



OFFICIAL: Sensitive

GENERAL ORDER

COMPLAINTS AND DISCIPLINARY FRAMEWORK

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General Orders provide an employee with instructions to ensure organisational standards are maintained consistent with SAPOL's vision. To this end, General Orders are issued to assist an employee to effectively and efficiently perform their duties. It is important that an employee constantly bears in mind that the extent of their compliance with General Orders may have legal consequences.

Most orders, as is indicated by the form in which they are expressed, are mandatory and must be followed. However, not all situations encountered by an employee can be managed without some form of guidance and so some of these orders are prepared as guidelines, which should be applied using reason. An appendix to a General Order will be regarded as part of the General Order to which it relates. At all times an employee is expected to act ethically and with integrity and to be in a position to explain their actions. Deviation from these orders without justification may attract disciplinary action.

To ensure best practice an employee should be conversant with the contents of General Orders.

The contents of General Orders must not be divulged to any person not officially connected with SAPOL. Requests for General Orders will be managed as follows:

- Civil subpoena and disclosure requests—contact the Information Release Unit.
- Criminal subpoena and disclosure requests—refer to General Order, **Disclosure compliance and subpoena management**.
- Freedom of information requests—contact the Freedom of Information Unit.
- Any other requests (including requests by employees)—refer to instructions provided within General Order, **Corporate policy framework, 5. GENERAL ORDER REQUESTS/RELEASE**.

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1. GENERAL ORDER STATEMENT

South Australia Police (SAPOL) is committed to managing all complaints and internal reports (hereinafter referred to as *reports*) relating to breaches of the code of conduct in an effective, responsible and professional manner.

Scope

This General Order applies to all SAPOL employees.

The *Police Complaints and Discipline Act 2016* and Police Complaints and Discipline Regulations 2017 contain the code of conduct for designated officers (refer to **2. DEFINITIONS, Designated officer**).

Protective security officers are governed by provisions of the *Protective Security Act 2007* and Protective Security Regulations 2008 which contain a code of conduct.

Public Sector Act employees (hereinafter referred to as PS Act employees) are directed by the *Public Sector Act 2009* with reference to the *Code of Ethics for the South Australian Public Sector* produced by the Commissioner for Public Employment. PS Act employees will include weekly paid employees unless stated otherwise.

Commentary

SAPOL is committed to the development and implementation of best practice in the performance management of its workforce.

Consideration of whether an employee is performing their duties satisfactorily or has behaved appropriately is a broad one. The public and employees need to have confidence in a system that supports the efficiency and effectiveness of the organisation and promotes the maintenance of integrity, good conduct and public value.

The discipline process is but one aspect of performance management. Sometimes it will be obvious that an employee should be managed within the disciplinary process. Other conduct or behaviour that could be said to amount to a breach of the code may be appropriately dealt with by regular management practices.

All performance management should aim to develop employees both professionally and personally and prevent the possibility of inappropriate behaviour recurring. The management resolution process contained in the *Police Complaints and Discipline Act 2016* is one way of achieving this.

The discipline process however may also include a notion of punishment in appropriate cases and the *Police Complaints and Discipline Act 2016* allows for more formal proceedings where this is considered necessary. Ensuring a proportionate response to issues will ensure the maintenance of public confidence in SAPOL, the self-esteem of other members and enhance organisational efficiency.

The important consideration from a managerial perspective is to identify when conduct is unsatisfactory, acknowledge there is an obligation to do something about it and manage it appropriately. This may include where it is reasonably suspected there is a breach of the code of conduct submitting a **PD185 Complaints and Reports about Breaches of the Codes of Conduct (PD185)** report in accordance with section 12 of the *Police Complaints and Discipline Act 2016*.

The *Police Complaints and Discipline Act 2016* details the manner in which complaints and reports are made, received and processed.

All complaints and reports about the conduct of employees are received and assessed at the Internal Investigation Section (IIS).

The assessment may result in:

- investigation
- management resolution pursuant to the *Police Complaints and Discipline Act 2016*
- referral to the local workplace manager to manage in the normal course of events
- a determination there is no further action required.

This General Order provides instructions for managers, supervisors and employees who become involved in the various criminal and disciplinary processes utilised by SAPOL.

2. DEFINITIONS

Breach of discipline—

- for designated officers is conduct that contravenes the *Police Complaints and Discipline Act 2016* or breaches the code of conduct and that may be the subject of a notice of allegation under the *Police Complaints and Discipline Act 2016*
- conduct that breaches the codes of conduct/ethics applicable to protective security officers according to the *Protective Security Act 2007* or the *Public Sector Act 2009* for PS Act employees.

Code of conduct or Code—for designated officers see section 7 of the *Police Complaints and Discipline Act 2016* and schedule 3 of the *Police Complaints and Discipline Regulations 2017*; or the *Public Sector Act 2009* code of conduct, produced as the *Code of Ethics for the South Australian Public Sector*; or code of conduct according to the *Protective Security Act 2007* and *Protective Security Regulations 2008*.

Complaint—a complaint made under section 10 of the *Police Complaints and Discipline Act 2016* or a complaint made about a protective security officer or PS Act employee.

Complaint management system—the complaint management system established by the IIS in accordance with section 6 of the *Police Complaints and Discipline Act 2016*.

Designated officer—a person who is:

- a member of SA Police (includes police officer and community constable); or
- a police cadet; or
- a special constable.

A designated officer does not include a protective security officer.

Police public servant—a person (not being a designated officer, protective security officer or weekly paid employee) employed or performing duties in an administrative unit of the Public Service of which the Commissioner of Police is the Chief Executive—this includes PS Act employees (engaged by SAPOL).

Prescribed determination (for management resolution)—

- a determination relating to the promotion or transfer of a designated officer (whether on application or otherwise); and
- a determination relating to an award of a medal or other accolade (however described); and
- any other determination.

Report—

- a report made by a designated officer under section 12 of the *Police Complaints and Discipline Act 2016* (relating to misconduct and corruption)
- a report made by a protective security officer or PS Act employee
- a report refers to a **PD185**.

Resolution officer—any member of SA Police referred a management resolution matter by the Officer in Charge, IIS or a District/LSA/branch manager.

3. **ETHICAL AND PROFESSIONAL STANDARDS BRANCH**

The Ethical and Professional Standards Branch (EPSB) has overall responsibility for managing SAPOL's disciplinary framework, and:

- undertake the assessment, investigation, adjudication and prosecution of matters involving complaints and reports about SAPOL employees through the IIS and the Professional Conduct Section (PCS)
- is responsible for the management of significant incident investigations and Commissioner's Inquiries. Investigational Assurance Section provides the terms of reference and a corporate review for such matters (refer to General Order, **Significant incident investigations and Commissioner's inquiries**).

Audit and Risk Management Section oversees a multidisciplinary audit and risk management program to maximise the effectiveness and efficiency of SAPOL and to create an environment for continuous improvement in compliance with General Order, **Audit procedures** and General Order, **Risk management**.

4. INTERNAL INVESTIGATION SECTION

The IIS is constituted in accordance with section 5 of the *Police Complaints and Discipline Act 2016*, and provides a state wide service to discharge the requirements of the *Police Complaints and Discipline Act 2016* and the provisions of this General Order that includes criminal allegations and breaches of discipline.

The IIS undertake investigation and oversight roles to ensure the scope, integrity and rigour for the following matters:

- deaths in custody—refer to General Order, **Deaths and deaths in custody**
- firearm and ECD incidents—refer to General Order, **Operational safety—operational equipment**
- level 2 equity and diversity complaints—refer to General Order 8420, **Human resource management, Diversity and inclusion**
- self-harm in police custody—refer to General Orders, **Self-harm in police custody** and **Custody management**
- arrest and custody management—refer to General Orders, **Arrest/report procedures and documentation** and **Custody management**
- declared significant incidents investigations and Commissioners inquiries—refer to General Order, **Significant incident investigations and Commissioner’s inquiries**.

5. PROFESSIONAL CONDUCT SECTION

The PCS adjudicates and prosecutes disciplinary and criminal matters involving all employees and provides policy advice concerning ethical and professional standards as they relate to SAPOL’s disciplinary processes.

6. OFFICE FOR PUBLIC INTEGRITY

The Office for Public Integrity (OPI) is established under part 3 of the *Independent Commissioner against Corruption Act 2012* (the ICAC Act) with functions as set out in section 8 of the *Police Complaints and Discipline Act 2016*.

The OPI is responsible to the Independent Commissioner Against Corruption (ICAC) and is the point of contact for any person wanting to make a complaint or report under the ICAC Act.

The *Police Complaints and Discipline Act 2016* provides the means by which the OPI oversees and manages the complaints process:

- to oversee the assessment and investigation of complaints and reports relating to designated officers; and
- to oversee the operation and enforcement of the *Police Complaints and Discipline Act 2016*; and
- to refer certain complaints and reports to the ICAC in accordance with the *Police Complaints and Discipline Act 2016* and the ICAC Act; and
- such other functions as may be assigned to the OPI under the *Police Complaints and Discipline Act 2016*.

7. CODES OF CONDUCT FOR SAPOL EMPLOYEES

Designated officers

Designated officers are required to adhere to the code of conduct detailed in section 7 of the *Police Complaints and Discipline Act 2016* and schedule 3 of the *Police Complaints and Discipline Regulations 2017*.

Provisions of the *Police Complaints and Discipline Act 2016* and Police Complaints and Discipline Regulations 2017 will be applied in disciplinary proceedings for designated officers.

Protective security officers

Part 5 of the *Protective Security Act 2007* describes processes for misconduct and discipline of protective security officers. Part 2 of the Protective Security Regulations 2008 prescribes the code of conduct.

Provisions of the *Protective Security Act 2007* and Protective Security Regulations 2008 largely follow that of the *Police Complaints and Discipline Act 2016* governing designated officers and will be applied in disciplinary proceedings for protective security officers.

Public Sector Act employees

PS Act employees are bound by the *Code of Ethics for the South Australian Public Sector* issued by the Commissioner for Public Sector Employment. This Code is issued pursuant to section 6 of the *Public Sector Act 2009* and will be applied in disciplinary proceedings for public sector employees.

Weekly paid employees

Weekly paid employees are public sector employees according to the *Public Sector Act 2009*; however, they are not appointed to the Public Service hence they are not subject to the disciplinary processes contained within the *Public Sector Act 2009*.

Nevertheless employees of this class are bound by the *Public Sector Act 2009* code of conduct, produced as the *Code of Ethics for the South Australian Public Sector* by the Commissioner for Public Employment, and can be the subject of an investigation. Where breaches of the code of conduct are found proved employees can be subject to a disciplinary outcome such as reprimand or termination.

Managers and supervisors are to contact the PCS for details on processes to be followed as each case may vary depending on the employee's contract or employment conditions.

8. RECEIVING AND MAKING COMPLAINTS AND REPORTS

It is the responsibility of all employees to report breaches of the codes of conduct that constitute grounds for disciplinary action against an employee. It is not the intention to restrict supervisors and managers from using performance management processes to correct behaviour considered to have contravened managerial instructions.

Pursuant to section 13 of the *Police Complaints and Discipline Act 2016* a complaint received by a designated officer or police public servant must be reported as soon as practicable to the IIS or the OPI and in any case by the end of the shift. A report will be made using a **PD185** report or to the OPI through the Internet at <<https://icac.sa.gov.au/content/office-public-integrity>>.

A complaint received by a protective security officer will be treated in the same manner as a complaint received by designated officers and police public servants and reported to the IIS or the OPI as soon as practicable and in any case by the end of the shift.

The Commissioner of Police will establish a complaint management system to record information relating to the making, assessment, investigation and resolution of complaints and reports—this will be administered by the IIS and overseen by the OPI.

Making a complaint about the conduct of designated officers by members of the public

In accordance with section 10 of the *Police Complaints and Discipline Act 2016* a complaint may be made by, or on behalf of, an aggrieved person to—

- a designated officer (not being an officer to whom the complaint relates); or
- a police public servant; or
- the OPI,

and may, to avoid doubt, be made whether or not the designated officer to whom the complaint relates is identified by the complainant.

A member of the public may make a complaint about a designated officer to OPI direct, attend a police station and be assisted in completing the OPI complaint form or an employee will complete a **PD185** report on behalf of the member of the public. It is the responsibility of all employees to facilitate the making of a complaint about any other SAPOL employee.

The complainant may (in the first instance) be referred to an officer of police, manager, sergeant or the officer in charge of a police station or supervisor, but the complainant is not to be unduly inconvenienced.

The IIS or the OPI may require a complaint made orally to be verified by the complainant in writing.

Complaints from police custody

Where a person detained in custody wishes to make a complaint about the conduct of a designated officer, a SAPOL employee performing duties in connection with the detention of the person must, at the request of the person, take all reasonable steps to ensure the person can make a complaint as soon as reasonably practicable. There is no obligation to interrupt the carrying out of any other lawful procedure or function—refer to section 11 of the *Police Complaints and Discipline Act 2016*.

Reports by designated officers

Breach of discipline and corruption

Section 12 of the *Police Complaints and Discipline Act 2016* imposes an obligation on all designated officers to report conduct by another designated officer that constitutes corruption, misconduct or maladministration in public administration to the IIS or the OPI and any refusal or failure to comply with that obligation/duty may be dealt with as a breach of discipline.

The conduct will be recorded as soon as reasonably practicable and in any case by the end of the shift on a **PD185** report and forwarded to the IIS or reported to the OPI through the Internet at <<https://icac.sa.gov.au/content/office-public-integrity>>.

Reports by protective security officers

Breach of discipline and corruption

Reporting provisions for breaches of discipline relative to protective security officers are contained within section 24 of the *Protective Security Act 2007* which states:

A protective security officer or police officer who becomes aware of circumstances in which it is reasonable to suspect the commission of a breach of the code of conduct under the Protective Security Act 2007 must report the matter to the Commissioner.

A protective security officer who reasonably suspects that another protective security officer or SAPOL employee has engaged in conduct that constitutes corruption, misconduct or maladministration in public administration must report that suspicion to the IIS or the OPI.

The conduct will be recorded as soon as reasonably practicable and in any case by the end of the shift on a **PD185** report and forwarded to the IIS or reported to the OPI through the Internet at <<https://icac.sa.gov.au/content/office-public-integrity>>.

Reports by Public Sector Act 2009 employees

Breach of discipline and corruption

Pursuant to the *Code of Ethics for the South Australian Public Sector*, PS Act employees will report to an appropriate authority, workplace behaviour that a reasonable person would suspect violates any law, is a danger to public health or safety or to the environment, or amounts to misconduct. A supervisor or manager is an appropriate authority for this purpose.

The conduct will be recorded as soon as reasonably practicable and in any case by the end of the shift on a **PD185** report and forwarded to the IIS or reported to the OPI through the Internet at <<https://icac.sa.gov.au/content/office-public-integrity>>.

This obligation does not derogate from the obligations on public sector employees under the directions and guidelines issued by the ICAC, which includes the duty to report corruption, misconduct or maladministration in public administration.

Public sector employees who are potential witnesses or are otherwise capable of assisting, will actively cooperate and assist with any investigation into the suspected or alleged conduct of another public sector employee that, if proven, would amount to misconduct (including corruption and maladministration) and any other processes relating to the management of such suspected or alleged conduct.

Reporting allegations of criminal behaviour

It is the duty of all employees to immediately report allegations of criminal behaviour by other employees to the Officer in Charge, IIS. For the purpose of this General Order, criminal behaviour includes drug offences that can be expiated or diverted under the drug diversion program, but does not include expiable traffic offences incurred off-duty by an employee—except where the expiation notice issued to the employee results in an instant loss of licence.

When an allegation of criminal behaviour relates to an:

- on duty incident which falls within the definition of breach of discipline pursuant to the codes of conduct for a SAPOL employee, a **PD185** report will be raised in the first instance and guidance sought from the IIS about raising a **PD338 Police incident report (PIR)**
- off-duty incident which falls within the definition of breach of discipline pursuant to the codes of conduct for a SAPOL employee, a **PD185** report will be completed and a PIR raised in accordance with General Order, **Crime and occurrence reporting** if a prima facie criminal offence is established.

The **PD185** report with relevant attachments will be immediately emailed or otherwise electronically forwarded to the IIS prior to the end of shift. The submitting employee's branch manager is to be advised.

Where the behaviour constitutes corruption, misconduct or maladministration in public administration a report will be made to the OPI through the Internet at <<https://icac.sa.gov.au/content/office-public-integrity>>, in addition to submission of a **PD185** report, in accord with reporting obligations of the ICAC Act.

All hard copy documents relevant to a **PD185** report or PIR are to be forwarded to the IIS under confidential cover (where applicable).

Where the incident is determined as a significant incident investigation or Commissioner's inquiry, the processes outlined in General Order, **Significant Incident investigations and Commissioner's Inquiries** will be followed.

The IIS will conduct oversight of criminal investigations involving SAPOL employees and determine the appropriate investigation section.

The adjudication and prosecution of criminal offences committed by SAPOL employees will be managed by PCS and the Director of Public Prosecutions (DPP) as appropriate.

Domestic abuse involving SAPOL employees

For all reports of and investigations into domestic violence incidents including intervention orders involving SAPOL employees, the instructions contained in General Order, **Domestic abuse** are to be followed.

For orders involving SAPOL employees refer also to instructions contained in General Order, **Intervention/restraining orders** in particular the role of family violence investigation sections.

The PCS is responsible for the adjudication and prosecution of domestic violence reports involving SAPOL employees.

A **PD185** report will be compiled and forwarded to the IIS where a SAPOL employee is the alleged perpetrator. A request to mask personal information will be required for documents such as police incident and apprehension reports.

Advice to employees the subject of police reports

Where a SAPOL employee becomes aware that another employee is the subject of a:

- PIR
- apprehension report
- street check or intelligence submission
- missing person report,

an officer of police (inspector or above) must be advised.

The officer of police in consultation with the Officer in Charge, IIS will determine if the employee should be advised they are the subject of a police report.

In determining whether the employee should be advised the integrity of any investigation is not to be compromised.

9. ASSESSMENT OF COMPLAINTS AND REPORTS BY THE INTERNAL INVESTIGATION SECTION

All complaints and reports about the conduct of SAPOL employees will be assessed by the IIS. The Officer in Charge, IIS will determine the process to undertaken and this includes:

- investigation (formal proceedings)
- management resolution (pursuant to the *Police Complaints and Discipline Act 2016*)
- no further action.

Complaints and reports assessed for no further action may be referred to the local workplace manager for action as considered appropriate.

Corruption

Each complaint or report received by or referred to the IIS under the *Police Complaints and Discipline Act 2016* must be assessed as to whether it raises a potential issue of corruption, misconduct or maladministration in public administration or some other issue that should, in the opinion of the Officer in Charge, IIS, be referred to the OPI (reporting exemptions apply—refer to section 12 of the *Police Complaints and Discipline Act 2016*).

No further action

The Officer in Charge, IIS may decline to take further action in respect of a particular complaint or report if:

- the matter has been previously dealt with under the *Police Complaints and Discipline Act 2016* or other related Acts (such as the ICAC Act or *Police Act 1998*)
- the matter raised is determined to be trivial, frivolous, vexatious or not made in good faith
- in the case of a complaint only, where an investigation into the circumstances of the case are determined to be unnecessary or unjustifiable.

When the above criteria is satisfied the Officer in Charge, IIS may refer the complaint or report to the local manager for advice and action as appropriate.

10. MANAGEMENT RESOLUTION

Designated officers

In accordance with part 3 of the *Police Complaints and Discipline Act 2016* the Commissioner of Police has determined that a complaint, report or allegation about the conduct of a designated officer may be dealt with by way of management resolution unless the conduct alleged, if proven, would result in:

- termination of the designated officer's appointment; or
- suspension of the designated officer's appointment for any period; or
- reduction of the designated officer's rank, seniority or remuneration; or
- the imposition of a fine.

Where a complaint or report consists of more than one allegation that complaint or report may be dealt with by management resolution **unless** one or more of the allegations would, if proven, result in:

- termination of the designated officer's appointment; or
- suspension of the designated officer's appointment for any period; or
- reduction of the designated officer's rank, seniority or remuneration; or
- the imposition of a fine.

The purpose of a management resolution is to avoid formal disciplinary proceedings by dealing with the matter as a question of educating and improving the future conduct of the designated officer concerned. Complaints and reports referred for management resolution are to be conducted as expeditiously as possible, without undue formality and with an emphasis on conciliation.

Complaints and reports determined suitable for management resolution by the Officer in Charge, IIS will be forwarded to work area managers and undertaken by nominated resolution officers (generally supervisors and managers).

Instructions for resolution officers about how to conduct management resolutions have been developed and accompany each file. The instructions are also available through the intranet at <police connect home page/services/governance and capability service/ethical and professional standards branch/resources>.

Management resolution timeframes will be set by the Officer in Charge, IIS and will accompany each file. In exceptional circumstances an extension may be granted by the Officer in Charge, IIS or nominee. This process is to be prioritised in the interests of all involved.

When possible, management resolutions will use the Blue Team (IAPro) application, available through the intranet at <police connect home page/services/governance and capability service/ethical and professional standards branch/blue team>, to deliver relevant documents between the IIS and work areas. A management resolution report once completed will be forwarded to the IIS and recorded on the complaint management system.

In the course of a management resolution the resolution officer, with approval of the District/LSA/branch manager, may take action such as:

- impose a restriction on the ability of the designated officer to work in a specified position, or to perform specified duties, within SAPOL
- remove, or impose conditions on, any accreditation, permit or authority granted by SAPOL to the designated officer
- provide the designated officer with counselling
- issue the designated officer with a reprimand.

In relation to the first two dot points such action will only be taken in order to provide the designated officer with remedial education and training, or to establish the designated officer is competent and capable of carrying out specified duties. Consideration must be given to the potential impact of the action on the designated officer and the risks to other employees and the community if no such action is taken.

The restrictions or conditions imposed in relation to the first two dot points will cease when the training or education has been completed or the competencies or capabilities have been established, or if a period of 3 months has elapsed from the time the action was taken (that is from the time a restriction or condition was imposed).

Resolution officers are required to contact the complainant and designated officer(s) to inform them of the management resolution process and to ascertain any relevant information. The resolution officer also has the responsibility for informing the complainant and designated officer(s) of the outcome of the management resolution. The designated officer is to be provided with a copy of the management resolution report following approval by the District/LSA/branch manager.

Outcomes of management resolution

The Officer in Charge, PCS will be responsible for monitoring and reviewing management resolution outcomes with a view to maintaining proper and consistent practices.

Pursuant to section 18(8) of the *Police Complaints and Discipline Act 2016*, information obtained in the course of a management resolution is not to be used in relation to a prescribed determination (that is promotion, transfer, medal or accolade) relating to the designated officer concerned.

However, this does not apply if in the opinion of the Officer in Charge, PCS the designated officer has engaged in a pattern of unsatisfactory conduct and it is appropriate for the information to be used in relation to a prescribed determination relating to the designated officer, having first sought and considered any views of the designated officer as to the use of the information.

Protective security officers

Protective security officers have a management resolution process outlined in section 28 of the *Protective Security Act 2007* and this will be applied.

Instructions for employees undertaking a management resolution are available through the intranet at <police connect home page/services/governance and capability service/ethical and professional standards branch/resources>.

Advice should be sought from the PCS in the first instance for matters relating to protective security officers.

Directions to designated officers and protective security officers involved in management resolutions

A SAPOL employee conducting a management resolution (resolution officer) referred by the Officer in Charge, IIS is authorised by the Commissioner of Police to direct employees to furnish information, produce property, a document or other record or answer a question relevant to the management resolution.

Refusal to furnish information or answer questions as detailed above or providing false or misleading information will be dealt with as a breach of discipline.

PS Act employees

PS Act employees are not governed by the management resolution process. Instructions contained in the *Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance (Including Misconduct)* are to be followed.

PS Act employees are not required to answer a question that may incriminate them according to the *Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance (Including Misconduct)*. PS Act employees will be provided a reasonable opportunity to respond to allegations.

Advice should be sought from the PCS in the first instance for matters relating to PS Act employees.

Weekly paid employees

Weekly paid employees are not governed by the management resolution process or the *Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance (Including Misconduct)*.

However employees of this class are bound by the *Public Sector Act 2009* code of conduct, produced as the *Code of Ethics for the South Australian Public Sector* by the Commissioner for Public Employment and can be the subject of an investigation. The investigation of a complaint or report involving a weekly paid employee will follow a similar process as outlined in the *Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance (Including Misconduct)*.

Advice should be sought from the PCS in the first instance for matters relating to weekly paid employees.

11. FORMAL PROCEEDINGS FOR A BREACH OF THE CODES OF CONDUCT

The classification of employee will determine the disciplinary process to be undertaken, that is designated officer, protective security officer or PS Act employee.

Investigations of complaints and reports about designated officers

Investigations involving designated officers will be carried out by the IIS or other members as directed by the IIS, vide part 4 of the *Police Complaints and Discipline Act 2016*.

Authorities for the IIS and other members directed to undertake investigations on behalf of the IIS are contained in section 21 of the *Police Complaints and Discipline Act 2016* and they include:

- making inquiries and obtaining information, property, documents or other records relevant to the investigation; and
- directing a designated officer to furnish information, produce property, a document or other record or to answer a question relevant to the investigation

Refusal to furnish information or answer questions as detailed above or providing false or misleading information will be dealt with as a breach of discipline.

A member conducting an investigation for or on behalf of the IIS must, before giving any direction to the designated officer whose conduct is under investigation, inform the officer of:

- the time and place at which the conduct is alleged to have occurred; and
- the nature of the alleged conduct,

unless those details are not known or the investigating officer believes on reasonable grounds it may prejudice the investigation.

Investigations will be undertaken as *initial* or *conduct*.

An initial investigation aims to gather further information in the first instance for example CCTV, body worn video or statements.

A conduct investigation is a compilation of relevant evidence relating to a serious breach of discipline resulting in the gathering of all associated statements, other material and generally an interview with the designated officer.

For initial and conduct investigations the Officer in Charge, IIS will conduct a review of the circumstances leading to the following outcomes:

- a charge (code of conduct breach) laid with the Police Disciplinary Tribunal (PDT)
- management resolution, pursuant to the *Police Complaints and Discipline Act 2016*
- no further action

Complaints and reports assessed for no further action may be referred to the local workplace manager for action as considered appropriate.

Investigation timeframes will be set by the Officer in Charge, IIS according to nature and complexity and will accompany investigation files. In exceptional circumstances an extension can be applied by the Officer in Charge, IIS or nominee. This process is to be prioritised in the interests of all involved.

An investigation report is required and will be forwarded to the IIS for assessment and inclusion on the complaint management system.

Instructions have been developed for members allocated an IIS investigation and will accompany each file. The instructions are available through the intranet at <police connect home page/services/governance and capability service/ethical and professional standards branch/resources>.

Members issued an investigation into a complaint or report are required to keep the complainant and designated officer(s) the subject of the complaint informed of the progress and resolution of the complaint or report.

Exemptions to this requirement exist and in summary relate to investigations involving corruption or where an investigation may be compromised by advice to the complainant or involved designated officers, refer to section 9 of the *Police Complaints and Discipline Act 2016*.

Investigations of complaints and reports about protective security officers

Protective security officers alleged to have breached their code of conduct will be the subject of an investigation in the same manner as those conducted for designated officers.

Pursuant to this General Order protective security officers involved in the investigation of a complaint or report will furnish information, produce property, a document or other record or answer a question relevant to the investigation.

Refusal to furnish information or answer questions as detailed above or providing false or misleading information will be dealt with as a breach of discipline.

Advice should be sought from the PCS in the first instance for matters relating to protective security officers.

Investigations of complaints and reports about Public Sector Act 2009 employees

Investigations involving PS Act employees suspected to have breached the *Code of Ethics for the South Australian Public Sector* where a disciplinary outcome is required will occur according to the *Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance (Including Misconduct)*.

PS Act employees may be the subject of a disciplinary inquiry when the findings of an investigation are complete.

PS Act employees are not required to answer a question that may incriminate them according to the *Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance (Including Misconduct)*. PS Act employees will be provided a reasonable opportunity to respond to allegations.

Advice should be sought from the PCS in the first instance for matters relating to PS Act employees.

Weekly paid employees

Weekly paid employees are not governed by the *Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance (Including Misconduct)*.

However employees of this class are bound by the *Public Sector Act 2009* code of conduct, produced as the *Code of Ethics for the South Australian Public Sector* by the Commissioner for Public Employment and can be the subject of an investigation.

The investigation of a complaint or report involving a weekly paid employee will follow a similar process as outlined in the *Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance (Including Misconduct)*.

Advice should be sought from the PCS in the first instance for matters relating to weekly paid employees.

Directions to employees during investigations

Depending on the status of the employee and the type of investigation being conducted an appropriate and proportionate direction may be utilised.

The directions are available through the intranet at <police connect home page/services/governance and capability service/ethical and professional standards branch/resources>.

Statements from employees

An employee who is or may be a witness to an incident, who responds to a reported incident, or who is involved in the investigation of an incident, must, at the request of the investigating officer provide a signed statement outlining their involvement, actions and observations. The employee will provide a copy of all notes and advice or other relevant materials within a reasonable period of time after the incident, if not by completion of the shift.

A signed sworn or affirmed affidavit is preferred as the accepted format for presenting evidence before the court. Should the matter proceed to court, the witness must provide their statement in the format required by the court. A signed sworn or affirmed affidavit enables the court to accept evidence without the need to provide oral evidence. There will be occasions however, when the employee will be required to attend court and provide oral evidence.

12. CONFIDENTIALITY

Pursuant to section 45 of the *Police Complaints and Discipline Act 2016* where a person receives information knowing that information is connected with a complaint, report, assessment or investigation, he or she must not disclose directly or indirectly that information unless that person is involved in the administration of the *Police Complaints and Discipline Act 2016* and only then using certain criteria as defined within section 45.

The *Police Complaints and Discipline Act 2016* does not prohibit disclosure by a designated officer:

- required or authorized by the *Police Complaints and Discipline Act 2016*, ICAC or OPI
- dealing with a matter under the *Police Complaints and Discipline Act 2016* or the ICAC Act
- for the purpose of a criminal proceeding for the imposition of penalty or disciplinary action
- seeking legal advice or legal representation or for the purpose of seeking indemnity for legal costs
- for the purpose of a person obtaining medical or psychological assistance from a medical practitioner or psychologist.

To disclose information outside the scope of section 45 is a criminal offence pursuant to *Police Complaints and Discipline Act 2016* (further provisions apply).

General obligations as to confidentiality

Pursuant to the relevant codes of conduct for designated officers, protective security officers and PS Act employees, all SAPOL employees are required to treat information obtained in the course of their duties confidentially. Where an employee improperly uses or discloses information obtained during the course of an investigation they may be the subject of disciplinary action.

13. ENQUIRIES INTO OFFENCES DETECTED BY PHOTOGRAPHIC DEVICES

Drivers of SAPOL vehicles may be detected speeding or failing to comply with traffic lights in the course of their duties. Exemptions exist pursuant to rule 305 of the Australian Road Rules and section 110AAAA of the *Road Traffic Act 1961* for police officers in certain circumstances. The exemption only applies to police officers and community constables.

The drivers of police vehicles are obliged at all times to drive with reasonable care and are not exempt from committing offences against sections 45 and 46 of the *Road Traffic Act 1961*, namely driving without due care or driving at a speed or in a manner dangerous.

When a police vehicle is detected committing an offence by a photographic device the driver will be required to complete a **PD4 Traffic Camera Expiation Notice – Police Vehicle Enquiry** to establish if exemptions or defences are justified prior to a notice being issued to the driver. A speeding offence involving a speed in excess of 40kph will result in an investigation.

The process to be followed by members seeking to claim an exemption and supervisor and manager obligations relative to determining if a valid exemption applies is available through the intranet at <police connect home page/services/governance and capability service/ethical and professional standards branch>.

14. DISCIPLINARY PROCEEDINGS

Adjudication of alleged breaches of the codes of conduct

Investigations regarding breaches of discipline for SAPOL employees that result in substantiated findings are referred to the Officer in Charge, IIS. When, upon review, the Officer in Charge, IIS determines there to be substantiated breaches of discipline the matter is referred to the PCS for adjudication. Recommendations from the adjudication process are forwarded to the Officer in Charge, PCS. This includes criminal matters.

The PCS is responsible for adjudicating and recommending a course of action to the Officer in Charge, EPSB.

The Officer in Charge, EPSB has authority to approve all disciplinary actions against employees. Criminal matters may be referred to the DPP for independent advice/adjudication depending on the seriousness of the offence.

Police Disciplinary Tribunal

When an alleged serious breach of the code of conduct has been identified as a result of an investigation into a complaint or report for designated officers the matter may be referred to the Police Disciplinary Tribunal (PDT).

A notice of allegation is compiled and provided to the designated officer along with a written notice outlining a punishment that would likely be imposed if the breach was proved. The OPI is advised of allegations to be placed before the PDT and any submissions are considered.

The PDT hears matters relating to police officers, police cadets and community constables. When disciplinary charges are approved the PCS is responsible for prosecuting the matters.

Charges involving officers of police may be prosecuted by the Crown Solicitors Office.

A magistrate presides over the PDT and the hearing is conducted in a similar manner to a magistrates court, except the hearings are conducted in private. Employees who are not connected with the case are not permitted to enter the hearing without permission from the PDT.

Where the PDT is satisfied on the balance of probabilities that a designated officer has committed a breach of discipline or an admission of a breach has been accepted, the PDT must notify the IIS and remit the matter to the Commissioner of Police for penalty.

The Officer in Charge, IIS will ensure information in respect of the PDT findings, remission of the proceedings to the Commissioner of Police and assessment as to the seriousness of the breach is recorded on the complaint management system.

Section 26 of the *Police Complaints and Discipline Act 2016* provides the list of sanctions the Commissioner of Police can impose following a guilty finding for an offence or breach of discipline.

Appeal provisions are detailed in part 6 of the *Police Complaints and Discipline Act 2016*.

Protective Security Officers Disciplinary Tribunal

Part 5A of the *Protective Security Act 2007* establishes the Protective Security Officers Disciplinary Tribunal and its operation is similar to the Police Disciplinary Tribunal.

Similar administrative processes apply for laying breaches of the code of conduct as prescribed in section 25 of the *Protective Security Act 2007* and part 3 of the Protective Security Regulations 2008.

Public Sector Act disciplinary inquiry

PS Act employees may be the subject of a disciplinary inquiry when the findings of an investigation are complete.

Inquiry process

The Officer in Charge, PCS will nominate an inquiry officer (generally a Public Service director or equivalent) to conduct a disciplinary inquiry.

The disciplinary inquiry will be conducted in accordance with the *Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance (Including Misconduct)*.

The inquiry officer will determine, on the balance of probabilities, whether the PS Act employee is liable to disciplinary action and may take one or more of the disciplinary actions found at section 55 of the *Public Sector Act 2009*.

The PS Act employee has a right of review against the findings and recommendations of the inquiry officer.

Weekly paid employees

Weekly paid employees whom after investigation are found to be in breach of the Public Sector Act code of conduct can be subject to a disciplinary outcome such as a reprimand or termination; however, they are not to be the subject of a public sector inquiry.

15. SUSPENSION

Designated officers

In some cases it may be appropriate to suspend the appointment of a designated officer charged with a criminal offence or a breach of discipline. The Officer in Charge, EPSB is delegated by the Commissioner of Police to suspend an employee pursuant to the *Police Complaints and Discipline Act 2016* unless the suspension is without remuneration.

In some cases the issue as to whether an employee is suspended can be determined at a show cause hearing where the employee can make representations as to why suspension from duty should not occur.

The issue of whether the period of suspension should count as service for the purpose of accrual of rights for various types of leave is another consideration for the Commissioner of Police.

Protective security officers

Section 27 of the *Protective Security Act 2007* details the suspension process for protective security officers where they have been charged with a criminal offence or a breach of the code of conduct. This process is delegated to the Officer in Charge, EPSB.

Public Sector Act employees

When a PS Act employee is charged with a criminal offence punishable by imprisonment or given notice that they will be the subject of a disciplinary inquiry the Commissioner of Police (or delegate) may, pursuant to section 55 of the *Public Sector Act 2009*:

- suspend the employee from duty
- transfer the employee to another position within the organisation
- transfer the employee to another department of the Public Service.

A PS Act employee must notify the Officer in Charge, IIS when they have been charged with a criminal offence—refer to the Public Sector Act code of conduct.

Weekly paid employees

Weekly paid employees are not appointed to the Public Service therefore they are not governed by the disciplinary process that includes suspension according to the *Public Sector Act 2009*.

16. PENALTY PROCESSES

Designated officers

Pursuant to section 26 of the *Police Complaints and Discipline Act 2016*, the Commissioner of Police may take any or all of the actions listed in that section in relation to a designated officer found guilty of an offence under a law of this State, the Commonwealth or another State or a Territory of the Commonwealth.

The same section applies for a person who admits or is found to have committed a breach of the code of conduct.

The Commissioner of Police (or delegate) will as soon as reasonably practicable notify the Officer in Charge, IIS of any action taken in respect of the proceedings and the Officer in Charge, IIS will record this on the complaint management system.

The Commissioner of Police may deal with a matter directly or delegate the sanctioning process to the Deputy Commissioner or an Assistant Commissioner.

The Commissioner of Police as part of any sanction can terminate an employee's appointment, transfer that employee to another position, reduce the rank of the employee, or impose more than one of the outcomes found within section 26 of the *Police Complaints and Discipline Act 2016*. However the sanction will be in accord with the written notice provided to the involved designated officer indicating the punishment that the Commissioner of Police would be likely to impose if the breach of discipline were proved.

In relation to criminal charges the Commissioner of Police is not bound by any penalty restrictions and has the full range or combination of penalty options permitted under section 26 of the *Police Complaints and Discipline Act 2016*.

Appeal provisions are detailed in part 6 of the *Police Complaints and Discipline Act 2016*.

Protective security officers

Pursuant to section 26 of the *Protective Security Act 2007* the Commissioner of Police may take any or all of the actions listed in that section in relation to a protective security officer found guilty of an offence under a law of this State, the Commonwealth or another State or a Territory of the Commonwealth.

The same section applies for a protective security officer who admits or is found to have committed a breach of the code of conduct.

Public Sector Act employees

Section 54 and 55 of the *Public Sector Act 2009* provides for the Commissioner of Police to take disciplinary action against a PS Act employee who has been found to have committed misconduct or for the unsatisfactory performance of duties.

Misconduct can include any misconduct while in the employment as a PS Act employee. This can include a criminal offence where the employee has been convicted of an offence punishable by imprisonment—refer to the definition of misconduct under the *Public Sector Act 2009*.

Where termination of employment is being considered the Commissioner for Public Sector Employment must be informed of the grounds on which it proposed to terminate the employee and the processes leading up to that proposed termination, pursuant to section 54(3) of the *Public Sector Act 2009*.

Weekly paid employees

Weekly paid employees can be reprimanded or have their employment terminated following a finding for breach of discipline or a criminal penalty.

17. ADMINISTRATIVE ORDERS FOR COMPLAINTS AND REPORTS

Where managers become aware of a suspected breach of the law or discipline by an employee they are to consider taking managerial action.

Investigations into breaches of law and discipline may take a considerable period of time to resolve and it is important to protect the interests of the involved member and SAPOL in the intervening period. Refer to **11. FORMAL PROCEEDINGS FOR A BREACH OF THE CODES OF CONDUCT, Directions to employees during investigations** previous in this General Order.

An administrative order is a means to do this and introduces changes to work duties or places work restrictions on an employee.

An administrative order can be served on an employee at any stage of the complaint or report process.

Changes to work duties or workplace restrictions imposed upon an employee are based on the individual circumstances of the complaint or report and the employee.

Examples of administrative orders to change work duties or introduce workplace restrictions on employees are:

- revoking or limiting an employee's use of the SAPOL email system
- revoking or limiting an employee's access to SAPOL databases
- prohibiting an employee from driving any police vehicle or suspending a SAPOL permit
- withdrawing a search warrant
- ordering an employee not to communicate with another employee (for example personally or by phone, email or social media).

Proposed administrative orders associated with an employee's movement, or restriction from attending SAPOL workplaces (specific or general) including directed leave, must be referred to the O/C EPSB for consideration and approval.

An administrative order should be carefully expressed as a measure taken to preserve existing interests, made without punitive intent and without prejudice to the issues to be determined later on.

The purpose of an administrative order is for the effective management of SAPOL, welfare of an employee and protection of the public. Each matter will depend upon the circumstances of the case.

Subject to above, administrative orders may be designed and imposed by workplace managers. Managers should seek guidance as necessary from EPSB. Copies of administrative orders imposed on employees by workplace managers must be forwarded as soon as practicable to the Officer in Charge, IIS.

18. FORMS

The following forms are applicable to this General Order:

- **PD185 Complaints and Reports about Breaching Codes of Conduct**
- **PD185A Management Resolution Report**
- **PD185B Investigation Diary**

- **RF1628 Request to mask personal information.**

19. REFERENCES

Australian Road Rules

[Code of Ethics for the South Australian Public Sector](#)

[Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance \(Including Misconduct\)](#)

General Order 8420, **Human resource management, Diversity and inclusion**

General Order, **Audit procedures**

General Order, **Corruption—reporting and investigation**

General Order, **Deaths and deaths in custody**

General Order, **Delegations**

General Order, **Domestic abuse**

General Order, **Fraud and corruption control plan**

General Order, **Information—access and release**

General Order, **Intervention/restraining orders**

General Order, **Operational safety—operational equipment**

General Order, **Risk management**

General Order, **Significant incident investigations and Commissioner's inquiries**

General Order, **Public interest disclosure**

Independent Commissioner Against Corruption Act 2012

Police Complaints and Discipline Act 2016

Police Complaints and Discipline Regulations 2017

Police Act 1998

Police Regulations 2014

Public Sector Act 2009

Protective Security Act 2007

Protective Security Regulations 2008

Road Traffic Act 1961

[South Australia Police Code of Conduct](#)

20. FURTHER ENQUIRIES

Ethical and Professional Standards Branch on telephone 732 23308, or through the intranet at <police connect home page/services/governance and capability service/ethical and professional standards branch>.

21. DOCUMENT HISTORY SINCE 18/11/09

Gazette reference (SAPG)	Date	Action (amendment/deletion/new/review/temporary variation)
362/09	18/11/09	Review 2009—replaces General Order, Offences involving SAPOL employees and PCO Circular 514, Informal resolution of minor complaints against police and informal inquiries into minor misconduct.
345/11	30/11/11	Amendment—references to General Order, Domestic violence changed to Domestic abuse , General Order, Restraining orders changed to Intervention/restraining orders and 'violence' changed to 'abuse'. Commencing 0001 hours on 09/12/11.
106/13	15/05/13	Amendment—references to the Police Complaints Authority deleted and replaced with Police Ombudsman. References to the Public Sector Management Act 1995 also deleted and replaced with Public Sector Act 2009.
177/13	21/08/13	Amendment—processes at 3. INTERNAL INVESTIGATION SECTION amended in relation to the investigation of deaths and self-harm incidents in custody in relation to the relevant General Order. Additionally all references to General Order, Deaths/attempt self-harm in custody amended to General Order, Deaths and deaths in custody .
187/17	13/09/17	Review 2017—major changes to General Order to address the introduction of the <i>Police Complaints and Discipline Act 2016</i> and Police Complaints and Discipline Regulations 2007 and repeal of the <i>Police Complaints and Disciplinary Proceedings Act 1985</i> .
150/18	04/07/18	Amendment—district policing model implementation.
68/22	06/04/22	Amendment—at 11. FORMAL PROCEEDINGS FOR A BREACH OF THE CODES OF CONDUCT a new subheading Statements from employees has been added.

APPROVED BY COMMISSIONER/DEPUTY

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Print Full Name

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ID Number

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Signature

29/03/2022
Date

Documentation certification and verification

General Order draft—prepared by: Inspector David Huddy, Ethical and Professional Standards Branch

General Order—verified by: Officer in Charge, Ethical and Professional Standards Branch