

07 Feb 2023

Report of a review of the operations of the Independent Commissioner Against Corruption and the Office for Public Integrity

For the period 1 July 2021 to 30 June 2022

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**REPORT TO THE ATTORNEY-GENERAL
THE HONOURABLE KYAM MAHER MLC PURSUANT TO SCHEDULE 4 OF THE
INDEPENDENT COMMISSIONER AGAINST CORRUPTION ACT 2012
FOR THE PERIOD 1 JULY 2021 TO 30 JUNE 2022**

BACKGROUND

The *Independent Commissioner Against Corruption Act 2012* came into operation on 1 September 2013. The Act was amended in 2016. I shall refer to the amended Act as "the 2012 Act". The 2012 Act was further amended by the *Independent Commissioner Against Corruption (CPIC Recommendations) Amended Act 2021* (the 2021 Act). The title of the Act is now *The Independent Commission Against Corruption Act 2012* ("the current Act").

The 2012 Act and the current Act establishes the Independent Commission Against Corruption (ICAC). Under the 2012 Act, the Office for Public Integrity (OPI) was required to review complaints and assess complaints and to report to the Commissioner of ICAC (the Commissioner) and to perform functions assigned to it by the Commissioner. The OPI was responsible to the Commissioner for the performance of its functions.

The current Act has separated the functions of the ICAC and the OPI. Further, a number of functions previously conducted by ICAC pursuant to the 2012 Act are now conducted by the Office of the Ombudsman (see section 7(1)(d) of the current Act). As a consequence, the role of ICAC has significantly changed. The separation of the OPI from ICAC has resulted in a reduction of the information available to ICAC in respect of complaints by the public. The OPI does not have access to ICAC's database. ICAC cannot access the OPI's data. Consequently, conduct which requires investigation may never come to the notice of ICAC. ICAC's role is to investigate corruption. As a consequence of the current Act requiring ICAC and the OPI to be separate organisations, the effectiveness of ICAC has been reduced.

Schedule 4 clauses 2 and 3 of the 2012 Act provides:

2 – Appointment of reviewer

- (1) The Attorney-General must appoint a person (the **reviewer**) –
 - (a) to conduct annual reviews examining the operations of the Commissioner and the Office during each financial year; and
 - (b) to conduct reviews relating to relevant complaints received by the reviewer; and
 - (c) to conduct other reviews at the request of the Attorney-General or the Committee; and
 - (d) to perform other functions conferred on the reviewer by the Attorney-General or by another ICAC.

3 – Reviews

- (1) Without limiting the matters that may be the subject of a review, the reviewer –
 - (a) must, in the case of an annual review, consider the following in relation to the financial year to which the review relates:
 - (i) whether the powers under this Act were exercised in an appropriate manner, including –
 - (A) whether there was any evidence of –
 - maladministration in public administration on the part of the Commissioner or employees of the Commissioner or of the Office; or
 - unreasonable delay in the conduct of investigations under this Act; or
 - unreasonable invasions of privacy by the Commissioner or employees of the Commissioner or of the Office; and
 - (B) whether undue prejudice to the reputation of any person was caused;
 - (ii) whether the practices and procedures of the Commissioner and the Office were effective and efficient;
 - (iii) whether the operations made an appreciable difference to the prevention or minimisation of corruption, misconduct and maladministration in public administration; and
 - (b) may examine any particular exercises of power by the Commissioner or the Office; and
 - (c) may make any recommendations to the Commissioner or to the Attorney-General that the reviewer thinks fit.

Schedule 4 of the 2012 Act requires the Attorney-General to appoint a person (the Reviewer) to conduct annual reviews examining the operations of the ICAC and the OPI during each financial year. The Reviewer also has power to conduct reviews relating to a relevant complaint received by the Reviewer and to conduct other reviews at the request of the Attorney-General or the Crime and Public Integrity Committee of Parliament. A relevant complaint means a complaint made in accordance with any requirements prescribed by the regulations relating to an abuse of power, impropriety or other misconduct on the part of ICAC or employees of ICAC or of the OPI.

I have been appointed as the Reviewer. My appointment commenced on 2 April 2019 and was for a period of three years. On 25 January 2022 the then Attorney-General, the Honourable Josh Teague MP, extended my appointment for a period of three months commencing on 2 April 2022. On 30 May 2022 the Attorney-General, the Honourable Kyam Maher MLC, extended my appointment from 2 July 2022 expiring on 31 December

2022. Accordingly, I now provide this report on my review of the ICAC and the OPI for the period 1 July 2021 to 30 June 2022.

Section 59 of the 2021 Act amends Schedule 4 of the 2012 Act. The position of Reviewer is abolished. The amended Schedule creates the offices of Inspector and Deputy Inspector. The amended schedule provides that the Attorney-General must ensure that the position of Inspector is advertised in a newspaper or newspapers circulated in South Australia. The Attorney-General is required to refer at least two candidates for the office of Inspector to the Statutory Officers Committee established under the *Parliamentary Committees Act 1991*. The appointment of the Inspector must be recommended by at least a two-thirds majority of the Committee. The amended schedule provides that the Deputy Inspector is to be appointed for three years by the Governor on conditions determined by the Governor. Section 59 is to operate from the date of it being proclaimed. As at the date of this report, the section has not been proclaimed. It follows that the provisions of Schedule 4 of the 2012 Act continue to apply.

As a consequence, the current position is that a number of functions which were previously conducted by ICAC, but which are now functions conducted by the Ombudsman, are no longer subject to review by the Reviewer.

THE CATEGORIES OF CONDUCT WHICH MAY BE INVESTIGATED BY ICAC

Section 5 of the current Act defines corruption in public administration as follows:

5—Corruption, misconduct and maladministration

- (1) **Corruption in public administration** means conduct that constitutes—
- (a) an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
 - (i) bribery or corruption of public officers;
 - (ii) threats or reprisals against public officers;
 - (iii) abuse of public office;
 - (iv) demanding or requiring benefit on basis of public office;
 - (v) offences relating to appointment to public office; or
 - (b) an offence against the *Public Sector (Honesty and Accountability) Act 1995* or the *Public Corporations Act 1993*, or an attempt to commit such an offence; or
 - (ba) an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence; or
 - (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.
- (3) In this Act—
 - maladministration** in public administration has the same meaning as in the *Ombudsman Act 1972*; and
 - misconduct** in public administration has the same meaning as in the *Ombudsman Act 1972*.

Section 7 of the current Act provides that if, in the course of performing functions the ICAC identifies any suspected misconduct or maladministration or any offences (not being offences that constitute potential corruption in public administration) it is required to report the matter to the OPI or the Ombudsman for assessment or to refer the matter to a law enforcement agency, the Ombudsman or a public authority or public officer whichever the ICAC determines to be appropriate.

ICAC is authorised 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 minimizing corruption in public administration.

It also has a function to conduct or facilitate the conduct of educational programs designed to prevent or minimize corruption in public administration.

Section 4 of the current Act defines a law enforcement agency as:

- (a) the Australian Crime Commission; or
- (b) the Australian Federal Police; or
- (c) the Australian Commission for Law Enforcement Integrity; or
- (d) South Australia Police; or
- (f) the police force of another State or a Territory of the Commonwealth; or
- (g) in relation to New South Wales—the Crime Commission, the Independent Commission Against Corruption, the Inspector of the Independent Commission Against Corruption, the Police Integrity Commission or the Inspector of the Police Integrity Commission; or
- (h) in relation to Queensland—the Crime and Corruption Commission; or
- (i) in relation to Tasmania—the Integrity Commission; or
- (j) in relation to Victoria—the Office of Police Integrity, the Independent Broad-based Anti-corruption Commission or the Independent Broad-based Anti-corruption Commission Committee; or
- (k) in relation to Western Australia—the Corruption and Crime Commission or the Parliamentary Inspector of the Corruption and Crime Commission; or
- (l) a Royal Commission of the Commonwealth, the State or another State or a Territory of the Commonwealth; or
- (m) a person or body declared by regulation to be a law enforcement agency.

An inquiry agency means the Commission, the Ombudsman, or the Judicial Conduct Commissioner.

A public authority is any authority listed in Schedule 1 of the current Act.

ICAC's power to investigate matters are now limited to corruption in public administration.

The Commissioner in her report titled "An Examination of the Changes Affected by Recent Amendments to the *Independent Commission Against Corruption Act 2012*" issued in November 2021 stated that, as a consequence of the 2021 amendments, the Commission can no longer investigate dishonesty or theft offences committed by public officers. As ICAC can no longer investigate theft or fraud, many investigations will be hamstrung.

In my opinion, offences by public officers are now likely to go undetected. The public of South Australia is less protected from dishonest conduct by public officers.

Section 24 of the current 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 ICAC, then ICAC must investigate the matter or refer it to South Australia Police (SAPOL) or another enforcement agency.

The current Act provides that the ICAC must not refer a matter directly to a prosecution authority but may only refer it 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 directly responsible.

Section 36(1) and (1a) provide:

36—Prosecutions and disciplinary action

- (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.

...

The effect of the provision is to prevent the ICAC from referring matters directly to the Director of Public Prosecutions (DPP). If ICAC 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 Commissioner has publicly stated that SAPOL does not want that responsibility. She has stated that SAPOL now has to attempt to understand briefs which are referred to SAPOL by ICAC and decide whether to give them to the DPP. ICAC employs specialist investigators who have expertise in investigating allegations of corruption. ICAC also employs persons who have legal expertise. The fact that the investigators cannot deal directly with the DPP deprives

the DPP of the ability to consult with investigators who have a detailed knowledge of the matter.

I observe that other investigating bodies throughout Australia customarily refer investigations directly to the relevant prosecuting authority which determines whether there is sufficient evidence to lay charges.

The relationship between the prosecutor and the investigator is a very important one. In order for briefs to be presented in the best possible way there needs to be a direct relationship between the DPP and ICAC. In my opinion the current situation is inefficient and reduces the effectiveness of prosecutions which ICAC has investigated.

ACTION TAKEN BY THE COMMISSIONER DURING THE REPORTING PERIOD

In this report, I shall refer to the period from 1 July 2021 to 6 October 2021 as "the prior period". The period from 7 October 2021 to 30 June 2022 is referred to as "the current period". The period from 1 July 2021 to 30 June 2022 is referred to as "the relevant period".

Investigations

During the relevant period 50 new corruption investigations were commenced by ICAC. Two of the 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. Twelve (12) corruption investigations commenced in a previous financial year were continued during the relevant period.

During the relevant period, no investigations were referred to the DPP. The investigations were referred to SAPOL for consideration of prosecution. The DPP determined to commence a prosecution in respect of two matters. A third matter remains under review.

During the relevant period, four persons were charged with corruption offences. Eight matters were referred to a public authority to consider disciplinary action following a corruption investigation.

During the relevant period, one person who had been the subject of an investigation was sentenced by a court.

Referral to police for investigation

Complaints and reports assessed as raising a potential issue of corruption may be referred to SAPOL. During the relevant period, 33 complaints and reports were referred to SAPOL for investigation.

Misconduct and maladministration referrals

During the relevant period, 21 matters were referred to the Ombudsman. During the relevant period, 47 complaints and reports of alleged misconduct and maladministration were referred to a public authority.

During the relevant period, I have attended at the offices of ICAC. I have conferred with the Commissioner, the Honourable Ann Vanstone KC, throughout the relevant period. I am satisfied that ICAC is well managed and that it has performed its role under the current Act and the 2012 Act effectively and efficiently.

PROTECTIVE SECURITY OFFICERS

During the prior period the OPI oversaw five matters concerning alleged breaches of the Code of Conduct for Protective Security Officers. After 7 October 2021 the OPI oversaw 19 matters concerning alleged breaches of the Code of Conduct for Protective Security Officers.

THE OFFICE FOR PUBLIC INTEGRITY (OPI)

The current Act established the OPI as a separate and distinct office from ICAC with an independent Director who was appointed on 7 October 2021 on a temporary basis pending the appointment of the current Director which took effect on 7 January 2022.

The functions and objectives of the OPI are set out in section 17 of the current Act which provides as follows:

17—Establishment of Office and 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.

Section 8 of the *Police Complaints and Discipline Act 2016* (PCD Act) provides that the OPI is to oversee the assessment and investigation of complaints and reports related to designated officers and to oversee the operations and enforcement of the PCD Act. It is to refer certain complaints and reports to ICAC which fall within the jurisdiction of ICAC.

Section 18A of the current Act provides that the Director of the OPI shall establish a system for receipt of complaints about public administration. The role of the OPI pursuant to the PCD Act has not substantially changed as result of the enactment of the current Act.

The OPI took over the conduct of complaints and reports received by ICAC under the 2012 Act which were open at the time of the transition of the OPI as a separate entity. All new complaints received after 7 October 2021 have been referred to the OPI.

The OPI is responsible for publishing directions and guidelines regarding the reporting of corruption in public administration.

The OPI is operated by 17 full-time staff comprising the Director, a Manager Assessments, a Team Leader, investigation specialists, principal assessment officers and a Business Manager.

The OPI is responsible for receiving complaints concerning alleged corruption and the various types of misconduct and maladministration which ICAC, SAPOL and the Ombudsman are charged with investigating. Complaints and reports are received by telephone, written correspondence, online or by email or through personal interviews.

Section 18A of the current Act provides that the Director of the OPI is required to establish a system for the receipt of complaints about public administration. The system is required to permit the making of complaints relating to matters that are, in the opinion of the Director, sensitive, complex or of significant public interest to be made in person to a member of the OPI. Complaints that are made in bad faith, or for an improper purpose, or are vexatious or amount to an abuse of the complaints system are not required to be received for consideration by the OPI.

The assessment team of the OPI is required to consider whether a complaint or report raises an issue for referral to ICAC or an inquiry agency. If it does not and the OPI considers that the complaint or report requires action, then it may refer it to a law enforcement agency, public authority, or public officer.

In the prior period the OPI received 361 general enquiries. In the current period it received 723 general enquiries.

In the prior period there were 304 complaints and reports made to the OPI. There were also 354 police complaints and reports made to the OPI. In the current period there were 750 complaints and reports made to the OPI and 1,340 police complaints and reports made to the OPI.

In the prior period there were 180 police reports and complaints made to the Internal Investigations Section (IIS) of SAPOL. In the current period the OPI reviewed 1,741 assessments which had been conducted by the IIS.

Details of the operations of the OPI are dealt with in detail in the Annual Report of the OPI for the period 2021-2022. That report gives particulars of the various functions conducted by the OPI, including its role in dealing with complaints relating to the conduct of police.

I have visited the offices of the OPI and conferred with the Director of the OPI. I have accessed the electronic records of the OPI. I am satisfied that the OPI is well administered. I have received full cooperation from the Director.

THE SURVEILLANCE DEVICES ACT 2016 (SA) (SDA)

The *Surveillance Devices Act 2016* (SDA) came into operation on 18 December 2017.

Section 6 of the SDA empowers a judge of the Supreme Court to issue a warrant authorising the use of one or more listening devices and entry to or interference with any premises, vehicle or thing for the purposes of installing, using, maintaining or retrieving one or more listening or surveillance devices. This section sets out the procedure for making an application for a warrant to the Court.

Section 6 provides that applications for a warrant under the Act may be made by an officer of an investigating agency with the approval of the chief officer of the investigating agency. ICAC is an investigating agency for the purposes of the SDA.

The SDA authorises the appointment of a "review agency" for an investigating agency and, in the case of the ICAC, the review agency must be independent of ICAC and be appointed by the Governor.

Section 6D of the Act requires the review agency to undertake inspections of the investigating agency every six months in order to ascertain the extent of compliance by the agency with the record-keeping requirements of the Act.

I have conducted inspections of the records of ICAC throughout the audit periods and I am satisfied that there has been compliance with the requirements of the SDA.

THE TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) ACT 1979 (CTH) (TIA ACT)

The TIA Act regulates the circumstances in which certain Commonwealth, and Territory government agencies can be authorised to intercept telecommunications and deal with the material derived through this means.

The TIA Act enables law enforcement and other agencies to apply to an eligible judge for a warrant to intercept telecommunications as part of an investigation, but imposes conditions on those agencies in recognition of the right to privacy.

In addition to providing for authorised interceptions by Commonwealth agencies, the TIA Act enables State and Territory agencies to apply for warrants to intercept telecommunications subject to conditions imposed by the TIA Act and State and Territory legislation. Section 34 of the TIA Act authorises the relevant Commonwealth Minister, by legislative instrument and at the request of the Premier of a State, to declare an eligible authority of that State, as an agency for the purposes of the Act.

Before making a declaration pursuant to section 34, the Minister must be satisfied that the law of the State makes satisfactory provision for imposing on the eligible authority various obligations referred to in the TIA Act.

Pursuant to these arrangements, the TIA Act provides that ICAC is an enforcement agency for the purposes of the Commonwealth legislation. As a prerequisite to this arrangement and in order to satisfy the requirements of the Commonwealth Act, the South Australian Parliament has enacted the *Telecommunications (Interception) Act 2012 (SA)* (the State Act).

The chief officer of the agency is required to keep records of each warrant issued to the agency and various other documents associated with the issue and execution of the warrant.

In order to equate the State procedures with those set out in the TIA Act, section 3 of the State Act required the ICAC Commissioner as chief officer of an eligible authority, to keep records of the application for warrants authorising telecommunication interceptions and the use thereof as prescribed in the TIA Act.

The State Act provides for the appointment of a "review agency", to determine whether there has been compliance by ICAC with record-keeping requirements. Section 2 states that the review agency for ICAC is a person who is independent of ICAC and is appointed by the Governor as the review agency.

I have been appointed as the review agency for ICAC to conduct the review required by section 5 of the State Act for the purpose of ascertaining compliance with the record-keeping requirements of that Act.

I have conducted inspections of the records of ICAC throughout the audit period and I am satisfied that there has been compliance with the requirements of the State Act.

PUBLIC INTEREST DISCLOSURE ACT 2018 (SA) (PID ACT)

The PID Act commenced on 1 July 2019. ICAC issued guidelines pursuant to section 14 of that Act. The OPI has a function to receive and assess disclosures of public interest information. During the relevant period, the OPI received 90 reports which were dealt with in accordance with the PID Act. I am satisfied that the OPI undertook its role in relation to the PID Act in an appropriate manner.

POLICE COMPLAINTS AND DISCIPLINE ACT 2016 (SA) (PCD ACT)

The OPI deals with complaints made to it against officers of SAPOL. The initial function of the OPI in this respect is to receive and process such complaints.

The majority of complaints received by the OPI relating to police misconduct are dealt with by the IIS. Although the OPI has oversight over SAPOL in respect of these complaints, they are mainly dealt with by the IIS. Section 28 of the PCD Act provides that, within three days after the IIS informs the OPI about an assessment of a complaint or report, the OPI may, after consultation with the officer-in-charge of the IIS, reassess the complaint or report and may substitute its assessment of the complaint or report and that reassessment will be taken to be an assessment of the IIS. The substituted assessment must be recorded on the complaint management system. The three-day limitation period, in my opinion, is too limited. I recommend consideration be given to extending the period to a minimum of seven working days.

In reviewing the conduct of the OPI, I have concluded that the OPI's oversight has been satisfactory. I have no power to review investigations made by the IIS.

THE EXERCISE OF POWERS UNDER THE ACT

The annual review of operations of ICAC and the OPI requires considerations as to whether the powers under both the current Act and the 2021 Act were exercised in an appropriate manner.

The audit of the exercise of the powers involves consideration of the manner in which examinations and other coercive powers were conducted and exercised during the relevant period. The coercive powers are confined to investigations into corruption in public administration.

During the relevant period, no coercive examinations pursuant to section 45 of the current Act were conducted by ICAC.

NOTICES

Section 28 of the current Act provides that a written notice may be issued requiring an inquiry agency or public authority or public officer to produce a written statement with information about a specific matter, or to answer specified questions within a specific period and in a specified form. The statement must be verified by statutory declaration if the person heading the investigation so requires. A copy of the notice is to be kept in ICAC's case management system. No notices were issued in the relevant period.

Section 29 of the current Act states that a person may be required to produce a document or thing for the purposes of an investigation into corruption in public administration. Five notices were issued in the relevant period. I am satisfied that there was compliance with the current Act in respect of the issue of section 29 notices.

Section 29A of the current Act empowers ICAC to authorise, by written notice, an investigator to inspect and take copies of financial records in the course of an investigation into corruption in public administration. The section also empowers an investigator authorised pursuant to the section to give directions to or impose requirements on the deposit holder for the purpose of inspecting and taking copies of records. Fifty one (51) notices were issued in the relevant period. I am satisfied that during the relevant period ICAC complied with the requirements of section 29A.

Section 30 of the current Act authorises an investigator in an investigation into corruption in public administration to require a person who the investigator reasonably suspects has committed, is committing or is about to commit, an offence prescribed by the current Act or who may be able to assist in the investigation of the prescribed offence to state all or any of the person's details and to produce evidence of those details. There were no occasions upon which a person was compelled to provide information pursuant to the section.

SECTION 34 NOTICES

Limiting action by other agencies and authorities

- (1) The Commissioner may, by written notice, require a South Australian law enforcement agency, inquiry agency or public authority to refrain from taking action, in respect of a particular matter being investigated by the Commissioner under this Act or to conduct a joint investigation with the Commissioner in respect of a particular matter (and the agency or authority must comply with the requirement even if the agency or authority is otherwise required or authorised to take action under another Act).
- (2) The notice must specify the period for which it is to apply and set out details of the action that is not to be taken or the requirements governing any joint investigation.
- (3) The Commissioner must consider any comments of the agency or authority with respect to the terms of the notice.

Eight notices were issued during the relevant period.

I am satisfied that ICAC has complied with the provisions of the current Act.

ENTER AND SEARCH POWERS UNDER WARRANT – SECTION 31

The current and the 2021 Act provide for the issue of search warrants in investigations into corruption in public administration.

Section 31(1) empowers the Commissioner to issue a warrant authorising an investigator or a police officer to enter and search –

- (a) a place occupied or used by an inquiry agency, public authority or public officer; or
- (b) a vehicle owned or used by an inquiry agency, public authority or public officer, being, or having been, used for or in connection with a prescribed offence; or

Section 31(2) provides that a judge of the Supreme Court may, on application by an investigator, issue a warrant authorising an investigator or a police officer to enter and search any place or vehicle.

Section 31(3) states that a warrant may only be issued if the Commissioner or the judge is satisfied that the warrant is reasonably required in the circumstances for the purpose of an investigation into the potential issue of corruption in public administration.

The grounds of an application for a warrant must be verified by a statutory declaration if the application is made to the Commissioner, or by affidavit if the application is made to a judge of the Supreme Court (section 31(5)).

The warrant must specify the place or vehicle to which it relates and whether entry is authorised at any time of the day or night or during specified hours of the day or night (section 31(6)).

Section 31(7) specifies the powers which may be exercised by the investigator or police officer during searches pursuant to a warrant, including the power to seize and retain objects and documents found in the course of the search.

The *Supreme Court Independent Commissioner Against Corruption Act Rules 2013* (“the Rules”) prescribe the procedure for an application to the Court under section 31 of the Act for the issue of a search warrant.

Form 1 to the Rules prescribes the information to be included in the application. This includes the requirement to set out in detail the grounds upon which it is said that the warrant is reasonably required for the purposes of the investigation. Procedures for applications by e-mail and telephone are also set out in the Rules.

The Standard Operating Procedure directs that the investigator or police officer must produce the original warrant for sighting by the person upon whom it is executed without relinquishing physical possession of the original warrant. It also provides that, unless it is not reasonably practicable to do so, a copy of the warrant is to be provided to the occupier of the place, or the owner or driver of the vehicle to be searched. In addition, there is a requirement that the investigator or police officer provide the person who is the subject of the warrant with an information sheet detailing that person’s rights, obligations and liabilities in regard to the warrant. A pro forma for the information sheet is set out in Appendix A to the Standard Operating Procedure.

During the relevant period, 15 search warrants were applied for and issued by the Supreme Court. No warrants were issued by the Commissioner.

The procedure prescribed for applying for warrants was followed in each case.

I am satisfied on the information before me that the searches were in accordance with the procedures which the investigators were required to follow.

RETENTION ORDERS – SECTION 32

Section 31(7)(c) (v) and (vi) authorises an investigator to issue a retention order in respect of anything the investigator reasonably believes is required to be retained and not to be interfered with or removed. One retention order was issued in the relevant period. I am satisfied that ICAC complied with the requirements of the current Act.

EXAMINATIONS

Section 29 of the Act provides for an examination, including the taking of evidence, for the purposes of an investigation into corruption in public administration.

The procedure for an examination is set out in Schedule 2 of the Act.

An examination may be conducted by the Commissioner, Deputy Commissioner, or an examiner appointed by the Commissioner. There were no examinations conducted during the relevant period.

During the relevant period no examinations took place under the Act. No new hearings were conducted exercising the powers of the Ombudsman under the *Ombudsman Act 1972* (SA).

COMPLAINTS CONCERNING THE EXERCISE OF ICAC POWERS

Clause 2(1)(b) of the Fourth Schedule of the Act provides that one of the functions of the Reviewer is “to conduct reviews relating to relevant complaints received by the Reviewer”. Clause 1 defines a “relevant complaint” as a complaint relating to an abuse of power, impropriety or other misconduct on the part of the Commissioner or employees of the Commissioner or of the Office.

A website for the Office of the Reviewer is now in operation and it contains instructions for the making of such complaints. It is emphasised on the website that complaints can only relate to an alleged abuse of power, impropriety or misconduct and that the Reviewer cannot review decisions made by ICAC or OPI to investigate or not investigate complaints made to them.

Over the period from 1 July 2021 to 30 June 2022, 29 complaints against ICAC and the OPI have been made to the Reviewer. The OPI was established as a separate body on 7 October 2021. From that date there were no complaints relating to the operation of ICAC. All complaints since 7 October 2021 were in respect of matters dealt with by the OPI.

A number of complaints related to matters which the OPI had referred to the Internal Investigation Section (IIS) of SAPOL. The Reviewer concluded that the matters had been properly referred to the IIS and that the IIS had made determinations which were not subject to a review by the Reviewer.

After Schedule 4 of the Act came into operation it was decided that it would be appropriate for ICAC to bring to the Reviewer's attention matters in which there had been complaints to ICAC or the OPI of conduct answering the description of a "relevant complaint", but where the alleged conduct had not been made the subject of a complaint to the Reviewer. Such matters would not be within my jurisdiction to review because of the absence of a complaint to me. However, it was thought that there may be some cases in which the OPI or the Reviewer might contact the complainant asking whether he or she wished to lodge a complaint to the Reviewer pursuant to Schedule 4.

The OPI will continue the practice which has previously been adopted.

As part of my role I review the use of surveillance devices by ICAC. No inappropriate use of surveillance devices occurred during the relevant period.

One matter was brought to the attention of the Reviewer by the ICAC.

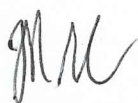
CRIME AND PUBLIC INTEGRITY POLICY COMMITTEE (CPIPC)

During the relevant period, I attended hearings of the CPIPC and provided evidence to the Committee.

I reported to the Committee that, in my role of reviewing ICAC, I have received complete cooperation from ICAC and the OPI. I advised the Committee about the extent of my role as Reviewer.

COOPERATION

I have been given full cooperation by the Commissioner and by the Director of the OPI. I am satisfied that both offices are operating efficiently. I appreciate the assistance given to me by the Commissioner, the Director and their staff.



The Honourable J R Sulan KC
Reviewer of ICAC

21/12/2022