Aboriginal Legal Rights Movement Inc.

ABN 32 942 723 464

ADELAIDE
321-325 King William Street
Adelaide SA 5000
DX 239
Ph (08) 8113 3777
Fax (08) 8211 7618

NATIVE TITLE UNIT
Level 4
345 King William Street
Adelaide SA 5000
DX 239
Ph (08) 8110 2800
Fax (08) 8211 7424

CEDUNA
cnr East Tce & Merghiny St
PO Box 419
Ceduna SA 5690
DX 51904
Ph (08) 8625 2432
(08) 8625 2200
Fax (08) 8625 3093

MURRAY BRIDGE
3-5 Bridge Street
PO Box 763
Murray Bridge SA 5253
DX 51215
Ph (08) 8532 4788
Fax (08) 8531 1015

PORT AUGUSTA
12 Church Street
PO Box 1771
Port Augusta SA 5700
DX 51023
Ph (08) 8642 4366
Fax (08) 8642 4650

PORT LINCOLN
30 Ravendale Road
PO Box 800
Port Lincoln SA 5606
Ph (08) 8683 4160
Fax (08) 8683 4160

Legislative Reviews
GPO Box 11066
Adelaide 5001

25 March 2015

Dear Sir /Madam,

The Aboriginal Legal Rights Movement (ALRM) makes a submission to the Review of the *Police (Complaints and Disciplinary Proceedings) Act* 1985.

The Aboriginal Legal Rights Movement

ALRM is the peak body in South Australia for upholding the legal rights of Aboriginal people.

Our mission is to seek for Aboriginal people of South Australia -- Justice Without Prejudice.

ALRM is a law practice for the purposes of the *Legal Practitioners Act 1982*. It is also a community controlled Aboriginal organisation, funded under the Indigenous Legal Assistance Program (ILAP) of the federal Attorney General's Department. ALRM was first incorporated in 1973 as an incorporated Association.

ALRM employs over 21 legal practitioners and 10 Aboriginal Field Officers in its central Adelaide office and branch offices in Murray Bridge, Port Augusta and Ceduna. Within the bounds of very limited funding ALRM provides legal services in criminal, civil and family law across the whole of the state. ALRM is subject to projected funding cuts of up to 10% in the forthcoming federal budget.

Context of the Submission

As a starting point to this submission ALRM continues to urge the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) as they relate to policing policy and specifically recommendation No 226 which relates to Police Complaints.

But that is not all that is needed. In light of the continued gross over representation of Aboriginal People in police custody and subject to police action, ALRM urges the need for a body to continually audit policing policy and practice in South Australia and the implementation of RCIADIC. Such a policy and practice review is needed but is beyond the purview of a Police Ombudsman as conventionally understood.

It is appropriate therefor that you be provided with a policy overview in relation to interaction between SAPOL and ALRM and Aboriginal communities in SA. There have been outstanding successes and some failures. Over representation continues.

Particular police operations which have targeted Aboriginal people such as "Operation Mandrake", a response to the so called Gang of 49 is a clear example. Regrettably the means of overseeing that occurred in the State Coroner's Court on a

Death in Custody Inquest and ALRM commends to your attention the findings of the State Coroner in the inquest into the death of Colin Craig Sansbury in that regard.[1] That case is important for at least 3 reasons including

1. The consequences for the deceased of abuses of police power exposed in the inquest and relevant to Operation Mandrake
2. Defaults on Police Safe Custody procedures and defaults on implementation of RCIADIC recommendations relating to safe custody.
3. The inappropriateness of South Australian Police investigating deaths in South Australian Police custody

Only the first of these three topics was really within the ready purview of the Police Ombudsman, however the detailed investigation and forensic analysis which the Coroner's jurisdiction requires, ensured that all of these topics were agitated in detail and made the subject of recommendations and findings.

In the instant case of Colin Sansbury the family of the deceased instructed ALRM to pursue interrogating letters of the Commissioner of Police and relevant Government Ministers regarding implementation of the Coronial recommendations, and this was done.

Implementation of Coronial recommendations is itself now subject to Coronial and Parliamentary scrutiny , by reason of the amendments to the Coroner's Act of 2005, specifically the enactment of sections 25(4)(5) and 39 of the Coroner's Act. Their effectiveness and the degree to which they implement the relevant RCIADIC recommendations is the subject of an article by Mr Charles of ALRM in the Indigenous Law Review and may be of interest to your Inquiry. [2]

ALRM and SAPOL also collaborate well together in appropriate cases. A recent example is the disciplinary proceedings in the SA Licencing Court against the Nundroo Hotel Motel.[3] In that case SAPOL brought the disciplinary proceedings but ALRM acted for and represented numerous Aboriginal communities on the west coast, which were given leave to appear in conciliation leading to the creation of new licence conditions. Similarly SAPOL actively participated in a Dry Communities Summit, sponsored by ALRM in May 2014. SAPOL still participates in the coordinating committee flowing from the Summit. This collaboration is directed to assisting Communities which want to control grog running and to maintain their communities as alcohol free living environments. The potential effects upon crime rates and mortality and morbidity will be obvious.

RCIADIC Recommendations regarding Policing

Other RCIADIC recommendations relevant to improving policing with Aboriginal people and communities in South Australia include the following;-

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[1] www.courts.sa.gov.au/coroner/findings /2007 Colin Craig Sansbury

[2] The Coroner's Act 2003and the partial implementation of RCIADIC: Consequences for Prison Reform. [2008] Volume12 page75 Australian Indigenous Law Review.

[3] Nundroo Hotel Motor Inn [1998] SALC 25 (30 October 1998)and in 2013 *Nundroo Hotel Motel* [2013] SALC 73 JURISDICTION: S 120 Complaints for Disciplinary Action FILE NO: 3786 of 2012 and 93 of 2013

Recommendation 214:

The emphasis on the concept of community policing by Police Services in Australia is supported and greater emphasis should be placed on the involvement of Aboriginal communities, organisations and groups in devising appropriate procedures for the sensitive policing of public and private locations where it is known that substantial numbers of Aboriginal people gather or live.

Recommendation 215:

That Police Services introduce procedures, in consultation with appropriate Aboriginal organisations, whereby negotiation will take place at the local level between Aboriginal communities and police concerning police activities affecting such communities, including:

a. The methods of policing used, with particular reference to police conduct perceived by the Aboriginal community as harassment or discrimination;
b. Any problems perceived by Aboriginal people; and
c. Any problems perceived by police.
Such negotiations must be with representative community organisations, not Aboriginal people selected by police, and must be frank and open, and with a willingness to discuss issues notwithstanding the absence of formal complaints.

Recommendation 220:

That organisations such as Julalikari Council in Tennant Creek in the Northern Territory and the Community Justice Panels at Echuca and elsewhere in Victoria, and others which are actively involved in providing voluntary support for community policing and community justice programs, be provided with adequate and ongoing funding by governments to ensure the success of such programs. Although regional and local factors may dictate different approaches, these schemes should be examined with a view to introducing similar schemes into Aboriginal communities that are willing to operate them because they have the potential to improve policing and to improve relations between police and Aboriginal people rapidly and to substantially lower crime rates.

Recommendation 221:

That Aboriginal people who are involved in community and police initiated schemes such as those referred to in Recommendation 220 should receive adequate remuneration in keeping with their important contribution to the administration of justice. Funding for the payment of these people should be from allocations to expenditure on justice matters, not from the Aboriginal affairs budget.

Recommendation 223:

That Police Services, Aboriginal Legal Services and relevant Aboriginal organisations at a local level should consider agreeing upon a protocol setting out the procedures and rules which should govern areas of interaction between police and Aboriginal people. Protocols, among other matters, should address questions of:
a. Notification of the Aboriginal Legal Service when Aboriginal people are arrested or detained;
b. The circumstances in which Aboriginal people are taken into protective custody by virtue of intoxication;
c. Concerns of the local community about local policing and other matters; and
d. Processes which might be adopted to enable discrete Aboriginal communities to participate in decisions as to the placement and conduct of police officers on their communities.

Recommendation 224:

That pending the negotiation of protocols referred to in Recommendation 223, in jurisdictions where legislation, standing orders or instructions do not already so provide,

appropriate steps be taken to make it mandatory for Aboriginal Legal Services to be notified upon the arrest or detention of any Aboriginal person other than such arrests or detentions for which it is agreed between the Aboriginal Legal Services and the Police Services that notification is not required.

Recommendation 225:

That Police Services should consider setting up policy and development units within their structures to deal with developing policies and programs that relate to Aboriginal people. Each such unit should be headed by a competent Aboriginal person, not necessarily a police officer, and should seek to encourage Aboriginal employment within the Unit. Each unit should have full access to senior management of the service and report directly to the Commissioner or his or her delegate.

Recommendation 228:

That police training courses be reviewed to ensure that a substantial component of training both for recruits and as in-service training relates to interaction between police and Aboriginal people. It is important that police training provide practical advice as to the conduct which is appropriate for such interactions. Furthermore, such training should incorporate information as to:

a. The social and historical factors which have contributed to the disadvantaged position in society of many Aboriginal people;
b. The social and historical factors which explain the nature of contemporary Aboriginal and non-Aboriginal relations in society today; and
c. The history of Aboriginal police relations and the role of police as enforcement agents of previous policies of expropriation, protection, and assimilation.

Recommendation 229:

That all Police Services pursue an active policy of recruiting Aboriginal people into their services, in particular recruiting Aboriginal women. Where possible Aboriginal recruits should be inducted in groups.

Recommendation 230:

That where Aboriginal applicants wish to join a service who appear otherwise to be suitable but whose general standard of education is insufficient, means should be available to allow those persons to undertake abridging course before entering upon the specific police training.

Recommendation 231:

That different jurisdictions pursue their chosen initiatives for improving relations between police and Aboriginal people in the form of police aides, police liaison officers and in other ways; experimenting and adjusting in the light of the experience of other services and applying what seems to work best in particular circumstances.

ALRM observes that implementation of these recommendations has been at least patchy in South Australia with some notable examples of sensitive community policing and some counterexamples.

Similarly ALRM has recently been involved in cultural awareness training for police recruits at Fort Largs, however this scheme needs to be increased and improved ALRM is concerned at the lack of cultural awareness that arises in policing, on a daily basis. Not merely police recruits but also all serving police officers should be required to undergo cultural awareness training on an annual basis and before country postings. Police training should include knowledge and understanding of local communities and should not be done on some generic basis. It should recognise that there are many different Aboriginal cultures in South Australia Cultural awareness training should be directed to accredited standards of cultural competence for police.

ALRM maintains close links with the Section of SAPOL which deals specifically with Aboriginal communities, people and Police Aides. An example is the close community consultation undertaken by the Local Area Commander in the implementation of expanded dry areas for the parklands of Adelaide.

ALRM is also recommending to Government that implementation of RCIADIC 220 to 223 be made a part of its Aboriginal Regional Authorities Policy.

In relation to custody notifications to ALRM, ALRM again observes that there has not been a consistent and uniform approach in South Australia. In that regard South Australia could learn from the approaches of the eastern states in particular NSW and Victoria. It is submitted that some form of automatic electronic notification should be used, which triggers a notification whenever a person identifying as Aboriginal is taken into custody. That said ALRM is facing significant funding cuts from 1st July and our ability to respond to custody notifications is ever more stretched.

Other RCIADIC recommendations have a real potential to improve relationships between Aboriginal communities and police and decrease incarceration rates, but they have not yet been fully implemented in South Australia. They include the following;

Recommendation 60:

That Police Services take all possible steps to eliminate:

a. Violent or rough treatment or verbal abuse of Aboriginal persons including women and young people, by police officers; and
b. The use of racist or offensive language, or the use of racist or derogatory comments in log
books and other documents, by police officers.
When such conduct is found to have occurred, it should be treated as a serious breach of discipline.

Comment ALRM

Implemented in law by Police Act and Code of Conduct, but difficult to monitor unless Aboriginal complainants come forward. Clearly ALRM needs to be funded to provide effective representation to Aboriginal complainants and to provide good community legal education on this point.

Recommendation 61:

That all Police Services review their use of para-military forces such as the New South Wales SWOS and TRG units to ensure that there is no avoidable use of such units in circumstances affecting Aboriginal communities.

Recommendation 79:

That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.

Comment by ALRM

Implemented in law by *Public Intoxication Act 1984*. Implementation in practice of *Public Intoxication Act* was criticised by Deputy State Coroner in Sleeping Rough Inquests of 2011and the *Public*

Intoxication Act 1984. Is subject to ongoing review of the implementation of his recommendations.[4]

Recommendation 80:

That the abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons.

Comment by ALRM

Implemented in law by *Public Intoxication Act 1984.*

Recommendation 81:

That legislation decriminalising drunkenness should place a statutory duty upon police to consider and utilise alternatives to the detention of intoxicated persons in police cells. Alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons.

Comment by ALRM

Implemented in law by the *Public Intoxication Act 1984*

Recommendation 82:

That governments should closely monitor the effects of dry area declarations and other regulations or laws restricting the consumption of alcohol so as to determine their effect on the rates of custody in particular areas and other consequences.

Comment by ALRM

Subject to specific submissions by ALRM in relation to Ceduna and Adelaide Parklands Dry Areas Declarations ALRM notes sympathetic approach of SAPOL and Liquor & Gambling Commissioner in that regard. Expiation notices is not suitable policing policy for persons 'in the grip of the grog'.

Recommendation 84:

That issues related to public drinking should be the subject of negotiation between police, local government bodies and representative Aboriginal organisations, including Aboriginal Legal Services, with a view to producing a generally acceptable plan.

Comment ALRM there is not a specific requirement for this in section 132 Liquor Licencing Act but it frequently occurs in practice ALRM often agrees to differ from opinion of Local Councils

Recommendation 85:

That:

a. Police Services should monitor the effect of legislation which decriminalises drunkenness with a view to ensuring that people detained by police officers are not being detained in police cells when they should more appropriately have been taken to alternative places of care;
b. The effect of such legislation should be monitored to ensure that persons who would otherwise have been apprehended for drunkenness are not, instead, being arrested and charged with other minor offences. Such monitoring should also assess differences in police practices between urban and rural areas; and
c. The results of such monitoring of the implementation of the decriminalisation of drunkenness should be made public.

[4] www.courts.as.gov.au./coroner/ findings/2011. Sleeping rough inquests.

Comment by ALRM.
ALRM sought to have this implemented in the review of Adelaide Dry areas in 2002-3 but was unsuccessful .SAPOL data collection did not allow such comparisons

Recommendation 86:

That:
a. The use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge; and
b. Police Services should examine and monitor the use of offensive language charges.

Comment by ALRM .ALRM has consistently sought the implementation of this recommendation, without success. A compromise, which ALRM strongly recommends is to have offensive language and disorderly behaviour, whilst intoxicated an additional criterion of detention under the Public Intoxication Act.

Recommendation 87:

That:

a. All Police Services should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders;
b. Police administrators should train and instruct police officers accordingly and should closely check that this principle is carried out in practice;
c. Administrators of Police Services should take a more active role in ensuring police compliance with directives, guidelines and rules aimed at reducing unnecessary custodies and should review practices and procedures relevant to the use of arrest or process by summons and in particular should take account of the following matters:

i. all possible steps should be taken to ensure that allowances paid to police officers do not operate as an incentive to increase the number of arrests;
ii. a statistical data base should be established for monitoring the use of summons and arrest procedures on a State-wide basis noting the utilisation of such procedures, in particular divisions and stations;
iii. the role of supervisors should be examined and, where necessary, strengthened to provide for the overseeing of the appropriateness of arrest practices by police officers;
iv. efficiency and promotion criteria should be reviewed to ensure that advantage does not accrue to individuals or to police stations as a result of the frequency of making charges or arrests; and
v. procedures should be reviewed to ensure that work processes (particularly relating to paper work) are not encouraging arrest rather than the adoption of other options such as proceeding by summons or caution; and

d. Governments, in conjunction with Police Services, should consider the question of whether procedures for formal caution should be established in respect of certain types of offences rather than proceeding by way of prosecution.

ALRM COMMENT it is difficult to monitor the implementation of this recommendation in practice, unless Aboriginal people come forward to complain of inappropriate arrests. Those Aboriginal complainants who do seek assistance receive assistance from ALRM in police complaints. ALRM also observes that recent NSW studies establish a link between overrepresentation in custody, refusal of bail

and a higher than usual arrest rate for Aboriginal people. ALRM also suggest that compliance with the principle of arrest as a last resort should be monitored in relation to SAPOL, but again it will not be by the police complaints process, unless a significant number of such complaints are recorded. This is not manifest in the recent Annual Reports of the Police Ombudsman, nor could it be under existing arrangements s .That said ALRM submits that high level oversight of compliance with this recommendation of RCIADIC is vitally important.

Recommendation 88:

That Police Services in their ongoing review of the allocation of resources should closely examine, in collaboration with Aboriginal organisations, whether there is a sufficient emphasis on community policing. In the course of that process of review, they should, in negotiation with appropriate Aboriginal organisations and people, consider whether:

a. There is over-policing or inappropriate policing of Aboriginal people in any city or regional centre or country town;
b. The policing provided to more remote communities is adequate and appropriate to meet the needs of those communities and, in particular, to meet the needs of women in those communities; and
c. There is sufficient emphasis on crime prevention and liaison work and training directed to such work.

ALRM Comment see commentary above

Recommendation 89:

That, the operation of bail legislation should be closely monitored by each government to ensure that the entitlement to bail, as set out in the legislation, is being recognised in practice. Furthermore the Commission recommends that the factors highlighted in this report as relevant to the granting of bail be closely considered by police administrators.

ALRM Comment. Bail laws are now used in SA as a means of surveillance control and preventive detention in SA.

Recommendation 90:

That in jurisdictions where this is not already the position:

a. Where police bail is denied to an Aboriginal person or granted on terms the person cannot meet, the Aboriginal Legal Service, or a person nominated by the Service, be notified of that fact;
b. An officer of the Aboriginal Legal Service or such other person as is nominated by the Service, be granted access to a person held in custody without bail; and
c. There be a statutory requirement that the officer in charge of a station to whom an arrested person is taken give to that person, in writing, a notification of his/her right to apply for bail and to pursue a review of the decision if bail is refused and of how to exercise those rights.

ALRM comment see comments on SAPOL custody notifications

Recommendation 91:

That governments, in conjunction with Aboriginal Legal Services and Police Services, give consideration to amending bail legislation:

a. to enable the same or another police officer to review a refusal of bail by a police officer;

b. to-revise any criteria which inappropriately restrict the granting of bail to Aboriginal people; and
c. to enable police officers to release a person on bail at or near the place of arrest without necessarily conveying the person to a police station.

ALRM Comment. Bail laws are now used in SA as a means of surveillance, control and preventive detention in SA.

RCIADIC and Police Complaints.
ALRM submissions on the *Police Complaints& Disciplinary Proceedings Act*

We now pass to the RCIADIC recommendation which deals most directly with police complaints

RCIADIC226.
That in all jurisdictions the processes for dealing with complaints against police need to be urgently reviewed. The Commission recommends that legislation should be based on the following principles:

a That complaints against police should be made to, be investigated by or on behalf of and adjudicated upon by a body or bodies totally independent of Police Services;
b. That the name of a complainant should remain confidential (except where its disclosure is warranted in the interests of justice), and it should be a serious offence for a police officer to take any action against or detrimental to the interest of a person by reason of that person having made a complaint;
c. That where it is decided by the independent authority to hold a formal hearing of a complaint, that hearing should be in public;
d That the complaints body report annually to Parliament;
e. That in the adjudication of complaints made by or on behalf of Aboriginal persons one member of the review or adjudication panel should be an Aboriginal person nominated by an appropriate Aboriginal organisation(s) in the State or Territory in which the complaint arose. The panel should also contain a person nominated by the Police Union or similar body;
f. That there be no financial cost imposed upon a complainant in the making of a complaint or in the hearing of the complaint;
g. That Aboriginal Legal Services be funded to ensure that legal assistance, if required, is available to any Aboriginal complainant;
h. That the complaints body take all reasonable steps to employ members of the Aboriginal community on the staff of the body;
i. That the investigation of complaints should be undertaken either by appropriately qualified staff employed by the authority itself, or by police officers who are, for the purpose of and for the duration of the investigation, under the direction of and answerable to, the head of the independent authority;
j. That in the course of investigations into complaints, police officers should be legislatively required to answer questions put to them by the head of the independent authority or any person acting on her/his behalf but subject to

> further legislative pro visions that any statements made by a police officer in such circumstances may not be used against him/her in other disciplinary proceedings; and
> k. That legislation ensure that the complaints body has access to such files, documents and information from the Police Services as is required for the purpose of investigating any complaint.

I commend the detail of this recommendation from the Royal Commission to you. ALRM makes the following commentary upon the existing *Police Complaints& Disciplinary Proceedings Act* in light of its expectation that unless there is whole sale amendment to the Act it is unlikely that implementation of rec 226a. will be achieved in practice .Nevertheless ALRM submits recommendation 226a should be implemented and investigation of Police complaints should be taken wholly from the hands of police and given to an independent body with full powers of investigation and resolution. That is subject to a requirement that cases where judicial determination takes place, that judicial determination should resolve the factual issues in the complaint. ALRM is also concerned to ensure that RCIADIC 226 (e) is implemented. The continued ability of ALRM to implement 226(g) is contingent upon our ability to maintain a high level civil legal practice despite funding cuts. A recommendation should therefore be made, that this not occur.

In light of the Sansbury inquest ALRM further recommends that disciplinary procedures, similar to those referred to in section 35 *Police Complaints& Disciplinary Proceedings Act.* should be mandated in legislation for the Commissioner in cases of adverse findings against a Police Officer as a result of Coronial inquests. The State Coroner should be notified of such proceedings.

In making these submissions ALRM is aware of the old question – who should guard the guardians?

Existing procedures

It is clear that the procedures under the *Police Complaints& Disciplinary Proceedings Act.* Are complex and involve checks and balances and interlocking arrangements between the Police Ombudsman and the Internal Investigation Section and the Police Commissioner. This is referred to in your Discussion Paper[5]

Conciliation Conferences

It is submitted that Section 22 - Conciliation needs a provision built into it to ensure the confidentiality of conciliation conferences. This is usual in conciliation – refer to Industrial Conciliation & Arbitration legislation which contains similar provisions. It is submitted that a Police Officer who is subject to an oath of office under the Police Act, would not be able to preserve confidentiality in a conciliation hearing, should the other party to the conciliation make admissions to other conduct which might constitute an offence of the course of conciliation. As such, it is possible that conciliations pursuant to S.22 may be hampered in their operation because parties will feel constrained against speaking candidly at the conciliation. It is submitted that consideration should be given to inserting a confidentiality clause into S.22 of the Act. The other procedures in section 22, as to deferral of investigation and mutual regard between the Commissioner and the Ombudsman are inevitable and appropriate under the existing regime.

[5] ICAC Discussion Paper Review of Legislative Schemes Feb 2015, page 10

Matters giving rise to Police Complaints that are the Subject of Summary or other Charges

Facts giving rise to police complaints are sometimes the subject of summary or other charges involving the complainant as Defendant and the police who have laid charges against the complainant, as complainants in the Magistrates Court.
The complaint itself, if it is laid, in these cases is often determined by the Police Ombudsman to be investigated by the IIS.

Nevertheless it is the experience of ALRM lawyers and of many other legal practitioners that it is not practical or appropriate to commence a detailed complaint in relation to a set of circumstances which is the subject of criminal charges against the complainant by police.

Any investigation by IIS police, or the Police Ombudsman which involves putting the complainant's allegation to the police involved for the purposes of investigation, will usually have the effect of providing those police with notice in advance of the complainant's case in relation to the offences with which they have been charged. Thus the presumption of innocence is undermined. If the existing process is to be retained, with investigation prior to trial , it is suggested that procedures to be adopted by the Internal Investigation Section should rigorously ensure that police the subject of investigation or subject of complaint and investigation should not be interviewed together and should not be given any opportunity to "put their heads together" before giving evidence or before making statements to the Internal Investigations Section Similarly they should not be asked leading questions about the subject matter of the complaint so as to be forewarned of it before trial. In that regard I refer you to the findings of the Royal Commission into Aboriginal Deaths in Custody in relation to the death of Craig Douglas Karpany(case no SA7) and also the coronial findings of the late L K Gordon Esq the Deputy State Coroner who heard that inquest.

If the Police Ombudsman or the IIS do investigate and come to conclusions, before trial they may or may not be in conflict with or incongruous with judicial findings of fact, arising from the summary trial or the inquest.

Again it is ALRM's experience that Magistrates are quite properly unwilling to make findings of fact in relation to matters relevant to an investigation of a complaint, unless they are the facts in issue or the matters required in determination in relation to the criminal charges laid by police.

If the subject matter of the complaint is a fact in issue ,ALRM submits that it would be inappropriate for the IIS or the Police Ombudsman to investigate or make findings , because they may be in conflict with the judicial determination; if not, they still run the risk of being incongruous with judicial findings. This seems, with respect to be an intractable problem which could only be solved by requiring the holding up of IIS or Police Ombudsman's investigations under the present legislation, pending judicial determination. ALRM recommends that a priority be given to judicial determination of facts in issue and priority to court proceedings. That includes all criminal proceedings and inquests. In relation to inquests a priority should be given to coronial investigations pursuant to the Coroner's Act, and summary proceedings over investigations under the *Police Complaints& Disciplinary Proceedings Act* or other police investigations.

ALRM does not necessarily support the following suggestion, but it is put forward for consultation and comment as a possible solution in relation to criminal cases.

In those cases where the issue in the police complaint is a fact in issue at trial a possible alternative is to give complainants the right to enter pleadings in response to charges in the Magistrates Court. They would of course have to bear a burden of proof (we submit a civil burden) and forego the presumption of innocence to that extent. But the benefits would include the following

1. It would have the Court resolve and determine the subject matter of the complaint in the course of hearing summary trials and provide a definitive resolution to factual disputes
2. It would provide the Police Ombudsman with a final determination of the facts in issue in a complaint as determined by a judicial officer.
   (This is of course subject to the resolution of all appeals)

Otherwise this problem seems unresolvable, unless investigations are held over. It is suggested that the only appropriate way to deal with it under present arrangements is the usual practice of solicitors in such cases. That is to make a complaint in form only but to hold the substance of the complaint back pending the result of the criminal trial in relation to the police subject of the complaint.

ALRM also submits that in general there is in the existing legislation too close a connection between the Police Ombudsman and the Internal Investigation Section of SAPOL and the Commissioner, with too many checks and balances favouring the Police Commissioner. ALRM submits these checks and balances undermine the independence and integrity of the office of Police Ombudsman and that determinations of disputes, by the Minister are inappropriate. In your Discussion Paper[6] you refer to at least 4 occasions when notification must be made by the Police Ombudsman,

1. On receipt of a complaint
2. When a determination is made
3. Where a matter is referred to conciliation
4. on completion of investigation provision of a report to the Commissioner

It is submitted that only the first of these four is justified, having regard to the need for independence of the Police Ombudsman. ALRM comments that a possible solution would lie in the implementation of RCIADIC Rec 226(I), with investigating police solely accountable to the Police Ombudsman. We note in that regard that a similar scheme already exists under the *Coroner's Act* .It is submitted that it would be useful for consultations to take place with the State Coroner as to the effectiveness of that arrangement.

You also refer to 3 areas where the Commissioner may disagree with the Police Ombudsman. [7]

1. directions by the Police Ombudsman to the IIS as to the manner of investigation
2. Decisions of the Police Ombudsman about own motion investigations
3. Recommendations following an assessment.

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[6]Ibid, page 10.
[7] Ibid page 10

ALRM submits that these powers of the Commissioner should be abolished as inconsistent with the Police Ombudsman's independence. If however it is decided that these powers of the Commissioner should not be abolished, ALRM observes that they are not appropriate matters for Ministerial decision, in the event of disagreement. They are not appropriate for Ministerial decision because, being matters of high public policy, they should not be subject to decision on what may turn out to be short term political expediency. Rather ALRM submits that they should be resolved by a high level administrative merits review, to be carried out by judicial officers of at least District Court status.

ALRM notes that the powers of the Police Ombudsman under S.32 are appropriate and should be maintained. ALRM is particularly concerned to ensure that the power to make recommendations as to changes in law and practice and policing policy under section 32(1) (b) (I) (D) is maintained after any review.

ALRM sees this power of the Police Ombudsman as essential to ameliorating the effects of discriminatory or heavy handed policing policies and practices.

ALRM notes that the Police Ombudsman's Annual Report[8] expresses grave concerns about under resourcing. ALRM submits that your Review should recommend immediate further resources be given to the Police Ombudsman. ALRM also notes references to duplication and triplication of work and tensions between the Police Ombudsman and ICAC and Office of Public Integrity. ALRM makes no comment upon these matters other than to express the wish and hope that they may be resolved amicably.

These are amongst the matters which ALRM wishes to bring to your attention in relation to the *Police Complaints & Disciplinary Proceedings Act.* Our submission has been written in the policy context of policing Aboriginal communities in South Australia and the urgent need for full implementation of and monitoring of the implementation of RCIADIC.

Yours faithfully

Cheryl Axleby
Chief Executive Officer

[8] Police Ombudsman Annual Report 2013-4 pages 28-9 and 5 .