



Report 2023/01: Review of the investigation and prosecution of Mr John Hanlon

26 June 2023



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26 June 2023

The Hon Terry Stephens
President, Legislative Council
Parliament House
North Terrace
ADELAIDE SA 5000

The Hon Daniel Cregan
Speaker, House of Assembly
Parliament House
North Terrace
ADELAIDE SA 5000

By hand

Dear President and Speaker,

In accordance with clause 9(10) of schedule 4 of the *Independent Commission Against Corruption Act 2012* (SA) (**ICAC Act**), I provide to each of you my Report 2023/01: Review into the investigation and prosecution of Mr John Hanlon.

Pursuant to clause 9(11) of schedule 4 of the *ICAC Act*, I ask that you lay this report before your respective Houses on the next possible sitting day.

Yours faithfully

Philip Strickland SC
Inspector



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Acronyms and abbreviations

Acronym	Description
AFP	Australian Federal Police
AFP Interpol	Australian Federal Police, Interpol Operations Division
CCRs	Call charge records
CLCA	<i>Criminal Law Consolidation Act 1935 (SA)</i>
Commissioner	Independent Commissioner Against Corruption (as enacted to 6 October 2021); Commissioner of ICAC (7 October 2021 to present)
CLCA	<i>Criminal Law Consolidation Act 1935 (SA)</i>
Criminal Procedure Act	<i>Criminal Procedure Act 1921 (SA).</i>
Current ICAC Act	<i>Independent Commission Against Corruption Act 2012 (SA)</i> (as currently in force)
DPP	Director of Public Prosecutions
DPP Act	<i>Director of Public Prosecutions Act 1991 (SA)</i>
Evidence Act	<i>Evidence Act 1929 (SA)</i>
Foreign Evidence Act	<i>Foreign Evidence Act 1994 (Cth)</i>
IASA	Investment Attraction South Australia
ICAC	Office of the Independent Commissioner Against Corruption (as enacted to 6 October 2021); Independent Commission Against Corruption (7 October 2021 to present)
ICAC Act	<i>Independent Commissioner Against Corruption Act 2012 (SA)</i> (as in force between 4 September 2017 to 30 June 2020)
MACMA	<i>Mutual Assistance in Criminal Matters Act 1987 (Cth)</i>
MAR	Mutual Assistance Request – protocol for evidence to be obtained from overseas via the MACMA
Nine Co-Working Businesses	Factory Berlin, Impact Hub, Wework Germany, Kaos, CLR Haus (aka CRCLR House), Fritz 46, Ahoy, Mind Space and Betahaus
OPI	Office for Public Integrity
SAPOL	South Australia Police
SD Act	<i>Surveillance Devices Act 2016 (SA)</i>
SDs	Surveillance Devices
TIA Act	<i>Telecommunications (Interception and Access) Act 1979 (Cth)</i>

Key persons

Name	Role
Mr John Hanlon	Chief Executive, Renewal SA from 21 July 2014. ¹
Ms Georgina Vasilevski	General Manager, People and Place, Renewal SA.
Employee A	Employee that worked with Ms Vasilevski, Renewal SA
Employee B	Senior employee, Renewal SA
Employee C	Senior employee, Renewal SA
Employee D	Employee that worked with Mr Hanlon, Renewal SA
The Hon Ann Vanstone KC (Commissioner Vanstone)	Current Commissioner of ICAC. Commissioner Vanstone commenced as Commissioner on 2 September 2020. ²
The Hon Bruce Lander KC (Mr Lander)	Former Independent Commissioner Against Corruption between 1 September 2013 and 31 August 2020. ³
Mr Michael Riches	Former Deputy Independent Commissioner Against Corruption. Mr Riches also held the position of CEO, ICAC.
Magistrate Roderick Jensen (Mr Jensen)	Former Director Legal, ICAC
Ms Helen Luu	Former Senior Legal Officer, ICAC.
Ms Victoria Greenslade	Former Legal Officer, ICAC.
Mr Andrew Baker	Former Director Investigations, ICAC. Mr Baker had overall responsibility for the investigation operations of ICAC. ⁴ Mr Baker had oversight of the Hanlon Investigation but did not have active day-to-day management of it. ⁵
Mr Steven Dalton	Team Leader Investigations, ICAC.
Mr Richard Frost	Former Senior Investigator, ICAC. Mr Frost was the primary investigator allocated to the investigation of John Hanlon in until approximately August 2018.
Ms Amanda Bridge	Former Senior Investigator, ICAC. Ms Bridge was the primary investigator allocated to the investigation of John Hanlon following Mr Frost's departure in August 2018. ⁶
The Hon Stephen Mullighan MP (Mr Mullighan)	Former Minister for Housing and Urban Development between January 2016 and 19 March 2018. ⁷
The Hon Stephan Knoll (Mr Knoll)	Former Minister for Transport and Infrastructure between 22 March 2018 and 26 July 2020.
The Hon Vickie Chapman MP (Ms Chapman)	Former Deputy Premier and Attorney-General.
Mr Martin Hinton KC (Mr Hinton)	Current Director of Public Prosecutions.
The Hon Justice Adam Kimber (Mr Kimber)	Former Director of Public Prosecutions.

¹ Exhibit 1 – Renewal SA, *Executive contract of John Hanlon* (21 July 2014).

² South Australia, *South Australian Government Gazette*, No 63, 27 July 2020 at p 4088.

³ South Australia, *South Australian Government Gazette*, No 13, 21 February 2013 at p 444.

⁴ Exhibit 52 - Andrew Baker (ICAC), *ICAC Employment Contract encl. Job & Person description* (8 June 2021).

⁵ Exhibit 61 – Transcript of Interview with Andrew Baker, *Independent Investigation into Aspects of 2018/003882* (Peter Healey, Cowell Clarke Commercial Lawyers Offices, 14 December 2022) at p 4 [13]-[21].

⁶ See Exhibit 55.2 – Transcript of Proceedings, *R v Hanlon* (SADC, Heffernan DCJ, 3 November 2022) at 38 [35].

⁷ Exhibit 206 – Affidavit of Stephen Mullighan MP, 22 November 2019 at [4].

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Name	Role
The Hon Justice Sandra McDonald (Ms McDonald)	Former Deputy Director of Public Prosecutions. Ms McDonald also held the position of Acting Director of Public Prosecutions.

I. Introduction

1. On 5 December 2022, the Hon Kyam Maher MLC, Attorney-General, requested that I, Philip Strickland SC, Inspector, undertake a review into the investigation and prosecution of Mr John Hanlon pursuant to clause 2(1)(c) of schedule 4 of the *Independent Commission Against Corruption Act 2012* (SA) (**the current ICAC Act**).
2. Clause 9 of schedule 4 of the current *ICAC Act* sets out a non-exhaustive list of matters which may be the subject of a review. In the case of an annual review there are matters set out in clause 9(1)(a) that I must consider in relation to the financial year to which the review relates. This Report is not an annual review. It is a review that has been conducted at the request of the Attorney-General. Accordingly, without limiting the matters that may be the subject of a review, I may examine any particular exercises of power, performance of functions and the making of decisions by the Office for Public Integrity (**OPI**) or the Independent Commission Against Corruption (**ICAC**). I may also make any recommendations to the OPI, ICAC or the Attorney-General that I think fit.
3. On completing a review, or at any time during a review, I may do any of the following:⁸
 - 3.1 refer a matter to the relevant law enforcement agency for further investigation and potential prosecution. I may also disclose to the relevant law enforcement agency, or to the OPI, ICAC or the public authority, information that I have in respect of the matter;⁹
 - 3.2 refer a matter to the OPI, ICAC or a public authority for further investigation and potential disciplinary action against a public officer for whom the OPI, ICAC or authority is responsible; and
 - 3.3 if I find that undue prejudice to the reputation of any person was caused by the OPI or ICAC, I may:
 - 3.3.1 publish any statement or material that I think will help to alleviate that prejudice; or
 - 3.3.2 recommend that ICAC or the OPI (as the case may require) pay an amount of compensation to the person.
4. I am satisfied that this Report will have no effect on any complaint, report, assessment, investigation or referral under the current *ICAC Act* pursuant to clause 9(9)(a) of schedule 4. I find that this Report has no effect on any current complaint, report,

⁸ *Independent Commission Against Corruption Act 2012* (SA) sch 4 cl 9(6) (**current ICAC Act**).

⁹ *Ibid* sch 4 cl 9(8).

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assessment or investigation related to this matter.

5. This Report anonymises certain names to protect their identity. I am required by the terms of the current *ICAC Act* not to disclose the identity of those persons.
6. I must not include information in a report if publication of the information would constitute an offence against section 54 of the current *ICAC Act*. On 17 January 2023, the current Commissioner of ICAC, the Hon Ann Vanstone KC, provided me with an authorisation pursuant to section 54(5) of the current *ICAC Act* to publish in this Report information which would otherwise constitute an offence against section 54.
7. My review examined the exercises of power, performance of functions and the making of decisions by ICAC and the OPI in accordance with the Terms of Reference at **Appendix A**. The Terms of Reference were drafted by me and are informed by clause 9 of schedule 4 of the current *ICAC Act*, including those matters that I must consider if the review was an annual review. This includes, inter alia, consideration of whether the powers exercised, functions performed and decisions made under the *ICAC Act* were appropriate, including whether any undue prejudice to the reputation of any person was caused by the exercise of a power, performance of a function or decision made.
8. The primary focus of my review has been on the practices and procedures adopted by ICAC in the course of its investigation into Mr Hanlon, and whether undue prejudice to the reputation of Mr Hanlon was caused by the investigation. The most significant steps taken by ICAC were the decisions to investigate Mr Hanlon, and the decision to refer the matter to the DPP.
9. I note that clause 9 of schedule 4 of the current *ICAC Act* does not limit the matters that may be the subject of a review. I have drafted the Terms of Reference in order to provide particularity and transparency as to the scope of my inquiry. The decision to investigate Mr Hanlon is specifically referred to in the Terms of Reference. One of the primary objects of the *ICAC Act* (both now, and as enacted) is 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). This primary object has informed my discretion as to what I may examine in this review.
10. I have had access to the brief of evidence referred to the Director of Public Prosecutions (**DPP**) by ICAC in respect of the prosecution of Mr Hanlon, as well as internal ICAC documents and other evidence obtained in the course of my inquiry.

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11. In addition, I have had the significant benefit of hearing evidence from those who were directly involved in the ICAC investigation. I conducted examinations in private pursuant to schedule 2 of the current *ICAC Act* of key (current and former) ICAC personnel and other relevant persons. By and large, the witnesses who appeared before me did their best to answer questions and to assist me with events that occurred some time ago. I acknowledge that the subject of these examinations has been difficult for some witnesses, who have also been the subject of public scrutiny in relation to the investigation into Mr Hanlon.
12. I wish to thank Commissioner Vanstone and her staff, and the DPP Mr Martin Hinton KC and his office, for their considerable assistance throughout the course of this review, including by promptly responding to inquiries and making available to me and my office all information requested. I thank the following witnesses who attended voluntarily: Mr Hinton KC, DPP; the Hon Bruce Lander KC, former Independent Commissioner Against Corruption; the Hon Justice Sandra McDonald, former Deputy DPP; Mr Michael Riches, former Deputy Independent Commissioner Against Corruption; Magistrate Roderick Jensen, former Director Legal of ICAC; Mr Steven Dalton, ICAC Investigations Team Leader; and Mr Peter Sams, former Counsellor and Consul-General in Berlin.
13. While my review has identified a number of significant errors in ICAC's conduct during the course of the investigation into Mr Hanlon, I have found that the investigation of Mr Hanlon and the referral of that investigation to the DPP were reasonable and appropriate. Based on the evidence available to the ICAC investigators, the investigation and referral were important in order to detect, prevent and minimise corruption in public administration.
14. Any criticism or recommendations I make in this Report should be viewed as an opportunity to improve ICAC's processes in order to safeguard its essential role in guarding against corruption. ICAC continues to perform a crucial role in carrying out its functions and in ensuring that corruption in public administration does not go unchecked.
15. I have heard, and received, submissions made on behalf of Mr Hanlon, who submitted that the Terms of Reference do not require me to express a view as to whether the decision of ICAC to investigate Mr Hanlon was justified.¹⁰ Mr Hanlon also submitted that the Terms of Reference do not require me to make any "*evaluative assessment of the question whether the decision by the ICAC to investigate Mr Hanlon was*

¹⁰ Exhibit 209 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (29 May 2023) at [3].

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appropriate".¹¹ I reject those submissions. Clause 9 of schedule 4 of the current *ICAC Act* does not limit the matters that may be the subject of a review. Further, I may examine any particular exercises of power, performance of a function or decision made by the OPI or ICAC.

16. The decision by ICAC to investigate Mr Hanlon and the decision to refer the allegations against Mr Hanlon to the DPP are relevant for the purpose of my review. In order to determine whether the exercises of power, performance of a function or decision made involved corruption, misconduct or maladministration by ICAC, or caused undue prejudice to any person, or whether the practices and procedures of ICAC were effective and efficient, it is necessary to closely examine the evidence or material that was available to ICAC at various points in time which informed their exercise of power, performance of a function or decision making and which shaped how the investigation into Mr Hanlon progressed. For that reason, my report must refer in some detail to some of the evidence and material available to the ICAC investigators.
17. To test this proposition, let us assume that when the Melbourne allegation was referred to the DPP, I found that there was no evidence to support the laying of any charges. If that were the case, that would make it more likely that I would find that ICAC's referral of the investigation to the DPP involved misconduct on the part of ICAC. It is inevitable that this Report will descend into some detail of the evidence or material available to ICAC which resulted in ICAC investigating and referring the Melbourne allegations and Germany allegations.
18. Mr Hanlon's representatives have submitted to me that "*he elects not to contest or dispute a finding by you that there is no evidence of corruption or improperly [sic] in connection with the decision to commence the investigation into Mr Hanlon and the referral of the Melbourne trip to the ODPP nor that he suffered undue prejudice as a consequence*".¹² Despite this appropriate concession, I consider that my role requires me to independently assess these matters, by examining the evidence before me and also referring to previous submissions made by Mr Hanlon.
19. The primary objects of the current *ICAC Act* seek to balance the public interest in investigating corruption, misconduct or maladministration in public administration and avoiding undue prejudice to any person's reputation.¹³ I have considered whether the publication of any part of this Report will cause undue prejudice to Mr Hanlon or any

¹¹ Ibid.

¹² Exhibit 279 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (19 June 2023) at p 5.

¹³ Current *ICAC Act* s 3(1)(c).

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other person such as Ms Vasilevski. In relation to Ms Vasilevski, it is important to highlight that she has not been convicted of any criminal offence arising out of the ICAC investigation which was the subject of a referral to the DPP. Ms Vasilevski is entitled to the presumption of innocence and nothing in this Report should be construed as inculcating her in the commission of any criminal offence.

20. Mr Hanlon submitted that any publication in this Report of the evidence available to the ICAC investigators will itself cause him undue prejudice.¹⁴ In relation to the Melbourne investigation, it is submitted that publication of the evidence available to ICAC would *“irredeemably prejudice Mr Hanlon’s right to a fair trial were the Melbourne charges to be re-opened”*.¹⁵
21. It is important to emphasise that my role is **not** to examine whether Mr Hanlon was guilty of corrupt or criminal conduct. Accordingly, I do **not** make any finding as to Mr Hanlon’s guilt or innocence or whether he was guilty of corrupt conduct. On 9 November 2022, the DPP entered a *nolle prosequi* in relation to the charges faced by Mr Hanlon. Mr Hanlon never went to trial in relation to the criminal charges he faced. The presumption of innocence which Mr Hanlon is entitled to has not been rebutted. There is no information before me which indicates that the DPP intends to re-open any of those charges.
22. Furthermore, it is not my role to determine whether or not Mr Hanlon should have been charged by the DPP or to examine the conduct of the DPP or the forensic decisions that underpinned the prosecution of Mr Hanlon.
23. I have carefully considered whether this Report strikes 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 as provided for by section 3(1)(c) of the current *ICAC Act*. I am satisfied that it is necessary and appropriate to include in this Report some details of the evidence obtained during the investigation and the evidence relied upon to refer the investigations to the DPP for adjudication. I am acutely conscious that the publication of that material may itself cause prejudice to Mr Hanlon and to other persons including Ms Vasilevski. In considering that issue, I have taken into account the significant amount of publicity which the investigation and prosecution of Mr Hanlon has generated in South Australia. That publicity has reflected adversely on Mr Hanlon but

¹⁴ See, e.g., Exhibit 279 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (19 June 2023) at p 2.

¹⁵ Exhibit 209 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (29 May 2023) at [12].

also on the institution of ICAC itself. There have been serious allegations made in the public domain that the ICAC officers have engaged in serious illegality or even in corrupt activity. A table of relevant media coverage and public discourse is contained at **Appendix B**.

24. I believe it is in the public interest that there is transparency in both the criticisms that I make of ICAC but also any findings that I make about whether ICAC itself has engaged in corruption, misconduct or maladministration. Merely to state the findings about those matters without detailing the reasoning and the evidence in support of those findings would not be in the public interest. Ultimately, as I set out below, I have found no evidence that ICAC engaged in corruption or misconduct in public administration. However, I have found evidence of maladministration in public administration in a discrete number of aspects of the investigation into Mr Hanlon.
25. Furthermore, there have been significant and weighty submissions about what findings I should make in this Report. In order to properly deal with those submissions, it is necessary to refer in some detail to the evidence considered by ICAC and, in one respect, by the DPP.
26. I am required to afford procedural fairness to anyone about whom an adverse finding has been made.¹⁶ I have provided relevant portions of the draft report to relevant interested parties for their review and invited them to make any submissions in response. I have reviewed and carefully considered all submissions made by those parties. Where appropriate, submissions have resulted in amendments to this Report. The findings of fact in this Report are made on the civil standard, namely the balance of probabilities, based on the principles set out in *Briginshaw v Briginshaw*.¹⁷

¹⁶ *Kioa v West* (1985) 159 CLR 550.

¹⁷ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

II. Background – Mr Hanlon and Renewal SA

27. On 21 July 2014, Mr Hanlon commenced as the Chief Executive of Renewal SA, appointed by the Minister for Housing and Urban Development, for a period of five years, pursuant to section 17 of the *Housing and Urban Development (Administrative Arrangements) Act 1985* (SA) (now the *Urban Renewal Act 1995* (SA)) (**Renewal SA Act**).
28. Renewal SA is the trading name for the Urban Renewal Authority,¹⁸ which is governed by a Board whose seven members are each appointed by the Governor of South Australia. The Board is subject to the control and direction of the Minister, which at the relevant time was the Minister for Housing and Urban Development. The Hon Stephen Mullighan MP held this role from January 2016 until the change of government on 19 March 2018.
29. The general role of Renewal SA at the relevant time was to facilitate urban development opportunities for the public and private sector through access to government land holdings. Renewal SA's statutory functions involved promoting residential, commercial and industrial development in the public interest for urban renewal processes; encouraging and facilitating public and private sector investment; and participation in the development of South Australia. Its functions include promoting South Australian development that is attractive to potential investors.¹⁹
30. Mr Hanlon's employment contract classified him as a senior official and a public sector employee, but not a public servant.²⁰ According to the Position Profile for the Chief Executive of Renewal SA (**Position Profile**),²¹ the Chief Executive's role involved working to "accelerate urban renewal through ongoing partnerships and engagement with industry, not-for-profit sectors, community and all levels of government".²² The Position Profile included that the Chief Executive was responsible for providing strategic leadership of Renewal SA and collaborating with industry and other stakeholders,²³ and referred to attracting private sector investment.²⁴
31. The Position Profile stated that "*intrastate and interstate travel*" was a technical

¹⁸ The Urban Renewal Authority is a statutory corporation established under pt 3 of the *Urban Renewal Act 1995* (SA) (**Renewal SA Act**).

¹⁹ See Renewal SA Act pt 2A clause 7C.

²⁰ Exhibit 1 – Renewal SA, *Executive contract of John Hanlon* (21 July 2014) at [1.7]-[1.8].

²¹ Exhibit 2 – Renewal SA, *Position Profile – Chief Executive* (undated).

²² Ibid at p 1 under heading 'Our Role at Renewal SA'.

²³ Ibid at p 2-3.

²⁴ Ibid at p 3 under heading 'Our Role at Renewal SA' and under heading 'Key Accountabilities, Strategic Planning and Leadership'.

requirement of the role.²⁵ The Position Profile (and Mr Hanlon's Executive contract) were both silent as to any requirements for international travel.

The legislative scheme

32. The current *ICAC Act* has been significantly amended since 2018 when ICAC commenced its investigation into Mr Hanlon. In 2018, at the start of the investigation into Mr Hanlon, the Commissioner's functions (set out in section 7 of the *Independent Commissioner Against Corruption Act 2012 (SA) (ICAC Act)*) relevantly included the identification of corruption in public administration for investigation and referral for prosecution, or referral to a law enforcement agency for investigation and prosecution.²⁶ In contrast, pursuant to section 7 of the current *ICAC Act*, the Commissioner does not have the direct referral for prosecution as a function, but instead may investigate corruption in public office and refer it to a law enforcement agency for further investigation and prosecution.²⁷
33. In 2018, the Commissioner's functions also included the identification of serious or systemic misconduct or maladministration in public administration, a function that has since been removed from current the *ICAC Act*.²⁸
34. The *ICAC Act* separately established the OPI. In 2018, the functions of the OPI included receiving and assessing complaints about public administration from members of the public; receiving and assessing reports about corruption, misconduct and maladministration in public administration from inquiry agencies, public authorities and public officers; and referring complaints and reports to inquiry agencies, public authorities and public officers in circumstances approved by the Commissioner or making recommendations to the Commissioner in relation to complaints and reports.²⁹
35. After receiving a complaint or report, section 23(1) of the *ICAC Act* required the OPI to assess the complaint or report as falling within one of the following categories:³⁰
- 35.1 raising a "*potential issue of corruption in public administration that could be the subject of a prosecution*"; or
- 35.2 raising a "*potential issue of misconduct or maladministration in public administration*"; or

²⁵ Ibid at p 5 under heading 'Qualifications/Technical Requirement, Technical Requirements'.

²⁶ *Independent Commissioner Against Corruption Act 2012 (SA)* s 7 as in force 16 May 2018 (**ICAC Act**).

²⁷ Current *ICAC Act* s 7.

²⁸ *ICAC Act* s 7(1)(ca).

²⁹ Ibid s 17.

³⁰ Ibid s 23(1).

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- 35.3 raising “some other issue that should be referred to an inquiry agency, public authority or public officer”; or
- 35.4 determining it to be “trivial, vexatious or frivolous, ... previously having been dealt with by an inquiry agency or public authority” and determining there was “no reason to re-examine it or there was other good reason why no action should be taken in respect of it”.
36. In 2018, the definition of “corruption in public administration” included:³¹
- (a) an offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes:
 - (i) Bribery or corruption of public officers
 - (ii) Threats or reprisals against public officers
 - (iii) Abuse of public office
 - (iv) Demanding or requiring benefit on basis of public office
 - (v) Offences relating to appointment to public office
 - (b) an offence against the Public Sector (Honesty and Accountability) Act 1995 or the Public Corporations Act 1993, or an attempt to commit such an offence; or
 - ...
 - (c) any other offence (including an offence against Part 5 (Offences of dishonesty) of the Criminal Law Consolidation Act 1935) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence;
37. The OPI was also required to make a determination as to whether or not action should be taken to refer the matter or to make recommendations to the Commissioner.³²
38. The Commissioner also had the power to assess, or require the OPI to assess, any other matter identified by the Commissioner on his or her own initiative or in the course of performing functions under the ICAC Act.³³
39. If the OPI assessed a matter under section 23(1)(a) as raising a potential issue of corruption in public administration that could be the subject of a prosecution, the ICAC Act required the matter to be either investigated by the Commissioner or referred to

³¹ Ibid s 5(1).

³² Ibid s 23(1).

³³ Ibid s 23(2).

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South Australia Police (**SAPOL**) or another law enforcement agency.³⁴ The question of whether action was taken, and what action was taken, was at the absolute discretion of the Commissioner.³⁵

40. Once an investigation was complete, or at any time during an investigation, the Commissioner had the capacity to refer a matter to the relevant law enforcement agency for further investigation and potential prosecution, and/or refer a matter to a public authority for further investigation and potential disciplinary action against a public officer for whom the authority was responsible.³⁶
41. The relevant sections of the *ICAC Act* that operated in 2018 are contained in **Appendix C** to this Report.

³⁴ *ICAC Act* s 24(1).

³⁵ *ICAC Act* s 24(7).

³⁶ *ICAC Act* s 36(1).

III. Was the decision by the Commissioner to investigate Mr Hanlon appropriate under the *ICAC Act*?

42. On 16 May 2018, Mr Lander determined to investigate allegations against Mr Hanlon pursuant to section 24(1)(a) of the *ICAC Act*.³⁷ The matter was allocated reference number 2018/003882.
43. This Part of the Report examines the Commissioner's decision to investigate Mr Hanlon with reference to the *ICAC Act* and the facts known at the time the decision was made. Mr Hanlon's legal representatives, in their final submissions to me, accepted that there was a proper basis for ICAC to investigate allegations against Mr Hanlon about his trip to Melbourne.³⁸ Despite this concession, I consider that I am required to independently assess this exercise of the Commissioner's functions.

OPI reports and referrals

44. The OPI received two reports from different employees within Renewal SA regarding bullying and harassment within the organisation in February and March 2018, respectively. The reports that ultimately informed the ICAC investigation into Mr Hanlon are described in detail below.

Matter 2018/003579

45. In April 2018, the OPI received a number of anonymous reports about Mr Hanlon.
46. On 12 April 2018, an anonymous caller telephoned the OPI and reported that Mr Hanlon regularly took leave without arranging a delegation of his authority or lodging annual leave requests, for the purpose of accruing leave balances that would later be paid out.³⁹ The caller referred to a leave period of two months in December 2017 and January 2018 at which time no one in the agency was aware of who to contact in Mr Hanlon's absence. The caller also alleged that Mr Hanlon had been on work trips overseas where he had taken additional time for personal reasons, and that there was no transparency around the period of time that he would be away.⁴⁰
47. The OPI's assessment of the report considered that it was based upon information not

³⁷ Exhibit 108 – Commissioner Lander KC (ICAC), *2018/003882 Section 24 Decision (Report/Complaint)* (16 May 2018).

³⁸ Transcript of Proceedings, *Review into the investigation and prosecution of John Hanlon* (Office of the Inspector, Phillip Strickland SC, 28 March 2023 to 19 May 2023) at p 710 [29] (**Transcript**).

³⁹ Exhibit 6 – Office for Public Integrity, *2018/003579 Incoming Telephone Call* (12 April 2018).

⁴⁰ *Ibid*.

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personally known to the caller, and that there may be a number of reasons why certain details were not communicated within the office about Mr Hanlon's whereabouts.⁴¹ The OPI assessed that on the limited information provided, no potential issue of corruption, misconduct or maladministration had been raised.⁴² The matter was allocated number 2018/003579. No further action was taken.⁴³

Matter 2018/003835

48. On 5 April 2018, the Hon Vickie Chapman MP, Deputy Premier and Attorney-General, received an anonymous letter which alleged that Mr Hanlon and Ms Georgina Vasilevski had used taxpayer funds to pay for a trip to Melbourne during Melbourne Cup week that was not for business or official purposes.⁴⁴ The report also alleged that this was not an isolated incident. Ms Chapman forwarded the report to the OPI under cover of letter dated 30 April 2018, which was received by the OPI on 2 May 2018.⁴⁵
49. The OPI's assessment of the report on 3 May 2018 questioned whether the limited and anonymous information available was sufficient to support an assessment of corruption that could be the subject of prosecution. Accordingly, the OPI assessed the matter as raising potential issues of misconduct and maladministration and raised a notice of intent to refer the matter to the relevant minister for investigation.⁴⁶ The matter was allocated number 2018/003835. Mr Lander agreed with the OPI's assessment and referred the matter to the Hon Stephan Knoll, Minister for Transport and Infrastructure.⁴⁷

Matter 2018/003882

50. Also on 3 May 2018, the OPI received an online report from a different employee of Renewal SA in respect of Mr Hanlon and Ms Vasilevski.⁴⁸ The report alleged, among

⁴¹ Exhibit 7 – Office for Public Integrity, *2018/003579 OPI S 23 Assessment (Report/Complaint)* (13 April 2018). The OPI assessed the matter in accordance with s 23(1)(d) of the *ICAC Act*.

⁴² *Ibid.*

⁴³ Exhibit 106 – Commissioner Lander KC (ICAC), *2018/003579 Section 24 Decision (Report/Complaint)* (13 April 2018).

⁴⁴ Exhibit 8 – Letter from the Hon Vickie Chapman MP, Deputy Premier and Attorney-General, to the Office for Public Integrity enclosing anonymous letter, 30 April 2018.

⁴⁵ *Ibid.*

⁴⁶ Exhibit 10 – Office for Public Integrity, *2018/003882 OPI S 23 Assessment (Report/Complaint)* (3 May 2018). The OPI assessed the matter in accordance with s 23(1)(b) of the *ICAC Act*.

⁴⁷ Exhibit 107 – Commissioner Lander KC (ICAC), *2018/003835 Section 24 Decision (Report/Complaint)* (4 May 2018).

⁴⁸ Exhibit 9 – Office for Public Integrity, *2018/003882 Online Complaint and Report Form* (3 May 2018). The identity of the employee has been withheld from this Report but was known to the OPI at the time the report was made.

other matters.⁴⁹

- 50.1 Mr Hanlon and Ms Vasilevski had travelled to Melbourne in November 2017 during the week of the Melbourne Cup using taxpayer funds. The travel was not associated with their work at Renewal SA and neither had any work meetings or any other work which required their attendance in Melbourne that week. The reporter provided details about the price of the accommodation and the identity of the person who booked the accommodation and flights;
- 50.2 Mr Hanlon rarely submitted leave forms for any leave that he took;
- 50.3 Mr Hanlon had directed an employee in Renewal SA to destroy receipts that related to purchases on his departmental credit card which were not work related and had provided fake odometer readings for his government vehicle on occasion; and
- 50.4 Mr Hanlon had engaged in bullying towards certain staff at Renewal SA.
51. The OPI assessed the report and formed the view that the allegations about the Melbourne trip may give rise to an offence of abuse of public office and that the conduct alleged raised a potential issue of corruption in public administration.⁵⁰
52. The report alleged that Mr Hanlon and Ms Vasilevski had used public monies to fund their Melbourne trip, which was for non-work-related reasons. The OPI assessed this alleged conduct as potential corruption in the form of an offence of abuse of public office.
53. Regarding improper record keeping, the report alleged that that Mr Hanlon had directed his assistant to destroy receipts relating to credit card expenditure and submitted false odometer readings for his vehicle, and that Mr Hanlon and Ms Vasilevski had both failed to submit leave forms when required.⁵¹ The OPI assessed that this conduct gave rise to an issue of *“improper expenditure and dishonestly dealing with documents”*.⁵²
54. *“Corruption in public administration”* was defined in section 5 of the *ICAC Act*.⁵³

⁴⁹ Ibid at p 4.

⁵⁰ Exhibit 11 – Office for Public Integrity, *2018/003835 OPI S 23 Assessment (Report/Complaint)* (10 May 2018).

⁵¹ Exhibit 9 – Office for Public Integrity, *2018/003882 Online Complaint and Report Form* (3 May 2018) at p 4.

⁵² Exhibit 11 – Office for Public Integrity, *2018/003835 OPI S 23 Assessment (Report/Complaint)* (10 May 2018) at p 2.

⁵³ Noting that significant amendments have been made to the current *ICAC Act*, the definition of corruption in public administration remains in s 5.

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Relevantly, it included offences of abuse of public office⁵⁴ and dishonestly dealing with documents, which is an offence against part 5 of the *Criminal Law Consolidation Act 1935* (SA) (**CLCA**).⁵⁵

55. Additionally, the OPI assessment noted that the allegations regarding the Melbourne trip and improper record keeping “*could be considered [together] on the basis that they both related to expenditure*”.⁵⁶ I understand this to be referring to section 5(2) of the *ICAC Act* which enabled matters incidental to corruption to be dealt with in the same manner as the corruption allegations.
56. Accordingly, the issues raised in the report were assessed as raising potential issues of corruption in public administration under section 23(1)(a) of the *ICAC Act* and was referred to the Commissioner.⁵⁷ Mr Lander agreed with the OPI’s assessment and determined to undertake an investigation into the same.⁵⁸
57. The OPI placed particular weight on the fact that the report provided additional information to that provided in the anonymous report received by Ms Chapman, including the price of the accommodation, the person responsible for booking the accommodation and flights, and that the accommodation was paid for on the departmental credit card.⁵⁹ Further, the OPI noted the position and role of the reporter at the time the booking was made, and therefore had reason to know whether Mr Hanlon and Ms Vasilevski had work-related reasons to travel to Melbourne.⁶⁰
58. The Renewal SA employee’s report followed one anonymous report that had raised issues regarding leave taken by Mr Hanlon (2018/003579) and a second anonymous report that raised concerns about the Melbourne trip (2018/003835). OPI was entitled to consider that there were two different sources for the information against Mr Hanlon. Mr Hanlon contends that there may only have been one source and if so, there was no corroboration of the complaint. That contention is wrong. There were two employees of Renewal SA who were the source of complaints.

⁵⁴ Pursuant to *ICAC Act* s 5(1)(a)(iii), “*abuse of public office*” is an offence against pt 7 div 4 of the *CLCA*.

⁵⁵ Pursuant to *ICAC Act* s 5(1)(c), “*corruption in public administration*” includes any other offence including offences of dishonesty in pt 5 of the *CLCA* (dishonestly dealing with documents). Under the current *ICAC Act*, dishonestly dealing with documents is no longer an offence that falls within the definition of “*corruption in public administration*”.

⁵⁶ Exhibit 11 – Office for Public Integrity, 2018/003882 OPI S 23 Assessment (Report/Complaint) (10 May 2018) at p 2-3.

⁵⁷ Ibid.

⁵⁸ Exhibit 108 – Commissioner Lander KC (ICAC), 2018/003882 Section 24 Decision (Report/Complaint) (16 May 2018).

⁵⁹ Exhibit 11 – Office for Public Integrity, 2018/003882 OPI S 23 Assessment (Report/Complaint) (10 May 2018) at p 1.

⁶⁰ Ibid at p 1-2.

59. In any event, it is irrelevant whether the allegations were corroborated. There was no requirement in sections 23(1) or 24(1) of the *ICAC Act* to only assess or investigate where there is corroboration of the reports. Mr Hanlon has submitted that the report must have come from a particular employee within his office who was disgruntled because they had been the subject of a disciplinary process within Renewal SA.⁶¹ The person who made the online report (2018/003882) was not the person identified by Mr Hanlon. Accordingly, I reject this submission.
60. The OPI assessed the allegations about Mr Hanlon and Ms Vasilevski's Melbourne trip, along with the allegations about leave records, receipts and the odometer readings, pursuant to section 23(1)(a) of the *ICAC Act*.⁶² The OPI recommended that the allegations be investigated by the Commissioner pursuant to section 24(1)(a) of the *ICAC Act*.⁶³ The OPI also recommended that the anonymous report made to Ms Chapman be reassessed as raising a potential issue of corruption.⁶⁴
61. Mr Lander agreed with the OPI's recommendations.⁶⁵ The matter was allocated reference number 2018/003882.

Assessment

62. The decision by Mr Lander to investigate the Melbourne trip and the report by the employee of Renewal SA about the use of public funds was appropriate and lawful. Once the OPI had assessed the report under section 23(1)(a), the Commissioner was required to either investigate the report or refer the matter to SAPOL or another law enforcement agency.⁶⁶ It was appropriate for the Commissioner to investigate the report rather than refer the matter for investigation.
63. Pursuant to section 7(1)(a) of the *ICAC Act*, the Commissioner's functions include to identify corruption in public administration and to investigate and, where appropriate, refer it for prosecution or to a law enforcement agency for investigation and prosecution. The online report of 3 May 2018 raised allegations which, on its face,

⁶¹ Exhibit 209 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (29 May 2023) at [5].

⁶² Exhibit 11 – Office for Public Integrity, *2018/003882 OPI S 23 Assessment (Report/Complaint)* (10 May 2018).

⁶³ *Ibid.*

⁶⁴ See Exhibit 156 – Matter note from OPI employee to Michael Riches (ICAC), 22 May 2018; Exhibit 157 – Matter note from Michael Riches (ICAC) to OPI employee, 23 May 2018; Exhibit 60 – ICAC, *2018/003882 Resolve case management running sheet* (4 May 2018 to 12 December 2022) at p 189 (**Exhibit 60 – Resolve running sheet**); Exhibit 11 – Office for Public Integrity, *2018/003882 OPI S 23 Assessment (Report/Complaint)* (10 May 2018).

⁶⁵ Exhibit 108 – Commissioner Lander KC (ICAC), *2018/003882 Section 24 Decision (Report/Complaint)* (16 May 2018).

⁶⁶ *ICAC Act* s 24(1).

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revealed misuse of public funds and therefore corruption in public administration. Accordingly, the investigation of the report to the OPI was an appropriate exercise of the Commissioner's functions.

IV. The investigation of Mr Hanlon's Melbourne trip

64. This Part of the Report addresses the steps taken by ICAC to investigate Mr Hanlon's Melbourne trip, including the use of surveillance devices (**SDs**) and search warrants, and the evidence available to investigators.

The beginning of the investigation

65. The investigation of Mr Hanlon and Ms Vasilevski's Melbourne trip was allocated to ICAC investigator Mr Richard Frost.⁶⁷
66. Following the decision to investigate the Melbourne trip, Mr Frost made initial inquiries with the reporter, who informed Mr Frost of the identity of the source of the information the subject of the report.⁶⁸ The source was another employee of Renewal SA who worked with Mr Hanlon (**the source**). Mr Frost then spoke to the source and recorded the following:⁶⁹

... [the source] feels a deep loyalty towards Hanlon - however [the source] considers [themselves] completely honest and is having difficulty with some of the actions occurring within the office (as described in the on-line report). [The source] feels that if [they] made a statement it would be obvious that the information has come from [them]. [The source] spoke about the bullying culture within Renewal SA and mentioned that Vasilevski [and others] all fully support Hanlon and do not question his actions.

67. On 1 June 2018, Mr Frost met with the source, who provided a folder identifying nine issues involving Mr Hanlon and Ms Vasilevski. Mr Frost assessed that the information provided by the source was at a general level only and Mr Frost recorded that the source was "unable to provide any direct evidence that could be utilised in the investigation".⁷⁰ Mr Frost recommended that no statement be taken from the source at that stage.⁷¹
68. Between June and September 2018, ICAC investigators undertook further investigations into Mr Hanlon and Ms Vasilevski's Melbourne trip. In June 2018, ICAC conducted an analysis of the credit card accounts of Mr Hanlon and Ms Vasilevski, including cross referencing against Outlook calendar entries to corroborate expenditure.⁷²
69. In June 2018, the emails of Mr Hanlon and Ms Vasilevski were restored, revealing their

⁶⁷ Exhibit 60 – Resolve running sheet at p 187, '17 May 2018, Allocate Investigation Team'.

⁶⁸ Ibid at p 186, '22 May 2018, Incoming Telephone Call'.

⁶⁹ Ibid at p 186, '22 May 2018, Incoming Telephone Call'.

⁷⁰ Ibid at p 185, '1 June 2018, Matter Note'.

⁷¹ Ibid at p 185, '1 June 2018, Matter Note'.

⁷² Ibid at p 183, '20 June 2018, Renewal SA'.

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email communication from 1 January 2017 to 25 May 2018. A review of those emails was conducted by ICAC.⁷³ Amongst other matters, the email restoration revealed that Mr Hanlon had planned a business trip to Europe in 2017 (see paragraph [147]).

70. On 8 August 2018, the source provided an affidavit to ICAC.⁷⁴ They stated that on 3 November 2017, Mr Hanlon directed that accommodation be booked for him at the Grand Hyatt Hotel in Melbourne for Friday, 10 November 2017 and Saturday, 11 November 2017 at a cost of \$500 per night. Mr Hanlon subsequently directed the booking of two additional nights of accommodation to allow him to check in to the same hotel on Wednesday, 8 November 2017. This was difficult because it was the time of the Melbourne Spring Racing Carnival and the accommodation cost \$873 per night.⁷⁵
71. The source alleged that Mr Hanlon “*never sought or obtained approval for any intrastate or interstate travel*”.⁷⁶ The source provided a copy of Renewal SA’s “Domestic and International Air Travel Policy” (**Travel Policy**).⁷⁷ The Travel Policy was approved on 5 November 2013, with a scheduled review date of 5 November 2016. The Travel Policy stated that it applied to all Renewal SA staff and “*any other individual who is approved to receive support for their travel expenses [by] Renewal SA*”,⁷⁸ and also that the Chief Executive’s travel must be approved by the Minister.⁷⁹ The delegations in the Travel Policy stated that approval of domestic and international travel of the Chief Executive was by the Minister.⁸⁰
72. Regarding domestic travel, Mr Hanlon has submitted to me that he was not required to have domestic travel approved by the Minister.⁸¹ In support of this, Mr Hanlon pointed to the evidence of Mr Mullighan, who was the relevant Minister at the time, given at Mr Hanlon’s committal hearing in the Magistrates Court on 18 June 2021. Mr Mullighan stated that as far as he was aware, there was no requirement for Mr Hanlon to seek ministerial approval for interstate travel and Mr Hanlon did not usually seek his approval to travel to Melbourne.⁸²

⁷³ Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [9]-[12].

⁷⁴ Exhibit 13 – Affidavit deposed by the source, 8 August 2018.

⁷⁵ Ibid at [28]-[32].

⁷⁶ Ibid at [31]-[32].

⁷⁷ Exhibit 13.3 – Renewal SA, *Domestic and International Air Travel Policy* (POL-HR22 v3, 5 November 2013) reproduced as ‘SAC-03’ to Exhibit 13 – Affidavit deposed by the source, 8 August 2018.).

⁷⁸ Ibid at p 3 [4].

⁷⁹ Ibid at p 8 [6.9].

⁸⁰ Ibid at p 4 [6].

⁸¹ Exhibit 158 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (12 May 2023) at [5].

⁸² Exhibit 145 – Transcript of Proceedings, *R v Hanlon & Vasilevski* (Magistrates Court of South Australia, AMC-20-2810, Magistrate Smart, 18 June 2021) at p 33 [1]-[13].

73. The evidence provided by Mr Mullighan was not available to the ICAC investigators. ICAC was entitled to have regard to the Travel Policy in respect to interstate travel approval.
74. I consider that at the time of ICAC's investigation into Mr Hanlon's Melbourne trip, there was no reason why ICAC investigators would be expected to disregard the express terms of the Travel Policy.

Were the complainants vexatious or motivated by bad faith?

75. It has been submitted to me on behalf of Mr Hanlon that the allegations made by the source (and others) were allegations made by "*disgruntled employees*", the suggestion being that they were baseless and should not have been investigated.⁸³ As I note above at paragraph [18], Mr Hanlon has nonetheless accepted that there was a proper basis for ICAC to commence the investigation. There is no evidence to support the assertion that the complainants were motivated by bad faith or that the complaints were simply a concoction of a "*disgruntled employee*". The preceding paragraphs reveal, to the contrary, that the source was circumspect in providing information to ICAC. The source said that, at some point, they felt a "*deep loyalty*" towards Mr Hanlon.⁸⁴ Furthermore, even if a reporter were "*disgruntled*", that would not of itself undermine the legitimacy of the allegations being made.
76. There was nothing at all in that material which prevented ICAC from taking any action under section 24(2) of the *ICAC Act* because it was vexatious or frivolous. A decision by ICAC not to investigate the complaint on that basis would have been a dereliction of ICAC's statutory duty.
77. Further, the information provided by the source and others was objective in nature (for example, in the form of business records, rather than the source's opinions). As discussed below, the information was subsequently corroborated by other information obtained by ICAC investigators. I do not find that the complaints were motivated by some ulterior purpose or that they were not genuinely made. There was sufficient evidence to support the continuation of the ICAC investigation.

The installation of surveillance devices

78. On or around 15 August 2018, Mr Frost ceased working at ICAC.⁸⁵ Detective Brevet

⁸³ Exhibit 209 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (29 May 2023) at [5], [22].

⁸⁴ Exhibit 60 – Resolve running sheet at p 186, '22 May 2018 – Incoming Telephone Call'.

⁸⁵ Mr Frost's last day is noted as being 15 August 2018: Exhibit 103.10 – Richard Frost (ICAC), 'Matters under investigation' v10 (Report for ICAC investigation meeting, 6 August 2018) at p 2.

Sergeant Amanda Bridge,⁸⁶ who had been the co-investigator assigned to the investigation,⁸⁷ took carriage of the matter as the primary investigator.⁸⁸

79. On 22 August 2018, ICAC sought a warrant (**SD warrant**) from the Supreme Court of South Australia to use four SDs under section 17 of the *Surveillance Devices Act 2016* (SA) (**SD Act**) in order to obtain evidence for use in the investigation of Mr Hanlon and Ms Vasilevski.⁸⁹ The application for the SD warrant specified that Mr Hanlon and Ms Vasilevski were suspected of having committed offences of abuse of public office and deception contrary to sections 251(1) and 137 of the *CLCA* in respect of the Melbourne trip.⁹⁰ The SD warrant application was endorsed by Mr Lander on 21 August 2018.⁹¹
80. The application for the SD warrant was supported by a comprehensive 24-page affidavit of Ms Bridge dated 22 August 2018.⁹² The affidavit of Ms Bridge addressed each of the matters specified in section 19(1) of the *SD Act* and set out in detail the information that was available to ICAC investigators at the time about the suspected conduct of Mr Hanlon and Ms Vasilevski.
81. The warrant was issued by the Hon Justice Kelly of the Supreme Court of South Australia on 23 August 2018.⁹³ Mr Hanlon has submitted that it is difficult to see how Justice Kelly could have arrived at the requisite satisfaction under section 17 of the *SD Act* that there were reasonable grounds for issuing the warrant if her Honour had properly taken into account, as her Honour was required to under section 17(1)(a) and (b), the extent to which the privacy of any person would be likely to be interfered with by use of the SD and the gravity of the criminal conduct to which the investigation relates.⁹⁴ Mr Hanlon submitted that the dearth of evidence available at the time suggests that “*the affidavits may have embellished or misrepresented*” the evidence.⁹⁵
82. I have read the affidavit of Ms Bridge. It does not contain misrepresentations or embellishments of the evidence.

⁸⁶ From 2016 to March 2020, Ms Bridge was seconded from her sworn position as a Detective Brevet Sergeant with South Australia Police (SAPOL) to ICAC: see Exhibit 57 – Affidavit of Amanda Bridge, 3 November 2022 at [3].

⁸⁷ Exhibit 60 – Resolve running sheet at p 187, ‘17 May 2018, Allocate Investigation Team’.

⁸⁸ Transcript at p 9 [23].

⁸⁹ Exhibit 185 – *Originating application for surveillance device warrants under SD Act ss 17-19 (Renewal SA)*, 22 August 2018.

⁹⁰ *Ibid* at [4.3].

⁹¹ Exhibit 186 – Handwritten note from Benjamin Broyd (ICAC) to Commissioner Lander KC (ICAC), 21 August 2018.

⁹² Exhibit 185.1 – Affidavit of Amanda Bridge in support of SD warrant application, 22 August 2018.

⁹³ Exhibit 237 – *Warrant for surveillance device (general) under SD Act ss 17-19* (SASC, Kelly J, 23 August 2018).

⁹⁴ Exhibit 209 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (29 May 2023) at [19], [23].

⁹⁵ *Ibid* at [23].

83. Mr Hanlon has submitted that, as the amount the subject of the allegations was less than \$4500 of public funds, the gravity of the criminal conduct was trivial and there were no reasonable grounds for issuing the warrant.⁹⁶ First, it is beyond my Terms of Reference to make any finding about whether Justice Kelly did or did not have reasonable grounds for issuing the warrant. The focus of this Report is on the conduct of ICAC.
84. Second, the submission that the allegation was trivial because it only involved \$4500 of public funds is without merit. The deliberate misuse of public funds by the senior executive of a statutory body may warrant investigation even if small amounts are involved, depending on the circumstances. This was a matter in which multiple complaints were received into the conduct of Mr Hanlon relating to his travel allowances. I do not consider that ICAC is obliged to only investigate matters that might be characterised as “*high value*”. If this were the case, lower level but persistent corruption may continue unchecked.
85. Ms Bridge fairly dealt with this issue in her affidavit and Justice Kelly clearly considered the issue of the gravity of the criminal conduct.⁹⁷ There can be no criticism whatsoever of Ms Bridge in the decision to apply for the SD warrants and the contents of her affidavit in support of the warrant.
86. I am satisfied that the decision to seek the SD warrant was an appropriate step taken by ICAC investigators to obtain evidence in the investigation of Mr Hanlon. It did not involve any unreasonable invasion of privacy.

Telephone intercepts

87. On 29 August 2018, Ms Bridge made an application under section 46 of the *Telecommunications (Interception and Access) Act 1979* (Cth) (**TIA Act**) for two telecommunications service warrants for the telephone numbers suspected to be used by Mr Hanlon and Ms Vasilevski (**TI warrants**).⁹⁸ The application was supported by a 25-page affidavit dated 29 August 2018 sworn by Ms Bridge as required by section 42 of the *TIA Act*.⁹⁹
88. Having had regard to the application and supporting affidavit, I am satisfied that each of the relevant matters set out in section 46(2) of the *TIA Act* were addressed in support

⁹⁶ Ibid at [37].

⁹⁷ Exhibit 185.1 – Affidavit of Amanda Bridge in support of SD warrant application, 22 August 2018.

⁹⁸ Exhibit 257 – *Application for telecommunications service warrant under TIA Act s 46* (John Hanlon), 29 August 2018; Exhibit 258 – *Application for telecommunications service warrant under TIA Act s 46* (Georgina Vasilevski), 29 August 2018.

⁹⁹ Exhibit 259 – Affidavit of Amanda Bridge in support of telecommunications service warrants, 29 August 2018.

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of the application for the TI warrants.¹⁰⁰ In her affidavit, Ms Bridge set out in detail the information that was available to ICAC investigators at the time about the suspected conduct of Mr Hanlon and Ms Vasilevski.¹⁰¹

89. The TI warrants were issued on 30 August 2018 by the Honourable Judge Heffernan.¹⁰² On or around 25 September 2018, ICAC investigators formed a view that the TI warrants were no longer necessary for the purposes of the investigation because Mr Hanlon and Ms Vasilevski were no longer in the office.¹⁰³ Accordingly, the TI warrants were revoked pursuant to section 57 of the *TIA Act* on 25 September 2018 by then Deputy Commissioner of ICAC, Michael Riches.¹⁰⁴ This was a substantially shorter period of interception than the application for the two warrants had sought, being 53 days.
90. As I found in respect of the decision of ICAC to seek the SD warrant, pursuant to my Terms of Reference, it is not for me to make any findings or draw any conclusions about the appropriateness of the grant of the two warrants by his Honour Judge Heffernan. I am satisfied that the decision to seek the TI warrants was an appropriate investigative step taken by ICAC investigators to obtain evidence in the investigation of Mr Hanlon. There is no evidence in the affidavit of Ms Bridge that I consider to be misrepresented or embellished. There can be no criticism of Ms Bridge for the decision to apply for the two warrants nor of the affidavit she deposed in support of the application.

The material obtained by the surveillance devices

91. Importantly, in August 2018, SDs were installed in the offices of Mr Hanlon and Ms Vasilevski at Renewal SA. The SDs commenced monitoring the offices on 26 August 2018 and finished on 25 September 2018.¹⁰⁵
92. The SDs in the Renewal SA office recorded conversations between Mr Hanlon,

¹⁰⁰ Ibid; Exhibit 257 – *Application for telecommunications service warrant under TIA Act s 46 (John Hanlon)*, 29 August 2018; Exhibit 258 – *Application for telecommunications service warrant under TIA Act s 46 (Georgina Vasilevski)*, 29 August 2018.

¹⁰¹ Exhibit 259 – Affidavit of Amanda Bridge in support of telecommunications service warrants, 29 August 2018.

¹⁰² Exhibit 260 – *Warrant for telecommunications service warrant under TIA Act s 46 (Georgina Vasilevski)* (SADC, Heffernan DCJ, 30 August 2018); Exhibit 260.1 – *Warrant for telecommunications service warrant under TIA Act s 46 (John Hanlon)* (SADC, Heffernan DCJ, 30 August 2018).

¹⁰³ Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [92].

¹⁰⁴ Exhibit 261 – Michael Riches (ICAC), *Revocation of telecommunications service warrant under TIA Act s 57 (John Hanlon)*, 25 September 2018; Exhibit 262 – Michael Riches (ICAC), *Revocation of telecommunications service warrant under TIA Act s 57 (Georgina Vasilevski)*, 25 September 2018.

¹⁰⁵ Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [92].

Ms Vasilevski and others.¹⁰⁶

93. On 18 September 2018, Ms Bridge telephoned a person who worked directly with Ms Vasilevski (**Employee A**) to advise that she wanted to obtain a statement about Mr Hanlon and Ms Vasilevski travelling to Melbourne during the Melbourne Cup week in 2017. Employee A asked Ms Bridge to call them back in five minutes. Ms Bridge advised Employee A that there were confidentiality requirements surrounding their discussion, which Ms Bridge would explain further when she called again.¹⁰⁷ Shortly after, Employee A entered Ms Vasilevski's office and advised her of the conversation with Ms Bridge.¹⁰⁸ Employee A then left, and Ms Vasilevski was recorded discussing the same with another senior employee of Renewal SA (**Employee B**), including whether they were "*clean*".¹⁰⁹ Ms Vasilevski also called Mr Hanlon and informed him of the call between Employee A and Ms Bridge.¹¹⁰
94. Later on 18 September 2018, Ms Bridge called Employee A again as requested, and informed Employee A of the confidentiality provision in section 54 of the *ICAC Act*. Ms Bridge also requested that Employee A provide a statement in relation to the travel arrangements for Ms Vasilevski and Mr Hanlon for the Melbourne trip.¹¹¹ Following the phone call, Employee A proceeded to discuss Ms Bridge's request for a statement with Mr Hanlon, Ms Vasilevski and a further senior employee at Renewal SA (**Employee C**).¹¹² The SDs monitored Mr Hanlon and Ms Vasilevski as they continued to discuss their movements in Melbourne.¹¹³
95. Employee A, Ms Vasilevski and Mr Hanlon then met in Mr Hanlon's office to discuss Ms Vasilevski's movements in Melbourne.¹¹⁴ The SDs recorded Mr Hanlon and Ms Vasilevski having the following discussion regarding their movements in Melbourne. At this point in time, Mr Hanlon and Ms Vasilevski knew there was an ICAC

¹⁰⁶ Relevantly, Ms Bridge reproduced excerpts of conversations caught by the surveillance devices in Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 and annexed the full transcripts to the same. The surveillance device transcripts have been tendered separately as Exhibit 86.

¹⁰⁷ Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [39].

¹⁰⁸ Exhibit 86.23 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-b_532* (ICAC, 18 September 2018) at p 6 [28].

¹⁰⁹ Ibid at p 15 [12].

¹¹⁰ Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [42].

¹¹¹ Ibid at [44]–[45].

¹¹² Ibid at [47].

¹¹³ Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [48]–[51]. See Exhibit 86.4 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-a_882* (ICAC, 19 September 2018) at p 15; Exhibit 86.25 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-b_535* (ICAC, 19 September 2018) at pp 9 [8], 12 [5]; Exhibit 86.5 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-a_844* (ICAC, 19 September 2018) at p 2 [10]; Exhibit 86.6 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-a_845* (ICAC, 19 September 2018) at p 2 [15].

¹¹⁴ Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [43].

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investigation on foot in relation to the Melbourne trip:¹¹⁵

HANLON *Yeah but that's the other thing that's wrong. They will want to know who we met there.*

VASILEVSKI *Hmm?*

HANLON *Who we met there.*

VASILEVSKI *Well we can just say we didn't actually didn't, we actually physically didn't meet anyone. All we did was we went to the University, we went and we did a tour of it ourselves, we went and had a look at it ourselves.*

HANLON *Well what's this all about then?*

VASILEVSKI *Mmm*

HANLON *We toured around the university, we went down to Fishermans Bend, we were looking at the school, and then we were looking at the land and how it was laid out. We were looking at all of the south end precinct area because we were taking it in. Afterwards we went and had some lunch. You went back. I stayed on.*

....

HANLON *And the horse racing, you know Melbourne Cup is Tuesday, there's a meeting on the Thursday, which we were in, and there's a meeting on the previous Saturday.. Well we weren't there, we weren't there for the Melbourne Cup. We were in meetings all day on the Thursday so that's got nothing to do with the Spring racing*

(underlining added)

96. It was open to ICAC investigators to form a view that Mr Hanlon and Ms Vasilevski were colluding about their movements in Melbourne.
97. Following that conversation, the SDs in Ms Vasilevski's office recorded Ms Vasilevski, Mr Hanlon and Employee A discussing the Melbourne trip. The conversation related to what Employee A should tell ICAC when they provided a statement:¹¹⁶

HANLON *And you can just say look I took the opportunity once you spoke to me if I have made a mistake –*

VASILEVSKI *No, no, don't try and make it that we're not together like as in we, we did, we did that stuff together.*

¹¹⁵ Exhibit 86.23 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-b_535* (ICAC, 18 September 2018) at pp 20 [13]–[27], 25 [6].

¹¹⁶ *Ibid* at p 24.

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...

HANLON: *Um John got in late Wednesday, you can see he had dinner, he caught up with Georgina, had dinner with her. Um, they went off on the Thursday. You can see late on the Thursday they had dinner, lunch, um.*

...

HANLON *And then I didn't see Georgina after that. She took off because you were catching up with your family or some damn thing that that she was doing.*

VASILEVSKI *Yeah*

HANLON *Um I don't know, did you stay that night at, in the hotel or did you stay at your brother-in-law's?*

...

VASILEVSKI *The first night I stayed at my brother's. The second night I stayed at the hotel.*

...

HANLON *Yep so she did that and I then I didn't see you again...*

(underlining added)

98. On the same day, before the conversation referred to above, the SDs in Mr Hanlon's office recorded the following conversation between Mr Hanlon, Ms Vasilevski and Employee A regarding where Ms Vasilevski stayed while in Melbourne:¹¹⁷

HANLON *Did you do your own accommodation or were you staying at the um, the one in –*

VASILEVSKI *No, no I'm pretty sure I was stayed at my brother's*

EMPLOYEE A *(inaudible) double check but I'm pretty sure you stayed at your brother's*

VASILVESKI *Yeah*

99. During the course of ICAC's search of Renewal SA's premises on 24 September 2018, Ms Vasilevski was interviewed under criminal caution by ICAC investigators Michael Clissold and John Kourabas.¹¹⁸ During that interview, Ms Vasilevski stated that she only had accommodation documentation for one night of her November 2017 trip to Melbourne because she stayed "*with family*" for the second night.¹¹⁹ In a subsequent

¹¹⁷ Ibid at p 7.

¹¹⁸ Exhibit 221 – Affidavit of John Karoubas (ICAC), 4 February 2019 at [10], [17].

¹¹⁹ Ibid at [27]. Later in the same conversation, Ms Vasilevski confirmed she stayed with a "*relative*": at [29].

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interview of Employee A conducted by Ms Bridge on 18 October 2018, Employee A advised ICAC investigators that Ms Vasilevski had told her she stayed with a family member in Melbourne, who Employee A thought was her “*step brother*”.¹²⁰

100. Inquiries conducted by ICAC investigators with Ms Vasilevski’s brother revealed that he was not in Melbourne the week of 6 November 2017, and that he did not own a house or rental property there at the time.¹²¹ ICAC investigators confirmed that Ms Vasilevski’s brother did not own property in Melbourne.¹²² Mr Vasilevski’s brother also advised Ms Bridge that he thought Ms Vasilevski had a “*few relatives*” in Melbourne but that he did not have any contact details for them.¹²³ Ms Vasilevski has submitted to me that she had a half-brother who lived in Melbourne, but does not state that she stayed with him whilst in Melbourne.¹²⁴
101. The following day, on 19 September 2018, the SDs in Mr Hanlon’s office recorded a further conversation regarding the Thursday night in Melbourne between Mr Hanlon and Ms Vasilevski.¹²⁵

VASILEVSKI	<i>Yeah in your room</i>
HANLON	<i>Working.</i>
VASILEVSKI	<i>Yeah working at night?</i>
HANLON	<i>Why not. What are you going to say?</i>
.....	
VASILEVSKI	<i>Um you making, making me come.</i>
HANLON	<i>Are you serious?</i>
.....	
HANLON	<u><i>You’d have to, you’ll always have to say we’re friends but nothing...and we were working</i></u>
VASILEVSKI	<i>Mm</i>
HANLON	<u><i>Never, never admit to a thing.</i></u>

¹²⁰ Exhibit 19.21 – Transcript of Interview with Employee A, 2018/003882 (Michael Clissold (ICAC), ICAC offices, 18 October 2018) at p 51 [31] reproduced as annexure ‘MAC/19’ to Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [117]. Employee A also referred to a conversation she had with Ms Vasilevski about whether ICAC would contact her “*brother or step-brother*”: at p 54 [22].

¹²¹ Exhibit 19.35 – Emails between Amanda Bridge (ICAC) and Steven Gold, 29 October 2018 at p 3–4 reproduced as Annexure ‘SG1’ to Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [154]–[156].

¹²² Exhibit 19.36 – State Government of Victoria, Land Titles Searches, 18 December 2018 reproduced as Annexure ‘LAND1’ to Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [157].

¹²³ Exhibit 19.35 – Emails between Amanda Bridge (ICAC) and Steven Gold, 29 October 2018 at p 1.

¹²⁴ Exhibit 167 – Georgina Vasilevski, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (22 May 2023) at p 3.

¹²⁵ Exhibit 86.10 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-a_882* (ICAC, 19 September 2018) at pp 1 [11]–[16], 2 [1]–[9], 2 [13]–[16], 3 [21]–[26].

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VASILEVSKI *(inaudible) no.*

HANLON *Just say I don't know, we were working, we had a chat, we talked about stuff, but nothing.*

VASILEVSKI *(inaudible) CCTV and I've gone into your room and we've come back out*

....

VASILEVSKI *I knew that Melbourne Cup week would be a problem. We shouldn't have even gone at that time of year. We knew it was always going to be a problem because that's always a risk...*

...

VASILEVSKI *One room which means-*

HANLON *Same room.*

VASILEVSKI *Yea, so you know.*

HANLON *That's right you could say I only slept on the couch because I was kicked out of my brother's place because he's (inaudible)*

VASILEVSKI *I wouldn't, I wouldn't go down that path*

(underlining added)

102. It was open to ICAC investigators to interpret these conversations as Mr Hanlon and Ms Vasilevski colluding about their movements in Melbourne and what they were going to say to ICAC investigators. I do not find that this was the only explanation of any of the conversations, but it was one that was reasonably open to ICAC investigators at this stage of the investigation.
103. On the same day, the SDs monitored Mr Hanlon and Employee C discussing the meeting between Ms Bridge and Employee A.¹²⁶ They then discussed Mr Hanlon reimbursing Renewal SA for his accommodation at the Grand Hyatt Hotel. Mr Hanlon directed Employee C to explain to the Accounts Department at SA Renewal that he had always intended to reimburse the payment, stating:¹²⁷

HANLON *I want – yeah well just send me something because you're [a senior employee] saying: John, following the finding of that anomaly where, you know, you requested something to be charged to your account and it wasn't done. ... There seems to be a fault – you know, I want you to say it something like this: There seems to be a fault somewhere in our office system which*

¹²⁶ Exhibit 86.8 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-a_876* (ICAC, 19 September 2018) at p 1.

¹²⁷ Ibid at p 3 [12]–5 [13].

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wouldn't accept your credit card for a payment in relation to that.
... I'm well aware that you have requested that before on payments ... I want you to go on and say: I want to make, I want to make – I'm going to go back and make sure where you have asked previously.

EMPLOYEE C Yes to reimburse the agency, yeah.

HANLON Yeah to – for me – well for me to you know to, to use my card to reimburse the agency ... That that has actually taken place ... Um because you know we're aware that's the practice ... And um I'm just going to go back and look over other accounts ... I will advise you if there have been any other anomalies where your request for payment has not occurred ... And, er, and you know, you know apol (sic) – say sorry, you know, that's, you know, we'll go if needed, you know, I'll go back and check it ... And I will, I will then advise you as to the outcome of that.

EMPLOYEE C Okay because that ---

HANLON Because I just want you – and then I want you to go back ... to the same time last year and about the same time the year before ... Where I would have gone over there because I would have gone on ... And see whether I stayed on a Saturday. If I stayed on a Saturday and there's a cost there ... So go to the accounts and have a look, don't tip them off what you're doing. ... Go to the accounts and have a look. If it's there, let me know and I'll make sure it's paid. ... And you can just say: look I have now found three others or two other occasions where this has not occurred.

(underlining added)

104. Employee C further explained in their affidavit dated 15 February 2019 that Mr Hanlon's accommodation at the Grand Hyatt Hotel was paid for using his Renewal SA credit card, and at no time during the monthly reconciliation of the transactions on Mr Hanlon's Renewal SA credit card did Mr Hanlon indicate he wished to reimburse Renewal SA for one night's accommodation.¹²⁸
105. On 19 September 2018, Mr Hanlon and Ms Vasilevski also discussed an invoice from the Grand Hyatt Hotel for Mr Hanlon's Melbourne trip which contained incorrect

¹²⁸ Exhibit 85 – Affidavit deposed by Employee C, 15 February 2019 at [16].

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dates.¹²⁹ Employee C explained that in around mid-June 2018, Mr Hanlon had asked Employee C for a copy of the Grand Hyatt Hotel invoice from his trip in November 2017 and indicated that he had to repay one night's accommodation.¹³⁰

106. After Employee C obtained a copy of the invoice, Mr Hanlon wrote on the invoice and dated his handwritten note 5 December 2017.¹³¹ At around the same time in mid-June 2018, Mr Hanlon directed Employee C to prepare a memorandum stating that the invoice for the Grand Hyatt Hotel with his writing on it dated 5 December 2017 had been found in the office and it needed to be reimbursed. Employee C prepared the memorandum and backdated it to 31 May 2018.¹³²
107. Employee C then explained that in the week of 18 September 2018, they were called into Mr Hanlon's office where Mr Hanlon appeared angry because the printed date on the tax invoice for the Grand Hyatt Hotel on which Mr Hanlon had written was dated 5 February 2018 (that is, after the date that Mr Hanlon had inserted in his handwritten note).¹³³ The SDs recorded a conversation between Mr Hanlon and Ms Vasilevski about this note, with Ms Vasilevski commenting:¹³⁴

You know that document, lucky [Employee C] has attention to detail. You know that document, that invoice that you signed saying can you put it, and you've dated it you've dated it December whatever ... That was printed, that document was printed February 2018, you've signed it December 2017.

108. Employee A then entered the office and joined the conversation, stating "*whiteout on the dates, and just photocopy it again*".¹³⁵ Mr Hanlon then told Employee A to alter the original Grand Hyatt Hotel invoice with Employee C the next day, stating "*Um you do that with [Employee C] tomorrow, whatever you have to do, alright*".¹³⁶ In response, Ms Vasilevski stated "*You'd do that to the original....I don't want, I don't want to be involved*".¹³⁷
109. On 20 September 2018, the conversation referred to in Employee C's affidavit between Employee C and Mr Hanlon was recorded by the SDs. Mr Hanlon referred to

¹²⁹ Exhibit 86.11 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-a_887* (ICAC, 19 September 2018) at p 2 [1]– [9].

¹³⁰ Exhibit 85 – Affidavit deposed by Employee C, 15 February 2019 at [33].

¹³¹ Ibid at [34]; See Exhibit 85.6 – Tax Invoice from Grand Hyatt Melbourne Hotel to John Hanlon re 8 November 2017 to 12 November 2017 printed 14 February 2018 reproduced as Annexure 'RA6' to Exhibit 85.

¹³² Exhibit 85 – Affidavit deposed by Employee C, 15 February 2019 at [36]; See Exhibit 85.7 – Memo from Employee C to John Hanlon, 31 May 2018 reproduced as Annexure RA7 to Exhibit 85.

¹³³ Exhibit 85 – Affidavit deposed by Employee C, 15 February 2019 at [52].

¹³⁴ Exhibit 86.11 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-a_887* (ICAC, 19 September 2018) at p 2 [1]–[6].

¹³⁵ Ibid at p 2 [25].

¹³⁶ Ibid at p 3 [8].

¹³⁷ Ibid at p 3 [12], [14].

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the Grand Hyatt Hotel invoice and asked "... could you print one out that doesn't have that date on there that looks like it's the one that was given to me?".¹³⁸ Mr Hanlon then stated "That's a big mistake ... that has to be fixed",¹³⁹ and "How could you have signed this in December when it's actually printed in February? ... It's a big error".¹⁴⁰

110. On 20 September 2018, Ms Bridge requested that Employee A provide documentation surrounding the Melbourne trip.¹⁴¹ The SDs captured Mr Hanlon, Employee A and Employee C organising the paperwork that Employee A needed to take to her meeting with Ms Bridge. In the same recording, Mr Hanlon appeared to instruct Employee A on talking points in relation to who he visited in Melbourne.¹⁴²
111. On 21 September 2018, Employee C and Mr Hanlon appeared to have a discussion about the ICAC investigation, which was open to be interpreted as an admission (express or implied):¹⁴³

EMPLOYEE C *Are you having a break?*

HANLON *Yeah.*

EMPLOYEE C *Are you okay?*

HANLON *Hey? Oh just pissed off with it all, that's all.*

EMPLOYEE C *Yeah so am I, yeah.*

HANLON *You know, because I think it's not going to end well.*

EMPLOYEE C *No.*

HANLON *Yeah I personally think they'll probably get me.*

EMPLOYEE C *Really? Why?*

HANLON *Hey?*

EMPLOYEE C *Why?*

HANLON *I don't know. You just can't get out of these things once they start.*

112. In her affidavit of 22 March 2019, which was prepared to support the Melbourne allegations, Ms Bridge referred to the material recorded by the SDs in the Renewal SA offices.¹⁴⁴ Ms Bridge's evidence before me was that she believed that the SD material

¹³⁸ Exhibit 86.12 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-a_900* (ICAC, 20 September 2018) at p 4 [11].

¹³⁹ Ibid at p 5 [8].

¹⁴⁰ Exhibit 86.13 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-a_901* (ICAC, 20 September 2018) at p 1 [16]–[18].

¹⁴¹ Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [64].

¹⁴² Exhibit 86.15 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-a_913* (ICAC, 20 September 2018).

¹⁴³ Exhibit 86.19 – Transcript of Surveillance Device, *Operation Torrent - ICAC-L020-00 Session Torrent-a_952* (ICAC, 20 September 2018) at p 1 [2].

¹⁴⁴ Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [19]–[24], [38]–[69].

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gave rise to questions about whether Mr Hanlon told his staff to say things that were not true.¹⁴⁵ Ms Bridge considered that the conversation with Employee C, in particular, about the backdated Grand Hyatt Hotel invoice suggested that Mr Hanlon knew that the document made them “*come unstuck for the ... actions they’ve taken*”.¹⁴⁶ In Ms Bridge’s opinion, the conversation with Employee C was significant because it revealed Mr Hanlon and Employee C were trying to hide the fact that Mr Hanlon had not reimbursed Renewal SA for the charges, and revealed Mr Hanlon “*doctoring*” the document.¹⁴⁷ Ultimately, the material recorded on the SDs led Ms Bridge to suspect that Mr Hanlon influenced others to commit offences, including telling his staff to falsify and backdate records to assist him with inquiries from ICAC.¹⁴⁸

113. Ms Bridge’s evidence in this respect was consistent with her contemporaneous notes. In a summary of tasks undertaken on 18 September 2018, she noted:¹⁴⁹

Contacted [Employee A] to provide a statement. This caused [Employee A] to go to Vasilevski and tell her about ICAC. Hanlon, Vasilevski and [Employee A] commenced discussing what should be provided to the ICAC. These discussions were conducted in either Hanlon or Vasilevski’s offices and captured on the SD.

From 18/9/2018 it was suspected from the SD content Hanlon, Vasilevski, [Employee A] and [Employee B] were making attempts to alter or potentially create documents to support the trip to Melbourne in November 2017.

114. Mr Andrew Baker, the Director Investigations at ICAC, was kept updated about the product coming from the SDs,¹⁵⁰ including the fact that Employee A had approached Mr Hanlon after Ms Bridge had arranged to interview her and had given her a warning under section 54 of the *ICAC Act* not to discuss the contact by Ms Bridge.¹⁵¹ The evidence from the SDs was important, in Mr Baker’s mind, because it showed that Mr Hanlon was potentially involved in deliberately creating false documents relating to the Melbourne trip, and that he was being assisted to do so by his staff. This supported the suspicion that Mr Hanlon had travelled to Melbourne with Ms Vasilevski for personal and not business purposes, and that documents were being doctored to support a false account that Mr Hanlon had a legitimate business purpose.¹⁵² When it came to investigating Mr Hanlon’s Germany trip, Mr Baker considered the material on the SDs was significant in showing that Mr Hanlon was willing to undertake private

¹⁴⁵ Transcript at p 32.

¹⁴⁶ Transcript at p 38.

¹⁴⁷ Transcript at p 46-47.

¹⁴⁸ Transcript at p 59.

¹⁴⁹ Exhibit 103.8 – Amanda Bridge (ICAC), ‘Matters under investigation’ v48 (Report for ICAC investigation meeting, 8 October 2018) at p 2.

¹⁵⁰ Transcript at p 229.

¹⁵¹ Transcript at p 230.

¹⁵² Transcript at p 231.

travel and claim it as work travel, as well as “*track*” documents to support the claim of work travel being undertaken.¹⁵³

115. Mr Lander was of a similar opinion. In Mr Lander’s opinion, the SDs also suggested that documents were being fraudulently altered, which was a serious matter for a person in Mr Hanlon’s position to be involved in.¹⁵⁴
116. I make no findings that the recorded conversations prove that Mr Hanlon engaged in corrupt conduct or in any criminal offence. I do find that the interpretation placed on those recorded conversations by ICAC was reasonably open to its officers. The evidence of those conversations shaped ICAC’s investigations into Mr Hanlon and they were relevant in ICAC’s decision to refer the Melbourne allegations to the DPP for adjudication.
117. I have considered the potential effect on the referral of Employee A to the DPP in relation to an alleged breach of section 54 of the current *ICAC Act*. Given that there is an ongoing prosecution against Employee A, I will not be examining issues in relation to the investigation of Mr Hanlon and Employee A in this Report. I am also satisfied that, on the materials I have been provided, the investigation by the ICAC into Employee A and the use of Employee A as a witness had no material impact on the investigation and prosecution of Mr Hanlon. I may examine this matter, at a later date, after the conclusion of the prosecution against Employee A.

Execution of search warrants and subsequent investigation

118. On 20 September 2018, Ms Bridge applied for two search warrants from the Supreme Court of South Australia under section 31(2) of the *ICAC Act* to enter and search the offices of Renewal SA and the residence of Mr Hanlon.¹⁵⁵ The applications for the search warrants specified that Mr Hanlon and Ms Vasilevski were suspected of having committed offences of abuse of public office and deception contrary to sections 251(1) and 137 of the *CLCA* in relation to the Melbourne trip and other conduct.¹⁵⁶
119. The search warrant applications were supported by affidavits of Ms Bridge dated 20 September 2018.¹⁵⁷ The affidavits outlined the conduct that raised the suspicion.¹⁵⁸

¹⁵³ Transcript at p 233-234.

¹⁵⁴ Transcript at p 253 [35].

¹⁵⁵ Exhibit 229 – *Originating Application for search warrant under ICAC Act s 31(2) (Renewal SA)*, 20 September 2018; Exhibit 230 – *Originating Application for search warrant under ICAC Act s 31(2) (Mr Hanlon’s residence)*, 20 September 2018.

¹⁵⁶ See *ibid* at [3]. The offences of “*abuse of public office*” and “*deception*” fell within the ambit of the definition of “*corruption in public administration*” under the *ICAC Act*: ss (5)(1)(a)(iii), 5(1)(c).

¹⁵⁷ Exhibit 231 – Affidavit of Amanda Bridge (ICAC) in support of search warrant applications, 20 September 2018.

¹⁵⁸ *Ibid* at [30]–[31].

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The affidavits provided further information about the inquiries and evidence already obtained in relation to each allegation, including SD evidence.¹⁵⁹ The affidavits stated that the warrants were required for the purposes of the investigation to locate, seize or secure evidence before such evidence was lost, destroyed or unrecoverable.¹⁶⁰

120. On 21 September 2018, the Hon Justice Parker issued search warrants for both premises authorising ICAC investigators to enter and search the Renewal SA offices, and Mr Hanlon's residence.¹⁶¹
121. At 10:05am on 24 September 2018, ICAC Senior Investigator Mr Kym Modra and ICAC Team Leader Mr Lyndon Miles executed a search warrant for the offices of Renewal SA and Mr Hanlon's home.¹⁶²
122. During the search, several items (exhibits) were seized by ICAC investigators. On the same day, ICAC investigators seized an Apple laptop and iPhone from Mr Hanlon's personal residence. Data and emails contained on those devices, along with a further computer and data extracted from Renewal SA computers, were processed by ICAC investigators and reviewed.¹⁶³
123. During the course of the search of Renewal SA's premises, Ms Bridge conducted an interview of Mr Hanlon (which was recorded by body worn camera and subsequently transcribed) during which he was informed of the allegations against him.¹⁶⁴ Relevantly, Ms Bridge characterised the allegations against Mr Hanlon in respect of the Melbourne trip as follows:¹⁶⁵

... in November 2017 you used a Renewal SA corporate credit card to pay for some or all of the expenses including four nights' accommodation at a cost of \$3,160.10 associated with a trip made by you to Melbourne between the dates of 8th to the 12th of November 2017 in circumstances I suspect where all or part of that trip was for general – for personal purposes and not for any purpose related to the functions of the Renewal SA. ... In doing so, I suspect your conduct amounts to an abuse of public office and deception [contrary to sections 251 and 139 of the Criminal Law Consolidation Act].

124. After having been cautioned,¹⁶⁶ Mr Hanlon accepted that he had travelled to Melbourne

¹⁵⁹ Ibid at [84]–[93].

¹⁶⁰ Ibid at [98].

¹⁶¹ Exhibit 232 – *Warrant for search and seizure under ICAC Act s 31 (Renewal SA)* (SASC, Parker J, 21 August 2018); Exhibit 233 – *Warrant for search and seizure under ICAC Act s 31 (Mr Hanlon's residence)* (SASC, Parker J, 21 September 2018).

¹⁶² Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [71].

¹⁶³ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [5]–[12].

¹⁶⁴ Exhibit 19.16 – Transcript of Interview with John Hanlon, 2018/003882 (Amanda Bridge (ICAC), Renewal SA premises, 24 September 2018) at p 8 [12]–[27] reproduced as 'JH1' to Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019.

¹⁶⁵ Ibid at p 9 [11].

¹⁶⁶ Ibid at p 8 [19].

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at the relevant time.¹⁶⁷ Despite having been in contact with the “*head of development in Melbourne*” in connection with the trip,¹⁶⁸ Mr Hanlon stated that he did not meet with anyone whilst in Melbourne,¹⁶⁹ and that this was not unusual as he was more interested in viewing sites relevant to developments.¹⁷⁰ Mr Hanlon then went on to describe aspects of his “*job ... as the head of a development agency is to build places and spaces for this city*”.¹⁷¹ Relevantly, Mr Hanlon stated that Ms Vasilevski joined him for “*part*” of the trip because “*she was the person responsible for Lot 14*”.¹⁷²

125. Witness statements were also taken from key Renewal SA employees who had travelled to Melbourne in October 2017 with Mr Hanlon and Ms Vasilevski.¹⁷³ As part of that trip, the representatives attended a conference along with counterparts from other States and Territories, and a number of site presentations and tours.¹⁷⁴ One of the Renewal SA witnesses stated that they did not consider it necessary for Renewal SA employees to re-attend two of those sites so soon after the visit in October.¹⁷⁵
126. On 3 December 2018, Mr Lander referred Mr Hanlon’s Melbourne trip to the DPP. The appropriateness of that decision is canvassed below in **Part XI**.
127. Following the execution of the search warrants, on or about 25 September 2018, Mr Knoll announced that Mr Hanlon was on leave from Renewal SA.¹⁷⁶
128. On 23 November 2018, Mr Clissold applied for two further search warrants from the Supreme Court of South Australia under section 31(2) of the *ICAC Act* to enter and search the offices of Renewal SA and another premises.¹⁷⁷
129. ICAC applied for the further search warrants as a result of evidence uncovered from the 24 September 2018 search of Renewal SA and further investigations.¹⁷⁸ It was suspected that other Renewal SA employees were involved in the creation and

¹⁶⁷ Ibid at p 9 [5].

¹⁶⁸ Ibid at p 9 [11].

¹⁶⁹ Ibid at p 10 [25].

¹⁷⁰ Ibid at p 9 [27].

¹⁷¹ Ibid at p 9 [14].

¹⁷² Ibid at p 9 [32].

¹⁷³ See, e.g., Exhibit 112 – Affidavit deposed by a Renewal SA employee, 16 November 2018 at [21].

¹⁷⁴ Ibid at [20]–[23].

¹⁷⁵ Ibid at [26], [30].

¹⁷⁶ Ostensibly, Mr Knoll made a public statement to this effect, however, that material is not before me. Reference was made to the statement by the media on 26 September 2018: see Exhibit 124 – ‘Renewal SA chief executive John Hanlon suddenly goes on leave but Premier won’t say why’, *ABC News* (online, 26 September 2019). Mr Knoll was queried about the same in Parliament on 27 September 2018: Exhibit 125 – South Australia, *Parliamentary Debates*, House of Assembly, Estimates Committee A, 27 September 2018, 333-339 (The Hon Stephan Knoll and the Hon Tom Koutsantonis).

¹⁷⁷ Exhibit 234 – *Originating Application for search warrants under ICAC Act s 31(2) (Renewal SA and another unrelated premises)*, 23 November 2018.

¹⁷⁸ Ibid at [6.3].

falsification of documents.¹⁷⁹ In particular, Mr Hanlon was suspected of engaging in conduct constituting corruption in public administration being:¹⁸⁰

129.1 dishonest dealing with documents, contrary to section 140(4) of the *CLCA*; and

129.2 duty of senior official to act honestly, contrary to section 16 of the *Public Sector (Honesty and Accountability) Act 1995 (SA)*.

130. The application was supported by an affidavit of Mr Clissold dated 23 November 2018.¹⁸¹ The search warrant for the Renewal SA office was sought because it was suspected that the Renewal SA office would hold evidence, including in relation to the creation of documents which may be stored on electronic devices, original documents, invoices and handwritten notes.¹⁸² On the same day, the Hon Justice Stanley issued a search warrant authorising ICAC investigators to enter and search the Renewal SA offices.¹⁸³ ICAC investigators executed the search warrant on 28 November 2018.¹⁸⁴

Legislative authority for search warrants

131. Pursuant to section 31(3) of the *ICAC Act*, a search warrant may only be issued if the judge is satisfied that the warrant is reasonably required in the circumstances for the purposes of an investigation into a potential issue of corruption in public administration. The application and supporting affidavits for the three warrants make it clear that the suspected offending was in relation to conduct potentially amounting to corruption in public administration.¹⁸⁵
132. As I found in respect of the decision of ICAC to seek the SD warrants and the telephone intercept warrants, it is not for me to make any findings or draw any conclusions about the appropriateness of the granting of the three search warrants relating to the investigation of Mr Hanlon.
133. Having considered the purpose of the SD warrant, TI warrants and search warrants, the nature and gravity of the suspected offending, and the evidence sought to be obtained by the warrants, I am satisfied that the decisions to apply for all of the relevant

¹⁷⁹ Ibid at [6.3].

¹⁸⁰ Ibid at [6.1].

¹⁸¹ Exhibit 235 – Affidavit of Michael Clissold (ICAC) in support of search warrant applications, 23 November 2018.

¹⁸² Ibid at [93.1]; Exhibit 234 – *Originating Application for search warrants under ICAC Act s 31(2) (Renewal SA and another unrelated premises)*, 23 November 2018 at [93].

¹⁸³ Exhibit 236 – *Warrant for search and seizure under ICAC Act s 31 (Renewal SA)* (SASC, Stanley J, 23 November 2018).

¹⁸⁴ Exhibit 19 – Affidavit of Amanda Bridge (ICAC), 22 March 2019 at [147]–[151].

¹⁸⁵ Exhibit 231 – Affidavit of Amanda Bridge (ICAC) in support of search warrant applications, 20 September 2018 at [22]–[29]; Exhibit 235 – Affidavit of Michael Clissold (ICAC) in support of search warrant applications, 23 November 2018 at [14]–[16].

warrants were appropriate steps taken by ICAC in the furtherance of the investigation of Mr Hanlon's conduct and did not involve any unreasonable invasion of Mr Hanlon's privacy.

Assessment

134. Having heard the conversations recorded on the SDs and examined the documentary evidence relied on by the investigators, Mr Baker and Ms Bridge's assessment about the conversations recorded on the SDs was reasonably open to them.
135. I emphasise that I make no findings whether Mr Hanlon committed any criminal offence. That is not my function. The purpose of this Part of the Report is to make findings on the conduct of ICAC officers in their investigation of Mr Hanlon.
136. I find that the investigation into Mr Hanlon and Ms Vasilevski's Melbourne trip did not cause any unreasonable invasion of privacy or undue prejudice to the reputation of any person. The conversations recorded on the SDs strengthened the need for the investigation. It was appropriate for ICAC to investigate the Melbourne trip to achieve the objective of detecting corruption in public office.
137. In submissions to me, Mr Hanlon has referred to the concession made by the prosecutor (Mr Peter Longson) at committal that Mr Hanlon had no case to answer on the Melbourne and Germany charges.¹⁸⁶ The concession was that in order to prove each count for which Mr Hanlon was charged with in the Magistrates Court involving the Melbourne and Germany trips, the prosecution was required to prove that Mr Hanlon undertook **no** work in connection with the affairs of Renewal SA.¹⁸⁷ The charges were abuse of public office, deception, acting dishonestly in the performance of duties as a senior official, and dishonestly dealing with documents.¹⁸⁸ See discussion in **Part XIV**.
138. Mr Hanlon submitted:¹⁸⁹
- If the totality of the evidence gathered at the time of the committal was insufficient to establish a case to answer, it must follow that the same test could never have established at earlier points in time when less evidence was available.*
139. I reject that submission. First, the proper approach is to examine what evidence and material the investigators had at the time they exercised any particular power or

¹⁸⁶ See Exhibit 145 – Transcript of Proceedings, *R v Hanlon & Vasilevski* (Magistrates Court of South Australia, AMC 20-2810, Magistrate Smart, 18 June 2021) at p 43 [26].

¹⁸⁷ *Ibid* at p 42 [9].

¹⁸⁸ See Exhibit 135.1 – DPP, Magistrates Court Information in *R v Hanlon & Vasilevski*, 5 March 2020.

¹⁸⁹ Exhibit 209 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (29 May 2023) at [23].

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performed a function or made any decision. A position adopted by a prosecutor at a subsequent time about the material does not establish that earlier decisions by ICAC were improper.

140. Second, when the Hanlon case was reviewed by more senior prosecutors (Mr Petraccaro and Ms McDonald), they found that Mr Longson's concession was wrong. It was in fact not necessary for the prosecution to prove that **no** Renewal SA work was required to be done in Melbourne or Germany or Melbourne.¹⁹⁰
141. In *R v Hanlon No 2* [2022] SADC 128, his Honour Judge Heffernan agreed with the position of the prosecution in resiling from the concession, holding (at [44]):

It is not necessary for the prosecution to prove beyond reasonable doubt that the defendant did no work whilst in Germany in order to make out the necessary element of 'acting improperly'.

...

If the evidence is capable of satisfying a jury that the predominant feature of the trip was interaction with his family and not work undertaken on behalf of Renewal SA, a jury may well find that the defendant was acting improperly within the meaning of s 238 of the Criminal Law Consolidation Act 1935.

142. His Honour's reasoning clearly applies with equal force to the charge of abuse of public office for the Melbourne charge.
143. Accordingly, I find that the prosecutor's original concession later withdrawn by the DPP and found to be wrong by his Honour Judge Heffernan cannot be used as a basis to find that ICAC exercised its powers or performed its functions or made decisions improperly in investigating the Melbourne allegations or subsequently referring those allegations to the DPP for adjudication.
144. I am fortified in that finding by the opinion of Ms McDonald who opined in her memorandum that the initial recommendation to lay the charges in relation to Melbourne:¹⁹¹

*[W]as clearly correct on the evidence **as it stood at the time**. There was a body of evidence from which it **could be inferred** that the trip to Melbourne was no more than an opportunity for Hanlon and Vasilevski to spend some time alone together and Hanlon to attend at the races. The creation of the false paper trail and the conversations recorded by the listening devices were particularly damning in this respect.*

(emphasis added)

¹⁹⁰ Exhibit 117 – Memorandum from Sandi McDonald SC (DPP) to DPP Martin Hinton KC, 9 September 2021 at [55].

¹⁹¹ Ibid at [176].

V. Was the decision by the Commissioner to investigate the Germany trip appropriate

145. On 23 April 2019, Mr Lander authorised an investigation to be conducted into Mr Hanlon's overseas travel to Germany in September 2017 (the **Germany trip**).¹⁹² This Part of the Report considers whether that decision was appropriate and supported by evidence before the Commissioner which could reasonably be assessed as raising a potential issue of corruption in public administration.

Initial planning for Mr Hanlon's Germany trip

146. In March 2019, Ms Bridge completed a review of the extraction report of Mr Hanlon's phone and identified the following communications between Mr Hanlon and his daughter, Ms Kate Hanlon, on 14 June 2017:¹⁹³

HANLON *Just checking, do you know your actual due date in September. I have a work trip that is being planned for September and was going to see what I could organise x.*

KATE HANLON *Exact due date is 23 September. Would be amazing if your trip aligned!*

147. Ms Bridge's affidavit dated 28 November 2019 stated that as a result of these communications, she was aware that Mr Hanlon was planning an overseas work trip that included Germany, and that Kate Hanlon resided in Berlin. Ms Bridge further suspected that as part of Mr Hanlon's overseas trip, he was intending to visit Kate Hanlon. Emails located on Mr Hanlon's government email account also suggested that Mr Hanlon was planning a business trip to Europe in 2017 with two Renewal SA employees.¹⁹⁴ Specifically, Ms Bridge identified emails which revealed Mr Hanlon liaising with Investment Attraction South Australia (**IASA**) and the Department of State Development about a trip to Berlin that formed part of the broader Europe Business Mission.¹⁹⁵

¹⁹² Exhibit 21 – Matter note from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 23 April 2019; Exhibit 21.1 – Matter note from Commissioner Lander KC (ICAC) to Amanda Bridge (ICAC), 23 April 2019.

¹⁹³ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [14].

¹⁹⁴ Ibid at [15]–[16]; Exhibit 20 – Memorandum from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 18 April 2019 at p 1.

¹⁹⁵ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [18]. See also Exhibit 141 – Email from a Renewal SA employee to John Hanlon (Renewal SA), 22 June 2017; Exhibit 41.2 – Email from an employee of Investment Attraction South Australia (IASA) to an employee of Department of State Development (DSD), 11 July 2017 reproduced as Annexure [EX01942] 2018-3882 DOC-006 to Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019.

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148. Ms Bridge also identified a minute from Mr Hanlon dated 22 August 2017, in which he sought approval to travel to Europe for the Europe Business Mission for the period 7 to 19 September 2017 from Mr Mullighan.¹⁹⁶ The purpose of Mr Hanlon's travel to Europe was described as follows:¹⁹⁷

The purpose of the Europe Business Mission is to support the Minister for Investment and Trade through meetings with importers, European partners and key decision makers to gain an in-depth understanding of business interests and investment opportunities for South Australia.

Twenty-five (25) small and medium business leaders will participate in the 2017 Europe Business Mission, and many of the overseas appointments are with businesses and industry directly linked to advanced manufacturing with a focus on the Tonsley Innovation Precinct. All defence related matters will be dealt with by Mr Hnyda [Chief Executive of IASA].

149. Mr Mullighan, in his affidavit dated 22 November 2019, provided evidence in relation to a 22 August 2017 minute from Mr Hanlon. He stated:

I cannot recall the trip, however the request does not surprise me as this was relevant to the Tonsley Innovation Precinct in which Renewal SA were managing jointly with [a representative] of Industry Attraction South Australia (IASA).¹⁹⁸

...

If Mr Hanlon was to say to me "my daughter's having a baby and I want to take some leave, I won't be around for this, between these dates", that is one thing but it would not be the sort of thing that you would attach a ministerial approval for overseas travel.¹⁹⁹

The assumption is that when a Minister grants approval for a Chief Executive to travel overseas then it's understood the travel is for a Government-related purpose and will incur Government expenditure. The Government-related purpose is explicit in the minute requesting approval, and the incurring of Government expenditure is then implicit in the carrying out of those purposes.²⁰⁰

150. On 7 September 2017, Mr Hanlon sent an email to a representative of IASA and advised that he was no longer attending the 2017 Europe Business Mission.²⁰¹ The same day, Mr Hanlon sent Kate Hanlon a message stating "Terrible news, I have had to cancel my trip due to some major work issues. I was advised only an hour ago. I am really devastated. I just wanted to be there so much. I can't believe it, I am so sorry. X

¹⁹⁶ Exhibit 3 – Minute from John Hanlon (Renewal SA) to the Hon Stephen Mullighan MP, Minister for Housing and Urban Development, 22 August 2017.

¹⁹⁷ Ibid at p 1.

¹⁹⁸ Exhibit 206 – Affidavit of Stephen Mullighan MP, 22 November 2019 at [23].

¹⁹⁹ Ibid at [29].

²⁰⁰ Ibid at [30].

²⁰¹ Exhibit 41.30 – Emails between John Hanlon (Renewal SA) and an employee of IASA, 9 September 2017 reproduced as Annexure [EX01942] 2018-3882 DOC-175 to Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019.

Dad". The following day, Mr Hanlon's flight to Berlin and accommodation was cancelled.²⁰²

151. A delegation, including the Hon Martin Hamilton-Smith MP, Minister for Investment and Trade, and representatives from Renewal SA, attended the Europe Business Mission in September 2017 without Mr Hanlon.²⁰³

Rebooking of Mr Hanlon's Germany trip

152. On 15 September 2017, Mr Hanlon was rebooked on a flight to Berlin departing Adelaide on 19 September 2017.²⁰⁴
153. The Germany trip was described in Mr Hanlon's Renewal SA electronic calendar as "*DSD Europe Business Mission for Mon Sep 11 Until Sep 16*" and accompanied by a note "*John delayed participation due to ORAH redevelopment issues*". A further entry in the calendar recorded "*DSD Europe Business Mission (John to join late)*" from Monday, 18 September 2017 until Wednesday, 20 September 2017.²⁰⁵
154. On 15 September 2017, an employee who worked directly with Mr Hanlon, Employee D, created an itinerary for Mr Hanlon for the period 21 September 2017 to 28 September 2017 (**First Itinerary**). The First Itinerary was titled "*Travel Plan — Germany — September 2017*".²⁰⁶ The First Itinerary was identified following the search of the Renewal SA offices on 24 September 2018 and the seizure and imaging of devices belonging to or operated by senior officers of Renewal SA.²⁰⁷ The First Itinerary recorded travel to Frankfurt, Stuttgart, Munich and Berlin between 21 and 28 September 2017.
155. Ms Bridge's investigation indicated that the two Renewal SA employees who attended the 2017 Europe Business Mission had already met with most of the companies listed in the First Itinerary during the Europe Business Mission, other than Munchen Rosenheimer, Dassault Systemes and IBM.²⁰⁸

²⁰² Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [19]–[21].

²⁰³ See e.g., Exhibit 113 – Affidavit deposed by Renewal SA employee, 9 May 2019 at [20].

²⁰⁴ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [22]–[24]; Exhibit 20 – Memorandum from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 18 April 2019 at p 2.

²⁰⁵ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [25]–[26].

²⁰⁶ Exhibit 79 – John Hanlon (Renewal SA), *Travel Plan – Germany – September 2017 (A1068813) (unsigned)* (19 September 2017) reproduced as Annexure [EX01942] 2018-3882 DOC-256 to Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019.

²⁰⁷ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [9], [12], [22].

²⁰⁸ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [45]–[48]; Exhibit 41.16 – 2017 Europe Business Mission — [Renewal SA employee] Program Overview reproduced as Annexure [EX01942] 2018-3882 DOC-162 to Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019; Exhibit 41.17 – 2017 Europe Business Mission — [Renewal SA employee]

Mr Hanlon's Germany trip

156. Ms Bridge's analysis of extraction data from Mr Hanlon's telephone revealed the following:²⁰⁹

156.1 Mr Hanlon arrived at Kate Hanlon's home in Berlin on 20 September 2017;

156.2 Mr Hanlon's wife and daughter arrived in Berlin on 21 September 2017;

156.3 from 20 to 28 September 2017, Mr Hanlon's telephone contained photographs and communications which indicated he only stayed in Berlin until leaving for Frankfurt late on 28 September 2017; and

156.4 on 28 September 2017, Mr Hanlon stayed overnight at a hotel at Frankfurt Airport with his wife and daughter.

157. Ms Bridge stated in her affidavit:²¹⁰

The review of Hanlon's mobile phone for the period 20 to 29 September 2017 did not provide evidence of him travelling outside of Berlin or meeting with any of the companies or persons listed on the itinerary prepared by [Employee D] on 15 September 2017.

158. Following further inquiries by Ms Bridge, a senior financial analyst within Renewal SA provided an affidavit to ICAC attaching a copy of a second itinerary, also titled "*Travel Plan – Germany – September 2017*", which was signed by Mr Hanlon as his travel record of his time spent in Germany in September 2017 (**Second Itinerary**).²¹¹ Mr Hanlon signed under the statement "*I acknowledge this is my travel record while in Germany in September 2017*". The Second Itinerary was provided to Renewal SA's finance department in satisfaction of Mr Hanlon's obligation to provide a full signed travel itinerary to "*determine the business versus private component to determine if a [fringe] benefit has been received by [Mr Hanlon]*".²¹²

159. The Second Itinerary differed from the First Itinerary but still recorded meetings in and travel to Stuttgart, Berlin, Frankfurt, and Munich.²¹³ It was open for ICAC investigators to assume that the Second Itinerary purported to represent Mr Hanlon's actual travels

Program Overview, reproduced as Annexure [EX01942] 018–3882 DOC–145 to Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019.

²⁰⁹ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [27].

²¹⁰ Ibid at [29].

²¹¹ Exhibit 137 – Addendum affidavit sworn by Renewal SA senior financial analyst, 9 May 2019 at [16].

²¹² Exhibit 138 – Addendum affidavit sworn by Renewal SA senior financial analyst, 24 July 2019 at [5]. Mr Hanlon was required to provide this document within 2 weeks of his return from travel, but ostensibly did not do so until approximately 4 months later: at [2.1].

²¹³ Exhibit 4 – John Hanlon (Renewal SA), *Travel Plan – Germany – September 2017 (A674961)* (undated) reproduced as 'TP1' to Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019.

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in Germany between 21 September 2017 to, 28 September 2017. Ms Bridge also made inquiries by email with the companies listed on the Second Itinerary as to whether they had met with Mr Hanlon. The companies which responded could not confirm a meeting had occurred with Mr Hanlon,²¹⁴ including one which provided a signed affidavit which indicated that they did not arrange a visit for Mr Hanlon, nor had they ever met with Mr Hanlon.²¹⁵ Mr Hanlon has submitted that the Second Itinerary “*was prepared by Mr Hanlon’s staff in his absence without reference to him*” and that he may have been “*sloppy*” to have signed off on the Travel Plan when it was obviously wrong in a number of respects.²¹⁶ Ms Bridge was not provided with any such explanation at the time of her investigations and even if she was, she would not have been bound to accept it.

160. Ms Bridge’s review of the financial transactions on Mr Hanlon’s departmental credit card showed a purchase of train tickets on 25 September 2017 and no other purchases during the period of the Germany trip. The train tickets purchased were for the following trips:²¹⁷

160.1 25 September 2017: Depart Berlin 12:30pm, arrive Frankfurt 4:44pm.

160.2 26 September 2017: Depart Frankfurt 6:13am, arrive Berlin 9:55am.

160.3 26 September 2017: Depart Berlin 1:30pm, arrive Munich 8:16pm.

160.4 27 September 2017: Depart Munich 6:17am, arrive Berlin 12:25pm.

161. The tickets were purchased nine minutes prior to the first departure.²¹⁸ At the time of Mr Lander’s decision to investigate Mr Hanlon’s Germany trip on 23 April 2019, Ms Bridge had not been able to identify any record of transactions for overnight accommodation by Mr Hanlon in Frankfurt and Munich on 25 and

²¹⁴ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [110]–[117]. See also Exhibit 263 – Affidavit of an employee of WISTA Management GmbH, 11 September 2019. An affidavit that was purportedly witnessed by a German lawyer and not Ms Bridge. It is unclear whether this affidavit would have complied with s 66 of the *Evidence Act 1929* (SA) and been *prima facie* admissible evidence.

²¹⁵ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [115]. See Exhibit 151 – Affidavit of James Jackson (IBM), 8 May 2019. Mr Jackson also confirmed that they were not able to coordinate a visit for the 2017 Europe Business Mission, which accorded with affidavits of the two Renewal SA employees who attended the 2017 Europe Business Mission; Exhibit 113 – Affidavit deposed by Renewal SA employee, 9 May 2019 at [24]; Exhibit 118 – Affidavit deposed by Renewal SA employee, 24 May 2019 at [12].

²¹⁶ Exhibit 201 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (28 May 2023) at [27].

²¹⁷ Exhibit 20 – Memorandum from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 18 April 2019 at p 2.

²¹⁸ *Ibid.*

26 September 2017.²¹⁹

162. Ms Bridge's review of Mr Hanlon's personal Westpac bank accounts for the period of the Germany trip indicated that all purchases were made in Berlin, other than one transaction on 29 September 2017 at Frankfurt Airport, which corresponded with his departure from Berlin (to return to Australia).²²⁰

163. Ms Bridge stated in her affidavit:²²¹

Hanlon had travelled to Berlin, Germany on 19 September and returned to Adelaide on 30 September 2017. This trip was represented by Hanlon to Renewal SA staff as an official business trip, however it is alleged the trip was a family holiday for Hanlon to visit his pregnant and expecting daughter, Kate Hanlon in Berlin, Germany.

As a result of my review of the extraction of Hanlon's iPhone, I suspected from the information that the conduct could give rise to potential issues of corruption in public administration that the ICAC may wish to investigate.

The recommendation and approval to investigate Mr Hanlon's Germany trip

164. On 18 April 2019, Ms Bridge provided a memorandum to Mr Lander with the subject "Renewal SA – 2018/003882" (**Germany Trip Investigation Memorandum**).²²² The Germany Trip Investigation Memorandum set out the facts above and concluded:²²³

I suspect the purpose of Hanlon's trip was to visit his daughter K. Hanlon.

I have not been able to determine with the initial review of the information available to me of [sic] the total expense of Hanlon's Berlin trip. However, the Qatar business flights are in excess of \$10,000.

Such conduct could give rise to an offence contrary to s 251 of the Criminal Law Consolidation Act, 1935 (the CLCA). Therefore such conduct could give rise to potential issues of corruption in public administration that you may wish to investigate.

165. On 23 April 2019, Mr Lander approved the investigation into Mr Hanlon's Germany trip.²²⁴ Mr Lander gave evidence before me that he approved the investigation into Mr Hanlon's Germany trip for the reasons set out in the Germany Trip Investigation

²¹⁹ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [32]; Exhibit 20 – Memorandum from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 18 April 2019 at p 3.

²²⁰ Exhibit 20 – Memorandum from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 18 April 2019 at p 3.

²²¹ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [33]–[34].

²²² Exhibit 20 – Memorandum from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 18 April 2019.

²²³ Ibid at p 3.

²²⁴ Exhibit 21 – Matter note from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 23 April 2019; Exhibit 21.1 – Matter note from Commissioner Lander KC (ICAC) to Amanda Bridge (ICAC), 23 April 2019.

Assessment

166. The decision to investigate Mr Hanlon's Germany trip came after initial inquiries had been made to verify the substance of the allegations made in the online report to the OPI dated 3 May 2018 (which became matter 2018/003882) in respect of Mr Hanlon's Melbourne trip.²²⁶ Those inquiries included interviewing witnesses and obtaining documentary evidence.
167. Mr Hanlon's Germany trip was identified as potentially warranting further investigation as a result of the examination of Mr Hanlon's telephone that occurred while ICAC investigators were investigating the Melbourne trip, pursuant to section 23(2) of the *ICAC Act*. Having identified that Mr Hanlon had planned a trip to Germany which coincided with the birth of his grandchild, Ms Bridge undertook further preliminary investigations about the Germany trip. Those inquiries suggested discrepancies between Mr Hanlon's official justification for travelling to Germany and the actual purpose of his stay.
168. The inquiries raised reasonable suspicions about the purpose of Mr Hanlon's Germany trip and gave rise to a potential issue of corruption in public administration, particularly considering the investigation that was being undertaken into the Melbourne trip, which involved similar alleged conduct. I am fortified in this view by Ms McDonald's memorandum dated 9 September 2021 about the significance of the evidence gathered by ICAC during its investigations.²²⁷
169. Mr Lander's decision to investigate the Germany trip was reasonable and appropriate in circumstances where the Commissioner reasonably assessed the evidence as giving rise to a potential issue of corruption in public administration. Having formed that view, which I find was reasonable in the circumstances, the Commissioner was required to investigate it under section 24(1)(a) or refer it to SAPOL under s 24(1)(b) of the *ICAC Act*. In circumstances where ICAC was already investigating the alleged conduct of Mr Hanlon with respect to the Melbourne trip, it was appropriate for the Commissioner not to refer the matter to SAPOL and instead for ICAC to investigate the matter.

²²⁵ Transcript at p 254 [41].

²²⁶ See Exhibit 9 – Office for Public Integrity, *2018/003882 Online Complaint and Report Form* (3 May 2018).

²²⁷ Exhibit 117 – Memorandum from Sandi McDonald SC (DPP) to DPP Martin Hinton KC, 9 September 2021 at [134]–[135].

VI. Initial stages of the investigation into Mr Hanlon's Germany trip, including the decision to approve travel to Germany

170. This Part of the Report addresses the initial stages of the investigation into Mr Hanlon's Germany trip, including the decision by Mr Lander on 16 August 2019 to approve a request by Ms Bridge to travel to Germany to obtain evidence.

Relevant facts

171. Following Mr Lander's decision to commence an investigation into Mr Hanlon's Germany trip, Ms Bridge obtained information regarding the preparation for the 2017 Europe Business Mission. Mr Hanlon's email records were inspected to locate flight confirmation details. Ms Bridge also obtained affidavits from two Renewal SA employees who had participated in the 2017 Europe Business Mission without Mr Hanlon.²²⁸ One of those Renewal SA employees provided an affidavit to ICAC about the meetings that occurred as part of that trip, and stated that they were advised that Mr Hanlon was no longer attending the 2017 Europe Business Mission,²²⁹ and there was no indication that he would attend the mission at a later date.²³⁰ The other affidavit indicated that the employee had followed up with businesses in Germany as required after the 2017 Europe Business Mission and that *"there was no need for anyone from Renewal SA to return to [businesses listed in the First Itinerary and Second Itinerary] within ... a week or two weeks after our trip"*.²³¹
172. On 28 June 2019, Mr Hanlon attended ICAC for the purpose of an interview regarding his Germany trip. Mr Hanlon's legal representative indicated that he would not participate in the interview but had prepared a statement with supporting documentation that dealt with his movements (**2019 Hanlon Statement**).²³² The 2019 Hanlon Statement, also dated 28 June 2019, recorded:

172.1 As CEO of Renewal SA, it was *"imperative"* that Mr Hanlon *"draw on familiarity with comparable interstate and overseas urban development projects"*, and he travelled extensively throughout South Australia, Australia and internationally to view various urban renewal sites. Some interstate and overseas

²²⁸ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [40]–[46]. See Exhibit 113 – Affidavit deposed by Renewal SA employee, 9 May 2019; Exhibit 118 – Affidavit deposed by Renewal SA employee, 24 May 2019.

²²⁹ Exhibit 118 – Affidavit deposed by Renewal SA employee, 24 May 2019 at [10].

²³⁰ Ibid at [23].

²³¹ Exhibit 113 – Affidavit deposed by Renewal SA employee, 9 May 2019 at [33].

²³² Exhibit 22 – Statement of John Hanlon, 28 June 2019.

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commitments were formal, with meetings, industry dinners and a great deal of protocol, but others were less formal and might involve a meeting with an individual onsite or unsupervised viewing of public infrastructure.²³³

172.2 In August 2017, the CEO of IASA approached him to provide assistance in connection with a planned trip by representatives of the agency and Minister Hamilton-Smith to Europe. Because Renewal SA had a wide network of relationships with private and overseas public interests, it was commonplace for representatives of IASA to seek assistance from Renewal SA to coordinate meetings and opportunities interstate and overseas.²³⁴

172.3 Plans were made for IASA's visit, which included Minister Hamilton-Smith and others visiting numerous locations in Europe, including Berlin, throughout most of September. Mr Hanlon could not afford to be away for a month, but Mr Mullighan and the Renewal SA Board supported a delegation from Renewal SA accompanying the Mission for at least part of their European travels. Mr Hanlon arranged for two other Renewal SA employees to attend also.²³⁵

172.4 Mr Hanlon's intention was to visit Berlin for a dinner event hosted by Renewal SA, visit the start-up precinct in East Berlin, travel to Frankfurt to view its repurposed building program and Frankfurt's contemporary art facilities and travel to Stuttgart to meet with representatives of Kaufland (a major German retail group which had been in negotiations with Renewal SA about potential sites in SA). Mr Hanlon also stated that he had intended to then travel to Paris to meet with Navya (a French company with which Renewal SA had been in discussions about the establishment of a facility for the manufacture of autonomous vehicles) and the Premier to sign the agreement to build the autonomous vehicles at Tonsley, South Australia. Mr Hanlon then intended to return via Berlin to catch up with his daughter and then return to Adelaide.²³⁶

172.5 Due to other Renewal SA commitments that arose, Mr Hanlon was requested by Mr Mullighan to defer his visit to Europe. He stated that as a consequence, the two other Renewal SA employees left for Europe without him and "*my itinerary was varied to see me travelling to Germany later in September*"

172.6 Mr Hanlon took the view that it remained imperative that he visit specific locations in East Berlin because of the "*synergies*" between those sites and the

²³³ Ibid at p 1-2.

²³⁴ Ibid at p 2.

²³⁵ Ibid at p 3.

²³⁶ Ibid.

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manner in which they had been redeveloped, and a redevelopment project in South Australia, Lot 14. He stated that Mr Mullighan was insistent that the plans for Lot 14 be advanced before the election in March 2018 and Mr Hanlon had existing plans to travel overseas in December and January. Accordingly, he settled for travelling for only 10 days from 20 September.

172.7 Mr Hanlon stated that when he arrived in Berlin, he visited a number of sites, including “*factory berlin, Impact Hub, Wework Germany, Kaos, CLR Haus, Fritz 46, Ahoy, Mind Space and Beta Haus [sic]*” (**the Nine Co-Working Businesses**). He stated that he “*met with staff at each of those sites*” (emphasis added), was given a tour and was handed brochures that he brought back with him to Renewal SA. He also obtained details of leasing rates and made note of how open space was preserved and older building repurposed and refurbished. His statement did not specifically address travel to Frankfurt but noted that “*as a consequence of the observations I made in Berlin and Frankfurt, upon my return, I immediately reduced the number of buildings on Lot 14 to be demolished ...*”.²³⁷

173. The 2019 Hanlon Statement did not confirm whether Mr Hanlon had visited the locations or people listed on the Second Itinerary, which had been endorsed by Mr Hanlon as his “*travel record while in Germany in September 2017*”.²³⁸

174. During Mr Hanlon’s interview on 28 June 2019, Mr Hanlon provided a number of documents to investigators.²³⁹ In particular, Mr Hanlon provided a document titled “*2017 Europe Business Mission – Additional Travel Plan- John Hanlon*” (**Additional Travel Plan**) which was within a bundle of documents marked “JH6”.²⁴⁰ The Additional Travel Plan provided an itinerary of visits and meetings in Germany and France for the period 7 September 2017 to 18 September 2017. At the bottom half of the page were handwritten notes which included a reference to “*co-working startups*”. Below the name “*Aldershof*” was a list of eight places:

174.1 Kaos, Oberschoneweide;

²³⁷ Ibid at p 6.

²³⁸ Exhibit 4 – John Hanlon (Renewal SA), *Travel Plan – Germany – September 2017 (A674961)* (undated).

²³⁹ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [119]–[120]. For completeness, these documents were also reproduced by Mr Hanlon’s Counsel in the Magistrates Court proceedings: Exhibit 135.10 – John Hanlon, *Documents marked JH1 to JH12* (various dates) reproduced in Exhibit ‘MS1’ to Exhibit 135 – John Hanlon, ‘Affidavit of Counsel for Mr Hanlon re permanent stay application’, Submission in *R v Hanlon*, DCCRM-21-1335, 20 October 2021.

²⁴⁰ Exhibit 144 – John Hanlon, *2017 Europe Business Mission Additional Travel Plan - John Hanlon from 7 to 18 September with handwritten notes* (undated).

- 174.2 Kindle Brewery;
- 174.3 CRCLR House;
- 174.4 Fritz 46, Mitte;
- 174.5 St Oberholz, Mitte;
- 174.6 Ahoy, Mitte;
- 174.7 Factory Berlin, Mitte;
- 174.8 Mindspace; and
- 174.9 Betahaus (with the words – “*Rudi Deutscheke Strabe*”).
175. On 2 July 2019, Ms Bridge conducted an internet search for co-working spaces in Berlin, Germany and located a web page called “*The 7 best Berlin coworking spaces*” on “<https://thespaces.com/best-berlin-coworking-spaces/>” (**internet document**).²⁴¹ Ms Bridge noted that the internet document listed the co-work spaces in the same order as those written on the Additional Travel Plan (which also had Betahaus listed).²⁴²
176. Following the interview with Mr Hanlon and the receipt of the 2019 Hanlon Statement, Ms Bridge commenced making inquiries into the Nine Co-Working Businesses.²⁴³ Significantly, Ms Bridge made contact by email and received responses from two of the businesses, both of which indicated that they had no record of Mr Hanlon visiting (CRCLR and Ahoy! Berlin).²⁴⁴ Ms Bridge also continued making inquiries with the companies listed in the Second Itinerary. One had already provided an affidavit on 23 May 2019 stating that no such meeting with Mr Hanlon occurred and the remaining five confirmed the same by email.²⁴⁵
177. On 13 August 2019, Ms Bridge drafted a memorandum to Mr Lander seeking approval for travel to Germany (**Bridge Germany Travel Memorandum**).²⁴⁶ The Bridge Germany Travel Memorandum described the purpose of the travel as follows:²⁴⁷

²⁴¹ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [125]. See Exhibit 41.58 – The 7 best Berlin coworking spaces (Web Page, 2 July 2019) <<https://thespaces.com/best-berlin-coworking-spaces/>> reproduced as Annexure ‘Co-Work Spaces’ to Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019.

²⁴² Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [126].

²⁴³ Ibid at [121].

²⁴⁴ Ibid at [127.1]–[127.2].

²⁴⁵ Ibid at [110]–[117]; Exhibit 243 – Emails between Amanda Bridge (ICAC) and an employee of WISTA Management GmbH, 8 May to 23 May 2019.

²⁴⁶ Exhibit 25 – Memorandum from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 13 August 2019.

²⁴⁷ Ibid at p 4.

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My communication with the companies contained within [the Second Itinerary] has been by email and telephone. Three of the companies, Siemens, Kaufland and Dassault Systemes, have Asia/Australia based offices who have assisted with providing information.

As previously stated, of the nine co-work spaces in Berlin emailed, two have responded. The two that have responded, CRCLR Berlin and Ahoy, confirm they have no record of Hanlon's attendance. I require affidavits from each co-work space, to be able to demonstrate if Hanlon did or did not visit those locations.

I have not emailed the co-work space, Impact Hub due to their association with Hanlon's son-in-law and visiting them, without notice is the preferable option.

The affidavits required are not onerous, however communication with the co-work spaces in Berlin by email and or telephone has proven difficult. Physically attending at the co-work business locations would enable me to prove my identity to the company and provides the opportunity to obtain the necessary information.

Travel is required to strengthen our case against [the Second Itinerary] and importantly to exclude Hanlon's version of events as a reasonable possibility and the value of meeting with potential prosecution witnesses to assess their credibility and reliability.

(underlining added)

178. The Second Itinerary stated that one of the persons whom Mr Hanlon had met on 24 September 2017 at 12:00pm was Mr Jurgen Schneider, Head of Market Development of Siemens. On 1 July 2019, Keith Ritchie, Head of Communications of Siemens and Government Affairs Australia and NZ Siemens, informed Ms Bridge that Mr Schneider had retired from the company two months before 24 September 2017, and that another person, Mr Jo Kaeser, the CEO of Siemens, would not have met Mr Hanlon as that was not his role.²⁴⁸
179. On 15 August 2019, Mr Baker drafted a further memorandum to Mr Lander regarding travel to Germany (**Baker Germany Travel Memorandum**).²⁴⁹ The Baker Germany Travel Memorandum endorsed the request by Ms Bridge and stated:²⁵⁰

Having reviewed the memorandum I agree that the enquiries suggested by Amanda are appropriate and required for the successful prosecution of Mr Hanlon. The matter is significant in respect of the position that Mr Hanlon held and given the media publicity and attention that has been given to this matter in Parliament,

²⁴⁸ Exhibit 60 – Resolve running sheet at p 25, '1 July 2017'; Exhibit 103.9 – Amanda Bridge (ICAC), 'Matters under investigation' v73 (Report for ICAC investigation meeting, 8 July 2019). See also Exhibit 97.12 – Memorandum from Patrick Dawes (DPP) to Sandi McDonald SC (DPP), 13 January 2020 at [109]; Exhibit 223 – Affidavit of Keith Ritchie (Siemens), 14 February 2020, [5]–[8].

²⁴⁹ Exhibit 26 – Memorandum from Andrew Baker (ICAC) to Commissioner Lander KC (ICAC), 15 August 2019.

²⁵⁰ Ibid at p 1.

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particularly by Tom Koutsantonis MP, it is important that it results in a successful prosecution.

(underlining added)

180. In his evidence before me, Mr Baker could not recall the relevance of the media publicity that he referred to in the Baker Germany Travel Memorandum, other than in relation to time pressure.²⁵¹
181. On 16 August 2019, Mr Lander sent a memorandum to Mr Baker and Ms Bridge approving travel to Germany (**Germany Travel Approval**). Mr Lander endorsed Ms Bridge's reasoning in seeking to travel to Germany, agreeing that it was "*necessary for the affidavit's [sic] mentioned in Amanda Bridge's memorandum to be obtained in order to disprove the claims made by Mr Hanlon*" and proposed that Mr Baker accompany Ms Bridge.

Assessment

Mr Lander's decision to approve travel to Germany

182. The request to travel to Germany was made following receipt of the 2019 Hanlon Statement which positively asserted that Mr Hanlon had met with the Nine Co-Working Businesses for the purpose of Mr Hanlon's role with Renewal SA. If that assertion were true, it was unlikely that any allegation of misuse of travel funds could be proved.
183. The Nine Co-Working Businesses were not listed on either the First or Second Itinerary.
184. In order to determine whether there had been a misuse of public funds by Mr Hanlon in travelling to Germany, and whether the trip was for purposes related to his role with Renewal SA, it was necessary to investigate the veracity of the 2019 Hanlon Statement. Ms Bridge attempted to do so by making email contact with the relevant businesses, however those inquiries did not all come to fruition.
185. There was a reasonable basis for ICAC investigators to request that inquiries be conducted on the ground in Germany and for Mr Lander to approve that request. This is a different question to whether those inquiries were properly carried out. It was reasonable to expect that investigators make in-person inquiries with relevant witnesses and not rely upon email correspondence. There was sufficient information before Mr Lander on 16 August 2019 to justify his decision to continue the investigation in Germany.

²⁵¹ Transcript at p 380.

Alleged bias or pre-determination of guilt by ICAC investigators

186. There has been criticism in the public arena of the comments made by Mr Baker in the Baker Germany Travel Memorandum,²⁵² namely that it was important that the enquiries result in a “*successful prosecution*” (see paragraph [179]).²⁵³
187. Mr Baker stated that when he referred to the importance of the investigation resulting in a “*successful prosecution*”, he was likely referring to taking steps to ensure that the evidence was not ruled out because of some issue with inadmissibility.²⁵⁴ Mr Baker accepted that this sentence was a poor choice of words.²⁵⁵
188. Ultimately, Mr Baker accepted that the language could give a perception that ICAC was trying to prove a case against Mr Hanlon, but stated that that did not reflect the objectivity of the investigation.²⁵⁶
189. When asked about Mr Baker’s choice of language in the Baker Germany Travel Memorandum – and in particular the reference to a “*successful prosecution*” – in his evidence before me, Mr Lander could not recall having turned his mind to that choice of words when he read the memorandum.²⁵⁷ When asked to turn his mind to it now, Mr Lander considered it to be an inappropriate choice of words, as an investigator should not be working on the basis that it is important that an investigation results in a successful prosecution; “*The investigator should follow the evidence*”.²⁵⁸
190. Mr Lander did not consider that there was pressure on him personally for the investigation into Mr Hanlon to result in a successful prosecution but was not able to say whether other staff in the office felt such pressure.²⁵⁹ Mr Lander also stated that he was not aware of whether there was a culture within ICAC of pursuing prosecutions or convictions.²⁶⁰ Mr Lander did acknowledge “...*You don’t carry out an investigation unless you suspect a person has committed a criminal offence, so you start with existing suspicion*”.²⁶¹
191. Other documents created by ICAC also revealed the use of language that did not

²⁵² See Exhibit 146 – South Australia, *Parliamentary Debates*, Legislative Council, 16 November 2022 at p 1537 (The Hon Frank Pangallo).

²⁵³ Exhibit 26 – Memorandum from Andrew Baker (ICAC) to Commissioner Lander KC (ICAC), 15 August 2019 at p 1.

²⁵⁴ Transcript at p 381 [27]–[29].

²⁵⁵ Transcript at p 379 [44].

²⁵⁶ Transcript at p 375–376.

²⁵⁷ Transcript at p 271 [46].

²⁵⁸ Transcript at p 272 [13]–[23].

²⁵⁹ Transcript at p 270 [35]–[39].

²⁶⁰ Transcript at p 272.

²⁶¹ Transcript at p 267.

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necessarily reflect the neutral role that an investigator should adopt.²⁶²

192. I accept that an investigator's mind is influenced by what they learned during an investigation. Further, the starting point of an investigation generally involves a suspicion that a person had committed a criminal offence.
193. However, a statement that inquiries were required "*for the successful prosecution of Mr Hanlon*" reflects a fundamental misconception about the role of an investigator, which is to gather all relevant information before determining whether to refer the matter for prosecution. The language used compromises the impartiality of investigators. At the very least, it creates the appearance of bias or partiality.
194. This finding does not detract from the conclusion that it was appropriate for investigators to travel to Germany as part of the investigation into Mr Hanlon's Germany trip. Rather, it serves to emphasise the importance of investigators maintaining their impartiality at each stage of the investigative process.
195. I also do not consider it appropriate for investigators to speak of "*disproving*" claims made by a person under investigation. The role of an investigator is to gather the truth, rather than disprove a particular version or theory of events.
196. Mr Riches, also disapproved of the use of such language. In his evidence before me, he referred to the fact that he frequently saw investigation plans which would contain words such as "*To collect evidence to prove X or Y conduct occurred*". Mr Riches stated that he frequently drew attention to such words to emphasise to investigators that that was not the purpose of an investigation.²⁶³
197. In evidence before me, former ICAC Director Legal, Magistrate Roderick Jensen, stated that the culture of ICAC investigators during his tenure was to "*gather evidence and go where the evidence took them*".²⁶⁴ Mr Jensen did not consider there to have been a culture of investigating "*at all costs*" and indeed that was inconsistent with his experience.²⁶⁵ Similar evidence was given by Mr Lander.²⁶⁶
198. I do **not** find that the evidence established that there was a pervasive culture of inappropriately pursuing prosecutions within ICAC. Nor do I accept that ICAC investigators approached the investigation into Mr Hanlon with a bias or a

²⁶² See, e.g., Exhibit 25 – Memorandum from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 13 August 2019 at p 4 where Ms Bridge stated: "*travel is required to strengthen our case*". In her evidence before me, Ms Bridge candidly accepted that this language was inappropriate: Transcript at p 76.

²⁶³ Transcript at p 489.

²⁶⁴ Transcript at p 167 [18]–[19].

²⁶⁵ Transcript at p 167 [23], [45]–[47].

²⁶⁶ Transcript at p 272 [19]–[23].

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pre-determination of guilt. Whilst the language used in a number of documents was inappropriate, the evidence before me does not establish that overall, the ICAC investigators approached their investigation in a manner that suggested they had pre-judged the outcome of their investigations. Nor do any of my findings in respect of the language used in a number of ICAC documents amount to evidence of misconduct or maladministration in public administration.

VII. Events leading up to Mr Baker and Ms Bridge's Germany trip

199. The following Part of the Report addresses what occurred in the lead up to Mr Baker and Ms Bridge's trip to Germany, including the sufficiency of the procedures within ICAC at the time in relation to overseas investigations and the supervision provided to Ms Bridge in making preparations for the trip.
200. Australia has in place protocols under the *Mutual Assistance in Criminal Matters Act 1987* (Cth) (**MACMA**) for evidence to be obtained from overseas via a mutual assistance request (**MAR**). This Part of the Report also addresses the state of knowledge within ICAC about the MAR process before the trip to Germany.
201. My assessment of the conduct and events described in this Part and **Part VIII** is contained in **Part IX**.

Roles and supervision within ICAC in relation to the Hanlon investigation

202. By the time the ICAC investigation had turned to investigating Mr Hanlon's Germany trip, Ms Bridge was the lead investigator responsible for the investigation.²⁶⁷
203. Mr Baker held the role of Director Investigations at all relevant times.²⁶⁸ Reporting to Mr Baker were team leaders, including Mr Dalton, Ms Bridge's direct supervisor.²⁶⁹ However, at the time that Ms Bridge's inquiries began into Mr Hanlon's Germany trip, Mr Dalton was almost exclusively occupied working on another significant ICAC investigation and therefore maintained little involvement in the Hanlon investigation.²⁷⁰
204. As Director Investigations, Mr Baker had general oversight of the progress of the investigation and received regular updates.²⁷¹ Mr Lander's evidence was that as Director Investigations, it was Mr Baker's responsibility to ensure that investigators had the resources necessary to conduct investigations and that they did so in a timely manner.²⁷²
205. Mr Baker acknowledged that the Hanlon investigation was a significant investigation, and Ms Bridge had a high workload at the time.²⁷³

²⁶⁷ Transcript at p 9 [23], 601.

²⁶⁸ Transcript at p 227 [40].

²⁶⁹ Transcript at p 228 [33]–[39].

²⁷⁰ Transcript at p 604.

²⁷¹ Transcript at pp 333 [35], 334 [14].

²⁷² Transcript at p 256 [4].

²⁷³ Transcript at p 235.

206. Mr Lander explained that he was kept updated about the progress of the Hanlon investigation by reports from Mr Baker at periodic investigation meetings, as well as Mr Baker reporting directly to him from time to time.²⁷⁴

Contact with Nine Co-Working Businesses

207. After Mr Lander approved the investigators travelling to Germany, Ms Bridge made further attempts to contact the Nine Co-Working Businesses.²⁷⁵ Ms Bridge also reviewed the documentary evidence which had been obtained by ICAC and found that Mr Hanlon's telephone had no contact details for any of the Nine Co-Working Businesses, nor photographs of the spaces; nor did his telephone contain any iMessages referring to any of the Nine Co-Working Businesses.²⁷⁶
208. Ms Bridge communicated with two businesses which questioned the legitimacy of ICAC and her inquiries. In July and August 2019, Ms Bridge contacted Ms Alice Grindhammer of CRCLR by email.²⁷⁷ Initially, Ms Grindhammer indicated a willingness to cooperate with inquiries, although raised some doubts about ICAC's legitimacy, stating "*this sounds very serious. I at first was not sure if it's a real request or spam, as it's a pretty surprising inquiry. I am trusting it is legitimate and hereby answer your questions*".²⁷⁸
209. Also on 28 August 2019, Ms Bridge made further inquiries with Ms Grindhammer, including arranging a time to meet with her in Germany. On 31 August 2019, Ms Grindhammer responded, stating:²⁷⁹

²⁷⁴ Transcript at p 256 [33].

²⁷⁵ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [169]–[170], [190]. See, e.g., Exhibit 41.62 – Emails between Amanda Bridge (ICAC) and Efrat Refaely (MindSpace), 28 August 2019 to 12 September 2019 reproduced as Annexure 'ER1' to Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019.

²⁷⁶ Exhibit 103.9 – Amanda Bridge (ICAC), 'Matters under investigation' v73 (Report for ICAC investigation meeting, 8 July 2019) at p 4 [11].

²⁷⁷ On 28 August 2019, Ms Grindhammer also advised Ms Bridge that former tenants of CRCLR, a business called Agora Collective, were asked by a colleague of Ms Grindhammer whether they knew Mr Hanlon. The former tenants advised that they did know Mr Hanlon and that he visited Agora Collective. Ms Grindhammer provided contact details for the former tenants and Ms Bridge advised Ms Grindhammer that she would contact the former tenants: Exhibit 87 – Emails between Amanda Bridge (ICAC), Andrew Baker (ICAC) and Alice Grindhammer (CRCLR) 3 July to 3 September 2019 reproduced as Annexure 'AG1' to Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019). There is no evidence before me that Ms Bridge ever made inquiries with the former tenants of Agora Collective.

²⁷⁸ Exhibit 87 – Emails between Amanda Bridge (ICAC), Andrew Baker (ICAC) and Alice Grindhammer (CRCLR), 3 July to 6 September 2019.

²⁷⁹ Ibid at p 5.

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[W]e find this request very strange, especially since we've confirmed to you multiple times now that we have never met [Mr Hanlon]. We are now doubting the legitimacy of this request. Can you please provide proof of a) the legitimacy of your request and b) legitimacy of the body that you are representing?

(underlining added)

210. Ms Bridge forwarded the email to Mr Baker, who in turn responded to Ms Grindhammer on 2 September 2019, including by providing a link to the ICAC website in order to demonstrate the legitimacy of the request.²⁸⁰

211. On 6 September 2019, Ms Grindhammer responded:²⁸¹

Dear Amanda, dear andrew [sic]

we kindly ask you to stop contacting us. You did not provide us with any proof of your legitimacy. Therefore we will not be meeting you on the 10th of September or answer your requests any longer.

If you do not stop contacting us we will initiate legal proceedings.

212. Ms Bridge forwarded this email to Mr Baker upon receipt, stating “*That’s not good news*”. Mr Baker responded as follows:²⁸²

No it’s a bit of a problem. I don’t understand what they want to provide this ‘legitimacy’. At risk of getting asked to leave or arrested, I think we might just have to turn up and try and convince them in person.

213. Ms Bridge responded “*That’s what I was thinking. I don’t understand what else they would require*”.²⁸³

214. Such a response from CRCLR illustrates the fundamental problem the ICAC officers faced of seeking to carry out investigative functions in Germany without going through the official channels in Germany.

215. Separately, Ms Bridge encountered difficulties in contacting another of the Nine Co-Working Businesses, Mindspace. On 3 September 2019, Mr Lander signed a letter to Mr Efrat Refaely, General Counsel of Mindspace, confirming that Ms Bridge was in fact an ICAC investigator.²⁸⁴

216. Ms Bridge’s evidence was that the purpose of the letter was to try to clothe her and Mr Baker with an air of authority and to confirm to the people with whom they were

²⁸⁰ Ibid at p 3-4.

²⁸¹ Ibid at p 1.

²⁸² Exhibit 121 – Emails between Amanda Bridge (ICAC), Andrew Baker (ICAC) and Alice Grindhammer (CRCLR), 1 to 6 September 2018 at p 1.

²⁸³ Ibid at p 1.

²⁸⁴ Exhibit 73 – Letter from Commissioner Lander KC (ICAC) to Efrat Refaely (Mindspace), 3 September 2019.

speaking that they were there officially.²⁸⁵

217. The Bridge Germany Travel Memorandum referred to the importance of physically attending the Nine Co-Working Businesses so as to “*enable me to prove my identity*”.²⁸⁶ In evidence before me, Ms Bridge agreed that presenting in person would provide her with some greater authority than she might have been able to achieve by simply communicating by telephone or email.²⁸⁷
218. The communications with Ms Grindhammer and Mr Refaely reveal that prior to Mr Baker and Ms Bridge’s Germany trip, questions were being asked about the legitimacy of ICAC. This should have raised questions in the minds of those who were aware of the communications about the legal authority of ICAC to conduct investigations in Germany. However, these communications were not brought to the attention of ICAC Legal, and therefore were not the subject of legal advice.

Mr Baker and Ms Bridge’s knowledge about MARs and protocols in Germany

General knowledge of processes for taking evidence overseas and interstate

219. When Ms Bridge and Mr Baker travelled to Germany, ICAC did not have in place any policies or guidance for investigators undertaking inquiries interstate or overseas.²⁸⁸ ICAC had no Standard Operating Procedures which addressed the MACMA or any procedure to be followed when obtaining witness statements interstate or overseas.
220. ICAC’s practice in this regard mirrored that of SAPOL.²⁸⁹ The Acting Officer in Charge of the Serious Crime Coordination Branch of SAPOL, Detective Superintendent Billy Thompson, provided information to me indicating that SAPOL does not have in place any formal protocols for obtaining evidence from overseas witnesses. SAPOL either obtains such evidence via “*police-to-police*” cooperation or via an MAR, but investigators “*have to some extent relied on common professional knowledge regarding the process of obtaining statements from witnesses who are either interstate or overseas*”.²⁹⁰
221. Ms Bridge addressed her knowledge of the MAR requirements in her affidavit of

²⁸⁵ Transcript at p 82 [28].

²⁸⁶ Exhibit 25 – Memorandum from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 13 August 2019 at p 4.

²⁸⁷ Transcript at p 80 [3].

²⁸⁸ Transcript at pp 164 [34], 365 [4].

²⁸⁹ Exhibit 213 – Letter from Billy Thompson (SAPOL) to the Inspector, 4 May 2023.

²⁹⁰ Ibid at p 2-3.

3 November 2022.²⁹¹

I am aware of a mutual assistance request (MAR) and to make one requires contact with the AFP. I had never had cause to make a request for one. During this investigation my understanding prior to leaving for Germany was that I was not seeking the foreign country's assistance to make enquiries nor obtain statements on the ICAC's behalf.

I had not made application for an MAR prior to leaving for Germany. From my experience and conversations with police and members of the ICAC I was aware to obtain an MAR 1) there may be delays for months or potentially years to obtain the information and in this matter time was important, 2) often the information required can be lost in translation resulting in the required information not being obtained, and 3) again I was not seeking the assistance of the foreign country.

222. Ms Bridge gave evidence in the District Court proceedings against Mr Hanlon that she did not know about the requirements of making a MAR before she departed for Germany.²⁹² Nor did Ms Bridge speak to anyone from the Australian Embassy to obtain advice about taking affidavits.²⁹³ Ms Bridge also stated that she had not spoken to Mr Lander **before** she left about what protocols would need to be followed in order to comply with both German and Australian law, although she thought they had spoken about the use of notaries.²⁹⁴ This was consistent with the evidence Ms Bridge gave before me.²⁹⁵
223. Ms Bridge had previously been involved in making interstate inquiries. Ms Bridge recalled that on those occasions, she informed interstate authorities that she would be travelling interstate for the purpose of making inquiries. For example, Ms Bridge travelled to Melbourne when investigating Mr Hanlon's Melbourne trip, and recalled having contacted the Victorian Independent Broad-Based Anti-Corruption Commission prior to doing so.²⁹⁶ Ms Bridge understood that the rationale for informing interstate authorities was because "*we had no legal power, we had no authority in those places*".²⁹⁷ However, Ms Bridge did not turn her mind to whether that same rationale applied with equal or greater force when she was travelling to Germany for the purposes of carrying out official duties in the Hanlon investigation.²⁹⁸
224. By contrast, Mr Baker was not aware that it was normal protocol when travelling

²⁹¹ Exhibit 57 – Affidavit of Amanda Bridge, 3 November 2022 at [9]–[10].

²⁹² Exhibit 55.2 – Transcript of Proceedings, *R v Hanlon* (SADC, DCCRM-21-1335, Heffernan DCJ, 3 November 2022) at p 43 [26]–[34].

²⁹³ Ibid at p 45 [20]–[22].

²⁹⁴ Ibid at p 52 [16]–[24].

²⁹⁵ Transcript at pp 89 [45], 94 [48]–95 [13].

²⁹⁶ Transcript at p 90-91.

²⁹⁷ Transcript at p 91 [8].

²⁹⁸ Transcript at p 91 [14].

interstate to take statements for investigators to contact interstate authorities.²⁹⁹ Indeed, while the information I received from SAPOL did state that it was *common* for a SAPOL officer taking evidence interstate to be supported or accompanied by local police, it did not indicate that it was *necessary* for SAPOL to advise interstate counterparts. However, Mr Baker acknowledged that when travelling to other states and territories, ICAC investigators would not have jurisdiction nor power to exercise any authority.³⁰⁰

Inquiries made by Mr Baker and Ms Bridge prior to travelling to Germany

225. On 23 July 2019, Ms Bridge emailed an officer from the Adelaide office of the Australian Federal Police (**AFP**) asking for the contacts for liaison officers in Germany and France.³⁰¹ Ms Bridge was provided with the contact details for the Interpol Operations division of the AFP (**AFP Interpol**).³⁰² On the same day, Ms Bridge made an entry in her notebook in a “*to do list*” that read “*AFP liaison*”.³⁰³ In her affidavit, Ms Bridge said that she did not recall why she made this entry, “*only that I would have considered enquiries with the Australian Federal Police (AFP) about potential assistance in Germany*”.³⁰⁴
226. Ms Bridge explained in her evidence before me that she had made contact with the AFP at this point in time because she believed that the AFP may be able to assist her and Mr Baker in making their inquiries in Germany, primarily by accompanying them, and so that they had a contact person in Germany if they had difficulty speaking to people.³⁰⁵ Ultimately, Ms Bridge did not make contact with AFP Interpol prior to travelling to Germany.
227. On 2 August 2019, ICAC Senior Legal Officer Ms Helen Luu emailed Ms Bridge, addressing a question from Ms Bridge “*about who can swear an affidavit in Germany so that it is acceptable in SA courts*”.³⁰⁶ Ms Luu drew Ms Bridge’s attention to the requirements in section 66(1) of the *Evidence Act 1929* (SA) (**Evidence Act**). Ms Luu indicated that, in the case of Germany, the available options of persons before whom an oath or affidavit may be taken were in sub-sections (b) (“*a British diplomatic or*

²⁹⁹ Transcript at p 365 [4].

³⁰⁰ Transcript at p 365 [33].

³⁰¹ Exhibit 74 – Emails between from Amanda Bridge (ICAC) and officer of the AFP, 23 July to 19 August 2019 at p 2.

³⁰² Ibid at p 1.

³⁰³ Exhibit 57 – Affidavit of Amanda Bridge, 3 November 2022 at [7]. See Exhibit 57.1 – Amanda Bridge (ICAC), *Handwritten notes* (23 July 2019) reproduced as Annexure ‘AFP NOTE’ to Exhibit 57 – Affidavit of Amanda Bridge, 3 November 2022.

³⁰⁴ Exhibit 57 – Affidavit of Amanda Bridge, 3 November 2022 at [8].

³⁰⁵ Transcript at p 94 [26]–[38].

³⁰⁶ Exhibit 24 – Email from Helen Luu (ICAC) to Amanda Bridge (ICAC), 2 August 2019.

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consular agent exercising his function in that place”), (ba) (ambassadors, high commissioners, consul-generals, consuls and similar), and (c) (“any person having authority to administer an oath in that place”). Ms Luu also stated that a notary public in Germany would be authorised to administer an oath in Germany, but cautioned that the notary would need to provide confirmation that it was in fact the local law in Germany that a notary public could take oaths/affidavits, or that there was a certificate of a superior court in Germany confirming the same.³⁰⁷

228. Ms Bridge referred to Ms Luu’s advice in the Bridge Germany Travel Memorandum.³⁰⁸

229. Also in August 2019, Ms Bridge made contact with Mr David Urry, an officer of Austrade in Berlin, primarily for the purpose of seeking contact details for the Nine Co-Working Businesses.³⁰⁹ Mr Urry advised Ms Bridge to contact the Frankfurt consular team to verify that the service she required could be offered.³¹⁰

230. In her evidence in the District Court, Ms Bridge also stated that she had not advised the Australian Embassy in advance of the purpose of her attendance, as she was using an online booking system.³¹¹

231. On 6 September 2019, Mr Baker emailed an officer working with the Adelaide office of the AFP, stating:³¹²

I wonder whether you might be able to assist with my enquiry or forward it to an appropriate person. The SA ICAC are conducting some enquiries in Berlin, Germany for an investigation. I will be travelling to Germany with an investigator tomorrow for two weeks and am wondering whether the AFP have any staff in Berlin. The reason I ask is that we are having difficulties with a couple of potential witnesses who think we are scammers and no matter what information we provide them, we can’t seem to satisfy them of our legitimacy.

If possible could you provide me with a contact in Berlin that we might be able to use to assist?

232. Mr Baker’s affidavit of 2 November 2022 explains the consideration he gave to obtaining an MAR prior to travelling to Germany:³¹³

³⁰⁷ Ibid at p 2.

³⁰⁸ Exhibit 25 – Memorandum from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 13 August 2019 at p 5–6.

³⁰⁹ Exhibit 147 – Emails between Amanda Bridge (ICAC) and David Urry (AusTrade), 26 to 28 August 2019 at p 5.

³¹⁰ Ibid at p 1.

³¹¹ Exhibit 55.2 – Transcript of Proceedings, *R v Hanlon* (SADC, DCCRM-21-1335, Heffernan DCJ, 3 November 2022) at p 46 [4]–[11].

³¹² Exhibit 27 – Email from Andrew Baker (ICAC) to an officer of the AFP, 6 September 2019.

³¹³ Exhibit 56 – Affidavit of Andrew Baker (ICAC), 2 November 2022 at [5].

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Prior to undertaking inquiries in Germany, consideration was given to having local authorities in Germany conduct the required inquiries. I had a conversation with Commissioner Lander regarding this issue. Following that conversation, a decision was made to not request assistance of the local authorities for three reasons. Firstly, the length of time in which mutual assistance requests take to be completed, secondly, the issues with being able to sufficiently brief local law enforcement with regards to the investigation and what was required in the statement, thirdly there was no requirement to.

233. In respect of the first issue, Mr Baker explained that it was common knowledge that MARs take a long time to be completed and would likely take approximately one year.³¹⁴ He continued “[t]his matter was very public at the time and it was in the public interest and in the interest of Mr Hanlon to expedite the inquiries where possible”.³¹⁵

234. Mr Baker indicated that Mr Lander wanted “these inquiries done and wanted them done quickly”.³¹⁶ Mr Lander stated in evidence before me that he would not have overlooked advice about correct processes to follow in order to save months of investigation time.³¹⁷ I accept Mr Lander’s evidence.

235. Relevantly, Mr Baker stated in his affidavit:³¹⁸

Additionally, my understanding of mutual assistance requests then and still to this date, is that if local authorities are not being asked to assist with the making of inquiries, taking of affidavits, or seizure of evidence, then mutual assistance protocols are not required. No authority was to be exercised in Germany. All statements were taken on a voluntary basis.

(underlining added)

236. Mr Baker was incorrect to assume that as an ICAC officer, he was not exercising any “authority” in Germany. Mr Baker and Ms Bridge were not acting in a private capacity. They were acting in their official capacity as ICAC officers. Further, they were holding themselves out as acting in an official capacity.³¹⁹ As for statements being taken on “a voluntary basis”, as discussed below in paragraph [273], Mr Baker and Ms Bridge did not comply with Ms Grindhammer’s request to stop contacting her.³²⁰ They visited the company’s work premises after that request.³²¹ This was quite extraordinary given that they had no authority to undertake any official activities in Germany at that time.

³¹⁴ Ibid at [7].

³¹⁵ Ibid at [7].

³¹⁶ Transcript at p 342 [1].

³¹⁷ Transcript at p 318 [7].

³¹⁸ Exhibit 56 – Affidavit of Andrew Baker (ICAC), 2 November 2022 at [9].

³¹⁹ Mr Baker wrote an email to Ms Grindhammer of CRCLR seeking to persuade her that he was a legitimate representative of ICAC including signing himself off as Director Investigations: Exhibit 87 – Emails between Amanda Bridge (ICAC), Andrew Baker (ICAC) and Alice Grindhammer (CRCLR), 3 July to 6 September 2019 at p 2.

³²⁰ Ibid at p 1.

³²¹ Exhibit 40 – Amanda Bridge (ICAC), *Travel diary for Amanda Bridge and Andrew Baker for September 2017 Germany trip* (24 October 2019) at p 2.

237. Mr Baker acknowledged that he made no inquiries, nor was he aware of any inquiries being conducted by any ICAC employees, into the protocols regarding approaches to or the interviewing or taking statements or affidavits from witnesses in Germany prior to travelling to Germany, apart from the witnessing of affidavits in accordance with section 66 of the *Evidence Act*.³²² Mr Baker drew a distinction in his mind between inquiries in which ICAC was “*exercising an authority*” or asking local authorities to conduct inquiries for them, and what he and Ms Bridge did in Germany.³²³ As discussed below, in taking steps to take statements or affidavits from witnesses, Mr Baker was exercising his authority as an ICAC officer.

Oversight within ICAC of the Hanlon investigation and the Germany trip

238. At the time of the Hanlon investigation, regular investigation meetings (held between fortnightly to monthly – hereinafter the “**regular investigation meetings**”) were held and attended by Mr Lander, Mr Riches, Mr Jensen, Mr Baker and team leaders, as well as occasionally the investigators in charge of the investigation.³²⁴ At the investigation meetings, current investigations were discussed. The investigator in charge of the investigation prepared an update on the status of the investigation and what they expected to occur over the next two weeks.³²⁵ There were investigation meeting reports (**investigation meeting reports**) prepared before those meetings, but there were no minutes or records kept of the regular investigation meetings.
239. However, not every current investigation was discussed at each investigation meeting.³²⁶ Mr Dalton explained that often Mr Lander received direct briefings about significant ICAC investigations by investigators (**informal meetings**).³²⁷ When this occurred, the same investigation may not have been discussed during the regular investigation meetings as there was no need to update Mr Lander on the status of the investigation.³²⁸
240. The investigation meeting reports prepared by Ms Bridge in respect of the Hanlon investigation provide a detailed summary of the status of the investigation and Ms Bridge’s proposed next steps.³²⁹ Those meeting reports outline the tasks that had been undertaken as at the date of the report and lists the matters to be followed up or

³²² Exhibit 56 – Affidavit of Andrew Baker (ICAC), 2 November 2022 at [10]–[11].

³²³ Transcript at p 371 [46].

³²⁴ Transcript at pp 234; 331; 363.

³²⁵ See Transcript at p 364.

³²⁶ But see Transcript at p 256 [45].

³²⁷ Transcript at p 646 [8].

³²⁸ Transcript at p 645 [41].

³²⁹ See e.g., Exhibit 103.1 – Amanda Bridge (ICAC), ‘Matters under investigation’ v84 (Report for ICAC investigation meeting, 3 December 2019).

completed.

The role of ICAC Legal

241. Mr Baker's evidence was that given ICAC legal officers were involved in investigations, he had an expectation that legal officers would consider the strategies being pursued by investigators and determine whether there was any legal issue with that strategy.³³⁰ Mr Baker believed that as the legal team (including the Director Legal) attended investigation meetings throughout the planning process for the Germany trip, if there was an issue around what was proposed, someone would have raised it.³³¹ However, this evidence was speculative and Mr Baker did not give any specific evidence about the knowledge of ICAC Legal about the Germany trip. There is no other evidence before me that the Germany trip was discussed at the investigation meetings.
242. Mr Lander gave evidence that in the early stages of his time as the Commissioner, there was a reluctance among investigators to talk to legal officers about investigations.³³² However during his tenure, he "*changed the geography [of ICAC] so that ... lawyers were placed on the same floor as investigators*", in order to build trust.³³³ Mr Lander explained that he wanted the legal officers to be proactive in relation to an investigation "*rather than just sit there waiting to be asked*" in order to overcome the reluctance on the part of investigators he had witnessed to get legal officers involved.³³⁴
243. Mr Jensen as Director Legal also stated that he assigned a legal officer to each investigation, and the legal officer had the responsibility of providing any advice that ought to have been given in relation to the conduct of the particular investigation.³³⁵ Mr Jensen explained that on large investigations, one particular legal officer would be allocated to be available to investigators for legal advice. Mr Jensen also suggested that the legal officer was expected to "*stay abreast of the investigation in a more detailed way than smaller ... investigations*".³³⁶ Although the legal officers were not "*embedded*" within the investigation team, the arrangements meant that there was one particular legal officer who had conduct of the investigation.³³⁷ However the legal officer was "*very much on the side of the investigation*".³³⁸ Mr Jensen said that at the

³³⁰ Transcript at p 397 [15]-[27].

³³¹ Transcript at pp 339-340, 397.

³³² Transcript at p 246 [13].

³³³ Transcript at p 246 [27].

³³⁴ Transcript at p 247 [2].

³³⁵ Transcript at p 161 [36].

³³⁶ Transcript at p 161 [38].

³³⁷ Transcript at p 161 [41].

³³⁸ Transcript at p 162 [25].

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beginning of the Hanlon investigation, he was not sure if a senior legal officer was allocated to the investigation because it was not clear how big the investigation would be. However, a senior legal officer was so allocated by the end of any large investigation.³³⁹

244. In subsequent submissions to me, Mr Jensen clarified that the role of the legal officer was not to actually conduct the investigation (this being the role of an investigator), but rather to provide a support role in a corruption investigation. He stated that the legal officer who was the point of contact for a particular investigation was not limited to only responding to specific requests for legal advice. Rather, if they became aware of an issue or had a concern during an investigation, there was no impediment to the legal officer raising that issue either with the investigator or someone else within ICAC without a specific request for legal advice.
245. If there was an expectation that ICAC legal officers would take a “*proactive*” approach to investigations and actively review investigations to determine whether any legal issues needed to be addressed (as suggested by Mr Lander in his evidence), I find that such an expectation was not communicated either in writing or verbally to ICAC Senior Legal Officer Ms Helen Luu, who gave Ms Bridge the advice about section 66 of the *Evidence Act* referred to at [227] above.
246. Mr Jensen sought to clarify his understanding of what Mr Lander meant when he referred to legal officers taking a “*proactive*” role in investigations.³⁴⁰ He considered that this meant no more than if a legal officer became aware of an issue, or had a concern regarding the legality of a particular action, the legal officer was at all times free to raise it and did not need to wait to be asked specifically for advice.³⁴¹
247. There is some inconsistency between Mr Jensen’s position and how Ms Luu understood her role as a legal officer, which was to provide advice on an “*as needs*” basis.³⁴² She stated she was **not** “*allocated*” to or responsible for the Hanlon investigation.³⁴³ Ms Luu said that “*there was quite a distinction between the legal team and the investigations team at ICAC*” and that the investigation team “*understandably*” kept their investigation secret.³⁴⁴ Her involvement in the Hanlon investigation was limited to addressing specific issues that were brought to her attention. Ms Luu further

³³⁹ Transcript at p 161 [36].

³⁴⁰ Exhibit 165 – Magistrate Roderick Jensen, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (22 May 2023) at [43].

³⁴¹ Ibid.

³⁴² Transcript at p 555.

³⁴³ Transcript at p 567.

³⁴⁴ Transcript at p 556.

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stated that “*it wasn’t like [the investigators] had a line of communication with ICAC Legal to update on every aspect of their investigation because sometimes strategically that’s not sensible*”.³⁴⁵

248. Ms Luu was clear in conveying her understanding that ICAC legal officers were **never** allocated to oversee or manage investigations.³⁴⁶ Ms Luu understood her role to be limited to addressing those matters specifically brought to her attention. Of course, if Ms Luu was aware of a matter that needed attention from a legal perspective, I do not doubt that she would have raised it, but she did not see her role as proactively reviewing arrangements made by investigators to identify potential legal issues.
249. Ms Luu acknowledged that this arrangement was not optimal, and had a legal officer been allocated to “own” an investigation, there would have been greater oversight from a legal perspective.³⁴⁷ I accept Ms Luu’s evidence. She was a most impressive witness.
250. Although Mr Jensen suggested that for larger investigations, the particular legal officer who was allocated to the matter would attend the periodic investigation meetings,³⁴⁸ Ms Luu stated that she did not recall attending any investigation meetings relating to the Hanlon investigation.³⁴⁹ If she had attended, Ms Luu stated she would have made a note of her attendance on ICAC’s case management system (called Resolve).³⁵⁰ Mr Baker at first suggested that Ms Luu attended the relevant investigation meetings at which the Germany trip was discussed, but was later equivocal as to whether she attended.³⁵¹ There is no reason to doubt Ms Luu’s evidence, and I accept it.
251. It is significant that neither Ms Luu nor Mr Jensen nor any other ICAC legal officer raised with Ms Bridge the MAR process. Nor did any ICAC legal officer suggest to Ms Bridge or Mr Baker that they should first make contact with the AFP or the Australian Embassy in Berlin to ascertain whether there were any protocols that should be followed when travelling overseas, or that they should contact the local authorities. Mr Jensen’s evidence was that:³⁵²

I would expect [the investigators] to arrive ... to the formulation of we’re going overseas, all right, well, perhaps we should have a conversation about what we can do there.

252. He further stated: “*I’m not aware of being asked to give advice or being in an*

³⁴⁵ Transcript at p 556.

³⁴⁶ Transcript at p 558.

³⁴⁷ Transcript at p 558.

³⁴⁸ Transcript at p 163.

³⁴⁹ Transcript at p 559.

³⁵⁰ Transcript at p 559.

³⁵¹ Transcript at p 398-399.

³⁵² Transcript at p 170.

*environment where that advice could have been given”.*³⁵³

253. Mr Jensen also stated that it appeared that assumptions were made that there was no issue with the ability to travel to Germany to take evidence.³⁵⁴
254. Ms Luu provided advice about the requirements of section 66 of the *Evidence Act* as they related to witnessing affidavits in Germany.³⁵⁵ That advice did not address the question of the legal authority of ICAC investigators to conduct inquiries in Germany. Ms Luu explained she had understood that Mr Lander had made the decision that Mr Baker and Ms Bridge would travel to Germany, and ordinarily a decision of this nature would have been made at a meeting attended by the Director Legal.³⁵⁶ In those circumstances, Ms Luu considered that she may have been working under the assumption that the broader question of ICAC’s authority to undertake investigations in Germany was considered at a higher meeting, without her being in attendance.³⁵⁷
255. Mr Jensen’s evidence was that he did not provide any advice in relation to Mr Baker and Ms Bridge’s Germany trip, including in relation to Ms Luu’s email of 2 August 2019 about the requirements of section 66 of the *Evidence Act*. Whilst Mr Jensen thought that he would have been aware of the Germany trip, he did not have specific recollections about what he had been told.³⁵⁸ Further, Mr Jensen did not consider that the fact of travel to Germany was necessarily a matter that needed to have been brought to his attention.³⁵⁹
256. There is a clear tension between how different parts of ICAC viewed the role of ICAC legal officers. On the one hand, ICAC investigators considered that if there had been a legal issue around the fact of them travelling to Germany, ICAC legal officers would have been brought those legal issues to their attention. On the other hand, Mr Jensen’s evidence was that he considered the responsibility was with ICAC investigators to specifically ask a question of ICAC legal officers that prompted them to consider the issue of whether the investigators had authority to conduct investigations in Germany.
257. Further, Mr Jensen at times appeared to place responsibility with identifying that there was a legal issue that merited investigation with Ms Luu.³⁶⁰ However this was clearly inconsistent with Ms Luu’s understanding of her role, including her role in the hierarchy

³⁵³ Transcript at p 171 [5].

³⁵⁴ Transcript at pp 171 [8], 172 [48].

³⁵⁵ Exhibit 24 – Email from Helen Luu (ICAC) to Amanda Bridge (ICAC), 2 August 2019.

³⁵⁶ Transcript at p 565.

³⁵⁷ Transcript at p 565.

³⁵⁸ Transcript at p 165 [31].

³⁵⁹ Transcript at p 169 [13].

³⁶⁰ Transcript at p 170 [36].

of decision making within ICAC Legal.

Oversight by Mr Lander and Mr Baker

258. Mr Baker gave evidence before me that he did not turn his mind to the question of whether an official from Australia had authority to conduct inquiries in Germany without approval from the German authorities.³⁶¹ Although this was the first time that Mr Baker had been involved in making overseas inquiries, he did not think about contacting the AFP to seek their advice about correct processes.³⁶² Nor did he consider whether ICAC had any legal authority to undertake any official investigative functions in Germany, nor consider obtaining legal advice on the issue.³⁶³ Mr Baker did not consider that what he and Ms Bridge were doing in Germany – approaching witnesses to voluntarily assist with their inquiries – meant that they were carrying out an “*official function*” in Germany.³⁶⁴
259. Nor did Mr Baker consider it appropriate to contact the Australian Embassy in Berlin prior to him and Ms Bridge travelling to Germany even though Mr Baker and Ms Bridge intended to attend the Australian Embassy to have the affidavits witnessed.³⁶⁵ Indeed, Mr Baker did not take any steps prior to travelling to Germany to check with Ms Bridge about the arrangements she had made to have the affidavits witnessed in Germany. According to Mr Baker, the rationale of his involvement in the Germany trip was to have someone of seniority within ICAC accompany Ms Bridge to Germany in order to provide some leadership in that role.³⁶⁶
260. As no other overseas inquiries had been undertaken by ICAC (other than the witness statement taken by Ms Bridge in England), Mr Lander had no prior experience as the Independent Commissioner Against Corruption in MARs.³⁶⁷ His only other prior experience in taking evidence overseas was in civil matters, in which different legal principles applied.³⁶⁸ In 2019, Mr Lander did not have any understanding of the MAR process.³⁶⁹
261. Mr Lander also did not turn his mind to the question of whether ICAC investigators had authority to conduct investigations in Germany.³⁷⁰ Mr Lander explained that he

³⁶¹ Transcript at p 337-338.

³⁶² Transcript at p 339 [40].

³⁶³ Transcript at p 340 [18].

³⁶⁴ Transcript at p 367-368.

³⁶⁵ Transcript at p 393.

³⁶⁶ Transcript at p 394 [48]; Exhibit 26 – Memorandum from Andrew Baker (ICAC) to Commissioner Lander KC (ICAC), 15 August 2019 at 1 [4].

³⁶⁷ Transcript at p 257 [49].

³⁶⁸ Transcript at p 258 [2].

³⁶⁹ Transcript at p 261 [6].

³⁷⁰ Transcript at p 261 [36].

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considered that investigators could lawfully undertake inquiries in Germany because “*they weren’t exercising any powers*”.³⁷¹ In other words, because investigators were not exercising powers under any Act or purporting to require witnesses to respond, he did not consider that the question of authority to conduct investigations arose.³⁷² I do not agree with Mr Lander’s opinion that the ICAC investigators were not exercising any powers when they were seeking to obtain statements/affidavits in Germany.

262. Mr Lander also did not request legal advice be obtained on this issue,³⁷³ nor did he direct that contact be made with local authorities, the AFP or the Australian Embassy prior to travel.³⁷⁴ He acknowledged that, looking at the events as he knew them to have unfolded now, it would have been best practice for an ICAC legal officer to examine the legal implications generally of two officers going to Germany to carry out their official functions there.³⁷⁵
263. Mr Baker did not recall discussing with Mr Lander the protocols that he and Ms Bridge should follow when approaching witnesses in Germany.³⁷⁶ When asked whether he had given any directions to the investigators who were travelling as to how they should conduct themselves overseas, Mr Lander recalled having said that Mr Baker and Ms Bridge must not purport to exercise any powers, and that if people would not cooperate, no further steps should be taken.³⁷⁷
264. Mr Lander drew a distinction between obtaining statements and obtaining evidence overseas.³⁷⁸ In his opinion, there was a distinction in the *MACMA* as to whether it applies at the investigation stage or only at the time when evidence is being given in the prosecution itself.³⁷⁹ As Mr Baker and Ms Bridge were in Germany for the purpose of obtaining statements, Mr Lander considered that this “*was not evidence at that stage*”³⁸⁰ and stated that it was never in his contemplation that any statements Mr Baker and Ms Bridge obtained would be tendered in evidence.³⁸¹ The fact is that Mr Baker and Ms Bridge’s activities in Germany breached German sovereignty. The taking of statements by the ICAC officers qualifies as investigative steps according to German legal standards irrespective of whether those witnesses cooperated

³⁷¹ Transcript at p 261 [48].

³⁷² Transcript at p 262 [2].

³⁷³ Transcript at p 262 [8].

³⁷⁴ Transcript at p 261 [11].

³⁷⁵ Transcript at p 276 [29].

³⁷⁶ Transcript at p 391.

³⁷⁷ Transcript at p 286 [44].

³⁷⁸ Transcript at p 265 [10].

³⁷⁹ Transcript at p 265 [18].

³⁸⁰ Transcript at p 265 [21].

³⁸¹ Transcript at p 284 [5].

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voluntarily with the ICAC investigators.³⁸² This matter is discussed further below.

265. Ordinarily in a criminal trial, an affidavit or statement taken in the course of an investigation will not be tendered in the trial itself, and the witness would be called to give oral evidence at the trial. However, there are occasions when the statement may be relied upon by the prosecution, such as where a witness has died.
266. Moreover, section 114 of the *Criminal Procedure Act 1921* (SA) (***Criminal Procedure Act***) contains the procedure for committal proceedings where a defendant does not admit a charge. In those circumstances, the prosecutor tenders the statements in the brief for the purpose of the Magistrate making an assessment of whether there is sufficient evidence which, if accepted, would prove every element of the offence(s) with which the defendant is charged.³⁸³ The act of taking statements overseas could therefore have had consequences for evidence in the context of a contested committal proceeding.³⁸⁴
267. I find that Mr Lander and Mr Jensen should have obtained legal advice prior to Mr Baker and Ms Bridge's Germany trip about the lawfulness of their investigations in Germany.

³⁸² Exhibit 225 – Legal opinion of Sebastian Sevenich (Rechtsanwalt), 21 May 2023.

³⁸³ *Criminal Procedure Act 1921* (SA) s 114.

³⁸⁴ Transcript at p 288 [31].

VIII. ICAC officers conduct investigations in Germany

268. This Part of the Report considers the conduct of Mr Baker and Ms Bridge in Germany, including contact with the AFP and the Australian Embassy, and the events immediately after their return from Germany.
269. Mr Baker and Ms Bridge left for Germany on 7 September 2019.³⁸⁵ The activities undertaken by Mr Baker and Ms Bridge while in Germany involved making inquiries with witnesses (including taking affidavits) and attending locations Mr Hanlon had visited (based on photographs and videos on Mr Hanlon's telephone). No one from ICAC ever informed any German official about the attendance of its officers to investigate Mr Hanlon on German soil.³⁸⁶

Attendance at locations

270. While in Germany, Mr Baker used an iPhone fitted with a prepaid Telstra SIM card to obtain cellular and satellite location data from various locations that Mr Hanlon had claimed to have visited during his Germany trip. Mr Baker and Ms Bridge also travelled by Deutsche Bahn train to observe the process of scanning and stamping paper tickets and to make enquiries about train tickets purchased by Mr Hanlon while in Germany.³⁸⁷
271. Mr Baker and Ms Bridge attended locations depicted in various photographs on Mr Hanlon's phone to confirm Mr Hanlon's movements while in Germany.

Contact with witnesses in Berlin

272. Whilst in Germany Mr Baker and Ms Bridge made contact with a number of witnesses, including, witnesses from CRCLR, Kaufland and Betahaus as detailed below.

Attendance at CRCLR

273. On 10 September 2019, Mr Baker and Ms Bridge attended CRCLR,³⁸⁸ the company for which Ms Grindhammer worked. Ms Bridge gave evidence that despite the prior indication from Ms Grindhammer that she did not wish to be contacted, Ms Bridge and Mr Baker attempted to contact Ms Grindhammer whilst they were in Berlin.

³⁸⁵ Exhibit 40 – Amanda Bridge (ICAC), *Travel diary for Amanda Bridge and Andrew Baker for September 2017 Germany trip* (24 October 2019) at p 1.

³⁸⁶ Exhibit 55.2 – Transcript of Proceedings, *R v Hanlon* (SADC, DCCRM-21-1335, Heffernan DCJ, 3 November 2022) at p 75 [15].

³⁸⁷ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [131]–[142]; Exhibit 51 – Affidavit of Andrew Baker (ICAC), 16 December 2020 at [3]–[20].

³⁸⁸ Exhibit 40 – Amanda Bridge (ICAC), *Travel diary for Amanda Bridge and Andrew Baker for September 2017 Germany trip* (24 October 2019) at p 2.

274. Ultimately, Mr Baker and Ms Bridge visited Ms Grindhammer's office but as she was not present, they left and did not try again a second time.³⁸⁹

Attendance at Kaufland

275. According to the Second Itinerary, on Monday 25 September 2017, Mr Hanlon had a meeting with two representatives of Kaufland. However, Mr Baker and Ms Bridge spoke to one of the Kaufland representatives who stated he was on holiday in Spain on 25 September 2017.³⁹⁰ The diary of the other representative showed they returned to Germany from Dublin, Ireland at 9:00am on 25 September 2017 and for the remainder of the day had multiple internal meetings in their office in Heilbronn, Germany.³⁹¹

Attendance at Betahaus

276. According to the 2019 Hanlon Statement, Mr Hanlon visited Betahaus during his trip to Germany.³⁹² Ms Bridge and Mr Baker met with the CEO and co-founder of Betahaus who provided an affidavit stating that in September 2018, Betahaus was located at Prinzessinnenstrasse 19c, 10969 Berlin and that Betahaus moved to its current location in Rudi-Dutschke-Strasse 23, 10969 Berlin on 3 December 2018.³⁹³ This was relevant because in the Additional Travel Plan submitted by Mr Hanlon, he suggested that he had visited Betahaus at the new address in Rudi-Deutscheke. The investigators were entitled to conclude that he could not have done so in September 2017 because Betahaus was not at that address at that time. This prompted suspicions that Mr Hanlon had handwritten the notes referring to the co-working spaces on the Additional Travel Plan after 3 December 2018, when Betahaus had moved to its new location.³⁹⁴

277. The CEO of Betahaus stated that if Mr Hanlon had requested a meeting to visit Betahaus, they would have received that request personally. Further that if Mr Hanlon made an appointment to visit or book a space, such records would be kept.³⁹⁵ The CEO of Betahaus confirmed that their emails and records for the previous 10 years contained no record of contact from Mr Hanlon.³⁹⁶ The co-founder of Betahaus also

³⁸⁹ Transcript at p 84.

³⁹⁰ Exhibit 140 – Affidavit of Kaufland employee, 19 September 2019 at [12].

³⁹¹ Ibid at [13].

³⁹² Exhibit 22 – Statement of John Hanlon, 28 June 2019 at p 6.

³⁹³ Exhibit 152 – Affidavit of Betahaus employee, 12 September 2019 at [4].

³⁹⁴ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [126].

³⁹⁵ Exhibit 152 – Affidavit of Betahaus employee, 12 September 2019 at [7].

³⁹⁶ Ibid at [9].

confirmed that they had never met Mr Hanlon.³⁹⁷

Attendance at Factory Berlin

278. According to the 2019 Hanlon Statement, Mr Hanlon visited Factory Berlin during his trip to Germany.³⁹⁸ An affidavit was obtained from a representative of Factory Berlin who confirmed that he had no record of John Hanlon or Renewal SA in his emails, Google Calendar, guest database or in any of the publicly listed emails.³⁹⁹

Contact with AFP Interpol on 11 September 2019

279. On 11 September 2019, Ms Bridge made appointments with the Australian Embassy in Berlin for a notary to witness statements. The appointments were made online without speaking to the Embassy personnel prior to attending.⁴⁰⁰

280. On the same day, Ms Bridge emailed the AFP Interpol email address stating:⁴⁰¹

I am currently in Berlin ... obtaining affidavits for an ICAC investigation.

We are intending to use the notary services of the Embassy however their appointments are almost booked out.

Is there an AFP liaison officer in Berlin in which we could contact? [sic]

281. Ms Bridge's evidence was that she contacted the AFP because she had not been able to book appointments at the Australian Embassy in Berlin to have the statements witnessed.⁴⁰²

282. An officer of AFP Interpol replied the same day at 3:59am, stating **(AFP Interpol email)**:⁴⁰³

The AFP International Network Liaison Office based in The Hague [...] They may be able to provide some further advice in the morning your time

However, could you please provide:

- *Details of the matter you are in Germany for and until when?*
- *Who are you obtaining affidavits from (Australian nationals, German nationals or other?)*

³⁹⁷ Ibid at [10].

³⁹⁸ Exhibit 22 – Statement of John Hanlon, 28 June 2019 at p 6.

³⁹⁹ Exhibit 34 – Affidavit of Factory Berlin employee, 18 September 2019 at [9], [12].

⁴⁰⁰ Exhibit 57 – Affidavit of Amanda Bridge, 3 November 2022 at [11].

⁴⁰¹ Exhibit 30 – Emails between Amanda Bridge (ICAC), an officer of AFP Interpol and AFP Liaison Officer in the Hague, 11 September 2019 at p 2.

⁴⁰² Transcript at p 100.

⁴⁰³ Exhibit 30 – Emails between Amanda Bridge (ICAC), an officer of AFP Interpol and AFP Liaison Officer in the Hague, 11 September 2019 at p 1.

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- *What approvals from Germany have you obtained?*
- *Whether advice has been sought from the Commonwealth Attorney Generals and/or AFP on German interview requirements (such as Mutual Assistance Requests)?*
- *What German agencies you have been engaging with?*

Local approvals (in the relevant country) are imperative when seeking to undertake any official activity in another jurisdictions where travelers have no jurisdictions [sic]. This is critical when there may be local legislation which makes such enquiries a criminal offence if not approved, and essential when it could impact broader Australian relationships so appreciate any advice on this.

In terms of identifying locations for such matters, we (through INTERPOL channels or through the AFP International Network) normally engage relevant local law enforcement (to ensure awareness and approval) and can also seek their assistance in identifying witnesses/suspects and also in providing suitable interview rooms.

Many countries also insist on one of their officers being present to protect the rights of the individuals and/or will insist on actioning themselves.

(emphasis in bold added)

283. Approximately three hours later, the AFP Liaison Officer in The Hague sent a further email to Ms Bridge (**AFP Hague email**), stating:⁴⁰⁴

*Amanda I strongly concur with [...] below and note that **Germany in particular are very strict with the application of legislation** and we always need to seek approvals through official channels to obtain any statements in Germany, **regardless of witnesses willingness or nationality**, the statement is taken by a Germany Prosecutor who affords the individual appropriate rights etc.*

Please give us a call to discuss further.

(emphasis in bold added)

284. Ms Bridge responded to the AFP Interpol officer 6.04pm on the same day advising:⁴⁰⁵

I will provide the information later today.

So you are aware we are only obtaining witness statements and not conducting interviews.

285. Ms Bridge stated that she understood from the AFP Hague email that she and Mr Baker should have obtained approval before going to Germany.⁴⁰⁶ Ms Bridge conceded that having received the emails, she ought to have communicated with

⁴⁰⁴ Ibid at p 1.

⁴⁰⁵ Exhibit 99 – Email from Amanda Bridge (ICAC) to AFP Officer of Interpol 11 September 2019 at p 1.

⁴⁰⁶ Transcript at p 121 [8].

Mr Lander and returned home.⁴⁰⁷

286. Ms Bridge and Mr Baker did not return to Australia. Ms Bridge did not, as she said she would, provide any response to the AFP Hague email.⁴⁰⁸ Ms Bridge stated in her evidence that “*potentially*”, the reason for not doing so was that she and Mr Baker had the attitude “*well, we’re here, we will just get the information anyway*”.⁴⁰⁹
287. The AFP Interpol and AFP Hague emails were significant. They put Ms Bridge on notice that:
- 287.1 local approval was “*imperative*” for the work that Mr Baker and Ms Bridge were undertaking;
- 287.2 there may be local legislation that made Mr Baker and Ms Bridge’s inquires a criminal offence if not approved;
- 287.3 Mr Baker and Ms Bridge’s conduct could impact broader Australian relationships; and
- 287.4 Germany was very strict and approval through official channels was always required to obtain statements in Germany.

Who was advised of the 11 September 2019 emails?

Mr Baker

288. Ms Bridge gave evidence that a discussion took place between herself and Mr Baker the following morning, 12 September 2019, at their hotel, in the common meeting room in the foyer. During the meeting, Ms Bridge showed Mr Baker the AFP Hague email on her computer. Ms Bridge stated that she had said to Mr Baker words to the effect of “*I’m not sure about this, I don’t think we should be here*”⁴¹⁰ or “*Should we be here? I mean this sounds like we may be committing offences*”,⁴¹¹ to which Mr Baker responded: “*I will deal with it, we will sort it out*”.⁴¹² She understood that Mr Baker would speak to Mr Lander, as Mr Baker was “*the communicator*” with Mr Lander, not her.⁴¹³ However, Ms Bridge could not positively recall whether Mr Baker actually told her that he would speak to Mr Lander.⁴¹⁴
289. Ms Bridge did not send Mr Baker, Mr Lander nor anyone else either the AFP Interpol

⁴⁰⁷ Transcript at p 122 [6].

⁴⁰⁸ Transcript at p 124 [31].

⁴⁰⁹ Transcript at p 124 [41].

⁴¹⁰ Transcript at p 125 [11].

⁴¹¹ Transcript at p 102 [38].

⁴¹² Transcript at p 101 [23].

⁴¹³ Transcript at p 101 [24].

⁴¹⁴ Transcript at p 125 [30].

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Email or the AFP Hague email. Ms Bridge was unable to explain in her evidence why not.⁴¹⁵ Nor did she advise Mr Lander herself of the emails, because she considered it Mr Baker's responsibility as Director Investigations and her manager to do so.⁴¹⁶ Ms Bridge acknowledged that in retrospect, best practice would have been "*to stop and speak with Mr Lander and return home*".⁴¹⁷

290. Ms Bridge recalled that at her meeting with Mr Baker, Mr Baker appeared to read the emails and appeared to look "*shocked. Dumbfounded*".⁴¹⁸ Ms Bridge further stated in her evidence that Mr Baker said words to the effect of "*I will take it up with the Commissioner*".⁴¹⁹
291. In contrast, Mr Baker denied ever having been shown the AFP Interpol email or the AFP Hague email by Ms Bridge. He stated that the first time he became aware of the emails was in November 2022, after the emails were discovered by ICAC following searches described below at paragraphs [304]-[305] (that is, after the charges against Mr Hanlon had been withdrawn). He denied that he had the conversation with Ms Bridge about the emails that she suggested occurred.⁴²⁰
292. Mr Baker stated in an internal ICAC interview that he did not recall having seen the emails between Ms Bridge and the AFP at all, nor discussing them with Ms Bridge, but that he could not state "100%" that Ms Bridge had not had a conversation with him about the emails and "*it would seem odd that [Ms Bridge] wouldn't*".⁴²¹ However, he also stated that the content of the emails were something that he was likely to recall if he had seen it.⁴²² This evidence was in less definite terms than the evidence he gave before me.⁴²³
293. During the course of their examinations, the evidence given by both Mr Baker and Ms Bridge was at times self-serving. Although I do not consider that either of them were deliberately dishonest, both had a tendency to minimise their role in events, shift responsibility and recreate events from the past in a favourable light to themselves in their attempt to give evidence. In those circumstances, and in circumstances where Mr Baker's recollection has shifted over time, it is difficult to determine whose version

⁴¹⁵ Transcript at p 101 [37].

⁴¹⁶ Transcript at p 121 [41].

⁴¹⁷ Transcript at p 122 [7].

⁴¹⁸ Transcript at p 103 [42].

⁴¹⁹ Transcript at p 104 [13].

⁴²⁰ Transcript at p 401-402.

⁴²¹ Exhibit 61 – Transcript of Interview with Andrew Baker, *Independent Investigation into Aspects of 2018/003882* (Peter Healey, Cowell Clarke Commercial Lawyers Offices, 14 December 2022) at p 18 [11]–20 [21].

⁴²² Ibid at p 18 [6].

⁴²³ See Transcript at pp 401 [50], 404 [13].

of events to accept.

294. Ultimately, I do not consider it necessary to make a finding about whether to accept the evidence of Mr Baker or Ms Bridge on the issue of whether Mr Baker was told by Ms Bridge about the AFP Interpol email and the AFP Hague email. I find that Ms Bridge received the information contained in the AFP Interpol email and the AFP Hague email while in Germany, did not act upon the advice given in those emails, and instead continued to make inquiries in Germany, including by witnessing further affidavits.
295. ICAC officers who are investigating corrupt conduct of Australian officials have an important duty to follow the law punctiliously, whether it be the law of the Commonwealth, South Australia, or the law of a foreign country. The decision by Ms Bridge to ignore these emails reflected a reckless attitude to the carrying out of her official functions, and in particular the issue of whether in seeking to obtain statements in Germany, ICAC investigators were in breach of any German law.

Mr Lander

296. Mr Lander's evidence was that he was not aware that the AFP Interpol email and the AFP Hague email had been sent and received by Ms Bridge until December 2022.⁴²⁴ He considered that the emails should have been brought to his attention and that it was "*extraordinary*" that the advice contained in the emails was ignored.⁴²⁵ Had he been made aware of that, he would have asked *first*, why it was that the information contained in the emails was only being obtained while they were in Germany (and had not been obtained before they left); and *second*, he would have asked them to return to Australia.⁴²⁶ Mr Lander considered it was Mr Baker's responsibility to have made inquiries with the AFP before leaving for Germany, and also the Director Legal, if he was aware of the circumstances.⁴²⁷
297. Mr Lander gave honest evidence to the inquiry. While he was unable to recall details of many of the questions put to him, he was forthright in his answers and assisted me to the extent that his memory allowed.
298. I accept that he was not advised about the AFP Interpol email and the AFP Hague email at any relevant time. He stated clearly that this was something that he would have remembered and had a strong reaction to their content. Further, there is no documentary evidence before me to contradict his evidence or any other evidence to

⁴²⁴ Transcript at p 289 [32].

⁴²⁵ Transcript at p 295 [8].

⁴²⁶ Transcript at pp 290 [34], 291 [28].

⁴²⁷ Transcript at pp 290 [42], 305 [2].

suggest that he received the emails.

299. However, Mr Lander's knowledge (or lack thereof) of the AFP Interpol email and the AFP Hague email is only one aspect of his role. I consider the critical question to be how a situation was allowed to develop in which no one from ICAC turned their mind to the issue of ICAC's authority to conduct investigations in Germany.

Failure to save the emails on ICAC's Objective System

300. ICAC's corporate application for managing official records and information is called Objective.⁴²⁸ ICAC is required to keep records in accordance with the requirements of the *State Records Act 1997* (SA).⁴²⁹

301. From August 2017, the ICAC Information and Records Governance Framework (**Information and Records Framework**) applied to all ICAC employees.⁴³⁰ The Information and Records Framework required emails that were an official record to be saved into the Objective system and stated:⁴³¹

an email message that is an official record must be captured into Objective ECMS [Enterprise Content Management System]. It is the responsibility of the author of the email to capture the official record, except where the author is outside ICAC, in which case the recipient must capture the official record.

302. The Information and Records Framework outlined the responsibilities of employees. Amongst other responsibilities, employees were expected to capture and maintain all official records created and received in approved systems, and ensure all outgoing correspondence (including emails) was captured to the extent it records an official activity or decision.⁴³²

303. An updated ICAC Records Management Policy (**Records Management Policy**) was approved by Mr Lander on 4 July 2019.⁴³³ Compliance with the policy was mandatory for all ICAC employees and to all official records.⁴³⁴ The policy specified that non-compliance may result in disciplinary or other action.⁴³⁵

304. On 10 November 2022, Commissioner Vanstone announced that she intended to

⁴²⁸ Exhibit 80 – ICAC, *Information and Records Governance Framework* (v1.0, 30 August 2017) at p 5.

⁴²⁹ For the disposal of records see *State Records Act 1997* (SA) s 23(1).

⁴³⁰ The framework was approved on 30 August 2017 with a review date of 30 August 2019: Exhibit 80 – ICAC, *Information and Records Governance Framework* (v1.0, 30 August 2017) at p 1.

⁴³¹ Ibid at p 8.

⁴³² Ibid at p 12.

⁴³³ Exhibit 109 – ICAC, *Records management policy* (V2 Revised approved policy, 4 July 2019) at p 1.

⁴³⁴ Ibid at p 3.

⁴³⁵ Ibid at p 7.

review the Hanlon investigation and the conduct of those involved in it.⁴³⁶ On or around 17 November 2022, Mr Paul Alsbury, Deputy Commissioner of ICAC, requested that ICAC's Director Corporate Services cause a search to be conducted of archived emails to identify any email communications which related to the Hanlon matter but which were not stored on the Objective system. The request for the search was made because the Objective folder for the Hanlon investigation appeared to contain fewer email communications than would be expected for an investigation the size of the Hanlon investigation.⁴³⁷ The searches were conducted on 21, 24 and 25 November 2022.⁴³⁸

305. The searches uncovered, among other things, the AFP Interpol and AFP Hague emails of 11 September 2019.⁴³⁹
306. Ms Bridge accepted that she did not save the AFP Interpol email and the AFP Hague email on Objective. She accepted that the emails were official records which ICAC's Record Management Policy required to be saved onto Objective.⁴⁴⁰
307. Ms Bridge denied having deliberately decided not to save the emails on Objective.⁴⁴¹ There is no doubt that the emails should have been saved on Objective.⁴⁴² Mr Lander expressed disappointment that the emails had not been saved on Objective and opined that this was isolated conduct by ICAC officers.⁴⁴³
308. While Mr Baker and Ms Bridge were in Germany, they did not have access to Objective. The process of transferring emails or documents to Objective was required to be completed upon their return to Australia.⁴⁴⁴
309. There was insufficient evidence before me to explain why the AFP Interpol email and the AFP Hague email were not saved. I do not find that the failure to save the emails to the Objective system was deliberate. I do find that the failure to save the emails, either at the time they were received or upon return from Germany, demonstrates the lack of attention and regard Ms Bridge paid to the emails. The emails had significant implications for the authority of ICAC to conduct investigations in Germany. They should have been saved on ICAC's Objective system, responded to and

⁴³⁶ Exhibit 250 – Commissioner of ICAC, the Hon Ann Vanstone KC, 'Investigation Review' (Public Statement, 10 November 2022).

⁴³⁷ Exhibit 63 – Statement of Benjamin Broyd (ICAC), 14 March 2023 at [5].

⁴³⁸ Ibid at [6], [13], [20].

⁴³⁹ Ibid at [16]–[17].

⁴⁴⁰ Transcript at p 129.

⁴⁴¹ Transcript at p 130-131.

⁴⁴² Transcript at p 405.

⁴⁴³ Transcript at p 295 [8].

⁴⁴⁴ Transcript at p 405-406.

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communicated immediately to Mr Lander. In this regard the failure to do so reflects a cavalier and reckless attitude by Ms Bridge towards her duties as an ICAC officer.

310. These emails only became known to ICAC on 24 November 2022. At that time, Commissioner Vanstone promptly advised the then Reviewer, the Hon John Sulan KC, of the discovery of the emails and provided him with copies. An independent investigation was also commenced by ICAC into the conduct of Mr Baker and Ms Bridge in relation to the AFP Hague and AFP Interpol emails. I find that ICAC acted properly in this regard.

Events following the emails with AFP Interpol on 11 September 2019

311. On 12 September 2019, Mr Baker emailed Mr Lander with an update on what was occurring on the Germany trip, stating:⁴⁴⁵

We have obtained 1 signed statement from Dr. Neumann from Wister Management. He had his CE witness his statement as he is a lawyer and claims to be able to witness affidavits in Germany. Dr Neumann was unable to attend the Australian Embassy for signing the document with a notary.

We have prepared statements from Sam Jenkins of Ahoy!; Madeleine von Mohl of Betahaus; and Filip Valusiak of Factory Berlin. We have set appointments with the Australian Embassy for witnessing of all statements that are to be completed. Unfortunately we have just been advised by Madeleine von Mohl that she can't attend the embassy on Wednesday. The embassy only offer these appointments on Wednesday mornings.

We are considering having Amanda witness the signature of Madeleine in order to progress the matter through adjudication with the DPP and then making arrangements for the signing with a notary at a later time.

We have attended at WeWork and Kaos who were unable to be contacted prior to our attendance. WeWork are considering whether they can legally provide information to us. I met with a legal officer from their team yesterday and have followed up with a formal request. Kaos appear to be willing but the person we spoke to was not available to attend the embassy as he is leaving the country on Monday for holiday. We have followed this up with an email to his co-founder who is returning to work on Monday. We hope to finalise this on Monday.

We attended CRCLR to speak to the person who had initially agreed to meet then backed out hoping to persuade her. We spoke to some people in her office and satisfied them of our legitimacy and asked for our witness to email me. She has not done so. I suspect she does not want to get involved which is disappointing.

[...]

⁴⁴⁵ Exhibit 31 – Emails between Andrew Baker (ICAC) and Commissioner Lander KC (ICAC), 12 to 16 September 2019 at p 1.

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We are having issues with availabilities of people for the restricted times we can have statements witnessed by a Notary at the embassy. I am inclined to have those people's affidavits witnessed by Amanda despite this technically not being satisfactory, I think this will be sufficient to put the matter through adjudication. We are able to make arrangements for notary signing at later dates. The alternative is that we find Notaries that can come to us but they charge upwards of 250 euro each time. If you have a view on this please let me know.

(underlining added)

312. Mr Baker's evidence was that he considered it appropriate to suggest that Ms Bridge witness the affidavits because although they would not comply with the requirements of section 66 of the *Evidence Act*, they would be "*suitable to allow the DPP to give an adjudication of their evidence*".⁴⁴⁶ He also acknowledged that they would need to be re-signed and re-witnessed at a later date.⁴⁴⁷ Mr Lander also considered that the process of Ms Bridge witnessing the affidavits was for the "*adjudication*" process only, being the process by which the DPP considers whether there is sufficient evidence upon which to prosecute the person who is being investigated.⁴⁴⁸ He understood the intention was to have the affidavits "*regularised*" after the adjudication process.⁴⁴⁹
313. I consider both Mr Baker and Mr Lander were wrong only to consider the matter from the perspective of the affidavits being improperly attested rather than the more fundamental issue that taking affidavits in Germany without permission from the German authorities was a breach of German sovereignty.
314. Ms Bridge stated in her evidence before me that she was not aware that Mr Baker had sent the above email to Mr Lander.⁴⁵⁰ However, Ms Bridge was advised by Mr Baker that she was to witness the statements.⁴⁵¹
315. On 16 September 2019, the Commissioner responded, stating "*I think that if a notary is not available that Amanda should witness the statements*".⁴⁵²

The visit to Consul-General Sams

316. On 18 September 2019, Mr Baker and Ms Bridge attended upon the Australian Embassy in Berlin and met two witnesses from the Nine Co-Working Businesses, each of whom had agreed to attend to sign their affidavits in the presence of an Australian Consular Officer. At the Embassy, Mr Baker and Ms Bridge spoke with

⁴⁴⁶ Transcript at p 413.

⁴⁴⁷ Transcript at p 413.

⁴⁴⁸ Transcript at p 298 [11].

⁴⁴⁹ Transcript at p 298 [26].

⁴⁵⁰ Transcript at p 135.

⁴⁵¹ Transcript at p 136.

⁴⁵² Exhibit 31 – Emails between Andrew Baker (ICAC) and Commissioner Lander KC (ICAC), 12 to 16 September 2019 at p 1.

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Consul-General Sams. The same day, Consul-General Sams emailed the AFP liaison officer responsible for Germany advising that Mr Baker and Ms Bridge had attended the Embassy that morning and outlined his discussion with them in the following terms:⁴⁵³

FYI the SA ICAC folks (Andrew Baker and Amanda Bridge) came to the embassy this morning seeking some witnessing of Affidavits. I made a few points:

- 1) They should contact your office to make sure that the German authorities were aware of their presences, and/or engaging in the gathering of the witness statements in Germany.*
- 2) We had received a complaint from a member of the public questioning the legitimacy of the SA ICAC investigation. I said it was inappropriate for two Australian investigators to be knocking on doors in Germany without having first told the Germans that they were doing so.*
- 3) I explained the routine process for the gathering of witness statements including that in response to an AFP request the Germans would assist and if the matter was sufficiently complicated organize for the Australian teams to be video conferenced into relevant discussions. In this case SA ICAC are seeking to confirm that the subject of their investigation didn't attend a premises, seemingly a pretty straight forward proposition.*
- 4) I made the point that we rely on German Police cooperation all the time and as such don't want any Australian agency doing things that undermines our reputation.*
- 5) I declined to witness the Affidavits and advised that if SA ICAC wanted them witnessed there didn't seem to be any reason not to have a notary do the witnessing, but that I wasn't comfortable signing the documents given the process that had been used to gather the information.*

317. Consul-General Sams confirmed in evidence before me that his conversation with Mr Baker and Ms Bridge had been in the terms described in his email.⁴⁵⁴

Consul-General Sams wrote this email to inform the AFP of what had occurred, and also to keep a file note of the conversation with Mr Baker and Ms Bridge.⁴⁵⁵

318. It is apparent from this summary that Consul-General Sams declined to witness the affidavits due to the failure by ICAC investigators to notify German authorities of their

⁴⁵³ Exhibit 93 – Email from Consul-General Peter Sams (DFAT) to another person, 18 September 2019. Two days earlier, Mr Sams had written in an internal email about Ms Bridge's booking appointments at the Consulate: "*I will meet her [Bridge] when she arrives, but will want to review very carefully what she has proposes, prior to signing anything. **Any investigations in Germany should be done in consultation with the AFP and German authorities.***" (emphasis added); Exhibit 92 – Email from Consul-General Peter Sams (DFAT) to Consular Berlin, 16 September 2019.

⁴⁵⁴ Transcript at pp 625, 627-628.

⁴⁵⁵ Transcript at p 624-625.

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activities via the AFP, and the potential reputational consequences that may follow.

319. According to Mr Baker's affidavit of 2 November 2022:

*Mr Sams appeared annoyed that he was not aware through official channels of our inquiries in Germany. He subsequently refused to witness the affidavits. During this conversation, Mr Sams informed me that the correct process should have been to go through the Australian Federal Police, who will then go to Interpol, who will then go to the German authorities, and the German authorities will appoint a German prosecutor to take the statements.*⁴⁵⁶

320. Ms Bridge's affidavit of 3 November 2022 stated that she and Mr Baker attended the Embassy for the witnessing of the statements and that "*the notary declined to witness the statements due to the local authorities not being aware of our attendance in the country*".⁴⁵⁷ Ms Bridge also stated that she and Mr Baker met with the Consul-General on 18 September 2019 to have "*witness affidavits signed by him*". Ms Bridge further stated "*My recollection of the conversation was that he would not witness the statements because we had not notified the local authorities of our investigation*" but that she did not recall the specifics of the conversation.⁴⁵⁸

321. In her evidence before me, Ms Bridge agreed with the general substance of the email sent by Consul-General Sams (see above paragraph [316]) but did not recall all of the contents of the conversation with Consul-General Sams.⁴⁵⁹ Ms Bridge understood from what she had been told by the Consul-General that "*we shouldn't have been [there]*".⁴⁶⁰

322. Mr Baker also recalled having been advised by Consul-General Sams that he and Ms Bridge had not followed the appropriate protocol "*which, from memory, was along the lines of going through AFP and Interpol and they would appoint a general prosecutor to take the statements*".⁴⁶¹ He understood from the conversation that he and Ms Bridge had "*gone outside*" of the protocol but did not consider at the time why it might be important that, as investigators from Australia, they abide by the protocol the Consul-General had explained. He did not, for example, consider that the failure to follow protocol may have implications for how the Australian consulate and Australia in general were viewed within Germany.⁴⁶²

323. Mr Baker's handwritten contemporaneous notes do not refer to the meeting at the

⁴⁵⁶ Exhibit 56 – Affidavit of Andrew Baker (ICAC), 2 November 2022 at [22].

⁴⁵⁷ Exhibit 57 – Affidavit of Amanda Bridge, 3 November 2022 at [12].

⁴⁵⁸ Ibid at [40.2].

⁴⁵⁹ Transcript at p 139.

⁴⁶⁰ Transcript at p 141.

⁴⁶¹ Transcript at p 422.

⁴⁶² Transcript at p 423.

Embassy.⁴⁶³ Ms Bridge's handwritten contemporaneous notes contain an entry at 8:50am stating "*Australian Embassy ... Notary services – not [illeg] signed*".⁴⁶⁴ Ms Bridge could not recall why she did not make a note of the conversation with Consul-General Sams.⁴⁶⁵

324. Both Mr Baker and Ms Bridge denied having deliberately failed to make notes about the conversation with Consul-General Sams.⁴⁶⁶ Whether or not there was a deliberate failure to record that meeting, both Mr Baker and Ms Bridge showed an extraordinarily cavalier attitude towards Consul-General Sams' advice.

Evidence in the District Court

325. Ms Bridge and Mr Baker gave evidence on the *voir dire* in the District Court proceedings for the prosecution of Mr Hanlon. Ms Bridge's affidavit of 3 November 2022 and Mr Baker's affidavit of 2 November 2022 were prepared for this purpose. As set out above at paragraphs [319]-[320]:

325.1 Mr Baker's affidavit referred to the conversation with Consul-General Sams, including his advice that the "*correct process should have been to go through the Australian Federal Police, who will then go to Interpol, who will then go to the German authorities, and the German authorities will appoint a German prosecutor to take the statements*"; and

325.2 Ms Bridge's affidavit referred to the fact that the Consul-General had declined to witness the statements because "*we had not notified the local authorities of our investigations*".

326. Mr Hanlon has submitted to me that Mr Baker's reference in his affidavit to the appointment of a "*German prosecutor*" must have meant that he had been shown the AFP Hague and AFP Interpol emails, or at least knew of their contents.⁴⁶⁷ That is because Consul-General Sams' email of 18 September 2019 did not make express reference to a German prosecutor, whereas the AFP Hague email did.
327. I do not accept this submission. While the email from Consul-General Sams was a contemporaneous note of the conversation, it did not purport to be a verbatim account of the precise words used by the Consul-General in his conversation with Ms Bridge

⁴⁶³ Exhibit 65 – Andrew Baker (ICAC), *Handwritten notes re Hanlon investigation* (28 August to 14 November 2021) at p 14.

⁴⁶⁴ Exhibit 64 – Amanda Bridge (ICAC), *Handwritten notes re Hanlon investigation* (5 September to 22 November 2019) at p 28.

⁴⁶⁵ Transcript at p 144.

⁴⁶⁶ Transcript at pp 195 [5], 431 [28].

⁴⁶⁷ Exhibit 163 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon*, 21 May 2023 at p 6.

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and Mr Baker. His email referred to German police generally. The possibility cannot reasonably be excluded that Consul-General Sams used the word “*prosecutor*” when speaking to Ms Bridge and Mr Baker, but did not make a note of this.

328. Further, I consider it unlikely that Ms Bridge and Mr Baker deliberately withheld the contents of the AFP Interpol email and AFP Hague email in circumstances where they disclosed the substance of their conversation with Consul-General Sams to the Commissioner and Mr Jensen upon their return to Australia. I do not consider that there is such a substantial difference in the content of the emails to what the investigators were told by the Consul-General that would cause them to deliberately withhold the former but disclose the latter.
329. For the same reasons, I reject the further submission made to me by Mr Hanlon that Ms Bridge deliberately failed to disclose the contents of the AFP Interpol email and AFP Hague email in her November 2022 affidavit.⁴⁶⁸ Ms Bridge’s affidavit was sworn over three years after the Germany trip, at a point in time at which Ms Bridge no longer worked for ICAC. It is plausible that without having had the opportunity to review those emails when preparing her affidavit, Ms Bridge no longer recalled their existence or content.
330. Mr Hanlon has also submitted to me that evidence given by Ms Bridge on the *voir dire* was deliberately false.⁴⁶⁹ Although Mr Hanlon has provided me with a number of extracts of that evidence, it has not been suggested that any particular answer was false. Rather, Mr Hanlon suggests that “*The cumulative effect of the depositions by Ms Bridge is that Ms Bridge only became aware that there may have been something amiss with their attendance in Germany after the attendance at the Australian Embassy on 18 September 2019*”,⁴⁷⁰ which evidence was false in light of the AFP emails.
331. I reject this submission for the same reasons given above. I do not consider there is sufficient evidence to support a finding that Ms Bridge knowingly gave false evidence in the District Court. Further, the selection of particular quotes from the transcript of her evidence in isolation is apt to mislead. For example, my attention was drawn to the following passage:⁴⁷¹

EDWARDSON *There was nobody at all that you spoke to that gave you any advice at all as to what the ramifications were of you travelling to*

⁴⁶⁸ Ibid at p 8.

⁴⁶⁹ Ibid p 8.

⁴⁷⁰ Ibid p 8.

⁴⁷¹ Ibid at p 6 reproducing Exhibit 55.2 – Transcript of Proceedings, *R v Hanlon* (SADC, DCCRM-21-1335, Heffernan DCJ, 3 November 2022) at p 45 [23]–[27].

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Germany and seeking to investigate and obtain an affidavit from a Germany national.

BRIDGE *No, that's correct.*

332. What is omitted from this passage is the context in which the question was asked. It is clear from the questions that were asked prior to the question above that the line of questioning was directed towards Ms Bridge's knowledge *prior to leaving for Germany*. I do not consider that her evidence was false or misleading.

Events following the conversation with Consul-General Sams

333. Following the meeting with Consul-General Sams, Ms Bridge stated that she and Mr Baker went to a café around the corner from the Australian Embassy with the two witnesses who had attended the Embassy for the purpose of signing their statements.⁴⁷² Her evidence was that Mr Baker then stated that he was going to contact Mr Lander, and he left for a moment.⁴⁷³ When Mr Baker came back, he stated that Ms Bridge was to sign the statement, stating "*The Commissioner has said for you to sign the statements, to witness them [...] not that it means anything. It holds no value in the court of law here but it's just that you witnessed those statements*".⁴⁷⁴ However when pressed, Ms Bridge could not positively recall Mr Baker having told her that he had spoken to Mr Lander.⁴⁷⁵
334. Mr Baker denied having had this conversation with Ms Bridge.⁴⁷⁶ Mr Lander also gave evidence that the interaction with Consul-General Sams was not brought to his attention until after Mr Baker and Ms Bridge had returned from Germany.⁴⁷⁷
335. I accept that Mr Lander was not told about the conversation with Consul-General Sams whilst Mr Baker and Ms Bridge were in Germany. As discussed below, upon their return to Australia, when the events at the Embassy were brought to Mr Lander's attention, he immediately sought legal advice. This conduct is inconsistent with a suggestion that he was told about the conversation with Consul-General Sams earlier but took no action.
336. Ms Bridge proceeded to witness the two affidavits, despite the advice having been

⁴⁷² Transcript at p 140.

⁴⁷³ Ibid.

⁴⁷⁴ Ibid.

⁴⁷⁵ Ibid.

⁴⁷⁶ Transcript at p 428.

⁴⁷⁷ Transcript at p 299 [35].

received from Consul-General Sams.⁴⁷⁸

Mr Baker and Ms Bridge take further witness statements

337. Later in the day on 18 September 2019, Mr Baker and Ms Bridge travelled to Frankfurt.⁴⁷⁹ While there, a further affidavit was signed by a witness and witnessed by Ms Bridge.⁴⁸⁰
338. Mr Baker stated that he did not consider it to be contrary to Consul-General Sams' advice to continue to have affidavits witnessed.⁴⁸¹ He said that he did not fully accept the validity of what Consul-General Sams had told him, because he considered the advice of Consul-General Sams in the context of what Mr Baker understood about the "mutual assistance process"⁴⁸² and therefore concluded that Consul-General Sams "might not know everything as such".⁴⁸³ He explained that he was frustrated at the time that Consul-General Sams was not willing to witness the affidavits.⁴⁸⁴ On this basis, and in circumstances where all that was left was witnessing three affidavits, Mr Baker thought "we should just get the three affidavits signed".⁴⁸⁵

Events after Mr Baker and Ms Bridge's return to Australia

339. Mr Baker and Ms Bridge returned to Adelaide on 21 September 2019.⁴⁸⁶
340. On 24 September 2019, Mr Baker met with Mr Lander to discuss the Hanlon investigation. He described the meeting in his affidavit of 2 November 2022 in the following terms:⁴⁸⁷

On 24 September 2019, I met with Commissioner Lander to discuss what further action ought to be taken with witnesses who did not provide statements during the Germany inquiries. The Commissioner requested that the legal team be tasked with confirming the correct protocol for this to be completed. I subsequently emailed the Director Legal Services, Rod Jensen, and advised him of the Commissioner's request for him to allocate this task to one of his junior lawyers.

341. On 24 September 2019, Mr Baker emailed Ms Bridge stating:⁴⁸⁸

⁴⁷⁸ See Exhibit 33 – Affidavit of Ahoy! Berlin employee, 18 September 2019; Exhibit 34 – Affidavit of Factory Berlin employee, 18 September 2019.

⁴⁷⁹ Exhibit 40 – Amanda Bridge (ICAC), *Travel diary for Amanda Bridge and Andrew Baker for September 2017 Germany trip* (24 October 2019) at p 6.

⁴⁸⁰ See Exhibit 140, Affidavit of Kaufland employee, 19 September 2019.

⁴⁸¹ Transcript at p 424.

⁴⁸² As noted above, Mr Baker referred to the MAR as the "mutual assistance process".

⁴⁸³ Transcript at p 427.

⁴⁸⁴ Transcript at p 429.

⁴⁸⁵ Transcript at p 427.

⁴⁸⁶ Exhibit 40 – Amanda Bridge (ICAC), *Travel diary for Amanda Bridge and Andrew Baker for September 2017 Germany trip* (24 October 2019) at p 7.

⁴⁸⁷ Exhibit 56 – Affidavit of Andrew Baker (ICAC), 2 November 2022 at [25].

⁴⁸⁸ Exhibit 35 – Email from Andrew Baker (ICAC) to Amanda Bridge (ICAC), 24 September 2019.

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After a discussion with the Commissioner today, can you please provide a memo to the Commissioner addressing the statements that we did not get signed up and what their value is. I am seeking some assistance from Rod [Jensen] to confirm the process to get those statements. The Commissioner wanted Rod to double check that the process we were advised of was correct.

342. Later that afternoon, Mr Baker emailed Mr Jensen advising that whilst he and Ms Bridge were in Germany, there were six witnesses who would not provide statements. He further explained that:⁴⁸⁹

*We were also advised by the Consular General in Berlin that there is a process **that we should have undertaken to make the enquiries**. The process is to go through the AFP who will then go to Interpol who will go [to] the German authorities and they will appoint a German prosecutor to take the statements. This process, although it will take some time, might result in some witnesses providing statements who initially have not.*

(emphasis added)

343. Mr Baker indicated that Mr Lander had requested that enquiries be made to confirm this protocol.
344. After consultation with Mr Baker, Ms Bridge prepared a memorandum dated 25 September 2019 with the subject “*Outstanding enquiries in Germany*”.⁴⁹⁰ The memorandum set out the six affidavits that remained outstanding and then set out the following in relation to the Australian embassy:⁴⁹¹

AUSTRALIAN EMBASSY

On 18 September 2019, Baker and I attended at the Australian Embassy, Berlin as I had two appointments for a Notary to witness affidavits.

The Consulate General met with us and declined to assist as we had not advised the Australian Federal Police (AFP) or the German authorities of our attendance and enquiries in Germany. It was suggested the correct protocol is to liaise with the AFP in The Hague, then liaise with the German authorities who would allocate the enquiry to a German Prosecutor.

CONSIDERATION

Three of the six outstanding affidavits have confirmed by email or verbally that they have no information or correspondence relating to Hanlon or Renewal SA.

All signed affidavits confirmed they have never met with Hanlon, never correspondence with him or Renewal SA and have no records of Hanlon or Renewal SA.

⁴⁸⁹ Exhibit 36 – Email from Andrew Baker (ICAC) to Roderick Jensen (ICAC), 24 September 2019.

⁴⁹⁰ Exhibit 37 – Memorandum from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 25 September 2019.

⁴⁹¹ Ibid at p 2.

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The affidavits required are not onerous, however it is important to exclude Hanlon's version of events as a reasonable possibility.

The process of obtaining the affidavits as advised by the Consulate General needs to be confirmed.

(emphasis added)

345. Mr Lander could not recall his reaction upon having received Ms Bridge's memorandum.⁴⁹² On 1 October 2019, he signed a memorandum to Ms Bridge in response to her memorandum of 25 September 2019, stating:⁴⁹³

Please would you follow up those witnesses with whom you have been attempting to communicate to attempt to obtain the further statements. Please also identify the appropriate protocol for carrying out investigations of this kind overseas. I suggest you speak to Rod Jensen who may be able to obtain that information from the Attorney-General.

346. The inquiries of the type referred to by Mr Lander were already in progress from 27 September 2019. On 1 October 2019, Ms Victoria Greenslade, an ICAC Legal Officer, received an email from the International Crime Cooperation Central Authority (ICCCA) (within the Commonwealth Attorney-General's Department) containing information about the MAR process (ICCCA email).⁴⁹⁴ Clearly, this inquiry should have been made **before** Mr Baker and Ms Bridge went to Germany by someone within ICAC. The ICCCA email stated:⁴⁹⁵

346.1 A MAR should only be made in cases where the relevant body is satisfied that there is a clear need to obtain evidence for the purpose of furthering an Australian criminal investigation or prosecution and where it is identified that the evidence is held in a foreign country. In practice, generally the requests are limited to circumstances in which the offence under investigation has a maximum penalty of imprisonment for a term of more than 12 months;⁴⁹⁶

346.2 The process of making a MAR involves consideration by the Commonwealth Attorney-General's Department, translation of the request into the relevant foreign language, and transmission to the foreign country. Any material obtained from the foreign country is then conveyed to the AGD, where the material is certified under the provisions of the *Foreign Evidence Act 1994* (Cth)

⁴⁹² Transcript at p 207 [2].

⁴⁹³ Exhibit 38 – Memorandum from Commissioner Lander KC (ICAC) to Amanda Bridge (ICAC), 1 October 2019.

⁴⁹⁴ Exhibit 39 – Email from Victoria Greenslade (ICAC) to Andrew Baker (ICAC) and Amanda Bridge (ICAC), 2 October 2019 at p 4.

⁴⁹⁵ Ibid at p 3-4.

⁴⁹⁶ Ibid at p 3.

(Foreign Evidence Act);⁴⁹⁷

346.3 If any international travel is to be made by Australian investigators to assist in obtaining evidentiary material:⁴⁹⁸

permission must first be formally obtained from the central authority of the foreign country, or from law enforcement agencies in that country. Travelling without this approval and conducting enquiries may result in investigators being detained by foreign authorities, may cause damage to international relationships, and will likely have a negative impact on the chances of the request being properly executed.

...

In order for witness statements to meet admissibility requirement for any future proceedings in Australia, they must be supplied under cover of lawful testimony (generally in the form of an affidavit or equivalent), sworn or affirmed by the maker of the statement before an officer in or of the foreign country who can place the witness under an oath or other obligation to tell the truth. If the statements are taken by Australian investigators directly without any involvement from foreign authorities, then they cannot obtain the necessary sworn testimony, and the material will not meet domestic admissibility requirements. Further, were these statements to be taken by Australian investigators and brought back to Australia directly, they also would not meet the requirements under the [Foreign Evidence Act], and the AGD would not be in a position to certify the materials as foreign evidence.

(underlining added)

346.4 In order to adhere to the requirements of the *Foreign Evidence Act* in Germany:⁴⁹⁹

the statements will need to be taken by a German state prosecutor, a German federal or state police officer, or other appropriate official, and the covering testimony must be sworn/affirmed by the witnesses before a court in Germany. The collected material then needs to be passed back to the German Central Authority, to then be conveyed to AGD in Canberra for certification.

346.5 Formal MARs can take a substantial period of time, and it was recommended to allow no less than 12 months for a request to be made and the material received.⁵⁰⁰

347. On 2 October 2019, Ms Greenslade forwarded the ICCCA email to Mr Baker and Ms Bridge, copying in Mr Jensen (**Greenslade advice**).⁵⁰¹ Ms Greenslade explained that she had spoken to a contact officer at the Commonwealth Attorney-General's Department who confirmed that a MAR should be made "to obtain the evidence from

⁴⁹⁷ Ibid at p 4.

⁴⁹⁸ Ibid at p 3-4.

⁴⁹⁹ Ibid at p 4.

⁵⁰⁰ Ibid at p 10.

⁵⁰¹ Ibid at p 1-2.

*the further witnesses (voluntarily) and to obtain the other statements in an admissible form”.*⁵⁰² Ms Greenslade also stated that she had discussed with a contact officer the possibility of alternatives to MARs, such as police to police assistance, but was informed that *“this depended on the requirements of the foreign country but said German authorities were usually very hesitant to let foreign law enforcement agencies assist and had a stricter approach to (sic) other countries”.*⁵⁰³

348. Ms Greenslade also summarised the key points from the ICCCA email.

349. Ms Greenslade also provided Mr Baker and Ms Bridge with a MAR questionnaire that had been provided to her by ICCCA which described the information required to process a MAR.⁵⁰⁴ Under the topic *“Travelling officers or investigators”*, the questionnaire stated:⁵⁰⁵

If your agency is prepared to provide investigators, an AFP liaison officer or a DPP lawyer to assist in executing the request in the foreign country, the request must say so. The MAR will seek permission for that person to attend in the foreign country to assist in the execution of the request. It is a decision for the foreign country whether to grant permission for travel – travel arrangements should not be made until a response is received from the foreign country confirming permission to travel.

Note that in some countries it is an offence for foreign law enforcement officers to conduct investigative activities without permission of local authorities or without the presence of local law enforcement. Please contact us before making any arrangements for travel in connection with this request.

Note that even if Australian law enforcement authorities are going to send someone to assist with the request, this does not affect the obligation to provide a full and complete statement in the request of what assistance is wanted and why. The foreign country will need to assess the MAR in order to determine whether permission is granted for Australian law enforcement officers to assist with the request.

350. Ms Greenslade also provided a MAR information sheet published by ICCCA, which stated, among other things:⁵⁰⁶

When is a Mutual Assistance Request Made?

It is necessary to make a request for mutual assistance if the:

- *assistance requires the requested country to use coercive powers [...]*
- *evidence to be obtained is for a trial and is required in a form admissible in court [...]*

⁵⁰² Ibid at p 1.

⁵⁰³ Ibid.

⁵⁰⁴ Ibid at p 6-19.

⁵⁰⁵ Ibid at p 11-12.

⁵⁰⁶ Ibid at p 21.

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351. The extent to which Ms Greenslade had ongoing involvement in the Hanlon matter beyond the provision of this advice is unclear from the evidence before me.⁵⁰⁷
352. Ms Luu did not recall having ever seen the advice from Ms Greenslade, nor the substance of it being conveyed to her.⁵⁰⁸ There were no documentary records available to me that suggested otherwise. It appears that Ms Greenslade was tasked by Mr Jensen to provide advice in relation to the affidavits obtained in Germany, but that Mr Lander's memorandum of 1 October 2019 and Ms Greenslade's advice were not passed on to Ms Luu. Ms Luu recalled that at this time, Ms Greenslade had taken over the referral to the DPP of the allegations around Mr Hanlon's Germany trip.⁵⁰⁹
353. Ms Luu did not recollect the context in which it was brought to her attention that there were admissibility issues in relation to statements within the brief (being the affidavits witnessed by Ms Bridge in Berlin). There was no record on the Resolve running sheet that recorded the Greenslade advice being brought to the attention of Ms Luu.⁵¹⁰ Without a dedicated legal officer who understood that their role extended beyond responding to direct inquiries made of them, there was a lack of continued involvement by ICAC Legal in providing legal support to the Hanlon investigation.
354. Ms Bridge's evidence was that she was not involved in any meetings or discussions in which consideration was given to the processes that should be followed in relation to the affidavits that had been witnessed in Germany.⁵¹¹ In her view, there was no sense of urgency or importance given to the Greenslade advice by others within ICAC.⁵¹²
355. From 18 November 2019, Ms Bridge's reports to the periodic investigation meetings contained a note of "*Follow up inquiries to be completed*", which included the notation "*Complete MAR to request further affidavits via AFP and German authorities*".⁵¹³ This remained on Ms Bridge's Follow Up list until her last investigation report on 12 February 2020.⁵¹⁴ As such, anyone supervising Ms Bridge or taking over the Hanlon investigation upon her departure from ICAC should have been on notice that this was an outstanding task in respect of the Hanlon investigation. However, Mr Dalton's evidence was that he did not recall reading the reports or the specific entries

⁵⁰⁷ Transcript at pp 313 [50], 574, 587-588, 596.

⁵⁰⁸ Transcript at p 574.

⁵⁰⁹ Ibid.

⁵¹⁰ See Exhibit 60 – Resolve running sheet at p 1-17 for entries after 1 October 2019.

⁵¹¹ Transcript at p 156.

⁵¹² Ibid.

⁵¹³ See Exhibit 103.3 – Amanda Bridge (ICAC), 'Matters under investigation' v84 (Report for ICAC investigation meeting, 3 December 2019) at p 3.

⁵¹⁴ See Exhibit 103.5 – Amanda Bridge (ICAC), 'Matters under investigation' v89 (Report for ICAC investigation meeting, 10 February 2020) at p 3.

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about the Hanlon investigation in the investigation meeting reports.⁵¹⁵ Mr Dalton submitted to me that had he done so, he “*expected that [he] would have acted on the information referring to a MAR*”.⁵¹⁶ I accept this evidence, and I accept that Mr Dalton would have taken steps to obtain a MAR had the need for one been brought to his attention.

356. Mr Baker’s evidence in the District Court was that his understanding was that the MAR process was only required where assistance was sought from the German authorities to undertake the inquiries in Germany, and not for the purpose of him and Ms Bridge travelling to Germany to take statements themselves and speak to witnesses.⁵¹⁷ It appears that he continued to hold this belief even after receiving the Greenslade advice (see paragraphs [347]-[350]), as he gave consideration to the need to obtaining a MAR only in the context of the possibility of obtaining further statements in Germany with the assistance of local authorities.⁵¹⁸ It was not tenable to hold such a belief after receiving the Greenslade advice. He was not able to recall having reviewed the email from Ms Greenslade thoroughly, and stated that it came at a very busy time for him.⁵¹⁹ He placed responsibility with the investigator and legal officer with carriage of the Hanlon investigation, stating that at this point in the process, when the brief was being prepared for referral to the DPP, it was not his responsibility to ensure the advice was followed and said “*I think I would have stepped away*”.⁵²⁰
357. The significance of the ICCCA email to investigations carried out in Germany was obvious if it was properly read. No ICAC officer should have travelled to Germany to conduct any official activities or investigations without the permission of Germany. That was so, irrespective of whether a MAR process was being pursued by ICAC. This had possible implications for the admissibility of any affidavits which had already been obtained by Mr Baker and Ms Bridge in Germany in that such statements or affidavits may have been obtained improperly or as a result of an impropriety.
358. Mr Baker did not recall having discussed the Greenslade advice with Mr Lander.⁵²¹ He accepted that it was important to ensure Mr Lander was aware of the content of Ms Greenslade’s email, but he had no specific recollection of making inquiries to

⁵¹⁵ Transcript at p 645.

⁵¹⁶ Exhibit 169 – Steven Dalton (ICAC), Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (18 May 2023).

⁵¹⁷ Exhibit 55.2 – Transcript of Proceedings, *R v Hanlon* (SADC, DCCRM-21-1335, Heffernan DCJ, 3 November 2022) at p 77 [35]–78 [1].

⁵¹⁸ Ibid at 79 [27].

⁵¹⁹ Transcript at p 437.

⁵²⁰ Transcript at p 439.

⁵²¹ Transcript at p 440.

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ensure that the advice was communicated to Mr Lander.⁵²²

359. There is no documentary evidence before me that establishes that the Greenslade advice was brought to Mr Lander's attention. Mr Lander acknowledged having signed a memorandum requesting this legal advice,⁵²³ and that he intended to review the legal advice himself. However, he did not know whether Ms Greenslade's email was brought to his attention, nor did he recall whether he had learned about the substance of the advice or spoken to Mr Jensen about it.⁵²⁴
360. Although Ms Greenslade's email was copied to Mr Jensen, Mr Jensen did not recall having been asked to review the Greenslade advice before it was sent. He understood that the Greenslade advice addressed the question of what should occur for any **further** affidavits that were to be taken, and he did not think he had been told that affidavits had actually been obtained in Germany.⁵²⁵ However this recollection was inconsistent with the terms of the Greenslade advice, which expressly referred to the two scenarios of obtaining "*further*" affidavits and obtaining the "*other*" statements in admissible form – i.e. drawing a distinction between additional affidavits that needed to be obtained from new witnesses, and re-obtaining the affidavits already signed in admissible form.⁵²⁶
361. Both Mr Baker and Ms Bridge understood there was a need for the statements that were witnessed in Germany by Ms Bridge to at least be re-witnessed on a later date in accordance with the requirements of section 66 of the *Evidence Act*. Mr Baker's email to Mr Lander dated 12 September 2019 referred to the process of Ms Bridge witnessing affidavits as "*technically not being satisfactory*" and that arrangements would be made for signing before a notary at a later date.⁵²⁷ Further, Travel Outcome reports signed by Mr Baker and Ms Bridge on 7 January 2020 (and by Mr Lander on 20 January 2020)⁵²⁸ stated that three affidavits had been witnessed by Ms Bridge "*despite there being a technical issue with this*" and "*Each of these witnesses have agreed to re-sign their affidavits at a later date with a German authority if required*".⁵²⁹

⁵²² Transcript at p 441.

⁵²³ Transcript at p 306.

⁵²⁴ Transcript at p 306 [10]–307 [9].

⁵²⁵ Transcript at p 181.

⁵²⁶ Transcript at p 305.

⁵²⁷ Exhibit 31 – Emails between Andrew Baker (ICAC) and Commissioner Lander KC (ICAC), 12 to 16 September 2019 at p 2.

⁵²⁸ Exhibit 43 – Andrew Baker (ICAC), *Overseas Travel Outcome Report* (7 January 2020); Exhibit 44 – Amanda Bridge (ICAC), *Overseas Travel Outcome Report* (7 January 2020).

⁵²⁹ Exhibit 44 – Amanda Bridge (ICAC), *Overseas Travel Outcome Report* (7 January 2020) at p 2.

IX. Assessment of ICAC's conduct regarding ICAC officers' Germany trip

Assessment of processes put in place before the trip to Germany

362. It was understandable that Ms Bridge was not aware of the *MACMA* and the MAR procedure prior to travelling to Germany. This was the first time that ICAC had conducted overseas inquiries of this nature, and there was no precedent for obtaining affidavits voluntarily from witnesses using a MAR. Ms Bridge had previously been asked to witness an affidavit in the United Kingdom without a MAR. ICAC's Standard Operating Procedures did not address the process. Nor did anyone within ICAC, including Mr Lander or ICAC Legal, draw Ms Bridge or Mr Baker's attention to the provisions of the *MACMA*. It appears that no-one within ICAC, including Mr Lander and those within ICAC Legal, were aware of the provisions of the *MACMA* so as to be able to bring them to Ms Bridge's attention.
363. Nevertheless, there is no excuse for Ms Bridge or Mr Baker not contacting the Australian Embassy or the AFP prior to travelling to Germany. Ms Bridge and Mr Baker were intending to use the services of the Australian Embassy for the purposes of witnessing the affidavits. Having made arrangements to travel to Germany, it was unprofessional not to even make contact in advance with the institution they intended to call on to perform a task that was central to their trip. Similarly, the AFP is accustomed to conducting overseas inquiries and could have provided them with valuable information about protocols to follow (as its officers ultimately did through the AFP Interpol email and the AFP Hague email). There is no satisfactory explanation as to why these elementary steps did not occur to Ms Bridge or Mr Baker. As the Director Investigations, this was a matter to which Mr Baker should have turned his mind.
364. There was also a significant lack of oversight within ICAC of Ms Bridge and Mr Baker's Germany trip, which extended to Mr Lander. Ms Bridge and Mr Baker were not informed about the processes under the *MACMA*. They were not advised to consider what legal authority they had to conduct any official inquiries in Germany. They were not instructed to make contact with the Australian Embassy, the AFP or the German authorities prior to travelling to Germany. It was reasonable for both Ms Bridge and Mr Baker to have an expectation that any legal issue about their travel would be brought to their attention, particularly in circumstances where the travel had been approved by Mr Lander. This reveals an institutional failure to put in place processes whereby legal advice was obtained in relation to this significant issue.

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365. It was highly regrettable that neither any ICAC legal officer nor Mr Lander turned their mind to the fundamental issue of whether the ICAC investigators had the lawful authority to carry out official functions in Germany without the knowledge and permission of the German authorities. Had anyone turned their mind to this issue, presumably Ms Bridge and Mr Baker would **not** have gone to Germany without seeking official approval or making further inquiries. Ultimately, when inquiries were made through Ms Greenslade, the advice received by ICAC was consistent in the AFP Interpol email and the AFP Hague email and the advice given by Consul-General Sams. That advice was that the affidavits should have been obtained by consulting with German authorities and, at the stage of taking any evidence, via a MAR. This was a matter in respect of which German authorities took a very strict approach.
366. My Terms of Reference extend to examining whether there was any evidence of corruption, misconduct or maladministration in public administration on the part of the OPI, the ICAC or employees of the OPI or the ICAC.
367. Section 5(4) of the *ICAC Act* provides that maladministration in public administration:
- (a) *means*
 - (i) *conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or*
 - (ii) *conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and*
 - (b) *includes conduct resulting from impropriety, incompetence or negligence; and*
 - (c) *is to be assessed having regard to relevant statutory provisions and administrative instructions and directions*
368. In the circumstances outlined above, I consider that conducting of investigations in Germany without lawful authority, and without making proper inquiries in advance of the trip to Germany was evidence of maladministration in public administration. I also consider there was impropriety not in the sense of dishonest conduct but in the failure to observe accepted standards of conduct by those with responsibility for investigating corruption. This conduct is also capable of giving rise to findings of incompetence or negligence. I do not make those findings against individual officers. As I have said previously, this was an institutional failure that cannot be attributed to any one person.
369. The failure to obtain approval from German authorities and make proper inquiries prior to travelling to Germany represents an institutional failure by ICAC as a whole and

cannot be attributed to any one person. Mr Lander did not turn his mind to the issue.⁵³⁰ Mr Lander has submitted to me that someone within ICAC Legal ought to have brought the provisions of the *MACMA* to his attention, as he could not be expected to undertake himself an analysis of potential legal issues arising in connection with the many investigations on foot. I do not find that Mr Lander should have personally undertaken research into any legal issues arising from the proposed trip to Germany. However, where this was the first occasion on which investigations had been undertaken by ICAC on foreign soil and permission was specifically sought from Mr Lander for the Germany trip, I consider that Mr Lander should have directed that ICAC Legal properly consider the basis upon which ICAC investigators could undertake investigations in Germany. Mr Lander does not submit that he did not bear ultimate responsibility as Commissioner at the time for the ICAC's failure to identify the provisions of the *MACMA*. This was an appropriate concession to make.

370. Investigators believed that ICAC Legal would identify any legal issues of significance to their inquiries, whereas Ms Luu considered her role was limited to responding to specific inquiries made of her. There was a mismatch of expectations, and a failure, at an institutional level, to put in place processes to ensure that the novel circumstance of investigators travelling overseas was a matter that received prompt and careful legal attention.
371. Ms Luu understandably believed that, in circumstances where the Director Legal was present at investigation meetings where Mr Baker and Ms Bridge's Germany trip was being discussed, it was Mr Jensen's responsibility to draw an issue of legal significance to the attention of ICAC's executive.⁵³¹ This was a reasonable expectation on Ms Luu's part, but one that did not reflect the reality that transpired. There is no evidence before me, due to the absence of minutes or records of outcomes, that the Germany trip was discussed at the investigation meetings, and therefore this is a further example of a mismatch of expectations.
372. In these circumstances, it is unsurprising that this fundamental legal issue fell through the gaps when novel inquiries were being undertaken.
373. Protocols or Standard Operating Procedures as contemplated by section 26 of the *ICAC Act* should have been put in place or directions given by senior management of ICAC to Mr Baker and Ms Bridge about (a) contacting the AFP before they made contact with witnesses in Germany; and (b) how any official functions in Germany should have been carried out. Mr Baker and Ms Bridge were on notice prior to travelling

⁵³⁰ Transcript at p 261-262.

⁵³¹ Transcript at p 565.

to Germany that some of the witnesses from the Nine Co-Working Spaces did not want to speak to them. Indeed, Mr Baker considered there to be a risk of being arrested if they attended the offices of Ms Grindhammer in circumstances where they had been asked to cease contact. Nevertheless, he thought it appropriate to persist. Mr Lander was at least aware that some witnesses had raised questions about the identity of ICAC investigators, such that he had signed the letter to Mindspace referred to at paragraph [215] above. These questions also should have put Mr Lander on notice that legal advice was required about the trip to Germany.

374. Ultimately, Mr Baker and Ms Bridge made contact with Ms Grindhammer despite having been asked not to do so. This was entirely inappropriate in circumstances where they had no legal authority to conduct inquiries in Germany. As the Director Investigations, Mr Baker should not have suggested or condoned this conduct.

Did Mr Baker and Ms Bridge contravene Australian law in seeking to obtain statements/affidavits in Germany?

375. This Part of the Report assesses the conduct of Mr Baker and Ms Bridge in Germany according to Australian law.

Mutual Assistance in Criminal Matters Act 1987 (Cth) – Relevant principles

376. Section 5 of the *MACMA* states that the *MACMA* has two objects:
- (a) *Regulation of the provision by Australia of international assistance in criminal matters when a request is made by a foreign country in respect of which powers may be exercised under the MACMA; and*
 - (c) *Facilitation of the obtaining by Australia of international assistance in criminal matters.*
377. The *MACMA* contains a framework for Australia to make requests to foreign countries for assistance in criminal matters. A request may be made by the Commonwealth Attorney-General to a foreign country to arrange for evidence to be taken in the foreign country and for the evidence to be provided to Australian authorities.⁵³²
378. While the *MACMA* provides a mechanism for such a request to be made to a foreign country, section 6 specifies that the *MACMA* does not prevent Australia obtaining international assistance in criminal matters other than via the procedures contained in the *MACMA*. Section 6 contemplates that Germany can provide international assistance to Australian authorities on a “*police-to-police*” basis. This is consistent with

⁵³² *Mutual Assistance in Criminal Matters Act 1987 (Cth)* ss 10, 12.

the information I obtained from SAPOL, which indicated that SAPOL does not always use the processes in the *MACMA*, but also obtains evidence via “*police-to-police*” for overseas requests.⁵³³

379. In *Milner v Director of Public Prosecutions (Cth)* [2020] VSCA 207 the Victorian Court of Appeal considered evidence obtained by the AFP from a local US police officer other than in accordance with the provisions of the *MACMA*. The Court found the procedures in the *MACMA* are facilitative only.⁵³⁴ They were not the only procedures by which arrangements can be made for a witness who resides in a foreign country to give evidence in an Australian criminal proceeding. The request procedure was only required to be invoked when the assistance being sought required the exercise of coercive powers.⁵³⁵ As the assistance provided by the US police officer was entirely voluntary, the AFP was not required to utilise the procedures in the *MACMA*.⁵³⁶
380. The Court also concluded that a failure to use the procedures in the *MACMA* to obtain evidence overseas did **not** mean that the evidence was inadmissible. This was particularly so where the witness might either travel to Australia to give evidence or give evidence via audio visual link.⁵³⁷ This decision is relevant later in considering the issue of undue prejudice to Mr Hanlon.
381. The Court also considered that the obtaining of a statement from a potential witness was separate from and prior to the taking or giving of evidence to which the *MACMA* refers.⁵³⁸
382. Mr Baker and Ms Bridge’s conduct in taking affidavits from witnesses in Germany without having applied for a MAR was not itself contrary to Australian law. The provisions of the *MACMA* are facilitative only. This means that while Australian investigators **may** use the mechanisms in the *MACMA* to obtain evidence from overseas, section 6 of *MACMA* and *Milner* and *R v Hunt* (2014) 286 FLR 59 make clear that they are not **required** to do so.⁵³⁹ Further, a failure to obtain evidence via a MAR

⁵³³ Exhibit 213 – Letter from Billy Thompson (SAPOL) to the Inspector, 4 May 2023 at p 2.

⁵³⁴ *Milner v DPP (Cth)* [2020] VSCA 207 at [22].

⁵³⁵ *Ibid.*

⁵³⁶ *Ibid* at [22]–[24].

⁵³⁷ *Ibid* at [26]. *R v Hunt* (2014) 286 FLR 59 is authority for the same proposition. In *Hunt*, Hiley J held that the AFP did not engage in any impropriety for the purposes of s 138 of the *Evidence (National Uniform Legislation) Act 2011* (NT) in not requesting Indonesian assistance under the *MACMA* or not informing Indonesian police about a consensual search of an Australian citizen on Indonesian soil in relation to possible child pornography offences against Australian law. The facts in *Hunt* are materially different from the present case because the AFP was lawfully recognised in Indonesia as a foreign law enforcement agency. Hiley J accepted that there was a significant amount of cooperation between the AFP and the Indonesian police that occurred outside of the *MACMA*, and there was no need in this case to inform the Indonesian police what the AFP were doing.

⁵³⁸ *Milner v DPP (Cth)* [2020] VSCA 207 at [25].

⁵³⁹ *R v Hunt* (2014) 286 FLR 59 at p 71 [57]; *Milner v DPP (Cth)* [2020] VSCA 207 at [22]–[24].

does not mean that evidence obtained in a foreign jurisdiction by Australian investigators is inadmissible.

383. However, this is by no means the end of the matter.
384. Neither *Milner* nor any other Australian authority sanctions or authorises Australian officials to exercise any of its powers or carry out official functions in a foreign country without permission from that country. Here, there was no permission by German authorities to conduct any official inquiries on its soil. The consequences of this are discussed below.

Breach of international law

385. The next issue is whether Ms Bridge and Mr Baker breached any principle of international law. Ms Bridge and Mr Baker did not breach any treaty.
386. The notion of state sovereignty recognises the exclusive authority that a state has within its own borders over its own citizens, and over other persons present there.⁵⁴⁰ A state prescribes laws for the most part only for its own citizens, residents, and matters arising within its national borders.⁵⁴¹
387. In the case *Military and Paramilitary Activities in and Against Nicaragua; Nicaragua v United States* [1986] ICJ Rep 14; [1986] ICJ 1, the International Court of Justice held at [202] and [206]:⁵⁴²

[202] The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law.

[206] In this respect it notes that, in view of the generally accepted formulations, the principle forbids all States or groups of States to intervene directly or indirectly in internal or external affairs of other States. A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State.

⁵⁴⁰ *Military and Paramilitary Activities in and Against Nicaragua; Nicaragua v United States* [1986] ICJ Rep 14; [1986] ICJ 1.

⁵⁴¹ Sam Blay, Ryszard W Piotrowicz and Martin Tsamenyi, *Public International Law: An Australian Perspective* (Oxford University Press, 2nd ed, 2005) at 154.

⁵⁴² *Military and Paramilitary Activities in and Against Nicaragua; Nicaragua v United States* [1986] ICJ Rep 14; [1986] ICJ 1.

388. Mr Sam Blay, author of *Public International Law: An Australian Perspective* expresses the principle somewhat more widely:⁵⁴³

...the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another state. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.

389. It is not clear if the reference to “exercising power” means exercising “coercive power”. If the principle had broader application to any exercise of power by a State in the territory of another country, the principle would forbid States from engaging in a wide array of activities, such as engaging in negotiations or other common acts of statecraft. I do not find that the actions of Mr Baker and Ms Bridge in seeking to obtain voluntary statements in Germany involved the coercive exercise of any State power.
390. However, different States may take different views on what constitutes the exercise of power by a foreign State. For this reason, it is relevant to consider the position according to German law.

Did Ms Bridge and Mr Baker breach German law or infringe German sovereignty?

391. I received expert evidence on the content of German law from Dr Wolfgang Babeck, a German lawyer and honorary Adjunct Professor of Bond University.⁵⁴⁴
392. Dr Babeck opined that:⁵⁴⁵

Taking a witness statement is an encroachment on state sovereignty. It constitutes such an interference since taking such a statement by the Australian state affects the rights of the witness ... This is likely to be the case even if taking of the witness statement is voluntary.

393. I have also been provided with further expert evidence on German law obtained by Mr Lander from two German lawyers: Mr Sebastian Sevenich, German attorney, and Prof Dr iur Suzan Denise Hüttermann, M.Res, Professor for German, European and International Criminal Law, Criminal Procedure and Economic Crime at Leuphana University. These reports were obtained by Mr Lander in order to assist me with my current review and my consideration of whether there was a breach of German law by ICAC investigators. I thank Mr Lander for his valuable assistance in providing these helpful reports and note that the reports have been provided despite containing

⁵⁴³ Sam Blay, Ryszard W Piotrowicz and Martin Tsamenyi, *Public International Law: An Australian Perspective* (Oxford University Press, 2nd ed, 2005) at 154.

⁵⁴⁴ Exhibit 153 – Legal Opinion of Dr Wolfgang Babeck, 2 May 2023 at [1].

⁵⁴⁵ Ibid at [2.2.2.2].

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opinions that may be said to be contrary to his personal interests.

394. Mr Sevenich's opinion is similar to Dr Babeck, and he concludes:⁵⁴⁶

*On the other hand, referring to the standards of international law the conduct of having carried out investigative actions in Germany apart from any legal assistance and without going through the proper official channels can be described as **unlawful**.*

The exercise of investigative powers on the territory of the Federal Republic of Germany by foreign authorities is prohibited as a matter of principle. They have no authority of their own to investigate here. This follows from the principle of respect for territorial sovereignty.

395. Similarly, Professor Hüttermann considered the conduct of ICAC in Germany and states:⁵⁴⁷

It is widely – and rightfully – accepted that foreign officials who contact people on German territory in an official capacity, e.g. even by merely sending them official questionnaires, are violating state sovereignty and need permission. This is not tied to these officials using force, invoking obligations or threatening legal consequences.

It is the activity in an authoritative capacity itself that renders these activities into exercises of state power that need permission when conducted on German territory.

(underlining added)

396. Professor Hüttermann concludes that ICAC investigators would have needed permission to question witnesses in Germany, even if participation in the questioning was declared to be voluntary and non-participation was not tied to any adverse legal consequences.

397. Professor Hüttermann also explains that the “German federal government has expressed its view regarding US subpoena cases in 1983 and put forward the position that direct questioning of witnesses in Germany by plaintiffs, judges or lawyers without permission is a breach of sovereignty”.⁵⁴⁸

398. I accept that in obtaining statements from German citizens, Mr Baker and Ms Bridge breached German sovereignty. As such, the conduct was unlawful.

399. Dr Babeck also considered that Australian authorities were required under German law to avail themselves of legal assistance and follow the two German laws: *the Law on International Mutual Legal Assistance in Criminal Matters* (Gesetz über die internationale Rechtshilfe in Strafsachen, IRG) and the *Guidelines for Dealings with*

⁵⁴⁶ Exhibit 225 – Legal opinion of Sebastian Sevenich (Rechtsanwalt), 21 May 2023 at p 4.

⁵⁴⁷ Exhibit 198 – Legal opinion of Prof. Dr. iur. Suzan Denise Hüttemann, M.Res., 25 May 2023 at [25].

⁵⁴⁸ Ibid at [23].

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Foreign Countries in Criminal Matters (Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten, RiVAST). However, a failure to comply with these laws and guidelines does not come with any sanctions because a citizen is not empowered under German law to bring claims against a foreign State outside of the European Union for such violation.⁵⁴⁹

400. There is some dispute between the experts as to whether these laws imposed positive obligations on foreign law enforcement bodies. Ultimately, I accept that those laws did not impose positive obligations on ICAC investigators. However, it appears uncontroversial that the rationale for the Mutual Legal Request law (the IRG) is the concept of State sovereignty, and it is intended to provide a mechanism to regulate the way in which foreign countries may obtain evidence on German soil. This reinforces my finding that ICAC investigators infringed German sovereignty.
401. Professor Hüttermann opined that the exercise of power by foreign officials on German territory without seeking any assistance under Germany's mutual assistance legislation is considered a breach of sovereignty. It follows from the Professor's opinion that ICAC investigators were either required to obtain evidence in Germany by a MAR or, at the very least, to obtain permission and assistance from the German police. The failure to do so meant that they infringed Germany's sovereignty.
402. Professor Hüttermann also explains that the *German Code of Criminal Procedure* contains formal requirements which would have had to be observed by German authorities had they conducted questioning of witnesses following a request by Australian authorities. As these requirements are not addressed to foreign officials, ICAC investigators cannot be considered to have violated the *Code of Criminal Procedure*. However, Professor Hüttermann concludes that the non-observance of the procedures in the *Code of Criminal Procedure* was a direct result of the breach of sovereignty by ICAC investigators. Had the questioning been carried out in response to a MAR by German authorities, German officials would have complied with those procedures.
403. As such, although ICAC investigators did not personally contravene the *Code of Criminal Procedure*, their conduct had the effect of denying German citizens of the protections inherent in that law.
404. I find that ICAC investigators were required to obtain evidence in Germany by a MAR or, at the very least, to obtain permission and assistance from the German police. Their failure to do so constituted an infringement of Germany's sovereignty.

⁵⁴⁹ Exhibit 153 – Legal Opinion of Dr Wolfgang Babeck, 2 May 2023 at [2.2.4].

Other consequences of the conduct of Mr Baker and Ms Bridge

405. In addition to a possible contravention of local law, the advice contained in the ICCCA email was that a failure to obtain the assistance of local authorities may cause damage to Australia's international relationships. This point was also made by Consul-General Sams, who explained that the Australian Embassy relied on the cooperation of the German Police at all times. Consul-General Sams clearly stated that he did not want any Australian agency undertaking activity without adhering to the appropriate protocol, and that failure to do so would undermine Australia's reputation. This was also further emphasised by the fact that the Australian Embassy had received a complaint about ICAC's conduct in Germany.

Were the affidavits obtained in Germany inadmissible?

406. The affidavits obtained in Germany by Mr Baker and Ms Bridge were not witnessed in accordance with the requirements of section 66 of the *Evidence Act*. Accordingly, the affidavits themselves were not in admissible form. Although Mr Lander had been advised of Ms Luu's advice on section 66 in the Bridge Germany Travel Memorandum,⁵⁵⁰ and reminded in Mr Baker's email of 12 September 2019 that if Ms Bridge witnessed the affidavits, this process would "*technically not [be] satisfactory*",⁵⁵¹ no steps were taken by ICAC to have the affidavits re-signed before a German notary, in accordance with section 66.

407. Mr Hanlon has submitted to me that, pursuant to section 111(4) of the *Criminal Procedure Act*, statements of witnesses filed as part of a committal brief must be in affidavit form and must therefore meet the requirements of section 66 of the *Evidence Act*.⁵⁵² It was submitted that, as the German affidavits did not comply with section 66, the German affidavits ought not to have formed part of the committal brief.⁵⁵³ On that basis, Mr Hanlon submitted to me that none of the German affidavits were admissible to establish a case to answer at committal.⁵⁵⁴ I have found that the German affidavits were not in admissible form. Whether the Magistrate would have found there was a

⁵⁵⁰ Exhibit 25 – Memorandum from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 13 August 2019 at p 5–6.

⁵⁵¹ Exhibit 31 – Emails between Andrew Baker (ICAC) and Commissioner Lander KC (ICAC), 12 to 16 September 2019.

⁵⁵² Exhibit 208 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (29 May 2023) at [7.6].

⁵⁵³ Ibid.

⁵⁵⁴ Ibid.

case to answer absent the German affidavits is an entirely hypothetical question.⁵⁵⁵

408. At the committal hearing on 18 June 2021, the DPP prosecutor incorrectly conceded that it was necessary for the prosecution to establish that Mr Hanlon had engaged in **no** Renewal SA activity during either of the trips the subject of the prosecution.⁵⁵⁶ Arising from this concession, the prosecutor then conceded that there was no case to answer. Mr Hanlon was never committed for trial at the hearing on 18 June 2021 on the basis of the brief containing the inadmissible German affidavits. Accordingly, any breach of section 111(4) of the *Criminal Procedure Act* did not have any material effect on the proceedings against Mr Hanlon. He was not committed for trial in any event.
409. The question of the admissibility of the witness affidavits themselves only became relevant if the DPP sought to tender the witness affidavits in lieu of calling the witnesses to give evidence.⁵⁵⁷ It is very unlikely that the DPP would have ever attempted to tender the German witness affidavits in the face of objection by Mr Hanlon's legal representatives. Accordingly, if the information contained in the affidavits was to be admitted in Court the prosecution would have had to have made arrangements for the witnesses to provide oral evidence.
410. If the Crown had called the German witnesses to give evidence in Australia, there would be no need for the prosecution to rely upon the affidavits, which would serve only as a form of disclosure.
411. I do not speculate whether the DPP could have secured the German witnesses to give evidence orally either in Australia or by audio-visual link.
412. There was a further basis upon which the German affidavits may have been held to be inadmissible.
413. Evidence obtained unlawfully or improperly may be excluded by a court pursuant to the discretion established by the High Court in *Bunning v Cross* (1978) 141 CLR 54. In *Bunning v Cross*, the High Court held that the discretion to exclude evidence improperly obtained can be exercised where the unfairness to the defendant outweighs

⁵⁵⁵ The principles governing the Magistrates Court's approach to evidence in committal proceedings is set out in s 115 of the *Criminal Procedure Act 1921* (SA). Evidence will be sufficient to put the defendant on trial for an offence if, in the opinion of the Court, the evidence, if accepted, would prove every element of the offence. Although the Court may reject evidence if it is plainly inadmissible, the Court will, if it appears that arguments of substance can be advanced for the admission of evidence, admit the evidence for the purpose of the committal proceedings, reserving any dispute as to its admissibility for determination by the court of trial.

⁵⁵⁶ Exhibit 145 – Transcript of Proceedings, *R v Hanlon & Vasilevski* (Magistrates Court of South Australia, AMC-20-2810, Magistrate Smart, 18 June 2021) at p 42 [28]–43 [6]. See also *R v Hanlon (No 1)* [2022] SADC 85 at [50]–[51].

⁵⁵⁷ *R v Hanlon (No 3)* [2022] SADC 135 at [35], [37].

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the public interest in enforcement of the law and obtaining evidence to aid that enforcement.⁵⁵⁸ Evidence may also be excluded by an exercise of judicial discretion where the extent to which it would prejudice a fair trial outweighs its probative value.⁵⁵⁹ The accused bears the onus of justifying the exclusion of the evidence.⁵⁶⁰

414. In the present case, it would have been open for Mr Hanlon to apply to exclude the affidavits from the German witnesses on the basis of the *Bunning v Cross* discretion.
415. Nonetheless, as discussed below, the fact that the affidavits were not witnessed in accordance with section 66 of the *Evidence Act* and the circumstances in which they had been obtained are matters which should have been brought to the attention of the DPP upon referral of the brief from ICAC.

Conclusion on conduct of investigators in Germany

416. Regardless of the legal position, there are a number of implications that flowed from Mr Baker and Ms Bridge's conduct in Germany.
417. The conduct of both Mr Baker and Ms Bridge in Germany in carrying out official functions and undertaking investigations in Germany was extraordinary. I have found that there is evidence of maladministration in public administration in this aspect of ICAC's conduct.
418. Ms Bridge was expressly advised in the AFP Interpol email and in the AFP Hague email received while in Germany that:
- 418.1 legal approval in the local country for undertaking official activities was "*imperative*";
- 418.2 undertaking inquiries in the absence of approval may be a criminal offence;
- 418.3 it may have a broader impact on Australian relationships; and
- 418.4 Germany in particular was "*very strict*" and required approval through official channels to obtain any statements, regardless of the witness' willingness to cooperate.
419. The advice contained in the AFP Interpol email and the AFP Hague email and from Consul-General Sams was significant and had implications for the actions of Ms Bridge and Mr Baker in Germany. The emails and the advice should have been brought to the attention of Mr Lander immediately.

⁵⁵⁸ *Bunning v Cross* (1978) 141 CLR 54 at 64-65.

⁵⁵⁹ *Ibid.*

⁵⁶⁰ *Ibid.*

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420. Whilst in Germany, both Mr Baker and Ms Bridge were also told by Consul-General Sams that they should not conduct any further investigations in Germany. Yet they continued to do just that. Mr Baker deliberately ignored the clear advice of Consul-General Sams because he thought it was wrong. If Mr Baker genuinely thought Consul-General Sams was wrong, he made not the slightest effort to obtain any legal advice about the legal authority of ICAC officers to conduct investigations in Germany.
421. In fact, Consul-General Sams was completely correct. Mr Baker and Ms Bridge had no legal power or authority to carry out **any** official function in Germany. Although not unlawful under Australian law, their investigations and attempts to obtain statements or affidavits from witnesses in Germany constituted an infringement of German sovereignty.
422. Such conduct can cause significant damage to the reputation and the integrity of ICAC whose charter was to expose abuses of power.

Assessment of conduct after Mr Baker and Ms Bridge returned from Germany

423. After Mr Baker and Ms Bridge returned from Germany, Mr Lander was informed about the meeting with Consul-General Sams and the advice communicated by him. As discussed above at paragraph [345], Mr Lander asked that advice be obtained from Mr Jensen about the "*appropriate protocol for carrying out investigations of this kind overseas*".
424. It is clear from the documents before me that Mr Lander was sufficiently concerned about the advice from Consul-General Sams that he instructed Ms Bridge to obtain legal advice on the issue. This request for advice resulted in Ms Greenslade contacting ICCCA and communicating the advice referred above.
425. The Greenslade advice made clear that the advice applied not only to affidavits to be obtained from further witnesses, but to re-obtaining the affidavits that were witnessed by Ms Bridge in Germany (see paragraph [347]).
426. Despite having taken the step of directing that advice be obtained, there is no evidence that Mr Lander reviewed the Greenslade advice. He did not recall having had the Greenslade advice, or the substance of it, brought to his attention.⁵⁶¹ If he did so, he did not take any action in relation to that advice. It appears that it was left to Ms Bridge to implement the Greenslade advice, without any guidance, supervision or direction

⁵⁶¹ Transcript at p 307 [24].

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from Mr Baker, Mr Jensen (who was copied into the email) or Mr Lander. Ms Bridge clearly intended to implement the advice (having made a note in her periodic reports to “*Complete MAR to request further affidavits via AFP and German authorities*”).⁵⁶² However, this was not completed prior to her leaving her role at ICAC.

427. The significant issue identified by Ms Greenslade should have been taken seriously by those at a senior level at ICAC. Having requested that advice be obtained, Mr Lander should have ensured that the advice was implemented promptly. It never was. The advice fell through the gaps due to a lack of oversight. It should not have been left to Ms Bridge alone to address the issues raised by Ms Greenslade. Again, this was an institutional failure that cannot be attributed to any one person. Mr Dalton candidly conceded that the “*ball was dropped*” by “*all of us*” in relation to following through with the Greenslade advice and knowing why the MAR process was not followed subsequently. Mr Dalton correctly summarised the failures at ICAC: “*We should have known about it [referring to MAR requirements] and that should have been done, unless there was a decision made not to do it by a party or party for some reason that wasn’t explained to everybody else*”.⁵⁶³
428. The fact that the advice was not brought to the attention of Ms Luu also represents an institutional failure in respect of the investigation into Mr Hanlon. Ms Luu was the legal officer who maintained the most significant involvement in the Hanlon investigation and was involved at the point in time when the brief was referred to the DPP. Ms Luu should have been made aware of the Greenslade advice. Although Mr Lander submitted that he understood that Ms Luu was assigned to the investigation of Mr Hanlon, the evidence before me indicates that this understanding was not held by Ms Luu. There was no evidence put before me explaining why the Greenslade advice was not brought to the attention of Ms Luu, if she was, as Mr Lander asserts, assigned to the investigation. This failure to communicate significant legal advice in relation to an investigation emphasises the importance of having a legal officer assigned to an investigation who understands their role to include oversight of all legal issues arising in an investigation, a system that would prevent issues falling through the gaps.

⁵⁶² Exhibit 103.4 – Amanda Bridge (ICAC), ‘Matters under investigation’ v84 (Report for ICAC investigation meeting, 3 December 2019).

⁵⁶³ Transcript at p 650.

X. Unreasonable delay in the conduct of the investigation into Mr Hanlon

429. This Part of the Report examines whether there was any unreasonable delay in ICAC's investigation into Mr Hanlon.

What is “*unreasonable delay*”?

430. Clause 9(1)(a)(i) of schedule 4 of the current *ICAC Act* sets out a non-exhaustive list of matters that I ought to consider in the course of an annual review when determining if any powers or functions under the Act have been exercised appropriately, including, whether there is any evidence of “*unreasonable delay in the conduct of investigations*” under the Act.
431. Where no period is specified for doing a particular act, the courts have been prepared to imply a requirement for it to be done within a reasonable time or that a reasonable time must be allowed for it to be done.⁵⁶⁴ Consideration as to what “*reasonable time*” is will turn upon the individual circumstances of the matter.⁵⁶⁵
432. In considering whether an investigation has suffered from unreasonable delay, I must first be satisfied that there has been a delay that was longer than the nature of the investigation required. I am not satisfied that there was any unreasonable delay in ICAC's investigation of Mr Hanlon.

Investigation into Mr Hanlon's Melbourne and Germany trips

433. As explained in paragraphs [42] and [62], on 10 May 2018, former Mr Lander appropriately and lawfully made a decision under section 24(1)(a) of the *ICAC Act* to investigate allegations made against Mr Hanlon in respect of the Melbourne trip (and other related matters).⁵⁶⁶
434. On 3 December 2018, former Mr Lander referred the matter to the DPP for adjudication.⁵⁶⁷ Throughout 2019, the ICAC investigation continued concurrently with the investigation into Mr Hanlon's Germany trip. For ICAC's purposes, the Melbourne investigation was finalised by way of advice from the DPP on 29 January 2020 which

⁵⁶⁴ D C Pearce & R S Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths Australia, 7th ed, 2011) [6.52].

⁵⁶⁵ *Koon Wing Lau v Caldwell* (1949) 40 CLR 533 at [574] (Dixon J).

⁵⁶⁶ Exhibit 108 – Commissioner Lander KC (ICAC), *2018/003882 Section 24 Decision (Report/Complaint)* (16 May 2018).

⁵⁶⁷ Exhibit 15 – Letter from Commissioner Lander KC (ICAC) to DPP Adam Kimber SC, 3 December 2018.

advised that the DPP would be commencing proceedings against Mr Hanlon.⁵⁶⁸

435. On 23 April 2019, Mr Lander appropriately and lawfully made a decision under section 24(1)(a) of the *ICAC Act* to investigate matters relating to Mr Hanlon's Germany trip.⁵⁶⁹ This investigation continued throughout 2019, and was ultimately finalised for ICAC's purposes when former Mr Lander referred the matter for potential prosecution to the DPP on 29 November 2019.⁵⁷⁰
436. From 10 May 2018 until 29 January 2020, ICAC investigators executed an investigation that included covert surveillance of Mr Hanlon, searches of relevant premises, in-person enquiries in Melbourne and Berlin, interviews of dozens of witnesses, and analysis of large volumes of technical data. This was a complex investigation, which was undertaken thoroughly and comprehensively.

Assessment

437. There is no information before me which suggests that ICAC's investigation into Mr Hanlon took longer than an investigation of this type and complexity would ordinarily require. I find that there was no unreasonable delay in ICAC's investigation of Mr Hanlon.

⁵⁶⁸ Exhibit 45 – Letter from Sandi McDonald SC (DPP) to Commissioner Lander KC (ICAC), 29 January 2020.

⁵⁶⁹ Exhibit 21 – Matter note from Amanda Bridge (ICAC) to Commissioner Lander KC (ICAC), 23 April 2019; Exhibit 21.1 – Matter note from Commissioner Lander KC (ICAC) to Amanda Bridge (ICAC), 23 April 2019.

⁵⁷⁰ Exhibit 42 – Letter from Commissioner Lander KC (ICAC) to DPP Martin Hinton KC, 29 November 2019.

XI. Referral of the brief to the DPP

438. On 3 December 2018, Mr Lander referred the allegations regarding the Melbourne trip to the DPP for adjudication as to whether a prosecution should be brought against Mr Hanlon, Ms Vasilevski and two other individuals.⁵⁷¹ Included with the referral was a memorandum of advice prepared by Ms Luu that set out the background to the matter, the evidence obtained, and Ms Luu's assessment of possible charges to be laid.⁵⁷²
439. On 29 November 2019, Mr Lander referred the allegations regarding Mr Hanlon's Germany trip to the DPP for adjudication. This Part of the Report considers issues surrounding that referral, including the appropriateness of the decision to refer to the DPP for adjudication and whether there was any pressure on ICAC or within ICAC to finalise the investigation.

The appropriateness of the decision to refer Mr Hanlon's Melbourne trip to the DPP

440. Prior to the referral of the Melbourne trip to the DPP, on 24 September 2018, Mr Hanlon was interviewed by Ms Bridge in the course of the execution of the search warrant at Renewal SA offices.⁵⁷³ The broad terms of the allegations relating to the Melbourne trip were put to him, and Mr Hanlon stated generally that his trip to Melbourne was for work purposes.

Mr Hanlon's version provided to ICAC

441. On 9 November 2018, Mr Hanlon's legal representative provided a letter to ICAC setting out Mr Hanlon's further response to the allegations relating to the Melbourne investigation.⁵⁷⁴ The letter said the following:
- 441.1 Mr Hanlon rejected the suggestion that the Melbourne trip was not for legitimate Renewal SA purposes. Although Mr Hanlon had an interest in horse racing and the timing of the trip was personally convenient to him, he was entitled to

⁵⁷¹ Exhibit 15 – Letter from Commissioner Lander KC (ICAC) to DPP Adam Kimber SC, 3 December 2018.

⁵⁷² Exhibit 16 – Memorandum from Helen Luu (ICAC) to Commissioner Lander KC (ICAC), 3 December 2018.

⁵⁷³ See Exhibit 19.16 – Transcript of Interview with John Hanlon, 2018/003882 (Amanda Bridge (ICAC), Renewal SA premises, 24 September 2018).

⁵⁷⁴ Exhibit 135.8 – Letter from Counsel for Mr Hanlon to Amanda Bridge (ICAC), 9 November 2018 at p 4 reproduced in 'Exhibit MS1' to Exhibit 135 – Affidavit of Counsel for Mr Hanlon re permanent stay application, Submission in *R v Hanlon*, DCCRM-21-1335, 20 October 2021.

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coordinate business visits to fit with his personal calendar.⁵⁷⁵

441.2 Mr Hanlon travelled to Melbourne in order to observe finished redevelopments in Melbourne, and, in particular, in the Crown Casino public realm for the purpose of assessing proposals relating to the Adelaide Festival Plaza redevelopment to be undertaken by the same company, as well as the redevelopment of the old Royal Adelaide Hospital site. Mr Hanlon did not intend to meet with third parties in Melbourne and the principal purpose of the trip was for information gathering and site inspections.⁵⁷⁶ Mr Hanlon provided specific details of the places he visited in Melbourne.⁵⁷⁷

441.3 Mr Hanlon spent the afternoon of Saturday, 11 November 2018 at the races, which is why he decided it was appropriate that he pay the cost of accommodation for that night out of his own pocket and, after his return, provided the hotel invoice to his Executive Assistant and asked them to arrange for that one night's accommodation to be reimbursed by him. Mr Hanlon's usual practice was to provide a printed invoice and receipt to an employee in his office on his return to the office and he believed he *"made an annotation on the invoice that the Saturday night accommodation was to be paid for by him personally"*. Mr Hanlon also assumed that his staff would *"make arrangements with the Hyatt concierge for the Saturday night accommodation charge to be debited to his personal credit card, the details of which [an employee in his office] held"*. However, for reasons unknown to him, the invoice with his annotation was misplaced and therefore the expenses were not charged to his personal card.⁵⁷⁸

441.4 Errors, as described above, by Mr Hanlon's staff were not isolated occurrences;⁵⁷⁹

441.5 Mr Hanlon habitually paid for meals that he could charge to his Renewal SA card on his personal credit card.⁵⁸⁰

441.6 When the fact of ICAC's investigation became known to Renewal SA staff, there was a degree of panic and attempts at reconstruction. However, this was not a fabrication but reflected the replacement of missing documents. The late

⁵⁷⁵ Exhibit 135.8 – Letter from Counsel for Mr Hanlon to Amanda Bridge (ICAC), 9 November 2018 at p 4.

⁵⁷⁶ Ibid at p 7.

⁵⁷⁷ Ibid at p 9.

⁵⁷⁸ Ibid at p 9.

⁵⁷⁹ Ibid at p 10.

⁵⁸⁰ Ibid at p 10.

reimbursement was not an attempt to remedy a defalcation only after it had been exposed.⁵⁸¹

Ms Luu's memorandum

442. On 3 December 2018, Ms Luu prepared a memorandum to Mr Lander assessing the Melbourne allegations for potential referral to the DPP.⁵⁸² Ms Luu ultimately recommended that the investigation into the Melbourne trip be referred to the DPP to prosecute Mr Hanlon for the following offences: (a) using Renewal SA funds to pay for his November 2017 Melbourne trip; and (b) fabricating documents or fabricating evidence to partially legitimise the November 2017 Melbourne trip.⁵⁸³ Ms Luu's memorandum included various references to evidence before ICAC. One example was the absence of Outlook calendar entries for both Mr Hanlon and Ms Vasilevski during the Melbourne trip could be contrasted for other occasions when they travelled interstate, when their calendars were busy with meetings and appointments.⁵⁸⁴
443. The evidence obtained by ICAC investigators suggested inconsistencies in the version provided by Mr Hanlon via the letter from his legal representative.⁵⁸⁵ For example, evidence captured by the SDs recorded Mr Hanlon stating that he visited Melbourne University and Federation Square on Thursday, 9 November 2017.⁵⁸⁶ In the letter from his legal representatives, Mr Hanlon explained that on 9 November 2017 he had visited Carlton Direct Precinct, Palais Redevlopment in St Kilda and Federation Square.⁵⁸⁷
444. Ms Luu relied heavily on what she described as a "*cover up*" which occurred in the Renewal SA Office after it was learnt that there would be an internal audit of the Renewal SA office by the Auditor-General. As part of that audit, Mr Hanlon signed a corporate card reconciliation form which attached several invoices relating to the Melbourne trip, including a copy of an invoice from the Grand Hyatt hotel (where Mr Hanlon stayed). Employee C had given a version of events in a number of interviews with ICAC investigators about Mr Hanlon's reimbursement of the accommodation for the Saturday night at the Grand Hyatt Hotel in Melbourne that

⁵⁸¹ Ibid at p 11.

⁵⁸² Exhibit 16 – Memorandum from Helen Luu (ICAC) to Commissioner Lander KC (ICAC), 3 December 2018.

⁵⁸³ Ibid at [224].

⁵⁸⁴ Ibid at [88].

⁵⁸⁵ Exhibit 135.8 – Letter from Counsel for Mr Hanlon to Amanda Bridge (ICAC), 9 November 2018.

⁵⁸⁶ Exhibit 86.2 – Transcript of Surveillance Device, *Operation Torrent – ICAC-L020-00 Session Torrent-a_835* (ICAC, 18 September 2018) at p 6 [5]-[25]; Exhibit 16 – Memorandum from Helen Luu (ICAC) to Commissioner Lander KC (ICAC), 3 December 2018 at [119].

⁵⁸⁷ Exhibit 135.8 – Letter from Counsel for Mr Hanlon to Amanda Bridge (ICAC), 9 November 2018 at p 9.

contradicted Mr Hanlon's version.⁵⁸⁸ In particular, Employee C alleged that Mr Hanlon had asked her to backdate a memorandum relating to his repayment of an invoice for the Grand Hyatt Hotel to give the false impression that he had requested repayment of the invoice before the audit process began.⁵⁸⁹ A summary of the key points in Employee C version are set out at paragraphs [104]-[107] above.

445. Most importantly, Ms Luu relied on the SD material. Her opinion was those conversations summarised above at paragraphs [103]-[112] were capable of proving Mr Hanlon's role in creating and falsifying certain documents relating to the repayment of the Grand Hyatt Hotel invoice, and coaching SA Renewal employees on what to say to ICAC investigators.⁵⁹⁰
446. Ultimately, Mr Lander accepted Ms Luu's memorandum.⁵⁹¹ He referred the matter to the DPP to consider whether to prosecute Mr Hanlon for the acts referred to in Ms Luu's memorandum.⁵⁹²

Referral to DPP for adjudication

447. On 14 December 2018, subject to ICAC finalising their investigation into Mr Hanlon, an internal DPP assessment considered there to be a *prima facie* case that Mr Hanlon committed the offences of deception contrary to section 139 of the CLCA and had contravened his duty of a senior official⁵⁹³ to act honestly pursuant to section 16(1) of the *Public Sector (Honesty and Accountability) Act* 1995 (SA).⁵⁹⁴
448. On 22 November 2019, a further internal DPP opinion considered there to be a *prima facie* case that Mr Hanlon committed the offences of deception contrary to section 139(a) of the CLCA,⁵⁹⁵ abuse of public office contrary to section 251(1)(a) of the CLCA,⁵⁹⁶ contravention of the duty of a senior official to act honestly pursuant to

⁵⁸⁸ Exhibit 16 – Memorandum from Helen Luu (ICAC) to Commissioner Lander KC (ICAC), 3 December 2018 at [168]–[177].

⁵⁸⁹ Ibid at [169].

⁵⁹⁰ Ibid at [154]–[177]. Ms Luu opined that the surveillance material disclosed potential charges against Mr Hanlon of attempting to pervert the course of justice.

⁵⁹¹ See Exhibit 15 – Letter from Commissioner Lander KC (ICAC) to DPP Adam Kimber SC, 3 December 2018.

⁵⁹² See Exhibit 15 – Letter from Commissioner Lander KC (ICAC) to DPP Adam Kimber SC, 3 December 2018, which enclosed Exhibit 16 – Memorandum from Helen Luu (ICAC) to Commissioner Lander KC (ICAC), 3 December 2018.

⁵⁹³ Mr Hanlon was a “*senior official*” pursuant to his executive contract: Exhibit 1 – Renewal SA, *Executive contract of John Hanlon* (21 July 2014) at p 3 [1.7]. See also paragraph [30] of this Report.

⁵⁹⁴ Exhibit 17 – Memorandum of Advice from James Pearce KC (DPP) to DPP Adam Kimber SC, 14 December 2018 at [8], [13], [15].

⁵⁹⁵ Exhibit 228 – Memorandum from Patrick Dawes (DPP) (through Jim Pearce KC) to Sandi McDonald SC (DPP), 22 November 2019 at [10].

⁵⁹⁶ Ibid at [10].

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section 16(1) of the *Public Sector (Honesty and Accountability) Act 1995* (SA),⁵⁹⁷ and dishonest dealing with documents contrary to section 140(4) of the *CLCA*.⁵⁹⁸

449. I consider that there was sufficient evidence to justify the referral of the brief to the DPP for adjudication in relation to the Melbourne investigation. Although Mr Hanlon had proffered a version of events, it was open to ICAC to find that version was contradicted by other evidence. The descriptions provided by Mr Hanlon of his activities in Melbourne were of such a high level that it might have been impossible to ever definitively disprove that he did what he claimed (for example, an assertion that on 9 November 2017 he recalled visiting the Carlton Direct Precinct).
450. It is not the role of an investigator to arrive at a final conclusion on guilt or innocence. That is the role of a jury or Judge in the criminal trial. ICAC was not required to accept Mr Hanlon's version in the face of other contradictory evidence. ICAC investigators had a considerable body of evidence available to them that gave rise to a circumstantial case sufficient to justify the referral.
451. Further, the evidence obtained by ICAC investigators suggested that Ms Vasilevski had not stayed with her brother in Melbourne, contrary to her discussions with Mr Hanlon in the SDs. This was a further matter that supported the referral of the matter to the DPP for consideration.
452. Finally, Mr Hanlon's representatives submitted to me that in circumstances where the Melbourne charges were ultimately abandoned, it must follow that that there was no evidence to have justified the charges at the outset.⁵⁹⁹ This conclusion does not follow. My role is not to investigate the decision by the DPP not to lay an *ex officio* Information. Suffice to say that I have concluded that there was sufficient evidence to justify the referral to the DPP, and the DPP's assessment was that the evidence was sufficient to lay charges against Mr Hanlon. Mr Hanlon's representatives recently submitted to me that "*he elects not to contest or dispute a finding by you that there is no evidence of corruption or improperly in connection with the decision to commence the investigation into Mr Hanlon and the referral of the Melbourne trip to the ODPP nor that he suffered undue prejudice as a consequence*".⁶⁰⁰

⁵⁹⁷ Ibid at [240].

⁵⁹⁸ Ibid at [12].

⁵⁹⁹ Exhibit 209 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (29 May 2023) at p 8.

⁶⁰⁰ Exhibit 279 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (19 June 2023) at p 5.

The appropriateness of the decision to refer Mr Hanlon's Germany trip to the DPP for adjudication

453. On 29 November 2019, Ms Luu met with Mr Lander to discuss the referral of Hanlon's Germany trip to the DPP. Her notes in ICAC's Running Sheet recorded:⁶⁰¹

HL [Helen Luu] met with the Commissioner to brief him on the Berlin trip affidavits obtained by SIO Bridge and obtain instructions about referring it to the DPP.

Before the meeting the Commissioner had already read HL's minute to Jim Pearce QC and was therefore aware of the general allegations. HL said since that minute SIO Bridge has travelled to Germany and obtained further affidavits to negate the version of events put forward by Hanlon at his interview.

HL said her view is that the brief gives rise to potential charges of deception and/or Abuse of Public Office.

The Commissioner agreed to refer the matter to the DPP for him to consider if there is a potential prosecution. The matter gives rise to potential charges of deception, Abuse of Public Office and Failing to Act Honestly.

454. As of 29 November 2019, no further steps had been taken to obtain affidavits from witnesses in Germany, either for the remaining Co-Working Businesses who had not yet provided statements, or to have the statements that were witnessed by Ms Bridge re-signed.
455. Mr Baker stated that, in his opinion, it was important that affidavits be obtained from each of the Nine Co-Working Businesses, and that each Co-Working Business be asked to confirm whether Mr Hanlon did or did not attend the locations listed in the 2019 Hanlon Statement.⁶⁰²
456. Mr Baker was not aware who made the decision not to take any further affidavits from witnesses in Germany. It was not his decision, nor was he involved in the process of finalising the brief.⁶⁰³ Mr Dalton was also not aware who made the decision.⁶⁰⁴ He stated that Mr Lander was "*not one for changing strategy on a whim*", and he could not understand why the decision was not recorded.⁶⁰⁵
457. Mr Lander could not recall why a decision was made not to seek any further witness statements from Germany.⁶⁰⁶ Further, Ms Luu was unable to recall the meeting or whether she had been told by Ms Bridge at this point in time that there were outstanding

⁶⁰¹ Exhibit 60 – Resolve running sheet at p 14, '29 November 2019, Matter note'.

⁶⁰² Transcript at pp 378, 445.

⁶⁰³ Transcript at p 443-444.

⁶⁰⁴ Transcript at p 648.

⁶⁰⁵ Transcript at p 650.

⁶⁰⁶ Transcript at p 308 [44].

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affidavits to be taken from witnesses in Germany.⁶⁰⁷

458. Ms Luu's evidence was that ordinarily, when consideration was given to referring a brief to the DPP, a memorandum was prepared by ICAC Legal for the Commissioner's consideration. The brief was prepared by the investigator, who would then provide it to a legal officer to review the brief and draft the memorandum to the Commissioner with an analysis of whether there was evidence to support the elements of a criminal offence, and a recommendation as to whether the brief should be referred.⁶⁰⁸ A 32-page memorandum dated 3 December 2018 was prepared by Ms Luu when the brief relating to Mr Hanlon's Melbourne trip was referred to the DPP. That memorandum summarised the evidence obtained by ICAC and analysed potential charges.⁶⁰⁹ Ms Luu's memorandum was sent to the DPP with Mr Lander's referral letter.⁶¹⁰ There was no memorandum prepared by ICAC Legal in respect of Mr Hanlon's Germany trip. Ms Luu had prepared an earlier memorandum dated 24 July 2019 to provide the DPP with a preliminary indication of the nature of the allegations relating to the Germany trip.⁶¹¹ However, that memorandum pre-dated Mr Baker and Ms Bridge's trip to Germany and the inquiries made of witnesses in Germany and did not, for example, draw to the DPP's attention the fact that outstanding inquiries remained.
459. Ms Luu did not recall why no memorandum had been prepared in relation to Mr Hanlon's Germany trip.⁶¹² She did say that the Commissioner "*often wanted things done quickly*" and that this may have been the case in relation to the Hanlon referral.⁶¹³

Assessment

460. The decision by the Commissioner to refer Mr Hanlon's Germany trip to the DPP for adjudication was reasonable in all the circumstances.
461. Putting aside the German affidavits which I have found were obtained unlawfully, there was significant other material which justified the referral to the DPP.
462. First, ICAC properly considered the Second Itinerary, signed by Mr Hanlon, which purported to be his travel record whilst in Germany between 21 and 28 September

⁶⁰⁷ Transcript at p 576.

⁶⁰⁸ Transcript at p 576.

⁶⁰⁹ Exhibit 16 – Memorandum from Helen Luu (ICAC) to Commissioner Lander KC (ICAC), 3 December 2018.

⁶¹⁰ Exhibit 15 – Letter from Commissioner Lander KC (ICAC) to DPP Adam Kimber SC, 3 December 2018.

⁶¹¹ Exhibit 23 – Minute from Helen Luu (ICAC) to Jim Pearce KC (DPP), 24 July 2019.

⁶¹² Transcript at p 577.

⁶¹³ Transcript at p 578.

2017.⁶¹⁴ The Second Itinerary stated that Mr Hanlon had travelled to Stuttgart, Berlin, Frankfurt and Munich, contradicting strong evidence obtained by investigators that he had not been to Stuttgart or Munich during that period. For example, ICAC investigators identified from credit card purchase records that Mr Hanlon purchased train tickets in Berlin at 8:49am on 26 September 2017 for Berlin to Frankfurt. However, the previous day (on 25 September 2017) at 12:21pm, Mr Hanlon had purchased tickets on his Renewal SA card which, had he used them, would have placed him on a train from Frankfurt to Berlin at that time.⁶¹⁵ Further, at 12:21pm Mr Hanlon purchased a ticket from Berlin to Frankfurt departing at 12:30pm, just nine minutes after the purchase was made.⁶¹⁶ Mr Hanlon has submitted that the Second Itinerary “*was not even in existence before he departed Adelaide and was not a document he ever had any input into*”.⁶¹⁷ There was no such evidence before the ICAC investigators. It was reasonable for the ICAC investigators to accept that Mr Hanlon adopted the Second Itinerary because he had signed the following statement: “*I acknowledge this is my travel record while in Germany in September 2017*”.

463. Second, in that Second Itinerary, Mr Hanlon represented that he had a meeting in Frankfurt with two individuals on 25 September 2017. The investigators had obtained an affidavit and diary notes from which they were able to conclude that such a representation was false, because one of the two individuals was not in Germany at that time and the other was not in Berlin.
464. Third, the telephone records, banking records and communications from Mr Hanlon all pointed to Mr Hanlon’s activities in Germany being for family/social purposes and unrelated to any business purposes.
465. Fourth, the investigators were entitled to take into account the evidence obtained from the Melbourne investigation and the statements made by Mr Hanlon in the SD recordings which pointed to similar conduct by Mr Hanlon in the Melbourne trip in November 2017. As the evidence before me established, investigators considered that this evidence demonstrated a pattern of creating false documents relating to travel claims.
466. Finally, the referral of the brief also contained the 2019 Hanlon Statement provided by Mr Hanlon’s lawyers which stated expressly that Mr Hanlon had visited each of the

⁶¹⁴ Counsel for Mr Hanlon conceded that it was appropriate for ICAC to consider the Second Itinerary: Transcript at p 720 [21].

⁶¹⁵ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [84.6]–[84.7].

⁶¹⁶ Ibid at [84.6].

⁶¹⁷ Exhibit 201 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (28 May 2023) at [5.1].

Nine Co-Working Businesses in Berlin and Frankfurt. The referral brief contained, as described in the affidavit of Ms Bridge, the responses by email that ICAC investigators received from CRCLR Berlin, Ahoy! Berlin, Betahaus, and Factory Berlin to initial enquiries.⁶¹⁸ None of the businesses who responded to the investigator's initial email enquiry had a record of Mr Hanlon attending their premises.⁶¹⁹

467. None of the above is intended to suggest that Mr Hanlon was guilty or would been found guilty of any criminal offence. The issue I am examining is quite different – whether there was any corruption or maladministration or improper conduct by ICAC in referring the Germany investigation to the DPP. I am firmly of the opinion that ICAC had sufficient evidence to refer the Germany matter to the DPP.

Was there pressure to finalise the Hanlon investigation and refer the brief?

468. On 26 September 2018, the media reported that two Renewal SA bureaucrats were on leave, including the agency's Chief Executive.⁶²⁰ Mr Knoll confirmed that Mr Hanlon was on leave, along with another executive who was not named.
469. Following the statement by Mr Knoll, on 27 September 2018, questions were raised during a Parliament Estimates Committee by a member of the opposition, the Hon Tom Koutsantonis, about the absence of Mr Hanlon and Ms Vasilevski and the circumstances surrounding that leave.⁶²¹ Ms Chapman made the following statement following the questions raised in Parliament:

In respect of questions about Renewal SA Executives that the Government has received from both the media and the Opposition, I confirm that, I have enquired of the Independent Commissioner Against Corruption, Mr Bruce Lander QC, as to whether there is any further information that can be made available on this matter.

He confirmed that there is not.

The commissioner at this stage will not be making a public statement on the matter.

In these circumstances, I confirm that the Government will not be adding to the statement made by Minister Knoll on Tuesday 25 September.

470. On 30 July 2019, during an Estimates Committee, Mr Knoll advised Parliament that

⁶¹⁸ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [127].

⁶¹⁹ Ibid. See also discussion at fn 277.

⁶²⁰ Exhibit 124 – 'Renewal SA chief executive John Hanlon suddenly goes on leave but Premier won't say why', *ABC News* (online, 26 September 2018).

⁶²¹ Exhibit 125 – South Australia, *Parliamentary Debates*, House of Assembly, Estimates Committee A, 27 September 2019, 333-340 (The Hon Stephan Knoll and The Hon Tom Koutsantonis).

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Mr Hanlon's contract expired on 20 July 2019 and had not been renewed.⁶²²

471. In her evidence before me, Ms Bridge stated that she felt under pressure following the return from Germany to finalise the investigation into Mr Hanlon's Germany trip. She referred, in particular, to a conversation with Mr Riches that occurred in around November 2019 in which he stated "*when are you going to finish this, you need to finish it quickly. It's taking too long*".⁶²³ She stated that this comment occurred in the context of Mr Knoll having made inquiries into the status of the investigation of Mr Hanlon and Ms Vasilevski, who had been suspended from their roles with Renewal SA.⁶²⁴
472. Mr Baker was asked about this conversation in his evidence. He was unable to pinpoint when it occurred,⁶²⁵ but recalled having been told by either Ms Bridge or Mr Dalton that Mr Riches had spoken to Ms Bridge about "*getting things done quickly*". He also believed that the conversation stemmed from discussions that Mr Riches had had with Mr Knoll that resulted in pressure to "*get this job finished*",⁶²⁶ and that Mr Riches had at some stage stated "*you better get Amanda Bridge on a flight to Germany to get those inquiries done*".⁶²⁷ He stated that he advised Ms Bridge to "*Try and put that aside, we still need to make sure we do this investigation methodically and we don't rush things*".⁶²⁸
473. Mr Baker also gave evidence that at some stage – either in relation to the Melbourne or Germany investigation, he could not recall which – Mr Riches had told the Minister that he would "*have the investigation finished within three weeks*".⁶²⁹ However, Mr Baker was unable to provide any specific evidence about how he was aware that Mr Riches was having meetings with the Minister.
474. Mr Dalton could not recall any conversation in which he had been advised of a three-week deadline to finalise the investigation. He did not recall there being any pressure on ICAC to finalise its investigation, beyond being encouraged by either Mr Baker or Mr Riches to focus the investigation and move it along.⁶³⁰
475. Mr Riches was asked to comment on his recollection of these conversations. His file notes indicated that he had been in a meeting with Mr Knoll on 24 September 2018 at

⁶²² Exhibit 247 – South Australia, *Parliamentary Debates*, House of Assembly, 30 July 2019, 317-31 (The Hon Stephan Knoll and The Hon Tom Koutsantonis); Exhibit 90 – 'Minister reveals Renewal SA chief executive John Hanlon has not had contract renewed', *ABC News* (online, 30 July 2019).

⁶²³ Transcript at p 212 [35]–[36].

⁶²⁴ Transcript at p 213 [8]–[11].

⁶²⁵ Transcript at p 360.

⁶²⁶ Transcript at p 236.

⁶²⁷ Transcript at p 334.

⁶²⁸ Transcript at p 236.

⁶²⁹ Transcript at p 352.

⁶³⁰ Transcript at p 606.

the time that search warrants were executed at Renewal SA, at which the Commissioner had advised Mr Knoll, as the Minister responsible for Renewal SA, of the fact that the Chief Executive of that entity was under investigation.⁶³¹ On 1 November 2018, Mr Riches also had a file note of a telephone call from Mr Knoll, who was seeking an update on the investigation into Mr Hanlon and Ms Vasilevski.⁶³² Mr Riches' notes indicated that he informed the Minister that the investigation was continuing, that the DPP would be briefed shortly, but that he expected that the DPP would not want any evidence disclosed to the Minister until the brief had been received and an assessment had been made on prosecution, which could take some time.⁶³³

476. Mr Riches did not recall having had any discussions with ICAC investigators arising out of the latter conversation with Mr Knoll. He did not have a recollection of a conversation with Mr Baker in around November 2018 to the effect described in paragraph [472] above, but did not expect that the conversation was one that was likely to have occurred.⁶³⁴ He also could not recollect a conversation in which he said to Mr Baker "*You better get Amanda Bridge on a flight to Germany to get those inquiries done*".⁶³⁵ He denied having given an undertaking or commitment to Mr Knoll that the investigation would be finished in a particular timeframe.⁶³⁶
477. Mr Riches was a forthright and honest witness. I do not accept that he gave any undertaking or commitment to Mr Knoll about the Hanlon investigation, or that he had any interactions with Mr Knoll or any other politician outside of those that he recorded in his notes. Mr Riches was candid about his interactions with Mr Knoll and with investigators about timeframes. He had taken file notes of his conversations with Mr Knoll, and there is no reason he would not have taken notes of other conversations if they had occurred.
478. Mr Riches clearly stated in his evidence that whilst Mr Knoll was keen for an outcome in the investigation of Mr Hanlon and Ms Vasilevski, Mr Riches did not consider there to be any pressure arising from the Minister's expectations. He stated there was nothing particularly unusual about a Minister or stakeholder wanting to know the outcome of an investigation.⁶³⁷ He also did not consider that any other external pressure was placed on ICAC to resolve the investigation.⁶³⁸ However Mr Riches

⁶³¹ Exhibit 101 – Michael Riches (ICAC), *Handwritten notes re Hanlon investigation* (24 September to 1 November 2018) at entry for 24 September 2018.

⁶³² *Ibid* at entry for 1 November 2018.

⁶³³ *Ibid*.

⁶³⁴ Transcript at p 481.

⁶³⁵ Transcript at p 485.

⁶³⁶ Transcript at p 487.

⁶³⁷ Transcript at p 482-483.

⁶³⁸ Transcript at p 483.

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acknowledged that he sought to encourage investigators to finalise investigations as expeditiously as possible.⁶³⁹

479. Mr Lander's evidence was that he was conscious of the need to conduct and complete investigations in a timely manner, particularly because he thought that some of ICAC's investigations were "*too slow*".⁶⁴⁰ He also acknowledged that there was external attention on the status of the Hanlon investigation because that Mr Hanlon and Ms Vasilevski had been suspended. However, he stated that the external media and political attention did not create pressure on him to finalise the investigation, nor was he aware of other staff within the office feeling any such pressure.⁶⁴¹
480. It was entirely appropriate for Mr Lander and Mr Riches to encourage investigators to finalise their investigations as expeditiously as possible, particularly in circumstances where Mr Hanlon and Ms Vasilevski had been suspended from their positions. This was consistent with the objects of the *ICAC Act*, as well as the public interest in the investigation being finalised as soon as possible.
481. I do not find that undue pressure was brought to bear on investigators. While they may have perceived pressures from external sources, I do not consider that this came about as a result of any conduct or interaction with Mr Lander or Mr Riches.

⁶³⁹ Transcript at pp 483, 487.

⁶⁴⁰ Transcript at p 256 [22].

⁶⁴¹ Transcript at p 270 [39].

XII. Disclosure during the course of the prosecution of Mr Hanlon

Disclosure obligations of ICAC

Protocols with the DPP

482. At the time of the referral of the Hanlon brief to the DPP, the DPP and ICAC had a protocol settled on 28 March 2018 entitled “*Protocol for ICAC Opinion and Prosecution Files*” (**ICAC-DPP Protocol**).⁶⁴² The ICAC-DPP Protocol set out the steps involved for ICAC’s processing of “*Opinion files*” and “*Arrest files*”, including the role of the relevant ICAC manager and DPP solicitors.

483. The ICAC-DPP Protocol is in brief form and does not contain significant detail on the type of information ICAC investigators must provide the DPP on referral of a brief. It does not contain any information on disclosure obligations. I have been advised by ICAC:⁶⁴³

There was no policy, guideline or formal guidance in force in 2018 or 2019 about the preparation of briefs for transferring to the ODPP, the referral of briefs by ICAC to the ODPP or the preparation of witness statements.

484. The ICAC-DPP Protocol does state, relevantly:

The ICAC investigator must provide details as to the nature of the outstanding evidence on the file, the time required to provide that evidence and the time that it is likely that the DPP will need to make a charge determination having regard to the amount of materials which will be within the preliminary brief.

485. Further, with respect to disclosure, the ICAC-DPP Protocol states:

The equivalent of a certificate pursuant to s10A of the Director of Public Prosecutions Act 1991 will be requested in ICAC prosecution matters, and will be provided with the committal brief.

486. Section 10A of the *Director of Public Prosecutions Act 1991* (SA) (**DPP Act**) contains the statutory requirements for disclosure in criminal trials that applies to SAPOL. Pursuant to section 10A, the police officer in charge of the investigation has a duty to disclose to the DPP “*all documentary material collected or created in the course of the investigation that might reasonably be expected to assist the case for the prosecution or the case for the defence*”. Section 10A does not apply to ICAC investigators.

⁶⁴² Exhibit 5 – ICAC, *Protocol for Opinion and Prosecution Files* (28 March 2018).

⁶⁴³ Exhibit 69 – Secure email from Benjamin Broyd (ICAC) to Stephen Plummer (OOTI), 16 February 2023.

Internal ICAC policies and procedures

487. At the time of the Hanlon investigation, ICAC did not have in place any formal disclosure policy. A draft Disclosure Guideline⁶⁴⁴ was being developed, in which Mr Lander directed that all ICAC investigators should comply with section 10A of the *DPP Act*.⁶⁴⁵ The draft Disclosure Guideline anticipated that ICAC's disclosure obligations mirrored the obligations imposed on SAPOL by section 10A, which required it to provide to the DPP all documentary material collected or created in the course of the investigation that might reasonably be expected to assist the case for the prosecution or the case for the defence.
488. Although the draft Disclosure Guideline was not yet in force at the time of the Hanlon investigation, Mr Lander had given instructions to those within ICAC that ICAC investigators were to comply with the terms of section 10A of the *DPP Act*.⁶⁴⁶
489. In terms of the procedure for compiling disclosable material, the draft Disclosure Guideline also provided:⁶⁴⁷

The primary investigator will prepare a certified list of all documentary material collected or created in the course of an investigation that might reasonably be expected to assist the case for the prosecution or the case for the defence in accordance with s 10A of the DPP Act. The primary investigator will supply a copy of the list to the Office of the DPP (ODPP) when the committal brief is provided to the ODPP [...]

490. The draft Disclosure Guideline further provided:⁶⁴⁸

The Director Investigations will identify a primary investigator for each investigation. This person will be responsible for ensuring that a Disclosure Master Record (DMR) is established and maintained for duration of the investigation. All material collected or created during an investigation will be recorded in the DMR.

A DMR must be established at the commencement of each investigation.

491. No Disclosure Master Record was kept by ICAC investigators during the course of the Hanlon investigation. As the Disclosure Guideline was not a finalised policy, nor had it been disseminated to ICAC employees, there can be no criticism of ICAC for failing to keep such a document. Indeed, Mr Dalton's evidence was that it was not normal course within ICAC to keep a disclosure schedule on an ongoing basis throughout an investigation, which in his experience, was also reflective of how police investigations

⁶⁴⁴ Exhibit 81 – ICAC, *Disclosure Policy* (v1, 28 March 2018).

⁶⁴⁵ Ibid at p 3.

⁶⁴⁶ Transcript at p 312 [3].

⁶⁴⁷ Ibid at p 4.

⁶⁴⁸ Ibid at p 11.

were conducted.⁶⁴⁹

492. Mr Dalton considered, however, that the preferable course was to maintain a disclosure log throughout an investigation. He noted that the awareness of ICAC investigators about the need to maintain disclosure records during the course of an investigation is “*completely different now to what it was in 2018 or between 2018 and 2020*”.⁶⁵⁰ The changes to ICAC’s practices since the time of the Hanlon investigation are discussed below in **Part XVI**.

Common law obligations

493. In addition to the terms of section 10A of the *DPP Act* with which Mr Lander had directed ICAC investigators to comply, ICAC had disclosure obligations arising under the common law. At common law, it is a fundamental tenet of the accusatorial system in criminal proceedings that the prosecution must disclose all relevant evidence to an accused, and that a failure to do so may, in some circumstances, require the quashing of a verdict of guilty.⁶⁵¹ This is because a breach by the prosecutor of the duty to act fairly, with due regard to the interests of the accused, might amount to a material procedural irregularity in the trial producing a miscarriage of justice.⁶⁵²
494. The content of the duty of disclosure has been considered by UK authorities. In *R v Keane* [1994] 2 All ER 478, the duty of disclosure was said to encompass three aspects. The Crown must disclose material which:
- 494.1 first, is or might be relevant to an issue in the case;
 - 494.2 second, raises a new issue, the existence of which is not apparent from the prosecution case; and
 - 494.3 third, holds out a real prospect of providing a lead on evidence in the first two categories.
495. This statement was considered by Hodgson JA in *R v Reardon (No 2)* (2004) 60 NSWLR 454.⁶⁵³ The *R v Keane* limbs of disclosure have subsequently been adopted by intermediate appellate courts in Australia.⁶⁵⁴ However, the obligation to disclose is not limitless. The High Court has recognised that the Crown’s obligation to disclose

⁶⁴⁹ Transcript at p 634.

⁶⁵⁰ Transcript at p 636.

⁶⁵¹ *Grey v The Queen* (2001) 184 ALR 593; *Mallard v The Queen* (2005) 224 CLR 125 at [17].

⁶⁵² *Cannon v Tahche* (2002) 5 VR 317 at [58].

⁶⁵³ *R v Reardon (No 2)* (2004) 60 NSWLR 454 at [46]–[54].

⁶⁵⁴ See *R v Spiteri* (2004) 61 NSWLR 369 at [20]; *Cornwell v R* [2010] NSWCCA 59 at [210]; *Button v The Queen* [2002] (2002) 25 WAR 382 at [14]; *R v Farquharson* (2009) 26 VR 410 at [213]; *R v Andrews* (2010) 107 SASR 471 at [19].

does not extend to “*all information in the possession of the prosecutor or to information that does no more than provide a potential avenue for inquiry*”.⁶⁵⁵

496. In *Ragg v Magistrates’ Court of Victoria* (2008) 18 VR 300, Justice Bell set out an extensive list of material that is disclosable at common law, including material in the possession of or known to the prosecution that **may**:⁶⁵⁶

496.1 undermine the prosecution case;

496.2 assist the defence case;

496.3 exculpate the accused; and

496.4 affect the credit of prosecution witnesses.

ICAC’s failure to disclose material to the DPP

497. There was a serious failure by ICAC not to disclose important matters to the DPP upon referral of the brief in relation to Mr Hanlon’s Germany trip.

Evidence obtained by Mr Baker and Ms Bridge in Germany

498. The brief that was sent to the DPP in respect of the Hanlon investigation was accompanied by “Delivery Certificates” that listed the affidavits, witness statements and other evidentiary material provided to the DPP.⁶⁵⁷ There were four tranches of brief provided to the DPP in relation to the Melbourne investigation on 6 March 2020, 18 June 2020 and 22 January 2021 that were accompanied by a Delivery Certificate.

499. The Germany brief was accompanied by an affidavit of Ms Bridge dated 28 November 2019 and an affidavit of Mr Baker dated 16 December 2020.

500. Ms Bridge’s affidavit dated 28 November 2019 set out the steps taken by her in Germany in general terms. She referred to the fact that five witnesses had signed their affidavits “*in my presence*”.⁶⁵⁸ Mr Lander submitted that it was obvious that the affidavits were witnessed by Ms Bridge in Germany.⁶⁵⁹ I do not agree with that submission as there was no specific reference in Ms Bridge’s affidavit to the fact that

⁶⁵⁵ *Edwards v The Queen* (2021) 273 CLR 585 at [26].

⁶⁵⁶ *Ragg v Magistrates’ Court of Victoria* (2008) 18 VR 300 at [73]. See also *R v Farquharson* (2009) 26 VR 410 at [214].

⁶⁵⁷ Exhibit 47 – ICAC, *Declarations delivery certificate 2018/003882 – Berlin, Germany No 1* (6 March 2020); Exhibit 48 – ICAC, *Declarations delivery certificate 2018/003882 – Melbourne No 1* (6 March 2020); Exhibit 49 – ICAC, *Declarations delivery certificate 2018/003882 – Melbourne No 2* (6 March 2020); Exhibit 50 – ICAC, *Declarations delivery certificate 2018/003882 – Melbourne No 3* (18 June 2020).

⁶⁵⁸ Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019 at [152], [156], [176], [191].

⁶⁵⁹ Exhibit 278 – The Hon Bruce Lander KC, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (19 June 2023) at [2].

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Ms Bridge had witnessed the affidavits in Germany. Nor was there any reference in any of the material that accompanied the brief to the DPP that an MAR had not been obtained or requested, nor to the discussions with Consul-General Sams, the inquiries with the AFP while in Germany, or the communications with ICCCA subsequently. Nor was the DPP's attention drawn specifically to the fact that the affidavits did not comply with section 66 of the *Evidence Act*.

501. Mr Baker's affidavit dated 16 December 2020 addressed inquiries undertaken in Germany, including inquiries made on a Deutsche Bahn train from Frankfurt to Berlin on 9 September 2019. His affidavit also described the affidavits taken from witnesses in Germany, stating in each case that the affidavit had been witnessed by Ms Bridge. As with Ms Bridge's affidavit, Mr Baker's affidavit made no reference to the failure to obtain an MAR (contrary to the Greenslade advice), the discussions with the Consul-General, inquiries with ICCCA, or the fact that the affidavits did not comply with section 66 of the *Evidence Act*.⁶⁶⁰
502. Mr Baker gave evidence before me that he did not refer to the conversation with Consul-General Sams in his affidavit because he did not consider it related to the admissibility of the statements, but rather was "*simply an issue of protocol that we had **not** complied with potentially*" (emphasis added).⁶⁶¹ I do not accept that this was simply a matter of protocol. Consul-General Sams made it clear to Mr Baker that they should not be carrying out any investigations in Germany without permission. Any proper consideration of that information should have caused an experienced investigator such as Mr Baker to realise that had the real potential to affect the admissibility of the affidavit evidence obtained in Germany if the DPP attempted to tender the affidavits at trial.
503. In November 2022, Mr Baker and Ms Bridge prepared further affidavits in the context of the District Court proceedings against Mr Hanlon. Mr Baker's affidavit of 2 November 2022 addressed his understanding of MARs and inquiries made in Germany, including the conversation with Consul-General Sams on 18 September 2019.⁶⁶² Ms Bridge's affidavit of 3 November 2022 addressed her understanding of an MAR and approaches to witnesses in Germany during the investigation.⁶⁶³
504. Mr Lander accepted that the DPP should have been advised, either at the time that the brief was referred or immediately after the adjudication process, that the affidavits had

⁶⁶⁰ Exhibit 51 – Affidavit of Andrew Baker (ICAC), 16 December 2020.

⁶⁶¹ Transcript at p 432.

⁶⁶² Exhibit 56 – Affidavit of Andrew Baker (ICAC), 2 November 2022.

⁶⁶³ Exhibit 57 – Affidavit of Amanda Bridge, 3 November 2022.

not been witnessed in accordance with section 66 of the *Evidence Act*.⁶⁶⁴ However, he was not able to recall whether he took any steps to ensure that the affidavits witnessed in Germany were re-witnessed, including by directing ICAC Legal to become involved, nor whether he gave any directions within ICAC to ensure that the manner in which the affidavits were witnessed in Germany was drawn to the attention of the DPP.⁶⁶⁵ Nor could he recall whether, at the time of referring the brief to the DPP, he turned his mind to what steps had been taken to address the question that he had raised in his memorandum of 1 October 2019, namely identifying the appropriate protocol for carrying out investigations overseas (see above at paragraph [345]). He did not recall generally the process by which the brief was referred.⁶⁶⁶

505. Ms Bridge stated that the opinion file for the DPP was put together by Ms Luu. She further stated that Ms Luu “*would have been aware that the statements [witnessed in Germany] needed to be done correctly*”.⁶⁶⁷ However this statement ignores the usual practice within ICAC at the time, in which investigators were responsible for disclosure. I discuss this further below.

506. Mr Baker also said that he had an expectation that the investigator (Ms Bridge) or legal officer (Ms Luu) who were involved in the referral to the DPP would bring issues of admissibility and the failure to obtain an MAR to the DPP’s attention.⁶⁶⁸ I agree with Mr Dalton’s evidence that it was the responsibility of each ICAC investigator involved in the brief, including Mr Baker, to ensure that the matters were disclosed to the DPP.⁶⁶⁹

507. I find that ICAC should have disclosed to the DPP the following matters:

507.1 Ms Bridge witnessed affidavits in Germany contrary to the known requirements of section 66 of the *Evidence Act*.

507.2 The existence and content of the AFP Interpol and AFP Hague emails.

507.3 The existence and content of the investigators’ conversation with Consul-General Sams.

507.4 The advice received from ICCCA dated 1 October 2019 that was conveyed to ICAC through Ms Greenslade.

507.5 No MAR had been sought or obtained in respect of the affidavits obtained in Germany and that the German authorities had not been advised of ICAC’s

⁶⁶⁴ Transcript at p 312 [35].

⁶⁶⁵ Transcript at pp 308, 321 [10].

⁶⁶⁶ Transcript at p 313 [10].

⁶⁶⁷ Transcript at p 213.

⁶⁶⁸ Transcript at pp 414, 449.

⁶⁶⁹ Transcript at p 637.

actions in Germany.

508. As to the last point, Mr Lander has submitted to me that this was not required to be disclosed in light of my finding that no MAR was required.⁶⁷⁰ Mr Lander has also submitted that the above matters were not required to be disclosed because the *“question of the admissibility of the German affidavits only became relevant when the ODPP sought to tender them, having failed in its attempt to have the trial vacated because it had not arranged MARS for the German witnesses to attend to give oral evidence despite having known for an extended period of time that MARs were required for these witnesses”*.⁶⁷¹ I do not accept these submissions. As I have found above, although an MAR was not required as a matter of Australian law, the absence of an MAR and the failure to obtain permission from Germany authorities meant that the way in which the German affidavits were obtained constituted a breach of German sovereignty. Importantly, the Greenslade advice indicated that an MAR was likely to be required and the AFP Interpol and AFP Hague emails reiterated that Germany took a *“strict approach”* with respect to these matters.
509. As a result, ICAC had an obligation to disclose all of these matters to the DPP because all of them could reasonably be expected to assist the case for the defence. The matters potentially had a bearing on the strength of the prosecution case because if the evidence of the witnesses who had provided affidavits in Germany were excluded, the prosecution case could have been weaker. This obligation went beyond an obligation to disclose so as to put the DPP on notice of the need to request an MAR for the attendance of the German witnesses. The obligation also arose because, as discussed above, the manner in which the affidavits were obtained gave rise to a potential argument that the evidence contained in the affidavits, if tendered, should be excluded. I emphasise that I am referring to the issue of duty of disclosure. I accept that **if** the German witnesses gave oral evidence at the trial, the issue of the admissibility of the German affidavits would not have been relevant.
510. I find that the failure to disclose these matters is evidence of maladministration in public administration by ICAC. Specifically, the failure to disclose is evidence of substantial mismanagement in relation to ICAC’s performance of its official functions. The failure to disclose was an institutional failure on the part of ICAC. However, I do not find that the non-disclosure was a deliberate decision by ICAC to conceal matters from

⁶⁷⁰ Exhibit 171 – The Hon Bruce Lander KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (22 May 2023) at p 8 [32].

⁶⁷¹ Exhibit 278 – The Hon Bruce Lander KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (19 June 2023) at [3].

Mr Hanlon.

Who was responsible for ensuring disclosure was complete?

511. Mr Lander did not recall whether he had turned his mind to the question of whether it was appropriate to disclose to the DPP the advice that had been received from Consul-General Sams or from ICCCA via Ms Greenslade (although noting that he did not recall having been shown the Greenslade advice).⁶⁷² In circumstances where he had been made aware of the conversation with Consul-General Sams and had sought specific legal advice afterwards to address the processes that should have been followed in Germany, he should have taken steps to ensure these matters were brought to the attention of the DPP. This is not to suggest that he should have *personally* liaised with the DPP, but that as Commissioner, he had responsibility for ensuring that his staff brought these significant matters to the attention of the DPP.
512. Mr Jensen's evidence was that although ICAC Legal sometimes had a role in disclosure, this was generally limited to reviewing documents for claims of privilege.⁶⁷³ This was consistent with Ms Luu's evidence, which was that ICAC Legal did not have any role in reviewing the material on ICAC's files throughout the course of a prosecution to ensure that disclosure had been properly conducted.⁶⁷⁴ Ms Luu also rejected the proposition that it was her responsibility to draw to the DPP's attention the fact that the statements from Germany had not been properly witnessed.⁶⁷⁵ Ms Luu's evidence was that if there was an issue in the brief about how some of the evidence had been gathered (such as an impropriety), she would have taken that into account in preparing her analysis or drawn it to the attention of the Commissioner.⁶⁷⁶ However, Ms Luu had not been tasked with preparing a minute or memorandum to the Commissioner in which she had the opportunity to consider all of the brief and then raise the issue with the DPP.⁶⁷⁷
513. The evidence of Mr Jensen and Ms Luu is also consistent with the role contemplated for ICAC Legal in ICAC's draft Disclosure Guideline. That document, although not formalised, suggested that the responsibility for disclosure lay with the investigator nominated by the Director Investigations, and that ICAC Legal was to be approached if issues about privilege or compliance with statutory confidentiality obligations arose.

⁶⁷² Transcript at p 312 [30].

⁶⁷³ Transcript at p 190.

⁶⁷⁴ Transcript at p 587.

⁶⁷⁵ Transcript at p 586.

⁶⁷⁶ Transcript at p 577.

⁶⁷⁷ Transcript at p 586-587.

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514. Further, as discussed above, Ms Luu was not made aware of the Greenslade advice. It could not have been her responsibility to take action in respect of that advice or draw it to the attention of the DPP.
515. Ms Bridge's evidence was that as she had left ICAC by the time of Mr Hanlon's arrest, the responsibility for disclosure fell with the investigators who took over the Hanlon file from her. She stated that those investigators should have compiled a disclosure document, which was only compiled after the referral progressed beyond an "opinion file" that was sent to the DPP.⁶⁷⁸
516. Mr Dalton indicated that prior to Ms Bridge resigning from ICAC, he had a conversation with her about the construction of a Disclosure Schedule. He did not recall why this was not completed.⁶⁷⁹ He considered that the responsibility for disclosure lay with the primary investigator,⁶⁸⁰ but also candidly accepted that every investigator involved in the Hanlon matter, including himself and Mr Baker, had responsibilities in relation to disclosure.⁶⁸¹
517. A further, significant factor that impacted on how disclosure occurred was the COVID pandemic. The impact of the COVID pandemic began to affect ICAC shortly after the arrest of Mr Hanlon. Ms Bridge ceased working for ICAC on 27 March 2020.⁶⁸² She was on leave from 26 February 2020, and returned to arrest Mr Hanlon on 5 March 2020.⁶⁸³ After Ms Bridge left ICAC, another ICAC investigator, Ms Katie Whiting, assumed responsibility for the Hanlon matter, supervised by Mr Dalton.
518. Mr Dalton explained that Ms Whiting was briefed by Ms Bridge to take over the Hanlon file on around 17 or 18 February 2020. Ms Bridge left the employ of ICAC approximately one week later, and within a month, ICAC was operating remotely due to COVID. At the time, ICAC also had a number of other very significant investigations on foot, some of which involved Ms Whiting and some of which involved significant electronic surveillance.⁶⁸⁴
519. Mr Dalton explained that prior to COVID, investigators communicated amongst themselves every day about ongoing investigations and strategy. The onset of working from home presented significant logistical issues, not only because ICAC had to

⁶⁷⁸ Transcript at pp 148, 215.

⁶⁷⁹ Exhibit 104 – Statement of Steven Dalton (ICAC), 29 November 2022 at [25].

⁶⁸⁰ Ibid at [39].

⁶⁸¹ Transcript at p 637.

⁶⁸² Exhibit 104 – Statement of Steven Dalton (ICAC), 29 November 2022 at [20].

⁶⁸³ Transcript at p 147 [5]-[7].

⁶⁸⁴ Transcript at pp 637, 650.

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maintain continuity in its work, but also because of ongoing requirements to manage reporting, communication and monitoring of live SDs, in circumstances where warrants had expiry dates. There were also significant pressures on developing IT solutions to allow people to work from home.⁶⁸⁵

520. Ms Luu also ceased working at ICAC in July 2020.⁶⁸⁶
521. The disruptive impact of COVID, combined with turnover in key personnel within ICAC, contributed to certain key disclosure issues being overlooked. However, it was the responsibility of all ICAC personnel, including Mr Lander, to ensure that the manner in which the German witness statements were obtained and the requirement to obtain an MAR or the permission of the German authorities in obtaining the affidavits were brought to the attention of the DPP. This was a significant issue which had prompted Mr Lander to seek legal advice. It should have been front and centre of everyone's minds. Again, although the German affidavits were not required to be obtained via an MAR due to the operation of *Australian* law, without an MAR or permission from German authorities, they were obtained in violation of Germany's sovereignty.
522. The draft Disclosure Guideline had not been disseminated to ICAC employees, and therefore the requirements proposed in the draft Disclosure Guideline were not being followed. Although Mr Lander had required ICAC investigators to comply with section 10A of the *DPP Act*, there was a significant deficiency in ICAC's records management.
523. A formal disclosure policy that required the creation of a Disclosure Master Record as per the draft Disclosure Guideline should have been in place. Creation of a Disclosure Master Record, which was updated periodically and recorded all disclosable information and material, would probably have prevented difficulties arising when there was a change in investigators or disruptions to normal working practices. It is noteworthy that at the time that Mr Hanlon was arrested (or shortly thereafter) in March 2020, ICAC implemented work from home arrangements in response to the COVID pandemic which resulted in disruptions to normal working practices.⁶⁸⁷
524. As lead investigator, the responsibility for disclosure fell to Ms Bridge. However, it does not appear that ICAC routinely followed the requirements of the draft Disclosure Guideline in creating such a document, as Ms Bridge suggested that disclosure schedules were only completed once a decision had been made by the DPP to charge a suspect. ICAC should have had in place more robust procedures for ensuring that

⁶⁸⁵ Transcript at p 651.

⁶⁸⁶ Transcript at p 590.

⁶⁸⁷ Exhibit 104 – Statement of Steven Dalton (ICAC), 29 November 2022 at [23].

the draft Disclosure Guideline was followed.

525. As Director Investigations, Mr Baker had a specified role in relation to disclosure according to the draft Disclosure Guideline. The draft Disclosure Guideline suggested that he had a supervisory role to ensure proper records were being kept of disclosable material. The supervisory role anticipated by the draft Disclosure Guideline was appropriate. Mr Baker did not, however, maintain any role in ensuring disclosure obligations were complete in relation to the Hanlon investigation, and suggested that when Ms Bridge ceased working for ICAC, the responsibility for disclosure fell to Mr Dalton.⁶⁸⁸
526. Mr Baker could not recall having a conversation with Mr Dalton about the nature of how the affidavits were witnessed in Germany, nor did he take steps to ensure that Mr Dalton was advised of the Greenslade advice, although he thought that Mr Dalton had been copied into an email about it.⁶⁸⁹ Mr Baker indicated that he had “*stepped back*” from the Hanlon investigation, although he was still overseeing it in his capacity as Director Investigations.⁶⁹⁰
527. Mr Dalton confirmed to me that he was forwarded the Greenslade advice on 2 October 2019, but that he did not read or digest that email at the time. Mr Dalton suspected that the reasons he did not properly consider the email at the time was because (a) the email was forwarded to him for “*information*” (as opposed to “*action*”); (b) he had other pressing priorities at the time; (c) the title of the email did not suggest any urgency, and (d) the original recipients to the Greenslade advice were Mr Baker, Ms Bridge and Mr Jensen. Mr Dalton submitted that the purpose of the email (being the need to re-obtain admissible affidavits or make an MAR for further statements) was not brought to his attention directly or discussed with him then or at any other time.⁶⁹¹
528. At no stage was Mr Dalton advised of the conversation between Mr Baker and Ms Bridge and Consul-General Sams. In normal circumstances, Mr Baker should have maintained a more active role in ensuring that ICAC met its disclosure obligations. However, these were not normal circumstances. ICAC was adjusting to the arrangements imposed by the COVID pandemic. Mr Baker in particular had additional responsibilities in ensuring that ICAC could transition to work-from-home arrangements. It is understandable, but regrettable, that he was unable to take a more active role in overseeing disclosure. However, after normal working arrangements

⁶⁸⁸ Transcript at p 454.

⁶⁸⁹ Transcript at p 451.

⁶⁹⁰ Transcript at p 452.

⁶⁹¹ Exhibit 169 – Steven Dalton (ICAC), Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (22 May 2023).

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resumed and adjustments were made to accommodate the impact of COVID, Mr Baker should have been more proactive in ensuring that the matters within his knowledge about how the affidavits were obtained in Germany, and the absence of an MAR, were communicated to the DPP.

XIII. Call charge records

529. In August 2019, in the course of its investigation, ICAC received call charge records (**CCRs**) for Telstra for services suspected to have been used by Mr Hanlon, his wife Jeannette and his daughter Millie while Mr Hanlon was in Germany (**Telstra CCRs**).⁶⁹² ICAC intelligence analyst Elizabeth Kelly analysed the Telstra CCRs and found:⁶⁹³
- 529.1 The records relating to Millie Hanlon's services indicated that it was not used in the period Mr Hanlon was overseas.
- 529.2 The records relating to Mr Hanlon's service indicated it was used for voice, SMS and data while he was overseas.
- 529.3 The records relating to Jeannette Hanlon's service indicated it was used for data and a small amount of SMS in the period Mr Hanlon was overseas.
530. Ms Kelly's analysis led to her creating two spreadsheets in which she had listed the coordinates and addresses of cell towers used by those phones while in Germany (**ICAC CCR Working Copy Spreadsheets**).⁶⁹⁴ Ms Kelly had found those coordinates by entering information from Telstra Call Charge Records (which had been disclosed on 18 June 2020) into a database publicly available on the internet.⁶⁹⁵
531. Mr Hanlon has submitted to me that the Telstra CCRs are exculpatory because they "*are capable of demonstrating*" that (a) he was in the vicinity of the Nine Co-Working Businesses; and (b) that he was not at all times in the company of his wife in Berlin. He submitted that there was additional health data in the possession of ICAC which further supported Mr Hanlon's explanation.⁶⁹⁶
532. He contends that ICAC did not disclose the content of the request to Telstra for CCRs or that Telstra had been asked to produce mobile telephone data for the mobile telephones used by Jeanette and Millie Hanlon. He further submitted that the Telstra CCRs were produced in PDF form and in a format that was indigestible in the absence

⁶⁹² Exhibit 59 – Statement of Elizabeth Kelly (ICAC), 29 November 2022 at [5].

⁶⁹³ Exhibit 59 – Statement of Elizabeth Kelly (ICAC), 29 November 2022 at [8]–[10].

⁶⁹⁴ Exhibit 66 – C2020-0001 Results HANLON – working copy (A471505); Exhibit 67 – C2020-003 Results Jennette HANLON – working copy (A474732); Exhibit 59 – Statement of Elizabeth Kelly (ICAC), 29 November 2022 at [21]–[22].

⁶⁹⁵ Exhibit 59 – Statement of Elizabeth Kelly (ICAC), 29 November 2022 at [24]–[25]; Exhibit 66 – C2020-0001 Results HANLON – working copy (A471505); Exhibit 67 – C2020-0003 Results Jennette HANLON – Working Copy (A474732).

⁶⁹⁶ Exhibit 201 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (28 May 2023) at [15]–[19].

of any disclosure of what it was.⁶⁹⁷

533. I am not satisfied that the Telstra CCRs were exculpatory. They do **not** prove that Mr Hanlon visited any of the Nine Co-Working Businesses. Those records probably would not have been admissible in any proceedings to prove his precise location at any point in time.
534. I am unable to speculate as to how precisely Mr Hanlon may have used the Telstra CCRs in his defence. Mr Hanlon has submitted that the records established or tended to establish that (a) he spent large periods of each day in Berlin not in the company of his family members, and (b) he was in the vicinity of the locations he had volunteered to have visited when no member of his family was in the same area at that time.⁶⁹⁸ On the material available to me, I do not consider that the records are capable of proving that latter proposition. Further, the prosecution was not required to prove that Mr Hanlon was in the company of his family at all times while in Germany. However, if the charges against Mr Hanlon had proceeded to trial, Mr Hanlon would not have been required to prove anything. He may, however, have placed reliance on the Telstra CCRs in making submissions to a jury.

Unreliability of the Call Charge Records

535. Ms Kelly made a statement for ICAC on 29 November 2022.⁶⁹⁹ The statement was produced as part of the Commissioner's own review of the Hanlon investigation. The effect of Ms Kelly's opinion is that the data contained in the Telstra CCRs for the use of Mr Hanlon's mobile telephone whilst in Germany could not accurately or reliably show the location of Mr Hanlon when he utilised his mobile phone for a number of reasons.
536. First, the CCRs only included information that might assist to identify the location of the cell tower used by the handset when that handset was used for data communications and not for voice or SMS.⁷⁰⁰
537. Second, Ms Kelly was not able to identify with any precision the location of the cell towers in Berlin. The methodology used by Ms Kelly was as follows: Telstra provided her with certain information about the cell tower which received the mobile data communication (Location Area Code, the Cell ID and A Party Start Location Value, as

⁶⁹⁷ Exhibit 201 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (28 May 2023) at [5.5]-[5.10].

⁶⁹⁸ Ibid at [5.3].

⁶⁹⁹ Exhibit 59 – Statement of Elizabeth Kelly (ICAC), 29 November 2022.

⁷⁰⁰ It was noted that the service relating to Millie Hanlon was not used in the period that Mr Hanlon was overseas, the service used by Mrs Hanlon was used for data and a small amount of SMS, and the service used by Mr Hanlon was used for voice, SMS and data whilst overseas: Ibid at [22].

well as a Mobile Country Code and Mobile Network Code). Ms Kelly then used an “open-source” website and entered the data to attempt to identify the cell tower. That website then provided Ms Kelly with a longitude and latitude for the cell tower. However, Ms Kelly could not verify the accuracy of that information from the open-source website. Accordingly, the location of the cell tower on the CCRs cannot be stated with accuracy.⁷⁰¹

538. Third, the Berlin CCRs do not show the “*Location Bearing*” which can be shown when the services are used in Australia. The location bearing is the directional bearing of the particular antenna on the cell tower which was used to transmit or receive the communication.⁷⁰² As such, a cell tower may have been used to connect to a handset when a data communication was made. However, the Germany CCRs do not allow for a conclusion as to the direction of the handset in relation to that tower.⁷⁰³
539. The above points lead me to conclude that little weight can be put on the cell tower location data contained in the CCRs. Accordingly, I do not accept the submission made to me on behalf of Mr Hanlon that “*the evidence discloses incontrovertibly is that Mr Hanlon was in the proximity each of the identified towers*”.⁷⁰⁴ That submission is clearly contradicted by the evidence of Ms Kelly about the accuracy of the location data.
540. Fourth, Ms Kelly had doubt about the time recorded in the CCRs and how accurately that time reflected the time that the service was connecting with the cell tower.⁷⁰⁵ The data Ms Kelly reviewed for the communications in Germany was different to the data received in relation to communications made in Australia. For the data in relation to the communications made in Germany, the local time that the communication commenced was not provided in the CCRs – only a UTC (Coordinated Universal Time) timestamp

⁷⁰¹ Exhibit 59 – Statement of Elizabeth Kelly (ICAC), 29 November 2022 at [26].

⁷⁰² Ibid at [19.8].

⁷⁰³ The location bearing can give an indication of the direction from the cell tower that the handset was located when it sent or received the communication. Ms Kelly states that generally speaking a cell tower will consist of multiple antennas which are pointed in different directions and will generally (but not always) communicate with mobile phones located in the direction in which they are pointed. Accordingly, the directional bearing can give an indication of what direction from the cell tower the mobile phone service was located in when it was used to receive or transmit a communication.

⁷⁰⁴ Exhibit 279 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (19 June 2023) at p 8; Transcript at p 713 [33]–714 [50]. Mr Hanlon’s submissions, both in writing and orally was that Ms Kelly opined that the latitude and longitude of the cell towers provided by Telstra can be relied on as accurate and therefore that the “*precise location of the cell towers was identifiable and reliable*”. In fact, Ms Kelly said the opposite. She said that the call charge records relating to Germany were unreliable whereas the call charge records when the mobile service was used in Australia “*can be relied on as the actual location of the tower*”. Mr Hanlon’s submissions conflated Ms Kelly’s opinion on the German call charge record with the call charge records when the service was used in Australia: Exhibit 59 – Statement of Elizabeth Kelly (ICAC), 29 November 2022 at [19]–[36].

⁷⁰⁵ Exhibit 59 – Statement of Elizabeth Kelly (ICAC), 29 November 2022 at [28].

was provided. Further, in Australia the duration of the communication is added to the local time (which is part of the records) which enables identification of the time the service ceases communicating with the tower (i.e., the end of the communication). It was not clear to Ms Kelly whether this method of conversion used for Australian records was even appropriate for the German records. As the spreadsheet of records⁷⁰⁶ demonstrates, the data sessions can be lengthy, and the data does not record at what point in the use of the service the location information was recorded.

541. Ms Kelly described the ICAC CCR Working Copy Spreadsheets as a “*Working Copy*” to indicate that it was a working document which contained formulas and intelligence methods used for analysis and “*was not intended to be a final document relied upon as evidence*”. She stated “[t]he analysis conducted within the record was not certified or complete and was subject to [limitations]”.⁷⁰⁷ She concluded: “*To establish this, inquiries would likely need to be made with the provider of the internet database to verify that the latitude and longitude coordinates did in fact relate to the mobile phone towers*”.⁷⁰⁸ No certified or reliable evidence of CCRs as it related to determining the location of a handset when a communication was made was obtained by ICAC investigators.
542. During committal proceedings, despite considerable experience of working with such data, Ms Kelly’s ability to interpret the CCRs for calls made in Australia in relation to the Melbourne allegations was vigorously challenged by Mr Hanlon.⁷⁰⁹
543. In relation to the CCRs relevant to the Melbourne allegations, in an internal DPP advice, Mr Petraccaro raised potential problems with reliance on the evidence about the telephone towers, in particular taking into account the expert evidence of Dr Sorrell given on this topic at committal.⁷¹⁰ In considering the matter, Ms McDonald was of the same view as Mr Petraccaro SC, noting that it seemed that the use of a particular telephone tower by Mr Hanlon’s or Ms Vasilevski’s phones could not be relied on as evidence capable of establishing their precise location at a given point in time.⁷¹¹
544. The reasoning of both prosecutors applies with even greater force to the CCRs for the Germany trip in light of the issues with reliability highlighted by Ms Kelly.

⁷⁰⁶ Exhibit 66 – C2020-0001 Results HANLON – working copy (A471505).

⁷⁰⁷ Exhibit 59 – Statement of Elizabeth Kelly (ICAC), 29 November 2022 at [23].

⁷⁰⁸ Ibid at [26].

⁷⁰⁹ Exhibit 145 – Transcript of Proceedings, *R v Hanlon & Vasilevski* (Magistrates Court of South Australia, AMC-20-2810, Magistrate Smart, 18 June 2021) at p 3-6.

⁷¹⁰ Exhibit 132 – Memorandum from Domenico Petraccaro SC (DPP) to Sandi McDonald SC (DPP), 9 July 2021 at p 34.

⁷¹¹ Exhibit 117 – Memorandum from Sandi McDonald SC (DPP) to DPP Martin Hinton KC, 9 September 2021 at p 11.

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545. On 17 March 2023 and 22 March 2023, Mr Hanlon provided me with a document produced by him titled: *"Phone Data Analysis – Jenny and John Hanlon"*.⁷¹² Mr Hanlon has submitted that this analysis demonstrates that the data within the possession of ICAC at all times confirmed Mr Hanlon's account in the June 2019 Statement – namely, that he visited the Nine Co-Working Businesses.⁷¹³
546. The fundamental problem with Mr Hanlon's *"Phone Data Analysis"* is that any assertion about the location of the cell tower with which Mr Hanlon's mobile telephone service was connecting was based upon the same potentially unreliable data as the ICAC CCR Working Copy Spreadsheets. For the reasons stated above, I cannot be satisfied that the spreadsheets used in the *"Phone Data Analysis"* accurately record where Mr Hanlon was at the time he utilised his mobile telephone.
547. Even if there was some degree of reliability in the CCRs, they do not prove that Mr Hanlon visited any of the Nine Co-Working Businesses. The Google Maps which are attached to Mr Hanlon's documents demonstrate, at most, that Mr Hanlon occasionally travelled near some of the Nine Co-Working Businesses. Mr Hanlon also submitted to me that the CCR data showed that at all times that he was in Berlin, he was in areas captured by the radius of those towers which correspond with the locations of nominated co-working spaces.⁷¹⁴ For the reasons I have stated, even if the location data on the CCR was accurate (which I do not accept), that would not establish that Mr Hanlon in fact attended the Nine Co-Working Businesses as he claimed. I have not been provided with any material from the Nine Co-Working Businesses which evidences Mr Hanlon's attendance at any of those businesses.
548. In short, I am not satisfied that the ICAC CCR Working Copy Spreadsheets relied upon by Mr Hanlon are exculpatory. They do not assist him in establishing that he visited any of the Nine Co-Working Businesses whilst in Berlin.

Health data

549. Mr Hanlon has submitted that the *"health data"*⁷¹⁵ from his mobile telephone

⁷¹² Exhibit 135.20 – John Hanlon, 'Defendant Hanlon's Further Submissions', Submission in *R v Hanlon & Vasilevski*, AMC-20-2810, 11 June 2021 reproduced in 'Exhibit MS1' to Exhibit 135 – John Hanlon, 'Affidavit of Counsel for Mr Hanlon re permanent stay application', Submission in *R v Hanlon*, DCCRM-21-1335, 20 October 2021.

⁷¹³ Exhibit 134 – Letter from Counsel for Mr Hanlon to the Inspector, 22 March 2023.

⁷¹⁴ Exhibit 279 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (19 June 2023) at p 8.

⁷¹⁵ See enclosure 4 to Exhibit 135.20 – John Hanlon, Defendant Hanlon's Further Submissions, Submission in *R v Hanlon and Vasilevski* (AMC-20-2810), 11 June 2021, which was contained in Exhibit 135 – Affidavit of Counsel for Mr Hanlon re permanent stay application, Submission in *R v Hanlon*, DCCRM-21-1335, 20 October 2021.

demonstrates that Mr Hanlon's movements in Germany did not correspond with those of his wife and daughter. This, with the CCR data, is submitted to have fundamentally undermined the ICAC and DPP case theory.

550. I reject this submission. The "*health data*" was recorded on the mobile telephones of Mr Hanlon, his wife and daughter. Screen shots from Mr Hanlon's telephone shows the "*Walking + Running Distance*" (in Kilometres) and the steps taken in respect to the period 21 to 29 September 2017. Mr Hanlon's legal representatives submitted that they undertook a comparison of the "*health data*" recorded on the mobile telephones of Mr Hanlon, his wife and daughter, appearing as graphs.⁷¹⁶ The data in the comparison shows the distance walked in hourly increments over a full day. The data suggests that there were hourly increments throughout each day between 20 and 29 September 2017 when the distanced walked by Mr Hanlon, his wife and daughter was similar, and other hourly increments when it differed. The data does not record the location of the mobile telephone handset. The health data has no relevance in determining whether Mr Hanlon visited any of the Nine Co-Working Businesses. Furthermore, the accuracy in the measurement of the distance walked depends on whether Mr Hanlon, Mr Hanlon's wife and daughter carried their mobile telephones with them at all times.

Disclosure of the Telstra CCRs to Mr Hanlon

551. On 18 June 2020, the Telstra CCRs were disclosed by the DPP to Mr Hanlon along with other parts of the brief of evidence, accompanied by a delivery certificate.⁷¹⁷
552. Mr Hanlon has submitted that he was not made aware that ICAC had in its possession CCRs relating to Millie or Jeanette Hanlon.⁷¹⁸ Specifically, Mr Hanlon submitted that none of the affidavits of the ICAC investigators disclosed the content of the request by ICAC to Telstra, or that Telstra had been asked to produce mobile telephone data for the mobile telephones used by Millie or Jeanette Hanlon.⁷¹⁹
553. I reject this submission, as the entirety of the Telstra CCRs obtained by ICAC were disclosed to Mr Hanlon on 18 June 2020 under cover of an affidavit from a Telstra employee, Michael Tapper.⁷²⁰
554. On or about 7 November 2022, in response to a request from Mr Hanlon's legal

⁷¹⁶ Exhibit 201 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (28 May 2023) at [12].

⁷¹⁷ Exhibit 50 – ICAC, *Declarations delivery certificate 2018/003882 – Melbourne No 3* (18 June 2020); Exhibit 72 – Statement of Michael Tapper (Telstra), 18 February 2020.

⁷¹⁸ Exhibit 201 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (28 May 2023) at [5.5]–[5.10].

⁷¹⁹ Ibid at [5.5]–[5.10].

⁷²⁰ Exhibit 72 – Statement of Michael Tapper (Telstra), 18 February 2020.

representatives, the DPP disclosed the ICAC CCR Working Copy Spreadsheets to defence representatives.⁷²¹ The ICAC CCR Working Copy Spreadsheets have been the subject of public comment, including in Parliament, suggesting that ICAC hid evidence from telephone data which supported Mr Hanlon's version of events.⁷²²

555. Further, public allegations were also made that ICAC investigators “doctored” evidence.⁷²³ The basis for this allegation appears to be that on 4 November 2022, ICAC disclosed a spreadsheet which summarised the evidence as it related to Mr Hanlon's movements in Germany between 19 and 30 September 2017 (**Berlin Movement Calendar**).⁷²⁴
556. Ms Kelly has indicated that she created the Berlin Movement Calendar upon request from Ms Bridge.⁷²⁵ Ms Bridge then began populating the Berlin Movement Calendar with information, including by adding a column headed “CCR – Tower – Intel purposes only” and amended a column headed “J Hanlon CCR (wife)” so that it read “J Hanlon CCR (wife) – Tower – Intel Purposes only”. Those two columns containing information about cell towers used by Mr Hanlon and his wife's telephones were drawn from the ICAC CCR Working Copy Spreadsheets.
557. In her affidavit of 28 November 2019, Ms Bridge included a similar spreadsheet to the Berlin Movement Calendar.⁷²⁶ As well as having some small differences, the spreadsheet annexed to Ms Bridge's affidavit did **not** include the two columns containing the cell tower information marked “Intel purposes only” (**Bridge Affidavit Spreadsheet**).
558. The Bridge Affidavit Spreadsheet, along with Ms Bridge's affidavit, was disclosed to the defence on 6 March 2020 as part of the initial prosecution brief. As stated above, the Telstra CCRs themselves were disclosed on 18 June 2020.

Should the Berlin Movement Calendar have been disclosed?

559. The Bridge Affidavit Spreadsheet did not contain the two columns in the Berlin Movement Calendar that recorded the information about cell towers marked “Intel purposes only”. The information in those two columns were drawn from Ms Kelly's

⁷²¹ Exhibit 134 – Letter from Counsel for Mr Hanlon to the Inspector, 22 March 2023 at [15].

⁷²² Exhibit 146 – South Australia, *Parliamentary Debates*, Legislative Council, 16 November 2022 at p 1556 (The Hon Frank Pangallo).

⁷²³ Ibid at p 1541, 1556.

⁷²⁴ Exhibit 68 – *John Hanlon Berlin Movement Calendar* (undated).

⁷²⁵ Exhibit 59 – Statement of Elizabeth Kelly (ICAC), 29 November 2022 at [35].

⁷²⁶ Exhibit 41.67 – ICAC, *September 2017 spreadsheet* (undated) produced in Exhibit 41 – Affidavit of Amanda Bridge (ICAC), 28 November 2019.

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analysis about the location of cell towers in Berlin,⁷²⁷ the reliability of which Ms Kelly could not confirm.⁷²⁸

560. In her evidence before me, Ms Bridge placed some weight on the fact that the two omitted columns in the Berlin Movement Calendar were marked “*Intel purposes only*”. It is not clear who marked the columns as “*Intel purposes only*”.⁷²⁹ In her mind, such information would not be provided to the DPP as the information could not be confirmed as accurate. She recalled removing the columns marked “*Intel purposes only*” from the Berlin Movement Calendar when preparing the Bridge Affidavit Spreadsheet because she “*couldn’t say definitively that that was correct information*”.⁷³⁰ Ms Bridge firmly denied having deliberately withheld those columns from her affidavit evidence.⁷³¹ She said that she did not include those columns in her affidavit because the location data in the columns were used for intelligence gathering purposes and needed to be tested for accuracy.⁷³²
561. Mr Jensen considered that the two columns marked “*Intel purposes only*” were disclosable, stating “*I don’t think that the mere fact that you’re unable to verify it means that your disclosure obligations changes*”.⁷³³ Further, the fact that the document may contain information that could reasonably be used by the defence in an exculpatory way meant that even the unverified portions should have been disclosed.⁷³⁴
562. The current ICAC Director Legal, Mr Benjamin Broyd, also gave evidence before me. Mr Broyd’s approach was more nuanced. His evidence was that although he would err on the side of caution and disclose the columns, the conclusions in the “*Intel purposes only*” column were drawn from entering information in disclosed documents on publicly available databases, and therefore whether disclosure was required was a “*shade of grey*”.⁷³⁵ Ultimately, however, he considered that it was information that had the potential to be exculpatory.⁷³⁶
563. Mr Hinton considered that whether the “*Intel purposes only*” columns were disclosable was a decision that should have been made by the DPP. That meant that the Berlin

⁷²⁷ Exhibit 59 – Statement of Elizabeth Kelly (ICAC), 29 November 2022 at [24]-[26].

⁷²⁸ Ibid at [31]-[32].

⁷²⁹ Ms Bridge thought that description was added by the intelligence analysts: Transcript at p 151; Ms Kelly did not recall any conversations about describing the information “*Intel purposes only*”: Exhibit 59 – Statement of Elizabeth Kelly (ICAC), 29 November 2022 at [36].

⁷³⁰ Transcript at p 151.

⁷³¹ Transcript at p 152.

⁷³² Transcript at p 153.

⁷³³ Transcript at p 189.

⁷³⁴ Transcript at p 189-190.

⁷³⁵ Transcript at p 523.

⁷³⁶ Transcript at p 523.

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Movement Spreadsheet should have been disclosed to the DPP, for the DPP to make a determination about whether it was disclosable to Mr Hanlon.⁷³⁷

564. I have also received submissions from Commissioner Vanstone,⁷³⁸ who submitted that the Berlin Movement Calendar was not required to be disclosed under the duty of disclosure because:⁷³⁹

564.1 the duty of disclosure was satisfied by the timely provision of the raw data (being the Telstra CCRs);

564.2 the withheld columns were simply internet inquiries which Mr Hanlon's advisers were free to make themselves; and

564.3 the Berlin Movement Calendar were simply working copies of the Bridge Affidavit Spreadsheet, which was disclosed, and there is no obligation to disclose drafts or working copies.

565. Ultimately, Commissioner Vanstone submitted that Mr Hanlon was placed in the same position as investigators by reason of the disclosure of the Telstra CCRs, as Mr Hanlon was able to then make the same inquiries on publicly available internet sites as Ms Kelly had done.

566. The test for disclosure is not whether the information is exculpatory, but whether it has the potential to assist the defence case.

567. I agree with Mr Broyd that whether disclosure was required of the Berlin Movement Calendar was a "grey area". To err on the side of caution, they should have been disclosed. Although I have doubts about the evidentiary value of the withheld columns in the Berlin Movement Calendar, I find that they had the **potential** to be exculpatory. They **may** have led Mr Hanlon's defence to obtain further evidence about the location of their client which **may** have assisted him in his defence. To err on the side of caution they should have been disclosed to Mr Hanlon or at least to the DPP so that the DPP could undertake its own assessment of whether they were disclosable to Mr Hanlon.

568. However, the evidence does **not** allow a finding that the failure to disclose the columns was deliberate. Further, I do **not** find that the failure to disclose the columns is evidence of maladministration in public office. I accept Ms Bridge's explanation about why she removed those columns from the spreadsheets.

569. I do **not** find that the Bridge Affidavit Spreadsheet was "*doctored*" to remove

⁷³⁷ Transcript at p 543.

⁷³⁸ Exhibit 159 – Commissioner of ICAC, the Hon Ann Vanstone, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (19 May 2023).

⁷³⁹ Ibid at [12].

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exculpatory evidence. The relevant columns were withheld because ICAC investigators held an erroneous belief that because the information contained in those columns could not be verified, it did not need to be disclosed. This was a misunderstanding of their disclosure obligations, but it did not reflect a deliberate decision to avoid their disclosure obligations.

XIV. Discontinuance of the prosecution of Mr Hanlon

The events in the Magistrates Court

570. On 5 March 2021, Mr Hanlon was arrested on charges laid in the Magistrates Court. He was charged with one count of abuse of public office and two counts of deception in relation to his Germany trip, and one count of abuse of public office, one count of acting dishonestly in the performance of his duties as a senior official, one count of deception and five counts of dishonestly dealing with documents in relation to his Melbourne trip.⁷⁴⁰ The information was laid by Ms McDonald, in her then-capacity as Acting DPP.⁷⁴¹
571. The matter was listed for a committal hearing in June 2021. During the course of that hearing, on 18 June 2021, the prosecutor accepted that it was necessary for the prosecution to establish that Mr Hanlon had engaged in **no** Renewal SA activity during either of the trips the subject of the prosecution.⁷⁴² Arising from this concession, the prosecutor then conceded that there was no case to answer.⁷⁴³
572. The Magistrate accordingly found no case to answer on each count.⁷⁴⁴

Ex Officio Information in the District Court

573. On 7 September 2021, the DPP filed an *ex officio* Information in relation to Mr Hanlon's Germany trip only, charging Mr Hanlon with one count of abuse of public office (Count 1 relating to improperly exercising power or influence by virtue of his position to direct a staff member of Renewal SA to book airline tickets for him) and two counts of dishonestly dealing with documents (Count 2 relating to reconciliation of foreign currency spent and Count 3 relating to Mr Hanlon's Second Itinerary). No *ex officio* Information was laid in relation to the Melbourne trip.
574. I have reviewed all relevant correspondence between ICAC and the DPP, I do not consider there was anything improper in the communications that passed between ICAC and the DPP. I am satisfied with the evidence of Ms McDonald that the DPP

⁷⁴⁰ Exhibit 135.1 – DPP, Magistrates Court Information in *R v Hanlon & Vasilevski*, 5 March 2020 reproduced as 'Annexure 2' to Exhibit 135 – John Hanlon, 'Affidavit of Counsel for Mr Hanlon re permanent stay application', Submission in *R v Hanlon*, DCCRM-21-1335, 20 October 2021.

⁷⁴¹ Ibid at p 4.

⁷⁴² Exhibit 145 – Transcript of Proceedings, *R v Hanlon & Vasilevski* (Magistrates Court of South Australia, AMC-20-2810, Magistrate Smart, 18 June 2021) at p 42 [28]–43 [6]. See also *R v Hanlon (No 1)* [2022] SADC 85 at [50]–[51].

⁷⁴³ Exhibit 145 – Transcript of Proceedings, *R v Hanlon & Vasilevski* (Magistrates Court of South Australia, AMC 20-2810, Magistrate Smart, 18 June 2021) at p 43 [26].

⁷⁴⁴ Ibid at p 44 [25].

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made the decision to lay the *ex officio* Information entirely independently from ICAC.

575. Mr Hanlon has submitted to me that it was incumbent upon ICAC at the time that the *ex officio* Information was laid to inform the Deputy Director of the problems with the German witnesses. I have already found that ICAC should have disclosed to the DPP the manner in which the German affidavits were witnessed and the substance of the Greenslade advice. This disclosure obligation was ongoing throughout the prosecution of Mr Hanlon. However, I make no criticism of Commissioner Vanstone, and I accept Commissioner Vanstone's statement that she was not aware of the issues about the admissibility of the German affidavits until media reports were raised during the criminal proceedings against Mr Hanlon in October 2022.⁷⁴⁵
576. On 12 October 2021, the matter was listed for trial to commence on 31 October 2022.⁷⁴⁶

Application for a stay of proceedings

577. On 19 October 2021, Mr Hanlon filed an application seeking orders that:
- 577.1 the action be permanently stayed on the grounds that the laying of the *ex officio* Information was an abuse of process; and/or
- 577.2 in the alternative, an order that each count on the *ex officio* Information be permanently stayed or dismissed on the grounds that the prosecution was foredoomed to fail.⁷⁴⁷
578. The application for a stay was heard on 26 September 2022. The primary argument advanced for Mr Hanlon was that it was an abuse of process for the prosecution to depart from its earlier concession that there was no case to answer in respect of the Magistrates Court charge and to present the case in the District Court on a different basis, namely that it was not necessary to prove that Mr Hanlon did no work on behalf of Renewal SA in Berlin.⁷⁴⁸ The filing of the *ex officio* Information was asserted to be unprincipled, disingenuous, and motivated by factors extraneous to the proper discharge of the Director's duties.⁷⁴⁹
579. As to the second basis for the application, counsel for Mr Hanlon also submitted that

⁷⁴⁵ Exhibit 304 – Letter from Commissioner of ICAC, the Hon Ann Vanstone KC to the Inspector, 23 June 2023. See e.g., Exhibit 305 – Sean Fewster, 'SA court told trial of ex-Renewal SA boss John Hanlon must be delayed as defence questions legality of ICAC's processes' *The Advertiser* (online 24 October 2022).

⁷⁴⁶ *R v Hanlon (No 3)* [2022] SADC 135 at [10].

⁷⁴⁷ Exhibit 135 – John Hanlon, 'Affidavit of Counsel for Mr Hanlon re permanent stay application', Submission in *R v Hanlon*, DCCRM-21-1335, 20 October 2021 at [2].

⁷⁴⁸ *R v Hanlon (No 2)* [2022] SADC 128 at [15].

⁷⁴⁹ *Ibid* at [15]–[19].

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the court should stay the proceedings on the basis that each of the charges was foredoomed to fail. This argument was advanced on the basis that the concession was correct, and that the prosecution was required to prove beyond reasonable doubt that Mr Hanlon did *no* Renewal SA work while in Berlin.⁷⁵⁰

580. In response, the DPP submitted that the concession in the Magistrates Court was wrongly made. The prosecution submitted that the element of the offence which was concerned with the extent of work performed was the element that Mr Hanlon had “*acted improperly*”. Accordingly, the committal was conducted on the basis of the prosecution having “*set the evidentiary bar too high*”. The prosecution case had always been that there was an overwhelming personal flavour to the Germany trip, that the travel effectively coincided with the conclusion of the European Business Mission, and that Mr Hanlon’s post-return travel plan claims were false and intended to cloak the trip in a veil of business-related legitimacy.⁷⁵¹ There was no significant shift in the prosecution case; it was always alleged to have been in truth a personal trip.⁷⁵²
581. Judge Heffernan dismissed the stay application on 24 October 2022. His Honour was not satisfied Mr Hanlon had established the proceedings amounted to an abuse of process in the sense that the trial would be unfair and/or oppressive.⁷⁵³ Nor was his Honour satisfied that Mr Hanlon had established that the prosecution was maintained for an improper purpose.⁷⁵⁴
582. His Honour was also not satisfied that the prosecution case was foredoomed to fail,⁷⁵⁵ finding in respect of Count 1 that it was not necessary for the prosecution to prove beyond reasonable doubt that the defendant did no work whilst in Germany in order to make out the necessary element of “*acting improperly*”.⁷⁵⁶
583. His Honour also concluded that the case was not one where Mr Hanlon could be said to have been blindsided by the charges.⁷⁵⁷ No prejudice had been established which established that Mr Hanlon’s ability to defend himself successfully against the allegations had been compromised by the change in the prosecution approach following the filing of the *ex officio* Information.⁷⁵⁸

⁷⁵⁰ Ibid at [19].

⁷⁵¹ Ibid at [28].

⁷⁵² Ibid at [29].

⁷⁵³ Ibid at [40].

⁷⁵⁴ Ibid at [40].

⁷⁵⁵ Ibid at [57]–[66].

⁷⁵⁶ Ibid at [42].

⁷⁵⁷ Ibid at [49].

⁷⁵⁸ Ibid at [49].

Subpoena

584. On 31 October 2022, ICAC was served with a subpoena issued by the District Court at the request of Mr Hanlon,⁷⁵⁹ which was served on that same date (**the subpoena**). The subpoena sought the production of documents falling within nine classes or categories of documents and was returnable on 1 November 2022.⁷⁶⁰
585. Among other things, the subpoena sought production of the following classes or categories of documents:
- 585.1 All documents evidencing any request made by any representative of ICAC to any counterpart investigating agency in Germany or to German Police or to Interpol for the issue and execution of any search warrant to obtain evidence from Wista Management, Kaufland, Betahaus, Knotel Ahoy!, St Oberholz, and/or Factory Berlin or requesting the interview of and taking statements or affidavits from any representative of any of those organisations (**Clause 4**); and
- 585.2 All documents evidencing any arrangement made by any representative of ICAC for affidavits made by any witness in Germany relevant to this matter to be witnessed by an authorised notary in Germany (**Clause 5**).
586. I have carefully considered submissions from Mr Hanlon's solicitors in relation to what they say is a failure of ICAC to comply with the terms of the subpoena by failing to produce the AFP Interpol and AFP Hague emails of 11 September 2019 to Mr Hanlon's solicitors as part of the subpoena returned on 1 November 2022.⁷⁶¹
587. The issue is whether there was a failure by ICAC to comply with the terms of the subpoena issued by the Court. In South Australia, failure, without reasonable excuse, to comply with a subpoena constitutes a contempt of court.⁷⁶² If there is evidence which substantiates a finding that ICAC failed, without reasonable excuse, to comply with the terms of the subpoena, ICAC, or officers of ICAC, may have engaged in conduct that constitutes maladministration or misconduct in the course of the investigation and prosecution of Mr Hanlon.
588. There is insufficient evidence before me to substantiate such a finding.
589. I find that the AFP Interpol and AFP Hague emails fell within scope of Clause 5 of the Schedule to the subpoena. Those emails should have been produced by ICAC

⁷⁵⁹ Exhibit 187 – Subpoena 'FDN 37' issued by Heffernan DCJ in *R v Hanlon* (SADC, DCCRM-21-1335, 31 October 2022).

⁷⁶⁰ Ibid.

⁷⁶¹ Exhibit 163 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (21 May 2023).

⁷⁶² *District Court Act 1991* (SA) ss 26, 48.

pursuant to the subpoena.

590. The AFP Interpol and AFP Hague emails should have been saved on the Objective system by Ms Bridge.
591. However, I do not find that the failure to produce the AFP Interpol and AFP Hague emails pursuant to the subpoena was a deliberate action by any ICAC officers to conceal those emails from production. I have found above at paragraph [309] that Ms Bridge's failure to save the emails on the Objective system was not deliberate.
592. Further, I also find that ICAC made genuine attempts to comply with the subpoena. In response to a request from me, ICAC officers undertook additional and thorough inquiries to ascertain what steps were taken by ICAC officers to identify documents captured by the subpoena.⁷⁶³ The precise searches that were made of emails not saved on the Objective system, which are called "*Mimecast searches*", were not able to be determined as the ICAC officers responsible for conducting the searches and reviewing the material identified (Mr Baker, Mr Hewlett-Parker, and Ms Bridge) are all no longer employees of ICAC.
593. Importantly, the Deputy Commissioner advised that it is usual practice within ICAC to retain and maintain a record of searches undertaken in relation to the emails of current and former employees of ICAC.⁷⁶⁴ Similarly, I am advised that a PST file, which is an electronic compendium of emails returned from a Mimecast search, and a record of the search parameters is ordinarily retained by ICAC. I am advised that a PST file was not saved in relation to this search and neither were the search parameters.⁷⁶⁵
594. I find that Mr Baker and Mr Hewlett-Parker, the ICAC officers responsible for complying with the subpoena, failed to retain appropriate records of searches undertaken for the purposes of complying with the subpoena, in accordance with usual ICAC practices.
595. As I have found above at paragraphs [304]-[305] and [310], the AFP Interpol and AFP Hague emails were discovered as a result of further searches undertaken after the subpoena was returned in the District Court on 1 November 2022. ICAC failed to retain and maintain an electronic record of searches undertaken to comply with the subpoena. Accordingly, I have not been able to ascertain what search terms were used and what documents were revealed as part of the Mimecast search. Commissioner Vanstone submitted to me that best practice would be to keep an

⁷⁶³ Exhibit 245 – Letter from Deputy Commissioner of ICAC, Paul Alsbury to the Inspector, 7 June 2023.

⁷⁶⁴ Ibid.

⁷⁶⁵ Ibid.

electronic record of such searches.⁷⁶⁶

Application for adjournment

596. On 25 October 2022, following the refusal of Mr Hanlon’s application for a stay, the DPP filed an application for an adjournment of the trial on the basis that the prosecution was unable to secure the attendance of six of the German witnesses at trial on 31 October 2021.⁷⁶⁷ As the witnesses resided in Germany an MAR application was required, based on advice provided by ICCCA to the DPP on 26 October 2022.⁷⁶⁸ A MAR was unable to be arranged within time for the trial to proceed.
597. On 12 May 2021, ICCCA had written to the Deputy DPP to advise of the requirements of MARs applying to foreign countries including when dealing with investigations and evidence involving persons residing in Germany, stating:⁷⁶⁹
- MAR required in all circumstances. No contact should be made with a witness or prior to a MAR being made. Examination via AVL requires consent of the person and the involvement of the German court.*
598. On 11 July 2022, ICCCA again wrote to the DPP with updated information with respect to the requirements for the provision of AVL testimony. That included advice that with respect to Germany, “MAR required in all circumstances. Witnesses must not be contacted directly”. The letter also suggested that three months’ notice was required to arrange an AVL to a witness in Germany.⁷⁷⁰
599. It is unclear whether this advice was brought to the specific attention of the solicitor with carriage of the matter at the DPP, but in any event, that solicitor did not appreciate the need to obtain an MAR until 10 October 2022, when the solicitor made personal contact with ICCCA. In response, ICCCA advised that Germany required an MAR to arrange for a witness to attend in Australia to give evidence and that any contact with a witness prior to approval was prohibited. Upon learning of the requirement to obtain an MAR, the DPP solicitor immediately advised the investigating officer to cease attempting to contact the German witnesses.⁷⁷¹
600. The DPP conceded in the District Court that it had overlooked the requirement to obtain an MAR. The DPP sought a period of eight weeks to facilitate the attendance of the

⁷⁶⁶ Exhibit 280 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review into the investigation and Prosecution of John Hanlon* (16 June 2023) at p 10.

⁷⁶⁷ *R v Hanlon (No 2)* [2022] SADC 128 at [9]–[10].

⁷⁶⁸ *Ibid* at [5].

⁷⁶⁹ *Ibid* at [10].

⁷⁷⁰ *Ibid* at [10].

⁷⁷¹ *R v Hanlon (No 3)* [2022] SADC 135 at [10].

German witnesses by audio visual link.⁷⁷²

601. On 8 November 2022, Judge Heffernan refused the DPP's application for an adjournment, finding that "*The German evidence is relevant and necessary to the prosecution case: all the more reason that firstly, it should have been secured with an MAR but more pertinently for this application, that the appropriate MAR arrangements should have been made for the attendance of the witnesses*".⁷⁷³ His Honour also found that "*At an organizational level, the office of the Director should be aware of the need for MARs in appropriate circumstances*".⁷⁷⁴

602. His Honour also referred to the prejudice to Mr Hanlon:⁷⁷⁵

"[Mr Hanlon] has been the subject of a vigorous ICAC investigation, comment in Parliament on a number of occasions and intense media scrutiny for about four years. In that time he has lost his job, been unable to obtain alternative employment because of the odium associated with the principal charge, been subjected to what turned out to be an erroneous capitulation at committal, endured about three months of uncertainty whilst consideration was given to filing an ex officio Information and incurred what I am told are enormous legal costs to prepare his defence"

Application to tender the German statements

603. Upon refusal of the adjournment application, the prosecution indicated it proposed to tender the statements of the six German witnesses pursuant to section 34KA(2)(c) of the *Evidence Act*.⁷⁷⁶ That section relevantly provided for the admission into evidence of an out of court statement in circumstances where the witness was outside of the State and it was not reasonably practicable to secure his or her attendance.

604. Mr Hanlon opposed the tender of the German statements and sought that the evidence be excluded under the common law discretion to exclude evidence that is generally unfair or would run contrary to public policy.⁷⁷⁷

605. While accepting that the statements were an important part of the prosecution case, the trial judge exercised his discretion to exclude the German statements.⁷⁷⁸ His Honour observed:⁷⁷⁹

⁷⁷² Exhibit 139 – DPP, 'Written Submissions on application to adjourn trial', Submission in *R v Hanlon*, DCCRM-21-1335, 3 November 2022 at [28].

⁷⁷³ *R v Hanlon (No 3)* [2022] SADC 135 at [25].

⁷⁷⁴ *Ibid* at [27].

⁷⁷⁵ *Ibid* at [33].

⁷⁷⁶ *Ibid* at [35].

⁷⁷⁷ *Ibid* at [36].

⁷⁷⁸ *Ibid* at [43].

⁷⁷⁹ *Ibid* at [37].

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The need to utilise s 34KA only arose because of the failure of the prosecution to make MAR arrangements. The effect of s 34KA represents a significant departure from the common law rule against hearsay and the right of an accused person to test the evidence against them

606. The trial judge also made reference to the manner in which the statements were obtained in Germany. His Honour expressly declined to make a finding that the conduct of the ICAC officers amounted to a breach of German domestic law. However, his Honour noted that the advice of ICCCA was that Germany takes very seriously the notion of agents from a foreign country gathering evidence and speaking to witnesses within its borders.⁷⁸⁰ His Honour considered that the failure of ICAC to have obtained permission by way of an MAR to conduct their enquiries in Germany fell well short of what should be expected from an investigative agency of ICAC's powers and responsibilities. Further, the court should be loath to, in effect, give sanction to a practice whereby evidence has been obtained contrary to an important, well known and readily available process established as a result of an agreement or understanding between the Commonwealth and a foreign nation designed to facilitate the type of enquiries made. While the conduct of the ICAC officers was not an example of unlawful conduct of the type usually associated with the public policy discretion to exclude evidence, his Honour considered that in the circumstances, that discretion, which extended to both unlawfully and improperly obtained evidence, nonetheless arose.⁷⁸¹
607. The trial judge also emphasised that it would be unfair in the circumstances if Mr Hanlon was unable to cross examine the witnesses,⁷⁸² and stated that allowing the evidence would "*allow the prosecution to benefit from the failure to make a MAR and have use of evidence which was improperly obtained*".⁷⁸³
608. Accordingly, the trial judge excluded the statements from evidence.
609. On 9 November 2022, following the trial judge's ruling, the DPP entered a *nolle prosequi* in relation to the charges.

The effect of ICAC's non-disclosure on the prosecution of Mr Hanlon

610. As discussed above, ICAC failed to disclose to the DPP key information about the way in which affidavits were obtained in Germany and the advice received by it about the correct protocol to follow to obtain statements in Germany. ICAC also failed to disclose

⁷⁸⁰ Ibid at [13].

⁷⁸¹ Ibid at [42].

⁷⁸² Ibid at [44].

⁷⁸³ Ibid at [44].

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that those statements had been obtained without an MAR or permission from German authorities.

611. The failure to disclose these matters meant that the DPP did not know key facts about the investigation relevant to the admissibility of critical evidence.
612. Had ICAC disclosed to the DPP at the time of referral on 29 November 2019 the issues around the German affidavits, including the advice contained in the AFP Interpol and AFP Hague emails of 11 September 2019, the conversation with Consul-General Sams on 18 September 2019, and the Greenslade advice dated 2 October 2019, it is a reasonable assumption that the DPP would have realised that an MAR was required to secure the attendance of the German witnesses once the trial had been set down for 31 October 2022 much earlier than they did in November 2022. The DPP most probably would have then taken the necessary steps to obtain an MAR well before the trial of Mr Hanlon.⁷⁸⁴
613. As the events played out, the particular solicitor at the DPP with carriage of the Hanlon prosecution was not aware until close to the time of the trial that an MAR was necessary. They were unable to secure the attendance of key witnesses.
614. Accordingly, ICAC's failures in respect of disclosure had significant implications for the prosecution of Mr Hanlon. I am unable to find what would have happened if ICAC had disclosed these matters at the time of referral of the brief for adjudication to the DPP. The DPP would probably have applied for the German witnesses to have given evidence under the *MACMA* thereby averting the difficulties that led to the charges being withdrawn.
615. I am unable to find whether that process would have succeeded or whether any German witnesses would have been prepared to travel to give evidence in South Australia. I simply have no evidence upon which to find whether German authorities would have consented to an examination of a witness via AVL given the previous breach of sovereignty by the ICAC investigators.

⁷⁸⁴ Transcript at p 689.

XV. Undue prejudice to the reputation of Mr Hanlon

616. This Part of the Report examines the impact of ICAC's conduct, including its investigation, the referral to the DPP and its role in the prosecution of Mr Hanlon, and whether there was undue prejudice to the reputation of Mr Hanlon.

What is “undue prejudice”?

617. The concept of prejudice to a person's reputation involves concept of harm or damage. However, my terms of reference are not directed to *any* prejudice; I am examining whether any prejudice was *undue*.
618. The concept of “undue prejudice” is also referred to in section 3(1)(c) of the *ICAC Act*, which refers to the following primary object of the Act:

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).

(underlining added)

619. In *C v ICAC* [2020] SASFC 57, Justice Bleby referred to this provision and explained (at [50]):

The balance to be struck in this object is not with a person's private interests in having their reputation unduly prejudiced, but in the public interest in avoiding undue prejudice to a person's reputation. Further, the object is not to avoid any such prejudice, but rather to avoid undue prejudice.

620. Accordingly, in section 3(1)(c) of the *ICAC Act*, the interest being referred to is the *public interest* in maintaining a person's reputation. My task is not so limited; I am permitted under my Terms of Reference to consider Mr Hanlon's personal interest in avoiding undue prejudice to his reputation.
621. Nonetheless, the emphasis by Justice Bleby in the second sentence is important: any prejudice must be *undue*. The Cambridge Dictionary defines “undue” as meaning “*to a level that is more than is necessary, acceptable, or reasonable*”. The Oxford Languages dictionary defines the word as meaning “*unwarranted or inappropriate because excessive or disproportionate*”.
622. I therefore approach the issue of “*undue prejudice*” by reference to consideration of whether the prejudice was unwarranted or inappropriate, having regard to the nature of the investigation and the scope of the alleged corruption.

Evidence provided by Mr Hanlon

623. On 17 March 2023, Mr Hanlon voluntarily provided a statement to me about the impact of the ICAC investigation and resulting prosecution on his reputation and the consequences that followed.⁷⁸⁵
624. Mr Hanlon referred to some impacts which may be characterised as common consequences of an investigation into an individual, such as embarrassment that flowed from the execution of search warrants and stress associated with an ongoing investigation.⁷⁸⁶ While these matters are unfortunate, they may be seen as an inevitable consequence of such an investigation.
625. Other matters referred to by Mr Hanlon arose from matters outside the control of ICAC, such as his suspension from employment and publicity as a result of comments made in Parliament.⁷⁸⁷ It is unfortunate that public comments were aired about the investigation into Mr Hanlon at a time when the matter remained confidential within ICAC.⁷⁸⁸ Mr Hanlon explained that he and his family made the decision to relocate to a secondary residence in the hope of avoiding such scrutiny,⁷⁸⁹ which demonstrates the unfortunate consequences that followed from this publicity.
626. Mr Hanlon's appearance in court was widely reported and attracted substantial media attention.⁷⁹⁰ Mr Hanlon states that he was filmed and photographed prior to and after his court appearance.⁷⁹¹ Around this time, Mr Hanlon describes having adopted a reclusive lifestyle.⁷⁹²
627. Mr Hanlon also states that the process has had an "extraordinary adverse effect" on his mental and physical health.⁷⁹³ In summary, Mr Hanlon describes the impact upon him and his family in this way.⁷⁹⁴

⁷⁸⁵ Exhibit 111 – Statement of John Hanlon, 17 March 2023.

⁷⁸⁶ Ibid at [49]-[51].

⁷⁸⁷ Exhibit 125 – South Australia, *Parliamentary Debates*, House of Assembly, Estimates Committee A, 27 September 2019, 333-340 (The Hon Stephan Knoll and The Hon Tom Koutsantonis).

⁷⁸⁸ Ibid.

⁷⁸⁹ Exhibit 111 – Statement of John Hanlon, 17 March 2023 at [32].

⁷⁹⁰ Exhibit 148 – 'Former Renewal SA boss John Hanlon set to face fresh court action months after case was thrown out', *ABC News* (online, 6 September 2021); Exhibit 149 – 'ICAC case against former Renewal SA executives thrown out after prosecution concedes lack of evidence', *ABC News* (online, 18 June 2021); Exhibit 150 – 'Renewal SA redundancy claim on former exec "doesn't pass muster"', *InDaily* (online, 21 December 2021).

⁷⁹¹ Exhibit 111 – Statement of John Hanlon, 17 March 2023 at [36].

⁷⁹² Ibid at [36].

⁷⁹³ Ibid at [44].

⁷⁹⁴ Ibid at [43].

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It is difficult for me to begin to explain the profound effect this whole process has had on me and my family. I have had to endure ridicule and contempt within the community, and I have lost my entire career. I am not qualified to do anything other than what I did for 40 years. My wife and youngest daughter have had to endure speculation that I was having a long running affair with a senior member of my staff. My eldest daughter has shared with me her great sense of regret that the charges laid against me relating to the Berlin trip only were caused by her desire that I co-ordinate my trip to correspond with the birth of her first child, my first grandchild.

628. I accept Mr Hanlon's statement about the impact on him and his family of "this whole process" as a truthful and accurate account.
629. In addition, Mr Hanlon described the financial impact of the investigation and prosecution. Prior to the ICAC investigation, Mr Hanlon had the expectation that his contract as Chief Executive of Renewal SA would be renewed for a period of five years from its expiry in July 2019. He also stated that, if the ICAC investigation and prosecution had not occurred, he would have been appointed to multiple board positions in the public and or private sector for remuneration.⁷⁹⁵
630. At the time he was suspended from his employment as Chief Executive of Renewal SA, Mr Hanlon's salary was approximately \$420,000 per annum.⁷⁹⁶ Mr Hanlon states that it was his expectation that this would rise to approximately \$480,000 per annum should his contract have been extended.⁷⁹⁷ He has also lost superannuation and the benefit of the growth of that superannuation.
631. Mr Hanlon's statement sets out his legal costs across the investigation and prosecution as amounting to approximately \$600,000.⁷⁹⁸ However, media reporting suggests that Mr Hanlon has since been reimbursed approximately \$450,000 in legal expenses.⁷⁹⁹
632. In all, Mr Hanlon estimates his total economic loss to be in excess of \$5 million.⁸⁰⁰
633. In addition, the following findings from Judge Heffernan on the DPP's adjournment application are relevant to assessing any prejudice suffered by Mr Hanlon:
- 633.1 The German evidence was relevant and necessary to the prosecution case, and the attendance of the witnesses should have been secured by an MAR.
- 633.2 Mr Hanlon had been the subject of a vigorous investigation, comment in Parliament and intense media scrutiny, and had lost his job and been unable to

⁷⁹⁵ Ibid at [41].

⁷⁹⁶ Ibid at [50].

⁷⁹⁷ Ibid at [50].

⁷⁹⁸ Ibid at [49].

⁷⁹⁹ Exhibit 152 – 'Hanlon gets his money back as ICAC botch bills balloon', *The Advertiser* (online, *Adelaide Now*, 19 April 2023).

⁸⁰⁰ Exhibit 111 – Statement of John Hanlon, 17 March 2023 at [51].

secure alternative employment.

633.3 Mr Hanlon had also been subject to three months of uncertainty while consideration was given to filing an *ex officio* Information and incurred significant legal costs.

The relevant conduct of ICAC

634. In the previous Parts of this Report, I have made findings about the conduct of ICAC during the course of its investigation into Mr Hanlon. The findings relevant to assessing whether Mr Hanlon suffered undue prejudice to his reputation are as follows:

634.1 The decisions to investigate Mr Hanlon's Melbourne and Berlin trips were appropriate in the circumstances. There was sufficient evidence available to investigators to justify the decision to commence and continue the investigations. This evidence included the evidence obtained from the SDs, statements taken from key witnesses in respect of the Melbourne allegations, inquiries with companies referred to in the Second Itinerary, and initial inquiries (before the investigators went to Berlin) with some of the Nine Co-Working Businesses in respect of the Berlin allegations which contradicted the information provided by Mr Hanlon in the 2019 Hanlon Statement.

634.2 It was appropriate for ICAC investigators to seek to make inquiries with witnesses in Germany and undertake other investigations in Germany. However, there were significant deficiencies in the processes put in place by ICAC prior to Mr Baker and Ms Bridge's trip to Germany, including a failure to seek legal advice about their authority to conduct investigations, and a failure to make contact with the German authorities, the Australian Embassy or the AFP.

634.3 The conduct of ICAC investigators in obtaining affidavits from German citizens in Germany was not contrary to Australian law or international law, but was unlawful in that it breached German sovereignty. The conduct also had the potential to cause diplomatic embarrassment and elicited complaints from at least one German company.

634.4 The decisions to refer Mr Hanlon's Melbourne and Germany trips to the DPP for adjudication were justified and reasonable in all the circumstances.

634.5 ICAC failed to disclose to the DPP a number of matters relevant to how the German affidavits were obtained, including the advice contained in the AFP Interpol and AFP Hague emails, from Consul-General Sams, and in the ICCCA email. Further, ICAC failed to disclose to the DPP that the German affidavits

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had been obtained without an MAR or permission from the German authorities. Had these matters been disclosed, the DPP would have been on notice that an MAR was required.

634.6 ICAC failed to disclose the Berlin Movement Calendar to the DPP, although this failure was due to a misapprehension about whether the material was disclosable. The material was ultimately provided to Mr Hanlon's legal representatives by the DPP on 7 November 2022 following a request made by Mr Hanlon to the DPP on 1 November 2022.⁸⁰¹

Did ICAC's conduct cause undue prejudice to Mr Hanlon's reputation?

635. Pursuant to clause 9(6) of schedule 4 of the *ICAC Act*, on completing a review, if I find that "*undue prejudice to the reputation of any person was **caused** by the Commission*", I may publish any statement or material that I think will help to alleviate the prejudice or recommend that the Commission pay an amount of compensation to Mr Hanlon.
636. In determining whether undue prejudice was **caused** by the Commission, I must be satisfied whether a particular exercise of power or performance of a function by ICAC can fairly and properly be considered a cause of Mr Hanlon's undue prejudice.⁸⁰²
637. It is important to identify with precision the relevant exercise of power, performance of function or decision made by ICAC.

Investigation of Melbourne and Berlin Trips

638. The prejudice to Mr Hanlon's reputation caused by the ICAC investigation was that he was subject to public scrutiny.
639. I am not satisfied that this prejudice to Mr Hanlon's reputation was "undue" prejudice in the sense of unwarranted prejudice because that was a natural product of an investigation which was reasonable and appropriate.
640. I have found that the decision to refer the Melbourne trip for adjudication to the DPP pursuant to s 7(1)(a)(i) of the *ICAC Act* by ICAC was a reasonable and appropriate decision.

⁸⁰¹ Exhibit 134 – Letter from Counsel for Mr Hanlon to the Inspector, 22 March 2023.

⁸⁰² *March v Stramere* (1991) 171 CLR 506 at 522 per Deane J: "*For the purposes of the law of negligence, the question of causation arises in the context of the attribution of fault or responsibility whether an identified negligent act or omission of the defendant was **so connected with the plaintiff's loss or injury that, as a matter of ordinary common sense and experience, it should be regarded as a cause of it.***" (emphasis mine).

641. I find that there was no undue prejudice caused to Mr Hanlon's reputation by that decision.

Referral of Berlin investigation to DPP for adjudication

642. I have received detailed submissions from Mr Hanlon as to why undue prejudice was caused by the Commission's decision to refer the Berlin investigations for adjudication. Mr Hanlon contends as follows.

643. First, the German witness affidavits were unlawfully obtained and did not comply with section 66 of the *Evidence Act*. Mr Hanlon submitted *"The brief ought not to have been sent to the DPP for the German charges until admissible affidavits were obtained by the MAR process or at least without express disclosure to the DPP that the affidavits were not in admissible form [because] the evidence in them might never be capable of being adduced unless an MAR was successfully completed"*.⁸⁰³

644. Second, none of the German witness affidavits were admissible to establish a case to answer at the committal. Mr Hanlon submitted *"If the evidence of those witnesses was key to establishing a case to answer, there could [not] have been an assessment by the DPP that there were reasonable prospects for conviction and hence there could not have been any charges laid. If there were no charges laid, Mr Hanlon would not have suffered harm"*.⁸⁰⁴

645. Mr Hanlon submitted that the most significant harm caused to Mr Hanlon followed from the laying of the *ex officio* Information. Mr Hanlon contends that *"the ex officio indictment would not have been laid had the ICAC belatedly warned the DPP at that point that the affidavit evidence of the German witnesses had been improperly taken and witnessed and there was no prospect that any evidence could be adduced from those witnesses unless a lengthy and potentially unsuccessful [MAR process] was first pursued"*.⁸⁰⁵

646. Third, Mr Hanlon submitted that the non-disclosed CCR material exculpated Mr Hanlon. If that information had been disclosed to the DPP, it would have justified further evaluation by the DPP as to whether the charges would have been laid. In short, Mr Hanlon submitted the non-disclosure of the CCR material *"caused"* the DPP to lay the charges against Mr Hanlon.⁸⁰⁶ In relation to the laying of the *ex officio* Information, if the CCR material had been disclosed to the DPP, *"the significance of that evidence*

⁸⁰³ Exhibit 208 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (29 May 2023) at [7.5]-[7.9].

⁸⁰⁴ Ibid at [7.10].

⁸⁰⁵ Ibid at [7.13], [7.14].

⁸⁰⁶ Ibid at [7.1]-[7.4].

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*would have been recognised by the DPP” and would have justified a permanent stay of the ex officio indictment.*⁸⁰⁷

Mr Hanlon’s first point

647. I accept that there was a significant failure by ICAC when referring the Germany trip to the DPP in failing to disclose to the DPP the circumstances in which the German affidavits had been obtained.
648. The critical issue is whether that failure can fairly and properly be considered a cause of undue prejudice to Mr Hanlon’s reputation. I accept that the German affidavits were not admissible in any court proceedings against Mr Hanlon. Accordingly, the DPP did not have admissible evidence about the contents of the German affidavits.
649. However, this does not mean that the DPP could not have obtained that evidence in admissible form. The DPP could have obtained that evidence in admissible form in a number of ways - for example, the DPP could have made an application under the *MACMA* for an affidavit to be obtained from the witness and for her to be available to be cross-examined on that affidavit by way of audio-visual link.
650. As Ms McDonald stated in her evidence before me, the flaws in the manner in which the German affidavits were obtained by ICAC were curable.⁸⁰⁸ To test this proposition, assume a hypothetical example where ICAC had obtained recordings of conversations by Mr Hanlon under the *SD Act* which ICAC knew were unlawful because the warrant for the SD was based upon an affidavit the contents of which ICAC knew to be false. Assume that those recorded conversations contained clear admissions of guilt and were an essential part of the brief to the DPP. Assume that the DPP laid an *ex officio* Information against Mr Hanlon on the basis of those recorded conversations.
651. The provision of such illegal recordings to the DPP would have caused undue prejudice to Mr Hanlon because the laying of the charges by the DPP was caused by ICAC unlawfully obtaining evidence that could not be subsequently obtained by lawful means. It was not possible to cure or “undo” that unlawful conduct. Assuming the recorded conversations were held by a Court to be inadmissible, they could never be used. The DPP could never use the information in the recorded conversations in any way.
652. Here, there is a material difference. The DPP was provided with the German affidavits which were not in admissible form. They were not evidence at all. They were simply

⁸⁰⁷ Ibid at [7.14] and [7.15].

⁸⁰⁸ Transcript at pp 689 [36], 690 [24].

information provided to the DPP in the form of affidavits. However, the defects in how the affidavits had been obtained were potentially curable. I say “potentially” because it is not possible to know whether the German authorities, when they became aware of the breach of sovereignty on their soil, would ever have facilitated the evidence from the German witnesses by AVL.⁸⁰⁹

653. Mr Baker contemplated in his memorandum to Mr Lander that the affidavits would be inadmissible but would be “enough” to put the matter through adjudication: *“I am inclined to have those people’s affidavits witnessed by Amanda despite this technically not being satisfactory, I think this will be sufficient to put the matter through adjudication”*. What Mr Baker did not realise is that the defect was not simply the failure to properly witness the affidavits but that obtaining any affidavits in Germany without permission from German authorities would breach German sovereignty.

654. Having read the German affidavits, the DPP ought to have known the following irrespective of the matters that had not been disclosed to the DPP by ICAC:

654.1 The prosecution could not simply prove the facts contained in the affidavits by tendering the affidavits because (a) they had not been properly witnessed in accordance with section 66 of the *Evidence Act*; and (b) the affidavits themselves were unlikely to be admitted. As is normal course in a criminal trial, the witnesses would need to be called to give evidence.

654.2 In order for the information contained in the affidavits to be admitted in Court, the DPP would either have to (a) request the witnesses to come to Australia to give evidence or (b) follow the correct MAR procedures.

655. Mr Hinton, a model of candour, gave evidence that when the DPP received the referral for adjudication from ICAC, in circumstances where it was intending to adduce evidence from a resident in a foreign country, it was incumbent on the DPP to ensure that the proper procedures were followed. Mr Hinton said that the DPP had to *“take responsibility for and liaise direct with the Department or Federal Attorney-General’s office”*. Mr Hinton acknowledged that the DPP failed to fulfill that obligation.⁸¹⁰ Mr Hinton said that the DPP *“dropped the ball”* on three occasions in one year because lawyers in his office were not aware of the requirements of the MAR legislation.⁸¹¹

656. I respectfully agree with Judge Heffernan that the DPP should have been aware of the

⁸⁰⁹ *R v Hanlon (No 3)* [2022] SADC 135 at [30] per Heffernan DCJ. I doubt whether the German authorities could have prevented the German witnesses from giving evidence in Australia.

⁸¹⁰ Transcript at p 540.

⁸¹¹ Ibid.

need for MARs in appropriate circumstances.⁸¹²

657. The decision to charge Mr Hanlon on both occasions was made by the DPP not ICAC. The DPP made the original decision to charge Mr Hanlon when it ought to have known (or did know) that the German affidavits could not have been tendered in the court proceedings. The responsibility to obtain admissible evidence from the German witnesses ultimately belonged to the DPP, not to ICAC. I cannot and do not need to make any finding about what the results would have been had the DPP followed the correct MAR procedures. I cannot and do not need to make any finding whether the deponents to the German affidavits would ultimately have given admissible evidence in any criminal proceedings against Mr Hanlon and what that evidence would have been.
658. I am not satisfied that any undue prejudice to Mr Hanlon's reputation as a result of him being charged was caused by the circumstances in which the German affidavits were obtained by the ICAC officers and ICAC's failure to disclose those circumstances to the DPP at the time or after ICAC referred the Berlin investigation for adjudication.

Mr Hanlon's second point

659. I have found that it was reasonable and appropriate to refer the Berlin investigation to the DPP for adjudication.
660. The decision to lay an *ex officio* Information against Mr Hanlon was made by Ms McDonald in her then-capacity as Deputy DPP.⁸¹³ The reasoning behind the decision to lay the charge of abuse of public office is set out in a memorandum written by Ms McDonald dated 9 September 2021. In setting out the evidence which supported her opinion that there was a reasonable prospect of success, Ms McDonald comprehensively analysed a significant body of evidence.
661. At the hearing before me, Ms McDonald believed that the material before her was a "*very strong multi-pronged circumstantial case*". Her opinion was that "*there was a real chance*" that the DPP would have laid the *ex officio* Information even if the DPP could not have proceeded with any of the German witnesses.⁸¹⁴
662. Relevantly, the evidence relied upon by Ms McDonald extended significantly beyond the evidence contained in the German affidavits. Briefly stated, that evidence included:
- 662.1 The application for approval of Mr Hanlon's travel was for Mr Hanlon to accompany the relevant Minister for Investment and Trade on specific dates (7

⁸¹² *R v Hanlon (No 3)* [2022] SADC 135 at [27].

⁸¹³ Mr Hinton KC had a conflict – see Transcript p 538.

⁸¹⁴ Transcript at p 692.

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September 2017 to 19 September 2017) and to visit specific places (Berlin, Frankfurt, London and Lucerne) for the State Government Europe Mission.⁸¹⁵

662.2 Mr Hanlon's plan for the trip set out specific dates, places and contacts for additional meetings he proposed to attend.⁸¹⁶

662.3 The evidence suggested that Mr Mullighan's initial approval for Mr Hanlon's Berlin trip (which approved the detailed travel itinerary supporting the Europe Business Mission) did not extend to approval for *any* trip Mr Hanlon wished to take to Europe, regardless of the nature or detail or any work to be undertaken.⁸¹⁷

662.4 On 18 September 2017, Mr Hanlon had submitted documents to the Renewal SA Executive Team Meeting for the purpose of his Berlin trip which gave the impression that he continued to travel for the Europe Business Mission, which had, in fact, been completed.⁸¹⁸

662.5 On 18 September 2017, Employee C submitted a request to the accountant at Renewal SA for foreign currency – 1,555 Euro. Submitted with that request was a table setting out that Mr Hanlon was to be in Frankfurt on 26 September 2017, Munich on 27 September, Berlin on 28 September and Frankfurt (again) on 29 September.⁸¹⁹

662.6 Evidence about the purchase of the train tickets to and from Frankfurt which were never used.⁸²⁰

662.7 No receipts were ever submitted as required for the expenditure of 1,555 euros.⁸²¹

662.8 The absence of any evidence of Mr Hanlon attempting to make any business arrangements prior to his departure, despite the fact that this was purportedly a rescheduling of a business trip.⁸²²

662.9 Evidence that Mr Hanlon engaged in significant social events with family. Ms McDonald stated: *"This was not a situation in which Hanlon was simply catching up with his family for a meal after an industrious day at work but rather the*

⁸¹⁵ Exhibit 117 – Memorandum from Sandi McDonald SC (DPP) to DPP Martin Hinton KC, 9 September 2021 at [110].

⁸¹⁶ Ibid at [111].

⁸¹⁷ Ibid at [112].

⁸¹⁸ Ibid at [116]-[118].

⁸¹⁹ Ibid at [118].

⁸²⁰ Ibid at [118].

⁸²¹ Ibid at [119].

⁸²² Ibid at [120].

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social texts and photographs are a constant them throughout Hanlon's stay in Berlin".⁸²³ The Crown case was not that Mr Hanlon was with his family for the entire period of his trip.

662.10 Whilst overseas Mr Hanlon paid for his own accommodation and expenses other than cash advanced.⁸²⁴

662.11 The absence of any evidence that established that Mr Hanlon undertook any significant work while in Berlin, such as diary entries, notes, emails or any sort of documentation. This was in contrast with other Renewal SA trips attended by Mr Hanlon and others, from which there was an extensive paper trail.⁸²⁵

662.12 There were only two pieces of evidence that suggested any Renewal SA work was undertaken by Mr Hanlon in Berlin, but these did not relate to the Nine Co-Working Businesses.⁸²⁶

662.13 Mr Hanlon did not undertake any of the activities set out in the Travel Plan which he adopted and signed, and was submitted six months after the trip.⁸²⁷

662.14 The fact that Ms Bridge had located seven of the Nine Co-Working Businesses on a webpage entitled "The 7 best Berlin co-working spaces", in identical order to the order in which they appeared on the document prepared by Mr Hanlon.⁸²⁸

662.15 Mr Hanlon had recorded the address of the last co-work space (Betahaus) as the same address listed on the webpage, despite the fact that it was located elsewhere at the time of his Berlin trip.⁸²⁹

663. I accept Ms McDonald's evidence before me that as she saw it, the prosecution case did not depend upon the German witnesses.⁸³⁰ It is immaterial that Ms McDonald's analysis differs from Judge Heffernan's observation that the German witnesses were necessary for the prosecution case. Accordingly, I cannot be satisfied that absent the German witnesses, the DPP could not or would not have laid the charges against Mr Hanlon.

664. Mr Hanlon has submitted that the conclusion that the *ex officio* Information would have been laid had ICAC disclosed the issues with the German witnesses is "*fundamentally inconsistent*" with what happened in November 2022 when the DPP filed the *nolle*

⁸²³ Ibid at [123].

⁸²⁴ Ibid at [124].

⁸²⁵ Ibid at [110], [125]-[128].

⁸²⁶ Ibid at [126]-[130].

⁸²⁷ Ibid at [134]-[135].

⁸²⁸ Ibid at [138].

⁸²⁹ Ibid at [138].

⁸³⁰ See paragraph [663] of this Report.

prosequi.⁸³¹ I reject this submission. As Mr Hanlon acknowledges, the prejudice to Mr Hanlon flows from the decision to lay the charge and most significantly the *ex officio* indictment by Ms McDonald in September 2021. Ms McDonald's memorandum dated 9 September 2021 and her evidence before me are quite clear – the evidence from the German witnesses was neither decisive nor material in her decision to lay the *ex officio* Information. Whatever motivated the DPP to enter the *nolle prosequi* 15 months later cannot logically disprove why Ms McDonald made the decision to *ex officio* the indictment.

Mr Hanlon's third point

665. As discussed above in **Part XIII** above, the non-disclosed CCR material was not self-evidently exculpatory. Accordingly, the submission that had that information been disclosed to the DPP, it would have justified further evaluation by the DPP as to whether the charges would have been laid has no merit. The non-disclosure of the CCR material did not "cause" the DPP to lay the charges against Mr Hanlon.⁸³² Indeed, the DPP decided not to lay an *ex officio* Information for the Melbourne charges based on the unreliability of the CCR evidence in proving where Mr Hanlon was at any relevant point in time.⁸³³

Conclusion

666. Ultimately, the decision by ICAC to investigate Mr Hanlon and refer this matter to the DPP for adjudication were appropriate and warranted. The prejudice to Mr Hanlon's reputation was caused primarily by the decisions to charge Mr Hanlon. Those decisions were made by the DPP.

667. In particular, the decision by Ms McDonald to lay an *ex officio* Information against Mr Hanlon did not depend upon the existence of the German affidavits. The responsibility to present evidence from the German witnesses in admissible form belonged to the DPP. In short, the prejudice or damage to Mr Hanlon's reputation was not caused by any deficiencies in the ICAC investigation or by ICAC's failures of disclosure to the DPP. The damage to Mr Hanlon's reputation would have occurred whether the improprieties and deficiencies by ICAC had occurred or not.

⁸³¹ Exhibit 279 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (19 June 2023) at p 6.

⁸³² Exhibit 209 – John Hanlon, Submission to the Inspector, *Review into the investigation and prosecution of John Hanlon* (29 May 2023) at [7.1]-[7.4].

⁸³³ Exhibit 117 – Memorandum from Sandi McDonald SC (DPP) to DPP Martin Hinton KC, 9 September 2021; Exhibit 132 – Memorandum from Domenico Petraccaro SC (DPP) to Sandi McDonald SC (DPP), 9 July 2021.

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668. Clause 9(6)(c) of schedule 4 of the current *ICAC Act* provides that on completing a review, or at any time during a review I may, if I find that undue prejudice to the reputation of any person was caused by ICAC or OPI, I may:

668.1 Publish any statement or material that I think will help to alleviate that prejudice;
or

668.2 Recommend that ICAC or OPI pay an amount of compensation to that person

669. As I have not made a finding undue prejudice, it follows that I will not be publishing any statement or making a recommendation under clause 9(6)(c) of schedule 4 of the current *ICAC Act*.

XVI. Steps taken by ICAC since the discontinuance of the Hanlon investigation

670. In response to my request, on 17 May 2023 and 24 May 2023 Commissioner Vanstone wrote to me outlining the steps taken by ICAC to improve its processes since the discontinuance of the prosecution of Mr Hanlon.⁸³⁴ Commissioner Vanstone's letters also outline changes proposed to be implemented. A summary is provided below.

Commissioner Vanstone's Review

671. Commissioner Vanstone advised that following the *nolle prosequi*, the Commissioner announced by way of public statement that she would oversee a review of the investigation.⁸³⁵ The review commenced immediately and I am advised it involved a detailed examination of the matter from the time complaints were received by the OPI to the court proceedings.

672. The Commissioner completed the report on 2 February 2023 and provided it to me. I am advised that the review has guided a number of changes of policy.

Investigation Manual, Draft Operations Policy and Disclosure Procedure

673. Central to the changes made by ICAC are the draft ICAC Operations Policy (**draft Operations Policy**), Investigations Manual and Disclosure Procedure.

674. The purpose of the draft Operations Policy is "*to provide guidance to employees and set out certain requirements which relate to activity undertaken in the exercise of the Commission's investigative functions*".⁸³⁶ That policy applies to all employees of ICAC. The draft Operations Policy sets out the framework for the operations of ICAC, supported by other policies including the Investigation Manual, Disclosure Procedure ICAC and Information Management Policy (**Information Management Policy**).

675. ICAC's Investigations Manual,⁸³⁷ which was utilised by investigators in draft, was

⁸³⁴ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC (ICAC), Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023); Exhibit 190 – Commissioner of ICAC, the Hon Ann Vanstone KC (ICAC), Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023).

⁸³⁵ Exhibit 250 – Commissioner of ICAC, the Hon Ann Vanstone KC, 'Investigation Review' (Public Statement, 10 November 2022). See also Exhibit 251 – Commissioner of ICAC, the Hon Ann Vanstone KC, 'Update of Investigation Review' (Public Statement, 2 December 2022).

⁸³⁶ Exhibit 176 – Independent Commission Against Corruption, Operations Policy (draft) v1, undated at p 3 under heading 'Purpose' (**Exhibit 176 – ICAC draft Operations Policy**).

⁸³⁷ Exhibit 177 – Independent Commission Against Corruption, Investigations Manual v1, 10 March 2023 (**Exhibit 177 – ICAC Investigations Manual**).

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finalised on 10 March 2023.⁸³⁸ The Investigations Manual sets out:⁸³⁹

675.1 the standard processes and steps to be undertaken in the course of each investigation; and

675.2 the steps to be taken when exercising or seeking to exercise powers in the course of an investigation.

676. The ICAC Disclosure Procedure was approved on 30 May 2023. It outlines *“the process by which the Commission implements its approach to disseminating material to SAPOL when referring a matter under s 36 of the ICAC Act and disclosing information when criminal proceedings are instituted as a result of such referral”*.⁸⁴⁰

677. On 28 March 2023, the Information Management Policy was approved.⁸⁴¹ The purpose of the Information Management Policy is to raise awareness of the Commission’s employees to:⁸⁴²

677.1 understand their obligations to retain official records;

677.2 understand their obligations to record decisions and interactions relating to Commission business;

677.3 understand their obligations to classify and protect information; and

677.4 only disclose or publish information when authorised to do so.

678. When approved, all of ICAC’s policies, procedures and guides are available on the ICAC intranet or on Objective ECMS.⁸⁴³

Assignment of legal officers to investigations

679. Commissioner Vanstone has advised that ICAC’s current approach is that a legal officer is assigned to each investigation it conducts. The assigned legal officer *“is to act as the primary point of contact for the investigators assigned to the investigation for legal advice and assistance”*.⁸⁴⁴ The legal officer’s role includes proactively identifying any legal issues or risks that arise in respect of proposed investigative

⁸³⁸ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 2.

⁸³⁹ Ibid.

⁸⁴⁰ Exhibit 256 – Independent Commission Against Corruption, *Disclosure Procedure* (30 May 2023) at p 1 (**Exhibit 256 – ICAC Disclosure Procedure**).

⁸⁴¹ Exhibit 184 – Independent Commission Against Corruption, Information Management Policy v1, 28 March 2023 at p 1 (**Exhibit 184 – ICAC Information Management Policy**).

⁸⁴² Ibid at p 3.

⁸⁴³ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 3.

⁸⁴⁴ Ibid at p 1-2.

activity.⁸⁴⁵

680. The draft Operations Policy reflects the requirement that *“the primary investigator and legal officer are responsible for ensuring any investigation they are assigned to are conducted in accordance with the Investigations Manual”*.⁸⁴⁶
681. In addition, ICAC assigns a prevention analyst to each investigation *“to identify matters which come to light during the investigation which might indicate a breakdown in the policies or procedures of the agency under investigation, and to ensure that all avenues relevant to a prevention outcome are explored as part of the investigation”*.⁸⁴⁷
682. ICAC is in the process of considering what internal documentation and processes are necessary to ensure the role and expectations of the legal officer are appropriately recorded and communicated to its officers.⁸⁴⁸

Conducting inquiries interstate or overseas

683. The Investigation Manual contains a new section which deals with *“[a]ctivity and requesting information in other jurisdictions”*.⁸⁴⁹ That section outlines considerations relevant for pursuing investigative strategies in other jurisdictions within Australia and in overseas jurisdictions.⁸⁵⁰ In summary, the investigator must consult with the assigned legal officer and the approval of the Commissioner is required for any travel interstate or overseas.⁸⁵¹ Furthermore, the Investigation Manual provides that in relation to overseas travel the legal officer must consider the *MACMA* and any local laws, and contact ICCCA.⁸⁵²
684. Commissioner Vanstone has advised that training on the section dealing with *“[a]ctivity and requesting information in other jurisdictions”* is intended to be provided to investigators and legal officers in the *“near future”*.⁸⁵³

Records and document management

685. Commissioner Vanstone advised that ICAC held a seminar on “Information

⁸⁴⁵ Ibid at p 2.

⁸⁴⁶ Exhibit 176 – ICAC draft Operations Policy at p 5.

⁸⁴⁷ Exhibit 255 – Letter from Commissioner of ICAC, the Hon Ann Vanstone KC to the Inspector, 24 May 2023 at p 2.

⁸⁴⁸ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 2.

⁸⁴⁹ Exhibit 177 – ICAC Investigations Manual at p 63-64.

⁸⁵⁰ Ibid.

⁸⁵¹ Ibid.

⁸⁵² Ibid at p 64; Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 2-3.

⁸⁵³ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 3.

Management and Record-Keeping” on 20 March 2023,⁸⁵⁴ based on the draft Information Management Policy, which was later approved without amendment on 28 March 2023.⁸⁵⁵ The seminar was compulsory for all ICAC officers.⁸⁵⁶ The draft Information Management Policy outlines that the “*Commission’s approved business systems must be used to capture, manage, store, track and dispose of official information*”.⁸⁵⁷

686. The draft Operations Policy includes a new section on “[r]ecord keeping” which provides that the primary investigator must ensure that a written record is made of all key or significant decisions made in the course of an investigation. The record must be recorded in the ICAC case management system (unless a record has already been made on a document which is stored on Objective ECMS).⁸⁵⁸
687. The draft Operations Policy outlines requirements in relation to the recording of matters considered at ICAC’s investigation update meetings. These include requirements relating to the production of written briefings and the recording of minutes of the investigation meetings.⁸⁵⁹
688. Commissioner Vanstone has advised that it is intended that training in relation to the new record keeping requirements will be provided to investigators.⁸⁶⁰

Disclosure policy and procedure

689. Commissioner Vanstone has advised that the draft Operations Policy includes a new section on disclosure.⁸⁶¹ That section relevantly states:⁸⁶²

⁸⁵⁴ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 3 under heading ‘Records and document management’. See Exhibit 183 – Independent Commission Against Corruption, ‘Information management and record keeping workshop’ (Agenda and slides, 20 March 2023).

⁸⁵⁵ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 3 under heading ‘Records and document management’. See Exhibit 184 – ICAC Information Management Policy at p 1.

⁸⁵⁶ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 4.

⁸⁵⁷ Exhibit 184 – ICAC Information Management Policy at p 8.

⁸⁵⁸ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 4.

⁸⁵⁹ *Ibid* at p 4-5.

⁸⁶⁰ *Ibid* at p 5.

⁸⁶¹ *Ibid* at p 5 under heading ‘Disclosure policy and procedure’.

⁸⁶² Exhibit 176 – ICAC draft Operations Policy at p 7 under heading ‘The Commission’s approach to disclosure’.

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When a prosecution arises from a referral the Commission has made to SAPOL under s36 of the ICAC Act the Commission will, subject to any claims of immunity or privilege or statutory prohibition preventing disclosure, disclose to the prosecution and defence (via SAPOL) any material it possesses which could be seen on a sensible appraisal by the prosecution to:

- 1. be relevant or possibly relevant to an issue in the case*
- 2. raise or possibly raise a new issue the existence of which is not apparent from the prosecution case, or*
- 3. hold out a real (as opposed to fanciful) prospect of providing a lead on evidence going to either of the above.*

In applying the above criteria the Commission does not adopt a narrow approach and gives an “issue in the case” a broad interpretation.

690. The draft Operations Policy also outlines the ongoing nature of the prosecution’s duty of disclosure and that:⁸⁶³

The Commission is committed to ensuring the prosecution is able to meet its obligation on an ongoing basis. To this end, the Commission will review its holdings in light of any issues raised in any criminal proceedings (including by the accused) and will disclose any previously undisclosed material which, because of the new issues, falls within any of the above three categories.

691. The draft ICAC Operations Policy assigns responsibility for the disclosure of material to the primary investigator.⁸⁶⁴ The primary legal officer has the responsibility to review any proposed disclosure of material to ensure it is consistent with the Disclosure Procedure.⁸⁶⁵

692. According to the Disclosure Procedure the primary investigator is to prepare and maintain a Disclosure Master Record for each investigation once the investigator commences collecting affidavits or when the view is formed that the investigation is likely to lead to a referral to SAPOL.⁸⁶⁶ A Disclosure Master Record “*is a list of all documents or other things created or obtained in the course of an investigation, classified according to relevance and whether the document or other thing is potentially subject to a claim of privilege or immunity*”.⁸⁶⁷

693. According to the Disclosure Procedure, when criminal proceedings arising out of an

⁸⁶³ Exhibit 176 – ICAC draft Operations Policy at p 7 under heading ‘Ongoing review of disclosure’.

⁸⁶⁴ Exhibit 176 – ICAC draft Operations Policy at p 7 under heading ‘Responsibility for disclosure’; Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 5.

⁸⁶⁵ Exhibit 176 – ICAC draft Operations Policy at p 7 under heading ‘Responsibility for disclosure’; Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 5.

⁸⁶⁶ Exhibit 256 – ICAC Disclosure Procedure at p 2.

⁸⁶⁷ Ibid at p 1.

ICAC referral are instituted.⁸⁶⁸

693.1 The primary investigator must review the Disclosure Master Record to ensure it contains all documents and other materials created or gathered in the investigation.

693.2 The primary investigator and primary legal officer should review the Disclosure Master Record to ensure that all documents or other things have been appropriately classified and any potential claims of privilege or immunity are properly recorded. If necessary, advice can be sought from the Disclosure Panel.

693.3 A version of the Disclosure Master Record containing all documents assessed as relevant should be provided to SAPOL.

693.4 The primary investigator and legal officer should complete and sign a Disclosure Checklist before material is disclosed.⁸⁶⁹

694. The Disclosure Procedure establishes a Disclosure Panel constituted by the Commissioner, Deputy Commissioner, Director Legal (or delegate) and Director Investigations (or delegate).⁸⁷⁰ The purpose of the Disclosure Panel is to provide expert advice and assistance about whether material should be disclosed.⁸⁷¹ A request for assistance from the Disclosure Panel must be made by the primary investigator using a request form.⁸⁷²

695. Commissioner Vanstone advised that ICAC will institute a training program for investigators and legal officers.⁸⁷³

⁸⁶⁸ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 6.

⁸⁶⁹ Exhibit 256 – ICAC Disclosure Procedure at p 6.

⁸⁷⁰ Exhibit 256 – ICAC Disclosure Procedure at p 13 'Appendix B'.

⁸⁷¹ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 6.

⁸⁷² Exhibit 256 – ICAC Disclosure Procedure at p 13 'Appendix B'; Exhibit 181 – Independent Commission Against Corruption, Disclosure panel request form (draft), undated.

⁸⁷³ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 7.

XVII. Conclusion

696. As discussed earlier in this Report my role is **not** to examine whether Mr Hanlon was guilty of corrupt or criminal conduct. Mr Hanlon has not been convicted of any offence arising out of the ICAC investigation which was the subject of referrals to the DPP. Mr Hanlon is entitled to the presumption of innocence and nothing in this Report should be construed as inculcating him in the commission of any criminal offence. I make the same point in relation to Ms Vasilevski.

ICAC's investigation of Mr Hanlon's Melbourne trip

697. The decision by Mr Lander to investigate Mr Hanlon's Melbourne trip and the report by the employee of Renewal SA about the use of public funds was justified and appropriate in the circumstances as the report was reasonably assessed as giving rise to a potential issue of corruption in public administration. Further, the investigation into Mr Hanlon's Melbourne trip was not conducted with any unreasonable delay, or in a manner that caused undue invasion of privacy or undue prejudice to the reputation of any person. The conversations recorded on the SDs strengthened the need for the investigation. It was an appropriate decision by ICAC to investigate the Melbourne trip to achieve the objective of detecting corruption in public office.
698. I find that there was no evidence that the complaints that gave rise to the investigation of the Melbourne trip were vexatious or motivated by bad faith. Further, I do not accept that the allegation was trivial because it only involved \$4500 of public funds.
699. I am also satisfied that ICAC's decision to seek SD warrant, TI warrants and search warrants were appropriate in light of the evidence available to ICAC investigators at the time of those applications.

ICAC's investigation of Mr Hanlon's Germany trip

700. I find that ICAC's decision to investigate Mr Hanlon's Germany trip was based on a reasonable and appropriate consideration of the evidence giving rise to a potential issue of corruption in public administration. Having formed that view, the Commissioner was obligated to investigate or refer under section 24(1) of the *ICAC Act*. It was reasonable in the circumstances for ICAC not to refer the Germany trip to SAPOL.
701. Once that investigation had commenced, there was a reasonable basis for ICAC investigators to request that inquiries be conducted on the ground in Germany and for Mr Lander to approve that request. It was reasonable to expect that investigators made in-person inquiries with key witnesses and did not rely upon email correspondence.

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702. However, I have made significant criticisms of the steps taken by ICAC in preparation for its investigators' German trip, and the conduct of those investigators in Germany. I find that before the ICAC investigators undertook the Germany trip, they should have sought and received legal advice about the lawfulness of ICAC's investigations in Germany, and how those investigations should have been undertaken to comply with German law.
703. It was understandable that Ms Bridge was not aware of the *MACMA* and the MAR procedure prior to travelling to Germany because this was the first time that ICAC had conducted overseas inquiries of this nature. She was given no guidance from ICAC's internal documents, nor from anyone within ICAC about this issue. There was a significant lack of oversight within ICAC of Ms Bridge and Mr Baker's Germany trip, which extended to Mr Lander. It was highly regrettable that neither any ICAC legal officer nor Mr Lander turned their mind to the fundamental issue of whether the ICAC investigators had the lawful authority to carry out official functions in Germany without the knowledge and permission of the German authorities.
704. There is also no excuse for the investigators failing to contact the Australian Embassy or the AFP prior to travelling to Germany. Ms Bridge and Mr Baker were intending to use the services of the Australian Embassy for the purposes of witnessing the affidavits. Having made arrangements to travel to Germany, it was unprofessional not to even make contact in advance with the institution they intended to call on to perform a task that was central to their trip. Similarly, the AFP is accustomed to conducting overseas inquiries and could have provided the ICAC investigators with valuable information about protocols to follow (as they ultimately did through the AFP Interpol email and the AFP Hague email). There is no satisfactory explanation for why these elementary steps did not occur to Ms Bridge or Mr Baker.
705. The taking of affidavits from witnesses without having applied for an MAR was not itself contrary to Australian law. Further, a failure to obtain evidence via an MAR does not of itself mean that evidence obtained in a foreign jurisdiction by Australian investigators is inadmissible.
706. However, as a matter of German law, the ICAC investigators were required to obtain evidence in Germany either through the MAR process or to obtain permission and assistance from the German police. Their failure to do so constituted an infringement of Germany's sovereignty. The conduct also had the potential to cause diplomatic embarrassment to Australia or South Australia.
707. Equally significant is the conduct of ICAC investigators in ignoring official advice given to them whilst they were in Berlin. Ms Bridge was given advice by the AFP in the AFP

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Interpol and AFP Hague emails that ICAC should not be carrying out investigations in Germany without local approval. Both Mr Baker and Ms Bridge were told by the Consul General of the Australian Embassy in Berlin that they should not conduct any further investigations in Germany. It is inexplicable and inexcusable that after receiving this advice the investigators continued to obtain further affidavits from witnesses in Germany. Such conduct has the potential to cause significant damage to the reputation and the integrity of ICAC, whose charter was to expose abuses of power.

708. Upon returning to Australia, the advice given by the Consul General was brought to the attention of Mr Lander. He promptly sought legal advice on the issue. His attention had also previously been drawn to the fact that the manner in which the affidavits were witnessed was contrary to the requirements of section 66 of the *Evidence Act*. However, having sought that legal advice, which indicated that the German affidavits should be obtained by way of an MAR, no steps were taken to implement the advice, nor to have the affidavits re-witnessed in accordance with the requirements of section 66. This was a significant institutional failure.
709. The significant issue which was identified by the legal advice should have been taken seriously by those at a senior level at ICAC. Having requested that advice be obtained, Mr Lander should have ensured that the advice was implemented. It never was. The advice fell through the gaps due to a lack of oversight. It should not have been left to Ms Bridge alone to address the issues raised by the legal advice. Again, this was an institutional failure that cannot be attributed to any one person.

Referral of the brief to the DPP and disclosure

710. I have found that there was sufficient evidence to justify the referral of the brief to the DPP for adjudication in relation to the Melbourne investigation. Although Mr Hanlon had proffered a version of events, that version was contradicted by other evidence. ICAC was also entitled to take into account the considerable evidence in the SD recordings.
711. I also consider that the decision by the Commissioner to refer Mr Hanlon's Germany trip to the DPP for adjudication was reasonable. Putting aside the German affidavits which I have found were obtained in breach of German sovereignty, there was significant other material which justified the referral to the DPP.
712. There is no evidence that there was any pressure on ICAC to finalise the Hanlon investigation and refer the brief.

Disclosure during the course of the prosecution of Mr Hanlon

713. I have found that ICAC should have disclosed to the DPP the following matters:

713.1 Ms Bridge witnessed affidavits in Germany contrary to the known requirements of section 66 of the *Evidence Act*.

713.2 The content of the AFP Interpol and AFP Hague emails.⁸⁷⁴

713.3 The content and context of the investigators' conversation with Consul-General Sams.

713.4 The advice received from ICCCA dated 1 October 2019 that was conveyed to ICAC through Ms Greenslade.

713.5 No MAR had been sought or obtained in respect of the affidavits obtained in Germany and that the German authorities had not been advised of ICAC's actions in Germany.

714. ICAC had an obligation to disclose all of these matters to the DPP because they could reasonably be expected to assist the case for the defence.

715. The impact of COVID, combined with turnover in key personnel within ICAC, contributed to key disclosure issues being overlooked by ICAC. The disruptive effect of COVID was significant. However, it was the responsibility of all ICAC personnel, including Mr Lander, to ensure that the manner in which the German witness statements were obtained and the requirement to obtain an MAR or the permission of the German authorities in obtaining the affidavits were brought to the attention of the DPP. This was a significant issue which had prompted Mr Lander to seek legal advice. It should have been front and centre of everyone's minds.

716. Further, at the time of the Hanlon investigation, ICAC did not have in place a finalised Disclosure Guideline. Although a draft Disclosure Guideline was being prepared, the failure to finalise the guideline represented a significant deficiency in ICAC's records management.

717. A formal disclosure policy which required the creation of a Disclosure Master Record as per the draft Disclosure Guideline should have been in place. Creation of a Disclosure Master Record, which was updated periodically and recorded all

⁸⁷⁴ I have found that Ms Bridge was aware of the AFP Interpol and AFP Hague email; however, as I state at paragraph [294] I do not consider it necessary to make a finding about whether to accept the evidence of Mr Baker or Ms Bridge on the issue of whether Mr Baker was told by Ms Bridge about the AFP Interpol email and the AFP Hague email. No-one else in the Commission can be held responsible for failing to disclose those emails.

disclosable information and material, would have prevented difficulties arising when there was a change in investigators or disruptions to normal working practices.

The CCRs

718. In August 2019, in the course of its investigation, ICAC received CCRs from Telstra for services suspected to have been used by Mr Hanlon, his wife Jeannette and his daughter Millie while Mr Hanlon was in Germany (the Telstra CCRs).
719. I am not satisfied that the Telstra CCRs were exculpatory. They do not prove that Mr Hanlon visited any of the Nine Co-Working Businesses. Those records probably would not have been admissible in any proceedings to prove his precise location at any point in time. There was considerable unreliability in the location data provided within the Telstra CCRs that recorded Mr Hanlon's telephone use in Germany. Indeed, the reliability of the location data relevant to his Melbourne trip was challenged by Mr Hanlon in the committal proceedings.
720. Nonetheless I have found a deficiency in the disclosure to Mr Hanlon of material related to the Telstra CCRs during his prosecution. Although the entirety of the Telstra CCRs were disclosed to Mr Hanlon, other "*intelligence*" documents prepared by ICAC were not. The test for disclosure is not whether the information is exculpatory, but whether it has the potential to assist the defence case. Whether disclosure was required of the working documents was a "*grey area*". To err on the side of caution, they should have been disclosed to Mr Hanlon or at least to the DPP.
721. However, there is insufficient evidence to find that the failure to disclose the material was deliberate. I do not find that ICAC "*doctored*" documents in order to remove exculpatory evidence. The relevant columns in the Berlin Movement Calendar were removed by Ms Bridge because she held an erroneous belief that, because the information contained in those columns could not be verified, it did not need to be disclosed. This was a misunderstanding of ICAC's disclosure obligations, but it did not reflect a deliberate decision to avoid ICAC's disclosure obligations.

The effect of ICAC's non-disclosure on the prosecution of Mr Hanlon

722. Had ICAC disclosed to the DPP at the time of the referral on 29 November 2019 the issues surrounding the German affidavits, including the advice contained in the AFP Interpol and AFP Hague emails of 11 September 2019, the conversation with Consul-General Sams on 18 September 2019, and the Greenslade advice dated 2 October 2019, it is a reasonable assumption that the DPP would have realised that an MAR was required to secure the attendance of the German witnesses for the trial set down

for 31 October 2022 much earlier than they did.

723. ICAC's failures in respect of disclosure had significant implications for the prosecution of Mr Hanlon. I am unable to find what would have happened if ICAC had disclosed these matters at the time of referral of the brief for adjudication to the DPP. The DPP would probably have applied for the German witnesses to have given evidence under the *MACMA*, thereby averting the difficulties that followed that led to the charges being withdrawn.
724. I am unable to find whether any MAR process would have succeeded.

Unreasonable delay and undue prejudice in ICAC's investigation of Mr Hanlon's Germany trip

725. There is no information before me that suggests there was a *prima facie* delay in ICAC's investigation into Mr Hanlon which was longer than an investigation of this complexity would ordinarily require. I have found that there was no unreasonable delay in ICAC's investigation of Mr Hanlon's Germany trip.
726. Ultimately, the decisions by ICAC to investigate Mr Hanlon and refer this matter to the DPP for adjudication were appropriate and justified. The prejudice to Mr Hanlon's reputation was caused primarily by the decisions to charge Mr Hanlon. Those decisions were made by the DPP.
727. In particular, the decision by Ms McDonald to lay an *ex officio* Information against Mr Hanlon did not depend upon the existence of the German affidavits. The responsibility to present evidence from the German witnesses in admissible form belonged to the DPP. In short, the prejudice or damage to Mr Hanlon's reputation was not caused by any deficiencies in the ICAC investigation or by ICAC's failures of disclosure to the DPP. The damage to Mr Hanlon's reputation would have occurred whether the improprieties and deficiencies by ICAC had occurred or not.

Culture within ICAC in conducting investigations

728. I have not found that the evidence established that there was a pervasive culture of inappropriately pursuing prosecutions within ICAC. Nor do I accept that ICAC investigators approached the investigation into Mr Hanlon with a bias or a pre-determination of guilt.
729. However, certain ICAC documents contain language that reflects a fundamental misconception about the role of an investigator. Investigators should not be motivated to gather information "*for the successful prosecution*" of a suspect. The role of an investigator is to gather all relevant information before determining whether to refer the

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matter for prosecution. The language used by ICAC investigators in some documents compromises the impartiality of investigators and at the very least, it creates the appearance of bias or partiality.

730. I also do not consider it appropriate for investigators to speak of “*disproving*” claims made by a person under investigation. The role of an investigator is to gather the truth, rather than disprove a particular version or theory of events.

Conclusion

731. I have found that there was sufficient evidence to justify the investigation by ICAC into Mr Hanlon’s Melbourne and Germany trips. I have also found that the referral of those allegations to the DPP were appropriate and reasonable.
732. This inquiry has revealed a number of failures by ICAC in the conduct of its investigation into Mr Hanlon. These failures were significant and warrant discussion. It is important that an integrity body such as ICAC has in place robust systems for ensuring that investigations, referrals for prosecution, and disclosure are in place.
733. However, significant steps have been taken since the Hanlon investigation to remedy these defects. I have also made recommendations about further steps that could be taken to improve ICAC’s systems.
734. Ultimately, I find no evidence that ICAC engaged in corruption or misconduct in public administration. However, I find evidence of maladministration in public administration in the following aspects of ICAC’s conduct:
- 734.1 ICAC’s failure to make proper inquiries, including by obtaining legal advice, about its authority to conduct and the legality of conducting investigations in Germany;
- 734.2 ICAC’s conduct in carrying out investigations in Germany without obtaining approval from local authorities; and
- 734.3 ICAC’s failure to disclose to the DPP the matters set out in paragraph [713] above.
735. I do not find that this conduct was deliberate. Rather, it is evidence of substantial mismanagement in relation to ICAC’s official functions resulting from incompetence or negligence.
736. I accept that Commissioner Vanstone was not aware of any of the matters set out in paragraph [734]. The evidence of maladministration in public administration on the part of ICAC which I have found in this report cannot be attributed to her.

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737. I find that the maladministration in public administration was at an institutional level and cannot be attributed to any one officer.
738. I do not find that the conduct of any ICAC officer warrants referral to SAPOL or another law enforcement agency for further investigation or prosecution. I have also had regard to the measures ICAC has now put in place to prevent such deficiencies from happening in the future. I consider those measures are appropriate and reasonable.

XVIII. Recommendations

739. This part of the Report outlines my recommendations arising from my review into the investigation and prosecution of Mr Hanlon.
740. Under clause 9(1)(c) of schedule 4 of the current *ICAC Act*, I have the power to make any recommendations to ICAC, OPI or the Attorney-General that I think fit arising from my review.
741. I have made these recommendations having regard to the evidence I have examined, submissions from interested parties as well as through oral hearings/examinations. I acknowledge that ICAC has undertaken significant changes in its policies and guidelines following the discontinuance of the prosecution of Mr Hanlon, which I have outlined in **Part XVI**.
742. The steps taken by ICAC represent a significant step in addressing the deficiencies that I identified in my review, and I commend Commissioner Vanstone in undertaking those steps in a timely manner. For that reason, I will not be making any recommendations, where ICAC has already addressed the deficiencies I have outlined in this Report. Although ICAC has addressed the majority of the deficiencies outlined in this Report through changes to its policies, I have identified some areas for improvement which are discussed below. These recommendations relate to ICAC's policies and training. I anticipate making broader recommendations, including recommendations relating to legislative changes, in the annual review.

Obtaining statements from other jurisdictions

743. As discussed in **Part XVI**, the ICAC Investigation Manual contains a new section which now deals with “[a]ctivity and requesting information in other jurisdictions”.⁸⁷⁵ That section outlines considerations relevant for pursuing investigative strategies in other jurisdictions within Australia and in overseas jurisdictions. In relation to investigative strategies that involve attendance, collecting or requesting evidence or information, or serving notices in overseas jurisdictions, the investigator must consult the legal officer attached to the investigation. Approval from the Commissioner must be obtained to travel overseas to perform activities for a Commission investigation.
744. This review has revealed that further oversight is required. It is necessary that there is a central repository of expertise overseeing the provision of legal advice to the Commissioner on this topic.

⁸⁷⁵ Exhibit 177 – ICAC Investigations Manual at p 63-64.

Recommendation 1

745. ICAC revise its Investigation Manual⁸⁷⁶ such that the ICAC Director Legal, in consultation with the assigned legal officer to the investigation, has oversight of all legal advice in relation to investigative strategies involving attendance, collecting or requesting evidence or information, or serving notices in overseas jurisdictions.

Information and records management

746. On 28 March 2023, ICAC approved the Information Management Policy.⁸⁷⁷ Commissioner Vanstone advised that ICAC held a seminar on “*Information Management and Record-Keeping*” on 20 March 2023,⁸⁷⁸ based on the draft Information Management Policy.⁸⁷⁹ The seminar was compulsory for all ICAC officers.⁸⁸⁰ In order to reinforce the importance of information management, given the deficiencies outlined during the investigation of Mr Hanlon, I consider that regular training should be provided to staff on the importance of saving official records.

Recommendation 2

747. ICAC provide regular training to staff on records management and the importance of saving official records in Objective (or any other nominated system).

Referral to law enforcement agency

748. ICAC no longer directly refers matters to the DPP, but rather to a law enforcement agency (i.e., SAPOL). This is now codified in section 36(1a) of the current *ICAC Act*, which provides that ICAC must not refer a matter directly to a prosecution authority but may only refer it to a law enforcement agency who will be responsible for any further investigation and prosecution of the matter. The efficacy of section 36(1a) may be addressed in the annual review.
749. The Investigation Manual includes a new section in relation to “*Referral for Further Investigation and Potential Prosecution*”.⁸⁸¹ That section provides a brief outline of the process, including that the assigned legal officer will prepare a short opinion (no more

⁸⁷⁶ See Exhibit 177 – ICAC Investigations Manual.

⁸⁷⁷ Ibid.

⁸⁷⁸ Exhibit 175 – Commissioner of ICAC, the Hon Ann Vanstone KC, Submission to the Inspector, *Review of the investigation and prosecution of John Hanlon* (17 May 2023) at p 3 under heading ‘Records and document management’. See Exhibit 183 – Independent Commission Against Corruption, ‘Information management and record keeping workshop’ (Agenda and slides, 20 March 2023).

⁸⁷⁹ Ibid at p 1.

⁸⁸⁰ Ibid at p 4.

⁸⁸¹ Exhibit 177 – ICAC Investigations Manual p 14.

than three pages) as to the suitability and reasoning underpinning the draft charges.⁸⁸² This review has considered the importance of communication between ICAC and the prosecuting authority. The insertion of s 36(1a) of the current *ICAC Act* creates a further challenge to ensuring all relevant information is conveyed by ICAC to the prosecuting authority.

750. Further, ICAC possesses significant relevant expertise in the conduct of complex corruption investigations. Both investigators and legal officers are well placed to provide advice to SAPOL in circumstances where, as a result of the establishment of ICAC on 1 September 2013,⁸⁸³ it should not be assumed that all SAPOL officers possess a similar level of expertise as ICAC investigators and legal officers in respect of corruption investigations.

Recommendation 3

751. ICAC revise its Investigation Manual to require the assigned legal officer to provide (where required) comprehensive advice about the investigation including any legal issues arising from the investigation to be provided to SAPOL with the referral of the matter. This advice should not be limited to a specific number of pages as is currently described in the Investigation Manual.

Recording of key decisions

752. Since the investigation of Mr Hanlon, ICAC has developed the draft ICAC Operations Policy which provides that the “*investigation update meeting is to be minuted and the Director Investigations is to task a person to take minutes*”.⁸⁸⁴ These minutes are then entered on the case management system.
753. The draft ICAC Operations Policy also requires the primary investigator to record all key or significant decisions made in the course of an investigation.⁸⁸⁵ The draft policy states that a separate record does not need to be made of decisions made, or directions given, in an “investigation update meeting” provided the decision has been recorded in the minutes relating to that meeting and entered into the case management system.⁸⁸⁶
754. It is my opinion that there should be a central file relating to key decisions made in each matter. This would permit all relevant persons at ICAC to have easy access to

⁸⁸² Exhibit 177 – ICAC Investigations Manual at p 14.

⁸⁸³ South Australia, *South Australian Government Gazette*, No 31, 23 May 2013 at p 2006.

⁸⁸⁴ Exhibit 176 – ICAC draft Operations Policy at p 6.

⁸⁸⁵ Ibid at p 6.

⁸⁸⁶ Ibid at p 6.

relevant decisions in one central file retained for each matter.

Recommendation 4

755. ICAC to revise the draft ICAC Operations Policy so that all significant decisions taken in relation to each investigation allocated a matter number, are recorded in a single document located within Objective. A suitable document template should be developed and implemented by ICAC.

Appendix A

Terms of Reference

The Attorney-General has requested that I, Philip Strickland SC, Inspector, undertake a review into the investigation and prosecution of John Hanlon pursuant to of Schedule 4, clause 2(1)(c) of the Independent Commission Against Corruption Act 2012 (*ICAC Act*).

My review will examine the exercise of power by the Independent Commissioner Against Corruption (ICAC) and Office for Public Integrity (OPI) including:

- whether there was any evidence of:
 - corruption, misconduct or maladministration on the part of ICAC, OPI or employees of ICAC or OPI;
 - unreasonable delay in the investigation; and
 - unreasonable invasions of privacy by ICAC, OPI or employees of ICAC or OPI.
- whether undue prejudice to the reputation of any person was caused.
- whether the practices and procedures of ICAC and OPI were effective and efficient.
- whether ICAC and OPI carried out functions in a manner that was likely to assist in preventing or minimising corruption in public administration.

The areas of the investigation and prosecution that will be the subject of the review include:

- the decision by ICAC to investigate Mr Hanlon
- the investigation of Mr Hanlon by ICAC
- the referral of allegations against Mr Hanlon by ICAC to the Office of the Director of Public Prosecutions
- the impact of ICAC's conduct on the prosecution of Mr Hanlon

The review will be conducted in accordance with my powers under Schedule 4 of the *ICAC Act*, noting the power to make recommendations under clause 9(1)(c) and the powers related to referral and findings of undue prejudice to reputation under clause 9(6).

Any report I prepare will be prepared in accordance with the requirements of Schedule 4, clause 9(9) of the *ICAC Act*.

I am required to deliver the report to the President of the Legislative Council and Speaker of the House of Assembly as required by Schedule 4, clause 9(10) of the *ICAC Act*.

Appendix B

Relevant media coverage and public discourse

Date	Description
25 September 2018	The Hon Stephan Knoll, former Minister, issues a statement that Mr Hanlon and another executive from Renewal SA were “on leave” and that he had appointed an acting chief executive. ⁸⁸⁷
26 September 2018	ABC News publishes an article referring to Minister Knoll’s statement. On the same day, in Parliament the Hon Zoe Bettison refers to Mr Hanlon as “missing” from Renewal SA in Parliament. ⁸⁸⁸
27 September 2018	<p>In Parliament, Minister Knoll is asked questions about Mr Hanlon’s absence during an estimates committee hearing in parliament by the Hon Tom Koutsantonis.⁸⁸⁹ Mr Koutsantonis’ questions included:</p> <ul style="list-style-type: none"> • <i>Is Renewal SA the subject of a search warrant?</i>⁸⁹⁰ • <i>Have any Urban Renewal Authority public sector employees’ homes been the subject of a search warrant?</i>⁸⁹¹ • <i>Has Renewal SA been subject to a law enforcement search warrant?</i>⁸⁹² • <i>Are the three executives on leave subject to an investigation by an integrity agency?</i>⁸⁹³ • <i>Have ICAC raided Renewal SA offices?</i>⁸⁹⁴ <p>The Hon Vickie Chapman, former Attorney-General, issued a statement that she had contacted former Commissioner Lander about the “Renewal SA executives” who confirmed that no information could be made available at this time.⁸⁹⁵ This statement did not identify Mr Hanlon by name.</p> <p>Former Commissioner Lander published a public statement pursuant to s 25 of the <i>ICAC Act</i> which authorised media outlets to publish the Attorney-General’s statement made earlier on the same day.⁸⁹⁶ This statement did not identify Mr Hanlon by name.</p> <p>Media article: ‘ICAC commissioner weighs into Renewal SA Controversy’.⁸⁹⁷</p>

⁸⁸⁷ Exhibit 124 – ‘Renewal SA Chief Executive John Hanlon suddenly goes on leave but Premier won’t say why’ *ABC News* (online, 26 September 2019).

⁸⁸⁸ Ibid; Exhibit 264 – South Australia, *Parliamentary Debates*, House of Assembly, Estimates Committee A, 26 September 2018, 301 (the Hon. Zoe Bettison).

⁸⁸⁹ Exhibit 125 – South Australia, *Parliamentary Debates*, House of Assembly, Estimates Committee A, 27 September 2018, 333-340 (The Hon Stephan Knoll and The Hon Tom Koutsantonis).

⁸⁹⁰ Ibid at p 334.

⁸⁹¹ Ibid at p 335.

⁸⁹² Ibid at p 336.

⁸⁹³ Ibid at p 337.

⁸⁹⁴ Ibid at p 337.

⁸⁹⁵ Exhibit 135.5 – James Taylor, ‘Statement from the Attorney-General’ (Media Release, Attorney-General Vickie Chapman, 27 September 2018).

⁸⁹⁶ Exhibit 89 – Commissioner Lander, ‘Public statement 27 September 2018’ (ICAC, 27 September 2018).

⁸⁹⁷ Exhibit 135.7 – ‘ICAC commissioner weighs into Renewal SA controversy’, *InDaily* (online, 27 September 2018).

Date	Description
23 October 2018	In Parliament, Minister Knoll is asked various questions by Mr Koutsantonis concerning whether Mr Hanlon and Ms Vasilevski are “on leave with full pay”. ⁸⁹⁸ Attorney-General Chapman is asked whether she received a section 54 authorisation from former Commissioner Lander concerning her public statement of 27 September 2019. ⁸⁹⁹
24 October 2018	In Parliament, Mr Koutsantonis asked Minister Knoll whether a review of Renewal SA contract was being undertaken in light of the “ICAC inquiry” into Mr Hanlon and Ms Vasilevski. ⁹⁰⁰
15 November 2018	Article published by The Advertiser indicates SAPOL is investigating a possible breach of the confidentiality provisions in the <i>ICAC Act</i> by Attorney-General Chapman concerning her 27 September 2018 statement. ⁹⁰¹
30 July 2019	Minister Knoll advised Parliament that Mr Hanlon’s executive contract had recently expired and was not renewed. ⁹⁰² Mr Koutsantonis questioned the Minister about the leave Mr Hanlon was on before the expiration of his contract, specifically whether ICAC had “instructed” the minister to not inform the parliament about matters relating to Mr Hanlon. ⁹⁰³ Several media articles were published on or around the same day concerning this exchange. ⁹⁰⁴
6 October 2020	Media article published regarding documents requested by Mr Hanlon under subpoena which were not released pursuant to PII claims by the state. ⁹⁰⁵
18-19 June 2021	Following the concession as to “no case to answer” in the Magistrates Court by Mr Peter Longson, there was significant media reporting of the matter. ⁹⁰⁶
23 June 2021	The Hon Frank Pangallo raised four matters for Attorney-General Chapman to attend to, including the Commissioner for Public Sector Employment investigation, the trip to Germany by ICAC investigators and

⁸⁹⁸ Exhibit 248 – South Australia, *Parliamentary Debates*, House of Assembly, 23 October 2018, 3024-5, The Hon Stephan Knoll and The Hon Tom Koutsantonis).

⁸⁹⁹ Exhibit 248 – South Australia, *Parliamentary Debates*, House of Assembly, 23 October 2018, 3018-9, 3021, 3024 (The Hon Vickie Chapman, Dr Susan Close and The Hon Tom Koutsantonis).

⁹⁰⁰ Exhibit 265 – South Australia, *Parliamentary Debates*, House of Assembly, 24 October 2018, 3114-5 (The Hon Stephan Knoll and The Hon Tom Koutsantonis).

⁹⁰¹ Exhibit 246 – Nigel Hunt, ‘Police assessing if Attorney-General Vickie Chapman breached ICAC secrecy provisions’, *The Advertiser* (online, 15 November 2018).

⁹⁰² Exhibit 247 – South Australia, *Parliamentary Debates*, House of Assembly, 30 July 2019, 318 (The Hon Stephan Knoll).

⁹⁰³ Exhibit 247 – South Australia, *Parliamentary Debates*, House of Assembly, 30 July 2019, 321 (The Hon Tom Koutsantonis).

⁹⁰⁴ See e.g., Exhibit 90 – Leah MacLennan, ‘Minister reveals Renewal SA chief executive John Hanlon has not had contract renewed’, *ABC News* (online 30 July 2019).

⁹⁰⁵ See, e.g., Exhibit 307, Sean Fewster, ‘Ex-Renewal SA boss John Hanlon hits roadblock in ICAC fraud case’, *The Advertiser* (online, 6 October 2020).

⁹⁰⁶ Exhibit 308 – ‘COURT BOMBHELL - Top public servants cleared as case thrown out’, *InDaily* (online, 18 June 2021); Exhibit 309 – ‘ICAC case against former Renewal SA executives thrown out after prosecution concedes lack of evidence’, *ABC News* (online, 18 June 2021); Exhibit 310 – Sean Fewster, ‘ICAC case collapses’, *The Advertiser* (online, 19 June 2021).

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Date	Description
	the “total cost” of the ICAC investigation. Mr Pangallo reiterated the same the next day. ⁹⁰⁷
2 August 2021	Comments made in Parliament ⁹⁰⁸
25 August 2021	Comments made in Parliament. ⁹⁰⁹
6 September 2021	Media article published following the laying of the <i>ex officio</i> indictment against Mr Hanlon. ⁹¹⁰
7 September 2021	Comments made in Parliament. ⁹¹¹
22 January 2022	Media article published regarding Georgina Vasilevski’s settlement regarding legal fees. ⁹¹²
9 November 2022	<p>Media articles published following <i>nolle prosequi</i>.⁹¹³</p> <p>John Hanlon gives media interview⁹¹⁴:</p> <ul style="list-style-type: none"> • “...this started because I disciplined four staff for bullying a young girl in my office.” • “They [the reporter] took fabricated matters to ICAC. With no basis at all, ICAC conducted an investigation. They searched my office for me stealing a book, for me going to the Barossa and having dinner with ... head of the UDIA. And they also said I went to the Melbourne Cup in 2017, which I was no where near the Melbourne Cup I was in Adelaide.” • Reporter: How would you describe this prosecution against you? “You will see when you get the evidence. Remember you’ve only seen a very small part of it. We have presented, the lawyers have presented everything into the courts. You will see in the courts emails between officers of ICAC and the Commissioner talking about how it was imperative for them to get a prosecution, a successful prosecution against me. And at what cost? And at

⁹⁰⁷ Exhibit 266 – South Australia, *Parliamentary Debates*, Legislative Council, 23 June 2021 (The Hon Frank Pangallo); Exhibit 314 – South Australia, *Parliamentary Debates*, Legislative Council, 24 June 2021, 3891-3 (The Hon Frank Pangallo).

⁹⁰⁸ Exhibit 311 – South Australia, *Parliamentary Debates*, Estimates Committee A, 2 August 2021, 264-270 (The Hon Vickie Chapman, The Hon Tom Koutsantonis).

⁹⁰⁹ Exhibit 312 – South Australia, *Parliamentary Debates*, Legislative Council, 25 August 2021, 4013, (The Hon Frank Pangallo).

⁹¹⁰ Exhibit 313 – ‘Ex-Renewal SA boss John Hanlon to again face corruption charges’, *The Advertiser* (online, 6 September 2021).

⁹¹¹ Exhibit 324 – South Australia, *Parliamentary Debates*, House of Assembly, 7 September 2021, 7059 (The Hon Chris Picton).

⁹¹² Exhibit 315– Nigel Hunt, ‘Cleared Renewal SA executive Georgina Vasilevski fights to claw back \$200k in legal fees’, *The Advertiser*, 22 January 2022.

⁹¹³ Exhibit 318 – ‘Abuse of public office charges dropped against former Renewal SA chief executive John Hanlon’, *ABC News* (online, 9 November 2022); Exhibit 319 – ‘DPP drops case against former Renewal SA boss’, *InDaily* (online 9 November 2022); Exhibit 320 – Sean Fewster, ‘Former Renewal SA boss John Hanlon speaks out after ICAC case dropped’, *The Advertiser* (online, 9 November 2022) (video inset).

⁹¹⁴ Exhibit 316, Transcript of ‘John Hanlon speaks after ICAC case dropped (Seven)’, *The Advertiser* (online, 9 November 2022).

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Date	Description
	<p><i>what cost to South Australia? And what cost to our justice system? This needs to stop.</i>"</p> <p>Media release from SA-BEST political party⁹¹⁵:</p> <ul style="list-style-type: none"> • Alleges that ICAC investigators failed to make disclosure regarding "inadmissible" German affidavits • Alleges ICAC Investigators breached international law by travelling to Germany to interview witnesses without the consent of that country's government and failed to follow advice from the Australian government • <i>"Prosecutors formally tendered no evidence...after failing to have the case adjourned, and following ICAC's concession it failed to comply with international law while investigating the case in Germany in 2018"</i> • <i>"ICAC hid evidence (phone data) for three years which supported Mr Hanlon's version of events"</i>
10 November 2022	Media articles published about Commissioner Vanstone's review. ⁹¹⁶
15 November 2022	Comments made in Parliament. ⁹¹⁷
16 November 2022	<p>Comments made in Parliament.⁹¹⁸</p> <p>The Hon Frank Pangallo moves a motion and tables various documents relating to the Hanlon investigation and makes statements as to:</p> <ul style="list-style-type: none"> • the unlawfulness/alleged inadmissibility of the German affidavits • The CCRs regarding non-disclosure and/or that ICAC <i>"doctoring"</i> evidence • Alleged bias and pre-determined guilt as to Mr Baker's memorandum of 15 August 2019 • The case against Mr Hanlon and the vexatious nature of the complaints at first instance
17 November 2022	Comments made in Parliament. ⁹¹⁹
30 November 2022	Debate in Parliament of Motion of the Hon Frank Pangallo. ⁹²⁰

⁹¹⁵ Exhibit 317 – 'SA-BEST demands Royal Commission into ICAC and calls for ICAC Commissioner's sacking', (Media release, SA-BEST, 9 November 2022).

⁹¹⁶ Exhibit 321 – 'ICAC to review Hanlon investigation after case dropped', *InDaily* (online 10 November 2022).

⁹¹⁷ Exhibit 322 – South Australia, *Parliamentary Debates*, Legislative Council, 15 November 2022, 1456-8 (The Hon Kyam Maher and The Hon Frank Pangallo).

⁹¹⁸ Exhibit 323 – South Australia, *Parliamentary Debates*, Legislative Council, 16 November 2022, 1531 (The Hon Frank Pangallo).

⁹¹⁹ Exhibit 325 – South Australia, *Parliamentary Debates*, Legislative Council, 17 November 2022, 1605 (The Hon Frank Pangallo and The Hon Kyam Maher).

⁹²⁰ Exhibit 326 – South Australia, *Parliamentary Debates*, Legislative Council, 30 November 2022, 1708 (The Hon Frank Pangallo).

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Date	Description
1 December 2022	Discussion in Parliament of the appointment of the Inspector. ⁹²¹ Media report on the appointment of the Inspector. ⁹²²
21 February 2023	Comments made in Parliament. ⁹²³
19 April 2023	Media article regarding reimbursement of legal fees incurred by Mr Hanlon. ⁹²⁴

⁹²¹ Exhibit 328 – South Australia, *Parliamentary Debates*, Legislative Council, 1 December 2022, 1772 (The Hon Kyam Maher).

⁹²² Exhibit 327 – Nigel Hunt, 'Philip Strickland SC to investigate ICAC handling of Hanlon case', *The Advertiser* (online, 1 December 2022).

⁹²³ Exhibit 329 – South Australia, *Parliamentary Debates*, Legislative Council, 21 February 2023, 2009.

⁹²⁴ Exhibit 330 – Nigel Hunt, 'Taxpayers pick up \$450k legal fees bill for failed ICAC inquiry', *The Advertiser* (online, 19 April 2023).

Appendix C

Relevant sections of the *ICAC Act* as in force between 4 September 2017 and 30 June 2020.

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) Whilst any potential issue of corruption, misconduct or maladministration in public administration may be the subject of a complaint or report under this Act and may be assessed and referred to a relevant body in accordance with this Act, it is intended—
 - (a) that the primary object of the Commissioner be to investigate corruption in public administration; and
 - (b) that matters raising potential issues of misconduct or maladministration in public administration will be referred to an inquiry agency or to a public authority (unless the circumstances set out in section 7(1)(cb) or (cc) apply).

5—Corruption, misconduct and maladministration

- (1) **Corruption in public administration** means conduct that constitutes—
 - (a) an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
 - (i) bribery or corruption of public officers;
 - (ii) threats or reprisals against public officers;
 - (iii) abuse of public office;
 - (iv) demanding or requiring benefit on basis of public office;
 - (v) offences relating to appointment to public office; or
 - (b) an offence against the *Public Sector (Honesty and Accountability) Act 1995* or the *Public Corporations Act 1993*, or an attempt to commit such an offence; or
 - (ba) an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence; or
 - (c) any other offence (including an offence against Part 5 (Offences of dishonesty) of the

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Criminal Law Consolidation Act 1935) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or

- (d) any of the following in relation to an offence referred to in a preceding paragraph:
 - (i) aiding, abetting, counselling or procuring the commission of the offence;
 - (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
 - (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
 - (iv) conspiring with others to effect the commission of the offence.
- (2) If the Commissioner suspects that an offence that is not corruption in public administration (an **incidental offence**) may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of corruption in public administration (whether or not the Commissioner has identified the nature of that corruption), then the incidental offence is, for so long only as the Commissioner so suspects, taken for the purposes of this Act to be corruption in public administration.
- (3) **Misconduct in public administration** means—
 - (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
 - (b) other misconduct of a public officer while acting in his or her capacity as a public officer.
- (4) **Maladministration in public administration**—
 - (a) means—
 - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
 - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
 - (b) includes conduct resulting from impropriety, incompetence or negligence; and
 - (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

7—Functions

- (1) There is to be an Independent Commissioner Against Corruption with the following functions:
 - (a) to identify corruption in public administration and to—
 - (i) investigate and refer it for prosecution; or
 - (ii) refer it to a law enforcement agency for investigation and prosecution;
 - (b) to assist inquiry agencies and public authorities to identify and deal with misconduct and maladministration in public administration;
 - (c) to refer complaints and reports to inquiry agencies, public authorities and public officers and to give directions or guidance to public authorities in dealing with misconduct and maladministration in public administration, as the Commissioner considers appropriate;
 - (ca) to identify serious or systemic misconduct or maladministration in public administration;
 - (cb) to exercise the powers of an inquiry agency in dealing with serious or systemic maladministration in public administration if satisfied that it is in the public interest to do so;
 - (cc) to exercise the powers of an inquiry agency in dealing with serious or systemic misconduct in public administration if the Commissioner is satisfied that the matter must be dealt with

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in connection with a matter the subject of an investigation of a kind referred to in paragraph (a)(i) or a matter being dealt with in accordance with paragraph (cb);

- (d) to evaluate the practices, policies and procedures of inquiry agencies and public authorities with a view to advancing comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration;
- (e) to conduct or facilitate the conduct of educational programs designed to prevent or minimise corruption, misconduct and maladministration in public administration;
- (f) to perform other functions conferred on the Commissioner by this or any other Act.

23—Assessment

- (1) On receipt by the Office of a complaint or report, the matter must be assessed as to whether—
 - (a) it raises a potential issue of corruption in public administration that could be the subject of a prosecution; or
 - (b) it raises a potential issue of misconduct or maladministration in public administration; or
 - (c) it raises some other issue that should be referred to an inquiry agency, public authority or public officer; or
 - (d) it is trivial, vexatious or frivolous, it has previously been dealt with by an inquiry agency or public authority and there is no reason to reexamine it or there is other good reason why no action should be taken in respect of it, and a determination made as to whether or not action should be taken to refer the matter or to make recommendations to the Commissioner.
- (2) The Commissioner may also assess, or require the Office to assess, according to the criteria set out in subsection (1), any other matter identified by the Commissioner acting on his or her own initiative or by the Commissioner or the Office in the course of performing functions under this or any other Act.

24—Action that may be taken

- (1) If a matter is assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution, the matter must be—
 - (a) investigated by the Commissioner; or
 - (b) referred to South Australia Police or other law enforcement agency.
- (2) If a matter is assessed as raising a potential issue of misconduct or maladministration in public administration, the matter must be dealt with in 1 or more of the following ways:
 - (a) the matter may be referred to an inquiry agency;
 - (b) in the case of a matter raising potential issues of serious or systemic maladministration in public administration—the Commissioner may exercise the powers of an inquiry agency in dealing with the matter if satisfied that it is in the public interest to do so;
 - (c) in the case of a matter raising potential issues of serious or systemic misconduct in public administration—the Commissioner may exercise the powers of an inquiry agency in dealing with the matter if the Commissioner is satisfied that the matter must be dealt with in connection with a matter the subject of an investigation of a kind referred to in subsection (1)(a) or a matter being dealt with in accordance with paragraph (b);
 - (d) the matter may be referred to a public authority and directions or guidance may be given to the authority in respect of the matter.
- (3) If a matter is assessed as raising other issues that should be dealt with by an inquiry agency, public authority or public officer, the matter must be referred, or the complainant or reporting agency advised to refer the matter, to the agency, authority or officer.
- (4) If a matter is assessed as trivial, vexatious or frivolous, the matter has previously been dealt with by an inquiry agency or public authority and there is no reason to reexamine the matter or there

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is other good reason why no action should be taken in respect of the matter, no action need be taken in respect of the matter.

- (5) The same matter, or different aspects of the same matter, may be dealt with contemporaneously under more than 1 subsection.

Example—

A matter that is assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution and a potential issue of misconduct or maladministration in public administration may be dealt with under both subsection (1) and subsection (2).

- (6) A matter may be dealt with under this section even if it is a matter referred to an inquiry agency or public authority under another Act.
- (7) The making of an assessment, and whether action is taken, and what action is taken, in respect of a matter is at the absolute discretion of the Commissioner and, if an assessment is modified in the course of dealing with the matter, the Commissioner may deal with the matter according to the modified assessment.
- (8) Subject to any directions of the Commissioner, reasonable steps must be taken to ensure that a complainant or reporting agency receives an acknowledgement of the complaint or report and is informed as to the action, if any, taken in respect of the matter.

Appendix D

Chronology

Date	Description
20 to 28 September 2017	Mr Hanlon travels to Germany.
8 to 11 November 2017	Mr Hanlon travels to Melbourne during the period when Ms Vasilevski was also in Melbourne.
12 April 2018	Anonymous phone call to the OPI reporting alleged conduct relating improper record keeping by Mr Hanlon (2018/003579).
2 May 2018	The OPI received anonymous report under cover of letter from the Attorney-General's Office (2018/003835). Anonymous report alleged "widespread fraudulent and maladministrative behaviour within Renewal SA" and that Mr Hanlon and Ms Vasilevski used public funds to travel to the 2017 "Melbourne Cup" for non-work related reasons.
3 May 2018	Online report submitted to the OPI alleging "continual bullying" and "fraud, theft and inappropriate conduct" by Mr Hanlon and Ms Vasilevski (2018/003882).
16 May 2018	Commissioner Lander KC agreed with the OPI assessment of 2018/003882 as raising potential matters of corruption in public administration (in respect of the 'Melbourne trip' and improper record keeping'); and potential misconduct regarding bullying. Resolved to investigate the potential corruption matters and refer the potential misconduct matter to Minister Knoll.
17 May 2018	Mr Frost and Ms Bridge assigned to investigation as primary investigator and co-investigator respectively.
22 May 2018	Mr Frost conducted initial inquiries with the reporter of 2018/003882 and contacted further source provided by the reporter.
21 June 2018	Investigation Plan prepared by Mr Frost approved by Commissioner Lander KC.
8 August 2018	Affidavit deposed by a source working within Renewal SA.
22 August 2018	Application made for surveillance device warrant. Application granted on 23 August 2018 by Justice Kelly.
29 August 2018	Applications made for telecommunications service warrants. Application granted on 30 August 2018 by Judge Heffernan.
30 August 2018	Affidavit addendum deposed by a source working within Renewal SA
20 September 2018	Application made for search warrants. Applications granted on 21 September 2018 by Justice Parker.

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Date	Description
24 September 2018	ICAC officers executed search warrants on Renewal SA premises and Mr Hanlon's residence. Mr Hanlon interviewed by ICAC officers for the first time under criminal caution.
26 to 27 September 2018	Media articles reporting that two Renewal SA bureaucrats on leave. Statement made by Minister Knoll that Mr Hanlon and another executive from Renewal SA were on leave.
8 November 2018	Mr Hanlon provided version of events regarding Melbourne matters to ICAC by way of letter from Counsel.
23 November 2018	Application made for search warrant for Renewal SA premises. Application granted same day by Justice Stanley.
3 December 2018	Ms Luu prepared internal assessment of the Melbourne investigation for Commissioner Lander KC to consider for referral to the DPP.
3 December 2018	Commissioner Lander referred the Melbourne matter to the DPP for opinion regarding allegations against Mr Hanlon, Ms Vasilevski and two other Renewal SA employees.
December 2018	Allegations regarding Mr Hanlon backdating financial memoranda re-assessed as raising a potential issue of misconduct or maladministration in public administration. Commissioner Lander referred matter to Minister Knoll for investigation.
14 December 2018	Mr Pearce (DPP) prepared preliminary opinion as to Melbourne referral – <i>prima facie</i> case against Mr Hanlon for various charges.
10 January 2019	DPP Adam Kimber advised Commissioner Lander of preliminary opinion of Mr Pearce.
March 2019	ICAC referred three more matters involving potential misconduct or maladministration concerning Mr Hanlon to Minister Knoll.
22 March 2019	Ms Bridge finalised affidavits regarding Melbourne matters.
23 April 2019	Mr Lander assessed memorandum by Ms Bridge as raising a potential issue of corruption concerning Mr Hanlon's Germany trip in 2017 and determined to investigate the matter. DPP advised ICAC further opinion regarding Melbourne investigation delayed.
28 June 2019	Mr Hanlon attended second interview at ICAC and provided written statement and documents as to version of events (nine co-working spaces) whilst in Germany.
24 July 2019	DPP requested "skeleton brief" regarding Germany matter, Helen Luu prepared memorandum outlining initial inquiries.
30 July 2019	Mr Knoll advised Parliament that Mr Hanlon's contract had expired and was not renewed.
July and August 2019	Ms Bridge made inquiries with the Nine Co-Working Businesses including CRCLR and Mindspace.

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Date	Description
2 August 2019	Ms Luu provided advice re <i>Evidence Act</i> s 66 to Ms Bridge.
16 August 2019	Commissioner Lander approved Mr Baker and Ms Bridge's trip to Germany to conduct further inquiries relating to Mr Hanlon.
7 September 2019	Mr Baker and Ms Bridge travel to Germany.
11 September 2019	Ms Bridge receives the AFP Hague and AFP Interpol emails.
12 September 2019	Mr Baker emailed Mr Lander to provide an update on the Germany trip.
16 September 2019	Mr Lander sends email to Mr Baker responding to 12 September email advising that if a notary is not available that Ms Bridge should witness the statements.
18 September 2019	Ms Bridge and Mr Baker meet with Consul-General Sams.
21 September 2019	Mr Baker and Ms Bridge return to Australia.
25 September 2019	Ms Bridge prepares a memorandum to Commissioner Lander outlining matters outstanding from the Germany trip.
1 October 2019	Mr Lander provides a memorandum in response to Ms Bridge suggesting Ms Bridge speak with Mr Jensen.
2 October 2019	Ms Greenslade provides ICCCA advice to Mr Baker, Ms Bridge and others in ICAC.
22 November 2019	Internal DPP memorandum from Mr Dawes to Ms McDonald assessing there to be a prima facie case that Mr Hanlon committed various offences.
28 November 2019	Ms Bridge finalised her affidavit regarding Germany matter.
29 November 2019	Commissioner Lander referred the Germany matter to the DPP.
16 December 2019	Mr Baker prepared an affidavit addressing inquiries undertaken in Germany.
February 2020	Ms Bridge ceased working at ICAC.
5 March 2020	Information was laid in the Magistrates Court and Mr Hanlon was arrested.
6 March 2020	Delivery certificates x 3 from ICAC to DPP.
18 June 2020	Delivery certificates x 1 from ICAC to DPP.
9 July 2020	Internal DPP memorandum from Mr Petraccaro to Ms McDonald.
July 2020	Ms Luu ceased working at ICAC.
18 June 2021	Mr Longson (DPP) conceded there is no case to answer at the conclusion of the committal hearing in the Magistrates Court.

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Date	Description
7 September 2021	Ms McDonald lays <i>ex officio</i> information in the District Court.
9 September 2021	Internal DPP memorandum from Ms McDonald to Mr Hinton.
12 October 2021	Mr Hanlon's trial is first listed for 31 October 2022.
7 September 2021	Ms McDonald lays <i>ex officio</i> information in the District Court.
19 October 2021	Mr Hanlon files application for stay of proceedings.
22 October 2021	Mr Hanlon was arraigned. The trial is listed for 31 October 2022.
2 February 2022	First Directions Hearing to address defence application for permanent stay of proceedings.
21 March 2022	Directions hearing. Date for hearing the stay application adjourned to 6 June 2022.
20 April 2022	Directions hearing. Defence applies to issue subpoenas to Attorney-General, DPP and ICAC.
18 May 2022	Hearing for argument concerning subpoena application.
6 June 2022	Directions hearing. Date for stay application adjourned to 15 August 2022.
26 July 2022	Subpoena ruling and directions hearing. Date for stay application adjourned.
26 September 2022	Hearing of argument for stay application.
10 October 2022	DPP becomes aware of the need to obtain MAR to have German witnesses appear by audio-visual link.
12 October 2021	Matter was listed for trial to commence on 31 October 2021
19 October 2021	Mr Hanlon files application for stay of proceedings
24 October 2022	Defence application for stay dismissed by Judge Heffernan.
25 October 2022	ICAC served with subpoena issued by the District Court.
1 November 2022	Subpoena was returned in the District Court.
2 and 3 November 2022	Mr Baker and Ms Bridge prepared further affidavits addressing the understanding of the MAR process. Mr Baker and Ms Bridge give evidence in the District Court.
8 November 2022	Judge Heffernan refused the DPP's application for an adjournment. DPP applied under section 34KA(2)(c) to tender the affidavits of the German witnesses. Judge Heffernan excluded the affidavits.
9 November 2022	DPP filed a <i>nolle prosequi</i> in relation to the prosecution of Mr Hanlon.