



THE UNIVERSITY
of ADELAIDE

Public Law and Policy Research Unit

Submission to the Independent Commissioner Against
Corruption on the Review of Legislative Schemes

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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.