



# **REVIEW OF LEGISLATIVE SCHEMES**

## **DISCUSSION PAPER**

**OVERSIGHT OF COMPLAINTS RELATING TO THE CONDUCT OF MEMBERS OF SA POLICE**

**COMPLAINTS AND REPORTS ABOUT PUBLIC ADMINISTRATION**

**FEBRUARY 2015**

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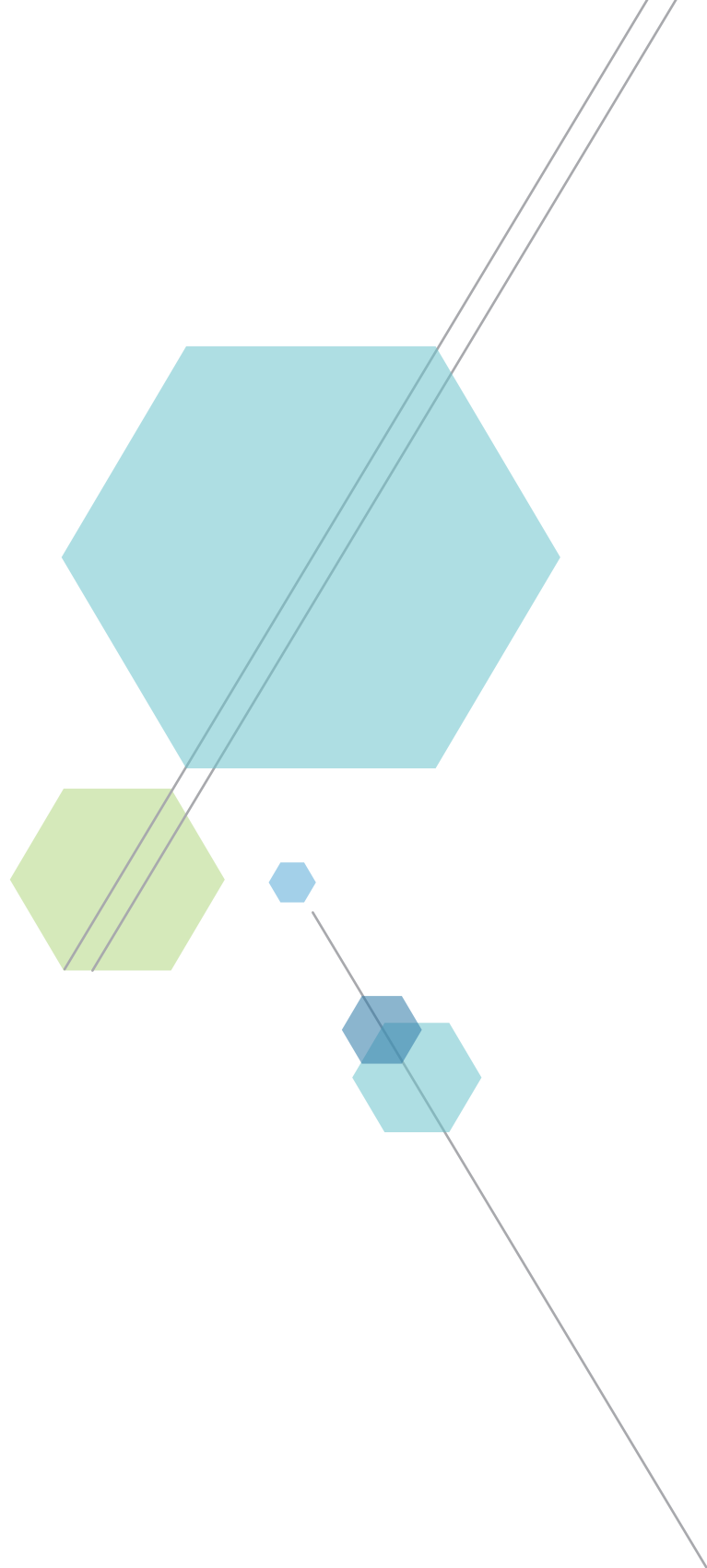
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# FOREWORD

On 30 October 2014 the Deputy Premier and Attorney-General, the Hon. John Rau MP ('Attorney-General') wrote to me and requested, at my invitation, that I undertake a review of the legislative schemes governing:

- » the oversight and management of complaints regarding the conduct of members of South Australia Police, in the *Police Act 1998* ('Police Act'), the *Police (Complaints and Disciplinary Proceedings) Act 1985* ('P(CDP) Act') and the *Independent Commissioner Against Corruption Act 2012* ('ICAC Act'); and
- » the making of complaints and reports to the Police Ombudsman, the Ombudsman and the Office for Public Integrity with a particular focus on whether or not the complaint/report processes to those offices can be consolidated in one office.

The Attorney-General also requested that I exercise the power given to me under section 40 of the ICAC Act to conduct an evaluation of the practices, policies and procedures of the Police Ombudsman.

On 31 October 2014, while appearing before the Crime and Public Integrity Policy Committee, I announced that I would be conducting the reviews and evaluation as requested by the Attorney-General. I also announced that I would conduct the reviews and evaluation by way of a public inquiry, as I am empowered to do under section 7(5) of the ICAC Act.

For convenience, the reviews of the legislative schemes and the evaluation of the practices, policies and procedures of the Police Ombudsman will be collectively referred to as 'the reviews' in this document.

The public are entitled to expect there to be an efficient and effective mechanism for the making of complaints and reports about any aspect of public administration, including about police. At the moment, there is unnecessary duplication, complexity, confusion and delay.

In my view, the reviews present an opportunity to consider the legislative schemes in light of the collective experience of their operation and to propose reforms aimed at making the schemes more efficient, effective, simple and clear.

To inform the review it is critical that those with a direct interest in the legislative schemes have a say about their operation. It is also critical that any interested member of the public has the opportunity to contribute his or her views.

Since commencing the reviews I have discussed the legislative schemes with key stakeholders, including the Commissioner of Police, Police Ombudsman, South Australian Ombudsman and the Police Association. I have examined the legislative schemes that operate in every other state and territory, in the Commonwealth and overseas. I have held teleconferences or visited a number of integrity agencies and police forces in Australia and New Zealand to gauge the operation and success of differing oversight systems.

The purpose of this discussion paper is to summarise the present legislative scheme in South Australia and to set out, in broad terms, the issues that I think ought to be considered in the reviews. I do not in this discussion paper suggest any proposal for reform. To do so now would, in my view, be premature. The process of consultation and the receipt and consideration of submissions from any interested party is critical to the presentation of considered, sensible and workable proposals for reform.

To that end, I encourage those interested or affected to consider this discussion paper and to make a submission.

I look forward to your participation in this very important process.



The Hon. Bruce Lander QC

## INDEPENDENT COMMISSIONER AGAINST CORRUPTION



# INTRODUCTION

South Australia has been fortunate not to have experienced the high profile corruption scandals that have led to the creation of integrity bodies in other states. The experience of integrity agencies in this State suggests that there is no evidence of the systemic corruption that has led to Royal Commissions and the establishment of anti-corruption agencies in New South Wales, Queensland, Victoria and Western Australia.

The South Australian community is well served by a professional, ethical and high calibre police force. The South Australia Police ('SAPOL') enjoys high levels of community confidence. In the 2012 Roy Morgan 'Image of Professions' poll, SAPOL scored an 84% rating for ethics and honesty, the highest of any police force in the country.

In order to maintain public confidence in policing and in public administration more generally, it is critical that there be in place an integrity system that is accessible, efficient, effective and simple.

Integrity agencies charged with the responsibility of implementing that system play a vital role in safeguarding public confidence in public administration and in ensuring that, where corruption, misconduct or maladministration does occur, it is identified and dealt with efficiently and effectively.

In September 2013, the integrity landscape in South Australia changed. The commencement of the ICAC Act saw the introduction of two new bodies: the Independent Commissioner Against Corruption ('ICAC') and the Office for Public Integrity ('OPI').

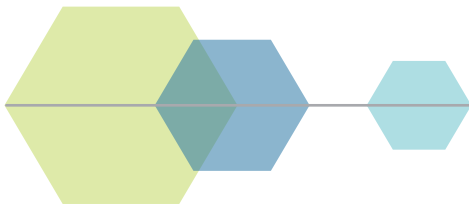
Those bodies came into existence following considerable political and community debate regarding the need for an overarching anti-corruption integrity body in South Australia.

A discussion paper published by the Attorney-General in 2010 entitled "A Review of the Public Integrity Institutions in South Australia and an integrated model for the future" proposed the establishment of a Commissioner for Public Integrity with the powers of a Royal Commissioner and a Public Integrity Office as a 'one stop shop' for the initial presentation of complaints from members of the public. In December 2012 the Parliament passed the ICAC Act. The ICAC Act reflected the proposals in the 2010 discussion paper by creating the ICAC and the OPI. On 2 September 2013, the ICAC and OPI commenced operations.

The ICAC is established under the ICAC Act with the following functions:

- a. to identify corruption in public administration and to –
  - i. investigate and refer it for prosecution; or
  - ii. refer it to a law enforcement agency for investigation and prosecution;
- b. to assist inquiry agencies and public authorities to identify and deal with misconduct and maladministration in public administration;
- c. to give directions or guidance to inquiry agencies and public authorities, and to exercise the powers of inquiry agencies in dealing with misconduct and maladministration in public administration, as the Commissioner considers appropriate;
- d. to evaluate the practices, policies and procedures of inquiry agencies and public authorities with a view to advancing comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration;
- e. to conduct or facilitate the conduct of educational programs designed to prevent or minimise corruption, misconduct and maladministration in public administration;
- f. to perform other functions conferred on the Commissioner by this or any other Act.<sup>1</sup>

<sup>1</sup> See section 7(1) ICAC Act.



The OPI is responsible to the ICAC and has been established to:

- a. receive and assess complaints about public administration from members of the public;
- b. receive and assess reports about corruption, misconduct and maladministration in public administration from inquiry agencies, public authorities and public officers;
- c. make recommendations as to whether and by whom complaints and reports should be investigated; and
- d. perform other functions assigned to the OPI by the Commissioner.<sup>2</sup>

These bodies have not replaced but have augmented the roles of the Ombudsman, the Police Ombudsman and the Commissioner for Public Sector Employment. Those agencies have been defined as ‘inquiry agencies’ under the ICAC Act.

In addition to the OPI, the Ombudsman and the Police Ombudsman continue to receive complaints from members of the public and reports from public officers.

A number of agencies have raised issues regarding the existing scheme.

In the 2013-2014 Annual Report of the ICAC and OPI, the Commissioner said:

[t]he legislative scheme regulating police conduct requires review and simplification. All investigations of police misconduct should be the subject of independent oversight and review, irrespective of who has reported the alleged misconduct and to whom the report is made. The legislative scheme should ensure that such oversight takes place in an efficient and uncomplicated manner, so as to minimise the potential for confusion and uncertainty.

The present system has the potential to diminish public confidence in the independence of the Police Ombudsman, particularly in so far as the system provides that the Commissioner of Police may disagree with directions, decisions and recommendations of the independent oversight body. At present, the P(CDP) Act makes the Police Ombudsman’s task more difficult than it need be.<sup>3</sup>

Later in the report the Commissioner noted that the idea of a ‘one stop shop’ had not come to fruition. He said:

I have already started speaking with relevant agencies about ways of reducing duplication and improving work flows for the management of complaints and reports about public administration. I intend to broaden those discussions in the near future. I will then make recommendations to government about how such improvements might be realised.

In her most recent Annual Report, the Police Ombudsman raised concerns about the operations of her office. She said:

[t]he significant increase in workload as foreshadowed in last year’s report has led to an untenable and unsustainable situation. It is clear that unless considerable and urgent measures are taken, the viability of the office will become increasingly precarious.

The increase in workload has primarily come about through greater complaint numbers, the establishment of the Office for Public Integrity (OPI) and the office of the Independent (ICAC) Commissioner Against Corruption and the recently required oversight function of the [office of the Police Ombudsman] in relation to SAPOL’s Internal Mandatory Reports.

<sup>2</sup> See section 17 ICAC Act.

<sup>3</sup> ICAC / OPI Annual Report 2013-2014 pg 60.

The consequences associated with an ever increasing workload, lack of resources and no promise of sufficient and future budgetary assistance are many. At the forefront of those consequences are the emotional well-being of staff, the integrity and reputation of the office, [and] the unacceptable delay in bringing complaint matters to resolution<sup>4</sup>.

Other concerns were raised by the then South Australian Ombudsman in his most recent Annual Report. The Ombudsman said:

[I]n previous annual reports I expressed hope that the commencement of the Office of [sic] Public Integrity (OPI) as a part of the new integrity arrangements would reduce my office's workload in providing advice and guidance to people who contact Ombudsman SA with approaches which do not fall within our jurisdiction.

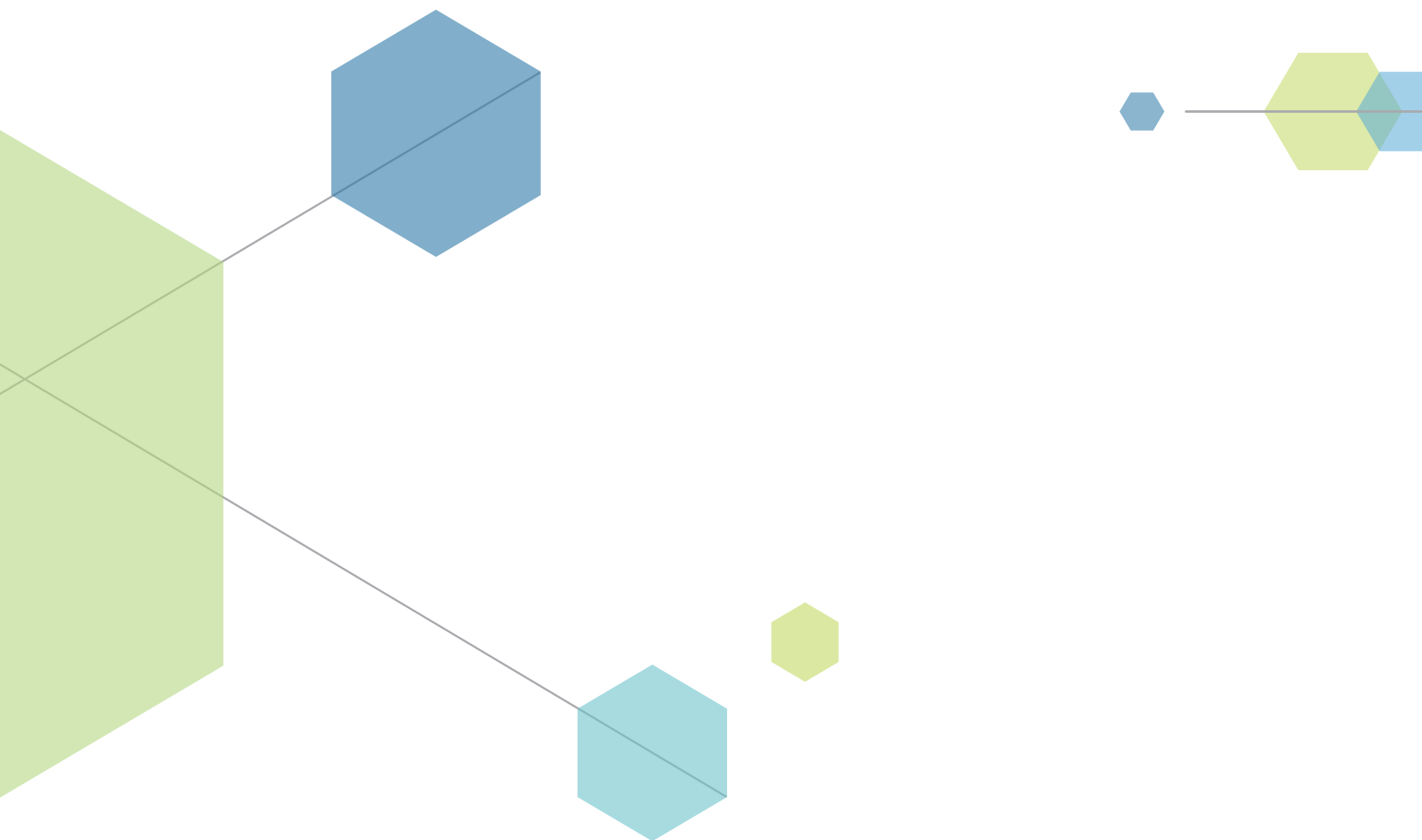
Over 68% of approaches to my office were in this category this reporting year. This number is not diminishing.

The establishment of OPI has not reduced my office's workload. As the figures below demonstrate, people are still contacting Ombudsman SA at a similar rate as they were previously, to seek advice about how to deal with their problem.

The Attorney-General's review of the integrity regime in November 2010 referred to the current complaints system being 'confusing' and suggested that OPI should be a 'one-stop-shop' for taking complaints for [sic] the public. I have been a strong advocate for such an approach in my submissions, but to date this initiative has not eventuated. It is indeed confusing for the public and agencies alike to know which complaints handling body deals with which matters, and to decide which door they need to open to have their matter considered.

It is against that backdrop that the reviews are being undertaken.

<sup>4</sup> Police Ombudsman Annual Report 2013-2014 pg 5.



# SUBMISSIONS

It is critical to the success of the reviews for everyone to have an opportunity to contribute their opinions, experience and recommendations. It is for that reason that the ICAC is conducting the reviews by way of a public inquiry.

You are invited to make a submission, in writing, about any aspect relevant to the subject matter of the reviews.

## IMPORTANT DATES

Submissions will be received until **COB Friday 27 March 2015**.

Submissions should be sent via email to [reviews@icac.sa.gov.au](mailto:reviews@icac.sa.gov.au) or addressed to:

**Legislative Reviews**  
**GPO Box 11066**  
**ADELAIDE SA 5001**

## PUBLICATION OF SUBMISSIONS

Submissions will be published on the ICAC website after 27 March 2015.

While submissions from individuals who have had direct experience with the legislative schemes or the agencies entrusted to operate those schemes is welcomed, the submission should focus upon issues arising from the schemes themselves. The reviews do not represent an opportunity to re-agitate a complaint or report that has already been determined by SAPOL, the Police Ombudsman, the Ombudsman, the OPI or the ICAC.

The ICAC reserves the right to decline to publish submissions that might contravene statutory or other confidentiality obligations, or that are otherwise deemed inappropriate for publication.

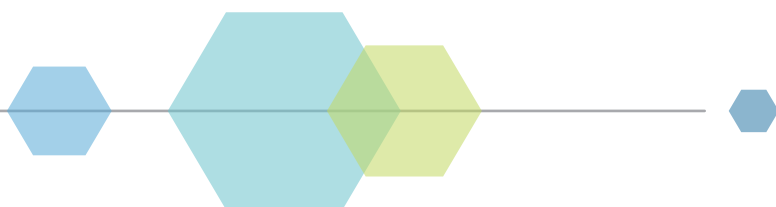
## PUBLIC HEARINGS

The ICAC intends to hold public hearings in order to hear from interested persons who wish to contribute to the reviews. Hearings will be held after the receipt of written submissions.

When making a written submission, please indicate whether you would also like an opportunity to present at a public hearing. Once the ICAC has received written submissions, the Commissioner will determine whom to invite to present at the public hearing.

Presenting at a public hearing will be by invitation only. The Commissioner is unlikely to invite anyone to present at a public hearing who has not already provided a written submission.

A person who has made a submission but is not invited to present at a public hearing is free like any member of the public to attend the hearing.



# OVERSIGHT AND MANAGEMENT OF POLICE COMPLAINTS

## THE LEGISLATIVE SCHEME

Complaints about police conduct can be made to the OPI, to the Police Ombudsman or to any member of SAPOL. Where a complaint is made directly to a member of SAPOL, that complaint must be forwarded to the Police Ombudsman. All members of SAPOL are obliged to report a suspected breach of the Police Code of Conduct to the Commissioner of Police. Details of those reports must be forwarded to the Police Ombudsman.

The Commissioner of Police has reporting obligations under the Directions and Guidelines issued under the ICAC Act. Other police officers have more limited reporting obligations.

The Police Ombudsman must report to the OPI any matter reasonably suspected of involving corruption in public administration or serious or systemic misconduct or maladministration in public administration.

Ultimately, all complaints and reports about police will be raised with the Police Ombudsman or the OPI or, in many cases, both.

When a complaint is received by the Police Ombudsman, he or she must notify the Commissioner of Police of the complaint and its particulars. The Police Ombudsman can deal with the complaint in one of the following ways:

- » refuse the complaint under identified circumstances;
- » undertake a preliminary inquiry;
- » determine that a complaint is a minor complaint that should be the subject of an informal inquiry only (in accordance with an agreement between the Police Ombudsman and the Commissioner of Police which is tabled in Parliament);
- » attempt to resolve the matter by conciliation or allow the Commissioner of Police to do so; or
- » determine that a matter should be investigated by the Police Ombudsman.

If the Police Ombudsman determines not to exercise any of the above options in relation to the complaint, he or she must refer the complaint to the Commissioner of Police for investigation by the Internal Investigation Section ('IIS') of SAPOL. The Police Ombudsman can issue directions to IIS in relation to an investigation, but those directions are subject to the agreement by the Commissioner of Police. Where agreement cannot be reached, the matter can be referred to the Minister for determination.

After IIS completes an investigation, the Commissioner of Police must report back to the Police Ombudsman. The Police Ombudsman must then notify the Commissioner of Police of his or her assessment of the conduct and any recommendations as to action that should be taken.

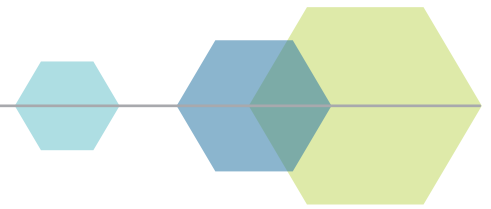
If the Police Ombudsman recommends certain action and the Commissioner of Police disagrees with the recommendation, the Police Ombudsman must confirm, vary or substitute the assessment or recommendation after conferral with the Commissioner of Police. The Commissioner of Police must then either give effect to the recommendation or refer the matter to the Minister for determination.

Where a complaint or report is made to the OPI, the matter is assessed and a recommendation is made to the ICAC as to what action, if any, should be taken and by whom. The ICAC can deal with matters in a variety of ways, depending upon whether the matter is assessed as raising a potential issue of corruption, misconduct or maladministration in public administration, or some other issue.

If the ICAC refers a matter raising a potential issue of misconduct or maladministration in public administration to the Police Ombudsman or to SAPOL, the ICAC can issue directions or guidance with the referral. Where the ICAC is not satisfied that the Police Ombudsman or SAPOL has duly and properly taken action in relation to a referral, the ICAC can inform the agency of the grounds of dissatisfaction, before taking the matter to the Minister and ultimately preparing a report to be tabled in both Houses of Parliament.

Where allegations of misconduct are made against an officer, that officer can dispute the allegations and the matter will be determined by a Magistrate in the Police Disciplinary Tribunal. It is the Commissioner of Police who determines the appropriate penalty for an officer found to have committed misconduct.





## ISSUES FOR CONSIDERATION

### Delay

The single biggest issue of concern confronting the existing system for the oversight and management of complaints about police is delay in bringing matters to conclusion.

In her 2013-2014 Annual Report, the Police Ombudsman said:

[i]n, or about, August 2013 I wrote, as a matter of courtesy, to all complainants advising that it could be between three to six months before their matter would be assessed and processed. The situation is now so dire that it is anticipated that will [sic] in some circumstances complainants will be advised that it may be a further twelve months before their complaint will be processed.

Delay in the assessment and resolution of complaints about police does not appear to be a new phenomenon. According to the 2010-2011 report of the Police Complaints Authority (as the Police Ombudsman was then known), issues associated with a 'backlog' of complaints were identified along with mechanisms adopted in an attempt to resolve that backlog. Similar comments were made in the 2011-2012 Annual Report.

The introduction of the OPI and ICAC has contributed to the delay, by introducing an additional layer of oversight and review. There is now an additional avenue for a person to complain about police, and the ICAC has the power to oversee the Police Ombudsman in relation to matters referred to it for investigation. This has created additional reporting requirements and brought about additional administrative steps in the process.

Delays in the ultimate resolution of disciplinary matters have also been identified as a cause for concern. In his 2008 findings into the death of Christopher Stuart Wilson, the State Coroner noted that the conduct of some officers involved in the matter the subject of the inquest had been investigated by the Internal Investigation Branch (as it then was) but that that investigation had not yet been completed. His Honour said (at 92):

[t]hat the disciplinary processes had not been completed more than three and a half years after they were instigated is a matter of considerable concern ... .

Delays in the assessment, referral, investigation and ultimate resolution of complaints and reports about police conduct have figured prominently in discussions with all key stakeholders.

Suggested reasons for these delays include the complexity of the system established under the P(CDP) Act and the Police Act, including the requirement to notify and/or obtain the agreement of the Commissioner of Police at multiple points in the process, the adversarial nature of misconduct proceedings, inadequate resourcing of the Police Ombudsman and, more recently, the oversight carried out by the ICAC.

It is likely that all of these factors contribute to the delays at various points in the scheme.

### Duplication

The introduction of the ICAC and OPI has created some duplication in effort, particularly in terms of the receipt and assessment of complaints and reports. A person can complain to the OPI or to the Police Ombudsman about the conduct of a police officer. In some cases, a person will complain to both agencies about the same conduct which causes duplication in assessment and action.

SAPOL has a legislative obligation to report complaints and mandatory reports to the Police Ombudsman. It must also report certain types of conduct to the OPI, in accordance with the Directions and Guidelines issued by the ICAC. The Police Ombudsman must report alleged corruption and serious or systemic misconduct or maladministration to the OPI. The present scheme means that both the OPI and the Police Ombudsman may be making an assessment of the same complaint or report. On occasion, those assessments can result in inconsistent determinations as to the action, if any, to be taken.

## Complexity

The present system is particularly complex.

Where a complaint is made to the OPI, the OPI is obliged by legislation to assess the matter and to recommend to the ICAC what action, if any, should be taken. In many cases, the matter is referred to the Police Ombudsman, who must then also review the matter in order to take action. That action invariably involves directing SAPOL Internal Investigations Section ('IIS') to carry out an investigation.

The Police Ombudsman is obliged to notify the Commissioner of Police at a number of stages along the path to resolution, including:

- » when a complaint is received;
- » when a determination is made;
- » where a matter is to be referred for conciliation; and
- » when an investigation is completed, including the provision of a report to the Commissioner of Police in relation to the investigation.

The Commissioner of Police may, in accordance with the legislation, disagree with decisions made by the Police Ombudsman, including:

- » in relation to directions given by the Police Ombudsman to the IIS about the manner of investigation;
- » the decision by the Police Ombudsman to initiate an investigation of its own motion; and
- » recommendations made following an assessment.

Where agreement cannot be reached, the matter must be referred to the Minister for determination.

It is unclear why an independent body charged with oversight of a police agency should require the agreement of the Commissioner of Police over matters such as the decision, for example, to conduct an investigation of its own motion.

Arguably, the existing scheme may be perceived to undermine the independence of the Police Ombudsman.

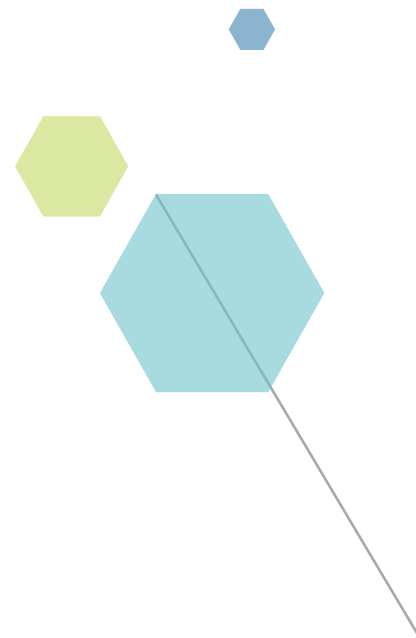
Complexity also arises by virtue of the requirement imposed by the ICAC on the Police Ombudsman to provide a report in relation to the manner in which a referral has been dealt with. That imposes additional obligations on the Police Ombudsman to prepare and transmit a report and to clarify matters as required by the ICAC. Complainants may also find themselves the recipients of correspondence from the Police Ombudsman, the OPI and the ICAC even though they have only complained to one body. These complexities undoubtedly contribute to the delays discussed above.

There is lingering confusion about the conferral of jurisdiction when the ICAC refers a matter to the Police Ombudsman for investigation, and how the ICAC Act, the Police Act and the P(CDP) Act operate together. The confusion may serve to influence the course taken in an investigation and may contribute to delays in the resolution of matters.

## Categorisation of Conduct

Under the ICAC Act, conduct can be assessed as raising a potential issue of corruption, misconduct or maladministration in public administration. Complaints and reports about police to the OPI are assessed against those three categories. Conduct may fall within multiple categories.

The options available to the ICAC in dealing with alleged improper police conduct are based upon the category to which the conduct is assigned.



Complaints made to the Police Ombudsman can be assessed as minor complaints where the complaint relates to conduct that is of a kind falling within an agreement between the Police Ombudsman and the Commissioner of Police and which agreement is tabled in Parliament. The most recent agreement is dated September 2014. Under that agreement, minor misconduct includes any breach of the Code of Conduct that does not involve 'integrity or dishonesty' or which is not 'serious by its nature or circumstance'.

There is no further categorisation of conduct under the P(CDP) Act.

Outside of the legislative scheme, SAPOL has implemented an additional system to deal with low level internal misconduct by way of a General Order issued by the Commissioner of Police under the Police Act.

Consideration should be given to:

- » whether there should be a more formal delineation between categories of conduct that distinguishes between conduct that is considered less serious, such as issues relating to poor service, which should be dealt with in a non-adversarial manner, and matters which are more serious and might constitute misconduct or corruption;
- » whether those categories should be established in legislation or regulation or left for agreement between the Commissioner of Police and an oversight agency; and
- » the nature and extent of involvement by oversight agencies in the resolution of complaints and reports about conduct that is less serious in nature.

## Number of Oversight Agencies

At present, the Police Ombudsman and the ICAC have a role to play in the oversight of complaints and reports about police. While the OPI is responsible to the ICAC, it is a separate entity that may receive complaints and reports about police conduct. SAPOL itself is largely responsible for the investigation of misconduct by police as the Police Ombudsman does not employ investigators. Corruption in public administration, engaged in by a police officer, may be investigated by the ICAC or referred to SAPOL for investigation.

The ICAC has the legislative ability to oversee investigations of misconduct by police (where the matter has been referred by the ICAC to police), and the manner in which the Police Ombudsman deals with a referred matter.

In some jurisdictions, dedicated police oversight agencies have been subsumed into overarching anti-corruption bodies (e.g. Independent Broad-based Anti-Corruption Commission — Victoria). In other jurisdictions, police oversight is shared between general oversight agencies (e.g. Ombudsman and Crime and Corruption Commission — Queensland).

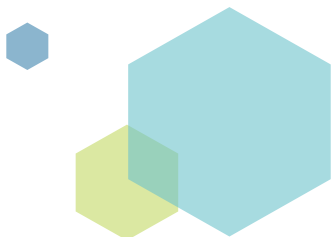
Consideration should be given to the role of each South Australian agency in the existing scheme with a view to determining whether there should be changes to the oversight mechanism and the agencies involved in that oversight.

## Resources

The proper and efficient use of public resources dedicated to the oversight and management of police conduct is a central consideration in this review.

Any system must be capable of operating within the constraints imposed by resource limitations. A system that is not sufficiently resourced will fail. On the other hand, an inefficient system is a waste of public resources.

The review will consider resourcing in the existing system and resourcing requirements in any proposed reform.



## QUESTIONS FOR CONSIDERATION

Submissions are invited about any matter relevant to the reviews, but particularly in relation to the following:

1. Are there too many agencies with responsibility for the receipt, assessment, investigation and review of complaints and reports about police?
2. What role should each agency play with respect to the oversight and management of police?
3. Should there be a reconsideration of the manner in which alleged inappropriate conduct is categorised? Should the role of an oversight agency depend upon the way conduct is categorised?
4. How can the police complaints system be made more efficient?
5. What role (if any) should an oversight agency have in the making of findings about police conduct and the imposition of penalty for misconduct?
6. How can the existing system for the receipt, assessment, investigation and resolution of complaints and reports about police be made more simple?
7. What amendments to the existing scheme might reduce delays presently being experienced at a variety of points in the process?

# COMPLAINTS AND REPORTS ABOUT PUBLIC ADMINISTRATION

## THE LEGISLATIVE SCHEME

Complaints and reports about state and local government governance issues can be made to a number of agencies, but primarily to the Ombudsman, the Police Ombudsman and the OPI.

The three bodies have different but overlapping jurisdictions:

- a. The Police Ombudsman receives complaints and reports about members of SAPOL and public servants working within SAPOL (see previous section);
- b. The Ombudsman can receive complaints in respect of ‘administrative acts’ of a person or body such as a statutory authority, a government department, a local council or a body established for a public purpose or subject to government control.
- c. The OPI can receive complaints about ‘public administration’ from members of the public and must receive reports from public officers, public authorities or inquiry agencies of suspected corruption and serious or systemic misconduct or maladministration in public administration.

The terms ‘public officer’ and ‘public authority’ are defined in the ICAC Act by reference to a number of categories of persons and entities in state and local government. They include:

- » Members of Parliament;
- » judicial officers;
- » police;
- » public sector employees;
- » elected members of local government;
- » employees of local government; and
- » persons performing contract work for the Crown or a public authority.

In order to constitute corruption in public administration, the conduct must constitute a criminal offence, such as abuse of public office, deception, theft, an offence within the *Public Sector (Honesty and Accountability) Act 1995* or any other offence committed by a public officer while acting in his or her capacity as a public officer. Misconduct in public administration must involve a breach of a code of conduct by a public officer or another form of misconduct engaged in by a public officer, while acting in his or her capacity as a public officer. Maladministration in public administration includes the irregular and unauthorised use of public money or substantial mismanagement of public resources. It can include not only conduct of public officers but the practices, policies and procedures of public authorities.

The Ombudsman is concerned with the investigation of ‘administrative acts’ of agencies covered under the *Ombudsman Act 1972*. More recently, the Ombudsman’s jurisdiction has been extended by giving the Ombudsman the statutory role of investigating misconduct by members of local government.

The Ombudsman can initiate an investigation based on the receipt of a complaint or on his or her own motion. Additionally, either House of Parliament or a parliamentary committee can refer to the Ombudsman any matter within the Ombudsman’s jurisdiction. The Ombudsman must then carry out an investigation and submit a report. Where the ICAC refers a matter of potential misconduct or maladministration in public administration to the Ombudsman, the Ombudsman is required to investigate the matter in accordance with any directions issued by the ICAC.

Upon completion of an investigation, the Ombudsman must give an opinion as to his or her assessment of the administrative act to which the investigation relates and his or her view on the action that should be taken as a result. The report must be made to the principal officer of the relevant agency (and a copy sent to the responsible Minister) with any recommendations which the Ombudsman thinks fit.

The OPI can receive complaints from members of the public in relation to any matter involving public administration. All inquiry agencies, public authorities and public officers are obliged to report matters to the OPI in accordance with directions and guidelines issued by the ICAC under the ICAC Act. The ICAC can also assess matters on his own initiative.

Once a matter has been assessed by the OPI, a recommendation is made to the ICAC as to whether, and by whom, the matter should be investigated.

The ICAC can deal with matters in a variety of ways, depending upon whether the matter is assessed as raising a potential issue of corruption, misconduct or maladministration in public administration, or some other issue.

The ICAC is not accountable to any other organisation on an operational level but is subject to the oversight of Parliament through the Crime and Public Integrity Policy Committee and by way of an independent annual review of the exercise of powers.

## ISSUES FOR CONSIDERATION

### Duplication

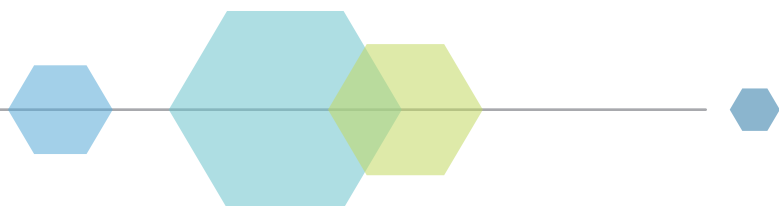
The OPI can receive complaints and reports about matters that also fall within the jurisdiction of the Ombudsman, the Police Ombudsman and the Commissioner for Public Sector Employment. An aggrieved person could complain to the Ombudsman and the OPI about the same matter. This occurs frequently.

Each agency is obliged, by statute, to assess the matter and determine what action to take (if any). Given the overlap in jurisdiction between the OPI and other inquiry agencies, there is often duplication in relation to the assessment of matters. Similarly, there may be occasion where an inquiry agency makes a determination on a matter that is inconsistent with a determination made by the ICAC after the same matter has been assessed by the OPI.

Overlapping assessments create other inefficiencies. In order to properly assess a matter, the OPI may need to enquire with an inquiry agency or public authority about whether a matter has previously been dealt with by that agency or authority. In some cases, the agency or authority advises that the matter has already been dealt with and provides information about how the matter was dealt with. The time taken by the inquiry agency or public authority to respond to the OPI detracts from that agency's core functions. On the other hand, such enquiries are necessary for the OPI to carry out an assessment in accordance with the ICAC Act.

It was originally intended that the OPI be a 'one stop shop' for the receipt of complaints and reports about public administration with a 'no wrong number, no wrong door' approach. While it was not contemplated that the introduction of the OPI would preclude members of the public presenting complaints directly to other agencies, the continued availability of multiple 'entry-points' for the receipt and assessment of complaints and reports creates, under the existing legislative scheme, inefficiency and duplication.

The review is considering how best to minimise duplication in the assessment and determination of complaints and reports about public administration.



## Oversight of the Overseers

The ICAC Act requires the ICAC to oversee the manner in which an inquiry agency deals with a matter referred by the ICAC. In effect, the ICAC is required to oversee a body whose function is, itself, to oversee the conduct of public officers and public authorities. The requirement to report to the ICAC regularly and at the conclusion of an investigation creates additional burdens on the inquiry agency that did not exist before the introduction of the ICAC Act.

Consideration will be given to whether it remains desirable for the ICAC to continue to be required to perform such oversight, or whether such oversight should be removed or made discretionary.

## Delay

The foregoing issues inevitably lead to delays in the assessment and ultimate resolution of complaints and reports about public administration. Such delays are not in the interests of the complainant or reporter, nor the person whose conduct is in question nor the agency responsible for that person.

## QUESTIONS FOR CONSIDERATION

Submissions are invited about any matter relevant to the reviews, but particularly in relation to the following:

1. Should the OPI be the central body for the receipt and assessment of complaints and reports about public administration?
2. What role should the ICAC play in relation to the oversight of inquiry agencies?
3. What systematic changes can be adopted to reduce duplication and improve efficiencies in the receipt, assessment and resolution of complaints and reports about public administration?

# EVALUATION OF PRACTICES, POLICIES AND PROCEDURES OF THE POLICE OMBUDSMAN

The ICAC is empowered by section 40 of the ICAC Act to evaluate the practices, policies and procedures of an inquiry agency or public authority. The power given to the ICAC under section 40 is directed toward one of the ICAC's statutory functions, namely:

to evaluate the practices, policies and procedures of inquiry agencies and public authorities with a view to advancing comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration.

In circumstances where the ICAC is carrying out a review of the legislative scheme governing the oversight and management of complaints regarding the conduct of police, it is timely that there be an evaluation of the operations of the Police Ombudsman. Information gathered from the review of legislative schemes will likely be relevant to the evaluation of the practices, policies and procedures of the Police Ombudsman and vice versa.

While the evaluation will focus on the internal operations of the Police Ombudsman, submissions are invited from those with relevant experience or knowledge in relation to improvements in the practices, policies and procedures of the Police Ombudsman.

