A decorative graphic at the top of the page features several hexagons in shades of teal and light green, arranged in a descending staircase pattern from the top left towards the center. Two thin, parallel lines run diagonally across the page, one from the top left to the middle right, and another from the middle left to the bottom right, intersecting the hexagons.

REVIEW OF LEGISLATIVE SCHEMES

APPENDIX 1 – WRITTEN SUBMISSIONS



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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:-

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

² The Coroner's Act 2003 and the partial implementation of RCIADIC: Consequences for Prison Reform. [2008] Volume 12 page 75 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 2011* and 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. 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 provisions 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 Paper⁵

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 Paper⁶ 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.

⁶Ibid, page 10.

⁷ Ibid page 10

ALRM Submission regarding Police Ombudsman March 2015

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 Report⁸ 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 .

If calling please ask for:
Michael Grant

Our Reference:
Your Reference:

2 April 2015

The Honourable Bruce Lander QC
Independent Commissioner Against Corruption.

Re: Review of Legislative Schemes as described in the Discussion Paper of February 2015.

Dear Mr Lander,

thank you for the opportunity to make submissions as regards this most important review. I will confine my submissions to the operations of the Police Ombudsman and the operation of the legislation which impacts that operation. I will address the issues in the same order set out in page 12 of the Discussion Paper.

1. Are there too many agencies with responsibility for the receipt, assessment, investigation and review of complaints and reports to police?

There should be only one agency with the responsibility for the receipt and assessment of complaints and then the referral of that complaint for investigation. This responsibility is currently shared by the Office for Public Integrity¹ ("the OPI") the Police Ombudsman² ("the POMB") and SA Police³ ("SAPOL").

It is clear that the involvement of three agencies has led to delays in the assessment, referral, investigation and resolution of complaints to a greater extent than previously had been the case. I note however that delays are not due only to this factor. The legislative scheme governing complaints against the police, *The Police (Complaints and Disciplinary Proceedings) Act 1985* ("the *Police Complaints Act*") all but guarantees delay, complexity and confusion in receiving, assessing, investigating and resolving complaints against the police.

In addition, the Independent Commissioner Against Corruption ("the ICAC") and the POMB operate under Acts which to a considerable extent overlap, as both deal with issues of misconduct in public office and maladministration. With the ICAC and the POMB both having jurisdiction to investigate and resolve complaints against the police, there is an inevitable confusion and duplication of effort and a loss of efficiency generally.

The present system, involving three agencies in addition to SAPOL, is not desirable. As a first step, a single agency should be responsible for the initial receipt and assessment of a complaint from whomever and wherever it emanates. If what is required is a "one stop shop" where a complainant may be assured that he or she will not be told to go elsewhere, then the OPI is the obvious agency that is already set up to receive any complaint or report whether it

¹ S 17 of the *ICAC Act*

² S 16 of the *Police Complaints Act*

³ S 16 and S 18 of the *Police Complaints Act*

be about public administration, corruption or lesser instances of misconduct and maladministration.

The rule should be that any complaint against the police is to be made to the OPI. I envisage that under such a system, SAPOL would refer any complaint against the police directly to the OPI and the POMB would do likewise.

Such a system would eliminate the “double handling” of police complaints as one authority would have the responsibility for the receipt and initial assessment. It would also reduce any confusion by the public regarding the ongoing management of police complaints.

2. What role should each agency play with respect to the oversight and management of police?

Section 6 of the *Police Act* 1988 provides that, subject to that Act, the Commissioner of Police is responsible for the control and management of SA Police. I do not suggest that this situation should be changed in any radical way.

I outline in further detail below as to how the police complaints system can be made more efficient. In that proposed system, the police Commissioner would have the initial responsibility for the investigation and resolution of a complaint (following the referral by the OPI) of conduct that is categorised as “minor.”

The POMB would have oversight of the investigation of a minor complaint only in a case where the complainant is dissatisfied with the proposed resolution of the complaint by the police and who then exercises a right of appeal to the POMB.

In the case of a complaint which is other than minor, the OPI would refer it to the ICAC who would decide whether the ICAC should investigate or whether it should be referred to the POMB. The organisation to which the complaint was referred would oversee the investigation by the police.

3. Should there be a reconsideration of the manner in which alleged inappropriate conduct is categorised? Should the role of an oversight agency depend upon the way conduct is categorised?

In my view, a complaint that could be categorised as requiring “managerial” intervention to cure it should be treated differently from other types of complaint. I am contemplating matters such as poor service and otherwise the incompetent carrying out of police duties as opposed to clear and deliberate breaches of the code of conduct. In deciding how to categorise the conduct, it might be helpful to pose the question “If the conduct could be proved, would it be appropriate to bring disciplinary proceedings against anyone?” If the answer is no then the complaint may be categorised as being in the “managerial” category.

To assist in categorising what is a “managerial” issue, guidelines could be issued by an appropriate agency and the decision would be made having regard to them.

A further way of categorising a complaint is to be found in clause 6 of Schedule 3 of the *Police Reform Act* 2002 (UK). In my view it is worth exploring. Under the UK system, a complaint may be sent for “local” resolution (by a police authority) if:

“(i) ...the conduct complained of (even if it were proved) would not justify the bringing of any criminal proceedings and

(ii) ...any disciplinary proceedings the bringing of which would be justified in respect of the conduct (even if it were proved) would be unlikely to result in dismissal, a

requirement to resign or retire, a reduction in rank or other demotion or the imposition of a fine.”

This general approach could be adopted with specific changes to suit our jurisdiction and the legislative scheme in place (which may have specific provisions as to the disciplinary sanctions that may be imposed.)

If the conduct complained of is in the first category of “managerial” then the police Commissioner, who has the control and management of the police force, would be left to deal with the complaint. I would envisage that there would be no need for an oversight agency to “oversee” the management of such a complaint in normal circumstances. I would envisage however that an oversight agency would have the power to audit such complaints and, in specific cases, to intervene if it was believed to be warranted.

If the complaint is in the second category, then the ultimate oversight of the complaint will be with the outside oversight agency but such oversight will not involve constant monitoring and direction. I address this further in **5** and **6** below.

The third category of complaint is one to which the answer “yes” is given to the question whether criminal proceedings are justified if the behaviour could be proven, or to the question of whether the more serious of the sanctions available would be justified if the behaviour could be proven. This category of behaviour will be the subject of oversight by the relevant agency from the beginning of the process.

With regard to the second and third categorisations, an appropriate agency could issue guidelines to assist with the categorisation.

4. How can the police complaints system be made more efficient?

The first step in making the police complaints system more efficient is to repeal the *Police Complaints Act* in its entirety. The features of this Act which invite inefficiency include:

- the convoluted and complicated system of complaints investigation
- the lack of independence of the POMB (in the sense that findings and recommendations are subject to dispute by the police Commissioner and disputes must be resolved by the Minister - and some inquiries require the consent or input from the police Commissioner)
- the unsatisfactory system of dealing with charges upon completion of an investigation

My submissions in 1-3 above inclusive are also aimed at making the complaints system more efficient.

5. What role (if any) should an oversight agency have in the making of findings about police conduct and the imposition of penalty for misconduct?

I have referred above to the need to repeal the current Act. Its replacement should not provide for the current level of police involvement in the findings and recommendation stage or in the disciplinary proceedings stage.

The POMB, as the oversight agency, has no real independence. In effect, the Act enables the police to be a major and significant player in how complaints will be ultimately resolved. While I do not doubt that the SA Police deserve their good reputation and standing in the eyes of the public, it is not desirable that they continue to play the role they do in complaints resolution. Indeed, it is in the best interests of the police if the complaints system is, and is

seen to be, as independent as it reasonably can be from police influence. There are two major ways the police may exert influence on the process.

First, the police are encouraged by the present Act to disagree with the findings and the recommendations of the oversight agency. In my experience thus far, the disagreements do not seem to emanate from the Commissioner of police himself - indeed I doubt whether he is even aware that they are occurring. The disagreements emanate from those whom he delegates. The frequency of disagreement has been considerable. In fairness, two of the disagreements I have encountered persuaded me to review the initial recommendations made. However, the general tenor of disagreement has been to debate the findings and recommendations in a somewhat partisan manner.

Secondly, the police have total control of the disciplinary sanction that will be imposed. In this regard, the police Commissioner (more frequently his delegate) has, from the point of view of the oversight agency, unfettered discretion with respect to 'punishment'. The Commissioner can ignore any indication from the Police Disciplinary Tribunal as to its view of the seriousness of the behaviour. Only the person the subject of the disciplinary proceedings may appeal from the decision of the police Commissioner or his delegate as regards the sanction imposed. I have a concern that some of the "punishments" imposed following charges of a breach of regulation indicate that there has been a failure to understand the purpose of disciplinary proceedings - that being the need to protect the public and maintain proper professional standards.⁴

Upon the oversight agency making a recommendation (after taking any police submissions into account) the relevant legislation should provide that it must be implemented. I add that, in the case of a recommended criminal charge, the oversight agency would make such a recommendation only after the receipt of an opinion from the Director of Public Prosecutions as to the likelihood of success based on the available evidence.

At 6 below I address the issue of which body should be responsible for hearing charges against the police, regardless of whether the charge is admitted or not.

6. How can the existing system for the receipt, assessment, investigation and resolution of complaints and reports about police be made more simple?

As adverted to above, I envisage the repeal of the current Act in its entirety. In my view, the system in operation in the United Kingdom has some features which could usefully be adopted here.

I do not intend to go into fine detail, but only to provide a basic sketch as follows:

- there would be one agency to receive complaints and make an initial assessment - that being the OPI
- following assessment, complaints that relate to a "managerial" issue would be, generally, entirely the responsibility of the police Commissioner as the manager of SAPOL to be dealt with in a non- adversarial way and with no view to charging anyone with a disciplinary breach
- complaints other than "managerial", but classed as "minor", would, following assessment, be sent for inquiry by the police Commissioner, who would be responsible for resolving the complaint to the satisfaction of the complainant. If the complainant

⁴ See the para headed "The Purpose of Disciplinary Proceedings" at 6 below and the reference to the case of *Craig v Medical Board of South Australia* (2001) 79 SASR 545 at [41]

remained dissatisfied, then, in defined circumstances, the complainant would be able to lodge an appeal with the oversight agency, which would then review the file and if necessary take control of further investigation.

- the most serious complaints would at the outset be sent by the OPI to the oversight agency which would direct and control any investigation either through in-house investigators or through the Internal Investigation Section of SAPOL
- the oversight agency would have the option, of its own motion, to intervene in any investigation or inquiry regardless of the category into which it fell, including complaints classed as “managerial”, and would have unfettered audit capabilities
- the oversight agency would have the option of conducting an investigation of its own motion without any need to consult with the police Commissioner.

Hearings and the imposition of a disciplinary sanction.

Under the current system, the Police Disciplinary Tribunal (“the PDT”) has no real impact in any matter where a police officer pleads guilty to the charges laid. In that event, a sanction is imposed by the police Commissioner or a delegate. If a police officer contests a charge, no matter how minor, then the PDT (comprised of a magistrate) must hear the charge. The PDT is bound by the rules of evidence, and must conduct the hearing in the same way as criminal proceedings are conducted in a Magistrates Court, no matter how serious, or otherwise, the charge may be.

The Police Association commonly fund the defence of their members in these proceedings. Costs are awarded. Even non serious matters can take a long time to resolve. In my experience there can be considerable delays between the hearing and the delivery of judgment. If the charge is proved, the PDT does not impose any sanction. It can only indicate to the police Commissioner its view of the degree of seriousness of the conduct found proved.⁵ The police Commissioner is not bound to adopt the view of the PDT.

The system whereby the police Commissioner imposes a disciplinary sanction should be scrapped along with the PDT. I am aware of previous arguments for the existence of a specialist tribunal, such as the PDT, to hear charges against the police. The argument is that the police are a “special” case, in that they face unique circumstances and pressures. The argument is that the police need a tribunal which will be aware of those “special” if not unique circumstances and make judgments which take those factors into account. In my view the police are no more “special” than doctors, nurses, dentists, psychologists and lawyers, who face all kinds of different pressures in practising their professions, but who are all accountable to a disciplinary tribunal. Such tribunals commonly have the ultimate power to “strike off” the person before it if the conduct charged is proved on the balance of probabilities.

I propose that the PDT should be replaced with a differently constituted tribunal (“the Police Tribunal”) operating within the South Australian Civil and Administrative Tribunal (the ‘SACAT’) and exercising the original jurisdiction of the SACAT.⁶

The Police Tribunal would be made up of three members - a person nominated by the police Commissioner, a legal practitioner and a lay member. A tribunal made up in this way would be similar to the make up of tribunals which are set up to hear disciplinary proceedings against doctors, nurses, dentists, psychologists etc. in that the tribunal will have a member of

⁵ S 36(5) of the Police Complaints Act.

⁶. As per section 33 of the *South Australian Civil and Administrative Tribunal Act 2013*

the same profession as the respondent to the proceedings, along with a lay member and a person with legal expertise (such as a regularly appointed SACAT member).

The Police Tribunal would hear a charge whether the charge is admitted or contested and having assessed its seriousness (taking into account the experience of a police officer, a legal practitioner and a member of the public) would then impose a disciplinary sanction.

Appeals against that decision could be brought in the usual fashion to the SACAT in its review jurisdiction.⁷ The right of appeal would not be confined to the respondent to the disciplinary hearing. The complainant would have that right as well as would the oversight agency if the oversight agency is not the complainant. In my opinion, legislating to provide that the SACAT has the jurisdiction to hear and determine disciplinary proceedings involving the police is likely to inspire public confidence in the police complaints system.

Finally, I would recommend that in the conduct of the proceedings, both in the original and in the review jurisdiction of the SACAT, the police should not be permitted to appear as counsel, as they currently do before the PDT. An independent body, such as the Crown Solicitor, should prosecute the disciplinary proceedings in the original and review jurisdiction of the SACAT. In my opinion this would further enhance the public perception of the independence and impartiality of disciplinary proceedings involving police officers.

The purpose of disciplinary proceedings.

In my view, *the Police Complaints Act* brings the wrong focus to bear on the issue of police misconduct. S 39(4) of the Act refers to the “imposition of punishment” on the officer concerned on the finding that he or she is “guilty” of a disciplinary breach (my emphasis). That is to equate disciplinary breaches with the commission of a criminal offence. In my view this is a flawed approach.

In *Craig v Medical Board of South Australia*⁸ Doyle CJ (Martin and Williams JJ agreeing) said that the purpose of disciplinary proceedings:

“... is to protect the public, not to punish a practitioner in the sense in which punishment is administered pursuant to the criminal law. A disciplinary tribunal protects the public by making orders which will prevent persons who are unfit to practise from practising, or by making orders which will secure the maintenance of proper professional standards. A disciplinary tribunal will also consider the protection of the public and of the relevant profession, by making orders which will assure the public that appropriate standards are being maintained within the relevant profession.” (my emphasis)

In my view, the current system of permitting the police Commissioner to deal (exclusively) with “punishment” for disciplinary breaches does not ensure that the protection of the public (and of the police force itself) is kept firmly in view as the ultimate goal of disciplinary proceedings. There is a danger that permitting the police Commissioner to be the sole judge of the disciplinary sanction increases the likelihood that irrelevant considerations unconnected with the goal of disciplinary proceedings will intrude, albeit in a subtle way. I would argue that to allow a tribunal, rather than the police Commissioner, to impose a disciplinary sanction is not to unduly interfere with the police Commissioner’s role as the manager and controller of the police force.

⁷ As per section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*

⁸ *Craig v Medical Board of South Australia* (2001) 79 SASR 545 at [41]

As regards the PDT, the requirement that it conduct its proceedings in the same way as if it was hearing the charge of a criminal offence on complaint is not conducive to maintaining a focus on the purpose of disciplinary proceedings.

I would submit that a properly constituted disciplinary tribunal within the SACAT is the body most likely to fully understand the purpose of disciplinary proceedings and to inspire public confidence that its oversight of police behaviour will be conducive to the maintenance of the high standards required of the members of our police force.

7. What amendments to the existing scheme might reduce delays presently being experienced at a variety of points in the process?

I do not support amendments to the existing legislative scheme as a practical solution. The better course is to repeal all of the existing legislation which is concerned with the receipt, investigation and resolution of complaints against the police.

The augmentation of the role of the POMB by the ICAC and the OPI and the oversight of the POMB by the ICAC has led to some complication and delay, but this is recognised by the ICAC in the discussion paper.

8. Resourcing

The resources of this office have been of concern to the POMB for a considerable period. A better and more efficient system of complaints management may well address at least some of the perceived resourcing issues.

Under any new scheme, the most efficient move may be to incorporate the POMB as part of the office of the ICAC. This would be hardly a radical move as, under the ICAC Act, the ICAC has, in any event, the ability to exercise the powers of the POMB, to refer matters to it for investigation and to issue directions, guidelines and recommendations following such a referral.⁹ The POMB could, in the same way as the OPI be directly responsible to the ICAC but at the same time have its own specific function. I envisage that the OPI and the POMB could directly complement the other.

Incorporating the POMB within the office of the ICAC would have the additional advantage of having the expertise of ICAC investigators, at the option of the ICAC, available to the POMB as part of the same organisational structure.

Police complaints are numerous and carry with them a heavy workload. If the OPI is to be the "one stop shop" for the receipt and the assessment of complaints, then the OPI will be well served by the existing staff in the POMB who have acquired a particular expertise over many years in the intake and assessment of complaints against the police. Such a valuable human resource should be exploited within any new legislative system and the experience gathered over many years not be wasted.

⁹ See Part 4 Subdivision 3 of the *ICAC Act*

9. In Conclusion.

Thank you again for the opportunity to provide submissions on this important matter. I indicate that I would be pleased to be given the opportunity to present at the public hearing.

Yours faithfully

A handwritten signature in blue ink, appearing to read "M. Grant", with a large circular flourish on the left side.

Michael Grant

Acting Police Ombudsman

Submission by AD Wainwright to the ICAC Review of Legislative Schemes

Introduction

The Police (Complaints & Disciplinary Proceedings) Act 1985 ('PCDP Act') has been in force for nearly 30 years. I held the office of Police Complaints Authority (then so entitled) under the PCDP Act from March 1995 until December 2009. The statutory office is now entitled Police Ombudsman ('PO') and the office the 'OPO'. I will so describe them hereafter.

I make this submission in the hope of assisting this review to achieve workable solutions which give due recognition to the objectives of both the PCDP Act and the Independent Commissioner Against Corruption Act 2012 ('ICAC Act'). For the purpose of this submission I assume that funding will not be increased and that the review aims to best achieve the objectives of both pieces of legislation within that constraint.

In order to make this submission I have familiarised myself with both pieces of legislation as well as the discussion paper. I am aware, albeit apocryphally, of some of the difficulties which have arisen in the administration of the PCDP Act since my retirement. I am conscious that the premature resignation of my successor in the statutory office may deprive this review of the benefit of her views. Be that as it may, the views I express here are my own.

Before addressing some of the specific issues which have prompted this review, I would take a step back and look, first, at the objectives of the PCDP Act and the context within which it operated when first enacted. The context within which the PCDP Act operates now, 30 years on, is vastly different from the context when it was enacted.

The PCDP Act - objectives

The objectives of the PCDP Act are not readily discerned from the Act itself. The long title merely describes some of the mechanisms created by the Act. Reference to the report of the Grieve Committee, whose report preceded the legislation, and to Hansard suggests that the primary objective was to provide (for the first time in SA) a measure of independent oversight of complaints about police and their outcome.

It is clear from these sources, I believe, that the oversight jurisdiction of the (then) PCA was to be invoked by the making of a complaint to the PCA by a member of the public or a police officer. In my view the primary objective of the PCDP Act, then and now, is to provide a system of external oversight for those who wish to have such oversight.

The PCDP Act - context - SAPOL

One of the key linkages in the PCDP Act is that between the OPO and SAPOL. Without wishing to labour history unduly, it is clear that SAPOL has changed enormously and is now a very different organisation than it was in 1985 when the PCDP Act was introduced.

In 1975 SAPOL had not been included within the (newly created) jurisdiction of the Ombudsman and I would suggest that, in 1985, its attitude to external oversight was best described as reluctantly accepting the inevitable. The PCDP Act still reflects that tension as well as reflecting, quite properly, the convention that the Commissioner of Police is not generally subject to direction in operational matters.

In 1985 the corporate response of SAPOL to complaints of misconduct might fairly be described as aiming to minimise and contain them. Complaints were adjudicated against the grounds for discipline in the regulations, the standard of proof for a breach being the criminal standard, beyond reasonable doubt. No adverse finding was equated with there being no problem.

In the intervening 30 years SAPOL has become much more professional in this area. Complaints (which, in my view, will inevitably arise) are now properly evaluated and addressed with the learnings from that process being used to address the issues which give rise to the complaints. Importantly, much effort has gone into empowering and requiring line managers and individual officers to identify, and address at source, misconduct and procedural deficiencies. Notably, the criminal proceedings recently announced by ICAC originated from the complaint of a police whistle-blower, an improbable scenario in past times.

The PCDP Act - context - the ICAC Act

The enactment of the ICAC Act changed significantly the context in which the PCDP Act operates. This review requires me to consider that change and the way in which the objectives of both Acts sit together and might best be harmonised. The primary objects of the ICAC Act are set out in section 3 which provides:-

3—Primary objects

(1) The primary objects of this Act are -

(a) to establish the Independent Commissioner Against Corruption with functions designed to further—

(i) the identification and investigation of corruption in public administration; and

(ii) the prevention or minimisation of corruption, misconduct and maladministration in public administration, including through referral of potential issues, education and evaluation of practices, policies and procedures; and

(b) to establish the Office for Public Integrity to manage complaints about public administration with a view to -

(i) the identification of corruption, misconduct and maladministration in public administration; and

(ii) ensuring that complaints about public administration are dealt with by the most appropriate person or body; and

(c) to achieve an appropriate balance between the public interest in exposing corruption, misconduct and maladministration in public administration and the public interest in avoiding undue prejudice to a person's reputation (recognising that the balance may be weighted differently in relation to corruption in public administration as compared to misconduct or maladministration in public administration).

(2) While the Commissioner may perform functions under this Act in relation to any potential issue of corruption, misconduct or maladministration in public administration, it is intended that the primary object of the Commissioner be—

(a) to investigate serious or systemic corruption in public administration; and

(b) to refer serious or systemic misconduct or maladministration in public administration to the relevant body, giving directions or guidance to the body or exercising the powers of the body as the Commissioner considers appropriate.

At the risk of detracting from those objects by paraphrasing them, it seems to me that the primary concerns of the ICAC Act are to address serious or systemic corruption, to prevent or minimise corruption, misconduct and maladministration in public administration and to manage complaints about public administration. The Act envisages that others will, in most cases, deal with those complaints.

Issues raised by this review

While I have not overlooked the specific questions posed in the discussion paper, I would prefer to approach the issues they raise from the perspective of the police complaints system, suggesting ways in which it might be simplified and which also meet the objects of the ICAC Act. I will adopt a sequential approach and begin with the complaint.

Complaints and multiple entry points.

The present legislative arrangements maximise the opportunity for making a complaint which may be made to SAPOL, the OPO and to OPI. In practice this is supplemented by police placing a complaint form into the property of a person taken into custody, whether or not they have expressed a desire to complain. My experience is that complainants will avail themselves of all or any of these options.

In my view this approach is correct. From a public policy perspective, it is better to capture the complaint and address it than to risk not having it. If there is an issue it can be dealt with and, if not, a clear account of the matter will have been obtained so that the matter can be properly explained when it is raised with the complainant's MP or other representative. Multiple entry points maximise the likelihood of capturing a complaint.

Complaints made to SAPOL by police officers who do not wish to invoke the jurisdiction of the OPO.

A police officer who wishes to invoke the jurisdiction of the OPO is able to do so by complaining to the OPO.

It was my view that a police officer who on her/his own account wished, or was bound, to report misconduct internally within SA Police ('SAPOL') did not thereby invoke the jurisdiction of the OPO. The PCDP Act enables such an officer to make the same complaint to the OPO **if they so choose** and, clearly, such a complaint invokes the oversight jurisdiction. I understand that the contrary opinion is now held and that all internal complaints are believed to fall under the PCDP Act.

It makes very little sense, in my view, to provide oversight for somebody who does not wish to have it. It merely diverts valuable resources from the task of providing oversight for those who **do** want it and contributes to the present difficulties in the OPO. If the PCDP Act achieves that result, it should be amended.

Managing the overlap.

The issue, I think, is how to provide ICAC with the complaints it wishes to address and, while so doing, expedite the handling of the remainder of the complaints by OPO or SAPOL. It is common ground that complaints should be finalised both satisfactorily and in the shortest time possible. While there will often be a tension between these two objects, it is desirable to streamline the process as far as possible.

While I am not familiar with the present practice, I would suggest the following principles:-

Complaints which, **on their face**, allege corruption (or any other type of conduct ICAC wishes to deal with itself) should be referred to OPI at the outset.

Complaints which, **while being handled by SAPOL or OPO**, disclose corruption (or any other type of conduct ICAC wishes to deal with itself) should be referred to OPI at the time of disclosure.

The remainder of complaints should be retained by, or referred directly to, OPO or SAPOL to be dealt with under the PCDP Act. In most cases these complaints are unlikely to require further oversight by ICAC and could simply be referred to OPO or SAPOL to be dealt with.

Should these arrangements miscarry, the existence of ICAC now provides an avenue of review for a complainant who remains concerned that a complaint has not been properly addressed by either SAPOL or OPO.

In my experience the vast majority of complaints dealt with by OPO are unlikely to be of any interest or concern to OPI and should require no further direction. I consider now how best to handle those complaints.

Handling complaints by SAPOL and OPO.

The striking feature of the PCDP Act when compared to the Ombudsman Act (with which it has much in common) is the ability of the PO to give directions and to make recommendations binding on the Commissioner of Police ('COP'). That ability is variously constrained by requirements to consult and obtain agreement.

I suggest that the origin of that structure reflects the state of affairs as they were in 1985 and the constraints I have previously described. My own experience is that a simple request and conversation was always able to achieve a meeting of minds. In nearly 15 years in office, I never sought a ministerial direction, nor did I need to do so.

The only significant need for formality occurred in cases which had been fully investigated and which required assessment by the PO and/or the making of recommendations. In cases of disagreement by the COP, the PCDP Act requires the PO and the COP to confer in order to reach agreement on the proper recommendation. The rationale for the process is that COP is obliged to implement a recommendation once it has been agreed. I concur in the observation (discussion paper, page 10) that this process can give rise to the perception that the independence of PO is undermined.

Need for change.

The PCDP Act is a patchwork quilt and is no longer fit for purpose. The time has come to devise a system which is so fit and which supports the reality that the primary responsibility for its own corporate integrity lies with SAPOL.

I suggest redesigning the police complaints process along the lines of the Ombudsman Act. The ultimate step under that Act is to make recommendations to an agency and to report to Parliament the manner in which the agency has or has not carried them into effect.

Outline of redesigned PCDP Act.

I now outline the key features of a redesigned PCDP Act. My suggestions relate only to those matters where ICAC has not been notified or given directions :-

Each party, SAPOL and OPO, would notify the other of their receipt of a complaint and the manner in which they proposed that it be dealt with.

Minor complaints would follow generally the present procedure in the PCDP Act. SAPOL would deal with them and notify the complainant of the outcome of the process. If the complainant was dissatisfied with the outcome or the way in which SAPOL had dealt with the matter they would be at liberty to seek a review by OPO.

The categories of conduct able to be dealt with in this way would, as hitherto, be agreed between COP and PO and tabled in Parliament. The decision is, ultimately, one of political judgment.

Complaints other than minor complaints would be investigated by SAPOL. SAPOL and PO could, and each would upon request from the other, discuss the scope, manner and direction of the investigation as necessary, likewise they could discuss any action taken, or to be taken, in consequence of the investigation.

At the conclusion of the process, COP would report to PO the outcome of the investigation (providing to the PO for that purpose the investigation file) and any action taken, or to be taken, in consequence of the investigation.

PO would respond to that report and could make such recommendations relating to the investigation and its conclusions as s/he thought it necessary.

If recommendations were made, COP would be obliged to report to PO what action he had taken to implement them. If no action was taken, the report would be accompanied by a report explaining why no action was taken. It would then be open for the PO to report the outcome to Parliament.

PO would be at liberty to discuss the progress of the matter with the complainant at any time and would be required to notify the complainant of his response to the COP, recommendations s/he had made and any subsequent developments.

Other matters impacting on the efficiency of the police complaints system.

OPO is presently required by statute to audit SAPOL's compliance with the statutory requirements relating to telephone interceptions, listening and surveillance devices and DNA sampling. These functions stand apart from its core function of oversight and detract from its capacity to exercise that function. I wonder whether the audit functions, relevant as they are to the integrity of systems, might not sit better with OPI.

OPO is also responsible for conducting External Reviews of SAPOL determinations under the Freedom of Information Act. It is a distinct advantage in so doing to be familiar with SAPOL practices and procedures. I think this function should remain with OPO.

Questions raised for consideration in this review and not already addressed.

What role (if any) should an oversight agency have in the making of findings about police conduct and the imposition of penalty for misconduct? (page 12, question 5).

The PCDP Act clearly envisages that the making of findings, properly so called, in relation to criminal or disciplinary charges will be made by a court or the Police Disciplinary Tribunal (PDT) and penalty imposed by the court of the COP.

Section 32 of the PCDP Act requires the PO, at the conclusion of an investigation, to

provide to the COP his or her assessment of the conduct of an officer and to make recommendations which may include charging for an offence or a breach of discipline. In effect it requires the PO to express an opinion upon which the recommendation is predicated. In that sense, and in that sense only, does the PO make 'findings'.

It seems to me inevitable that, in making a meaningful recommendation to the COP, the PO will have formed a view on the evidence obtained during the investigation and will need to explain his or her reasons for having formed that view.

Section 36(4) of the PCDP Act makes it clear that, where the recommendation is to charge, particulars of the recommendation only (without further comment) are to be provided to the complainant and to the officer concerned. It is unclear whether, once the charge has been finalised, the PO is required or permitted to provide his or her reasons for having made that recommendation.

The PO performs an administrative role, not the judicial role of a court or the PDT. In my view the PCDP Act properly preserves that distinction.

The difficulty arising from this aspect of the legislative scheme, particularly where a matter goes to a closed hearing in the PDT, is that the PO is unable to give the complainant or the officer any adequate explanation of his or her reasons for having recommended that course. This has the potential to throw the integrity of the oversight process itself into question.

Conclusion

I make this submission in the hope that it will be of assistance to the review. I have no personal desire to present at the hearing. I am happy to do so upon request.

Anthony D Wainwright

26 March 2015



CHELTENHAM PARK RESIDENTS ASSOCIATION INC

PO BOX 5154 ALBERTON SA 5014

Hon Bruce Lander QC
Independent Commissioner Against Corruption
via email: www.icac.sa.gov.au

27 March 2015

Dear Sir,

RE: Review of Legislative Schemes

As per your published invitation (*The Advertiser*, 25/2/15), the Cheltenham Park Residents Association (CPRA) makes the following submissions regarding your review of the legislative schemes governing the oversight and management of complaints and reports about public administration in South Australia.

About CPRA

CPRA was formed in 2004 as the Cheltenham Park Residents Group at the instigation of the Member for Cheltenham (now Premier) Hon Jay Weatherill, in response to the South Australian Jockey Club's decision to dispose of Cheltenham Park Racecourse. CPRA was incorporated on 29 October 2007 and, as per its Constitution, continues to advocate on civic and environmental affairs in Cheltenham and neighbouring areas.

In the course of its activities, CPRA has had dealings with the State Ombudsman, Police Ombudsman and the Office for Public Integrity.

Delay and Duplication

As indicated in the Review of Legislative Schemes Discussion Paper, prolonged delays in resolving complaints and the duplication of work across agencies are two of the main issues this review hopes to address.

From CPRA's experience, and from the Annual Report extracts quoted in the Discussion Paper, there is a glaring necessity for more resources in the Offices of the State Ombudsman and Police Ombudsman to deal with their workloads. It erodes public confidence in the complaints process if matters take an inordinate length of time to reach a conclusion. The Police Ombudsman in particular appears to be struggling in this regard.

CPRA submits that one way to alleviate the Police Ombudsman's workload is to take FOI external reviews away from that office. CPRA also submits that FOI external reviews where

the originating “agency” involved is the Police Minister (as opposed to SAPOL) would be more appropriately dealt with by the State Ombudsman rather than the Police Ombudsman.

In regards to duplication across the various integrity agencies, CPRA submits that matters which have already been dealt with in part by one agency should *not* be referred to another agency.

A case in point is where a lengthy and complex matter which had been with the State Ombudsman for some time, and had been considered at length by the Ombudsman in conjunction with other related matters, was eventually referred to OPI when the ICAC legislation was introduced. Not only did this result in a duplication of work, it resulted in two different opinions being formed on a particular issue on which the decision to investigate or not investigate turned.

It seriously erodes confidence in the process and denies justice to complainants when different conclusions are reached between one integrity agency and another.

Secrecy

CPRA joins the community’s calls for a relaxation of the ICAC legislation’s strict confidentiality clauses. South Australia’s ICAC is the most secretive in the nation – an ironic overkill in the state where there is “no evidence” of systematic corruption.

Even writing this submission has been difficult bearing in mind the blanket suppression imposed by section 56. The Act’s default position of secrecy in relation to each and every matter that goes to ICAC would be akin to each and every matter before the state courts having an automatic suppression order in place. In regards to confidentiality, ICAC should operate like the courts system where matters are open to the public unless a case for suppression is made.

Code of Conduct for MPs

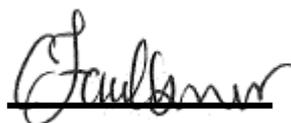
CPRA submits that this review of the ICAC legislation provides an opportunity to insert the long-awaited Code of Conduct for Members of Parliament. Or rather, an opportunity to *reinsert* the Code of Conduct after it was deleted from the ICAC Bill in the Legislative Council.

Considering the first motion to introduce a Code of Conduct for Members of Parliament dates back to 1994, including it in the current legislative review should be a priority.

Yours faithfully,



Trevor White
Chairman [REDACTED]



Carol Faulkner
Executive Committee Member [REDACTED]



File No: DPC/13/1849PT001
Reg No: DPC15DO1654

Commissioner for Public
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and Cabinet

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27 March 2015

The Hon Bruce Lander QC
Independent Commissioner Against Corruption
Legislative Reviews
GPO Box 11066
ADELAIDE SA 5001

Dear Justice Lander,

I refer to your recent *Review of Legislative Schemes* discussion paper regarding the oversight and management of police complaints, and more general issues relating to potential duplication and inefficiency arising from the current complaints and reports process. Specifically you have sought any submissions about any aspect relevant to the subject matter of the *Review of Legislative Schemes* discussion paper.

I hereby advise that my office currently has no matters to raise in relation to the content of the discussion paper. However, we would welcome the opportunity to provide further input to the review as the work progresses.

Subsequent correspondence relating to this matter should be directed towards Mr Davide Latini, Principal Policy Officer at:

Office for the Public Sector
GPO Box 2343
Adelaide SA 5001

Yours sincerely

Erma Ranieri

COMMISSIONER FOR PUBLIC SECTOR EMPLOYMENT

If calling please ask for
Michael O'Connell

[REDACTED]
[REDACTED]

[REDACTED]

Reference
Letter_ClosingPoliceStations.docx

26 April 2015

Hon Bruce Lander QC
Independent Commissioner against Corruption
GPO Box 11066
Adelaide SA 5001



**Government
of South Australia**

**Commissioner for
Victims' Rights**

45 Pirie Street
Adelaide SA 5000

GPO Box 464
Adelaide SA 5001
DX 336

Tel 08 8204 9635
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Dear Commissioner Bruce Lander,

Re Complain against Police – ICAC consultation

I refer to your current inquiry into the mechanisms for dealing with complaints against police. First, I apologise for the delay in my submission by this letter, which is due to my absence from South Australia for work and private commitments. Secondly, in the past six or so months my one staff and I have been overwhelmed with requests for submissions and comments on matters affecting victims: their needs and rights, as well as undertaking my legislated functions. Thirdly, a television reporter alerted me to your public consultations.

Please note that I have most often enjoyed a good working relationship with the Police Ombudsman (formerly Police Complaints Authority) and the South Australia Police; albeit that we have not always agreed on 'outcomes'.

That said, I have received a sufficient number of grievances over a decade or so that suggest some victims feel ignored and unimportant when raising complaints about their treatment. Such feelings are not confined to the police complaints process; however, the majority of complaints are against police then prosecutors. Some complaints are against magistrates or judges. I also receive complaints about media treatment of victims and their families in addition to complaints about staff in non-government organisations. As explained below, my authority and capacity to deal with victims' complaints is constrained by section 16A of the Victims of Crime Act 2001.

Victims should be treated with respect and dignity. They are entitled to be told about the existing complaint mechanisms. It is fundamental human decency to tell victims in a sensitive and timely manner how to go about making a complaint and, as appropriate, why something has not happened as it should.

I have seen and read excellent examples of work by police and other public officials as well as the Police Complaints Authority that demonstrates genuine commitment to helping establish the truth and providing some remedy for violations of victims' rights. The Police and the Police Complaints Authority have, for instance, permitted me to accompany a victim to a reconciliation meeting. The Police and the Police Ombudsman have embraced the concept of 'apology' as a remedy (see section 16A of the Victims of Crime Act 2001).

My direct dealings with both have, however, been impeded at times because of the law prohibiting exchange of information whilst a complaint against police is under investigation. The appointment of a victim-liaison officer among the Police Internal Investigation Branch staff is an initiative to alleviate my concern that victims had no-one to help them attain information about the progress of investigations into complaints against police. Similarly, in spite of the resource constraints, staff for the Police Ombudsman have endeavoured to keep victims informed, as appropriate.

Some victims, however, are not getting the service they deserve. It is, for instance, an imperative that not only is provision made to keep victims informed but, moreover, that victims are kept informed. It is vital that complaint mechanisms afford victims the right to tell their stories and to be listened to or heard. Victims are thrust into the criminal justice system that many find daunting and overly legalistic. They discover a contest between the state-as-prosecutor and a citizen-as-accused, which is governed by laws to protect accused right to procedural justice at the expense of establishing the truth.

Victims are entitled to complain about their treatment. In so doing, the process should not replicate that of the adversarial criminal justice system, except of course when the complaint gives rise to criminal proceedings against the accused public official.

Victims who are not satisfied with their treatment (who feel their rights have not been respected) should be able to attain and given clear guidelines on how to complain, regular up-dates on the investigation of their complaints and a full explanation on the outcome. Throughout the process, victims should be treated with utmost respect, compassion and dignity – mindful always of their personal circumstances and the effects of crimes. They should not be treated as a nuisance, or similar.

No complaint mechanism in South Australia provides for reparations, such as an apology, restitution or compensation. Pursuant to the Correctional Services Act, a public official who misuses information about victims kept on the Victim Register can be prosecuted and be liable to a penalty of up to \$10,000. It seems to me that the Criminal Court hearing such prosecution might on finding the charge proved order the offending public official to pay restitution by way of monetary compensation to the victim (section 52 of the Criminal Law (Sentencing) Act 1988). In England and Wales some complaint mechanisms do provide for financial compensation for complaints (that is aggrieved people). The Parliamentary Ombudsman can recommend financial compensation as a remedy and has done so in favour of a victim after an inquiry into that victim's complaint. The Ombudsman can also recommend changes in policies and practice and other remedial action.

Against this backdrop, I point to my role that is often likened to a victim-ombudsman, albeit that my functions are broader than traditionally associated with an ombudsman. Section 16A of the Victims of Crime Act 2001 that allows me, as Commissioner for Victims' Rights, to consult a public official or public agency on the treatment of a victim and, if in my opinion, that official or agency has not treated the victim in accordance with the Declaration Governing Treatment of Victims, I can recommend the official or agency make a written apology to the victim. Should the official or agency not comply with my recommendation, I can report such to Parliament.

To-date, although I have formally given 'notice of consultation', I have not had to formally recommend an apology. The Police and the Police Ombudsman have determined an apology is from their perspective appropriate remedy on several occasions known to me. Although the apologies have mostly appeared genuine, I am aware of an occasion where the apology itself was, in my view, unsatisfactory.

There is no limitation of time regarding the lodgement of victims' complaints, which differs from law pertinent to the Police Ombudsman's authority. Occasionally, victims have complained after being informed that they cannot complain to the Police Ombudsman as the 'limitation of time' for such complaint has expired. It is important that the limitation of time does not become an obstacle to attaining access to justice and a shield to protect those who violate victims' rights. It is important also that the complaint process does not unduly impact the rights of accused police officers. Thus, a balance should be struck; and, in reaching that balance it is my view that equal consideration should be given to victims' interest, accused officials' interest and the public interest.

Trust and transparency are central if a balance is to be struck. There should be more openness and public reporting with respect to the determinations of complaint authorities. Those that seek help from authorities such as the Police Ombudsman and those who believe in the institution as necessary to protect innocent police and to protect aggrieved citizens, including victims, should know how the process is working. A future complaint process cannot expect to be perceived as legitimate, just, fair and equitable if it operates 'behind closed doors'.

As Commissioner, I am not empowered to request or demand production of documents or other when consulting on a victim's complaint. Public officials and representatives have dealt with this omission in differing ways. On one occasion the official complained about provided a written report denying the victim's allegations, while the representative for the agency provided documents that contradicted the official. On another occasion the representative for the agency in which the official complained about was employed allowed me to read all documents pertaining to the matter and interview staff. Mostly, however, I am not given access to 'evidence' for or against the complaint and instead I rely on the integrity of the public official or the representative of the respective public agency. To overcome this short-coming in my authority, I call on the Police Ombudsman or other complaint mechanism, such as the Ombudsman, the Health and Community Services Complaint Commissioner or the Equal Opportunity Commissioner.

To the extent that the relevant laws allow, co-operation and collaboration are useful in dealing with victims' complaints. Such can also leave some victims with a sense that there has been no truly independent assessment of their complaint.

Notably, the New South Parliament enacted law to establish a Commissioner for Victims' Rights whose authorities in general are not as extensive as mine but regarding victims' complaints does empower the Commissioner to request production of documents and other. In Queensland, the Victims of Crime Co-ordinator can review the process and/or outcome after a victim's complaint has been dealt with under an agency internal complaint mechanism. Both the New South Wales and Queensland law seeks, it seems to me, to ensure the integrity of complaint mechanisms rather than to replicate such.

Mindful of victims' sense of justice and the nature of their grievances, the existing complaint mechanisms, my authorities and experiences as well as review of literature (including your discussion paper), I do not favour a police complaint process that, with the exception of matter that falls under your authority, is entirely in control of the police themselves. My view is, I hasten to add, not confined to police. I have publicly criticised professional vocations and others that maintain the role of 'guardian' of themselves. In another submission, for instance, I have urged that the Director of Public Prosecutions be subject of independent review as now happens in England and Wales and in yet another submission I have urged the establishment of a Judicial Review Council, or similar, to enquire into complaints about

judicial officers. Further, I expressed my support for an independent commission (or like) into corruption.

I stress that my urgings and recommendations are founded on principles and are not intended as an attack on the integrity of these and other institutions. It is important that process and procedure dispel the myths about, for instance, police protecting police.

I urge that complaint mechanism provide for victim participation. Victim participation is consistent with the principle of access to justice for those allegedly aggrieved. Furthermore, victims feel that they are best placed to explain their victimisation and the act or omission that causes them to complain and, in this sense, they feel they can contribute to the establishment of the truth. They should be treated with sensitivity, empathy, respect and dignity throughout all stages of the complaint process. They should in addition be kept informed, so long as keeping them informed does not jeopardise the, or another, investigation. The process itself should be visible and the investigation and outcomes should be transparent, as appropriate on a case-by-case basis.

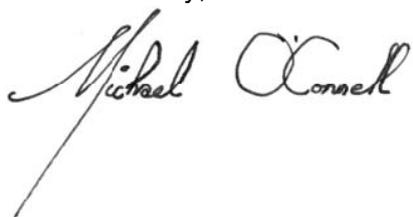
In most cases police should investigate police – many police officers are very competent investigators with high integrity but there should be provision for independent review and that authority should be empowered to order the Commissioner of Police to conduct further investigation and/or assume control of the investigation.

I urge also that the complaint mechanism comprise an effective and accessible investigation and enforcement body with power to award remedy, such as apology, direct or symbolic restitution from individual officers and compensation from the Police, as well as to recommend changes in procedure and practice, in those cases where the Declaration Governing Treatment of Victims is violated.

The Declaration Governing Treatment of Victims honours our international (for example, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power) and national obligations (for example, the National Charter on Victims' Rights). Its implementation must not fall short of the 'rights' or 'entitlements' intended by Parliament and articulated in the Act and those sections of other Acts that compliment it. This includes the right to be treated with respect and dignity, the right to be told how to make a complaint, the right to be kept informed about the progress of the investigation and the right to how the outcome explain in a manner that is comprehensible.

Victims' access to justice depends not only on the applicable law but also the attitudes and behaviours of those tasked with treating victims in accordance with the said Declaration. There has been a remarkable cultural shift in the Police since the first declaration on victims' rights was promulgated in our state in 1985. Nonetheless, victims who come forward to complain should receive adequate and effective support. Victims whose rights are violated should have access to fair and just processes to inquire, to restore and to provide remedy. Victims' rights should be meaningfully enforced.

Yours faithfully,

A handwritten signature in black ink that reads "Michael O'Connell". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Michael O'Connell APM | Commissioner for Victims' Rights

The environment's legal team since 1992

Protecting the public interest - evening the odds

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EDO(SA) Submission on ICAC Discussion Paper: Review of Legislative Schemes - Complaints and Reports about Public Administration (February 2015)

27 March 2015

Background

The Environmental Defenders Office (SA) Inc. ("EDO(SA)") is a community legal centre with over twenty years of experience specialising in public interest environmental and planning law. EDO(SA) provides legal advice and representation, undertakes law reform and policy work and provides community legal education.

The vast majority of EDO(SA) clients seek advice about processes undertaken and/or decisions made by a statutory body (e.g. *the Environment Protection Authority; the Native Vegetation Council*), a government department (e.g. *Department of Planning, Transport and Infrastructure; the Department of Environment, Water and Natural Resources; Department of State Development*) and/or a local council. EDO(SA) very rarely advises in relation to matters involving the police.

Therefore, this submission focuses upon the legislative schemes in relation to public administration reports and complaints. This submission does not address the police complaints legislative schemes.

EDO(SA) does not wish to present at a public hearing on the review.

Context

The NSW ICAC, in its February 2012 Report, "*Anti-corruption Safeguards and the NSW Planning System*", emphasises the importance of accountability and transparency in the planning and assessment decision making processes.¹

¹ "The existence of a wide discretion to approve projects, which are contrary to local plans and do not necessarily conform to state strategic plans, creates a corruption risk and community perception of lack of appropriate boundaries." (at page 5)

"Meaningful community participation and consultation in planning decisions helps ensure that relevant issues are considered during the assessment and determination of plans and proposals. It also allows the community to have some influence over the outcome of decisions. Community participation and consultation requirements also act as a counter balance to corrupt influences. The erosion of these requirements in the

Concerns regarding accountability and integrity in government decision-making processes are not restricted to NSW.

In 2013, the SA Government established ICAC to:

- identify and investigate corruption in public administration;
- assist in identifying and dealing with misconduct and maladministration in public administration; and
- prevent or minimise corruption, misconduct and maladministration in public administration through education and evaluation of practices, policies and procedures.

In SA, in regard to the FOI regime, the Ombudsman SA, in his *“Audit of state government departments’ implementation of the Freedom of Information Act 1991 (SA)”* Report (May 2014) made the following observation:

“In summary, the evidence provided to the audit strongly suggests that ministerial or political influence is brought to bear on agencies’ FOI officers, and that FOI officers have been pressured to change their determinations in particular instances. I have no reason to disbelieve this evidence.” (at paragraph 337)

Should the Office for Public Integrity (OPI) be the central body for the receipt and assessment of complaints and reports about public administration?

In the context of potential corruption, misconduct or maladministration, the experience of EDO(SA) clients in reporting their concerns regarding processes undertaken and/or decisions made confirms the need for a simpler, more effective and speedier legislative scheme to be established.

The current system involving both the OPI and the Ombudsman is confusing for the layperson and an inefficient use of community resources.

EDO(SA) recommendations:

1. In relation to potential corruption, misconduct or maladministration allegations - there should be a single statutory body with wide powers (and, as importantly, adequate resources) to:
 - Receive allegations;
 - Assess allegations;
 - Investigate allegations; and
 - Make decision review recommendations and prosecution recommendations.
2. The statutory body should be empowered to undertake investigations on its own motion, without the need for a complaint.

planning system reduces scrutiny of planning decisions and makes it easier to facilitate a corrupt decision.” (at page 19)

3. In order to maintain and enhance community confidence in the integrity of the public administration in SA, it is vital that the statutory body be required to provide ongoing feedback to complainants on the progress and outcome of its assessments and investigations.

What role should the ICAC play in relation to the oversight of inquiry agencies?

In order to maintain and enhance community confidence in the integrity of the public administration in SA, a balance needs to be struck between adequate oversight of inquiry agencies and the effective and efficient use of resources.

EDO(SA) recommendation:

ICAC to have a discretion to oversee the activities of and investigate the operations of inquiry agencies, with a requirement that ICAC review and report upon the activities and operations every three years.

What systematic changes can be adopted to reduce duplication and improve efficiencies in the receipt, assessment and resolution of complaints and reports about public administration?

EDO(SA) has insufficient detailed knowledge of the current systems to comment.

Please contact: James Blindell for further details [REDACTED]

[REDACTED]

Reference number: A2014/00181

The Hon. Bruce Lander QC
Independent Commissioner Against Corruption

Dear Mr Lander

I refer to your letter of 13 February 2015 and to your Review of Legislative Schemes Discussion Paper dated February 2015. I provide my submissions in relation to the questions posed in the Paper and advise that I would like to be heard at a public meeting that you intend to hold in late April.

Oversight and Management of Police Complaints

As the Ombudsman for South Australia, I do not agree with the Police Ombudsman's arrangement of having complaints about police misconduct investigated by police officers. As a matter of principle, an independent complaint handling agency needs to have the ability to independently investigate complaints and have full control of the findings and conclusions. I understand that the absence of investigators within Police Ombudsman is partly by design and largely in response to inadequate funding. The lack of resources may well be the result of Police Ombudsman's office being too small due to a very limited jurisdiction leading to an inability to achieve an 'economy of scale'. In this respect, heed should be given to the Productivity Commission's Report into Access to Justice Arrangements dated 5 September 2014, particularly recommendation 9.3 at p50:

'Recommendation 9.3

The Australian, State and Territory Governments should consider whether certain high-cost, low-volume complaint services could be more efficiently and effectively incorporated into another body rather than as stand-alone services.'

One solution to the resourcing issue and lack of in-house investigators would be to abolish the Police Ombudsman's office and incorporate the investigation of police misconduct investigations into ICAC's functions. My research of arrangements interstate reveals that there is no other separate Police Ombudsman: all states (apart from Victoria) give either the Ombudsman alone or the Ombudsman and the relevant anti-corruption body jurisdiction over police complaints. Victoria requires such complaints to be dealt with by the IBAC, not the Ombudsman. In my view, investigation of police misconduct has an anti-corruption 'flavour' to it as it relates to the ethics and honesty of law enforcement personnel and sits well within ICAC's core purpose.

Consistent with good complaint handling principles, it would still be appropriate for SA Police in most instances to deal with officer misconduct in accordance with its internal complaint handling process but ICAC should be the authority to which complaints may be escalated with the expectation that they would be investigated independently by ICAC's own investigators. I am also of the view, that once a complaint is being dealt with by ICAC, the Commissioner of Police should be subject to the ICAC's findings and recommendations and not have a power of veto. Any control that the Commissioner has over an ICAC investigation and outcome will undermine both the independence of the investigation and public confidence in the process.

Under section 39(1)(b) of the *Freedom of Information Act 1991*, the Police Ombudsman is responsible for conducting external reviews of FOI decisions of SA Police. In my view, there is no strong argument for this to continue. An FOI decision is an administrative one and not a misconduct matter. Ombudsman SA has responsibility for external reviews of FOI decisions by all other agencies including local government and universities and could just as easily conduct external reviews of SA Police FOI decisions. Similarly, a complaint about SA Police administrative error or maladministration could be dealt with by Ombudsman SA in the same way that the Office deals with these issues in respect of all other agencies.

Complaints and Reports about Public Administration

1. Should the OPI be the central body for the receipt and assessment of complaints and reports about public administration?

My predecessor, Richard Bingham, expressed his view in the 2013/2014 Ombudsman SA Annual Report that the 'OPI should be a 'one stop shop' for taking complaints for the public'. I do not share that view. As the 2013/2014 Annual Report records, Ombudsman SA received 10,995 approaches last year from members of the public. 68% of these were 'out of jurisdiction' contacts which were dealt with by referring the caller to an appropriate agency or other body, or by providing information or advice to the caller. These were either responded to at the time of intake or referred within 24 hours. These statistics indicate that Ombudsman SA is seen as a 'first port of call' for many thousands of South Australians. From the total of 10,995 approaches, 3090 were dealt with by the Office as complaints.

It would be interesting to compare the volume of approaches received by my Office with those received by OPI. My understanding is that it receives about 1/5 of the approaches that my Office does. This is in spite of the obligation that all public officers, public authorities and inquiry agencies have to report corruption, serious misconduct and maladministration to OPI and in spite of the tireless work that ICAC has done in promoting awareness of his Office.

I consider it unlikely that the Ombudsman brand would be bypassed by many complainants if OPI were to become the designated 'first port of call'. In other words, large numbers of people would likely still contact my Office.

I also have reservations about the desirability of directing the public to contact an agency which does not have a complaint handling reputation or complaint handling expertise. From its inception, OPI has been responsible to ICAC and is thus associated in the public mind with ICAC and ICAC's mandate to fight corruption and have criminal conduct prosecuted. By contrast, the Ombudsman has enjoyed a 43 year presence in this State as an independent Office and is well established as a complaint handling authority that investigates the administrative actions of public bodies. The Office has built up a reputation for being the arbiter of fairness in regard to complaints about administrative decision making and I believe it is in the public interest for that reputation to be maintained and strengthened.

Whilst some observers see the receipt and assessment processes as the one function, I consider they are different and discrete. In Ombudsman SA, my Assessment Officers have the task of responding to approaches once they have been identified as within my jurisdiction or likely to be within my jurisdiction. That judgement call can, by itself, take some time and requires knowledge of agency functions and processes. Assessment work requires a full appreciation of the requirements of the Ombudsman Act and often involves a level of informal investigation. This can occur in collaboration with an Investigating Officer, a Senior Solicitor or with the Deputy Ombudsman or me. Assessment Officers also conciliate and independently resolve many matters. The nature of the work therefore requires Assessment Officers to have a practical understanding of the administrative processes and legal requirements of government, local government and other statutory authorities such as the universities. Through the assessment process I keep track of trends and spikes in

complaints made against agencies. The assessment process also collates the information that I need for determining whether to proceed to the preliminary investigation stage or launch an own initiative investigation or audit.

In this way, the assessment process is an integral part of the functioning of my Office. OPI is not set up to perform this type of work but, in any event, it needs to be done within my office for it to be useful to me. My Office would not be able to function properly without it.

It follows that I do not think it would be effective for OPI to be the central body for receiving complaints about public administration for the following reasons:

Firstly, it would diminish my Office's capacity to be an effective complaint handling agency. Secondly, if OPI only receives complaints and does not have the assessment function that supports early resolution it will not reduce the double handling that occurs now and it will not provide a service that is useful to the public. Thirdly, I believe that acceptance of OPI as the body that receives all complaints about public administration will take a long time to establish in the public consciousness because OPI is strongly associated with anti-corruption rather than administrative error and the Ombudsman brand is so well established in South Australia. I question whether the effort to educate the public to direct their complaints to OPI in place of the Ombudsman would be a worthwhile use of resources.

I argue that Ombudsman SA is better placed to be the central body for the receipt and assessment of complaints about public administration. It already has well developed processes and the expertise for both the receipt and assessment of complaints, including early resolution. It is a role already widely accepted by the public. It would only require a relatively straightforward amendment to the Ombudsman Act so as to encompass the broader definitions of maladministration and misconduct currently contained in the ICAC Act. With those amendments, Ombudsman SA would be able to receive and assess the full range of complaints about public administration without major resourcing implications.

In the model that I propose, I envisage that OPI would continue to operate to receive complaints about corruption and police misconduct.

2. What role should ICAC play in relation to the oversight of inquiry agencies?

As submitted above, I am of the view that the Police Ombudsman's office should be abolished, which would leave only Ombudsman SA and the Commissioner for Public Sector Employment as inquiry agencies. ICAC should continue to have the function of receiving and dealing with reports of corruption relating to these agencies. However, in my view ICAC should not have any oversight of our complaint handling and investigation functions relating to maladministration and misconduct of public officers.

I firmly believe that the primary reason for ICAC's existence is to stamp out corruption in public administration. I do not see the need for ICAC to oversee our dealing with complaints about administrative decisions or public officer misconduct. They are two very different types of matters that require completely different approaches. ICAC is primarily a law enforcement body. The Ombudsman is the arbiter and formulator of administrative fairness. Administrative improvement is our business. My Office has been dealing with complaints about administrative acts for over 40 years and my accountability is directly to the Parliament. As I see it, ICAC's oversight of my Office is completely unnecessary. It does not add any value to what I do just as it probably does not add value to ICAC's core function of detecting and investigating corruption. It only creates more work for us both and because our respective legislation sets us up to do different things with a different end point in view,

we can be at cross purposes at times which results in some additional correspondence between us. The Commissioner for Public Employment may have a different view on this point, but I note that she is subject to the direction of the Minister and in my view that is an appropriate line of accountability given the public sector is the area of her functions and she is only dealing with misconduct that is not criminal in nature.

I also note that, on receipt of a complaint, it is not always clear whether the allegation is in fact one comprising administrative error (pursuant to the Ombudsman Act), misconduct or maladministration. There is considerable overlap between these error types. During the course of an investigation, it may become apparent that, for example, an allegation of misconduct is in fact best dealt with as an administrative error. I am of the view that the legislation currently allows me flexibility in terms of how I deal with such matters. However, there is no doubt confusion amongst the public and government agencies as to how matters are dealt with and which authority should be approached. Further, I note that the ICAC has the power to refer matters to this Office under section 24(3) of the ICAC Act if they are assessed as 'raising other issues'. I suggest that these 'other issues' would include complaints about actions that do not come within the ICAC Act definitions of misconduct and maladministration but may come under the Ombudsman Act definition of 'administrative act'. However, referrals to my Office under section 24(3) of the ICAC Act have rarely occurred, and I query whether this may be because the OPI is not overly familiar with the Ombudsman Act jurisdiction and matters that should appropriately be referred to my Office have either been dismissed or referred elsewhere.

My considered opinion is that complaints comprising administrative error, misconduct or maladministration should be dealt with in their entirety by my Office, which should be able to receive all such complaints directly from the complainants. In addition, if OPI receives complaints of this nature and identifies that they have no potential criminal element, it should simply transfer the matter to my Office to deal with in accordance with the Ombudsman Act (or to the Commissioner for Public Sector Employment in the case of misconduct by public sector employees), and OPI and ICAC need have no further interest in the matter. This will allow ICAC to focus on corruption and criminal conduct in public administration as it should. I acknowledge that to implement this view will require significant amendment to the ICAC Act.

3. What systemic changes can be adopted to reduce duplication and improve efficiencies in the receipt, assessment and resolution of complaints and reports about public administration?

The key to reducing duplication and improve efficiencies is legislative change to narrow ICAC's focus to criminal conduct and corruption in public administration and bolster Ombudsman SA's involvement in administrative improvement.

If my proposed model is not adopted, I consider that some legislative change is required in any event to avoid possible legal challenge to the manner in which the Ombudsman and ICAC are currently interpreting the legislation. In particular, I consider clarity should be provided in the legislation to ensure:

- the Ombudsman is able to make findings of misconduct or maladministration under the Ombudsman Act
- the Ombudsman is able to make a finding under the current section 25(1) of the Ombudsman Act on receipt of a referral under section 24(2) of the ICAC Act from the Commissioner

- the Ombudsman is able to end an investigation under section 17(2)(d) of the Ombudsman Act on receipt of a referral under section 24(2) of the ICAC Act from the Commissioner
- the Ombudsman is able to make recommendations under the Ombudsman Act / Local Government Act as a result of an investigation conducted on referral under section 24(2) of the ICAC Act from the Commissioner
- other procedures under the Ombudsman Act and Local Government Act follow as a result of an investigation conducted on referral under section 24(2) of the ICAC Act from the Commissioner (for example that the relevant Minister is informed of a finding of error).

In the absence of legislative change, we may be able to improve efficiencies by:

- Regular sharing of data, such as providing each other with a daily report of incoming reports or complaints;
- Developing a procedure for case conferencing to discuss particular referrals and investigations;
- ICAC and Ombudsman SA agreeing on the criteria by which matters are assessed as appropriate for Ombudsman SA to receive on referral from ICAC;
- Developing a common website for lodgement of on line complaints.

I welcome any questions you may have in relation to my submission.

Yours sincerely

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POLICE ASSOCIATION OF SOUTH AUSTRALIA

Your Ref: A2014/00181
Our Ref: MC:jw:1719/14

26 March 2015

The Hon Bruce Lander QC
Independent Commissioner Against Corruption
GPO Box 11066
ADELAIDE SA 5001

Dear Commissioner

Re: Review of Legislative Schemes – Evaluation of Practices, Policies and Procedures of Police Ombudsman

INTRODUCTION

Thank you for the invitation to make submissions to you regarding the matters you raised in your February 13 correspondence to the Police Association.

In addition to this, I am quite prepared to address any public hearing you might schedule. The matters which are the subject of your intended review are critical to association members and their employment as sworn police officers.

We agree with your assertion that the current police-complaints system involves "duplication, complexity, confusion and delay". But aspects of the current system, including the Police Disciplinary Tribunal, operate successfully.

So, while we advocate certain changes, we do not encourage you to recommend alterations to that which is working successfully in the current system.

Delay is caused chiefly at the investigation stage rather than at the point when, for example, disciplinary charges are laid. Since their creation, the ICAC and OPI have themselves contributed significantly to both duplication and complexity.

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.

We agree with your introductory assertion that “the South Australian community is well served by a professional, ethical and high-calibre police force”.

This statement has not always applied to other states of the Commonwealth. Standing commissions against corruption or commissions to maintain police integrity have existed far longer in other jurisdictions than they have in South Australia.

Valuable lessons have been learnt by virtue of the existence of these bodies.

We contend that the good state of affairs in South Australia is evidence of the success of our existing integrity systems. This gives weight to the argument that they ought not be changed.

LESSONS FROM OTHER JURISDICTIONS

Bodies such as the ICAC and OPI have rarely, if ever, operated without questions as to their effectiveness. Examples of problems certainly exist in other jurisdictions.

Our submissions include our observations of the nature of complaints made about the operations of such bodies in other jurisdictions in the hope of avoiding similar mistakes in South Australia.

The problems which exist, or have existed, in other jurisdictions fall into one or another of two categories.

The first issue complained of, in NSW, was that too many bodies existed to cover the same or similar ground.

Former commissioner, the Hon Jerrold Cripps QC, argued passionately that an independent police integrity commission was justified in NSW, but many more have condemned the model.

In a recent select committee on the conduct and progress of the ombudsman’s Operation Prospect Inquiry, the NSW Legislative Council published the assertion below under its findings and recommendations from page 114 (*Oversight of police*).

“During the inquiry, several participants expressed concerns about the system to oversight police complaints in NSW, including the multiple number of agencies involved in the investigation and oversight of police conduct...” (paragraph 7.18).

Referring to a submission made by the Police Association of NSW, the inquiry noted that “in a system where there are multiple oversight agencies, a matter may be assessed by one or more agencies as not warranting further investigation, only for another agency to launch a full investigation. In such cases, justice is put at risk and important questions are raised about the reasons for the differing decisions and the appropriateness of the decision to investigate where more than one agency declined to do so”.

In the *Review of Oversight of Police Critical Incidents*, the NSW police commissioner said: "oversight agencies collide in a way that was not intended."

Experienced legal practitioner in the area, David Porter, who gave evidence to the inquiry, said that involvement by multiple agencies such as the Crime Commission and Police Integrity Commission showed a "predominant failure of the multiple-agency system..."

The inquiry further noted the evidence of Commissioner Andrew Scipione APM: "I think in terms of the failure here we had three agencies trying to do the work of what should have been a single agency... My view is this should have been a single agency that had carriage of the investigation... It is very difficult when you have got three agencies, with all the goodwill in the world, with one steering the bus, one using the brake, and one using the accelerator. That does not work."

The inquiry made recommendation 6: "That the NSW Government establish a single, well-resourced police oversight body that deals with complaints quickly, fairly and independently."

The second issue is the ever-present problem of who watchdogs the guardians. This was a particular concern in the operation of the Victorian Office of Police Integrity.

Clear abuses occurred in the form of unwarranted investigations into police officers and involved warrants granted without justification. This is the obvious downside to a "one-stop-shop" system.

Irrespective of the New South Wales concerns, the potential evil in concentrating all functions within the same office is the risk of abuse and "noble-cause" corruption.

In a long submission to the Integrity and Anti-Corruption System Review, the Police Association Victoria quoted former Office of Police Integrity assistant director Graham Ashton, who said: "...noble cause corruption is something we focus heavily on at the OPI because it's an often misunderstood concept. Noble cause corruption is the breeding ground from which more endemic corruption occurs and more serious corruption grows out of that. If there's an acceptance that any sort of corruption is acceptable because it has a noble end, that's where corruption gets a foothold and quite often there'll be a cultural acceptance of noble cause corruption but not of what people might regard as a more serious corruption, but there's little understanding that the more serious corruption will generally flow from an environment that's created by the noble cause corruption."

Examples of poor practices by the Victorian OPI include the unsuccessful criminal prosecution in *R v Bolton* and *R v Ashby*.

When complaints were made about the Victorian OPI, the Victorian ombudsman was tasked to investigate. However, in the following year, the Office of the Victorian Ombudsman itself came under investigation.

An inevitable question arose as to who was watchdogging the guardians. Meanwhile, police officers had been unfairly accused and their reputations damaged when, to the

observer, there seemed insufficient accountability on the part of anti-corruption agencies which had engaged in poor and illegal practices.

Similar problems currently exist in the Western Australian Crime and Corruption Commission. However, in light of the immediacy of those matters and current criminal investigations into members of the CCC, it would be improper to do any more than allude to that example.

In Queensland, the Crime and Misconduct Commission found itself investigating all manner of matters which, in any other jurisdiction, would have fallen squarely into what one might regard as the "disciplinary" domain.

Under the former Queensland government, the commission's purview was reduced to that of corruption matters only.

THE POLICE ASSOCIATION OF SOUTH AUSTRALIA POSITION

The Police Association is uncomfortable with the *Independent Commissioner Against Corruption Act* insofar 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, insofar 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.

The Police Association position on this subject is not new. Nor has it changed. We expressed similar views in our submission to the Attorney-General by letter of 18 June, 2010 (copy enclosed at Appendix A).

THE ROLE OF THE OMBUDSMAN, POLICE OMBUDSMAN AND COMMISSIONER FOR PUBLIC EMPLOYMENT

Police Association members who might be the subject of complaints do not fall within the jurisdiction of the Commissioner for Public Employment. Our interaction with the South Australian Ombudsman is minimal. We cannot usefully add to the remarks in your discussion paper regarding those offices and therefore confine our submissions to the Office of Police Ombudsman.

Our view is that the Office of Police Ombudsman is now largely pointless.

Any complaint made to the police ombudsman is investigated by police.

Furthermore, acting on a recommendation made by the police ombudsman is, and remains, a matter in the discretion of the Commissioner of Police.

With the introduction of the Office of Public Integrity, it would seem pointless to retain the Office of Police Ombudsman.

POLICE ASSOCIATION OF SOUTH AUSTRALIA PREFERRED MODEL

How then should a successful model look and what aspects of the current system should remain?

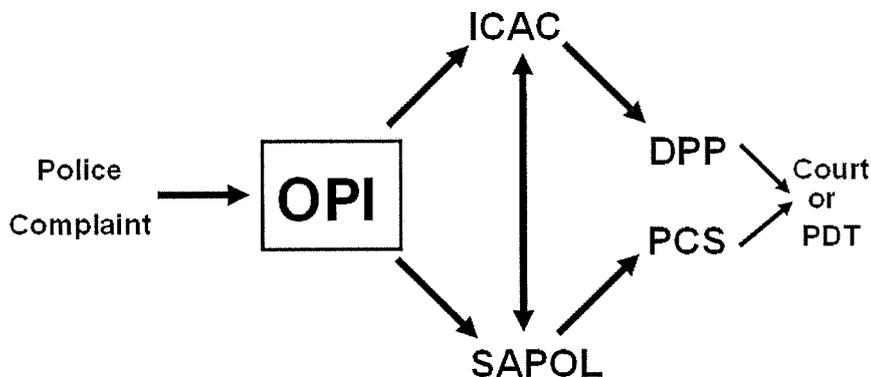
First, the existing scheme of discipline is enshrined in legislation in *The Police Act* and *Police (Complaints and Disciplinary Proceedings) Act*. It has existed in this way for many years, because both the South Australia Police and Police Association value its fairness, impartiality and success.

Unlike other jurisdictions employing an administrative approach, South Australia has avoided the common complaints of a lack of procedural fairness, transparency and a 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 specialized 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 shares 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.

On the other hand, we do not contend that the current system of complaint might not be improved. To that end, the model that we advance is this.



Legend:

PCS – Professional Conduct Section

PDT – Police Disciplinary Tribunal

A police complaint is made to an independent Office of Public Integrity. The OPI determines whether the matter pertains to corruption or maladministration, as distinct from an ordinary matter of misconduct.

Should the matter have the characteristics of corruption or maladministration in public office, it is to be referred to the ICAC. Otherwise the matter is referred to SAPOL for investigation. At any time during an investigation, SAPOL may refer a matter to the ICAC and vice versa.

As to disciplinary/misconduct matters, the current system of prosecution and the Police Disciplinary Tribunal ought to be retained for the reasons set out above and in the written advice of Mrs Shaw QC dated 17 March, 2015 (attached at Appendix B).

FUNDING

Finally, as with other jurisdictions, immediate and serious consideration must be given to funding legal representation for police officers who are summonsed before the ICAC for examination, particularly if the matter arises out of or in the course of duty.

Clearly, the resources of the Police Association should not be eroded owing to the creation of an ICAC. Our argument to the Attorney-General regarding that point is attached at Appendix C.

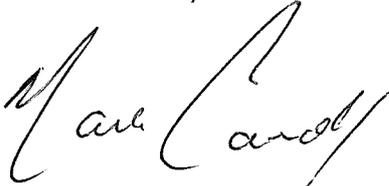
ANSWERS TO SPECIFIC QUESTIONS

In answer to the specific questions contained on page 12 of your correspondence:

1. There are too many agencies owing to the creation of the OPI and ICAC.
2. The role of each agency ought to turn on the nature of the matter complained of.
3. Yes, subject to our earlier remarks.
4. By preserving the existing disciplinary framework and limiting the role of the ICAC and OPI when a matter is one of misconduct not involving corruption or maladministration in public office. Ultimately this is a judgement of common sense.
5. There should be no role of an oversight agency in determining penalties arising from misconduct. That is squarely a matter for the Commissioner of Police. The role of the oversight agency should be restricted to a recommendation to prosecute only.
6. We refer you to our preferred model.

7. The key to reducing delay is in timely investigation and the early correct delineation of the conduct alleged.

Yours sincerely

A handwritten signature in cursive script that reads "Mark Carroll". The signature is written in black ink and is positioned above the printed name.

MARK CARROLL
PRESIDENT

Enc.

Appendix A



POLICE ASSOCIATION OF SOUTH AUSTRALIA

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Your ref: 10AGO1144
Our ref: MC:ld:0919/10

18 June 2010

FAXED
21.6.10

The Hon John Rau MP
Attorney-General
GPO Box 464
ADELAIDE SA 5001

Dear Attorney-General

I write in response to your letter of 12 May 2010 whereby you provide the association the opportunity to comment on existing public integrity structures in South Australia.

The association appreciates the opportunity to contribute by way of a submission and provides the following:

Context

As you are aware, police officers are highly scrutinized and regulated. Police perform a unique role in society and owing to their duties can attract many and varied complaints, many of which prove unsubstantiated. A police officer must, when lawfully directed to do so, answer questions about any subject pertaining not only to on-duty but also to off-duty conduct. This applies to no other category of employment in the wider South Australian public sector.

The conduct of police officers is governed by the *Police Act 1998* and *Police Regulations 1999*. A police officer charged with a breach of the police code of conduct may elect to have the charge heard and determined by the independent Police Disciplinary Tribunal in accordance with the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

Police (Complaints and Disciplinary Proceedings) Act

The Act provides for investigation of complaints made in respect of members of the police force; constitutes the Police Disciplinary Tribunal; and provides for the appointment of a Police Complaints Authority. Section 48 of the Act provides specific secrecy provisions. Whilst the secrecy provisions are often the subject of negative media comment the association supports these provisions. The publication of details of a wholly, or partly, unsubstantiated complaint would be unfair to a police officer and to a complainant. The policy of "secrecy" under the Act is a deliberate one, sanctioned by Parliament. It provides, amongst other things, reassurance to any potential complainants that their concerns will be dealt with the utmost confidentiality, and ordinarily well away from the glare of media attention.

As it is a breach of the code of conduct for a police officer to disobey an order in failing to answer questions of a senior officer or member of the Internal Investigations Section, the association is concerned that such

involuntary statements, made under compulsion, could be subject to disclosure or publication. Legislation should continue to prevent this from occurring. To this end, the *Police (Complaints and Disciplinary Proceedings) Act* has a dual purpose in that it provides for an avenue for complaints against police to be independently considered by the Police Complaints Authority, whilst maintaining confidentiality for both police and complainants.

The *Police (Complaints and Disciplinary Proceedings) Act* was last comprehensively reviewed by former district court judge Stevens (in 1998) which resulted in amendment to the Act in accordance with the report and recommendations. The Act was fundamentally amended to reduce the burden of proof required in the Police Disciplinary Tribunal from "beyond reasonable doubt" to "on the balance of probabilities". This was a major change to the Act.

The Police Disciplinary Tribunal

Proceedings before the Police Disciplinary Tribunal are confidential.

This should always be the case. There exist strong public-interest reasons why complaints should remain confidential. The Police Disciplinary Tribunal is essentially an employment tribunal which deals independently with employer-employee discipline issues.

The operation of Section 40 of the Act pertaining to proceedings before the Police Disciplinary Tribunal has been effective and should remain.

There exists in Section 40(7) of the Act a power of the tribunal to permit the Police Complaints Authority or his or her nominees and "any other person (including members of the public) to be present at proceedings of the tribunal". It is, of course, a matter at the discretion of the tribunal. However, the association holds the view that that section is adequate, ought to remain in the Act unamended, and currently provides the tribunal with proper and appropriate powers to permit third parties to be present during the proceedings, where the tribunal, in its discretion, regards it as necessary and desirable.

Definition of Corruption

In our view the question that you have posed is central to your deliberations of whether the current public integrity structures in South Australia are sufficient or, as you have reflected in your ministerial statement on the subject of public integrity dated 6 May 2010, an Independent Commission against Corruption (ICAC) is required.

In defining corruption it is important to ensure that criminality and issues of police discipline are not linked. The concern for the Police Association of South Australia and its members is to ensure that if an ICAC is eventually established either nationally or as a state commission, then conduct by police that would ordinarily be considered to be in breach of the Code of Conduct pursuant to the *Police Act*, should only be the subject of proceedings before an ICAC if the conduct under consideration falls within a legislated definition of corruption that deals with dishonest activity arising out of public office or public service.

The SAPOL Anti-Corruption Branch (ACB) operates according to directions issued by the Minister to the Commissioner pursuant to the *Police Act 1998*. Corruption is 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. The current public integrity structures as applicable to police in South Australia appear adequate, and there is no evidence of endemic corruption in the South Australia Police. Thus we are concerned that matters that could properly be dealt with within the existing public integrity structures in South Australia would unnecessarily find their way before an ICAC.

Issues of practicality also need to be considered. An ICAC could not consider some 1200 complaints against police lodged per year as well as investigate corruption in all areas involving public officials.

The Appropriate Delineation of Jurisdictional Boundaries between the Individual Bodies

In the context of the Police Complaints Authority, no complaint made to the Police Complaints Authority is concluded by the Commissioner of Police without reference to the Police Complaints Authority. If a breach of the Code of Conduct pursuant to the *Police Act* is prosecuted it is done so before the independent Police Disciplinary Tribunal. If criminality is alleged it is prosecuted by the Director of Public Prosecutions and determined by the independent judiciary and criminal justice system.

Oversight of the System

In relation to police complaints there is currently, and as far as we are aware, no complaint that there is a lack of oversight of the present system. Current structures are legislatively based and require reporting procedures to parliament. Outcomes of Disciplinary Tribunal matters are reported in the *Police Gazette* on a quarterly basis in an anonymous way. Disciplinary procedures are based on a strict punitive model. A disadvantage of the present system may be that it lacks an educative function. Further, in our view, the time taken to determine whether to lay proceedings before the Police Disciplinary Tribunal takes too long and should be improved. Once a matter is before the Police Disciplinary Tribunal and the timetable is controlled by the presiding officer, a magistrate, inappropriate delay is rare.

In relation to the Anti-Corruption Branch, the Commissioner is required to report every six months to the Minister on the operations of the Branch. The Branch is audited externally by a person (not being a member of South Australia Police or the public service) appointed by the Governor.

Summary

Against the background of your ministerial statement of 6 May 2010, we have interpreted your correspondence of 12 May 2010 to be an invitation to comment both in respect of the existing public integrity structures in South Australia as well as to remark upon the establishment of an ICAC.

The current system provides the necessary protections for complainants and police. Police conduct is closely scrutinised by existing legislation as well as the independent office of the Police Complaints Authority and the Police Disciplinary Tribunal. Unlike any other group in the workforce, police are compelled to answer questions to a member of the Internal Investigations Section established pursuant to the *Police (Complaints and Disciplinary Proceedings) Act*. There is no evidence that corruption of police within SAPOL is prevalent. Occasional isolated examples of dishonesty may occur, but there is no culture of corruption.

Yours sincerely



MARK CARROLL
PRESIDENT

Appendix B

MARIE SHAW QC

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17 March 2015

The Secretary
Police Association of South Australia
2nd Floor, 27 Carrington Street
Adelaide SA 5000

Dear Sirs

I am asked to advise of the potential impact of the proposal of the State Government to incorporate the Police Disciplinary Tribunal (“PDT”) into the new South Australian Civil Administrative Tribunal (“SACAT”) that is proposed to absorb many current administrative bodies. For the purpose of my consideration, I have obtained information about the current operation of the PDT and I have had the opportunity to have regard to Hansard, in particular the Second Reading explanation referred to by the Honorable Minister Gail Gago on 12 September 2013 in the Legislative Council.

The explanation provides information as to the mischief or shortcomings of the current administrative landscape that the new SACAT is intended to address.

The objectives of the legislation establishing SACAT are identified as follows:

1. To be accessible to all, especially to those with special needs;
2. To ensure efficient and cost effective processes for all parties involved;
3. To act with as little formality and technicality as possible;
4. To be flexible in the way in which it conducts its business;
5. To be transparent and accountable.

The mischief the SACAT is intended to address is said to include the complication arising out of the fact that each of the existing tribunals or bodies have their own structures and processes, which results in inconsistency and unnecessary duplication. This is said to contribute to “*creating an inefficient and confusing barrier to members of the public attempting to enforce their rights*”.

MARIE SHAW QC

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 under the *Police (Complaints and Disciplinary Proceedings) Act 1985* ("the Act") and to determine whether a police officer has breached the Act or the *Police Act 1998*. This means that many of the concerns that are said to be the reason for the absorption of the bodies into the new SACAT do not apply to the PDT.

That is, the PDT is not a body in respect of which accessibility or special needs impacting on accessibility are relevant. In that respect, quite properly, any and every complaint against police is the subject of an investigation and may or may not result in the need for a hearing. In the same way, there is no issue about cost effectiveness or procedural complexities. Police officers are well trained in the processes and are not prejudiced in that respect. Another citizen who needs to grapple with the process does not control the case against a police officer.

Indeed, 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 hierarchal 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.

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 amongst 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.

Further, issues of transparency and accountability are provided for by the legislation itself.

The PDT, its investigations and hearings must always be alive to ensuring that confidentiality is the norm. That is because every investigation of police that explores their powers or their conduct is likely to include evidence or information about police practices that for very good reasons, are invariably the subject of public interest immunity claims in order to preserve their ability to police effectively. That is, it is critical that police operations and police practices remain confidential so that their efforts to gather evidence and identify alleged offenders are not thwarted by the release of such information into the public domain.

MARIE SHAW QC

Police are dealing with very sensitive matters on a daily basis, both in relation to ongoing criminal enquiries but also in relation to more serious security issues. It is in the public interest that, where required, transparency gives way to ensuring that effective police operations are not put at risk.

This need for confidentiality of police operations and procedures necessarily would result in inconsistency between the way hearings relating to allegations against serving police officers are dealt with as compared to other matters that might be the subject of the new SACAT's jurisdiction.

That is, the Act and the *Police Act 1998* specifically recognise the need for a disciplinary structure that is able to address the unique responsibilities that police have and their integral role in protecting the public both in community policing and, perhaps more importantly, investigating crime and bringing alleged offenders into the criminal justice system. Parliament has determined that these goals are fostered before the PDT, for example, by the automatic suppression of a police officer's identity in relation to proceedings under the Act.

It is important to recognise that the members represented by the Police Association of South Australia ("PASA") have confidence in the present process of dealing with disciplinary matters. In addition, I am instructed that the Commissioner of Police does not believe that the PDT should be absorbed into the SACAT.

The history of the PDT demonstrates that it has neither been unwieldy, inefficient, expensive or inconsistent in its processes and its outcomes. There is no suggestion that the present processes do not work or have failed in any respect. Since December 2011, only three matters have proceeded to trial. 34 have been withdrawn. 64 have resolved by way of guilty pleas.

It is in the public interest that serving police officers are able to carry out their onerous responsibilities with the confidence that the current system and its disciplinary body has the experience and history of giving them a fair hearing.

In conclusion: unlike other tribunals that are to be abolished or merged or their costs reduced by the new structure, the disciplinary process for police officers is not an appropriate vehicle to seek to achieve such cost savings, for the following reasons:

- a. Police officers are an essential part of the community performing the unique role of ensuring that not only the public have confidence in the police force but also that there is a perception that police will put their personal safety second to that of a member of the public if the need

MARIE SHAW QC

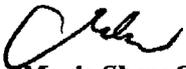
arose.

- b. The current PDT is the subject of careful legislation that has regard to the particular role that police have in our democracy both in addressing the most serious security risks and policing the whole range of regulatory and serious offending.
- c. The current system has been able to operate effectively in accordance with the Act under which it operates for a very long time without any suggestion that there is a need for reform. It is contrary to the public interest to abandon a system that has not been shown to be wanting, and to replace it with one in respect of which the police force would lack confidence and which is established for purposes inconsistent with the peculiar operational needs of police and the public interest.

In my opinion, there is a real risk that if the police lack confidence in their disciplinary process, it may be reflected in the performance of their duties, and therefore impact adversely on effective law enforcement and public protection. In addition, if the goal is transparency, then effective policing and public safety might well be placed at risk.

Should you require any further information please do not hesitate to contact me.

Kind regards,


Marie Shaw QC

Liability limited by a scheme approved under the professional standards legislation

Appendix C



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Ref : MC:jw:0619/13

9 October 2014

The Hon J Rau MP LLB
Attorney-General
GPO Box 464
ADELAIDE SA 5001

Dear Attorney

Re: Representation of police officers appearing at the ICAC

The office of the Independent Commissioner Against Corruption began operations a year ago. The Police Association therefore considers it timely to reflect on the impact the Commissioner's office has had on the association and its members.

Clearly, the secrecy provisions of the relevant legislation prevent us from detailing specific cases. But, this year, we have encountered a funding anomaly on which we would appreciate your intervention.

As police officers, our members constitute a class of people who might find themselves the subject of an ICAC schedule 2 examination. They could otherwise receive summonses to appear at such examination when they are not the subject officer.

The summons might or might not indicate whether the particular member is a subject officer, or the subject matter of the investigation.

A member who is not a subject officer could become a subject officer during the course of an investigation given the Commissioner's power to self-refer matters pursuant to section 23(2) of the act.

Given the seriousness of matters the commissioner is likely to investigate, and the act's secrecy provisions, the act provides that witnesses may be legally represented whether or not they are subject officers.

This approach is consistent with other similar commissions across Australia and inquisitorial judicial proceedings generally.

In other proceedings (criminal hearings, coronial inquests, and royal commissions) with which this association and your office are familiar, applications for reimbursement of the costs of legal representation have been made to you through such arrangements as Legal Bulletin 20, and *ex gratia* payments.

However, the secrecy provisions of the ICAC Act would not usually permit the making of an application to you for reimbursement of legal expenses, whether a member or this organization initially pays those expenses in line with protocols we have established in consultation with the Commissioner for the disclosure of the existence of the summons to the Police Association.

We would suggest that it is proper that our members are indemnified for legal costs incurred as a result of receiving summonses to schedule 2 examinations.

This is particularly so because the reasons they might be summonsed will relate to their employment as police officers, and they will not often know what the investigation relates to or whether they are subject officers.

A comparison of similar commissions across Australia reveals how the different jurisdictions have identified and addressed the issue.

New South Wales

The NSW government established the Legal Representation Office (LRO) to provide independent legal assistance to people in their dealings with the NSW Police Integrity Commission (PIC) and the NSW Independent Commission Against Corruption (ICAC).

The LRO provides grants of legal assistance to police officers who have received summonses to attend the commission.

Applicants can specify their choice of legal representation or are otherwise assigned representation by the LRO from a panel.

The grants are not means-tested, and it is a condition of the grant that the applicant repay the amount of the grant in the event that he or she is convicted of an indictable offence in a superior court as a result of the investigation.

Victoria

Section 151 of the *Independent Broad-based Anti-Corruption Commission (IBAC) Act* allows recipients of summonses to apply to the secretary to the Department of Justice for legal assistance funding.

The applicant nominates the legal practitioner of his or her choosing for the grant, although the IBAC may veto the funding of that legal representative in the event the appointment would prejudice an investigation.

Western Australia

Recipients of summonses from the Crime and Conduct Commission have a right to legal assistance funding from the Legal Services Commission of Western Australia.

The Legal Services Commission makes and assesses applications and disclosure of the existence of a summons is permitted to the Legal Services Commission for the purpose of making applications.

The grants of funding are not means-tested and the applicant may nominate his or her legal representative provided that that legal representative is on the panel of approved special legal aid providers maintained by the Legal Services Commission.

Proposal

We suggest that South Australia enact a scheme similar to those of comparable jurisdictions so as to allow our members who have received summonses from the ICAC to apply for legal assistance funding.

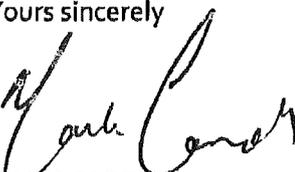
We invite discussion on the form of this scheme but suggest that it should:

- Not be means-tested.
- Be a right extended to recipients of summonses whether or not they are known subject officers.
- Be at arm's length from the ICAC.
- Allow applicants to nominate their choice of legal representation and, failing that, refer an applicant to a panel legal practitioner.

To safeguard the integrity of the scheme, we would not oppose a NSW-style approach that would permit it to recover legal expenses paid when an applicant is subsequently convicted of an indictable offence in a superior court in respect of the matter being investigated.

We propose a meeting to discuss this issue further.

Yours sincerely



MARK CARROLL
PRESIDENT

Submission of the Police Association Victoria to the Integrity and Anti-Corruption System Review

THE POLICE ASSOCIATION VICTORIA SUBMISSION

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Submission of the Police Association Victoria to the Integrity and Anti-Corruption System Review

1. Introduction

- 1.1 This submission is provided by the Police Association Victoria (**the Association**) on behalf of its members to assist the Public Sector Standards Commissioner in the conduct of a review into the effectiveness of Victoria's Integrity and Anti-Corruption System (**the Review**).

Police Association Victoria

- 1.2 In excess of 11,000 sworn members of the Victoria Police Force (over 98% of all police officers) are members of the Association. The Association liaises with senior management and command levels of the Victoria Police Force (**the Police Force**), including the Chief Commissioner, concerning the welfare and support of its members and the protection of their rights. Its role includes the provision of legal advice and representation to police in relation to matters arising out of their duties and responsibilities as members of the Police Force.
- 1.3 The Association is in a unique position to assist the Review. The Association has observed the operations of the Office of Police Integrity since its introduction and subsequent re-establishment under the *Police Integrity Act 2008* (**the Act**). The Association has received feedback from its members regarding the operation of the OPI and Victoria's integrity and anti-corruption system generally. The Association is also responsible for assisting its members who are the subject of investigation.

Victoria's anti-corruption arrangements

- 1.4 The Association believes that significant reforms are needed to ensure that a comprehensive, fair and accountable anti-corruption system is established in Victoria. The current arrangements are incomplete and fragmented. Anti-corruption powers at present are only exercised by the OPI against Victoria Police employees.

Submission of the Police Association Victoria to The Integrity and Anti-Corruption System Review

- 1.5 The Association has been a strong advocate for comprehensive corruption reform. The existing measures represent a patchwork quilt of disparate bodies with varying powers and limited jurisdictions. The resulting treatment of public sector employees is selective and inconsistent.
- 1.6 At one end of the spectrum, members of Victoria Police are the subject of a dedicated corruption body with draconian powers. At the other, the majority of the public sector (including politicians and other bearers of high office) are not answerable to any dedicated watchdog at all.

The current system – a flawed model

- 1.7 The Association has specific concerns regarding the current system and its ability to adequately address corruption in Victoria. The Association believes that urgent reform is required, in particular, in relation to:-
- 1.7.1 Oversight of the OPI;
 - 1.7.2 Public examinations by the OPI;
 - 1.7.3 The excessive and unnecessary protection of OPI staff in relation to civil and criminal liability;
 - 1.7.4 The relationship between the OPI, the Victorian Ombudsman and Victoria Police and the ability of these organisations to deal independently and comprehensively with corruption in Victoria;
 - 1.7.5 The need for the establishment of a broad-based Anti-Corruption Commission capable of independently addressing all complaints of serious misconduct against public officials.

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The need for a new system

- 1.8 The Association submits that the only means of achieving an efficient and effective integrity and anti-corruption system in Victoria is to establish a broad-based Anti-Corruption Commission with the power to investigate complaints of serious misconduct and criminal offending across the entire public sector. The limited focus of the OPI makes second-class citizens of serving police officers. The OPI focuses solely on police misconduct to the detriment of exposing corruption throughout the public sector. Until such time as the current system is replaced with a dedicated and independent Anti-Corruption Commission, Victoria will continue to labour under a flawed model incapable of fully investigating serious misconduct by all public officials.

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2. Oversight by Special Investigations Monitor

Background

- 2.1 Section 114 of the Act empowers the Special Investigations Monitor (**SIM**) with an oversight role in relation to the OPI. The oversight powers contained in Part 5 of the Act are manifestly inadequate.

No adequate complaint process

- 2.2 The SIM may only investigate a complaint made by a person who has attended an examination before the OPI where the complaint is made within 90 days after the person was excused from attendance and the person was not afforded adequate opportunity to convey his or her appreciation of the relevant factors to the Director.¹
- 2.3 There is no provision for a complaint to be made to the SIM generally regarding the conduct of the OPI and its staff.
- 2.4 The need for an independent complaint process is best illustrated by example.

OPI v Bolton

- 2.5 The case of *OPI v Bolton*² was heard before His Honour Mr Gurvich M. between 28 April and 5 May 2008 in the Melbourne Magistrates' Court.
- 2.6 The facts in *OPI v Bolton* demonstrate the need for the SIM to be empowered to receive and investigate complaints regarding the conduct of the OPI and its staff. It is evident from the outcome in *OPI v Bolton* that the conduct of the OPI warranted investigation:-

¹ s.118, *Police Integrity Act 2008*

² See Schedule 1 – Executive Summary of proceedings in *OPI v Bolton*, Melbourne Magistrates' Court, 28 April to 5 May 2008.

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- 2.6.1 OPI staff and investigators repeatedly denied, in writing and on oath, the existence of audio recordings subpoenaed by the defence which were important to Sergeant Bolton's defence;
- 2.6.2 The Presiding Magistrate observed that if the audio recordings existed, they were relevant and should be disclosed;
- 2.6.3 An OPI Investigator gave sworn evidence at the hearing that no such audio recordings were made;
- 2.6.4 The evidence of the OPI Investigator was subsequently contradicted by the evidence of three other witnesses who all swore that their interviews with the OPI had been audio recorded. The OPI investigator was recalled and changed her earlier evidence (having heard the conflicting evidence of the other witnesses) swearing *"there's a very strong possibility that our interview was recorded..."*
- 2.6.5 The audio recordings were not produced at the hearing despite evidence of their existence. Some of these recordings are still missing and have never been accounted for.

Bolton's complaint – A history of inaction

- 2.7 The charges brought by the OPI were dismissed and costs were awarded in favour of Sergeant Bolton on 5 May 2008. On 20 June 2008, Sergeant Bolton lodged a formal complaint with the SIM.³ The history of that complaint can be summarised as follows:-

14 July 2008 The SIM wrote to Sergeant Bolton acknowledging his complaint and advising he has no power under the Act to investigate the matter.⁴ The SIM forwarded a copy of the complaint and his reply to both Mr Michael Strong, Director, Police Integrity and Mr George Brouwer, State

³ Schedule 2 – Letter from Mr Carl Bolton to the SIM dated 20 June 2008

⁴ Schedule 2 – Letter from the SIM to Mr Carl Bolton dated 14 July 2008

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Ombudsman, for their consideration. While noting Sergeant Bolton's concerns relating to the destruction of audio recordings, perjury, attempting to pervert the course of justice and misconduct in public office by OPI officers, the SIM confirmed that he was unable to assist due to his limited powers under the Act.

22 July 2008

The Victorian Ombudsman, George Brouwer, wrote to Sergeant Bolton acknowledging receipt of a copy of the complaint provided to him by the SIM.⁵ The Ombudsman stated that he would be making enquiries concerning the alleged conduct of the OPI officers. It should be noted that the Victorian Ombudsman, Mr Brouwer, was the former Director of Police Integrity at the OPI prior to the appointment of Mr Michael Strong and was therefore the former superior to the OPI officers now under investigation.

5 November 2008

Deputy Ombudsman John Taylor wrote to Sergeant Bolton.⁶ Mr Taylor confirmed that four digital audio recordings had now been located on the personal drive of one of the OPI officers who had since left the organisation. These recordings constituted interviews with witnesses for the prosecution in Mr Bolton's case. The discovery of these recordings was in direct conflict with the sworn evidence of the OPI investigator who had sworn during the course of the hearing that no such audio recordings were made. These recordings were not disclosed to Sergeant Bolton by the OPI despite written requests and the service of subpoenas. Mr Taylor concluded:-

"There is no evidence to suggest that any other recordings exist or have been disposed of".

⁵ Schedule 2 – Letter from Mr George Brouwer, Ombudsman to Mr Carl Bolton dated 22 July 2008

⁶ Schedule 2 – Letter from Mr John Taylor, Deputy Ombudsman, to Mr Carl Bolton dated 5 November 2008

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This finding was made notwithstanding the fact that the diary notes of the Informant referred to additional recorded interviews with two other prosecution witnesses; Hill and Orsolich. Both Hill and Orsolich gave sworn evidence that their interviews with the OPI were audio recorded. This evidence was apparently not considered by Mr Taylor in reaching his conclusions. In relation to the filing of criminal charges against the OPI officers, Mr Taylor responded, somewhat unhelpfully:-

"This office does not provide legal advice or conduct criminal proceedings and hence, you may wish to seek your own advice on this matter."

- 24 November 2008 As a consequence of both the SIM and the Victorian Ombudsman lacking any adequate jurisdiction, Sergeant Bolton referred his complaint to the then Chief Commissioner, Christine Nixon.⁷ Receipt of the complaint by the Office of the Chief Commissioner was acknowledged on 27 November 2008. The matter was then referred to Assistant Commissioner ESD, Luke Cornelius, in March 2009. In May 2009, Assistant Commissioner Cornelius referred the complaint to Superintendent Lisa McMeeken.
- 26 November 2008 Sergeant Bolton wrote to the OPI requesting copies of the audio recordings located as a result of the Ombudsman's enquiries.⁸ By letter dated 15 December 2008, the OPI refused to provide the recordings to Sergeant Bolton.⁹ The OPI has never responded to Mr Bolton's substantive complaint.
- January 2010 Mr Bolton was advised by the Ethical Standards Department that the matter can be taken no further. Mr Bolton remains unaware whether his allegations of destruction of audio recordings, perjury, misconduct in

⁷ Schedule 2 – Letter from Mr Carl Bolton to Chief Commissioner Nixon dated 24 November 2008

⁸ Schedule 2 – Letter from Mr Carl Bolton to OPI dated 26 November 2008

⁹ Schedule 2 – Letter from OPI to Mr Carl Bolton dated 15 December 2008

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public office and attempting to pervert the course of justice have actually been put to the OPI officers involved or if they have been the subject of any formal interview or enquiry. The missing audio recordings have never been found.

Breach of Charter rights

- 2.8 In *Atlan v United Kingdom*¹⁰, the prosecution repeatedly denied the existence of undisclosed material and failed to inform the Judge of the true position when it appeared that there had been undisclosed material directly bearing on the defence advanced at trial. This was found to constitute a violation of Article 6(1) (the right to a fair trial).¹¹
- 2.9 Notwithstanding the facts in *OPI v Bolton* give rise to concerns of serious criminal misconduct and the violation of S.24(1) of the Charter, there is presently no means by which Sergeant Bolton can pursue a formal complaint to the SIM. The Act does not permit it. To date, no adequate investigation has been conducted in relation to the serious allegations of misconduct raised by Sergeant Bolton against the OPI. The current system is simply unable to deal with the matter.

Who guards the guardians?

- 2.10 The former Assistant Director, Office of Police Integrity, Graham Ashton, was interviewed by Liz Jackson on the ABC's Four Corners program on 12 February 2007. Mr Ashton made the following important observations:-

"...noble cause corruption is something we focus heavily on at the OPI because it's an often misunderstood concept. Noble cause corruption is the breeding ground from which more endemic corruption occurs and more serious corruption grows out of that. If there's an acceptance that any sort

¹⁰ (2001) 34 EHRR 833

¹¹ See s.24(1), *Charter of Human Rights and Responsibilities Act 2006*

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*of corruption is acceptable because it has a noble end, that's where corruption gets a foothold and quite often there'll be a cultural acceptance of noble cause corruption but not of what people might regard as a more serious corruption, but there's little understanding that the more serious corruption will generally flow from an environment that's created by the noble cause corruption."*¹²

Mr Ashton went on to say with respect to the Armed Offenders Squad:-

*"So I think if you find that here you've got an elite squad that should be staffed by professionals doing a difficult job, you're entitled to expect, I think, that the highest ethical standards are conducted in that squad, because if they're investigating serious crimes the last thing the community wants is for prosecutions to be put at risk by slipshod investigations or by shoddy police work."*¹³

2.11 Mr Ashton's comments are of equal application to the operations of the OPI. The community is entitled to expect the OPI to conduct itself in a professional manner to the highest ethical standards. The concerns identified in *OPI v Bolton* relating to the collection of relevant audio recorded evidence, the apparent destruction of that evidence, the initial denial of the existence of such evidence on oath and the subsequent admission that such evidence did exist despite previous denials to the contrary, highlights the need for a fully independent body capable of oversight and review of the actions of the OPI and its staff. The SIM and the Ombudsman are not empowered to discharge this function.

2.12 The SIM must be capable of entertaining complaints relating to any aspect of the operations of the OPI and have the power to fully investigate. The coercive powers and secrecy provisions afforded to the OPI are unprecedented in Victoria. It is not in the public interest for the exercise of such powers to go unchecked without a formal

¹² "Four Corners", ABC, 12 February 2007

¹³ "Four Corners", ABC, 12 February 2007

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process for complaint, investigation and review. 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 Victoria Police to have confidence in the operations of the OPI. Aggrieved parties must have the opportunity to have their complaints relating to the conduct of the OPI heard and investigated in a thorough and expeditious manner.

- 2.13 Only a few OPI prosecutions have proceeded to hearing to date. A significant proportion have failed. The fact that the problems identified in *OPI v Bolton* have arisen so early in the active life of the OPI reinforces the need for formal measures to deal with complaints against the OPI on a comprehensive basis.

Protected document provisions

- 2.14 The material non-disclosure by the OPI of evidence relevant to the defence was only exposed in *OPI v Bolton* through the use of a subpoena. The introduction of the protected document provisions contained in sections 104 to 108 of the Act subsequent to the decision in *OPI v Bolton* may prevent the future detection of relevant material not disclosed to the defence. Such non-disclosure is capable of constituting a violation of an accused person's right to a fair trial (as found in *Atlan v United Kingdom*).¹⁴

A comparison – Anti-corruption bodies Interstate and in the Commonwealth

- 2.15 A comparison with the oversight and review provisions of other bodies in Australia that enjoy similar powers is illustrative of the lack of adequate oversight of the OPI.

NSW

- 2.16 In New South Wales, Part 7 of the *Independent Commission Against Corruption Act* 1988 establishes a Parliamentary Joint Committee 'to monitor and to review the exercise by the Commission and the Inspector of the Commission's and Inspector's functions' (ss 64 (1)(a)). The Joint Committee is not empowered to investigate

¹⁴ (2001) 34 EHRR 833

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particular matters (ss 64 (2)). The Inspector of the ICAC is however empowered to deal with complaints of any impropriety or misconduct on the part of the Commission or officers of the Commission (Part 5A). Similar provisions have been incorporated in the *Police Integrity Commission Act 1996* (Parts 6 and 7).

Queensland

- 2.17 In Queensland, Chapter 6 Division 1 of Part 4 of the *Crime and Misconduct Act 2001* establishes the Office of Parliamentary Commissioner. Sub-section 314 (2)(b) empowers the Commissioner to investigate complaints about the conduct or activities of the Crimes and Misconduct Commission as and when required by the Parliamentary Committee. The Parliamentary Commissioner has power to conduct a coercive hearing to obtain information when authorised by the Parliamentary Committee (s 318). The Act also provides power for the Governor in Council to appoint a Public Interest Monitor to monitor applications for the use of surveillance warrants and covert search warrants (Chapter 6, Part 5 of the Act).

Commonwealth

- 2.18 The Australian Crime Commission (ACC) is subject to the oversight of a Joint Committee of the Commonwealth Parliament that has, as one of its duties, the requirement to monitor and review the performance of the ACC regarding its functions (Part 111 of the *Australian Crimes Commission Act 2002*). The ACC is also subject to monitoring by the Inter-Government Committee. (Part II Subdivision C.) Matters arising under the *Australian Crimes Commission Act 2002* can also be the subject of proceedings pursuant to the *Administrative Decisions (Judicial Review) Act 1977* (section 57).

Western Australia

- 2.19 In Western Australia s. 188 of the *Corruption and Crime Commission Act 2003*, establishes the office of Parliamentary Inspector. Sub-section 188(4) provides that "the

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Parliamentary Inspector is an officer of Parliament and is responsible for assisting the Standing Committee in the performance of its functions”.

2.20 Sub-section 195(1)(b) empowers the Parliamentary Inspector “*to deal with matters of misconduct on the part of the Commission, officers of the Commission and officers of the Parliamentary Inspector*”. Powers provided to the Parliamentary Inspector include the power to:

2.20.1 do all things necessary or convenient for the performance of the Parliamentary Inspector’s functions (ss 196 (2));

2.20.2 ‘require officers to attend before the Parliamentary Inspector to answer questions or produce documents or other things relating to the Commission’s Operations or the conduct of officers’ (ss 196 (3)(d)); and

2.20.3 hold an inquiry akin to that of a Royal Commission (s 197).

Conclusion

2.21 It can be seen from the oversight and monitoring of similar bodies in Australia that substantial safeguards have been implemented elsewhere to ensure the exercise of powers by such organisations, including issues of misconduct, are amenable to investigation and review. This is in stark contrast to the extremely limited oversight in Victoria.

2.22 It cannot be argued that further scrutiny of the OPI will adversely impact upon the performance of its functions if mechanisms for such scrutiny already exist under the equivalent models in other States and in the Commonwealth. This is particularly so bearing in mind that the equivalent bodies have been operating for some considerable time without any apparent detriment (longer, in fact, than the OPI). The ACC, for

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example, has often been the subject of judicial review by the Federal Court.¹⁵ No such accountability exists with the OPI. It is expressly prohibited.¹⁶

2.23 *OPI v Bolton* provides a compelling case for greater scrutiny of and accountability for the operations of the OPI beyond the manifestly inadequate provisions contained in Part 5 of the Act.

3. Proposed Findings

3.1 The Review should make the following recommendations:-

- i. the current oversight of the OPI is inadequate;
- ii. the SIM should be empowered to investigate and report on all matters of misconduct on the part of the OPI and its staff including a power to conduct coercive hearings and to require those called before the SIM to answer questions or produce documents or other things;
- iii. The role of the SIM should be expanded to enable the SIM to fully monitor and review the functions and actions of the OPI and its staff. The SIM's powers should equate to those enjoyed by equivalent interstate organisations;
- iv. The expanded powers of the SIM to receive complaints and investigate the actions of the OPI must be retrospective to enable the SIM to consider and review cases such as *OPI v Bolton*. It is in the public interest for the SIM to be empowered to fully investigate the past conduct of the OPI in order to clear the air surrounding matters which have not to date been the subject of any adequate scrutiny.
- v. The OPI should be amenable to judicial review in line with other coercive bodies such as the ACC.

¹⁵ For a recent example of a successful review of the ACC, see *OK v Australian Crime Commission* [2009] FCA 1038

¹⁶ S.109(6), *Police Integrity Act 2008*

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4. Public Examinations

Background

- 4.1 Since its inception, the OPI has conducted four public examinations under s.65 of the Act. The OPI is empowered to conduct public examinations if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, the Director considers that it is in the public interest to do so.¹⁷
- 4.2 All public examinations conducted by the OPI to date have occurred prior to the commencement of criminal proceedings and have involved witnesses who were yet to be the subject of any formal court process. The overwhelming majority of people examined have necessarily been police officers.

Interference with the administration of justice

- 4.3 It must have been clear to the OPI prior to the commencement of their public examinations whether certain persons of interest were being viewed as suspects or were likely to be subject to adverse findings and potential criminal prosecution. The effect of these examinations has been to publicly accuse individuals of corruption prior to anyone being charged, tried or convicted. This has taken place amidst a frenzy of media interest and publicity promoted, in part, by the OPI's own Communications and Media Unit.
- 4.4 The conduct of public examinations has the potential to seriously interfere with the administration of justice. The risk that individuals may be tried and convicted in the court of public opinion before they are even charged is contrary to both the presumption of innocence and the right to a fair trial (now enshrined in s.24 and 25 of the *Charter of Human Rights and Responsibilities Act 2006*). The fact that previous public

¹⁷ S.65(2), *Police Integrity Act 2008*

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examinations by the OPI have been conducted in an atmosphere of trial by ambush¹⁸ with selective evidence being adduced only heightens the unfairness of this process.

Contrasting approaches - ACC

- 4.5 It is accepted that the investigation of police corruption and serious misconduct is an essential and important function. This can, of course, be achieved through the conduct of private examinations and the subsequent prosecution of any identified offenders. It is the *"name and shame"* nature of public examinations that is most troubling. There are already examples of police officers who have been named and publicly vilified through the conduct of public examinations only to be subsequently acquitted.¹⁹ The destruction of the reputations of innocent individuals is anathema to any civilized and democratic society.
- 4.6 Other coercive bodies in Australia operate successfully without the need for public hearings. The Australian Crime Commission is a well established and successful coercive investigation body which has operated for years without the need for public examinations and media publicity of the information received in the course of its examinations. To the contrary, the ACC operates its hearing in private. In doing so, its operations do not jeopardize the fair trial of individuals who subsequently find themselves the subject of criminal charges by avoiding the public *"name and shame"* approach which has been a hallmark of the OPI.

Rushing to judgment

- 4.7 The vice in conducting public examinations into allegations of criminal offending and serious misconduct is obvious. The reports generated by the OPI following a public examination include findings of fact which, in effect, amount to a determination by the delegate that certain individuals have committed criminal offences. Recent public examinations have been conducted before a retired Federal Court judge. This gives a

¹⁸ See, for example, "Exposing corruption within senior levels of Victoria Police", November 2007

¹⁹ R v Ashby [2010] VSC 14

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judicial imprimatur to the OPI's findings.²⁰ These findings have been published by the OPI and reported upon widely in the media and on the internet. While the OPI has removed some of this material from its website due to pending court proceedings, a simple Google search will readily locate information relating to the OPI's previous public hearings and findings.

4.8 In relation to these findings, the following matters are particularly salient:-

4.8.1 The facts before the OPI in relation to its public examinations have invariably been in dispute and remained in issue in subsequent criminal proceedings;

4.8.2 In reaching its conclusions, the OPI, through its delegate, has applied a lower standard of proof than would apply to a criminal proceeding;

4.8.3 The OPI has, in part, acted on evidence in the course of public examinations which will not find its way before a jury hearing a criminal charge. This evidence may have already found its way into the media notwithstanding the fact that it may be inadmissible in a criminal court.

ASIC v HLP Financial Planning (Aus) Pty Ltd

4.9 In *Australian Securities Investment Commission v HLP Financial Planning (Aus) Pty Ltd*²¹, Finkelstein J dealt with the relationship between civil and criminal proceedings involving the same subject matter. This case involved an application by ASIC seeking declarations in relation to an unregistered management investment scheme which breached the provisions of the *Corporations Act 2001 (Cth)*. It is accepted that the functions and powers of ASIC are quite different to those of the OPI. The decision in *ASIC v HLP Financial Planning (Aus) Pty Ltd* is, however, illustrative of the problems that can be encountered when public determinations are made on facts which are to be the subject of a subsequent criminal prosecution. Finkelstein J concluded in *ASIC v HLP Financial Planning (Aus) Pty Ltd* that:-

²⁰ "Exposing corruption within senior levels of Victoria Police", November 2007

²¹ [2007] FCA 1868

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- 4.9.1 The court should not grant declaratory or injunctive relief where the relief amounts to a declaration that the defendant has committed a crime in circumstances where a criminal prosecution is on the cards or has not been positively ruled out and the facts are in dispute.
- 4.9.2 If there is potential for an adverse impact on the jury in any subsequent criminal proceedings as a consequence of a declaration or injunction being granted in a civil proceeding dealing with the same subject matter, this is a further factor in favour of the court declining to grant the relief sought in the civil proceedings.
- 4.10 Finkelstein J approved of the comments of Frieberg J in *ASIC v Intertax Holdings Pty Ltd*²² in which His Honour observed:-

"Where the possibility of prosecution is open, it would, in my judgment, be contrary to the ordinary practice for the authority of this Court to be given to a declaration which, in substance, amounted to a declaration that a defendant had committed a crime. One should not make a declaration which might be falsified by a subsequent acquittal in proceedings between the same parties."

- 4.11 Importantly, Finkelstein J observed in *ASIC v HLP Financial Planning (Aus) Pty Ltd* that:-

"Third, there is potential for an adverse impact on the jury. The civil case will be decided on evidence that, for the most part, will not be available to the prosecutor in a criminal trial. Imagine what would happen if a jury discovers that a civil court has ruled that Mr Berlowitz' conduct is illegal. The judge presiding over the criminal trial will be obliged to tell the jury to leave that out of account. It is axiomatic in our courts that jurors can be trusted to leave out of their consideration things that they are instructed to

²² [2006] QSC 276

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leave out. Yet many regard this kind of instruction as little more than wishful thinking. Perhaps the jurors will have explained to them that the judge who made the ruling acted on evidence not before the jury and that in any event a lower standard of proof was required in the civil court. Whether those instructions will result in a fair criminal trial may be strongly doubted. Last, but by no means least, is the falsification point made by Fryberg J. which, if it occurs, will bring the law into disrepute".²³

- 4.12 While the proceeding before Finkelstein J was clearly of a different character, the findings of the OPI can, for all practical purposes, constitute a very public determination of the guilt of an individual. The reporting of public examinations has been widespread and sensational. Many potential jurors may have formed a personal view on the guilt of those called before the OPI. Whether those jurors can put out of their mind the matters they have read and heard, as Finkelstein J noted, may be strongly doubted. More importantly, if, as we have seen, individuals are subsequently exonerated, this will bring about a falsification of the findings of the OPI which, as Frieberg J observed, will bring the law into disrepute.

The destruction of reputations

- 4.13 It is unacceptable for adverse public findings to be made against police officers by the OPI in relation to serious criminal offences where those members may never be charged or be charged and acquitted. To allow this practice to continue not only tarnishes the good reputations and careers of serving police members, it endangers the administration of justice itself.

²³ [2007] FCA 1868 at [59]

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The OPI's approach to its own staff

- 4.14 The OPI has been unwilling to identify its own staff when they have been suspected of committing serious offences in relation to the alleged theft of \$3,000.00.²⁴ An OPI spokesman was reported as having stated that the OPI employee was under investigation but that "... *he couldn't comment further for privacy reasons.*" It is ironic that the OPI is sensitive to the privacy of its own investigators when they are faced with allegations of criminality but unwilling to afford Victoria Police members the same courtesy and protection when their reputations are at stake.
- 4.15 The OPI officer suspected of fraud was subjected to what appears to be a disciplinary investigation rather than a criminal investigation. As identified in the relevant media reporting of this incident²⁵, this revelation only highlights the need for a broad-based Anti-Corruption Commission with powers to investigate not only police members but the entire public sector.

The OPI's approach to Victoria Police members

- 4.16 In February 2006, the OPI conducted its first public examination in the Melbourne County Court into the alleged theft of cash by a police member in Flinders, Victoria. In the course of that inquiry, the Police Association understands that OPI personnel and senior Victoria Police personnel (not attending as part of the inquiry but as observers) were provided with secure and private entry to and from the court through an underground car-park. This practice was repeated during the "*Operation Diana*" hearings conducted at the OPI offices in 2007 with senior police and OPI officials being provided with secure and private entry.
- 4.17 By contrast, all police members attending these inquiries pursuant to summons, whether as witnesses or suspects, were forced to run a media gauntlet through the public

²⁴ Schedule 2 – The Age, 3 September 2008, The Australian, 5 March 2009, The Age, 5 March 2009, The Herald Sun, 14 August 2009

²⁵ Schedule 2 – The Age, 3 September 2008, The Australian, 5 March 2009, The Age, 5 March 2009, The Herald Sun, 14 August 2009

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entrance. As a consequence, at least one serving police member (who was a witness, not a suspect) was filmed by television crews that aired footage as part of a “*corruption story*” on national television. That individual (a long-standing police member of impeccable character and service record) subsequently had to endure contact from acquaintances and other police officers, many of whom made disparaging remarks questioning his integrity.

R v Ashby

4.18 In the recent decision of the Victorian Supreme Court in *R v Ashby*²⁶, the public examinations conducted before the Director of Police Integrity’s delegate, Mr Murray Wilcox QC, were found to be unlawful as a consequence of the Director’s failure to make a valid delegation of his power to examine witnesses on oath.

4.19 The Director’s failure to comply with the requirements of the Act rendered the public hearing process invalid. It can only be described as a failure of epic proportions. Mr Ashby has been subjected to a public humiliation before an unlawfully constituted tribunal convened without proper legal authority. Mr Ashby’s recent acquittal has falsified the findings and recommendations of the OPI and severely, if not irreparably, damaged the credibility and integrity of the organisation itself.

4.20 The Director of Police Integrity has defended the conduct of public hearings on the basis that they reinforce community confidence that police corruption is being tackled. The Director has stated “*if you are given a power, you are expected to use it, in appropriate circumstances*”²⁷. With respect, if you are given a power, you are expected to use it lawfully. The fact that the public examinations conducted in November 2007 were tainted by illegality has raised significant public concern and seriously eroded public confidence in the operations of the OPI.

²⁶ *R v Ashby* [2010] VSC 14

²⁷ Mr Michael Strong, Director of Police Integrity, *The Age Newspaper*, 6 February 2010

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5. Proposed Findings

5.1 The Review should make the following recommendations:-

- i. It is not in the public interest under s.65(2) of the Act for public examinations to be conducted by the OPI where a criminal prosecution is on the cards or has not been positively ruled out and the facts are in dispute. In such cases, the Director of Police Integrity should decline to conduct public examinations pursuant to s.65 of the Act on the ground that such hearings have the potential to prejudice the fair trial of individuals who may subsequently find themselves the subject of criminal charges;
- ii. The OPI Communications and Media Unit should refrain from publicizing or encouraging the publication of material concerning investigations where a criminal prosecution is on the cards or has not been positively ruled out so as not to jeopardize the fair trial of individuals who may subsequently find themselves the subject of criminal charges;
- iii. The OPI has a statutory responsibility to report to Parliament. Division 4 of the Act deals expressly with confidentiality, reporting and disclosure and limits the extent to which information is to be made public. In view of the strict confidentiality and reporting requirements under the Act, the need for the OPI to maintain and fund its own Communications and Media Unit is a questionable use of resources. These resources would be better directed toward the organisation's core investigative functions. The self promotion of the OPI's activities via its Communications and Media Unit has potential to compromise the organisation's independence and is inconsistent with the confidentiality and secrecy of its operations.

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6. Protected Persons and Critical Incidents

- 6.1 The Act provides significant protection to persons coming within the definition of *'protected person'* as defined by the Act. In short, protected persons are the Director of the OPI or any employee or delegate of the OPI.

Section 109 – General immunity

- 6.2 Section 109 of the Act provides that a staff member of the OPI is not liable on any ground whatsoever for any civil or criminal proceedings that he or she would otherwise have been liable in respect of any act purportedly done under the Act *'unless the act was done in bad faith'*. This blanket protection does not apply to incidents coming within the definition of critical incident.
- 6.3 Section 109 makes it almost impossible for an aggrieved person to commence civil action or pursue criminal charges against a staff member of the OPI. Sub-sections (3) and (4) prohibit action being taken without the leave of the Supreme Court. This can only be granted where the Supreme Court is satisfied that there is a substantial ground for concluding that the OPI officer acted in bad faith.
- 6.4 The onus rests on a person seeking to commence civil or criminal proceedings to prove to the Supreme Court, as a pre-condition to such action, that the OPI officer has acted in bad faith. This goes well beyond protecting OPI officers who are acting in good faith. It must be established that there is a *'substantial'* basis for concluding that there has been bad faith. This is an extremely heavy burden of proof. In the case of civil actions, a prospective claimant must be able to discharge this onus without having recourse to the customary processes of discovery or interrogation that are normally available to a litigant. Depending on the cause of action, it may be impossible to demonstrate bad faith without first having access to adequate discovery of material exclusively within the possession of the OPI.

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Civil action

- 6.5 The inability of a claimant to prove bad faith on the part of an OPI officer will no doubt result in some people being left without any remedy notwithstanding the significant personal harm occasioned by the actions of an OPI officer. For example, if an OPI investigator, other than in the course of a critical incident but through his or her negligence, causes a child to be seriously injured, that child, through his or her parents, cannot commence civil proceedings without first satisfying the Supreme Court that the OPI officer was acting in bad faith at the time of the incident. This cannot be an intended consequence. It is a position which is incompatible with the common law rights of both the child and his or her family.
- 6.6 The common law presumption of statutory interpretation that, where possible, statutes should not be interpreted as abrogating common law rights is a presumption based on high authority of long standing.²⁸ Legislation can, of course, override the common law. However, for this to occur a clear intention to this effect is required on the part of the legislature. The Act as it presently stands restricts the common law right of individuals to commence action against a very narrow class of persons. No other class of individuals in this State enjoys this immunity.

Criminal action

- 6.7 In the case of criminal offences not coming within the definition of a critical incident, OPI officers can only be prosecuted if their impugned conduct was done in bad faith. The wording of this section leaves OPI officers liable to prosecution in cases where bad faith forms an element of the offence, for example, attempting to pervert the course of justice or perjury. However, in order to commence a prosecution, it may be necessary for the prosecution to effectively conduct its case before the Supreme Court in order to obtain leave to file criminal charges. The time involved and the financial cost of such action

²⁸ *Clancy v Butchers' Shop Employees Union* (1904) 1 CLR 181, 201; *Australian Tramway Employees Association v Prahran and Malvern Tramway Trust* (1913) 17 CLR 680, 687; *Re Bolton, ex parte Beane* (1987) 162 CLR 514; *Commissioner of Inland Revenue v West-Walker* [1954] NZLR 191; Pearce, DC & Geddes, *RS Statutory Interpretation in Australia*, 3rd ed. Butterworths 1988 at [5.11].

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would, of course, be significant. Why the normal procedure, where decisions of this nature are made by the Office of Public Prosecutions, cannot be followed in the case of OPI officers has not been established or justified.

- 6.8 An OPI officer is not liable for offences where negligence or even gross negligence satisfy the mental element of the offence. This is because the blanket protection requires the further element of bad faith in cases where OPI officers are concerned. The common law offence of misconduct in public office is the most obvious example of such an offence. The Court of Appeal of South Australia has explained the scope of this offence and specifically identified neglect of duty as a form of misconduct coming within the ambit of this offence.²⁹ The exemption of OPI officers from exposure to the application of negligence based offences places them above the law applicable to the remainder of the public sector.

Contrasting approaches – s.123 Police Regulation Act 1958

- 6.9 Section 109, and its effect, should be contrasted with the immunity provided to members of Victoria Police. Section 123 of the *Police Regulation Act 1958* provides that:

(1) A member of the force or a police recruit is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith in the course of his or her duty as a member of the force or police recruit.

(2) Any liability resulting from an act or omission that, but for subsection (1), would attach to a member of the force or police recruit, attaches instead to the State.

- 6.10 The protection from liability provided to police, unlike the OPI, makes no mention of criminal proceedings. Indeed, the Minister for Police and Emergency Services, Mr Haermeyer, during his second reading speech specifically stated that:

²⁹ Question of Law Reserved (No 2 of 1996) (1996) 67 SASR 62 at 77, 78, 85 and 87

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The bill also provides immunity to police officers from personal liability for civil action arising from any act or omission undertaken in good faith while on duty. This measure will free responsible police members from the worry of legal proceedings while performing their duties and is consistent with the protection already afforded police officers in New South Wales and South Australia.³⁰

6.11 Carabetta has noted that s 137 of the *Police Act 1892 (WA)* is to the same effect.³¹ The absence of similar provisions Interstate to those enjoyed by the OPI raises the question as to why such protection is considered necessary for OPI investigators.

6.12 Section 8 of the *Charter of Human Rights and Responsibilities Act 2006* provides that:

- (1) Every person has the right to recognition as a person before the law.
- (2) Every person has the right to enjoy his or her human rights without discrimination.
- (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

6.13 Fleming has explained the rationale for the law of torts as follows:

"Tort liability ... exists primarily to compensate the person injured by compelling the wrongdoer to pay for the damage he has done. True, some traces of its older link with punishment and crime have survived to the present day, most prominently exemplary damages to punish and deter contumelious and outrageous wrongdoing. Yet the principal concern of the law of torts nowadays is with casualties of accidental, i.e., unintended, harm. In this wider field, the law is concerned chiefly with distributing

³⁰ Parliamentary Debates, Legislative Assembly 2 December 1999 at page 789.

³¹ Carabetta, J 'Employment Status of the Police in Australia' [2003] MULR 1 at footnote 7.

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losses which are an inevitable by-product of modern living, and, in allocating risk, makes less and less allowance to ideas of punishment, admonition, and deterrence".³²

- 6.14 The protection afforded to OPI officers effectively replaces the primary objective of the law of torts with a liability that is only enlivened when any harm by an OPI employee was occasioned in bad faith. As a result, section 109 of the Act is not in keeping with the terms or sentiment of Section 8 of the *Charter* and, in particular, with the requirement that 'every person is equal before the law and is entitled to the equal protection of the law without discrimination ...'³³
- 6.15 The Act clearly provides OPI officers with preferential treatment well beyond that given to any other member of the community and, in particular, any fellow public servant. Any person seeking to take civil action against an OPI officer is placed at an enormous disadvantage.

Section 110 – Critical incidents

- 6.16 Section 110 of the Act provides that OPI staff members are not personally liable for anything done or omitted to be done in good faith when performing a function or exercising a power under the Act in relation to a critical incident. Critical incident is defined³⁴ as meaning an incident involving OPI personnel while on duty that resulted in the death or serious injury of a person and also involved:
- 6.16.1 the discharge of a firearm by a member; or
 - 6.16.2 the use of force by a member;
 - 6.16.3 the use of a motor car by a member; or
 - 6.16.4 occurred while the person was in the custody of a member.

³² Fleming, J.G *The Law of Torts*, 5th ed. The Law Book Co. 1977 at page 2.

³³ S.8(3), *Charter of Human Rights and Responsibilities Act 2006*

³⁴ S.30, *Police Integrity Act 2008*

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- 6.17 The scope of section 110 is excessive. It is arguable that an OPI officer is not personally liable for committing serious criminal offences as long as he or she was acting in good faith at the time of the incident. Support for this interpretation can be found in the fact that section 109 provides protection to OPI officers with respect to both civil and criminal proceedings. Sub-section 109(2), in excluding the blanket protection given to OPI officers involved in critical incidents, does not differentiate between civil and criminal proceedings. It follows that section 110 has application to both civil and criminal proceedings.
- 6.18 If this is correct section 110 appears to have the extraordinary effect of exempting all OPI officers, while on duty, from liability for any criminal offence where a person is killed or injured as long as he or she was acting in good faith at the time of the incident and the cause of death or injury falls within the definition of a critical incident. That is, the death or injury was caused by the OPI officer:
- 6.18.1 shooting a person;
 - 6.18.2 using physical violence on a person;
 - 6.18.3 driving a motor car; or
 - 6.18.4 while the person was in custody.
- 6.19 Although these are precisely the type of situations in which the public would expect any law enforcement officer to be held most accountable for his or her actions (as is the case with members of Victoria Police), the Act does not require such accountability from the OPI and its staff.

The OPI and motor vehicles

- 6.20 Section 110 clearly encompasses a situation where the personal actions of an OPI officer have turned what was not a critical incident into a critical incident. A case in point would be a person killed as the result of an OPI officer driving a motor vehicle. For some reason, not immediately apparent, even the passenger in an OPI car is protected under the Act. Leaving that aside, an OPI officer could be driving an OPI car in pursuit

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of a suspect in a manner that was negligent or perhaps even dangerous and in doing so cause the death or serious injury of another person. In reliance on the terms of subsection 110(1), the OPI officer could argue that he or she was not personally liable because he or she was acting in good faith at the time. If that view is correct, the only action that could be taken would be civil action against the State.³⁵

Contrasting Approaches – Police exemption under Road Rule 305

6.21 The protection afforded to the OPI regarding the driving of a motor car needs to be contrasted with the very limited protection provided to police driving motor cars in the course of their duties. *Road Rule 305* only exempts police from complying with the *Road Rules* when taking reasonable care and when it is reasonable in the circumstances to do so. Police officers are not protected from prosecution, even when acting in good faith, if their actions, when judged objectively, were not reasonable. Police are certainly not protected from prosecution in cases where it is alleged that serious offences against the *Road Safety Act 1986* or *Crimes Act 1958* have been committed.

The OPI and firearms

6.22 OPI officers are authorized under the Act to carry firearms. It is important to consider what would happen if an OPI investigator discharged his or her firearm and in doing so negligently killed or seriously wounded an innocent bystander. As is the case in relation to the negligent or even dangerous driving of a motor car, section 110 protects an OPI officer from personal liability for what could amount to very serious criminal misconduct.

The danger of applying an inconsistent standard to law enforcement

6.23 The extra protection afforded to OPI officers is surprising given that most OPI investigators are either former police or law enforcement officers of some description. OPI investigators are subject to the same pressures and temptations as any other law

³⁵ S.110(2) *Police Integrity Act 2008*

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enforcement officer and are just as prone to doing the wrong thing. There is no logical reason why the OPI should not be subject to the same scrutiny and the same laws that apply to other law enforcement organisations. One sure way to encourage abuse of power is to remove or obstruct the courts from passing judgment on alleged misconduct on the part of OPI officers. In the words of Lord Acton;

"Power tends to corrupt, and absolute power corrupts absolutely."

The Act in its current form could be said to so comprehensively absolve OPI employees from any responsibility for their actions as to encourage careless, reckless or even cavalier behaviour.

- 6.24 It is foreseeable that OPI investigators will have cause to investigate police in relation to their involvement in incidents of a similar nature to the matters specified in the definition of a critical incident under the Act. It would be unfair and discriminatory if a police member could be charged with criminal offences arising out of an incident if, in the same circumstances, an OPI officer would avoid prosecution for the same offence due to the application of these protective provisions. Preferential treatment of this nature would seriously diminish confidence in the criminal justice system as a whole.

No judicial review

- 6.25 Sub-section 109(6) of the Act prevents judicial review of the decisions of the Director to commence or to refuse to commence an investigation. The result is that the Director's decisions are immune from independent judicial review. Wrong or even biased decisions are not subject to independent judicial scrutiny. Other law enforcement bodies must operate within the normal judicial framework. No adequate reason has been advanced to exempt the OPI from the due processes of our courts to the extent provided under the Act.

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7. Compellability of OPI staff - Section 109A

Background

- 7.1 Section 109A(1) of the Act provides that a protected person cannot be compelled to give evidence in any legal proceeding in respect of any matter coming to his or her knowledge in the performance of functions under the Act.
- 7.2 A protected person can only be compelled to give evidence in a legal proceeding if the Director certifies in writing that the giving of evidence by the protected person is in the public interest.³⁶
- 7.3 In terms of transparency and accountability, it is of concern that the Director of Police Integrity alone has the power to determine whether or not an OPI staff member or, for that matter, the Director himself shall give evidence before a court. S.109A operates so as to render the Director and any other OPI employee immune from answering a subpoena to give evidence unless the Director certifies in writing that the giving of evidence by the OPI staff member is in the public interest.

Consequences

- 7.4 The practical consequences are significant:-
- 7.4.1 An accused person facing criminal charges initiated by the OPI may seek to subpoena an OPI employee to adduce evidence favourable to the defence but damaging to the prosecution case. There is no obligation under s.109A for the Director to certify that the giving of this evidence by the OPI member is in the public interest. Moreover, in considering this question, the Director has a clear conflict of interest in determining whether to permit evidence to be adduced which may be damaging to a case brought by his agency. The court or judicial officer before whom the charges are being heard has no discretion or power to

³⁶ S.109A(2) *Police Integrity Act 2008*

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direct the calling of such a witness. The fact the Director alone must decide this question gives rise to at least a perception of bias.

- 7.4.2 In civil or criminal proceedings commenced against the OPI, a subpoena may be issued seeking to compel an OPI employee to give evidence. Once again, it falls to the Director to determine whether or not the witness shall be compelled to give such evidence. Yet again, there is no judicial power or discretion to require such a witness to be compelled to give evidence if the Director refuses to certify in writing that the giving of this evidence is in the public interest. In a civil or criminal proceeding where the Director may have a direct interest or involvement (or even be a party to the proceeding himself) the conflict of interest and perception of bias is manifest.

Conflict and impartiality

- 7.5 In the interests of impartiality, transparency and public confidence, any question as to whether the giving of evidence by a protected person is in the public interest ought to be determined by the judge or judicial officer presiding over the proceeding in question. The perception of conflict readily justifies the implementation of an independent process to determine the compellability of OPI witnesses to ensure confidence in the administration of justice is not eroded. Section 109A is unprecedented in this State and operates to severely undermine public confidence in the accountability of the OPI as a law enforcement agency.

8. Proposed Findings

- 8.1 The review should make the following recommendations:-
- i. The protections afforded to the OPI under sections 109, 109A and 110 are excessive and unjustified. They should be abrogated.
 - ii. OPI officers should retain protection from personal liability but only in respect of civil action arising from any act or omission undertaken in good faith while on duty.

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This can be achieved by implementing the same immunity afforded to police officers under s.123 of the *Police Regulation Act 1958*. Any greater immunity from civil or criminal action is excessive and unjustified.

- iii. No OPI officer should be immune from criminal prosecution. To absolve law enforcement officers from criminal liability is to create a breeding ground for serious misconduct and corruption. Such an approach would never be tolerated within our police force. It should not be acceptable amongst those charged with the responsibility of overseeing the ethical conduct of our police officers.
- iv. The decision whether to compel OPI staff to give evidence in a legal proceeding is a matter which, in the interests of justice, should be determined independently of the OPI. Vesting sole power to determine compellability in the Director gives rise to a conflict of interest and a perception of bias. Section 109A should be abrogated. Responsibility for determining compellability under subpoena should rest with the Court or Tribunal seized with the relevant proceeding.

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9. The Relationship between the OPI, Victorian Ombudsman and Victoria Police

The OPI and the Victorian Ombudsman

9.1 The principal function of the Ombudsman is to investigate administrative action of government departments or public statutory bodies.³⁷ To this extent, the Ombudsman ostensibly has some limited power to investigate complaints relating to the OPI.

9.2 The Ombudsman is not, however, empowered to provide comprehensive oversight of the OPI. It can be seen from *OPI v Bolton*³⁸ that the Ombudsman has no jurisdiction to investigate allegations of criminal offending or serious misconduct within the OPI. The Ombudsman has expressly disavowed such a role³⁹. No other body under the current integrity and anti-corruption arrangements in Victoria has jurisdiction to perform this function:-

9.2.1 The SIM has no power to entertain a complaint or undertake an investigation concerning criminal offending or serious misconduct within the OPI;⁴⁰

9.2.2 The OPI itself, after receiving a copy of Sergeant Bolton's complaint from the SIM, provided no substantive response to Sergeant Bolton's concerns. In any event, it would have been inappropriate for the OPI to conduct an investigation into its own conduct;

9.2.3 Once Sergeant Bolton's complaint was provided to the Office of the Chief Commissioner, the matter passed through various hands before ultimately finding its way to the Ethical Standards Department. After 12 months, Sergeant Bolton was advised that no further action would be taken. ESD has no formal role or jurisdiction to investigate OPI staff. To the contrary, the OPI is responsible for overseeing ESD investigations. The OPI has access to the ESD database. The OPI and ESD frequently conduct joint investigations and

³⁷ S.13(1), *Ombudsman Act 1973*

³⁸ *OPI v Bolton*

³⁹ Letter from Deputy Ombudsman, John Taylor to Sergeant Bolton, 5 November 2008

⁴⁰ S.118(2), *Police Integrity Act 2008*

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have a close working relationship. In these circumstances, it is inappropriate to require or expect ESD to investigate the conduct of the OPI when it has no clear authority to do so.

- 9.3 In conclusion, the SIM, the Ombudsman, the OPI and Victoria Police (through the Ethical Standards Department) are inadequately equipped to investigate allegations of criminal offending or serious misconduct within the OPI.

Misconduct within the OPI and the Victorian Ombudsman

- 9.4 The case of *OPI v Bolton* is not an isolated example. The media have reported on a number of incidents involving allegations of criminal and serious misconduct on the part of OPI and Victorian Ombudsman employees in recent years:-

9.4.1 An OPI investigator alleged he was forced to sign false statutory declarations at the OPI to cover up dubious expense claims, acts which potentially involve offences of perjury and obtaining financial advantage by deception⁴¹. These allegations were apparently the subject of an "*independent workplace investigation*" by a private consultancy firm, Julie Baker-Smith and Associates, as well as a review by the Ombudsman, Mr George Brouwer;

9.4.2 An OPI investigator left the agency after being accused of lying about his house being broken into in order to take a day off work⁴²;

9.4.3 A disagreement between OPI staff about whether the Office of Public Prosecutions should be notified that the OPI Integrity Testing Unit was under a cloud⁴³;

9.4.4 A disagreement between a now-sacked OPI officer and a senior OPI member about what information should be put into an affidavit that was used to obtain a

⁴¹ Schedule 3 - The Age, 3 September 2008, The Australian, 5 March 2009, The Age, 5 March 2009, Herald-Sun, 14 August 2009

⁴² Schedule 3 - The Age, 3 September 2008

⁴³ Schedule 3 - The Age, 3 September 2008

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search warrant. It has been reported that the sacked officer refused to sign the search warrant affidavit because he could not verify the information in it⁴⁴;

9.4.5 An investigator with the Ombudsman who has been the subject of complaints over alleged threatening behaviour towards councillors during the Ombudsman's inquiry into misconduct within the Brimbank Council⁴⁵.

9.5 The Association is aware of other complaints of misconduct involving OPI staff but due to current court proceedings it is not considered appropriate to publicly raise these matters at this stage.

No adequate oversight

9.6 It is evident from these examples that no adequate oversight exists in relation to either the OPI or the Victorian Ombudsman. In the case of the OPI officer accused of fraud⁴⁶, the OPI instructed a private investigation company to conduct what has been described as an "*independent workplace investigation*". The outcome of that investigation remains unknown as does the outcome of the review conducted by the Victorian Ombudsman, Mr George Brouwer. The firm engaged by the OPI to conduct the investigation, Julie Baker-Smith & Associates, states on its website that its investigations "*...are concluded with a confidential report tailored to your specific requirements*"⁴⁷. The shortcomings in this approach are obvious:-

9.6.1 It is inappropriate for a private investigation company to be retained by the OPI to investigate allegations of criminal offending or serious misconduct by the OPI's own staff. Such a process lacks independence and transparency;

9.6.2 The OPI presumably provided instructions to the private investigation company as to the nature and ambit of the inquiry. To this extent, the OPI was the

⁴⁴ Schedule 3 - The Age, 3 September 2008

⁴⁵ Schedule 3 - Herald-Sun, 24 May 2009

⁴⁶ Schedule 3 - The Age, 3 September 2008, The Australian, 5 March 2009, The Age, 5 March 2009, Herald Sun, 14 August 2009

⁴⁷ Schedule 3 – Copy Home Page – Julie Baker-Smith & Associates

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"client" of the investigator. It is inappropriate for the body the subject of corruption allegations to determine the parameters of an investigation into its own misconduct;

- 9.6.3 The fact that a private consultancy firm was engaged to investigate what are essentially criminal allegations is not appropriate. Matters which have the potential to involve serious offences such as perjury and obtaining financial advantage by deception must be the subject of a fully independent criminal investigation. Potential corruption within the OPI cannot be addressed through a confidential commercial arrangement between the OPI and a private consultancy;
- 9.6.4 The investigator's report has not been made public. It appears to be the subject of a claim for legal professional privilege.⁴⁸ Potential therefore exists for the OPI to withhold findings adverse to its staff and operations. There is a clear public interest in disclosure of serious misconduct and criminal offending within the OPI. This cannot be achieved under the current system;
- 9.6.5 The fact that this investigation has been the subject of a review by the Ombudsman, Mr Brouwer, does not constitute adequate independent oversight. A review cannot remedy an inadequate or flawed investigation. The Ombudsman has a limited jurisdiction confined to administrative action and is not equipped to investigate criminal or serious misconduct⁴⁹. Independent oversight should be undertaken by a body capable of investigating (rather than reviewing) complaints and, if necessary, conducting coercive hearings and requiring individuals to answer questions or produce documents or things;
- 9.6.6 Mr Brouwer's involvement is attended by a perception of bias. Mr Brouwer was the Director of Police Integrity at the time of the events under investigation. The

⁴⁸ Schedule 3 – Herald Sun, 14 August 2009

⁴⁹ Schedule 3 – Letter from Mr John Taylor, Deputy Ombudsman, to Mr Carl Bolton dated 5 November 2008

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OPI has itself recognised the importance of avoiding any perception of bias in the selection of a reviewer.⁵⁰

Victoria Police and the OPI

- 9.7 The OPI has a statutory function to provide information and advice to, and consult with, Victoria Police to increase the capacity of Victoria Police to prevent police corruption and serious misconduct.⁵¹
- 9.8 The OPI has established a close working relationship with both the Chief Commissioner and ESD. The reason appears to be twofold. Firstly, the OPI has a consultative function. Secondly, the OPI's resources are such that it has been reliant upon ESD to conduct joint investigations utilizing the resources available to ESD to facilitate its objectives.
- 9.9 This consultative function combined with the OPI's reliance upon joint operations with ESD seriously compromises the independence and efficiency of the OPI to properly investigate serious misconduct and corruption. The independence of the OPI is compromised by a perception that it is too close to the Office of the Chief Commissioner and ESD to enjoy the confidence of both police members and the public. This perception is reinforced through the following arrangements between the OPI, the Chief Commissioner and ESD:-
- 9.9.1 As mentioned earlier, the OPI and ESD are in the practice of conducting joint investigations in which information is shared and resources pooled. The need for the OPI to rely upon ESD in such joint inquiries appears to be the product of a lack of resources, expertise and the personnel necessary for the OPI to undertake such matters in its own right.

⁵⁰ Report on the 'Kit Walker' Investigations – OPI, December 2007, p. 21 and 22

⁵¹ S.6(2)(c), Police Integrity Act 2008

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- 9.9.2 Joint operations between the OPI and ESD result in OPI investigators having to work with Victoria Police members in the course of investigating other Victoria Police members. This seemingly defeats the purpose of establishing an independent police corruption body in the first place.
- 9.9.3 If the OPI must call upon the services and resources of Victoria Police to investigate allegations of corruption and serious misconduct within Victoria Police, this can only compromise the independence and integrity of the process.
- 9.9.4 The inclusion of Victoria Police members in joint operations with the OPI increases the risk of an investigation being compromised. ESD is not immune from allegations of criminal and disciplinary misconduct.⁵² A finding has previously been made that ESD detectives "*had sanitized their evidence*" in the conduct of an ESD investigation.⁵³
- 9.9.5 Misconduct is not confined to specific departments within Victoria Police or the public sector. It is a product of human frailty. It is naïve to presume that the factors which motivate misconduct cannot operate upon individuals within anti-corruption agencies. If the OPI is to be held to its promise of detecting and preventing serious misconduct and corruption in Victoria Police independently of Victoria Police, it should no more conduct joint investigations and share resources with ESD than it would with any other department within Victoria Police. How does the OPI deal with a complaint against ESD if it has forged close working relationships with members who may be the subject of allegations themselves?
- 9.9.6 The OPI has been permitted to appoint former Victoria Police members as investigators (in contrast with the NSW Police Integrity Commission which is not

⁵² Victorian Ombudsman's Investigation into Complaints about the treatment of Senior Constable Robert John Gray and Senior Constable David Schaefer by the Ethical Standards Department (Victoria Police) dated 31 March 2003

⁵³ Victorian Police v Robert John Gray, Melbourne Magistrates' Court, 8 August 2001 per Mr Noel B Purcell, Magistrate

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permitted to employ NSW police on staff). The involvement of ex-Victorian police at the OPI has potential to expose investigations to the influence of past associations or grievances between members who may have served together.⁵⁴

- 9.9.7 If the OPI lacks sufficient funding, resources or personnel to fulfill its functions independently, this only highlights the need for a well resourced and independent Anti-Corruption Commission capable of operating in its own right.

Consultation between the OPI and the Chief Commissioner

- 9.10 Both the OPI and the Victorian Ombudsman engage in oral and written communications with the Chief Commissioner concerning their investigations. The full extent and nature of these communications are not matters of public record.
- 9.11 The communications between the Chief Commissioner, the OPI and the Ombudsman extend to the formulation and finalisation of investigative reports. The fact that the OPI seeks the input of the Chief Commissioner in relation to the preparation of its reports is a matter of public record.⁵⁵
- 9.12 The practice of providing draft OPI and Ombudsman reports to the Chief Commissioner for comment enables the Chief Commissioner to influence the outcome of these investigations. In some instances, it may be appropriate to seek a response from the Chief Commissioner with respect to specific issues as a matter of natural justice and procedural fairness. It should not, however, be necessary for the Chief Commissioner to be provided with a draft copy of an entire report for comment and input. Such an approach has the potential to undermine public confidence in the independence of the OPI and the Ombudsman and their ability to report without fear or favour.

⁵⁴ Schedule 3 – The Age, 3 September 2008

⁵⁵ See the Report on Investigation into Operation Clarendon, OPI, June 2008 at p.16, footnote 4 to the Report. The Association understands this approach has also been adopted in relation to investigations conducted by the Victorian Ombudsman, Mr Brouwer.

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- 9.13 The need for both the OPI and the Ombudsman to operate at arms length from the Chief Commissioner is highlighted by two OPI investigations which have involved scrutiny of the Chief Commissioner's own conduct:-

Operation Clarendon

9.13.1 The report on Investigation into Operation Clarendon⁵⁶ concerned the investigation of unlawful activities between members of Victoria Police and a Mr Kerry Milte who had been linked in media reports to the then Chief Commissioner, Ms Christine Nixon.⁵⁷ Ms Nixon was responsible for establishing Operation Clarendon, with the assistance of Mr Milte, to investigate organised crime activity in Victoria. Operation Clarendon was subsequently shutdown after inappropriate relationships between Mr Milte and members of Victoria Police and the Australian Federal Police were revealed. Mr Milte was subsequently convicted of aiding, abetting, counselling and procuring disclosure of information from the Victoria Police Law Enforcement Assistance Program database.⁵⁸

9.13.2 Ms Nixon was a central witness in the OPI investigation into Operation Clarendon. Ms Nixon was, however, treated differently to other witnesses. Most notably, Ms Nixon was provided with a draft of the OPI report and invited to respond. Ms Nixon appears to have provided significant input in response to the draft report.⁵⁹

The Qantas Gratuity

9.13.3 Ms Nixon was the subject of a second OPI investigation, which reported to Parliament in June, 2009. This investigation, entitled "*Offers of Gifts and Benefits to Victoria Police Employees*", examined the propriety of the Chief

⁵⁶ OPI Report, June 2008

⁵⁷ Report on Investigation into Operation Clarendon, OPI Report, June 2008 at 10

⁵⁸ Report on Investigation into Operation Clarendon, OPI Report, June 2008 at 19-20

⁵⁹ Report on Investigation into Operation Clarendon, OPI Report, June 2008, footnote 3, p.14, footnote 4, p.16

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Commissioner accepting a free return trip to the United States for herself and her husband valued in excess of \$40,000.00.⁶⁰ Evidence before the OPI established that Qantas received a benefit in relation to the arrangement in terms of publicity and Ms Nixon's reported endorsement that *"the plane was just magnificent"*⁶¹

9.13.4 Ms Nixon was summonsed to give evidence at a private examination before the OPI on 13 November 2008. Notwithstanding the enormous media and public interest, it was decided not to conduct a public examination. While some evidence was taken⁶², the evidence given on that occasion by Ms Nixon has never been made public. Instead, the examination was suspended and a meeting was arranged the next day between Ms Nixon and the Director, Police Integrity at which a public statement was settled and released. Ms Nixon ultimately admitted that her position as Chief Commissioner had influenced Qantas' decision to offer the gift of free travel and her acceptance constituted a breach of the Victoria Police Code of Conduct. These were matters previously denied by Ms Nixon when the issue was first raised in the media.⁶³

9.13.5 Prior to publication of the OPI's report, further communications took place between the OPI, Ms Nixon and her successor, Chief Commissioner Overland, concerning police policy in the area of gifts and benefits.⁶⁴ This is notwithstanding the fact that Ms Nixon was the focus of allegations of misconduct by her. It is unclear whether the former or current Chief Commissioners were given the opportunity to review a draft of the final report delivered in June 2009.

9.14 The manner in which these two OPI investigations were conducted and the treatment of Ms Nixon compared to that of other witnesses suggests that the relationship between

⁶⁰ Offers of Gifts and Benefits to Victoria Police Employees, OPI Report, June 2009, p. 10

⁶¹ Offers of Gifts and Benefits to Victoria Police Employees, OPI Report, June 2009, p.10

⁶² Offers of Gifts and Benefits to Victoria Police Employees, OPI Report, June 2009, p.10

⁶³ Schedule 4 - Herald Sun, 23, 24 and 25 October 2008, Neil Mitchell Program, 3AW, 17 November 2008

⁶⁴ Offers of Gifts and Benefits to Victoria Police Employees, OPI Report, June 2009, p.12

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the OPI and police command has remained consultative regardless of the fact that Ms Nixon was a central witness in inquiries into allegations of misconduct. While the OPI is vested with an advisory and consultative function under the Act,⁶⁵ this must not be confused with the need for the rigorous and independent investigation of complaints and allegations of misconduct made against or involving senior command within Victoria Police, including the Chief Commissioner.

- 9.15 The complaint against Ms Nixon involving the Qantas gratuity was resolved in unprecedented fashion. The Association is unaware of any previous or subsequent occasion where a private coercive examination has been terminated and a complaint resolved by the release of an agreed public statement (notwithstanding an admitted breach of the Victoria Police Code of Conduct). It is difficult to conceive of a complaint against an ordinary serving police member being resolved in such a manner. There is now a perception that one rule applies to the Chief Commissioner and another for the rank and file.
- 9.16 The consultative and advisory function of the OPI under the Act has blurred the line of separation required when dealing with complaints involving senior command within Victoria Police. If this function is permitted to continue, the ability of the OPI to vigorously and independently investigate complaints or allegations involving senior command, including the Chief Commissioner, may be lost. The close working relationship that must exist between the OPI and the Chief Commissioner if both organisations are permitted to collaborate in relation to the formulation of policy makes it impossible for the OPI to maintain the independence necessary to investigate allegations of misconduct against the Chief Commissioner or her staff.
- 9.17 The consultative and collaborative nature of the relationship between command and the OPI demonstrates the need for an independent broad-based Anti-Corruption Commission capable of entertaining allegations or complaints against not only ordinary serving police members but individuals holding high office (such as the Chief Commissioner). It is impossible for allegations of improper conduct and corruption to be

⁶⁵ S.6(2)(c), *Police Integrity Act 2008*

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investigated without a perception of bias if the investigating agency works closely with the subject of an investigation. Only the establishment of an independent broad-based Anti-Corruption Commission can ensure that such allegations are examined free of any prior relationship or association.

9.18 There are other examples of relationship which add to a perception that there is a lack of independence within the current integrity and anti-corruption system in Victoria:-

9.18.1 The current Victorian Ombudsman, Mr George Brouwer, is the former Director of Police Integrity. Mr Brouwer has been placed in the compromising position of being responsible for reviewing complaints against the OPI during the period in which he himself held the position of Director, Police Integrity. Mr Brouwer may have been the immediate boss of individuals he must now scrutinize.⁶⁶

9.18.2 The former Deputy Director, Police Integrity, Mr Graham Ashton, recently resigned and was immediately appointed by the current Chief Commissioner, Simon Overland, to a newly created senior executive position within Victoria Police. Mr Ashton has been privy to a wealth of highly confidential information while employed at the OPI. Mr Ashton cannot divulge or make use of this information in the course of his new position with Victoria Police yet it may be extremely difficult for him to avoid drawing upon this knowledge in the discharge of his new duties. This knowledge has potential to compromise both Mr Ashton, his old employer, the OPI and his new employer, Victoria Police.

9.18.3 Mr Ashton (a former Australian Federal Police Assistant Commissioner), Chief Commissioner Overland and Assistant Commissioner (ESD) Luke Cornelius were all colleagues when they worked together with the Australian Federal Police prior to their recent appointments.

9.18.4 Mr Ashton's replacement as Deputy Director, Police Integrity is Mr Paul Jevtovic. Mr Jevtovic is also a former Australian Federal Police Assistant

⁶⁶ Schedule 3 - The Age, 3 September 2008, *OPI v Bolton* (see above)

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Commissioner and a colleague and acquaintance of Chief Commissioner Overland.

10. Proposed Findings

10.1 The Review should make the following recommendations:-

- i. The OPI's consultative and advisory function in dealing with the Chief Commissioner's Office is inconsistent with its primary function of investigating police corruption and serious misconduct.
- ii. The involvement of Victoria Police members in OPI investigations (whether via ESD or through the employment of former Victoria Police members) has potential to seriously compromise the OPI's objectives.
- iii. The direct involvement of the Chief Commissioner in the formulation of reports prepared by the OPI or the Ombudsman seriously undermines the ability of either organisation to effectively and independently investigate allegations of serious misconduct against senior command within Victoria Police.
- iv. There is a need to ensure the independence and public accountability of the OPI, the Victorian Ombudsman and Victoria Police in their respective dealings with each other. All communications and correspondence between the OPI, the Victorian Ombudsman and the Office of the Chief Commissioner should be provided to the Special Investigations Monitor for oversight and review.
- v. Informal communications on matters of substance between the OPI, the Victorian Ombudsman and Victoria Police should not be permitted. In the interests of maintaining public confidence and transparency, all communications should be in writing and subject to independent oversight and review.
- vi. The transfer of personnel between agencies has the potential to undermine public confidence in the independence of the OPI, the Victorian Ombudsman and Victoria

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Police. Appointments to senior positions within each organisation should be the subject of approval by Parliamentary Committee.

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11. Conclusion

11.1 The principle of open justice is well established. Lord Hewart expressed it in terms of

*“... it is not merely of some importance but is of fundamental importance, that justice should not only be done, but should manifestly and undoubtedly be seen to be done”.*⁶⁷

11.2 The relationship between the OPI, Victorian Ombudsman, Victoria Police and its personnel has been the subject of comment and criticism.⁶⁸ These criticisms highlight the need for new measures to ensure independence and accountability within the integrity and anti-corruption system in Victoria. A strong and viable integrity and anti-corruption system must be beyond reproach. Regrettably, the current arrangements were never intended to provide a comprehensive anti-corruption system. It is a system attended by conflicts and perceptions of bias.⁶⁹

11.3 Reform is required to resolve systemic problems which are, in large part, the product of an arrangement which has been cobbled together by amendments to the *Police Regulation Act 1958*, the re-establishment of the OPI through the *Police Integrity Act 2008* and an attempt to expand the role of the existing Ombudsman to cover a jurisdiction not originally intended for a body charged with reviewing administrative action. This band-aid approach to corruption in Victoria has resulted in the creation of a flawed model with limited application and inconsistent approaches to different areas of the public sector.

11.4 The anti-corruption measures in Victoria have been drawn from a combination of incomplete powers spread across separate organisations, some of which are ill-equipped to perform corruption investigation functions in a contemporary sense. The Victorian system does not compare favorably to the anti-corruption measures

⁶⁷ R v Sussex Justices; Ex Parte McCarthy [1924] 1 KB 256 at 259

⁶⁸ Schedule 3 - The Age, 3 September 2008

⁶⁹ Interview with Mr David Jones, ABC, Stateline, Friday, 12 February 2010

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established interstate and in the Commonwealth in terms of the reach of powers, accountability and independence.

Independent Anti-Corruption Commission

- 11.5 It is time for Victoria to adopt a fully independent and broad-based Anti-Corruption Commission capable of investigating serious misconduct and criminal offending across the entire public sector including all politicians at State level. With appropriate oversight, such a system will ensure that the failings present in the current model are rectified and the Victorian public can enjoy confidence in those charged with the responsibility of serving them.
- 11.6 The failure of the OPI to conduct itself according to law in *R v Ashby* must never be repeated. It is symptomatic of an organisation that is struggling to fulfill its responsibilities. The ill-fated prosecutions of Noel Ashby and Paul Mullett serve as a sobering example of the damage that can be occasioned to the reputation and privacy of individuals when a body such as the OPI misconducts itself in the exercise of such significant powers.
- 11.7 The fact that the Director of Police Integrity, Mr Michael Strong, still seeks to portray the Ashby hearings as a success⁷⁰ is reflective of an organisation in denial, dismissive of the right of Mr Ashby to enjoy not only a presumption of innocence but the fruits of his acquittal. It is a pronouncement by the OPI that the end justifies the means.
- 11.8 The OPI's delegate, Mr Wilcox QC, has gone further by publicly questioning the correctness of the Supreme Court's decision in *R v Ashby*⁷¹ (notwithstanding the fact that no appeal has been lodged to challenge the ruling of Justice Osborn). Such hubris highlights the OPI's reluctance to accept judicial scrutiny of its actions and an unwillingness to acknowledge and learn from its mistakes.

⁷⁰ Neil Mitchell, 3AW, Interview with Mr Michael Strong, 10 February 2010, Jon Faine, ABC, Interview with Michael Strong, 10 February 2010

⁷¹ Interview with Mr Murray Wilcox QC, ABC 7:00pm News, Melbourne, 10 February 2010

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- 11.9 The call for the establishment of an independent broad-based Anti-Corruption Commission has, in the wake of R v Ashby, become loud and clear.⁷² The recent criticism of the OPI in the media has been scathing.⁷³ Perhaps most telling are the measured observations of the SIM, Mr David Jones, who has recognised the inability of the Victorian Ombudsman and the OPI to deal with official corruption and the need for a body capable of investigating all forms of corruption, whether by police or public officials.⁷⁴
- 11.10 In his introductory comments to his Report on Gifts and Benefits to Victoria Police Employees,⁷⁵ the Director of Police Integrity, Mr Michael Strong, correctly observed:-

"We expect police, like all public sector employees, always to put their public duty above their private interests."[Emphasis added]

This expectation, of all public sector employees, cannot be advanced by the OPI. At present, Victoria Police are the only public sector employees who are subject to a coercive body with powers to investigate criminal offending and serious misconduct. It is time for anti-corruption measures to be applied equally and effectively across the entire public sector. The only way to achieve this is to replace the OPI with a dedicated and independent Anti-Corruption Commission.

12. Proposed Findings

- 12.1 The Review should make the following recommendations:-
- i. The current arrangements in Victoria for the investigation of criminal offending and serious misconduct within the public sector are incomplete and inadequate. There

⁷² The Age, 6 February 2010, Herald Sun, 9 February 2010, The Age, 10 February 2010

⁷³ Jon Faine, ABC, 9 and 10 February 2010, Neil Mitchell, 3AW, 10 February 2010

⁷⁴ Interview with Mr David Jones, ABC, Stateline, Friday, 12 February 2010

⁷⁵ *Offers of Gifts and Benefits to Victoria Police Employees*, OPI Report, June 2009, p. 5

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is no body in Victoria capable of comprehensively investigating allegations of criminal offending and serious misconduct across the entire public sector. The OPI has no such jurisdiction. The Victorian Ombudsman's powers are limited to reviewing administrative action.

- ii. The present Victorian anti-corruption system focuses unduly on police officers to the detriment of exposing misconduct by other public officials.
- iii. The ability of the OPI to investigate allegations against members of ESD and senior command within Victoria Police is compromised by virtue of the nature of the relationship between the OPI and those it may be called upon to investigate.
- iv. The OPI has failed to perform to the standard expected of it and, as a consequence, it has now lost the confidence of the Victorian public following the decision in *R v Ashby*.
- v. In order to equip Victoria with measures equivalent to those established Interstate and in the Commonwealth, the Victorian Government should abolish the OPI and establish a broad-based Anti-Corruption Commission able to investigate allegations of criminal offending and serious misconduct across the entire public sector. Such a body should have power to investigate not only police but politicians, councillors and all other public officials. It should have the powers of a standing Royal Commission with full and independent oversight of its operations.
- vi. In the event the Victorian Government replaces the OPI with a broad-based Anti-Corruption Commission, the new body must remedy the deficiencies identified at paragraphs 3.1, 5.1, 8.1 and 10.1 of this Submission. In particular, the new body must be subject to full and independent oversight with a mechanism for the investigation of complaints of misconduct not only against the new body itself but also relating to previous investigations conducted by the OPI which, to date, has been immune from proper scrutiny. Such measures are necessary to clear the air and restore public confidence in the anti-corruption system in Victoria.

The Police Association Victoria

19 February, 2010

Submission of the Police Association Victoria to the Integrity and Anti-Corruption System Review

SCHEDULE 1

Executive Summary of Buckle (OPI) v Bolton heard at Melbourne Magistrates' Court before His Honour Mr Gurvich M on 28, 29, 30

April, 1 and 5 May 2008

SCHEDULE 1

Executive Summary of Buckle (OPI) v Bolton heard at Melbourne

Magistrates' Court before His Honour Mr Gurvich M on 28, 29, 30 April,

1 and 5 May 2008

- | | |
|-------------------|--|
| 19 August 2006 | Sergeant Carl Bolton arrested Mr Malcolm Carson for being drunk. Sgt Bolton's partner at the time was S/C Sally Slingsby. |
| 19 August 2006 | Upon return to the Colac police station Mr Carson refused to be searched and physically hindered Sgt Bolton in his attempts to search him. |
| 19 August 2006 | During the course of the search Sgt Bolton believed that Mr Carson was about to spit on him or S/C Slingsby and as a result he slapped Mr Carson once to his face. Sgt Bolton then completed his search of Mr Carson and lodged him in the cells. The incident was captured on CCTV. |
| | Mr Carson made a complaint to the OPI in relation to his treatment by Sgt Bolton. |
| 30 August 2006 | S/C Slingsby signed a statement that she had prepared earlier in relation to the incident involving Mr Carson. |
| 20 September 2006 | S/C Slingsby had an affidavit taken by Senior Investigation Officer Michael Davson from the Office of Police Integrity. |
| | Comments included in this affidavit detrimental to Sgt Bolton had not been included in Senior Constable Slingsby's earlier statement. |
| 6 August 2007 | Sgt Bolton charged with assaulting Mr Carson (nearly 12 months after the arrest of Mr Carson). |
| 8 February 2008 | Witness summons for production of documents or things was issued and served on the Director OPI. |
| | The subpoena required production of any audio or video recordings with respect to the interviews conducted by OPI investigators with witnesses in the matter. |

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19 March 2008 In response to the subpoena, the Managing Lawyer for the OPI, Ms Vanessa Twigg, by way of letter stated that:

I have made inquiries of the informant as to whether there are any tape recordings of interviews conducted by OPI investigators in this matter. To date, no recordings have been located. Should tape recordings of interviews conducted by OPI investigators with witnesses in this matter be identified, copies of such material will be produced to the Court.

20 March 2008 Ms Twigg forwarded another letter advising that:

... I have made further inquiries with the OPI investigators who interviewed and took affidavits from witnesses in this matter. They have confirmed that they did not make tape recordings of those interviews and no such recordings have been located in a search of OPI holdings in this matter.

25 March 2008 Sgt Bolton's solicitors received material from the OPI pursuant to the witness subpoena issued to the Director.

The diary notes of the informant were provided as part of this documentation. In her diary, the informant specifically noted in relation to the interview of the witness S/C Hill on 20/9/06 that 'conversation tape recorded'. In relation to the interview of the witness S/C Orsolic on 21/9/06 she had noted 'conversation recorded'.

11 April 2008 Letter written by the solicitors for Sgt Bolton to the Office of Public Prosecutions that stated, in part:

We have cause to believe that the conversations OPI officers had with witnesses were "recorded" and request copies of such recordings and any transcript that may have been made of those recordings.

23 April 2008 The OPP by way of letter advised that:

OPI instructs that there are no recordings and refer you to Ms Vanessa Twigg's letter dated 20 March 2008.

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28 April 2008 Prosecution against Sgt Bolton commenced at the Melbourne Magistrates' Court.

Counsel for Mr Bolton stated that the defence had been denied access to the audio recordings of interviews with witnesses referred to in the notes of the informant.

In response the informant, OPI investigator Buckle, advised the prosecutor:

that's an error and that there are no tape recordings in existence.'

His Honour then asked:

are you saying that the informant will give evidence that that is confined to writing?

To which the prosecutor replied:

Yes, your Honour they are my instructions'.

Defence counsel immediately called for those notes. (Transcript pages 5-6.)

The informant subsequently gave sworn evidence, contrary to what was recorded in her notes taken at the time, that no tape recordings had been made. She also stated that no other notes had been made and the only record of what had happened was the affidavit itself. (Transcript page 11 and following.)

The informant also gave evidence that although she would normally tape record the interviews of witnesses she had not done so on this occasion because she was specifically directed by the principal investigator Mr Davson not to do so. (Page 24 transcript.)

29 April 2008 OPI officer Davson stated that he believes he would have recorded the initial interview with the complainant Mr Carson. (Transcript page 146 lines 6-7.)

Mr Davson also stated that while he did not believe there was any need to tape record the interviews with witnesses he did not recall giving a specific direction not to record interviews with witnesses. (Transcript pages 147-148.)

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30 April 2008 S/C Hill gave sworn evidence that her interview with the OPI, at which Ms Buckle was present, was tape-recorded. She indicated, however, that it was not Ms Buckle who asked if she minded whether the interview was recorded but the person who took her affidavit, "Karen" (That is, Kerryn Reynolds.) She went on to say that:

I remember it because it was a very small device and I'm actually not very technically minded and it was a small device, maybe even a pen size or smaller and it was placed down there and I know that it was tape-recorded.' (Transcript page 198.)

30 April 2008 S/C Orsolic gave sworn evidence that his interview with the OPI investigators had been tape-recorded by a small tape-recording device. (Transcript page 206.) This affidavit was taken by OPI officer Keryn Reynolds.

30 April 2008 S/C Zavaglia gave sworn evidence. He also stated that his interview with OPI investigators had been tape-recorded by a little hand held tape recorder. (Transcript page 210.) S/C Zavaglia stated that the person who took the affidavit from him had also asked him whether it was okay to tape the interview. The person who took S/C Zavaglia's statement was Senior Investigation officer Davson.

30 April 2008 OPI officer Kerryn Reynolds gave sworn evidence. Ms Reynolds initially denied that the interview with S/C Hill was tape recorded but when pressed stated she was not sure. (Transcript at pages 213-14 and 221-227.)

Ms Reynolds had not been present in court when Ms Buckle or the police witnesses had given evidence.

30 April 2008 OPI officer Buckle was recalled to give evidence. (Ms Buckle, as the informant, had been present in court and heard the evidence given by all witnesses.)

During her evidence Ms Buckle stated that:

Based on my diary and Senior Constable Hill's evidence I would say there's a very strong possibility that our interview was recorded....'

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Ms Buckle also acknowledged that the same could have been the case with Senior Constable Orsolio and Leading S/C Woodcroft. (Transcript pages 232-233.)

Although Woodcroft did not give evidence due to illness, he was spoken to by Mr Bolton's solicitors on the last day of the hearing and confirmed that his interview had also been tape-recorded.

OPI officer Buckle took S/C Woodcroft's affidavit.

During cross-examination Ms Buckle acknowledged that it is very easy to delete material from the portable recording devices they are provided with and that if a recording is not downloaded onto the OPI's main system prior to deletion there would not be any record that an interview had ever been recorded. (Transcript at page 234.)

When cross-examined further, Ms Buckle accepted that the evidence of the police witnesses was such that they must be telling the truth about the interviews being recorded. (Transcript page 238.)

During the course of the day, His Honour Mr Gurvich M stated that:

The defence in this case, and I understood from the prosecutor right at the outset, if the stuff was there you should have it.'

His Honour went on to say:

And I think that's axiomatic isn't it? (Transcript at page 215.)

1 May 2008

OPI officer Buckle was recalled to give evidence. During cross-examination she accepted that if recordings of interviews were made they could not have been placed onto the OPI main system by whoever was responsible for making those recordings. (Transcript at pages 247-48.)

During cross-examination OPI officer Buckle could not explain why it was that she had failed to properly check her diary to determine whether she had any record of the interviews of witnesses being recorded. (Transcript pages 248-249.)

On the basis of the sworn evidence of three police officers and the statement of a fourth officer, it is clear that the OPI

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interviews with each of those witnesses were tape-recorded. The notes taken at the time by Ms Buckle corroborate that the interviews with S/C Hill and S/C Orsolic were recorded.

5 May 2008

His Honour Mr Gurvich dismisses the current charge against Mr Bolton and awards costs against the Director OPI.

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SCHEDULE 2

Correspondence relating to the complaint of Sergeant Bolton

20 June 2008

35 Bull Hill Road
KAWARREN VIC 3249

Special Investigations Monitor
PO Box 617 Collins Street West
MELBOURNE VIC 8007

Dear Mr Jones

Re: Complaint of serious misconduct/criminal offending by members of the Office of Police Integrity during the investigation and prosecution of an assault allegedly committed by me on 19 August 2006

I am a Sergeant of Police presently stationed at the Colac Police Station. On 19 August 2006 I arrested Mr Malcolm Carson for being drunk. My partner at the time was Senior Constable Sally Slingsby. Upon return to the Colac police station Mr Carson refused to be searched and physically hindered me in my attempts to search him.

During the course of the search I believed that Mr Carson was about to spit on S/C Slingsby or myself and as a result I slapped Mr Carson once to his face. I then completed my search of Mr Carson and lodged him in the cells. The incident was captured on CCTV and I was aware at the time of the incident that it was being recorded.

Mr Carson made a complaint to the OPI in relation to my treatment of him and on 6 August 2007, nearly 12 months after I arrested Mr Carson, I was charged with assaulting Mr Carson.

After I was charged I was provided with a copy of the brief of evidence that had been compiled against me. At that time I ascertained that on 30 August 2006 S/C Slingsby signed a statement that she had prepared earlier in relation to the incident involving Mr Carson.

On 20 September 2006 S/C Slingsby had an affidavit taken by Senior Investigation Officer Michael Davson from the Office of Police Integrity. Comments in this affidavit that could be regarded as being detrimental to me had not been included in Senior Constable Slingsby's earlier statement.

On 8 February 2008 my solicitors issued a witness summons for production of documents or things and served it on the Director OPI. The summons required production of any audio or video recordings relating to interviews conducted by OPI investigators with witnesses in the matter.

In response to the subpoena, the Managing Lawyer for the OPI, Ms Vanessa Twigg, by way of letter dated 19 March 2008 wrote to my solicitors and stated:

I have made inquiries of the informant as to whether there are any tape recordings of interviews conducted by OPI investigators in this matter. To date, no recordings have been located. Should tape recordings of interviews conducted by OPI investigators with witnesses in this matter be identified, copies of such material will be produced to the Court. (Copy enclosed.)

On 20 March 2008 Ms Twigg forwarded another letter to my solicitors advising that:

... I have made further inquiries with the OPI investigators who interviewed and took affidavits from witnesses in this matter. They have confirmed that they did not make tape recordings of those interviews and no such recordings have been located in a search of OPI holdings in this matter. (Copy enclosed.)

On 25 March 2008 my solicitors received material from the OPI pursuant to the witness subpoena issued to the Director. The diary notes of the informant were provided as part of this documentation. **(Copy of relevant page enclosed.)** In her diary, the informant specifically noted in relation to the interview of the witness S/C Hill on 20/9/06 that '*conversation tape recorded*'. In relation to the interview of the witness S/C Orsolich on 21/9/06 she had noted '*conversation recorded*'.

On 11 April 2008 my solicitors forwarded a letter to the Office of Public Prosecutions on my behalf that stated, in part:

We have cause to believe that the conversations OPI officers had with witnesses were "recorded" and request copies of such recordings and any transcript that may have been made of those recordings. (Copy enclosed.)

By way of a letter dated 23 April 2008 the OPP advised my solicitors that:

OPI instructs that there are no recordings and refer you to Ms Vanessa Twigg's letter dated 20 March 2008. (Copy enclosed.)

On 28 April 2008 the prosecution against me commenced at the Melbourne Magistrates' Court. **(A full copy of the transcript of the proceedings is enclosed.)**

Upon commencement of the proceedings, my counsel, Mr Ramon Lopez, advised the court that the defence had been denied access to audio recordings of interviews with witnesses referred to in the notes of the informant. In response the informant, OPI investigator Buckle, advised the prosecutor:

That's an error and that there are no tape recordings in existence.'

His Honour then asked:

Are you saying that the informant will give evidence that that is confined to writing?

The prosecutor replied by saying:

Yes, your Honour they are my instructions'.

My counsel immediately called for those notes. (Transcript pages 5-6.)

The informant subsequently gave sworn evidence, contrary to what was recorded in her notes taken at the time, that no tape recordings had been made. She also stated that no other notes had been made and the only record of what had happened was the affidavit itself. (Transcript page 11 and following.)

The informant also gave evidence that although she would normally tape record the interviews of witnesses she had not done so on this occasion because she was specifically directed by the principal investigator Mr Davson not to do so. (Page 24 transcript.)

On 29 April 2008 OPI officer Davson gave evidence on oath and stated that he believed he would have recorded the initial interview with the complainant Mr Carson. (Transcript page 146 lines 6-7.) If this is correct it raises the question as to what happened to that tape recording. It would, of course, have been quite improper for Mr Davson or any other person to have destroyed the recording of an interview with the complainant and the main witness against me. This is because Mr Carson may well have made inconsistent statements during this interview that would have cast doubt on his credibility and thus assisted me in conducting my defence. The inability of the OPI to locate this recording leads to the inescapable conclusion that it was destroyed by OPI officer Davson. The destruction of this recording was obviously to my detriment and should not have occurred.

Mr Davson also stated that while he did not believe there was any need to tape record the interviews with witnesses he did not recall giving a specific direction not to record such interviews. (Transcript pages 147-148.) This sworn evidence was contrary to the sworn evidence previously given by OPI officer Buckle.

On 30 April 2008 S/C Hill gave sworn evidence that her interview with the OPI, at which Ms Buckle was present, was tape-recorded. She indicated, however, that it was not Ms Buckle who asked if she minded whether the interview was recorded but the person who took her affidavit, "Karen" (*That is, Kerryn Reynolds.*) She went on to say that:

I remember it because it was a very small device and I'm actually not very technically minded and it was a small device, maybe even a pen size or smaller and it was placed down there and I know that it was tape-recorded.' (Transcript page 198.)

On 30 April 2008 S/C Orsolic gave sworn evidence that his interview with the OPI investigators had been tape-recorded by a small tape-recording device. (Transcript page 206.) This affidavit was taken by OPI officer Keryn Reynolds.

On 30 April 2008 S/C Zavaglia gave sworn evidence. He also stated that his interview with OPI investigators had been tape-recorded by a little hand held tape recorder. (Transcript page 210.) S/C Zavaglia stated that the person who took the affidavit from him had also asked him whether it was okay to tape the interview. The person who took S/C Zavaglia's statement was Senior Investigation officer Davson.

On 30 April 2008 OPI officer Kerryn Reynolds gave sworn evidence. Ms Reynolds initially denied that the interview with S/C Hill was tape recorded but when pressed stated she was not sure. (Transcript at pages 213-14 and 221-227.) Ms Reynolds had not been present in court when Ms Buckle or the police witnesses had given evidence.

On 30 April 2008 OPI officer Buckle was recalled to give evidence. (Ms Buckle, as the informant, had been present in court and heard the evidence given by all witnesses.) During her evidence Ms Buckle stated, amongst other things, that:

Based on my diary and Senior Constable Hill's evidence I would say there's a very strong possibility that our interview was recorded....'

Ms Buckle also acknowledged that the same could have been the case with Senior Constable Orsolio and Leading S/C Woodcroft. (Transcript pages 232-233.) Although S/C Woodcroft did not give evidence during the hearing due to illness, he was spoken to by my solicitors on the last day of the hearing and confirmed that his interview had also been tape-recorded. OPI officer Buckle took S/C Woodcroft's affidavit.

During cross-examination Ms Buckle acknowledged that it is very easy to delete material from the portable recording devices they are provided with and that if a recording is not downloaded onto the OPI's main system prior to deletion there would not be any record that an interview had ever been recorded. (Transcript at page 234.)

When cross-examined further, Ms Buckle accepted that the evidence of the police witnesses was such that they must be telling the truth about the interviews being recorded. (Transcript page 238.)

During the course of the day, His Honour Mr Gurvich M stated that:

The defence in this case, and I understood from the prosecutor right at the outset, if the stuff was there you should have it.'

His Honour went on to say:

And I think that's axiomatic isn't it? (Transcript at page 215.)

The recordings could not be produced if they had been deliberately destroyed prior to the court hearing. It appears this is exactly what has happened in my case and that those involved have committed serious criminal offences in doing so.

On 1 May 2008 OPI officer Buckle was again recalled to give evidence. During cross-examination she accepted that if recordings of interviews were made they could not

have been placed onto the OPI main system by whoever was responsible for making those recordings. (Transcript at pages 247-48.)

During cross-examination OPI officer Buckle could not explain why it was that she had failed to properly check her diary to determine whether she had any record of the interviews of witnesses being recorded. (Transcript pages 248-249.)

On the basis of the sworn evidence of three police officers and the statement of a fourth officer, it is clear that the OPI interviews with each of those witnesses were tape-recorded. The notes taken at the time by Ms Buckle corroborate that the interviews with S/C Hill and S/C Orsolic were recorded. It is also probable, although this was not explored at the court hearing, that the interview with S/C Slingsby was also recorded by a digital recorder. I ask that as part of your investigation you make appropriate inquiries in this regard.

On 5 May 2008 His Honour Mr Gurvich dismissed the charge of assault against me and awarded costs against the Director OPI.

As a result of what transpired in my case there is strong evidence that the informant, Ms Holly Buckle, committed perjury when first giving evidence in my matter. There is also strong evidence that Mr Davson and Ms Reynolds were both involved in the recording of interviews with witnesses. The failure of OPI staff to locate the recordings made by OPI officers Buckle, Davson and Reynolds, even after very comprehensive investigations, suggests that these recordings must have been deleted and not placed on the OPI's main recording system as required.

The interviews with the various witnesses during the investigation into my alleged misconduct took place at locations away from the OPI's main office. As a result, the recordings can only have been made by the OPI officers using portable recording devices. It follows that the only persons who could have deleted these recordings are those same OPI investigators. Moreover, these deletions could not have been inadvertent because the evidence is that at least three separate devices were used to record the interviews with the respective witnesses. The fact that recordings were deleted from all three recording devices leads to the inescapable conclusion that the investigators involved reached an agreement between themselves to delete whatever recordings they had made. That is, they conspired with one another to destroy critical evidence of high relevance to my defence of the charges. In any event, the deliberate destruction of these recordings must amount to an attempt to pervert the course of justice and/or constitute misconduct in public office.

I believe that as a result of the destruction of the audio recordings made by the OPI with the various witnesses in my matter that I was seriously prejudiced in conducting my defence. As previously mentioned, if the initial interview with the complainant, Mr Carson, was recorded and then destroyed I was denied the opportunity of examining any inconsistencies in his account that may have adversely impacted on his credibility. The same complaint can be made regarding the destruction of the recordings made by OPI officers with the other witnesses. Even more importantly, any evidence of pressure being applied to any of these witnesses to make affidavits along the lines required by the OPI officers was lost. It is certainly my concern that

inappropriate pressure was placed on police witnesses in an attempt to obtain statements detrimental to myself.

I am submitting my complaint to you because there is no independent body set up to investigate allegations of criminal misconduct on the part of officers of the OPI. The Ombudsman is restricted to investigating complaints regarding administrative matters and there is obviously a conflict in Victoria Police personnel investigating members of the body set up to monitor their activities. I therefore request that you take whatever action is necessary to have my complaints properly investigated.

I ask that the following matters be investigated:

- (1) Whether the interview with the complainant, Mr Carson, was taped recorded;
- (2) If the interview with Mr Carson was tape recorded, who recorded it and what happened to that recording;
- (3) If the recording was destroyed, why was it destroyed and who was involved in the destruction of that recording.
- (4) I ask that similar inquiries be made in relation to the interviews with Senior Constable Slingsby, Senior Constable Hill, Senior Constable Orsolic, Senior Constable Zavaglia and Leading Senior Constable Woodcraft. On the basis of the evidence presented at court, the evidence is overwhelming that the interviews with Senior Constable Hill, Senior Constable Orsolic and Senior Constable Zavaglia were recorded. That being so, I ask that inquiries be undertaken to ascertain who was involved in destroying these recordings;
- (5) Upon confirmation being made that audio recordings have been destroyed, I ask that consideration be given as to whether criminal charges should be filed against those involved including consideration of the following offences:-
 - a. Perjury;
 - b. Attempting to pervert the course of justice;
 - c. Misconduct in public office.
- (6) I also ask that inquiries be undertaken to determine what procedures were in place at the OPI to prevent the destruction of evidence as occurred in my case, and whether the destruction of these recordings contravenes the *Public Records Act 1973 (Vic)*;
- (7) I also ask that inquiries be undertaken to determine why the managing lawyer for the OPI, Ms Vanessa Twigg, provided two letters stating that no recordings had been made and apparently provided verbal advice to the OPP to the same affect when the notes of OPI officer Buckle clearly showed that at least two of the interviews had been recorded.

I believe that if a serving police officer had conducted himself or herself in the manner demonstrated by the OPI officers in this case, a thorough and exhaustive ESD investigation would certainly follow and result in charges of perjury, attempting to pervert the course of justice, misconduct in public office and contraventions of the *Public Records Act 1973 (Vic)*. The misconduct demonstrated by officers of the OPI in this matter is precisely the kind of behaviour targeted by the OPI itself in scrutinising the actions of Victoria Police. It would be a gross injustice if OPI officers are permitted to engage in misconduct with immunity. The OPI has been granted extraordinary powers by the parliament and has been entrusted by the community to exercise those powers with the utmost integrity. Any breach of that trust is a most serious matter that must be addressed comprehensively if the public are to maintain confidence in the OPI.

I await your response and thank you for your consideration of this matter.

Yours truly,

C.A. Bolton



Office of the Special Investigations Monitor

PO Box 617 Collins Street West Melbourne Victoria 8007 DX 210172 Melbourne
Telephone 03 8614 3222 Facsimile 03 8614 3200 Email osim@justice.vic.gov.au

14 July 2008

Mr. C.A Bolton
35 Bull Hill Road
KAWARREN VIC. 3249

Dear Mr. Bolton

Complaint to Special Investigations Monitor

Further to your letter of 20 June 2008 and my response of 23 June 2008 the documents attached to your letter have been reviewed and considered.

I note that your complaint in essence relates to alleged conduct of officers/investigators of the Office of Police Integrity (OPI) in relation to an investigation into and subsequent prosecution of an assault allegedly committed by you on an arrested person in custody on 19 August 2006. The alleged conduct is that OPI officers/investigators destroyed audio recordings of interviews with the complainant and other witnesses which were conducted during the course of the investigation and that such recordings were therefore not produced to the defence in accordance with the summons served on the Director, Police Integrity. As a consequence these recordings were not tendered to the court hearing the prosecution against you and you were thereby prejudiced in the conduct of your defence. I also note that the result of the prosecution was that the Magistrate dismissed the assault charge against you and ordered costs against the Director, Police Integrity.

Further, I note the evidence given during the course of the prosecution by the OPI informant and other OPI officers/investigators in relation to whether the interviews were recorded and to the points you make in relation to this matter. However, I am unable to undertake investigations to determine whether interviews with the complainant and relevant witnesses were in fact tape recorded by the relevant OPI officers/investigators and whether any such tape recordings were destroyed by those officers/investigators.

My complaints jurisdiction as the Special Investigations Monitor (SIM) under the *Police Regulation Act 1958* (PR Act) relates to the OPI and in particular to how the Director of that office exercises his powers under that Act. However, it is not a general complaints jurisdiction being limited to:

- monitoring compliance with the PR Act by the Director and staff of the OPI; and
- assessing complaints made by persons who have attended before the Director, OPI in the course of coercive examinations conducted for the

purposes of providing information, producing a document or thing or giving evidence. Complaints are limited to those cases where persons called to coercive examinations are not afforded adequate opportunity to convey their appreciation of the relevant facts, it being one of the roles of the SIM to assess the relevance and appropriateness of questions or documents/things things requested having regard to the purpose of the particular investigation in question.

It is clear that your complaint does not fall within the latter category referred to above as you have not been the subject of a coercive examination by the OPI.

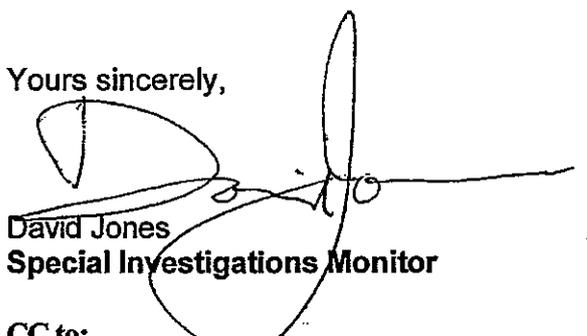
In respect of the former, my role in monitoring compliance with the PR Act by the Director and staff of the OPI extends to the exercise of coercive powers under the PR Act. It does not extend to how the OPI conducts an investigation or to consider issues that arise in the conduct of that investigation and subsequent prosecution. The PR Act does not give me the function of supervising OPI officers/investigators in the conduct of an investigation.

I understand that you are concerned that if there was in fact a deliberate destruction of audio recordings by the OPI officers/investigators in the circumstances of your case consideration should be given to whether criminal charges are to be filed against those involved for offences including perjury, attempting to pervert the course of justice and misconduct in public office. However, it is not my function under the PR Act to investigate such allegations of criminal misconduct on the part of officers of the OPI.

To sum up the position, it is not my function under the PR Act to investigate the issues you have raised. I can only act in accordance with the function given to me by the legislation. However, the Ombudsman does have an important role with respect to the oversight of the OPI. I am therefore forwarding your complain to him for his consideration. I am also forwarding a copy of your letter and my reply to Mr. Michael Strong, Director Police Integrity for his consideration as he may wish to respond to you.

Otherwise, I regret for the reasons I have stated that I am unable to assist you further..

Yours sincerely,



David Jones
Special Investigations Monitor

CC to:

Mr. Michael Strong, Director, Police Integrity; and
Mr. George Brouwer, State Ombudsman



Office of the *Special Investigations Monitor*

PO Box 617 Collins Street West Melbourne Victoria 8007 DX 210172 Melbourne
Telephone 03 8614 3222 Facsimile 03 8614 3200 Email osim@justice.vic.gov.au

23 June 2008

Mr C A Bolton
35 Bull Hill Road
KAWARREN VIC 3249

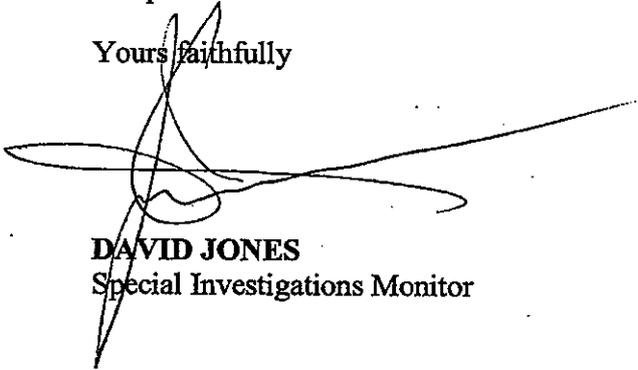
Mr Bolton

**Your correspondence re complaint of serious misconduct/criminal offending by members of the Office of Police Integrity during the investigation and prosecutions of an assault allegedly committed on 19 August 2006
Our Ref: 0608**

I have received your letter of 20 June complaining about various matters relating to an Office of Police Integrity investigation and prosecution of an alleged assault committed by you.

After I have had a chance to carefully consider the matters that you have raised and the material that you have provided I will be in touch with you again concerning your complaint.

Yours faithfully



DAVID JONES
Special Investigations Monitor

22 July 2008

File No: C/08/9709-02

Sergeant C. A. Bolton
35 Bull Hill Road
KAWARREN Vic 3249

Dear Sergeant Bolton

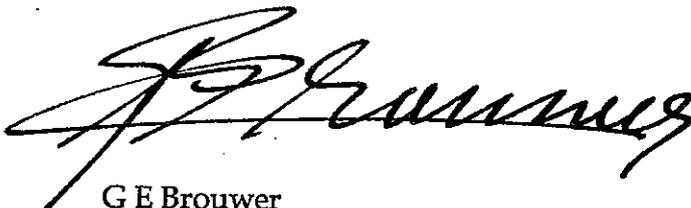
I am writing to acknowledge receipt of your letter dated 20 June 2008 which has been forwarded to me by the Special Investigations Monitor.

I will be making enquiries about the matters raised by you concerning the alleged conduct of officers of the Office of Police Integrity.

I will contact you again if I require any further information.

If you have any queries about this matter you may contact the Deputy Ombudsman Mr John Taylor on 9613 6208.

Yours sincerely



G E Brouwer
OMBUDSMAN

5 November 2008

File No: C/08/9709

Sergeant C A Bolton
35 Bull Hill Road
KAWARREN VIC 3249

Dear Sergeant Bolton

I refer to the Ombudsman's letter to you of 22 July 2008 acknowledging receipt of your letter dated 20 June 2008 forwarded to him by the Special Investigations Monitor, and our telephone conversation on 17 October 2008.

In his letter, the Ombudsman advised that he would be making enquiries concerning the alleged conduct of officers of the Office of Police Integrity (OPI).

We have concluded those enquiries and I can now advise you of the outcome.

In your letter of 20 June 2008, you raise a number of allegations. In summary, these allegations relate to the inability of OPI to locate certain tape recordings of interviews and hence on what basis were they destroyed, and the actions of OPI officers in relation to this.

Our enquiries have now revealed the existence of four digital recordings, previously stored on the personal drive of one of the OPI officers who has since left OPI. Two of these recordings relate to the interview of Mr Malcolm Carson; one to the interview of Mrs Mary Carson; and one to the interview of Constable Lynton Zavaglia. No other recordings have been discovered. If you require access to these digital recordings, you should contact OPI directly. I am satisfied that OPI has now exhausted all avenues of inquiry in relation to locating interview recordings.

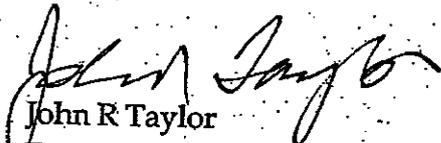
I have also examined OPI's processes and policies relating to the recording of interviews that existed at the time to assess whether those policies had been breached. I have also considered whether there is any evidence to suggest that any other recordings may have existed and been destroyed. While I consider

that OPI's procedures at the time were inadequate, I am also of the view that OPI officers acted reasonably and did nothing contrary to the policies in place at that time. As a result of our enquiries, OPI has acknowledged that improvements could be made to their record keeping methodology, and has subsequently revised its processes and procedures to overcome these deficiencies. There is no evidence to suggest that any other recordings exist or have been disposed of.

You asked that consideration be given to whether criminal charges should be filed against OPI officers. This office does not provide legal advice or conduct criminal proceedings and hence, you may wish to seek your own advice on this matter.

Given the above, I do not consider that this office can be of further assistance to you at this time.

Yours sincerely


John R Taylor
Deputy Ombudsman

Carl Bolton
35 Bull Hill Road
KAWARREN VIC 3249

24 November 2008

Chief Commissioner of Police
Victoria Police
Victoria Police Centre
637 Flinders Street
Melbourne, VIC, 3005

Dear Madam,

Re: Complaint of serious criminal misconduct by members of the Office of Police Integrity during the investigation and prosecution of an assault allegedly committed by me on 19 August 2006

I am a Sergeant of Police presently stationed at the Colac Police Station.

I enclose:-

1. My letter to Mr David Jones, Special Investigations Monitor (SIM), dated 20 June 2008 together with enclosures;
2. Copy letter from the SIM, dated 14 July 2008;
3. Copy letter from Mr George Brouwer, Ombudsman dated 22 July 2008;
4. Copy letter from Mr John Taylor, Deputy Ombudsman, dated 5 November 2008.

I forwarded a formal complaint to the SIM in June of this year requesting that he investigate whether officers of the Office of Police Integrity (OPI) have committed serious criminal offences involving perjury, attempting to pervert the course of justice and misconduct in public office arising out of their involvement in my case. The evidence relating to the unlawful conduct of members of the OPI is set out in

detail in my letter to the SIM dated 20 June 2008 (copy enclosed). This letter is to be read in conjunction with my letter to the SIM dated 20 June 2008.

On 14 July 2008, I received a response from the SIM informing me that he has no jurisdiction to investigate these matters notwithstanding the fact they involve serious allegations of criminal misconduct. Mr Jones did, however, refer my complaint to the Ombudsman and to Mr Michael Strong, Director of Police Integrity for their consideration.

I have received no response from the Director of Police Integrity notwithstanding the referral of the matter to him by the SIM.

In relation to the reply now received from the Ombudsman, my concerns have not been addressed in any substantive sense.

The Ombudsman has declined to investigate the allegations of misconduct. This is notwithstanding the fact that the Ombudsman's enquiries have resulted in four digital recordings made by the OPI being located. The OPI previously denied that these recordings existed and officers of the OPI have given sworn evidence to this effect.

The discovery of recordings of interviews by the Ombudsman confirms that OPI Officer Buckle gave false evidence on 28 April 2008 in the Melbourne Magistrates' Court when she provided the following sworn answer in response to the Prosecutor (transcript page 12) -

Prosecutor - *"Were there any tape recordings, to the best of your knowledge?"*

OPI Officer Buckle - *"No, and I searched for them and there's none."*

The Ombudsman has concluded in his reply -

"There is no evidence to suggest that any other recordings exist or have been disposed of."

There is clear and cogent evidence in the supporting materials accompanying my complaint to the SIM that other recordings do exist. The evidence relating to the existence of other recordings includes:-

- (a) S/C Hill gave sworn evidence on 30 April 2008 that the interview with the OPI, at which OPI officer Buckle was present, was tape-recorded (transcript page 198).

Chief Commissioner of Police

The OPI frequently works in conjunction with the Ethical Standards Department (ESD) and oversees the conduct of ESD investigations on a regular basis. I submit that it is inappropriate for this matter to be referred to the ESD for this reason. I request that you appoint a suitably senior and independent investigator to conduct the investigation.

I look forward to receipt of your response at your earliest convenience. I am conscious of the fact that it is now five months since I first raised my complaint with the SIM. I am keen to ensure that this matter is investigated promptly to avoid the risk of the investigation being compromised by any further delay.

Yours faithfully,

Carl Bolton

26/11/08

The Director
Office of Police Integrity

Dear Sir,

Re OPI prosecution against me in relation to an incident at the Colac Police Station on 19th August 2006.

I am a Sergeant of Police stationed at the Colac Police Station. On 19th August 2006, I arrested Mr Malcolm CARSON for being drunk. Whilst he was being lodged an incident occurred. As a result of this incident I was subsequently charged with an assault on him. The informant in the matter was Ms Holly BUCKLE. The matter was heard before the Magistrates Court and the charge dismissed.

On 8th February 2008, whilst preparing my defence of this matter solicitors acting on my behalf issued a witness summons for production of documents or things, specifically tape recordings of interviews conducted by OPI staff with witnesses in the matter.

On the 19th March we were advised by Ms Vanessa TWIGG that no recordings could be located.

On 20th March we again wrote to your office requesting that further checks be made to locate and provide any audio recordings, and Ms TWIGG advised that OPI investigators had confirmed that no recordings were made and her search could not locate any.

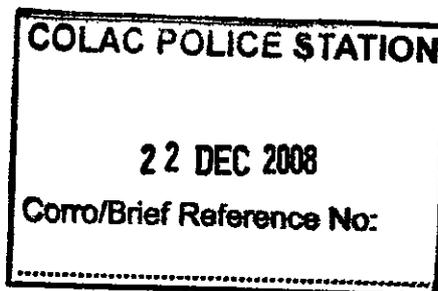
On the 11th April we contacted the Office of Public Prosecutions, making similar requests in relation to the production of audio recordings. On 23rd April the OPP replied relying on the advice provided by Ms TWIGG that no recordings existed.

I have had reason to lodge a complaint in relation to this and other matters with the SIM who in turn forward my complaint to you and the Ombudsman.

On 5th November 2008 I received a reply from Mr John TAYLOR Deputy Ombudsman (Copy enclosed) whose enquiries revealed the existence of four digital recordings, two relate to the interview of Malcolm Carson one relates to the interview of his mother and the other to the interview of Senior Constable Lynton ZAVAGLIA. Mr TAYLOR advised that should I require access to these digital recordings that I contact the OPI directly.

Therefore I am writing to request that you forward a copy of these recordings to me at your earliest convenience.

C.A. BOLTON
Sergeant 23120
Colac Police



15 December 2008

Sergeant C A Bolton
Colac Police Station
Cnr Dennis & Queen Streets
COLAC VIC 3250

Dear Sergeant Bolton

Request for provision of information from OPI

I refer to your letter of 26 November 2008 in which you requested copies of four digital recordings made by OPI officers during the investigation into a complaint against you. The existence of these recordings was identified during an investigation by the Ombudsman of a complaint made by you against OPI.

The proceedings under which your solicitors issued a subpoena requiring production of such material concluded with your acquittal, and OPI is therefore no longer subject to the requirements of the subpoena. The Ombudsman's investigation into the conduct of OPI with respect to your prosecution has been completed and OPI has complied with all lawful requirements of the Ombudsman with respect to his investigation.

Under the provisions of section 22 of the *Police Integrity Act 2008 (Vic)*, OPI is prohibited from disclosing information obtained or received in the course of, or as a result of the functions of the performance of the functions of the Director, except in the limited circumstances set out in subsections 22(1)(a) to (e). Your request does not fall within any of the limited exceptions and OPI is therefore prohibited from providing the digital recordings to you. OPI will, of course, produce the material if called upon to do so in accordance with law.

Yours sincerely

A handwritten signature in black ink, appearing to read "Michael Strong".

Michael Strong
DIRECTOR, POLICE INTEGRITY

Office of Police Integrity

Level 3 South Tower 459 Collins Street PO Box 4676 Melbourne VIC 3001 DX 210004

Telephone: 03 8635 6188 Toll free: 1800 818 387 Facsimile: 03 8635 6185 Email: opi@opi.vic.gov.au Website: www.opi.vic.gov.au

Submission of the Police Association Victoria to the Integrity and Anti-Corruption System Review

SCHEDULE 3

**Media reports relating to misconduct within the OPI and Victorian
Ombudsman**



Herald Sun
27/08/2008
Page: 7
General News
Region: Melbourne
Circulation: 535000
Type: Capital City Daily
Size: 89.71 sq.cms
MTWTFS-

Officer suspect for fraud at OPI

Carly Crawford

A POLICE corruption investigator is facing the sack over allegations he skimmed up to \$3000 from Victoria's anti-corruption watchdog.

The Office of Police Integrity last night confirmed it had suspended a staff member for a disciplinary breach.

The *Herald Sun* believes a senior investigator is alleged to have fiddled accounts in the OPI's business unit, escaping detection for a considerable time.

The case is said to involve inadequate supervision of administration expenses.

The staff member was not involved in front-line investigations, and while suspended remains on full pay.

Embarrassed OPI officials launched an immediate inquiry after a routine internal audit in June.

"The OPI is having an independent workplace disciplinary investigation," a spokesman said. "The Ombudsman will review the findings."

The spokesman said he couldn't comment further for privacy reasons.

The revelation is likely to reignite calls for Victoria to set up a wide-ranging anti-crime commission with powers to investigate not only police but the entire public service.

The State Opposition and the Police Association have been vocal in their demands for an anti-corruption body with broader powers.

Premier John Brumby has resisted it as a waste of taxpayers' money, insisting the Auditor-General, OPI and Ombudsman were sufficient.

Former County Court Judge Michael Strong took the reins as OPI director in March, replacing George Brouwer.

Mr Brouwer had been both Ombudsman and OPI director until the offices were separated last year; he remains the Ombudsman.

The taxpayer-funded OPI has a \$16 million budget and a staff of about 100.

Matters of integrity

- Nick McKenzie
- September 3, 2008

The police watchdog has been wined by misconduct allegations.

BULKY and broad shouldered, Denis Grimes is an unashamedly old-school country copper. The Shepparton senior sergeant believes the force he has served for 36 years has gone soft.

"I don't care if you are black, white or brindle. I just like catching crooks and keeping the streets safe," he says.

His outspoken nature has long grated with his superiors. According to some police, so too has his handling of lost property. When lost property is handed into the police and not claimed for three months, it has to be destroyed or donated to charity.

But about 18 months ago, the state's police watchdog got a tip-off that Grimes had been bending the rules. A system check showed that Grimes, an avid hoarder and handyman, had been previously investigated for his mishandling of lost property but nothing had ever stuck. So the Office of Police Integrity decided to set a trap.

Armed with a false identification, an officer from the OPI's secretive integrity testing unit approached Grimes claiming to have found some property at a truck stop, including a knife, a fishing reel and a gun-cleaning kit. Grimes took the items back to the police station, where they were duly recorded. Three and a half months later, when no one had arrived to claim them, they were earmarked for destruction.

It was then that Grimes took the bait. Six months later in December last year, OPI officers, with a search warrant, raided Grimes' home. Among the items found were a fishing reel, knife and gun-cleaning kit.

Without doubt, Grimes' decision to take the goods was open to serious question. But did taking property due to be destroyed amount to a clear case of criminal activity?

Grimes certainly didn't think so. "I don't care if they go after the crooked coppers. And if I had taken the property straight home, it might be different. But I waited until it was to be destroyed," he says.

Grimes is suspicious about whether the OPI had a strong enough case to justify the granting of a search warrant. "To take out a search warrant, the goods have to be stolen. And that is where I have got them (the OPI). They had to tell lies (in an affidavit) to get the search warrant. Any copper worth their salt would know that," Grimes says.

That an old-school copper accused of wrong doing is pointing a finger back at his accusers is hardly revelatory. But Grimes is not alone in holding concerns about the OPI's handling of the matter.

Not only has the Office of Public Prosecutions deemed the case too weak to warrant criminal charges but *The Age* reveals today that the Grimes matter is one of several cases - including an inquiry into two OPI investigators - that have sparked disquiet among some within the OPI. This disquiet ultimately goes to the question of the accountability and oversight of one of the nation's most powerful anti-corruption agencies. Who is watching the watchdog?

It is a question that comes at a politically sensitive time for the agency set up four years ago by the State Government. That the OPI has had an impact on corruption and driven a raft of policing reforms is unquestionable. But the Police Association, State Opposition and scores of lawyers are watching the agency's every move - and the Government has not improved oversight of the OPI, leaving the agency vulnerable to criticism.

WELL-PLACED sources have told *The Age* that the integrity testing unit investigator who handed Grimes the "lost" items had later resisted signing the search warrant affidavit because he claimed it contained information he could not verify. After he refused a request from a

senior officer to alter his original affidavit, he was allegedly sworn at. Another investigator signed the final affidavit and the warrant was granted.

According to sources, there was also a disagreement between two OPI officers about whether the Office of Public Prosecutions should be informed of an unexpected twist in the case: that the OPI officer who carried out the integrity test in Shepparton, as well as the investigator's boss in the integrity testing unit, had themselves fallen under a cloud. (The OPP was ultimately notified of the allegations.)

But the problems within the unit go beyond office place clashes and debate. In March*, the investigator who performed the Grimes integrity test was sacked by the OPI for abandoning his workplace. Before he was fired, the investigator conceded he had acted improperly in respect of the OPI's expense account, but said that he had only done so under pressure from his integrity testing unit boss, who has been suspended. *The Age* understands the investigator made the allegations in an OPI interview and to the private Melbourne investigation consultancy hired to look into the claims, Julie Baker-Smith and Associates.

The investigator alleged his boss had spent about \$3000 of OPI expenses on pokies, meals, wine, entertaining guests at a unit forum and tinting his work car windows. It is unclear which expenses adhered to public sector policy, but some of the spending appeared questionable.

In order to account for the expenses, the investigator admitted to signing false statutory declarations. In some cases, the investigator conceded exaggerating the amount of work he had done on an OPI operation codenamed Uranium. He said his boss knew the declarations were false.

It is understood the investigator's allegations were outlined in a statement prepared in March, but he refused to sign it after advice from his union. Shortly afterwards, he moved overseas.

Some of his claims fall into a grey area; an undercover officer must sometimes build up a false identity by hanging around pubs and gambling venues. But the integrity testing unit boss is a well known former Victorian police officer and, therefore, an unlikely candidate for undercover work.

The Age has no evidence to corroborate the allegations and it is understood they have been fiercely contested by the unit boss. But sources aware of them say they must be thoroughly examined because they involve potentially criminal conduct. The manner in which this should be done goes to the heart of the issue of how the OPI is held accountable.

Two agencies have oversight of the OPI - the state's Special Investigations Monitor, David Jones, and the Victorian Ombudsman, George Brouwer, who is the former head of the OPI.

The Police Association, State Opposition, lawyers and academics have argued that under this model the OPI lacks accountability because Brouwer is left overseeing an agency he used to run, and the powers of the Special Investigations Monitor are limited.

The OPI director, former county court judge Michael Strong, disagrees.

"It amazes me when I hear that said (that the OPI is unaccountable). Practically every day I sign reports to the Special Investigations Monitor," he told *The Age* recently.

But among the proponents for greater oversight is the Special Investigation Monitor and former county court judge David Jones. A report Jones tabled in November stated that his ability to investigate complaints was "much narrower" than those who have oversight of the NSW Police Integrity Commission and Queensland's Crime and Misconduct Commission. In contrast to the OPI, a parliamentary committee and a dedicated inspector have oversight of the interstate agencies.

Jones' investigation jurisdiction is limited to the OPI's use of phone taps, listening devices and coercive questioning powers. Misconduct or abuse-of-power complaints that don't involve these areas go instead to George Brouwer. Jones has said that given Brouwer's former job as OPI director, it may lead to the perception of a conflict of interest.

So is it appropriate for a private consultancy with no police powers or accountability to inquire into the integrity testing unit or for Brouwer to review its investigation?

The unit's troubles also raise questions about OPI recruitment. For instance, how closely screened were the two officers before their appointment?

The OPI's hurried creation by a government under fierce pressure over corruption issues left the unenviable task of building an agency in a policing environment in which good officers were in high demand. Several OPI staff, including OPI chief Michael Strong and assistant director and former senior federal policeman Graham Ashton, are highly respected in policing and legal circles. Among anti-corruption investigators, OPI legal director Greg Carroll and senior investigator Mick Sherry are also respected.

But some ill-suited staff have parachuted into sensitive roles. As *The Age* reveals today, a very small number of OPI officers have had their integrity questioned while a senior investigator recently quit the agency and voiced his concerns to senior management about staff and case mismanagement.

Another OPI staffing issue is the fact that it is allowed to appoint former Victoria Police officers as investigators (in contrast with the NSW Police Integrity Commission, which is barred from hiring NSW police). While ex-Victorian detectives bring with them local law enforcement expertise, they are also potentially left directing investigations against former colleagues. Well placed sources have told *The Age* that some within the OPI have questioned whether old grievances have partly driven some investigations.

In the Grimes case, a senior OPI officer told another investigator that he knew that the Shepparton senior sergeant was a justifiable target because he had worked with him more than a decade ago.

Strong recently told *The Age* that any public sector agency would occasionally confront integrity issues.

"If, and to the extent, they have arisen they have been appropriately dealt with," Strong said.

The OPI has had some important successes; its high-profile work has cemented its place in the Victorian policing landscape and provided impetus for force command to tackle the darker side of police culture. In 2006, a secret OPI camera recorded the ugly assault of a police suspect that led to the scrapping of the controversial armed offenders squad. Several problematic stations have been reformed after OPI inquiries. The OPI has recently advanced its case against former assistant commissioner Noel Ashby. Other major OPI operations are gathering pace.

But its clumsy handling of relatively minor matters, including the Grimes case and one involving Colac Sergeant Carl Bolton, has led to the perception among its critics that it is overzealous or engaged in cheap run scoring.

Bolton was accused in August 2006 of assaulting a man he had arrested for public drunkenness. Video footage showed Bolton slapping the man inside the police station. Bolton maintained he had done so in self-defence after the unco-operative drunk prepared to spit at him or his colleagues.

The Age has been told that a year after the alleged assault, Bolton was charged in the face of at least one internal warning from an OPI investigator that the case would not succeed.

During Bolton's court hearing, an OPI officer who worked on the investigation came under repeated fire from Bolton's lawyer for telling the court she did not tape record any witness interviews. She revised this position after the court heard that a notation in the investigator's diary and the recollection of three witnesses suggested otherwise.

One source aware of the Bolton inquiry says: "The case let the OPI down and let Bolton down and even let the alleged victim down. You could deal with it sensibly down the disciplinary route. Or you could go him in court and he will beat it and walk out with his head held high. That is what happened."

Magistrate Maurice Gurvich dismissed the assault charge against Bolton in April and ordered the OPI to pay his defence costs.

Suspended Senior Sergeant Denis Grimes was visited by his boss last week and told he would not face criminal charges as a result of the OPI investigation. In what is likely to be an inglorious end to 36 years of policing, Grimes will now face a disciplinary hearing. He says one of his last acts as a policeman, albeit suspended, will be to complain about the OPI's handling of his case. Like Bolton, who has also lodged a complaint about the police watchdog, Grimes' complaint will be sent to the very man who headed the OPI when he and Bolton

became targets, Ombudsman George Brouwer.

Also soon to be in the Ombudsman's OPI file will be the private consultancy's report on the problems within the integrity testing unit, which also occurred during Brouwer's stint as OPI boss.

Welcome to the Victorian way.

Internal sacking, suspension stir police force watchdog

- Nick McKenzie
- September 3, 2008

VICTORIA'S powerful police corruption watchdog is facing its own integrity problems, with one officer sacked and another suspended after alleged misconduct.

An Office of Police Integrity investigator recently sacked for abandoning his workplace has alleged he was forced to sign false statutory declarations at the OPI to cover up dubious expense claims — acts which potentially involve offences of perjury and obtaining financial advantage by deception.

The sacking and suspension come after concerns were raised internally at the OPI by a small number of staff about the handling of some cases and the oversight and management of staff.

The sacked OPI investigator told a private company hired by the OPI to investigate the allegations, Julie Baker-Smith and Associates, that he signed false statutory declarations to account for OPI expenses spent on meals and entertainment. He has alleged he did so after pressure from his boss at the OPI's integrity testing unit, who spent some of the money.

The investigator has also alleged that he was directed to falsely declare hundreds of dollars spent by his boss on poker machines as expenses for an OPI operation, code-named Uranium. His boss is suspended on pay and is understood to have rejected the claims.

In a statement, the OPI said the allegations were part of an "independent workplace investigation" that would be reviewed by State Ombudsman George Brouwer. Mr Brouwer is the former head of the OPI, and the alleged misconduct occurred during his time there.

The revelations are likely to spark debate about whether the oversight of the OPI is appropriate. The OPI said it had reviewed policies and procedures and stressed that internal auditing had identified the alleged misuse of expenses, which is believed to involve a few thousand dollars.

The OPI's director, Michael Strong, said he had confidence in the integrity of his staff and that every workplace occasionally confronted "workplace issues".

"When those issues involve any allegations of misconduct, it is important those allegations are independently investigated and the investigation is oversighted," Mr Strong said.

The Age can also reveal that an OPI officer quit in June and told Mr Strong last month of his concerns about the management of staff and some cases.

A small number of other staff have left the agency, and it is understood some hold concerns about its running. More than 18 months ago, an OPI investigator left the agency after being accused of lying about their house being broken into and attending a funeral in order to take a day off work. Several well-placed sources critical of the OPI conceded that its assistant director, Graham Ashton, and other senior staff were experienced and respected and had delivered some strong results. But they said some poor recruiting and oversight had caused problems.

One of the OPI cases that has caused concern involved long-serving Shepparton officer Denis Grimes. Senior Sergeant Grimes was the subject of an OPI integrity test in mid-2007 that involved the now-sacked OPI officer handing him lost property items. After several months had passed and the property was due to be destroyed, Senior Sergeant Grimes took it home.

Concerns about the case within the OPI have included:

- A disagreement between OPI staff about whether the Office of Public Prosecutions should be notified that the integrity testing unit was under a cloud.

■A disagreement between the now-sacked officer and a senior OPI member about what information should be put into an affidavit that was used to get a search warrant. A well-placed source said the since sacked officer refused to sign the search warrant affidavit because he could not verify information in it.

The OPP recently advised that Senior Sergeant Grimes, who has been suspended, should not face criminal charges. He will instead face a disciplinary hearing.

Senior Sergeant Grimes told *The Age* his case had been poorly handled and questioned the validity of the search warrant. "They had to tell lies to get the search warrant. Any copper worth his salt would know that."

Sources say a senior OPI investigator also warned against prosecuting another police officer, Colac sergeant Carl Bolton, for allegedly assaulting a drunk man in a police station. The case against Sergeant Bolton was dismissed by magistrate Maurice Gurvich in May. The Police Association singled out the Bolton case before a state parliamentary committee in June because of discrepancies with the evidence of an OPI officer.

Got a tip? Email investigations@theage.com.au

NEWS

IN BRIEF

ACCIDENT

Fruit-picker struck

A HONG Kong woman was in intensive care at the Royal Melbourne Hospital last night after she and five other backpackers were hit by a car as they walked to a fruit-picking job near Shepparton.

The woman was flown from the collision after receiving several head injuries, just before Bam yesterday. The driver of the car, Nino Atzori, from nearby Durrigville, was the owner of the hostel where the group was staying.

Paramedics put the critically injured woman into an induced coma at the scene.

The five others were taken to Goulburn Valley Health hospital. One had a broken leg while the others had minor injuries. Police said last night that no charges had been laid.

THE AGE

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It is the policy of The Age to correct all significant errors as soon as possible. The Age is committed to presenting information fairly and accurately.

LOTTERIES

Super 7s Oz Lotto (draw 785)
dividends: Division 1, \$2 million;
Division 2, \$63,393.40; Division 3,
\$2837.30; Division 4, \$271.75;
Division 5, \$34.60; Division 6,
\$18.30; Division 7, \$11.85.
Wednesday Lotto (draw 2805): 20,
39, 1, 4, 10, 16. Supplementaries:
31 and 14.

READERSHIP

Monday-Friday: 766,000
Saturday: 957,000
Sunday: 735,000

LAW LIST

View the law list at
theage.com.au/lawlist

Taxi! Bid to ban the hail beyond the pale

By KATE LAHEY
and JASON DOWLING

and benefit patrons who just want to walk out of a venue and go home rather than get caught up in a queuing situation," he said. "Imagine if Robert Doyle's in the city and he has to walk to one of four taxi ranks and wait to catch a taxi home. It's just undignified."

But Mr Chalker said increasing the number of safe ranks would be a good idea.

When people are so tired, or when they are drunk, they cannot walk (to taxi steps). 7

NEERAJ SONI, driver

"Frankly, if there were 25 super stops around the city, maybe that would help."

While Cr Doyle does not have the power to introduce the ban, he is expected to meet with Transport Minister Lynne Kosky and the Victorian Taxi Director, bar owner Vernon Chalker, who runs several city venues, including the Gin Palace, warned that forcing everyone to queue at only four stops could cause frustration and lead to violence.

"It's a ridiculous idea. I don't understand how that will help

The Victorian Taxi Association said while more ranks — and safer ranks — were needed, preventing the halting of taxis would require a huge cultural shift for drivers and passengers. "We support Cr Doyle's intention and respect that it's really just one part of what needs to be a much larger strategy," spokesman David Samuel said.

Neeraj Soni, 27, who has been driving taxis in Melbourne for six months, said the vast majority of his fares at night were hailed off the street.

Mr Soni said the ban should not be introduced because he doubted it would be better for passengers. "The things on late nights or early mornings, when people are so tired, or when they are drunk, they cannot walk and go to the taxi ranks would not be easy for them," he said.

"It's good for us, but not for the people." There are 3600 taxis operating in greater Melbourne and three safe ranks in the city, at Flinders Street Station, 55 King Street and 50 Bourke Street.

theage.com.au
Should the halting of taxis in the city be banned? Vote online

MELBOURNE TAXIS

1988
New licence ownership opened to all owners.

1993
November then Premier Jeff Kennett suggests Melbourne's taxis should be painted a uniform colour, perhaps a patriotic green and gilt or even a bright pink.

1994
Reforms introduced by Kennett government:

- Uniforms
- Improved training and testing
- Single colour front caps - yellow
- Air-conditioned cabs mandatory
- Establishment of Victorian Taxi Directorate
- Three-tier tariff replaced by single 24-hour rate

1996
Forty-hour RAFE courses introduced that includes knowledge of Melbourne, basic English and small talk.

October 1 \$200 fine introduced for drivers eating or drinking in cabs. Fine for smoking jumps from \$50 to \$200.

2001
Over 19 Passengers to pay \$1 extra on fares from Melbourne as 'tipoff' levy.

2002
Green-top cabs introduced for peak periods and nights only. Twenty per cent night tariff to operate between 1am and 5am and replace the \$1.10 flagfall. Nightlight is to be progressively introduced as meters are reprogrammed.

2008
October 1 Late-night prepaid taxi bans come into force in Victoria, making it compulsory for passengers to pay for taxi up front between 11pm and 5am.

December Transport Minister Lynne Kosky pledges driver safety screens for all cabs. Owners and operators affronted at the State Parliament.



HERE COMES WINTER: Ready or not, the Melbourne Fashion Festival (March 15-22) is coming to a catwalk, gallery and shopping mall near you. JANICE BREEN BURNS METRO PAGE 18

The senior investigator's sacking is likely to spark debate about whether the oversight of the OPI is appropriate and whether police should have been called in to investigate the misconduct claims.

It also raises questions about the level of screening used when hiring OPI staff after the agency was hurriedly created in 2004 by the State Government.

When the allegations about OPI unaccountable and called for the establishment of a broad-based anti-corruption commission, similar to that in NSW or Queensland.

The police union and the Opposition have labelled the OPI unaccountable and called for the establishment of a broad-based anti-corruption commission, similar to that in NSW or Queensland.

Age last year, the OPI said it had

Police watchdog sacks own investigator

Officer accused of misconduct

By NICK MCKENZIE
AGE INVESTIGATIVE UNIT

A SENIOR investigator from Victoria's powerful police corruption watchdog has been sacked a year after he was accused of serious misconduct.

His dismissal comes 12 months after another officer from the Office of Police Integrity — who was fired last year —

mounted a legal challenge against his sacking last month.

It is also believed a private consultant hired by the OPI to probe the allegations, which amounted to potentially criminal conduct, found they did not warrant a criminal investigation.

An OPI spokesman said the agency would not comment on the matter for legal reasons.

The OPI officer had alleged that the senior investigator pressed him into signing false statutory declarations in account for OPI expenses spent

KEY POINTS

- Investigator alleged to have pressured officer to sign false statutory declarations.
- Wrongfully denied.
- Not warrant criminal probe.

by Ombudsman George Browner. Mr Browner is the former head of the OPI, and the alleged misconduct was said to have happened in his time there.

Age last year, the OPI said it had

Economy reverses

◀ FROM PAGE 1

AMF chief economist Shane O'Leary said that, to all intents and purposes, Australia was already in recession.

Expectations of another quarter of contraction grew yesterday with figures showing vehicle sales plunged by a seasonally adjusted 17 per cent in February.

Footmaker Centrebet suspended betting on the economy before yesterday's accounts after a flood of money backing a recession. It will reopen today offering to pay \$4.85 to anyone punting \$1 on Australia avoiding a recession this year.

The national accounts punch a deeper hole in the federal budget, showing that income tax revenue has fallen for the last three quarters. Total expenditure fell \$3 billion in three months.

Exports fell 0.8 per cent in the December quarter, imports fell 6.8 per cent, profits fell 5.4 per cent and the business sector's ratio of stocks to sales hit an all-time low.

JP Morgan economist Helen Evans called the stocks slide "good news" because firms would need to rebuild stock as sales improved, although this process will be gradual given expectations of a protracted period of weak demand, locally and abroad.

Age last year, the OPI said it had

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THE AUSTRALIAN

March 05, 2009 01:47pm AEDT

Police corruption watchdog under fire

September 03, 2008

Article from: [Australian Associated Press](#)

THE Victorian police watchdog came under fire today over the behaviour of its employees amid calls for an independent corruption body.

The Office of Police Integrity (OPI) confirmed in a statement that one officer had been suspended for falsely declaring and misusing money but did not confirm or deny reports another had been sacked.

The OPI said the matter was being independently investigated and reviewed by Victorian ombudsman George Brouwer.

The Police Association criticised the process as a conflict of interest with the ombudsman having been the OPI's director at the time of the alleged offences.

"That's the ludicrous situation we're now confronted with," association legal manager Greg Davies told ABC Radio.

"These allegations are said to have occurred while Mr Brouwer was director of the OPI.

"The Government took him away from the director's role because of a perceived conflict of interest and now he is oversighting an inquiry into matters that happened on his watch.

"That's why we've been calling for years for proper oversight of the OPI.

"The police have extraordinary powers and the OPI have powers far in excess of those held by police."

Senior Sergeant Davies said corruption was not restricted to a police force and an independent commission against corruption similar to what existed in other states was needed.

The allegations involve a sacked OPI investigator claiming he was forced by his boss to sign false statutory declarations at the OPI to cover up dubious expense claims on meals and entertainment.

His boss is suspended on pay.

The OPI said it was conducting a "thorough review of relevant policies and procedures".

OPI director Michael Strong said in a statement he had full confidence in all his staff.

"Like all workplaces, we will from time to time have workplace issues," he said.

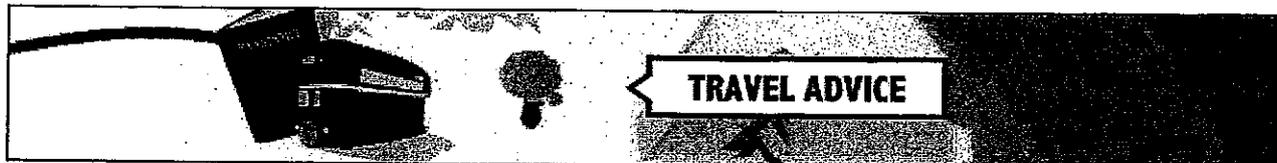
"When those issues involve any allegations of misconduct it is important those allegations are independently investigated and the investigation oversighted."

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Probe on officer 'threats'

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Article from: Sunday Herald Sun

James Campbell
May 24, 2009 12:00am

VICTORIA'S integrity watchdog is facing an investigation by State Parliament into allegations of misconduct.

President of the Legislative Council Bob Smith has revealed he has been made aware of serious allegations about the conduct of an investigator working for Victorian Ombudsman George Brouwer.

The allegations relate to an Ombudsman inquiry into misconduct at Brimbank Council, which was released earlier this month.

Former detective Lachlan McCulloch, who works as an investigator for the Ombudsman, has been the subject of complaints over alleged threatening behaviour towards councillors during the investigation.

It was revealed last week that Mr McCulloch had also been accused of revealing the identity of a supergrass in a book he wrote about his time working undercover investigating the notorious Pettingill crime family.

Mr Smith said he was concerned by the allegations relating to the way the Ombudsman office's wide-reaching Brimbank Council investigation was carried out.

"These are serious allegations," Mr Smith said.

"Allegations have been made and I am prepared to investigate any formal complaint made to me about an officer of the parliament."

Ombudsman George Brouwer is an officer of the Victorian Parliament.

Mr Smith has also flagged concerns that the current laws that govern the Ombudsman may not be adequate for dealing with allegations of misconduct against his office.

"I am also concerned there may not be a formal process to address complaints made about the Ombudsman and

that is a matter I am investigating."

Two people interviewed by Mr McCulloch during the investigation have claimed the investigator told them they could not discuss their interview with a lawyer.

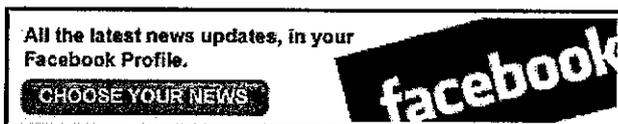
One said they had since tried to obtain a copy of the tape of their interview, but the request was refused.

"The tape will show how I was treated," the subject said.

The Ombudsman Victoria office declined to comment and asked the Sunday Herald Sun not to seek to contact Mr McCulloch.

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Herald Sun

Victoria Police have hired private investigators to check on police watchdog

- Padraic Murphy
- From: *Herald Sun*
- August 14, 2009 12:00AM
- [2 comments](#)

VICTORIA'S highly secretive police watchdog has hired private investigators to dig into the affairs of its own employees.

The Office of Police Integrity engaged the firm Julie Baker-Smith and Associates to investigate John Kapetanovski, a highly respected former Victoria Police detective.

The OPI sacked Mr Kapetanovski last year and he has been fighting his dismissal in the Australian Industrial Relations Commission, now Fair Work Australia.

It's believed Mr Kapetanovski worked in the OPI's integrity testing area.

The OPI told the commission it had hired the Julie Baker-Smith firm for an "investigation report concerning Mr Kapetanovski".

The firm is run by lawyer Julie Baker-Smith and qualified teacher Katherine Clarkson. Its website claims it's the "pre-eminent investigators of sensitive and complex issues".

Start of sidebar. [Skip to end of sidebar.](#)

Related Coverage

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- [No Tasers for cops - watchdog](#) *Herald Sun, 12 Jul 2009*
- [A fish who got away](#) *Herald Sun, 25 Jun 2009*

End of sidebar. [Return to start of sidebar.](#)

It specialises in investigating government employees with clients including the Department of Justice and the Australian Taxation Office.

Mr Kapetanovski's lawyers have been seeking the legal advice given to the OPI after they heard about criticism of the JBSA report.

The OPI successfully argued in May the independent legal advice was privileged, and denied Mr Kapetanovski legal team's attempt to be granted access to it.

Mr Kapetanovski had a long and successful career with Victoria Police before joining the OPI.

He rose to the rank of detective inspector and worked on some of the state's most high-profile crimes, including the 1996 murder of a Bendigo mother, the 1998 car bombing murder of mechanic John Furlan and the extradition from Darwin of Brendan Luke Berichon, the apprentice of the so-called postcard bandit Brendan James Abbott.

A spokesman for the OPI declined to comment.

"We can't make any comment because the matter is still before Fair Work Australia," said spokesman Paul Conroy.

Mr Kapetanovski's lawyer, Daniel Proietto, did not return calls yesterday.

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Submission of the Police Association Victoria to the Integrity and Anti-Corruption System Review

SCHEDULE 4

**Media reports relating to the receipt of a gratuity by former Chief
Commissioner, Christine Nixon**



Police chief Nixon defends free luxury trip

BEVERLY HILLS

Cap

Peta Hellard

Los Angeles

POLICE chief Christine Nixon has defended taking a free luxury trip to Los Angeles worth tens of thousands of dollars.

The Chief Commissioner and her husband, Mr John Becquet, a former Qantas executive, flew from Melbourne on Monday as VIP guests of the airline on the inaugural flight of its A380 airbus to Los Angeles.

The trip would normally cost a couple more than \$30,000 in airfares alone, but Ms Nixon said she did not feel it was inappropriate for her to accept the all-expenses paid junket.

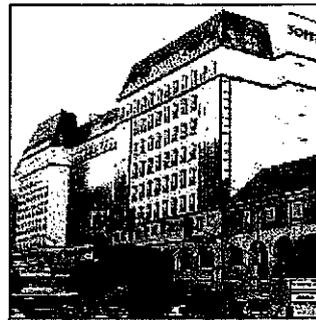
"I thought about what people might think but I have to say I don't think in any way I've been compromised," she said.

"I am on holidays for just three days ... I haven't had a holiday for maybe 12 months.

"We've been asked to be part of an amazing event — the plane was just magnificent."

Ms Nixon and her husband have enjoyed star treatment since arriving on Tuesday.

They were greeted by stars John Travolta and Olivia Newton-John and have enjoyed free accommodation at the Sofitel in Beverly Hills, cocktail parties and private tours of galleries and museums.



VIP: the Sofitel hotel

Qantas business class airfares run to more than \$16,000 a person, while first class costs more than \$20,000. Standard luxury rooms at the Sofitel — described as Los Angeles city's hottest new destination — start above \$500 a night.

Police Minister Bob Cameron last night declined to comment on whether he supported Ms Nixon taking the free trip.

He said through a spokeswoman: "The Chief Commissioner advised the minister that she was taking personal leave to accompany her husband on a trip to the US."

But Mr Becquet, who was in charge of Qantas crew operations and was involved in the 747 launch in Australia in the '70s, said his wife deserved time off.

"At the end of the day, we are entitled to a life," he said.

Continued Page 2



Relaxed: Christine Nixon and John Becquet in LA

Nixon's free trip

From Page 1

"I find it kind of bizarre that this question gets asked and she's had a three-day holiday."

Mr Becquet said the couple, who celebrate their 18th anniversary tomorrow, were invited to LA after a chance meeting with a Qantas executive. "I am normally her handbag but on this she's my handbag," he said.

Ms Nixon, whose contract as police chief expires in April, would not say whether she wanted to stay in the job.

"I've had some discussions so far but it's really not been finalised," she said.

While in LA the couple attended an exclusive cocktail party at a multi-million-dollar private home in Los Angeles and visited the Getty Centre.

Voteline: Page 25

Neil Mitchell: Page 26



Herald Sun
24/10/2008
Page: 26
Editorials
Region: Melbourne
Circulation: 530000
Type: Capital City Daily
Size: 166.96 sq.cms
MTWTFSS-

Herald Sun

A fair cop, Ms Nixon

A THREE-DAY luxury trip to Los Angeles to celebrate an inaugural flight of the new Qantas A380 is turning into a major embarrassment for Victoria Police Chief Commissioner Christine Nixon.

Ms Nixon accompanied her husband, a former long-serving Qantas executive, on the all-expenses-paid junket that would have normally cost tens of thousands of dollars.

Now she is to be asked to explain details of the trip to Office of Police Integrity director and former County Court judge Michael Strong.

The Chief Commissioner will also be asked about her own guidelines on police officers accepting gifts, as well as possible conflicts of interest.

Ms Nixon returned yesterday, telling waiting media she did not feel she acted inappropriately. Besides, she had not had a holiday for 12 months.

No one begrudges the Chief Commissioner a vacation, but that does not mean flying off on a freebie.

As to not believing she has been compromised by accepting the airline's largesse, that is perhaps for others to judge. At the very least her attitude is naive.

Former chief commissioner Kel Glare bought into the row yesterday, suggesting

Ms Nixon made an error of judgment.

His view is particularly relevant given he investigated the so-called Continental Airlines affair in the 1980s when free air tickets were handed out to business people and police.

Ultimately, it ended the career of then Victorian governor Sir Brian Murray, who took a free inaugural flight to Europe, as well as the police who accepted discounted tickets on the same airline.

John Cain was the premier who accepted Sir Brian's resignation and yesterday he too expressed concern at Ms Nixon's acceptance of free travel. Public office holders shouldn't do it, he said, and he has a point.

No one is suggesting the Chief Commissioner should lose her job over the trip.

But, coming so close to her involvement in Collingwood's decision not to draft troubled AFL star Ben Cousins, it raises questions about her judgment of late.

Whether this relates to the impending expiry of her contract is unclear. The Chief Commissioner is not saying whether she will seek an extension.

Ms Nixon is a hard-working and honourable police chief who has served the state well. On balance, she would have been better to forgo the trip.



Herald Sun
24/10/2008
Page: 28
Letters
Region: Melbourne
Circulation: 530000
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Size: 37.09 sq.cms
MTWTFS-

Junkets take their toll

THERE are disturbing aspects to Chief Commissioner Nixon accepting a free luxury Qantas VIP junket to Los Angeles.

If accepting a free air trip for himself and his wife was sufficient to justify Sir Brian Murray being forced to resign as Victorian governor by the Cain government, then Christine Nixon should be required to reimburse the full cost of this junket.

If Victorian police are forbidden to accept free hamburgers and drinks from merchants while on street patrol, then Christine Nixon should abide by the same rules and reject free luxury VIP junkets.

It appears highly unlikely this luxury junket would have been offered to a long-retired executive if he had not been married to a chief commissioner.

James Bowen, Glen Waverley



Herald Sun
24/10/2008
Page: 1
General News
Region: Melbourne
Circulation: 530000
Type: Capital City Daily
Size: 49.11 sq.cms
MTWTF5-

OPI to question police chief

THE Office of Police Integrity will ask Chief Commissioner Christine Nixon to spell out the circumstances of her controversial free luxury trip to Los Angeles.

The OPI is expected to examine whether Ms Nixon breached her own guidelines in relation to accepting gifts.

OPI director Michael Strong intends

raising the VIP Qantas trip directly with Ms Nixon. "I will be seeking further information about the circumstances of the flight by the chief commissioner to Los Angeles," Mr Strong said yesterday.

"I will be doing that as soon as I am able to arrange to speak to Ms Nixon."

Report, Page 5



Top cop's shocked by furore

Keith Moor, John Ferguson, Holly Ife and Ian Royall

CHRISTINE Nixon is unrepentant about her luxury junket to Los Angeles on Qantas's new A380 super jumbo.

As the Premier and the Police Minister yesterday strongly backed her, the Chief Commissioner declared "I believe what I've done is reasonable and fair."

"I don't owe Qantas anything," she said.

"I understand it's been said it's a very expensive holiday."

"Qantas owns the plane, and Qantas obviously owns part of the hotel as well, so I don't think it was very expensive in that way."

She had been surprised by the reaction to her trip.

The Office of Police Integrity will speak to Ms Nixon, seeking more information about the trip, as soon as it can be arranged.

The police manual warns of the dangers of accepting free gifts and directs police not to endorse or recommend services or products.

Ms Nixon praised the Qantas jet after joining its inaugural flight.

"We've been asked to be

part of an amazing event — the plane was just magnificent," Ms Nixon said.

She and her husband John Becquet, a former Qantas executive, flew as guests of the airline.

They returned to Melbourne yesterday.

They had free accommodation at the Sofitel in Beverly Hills and had private tours of galleries and museums during the all-expenses paid trip.

Ms Nixon told Police Minister Bob Cameron before she left that she was taking leave to accompany her husband.

The minister said yesterday: "She's doing a great job and has the full support of the Government."

A spokeswoman for Premier John Brumby said Ms Nixon was entitled to take leave, and her leave arrangements were a matter for her.

While Ms Nixon retains the backing of the Government, Labor sources told the *Herald Sun* some people expected her to stand down before her second four-year contract expired next April.

Government sources said if she wanted to stay she would be given a new contract.

Ms Nixon said yesterday she would be happy to discuss the trip with the OPI.

A spokeswoman said: "The

Chief Commissioner has been very transparent about this issue, particularly as a number of journalists were also on the flight and she was aware of this prior to taking part."

As she touched down in Melbourne yesterday morning, Ms Nixon said: "I was very aware of what I was doing."

"I had thought about whether or not I should accept this trip, and I understand that some people think it's inappropriate."

"I think it is reasonable that I accompanied my husband, went there for about 20 hours, and have come back on Thursday morning."

"I understand people's concerns but I believe what I've done is reasonable and fair. I don't think I've compromised Victoria Police at all."

Ms Nixon said she had wanted to take the trip because it was a significant occasion for her husband.

Opposition Leader Ted Baillieu said yesterday he would not have taken the trip. "I understand she sought approval from the minister... so to that extent you can't argue she's done something wrong."

"But it's not something I would have done," he said.

Former premier John Cain said Ms Nixon should not

have taken the trip.

"I've always had a strict view on this, and that view hasn't changed," he said.

"I don't think public office holders should put themselves in a position where they can be compromised. Public office holders are different."

Governor Sir Brian Murray was forced from office during Mr Cain's term in office after accepting free overseas travel from Continental Airlines.

At the time, senior and junior police were taking trips in a fares racket organised by the airline's Melbourne manager.

Editorial, Page 26



Yesterday's Herald Sun



Herald Sun
25/10/2008
Page: 3
General News
Region: Melbourne
Circulation: 530000
Type: Capital City Daily
Size: 245.22 sq.cms
MTWTFSS-

Police chief will pay discount fare for Beverly Hills break

Free trip backflip

Keith Moor

CHIEF Commissioner Christine Nixon yesterday agreed to reimburse Qantas for the cost of her controversial free trip to Los Angeles.

Ms Nixon said she would do so to limit damage to Victoria Police's reputation.

She has come under pressure since joining her husband, John Becquet, on the inaugural Qantas A380 super jumbo flight to LA on Monday.

Her husband is a former Qantas executive, and Ms Nixon said it was in that capacity he was invited. She travelled as his partner.

But as the wife of a retired Qantas executive, Ms Nixon qualifies for cheap spousal fares of about 10 to 20 per cent of the scheduled fare.

Since the normal Qantas return business-class fare to Los Angeles is \$15,000, it will cost Ms Nixon less than \$3000

to reimburse Qantas.

She took annual leave for the three-day trip and informed Police Minister Bob Cameron she was going.

But the Chief Commissioner was criticised for possibly breaching her own guidelines in relation to conflict of interest, accepting gifts and endorsing businesses.

Office of Police Integrity director Michael Strong has written to Ms Nixon asking for more information about the circumstances of her flight.

Ms Nixon said yesterday she flew as a private citizen.

"After discussions with a range of people over the past 24 hours, I have arranged today to reimburse Qantas," she said yesterday.

"Whilst I was taking the flight on leave and as a result of an invitation received by my husband, a former Qantas executive, I understand that some people are concerned about the perception issue.

"At no stage was this travel

undertaken by me as part of my role as Chief Commissioner...

"However, I do not want to damage the reputation of Victoria Police or the Victorian Government any further, and as a result my husband has today arranged to pay the funds to Qantas.

"The payment is in line with the fares normally paid as part of my husband's retirement benefits package.

"As his spouse I am entitled to access these fares. (They are only used by my husband and I for private travel."

She said accommodation was included in the invitation and staying with her husband did not add to the cost.

Premier John Brumby and Mr Cameron have both offered Ms Nixon full support. But Opposition Leader Ted Baillieu, former premier John Cain and former chief commissioner Kel Glare, have criticised her.

The Victoria Police Manual warns of the dangers of accept-

ing free gifts and directs police not to endorse or recommend services or products.

Ms Nixon praised the Qantas jet after arriving in LA.

The OPI is expected to compare her explanation with the guidelines in the manual to see if she committed any breaches.

Editorial, Page 98
Readers react at
heraldsun.com.au



Christine Nixon

APPENDIX A

24/10 2008 07:35 FAX 01298914340

QANTAS AIRWAYS

Executive General Manager
Qantas Airways
John Borghetti



12 September 2008

Ms Christine Nixon
Chief Commissioner
Victoria Police
Level 10, Building C
Victoria Police Centre
637 Flinders Street
MELBOURNE VIC 3000

Dear Chief Commissioner,

On behalf of our Chief Executive Officer, Geoff Dixon, it is my pleasure to formally invite you and John to join Geoff and Dawn, and other invited guests, on the inaugural commercial flight of Qantas' Airbus A380. Operating as QF93, the flight will depart Melbourne for Los Angeles on 20 October 2008 at 11.15am.

Accommodation has been booked at the Sofitel Los Angeles from Sunday 19 October (to enable guests to go direct to their room on arrival) to Wednesday 22 October. An inaugural dinner will be held on the evening of arrival with the remainder of the time free.

It is anticipated that the majority of the group will depart Los Angeles on the evening of 22 October. However, we would be pleased to book a later return flight for you should you wish to extend your stay.

I realise that your schedule is extremely busy but do hope that you and John may be able to join Geoff and Dawn on this very significant occasion.

Yours sincerely,

John Borghetti
EXECUTIVE GENERAL MANAGER

Qantas Airways Limited
ABN 16 009 661 901
St Regis McMaster Building 203 Crown Street, Mascot, New South Wales 2020 Australia
Telephone 61 (2) 9691 3974 Facsimile 61 (2) 9691 4348

APPENDIX B



VICTORIA POLICE

14 November 2008

Chief Commissioner's LA travel

On 24 October, I was asked by OPI to respond to concerns related to my recent travel with my husband to Los Angeles. I understand that later a formal complaint was received by OPI. I have cooperated with OPI in the subsequent investigation.

Pursuant to a conciliated resolution, I now release the following statement.

On 18 March 2008 my husband and I received an oral invitation to join the inaugural flight of the Qantas A380. My belief then was that the offer was made because of my husband's past connection with the airline and his interest in the A380. The oral offer was formally confirmed in a letter on 17 September 2008 addressed to me as Chief Commissioner. My husband was very enthusiastic about the prospect of joining the inaugural flight. He has been very supportive, and patient, during my term as Chief Commissioner. I was in need of a break, so we decided to accept the offer and take the trip.

I now accept that my position as Chief Commissioner influenced Qantas' decision to make the offer, and also influenced aspects of the flight arrangements made thereafter. I have come to understand that Qantas regarded me as a guest in my own right, and not merely as the partner of my husband. I should have given the offer more careful consideration. I probably should have sought independent advice.

At the time, I did not believe that my conduct contravened the Victoria Police Code of Conduct. As I now appreciate, my acceptance of the free travel was inadvisable. I accept that the free travel involved a gift of more than token value within the meaning of the Code of Conduct.

I accept that my conduct has not provided a good example for Victoria Police members to whom gifts and gratuities may be offered. I very much regret that this

has occurred. I accept that there is an urgent need for Victoria Police policy in this area to be clarified and, if necessary, strengthened. Victoria Police will work with the OPI and the State Services Authority to achieve this objective.

Because my husband is entitled to discounted travel from Qantas, for himself and for me, it is difficult to determine the true value of the benefit I received. On 30 October 2008, my husband and I have made a payment to Qantas representing the value of my travel under the Qantas staff travel scheme. In the circumstances, I have decided to pay an appropriate additional amount, to be advised by Qantas, to better reflect the value of the benefits I received. Qantas has indicated this amount will be given to charity.

Christine Nixon

Chief Commissioner

APPENDIX C

MEDIA ALERT

Friday, 14 November 2008



STATEMENT BY DIRECTOR, POLICE INTEGRITY

A complaint received by OPI in relation to Chief Commissioner Nixon's air travel to Los Angeles has been resolved by conciliation pursuant to section 86N(6) of the *Police Regulation Act 1958*.

The Chief Commissioner has publicly acknowledged that her acceptance of the free travel involved a gift 'of more than token value' within the meaning of the Victoria Police Code of Conduct and therefore contravened the Code. She has acknowledged a lack of judgment, for which she has given reasons. She has acknowledged that there is a need to clarify and, if necessary, strengthen policy in relation to gifts and gratuities offered to police members. OPI will work with Victoria Police to ensure that this occurs.

I am satisfied that resolution, in this way, of the complaint made against the Chief Commissioner is consonant with my statutory objects and functions, and is in the public interest.

I will further elaborate upon my reasons in a report to Parliament. The policy review will commence immediately.

MEDIA ENQUIRIES:
Paul Conroy
Manager, Communications
P: 03 8635 6161
M: 0416 371 099



MAGISTRATE'S CHAMBERS
MAGISTRATES COURT ADELAIDE

Your reference: A2014/00181

7 April 2015

The Hon Bruce Lander QC
Independent Commissioner Against Corruption
GPO Box 11066
ADELAIDE SA 5001

Dear Commissioner,

Review of Legislative Schemes / Evaluation of Practices and Procedures of Police Ombudsman

I refer to your letter dated 13 February 2015, and apologise again for missing the submissions closing date.

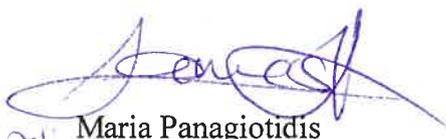
I have again also sought the views of the Deputy, Magistrate Paul Foley before sending this reply.

This may be outside the matters you are considering, however, in the event that your review takes into consideration the procedures applied to the Police Disciplinary Tribunal hearings, I make the following comments:

As you will already know, the function of the Tribunal is to determine the question of guilt. The penalty is imposed by the Police Commissioner (see section 39(4) *Police (Complaints and Disciplinary Proceedings) Act 1985*). Whilst I do not necessarily suggest the penalty should be imposed by the Tribunal, I wonder whether the process can be simplified. In my last letter I mentioned the time that matters take to reach the stage where they can be remitted is very long. This is especially so where a matter is ultimately uncontested. I also consider the process is overly complicated and formal.

Please contact me on 8204 0363 if you wish to discuss anything arising out of this letter.

Yours Sincerely,


Maria Panagiotidis



THE UNIVERSITY
of ADELAIDE

Public Law and Policy Research Unit

Submission to the Independent Commissioner Against
Corruption on the Review of Legislative Schemes

This submission was written by:
Dr Anna Olijnyk and Dr Judith Bannister

CRICOS PROVIDER 00123M

adelaide.edu.au

seek LIGHT

We thank ICAC for the opportunity to comment on the review of legislative schemes. We applaud the ongoing efforts of ICAC and the South Australian Government to establish a comprehensive and effective system of government accountability mechanisms.

Our submission is restricted to that part of the review that relates to complaints and reports about public administration. We do not wish to comment on the system for handling complaints relating to the conduct of members of SA Police.

We will address the first and third questions for consideration in the review¹ together, because our responses to both questions are related. We do not wish to comment on the second question.² Our principal concern is that the system for receiving and investigating complaints should be accessible and user-friendly for members of the public. There is clearly room to reduce duplication and improve efficiency in the current system, but this should not be achieved at the expense of accessibility.

We accept that it would be ideal to have a central body to receive complaints and reports about public administration. This could provide the public with a highly visible point of entry into the system, as well as providing likely efficiency benefits. However, we recognise that each of the bodies that handle complaints (ICAC, the Ombudsman and the Police Ombudsman) has a distinct role and ought to continue to handle the matters that fall within their jurisdiction. Furthermore, even if OPI were made the central body for receiving complaints, members of the public are likely to continue to make complaints to the other bodies. The Ombudsman in particular has a well-deserved, long-standing reputation as a first point of contact for complaints about government conduct. It may be difficult to communicate to members of the public the message that the OPI now performs that role.

We foresee two kinds of problems that would arise if OPI were made the *only* agency that receives complaints, and yet members of the public continued to bring complaints to those agencies.

First, people who had genuine complaints about public administration might be deterred from pursuing those complaints. The Discussion Paper notes that OPI was originally intended to implement a ‘no wrong number, no wrong door’ approach to receiving complaints. As this approach recognises, making a complaint can be an intimidating and confusing process. If a person who makes a complaint to the Ombudsman (for example) is simply told they have complained to the wrong agency and must instead approach OPI, the person may be discouraged from pursuing the complaint at all. This would undermine the entire accountability scheme.

Secondly, if a person makes a complaint to the one of the complaints bodies that falls squarely within that body’s jurisdiction, that body should be able to receive and investigate that complaint immediately. If, for example, a person complains to the Ombudsman about an administrative act that does not involve a member of SAPOL or any suggestion of corruption, it

¹ Should the OPI be the central body for the receipt and assessment of complaints and reports about public administration? What systematic changes can be adopted to reduce duplication and improve efficiencies in the receipt, assessment and resolution of complaints and reports about public administration?

² What role should the ICAC play in relation to the oversight of inquiry agencies?

seems unnecessary for the Ombudsman to refuse to receive the complaint but instead to suggest that the complaint be made to OPI. The complaint would almost inevitably be referred back to the Ombudsman by OPI. This 'bounce-back' situation would create the kind of delay, duplication and inefficiency this review aims to reduce.

Therefore, in the interests of accessibility, we recommend that other agencies retain the ability to receive complaints. Duplication could be reduced through record keeping systems. The OPI could maintain a centralised register of complaints. If this register revealed that the same complaint was being handled by more than one agency, OPI could notify the agencies involved and those agencies could, by negotiation, decide which agency should proceed with the complaint.³

If it is decided that OPI should be the only body to receive and assess complaints, the complaints bodies other than OPI ought to engage in 'warm referrals' – that is, actively assisting a complainant to make their complaint to OPI.⁴ This would allay our concerns about the accessibility and responsiveness of the system, but would not address the 'bounce-back' problem identified above.

In summary, while we are aware of the benefits of a 'one stop shop' for receiving and assessing complaints about public administration, we are doubtful whether these benefits can be fully realised without detracting from the benefits of the current system. While there is clearly potential to improve the efficiency of the system, this might best be achieved by strengthening the communication and record keeping between the complaints bodies rather than by changing the substantive ability of any of these bodies to receive and investigate complaints.

³ The agencies are permitted to discontinue an investigation if, for example, 'having regard to all the circumstances of the case, the investigation or the continuance of the investigation of the matter ... is unnecessary or unjustifiable': *Ombudsman Act 1972* (SA) s 17(2)(d); see also *Police (Complaints and Disciplinary Proceedings) Act 1985* (SA) s 21(1)(d).

⁴ See Commonwealth Access to Justice Taskforce, Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, September 2009, 79-80.

Independent Commissioner Against Corruption.

Commissioner Lander

I am pleased to provide this submission on behalf of the South Australia Police (SAPOL) in response to the Independent Commissioner Against Corruption (ICAC) 'Review of Legislative Schemes' Discussion Paper. This submission is provided in furtherance to the valuable interaction that has already taken place between SAPOL and ICAC concerning the broad and complex topic of legislative schemes and associated issues.

I request that all previous relevant interaction and advice provided from SAPOL be considered to inform this current process of review.

I also accept the offer for SAPOL to make a submission at any public hearing into the future if this assists.

Implementation of Office for Public Integrity (OPI) and ICAC in 2013 was always going to present challenges and essentially alter the landscape in South Australia in relation to integrity and corruption investigations. The commitment by all parties to address those challenges has been well intentioned and appropriately focused. This review is evidence of that continued commitment.

Notwithstanding the extent of cooperation, it is clear that the current framework concerning assessment, allocation, oversight and management of police related complaints in particular remains problematically complex and duplicitous.

Although as highlighted in the discussion paper, OPI and ICAC were intended to augment the roles of the Ombudsman, the PO and the Commissioner for Public Sector Employment it is apparent that certain procedural issues have resulted in duplication of effort and as a result there has been an unintended impact on the efficient operations of the office of the PO which has in turn flowed onto SAPOL. In practical terms this translates to notable delays in bringing matters to an appropriate and timely outcome.

There is little doubt that the current arrangements between agencies need to change.

That change process should focus on clarifying roles and functions, streamlining of the assessment/allocation process relating to police complaints and ensuring that relevant legislation supports any change that is made or in the least supports that which is retained.

It is immediately apparent that the many issues outlined in the discussion paper are of relevance to SAPOL and ultimately very important to the community of South Australia. This process of review provides opportunity to discover and consider reform options and is supported and welcomed.

The broad nature of this response will most likely serve to confirm that which has already been made known to you in our previous interaction. I anticipate that this paper will therefore serve as the catalyst for more detailed exploration and discussion. I look forward to assisting in that process.

SAPOL framework

As identified in the discussion paper SAPOL has a high level of community satisfaction relating to ethics and honesty. This achievement is a direct result of the professionalism and attitude demonstrated by SAPOL members.

The organisational commitment to ensuring the highest of standards is supported by a comprehensive internal complaints and disciplinary framework. SAPOL is committed to the development and implementation of best practice for the management of behaviour, conduct and or work performance issues identified as a result of an investigation into complaints and reports against SAPOL employees.

Organisationally SAPOL has an Ethical and Professional Standards Branch (EPSB) which assumes overall responsibility for managing the disciplinary framework utilised by SAPOL. EPSB coordinates the investigation, adjudication and prosecution of matters involving complaints against employees and internal SAPOL conduct investigations.

EPSB includes the Internal Investigation Section (IIS) which provides a state wide response to the requirements of the *Police (Complaints and Disciplinary Proceedings) Act, 1985* (PC&DPA) and internal conduct investigations involving suspected criminal offences and breaches of the *Code of Conduct* prescribed in the *Police Regulations, 1999*. IIS investigators are required to investigate as directed by the PO whom independently assesses each investigation and makes recommendations to my office.

Additionally, SAPOL operates an Anti-Corruption Branch (ACB) which has a primary role to ensure allegations of corruption in public administration referred to SAPOL by the ICAC are appropriately investigated. The investigations are not restricted to allegations of corruption in SAPOL and the remit extends across matters of all public administration. Notably, prior to commencement of ICAC the ACB was governed by a ministerial direction that mandated its operations. ACB was only permitted to investigate criminal matters that constituted corruption as provided in a very narrow definition.

Police Complaints and Mandatory Reports

Within the current Legislative framework complaints about police conduct can be made direct to the PO, OPI or to any member of SAPOL. Any complaint made direct to a member of SAPOL must in turn be provided to the PO.

It is the PO's responsibility to investigate complaints to which the Act applies. Those are matters of which a complaint is made about the conduct of a designated officer.

At this point it is important to acknowledge the independent role of the PO which is a legislated independent agency to oversight the investigation of police complaints. Such a mechanism has existed in South Australia since 1987 and has generally served the South Australian community well.

It is the case currently, that IIS staff will await direction from the PO about a police complaint. More recently, in some cases the timeframe for this advice has extended beyond what would be an acceptable delay and I understand that on occasions the delay has been attributed to demands placed upon the PO office by OPI and/or other work place demands by the PO office. I also understand that central to such delay is the 'assessment process' undertaken by OPI. On this issue I have previously expressed my concerns about the role of the OPI making very comprehensive assessments of some matters before determining to refer them for investigation or enquiry.

There are of course numerous other apparent reasons for delay within the overall framework including administrative and reporting requirements and most likely resourcing as identified in the discussion paper.

I request that you consider the particular issue of 'assessment by OPI' as part of the review.

In any case, a complementary scheme also operates which involves reports of suspected breaches of the *Code of Conduct* (Police Act) which are made by police officers to me. Between the agencies such reports are referred to as 'Mandatory Reports'.

In 2012, when the ICAC Bill was introduced an amendment was made to the Police Act which obliged me to advise the Police Ombudsman of the details of those Mandatory Reports.

For sake of clarity breaches of the *Code of Conduct* can range from the very minor to the very serious including such things as speaking inappropriately to another officer or failing to maintain care for property and similar. These Mandatory Reports are fundamentally internal disciplinary matters which should be dealt with swiftly and in most cases in a manner that encourages behavioural change and education to the workforce.

It is common ground between the PO and SAPOL that a complaint in the context of complaints against police or other government agencies is an expression of a grievance. The person expressing the grievance brings it to the attention of a relevant person or agency with the expectation that it will be considered or addressed in some way.

To the contrary, a police officer or police cadet has a mandated statutory obligation when he or she reasonably suspects a breach of the *Code of Conduct* to report such suspicion to the Police Commissioner. It does not matter whether an officer has a grievance or not, as they have a positive obligation to report such matters to the Commissioner.

It would seem logical that if the Police Act places a positive obligation on police officers to make reports of their suspicions to the Police Commissioner, then the Police Commissioner should be entitled to deal with such disciplinary matters in a manner in which he or she deems appropriate. This is how Section 38(2) of the Police Act is framed in that subject to the Police Ombudsman exercising any other power, the Commissioner may cause the matter to be investigated. In other words, it is a matter for the Commissioner how such matters are dealt with.

From a practical perspective, on a daily basis, each Mandatory Report is assessed by IIS. Part of that assessment determines if the matter should be reported to the ICAC, and also determines if the matter could potentially involve a complaint about the conduct of a police officer by a person with a particular grievance (usually a member of the public). Where there is any doubt, a decision is made to await the direction of the PO before proceeding with internal action. Regardless of the assessment every report is referred on a daily basis to the PO.

For example it can sometimes be the case that a police officer will make a Mandatory Report about the behaviour of another police officer towards a member of the public. In those circumstances it is not uncommon for the PO, having been notified of the Mandatory Report by SAPOL to make contact with the member of the public involved and ascertain if the member of the public wishes to make a complaint about the conduct.

Where the member of the public does not wish to make a complaint, the PO refers the matter back to the Police Commissioner to deal with as he/she deems appropriate. If the member of the public does wish to make a complaint, the PO can then register the complaint and direct the Police Commissioner as to how the matter is to be investigated. The PO will then retain oversight of the investigation and make a written assessment which is provided to the complainant.

In certain circumstances where a suspected breach of the *Code of Conduct* is evident IIS staff make decisions and commence action immediately to investigate or resolve these matters in any case. A responsibility of the PO is to advise OPI of any reports which are considered to be serious or systemic misconduct, or are reports of maladministration. This is another outcome of the PO receipt of Mandatory Reports from SAPOL.

The extent of external oversight concerning assessment of Mandatory Reports has potential to create significant delays in actioning an appropriate response and unnecessarily complicates the efficient operation of SAPOL as an organisation.

As indicated within the discussion paper, time delay in bringing matters to conclusion is a significant issue of concern. Such delays impact on the community through loss of confidence in the system and impact on SAPOL members as they await the outcome of investigations.

In any case, as described, this reporting process now occurs, however in the majority of instances where a police officer is reporting to me about a suspected breach of the *Code of Conduct*, it is not a matter which falls within the *jurisdiction* of the PO.

There are some occasions where there is overlap, and mechanisms exist between our agencies to identify those circumstances.

Any system that imposes an obligation on the PO (or any other agency) to oversight every Mandatory Report of police misconduct would be onerous and counterproductive to the responsibility of the Police Commissioner to effectively manage police employees. For more serious matters, the external oversight already exists through ICAC.

Nonetheless, it is a point of agreement with the PO that in most instances, a Mandatory Report made to me remains my responsibility to deal with.

The resources of the PO office (or any other external oversight agency so appointed to undertake such a function) are far better utilised in assessing and overseeing the investigations of complaints made about the conduct of designated officers, rather than having to deal with matters of internal discipline.

I would be deeply concerned about any system which required the PO or another office to make an 'assessment' of every Mandatory Report before my officers could act.

I am strongly of the view that there are matters of internal breaches of the *Code of Conduct* which should remain within my determination to manage.

I request that you consider this position as part of the review.

Police Ombudsman

The current framework and interoperability of agencies is influenced by a suite of legislation, most relevantly the ICAC Act, Police Act and the PC&DPA. I request that you consider the impact of the ICAC Act on the PO's function as part of the review.

The existence of an entity such as the PO is vitally important to the effective assessment of complaints (from a member of the public) which are received.

It is apparent that within the current framework the office the PO has developed a practical and operational understanding of the practices and procedures under which SAPOL operate.

This naturally assists in the assessment of complaints received.

The heightened level of awareness comes about not only from the day to day operation of the PO but SAPOL has also provided opportunity for the PO to view operational training sessions, deliver PO specific training to recruits and promotional courses, and engage meaningfully with SAPOL staff on many of the complex matters surrounding police complaints.

The independence of the PO is and remains however an important factor.

I ask that in the process of review you consider the role of the PO as an independent oversight body with specific responsibilities towards police conduct in this State. In my submission, irrespective of whatever disciplinary framework exists or is developed in the future, it remains vitally important that total independence and a *specialist capability* of the oversight body is maintained.

As an example, if the OPI was to assume the responsibility for receiving and assessing all police related complaints, and the current level of assessment currently undertaken by OPI was to be applied to all such complaints, I would envisage that the entire system would most likely become more inefficient.

I provide this opinion based on that which occurs currently when pursuant to section 23 of the ICAC Act, OPI undertakes assessment process of all complaints and reports. The interpretation of "assessment" has been an ongoing point of discussion between SAPOL and ICAC.

In practical terms it has become the practice of OPI to undertake comprehensive assessments of every report received before determining whether it is corruption/maladministration/misconduct. The consequence of this is twofold, firstly it requires SAPOL to collect and collate a large amount of information and pass it onto the OPI and secondly it delays the assessment process and therefore the ability of SAPOL to commence and investigation by often up to several months.

Further the assessment process apparently conducted by OPI is often so comprehensive that it appears to more align to a preliminary investigation rather than an initial assessment. While this may, on some occasions result in a report being filed, often it results in duplication of work for SAPOL and unnecessary time delays

I request that you consider the process of 'assessment' by OPI and or any other entity and the impact of that process on the ultimate administration of Justice.

Defining Corruption

I have previously outlined my concerns regarding the very broad definitions of corruption within the current ICAC Act which effectively captures any suspected statutory offence no matter how minor. There is also a reporting requirement for misconduct.

The primary objects of the Act outline that the primary object of the (ICAC) Commissioner is:

- *To investigate serious or systemic corruption in public administration and*
- *To refer serious or systemic misconduct or maladministration in public administration to the relevant body, giving directions or guidance to the body or exercising the powers of the body as the Commissioner considers appropriate.*

The very broad definition of corruption under the Act and the narrow level of reporting initially required for misconduct matters, may have resulted in the focus of OPI/ICAC having a lower threshold than perhaps was intended by Parliament

Whilst there has been some shift by your office in the need to report low level misconduct matters, I maintain my concern about the duplicitous role of the OPI/ICAC and PO and the inevitable inefficiency this creates.

SAPOL consider the definition of corruption which previously existed under the ACB Ministerial Directions would provide far greater focus and clarity for the operations of OPI/ICAC:

- (a) conduct of a public official involving a breach or neglect of duty or abuse of office engaged in as a result of a bribe or threat or to gain any financial or other advantage or for any dishonest or improper purpose;*
- (b) conduct of a public official or any other person involving the soliciting, offering, taking or giving of a bribe or any financial or other advantage, or the making of any threat, to induce a breach or neglect of duty or abuse of office on the part of a public official;*
- (c) conduct of a public official or any other person involving a conspiracy or attempt to engage in conduct of a kind referred to in paragraph (a) or (b), where that conduct constitutes or involves, or might constitute or involve, a criminal offence.*

Perhaps for some Government agencies who may not have the established level of mandated reporting systems or independent oversight bodies such as SAPOL has, this higher level of reporting is required. However, I ask you to consider in your review the current impact of the actual legislated definition of corruption.

I suggest the review may like to consider how the office the PO may operate if the definition of corruption did not capture every suspected statutory offence, and the reports/complaints of police misconduct (other than those that meet a higher threshold of corruption) were a matter for the PO.

A change to the definition may also significantly impact on the current or future level of resources required within OPI/ICAC.

Sanctions applied to Police Officers

Section 40 of the Police Act allows for the Police Commissioner to determine punishment where a person admits a breach of the Code or commits an offence. This occurs once the matter has been determined in the Police Disciplinary Tribunal or the Criminal Courts. There are a range of other sanctions which enable less serious breaches of misconduct to be dealt with in a more efficient and effective manner. This includes the minor misconduct process, and the managerial support process. For complaint matters, the PO makes recommendations to me as to how substantiated matters should be dealt with. For Mandatory Reports, the approach is a matter for the Police Commissioner.

The Police Disciplinary Tribunal is an important feature of the police complaints and disciplinary process however it is not always the most effective way to deal with misconduct or rectify errant behaviour in a timely manner.

I ask that during your review you take into account the important role that the PO plays in making recommendations to me about how substantiated allegations are dealt with, and additionally my discretion in relation to Mandatory Reports of misconduct and any sanction which should be applied.

Thankyou for the opportunity to provide my views.

Gary T Burns BM APM LEM
Commissioner
South Australia Police.



SOUTH AUSTRALIAN CORONERS COURT

State Coroners Office
302 King William Street
Adelaide SA 5000

Telephone: (08) 8204 0600
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17 March 2015

Legislative Reviews
GPO Box 11066
ADELAIDE SA 5001

Dear Commissioner

Re: Review of Legislative Schemes / Evaluation of Practices, Policies and Procedures of Police Ombudsman

Thank you for your letter dated 13 February 2015. I am pleased to make a submission to your review of the oversight and management of complaints regarding the conduct of members of South Australia Police, in the Police Act 1998, the Police (Complaints and Disciplinary Proceedings) Act 1985 and the Independent Commissioner Against Corruption Act 2012. I also note in your discussion paper dated February 2015 reference is made to the Finding into the death of Christopher Stuart Wilson. I know that you already have a copy of that Finding in your possession, but I attach an electronic copy for your convenience.

I will not repeat in this submission the remarks I made about the Police (Complaints and Disciplinary Proceedings) Act 1985 in that Finding, however I do ask that you take them into consideration. You will recall that in that case I requested that the Police Complaints Authority assessment and statements made by the key witnesses to the Internal Investigation Branch be voluntarily provided to me by the Commissioner of Police pursuant to section 48(2) of the Act. That section enables a relevant person, which is defined to mean the Commissioner, the Minister or the Authority (now Ombudsman) to authorise a prescribed officer to provide information. The invitation I extended to the Commissioner would have enabled him to authorise a member of the IIB, being a prescribed officer, to provide me with the relevant information. The Commissioner refused, citing as his reason the fact that the disciplinary processes under the Act were yet to be completed. As you have noted in your discussion paper, that was more than 3½ years after the disciplinary processes had been instigated. So far as I am aware the disciplinary processes had not resulted in any more serious sanction than unrecorded reprimands, submission to counselling in relation to conduct and recorded reprimands.

As I said in the Wilson Finding, it is difficult to see how the public interest in the full disclosure to an Inquest of all matters pertinent to the circumstances of a death could be outweighed by the perceived public interest in the prevention of possible prejudice

Cont/2...

to a disciplinary process that is unlikely to result in anything more serious than reprimands and managerial guidance.

I expressed the view in the Wilson Finding that the Inquest was detrimentally affected by the statutory secrecy in section 48 and which is a central feature of the Police (Complaints and Disciplinary Proceedings) Act. I recommended that section 48 of the Act be amended to enable full disclosure of relevant evidence to the Coroners Court and further that the Government review the Police (Complaints and Disciplinary Proceedings) Act 1985 in light of reforms adopted in other states of Australia, the United Kingdom and New Zealand which I had referred to in the Finding. I have never received a response from the Government to those recommendations. The Police (Complaints and Disciplinary Proceedings) Act 1985 has not been amended as I recommended and, if there has been any review as recommended by me, I have never seen its contents and no amendment has been made to the Act as a result of any such review.

Indeed, the fact that the Act remains in substantially the same form as it was when enacted in 1985 is most unusual. It is difficult to think of any other piece of legislation governing an aspect of the employment of a public employee such as a police officer that has not undergone at least two revisions in that time. Certainly the legislation covering public servants has been fundamentally changed at least twice during that period. South Australia is clearly out of step with the other states in this respect also and I refer to the Wilson Finding, paragraphs 23.4 to 23.6.

I am particularly concerned about the potential impact of delays in the police disciplinary process upon Inquests into deaths in custody. As you would be aware, the Coroners Act 2003 provides that the Coroners Court must hold an Inquest to ascertain the cause or circumstances of a death in custody. Other reportable deaths are the subject of a discretion vested in the State Coroner as to whether an Inquest will be held or not. Deaths in custody are the exception for obvious reasons. In this connection I draw your attention to the Royal Commission into Aboriginal Deaths in Custody, Volume 1, page 109 and following where the Commissioner commented on the adequacy of coronial Inquests reviewed by the Commission. A matter of particular concern in a death in police custody is that the police are effectively investigating the actions and omissions of the police themselves. This was the subject of comment by the Commissioner in the Royal Commission into Aboriginal Deaths in Custody and you will see the Commissioner eventually concluded that, imperfect though the system is, with the proper safeguards in place, including close coronial supervision, he was satisfied that police investigation of police deaths should continue.

But, when there is a potential that the outcome of a police disciplinary process might delay the commencement of an Inquest into a police death in custody, there is cause for great concern. Although the Coroners Act 2003 does not stipulate a time within which an Inquest must be commenced and completed into a death in custody, whether police custody or otherwise, it is clear that Parliament must have intended that the Inquest be held with all reasonable expedition. Indeed, the Parliament expressly empowered the Coroners Court to make recommendations that might in the opinion of the Court prevent or reduce the likelihood of an event similar to the event that was the subject of the Inquest (see section 25(2) of the Coroners Act 2003). It is easy to see that the benefit of a recommendation is considerably reduced the longer it takes for the

recommendation to be made. It is clearly not in the public interest that an Inquest into a police death in custody should be delayed by a cumbersome and lengthy police disciplinary process.

Once again, thank you very much for providing me with the opportunity to make a submission. I look forward to the outcome of your process and very much hope that it will result in long overdue reforms of the Police (Complaints and Disciplinary Proceedings) Act 1985. I note that you intend to hold a public hearing in late April 2015. I do not wish to be heard at that public hearing and I am content to confine my input to this submission. I note that submissions will be published on the ICAC website after 27 March 2015 and I have no objection to the publication of my submission in that manner.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mark Johns', written over a printed name and title.

Mark Johns
STATE CORONER



INQUEST INTO THE DEATH OF

CHRISTOPHER STUART WILSON

“In my view, this case presented opportunities for greater leadership to be demonstrated and I would have expected greater leadership to be shown during police involvement in the incidents that have been examined during this Inquest.” (Deputy Commissioner Burns)



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 21st, 23rd and 28th days of May 2007, the 28th and 29th days of June 2007, the 13th, 14th, 15th, 16th, 17th, 20th, 21st, 22nd, 23rd, 24th, 27th, 28th, 29th and 30th days of August 2007, and the 9th, 19th, 20th, 22nd, 23rd and 26th days of November 2007, and the 7th day of April 2008, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Christopher Stuart Wilson.

The said Court finds that Christopher Stuart Wilson aged 23 years, late of 3 Ey Court, Athelstone died at the Royal Adelaide Hospital, North Terrace, Adelaide, South Australia on the 28th day of February 2004 as a result of gunshot wounds to head. The said Court finds that the circumstances of his death were as follows:

1. Cause of death

Christopher Wilson was 23 years of age at the time of his death at 1500 hours on 28 February 2004 at the Royal Adelaide Hospital. On 27 February 2004 Mr Wilson had sustained a gunshot wound to the back and two shots to the head. He was conveyed to the Royal Adelaide Hospital where he subsequently died from his wounds. Post mortem examination confirmed two gunshot entry wounds to the head, one in the right forehead and the other just below the left ear. Further examination of the brain showed the right forehead gunshot wound passed right to left, horizontally, and exited the brain in the left frontal region. The left temporal gunshot wound passed left to right into the brain and approximately horizontally. Another gunshot

wound was located in the left side of the back region, with a projectile path passing through the tenth thoracic vertebrae. The pathologist also noted that there was an irregularly shaped abrasion on the lateral aspect of Mr Wilson's right lower leg. This abrasion was 17 by 8 millimetres in size and was healing at the time of death.

1. Christopher Wilson's murderer

- 1.1. For reasons that appear in paragraph 23 of these findings, the media is forbidden from publishing the identity of Christopher Wilson's murderer, because he (the murderer) was 17 years old at the time of the murder. Although the Coroner's Court can publish his name, any further publication by the media of his name would be forbidden by section 63C of the Young Offenders Act 1993.
- 1.2. In order to prevent an inadvertent breach of section 63C by media outlets I have elected to refer to the murderer by the letters "HB". Had HB murdered Christopher Wilson just one week later, he would have been 18 years old and this would have been unnecessary. I have made recommendations about section 63C of the Young Offenders Act.
- 1.3. On 4 August 2005 HB pleaded guilty to the offence of murder, two separate offences of endangering the life of another person and one offence of threatening a person with a firearm. It was HB who shot Christopher Wilson on 27 February 2004. He used a Ruger revolver¹. HB was sentenced to life imprisonment for the offence of murder and to a single sentence of imprisonment for nine years for the offences of endangering life and threatening a person with a firearm. The sentences were directed to be served concurrently. HB was almost 18 years old on 27 February 2004² and accordingly he was dealt with under the Young Offenders Act 1993 but was sentenced as an adult. Justice White directed that the sentences of imprisonment be served in a prison. He fixed a non-parole period of 16 years and 6 months commencing on 1 March 2004. Of the offences for which HB was convicted, the murder, the threatening a person with a firearm and one of the offences of endangering the life of another person were committed on 27 February 2004 during an incident that occurred in Duthie Street, Hillcrest in the early hours of that morning. The other offence of endangering the life of another person occurred late in the

¹ Annexure GM37 to Exhibit C10

² His date of birth was 3 March 1986

evening of 25 February 2004 in Flinders Street, Hillcrest. The victim on that occasion was also Christopher Wilson. The victims of the offences apart from murder that occurred on 27 February 2004 were Mr Mark Wilson, the brother of Christopher Wilson, and Mr Justin Williams, a friend of Christopher and Mark Wilson. The sentencing remarks of Justice White are contained in Exhibit C37c. Those remarks note that the wound to Christopher Wilson's back was fired as he was running away from HB. That wound disabled Christopher Wilson immediately and he fell to the ground. After that, two shots were fired by HB into Mr Wilson's head as he lay on the ground. Justice White described this as indicative of an "execution style killing" and I respectfully agree.

- 1.4. Thus, the criminal proceedings which ensued from the death of Christopher Wilson having been disposed of, section 21(2) of the Coroners Act 2003 did not afford any obstacle to the commencement of this Inquest on 21 May 2007.

2. Conduct of the Inquest

- 2.1. Section 20(1) of the Coroners Act 2003 provides:

'The following persons are entitled to appear personally or by counsel in proceedings before the Coroner's Court:

- (a) the Attorney-General;
- (b) any person who, in the opinion of the Court, has a sufficient interest in the subject or result of the proceedings.'

When the Inquest opened on 21 May 2007 the information then available to the Court was relatively limited as is evident from the opening submissions of Counsel Assisting which appear at Transcript, pages 2 to 9. At that time Counsel Assisting me tendered the following affidavits:

- Senior Sergeant Dean Greenlees of Fingerprint Section, South Australia Police and attached statement of Anneke Lisbeth Sterk dated 1 March 2004
- Dr Allan Cala, Chief Forensic Pathologist and attached post mortem report dated 15 April 2004
- Mr Donald Sims, Principal Forensic Scientist of Forensic Science SA and attached toxicology report dated 21 May 2004
- Mr Mark Edmund Wilson sworn 14 May 2007 and attached statements dated 21 May 2004 and 19 November 2004
- Detective Inspector Brenton Saunders of Holden Hill Criminal Investigation Branch, South Australia Police and attached letter from Psychiatrist Nick Ford

dated 30 April 2007, and attached letter from Registered Psychologist Michael Correll dated 4 May 2007

- Sergeant Robert Delaat of Adelaide Crime Scene, South Australia Police and attached statement dated 12 March 2004

The affidavit of Senior Sergeant Greenlees was a formal identification affidavit. The post mortem report and toxicology reports were likewise essential documents, for the ascertainment of cause of death but did not provide much indication of the circumstances leading up to Mr Wilson's death. The affidavit of Mark Edmund Wilson was put in at that stage because he would be unable to give evidence by reason of a psychiatric condition. The affidavit of Detective Inspector Brenton Saunders related to the inability of another police officer to attend Court by reason of a medical condition.

- 2.2. Counsel Assisting's description of the situation as it appeared from the documents then available to the Court appears at Transcript, page 3. I set it out hereunder:

'... late on 25 February 2004, Mr Wilson, his brother Mark, who lived at an address at John Street at Hillcrest, and three other men in a car, who I'll refer to as Mr Wilson's group, encountered two other men in a nearby street, and there was apparently some verbal exchange between some of them.

Your Honour will hear references throughout the course of the inquest to John Street, which is where Mr Mark Wilson lived, to Duthie Street, to Hawkins Avenue and Flinders Road, and they are all streets in the same vicinity between Fosters and North East Roads at Hillcrest.

Mr Wilson's group apparently travelled in a car driven by Mr McAinsh down Duthie Street, which is a dead end street. They turned and went back onto Hawkins Avenue and then into Flinders Street, and in statements to police some of them say that they noticed a particular black BMW car behind them as they exited Duthie Street.

Once they were in Flinders Street, I understand that Mr McAinsh travelled around a roundabout so that his car was facing in the direction from which it had just come, and it was at this point that the occupants in that car in their statements describe that they saw a black BMW car coming towards them. Both of those vehicles stopped and it was at this time that there was some interchange between the two groups.'

Counsel Assisting then described how one of the occupants of the BMW, subsequently identified as HB, had a firearm of some description with him. She described how the firearm was apparently discharged during the encounter and how, as Mr Wilson's group drove away from the scene Mr Wilson, who was sitting in the right rear passenger seat said something to the effect that he thought he might have been shot, having felt what appeared to be blood on his right calf. As will

subsequently appear from a fuller description of this incident, a shot discharged from HB's gun ricocheted off the bitumen on Flinders Road and hit Mr Wilson in his right calf while he was seated in Mr McAinsh's Magna motor vehicle, in the rear of that vehicle on the driver's side with the door open. Shortly afterwards, the Wilson group attended in the same vehicle at the Holden Hill Police Station to report this incident.

- 2.3. Counsel Assisting said that the events at the Holden Hill Police Station concerning what was said by members of the Wilson group to particular police officers and what action was subsequently taken by police would be a primary focus of the Inquest.
- 2.4. Counsel Assisting made the point, which I returned to frequently during the course of Inquest, that the Court had no overall report of the events leading to the fatal shooting of Christopher Wilson. The documentary information available to the Court at the commencement of the Inquest related predominantly to the events of 25–27 February 2004. As the Inquest unfolded, it became apparent that there had been another significant incident which required consideration which came to be referred in the course of the Inquest as the “Dreelan PIR” or “Dreelan complaint”. That related to a complaint made to officers at Holden Hill Police Station by a person called Clive Dreelan in relation to an incident involving HB that had occurred in September 2003, the complaint having been made in October 2003. The handling of the Dreelan complaint became the subject of extensive investigation at the Inquest just as did the handling of the complaint made at Holden Hill Police Station by Christopher Wilson on the evening of 25 February 2004.
- 2.5. The lack of any overall report collating all material relevant to the cause and circumstances of Christopher Wilson's death meant that new³ material emerged over the course of the Inquest and required assessment “on the fly”, to an extent not usually experienced by the Court.
- 2.6. As a consequence of this, it became necessary to call further witnesses as the relevance or potential relevance of the accounts of those witnesses became apparent from evidence adduced by the witnesses that preceded them.
- 2.7. For that reason the Inquest took an unpredictable course and it was necessary to deal with applications by Counsel seeking leave to appear on behalf of proposed witnesses

³ I refer to material not previously known to the Court.

throughout the Inquest as it unfolded. This was complicated by the fact that it was not always entirely clear at the time an application was made why the proposed witness was said to have a sufficient interest in the subject or result of the proceedings. With the exception of an application on behalf of Mrs Julie Wilson, the mother of Christopher Wilson, and an application by the Commissioner of Police whose interests were self evident, there were a number of applications made on behalf of police officers who were to be called as witnesses during the course of the Inquest. A person appearing as a witness is not entitled as of right to be represented by Counsel on the basis that he or she has a sufficient interest in the subject or result of the proceedings. Something more than an interest as a witness or a proposed witness is required. Part of the material available to the Court at the commencement of the Inquest was a letter dated 19 October 2006 from the Police Complaints Authority⁴ to Mrs Julie Wilson who had made a complaint against police as a result of her son's death. That letter eventually came to be received in evidence as Exhibit C12n. The letter advised that the Police Complaints Authority had recommended disciplinary action against four named police officers; Detective Brevet Sergeant Gregory Paul Ranger, Detective Senior Constable Rohan Wynfield Crawford, Senior Constable Michael Redding and Sergeant Glenn Mickan. I took the view that any of these officers who was required to give evidence at the Inquest would, on the face of it, be entitled to appear by Counsel if an application was made. Beyond those officers, there was no material before the Court which would offer any obvious basis for an application made on behalf of a proposed police officer witness other than submissions provided by his or her Counsel.

- 2.8. As the Inquest unfolded, it became apparent that a number of other police officers apart from those referred to in Exhibit C12n had been the subject of investigation by the Internal Investigation Branch and the Police Complaints Authority in relation to the circumstances leading to Christopher Wilson's death. As a consequence of the lack of any overall report about those circumstances it was not possible for the Court to predict before the commencement of the Inquest the involvement of those other police officers.
- 2.9. In the result, almost every police officer who was called to give evidence at the Inquest applied for and was granted leave to appear by Counsel. In all there were

⁴ Exhibit C12n

twenty Counsel representing different interests by the completion of the Inquest many of whom were present in Court for substantial parts of the Inquest.

- 2.10. I made it plain at the outset that I did not wish to have unnecessary repetition of questions and that Counsel should confine themselves to questions pertaining to their client's interests only and to avoid covering ground which had already been covered so far as possible. With limited exceptions, this rule was generally adhered to by Counsel. Nevertheless, there were severe logistical difficulties presented by the number of Counsel appearing.

3. Police (Complaints and Disciplinary Proceedings) Act 1985

- 3.1. Prior to the commencement of this Inquest, Counsel Assisting me wrote to the Commissioner of Police seeking access to an assessment of the Police Complaints Authority. The Court was aware that such a document existed and that it was 53 pages in length. This was apparent from a letter dated 15 November 2006 from the Police Complaints Authority to Mrs Julie Wilson a copy of which was admitted as Exhibit C12q and which had been provided by Mrs Wilson to the Court prior to the Inquest. Neither the Commissioner of Police nor the Police Complaints Authority was prepared to provide a copy of the assessment to the Court for use at the Inquest. The Commissioner of Police was prepared and did offer to provide a copy of the report to me on the condition that I not divulge its contents. This I declined to do because it would be of no assistance to me to be aware of material which I could not use for the purposes of a public Inquest. Having knowledge of matters which I would not be able to refer to might also create difficulties in the conduct of the Inquest.
- 3.2. Nevertheless, it became clear at a fairly early stage that there was a significant amount of material in the hands of both the Commissioner of Police and the Police Complaints Authority that was relevant to the matters the subject of the Inquest. In my opinion it was likely that such material would include statements of witnesses, record of interviews of witnesses, copies of exhibits and various other documents.
- 3.3. The Inquest was fully conducted without access to any of this material. As the Inquest unfolded it became apparent that persons not previously understood by me to have been the subject of disciplinary investigation had in fact been so investigated. One such person disclosed this fact during the course his evidence. It was not until

very late in the Inquest that Counsel for the Commissioner of Police finally informed the Court (at the Court's request) of the names of all officers in relation to whom disciplinary investigations had taken place.

- 3.4. The Police (Complaints and Disciplinary Proceedings) Act 1985 will hereinafter be referred to as the "Police Complaints Act". The Police Complaints Act establishes the Police Complaints Authority and provides for a Police Disciplinary Tribunal. In addition to that it provides for the investigation and assessment of complaints against police. Section 48 of the Act is headed "Secrecy" and provides as follows:

'(1) In this section—

prescribed officer means—

- (a) a person acting under the direction or authority of the Authority; or
- (b) a member of the internal investigation branch or any other member of the police force,

but does not include the Authority or the Commissioner;

relevant person means—

- (a) in relation to a person who is or has been acting under the direction or authority of the Authority—the Authority; or
- (b) in relation to a person who is or has been a member of the police force—the Commissioner; or
- (c) in any case—the Minister.

- (2) Except as required or authorised by this Act or by a relevant person, a person who is, or has been, a prescribed officer must not, either directly or indirectly, make a record of, or divulge or communicate, information acquired by reason of his or her being, or having been, a prescribed officer, being information that was disclosed or obtained under this Act.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (3) Where the Commissioner furnishes to the Authority a certificate certifying that the divulging or communication of information specified in the certificate, being information that has been disclosed to the Authority by a member of the police force or obtained by the Authority from records of the police force, might—
- (a) prejudice present or future police investigations or the prosecution of legal proceedings whether in the State or elsewhere; or
 - (b) constitute a breach of confidence; or
 - (c) endanger a person or cause material loss or harm or unreasonable distress to a person,

then, despite any other provisions of this Act, a person who is, or has been, the Authority or a person acting under the direction or authority of the Authority must not, either directly or indirectly, divulge or communicate any part of the information except with the approval of the Commissioner or the approval of the Minister given after consultation with the Commissioner.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (4) This section does not prevent a person who is or has been a prescribed officer from divulging or communicating information disclosed or obtained in the course of an investigation under this Act—
- (a) in proceedings before a court, the Tribunal or the Commissioner in respect of—
 - (i) an offence; or
 - (ii) a breach of discipline,
 relating to a matter the subject of the investigation; or
 - (b) as required in proceedings under the *Royal Commissions Act 1917*; or
 - (c) as required by order of a court, the court being satisfied that there are special reasons requiring the making of such an order and that the interests of justice cannot adequately be served except by the making of such an order.
- (5) This section does not prevent a person who is or has been a prescribed officer from whom information has been sought in the course of an investigation under this Act from consulting—
- (a) a legal practitioner; or
 - (b) some other person with the Minister's approval (which may be a general approval or given in a particular case),
- in relation to the matter under investigation.
- (6) This section does not prevent a person who is or has been a member of the police force whose conduct has been under investigation under this Act from divulging or communicating particulars of the outcome of the investigation as furnished or registered under section 36 (including any comments made by the Authority when furnishing any of those particulars).
- (7) Despite any other Act or law, a person who is or has been the Authority or the Commissioner cannot be required to divulge information disclosed or obtained under this Act in the course of an investigation except where such a requirement is made—
- (a) in proceedings before a court or the Tribunal in respect of—
 - (i) an offence; or
 - (ii) a breach of discipline,
 relating to a matter the subject of the investigation; or
 - (b) in proceedings under the *Royal Commissions Act 1917*; or
 - (c) as required by order of a court, the court being satisfied that there are special reasons requiring the making of such an order and that the interests of justice cannot adequately be served except by the making of such an order.
- (8) If a person consulted under subsection (5) obtains information as a result of the consultation that the person who initiated the consultation is (apart from that subsection) prohibited from divulging or communicating, the person so consulted must not divulge or communicate that information.

Maximum penalty: \$2 500 or imprisonment for 6 months.’

- 3.5. Section 48 of the Police Complaints Act operates as a secrecy provision in respect of people other than the Police Complaints Authority and the Commissioner. I formally requested the Police Complaints Authority and the Commissioner of Police voluntarily to produce all relevant information held by them in connection with the disciplinary process to the Court. They both declined to do so.
- 3.6. The secrecy provision operates to prevent a person who is or has been a police officer⁵ from divulging information acquired by reason of his or her having been a police officer being information that was disclosed or obtained under the Act. Clearly this prohibition was apt to prevent the disclosure by any of the police witnesses before the Inquest of information that had been disclosed by them to the Internal Investigation Branch or the Police Complaints Authority.
- 3.7. However, I took the view, with which Counsel for the Commissioner of Police did not disagree, that the prohibition did not prevent such officers from providing the same information they might previously have given to the Internal Investigation Branch or the Police Complaints Authority in answer to a direct question before the Court, provided that the question was not framed in a way that requested them to disclose what they had provided in answer to inquiries made by the Internal Investigation Branch or the Police Complaints Authority. In other words, if an officer had been questioned by Internal Investigation Branch and asked a particular question as to steps taken on the night of 25 February 2004, and the officer provided an answer, then Counsel before the Coroner’s Court could ask the officer exactly the same question in evidence and that officer would be obliged to answer the question and this would involve no breach of section 48 of the Police Complaints Act. Thus there would be no objection to eliciting answers from individual officers simply by asking those officers questions which might yield the same information as was provided to the Police Complaints Authority or the Internal Investigation Branch provided that the question was not framed in such a way as to ask what they actually said to the Internal Investigation Branch or the Police Complaints Authority.
- 3.8. That left open the possibility that I might have occasion to direct a witness to divulge information disclosed under the Police Complaints Act pursuant to section 48(7)(c) of

⁵ Excepting the Commissioner

the Act. However, I took the view that the tests required to be satisfied under that section were never met. That section required me to be satisfied that there were special reasons requiring the making of an order and the interest of justice could not adequately be served except by the making of such an order. The ability for the Court to hear, at least in theory, the same evidence from witnesses before the Court as given by those witnesses to the Internal Investigation Branch or the Police Complaints Authority meant that it was difficult to satisfy the requirement that there be special reasons requiring the making of an order. It seemed to me that the most likely special reason would be that I was of the view that a witness may not have been providing a truthful account to me and that that would afford a special reason to verify the account to the Court by checking it against a previous account provided to the Internal Investigation Branch or the Police Complaints Authority. In the circumstances that situation did not arise. Although the accounts of some witnesses differed, I have felt able to dispose of this matter without requiring production of previous accounts given by those witnesses.

4. Public interest immunity

- 4.1. The material available to the Court before the commencement of the Inquest was not such as would attract a claim for public interest immunity. However, from a very early stage in the Inquest, Counsel for the Commissioner of Police raised the subject of public interest immunity and foreshadowed that a claim would be made in relation to some material. That was material which had yet to be provided by the Commissioner of Police but was clearly thought by the Commissioner and those advising him to be relevant to the Inquest.
- 4.2. Subsequently Counsel for the Commissioner of Police suggested that I look at the relevant material privately. I resisted this suggestion preferring to conduct the Inquest as publicly as possible and wishing to ensure that I saw nothing which could not be publicly revealed. The Commissioner filed an affidavit sworn by Detective Senior Sergeant Grant Garritty on 26 June 2007. This was an “open affidavit” in the sense that no objection was taken to publication of the affidavit or any part of it. The material the subject of the public interest immunity claim was described in paragraph 13 of that affidavit as follows:

‘During the later half of 2003 SAPOL received information from a registered human source that HB was in possession of a revolver.

- a. This information was documented and disseminated to Holden Hill police in hard copy document for action.
- b. Informant Management Section/Human Source Management Section received no further information as to any results or outcomes from the referral of the information.’

- 4.3. I accepted the need to respect the public interest in the non-disclosure of the identity of a “human source” or informant. The public interest in non-disclosure of the identity of informants is well established and well known. The more difficult issue would be the application of the second part of the well established principle for dealing with claims of public interest immunity in the context of an Inquest: the so called “balancing exercise” in which the Court is required to balance the public interest in the preservation of the confidentiality of certain information against the detriment that might be caused to the administration of justice if that information were not to be available in the proceedings. That test is normally applied in an action, civil or criminal, between parties. I am not aware of any authority upon the application of the principle to an Inquest. The difficulty that I perceive is that the second part of the test, namely the balancing of the detriment to the administration of justice is a variable factor in normal civil or criminal litigation in that the detriment to the administration of justice is measured by the forensic advantage that might be obtained or lost if the material is produced or not produced to one or other of the parties. In an Inquest, the purpose of which is to ascertain the cause **or circumstances** of specified events, any material relevant to the circumstances surrounding the event in question is relevant, and it is difficult to perceive any quantitative test which could be applied to determine in a way analogous to the application of the test in civil or criminal proceedings, the “forensic advantage” of the inclusion or non-inclusion of the particular information.
- 4.4. Be that as it may, I resisted the need to pursue the identity of the informant on the ground that it seemed to me to be irrelevant.
- 4.5. Late in the Inquest, when it was proposed to recall Detective Senior Constable Rohan Crawford to give evidence, his Counsel pressed upon me the need to consider the identity of the informant in order to better understand the position of Detective Senior Constable Crawford who, it was said, had done certain things which could not be

disclosed without disclosing the identity of the informant. I briefly convened the Court in camera and was informed during that session of the identity of the informant, and was assured by Counsel for Detective Senior Constable Crawford that he had carried out more investigations than he was able to reveal without disclosing the identity of the informant. On the basis that Detective Senior Constable Crawford may have done more than he was able to disclose, I excused him from further attendance, having taken the view that the matter could not further be pursued because to do so would require the divulgence to a wide group of people of the identity of the informant and that this exercise would not materially assist me in an analysis of the circumstances leading to Mr Wilson's death, but would only serve to prove one way or the other whether Detective Senior Constable Crawford had in fact done more than was apparent on the face of the evidence both oral and documentary as it then stood.

- 4.6. Detective Senior Constable Crawford's evidence was relevant to the Dreelan PIR and the information contained in paragraph 13 of Detective Senior Sergeant Garritty's affidavit⁶. All references to the evidence of Detective Senior Constable Crawford in this finding should be read against the background that I must accept that there were further steps taken by him than those which are apparent on the evidence in pursuing those two matters. However, the results of those investigations, so far as they are relevant to the circumstances leading to the death of Mr Wilson, will be apparent on the face of these findings. There were admitted deficiencies in those investigations. I am unable to attribute them to Detective Senior Constable Crawford for the reasons I have already stated, however that does not mean that there were not deficiencies. Indeed, as will be apparent in due course, such deficiencies were acknowledged by Deputy Commissioner Burns in his evidence. The deficiencies must be regarded as attributable in a "corporate" sense to South Australia Police, and should not be taken in this finding, as referable to Detective Senior Constable Crawford except where specifically appears.

5. The earlier offending of HB

- 5.1. The evidence revealed that in the early hours of Sunday, 30 March 2003, HB was involved in an altercation with an unknown person at McDonald's on West Terrace, Adelaide. At about 5:30am he returned to the McDonald's in possession of a long

⁶ Exhibit C40

barrelled pump action firearm. He confronted a number of patrons, waving the firearm at them and apparently looking for the person with whom he had the earlier altercation. He was shouting that he was going to kill that person. He pointed the firearm at a number of people inside the restaurant while holding his finger on the trigger and shouting that he would kill those involved. A security guard stepped in and moved HB from the restaurant to the car park where he continued to wave the firearm around at people. He was arrested later that day at his home address in Duthie Street, Hillcrest. Although the gun was not located at that time it was later handed to police, apparently by HB's father.

- 5.2. It was discovered by police that the firearm was stolen although it was not alleged that HB was the thief. HB did not have a licence to possess a firearm. He had just turned 17 when this happened.
- 5.3. On 22 June 2003, despite being on bail in relation to the incident previously mentioned, and despite that bail being conditional upon HB not leaving his home except for the purposes of attending school, for the purpose of attending his family's mosque, and for the purpose of seeing his solicitor, HB was arrested at approximately 11:30 pm on 22 June 2003, after having been observed doing burn-outs in Gouger Street and having been found to have a Samurai sword under the driver's seat of his car.
- 5.4. On 8 July 2003, HB appeared before the Youth Court and was sentenced for the offences of threatening a person with a firearm (two counts), possessing a firearm with intent to commit an offence, possessing a firearm without a licence, carrying an offensive weapon, giving a false name and address, failing to comply with a bail agreement, and unlawful possession. HB was sentenced to four months detention which was suspended on the condition that he enter into an obligation with the Court. The length of that obligation was 18 months. The paramount condition of the obligation was that he be of good behaviour for that period. In addition to that, he was to reside at his Duthie Street home address. Condition 5 of the obligation prohibited him from possessing or carrying any firearm or offensive weapon including knives. The obligation was acknowledged by HB on that day.

6. Police warnings in relation to HB

Some time around June 2003, warnings were placed onto the Police Information Management System (“PIMS”) which is a computerised information management system allowing for the sharing of information within South Australia Police⁷. Those warnings related to HB. They came mostly from ancillary reports. Such reports come to generated, and the information therein transferred to the PIMS system, in accordance with a process described in the affidavit of Deputy Commissioner Burns⁸ and the affidavit of Senior Constable Allan Ziegler⁹. The warnings which were inserted on the PIMS system in June 2003 included “may be armed”, and “psychological/psychiatric disorder”.

7. The murder of Christopher Wilson

- 7.1. I will now briefly describe the events immediately preceding the shooting of Christopher Wilson. These events occurred on the night of 27 and the early hours of the morning of 28 February 2004. 27 February 2004 was a Friday. That night, Christopher Wilson, James McAinsh, Ryan Williams, Justin Williams and Mark Wilson gathered together at the home of Mark Wilson. They were drinking alcohol and talking about the events of the previous Wednesday night when they had had an altercation which will be described in more detail later.
- 7.2. According to James McAinsh the idea arose of walking around to Duthie Street which was nearby, and “sus out the house”¹⁰ which they believed the persons involved in the earlier altercation might live in or frequent. Ryan Williams gave an account that it was in the back of his mind that they might find the men who had been involved in the incident on Wednesday night and “beat them up if we found them”. Ryan Williams armed himself with a broken off golf club shaft. Christopher Wilson was drinking from and took with him a 750 ml bottle of Coopers Pale Ale beer.
- 7.3. There is a park on one side of Duthie Street opposite the house that the men were interested in. They sat in the park in a position just south of two large drains which are located in the centre of the park. They remained there for a little while, perhaps

⁷ Exhibit C10, affidavit of Chief Inspector Grant Moyle, paragraph 6

⁸ Exhibit C34

⁹ Exhibit C25b

¹⁰ Transcript, page 113

half an hour, looking at this house. After that period they decided to walk back to Mark Wilson's house.

- 7.4. The question arises: what was the motivation of the group in attending at Duthie Street that night. It was suggested by some members of the group who gave evidence at the Inquest that they decided to attend the scene because they believed that police had not taken sufficient action following a report made by them about the incident which occurred on the Wednesday night. Other members of the group, such as Ryan Williams, clearly had vengeance in mind. On the whole of the evidence, it is not possible to conclude that the group acted in concert with a common purpose to seek vengeance. It is clear that some members of that group may have had that purpose. Other members may have had no particular purpose other than curiosity. It was forcefully submitted by the Commissioner of Police that their behaviour in attending at the scene on that night was foolhardy, knowing that they might encounter a person who they knew to possess a firearm, and a willingness to use it. Whether the behaviour was motivated by an intention to seek vengeance, or was mere bravado by relatively young men filled with alcohol and with some idle hours to fill, or whether the motivation was that the locality was relatively close to the home of Mark Wilson and the group was keen to carry out some form of reconnaissance because of a concern that Mark Wilson might encounter HB again, is not clear. I agree that the decision on the part of some members of the group to arm themselves with objects such as golf club shafts was foolish in the extreme. However, not all members of the group equipped themselves in that way. It was not clear that all members of the group were aware that some members of the group were armed. The most that can be said is that some members of the group acted in a foolhardy manner, some in an extremely foolhardy manner, and others in a relatively unexceptionable manner.
- 7.5. As I have said the group decided to leave the area opposite the house they thought to be occupied by their protagonists from the previous Wednesday night. They decided to return to Mark Wilson's house and walked across the park and onto Duthie Street. It will be recalled that the group consisted of Justin Williams, Ryan Williams, Christopher and Mark Wilson and James McAinsh. As they were walking along Duthie Street a car drove into Duthie Street. It was a white VK Commodore. A passenger emerged from this vehicle. It was HB. Mark Wilson walked up to HB and punched him in the face causing him to fall to the ground. Mark Wilson apparently

recognised HB as the person who had discharged a firearm on the preceding Wednesday night, hitting his brother in the leg.

- 7.6. HB then ran away in the direction of his home which was approximately 60 metres away. While in his home, he obtained his gun, which was loaded, and returned to the area where the car and the group of young men were located. That group was then engaged in a conversation of a relatively calm nature. HB walked up to Justin Williams and pointed the gun at his face. HB attempted to fire the gun but fortunately for Justin Williams, it did not discharge. HB then pointed the gun at Mark Wilson, telling him to get on his knees and to apologise. Mark Wilson complied. HB fired a shot into the ground in front of Mark Wilson and then fired at least one more shot in the direction of Mark Wilson one of which struck him in the left arm.
- 7.7. When HB began firing the gun, the other males in the group began to scatter. Christopher Wilson started to run in an easterly direction on Duthie Street. HB fired his gun at Christopher Wilson, striking him in the back as he was running away. That shot caused Christopher Wilson to fall to the ground. HB then walked towards him, stood over him and fired two further shots from close range into his head. Shortly after this, HB used a mobile telephone to dial 000, and report the incident and request the attendance of an ambulance. An ambulance attended, and police attended. HB was then arrested.

8. The first shooting incident involving Christopher Wilson

- 8.1. On Wednesday, 25 February 2004 at around 11:00 pm Christopher Wilson and four of his friends departed from the home of Mark Wilson to attend the OG Hotel to play the poker machines. They were being driven in a Magna motor vehicle owned and driven by James McAinsh. Ryan Williams was a passenger in the front seat of the vehicle. Mark Wilson (the brother of Christopher Wilson) was in the rear passenger side seat, Dylan Connelly was in the middle rear seat and Christopher Wilson was seated in the rear driver's side seat. As I have already said Christopher Wilson was 23 years old at that time. His friends were all of around the same age.
- 8.2. It appeared that Mark Wilson's "wheelie bin" had disappeared from his home and it was thought that it may have been stolen. The evidence suggests that at least part of their purpose as they drove away from Mark Wilson's house that night, in addition to

travelling to the OG Hotel, was to keep an eye out for the missing wheelie bin. This may have accounted for the fact that the group took a wrong turn and ended up in Duthie Street at Hillcrest. The western end of Duthie Street is a cul-de-sac and it was in this direction that the vehicle containing the five men travelled. Duthie Street runs parallel with Flinders Street and they are separated by a narrow strip of “park” or vegetation. It was that narrow strip which some of the group visited on the following Friday night on the occasion of the murder of Christopher Wilson. On the northern side of Duthie Street there are a number of domestic dwellings, including that of HB’s family.

- 8.3. It may be that James McAinsh had turned into Duthie Street having mistaken it for Flinders Street. In any event, at the western end of Duthie Street the Magna executed a manoeuvre described by James McAinsh in his evidence as a “five-point turn”. As the vehicle moved along Duthie Street, now proceeding in an easterly direction, some of the men in the car noticed some people standing in front of a house in Duthie Street. They did not pay much attention to this at the time. Some of them gave evidence that they noticed a car parked at that address facing towards the road and that there was a light on at the house. The group in the Magna left Duthie Street and travelling briefly on Hawkins Avenue, turned into Flinders Street. While travelling on Flinders Street they noticed a car coming up behind them. The car began to flash its lights at them and so James McAinsh executed a U-turn at the next roundabout and stopped his car facing in the opposite direction and alongside that other vehicle. The evidence suggested that the rear doors of each of the cars were approximately adjacent to one another, the vehicles facing in opposite directions.
- 8.4. Two males alighted from the other vehicle which was described subsequently by some of the men in the Magna as a black or dark coloured BMW. The males from the BMW were yelling something about the men in the Magna being in “their street” and were yelling for the group to “keep out” of “their street”. Ryan Williams and Mark Wilson alighted from James McAinsh’s car and approached the people from the BMW, meeting them in the space between the two vehicles. At this stage, Christopher Wilson had opened the rear right door of the Magna but had not alighted from it. One of the males from the BMW, the passenger, was HB. It seems that HB enquired in an aggressive fashion what the men in the Magna had been doing in his street. It may be that they responded that they were looking for a stolen wheelie bin

but had made the wrong turn. HB produced a revolver. He was told by his companion to put it away but he did not do so. He fired a shot from the revolver apparently in the direction of the road surface.

- 8.5. Although Christopher Wilson did not realise it immediately, the shot fired by HB had ricocheted off the road surface and hit him in the right leg below the knee on the calf muscle. As soon as the shot was fired, Mark Wilson and Ryan Williams quickly re-entered the Magna and James McAinsh drove away from the scene. They were not followed by the BMW and had no further contact with it.
- 8.6. As they drove away Christopher Wilson felt something warm and wet on his leg and realised he was bleeding. He told the others in the car and they travelled to a nearby BP Service Station where they pulled in and had a look at Christopher Wilson's leg. It was not bleeding profusely and Mr Wilson did not consider that it required medical assistance. Christopher Wilson did not complain of being in great pain and did not suggest that he see a doctor or be taken to a hospital.
- 8.7. At that point, the men in the Magna discussed what ought to be done next. The subject of going to the police was raised. The evidence of James McAinsh, Ryan Williams and Dylan Connelly suggests that Christopher Wilson was not enthusiastic about reporting the matter to the police, although he was not completely resistant either. James McAinsh gave evidence that it was he who raised the topic of reporting it to the police. It appears that James McAinsh also mentioned that this would be necessary if Christopher Wilson were later to pursue a criminal injuries compensation payout as a result of the wound. In the result, James McAinsh took responsibility for the decision and said that they were going to the police and that is what happened¹¹. I should mention that neither Ryan Williams nor Dylan Connelly gave evidence of being aware of a discussion about criminal injuries compensation. Their motivation for going to the police was the simple fact that they had been shot at and that a person was in possession of a gun and prepared to use it. The group then attended at the Holden Hill Police Station which was quite close by. They were asked why they did not ring the police from the BP Service Station and their response was that the Holden Hill Police Station was within five minutes drive.

¹¹ Transcript, page 87

- 8.8. They travelled to the Holden Hill Police Station via Flinders Street and past Duthie Street where they thought the BMW had come from in an effort to see if it was the same vehicle as that which had followed them and been involved in the encounter in Flinders Street. They saw nothing. Some of the men had different recollections in this regard. For example, James McAinsh did not think that they went via Flinders or Duthie Street¹². Other members of the group had a different recollection and on balance I think it more likely than not that this did occur.
- 8.9. Dylan Connolly's account of the events of the evening of 25 February 2004 provides a good summary. He recalled that James McAinsh was driving, Ryan Williams was in the front, he (Dylan Connelly) was in the middle in the back, Mark Wilson was on his left and Christopher Wilson was on his right¹³. He said that they left to go and play the poker machines at the OG Hotel¹⁴. He related the story of the wrong turn down Duthie Street¹⁵, and said that they noticed one house with the lights lit up and a car reverse parked in the driveway¹⁶. Dylan Connelly's account of the confrontation with the BMW appears at T1377-T1379. He stated that when the vehicle stopped "these blokes jumped out, like rambling" and there were two of them. Mark stepped out of the Magna and Dylan Connelly jumped out behind him. The following is a useful summary of what happened next:

'They were yelling obscenities and stuff, saying 'What the fuck are you doing in that fucking street? Fuck away from that house' etc. That's when I stepped out. The two boys were both on the driver's side of the car and we're just at the boot on the other side of our car and you see one of them trying to do something with his belt and the other one is just going 'No, man, no, put it away, man. What the fuck are you doing?'. Because he tried to push it back into his mate's belt, he pulled it out. I think we both sort of stood there, shocked for a second. He's pulled out this massive gun and he's still just yelling and threatening us about the house. We were just trying to get back into the car, and just as I am getting back into the car I heard a pop. We jumped back in the car, with Mark right behind me and we have gone.'¹⁷

- 8.10. Dylan Connelly made it plain that as soon as he saw the gun he moved to get straight back into the car. When he heard the "pop" sound he was still outside the car but was

¹² Transcript, page 87

¹³ Transcript, page 1374

¹⁴ Transcript, page 1374

¹⁵ Transcript, page 1375

¹⁶ Transcript, pages 1375 – 1376

¹⁷ Transcript, page 1378

just putting his head down to get in. Mark Wilson was right behind him. Once they got into the car it drove off straight away¹⁸.

- 8.11. Dylan Connelly provided some evidence about what knowledge any members of his group had of the identity of the shooter. He said that he thought that Mark Wilson said something to one of the occupants of the BMW when they first stepped out of the car along the lines of “I went to school with your brother”¹⁹. The occupant of the BMW did not respond. They were not listening to Dylan and Mark because they were just shouting²⁰. Dylan Connelly also said that after the shooting incident he did not believe that Mark Wilson further discussed the identity of the two individuals in the BMW. He said that he did not believe that either he or any of the other members of the group discussed the identity of this person with Mark Wilson during the trip to the Holden Hill Police Station²¹ even though that would have been important information to provide to the police.

9. The attendance of Christopher Wilson and others at Holden Hill Police Station on 25 February 2004

- 9.1. The evidence is clear that formal written statements were taken by police officers at the Holden Hill Police Station that night or in the early hours of the following morning from Christopher Wilson, James McAinsh and Dylan Connelly. No statement was taken from Ryan Williams that night, nor from Mark Wilson.

9.2. James McAinsh

James McAinsh said that four members of the group entered the police station and spoke to a person at the front counter who he believed to be a uniformed police officer by the name of Wilson. It is apparent from the totality of the evidence that he was wrong in this – the officer was Senior Constable Redding. He said that the men walked into the Holden Hill Police Station and said words to the effect “Our mates been shot he has a gunshot wound”. They said, “we know where this person is he has just pulled out a gun on us and shot it”. The police officer said words to the effect of “hang on what do you reckon happened?” with, according to Mr McAinsh, a smirk on

¹⁸ Transcript, page 1380

¹⁹ Transcript, page 1381 and Transcript, page 1398

²⁰ Transcript, page 1398

²¹ Transcript, page 1399

his face. Mr McAinsh took this to indicate scepticism or disbelief²². At this point Ryan Williams walked out of the police station²³. According to James McAinsh, the wound was shown to the officer at the front desk. James McAinsh also said that he gave all of the information he had about the events of the night and did not hold anything back²⁴. He was asked whether he provided to anyone at the Holden Hill Police Station information to the effect that he knew either the passenger or the driver of the vehicle. He answered that he did not do so because he did not know them. He said:

‘Over the next few days names were mentioned around the scenery. I can't remember. I mean the other guys may have known them; I didn't know them prior. I went to a totally different high school, totally different scenery. I've never seen them before.’²⁵

James McAinsh also said he did not remember any member of the group saying that they knew who the shooter was²⁶. He said that no one at the Holden Hill Police Station looked at his car that night. He remembered that very clearly because his car was unregistered²⁷.

- 9.3. It is notable that James McAinsh said that when the group entered the police station they were all talking at once²⁸.
- 9.4. Certain aspects of Mr McAinsh's account are clearly not correct. These include the identification of the officer at the front counter as a uniformed officer called Wilson. There was no uniformed officer by that name at the counter at that point. Subsequently, a uniformed police officer by the name of Luke Wilson attended at the Holden Hill Police Station at the request of Sergeant Mickan and took a statement from Dylan Connelly. However, Constable Luke Wilson did not have contact with any of the witnesses apart from Dylan Connelly while he was at the Holden Hill Police Station²⁹. Mr McAinsh's recollection that the wound was shown at the initial presentation at the counter does not seem to accord with the evidence of other witnesses either. Furthermore, it is difficult to see how Christopher Wilson could have demonstrated the leg wound while on the opposite side of the counter from any

²² Transcript, page 93

²³ Transcript, page 94

²⁴ Transcript, page 97

²⁵ Transcript, page 99

²⁶ Transcript, page 99

²⁷ Transcript, page 101

²⁸ Transcript, page 108

²⁹ Transcript, page 891

of the police officers. Mr McAinsh himself acknowledged this and suggested that the police officer may have come around to their side of the counter. I consider this to be unlikely. Mr McAinsh noted that he had given a number of interviews about the events of that night and the following Friday night over the ensuing couple of months³⁰. As a result his recollection may have become confused in some respects. However, I have no reason to doubt his basic position that the group conveyed at a very early stage to the officer behind the counter that one of their number had been shot by a person with a gun.

9.5. Dylan Connelly

Dylan Connelly gave evidence. He said that there was no discussion of ringing the police immediately after the incident because the police station was ‘straight up the street’³¹. He was asked whether there was any thought of getting medical attention for Christopher Wilson and his response was that he doubted that was considered because of “..the way we are. If it’s not life threatening or anything we never bother.”³² Dylan Connelly also shed some light on the question of whether the McAinsh vehicle returned to Duthie Street on the way to the police station. He referred to driving past the other side of the park which separates Duthie Street from Flinders Street. I infer that the occupants of the McAinsh vehicle drove parallel with Duthie Street and attempted to see if they could spot the BMW through the park that separated Duthie Street from Flinders Street³³. Upon arrival at the Holden Hill Police Station, Dylan Connelly stated that it was he and Christopher Wilson who entered the police station and he was not certain if any other members of the group came in at that stage. He was aware that James McAinsh came into the police station at a later point when he found the bullet fragment on the back floor of the car where Christopher Wilson had been sitting³⁴.

9.6. He did not recall the actual words that were used to the officer at the front counter but:

‘...it was along the lines of “My mate’s been shot” or Chris would have said “I’ve been shot”, but that’s it, I don’t know.’³⁵

³⁰ Transcript, page 96

³¹ Transcript, page 1383

³² Transcript, page 1384

³³ Transcript, page 1384

³⁴ Transcript, page 1385

³⁵ Transcript, page 1386

Interestingly, Dylan Connelly also had a recollection that Christopher Wilson showed the wound on his leg at the front counter stating “I’m sure he did but I truly can’t recall”³⁶.

- 9.7. Dylan Connelly said that after a period at the front desk he and Christopher Wilson were taken to a small interview room. His evidence is consistent with entering that interview room with the first uniformed officer to whom they initially spoke at the front counter³⁷.
- 9.8. Dylan Connelly said that he was shocked at how the police were treating them and by their words or conduct suggesting that the wound looked like nothing and didn’t look like a gunshot wound. He even said that some of the plain clothes officers had a chuckle³⁸. Dylan Connelly said that once he and Christopher Wilson had been taken into the interview room, a police officer started to take a statement but because Christopher Wilson and Dylan Connelly were both telling the story the police officer said “we had better split you up and take two separate statements” and at that point Dylan Connelly left that interview room³⁹.
- 9.9. Dylan Connelly also stated quite emphatically that he made an offer to a police officer to take them to the house with the lights on from which they thought the BMW had come. He thought that this was an offer made at the front counter of the police station upon arrival. He also referred to showing the address where the house was located by reference to a street directory⁴⁰.
- 9.10. It is significant that Dylan Connelly also recalls seeing the bullet fragment which was taken from the back of the Magna into the police station by James McAinsh. He said that when he saw the fragment he believed it had been handed in at the desk (presumably by James McAinsh) and then had been brought into the interview room occupied by him and Christopher Wilson. Dylan Connelly was positive that he saw the fragment and commented that it looked very damaged from having ricocheted⁴¹. Dylan Connelly said that although the projectile was mangled he still thought that it was a bullet because he thought it was made of lead. He said that he saw it when it

³⁶ Transcript, page 1386

³⁷ Transcript, page 1387

³⁸ Transcript, page 1388

³⁹ Transcript, page 1388

⁴⁰ Transcript, page 1391

⁴¹ Transcript, page 1392

was brought in while he and Christopher Wilson were still in the interview room⁴². When it was brought in it was inside a bag. It was brought in by a policeman and the officer who brought it in or another officer said something like “that doesn’t look like a bullet”⁴³. He confirmed that it was in a bag at this point⁴⁴. He said:

‘I just remember one of them saying that “that doesn't look like a bullet”, and I'm saying, “well, if that ricocheted off the ground first, then that's probably what it would look like”.’⁴⁵

9.11. Dylan Connelly could not recall either himself or Christopher Wilson telling the officers a name of who the perpetrator might have been⁴⁶. Dylan Connelly said that he circled the location of the Duthie Street address on a map (I presume he meant a street directory) and said to the police officer “I could take you there right now”⁴⁷. Dylan Connelly said that he did not hold any information back from the police that night⁴⁸. He said that he did not think that the police ever suggested to him that the episode was a road rage incident or anything like that⁴⁹. He was asked whether he noticed any particular reaction from the police officer or officers when he said that the weapon which was involved was a pistol or a revolver. He said that this did not produce any particular reaction from the police; it did not cause them to prick up their ears⁵⁰. Dylan Connelly discussed the motivation for reporting the matter to police. He said that he thought: “lunatic’s running around with a gun, you know what I mean, like, do anything about it, then nothing is going to happen.”⁵¹

9.12. Senior Constable Michael Redding

Senior Constable Michael Redding gave evidence at the Inquest. He is a police officer of 33 years standing. He said he was at the front counter of the police station when the young men came in. He recalled that two of them came to the counter and he was aware that there were another two in the foyer that were connected with the two at the counter. The two at the counter were Christopher Wilson and Dylan Connelly⁵². He said that he spoke with Christopher Wilson and Dylan Connelly at the

⁴² Transcript, page 1410

⁴³ Transcript, page 1411

⁴⁴ Transcript, page 1411

⁴⁵ Transcript, page 1411

⁴⁶ Transcript, page 1392

⁴⁷ Transcript, page 1400

⁴⁸ Transcript, page 1402

⁴⁹ Transcript, page 1403

⁵⁰ Transcript, page 1404

⁵¹ Transcript, page 1409

⁵² Transcript, page 306

counter for a period of approximately 10 to 15 minutes before moving with the two of them into a separate interview room. He said that while he was in the interview room with Christopher Wilson and Dylan Connelly, Detective Mark Wilson came in and shortly after that, at Senior Constable Redding's instigation, Dylan Connelly was required to leave the interview room. He thought that his interview with Christopher Wilson took 45 to 50 minutes⁵³.

9.13. Senior Constable Redding said that he had just started a nightshift when the men came in. He said "Christopher Wilson wanted to report a road rage incident and that's what he termed it as"⁵⁴. According to Senior Constable Redding, Christopher Wilson presented at the front counter in quite a normal manner – "not traumatised, no hint of anything that one would – well I would have equated with having received a wound"⁵⁵. According to Senior Constable Redding, Christopher Wilson told him about the black BMW, the "Afghan type blokes" and that when they stopped in Flinders Road and two of their number had left their car, Christopher Wilson who was seated in the back of the car saw one of the "Afghan blokes" pull something out of his pants. A fight started between the driver of the BMW and the passenger of the BMW while they were arguing with the people from Christopher Wilson's car. Senior Constable Redding said that Christopher Wilson described the thing that had been pulled out of the person's pants as looking like a bat or baseball club. He said "it started off with a club – like a bat, or like a club, but then it got defined quickly to a baseball bat, 'could have been a baseball bat'"⁵⁶. Senior Constable Redding said that it was at that point that he invited Christopher Wilson and Dylan Connelly into an interview room.

9.14. He said that the story developed further in the interview room. Senior Constable Redding went through the story again. He said that as they worked through the story Christopher Wilson elaborated on the incident and said that he thought he heard a pop like a slug gun. Senior Constable Redding then asked Christopher Wilson something to the effect "was the baseball bat a firearm?" to which Christopher Wilson replied that it could have been, it may have been a bigger gun⁵⁷. Senior Constable Redding said that as this conversation took place, Sergeant Mickan was nearby and was

⁵³ Transcript, page 308

⁵⁴ Transcript, page 308

⁵⁵ Transcript, page 309

⁵⁶ Transcript, page 310

⁵⁷ Transcript, page 312

occasionally standing inside the doorway of the interview room apparently listening. He said that because the situation had escalated to the point where a firearm was involved his reaction was to contact the Criminal Investigation Branch (“CIB”) because of the serious nature of the offence. He would also take a detailed statement from Christopher Wilson⁵⁸. Senior Constable Redding said that he was perplexed by what he insisted was Christopher Wilson’s nonchalant attitude to the event. He said that at this point the wound had still not been mentioned⁵⁹.

- 9.15. According to Senior Constable Redding, Christopher Wilson elaborated further and told him that as he was about to get out of the car he felt something hit his leg and that he leant down and felt something warm and wet and “that’s when I had a look at what he was alleging to be a wound in his leg”⁶⁰. This had not been mentioned previously⁶¹. Senior Constable Redding said that at this point he reassessed Christopher Wilson. He said that there was no blood on Christopher Wilson’s hands and no blood or soiling around his shoes or socks. Senior Constable Redding described the wound as looking like “a breaking of the skin like a cigarette burn”⁶².
- 9.16. Senior Constable Redding said that it was at about this time that Detective Mark Wilson entered the interview room. He said that he was a little bit shocked by it all because the wound had been “revealed so late from the initial inquiry at the front counter about a road rage incident”⁶³. Senior Constable Redding said he was not satisfied with what Christopher Wilson was telling him, he did not think that it added up and did not think that there was a full disclosure of the events or that Christopher Wilson was being frank with him.
- 9.17. Senior Constable Redding was asked at what stage he directed Dylan Connelly to leave the interview room. He was unable to be certain about that. However, he explained that his decision to send Dylan Connelly was based on his feeling that the story had changed “so many times” that it was necessary to separate Dylan Connelly and Christopher Wilson⁶⁴.

⁵⁸ Transcript, page 313

⁵⁹ Transcript, page 313

⁶⁰ Transcript, pages 314-315

⁶¹ Transcript, page 315

⁶² Transcript, page 315

⁶³ Transcript, page 316

⁶⁴ Transcript, pages 316-317

- 9.18. Senior Constable Redding was aware that statements were being taken from some of the other members of Christopher Wilson's group while he was taking his statement from Christopher Wilson⁶⁵.
- 9.19. Senior Constable Redding said that Detective Mark Wilson left the interview room and then returned to it a short time later with Detective Green. Detective Mark Wilson was holding a plastic bag containing what appeared to be a fragment of a projectile⁶⁶.
- 9.20. Senior Constable Redding said that he suspected that Christopher Wilson and the other members of his group may have known their assailants⁶⁷. When Senior Constable Redding finished taking his statement from Christopher Wilson he let him out into the foyer which was empty. Somewhat dramatically, he described Christopher Wilson as being met by a "shadowy figure" just outside the front of the police station⁶⁸. He assumed that witness statements were in preparation at that time. At that stage he could no longer see any sign of the CIB members.
- 9.21. Senior Constable Redding prepared a Police Incident Report ("PIR"). That document appears as GM1 to an affidavit of Inspector Grant Moyle sworn 26 June 2007 which was admitted as Exhibit C10. Hereafter, I will refer to exhibits to this affidavit simply by their exhibit name. The PIR states that at 1220 hours on 25 February 2004 at Flinders Road, Hillcrest, Christopher Wilson was with his brother and three others and were challenged by the occupants of a BMW of unknown registration. A passenger of the BMW got out and fired a shot from "a weapon of some sort, possibly slug gun", wounding Christopher Wilson in the lower right leg. The report states that Christopher Wilson and two witnesses attended at Holden Hill Police Station about 30 minutes after the incident and that statements were obtained from all. It states that Holden Hill CIB members Detective Wilson and Detective Green were "advised and assessing for dayshift follow-up". The PIR continues:

'Nil further information on suspect vehicle or suspects. Appears this stage that the suspect vehicle may be associated with person/s living in Duthie Street Hillcrest. Attached is a copy of possible suspects, HB and HB's brother, Duthie Street, Hillcrest, but this info is an educated guess. Nil evidence to link these suspect names with this incident this stage.'

⁶⁵ Transcript, page 317

⁶⁶ Transcript, page 318

⁶⁷ Transcript, pages 318-319

⁶⁸ Transcript, page 319

The narrative goes on to explain that Christopher Wilson was advised to re-attend at the police station for a photograph to be taken of his wound. It also states that part of a projectile was obtained from the interior of the car the victim was in and that it had been booked in as an exhibit. The PIR was first raised at 2350 hours on 25 February 2004. It was entered by Senior Constable Redding at 0117 hours on 26 February 2004. The only other pertinent information from the PIR was that it contained the names, addresses and ages of Christopher Wilson, Dylan Connelly, James McAinsh and Mark Wilson.

- 9.22. Senior Constable Redding said that the information in relation to HB's brother and HB was provided to him by either Sergeant Mickan or Probationary Constable Crawford, more likely the former. Senior Constable Redding acknowledged that he was aware when he finished with the PIR that Christopher Wilson had changed his description of the gun to something which may have been bigger than a slug gun and yet he completed the PIR without changing the reference to a slug gun⁶⁹. He had no explanation for this.
- 9.23. Senior Constable Redding thought that the information provided to him as the result of computer searches carried out by others, included the names of HB and HB's brother as possible persons of interest. He thought that this included a reference to HB having a criminal record which included attempted murder⁷⁰. This was incorrect, there was no such reference on HB's record. Senior Constable Redding said that the record of attempted murder which he believed to be part of HB's record had firmed up his view that a wounding had indeed happened⁷¹. This is extraordinary. It should have been obvious to him that Christopher Wilson had a wound – by that stage he had actually seen it. To suggest that something on HB's criminal record caused him to feel safer in concluding that there had been a wounding when there was physical evidence of a wound is most peculiar, particularly given that the information said to be in HB's record, namely attempt murder, did not appear in his record (at that stage) at all.
- 9.24. Senior Constable Redding stated that he had been in the interview room for a substantial amount of time with Christopher Wilson before there was mention of a

⁶⁹ Transcript, page 393

⁷⁰ Transcript, page 429

⁷¹ Transcript, page 429

firearm and wounding⁷². Senior Constable Redding acknowledged that he never conveyed to Detective Senior Constable Green the name of a suspect or a person of interest⁷³. He said that he never saw Probationary Constable Crawford look at Christopher Wilson's leg at the front counter⁷⁴. Senior Constable Redding acknowledged that there was no reference in the statement he took from Christopher Wilson, Exhibit GM29, to a report of road rage⁷⁵. He explained this by saying that the road rage "basically paled in significance" as the matter escalated to an unlawful wounding.

- 9.25. Senior Constable Redding was asked how it might have been that a projectile from a slug gun had sufficient power to ricochet off the ground or some other object and hit a person with a sufficient amount of force to cause a wound similar to that on Christopher Wilson's leg. He acknowledged that some slug guns are "pretty powerful" particularly those of a high calibre⁷⁶.

9.26. Sergeant Glen Mickan

Sergeant Mickan is a sergeant of police. He gave evidence at the Inquest. He was on duty with Senior Constable Redding and Probationary Constable Crawford in the Holden Hill Police Station on the night of 25/26 February 2004. He was not requested to make a statement about the events of that night at any time proximate to those events. The first time he was asked to recall the matter in any detail was when he was questioned by Internal Investigation Branch in early 2006, some two years after the event.

- 9.27. Sergeant Mickan said that he recalled a group of people entering the police station during his shift that night and that Senior Constable Redding went to the front counter to greet them⁷⁷. Shortly after Senior Constable Redding had spoken to them Sergeant Mickan had a conversation with Senior Constable Redding from which he learnt that Senior Constable Redding was taking a report from a member of the group and that some other members of the group had witnessed the event. At that point Sergeant Mickan decided that his staffing was not sufficient to deal with the matter. Sergeant Mickan understood the event to have been an assault, although he became aware

⁷² Transcript, page 422

⁷³ Transcript, page 395

⁷⁴ Transcript, page 336

⁷⁵ Transcript, page 362

⁷⁶ Transcript, pages 395-396

⁷⁷ Transcript, page 753

either on the first occasion he spoke to Senior Constable Redding about the incident or the second occasion that a firearm may have been involved⁷⁸. Because further staff were required he contacted Sergeant Tuk who was in charge of patrols and requested that he provide officers under his control to assist. This happened very quickly. The assisting officers were Senior Constable Peter Cox and Constable Luke Wilson. Sergeant Mickan thought that they arrived within five minutes of Senior Constable Redding entering the interview room⁷⁹.

- 9.28. Sergeant Mickan said that he recalled that when Constable Wilson and Senior Constable Cox arrived he was speaking to Senior Constable Redding who was informing him that the complainant's story was changing and that he was indicating that he had been shot with a firearm of some sort, possibly a slug gun, and that he had been hit in the leg⁸⁰. Sergeant Mickan said that when he learnt that the matter was a firearm incident, he then contacted the CIB because the incident was of a serious nature⁸¹. He said that he spoke to either Detective Wilson or Green by telephone and explained briefly to them that they had an incident involving a firearm and a road rage type incident and that he wished them to come down and look at the situation⁸². He believed that at that point he was aware of the location of the event, the involvement of a particular type of vehicle and of the offender being from a particular ethnic group⁸³. Sergeant Mickan said that, armed with this information, he directed Probationary Constable Crawford to start running some computer checks on this information⁸⁴. His recollection was that this search started prior to Detectives Green and Wilson attending⁸⁵. Prior to the attendance of the CIB officers the computer searches conducted by Probationary Constable Crawford had come up with a person of interest or persons of interest by the name of B. When the CIB officers arrived, Sergeant Mickan informed them of the details of this. He told them that Senior Constable Redding was speaking to the victim and that there were people waiting in the front office that were part of the group. Two other statements were being taken by Senior Constable Cox and Constable Wilson. He said that he definitely informed

⁷⁸ Transcript, page 755

⁷⁹ Transcript, page 756

⁸⁰ Transcript, page 757

⁸¹ Transcript, page 758

⁸² Transcript, page 759

⁸³ Transcript, page 759

⁸⁴ Transcript, page 760

⁸⁵ Transcript, page 761

them of the detail generated from the computer searches⁸⁶. Those computer searches as detailed by Sergeant Mickan to the CIB officers included an address, a name of a person of interest that lived at that address and the fact that the person had a car which was similar to that described by the group in the police station⁸⁷. Sergeant Mickan said that he conveyed this information to both Detectives Wilson and Green together.

- 9.29. Sergeant Mickan said that from that time on it was “the CIB’s call” as to how the matter would be handled. He said that at the point when the CIB arrived and were briefed, they took over the investigation and it was under their direction that all further inquiries and reports were undertaken⁸⁸.
- 9.30. Sergeant Mickan said that Detectives Green and Wilson decided that his staff should finish taking the statements and then pass it on for allocation the following morning by the Crime Management Unit. He agreed with that decision⁸⁹.
- 9.31. Sergeant Mickan gave evidence that he “vetted” the PIR that was produced by Senior Constable Redding and the statements produced by Senior Constable Cox and Constable Wilson later in the morning before despatching the investigation to the Crime Management Unit for allocation in the morning.
- 9.32. Sergeant Mickan believed that the information which he had available to him from the computer searches that morning included a registration number for a black or a dark BMW⁹⁰.
- 9.33. Sergeant Mickan said that on the night he had the feeling that this was not a random incident. He said that he formed that view because of the information coming from Senior Constable Redding that the story and details were changing and had changed a number of times. He formed the view that evidence was not freely being given by the witnesses and that they knew who the person was and exactly where he lived⁹¹.
- 9.34. Sergeant Mickan adhered adamantly to his position that the names of persons of interest, namely the B’s, was given to the CIB detectives that night⁹².

⁸⁶ Transcript, page 761

⁸⁷ Transcript, page 762

⁸⁸ Transcript, page 776

⁸⁹ Transcript, page 784

⁹⁰ Transcript, page 813

⁹¹ Transcript, page 819

⁹² Transcript, page 823

9.35. It was put to Sergeant Mickan in cross examination that one of the computer checks, namely a check as to vehicle details, was not done, according to other evidence before the Court, until a time after the CIB officers had left the building. Sergeant Mickan suggested that this may be explained by the possibility that he was operating another computer nearby in the police station and gained some of the information in that manner and then gave it to the CIB officers⁹³. However, he admitted that he had no clear recollection about this.

9.36. On the subject of the responsibility of the future conduct of the investigation Sergeant Mickan said:

‘The fact is that CIB were called in, it then became their responsibility to investigate it. It brings to mind if you go to an armed hold-up and CIB are called; because the statements haven't been taken by all the witnesses, do CIB sit back and do nothing until those statements have been provided? I don't think so. I think it's clearly a case of once CIB are there, they are responsible.’⁹⁴

9.37. Probationary Constable Tina Crawford

Tina Crawford gave evidence at the Inquest. She was a probationary police constable working at Holden Hill Police Station in February 2004. She left the police force later that year and is no longer a serving police officer. There was no suggestion at the Inquest that her decision to leave the police force was related to the events the subject of this Inquest.

9.38. Unlike Sergeant Mickan, she was called upon to make a statement about the events of the night of 25/26 February 2004. Her statement was made on 8 March 2004 and was admitted as Annexure GM9 to Exhibit C10. She said that she recalled Senior Constable Redding talking to Christopher Wilson on that night. She said that while Senior Constable Redding was talking to him at the front counter she was standing behind listening. She heard one of them say that he had been shot in the leg. She said he did not appear to be hampered by the wound in any particular way. That further excited her interest because she had imagined that someone having been shot would be behaving differently⁹⁵.

9.39. Ms Crawford recalled that Senior Constable Redding asked the men what had happened. She said that members of the group were all talking at once, but she

⁹³ Transcript, page 827

⁹⁴ Transcript, page 855

⁹⁵ Transcript, pages 588-589

overheard Christopher Wilson say that he had been shot in the leg and that the shooter looked Afghani, dark coloured and he was in a dark vehicle like a BMW. She said that she definitely heard the word BMW⁹⁶. Ms Crawford said that they also reported that this happened in Duthie Street, Hillcrest⁹⁷. According to Ms Crawford, Senior Constable Redding then decided to take Christopher Wilson to an interview room. She went out to the back part of the police station and started to do some checks to see if she could find out any information about the street which had been nominated. She said that she did this of her own initiative, and not pursuant to a direction from anyone⁹⁸. Ms Crawford said that she entered the name of the street to see if there were any persons of interest on that street. She said that one of the names which came up seemed to be a middle eastern or Lebanese type of name. She then typed that name into the computer and it came up with HB's details. She was printing out the different screens as she was moving in and out of them. She noted that there was a warning next to the name HB to the effect "May be armed" and said that she thought this may well be the person that was involved⁹⁹.

- 9.40. Ms Crawford said that she would print the pages on the screen straight away before moving on to another screen¹⁰⁰. She was aware as she was doing these searches that the Detectives, Green and Wilson, had come down into the station¹⁰¹. Ms Crawford printed out four pages from the system between 2347 and 2349 hours on 25 February 2004. Each of the pages bears a time. Annexure GM47 to Exhibit C10 is a copy of the four pages printed by Ms Crawford during those few minutes. They are copies of the actual pages printed by her on the night. They could not now be replicated from the computer system because they bear the date and time referred to above. The pages are all headed "General Enquiries – Enquire Persons at Address" for Duthie Street, Hillcrest. The pages reveal the names of seventeen persons recorded in the computer system for different addresses within Duthie Street, Hillcrest. Most of the names have been blanked out by the solicitors acting for South Australia Police in this matter because they are said not be relevant. The names which have not been blanked out are as follows:

⁹⁶ Transcript, page 589

⁹⁷ Transcript, page 589

⁹⁸ Transcript, page 590

⁹⁹ Transcript, page 592

¹⁰⁰ Transcript, page 592

¹⁰¹ Transcript, page 592

member of the Christopher Wilson group who came to the counter and said words to the effect “I’ve got a bullet in my car” or “piece of bullet, should I get it”. Ms Crawford said that she could get it if he showed her where it was. He said that it was just as easy for him to get it. He ran out and came back with it and during that time Ms Crawford obtained gloves and a bag to put the bullet or whatever it was. The item that he produced was described by Ms Crawford as a silver piece of shrapnel¹⁰⁶. Ms Crawford said that at the time that this was being handed to her Detective Green was at the counter taking some notes from another person. She said to him that this had been handed to her and he took possession of it and said that he would deal with it.

- 9.44. Ms Crawford said that she did some further computer searches during her shift and produced a second batch of documents which she handed to Senior Constable Redding¹⁰⁷.
- 9.45. Ms Crawford said that of the seventeen names under “Enquire Person at Address” in Annexure GM47 to Exhibit C10 the name HB was the only one which she thought had a middle eastern origin¹⁰⁸. She said that the detectives acknowledged the provision of the material to them by saying “thanks”¹⁰⁹. She said that she subsequently discussed the matter with Senior Constable Redding and Sergeant Mickan because she was wondering what would happen about her searches and the revelation of B as a person of interest. She said that Senior Constable Redding and Sergeant Mickan responded by telling her that CIB had taken the matter over and “that was that”¹¹⁰.
- 9.46. Ms Crawford said that she gave the detectives information from her computer searches revealing information about a vehicle. She said “I definitely gave them the picture of HB and the vehicle information and the address information”¹¹¹. She maintained that the motor vehicle check was in the first lot of information she provided to the detectives¹¹². Ms Crawford confirmed her account of the handing of the material to the detectives with the photograph on top and that there were two

¹⁰⁶ Transcript, page 604

¹⁰⁷ Transcript, page 607

¹⁰⁸ Transcript, page 614

¹⁰⁹ Transcript, page 615

¹¹⁰ Transcript, page 615

¹¹¹ Transcript, pages 619-620

¹¹² Transcript, page 621

batches of materials¹¹³. Ms Crawford acknowledged that the motor vehicle check took place at 00:31:58 hours on 26 February 2004¹¹⁴.

- 9.47. Ms Crawford was quite adamant that she handed the information to the detective while the victim was still in the interview room and she was adamant that this was at a point after she had done the motor vehicle check not at an earlier stage¹¹⁵.
- 9.48. Ms Crawford had made a statement on 8 March 2004 relating the events of the night of 25/26 February 2004. That statement was admitted as Annexure GM9 to Exhibit C10. That statement does not refer to Ms Crawford handing the search information to a detective and then to Senior Constable Redding. She was asked in cross examination why she had omitted this from the statement. She responded that she did not mention it in her statement because she handed it to the CIB member to give it, or with the intention that it be given, to Senior Constable Redding. For that reason she said she did not incorporate that information into the statement, saying “so I didn’t put I handed it to them, then they looked at it, then they handed it to him”¹¹⁶.
- 9.49. It was put to Ms Crawford by Counsel for Detective Green that at no stage on the night of 25 February or in the early hours of 26 February 2004 did she hand information in the form of intelligence checks to a detective from Holden Hill. She replied:

‘I did. I handed it to them and it's actually in a statement that I provided to IIB.’¹¹⁷

9.50. Detective Mark Wilson

Detective Mark Wilson gave evidence at the Inquest. He was one of the two detectives present in Holden Hill Police Station when Sergeant Mickan requested the attendance of CIB that night. Annexure GM5 to Exhibit C10 is a copy of Detective Wilson’s notes made that night. The note is as follows:

‘Wed 25th Feb 2004

Received info from Sgt Mickan at 2350 hrs. Male walked into front office and been shot in leg. Possibly slug gun. Spoke with Chris & Mark Wilson states some Afghans in a BMW pulled a pistol on them. Fired one shot. Small pop noise. Possibly slug gun. Something hit Chris in the leg and has scratch. No hosp treatment. They were in Duthy

¹¹³ Transcript, pages 633-634

¹¹⁴ Transcript, page 640

¹¹⁵ Transcript, page 696

¹¹⁶ Transcript, page 704

¹¹⁷ Transcript, page 705

St Hillcrest. Afghans said stay out of our street. No rego of BMW. Office and patrol taking statements. Further enq on A shift Thurs with FIO's.

Off duty 0030 hrs'

The reference to "A shift" is to afternoon shift and the reference to "FIO" is to Field Intelligence Officer.

- 9.51. Detective Wilson said that in addition he usually completed a computerised journal at the completion of each shift. A copy of the journal made by either him or Detective Green that night was tendered by Counsel for Detective Wilson and admitted as Exhibit C16. It states:

'0015 hrs Wilson and Green Report

Received info from Sgt Mickan front office re male has come into front office and thinks he has been shot by Afghans. Spoke with 4 males who stated they were in Duthy St, Hillcrest and 2 "Afghans" in a old BMW stopped them and told them not to come into their street. The pulled a large pistol? Out and a small pop was heard. It was not until later that one of the boys found he had a graze to the leg. Another occupant of the car later found what appeared to be a mangled slug in the car. Front office and patrols taking statements. Offenders not known at this stage and no rego of BMW. Further enquiries to be conducted in day light. Cont. no hospital treatment sought. Wilson and Green off duty 0030 hrs.'

Detective Wilson said that it was 2350 hours when the detectives attended and spoke to Sergeant Mickan in the front office¹¹⁸. He confirmed that after speaking to Sergeant Mickan he and Detective Green went to the interview room in which Christopher Wilson and Dylan Connelly were talking to Senior Constable Redding¹¹⁹. Detective Wilson stated that Exhibit C16 and Annexure GM5 to Exhibit C10 contained all the information of which he and Detective Green were appraised that night¹²⁰.

- 9.52. Detective Wilson, Christopher Wilson and Dylan Connelly discussed what might have been meant by the exclamation from the occupants of the BMW "not to come into their street". Detective Wilson said that Christopher Wilson said that there was no explanation given by the occupants of the BMW as to why it was "their" street¹²¹. Detective Wilson said that he and Detective Green returned to their office upstairs at

¹¹⁸ Transcript, page 445

¹¹⁹ Transcript, page 446

¹²⁰ Transcript, page 453

¹²¹ Transcript, page 451

Holden Hill Police Station at 0015 hours¹²². Before doing so, there was a conversation between Detective Green, Sergeant Mickan and Detective Wilson. According to Detective Wilson they reviewed the situation between them and because there were no suspects and no “rego” to follow up and because the detectives were already on overtime, and the statements were being taken from the other boys, there was nothing for the detectives to follow up. It was decided that they would get “the intel” to do checks on Afghans with black BMWs in the morning and “just to put the whole file up through the system, yes through the Crime Management Unit”¹²³. Detective Wilson said that he and Detective Green discussed the possibility of he and Detective Green being authorised to stay for overtime to go looking for a black BMW. He said that they formed the view that they would not have been authorised to perform that overtime¹²⁴ because of the fact that they could hunt all night and probably not find the black BMW.

9.53. Detective Wilson said that from the time that he and Detective Green completed their computerised journal¹²⁵ at 0030 hours on 26 February 2004 he had no further involvement with the matter until after Christopher Wilson’s death. He was not given any task to be formed in relation to the matter by the Crime Management Unit¹²⁶.

9.54. Detective Wilson said that the officer in charge or investigating officer for the matter on the night was “probably Mick Redding” and elaborated:

‘My understanding is we were going down there to just assess the situation, whether anything needed to be done straightaway that night and it turned out that it wasn’t so he’s the senior connie and he was taking the police incident report. ... All he’s doing is taking the report so if you want to call him an investigating officer I suppose he is at that time but as soon as he gets rid of it to the crime management unit he’s finished.’¹²⁷

9.55. Detective Wilson gave evidence of going to the front counter while he was down in the station office and speaking to Mark Wilson. He said that Mark Wilson did not really want to speak to him. He said that there was another male, apparently part of the group, who stood back against the wall and did not come up to the counter¹²⁸.

¹²² Transcript, page 454

¹²³ Transcript, page 454

¹²⁴ Transcript, page 456

¹²⁵ Exhibit C16

¹²⁶ Transcript, page 457

¹²⁷ Transcript, page 457

¹²⁸ Transcript, page 460

- 9.56. Detective Wilson said that he had the feeling that there might have been something more to the incident which would have meant that it was not random¹²⁹. He elaborated on this later in his evidence saying that he had a feeling that there was more to it¹³⁰. He then added that he did not think that Christopher Wilson himself was being evasive. He said that it was always hard to obtain details from him and he was aware of this from a previous assault involving Christopher Wilson as a victim in which Detective Wilson had been involved. He said it had been difficult to get information out of him on that occasion and that it was just as if he was not interested¹³¹. He said that therefore Christopher Wilson was probably behaving according to his normal disposition but that he considered that the two men out the front (one of whom was Mark Wilson) were not cooperating¹³².
- 9.57. Detective Wilson said that he was under the understanding that all statements from the group would be taken that night by members of the office and patrols¹³³.
- 9.58. Detective Wilson said that he had no recollection that a woman police officer was on duty that night¹³⁴. At that time he did not know Tina Crawford¹³⁵. He was shown Annexure GM47 to Exhibit C10, which is the four pages entitled “General Enquiries – Enquire Persons at Address” referred to previously, and asked whether he saw those documents being handed over by Ms Crawford on that night either directly to him or to someone else or in his presence¹³⁶. He added that he had never seen the documents set out in Annexure GM47 to Exhibit C10 at any time prior to giving evidence in the Coroner’s Court¹³⁷. He had no knowledge of a check on HB¹³⁸.
- 9.59. Detective Wilson confirmed that he and Detective Green were aware that somebody had been shot before they went down to the front office that night¹³⁹.
- 9.60. Detective Wilson denied that Sergeant Mickan had told him that computer checks had been generated that night. He said that they did not discuss computer checks that

¹²⁹ Transcript, page 465

¹³⁰ Transcript, page 487

¹³¹ Transcript, page 487

¹³² Transcript, pages 488-489

¹³³ Transcript, pages 465-466

¹³⁴ Transcript, page 469

¹³⁵ Transcript, page 469

¹³⁶ Transcript, page 470

¹³⁷ Transcript, page 470

¹³⁸ Transcript, page 471

¹³⁹ Transcript, page 473

night¹⁴⁰. He acknowledged that the decision to leave the matter to the following day for allocation by the Crime Management Unit was his call¹⁴¹.

- 9.61. Detective Wilson said that when he spoke to Mark Wilson, Mark Wilson did not say that he knew who the assailant was. In fact he said that he did not know who the assailant was and did not know the car¹⁴². Detective Wilson denied that he and Detective Green had taken over the job that night¹⁴³.

9.62. Detective Stuart Green

Detective Green gave an account of the events of 25/26 February 2004 that accorded, in the broad, with that of Detective Mark Wilson. Annexure GM6 to Exhibit C10 is a copy of a handwritten note made by Detective Green on that night. It records that at 2345 hours Detective Green was contacted by Sergeant Mickan about a male person presenting at the police station alleging he had been shot by a group of Afghans, possibly by a slug. It records that Detective Green went off duty at 0030 hours. The note refers to the names of Ryan Williams, James McAinsh and Mark Wilson and gives ages and contact details. Curiously, the note does not refer to the name of Christopher Wilson. Detective Green confirmed the accuracy of this note and of the computerised journal¹⁴⁴ which was referred to previously.

- 9.63. Detective Green said he would have noted the time of 2345 hours before going down stairs to the station proper. He was aware before going down that a person had presented at the station alleging that he had been shot in the leg¹⁴⁵. Detective Green said that he and Detective Wilson went downstairs to the station proper and straight into the interview room with Senior Constable Redding and Christopher Wilson¹⁴⁶. Detective Green recalled that Christopher Wilson had said words to the effect that he thought he had been shot with some sort of gun but did not think it was real¹⁴⁷. Detective Green saw the wound on Christopher Wilson's leg and described it in evidence as "just a small scratch"¹⁴⁸. According to Detective Green, Christopher Wilson was not overly concerned about "the cut on his leg" and was not going to seek

¹⁴⁰ Transcript, page 474

¹⁴¹ Transcript, page 475

¹⁴² Transcript, page 490

¹⁴³ Transcript, pages 491-493

¹⁴⁴ Exhibit C16

¹⁴⁵ Transcript, page 512

¹⁴⁶ Transcript, page 513

¹⁴⁷ Transcript, page 514

¹⁴⁸ Transcript, page 515

medical attention because he did not think he had been shot with a real gun but possibly a slug gun¹⁴⁹.

- 9.64. Detective Green said that he spoke to Mark Wilson and some of the other men at the front counter. None of them volunteered a name of an assailant. At this point Detective Green said that he was approached by Probationary Constable Tina Crawford who handed him a plastic bag with some sort of metal projectile in it. He had not spoken to her prior to this¹⁵⁰. He said that Probationary Constable Crawford informed him that somebody had retrieved this from the vehicle and given it to her. Detective Green took this plastic bag to Detective Wilson. He said that they discussed the object and decided that it was more than likely a slug. He said that there was a conversation with Senior Constable Redding and Christopher Wilson “and it was agreed by all parties that they were all of the opinion that it was a slug”¹⁵¹.
- 9.65. Detective Green said that he and Detective Wilson then had a further conversation between themselves outside the interview room. This conversation was to the effect that “the matter was I believed of a less serious nature because of the fact that the weapon used was more than likely a slug gun”. Because there were no lines of inquiry to follow up (that is no address, no suspect’s name and no registration number for a vehicle), and no other information was “provided to us” at that time, they would approach Sergeant Mickan and “put our side of the story to him”¹⁵². He then described the subsequent conversation between himself, Detective Wilson and Sergeant Mickan. They informed Sergeant Mickan that they did not think it likely that they would achieve anything by conducting further inquiries themselves on the night and that the matter would be “better suited for day shift to follow it up as we were off duty”¹⁵³. Detective Green said that it would have been possible for he and Detective Wilson to be “recalled” to duty but that based on the information that they “were given” they thought it highly unlikely that they would be given authorisation to be recalled¹⁵⁴.
- 9.66. Detective Green said that Senior Constable Redding expressed concerns to him about Christopher Wilson’s version of events. Senior Constable Redding thought that what

¹⁴⁹ Transcript, page 516

¹⁵⁰ Transcript, page 518

¹⁵¹ Transcript, page 519

¹⁵² Transcript, pages 520-521

¹⁵³ Transcript, page 521

Christopher Wilson was saying “didn’t seem quite right and wasn’t adding up”¹⁵⁵. Furthermore, Detective Green said that his first thought was that it was “a little bit odd” that Christopher Wilson and his friends had come to the police station and not sought medical treatment if there had been a shooting¹⁵⁶ and that this did not add up¹⁵⁷. He said that they thought that the firearm may not have been a revolver or a long barrel rifle and that was “the reason why we treated it as a less serious thing”¹⁵⁸. He said that he felt that Christopher Wilson was not telling them everything¹⁵⁹. Finally, he said that looking at the projectile he was not convinced that it was a bullet and thought that it was a slug¹⁶⁰.

- 9.67. Detective Green said that he and Detective Wilson returned upstairs to their office, made a journal entry on the computerised journal at about 0015 hours and then left the building. He said that he estimated that he left the building just before 12:30am¹⁶¹. Detective Green was shown Annexure GM47 to Exhibit C10, the four page printout of persons at Duthie Street previously referred to and generated by Probationary Constable Crawford at approximately 11:47pm on 25 February 2004. He said that he did not see any of those four pages prior to completing his shift that night and was not present when it was handed to any other member of police. He said that the first time he saw the document was when it was shown to him by his lawyer shortly before the Inquest¹⁶².
- 9.68. Detective Green denied that he had heard the expression “road rage” mentioned by any police officer or civilian that night¹⁶³.
- 9.69. Detective Green said that his understanding of his role and that of Detective Wilson that night was simply to assess the situation and proffer advice as to how the matter should progress, but not to take it over¹⁶⁴ and that he understood that the further

¹⁵⁴ Transcript, pages 522-523

¹⁵⁵ Transcript, page 548

¹⁵⁶ Transcript, page 552

¹⁵⁷ Transcript, page 552

¹⁵⁸ Transcript, page 552

¹⁵⁹ Transcript, page 560

¹⁶⁰ Transcript, page 569

¹⁶¹ Transcript, page 525

¹⁶² Transcript, pages 524, 556 and 570

¹⁶³ Transcript, page 546

¹⁶⁴ Transcript, page 549

conduct of the matter for that night was with Sergeant Mickan and Senior Constable Redding¹⁶⁵.

9.70. Detective Green said that he would have expected that any computer checks which had been generated in the course of the evening would have been shown to him¹⁶⁶. He agreed that the information concerning a dark coloured BMW, a firearm and the street name of Duthie Street would be sufficient for computer checks to be conducted¹⁶⁷.

9.71. Detective Green said that he and Detective Wilson were approached by Acting Detective Sergeant Addison at the commencement of their afternoon shift the following day, namely 26 February 2004. Acting Detective Sergeant Addison was aware that they had had some involvement with the Christopher Wilson incident the previous night. He inquired of them what the job was about. Detective Green said that he and Detective Wilson provided Acting Detective Sergeant Addison with an overview of what had happened the previous evening. This occurred at approximately 3:00pm on 26 February 2004.

9.72. Detective Green was asked by his own Counsel to assume that he had had knowledge that night that a revolver had been used in relation to the shooting. He provided a very detailed answer the effect of which was that there would have been “a different set of procedures put in place”. He said the matter would have been treated as a “high risk listing”, there would have been advice to the shift manager, to the on-call officer, to police communications, to the on-call STAR Group officer, a briefing conducted, uniform patrols attending, placement of cordons and a tactical commander assuming responsibility for the incident¹⁶⁸. However, he said that he was not aware that witnesses spoken to that night had described the weapon used as a pistol until some time after that night¹⁶⁹.

9.73. Senior Constable Peter Cox and Senior Constable Luke Wilson

These police officers were the two patrol officers who were called back to Holden Hill Police Station at the request of Sergeant Mickan by Sergeant Tuk, the officer in charge of patrols. The joint daily activity log of Senior Constable Luke Wilson and

¹⁶⁵ Transcript, page 577

¹⁶⁶ Transcript, page 556

¹⁶⁷ Transcript, page 559

¹⁶⁸ Transcript, page 526

Senior Constable Peter Cox¹⁷⁰ confirms that from 0005 to 0125 hours they were at Holden Hill Police Station to assisting in the taking of the statements. Senior Constable Cox said that he attended at the front foyer area of Holden Hill Police Station and spoke to Detective Green who asked them to take a statement from the driver of the vehicle who turned out to be James McAinsh. He confirmed that he proceeded to do just that. He said that once he had finished taking the statement he handed it to Senior Constable Redding¹⁷¹. He said that as soon as the statements were handed in they resumed patrol duties¹⁷². It was clear that very little time expired between the completion of the statements and the resumption of patrol duties¹⁷³. Senior Constable Cox could tell that Senior Constable Redding had completed taking whatever statement he had taken (we now know it was the statement of Christopher Wilson) prior to Senior Constable Cox completing his. Neither Senior Constable Cox nor Senior Constable Luke Wilson was aware of Senior Constable Redding's presence on their arrival at the police station. All of the evidence suggests that Senior Constable Redding was in the interview room with Christopher Wilson at that point. Senior Constable Cox said that James McAinsh was cooperative and did not appear to be holding anything back¹⁷⁴.

- 9.74. Senior Constable Luke Wilson gave evidence to a similar effect as that given by Senior Constable Cox. He confirmed that he took a statement from Dylan Connelly and that he commenced taking that statement at 0005 hours and finished doing so shortly before 0125 hours. He said that he handed his completed statement to Senior Constable Redding¹⁷⁵. He said that he did not have any difficulty in obtaining information from Dylan Connelly who was quite forthcoming with details¹⁷⁶.
- 9.75. The evidence of both of these officers confirms that Senior Constable Redding was free from the task of taking a statement from Christopher Wilson prior to the completion of the statements that Senior Constable Cox and Senior Constable Wilson were tasked to take. There was no reason why Senior Constable Redding could not

¹⁶⁹ Transcript, page 528

¹⁷⁰ Exhibit C15

¹⁷¹ Transcript, page 876

¹⁷² Transcript, page 877

¹⁷³ Transcript, page 877

¹⁷⁴ Transcript, page 885

¹⁷⁵ Transcript, page 890

¹⁷⁶ Transcript, page 895

have used this time, it seems to me, to be taking a statement from either of Mark Wilson or Ryan Williams.

10. The Christopher Wilson complaint - Conclusions

- 10.1. Senior Constable Redding somehow did not pick up the information that Probationary Constable Tina Crawford picked up, namely that Christopher Wilson had been shot and wounded. Senior Constable Redding's evidence in chief was built upon the premise that this was information that was only reluctantly revealed by Christopher Wilson at a very late stage in the interaction between him and Senior Constable Redding. The premise was that there was a gradual change in the story from a "road rage" incident, to an assault involving a bat or other like object, to a shooting and finally to a shooting and a wounding, and this last only at a very late stage. However, while Senior Constable Redding was sitting with Christopher Wilson in the interview room eliciting what he described as a changing story, Probationary Constable Crawford was already pursuing fruitful lines of inquiry based upon her appreciation, gained almost immediately upon the arrival of Christopher Wilson at the Holden Hill Police Station, that he had been shot and wounded by "Afghans". It is extremely difficult to imagine how Senior Constable Redding managed to remain oblivious to this for so long. Was he distracted when that was mentioned at the front counter? Was his hearing impaired by something? Was he being truthful or did he hear the same things as Probationary Constable Crawford but was reluctant to accept that it was true until Christopher Wilson, having been forced to go through the story at length in the interview room finally got the point of the narrative where he was shot and revealed the wound. Did this in turn enable Senior Constable Redding to suggest that the wound was a late revelation reluctantly made thus establishing Senior Constable Redding with a foundation for his belief that something "did not add up", that Christopher Wilson was "holding something back". It will be remembered that Senior Constable Redding added a touch of mystery to his account by reference to the "shadowy figure" that met Christopher Wilson outside the station after he had been shown into an empty foyer by Senior Constable Redding after the completion of the interview.
- 10.2. In any event, I find that Christopher Wilson did indeed mention the wound and the shooting at a very early point at the front counter thus enabling Probationary

Constable Crawford to hear it and begin her inquiries. I am unable to explain why Senior Constable Redding would have been unable to hear something that could be heard by Probationary Constable Crawford.

- 10.3. Senior Constable Redding passed his suspicions about Christopher Wilson's unwillingness to cooperate onto other police officers that night, namely Sergeant Mickan, Detective Green and Detective Wilson. However, neither Senior Constable Cox nor Constable Luke Wilson noted a lack of cooperation on the behalf of James McAinsh or Dylan Connelly.
- 10.4. All the members of the Christopher Wilson party gave evidence that they did not feel that the complaint had been taken seriously by the police that night. This may be explained by the fact that Senior Constable Redding apparently did not take in the information about the wounding by gunshot until well into the interview with Christopher Wilson when none of the others with the exception of Dylan Connelly was present. The others would be left wondering why there was not some more urgent response to a report of a shooting, if it was accepted at face value.
- 10.5. They were not to know that it had been accepted at face value by Probationary Constable Crawford. By face value, I am referring to the initial attendance in the foyer by the Christopher Wilson party on their arrival at the Holden Hill Police Station, and the acceptance of the account of a shooting and wounding at that point. From the point of view of the rest of the members of the Christopher Wilson group, the public face of South Australia Police was Senior Constable Redding, who somehow missed the central message that was being conveyed, namely that Christopher Wilson had been shot and wounded by "Afghans". It is quite possible that the members of the group felt that they were not being taken seriously if Senior Constable Redding, the only officer to whom they initially spoke, did not realise that they were saying that Christopher Wilson had been shot and wounded.
- 10.6. Detectives Wilson and Green were both adamant that none of the results of the searches by Probationary Constable Crawford had been shown to them that night. Probationary Constable Crawford was just as adamant that she had handed the search results to one of the detectives in the presence of the other, for handing to Senior Constable Redding. Both detectives denied that this occurred.

- 10.7. Sergeant Mickan was quite sure that he gave the detectives information about the searches, including the name HB.
- 10.8. The initial search results “Enquire persons at address” for Duthie Street revealed the name HB together with the warnings “May be armed” and “Psych disorder”. That information was in existence at 11:47pm and had been printed. On Probationary Constable Tina Crawford’s evidence she left a pile of material on the printer before taking it to the interview room and handing it to the detectives. She was adamant that the final check she did before this was the vehicle details check which was not done and printed until 0032 hours on 26 February 2004. By that time the detectives had returned to their office upstairs, completed their journal entries and left the building (at 0030 hours).
- 10.9. If I were to accept that Probationary Constable Crawford did not hand over anything until after she printed the vehicle enquiry details, then it would not have been possible for the detectives to have been present when the material was handed over as recounted by Probationary Constable Crawford. This would mean that her evidence would have to be rejected on this point – that notwithstanding her emphatic assertions that she handed the checks to the detectives for transmission to Senior Constable Redding, she did not. It would be difficult to conclude that Probationary Constable Crawford was mistaken in that evidence given her repeated vehement assertions that this did happen.
- 10.10. On the other hand, if I accept that Sergeant Mickan was correct in saying that he told the detectives about the searches before they left the office that night, and assume Probationary Constable Crawford was mistaken in recalling that the vehicle enquiry searches were included in the package of information she handed to the detectives or Senior Constable Redding, then it may be possible to conclude that some computerised search information, including the details about HB, was provided to the detectives before they left that night. However, this conclusion would necessarily entail finding that the detectives were both lying. It would be difficult to find they were mistaken because they were as adamant in their evidence that they were not shown any searches nor provided with any verbal report of searches as Probationary Constable Crawford and Sergeant Mickan were in their assertions to the contrary.

10.11. I am in a position where, if I am to resolve the issue of the knowledge of the detectives about the search results in the early morning of 26 February 2004, I must find that either:

1. Detectives Wilson and Green are lying and Sergeant Mickan and Probationary Constable Crawford are telling the truth.
2. Sergeant Mickan and Probationary Constable Crawford are lying and Detectives Wilson and Green are telling the truth.

I have acknowledged that the version of events given by the detectives is supported by the times shown on the computer record of the vehicle checks. However, this is only to the extent that Probationary Constable Crawford is not mistaken in her belief that the vehicle checks were part of the package of checks she maintains she gave to the detectives. In the result, I am unable to reach a conclusion on the matter. I have reached the conclusion though that the discrepancy is not explicable by a genuine mistake on the part of one side or the other. Either Detectives Wilson and Green on the one hand or Probationary Constable Crawford and Sergeant Mickan on the other, have been untruthful at the Inquest.

10.12. With the exception of Probationary Constable Crawford, and Senior Constable Cox and Constable Luke Wilson, all officers involved on the night of 25/26 February 2004 said that things did not add up, that something was being held back and that there was a suspicion that the event was not random as alleged by the Christopher Wilson party.

10.13. The wound was variously described as a scratch, looking like a cigarette burn, a small crater. Christopher Wilson was described as nonchalant and not looking for medical treatment. The gun was only a slug gun or an air gun and only made a popping noise.

10.14. There was a general tendency to minimise the seriousness of the presentation that night. None of the officers when asked directly suggested that a minor wounding, even with an air gun, was not a serious matter. Yet somehow it was relevant that the wound was minor, that the gun made a popping noise, and that the projectile appeared to be a slug.

10.15. Detectives Wilson and Green and Senior Constable Redding said that the projectile appeared to be a slug. They said that Christopher Wilson and Dylan Connelly agreed.

None of them had ballistics training. None of them appeared to consider that it was obvious from the story given by Christopher Wilson that the projectile was not fired directly at him but that it had ricocheted off something else and spent most of its force before hitting him. None of them appeared to consider that this meant that the weapon was less likely to be an air gun and the projectile not a slug¹⁷⁷. When it was suggested to Senior Constable Redding that the projectile had hit the road before hitting Christopher Wilson and this may not be considered to be consistent with a low powered air gun, it was explained that some higher calibre air guns are actually quite powerful¹⁷⁸.

10.16. There was a tendency by Detective Green, Detective Wilson, Senior Constable Redding and Sergeant Mickan to suggest that it was accepted as a serious incident, but to point out that observations made by them decried the seriousness of the incident. This was something of the best of both worlds: an acknowledgement of the seriousness of the shooting (which, in hindsight, could hardly be denied, now that we know that there was no air gun but a Ruger revolver)¹⁷⁹ but an emphasis on the factors which would justify the treatment of the matter as less serious. Detective Green did admit that they treated the matter as less serious¹⁸⁰.

10.17. It was unacceptable to blame, as some witnesses did, Christopher Wilson for the lack of urgency and action. Senior Constable Redding went so far as to suggest that the incident was trivialised by Christopher Wilson¹⁸¹. Even if the victim of a shooting incident that police have no reason to believe is anything other than random (and all the evidence in this case suggests that the incident was indeed random) has some oddity of character that causes him not to be reacting in the way that one would normally expect, that should not lead to an assumption that the matter is not as serious as it might be. Public safety requires that an open mind be maintained. It is all very well to make assumptions based on vague feelings and suspicions and other highly subjective factors that a matter is not as serious as at first appears. The fact in this case was that there was a person at large who had used a gun in a public place for no better reason than that some people had driven into “his street” and that as a result, a member of the public who had done nothing to provoke this had been injured –

¹⁷⁷ The exception is Dylan Connelly, who said that he made this point to the detectives. Transcript, page 1411

¹⁷⁸ Transcript, pages 395-396

¹⁷⁹ Annexure GM37 to Exhibit C10

¹⁸⁰ Transcript, page 552

¹⁸¹ Transcript, page 428

fortunately, not seriously. There was no reason to believe that the incident would not be repeated other than feelings said to be based on experience, but more likely born or apathy, that the incident was not random and something was being held back.

- 10.18. Yet the incident had been reported by a group of people who had been prepared to come into a police station shortly before midnight to make a formal complaint. Three of their number were interviewed and gave statements. In all they spent as a group at least two hours in the vicinity of Holden Hill Police Station waiting around. That can hardly be described as uncooperative.
- 10.19. The evidence given at Inquest by some members of the Wilson group was, I suspect, somewhat exaggerated. For example, reference by James McAinsh to a smirk¹⁸², by Dylan Connelly to officers chuckling at the wound¹⁸³, are more likely to reflect some degree of animus on their part towards the police than a true account. Having said that, I do believe that these witnesses generally provided a true account and tried to recall as faithfully as possible the events in question.
- 10.20. There should have been a far more rigorous response by the officers in Holden Hill Police Station involved in the investigation of the matter that night (with the exception of Probationary Constable Tina Crawford, whose involvement was probably purely of her own initiative and born of enthusiasm) and officers Luke Wilson and Peter Cox who were given a specific task to do in the matter which they did before resuming their patrol duties. It is notable that neither Constable Luke Wilson nor Senior Constable Peter Cox reported any lack of cooperation or any vague notions of a tendency on the part of their interviewees to hold things back. They had no incentive to offer any justification for their actions that night. They showed no lack of rigour in their approach.

11. Police response – community expectation

- 11.1. What should the community expect of its police force in a situation such as this? Let us assume that there was some bravado by Christopher Wilson that the wound was only minor and did not hurt or require medical treatment and agreement by Christopher Wilson that the projectile was in all probability a slug. But that does not

¹⁸² Transcript, page 93

¹⁸³ Transcript, page 1388

change the fact that a member of the public had presented in the police station to report that he had been wounded, albeit not seriously, by a projectile discharged from a firearm of some sort with sufficient power to cause the wound after having spent its initial force in ricocheting off something else, most likely the road surface, and that the incident was not provoked in any way but that the shooter was yelling out that the victim should keep out of “his street” and demanding to know what the victim was doing in “his street”. The victim was accompanied by four eye witnesses. None of them was heard to say that he knew the shooter. However, they did say that the incident occurred after they had made a wrong turn down a street from which the shooter apparently pursued them shortly afterwards, flagging them down in a nearby street.

- 11.2. I believe that the community had a right to expect that such an incident would be responded to as an immediate priority until the police have some basis to explain the conduct as being other than random. Until there is such a basis the community is theoretically at general risk. There may be other incidents involving this person. He may decide to accost someone else who drives into and out of his street. Bearing in mind that it is a public street, there is a likelihood that this might occur. The apparently irrational shooter might repeat his violent behaviour.
- 11.3. All this might seem unlikely. It might seem improbable that someone would be sufficiently deranged to take such exception to a car full of persons driving in his street as to flag them down and shoot one of their number if only inadvertently by ricochet. In the event that such a thing does occur, it is the police to whom the public turn for a response. It is the police who are charged with upholding law and order. It is not acceptable for the police to react to this by regarding it as inherently unlikely, probably explicable by some connection between the complainant and the shooter which the complainant is for reasons of his own concealing, and to proceed on the assumption that the shooter will not repeat his behaviour. Instead, the police should assume that there is a person who is willing to discharge a firearm in the vicinity of the location in question, who regards some public street as “his street” and who may therefore be a resident of that street. Police should then take steps to secure the peace and restore public safety.

12. The further handling of the complaint made by Christopher Wilson after he left the Holden Hill Police Station

- 12.1. On 26 February 2004 at 1:17am Senior Constable Redding updated the PIR investigation diary summarising the status of the investigation¹⁸⁴. He noted that Christopher Wilson had been advised to attend Holden Hill Police Station in the morning to have his wound photographed by technical services. Senior Constable Redding also noted that HB was a person of interest and may be a possible suspect.
- 12.2. Senior Constable Redding also submitted a hard copy of that same PIR, along with a copy of Christopher Wilson's statement and copies of the searches that Probationary Constable Crawford had done to Sergeant Mickan for vetting. Sergeant Mickan forwarded the electronic PIR as well as the hard copy PIR and the statement and searches to the Crime Management Unit or CMU for allocation at approximately 4:57am on 26 February 2004¹⁸⁵.
- 12.3. At approximately 7:00am on 26 February 2004, Senior Constable McGowan checked the Holden Hill Scene overnight book, and discovered that there was an overnight tasking for Christopher Wilson's injury to be photographed¹⁸⁶. Senior Constable McGowan attempted to contact Christopher Wilson by telephone at approximately 10:00am, 11:45am and 12:30pm¹⁸⁷. At 3:00pm Senior Constable McGowan asked Senior Constable Marzano to make further enquiries and contact Christopher Wilson¹⁸⁸. Senior Constable Marzano contacted Senior Constable Roger Delaat of Adelaide Crime Scene Investigation Unit to take the tasking¹⁸⁹. Senior Constable Delaat attended Christopher Wilson's home at approximately 5:50pm. The door was not answered and he left a calling card in it¹⁹⁰. At 9:43pm it was noted in the PIR investigation diary that Christopher Wilson had not attended Holden Hill Police Station to have his wound photographed¹⁹¹.
- 12.4. At Holden Hill Police Station there is an Intelligence Section. One of the duties of that section is to prepare a daily briefing sheet which gathers details of events from

¹⁸⁴ Annexure GM1 to Exhibit C10

¹⁸⁵ Annexure GM1 to Exhibit C10

¹⁸⁶ Annexure GM37 to Exhibit C10

¹⁸⁷ Annexure GM45 to Exhibit C10

¹⁸⁸ Annexure GM37 to Exhibit C10

¹⁸⁹ Annexure GM34 to Exhibit C10, Exhibit C7a

¹⁹⁰ Annexure GM34 to Exhibit C10, Exhibit C7a, Exhibit C12e and evidence of Mrs Julie Wilson

¹⁹¹ Annexure GM1 to Exhibit C10

the previous twenty-four hours which may be of interest to the Local Service Area. The briefing sheet is prepared by one or more Field Intelligence Officers. These officers obtain intelligence material from different sources in order to create the briefing sheet. Annexure GM58 to Exhibit C10 is a copy of the Holden Hill Crime Management Journal for 26 February 2004. It contains an entry relating Christopher Wilson's complaint. It contains a reference to the number of the PIR. It seems likely that the entry in the Crime Management Journal was made by Senior Constable Redding. It is most probably that journal together with the PIR that triggered an entry in the Holden Hill LSA Intelligence Section daily briefing in relation to the Christopher Wilson incident. This is evidenced by an extract from the Holden Hill LSA Intelligence Section daily briefing for 26 February 2004 a copy of which appears as Annexure GM59 to Exhibit C10. The daily intelligence briefings that are prepared by the intelligence officers are presented to the daily Tactical Coordination Group ("TCG") meeting for discussion and action. Annexure GM59 to Exhibit C10 indicates that the intelligence briefing was indeed distributed at a TCG meeting that day. Detective Senior Sergeant Eric Douglas was the Acting Detective Chief Inspector on the evening of 25 February 2004. He was not on duty at the time Christopher Wilson and his friends attended at the police station. He first became aware of the incident at the TCG meeting on the morning of 26 February 2004.

- 12.5. At the time Detective Senior Sergeant Douglas considered the matter he recognised the incident as serious. However it appeared to him that there was not, by that stage, an imminent or immediate danger to the public arising out of the incident¹⁹². He decided that the matter should be actioned by the CIB officers who had been on duty when the report occurred, namely Detectives Wilson and Green. He did not allocate the matter to the day shift CIB members because they were routinely off duty on Saturdays and Sundays and thus there would have been a risk of interruption and delay in the investigation¹⁹³. Detective Senior Sergeant Douglas prepared a forwarding minute¹⁹⁴ stating "for allocation to 2 Team for investigation please". The forwarding minute was attached to the PIR and forwarded to the Crime Management Unit for that instruction to be actioned. The reference to "2 Team" was a reference to

¹⁹² Transcript, page 1647

¹⁹³ Transcript, page 1676

¹⁹⁴ Exhibit C26

Team 2 of Investigations Division of which Detectives Wilson and Green were a part¹⁹⁵.

- 12.6. The forwarding minute with the PIR was physically received by Sergeant Kelly, a member of the Crime Management Unit. Receipt of the hard copy was acknowledged by Sergeant Kelly's signature on the minute¹⁹⁶. Sergeant Kelly then allocated the PIR to Detective Sergeant Butvila who Sergeant Kelly mistakenly believed was the person then in charge of Team 2 because Detective Sergeant Butvila was usually in that position. However, at that time, Detective Sergeant Butvila was relieving in the position of Acting Detective Senior Sergeant of Investigation and Response, which was primarily an administrative role and did not involve any direct and immediate supervision of Team 2. Instead he oversaw all of the Investigations Section as well as the Crime Management Unit¹⁹⁷. Sergeant Kelly had access to the weekly dispositions journal¹⁹⁸ which showed that Detective Sergeant Butvila was relieving up and similarly that Acting Detective Sergeant Addison was also relieving up and therefore in charge of Team 2. Sergeant Kelly gave evidence that he acknowledged that the PIR was to be allocated to Team 2 and not to Detective Sergeant Butvila directly. He explained that he sent the file to Detective Sergeant Butvila because he knew he was generally the sergeant in charge of Team 2. He acknowledged that he did not check the dispositions journal but allocated the PIR to Detective Sergeant Butvila because he was associated with Team 2.
- 12.7. As I have said Acting Detective Sergeant Shane Addison was in charge of Team 2 at the relevant time and was the direct supervisor of the members of that team¹⁹⁹. The PIR was sent electronically using the police information management system. Furthermore, a hard copy of the PIR followed thereafter. Thus both the electronic version and the hard copy version were forwarded to Detective Sergeant Butvila.
- 12.8. When a PIR is electronically allocated it goes into the system and when the relevant members logs onto the system he or she receives notification of matters that have arrived and are awaiting their attention. If a member does not log onto the Police Information Management System, then he or she will not receive any electronic

¹⁹⁵ Transcript, pages 1635-1636

¹⁹⁶ Exhibit C26

¹⁹⁷ Evidence of Detective Sergeant Butvila; Exhibit C26d

¹⁹⁸ Exhibit C26d

¹⁹⁹ Exhibit C26d

notification of the arrival of a new matter. The member will not have notice of the new matter until that member logs onto the system²⁰⁰.

- 12.9. Both Detective Sergeants Butvila and Addison had their own pigeon holes into which hard copy material would be placed by a rounds clerk who did rounds at least twice a day, in the morning and in the afternoon. Those pigeon holes were located near the Detective Sergeant of Investigation's office²⁰¹.
- 12.10. Detective Sergeant Butvila's usual office was being temporarily occupied by Acting Detective Sergeant Addison while they were both relieving. There were two trays located on the desk in that office, one of which was allocated for general purpose materials relevant to Team 2 investigations, and the other one was for personal correspondence addressed to Detective Sergeant Butvila²⁰².
- 12.11. While relieving up, Detective Sergeant Butvila did not regularly access the PIMS as his role as an Acting Detective Senior Sergeant did not require him to do so and because he was not required to receive and allocate matters for investigation while relieving up. On occasion, he would log onto PIMS and would forward on to the relevant person, usually Acting Detective Sergeant Addison, any material that might have been incorrectly forwarded to him. However, there was no regularity to his logging onto PIMS²⁰³.
- 12.12. While relieving up, Detective Sergeant Butvila would not necessarily check his pigeon hole with regularity either and for the same reason²⁰⁴. While relieving up, Detective Sergeant Addison was in charge of the receipt and allocation of matters for investigation by members of Team 2 and he relied upon those matters being forwarded to him. He relied upon the hard copy of those matters being placed in his pigeon hole. Detective Sergeant Butvila assumed that Detective Sergeant Addison would check Detective Sergeant Butvila's pigeon hole and remove anything that related to Team 2. However, Detective Sergeant Addison believed that it was not his place to check Detective Sergeant Butvila's pigeon hole and assumed that Detective Sergeant Butvila would check it himself.

²⁰⁰ Evidence of Detective Senior Sergeant Douglas; Detective Sergeant Butvila; Detective Sergeant Addison and Sergeant Kelly

²⁰¹ Evidence of Detective Senior Sergeant Douglas and Detective Sergeant Butvila

²⁰² Evidence of Detective Sergeant Butvila and Detective Sergeant Addison

²⁰³ Evidence of Detective Sergeant Butvila and Detective Sergeant Addison

²⁰⁴ Evidence of Detective Sergeant Butvila and Detective Sergeant Addison.

12.13. The staffing arrangements for the Holden Hill CIB were recorded in a document called the Holden Hill CIB Disposition sheet²⁰⁵. That document was collated, updated and distributed on a weekly basis to staff members²⁰⁶. Members of the Crime Management Unit were aware of and had ready access to the Holden Hill CIB Disposition sheet every week and were aware that it could be accessed on their computers²⁰⁷. Annexure GM1 to Exhibit C10 contains an entry at 1433 hours on 26 February 2004. It was made by Sergeant Kelly and it refers to the Christopher Wilson PIR. It states:

‘Vic for alloc as per direction of DS/Sgt Douglas. Hard copy to you 26/2’

And it records the transfer to Detective Sergeant Butvila.

12.14. In the result, neither Detective Sergeant Butvila nor Detective Sergeant Addison received the electronic version of the Christopher Wilson PIR on 26 February 2004 as intended. Nor did either of them receive the hard copy documents²⁰⁸. In fact Detective Sergeant Butvila had no knowledge of the matter at all until Internal Investigation Branch began investigating the matter more than twelve months later²⁰⁹.

12.15. As already noted previously, Detective Sergeant Addison who was working on afternoon shift along with Detectives Wilson and Green became aware of their involvement in the Christopher Wilson incident at approximately 3:00pm on 26 February 2004²¹⁰. However at the time of this discussion he was not in possession of the PIR in any form and did not come into possession of it until he sought out an electronic copy of it himself on 28 February 2004 at the request of Detective Lidio Santucci who had asked for it to be forwarded to him in relation to the fatal shooting of Christopher Wilson. The hard copy documents arrived on the desk Detective Sergeant Addison was occupying some time during the afternoon of 28 February 2004. He passed this on to Detective Santucci and made a note on the forwarding minute as follows:

‘Lidio, this is for you too. Makes very interesting reading now.’

²⁰⁵ Exhibit C26d

²⁰⁶ Evidence of Detective Sergeant Butvila, Detective Senior Sergeant Douglas and Sergeant Kelly

²⁰⁷ Evidence of Detective Sergeant Butvila and Sergeant Kelly

²⁰⁸ Evidence of Detective Sergeant Butvila and Detective Sergeant Addison

²⁰⁹ Evidence of Detective Sergeant Butvila

²¹⁰ In discussion with them, but not as a result of the allocation of the PIR.

12.16. Other than the efforts made by the crime scene examiners in connection with photographing Christopher Wilson's wound, and apart from the allocation of the PIR (or misallocation), no other action took place in relation to the complaint by Christopher Wilson until after his death on 28 February, 2004. The misallocation of the PIR reflects poorly on Sergeant Kelly. His evidence at T1702-1706 shows that he had a rather casual attitude in relation to ascertaining the identity of the person acting in a particular position at a particular time. This is evidenced by his comments that "you've got to appreciate there was always changes and relieving and it was an ongoing matter"²¹¹ and "you just throw it around there. I'd say whose relieving in that position at the moment or is so and so relieving. I mean its just general talk within the confines of the staff there at the Crime Management Unit."²¹² As to the disposition journal he said:

'Every now and again you get on to it. Depending what you were working on and what you were looking at, but, I mean, you know, we have a hundreds tasks to do there. It was just one of many.'²¹³

In my opinion Sergeant Kelly was less than diligent in his approach to the allocation of the Christopher Wilson PIR. If his evidence is any indication of his attitude to the importance of accurate allocation generally, it appears that he does not attach sufficient importance to the accurate transmission of PIRs. As this case has shown, a high level of diligence is required in this task.

12.17. In the result, neither Detective Sergeant Butvila nor Detective Sergeant Addison received the electronic version of the Christopher Wilson PIR on 26 February 2004 as intended. Nor did either of them receive the hard copy documents²¹⁴. In fact Detective Sergeant Butvila had no knowledge of the matter at all until Internal Investigation Branch began investigating the matter more than twelve months later²¹⁵.

13. Human source information

13.1. According to an affidavit of former Detective Brevet Sergeant Edgcombe, he was attached to the Informant Management Liaison Office at the Holden Hill CIB. He was responsible for the management of human sources and the safe dissemination of

²¹¹ Transcript, page 1702

²¹² Transcript, page 1706

²¹³ Transcript, page 1706

²¹⁴ Evidence of Detective Sergeant Butvila and Detective Sergeant Addison

information they provided. At an Informant Management Liaison Office meeting with members of the Informant Management Section (now referred to as the Human Source Management Section) between July and October 2003 he was advised of information received from a registered informant. The information was that HB, who resided within the Holden Hill Local Service Area was in possession of a revolver. An information report describing this information was tabled at the meeting. This information report is the same information as referred to in the affidavit of Detective Senior Sergeant Grant Garritty²¹⁶. According to an affidavit of Detective Brevet Sergeant Edgecombe which was admitted as Exhibit C38 in these proceedings, after the meeting of the Human Source Management Section referred to above he had a conversation with then Detective Senior Sergeant Saunders who was in charge of the Holden Hill CIB Tactical Unit at that time. Detective Senior Sergeant Garritty advised Detective Senior Sergeant Saunders of the nature of the information and sought his assistance in allocating the information report to his staff for follow up. Detective Senior Sergeant Saunders informed him that staffing problems prohibited him from providing any tactical resources. On the advice of Detective Senior Sergeant Saunders he then spoke with the Holden Hill Operation Mantle staff who were thought to be able to assist. Detective Senior Sergeant Garritty then briefed members of Operation Mantle and understood that the informant information would be followed up by members of that team.

- 13.2. Between July and October 2003, Detective Senior Sergeant Garritty spoke with members of Operation Mantle on a regular basis in the ordinary course of his duties. On one of those occasions he inquired about the status of the informant information and was told that the Operation Mantle members had been unable to act on the information but had passed it on to members of Operation Nail, a Holden Hill uniform tactical team involved in the investigation of local youth gang activity. Detective Senior Sergeant Garritty then spoke with Constable Lawton of Operation Nail and was advised by him that apart from driving past HB's address on a number of occasions, Operation Nail members had not been able to further any investigation due to lack of staffing. Detective Senior Sergeant Garritty again met with Detective Senior Sergeant Saunders and again asked for the allocation of staff from CIB Tactical Unit to deal with the informant information about HB possessing a firearm.

²¹⁵ Evidence of Detective Sergeant Butvila

²¹⁶ Exhibit C40

During this conversation, according to Detective Senior Sergeant Garritty, Detective Senior Sergeant Saunders said that the tactical team would investigate the matter but that it would be delayed for a week because of a lack of staff.

- 13.3. As I noted in paragraph 6.4 of this Finding, HB had appeared before the Youth Court on 8 July 2003. He had entered into an obligation with the Court to be of good behaviour for a period of eighteen months. Condition 5 of the obligation prohibited him from possessing or carrying any firearm or offensive weapon. This information was available to members of South Australia Police²¹⁷.

14. The Dreelan PIR

- 14.1. Annexure GM63 to Exhibit C10 is a copy of a Police Incident Report submitted by Constable Denise Case of Holden Hill Police Station at 12:46pm on 20 October 2003. Annexure GM64 to Exhibit C10 is a statement which was given by the complainant, Clive Patrick Dreelan, to Constable Lawrence at 1:30pm that day. The essence of the complaint was that Mr Dreelan's life had been threatened by a person he knew only as "HB". He would recognise HB if he saw him again because he had known him for approximately six to eight months according to this statement. HB was not a stranger to him. Furthermore, he provided HB's mobile telephone number but said that he did not know his full name or address. He told Constable Case, according to information recorded in the statement given to Constable Lawrence²¹⁸ that at about 5:30pm on Sunday, 21 September 2003 he was at home. A male that he knew only as HB had called him on his mobile telephone but he missed the call. Mr Dreelan called HB back at about 6:00pm and asked him what he wanted. He said something important had come up and that Mr Dreelan was in trouble and he wanted to speak to Mr Dreelan. Mr Dreelan told him to come around and he said he would be around at about 10:00pm. At about 10:30pm HB pulled up in the driveway at the front of Mr Dreelan's house in his green Nissan Skyline and revved his car loudly. Mr Dreelan opened the front door and saw HB in the car and HB waved for him to come out the front. Mr Dreelan went out of the front door closing it behind him and went out to HB's car. He opened the passenger door of the car and sat in the passenger seat but he left the door open. HB was sitting in the drivers seat and on the

²¹⁷ Exhibit C42

²¹⁸ Annexure GM64 to Exhibit C10

centre console of the car was a Samurai sword in its sheath. As he sat down in the car HB picked up the sword and held it. He pulled the sword so it was halfway out of the sheath so that Mr Dreelan could see the blade. HB then asked him "Do you know what I do?" to which Mr Dreelan stated "No". HB asked again "Do you know what I do?" to which Mr Dreelan replied "I don't want to know what you do." HB then said "I'm a hitman and I had a meeting with my people today and they told me that there's a contract out on my life (Dreelan's life) worth \$30,000." HB said that there was a way around it and suggested that they go inside for a chat. They got out of the car and HB left the sword in the car and went to the boot of the car and opened it. HB opened the side compartment in the boot and pulled out something wrapped in a white rag. He unwrapped the rag in front of Mr Dreelan and inside the rag was a black revolver. HB opened the chamber where the bullets go and spun it around a few times, he then closed the chamber and put the gun down the front of his pants under his shirt. When the chamber was open Mr Dreelan could not see whether there were or were not any bullets in the gun. They walked inside the house and went straight through the lounge and into the kitchen. In the lounge was Tanya Dunstall, Mr Dreelan's girlfriend and two other males whom he did not name. While in the kitchen, HB said to him words to the effect "I know you and you've been good to my cousins so I will do the right thing by you. If you give me the \$30,000 I won't kill you, I'll forget about this". Mr Dreelan was scared of him so he said that he would see what he could do. HB then opened the kitchen drawer and pulled out a very large kitchen knife. He then said words to the effect "If you fuck with me, if you call the cops or if you get your mates involved I'll fucking kill you". As HB said this he held the knife with the blade side facing Mr Dreelan to the left of Mr Dreelan's stomach. He then put the knife again with the blade side facing Mr Dreelan up against the left side of Mr Dreelan's throat. As he held the blade against Mr Dreelan's throat for about two seconds he said "I'll fucking slit your throat and cut your fucking head off". Mr Dreelan said that he was petrified at this point and said that he would comply but that it would take him until the following day to get the money. He promised to call HB at 1:00pm the following day. HB then put the knife on top of the counter, walked back to the front door and left the house. As he went out the front door he said that he would have to check with "his people" whether it was alright for Mr Dreelan to give him the money and then forget about it. He told Mr Dreelan to call him in an hour to find out what happened. Mr Dreelan shut the door of the house and quickly told his girlfriend and

this two male visitors what had happened. His girlfriend and he packed some clothes and they left with their friends to go and stay at another friends house. At about 11:45pm he called HB's phone. HB told him that it was all sorted out with "his people" that Mr Dreelan could sleep easy and should call him the next day. Mr Dreelan said that he was extremely scared of HB and believed that he would hurt Mr Dreelan with the knife. He also believed that HB would come and get him if he did not pay the money. Mr Dreelan had moved all of his possessions into storage and could not go home to that address because HB was aware of it and Mr Dreelan did not feel that it was safe to live there any more. Effectively, Mr Dreelan went into hiding.

- 14.2. As I have noted, the statement taken from Mr Dreelan was taken by Constable Lawrence. However the reporting officer was Constable Case. Constable Case obtained some information from Mr Dreelan for the purposes of preparing the PIR²¹⁹. In that PIR, Constable Case recorded the suspect's name as being "TAN, Hu". Constable Case gave evidence that she understood the suspect to have a surname of "Tan" and a first name of "Hu" from her conversation with Mr Dreelan²²⁰. However, the statement taken by Constable Lawrence²²¹ makes it plain that H is one word albeit misspelt in the statement and that it is not HB's full name.
- 14.3. There is a further difference between the information recorded in the statement taken by Constable Lawrence and the information recorded by Constable Case in the PIR. The PIR records that Mr Dreelan told Constable Case that HB had also been to the address of Mr Dreelan's fiancé's brother on two occasions and asked her brother where he could find Mr Dreelan. HB told the fiancé's brother that he would kill him if he did not tell him where Mr Dreelan was. Mr Dreelan told Constable Case that "two nights ago" his fiancé's brother was held down and two knives were held to his throat and his gold chain was taken. Mr Dreelan said "they" were looking for him and "they" told his fiancé's brother that if he didn't tell where Mr Dreelan was then HB would kill him. The PIR also records that Mr Dreelan asserted that he had not done anything to HB to provoke this behaviour and believed that HB considered him to be "an easy target".

²¹⁹ Annexure GM63 to Exhibit C10

²²⁰ Transcript, page 1728

²²¹ Annexure GM64 to Exhibit C10

- 14.4. The information thus recorded by Constable Case in the PIR²²² is clearly ambiguous. It is referring to a complaint against HB, an individual, but at more than one point it moves into the plural, suggesting that HB has one or more accomplices. Whether this was deliberate or not I do not know. However, Constable Case has failed to record unambiguously and with proper clarity allegations of the utmost seriousness. This ambiguity was noted by Deputy Commissioner Burns²²³ who assumed that the reference to an incident “two nights ago” was a reference to an event two nights prior to 21 September 2003 rather than to a more recent incident two nights before presentation at the Holden Hill Police Station. With respect to Deputy Commissioner Burns, I am unable to see that the reference could have been to an incident two days prior to 21 September 2003, because the point of the confrontation with the fiancé’s brother was to establish the whereabouts of Mr Dreelan yet, according to the statement taken by Constable Lawrence²²⁴, HB had had no difficulty in establishing contact with Mr Dreelan on Sunday, 21 September 2003, having simply called him on his mobile telephone and Mr Dreelan himself having returned that call and agreed to a meeting later that night. The very fact that the PIR was capable of misinterpretation in this way by the Deputy Commissioner of Police is sufficient to demonstrate its inadequacy. Furthermore, this important information was not recorded in Mr Dreelan’s statement by Constable Lawrence. Constable Lawrence was not called at the Inquest and so it is not possible for me to determine whether that was because the information was omitted by Mr Dreelan or not recorded by Constable Lawrence. However, Mr Dreelan had obviously conveyed it earlier to Constable Case. He may have thought that it was unnecessary to repeat himself but that is speculation. According to the PIR²²⁵ Constable Lawrence recorded in the investigation diary at 1454 hours on 20 October 2003 that the statement had been taken and signed by Mr Dreelan although not witnessed as no staff were available to do that. The statement and the PIR were given to the station sergeant. The PIR investigation diary reveals that at 1057 hours the following morning a Sergeant Johnson of the Holden Hill Crime Management Unit forwarded the Dreelan PIR electronically to Detective Senior Sergeant Saunders. It was not then accompanied by any hard copy. However, at 1901 hours on the same day the hard copy was forwarded to Detective Senior Sergeant Saunders by Sergeant Kelly of the Crime Management Unit. I should also

²²² Annexure GM63 to Exhibit C10

²²³ Transcript, page 1942

²²⁴ Annexure GM64 to Exhibit C10

record that the station supervisor at the Holden Hill Police Station on day shift 20 October 2003 was Paul Bahr who was at that time a sergeant. At the time of giving evidence he had been promoted to the rank of Inspector and is stationed at the State Duty Office Communications Branch. He gave evidence at the Inquest and said that for the 16 years prior to September 2003 he was a member of the Police Forensic Services Branch. Having spent 16 years in that one area he thought it was time to move on and seek further development within South Australia Police. He sought secondment to an operational area²²⁶. He said that the procedures that are used in an operational field of South Australia Police are “vastly different” to those that he encountered as a member of the Forensic Services Branch. He said that there were a range of procedures that “would have been completely foreign to me”²²⁷. Inspector Bahr gave evidence that according to the Dreelan PIR investigation diary²²⁸ at 1325 hours on 20 October 2003 he viewed the PIR from a vetting list of PIRs taken by those officers that he was supervising, in this instance Constables Case and Lawrence. He acknowledged that he considered the information from Constable Case²²⁹. He acknowledged also that he considered the information in the statement by Constable Lawrence which he received subsequently and that he vetted it to “make sure it covered the relevant detail required for the particular offence under investigation”²³⁰. He had no recollection of the particular occasion²³¹ but acknowledged that this must have occurred by reference to the PIR investigation diary. Although Inspector Bahr acknowledged that he must have vetted both the electronic PIR and the written statement²³² he offered no explanation as to why there was a different level of information on the one hand in the PIR and on the other in the statement. He acknowledged that it was not normal practice to have two different officers doing the PIR and the statement, especially where there was only one statement to be taken²³³. In any event, Inspector Bahr (as he now is) failed to appreciate that there were important details in the PIR which were simply not reflected in the statement taken by Constable Lawrence. He also failed to recognise that the PIR entry itself was

²²⁵ Annexure GM63 to Exhibit C10

²²⁶ Transcript, page 1737

²²⁷ Transcript, page 1737

²²⁸ Annexure GM63 to Exhibit C10

²²⁹ Transcript, page 1741

²³⁰ Transcript, page 1742

²³¹ Transcript, page 1743

²³² Transcript, page 1746

²³³ Transcript, pages 1745-1746

ambiguous and to rectify that. The verb “to vet” means to examine, scrutinise and test. Inspector Bahr’s vetting process in this instance was seriously deficient.

- 14.5. There was a further omission that occurred. The PIR was not recorded in the Crime Management Journal. Although the Dreelan PIR was handled by three officers on 20 October 2003 prior to its transfer to the Crime Management Unit, none of those officers - Constable Case, Constable Lawrence nor Sergeant (now Inspector) Bahr made an entry in the Crime Management Journal. Inspector Bahr said:

‘As I developed some skills and knowledge and a bit more acumen in regard to the processes used in the operational domain, I developed certain requirements that I required my staff to enter into the investigation diary. Specifically toward the end of my tenure I required all of my staff to enter details of any Crime Management Unit journal entry that was also added to the crime management system and to state the particular item or journal number for that crime management journal so that I was sure that the matter could be cross-referenced against the journal if necessary.’²³⁴

Inspector Bahr went on to concede that there was nothing to indicate that the matter was placed on the Crime Management Journal and that as the supervisor of Constables Case and Lawrence it had been his responsibility to ensure that had been done²³⁵.

- 14.6. The evidence now shows that neither of the two Crime Management Unit officers who processed the Dreelan PIR on 22 October 2003 – Sergeants Johnson and Kelly – recorded the incident in the Crime Management Journal. Deputy Commissioner Burns gave evidence that given the seriousness of the alleged offences in the Dreelan PIR an entry should have been made in the Crime Management Journal²³⁶. Deputy Commissioner Burns was asked to comment upon General Order 8273²³⁷ which deals amongst other things with the Crime Management Journal. Item 5 of the General Order states that each Crime Management Unit must maintain a comprehensive real time incident journal and the journal will contain information of interest to the LSA/TCG and will include details which are listed. Deputy Commissioner Burns stated that personnel within the Crime Management Unit had a responsibility to enter information such as that contained in the Dreelan PIR in the Crime Management Journal²³⁸. Deputy Commissioner Burns said that if the Dreelan PIR had been entered

²³⁴ Transcript, page 1743

²³⁵ Transcript, page 1743

²³⁶ Transcript, page 1921

²³⁷ Annexure BF4 to Exhibit C11

²³⁸ Transcript, pages 1922-1923

in the Crime Management Journal on 21 October 2003 he would have expected that it would have been raised for discussion at the TCG meeting the following morning²³⁹. He also agreed that if the Dreelan PIR had been raised for discussion on 22 October 2003 it was likely that an “action” would have been raised²⁴⁰. This would have meant that there would be a system in place to follow up and monitor through the TCG what was occurring with the Dreelan PIR²⁴¹.

- 14.7. In the event, the Dreelan PIR was never recorded in the Crime Management Journal. In the course of the Inquest I called for the production of minutes of the TCG meetings at Holden Hill for the period immediately after 21 October 2003 in an effort to identify whether the Dreelan PIR had been the subject of discussion at any TCG meeting. However, no minutes were ever produced, notwithstanding evidence that minutes are duly recorded and would have been recorded for the relevant period. Deputy Commissioner Burns made an affidavit which was received as Exhibit C34. At paragraph 70 he stated:

‘Extensive investigation has identified that relevant daily TCG documents for 2003 and 2004 are unable to be located.’

He stated that the general disposal schedule maintained in conformity with the State Records Act requires that minutes of such meetings be held for five years after the last action. Deputy Commissioner Burns said in his affidavit that no determination had ever been made to destroy any TCG minutes in accordance with the State Records Act. However, he acknowledged that the relevant minutes which must have been taken for meetings during those years at Holden Hill Police Station TCG meetings “have been unable to be located”. Deputy Commissioner Burns said:

‘Based on the information available to me this is a failing of SAPOL’s record keeping system and I take responsibility for this failing.’²⁴²

- 14.8. Thus it was not possible at this Inquest to establish whether the Dreelan PIR was ever raised at a TCG meeting. It certainly should have been. It was acknowledged by Deputy Commissioner Burns and every other witness who ought to know that the Dreelan PIR contained allegations of sufficient seriousness to require that the matter be raised at a TCG meeting. One of the triggers for a PIR to be placed on the agenda

²³⁹ Transcript, page 1923

²⁴⁰ Transcript, page 1924

²⁴¹ Transcript, page 1924

²⁴² Exhibit C34, paragraph 71

of a TCG meeting is information placed in the Crime Management Journal. It is possible, in view of the omission of the Dreelan PIR from the Crime Management Journal, that the Dreelan PIR was never placed on the agenda for a TCG meeting, but I am unable to make a positive finding one way or another.

15. The investigation of the Dreelan PIR

- 15.1. The next entry on the Dreelan PIR²⁴³ does not occur until 12 November 2003 when at 1400 hours Detective Senior Sergeant Saunders assigned the investigation to Senior Constable Rohan Crawford with a computerised message as follows:

‘Dreelan threaten life – f/u suspect as discussed.’

There are no entries on the PIR investigation diary between 12 November 2003 and 13 February 2004. On 13 February 2004 Detective Senior Constable Crawford recorded that Mr Dreelan no longer wanted to pursue the complaint. Thereafter, two entries appear on 2 March 2004, just a few days after Christopher Wilson’s death at the hands of HB. Those entries are as follows:

‘Enquiries made in relation to HB. Enquiries indicate suspect vehicle WWJ076 was stopped since incident and hiding place in vehicle was searched. Nil firearm located. Additional information received that vehicle WWJ076 has been sold. Unknown current vehicle of HB. HH Tactical members conducted obs on [HB’s residential address] to confirm or negate whether HB residing at address. Nil activity observed as address. Some attention paid to HB HHill Op Nail. Appears nil result and unable to confirm address or current vehicle.’

‘Arrangements previously made with Dreelan to attend HHPS. To date has not attend. Advised by [blacked out] that Dreelan has moved [blacked out]. To date statement from Dreelan is insufficient and refuses to identify additional witnesses/parties involved that may be able to assist police (as per current statement from Dreelan) suggest matter be filed.’

Interestingly, on 4 March 2004 a further note appears in the investigation diary indicating that Mr Dreelan had again contacted police to explain that he had been told that HB had been arrested for the murder at Hillcrest and that Mr Dreelan now wanted action on his PIR. It appears that he admitted that he had not previously been “fussed” as to what police action was taken.

²⁴³ Annexure GM63 to Exhibit C10

15.2. Detective Senior Sergeant Saunders

Detective Senior Sergeant Saunders was unable to explain the delay between 22 October 2003 and 12 November 2003. He said:

‘There’s a three week delay and I have no independent recollection as to why there was a three week delay. My normal business practice was that if I - if there was a delay the reason would be recorded. I have no answer as to why I haven’t put an entry in.’²⁴⁴

He conceded that the allocation of the PIR may simply have been overlooked by him²⁴⁵ and he implied that he could offer no excuse as to why it was not allocated²⁴⁶. Detective Senior Sergeant Saunders was invited by his Counsel and by other Counsel to consider possible reasons for the delay in allocating the Dreelan PIR to Detective Senior Constable Crawford. He put forward two propositions as possibilities, the first being the delay of Mr Dreelan’s report and the fact that Mr Dreelan had since relocated and in hiding, and secondly that the threat related to one specific victim at one specific residence and his whereabouts were not known to the offender²⁴⁷. I was urged by Counsel for Detective Senior Sergeant Saunders not to regard these possible reasons as actual reasons for the delay. Counsel for Detective Senior Sergeant Saunders cautioned against looking at a speculative answer as to a possible reason for the delay in allocation and treating it as Detective Senior Sergeant Saunders’ assessment at the relevant time. Of course I accept that Detective Senior Sergeant Saunders has said that he has no recollection of the reason for the delay, that he does not seek to excuse the delay. However, that begs the question of what I am to make of answers given to him about possible reasons for the delay when asked by his own Counsel to speculate. Detective Senior Sergeant Saunders’ response to the invitation to speculate was to focus upon Mr Dreelan’s own delay in reporting the threat of 21 September 2003. While I accept that Detective Senior Sergeant Saunders principal position was that he could offer no excuse for the delay, the fact remains that the delay referred to on the part of Mr Dreelan may in fact be no delay at all; it must be remembered that the information recorded by Constable Case in the electronic documentation referred, albeit confusingly, to threats against Mr Dreelan’s fiancé’s brother as recently as two days before. The information recorded by Constable Case also referred to a deadline of seven days. All of this put some greater urgency and immediacy upon the report by Mr Dreelan. While I accept that Detective Senior

²⁴⁴ Transcript, page 1590

²⁴⁵ Transcript, page 1578

²⁴⁶ Transcript, page 1579

Sergeant Saunders was not attempting to trivialise the Dreelan complaint in any way, the very fact of referring to a delay by Mr Dreelan is misconceived when one considers that he was actually complaining about not one threat, but two, the most recent of which was only made two days before.

- 15.3. It was submitted by Counsel for Detective Senior Sergeant Saunders that if the Dreelan PIR had been recorded in the Crime Management Journal as it should have been, it might have been added to the agenda for a TCG meeting, and this might have prevented the three week delay that ensued while the matter was in Detective Senior Sergeant Saunders' hands. So far as it goes, this may well be so. The difficulty is that the TCG minutes are not available. Furthermore, on his own evidence Detective Senior Sergeant Saunders would have attended the TCG meeting. Given that the PIR was in his own hands, it is difficult to see how his attendance at a TCG meeting might have added any more rigour to a process which was largely in his own hands. It might be suggested that the possible actions issued by a TCG meeting would have prevented Detective Senior Sergeant Saunders from being in a position where he was able to overlook the PIR for three weeks. However, that is a matter of speculation. While the failure to record the PIR on the Crime Management Journal by a number of officers was a serious oversight, the fact remains that Detective Senior Sergeant Saunders himself was guilty of a serious oversight in not allocating the PIR for three weeks. It might also be said that the incoherence of Constable Case's notation on the electronic narrative, and Constable Lawrence's failure to elicit that information from Mr Dreelan for the purposes of Mr Dreelan's statement, and Inspector Bahr's failure to adequately vet the PIR and ensure the correction of those errors also contributed to a situation in which the PIR could be misconstrued if not carefully assessed by the reader and that this did not make Detective Senior Sergeant Saunders' task any easier. No doubt that is true. A picture emerges of compounding errors.

15.4. Detective Senior Constable Rohan Crawford

Detective Senior Constable Rohan Crawford gave evidence at the Inquest. He said that he instigated inquiries on the file while he had it between 12 November 2003 and 2 March 2004. He suggested that he had done computer searches in relation to the suspect HB. He acknowledged that he was aware of the name HB from the time of, or very shortly after, the allocation of the PIR to him.

- 15.5. Detective Senior Constable Crawford said that he had made observations on the HB residence in Duthie Street, Hillcrest. He said that his primary focus was to search the motor vehicle in which HB had travelled to Mr Dreelan's house when the original threat was made. It was Detective Senior Constable Crawford's intention to search the car in the hope of finding a weapon.
- 15.6. There is very little evidence of what was done by Detective Senior Constable Crawford to corroborate his account, because he was not, on his own admission, in the habit of regularly updating the electronic investigation diary with details of his investigations and the actions he had taken. This was a very clear contravention of South Australia Police General Orders, policies and procedures. It was suggested by Detective Senior Constable Crawford that it was quite a common practice within Holden Hill CIB that detectives would keep notes on paper and that entries might be made on the electronic diary from time to time. It was said in evidence by Detective Senior Constable Crawford that that is exactly what he did in the Dreelan investigation. He said that he made written notes on paper and kept those notes in a folder. After the fatal shooting of Christopher Wilson, he was asked to provide that bundle of documents to the detectives investigating the Christopher Wilson murder. He said that he complied with that request and that as a consequence, when he came to make the entries on the electronic PIR investigation diary on 2 March 2004 which have been quoted above, he did not have access to full details of the activities he had carried out during the period of the investigation. Upon Detective Senior Constable Crawford referring to this paper material, I requested that Counsel for South Australia Police arrange for searches to be instigated to produce the material to the Court. After what I was assured were extensive and thorough searches, no such documents could be located. The result is that there is nothing to corroborate Detective Senior Constable Crawford's account of the things he said he did in connection with the Dreelan investigation. Obviously the maintenance of accurate and proper records is important in policing as it is in any other serious endeavour. The circumstances just described make it apparent why organisations establish systems for record keeping and require their staff to comply with those systems. South Australia Police has such a system; Detective Senior Constable Crawford did not comply with; as a result it is not possible to establish precisely what was done by Detective Senior Constable Crawford. Much of his evidence was based upon his attempts to recall what he

believed he did, but he was unable to provide explicit detail because of the absence of records and the effluxion of time.

- 15.7. After he gave evidence, he was recalled to clarify the matter of the electronic searches he claimed to have done but which were not verified by a search carried out by Senior Constable Allan Ziegler. It was at this point in the proceedings, that Counsel for Detective Senior Constable Crawford informed the Court that there were certain other things done by Detective Senior Constable Crawford that could not be revealed because of the public interest in maintaining the confidentiality of information that would potentially identify an informant or human source. As I have previously recorded, I accepted those assurances. Thus, I proceed on the assumption that in addition to the matters about which Detective Senior Constable Crawford gave evidence, there were other things he did.
- 15.8. Detective Senior Constable Crawford said, and I accept, that he had some difficulty with Mr Dreelan in the latter's willingness to assist with the investigation. Ultimately, at some time in December 2003, Mr Dreelan indicated an unwillingness to continue with the matter and this is reflected in the entry made by Detective Senior Constable Crawford on 13 February 2004.
- 15.9. However, as Deputy Commissioner Burns said in his evidence, there was a second arm to this investigation, namely that whether or not Mr Dreelan wished to pursue the complaint about the threat to his life, there was a report that HB was in possession of a firearm and this had to be acted upon regardless of Mr Dreelan's attitude as a priority and as a matter of public safety.
- 15.10. Detective Senior Constable Crawford was given no explanation for the delay in the matter being allocated for investigation when he was given the PIR by Detective Senior Sergeant Saunders. Detective Senior Constable Crawford assumed, in the absence of any direction to the contrary, that the matter was not urgent²⁴⁸. Furthermore, during the relevant period Detective Senior Constable Crawford was managing a heavy workload²⁴⁹. Detective Sergeant Gregory Ranger said that the Tactical Unit was not at full staffing level in 2003²⁵⁰. He believed that the Tactical

²⁴⁸ Transcript, page 1930

²⁴⁹ Transcript, page 1943

²⁵⁰ Transcript, page 1087

Unit was understaffed to the point where it was half of its establishment²⁵¹. Senior Sergeant Kenneth Raymond acknowledged that it was not uncommon for investigators such as Detective Senior Constable Crawford to be overburdened by their workload to the point where in December 2003 it was affecting the efficient discharge of investigations²⁵².

15.11. Importantly, between 12 December 2003 and 2 February 2004, Detective Senior Constable Crawford was absent on Workers Compensation leave. He had at first thought that he would be away for a relatively short time but once he realised that he would be absent for a matter of weeks he telephoned Senior Sergeant Raymond to advise of the situation²⁵³. When Detective Senior Constable Crawford returned from Workers Compensation leave he found that no further work had been done on any of his investigations, and in particular, not on the Dreelan PIR²⁵⁴. Between 2 February 2004 and 19 February 2004 he had other urgent outstanding matters to attend to. Between 19 February 2004 and 25 February 2004 he was required to work on an attempted murder at Yatala Labour Prison²⁵⁵.

15.12. Senior Sergeant Raymond was supervising Detective Senior Constable Crawford from 10 November 2003 until 11 December 2003 and then again from 21 January 2004 to 22 February 2004. Detective Senior Constable Crawford said that he discussed the Dreelan PIR with Senior Sergeant Raymond, probably soon after he received it. He informed Senior Sergeant Raymond about his general approach to the case, that he would like to locate the vehicle and that he had concerns that Mr Dreelan was not being entirely cooperative and was reluctant to make a “forced entry” into HB’s house²⁵⁶. Senior Sergeant Raymond gave evidence at the Inquest. He did not specifically recall this conversation but agreed that it was likely that it occurred and, that it was part of his normal practice to review the investigations of those under his supervision at an early stage after taking supervisory responsibility for a new group of people. Senior Sergeant Raymond said that it was his habit to check his investigator’s electronic investigation diaries periodically once or twice a month²⁵⁷. Senior Sergeant

²⁵¹ Transcript, page 1115

²⁵² Transcript, page 1333

²⁵³ Transcript, page 922

²⁵⁴ Transcript, page 923

²⁵⁵ Transcript, pages 942, 1030, 1070 and 1120

²⁵⁶ Transcript, page 913

²⁵⁷ Transcript, page 1339

Raymond said that he did not recall speaking to Detective Senior Constable Crawford about the way his work was progressing²⁵⁸.

16. The supervision of Detective Senior Constable Crawford

16.1. Detective Senior Constable Crawford's, Detective Sergeants during the period August 2003 until February 2004 were Detective Sergeant Ranger and Senior Sergeant Raymond. Further up the line of responsibility was Detective Senior Sergeant Saunders.

16.2. Detective Sergeant Gregory Ranger

Detective Sergeant Ranger confirmed that from August 2003, Detective Senior Sergeant Saunders took up the position of Acting Detective Senior Sergeant and Detective Sergeant Ranger took up the position of Acting Detective Sergeant²⁵⁹. Detective Sergeant Ranger said that on 8 September 2003 he became involved in an investigation relating to an illicit drug laboratory at Cudlee Creek. This investigation also involved dealing with a very large quantity of stolen property which had been found in the same premises as the Cudlee Creek laboratory. I will refer to this investigation as the "Cudlee Creek investigation". Detective Sergeant Ranger described the Cudlee Creek investigation as "very big" and "a huge job"²⁶⁰. Detective Sergeant Ranger said that from 8 September 2003 into 2004 his work was exclusively devoted to the Cudlee Creek investigation²⁶¹. He said that while he was devoted to that investigation he believed that Senior Sergeant Raymond was responsible for the supervision of Detective Senior Constable Crawford²⁶².

16.3. Detective Sergeant Ranger said that he only became aware of the Dreelan allegations for the first time when he became involved in the investigations relevant to the shooting of Christopher Wilson soon after the event in late February-March 2004²⁶³.

16.4. Detective Sergeant Ranger said that Senior Sergeant Raymond was another Detective Sergeant within the Tactical Unit at the same time as he was there. He accepted that between 11 December 2003 and 22 January 2004 Detective Senior Sergeant Saunders

²⁵⁸ Transcript, page 1340

²⁵⁹ Transcript, page 1074

²⁶⁰ Transcript, page 1075

²⁶¹ Transcript, page 1078

²⁶² Transcript, page 1078

²⁶³ Transcript, page 1078

moved into a CIB management position (Detective Chief Inspector) and that Senior Sergeant Raymond moved into the Acting Detective Senior Sergeant role that had been vacated by Detective Senior Sergeant Saunders²⁶⁴.

16.5. Detective Sergeant Ranger said that although he was not aware of the Dreelan allegations at any time prior to late February early March 2004, if he had known of the allegations and the allocation of the PIR to Detective Senior Constable Crawford he would have taken action to ensure that it was investigated as expeditiously as possible considering the seriousness of the allegation²⁶⁵.

16.6. Detective Sergeant Ranger accepted that a detective sergeant is responsible for the supervision of those members of the police force who are under his or her control²⁶⁶. Detective Sergeant Ranger said that from his point of view the Cudlee Creek matter dominated most if not all of his time while it was a live matter within the Tactical Unit²⁶⁷. Detective Sergeant Ranger talked about responsibility for supervising less senior staff and said that the responsibility for supervision of staff under the control of a detective sergeant was not only the responsibility of the detective sergeant but also of the detective senior sergeant. He said:

‘Yes, I was the only detective sergeant there, the only supervisor, no. There’s still Detective Sergeant Raymond. Although he’s the acting senior sergeant he is still a supervisor there.’²⁶⁸

16.7. Detective Sergeant Ranger acknowledged that during the period between 11 December 2003 and 22 January 2004 when Detective Senior Sergeant Saunders was acting as detective chief inspector and Senior Sergeant Raymond was acting as detective senior sergeant, that left himself as the only detective sergeant in the Tactical Unit²⁶⁹.

16.8. Detective Sergeant Ranger acknowledged that Detective Senior Sergeant Saunders was aware of his involvement in the Cudlee Creek matter and that he was reporting to Detective Senior Sergeant Saunders from time to time on that matter²⁷⁰. When he was

²⁶⁴ Transcript, page 1076

²⁶⁵ Transcript, page 1080

²⁶⁶ Transcript, page 1088

²⁶⁷ Transcript, page 1091

²⁶⁸ Transcript, page 1095

²⁶⁹ Transcript, page 1098

²⁷⁰ Transcript, page 1102

asked if he was formally or informally relieved of the supervising role as a detective sergeant during that period he stated:

‘Yes. I don't know whether it would've been formal, but certainly informally I would've been told because of the lack of staff from a CIB point of view, that I was told to complete that task and the situation is, no I wasn't told “You've now got no responsibilities of a detective sergeant”. It was more that “This is your job to do and to complete that task”.’²⁷¹

Detective Sergeant Ranger said that it was his belief that in practice he was not available to do any other detective sergeant duties because of his commitments with the Cudlee Creek investigation, but nevertheless, he was continuing to be paid at a higher duties level of detective senior sergeant²⁷². Detective Sergeant Ranger acknowledged that Detective Senior Sergeant Saunders offered to assist him with his sergeant's responsibilities during that time²⁷³. However in practice he felt that he was not available to do the other Detective Sergeant duties because of his commitments to the Cudlee Creek matter. Notwithstanding this he was continuing to be paid at a higher duties level as Detective Sergeant throughout²⁷⁴. He acknowledged that Detective Senior Sergeant Saunders offered to assist him with the preliminary assessment and allocation of PIRs and that he did in fact do so²⁷⁵. Detective Sergeant Ranger was asked whether it was not part of his responsibility to continue to monitor the investigation of PIRs:

‘Well, if - I'd say that I'd been told to do the Cudlee Creek thing and, within reason and where time permitting, fulfil my duties as a detective sergeant in the same time - where possible.’²⁷⁶

He said that it was Detective Senior Sergeant Saunders who told him to work on the Cudlee Creek matter exclusively²⁷⁷.

- 16.9. It became apparent that by and large the bulk of the work arising out of the Cudlee Creek matter in late 2003, was the finding of owners of a large quantity of stolen property²⁷⁸. Detective Sergeant Ranger was being assisted by a group of uniform

²⁷¹ Transcript, page 1103

²⁷² Transcript, page 1104

²⁷³ Transcript, page 1104

²⁷⁴ Transcript, page 1104

²⁷⁵ Transcript, pages 1104-1105

²⁷⁶ Transcript, page 1107

²⁷⁷ Transcript, page 1108

²⁷⁸ Transcript, page 1109

officers in relation to this Cudlee Creek task²⁷⁹. Detective Sergeant Ranger was asked whether it would have been possible for him during the period in question to have conducted computer checks on the progress of PIRs and monitor the associated investigations. He agreed that it would have been and this could have been done in a relatively short space of time, of the order of 20 minutes²⁸⁰. He said that he probably did not undertake any such computer checks to see how his investigators were going during this period because “I was told to complete the Cudlee Creek inquiries, that was my main focus and that’s what I focused on”²⁸¹. However he thought it was going a bit too far to say that he assumed that someone else was monitoring the progress of those investigations²⁸². He was asked who he thought was monitoring the staff during the period 11 December 2003 to 22 January 2004 when Senior Sergeant Raymond was the Acting Detective Senior Sergeant and the Detective Senior Sergeant Saunders was the Detective Chief Inspector. He said that he thought most of the staff were helping him with the Cudlee Creek matter²⁸³. Detective Sergeant Ranger said that the staffing shortages in the Tactical Group at this time meant that the group was understaffed to the extent of fifty percent²⁸⁴. Detective Sergeant Ranger acknowledged that if he had done computer checks he may have identified that Detective Senior Constable Crawford had been allocated the Dreelan PIR and become aware of what progress if any had been made in that investigation²⁸⁵. Detective Sergeant Ranger acknowledged that Detective Senior Constable Crawford was on Workers Compensation leave for a significant period of approximately five weeks in December 2003 – January 2004. He was asked if he turned his mind at any stage to who was working on Detective Senior Constable Crawford’s investigations during that period. He said that he did not²⁸⁶. He said that he assumed that Detective Senior Constable Crawford was being helped by other supervisors because of his involvement in the Cudlee Creek matter²⁸⁷.

²⁷⁹ Transcript, page 1110

²⁸⁰ Transcript, pages 1111-1112

²⁸¹ Transcript, page 1112

²⁸² Transcript, page 1112

²⁸³ Transcript, page 1113

²⁸⁴ Transcript, page 1115

²⁸⁵ Transcript, page 1117

²⁸⁶ Transcript, page 1119

²⁸⁷ Transcript, page 1117

16.10. Senior Sergeant Kenneth Raymond

Senior Sergeant Raymond gave evidence at the Inquest. He said that he was posted at Holden Hill in the period between July 2003 and March 2004. He said that during that time he did supervise Detective Senior Constable Crawford between the periods 10 November 2003 to 11 December 2003 and 22 January 2004 until 22 February 2004²⁸⁸. Senior Sergeant Raymond was aware of Detective Sergeant Ranger's involvement in the Cudlee Creek matter²⁸⁹. He said that during the period 12 December 2003 to 22 January 2004 while he was the Acting Detective Senior Sergeant and Detective Sergeant Ranger was the only Detective Sergeant in the division his view was that the day to day responsibility for the supervision of Detective Senior Constable Crawford rested with Detective Sergeant Ranger²⁹⁰. He acknowledged that according to the information before the Court, Detective Senior Constable Crawford was on Workers Compensation leave between December 2003 and January 2004. He said that during that period he would have expected that Detective Sergeant Ranger would have monitored the progress of Detective Senior Constable Crawford's investigations²⁹¹. It was Senior Sergeant Raymond's evidence that he had no independent recollection of the Dreelan PIR. He noted that his identification number did not appear anywhere on the Dreelan PIR investigation diary. He knew that he had spoken to Detective Senior Constable Crawford and another detective on his team about workloads but had no independent notes or memory as to the specifics of the conversations²⁹². Senior Sergeant Raymond acknowledged that he was, in effect, Detective Senior Constable Crawford's supervisor between 14 November 2003 and 11 December 2003 and again from 21 January 2004 until 22 February 2004²⁹³ and that during that period he did not recall ever being concerned about the status of any of Detective Senior Constable Crawford's files²⁹⁴. He had no recollection of Detective Senior Constable Crawford having telephoned him to advise that Detective Senior Constable Crawford was required to undergo shoulder surgery in December 2003²⁹⁵.

²⁸⁸ Transcript, page 1312

²⁸⁹ Transcript, pages 1329-1330

²⁹⁰ Transcript, page 1331

²⁹¹ Transcript, pages 1331-1332

²⁹² Exhibit C27

²⁹³ Transcript, page 1337

²⁹⁴ Transcript, page 1338

²⁹⁵ Transcript, page 1339

16.11. Conclusions as to supervision of Detective Senior Constable Crawford

In my view, during the period October 2003 to February 2004 Detective Senior Constable Crawford had little or no supervision. Detective Sergeant Ranger continued to be paid at a higher duties rate as a detective sergeant and had not been in any formal sense relieved of his supervisory responsibility but devoted himself to his Cudlee Creek investigation and carried out little or no supervision outside of the Cudlee Creek matter. It is true that when Senior Sergeant Raymond first arrived in November 2003, he sat down with Detective Senior Constable Crawford and discussed his files. Beyond that, Detective Senior Constable Crawford was substantially left to his own devices. It is plain from Detective Senior Sergeant Saunders' affidavit²⁹⁶ that he understood that Detective Sergeant Ranger would continue to spend time with less experienced staff, provide leadership and during this period, because of staffing shortages and workloads in the Tactical Unit, Detective Senior Sergeant Saunders "volunteered" to assume some of Detective Sergeant Ranger's duties. The roles which he "voluntarily assumed" in addition to his own duties were receiving all PIR/IR's for assessment and allocation which would normally have been sent directly to Detective Sergeant Ranger. This assistance was limited to conducting preliminary checks in relation to drug information reports to determine whether they would be allocated for further investigation. Furthermore, Detective Senior Sergeant Saunders agreed to accepting responsibility for the vetting of arrest/report/expiation files²⁹⁷.

16.12. Detective Senior Sergeant Saunders also made reference to the Cudlee Creek matter and said that the staff shortages and workloads to which he referred were partly attributable to that matter. Detective Senior Sergeant Saunders said that two separate case management files were created in relation to the laboratory and the stolen property and that Detective Sergeant Ranger managed both matters which were overseen by Detective Senior Sergeant Saunders. He said that the property case management in particular was lengthy and time consuming and involved property tracing and conducting a public viewing to try and identify as much property as possible. He said that the property aspect of this investigation comprised 111 actions issued to Detective Sergeant Ranger and other members of the Tactical Unit.

²⁹⁶ Exhibit C31

²⁹⁷ Exhibit C31

- 16.13. It is a matter of concern that the Cudlee Creek property investigation occupied so much time and was accorded such a high priority by comparison with other matters, including the Dreelan PIR, which would appear to me to warrant a higher level of priority than the search for the owners of stolen property.
- 16.14. It is a matter of considerable concern that during the lengthy period during which Detective Senior Constable Crawford was on Workers Compensation leave no supervisor including Detective Sergeant Ranger, Senior Sergeant Raymond and Detective Senior Sergeant Saunders made any attempt to reallocate his duties to anyone else. During this considerable period, it appears that Detective Senior Constable Crawford's investigations simply languished. This is even more serious when one considers that there was a general problem with understaffing throughout the period, as a result of which one might expect that Detective Senior Constable Crawford would have had urgent matters that had not been attended to even before he was absent on Workers Compensations leave. That would have made all the more crucial the need to monitor his investigations during that period.

17. The fate of the Dreelan PIR

- 17.1. As I have already noted, Mr Dreelan contacted police after the death of Christopher Wilson and requested that his complaint against HB be reactivated. I think it can be fairly said that by at the latest 13 February 2004 the Dreelan PIR had reached a point at which Detective Senior Constable Crawford was no longer actively pursuing it. On 2 March 2004, after the death of Christopher Wilson, Detective Senior Constable Crawford made the entries in the PIR investigation diary which I have set out previously in this Finding. Those entries, although made after the death of Christopher Wilson, make no mention of HB's arrest for Christopher Wilson's murder. That is surprising. Detective Senior Constable Crawford's explanation for the entries was that he had been asked to pass the PIR over to Sergeant Paul Blackmore. That in itself was triggered by the fatal shooting of Christopher Wilson. It seems rather artificial that there was no mention of the fatal shooting of Christopher Wilson in those diary entries, or at the very least a reference to HB's arrest for murder.
- 17.2. The affidavit of Detective Sergeant Ranger which was admitted as Exhibit C23 annexes a statement prepared by him as to his further actions in relation to the

Dreelan PIR in March 2004. The statement was, I understand, prepared in December 2004. The statement indicates that Detective Sergeant Ranger was unable to procure the cooperation of witnesses to the Dreelan complaint apart from Mr Dreelan himself. Neither Mr Dreelan's fiancé nor other witnesses were prepared to provide statements. The offences of which HB was convicted on 4 August 2005²⁹⁸ do not include any of the Dreelan PIR allegations. It appears that the Dreelan PIR was ultimately filed as foreshadowed by the diary entry made by Detective Senior Constable Crawford on 2 March 2004.

- 17.3. In many ways the Dreelan PIR was overtaken by the fatal shooting of Christopher Wilson. The Dreelan PIR involved not only the threat against Mr Dreelan, but it had what was referred to by Deputy Commissioner Burns as a second arm to the investigation namely, the simple possession or possible possession of a firearm by HB. Deputy Commissioner Burns in his evidence was firmly of the view that this aspect of the matter required action regardless of Mr Dreelan's attitude because it did not necessarily require Mr Dreelan's full cooperation or support to pursue that line of enquiry. Furthermore, it was a priority because of the issue of public safety and acting swiftly where a firearm is involved.
- 17.4. Although I must accept that there were actions taken by Detective Senior Constable Crawford that he was unable to reveal in open Court, and of which I am unaware, I think I can proceed safely on the assumption that no member of South Australia Police confronted HB at any time between October 2003 and 25 February 2004 with the allegation that he was in possession of a firearm contrary to Condition 5 of his obligation to the Youth Court. There were a number of powers in relation to the firearm that could have been exercised pursuant to the Firearms Act 1977. These include:
- (a) A member of the police force may seize a firearm if he or she suspects on reasonable grounds that a person who has possession of it is not a fit and proper person to have possession of it,
 - (b) A member of the police force may seize a firearm if he or she suspects on reasonable grounds that continued possession of a firearm by a person would be likely to result in undue danger to life or property,

²⁹⁸ See paragraph 2.1 hereof

- (c) A member of the police force may seize a firearm if he or she suspects on reasonable grounds that a person has possession of the firearm in contravention of an order of a Court,
- (d) A member of the police force may stop, detain and search or detain and search any vehicle on which the member suspects on reasonable grounds there is a firearm liable to seizure under this Act,
- (e) A member of the police force may stop, detain and search or detain and search any person who the member suspects on reasonable grounds has possession of a firearm liable to seizure under this Act,
- (f) A member of the police force may break into, enter and search any premises in which the member suspects on reasonable grounds there is a firearm liable to seizure under this Act,
- (g) A person who hinder or resists a member of the police force acting in the exercise of powers conferred under the Act is guilty of an offence²⁹⁹.

17.5. There is nothing to suggest that any member of South Australia Police exercised any of these powers.

18. Deputy Commissioner Gary Burns

18.1. Deputy Commissioner Gary Burns made an affidavit which set out South Australia Police's "corporate" response to the matters the subject of this Inquest. The affidavit was received as Exhibit C34 in these proceedings. Deputy Commissioner Burns also gave oral evidence. Deputy Commissioner Burns was open and frank in his evidence and conceded that the circumstances preceding the death of Christopher Wilson presented opportunities for greater leadership to be demonstrated by members of South Australia Police and that he would have expected greater leadership to have been shown.

18.2. In particular, Deputy Commissioner Burns said that he would have expected the "human source" information to have been given some priority for investigation because it involved a firearm. He would have expected CIB, because of their

²⁹⁹ Sections 32 and 33, Firearms Act 1977

expertise, to become involved. He regarded the responsibility as resting with Detective Senior Sergeant Saunders to seek and secure extra resources because the information that a person is in possession of a revolver was something that he would expect to be investigated and acted upon at an early time³⁰⁰.

- 18.3. Deputy Commissioner Burns said that he did not consider it unusual or irregular that the human source information in this case was not widely disseminated amongst police at Holden Hill but that even in circumstances where it is not widely disseminated he would expect that it be acted upon with expedition.
- 18.4. Deputy Commissioner Burns referred to the time taken by Detective Senior Sergeant Saunders to allocate the Dreelan PIR. He said that he did not consider that it should have taken so long to allocate bearing in mind the gravity of the allegations³⁰¹.
- 18.5. Deputy Commissioner Burns noted the significant amount of time off work that occurred by reason of the work related injury suffered by Detective Senior Constable Crawford and said that during Detective Senior Constable Crawford's absence he would have expected that a matter involving allegations of a serious nature such as the Dreelan PIR would continue to be investigated³⁰².
- 18.6. Deputy Commissioner Burns said that Mr Dreelan's reluctance to press the matter was a factor to be weighed in the investigation but regardless of Mr Dreelan's cooperation there remained information that a particular person had recently been in possession of a firearm which he had threatened to use. This was a matter that continued to warrant investigation by police and there was sufficient information to continue to pursue that aspect of the matter³⁰³. In relation to the initial report of the first shooting of Christopher Wilson, Deputy Commissioner Burns remarked that all police members involved in the event should have been aware that it was a serious offence which posed a real risk to the community. He said that the established procedure for dealing with serious offences should have been activated and it was not³⁰⁴.

³⁰⁰ Exhibit C34, paragraph 35

³⁰¹ Exhibit C34, paragraph 45

³⁰² Exhibit C34, paragraph 48

³⁰³ Exhibit C34, paragraph 49

³⁰⁴ Exhibit C34, paragraph 55

- 18.7. Deputy Commissioner Burns noted that the General Duties manual instructions in relation to firearms³⁰⁵ makes it clear that any officer investigating or receiving a report of a firearms incident, including any use of a firearm in unlawful circumstances, must submit an ancillary report to the Firearms Branch through the Local Service Area Intelligence Section. It appears that General Order was not complied with either on the occasion of the Dreelan PIR or of the first Christopher Wilson shooting report.
- 18.8. Deputy Commissioner Burns said that active consideration should have been given to recalling the CIB on the night of 25/26 February 2004³⁰⁶. Deputy Commissioner Burns was also critical of the failure to take statements from two of the witnesses who were present on the night of 25/26 February 2004³⁰⁷.
- 18.9. Deputy Commissioner Burns acknowledged that the report of the first Christopher Wilson shooting should have been accorded greater urgency and priority and been treated as a serious offence and if that had happened the route which the investigation ultimately took would have been avoided³⁰⁸.
- 18.10. Deputy Commissioner Burns said that he believed that the first Christopher Wilson shooting incident may have been treated differently by police had it been reported on the street or at the scene via telephone or a passing patrol. He thought that the investigation “took a slower route” in light of it being reported in the police station where reports of firearms offences are rare³⁰⁹. In saying this Deputy Commissioner Burns was not seeking to excuse the deficiencies exposed in this Inquest, he was making an observation which is probably true. But the mode of reporting a matter to police should not affect the manner of investigation. Deputy Commissioner Burns acknowledged that incorrect value judgements and assessments as to seriousness were made on the night of 25/26 February 2004 and that the matter was given a lower prioritisation than was justified or warranted in the circumstances³¹⁰.
- 18.11. Deputy Commissioner Burns pointed to a number of changes to practices, procedures, policies and General Orders within South Australia Police which, he said, should

³⁰⁵ Annexure BF16 to Exhibit C11 (affidavit of Assistant Commissioner Brian Fahy)

³⁰⁶ Exhibit C34, paragraph 60

³⁰⁷ Exhibit C34, paragraphs 62 and 63

³⁰⁸ Exhibit C34, paragraph 67

³⁰⁹ Exhibit C34, paragraph 69

³¹⁰ Exhibit C34, paragraph 69

assist in preventing a repetition of the shortcomings he identified. However, none of the changes identified by him were instigated as a direct result of the Christopher Wilson shooting. The changes are set out in Deputy Commissioner Burns' affidavit, Exhibit C34.

19. Submissions by the Commissioner of Police

In closing submissions filed on behalf of the Commissioner of Police, the Commissioner identifies a number of issues arising from the conduct of the inquiry and the investigations on the night of 25/26 February 2004. They are as follows:

1. The failure to identify the incident reported on 25 February 2004 as a serious incident and follow the General Order procedures for investigation of a serious offence.
2. On 25 February 2004, CIB's decision to provide advice rather than a more detailed analysis and assessment of the evidence. CIB did not assume investigative responsibility.
3. Failure to obtain statements from all witnesses who attended the Holden Hill Station on 25 February 2004.
4. Advice of the vehicle description involved in the incident and warning of potential weapon possession was not forwarded to all patrols in the Holden Hill Local Service Area.
5. Christopher Wilson was not offered medical attention or advised to seek medical attention upon presenting at Holden Hill Police station with a wound.
6. There was a failure to identify and secure all physical evidence on the night of 25 February 2004 including bullet fragments from the car and the scene of the shooting, the victim's clothing, and an assessment of the car.
7. There was an excessive length of time taken for the Dreelan PIR to be allocated by Acting Detective Senior Sergeant Saunders to an investigating officer.

8. Once allocated, the nature of Detective Senior Constable Crawford's investigation of the Dreelan PIR and the lapse of investigations whilst Detective Senior Constable Crawford was on leave.
9. The lack of priority and urgency in investigation of human source information received in late 2003.

20. Conclusions as to deficiencies in policing preceding the death of Christopher Wilson

In no particular order I list the deficiencies I have identified in the police work that preceded the death of Christopher Wilson and which I regard as part of the circumstances of his death:

1. The failure to act on the human source information expeditiously because of resource shortages.
2. The failure by Constable Denise Case to adequately complete the Dreelan PIR.
3. The failure by Constable Lawrence to include in Mr Dreelan's statement the reference to the later threats against Mr Dreelan's fiancé's brother.
4. The failure by Inspector Bahr to identify the differences between the PIR as recorded by Constable Case and the statement as taken by Constable Lawrence.
5. The failure of Constable Case to enter the Dreelan complaint in the Crime Management Journal.
6. The failure of Constable Lawrence to enter the Dreelan complaint in the Crime Management Journal.
7. The failure of Inspector Bahr to enter the Dreelan complaint in the Crime Management Journal.
8. The failure of Constable Case to notify the Firearms Branch in accordance with General Orders of the allegation of an offence involving a firearm.
9. The failure of Constable Lawrence to notify the Firearms Branch in accordance with General Orders of the allegation of an offence involving a firearm.

10. The failure of Inspector Bahr to notify the Firearms Branch in accordance with General Orders of the allegation of an offence involving a firearm.
11. The fact that Inspector Bahr was then the officer in charge at the Holden Hill Police Station when the Dreelan complaint was made, when on his own evidence he was inexperienced in operational policing.
12. The failure of Sergeant Kelly of the Crime Management Unit to enter the Dreelan complaint in the Crime Management Journal.
13. The failure of Sergeant Johnson to enter the Dreelan complaint in the Crime Management Journal.
14. The failure of Detective Senior Sergeant Saunders to ensure that the human source information was pursued with sufficient expedition and urgency and appropriate resources allocated.
15. The failure of Detective Senior Sergeant Saunders to allocate the Dreelan PIR for a period of three weeks.
16. The failure of Detective Senior Constable Crawford to maintain a timely PIR investigation diary as required by General Orders.
17. The failure by any member of South Australia Police to exercise powers that were available under the Firearms Act following the making of the Dreelan PIR.
18. The failure by any member of South Australia Police to confront HB with the serious allegations that had been made by Mr Dreelan³¹¹.
19. Detective Sergeant Ranger was preoccupied with the return of stolen property from the Cudlee Creek investigation to the detriment of at least the investigation of the Dreelan allegations which involved a threat to life and were therefore clearly more serious and deserving of a higher priority.

³¹¹ It may be suggested that even if this had occurred HB would have merely denied the allegations. He might have had warning and been able to dispose of a firearm. While all that may be true, it seems to me unfortunate that he was left for a period of months between October and February 2004 in the knowledge that he had made an extremely serious threat against the life of another person with a view to extorting a significant sum of money from that person, and there appeared to be no consequence flowing from his behaviour. This could only increase his confidence and bravado. It must be remembered, that he was, after all, only 17 years old during this period. I do not suggest that a further intervention would have prevented

20. Senior Sergeant Raymond and Detective Sergeant Ranger failed to communicate adequately between them as to who was supervising Detective Senior Constable Crawford.
21. Detective Senior Sergeant Saunders failed to ensure that either Detective Sergeant Ranger or Senior Sergeant Raymond were maintaining effective supervision of Detective Senior Constable Crawford.
22. During Detective Senior Constable Crawford's absence on Workers Compensation leave Detective Sergeant Ranger failed to ensure that Detective Senior Constable Crawford's investigations, including the Dreelan PIR, were being investigated.
23. During Detective Senior Constable Crawford's absence on Workers Compensation leave Senior Sergeant Raymond failed to ensure that Detective Senior Constable Crawford's investigations, including the Dreelan PIR, were being investigated.
24. During Detective Senior Constable Crawford's absence on Workers Compensation leave Detective Senior Sergeant Saunders failed to ensure that Detective Senior Constable Crawford's investigations, including the Dreelan PIR, were being investigated.
25. The failure by any person to pursue the fact that HB was in possession of a firearm and that this could be pursued regardless of Mr Dreelan's attitude.
26. The fact that Detective Sergeant Ranger thought he had been relieved of his supervisory responsibilities in light of his Cudlee Creek investigation and that his supervisor, Detective Senior Sergeant Saunders, had a different perception.
27. The fact that the Holden Hill CIG tactical section was understaffed to a significant extent (by a factor, on one account, of as much as 50 percent).
28. The fact that the PIR as recorded by Constable Case referred to "Hu Tan" rather than H and this was not reconciled with the more accurate information in the statement obtained by Constable Lawrence from Mr Dreelan.

him from obtaining another firearm and eventually killing Christopher Wilson or some other person; however in my view an opportunity was lost which might potentially have had that result.

29. The failure by Senior Constable Redding to appreciate at an early stage that Christopher Wilson was complaining that he had been shot by a firearm.
30. The failure to ensure that productive use was made of the timely searches carried out by Probationary Constable Tina Crawford.
31. Senior Constable Redding's flawed judgement in deciding that the matter was less serious because Christopher Wilson was withholding information and behaving nonchalantly.
32. Senior Constable Redding's transmission of this wrong impression to other officers present on the night including Sergeant Mickan, Detective Green and Detective Wilson all of whom were influenced by it.
33. The failure by Senior Constable Redding and Sergeant Mickan to ensure that statements were taken on the night from the two remaining witnesses, Mark Wilson and Ryan Williams.
34. The failure by any police officer involved on the night to search James McAinsh's vehicle.
35. The failure by any police officer involved on the night to advise a more senior officer, possibly the State Duty Officer, of the situation and seek guidance.
36. The belief by uniformed police officers, Senior Constable Redding and Sergeant Mickan, that the CIB officers had accepted responsibility for the further investigation of the matter.
37. The belief by the CIB officers, Detective Green and Detective Wilson, that they had not assumed any responsibility for the further investigation of the matter and were merely "advising".
38. The net failure of any of officers, Sergeant Mickan, Senior Constable Redding, Detective Wilson or Detective Green to assume leadership when it must have been obvious to all of them that there was a real danger that the matter would not be under the control and management of one of the uniformed officers or the CIB members.

39. The failure of Senior Constable Redding or Sergeant Mickan to update the PIR once the statements of Dylan Connelly and James McAinsh were obtained to eliminate references to a “slug gun” and to substitute a reference to a “pistol or revolver” with the result that the Holden Hill LSA Intelligence Section daily briefing prepared the following morning contained a reference to a slug gun³¹² and that the Holden Hill Crime Management Journal, presumably prepared by Senior Constable Redding, contained a reference to a slug gun³¹³ with the possible result that Detective Senior Sergeant Douglas may have missed an opportunity to elevate the matter to a higher priority at the Crime Management Unit meeting on Thursday morning.
40. The determination by Senior Constable Redding, Sergeant Mickan, Detective Wilson and Detective Green, none of whom had ballistics training, that a projectile which was known to have ricocheted from a hard surface was, in all probability, merely a slug from an air gun.
41. The failure to alert Holden Hill Patrols as to the fact that a person was at large with a weapon and a preparedness to use it.
42. The failure by any of the officers present in Holden Hill Police Station to have taken the opportunity while the men were present at the police station to take one of them back to Duthie Street and identify the house involved (I have reached no conclusion one way or another about whether a specific offer was made by any of the Christopher Wilson group that night to this effect: even it was not offered, it could still have been suggested by police).
43. The failure by Senior Constable Redding to ensure that all five of the witnesses were accounted for as far as statements were concerned before he allowed them to leave that night.
44. The assumption by Detectives Wilson and Green that they would not have been given overtime or authorisation to continue with the investigation that night³¹⁴.

³¹² Annexure GM59 to Exhibit C10

³¹³ Annexure GM58 to Exhibit C10

³¹⁴ Had Detectives Wilson and Green stayed longer they would have become aware of the involvement of a revolver, they might have ensured that all statements were taken that night and they could not have failed to become aware of the result of Probationary Constable Crawford’s searches if, as they both asserted, they truly did not become aware of these searches on the night.

45. The failure by Detectives Wilson and Green at least to attempt to seek the authorisation of a more senior officer to remain on duty that night.
46. The failure by Sergeant Kelly to allocate the Christopher Wilson PIR to Detective Sergeant Addison who was Acting Officer in Charge of CIB Team 2. Instead, Sergeant Kelly allocated the PIR to Detective Sergeant Butvila who was at that time acting in a different position.
47. Sergeant Kelly failed to have regard to the Holden Hill CIB disposition sheet, a document readily available either in hard copy or on the intranet.
48. The failure by both Detective Sergeant Butvila and Detective Sergeant Addison to have put in place procedures to ensure that one or other was checking to make sure that any files that were potentially misallocated would be checked and recovered from the respective pigeon holes of Detective Sergeant Butvila and Detective Sergeant Addison, and that the respective PIMS logons for Detective Sergeant Addison and Detective Sergeant Butvila would be routinely checked to ensure that no PIRs had been misallocated during a period of acting.
49. The failure by South Australia Police to preserve minutes of TCG meetings as required by the State Records Act.

21. The aftermath of the Christopher Wilson shooting – What did South Australia Police do?

- 21.1. I have already referred to the complaint made to the Police Complaints Authority by Mrs Julie Wilson on 19 April 2004³¹⁵. I was not aware, until I received the affidavit of Deputy Commissioner Burns³¹⁶ that there had in fact been another internal complaint by Superintendent Bronwyn Killmeir. That complaint was dated 15 April 2004. The Court was not aware of the existence of that complaint until the receipt of Deputy Commissioner Burns' affidavit, Exhibit C34, shortly before Deputy Commissioner Burns gave evidence on 20 November 2007. That day was the twenty-second sitting day and the last day on which evidence was taken in the Inquest. The Court has never been provided with a copy of the complaint by Superintendent Killmeir. According to the affidavit of Deputy Commissioner Burns, Superintendent

³¹⁵ Exhibit C12g

Killmeir (now Assistant Commissioner, Killmeir) reported on 15 April 2004 to Superintendent Tank of the Internal Investigation Branch that there were “service delivery deficiencies” relating to the investigation of the shooting of Christopher Wilson³¹⁷. I do not know whether the service delivery deficiencies complained of by Superintendent Killmeir extended to the deficiencies that I have identified in the handling of the Dreelan PIR, or the human source information.

- 21.2. This referral, by Superintendent Killmeir, of a complaint about service delivery faults, was the only recognition by South Australia Police that something had gone wrong.
- 21.3. The relevant officers who proceeded to investigate the murder of Christopher Wilson had not been involved in the earlier investigations (with the exception of Detective Sergeant Ranger). HB pleaded guilty to the murder in July 2005 and was sentenced on 4 August 2005. On 6 September 2005, South Australia Police submitted a Coroners report to the Office of the State Coroner³¹⁸. That report was tendered as Exhibit C34c. It consists of three pages and attaches a copy of Sentencing Remarks of the Honourable Justice White. The report sets out in very brief summary form a description of the first encounter between the Christopher Wilson group and HB. It sets out a short summary of the events of the early hours of the morning of Saturday, 28 February 2004 which resulted in the fatal shooting of Christopher Wilson. The only reference to the handling by the police of the first complaint by Christopher Wilson is as follows:

‘A short time later the occupants attended the Holden Hill Police Station to report the incident. Statements were taken from Christopher Wilson, Dylan Connelly and James McAinsh. No other police action was taken. This matter is now the subject of a Police Complaints Authority investigation.’³¹⁹

- 21.4. In my opinion, the Police Complaints Authority is not an appropriate body for dealing with problems such as those apparent in this case. The problems that emerged in this Inquest were of a cultural nature, more than a disciplinary nature, subject to one or two exceptions. From South Australia Police point of view, the cultural problems are far more pressing than the disciplinary problems. The Police Complaints Authority process is effectively conducted in secret. It is still not clear to me what the outcome

³¹⁶ Exhibit C34

³¹⁷ Exhibit C34, paragraph 83

³¹⁸ Exhibit C34, Item 40

³¹⁹ Exhibit C34c

of Superintendent Killmeir's referral was. Nothing has been produced to me by South Australia Police to show that.

- 21.5. The Commissioner was requested voluntarily to reveal the full Internal Investigation Branch investigation and Police Complaints Authority assessment and other relevant material including statements made by the key witnesses in this Inquest to the Internal Investigation Branch. The Commissioner refused to reveal it citing as his reason the fact that the disciplinary processes under the Police Complaints Act were yet to be completed³²⁰. That the disciplinary processes had not been completed more than three and a half years after they were instigated is a matter of considerable concern and Deputy Commissioner Burns conceded this in his evidence³²¹. So far as I am aware, the disciplinary process has resulted in no more serious sanction than unrecorded reprimands, submission to counselling in relation to conduct and recorded reprimands³²². It is difficult to see how the public interest in the full disclosure to an inquest of all matters pertinent to the circumstances preceding the death of Christopher Wilson could be outweighed by the perceived public interest in the prevention of possible prejudice to a disciplinary process that appears likely to result in nothing more serious than recorded and unrecorded reprimands and managerial guidance.
- 21.6. In my opinion, the Inquest was detrimentally affected by the statutory secrecy that is central to the Police Complaints and Disciplinary process. Any forensic investigation, any thorough legal review, indeed any normal legal process has as one of its hallmarks the full disclosure of previous accounts of the events given by witnesses before the inquiry. That did not happen at this Inquest.
- 21.7. As the Inquest proceeded, some witnesses revealed that they had been subject to a disciplinary assessment. That information was not known to the Court in relation to that witness until the witness revealed it. It was not until very late in the Inquest that, at the express request of the Court, Counsel for the Commissioner provided a

³²⁰ I do not wish to be taken as suggesting that the Commissioner does not have the right, under section 48, to refuse to reveal this information. To the contrary, he does have that right, as affirmed by recent Supreme Court authority (*White & Ors v The State of South Australia & Ors* [2007] SASC 75). However, the decision to exercise the right and to refuse to provide the information may nevertheless be the subject of examination and comment by me. In this case, the Commissioner offered a reason for his refusal, namely the disciplinary processes not yet completed. I am entitled to comment on the reason given by the Commissioner and express my opinion as to its merits. This I will proceed to do.

³²¹ Transcript, page 1979

³²² See recommendations contained letter from Police Complaints Authority, Exhibit C12n

complete list of all officers who had been subject to disciplinary assessment. In my opinion, this was potentially relevant information. Information that is potentially relevant is habitually disclosed to Courts voluntarily by Government agencies such as South Australia Police, because the Government has a duty to behave as a model litigant. That this did not occur in this case is probably explained by the secrecy governing the Police Complaints and Disciplinary process. It is difficult to see how an organisation such as South Australia Police could really justify withholding relevant information from the Coroner's Court on the basis that there is still the possibility that the police complaints process may, after three and half years, yield some further result which, it seems to me, is likely to be no more significant than a reprimand (recorded or unrecorded) or managerial guidance.

- 21.8. In submissions filed on behalf of the Commissioner, it was put that the Police Complaints Authority and the Internal Investigation Branch inquiry in relation to any particular police officer, or more generally at all, is not relevant to the cause and circumstances of the death of Christopher Wilson. That response overlooks the fact that during the course of the Inquest evidence was adduced by a number of witnesses who were either known at the time, or who came to be known during the course of their evidence, as persons who had given previous statements to the Internal Investigation Branch and/or officers of the Police Complaints Authority. Any proper forensic inquiry into a matter in which the participants have given previous written accounts of their involvement cannot be complete without a consideration of those previous accounts, and a consideration of whether those accounts are consistent with the accounts being provided to the current inquirer. For that reason, the material was clearly relevant, and had it not been for the secrecy provisions of the Police Complaints Act, I would unhesitatingly have sought and considered that material.

- 21.9. It was further submitted by the Commissioner as follows:

‘In this incident, like most matters which are the subject of Coronial Inquests, there a (sic) combination of factors which have come together to cause the judgment calls made by individuals on the night. The individual roles and decisions of police officers have been subject to inquiry by SAPOL. The more relevant issue is to consider the SAPOL's corporate policies and procedures....’

I strongly disagree with any suggestion that the conduct of particular officers and the judgement calls made by them is a subject outside the scope and jurisdiction of an Inquest. The fact of the matter is that, apart from section 48 of the Police Complaints

Act, some of the information flowing from the investigation of the conduct of individual officers whether made by South Australia Police or anyone else, might provide relevant information for consideration by the Coroner at an Inquest. It is not difficult to see that this might arise, and might likely arise, in the context of a death in police custody. In my opinion, it is not satisfactory to suggest that the coronial inquiry must, in every case, if it is to be conducted with the benefit of all relevant information, await the completion of police complaints processes which can take as long as three and a half years, and perhaps more, to complete. This is a matter that requires attention by the Parliament. I intend to recommend that consideration be given to the making of amendments to section 48 of the Police Complaints Act to remove the barrier created by the secrecy provision to full disclosure of all relevant evidence to the Coroner's Court in future.

- 21.10. I have made a number of references in this Finding to my concern at the lack of an overarching coronial investigation that would have enabled the Court to predict with some degree of certainty the likely course of the Inquest and the witnesses who would be likely to be required. The Commissioner made submissions in relation to that issue. The submission is as follows:

‘SAPOL provided its report into the death of Christopher Wilson to the Coroner on 6 September 2005. The Coroner never provided any criticism, feedback nor request that any further investigation be conducted as a result of SAPOL submitting this report. In the event that the Coroner (sic) Office is of the view that a Coroner's Report provided by SAPOL requires further investigation or supplementation SAPOL is happy to provide this if requested to do so.’

I have already referred to the coronial report provided on 6 September 2005 and to the extremely brief description of the police handling of the first Christopher Wilson complaint. Nothing in the report could have alerted the reader to the existence of the Dreelan PIR, nor to the human source information. All of these things were relevant to the circumstances surrounding the death of Christopher Wilson. I do not suggest that the deficiencies in the Dreelan investigation or in the handling of the human source information were causative of Christopher Wilson's death. The most that can be said of their relevance to the actual cause of Christopher Wilson's death is that a number of opportunities were afforded for interventions which might have had the potential to prevent HB from continuing to behave as he did and to engage in the kind of conduct he did which included ultimately the shooting of Christopher Wilson.

However, it is indisputable that the events surrounding the handling of the Dreelan PIR and the human source information were relevant to the circumstances of Christopher Wilson's death and the Court has jurisdiction pursuant to section 21 of the Coroners Act to consider not only cause but circumstances of a reportable death. "Circumstances" is a word of very wide import, and I am firmly of the view that the behaviour of HB during the twelve months of the eighteenth year of his life leading to the fatal shooting of Christopher Wilson, including as they did, various acts of violence involving weapons and firearms that resulted in the placement of warnings on the Police Information Management System about him, and ultimately in a complaint by Mr Dreelan about him threatening the latter's life, are quite plainly circumstances which are relevant to the fatal shooting by HB of Christopher Wilson.

- 21.11. It is disingenuous to suggest that a coronial report which says nothing at all about these matters is a proper coronial report. The Commissioner suggests that it is always possible for the Coroner to request further investigations. The difficulty with this is that when the initial information is as scant as that provided in this case, there is little reason to request a further investigation. Furthermore, out of the approximately two thousand deaths reported each year, there are police reports associated with approximately one thousand of them. The Coroner's Court simply does not have the resources to consider each one of the thousand or so police reports received each year to test their adequacy. There are several thousand police officers in South Australia while the staff of the Coroner's Court numbers less than twenty. It is beyond the resources of the Court to examine each South Australia Police investigation to assess its adequacy. The State Coroner and the Coroner's Court must be able to rely upon a thorough initial investigation by South Australia Police. Any such investigation may require supplementation. However, the extent of supplementary investigation should usually be minor. In the present case a three page investigation – namely that provided and referred to by the Commissioner as the "Coroner's report" in this matter on 6 September 2005 – has been dwarfed by the volume of evidence oral and written elicited at this Inquest.
- 21.12. The Commissioner has submitted that the matter of documents required to be held by South Australia Police pursuant to the State Records Act for periods required by that Act are not "part of the cause and circumstances of death of Christopher Wilson"³²³.

³²³ Closing submissions for Commissioner of Police

I take this to imply that this matter therefore does not concern the Coroner's Court. In my view, that is incorrect. The unavailability of documents relevant to an Inquest is very much a matter for the concern of the Coroner's Court. In the present case, the documents asserted by Detective Senior Constable Crawford to afford evidence of his efforts in pursuing the Dreelan PIR cannot be found after extensive searches by South Australia Police. They are required to be preserved by reason of the State Records Act 1997. Furthermore, the minutes of TCG meetings during 2003 and 2004 which would have revealed for the Court the deliberations of the TCG in relation to both the Dreelan PIR (if any) and the Christopher Wilson PIR have not, after extensive searches, been located by South Australia Police. They should have been retained by reason of the State Records Act 1997. In my opinion, the Coroner's Court is entitled to take notice of those matters and to record its concern at the fact that documents required to be kept in accordance with the law of this State have not been so kept. I formally record my concern at that circumstance.

22. Section 63C – Young Offenders Act 1993

22.1. Section 63C of the Young Offenders Act 1993 provides as follows:

- ‘(1) A person must not publish, by radio, television, newspaper or in any other way, a report of proceedings in which a child or youth is alleged to have committed an offence, if—
- (a) the court before which the proceedings are heard prohibits publication of any report of the proceedings; or
 - (b) the report—
 - (i) identifies the child or youth or contains information tending to identify the child or youth; or
 - (ii) reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification, of any child or youth who is concerned in those proceedings, either as a party or a witness.
- (2) The court before which the proceedings are heard may, on such conditions as it thinks fit, permit the publication of particulars, pictures or films that would otherwise be suppressed from publication under subsection (1)(b).
- (3) A person who contravenes this section, or a condition imposed under subsection (2), is guilty of an offence.
- Maximum penalty: \$10 000.’

22.2. Section 63C is capable of having an application to the allegations against HB. I will proceed on the assumption that even after his conviction, at least of the offences of

which he was convicted in July and August 2005, references to allegations underpinning those convictions might still attract the operation of section 63C. That is because, notwithstanding the ultimate conviction of HB, the matters complained of against him can still be described as allegations, or could have been up until his conviction. Furthermore, there are the allegations the subject of the Dreelan PIR which were never brought before a Court³²⁴. It may be that in those circumstances the allegations contained in the Dreelan PIR would not if published fall within the prohibition in section 63C because that section seems only to apply to proceedings before a Court. Finally, there are the allegations that were the subject of HB's earlier convictions for his offences in March 2003. Notwithstanding the fact that those allegations resulted in convictions, or at least findings of guilt, they nevertheless would have been allegations prior to that time, and it seems to me that section 63C must be interpreted on the assumption that the subsequent conviction of a person of allegations against them does not permit thereafter the publication of information identifying the child or tending to identify the child.

- 22.3. In my view the Coroner's Court, in publishing its finding of the cause and circumstances of the death of Christopher Wilson, is not prohibited by section 63C from referring to HB by name and otherwise identifying him. The prohibition in section 63C does not in my opinion apply to a Court. Nor does it apply in my opinion to prevent the receipt of information by the Coroner's Court, or any other Court, of information which would otherwise be prohibited from publication by section 63C. I am of that view because the prohibition in section 63C applies to "a person" and this expression is not apt to include a "Court". In *Canadian Pacific Tobacco Company Limited and Anor v Stapleton* (1952) 86 CLR 1 Chief Justice Dixon said that the meaning of the words "to any person", "probably cannot apply to Courts, which would hardly be called persons". A similar view was expressed by Gibbs J in *Miller v Miller* (1978) 141 CLR 269 at 277. In *Hilton v Wells* (1985) 157 CLR 57, Mason and Dean JJ referred to Dixon CJ's comments and held that a provision which prohibited divulging or communicating information to "another person" did not apply in respect of the disclosure of such information in the course of giving evidence before a Court. Their Honours commented that "as a matter of ordinary language, the words 'divulge or communicate to another person' are inappropriate to refer to the giving of evidence

³²⁴ The section may now operate in relation to the proceedings before the Coroner's Court, which have now aired the allegations.

before a Court”. The majority judgment of Gibbs CJ, Wilson and Dawson JJ in *Hilton v Wells* (at 76) made reference to the comments of Gibbs J in *Miller v Miller* (1978) 141 CLR 269, and went on to find that “relevant evidence obtained from an intercepted communication may be given in proceedings” other than those mentioned in the legislative provision, and that the provision of such evidence did not amount to an offence under the Act. I have concluded that the prohibition in section 63C did not prevent the divulgence of information about HB to the Coroner’s Court and further that it would not operate to prohibit me from making reference in my finding to proceedings in which HB was alleged to have committed an offence in such a way as to identify him.

- 22.4. The effect of section 63C it seems to me would be to prohibit the publication by newspaper, radio or television of a report of this finding if that report identified HB by name or otherwise tended to identify him. I note that section 63(2) permits the Court before which the proceedings relating to the allegations against the child have been heard to make an order permitting publication of material that would otherwise be suppressed from publication under subsection (1). The Coroner’s Court, not being the Court before which the proceedings against HB were heard, does not have power to permit the publication of particulars that would identify HB. Had subsection (2) empowered me to do so, I would certainly have made an order permitting the publication of HB’s name and other identifying information. My reason for that is that there has been a significant public interest in this Inquest, and it is generally in the public interest that inquests be conducted as fully as possible under public scrutiny. I propose to recommend that section 63C be amended to permit the Coroner’s Court to make an order permitting publication of the name of a youth. An obvious situation in which that might be necessary is that in which a child, remanded in custody, dies while in custody. It is not difficult to envisage that the circumstances leading up to a child being charged with the offence that leads to his or her remand in custody would be relevant to the circumstances of his or her incarceration, and if he or she died as a result of a self-inflicted injury, may very well be relevant to the circumstances of that death. Section 63C would prevent the publication of a report of such an inquest in which the child was identified. That may not always be appropriate. In my opinion, the Coroner’s Court should have the power to permit publication. A similar difficulty arises with section 59A of the Children’s Protection Act 1993, which is identical to section 63C but applicable to child welfare

proceedings before the Children's Court. Such proceedings are likely to be relevant in an inquest into the death of the child the subject of the proceedings and so a corresponding amendment should be made to section 59A.

23. Recommendations

- 23.1. Section 25(2) of the Coroners Act 2003 provides that the Court may add to its findings any recommendation that might, in the opinion of the Court, prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the Inquest.
- 23.2. I have not found that the death of Christopher Wilson was caused by any of the deficiencies in policing which I have identified in these findings. However, I do believe that a number of the deficiencies identified by me can be regarded as events, which had they been handled differently, might potentially have changed future events, including possibly, the ultimate event the subject of this Inquest, namely the fatal shooting of Christopher Wilson. These events were opportunities for intervention which had the potential to directly or indirectly prevent that fatal outcome. While those events were not causes of the fatal outcome, they were components of the circumstances leading up to the fatal event.
- 23.3. Each of the potential opportunities for intervention relates to acts or omissions of police officers. Those acts or omissions have been, in some sense, deficient. The system for dealing with those deficiencies is the process established by the Police Complaints Act. It was that process that Superintendent Killmeir adopted to deal with the deficiencies she identified. In my opinion, improvements to the process established by the Police Complaints Act might reduce the likelihood of a recurrence of deficiencies of the kind identified during this Inquest and therefore have the potential to reduce the likelihood of a recurrence of an event similar to the event that was the subject of this Inquest.
- 23.4. The Police Complaints Act or the Police (Complaints and Disciplinary Proceedings) Act 1985 to use its full title, was enacted in 1985. The Act has remained in substantially the same form since that time although there have been nine amending Acts in the twenty-three years since 1985 which have made various adjustments to the

general scheme of the Act. However, none of those amending Acts has made any major change to the system which remains broadly as it was in 1985.

- 23.5. Since 1985, Queensland Police (the Fitzgerald Royal Commission 1989), New South Wales Police (the Wood Royal Commission 1994), Western Australia Police (the Kennedy Royal Commission 2002) and the Australian Federal Police (the Fisher Review 2003) each have undergone significant reform processes following Royal Commissions or Inquiries.
- 23.6. In Victoria, the Office of Police Integrity published a report called “A Fair and Effective Victoria Police Discipline System” in October 2007. That report recommended substantial changes to the Victorian model of complaint handling and disciplinary process within Victoria Police. It noted that in Tasmania and South Australia there has been little reform in this area by comparison with Queensland, New South Wales, Western Australia, the Federal Police, and Victoria itself. Of course, Victoria has seen the establishment of the Office of Police Integrity which in itself represents a reform. The report notes that the Victorian system is similar to that of South Australia although it is even more complex than the South Australian system.
- 23.7. The South Australian Act is indeed complex. The fact that proceedings can take more than three and a half years is clear evidence of that fact. In *Police Service Board v Russell John Morris and Robert Colin Martin* (1985) 156 CLR 397 Brennan J, as he then was, said:
- ‘Internal disciplinary authority over members of the police force is a means - the primary and usual means - of ensuring that individual police officers do not jeopardize public confidence by their conduct, nor neglect the performance of their police duty, nor abuse their powers. The purpose of police discipline is the maintenance of public confidence in the police force, of the self-esteem of police officers and of efficiency.’
- 23.8. In *Hardcastle v Commissioner of Police* [1984] 53 ALR 593 at 597 the Full Federal Court said:
- ‘The purpose of a disciplinary system within a professional organisation is: to protect the public, to maintain proper standards of conduct and to protect the reputation of the organisation. It is not to punish.’
- 23.9. In my opinion this Inquest has shown that the Police Complaints and Disciplinary process in South Australia is in need of review. As noted in the Victorian Office of

Police Integrity report³²⁵ an effective disciplinary process must operate promptly. A delayed outcome with lingering uncertainty is often stressful for the employee concerned and may well be worse than the penalty itself. It is also a potential cause of dysfunction within the workplace.

23.10. I therefore recommend as follows:

1. I recommend that the Government review the Police (Complaints and Disciplinary Proceedings) Act 1985 in light of reforms adopted in other States of Australia, the United Kingdom and New Zealand³²⁶.
2. In the meantime I recommend that section 48 of the Police Complaints Act be amended to remove the barrier created by the secrecy provision to full disclosure of all relevant evidence to the Coroner's Court.
3. I recommend that section 63C of the Young Offenders Act 1993 and section 59A of the Children's Protection Act 1993 be amended to permit the Coroner's Court to allow publication of material that would otherwise be prohibited from publication by these provisions.

Key Words: Firearms - licence - Firearms Act; Murder – allegations; Police; Police Complaints; Public safety; Publicity/Public Warnings

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 7th day of April, 2008.



State Coroner

Inquest Number 12/2007 (0599/04)

³²⁵ "A Fair and Effective Victoria Police Discipline System", page 20

³²⁶ See generally, "A Fair and Effective Victoria Police Discipline System", Office of Police Integrity, Victoria, October 2007.

To:

The Honourable Bruce Lander QC
Independent Commissioner Against Corruption
South Australia
GPO Box 11066 Adelaide

Dear Mr Lander

Thank you for the invitation to make a submission to the 'Review of Legislative Schemes / Evaluation Practices, Policies and Procedures of Police Ombudsman'.

(In your invitation you mentioned the possibility of appearing at a public hearing. I would be interested in this option. However, I am in a new job with a significant new teaching load so, at this stage, I am not sure of my availability.)

The discussion paper accompanying the review raises a number of complex issues that are not easily resolved. Rather than address each point in turn, I would like to make a general submission about a model public sector integrity agency that I believe would have direct applicability in South Australia. The proposal is based on 25 years of empirical research on the topic, including visits to numerous agencies around the world. The model has value for maintaining and extending public sector integrity, even where jurisdictions already have outstanding records.

1. Effective public sector integrity systems require diverse institutions with complimentary and overlapping responsibilities to ensure adequate coverage of misconduct risks. At the core of a system is an independent public sector integrity agency – an 'integrity commission' – with significant powers and resources to engage in investigations and prevention.
2. The integrity commission should cover the whole public sector including police. While police are subject to particularly intense pressures and temptations towards misconduct, policing is by no means unique in regard to integrity risks and officers can feel unfairly treated through the operations of specialist police ombudsman type bodies. Vigilance in regard to police can be maintained by legislating a designated police unit within an integrity commission.
3. Investigating and resolving complaints will be a key function of an integrity commission. In order to engender adequate confidence in public sector integrity, the commission needs to directly and independently investigate all, or most of, the complaints made against politicians, public servants and staff in public corporations. This entails training and employing specialist 'civilian' investigators in place of seconded police. It also entails creating a clearer hierarchy of matters – with more serious matters designated for automatic independent processing; and remaining, lower level matters, subject to negotiation with complainants about which agency investigates the matter. Appeals against outcomes in the latter process should be dealt with by the integrity commission.
4. There also needs to be an efficient approach to investigations and adjudication. The integrity commission should prioritise an administrative and inquisitorial approach to matters, with criminal prosecutions only taken after administrative processes are complete.

The commission also needs to be able to direct or over-ride disciplinary decisions by government departments. This is essential to counter the tendency towards weak disciplinary responses when matters are dealt with in-house. There also needs to be a disciplinary matrix, on the public record, so citizens can see how offences align with sanctions.

5. At the same time, there needs to be a decisive shift towards the availability of an independent mediation option for complaints.
6. In order to take a much more substantive role in complaints management and engage in more effective public outreach, an integrity commission needs to regionalise its operations by setting up accessible offices in regional centres.
7. An integrity commission also needs to have a research and prevention role, and ensure that government agencies have effective in-house misconduct prevention mechanisms in place. Examples of the latter include complaints profiling and early intervention systems, and police video camera programs.
8. Some integrity commissions in Australia include major and organised crime in their mission. This function distracts from the core task of public sector integrity management and generates a substantial corruption risk.

To enlarge slightly, the model proposed here represents a blend of one of the most successful police oversight agencies in the world – the Police Ombudsman for Northern Ireland – and one of the most successful anti-corruption agencies – the Hong Kong Independent Commission Against Corruption.

For your convenience, I have attached copies of the following publications that review evidence related to the proposed model. I have also attached an updated CV. I am happy to supply copies of relevant publications listed in the CV.

1. Prenzler, T., & Porter, L.E. (2015, in press). Improving police behaviour and police-community relations through innovative responses to complaints. In S. Lister & M. Rowe (Eds.), *Accountability in policing: Contemporary debates*. Abingdon: Routledge.
2. Prenzler, T., Mihinjac, M., & Porter, L. (2013). Reconciling stakeholder interests in police complaints and discipline systems. *Police Practice and Research: An International Journal*, 14(2), 155-168.
3. Prenzler, T. (2011). The Evolution of police oversight in Australia. *Policing and Society*, 21(3), 284-303. Reprinted in L. Holmes (Ed.), (2014), *Police corruption: Essential readings* (pp. 551-570). Cheltenham: Edward Elgar.
4. Prenzler, T., & Faulkner, N. (2010). Towards a model public sector integrity commission. *Australian Journal of Public Administration*, 69(3): 251-262.
5. Prenzler, T. (2009). An Assessment of reform in politics, criminal justice and the police in post-Fitzgerald Queensland. *Griffith Law Review*, 18(3): 576-595.

Thank you once again for the opportunity to make a submission.

Yours sincerely,

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