



Report 2024/02: Review of the investigation of Chief Superintendent Douglas Barr

29 April 2024



OFFICE OF
THE INSPECTOR



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29 April 2024

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

The Hon Leon Bignell
Speaker
House of Assembly
Parliament House
North Terrace
ADELAIDE SA 5000

By hand

Dear President and Speaker

In accordance with clause 9(10) of Schedule 4 of the *Independent Commission Against Corruption Act 2012 (SA) (ICAC Act)*, I provide to each of you my Report 2024/02: Review of the investigation of Chief Superintendent Douglas Barr.

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

Yours faithfully

Philip Strickland SC
Inspector



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Acronyms and abbreviations

Acronym	Description
AC	Assistant Commissioner of Police
ACS	SAPOL's Anti Corruption Section
Amending Act	<i>Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021 (SA)</i>
CLCA	<i>Criminal Law Consolidation Act 1935 (SA)</i>
Code of Ethics	Code of Ethics for the South Australian Public Sector
Commissioner	Independent Commissioner Against Corruption
CPIPC	Crime and Public Integrity Policy Committee
CSO	Crown Solicitor's Office
DPP	Director of Public Prosecutions
EAS	SAPOL's Employee Assistance Section
EPSB	SAPOL's Ethical and Professional Standards Branch
HRMB	SAPOL's Human Resource Management Branch
HRS	SAPOL's Human Resource Services
ICAC Act	<i>Independent Commission Against Corruption Act 2012 (SA)</i>
IIS	SAPOL's Internal Investigation Section
PSHA Act	<i>Public Sector (Honesty and Accountability) Act 1995</i>
OPI	Office for Public Integrity
Recruit 313	SAPOL project to recruit 313 additional police officers by June 2018
SAPOL	South Australia Police established under the <i>Police Act 1988 (SA)</i>

WARNING: This Report contains information relating to a person who died by suicide. Readers may find some content distressing.

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Introduction

1. Clause 75(1) of Schedule 1 of the *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA) (**Amending Act**) required me to consider, as part of my first annual review of the Independent Commission Against Corruption (**the Commission**) and the Office for Public Integrity (**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 *Independent Commissioner Against Corruption Act 2012* (SA) (**ICAC Act**)¹ prior to the commencement of the Amending Act.
2. I sought submissions from members of the public in relation to whether undue prejudice to the reputation of any person was caused by the Independent Commissioner Against Corruption, employees of the Commissioner or employees of the OPI under the *Independent Commissioner Against Corruption Act 2012* (SA) as in force prior to 7 October 2021. On 9 March 2023, I made a public call for submissions and accepted submissions until 10 April 2023.
3. I received a response from Mrs Deborah Barr on 27 March 2023.
4. Between 2017 and 2020, Mrs Barr's husband, the late Chief Superintendent Douglas Barr, was the subject of an investigation by the Independent Commissioner Against Corruption (the **Commissioner**), the Honourable Bruce Lander KC. The investigation related to the South Australia Police (**SAPOL**) recruitment project, Recruit 313.
5. The investigation of Chief Superintendent Barr was initially an investigation of potential corruption in public administration. In July 2018, the assessment of the matter was modified to one raising potential issues of serious or systemic misconduct or maladministration in public administration. I will refer to these investigations as the "corruption investigation" and the "misconduct and maladministration investigation". A reference to "the investigation" or "the investigations" is a reference to both the corruption investigation and the misconduct and maladministration investigation in their entirety.
6. On 18 October 2019, Chief Superintendent Barr was hospitalised as a result of self-harm. Chief Superintendent Barr passed away on 23 October 2019. Mrs Barr

¹ On 7 October 2021, the short title of the *ICAC Act* was amended to the *Independent Commission Against Corruption Act 2012* (SA).

submitted that Chief Superintendent Barr “*experienced substantial stress and anguish as a result of the way [the] investigation was conducted*”.²

7. Mrs Barr requested that I investigate the investigation of Chief Superintendent Barr.
8. On reviewing Mrs Barr’s submission, I considered 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 (SA)* as in force prior to 7 October 2021. I decided that Mrs Barr’s submission raised issues that went beyond the issue of undue prejudice to reputation and warranted a detailed review.
9. In this Report I will refer to the Commissioner as “Mr Lander” and to his employees and staff as “ICAC”. I will refer to the investigation of Chief Superintendent Barr as “the ICAC investigation”.
10. I determined to undertake on my own motion a review into the ICAC investigation of Chief Superintendent Barr pursuant to clause 2(1)(c) of Schedule 4 of the *ICAC Act*.³
11. Clause 9 of Schedule 4 of the *ICAC Act* sets out a non-exhaustive list of matters which may be the subject of a review. In the case of an annual review, there are matters set out in clause 9(1)(a) that I must consider in relation to the financial year to which the review relates. This Report is not an annual review. It is a review that has been conducted on my own motion. Accordingly, without limiting the matters that may be the subject of a review, I may examine any particular exercises of power, performance of functions and the making of decisions by the OPI or the Commission. I may also make any recommendations to the OPI, the Commission or the Attorney-General that I think fit.
12. On completing a review, or at any time during a review, I may do any of the following:⁴
 - (a) refer a matter to the relevant law enforcement agency for further investigation and potential prosecution. I may also disclose to the relevant law enforcement agency, or to the OPI, the Commission or the public authority, information that I have in respect of the matter;⁵
 - (b) refer a matter to the OPI, the Commission or a public authority for further investigation and potential disciplinary action against a public officer for whom the OPI, the Commission or authority is responsible; and

² Vol 1 Exhibit 2 – Letter from Mrs Barr to Inspector, 27 March 2023, p 1.

³ *ICAC Act* Sch 4 cl 2(1)(c), as currently in force.

⁴ *ICAC Act* Sch 4 cl 9(6), as currently in force.

⁵ *ICAC Act* Sch 4 cl 9(8), as currently in force.

- (c) if I find that undue prejudice to the reputation of any person was caused by the OPI or the Commission, I may:
 - (i) publish any statement or material that I think will help to alleviate that prejudice; or
 - (ii) recommend that the Commission or the OPI (as the case may require) pay an amount of compensation to the person.
- 13. I am satisfied that this Report will have no effect on any complaint, report, assessment, investigation or referral under the *ICAC Act* pursuant to clause 9(9)(a) of Schedule 4. I find that this Report has no effect on any current complaint, report, assessment or investigation related to this matter.
- 14. In writing this Report, I have carefully considered that one of the primary objects of the *ICAC Act* is to achieve an appropriate balance between the public interest in exposing corruption, misconduct and maladministration in public administration and the public interest in avoiding undue prejudice to a person's reputation.⁶ This Report anonymises certain names to protect the identities of those persons. Although the information included in this Report was the subject of an investigation by Mr Lander, it has never been made public. In my view, publishing the names of applicants and SAPOL officers would cause undue prejudice to the reputations of those people.
- 15. I must not include information in a report if publication of the information would constitute an offence against section 54 of the *ICAC Act*. On 29 August 2023, the current Commissioner of the Commission, the Hon Ann Vanstone KC, approved me as a person who may give authorisations to disclose information which would otherwise be prohibited by section 54(3) of the *ICAC Act* and as a person who may give authorisations to publish information which would otherwise be prohibited by section 54(5) of the *ICAC Act*. Both approvals were subject to the condition that I consider the disclosure or publication is necessary in order for me to perform my functions as the Inspector. The publication approval was also subject to the condition that I not include information from which a complainant or reporter or an employee or former employee of the Commission could be identified. On 15 March 2024, I sought an authorisation from Commissioner Vanstone to publish the name of a former employee of the Commission. Commissioner Vanstone refused that request on 18 March 2024.
- 16. My review examined the exercises of power, performance of functions and the making of decisions by the Commissioner and the OPI in accordance with the Terms of Reference at **Appendix A**. The Terms of Reference were drafted by me and are informed by clause 9 of Schedule 4 of the current *ICAC Act*, including those matters that I must consider if the review was an annual review. This

⁶ *ICAC Act* s 3(1)(c).

includes, inter alia, consideration of whether the powers exercised, functions performed, and decisions made under the *ICAC Act* were appropriate, including whether any undue prejudice to the reputation of any person was caused by the exercise of a power, performance of a function, or decision made.

17. I note that clause 9 of Schedule 4 of the current *ICAC Act* does not limit the matters that may be the subject of a review. I have drafted the Terms of Reference in order to provide particularity and transparency as to the scope of my inquiry. The decision to investigate Chief Superintendent Barr is specifically referred to in the Terms of Reference. One of the primary objects of the *ICAC Act* (both now, and as enacted) is to achieve an appropriate balance between the public interest in exposing corruption, misconduct and maladministration in public administration and the public interest in avoiding undue prejudice to a person's reputation (recognising that the balance may be weighted differently in relation to corruption in public administration as compared to misconduct or maladministration in public administration). This primary object has informed my discretion as to what I may examine in this review.
18. I have had access to the files held by the Commission in respect of the investigation of Chief Superintendent Barr, including internal documents, and other evidence obtained in the course of my inquiry.
19. I conducted examinations of, and heard evidence from, key witnesses in private pursuant to Schedule 2 of the current *ICAC Act*. I have also received written responses to requests for information from relevant persons. I am grateful for the assistance that these witnesses provided.
20. I wish to thank the family of Chief Superintendent Barr for their assistance in this matter.
21. I wish to thank Commissioner Vanstone and her staff for their considerable assistance throughout the course of this review, including by promptly responding to inquiries and making available all information requested.
22. As a result of my review of the investigation of Chief Superintendent Barr, I have found no evidence of corruption, misconduct or maladministration in public administration by Mr Lander or any employee of the OPI or ICAC.
23. The findings of fact in this Report are made on the civil standard of proof, namely the balance of probabilities, based on the principles set out in *Briginshaw v Briginshaw*.⁷ When making findings as to whether I have found any evidence of corruption, misconduct or maladministration in public administration on the part of the OPI or ICAC, I have applied the definitions of these terms (as set out in **Appendix B**) that applied at the time of the relevant events and conduct. I

⁷ (1938) 60 CLR 336.

consider this to be an orthodox legal approach to analysing past events (particularly when those events have the potential to give rise to criminal charges or disciplinary action) and to be consistent with section 32 of the *Legislation Interpretation Act 2021* (SA) and the law with respect to retrospective operation of legislation.

24. I am required to afford procedural fairness to anyone whom I have included adverse information or made an adverse finding about in this Report.⁸ I have provided relevant portions of my draft report to those who I have included adverse information or made adverse findings about in this Report and have invited them to make submissions to me if they choose.

⁸ In *Kioa v West* (1985) 159 CLR 550 Brennan J stated (at 629) that "*in the ordinary case where no problem of confidentiality arises an opportunity should be given to deal with adverse information that is credible, relevant and significant to the decision to be made*" as such information "*creates a real risk of prejudice ... and it is unfair to deny a person whose interests are likely to be affected by the decision an opportunity to deal with the information*". See also the discussion of "*adverse information that is credible, relevant and significant*" in *Applicant VEAL of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 225 CLR 88 at [16]–[17] per Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ.

Background – Chief Superintendent Barr and Recruit 313

25. Chief Superintendent Barr was the Officer in Charge of SAPOL’s Ethical and Professional Standards Branch (**EPSB**) when he was appointed to lead the Recruit 313 project.⁹ The Officer in Charge of the EPSB was responsible for preventing corruption and misconduct within SAPOL.¹⁰ The Officer in Charge was also responsible for reviewing and recording conflicts of interest within SAPOL and was the contact point for any enquiries from SAPOL employees.¹¹
26. In September 2016, the Commissioner of Police, Grant Stevens, announced that SAPOL would attempt to recruit 313 additional police officers by June 2018. That project was known as Recruit 313.¹² In approximately August 2016, Chief Superintendent Barr was appointed to lead “*the entire program associated with recruiting and the Recruit 313 project*”.¹³
27. Mr Lander received evidence from the Commissioner of Police that whilst Chief Superintendent Barr “*was given extensive latitude*” to achieve the goals of Recruit 313, which allowed him “*to go outside the scope of existing policies*”, he was still obliged to comply with General Orders prohibiting nepotism and patronage.¹⁴
28. Section 11 of the *Police Act 1998* (SA) empowers the Commissioner of Police to make general orders “*for the control and management*” of SAPOL. General orders can relate to the duties to be performed, how and when duties are to be performed, requirements for appointment and promotion, and other matters the Commissioner of Police considers relevant.¹⁵
29. *General Order 8420: Human Resources Management, Recruitment of Police Act and Protective Security Act employees (General Order 8420)* set out how SAPOL was to manage recruitment,¹⁶ and *General Order – Conflict of Interest* set out how conflicts of interest were to be managed, including that SAPOL employees were required to declare a conflict of interest immediately and were to submit a PD254.¹⁷ Employees were also required to report another

⁹ Vol 2 Exhibit 57 – Submissions of Counsel Assisting, 10 October 2019, p 42.

¹⁰ Vol 1 Exhibit 28 – Position Information Document – Chief Superintendent, 14 March 2017, p 1.

¹¹ Vol 4 Exhibit 114 – South Australia Police, *General Order – Conflict of Interest*, 28 September 2016, pp 5–9 (**General Order – Conflict of Interest**).

¹² Vol 1 Exhibit 21 – Independent Commissioner Against Corruption Investigation Report 2017-00076-S01, pp 10, 13 (**Investigation Report**).

¹³ Vol 1 Exhibit 21 – Investigation Report, p 12.

¹⁴ Vol 1 Exhibit 21 – Investigation Report, p 12.

¹⁵ *Police Act 1998* (SA) s 11(2).

¹⁶ Vol 4 Exhibit 104 – South Australia Police, *General Order 8420: Human Resources Management, Recruitment of Police Act and Protective Security Act employees*, p 4 (**General Order 8420**); Vol 1 Exhibit 21 – Investigation Report, p 24.

¹⁷ Vol 4 Exhibit 114 – *General Order – Conflict of Interest*, p 7.

employee's conflict of interest where they believed the other employee had a conflict.¹⁸ Failure to report a conflict of interest could result in disciplinary proceedings.¹⁹

30. Some of the recruitment principles listed in *General Order 8420* included that selection processes were “based on a proper assessment of an applicant’s merit”, were “free from nepotism, patronage and unlawful discrimination”, and were “fair, consistent, transparent, appropriately documented and capable of review”.²⁰
31. *General Order – Conflict of Interest* set out how SAPOL employees were to manage conflicts of interest. Conflicts of interest were categorised as either “actual”, “perceived or potential”, and “accessing information”, with the following descriptions:
 - (a) an actual conflict of interest “involves a direct conflict between an employee’s current duties and responsibilities and their private interests”;
 - (b) a perceived or potential conflict of interest occurred “where it could be perceived or appear an employee’s private interests could improperly influence the performance of their duties – whether or not this is in fact the case”; and
 - (c) in relation to accessing information, an employee’s “access to information held by SAPOL is limited to the specific information that has a direct relationship to their work area or associated work functions”, and employees are not permitted to “access information held by SAPOL which relates to themselves, relatives, or friends”, etc.²¹

Recruitment process

32. The Recruiting Section of SAPOL was part of the Human Resource Management Branch (**HRMB**) within the Human Resource Services (**HRS**) of SAPOL.²² The Recruiting Section was responsible for the recruitment of police cadets.²³ Officer 1 was the Manager, Recruiting and reported to the Manager, HRMB.²⁴ During Recruit 313, the Recruiting Section (including the Manager, Recruiting) reported to Chief Superintendent Barr.²⁵

¹⁸ Vol 4 Exhibit 114 – *General Order – Conflict of Interest*, p 8.

¹⁹ Vol 4 Exhibit 114 – *General Order – Conflict of Interest*, p 8.

²⁰ Vol 4 Exhibit 104 – *General Order 8420*, pp 4–5; Vol 1 Exhibit 21 – Investigation Report, p 24.

²¹ Vol 4 Exhibit 114 – *General Order – Conflict of Interest*, pp 4–5.

²² Vol 1 Exhibit 21 – Investigation Report, p 11.

²³ Vol 1 Exhibit 21 – Investigation Report, p 11.

²⁴ Vol 1 Exhibit 21 – Investigation Report, p 11.

²⁵ Vol 1 Exhibit 21 – Investigation Report, p 11.

33. The Recruiting Section processed applications for police cadet roles in the order they were received.²⁶ Throughout Recruit 313, certain applications were “fast tracked” or “case managed” if a SAPOL officer promoted the applicant.²⁷
34. Secondary school students in South Australia are assigned a rank between 0 to 99.95, which shows how a student performed in their Year 12 program compared to other students. This rank is known as the Australian Tertiary Admission Rank (**ATAR**).²⁸ Applicants who did not attain an ATAR score of 70 or more were required to undertake a pre-application test at TAFE SA (**TAFE SA test**).²⁹ *General Order 8420* stated specifically that the test was conducted at TAFE SA for metropolitan applicants or by the Recruiting Section at SAPOL premises for regional and interstate applicants and SAPOL employees and volunteers.³⁰ Applicants were required to pay a fee of \$148.50 to undertake the TAFE SA test, or \$126.50 for those entitled to a concession.³¹
35. *General Order 8420* set out the steps in the recruiting process, which included:
- (a) submission of an initial application with TAFE SA literary and numeracy test results included, if required;
 - (b) a probity assessment;
 - (c) other tests and assessments, including:
 - (i) ability assessments to “*identify characteristics required to meet the academic requirements of police work*”;
 - (ii) psychometric testing and evaluation (**SafeSelect testing**);
 - (iii) psychological assessment;
 - (iv) panel interview;
 - (v) SAPOL referee check with any SAPOL employees named as referees;
 - (vi) medical examination;
 - (vii) drug and alcohol test;
 - (viii) DNA test;
 - (ix) fingerprint check;

²⁶ Vol 1 Exhibit 21 – Investigation Report, p 13.

²⁷ Vol 1 Exhibit 21 – Investigation Report, pp 13–14.

²⁸ ‘ATAR’, *South Australian Tertiary Admissions Centre* (Web Page) <<https://www.satac.edu.au/atar>>.

²⁹ Vol 1 Exhibit 21 – Investigation Report, p 14.

³⁰ Vol 4 Exhibit 104 – *General Order 8420*, p 7; Vol 1 Exhibit 21 – Investigation Report, p 14.

³¹ Vol 1 Exhibit 21 – Investigation Report, p 14.

- (x) polygraph test;
 - (xi) physical and agility test for applicants who has passed the medical examination; and
 - (xii) computer test.³²
36. Panel interviews were conducted by two serving SAPOL officers and questions were asked from a pro forma document.³³ The questions were confidential and not shared with applicants prior to the interview, and applicants were warned not to disclose the questions to anyone.³⁴
37. Applicants were required to undergo a probity assessment, which included checks of identity, address, offence history, and character references.³⁵ Applicants were automatically disqualified if they had convictions for certain offences, such as indictable offences or offences for which they were imprisoned.³⁶ Other offences and conduct impacting integrity were considered by the Probity Assessment Committee,³⁷ which consisted of the Officer in Charge, HRMB, the Officer in Charge, Internal Investigation Section, and the Officer in Charge, Anti-Corruption Branch.³⁸
38. Applicants were allocated to a category based on their suitability for a role as a police officer or protective security officer.³⁹
39. When all processes were completed, applications were forwarded to the selection board. The selection board consisted of at least three members of the Recruiting Section, including the Manager, Recruiting Section (Officer 1).⁴⁰ The selection board, through the Manager, Recruiting Section, made a recommendation to the Manager, HRMB about an applicant's suitability for employment.⁴¹
40. Successful applicants progressed to completing a cadet course. The Recruiting Section used a whiteboard to record the names of applicants accepted for cadet courses. Names were only recorded on the whiteboard under the relevant course when the applicants had passed all of the testing and had been advised that they were accepted onto a cadet course. Writing a name on the whiteboard reserved

³² Vol 4 Exhibit 104 – *General Order 8420*, pp 10–11. The psychometric testing was conducted by SafeSelect and produced a score for each applicant. See Vol 1 Exhibit 21 – Investigation Report, p 14.

³³ Vol 1 Exhibit 21 – Investigation Report, p 14.

³⁴ Vol 1 Exhibit 21 – Investigation Report, p 15.

³⁵ Vol 4 Exhibit 104 – *General Order 8420*, p 7; Vol 1 Exhibit 21 – Investigation Report, p 25.

³⁶ Vol 4 Exhibit 104 – *General Order 8420*, p 8.

³⁷ Vol 4 Exhibit 104 – *General Order 8420*, pp 8–9.

³⁸ Vol 4 Exhibit 104 – *General Order 8420*, p 6.

³⁹ Vol 1 Exhibit 21 – Investigation Report, pp 14–15.

⁴⁰ Vol 4 Exhibit 104 – *General Order 8420*, p 11.

⁴¹ Vol 4 Exhibit 104 – *General Order 8420*, p 11.

a spot in that cadet course for that person.⁴² From November 2016, SAPOL held “*Selection Meetings*” to select candidates for cadet courses to ensure the “*best applicants*” were selected for each course instead of selecting candidates simply because they had passed all testing requirements.⁴³

⁴² Vol 1 Exhibit 21 – Investigation Report, p 39.

⁴³ Vol 2 Exhibit 57 – Submissions of Counsel Assisting, 10 October 2019, p 54.

PART 1: The corruption investigation

Complaint to the Office for Public Integrity

41. On 17 January 2017, a report was made to the OPI⁴⁴ alleging that the reporter had observed Officer 1 modifying incorrect answers on the spelling component answer sheet of the TAFE SA test of Applicant 2 so that Applicant 2 would pass the test.⁴⁵ Applicant 2 was a relative of a senior SAPOL officer.⁴⁶
42. The reporter provided further details, including that the TAFE SA test was conducted onsite for seven applicants, five of whom did not appear to have special requirements warranting the onsite assessment.⁴⁷ The reporter further stated that, in addition to Applicant 2, the applicants included the son of a SAPOL officer and his friend, and the daughter of a SAPOL officer and her partner.⁴⁸
43. The OPI assessed the complaint as raising a potential issue of corruption in public administration and recommended the matter be further investigated pursuant to section 24(1) of the *ICAC Act*.⁴⁹
44. On 24 January 2017, Mr Lander commenced an investigation into Officer 1's conduct.
45. On 8 March 2017, Investigator 1 received an email from Investigator 2 stating that on 7 March 2017, Investigator 2 was contacted by a source known to them (**the source**) about a person closely connected to Chief Superintendent Barr, Applicant 11.⁵⁰ The source and another SAPOL officer interviewed Applicant 11 for 30 minutes and determined that his application should not be progressed.⁵¹ The source informed Investigator 2 that Chief Superintendent Barr requested that Applicant 11 be interviewed again.⁵² Applicant 11 was reinterviewed by two different SAPOL officers and it was again determined that his application should not be progressed. Chief Superintendent Barr was "*angry*" and "*fronted*" one of the interviewers about the result.⁵³
46. The source said that Applicant 11's file contained four pages of typed notes either provided by Chief Superintendent Barr or Applicant 11. According to the source,

⁴⁴ At this time, the OPI was responsible to the Commissioner. See *ICAC Act* s 18(1).

⁴⁵ Vol 1 Exhibit 21 – Investigation Report, p 5.

⁴⁶ Vol 1 Exhibit 21 – Investigation Report, p 5; Vol 1 Exhibit 25 – Investigation Plan 2017/000076, 8 March 2017, p 1.

⁴⁷ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 18 January 2017, p 67.

⁴⁸ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 18 January 2017, p 67.

⁴⁹ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 18 January 2017, p 72. See *ICAC Act* s 24(1).

⁵⁰ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 9 March 2017, pp 59, 62.

⁵¹ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 9 March 2017, pp 59, 62.

⁵² Vol 1 Exhibit 19 – Running Sheet 2017/000076, 9 March 2017, pp 59, 62.

⁵³ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 9 March 2017, pp 59, 62.

the Commissioner of Police told Officer 2 to review Applicant 11's file, as someone should not be deemed unsuitable based on their interview.⁵⁴ Officer 2 reviewed Applicant 11's file and considered him suitable to progress to the next stage of the process. Applicant 11 progressed to the medical testing phase of the recruitment process.⁵⁵ The source had heard from recruiting staff that Applicant 11 might not have been undergoing the psychological or medical testing and might "*be passed straight through*."⁵⁶

47. On 10 March 2017, Mr Lander determined that the information from the source raised a potential issue of corruption that should be investigated.⁵⁷ The investigation of potential issues of corruption in public administration was conducted pursuant to section 24(1)(a) of the *ICAC Act*.⁵⁸

Alleged conduct of Chief Superintendent Barr

48. ICAC investigated allegations that Chief Superintendent Barr engaged in the conduct described in the following paragraphs. It is important to recognise that Chief Superintendent Barr was never charged with or convicted of any criminal offending arising from his conduct, and no findings of misconduct or maladministration were made against Chief Superintendent Barr.
49. On 10 January 2017, a TAFE SA test was held at SAPOL headquarters for Applicant 11, Applicant 2, Applicant 4, Applicant 5, Applicant 6, and two other applicants. Applicant 11, Applicant 2, Applicant 4, and Applicant 5 were all related to senior SAPOL officers, and Applicant 6 was the partner of Applicant 5. None of those applicants were country or interstate applicants requiring testing at SAPOL headquarters. It was alleged that Chief Superintendent Barr directed those applicants be booked for the TAFE SA test on that day and that, when questioned about whether those applicants were paying for the test, Chief Superintendent Barr said to "[j]ust make sure they're booked in".⁵⁹
50. Applicant 1 was the son of a senior SAPOL officer who had worked closely with Chief Superintendent Barr.⁶⁰ After a discussion between Chief Superintendent Barr and Officer 1, Applicant 1 was deemed "*suitable to progress*" despite having previously been deemed unsuitable or not recommended to progress after the

⁵⁴ Officer 2 has submitted that the message was received from the Commissioner's Office via another SAPOL officer, and that the conversation between Officer 2 and the Commissioner of Police concerning the suitability of applicants was based on interviews which occurred prior to the Recruit 313 project and was not connected to the message received from the Commissioner's Office.

⁵⁵ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 8 March 2017 and 10 March 2017, pp 59–63.

⁵⁶ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 8 March 2017, pp 62–63.

⁵⁷ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 10 March 2017, p 58.

⁵⁸ Vol 2 Exhibit 57 – Submissions of Counsel Assisting, p 7. See *ICAC Act* s 24(1)(a).

⁵⁹ Vol 1 Exhibit 21 – Investigation Report, p 59.

⁶⁰ Vol 1 Exhibit 21 – Investigation Report, p 35.

panel interview and a clinical interview with a psychologist.⁶¹ Chief Superintendent Barr later “*embargoed*”⁶² a place in a cadet course for Applicant 1 despite Applicant 1 not having been provided with a letter of appointment,⁶³ and signed a letter of appointment for Applicant 1 despite the results of the batch checks not having been returned.⁶⁴

51. Applicant 2 was the relative of a senior SAPOL officer. Applicant 2 was booked to undertake the TAFE SA test on 10 January 2017 and did so without paying the fee.⁶⁵
52. Applicant 3 was the son of a senior SAPOL officer⁶⁶ and passed all testing except the grip strength test.⁶⁷ Chief Superintendent Barr wrote or arranged for someone to write “*Reserved-Barr*” on the whiteboard used to record the names of applicants who had been accepted for cadet courses.⁶⁸ The effect was that a place in a cadet course was reserved for Applicant 3.⁶⁹ Chief Superintendent Barr denied that he reserved a place on the cadet course for Applicant 3 because Applicant 3 was the son of a senior SAPOL officer, and said he reserved a place for Applicant 3 because he was in his “*target range*” due to his age (he was a youth) and because he was related to a police officer.⁷⁰
53. Applicant 4’s father was a family friend of Chief Superintendent Barr.⁷¹ It was alleged that Chief Superintendent Barr:
 - (a) requested Officer 1 have Applicant 4’s application entered into the SAPOL recruitment database, resulting in Applicant 4’s application being entered ahead of approximately 80 other applications.⁷² A staff member of the Recruiting Section estimated that this caused the application to have “*jumped the queue ... by about 2 weeks*”;⁷³
 - (b) caused Applicant 4 to be booked for SafeSelect and physical testing without Applicant 4 having a bachelors degree, ATAR score over 70, or a certificate

⁶¹ Vol 1 Exhibit 21 – Investigation Report, pp 35–36, 155.

⁶² I understand “*embargoed*” in this context to mean a position in the cadet course was reserved for Applicant 1.

⁶³ Vol 1 Exhibit 21 – Investigation Report, p 37.

⁶⁴ Vol 1 Exhibit 21 – Investigation Report, p 38. “Batch checks” in relation to applicants were integrity checks conducted by other agencies and parts of SAPOL on databases which the Recruiting Section could not access.

⁶⁵ Vol 1 Exhibit 21 – Investigation Report, pp 56–58.

⁶⁶ Vol 1 Exhibit 21 – Investigation Report, p 39.

⁶⁷ Vol 1 Exhibit 21 – Investigation Report, p 39.

⁶⁸ Vol 1 Exhibit 21 – Investigation Report, p 40; Vol 2 Exhibit 44 – Transcript of Proceedings, *Matter 2017/000076-S01* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 10 July 2019), pp 46–47.

⁶⁹ Vol 1 Exhibit 21 – Investigation Report, p 40.

⁷⁰ Vol 1 Exhibit 21 – Investigation Report, p 41.

⁷¹ Vol 1 Exhibit 21 – Investigation Report, p 46.

⁷² Vol 1 Exhibit 21 – Investigation Report, pp 46–47, 163.

⁷³ Vol 1 Exhibit 21 – Investigation Report, p 47.

of completion of the TAFE SA test.⁷⁴ The result being that Applicant 4's places in those tests were not available to other applicants;⁷⁵ and

(c) requested Officer 5 conduct preliminary checks on Applicant 4's file, resulting in the application being progressed ahead of others.⁷⁶

54. Applicant 11 is a person closely connected to Chief Superintendent Barr.⁷⁷ No evidence of a bachelors degree, ATAR score, or completion of the TAFE SA test was provided with Applicant 11's application.⁷⁸ There were 81 applications waiting to be entered into the SAPOL recruitment database, and Applicant 11's application was entered ahead of those.⁷⁹ Applicant 11's application was also advanced in the following ways.

(a) Officer 1 arranged for preliminary and other checks to be performed by an intelligence officer.⁸⁰ Performing those checks together advanced Applicant 11's application by up to one month.⁸¹

(b) Officer 1 also arranged for Applicant 11 to complete SafeSelect testing and, subsequently, the physical testing prior to the medical testing.⁸² Ordinarily, medical testing occurred prior to physical testing in the event the medical testing identified an issue that would prevent applicants from completing the physical assessment.⁸³ Applicant 11 was advantaged over other applicants by being booked for the SafeSelect entrance exam and physical testing without having met the prerequisites.⁸⁴

55. Applicant 5 was the daughter of a senior SAPOL officer. Applicant 6 was the partner of Applicant 5. Chief Superintendent Barr emailed Applicant 5's mother stating that Applicant 5 could undertake the TAFE SA test on the same day as the psychometric testing and that it "*may accelerate the process*".⁸⁵ Applicant 5 and Applicant 6 subsequently lodged applications with SAPOL and included Chief Superintendent Barr's email with the applications.⁸⁶

⁷⁴ Vol 1 Exhibit 21 – Investigation Report, p 49.

⁷⁵ Vol 1 Exhibit 21 – Investigation Report, p 49.

⁷⁶ Vol 1 Exhibit 21 – Investigation Report, pp 47–48.

⁷⁷ Vol 1 Exhibit 21 – Investigation Report, p 49.

⁷⁸ Vol 1 Exhibit 21 – Investigation Report, p 49.

⁷⁹ Vol 1 Exhibit 21 – Investigation Report, p 52.

⁸⁰ Vol 1 Exhibit 21 – Investigation Report, pp 52–53.

⁸¹ Vol 1 Exhibit 21 – Investigation Report, p 53.

⁸² Vol 1 Exhibit 21 – Investigation Report, p 53.

⁸³ Vol 1 Exhibit 21 – Investigation Report, p 54.

⁸⁴ Vol 1 Exhibit 21 – Investigation Report, p 54.

⁸⁵ Vol 1 Exhibit 21 – Investigation Report, p 55.

⁸⁶ Vol 1 Exhibit 21 – Investigation Report, p 56.

Investigation by ICAC

56. An investigation plan dated 8 March 2017 identified that the “*criminality to be investigated*” was:

- (a) Officer 1 altering Applicant 2’s spelling test. This was identified as potentially amounting to an offence of abuse of public office or dishonest dealing with documents;
- (b) the arrangement of the TAFE SA test at SAPOL headquarters for Applicant 11, Applicant 2, Applicant 4, Applicant 5, and Applicant 6. The investigation would attempt to identify who was responsible for the variation from standard procedure and whether it amounted to an abuse of public office offence;
- (c) Chief Superintendent Barr’s conduct relating to the progression of Applicant 11’s application, which was identified as potentially amounting to an offence of abuse of public office; and
- (d) “[t]he conduct of senior SAPOL officers in the assessment process of recruitment candidates with regard to whether improper favouritism has occurred that may constitute criminal conduct.”⁸⁷

57. The targets of the investigation were Officer 1 and Chief Superintendent Barr.⁸⁸

58. A debrief report of the corruption investigation stated that between 6 March 2017 and 24 July 2017, ICAC had:

Conducted 26 witness interviews.

Obtained 28 witness statements.

Issued 6 ICAC Notices.

Issued summonses for and conducted 4 coercive examinations on behalf of the Commissioner.

Arranged forensic examination of items.

Obtained email restores for 12 accounts and analysed data therein.

*Drafted observation documents summarising evidence gathered.*⁸⁹

Referral to the Director of Public Prosecutions

59. On 10 August 2017, Mr Lander referred the brief relating to the investigation of Chief Superintendent Barr to the Director of Public Prosecutions (**DPP**) for an

⁸⁷ Vol 1 Exhibit 25 – Investigation Plan 2017/000076, 8 March 2017, p 4.

⁸⁸ Vol 1 Exhibit 25 – Investigation Plan 2017/000076, 8 March 2017, pp 4–5.

⁸⁹ Vol 2 Exhibit 32 – Debrief Report 2017/000076, 29 August 2017, p 2.

opinion about whether the evidence could support criminal charges.⁹⁰ The DPP provided the opinion to Mr Lander on 11 January 2018.⁹¹ Mr Lander had previously referred a brief to the DPP in relation to Officer 1.⁹²

60. The DPP characterised the alleged impropriety by Chief Superintendent Barr as:
- (a) facilitating the expedited processing of the applications of Applicant 11 and Applicant 4;
 - (b) directing SAPOL officers to provide a free TAFE SA test to Applicant 11 and selected other applicants, when the test would usually cost about \$150.00;
 - (c) petitioning that Applicant 11 be given a second interview after he was unsuccessful in the first;
 - (d) petitioning a review of Applicant 11's second unsuccessful interview; and
 - (e) demanding that Applicant 11 be allocated a position in a cadet course.⁹³
61. The DPP did not consider that there was a reasonable prospect of conviction for abuse of public office charges contrary to section 251 of the *Criminal Law Consolidation Act 1935* (SA).⁹⁴
62. Section 26 of the *Public Sector (Honesty and Accountability) Act 1995* (SA) (**PSHA Act**) provides that public sector employees must at all times act honestly in the performance of their duties, and failing to do so incurs a penalty of a \$15,000 fine or imprisonment for four years.⁹⁵ Although there was sufficient evidence to support a charge contrary to section 26 of the *PSHA Act*, it was recommended that no charge be laid as the public interest was better served by disciplinary proceedings.⁹⁶ Chief Superintendent Barr's conduct relating to the TAFE SA test could have been viewed as dishonest, and it could have been established that the conduct "*resulted in a significant detriment to the public interest, but only just*".⁹⁷ The DPP said this was the only conduct that could be the appropriate subject of a charge.⁹⁸
63. The evidence was "*marginally capable of satisfying the threshold question of whether a reasonable prospect of conviction*" existed but the efficacy of

⁹⁰ Vol 3 Exhibit 79 – Letter from Mr Lander to Mr Kimber SC, 10 August 2017, p 1.

⁹¹ Vol 3 Exhibit 81 – Letter from Mr Kimber SC to Mr Lander, 11 January 2018.

⁹² Vol 3 Exhibit 78 – Letter from Mr Lander to Mr Kimber SC, 28 June 2016.

⁹³ Vol 3 Exhibit 80 – Advice of the Office of the Director of Public Prosecutions, 3 December 2017, p 1 [1] (**DPP Advice**).

⁹⁴ Vol 3 Exhibit 80 – DPP Advice, p 2 [3].

⁹⁵ *Public Sector (Honesty and Accountability) Act 1995* (SA) s 26; Appendix – Divisional penalties and expiation fees.

⁹⁶ Vol 3 Exhibit 80 – DPP Advice, p 2 [4].

⁹⁷ Vol 3 Exhibit 80 – DPP Advice, p 2 [4].

⁹⁸ Vol 3 Exhibit 80 – DPP Advice, p 47 [164].

disciplinary proceedings better served the public interest.⁹⁹ The recommendation that charges not be laid was “*largely influenced by the availability and efficacy of police disciplinary proceedings which can address the allegations more holistically.*”¹⁰⁰ Further, in only dealing with Chief Superintendent Barr’s conduct regarding the TAFE SA test, there were still other allegations against Chief Superintendent Barr and other SAPOL officers that would need to be resolved by further investigation and disciplinary proceedings.¹⁰¹

64. Even if Chief Superintendent Barr was convicted of a section 26 offence of failing to act honestly in the performance of duties, it was unlikely that he would have received a custodial sentence.¹⁰² Any prosecution was likely to be contested and would cause lengthy and costly proceedings.¹⁰³
65. The DPP noted that although a prosecution was not in the public interest, the evidence showed “*some concerning behaviour by Barr and other senior personnel in the recruitment of SAPOL cadets*” and that “*SAPOL did not have sufficiently transparent operational procedures in place to prevent the conduct that arose in the present case.*”¹⁰⁴

Outcome

66. No charges were laid against either Officer 1 or Chief Superintendent Barr.¹⁰⁵ The DPP’s advice dated 11 January 2018 therefore brought to an end the corruption investigation.

Was the decision to investigate Chief Superintendent Barr appropriate?

67. Mrs Barr has submitted that “*criticism is not made regarding the decision of the ICAC to investigate the allegations which arose in this matter. The criticism relates to how the investigations were undertaken.*”¹⁰⁶ However, I consider below the decision to commence the investigation into allegations of a potential issue of corruption in public administration for the sake of completeness.

⁹⁹ Vol 3 Exhibit 80 – DPP Advice, p 2 [4].

¹⁰⁰ Vol 3 Exhibit 80 – DPP Advice, p 47 [163].

¹⁰¹ Vol 3 Exhibit 80 – DPP Advice, p 47 [164].

¹⁰² Vol 3 Exhibit 80 – DPP Advice, p 47 [164].

¹⁰³ Vol 3 Exhibit 80 – DPP Advice, p 47 [164].

¹⁰⁴ Vol 3 Exhibit 80 – DPP Advice, p 47 [165].

¹⁰⁵ Vol 3 Exhibit 80 – DPP Advice, p 47 [163]; Vol 4 Exhibit 100 – Letter from Mr Kimber SC to Mr Lander, 26 September 2017.

¹⁰⁶ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [1.10].

68. It was appropriate and lawful for Mr Lander to determine to investigate the conduct of Chief Superintendent Barr.
69. The decision to commence the investigation of Chief Superintendent Barr's conduct was based on the information received by Investigator 2 from a source known to that investigator. As referred to above at paragraphs [45]–[46], that information included that Chief Superintendent Barr had interfered in the recruitment process of Applicant 11 in that Chief Superintendent Barr sought that Applicant 11 be given a second interview after he was unsuccessful in the first, and that he had responded angrily when Applicant 11 was again considered unsuitable following the second interview. The information also included that the Commissioner of Police had told Officer 2 (who was not involved in the Recruit 313 project) to undertake a review of Applicant 11's file.¹⁰⁷
70. On 9 March 2017, Senior Legal Officer 1 wrote to Mr Lander advising of the information received by the investigator.¹⁰⁸
71. Senior Legal Officer 1 advised that Mr Lander may wish to assess the information as raising a potential issue of corruption in public administration that could be the subject of a prosecution, and to determine to investigate the matter.¹⁰⁹ Senior Legal Officer 1 considered that section 23(2) of the *ICAC Act* permitted Mr Lander to do so. Section 23(2) of the *ICAC Act* provided that the Commissioner could assess any other matter identified by the Commissioner while acting on his own initiative or in the course of performing functions under any Act as to whether it raised, amongst other things, a potential issue of corruption in public administration.¹¹⁰
72. Senior Legal Officer 1 considered that the conduct raised in the email received from the source on 7 March 2017 could amount to an abuse of public office offence or an offence contrary to section 26 of the *PSHA Act*.¹¹¹
73. Senior Legal Officer 1 said it was appropriate for Mr Lander to investigate the matter due to the involvement of senior SAPOL officers and the similarities in Mr Lander's other investigation into the conduct of Officer 1. Both matters raised a cultural issue within SAPOL of *"improperly preferencing associates of police officers in the recruitment processes of SAPOL, including ensuring that such associates are successful within those processes regardless of their merits or performance during the recruitment process itself."*¹¹²

¹⁰⁷ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 9 March 2017, pp 59, 62.

¹⁰⁸ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 9 March 2017, pp 58–60.

¹⁰⁹ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 9 March 2017, p 60.

¹¹⁰ *ICAC Act* s 23(2).

¹¹¹ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 9 March 2017, p 60.

¹¹² Vol 1 Exhibit 19 – Running Sheet 2017/000076, 9 March 2017, p 60.

74. On 10 March 2017, Mr Lander determined that the further information received by Investigator 2 as outlined by Senior Legal Officer 1 raised a further potential issue of corruption and that it should be investigated with the existing investigation concerning Officer 1.¹¹³
75. The definition of corruption in public administration included offences contrary to Part 7 Division 4 of the *Criminal Law Consolidation Act 1935* (SA), which included offences of abuse of public office, and offences contrary to the *PSHA Act*.¹¹⁴ The information from the source contained allegations which disclosed a potential offence of abuse of public office and an offence contrary to section 26 of the *PSHA Act*. It was appropriate to assess the matter as raising a potential issue of corruption in public administration.
76. A function of the Commissioner was to identify corruption in public administration and to either investigate it or refer it to a law enforcement agency for investigation and prosecution.¹¹⁵ When the information was received from the source, Mr Lander was performing that function in that he was investigating potential corruption by Officer 1. The decision to broaden the investigation to also investigate Chief Superintendent Barr was made in light of further information that was received while investigating Officer 1. Mr Lander's decision to investigate Chief Superintendent Barr was appropriate and in accordance with section 23(2) *ICAC Act*.¹¹⁶
77. Section 24(1) of the *ICAC Act* required Mr Lander to either investigate the matter himself or refer it to SAPOL or another law enforcement agency.¹¹⁷ It was appropriate for Mr Lander to investigate the matter himself. Mr Lander was already investigating the conduct of Officer 1, which was similar and related to the alleged conduct of Chief Superintendent Barr. The allegations also raised the conduct of senior SAPOL officers, one of which held the substantive position of Officer in Charge of the EPSB, so it was appropriate that the matter be investigated by an independent agency.

¹¹³ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 9 March 2017, p 58.

¹¹⁴ See *ICAC Act* s 5(1)(a)–(b). At the time of the decision to investigate Chief Superintendent Barr, the version of the *ICAC Act* in force was the version dated 16 December 2016 to 31 March 2017.

¹¹⁵ *ICAC Act* s 7(1)(a)(i)–(ii).

¹¹⁶ *ICAC Act* s 23(2).

¹¹⁷ *ICAC Act* s 24(1).

PART 2: Period between the corruption investigation and the misconduct and maladministration investigation

78. Following the conclusion of the corruption investigation on 11 January 2018, Mr Lander needed to determine what, if any, further action he would take.
79. On 2 February 2018, Senior Legal Officer 1 submitted a memorandum to Mr Lander about how the matter could be further dealt with in light of the advice of the DPP.¹¹⁸ The memorandum identified that Mr Lander could obtain advice addressing Mr Lander's ability to exercise the Ombudsman's powers to investigate serious or systemic misconduct or maladministration by SAPOL officers.¹¹⁹
80. On 12 February 2018, Senior Legal Officer 1 met with the Chief Executive Officer of ICAC to discuss the memorandum and it was decided that ICAC would seek advice from the Crown Solicitor's Office (CSO) on the issue.¹²⁰
81. That advice was received on 16 February 2018.¹²¹ The Crown Solicitor advised that Mr Lander did not have jurisdiction under the *ICAC Act* at the time to use the Ombudsman's powers to investigate a potential issue of misconduct or maladministration in public administration arising from a complaint about the conduct of a "designated officer" within the meaning of the *Police Complaints and Discipline Act 2016* (SA). As the proposed further investigation related to the conduct of SAPOL officers, who were each a "designated officer", this effectively meant that Mr Lander did not have power to conduct a further misconduct and maladministration investigation.
82. On 19 March 2018, Mr Lander advised the Crown Solicitor that he disagreed with the 16 February 2018 advice and requested a meeting to discuss the issues.¹²²
83. On 15 May 2018, whilst awaiting further legal advice, Senior Legal Officer 1 provided a memorandum to Mr Lander about the next steps in the investigation.¹²³ Three possible avenues were identified:
 - (a) take no further action;
 - (b) refer the matter to the Commissioner of Police either:

¹¹⁸ Vol 2 Exhibit 34 – Memorandum from Senior Legal Officer 1 to Mr Lander, 2 February 2018.

¹¹⁹ Vol 2 Exhibit 34 – Memorandum from Senior Legal Officer 1 to Mr Lander, 2 February 2018, p 1.

¹²⁰ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 18 January 2017, pp 10–11.

¹²¹ Vol 6 Exhibit 167 – Advice of the Crown Solicitor's Office, 16 February 2018.

¹²² Vol 3 Exhibit 83 – Letter from Mr Lander to Mr Wait SC, 19 March 2018.

¹²³ Vol 2 Exhibit 35 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Consideration of further action in ICAC investigation 2017/000076*, 15 May 2018.

- (i) for further investigation and potential disciplinary action pursuant to section 36(1)(b) of the *ICAC Act*; or
 - (ii) as a matter raising a potential issue of misconduct or maladministration pursuant to section 38 of the *ICAC Act*;
- (c) exercise the powers of an inquiry agency to investigate potential issues of serious or systemic maladministration or misconduct in public administration.¹²⁴
84. Section 24(2) of the *ICAC Act* provided that when a matter raised potential issues of serious or systemic maladministration or misconduct, the Commissioner could exercise the powers of an inquiry agency to deal with the matter if the Commissioner was satisfied that it was in the public interest to do so.¹²⁵ This was the very topic upon which further legal advice was being sought by Mr Lander.
85. In relation to whether serious and systemic issues were raised in the investigation, Senior Legal Officer 1 referred to the seniority of the officers involved and the culture within SAPOL and the following.
- (a) In the context of Chief Superintendent Barr's seniority and substantive position as the Officer in Charge of the EPSB, the suspected conduct was said to "*likely have significant implications for the public's confidence in SA Police*" and also "*for the confidence that junior police officers place in SA police officers in leadership positions.*"¹²⁶ The EPSB was responsible for maintaining the ethical standards of SAPOL and administering the conflict of interest polices.¹²⁷ The involvement of other senior SAPOL officers in not taking action about Chief Superintendent Barr's conflict of interest was also referenced, and was said to also likely affect public confidence in SAPOL.¹²⁸
 - (b) The evidence revealed "*serious shortcomings*" in managing conflicts of interest within SAPOL and the culture within SAPOL of assisting applicants who were associated with senior SAPOL officers. These matters had "*serious implications for SA Police and the confidence the community places in it.*"¹²⁹ Further, the allegations raised issues of abuse of

¹²⁴ Vol 2 Exhibit 35 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Consideration of further action in ICAC investigation 2017/000076*, 15 May 2018, p 3.

¹²⁵ *ICAC Act* s 24(2)(b)–(c).

¹²⁶ Vol 2 Exhibit 35 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Consideration of further action in ICAC investigation 2017/000076*, 15 May 2018, p 109.

¹²⁷ Vol 2 Exhibit 35 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Consideration of further action in ICAC investigation 2017/000076*, 15 May 2018, p 109.

¹²⁸ Vol 2 Exhibit 35 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Consideration of further action in ICAC investigation 2017/000076*, 15 May 2018, p 109.

¹²⁹ Vol 2 Exhibit 35 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Consideration of further action in ICAC investigation 2017/000076*, 15 May 2018, pp 109–110.

hierarchical management authority within SAPOL, which had “*significant implications for the morale and effectiveness of SA Police.*”¹³⁰

- (c) An independent investigation of SAPOL would be most effective in addressing the risk of diminishing confidence in SAPOL, and an investigation by Mr Lander would be independent of SAPOL.¹³¹ The independence of the investigation was warranted due to the issues being widespread and potentially involving shortcomings in managing conflicts of interest within SAPOL.¹³² Further, as the allegations involved senior officers within SAPOL, the ability of SAPOL to properly investigate the matter would be a “*serious issue*” and the impartiality of the investigation could be of concern to the community and other SAPOL officers.¹³³
 - (d) Mr Lander had already extensively investigated the matter from a criminal perspective and most of the information in that investigation would be relevant. It was appropriate and efficient for Mr Lander to continue to investigate the matter rather than referring it to another agency.¹³⁴
86. In respect of whether Mr Lander could be satisfied that potential issues of misconduct at SAPOL should be dealt with in connection with issues of serious or systemic maladministration, Senior Legal Officer 1 identified a number of factors including:
- (a) a close factual and temporal connection between issues of misconduct and the matters to be dealt with in any maladministration investigation suggested that it would be inefficient and ineffective for the matters to be investigated separately. If the issues of misconduct and maladministration arose from the same or similar factual circumstances, there might be a strong argument for them to be dealt with together; and
 - (b) as the allegations involved senior SAPOL officers, and some of the witnesses were senior SAPOL officers (including the Commissioner of Police) a serious question arose as to whether SAPOL could independently investigate the allegations. Further, a serious question also arose as to whether the community or other SAPOL officers could have confidence that

¹³⁰ Vol 2 Exhibit 35 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Consideration of further action in ICAC investigation 2017/000076*, 15 May 2018, p 110.

¹³¹ Vol 2 Exhibit 35 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Consideration of further action in ICAC investigation 2017/000076*, 15 May 2018, p 111.

¹³² Vol 2 Exhibit 35 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Consideration of further action in ICAC investigation 2017/000076*, 15 May 2018, p 111.

¹³³ Vol 2 Exhibit 35 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Consideration of further action in ICAC investigation 2017/000076*, 15 May 2018, p 111.

¹³⁴ Vol 2 Exhibit 35 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Consideration of further action in ICAC investigation 2017/000076*, 15 May 2018, p 111.

any such investigation was actually impartial and independent, which would not arise if an independent agency investigated the allegations.¹³⁵

87. On 14 June 2018, whilst still awaiting further legal advice, Mr Lander sent a letter to the Ombudsman seeking his views about Mr Lander exercising the Ombudsman's powers to investigate potential misconduct and maladministration at SAPOL.¹³⁶
88. On 19 June 2018, the Ombudsman advised that he agreed with Mr Lander exercising the powers of an inquiry agency to investigate potential issues of serious or systemic misconduct or maladministration.¹³⁷
89. Mr Lander was still awaiting further legal advice on the very issue of whether he could exercise the powers of the Ombudsman in a further investigation. The Ombudsman's consent did not obviate the need for him to obtain further advice on that topic.
90. On 22 June 2018, Senior Legal Officer 1 wrote to Mr Lander about the options for progressing the investigation.¹³⁸
91. On 6 July 2018, Mr Lander determined that questions of whether the matter raised one or more potential issues of misconduct or maladministration, whether the misconduct or maladministration was serious and systemic, and whether it was in the public interest to exercise the powers of an inquiry agency in dealing with the matter "*should be answered in the affirmative*".¹³⁹
92. On 9 July 2018, Mr Lander modified the assessment of the matter as raising potential issues of serious or systemic misconduct and maladministration in public administration and determined to deal with the investigations of Officer 1 and Chief Superintendent Barr as one matter.¹⁴⁰
93. Once the investigation had been formally modified in this manner, the second investigation into misconduct and maladministration commenced. This occurred despite there being some uncertainty as to whether Mr Lander could exercise the powers of the Ombudsman in conducting such an investigation.
94. Mr Lander could only exercise the powers of the Ombudsman in the context of a misconduct and maladministration investigation if it was lawful for him to do so.

¹³⁵ Vol 2 Exhibit 35 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Consideration of further action in ICAC investigation 2017/000076*, 15 May 2018, pp 116–118.

¹³⁶ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 14 June 2018, p 10; Vol 2 Exhibit 36 – Correspondence between Mr Lander and Mr Lines (letter from Mr Lander dated 14 June 2018).

¹³⁷ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 22 June 2018, p 10; Vol 2 Exhibit 36 – Correspondence between Mr Lander and Mr Lines (letter from Mr Lines dated 19 June 2018).

¹³⁸ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 22 June 2018, p 7.

¹³⁹ Vol 1 Exhibit 19 – Running Sheet 2017/000076, 6 July 2018, p 6.

¹⁴⁰ Vol 1 Exhibit 21 – Investigation Report, p 7; Vol 1 Exhibit 19 – Running Sheet 2017/000076, 9 July 2018, p 4.

It is clear that Mr Lander did not agree with the advice he had received on 16 February 2018 and wished for the legal issues arising to be the subject of further legal advice. It was prudent to seek further legal advice in these circumstances. It was appropriate that he give further consideration to the type of investigation he wished to conduct while he awaited that advice. I consider that Mr Lander was proactive in ensuring that all steps that could be taken whilst he awaited further legal advice were in fact taken. This included seeking the Ombudsman's consent for him to exercise the Ombudsman's powers and modifying the assessment of the matter.

PART 3: The misconduct and maladministration investigation

95. Mr Lander approved the investigation plan for the misconduct and maladministration investigation on 19 July 2018.¹⁴¹
96. The investigation plan specified that the investigation of the matter was to be undertaken pursuant to section 24(2)(b), 24(2)(c), and 36A of the *ICAC Act*.¹⁴² Section 36A(2)(b) conferred on Mr Lander all of the powers of the Ombudsman, including the powers available to the Ombudsman under the *Royal Commissions Act 1917 (SA)*.¹⁴³ Mr Lander could only exercise those powers if it was lawful for him to do so.
97. The scope and purpose of the investigation was identified as:
1. *To investigate whether maladministration and/or misconduct in public administration occurred in relation to the recruitment of police cadets by South Australia Police during the project known as Recruit 313.*
 2. *Any other related matters.*
- As well as examining specific conduct the investigation will consider how conflicts of interest are regulated within SA Police and how obligations in relation to the same are understood by officers, including senior officers. As well as being relevant contextual evidence an assessment of an adequacy of these measures will assist SA Police in preventing future maladministration and/or misconduct in public administration.*¹⁴⁴
98. The conduct that was to be further investigated as part of the misconduct and maladministration investigation was as follows.
99. In relation to Chief Superintendent Barr:
- (a) requesting that preliminary checks be conducted on Applicant 4's file and Applicant 4 be scheduled for psychometric testing, resulting in Applicant 4's application progressing ahead of other applications. This was identified as a potential conflict of interest and it may have been an exercise of power, influence or authority by Chief Superintendent Barr to advance his private interest, arising from his close personal association with Applicant 4 and his family, ahead of the public interest;¹⁴⁵
 - (b) improperly providing confidential information about recruitment processes to Applicant 4's father and Applicant 11. Chief Superintendent Barr provided

¹⁴¹ Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 19 July 2018, p 45.

¹⁴² Vol 2 Exhibit 57 – Submissions of Counsel Assisting, 10 October 2019, p 7. See *ICAC Act* ss 24(2)(b)–(c) and 36A.

¹⁴³ Vol 2 Exhibit 57 – Submissions of Counsel Assisting, 10 October 2019, p 7. See *ICAC Act* section 36A(2)(b).

¹⁴⁴ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 2.

¹⁴⁵ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 2.

information to Applicant 4's father about the questions asked in panel interviews, the outcome of Applicant 4's interview, and information about Applicant 4's medical assessment;¹⁴⁶

- (c) Chief Superintendent Barr provided information to Applicant 11 about what questions would be in his recruitment interview and information about the content of the TAFE SA test and SafeSelect testing;¹⁴⁷
- (d) Chief Superintendent Barr also provided website links to practice tests to the relative of Applicant 2 and the parent of Applicant 5;¹⁴⁸
- (e) obtaining or seeking access to confidential information about Applicant 11's application, including the outcomes of the first and second interviews and the result of the empirical testing;¹⁴⁹
- (f) directing a subordinate to retrieve Applicant 11's file and have it reviewed after the first unsuccessful interview, and to take carriage of Applicant 11's application for the remainder of the process after the application was progressed to the next stage by Officer 2;¹⁵⁰
- (g) directing that the TAFE SA test on 10 January 2017 be made available to those applicants connected to senior SAPOL officers at no cost to the applicants;¹⁵¹
- (h) directing or petitioning Officer 2 to prepare a letter of offer for Applicant 11 immediately after Officer 2 approved Applicant 11's application for progression;¹⁵² and
- (i) conferring an advantage on Applicant 3 by reserving a spot on a cadet course for Applicant 3.¹⁵³

100. In relation to the following officers:

- (a) Officer 1 – conferring advantages on Applicant 4, Applicant 11, and two other applicants, altering Applicant 2's answers on the TAFE SA test, and appointing cadets without the authority or delegation to do so;¹⁵⁴
- (b) Officer 9 – contacting an officer who had been on an interview panel for Applicant 11 prior to the panel report being finalised, which was identified

¹⁴⁶ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 3.

¹⁴⁷ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 3.

¹⁴⁸ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, pp 2–3; Vol 1 Exhibit 21 – Investigation Report, pp 168–169.

¹⁴⁹ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 3.

¹⁵⁰ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 3.

¹⁵¹ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 3.

¹⁵² Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 3.

¹⁵³ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 3.

¹⁵⁴ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 4.

as potentially having been an attempt to influence the panel report.¹⁵⁵ Officer 9 was close friends with Chief Superintendent Barr;¹⁵⁶

- (c) Chief Superintendent Barr's supervisors – failing to require Chief Superintendent Barr to submit a conflict of interest declaration and failing to take steps once they were aware of the conflict to ensure the conflict was managed appropriately.¹⁵⁷

101. The target completion dates for each phase of the investigation were as follows:

- (a) 14 September 2018 – completion of the preliminary inquiries phase, including gathering documentary evidence and issuing summons under the *Royal Commissions Act 1917* (SA);
- (b) 30 September 2018 – completion of the interviews/examinations phase;
- (c) 19 October 2018 – submissions process phase, including consideration of whether a report needed to be prepared and, if it did, submissions of Counsel Assisting to be completed and provided to parties, and parties given access to evidence to respond to adverse findings;
- (d) 9 November 2018 – submissions response phase, including allowing parties to give further evidence and cross examine witnesses, and ICAC to consider submissions of parties; and
- (e) 20 December 2018 – report writing phase.¹⁵⁸

102. The time completion periods for the investigation plan were appropriate. Unfortunately, they were not able to be reached.

103. In July and August 2018, ICAC obtained further evidence, including witness statements and interviews, and documents from SAPOL.¹⁵⁹

104. On 15 August 2018, Mr Lander wrote to the Commissioner of Police advising that the corruption investigation had concluded, that Mr Lander had determined to exercise the powers of an inquiry agency to investigate potential issues of misconduct or maladministration in public administration, and that Mr Lander was now conducting that investigation.¹⁶⁰

¹⁵⁵ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 4.

¹⁵⁶ Vol 4 Exhibit 107 – Transcript of Proceedings, *Matter 2017/000076* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 21 June 2017) p 15.

¹⁵⁷ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 4.

¹⁵⁸ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2018, p 5.

¹⁵⁹ Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, pp 44–48; Vol 1 Exhibit 19 – Running Sheet 2017/000076, 26 July 2018, p 3.

¹⁶⁰ Vol 2 Exhibit 38 – Letter from Mr Lander to Commissioner Stevens, 15 August 2018.

105. In September 2018, further information was obtained including witness statements.¹⁶¹ On 20 September 2018, ICAC received information from SAPOL in response to a summons.¹⁶²
106. In October 2018, further witness statements were obtained.¹⁶³
107. On 24 October 2018, Mr Lander wrote to the Crown Solicitor formally seeking further legal advice.¹⁶⁴ Mr Lander requested the CSO reconsider the previous advice in respect of whether he had jurisdiction under the *ICAC Act* to use the Ombudsman's powers to investigate a potential issue of misconduct or maladministration.¹⁶⁵
108. On 18 February 2019, further advice was received from the Crown Solicitor. This advice essentially agreed with the earlier advice of 16 February 2018, although it noted that the contrary matters identified by Mr Lander were "*reasonably open*" meaning that it was open him to decide to proceed with the planned investigations utilising the powers of the Ombudsman.¹⁶⁶ By this stage, the target completion dates in the investigation plan dated 19 July 2018 were not being met. The interviews/examinations phase was due to have been completed by 30 September 2018 and the submissions process phase was due to have commenced on 19 October 2018.
109. On 22 February 2019, Mr Lander wrote to the Crown Solicitor and suggested that a further opinion be obtained from the Solicitor-General. Mr Lander stated in his letter to the Crown Solicitor that "*a number of the matters that I am currently considering are now becoming stale*" and that the time required to pass legislative amendments to cure any issues of jurisdiction "*would have a negative impact on those matters.*"¹⁶⁷
110. On 1 April 2019, the Solicitor-General's advice was received.¹⁶⁸ The Solicitor-General advised that although the issue was finely balanced and that the Crown Solicitor raised reasonable considerations in favour of the opposite answer, he considered Mr Lander did have the power to use the Ombudsman's powers.¹⁶⁹
111. On 8 April 2019, Senior Legal Officer 1 wrote to Mr Lander and invited him to consider what further action he may wish to take following the receipt of the advice from the Solicitor-General on 1 April 2019 that Mr Lander did have the

¹⁶¹ Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 5 September 2018 to 18 September 2018, pp 42–44.

¹⁶² Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 20 September 2018, p 43.

¹⁶³ Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 12 October 2018 and 23 October 2018, p 42.

¹⁶⁴ Vol 3 Exhibit 84 – Advice from Crown Solicitor, 18 February 2019, p 1 [2].

¹⁶⁵ Vol 3 Exhibit 84 – Advice from Crown Solicitor's Office, 18 February 2019, p 1 [2].

¹⁶⁶ Vol 3 Exhibit 84 – Advice from Crown Solicitor, 18 February 2019, p 2 [5].

¹⁶⁷ Vol 3 Exhibit 85 – Correspondence between Mr Lander and Mr Wait SC (letter from Mr Lander to Mr Wait SC dated 22 February 2019), pp 1–2.

¹⁶⁸ Vol 3 Exhibit 86 – Advice from Solicitor-General, 1 April 2019.

¹⁶⁹ Vol 3 Exhibit 86 – Advice from Solicitor-General, 1 April 2019, pp 1–2.

power to exercise the powers of the Ombudsman.¹⁷⁰ The memorandum was stated to be for the purpose of “*inform[ing] discussion about future action taken in relation to 2017/000076-S01...*” and a related matter.¹⁷¹ Following receipt of this memorandum, Mr Lander determined to hold examinations utilising the powers of the Ombudsman.

Examinations

112. Between 29 May 2019 and 11 July 2019, Mr Lander examined 27 witnesses. Those witnesses included:

- (a) Chief Superintendent Barr and Officer 1;
- (b) staff of the Recruiting Section and those additional staff allocated to assist with Recruit 313;
- (c) some of the key applicants;
- (d) parents of some of the applicants;
- (e) the SAPOL officers who conducted Applicant 11’s second interview;
- (f) the SAPOL officers who held the position of Assistant Commissioner, HRS during the relevant period; and
- (g) Officer 2, who was previously the Manager, HRMB.¹⁷²

113. Chief Superintendent Barr was the final witness to be examined. At the conclusion of his examination, Mr Lander advised Chief Superintendent Barr of the next steps in the investigation and stated:

*THE COMMISSIONER: Thank you. Can I just explain how the process will now develop? It may be that I'll need to speak to the Commissioner in relation to some aspects of this investigation and, if I do, that will happen early next week. After that, I'll invite [Counsel Assisting] to provide me with submissions as to the findings that I should make and as to whether or not any report should be made public or otherwise. At that stage, you'll be given an opportunity of reading those submissions and making any comment that you wish to make in relation to those submissions and making any application you wish to make at that stage for further evidence to be taken or to cross-examine any of the witnesses who have previously given evidence. So you'll be given every opportunity to test those submissions, if you wish. I am not saying you have to do that, but if you wish to do so. At that time, you'll also be given the opportunity of being heard as to whether or not the report should be made public, or whether it should be restricted to a smaller audience. **I would expect those submissions probably won't be in for two or three weeks?***

¹⁷⁰ Vol 4 Exhibit 103 – Memorandum from Senior Legal Officer 1 to Mr Lander, 8 April 2019, pp 1, 8–9.

¹⁷¹ Vol 4 Exhibit 103 – Memorandum from Senior Legal Officer 1 to Mr Lander, 8 April 2019, p 1.

¹⁷² Vol 5 Exhibit 57 – Submissions of Counsel Assisting, p 37 [4.5].

[Counsel Assisting]: **Yes.**

THE COMMISSIONER: So you will not probably hear from us again for two or three weeks. As soon as I get the submissions, I shall circulate them to the people who I think may be adversely affected by any submission made by [Counsel Assisting]. Do you understand the process?

[Chief Superintendent Barr]: Yes, Commissioner.¹⁷³

(emphasis added)

Submissions of Counsel Assisting

114. The submissions of Counsel Assisting were dated 10 October 2019. Counsel Assisting submitted that Mr Lander could find the actions of Chief Superintendent Barr amounted to misconduct, and that (whether alone or in combination) his actions amounted maladministration by a substantial mismanagement of his official functions in relation to the management of Recruit 313, his management of conflicts of interests, and his use of his power or influence in relation to the applications of Applicant 11 and several other applicants.¹⁷⁴

Investigation Report and findings

115. Mr Lander's report on the investigation was undated but was circulated to the relevant parties on 31 August 2020 (the **Investigation Report**), approximately 10 months after Chief Superintendent Barr passed away.¹⁷⁵

116. The Investigation Report was not published to the general public as Mr Lander did not consider that it was in the public interest to do so. It was published to the persons who received Counsel Assisting's submissions.¹⁷⁶ Mr Lander considered that doing so would assist the Commissioner of Police to address the issues identified and recommendations made in the Investigation Report.¹⁷⁷

117. Mr Lander stated that he did not intend to make any findings of misconduct or maladministration regarding Chief Superintendent Barr's conduct.¹⁷⁸ Mr Lander accepted that Chief Superintendent Barr was entitled to be afforded procedural fairness and the right to be heard, and that the obligation to afford procedural fairness to Chief Superintendent Barr had not been discharged at the time of his death.¹⁷⁹ Mr Lander would have discharged the obligation by serving Chief

¹⁷³ Vol 2 Exhibit 45 – Transcript of Proceedings, *Matter 2017/000076-S01* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 11 July 2019), pp 38–39.

¹⁷⁴ Vol 5 Exhibit 57 – Submissions of Counsel Assisting, pp 232–239.

¹⁷⁵ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) at p 9.

¹⁷⁶ Vol 1 Exhibit 21 – Investigation Report, p 208.

¹⁷⁷ Vol 1 Exhibit 21 – Investigation Report, p 208.

¹⁷⁸ Vol 1 Exhibit 21 – Investigation Report, pp 137–138.

¹⁷⁹ Vol 1 Exhibit 21 – Investigation Report, pp 137–138.

Superintendent Barr with the submissions of Counsel Assisting, which would have put Chief Superintendent Barr on notice of adverse findings Mr Lander might have made.¹⁸⁰ Chief Superintendent Barr would have had the opportunity to respond with submissions in reply and to present further evidence.¹⁸¹

118. In the course of making his findings, Mr Lander considered that Chief Superintendent Barr could not respond to Counsel Assisting's submissions, gave evidence when he had not been given notice about the topics of examination, did not have the opportunity to present further evidence, and did not have the opportunity to examine other witnesses.¹⁸²

119. Although Mr Lander stated that he did not intend to make any findings of misconduct or maladministration, he found that it was appropriate to make some findings of fact in relation to Chief Superintendent Barr.¹⁸³ In that regard, Mr Lander stated:

*However, I consider it necessary to make some findings of fact about conduct Barr engaged in or statements he made. One of the purposes of writing this report is to identify risks of maladministration or misconduct and to make recommendations to SA Police and others about how those risks can be avoided. In order to discharge this function it is necessary for me to make some findings about the events I have examined including the conduct of those involved in them. Any findings I have made about Barr's conduct I have made because I consider they were necessary in order for me to discharge my duties as Commissioner and because I consider it was in the public interest to make those findings.*¹⁸⁴

120. I consider that Mr Lander's approach to what findings he could and could not make about Chief Superintendent Barr was entirely appropriate.

121. Mr Lander's findings about the conduct of Chief Superintendent Barr and other SAPOL officers are as follows.

122. Mr Lander found that "*applications processed during the Recruit 313 project were not free of nepotism*" and that engaging in conduct due to the relationships between the relevant applicants and senior SAPOL officers, such as progressing applications that had been rejected or recommended not to proceed, embargoing places on cadet courses, progressing applications that did not meet the prerequisites, and entering applications into the SAPOL recruitment database out of the usual order, amounted to nepotism.¹⁸⁵

123. Mr Lander found that Chief Superintendent Barr had a conflict of interest in respect of Applicant 11's application, which "*gave rise to significant and substantial risks that Barr's exercise of his duties and responsibilities may be*

¹⁸⁰ Vol 1 Exhibit 21 – Investigation Report, pp 137–138.

¹⁸¹ Vol 1 Exhibit 21 – Investigation Report, pp 137–138.

¹⁸² Vol 1 Exhibit 21 – Investigation Report, pp 137–138.

¹⁸³ Vol 1 Exhibit 21 – Investigation Report, p 138.

¹⁸⁴ Vol 1 Exhibit 21 – Investigation Report, p 138.

¹⁸⁵ Vol 1 Exhibit 21 – Investigation Report, pp 198–199.

compromised and that he could misuse the authority he had by virtue of his position".¹⁸⁶

124. Chief Superintendent Barr did not complete a PD254 concerning Applicant 11's application, nor did he make any other disclosure about the conflict. The failure to do so did not adhere to the requirements under the Code of Conduct and *General Order: Conflict of Interest*.¹⁸⁷
125. The determination by Officer 2 to accept Applicant 11's application for employment as a police cadet was recorded in a memorandum, which stated that Chief Superintendent Barr's "advocacy" in respect of Applicant 11's application was "*undoubtedly well known*" by the Recruiting Section.¹⁸⁸ Mr Lander found that the effect of this was that Chief Superintendent Barr's conflict was both recorded and ignored.¹⁸⁹ Mr Lander found that the decision to accept Applicant 11's application was made because of the pressure the decision maker felt they were under from Chief Superintendent Barr and other senior officers.¹⁹⁰
126. Mr Lander made findings about the conduct of Officer 11, who was a senior SAPOL officer.¹⁹¹ In particular, Mr Lander found that it was concerning that Officer 11, as an experienced senior SAPOL officer, did not take any action with respect to Chief Superintendent Barr's conflict of interest or address any risks that arose despite being seized of information indicating that the conflict existed and that it was causing Chief Superintendent Barr to improperly involve himself in recruiting processes.¹⁹²
127. In relation to Officer 12, another senior SAPOL officer, Mr Lander found that Officer 12 had a misunderstanding about what amounted to a conflict of interest in that he considered that a conflict of interest would only cause an issue where an officer in fact exercised duties in respect of that conflict and failed to recognise the damage that the perception of a conflict may cause, and the need for transparent disclosure and management of both actual and potential conflicts of interest.¹⁹³ Mr Lander found that Officer 12 should have taken action to ensure that Chief Superintendent Barr's conflict of interest was appropriately declared and managed, including ensuring that that the integrity of recruitment decision making was not affected.¹⁹⁴ Mr Lander stated that his findings in relation to

¹⁸⁶ Vol 1 Exhibit 21 – Investigation Report, p 165.

¹⁸⁷ Vol 1 Exhibit 21 – Investigation Report, p 165.

¹⁸⁸ Vol 1 Exhibit 21 – Investigation Report, p 194.

¹⁸⁹ Vol 1 Exhibit 21 – Investigation Report, p 194.

¹⁹⁰ Vol 1 Exhibit 21 – Investigation Report, p 194.

¹⁹¹ Vol 1 Exhibit 21 – Investigation Report, p 197.

¹⁹² Vol 1 Exhibit 21 – Investigation Report, p 197.

¹⁹³ Vol 1 Exhibit 21 – Investigation Report, p 186.

¹⁹⁴ Vol 1 Exhibit 21 – Investigation Report, p 186.

Officer 12, together with his senior position, raised concerns about the manner in which SAPOL was managing and dealing with conflicts of interests.¹⁹⁵

128. In relation to the TAFE SA test conducted on 10 January 2017, Mr Lander found that Chief Superintendent Barr's conduct in giving the direction to book Applicant 4 and Applicant 5 for the test on that day was an example of a decision not "*made on the basis of a proper assessment of the merits*" in that it conferred an advantage on the applicants who undertook the test of 10 January 2017 because of their connections to SAPOL officers.¹⁹⁶ However, Mr Lander made no findings that this amounted to misconduct or maladministration by Chief Superintendent Barr.¹⁹⁷
129. Mr Lander found that Officer 1 did alter answers on Applicant 2's answer sheet.¹⁹⁸ This was in circumstances where Officer 1 was aware that Chief Superintendent Barr, as Officer 1's superior officer, had given a direction which resulted in advantage to certain applicants (including Applicant 2).¹⁹⁹ Mr Lander said that Officer 1's "*resistance*" to engaging in conduct, such as altering Applicant 2's answer sheet, was likely to have been reduced by the impression that "*the most senior levels of SA Police were willing to manipulate recruitment processes to confer advantages on their children.*"²⁰⁰
130. Mr Lander also found that Applicant 2 was allowed to undertake the TAFE SA test on 10 January 2017 (as well as Applicant 11) even though they had not applied for employment as a police cadet, and were the only person at the test who had not done so. The direction given by Chief Superintendent Barr to Officer 6 and Officer 1 was the reason that Applicant 2 was permitted to undertake the test without having submitted an application.²⁰¹
131. ICAC received evidence that Chief Superintendent Barr wanted to create a document for publication on the SAPOL website (the **Information Sheet**) and that he likely requested that be done by Officer 1.²⁰² The Information Sheet included information from a historical TAFE SA sample question document.²⁰³ The Information Sheet was provided to Chief Superintendent Barr and the parent of Applicant 5 by Officer 1 shortly after the candidates has been scheduled to undertake the TAFE SA test on 10 January 2017.²⁰⁴ The Information "*was not made generally available to applicants or potential applicants for the position of*

¹⁹⁵ Vol 1 Exhibit 21 – Investigation Report, p 186.

¹⁹⁶ Vol 1 Exhibit 21 – Investigation Report, pp 168, 199.

¹⁹⁷ Vol 1 Exhibit 21 – Investigation Report, pp 168, 199.

¹⁹⁸ Vol 1 Exhibit 21 – Investigation Report, p 172.

¹⁹⁹ Vol 1 Exhibit 21 – Investigation Report, p 173.

²⁰⁰ Vol 1 Exhibit 21 – Investigation Report, p 173.

²⁰¹ Vol 1 Exhibit 21 – Investigation Report, p 168.

²⁰² Vol 1 Exhibit 21 – Investigation Report, p 168.

²⁰³ Vol 1 Exhibit 21 – Investigation Report, p 169.

²⁰⁴ Vol 1 Exhibit 21 – Investigation Report, p 169.

police cadet”, and Mr Lander said there was “*no justification*” for providing it to only some candidates.²⁰⁵ Mr Lander found that Applicant 11, Applicant 5, and Applicant 6 were advantaged by having been provided with the Information Sheet and said that “[t]here was no justification for it being provided to a select group of candidates.”²⁰⁶

Was it appropriate to modify the assessment and conduct the misconduct and maladministration investigation?

132. Mrs Barr has submitted that there was “*limited utility in conducting such a further investigation because an investigation into the matter had already been conducted in relation to the same subject matter.*”²⁰⁷
133. Section 7(1)(ca) of the *ICAC Act* provided that the Commissioner’s functions included the identification of serious or systemic misconduct or maladministration in public administration.²⁰⁸
134. Section 24(7) of the *ICAC Act* in force at the time of the modification provided that the Commissioner had the absolute discretion to make an assessment and to determine whether and what action was taken. In relation to modifying assessments, section 24(7) provided that “*if an assessment is modified in the course of dealing with the matter, the Commissioner may deal with the matter according to the modified assessment.*”²⁰⁹
135. Section 5(3) of the *ICAC Act* provided that misconduct in public administration meant:
- (a) *contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or*
 - (b) *other misconduct of a public officer while acting in his or her capacity as a public officer.*²¹⁰
136. Section 5(4) of the *ICAC Act* provided that maladministration in public administration:
- (a) ... means—

²⁰⁵ Vol 1 Exhibit 21 – Investigation Report, p 169.

²⁰⁶ Vol 1 Exhibit 21 – Investigation Report, p 169.

²⁰⁷ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [5.7.1].

²⁰⁸ *ICAC Act* s 7(1)(ca).

²⁰⁹ *ICAC Act* s 24(7).

²¹⁰ *ICAC Act* s 5(3).

- (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.*²¹¹

137. In the circumstances outlined above, I consider that the issues raised were correctly assessed as being serious and systemic. Chief Superintendent Barr was the Officer in Charge of the branch responsible for providing “*the organisational focus for ethical and professional conduct to ensure the community has full confidence in SAPOL*” and he was responsible “*for the prevention of corruption and misconduct by all SAPOL employees*”.²¹² Other officers involved, including Officer 1 and Chief Superintendent Barr’s superiors, were all senior officers within SAPOL. It was open to conclude that the issues were serious and systemic based on the seniority and sheer number of officers involved.

138. It was appropriate to conclude that it was in the public interest for Mr Lander to investigate the potential issues of serious and systemic misconduct and maladministration raised in the matter. An investigation by Mr Lander enjoyed the benefits of being independent, impartial and efficient. The efficiency arose because Mr Lander had already conducted an extensive corruption investigation relating to the conduct.

139. Accordingly, I find that the decision made by Mr Lander to modify the assessment of the matter was appropriate and in accordance with the *ICAC Act*.

²¹¹ *ICAC Act* s 5(4).

²¹² Vol 1 Exhibit 28 – Position Information Document – Chief Superintendent, 14 March 2017, p 1.

PART 4: Delay

140. My Terms of Reference in relation to this review extend to examining whether there was any evidence of unreasonable delay in the investigations in relation to Recruit 313 by ICAC and the OPI.
141. Where no period is specified for doing a particular act, the courts have been prepared to imply a requirement for it to be done within a reasonable time or that a reasonable time must be allowed for it to be done.²¹³ Consideration as to what “reasonable time” is will turn upon the individual circumstances of the matter.²¹⁴
142. In the absence of any direct judicial consideration of undue delay in the context of an investigation by ICAC, I have considered, by analogy, judicial decisions in respect of delays in courts and tribunals.
143. In *NAIS v Minister for Immigration and Multicultural and Indigenous Affairs (NAIS)* the High Court considered a matter where the Refugee Review Tribunal (the **Tribunal**) held oral hearings on 6 May 1998 and 19 December 2001, and the Tribunal’s decision was delivered on 14 January 2003.²¹⁵ Relevantly, Chief Justice Gleeson stated that:

*Undue delay in decision-making, whether by courts or administrative bodies, is always to be deplored. However, that comfortable generalisation does little to advance the task of legal analysis when it becomes necessary to examine the consequences of delay. The circumstances in which delay, of itself, will vitiate proceedings, or a decision, are rare... A court of appeal, reviewing a decision of a primary judge, may conclude that delay in giving judgment has contributed to error, or made a decision unsafe. Again, the ground of appellate intervention is the error, or the infirmity of the decision, not the delay itself.*²¹⁶

144. In *NAIS*, the delay between the first hearing and the decision was four and a half years. The High Court found this delay was excessive and had deprived the Tribunal of the capacity to properly assess and evaluate the matter. In that regard:
- (a) Justice Kirby stated that the delay “rendered suspect the reasons, findings and references to the evidence contained in the Tribunal’s “decision”. The

²¹³ D C Pearce & R S Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths Australia, 7th ed, 2011) [6.52].

²¹⁴ *Koon Wing Lau v Caldwell* (1949) 80 CLR 533 at [574] (Dixon J).

²¹⁵ *NAIS v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 77 at [2]; (2005) 228 CLR 470 at [473].

²¹⁶ *NAIS v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 77 at [5]; (2005) 288 CLR 470 at [473]–[474]. See also *Mount Lawley Pty Ltd v Western Australian Planning Commission* (2004) 29 WAR 273 at [31], [36], [37] (Steytler, Templeman and Simmonds JJ); *Hadid v Redpath* (2001) 35 MVR 152 at [157]; [2001] NSWCA 416 at [29] (Heydon JA, with whom Stein JA and Grove J agreed); *Von Schoeler v Allen Taylor and Company Ltd Trading as Boral Timber (No 2)* [2020] FCAFC 13 (20 February 2020) at [92], [100], [101], [113].

“decision” was not reached by a process that was procedurally fair and just to the appellants.”²¹⁷

(b) Justices Callinan and Heydon stated:

*the Tribunal can disable itself from giving consideration to the presentation of a case arises where it permits so much time to pass that it can no longer assess the evidence offered. That is what happened here.... It can be inferred from the delay that, in the absence of contrary evidence, the Tribunal had deprived itself of its capacity to do so, and there is no contrary evidence.*²¹⁸

145. In *NAIS*, Justice Kirby found that the concerns in respect of judicial delay are equally applicable to decision making by quasi-judicial tribunals²¹⁹ and stated:

The significance of delay, depending as it does on the issues for decision, necessitates examination of the matter actually decided.....where, however, a matter for decision involves an assessment of the truthfulness of a party or important witness, the resolution of competing versions of the facts and the differentiation of truth and falsehood, delay, especially protracted delay, in the provision of a reasoned decision may cause doubt on the validity of the decision.

...

*Extensive delay may sometimes tempt (or appear to tempt) the decision maker to take the path of easy resolution.*²²⁰

146. The consideration of any delay will depend on the facts and circumstances of each case, in particular, on the nature of the administrative body and the complexity of the matter. In *NAIS*, Justice Gummow noted with approval the observations of Justice LeBel in the Supreme Court of Canada that:

*there are different kinds of delay and that not all administrative bodies are the same. Delay in deciding an individual case may relate to the special complexity of the subject matter as well as to the inattention of the decision-maker. The former may encompass necessary delay. Further, the diversity of the powers, mandates and structures of administrative bodies makes it inappropriate to apply particular standards from one context to the other.*²²¹

147. Furthermore, a long delay will necessarily impact on litigants who are required to live with uncertainty pending a decision causing any stress and anxiety associated with the proceedings to be prolonged, if not increased.²²²

²¹⁷ *NAIS v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 77 at [102]; (2005) 288 CLR 470 at [502].

²¹⁸ *NAIS v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 77 at [172]; (2005) 288 CLR 470 at [526].

²¹⁹ *NAIS v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 77 at [87]; (2005) 288 CLR 470 at [497].

²²⁰ *NAIS v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 77 at [86]–[87]; (2005) 288 CLR 470 at [496]–[497].

²²¹ *NAIS v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 77 at [18],[87]; (2005) 288 CLR 470 at [478].

²²² *Mount Lawley Pty Ltd v Western Australian Planning Commission* (2004) 29 WAR 273 at [31]–[37]; *Hadid v Redpath* (2001) 35 MVR 152 at [157]; [2001] NSWCA 416 at [29].

148. In my view, the potential impact of undue delay on any administrative process can be both serious and highly damaging. An ICAC investigation is no exception. The impact of unreasonable delay can be highly damaging to the investigation process, the outcome of investigations, the individuals involved, as well as to the public's perception of the processes and bodies which caused the delay.
149. In considering whether any delay in the course of the investigation into Recruit 313 was **unreasonable**, I must be satisfied that there has been a delay which was longer than was warranted having regard to the nature and complexity of the investigation conducted by ICAC.
150. I have considered whether unreasonable delay may be measured against the target completion dates set by ICAC in the investigation plan. Such an approach may be unfair or unrealistic because an investigation is an organic process. An investigation can develop a complexity which could not be foreseen when the investigation plan was formulated. Furthermore, unforeseen events can affect the failure to meet the target completion dates.

Submissions of Mrs Barr

151. Mrs Barr has submitted that the ICAC investigation “*involved repeated unreasonable delays*”.²²³
152. The first period of delay identified by Mrs Barr was the period between 11 January 2018 and 14 June 2018. This was the period between ICAC receiving the advice from the DPP and Mr Lander writing to the Ombudsman.²²⁴
153. The second period complained of was between 11 January 2018 and 29 May 2019, being the period between the receipt of the DPP advice and the commencement of witness examinations under the *Royal Commissions Act 1917* (SA).²²⁵ Included in that period was a delay of 10 months between 9 July 2018 and 29 May 2019.²²⁶ This was the time between the modification of the assessment and the commencement of examinations of witnesses under the *Royal Commissions Act 1917* (SA).

²²³ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.1].

²²⁴ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.17].

²²⁵ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.20].

²²⁶ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.20].

154. The third period of delay was between 11 July 2019 and 18 October 2019, being the period of 14 weeks between Chief Superintendent Barr’s examination and hospitalisation.²²⁷
155. Mrs Barr identified the following periods of delay after Chief Superintendent Barr’s death:
- (a) the delay in receiving the submissions of Counsel Assisting after Chief Superintendent Barr’s death. On 6 November 2019, Chief Superintendent Barr’s solicitor, Mr Craig Fabbian, was advised by ICAC that the submissions would not be circulated for a month due to Chief Superintendent Barr’s passing.²²⁸ On this basis, the Barr family expected to receive further correspondence from ICAC on approximately 6 December 2019.²²⁹ Mr Fabbian received the submissions of Counsel Assisting on 20 December 2019, which was the Friday before Christmas, with correspondence from Mr Lander stating that he “*decided to hold off providing the submissions to any interested person until a later date ... out of respect for Mr Barr, his family, and those associated with him.*”²³⁰ Mrs Barr submitted that the provision of the submissions just prior to Christmas after an already lengthy delay did not respect the Barr family and instead caused hurt and upset;²³¹ and
 - (b) the delay in providing the Investigation Report on 1 September 2020. On 13 February 2020, the matter of *C v Independent Commissioner Against Corruption (2020) 136 SASR 215* commenced in the Supreme Court. Mr Lander advised that progress on the matter would be paused until the proceedings finalised.²³² Mrs Barr concedes that the delay between the commencement of proceedings on 13 February 2020 and receiving the Investigation Report on 1 September 2020 was not unreasonable, but submitted that the Investigation Report being provided more than three years and seven months after the initial complaint to the OPI on 17 January 2017 “*reflects that there were substantial and unreasonable delays associated with the handling of this matter at a number of stages.*”²³³

²²⁷ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.25].

²²⁸ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.26].

²²⁹ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.27].

²³⁰ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.28].

²³¹ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.30].

²³² Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.32].

²³³ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.36]–[4.38].

156. Mrs Barr submitted that the delays prior to Chief Superintendent Barr's death left him "*in a state of uncertainty for a considerable period of time.*"²³⁴

11 January 2018 to 14 June 2018

157. This was the period between the receipt of the DPP advice on 11 January 2018 and the modification of the assessment on 9 July 2018. It was not an active investigation phase but rather a period in between the two investigations. I have outlined the relevant events that occurred during this period in Part 2. I do not consider this period involved any unreasonable delay.

14 June 2018 to 23 May 2019

158. During this period, the misconduct and maladministration investigation was progressing as outlined in Part 3 of this Report. Between July and October 2018, witness statements and documents were being obtained by ICAC.

159. From October 2018 to April 2019, it was appropriate for Mr Lander to seek and obtain advice about whether he could continue the investigation using the powers of the Ombudsman. The Solicitor-General's advice confirming that he could exercise the Ombudsman's powers to conduct examinations was received on 1 April 2019.

160. On 8 April 2019, Senior Legal Officer 1 wrote to Mr Lander and invited him to consider what further action he may wish to take following the receipt of that advice.

161. The memorandum stated that "[t]he matter has been placed on hold pending the outcome of the request for advice referred to above."²³⁵ In explaining the options for progressing the matter, Senior Legal Officer 1's memorandum "*set out factors which might affect [Mr Lander's] consideration of the ... options.*"²³⁶ One of those considerations was delay, and it was noted that "[s]ome delay has been occasioned in the investigations."²³⁷ Senior Legal Officer 1 identified that the delay could impact the ability to gather evidence due to the effect of time on witnesses' recollection of events and the ability of persons of interest to defend themselves against findings of misconduct or maladministration if they could not

²³⁴ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.36]–[4.38].

²³⁵ Vol 4 Exhibit 110 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Future action in Matters 2017/000076-S01 and 2016/001078*, 8 April 2019, p 2.

²³⁶ Vol 4 Exhibit 110 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Future action in Matters 2017/000076-S01 and 2016/001078*, 8 April 2019, p 4.

²³⁷ Vol 4 Exhibit 110 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Future action in Matters 2017/000076-S01 and 2016/001078*, 8 April 2019, p 6.

locate evidence due to the passage of time.²³⁸ Those consequences were “mitigated [to] some extent” because “the substantial majority of evidence in relation to the corruption allegations [had] been gathered” and the “allegations [were] also likely to form the basis of the maladministration and misconduct investigation.”²³⁹ In the context of referring the matter to the Commissioner of Police for disciplinary proceedings, Senior Legal Officer 1 identified that “[f]urther investigation (as opposed to immediate referral) would involve further delay.”²⁴⁰

162. On 11 April 2019, Mr Lander determined to continue to investigate the matter.²⁴¹ Mr Lander appropriately took into account the “seriousness of allegations and potential ramifications for ethical culture at SA Police.”²⁴²
163. On 7 May 2019, Mr Lander formally appointed senior counsel as Counsel Assisting.²⁴³
164. At a meeting on 22 May 2019, Mr Lander decided that he would examine Chief Superintendent Barr and Officer 1 under the *Royal Commissions Act 1917* (SA). Other witnesses to be examined included SAPOL employees involved in progressing the applications of Applicant 11 and Applicant 4, and witnesses who gave statements or were interviewed as part of the corruption investigation.²⁴⁴
165. Summonses were issued to witnesses on 23 May 2019.²⁴⁵ That day, Mr Lander decided that Chief Superintendent Barr and Officer 1 should be given more notice of their examinations. It was settled that they would be examined in late June 2019 when Counsel Assisting was next available.²⁴⁶ Other witnesses were also rescheduled.²⁴⁷ The summonses were reissued on 24 May 2019.²⁴⁸
166. The length of time between modifying the assessment of the matter and the commencement of the compulsory examinations was attributable to the time it took for the various advices from the CSO and Solicitor-General to be received.
167. One problem in assessing whether any delay in the investigation by ICAC was “unreasonable” during any specified period is the lack of any objective time standard against which to measure the delay.

²³⁸ Vol 4 Exhibit 110 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Future action in Matters 2017/000076-S01 and 2016/001078*, 8 April 2019, p 6.

²³⁹ Vol 4 Exhibit 110 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Future action in Matters 2017/000076-S01 and 2016/001078*, 8 April 2019, p 6.

²⁴⁰ Vol 4 Exhibit 110 – Memorandum from Senior Legal Officer 1 to Mr Lander, *Future action in Matters 2017/000076-S01 and 2016/001078*, 8 April 2019, p 8.

²⁴¹ Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 16 April 2019, p 42.

²⁴² Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 16 April 2019, p 42.

²⁴³ Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 7 May 2019, p 41.

²⁴⁴ Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 22 May 2019, p 41.

²⁴⁵ Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 22 May 2019 and 23 May 2019, pp 40–41.

²⁴⁶ Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 23 May 2019, p 39.

²⁴⁷ Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 24 May 2019, pp 39–40.

²⁴⁸ Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 24 May 2019, p 39.

168. It is not within my jurisdiction to make any findings in relation to the operation of the CSO and the Solicitor-General and the time taken to provide advices to ICAC.
169. The process of obtaining legal advice from the CSO, and then from the Solicitor-General, in light of the complexity of the issues raised and the legitimate differences in legal opinion, contributed significantly to the delays in progressing the investigation between 24 October 2018 and 18 February 2019. In my view, given the significant impact on individuals of holding compulsory examinations, it was appropriate for Mr Lander to seek and await the outcome of the further legal advice before exercising these powers.

11 July 2019 to 18 October 2019

170. Chief Superintendent Barr's examination concluded on 11 July 2019. At the end of the second day, Mr Lander told Chief Superintendent Barr that the submissions of Counsel Assisting would not be finalised and distributed for two or three weeks, and that Chief Superintendent Barr would be contacted by ICAC in two or three weeks.²⁴⁹
171. On 22 July 2019,²⁵⁰ Senior Legal Officer 1 suggested to Mr Lander further information and documents which could be obtained.²⁵¹
172. On 4 August 2019, Counsel Assisting sent Senior Legal Officer 1 a draft of an advice titled "*ICAC Advice – Use of Evidence Variation of Schedule 2 Directions – August 2019*" (**Variation to Schedule 2 Directions advice**) for comment. The advice addressed the question of whether evidence given in the corruption investigation could be used in connection with the misconduct and maladministration investigation. It also considered issues arising from existing non-disclosure directions made in the corruption investigation, including whether those directions could be varied or revoked.²⁵² Counsel Assisting apologised to Mr Lander for the delay in providing the advice and explained that the issue was not "*at all easy to address.*"²⁵³
173. On 6 August 2019, Senior Legal Officer 1 provided comments on the advice to Counsel Assisting and informed Counsel Assisting that Mr Lander was "*happy*

²⁴⁹ Vol 2 Exhibit 45 – Transcript of Proceedings, *Matter 2017/000076-S01* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 11 July 2019), p 39.

²⁵⁰ Senior Legal Officer 1 had attempted to send the communication to Mr Lander on 16 July 2019, but it did not transmit. See Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 22 July 2019, p 21.

²⁵¹ Vol 1 Exhibit 20 – Running Sheet 2017/000076-S01, 22 July 2019, pp 21–23.

²⁵² Vol 3 Exhibit 87 – Advice from Counsel Assisting to Mr Lander, 3 October 2019, p 1.

²⁵³ Vol 2 Exhibit 50 – Email chain between Senior Legal Officer 1 and Counsel Assisting, 4–6 August 2019, p 3.

for [Counsel Assisting and Senior Legal Officer 1] to take the time needed to finalise the advice given the complexity of the issues involved.”²⁵⁴

174. On 21 August 2019, Senior Legal Officer 1 emailed Counsel Assisting about the Variation to Schedule 2 Directions advice stating he had added a few comments.²⁵⁵ Further emails were exchanged that same day about the content of the advice.²⁵⁶
175. On 5 September 2019, Senior Legal Officer 1 sent the draft submissions to Counsel Assisting.²⁵⁷
176. On 3 October 2019, the Variation to Schedule 2 Directions advice was completed.²⁵⁸
177. The submissions of Counsel Assisting were dated 10 October 2019, however emails between Counsel Assisting and Senior Legal Officer 1 indicate that work continued on the submissions on 13 October 2019.²⁵⁹ On 13 October 2019, Counsel Assisting sent Senior Legal Officer 1 a copy of the draft submissions stating that some references were to be added.²⁶⁰
178. On 17 October 2019, Mr Lander emailed Senior Legal Officer 1 advising that he had read the submissions and that he would like to discuss some matters the following week.²⁶¹
179. This period of delay was the most significant for Chief Superintendent Barr.
180. In relation to this period, Christopher Barr said:

after the interview days, he was a bit – well, seemed very sort of shocked but he also kept it to himself so I didn't know the details. And then he had sort of that three week period of leave where he sort of seemed to regain his composure because I guess he was sort of shocked the first few days and he had a plan of action and sort of a course forward, which seemed to – I guess that was very helpful, you know, he sort of was trying to do something. He thought he had a plan.

So he was pretty stable for that three weeks. And then after that three weeks when he had used – you know, he was supposed to go back to work and he

²⁵⁴ Vol 2 Exhibit 50 – Email chain between Senior Legal Officer 1 and Counsel Assisting, 4–6 August 2019, p 3.

²⁵⁵ Vol 2 Exhibit 54 – Email from Senior Legal Officer 1 to Counsel Assisting, 21 August 2019, p 1.

²⁵⁶ Vol 2 Exhibit 53 – Email chain between Senior Legal Officer 1 and Counsel Assisting, 21 August 2019.

²⁵⁷ Vol 2 Exhibit 55 – Email from Senior Legal Officer 1 to Counsel Assisting, 5 September 2019, p 1.

²⁵⁸ Vol 3 Exhibit 87 – Advice from Counsel Assisting to Mr Lander, 3 October 2019.

²⁵⁹ Vol 2 Exhibit 58 – Email chain between Senior Legal Officer 1 and Counsel Assisting, 13 October 2019, p 1; Vol 1 Exhibit 22 – Timeline of Investigation 2017–2020, p 3.

²⁶⁰ Vol 2 Exhibit 58 – Email chain between Senior Legal Officer 1 and Counsel Assisting, 13 October 2019, p 1.

²⁶¹ Vol 2 Exhibit 59 – Email from Mr Lander to Senior Legal Officer 1, 17 October 2019, p 1.

*thought he would be hearing from ICAC in some capacity, that was when things started to decline, I guess, further.*²⁶²

181. After the examination, Chief Superintendent Barr was “*relieved at least to have been told what sort of investigation it was; that it was not a criminal corruption investigation.*”²⁶³
182. Mrs Barr said that in the two-to-three-week period after Chief Superintendent Barr’s examination, he was “*preparing his defence*” and said that he could not return to work until he had completed that.²⁶⁴ Chief Superintendent Barr expected that he would receive the submissions of Counsel Assisting and would be able to ask questions of witnesses and test the evidence in the three weeks following his examination.²⁶⁵ Mrs Barr said that preparing the “*defence*” was the only thing Chief Superintendent Barr did, that he worked on it “*every day and every night*”, and described it as “*his life’s work*”.²⁶⁶
183. The Barr family has provided me with documents extracted from Chief Superintendent Barr’s OneDrive account.²⁶⁷ On 3 October 2019, Chief Superintendent Barr applied passwords to those documents, and it is therefore not possible to observe changes to the documents post that date.²⁶⁸ One of the documents was titled “*Privilege Interview response*” and included the following sentence: “*RESPONSE Following an interview by ICAC in relation to the R313 initiative from 12 September 2016.*”²⁶⁹ The metadata for that document indicates it was created on 12 July 2019, the day after the conclusion of Chief Superintendent Barr’s examination.²⁷⁰
184. The metadata for the “*Privilege Interview response*” document lists the total editing time for that document as 33,860 minutes (or approximately 564 hours) and the number of revisions to the document as in excess of 4,000.²⁷¹ I obtained an expert opinion on the metadata of the documents from Dr Matthew Sorell. Dr Sorell provided the following explanation of the editing time and number of revisions for the “*Privilege Interview response*” document:

²⁶² Vol 4 Exhibit 128 – Transcript of Proceedings, *Review of the investigation of Chief Superintendent Douglas Barr* (Office of the Inspector, Philip Strickland SC, 23 August 2023), p 96 (**Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023**).

²⁶³ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 100.

²⁶⁴ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 40.

²⁶⁵ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, pp 40, 42–43.

²⁶⁶ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, pp 43–44.

²⁶⁷ Microsoft OneDrive is a cloud storage service that allows users to securely save and share their files, photos, and videos across a number of devices.

²⁶⁸ Vol 5 Exhibit 133 – Explanation of OneDrive documents provided by Christopher Barr, p 1.

²⁶⁹ Vol 5 Exhibit 138 – Privilege Interview Response prepared by Chief Superintendent Barr, p 1.

²⁷⁰ Vol 5 Exhibit 133 – Explanation of OneDrive documents provided by Christopher Barr, p 2; Vol 6 Exhibit 173 – Report of Dr Matthew Sorell, 19 January 2024, p 4 [1.15].

²⁷¹ Vol 6 Exhibit 173 – Report of Dr Matthew Sorell, 19 January 2024, p 4 [1.15].

I draw attention to the very large number of revisions and editing time of “Privilege Interview response”. This document represents significant frenetic activity over 72 available days at 8 hours per day, saving every 8-10 minutes.

However, if the document originated online on OneDrive, it is more likely to represent that the document was open on average for 8 hours a day but not necessarily worked on continuously, and when changes were made these resulted in automatic updates to the stored document within seconds.²⁷²

185. Irrespective of whether Chief Superintendent Barr did work on the document continuously, the metadata supports Mrs Barr’s evidence of the significant level of work Chief Superintendent Barr invested in his “defence”.²⁷³

186. Mrs Barr said that Chief Superintendent Barr was “very positive” when three weeks had elapsed but that his outlook changed after approximately six weeks when he had to return to work.²⁷⁴ In those first three weeks after Chief Superintendent Barr’s examination, Mrs Barr said she “*didn’t worry for his mental health because he had a plan*”.²⁷⁵

187. As to Chief Superintendent Barr’s understanding of the nature of the investigation, Christopher Barr said:

He had the interview and he was relieved at least to have been told what sort of investigation it was; that it was not a criminal corruption investigation. But then when he didn’t hear anything back for such a long period, he eventually came to the conclusion that the reason it was taking so much longer was because things had somehow escalated.

...

So I remember saying to him, “It’s just a conflict of interest thing, isn’t it?” And, “Surely that’s not a criminal thing.”

...

And he said, “Yes. But they will tie together as many things as they can, and they will build it into something bigger because they will – they will bring all these different bits.”²⁷⁶

188. Chief Superintendent Barr would say to Christopher Barr, “*It’s going to be so bad, I’m going to jail*” when he was “*in that mindset where it has escalated to be a corruption investigation.*”²⁷⁷

189. Mrs Barr’s evidence was consistent with Christopher Barr’s observations. Mrs Barr said this of Chief Superintendent Barr’s belief about the nature of the investigation: “*at the end, just before he took his life, he thought that it was going*

²⁷² Vol 6 Exhibit 173 – Report of Dr Matthew Sorell, 19 January 2024, p 5 [1.17]–[1.18].

²⁷³ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 43.

²⁷⁴ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 51.

²⁷⁵ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 44.

²⁷⁶ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 100.

²⁷⁷ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 101.

*to be a criminal investigation because he had taken – because Mr Lander had taken so much longer than what he said.”*²⁷⁸

190. Mrs Barr said that Chief Superintendent Barr applied for further leave from approximately mid-August 2019 because he *“thought that it was a criminal investigation. He thought that if they were coming to arrest him and charge him, he didn’t want to be taken out of work like that.”*²⁷⁹
191. Chief Superintendent Barr would say to Mrs Barr, *“[t]hey can still charge you with it and then I will spend the next six or seven years, or I will be 67, and I will still be fighting it before it’s over.”*²⁸⁰ He was 60 years old at the time. Mrs Barr said this seven-year estimation was based on another ICAC investigation of other SAPOL officers who were charged with, but not convicted of, criminal offending.²⁸¹
192. Mrs Barr said that Chief Superintendent Barr had plans for the future, but that the delay weighed on his mind and led him to believe that those plans would remain unfulfilled because of the matter becoming a criminal investigation, and because of the possibility or likelihood that he would be charged.²⁸² Chief Superintendent Barr felt that his plans of taking long service leave for a year could not occur because he anticipated that he would be defending himself for a period of years.²⁸³
193. Christopher Barr recounted an incident when he climbed into the roof cavity of the family home and became stuck in the manhole cover. When Chief Superintendent Barr found Christopher Barr, he said to Christopher Barr, *“[i]t’s a really awful feeling, isn’t it? That’s just what I feel like all the time now”* and *“I’m too scared to go ahead but I don’t know what else to do.”*²⁸⁴
194. Christopher Barr said that after Chief Superintendent Barr’s examination, he lost *“a fair bit of weight”, “was visibly gaunt to how he was before”,* and *“didn’t seem that interested in eating.”*²⁸⁵
195. The impact of the delay in receiving the submissions of Counsel Assisting and not knowing why the submissions had not been finalised had a profound negative impact on Chief Superintendent Barr. Chief Superintendent Barr was convinced during this period that he would be prosecuted and imprisoned for a lengthy period.

²⁷⁸ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 32.

²⁷⁹ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 50.

²⁸⁰ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 55.

²⁸¹ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, pp 33–34.

²⁸² Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, pp 32, 51, 56.

²⁸³ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 51.

²⁸⁴ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, pp 96–97.

²⁸⁵ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 99.

196. The 245 pages of submissions of Counsel Assisting were careful and comprehensive, and ICAC’s work on the matter was ongoing throughout this period.
197. The submissions could not have been finalised without Counsel Assisting first providing the Variation to Schedule 2 Directions advice. This advice was provided on 3 October 2019. The advice was crucial to the continued investigation of the matter because it addressed the issue of whether ICAC could use the evidence obtained in the corruption investigation in the misconduct and maladministration investigation and how that could occur. Put simply, if there were any restrictions on the use of the evidence gathered in the corruption investigation, then the evidence upon which Mr Lander could make any findings would be more limited in the misconduct and maladministration investigation. Further, any non-disclosure directions made in the corruption investigation had the potential to limit what information could be included in Counsel Assisting’s submissions (and then the final Investigation Report).
198. Accordingly, I find that it was appropriate that Mr Lander first receive advice and await Counsel Assisting’s submissions before finalising the Investigation Report.

Impact of delay on Chief Superintendent Barr

199. The key issue is Chief Superintendent Barr received no communication from ICAC about the delay in finalising the submissions of Counsel Assisting.
200. I accept the evidence from Mrs Barr and Christopher Barr that Chief Superintendent Barr’s mental health deteriorated from August 2019, which was after the elapse of the three-week period when the submissions of Counsel Assisting were due to be provided to Chief Superintendent Barr.²⁸⁶ I accept that suicide is a complex issue and there likely were other factors impacting Chief Superintendent Barr’s mental health.
201. A report prepared as part of a Return to Work claim stated that records of Chief Superintendent Barr’s general practitioner “*document the experience of depression in Mr Barr subsequent to involvement in an ICAC Commission interview on 10 and 11 July 2019.*”²⁸⁷
202. On 26 August 2019, Chief Superintendent Barr attended an appointment with a psychologist. Chief Superintendent Barr reported that “*he was suffering significant workplace stress having returned to work that day following six weeks*

²⁸⁶ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, pp 50–58, 67–70, 96, 100–102.

²⁸⁷ Vol 4 Exhibit 95 – Report of Doctor 1, 3 May 2021, p 2.

leave” and that he was having difficulty sleeping, was feeling agitated, teary and angry, had no appetite, and was experiencing impaired concentration.²⁸⁸

203. A mental health care plan referral dated 30 August 2019 listed Chief Superintendent Barr’s diagnosis as “*depression*” dating back to the examination.²⁸⁹
204. On 9 September 2019, Chief Superintendent Barr attended an appointment with a psychologist, and explained that he had “*an extended period of time off work as he was unable to stay at work due to his increased anxiety levels and associated distress with the investigation process.*”²⁹⁰ Chief Superintendent Barr told the psychologist that he was unable to function without isolating himself at home and that he avoided “*reminders of the investigation as he felt trapped, powerless and fearful*”.²⁹¹
205. Officer 9 recalled that Chief Superintendent Barr “*became increasingly anxious and distressed about the investigation*” and “*expressed concerns as to the time the investigation was taking*”.²⁹²
206. I have listened to recordings of telephone calls between Chief Superintendent Barr and Mrs Barr from September 2019 onwards and have considered Chief Superintendent Barr’s internet search history.²⁹³ Both are heart rending and provide insight into Chief Superintendent Barr’s state of mind and concerns about the ICAC investigation. They reveal that Chief Superintendent Barr was particularly anxious about whether he would be imprisoned as a result of the ICAC investigation. His mental health clearly deteriorated significantly from September 2019 until his passing.
207. At no time were any telephone calls intercepted by ICAC, nor did ICAC use any surveillance devices. The telephone calls were recorded by Mrs Barr and Chief Superintendent Barr to enable Chief Superintendent Barr to listen to radio competitions entered by Mrs Barr.²⁹⁴ ICAC also never obtained Chief Superintendent Barr’s internet search history.²⁹⁵
208. In early September 2019, Chief Superintendent Barr performed internet searches relating to suicide.²⁹⁶
209. In mid to late September 2019, the telephone calls between Chief Superintendent Barr and Mrs Barr included discussions about Chief

²⁸⁸ Vol 4 Exhibit 102 – Affidavit of Psychologist 2, 17 January 2020, p 2 [5]–[7].

²⁸⁹ Vol 4 Exhibit 95 – Report of Doctor 1, 3 May 2021, p 3.

²⁹⁰ Vol 4 Exhibit 101 – Affidavit of Psychologist 1, 28 November 2019, p 3 [8].

²⁹¹ Vol 4 Exhibit 101 – Affidavit of Psychologist 1, 28 November 2019, p 3 [10].

²⁹² Vol 6 Exhibit 178 – Affidavit of Officer 9, 27 February 2024, p 1 [4.1].

²⁹³ Vol 5 Exhibit 139 – Internet Search History of Chief Superintendent Barr.

²⁹⁴ See Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 64.

²⁹⁵ Vol 7 Exhibit 193 – Submissions of Commissioner Vanstone, 9 April 2024, p 3.

²⁹⁶ Vol 5 Exhibit 139 – Internet Search History of Chief Superintendent Barr, pp 17–18.

Superintendent Barr struggling to be at work. Chief Superintendent Barr said to Mrs Barr, “*I’m just waiting for them to come and get me patiently*” and said that he was “*just waiting for ICAC to come and hit [him] down with something and that’ll be it*”. Chief Superintendent Barr told Mrs Barr that he felt the matter would span years and that he could not “*go out and enjoy [his] life*” for the next five years. Chief Superintendent Barr also spoke about his concerns about not having a timeframe and said, “*the longer it takes, it’s going to be worse*”. During this time, Chief Superintendent Barr’s internet search history related to anxiety and issues sleeping.²⁹⁷

210. In October 2019, Mrs Barr told Chief Superintendent Barr that she did not think the matter was “*a criminal thing*”. Chief Superintendent Barr agreed but said, “*they add them all up together, put them in as abusing your office or something*”. Chief Superintendent Barr also told Mrs Barr that he was struggling at work and wanted to resign. Chief Superintendent Barr conducted internet searches relating to spyware and tracking apps on telephones, life in prison, and suicide.²⁹⁸
211. Medical notes from a consultation on 14 October 2019 recorded that Chief Superintendent Barr was “*panicky*” and “*unable to sleep*”, and that Chief Superintendent Barr reported that “*his situation is really bad, will lose everything but not elaborating*”.²⁹⁹
212. Mr Lander confirmed in evidence that Chief Superintendent Barr would have expected to hear from ICAC within two-to-three weeks and be provided Counsel Assisting’s written submissions because that was what Mr Lander told him at the end of his examination on 11 July 2019.³⁰⁰ However, Mr Lander stated that Chief Superintendent Barr did not hear from ICAC in that timeframe because the submissions of Counsel Assisting took longer to be prepared than he had expected. Mr Lander stated that Senior Legal Officer 1 drafted the submissions, and Counsel Assisting settled them.³⁰¹ Mr Lander stated he took active steps to encourage Senior Legal Officer 1 to finalise the submissions, including giving Senior Legal Officer 1 his office and moving to another floor so that Senior Legal Officer 1 “*could be free of any interruption to finish the submissions*”.³⁰² Mr Lander said the submissions of Counsel Assisting took longer than they should have.³⁰³

²⁹⁷ Vol 5 Exhibit 139 – Internet Search History of Chief Superintendent Barr, pp 14–17.

²⁹⁸ Vol 5 Exhibit 139 – Internet Search History of Chief Superintendent Barr, pp 1–3, 6–13.

²⁹⁹ Vol 5 Exhibit 95 – Report of Doctor 1, 3 May 2021, p 3.

³⁰⁰ Vol 7 Exhibit 180 – Transcript of Proceedings, *Review of the investigation of Chief Superintendent Douglas Barr* (Office of the Inspector, Philip Strickland SC, 8 February 2024), p 37 (**Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024**).

³⁰¹ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 37–38.

³⁰² Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 38.

³⁰³ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 38.

213. Senior Legal Officer 1 said he held the “*overly optimistic*” belief that submissions of Counsel Assisting would have been finalised and distributed soon.³⁰⁴ Senior Legal Officer 1 reflected on whether he could have completed the submissions sooner, but considers that he could not have.³⁰⁵ Senior Legal Officer 1 explained that the material he had to review and consider in preparing the submission was voluminous and amounted to approximately 1,300 pages of transcript and 2,500 pages of documentary evidence, the submissions required him to consider complex legal issues, and Senior Legal Officer 1 was working on other matters concurrently.³⁰⁶ Senior Legal Officer 1 also worked on the submissions outside of working hours, including on weekends and most weeknights.³⁰⁷
214. I accept Senior Legal Officer 1’s explanation as to the significant amount of work he put into the submissions and accept that the submissions could not have been completed sooner than they were.
215. I also accept Commissioner Vanstone’s submission that:
- (a) given the magnitude of the task of producing final submissions, the estimate of two to three weeks communicated to Superintendent Barr was always untenable; and
 - (b) “[h]ad that estimate never been given, and that false expectation engendered, the period following elapse of the period might not have been so stressful to Mr Barr.”³⁰⁸
216. I also agree with Mr Lander that the submissions took too long to complete. However, that delay was not the fault of Senior Legal Officer 1 who acted with diligence and professionalism in completing very complex and lengthy submissions, which were of the highest quality. No doubt, he needed more resources to assist him with drafting the submissions. Even with more resources, I doubt the submissions could have been completed within the estimated two to three week period.
217. Mr Lander’s evidence was that, when three weeks had elapsed, he did not arrange for Chief Superintendent Barr to be notified that the submissions were delayed.³⁰⁹ Mr Lander gave evidence that this was because whenever he contacted Senior Legal Officer 1 about why there was a delay, he was informed that the submissions were almost finished or almost ready.³¹⁰ Mr Lander’s evidence was that he could not remember exactly how many times he had this

³⁰⁴ Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 12 [95].

³⁰⁵ Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 8 [57].

³⁰⁶ Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 8 [58].

³⁰⁷ Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 8 [58].

³⁰⁸ Vol 7 Exhibit 193 – Submissions of Commissioner Vanstone, 9 April 2024, p 5.

³⁰⁹ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 38–39.

³¹⁰ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 39.

conversation but that it was a number of times, and acknowledged, in fairness to Senior Legal Officer 1, that they worked very hard.³¹¹

218. I find that the delay in receiving the submissions of Counsel Assisting and not knowing why there was a delay or when any information would be received had a severe detrimental impact on Chief Superintendent Barr. It is clear from the telephone calls and internet searches that Chief Superintendent Barr believed he would be imprisoned and experienced suicidal thoughts since at least early September 2019.

219. Mrs Barr explained that Mr Lander's comments at the conclusion of the examination about needing to speak with Commissioner Stevens (see the quote at paragraph [113]) added to Chief Superintendent Barr's concerns about the outcome of the investigation.³¹² Mrs Barr said Chief Superintendent Barr felt "*he had let the Commissioner [of Police] down*".³¹³ Mr Lander could not recall why he believed he would need to speak to the Commissioner of Police.³¹⁴

220. Mrs Barr also explained that the delay (and its effects) had prevented Chief Superintendent Barr from acting in a more senior position following his return to work in September 2019, and had initially prevented SAPOL from allowing him to return to work full time.³¹⁵ Mrs Barr stated that Chief Superintendent Barr had been selected to act as Assistant Commissioner for a period, but this did not occur because:

he had seen a psychologist, he was told he could only return to work on four days a week. But he thought he could still do it, do the job on four days a week, and he was trying to convince them that he was good to come back five days a week but they wouldn't – they wouldn't do that initially. So I think for the first week back it was four days a week. The next week, they said "okay you can do five days." And the same time that they said he could do five days, he had a meeting with [Officer 7]...and [Officer 7] said, "they have told me" – so EAS or the psychology section – "Have told me that I can't give it to you. I can't let you act up because it will be too much pressure on you."³¹⁶

221. Mrs Barr's evidence was that as a result of being unable to act as Assistant Commissioner, Chief Superintendent Barr's mental health declined further, and that "*it made him feel that they didn't have any confidence in him*".³¹⁷

222. Senior Legal Officer 1 explained that he "*did not agitate for any contact*" with Chief Superintendent Barr or his legal representative for a number of reasons.³¹⁸ First, while working on the submissions he believed that a draft would shortly be

³¹¹ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 39–40.

³¹² Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, pp 58–61.

³¹³ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 59.

³¹⁴ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 28.

³¹⁵ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, pp 57, 68.

³¹⁶ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 68.

³¹⁷ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 69.

³¹⁸ Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 12 [94].

completed and provided; a belief which he conceded was overly optimistic.³¹⁹ Second, Senior Legal Officer 1 believed that Chief Superintendent Barr would not have wanted contact from ICAC beyond what was necessary, and so Senior Legal Officer 1 “*was reluctant to make or cause contact unless it was required.*”³²⁰ Finally, Senior Legal Officer 1 considered that Chief Superintendent Barr’s legal representative could contact ICAC for an update if Chief Superintendent Barr wanted one.³²¹

223. Mr Lander gave evidence that he did not receive any indication after the examination on 11 July 2019 about Chief Superintendent Barr’s mental state or receive any communication about when Counsel Assisting’s submissions would be provided.³²² His evidence was that he did not receive any communication from either Chief Superintendent Barr or Mr Fabbian in that regard.³²³ Mr Lander also gave evidence that at no stage before Chief Superintendent Barr’s death did he receive any information about his mental health, that he was suicidal or had suicidal ideation, or that he was depressed.³²⁴

224. Mr Lander’s evidence was that if he had been aware of Chief Superintendent Barr’s mental health, he would have reached out to Chief Superintendent Barr to “*tell him what the process was and to reassure him that we were trying to get the matter finished as soon as possible.*”³²⁵ Mr Lander also said he would have spoken to the Commissioner of Police.³²⁶

225. Mr Lander’s evidence was that ICAC would only have some responsibility to monitor Chief Superintendent Barr’s welfare after he was examined in July 2019 if there had been some “*hint*” that Chief Superintendent Barr “*was a person at risk*”, but that as there was “*no hint of that*”, there was no responsibility to check on his welfare.³²⁷

226. On 27 August 2019 at 11:56am, Chief Superintendent Barr emailed Mr Fabbian and stated “*presumably you have heard nothing from ICAC yet. Have you any indication as to timelines?*”³²⁸ Mr Fabbian responded on 28 August 2019 at 10:05am with the following:

Good morning Doug

³¹⁹ Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 12 [95].

³²⁰ Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 12 [96].

³²¹ Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 12 [97].

³²² Vol 6 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 40–41.

³²³ Vol 6 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 41.

³²⁴ Vol 6 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 40–41.

³²⁵ Vol 6 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 41–42.

³²⁶ Vol 6 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 42.

³²⁷ Vol 6 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 42–43.

³²⁸ Vol 5 Exhibit 148 – Further response of Mr Craig Fabbian, 5 January 2024, pp 3–4.

Confirming that nothing further has been heard regarding the matter – I will let you know as soon as I hear something.

Regarding timeframe, I note the Commissioner said on 11 July 2019 at the conclusion of the hearing that ‘you will probably not hear from us again for two or three week...’ (transcript page 199). However, that time has now well passed. I am not able to give any further guidance regarding the timeframe and I would recommend that we not seek an update at this time. I do except [sic] contact sooner than later.

I will be in touch as soon as I hear.

*Kind regards*³²⁹

227. Chief Superintendent Barr responded to that email at 10:06am on 28 August 2019 thanking Mr Fabbian.³³⁰ This was the last contact between Chief Superintendent Barr and Mr Fabbian.³³¹
228. I accept that on the information available to Mr Lander following Chief Superintendent Barr’s examination on 10 and 11 July 2019, there was nothing which did or should have alerted him to the state of Chief Superintendent Barr’s mental health or that he was vulnerable. I also accept Mr Lander’s evidence that if he had been alerted to Chief Superintendent Barr’s mental health, he would have arranged for Chief Superintendent Barr to be contacted to provide an update, and reassured that ICAC was trying to finalise the matter as soon as possible. I also accept Mr Lander’s evidence that he would have contacted the Commissioner of Police if he had become concerned in relation to Chief Superintendent Barr’s mental health.
229. However, I find that Mr Lander should have advised Chief Superintendent Barr or Mr Fabbian that there was a delay in the finalisation of Counsel Assisting’s submissions. Chief Superintendent Barr was told at the end of his examination that those submissions would be provided to him in three weeks. In fact, they were not provided for a period of three months. When the three weeks had passed and no submissions were forthcoming, the Commissioner should have, in a timely manner, advised Chief Superintendent Barr of the delay and when the submissions would be provided to him. Chief Superintendent Barr should not have been left wondering why there was a delay and when he could expect to receive Counsel Assisting’s submissions. The evidence is overwhelming that during that delayed period, Chief Superintendent Barr’s mental health declined dramatically. ICAC did not have any inkling of that decline. I do not accept it was up to Mr Fabbian to make contact with ICAC to find out when the submissions would be provided. The failure to inform Chief Superintendent Barr of the delay was most unfortunate.

³²⁹ Vol 5 Exhibit 148 – Further response of Mr Craig Fabbian, 5 January 2024, p 3.

³³⁰ Vol 5 Exhibit 148 – Further response of Mr Craig Fabbian, 5 January 2024, p 3.

³³¹ Vol 5 Exhibit 148 – Further response of Mr Craig Fabbian, 5 January 2024, p 2.

Delays after Chief Superintendent Barr's death

230. Receiving the submissions of Counsel Assisting on the Friday prior to Christmas in circumstances where the Barr family expected to receive the submissions in early December understandably caused hurt and upset. However, I do not consider there was anything unreasonable about this delay. The correspondence from Mr Lander stated that the submissions would be provided at a later date “*out of respect for Mr Barr, his family, and those associated with him.*”³³² The intention was to be respectful. Unfortunately, that did not have the desired effect.
231. Mrs Barr has submitted that the delay in providing the Investigation Report more than three years and seven months after the complaint was made to the OPI was unreasonable. It is important to recognise that there were, in fact, two separate investigations into Recruit 313 and a period in between the two investigations of some seven months. The corruption investigation commenced on 24 January 2017 and was referred to the DPP on 10 August 2017. Given the complexity of that investigation, I find that there was no unreasonable delay in the first investigation.
232. The second investigation (the misconduct and maladministration investigation) took place over 25 months.³³³ It included the following periods, which totalled 12 months:
- (a) four months between 24 October 2018 and 18 February 2019 when Mr Lander requested the CSO reconsider the previous advice about whether Mr Lander had jurisdiction under the ICAC Act in force at the time to use the Ombudsman's powers to investigate a potential issue of misconduct or maladministration, and receiving the further advice;
 - (b) more than one month between 22 February 2019 and 1 April 2019 when Mr Lander sought the Crown Solicitor's support for obtaining an opinion from the Solicitor-General and receiving the advice from the Solicitor-General on 1 April 2019; and
 - (c) almost seven months between 13 February 2020 and 1 September 2020 while the matter of *C v Independent Commissioner Against Corruption* (2020) 136 SASR 215 was in the Supreme Court. There is nothing ICAC could have done about this delay.
233. In short, ICAC was able to “control” the investigation for a period of 13 months. The second investigation was complex. It involved analysing voluminous material. There was a great number of witnesses to examine. The conduct of

³³² Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [4.28].

³³³ The second investigation commenced on 9 July 2018. The investigation report was circulated on 31 August 2020.

many other senior officers apart from Chief Superintendent Barr was examined. The existence and management of conflicts of interest in SAPOL regarding the recruitment of police officers was also examined.

Conclusion

234. The concerns held by Chief Superintendent Barr's family about the delay in the investigation were valid based on the information they had.
235. ICAC's overall investigation of Chief Superintendent Barr, including both the corruption and misconduct and maladministration investigations, was undoubtedly protracted.
236. I unreservedly accept that the protracted investigation took a psychological toll on Chief Superintendent Barr. It bears emphasis that persons, such as Chief Superintendent Barr, who are the subject of an investigation by ICAC have a legitimate expectation that the investigation will be completed in as short a time as is practicable. That expectation is one of the reasons that the Inspector has a duty in annual reviews to ascertain whether, in exercising powers under the *ICAC Act*, there was evidence of unreasonable delay in the conduct of investigations.³³⁴
237. Ultimately, I find that the delay in the second investigation was protracted, but it did not amount to "unreasonable delay" within the meaning of the *ICAC Act*. This matter exemplifies the challenges faced by a reviewer, such as myself, with the benefit of hindsight, making a finding that an administrative body (ICAC) acted unreasonably in the time it took to complete an investigation. Each individual step ICAC took in the investigation was reasonable and necessary. Given the complexity and volume of material, and the novel and complex legal issues, it was difficult for ICAC to estimate how long each step would take. Further, the absence of any time standards for completing the report meant that there was no objective measure ICAC had to work towards. If ICAC had specific targets within which it was expected to deal with its matters, it would assist any future Inspector to consider whether there was unreasonable delay in any particular matter, and would be "best practice" in the future to ensure matters are dealt with expeditiously. I deal with this further in the Recommendations section of this Report.

³³⁴ *ICAC Act* Sch 4 cl 9(1)(a)(i)(A).

238. There was no evidence of corruption in public administration in respect of Mr Lander or anyone else involved in the ICAC investigation relating to the protracted nature of the investigations, or in not contacting Chief Superintendent Barr following his examination to provide an update and advise that the matter had been delayed. Mr Lander's conduct therefore could not constitute an offence against Part 7 Division 4 of the *Criminal Law Consolidation Act 1935 (SA)*, the *PSHA Act* or the *Public Corporations Act 1993 (SA)*.
239. There was no evidence of misconduct in public administration on the part of Mr Lander or anyone else involved in the ICAC investigation. There was no evidence that Mr Lander or anyone at ICAC contravened the Code of Ethics for the South Australian Public Sector (**the Code of Ethics**)³³⁵ arising from the protracted nature of the investigation or by not contacting Chief Superintendent Barr following his examination to advise that Counsel Assisting's submissions had been delayed.
240. I also do not consider that there is any evidence of maladministration in public administration by Mr Lander or ICAC. The failure of Mr Lander and ICAC in not contacting Chief Superintendent Barr following his examination to advise of the delay in providing the submissions of Counsel Assisting does not demonstrate that a practice, policy or procedure of ICAC resulted in an irregular and unauthorised use of public money or substantial mismanagement of public resources. It also cannot be said to be conduct that involved substantial mismanagement in or in relation to the performance of official functions.

³³⁵ Code of Ethics for the South Australian Public Sector issued pursuant to s 15 of the *Public Sector Act 2009 (SA)*. The relevant versions applicable during the periods of the investigations are dated 13 July 2015, 19 May 2017, and August 2019 because the investigation commenced in March 2017 and was only concluded with the publication of the final report on 31 August 2020. See Vol 6 Exhibit 177 – Code of Ethics for the South Australian Public Sector, 13 July 2015; Vol 6 Exhibit 175 – Code of Ethics for the South Australian Public Sector, 19 May 2017; Vol 6 Exhibit 176 – Code of Ethics for the South Australian Public Sector, August 2019.

PART 5: ICAC’s “*less favourable and differential*” treatment of Chief Superintendent Barr

Mrs Barr’s submissions and evidence

241. Mrs Barr submitted that Chief Superintendent Barr was subjected to “*less favourable and differential*” treatment than Officer 1 by ICAC, which included a failure to notify Chief Superintendent Barr of the commencement of the corruption investigation and its outcome and a failure to notify Chief Superintendent Barr that he was not to be prosecuted.³³⁶
242. Mrs Barr also submitted that the compulsory examination procedure adopted by ICAC in relation to Chief Superintendent Barr involved an “*unacceptable level of unfairness*” comprising the failure to put him on notice of the precise nature of the investigation and associated allegations (until he was under compulsory examination) and exposing him to lengthy and detailed cross-examination by skilled senior legal practitioners.³³⁷
243. Mrs Barr gave evidence that she was not aware of the interactions Chief Superintendent Barr had with ICAC as part of his role as the Officer in Charge of the EPSB.³³⁸ However, she was aware that Chief Superintendent Barr attended Parliament with Commissioner Stevens on 26 February 2016 (i.e. prior to the Recruit 313 program commencing),³³⁹ but she did not discuss with him what occurred at the time. Mrs Barr has since become aware that Chief Superintendent Barr’s evidence had been to the effect that ICAC’s investigations were not occurring in a timely manner, that this was not good for the police officers involved, that the agencies should work better together and “*it should be overhauled so that things ran more smoothly for people because it’s not good having people’s lives on hold for so many years*”.³⁴⁰
244. Mrs Barr informed me that when Chief Superintendent Barr was the Officer in Charge of the EPSB (from 2015 to 2016), he had regular contact with ICAC personnel including the Director Investigations. Mrs Barr queried whether this prior professional contact may have given rise to any potential conflict of interest.³⁴¹
245. Mrs Barr also directed me to evidence Chief Superintendent Barr had given to

³³⁶ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [2.3.3].

³³⁷ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [2.3.4]–[2.3.5].

³³⁸ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, pp 9, 16–18.

³³⁹ Vol 4 Exhibit 125 – Letter from Mrs Deborah Barr to Inspector, 9 August 2023, p 3.

³⁴⁰ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 17.

³⁴¹ Vol 4 Exhibit 125 – Letter from Mrs Deborah Barr to Inspector, 9 August 2023, p 2.

the Crime and Public Integrity Policy Committee (**CPIPC**) on 26 February 2016. Mrs Barr described Chief Superintendent Barr's evidence as being "*moderately critical of ICAC's delayed handling of investigations*" and submitted that, in effect, Chief Superintendent Barr had suggested a "*recalibration*" of the role of integrity bodies including ICAC, which "*could reasonably have been construed as a suggestion that ICAC's scope be narrowed*". In that regard, Mrs Barr submitted that as Chief Superintendent Barr made public statements which "*could be construed as critical of ICAC*", some individuals within ICAC may have held some bias against him which may have constituted a conflict of interest.³⁴²

Prior contact between Chief Superintendent Barr and ICAC

246. Senior ICAC Employee 1 gave evidence that at the time of the corruption investigation, he was aware that Chief Superintendent Barr was in charge of the EPSB and was aware that the EPSB had a "*significant role with ICAC*". He considered that Chief Superintendent Barr was likely to have had contact with ICAC personnel "*at a high level*", including with Mr Lander, the Chief Executive Officer of ICAC, and the Director Operations. However, there was only one person that he knew had contact with Chief Superintendent Barr – the previous Director Operations. In general terms, he was also aware of the EPSB having contact with ICAC during its establishment and in the context of requests for assistance.³⁴³
247. As for himself, Senior ICAC Employee 1 said that he could recall attending one meeting where several senior SAPOL officers were present, which related to SAPOL potentially prosecuting summary offences investigated by ICAC. Senior ICAC Employee 1 thought that Chief Superintendent Barr "*may have been in that meeting*".³⁴⁴ Senior ICAC Employee 1 never had any adverse dealings with Chief Superintendent Barr.³⁴⁵
248. At the beginning of Chief Superintendent Barr's examination before Mr Lander on 10 July 2019, Mr Lander declared that he had met Chief Superintendent Barr on two occasions, once at his office during a discussion of the *Police Complaints and Discipline Act 2016* (SA) and once at the Naval and Military Club after Mr Lander had given an address there.³⁴⁶

³⁴² Vol 4 Exhibit 125 – Letter from Mrs Barr to Inspector, 9 August 2023, p 2.

³⁴³ Vol 7 Exhibit 179 – Transcript of Proceedings, *Review of the investigation of Chief Superintendent Douglas Barr* (Office of the Inspector, Philip Strickland SC, 7 February 2024) pp 9, 49–50 (**Transcript, Senior ICAC Employee 1, 7 February 2024**).

³⁴⁴ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, p 49.

³⁴⁵ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, p 51.

³⁴⁶ Vol 2 Exhibit 44 – Transcript of Proceedings, *Matter 2017/000076-S01* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 10 July 2019), p 4.

249. In his evidence before me, Mr Lander explained that on the second occasion he had given a speech to senior police officers from all around Australia and after that he had lunch with the officers, and Chief Superintendent Barr was one of them.³⁴⁷ Mr Lander could not recall having any dealings with Chief Superintendent Barr in his role as the Officer in Charge of EPSB, stating that ICAC had little to do with this Branch and mainly dealt with the Anti-Corruption Branch.³⁴⁸
250. There is no evidence before me to suggest that ICAC, or any relevant employee of ICAC, had any conflict of interest in relation to Chief Superintendent Barr arising from any previous dealings with Chief Superintendent Barr.

Chief Superintendent Barr's public views about ICAC

251. Both Senior ICAC Employee 1 and Mr Lander gave evidence that they were not aware that Chief Superintendent Barr had given evidence before the CPIPC on 26 February 2016 at that time, nor when ICAC's investigation into Chief Superintendent Barr was occurring. Neither Senior ICAC Employee 1 nor Mr Lander were aware of anyone within ICAC discussing those remarks, nor were they aware of anyone within ICAC speaking badly of Chief Superintendent Barr on the basis that he had criticised ICAC.³⁴⁹
252. The relevant CPIPC transcript demonstrates that Chief Superintendent Barr's only criticism of ICAC was the time taken to deal with some complaints made against SAPOL officers. Chief Superintendent Barr attributed this delay to an overlap in roles/functions between ICAC, SAPOL, the Office of the DPP, and the Police Ombudsman. Whilst he described these delays as being "*no good for our organisation and ... no good for our people*", he also indicated that SAPOL was awaiting the outcome of an ICAC review which the Commissioner of Police had already described as being "*likely to eliminate*" some of the issues encountered. He did not expressly advocate for an overhaul of ICAC, nor for any narrowing of its functions.³⁵⁰
253. Chief Superintendent Barr's evidence before the CPIPC was unremarkable. He voiced a modest and measured criticism of the timeliness of ICAC investigations relating to complaints against SAPOL officers. I am not surprised that Mr Lander was not aware of them at the time and that they did not attract any discussion by ICAC employees. There is no evidence before me to suggest that any individuals

³⁴⁷ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 48–49.

³⁴⁸ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 49.

³⁴⁹ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, pp 50–51; Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 49–50.

³⁵⁰ Vol 4 Exhibit 125 – Letter from Mrs Barr to Inspector, 9 August 2023, pp 4–5.

within ICAC held any bias against Chief Superintendent Barr which may have constituted a conflict of interest arising from his evidence before the CPIPC.

Decision not to notify Chief Superintendent Barr of the corruption investigation

254. ICAC did not inform Chief Superintendent Barr that he was being investigated in relation to potential corruption in public administration. Chief Superintendent Barr learned that ICAC was conducting an investigation because Officer 1 advised Chief Superintendent Barr that he had been contacted by ICAC.³⁵¹
255. Mrs Barr has submitted that Chief Superintendent Barr “*was left in a state of uncertainty for an extended period of time*” as a result of having been made aware of the investigation by Officer 1 and that “*as a result of the unreasonable delays during the course of the matter, the adverse consequences of the situation were compounded.*”³⁵²
256. Mr Lander gave evidence that all corruption investigations start covertly because in conducting the investigation “*you try to obtain evidence of the person’s conduct, especially where that person’s conduct is continuing*”.³⁵³ Mr Lander said that the general practice was usually to investigate covertly, and that informing a suspect of an investigation was dependent on the circumstances of the matter.³⁵⁴
257. In relation to the corruption investigation, Mr Lander gave evidence that his usual practice was not to examine suspects. The only exception to that was Officer 1, and that was because Officer 1 was examined in relation to the conduct of Chief Superintendent Barr.³⁵⁵ Mr Lander stated that this general practice arose in part because “*the coercive power [to examine a person] could possibly prejudice the defence by someone who was under investigation and should not be used generally, and because of the possibility that it would interfere with the prosecution as well*”.³⁵⁶
258. Mr Lander’s approach to conducting corruption investigations covertly and not examining suspects was both orthodox and appropriate in this case.
259. Mr Lander decided that there were cogent reasons to examine Officer 1, and that he should not examine Chief Superintendent Barr. That decision in turn led Mr Lander to inform Officer 1 of the corruption investigation, but not Chief Superintendent Barr.

³⁵¹ Vol 3 Exhibit 90 – Affidavit of Senior ICAC Employee 1, 17 December 2020, p 3 [13].

³⁵² Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [6.5].

³⁵³ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 9.

³⁵⁴ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 9–10.

³⁵⁵ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 11.

³⁵⁶ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 12.

260. Mr Lander decided to examine Officer 1 because he believed that Officer 1 could give evidence about a number of pertinent matters, including:
- (a) Officer 1's conversations with and directions given by Chief Superintendent Barr about Applicant 11's application;
 - (b) conversations Officer 1 had with other SAPOL officers about Applicant 11's application;
 - (c) Officer 1's knowledge about how Applicant 11's application was treated differently to other applications; and
 - (d) Officer 1's conversations with other SAPOL officers about the applicants enrolled in the TAFE SA test on 10 January 2017.³⁵⁷
261. Mr Lander understood that Officer 1 may have exercised his privilege against self-incrimination in relation to altering Applicant 2's answer sheet. However, Mr Lander believed that Officer 1's evidence on that issue could assist the investigation by revealing whether (a) another SAPOL officer directed or encouraged Officer 1 to alter Applicant 2's answer sheet, or (b) Officer 1 did so as a result of pressure from other SAPOL officers, and (c) whether there was a culture within SAPOL of favouring associates of SAPOL officers.³⁵⁸ In short, Officer 1 was a suspect, but he was also a witness.
262. By contrast, Mr Lander regarded Chief Superintendent Barr as a suspect only, and he could not or would not have provided any valuable evidence in relation to any other suspect.
263. It is a usual investigative practice for suspects in criminal investigations not to be notified that they are suspects until the investigation is complete and/or the suspect is arrested. In some cases, an interview may occur earlier on the basis that it is necessary to pursue a line of inquiry or for other strategic purposes, but there is no requirement to do so. Mr Lander stated that it was his practice not to put suspects on notice or approach suspects for examinations.³⁵⁹ That is an orthodox practice.
264. Mr Lander also stated that Chief Superintendent Barr could not have given valuable evidence about Officer 1 because the potential charges in relation to Officer 1 were about "*whether he had changed a document.*" Chief Superintendent Barr did not observe and did not know about that alleged conduct.³⁶⁰ Mr Lander stated that any evidence from Chief Superintendent Barr

³⁵⁷ Vol 4 Exhibit 106 – Examiner's Record of Reasons, 20 March 2017, pp 5 [15], 6 [20].

³⁵⁸ Vol 4 Exhibit 106 – Examiner's Record of Reasons, 20 March 2017, p 5 [17].

³⁵⁹ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 10–11.

³⁶⁰ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 16.

about the culture of senior SAPOL officers in relation to nepotism in Recruit 313 would not be relevant to any potential charges against Officer 1.³⁶¹

265. Senior Legal Officer 1 also considered that Chief Superintendent Barr was in a different position from Officer 1. Senior Legal Officer 1 said that it would be “*unusual*” for a suspect such as Chief Superintendent Barr to be examined in an investigation of potential corruption in public administration because of the availability of the protections in clauses 8(4) and 8(5) of Schedule 2 of the *ICAC Act*.³⁶² The effect of those clauses is that a witness giving evidence before the Commissioner could claim that answering a question or providing a document might tend to incriminate them or make them liable to penalty, and that doing so would render the answer or document inadmissible against the person as evidence in criminal or other proceedings.³⁶³ Senior Legal Officer 1 also believed the circumstances surrounding Officer 1’s examination “*were materially different*” from Chief Superintendent Barr’s because Officer 1 could give evidence about Chief Superintendent Barr’s involvement in the potential corruption being investigated.³⁶⁴
266. The decision to examine Officer 1 in the corruption investigation necessarily meant that Officer 1 was informed that there was a corruption investigation into Recruit 313. Officer 1 was so informed on 17 March 2017, less than two months after the commencement of the investigation on 24 January 2017.³⁶⁵

How and when Chief Superintendent Barr learned of the corruption investigation

267. On 17 March 2017, Senior ICAC Employee 1 called Officer 1 at 3:00pm and advised him that ICAC was investigating “*allegations that have come out of the SAPOL Recruiting Section*”, including allegations of abuse of public office and dishonest dealing with documents.³⁶⁶ Senior ICAC Employee 1 advised Officer 1 that he was a suspect in the investigation and was invited to attend an interview.³⁶⁷ Unfortunately, Senior ICAC Employee 1 forgot to advise Officer 1 of the requirements of section 54 of the *ICAC Act*, namely that Officer 1 could not disclose to anyone (with certain irrelevant exceptions) information about the corruption investigation.
268. At about 3:21pm on 17 March 2017, Officer 1 called Chief Superintendent Barr and told him that he had received a telephone call from ICAC that ICAC was investigating “*dishonest dealing with documents*” (no doubt a reference to the

³⁶¹ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 16.

³⁶² Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 9 [60]–[61].

³⁶³ *ICAC Act* Sch 2 cls 8(4)–(5).

³⁶⁴ Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 9 [65]–[66].

³⁶⁵ Vol 3 Exhibit 90 – Affidavit of Senior ICAC Employee 1, 17 December 2020, p 3 [13].

³⁶⁶ Vol 1 Exhibit 31 – Affidavit of Senior ICAC Employee 1, 30 June 2017, pp 5–6.

³⁶⁷ Vol 1 Exhibit 31 – Affidavit of Senior ICAC Employee 1, 30 June 2017, p 6.

allegation that Officer 1 had altered a test). Officer 1 asked Chief Superintendent Barr to advise him about his rights concerning whether to answer questions from ICAC.³⁶⁸

269. At about 3:37pm on 17 March 2016, Senior ICAC Employee 1 again called Officer 1 and advised that he had not cautioned him in relation to the confidentiality requirements under section 54 of the *ICAC Act* during their previous telephone conversation and proceeded to do so.³⁶⁹ Officer 1 quite candidly informed Senior ICAC Employee 1 that he “*probably should have told him that from the outset because I’ve spoken to Chief Superintendent Doug Barr*”.³⁷⁰ Officer 1 said that he spoke to Chief Superintendent Barr and informed him of the contents of his conversations with Senior ICAC Employee 1 earlier that day in circumstances where he did not know and had not been cautioned in relation to the confidentiality requirements.³⁷¹

270. In his evidence before Mr Lander during the corruption investigation, Officer 1 was asked what he told Chief Superintendent Barr and stated that:

And I said I - the nature of the call was, ‘I’ve received a phone call from this guy from the ICAC, it’s something to do with dishonestly dealing with documents. Is this normal?’ ... That was all I had the conversation with Chief Superintendent Barr about.”³⁷²

271. Mrs Barr’s evidence was that Chief Superintendent Barr knew that there was an investigation into Recruit 313 in mid-2017. However, Chief Superintendent Barr never knew that there were two discrete investigations – the first being the corruption investigation and the second being the misconduct and maladministration investigation. According to Mrs Barr, she and Chief Superintendent Barr understandably “*thought it was the one investigation*” until after Chief Superintendent Barr’s passing.³⁷³ Chief Superintendent Barr was never advised that the corruption investigation had concluded or that the assessment of the matter had been modified to misconduct and maladministration.

³⁶⁸ Vol 4 Exhibit 105 – Transcript of Proceedings, *Matter 2017/000076* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 22 March 2017) pp 53–55; Vol 1 Exhibit 31 – Affidavit of Senior ICAC Employee 1, 30 June 2017, pp 16–17.

³⁶⁹ Vol 1 Exhibit 31 – Affidavit of Senior ICAC Employee 1, 30 June 2017, pp 15–17; Vol 4 Exhibit 105 – Transcript of Proceedings, *Matter 2017/000076* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 22 March 2017) p 55.

³⁷⁰ Vol 1 Exhibit 31 – Affidavit of Senior ICAC Employee 1, 30 June 2017, p 16; Vol 4 Exhibit 105 – Transcript of Proceedings, *Matter 2017/000076* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 22 March 2017) p 55.

³⁷¹ Vol 1 Exhibit 31 – Affidavit of Senior ICAC Employee 1, 30 June 2017, p 16; Vol 4 Exhibit 105 – Transcript of Proceedings, *Matter 2017/000076* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 22 March 2017) p 55.

³⁷² Vol 4 Exhibit 105 – Transcript of Proceedings, *Matter 2017/000076* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 22 March 2017) p 54.

³⁷³ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 20.

272. Senior ICAC Employee 1 gave evidence that following his discussions with Officer 1 on 17 March 2017, he understood that Chief Superintendent Barr knew that Officer 1 was being investigated, and that it did not occur to him at the time that Chief Superintendent Barr might have thought **he** was also being investigated.³⁷⁴ Senior ICAC Employee 1 stated that he did not tell Officer 1 that Chief Superintendent Barr was a target of the investigation.³⁷⁵ Senior ICAC Employee 1 conceded that he now accepts that Chief Superintendent Barr might have thought ICAC would also investigate him (because it was investigating Officer 1), but that he did not think that at the time.³⁷⁶ Senior ICAC Employee 1 was fortified in his view that Chief Superintendent Barr probably did not know he was being investigated because Senior ICAC Employee 1 believed that Chief Superintendent Barr continued to engage in similar conduct to that under investigation throughout the time the corruption investigation took place.³⁷⁷ I accept that this was Senior ICAC Employee 1's honest opinion of Chief Superintendent Barr's state of mind.

273. Mr Lander was aware that Officer 1 had spoken to Chief Superintendent Barr and that therefore Chief Superintendent Barr was aware of the investigation. In the record of reasons for issuing the summons to Officer 1, Mr Lander recorded the following:

*I note that, soon after receiving the contact from [Senior ICAC Employee 1] referred to above in these reasons, [Officer 1] telephoned Barr and advised him of the contact. Accordingly, at least Barr is aware of my investigation. I am satisfied that, notwithstanding this, any further disclosure of matters relating to my investigation by [Officer 1] is likely to cause prejudice to it.*³⁷⁸

274. In addition to being informed of the corruption investigation, Chief Superintendent Barr also became aware of the corruption investigation by viewing a summons issued to another SAPOL officer. Mr Lander received evidence from Officer 9, who was a close friend of Chief Superintendent Barr, that Chief Superintendent Barr had seen Officer 9's summons and had said that he was aware that Officer 1 had received one as well.³⁷⁹ The summons issued to Officer 9 dated

³⁷⁴ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, pp 17–18.

³⁷⁵ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, pp 22–24.

³⁷⁶ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, pp 18–20.

³⁷⁷ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, pp 40–41.

³⁷⁸ Vol 4 Exhibit 106 – Examiner's Record of Reasons, 20 March 2017, p 7 [29].

³⁷⁹ Vol 4 Exhibit 107 – Transcript of Proceedings, *Matter 2017/000076* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 21 June 2017) pp 76–79.

9 June 2017 did not specify the nature of the examination and gave the following explanation for that omission:

*I am satisfied that, in the particular circumstances of the investigation to which this examination relates, it would prejudice the effectiveness of the investigation to inform you of the general nature of the matters in relation to which you will be questioned at the examination.*³⁸⁰

275. Mrs Barr's evidence before me was that shortly after Officer 1 had spoken to Chief Superintendent Barr about the ICAC summons, Officer 9 told Chief Superintendent Barr that she had been questioned by ICAC.³⁸¹ As far as Mrs Barr was aware, Chief Superintendent Barr had not discussed what Officer 9 had been interviewed about.³⁸² However, Mrs Barr stated that Officer 9 "*said our house, phones, his car, his office and [her] home, office and phone had all been bugged. This made Doug think the investigation must be about him*".³⁸³ Mrs Barr said that from this point, their lives changed as they stopped speaking to each other inside the house about any work-related subject. Mrs Barr said that the concept of being monitored had a particular impact on Chief Superintendent Barr and she recalled that "*towards the end there were one or two times he felt he was followed when driving home*".³⁸⁴

276. On 27 July 2017, Chief Superintendent Barr attended at the offices of his lawyer, Mr Fabbian, and advised him that he (Chief Superintendent Barr) was the subject of an ICAC investigation into Recruit 313. Chief Superintendent Barr told Mr Fabbian that he had turned his mind to being charged with a criminal offence.³⁸⁵

277. Mr Fabbian gave the following account of Chief Superintendent Barr's attendance at his office on 27 July 2017:

Mr. Barr had not been formally notified by the Independent Commissioner Against Corruption of any investigation. However, he had informally received information that he was the subject of an ICAC investigation associated with the SA Police Project – Recruit 313.

I have a recollection that Mr. Barr advised that he had been informally notified of the investigation by an SA Police colleague. He advised that a discussion had occurred between a staff member of the ICAC Office and an SA Police employee, who both had children attending the same school.

*Mr Barr provided a detailed written timeline of events associated with Recruit 313. The timeline referenced speaking with [another SAPOL officer, i.e. not Officer 9] on 20 July 2017 about Recruit 313 (a week prior to our consult), in which [that officer] advised him that [the officer] could not talk about it.*³⁸⁶

³⁸⁰ Vol 4 Exhibit 113 – Summons issued to Officer 9, 9 June 2017, p 1.

³⁸¹ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 25.

³⁸² Vol 5 Exhibit 135 – Affidavit of Deborah Barr, 20 February 2020, p 12 [29].

³⁸³ Vol 5 Exhibit 135 – Affidavit of Deborah Barr, 20 February 2020, p 12 [29].

³⁸⁴ Vol 5 Exhibit 135 – Affidavit of Deborah Barr, 20 February 2020, p 12 [29].

³⁸⁵ Vol 4 Exhibit 147 – Response of Mr Craig Fabbian, 22 December 2023, pp 3–4.

³⁸⁶ Vol 4 Exhibit 147 – Response of Mr Craig Fabbian, 22 December 2023, p 3 [2(a)–(c)].

278. On 26 August 2019, Chief Superintendent Barr told the psychologist that he “*believed he may have been followed at times and felt his colleagues and friends had been questioned*”.³⁸⁷
279. On 9 September 2019, Chief Superintendent Barr told the psychologist that “*his communications had been bugged and people had been following him throughout the time of the investigation.*”³⁸⁸ I accept that Chief Superintendent Barr believed that he was being bugged. However, ICAC did not use any telephone interception or surveillance devices during the corruption investigation. Mr Lander did not have the power to use any such surveillance technique as part of the misconduct and maladministration investigation whilst exercising the powers of an inquiry agency (in this case, the Ombudsman).³⁸⁹
280. Chief Superintendent Barr was only notified **by ICAC** that there was an investigation by ICAC when he was served a summons on 24 May 2019 in relation to the misconduct and maladministration investigation. This was over two years since the commencement of the corruption investigation.³⁹⁰

Should ICAC have informed Chief Superintendent Barr of the corruption investigation following Officer 1’s disclosure to Chief Superintendent Barr about the corruption investigation?

281. Senior Legal Officer 1 did not recall any discussion within ICAC about whether Chief Superintendent Barr should have been advised of the corruption investigation. He explained that it “*was a decision that would usually be made by the Commissioner and investigators.*”³⁹¹ Senior Legal Officer 1 further stated:

*As I understood it, it was not the usual practice of the Commissioner to notify a person they were the subject of a corruption investigation when that investigation commenced. A person of interest who was unaware there was a corruption investigation of their conduct would not normally be notified of the existence of the investigation until such time as investigators considered it was necessary to seek information from them. For example, in a record of interview.*³⁹²

282. This is consistent with Mr Lander’s letter to the DPP requesting an opinion on whether the evidence was “*capable of supporting criminal charges*” against Chief Superintendent Barr.³⁹³ In that letter, Mr Lander said that Chief Superintendent Barr had “*not been approached for an interview in relation to the allegations.*” Mr Lander stated that Chief Superintendent Barr would be approached for an

³⁸⁷ Vol 4 Exhibit 102 – Affidavit of Psychologist 2, 17 January 2020, p 2 [5].

³⁸⁸ Vol 4 Exhibit 101 – Affidavit of Psychologist 1, 28 November 2019, pp 2–3 [6].

³⁸⁹ Vol 7 Exhibit 193 – Submissions of Commissioner Vanstone, 9 April 2024, pp 5–6.

³⁹⁰ Vol 3 Exhibit 90 – Affidavit of Senior ICAC Employee 1, 17 December 2020, pp 6–7 [29]; Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [8.6].

³⁹¹ Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 10 [73].

³⁹² Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 10 [74].

³⁹³ Vol 3 Exhibit 79 – Letter from Mr Lander to Mr Kimber SC, 10 August 2017, p 1.

interview if the DPP considered that the evidence gathered to date could support criminal charges.³⁹⁴

283. In his evidence before me, Mr Lander confirmed that in March 2017 he became aware that, as a consequence of Senior ICAC Employee 1 failing to appropriately caution Officer 1, Chief Superintendent Barr became aware of the investigation.³⁹⁵ However, Mr Lander stated that at the time, he did not think that Chief Superintendent Barr believed that he was a suspect.³⁹⁶ Mr Lander's evidence was that he had no information, other than via Officer 1, as to what Chief Superintendent Barr knew of the investigation.³⁹⁷ He stated that accordingly, he "*didn't know what [Chief Superintendent Barr] knew, apart from that he knew that [Officer 1] was being investigated*".³⁹⁸
284. Mr Lander's evidence was that, at the time when he was alerted to the fact Chief Superintendent Barr had become aware of the investigation, he did not consider asking Senior ICAC Employee 1 to contact Chief Superintendent Barr and learn what he knew, or caution him in relation to confidentiality.³⁹⁹ He considered that doing so would not have been appropriate because "*it would have spread more information to Barr than [Officer 1] had previously given him*".⁴⁰⁰ Further, Officer 1 could only have told Chief Superintendent Barr what Senior ICAC Employee 1 had told him, which was "*not much*"; the damage had been done (in respect of a loss of confidentiality); and that he did not want to aggravate the damage by arranging for further contact with Chief Superintendent Barr.⁴⁰¹
285. Mr Lander confirmed that it was his decision that Chief Superintendent was not informed of the corruption investigation by ICAC in consultation with Senior ICAC Employee 1 and the investigators, who would not proceed "*overtly*" with an investigation without his permission.⁴⁰² Mr Lander gave evidence that it was a "*continuing*" and "*deliberate*" decision throughout the corruption investigation not to advise Chief Superintendent Barr of the corruption investigation, because unless the DPP first considered that there was sufficient evidence to charge him, "*he needn't know*".⁴⁰³
286. Mr Lander's evidence is consistent with Senior ICAC Employee 1's evidence that he had a discussion in Mr Lander's office about interviewing Chief Superintendent Barr at some point before August 2017 (prior to the referral to

³⁹⁴ Vol 3 Exhibit 79 – Letter from Mr Lander to Mr Kimber SC, 10 August 2017, p 1.

³⁹⁵ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 4–6, 8.

³⁹⁶ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 5.

³⁹⁷ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 6.

³⁹⁸ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 7.

³⁹⁹ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 7.

⁴⁰⁰ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 7.

⁴⁰¹ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 8.

⁴⁰² Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 9–10.

⁴⁰³ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 10.

the DPP) during which Mr Lander stated that he did not want to put Chief Superintendent Barr through a process of being interviewed and having allegations put to him which could be embarrassing if the DPP was not going to prosecute.⁴⁰⁴ Senior ICAC Employee 1's evidence was that "[t]he Commissioner's view was that he wanted the brief adjudicated by the DPP first and then if there was to be a prosecution, then at that point Barr would be given an opportunity to answer questions".⁴⁰⁵

287. Mr Lander's evidence was that, ordinarily, an investigation would start covertly, it would progress, and that at some stage the allegations would be put to the suspect to allow them to give an explanation for their conduct.⁴⁰⁶ However, Mr Lander explained that he did not do this with Chief Superintendent Barr "because of his seniority within the police force" and Mr Lander "thought it was unfair to burden him with an interview" unless the DPP had decided there was sufficient evidence to prosecute without any admissions in an interview.⁴⁰⁷ Mr Lander accepted that if Chief Superintendent Barr had been examined, it was possible he may have given an explanation relevant to the DPP's decision whether to prosecute. However, Mr Lander expected Chief Superintendent Barr would have declined to answer questions on the basis of the privilege against self-incrimination. In any event, according to Mr Lander, that issue would not arise if the DPP chose not to prosecute.⁴⁰⁸

288. Mr Lander said that he did not know Chief Superintendent Barr had sought legal advice in July 2017 because he had been informally advised that he was a suspect in an ICAC investigation by a SAPOL colleague.⁴⁰⁹ Mr Lander's evidence, which I accept, was that the first time he had heard of this was during his evidence before me.⁴¹⁰

Conclusion

289. Chief Superintendent Barr was not told of the corruption investigation by ICAC. He learned of the investigation as a result of Officer 1 informing him of the investigation at a time when Officer 1 was not aware of any prohibition on disclosure of this information. ICAC was, however, aware that Officer 1 had told Chief Superintendent Barr of the existence of the investigation.

290. I accept Mrs Barr's evidence that Chief Superintendent Barr became particularly concerned about the investigation after Officer 9 told him she had attended an ICAC examination in relation to the matter, which could only have occurred after

⁴⁰⁴ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, p 25.

⁴⁰⁵ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, p 26.

⁴⁰⁶ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 13.

⁴⁰⁷ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 13.

⁴⁰⁸ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 14–15.

⁴⁰⁹ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 35–36.

⁴¹⁰ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 35–36.

21 June 2017, and warned him about listening/surveillance devices. I also accept Mr Fabbian's account of his first meeting with Chief Superintendent Barr on 27 July 2017 in which Chief Superintendent Barr said that he had informally received information that he was the subject of an ICAC investigation associated with the Recruit 313 project.

291. ICAC did not know of Chief Superintendent Barr's conversation with Officer 9, or that he had sought legal advice from Mr Fabbian.
292. I accept the evidence of Senior ICAC Employee 1 and Mr Lander that the usual practice was for corruption investigations to proceed covertly, and that although they knew that Chief Superintendent Barr was aware of the investigation, they did not consider Chief Superintendent Barr knew he was a suspect. This is because, as far as both Senior ICAC Employee 1 and Mr Lander were aware, Chief Superintendent Barr was only aware that the investigation concerned Officer 1.
293. It was appropriate that ICAC did not advise Chief Superintendent Barr of the corruption investigation. There was a proper basis for Barr to be treated differently from Officer 1 in that respect.
294. I find that it was appropriate that ICAC not contact Chief Superintendent Barr to advise him of the corruption investigation even after Officer 1 had informed Chief Superintendent Barr of the existence of the corruption investigation. Based on the information available to ICAC at the time, it was reasonable to conclude that Chief Superintendent Barr was not aware that he was a suspect in the investigation.
295. Officer 1's evidence was that he told Chief Superintendent Barr that ICAC had contacted him about Officer 1 allegedly dishonestly dealing with documents arising out of his role in the Recruit 313 project.⁴¹¹ That information is essentially what Senior ICAC Employee 1 told Officer 1. Senior ICAC Employee 1 did **not** inform Officer 1 that Chief Superintendent Barr was also a suspect in the investigation. Officer 9's summons, which Chief Superintendent Barr saw, did not include any information about the nature of the investigation.⁴¹²
296. Mr Lander's decision about whether to disclose the corruption investigation to Chief Superintendent Barr was based on the information ICAC had about the information Chief Superintendent Barr was privy to following his conversation with Officer 1 on 17 March 2017. I agree with Mr Lander that any further information ICAC provided to Chief Superintendent Barr about the corruption investigation risked alerting Chief Superintendent Barr to the fact that he was a

⁴¹¹ Vol 1 Exhibit 31 – Affidavit of Senior ICAC Employee 1, 30 June 2017, pp 6, 9–10; Vol 4 Exhibit 105 – Transcript of Proceedings, *Matter 2017/000076* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 22 March 2017) pp 53–54.

⁴¹² Vol 4 Exhibit 113 – Summons issued to Officer 9, 9 June 2017.

suspect. ICAC could not have known that Chief Superintendent Barr in fact believed that he was a suspect. At the least, Mr Lander's decision not to disclose the corruption investigation to Chief Superintendent Barr was a reasonable one.

Decision not to put Chief Superintendent Barr on notice of the allegations prior to his examination.

297. ICAC did not advise Chief Superintendent Barr that he was the subject of allegations or what those allegations were. The first time Chief Superintendent Barr was contacted by ICAC was when he was served with the summons compelling him to attend for an examination on 29 May 2019.
298. Mrs Barr submitted that the summons "*was entirely inadequate for Barr to understand the issues and allegations*" and that it "*failed to put Barr on formal notice that he was personally the subject of allegations*".⁴¹³ Mrs Barr further submitted that "*there appears no sound reason why, as a matter of fairness, further details were not included within Schedule 1 of the summons dated 24 May 2019 to provide appropriate notice to Barr of the specific allegations*".⁴¹⁴
299. Mr Fabbian has informed me that, in his view, the examination process was "*particularly unfair*" towards Chief Superintendent Barr and "*involved substantial imbalance*" given the length of the examination, the legal experience of the examiners, the extensive preparations that had been undertaken by Counsel Assisting prior to the examination, the voluminous size of ICAC's Exhibits Brief referred to during the examination, and the fact that Chief Superintendent Barr was required to answer questions in relation to events which spanned an extended period of time without any prior notice and without having seen any documents contained within the Exhibits Brief.⁴¹⁵ Mr Fabbian submits that "*the requirement for Mr Barr to answer questions, under compulsion, without adequate prior notice of the allegations was unfair*."⁴¹⁶
300. The letter accompanying Chief Superintendent Barr's summons informed him that Mr Lander was investigating "*potential issues of serious or systemic maladministration and misconduct in public administration arising in relation to the recruitment of police cadets by South Australia Police during the project known as Recruit 313*".⁴¹⁷ The summons identified that the matters Chief Superintendent Barr might be asked about included:

⁴¹³ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [8.8]–[8.9].

⁴¹⁴ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [8.11].

⁴¹⁵ Vol 4 Exhibit 147 – Response of Mr Craig Fabbian, 22 December 2023, p 6 [14(d)].

⁴¹⁶ Vol 7 Exhibit 190 – Submissions of Mr Craig Fabbian, 9 April 2024, p 3 [2(d)].

⁴¹⁷ Vol 4 Exhibit 109 – Summons to Appear, p. 1.

- 1) *Whether maladministration or misconduct in public administration occurred in relation to the recruitment of police cadets by South Australia Police during the project known as Recruit 313.*
- 2) *Any other matters relating to the above.*⁴¹⁸

301. The summons did not state that Chief Superintendent Barr was a target in the investigation, nor did it outline any allegations against him.

302. Mrs Barr's evidence was that Chief Superintendent Barr was "[n]ot any clearer" about the subject of the investigation after receiving the summons, and that he was "*waiting for the interview*".⁴¹⁹ Chief Superintendent Barr expressed to Mrs Barr his relief that "*he was finally going to find out what it was about fully*".⁴²⁰

303. On 30 May 2019, Mr Fabbian met with Chief Superintendent Barr for approximately 70 minutes to prepare for giving evidence before Mr Lander "*with consideration for the limited information provided by ICAC*".⁴²¹ Following the examination date being adjourned to 10 July 2019, Mr Fabbian met again with Chief Superintendent Barr on 2 July 2019 for approximately 70 minutes "*for the purpose of further preparations associated with giving evidence*".⁴²²

304. Chief Superintendent Barr appeared before Mr Lander on 10 July 2019. Mr Fabbian also attended. Mrs Barr gave evidence that after the first day of the examination, Chief Superintendent Barr said he was "*shocked at things that he was asked, that he felt that it went quite well but he was shocked*".⁴²³ Chief Superintendent Barr's shock related to the subjects he was questioned about because this was when he became aware that Applicant 2's TAFE SA results had been altered by Officer 1.⁴²⁴ Chief Superintendent Barr was also "*shocked at some things that other witnesses had said*" about internal SAPOL matters, which Chief Superintendent Barr and Mrs Barr later learned were untrue.⁴²⁵ Overall, Chief Superintendent Barr "*felt quite positive that now he knew more what he was dealing with*" after the first day of his examination.⁴²⁶

305. Senior Legal Officer 1 gave evidence about the Commission's practices relating to putting people on notice of matters prior to a compulsive examination. He said:

it is, in my experience, not unusual for a witness to be given limited notice of the matters about which they are to be questioned before any investigative hearing or questioning occurs. This is a forensic choice open to an investigator and a means by which the investigator can ensure the most accurate evidence is obtained and,

⁴¹⁸ Vol 2 Exhibit 109 – Summons to Appear, pp 9–10.

⁴¹⁹ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, pp 37–38.

⁴²⁰ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 37.

⁴²¹ Vol 4 Exhibit 147 – Response of Mr Craig Fabbian, 22 December 2023, p 5 [11].

⁴²² Vol 4 Exhibit 147 – Response of Mr Craig Fabbian, 22 December 2023, p 5 [11]–[13].

⁴²³ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 39.

⁴²⁴ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 40.

⁴²⁵ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 40.

⁴²⁶ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 40.

accordingly, the investigation is best directed at establishing the truth. Other relevant evidence the witness identifies or recalls after initial questioning can be provided to the investigation by way of a further opportunity for the witness to provide that information, whether by way of further hearing, record of interview or otherwise. Such an opportunity is also one (but not the only) means by which obligations of procedural fairness can be met.

*I observe that this approach is consistent with approaches to investigations undertaken by the Police Integrity Commission of NSW ... I also understand it to be consistent with the manner in which the Independent Commission Against Corruption in NSW approaches investigations.*⁴²⁷

306. Mr Lander gave evidence that it was his practice to use the examination process itself to provide the person concerned with all of the information they needed to answer questions.⁴²⁸ This was a practice he had witnessed in other examinations, a practice he had witnessed as a judge and a practice he understood that the Ombudsman routinely used. It was in effect a two-stage process whereby the person concerned would be provided with a second opportunity upon Counsel Assisting's submissions being put to them. At that point in time, the person could apply to cross-examine other witnesses, lead further evidence and make submissions. Mr Lander considered that this two-stage process was an appropriate mechanism by which the person concerned was provided with procedural fairness.⁴²⁹
307. I accept that Chief Superintendent Barr would have been afforded the opportunity to respond to the submissions of Counsel Assisting and cross-examine witnesses following his examination. Mr Lander told him this was the case at the conclusion of his examination.⁴³⁰ It was also provided for in the investigation plan, which said, "[a]s considered appropriate by the Commissioner affected persons to be given the opportunity to give further evidence and/or cross examine any relevant witnesses."⁴³¹
308. Mr Fabbian has submitted that, while acknowledging that the examination of Chief Superintendent Barr "*was not of a criminal nature*", the principles applicable in a criminal context are applicable in the context of an ICAC examination and that Chief Superintendent Barr was therefore "*confronted with a greater level of unfairness with comparison to an arrested person facing a criminal investigation.*"⁴³² Mr Fabbian has pointed me to case law establishing that it is "unfair" in a criminal investigation to fail to advise the suspect of the nature of the

⁴²⁷ Vol 4 Exhibit 108 – Response from Senior Legal Officer 1, 20 October 2023, p 13 [101]–[102].

⁴²⁸ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 25.

⁴²⁹ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 24–25.

⁴³⁰ Vol 2 Exhibit 45 – Transcript of Proceedings, *Matter 2017/000076-S01* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 11 July 2019) pp 38–39.

⁴³¹ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2019, p 5.

⁴³² Vol 7 Exhibit 190 – Submission of Craig Fabbian, 9 April 2024, p 6 (2[g][viii]).

allegations prior to interrogation, including *R v Szach* (1980) 23 SASR 504 (**Szach**) and *R v Holland* (1997) 193 LSJS 22.

309. Mr Fabbian has referred to the following passage in *Szach*:

*A stage may come, moreover, in the course of police inquiries when some degree of disclosure is requisite. If the investigation proceeds successfully, it will reach a stage at which the police are satisfied about the nature of the crime which has been committed and believe that it was committed by a particular person. It then becomes necessary to interrogate that person, with a view to laying the foundation for charging him with the crime unless in the course of the interrogation he is able to exonerate himself. I think that at the stage of commencing such an interrogation, the dictates of fairness differ from those applying to the earlier stage of the investigation. The focus of the investigation has changed. The investigation has passed beyond the stage of merely putting questions with a view to eliciting useful information. It has hardened into an interrogation of a particular person who is likely to be charged with the crime unless he can exonerate himself.*⁴³³

(emphasis added)

310. Mr Fabbian submitted that in relation to Chief Superintendent Barr, and applying the wording of *Szach*, the investigation had “*passed beyond the stage of merely putting questions with a view to eliciting useful information*” and had “*hardened into an interrogation of a particular person*”.⁴³⁴

311. I am not persuaded by this argument. The issue in *Szach* was whether a record of interview by the police should be excluded on the grounds of unfairness.⁴³⁵ The principle in *Szach* that the appellant should be informed about the nature of the crime arose in the context of a police investigation into a crime when it was likely that the appellant would be charged with that crime unless he could exonerate himself.

312. That was far from the case with the examination of Chief Superintendent Barr. The examination was not concerned with any criminal investigation or whether ICAC investigators believed Chief Superintendent Barr would be found guilty of a crime.

313. Furthermore, in the summons issued to Chief Superintendent Barr, Mr Lander did disclose to Chief Superintendent Barr that the primary issue he would be examined about was whether “*maladministration or misconduct in public administration occurred in relation to the recruitment of police cadets by South*

⁴³³ (1980) 23 SASR 504 at 583.

⁴³⁴ Vol 7 Exhibit 190 – Submission of Craig Fabbian, 9 April 2024, p 6 (2[g][vii]).

⁴³⁵ In *Szach*, the appellant had voluntarily entered a police station to seek help from a police officer to find the deceased and to inform that officer of his relationship with the deceased. During the interview, the police officer (having received information from his superiors that the appellant was a principal suspect in the disappearance of the appellant) then began to interview the appellant about various matters relevant to a murder investigation.

Australia Police during the project known as Recruit 313".⁴³⁶ In my view, Chief Superintendent Barr was on notice that his own conduct during Recruit 313 was in issue. *Szach* is not authority for any proposition that an examinee should be told the details of the allegations against him days or even hours before the interview.

314. There is nothing in the *ICAC Act* which prohibited or was inconsistent with Mr Lander's two stage process.
315. It would not be appropriate to criticise Mr Lander for adopting that approach in the examination of Chief Superintendent Barr. This was an approach that Mr Lander adopted with all examinees.
316. It is not clear to me that not giving Chief Superintendent Barr notice of the substance of the allegations against him was unfair. I agree with Mr Lander that Chief Superintendent Barr did not seem to have trouble answering any of the questions he was asked.
317. However, in my view, there are circumstances where examinees should be given an opportunity to consider the substance of any material adverse to their interests **before** they are examined. That can enhance the Commission's ability to establish the truth and would afford an examinee procedural fairness at all stages of the process.
318. Providing an examinee with advance notice of the precise topics to be examined or the substance of any allegations could have some benefits. The most obvious benefit is to ensure that the examinee has had time to (a) give thoughtful consideration to the allegations and topics; and/or (b) review any relevant documents before attending the examination. It is well known that a person's memory can be refreshed or triggered by reading contemporaneous documents.
319. I acknowledge that in other circumstances providing advance notice to an examinee could also have adverse consequences. Giving prior notice of topics could result in the examinee using the time provided to concoct, reconstruct or rehearse an answer in advance of an examination. It could also deprive the examiner of being able to observe the examinee's immediate reaction to particular facts or assertions being put to the examinee. An examinee's immediate response to questions without notice, including their facial expressions and body language, is likely to reveal much to the examiner as to the examinee's ability to accurately recall events and their credit and reliability as a witness.

⁴³⁶ Vol 4 Exhibit 109 – Summons to Appear, pp 9–10.

320. Section 31B of the *Independent Commission Against Corruption Act 1988* (NSW)⁴³⁷ requires the NSW ICAC Commissioners to issue and publish guidelines relating to the conduct of **public inquiries** to the staff of the Commission and counsel assisting. The South Australian *ICAC Act* does not provide for public inquiries.⁴³⁸ However, I can see benefits in adopting (with appropriate modifications) certain elements of the New South Wales legislation, particularly relating to providing examinees in inquiries by ICAC against whom substantial allegations have been made with access to exculpatory and other relevant evidence and a reasonable time to prepare before giving evidence. It would be at the discretion of the Commissioner when those guidelines would be applied to any particular examination.

“Unfair” treatment of Chief Superintendent Barr during his examination

321. I have considered whether the examination of Chief Superintendent Barr was conducted in a manner unfair to Chief Superintendent Barr.

322. On 10 July 2019, Chief Superintendent Barr was subject to compulsory examination from 9:00am to 4:19pm (with breaks including a 45-minute lunch break).⁴³⁹ On 11 July 2019, Chief Superintendent Barr was subject to further examination between approximately 9:50am and 12:00pm (with breaks).⁴⁴⁰ The examination was conducted by Counsel Assisting with questions also being asked by Mr Lander.

⁴³⁷ Section 31B commenced operation on 4 August 2017 and provides:

(1) *The Commissioners are to issue guidelines relating to the conduct of public inquiries of the Commission to members of staff of the Commission and counsel appointed under section 106 to assist the Commission.*

(2) *The guidelines are to provide guidance on the following aspects of the conduct of public inquiries--*

(a) *the investigation of evidence that might exculpate affected persons,*

(b) *the disclosure of exculpatory and other relevant evidence to affected persons,*

(c) *the opportunity to cross-examine witnesses as to their credibility,*

(d) *providing affected persons and other witnesses with access to relevant documents and a reasonable time to prepare before giving evidence,*

(e) *any other matter the Commission considers necessary to ensure procedural fairness.*

(3) *The Commission is to arrange for the guidelines to be tabled in both Houses of Parliament and to be published on a website maintained by the Commission.*

(4) *In this section--*

“affected person” means a person against whom substantial allegations have been made in the course of or in connection with the public inquiry concerned.

⁴³⁸ *ICAC Act* Sch 2 cl 3(3). I note that the examination of Chief Superintendent Barr occurred pursuant to the *Royal Commissions Act 1917* (SA), which permits evidence to be taken in public or in private (see s 6).

⁴³⁹ Vol 2 Exhibit 44 – Transcript of Proceedings, *Matter 2017/000076-S01* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 10 July 2019), pp 1, 94, 160.

⁴⁴⁰ The transcript of Chief Superintendent Barr’s evidence does not state times; however, Mr Fabbian has provided these times. See Vol 4 Exhibit 147 – Response of Mr Craig Fabbian, 22 December 2023, p 5 [14(b)].

323. Mr Lander rejected that the examination was harsh or confrontational. He described the questions as “*precise*”, and agreed that documents were shown to Chief Superintendent Barr during the examination so that he could comment on them.⁴⁴¹ Mr Lander considered that during the examination Chief Superintendent Barr “*conducted himself in a very straightforward way and answered questions very directly*”, including by admitting matters that were not in his interest.⁴⁴² Chief Superintendent Barr had no trouble understanding questions, answered questions in a frank and robust manner, and “*handled himself very well*”.⁴⁴³ Mr Lander considered that Chief Superintendent Barr showed no greater sign of stress than would ordinarily be expected of an examinee, and there was nothing about his demeanour or appearance that gave Mr Lander cause for concern about his welfare or mental health.⁴⁴⁴

324. Having listened to the recordings of Chief Superintendent Barr’s examination, I do **not** find that there was any aggressive or inappropriate tone used by Mr Lander or Counsel Assisting. I am satisfied that the questions asked during Chief Superintendent Barr’s examinations were relevant and appropriate. Whilst the examination was certainly lengthy, it needed to be so in order to cover a large number of topics and to provide Chief Superintendent Barr with the opportunity to address those topics in detail. Whilst at times the line of questioning could be described as robust in that Chief Superintendent Barr was challenged about some of his answers, I do not consider the examination to have been conducted in a harsh, oppressive or unfair manner.

Decision not to notify Chief Superintendent Barr that he would not be prosecuted

325. Chief Superintendent Barr was never advised by ICAC that he would not be facing charges arising from his conduct.⁴⁴⁵ Mrs Barr submitted to me that Chief Superintendent Barr “*lived with concern of criminal prosecution until the time of his death*”.⁴⁴⁶ The conversations between Mrs Barr and Chief Superintendent Barr and his internet search history completely support Mrs Barr’s submission. Chief Superintendent Barr’s fear that he would go to prison was a tragic misconception. I do **not** find that any actions or omissions by ICAC caused that misconception.

326. On 17 October 2017, Senior ICAC Employee 1 advised Officer 1 that he would not be prosecuted after Officer 1 contacted Senior ICAC Employee 1 seeking an

⁴⁴¹ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 26.

⁴⁴² Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 27.

⁴⁴³ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 27.

⁴⁴⁴ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 27.

⁴⁴⁵ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 32.

⁴⁴⁶ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [7.4].

update. Senior ICAC Employee 1 told Officer 1 that the matter would proceed as a disciplinary matter.⁴⁴⁷ This interaction followed ICAC receiving advice from the DPP to Mr Lander in relation to Officer 1 on 26 September 2017.⁴⁴⁸

327. On 9 August 2018, Mr Lander wrote to Officer 1 advising him that the corruption investigation had concluded and that the misconduct and maladministration investigation had commenced.⁴⁴⁹
328. ICAC received separate advice from the DPP in relation to Chief Superintendent Barr on 11 January 2018. However, Chief Superintendent Barr was not informed that he would not be prosecuted. The issue is whether ICAC should have informed Chief Superintendent Barr that he would not be prosecuted.
329. Mr Lander gave evidence that his usual practice of advising suspects who would not be prosecuted of that fact was based on whether the suspect was aware of the corruption investigation.⁴⁵⁰ If the suspect was not aware of the investigation, then there would be no communication with them.⁴⁵¹ Mr Lander said that if a suspect was aware of an investigation, but then a decision was made not to refer the matter to the DPP, the suspect would typically be advised at that time.⁴⁵²
330. Mr Lander's evidence was that although he knew Chief Superintendent Barr was aware of "*an investigation*", he assumed Chief Superintendent Barr "*didn't know that he was the subject of the investigation*".⁴⁵³ Mr Lander did not know Chief Superintendent Barr had sought legal advice in July 2017. Mr Lander stated that, if he had known of this, he "*probably*" would have contacted Chief Superintendent Barr and informed him that he would not be prosecuted.⁴⁵⁴ Mr Lander said that he assumed that Chief Superintendent Barr did not know he was a suspect because, as far as Mr Lander was aware, all Officer 1 had told Chief Superintendent Barr was that Officer 1 was being investigated with respect to particular conduct in relation to some false documents.⁴⁵⁵ Accordingly, Mr Lander did not consider that Chief Superintendent Barr should have been told of the outcome of the referral to the DPP.⁴⁵⁶
331. Senior ICAC Employee 1 stated that ICAC's practice was that a person who was investigated for corruption would not be advised that there would be no prosecution if that person was not aware of the investigation in the first place.⁴⁵⁷

⁴⁴⁷ Vol 1 Exhibit 21 – Investigation Report, p 7.

⁴⁴⁸ Vol 4 Exhibit 100 – Letter from Mr Kimber SC to Mr Lander, 26 September 2017.

⁴⁴⁹ Vol 3 Exhibit 90 – Affidavit of Senior ICAC Employee 1, 17 December 2020, p 6 [25]; Vol 1 Exhibit 21 – Investigation Report, p 8.

⁴⁵⁰ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 17–19.

⁴⁵¹ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 17.

⁴⁵² Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 17–18.

⁴⁵³ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 19.

⁴⁵⁴ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 35–36.

⁴⁵⁵ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 19–20.

⁴⁵⁶ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 19.

⁴⁵⁷ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, pp 36–37, 40–41.

Senior ICAC Employee 1 said in his evidence before me, “[i]t’s always the practice of mine, that if I’ve interviewed somebody or [phoned] someone for interview, and they know that they are the subject of a criminal investigation, then they should be made aware it’s finished.”⁴⁵⁸

332. Officer 1 was informed that he was being investigated, so it was appropriate to advise him, because “it would have been stressful for him, knowing, waiting”.⁴⁵⁹ Senior ICAC Employee 1’s evidence was that Chief Superintendent Barr was not informed because, as far as Senior ICAC Employee 1 was aware, Chief Superintendent Barr did not know he was being investigated.⁴⁶⁰ In short, ICAC’s position was that Officer 1 and Chief Superintendent Barr were only treated differently in that Officer 1 was aware that he was being investigated whereas Chief Superintendent Barr was not.⁴⁶¹

333. On 15 August 2017, Mr Lander advised the Commissioner of Police that the corruption investigation had concluded and that there would be no prosecutions arising out of that investigation.⁴⁶² Mr Lander said this was appropriate because the Commissioner of Police had been interviewed during the corruption investigation and was therefore already aware that Chief Superintendent Barr was a suspect.⁴⁶³ Mr Lander explained that this was the reason why he treated Chief Superintendent Barr differently than the Commissioner of Police because Mr Lander believed that Chief Superintendent Barr did not know he was being investigated, whereas the Commissioner of Police was aware that Chief Superintendent Barr was a suspect.⁴⁶⁴ Mr Lander adopted this practice with everyone both in relation to the corruption investigation and at large.⁴⁶⁵

334. On 24 May 2019, ICAC issued Chief Superintendent Barr with a summons to appear and give evidence before Mr Lander. The covering letter stated:

*I am currently conducting an investigation into potential issues of serious or systemic maladministration and misconduct in public administration arising in relation to the recruitment of police cadets by South Australia Police during the project known as Recruit 313.*⁴⁶⁶

335. I have considered whether when Chief Superintendent Barr attended for examination on 10 July 2019, he knew that he was not going to be charged with criminal offending.

⁴⁵⁸ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, p 42.

⁴⁵⁹ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, p 36.

⁴⁶⁰ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, pp 36–37, 40–41.

⁴⁶¹ Vol 7 Exhibit 179 – Transcript, Senior ICAC Employee 1, 7 February 2024, p 42.

⁴⁶² Vol 2 Exhibit 38 – Letter from Mr Lander to Commissioner Stevens, 15 August 2018.

⁴⁶³ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 20–21.

⁴⁶⁴ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, pp 21–22.

⁴⁶⁵ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 21.

⁴⁶⁶ Vol 2 Exhibit 42 – Letter from Mr Lander to Chief Superintendent Barr, 24 May 2019, p 1.

336. At the beginning of Chief Superintendent Barr's examination on 10 July 2019, a question was asked about self-incrimination in answering questions. The following exchange occurred:

MR FABBIAN: Yes. Sir, to clarify, just in relation to the second issue that you've raised in relation to something that might incriminate Mr Barr, from past experience before you, I understood that perhaps at the outset what might occur is pursuant to the schedule that it be noted that the questions [sic] forthwith are provided, but there is a preservation of self-incrimination. Is that the situation that could be applied in this situation today?

THE COMMISSIONER: No. That's a different process. That's an examination in relation to an investigation into corruption under schedule 2 to the ICAC Act.

MR FABBIAN: That's right.

THE COMMISSIONER: This is not an investigation of that kind. This is an investigation into misconduct or maladministration, which is carried out under the Ombudsman's Act, through that Ombudsman's Act and the Royal Commissions Act. So, I'm acting as a Royal Commissioner. If Chief Superintendent Barr wishes to refuse to answer a question on the ground that it might incriminate him, he'd need to do that in relation to individual questions.⁴⁶⁷

(emphasis added)

337. In relation to this exchange, Mr Lander gave evidence that he did not expressly tell Chief Superintendent Barr that he would not be prosecuted because Chief Superintendent Barr:

had received a letter before, telling him that the investigation I was conducting was into maladministration. And I was trying to explain to him here that he wasn't being investigated for corruption. I saw no point in telling him that he had been investigated for corruption, but he wouldn't be charged.⁴⁶⁸

338. Given Mr Lander's clear statement to Chief Superintendent Barr that he was not investigating corruption but was investigating misconduct or maladministration, Chief Superintendent Barr was or should have been aware that the investigation was not a corruption investigation. Mr Fabbian believed that Chief Superintendent Barr was aware the investigation related to misconduct and maladministration and was not a criminal investigation.⁴⁶⁹ Mr Fabbian did **not** advise Chief Superintendent Barr that he would **not** be subject to criminal or disciplinary action in the future, because he considered it would have been "erroneous" to do so.⁴⁷⁰ It was appropriate for Mr Fabbian to take that position. Neither he nor Chief Superintendent Barr were aware that the matter had already

⁴⁶⁷ Vol 2 Exhibit 44 – Transcript of Proceedings, *Matter 2017/000076-S01* (Independent Commissioner Against Corruption, the Hon Bruce Lander KC, 10 July 2019), pp 2–3.

⁴⁶⁸ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 23.

⁴⁶⁹ Vol 7 Exhibit 190 – Submissions of Craig Fabbian, 9 April 2024, p 7 (3[f]).

⁴⁷⁰ Vol 7 Exhibit 190 – Submissions of Craig Fabbian, 9 April 2024, p 8 (3[l]).

been referred to the DPP for opinion and that no criminal charges were to be laid.⁴⁷¹

339. Christopher Barr's evidence was that Chief Superintendent Barr knew that this was *"not a criminal corruption investigation but [was] a maladministration [or] misconduct type thing which he understood that to be the case in the first few weeks"* after the examination on 10 July 2019, and Chief Superintendent Barr *"was relieved at least to have been told what sort of investigation it was; that it was not a criminal corruption investigation."*⁴⁷²
340. Christopher Barr also gave evidence that when he expressed the view that a conflict of interest was not a *"criminal thing"*, Chief Superintendent Barr's response was *"[y]es. But they will tie together as many things as they can and they will build it into something bigger because they will – they will bring all these different bits."*⁴⁷³ Christopher Barr stated as the investigation was taking so long, Chief Superintendent Barr's views shifted or escalated and he came to believe that he was going to be imprisoned.⁴⁷⁴ Thus, it appears that although Chief Superintendent Barr knew that the ICAC investigation was not a criminal investigation, he nevertheless worried that it would change over time and in some way become *"bigger"*, i.e. criminal in nature.
341. On 9 September 2019, Chief Superintendent Barr attended an appointment with a psychologist. Chief Superintendent Barr told the psychologist that *"everything was beaten up into the biggest crime"*, that he felt trapped and powerless, and that he feared he would be imprisoned.⁴⁷⁵

Conclusion

342. I accept Mrs Barr's submission that Chief Superintendent Barr was in a state of uncertainty for an extended period of time, which clearly had serious adverse consequences on his wellbeing. However, on the information available, there is no evidence that Mr Lander or Senior ICAC Employee 1 were aware or should have been aware that Chief Superintendent Barr knew he was a suspect in the corruption investigation.
343. On the information available to ICAC at the time, it was reasonable for Mr Lander to conclude that Chief Superintendent Barr was **not** aware that he was a suspect in the corruption investigation. I accept Mr Lander's evidence that it was not appropriate to tell a person who did not even know that they had been

⁴⁷¹ Vol 7 Exhibit 190 – Submissions of Craig Fabbian, 9 April 2024, p 8 (3[n]).

⁴⁷² Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, pp 99–100.

⁴⁷³ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 100.

⁴⁷⁴ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, pp 100–101.

⁴⁷⁵ Vol 4 Exhibit 101 – Affidavit of Psychologist 1, 28 November 2019, pp 2–3 [6]–[7].

investigated that they would not be prosecuted, and that doing so could cause such a person undue stress.⁴⁷⁶

344. I am satisfied that at his examination, Chief Superintendent Barr was informed by Mr Lander that the investigation was **not** a corruption investigation. As a result of this, Chief Superintendent Barr, as an experienced police officer who was legally represented, should have been aware that the investigation was not a corruption investigation and, by extension, was therefore not a criminal investigation.
345. The practice of only notifying suspects that they would not be prosecuted if they were already otherwise aware that they were suspects was reasonable. Accordingly, I find that the practice of ICAC, in not advising Chief Superintendent Barr he would not be prosecuted, was not ineffective or inefficient, and was appropriate in the circumstances.

Additional allegations relating to Officer 10 and Officer 8

346. On 25 October 2023, the Director of the OPI, Ms Emma Townsend, wrote to my Office in relation to ICAC's investigation into Recruit 313.⁴⁷⁷ The report identified that during that investigation, allegations had been raised that a particular applicant (Applicant 7), had been unsuccessful in being appointed as a cadet due to a decision of the Probity Assessment Committee but that a senior SAPOL officer, Officer 8, had intervened and overruled the decision. The allegation had been investigated by ICAC, to an extent. However, it appeared that no findings had been made and the allegations had not been referred to the Internal Investigation Section (**IIS**) nor the Anti-Corruption Section (**ACS**) of SAPOL. It was unclear to Ms Townsend as to why no action had been taken.
347. In response, I undertook a further review of the relevant ICAC investigation files in order to identify whether any allegations of nepotism or preferential treatment had been made against any senior SAPOL officers which had been investigated by the Commission but had not resulted in any findings. This review identified that Applicant 7 was one of three applicants where allegations of nepotism or preferential treatment had been made against Officer 8. I will refer to the other applicants as Applicant 8 and Applicant 9. This review identified that allegations against Officer 10 in relation to a single further applicant, Applicant 10, had also been made.
348. As a result of the above coming to my attention, I have in the course of my review of this matter reviewed the actions and decisions of ICAC in relation to these four additional applicants. This has involved consideration of ICAC's investigation into

⁴⁷⁶ Vol 7 Exhibit 180 – Transcript, the Hon Bruce Lander KC, 8 February 2024, p 22.

⁴⁷⁷ Vol 4 Exhibit 164 – Letter from Ms Townsend to Inspector, 25 October 2023.

the allegations made against Officer 10 and Officer 8 and why no findings were made in relation to these allegations. The purpose of reviewing these allegations was **only** to consider whether there was any evidence of bias or conflict of interest on the part of Mr Lander and ICAC towards Chief Superintendent Barr and, conversely, if there was any evidence of preferential treatment towards Officers 10 or Officer 8.

349. I find that the fact that Mr Lander did not make findings against Officer 10 and Officer 8 in the Investigation Report did not involve any bias against Chief Superintendent Barr or bias in favour of Officers 8 and 10. Accordingly, I will deal with this topic only briefly.
350. The evidence before me demonstrates that ICAC conducted some investigation in relation to the allegations relating to Applicants 7 to 10 inclusive, including obtaining the SAPOL recruitment files for each applicant by the issuing of a summons and by obtaining evidence from some relevant witnesses during interviews and/or examinations. Relevant investigations occurred during both the corruption investigation and during the misconduct and maladministration investigation. These investigations had the potential to establish that Officer 8 (in relation to Applicants 7, 8 and 9) and Officer 10 (in relation to Applicant 10) engaged in preferential treatment of those applicants on the basis that each had one or more family members employed by SAPOL at the time. However, the allegations were not exhaustively investigated and were not put to Officer 10 or Officer 8 at any time. The allegations were not referred to in Counsel Assisting's submissions and no findings were made about them in the Investigation Report. They were not formally referred to any other inquiry agency, public authority or public officer. There are no ICAC records which demonstrate why this was the case.
351. Mr Lander gave a number of explanations why allegations against Officer 8 and Officer 10 were not included in the Investigation Report. I have considered that evidence closely. Ultimately, I find that the evidence does not bear upon the subject matter of my report.
352. I make two observations. First, at the time the Investigation Report was delivered, section 24(7) of the *ICAC Act* stated:
- The making of an assessment, and whether action is taken, and what action is taken, in respect of a matter is at the absolute discretion of the Commissioner and, if an assessment is modified in the course of dealing with the matter, the Commissioner may deal with the matter according to the modified assessment.*
353. Mr Lander had an "*absolute discretion*" to investigate matters as he saw fit.
354. Secondly, having considered all the material (including Mr Lander's evidence), I find that there is no evidence that Mr Lander deliberately ignored or disregarded the allegations relating to Applicants 7 to 10 inclusive.

355. Once the Investigation Report had been delivered, the allegations that were not the subject of findings should have, at that point in time, been subject to a further assessment to determine whether they would be investigated further, would be referred to another inquiry agency or public authority, or that no further action would be taken. Although no further formal assessment occurred, I am aware that following delivery of the Investigation Report, ICAC's entire investigation file was provided to SAPOL by Commissioner Vanstone in about May 2021.⁴⁷⁸ From that point on, SAPOL was in possession of all of the evidence gathered by ICAC (including relating to Applicants 7 to 10 and Officers 10 and 8), and therefore could have considered conducting any further investigation and/or commencing any disciplinary action as was seen fit. In light of this, and having regard to further information provided to me by Ms Townsend and Commissioner Vanstone,⁴⁷⁹ I am satisfied that there is no need for me to make any referrals or recommendations relating to these issues in this Report.

Findings about ICAC's treatment of Chief Superintendent Barr

356. In relation to the following:

- (a) Chief Superintendent Barr's prior contact with ICAC;
- (b) the decision not to inform Chief Superintendent Barr of the corruption investigation;
- (c) the decision not to put Chief Superintendent Barr on notice of the precise allegations made against him prior to his examination;
- (d) the treatment of Chief Superintendent Barr during his examination;
- (e) the decision not to inform Chief Superintendent Barr that he would not be prosecuted; and
- (f) the treatment of Chief Superintendent Barr, including as compared to other SAPOL officers;

I have found no evidence of any bias or "*less favourable*" and unfairly "*differential*" treatment of Chief Superintendent Barr. There was no evidence that Mr Lander even knew about Chief Superintendent Barr's publicly stated views about ICAC.

357. I have not found any evidence of any bias against Chief Superintendent Barr nor that any conflicts of interest existed. I have not found evidence of any criminal

⁴⁷⁸ Vol 6 Exhibit 174 – Letter from Commissioner Vanstone to Inspector, 27 February 2024.

⁴⁷⁹ Vol 5 Exhibit 164 – Letter from Ms Townsend, 25 October 2023; Vol 6 Exhibit 174 – Letter from Commissioner Vanstone to Inspector, 27 February 2024.

offence that could meet the definition of corruption in public administration at the relevant time.

358. I have not found any evidence of maladministration in public administration as there is no evidence before me of any conduct, nor of a practice, policy or procedure, that has resulted in an irregular and unauthorised use of public money, nor any substantial mismanagement of public resources or substantial mismanagement in or in relation to the performance of official functions.
359. In relation to ICAC's practices with respect to not notifying suspects of the existence of a corruption investigation and not notifying suspects that they will not be prosecuted (in circumstances where, to ICAC's knowledge, the suspect is not aware that they were the subject of a corruption investigation), I do not consider those practices to be ineffective or inefficient. Similarly, in relation to ICAC's practice with respect to not putting examinees on notice of precise allegations in advance of an examination, I do not consider that practice to be ineffective or inefficient.
360. Mr Lander's decision not to include allegations in relation to Applications 7 to 10 inclusive in the Investigation Report cannot amount to corruption, misconduct, or maladministration in public administration or any deficiency in ICAC's practices.

PART 6: Confidentiality provisions

361. Mrs Barr requested that I consider “[t]he impact of the confidentiality provisions within the ICAC Act in the context of lengthy ICAC investigations involving a substantial number of staff from within the same workplace.”⁴⁸⁰
362. Mrs Barr further submitted that Chief Superintendent Barr felt ostracised by the investigation and observed his colleagues “distance themselves”, and understood this was because of the investigation itself and the confidentiality provisions.⁴⁸¹
363. The recorded telephone calls illustrate Chief Superintendent Barr’s feelings of isolation.
- (a) In September 2019, Chief Superintendent Chief Superintendent Barr told Mrs Barr that returning to work was a “big mistake” and that people were treating him as if he had “the plague”. He also spoke about having no work to do and people ignoring him. Chief Superintendent Barr also described himself as being a “leper” at work and told Mrs Barr that he would tell the SAPOL Employee Assistance Section (**EAS**) psychologist that he had been “shunned” and “made to feel isolated”.
- (b) In October 2019, Chief Superintendent Barr that he felt like a “shag on a rock”. Chief Superintendent Barr told Mrs Barr that no one was speaking to him at work and that being at work was “humiliating”.
364. The ostracism faced by Chief Superintendent Barr was extremely unfortunate. However, there is no evidence before me that anything that ICAC did or omitted to do caused that ostracism. It was probably inevitable given the number of SAPOL witnesses examined by ICAC that many officers at SAPOL would have known of and reacted to ICAC’s investigation. How those officers treated Chief Superintendent Barr cannot be laid at the feet of ICAC. If there was any unlawful disclosure or leaking of information by SAPOL officers to other officers (and I have no evidence that there was), that also cannot be laid at the feet of ICAC.
365. The next issue is whether ICAC properly informed Chief Superintendent Barr about who he was able to communicate with about the ICAC investigation. When Chief Superintendent Barr was issued with the summons, section 54 of the *ICAC Act* (see Appendix B) was reproduced in the summons.
366. Mrs Barr’s evidence was that Chief Superintendent Barr told her that he believed that he could not disclose information relating to the investigation to a

⁴⁸⁰ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [2.3.7].

⁴⁸¹ Vol 1 Exhibit 3 – The Family of Chief Superintendent Douglas Barr, 17566943 (27 July 2021) [10.2].

psychologist from whom he was seeking psychological assistance.⁴⁸² After seeing the psychologist on 26 August 2019, Chief Superintendent Barr said to Mrs Barr, “[w]ell, I can’t tell them about any of what it is because it’s ICAC”.⁴⁸³

367. A person was defined as being a “close family member” in section 54(4) if one was a spouse of the other person, one was a parent or grandparent of the other, one was a brother or sister or the other, or one was a guardian or carer of the other.⁴⁸⁴
368. Chief Superintendent Barr could have discussed the investigation with Mrs Barr and their children because the information related to Chief Superintendent Barr and, as such, he would have been disclosing the information to close family members. Mrs Barr said that “he didn’t feel that he could talk to anybody about it – well, apart from family. And then didn’t even really to the boys but we now know that you could have with immediate family members.”⁴⁸⁵
369. Christopher Barr was never told by Chief Superintendent Barr that his father was being investigated by ICAC; he learned this from Mrs Barr.⁴⁸⁶ Christopher Barr described the knowledge of the existence of the investigation as “like a dark cloud” and that whenever Mrs Barr gave him any information, she said, “[w]e can’t talk about it, you know, we can’t know about it, we can’t mention it in the house. We can’t talk about it.”⁴⁸⁷
370. After either the first or second day of examinations, Chief Superintendent Barr did not tell Christopher Barr what he had been questioned about, but said that “it was so much worse than he ever thought”.⁴⁸⁸ Christopher Barr said Chief Superintendent Barr “didn’t talk about it in great detail” and said to Christopher Barr, “[y]ou wouldn’t understand. I can’t tell you. It’s so much worse.”⁴⁸⁹
371. The summons issued to Chief Superintendent Barr on 24 May 2019 said the following on the issue of confidentiality:

Can you tell anyone about this summons?

Section 54(3) of the Independent Commissioner Against Corruption Act 2012 (SA) (‘ICAC Act’) makes it an offence for a person to disclose information about this summons and its contents unless:

...

(b) the disclosure of that information is for the purpose of—

⁴⁸² Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 53.

⁴⁸³ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 51–52.

⁴⁸⁴ ICAC Act s 54(4). I note this section is identical in the current ICAC Act.

⁴⁸⁵ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 53.

⁴⁸⁶ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 95.

⁴⁸⁷ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 95.

⁴⁸⁸ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 94.

⁴⁸⁹ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 94.

...

(iv) a person obtaining medical or psychological assistance from a medical practitioner or psychologist; or

(c) the information relates to the person and is disclosed by the person to a close family member of the person.

A person is a close family member of another person if:

a. 1 is a spouse of the other or is in a close personal relationship with the other; or

b. 1 is a parent or grandparent of the other (whether by blood or by marriage); or

c. 1 is a brother or sister of the other (whether by blood or by marriage); or

d. 1 is a guardian or carer of the other.

If you do not understand what you must do, or if you cannot comply with this summons, you should contact the Office for Public Integrity immediately on (08) 8207 1777.⁴⁹⁰

372. There was no discussion of the confidentiality provisions during Chief Superintendent Barr's examination.

Conclusion

373. Chief Superintendent Barr's understanding of who he could discuss the ICAC investigation with is unclear. Mrs Barr's evidence was that Chief Superintendent Barr believed he could not disclose information to a psychologist for the purpose of seeking psychological assistance.⁴⁹¹ However, Chief Superintendent Barr did discuss the investigation to some extent with psychologists. Chief Superintendent Barr told Psychologist 1 that he had "*been the subject of an ongoing investigation associated with his role in recruiting police officers*", that "[Applicant 11] and [a senior SAPOL officer's] daughter were accepted into the police force, however, he had been accused of cheating", that he made "*contact with recruiters regarding [Applicant 11]*", and that "[Applicant 11] *had failed the interview as he had insufficient life experience*" and Chief Superintendent Barr "*described experiencing frustration that there was a mentality of rejecting people into SAPOL on those grounds.*"⁴⁹² Chief Superintendent Barr told Psychologist 2 that "*he was under investigation by the Independent Commission Against Corruption*" and that "*the ICAC investigation had stemmed from his time working in SAPOL's recruitment section and it related to 'nepotism' and 'favouritism'.*"⁴⁹³

⁴⁹⁰ Vol 4 Exhibit 109 – Summons to Appear, pp 12–13.

⁴⁹¹ Vol 4 Exhibit 128 – Transcript, Deborah Barr and Christopher Barr, 23 August 2023, p 52.

⁴⁹² Vol 4 Exhibit 101 – Affidavit of Psychologist 1, 28 November 2019, p 5 [6].

⁴⁹³ Vol 4 Exhibit 102 – Affidavit of Psychologist 2, 17 January 2020, p 2 [5]–[6].

374. There was nothing in the information provided by ICAC about the confidentiality requirements that could have been interpreted as preventing Chief Superintendent Barr from discussing the investigation with a psychologist from which he sought psychological assistance, or with Mrs Barr as his spouse or their children.
375. It was appropriate for ICAC to include the information that it did in the summons. The heading “*Can you tell anyone about this summons?*” was a suitable flag for witnesses to identify that the information was relevant and of interest. Chief Superintendent Barr’s understanding of the confidentiality provisions was not based on any action by ICAC.
376. Having provided that information to Chief Superintendent Barr in writing, there was nothing further for ICAC to do.
377. I find that there was no impropriety by ICAC as it related to the confidentiality provisions within the *ICAC Act* and the investigation of Chief Superintendent Barr.⁴⁹⁴

⁴⁹⁴ *ICAC Act* s 54 in force at the time Chief Superintendent Barr was issued a summons by ICAC and was examined by Mr Lander, was amended by the *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA) on 7 October 2021. While largely similar, the key changes are that under s 54(1) and (3)(a), the Director of the OPI (as well as the Commissioner) can now authorise disclosure. Further, the exceptions to the prohibition on disclosure in s 54(3)(b) have been amended to include 54(3)(b)(v)–(vii) to permit disclosure of information for the purpose of: a person advising their employer; a person advising their business partners or others with whom a fiduciary relationship exists; and the management of a workers compensation claim. Section 54(3)(a) also now provides that authorisations must be granted by the Commissioner or the Director of the OPI in certain circumstances.

PART 7: Undue prejudice to reputation

378. Prejudice to a person's reputation involves harm or damage. However, my terms of reference are not directed to *any* prejudice; I am examining whether any prejudice was *undue*.

379. The concept of "undue prejudice" is also referred to in section 3(1)(c) of the ICAC Act, which refers to the following primary object of the Act:

*to achieve an appropriate balance between the public interest in exposing corruption, misconduct and maladministration in public administration and the public interest in avoiding undue prejudice to a person's reputation (recognising that the balance may be weighted differently in relation to corruption in public administration as compared to misconduct or maladministration in public administration).*⁴⁹⁵

(underlining added)

380. In *C v Independent Commissioner Against Corruption* (2020) 136 SASR 215, Justice Bleby referred to this provision and explained (at [50]):

The balance to be struck in this object is not with a person's private interests in having their reputation unduly prejudiced, but in the public interest in avoiding undue prejudice to a person's reputation. Further, the object is not to avoid any such prejudice, but rather to avoid undue prejudice.

381. Accordingly, in section 3(1)(c) of the *ICAC Act*, the interest being referred to is the public interest in maintaining a person's reputation. My task is not so limited; I am permitted under my Terms of Reference to consider Chief Superintendent Barr and his family's legitimate personal interest in avoiding undue prejudice to his reputation.

382. Nonetheless, the emphasis by Justice Bleby in the second sentence is important: any prejudice must be undue. The Cambridge Dictionary defines "*undue*" as meaning "*to a level that is more than is necessary, acceptable, or reasonable*". The Oxford Languages dictionary defines the word as meaning "*unwarranted or inappropriate because excessive or disproportionate*". The Macquarie Dictionary defines "*undue*" as "*unwarranted; excessive; too great*".⁴⁹⁶

383. I therefore approach the issue of "*undue prejudice*" by reference to consideration of whether the prejudice was unwarranted or inappropriate, having regard to the nature of the investigation and the scope of the alleged conduct on the part of Chief Superintendent Barr.

⁴⁹⁵ Section 3(1)(c) of the current *ICAC Act*. I note this current section is identical in the *ICAC Act* as in force from 16 December 2016 to 31 March 2017; 1 April 2017 to 14 July 2017; 15 July 2017 to 3 September 2017; 4 September 2017 to 30 June 2020; and 1 July 2020 to 6 October 2021.

⁴⁹⁶ *Macquarie Dictionary* (online at 27 February 2024) "*undue*".

384. Mrs Barr submitted that Chief Superintendent Barr:

experienced significant isolation because of the rumours that circulated within SAPOL as a result of this investigation. Rumours of Doug's guilt within SAPOL caused him significant anguish and contributed greatly to his decline and eventual suicide.⁴⁹⁷

385. Reputational damage was considered by ICAC. The following was recorded in the investigation plan for the misconduct and maladministration investigation:

Reputation issues

The allegations being investigated have the potential to prejudice the reputations of the subjects of those allegations as well as others (including police cadets whose applications for recruitment relate to the allegations).

In the first instance the risk to reputations is to be managed by maintaining the confidentiality of investigation.

Should wider disclosure of information be required procedural fairness to be afforded to any persons whose reputations may be prejudiced. Such potential prejudice to be taken into account in decisions as to whether and to what extent information should be disclosed.⁴⁹⁸

386. It is an expected and natural consequence of any investigation that the suspect's reputation may be prejudiced purely because of the fact they are being investigated (to the extent the investigation becomes public knowledge).

387. Chief Superintendent Barr's reputation was prejudiced by the ICAC investigation. However, the investigation remained confidential. Witnesses were confined to those within SAPOL who were connected to the conduct of Officer 1 and Chief Superintendent Barr. The Investigation Report was not made available to the general public and was published only to the persons who received Counsel Assisting's submissions.⁴⁹⁹ The prejudice did not extend beyond the witnesses subjected to examinations or interviews and did not expand to the general SAPOL population or to the public at large.

388. Accordingly, I find that the prejudice to Chief Superintendent Barr's reputation was not "undue". It was an ordinary consequence of being the suspect of the investigation. ICAC did not cause undue prejudice to any other person.

389. As I have not made a finding of undue prejudice, it follows that I will not be publishing any statement or making a recommendation as to compensation under clause 9(6)(c) of Schedule 4 of the *ICAC Act*.

⁴⁹⁷ Vol 1 Exhibit 2 – Letter from Mrs Barr to Inspector, 27 March 2023, p 2.

⁴⁹⁸ Vol 1 Exhibit 27 – Investigation Plan 2017/000076-S01, 19 July 2019, p 6.

⁴⁹⁹ Vol 1 Exhibit 21 – Investigation Report, p 208.

PART 8: Steps taken by the Commission

390. In response to my request, on 6 February 2024 Commissioner Vanstone provided me with a number of the Commission’s current policy documents.
391. Most relevantly, the Commission’s Investigations Manual, which was previously used by investigators in draft form, was finalised on 10 March 2023 and was provided to me in its finalised form.⁵⁰⁰ The Investigations Manual is a document which sets out the standard processes and steps to be undertaken in the course of each investigation and the steps to be taken when exercising or seeking to exercise powers in the course of an investigation.
392. The finalised Investigations Manual now includes a specific section addressing “Witness and Person of Interest Welfare”.⁵⁰¹ This addition recognises that the Commission’s “*investigations can adversely affect the welfare of those who become involved in them (including as persons of interest or witnesses)*.”⁵⁰² It also confirms the Commission’s commitment to “*taking reasonable steps to avoid unnecessary adverse consequences to the welfare of those involved in investigations*.”⁵⁰³
393. The finalised Investigations Manual provides that if an investigator considers there is a risk to the welfare of a person, they should seek advice from their Team Leader as to what steps, if any, should be taken.⁵⁰⁴
394. The finalised Investigations Manual requires that, whenever interacting with persons involved in an investigation, all investigators should carry copies of the Commission’s new Welfare Services Contact Card, which contains information about various support services. Investigators should consider offering the card to those who they interact with in the course of their investigation.⁵⁰⁵ However, an investigator may consider it not appropriate to distribute a Welfare Services Contact Card when dealing with professional witnesses who are not impacted by the investigation (unless a particular need for the card is identified by the Investigator).⁵⁰⁶ Further, the Investigations Manual states that:

*Police officers would usually be included in this category. However, Investigators should consider potential welfare issues if police officers are providing information against another police officer or where they are otherwise personally impacted by the investigation.*⁵⁰⁷

⁵⁰⁰ Vol 6 Exhibit 171 – Investigations Manual (A685532), 10 March 2023.

⁵⁰¹ Vol 6 Exhibit 171 – Investigations Manual (A685532), 10 March 2023, p 9.

⁵⁰² Vol 6 Exhibit 171 – Investigations Manual (A685532), 10 March 2023, p 9.

⁵⁰³ Vol 6 Exhibit 171 – Investigations Manual (A685532), 10 March 2023, p 9.

⁵⁰⁴ Vol 6 Exhibit 171 – Investigations Manual (A685532), 10 March 2023, p 9.

⁵⁰⁵ Vol 6 Exhibit 171 – Investigations Manual (A685532), 10 March 2023, p 9.

⁵⁰⁶ For example, employees of financial institutions providing financial records are not likely to require a Welfare Services Contact Card.

⁵⁰⁷ Vol 6 Exhibit 171 – Investigations Manual (A685532), 10 March 2023, p 9.

395. The finalised Investigations Manual provides that: “[i]f an investigator forms the view that the welfare of a person involved in an investigation might be affected by their participation in it”, the investigator must consider whether any steps should be taken to address that risk.⁵⁰⁸ Those steps could include:

Where the interviewee is a public officer, liaising with an appropriate manager, supervisor or HR official of the agency that employs the officer to ensure they are receiving the support of the agency, including access to an Employee Assistance Program.

Giving the interviewee a Welfare Services Contact Card.

Advising the interviewee that there are exceptions to the confidentiality provisions of the ICAC Act which permit the person to disclose information they have received and which they know is connected with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under the ICAC Act:

- *For the purpose of them obtaining medical or psychological assistance from a medical practitioner or psychologist.*
- *If the information relates to the person – disclosing the information to a close family member (which is defined in s 54(4) of the ICAC Act as including a spouse, parent, sibling or carer of the person).*

If necessary, seeking advice from a qualified medical professional about whether or not or in what circumstances the interview should be conducted. If an Investigator is of the view that such advice is necessary, they should consult the Director Investigations. In serious cases the Director Investigations may need to consider whether the welfare of the witness outweighs the importance of the interview.⁵⁰⁹

396. The finalised Investigations Manual demonstrates the Commission’s awareness of, and commitment to, ensuring (in the context of their role) the welfare of witnesses and persons of interest in investigations. The finalised Investigations Manual provides clear guidance on the steps which are available to investigators should they consider that a particular person is or might be affected by their participation in the investigation. In my view, the specific guidance given for police officers is appropriate. Further, the Welfare Services Contact Card is a sensible and practical measure that is likely to assist witnesses and persons of interest.

397. I recommend that the finalised Investigations Manual include examples of situations in which the welfare of a person involved in a Commission investigation could be adversely impacted. The examples should include a discussion of the specific steps to be taken to address the welfare concerns. The statements of principles concerning the need to recognise the impact of Commission investigations on people involved in investigation and the commitment to taking

⁵⁰⁸ Vol 6 Exhibit 171 – Investigations Manual (A685532), 10 March 2023, p 9.

⁵⁰⁹ Vol 6 Exhibit 171 – Investigations Manual (A685532), 10 March 2023, pp 9–10.

steps to avoid adverse consequences is excellent, as are the suggestions of steps investigators can employ to manage welfare. However, the finalised Investigations Manual should apply those principles and suggested steps to different scenarios in which a person's welfare could be adversely impacted.

Conclusion

398. The decisions to commence the corruption investigation into Chief Superintendent Barr's conduct and to modify the assessment of the investigation to a matter raising potential issues of misconduct or maladministration in public administration were appropriate.
399. There was no unreasonable delay in the first corruption investigation. There was a protracted but not unreasonable delay in the second misconduct and maladministration investigation.
400. Mr Lander should have advised Chief Superintendent Barr or Mr Fabbian that there was a delay in the finalisation of Counsel Assisting's submissions.
401. There was no undue prejudice to the reputation of Chief Superintendent Barr or anyone else caused by Mr Lander, employees of ICAC or employees of the OPI.
402. There was no evidence of corruption, misconduct or maladministration by Mr Lander or ICAC.
403. I have found that ICAC and the OPI did carry out their functions in a manner that was likely to assist in preventing or minimising corruption in public administration.
404. There is no evidence of any bias on the part of Mr Lander or employees of ICAC towards Chief Superintendent Barr.
405. I have found that no practices or procedures of ICAC and the OPI were ineffective or inefficient. However, I do recommend that certain practices or procedures relating to key performance indicators concerning the timeliness of investigations and guidelines concerning procedural fairness to examinees be amended for the reasons stated in this Report.
406. I find that there was no evidence of any unreasonable invasions of privacy.

Recommendations

407. This part of the report outlines my recommendations arising from my review in accordance with the Terms of Reference at Appendix A.
408. Under clause 9(1)(c) of Schedule 4 of the *ICAC Act*, I have the power to make any recommendations to ICAC, OPI or to the Attorney-General that I think fit arising from my review. I have made these recommendations having regard to the documentary and oral evidence I have received in this matter and submissions from interested parties.

Key performance indicators

409. The lack of any objective time standard against which to measure the delay creates a problem in assessing whether, during any specific period, any delay by ICAC was “unreasonable”. I have considered the legislative scheme and annual reports of the Commission’s interstate/territory counterparts.⁵¹⁰ Legislation in some States require the Commissions to create targets or key performance indicators (**KPIs**) in respect of the timeframes in which they are required to deal with matters. Furthermore, there is a legislative requirement for Commissions to publish in the annual reports on its performance in respect of these targets.⁵¹¹
410. In South Australia, section 45(3) of the *ICAC Act* requires that the Commission prepare an annual report and set out a number of matters which the annual report must address including the number and general nature of the matters investigated by the Commission. The Commission’s 2022-2023 annual report states that the Commission commenced 43 investigations and continued 17 investigations from the previous reporting period.⁵¹² There is no provision in the South Australian legislation to record targets in respect of the timeliness of assessments or investigations of matters.
411. I have not found that there was any unreasonable delay on the part of ICAC in completing the investigation. Nonetheless, if ICAC had specific targets within which it was expected to deal with its matters, it would assist the Commissioner

⁵¹⁰ Vol 8 Exhibit 200 – Office of the Independent Commissioner Against Corruption NT, *Annual Report 2022-23*, 29 September 2023; Vol 8 Exhibit 201 – Corruption and Crime Commission, *Annual Report 2022-23*; Vol 8 Exhibit 203 – ACT Integrity Commission, *Annual Report 2022-23*; Vol 8 Exhibit 204 – Integrity Commission Tasmania, *Annual Report 2022-2023*, 19 October 2023; Vol 8 Exhibit 205 – Independent Commission Against Corruption New South Wales, *Annual Report 2022-23*; Vol 8 Exhibit 206 – Crime and Corruption Commission Queensland, *2022-23 Annual Report*, 20 August 2023.

⁵¹¹ NSW: *Independent Commission against Corruption Act 1988* (NSW) s 74E, 76; ACT: *Integrity Commission Act 2018* (ACT) s 218; Qld: *Crime and Corruption Act 2001* (Qld) s 35B (the information must be published on the commission’s website).

⁵¹² Vol 8 Exhibit 202 – Independent Commission Against Corruption South Australia, *2022-23 Annual Report*, 29 September 2023, p 28.

in ensuring matters are dealt with expeditiously. It would also assist the Commissioner and Inspector in assessing whether there was unreasonable delay in the assessment or investigation of any matter.

412. I consider that it would be appropriate for the Commission to revise its internal policies to create KPIs in respect of the timeliness of its investigations. It would also be appropriate for the Commission to include in its annual reports the data in respect of its performance with reference to those KPIs. Accordingly, I have made recommendations in those terms.

413. Furthermore, while the Commission's assessments and investigations must be conducted in as timely a manner as possible, this does not mean that investigations should be rushed, or that shortcuts should be taken. Of course, the Commission should be thorough and considered. It is inevitable that some investigations will take some time to resolve. This may be because of the complexity of a matter or the nature of the conduct being investigated.

Recommendation 1

The *ICAC Act* be amended to include "targets" or KPIs in respect of the timeframes in which the Commission is required to deal with matters. The *ICAC Act* should also be amended to require the Commission to publish in its annual reports the data in respect of its performance with reference to those KPIs.

Recommendation 2

The Commission revise its investigations manual to reflect the legislative changes referred to in Recommendation 1.

These targets or KPIs referred to in Recommendation 1 should be specific and include:

- (a) a target timeframe for the assessment of a complaint or report to the Commission to be completed from the date of the Commission's receipt of the complaint or report;
- (b) a target timeframe for the investigation of a matter (following an assessment that the matter was an appropriate matter to be investigated), from the date of the completion of the assessment; and
- (c) what action the Commission takes if the assessment, and investigation timeframes are not met.

Recommendation 3

The Commission revise its annual reports to include the data in respect of its performance with reference to the KPIs I have referred to in Recommendation 1. This should include:

- (a) the percentage of assessments completed within the target timeframe;
- (b) the percentage of investigations completed within the target timeframe; and
- (c) the action the Commission has taken to ensure the target timeframes are met.

Recommendation 4

The finalised Investigations Manual should include examples of situations in which the welfare of a person involved in a Commission investigation could be adversely impacted. The examples should include a discussion of the specific steps to be taken to address the welfare concerns.

Recommendation 5

Consideration should be given to amending the *ICAC Act* to empower the Commissioner to issue guidelines relating to the conduct of inquiries of the Commission to members of staff of the Commission and counsel appointed to assist the Commission.

The guidelines should provide guidance on the following aspects of the conduct of inquiries:

- (a) the investigation of evidence that might exculpate affected persons;
- (b) the disclosure of exculpatory and other relevant evidence to affected persons;
- (c) providing affected persons⁵¹³ and other witnesses with access to relevant documents and a reasonable time to prepare before giving evidence; and
- (d) any other matter the Commission considers necessary to ensure procedural fairness.

⁵¹³ “Affected person” means a person against whom substantial allegations have been made in the course of or in connection with the relevant inquiry.

The guidelines should be tabled in both Houses of Parliament and be published on the Commission's website.

I accept that the only relevant guideline dealt with in this review is Recommendation 4(c).

Appendix A

I, Philip Strickland SC, Inspector, on my own motion, intend to undertake a review into the investigations in relation to Chief Superintendent Douglas Barr by the Independent Commissioner Against Corruption (**the Commissioner**) pursuant to Schedule 4, clause 2(1)(c) of the *Independent Commission Against Corruption Act 2012 (ICAC Act)*.⁵¹⁴

My review will examine the exercise of power by the Commissioner and the Office for Public Integrity (**OPI**) relating to Recruit 313 including:

- whether there was any evidence of:
 - Corruption, misconduct or maladministration on the part of the Commissioner, OPI or employees of the Commission or the OPI.
 - Unreasonable delay in the investigations; and
 - Unreasonable invasions of privacy by the Commissioner, the OPI and 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 Office of the Commissioner and the OPI were effective and efficient.
- whether the Commissioner and the OPI carried out their functions in a manner that was likely to assist in preventing or minimising corruption in public administration.

The areas of the investigations that will be the subject of the review include:

- Mr Lander's decision on 8 March 2017 to commence the investigation into allegations of a potential issue of corruption in public administration in relation to Chief Superintendent Barr.
- Mr Lander's decision on in July 2018 pursuant to section 24(7) of the *ICAC Act*⁵¹⁵ to modify the investigation from a criminal investigation into alleged corruption into an investigation into potential issues of serious or systemic misconduct or maladministration in public administration.
- The investigations by the Commissioner in relation to Chief Superintendent Barr.
- Any bias or conflict of interest on the part of the Commissioner and employees of the Commission towards Chief Superintendent Barr.

⁵¹⁴ *Independent Commission Against Corruption Act 2012 (SA) (Current ICAC Act)*.

⁵¹⁵ *Independent Commission Against Corruption Act 2012 (SA)* as in force on 9 July 2018 (*ICAC Act*).

- The Commissioner's conduct in relation to investigating or taking any relevant action in relation to allegations against senior police officers other than Douglas Barr and Officer 1 arising out of Recruit 313.
- The Commissioner's use of confidentiality provisions, including non-disclosure directives.
- The provision of information to or communications with Chief Superintendent Barr during the progress of the investigations by the Commissioner or employees of the Commission.

The review will be conducted in accordance with my powers under Schedule 4 of the *ICAC Act*, noting the power to make recommendations under clause 9(1)(c) and the powers related to referral and findings of undue prejudice to reputation under clause 9(6).

Any report I prepare will be prepared in accordance with the requirements of Schedule 4, clause 9(9) of the *ICAC Act*.

I am required to deliver the report to the President of the Legislative Council and Speaker of the House of Assembly as required by Schedule 4, clause 9(10) of the *ICAC Act*.

Appendix B

*Independent Commissioner Against Corruption Act 2012*⁵¹⁶

Unless otherwise indicated, the following extracts of the ICAC Act appear as they were between 17 January 2017 and 31 August 2020. These were therefore the applicable provisions when the OPI assessed the report received on 17 January 2017 concerning the conduct of Officer 1 and at all times when ICAC was investigating Chief Superintendent Barr.

3—Primary objects

- (1) The primary objects of this Act are—
 - ...
 - (c) to achieve an appropriate balance between the public interest in exposing corruption, misconduct and maladministration in public administration and the public interest in avoiding undue prejudice to a person's reputation (recognising that the balance may be weighted differently in relation to corruption in public administration as compared to misconduct or maladministration in public administration).

5—Corruption, misconduct and maladministration

- (1) Corruption in public administration means conduct that constitutes—⁵¹⁷
 - (a) an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
 - (i) bribery or corruption of public officers;
 - (ii) threats or reprisals against public officers;
 - (iii) abuse of public office;
 - (iv) demanding or requiring benefit on basis of public office;
 - (v) offences relating to appointment to public office; or (b) an offence against the *Public Sector (Honesty and Accountability) Act 1995* or the *Public Corporations Act 1993*, or an attempt to commit such an offence; or
 - (ba) an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence; or
 - (c) any other offence (including an offence against Part 5 (Offences of dishonesty) of the *Criminal Law Consolidation Act 1935*) committed by a public officer while

⁵¹⁶ On 7 October 2021, the short title of the *ICAC Act* was amended to the *Independent Commission Against Corruption Act 2012* (SA).

⁵¹⁷ Section 5(1) of the *ICAC Act* was amended on 1 April 2017 to insert subsection (ba). That subsection did not exist in the *ICAC Act* as in force prior to 1 April 2017.

acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or

- (d) any of the following in relation to an offence referred to in a preceding paragraph:
 - (i) aiding, abetting, counselling or procuring the commission of the offence;
 - (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
 - (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
 - (iv) conspiring with others to effect the commission of the offence.

...

- (3) Misconduct in public administration means— (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or (b) other misconduct of a public officer while acting in his or her capacity as a public officer.
- (4) Maladministration in public administration—
 - (a) means—
 - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
 - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
 - (b) includes conduct resulting from impropriety, incompetence or negligence; and
 - (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

7—Functions⁵¹⁸

- (1) There is to be an Independent Commissioner Against Corruption with the following functions:
 - (a) to identify corruption in public administration and to—
 - (i) investigate and refer it for prosecution; or
 - (ii) refer it to a law enforcement agency for investigation and prosecution;

⁵¹⁸ Section 7(1) of the ICAC Act was amended on 1 April 2017 to insert subsections (ca)–(cc). Those subsections did not exist in the ICAC Act as in force prior to 1 April 2017.

- (b) to assist inquiry agencies and public authorities to identify and deal with misconduct and maladministration in public administration;
- (c) to refer complaints and reports to inquiry agencies, public authorities and public officers and to give directions or guidance to public authorities in dealing with misconduct and maladministration in public administration, as the Commissioner considers appropriate;
- (ca) to identify serious or systemic misconduct or maladministration in public administration;
- (cb) to exercise the powers of an inquiry agency in dealing with serious or systemic maladministration in public administration if satisfied that it is in the public interest to do so;
- (cc) to exercise the powers of an inquiry agency in dealing with serious or systemic misconduct in public administration if the Commissioner is satisfied that the matter must be dealt with in connection with a matter the subject of an investigation of a kind referred to in paragraph (a)(i) or a matter being dealt with in accordance with paragraph (cb);
- (d) to evaluate the practices, policies and procedures of inquiry agencies and public authorities with a view to advancing comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration;
- (e) to conduct or facilitate the conduct of educational programs designed to prevent or minimise corruption, misconduct and maladministration in public administration;
- (f) to perform other functions conferred on the Commissioner by this or any other Act.

18—Organisational structure

- (1) The Office is responsible to the Commissioner for the performance of its functions.

23—Assessment

...

- (2) The Commissioner may also assess, or require the Office to assess, according to the criteria set out in subsection (1), any other matter identified by the Commissioner acting on his or her own initiative or by the Commissioner or the Office in the course of performing functions under this or any other Act.

24—Action that may be taken⁵¹⁹

- (1) If a matter is assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution, the matter must be—
 - (a) investigated by the Commissioner; or
 - (b) referred to South Australia Police, the Police Ombudsman (if the issue concerns a police officer or special constable) or other law enforcement agency.
- (2) If a matter is assessed as raising a potential issue of misconduct or maladministration in public administration, the matter must be dealt with in 1 or more of the following ways:
 - (a) the matter may be referred to an inquiry agency;
 - (b) in the case of a matter raising potential issues of serious or systemic maladministration in public administration—the Commissioner may exercise the powers of an inquiry agency in dealing with the matter if satisfied that it is in the public interest to do so;
 - (c) in the case of a matter raising potential issues of serious or systemic misconduct in public administration—the Commissioner may exercise the powers of an inquiry agency in dealing with the matter if the Commissioner is satisfied that the matter must be dealt with in connection with a matter the subject of an investigation of a kind referred to in subsection (1)(a) or a matter being dealt with in accordance with paragraph (b);
 - (d) the matter may be referred to a public authority and directions or guidance may be given to the authority in respect of the matter.

...
- (7) The making of an assessment, and whether action is taken, and what action is taken, in respect of a matter is at the absolute discretion of the Commissioner and, if an assessment is modified in the course of dealing with the matter, the Commissioner may deal with the matter according to the modified assessment.

36A—Exercise of powers of inquiry agency⁵²⁰

- (1) The Commissioner must, before deciding (in accordance with section 24(2)(b) or (c)) to exercise the powers of an inquiry agency in respect of a matter raising potential issues of misconduct or maladministration in public administration, take reasonable steps to obtain the views of the agency.

⁵¹⁹ Subsection 24(1)(b) of the *ICAC Act* was amended on 4 September 2017 to remove the words “*the Police Ombudsman (if the issue concerns a police officer or special constable)*”. Subsection 24(2) was amended on 1 April 2017, including updating (a)–(b), removing what was formerly (ab), and inserting (c)–(d).

⁵²⁰ Subsections 36A(1)–(2) of the *ICAC Act* were amended on 1 April 2017 to insert “*(in accordance with section 24(2)(b) or (c))*”. Those words did not exist in subsections 36A(1)–(2) of the *ICAC Act* as in force prior to 1 April 2017.

- (2) If the Commissioner decides (in accordance with section 24(2)(b) or (c)) to exercise the powers of an inquiry agency in respect of such a matter—
- ...
- (b) the Commissioner—
- (i) has all the powers of the agency; and
 - (ii) is bound by any statutory provisions governing the exercise of those powers (subject to such modifications as may be prescribed, or as may be necessary for the purpose), as if the Commissioner constituted the agency;

54—Confidentiality

- (1) Except as required or authorised by this Act or by the Commissioner, a person who is or has been engaged in the administration of this Act must not, directly or indirectly, disclose information in relation to or connected with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under this Act.
- Maximum penalty: \$2 500 or imprisonment for 6 months.
- (2) Despite subsection (1), a person engaged in the administration of this Act may disclose information—
- (a) for the purposes of the administration or enforcement of this Act; or
 - (b) for the purposes of referring a matter in accordance with this Act to a law enforcement agency, inquiry agency, public authority or public officer; or
 - (c) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
 - (d) for the performance of the functions of the Office or the Commissioner under another Act; or
 - (e) as otherwise required or authorised by this or another Act.
- (3) A person who receives information knowing that the information is connected with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under this Act must not disclose that information unless—
- (a) the person is authorised in writing by the Commissioner or by a person approved by the Commissioner under this section to give an authorisation; or
 - (b) the disclosure of that information is for the purpose of—
 - (i) dealing with a matter referred under this Act by the Commissioner or the Office; or
 - (ii) a criminal proceeding, a proceeding for the imposition of a penalty or disciplinary action; or
 - (iii) a person obtaining legal advice or legal representation or for the purposes of determining whether a person is entitled to an indemnity for legal costs; or

- (iv) a person obtaining medical or psychological assistance from a medical practitioner or psychologist; or
- (c) the information relates to the person and is disclosed by the person to a close family member of the person.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (4) For the purposes of subsection (3)(c), a person is a close family member of another person if—
 - (a) 1 is a spouse of the other or is in a close personal relationship with the other; or
 - (b) 1 is a parent or grandparent of the other (whether by blood or by marriage); or
 - (c) 1 is a brother or sister of the other (whether by blood or by marriage); or
 - (d) 1 is a guardian or carer of the other.

Appendix C

Date	Event
16 Feb 2016	Chief Superintendent Barr appears before the Crime and Public Integrity Policy Committee with Commissioner Stevens in relation to unrelated matters.
Sep 2016	Commissioner of Police announced SA Police (SAPOL) would recruit 313 additional police officers by June 2018. Chief Superintendent Barr appointed to lead the Recruit 313 Project.
10 Jan 2017	TAFE SA test sat by Applicant 11 and Applicants 2 – Applicants 6 inclusive.
17 Jan 2017	Report received by Office for Public Integrity (OPI) regarding conduct of Officer 1 in modifying incorrect answers on the spelling test of Applicant 2.
24 Jan 2017	Independent Commissioner Against Corruption (ICAC/Mr Lander) commences the corruption investigation relating to Officer 1 pursuant to s 24(1)(a) of the Act.
8 Mar 2017	ICAC receives information relating to recruitment of Applicant 11. An investigation plan is prepared relating to the allegations against both Officer 1 and Chief Superintendent Barr.
9 Mar 2017	Senior Legal Officer 1 provides advice to Mr Lander about assessment of information relating to Applicant 11 and Chief Superintendent Barr.
10 Mar 2017	ICAC formally commences the corruption investigation relating to Chief Superintendent Barr pursuant to s 24(1)(a) of the Act.
17 Mar 2017	Officer 1 tells Chief Superintendent Barr that he had received a telephone call from ICAC and that they were investigating dishonest dealing with documents. ICAC is made aware of this on the same date.
6 Mar to 24 Jul 2017	ICAC conducted 26 witness interviews, obtained 28 witness statements, issued 6 notices, conducted 4 coercive examinations, arranged forensic examination of items, obtained email restore data and drafted documents summarising evidence gathered.
9 Jun 2017	Officer 9's summons was issued. Chief Superintendent Barr saw Officer 9's summons and commented to Officer 9 that he was aware that Officer 1 had received one as well. ICAC is aware of the above when Officer 9 attends for examination on 21 June 2017.
27 Jul 2017	Chief Superintendent Barr meets with his solicitor, Mr Fabbian, and advises him that he (Barr) is the subject of an ICAC investigation into Recruit 313 (ICAC is not aware of this).

Date	Event
10 Aug 2017	ICAC forwards brief to the Director of Public Prosecutions (DPP) for an opinion about whether the evidence could support criminal charges against Chief Superintendent Barr.
26 Sep 2017	DPP provides advice to ICAC in relation to a potential prosecution of Officer 1.
17 Oct 2017	Following Officer 1 seeking an update from ICAC, Officer 1 is advised that he would not be prosecuted and the matter would proceed as a disciplinary matter.
3 Dec 2017	DPP advice relating to Chief Superintendent Barr is prepared advising that the evidence could establish a reasonable prospect of conviction but that charges were not recommended.
11 Jan 2018	ICAC receives DPP advice recommending no charges against Chief Superintendent Barr. No prosecution is commenced.
2 Feb 2018	Senior Legal Officer 1 provides a memorandum to Mr Lander about potential options for further investigation.
12 Feb 2018	Senior Legal Officer 1 and the Chief Executive Officer of ICAC meet and decide to seek advice from the Crown Solicitor's Office (CSO).
16 Feb 2018	Advice received from the CSO which concluded that Mr Lander could not exercise the powers of the Ombudsman to investigate a potential issue of maladministration or misconduct in public administration in relation to any complaint relating to "designated officers" to whom the <i>PCD Act</i> applied.
19 Mar 2018	Mr Lander informs the CSO that he disagrees with the advice of 16 February 2018 and requests a meeting to discuss the issues.
15 May 2018	Senior Legal Officer 1 provides a memorandum to Mr Lander about next steps to conduct a further investigation.
14 Jun 2018	Mr Lander writes to the Ombudsman seeking his views about Mr Lander exercising the Ombudsman's inquiry agency powers to investigate potential misconduct and maladministration.
19 Jun 2018	The Ombudsman writes to Mr Lander agreeing that Mr Lander may exercise powers as an inquiry agency to investigate potential issues of misconduct and maladministration.
6 Jul 2018	Mr Lander determines that the alleged misconduct and maladministration is potentially serious and systemic.
9 Jul 2018	Mr Lander modifies the assessment of the matter as raising potential issues of serious or systemic misconduct or maladministration in public administration relating to both Officer 1 and Chief Superintendent Barr.
19 Jul 2018	Investigation plan for the misconduct and maladministration investigation is approved.

Date	Event
9 Aug 2018	On 9 August 2018, Mr Lander wrote to Officer 1 advising him that the corruption investigation had concluded and that the misconduct and maladministration investigation had commenced.
15 Aug 2018	Mr Lander wrote to the Commissioner of Police to advise that the corruption investigation was closed and no prosecution was to be brought against Chief Superintendent Barr. Mr Lander advised that he has determined to investigate potential issues of misconduct or maladministration in public administration.
Jul to Aug 2018	ICAC obtains further evidence including witness statements and interviews and obtains documents from SAPOL.
Sep 2018	ICAC obtains further evidence including witness statements.
14 Sep 2018	Investigation plan approved on 19 July 2018 sets this date as the target completion date for the preliminary inquiries phase to be completed.
20 Sep 2018	ICAC receives information from SAPOL as a result of a summons.
30 Sep 2018	Investigation plan approved on 19 July 2018 sets this date as the target completion date for the completion of interviews and examinations – whilst interviews have occurred, no examinations have occurred by this date.
Oct 2018	ICAC obtains further evidence including witness statements.
9 Nov 2018	Investigation plan approved on 19 July 2018 sets this date as the target completion date for submissions including submissions from relevant parties – this date was not met.
20 Dec 2018	Investigation plan approved on 19 July 2018 sets this date as the target completion date for report writing – this date was not met.
18 Feb 2019	Further advice received from the CSO which agrees with earlier advice of 16 February 2018 but notes that the matters raised by Mr Lander were reasonably open and it is open to him to proceed with investigations utilising the powers of the Ombudsman.
22 Feb 2019	Mr Lander wrote to the CSO suggesting a further opinion be obtained from the Solicitor-General.
1 Apr 2019	Advice received from the Solicitor-General which concluded that Mr Lander could utilise the powers of the Ombudsman.
8 Apr 2019	Senior Legal Officer 1 provides advice to Mr Lander about future action to be taken in the misconduct and maladministration investigation.
11 Apr 2019	Mr Lander determines to continue to investigate the matter.
7 May 2019	Mr Lander appoints senior counsel as Counsel Assisting.
22 May 2019	Mr Lander decides that he will examine Chief Superintendent Barr and Officer 1 using compulsory examination powers.

Date	Event
23 May to 24 May 2019	Mr Lander decides to examine Chief Superintendent Barr and Officer 1. Summonses are issued for this purpose.
23 May to 11 Jul 2019	Mr Lander conducts 27 compulsory examinations including examining Chief Superintendent Barr.
29 May 2019	Chief Superintendent Barr was served with ICAC summons to appear for compulsory examination.
30 May 2019	Chief Superintendent Barr met with his solicitor, Mr Fabbian.
10 Jul 2019	Chief Superintendent Barr attends before ICAC to give evidence at compulsory examination (Day 1).
11 Jul 2019	Chief Superintendent Barr attends before ICAC to give evidence at compulsory examination (Day 2). Mr Lander informs Chief Superintendent Barr that the submissions of Counsel Assisting would be ready in two to three weeks.
22 Jul 2019	Senior Legal Officer 1 suggested to Mr Lander that further information and documents be obtained.
1 Aug 2019	This date is three weeks from Chief Inspector Barr's attendance for compulsory examination on 11 July 2019, i.e. the time period within which he was told he would receive Counsel Assisting's submissions – this timeframe was not complied with. Chief Superintendent Barr's mental health deteriorated from August 2019 (ICAC is unaware of this).
4 August 2019	Counsel Assisting provides Senior Legal Officer 1 with a draft of the Variation to Schedule 2 Directions advice for comment.
6 Aug 2019	Senior Legal Officer 1 provides comments on the Variation to Schedule 2 Directions advice and advises that Mr Lander is happy for them to take the time needed to finalise the advice given the complexity of the issues involved.
21 Aug 2019	Senior Legal Officer 1 emails Counsel Assisting about the Variation to Schedule 2 Directions advice.
26 Aug 2019	Chief Superintendent Barr attends an appointment with a psychologist (ICAC is unaware of this).
27 Aug 2019	Chief Superintendent Barr emails his solicitor, Mr Fabbian, asking if he has heard anything from ICAC and whether he has any indication as to timelines (ICAC is unaware of this).
28 Aug 2019	Mr Fabbian informs Chief Superintendent Barr that he has not heard from ICAC and he is not able to give any guidance as to timeframes. He recommends not seeking an update from ICAC and says he expects contact soon. Chief Superintendent Barr responds thanking Mr Fabbian (ICAC is unaware of this).

Date	Event
30 Aug 2019	Chief Superintendent Barr attends an appointment with a psychologist and obtains a mental health care plan (ICAC is unaware of this).
5 Sep 2019	Senior Legal Officer 1 sends draft submissions to Counsel Assisting.
9 Sep 2019	Chief Superintendent Barr attends an appointment with a psychologist (ICAC is unaware of this).
Sep to Oct 2019	Chief Superintendent Barr's concerns about the ICAC investigation heighten, his mental health deteriorates, and he feels ostracised at work (ICAC is unaware of this).
3 Oct 2019	The Variation to Schedule 2 Directions advice is finalised.
10 Oct 2019	Counsel Assisting's written submissions are recorded as at this date.
13 Oct 2019	Emails between Senior Legal Officer 1 and Counsel Assisting indicating work is continuing on the written submissions.
14 Oct 2019	Chief Superintendent Barr attends an appointment relating to his mental health (ICAC is unaware of this).
17 Oct 2019	Mr Lander emails Senior Legal Officer 1 advising he has read the submissions and would like to discuss some matters next week.
18 Oct 2019	Chief Superintendent Barr was hospitalised.
23 Oct 2019	Chief Superintendent Barr passes away.
6 Nov 2019	ICAC advises Mr Fabbian that Counsel Assisting's submissions will not be circulated for a month due to Chief Superintendent Barr's passing.
20 Dec 2019	Mr Fabbian receives Counsel Assisting's written submissions.
13 Feb 2020	Judicial review proceedings are commenced in the Supreme Court against ICAC. The proceedings require ICAC to put the investigation on hold.
26 Jun 2020	Full Court of the Supreme Court dismisses the judicial review proceedings and determines to hear the parties as to costs (see <i>C v Independent Commissioner Against Corruption</i> (2020) 136 SASR 215; [2020] SASFC 57).
31 Aug to 1 Sep 2020	ICAC's Final Investigation Report is circulated to relevant parties, including Chief Superintendent Barr's family.