

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

For the period  
1 July 2022 to 30 June 2023



**OFFICE OF  
THE INSPECTOR**



# OFFICE OF THE INSPECTOR

OFFICIAL

27 September 2023

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

The Honourable Dan Cregan MP  
Speaker  
House of Assembly  
Parliament House  
ADELAIDE SA 5000

## By hand

Dear President and Speaker,

It is my privilege to present the first 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 2022–23 annual review examining the operations of the Commission and the OPI and information about reviews of relevant complaints and other reviews I undertook during the 2022–23 financial year;<sup>1</sup>
- a review of whether undue prejudice to the reputation of any person was caused by the Commissioner, employees of the Commissioner or employees of the OPI under the *Independent Commissioner Against Corruption Act 2012* as in force at any time before the commencement of the *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021*;<sup>2</sup>
- the 2022–23 annual review examining the operations of Ombudsman SA and information about reviews of relevant complaints I undertook during the 2022–23 financial year.<sup>3</sup>

Yours faithfully,

Philip Strickland SC  
Inspector

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

<sup>2</sup> Pursuant to *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA) Sch 1 cl 75(1).

<sup>3</sup> Pursuant to *Ombudsman Act 1972* (SA) s 29(1)(a)-(b).



OFFICE OF  
THE INSPECTOR

Email: [Inspector@sa.gov.au](mailto:Inspector@sa.gov.au)  
[www.inspector.sa.gov.au](http://www.inspector.sa.gov.au)  
The Inspector, GPO Box 2371, Adelaide SA 5001

## From the Inspector

This is the first Annual Report that I am presenting to the Parliament of South Australia as the inaugural Inspector of the Independent Commission Against Corruption (**Commission**), the Office for Public Integrity (**OPI**), and Ombudsman SA.

This Annual Report comes at a time following substantial changes to the public integrity landscape in South Australia. There has been much public comment on the changes that were made on 7 October 2021 to the *Independent Commission Against Corruption Act 2012* (**ICAC Act**), which among other things, narrowed the jurisdiction of the Commission and separated the Commission from the OPI, establishing the latter as a standalone agency.

Schedule 4 of the ICAC Act commenced on 5 December 2022, which created the position of the Inspector. Though there are differing views across public life and in the South Australian community about how the integrity agencies in South Australia should operate, one thing that is beyond doubt is the importance of a robust integrity framework to facilitate the confidence and trust placed in government by South Australians.

The need for measures to address corrupt activity in government was identified in antiquity. Integrity and anti-corruption laws have ancient and remote origins dating back to the Roman Republic and are in part the progenitors of the criminal courts as we now know them.

Legislative reforms in the Roman Republic in 149 BCE and 122–23 BCE established one of the first known standing criminal courts. The *lex Calpurnia de repetundis* and *lex Acilia Calpurnia* aimed to provide a means to improve public administration by allowing Roman citizens to bring actions against Roman officials who had allegedly acted corruptly in office, whether that be through extortion, misappropriation of public resources, or bribery.

Prior to this innovation of the Roman law, criminal courts were established on an ad-hoc basis. The need to bring those officials who had transgressed, by virtue of their office, before a jury to answer for their conduct resulted in a significant innovation to the body politic during the period of the Roman Empire.

In England, the learned Lord Justice Salmon, appointed as a Commissioner of the Royal Commission on Tribunals of Inquiry in 1966, remarked that from the 17<sup>th</sup> century until the early 20<sup>th</sup> century, the usual way in which alleged misconduct of ministers or other public servants was investigated was by a parliamentary committee or by a Royal Commission. There was at that time no independent authority, established at arm's length from the executive government, to investigate alleged misconduct or corruption of public officers of the sort we now have in every jurisdiction in Australia, including the newly established National Anti-Corruption Commission.

Lord Justice Salmon went on at some length to provide examples of where these ad-hoc commissions of inquiry fell short, and indeed made various recommendations about what should be done to improve them. Despite his misgivings about the various methods of

investigating and examining corrupt conduct, Lord Justice Salmon identified the cornerstone of the need for what we would now call integrity or anti-corruption agencies when he said:<sup>4</sup>

*It is essential that on the very rare occasions when crises of public confidence occur, the evil, if it exists, shall be exposed so that it may be rooted out; or if it does not exist, the public shall be satisfied that in reality there is no substance in the prevalent rumours and suspicions by which they have been disturbed.*

When the Independent Commissioner Against Corruption Bill 2012 was read for the second time in the House of Assembly on 2 May 2012 by the Honourable Thomas Kenyon, speaking on behalf of the then Attorney-General the Honourable John Rau, Mr Kenyon said that corruption, at its worst, “*can undermine the rule of law and destroy public confidence in government and public institutions and agencies*”.<sup>5</sup>

It is in answer to the challenge that corruption poses to good government and to the moral fabric of the community that the Commission and the OPI were established. The nature of corruption bodies is pithily expressed by the High Court in *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625, which, although describing the New South Wales Independent Commission Against Corruption, is an apt descriptor of the South Australian Commission and the OPI:<sup>6</sup>

*The Commission is primarily an investigative body whose investigations are intended to facilitate the actions of others in combating corrupt conduct. It is not a law enforcement agency and it exercises no judicial or quasi-judicial function.*

It should also be acknowledged that perennial concerns have been expressed about the wide, coercive powers of corruption bodies which can lead to the erosion of civil liberties (such as the privilege against self-incrimination), and the unfair prejudice caused to the reputation of some citizens caught in the blaze of publicity occasioned by public corruption inquiries.

In Queensland, concern has been expressed that permanent corruption commissions infused with their “*own inevitable sense of importance and crusading zeal, may become increasingly insensitive to the delicate balance between conflicting public and private interests, which is traditionally and best struck by judges*”.<sup>7</sup>

One prominent barrister in New South Wales questioned whether the then newly formed Independent Commission Against Corruption was the “*new Star Chamber*”.<sup>8</sup> The story of the rise of the Court of Star Chamber and its abolition in 1641 merits constant reminder. Citizens were summonsed to appear before the Court of Star Chamber and the Court of High Commission in Causes Ecclesiastical and were examined on oath. They were not charged with any offence. They were rarely informed of the nature of the examination. The Courts

<sup>4</sup> Salmon LJ, *Royal Commission on Tribunals of Inquiry* (Report, 1966) at p 16 [28].

<sup>5</sup> South Australia, *Parliamentary Debates*, House of Assembly, 2 May 2012, 1357 (The Hon Thomas Kenyon MP).

<sup>6</sup> *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625 at 636.

<sup>7</sup> GE Fitzgerald KC, *Report of a Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, (Report, 26 May 1987 to 29 June 1989) at p 302 [9.5.4].

<sup>8</sup> WG Roser, ‘The Independent Commission Against Corruption: The New Star Chamber?’ (1992) 16 Criminal Law Journal 225.

were allowed or encouraged to go on what we now call a “*fishing expedition*” in the hope that during the questioning, the witness might reveal the commission of some offence.

Unlike the Star Chamber, the ICAC Act does provide statutory protections which afford some protection to certain civil liberties. Furthermore, as discussed below, the conduct of the Commission, the OPI and the Ombudsman during this reporting period can provide comfort to the citizens of South Australia that those integrity bodies are not corrupt. They do not engage in misconduct or maladministration in public administration. They are mindful of the impact of the exercise of their powers and functions on the lives of people they investigate.

Nevertheless, it is important that bodies such as the Office of the Inspector exist – to provide a check against the power of corruption and integrity bodies, and to provide some supervision and overview when they overreach their powers and functions.

The work of my Office should be as transparent as is possible within the legislative framework in which I operate. If I find evidence of corruption, misconduct, or maladministration in public administration by the Commission, the OPI, or Ombudsman SA, I will review it and I will make appropriate findings and provide them to the Parliament. Where I find that practices and policies could be improved, I will work with the Commissioner, the Director of OPI, and the Ombudsman to ensure that improvements are made and are made in a timely manner.

In the first 10 months of my Office, there has been substantial work done in progressing the strengthening of the public integrity landscape in South Australia, including the receiving of complaints about the integrity agencies from concerned members of the public.

The publication of *Report 2023/01: Review of the investigation and prosecution of Mr John Hanlon* (**Hanlon Report**) was a detailed examination of that investigation and the conduct of staff within the Commission, which highlighted significant errors, including institutional maladministration on the part of the Commission.

I made four recommendations to the Commission to improve practices and procedures that have been accepted by the Commissioner in principle.

There are two other matters that I am currently reviewing of my own motion and a further matter I am reviewing at the request of the Attorney-General. These are matters (more than three years old) that were the subject of investigations by the Independent Commissioner Against Corruption. I am confident that the work of my Office will result in further improvements to the strengthening of the integrity agencies in South Australia.

In this Annual Report, I have consulted key stakeholders including the Commissioner, the Director of OPI, the Ombudsman, the Commissioner of Police, and the Director of Public Prosecutions (**DPP**), to make a number of recommendations for reform of the ICAC Act and related legislative instruments, which I say would result in further strengthening of the South Australian public integrity system. Since the changes to the ICAC Act made on 7 October 2021, some commentators, with a rhetorical flourish, have referred to the Commission as being a “*toothless anti-corruption tiger*”.<sup>9</sup> The Commission does have teeth in

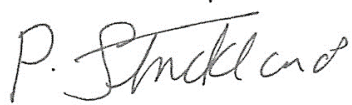
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<sup>9</sup> Rory McClaren, ‘Could South Australia’s ‘toothless’ anti-corruption tiger get back some of its teeth?’, *ABC News* (online, 26 August 2023).

the form of wide-ranging coercive powers of investigation. However, the 2021 legislative amendments undoubtedly have blunted the Commission's bite.

There is a real risk that the ability of the Commission, the OPI, and Ombudsman SA to identify and investigate corruption, misconduct, and maladministration will continue to be impeded without genuine consideration of the legislative changes which I have proposed in this Annual Report.

Finally, I extend my sincere gratitude to the staff of the Attorney-General's Department (**AGD**) and the Crown Solicitor's Office for the invaluable support they have provided to me and my Office over the last 10 months. I am also grateful for the DPP's continued cooperation with my Office.

A handwritten signature in black ink, reading "P. Strickland". The signature is written in a cursive, flowing style.

Philip Strickland SC  
Inspector

# Contents

<b>From the Inspector .....</b>	<b>3</b>
<b>Acronyms and abbreviations .....</b>	<b>9</b>
<b>Office of the Inspector.....</b>	<b>10</b>
Inspector's functions and powers.....	12
Overview of the Inspector's work .....	13
Key statistics .....	17
<b>Inspector's annual review of the Commission, the OPI and Ombudsman SA..</b>	<b>19</b>
Annual review under the <i>Independent Commission Against Corruption Act 2012</i> .....	19
Six-monthly reviews under the <i>Surveillance Devices Act 2016</i> and the <i>Telecommunications (Interception) Act 2012</i> .....	28
Annual review under the <i>Ombudsman Act 1972</i> .....	29
<b>Reports delivered by the Inspector during the 2022–23 financial year.....</b>	<b>33</b>
Report 2023/01: Review of the investigation and prosecution of Mr John Hanlon.....	33
<b>Proposals for legislative reform.....</b>	<b>35</b>
Amendments to the <i>Independent Commission Against Corruption Act 2012</i> .....	36
Amendments to the <i>Police Complaints and Discipline Act 2016</i> .....	43
Amendments to the <i>Ombudsman Act 1972</i> .....	44
Amendments to the <i>Telecommunications (Interception and Access) Act 1979 (Cth)</i> ..	47
Amendments to the <i>Public Interest Disclosure Act 2018</i> .....	48
<b>Annexure A – Financial Statements.....</b>	<b>49</b>
Financial performance at a glance .....	49
<b>Annexure B – Overview of the Commission .....</b>	<b>51</b>
Functions and powers of the Commission .....	51
Relevant data provided by the Commission.....	53
Investigations and referrals during the reporting period.....	54
<b>Annexure C – Overview of the OPI.....</b>	<b>56</b>
Functions and powers of the OPI.....	56
Relevant data provided by the OPI .....	57
<b>Annexure D – Overview of Ombudsman SA .....</b>	<b>59</b>
Functions and powers of Ombudsman SA.....	59
Relevant data provided by Ombudsman SA.....	60

**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 2022 to 30 June 2023**

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* (**Ombudsman Act**). This Annual Report deals with the work of the Office of the Inspector during the 2022–23 financial year. It also addresses matters required by clause 75(1) of Schedule 1 of the *Independent Commissioner Against Corruption (CIPIC Recommendations) Amendment Act 2021* (**Amending Act**).



## Acronyms and abbreviations

<b>AGD</b>	Attorney-General's Department
<b>Amending Act</b>	<i>Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021 (SA)</i>
<b>Commission</b>	Independent Commission Against Corruption
<b>Commissioner</b>	The Hon Ann Vanstone KC, Commissioner
<b>Commonwealth TI Act</b>	<i>Telecommunications (Interception and Access) Act 1979 (Cth)</i>
<b>Director of OPI</b>	Ms Emma Townsend
<b>DPP</b>	Director of Public Prosecutions
<b>DPP Act</b>	<i>Director of Public Prosecutions Act 1991 (SA)</i>
<b>Hanlon Report</b>	Report 2023/01: Review of the investigation and prosecution of Mr John Hanlon
<b>ICAC Act</b>	<i>Independent Commission Against Corruption Act 2012 (SA)</i>
<b>IIS</b>	Internal Investigation Section of South Australia Police
<b>Ombudsman</b>	Mr Wayne Lines
<b>Ombudsman Act</b>	<i>Ombudsman Act 1972 (SA)</i>
<b>Ombudsman SA</b>	Office of the South Australian Ombudsman
<b>OPI</b>	Office for Public Integrity
<b>PCD Act</b>	<i>Police Complaints and Discipline Act 2016 (SA)</i>
<b>PID Act</b>	<i>Public Interest Disclosure Act 2018 (SA)</i>
<b>SAPOL</b>	South Australia Police
<b>SD Act</b>	<i>Surveillance Devices Act 2016 (SA)</i>
<b>Statutes Amendment Act</b>	<i>Statutes Amendment (Attorney-General's Portfolio) (No 4) Act 2023 (SA)</i>
<b>TI Act</b>	<i>Telecommunications (Interception) Act 2012 (SA)</i>

## Office of the Inspector

I, Philip Strickland SC, was appointed as the Inspector by Her Excellency the Governor in Executive Council on 5 December 2022. On 5 June 2023, I was again appointed by Her Excellency as the Inspector for a term expiring on 4 December 2024.

I am assisted in the performance of my statutory functions by Deputy Inspector Stephen Plummer. Mr Plummer was appointed as Deputy Inspector by Her Excellency on 5 June 2023 for a term expiring on 4 December 2024.

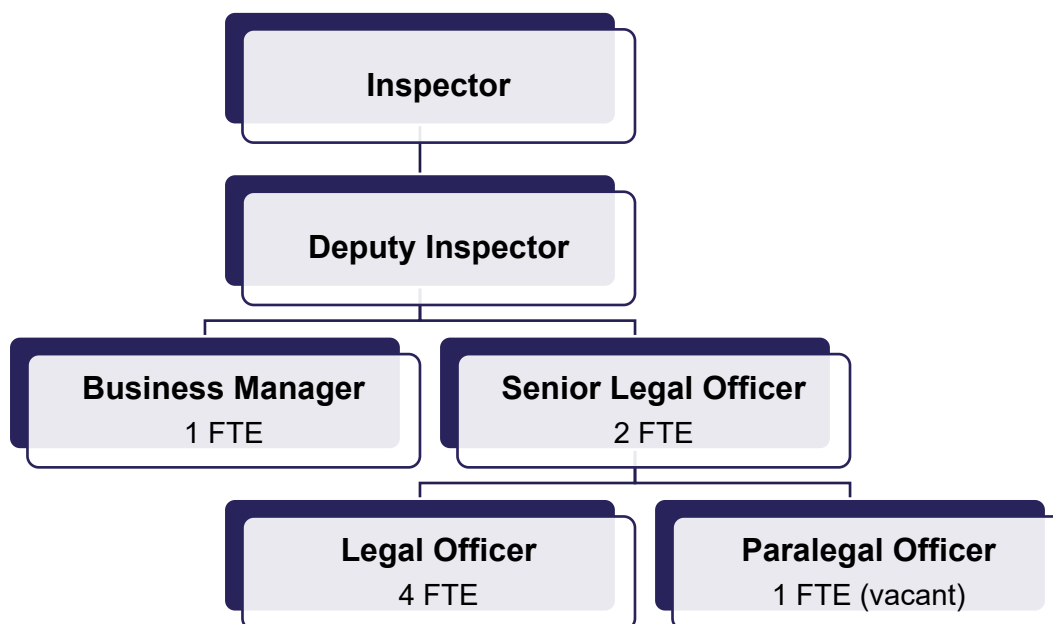
My functions and powers are set out in Schedule 4 of the ICAC Act and section 29 of the Ombudsman Act. My statutory functions include:

- 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;
- other functions conferred on me by other Acts.

### Organisational structure

I have been assisted in my role as the Inspector by the staff of the Office of the Inspector, whose administrative, technical, and legal support has been invaluable. At times, we have operated under significant time pressures, and I am thankful for their continued assistance.

As of 30 June 2023, the Office of the Inspector consisted of eight Full Time Equivalent (**FTE**) employees, including an Office Manager, two Senior Legal Officers, four Legal Officers, and one Paralegal Officer:



Performance review and development discussions play an important role in staff development. These discussions involve setting objectives, goals, and development plans for the upcoming year. As of 30 June 2023, 86% of Office of the Inspector staff completed and recorded their bi-annual performance review and development discussion. The remainder had recently started with the Office of the Inspector, therefore discussions did not occur prior to the end of financial year.

The Office of the Inspector recorded no workplace injury claims or return to work costs in the 2022–23 financial year. There were no notifiable incidents under Part 3 of the *Work Health and Safety Act 2012*.

Staff wellbeing is a priority for the management team. Staff have been consulted in the implementation of human resources policies including the Wellbeing Policy and the Work from Home Policy.

The Office of the Inspector is a collaborative office that holds regular team meetings. These meetings provide staff with the opportunity to discuss workloads, wellbeing, health and safety issues and any other matters that may arise. The management team also meets regularly to discuss various issues including process improvements, complaints, and staff wellbeing.

## Financial statements

Refer to **Annexure A – Financial Statements** for the Office of the Inspector's financial statements for the 2022–23 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, or an inquiry agency;
- 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, or an inquiry agency.

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 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

### Complaints made to the Reviewer

Following my appointment on 5 December 2022, I assumed responsibility for any review being conducted by the former Reviewer, the Honourable Mr John Sulan KC, pursuant to clause 74 of Schedule 1 of the Amending Act.

In the period 1 July 2022 to 4 December 2022, the Reviewer received 21 complaints and two self-reports from the OPI. The Reviewer finalised eight complaints and both self-reports from the OPI prior to my appointment.

Status as at 4 December 2022	Number of complaints
Finalised	10
Under review	13
<b>TOTAL</b>	<b>23</b>

Accordingly, I considered each of the 13 complaints made to the Reviewer as if they had been made to me.

### Complaints and submissions

During the 2022–23 financial year, I received 51 complaints or submissions under the ICAC Act and the Ombudsman Act, including the 13 complaints made to the Reviewer. The 51 complaints or submissions were made by 45 individual complainants and included one self-report made by the OPI to me.

Source of complaint	Number of complaints or submissions
Complained to the Reviewer	13
Complained to the Inspector	31
Responded to a call for submissions	6
Self-reported by an agency	1
<b>TOTAL</b>	<b>51</b>

I assessed each complaint or submission that I received. In doing so, I made a determination, firstly, whether the complaint or submission related to the conduct of the Commission, the OPI or Ombudsman SA such that my jurisdiction was enlivened, and secondly, if my jurisdiction was enlivened, under what provision I ought to review the matter. I determined it was appropriate to also consider the matters raised in three historical submissions (see below) as relevant complaints. Therefore, the total number of complaints or

submissions considered during the 2022–23 financial year was 54 (51 complaints and three historical submissions also considered as relevant complaints).

Jurisdiction	Number of complaints or submissions
<b>Under the ICAC Act</b>	
Related to the historical review under the Amending Act <sup>10</sup>	6
Review of a relevant complaint <sup>11</sup>	30
<b>Under the Ombudsman Act</b>	
Review of a relevant complaint <sup>12</sup>	3
<b>Outside of jurisdiction</b>	15
<b>TOTAL</b>	<b>54</b>

The majority of the complaints and submissions I received related to the conduct of the Commission, the OPI or Ombudsman SA. However, it was often the case that complainants raised issues in relation to more than one agency. This was not surprising given significant changes to the ICAC Act in 2021, which, among other things, established the OPI as a standalone agency from the Commission.<sup>13</sup> Where a complaint or submission related to more than one agency, it has been counted twice for the purposes of the table below.

Agency	Number of complaints or submissions
<b>Commission</b>	
Pre-2021 separation from the OPI	6
Post-2021 separation from the OPI	5
<b>OPI</b>	
Pre-2021 separation from the Commission	9
Post-2021 separation from the Commission	18
<b>Ombudsman SA</b>	6
<b>Other/unclear</b>	13

<sup>10</sup> *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA) Sch 1 cl 75 (**Amending Act**).

<sup>11</sup> *Independent Commission Against Corruption Act 2012* (SA) Sch 4 cl 2(1)(b) (**ICAC Act**).

<sup>12</sup> *Ombudsman Act 1972* (SA) s 29(1)(b) (**Ombudsman Act**).

<sup>13</sup> Amending Act s 17 as enacted 7 October 2021.

I finalised 17 of the 54 complaints or submissions by 30 June 2023.

I have taken a variety of actions in dealing with complaints that raised legitimate issues with respect to the practices of the Commission, the OPI, and Ombudsman SA. I have provided examples of those matters later in this Annual Report.

As of the date of this Annual Report, I have finalised 49 of the 54 complaints or submissions received during the 2022–23 financial year.

Status of complaints and submissions	As at 30 June 2023	As at 27 September 2023
Finalised	17	49
Under consideration	37	5
<b>TOTAL</b>	<b>54</b>	<b>54</b>

## Requests from the Attorney-General or the Committee

During the 2022–23 financial year, I received two requests to conduct reviews from the Attorney-General, the Honourable Kyam Maher MLC, pursuant to clause 2(1)(c) of Schedule 4 of the ICAC Act. Both matters broadly concern the conduct of the Commission and the OPI prior to their separation in 2021.

I did not receive any requests from the Crime and Public Integrity Policy Committee.

The first request resulted in the Hanlon Report,<sup>14</sup> which is discussed later in this Annual Report. That matter broadly concerned the conduct of the Commission and the OPI.

I have commenced a review relating to the second request which relates to a matter involving the Commission and the OPI and arose from a matter known to the Select Committee on Damage, Harm or Adverse Outcomes Resulting from ICAC Investigations. A report of my review will be completed in early 2024.

Status of reviews at the request of the Attorney-General	As at 30 June 2023	As at 27 September 2023
Finalised	1	1
Under review	1	1
<b>TOTAL</b>	<b>2</b>	<b>2</b>

I did not receive any requests from the Attorney-General or the Crime and Public Integrity Policy Committee under section 29(1)(c) of the Ombudsman Act.

<sup>14</sup> Philip Strickland SC, *Report 2023/01: Review of the Investigation and prosecution of Mr John Hanlon*, 26 June 2023 (**Hanlon Report**).

## Own motion

During the 2022–23 financial year, I considered several matters that I received as historical submissions. I have discussed these matters further below. I determined that two of those matters raised significant issues that include, but go beyond, the issue of undue prejudice to reputation and warrant a more detailed review that broadly includes the exercise of powers and functions by the Commission. As a result, I have since determined to conduct two reviews of my own motion under clause 2(1)(c) of Schedule 4 of the ICAC Act.

Both reviews of my own motion are ongoing as of the date of this Annual Report. I expect to deliver a report in respect of each own motion review to the Parliament in early 2024 in accordance with the requirements in clause 9 of Schedule 4 of the ICAC Act.

<b>Status of reviews of the Inspector's own motion</b>	<b>As at 27 September 2023</b>
Finalised	0
Under review	2
<b>TOTAL</b>	<b>2</b>

I did not commence any reviews of my own motion under section 29(1)(c) of the Ombudsman Act.



## Key statistics

	Finalised	Under review	TOTAL
<b>Relevant complaints</b>			<b>33</b>
As at 30 June 2023	10	23	
As at 27 September 2023	28	5	
<b>Complaints not in jurisdiction</b>			<b>15</b>
As at 30 June 2023	7	8	
As at 27 September 2023	15	0	
<b>TOTAL COMPLAINTS</b>			<b>48</b>
<b>Historical submissions</b>			<b>6</b>
As at 30 June 2023	0	6	
As at 27 September 2023	6	0	
<b>Reviews at the request of the Attorney-General</b>			<b>2</b>
As at 30 June 2023	1	1	
As at 27 September 2023	1	1	
<b>Reviews of the Inspector's own motion</b>			<b>2</b>
As at 27 September 2023	0	2	
<b>TOTAL MATTERS<sup>15</sup></b>			<b>58</b>

<sup>15</sup> Complaints, submissions and other reviews.



## Inspector's annual review 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 2022–23 financial year.

On 29 June 2023, a notice calling for public submissions in relation to the annual review was published in the South Australian Government Gazette and on the Office of the Inspector's website. The notice was also published in the Adelaide Advertiser. Submissions were open until 1 August 2023.

In assessing the exercise of powers by the Commission, the OPI, and Ombudsman SA under the relevant Acts, I do not consider that it is necessary for me to examine every action taken by the Commission, the OPI, and Ombudsman SA during the reporting period. To adopt such an approach would constitute an impractical task and would require considerable additional resourcing.

Rather, I consider that I am required, for the purposes of an annual review, to examine the exercise of powers by the Commission, the OPI and Ombudsman SA in the context of the submissions and relevant complaints I have received during the reporting period. Proceeding in this way allows me to examine particular exercises of power about which members of the community, public officers, or public authorities hold concerns. Agencies, during the reporting period, also self-reported to me in relation to matters that raised the possibility of my jurisdiction. I also include, by way of summary, relevant data provided to me by the Commission, the OPI, and Ombudsman SA regarding their operations during the 2022–23 financial year at Annexures B to D to this Annual Report.

## Annual review under the *Independent Commission Against Corruption Act 2012*

In conducting an annual review under the ICAC Act, I am required by clause 9(1)(a) of Schedule 4 to consider certain matters. Those matters are:

- 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.

Pursuant to clause 9(6)(c) of Schedule 4 of the ICAC Act, if I do find that undue prejudice to the reputation of any person was caused, in relation to any review, I may publish any statement or material that I think will help alleviate the prejudice, or recommend that the Commission or the OPI (as the case may require) pay an amount of compensation to the person.

I am required by clause 9(9)(a) of Schedule 4 of the ICAC Act to consider, in the preparation of this Annual 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 Annual 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. Though I have written this Annual Report with the operation of section 54 in mind, out of an abundance of caution, I have sought and received an approval to authorise disclosure of information from the Commissioner and the Director of OPI to publish information that may otherwise be prohibited from publication by section 54 of the ICAC Act.

In addition to functions under the ICAC Act, the OPI has legislative functions under the *Police Complaints and Discipline Act 2016 (PCD Act)*. The disclosure and publication of information relating to a complaint, report, assessment or investigation under the PCD Act is subject to the confidentiality provisions under sections 44 to 46 of the PCD Act. I have sought and received an authorisation from the Director of OPI pursuant to section 45(3) and section 46(1) of the PCD Act to include information in this Annual Report that may otherwise have been prohibited from inclusion under sections 45 and 46 of the PCD Act.

## Consideration of historical submissions

I am also required by clause 75(1) of Schedule 1 of the Amending Act to consider during my first annual review of the Commission and the OPI whether undue prejudice to the reputation of any person was caused by the Commissioner, employees of the Commissioner or employees of the OPI under the ICAC Act prior to the commencement of the Amending Act. The relevant period is from the Commission's inception on 1 September 2013 to the date of commencement of the Amending Act on 7 October 2021.

In order to comply with my obligation under the Amending Act, I determined that it was appropriate to seek submissions from members of the public who may have experienced undue prejudice to their reputation arising from the conduct of the Commissioner or the OPI. Accordingly, I made a public call for submissions on 9 March 2023 and accepted submissions until 10 April 2023. The notice calling for public submissions was published in the South Australian Government Gazette and on the Office of the Inspector's website. The notice was also published in the Adelaide Advertiser. I refer to these submissions as "*historical submissions*".

I received seven responses to the call for historical submissions. One person made two submissions about the same incident. Therefore, I have considered six historical

submissions in relation to the conduct of the Commissioner, employees of the Commissioner or employees of the OPI prior to 7 October 2021.

In relation to each submission, I considered the question of whether undue prejudice to the reputation of any person was caused.

## **Submissions 1 and 2**

Submissions from two separate persons who alleged that undue prejudice to their reputation was caused as a result of a 2014 Commission investigation into alleged misuse of government credit cards by public officers within the then Department of Planning, Transport and Infrastructure.<sup>16</sup>

On reviewing both submissions and the brief of evidence, I considered whether undue prejudice to the reputation of any person was caused by the Commission. I decided that this matter raises significant issues that include, but go beyond the issue of, undue prejudice to reputation and warrants a more detailed review that broadly includes the exercise of powers and functions by the Commission. Accordingly, I decided to conduct an own motion review pursuant to clause 2(1)(c) of Schedule 4 of the ICAC Act in relation to Submission 1. That review has commenced, and I expect that my report on that review will be delivered to the Parliament in early 2024.

## **Submission 3**

A submission concerning the OPI's oversight of the Internal Investigation Section (IIS) of South Australia Police (SAPOL) as it related to the complainant's involvement with police, and the way that they were treated by an employee of the OPI when the complainant spoke with them over the telephone. I have determined that there was no action by the OPI that caused undue prejudice to the complainant's reputation. I have considered the matter as a relevant complaint during the 2023–24 financial year. I wrote to the complainant with the outcome of my review.

## **Submission 4**

A submission about the ICAC, OPI and Ombudsman SA, which did not, upon consideration, raise issues of undue prejudice to the reputation of any person caused by the Commission or the OPI. As such, it did not fall within the scope of clause 75(1) of Schedule 1 of the Amending Act. The complainant was invited to provide me with any information that might enable me to consider their matter as a relevant complaint. No further information was provided, and the file in relation to this matter was closed.

## **Submission 5**

A submission was made about undue prejudice to the reputation of Chief Superintendent Douglas Barr who died by suicide during a Commission investigation into Chief Superintendent Barr's involvement in the SAPOL recruitment process known as "*Recruit 313*". I have considered whether undue prejudice to the reputation of any person was caused by the Commission. As with submission 1, this matter raises significant and complex issues which extend beyond whether undue prejudice to the reputation of any person was caused by the Commission or the OPI. I have therefore determined to review the matter on my own

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<sup>16</sup> It is now the Department for Infrastructure and Transport.

motion, pursuant to clause 2(1)(c) of Schedule 4 of the ICAC Act. That review has commenced. I also intend to report on this matter early in 2024.

### **Submission 6**

A submission about the OPI. I determined that the submission did not relate to an issue of undue prejudice to the reputation of any person caused by the OPI, however it did raise issues with the conduct of the OPI. I determined to review the matter as a relevant complaint under clause 2(1)(b) of Schedule 4 of the ICAC Act. On reviewing the complaint and brief of evidence, I was satisfied that the OPI and the ICAC satisfactorily carried out their functions and powers under the ICAC Act in relation to this complaint. I found that there was no conduct of the OPI or the Commission that warranted further investigation. I wrote to the complainant with the outcome of my review and the matter was closed.

### **Was undue prejudice to the reputation of any person caused by the Commissioner, employees of the Commission or the OPI at any time before the commencement of the Amending Act?**

It follows that I have not yet made any finding that undue prejudice to the reputation of any person was caused by the Commissioner, employees of the Commissioner or employees of the OPI as in force at any time before the commencement of the Amending Act. Accordingly, pursuant to clause 75(2) of Schedule 1 of the Amending Act, I have not published any statement or material that I think will help alleviate said prejudice, nor have I made a recommendation that the Commission pay any compensation.

That is not to say that I will not. I consider I am able to make the same findings and take the same actions in relation to any other reviews under clause 9(6)(c) of Schedule 4 of the ICAC Act.

I am currently reviewing the issue of undue prejudice to reputation in conjunction with other important issues about the conduct of the Commission in two separate reviews of my own motion in relation to submissions 1 and 5.

To that end, I intend to report on these matters in the future, which will include further consideration of undue prejudice to reputation.

### **Summary of complaints received relating to the Commission and the OPI**

In the 2022–23 financial year, I received 45 complaints about the conduct of the Commission and the OPI. I determined 15 complaints were not relevant complaints in accordance with the definition under clause 1 of Schedule 4 of the ICAC Act and Regulation 21 of the *Independent Commission Against Corruption Regulations 2013*. The following table summarises the outcomes of those 15 complaints:

Reason for determination	Provision	Number of complaints
Complaint not particularised	ICAC Regulation 21(b)(i)	8
Complaint related to the conduct of another agency	ICAC Act Sch 4 cl 1	6
Complaint withdrawn		1
<b>TOTAL</b>		<b>15</b>

I undertook reviews of all 30 relevant complaints. Some relevant complaints concerned the conduct of both the OPI and the Commission, while others complained about just the one agency. Some relevant complaints related to the conduct of the OPI both before and after its establishment as a standalone agency from the Commission.

I make it clear that I have considered the issue of whether undue prejudice to the reputation of any person was caused by the Commission or the OPI in relation to each matter reviewed by me, including reviews of relevant complaints, under clause 9(6)(c) of the ICAC Act. I did not make any findings as to undue prejudice to reputation caused by the Commission or the OPI. Therefore, I have not exercised my power to publish any statement or material that may alleviate such prejudice, nor have I made any recommendations as to compensation to be paid by the Commission or the OPI.

I have summarised some relevant complaints below. I have not included all relevant complaints. Reasons for not including a summary include that doing so might identify the complainant, my review has not been finalised, or a summary has been included elsewhere in this Annual Report. The following examples have been chosen to provide a summary of the types of matters received and considered by me during the 2022–23 financial year.

### Example 1

I received a complaint about a telephone call the complainant made to the OPI seeking advice. However, the information that the complainant provided to the OPI resulted in their complaint being referred to the IIS of SAPOL. The complainant did not want this to occur. The OPI explained to the complainant in a telephone call, and in an email, the reason why it was required by law to refer the complaint to the IIS.

I wrote to the Director of OPI about this matter and received a written response. I also met with the Director of OPI about the same complaint. I then telephoned the complainant before writing to them. I explained to the complainant that their telephone call to the OPI was properly treated as a complaint made under section 10 of the PCD Act and that pursuant to section 13(2) of that Act the OPI was required to refer their complaint to the IIS, and that in the circumstances it was appropriate to do so. I advised that I was satisfied that the OPI exercised its functions appropriately in referring their complaint to the IIS.

This complaint raised some important issues which I discussed with the Director of OPI and that I believe will lead to improvements to systems for those who make similar complaints to the OPI. These improvements include the consideration of a recorded message at the

commencement of calls to the OPI in relation to complaints and reports about police officers. I also encouraged the OPI to communicate the wishes of a complainant to the IIS for their consideration in circumstances where the complainant does not wish for the complaint to be referred to the IIS.

## Example 2

Throughout the 2022–23 financial year, I reviewed the documentation stored on the databases of the Commission, the OPI and Ombudsman SA when it was necessary to do so. In relation to complaints made to the OPI, telephone calls made to or from the OPI are retained on the OPI's database. For the most part, I considered the way in which the OPI communicated with complainants to be appropriate.

I received two complaints on similar terms that related to the way in which the OPI handled telephone calls with complainants. Both complainants were dissatisfied with the way they were spoken to over the telephone. Both complainants expressed frustration that they were unable to receive the information they sought from either the OPI or the IIS.

I met with the Director of OPI in relation to both complaints and brought the telephone calls to her attention. I recommended that the OPI liaise with the IIS in relation to the provision of information to complainants. The Director of OPI subsequently advised me that relevant OPI staff had attended further training relating to telephone attendances and that she had met with OPI staff to clarify the provision of information relating to complaint outcomes. Further, that the Director of OPI had met with the Officer in Charge of the IIS to ask him to reiterate to his staff the need for clear advice about outcomes when speaking to complainants over the telephone. I understand that the Director of OPI's consideration of these complaints resulted in a review of the OPI's policy relating to call handling. The outcomes of the reviews were communicated to the respective complainants.

## Example 3

I was contacted by a complainant who wished to "*report*" the OPI. The complainant took issue with what they perceived as being treated "*as a number*" and with not receiving any personal contact from the OPI. The complainant had complained to the OPI about issues with their aged care provider. The complainant self-identified as vulnerable and as a person being subjected to elder abuse. The complainant described their correspondence as "*a cry for help*".

My Office wrote to the complainant advising that they could contact the Adult Safeguarding Unit if they were being abused or mistreated. The complainant was provided with a list of other support services, including advocacy services for the elderly and mental health support services. Further information was sought from the complainant, including what the complainant alleged the OPI had done. The Inspector's jurisdiction was explained, and the complainant was advised that they might wish to contact the Aged Care Quality and Safety Commission about complaints relating to Australian Government funded aged care providers.

The complainant responded and thanked my Office for acknowledging the complainant respectfully and for including the name of the person who contacted them. The complainant again raised complaints about their aged care provider, including breaches of the *Retirement Villages Act 2016*, and asked who to report their complaints to. The complainant again



complained about the OPI but did not provide sufficient particulars for me to fully understand their complaint.

The Office of the Inspector provided the complainant with the names of services that might be able to assist, including: the Aged Rights Advocacy Services for advocacy and legal advice, the Legal Services Commission for advice and referrals, the Older Persons Advocacy Network for support, and the Health and Community Services Complaints Commissioner and the Aged Care Quality and Safety Commission for complaints. The complainant was advised that the Inspector could not provide legal advice and could not deal with the conduct of agencies outside of the Commission, the OPI or Ombudsman SA. The complainant was asked to provide more information about what they alleged the OPI had done.

No further information was received from the complainant. I wrote to the complainant advising that the matter could not be progressed as the requested information was not received. I advised the complainant that they could submit a further complaint if they did wish to complain about the OPI. I have not received any further correspondence from the complainant.

#### **Example 4**

This was a matter that was ongoing at the time that I commenced in the role of Inspector and related to communication between the complainant and a former employee of the Commission. The complainant had provided their consent to disclose their identity to enable the investigation of their complaint.

On reviewing the complaint, and the information available to me, I considered whether the former employee had communicated with the complainant in a manner that was inappropriate and/or in contravention of Commission protocols. I decided that as the person complained about was a former employee of the Commission, I did not have the power to refer the matter back to the Commission for further investigation and potential disciplinary action pursuant to clause 9(6)(b) of the ICAC Act. Instead, I determined to disclose information to the Commissioner pursuant to clause 9(8) of Schedule 4 of the ICAC Act for consideration by the Commissioner. Following my disclosure, I understand that the matter was then considered by the Commissioner. I wrote to the complainant advising them of the outcome of my review.

#### **Example 5**

This was a matter that was ongoing at the time that I commenced in the role of Inspector and related to the OPI prior to the OPI being established as a separate agency.

The complainant alleged that due to the OPI disclosing their identity to their employer (a government department) the complainant had experienced difficulties with their employment. Specifically, the complainant referred to an application for a position that the complainant applied for, and for which the complainant was interviewed but ultimately was not successful. The complainant had made two reports to the OPI. I found that the complainant only consented to the disclosure of their identity in relation to one of the complaints. The OPI wrote to the complainant's employer about both complaints and thereby disclosed the complainant's identity.

I found that after becoming aware of the disclosure of the complainant's identity, the OPI immediately commenced action to rectify the disclosure and mitigate risks arising from the

disclosure. Amendments were made to the OPI online reporting form and the fact sheet document. A new process was developed to ensure that the complainant's consent to having their identity disclosed is considered in respect of individual complaints made.

I found that there was no evidence that the interview panel members who interviewed the complainant knew about the complainant's report to the OPI and that the decision to not appoint the complainant was made for reasons other than their report to the OPI. I wrote to the complainant advising them of the outcome of my review.

### **Example 6**

This was a matter that was ongoing at the time that I commenced in the role of Inspector and related to the OPI prior to the OPI being established as a separate agency.

The complainant had made two complaints to the Reviewer. The complainant alleged that there had been impropriety on the part of the OPI in failing to adequately assess their complaint about a statutory officer. The complainant also argued that their business assets had been unlawfully sold by a delegate of the statutory officer and they had not been provided with the proceeds of sale.

A review of the OPI's files in relation to this complaint was conducted and I determined that the OPI had conducted a comprehensive assessment of the matter. The OPI assessment showed no evidence of an erroneous approach either factually or legally and the statutory officer and their delegates had acted lawfully. Further, I found that there was no impropriety on the part of the OPI. I wrote to the complainant advising them of the outcome of my review.

### **Were the powers of the Commission and the OPI exercised in an appropriate manner?**

Having reviewed the submissions and complaints made in relation to the Commission and the OPI, I am satisfied that, on the whole, the powers of the Commission and the OPI were exercised in an appropriate manner during the 2022–23 financial year.

During this period, I did not identify any evidence of corruption, misconduct, or maladministration in public administration by the Commission, the OPI, or employees of the Commission or the OPI. I did make a finding of institutional maladministration against the Commission in relation to events prior to the 2022–23 financial year in the Hanlon Report, which is discussed later in this Annual Report.

In a limited number of instances, I did identify certain areas in which practices of the OPI could be improved, such as in communication practices when engaging with complainants. On those occasions, the Deputy Inspector or I either wrote to, or met with, the Director of OPI to discuss the issue. I am satisfied that in each instance the Director of OPI has taken relevant steps to improve those practices moving forward.

I did not identify any evidence of unreasonable delay in the conduct of investigations under the ICAC Act during the 2022–23 financial year.

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

I did not identify any instances of undue prejudice being caused to the reputation of any person by the Commission or the OPI or employees of the Commission or the OPI.

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

In line with my above findings, I consider that the practices and procedures of the Commission and the OPI were effective and efficient during the 2022–23 financial year.

**Did the Commission and the OPI carry out their functions under the ICAC Act in a manner likely to assist in preventing or minimising corruption in public administration?**

I am satisfied that the Commission and the OPI carried out their functions under the ICAC Act in a manner likely to assist in preventing or minimising corruption in public administration. Upon the review of the relevant complaints and submissions made to me, I have identified no evidence that either the Commission or the OPI has conducted itself contrary to the purpose of its functions and of integrity agencies more generally.

Furthermore, the OPI data indicates that a very large number of complaints and reports are being processed efficiently and effectively, with a substantial number of referrals being made to the Commission, inquiry agencies, law enforcement agencies, and other public authorities by the OPI. Efficient administration of the ICAC Act and PCD Act is critical to assisting in the prevention or minimising of corruption because it is necessary for matters to be assessed and referred quickly, which in turn mitigates the risk of any undue delay in an investigation by the Commission or Ombudsman SA.

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

Prior to amendments to the ICAC Act that came into operation on 5 December 2022, the Reviewer had powers under the *Surveillance Devices Act 2016* (**SD Act**) and the *Telecommunications (Interception) Act 2012* (**TI Act**) to ensure that the Commission and SAPOL adhered to record keeping and reporting obligations under those acts pertaining to intercepting telecommunications and the use of surveillance devices.

When I was appointed as the inaugural Inspector, amendments were not made to the definitions in section 3 of the SD Act and section 2 of the TI Act to define a “*review agency*” as including the Inspector appointed under Schedule 4 of the ICAC Act. I have therefore lacked the legislative power to conduct the required six-monthly reviews of ICAC and SAPOL under the SD Act and TI Act.

I understand that on 15 June 2023, the Attorney-General introduced the Statutes Amendment (Attorney-General’s Portfolio) (No 4) Bill 2023 into Parliament and that this Bill passed both Houses of Parliament on 12 September 2023. It was recently assented to by the Governor on 21 September 2023. The Statutes Amendment (Attorney-General’s Portfolio) (No 4) Act 2023 (**Statutes Amendment Act**) has 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. I therefore now have the power to undertake the six-monthly reviews required by section 32 of the SD Act and section 5 of the TI Act.

The Statutes Amendment Act also includes transitional arrangements which provide that required reviews that were missed from 31 August 2022 may be conducted as part of the next review occurring after the commencement of the Statutes Amendment Act.

Despite the previous absence of the legislative power to conduct the reviews, either the Deputy Inspector or I have attended at SAPOL<sup>17</sup> and the Commission<sup>18</sup> at least six monthly to meet with those responsible for ensuring compliance with the SD Act and TI Act and to familiarise ourselves with the process. As we did not have the power to conduct the reviews at the time, we have not done so.

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<sup>17</sup> 15 May 2023.

<sup>18</sup> 23 February 2023 and 22 August 2023.

## 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;
- 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 Annual 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 Annual Report may have on any of the aforementioned matters, and I am satisfied that this Annual 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. Though I have written this Annual 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.

### Summary of complaints received relating to Ombudsman SA

I received five complaints and one historical submission relating to Ombudsman SA during the 2022–23 financial year. One person made a complaint and a historical submission about the Ombudsman. As the call for historical submissions did not concern the Ombudsman, I determined to treat those two matters as a single complaint. Therefore, I considered five complaints relating to Ombudsman SA.

In two instances, complaints made about Ombudsman SA did not provide sufficient information for me to review them as relevant complaints. The complainants were invited to provide me with any information that might enliven my jurisdiction to review. However, no further information was provided by either complainant. I determined those complaints were not relevant complaints and closed both files.

I have provided two examples of relevant complaints about Ombudsman SA that were made to me during the 2022–23 financial year that I subsequently reviewed and have since closed.

### Example 1

This was a complaint to me about Ombudsman SA.

The complainant was the subject of an anonymous complaint to the OPI regarding the disclosure of confidential information.

The conduct the subject of the complaint was referred by the OPI to Ombudsman SA. Upon receiving the referral from the OPI, the Ombudsman commenced assessing the information provided and formed a provisional view that the complainant may have inappropriately shared confidential information. The Ombudsman corresponded with the complainant to seek their views and to attempt to resolve the matter without the need to conduct a full investigation. The matter failed to resolve, and the Ombudsman made a decision to investigate the matter.

The Ombudsman published a report on the investigation and made a number of findings adverse to the interests of the complainant.

The complainant made a complaint to me about potential impropriety on the part of the Ombudsman and a staff member of Ombudsman SA in undertaking the investigation. The allegations included:

- including false or misleading information in the report;
- failing to consider relevant information for the purposes of the investigation and report;
- erring in making a particular recommendation and finding;
- accepting evidence as part of the investigation that was not admissible;
- acting in a position of conflict and/or personal interest in the matter;
- making findings without any evidence in support of those findings;
- acting as part of a conspiracy;
- not affording procedural fairness;
- failing to appropriately consider submissions;
- erring in publishing the report.

Following my review of each of the allegations made by the complainant, which involved a comprehensive assessment of the information retained by Ombudsman SA in relation to the matter, I did not consider that there was any evidence of impropriety, misconduct or

maladministration or any material factual or legal error in the exercise of powers and functions by the Ombudsman or his staff under the ICAC Act and Ombudsman Act. I wrote to the complainant to advise them of the outcome of my review.

## **Example 2**

This was a matter that was ongoing at the time that I commenced in the role of Inspector.

A complaint was received by the Reviewer from a person who had been the subject of a report to the Commission where it had been alleged to the Commission that the complainant had engaged in misconduct in public administration in relation to the complainant's position and interests in property within their council area.

The Commission referred the matter to the Ombudsman for investigation.

The Ombudsman found that the complainant committed misconduct in public administration.

Although the complainant stated to the Reviewer that their complaint was about the Commission, their complaint was in fact about the Ombudsman. The Reviewer had no jurisdiction over the Ombudsman.

I do have jurisdiction to review complaints about the Ombudsman.

After the establishment of the Office of the Inspector, the complainant provided further information about their complaint and, as a result, I undertook a comprehensive review of the matter. The complainant alleged impropriety by the Ombudsman in relation to the content of the Ombudsman's report, including a specific complaint that the Ombudsman failed to refer to a particular document in the Ombudsman's report.

As part of my review of the complaint, the files held by the Ombudsman were reviewed.

I found that the complainant was afforded procedural fairness by the Ombudsman. I found that there was no impropriety by the Ombudsman in not referring to a particular document in his report, and there was no impropriety in the Ombudsman's finding of misconduct in public administration. There was objective evidence of the behaviour that resulted in that finding. I wrote to the complainant to advise them of the outcome of my review.

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

Having reviewed the relevant complaints in relation to Ombudsman SA, I am satisfied that the Ombudsman has exercised his powers in an appropriate manner during the 2022–23 financial year.

I have not identified any instances in which undue prejudice to the reputation of any person was caused by Ombudsman SA.

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

I am satisfied that the practices and procedures of the Ombudsman were effective and efficient during the 2022–23 financial year. As reported by Ombudsman SA, more matters were resolved during the 2022–23 financial year than were received as a result of complaints



or referrals to Ombudsman SA. No complaint to me has raised any issue of delay in the conduct of the Ombudsman's functions.

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

For the reasons I have given, I am satisfied that the Ombudsman has exercised his 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 2022–23 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:

- I received five complaints concerning the conduct of the Ombudsman. Three of the complaints were relevant complaints for the purposes of section 29(1)(b) of the Ombudsman Act in the 2022–23 financial year;
- I undertook a review of each relevant complaint but determined not to prepare a report into any of the three relevant complaints. I closed each of the three relevant complaints without taking any further action in relation to them;
- two of the relevant complaints alleged impropriety on the part of Ombudsman SA in that the investigations by the Ombudsman were inappropriate, politically motivated, and in one case, the product of a conspiracy between local government and the Ombudsman. Both relevant complaints also took issue with the ultimate findings of the Ombudsman;
- one of the relevant complaints alleged the Ombudsman erred in deciding to take no further action in relation to a complaint;
- I did not conduct any reviews of my own motion and did not receive any requests to conduct any reviews from the Attorney-General nor the Crime and Public Integrity Policy Committee.

Of the five complaints I received relating to Ombudsman SA during the 2022–23 financial year, three were closed by 30 June 2023. As of the date of this Annual Report, I have finalised all five complaints.



## Reports delivered by the Inspector during the 2022–23 financial year

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

On 26 June 2023, I delivered the Hanlon Report to the President of the Legislative Council and the Speaker of the House of Assembly. The President and the Speaker tabled the Hanlon Report before their respective Houses on 27 June 2023.

On 5 December 2022, the Attorney-General, the Honourable Kyam Maher MLC, requested that I undertake a review into the investigation and prosecution of Mr Hanlon pursuant to clause 2(1)(c) of Schedule 4 of the ICAC Act.

Mr Hanlon was the former Chief Executive of Renewal SA and was the subject of a corruption investigation by the Commission and referral by the Commission to the DPP for prosecution. All charges against Mr Hanlon were withdrawn by the DPP and he has never been convicted of a criminal offence.

In the Hanlon Report, I made several key findings, including:

- that there was sufficient evidence to justify the investigation by the Commission into Mr Hanlon's trips to Melbourne and Germany;<sup>19</sup>
- that the referral to the DPP by the Commission of Mr Hanlon's trips to Melbourne and Germany was appropriate and reasonable;<sup>20</sup>
- that there was no evidence that the Commission engaged in corruption or misconduct in public administration;<sup>21</sup>
- that there was evidence of maladministration in public administration in the following aspects of the Commission's conduct:<sup>22</sup>
  - the Commission's failure to make proper inquiries, including by obtaining legal advice, about its authority to conduct investigations in Germany;
  - the Commission's conduct in carrying out investigations in Germany without obtaining approval from local authorities;
  - the Commission's failure to disclose to the DPP the matters set out below;
- that the Commission should have disclosed to the DPP the following matters:<sup>23</sup>
  - a Senior Investigator witnessed affidavits in Germany contrary to the known requirements of section 66 of the *Evidence Act 1929*;

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<sup>19</sup> Hanlon Report at [731].

<sup>20</sup> Ibid at [460], [731].

<sup>21</sup> Ibid at [734].

<sup>22</sup> Ibid.

<sup>23</sup> Ibid at [713].

- the content of the email from the AFP Interpol officer and AFP Liaison Officer in the Hague dated 11 September 2019;
- the content and context of the investigator's conversation with the German Consul-General;
- the advice received from the International Crime Cooperation Central Authority dated 1 October 2019 that was conveyed to a Legal Officer within the Commission ;
- no mutual assistance request under the *Mutual Assistance in Criminal Matters Act 1987* (Cth) had been sought or obtained in respect of the affidavits obtained in Germany and that the German authorities had not been advised of the Commission's actions in Germany.

Based on those findings I made four recommendations in the Hanlon Report. The recommendations were made having regard to the evidence I heard during the review, as well as through submissions from interested parties. The recommendations were:

### **Recommendation 1: Obtaining statements from other jurisdictions**

The Commission revise its Investigations Manual such that the 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.

### **Recommendation 2: Information and records management**

The Commission provide regular training to staff on records management and the importance of saving official records in Objective (or any other nominated system).

### **Recommendation 3: Referral to law enforcement agency**

The Commission revise its Investigations 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 Investigations Manual.

### **Recommendation 4: Recording of key decisions**

The Commission revise the draft 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 the Commission.

## Proposals for legislative reform

Since my appointment as the Inspector, my focus has been on reviewing complaints from members of the public, conducting the detailed review into the Commission's investigation and prosecution of Mr Hanlon, and conducting reviews of the historical submissions. In performing my functions, I have had cause to review the ICAC Act, the PCD Act, the Ombudsman Act and other related legislation and legislative instruments. 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. Such a review is outside the scope of an annual review. It is also not a task that I have been requested to perform. Nevertheless, pursuant to clause 9(1)(c) of Schedule 4 of the ICAC Act and section 29(2)(c) of the Ombudsman Act, I may make any recommendations to the Attorney-General, the OPI, the Commission or the Ombudsman that I think fit. In the Hanlon Report, I foreshadowed that I would likely make broader recommendations, including recommendations relating to legislative changes, in the annual review. I do so now.

I sought submissions regarding legislative reform from the Commission, the OPI, Ombudsman SA, SAPOL, and the DPP. I am thankful to those agencies for their considered, insightful and helpful submissions.

In some cases, I have been provided with detailed submissions that have been raised with the government previously. I do not repeat all of those submissions in this Annual Report, and I do not propose that this Annual Report includes all issues raised with me. There are numerous submissions that have been put to me that may have merit, but which I have not addressed because although they are relevant to a particular agency, they do not directly relate to my role as the Inspector. Further, I do not intend to speak on behalf of an agency on a topic with which I have had limited exposure. Other proposed reforms are omitted from this Annual Report as those issues are the subject of reviews I am currently conducting.

Instead, I have focussed on matters that I consider are key to ensuring South Australia has an efficient and cohesive integrity system in place to address corruption, misconduct, and maladministration in public administration. I have also focussed on matters that are significant to the performance of my functions.

Significant change is required to the integrity laws in this State if the intention is to have an effective public integrity scheme. Of course, if any consideration is to be given to legislative reform, it is necessary that the agencies be consulted.

## Amendments to the *Independent Commission Against Corruption Act 2012*

Amendments to the ICAC Act, which came into effect on 7 October 2021, caused a significant reduction in the powers of the Commission, the most significant being that the Commission can now only investigate matters involving conduct falling within a re-constituted definition of “*corruption in public administration*” and can no longer inquire into matters of serious or systemic misconduct or maladministration in public administration.

As will be discussed, these amendments have had significant consequences for the efficiency and robustness of the integrity system in South Australia.

### Reimbursement of legal costs

Under section 59A and Schedule 5 of the ICAC Act, government employees who are investigated by the Commission and are not convicted of an indictable offence which falls within the definition of “*corruption in public administration*” can apply to have their legal costs reimbursed.

The effect is that government employees who are prosecuted for offences such as theft or deception (offences which do not constitute corruption in public administration) as a result of Commission investigations are entitled to have the legal costs incurred during the investigation and prosecution reimbursed by the taxpayer. That is so even if government employees are convicted of an offence. For example, a government employee who is investigated by the Commission and subsequently charged with, and convicted of, a theft they committed during the course of their work would be entitled to have their legal costs reimbursed. That is because theft is not an offence constituting corruption in public administration.

Generally, it is against the public interest for a convicted offender to be reimbursed by the taxpayer for their legal costs for both the Commission’s investigation and the prosecution in circumstances where that investigation and the subsequent prosecution led to conviction.

Such an entitlement to reimbursement for legal costs may have a negative impact on corruption prosecutions. The cost implications might impact the decision in relation to the laying of charges against a public officer.

Proceedings might be prolonged by pre-trial applications made by public officers who know they are entitled to reimbursement for their legal costs. This could place unnecessary pressure on and drain the resources of the Courts, the DPP, SAPOL, and the Commission.

Cost reimbursement is a significant disincentive against the Commission investigating or referring matters.

Furthermore, in relation to examinations conducted by the Inspector, currently any witness who appears before the Inspector at an examination can have no confidence that their legal costs will be reimbursed. That is because there is no reference to the Inspector, or a review conducted by the Inspector, in Schedule 5. A provision allowing people who have been required to be involved in or respond to a review by the Inspector to obtain publicly funded legal advice and representation should be inserted into Schedule 5 of the ICAC Act.

## Referral to the Director of Public Prosecutions

The amendments to the ICAC Act made on 7 October 2021 prohibited the Commission from referring its investigations directly to the DPP. Section 36 states:

- (1) On completing an investigation or at any time during an investigation, the Commission may do either or both of the following:
  - (a) refer a matter to the relevant law enforcement agency for further investigation and potential prosecution;
  - (b) refer a matter to a public authority for further investigation and potential disciplinary action against a public officer for whom the authority is responsible.
- (1a) For the avoidance of doubt, the Commission 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.

Tellingly, no other parliament in Australia has seen fit to restrict their integrity agencies in the same way as the Commission is restricted under section 36(1a).<sup>24</sup>

As a result of the amendments, the Commission must now refer matters to SAPOL for further investigation and prosecution. It is a matter for SAPOL to determine whether to refer the matter to the DPP, and there is no obligation on SAPOL to do so. The Commission cannot assist the DPP with the prosecution.

I understand that this has caused significant inefficiencies and duplication of work and costs. My review into the investigation and prosecution of Mr Hanlon highlighted the importance of communication between the Commission and the prosecuting authority. My review found that the Commission<sup>25</sup> failed to disclose to the DPP a number of matters arising out of the investigation, including issues with the obtaining of evidence while in Germany.<sup>26</sup> As I outlined in the Hanlon Report, it is my view that the requirement for the Commission to refer matters to SAPOL will create a further challenge to ensuring that all relevant information is conveyed to the DPP.<sup>27</sup>

Furthermore, the Commission develops a comprehensive understanding of the evidence throughout the investigation of a matter. The matter is then referred to SAPOL and a SAPOL officer is required to review the evidence that the Commission has compiled. Large investigations may require more than one SAPOL officer to be allocated to the matter and it can take time for investigators to review and understand the evidence. I understand that this causes a duplication of work and waste of resources for both the Commission and SAPOL.

<sup>24</sup> See *Independent Commissioner Against Corruption Act 2017* (NT) s 25; *Integrity Commission Act 2009* (Tas) s 8(1)(h); *Independent Commission Against Corruption Act 1988* (NSW) ss 14(1) and 53(1); *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 74(1). Queensland has a process whereby matters are referred to police officers seconded to the Crime and Corruption Commission to determine whether charges are to be laid. See Commission of Inquiry, *Commission of Inquiry relating to the Crime and Corruption Commission Report* (Report, 9 August 2022) at p 65-66.

<sup>25</sup> For the avoidance of doubt, I found that the failure to disclose was an institutional failing of the organisation, which was known as the Office of the Independent Commissioner Against Corruption at the time.

<sup>26</sup> Hanlon Report at [713].

<sup>27</sup> Ibid at [749].

Corruption investigations are often legally and factually complex, and involve voluminous evidence. The Commission is the agency with the expertise and skill to conduct these complex investigations. The Commissioner has submitted that the process involves “*significant cost duplication and wastage, and significantly delay the administration of justice*”.<sup>28</sup> I agree that the Commission’s inability to assist the DPP throughout the prosecution is a waste of a valuable resource. The Commission cannot communicate directly with the DPP. Any questions from the DPP prosecutor must go through SAPOL first. The SAPOL officer will, quite understandably, not have the same expertise as the Commission so the questions must be referred to the Commission. Enabling the Commission to communicate directly with the DPP will reduce the double handling and delay caused by the requirement to have SAPOL as the intermediary.

The Commission’s power to refer matters directly to the DPP should be reinstated.

Section 36(1a) should be repealed to enable the Commission to refer matters directly to the DPP. Either of the following will also need to occur:

- amending section 7(1)(a)(i) to be in the same terms as it was prior to October 2021, which would confer on the Commission an implied power to refer directly to the DPP; or
- inserting a provision into the ICAC Act expressly conferring on the Commission the power to refer matters to the DPP.

Further, there are issues with the drafting of section 36 of the ICAC Act that require rectification.

The DPP has brought to my attention that a literal interpretation of section 36(1a) is that SAPOL is responsible for any further investigation and prosecution of matters referred by the Commission pursuant to section 36(1a). I agree that this section appears to remove from the DPP the responsibility for the oversight and prosecution of these offences originally investigated by ICAC. I doubt that this was the intention of the section.

Further, section 36(2) states:

The Commission may disclose to the relevant law enforcement agency or public authority any evidence or information that the Commission has in respect of the matter.

That is also problematic as it does not require the Commission to disclose information that might reasonably be expected to assist the defence case. The use of the word “*may*” implies that the Commission has discretion to disclose the material. The Commission should be required to disclose the information.

Consideration should be given to either amending section 36(2) or to amending section 10A of the *Director of Public Prosecutions Act 1991 (DPP Act)*, or both. The Commission has submitted that amending the DPP Act is the more appropriate avenue as it ensures that there is the same standard of disclosure for Commission investigators and SAPOL officers. The effect of section 36(2) is that the Commission can disclose information during a corruption investigation if it wishes to refer a disciplinary or other matter to a public agency.

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<sup>28</sup> The Hon Ann Vanstone KC, Commissioner, Submission to the Inspector regarding proposals for legislative reform, *Inspector’s annual review 2022–23*, (11 August 2023) at [60].

The Commission has submitted that imposing a mandatory obligation in section 36(2) could result in the Commission having to disclose information that could compromise the underlying corruption investigation.

In my view, both section 10A of the DPP Act and section 36(2) of the ICAC Act should be amended. This will ensure there are no inconsistencies between the two sections. The amended section 36(2) could be drafted in a way that addresses the Commission's concerns about disclosing information that would undermine the corruption investigation.

### Definition of “*corruption in public administration*”

“*Corruption in public administration*” is defined in section 5 of the ICAC Act. The definition was narrowed by the October 2021 amendments to the ICAC Act. Prior to the amendments, the definition in section 5 included the following:

- (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;

The effect of the amendment is that various offences no longer amount to corruption in public administration, including theft and dishonest dealing with documents committed by public officers in the course of their duties or an assault by a police officer on a prisoner or victim. Referrals can be made to law enforcement agencies for offences that do not meet the definition of corruption in public administration.

Under the current definition the conduct that constitutes the offence must either be under:

- Part 7 Division 4 of the *Criminal Law Consolidation Act 1935*;
- an offence against the *Public Sector (Honesty and Accountability) Act 1995*, or an attempt to commit such an offence;
- an offence against the *Public Corporations Act 1993*, or an attempt to commit such an offence;
- an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence;
- aiding, abetting, counselling or procuring, inducing, being knowingly concerned in or party to, or conspiring with others to effect the commission of any of the above offences.

The Commission has submitted that the definition of corruption is too narrow, with the effect that the definition does not capture conduct which damages the public interest and would reasonably appear to be a matter of corruption. I agree with this submission.



In the second reading speech of the Amending Act, the Honourable Frank Pangallo MLC said:

*Anticorruption and integrity agencies do have a critical and crucial role to play in our society, because serious corruption and misconduct in our public sector must not be allowed to flourish unchecked. As I have said, corruption is the mortar holding up society's walls, it is the oil that greases the wheel, and it is everywhere—in the highest and most unexpected places. Sunshine is the best disinfectant, and we have a responsibility in this place to ensure that the sun shines brightly.*

I agree that the best way to combat corruption is to shed light on it. However, I disagree that only “serious” corruption should be brought to light. In my view, even what could be considered as “lower level” corruption should be identified, investigated, and dealt with appropriately. The implication of only dealing with “serious” corruption is that some corruption is permissible. I do not think that is an appropriate approach.

The definition of “*corruption in public administration*” should be amended to include any offence committed by a public officer in the course of their duty where there is a certain maximum penalty. At a minimum, all dishonesty offences committed by a public officer should constitute corruption in public administration.

The definition of “*misconduct in public administration*” also faces similar issues. I will return to this in the consideration of amendments to the Ombudsman Act.

## **Fragmentation, efficiency, and information sharing**

The fragmentation of the complaints and assessment system between the Commission, the OPI and Ombudsman SA deprives the agencies of the information needed to properly deal with corruption.

The Commission has submitted, that a provision should be inserted into the ICAC Act allowing the Commission and the OPI to share information where it might assist the other’s statutory functions. I agree with this submission. Information sharing is essential to the efficiency of any system, and it will improve the functioning of the integrity system in South Australia. Information sharing does occur at present, but a provision providing a clear mechanism for information sharing would remove any uncertainty and reduce inefficiency.

Under section 7(1)(b) of the ICAC Act, the Commission is tasked with evaluating “*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 in public administration*”. The Ombudsman has an identical function under section 5A(e) of the Ombudsman Act, except that the function relates to misconduct and maladministration rather than corruption. Ombudsman SA has submitted that it may be more efficient for the Commission to maintain the evaluation function as it relates to misconduct and maladministration as well as corruption, given the three are closely linked.



## Inspector's powers regarding complaints and other reviews

The definition of a “*relevant complaint*” under clause 1 of Schedule 4 only relates to the exercise of functions and powers under the ICAC Act. The definition reads:

***relevant complaint*** means a complaint made in accordance with any requirements prescribed by the regulations relating to the conduct of any person exercising or purporting to exercise functions and powers under this Act.

The Commission and the OPI both have functions under other Acts. The Inspector's ability to deal with complaints about the Commission or OPI exercising functions under a different Act is limited. The definition should be amended to encompass the exercise of functions by the Commission and the OPI irrespective of the Act conferring the functions.

Witnesses giving evidence at an examination before the Inspector can, prior to answering a question or producing a document, claim that the answer or document might incriminate them and make them liable to a penalty.<sup>29</sup> The Inspector should be empowered to adjudicate claims of the privilege against self-incrimination and to require the witness to answer the question or produce the document during the review. Pursuant to section 23A of the *Coroners Act 2003*, the Coroner can adjudicate claims of the privilege, require a witness to answer the question or produce the document, and then provide the witness with a certificate concerning the answer or document. A provision conferring this power on the Inspector could be modelled on section 23A of the *Coroners Act 2003*.

The Inspector should be empowered to execute evidentiary certificates under the ICAC Act. Section 59 should be amended to refer to the Inspector in addition to the Commissioner.

## Delegation of the Inspector's powers

There is no power for the Inspector to delegate functions within Schedule 4 of the ICAC Act.

The Deputy Inspector is appointed pursuant to clause 3 of Schedule 4 and may act as the Inspector during any period when the Inspector is absent or unable to discharge duties, or when no person is appointed as the Inspector. However, the Inspector has no power to delegate to the Deputy Inspector or anyone else for that matter.

A provision conferring this power should be inserted into the ICAC Act.

The Director of OPI also has no power to delegate to an Acting Director. There should be a provision providing for the appointment of an Acting Director and a subsequent provision empowering the Director of OPI to delegate to the Acting Director.

## Confidentiality

### Authorisations

At present, it is arguable that the Inspector must seek authorisations from the Commissioner and the Director of OPI pursuant to section 54 of the ICAC Act relating to the disclosure of information in relation to or connected with a complaint, report, assessment, investigation, or referral under the ICAC Act in certain situations. The Inspector should not need to do this.

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<sup>29</sup> ICAC Act Sch 2 cl 8(4)(c).

This is problematic as seeking the authorisation necessarily involves a disclosure of the complainant's identity. If the complainant has complained about the Commission or the OPI and does not wish for their identity to be disclosed, the Inspector may not be able to properly review their complaint.

It is inappropriate that the Inspector requires the Commissioner's or the Director of OPI's authorisation to receive or publish information for the purposes of the Inspector's functions. The Commission has suggested that a provision should be inserted into Schedule 4 of the ICAC Act to empower the Inspector to give authorisations under subsections 54(3)(a) and 54(5). I agree with this approach.

#### Other disclosures

Protections for complainants providing information to the Inspector (also the Commission and the OPI) are contained within section 50. Nevertheless, there is some ambiguity when the Inspector is not explicitly stated in section 54 to be an agency that is engaged in the administration or enforcement of the Act. I refer in particular to section 54(3)(b) of the ICAC Act. Complainants have raised concerns that disclosure of information may be prohibited under section 54. This could be overcome by expanding section 54(3)(b)(i) to include the Inspector.

Section 54(3)(b)(iv) provides that a person may disclose information for the purposes of obtaining medical or psychological assistance from a medical practitioner or psychologist. The availability of, and access to, medical practitioners and psychologists is problematic for some people who come into contact with my Office. There should be consideration given to expanding this provision to include counsellors and social workers in the course of them providing counselling or advice. It is important that people can access appropriate support services in the absence of a psychologist or medical practitioner.

### **Powers regarding documents**

Under clause 7 of Schedule 4, the Inspector is empowered to require a person to produce documents. There is no non-compliance provision. A penalty provision for failing to comply with a clause 7 of Schedule 4 requirement should be inserted into the ICAC Act.

## Amendments to the *Police Complaints and Discipline Act 2016*

Under the PCD Act, a function of the OPI is to oversee the assessment and investigation of complaints and reports about designated officers. Under section 6, the IIS of SAPOL is required to record information in a complaint management system and the Commission and the OPI have “*directed and unrestricted access*” to the complaint management system. The OPI accesses and assesses information from that complaint management system as part of the OPI’s oversight of the assessment and investigation of complaints and reports by the IIS.

Under clause 9(4) of Schedule 4 of the ICAC Act, the OPI and the Commission must provide the Inspector with information required for the Inspector to complete a review.

However, section 44 of the PCD Act prohibits “*information disclosed or obtained in the course of an investigation*” under the PCD Act from being disclosed, even to the Inspector.

At present, the Inspector cannot review information disclosed or obtained during an investigation under the PCD Act or information relating to a complaint, report, assessment, or investigation under the PCD Act without an authorisation from the Commissioner of Police, the Commission or the OPI. Whether the authorisation is given by the Commissioner of Police, the Commission or the OPI will depend on when the original complaint was made.

Sections 44 and 45 of the PCD Act should be amended to allow the Inspector to access information disclosed or obtained during an investigation under the PCD Act or information relating to a complaint, report, assessment, or investigation under the PCD Act. The Inspector should be included in section 45(3)(a) as being able to authorise the disclosure of information. The effect of such an amendment would permit the disclosure by the Inspector of the outcome of a review of a complaint conducted by the Inspector to the complainant without the need to seek an authorisation to do so.

The practical effect of current sections 44 and 45 of the PCD Act is that the Inspector does not have unfettered access to the OPI’s case management system. The Inspector must request access to each file and an assessment of the request must be made by the OPI as to whether access should be granted. This hinders the Inspector’s ability to provide effective oversight of the OPI as it relates to the OPI’s oversight of the IIS.

Further, requesting access to a file from the OPI involves a disclosure of the complainant’s identity. If the complainant does not consent to the disclosure of their identity to the Commission or the OPI, the Inspector may not be able to assess the complaint. The only way to remedy this is for the legislation to be amended to allow the Inspector access to the information under the PCD Act.

I am not suggesting that the Inspector has access to SAPOL’s complaint management system pursuant to section 6 of the PCD Act. However, the Inspector and Office of the Inspector staff should have unrestricted access to the information retained by the OPI.

## Amendments to the *Ombudsman Act 1972*

### Definition of “*misconduct in public administration*”

The Ombudsman has submitted that the current definition of “*misconduct in public administration*” in the Ombudsman Act is unclear as to whether the conduct must be intentional and serious or whether the contravention of a code of conduct must be intentional and serious. Intentional and serious is a high threshold and many complaints do not meet that threshold. The current definition of “*misconduct in public administration*” under section 4 of the Ombudsman Act is:

- (1) ***Misconduct in public administration*** means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer.

The Ombudsman’s preference is for the definition to be:

*Misconduct in public administration means:*

- (a) *contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer whether under the code of conduct or otherwise; or*
- (b) *other misconduct of a public officer while acting in their capacity as a public officer.*

The Ombudsman has submitted that an alternative definition of misconduct in public administration could be:

*Misconduct in public administration means intentional and serious conduct by a public officer while acting in their capacity as a public officer which:*

- (a) *contravenes a code of conduct and which constitutes a ground for disciplinary action against the officer whether under the code of conduct or otherwise; or*
- (b) *constitutes other misconduct of a public officer while acting in their capacity as a public officer.*

I agree with the Ombudsman’s submission on this matter.

### Confidentiality

Section 29A of the Ombudsman Act poses the same issues for the Inspector as section 54 of the ICAC Act. The Inspector should not need to seek an authorisation from the Ombudsman to disclose information.

Under section 29(11) of the Ombudsman Act, the Inspector must include in a report on an annual review information about relevant complaints, including how many and the type of complaints. I have had to seek an authorisation from the Ombudsman allowing me to publish information about the complaints in this Annual Report. It is not appropriate that I am required to seek such an authorisation from each of the agencies prior to including information in any report.

Section 29A should be amended to ensure the Inspector is not required to seek authorisations from the Ombudsman.

## Inspector's powers regarding complaints

There is no definition of “*relevant complaint*” in the Ombudsman Act. On advice, I have read this term within the Ombudsman Act in line with the definition of the same term in Schedule 4 of the ICAC Act. The implied definition of “*relevant complaint*” is limited to the exercise of functions and powers under the Ombudsman Act. A definition of “*relevant complaint*” should be inserted into the Ombudsman Act to encompass the exercise of functions by the Ombudsman irrespective of the Act conferring the functions.

## Inconsistencies with the ICAC Act

Provisions of the Ombudsman Act relating to the Inspector are inconsistent with the ICAC Act and amendments are required to achieve consistency.

Section 29 of the Ombudsman Act relates to a review conducted by the Inspector. The language of that section is inconsistent with Schedule 4 of the ICAC Act.

Section 29(1) states that the Inspector “*must conduct the following reviews in accordance with this section*”, including:

- (a) annual reviews examining the operations of the Ombudsman during each financial year;
- (b) reviews relating to relevant complaints received by the Inspector;
- (c) other reviews on the Inspector's own motion or at the request of the Attorney-General or the Crime and Public Integrity Policy Committee established under the Parliamentary Committees Act 1991.

The use of the word “*must*” implies that the Inspector does not have a discretion when deciding to review complaints about the Ombudsman. There is no such use of the word “*must*” in Schedule 4 of the ICAC Act, nor should there be. The Inspector should have a discretion as to whether to conduct a review or not.

Section 29(3) states that:

For the purpose of conducting a review under this section, the Inspector (and any person assisting the Inspector) has the same powers as the Inspector has in conducting a review under the *Independent Commission Against Corruption Act 2012*.

This unusual provision presumably allows for any staff of the Office of the Inspector to have the same powers of the Inspector in conducting a review under section 29. There is no like provision in the ICAC Act. Office of the Inspector staff will only have the same powers as the Inspector for reviews that relate to section 29 of the Ombudsman Act, not for any complaints covered by the ICAC Act. The practical effect of this provision is that a Paralegal within the Office of the Inspector may be considered to have the same powers as the Inspector in conducting reviews under the Ombudsman Act. I do not consider that is appropriate.

## Information sharing

Section 29A of the Ombudsman Act sets out the confidentiality requirements and is substantially the same as the analogous provision in the ICAC Act.

The Ombudsman has submitted that an additional subsection should be inserted into section 29A to allow for the sharing of information with the Commission and the OPI.

The Commission has submitted that the Ombudsman Act needs to be amended to allow an absolute discretion for the Commission, the OPI and the Ombudsman to share information.

I agree with these submissions. Information sharing between the integrity agencies is vital to ensure efficiency and to improve public administration. I can see no public policy reason to prevent such information sharing.

## **Amendments to the *Telecommunications (Interception and Access) Act 1979 (Cth)***

Staff of the Office of the Inspector have met with Commonwealth Attorney-General's Department officers to discuss proposed amendments to the *Telecommunications (Interception and Access) Act 1979 (Cth)* (**Commonwealth TI Act**).

The Commonwealth TI Act prescribes when certain Commonwealth and state and territory government agencies can intercept telecommunications and how they can deal with the material obtained.

For the Inspector's purposes, the Commonwealth TI Act limits the disclosure of information obtained by the Commission. There are also restrictions on how the Inspector can request and use certain material obtained under the Commonwealth TI Act.

Specifically, there are issues with the narrow scope of the use and disclosure provisions in the Commonwealth TIA Act which inhibit oversight bodies from being able to properly exercise their audit and oversight functions.

The Commonwealth TI Act should be amended to insert provisions relating to the Inspector. My Office has advised the Commonwealth Attorney-General's Department of the proposed amendments and I understand that they are being considered.

The effect will be that when the Commission has obtained lawfully intercepted information for its own investigative purposes and the information appears to relate to a matter that may give rise to an investigation by the Inspector, the Commission can communicate the information to the Inspector without the current restrictive limitations.

These amendments, if made, would allow the Inspector to perform the oversight function in inspecting the Commission's records.

I also note that currently, I do not have unfettered access to the Commission's files as that access might disclose to this Office information that is prohibited from disclosure under the Commonwealth TI Act. Accordingly, in relation to each matter that I review, a request must be made by my Office to access a Commission file. The Commission then discloses to me a version of the Commission file with the removal of any information prohibited by the Commonwealth TI Act as the information can only be disclosed under limited exceptions under that Act.

## Amendments to the *Public Interest Disclosure Act 2018*

Under the *Public Interest Disclosure Act 2018* (**PID Act**), “*corruption in public administration*” has the same meaning as the ICAC Act. Similarly, misconduct and maladministration in public administration have the same meaning as in the Ombudsman Act. That is problematic because the definition of corruption in public administration does not include offences of dishonesty, and the definition of misconduct in public administration requires an “*intentional and serious*” breach. Consequently, people seeking protection for disclosing information about suspected corruption are not adequately protected under the PID Act.

Amending the definition of “*corruption in public administration*” in the ICAC Act, as outlined earlier in this Annual Report, will assist in remedying this issue. Alternatively, the PID Act should be amended to ensure whistle blowers are adequately protected when disclosing information about a broader range of suspected conduct.



## 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 2022–23 financial year, funding of \$1.8m was appropriated to the Office.

The budget provided was intended to fund nine FTE and associated operating costs of the Office. Being the first year of operation, the time taken to initially recruit staff resulted in a favourable variance compared to budget.

The tables below summarise the unaudited financial information of the Office of the Inspector for the 2022–23 financial year.

### Statement of comprehensive income

	Budget \$'000	Actual \$'000	Variance \$'000
<b>REVENUE</b>			
Appropriation	1,818	1,818	0
<b>TOTAL REVENUE</b>	<b>1,818</b>	<b>1,818</b>	<b>0</b>
<b>EXPENSES</b>			
Salaries	1,147	630	517
Supplies and Services	671	683	-12
<b>TOTAL EXPENSES</b>	<b>1,818</b>	<b>1,313</b>	<b>505</b>
<b>NET RESULT</b>	<b>0</b>	<b>505</b>	<b>505</b>

## Statement of financial position

	\$'000
<b>ASSETS</b>	
Cash	876
<b>TOTAL ASSETS</b>	<b>876</b>
<b>LIABILITIES</b>	
Employee Benefits Liability	177
<b>Payables</b>	
Employment on costs	21
Creditors	173
<b>TOTAL LIABILITIES</b>	<b>371</b>
<b>NET ASSETS</b>	<b>505</b>

### Consultants disclosure

Total consultancy expenditure for the 2022–23 financial year was \$3,055.

### Contractors disclosure

Total contractors expenditure for 2022–23 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 2022–23 financial year.

### Risk and audit framework

Refer to the AGD Annual Report 2022–23.

### Strategies to control and prevent fraud

Refer to the AGD Annual Report 2022–23.

## Annexure B – Overview of the Commission

### Functions and powers of the Commission

The Commission is established under section 7(1) of the ICAC Act which provides that there is to be an Independent Commission Against Corruption with the following functions:

- (a) to identify corruption in public administration and to—
  - (i) investigate and refer it to a law enforcement agency for any further investigation and prosecution; or
  - (ii) refer it to a law enforcement agency for investigation and prosecution;
- (b) 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 in public administration;
- (c) to conduct or facilitate the conduct of educational programs designed to prevent or minimise corruption in public administration;
- (d) if, in the course of performing functions in relation to potential corruption in public administration, any suspected misconduct or maladministration or any offences (not being offences that constitute the potential corruption in public administration) are identified – to report the matter to the Office or the Ombudsman for assessment or refer the matter to a law enforcement agency, the Ombudsman or a public authority or public officer, as the Commission considers appropriate.

Section 5(1) of the ICAC Act defines “*corruption in public administration*” as follows:

- (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 *Lobbyist Act 2015*, 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.

Section 5(3) of the ICAC Act provides that “*maladministration in public administration*” and “*misconduct in public administration*” have the same meaning as in the Ombudsman Act.

Section 4(1) of the Ombudsman Act defines “*misconduct in public administration*” as:

Misconduct in public administration means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer.

Section 4(2) of the Ombudsman Act defines “*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.

Section 24 of the ICAC Act provides that if a matter is assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution and is referred to the Commission, then the Commission must investigate the matter or refer it to SAPOL or another law enforcement agency.

Section 36 of the ICAC Act provides that the Commission must not refer a matter directly to a prosecution authority but may only refer it to a relevant law enforcement agency for further investigation and potential prosecution or refer it to a public authority which may further investigate the matter and determine to take disciplinary action against a public officer for whom the authority is responsible.

Since the amendment of section 36 of the ICAC Act on 7 October 2021, the Commission has not had the power to refer matters to the DPP directly. If the Commission considers that there is sufficient evidence for a prosecution, it must refer the matter to SAPOL. SAPOL will then consider whether the matter requires referral to the DPP. The operation of this section, and potential challenges posed by this aspect of the legislation, is discussed in more detail earlier in this Annual Report.

The Commission possesses various powers, vested in both the Commissioner and the Commission’s investigators by the ICAC Act, including:

- the power to issue written notices requiring an inquiry agency, public authority, or public officer to produce a written statement with information about a matter, or to answer specified questions (section 28);

- the power to require a person to produce a document or thing for the purposes of an investigation into corruption in public administration (section 29);
- the power for the Commissioner to authorise an investigator to inspect and take copies of financial records during an investigation into corruption in public administration (section 29A);
- the power for investigators to require a person to disclose personal details for the purpose of an investigation into corruption in public administration (section 30);
- the power for the Commissioner to issue search warrants authorising an investigator to enter and search a place or vehicle occupied or used by an inquiry agency, a public authority, or public officer (section 31(1));
- the power for an investigator to apply to the Supreme Court for a warrant authorising entry and search of any place or vehicle (section 31(2));
- the power for the Commissioner to require a law enforcement agency, inquiry agency, or public authority to refrain from taking action in respect of a particular matter being investigated by the Commissioner (section 34);
- the power for the Commissioner to require a law enforcement agency, inquiry agency, or public authority to conduct a joint investigation with the Commission (section 34);
- the power to conduct examinations of witnesses in accordance with Schedule 2 of the ICAC Act (section 29);
- the power to seize and retain items and issue retention orders (section 31(7)(v)).

## Relevant data provided by the Commission

During the 2022–23 financial year, the Commission reported the following instances of the exercise of its powers:

Exercise	Section	Instances
Notice to produce statement of information	s 28	0
Summons to give evidence and/or produce documents or other things	s 29 & sch 2 cl 5	1
Notice to produce documents or other things	s 29 & sch 2 cl 5	5
Power to inspect financial records	s 29A	36
Search warrant issued by Commissioner	s 31(1)	0
Search warrant issued by judge of Supreme Court	s 31(2)	2
Seizure and retention orders	s 31(7)(v)	0

## Investigations and referrals during the reporting period

During the reporting period, the Commission commenced 43 new corruption investigations. No investigations were commenced as a result of a complaint or report received in the previous financial year. No investigations were conducted as a joint investigation with another agency. Seventeen investigations commenced during a previous financial year continued during the relevant period.

During the 2022–23 financial year:

- three investigations were referred to SAPOL for further investigation and prosecution;
- the DPP did not determine to commence a prosecution in respect of any matters referred by the Commission to SAPOL;
- no persons were charged with corruption offences;
- three matters were referred to a public authority following a corruption investigation for further investigation and potential disciplinary action against a public officer for whom the authority was responsible;
- no person the subject of an investigation by the Commission was sentenced by a court.

Complaints and reports assessed by the Commission as raising an issue of corruption may be referred to SAPOL for investigation under section 24 of the ICAC Act. During the 2022–23 financial year, 29 complaints and or reports were referred to SAPOL for investigation in this way.

The Commission is required to refer matters raising issues of misconduct or maladministration in public administration to Ombudsman SA, the OPI, or another public authority. During the 2022–23 financial year, no matters were referred to Ombudsman SA.

I am advised that during the 2022–23 financial year, the Commission:

- commenced one investigation under s 30 of the PCD Act;
- made six public statements;
- directed a public authority to investigate a matter and report back to the Commission on two occasions;
- made 134 recommendations to public authorities;
- delivered six reports to the Attorney-General, President of the Legislative Council or Speaker of the House of Assembly;
- evaluated the practices, policies and procedures of three public authorities;
- delivered 33 educational sessions;
- recorded 2,677 enrolments in the Commission's online education programs;

- published eight resources designed to assist and educate public authorities and public officers on corruption and integrity related matters;
- published 11 news items and updates from the Commission.

## Annexure C – Overview of the OPI

### Functions and powers of the OPI

Section 17 of the ICAC Act establishes the OPI and vests in it the following functions:

- (1) The Office for Public Integrity continues in existence with the following functions:
  - (a) to receive and assess complaints about public administration from members of the public;
  - (b) to receive and assess reports about corruption, misconduct and maladministration in public administration from inquiry agencies, public authorities and public officers;
  - (c) to refer complaints and reports to inquiry agencies, public authorities and public officers or to determine to take no action in accordance with this section.

In addition to functions under the ICAC Act, the OPI has legislative functions assigned to it under section 8 of the PCD Act. Those functions are:

- (a) to oversee the assessment and investigation of complaints and reports relating to designated officers; and
- (b) to oversee the operation and enforcement of this Act; and
- (c) to refer certain complaints and reports to the ICAC in accordance with this Act and the *Independent Commission Against Corruption Act 2012*; and
- (d) such other functions as may be assigned to the OPI under this Act.

Section 18A of the ICAC Act requires that the Director of OPI establish a system for the receipt of complaints about public administration. Upon receipt of a complaint or report, section 18E(1) requires the OPI to make an assessment as to whether:

- (a) it raises a potential issue of corruption in public administration that could be the subject of a prosecution and should be referred to the Commission; or
- (b) it raises some other issue that should be referred to another inquiry agency; or
- (c) it is trivial, vexatious or frivolous, it has previously been 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,

and a determination made as to whether or not action should be taken to refer the matter to a law enforcement agency or an inquiry agency.

The making of an assessment and what actions are taken in respect of an assessment is at the absolute discretion of the Director of OPI.

Following the making of that assessment, the OPI must refer a matter assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution to the Commission. If a matter is assessed as raising other issues, the matter must be referred, or the complainant or reporting agency advised, to refer the matter to the inquiry agency.

The OPI can receive complaints made about the conduct of police officers under section 10 of the PCD Act. Complaints received by the OPI about the conduct of police officers must be



referred to the IIS within three days of receipt unless the complaint is to be referred to the ICAC under section 29 of the PCD Act.

In addition, under section 28 of the PCD Act, the OPI may reassess any IIS assessment within three days of the required information relating to an assessment of a complaint or report by the IIS being entered into the complaints management system. Following a reassessment of an IIS assessment, the OPI may substitute its assessment of a complaint or report for the assessment entered by IIS into the complaints management system.

The OPI has further powers to direct the Commissioner of Police, the IIS, or a police officer pursuant to section 27 of the PCD Act to do certain things, as the OPI thinks fit.

Under section 29 of the PCD Act the OPI may refer a complaint to the ICAC if the OPI is satisfied that it relates to matters that should be dealt with by the ICAC under the PCD Act or the ICAC Act.

The OPI can receive public interest disclosures of public administration information and environmental and health information under the PID Act.

## Relevant data provided by the OPI

The OPI has provided me with an overview of their operations during the 2022–23 financial year. The data indicate that the OPI:

- received 538 complaints about public administration;
- received 348 reports about public administration;
- received 670 general enquiries;
- received 91 contacts outside of its jurisdiction;
- received 98 contacts regarding public interest disclosure.

Arising from those 1,745 contacts, the OPI made assessments in relation to 504 complaints and 322 reports. As of 30 June 2023, 27 matters were yet to be assessed.

The OPI recorded the following outcomes in relation to assessments:

- 68 matters were referred to the Commission;
- 98 matters were referred to another inquiry agency;
- 11 matters were referred to a law enforcement agency;
- 143 matters were referred to a public authority or public officer;
- no further action was taken in 511 matters.

In relation to its functions under the PCD Act, the OPI was contacted 2,605 times during the 2022–23 financial year, including 1,681 complaints about police from members of the public and 22 reports about police from other police officers.

In terms of reviewing IIS assessments, the OPI:

- reviewed 1,916 complaints about police, involving 42 consultations with SAPOL;

- reviewed 612 police reports, involving 27 consultations with SAPOL;
- reviewed six protective security oversight assessments.

In terms of final outcomes of complaints and reports under the PCD Act, the OPI reported:

- five matters were assessed as raising a potential issue of corruption;
- 13 matters were referred to the Commission under section 29 of the PCD Act;
- 233 matters were assessed as raising a potential issue of misconduct;
- 408 matters were assessed as a breach of discipline;
- 45 matters were assessed as raising a potential issue of criminal conduct requiring a criminal investigation;
- one matter was assessed as raising a potential issue of maladministration;
- 1,843 matters had no further action taken.

## Annexure D – Overview of Ombudsman SA

### Functions and powers of Ombudsman SA

Ombudsman SA is tasked with the investigation of complaints about South Australian government and local government agencies under the Ombudsman Act. Ombudsman SA also has functions under the *Return to Work Act 2014*, the PID Act and various other Acts.

Under the Ombudsman Act, the Ombudsman has the following statutory functions:<sup>30</sup>

- (a) to receive, assess and investigate or otherwise deal with complaints made or referred to the Ombudsman about public administration;
- (b) to receive, assess and investigate or otherwise deal with reports about misconduct and maladministration in public administration made or referred to the Ombudsman;
- (c) to assist agencies to identify and deal with inappropriate or improper administrative acts;
- (d) to give directions or guidance to public authorities in dealing with misconduct and maladministration in public administration, as the Ombudsman considers appropriate;
- (e) to evaluate the practices, policies and procedures of public authorities with a view to advancing comprehensive and effective systems for preventing or minimising misconduct and maladministration in public administration;
- (f) to conduct or facilitate the conduct of educational programs or the publication or distribution of educational materials designed to prevent or minimise misconduct or maladministration in public administration;
- (g) to perform other functions conferred on the Ombudsman by this or any other Act.

Section 12H of the Ombudsman Act sets out the legislative regime for the assessment of complaints by the Ombudsman. A complaint must be assessed as to whether:

- it raises an issue that should be investigated under the Ombudsman Act or, alternatively;
- whether 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
- whether it is trivial, vexatious, or frivolous, or has been previously dealt with and there is no reason to reexamine it, or
- whether there is good reason why no action should be taken in respect of it.

Once the Ombudsman has made an assessment under section 12H, a determination must be made as to whether or not action should be taken to investigate or refer a matter. The Ombudsman may, for the purposes of completing the required assessment under section 12H, require a public authority or public officer to produce documents or produce a statement.

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<sup>30</sup> Ombudsman Act s 5A.

Section 13(1) vests in the Ombudsman a broad remit to investigate any administrative act or any suspected misconduct or maladministration in public administration. The Ombudsman can investigate on his own initiative.<sup>31</sup>

Under section 18, the Ombudsman is required to conduct every investigation under the Ombudsman Act in private. The Ombudsman may obtain information from such persons, and in such manner, as he thinks fit. The Ombudsman is required to afford public authorities and public officers with procedural fairness.<sup>32</sup>

The Ombudsman may make recommendations upon the completion of an investigation, which includes actions that can and should be taken to rectify, mitigate or alter the effects of the act to which the investigation related.<sup>33</sup> Any report containing recommendations must be provided to the responsible Minister for the public authority.

If satisfied that it is in the public interest to do so, the Ombudsman may cause a report on an investigation to be published.<sup>34</sup>

## Relevant data provided by Ombudsman SA

Ombudsman SA has provided me with a summary of relevant data for the purposes of this Annual Report.

Ombudsman SA recorded a total of 4,401 matters in the 2022–23 financial year.

The total of 4,401 matters consisted of:

- 2,674 complaints about government departments;
- 1,023 complaints about local government;
- 704 complaints about other authorities.

Ombudsman SA reported receiving 216 complaints about potential misconduct and maladministration directly from members of the public. Ombudsman SA received 125 referrals from the Commission and the OPI of matters raising issues of misconduct or maladministration in public administration.

In terms of outcomes, Ombudsman SA reported that 2,737 complaints about government departments were resolved in the 2022–23 financial year (noting that some matters resolved were matters from the previous financial year).

Ombudsman SA also recorded 1,039 outcomes for complaints about local government during the 2022–23 financial year, again noting that some matters were resolved from the previous financial year.

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<sup>31</sup> Ibid s 13(2).

<sup>32</sup> Ibid s 18(4).

<sup>33</sup> Ibid s 25(2).

<sup>34</sup> Ibid s 26.