

ICAC

OPEN HEARING

BEFORE THE HON. BRUCE LANDER QC
INDEPENDENT COMMISSIONER AGAINST CORRUPTION

MR. M. RICHES Counsel Assisting

Courtroom 3
Level 7, Riverside Centre Building
North Terrace, Adelaide

THURSDAY, 23 APRIL 2015 at 9:50am

THE COMMISSIONER:

Since my appointment as the Independent Commissioner Against Corruption in September 2013 my office and the Office for Public Integrity have carried out the functions given by the Independent Commissioner Against Corruption Act which are essentially: to receive and assess complaints and reports about public administration; to identify and investigate corruption in public administration or to refer it for investigation; to assist agencies to deal with misconduct and maladministration in public administration; to evaluate the practices, policies and procedures of agencies and authorities; and to conduct or facilitate the conduct of educational programs targeting corruption, misconduct or maladministration in public administration.

On 30 October 2014, the Deputy Premier and Attorney General, the Honourable Rau MP wrote to me and requested 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, the Police (Complaints and Disciplinary Proceedings) Act and the Independent Commissioner Against Corruption Act and the making of complaints and reports to the Police Ombudsman, the Ombudsman and the OPI, with a particular focus on whether or not the complaint report processes to those offices can be consolidated into one office. The Attorney General also requested that I consider exercising my legislative power to evaluate the practices, policies and procedures of the Police Ombudsman. When I appeared before the Crime and Public Integrity Policy Committee on 31 October 2014, 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 the ICAC Act. For the purposes of this review I published a discussion paper in February of this year in which I stated that 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, in my opinion, unnecessary duplication, complexity, confusion and delay.

These public hearings form an important part of the reviews that I am undertaking. They

represent an opportunity for key parties to comment on the present system, how that system works, the difficulties with the system and most importantly how the system can be changed for the better. It is important that the dialogue occur in a public forum so as to ensure that all points of view are aired and that everyone, including the public, understands the existing difficulties within the system and how those difficulties might be addressed. I will in due course publish a final report which will be made public. I anticipate that that report will include recommendations for change. I hope to publish my final report in June or July this year. I have appointed Mr. Michael Riches, who is sitting at the bar table, as counsel assisting me with these reviews. Mr. Riches will make an opening statement which I invite him to do now.

MR. RICHES:

Thank you, Commissioner.

My opening statement will be in four parts. First, I will make some introductory remarks which will include a brief summary of the work that has been undertaken thus far in the reviews. Secondly, I will give a brief overview of the integrity system as it presently exists. Thirdly, I will briefly summarise some of the key written submissions that have been received. And finally, I will address the issues that are, in my opinion, of particular importance in these reviews.

Commissioner, your office and the Office for Public Integrity, which I will refer to from herein as the OPI, have been in operation now for some 18 months. The introduction of those offices has substantially altered the scheme for the oversight of integrity issues in public administration. The legislative reviews now being undertaken present an opportunity to review the scheme as a whole in order to identify shortcomings and to propose changes that will strengthen and enhance the existing system.

Commissioner, in your discussion paper, published in February of this year, you said that it is

critical there be in place an integrity system that is accessible, efficient, effective and simple. In my submission, the existing system for the receipt, assessment and resolution of complaints and reports about public administration falls short of that expectation. The system as it is presently constructed is overly complex, invites duplication of effort, creates considerable delay and can be confusing, both for those who wish to use the system and to those who have to administer it. I will expand upon these issues later when I summarise some of the written submissions that have been received in these reviews.

For the moment I wish to briefly outline the course these reviews have taken so far. Commissioner, since announcing the reviews in October last year, consideration has been given to the public integrity schemes and police complaints schemes that operate in every other Australian state and in the Commonwealth, in New Zealand and in the United Kingdom. Commissioner, you have held 17 teleconferences with representatives of integrity agencies around Australia and in New Zealand and you have personally visited six agencies in New South Wales and Victoria. You have met personally with the Police Commissioner, the South Australian Ombudsman, the former Police Ombudsman, the current Acting Police Ombudsman, the Police Association and other interested parties.

In parallel, an extensive literature review has been undertaken to identify best practice, critiques of existing systems, proposals for reform in other jurisdictions and aspects of other systems that lead to best outcomes for the police service and the public at large.

Commissioner, you have received 21 written submissions, including submissions from the Ombudsman, Acting Police Ombudsman, Police Commissioner, Police Association, Aboriginal Legal Rights Movement, the State Coroner, Professor Timothy Prenzler from the University of the Sunshine Coast, the Environmental Defenders Office and the Public Law and Policy Unit of the University of Adelaide. A number of members of the public, who have had direct experiences with the integrity system, have also provided submissions. These public hearings are the next step in the review process.

Can I turn now to the integrity system in South Australia as it presently exists? In broad terms, complaints about public administration can be made to the OPI, the State Ombudsman or directly to the agency involved. Complaints about police conduct can be made directly to the Police, to the Police Ombudsman or to the OPI. Within the public sector the Commissioner for Public Sector Employment may also receive complaints about alleged misconduct. There are, of course, other agencies that might receive complaints about public officers, such as the Commissioner for Equal Opportunity or the Health and Community Services Complaints Commissioner. However, I will restrict my remarks to the scheme involving the OPI, the South Australian Ombudsman, the Police Ombudsman and the Commissioner for Public Sector Employment.

I will start with the South Australian Ombudsman. The South Australian Ombudsman was first established in 1972 and was the second office of its kind in Australia. Since then there have been six ombudsmen appointed under the Ombudsman Act and a number of acting ombudsmen. The Ombudsman can investigate complaints about administrative acts of an agency captured within the Ombudsman's jurisdiction such as a government department, a local council or a statutory office holder. The Ombudsman can also investigate such matters on his or her own initiative, even if a complaint has not been received. The Ombudsman Act expressly excludes from its operation complaints which are captured by the Police (Complaints and Disciplinary Proceedings) Act.

Aside from the power to deal with complaints about administrative acts, the Ombudsman is an external reviewer for the purposes of the Freedom of Information Act.

With the commencement of your office and the OPI, in September of 2013, the Ombudsman must now also investigate matters raising a potential issue of misconduct or maladministration in public administration as referred by you.

According to the Ombudsman's most recent annual report his office received 3,090 complaints and 116 requests for external review under the FOI Act in the 2013-2014 financial year. The Ombudsman received over 10,000 approaches during the same period and completed 45 reports in accordance with section 25 of the Ombudsman Act. According to the most recent budget papers the Ombudsman's office comprises 18 full-time equivalent positions. They include the Ombudsman, Deputy Ombudsman, legal officers, investigators and support staff.

The office of the Commissioner for Public Sector Employment is established by section 13 of the Public Sector Act. The Commissioner has a range of functions, including to advance the objects of the Public Sector Act, to issue the public sector Code of Conduct and public sector employment determinations and to investigate or assist in the investigation of matters in connection with public sector employee conduct or discipline as required or on the Commissioner's own initiative.

I am advised by the Office for the Public Sector that, generally speaking, investigations are not undertaken by the Commissioner for Public Sector Employment, even though the Commissioner has a number of powers given to it under section 18 of the Public Sector Act. As I understand it, where the Commissioner for Public Sector Employment does receive a report of alleged misconduct, the usual procedure is to refer the matter back to the relevant chief executive for investigation and action. In rare cases the Commissioner for Public Sector Employment will contract an investigator to carry out an investigation. The Commissioner for Public Sector Employment does not have dedicated investigation staff.

Can I turn now to the system for the oversight of police? Given that it is a particular focus of these reviews, I will provide a more expansive overview of that system. The Police Ombudsman is a separate office established under the Police (Complaints and Disciplinary Proceedings) Act. Commissioner, I will refer to that Act as the "Police Complaints Act".

Until December 2012, the Police Ombudsman was known as the Police Complaints Authority.

According to the Police Ombudsman website, South Australia was the last Australian state to adopt a system of independent oversight of police with the introduction of the Police Complaints Authority in 1985. The Police Ombudsman, as it is now known, is responsible for the receipt of complaints about the conduct of members of SA Police and the action taken in relation to those complaints. The scheme under which the Police Ombudsman operates is complex. The Police Complaints Act has, since its commencement, been amended by 14 amending Acts. Indeed, the legislative history to the Police Complaints Act, which identifies all of the amendments, is in itself 14 pages long. While the Police Complaints Act empowers the Police Ombudsman to conduct its own investigations, the Act is geared heavily towards external oversight of internal investigation. In other words, the Act operates on the presumption that in most cases the police will be responsible for the investigation of a complaint about police conduct. Indeed, section 13 of the Police Complaints Act requires the Commissioner of Police to constitute within the Police Force a separate section to carry out investigations under the Police Complaints Act. That section within police is known as the Internal Investigation Section, or IIS.

Under the Police Complaints Act complaints about police can be made directly to the Police Ombudsman or to SAPOL. Where a complaint is made to SA Police, the complaint must, subject to an exception, be sent to the IIS for investigation and the Police Ombudsman must be notified of the complaint and furnished with particulars. Conversely, where a complaint is made to the Police Ombudsman, the Police Commissioner must be notified of the complaint and furnished with its particulars. Subject to some exceptions, which I will explain shortly, the Police Ombudsman must refer the complaint to the Police Commissioner. On a complaint being received or referred, the Police Ombudsman can deal with the matter in a number of ways. I have already said that the presumption in the Police Complaints Act is that the complaint will be referred to the IIS for investigation. However, there are exceptions.

First, the Police Ombudsman may determine not to entertain a complaint for one of a number of reasons contemplated in the Act, such as the complaint being trivial, frivolous, vexatious, or

that further investigation of the complaint is unnecessary or unjustifiable.

Alternatively, the Police Ombudsman may determine that the complaint is a minor complaint to be dealt with by way of an informal inquiry. A complaint may be categorised as a minor complaint if it is conduct that constitutes minor misconduct. Minor misconduct is, in turn, categorised by way of an agreement reached between the Police Ombudsman and the Police Commissioner as to the kinds of conduct that constitute minor misconduct. That agreement must be tabled in both Houses of Parliament. I have been provided with a copy of an agreement signed by the then Police Ombudsman on the 28th August 2014 and the Police Commissioner on the 9th of September 2014. However, I have been advised that that agreement has never been tabled in both Houses of Parliament as is required under the Police Complaints Act. There is, however, an agreement entered into between the Police Commissioner and the then Police Complaints Authority in 2002 which was tabled in both Houses of Parliament. Subject to some minor changes the agreements are very much the same. I understand that the 2002 agreement will continue to be relied upon while work is carried out to prepare a new agreement that will be referred to the Minister for tabling in accordance with the legislation.

Putting that issue to one side, neither the existing agreement nor the 2002 agreement is published on either the Police Ombudsman's website or the SAPOL website.

The 2002 agreement provides that any breach of the Code of Conduct is deemed to be minor misconduct unless it is of a kind prescribed in the agreement. Exceptions include “a breach which involves integrity or dishonesty” or “a breach which is serious by its nature or circumstances”. No explanation is given in the agreement as to what these exceptions mean in practice or how the exceptions are to be applied to actual cases.

Matters that involve minor misconduct can be dealt with by way of an informal inquiry. The way in which an informal inquiry can be heard is prescribed in both the Police Complaints Act

and the Police Act. While the process is termed an “informal inquiry” the process has, in my opinion, many of the hallmarks of a formal disciplinary process. For example, the officer the subject of the allegations must be told of the particulars of the breach and that the Police Commissioner has determined that the matter involves minor misconduct, at which point the subject officer can elect to require that the matter be dealt with by way of a full investigation or proceed with the informal inquiry. The officer conducting the inquiry must make a determination on the balance of probabilities whether the subject of the inquiry involves a breach of the Code of Conduct. The subject officer can admit the breach or can make submissions in relation to the breach. Where a breach is admitted or is found to have occurred, there are a range of sanctions prescribed in the legislation, including transfer, recorded or unrecorded advice, counselling, education or training.

A member can seek a review of an adverse finding following an informal inquiry on the grounds that he or she did not commit a breach of the Code of Conduct or that there was a serious irregularity in the process followed in the informal inquiry. The ensuing review must be undertaken and the subject officer given an opportunity to make submissions. On completing the review, the reviewing officer can order that a new informal inquiry be conducted, can affirm or quash any findings or determinations, or make a determination that should have been made in the first instance. Commissioner, as I have already said, this is a process that is designed only to deal with minor misconduct.

There are other options for dealing with a complaint. The Police Commissioner, with the approval of the Police Ombudsman, or the Police Ombudsman can attempt to conciliate the complaint. The Police Commissioner or the Police Ombudsman must report to the other on the results of an attempt to conciliate a matter. If the Police Ombudsman is satisfied that the matter has been resolved by conciliation, the Ombudsman may determine that the matter not be investigated.

The Police Ombudsman can investigate a matter on his or her own initiative where he or she is

satisfied that the matter concerns possible misconduct that has become a matter of public interest or comment or may raise questions as to the practices, procedures or policies of the police. However, having decided to investigate the matter on his or her own initiative, the Police Ombudsman must advise the Police Commissioner of the matter and refer the matter to the Police Commissioner, who must, in turn, refer the matter to the IIS for investigation. The Police Commissioner is empowered under the Police Complaints Act to disagree with the Police Ombudsman's decision that the matter be investigated. If the Police Commissioner does disagree, the investigation must cease until the disagreement is resolved either between the parties or by the matter being referred to the Minister for determination.

The Police Ombudsman is empowered under the Police Complaints Act to investigate a matter personally, whether that matter arises by virtue of a complaint or the Police Ombudsman's own initiative. In those circumstances, the Police Ombudsman must advise the Police Commissioner. The Police Ombudsman cannot commence an investigation unless either the Police Commissioner agrees or the Police Commissioner has been given a period of five working days to comment on the determination, in which case the Police Ombudsman has to take into account any comments made from the Police Commissioner within that period.

The Police Ombudsman is given a range of powers to investigate matters. However, as I understand it, the Police Ombudsman rarely investigates matters personally. Indeed, I understand that the Police Ombudsman does not have, and has not had for some time, investigators on staff.

I have already said that the Police Complaints Act is geared towards the investigation of complaints by the IIS. In reality, most, if not all, investigations are undertaken by police, at least in recent times. The manner in which a matter is to be investigated by the IIS and the powers given to the IIS are provided for in the Police Complaints Act. This includes the power to direct a police officer to furnish information, produce property, a document or other record, or answer a question where relevant to an investigation. An officer may refuse to furnish

such information or answer questions where it might tend to incriminate him or her or a close relative. But any such refusal may be dealt with as a breach of discipline.

The Police Ombudsman is empowered to oversee an investigation and can require at any time the IIS to provide information about the progress of the investigation and access to documents or records relevant to the investigation or to arrange for the Police Ombudsman to interview a person in relation to an investigation. The Police Ombudsman may give directions to the Officer in Charge of IIS as to the matters to be investigated or the methods to be employed in relation to a particular investigation. However, again, the Police Commissioner can disagree with those directions, in which case those directions will cease to be binding unless and until the matter is resolved between the parties or the matter is referred to the Minister for a determination.

When the IIS has completed an investigation, a report must be prepared and delivered to the Police Commissioner. The Police Commissioner must then send the report to the Police Ombudsman, unless the Police Commissioner directs that further investigation be undertaken. The Police Ombudsman must then consider the report and make an assessment of the conduct of the officer complained of and the recommendation as to whether action should be taken and what action should be taken, if any. Such a recommendation could include that the officer be charged with a breach of discipline, or to alter a practice, procedure or policy on which a decision was based, or any other action that should be taken in relation to the matter.

The Police Ombudsman can also refer the matter back to the Police Commissioner for further investigation, who must, in turn, refer the matter to the IIS.

Having received the Police Ombudsman's assessment and recommendations, the Police Commissioner must notify the Police Ombudsman, in writing, of his or her agreement or disagreement. If the Police Commissioner agrees, he or she must then give effect to the recommendations. If the Police Commissioner disagrees, then the Police Ombudsman must

reconsider the assessment and the recommendations. Ultimately, if the Police Ombudsman and the Police Commissioner cannot agree, the matter is referred to the Minister for determination.

The Police Commissioner must notify the Police Ombudsman of the laying of charges or other action consequential on an investigation. Where a police officer is charged with a breach of discipline, if the officer does not make an admission of guilt then the matter is heard by the Police Disciplinary Tribunal, a body created by the Police Complaints Act and constituted by a Magistrate appointed by the Governor.

Where proceedings are commenced, the Police Commissioner is obliged to indicate to the Tribunal the categories of punishment that the Police Commissioner considers would, on the facts then known, most likely be appropriate if the Tribunal finds the officer guilty of a breach of discipline. There are three such categories defined in the Police Complaints Act. Category A includes termination or suspension of the officer's appointment or reduction of the officer's rank for an indefinite period; Category B includes transfer, reduction in remuneration or rank or imposition of a fine; Category C includes recorded or unrecorded reprimand, counselling, education or training.

Where the Tribunal finds that the officer has committed a breach of discipline, the matter is remitted to the Police Commissioner for the imposition of punishment. While the Police Commissioner must have due regard to any comments from the Tribunal as to the seriousness or otherwise of the breach of discipline, it is for the Police Commissioner to determine appropriate sanction. The Police Ombudsman has no role to play in this process.

There is another aspect to the police disciplinary system that I have not addressed, but it is very important. Section 38(1) of the Police Act provides that a member of SA Police or police cadet who becomes aware of circumstances in which it is reasonable to suspect the commission of a breach of the Code of Conduct must report the matter to the Police Commissioner as directed

by the Police Commissioner. Section 38(2) provides that if the Police Commissioner suspects that a member of SA Police or a police cadet has committed a breach of the Code of Conduct, the Police Commissioner may, subject to a determination of the Police Ombudsman to investigate the matter him or herself, cause the matter to be investigated. Historically, both SAPOL and the Police Ombudsman have shared the view that these “mandatory reports” fall outside of the jurisdiction of the Police Ombudsman and, therefore, the manner in which those matters have been dealt with has not been the subject of independent oversight. In December 2012, section 38 of the Police Act was amended to include a new subsection that requires the Police Commissioner to provide to the Police Ombudsman details of each report as soon as practicable after it has been made. Nevertheless, as I understand it, the then Police Ombudsman and SAPOL continued to express the view that mandatory reports fell outside of the jurisdiction of the Police Ombudsman. Commissioner, putting aside legal argument as to the correct interpretation of the existing legislation, the matter raises the broader question of whether the manner in which such internal reports are dealt with should be the subject of some external oversight. I will address this matter again when I summarise some of the written submissions that have been received so far.

The Police Ombudsman has other functions. Pursuant to the Freedom of Information Act, the Police Ombudsman acts as the external reviewer of decisions made in relation to FOI applications to police. The Police Ombudsman is also required to audit SAPOL's record keeping and compliance with legislation concerning listening and surveillance devices, forensic procedures and telecommunications interceptions.

The Office of the Police Ombudsman presently comprises ten staff, some of whom are part-time employees. This includes the Acting Police Ombudsman, lawyers and support staff. As I alluded to earlier, the office does not employ its own investigators.

I turn now to two offices that, since their commencement, have significantly altered the integrity system. They are the OPI, and your office, Commissioner, the office of the

Independent Commissioner Against Corruption. The OPI commenced operations on the 2nd of September 2013. It is an office created by section 17 of the ICAC Act, and has the statutory functions of: receiving and assessing complaints about public administration from members of the public; receiving and assessing reports about corruption, misconduct and maladministration in public administration from inquiry agencies, public authorities and public officers; to make recommendations as to whether and by whom complaints and reports should be investigated; and to perform other functions as assigned by you.

The OPI is responsible to you for the performance of its functions. According to the second reading speech to the ICAC Bill the OPI was intended to, I quote: “act as a clearing house so to speak, referring complaints and reports to existing agencies and authorities for action (where appropriate)”.

However, the ICAC Act is drafted such that the OPI is empowered to do no more than receive complaints and reports, assess those complaints and reports, and make a recommendation to you as to how the complaint or report is to be dealt with. It then falls to you to determine what action, if any, is to be taken. In that respect, the OPI itself does not act as a clearing house, as it does not determine what action will be taken on a complaint or report.

The OPI is obliged to assess a matter in accordance with the categories specified in section 23 of the ICAC Act. In short, a complaint or report must be assessed as to whether it raises a potential issue of corruption, misconduct or maladministration in public administration or as raising some other issue or such that there is – that no action need be taken. As I have already said, it is then a matter for you, Commissioner, as to what action is taken.

However, the options available are constrained by the assessment made and by the pathways prescribed in the ICAC Act. Where a matter is assessed as raising a potential issue of corruption in public administration you can determine to investigate the matter yourself or you can refer it to a law enforcement agency such as SAPOL or, if the matter involves a police

officer or special constable, to the Police Ombudsman.

The definition of corruption in public administration is, in itself, curious. Unlike integrity agencies in other states, the South Australian legislation confines corruption to criminal offences. However, the range of criminal offences captured by that definition is very wide. The definition not only captures the types of offences that would be associated with ordinary notions of corruption, for example abuse of public office, or bribery of a public official, but the definition is extended to include any offence committed by a public officer while acting in his or her capacity as a public officer. Commissioner, that definition can lead to some curious examples. I will just give one. A public sector employee who is drink driving while undertaking public duties commits an offence captured by the definition of corruption. There are, of course, many other examples.

Some have criticised the breadth of the definition of corruption and the flow on effect that that broad definition has on the obligation to report matters to the OPI.

If a matter is assessed as raising a potential issue of misconduct or maladministration in public administration, you can refer the matter to an inquiry agency or a public authority. Alternatively, you can exercise the powers of an inquiry agency and investigate the matter yourself. An inquiry agency is defined in the ICAC Act to be the South Australian Ombudsman, the Police Ombudsman or the Commissioner for Public Sector Employment. No other agencies have been prescribed by regulation to be inquiry agencies.

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

Finally, you can determine to take no action. You may determine to take no action where, for example, the complaint or report is deemed to be trivial, vexatious or frivolous, or where the

matter has already been dealt with by another agency and there is no reason to re-examine it.

Where you do refer a matter of misconduct or maladministration to an inquiry agency or public authority you may issue directions or guidance with that referral. If you are not satisfied that an inquiry agency or public authority has duly and properly taken action in relation to the referral, the ICAC Act provides a mechanism by which you can express that dissatisfaction with the agency or authority initially, then the relevant Minister, then ultimately by way of a report tabled in both Houses of Parliament.

Commissioner, you have also been given other statutory functions, including to identify and investigate corruption in public administration, to assist inquiry agencies and public authorities to identify and deal with misconduct and maladministration in public administration, to evaluate the practices, policies and procedures of inquiry agencies and public authorities, and to conduct or facilitate the conduct of educational programs designed to prevent or minimise corruption, misconduct and maladministration in public administration.

Your office and the OPI commenced operations on the 2nd of September 2013. Between the 2nd of September 2013 and the 31st of March this year, the OPI has received 1,591 complaints and reports, comprising 791 complaints and 800 reports. Of the matters that had been assessed as at 31st of March of this year, 285 matters had been assessed as raising a potential issue of corruption in public administration, while 297 matters had been assessed as raising a potential issue of misconduct or maladministration in public administration. 905 complaints and reports were deemed not to require further action.

The OPI presently employs ten staff. Your office comprises 30 staff, including 11 investigators plus legal officers, forensic and intelligence analysts and support staff.

Commissioner, the ICAC Act has the practical effect of creating a new office for the receipt and assessment of complaints and reports about public administration, in addition to those

agencies that still exist to receive such complaints and reports. Inquiry agencies, public authorities and public officers have an obligation to report corruption and serious or systemic misconduct or maladministration in public administration, in accordance with directions and guidelines that you have published in accordance with section 20 of the ICAC Act. Those reporting obligations have not replaced other obligations such as those contained within the Police Act and those contained in the Code of Ethics for the South Australian Public Sector.

In order to carry out assessments, the OPI will occasionally seek information from inquiry agencies and public authorities about the circumstances alleged in a complaint or report. This is done in order to best ensure an appropriate assessment is made. However, that process is not without some criticism, as I will describe later.

The ICAC Act has the further practical effect of enabling you to see the manner in which an inquiry agency or public authority deals with a matter of misconduct or maladministration that you have referred to it for investigation. As I have said, you are empowered to issue directions and guidance in relation to a referral and you can be dissatisfied with the manner in which the inquiry agency or public authority has dealt with the matter. That dissatisfaction can ultimately be expressed by way of a report tabled in both Houses of Parliament. Some have expressed concern about your capacity to oversee agencies whose core business is the resolution of complaints about public administration.

Commissioner, can I turn now to briefly go through some of the written submissions that have been received in these reviews? Commissioner, there have been 21 written submissions received for the purposes of the legislative reviews. Most of these submissions will be published soon after the conclusion of these public hearings. Some of the submissions have been provided on a confidential basis and others have addressed matters that fall outside the scope of the legislative reviews and in those circumstances, they won't be published. I will only address some of the written submissions that have been received. I do not intend to canvass every issue raised in those submissions. Rather, I will summarise some of the issues

raised in the submissions which will likely be the subject of further discussion during the course of these public hearings.

You will hear from the State Ombudsman this afternoon. In his written submission the Ombudsman says that he does not agree with the Police Ombudsman's arrangement of having complaints about police misconduct investigated by police. As a matter of principle the Ombudsman says that an independent complaint-handling agency needs to have the ability to independently investigate complaints and have full control of the findings and conclusions.

The Ombudsman suggests that one solution might be to abolish the Office of the Police Ombudsman and incorporate the investigation of police misconduct into the ICAC's functions. The Ombudsman says that, in his view, the investigation of police misconduct has an anticorruption flavour to it as it relates to the ethics and honesty of law enforcement personnel and sits well within the ICAC's core purpose.

On the topic of a one-stop-shop for the receipt of complaints about public administration, the Ombudsman says it would not be effective for the OPI to be the central body for receiving complaints, because it would diminish the Ombudsman's capacity to be an effective complaint-handling agency.

The Ombudsman suggests that his office is better placed to be the central body for the receipt and assessment of complaints about public administration. The Ombudsman proposes a model that would incorporate into the Ombudsman Act the definitions of misconduct and maladministration, as it is presently provided in the ICAC Act, thus enabling the Ombudsman to be the repository of complaints about such matters and leaving the OPI to deal with matters related to corruption and police misconduct.

Finally, the Ombudsman says that the ICAC should not have any oversight of its complaint handling and investigation functions relating to maladministration and misconduct. Indeed,

the Ombudsman says, in his view, the ICAC's oversight of his office is completely unnecessary and does no more than create additional work for both agencies.

I turn now to the written submission of the Acting Police Ombudsman. As you are aware, the Acting Police Ombudsman commenced on the 2nd of March this year, following the resignation of the former Police Ombudsman. In his written submission the Acting Police Ombudsman says that there should only be one agency with the responsibility for the receipt and assessment of complaints and then the referral of that complaint for investigation. As the Acting Police Ombudsman points out, the responsibility is currently shared between three agencies. We are speaking of course in relation to the police complaints system.

The Acting Police Ombudsman says, and I quote:

“It is clear that the involvement of three agencies has led to delays in the assessment, referral, investigation and resolution of complaints to a greater extent than previously had been the case. I note, however, that delays are not due only to this factor. The legislative scheme governing complaints against police, the Police (Complaints and Disciplinary Proceedings) Act, all but guarantees delay, complexity and confusion in receiving, assessing, investigating and resolving complaints against police”.

The Acting Police Ombudsman proposes the repeal of the existing Police Complaints Act in its entirety. He says that the existing system invites inefficiency in the convoluted and complicated systems of complaints investigation, the lack of independence of the Police Ombudsman and the unsatisfactory system of dealing with charges upon completion of an investigation. A new system would include a new way of categorising conduct in a way that diverts complaints that raise managerial issues (such as poor service delivery) out of the disciplinary system to be dealt with by the Police Commissioner entirely. More serious matters would fall within a structured disciplinary system with oversight by an external body.

The Acting Police Ombudsman also proposes that all complaints about police be sent to the

OPI, even if they are first received by the Police Ombudsman or the police themselves. That way, the OPI would be the sole authority responsible for the initial assessment of all matters, thereby eliminating double handing and reducing confusion.

Beyond the assessment of complaints, the Acting Police Ombudsman proposes that the Commissioner of Police maintain responsibility for the investigation of complaints of conduct categorised as minor and that the Police Ombudsman would only have oversight of such an investigation if the complainant is dissatisfied with the proposed resolution of the complaint and who then exercises the right of appeal to the Police Ombudsman. In the case of complaints about conduct not considered minor, the Acting Police Ombudsman suggests that such matters be referred to the ICAC to determine whether to investigate the matter yourself or to refer the matter to the Police Ombudsman.

Where an officer is charged with a breach of discipline, the Acting Police Ombudsman proposes the abolition of the Police Disciplinary Tribunal and replacing the Tribunal with a Tribunal operating within the South Australian Civil and Administrative Tribunal and made up of a panel of three members. The Acting Police Ombudsman rejects the suggestion that police are a special case, and says that police are no more special than doctors, nurses, dentists, psychologists and lawyers who face all kinds of different pressures in the practice of their profession.

In the Acting Police Ombudsman's view a properly constituted tribunal would determine the charge and the sanction. The Acting Police Ombudsman also suggests that police should not appear as counsel in disciplinary matters, as they presently do in proceedings in the Police Disciplinary Tribunal. Rather, the Acting Police Ombudsman proposes that an independent body such as the Crown Solicitor should prosecute such matters.

Finally, the Acting Police Ombudsman suggests that under any new scheme the most efficient move would be to bring the Police Ombudsman within the office of the ICAC. He says this

would not be a radical move, as under the existing system the ICAC can exercise the powers of the Police Ombudsman and can issue directions and guidance to the Police Ombudsman in relation to referrals. The Acting Police Ombudsman says that incorporating the Police Ombudsman within the office of the ICAC would have the additional advantage of having the expertise of ICAC investigators available as part of the same organisational structure.

Can I turn now to the submission of the Police Commissioner?

In relation to the existing system, the Police Commissioner says that the unintended consequences of the introduction of the ICAC and the OPI has resulted in duplication of effort and in notable delays. He says that the current arrangements need to change. That change should focus on clarifying roles and functions, streamlining of assessments and allocation of police complaints and ensuring that relevant legislation supports any change that is made or at least supports that which is retained.

The Police Commissioner has specifically called for consideration of the process of assessments of complaints by the OPI, and delays that can be caused by the making of very comprehensive assessments of some matters before determining to refer them for investigation or inquiry. The Police Commissioner has stated that he is strongly of the view that mandatory reports made to the Police Commissioner by a member of SA Police, and in accordance with the Police Act, should be left to the Police Commissioner to deal with. He says that the extent of oversight concerning the assessment of mandatory reports has the potential to create significant delays in actioning an appropriate response and unnecessarily complicates the efficient operation of SAPOL as an organisation.

The Police Commissioner supports the independence of the Police Ombudsman. He says that, irrespective of the disciplinary framework adopted, it is vitally important that the independence and specialist capability of the oversight body is maintained.

The Police Commissioner also proposes a reconsideration of the definition of corruption, given its breadth in terms of criminal offences captured by that definition.

I turn now to the written submission of the Police Association who state that while change is encouraged in respect of certain aspects of the system, there are parts of the system that operate successfully, such as the Police Disciplinary Tribunal. The Police Association says that since their creation the OPI and the ICAC have themselves contributed significantly to both duplication and to complexity. It is concerned about the capacity of the ICAC to investigate misconduct that is neither corruption nor maladministration. While it is proper for the ICAC to maintain some oversight role, the Police Association suggests that the ICAC ought not be charged with direct responsibility for the investigation of misconduct. The Police Association suggests that the Office of the Police Ombudsman is now largely pointless. Complaints made to the Police Ombudsman are investigated by police and acting on a recommendation of the Police Ombudsman remains a matter of discretion for the Police Commissioner. To that end, the Police Association proposes a model that would see all complaints made to the OPI which would then refer matters of corruption or maladministration to the ICAC and all misconduct matters to SAPOL. The Police Association advocates the continued existence of the Police Disciplinary Tribunal. It says, and I quote: “When a police officer faces significant penalties, including potential termination, suspension, demotion or other long-term financial penalties, the assurance of a fair evidentiary hearing before a properly specialised independent Magistrate is the system which should without question remain”.

Similarly, the Police Association says that there should be no role for an oversight agency to determine a penalty and that this should remain squarely a matter for the Commissioner of Police.

The State Coroner has expressed his concern about the existing secrecy provisions under the Police Complaints Act, and from his perspective how those secrecy provisions affect his capacity to carry out a coronial inquest in a fulsome and timely manner. The State Coroner also

expresses his concern about the time taken to finalise disciplinary matters and the impact that that has on the conduct of coronial inquests.

Finally, I wish to summarise the written submissions of Professor Timothy Prenzler, of the University of the Sunshine Coast. Professor Prenzler has written extensively on the topic of oversight of police and in 2012 co-authored a book entitled “Police Integrity Management in Australia – Global Lessons for Combating Police Misconduct”. Professor Prenzler is of the opinion that an integrity commission should cover the whole of the public sector, including police. He says that, and I quote: “while police are subject to particularly intense pressures and temptations towards misconduct, policing is by no means unique in regard to integrity risks and officers can feel unfairly treated through the operations of a specialist Police Ombudsman-type body. Vigilance in regard to police can be maintained by legislating a designated police unit within an integrity commission”.

Professor Prenzler also advocates the investigation of all, if not most, complaints by an independent body with low-level matters being investigated by other agencies subject to negotiation with the complainant. He also supports the creation of a disciplinary matrix on the public record so that citizens can see how misconduct offences align with sanctions.

Commissioner, you have received a number of other written submissions. These submissions raise issues such as delay, complexity and lack of transparency as particular concerns. Concerns have also been expressed about making the OPI a one-stop-shop to the exclusion of other avenues of complaint and the effect that such a scheme might have on accessibility to members of the public.

I turn now to the last part of my opening statement. In my opinion, there are a number of issues of concern that appear to be of central relevance to these reviews.

First is the time taken to resolve a complaint or report about public administration. Delay has

been raised as an issue at each step of the complaint process, including assessment, investigation and action. In the context of complaints about police, the former Police Ombudsman said in her most recent annual report, I quote: “the situation is now so dire that it is anticipated that in some circumstances complainants will be advised that it may be a further 12 months before their complaint will be processed”.

A number of written submissions raise delay, and in my submission it’s a significant issue that will require resolution.

Secondly, there is duplication. Since the commencement of the ICAC and the OPI, the legislative scheme now not only invites but requires duplication in effort. The multiple pathways to complaint, combined with sometimes multiple mandatory reporting obligations, results in more than one agency considering the same complaint or report. For example, under the police complaints system both the OPI and the Police Ombudsman may make an assessment of the same conduct. On occasion, those assessments can result in inconsistent determinations. The reviews will need to consider how best to minimise duplication, while still ensuring appropriate oversight and review of the management of complaints and reports about public administration.

Thirdly, there is the issue of the number of oversight agencies and their respective roles. Some advocate the streamlining of the police complaints system by the abolition of the Police Ombudsman, while others propose that the ICAC no longer have oversight over conduct of investigations by inquiry agencies. There are, of course, a number of different views. In my submission these hearings represent an opportunity for key agencies to identify how, in their view, each agency can be best placed to contribute to an effective and efficient integrity system.

Insofar as your review of the legislative scheme regarding the oversight of management – and management of complaints about police is concerned there are additional issues. What role

should the Police Commissioner play in relation to the oversight of management of the conduct of police and what role should an independent oversight body play? Should the police investigate themselves? Should the making of findings regarding misconduct be left to the Police Commissioner or should an external agency have a role to play? Should the Police Commissioner continue to have an exclusive role to play in terms of disciplinary sanction, or should an independent oversight body have a greater role to play in terms of those binding determinations?

There are, of course, a number of other issues that I haven't expressly addressed. I have merely raised what I consider are the most pertinent issues, but I do not suggest that they are the only ones. However, in my submission, it is these core issues that I have identified that will require resolution in order to propose a system that, as you said in your discussion paper, is effective, efficient, fair and simple.

And Commissioner, unless I can be of any further assistance, that concludes my opening statement.

THE COMMISSIONER:

Thank you. Thank you, Mr. Riches, for a clear and comprehensive review of what is undoubtedly a very complex legislative scheme.

As I understand it, Mr. Riches, you have made arrangements for the Ombudsman to speak to his submission at noon today.

MR. RICHES:

12 o'clock, yes.

THE COMMISSIONER:

Yes. I don't think I'll accelerate that in case – even though the Ombudsman is in the hearing

room at the moment – because it may be that some people have made arrangements to be here when he makes his submissions.

So, what I propose to do is to adjourn until 12 o'clock for that purpose. And then we will – I think you have also made arrangements for a member of the public, who I understand has been a complainant through the system, to make submissions at 3 o'clock.

MR. RICHES:

Yes, Commissioner.

THE COMMISSIONER:

Thank you. Alright, well thank you very much for your assistance. I'll resume again at midday.

ADJOURNED 10:57am