

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

MONDAY, 28 APRIL 2015 at 9:59am

Witnesses:

CARROLL, MARK, President, Police Association of South Australia

SCHEFFLER, THOMAS, Secretary, Police Association of South Australia

BAILES, MORRY, Managing Partner, Tindall Gask Bentley Lawyers, Principal Legal
Advisor to the Police Association of South Australia

THE COMMISSIONER:

Good morning, Mr. Carroll.

MR. CARROLL:

Hello Commissioner. How are you?

THE COMMISSIONER:

Mr Scheffler, Mr. Bailes, thank you very much for coming.

MR. BAILES:

Commissioner.

MR. SCHEFFLER:

Thank you.

THE COMMISSIONER:

I will be interested in anything you have to say, Mr. Carroll.

MR. CARROLL:

Thank you Commissioner. First, if I can introduce the secretary of the Police Association Mr. Thomas Scheffler. Tom has worked for the Association for more than 13 years. He has advocated for many hundreds of Association members who have had to front the police disciplinary system. Prior to joining the Association Tom served with SAPOL for 29 years and was a member of the CIB for 17 years. I am also joined by the Managing Partner of Tindall Gask Bentley Lawyers, Mr. Morry Bailes, who has an intimate knowledge of legal issues associated with the police disciplinary system. Over 20 plus years he has represented many Association members and can speak with authority on the absolute need for the Police Disciplinary Tribunal.

My oral statement to you today, Commissioner, should be considered in conjunction with my written submission dated the 26th March, prepared on behalf of the members of the Police Association of South Australia. One point I want to make very clear from the outset is that the Police Association supports external oversight. Police officers operate under the highest levels of scrutiny and regulation. And the investigation of police corruption and serious misconduct is an essential function. The current system you are now reviewing has provided the necessary protections for both complainants and police for many years and as you have acknowledged the South Australian community is well served by a professional ethical and high calibre Police Force.

The Stevens review: former District Court Judge Stevens undertook a comprehensive review of the current system in 1998. In response to the findings and recommendations of that review the now late former Attorney General Trevor Griffin introduced into Parliament in 1999 a Bill to amend the Police (Complaints and Disciplinary Proceedings) Act. I have already provided your office with a copy of that review.

What I draw from it and what I implore you to consider is the absolute necessity for investigative or preliminary decision-making bodies to apply the principles of natural justice and procedural fairness particularly where the exercise of power plays a significant part in the final decision-making process which impacts directly on the individual concerned. Adverse findings or comments made in Police Ombudsman assessments have the potential to cause irreparable damage to a police officer's status, reputation and livelihood, including the opportunity of promotion.

The current legislative scheme therefore provides the right to know and be heard. Many sections of the Act import a natural justice requirement into the reporting and assessing functions of the Police Ombudsman. Any future legislative scheme should undoubtedly do the same. The importance of these check and balance requirements in the present Act is that they safeguard individuals from the improper exercise of investigative and decision-making

power. They are checks and balances which ensure the practice of fairness and equity within the complaints process.

Delay: You have identified that delay in so far as concluding matters under the present system constitute the biggest single issue of concern. I can indicate that this existed at the time of the Stevens review; delay is caused chiefly at the investigation stage rather than at the point when, for example, disciplinary charges are laid. I note your acknowledgement of the fact that an additional layer of oversight and review brought about by the introduction of the OPI and ICAC has contributed to the delay issue.

I understand that the OPI assessment process is often comprehensive and even borders on what can be described as a preliminary investigation. This can result in not only delay but also duplication of effort. To the extent that it is possible, therefore, we advocate strongly that in run of the mill disciplinary matters the ICAC and OPI should play little part. The introduction of the Office of Public Integrity, with its statutory functions, provides another avenue for complaints against police. It now enables a person to complain to SAPOL, the Police Ombudsman or the OPI. This is far from a common-sense structure and it seems apparent to us that it will not continue into the future.

I note that your 2013-14 Annual Report highlights the fact that the OPI was originally intended to be the one-stop-shop to triage complaints and reports about public administration. You highlighted the Deputy Premier's 2010 review that the notification point should be independent of any agency to be investigated. The responsibility to initially assess and allocate those complaints to the correct investigator should lie with the system not the public. To achieve this it would seem, in our view, pointless to retain the office of Police Ombudsman but we would only hold to this view as long as such integrity reform delivered a truly independent Office of Public Integrity. We say that, at present, under the legislative arrangements it does not.

An independent OPI: I note that in your Annual Report you agree with the Deputy Premier that the complaint handling system for police ought to be a system in which the Commissioner and Police Ombudsman are at arm's length as appropriate in the handling of complaints. You have also commented that the present system has the potential to diminish public confidence in the independence of the Police Ombudsman as the Commissioner of Police may disagree with directions, decisions and recommendations of the independent oversight body.

A passage from the Stevens review at pages 76 to 77 is informative on this topic. And I quote: "The argument is that the Authority does not affect the rights of a police officer complained about as he has no disciplinary power, and punishment or sanction would be imposed by the Commissioner, a tribunal or a court. Such an argument overlooks section 34(3) of the Act, which states the Commissioner must take all steps necessary to give effect to any recommendations of the Authority. Although the recommendations which are made in the assessments are not final, in the sense they need to be applied and implemented by the Commissioner, they nevertheless are of more than a persuasive nature. The Commissioner certainly cannot lightly dismiss any recommendations by the Authority. And indeed, he must take all such steps as are necessary to give effect to any such recommendations. The Commissioner is not empowered to substitute his own assessments and recommendations for that of the Authority but can only inform the Authority of his disagreement which the Authority is to consider in confirming, varying or making a new assessment. The only other option being to refer the matter to the Minister for determination. As the recommendations of the Authority are not recommendations that the Commissioner can lightly disagree with or ignore, the assessment and recommendations are a decisive step in action being taken against a police officer who has been found guilty of conduct by the Authority. And further, although the assessments made by the Authority are not final in the strict sense that the Authority cannot impose a penalty, they nonetheless are an exercise of power which plays a significant role in the final outcome. The police officer's employment could be affected by an assessment. He can, on the recommendation of the Authority, be subjected to criminal proceedings or disciplinary proceedings, his reputation may be damaged by publication of the assessment."

We understand that, although provided for in the Police Complaints Act, matters are rarely referred to the Minister. And the Police Ombudsman does not have to vary his or her assessment if the Police Commissioner disagrees. The Police Ombudsman can confirm it after considering the Commissioner's position. It falls to the Commissioner to refer the matter to the Minister if agreement cannot be reached. One might consider this to be a robust process which ensures a level of natural justice. Yet, if this is considered too close a relationship in which the Police Ombudsman and Police Commissioner are not sufficiently at arm's length, then so it must be in our submission for the present legislative arrangements of the ICAC and the OPI.

The ICAC and the OPI: You have indicated, Commissioner, in your annual report that the ICAC and OPI are designed to work harmoniously and to that end you have responsibility for both your office and the OPI. Both offices share the same CEO. The CEO has commented that whilst the OPI has been created as a separate office for practical purposes the office of the Commissioner and the OPI are one entity with all employees employed by the Commissioner and working together towards a common goal.

The functions and objectives of the OPI are to receive and assess complaints about public administration and reports about corruption, misconduct and maladministration in public administration from inquiry agencies, public authorities and public officers. The OPI makes recommendations as to whether, and by whom, complaints and reports should be investigated. And the ICAC is not bound by the OPI recommendations. The ICAC is a law enforcement agency. Therefore, is the legislative construction of the operation of the ICAC and OPI not at sufficient arm's length? I note that the ICAC legal team advises both the Commissioner and the OPI by providing legal advice in relation to a variety of matters including assessments, investigations, industrial and corporate compliance. The Commissioner appoints members of the legal team to act as counsel assisting him or her in investigations into corruption in public administration. It also provides advice in relation to the construction of the ICAC Act and

legislative amendments. Legal officers are not independent of the ICAC or the OPI. How can the OPI perform a truly independent role insofar as assessing complaints if it is controlled by the ICAC and reliant on the same legal resources as the ICAC? Does this not create a substantial conflict or at the very least a perceived conflict? What if the OPI were to receive a complaint about ICAC staff or investigators? Isn't the assessment process of such complaint flawed if assessment and recommendations are mandated to be made to the ICAC under section 23 and the ICAC is not bound by the recommendation under section 18, part 2?

No doubt, Commissioner, you are acquainted with the integrity and anti-corruption systems in Victoria. In 2010 that system underwent a review as to its effectiveness. That review led to the introduction of a broad-based anti-corruption commission. The Police Association provided a comprehensive submission to the Public Sector Standards Commissioner. And I table a copy of that submission for your information.

THE COMMISSIONER:

Thank you very much.

MR. CARROLL:

The Police Association of Victoria was highly critical of the then Office of Public Integrity and its relationship with the Victorian Ombudsman and Victoria Police. It questioned those organisations' ability to deal independently and comprehensively with corruption in Victoria. The submission highlighted the unwillingness of the OPI to identify members of its own staff when they were suspected of committing serious theft offences. In a case of OPI v Bolton serious questions arose about the evidence of OPI staff and investigators who repeatedly denied the existence of audio recordings which the defence subpoenaed and which were important to Sergeant Bolton's defence. Three other witnesses contradicted that evidence and when the OPI investigator was recalled she changed her earlier sworn testimony.

The Victorian Police Association in its submission presented other examples of misconduct of

OPI investigators, and I draw your attention to Clause 9.4 of that submission. Clearly, a strong and viable integrity and anti-corruption system must be beyond reproach. The Victoria Police Association submission underscore that it is not in the public interest for the exercise of coercive powers to go unchecked without a formal process for complaint, investigation and review.

Corruption investigators are subject to the same pressures and temptations as any other law enforcement officer and just as prone to doing the wrong thing. Misconduct is not confined to specific sections of the police or public sector; it is a product of human frailty. It would be naive to presume that the factors that motivate misconduct do not operate on individuals within anti-corruption agencies. As much as it is important for the public to have confidence in its Police Force, it is just as important for the public and members of SA Police to have confidence in the operations of external oversight agencies. But the present legislative arrangements of the ICAC and OPI come with the potential to compromise both entities. Indeed, one could perceive the present arrangements as similar to an arrangement whereby the Police Ombudsman was responsible to the Police Commissioner for the performance of its functions and the Police Commissioner was not bound by any recommendations of the Police Ombudsman. That is a situation that would not be tolerated, yet for all intents and purposes that appears to be the present legislative arrangement for the ICAC and the OPI.

The OPI and the Police Ombudsman: We have suggested a new model based on a truly independent OPI. The OPI as an independent statutory body could deliver that envisaged by the Deputy Premier. It could be the independent agency to receive and assess all complaints by the public et cetera, as indicated in the present section 17(a) to (c) of the Act. If that complaint were against a police officer, the OPI would assess it. If it related to corruption, criminality or serious and systemic misconduct then it could be referred to the ICAC to investigate. If none of those elements existed the matter would be referred to SAPOL to investigate. At the conclusion of either an ICAC or SAPOL investigation, a report and recommendation as to action would be returned to the OPI, which would either agree or

dissent. In matters of an agreed outcome which involved criminal or disciplinary proceedings the matter would be forwarded to either the DPP or SAPOL to prosecute as the case may be.

In a matter of dissent, particularly with regard to legal proceedings, the OPI could forward the matter to the Crown Solicitor and act on the independent advice received. The OPI acting in such a manner would then render the present Police Ombudsman's role redundant. I note that the proper and efficient use of public resources dedicated to the oversight and management of police conduct is an essential consideration in this review. The Police Association supports an independent OPI subsuming the role of the Police Ombudsman and sees the OPI as perfectly placed to receive all complaints from the public and allocate them to the appropriate agency for investigation.

The Police Disciplinary Tribunal: Commissioner you have received submissions from other stakeholders who advocate scrapping the Police Disciplinary Tribunal.

You have questioned the Tribunal's utility and whether a less formal system, one which might involve the new SA Civil and Administrative Tribunal would be more appropriate. We hold fervently to the view that the PDT should remain. First, the existing scheme of discipline is enshrined in legislation in both the Police Act and the Police (Complaints and Disciplinary Proceedings) Act. It has existed in this way for many years because both the South Australia Police and the Police Association value its fairness, impartiality and success.

Unlike other jurisdictions employing an administrative approach, South Australia has avoided the common complaints of a lack of procedural fairness, transparency and just outcome. When a police officer faces significant penalties, including potential termination, suspension, demotion and other long-term financial penalties, the assurance of a fair evidentiary hearing before a properly specialised independent Magistrate is a system which should without question remain. The Association sees nothing wrong with an evidence-based adversarial model when dealing with an accused police officer's rights and entitlements and believes the

South Australia Police share that view. To do less is to demean the sworn office, discourage police and long-term erode the very high quality of candidate who is attracted to the police occupation in South Australia. Proceedings before the Police Disciplinary Tribunal are confidential and there exists strong public interest reasons that this should always be the case. The Police Disciplinary Tribunal is essentially an employment tribunal which deals independently with employer/employee discipline issues. The private nature of the proceedings prevents the name and shame nature of public examinations in which individuals can be publicly vilified. The destruction of the reputations of innocent individuals is an anathema to any civilised democratic society. The operation of section 40 of the Act pertaining to proceedings before the Tribunal has been effective and should remain. Section 40(7) of the Act empowers the Tribunal to admit the Police Ombudsman or his or her nominees and any other person including members of the public to be present at proceedings of the Tribunal. Of course, the Tribunal exercises this power at its discretion. Commissioner our written submission included the written opinion of barrister, Marie Shaw QC who set out reasons for the PDT's retention.

THE COMMISSIONER:

It wasn't a legal opinion.

MR. CARROLL:

I beg your pardon, sir?

THE COMMISSIONER:

It wasn't a legal opinion.

MR. CARROLL:

It was prepared by Marie Shaw, barrister, that's right.

THE COMMISSIONER:

But it's not a legal opinion.

MR. CARROLL:

No. She identified, one, the first point of difference between the PDT and other existing administrative bodies is that the PDT is not a body in respect of which citizens are a party or where rights of citizens are sought to be asserted. Rather, its role is to adjudicate upon complaints that come before it and determine whether a police officer has breached the Police Act. Two, such is the importance of allegations against police in so far as the potential impact on a career is concerned and such is the range of complaints that can be made, it must be prudent to maintain a serious approach to the conduct of the proceedings. There is no issue of a need for greater flexibility about the way the PDT conducts its business. Police officers are regarded as professional witnesses and by occupation are required to act with due formality adhering to a hierarchical structure at all times such that a level of informality is simply not appropriate. Their role is too serious. Any allegation and its impact on their career and the standing of police must remain a matter of utmost seriousness. And three, in so far as the goal of the establishment of the new SACAT is to address the inconsistency of structure and process that currently exists among other administrative bodies, this does not apply to police and the PDT.

Disciplinary proceedings against police are simply not comparable to the function of any other administrative body. Commissioner, it is important to recognise that police officers represented by the Police Association have confidence in the PDT. History shows that the PDT has never been fundamentally unwieldy, inefficient, expensive or inconsistent in its process and outcomes. There is no suggestion that the present processes do not work or have failed. At the time of Mrs. Shaw's advice our statistics indicated that since December 2011 only three matters have proceeded to trial. 34 had been withdrawn and 64 had been concluded by way of guilty pleas. Clearly in the public interest is for police officers to discharge their critical and onerous duty with confidence in the current system and its disciplinary body. Confidence in its experience and history of fair hearings. The PDT delivers that confidence. It determines

the facts, deals in evidence rather than speculation and is independent and transparent. The Police Association will continue to advocate for its retention long into the future.

The ICAC: The Police Association is uncomfortable with the Independent Commissioner Against Corruption Act, in so far as it allows for the investigation of matters related purely to misconduct, when that misconduct is neither corrupt nor tantamount to maladministration. These matters ought to be investigated but we consider that to be the job of the South Australia Police, in so far as investigations might pertain to police officers. We make no submission in respect of other public officers. We were and remain uncomfortable with ICAC fulfilling this function; it is entirely proper for ICAC to play some oversight role but in our proposed model the ICAC ought not in this area be charged with direct responsibility. We agree with your statement that the definition of corruption in public administration in the ICAC Act is very wide, in that it includes any offence committed by a public officer while acting in his or her capacity as a public officer, however minor. In defining corruption, the Association has long held to the view that criminality and issues of police discipline not be linked. Police conduct which would ordinarily be considered in breach of the Code of Conduct pursuant to the Police Act and Regulations should only be the subject of proceedings before an ICAC if the conduct under consideration falls within a legislative definition of corruption that deals with dishonest activity arising out of public office or public service.

As stated by the Police Commissioner, SAPOL's Anti-Corruption Branch operated according to directions issued by the Minister to the Commissioner pursuant to the Police Act. Corruption was defined in the Minister's directions. That definition appears to operate in a way that does not confuse police discipline with dishonest conduct of a corrupt kind.

Police investigating police: When it comes to the question of police conducting internal investigations into other police, one must appreciate a self-evident reality. It is that police are the most capable resource available for the task – investigations are what we do. Some decry the practice of internal police investigations but to take their argument to its logical conclusion,

one would have to bar police, seconded, retired or resigned from any involvement on any occasion. This is infinitely impractical. Concerns about bias and or conflict real or perceived clearly exist. But the experience of the Police Association and its legal providers is that the ACB and IIS investigators pursue the truth with unrelenting zeal. Our legal practitioners report that the method of questioning some IIS and ACB members employ is continuously importune. Many disciplinary interviews amount to interrogations in which unjustified propositions are put and serious accusations made.

In any event, an independent OPI would assess any investigation and recommendation from a complaint it receives. ICAC oversight of investigations of police by police would also provide impartiality and transparency. The audit function you raised last week Commissioner would be welcomed.

In summary: Police officers perform a unique role and operate under the highest levels of scrutiny and regulation. The nature of their duties is such that it can attract many and varied complaints many of which are proved unsubstantiated and in public service police were until the ascent of the ICAC Act the only group other than in recent times being protective services officers who are compelled when lawfully directed to answer questions about matters relating not to their – not only to their on duty but also their off duty conduct. That applied to no other category of employment in the wider South Australian public sector. South Australian police officers are known for their professionalism and ethics. They seek a police complaints system that doesn't confuse police discipline with criminality; it must be fair, evidentiary based and independent. Thank you and I'm happy to take any questions you have, Commissioner.

THE COMMISSIONER:

Thank you. The last point that you made, Mr. Carroll, that there is a risk that the system might confuse disciplinary proceedings with criminality. Isn't that what the present system is? Exactly that, it does confuse those two matters?

MR. CARROLL:

Well, we don't think so because when you take into account the Police Act and Regulations it sets out the Code of Conduct.

THE COMMISSIONER:

I understand that.

MR. CARROLL:

It set out what is to be investigated and how it's to be determined and assessed.

THE COMMISSIONER:

But –

MR. CARROLL:

In the – oh, sorry, sir.

THE COMMISSIONER:

No, you go ahead.

MR. CARROLL:

In the ICAC Act, I mean the broad definition of corruption, when it picks up minor breaches of criminality. That might be a police officer involved in a speeding incident. Or it might be an argument between excessive force or assault. It is those minor complaints the police have always investigated and there is always a process involved in relation to whether that is handled in the Police Disciplinary Tribunal or it is handled in a court.

THE COMMISSIONER:

I am not suggesting that police shouldn't investigate it. But what I'm saying is that the present system does confuse a concept of disciplinary proceedings and criminal proceedings. Because

it treats disciplinary proceedings as if they were criminal proceedings.

MR. CARROLL:

You are mentioning the Police Disciplinary Tribunal process?

THE COMMISSIONER:

Well, that and the investigation process itself. Criminal proceedings commence with an investigation. And they conclude if a person is charged with a hearing before a tribunal or a court. That's exactly what you do for disciplinary proceedings at the moment.

MR. CARROLL:

Before I ask Morry to respond – in relation to that though sir, if you consider the amount of complaints that are made against police, by where those complaints come, who we deal with on a daily basis, we want a system that is evidentiary based where people who make complaints, if that's taken to its logical conclusion and our members say that they're not guilty of it, that there should be a proper evidentiary hearing where witnesses can be cross-examined.

THE COMMISSIONER:

But why should a person who has been complained about for a disciplinary matter have to plead guilty or not guilty? It is not a criminal matter.

MR. CARROLL:

Because it may very well be that the complaint that's made against them they are not guilty of.

THE COMMISSIONER:

No. No. But, if you are a civilian and in the public sector, and someone makes a complaint about your conduct, an investigation might occur but the investigation doesn't ask the person who is the subject of the investigation to plead guilty or not guilty. That's a criminal matter.

MR. CARROLL:

And our members, unlike other public servants, are compelled to answer those questions.

THE COMMISSIONER:

I'm not sure what the relevance of that is.

MR. CARROLL:

Well –

THE COMMISSIONER:

What I am putting to you at the moment is that the present system is overformalised to the disadvantage of your members.

MR. CARROLL:

We would disagree. We would say that –

THE COMMISSIONER:

They're treated like criminals –

MR. CARROLL:

Well, there are other processes that already exist in relation to the system to deal with minor misconduct, to deal with minor matters. But that already exists.

THE COMMISSIONER:

Put those aside. In relation to matters of serious misconduct your people are being treated as if it were a criminal matter. And I can't understand why your organisation would support that.

MR. CARROLL:

Well, I think, for the reasons I have outlined to you, sir.

THE COMMISSIONER:

You want your people to be treated as if they were criminals?

MR. CARROLL:

No, I am not saying that. I am saying that at the moment people make police complaints –

THE COMMISSIONER:

I know they do.

MR. CARROLL:

– and there are great ramifications for any member found guilty of a complaint. And we want to make sure before that happens to our members, who would lose tens and tens of thousands of dollars if they are demoted for example, that we want to make sure that the evidence that is going to be relied upon is properly tested.

THE COMMISSIONER:

I think what's necessary to be done is to discriminate between those matters that could give rise to, for example, termination, demotion, reduction in pay, transfer or something of that kind. They have to be treated seriously, if that is a possible result. But at the moment the system treats every matter the same way.

MR. CARROLL:

Well, there is a system of minor misconduct.

THE COMMISSIONER:

I know that.

MR. CARROLL:

And informal resolution of matters. And that already exists and there is already a determination in general orders in relation to how that would happen.

THE COMMISSIONER:

But there are many misconduct matters that are not minor misconduct matters but are not likely to ever lead to termination or suspension, demotion or anything of that kind. They're treated as if they were. And they go to the Tribunal.

MR. CARROLL:

Well, they don't have to be. The system already allows the Commissioner to treat them differently, if he so desires.

THE COMMISSIONER:

How could he treat it differently?

MR. CARROLL:

They can be considered to be dealt with under the minor misconduct or the informal resolution process.

THE COMMISSIONER:

No, we're at cross purposes. I am not talking about minor misconduct. I am talking about a matter that is misconduct. Not minor. It can't be minor misconduct.

MR. CARROLL:

All matters can be determined, are misconduct.

THE COMMISSIONER:

Yeah. At the moment those matters can end up in the Tribunal where there is no prospect that the police officer will suffer any serious sanction such as demotion et cetera, et cetera.

That seems to me to be extraordinary. And it is extraordinary that your Association wants it to continue.

MR. CARROLL:

Well, that's your view, I suppose, sir, but –

THE COMMISSIONER:

Well, that is.

MR. CARROLL:

And I'm saying to you that if you look at the statistics of the Police Disciplinary Tribunal, many occasions we will have a contest between the facts in issue, what the allegations are. And in this system the PDT provides that appropriate, necessary adversarial system where things can be tested, where we can say, well, no, if they are going to be guilty of that breach of regulation as defined in the Police Code, then our member will say, well, I agree to this but that is not correct in relation to that fact in issue. And that becomes the debating point.

THE COMMISSIONER:

Yeah. There are some –

MR. CARROLL:

Did you want to say anything Morry?

MR. BAILES:

No. Sorry, Commissioner. I'll hear you out and add anything that I need say after that.

THE COMMISSIONER:

Okay. There are some circumstances where it is necessary to make findings of fact. And they will arise where a matter gives rise to an allegation of serious misconduct that could give

rise to termination, demotion et cetera and there will be a need in those circumstances to be findings of fact. But where such a sanction is not – would not be imposed, having regard to the conduct, for example investigation, why do you need a disciplinary tribunal to hear it?

MR. BAILES:

Perhaps I can answer that one Commissioner. The current approach by the South Australia Police is that matters that are laid in the Tribunal are only Category A and Category B matters. And the penalties relating to those, range from termination to demotion –

MR. SCHEFFLER:

Reduction of seniority.

MR. BAILES:

– reduction of seniority. So it is only those matters which can involve a serious penalty that are in fact tried. The Category C matters that you are probably referring to, the current approach of SAPOL is not to lay those before the Tribunal.

THE COMMISSIONER:

But the member can take it to the Tribunal.

MR. BAILES:

No. A Category C matter can be concluded in a way that doesn't require it before the Tribunal.

THE COMMISSIONER:

It may be —

MR. CARROLL:

But in minor misconduct matters, you're quite right.

THE COMMISSIONER:

It may be concluded, but the member can take it to the Tribunal, can he not?

MR. CARROLL:

Yes.

THE COMMISSIONER:

And they do.

MR. CARROLL:

Because they say they're not guilty of the conduct.

THE COMMISSIONER:

I understand that. But I was just taking up Mr. Bailes's point. A lot of the matters that go to the Tribunal are not initiated by the Commissioner, but are in the Tribunal because of the police officer's claim to want a tribunal hearing.

MR. CARROLL:

Because they are not guilty of what has been alleged.

THE COMMISSIONER:

That may be.

MR. CARROLL:

That's what they are saying sir. That's why it's there. Because the complaint has been investigated and the determination has been made. Our member is saying but I am not guilty of that. And it might be judged as minor misconduct and what we do in that system is the member can determine as to whether they are happy to go through the minor misconduct

process by saying yep, I accept that I have breached that certain code and we won't go to a full investigation and it won't go to the Police Disciplinary Tribunal but if the allegations are put to the member that they say that is not the case then they do choose to have the full investigation.

THE COMMISSIONER:

But these are – are these minor misconduct – could these include minor misconduct matters?

MR. CARROLL:

Yes. Yes.

THE COMMISSIONER:

So your officers could tie up a tribunal in relation to a minor misconduct matter that could only give rise to managerial caution.

MR. CARROLL:

No, because the member chooses based on what the allegations are as to – at the beginning of the process – as to whether they say that they accept that being allegation, is a fact or not.

THE COMMISSIONER:

Yeah, no I understand that. But if the matter is minor misconduct and if the investigation reaches a conclusion that the officer has been guilty of minor misconduct and that might give rise to managerial caution, or discipline – managerial caution – your member can take it to the Tribunal.

MR. CARROLL:

No. No, Commissioner.

MR. BAILES:

No, Commissioner, that's not so. The Act – the method for contesting that finding is to make an application to the Commissioner. So once it's designated minor –

THE COMMISSIONER:

You are talking about minor misconduct?

MR. BAILES:

Yes.

THE COMMISSIONER:

Alright. Well, let's put minor misconduct out the way. Let's put it out the way. That doesn't go to the Tribunal. The other matters do if your member wishes them to.

MR. BAILES:

Well, Commissioner, I beg to differ.

THE COMMISSIONER:

Are you saying that's not right?

MR. BAILES:

Well, what I say is that it is up to the Commissioner of the day –

THE COMMISSIONER:

No, no the Commissioner can do it. Also the member can –

MR. BAILES:

A Category A or Category B matter is laid by the Commissioner.

THE COMMISSIONER:

I understand that.

MR. BAILES:

So, it's not a choice of the member. They are in the Tribunal.

THE COMMISSIONER:

They are in that case, Mr. Bailes. But concentrate if you wouldn't mind on my proposition. If the Commissioner doesn't lay it in the Tribunal, the member may take it there.

MR. BAILES:

No.

THE COMMISSIONER:

Is that right, you say no.

MR. BAILES:

No. No, no, I don't –

THE COMMISSIONER:

I don't think – I don't think your colleagues agree with that.

MR. SCHEFFLER:

No, I agree with Mr. Bailes. It's only when it's a minor misconduct can the member elect to challenge that in the Police Disciplinary Tribunal. They have got an opportunity to do that.

THE COMMISSIONER:

It is only with – when it is minor misconduct.

MR. CARROLL:

In the beginning.

MR. SCHEFFLER:

Minor misconduct.

THE COMMISSIONER:

I thought that's what Mr. Carroll said couldn't be challenged.

MR. CARROLL:

No. At the begin-

MR. SCHEFFLER:

So, within the disciplinary process at the moment we have a managerial support process, as you are aware of, where people get managerial advice. Those matters are recorded and not reported. A member has not got any opportunity to challenge that. They will receive that managerial advice no matter what. And they need to accept that. Then there's nowhere to take that, nowhere to appeal it. And we also accept that process. Because it has no impact on the member.

The next level up we have minor misconduct. And when a member gets advised that a matter is being determined as a minor misconduct process they have the ability to challenge that within seven days of receiving notification –

THE COMMISSIONER:

And how can they challenge that?

MR. SCHEFFLER:

– and ask that to be heard in the Police Disciplinary Tribunal. Now it doesn't even mean that the member does accept – if a member accepts the minor misconduct process they can still

challenge those issues in the minor misconduct process.

THE COMMISSIONER:

But that – that was my point –

MR. SCHEFFLER:

Commissioner just further to that –

THE COMMISSIONER:

Yeah, you go on. You go on.

MR. SCHEFFLER:

What our concern is, even with the minor misconduct process, which obviously some people might think it is a preferred option, there are longstanding ramifications for members.

MR. CARROLL:

That's right.

MR. SCHEFFLER:

Even under that process you can have a transfer of four months but on top of that it will go on the member's record on their probity report and further to that in future when they apply for promotions, whether they apply for their medals when they are – when they are due to receive a medal, that minor misconduct record will have a significant role to play as far as – as I've said, when they are applying for a promotion what have you or their medal. So, in a number of cases, and I would say it is probably less cases, the members choose to have the matter heard in the Police Disciplinary Tribunal because they are so concerned that they will not get a proper hearing under a minor misconduct process. Now as far as the next level goes that is when members get disciplinary charges, so they receive a formal disciplinary charge, and the members under that particular process, obviously they come to the Association and we give

them some sort of comfort in how that process works but then they have – they do have the opportunity then to challenge that in the police disciplinary process and if you would look at those statistics when you can see that approximately one third of matters – members are found not guilty. The matters are withdrawn – matters are withdrawn from the Disciplinary Tribunal – that’s quite effective.

And if you look at all of the other guilty pleas many of them have come about through negotiation, through legal counsel, and a number of items in those Police Disciplinary Tribunals, a number of cases you will find that is agreement reached in relation to statements that have been provided, some are removed, redacted. There’s a whole range of issues that go through that which will have a long term impact on our members.

MR. CARROLL:

There might even be duplicitous charges so they might be charged with the Code of Conduct under their behaviour, their honesty and integrity and conduct prejudicial –

THE COMMISSIONER:

After a minor misconduct matter?

MR. CARROLL:

No no no, this is in the PDT process that Tom is just talking about and so when it comes to conclusion within the PDT because there is a range of charges that have been laid on the member and through negotiations that is discussed in relation to withdrawal of some charges of the Code of Conduct for an acceptance of a plea on one instead of three breaches arising out of the same set of circumstances.

THE COMMISSIONER:

Are we agreed then that minor misconduct matters can be taken to the Tribunal by an officer?

MR. CARROLL:

Yes.

THE COMMISSIONER:

Mr. Bailes?

MR. BAILES:

Yeah. Commissioner, forgive me. I had assumed the position where you've gone past the post and it is purely a minor misconduct process.

THE COMMISSIONER:

All right. Well, the point I was making is that the police officer himself or herself can elect to have the matter heard by the Tribunal. Now, there's been a suggestion that the Tribunal system is overly complicated and formal. You would not agree with that?

MR. CARROLL:

We don't – we don't find anything wrong with that.

THE COMMISSIONER:

Overcomplicated?

MR. CARROLL:

We don't – we don't – we don't think that it's overly complicated and we like the formality of it.

THE COMMISSIONER:

Well, do you agree it's overcomplicated?

MR. CARROLL:

No.

THE COMMISSIONER:

Do you agree it's formal?

MR. CARROLL:

Yes.

THE COMMISSIONER:

And you agree that the time taken – that matters take to reach the stage where they can be remitted is very long?

MR. CARROLL:

Yes.

THE COMMISSIONER:

And what is the reason for that?

MR. CARROLL:

We think it's to do a lot with the investigation process and perhaps the assessment process in relation to how long an investigation takes to reach its conclusion. We have some members who, at the moment, are waiting between 12 and 24 months after they have been interrogated for an outcome before coming to find out whether they are going to be charged with a breach of regulations, whether it be minor misconduct or not.

MR. BAILES:

Do you mind if I add something? Commissioner, because you have identified delay, we've given it some thought. Can I just provide an explanation that may assist? Mr. Carroll has made reference to the fact that in our view, our collective view, the predominant delay is at the investigation stage. Once it's before the Tribunal, we tend to get on with it. We've got a

fairly enthusiastic Magistrate who won't allow us to sit around being idle. The statistics might belie what actually occurs because if there are criminal proceedings on foot, arising out of the same conduct, the Police Disciplinary Tribunal necessarily adjourns the disciplinary proceedings whilst the criminal proceedings are concluded. So that can account for – on the statistics – some matters that sit before the Tribunal for a period of time. You've learnt this morning that about a third of matters are withdrawn. So, we say that that is vindication for having a formal process so that you can carefully look at evidence as distinct from some other jurisdictions where an administrative approach to police discipline has led to a less than quality system of discipline.

THE COMMISSIONER:

Why would that be?

MR. BAILES:

Because there is less ability to – there is no evidentiary-based system or hearing. There is no cross examination of witnesses.

THE COMMISSIONER:

Why would that be?

MR. BAILES:

Sorry?

THE COMMISSIONER:

Why would that be?

MR. BAILES:

Well, let me take Western Australia, for example. There is an ability for the Commissioner of Police in Western Australia to conduct a hearing. He has entirely abandoned that process.

THE COMMISSIONER:

The Commissioner of Police?

MR. BAILES:

The Commissioner of Police.

THE COMMISSIONER:

I'm not suggesting that.

MR. BAILES:

I'm sorry?

THE COMMISSIONER:

Nobody is suggesting that, I don't think.

MR. BAILES:

Well, maybe not, but we look at examples from other jurisdictions, that are in our view less –

THE COMMISSIONER:

I think the suggestion that's been made is that administrative tribunals such as SACAT which might be comprised of delegates of PASA, the Commissioner of Police, Victims of Crime, might hear the matter.

MR. BAILES:

Well I will let Mr. Carroll remark on that but my final point in relation to delay is that the matters that are run to trial in the Police Disciplinary Tribunal, so those that take the longest, are generally the Category A matters. And as you have heard, from December 2011, there has only been three contested matters. So whether you take a personal view about it or not, the

attitude of the Association and its members is that it is content with the process. It sees a benefit in the formality because it enables a proper scrutiny of the evidence.

THE COMMISSIONER:

But an administrative tribunal can be quite formal too, I mean, you would have appeared before the Administrative Appeals Tribunal –

MR. BAILES:

Certainly, but our argument –

THE COMMISSIONER:

They conduct themselves as if they were a court.

MR. BAILES:

Our riposte to that Commissioner would be if it ain't broke don't fix it. Why move it to another tribunal?

THE COMMISSIONER:

That assumes it is not broken of course and what I am suggesting is, and it has been suggested, that the system is overcomplicated and formal and time-wasting.

MR. BAILES:

Well if it is simply going to be allegedly overcomplicated, formal and time wasting in another forum we'd prefer it to remain where it is.

THE COMMISSIONER:

Even with those descriptions?

MR. BAILES:

Well, I don't agree with those descriptions but the point is if you are going –

THE COMMISSIONER:

That is not my impression of the Tribunal, that's the Magistrate's impression.

MR. BAILES:

Well, if you are simply going to pick up what you have got now and put it in another place we would argue against that.

THE COMMISSIONER:

But nobody would suggest that. You don't just pick it up and put it in another place because that can't work. What it is, is you change. You might have to change things to make it less complicated, less formal, quicker, surer and such that people have more confidence in the system. The police need to have confidence in the system; there is no doubt about that. But so also does the public.

MR. CARROLL:

Are you suggesting that police don't have confidence in the PDT system?

THE COMMISSIONER:

No, I am not suggesting that at all.

MR. CARROLL.

Because that is not our experience. We have had, I mean in relation to the SACAT, I mean the documentation in relation to it that has been provided to us from the Government talks about not having contested hearings. It talks about not having the need for legal representation. Please understand that because of the outcome of a finding of guilt, it has severe ramifications for a police officer, member's status, reputation, promotion opportunities and earnings.

THE COMMISSIONER:

I understand that.

MR. CARROLL:

We want the contested hearing. We want the ability to cross-examine those people that complain and make false and malicious complaints against police and if that is the case we don't want it heard in an administrative way on the papers. We want the ability to cross-examine them and put them to proof.

THE COMMISSIONER:

I do not know what was proposed at any stage and what was put to your organisation in relation to how an administrative tribunal should organise itself. I have sat on administrative tribunals when I was a judge. I was a Deputy President of the Administrative Appeals Tribunal. I know how they work if they are properly organised. Everyone in tribunal hearings before me had the right to cross-examine anyone else. And that is the usual course of events. The evidence is tested and the administrative decision maker makes a decision on the tested evidence.

MR. CARROLL:

So it does exactly what the PDT does.

THE COMMISSIONER:

No, that is not what the PDT does. It would be done administratively. The rules of evidence are different in as much as the rules of evidence are relaxed. The hearing would be quicker, it would be less formal, it would be less complicated and your members would know the result of the complaint much quicker than they would now, which must be to their advantage.

MR. CARROLL:

Well, as I have said and as I have pointed out in both my written submission and in my oral

statement, we are very content with the way the PDT works. We have no problems with the adversarial nature of it. Our members are professional police witnesses that deal with complexities and formalities in their work on a daily basis. We are very comfortable with the Magistrate who understands policing, police work, and hears on a regular basis the evidence given by police officers in the Magistrates Court. We think it fits in perfectly with the way that we go about our business.

THE COMMISSIONER:

How many matters have been heard in the last four years?

MR. CARROLL:

In the Police Disciplinary Tribunal as trial, three.

THE COMMISSIONER:

Three.

MR. CARROLL:

Three. And in relation to the other matters that come before it, there may be some –

THE COMMISSIONER:

So there has only been a need for a tribunal of that kind for three hearings in four years.

MR. CARROLL:

For three trials but there is much more in relation to pre-trial conferences, there is more.

THE COMMISSIONER:

That has nothing to do with the Tribunal. That is the way the parties deal with each other.

MR. CARROLL:

Yes.

THE COMMISSIONER:

That is a different thing, that's quite different. And they can deal with each other in exactly the same way whether the ultimate hearing is in a tribunal or in an administrative tribunal.

MR. SCHEFFLER:

Commissioner, could I just add to that, the Magistrate at the Police Disciplinary Tribunal at those early stages usually makes some comments in relation to the evidence that is being presented.

THE COMMISSIONER:

So he should –

MR. BAILES:

And makes suggestions perhaps to the parties to have the matter resolved at an early stage.

THE COMMISSIONER:

Mr. Scheffler, that is not only something that is done by a court. Tribunals do that too. They have pretrial hearings. They have directions hearings. They do exactly the same thing as courts. They are just not courts.

MR. SCHEFFLER:

Commissioner, you suggested that the Police Association, Victims of Crime Commissioner would be involved in a tribunal. We would not support that. We would like a true independent body, a Magistrate, dealing with –

THE COMMISSIONER:

All right perhaps the president of SACAT then, who is a Supreme Court judge.

MR. CARROLL:

Yes, that's right and we would hope that they would be available for the hearing of the matters so that things are happening in a timely way.

THE COMMISSIONER:

That would be something we would have to talk about. All right well, we've dealt with probably the end of the process before, we should have dealt with the start of the process and unfortunately that is my fault. Let us deal with the start of the process. At the moment a person can make a complaint to SAPOL, to the Office for Public Integrity and to the Police Ombudsman, which seems to me to be unsatisfactory.

MR. CARROLL:

I think I have agreed with you in my statement.

THE COMMISSIONER:

I put to the Police Commissioner, I think you were present at the time, both and you and Mr. Scheffler were present at the time Mr. Carroll, that perhaps all of the triaging of complaints about police officers ought to be done by police.

MR. CARROLL:

And I think I have said in my oral statement that we support an independent OPI and a lot of the complaints, I would have thought if you are looking for public confidence in the system too would come through the OPI and then they would be triaged there. Certainly that is what was – I think – foreseen for the role of the OPI when this was first mooted back in 2010, so –

THE COMMISSIONER:

I am not sure but at the moment you have the capacity of police to triage complaints made directly to police –

MR. CARROLL:

Mandatory reporting –

THE COMMISSIONER:

And for the OPI to assess those matters directly to OPI, that seems to be unsatisfactory. You have two people assessing them in perhaps two different ways.

MR. CARROLL:

Well, yes. And I think our submission to you has been that an independent OPI would do that.

THE COMMISSIONER:

Well –

MR. CARROLL:

In relation to whether that is right or wrong, depending on your context or your circumstance we would have to look at it in relation to any proposed legislation that might come out of this hearing.

THE COMMISSIONER:

Are you suggesting then that all complaints have to go to OPI, rather than to police?

MR. CARROLL:

Well, at the moment, as you have identified, as we have said, they can go to three people.

THE COMMISSIONER:

I know that.

MR. CARROLL:

So –

THE COMMISSIONER:

We're suggesting about the future.

MR. CARROLL:

In the future then our submission to you is that the OPI would handle all complaints. And they would assess them.

THE COMMISSIONER:

All complaints about police.

MR. CARROLL:

Well, that is right.

THE COMMISSIONER:

And they, and OPI would assess –

MR. CARROLL:

And they would determine – they would determine as to whether the matter involved anything that an ICAC would investigate and if it did not come under the definition of corruption for what an ICAC is established for then it would go to SAPOL to investigate.

THE COMMISSIONER:

Without OPI making any assessment of it.

MR. CARROLL:

Well, they would determine as to what the nature of the complaint was. They would send it to the investigative body to investigate that complaint and then they would look at the

investigation and the recommendations from that.

THE COMMISSIONER:

Well, at the moment, OPI when it receives complaints makes an assessment of them and those matters that it assesses as corruption, it recommends that I deal with and I – as you said in your presentation I can agree or disagree with the recommendation. But those other matters that are not corruption, OPI at the present time does an assessment of them. About 60 per cent are assessed as requiring no action at all. Well, a significant percentage is. Of all the complaints made to OPI, more than 60 per cent are assessed as requiring no action at all. That is, they are never referred to anyone. Are you suggesting that should continue so that those police officers who are the subject of a complaint to OPI, which OPI assesses as requiring no action at all, should remain?

MR. CARROLL:

In what regard? Not advising SAPOL or –

THE COMMISSIONER:

No –

MR. CARROLL:

It just comes into the OPI and –

THE COMMISSIONER:

There might be enquiries made of SAPOL about some facts but then OPI assesses it as requiring no action at all, makes the recommendation to me, I agree and the matter is completed.

MR. CARROLL:

Well, I suppose what we have said under our system is that the OPI would not be reporting to you. It would be – it would be of a presumed taking of a complaint and sending it off to

SAPOL to investigate.

THE COMMISSIONER:

No, but what I am asking you is in the future. Do you want OPI to be assessing these matters?

MR. CARROLL:

Well I would have thought that when you talk about having public confidence in the system, then the reasons for an Independent Commissioner Against Corruption, a reason for an Office for Public Integrity was to provide that one-stop-shop for all people to make their complaints to it. If all complaints are made and assessed by SAPOL we might find ourselves in a few more years' time having another hearing such as this because people are unhappy with that system.

THE COMMISSIONER:

At the moment –

MR. CARROLL:

But I would have to look – I would say, sir, that we would have to assess that on what a new model would come, before we could actually make one, a determined decision on whether that would be a good idea or a bad one.

THE COMMISSIONER:

Well, that is the suggestion I made to the Police Commissioner, I am making to you. That police make all of the assessments, SAPOL does all of the assessing; do you agree with that and do you agree that that would be –

MR. CARROLL:

I would have to look at the structure of that. I am not going to give a definitive answer at this point. We have certainly given our submission in relation to what we believe the OPI should be and how that should operate.

THE COMMISSIONER:

Well, as I said to the Commissioner, if that were the case, police would not have to report to the oversight agency because that oversight agency would have direct access to police records. Do you agree with that as a proposition?

MR. CARROLL:

Well we agree with external oversight, I think I have said that.

THE COMMISSIONER:

No, do you agree with the oversight body having direct access to all of the police records relating to complaints?

MR. CARROLL:

Look, I do not see any problem in that at all.

THE COMMISSIONER:

No. Well the Commissioner apparently sees – that is the way in which the systems work in New South Wales and Victoria as you know. And they seem to work well. So if it were the case that the oversight agency had direct access to the police records and SAPOL would not have to report anything to the oversight agency because the oversight agency would have it; would you agree with that?

MR. CARROLL:

Well, you would presume that the oversight agency had access to all of the complaints that were made, they would have access to it. What the checks and balances of that access would be would be I suppose a matter for debate.

THE COMMISSIONER:

And SAPOL would each morning as it presently does, as was explained by Superintendent Patterson, would make an assessment of each of these matters and decide for itself how they would be investigated. So what I was putting to the Commissioner is that SAPOL have that responsibility for every matter. But you seem to want OPI still involved.

MR. CARROLL:

Well, the OPI, as far as what it was set up to do, as we understood it in relation to what you have said about the Deputy Premier wanting it to be a one-stop-shop for triaging, then that would work against that as a proposition wouldn't it? Because it would go – every complaint against police would go directly to SAPOL.

THE COMMISSIONER:

That is right. Do you have any trouble with that?

MR. CARROLL:

We would have to take that under consideration.

THE COMMISSIONER:

All right, well say that were the case, and all of the matters go to SAPOL and SAPOL assess them every day, and SAPOL get on with their investigation, what I proposed to the Commissioner was that the oversight agency would then randomly audit any of those matters and might have the power to interfere in a matter and take over the investigation itself. What do you think of that as a proposition?

MR. CARROLL:

In relation to a police discipline matter, run of the mill complaint, or something with the hallmarks of corruption or systemic misconduct or –

THE COMMISSIONER:

No.

MR. CARROLL:

What would be the determining factor for an ICAC to take over the investigation?

THE COMMISSIONER:

I did not say ICAC.

MR. CARROLL:

The OPI, sorry.

THE COMMISSIONER:

The oversight agency. Let us assume that the system is presently as it stands, that ICAC has responsibility for corruption – and we will talk about the definition of corruption in a minute. But as to the other matters, the oversight agency randomly audits those matters and they will be something that don't amount to criminal conduct because otherwise they would be at ICAC; what do you think of that as a proposition?

MR. CARROLL:

Well, I have said we would have no problem with external oversight.

THE COMMISSIONER:

Yeah but you do not have any trouble with the external oversight having that random audit?

MR. CARROLL:

No, not at all, I think I have said that already.

THE COMMISSIONER:

And that it could give perhaps directions to SAPOL as to how the investigation take place?

MR. CARROLL:

Well, I think we have a similar system to that now with the Police Ombudsman.

THE COMMISSIONER:

That would mean that you would not have all of the correspondence that presently goes backwards and forwards to the oversight agency which takes up a lot of time, takes up a lot of effort. And really is, in the end result, non productive. And then if the police were to investigate these matters, assuming that I reject the Ombudsman's suggestion that police should not investigate police. But if police were to investigate these matters, police would make the findings as to the conduct?

MR. CARROLL:

Well, I think that would be part of the investigative process as to determining the evidence and what would come of that evidence in relation to a conduct setting, yes.

THE COMMISSIONER:

That is what police do in all investigations at the moment.

MR. CARROLL:

That is what they do now, yeah.

THE COMMISSIONER:

But at the moment the system does not do that for police conduct, because it is the – after SAPOL has finished its investigation the Police Ombudsman makes assessments of the evidence, effectively findings. It seems a very complicated procedure; do you agree?

MR. CARROLL:

Well, someone would be making an assessment on that, wouldn't they?

THE COMMISSIONER:

Yeah. The police. And the oversight agency could say whether they agree or disagreed with it by randomly auditing.

MR. CARROLL:

That is right.

THE COMMISSIONER:

Would you agree with that?

MR. CARROLL:

Well, yes and that is what I suppose happens in effect now with the Police Ombudsman. They either agree –

THE COMMISSIONER:

No.

MR. CARROLL:

– they agree with the investigation that comes towards them or they disagree.

THE COMMISSIONER:

No, it is the other way around. When it goes to the Police Ombudsman now he makes the assessment and recommendation and the Police Commissioner can disagree.

MR. CARROLL:

Yes. He makes the recommendation on the investigation conducted by the police.

THE COMMISSIONER:

Yeah. Which seems to me to be strange. You would think –

MR. CARROLL:

You are just talking about the reverse of it being true.

THE COMMISSIONER:

Yeah. Yeah. What' I'm –

MR. CARROLL:

I suppose I've said in what we put forward as proposition with the OPI it works exactly the same. SAPOL would investigate the matter, would make the recommendations, would send it to the OPI for assessment as to whether they agreed or disagreed, I think that's what I said. S you are talking about the reverse, we are talking about the same thing but perhaps in a different context.

THE COMMISSIONER:

Well, I do not think what I am putting to you as a model, you've put to me but what I am putting to you is an oversight agency which has less impact upon each particular investigation that it presently does but can monitor any of them at any time.

MR. CARROLL:

And I have said external oversight we have no problem with at all.

THE COMMISSIONER:

Well, yeah –

MR. CARROLL:

So –

THE COMMISSIONER:

– of that kind then?

MR. CARROLL:

Of course.

THE COMMISSIONER:

Nobody, I think, disagrees with external oversight. The question is the model, which is what I am putting. The model I am putting to you at the moment.

THE COMMISSIONER:

This is the model you put to the Commissioner the other day.

THE COMMISSIONER:

Yeah. Yeah. Do you have any trouble with any of that?

MR. CARROLL:

I would have to have a look at the detail of it in a much more analytical way. But from what you are saying in relation to your model as I understand it to be you were saying that any member of the community who has a complaint against police would lodge that complaint to the police to assess and they would then assess it, they would either investigate it or not and that would be overseen by either the OPI – by the OPI.

THE COMMISSIONER:

By an agency, let just call it an agency at that stage before we get too complicated.

MR. CARROLL:

Okay and that would not be on every complaint, that would only be randomly, as a random audit.

THE COMMISSIONER:

Yes. And those matters that are assessed by police as corruption would go straight to ICAC and be dealt with by ICAC independently of that oversight agency. Although it may be that ICAC would require SAPOL to carry out the investigation as it presently does now under the existing Act. So that really means the oversight agency limits itself to misconduct of a kind that is not criminal conduct. Would that be acceptable to your members, do you think?

MR. CARROLL:

This is the OPI now you are talking about?

THE COMMISSIONER:

No, no we have not got to that. We are just talking about an oversight agency.

MR. CARROLL:

An oversight agency. Well, that is what happens now so, yeah.

THE COMMISSIONER:

Yeah. And so that oversight agency would randomly audit and might give directions to SAPOL as to a particular investigation.

MR. CARROLL:

They might, yes.

THE COMMISSIONER:

All right.

MR. CARROLL:

And the Commissioner may or may not – may disagree or not disagree. I suppose it comes

down to the detail and whether we are going to be seeing the same kind of complaints that we have seen in the current system between the Ombudsman and the Police Commissioner. So there is a possibility of that – I mean I am not saying that I disagree with you Commissioner. And I am not saying that I agree with you. What we are saying is that it is another model that you are suggesting and that we want to see the detail in relation to that before formally responding.

THE COMMISSIONER:

Yeah. Well, then if this were the model, the police would not want the oversight agency to be ICAC?

MR. CARROLL:

For misconduct?

THE COMMISSIONER:

Yes.

MR. CARROLL:

No.

THE COMMISSIONER:

Then, that would mean it would have to be the Police Ombudsman as he is presently constituted, but with different powers or the Office for Public Integrity.

MR. CARROLL:

That is right.

THE COMMISSIONER:

I think everyone has advocated that the – including the Acting Police Ombudsman himself –

that the Police Ombudsman's office might – as you have advocated – might be brought to an end.

MR. CARROLL:

That is right. We don't – I mean central to your consideration as you have stated in this review is in relation to public resources so it would seem if the ICAC and the OPI have been created and it is an oversight agency, to look at police complaints, and whatever model that you come up with and what you have suggested may be a good idea, I am not saying it isn't. But, I can't see the point of an ICAC, an OPI, an Ombudsman and SAPOL. It just seems to be a waste of public resources but I qualified that in my oral statement by saying we would be happy with that as long as the OPI was fully independent.

THE COMMISSIONER:

Yes. Okay, well say you are right about that and there is lot of support for what you say in relation to that, and the Office for Public Integrity became the oversight agency, what is your comment about the independence of the Office for Public Integrity assuming the model I have mentioned that it doesn't triage anything, it simply has oversight.

MR. CARROLL:

Ok, so your model is there is no triaging of a police complaint in the OPI. It is directly to the SAPOL and it is randomly audited by the OPI.

THE COMMISSIONER:

That is it.

MR. CARROLL:

It may be a good idea. I am not saying it is not but I would like to see the detail before making a definitive answer on that, sir.

THE COMMISSIONER:

Well, do you see any problems with that type of –

MR. CARROLL:

I suppose I would see some of our own members might not want to report to their employer. They might want an independent person to lodge a complaint with because they might not have faith in their employer investigating their complaint seriously.

THE COMMISSIONER:

I think that might be right, and I think a lot of the public would not want to report directly to police.

MR. CARROLL:

That's exactly right.

THE COMMISSIONER:

You would allow them to report to OPI but OPI would have to provide the report to police for triaging.

MR. CARROLL:

Well, and that's right. And so, that's why in our model we said, well, if the OPI is truly going to be a one-stop-shop for the public to make their complaint about whether it be police, whether it be about a public servant, whether it be about anyone, instead of the individual having to work out where to go, it is very clear that it would go to the OPI and that is where we have deliberated and come to a position on that, that the OPI would become the one-stop-shop as envisaged by the Deputy Premier and so you asked me about what would be some of the concerns with every complaint going to SAPOL. I think that people would feel like that is more of the same.

THE COMMISSIONER:

What I am probably putting to you is that there is no one-stop-shop, because it can't work, perhaps. Because not only can't it work because of reluctance on the part of SAPOL officers to report to SAPOL or members of the public to report to SAPOL but also because of matters raised by the Ombudsman in relation to complaints about civilian authorities. So let's get away just from the one-stop-shop as a proposition, if I might. If the Office for Public Integrity were the oversight agency with the type of random powers of audit to which I have referred and the power to direct in relation to misconduct matters would your organisation support that?

MR. CARROLL:

As I said, it may be a very good idea but I wouldn't give a definitive answer to you today on that. I would want to see the detail in relation to all that and how that would work. But, look, it is a proposition that I have heard you speak of, last week, so –

THE COMMISSIONER:

I am happy to of course give more detail because I am still making up my mind about this. But what sort of detail do you need?

MR. CARROLL:

Well, I would like to look at how it would work in practice. Who would be involved, what the other parts of that system are, where somebody as part of the end of the complaint process, the assessment, how it is determined, the right to know and be heard, the natural justice side of things, the procedural fairness. I would look at all of that before I, you know, say yes, that is a great idea because it might have other things hanging off of it. I don't think that is unreasonable.

THE COMMISSIONER:

No, I'm not suggesting it is, I'm not suggesting it is. I just want to know what you want to know

so I can tell you and think about it. I am not going into the detail of the investigation. The investigation would proceed, I would have thought, the same way as any police investigation would have any other –

MR. CARROLL:

I would agree with that.

THE COMMISSIONER:

Yeah. The tricky thing is of course investigating misconduct is different to investigating a crime. Because you are dealing with a lower level of conduct. Would you agree?

MR. CARROLL:

Yes.

THE COMMISSIONER:

Yeah. But, I mean there is a strong argument for police to do that.

MR. CARROLL:

Yes. But it would depend. It is interesting I suppose, I mean you have talked about minor misconduct. I mean the way that our Act is set up is that every breach of discipline and every breach of the Code of Conduct, whether it be minor or not, is a breach of the Code of Conduct. So when the Act was changed back in '98, I remember having this debate with my predecessor in the office of the then Minister of Police. Because we didn't like the fact that minor misconduct when it was structured within the Act was not going to allow a police officer to have their day in court because the way it was set up originally is that if it was determined minor misconduct your appeal was to Caesar judging Caesar being the Police Commissioner because if you disagreed with the finding of the minor misconduct, a process, you would then be appealing your right directly to the employer whose job it is to investigate you for the minor misconduct breach. So we argued very passionately in our submission to the 2004

Parliamentary Select Committee to actually have the ability for somebody to determine at the very stage, if it is going to be considered minor, what does that mean first and foremost to the officer and if it was going to be dealt with in a minor way and they were accepting of the facts, would they be happy to then plead guilty to the minor misconduct and go through that process. But if they wanted to say no, listen I disagree with that complaint. I disagree with what the complainant said about my behaviour, it didn't occur, then they would want to know that they could have the ability to test that complainant's version of events. And that is why we have had this argument for many years about the right for the officer to be heard and determined about their guilt or innocence in a contested hearing and an adversarial way because the reality is of all this stuff is that, you talked about the difference between criminality and conduct, well some of the conduct findings and being found guilty can actually have a far greater significant financial penalty than any criminal matter that a member might find themselves engaged in. So, for example we have had members who have been demoted because of their conduct. And I am not saying that's wrong, but they have been demoted because of their conduct. Or they have been reduced in their incremental earnings. For many, many years they are now, their earnings have been reduced so that the actual penalty for the breach of the Code of Conduct, whether it be minor or not, could be several thousands, tens of thousands of dollars. So, so you have got to take that into account as well I would have thought.

THE COMMISSIONER:

But for minor misconduct you wouldn't suffer that penalty, would you?

MR. CARROLL:

Well, you can – well, I forget –

THE COMMISSIONER:

I don't think so. I don't think so.

MR. CARROLL:

– exactly where the penalties lay but can you be transferred and things like that for minor misconduct.

THE COMMISSIONER:

I do not think so. I think if you treat minor misconduct as a management matter, you might take away a lot of the anxiety of your members, not that they plead guilty to it. You don't plead guilty to behavioural matters, you assess them and you advise people in relation to behavioural matters.

MR. CARROLL:

Well perhaps there should be a difference then between what a breach of the Code of Conduct is and what a managerial outcome is. And perhaps we should proceed – perhaps we should proceed by saying this is not a Code of Conduct matter.

THE COMMISSIONER:

That might be right. It seems to me –

MR. CARROLL:

Because at the moment everything is a Code of Conduct matter.

THE COMMISSIONER:

It seems to me that the Commissioner has a duty to manage his Police Force.

MR. CARROLL:

Of that there is no doubt.

THE COMMISSIONER:

And if the system interferes with the management responsibilities, that is not a good result for the Police Force, or for the Commissioner. It might be that the system ought to recognise that

behavioural matters are management matters and nothing more. Not Code of Conduct matters but management matters which will be addressed immediately by whoever is responsible for management of that officer.

MR. CARROLL:

Well the managerial support process we were very active in discussing that with the then Commissioner Mr. Hyde, in relation to having some other process where it wasn't a breach of the Code of Conduct, where there was some form of educative and counselling type of role. I mean we are very supportive of the managerial support process.

THE COMMISSIONER:

Well, then it might be that the system would have behavioural conduct which is not a Code of Conduct matter, where there has been, police officer is alleged to have been rude or there has been an allegation of delay in services, something of that kind, which is not misconduct, it's a behavioural matter. And it is dealt with as a management matter.

MR. CARROLL:

We would be supportive of that.

THE COMMISSIONER:

And there is no investigation, there is no hearing, there is no right to hearing, it is dealt with as a management matter by the police.

MR. CARROLL:

And we do have a form of that now because the Police Commissioner can make that determination already about any complaint.

THE COMMISSIONER:

Perhaps, but I don't think the present system recognises this appropriately. Then the next

matters are misconduct matters, which are investigated. And because they could lead to a serious penalty of the kind that you mentioned, including financial implications and effect on promotion as Mr. Scheffler said, something of that kind. And they are the matters that are regularly audited by the independent oversight authority, what would your members say about that?

MR. CARROLL:

I think that that's an appropriate methodology in relation to separating that which is not a breach of the Code of Conduct.

THE COMMISSIONER:

Yes.

MR. CARROLL:

Now we have operated certainly all of our careers under a very formal frame work about the regulation of police behaviour. And if we are going to go down and say that this is a separation now between what can be determined to be a more managerial methodology, then we have no problems with that. I think what Tom is trying to say is that we already have that process. There is a managerial support process. There are complaints that are made that can be determined by the Commissioner or his delegate to fall into that process. If that needs to be highlighted more clearly within the legislation we wouldn't be opposed to that.

MR. BAILES:

May I contribute Commissioner; I agree that there are matters before the Police Disciplinary Tribunal of a behavioural nature that are there by virtue of the fact they are breach of the Code of Conduct where one puzzles to one's self as to whether or not it's in fact the correct forum. So I think your suggested approach is laudable, because behavioural matters ought not to be treated as a breach of the Code of Conduct. That would be an advantage to the members. What we want to hang on to is a robust evidentiary system when it comes to the more serious

—

MR. CARROLL:

Serious nature.

THE COMMISSIONER:

Well then that would be reserved for the serious misconduct matters which don't amount to criminal conduct because they are dealt with as —

MR. BAILES:

Well, sometimes Commissioner, they are of a nature that a complainant might not want to make a criminal complaint or because of the difference of the standard of proof in the Police Disciplinary Tribunal, it's on balance of probabilities, something may be able to be proved there that can't be proved criminally.

THE COMMISSIONER.

Possibly.

MR. BAILES:

And so the allegations might be very serious. An alleged sexual misconduct matter for example, where de facto what is being alleged is an indecent assault for example. Those are very serious matters that would lend themselves to a full evidentiary hearing.

THE COMMISSIONER:

Well, I won't go back to where we started the debate but you can have an evidentiary matter in a SACAT that is what SACAT is all about. It is evidentiary based. But anyway we won't go back to that. So then Mr. Carroll what I am rather suggesting is what are substantial changes, might be substantial changes, to the present system which will effectively give police more responsibility in the triaging of complaints and will allow police to deal with behavioural

matters immediately so that they do not have to wait for OPI to assess them or don't have to wait until the Police Ombudsman agrees. They can manage them immediately. If they are minor behavioural matters it might be done by Sergeant Smith speaking to Constable Jones, you should not do that again. That is the end of that matter, let's get on with our lives. That sort of thing.

MR. CARROLL:

Well, I mean, I think some of that happens now, to be honest Commissioner.

THE COMMISSIONER:

It does. But the system can take over at the moment because there has to be a report made to the Police Ombudsman, the Police Ombudsman's got to make an assessment, you go backwards and forwards.

MR. CARROLL:

And then there was that debate about the mandatory reporting and whether they should go to the Police Ombudsman or not and that argument of last year, so –

THE COMMISSIONER:

Yeah, well, I won't deal with mandatory reporting at the moment. It might be more than we can deal with all at once. But then the triage can be done by police. Management matters are dealt with as management and serious misconduct matters are investigated by police with a random audit power to the independent oversight authority. That would be acceptable?

MR. CARROLL:

As I said to you before, it might be a good idea.

THE COMMISSIONER:

Yeah. And I should say that independent authority would have the right to audit the

management matters just to make sure they are being assessed appropriately so the police aren't under assessing or over assessing effectively in that relation.

MR. CARROLL:

Yes.

THE COMMISSIONER:

Ok. All right. That would mean, of course, now that you have raised mandatory reporting, that would mean that the independent oversight agency would have access to mandatory reports as well of course because they would be in the system.

MR. CARROLL:

Well, I think the Commissioner said of this, police have nothing to hide in these things. I mean external oversight has never been a problem. As I have mentioned ad nauseam, police officers are highly scrutinised and highly regulated and nothing that comes out of this is going to change that.

THE COMMISSIONER:

It's in both SAPOL's interest and your members' interest that SAPOL enjoys a high reputation.

MR. CARROLL:

Absolutely.

THE COMMISSIONER:

And it is of course in the public's interest the same and it's a question of getting a balance so that your people think they are being dealt with fairly and the public think they are being dealt with appropriately.

MR. CARROLL:

That's right. And I think the history will show that not everyone has felt like that has occurred.

THE COMMISSIONER:

No. Well, I think there has been dissatisfaction amongst your members in relation to, I think, what is an overcomplicated system, which might be able to be freed up.

MR. CARROLL:

As I said, it might be a good idea.

THE COMMISSIONER:

Yes. Well, probably might need a couple more conversations.

MR. CARROLL:

I think I will just round off that debate though.

THE COMMISSIONER:

Yes.

MR. CARROLL:

And whether it is the administrative tribunal or Police Disciplinary Tribunal, at the end it is very important for our members to know that they have been treated appropriately by the employer. They haven't been subject to duress and they have an independent person to assess what they have gone through. And we will always fight for that. And I'm not suggesting that you're not saying that that shouldn't occur, but as far as the mechanics go, anything that is investigated is investigated as a breach of the Code of Conduct unless it is determined to be some kind of managerial support process. But it is still a breach of the Code of Conduct. I think in any of your review or recommendations going forward then Part 5 of the Police Act and the Code of Conduct in the regulations support as to what that is, because anything can be captured with that. The way that it is so broad in relation to what the

offences are of the breach of the Code of Conduct that would need serious consideration to separate what we think is a Code of Conduct, what we think is behaviour that should be dealt with in a managerial way.

THE COMMISSIONER:

I understand, Mr. Carroll, that your members need to be satisfied that the process is fair, and that individually they have been treated fairly. At the same time the public has to be satisfied that the investigations are properly scrutinised, and have been carried out appropriately and that the appropriate result is arrived at. It is a matter of balance.

MR. CARROLL:

Yes.

THE COMMISSIONER:

One last matter if I might deal with which you haven't made so much of in your written submission but you have made more of today was an apparent concern that OPI and ICAC are not independent of each other. OPI's role is very limited, as you understand. It only receives complaints and reports, makes assessments and makes recommendations to me as to how I should deal with them. It does nothing else. What is the perception of –

MR. CARROLL:

Well, we have said that the way that it's constructed at present, is that if we were going to do away with the Police Ombudsman, I said I think in the context of this argument, then that was only on the acknowledgement that the OPI would be an independent statutory office, not determined by anybody else. So the way that the ICAC sits at the moment, if for example, and this is the – when you talk about having confidence in the system –

THE COMMISSIONER:

Mm.

MR. CARROLL:

I have tabled the Victorian Police submission because I think it is very important to understand what happens when things have not been gotten right in relation to how it all occurs.

THE COMMISSIONER:

But that office had quite different powers than the Office for Public Integrity.

MR. CARROLL:

That is right. But it was still – I mean, the Association was arguing for an independent corruption agency, they were dissatisfied with the way that they could not have their complaints heard seriously about some of the officers who were investigating their members and they argued that they were done inappropriately and there was not sufficient independent oversight of the independent oversight. So who, guards – who watches –

THE COMMISSIONER:

Who watches the watchers?

MR. CARROLL:

– the watchers? And so, what we are saying is, if we have a member or anyone who has a complaint against an ICAC investigator and they go to the OPI with their complaint and the OPI makes a recommendation to you – not to you, sir, to the ICAC Commissioner, then that recommendation doesn't have to be accepted. So, therefore, we used in the context of, that's really no different because the ICAC is a law enforcement agency. It's really no different to the Police Commissioner being in charge of the Police Ombudsman, the Ombudsman making a recommendation and the Police Commissioner just rejecting it out of hand because the statutory mechanics allow it to happen. So we have raised it as a concern that perhaps if the Ombudsman is going to be wound up then perhaps if the OPI was going to become the true one-stop-shop which was our argument which was what was raised by the Deputy Premier,

then that needed to be considered in relation to the relationship between the OPI and the ICAC, the sharing of resources and the way that it operates as really a single entity.

THE COMMISSIONER:

Yeah. I am not sure that I follow entirely what your concern is. I mean, if your concern is that ICAC ought to be subject to an inspectorate, that's a different matter. Is that what you're putting?

MR. CARROLL:

Well, I mean, it already is in relation to Mr. Duggan, but certainly at the moment the way that the legislation is framed, the OPI can make a recommendation to you – or not you but to the ICAC – and it doesn't have to be accepted.

THE COMMISSIONER:

But what's the problem with that?

MR. CARROLL:

Well, that is probably one of the arguments in relation to the Ombudsman, when we have read in your documentation that there is a belief or the Deputy Premier believes that there is too close – not too close – but the relationship between the Police Ombudsman and the Police Commissioner isn't sufficiently at arm's length from each other. Well if that is the case, if that's a proposition that's right, then certainly the construct of this current arrangement with the ICAC and the OPI, surely would fit into a similar argument.

THE COMMISSIONER:

But at the moment, for example, the OPI might recommend to me that a matter be assessed as corruption. And recommend that I investigate it. And I think well, perhaps it might give rise to a criminal offence, but it is unlikely to ever result in a prosecution, and therefore I would assess it for myself as serious misconduct, the difficulties about something like that are what?

MR. CARROLL:

Well –

THE COMMISSIONER:

See I am only dealing with recommendations, they do no more than suggest how each matter should be dealt with. I have to decide how each matter can be dealt with – what's then the difficulty?

MR. CARROLL:

The ICAC is a law enforcement agency.

THE COMMISSIONER:

So?

MR. CARROLL:

The OPI is a complaint construct and it's making recommendations and it doesn't have to be accepted by anyone.

THE COMMISSIONER:

That's right. It's a triaging machine.

MR. CARROLL:

So how is that any different to a police complaint under the present system going into the Police Ombudsman and the criticism that has been made in relation to the Police Commissioner whether he accepts or rejects anything that comes out of the assessment or recommendation. I mean I found them to be a similar argument. That's what we have addressed in our statement to you today.

THE COMMISSIONER:

Okay.

MR. CARROLL:

That that should be considered in light of whatever the new legislation will be relative to police complaints and how the OPI might be considered in relation to that in the future.

THE COMMISSIONER:

I think that they are quite different models but anyhow I will consider what you've said today because I hadn't read your written submission to be putting that. I will take on board what you have said today.

MR. CARROLL:

I think in our written submission we talk about an independent OPI. I think are the words we use in the written submission. But I agree that we have gone into more detail in our oral submission before you today.

THE COMMISSIONER:

Yeah, okay. Well, I will certainly consider that. Mr. Carroll, is there anything else you want to put?

MR. CARROLL:

No, I think that's –

THE COMMISSIONER:

It's like – yeah. It's likely, Mr. Carroll, that I'll be speaking with you again in relation to the matters that we have discussed today. The purpose of having a public hearing today was to allow the public to hear us having a discussion so that they knew, the public can understand what is being debated and what might arise out of it. But as I say, it's likely that I will be

speaking both to you and to the Commissioner and other people again.

MR. CARROLL:

And we would appreciate that opportunity. And I might say we've chosen purposefully not to mention individual cases that would support some of our arguments and that would be done in a confidential manner if we thought it appropriate.

THE COMMISSIONER:

Well, I think that's appropriate. I understand there will be individual cases would support your arguments and probably other arguments. But we don't need to air those here.

MR. CARROLL:

No.

THE COMMISSIONER:

No. Well, thank you very much. Mr. Riches, did you want to add anything?

MR. RICHES:

Commissioner, if I can just ask one question for any of the speakers. Irrespective of the model that might be adopted what role does the Police Association see a complainant having in the assessment and resolution of complaints?

MR. CARROLL:

The role for the complainant in the assessment and recommendation of action?

MR. RICHES:

Yes.

MR. CARROLL:

Well, I think that you would let the system determine it and discuss that with the complainant and give them an outcome or not – I don't really see a role for the complainant. I mean it's sort of – they are sort of conflicted aren't they? I mean, I make the complaint and I'm going to recommend the action that should be taken. I mean, I just think common sense revolts at that.

THE COMMISSIONER:

I think Mr. Riches is rather suggesting should the complainant have a right of appeal against any result that's arrived at if the complainant considers the sanctions inadequate or the determination of –

MR. CARROLL:

Well, no, I think you are crossing over the line there. I mean, we're talking about employer/employee relationships. I mean, there's not too many people that can complain against any other employee anywhere and not like the outcome and then appeal somewhere. I mean I just don't think that's a proposition that we would support.

MR. SCHEFFLER:

Commissioner, there are some opportunities for that, and especially with the managerial support process I believe that there's some discussion goes on with the complainant if they are willing to accept that the matter could be dealt with rather swiftly and at that very low level. Furthermore, in many cases when you get statements from complainants that go to the Police Disciplinary Tribunal with formal charges there are sometimes comments by the complainant saying, "Look I just want this person told off". And they end up in the Police Disciplinary Tribunal with very serious charges because obviously the Commissioner would have a different view in relation to the discipline of his force compared against a person out in the street. And you would have such a variance like a person perhaps that frequents places like Hindley Street, that is a common street offender, might have a different approach to somebody that's a professional person that gets dealt with by a police officer. Everyone has – the variety is so

great but I am sure that from what we have experienced the complainants do have some input, but not a total input.

MR. CARROLL:

I would imagine, if I may sir, that the consistency that's required in relation to outcome for certain behaviours needs to have the control of the Commissioner. I think that would be his argument.

THE COMMISSIONER:

Well, I – yes. I think the complainants have to be treated sensitively –

MR. CARROLL:

Absolutely.

THE COMMISSIONER:

– and they have to be kept acquainted with their complaints but of course they can't assume the management of SAPOL by having made a complaint.

MR. CARROLL:

No. No. We can't manage SAPOL so I don't think the complainant is going to be able to.

THE COMMISSIONER:

No. I am sure you keep trying. Thank you gentleman for coming this morning, I'm grateful. And as I said we will meet again before the review is complete.

MR. CARROLL:

Thank you sir.

MR. SCHEFFLER:

Thank you.

THE COMMISSIONER:

Mr. Grant's in the hearing room, so – are you ready to proceed Mr. Grant, or do you want a break?

MR. GRANT:

I would just appreciate a short break –

THE COMMISSIONER:

Yes, of course. Five minutes?

MR. GRANT:

Yes, thank you, sir.

THE COMMISSIONER:

I'll adjourn for five minutes.

ADJOURNED 11:30am