

Annual Report of the
Inspector of the
Independent Commission
Against Corruption,
the Office for Public
Integrity, and
Ombudsman SA

For the period
1 July 2023 to 30 June 2024



OFFICE OF
THE INSPECTOR



OFFICE OF THE INSPECTOR

OFFICIAL

27 September 2024

The Honourable Terry Stephens MLC
President
Legislative Council
Parliament House
ADELAIDE SA 5000

The Honourable Leon Bignell MP
Speaker
House of Assembly
Parliament House
ADELAIDE SA 5000

By hand

Dear President and Speaker

It is my privilege to present the second Annual Report of the Inspector of the Independent Commission Against Corruption (**Commission**), the Office for Public Integrity (**OPI**) and Ombudsman SA to Parliament.

This Annual Report incorporates:

- the 2023–24 annual review examining the operations of the Commission and the OPI and information about reviews of relevant complaints and other reviews undertaken during the 2023–24 financial year;¹
- the 2023–24 annual review examining the operations of Ombudsman SA and information about reviews of relevant complaints undertaken during the 2023–24 financial year.²

Yours faithfully

A handwritten signature in blue ink, appearing to read 'S. Plummer'.

Stephen Plummer
Acting Inspector

¹ Pursuant to *Independent Commission Against Corruption Act 2012* (SA) Sch 4 cl 2(1)(a)-(b).

² Pursuant to *Ombudsman Act 1972* (SA) s 29(1)(a)-(b).



OFFICE OF
THE INSPECTOR

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From the Acting Inspector

On 1 May 2024, I commenced to act in the role of Inspector of the Independent Commission Against Corruption (**Commission**), Office for Public Integrity (**OPI**) and Ombudsman SA. This is the second Annual Report to be presented to the Parliament of South Australia by the Inspector.

I have acted in the role of Inspector following the resignation of Mr Philip Strickland SC who was the inaugural Inspector. Mr Strickland SC led the Office of the Inspector from its inception until 30 April 2024. The position of Inspector is currently vacant. I look forward to working with the new Inspector when they are appointed.

I am supported by a team of lawyers and administrative staff who are committed to the Office of the Inspector and its part in contributing to the integrity framework in South Australia. I thank the staff for their commitment and enthusiasm.

The 2023–24 financial year was one of considerable output. Mr Strickland SC and I received 64 matters and finalised 39 of those matters within the reporting period. In addition to this work, Mr Strickland SC and I finalised 36 matters carried over from the previous financial year. Mr Strickland SC delivered three reports to Parliament on 29 April 2024:

- Report 2024/01: Review of the investigation and prosecution of Mr Trent Rusby;
- Report 2024/02: Review of the investigation and prosecution of Chief Superintendent Douglas Barr; and
- Report 2024/03: Review of PIR8E17253 and complaint of Mr Michael Fuller.

These three reports followed the report of the review of the investigation and prosecution of Mr John Hanlon (**the Hanlon Review**) delivered on 26 June 2023.

The last financial year has also been a period of internal review and consolidation. The Office of the Inspector has developed effective working relationships with the integrity agencies over which it has jurisdiction. Memorandums of Understanding have been signed between this Office and each of the integrity agencies formalising how our agencies interact with one another. Ensuring the security of information held by the Office of the Inspector and each integrity agency is a priority.

During the reporting period and more recently, there have been significant changes in positions of leadership within the integrity agencies. In late 2023, Mr Wayne Lines resigned as Ombudsman after nine years in that role. Ms Emily Strickland commenced as the Ombudsman on 1 January 2024. Mr Steven Strelan recently resigned as Deputy Ombudsman having been appointed to that position in October 2021. That position is currently vacant. Ms Julie-Anne Burgess was appointed the Chief Executive Officer of the Commission in November 2023. Commissioner Vanstone's resignation took effect on 6 September 2024 and Mr Ben Broyd currently acts in the role of Commissioner until such time as the Commissioner is appointed.

Mr Strickland SC and I maintained strong working relationships with the former Commissioner, former Ombudsman, and former Deputy Ombudsman since the inception of the Office of the Inspector in December 2022. Each supported the role of the Inspector and cooperated with this Office as we have conducted our reviews. I wish each of them well. This Office has maintained an effective working relationship with each of the integrity agencies following the changes of leadership.

The Office of the Inspector continues to strive to review complaints efficiently, accurately, thoroughly and with respect for the individuals involved.

The integrity agencies in South Australia are strengthened by the oversight provided by an Inspector. An Inspector contributes to the public trust in government and public administration by providing a check on the exercise of power by the integrity agencies. The powers exercisable by integrity agencies affect ordinary civil rights; however, they are considered essential in the investigation of corruption, maladministration and misconduct. The Inspector provides the system with a complaint mechanism that can review the exercise of those powers and functions and report to Parliament, as I do now in this report.

My focus has been to continue the good work conducted by the inaugural Inspector in contributing to the integrity framework in South Australia. I strive to conduct my role as transparently as possible within the legislative framework in which I operate.

Much has been said publicly in recent months about the integrity legislation in South Australia. In the 2022–23 Annual Report, the former Inspector stated the following:

In my opinion, the legislative scheme in which the integrity agencies operate within South Australia is fraught with inconsistencies, obstacles, and anomalies. The legislation makes it more difficult for me to perform my role. More significantly, it impacts each agency's ability to ensure the integrity of public administration in this state.

A broad review of the integrity laws is necessary.

Mr Strickland SC made those comments following 10 months in the role of Inspector and having completed the Hanlon Review. Their meaning could not have been plainer. Mr Strickland SC supplemented his own interactions with the legislation by seeking submissions from each of the integrity agencies, and other impacted agencies, as to proposed legislative reforms.

In the 2022–23 Annual Report, Mr Strickland SC included a summary of the matters of significance as he saw them, impacting his role as Inspector. I do not repeat those matters here; however, throughout the time that I have been Deputy Inspector and acted in the role of Inspector, I have confronted the same obstacles and anomalies referred to in that report.

Undoubtedly, the *Independent Commission Against Corruption Act 2012 (ICAC Act)* and *Ombudsman Act 1972 (Ombudsman Act)* are in need of review. I understand that the Commission, the OPI, and Ombudsman SA shared Mr Strickland SC's concerns and all agencies agree that an independent and substantive review of the legislative scheme is needed. Such a review should be wide reaching and not limited to the ICAC Act and Ombudsman Act. The *Police Complaints and Discipline Act 2016*, the *Telecommunications (Interception and Access) Act 1979 (Cth)* and *Public Interest Disclosure Act 2018* all require considered review.

Finally, I extend my gratitude to the staff of the Attorney-General's Department (**AGD**) and the Crown Solicitor's Office for their ongoing support to this Office. I am also grateful for the continued cooperation of the Director of Public Prosecutions and Commissioner of Police.



Stephen Plummer
Acting Inspector

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Report pursuant to Schedule 4 of the *Independent Commission Against Corruption Act 2012* and section 29 of the *Ombudsman Act 1972*

For the period 1 July 2023 to 30 June 2024

This Annual Report is made pursuant to clause 2(1)(a) of Schedule 4 of the *Independent Commission Against Corruption Act 2012*, and sections 29(1)(a) and 29(11) of the *Ombudsman Act 1972*. This Annual Report deals with the work of the Office of the Inspector during the 2023–24 financial year.

Acronyms and abbreviations

AGD	Attorney-General's Department
Commission	Independent Commission Against Corruption
Commissioner	The Honourable Ann Vanstone KC, Commissioner
CPIPC	Crime and Public Integrity Policy Committee
Director of the OPI	Ms Emma Townsend
IIS	Internal Investigation Section of South Australia Police
Ombudsman	Ms Emily Strickland
Ombudsman SA	Office of the South Australian Ombudsman
OPI	Office for Public Integrity
SAPOL	South Australia Police

Office of the Inspector

I, Stephen Plummer, was appointed as the Deputy Inspector by Her Excellency the Governor in Executive Council on 5 June 2023. I have acted as the Inspector since 1 May 2024. I also acted as the Inspector from 13 to 23 December 2023 and on 11 April 2024.

The former Inspector, Mr Strickland SC, held the appointment of Inspector from 5 December 2022 until 30 April 2024.

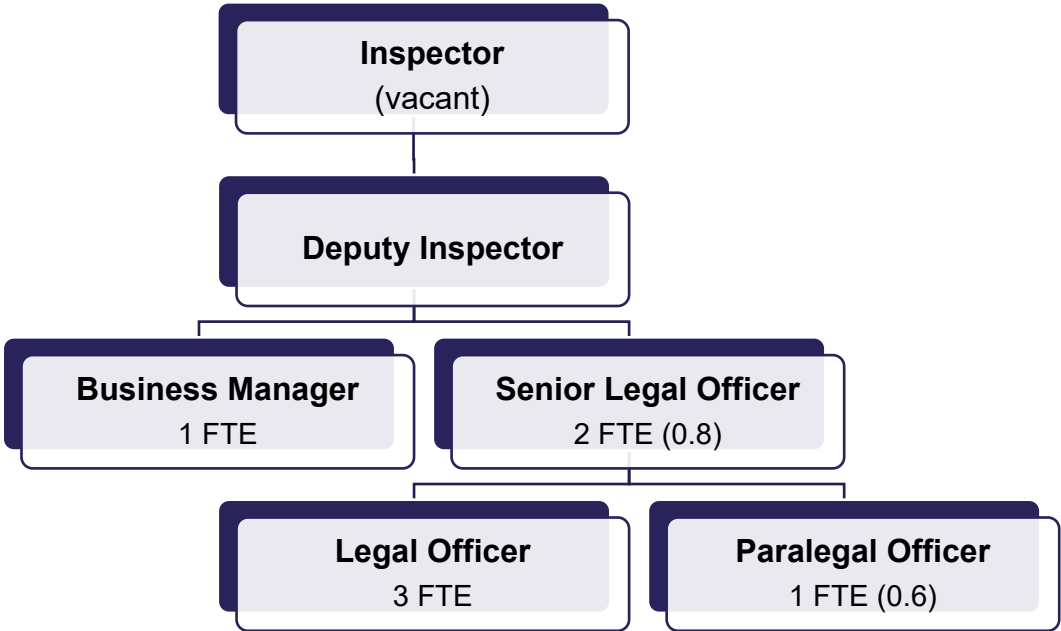
The functions and powers of the Inspector are set out in Schedule 4 of the ICAC Act and section 29 of the Ombudsman Act. The Inspector’s statutory functions include:

- the conduct of annual reviews examining the operations of the Commission, the OPI and Ombudsman SA during each financial year;
- the conduct of reviews of relevant complaints received by me under the ICAC Act and the Ombudsman Act;
- the conduct of other reviews on my own motion, or at the request of the Attorney-General or the Crime and Public Integrity Policy Committee (**CPIPC**);
- other functions conferred on me by other Acts.

Organisational structure

I am assisted in my role as the Acting Inspector by the staff of the Office of the Inspector, whose administrative, technical, and legal support continues to be invaluable. At times, we have operated under significant time pressures, and I am thankful for their considerable efforts.

As of 30 June 2024, the Office of the Inspector consisted of eight Full Time Equivalent (**FTE**) employees, including the Acting Inspector/Deputy Inspector, two Senior Legal Officers, three Legal Officers, a Paralegal and a Business Manager.



The organisational structure of the Office of the Inspector remained largely unchanged from the previous financial year. Notable changes included the resignation of Mr Strickland SC as Inspector on 30 April 2024 and the filling of the Paralegal position to undertake legal, policy and administrative support.

Staff recruitment continued during the financial year with two new Senior Legal Officers joining the Office adding further experience and stability. The Office awaits the appointment of the Inspector.

The Inspector makes use of the services of staff of the AGD. Accordingly, staff of the Office of the Inspector are required to comply with departmental performance and development processes. Performance review discussions continue to play an important role in staff development. These discussions involve setting objectives, goals, and development plans for the upcoming year. As of 30 June 2024, 100% of Office of the Inspector staff completed and recorded their bi-annual performance review and development discussion as required of staff of the AGD.

The Office of the Inspector recorded no workplace injury claims or return to work costs in the 2023–24 financial year. There were no notifiable incidents under Part 3 of the *Work Health and Safety Act 2012*.

Financial statements

Refer to **Annexure A – Financial Statements** for the Office of the Inspector’s financial statements for the 2023–24 financial year.

Inspector's functions and powers

In aid of me fulfilling my statutory functions, I have been given various powers under Schedule 4 of the ICAC Act and section 29 of the Ombudsman Act.

The powers vested in me for the purposes of conducting a review include:

- I may take evidence on oath or affirmation or permit a witness to give evidence by other means, including written evidence;
- I may issue summonses to require a person to appear before me to give evidence or produce documents or other things;
- I have powers contained within Schedule 2 of the ICAC Act regarding the conduct of examinations of witnesses;
- I may require a person to produce documents or things, or provide information, or to verify information by statutory declaration, or examine or make copies of any document or thing;
- I may enter and search any place or vehicle occupied by the Commission, the OPI, Ombudsman SA or the Judicial Conduct Commissioner;³ or
- I may apply for a warrant from a magistrate to search any place or vehicle other than a place or vehicle occupied by the Commission, the OPI, Ombudsman SA, or the Judicial Conduct Commissioner.

Other functions and powers vested in me include:

- I may refer a matter to the relevant law enforcement agency for further investigation and potential prosecution;
- I may refer a matter to the Commission, the OPI, Ombudsman SA, or a public authority for further investigation and potential disciplinary action;
- if I find that undue prejudice to the reputation of any person has been caused by the Commission, the OPI, or Ombudsman SA, I may publish a statement or material that I think will help alleviate that prejudice, or recommend that the Commission, the OPI, or Ombudsman SA pay an amount in compensation to that person;
- I may disclose any information I have in respect of a matter to the relevant law enforcement agency, or to the Commission, the OPI, Ombudsman SA, or any other public authority.

In exercising these functions and powers, I must bear in mind the objects of the ICAC Act, which aims 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. The ICAC Act recognises that the

³ The effect of the reference to an 'inquiry agency' within clause 8 of Schedule 4 of the ICAC Act is that the Inspector may enter and search a place or vehicle occupied by the Judicial Conduct Commissioner, an independent statutory officer over whom the Inspector has no oversight.

balance may be weighted differently in relation to corruption in public administration as compared to misconduct or maladministration in public administration.

Overview of the Inspector’s work

The work of the Inspector is largely to undertake reviews of matters concerning the conduct of the Commission, the OPI and Ombudsman SA under the ICAC Act and the Ombudsman Act. Such matters typically originate from three sources – **complaints** including those reported by the Commission, the OPI and Ombudsman SA, **requests** from either the Attorney-General or the CPIPC, and public **submissions**.

Reviews of matters concerning the conduct of the Commission, the OPI and Ombudsman SA can also be conducted on the Inspector’s own motion.

Matters carried over from previous financial year

As of 1 July 2023, 38 matters received by the Inspector in the previous financial year had not been finalised.

Matters carried forward	Number of matters
Complaints	31
Requests	1
Submissions	6
TOTAL	38

Whilst the six submissions were not finalised by the end of the last financial year, the Inspector considered them in the first annual review dated 27 September 2023.⁴

⁴ *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021 (SA)* Sch 1 cl 75.

Complaints

During the 2023–24 financial year, 61 complaints were received by the Inspector. 52 complaints were made by members of the public or public officers. The remaining nine complaints were raised by the Commission, the OPI or Ombudsman SA either about their own conduct or the conduct of another agency.

Source of complaint	Number of complaints
Complained to the Inspector	52
Self-reported by an agency	7
Reported by an agency	2
TOTAL	61

In total, the Inspector considered 92 complaints (31 carried forward and 61 received) during the 2023–24 financial year.

Jurisdiction	Number of complaints
Under the ICAC Act	
Review of a relevant complaint ⁵	42
Under the Ombudsman Act	
Review of a relevant complaint ⁶	11
No review commenced	
Complaint not relevant / no further action	32
Not yet determined	7
TOTAL	92

⁵ *Independent Commission Against Corruption Act 2012* (SA) Sch 4 cl 2(1)(b).

⁶ *Ombudsman Act 1972* (SA) s 29(1)(b).

The majority of the complaints received related to the conduct of the Commission, the OPI or Ombudsman SA. It was often the case that complainants complained about more than one agency. For the purposes of the table below, the number of complaints about each agency reflects the number of complaints received about that individual agency. For example, one complaint about the Commission and Ombudsman SA has been reported as a complaint made about each agency.

Relevant agency	Complaints carried over from 2022-23 FY	Complaints received in 2023-24 FY	TOTAL
Commission	12	9	21
OPI	18	29	47
Ombudsman SA	3	12	15
Other/unclear ⁷	5	27	32

As of 30 June 2024, 68 of the 92 complaints had been finalised. 24 complaints remained under consideration and have been carried over into the 2024–25 financial year.

Status of complaints as of 30 June 2024	Number of complaints
Finalised	68
Under consideration	24
TOTAL	92

Own motion reviews

In the Inspector’s first annual review, the former Inspector considered several matters received as historical submissions.⁸ Mr Strickland SC determined that two of those matters raised significant issues that included, but went beyond, the issue of undue prejudice to reputation and warranted a more detailed review that broadly included the exercise of powers and functions by the Commission. As a result, Mr Strickland SC determined to conduct two reviews on his own motion under clause 2(1)(c) of Schedule 4 of the ICAC Act.

⁷ Some complaints contained allegations about a relevant agency as well as other bodies outside of the Inspector’s jurisdiction.

⁸ Pursuant to clause 75(1) of Schedule 1 to the Amending Act.

The reports of those reviews were delivered to Parliament on 29 April 2024 in accordance with the requirements in clause 9 of Schedule 4 of the ICAC Act.⁹

In addition, I, in my capacity as the Acting Inspector, determined that three matters raised with me in the 2023–24 financial year warranted reviews on my own motion. Those matters were raised by either the OPI or Ombudsman SA about their own conduct or the conduct of another agency. Those reviews will be considered in the 2024–25 financial year.

Status of own motion reviews as of 30 June 2024	Number of reviews
Finalised	
Under the ICAC Act ¹⁰	2
Under review	
Under the ICAC Act ¹¹	2
Under the Ombudsman Act ¹²	1
TOTAL	5

Requests from the Attorney-General or the CPIPC

One request to conduct a review from the Attorney-General, the Honourable Kyam Maher MLC, was carried over from the previous financial year. Mr Strickland SC’s report on that review was delivered to Parliament on 29 April 2024 in accordance with the requirements of clause 9 of Schedule 4 of the ICAC Act.¹³

During the 2023–24 financial year, the Inspector did not receive any requests to conduct reviews from the Attorney-General or the CPIPC.¹⁴

⁹ Report 2024/01 Review of the investigation and prosecution of Mr Trent Rusby, 29 April 2024; Report 2024/02: Review of the investigation and prosecution of Chief Superintendent Douglas Barr, 29 April 2024.

¹⁰ Pursuant to clause 2(1)(c) of Schedule 4 of the ICAC Act.

¹¹ Pursuant to clause 2(1)(c) of Schedule 4 of the ICAC Act.

¹² Pursuant to section 29(1)(c) of the Ombudsman Act.

¹³ Report 2024/03: Review of PIR8E17253 and complaint of Mr Michael Fuller, 29 April 2024.

¹⁴ Pursuant to clause 2(1)(c) of Schedule 4 of the ICAC Act or section 29(1)(c) of the Ombudsman Act.

Submissions

Prior to commencing this annual review, I made a call for public submissions in relation to the operations of the Commission, the OPI and Ombudsman SA during the 2023–24 financial year.¹⁵ A notice was published in the Gazette and on the Office of the Inspector’s website on 27 June 2024.

I received five submissions in response to my call for public submissions. Of the five submissions, three submissions did not concern the operations of an agency within the 2023–24 financial year. Those matters are being considered as complaints in the 2024–25 financial year.

The remaining two submissions related to the operation of Ombudsman SA in the 2023–24 financial year. I have commenced my review of the two submissions, however for procedural fairness reasons, and the complexity of the issues raised, my review of those two submissions will continue beyond the date that this report is delivered. As such, I have determined to continue my review of these two submissions on my own motion pursuant to section 29(1)(c) of the Ombudsman Act.

Appearances and attendances

Other notable work of the Office of the Inspector included appearances and attendances at various committees and meetings.

Mr Strickland SC and I appeared before two Parliamentary Committees in the 2023–24 financial year. We appeared before the CPIPC on one occasion and the Select Committee on Damage, Harm or Adverse Outcomes resulting from ICAC Investigations on one occasion.

Mr Strickland SC made a submission to the CPIPC’s *Inquiry into the performance of functions and exercise of powers by the Ombudsman* on 25 March 2024.

Additionally, Mr Strickland SC published a Corrigendum Report to the Reviewer’s 2021–22 Annual Report.

Mr Strickland SC and I presented at events relevant to the integrity framework of South Australia. Mr Strickland SC presented at the South Australian Integrity Agency Education Day, whilst I presented at the Regional CEO Forum in Victor Harbor on 2 November 2023.

¹⁵ In accordance with clause 9(2) of the ICAC Act and section 29(4) of the Ombudsman Act.

Key statistics

The below table summarises the work of the Inspector throughout the 2023–24 financial year and the status of matters as of 30 June 2024. It includes 38 matters carried over from the previous financial year, 61 complaints received in the 2023–24 financial year, and five reviews conducted on the Inspector’s own motion.

Status of matters as of 30 June 2024	Finalised	Not finalised	TOTAL
Complaints			
Relevant complaints (ICAC Act)	33	9	42
Relevant complaints (Ombudsman Act)	7	4	11
Own motions (ICAC Act)	2	2	4
Own motions (Ombudsman Act)		1	1
Complaint not relevant / no further action	28	4	32
Not yet determined		7	7
Requests			
From the Attorney-General	1		1
Submissions			
Under the Amending Act	6		6
TOTAL	77	27	104

Inspector's annual reviews of the Commission, the OPI and Ombudsman SA

In undertaking an annual review, I am required by the ICAC Act and Ombudsman Act to make a public call for submissions in relation to the operations of the Commission, the OPI, and Ombudsman SA for the reporting period, in this case the 2023–24 financial year.

On 27 June 2024, a notice calling for public submissions in relation to the annual review was published in the South Australian Government Gazette, on the Office of the Inspector's website, and in the Adelaide Advertiser. Submissions were open until 1 August 2024.

In conducting an annual review under the ICAC Act and the Ombudsman Act, I am required to form a view in relation to the operations of the Commission, the OPI and Ombudsman SA throughout the 2023–24 financial year. Whilst the findings in this annual review are my own, they are informed by the reviews conducted by the former Inspector during the reporting period.

Examples of complaints considered by me (as the Acting Inspector)¹⁶ and the former Inspector during this reporting period have been summarised below to provide some context to the information and findings in each annual review. The examples do not necessarily concern matters related to conduct that occurred during the 2023–24 financial year. Examples should be considered in the context of the high volume of matters considered by each agency.

¹⁶ There is no power for the Inspector to delegate functions to the Deputy Inspector or any other person within Schedule 4 of the ICAC Act.

Summary of complaints received relating to the Commission, the OPI and Ombudsman SA

Example 1

This matter involved a complaint to the Inspector about the OPI and Ombudsman SA. The complaint related to four issues. As the complainant had made numerous complaints about multiple agencies over a number of years, consideration of all four issues required a detailed review of 14 OPI files and three Ombudsman SA files. It was determined that each of the issues had been handled appropriately by both the OPI and Ombudsman SA.

The first issue related to the complainant being unable to transfer a Community Based Order from interstate to South Australia. The complainant had complained about this to both Ombudsman SA and the OPI. Ombudsman SA had made appropriate enquiries with the Department for Correctional Services (**DCS**) in relation to why a transfer had been denied. The OPI had given appropriate consideration to the legal issues relating to such a transfer and had regard to the fact that the issue had already been brought to the Ombudsman's attention. No further action was warranted in relation to this issue.

The second issue related to an alleged theft of the complainant's personal property by a staff member of a health facility. The complainant had complained to the OPI about the alleged theft. The OPI determined to refer the issue to the health facility for further consideration and action as the facility considered appropriate. The facility was not satisfied that a theft had occurred but did identify that there had been a delay in returning personal property to the complainant and had taken action to reinforce property documentation requirements with staff to prevent a similar issue arising in the future. The facility had also apologised to the complainant and sought to compensate the complainant for the item that the complainant believed to be stolen. Although the complainant remained dissatisfied with the outcome, the OPI had acted appropriately, and no further action was warranted in relation to this issue.

The third issue related to the conduct of health professionals in the context of proceedings under the *Mental Health Act 2009* (SA) involving the complainant before the South Australian Civil and Administrative Tribunal (**SACAT**). It was alleged that a health professional had lied before the SACAT. The OPI correctly identified that there was not a sufficient basis to support the allegation, that it could not overturn or substitute any decision made by SACAT and that the appropriate avenue for the complainant to raise the issues was with SACAT including, if necessary, in any review or appeal proceedings. No further action was warranted in relation to this issue.

The proceedings in the SACAT related to a Community Treatment Order (**CTO**). The complainant was subject to a CTO and asked that the Inspector cease the CTO. The complainant had complained to the OPI about the same matter. The OPI's assessment of the complaint was reviewed, and the complainant was advised that CTOs are made by psychiatrists, other authorised medical practitioners or by SACAT. The complainant was advised that neither the OPI, nor the Inspector, has the jurisdiction to overturn or substitute any decision made by SACAT.

The fourth issue related to serious allegations of criminal conduct made by the complainant about public officers. The complainant alleged that the allegations had not been properly investigated. The complainant first complained to DCS and then, before receiving any

outcome from DCS, complained to Ombudsman SA about this same issue. Ombudsman SA requested that DCS inform the Ombudsman of the outcome of the DCS complaint. DCS subsequently informed the complainant and Ombudsman SA that the DCS Complaints Assessment Panel had considered the complaint and determined that, as the complainant was no longer imprisoned and given the serious nature of the allegations, that the complainant should report the allegations to SAPOL to ensure appropriate action was taken. The Ombudsman was satisfied with this outcome and considered that SAPOL was best able to deal with the complainant's allegations.

The complainant then complained about the police investigation to the OPI about the same issue. The OPI appropriately referred the complaint to the Internal Investigation Section (IIS) of SAPOL pursuant to the *Police Complaints and Discipline Act 2016 (PCD Act)*. The IIS considered SAPOL records which demonstrated that the complainant had reported the allegations to SAPOL who had determined that no substantive offence was committed or could be proven. The IIS determined that an investigation of the complaint was unnecessary or unjustifiable and that no action would be taken. The OPI agreed with the IIS' assessment.

In order to thoroughly review the OPI's oversight of the IIS decision in relation to the complaint, I issued a Notice to Produce pursuant to clause 7 of Schedule 4 of the ICAC Act requiring production of documents relevant to this issue. The documents produced demonstrated that the matter had been reported to and considered by SAPOL, and that the conduct of the OPI in reviewing the IIS determination was appropriate. In these circumstances no further action was necessary.

Example 2

A complaint was made to the Inspector about the OPI in relation to the conduct of police officers during their arrest. The complainant made various allegations relating to their arrest including alleging that their arrest was unlawful, that they were assaulted when being arrested, that they had been abducted by being taken to a police station and that officers had used offensive language towards them.

The OPI appropriately referred the complaint to the IIS pursuant to the PCD Act. The IIS reviewed relevant materials including the warrant for the complainant's arrest and body worn video footage of the complainant's arrest and conveyance to a police station. The IIS considered that no criminal offences by any SAPOL officers nor any breach of the Code of Conduct was identified and that, having regard to all of the circumstances of the case, an investigation of the complaint was unnecessary or unjustifiable.

The OPI agreed with the IIS' assessment and noted that a portion of the body worn camera footage had been reviewed. However, the OPI did not describe precisely what had been viewed and it was unclear whether the OPI employees had given specific consideration to the content and tone of a number of comments made by the primary arresting officer to the complainant when conveying the complainant to the police station (as opposed to the arrest of the complainant at their home).

All documentary material reviewed by the OPI, and the body worn video footage of the complainant's arrest and conveyance to a police station was reviewed by this Office. Upon viewing the footage, it was determined that the complainant's allegation that an arresting

officer had used offensive language had merit and could amount to a breach of clause 7(b) and/or 7(c) of the Code of Conduct which provides:

A designated officer, in dealing with members of the public in the course of his or her employment, or in dealing at any time with designated officers, police medical officers or other persons employed in or performing duties or functions in the department—

- (a) must not unlawfully discriminate against any person; and*
- (b) must not behave in an oppressive, offensive, abusive or insulting manner; and*
- (c) must be impartial and respectful.*

I wrote to the Director of the OPI making a recommendation pursuant to clause 9(1)(c) of Schedule 4 of the ICAC Act that the OPI re-open the complainant's OPI complaint and consult with the Officer in Charge of the IIS with a view to reassessing the complaint and/or substituting its own assessment of the complaint pursuant to section 28(1) of the PCD Act.

The Director of the OPI subsequently wrote to the IIS to request that the IIS re-open its file with a view to reassessing the conduct in question. I provided the complainant with an explanation of the outcome of their complaint.

Example 3

A complaint was made to the Inspector about the OPI's oversight of a police complaint. The complainant alleged that their relative had been assaulted by police during an arrest.

The complainant's initial complaint to the OPI was referred to the IIS. Prior to the assessment of that complaint, the IIS received a Ministerial complaint concerning the same subject matter. In relation to the Ministerial complaint, the IIS reviewed the body worn video footage of the arrest and determined that there was no breach of the Code of Conduct. The IIS determined to take no further action in relation to the initial complaint given the matter had been assessed as part of the review of the Ministerial complaint.

The complainant again complained to the OPI about the same issue. The OPI did not refer that complaint to the IIS as required by section 13(2) of the PCD Act.

I wrote to the Director of the OPI requesting an explanation as to why the complaint was not referred to the IIS. The OPI accepted that the complaint should have been referred to the IIS. The Director also advised that a formal recontact policy had been initiated and that the Intake Team at the OPI would be provided with training on the processes in that policy.

It was determined that there was no detriment caused by the OPI not referring the complaint to the IIS given the matter had already been assessed by the OPI and the complaint raised no new information.

Example 4

A complaint was made to the Inspector about the OPI declining to authorise the complainant to disclose certain information pursuant to section 54(3) of the ICAC Act. At the time of making their complaint to the Inspector, the complainant was a prisoner.

The complainant had made previous complaints to the OPI about numerous matters. The complainant sought the Director of the OPI's authorisation to provide some of the material

that formed part of their previous complaints to the OPI to a third party. The Director of the OPI declined to authorise the complainant to disclose the material.

The materials were reviewed by this Office, and it was determined that it was within the Director's discretion to decline to authorise the complainant to disclose the materials.

It was determined that there was no error in the exercise of a power or performance of a function in the Director's decision.

Example 5

A complaint was made to the Inspector about the OPI and the Commission. Some of the content of the complaint was offensive, nevertheless, the complainant raised genuine issues for review that required careful consideration. The complainant was frustrated and confused with the information provided to them.

The complainant had previously complained to the OPI about a police officer.

Instead of referring the complaint to the IIS pursuant to section 13 of the PCD Act, the OPI referred the complaint to the Commission pursuant to section 29(1) of the PCD Act. It was the opinion of the Director of the OPI that the complaint related to matters that should be dealt with by the Commission. The complainant was advised that their complaint had been referred to the Commission.

The referral was not accepted by the Commission on the basis that the Commissioner did not agree that it was appropriate for the Commission to investigate the matter.

The OPI reconsidered the complaint and decided to refer the matter to the IIS on the basis that there was no longer any reason why the matter should not be referred to the IIS. The complainant was subsequently advised by the OPI that their complaint would be dealt with by the IIS pursuant to section 13(2) of the PCD Act.

I considered the referral to the IIS and that it was outside of the legislated timeframe of three days pursuant to section 13 of the PCD Act. I was satisfied that this was reasonable in the circumstances due to the nature of the issues raised in the complaint and the fact that the matter was initially referred to the Commission.

Although I found the referral to the IIS to be reasonable, I considered the manner in which the OPI communicated with the complainant about the decision to refer to the IIS could have been improved and likely contributed to the complainant's frustration and confusion.

I wrote to both the Commissioner and Director of the OPI in relation to the issues raised in this matter. I urged both agencies to consider an agreed position on: the interpretation of section 21(14) of the PCD Act; the powers of delegation within IIS; the referral of complaints by the OPI to the Commission pursuant to section 29 of the PCD Act; and the agency responsible for communicating the referral to the complainant. Further explanation was provided to the complainant.

Example 6

A complaint was made to the Inspector that the Ombudsman had not provided the complainant with procedural fairness.

The Ombudsman had written to the complainant advising that she intended to end her consideration of the complaint unless the complainant was able to identify an error in her assessment of the matter. The complainant was asked to contact Ombudsman SA within one week of the date of the letter if they were able to identify such an error.

The complainant replied to the Ombudsman on the same day expressing their dissatisfaction with the Ombudsman's decision. The following day, an email was sent to the complainant from Ombudsman SA acknowledging receipt of the email, noting that the complainant was unhappy with the decision and stating that 'the matter is now finalised'. The complainant replied to the email, identifying that they had further time within which to respond (the one-week timeframe for a response had not yet expired). No further response was sent by Ombudsman SA.

I reviewed the decision of the Ombudsman¹⁷ to take no action with respect to the complaint. I found that by Ombudsman SA closing the matter prior to the allocated date, the complainant had been denied procedural fairness. The complainant had an interest in their complaint being considered and acted upon in accordance with the applicable law. When the procedural fairness period was prematurely ceased, the complainant had no ability to identify any errors in the Ombudsman's assessment and their interests were thereby affected.

I suggested that the Ombudsman re-open the complaint; and write to the complainant to provide them with a further period within which to identify any errors in the Ombudsman's assessment of their complaint.

The Ombudsman agreed that the complainant had been denied procedural fairness and re-opened the complainant's matter. Additionally, the Ombudsman advised me of steps she would take to ensure that a similar error does not occur in the future.

Example 7

A complaint was made to the Inspector about Ombudsman SA and the OPI. The complainant complained about the way they were treated by staff of both agencies. Amongst other things, the complainant alleged that the Ombudsman refused to receive their complaints, the Ombudsman had lied to them by saying that she would telephone the complainant herself, that the Ombudsman had not responded to the complainant or provided dismissive responses to them, and that staff of the OPI refused to provide their names to them.

The complainant had been corresponding with Ombudsman SA relating to issues they had with a local council. The complainant had 16 separate files with the Ombudsman in 2024 as at the date this Office reviewed the Ombudsman's records, and a further 21 files between 2016 and 2023.

The complainant contacted this Office in excess of 50 times whilst their matter was being reviewed. They have continued to contact this Office using offensive language, sometimes on multiple occasions per day.

This is an example of a complex matter in which both Ombudsman SA and the OPI responded appropriately and with patience.

¹⁷ Made pursuant to section 12H(1) of the *Ombudsman Act 1972*

The review of this complaint was complicated by the following circumstances:

- the volume of complaints made by the complainant;
- the manner in which the complainant expressed themselves in those complaints to this Office and the agencies complained about;
- the apparent mental health issues experienced by the complainant;
- the fact that the complaint related to multiple agencies; and
- uncertainty in the mind of the complainant as to the appropriate agency to receive their complaint.

The complainant initially wrote to the Ombudsman relating to a complaint about a local council's development approval processes. The Deputy Ombudsman was unable to identify an administrative act within the Ombudsman's jurisdiction and the complainant was appropriately encouraged to address their concerns in the first instance to the relevant council.

The complainant sent numerous emails to the Ombudsman and many other parties (including SAPOL) using offensive language and raising concerns about their mental health. In some of these emails the complainant complained about police attendance at their property. The Ombudsman contacted the IIS to confirm that SAPOL had received the complaint and were handling that complaint under the PCD Act.

The complainant then complained to the Ombudsman that the Deputy Ombudsman had subjected them to bullying and mocking and had not responded to their earlier email. The Ombudsman informed the complainant that she had reviewed the files held by Ombudsman SA but did not identify any behaviour that failed to meet the Ombudsman's expectations about the treatment of complainants. The Ombudsman invited the complainant to send her specific responses from the Deputy Ombudsman so that she could consider the complaint further. The Ombudsman also advised the complainant that all their correspondence was read and considered, and that any correspondence that did not receive a response was because it had been sent to multiple parties, was about an issue that the complainant had already been advised would not be further considered or did not meet the expectations for complaints.

Ombudsman SA made considerable efforts to clarify the complaint with the complainant, including a telephone call in which the complainant terminated the call, sending emails and by providing detailed information about how the complainant could make a freedom of information request to various agencies. The Ombudsman advised the complainant that the further correspondence had been considered and still did not raise any complaints of an administrative act within the Ombudsman's jurisdiction.

Ombudsman SA wrote to the local council about one aspect of the complainant's complaint. The local council provided a response, and the Ombudsman was satisfied that the local council had not erred in their decision in relation to the complainant. It was noted that the complainant had been arrested in relation to their dealings with council and their bail conditions prohibited them from contacting the local council.

The complainant continued to complain to the local council and the Ombudsman throughout March and April 2024. The complainant sent similar complaints to the OPI. Some of the complaints continued to be abusive and disrespectful. The complainant alleged bullying and harassment. They made unreasonable requests of the council and the Ombudsman. The Ombudsman and OPI continued to consider their complaints and provide courteous and respectful responses.

In correspondence with this Office, the complainant repeatedly alleged racism and prejudice on the part of numerous statutory officers. There was no such racism or prejudice evident in the materials reviewed by me. There was no correspondence sent to the complainant by either the Ombudsman or OPI that was improper. I found that the Ombudsman's responses to the complainant were not dismissive, and that the Ombudsman thoroughly assessed their complaints. I found that it was appropriate for the Ombudsman to not respond to all correspondence that did not identify an administrative act within the Ombudsman's jurisdiction. I found that there was no evidence of the staff of Ombudsman SA lying to the complainant and that it was reasonable for staff of Ombudsman SA to not provide their names and not transfer calls from the complainant directly to the Ombudsman.

It is not uncommon for complaints to this Office, and to the OPI and Ombudsman SA to be complicated by similar issues as in this matter.

Example 8

In this matter, the complainant had previously complained to the former Ombudsman about a local council not taking reasonable action in response to a complaint they had made to the council.

The complainant complained to the Inspector about several matters including that the former Ombudsman made a decision to allow a local council to treat them with contempt and that the reasons of the former Ombudsman were inadequate and ignored the information that they provided. The complainant asked that the Inspector help them to have closure on the matter as they felt that Ombudsman SA had failed them.

In assessing the complainant's complaint about the council, the former Ombudsman assessed the complaint pursuant to section 12H of the Ombudsman Act. That section provides that the matter must be assessed as to whether:

- it raises an issue that should be investigated under the Ombudsman Act; or
- it raises some other issue that should be referred to a law enforcement agency, another inquiry agency, a public authority or a public officer; or
- it is trivial, vexatious or frivolous, has been previously dealt with by an inquiry agency or a 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.

Once that assessment has been made, the Ombudsman has a discretion to make a determination as to whether action should be taken to investigate or refer the matter. In respect of this complaint, a determination was made not to commence an investigation or refer the matter. The former Ombudsman determined that there was good reason why no action should be taken in relation to the complaint. The reason was that it was not in the public interest to do so.

The discretion of the Ombudsman in respect of section 12H of the Ombudsman Act is unconstrained. There are no express matters in the provision which the Ombudsman is required to consider prior to making their assessment. However, the former Ombudsman provided the complainant with examples of matters that he may consider in the exercise of his discretion as to whether an investigation may be in the public interest.

The former Inspector determined that the reasoning of the former Ombudsman was not clearly communicated to the complainant. The complainant was confused as to how each of the examples related to their complaint as each of the examples were not applied to the facts of their complaint. The former Inspector wrote to the Ombudsman recommending that she consider how communication with complainants regarding the exercise of her discretion pursuant to section 12H of the Ombudsman Act could be improved. The former Inspector also provided suggestions to the Ombudsman for the way in which communication might be improved.

There was no evidence that the former Ombudsman ignored the information provided by the complainant. It was clear through reviewing correspondence that the former Ombudsman had regard to the issues raised. The former Inspector found that it was not unreasonable or improper for the former Ombudsman to decline to investigate in circumstances where he was unable to identify any error in the actions of the council beyond a delay in responding to the complainant.

Annual reviews under the *Independent Commission Against Corruption Act 2012*

In conducting my annual review examining the operations of the Commission and the OPI during the 2023–24 financial year, I am required by clause 9(1)(a) of Schedule 4 to consider the following matters:

- whether the powers under the ICAC Act were exercised in an appropriate manner, including:
 - whether there was any evidence of corruption, misconduct or maladministration in public administration on the part of the Commission, the OPI, or employees of the Commission or the OPI;
 - whether there was any evidence of unreasonable delay in the conduct of investigations under the ICAC Act;
 - whether there was any evidence of unreasonable invasions of privacy by the Commission, the OPI, or employees of the Commission or the OPI.
- whether undue prejudice to the reputation of any person was caused;
- whether the practices and procedures of the Commission and the OPI were effective and efficient;
- whether the Commission and the OPI carried out their functions in a manner that was likely to assist in preventing or minimising corruption in public administration.

I am required by clause 9(9)(a) of Schedule 4 of the ICAC Act to consider, in the preparation of this report, the effect of the proposed report on any complaint, report, assessment, investigation, or referral under the ICAC Act. I have considered the effect that publication of this report may have on any of the aforementioned matters, and I am satisfied that it shall have no effect on those matters.

I must not include information in a report if publication of the information would constitute an offence against section 54 of the ICAC Act. As the OPI also has functions under the PCD Act, in conducting my annual review and preparing this report, I have been mindful of the confidentiality provisions under sections 44 to 46 of the PCD Act.¹⁸

The functions and powers of the Commission and the OPI differ considerably. Therefore, it is appropriate to set out my reviews examining the operations of each agency separately.

¹⁸ Though I have written this report with the operation of section 54 of the ICAC Act and sections 44 to 46 of the PCD Act in mind, out of an abundance of caution, I have sought and received an authorisation from the Acting Commissioner and the Director of the OPI to include information in this report that might otherwise be prohibited from publication.

Review examining the operations of the Commission

In the 2023–24 financial year, the Inspector received nine complaints about the conduct of the Commission. Of the nine complaints, five complaints were relevant complaints pursuant to clause 2(1)(b) of Schedule 4 of the ICAC Act. A further three complaints were not relevant complaints in accordance with the definition under clause 1 of Schedule 4 of the ICAC Act and one complaint was yet to have a determination made in relation to the Inspector’s jurisdiction.

Information was received about a further two matters concerning the conduct of the Commission, which led to reviews conducted on the Inspector’s own motion.

As noted above, I am required to call for submissions into the operations of the Commission during the financial year to which this review relates. I received two responses to my call for submissions in relation to the operations of the Commission. However, those responses concerned conduct that did not occur during the 2023–24 financial year, and as such, these responses are treated as complaints in the 2024–25 financial year.

Were the powers of the Commission exercised in an appropriate manner?

Having conducted reviews in relation to the conduct of the Commission, and having been provided with materials concerning each instance where the Commissioner (or delegate) exercised a power under the ICAC Act in the 2023–24 financial year, I am satisfied that the powers of the Commission were exercised in an appropriate manner during the 2023–24 financial year.

During this period, I did not identify any evidence of corruption, misconduct, or maladministration in public administration by the Commission or employees of the Commission.

I did not identify any evidence of unreasonable delay in the conduct of investigations that were conducted by the Commission under the ICAC Act.

I did not identify any evidence of unreasonable invasions of privacy by the Commission or employees of the Commission.

I did not identify any instances of undue prejudice being caused to the reputation of any person by the Commission or employees of the Commission. It follows that no statements or materials were published by the former Inspector or me to alleviate such prejudice, nor were any recommendations that compensation be paid to any person by the Commission made.

Were the practices and procedures of the Commission effective and efficient?

I consider that the practices and procedures of the Commission were effective and efficient during the 2023–24 financial year.

Did the Commission carry out their functions in a manner likely to assist in preventing or minimising corruption in public administration?

I am satisfied that the Commission has carried out its functions in a manner likely to assist in preventing or minimising corruption in public administration.

Review examining the operations of the OPI

In the 2023–24 financial year, the Inspector received 29 complaints about the conduct of the OPI. Of the 29 complaints, 18 complaints were relevant complaints pursuant to clause 2(1)(b) of Schedule 4 of the ICAC Act. A further eight complaints were not relevant complaints in accordance with the definition under clause 1 of Schedule 4 of the ICAC Act and three complaints were yet to have a determination made in relation to the Inspector's jurisdiction.

I did not receive any responses to my call for submissions in relation to the operations of the OPI during the 2023–24 financial year.

Were the powers of the OPI exercised in an appropriate manner?

Having conducted reviews in relation to the conduct of the OPI, and having been provided with materials concerning each instance where the OPI exercised a power under the ICAC Act in the 2023–24 financial year, I am satisfied that, on the whole, the powers of the OPI were exercised in an appropriate manner during the 2023–24 financial year.

During this period, I did not identify any evidence of corruption, misconduct, or maladministration in public administration by the OPI or employees of the OPI.

I did not identify any evidence of unreasonable invasions of privacy by the OPI or employees of the OPI.

I did not identify any instances of undue prejudice being caused to the reputation of any person by the OPI or employees of the OPI. It follows that no statements or materials were published by the former Inspector or me to alleviate such prejudice, nor were any recommendations that compensation be paid to any person by the OPI made.

Were the practices and procedures of the OPI effective and efficient?

I consider that the practices and procedures of the OPI were effective and efficient during the 2023–24 financial year.

Did the OPI carry out their functions in a manner likely to assist in preventing or minimising corruption in public administration?

With reference to Example 2 above, I made one recommendation to the Director of the OPI under clause 9(1)(c) of Schedule 4 of the ICAC Act in relation to a discrete issue concerning one matter relating the OPI's performance of its oversight function under the PCD Act.

Despite the above example, on the whole, I am satisfied that the OPI carried out its function in a manner likely to assist in preventing or minimising corruption in public administration during the 2023–24 financial year.

Annual review under the *Ombudsman Act 1972*

Under section 29(2) of the Ombudsman Act, I am required to consider the following matters in relation to the operations of Ombudsman SA (which includes a person acting in the office of the Ombudsman) during each financial year:

- whether the powers under the Ombudsman Act were exercised in an appropriate manner (including whether undue prejudice to the reputation of any person was caused);
- whether the practices and procedures of Ombudsman SA were effective and efficient; and
- whether Ombudsman SA carried out the functions of the Ombudsman under the Ombudsman Act in a manner that was likely to assist in the proper exercise of administrative powers in the State.

I am further required by section 29(11) of the Ombudsman Act to include the following information in a report on an annual review:

- specify how many relevant complaints were made during the financial year to which the report relates; and
- specify how many reviews were conducted by the Inspector in relation to relevant complaints during the financial year to which the report relates; and
- describe the types of relevant complaints made during the financial year to which the report relates (in terms of the type of conduct being complained of) and specify how many complaints of each such type were made and describe the outcome of those complaints.

I am required by section 29(12)(a) of the Ombudsman Act to consider, in the preparation of this report, the effect of the proposed report on any complaint, report, assessment, investigation, or referral under the Ombudsman Act. I have considered the effect that publication of this report may have on any of the aforementioned matters, and I am satisfied that this report shall have no effect on those matters.

I must not include information in a report if publication of the information would constitute an offence against section 29A of the Ombudsman Act.¹⁹

Summary of complaints received relating to Ombudsman SA

In the 2023–24 financial year, the Inspector received 12 complaints about the conduct of the Ombudsman or staff of Ombudsman SA. Of those 12 complaints, nine complaints were relevant complaints pursuant to section 29(1)(b) of the Ombudsman Act. One complaint was not a relevant complaint because it lacked sufficient particulars and two complaints were yet to have a determination made in relation to the Inspector’s jurisdiction.

¹⁹ Though I have written this report with the operation of section 29A in mind, out of an abundance of caution, I have sought and received an authorisation from the Ombudsman to publish information that would otherwise be prohibited from publication by section 29A of the Ombudsman Act.

I determined to conduct a review on my own motion in relation to a matter raised with me by the Ombudsman in the 2023–24 financial year.

As noted above, I am required to call for submissions into the operations of Ombudsman SA during the financial year to which this review relates. I received three submissions in response to my call for submissions in relation to the operations of Ombudsman SA. Two submissions concerned conduct that occurred during the 2023–24 financial year, and I have determined to commence an own motion review in those matters. The third submission did not relate to conduct that occurred in the relevant period, and as such, that response will be treated as a complaint in the 2024–25 financial year.

Were the powers of Ombudsman SA exercised in an appropriate manner?

Having conducted reviews in relation to the conduct of Ombudsman SA, and having been provided with materials concerning each instance where the Ombudsman (or delegate) exercised a power under the Ombudsman Act in the 2023–24 financial year, I am satisfied that, on the whole, the powers of the Ombudsman were exercised in an appropriate manner during the 2023–24 financial year.

I found no evidence of undue prejudice having been caused to the reputation of any person by the Ombudsman or employees of the Ombudsman.

Were the practices and procedures of the Ombudsman effective and efficient?

As detailed in Example 6 above, there was one instance where a complaint was closed prematurely by Ombudsman SA and a complainant was denied the opportunity to respond to the Ombudsman’s preliminary determination to decline to take further action in relation to their complaint. The Ombudsman advised me that this was an oversight and resolved to provide additional training to staff and to review relevant procedures.

Despite the above example, I am satisfied that, on the whole, the practices and procedures of the Ombudsman were effective and efficient during the 2023–24 financial year.

Did the Ombudsman carry out their functions under the Ombudsman Act in a manner likely to assist in the proper exercise of administrative powers in the State?

I am satisfied that the Ombudsman carried out their functions under the Ombudsman Act in a manner likely to assist in the proper exercise of administrative powers in the State.

Required information pursuant to section 29(11) of the Ombudsman Act

As I described above, I am required by the Ombudsman Act to provide the following information:

- the number of relevant complaints made during the 2023–24 financial year; and
- the number of reviews I undertook in relation to those relevant complaints; and
- to describe the types of relevant complaints made in terms of the type of conduct being complained of, and specify how many complaints of each sub type were made and describe their outcome.

Accordingly, I now report that:

- Twelve complaints concerning the conduct of the Ombudsman were received in the 2023–24 financial year. Of the 12 complaints, nine were relevant complaints for the purposes of section 29(1)(b) of the Ombudsman Act;
- Reviews in relation to all nine relevant complaints were commenced in the 2023–24 financial year. Five reviews in relation to relevant complaints were finalised during the period and four have been carried over into the 2024–25 financial year;
- I determined to conduct one review on my own motion in relation to a matter raised with me by the Ombudsman pursuant to section 29(1)(c) of the Ombudsman Act in the 2023–24 financial year. That review will be finalised in the 2024–25 financial year;
- I did not receive any requests to conduct reviews from the Attorney-General nor the CIPIC in the 2023–24 financial year;
- Six of the nine reviews of relevant complaints related to a decision of the Ombudsman (or delegate) to take no further action in relation to their matter.²⁰ Two reviews of relevant complaints, and one review on the Inspector’s own motion concerned the manner in which the Ombudsman’s functions regarding complaints about public administration were dealt with,²¹ and one review of a relevant complaint concerned a complaint about a review conducted by the Ombudsman under section 39 of the *Freedom of Information Act 1991*;
- In relation to the five reviews that were finalised in the 2023–24 financial year, it was determined that no further action was required by the Inspector. In most instances, an error on the part of the Ombudsman was not identified particularly when the complaint concerned a decision about the Ombudsman’s assessment of a matter under section 12H of the Ombudsman Act. In relation to the complaint detailed in Example 6 above, it was not necessary for further action to be taken in circumstances where the Ombudsman agreed with my suggestion as to remedial action with the complainant.

²⁰ Ombudsman Act ss 12H(1)(c), 13(3).

²¹ Ombudsman Act s 5A(a).

Six-monthly reviews under the *Surveillance Devices Act 2016* and the *Telecommunications (Interception) Act 2012*

During the previous reporting period, the Inspector did not have the power to conduct the six-monthly reviews of the Commission and SAPOL as required by the *Surveillance Devices Act 2016* (**SD Act**) and the *Telecommunications (Interception) Act 2012* (SA) (**TI Act**).

On 21 September 2023, the *Statutes Amendment (Attorney-General's Portfolio) (No 4) Act 2023* (**Statutes Amendment Act**) amended the definitions of “review agency” in the SD Act and TI Act to specify that the Inspector is the “review agency” for the Commission and SAPOL.

The Inspector now has the power to undertake the six-monthly reviews required by section 32 of the SD Act and section 5 of the TI Act.

Transitional arrangements provided that reviews that were not completed were required to be conducted as part of the next review occurring after the commencement of the Statutes Amendment Act. Accordingly, the former Inspector and I conducted our first reviews as required by the SD Act and TI Act of the Commission and SAPOL in December 2023. Those reviews were for a period from the date of the last review conducted by the former Reviewer, the Honourable John Sulan KC.

Since the amendments to the SD Act and the TI Act, the following inspections have been conducted during the 2023–24 financial year pursuant to section 32 of the SD Act and section 5 of the TI Act:

December 2023

Mr Strickland SC reported to the Attorney-General following an inspection of the Commission on 11 December 2023 for the period 1 September 2022 to 11 December 2023.

Mr Strickland SC was satisfied that the Commission complied with all of the requirements of the SD Act and TI Act during the reporting period.

I reported to the Attorney-General following inspections of SAPOL on 11, 12, 19 and 21 December 2023 for the period 22 November 2022 to 12 December 2023.

The Anti-Corruption Section within the Ethical and Professional Standards Branch and the Operations Administration Section within the Investigation Support Branch are the two sections of SAPOL responsible for implementing the requirements of the SD Act relating to the use of surveillance devices and implementing the requirements of the TI Act, including the requirements prescribed by the Commonwealth *Telecommunication (Interception and Access) Act 1979* (**Commonwealth TI Act**), relating to telecommunications interceptions.

I was satisfied that SAPOL complied with all of the requirements of the SD Act during the reporting period with one exception which I brought to the attention of SAPOL and the Attorney-General.

I was satisfied that SAPOL complied with all of the requirements of the Commonwealth TI Act and State TI Act during the reporting period. I provided feedback to SAPOL relating to the requirements of section 81(1)(g) of the Commonwealth TI Act.

May 2024

I reported to the Attorney-General following an inspection of the Commission on 29 May 2024 for the period 12 December 2023 to 29 May 2024.

I was satisfied that the Commission complied with all of the requirements of the SD Act and TI Act during the reporting period.

I reported to the Attorney-General following inspections of SAPOL on 3 and 4 June 2024 for the period 13 December 2023 to 31 May 2024.

I was satisfied that SAPOL complied with all of the requirements of the SD Act during the reporting period with two exceptions which I brought to the attention of SAPOL and the Attorney-General. I was otherwise satisfied that there had been full compliance with the requirements of the SD Act.

I was satisfied that SAPOL complied with all the requirements of the Commonwealth TI Act and State TI Act during the reporting period with one exception which I brought to the attention of SAPOL and the Attorney-General.

Reports delivered by the Inspector during the 2023–24 financial year

The President and the Speaker tabled Report 2024/01 (**the Rusby Report**), Report 2024/02 (**the Barr report**) and Report 2024/03 (**the Fuller Report**) before their respective Houses on 30 April 2024.²²

Report 2024/01

Inspector Strickland received a complaint from Mr Trent Rusby on 19 February 2023. Mr Rusby wished for the complaint to be treated as a submission in respect of the Inspector's first annual review pursuant to clause 75 of Schedule 1 of the *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021*. The Inspector considered that Mr Rusby's matter raised matters that included but went beyond the issue of undue prejudice to reputation and warranted a detailed review. Inspector Strickland determined to conduct a review on his own motion pursuant to clause 2(1)(c) of Schedule 4 of the ICAC Act in relation to the investigation and prosecution of Mr Rusby.

Mr Rusby was investigated by the Independent Commissioner Against Corruption (**ICAC**) in 2014 and 2015 following a report of a potential issue of corruption in public administration. The Honourable Bruce Lander KC was the Commissioner at the relevant time. The report alleged misuse of government issued credit cards and the misappropriation of government property for personal use by employees of the then Department of Planning, Transport and Infrastructure. Mr Rusby was charged with four corruption offences by the Director of Public Prosecutions (**ODPP**) following the investigation of him by the ICAC. All four charges were withdrawn against Mr Rusby.

As part of his review, Inspector Strickland conducted examinations and took evidence from numerous witnesses. The Inspector found:

- no evidence of corruption, misconduct, or maladministration in public administration by Mr Lander KC or any employee of the OPI or ICAC;
- based on the report received by the OPI, it was appropriate for Mr Lander KC to decide to conduct an investigation into the allegations raised about Mr Rusby and others in the report;
- that there was no or insufficient evidence obtained during the ICAC's investigation that could prove that Mr Rusby committed any corruption offence. As a result, Mr Lander KC made an error when he performed his function to refer Mr Rusby for prosecution. Despite this finding, the Inspector was not satisfied that the referral of Mr Rusby for prosecution caused undue prejudice to Mr Rusby's reputation;
- that he was not satisfied that Mr Lander KC's decision to include details about Mr Rusby in a public statement that Mr Lander KC made about the investigation and prosecution of Mr Rusby caused undue prejudice to Mr Rusby's reputation.

²² I note that former Commissioner Vanstone tabled a report in Parliament that was a response to all three of the former Inspector's reports.

Report 2024/02

Inspector Strickland received a submission from Mrs Deborah Barr on 27 March 2023 in respect of the Inspector's first annual review. The Inspector considered that Mrs Barr's matter raised issues that went beyond the issue of undue prejudice to reputation and warranted a detailed review. Inspector Strickland determined to conduct a review on his own motion pursuant to clause 2(1)(c) of Schedule 4 of the ICAC Act in relation to the ICAC investigation of Chief Superintendent Barr.

Between 2017 and 2020, Chief Superintendent Douglas Barr, was the subject of an investigation by ICAC, relating to the SAPOL recruitment project known as "*Recruit 313*". The investigation of Chief Superintendent Barr was initially an investigation of potential corruption in public administration. In July 2018, the assessment of the matter was modified to a matter raising potential issues of serious or systemic misconduct or maladministration in public administration.

On 18 October 2019, Chief Superintendent Barr was hospitalised as a result of self-harm. He passed away on 23 October 2019.

Inspector Strickland found that:

- the decisions to commence the corruption investigation into Chief Superintendent Barr's conduct and to modify the assessment of the investigation to a matter raising potential issues of misconduct or maladministration in public administration were appropriate;
- there was no unreasonable delay in the corruption investigation. There was a protracted but not unreasonable delay in the misconduct and maladministration investigation;
- Mr Lander KC should have advised Chief Superintendent Barr or his lawyer that there was a delay in the finalisation of Counsel Assisting's submissions;
- there was no undue prejudice to the reputation of Chief Superintendent Barr or anyone else caused by Mr Lander KC, employees of ICAC or employees of the OPI;
- there was no evidence of corruption, misconduct or maladministration by Mr Lander KC or ICAC;
- ICAC and the OPI carried out their functions in a manner that was likely to assist in preventing or minimising corruption in public administration.
- there was no evidence of any bias on the part of Mr Lander KC or employees of ICAC towards Chief Superintendent Barr;
- none of the practices or procedures of ICAC and the OPI were ineffective or inefficient. However, Inspector Strickland recommended that certain practices or procedures relating to key performance indicators concerning the timeliness of investigations and guidelines concerning procedural fairness to examinees be amended;
- there was no evidence of any unreasonable invasions of privacy.

Inspector Strickland also made recommendations relating to:

- the ICAC Act be amended to include key performance indicators (**KPIs**) in respect of the timeframes in which the Commission is required to deal with matters, including requiring the Commission to publish data relating to KPI performance in its annual reports;
- the Commission's investigation manual be revised to reflect those legislative changes, and the KPIs include reference to a target timeframe for assessing a complaint, a target timeframe for investigating a matter, and what action should be taken if the timeframes are not met;
- the Commission's annual reports should include data relating to KPI performance, including the percentages of assessments and investigations completed within the target timeframes and the action taken to ensure the timeframes are met;
- the investigation manual should include examples of situations in which the welfare of a person involved in an investigation could be adversely impacted and steps to be taken to address the welfare concerns; and
- the Commission should be empowered to issue guidelines relating to the conduct of inquiries, and those guidelines should address the investigation of exculpatory evidence, the disclosure of exculpatory and other relevant evidence to affected persons, providing affected persons and other witnesses with access to relevant documents and a reasonable time to prepare before giving evidence, and other matters necessary to ensure procedural fairness.

Report 2024/03

Report 2024/03 arose both from a request from the Attorney-General to conduct the review (pursuant to clause 2(1)(c) of Schedule 4 of the ICAC Act) and from a relevant complaint received from Mr Michael Fuller (pursuant to clause 2(1)(b) of Schedule 4 of the ICAC Act). The Attorney-General's request and Mr Fuller's complaint concerned complaints that Mr Ian Lawton and Mr Fuller had made to the OPI and ICAC in 2019 and 2020.

Mr Lawton and Mr Fuller's complaints initially concerned a decision by SAPOL to terminate an investigation into alleged fraud on the part of Mr Lawton's previous business partner. Mr Lawton had alleged that his former business partner had engaged in fraudulent conduct in mid-2013 which had resulted in his company sustaining a loss of approximately \$120,000. The alleged fraud was reported to SAPOL in May 2018 and an investigation commenced. However, in September 2018 the investigation was terminated.

Mr Lawton and Mr Fuller alleged that the termination of the investigation by SAPOL involved misconduct and corruption and that the reasons given to Mr Lawton for the termination of the investigation involved the telling of lies. In particular, it was alleged that police officers had lied about seeking and receiving advice from the ODPP. It was also alleged that those lies had been 'covered up' by more senior SAPOL officers including the Commissioner of Police.

As Mr Lawton's and Mr Fuller's complaints were about the conduct of police officers, they were dealt with by the IIS with oversight by the OPI pursuant to the PCD Act. As Mr Lawton and Mr Fuller were dissatisfied with how their complaints were handled and with the outcome

of the complaints, they continued to complain of misconduct and corruption on the part of SAPOL officers including officers within the IIS. Over time, their complaints grew to encompass allegations of misconduct and corruption on the part of OPI employees, the former Deputy Independent Commissioner Against Corruption (Mr Riches), the former Independent Commissioner Against Corruption (Mr Lander KC) and Commissioner Vanstone.

Inspector Strickland found that there was no dishonesty or improper conduct by any relevant SAPOL officer in the decision to terminate the criminal investigation and that there was no cover up of the conduct of the relevant SAPOL officers by more senior SAPOL officers, the IIS, the OPI or the ICAC.

Inspector Strickland found no evidence of corruption, misconduct or maladministration in public administration by ICAC, the OPI or any employee of ICAC or the OPI. Inspector Strickland also found no evidence of unreasonable delay nor of any unreasonable invasion of privacy.

Inspector Strickland made the following key findings:

- SAPOL had a wide discretion to decide whether it was in the public interest to investigate Mr Lawton's allegations of criminal conduct and had given the matter due and proper consideration before terminating the investigation including by obtaining informal advice from the ODPP;
- the IIS and OPI appropriately dealt with Mr Lawton's and Mr Fuller's complaints despite their initial complaint being dealt with by the management resolution process (**MRP**) established under Part 3 of the PCD Act;
- although the OPI erred in failing to identify that the initial complaint was not suitable for MRP, this error did not result in any adverse impact on the outcome of the complaint as the resolution officer for the MRP conducted appropriate enquiries which ensured that Mr Lawton's complaint was effectively dealt with. Those enquiries established that there had been no lies told by any SAPOL officer relating to seeking and obtaining advice from the ODPP;
- the OPI subsequently conducted an appropriate review of Mr Lawton's and Mr Fuller's further complaints which resulted in Mr Riches writing to Mr Fuller on 3 July 2019 which included the OPI making appropriate enquiries with the IIS in relation to the issue of obtaining ODPP advice;
- Mr Riches' conclusion, namely that there had been no lies told by any SAPOL officers nor any subsequent 'cover up' of those lies, that informal advice had been obtained from the ODPP prior to terminating the criminal investigation and that there had simply been a miscommunication about the nature of the ODPP advice received, was appropriate; and
- the subsequent decisions of Mr Lander KC and Commissioner Vanstone (on 13 December 2019 and 20 October 2020 respectively) to take no further action were appropriate as Mr Lawton's and Mr Fuller's complaints had already been thoroughly considered and there was no good reason for either of them to revisit the matter.

Inspector Strickland made no recommendations in Report 2024/03.

However, Inspector Strickland noted that Mr Fuller had repeatedly engaged in threatening conduct directed at public officials in the course of making his various complaints and identified that conduct of this nature gives rise to the potential for the recipients of those communications to be intimidated or cowed into not performing their public duties properly.

Inspector Strickland also noted that significant time and resources had been spent in the consideration of complaints made by Mr Lawton and Mr Fuller in circumstances where, at the very least since 3 July 2019, Mr Lawton and Mr Fuller had been given a full explanation as to why their complaint raised no issues of corruption, misconduct nor maladministration.

Annexure A – Financial Statements

Financial performance at a glance

The Inspector and Deputy Inspector make use of the services and staff of the AGD. The administrative unit that supports the Inspector is the Office of the Inspector.

For the 2023–24 financial year, there was a minor overspend that mainly related to the valuation of leave liabilities.

The tables below summarise the unaudited financial information of the Office of the Inspector for the 2023–24 financial year.

Statement of comprehensive income

	Budget \$'000	Actual \$'000	Variance \$'000
REVENUE			
Appropriation	1,732	1,732	0
TOTAL REVENUE	1,732	1,732	0
EXPENSES			
Salaries	1,198	1,257	-59
Supplies and Services	534	575	-41
TOTAL EXPENSES	1,732	1,832	-100
NET RESULT	0	-100	-100

Statement of financial position

	\$'000
ASSETS	
Cash	742
TOTAL ASSETS	742
LIABILITIES	
Employee Benefits Liability	293
Payables	
Employment on costs	14
Creditors	30
TOTAL LIABILITIES	337
NET ASSETS	405

Consultants disclosure

Total consultancy expenditure for the 2023–24 financial year was \$0.

Contractors disclosure

Total contractors expenditure for 2023–24 financial year was \$0.

Risk Management

Fraud detected in the Office of the Inspector

There were no instances of fraud detected in the Office of the Inspector during the 2023–24 financial year.

Risk and audit framework

Refer to the AGD Annual Report 2023–24.

Strategies to control and prevent fraud

Refer to the AGD Annual Report 2023–24.