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## POLICE COMPLAINTS

### A NEW SCHEME IN SEPTEMBER 2017

On Friday 1 September 2017, the Office of the Police Ombudsman closed its doors for the last time. The Police Ombudsman, formerly known as the Police Complaints Authority, has been responsible for the receipt of complaints and the independent oversight of investigations into police misconduct since 1985.

On Monday 4 September 2017, a new scheme for managing complaints and reports about police commenced.

The new scheme, which is governed by the *Police Complaints and Discipline Act 2016*, ensures an independent and robust process for overseeing the way in which police manage and investigate allegations of police misconduct.

The Office for Public Integrity (OPI) will be responsible for independently overseeing and reviewing the way in which the police deal with complaints and reports.

Unlike the previous scheme, the independent oversight body will have real-time access to police systems and will be able to intervene and give directions to police as to the assessment of complaints and reports and the manner in which they are investigated.

“I think the new scheme will reduce duplication and delay that was a significant feature of the old scheme,” said OPI CEO, Michael Riches.

“The ability to independently oversee the investigation of matters in real time should give the community confidence that serious allegations of police misconduct will be dealt with appropriately.”

Fraser Stroud, the OPI Director of Police Integrity said, “Under the new scheme, complaints and reports about Police can be made to the OPI or to SAPOL.”

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# POLICE COMPLAINTS

## A NEW SCHEME IN SEPTEMBER 2017

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“Ultimately all matters received by the OPI or SAPOL will be referred to the Internal Investigations Section (IIS) of SAPOL for assessment, unless the complaint or report raises a potential issue of corruption or some other serious allegation, in which case it will be brought to the attention of the Independent Commissioner Against Corruption.”

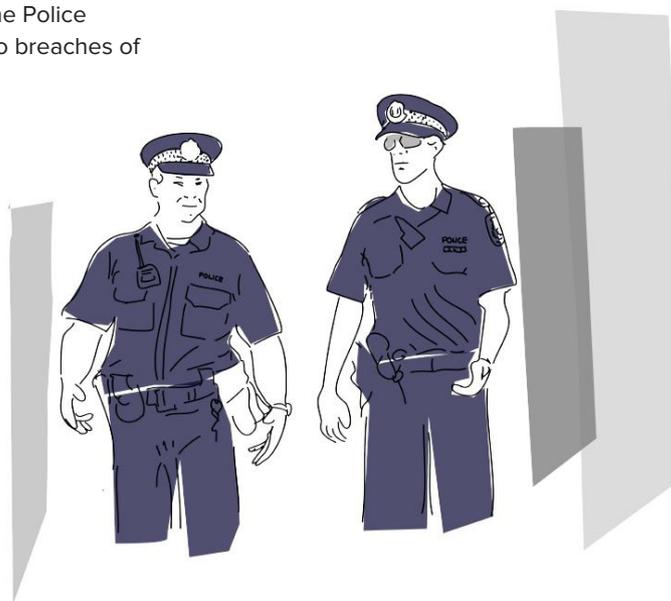
“The ICAC will be empowered to investigate any matter where the ICAC thinks he ought to conduct the investigation rather than SAPOL.”

“The OPI will monitor the action taken by police on all complaints and reports and can intervene and give directions in respect of investigations.”

“If the OPI disagrees with an assessment made by the IIS of a complaint or a report, the OPI can reassess the matter and IIS must then proceed according to that assessment,” said Fraser Stroud.

For the first time, an annual report will be prepared for Parliament by the ICAC addressing the number and general nature of sanctions imposed by the Police Commissioner in relation to breaches of discipline.

Michael Riches said, “I am confident that the new scheme will provide a more efficient and effective way of managing complaints and reports about police. It will also provide a more robust system of independent oversight.”



## PUBLIC TRUSTEE EVALUATION

In March 2017, the Commissioner announced that he would conduct an evaluation of the practices, policies and procedures of the Public Trustee.

The purpose of an evaluation is not to gather evidence for prosecution but to ensure that an agency has the most comprehensive and effective systems for preventing or minimising corruption, misconduct or maladministration in public administration.

The executive and staff of the Public Trustee have been very cooperative and have worked closely with the Commissioner’s evaluation team to gather all necessary information.

The Commissioner is hoping to provide a report on the evaluation of the Public Trustee, for tabling in both Houses of Parliament before the end of September 2017.

# OAKDEN INVESTIGATION

On 25 May 2017, whilst giving evidence before the Parliamentary Crime and Public Integrity Committee, the Commissioner announced that he would investigate the management of care at the Oakden Older Persons Mental Health facility.

The investigation is not a corruption investigation. It is an investigation to determine whether or not sub-optimal care delivered to patients at this facility was as a result of maladministration by a public authority or by public officers.

The Commissioner said, "It is important to determine what information was communicated or available to persons in authority, from local management

to executive leadership and ministers, when that information was communicated or available and what action was taken in response to that information."

"If information was available that was not acted on in a timely and appropriate manner, that might constitute serious or systemic maladministration, as defined in the ICAC Act."

"Alternatively, if information did not become known to appropriate persons, whether as a consequence of intentional cover up or poor communications and oversight systems, that too might constitute serious or systemic maladministration."

The Commissioner held a press conference on 30 May 2017 to make a public call for information and to announce the terms of reference by which the investigation would be conducted.

The Commissioner is very grateful to members of the public and public officers who have come forward and provided information to his office.

The investigation is being conducted in private, as required by the ICAC Act. The Commissioner's intention is to publish his final report if he considers it in the public interest to do so.

The terms of reference for the investigation are published on the [ICAC website](#).



## DOES THE COMMISSIONER MOONLIGHT AS THE OMBUDSMAN?

Included in the primary functions of the Commissioner is the obligation to identify and deal with maladministration in public administration.

The Commissioner can do this by referring maladministration to an inquiry agency or to a public authority for investigation.

If the Commissioner is of the view that the maladministration is serious or systemic, he has the option of not referring it and investigating the matter himself.

If the Commissioner does decide that a matter requires an investigation by him and not an inquiry agency or public authority, he is required to exercise the powers of an inquiry agency (the Ombudsman) to conduct that investigation.

Exercising those powers does not make the Commissioner the Ombudsman, nor does it make the investigation an Ombudsman's investigation. It simply defines the powers that the Commissioner can use for the investigation.

The powers of the *Ombudsman Act 1972* include the powers of a Royal Commission.

When the Ombudsman conducts an investigation using those powers given to him under that Act, he is not conducting that investigation as a Royal Commissioner.

Likewise, when the Commissioner conducts an investigation using the powers of the same Act, he is neither a Royal Commissioner nor the Ombudsman. He is the Independent Commissioner Against Corruption and he has formed a view that his office should investigate the matter, hence making it an investigation of the Commissioner.

# SENATE COMMITTEE EVIDENCE

On 15 May 2017, the Commissioner appeared before the Senate Select Committee on a National Integrity Commission.

This Select Committee will inquire and report on the establishment of a national integrity body, by examining the adequacy of the Australian government's framework for addressing corruption and misconduct.

The Commissioner did not make a written submission, but presented his views by teleconference.

In his opening statement, the Commissioner reinforced his support for a federal anti-corruption agency, stating, "There would be no reason to think that there was not a need for a body of the same kind [as the states and territories] in the federal jurisdiction."

He suggested three matters would need to be addressed in establishing such an agency:

- 1. The extent of the body's jurisdiction**, to determine whether it could examine misconduct and maladministration as well as corruption.
- 2. The purpose of the body**, to determine whether its function is decision making or investigating (as is the case in South Australia, where the Commissioner "obtains evidence for the purpose of providing that evidence to the Director of Public Prosecutions").
- 3. The powers of the body**, to determine the coercive powers necessary for investigating and obtaining evidence.

On the issue of private versus public hearings, the Commissioner re-stated his position on holding corruption investigations in private.

"I am opposed to public hearings in relation to investigations into corruption because they are investigations into a criminal offence," he said. "It seems to me that if I am investigating criminal conduct, it ought to be done in private."

The Commissioner thanks the Committee for the opportunity to appear and give evidence.

The Committee's report is scheduled for release on 13 September 2017.



## EDUCATION UPDATE

The Commissioner and his Education team have had a very busy year delivering education sessions to South Australian public officers.

### Internal Investigations Seminar and Workshop series

The popular ICAC workshop, 'What Happened? How to Conduct an Internal Investigation' was recently adapted into a two-part seminar and workshop series.

The 2.5 hour seminar, delivered by senior ICAC legal staff, focuses on the theory, concepts and principles that underpin an internal investigation.

The seminar is a pre-requisite for the full-day practical workshop, where participants learn how to plan and manage an investigation, conduct interviews and take statements. The workshop is facilitated by ICAC senior investigators and lawyers.

A seminar for local government public officers will be held on 21 September in the Adelaide CBD. Apply to attend using the form on the [ICAC website](#).

A workshop for local government public officers will be held on 13 October. Apply to be considered for a place via the [ICAC website](#).

Our next public sector seminar and workshop will be announced shortly. The sessions fill up quickly, so we recommend [signing up to the waitlist](#) to be notified if a place becomes available.

### Commissioner's Awareness session

The Commissioner will deliver his next ICAC Awareness session to public officers on 17 October.

These sessions are managed by the Institute of Public Administration Australia (IPAA). Register to attend via the [IPAA website](#).

### Resources

A number of new brochures and fact sheets are available to download from the ICAC [Education Resources](#) webpage.

You can request hard copies of these resources at no cost to your agency by contacting [education@icac.sa.gov.au](mailto:education@icac.sa.gov.au).

To learn about your reporting obligations, enrol in our [e-learning course, ICAC Induction for Public Officers](#). In 40 minutes, you will learn about the role and functions of the OPI and ICAC, and how public officers play a critical role in our work.

### Education session requests

To request an information session or an in-agency Internal Investigations seminar and workshop for your organisation, please contact [education@icac.sa.gov.au](mailto:education@icac.sa.gov.au).

# PROSECUTION UPDATE

## SEPTEMBER 2017

### COURT FINDINGS

In July 2017, former TAFE Education Manager, Josephine Cray, and James Richard Beaumont, who is not a public officer, received custodial sentences for offences relating to approximately \$153,000 worth of fraudulent invoices being claimed from the public authority.

Ms Cray was sentenced to three years, three months and 18 days in prison for abuse of public office, with a non-parole period of 18 months. Mr Beaumont received the same sentence for aiding, abetting, counselling, or procuring Ms Cray's abuse of public office. Mr Beaumont received a non-parole period of two years and one month. These are the first immediate custodial sentences resulting from an ICAC investigation.

In April 2017, Professor Dayang Wang, formerly of UniSA, was convicted of one count of making a false declaration contrary to section 27 of the *Oaths Act*, for having an international student sign a statutory declaration claiming responsibility for a speeding fine. Mr Wang pleaded guilty at the earliest opportunity and was placed on a \$1000, 12-month good behaviour bond.

### NEW PROCEEDINGS

On 14 August 2017, the Commissioner released a public statement regarding multiple charges that had been laid against a 43-year-old from Mount Gambier. The Commissioner's usual practice is not to name the person charged to allow that person to apply to the court for a suppression order. If a suppression order is not in place, the identity of the person is usually made known by the court.

In this matter, however, *The Advertiser* ran a story about Troy Bell having been charged with multiple offences. After the story ran, the Commissioner confirmed that Troy Bell was the 43-year-old Mount Gambier man referred to in his public statement. Mr Bell appeared in the Mount Gambier Magistrates Court on 22 August and has been bailed to appear again on 11 December 2017.

On 28 July 2017, two South Australian police officers were charged with criminal offences amounting to corruption under the ICAC Act. Andrew Jaunay was charged with aggravated assault, and Sean Hobbs was charged with aggravated assault causing harm. The matter has been adjourned to 27 September 2017.

On 15 May 2017, Kim Graham was arrested and charged with two counts of abuse of public office. Colin Weetra and Stacey Marie Haining, who are not public officers, were arrested and charged with aiding, abetting, counselling and procuring an abuse of public office in relation to the charges laid against Kim Graham. The matter returns to court on 14 September 2017.

On 27 April 2017, government contractor Frank Templeton was charged with six counts of wilfully making a false statutory declaration contrary to the *Oaths Act 1936*. The matter has been adjourned to 26 October 2017.

### ONGOING PROCEEDINGS

Department of Planning, Transport and Infrastructure employee, Michael King, was arrested on 25 February 2016 and charged with 22 counts of failing to act honestly, and eight counts of unlawful possession. The matter has been adjourned to 14 September 2017.

Alana Bartels was a public officer employed by the Public Trustee when she was charged with five counts of abuse of public office and five counts of aggravated theft on 17 May 2016. Ms Bartels has pled guilty and is awaiting sentencing. This matter is in court on 26 September 2017.

The findings of a 'no case to answer' hearing involving former Chief Executive of BioSA, Jurgen Michaelis, were delivered on 28 June 2017. There was no case to answer for Count One. Mr Michaelis was committed to the District Court for arraignment on 18 August 2017 on Count Two, in which he allegedly improperly exercised his power and influence. This matter is in court on 25 October 2017 for pleas and directions.

South Australian police officer, Hayley May Greenwood, was arrested on 21 August 2015 and charged with abuse of public office, drug trafficking, theft and possession of a dangerous article. She was later charged with possessing a controlled drug and equipment. On 15 May 2017, prosecutors tendered no evidence in the abuse of public office trial but laid an alternative dishonesty charge under the *Public Sector Act*. A trial date has not yet been set. The remaining charges are due to be heard on 13 December 2017.

Seven South Australian police officers were arrested and charged with various offences in March 2014. One of those officers will face trial on 14 November 2017. The remaining officers are scheduled to face trial in the Supreme Court of South Australia in February 2018.

Yvonne Buza was arrested and charged with 36 counts of deception on 15 January 2016. This matter has been set for trial commencing March 2018.

THE INFORMATION CONTAINED IN THIS NEWSLETTER MUST NOT BE UNDERSTOOD TO CONSTITUTE LEGAL ADVICE.