



# Report 2024/03: Review of PIR18/E17253 and complaint of Mr Michael Fuller

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* (ICAC Act), I provide to each of you my Report 2024/03: Review of PIR18/E17253 and complaint of Mr Michael Fuller.

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

Short name	Description
AA	Amending Agreement that was executed by Company A, Company B, Company C and Company D on 25 July 2013.
ACB	Anti-Corruption Branch within the Governance and Capability Service of South Australia Police
ASIC	Australian Securities and Investment Commission
CECB	Commercial and Electronic Crime Branch within the Crime Service of South Australia Police. Includes the Major Fraud Investigation Section.
CLCA	<i>Criminal Law Consolidation Act 1935 (SA)</i>
Committee	Select Committee on Damage, Harm or Adverse Outcomes Resulting from ICAC Investigations
Company A	Company that held an interest in the Partnership as a corporate trustee.
Company B	Company that held an interest in the Partnership as a corporate trustee.
Company C	Company that held an interest in the Partnership as a corporate trustee. C is a director of Company C.
Company D	Company that held an interest in the Partnership as a corporate trustee. C and Mr Lawton are both directors of Company D at the time the SPA is executed.
Company E	Company that held an interest in the Partnership as a corporate trustee. Company was created to hold Mr Lawton's interest in the Partnership. Mr Fuller becomes a director of Company E on 9 January 2019 and ceases to be a director on 30 November 2023.
CPIPC	Crime and Public Integrity Policy Committee
C's First Trust	C's First Trust holds an interest in the Partnership. Company C is the trustee.
C's Second Trust	C's Second Trust holds an interest in the Partnership. Company D is the trustee.
CoP	Commissioner of Police
Deputy CoP	Deputy Commissioner of Police
DPP	(Office of) the Director of Public Prosecutions

Short name	Description
EPSB	Ethical and Professional Standards Branch within the Governance and Capability Service of South Australia Police. Includes the Internal Investigation Section.
IAG	SAPOL Investigation Assessment Group
IAPro system	Complaint management system maintained by the Internal Investigation Section under the PCD Act
ICAC	The Commissioner and the Commissioner's employees and staff prior to the existence of the Independent Commission Against Corruption
ICAC Act	<i>Independent Commission Against Corruption Act 2012 (SA)</i>
ICAC Regulations	Independent Commission Against Corruption Regulations 2013 (SA)
IIS	Internal Investigations Section within the Ethical and Professional Standards Branch of the Governance and Capability Service of South Australia Police
Lawton's statutory declaration and annexures	Statutory declaration (9 pages) declared by Mr Lawton on 4 May 2018 before Ms Joana Fuller. Annexed to the declaration were various documents (476 pages) relating to the purchase of Mt Lyndhurst Station.
Lawton's Trust	Lawton's Trust holds an interest in the Partnership. Company D, and then later Company E, is the trustee of Lawton's Trust. The sole beneficiary of Lawton's trust is Mr Lawton
LPP	Legal professional privilege
MFIS	Major Fraud Investigation Section within the Commercial and Electronic Crime Branch within the Crime Service of South Australia Police
MRP	Management resolution process under Part 3 of the <i>Police Complaints and Discipline Act 2016 (SA)</i> .
OPI	Office for Public Integrity
Partnership	Glenstrae Pastoral Co Partnership. The Partnership owned and operated Mt Lyndhurst Station.
PCD Act	<i>Police Complaints and Discipline Act 2016 (SA)</i>
PCD Regulations	Police Complaints and Discipline Regulations 2017 (SA)
PSHA	<i>Public Sector (Honesty and Accountability) Act 1995 (SA)</i>
SAPOL	South Australia Police

Short name	Description
SPA	Sales and Purchase Agreement signed in January 2013
SPA 2	Second Sales and Purchase Agreement signed in July 2013
Station	Mt Lyndhurst Station, a pastoral holding in the Northern Flinders Ranges

## Key persons

Short name	Description
Bolingbroke	Detective Senior Sergeant Bolingbroke
Brown	Detective Senior Sergeant Brown
Commissioner Vanstone	The Hon Ann Vanstone KC, Commissioner of ICAC
Curtis	Chief Inspector Curtis, former Officer in Charge of the Internal Investigations Section.
Della Sala	Detective Brevet Sergeant Della Sala
Deputy Inspector Plummer	Mr Stephen Plummer, Deputy Inspector
Former Senior OPI Employee 1	A Senior OPI Employee (no longer employed within the OPI)
Isherwood	Chief Inspector Isherwood, former Officer in Charge of the Internal Investigation Section.
Mr Kimber SC	The Hon Adam Kimber SC, former Director of Public Prosecutions. His Honour was appointed a Justice of the Supreme Court of South Australia in June 2022.
Mr Lander	The Hon Bruce Lander KC, former Independent Commissioner Against Corruption.
Mr Riches	Mr Michael Riches, former Deputy Independent Commissioner Against Corruption.
Mr Gryst	Mr William Gryst, cousin of Mr Lawton. A current director of Company E.
Mr Fuller	Mr Michael Fuller
Mr Lawton	Mr Ian Lawton
Mr Longson	Mr Peter Longson, a former employee of the DPP.
Mr Pangallo	The Hon Frank Pangallo MLC
Mr Phillips	Mr Gary Phillips, a former employee of the DPP.
Ms Fuller	Mr Michael Fuller's daughter. Former Barrister. The Hon Joana Fuller was appointed a Judge of the District Court of South Australia in December 2019.



Osborn	Detective Chief Superintendent Osborn, former Officer in Charge of the Serious Crime Coordination Branch within the Crime Service of South Australia Police; Officer Second in Charge of the Crime Service of South Australia Police.
Reviewer Duggan	The Hon Kevin Duggan KC, former Reviewer
Reviewer Sulan	The Hon John Sulan KC, former Reviewer
Trenwith	Detective Superintendent Trenwith
Wieszuk	Detective Superintendent Wieszuk
Yeomans	Chief Superintendent Yeomans

## Introduction

1. The Mt Lyndhurst Station (the **Station**) is a pastoral holding of significance covering almost 3,500 square kilometres with its southern hills fed from the Northern Flinders Ranges. The Station stocks both cattle and sheep in large numbers.
2. In 2012 the Station was owned, by way of a Crown Lease, and operated by a partnership called Glenstrae Pastoral Co Partnership (the **Partnership**). The minor partner in the Partnership, with a 6.5% share, was Company C. One of Company C's directors at this time, and later its only director, was C.<sup>1</sup> C was also an accountant and a partner in an accounting firm.
3. In 2012, Mr Ian Lawton (**Mr Lawton**) was invited by C to purchase an interest in the Station. Mr Lawton knew C having previously engaged in other business dealings with C and having appointed C's accounting firm as his personal and business accountants. Mr Lawton's belief was that the Station was valued at approximately \$6 million. In January 2013, a Sales and Purchase Agreement (**SPA**) was signed by the relevant parties. The transfer of the Partnership interests occurred in two stages with most of the Partnership interests transferring to C and Mr Lawton in March 2013. The outstanding interests were transferred to C and Mr Lawton in July 2013 after the signing of a second Sale and Purchase Agreement (**SPA 2**) in June 2013.
4. By the end of 2013, the relationship between C and Mr Lawton had deteriorated and both partners were looking at ways to end the Partnership. The Station was ultimately sold again at auction in April 2016 for a reported figure of \$7.05 million.<sup>2</sup>
5. In May 2018 Mr Lawton complained to South Australia Police (**SAPOL**) that he had been the victim of criminal conduct by C in relation to the purchase of his interest in the Station. Mr Lawton complained that his company, Company E, had not received approximately \$120,000 owed to it as a refund for a shortfall in the number of sheep at the Station. Mr Lawton alleged that C had engaged in fraud and/or deception. The alleged fraud hinged on an Amending Agreement (**AA**) signed by C which retrospectively amended the price per head of sheep at the Station. Mr Lawton did not sign the AA, claimed he had not agreed to its terms and was never aware of its contents. The alleged value of the fraud (i.e., the loss to Company E) was \$120,000.
6. SAPOL commenced an investigation into Mr Lawton's complaint of criminal conduct by C. SAPOL decided to terminate the investigation on

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<sup>1</sup> Exhibit 67 (Volume 1) – ASIC search forming part of annexure IGL-2 to the statutory declaration of Ian Lawton at p 6-12.

<sup>2</sup> Exhibit 263 (Volume 4) – Media report, 15 April 2016 at p 1.

5 September 2018. It was the termination of this investigation that Mr Lawton complained about: initially on 3 December 2018 to the Commissioner of Police (**CoP**) and the Director of Public Prosecutions (**DPP**) and then to the Office for Public Integrity (**OPI**) on 21 January 2019. Further complaints were made to the OPI, the former Independent Commissioner Against Corruption, the Hon Bruce Lander KC (**Mr Lander**), and the current Commissioner, the Hon Ann Vanstone KC (**Commissioner Vanstone**). Complaints were also made to the former Reviewers, the Hon Kevin Duggan KC (**Reviewer Duggan**) and the Hon John Sulan KC (**Reviewer Sulan**). Mr Lawton was assisted in making his initial complaint to SAPOL and the DPP by Mr Michael Fuller (**Mr Fuller**). Mr Fuller was subsequently a co-complainant with Mr Lawton in relation to his various complaints to the OPI, Mr Lander, Commissioner Vanstone, Reviewer Duggan and Reviewer Sulan.

7. In 2021, being dissatisfied with how their complaints had been dealt with, Mr Lawton and Mr Fuller complained to the Parliamentary Select Committee on Damage, Harm or Adverse Outcomes Resulting from ICAC Investigations (the **Committee**). The Committee considered Mr Lawton and Mr Fuller's complaints and described them as matter PIR18/E1725 (in fact PIR18/E17253 is the correct reference). It was the Committee's Final Report delivered on 30 November 2021, and in particular Recommendation 8.1, that led to the Attorney-General requesting that I review this matter.<sup>3</sup> I also received a separate complaint from Mr Fuller about the same matter.
8. As a result of my review of this matter I have found no evidence of corruption, misconduct or maladministration in public administration by ICAC, the OPI or any employee of ICAC or the OPI.

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<sup>3</sup> Exhibit 1 (Volume 1) – Letter from the Attorney-General; Exhibit 228 (Volume 3) – the Committee's Final Report at p 42.

## Legislative framework

9. At all relevant times the provisions of the *Police Complaints and Discipline Act 2016* (SA) (**PCD Act**)<sup>4</sup> applied to complaints made about police officers.<sup>5</sup> Upon a complaint about a police officer being made to a designated officer, police public servant or the OPI, the person receiving the complaint must, as soon as is reasonably practicable, and in any event within 3 days, refer the complaint to the Internal Investigation Section (**IIS**) of SAPOL.<sup>6</sup>
10. Upon the IIS receiving a complaint particular information detailed in the *Police Complaints and Discipline Regulations 2017* (SA) (**PCD Regulations**)<sup>7</sup> must be recorded in the “*complaint management system*” by the officer in charge of the IIS or a member of the IIS to whom that function is given by the officer in charge.<sup>8</sup> The OPI need not refer a complaint about a police officer to the IIS if the OPI instead refers it to the Independent Commissioner Against Corruption (**Commissioner**) and when that occurs the Commissioner may investigate the complaint if satisfied that it is appropriate to do so.<sup>9</sup> However, the OPI can only refer such a complaint to the Commissioner if the OPI “*is satisfied that the complaint or report relates to matters that should be dealt with by*” the Commissioner under the PCD Act<sup>10</sup> or the *Independent Commission Against Corruption Act 2012* (SA) (**ICAC Act**).<sup>11</sup>
11. The PCD Act does not give guidance as to what matters should be dealt with by the Commissioner under the PCD Act (nor the ICAC Act) as it simply provides, in sections 30(1) and 30(2), that the ICAC “*may*” investigate a complaint or report referred to the ICAC under section 29, or of its own initiative, if “*satisfied that it is appropriate to do so*”.
12. Relevant provisions of the ICAC Act are set out in **Appendix A** to this Report. These demonstrate that at the relevant time the ICAC Act vested the Commissioner with the primary function and object of identifying and

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<sup>4</sup> The relevant version of the PCD Act is that which was in force from 4 September 2017 until 6 October 2021. Relevant provisions of the PCD Act are contained in **Appendix B** to this Report.

<sup>5</sup> The PCD Act applies to complaints against “*designated officers*” and section 3(1) of the PCD Act defines this term to include “*a member of SA Police*” (and others).

<sup>6</sup> PCD Act ss 13(1)-(2) (see **Appendix B**).

<sup>7</sup> The relevant version of the *Police Complaints and Discipline Regulations 2017* (SA) (**PCD Regulations**) is that which was in force from 4 September 2017 until 6 October 2021.

<sup>8</sup> PCD Regulations Sch 2 and r 6.

<sup>9</sup> PCD Act ss 13(3), 30(1) (see **Appendix B**). Section 30(2) also provides that the ICAC can investigate any other complaint if the ICAC is satisfied that it is appropriate to do so. However, without a matter being referred to the ICAC by the OPI, the ICAC would presumably only be aware of a complaint against SAPOL if the complaint arose in the course of an existing ICAC investigation.

<sup>10</sup> PCD Act s 29(1) (see **Appendix B**).

<sup>11</sup> The ICAC Act’s previous short title (until 7 October 2021) was the *Independent Commissioner Against Corruption Act 2012* (SA).

investigating “*corruption in public administration*”.<sup>12</sup> Pursuant to section 24(1) of the ICAC Act, where a matter is assessed by the OPI as raising a potential issue of corruption in public administration that could be the subject of a prosecution, then the matter “*must*” be investigated by the Commissioner or referred to SAPOL or another law enforcement agency.

13. For all other matters section 24 of the ICAC Act provided a variety of options depending on how the matter had been assessed.
14. Where a matter was assessed as raising a potential issue of misconduct or maladministration in public administration<sup>13</sup> the matter “*must*” be dealt with in one or more of the following ways:<sup>14</sup>
  - (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.
15. For matters assessed as raising other issues that “*should be dealt with by an inquiry agency, public authority or public officer*” the matter “*must be referred, or the complainant or reporting agency advised to refer the matter, to the agency, authority or officer*”.<sup>15</sup>
16. No action needed to be taken where a matter was assessed as “*trivial vexatious or frivolous*”, where the matter had “*previously been dealt with by an inquiry agency or public authority and there is no reason to examine the matter*” and where there was “*other good reason why no action should be taken in respect of the matter*”.<sup>16</sup>

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<sup>12</sup> ICAC Act ss 3(1)(a), 3(2)(a). See definition of “*corruption in public administration*” within **Appendix A**.

<sup>13</sup> See applicable definitions within **Appendix A**.

<sup>14</sup> ICAC Act s 24(2) (see **Appendix A**).

<sup>15</sup> ICAC Act s 24(3) (see **Appendix A**).

<sup>16</sup> ICAC Act s 24(4) (see **Appendix A**).

17. Importantly, section 24(7) of the ICAC Act provided that:

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.

(emphasis mine)

18. Absent a PCD Act complaint being referred to the Commissioner, it was for the IIS to assess each complaint and determine whether the complaint: (a) raises a potential issue of corruption in public administration that could be the subject of a prosecution, or (b) it raises a potential issue of misconduct or maladministration in public administration, or (c) it raises some other issue that should, in the opinion of the officer in charge of the IIS, be referred to the OPI.<sup>17</sup> If the complaint is assessed as raising the matters in either (a) or (c) then the officer in charge of the IIS must notify the OPI of this fact.<sup>18</sup>
19. However, the obligation on the IIS to assess each complaint is displaced in particular circumstances including where the conduct that is the subject of the complaint has previously been assessed by the IIS, the OPI or the Commissioner.<sup>19</sup> Further the CoP may decline to take further action in respect of a particular complaint in certain circumstances including where the conduct that is the subject of the complaint has previously been dealt with under the PCD Act or the ICAC Act.<sup>20</sup>
20. The PCD Act also provides that the OPI may, within three business days after the information required by the PCD Regulations relating to an assessment of a complaint by the IIS is entered into the complaints management system, reassess the complaint and/or substitute its assessment of the complaint for that entered in the complaints management system. But it can only take such action “*after consultation with the officer in charge of the IIS*”.<sup>21</sup>
21. Once a complaint has been assessed it must be investigated by the IIS unless an exception within section 21(2) of the PCD Act applies.<sup>22</sup> One exception is where the complaint is to be dealt with under Part 3 of the PCD Act.<sup>23</sup> Part 3 of the PCD Act enables matters to which that Part applies to be dealt with by the

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<sup>17</sup> PCD Act s 14(1) (see **Appendix B**). At the relevant time the terms “*corruption in public administration*”, “*misconduct in public administration*” and “*maladministration in public administration*” were defined in section 3(1) of the PCD Act as each having the same meaning as in the ICAC Act (see **Appendix A**).

<sup>18</sup> PCD Act s 14(4) (see **Appendix B**).

<sup>19</sup> PCD Act s 14(2) (see **Appendix B**).

<sup>20</sup> PCD Act s 15(a) (see **Appendix B**).

<sup>21</sup> PCD Act ss 28(1), 28(2) (see **Appendix B**). When the latter occurs the OPI’s substituted assessment is taken, for the purposes of the PCD Act, to be the assessment of the IIS in respect of the complaint.

<sup>22</sup> PCD Act s 21(1) (see **Appendix B**).

<sup>23</sup> PCD Act s 21(2)(a) (see **Appendix B**).

CoP “causing the matter to be referred to a suitable member of SA Police (the resolution officer) for resolution” in accordance with Part 3. Where a complaint is dealt with under Part 3 it is referred to as having been dealt with “by management resolution”. I will refer to this process as the Management Resolution Process (**MRP**).

22. Section 27(1) of the PCD Act provides that in relation to a complaint the OPI may give such directions to the CoP, the IIS or to a police officer conducting or assisting in an investigation on behalf of the IIS, “as the OPI thinks fit”. This ability to direct is stated to include directions as to a requirement that the IIS or a specified person provide specified information or a specified document or record and directions as to “the methods to be employed, the matters to be investigated or the evidence to be obtained in relation to a specified investigation or class of investigations”.<sup>24</sup> A direction under section 27(1) must be in writing and can only be given after consultation with the officer in charge of the IIS.<sup>25</sup> The current Director of the OPI has submitted to me that the ambit of the power to direct under section 27(1) of the OPI is arguably ambiguous and that it may only empower the OPI to give directions at the point at which a matter has proceeded to investigation under section 21. However, the Director accepts that an alternative view is that section 27(1) empowers the OPI to give directions at almost all stages of the process under the PCD Act.<sup>26</sup>
23. I do not have any direct role under the PCD Act. My role is created by Schedule 4 of the ICAC Act which also sets out my jurisdiction. Pursuant to clause 2(1) of Schedule 4, I have jurisdiction:
- (a) to conduct annual reviews examining the operations of the Office and the Commission during each financial year; and
  - (b) to conduct reviews relating to relevant complaints received by the Inspector; and
  - (c) to conduct other reviews on the Inspector’s own motion or at the request of the Attorney-General or the Committee; and
  - (d) to perform any other functions conferred on the Inspector by other Acts.
24. The reference to ‘the Office’ above, is a reference to the OPI. The reference to ‘the Committee’ above is a reference to the Crime and Public Integrity Policy Committee (**CPIPC**). The reference to ‘the Commission’ is a reference to the Independent Commission Against Corruption (the **Commission**). Where this Report refers to “**ICAC**” this is a reference to the Commissioner and the

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<sup>24</sup> PCD Act s 27(2) (see **Appendix B**).

<sup>25</sup> PCD Act s 27(3) (see **Appendix B**).

<sup>26</sup> Exhibit 406 (Volume 6) – Submission of the Director of the OPI, 17 April 2024 at [2].

Commissioner's employees and staff prior to the existence of the Commission.<sup>27</sup>

25. It is clear from the content of Schedule 4 of the ICAC Act as a whole that my 'review function' involves reviewing what can broadly be described as alleged impropriety on the part of persons exercising or purporting to exercise functions and/or powers under the ICAC Act. The purpose of any review I conduct is to identify whether there is any evidence of corruption, misconduct or maladministration in public administration on the part of the ICAC, the OPI or the Commission including employees and staff of the same.
26. Accordingly, my focus in any matter involving a complaint dealt with under the PCD Act and where the OPI and/or ICAC did not separately investigate the matter nor exercise any powers under the ICAC Act, will necessarily be on the oversight role performed by the OPI and whether there was a proper basis for the OPI declining to take action. Where subsequent complaints are made about the OPI's oversight role to the Commissioner, and where the Commissioner declines to take any action (as occurred here), my focus will be on whether there is any evidence of corruption, misconduct or maladministration in public administration on the part of the Commissioner or the Commissioner's employees. It is not enough that I might not have taken the same actions or ultimately even reached the same decision as the OPI or the Commissioner. I must consider whether there is any evidence of corruption, misconduct or maladministration in public administration on the part of the OPI, the Commissioner and the employees of the OPI and the Commissioner. In doing so I must assess the conduct in question in accordance with the definitions of the relevant terms (corruption, misconduct, or maladministration in public administration) as at the time of the relevant events/decisions/conduct.

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<sup>27</sup> See ICAC Act s 4(1), Sch 4 cl 1 as currently in force for the relevant definitions. I note that "*the Commission*" was only established by amendments to the ICAC Act which came into operation on 7 October 2021. When using the term ICAC I am referring to the Commissioner and all employees or other staff working for the Commissioner (including any Deputy Commissioner and Acting Commissioner) prior to 7 October 2021.



## Discretion to investigate

27. Central to this review is the decision by SAPOL on 5 September 2018 to cease an investigation into an allegation of criminal wrongdoing made by Mr Lawton against C. It is not possible for me to perform my review of the conduct of the OPI and ICAC in this matter, in accordance with the Amended Terms of Reference, without understanding this decision and the legal context in which it was made. It is important to acknowledge at the outset that SAPOL has a discretion with respect to what matters it decides to investigate and how any investigations are to be conducted including what lines of inquiry are pursued. That discretion is to be informed by a myriad of relevant factors including the public interest in ensuring available police resources are deployed for appropriate purposes.
28. The purpose of SAPOL informs the exercise of the discretion whether and how to conduct an investigation. Section 5 of the *Police Act 1998* (SA) provides:
- The purpose of SA Police is to reassure and protect the community in relation to crime and disorder by the provision of services to—
- (a) uphold the law; and
  - (b) preserve the peace; and
  - (c) prevent crime; and
  - (d) assist the public in emergency situations; and
  - (e) co-ordinate and manage responses to emergencies; and
  - (f) regulate road use and prevent vehicle collisions.<sup>28</sup>
29. As well as being required to serve SAPOL and its purpose, a police officer has certain duties at common law including a duty to enforce the law, to prevent breaches of the peace, to uphold the law, to protect life and property, to prevent crime and to apprehend offenders. However, the law has long recognised that those duties have an inherent discretionary component. Although that discretion is wide, it must still be exercised reasonably and impartially as to do otherwise could be to fail to perform the duty.
30. The UK Court of Appeal considered the issue of police discretion in *R v Commissioner of Police of the Metropolis; Ex Parte Blackburn* which considered

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<sup>28</sup> This provision has not been amended since the *Police Act 1988* (SA) was enacted.

a deliberate policy of the Metropolitan Police to not enforce particular gaming laws.<sup>29</sup> Lord Denning MR stated:<sup>30</sup>

*Although the chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not interfere. For instance, it is for the Commissioner of Police of the Metropolis, or the chief constable as the case may be, to decide in any particular case whether inquiries should be pursued, or whether an arrest should be made, or a prosecution brought. It must be for him to decide on the disposition of his force and the concentration of his resources on any particular crime or area. No court can or should give him direction on such a matter. He can also make policy decisions and give effect to them, as, for instance, was often done when prosecutions were not brought for attempted suicide. But there are some policy decisions with which, I think, the courts in a case can, if necessary, interfere. Suppose a chief constable were to issue a directive to his men that no person should be prosecuted for stealing any goods less than £100 in value. I should have thought that the court could countermand it. He would be failing in his duty to enforce the law.*

31. The wide discretion conferred on police officers with respect to their duty to enforce the law has been recognised in a number of Australian cases relating to whether the police owe a duty of care to complainants to investigate an alleged offence. Those cases have established that there is no general duty of care owed by police to complainants to investigate an alleged offence and there must be some exceptional circumstances for any civil liability to arise from the failure to investigate a complaint.
32. In *Hinchcliffe v Commissioner of Police of the Australian Federal Police*<sup>31</sup> Justice Kenny accepted that the AFP's functions include the prevention of crimes and associated activities, such as the investigation of complaints about the commission of crimes with a view to the identification of offenders. Justice Kenny cited the above passage from *Blackburn* with approval.<sup>32</sup> Justice Kenny went on to consider when a police officer may fail in his or her duty to enforce the law stating:<sup>33</sup>

*I accept that, where a member of the AFP receives a complaint from a member of the public, the member discharges his or her duty to enforce the law if:*

- (1) *he or she gives due and proper consideration to the question whether and in what way an initial inquiry into the complaint should be made; and*
- (2) *he or she acts appropriately upon the view which he or she has formed.*

*A range of matters may be pertinent to the member's consideration of the complaint, depending on the circumstances.*

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<sup>29</sup> [1968] 2 QB 118; 2 WLR 893.

<sup>30</sup> [1968] 2 QB 118; 2 WLR 893 at 902-3. See also Salmon LJ at 904-905 and Edmund Davies LJ at 913.

<sup>31</sup> (2001) 118 FCR 308.

<sup>32</sup> (2001) 118 FCR 308 at 319-20 [31]-[34].

<sup>33</sup> (2001) 118 FCR 308 at 320 [37].

33. In *Sullivan v Moody*, the High Court referred to a House of Lords decision in which it was held that police officers did not owe a duty to individual members of the public who might suffer injury through their careless failure to apprehend a dangerous criminal noting that:<sup>34</sup>

*Lord Keith of Kinkel pointed out that the conduct of a police investigation involves a variety of decisions on matters of policy and discretion, including decisions as to priorities in the deployment of resources. To subject those decisions to a common law duty of care, and to the kind of judicial scrutiny involved in an action in tort, was inappropriate.*

34. In *O'Malley v Keelty (Australian Federal Police Commissioner)*,<sup>35</sup> Judge Emmett (in the context of judicial review proceedings against the Australian Federal Police), stated:<sup>36</sup>

*Generally speaking, the Commissioner must act so as to facilitate the performance by the Australian Federal Police of its statutory functions. However, whilst a Commissioner of Police has a duty to enforce the law, he or she also has a broad discretion as to the manner in which he or she chooses to fulfil the responsibilities of office. Where a member of the Australian Federal Police receives a complaint from a member of the public, the member of the Australian Federal Police would certainly discharge his or her duty to enforce the law if he or she gives due and proper consideration to the question of whether, and in what way, an initial inquiry into the complaint should be made, and then acts appropriately upon the view formed ...*

*The duty of the Commissioner is to enforce the law. He or she must take steps to post police officers so that crimes may be detected and that honest citizens may go about their affairs in peace. But the Commissioner is not the servant of anyone save the law itself. Although the Commissioner is answerable to the law, there are nevertheless many fields in which the Commissioner will have a discretion with which the law will not interfere. **It is for the Commissioner to decide in any particular case whether inquiries should be pursued. It must be for the Commissioner to decide on the disposition of the force and concentration of the resources available on any particular crime or area. No court can or should give the Commissioner direction on such a matter ...***

*Nevertheless, the Commissioner of Police is not beyond the law. If the police fail in the duties, however ephemeral it may be to describe them, a citizen is entitled to assistance in ensuring that the police do their duty. **For example, if there was evidence of a dishonest refusal to investigate on the part of an investigating officer, or if the evidence suggests that an honest police officer acting reasonably could not properly come to the view that the matter was not capable of investigation there may be, and I emphasise may be, a basis upon which the Court could interfere.***

(emphasis mine)

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<sup>34</sup> (2001) 207 CLR 562 at [57] citing *Hill v Chief Constable of West Yorkshire* [1989] AC 53 at [63].

<sup>35</sup> [2004] FCA 1688.

<sup>36</sup> *O'Malley v Keelty (Australian Federal Police Commissioner)* [2004] FCA 1688 at [6]-[8].

35. In 2010, Justice Kyrou of the Supreme Court of Victoria in a civil case against the State of Victoria and various Victoria Police defendants put it this way:<sup>37</sup>

*... in general, police officers will not owe a duty of care to a particular complainant of actual or threatened criminal conduct because the imposition of such a duty would be inconsistent with the performance of their public duty to enforce the criminal law, which requires them to exercise discretion in prioritising the use of scarce investigative resources in the public interest...*

*While police officers do not enjoy blanket immunity from liability for harm caused by their failure to investigate complaints, the authorities indicate that a duty of care will not be recognised unless there is something exceptional in the circumstances of a particular case that warrants such recognition. In the absence of exceptional circumstances, the mere failure by police to investigate a complaint of actual or threatened criminal conduct is not sufficient.*

36. The role of investigating criminal offences is not limited to police. Many public authorities have an investigative function conferred on them by statutes containing criminal offences. Ordinarily, the power to investigate is expressed as a discretion (i.e., “*may*” investigate) rather than an obligation (i.e., “*must*” investigate). The statute will set out any applicable jurisdictional limits and may contain relevant factors to consider when determining whether to investigate.
37. In the case of the Commissioner and ICAC, I have set out the relevant legislative provisions in paragraphs [12]-[17] above and in **Appendix A**. In essence, ICAC is only required to investigate SAPOL’s decision to cease the investigation of a matter if alleged conduct associated with the decision is first assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution. Even in that situation the Commissioner could instead decide to refer the matter to another law enforcement agency for investigation.
38. For matters involving “*serious or systemic*” maladministration in public administration the Commissioner has a discretion as to whether to exercise the powers of an inquiry agency or whether to deal with the matter in some other way.<sup>38</sup> For matters involving “*serious or systemic*” misconduct in public administration the matter would need to have a connection with another matter already under investigation in order for the Commissioner to have a discretion as to whether to exercise the powers of an inquiry agency or whether to deal with the matter in some other way.<sup>39</sup> Where the Commissioner has a discretion the ICAC Act is abundantly clear that this discretion is “*absolute*”.<sup>40</sup>

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<sup>37</sup> *Slaveski v Victoria* [2010] VSC 441 at [345]-[347] and see [2099]-[2119] for application to the facts in that case.

<sup>38</sup> ICAC Act s 24(2)(b) (see **Appendix A**).

<sup>39</sup> ICAC Act s 24(2)(c) (see **Appendix A**).

<sup>40</sup> ICAC Act s 24(7) (see **Appendix A**).

## Attorney-General's request and Terms of Reference

39. By letter dated 6 March 2023 the Hon Kyam Maher MLC, Attorney-General wrote to me concerning the Committee's Final Report, and in particular Recommendation 8.1 relating to PIR18/E17253. The Attorney-General requested that I review the involvement of the OPI and ICAC in that matter and provided me with draft Terms of Reference that had been drafted by the Chair of the Committee the Hon Frank Pangallo MLC (**Pangallo**).<sup>41</sup> I considered this letter to be a request to conduct a review pursuant to clause 2(1)(c) of Schedule 4 of the ICAC Act.
40. My Office then set about gathering information relevant to the Attorney-General's request. By letter dated 10 July 2023, I wrote to the Attorney-General seeking clarification in relation to the Terms of Reference for this review.<sup>42</sup> I noted that the Committee's draft Terms of Reference included matters that fell outside of my jurisdiction, as established within Schedule 4 of the ICAC Act. For example, the Committee's draft Terms of Reference referred to reviewing the conduct of the CoP and "*other high ranking SAPOL officers*" as well as the conduct of Reviewer Duggan and Reviewer Sulan.<sup>43</sup>
41. I have no jurisdiction to examine either Mr Lawton's original complaint to SAPOL, or the handling of police complaints generally, or SAPOL's compliance with the PCD Act. I have no jurisdiction to examine the operations of the Reviewer. I only have jurisdiction to review the OPI and the Commissioner's review of SAPOL's decision to cease investigation into the complaint. Accordingly, I provided the Attorney-General with my own draft Terms of Reference and invited him to make any comment that he saw fit.<sup>44</sup>
42. On 15 August 2023 the Attorney-General informed me that he accepted that my jurisdiction to conduct the review was limited as I had described in my letter and as set out in my draft Terms of Reference and that he had no further comment to make on the proposed terms.<sup>45</sup> Accordingly, I proceeded to commence my review of this matter in accordance with the Terms of Reference provided to the Attorney-General. A copy of those Terms of Reference appears at **Appendix C – Terms of Reference** to this Report.
43. During the course of my review, it became apparent that the wording of the initial Terms of Reference would benefit clarification. Accordingly, on 7 April 2024 I varied the Terms of Reference. The Amended Terms of

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<sup>41</sup> Exhibit 1 (Volume 1) – Letter from the Attorney-General.

<sup>42</sup> Exhibit 2 (Volume 1) – Letter from the Inspector to the Attorney-General.

<sup>43</sup> Exhibit 1 (Volume 1) – Letter from Attorney-General at p 2 [1]-[3].

<sup>44</sup> Exhibit 2 (Volume 1) – Letter from the Inspector to the Attorney-General; Exhibit 3 (Volume 1) – Draft Terms of Reference.

<sup>45</sup> Exhibit 4 (Volume 1) – Minute from the Attorney-General.

Reference appears at **Appendix D – Amended Terms of Reference** to this Report. Pursuant to the Amended Terms of Reference my review will examine ICAC and the OPI’s involvement in Mr Lawton’s matter including:

- (a) Whether there was evidence of corruption, misconduct or maladministration on the part of ICAC, OPI or employees of ICAC or OPI.
  - (b) Whether there was unreasonable delay in the conduct of investigations under the ICAC Act.
  - (c) Whether there were unreasonable invasions of privacy by ICAC, OPI or employees of ICAC or OPI.
  - (d) Whether undue prejudice to the reputation of any person was caused.
  - (e) Whether the practices and procedures of ICAC and OPI were effective and efficient.
  - (f) Whether ICAC and OPI carried out functions in a manner that was likely to assist in preventing or minimising corruption in public administration.
44. The areas of the matter that are stated in the Amended Terms of Reference to be the subject of the review include:
- (a) The decision by the OPI on about 6 February 2019, when reviewing the assessment of the IIS of SAPOL and the management resolution process undertaken under the PCD Act, to not reassess the complaint nor substitute its assessment of the complaint pursuant to section 28(1) of the PCD Act and to take no further action.
  - (b) The decision by Mr Riches on 3 July 2019 to take no further action in relation to the above matter other than writing to the Commissioner of Police about the need to provide timely and accurate explanations to persons who have an interest in an investigation.
  - (c) The decision by Mr Lander on 12 August 2019 to take no further action in relation to the above matter.
  - (d) The decision by the OPI on about 13 December 2019, when reviewing the assessment of the IIS to take no action in relation to a further complaint made by Mr Lawton and Mr Fuller, to not reassess the complaint nor substitute its assessment of the complaint pursuant to section 28(1) of the PCD Act and to take no further action.
  - (e) The decision by Commissioner Vanstone on 20 October 2020 to take no further action in relation to the above matter.

- (f) Whether the above matter raised issues of corruption, misconduct or maladministration which required the OPI or ICAC to further investigate the matter or take any other action.
45. On completing a review, or at any time during a review, I may do any of the following:<sup>46</sup>
- (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;<sup>47</sup>
  - (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
  - (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.
46. Pursuant to clause 9(9)(a) of Schedule 4 of the ICAC Act, in preparing a report I must consider the effect of the proposed report on any complaint, report or assessment, investigation or referral under the ICAC Act. I am satisfied that this Report will have no effect on any complaint, report, assessment, investigation or referral under the ICAC Act.

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<sup>46</sup> ICAC Act Sch 4 cl 9(6), as currently in force.

<sup>47</sup> ICAC Act Sch 4 cl 9(8), as currently in force.

## Mr Fuller's relevant complaint

47. On 5 August 2023 my Office received an email from Mr Fuller advising that he had delivered a complaint to my GPO Box on 4 August 2023.<sup>48</sup> Attached to this email was a 12-page document titled *“Schedule 4 – Complaint to ICAC Inspector by Michael Fuller – Independent Commission Against Corruption Act 2012 and Police Complaints and Discipline Act & Regulations”*.<sup>49</sup> This document had been signed by Mr Fuller on 3 August 2023. My Office also received a physical folder which contained the same document to which was attached 11 *“Exhibits”*.<sup>50</sup>
48. Pursuant to clause 2(1)(b) of Schedule 4 to the ICAC Act I may conduct a review relating to *“relevant complaints”* I receive. A *“relevant complaint”* is defined in clause 1 as meaning a complaint made in accordance with any requirements prescribed by the regulations relating to the conduct of any person exercising or purporting to exercise functions and powers under the Act. Regulation 21 of the Independent Commission Against Corruption Regulations 2013 (SA) (**ICAC Regulations**) provides that a complaint may only be made by email or mail addressed to me and must include details of the alleged conduct that is the subject of the complaint and contact details for the complainant.
49. I am satisfied that Mr Fuller's complaint is a *“relevant complaint”* for the purposes of the ICAC Act and ICAC Regulations. My comments above regarding the scope of my review and the actions I may take during or at the conclusion of a review apply equally to Mr Fuller's relevant complaint.
50. In his complaint Mr Fuller acknowledges that his complaint *“has its genesis in the alleged wrongful termination by officers of CECB of a complaint to them by Lawton”*.<sup>51</sup> Mr Fuller asserts that this began with *“an original series of lies told by CECB officer Della Sala to Lawton and to Joana Fuller, approbated actively or inadvertently by unidentified OPI Senior Assessors ... then covered up by a succession of hierarchical officers from former OPI Director, up to and including former Deputy ICAC, successive ICAC, and successive ICAC Reviewers”*.<sup>52</sup> Mr Fuller asserts that when the *“truth is exposed then each, and every one of them will be exposed to charge for minor indictable offending”*.<sup>53</sup> I take Mr Fuller to mean that a review of his complaint will result in each of the persons he has made allegations against as being liable to be charged with one or more serious criminal offences. Mr Fuller also asserts that his complaint is *“a literal*

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<sup>48</sup> Exhibit 6 (Volume 1) – Email from Mr Fuller, 5 August 2023.

<sup>49</sup> Exhibit 7 (Volume 1) – Mr Fuller's complaint.

<sup>50</sup> Exhibits 9 to 19 (Volume 1) – Exhibits to Mr Fuller's complaint.

<sup>51</sup> Exhibit 7 (Volume 1) – Mr Fuller's complaint at p 6. I understand Mr Fuller to be referring to the Commercial and Electronic Crime Branch (**CECB**) of the Major Fraud Investigation Section (**MFIS**) of SAPOL.

<sup>52</sup> Exhibit 7 (Volume 1) – Mr Fuller's complaint at p 3 [4].

<sup>53</sup> Exhibit 7 (Volume 1) – Mr Fuller's complaint at p 3 [8].



*‘Pandora’s Box’ for you to lift the lid or not lift the lid” and that I will “either just be another way station in my pursuit of ‘truth telling’ and join the list of persons reasonably suspected of criminal conduct or you will be celebrated for your exposure of systemic corruption in the premier law enforcement agencies in South Australia”.*<sup>54</sup>

51. As the matters raised by Mr Fuller’s complaint that fall within my jurisdiction replicate those relating to the Attorney-General’s request detailed above, I determined that I would conduct a review in relation to Mr Fuller’s complaint and that this review would be conducted concurrently with the review requested by the Attorney-General and in accordance with the Amended Terms of Reference relating to the Attorney-General’s request. Accordingly, this Report relates to both the Attorney-General’s request and Mr Fuller’s relevant complaint.
52. Provided with Mr Fuller’s complaint was a document titled *“About Michael Fuller”* which was dated 6 December 2021.<sup>55</sup> A similar document dated 25 January 2019, was also provided to the OPI by Mr Fuller.<sup>56</sup> Both documents provide a summary of Mr Fuller’s working life and include the fact that he practised as a solicitor from 1964 to the *“late 80s”*, was involved as a director of various companies in the 1980s and early 1990s, was declared bankrupt in May 1993 and ceased to hold a legal practising certificate at that time and has not since regained his practising certificate. Mr Fuller states that since 2003 he has been *“engaged in commercial activity and contract work for a number of Solicitors in Adelaide”* and also *“privately assist[s] people in need to understand the legal processes they come up against and review the competence of any legal advice being given and/or make recommendations with respect to legal representation”*. Mr Fuller adds that he does not *“advertise or hold myself out as a practising solicitor I only assist a person upon recommendation from persons well known to me or from persons I have helped in the past”*.<sup>57</sup>
53. Precisely how Mr Fuller assists people who are recommended or known to him is unclear from this document as is whether he usually charges for his services. However, a publicly available decision of the Supreme Court of South Australia records that in 2008 Mr Fuller was operating as a *“business adviser”* and/or *“general advisor”* which included him co-ordinating the retainer of legal and other professional advice, assisting persons in the course of their performance as guardians and as administrators of an estate and interfacing with solicitors and counsel in relation to proposed litigation and the conduct thereof.<sup>58</sup> The

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<sup>54</sup> Exhibit 7 (Volume 1) – Mr Fuller’s complaint at p 3 [9]-[10].

<sup>55</sup> Exhibit 9 (Volume 1) – Exhibit 1 to Mr Fuller’s complaint.

<sup>56</sup> Exhibit 26 (Volume 1) – First attachment to an email from Mr Fuller to the OPI.

<sup>57</sup> Exhibit 9 (Volume 1) – Exhibit 1 to Mr Fuller’s complaint at p 5.

<sup>58</sup> *Jeavons v Chapman (No. 2)* [2009] SASC 3, 12 January 2009 per Gray J at [10]-[11].

decision records that in that particular matter he was paid by his clients an upfront fee of \$10,000 and then had been paid a further \$35,900 based on an hourly rate of \$200 per hour.<sup>59</sup> Whether Mr Fuller had any similar arrangement with Mr Lawton is unknown and is not a matter into which I have inquired.

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<sup>59</sup> *Jeavons v Chapman (No. 2)* [2009] SASC 3, 12 January 2009 per Gray J at [10]-[11].

## Conduct of my review

### Records accessed and reviewed

54. In conducting my review my Office has had full access to the OPI/ICAC files relating to this matter. Reviewing the documents and records within those files has enabled me to have a comprehensive understanding of the handling of this matter by the OPI/ICAC including the OPI's oversight of the IIS. On 4 December 2023, a Senior Legal Officer within my Office accessed the file relating to this matter which forms part of the complaint management system maintained by the IIS under the PCD Act (the **IAPro system**), made copies of relevant documents and provided me with relevant information about the content of that file.
55. Additionally, I have had access to records maintained by Reviewer Duggan and Reviewer Sulan. Although my role does not involve a review of the conduct of, and/or actions taken by, the former Reviewers, I have nevertheless found it useful to consider those records.
56. I have also had access to transcript of the Committee and the CPIPC and documents submitted to those committees which relate to this matter. I take the view that these materials are subject to parliamentary privilege irrespective of whether they are publicly available. This means they cannot be used by me as evidence to support any adverse findings. The materials do not, however, need to be wholly disregarded and I have had regard to them in determining whether to seek additional evidence from any relevant person or organisation.
57. I have also had regard to the content of Mr Fuller's complaint to me dated 3 August 2023 and the 11 "*Exhibits*" attached to that complaint.<sup>60</sup> In his complaint Mr Fuller requests that I consider exercising my compulsive powers "*to expose to the public gaze ineptitude, cover up of ineptitude, and ultimately complicity in corruption*" by various persons involved in reviewing his complaints including Mr Riches, Mr Lander and Commissioner Vanstone. Mr Fuller also states that my review will "*necessarily extend to an examination of the complaint's genesis in the dealing by the SAPOL personnel concerned in the resolution of Lawton's complaint to [CoP] Stevens of 3 December 2018 and my and Lawton's complaint to OPI of 29 January 2019*". I will not set out the remainder of the contents of the complaint as it in large part repeats previous complaints made by Mr Fuller which are detailed below. However, I note that the primary claim contained in Mr Fuller's complaint is that a particular SAPOL officer, Detective Brevet Sergeant Della Sala (**Della Sala**), told a "*series of lies*", that this was "*covered up by a succession of hierarchical officers*" including

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<sup>60</sup> Exhibits 6 to 19 (Volume 1) – Mr Fuller's complaint and exhibits.

Mr Lander and Commissioner Vanstone. Mr Fuller puts particular emphasis on a letter he received from Mr Riches dated 3 July 2019 calling this “*the ‘Rosetta Stone’ upon which I rely for insight into the manipulation and perversion by [the CoP] of PCDA with the active assistance of IIS, approbated by OPI*”. Mr Fuller also included a list of steps that he considered I should take in conducting my review including the issuing of summonses to Commissioner Vanstone, the CoP and the DPP and requested that I meet with him in person “*to establish, if possible, an agreed modus operandi*”. Mr Fuller expressed concern about my “*ability to bring rigour to the task of investigating this my complaint*” arising from what Mr Fuller described as my “*interim report in the ‘Hanlon Matter’*” and proceeded to critique the content of that report within his complaint.<sup>61</sup>

## Further evidence obtained and authorisations

58. There was a large volume of documentary material available to me relating to Mr Lawton’s original complaint of criminal conduct by C, and in relation to Mr Lawton and Mr Fuller’s subsequent complaints to the OPI and ICAC. There were only a few topics upon which I considered I required additional information.
59. In total I obtained one company search from the Australian Securities and Investments Commission (**ASIC**) and issued six notices pursuant to clause 7 of Schedule 4 of the ICAC Act as follows:
  - (a) on 12 December 2023, a notice to the CoP compelling the production of records that fell into four categories: three of which related to legal advice provided by the DPP to SAPOL in relation to PIR18/E17253 and one of which related to policies and procedures relating to the investigation of complaints of criminal conduct;<sup>62</sup>
  - (b) on 15 December 2023, a notice to Former Senior OPI Employee 1 compelling the provision of information in the form of a statutory declaration relating to steps taken by him in February to July 2019 in relation to a complaint made to the OPI by Mr Lawton and Mr Fuller;<sup>63</sup>
  - (c) on 12 February 2024, a notice to a former SAPOL officer, Detective Chief Superintendent Osborn (**Osborn**), compelling the provision of information in the form of a statutory declaration relating to his role as the “*resolution officer*” of Mr Lawton’s initial PCD Act complaint in

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<sup>61</sup> Exhibit 7 (Volume 1) – Mr Fuller’s complaint at p 4 [14]-[24]. My Report in the Hanlon matter (Report 2023/01) was dated 26 June 2023 and was not an “*interim*” report.

<sup>62</sup> Exhibit 325 (Volume 4) – Letter and Notice to the CoP.

<sup>63</sup> Exhibit 326 (Volume 4) – Letter and Notice to Former Senior OPI Employee 1.

December 2018 to February 2019 (this role will be explained further below);<sup>64</sup>

- (d) on 12 February 2024, a notice to the DPP, Mr Martin Hinton KC, compelling the production of documents relating to legal advice provided by the DPP to SAPOL in relation to PIR18/E17253;<sup>65</sup>
  - (e) on 14 February 2024, a notice to Mr Peter Longson (**Mr Longson**), a former employee of the DPP, compelling the provision of information in the form of a statutory declaration, and any relevant documents held by him, relating to any legal advice he provided to SAPOL in relation to PIR18/E17253;<sup>66</sup>
  - (f) on 16 February 2024, a notice to Mr Gary Phillips (**Mr Phillips**), a former employee of the DPP, compelling the provision of information in the form of a statutory declaration, and any relevant documents held by him, relating to any legal advice he provided to SAPOL in relation to PIR18/E17253.<sup>67</sup>
60. Each notice I issued was complied with within the time frame required. I am thankful to each of the abovenamed for their assistance.
61. I note that when I wrote to the CoP on 12 December 2023 providing the notice referred to in paragraph [59(a)] above, I raised the issue of the potential for the records sought to contain information protected by legal professional privilege (**LPP**). I requested that, if the CoP considered that LPP applied, that he waive LPP to enable the documents sought to be provided and to enable any legal practitioner employed within the DPP who provided advice to SAPOL about this matter to provide me with information about that advice.<sup>68</sup> On 11 January 2024 the Acting CoP advised that LPP was waived in respect of the documents produced and was waived to enable me to obtain relevant information from any solicitor currently or previously employed by the DPP.<sup>69</sup>
62. I did not consider it necessary or appropriate to hold any compulsive examinations in the course of my review.
63. I have considered and rejected the submissions put to me by Mr Fuller as to what compulsive powers he thought I ought to exercise in this matter. I have been given significant powers within Schedule 4 of the ICAC Act. Those powers should only be exercised where necessary and for a proper purpose. There

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<sup>64</sup> Exhibit 367 (Volume 5) – Letter and Notice to Osborn.

<sup>65</sup> Exhibit 368 (Volume 5) – Letter and notice to the DPP.

<sup>66</sup> Exhibit 369 (Volume 5) – Letter and Notice to Mr Longson.

<sup>67</sup> Exhibit 370 (Volume 5) – Letter and Notice to Mr Phillips.

<sup>68</sup> Exhibit 325 (Volume 4) – Letter to CoP at p 3.

<sup>69</sup> Exhibit 338 (Volume 5) – Letter from Acting CoP at p 1-2.

was no rational basis for me to exercise any powers other than those outlined in paragraph [59] above.

64. There were some background and contextual matters which I considered may be able to be addressed in a voluntary witness statement from Mr Lawton. I arranged for Deputy Inspector Plummer to obtain such a statement from Mr Lawton, in the presence of Mr Lawton's then solicitor, on 13 December 2023.<sup>70</sup> Although Mr Lawton initially agreed to this arrangement, his solicitor subsequently ceased to act for him and he decided that he did not wish to attend to provide a statement at this time.<sup>71</sup> On 14 December 2023 Mr Lawton informed Deputy Inspector Plummer that he would be willing to provide a voluntary statement (at which time he and I would appear remotely via video link) in the latter half of January 2024.<sup>72</sup> On 11 January 2024 Mr Lawton was informed that the meeting would most likely occur on 25 January 2024.<sup>73</sup> However, on 15 January 2024 Mr Lawton informed Deputy Inspector Plummer that he no longer wished to attend to provide a voluntary witness statement.<sup>74</sup>
65. As the matters Mr Lawton's witness statement were to address were not matters that went to any key issues in this matter, and given he was to be afforded procedural fairness prior to the finalisation and publication of this Report, I did not consider it appropriate or necessary to compel Mr Lawton to provide information nor attend for an examination.
66. I did not consider it was necessary for me to obtain any further information from Mr Fuller given his very lengthy written complaints and submissions and given that he was to be provided with procedural fairness prior to the finalisation and publication of this Report.
67. 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.<sup>75</sup> I must not include information in a report if publication would constitute an offence against section 54 of the ICAC Act. I also must not include information in a report if publication would constitute an offence against section 46 of the PCD Act. To ensure compliance with these provisions, I

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<sup>70</sup> Exhibit 290 (Volume 4) – Letter to Mr Lawton, 24 November 2023.

<sup>71</sup> Exhibit 320 (Volume 4) – Email from Mr Lawton's solicitor, 12 December 2023; Exhibit 321 (Volume 4) – File Note, 14 December 2023.

<sup>72</sup> Exhibit 327 (Volume 4) – File Note, 18 December 2023.

<sup>73</sup> Exhibit 359 (Volume 5) – File note, 11 January 2024; Exhibit 363 (Volume 5) – Email and letter to Mr Lawton, 25 January 2024.

<sup>74</sup> Exhibit 359 (Volume 5) – File note, 11 January 2024; Exhibit 363 (Volume 5) – Email and letter to Mr Lawton, 25 January 2024.

<sup>75</sup> ICAC Act s 3(1)(c), as currently in force.

obtained a number of authorisations under the ICAC Act and PCD Act in the course of reviewing this matter prior to disclosing information and distributing and publishing this Report. These are set out in **Appendix E – Authorisations** to this Report. This Report anonymises certain names either because I am not authorised to name the person or because I have taken the view that it is unnecessary to name the person for the purpose of discharging my functions having regard to the need to ensure that no undue prejudice is caused to any individual’s reputation. I have included within this Report the names of SAPOL officers against whom a complaint was made under the PCD Act pursuant to an authorisation by Commissioner Vanstone under the PCD Act on 18 March 2024.<sup>76</sup> I have done so as the officers have previously been publicly named by Mr Lawton and Mr Fuller and it is preferable for reasons of transparency that they be named here.

## Communications with Mr Lawton and Mr Fuller

68. I initially invited Mr Fuller and Mr Lawton to attend a meeting with me in person in November 2023 as I considered it may be useful for me to explain to them the nature of my role and what my review of this matter was likely to involve. However, on 29 September 2023, Mr Fuller sent me and Deputy Inspector Plummer a lengthy email in which his focus was my report in the Hanlon matter<sup>77</sup> and his critique of that report. Mr Fuller was not involved in any way in the facts arising in the Hanlon matter nor in my review of the Hanlon matter.
69. On 12 October 2023 I wrote to Mr Fuller asking him to clarify whether, in light of his expressed concerns about the Hanlon report, it was his wish for my Office to not continue to review his complaint.<sup>78</sup> On 13 October 2023 Mr Fuller responded but did not directly answer this question. Rather he asserted that my failure to respond to his critique of the Hanlon matter raised questions as to *“the fitness for continuation in office of you Mr Strickland and you Mr Plummer”* and asserted that a continued failure to answer *“will also indict you Mr Strickland, and you Mr Plummer, as persons liable to be suspended from office pursuant to ICAC Act Schedule 4 Sect. 2(8)(b) or (c) and Sect. 3(3)(b) or (c) respectively”*. Mr Fuller then demanded a detailed response to his submission by 5pm that day stating that otherwise *“The cards will fall where they may”*.<sup>79</sup>
70. On 14 November 2023 I wrote to Mr Fuller (copying Mr Lawton) advising that his communications were threatening in tone and content and appeared to be an attempt to intimidate both me and Deputy Inspector Plummer. I informed Mr Fuller that correspondence of this nature sent to public officers is entirely

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<sup>76</sup> Exhibit 389 (Volume 4) – Authorisation issued by Commissioner Vanstone.

<sup>77</sup> Report 2023/01: Review of the investigation and prosecution of Mr John Hanlon, 26 June 2023.

<sup>78</sup> Exhibit 251 (Volume 3) – Letter to Mr Fuller, 12 October 2023.

<sup>79</sup> Exhibit 252 (Volume 3) – Email from Mr Fuller, 13 October 2023.

inappropriate and that future correspondence of this nature would not be responded to. I also informed Mr Fuller that I had assessed his complaint to me as a relevant complaint for the purposes of Schedule 4 of the ICAC Act insofar as it related to the OPI's oversight of the PCD Act, and the complaints made by himself and Mr Lawton to the OPI and ICAC. I also informed Mr Fuller that his complaint would be dealt with concurrently with the Attorney-General's request and that I anticipated producing a single report in relation to both matters. I also provided Mr Fuller with a copy of the initial Terms of Reference which applied to the Attorney-General's Request.<sup>80</sup>

71. On 15 November 2023 Mr Lawton emailed me stating that he “*really believe[s]*” that he needs to speak with me.<sup>81</sup> On 16 November 2023 Deputy Inspector Plummer, with my approval, arranged to speak with Mr Lawton over the telephone with a Senior Legal Officer from my Office also present.<sup>82</sup> In this telephone discussion Mr Lawton informed Deputy Inspector Plummer that he was disappointed with what had occurred but understood why I had decided that further communications with Mr Fuller would need to occur in writing. Deputy Inspector Plummer asked Mr Lawton if Mr Fuller still had any authority to speak on his behalf in relation to this matter and Mr Lawton responded by referring to the fact that Mr Fuller and Mr Pangallo had been “*pushing it forward*”. Mr Lawton later said that he wanted to keep “*lines open*” with my Office and that he was happy for my Office to contact him directly in relation to the matter.<sup>83</sup> Mr Lawton sent an email following the telephone conversation stating: “*Thank you for talking to me today. Please don't hesitate to call if you need any clarification in the future*”.<sup>84</sup>
72. On Sunday 19 November 2023 Mr Fuller sent me two emails. In the first he acknowledged my letter of 14 November 2023 and asserted that his previous communications constituted “*a reasoned critique*” of the Hanlon report to which I had not provided a “*rebuttal*”. He stated that he did not accept that I was entitled to cancel our previously scheduled meeting because of my “*sensitivity to reasoned critique*” and suggested that our meeting be recorded. He asked that I “*reconfirm our meeting on these terms*”.<sup>85</sup> The second email (which I note was copied to a third person who is unknown to me) requested that I pay particular regard to paragraph [4] of his complaint which identifies the persons he alleges have participated in corrupt conduct. He further identified four issues upon which he wished to discuss with me at a meeting: (1) my jurisdiction including as it relates to the Reviewers; (2) my power to compulsorily examine

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<sup>80</sup> Exhibit 255 (Volume 3) – Letter to Mr Fuller, 14 November 2023.

<sup>81</sup> Exhibit 257 (Volume 3) – Email from Mr Lawton, 15 November 2023.

<sup>82</sup> Exhibit 258 (Volume 3) – Email to Mr Lawton, 16 November 2023; Exhibit 259 (Volume 3) – Email from Mr Lawton, 16 November 2023.

<sup>83</sup> Exhibit 276 (Volume 4) – File note, 16 November 2023.

<sup>84</sup> Exhibit 277 (Volume 4) – Email from Mr Lawton, 16 November 2023.

<sup>85</sup> Exhibit 278 (Volume 4) – Email from Mr Fuller, 19 November 2023.



the CoP and the Chief Superintendent(s) of the IIS; (3) the necessity for an authorisation from Commissioner Vanstone; and (4) the power to compulsorily acquire possession, if necessary, of the former Reviewers' files.<sup>86</sup>

73. On 20 November 2023 I wrote to Mr Fuller (copying Mr Lawton) informing him that I did not agree that I could not cancel our meeting, that the meeting was cancelled and that it would not be rescheduled. I advised that I did not intend to engage in any communications with him in relation to the Hanlon report. I informed Mr Fuller that I did not consider any of the four topics he had identified as being matters upon which I should engage in any communication or consultation with him. I informed him that if I were to propose exercising any of my powers in relation to him then it may, at that time, be appropriate for me to seek a submission from him. However, in all other circumstances I expressed the view that it would be entirely inappropriate for Mr Fuller to seek to direct or otherwise influence the conduct of my review.<sup>87</sup>
74. About 25 minutes after sending the above letter by email, Mr Lawton responded by email advising *"Mr Fuller is operating without my knowledge or authority"*.<sup>88</sup>
75. On 21 November 2023 Mr Lawton sent me four emails in quick succession containing the same substantive content. However, it was apparent from these emails that the first email (sent at 12.43 pm) was in fact a forwarded email sent from Mr Pangallo's parliamentary email address to Mr Lawton at 12.40pm. It therefore appeared to me that the content of the email had been drafted by Mr Pangallo or a person with access to Mr Pangallo's parliamentary email account. The email advised me that Mr Lawton had decided to *"reconsider his position"* and that *"in any further meetings, deliberations and discussions I have with you and your office regarding the review of complaints ... I must insist on Mr Fuller being present with me at all times"*. The email also referred to Mr Lawton having ongoing *"health and mental well-being"* issues.<sup>89</sup>
76. On the same date, Mr Fuller emailed me and advised that he was aware that Mr Lawton had communicated with my Office *"to disassociate himself from my relevant complaint and my correspondence"*. Mr Fuller stated that it was a matter for Mr Lawton as to what he wants to do *"except when he intrudes into my dialogue with you"*. Mr Fuller then stated that his complaint was confidential, that no correspondence sent to him should be copied to any person without his informed consent, and that I should *"desist with with [sic] cc to Ian Lawton"*. Mr Fuller also described Mr Lawton as having *"a very limited understanding of the processes at play here"*. In this email Mr Fuller also stated that by cancelling my meeting with him I was denying him natural justice and procedural fairness

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<sup>86</sup> Exhibit 279 (Volume 4) – Second email from Mr Fuller, 19 November 2023.

<sup>87</sup> Exhibit 282 (Volume 4) – Letter to Mr Fuller, 20 November 2023.

<sup>88</sup> Exhibit 284 (Volume 4) – Email from Mr Lawton, 20 November 2023.

<sup>89</sup> Exhibit 285 (Volume 4) – Emails (x4) from Mr Lawton and Mr Pangallo, 21 November 2023.

and that as a complainant he is a person “*with whom you must deal personally*”.<sup>90</sup>

77. In light of all of the above, I held significant concerns both as to the content and provenance of Mr Lawton’s emails sent on 21 November 2023. This was one matter (amongst others) which I hoped might be clarified by Mr Lawton providing a voluntary witness statement to me. As he declined to do so, I am unclear as to why Mr Lawton made conflicting statements about whether he was willing to deal with my Office in the absence of Mr Fuller or not. I am also unclear as to why a parliamentary email address appears to have been used to draft correspondence to my Office.
78. On 30 November 2023 I wrote to Mr Fuller advising that I would no longer copy Mr Lawton to communications with him. I also informed Mr Fuller that I did not agree that procedural fairness required me to meet with him personally on the terms he had proposed. I informed him that I would continue to receive any written material that he wished to provide and would give that material due consideration.<sup>91</sup> As noted below (see paragraph [89]), on the same date Mr Fuller ceased to be a director of the company in which he had been a co-director with Mr Lawton since 9 January 2019.<sup>92</sup>
79. Mr Fuller proceeded to send me further emails on 2 and 9 December 2023,<sup>93</sup> 8, 9 and 21 January 2024,<sup>94</sup> 1, 18 and 26 February 2024,<sup>95</sup> 7, 10, 13, 14 and 29 March 2024,<sup>96</sup> and 3 and 4 April 2024.<sup>97</sup> In these emails Mr Fuller continued to agitate for a meeting with me in order to discuss matters relating to the conduct of my review. This included Mr Fuller wishing to examine documents and records held by the OPI, ICAC and SAPOL, including records held under the PCD Act, and wishing to discuss the use of my compulsive powers. In relation to examining documents, Mr Fuller requested that I provide him with direct access to the complaint management system maintained under the PCD Act as well as providing him with all evidence and material I had obtained in the course of my review which I have taken into account in reaching my conclusions. Mr Fuller also requested that I inform him of what authorisations I

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<sup>90</sup> Exhibit 286 (Volume 4) – Email from Mr Fuller, 21 November 2023.

<sup>91</sup> Exhibit 295 (Volume 4) – Letter to Mr Fuller, 30 November 2023.

<sup>92</sup> Exhibit 378 (Volume 5) – ASIC Company Extract, 28 February 2024 at p 2-3.

<sup>93</sup> Exhibit 297 (Volume 4) – Email from Mr Fuller, 2 December 2023; Exhibit 315 (Volume 4) – Email from Mr Fuller, 9 December 2023.

<sup>94</sup> Exhibit 356 (Volume 5) – Email from Mr Fuller, 8 January 2024; Exhibit 357 (Volume 5) – Email from Mr Fuller, 8 January 2024; Exhibit 362 (Volume 5) – Email from Mr Fuller, 21 January 2024.

<sup>95</sup> Exhibit 371 (Volume 5) – Email from Mr Fuller, 1 February 2024; Exhibit 373 (Volume 5) – Email from Mr Fuller, 18 February 2024; Exhibit 375 (Volume 5) – Email from Mr Fuller, 26 February 2024.

<sup>96</sup> Exhibit 381 (Volume 5), Email from Mr Fuller, 7 March 2024. Exhibit 382 (Volume 5), Email from Mr Fuller, 7 March 2024. Exhibit 385 (Volume 5), Email from Mr Fuller, 13 March 2024. Exhibit 386 (Volume 5), Email from Mr Fuller, 14 March 2024. Exhibit 395 (Volume 5), Email from Mr Fuller, 29 March 2024.

<sup>97</sup> Exhibit 396 (Volume 5), Emails between Mr Fuller and Inspector, 3 to 4 April 2024.

had received under the ICAC Act in the context of reviewing his complaint and made allegations that I had told lies to the CPIPC about the issue of authorisations. Mr Fuller continued to raise legal arguments relating to my review in the Hanlon matter and continued to assert that Deputy Inspector Plummer and I were not fit for office. In his emails sent on 1, 18 and 26 February 2024 Mr Fuller called for Deputy Inspector Plummer and I to both resign immediately.

80. Responses were sent by me or members of my office on my behalf to Mr Fuller on 12 and 25 January 2024,<sup>98</sup> 14 February 2024,<sup>99</sup> 12 March 2024,<sup>100</sup> and 3 April 2024.<sup>101</sup> In these responses I declined to meet with Mr Fuller on the basis that the matters he sought to discuss with me were not matters that were appropriate for me to discuss with him. I informed Mr Fuller that it would be entirely inappropriate for him to have direct access to the complaint management system maintained under the PCD Act. I informed Mr Fuller that I would not be providing him with copies of all the material he had requested but that, if upon reviewing my draft Report in this matter he wished to request access to a particular document and provide reasons for his request, I would consider that request. I also reiterated that I would not be engaging with Mr Fuller in relation to my Report in the Hanlon matter. I informed Mr Fuller that any statutory authorisations I had received would be outlined in my Report relating to his complaint (see **Appendix E – Authorisations**). Mr Fuller was again informed that he could provide further information or submissions to me at any time and would be provided with procedural fairness prior to the finalisation of my Report in this matter.
81. I note that whilst Mr Fuller copied Mr Pangallo to many of his email communications with me (both using Mr Pangallo’s parliamentary email address and using a private email address), there was nothing to indicate that Mr Pangallo or his parliamentary office had been involved in drafting those emails. I did not copy Mr Pangallo to any of my responses to Mr Fuller nor did I receive any emails directly from Mr Pangallo.
82. The only other relevant communications with Mr Lawton and Mr Fuller occurred as part of the procedural fairness process detailed below.

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<sup>98</sup> Exhibit 360 (Volume 5) – Letter to Mr Fuller 12 January 2024; Exhibit 364 (Volume 5 – Email to Mr Fuller, 25 January 2024.

<sup>99</sup> Exhibit 372 (Volume 5) – Email to Mr Fuller, 14 February 2024.

<sup>100</sup> Exhibit 384 (Volume 5) – Email to Mr Fuller, 12 March 2024.

<sup>101</sup> Exhibit 396 (Volume 5) – Emails between Mr Fuller and Inspector, 3 to 4 April 2024.

## Procedural fairness process and findings of fact

83. I am required to afford procedural fairness to anyone whom I have included adverse information or made an adverse finding about in this Report.<sup>102</sup> I have provided relevant portions of my draft Report to those persons who I have included adverse information about, or made adverse findings about, in this Report. Other persons who have provided evidence to me in the course of my review of this matter or whom I considered have a particular interest in this review have also been provided with relevant portions of my draft Report. This included providing the draft Report to Mr Lawton and Mr Fuller. Each person provided with relevant portions of the draft Report was invited to provide me with submissions and/or material if they chose to do so.
84. Upon providing the draft Report to Mr Lawton I discovered that he had been unwell and that his son (who lived overseas) held his power of attorney. Mr Lawton's son was provided with my draft Report. He authorised the provision of the draft Report to Mr Lawton's cousin, Mr William Gryst, for the purposes of Mr Gryst explaining the report to Mr Lawton with a view to discovering if he wished for any submission to be made on his behalf. On 18 April 2024 Mr Lawton's son advised that Mr Gryst had spent time "*communicating and explaining*" the findings within my draft Report to Mr Lawton and that Mr Lawton had "*no comment*".<sup>103</sup>
85. Mr Fuller provided a 13-page written submission to me which he demanded I publish with this Report.<sup>104</sup> I have annexed Mr Fuller's submission to this Report (see **Appendix F – Mr Fuller's submission**).<sup>105</sup> I did not find Mr Fuller's submissions persuasive in any respect. Where necessary, any matters raised by Mr Fuller in paragraphs [44] to [110] of his submission are addressed in the body of this Report. The matters raised by Mr Fuller in

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<sup>102</sup> In *Kioa v West* (1985) 159 CLR 550 per Brennan J 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.

<sup>103</sup> Exhibit 408 (Volume 6) – Email correspondence relating to Mr Lawton, 18 April 2024.

<sup>104</sup> Exhibit 412 (Volume 6) – Submission of Mr Fuller, 22 April 2024 (see **Appendix F – Mr Fuller's submission**).

<sup>105</sup> Following receipt of this submission Mr Fuller sent an email informing me that he had "*noticed a date error in para 97. the letter date should be "6 September 2019". It is the same letter referred to in previous paragraph 58.*"

paragraphs [1]-[43] and [111]-[112] relate to procedural fairness. In brief, my response to those submissions are as follows:

- (a) Mr Fuller's assertion in paragraph [5] that I "*declined and refused to receive my complaint and its accompanying documents into evidence*" is simply incorrect. Mr Fuller's complaint and all accompanying documents were received by me as exhibits in my brief relating to this matter and were considered by me;
- (b) Mr Fuller's assertion in paragraph [5] that he was denied "*the opportunity to present evidence to meet new and/or previously unknown material in the course of the process of your review*" is simply incorrect. Mr Fuller was informed on numerous occasions that he could provide with me submissions and any other relevant material. When I wrote to Mr Fuller on 10 April 2024 to provide him with procedural fairness, I expressly invited him to make any submissions in relation to my draft Report and to "*provide any further material in support of your submissions*";
- (c) Mr Fuller's assertion in paragraph [23] that he was "*entitled*" to review "*any new information and all of the new information relied upon, or regarding by you as material to your proposed decision making*" is simply incorrect. In a letter I sent to Mr Fuller dated 18 April 2024 I explained that procedural fairness does not require that this occur and that in determining whether to provide an interested party with access to, or a copy of, a particular document, I need to have regard to the nature of the document, what information has already been provided to the interested party about the contents of that document, the reasons for why the interested party seeks the document and whether any 'practical injustice' would be caused to the interested party if the document was not disclosed to the party;
- (d) Mr Fuller's assertion in paragraph [14] that I interviewed officers from CECB including Della Sala is simply incorrect. I did not interview any CECB officers in the course of my review;
- (e) Mr Fuller's assertions in paragraphs [12] and [20] that he was "*entitled to be heard, and on oath ... in relation to matters in contention and to give evidence in response to new material not previously known to either of us*" and that I "*declined and refused to hear sworn testimony from me*" fails to understand my role and misunderstands the requirements of procedural fairness;
- (f) Pursuant to clause 6 of Schedule 4 of the ICAC Act, I may receive any evidence that may assist me to carry out a review, may permit a witness to give evidence by any means and have a discretion as to whether any evidence is taken on oath or affirmation. It was within my discretion to decide that I did not need to obtain any evidence from Mr Fuller;

- (g) Mr Fuller’s assertion in paragraph [9] that “*active discrimination*” against him will be proven if other complainants and interested parties are treated differently to him is misguided. Discrimination does not follow from the fact that interested parties were able to provide information and evidence to me in different forms and by different processes. What matters is whether in each case the decision to obtain evidence or material, and the method employed for that purpose, was lawful and reasonable. The fact that I have taken oral evidence on oath from witnesses in another review, and obtained statutory declarations from witnesses in my review of this matter, has no bearing on my decision whether it was necessary to obtain evidence from Mr Fuller by way of an examination;
- (h) The fact that I did not find that any “*lie*” was told by any SAPOL officers did not mean that I was somehow required by this finding to take sworn evidence from Mr Fuller (nor any other person) about his assertions of a “*lie*”; and
- (i) Mr Fuller’s assertions that Ms Joana Fuller (**Ms Fuller**),<sup>106</sup> was “*entitled to be heard, in relation to matters in contention and to give evidence in response to new material not previously known to either of us*” (paragraph [12]), that I “*neglected to hear sworn testimony*” from Ms Fuller (paragraph [20]), that I should have sought “*a private audience*” with Ms Fuller (paragraph [43]) and should have followed a “*protocol*” and issued a summons to require Ms Fuller to give evidence (paragraphs [39]-[40]) are similarly misguided. As acknowledged by Mr Fuller, Ms Fuller was provided with my draft Report and invited to provide a submission and/or provide me with any relevant material. Ms Fuller provided a submission in response on a single topic.<sup>107</sup> That submission has been incorporated into this Report (at footnote 175). There was nothing which prevented Ms Fuller from providing me with a submission on any topic nor was she prevented from providing me with any relevant material.

86. 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*.<sup>108</sup> 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 the ICAC, I have applied the definitions

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<sup>106</sup> The Honourable Joana Fuller was appointed a Judge of the District Court of South Australia in December 2019. I will refer to Her Honour as ‘Ms Fuller’ in this Report given her role as a barrister at the relevant time.

<sup>107</sup> Exhibit 400 (Volume 6) – Submission of Ms Fuller, 15 April 2024.

<sup>108</sup> (1938) 60 CLR 336

of these terms as set out in **Appendix A** being the definitions that applied at the time of the relevant events and conduct. I 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. In any event, the current definitions of corruption and maladministration in public administration are in the same terms as the definitions I have applied in this Report.<sup>109</sup> The current definition of misconduct is in different terms. It requires a more serious level of conduct than was previously the case.<sup>110</sup> It necessarily follows that where I have found that there was no evidence of corruption, misconduct and maladministration in public administration under the previous definition, there could not be evidence of misconduct under the current definitions.

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<sup>109</sup> ICAC Act s 5, as currently in force. *Ombudsman Act 1972* (SA) s 4, as currently in force.

<sup>110</sup> *Ombudsman Act 1972* (SA) s 4(1): “*Misconduct in public administration means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer*”.

## Background: Mr Lawton’s allegations of criminal conduct against C

### Mr Lawton’s purchase of an interest in the Mt Lyndhurst Station

87. The table below is a summary of key events relating to Mr Lawton’s purchase of an interest in the Station in 2013.
88. The information contained in the table has been taken from a 9-page statutory declaration declared by Mr Lawton on 4 May 2018 to which various documents totalling 476 pages relating to the purchase of the Station had been annexed (**Lawton’s statutory declaration and annexures**).<sup>111</sup> It was Lawton’s statutory declaration and annexures which formed the basis of Mr Lawton’s complaint to SAPOL on 10 May 2018. I note that the assertions made by Mr Lawton in his statutory declaration have not been investigated nor independently verified.

Date	Event	Details
Pre-Aug 2012	Existing partnership	<p>The Partnership owns and operates the Station. The three partners who comprise the Partnership are:</p> <ul style="list-style-type: none"> <li>• Company A (46.75%);</li> <li>• Company B (46.75%); and</li> <li>• Company C (6.5%).</li> </ul> <p>Each company holds its interest as a trustee for a Trust. C is a director of Company C which holds its interest in the Partnership as a trustee of a Trust (<b>C’s First Trust</b>).<sup>112</sup></p> <p>The partnership agreement is not reduced to writing.<sup>113</sup></p>
Approx. Aug 2012	In principle agreement to purchase pastoral business	<p>Companies A and B (which are related companies) wish to sell their existing 93.5% interest and offer this interest to Company C if potential new partner(s) can be sourced. C offers half of the 93.5% Partnership interest to Mr Lawton (i.e., 46.75%) on the basis that Company C will retain its existing interest (6.5%) and C will establish another trustee company to hold the remaining 46.75% interest.</p> <p>Mr Lawton agrees in principle to the purchase on the basis that he will not have to provide any capital as bank</p>

<sup>111</sup> Exhibits 64 to 78 (Volume 1).

<sup>112</sup> Exhibit 67 (Volume 1) – ASIC extract forming part of Exhibit IGL-2 to Lawton’s statutory declaration at p 6-12.

<sup>113</sup> Exhibit 68 (Volume 1) – Partnership Agreement forming part of IGL-3 to Lawton’s statutory declaration at p 41.



		funding will be arranged for the purchase and for working capital. Mr Lawton states: <sup>114</sup> <i>I told [C] I would go into this venture with [C] and left [C] to arrange all the legal and financing detail on the basis that I would undertake the management role.</i>
Aug-Sep 2012	Mr Lawton commences role at Station	Mr Lawton visits the Station and commences a management role in preparation for the sale. <sup>115</sup>
19 Oct 2012	Company D is incorporated	Company D is incorporated with C as sole director. <sup>116</sup> Company D subsequently becomes trustee of a trust relating to C ( <b>C's Second Trust</b> ).
1 Nov 2012	Mr Lawton becomes director of Company D	Directorship of Company D changes – C remains a director and Mr Lawton becomes co-director. <sup>117</sup> Company D becomes trustee of a trust where the sole beneficiary of the trust is Mr Lawton ( <b>Lawton's Trust</b> ). <sup>118</sup> (This is in addition to Company D being the trustee of C's Second Trust).
29 Nov 2012	First bank offer for loan made	Original bank loan offer is made in relation to purchase of Station for \$6 million. Guarantors are stated to be as C and Mr Lawton. <sup>119</sup>
Late 2012	Mr Lawton becomes aware of intention for Company B to retain an interest	Mr Lawton receives a SPA drafted by solicitors. Mr Lawton says that C organised the solicitors to draw up the documentation and he did not have anything to do with the solicitors nor did he meet with the solicitors relying instead on C and another partner in C's accounting firm. <sup>120</sup> Mr Lawton asserts that it is only when he received the draft SPA that he became aware of the intention for Company B to continue as a partner and retain a 20% interest in the livestock and plant until the following financial year for "tax reasons". He discussed this with C who told him "it was nothing I needed to worry about and that it was part of the deal he had reached with [the other existing partners] to make the sale tax effective. He said I wouldn't understand it even if he tried to explain it to me. I did not question this further as I trusted his expertise". <sup>121</sup>
24 Jan 2013	Partnership Agreement is executed	The existing partners to the Partnership execute a written agreement in relation to the Partnership: i.e., committing their earlier partnership agreement to writing. This is an agreement between the existing partners only (i.e., Companies A, B and C - Company D and Mr Lawton are not parties). The Partnership Agreement contains a

<sup>98</sup> Exhibit 65 (Volume 1) – Lawton's statutory declaration at p 1 [5].

<sup>115</sup> Exhibit 65 (Volume 1) – Lawton's statutory declaration at p 2 [7].

<sup>116</sup> Exhibit 67 (Volume 1) – ASIC extract forming part of Exhibit IGL-2 to Lawton's statutory declaration at p 2-5.

<sup>117</sup> Exhibit 67 (Volume 1) – ASIC extract forming part of Exhibit IGL-2 to Lawton's statutory declaration at p 4.

<sup>118</sup> Exhibit 67 (Volume 1) – Trust Deed forming part of Exhibit IGL-2 to Lawton's statutory declaration at p 20-49.

<sup>119</sup> Exhibit 69 (Volume 1) – Bank letter of offer and facility schedule forming part of Exhibit IGL-4 to Lawton's statutory declaration at p 10-16.

<sup>120</sup> Exhibit 65 (Volume 1) – Lawton's statutory declaration at p 2 [9].

<sup>121</sup> Exhibit 65 (Volume 1) – Lawton's statutory declaration at p 2 [6].

		clause which enables the partners to change in the future. <sup>122</sup>
24 Jan 2013	Final SPA is executed	<p>On the same date as the above, the final SPA is executed by companies A, B, C and D. Company D executes the SPA in two capacities: one as trustee of C's Second Trust and one as trustee of Lawton's Trust. C and Mr Lawton each the SPA as Directors of Company D in both capacities.<sup>123</sup></p> <p>The effect of the SPA is that upon 'completion':</p> <ul style="list-style-type: none"> <li>• Company A is no longer a partner in the Partnership having sold all interests in the Station;</li> <li>• Company C retains 6.5% interest in entire Partnership (as trustee for C's First Trust);</li> <li>• Company B retains 20% interest in livestock and plant only having sold all other interests in Partnership;</li> <li>• Company D obtains:<sup>124</sup> <ul style="list-style-type: none"> <li>○ 36.75% interest in livestock and plant as trustee for C's Second Trust;</li> <li>○ 36.75% interest in livestock and plant as trustee for Lawton's Trust;</li> <li>○ 46.75% interest in land (Crown lease and fixtures) for C's Second Trust;</li> <li>○ 46.75% interest in land (Crown lease and fixtures) for Lawton's Trust.</li> </ul> </li> </ul> <p>The purchase price for Company A and Company B's interests contains a number of variables including the precise livestock numbers (cattle and sheep) present at the Station.<sup>125</sup></p> <p>The SPA estimates the total sheep present as being 15,589 with a potential variance of 1,098. The SPA acknowledges that different sheep (age, sex etc.) have different market values and contains formula for calculating sale price of sheep which uses an average head price of \$79.10 but involves other variables.<sup>126</sup></p> <p>The SPA provides that when an inventory of sheep occurs in May 2013 if the total number of sheep are out by more than 1,098 then there will be a refund by the sellers or an additional payment by the purchasers equivalent to \$79.10 per head.<sup>127</sup></p>

<sup>122</sup> Exhibit 68 (Volume 1) – Partnership Agreement forming part of Exhibit IGL-3 to Lawton's statutory declaration at p 40-72.

<sup>123</sup> Exhibit 68 (Volume 1) – SPA forming part of Exhibit IGL-3 to Lawton's statutory declaration at p 2-39 (execution at p 36-7).

<sup>124</sup> Exhibit 68 (Volume 1) – SPA forming part of Exhibit IGL-3 to Lawton's statutory declaration at p 6-25 (in particular 'Background' at p 6-8, 'clause 1.1' at p 9-10 and 'clause 18' at p 24-25).

<sup>125</sup> Exhibit 68 (Volume 1) – SPA forming part of Exhibit IGL-3 to Lawton's statutory declaration at p 10-3 (in particular 'clause 3').

<sup>126</sup> Exhibit 68 (Volume 1) – SPA forming part of Exhibit IGL-3 to Lawton's statutory declaration at p 10-2 (in particular clauses 3.1.7 to 3.1.11 at p 10-11, 'clause 3.3' at p 11 and 'clause 3.4' at p 11-2).

<sup>127</sup> Exhibit 68 (Volume 1) – SPA forming part of Exhibit IGL-3 to Lawton's statutory declaration at p 12-3 (in particular 'clause 3.5').

		The SPA provides that <i>“No variation of this Agreement will be of any force or effect unless it is in writing and signed by each party to this Agreement”</i> . <sup>128</sup>
25 Jan 2013	Company E is incorporated	On the day after the above events, Company E is incorporated with Mr Lawton as sole director. <sup>129</sup>
25 Jan 2013	Direction re Company E and Lawton’s Trust	On the same day as the above, C sends an email directing others within C’s accounting firm for the trust deed for Lawton’s Trust to be amended such that the trustee is Company E (rather than Company D). <sup>130</sup>
1 Feb 2013	Mr Lawton ceases to be a director of Company D	Mr Lawton ceases to be a director of Company D. Company D reverts to having C as its sole director. <sup>131</sup>
8 Mar 2013	New bank loan offer received	New loan offer is for \$5.15 million with guarantors stated to be C, Mr Lawton and Company B. <sup>132</sup> Mr Lawton asserts that C did not consult him about this change and <i>“simply pressed ahead with arrangements for settlement without any adjustment of the purchase price (which was maintained) but with [Companies A and B] making up the shortfall with vendor finance on 2nd Mortgage for \$850k”</i> . <sup>133</sup>
27 Mar 2013	Property transfer occurs	Two Memorandums of Transfer are executed in relation to the relevant Crown Lease upon which the Station is located. One Memorandum transfers Company A’s interest and the other transfers Company B’s interest. In both cases the transferees are Company D and Company E as tenants in common in equal shares. <sup>134</sup>
28 Mar 2013	‘Settlement date’ according to conveyancers	Conveyancer’s invoice (dated 29 April 2013) records that on this date ‘settlement’ occurred involving the purchase price of \$3.336 million being paid by the purchasers and in addition to this separate amounts for the purchase of cattle and sheep being paid by the purchasers. The amount recorded for the purchase of sheep is \$461,734. <sup>135</sup>
29 Apr 2013	‘Settlement date’ of SPA according to Mr Lawton Registration of mortgage	Mr Lawton asserts that ‘settlement’ of the SPA occurred on 29 April 2013. <sup>136</sup>

<sup>128</sup> Exhibit 68 (Volume 1) – SPA forming part of Exhibit IGL-3 to Lawton’s statutory declaration at p 28 (in particular ‘clause 20.13’).

<sup>129</sup> Exhibit 67 (Volume 1) – ASIC extract forming part of Exhibit IGL-2 to Lawton’s statutory declaration at pp 14, 16-9.

<sup>130</sup> Exhibit 67 (Volume 1) – email from C forming part of Exhibit IGL-2 to Lawton’s statutory declaration at p 15. An amended trust deed is not annexed to Lawton’s statutory declaration.

<sup>131</sup> Exhibit 67 (Volume 1) – ASIC extract forming part of Exhibit IGL-2 to Lawton’s statutory declaration at p 4.

<sup>132</sup> Exhibit 69 (Volume 1) – Bank letter of offer and facility schedule forming part of Exhibit IGL-4 to Lawton’s statutory declaration at p 2-9.

<sup>133</sup> Exhibit 65 (Volume 1) – Lawton’s statutory declaration at p 2 [11]-[12].

<sup>134</sup> Exhibit 71 (Volume 1) – Memorandum of Transfer and Memorandum of Mortgage forming part of Exhibit IGL-6 to Lawton’s statutory declaration at p 2-7.

<sup>135</sup> Exhibit 70 (Volume 1) – Conveyancer’s Tax Invoice forming part of Exhibit IGL-5 to Lawton’s statutory declaration at p 2.

<sup>136</sup> Exhibit 65 (Volume 1) – Lawton’s statutory declaration at p 3 [13].

		A new mortgage to the bank who made the loan offers above is executed and registered on the Crown Lease on this date. <sup>137</sup>
27 Jun 2013	Partnership meeting occurs	C and Mr Lawton hold a Partnership meeting. Although Company B is still a partner at this time no person is present on behalf of Company B. <sup>138</sup> An agenda from this meeting records, under “ <i>Expected income</i> ”, that the Station is expecting to shear “ <i>15,000 sheep</i> ” (consistent with estimate of sheep numbers in the SPA) and that the sheep will be counted during shearing. <sup>139</sup> Handwritten notes attached to the agenda record “ <i>Variance from 15,589 up or down \$79.10 / head</i> ”. Mr Lawton asserts that these are C’s handwritten notes and are an acknowledgment by C that at that time C understood any variance in sheep numbers (beyond the agreed 1,098) would be calculated at the head price of \$79.10 (consistent with the terms of the SPA). <sup>140</sup>
Late Jun- Early Jul 2013	Sheep muster / count	Mr Lawton is involved in the muster of sheep which occurred in late June and finished in about the first week of July. He realised then that the sheep numbers were down and that “ <i>the shortfall was likely to be in the thousands</i> ”. <sup>141</sup> Subsequently (and at least by 25 July 2013) the exact number of the shortfall in sheep is identified as 4,138. <sup>142</sup> When the allowed for 1,098 is deducted this leaves 3,040 sheep for which a refund is due to be paid to the purchasers. If the price of \$79.10 per head was used to calculate the refund this would give a total of \$240,464 to which Company E would be entitled to half, namely \$120,232.
25 Jul 2013	Partnership meeting occurs – signing of second Sale and Purchase Agreement	C and Mr Lawton hold a Partnership meeting. Although Company B is still a partner at this time no person is present on behalf of Company B. C provides Mr Lawton with SPA 2 under which Company B’s remaining interest in the Partnership (20% of livestock and plant) is to be sold to Company D as trustee of C’s Second Trust and Company E as trustee of Lawton’s Trust. Mr Lawton and C discuss why this is occurring now and C explains that it was always intended that this would occur “ <i>early in the new financial year</i> ”, that it relates to the “ <i>tax scheme</i> ” devised for Companies A and B in connection with the disposal of their Partnership interests and it was agreed with those parties at the start. C also said that C

<sup>137</sup> Exhibit 71 (Volume 1) – Annexure to Memorandum of Mortgage and historical land title documents forming part of Exhibit IGL-6 to Lawton’s statutory declaration at p 8-20

<sup>138</sup> Exhibit 65 (Volume 1) – Lawton’s statutory declaration at p 3-4 [18].

<sup>139</sup> Exhibit 72 (Volume 1) – Meeting agenda/notes forming part of Exhibit IGL-7 to Lawton’s statutory declaration at p 5.

<sup>140</sup> Exhibit 72 (Volume 1) – Meeting agenda/notes forming part of Exhibit IGL-7 to Lawton’s statutory declaration at p 10.

<sup>141</sup> Exhibit 65 (Volume 1) – Lawton’s statutory declaration at p 4 [19].

<sup>142</sup> It is unclear precisely when this number is ascertained and when Mr Lawton becomes aware of it.

		<p>would explain this to the bank (mortgagee). Mr Lawton says that in response he said: <i>“Best of luck”</i> and that <i>“As a result of this conversation and because I trusted [C], I signed the SPA 2 on behalf of [Company E]”</i>. Company B, C and D also signed SPA 2.<sup>143</sup></p> <p>The effect of SPA 2 is that <i>“at Completion”</i>, Company B no longer has any interest in the Partnership, Company C retains its overall 6.5% interest (as trustee of C’s First Trust) and Company D (as trustee of C’s Second Trust) and Company E (as trustee of Lawton’s trust) each now have an overall interest of 46.75%.<sup>144</sup></p> <p>The Completion date is specified as 31 July 2013.<sup>145</sup></p> <p>The livestock are specified by total number with the sheep being identified as 11,451. The purchase price per head is stated to be \$50.18.<sup>146</sup></p> <p>It appears that Mr Lawton never read the terms of SPA 2 or at least did not read the clause containing the per head price for sheep as he takes issue with the fact that at the time of signing, C did not tell him that the purchase price for sheep had changed.<sup>147</sup></p>
25 Jul 2013	Amending Agreement is signed	<p>On the same date as the above, the AA is executed by Company A, Company B, Company C and Company D. Company E is not mentioned. Company D is stated to be signing in two capacities: one as the trustee of C’s Second Trust and the other as the trustee of Lawton’s Trust. Only C signs for Company D meaning that Mr Lawton does not sign the AA at all.<sup>148</sup></p> <p>The AA refers to the SPA and says that the parties <i>“acknowledge and agree that effective immediately prior to Completion the terms of the Sales Agreement were amended by unanimous agreement as follows ...”</i>.<sup>149</sup></p> <p>A number of changes are then set out including changes relating to the purchase price formula for cattle, the purchase price formula for sheep and the refund price per head for sheep. For sheep, the following changes are made:</p> <ul style="list-style-type: none"> <li>• the formula for calculating the purchase price payable for sheep has been amended to use the average per head price of \$50.18,<sup>150</sup> and</li> </ul>

<sup>143</sup> Exhibit 65 (Volume 1) – Lawton’s statutory declaration at p 4 [23]-[24].

<sup>144</sup> Exhibit 73 (Volume 1) – SPA 2 forming part of Exhibit IGL-8 to Lawton’s statutory declaration at p 2-43 (in particular ‘Background’ at p 6-8, ‘clause 1.1’ at p 8 and ‘clause 12’ at p 17-8).

<sup>145</sup> Exhibit 73 (Volume 1) – SPA 2 forming part of Exhibit IGL-8 to Lawton’s statutory declaration at p 11 (in particular ‘clause 5.1’).

<sup>146</sup> Exhibit 73 (Volume 1) – SPA 2 forming part of Exhibit IGL-8 to Lawton’s statutory declaration at p 9 (in particular ‘clause 2.1.2’ and ‘clause 2.3’).

<sup>147</sup> Exhibit 65 (Volume 1) – Lawton’s statutory declaration at p 4-5 [22]-[23].

<sup>148</sup> Exhibit 74 (Volume 1) – AA forming part of Exhibit IGL-9 to Lawton’s statutory declaration at p 2-10 (executed on p 9-10).

<sup>149</sup> Exhibit 74 (Volume 1) – AA forming part of Exhibit IGL-9 to Lawton’s statutory declaration at p 2-10 (in particular ‘clause 1.1’ at p 4).

<sup>150</sup> Exhibit 74 (Volume 1) – AA forming part of Exhibit IGL-9 to Lawton’s statutory declaration at p 2-10 (in particular ‘clause 1.1.2’ at p 4).

		<ul style="list-style-type: none"> <li>the formula for the variance payment for sheep above/below 15,598 has been amended to use a price per head of \$50.18.<sup>151</sup></li> </ul> <p>In the AA the parties acknowledge and agree that an inventory of the sheep performed by the manager of the business at the time of shearing and crutching the sheep “<i>following Completion</i>” determined that there was 11,451 Sheep on hand at that time and this figure is agreed to be the number of sheep held at the time of “<i>completion</i>”.<sup>152</sup> The AA specifies that using this figure and the price per head of \$50.18 Company A must refund to C’s Second Trust and Lawton’s Trust the amount of \$48,537 each, Company B must refund to C’s Second Trust and Lawton’s Trust the amount of \$27,772.50 each (giving a total refund amount of \$152,619).<sup>153</sup> Mr Lawton asserts that he was never a party to any discussion or agreement to change the price per head of sheep in the SPA, was never told of this change by C (or any other party) and never saw the AA.<sup>154</sup></p>
26 Jul 2013	Meeting with a bank representative occurs and approximate sheep refund figure is provided	<p>On the next day, a meeting occurs between a representative from the bank (mortgagee), C and Mr Lawton. C informed the bank representative that they were buying out Company B’s remaining interest “<i>for \$327,156 but against that are getting back approximately \$152,000 for the shortfall in sheep numbers</i>”. C explains that this was “<i>part of the deal we agreed with [Companies A and B] as a part and parcel of the original purchase agreement</i>”. Mr Lawton asserts that the bank manager queried the sum payable as being not enough and asked if there was more to come to which C replied:<sup>155</sup></p> <p><i>Yes, there is. The whole thing is part of the arrangement put in place for the benefit of [Companies A and B] to provide the best Tax outcome for them in the structuring and staging of the purchase. It will work itself out in the wash at the end.</i></p> <p>As a result of this conversation Mr Lawton asserts that he believed the figure of \$150,000 “<i>was not a final figure</i>”.</p>
12 Aug 2013	Sheep refund is paid	<p>\$152,619 is paid into the Partnership’s bank account (i.e., a joint account controlled by both C and Mr Lawton). Mr Lawton says that this occurred without his knowledge or consent.<sup>156</sup></p>
End of 2013	Business relationship has deteriorated	<p>The business relationship between Mr Lawton and C had deteriorated by this point in time.<sup>157</sup></p>

<sup>151</sup> Exhibit 74 (Volume 1) – AA forming part of Exhibit IGL-9 to Lawton’s statutory declaration at p 2-10 (in particular ‘clause 1.1.3’ at p 4).

<sup>152</sup> Exhibit 74 (Volume 1) – AA forming part of Exhibit IGL-9 to Lawton’s statutory declaration at p 2-10 (in particular ‘clause 2.1.1’ at p 6).

<sup>153</sup> Exhibit 74 (Volume 1) – AA forming part of Exhibit IGL-9 to Lawton’s statutory declaration at p 2-10 (in particular ‘clause 2.1.3’ at p 6).

<sup>154</sup> Exhibit 65 (Volume 1) – Lawton’s statutory declaration at pp 4-5 [22]-[23], 7-8 [36].

<sup>155</sup> Exhibit 65 (Volume 1) – Lawton’s statutory declaration at p 5-6 [24].

<sup>156</sup> Exhibit 65 (Volume 1) – Lawton’s statutory declaration at p 5-6 [24].

<sup>157</sup> Exhibit 65 (Volume 1) – Lawton’s statutory declaration at p 7 [34].

Feb 2014	Independent legal and accounting advice obtained	By February 2014 Mr Lawton had engaged his own independent solicitor in relation to his interest in the Station. At around this time he also engaged an accountant and another business advisor to assist him and his solicitor. <sup>158</sup> Mr Lawton says that it was at some point after he engaged his own solicitor that he became aware of the sheep refund being paid to the Partnership on 12 August 2013. <sup>159</sup>
29 Apr 2014	Mr Lawton's solicitor receives AA	Mr Lawton's solicitor receives copies of the SPA, SPA 2 and AA. <sup>160</sup>
17 Jun 2014	Mr Lawton sees AA	Mr Lawton receives copies of the SPA, SPA 2 and AA from his solicitor and asserts that this was the first time he had seen the AA. <sup>161</sup>
26-27 Nov 2014	Partnership negotiations are ongoing	Mr Lawton instructs his solicitor to make an offer to C to purchase the Station. Mr Lawton's solicitor writes to Mr Lawton proposing precise wording/terms for this offer. There is no mention of the sheep refund payment. <sup>162</sup>
28 Nov 2014	Mr Lawton aware of 2013-2014 financial statements	Mr Lawton emails C's accounting firm taking issue with some aspects of 2013-14 financial statements for Partnership. The issue of the refund payment is not raised by Mr Lawton. The refund figure appears in those statements under 'Sundry Debtors – Other'. <sup>163</sup>
29 Oct 2015	Mr Lawton attends meeting with accountants	Mr Lawton and his business advisor attended a meeting with C's accountancy firm to discuss various matters relating to the Partnership (see further below). <sup>164</sup>
Apr 2016	Station is sold at auction	The Station is sold to new owners/operators. <sup>165</sup> Upon settlement (believed to be May 2016) Mr Lawton (Company E) ceases to be in partnership with C (through either Company C or Company D).
25-27 Oct 2017	Mr Lawton raises issues with sheep refund with accountants	In email correspondence with C's accountancy firm in October 2017 Mr Lawton asserts that he (Company E) did not receive its share of the sheep refund. On 25 October 2017, the accountancy firm directs Mr Lawton to financial records that list this under 'Sundry Debtors – Other'. He is also told that the refund was received on 12 August 2013 but that it only settled in 'May 2016' (i.e., upon the further sale of the Station). Mr Lawton is also told that because <i>"\$39,395 too much was paid by your and [C]'s interests (of the correct</i>

<sup>158</sup> Exhibit 65 (Volume 1) – Lawton's statutory declaration at p 7 [34].

<sup>159</sup> Exhibit 65 (Volume 1) – Lawton's statutory declaration at p 8 [37].

<sup>160</sup> Exhibit 77 (Volume 1) – Email from Mr Lawton's solicitor forming part of Exhibit IGL-12 to Lawton's statutory declaration at p 5.

<sup>161</sup> Exhibit 65 (Volume 1) – Lawton's statutory declaration at p 7 [34]; Exhibit 77 (Volume 1) at p 10.

<sup>162</sup> Exhibit 77 (Volume 1) – Email from Mr Lawton's solicitor forming part of Exhibit IGL-12 to Lawton's statutory declaration at p 12-14.

<sup>163</sup> Exhibit 77 (Volume 1) – Emails to/from Mr Lawton and C's accounting firm forming part of Exhibit IGL-12 to Lawton's statutory declaration at p 15-16; Exhibit 78 (Volume 1) – accounting statements forming part of Exhibit IGL-12 to Lawton's statutory declaration at p 12.

<sup>164</sup> Exhibit 75 (Volume 1) – C's accounting firms' 'response' to Lawton queries forming part of Exhibit IGL-10 to Lawton's statutory declaration at p 12 [2].

<sup>165</sup> Exhibit 263 (Volume 4) – Media report, 15 April 2016.

		<p><i>amount 11,451 @ \$50.18) for the sheep on the first settlement (73.5%) on 24/01/2013. Therefore only \$39,395 should have been reimbursed to the purchaser not the \$152,619 (a variance of \$113,226). <b>Accordingly it is our view that the vendors owe you and [C] nothing in respect of the livestock transaction, you had an interest free loan from 12/08/2013 to settlement of your sale of Mt Lyndhurst Station in May, 2016 in the sum of \$113226 arising from the over reimbursement in 2013 and that you and [C] owe [Companies A and B] nothing but your thank [sic] for them having supported you during your period of ownership of Mt Lyndhurst Station</b></i>" (original emphasis).<sup>166</sup></p> <p>In a responding email on 27 October 2017 Mr Lawton expresses surprise that \$113,226 was owed to Companies A and B in light of the fact <i>"there was a formal agreement for reimbursement of \$152619 entered into on the 25th of July 2013. The amount of \$153619 was precisely calculated and enshrined in the agreement. This written agreement does not allow room for any recalculation of the overpayment refund as you suggest"</i>.<sup>167</sup></p>
6 Nov 2017	Further communications with C's accountancy firm re sheep refund	<p>In an email on this date C's accountancy firm provides responses to questions asked by Mr Lawton. The responses include stating that the firm discovered the over-reimbursement payment by C on the livestock adjustment on or about 25 March 2014 and advised C that this occurred and of the amount. C was informed because C was the 'finance director' of the partnership. The responses also state that a meeting occurred with Mr Lawton and his business advisor on 29 October 2015 and that at this meeting the firm <i>"ran through the reconciliation of variances between the Sale &amp; Purchase Agreement and the amounts actually paid to the Vendors ... The over-reimbursement for the livestock was made clear at that meeting"</i>. The preparation of the 2013 accounts was also discussed at this meeting.<sup>168</sup></p>

Table 1

<sup>166</sup> Exhibit 75 (Volume 1) – Email from C's accounting firm forming part of Exhibit IGL-10 to Lawton's statutory declaration at p 2-3.

<sup>167</sup> Exhibit 75 (Volume 1) – Email from Mr Lawton to C's accounting firm forming part of Exhibit IGL-10 to Lawton's statutory declaration at p 16.

<sup>168</sup> Exhibit 75 (Volume 1) – C's accounting firm's 'response' to Mr Lawton queries forming part of Exhibit IGL-10 to Lawton's statutory declaration at p 12 [2].



## Mr Fuller's involvement and allegations of criminal conduct

89. As demonstrated by the above table Mr Fuller had no interest in the Station, Company E or Lawton's Trust at any relevant time nor did he have a role in any of the above events. Mr Fuller was appointed a director of Company E on 9 January 2019, which was well after the relevant events occurred and well after the alleged criminal conduct occurred.<sup>169</sup> A recent ASIC company search demonstrates that on 30 November 2023 Mr Fuller ceased to be a director, and Mr Gryst was appointed a director, of Company E (with Mr Lawton remaining a director at all times).<sup>170</sup>
90. In a document provided to the OPI, Mr Fuller stated that he assisted Mr Lawton *"in the preparation of the Brief presented to SAPOL in May 2018"*.<sup>171</sup> In a document provided to SAPOL on 25 July 2018 Mr Fuller stated, *"In October 2016, I was requested by a mutual friend and colleague of Ian Lawton and me to review the circumstances surrounding the sale of Mt Lyndhurst Station and to recommend to him if so advised to retain a Solicitor and Counsel to prosecute any claim for compensation that I thought worthy"*. No further details as to the arrangement Mr Fuller has with Mr Lawton were provided in this document.<sup>172</sup>
91. A chronology of relevant events beginning from when the 'Brief' was provided to SAPOL is contained in **Appendix G – Chronology** to this Report. The *"Brief"* presented to SAPOL comprised a three-page covering letter from Mr Fuller's daughter, then Barrister, Ms Fuller, dated 10 May 2018, and Mr Lawton's statutory declaration and annexures (see paragraph [88] above).<sup>173</sup> On or about 10 May 2018, the *"Brief"* was hand delivered to a detective within the Major Fraud Investigation Section (**MFIS**) of the Commercial and Electronic Crime Branch (**CECB**) of SAPOL. In her covering letter, Ms Fuller stated that she had been *"briefed to review the evidence and provide an opinion as to whether the evidence disclosed the commission of criminal offences"*.<sup>174</sup> There was no reference to Ms Fuller being instructed by a practising solicitor. She may have been engaged directly by Mr Lawton and/or Mr Fuller at some point prior to 4 May 2018.<sup>175</sup>

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<sup>169</sup> Exhibit 61 (Volume 1) – ASIC company extract provided by Mr Lawton and Mr Fuller to the OPI.

<sup>170</sup> Exhibit 378 (Volume 5) – ASIC company extract, 28 February 2024 at p 2-3.

<sup>171</sup> Exhibit 27 (Volume 1) – 'Case Summary' provided by Mr Lawton and Mr Fuller to the OPI at p 1 [4].

<sup>172</sup> Exhibit 345 (Volume 5) – 'About Michael Fuller' provided to SAPOL at p 1.

<sup>173</sup> Exhibits 64 to 78 (Volume 1).

<sup>174</sup> Exhibit 64 (Volume 1) – Letter from Ms Fuller, 10 May 2018 at p 1.

<sup>175</sup> The South Australian Bar Association Inc's 'Barristers Conduct Rules' which applied at the time (having commenced on 14 November 2013) provided that a barrister must not act in a professional capacity in any matter unless briefed by a solicitor entitled to practice in the relevant jurisdiction or a

92. In her covering letter Ms Fuller stated that, having considered Mr Lawton's statutory declaration and annexures, she considered there was a prima facie case of deception and dishonestly dealing with documents.<sup>176</sup> Although not stated in Ms Fuller's letter, these were offences against sections 139 and 140 of the *Criminal Law Consolidation Act 1935* (SA) (**CLCA**) respectively. Ms Fuller set out, in 12 numbered dot points, the "*important features*" which led her to this view. These included a number of the factual matters outlined in the above table along with the following statements and opinions:

- (a) The refund payment under the SPA was to be calculated as a "*fixed sum per head*" which is to be contrasted with the situation for the sheep generally which "*required the application of a Tax related formulation*".<sup>177</sup>
- (b) The SPA contained a clause that stated that it could not be amended except by further written agreement signed by all parties.<sup>178</sup>
- (c) When C presented SPA 2 to Mr Lawton, he did not tell him that there had been a change in the adjustment price per head of sheep under the SPA and instead told him that he needed to sign SPA 2 to buy out the remaining interest [of Company B] in the property. Mr Lawton signed "*in reliance on [C's] advice*".<sup>179</sup>
- (d) The AA was signed on the same date as SPA 2 but Mr Lawton as director of Company E was not a signatory to the AA. Instead, C signed as director of Company D asserting that this Company was a trustee of Lawton's Trust. "*This was false and gave a misleading impression of a fact upon which the validity of the document depended, namely that [Company D] was, at that time, the trustee of [Lawton's Trust]. Lawton was never told of the existence of the AA and never signed it. He was never told that there was an 'oral agreement' immediately prior to settlement to change the adjustment price per head of sheep and was never a party to any such oral agreement to change the adjustment price per head of sheep*".<sup>180</sup>
- (e) "*The assertion in the AA that the oral agreement was entered into immediately prior to settlement is inconsistent with the documents*

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patent attorney in respect of an intellectual property matter within the jurisdiction and expertise of the patent attorney (Rule 125). However, exceptions existed for when a barrister was acting in a professional capacity and was "*providing voluntary and unpaid assistance in a pro bono matter or at or for a legal advice centre or charitable organisation*" (Rule 126(d)) or was "*assisting without fee a friend or relative or acting on the barrister's own behalf*" (Rule 126(e)): Exhibit 411 (Volume 6) – Barrister's Conduct Rules.

<sup>176</sup> Exhibit 64 (Volume 1) – Letter from Ms Fuller, 10 May 2018 at p 1.

<sup>177</sup> Exhibit 64 (Volume 1) – Letter from Ms Fuller, 10 May 2018 at p 2 [5].

<sup>178</sup> Exhibit 64 (Volume 1) – Letter from Ms Fuller, 10 May 2018 at p 2 [7].

<sup>179</sup> Exhibit 64 (Volume 1) – Letter from Ms Fuller, 10 May 2018 at p 2 [7].

<sup>180</sup> Exhibit 64 (Volume 1) – Letter from Ms Fuller, 10 May 2018 at p 2 [8].

*coming into existence at and after settlement, all of which continue to refer to the fixed adjustment price of \$79.10 per head as provided in the SPA. [C's] own written acknowledgement on 27 June 2013 that the price per head of sheep was \$79.10 reveals the falsity of the amending agreement and the deception contained within it".* Further, if the AA was legitimate Ms Fuller rhetorically asks why Mr Lawton was not a party to it, not told about, and not made a signatory?<sup>181</sup>

- (f) The detriment to Company E was approximately \$120,000 being half of the approximate sheep refund figure of \$240,000.<sup>182</sup>
  - (g) It is open to infer that, given the relationship between C and Companies A and B, Companies A and B held C responsible for the shortfall in sheep and required C to *"fix it"*. Although on the face of it the alleged offending also caused a financial detriment to C, *"the motive for [C] to engage in this conduct is likely to be found in the record of communications that exist in the files of [C's accounting firm], [the legal firm who prepared the SPA, SPA 2 and AA] and communications between [C] and [Companies A and B] in the period between the time the sheep numbers were ascertained and the execution of SPA 2 and the AA"*.<sup>183</sup>
93. Ms Fuller's covering letter was a useful summary of the key assertions that made up Mr Lawton's complaint of criminal conduct and the basis upon which he requested that SAPOL investigate the matter. It was not, nor did it purport to be, a detailed legal analysis of the complex commercial transactions in question nor how the elements of the particular criminal offences could be proven. I make no criticism of Ms Fuller in this regard as this was not her role. She had reviewed the material provided to her and formed the view that there was a 'prima facie'<sup>184</sup> case of fraudulent and/or deceptive conduct so she referred the matter to SAPOL for investigation. I do not doubt that Ms Fuller genuinely held this view.
94. It is neither necessary nor appropriate for me, given the nature of my review as outlined above, to determine whether in my view there was a prima facie case that any particular criminal offences were committed by C. The allegations have never been put to C and C has therefore never had an opportunity to respond to Mr Lawton's assertions. C is entitled to the presumption of innocence. As it is outside the scope of my review, I have not sought further information or evidence from Mr Lawton, C, or any other person in relation to the alleged criminal conduct.

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<sup>181</sup> Exhibit 64 (Volume 1) – Letter from Ms Fuller, 10 May 2018 at p 3 [9]-[10].

<sup>182</sup> Exhibit 64 (Volume 1) – Letter from Ms Fuller, 10 May 2018 at pp 2 [6], 3 [11].

<sup>183</sup> Exhibit 64 (Volume 1) – Letter from Ms Fuller, 10 May 2018 at p 3 [9],[12].

<sup>184</sup> Latin: 'at first sight', 'on the face of it'.

## OPI's review of IIS' assessment of 6 February 2019

95. This Report considers the OPI's review of the IIS' assessment of 6 February 2019 in detail. By way of summary, in relation to that review, I have reached a number of conclusions.
96. In relation to Mr Lawton's complaint to the CoP and DPP dated 3 December 2018 my conclusions are that:
- (a) The complaint was appropriately referred to the IIS.
  - (b) The IIS appropriately assessed that the complaint raised a potential issue of misconduct and/or negligence and/or failing in duty and did not raise a potential issue of corruption in public administration that could be the subject of a prosecution.
  - (c) The OPI appropriately determined to take no action in relation to the IIS' assessment of the complaint.
  - (d) It was not appropriate for the IIS to determine that the complaint was suitable for MRP.
  - (e) The OPI failed to identify that the matter was not suitable for MRP and was in error in deciding to take no action. The OPI should have consulted with the officer in charge of the IIS with a view to issuing a written direction to the IIS under section 27(1) of the PCD Act that the matter should not be dealt with by MRP and/or that the matter should be investigated by the IIS pursuant to section 21 of the PCD Act.
  - (f) Despite the errors of the IIS and the OPI, there was no adverse impact on the outcome of the complaint as Osborn (the 'resolution officer' for the MRP) conducted appropriate inquiries. These inquiries ensured that Mr Lawton's complaint was effectively dealt with. Osborn's inquiries found that there had been no lies told by any SAPOL officer relating to seeking or obtaining advice from the DPP.
  - (g) Notwithstanding the error of the OPI, I find that there is no evidence of corruption, misconduct or maladministration in public administration in respect of the OPI (or any employee of the OPI).
97. In relation to Mr Lawton and Mr Fuller's complaint to the OPI on 21 January 2019 my conclusions are that:
- (a) The complaint was appropriately referred by the OPI to the IIS with no further action taken by the OPI.
  - (b) The IIS appropriately added Mr Lawton and Mr Fuller's complaint to the existing complaint file relating to the complaint dated 3 December 2018.

- (c) Although section 18(2)(c) of the PCD Act was not complied with by Osborn, the MRP was conducted in an appropriate manner and Osborn appropriately found that there was no misconduct, negligence or failure of duty on the part of any SAPOL officer.
- (d) The OPI appropriately determined to take no action after reviewing the MRP. That determination does not evidence any corruption, misconduct or maladministration in public administration by the OPI.
- (e) The IIS appropriately determined to take no further action once the MRP was complete. Additional information provided by Mr Lawton and Mr Fuller to the OPI after the MRP had been completed was added to the existing complaint file. This was appropriate as the additional information was still considered by the IIS and was not capable of changing the outcome of the matter.

## Nature of assessment and legislative context

98. The first key decision of the OPI that is central to my review of this matter is the decision of the OPI on 6 February 2019, when reviewing the determination assessment of the IIS, to not reassess the complaint nor substitute its assessment of the complaint pursuant to section 28 of the PCD Act and to take no further action. Section 28 provides:

- (1) The OPI may, within 3 business days after the information required by the regulations relating to an assessment of a complaint or report by the IIS is entered in the complaints management system, do 1 or both of the following
  - (a) reassess the complaint or report;
  - (b) substitute its assessment of the complaint or report for that entered in the complaints management system (and the substituted assessment will, for the purposes of this Act, be taken to be the assessment of the IIS in respect of the complaint or report).
- (2) The OPI may only take action under subsection (1) after consultation with the officer in charge of the IIS.
- (3) The officer in charge of the IIS must, as soon as is reasonably practicable (but in any event within 7 days) after becoming aware of a substituted assessment under subsection (1)(b), cause the information required by the regulations in respect of the substituted assessment to be recorded on the complaint management system.

99. In this case, there was a determination by IIS that the first complaint made by Mr Lawton dated 3 December 2018 was to be dealt with by way of MRP under Part 3 of the PCD Act which meant that no formal investigation of the complaint

by the IIS was required.<sup>185</sup> Part 3 of the PCD Act in its entirety, at the relevant time, is contained in **Appendix B**).

100. Part 3 of the PCD Act makes it clear that MRP is intended to be used to deal with alleged minor misconduct which is amenable to being dealt with in a more informal manner and which may benefit from conciliation with the complainant. To my mind this process appears most suitable for cases where the officer(s) concerned are alleged to have fallen short of the high standard expected of police officers when dealing with complainants, victims, witnesses, and members of the public such as having a discourteous, rude, or abrupt manner or failing to communicate in an effective and appropriate manner. Given that a potential outcome is for the officer(s) concerned to undergo remedial education or training it may also be appropriate for this process to be utilised where it appears that the officer(s) concerned are lacking in awareness or skills of a minor nature that could benefit from such education or training.
101. On 14 August 2017, the CoP made a determination under section 16(1) of the PCD Act.<sup>186</sup> The determination was signed by the Chief Executive Officer of the OPI on 1 September 2017 and the CEO recalled that it was returned to the Commissioner of Police within a few days of signing it. The effect of the determination was that a complaint relating to the conduct of “*a designated officer*” may be dealt with by MRP in accordance with Part 3 of the PCD Act unless one or more of the allegations would, if proven, result in:<sup>187</sup>
- (i) termination of the officer’s appointment; or
  - (ii) suspension of the officer’s appointment for any period;
  - (iii) reduction of the officer’s rank, seniority or remuneration; or
  - (iv) the imposition of a fine.
102. On 10 September 2019, the section 16 determination was tabled in the Parliament. The reason given for the delay to the Parliament was simply that the section 16 determination had not been provided to the Attorney-General until 26 July 2019.<sup>188</sup> The determination is valid on its face and has not been set aside by any Court. It is not within my jurisdiction to consider whether the delay in tabling had any legal effect upon the determination.<sup>189</sup> I will proceed on the basis that the determination was valid. The content of the determination is

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<sup>185</sup> PCD Act s 21(2)(a) (see **Appendix B**).

<sup>186</sup> This was just prior to Part 3 of the PCD Act coming into force on 1 September 2017. The determination was signed by the chief executive officer of the OPI on 1 September 2017 evidencing the approval of the OPI as required by section 16(3) of the PCD Act.

<sup>187</sup> Exhibit 161 (Volume 2) – Letter from Mr Fuller to Commissioner Vanstone with attachments at p 44.

<sup>188</sup> Exhibit 161 (Volume 2) – Letter from Mr Fuller to Commissioner Vanstone with attachments at pp 19-21, 45-47

<sup>189</sup> *Director of Housing v Sudi* (2011) 33 VR 559.

entirely consistent with my own view of the purpose of the MRP as set out in paragraph [100] above.

## Background to IIS' assessment

### Mr Lawton's complaint to the CoP and DPP of 3 December 2018

103. By letter dated 3 December 2018 Mr Lawton complained directly to the CoP and the DPP about the handling and termination of his complaint of criminal conduct by C.<sup>190</sup> Mr Fuller was not named as a complainant but in a subsequent email sent to the OPI Mr Fuller stated that *"Almost every communication by Ian [Lawton] with SAPOL officers has been drafted with my assistance from day one. I am across every aspect and detail of the original complaint to SAPOL"*.<sup>191</sup>
104. Mr Lawton's complaint referred to the fact that Ms Fuller had provided the complaint of criminal conduct to Della Sala and that a series of communications had then occurred between: (i) Mr Lawton and Chief Superintendent Yeomans (**Yeomans**); and (ii) Ms Fuller and Detective Senior Sergeant Bolingbroke (**Bolingbroke**).
105. Mr Lawton's complaint noted that by an earlier email sent on 9 November 2018, Mr Lawton had *"alleged misconduct, criminal in nature, by each of them in and about the investigation of my Complaint"* and that three weeks had now passed without any response. Mr Lawton stated that, as a result, he was *"persuaded to the point of moral certainty that Bolingbroke and Yeomans have engaged in corrupt conduct in and about the investigation of my Complaint in order to suppress and ultimately terminate it for the benefit of the targets of that investigation"*.
106. Mr Lawton stated that he was unsure as to whether Della Sala was possessed of the same knowledge as Bolingbroke and Yeomans but that *"the reasons he advanced to me and Miss Fuller (as noted by her conversation with him) for termination of the investigation were blatant lies"* and that only an investigation by the Anti-Corruption Branch (**ACB**) within SAPOL would reveal if he was the *"unwitting messenger of the lies of which Yeomans and Bolingbroke were the authors"*. Further Mr Lawton asserted that the *"lies"* told by Della Sala were repeated to him over a period of months until *"the final conversation in which he recited particulars of the grounds supposedly given by the DPP for recommending that my Complaint and the material provided 'offered no reasonable prospects of conviction'"*. In addition to asserting that his complaint

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<sup>190</sup> Exhibit 62 (Volume 1) – Mr Lawton's complaint to the CoP and DPP, 3 December 2018. Records indicate that Mr Lawton hand-delivered his complaint to SAPOL Angas Street marked for the CoP's attention: Exhibit 57 (Volume 1) – Letter from Mr Lawton to the CoP, 6 December 2018 at p 1. There is no evidence that the CoP personally dealt with the correspondence upon receipt.

<sup>191</sup> Exhibit 25 (Volume 1) – Email from Mr Fuller to the OPI, 25 January 2019.

“should immediately become the subject of an investigation by SAPOL Anti-Corruption Branch” Mr Lawton requested that his original complaint of criminal conduct by C be sent to the DPP for advice and recommendations with respect to further investigation and/or charging of C.<sup>192</sup>

107. Mr Lawton’s complaint was accompanied by a series of letters, emails, and file notes from which the following chronology of events between the making of the criminal complaint on about 10 May 2018 and Mr Lawton’s complaint of 3 December 2018 can be established:

Date	Event	Details
3 Jul 2018	Bolingbroke informs Ms Fuller that a police incident report has been created	Bolingbroke informs Ms Fuller that he had completed an assessment of the matter and held an investigation management meeting late last week which has resulted in a police incident report (PIR 18/E17253) being created for dishonest dealing with documents and the offence of unlawful bias in a commercial relationship (CLCA s 149). Bolingbroke advises that the matter will remain in his office for investigation. <sup>193</sup>
10 Sep 2018	Della Sala informs Mr Lawton that the investigation has been terminated	Della Sala telephones Mr Lawton and advises him that the investigation has been terminated and gives an explanation for the investigation being terminated which (according to Mr Lawton) includes that “ <i>the DPP has advised ‘management’ that there were no reasonable prospects for conviction of [C] for any offence on the brief of documents and my Declaration</i> ”. <sup>194</sup>
12 Sep 2018	Ms Fuller has telephone conversation with Della Sala re reasons for terminating investigation and makes a file note of the same	Della Sala informed Ms Fuller (according to Ms Fuller’s file note) that the “ <i>DPP provided advice that no reasonable prospect of conviction and that it was a civil matter</i> ”. Significant factors were: <ul style="list-style-type: none"> <li>• that C provided all of the equity because Mr Lawton was not in a position to make a capital contribution;</li> <li>• Mr Lawton “<i>appointed [C] as his agent in all matters financial in the partnership therefore when [C] signed the AA he did so as Lawton’s agent</i>”;</li> <li>• “<i>SPA 2 was signed by Lawton and therefore he agreed to its terms</i>” – although Della Sala said he had no doubt Mr Lawton did not read it and “<i>was just told to sign it and didn’t realise what had happened in terms of the change in sheep price</i>”.</li> </ul> Della Sala also “ <i>agreed</i> ” with Ms Fuller that: <ul style="list-style-type: none"> <li>• if SPA 2 “<i>had been signed as a consequence of a deception/fraud then his signature would not alter the fact that an offence had been committed</i>”; and</li> <li>• “<i>but for the agency relationship the signing of SPA 2 would not deprive the AA of its otherwise criminal characterization</i>”.</li> </ul>

<sup>192</sup> Exhibit 62 (Volume 1) – Mr Lawton’s complaint to the CoP and DPP, 3 December 2018.

<sup>193</sup> This event is referred to in a letter from Mr Lawton to Yeomans dated 9 November 2018: Exhibit 56 (Volume 1) at p 7-9.

<sup>194</sup> Exhibit 56 (Volume 1) – Letter from Mr Lawton to Yeomans, 9 November 2018 at p 7-9.



		Della Sala stated he has “no doubt [that] this was a tax minimization scheme”, that Mr Lawton had placed a lot of trust in C and had “been used”. Della Sala also agreed with Ms Fuller’s view that Mr Lawton had been “ripped off”. When Ms Fuller asked who had given the advice in the DPP, Della Sala said he did not know, and that the advice was received “via management”. Ms Fuller asked for something in writing confirming the basis of the decision to enable her to properly advise Mr Lawton of his options for “review/complaint etc” and Della Sala agreed to ask his manager. <sup>195</sup>
17 Sep 2018	Ms Fuller makes further request to Della Sala	Ms Fuller made a request for further information about the potential offences that SAPOL referred to the DPP for advice and opinion and the DPP advice. <sup>196</sup>
Pre-1 Oct 2018	Della Sala telephones Ms Fuller	Della Sala telephoned Ms Fuller and advised that Bolingbroke was on leave until after the long weekend <sup>197</sup> and that a response would be provided early next week. <sup>198</sup>
9 Oct 2019	Yeomans writes to Mr Lawton	Yeomans writes a letter to Mr Lawton in response to his “allegations of fraud”. Yeomans advises that he has had conversations with Della Sala and that “an assessment of the allegations has been conducted by senior investigators in the Major Fraud Investigation Section of the Commercial and Electronic Crime Branch. That assessment has determined the matter does not warrant any further criminal investigation to be undertaken at this time by the South Australia Police”. Mr Lawton is advised to contact Della Sala should he wish to discuss the matter further. <sup>199</sup>
10 Oct 2018	Ms Fuller emails Della Sala	Ms Fuller emails Della Sala and notes she has not received a response to her requests for further information and is therefore “not yet privy to the details of the DPP advice”. She also notes Della Sala’s “informal advice that DPP advice was that as [C] was the agent of Lawton [C] had implied authority to transact financial matters on Lawton’s behalf there was no reasonable prospect of establishing any offences against the CLCA”. Ms Fuller comments that this means that “the evidence reinforced a conclusion of implied agency”. Ms Fuller queries that conclusion, describing it as “misguided” whilst also noting that, if correct, it would attract the operation of CLCA s 149 (offence of unlawful bias as a fiduciary) which SAPOL highlighted as a potential charge very early in the matter when generating a police incident report. Ms Fuller repeats her request for: <sup>200</sup> <u>1. The potential offences that SAPOL referred to the DPP for advice and opinion.</u>

<sup>195</sup> Exhibit 56 (Volume 1) – Notes of Ms Fuller re telephone conversation 12 September 2018 at p 10.

<sup>196</sup> This event is referred to in an email from Ms Fuller to Della Sala dated 10 October 2018: Exhibit 56 (Volume 1) at p 11-12.

<sup>197</sup> The relevant public holiday was Monday 1 October 2018.

<sup>198</sup> Exhibit 56 (Volume 1) – Email from Ms Fuller to Della Sala, 10 October 2018 at p 11.

<sup>199</sup> Exhibit 56 (Volume 1) – Letter from Yeomans to Mr Lawton, 9 October 2018 at p 2.

<sup>200</sup> Exhibit 56 (Volume 1) – Email from Ms Fuller to Della Sala, 10 October 2018 at p 11-12.

		<u>2. A copy of the advice provided by the DPP which concluded that there were no reasonable prospects of conviction for the offence(s) considered by the DPP.</u> <i>(original emphasis)</i>
18 Oct 2018	Mr Lawton receives Yeomans' letter	Mr Lawton states in a subsequent letter that he received Yeomans' letter dated 9 October 2018 by post on this date. <sup>201</sup>
26 Oct 2018	Mr Lawton emails Yeomans	Mr Lawton emails Yeomans a letter in which he says he regards Yeomans' advice (in his letter dated 9 October 2018) to be unsatisfactory on a number of levels and falling short of a proper and professional explanation. Mr Lawton requests a response to the following: <ol style="list-style-type: none"> <li>1. <i>Were you the decision maker? If not, then the name and rank of the person/s who were the decision maker/s.</i></li> <li>2. <i>The grounds upon which the decision maker/s acted to terminate this investigation.</i></li> <li>3. <i>If the grounds include advice from the Director of Public Prosecutions, a summary of that advice, its date, and particulars of the possible offences upon which the Director was requested to advise.</i></li> <li>4. <i>The names and rank of the persons specifically charged with the conduct of this investigation</i></li> <li>5. <i>Having regard to the approximately 4 ½ months your investigators have had my declaration, the attached brief of documents, and the accompanying assessment of my Counsel Ms Joana Fuller, an explanation from you or the decision maker/s as to why this investigation was not terminated earlier or a step taken as a preliminary to charges being laid.</i></li> </ol> Mr Lawton request that “ <i>fulsome answers</i> ” be provided within five business days stating that he would “ <i>not accept any delay or prevarication, whether on operational grounds, or otherwise</i> ”. <sup>202</sup>
29 Oct 2018	Mr Lawton emails Yeomans	Mr Lawton emails Yeomans noting that a hard copy of his email from 26 October 2018 was delivered to SAPOL at 100 Angas Street that day. <sup>203</sup>
30 Oct 2018	Yeomans emails Mr Lawton	Yeomans emails Mr Lawton and confirms receipt of his email and the hard copy and states that he will endeavour to provide a response to his queries as soon as he can. <sup>204</sup>
30 Oct 2018	Mr Lawton emails Yeomans	Mr Lawton emails Yeomans referring to his request on 26 October 2018 stating that Yeomans has ample time to respond to his requests by 2 November 2018 and therefore he anticipates a response by that time. <sup>205</sup>
3 Nov 2018	Ms Fuller emails Della Sala	Ms Fuller emails Della Sala expressing her disappointment that he has not responded to her emails of 17 September 2018 and 10 October 2018 and requests that he provides her with a response to her request as articulated in her email of 10 October 2018. <sup>206</sup>

<sup>201</sup> Exhibit 56 (Volume 1) – Letter from Mr Lawton to Yeomans, 26 October 2018 at p 3.

<sup>202</sup> Exhibit 56 (Volume 1) – Letter from Mr Lawton to Yeomans, 26 October 2018 at p 3.

<sup>203</sup> Exhibit 56 (Volume 1) – Email from Mr Lawton to Yeomans, 29 October 2018 at p 4.

<sup>204</sup> Exhibit 56 (Volume 1) – Email from Yeomans to Mr Lawton, 30 October 2018 at p 4.

<sup>205</sup> Exhibit 56 (Volume 1) – Email from Mr Lawton to Yeomans, 30 October 2018 at p 6.

<sup>206</sup> Exhibit 56 (Volume 1) – Email from Ms Fuller to Della Sala, 3 November 2018 at pp 11, 13.

5 Nov 2018 at 9:38 AM	Della Sala emails Ms Fuller	Della Sala emails Ms Fuller and advises that a meeting was held by “Management” last week in relation to this matter and a response is being prepared and will be provided to Mr Lawton in due course. <sup>207</sup>
5 Nov 2018 at 12:22 PM	Yeomans emails Mr Lawton	<p>Yeomans emails Mr Lawton and informs him that he has convened a meeting with investigators from the MFIS to discuss the queries he has raised. He states:<sup>208</sup></p> <p><i>I am completely satisfied this matter has been investigated as far as we can take it. You note that we have had your declaration for approximately 4.5 months – that is a very pertinent point. This matter has been reviewed and investigated by senior fraud investigators within SAPOL throughout that time. But we do get to a point, like with some other matters that are brought to our attention, that we consider that the documents as provided raise doubts as to the sufficiency of evidence necessary to prove a charge beyond reasonable doubt and that particular matter would be better adjudicated and tested in the civil arena where a lower burden of proof is required to succeed. It is worth noting that our use of relevant authorities is obviously very much restricted in matters such as these.</i></p> <p><i>In relation to your matter, it is my considered opinion that we have reached that point and consequently, we have finalised the investigation from our perspective. I understand that one of my senior fraud investigators has previously spoken with both yourself and Ms Fuller regarding this matter and has explained our position on this.</i></p> <p><i>I respect that your opinion may differ from mine in this regard but in any event, I do not propose to provide the specific detail you request relating to how this decision was made. My advice if you wish to pursue this matter is to instigate civil proceedings – but that is obviously a matter for yourself to consider.</i></p>
9 Nov 2018	Mr Lawton writes to Yeomans	<p>Mr Lawton writes a letter to Yeomans complaining that he has waited six business days for a response to his request for a full explanation of the circumstances which led him to advise that the matter does not warrant any further criminal investigation to be undertaken. Mr Lawton refers to his telephone conversation with Della Sala on 10 September 2018 and asserts that Della Sala’s answers to questions from Mr Lawton for “a better explanation suggested he was merely the messenger giving me some details from a script he had been given on the ‘DPP advice’, but had not seen it himself, or taken any part in obtaining it”.</p> <p>Mr Lawton refers to Yeomans’ email to him on 5 November 2018 and says that it is now clear that Yeomans was the decision maker.</p> <p>Mr Lawton refers to Ms Fuller’s telephone conversation with Della Sala on 12 September 2018 and the email correspondence that follows. Mr Lawton notes that Ms Fuller “was highly critical of the ‘DPP advice’”.</p> <p>Mr Lawton notes that Yeomans’ letter to him dated 9 October 2018 “Inexplicably ... makes no mention of the advice from the DPP as the reason for terminating the</p>

<sup>207</sup> Exhibit 56 (Volume 1) – Email from Ms Fuller to Della Sala, 5 November 2018 at p 13.

<sup>208</sup> Exhibit 56 (Volume 1) – Email from Yeomans to Mr Fuller, 5 November 2018 at p 5-6.

	<p><i>Investigation” and that this means “<u>nobody</u> involved in this investigation, including you, (and of which you had oversight), is prepared to confirm in writing the reasons conveyed to me and Miss Fuller by Della Sala for the termination of the investigation, namely advice from the DPP” (original emphasis).</i></p> <p>Mr Lawton then states:</p> <p><i>Enquiries made on my behalf of the Office of the DPP disclose that there was within weeks of the delivery of the brief to Bolingbroke an initial informal contact with an officer of the DPP to review Miss Fuller’s letter of opinion attached to the brief given to Bolingbroke. Advice from that officer of the DPP was apparently conveyed to Bolingbroke that having regard to Miss Fuller’s opinion my complaint warranted investigation. This is no doubt why Bolingbroke then advised that a PIR had been raised and the matter allocated to Della Sala for investigation.</i></p> <p><i>My further information as a result of these enquiries is that there exists no record in the Office of the DPP of any further request for advice as to the prospects of conviction of [C] based on my Declaration and the brief of documents (and any investigation of it by Bolingbroke and/or Della Sala.</i></p> <p><i>If my information is true, namely that there has been no request by anybody in your section of the DPP for advice as to the prospects of a conviction, then the information conveyed to me by Della Sala and repeated to Miss Fuller, of which you were aware, was false.</i></p> <p>Mr Lawton then states that he is “left with an overwhelming suspicion that this investigation has been influenced by some unknown third party or parties and that the reason proffered to me for terminating the investigation (namely DPP advice) was untrue and intended to deter me from pursuing the matter any further”. He states that the only inference he can draw is that no advice was given by the DPP and that “senior personnel” within SAPOL have advanced “a false reason for terminating an investigation” and then attempted to “write it out” of the record. Mr Lawton concludes by stating that he intends to make a complaint to the appropriate body regarding the conduct of those responsible for the termination of the investigation into my complaint.<sup>209</sup></p>
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Table 2

108. Ms Fuller’s file note from her telephone call with Della Sala on 12 September 2018 (outlined in the above table) contains the reasons given by SAPOL to Ms Fuller for why the investigation was terminated. I note the following relevant matters:

- (a) Della Sala explained that SAPOL considered the matter to be “a *civil matter*”. There is no doubt that the alleged fraud occurred in the context

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<sup>209</sup> Exhibit 56 (Volume 1) – Letter from Mr Lawton to Yeomans, 9 November 2018 at p 7-9.

of a complex commercial transaction occurring over five years earlier.<sup>210</sup> The alleged fraud could appropriately be considered to involve a breach of contract which could have been the subject of civil legal proceedings. A few examples of the complexity of the matter which are apparent to me are that:

- (i) the AA states that unanimous agreement occurred “*immediately prior to Completion*” of the SPA but the “*Completion*” date is only able to be ascertained by reference to the dates of other events that are not discussed by Mr Lawton in his Declaration and to which no relevant documents were provided by Mr Lawton;<sup>211</sup>
- (ii) the Partnership (i.e., Company D and Company E) received a sheep refund payment of \$152,619 on 12 August 2013 paid into the Partnership’s account but Mr Lawton has not deducted this amount (nor any other amount) from the amount he says is owed to Company E as a result of C’s fraud;
- (iii) Lawton’s statutory declaration does not acknowledge that in an email he sent to C’s accounting firm in October 2017 he states: “*there was a formal agreement for reimbursement of \$152619 entered into on the 25th of July 2013. The amount of \$153619 was precisely calculated and enshrined in the agreement. This written agreement does not allow room for any recalculation of the overpayment refund as you suggest*” (my emphasis). By these statements Mr Lawton expressly accepts that the sheep refund amount was the lower amount of \$153,619 based on \$50.18 per head (rather than the approximate figure of \$240,000 based on \$79.10 per head). If Mr Lawton was

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<sup>210</sup> It was only in May 2018 that Lawton made a complaint to SAPOL relating to C’s conduct in relation to the purchase of the Station from Companies A and B. The complaint of criminality was therefore made over five years after Lawton first become a partner in the Partnership (in March 2013) and, as explained below, over four years after Lawton first obtained independent legal advice in relation to matters relating to the Partnership (in February 2014). The complaint was also made about two years after both Lawton and C had sold their entire interest in the Station.

<sup>211</sup> Exhibit 68 (Volume 1), SPA forming part of Exhibit IGL-3 to Mr Lawton’s statutory declaration at p 2-39. Clause 2.1 (p. 10) provided that it was a condition precedent to “*completion*” that particular Land Sale Agreements (relating to land separate to the Station but also owned by the original partners of the Partnership) had settled, that all amounts owing had been received in full and the relevant Government Minister had approved the assignment of the pastoral leases relating to those parcels of land to the new owners. Under cl. 6.1 (p. 15) if the condition precedent was met by 12pm on 25 January 2013 then the “*completion*” date was 29 January 2013. If not, then the “*completion*” date was to be “*5 Business Days following the day on which the conditions precedent are satisfied*”. However, under cl. 6.2 (p. 15) in either case, the SPA provided that the “*completion date*” was in fact only a “*Nominated Completion Date*” as it could be impacted by the availability of bank funding. If bank funding to complete the transaction was not available by the Nominated Completion date, then “*Completion must take place on the earlier of: ... the date that the financial institution advises that the funds will be made available; and 14 days from the Nominated Completion Date*”. Cl. 6.3 (p. 15) also provided that the SPA also provided that “*Completion of the sale and purchase of all Partnership Interests must occur simultaneously*”.

willing to accept this lower head price had been “*precisely calculated and enshrined*” in an agreement, which could only mean the AA, at that point in time why was that and why had his position changed? Why did he not address this significant inconsistent prior statement in his Declaration?

(b) Della Sala explained that Mr Lawton appeared to have appointed C as his agent “*in all matters financial*” and therefore when C signed the AA he may have done so in his capacity as Mr Lawton’s agent. The existence of an implied agency agreement would be unusual given that Mr Lawton was fully aware from the outset that C had an existing relationship with the persons involved in Companies A and B as their existing business partner. He was also fully aware that the persons involved in Companies A and B were clients of C’s accounting firm and that C was an executor of the estate of a person who had previously been involved in those companies (a family member of the remaining persons involved).<sup>212</sup> Accordingly, there does not appear to have been any failure on C’s part to declare his other relationships and interests to Mr Lawton. Further, if there was indeed an implied agency arrangement Lawton’s statutory declaration was largely silent on a number of salient points such as:

- (i) did C know that Mr Lawton had left all legal and financial matters to him or was this something that was never disclosed by Mr Lawton?
- (ii) what identifiable acts did C perform and/or what identifiable representations did C make that mean that he did in fact act as Mr Lawton’s agent?
- (iii) what was the scope of C’s authority as an agent and for what period was C Mr Lawton’s agent?
- (iv) did C act in breach of C’s obligations as Mr Lawton’s agent by failing to bring the content of SPA 2 to Mr Lawton’s attention or was producing it to him sufficient (leaving it to Mr Lawton to decide whether or not to read it)?
- (v) did C act within the scope of his authority in signing the AA on behalf of the trustee of Lawton’s Trust?
- (vi) did C act in breach of his obligations as Mr Lawton’s agent by failing to bring the content of the AA to Mr Lawton’s attention?

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<sup>212</sup> Exhibit 65 (Volume 1), Lawton’s statutory declaration at p 1 [2].

- (c) Della Sala explained that as SPA 2 had been signed by Mr Lawton he had agreed to its terms whether or not he read it and therefore he was bound by it. According to his statutory declaration, Mr Lawton did ask some questions of C at the time when he was presented with SPA 2 and when he was told he wouldn't understand the arrangements, Mr Lawton simply signed SPA 2 "*because I trusted [C]*".<sup>213</sup> He does not expressly state whether he was aware that in SPA 2 the price per head of sheep was specified to be \$50.18 nor whether he read SPA 2. The only way Mr Lawton would not have known of the change of price per head of sheep in SPA 2 was if he did not read it. It is not clear whether Mr Lawton did read SPA 2, and if he in fact did read SPA 2, why he did not discuss with C the reason for the lower price.
109. The table above also demonstrates that from 12 September 2018 Mr Lawton and Ms Fuller were concerned to find out precisely what advice had been provided by the DPP to SAPOL in relation to the alleged criminal conduct, it was only Mr Lawton's final communication with Yeomans on 9 November 2018 that this issue was brought into sharp focus by Mr Lawton disclosing that his own enquiries had revealed that:
- (a) a member of the DPP had "*informal contact*" with SAPOL within weeks of the delivery of the "*brief*" to Bolingbroke;
  - (b) that this person had reviewed Ms Fuller's letter and had conveyed to Bolingbroke that, having regard to Ms Fuller's opinion, Mr Lawton's complaint warranted investigation;
  - (c) it was after this that a police incident report was raised, and the matter allocated to Della Sala for investigation; and
  - (d) that the DPP has no record of any further request for advice as to the prospects of conviction in relation to the matter.
110. Yeomans cannot be criticised for not addressing these matters in his letter dated 9 October 2018 and his email dated 5 November 2018, when these matters were never brought to his attention earlier by Mr Lawton. That is not to deny the fact that Yeomans' correspondence with Mr Lawton failed to address the 'DPP advice' issue when Yeomans should have been aware that this was a critical issue from Mr Lawton's point of view. Although Yeomans had no legal obligation to address this issue, his failure to do so was the catalyst for Mr Lawton's subsequent complaint to the CoP and DPP.
111. It is understandable that Mr Lawton had concerns about the reasons proffered by SAPOL for discontinuing the investigation in light of the above information

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<sup>213</sup> Exhibit 65 (Volume 1), Lawton's statutory declaration at p 4-5 [22]-[23].

and Yeomans' failure to address the issue of DPP advice. However, there is no basis for Mr Lawton's serious allegation that Yeomans and Bolingbroke were therefore involved in "misconduct, criminal in nature" and "corrupt conduct" in order to benefit C. No evidence is provided to support that allegation. I have not been provided with any evidence as to any possible motive or reason why those SAPOL officers would want to benefit C, to the detriment of Mr Lawton.

### OPI is notified of the 3 December 2018 complaint

112. On 11 December 2018, the IIS notified the OPI that an assessment of a complaint made by Mr Lawton had been made.<sup>214</sup>
113. At that time, the OPI was responsible to the Commissioner for the performance of its functions and was comprised of public service employees assigned to the OPI to assist the Commissioner, and employees of the Commissioner assigned to the OPI by the Commissioner.<sup>215</sup> In practical terms the head of the OPI was its "Director" who was responsible to the Commissioner.
114. The IIS notification recorded details relating to Mr Lawton, the fact that his complaint was against SAPOL and in particular against the MFIS, Della Sala, Yeomans, Bolingbroke and the CoP and the fact that the conduct complained of occurred after 10 May 2018.<sup>216</sup> The issues identified by IIS were potential "Misconduct" and "Negligence and/or failing in duty". The general nature of the complaint was recorded as "Failure to exercise power / make decision / carry out a function or inadequate exercise of power". The "summary" of the assessment recorded "Complainant victim of potential fraud by his accountant and matter reported to Major Fraud by complainant's solicitor. Major Fraud held file for some 5 months, referring matter to DPP for advice and opinion before advising complainant no reasonable prospect of conviction and that matter is potentially civil claim. Complainant not happy with outcome and has corresponded with OC Major Fraud for reasons and explanation of no investigation. Whilst no conduct issues with investigation and handling of file, MR process to be utilised to further communicate with complainant and provide further explanation". The outcome recorded was "Management Resolution".<sup>217</sup>

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<sup>214</sup> Exhibit 29 (Volume 1) – Running Sheet 2019/002345 at p 2; Exhibit 273 (Volume 4) – Email from the Commission, 15 November 2023; Exhibit 274 (Volume 4) – Screen shot attachment to email from the Commission.

<sup>215</sup> ICAC Act s 18(1) (see **Appendix A**).

<sup>216</sup> This was the date the complaint and brief were delivered to Bolingbroke.

<sup>217</sup> Exhibit 29 (Volume 1) – Running Sheet 2019/002345 at p 2; Exhibit 273 (Volume 4) – Email from the Commission, 15 November 2023; Exhibit 274 (Volume 4) – Screen shot attachment to email from the Commission; Exhibit 299 (Volume 4) – IIS File Allocation at p 2.



115. An OPI assessment officer reviewed the IIS notification on the same date and determined not to re-assess the complaint nor substitute an OPI assessment of the complaint.<sup>218</sup> No detailed record was made of this review.

## Mr Lawton and Mr Fuller's January 2019 complaint to the OPI

116. On 21 January 2019 Mr Lawton emailed the OPI a complaint.<sup>219</sup> Mr Lawton's complaint was specified to be against "3 very senior officers of SAPOL". The complaint related to "*the circumstances in which an original complaint by me to SAPOL Of Unlawful Bias, Deception and Dishonestly Dealing with documents by a formal partner in a pastoral business was terminated*". Mr Lawton alleged that his complaint "*was terminated on a false pretence that the Director of Public Prosecutions had advised the officers of SAPOL charged with the investigation that my complaint offered no reasonable prospects of conviction. I have written confirmation from The Director that no such advice was sought or given*". Mr Lawton complained of senior officers failing to respond to his requests that ACB should investigate the circumstances of the termination of his complaint and refer his original complaint to the DPP for advice and/or recommendations. Mr Lawton did not identify the officers nor provide any material with his emailed complaint on the basis that it was "*so sensitive that it requires delivery in person and in hard copy*".
117. On 22 January 2019, an OPI employee telephoned Mr Lawton and arranged an in-person meeting for him with OPI staff on 29 January 2019 at 2pm.<sup>220</sup> Mr Lawton advised that Mr Fuller, whom he described as being another director of the company which had been defrauded, would be attending the interview. Mr Fuller had indeed been made a director of Company E on 9 January 2019.<sup>221</sup>
118. On 25 January 2019 Mr Fuller emailed the OPI and addressed his email to "*Whomever will preside at meeting with Ian Lawton and me at 2 p.m. Tuesday 29 January 2019*". The email said: "*Almost every communication by Ian with SAPOL officers has been drafted with my assistance from day one. I am across every aspect and detail of the original complaint to SAPOL, and the present complaint. I am a director of one of the victims [Company E], the other is Ian*

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<sup>218</sup> Exhibit 29 (Volume 1) – Running Sheet 2019/002345 at p 2; Exhibit 273 (Volume 4) – Email from the Commission, 15 November 2023; Exhibit 274 (Volume 4) – Screen shot attachment to email from the Commission.

<sup>219</sup> Exhibit 21 (Volume 1) – Email from Mr Lawton to the OPI, 21 January 2019; Exhibit 22 (Volume 1) – Letter from Mr Lawton to the OPI, undated.

<sup>220</sup> Exhibit 23 (Volume 1) – Audio recording of the OPI telephone call with Mr Lawton, 22 January 2019; Exhibit 24 (Volume 1) – Email from the OPI to Mr Lawton, 22 January 2019; Exhibit 29 (Volume 1) – Running Sheet 2019/002345 at p 1-2.

<sup>221</sup> Exhibit 61 (Volume 1) – ASIC extract provided by Mr Lawton to the OPI.

*Lawton who is the primary beneficiary of a private family trust of which [Company E] is Trustee. The attachments are sent for the purpose of a 'heads up' before the meeting".*<sup>222</sup>

119. The first document attached to Mr Fuller's email was the document headed 'About Michael Fuller' which I have referred to in paragraph [52] above.<sup>223</sup>
120. The second document attached to Mr Fuller's email was a document headed "*Lawton v SAPOL Case Summary*" which was stated to have been prepared by Mr Fuller in his capacity as director of Company E.<sup>224</sup>
121. The "*Introduction*" part of this document explains that Mr Fuller's recent appointment as director of Company E "*has been made to give me a credential to present and talk to where necessary any aspect of the complaint now made on behalf of [Company E] and Ian Lawton*" and that Mr Fuller assisted Mr Lawton "*in the preparation of the Brief presented to SAPOL in May 2018, and now this brief to be presented to OPI*".<sup>225</sup>
122. In this document Mr Fuller also identifies that he is "*known to*" Mr Lander as Mr Lander had previously acted for Mr Fuller in legal proceedings known as the "*Beach Petroleum Proceedings*". Mr Fuller explained that these were civil proceedings taken against him as the chairman of a number of companies which collapsed in the late 1980s and resulted in Mr Fuller becoming bankrupt and unable to defend the proceedings.<sup>226</sup> Mr Fuller also disclosed that Ms Fuller is his daughter.<sup>227</sup>
123. "*The Case*" part of this document set out some of the history of SAPOL's handling of the criminal complaint and in particular records the following:
  - (a) shortly after the original complaint was delivered to Bolingbroke on 10 May 2019, a police incident report was issued to investigate possible breaches of the CLCA for Deception, Dishonestly Dealing with Documents, and Unlawful Bias;
  - (b) "*Apart from an initial interview, a written advice from Bolingbroke that the matter was being investigated in house, nothing appeared to be happening other than the appointment of Della Sala as investigator and point of contact for Lawton*" as "*no single advice of specific action being taken by SAPOL was advised to Lawton until late July/early August when*

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<sup>222</sup> Exhibit 25 (Volume 1) – Email from Mr Fuller to the OPI, 25 January 2019.

<sup>223</sup> Exhibit 26 (Volume 1) – 'About Michael Fuller' document provided to the OPI.

<sup>224</sup> Exhibit 27 (Volume 1) – 'Case Summary' document provided to the OPI.

<sup>225</sup> Exhibit 27 (Volume 1) – 'Case Summary' document provided to the OPI at p 1 [1].

<sup>226</sup> Exhibit 26 (Volume 1) – 'About Michael Fuller' document provided to the OPI at p 1;

Exhibit 27 (Volume 1) – 'Case Summary' document provided to the OPI at p 1 [6].

<sup>227</sup> Exhibit 27 (Volume 1) – 'Case Summary' document provided to the OPI at p 1 [7].

*Della Sala told Lawton that the brief had been sent to the DPP for advice and that it might take about 2 weeks for an answer”;*

- (c) No information as to status or progress was given by SAPOL including when “*A memo to Lawton from Michael Fuller forwarded to Bolingbroke by Lawton suggested a direction for obtaining relevant material*” (this memo “*was not responded to*”);
  - (d) No information was provided by SAPOL to Mr Lawton until mid-August 2018 when during a telephone call between Mr Lawton and Della Sala, “*Lawton was told that the DPP had been contacted for advice but Della Sala said that he was not able to tell Lawton about the detail as it had not been referred to the DPP by Della Sala but by ‘management’. He said it would take about 2 weeks for the advice to be received back from the DPP*”;
  - (e) About two weeks later Della Sala told Mr Lawton that “*the DPP advice had been received and was with ‘management’ to make a decision*” and that Mr Lawton would be contacted once a decision was made;
  - (f) On about 11 September 2019 Mr Lawton received a call from Della Sala which he put on speakerphone so that Mr Fuller could hear the conversation and the “*substance of that conversation*” was subsequently repeated to Ms Fuller at Mr Lawton’s request;
  - (g) There were then written communications and telephone calls and it is upon these that the “*allegations against Yeomans and Bolingbroke and [CoP] Grant Stevens of improper conduct are principally based*”; and
  - (h) Mr Fuller asserts that “*The DPP fiction was played out over a number of phone calls extending over approx. 5 weeks. It was a construct built upon overtime [sic] to provide at a future point, a strategy for termination of the investigation which Lawton might in context accept without demur ... This strategy involved not merely the fiction but the avoidance early on of accepting any invitation from DPP to review the brief and provide advice*”.<sup>228</sup>
124. Mr Lawton and Mr Fuller’s complaint to the OPI was against Yeomans, Bolingbroke and the CoP. The basis for the inclusion of the CoP was explained in the last two paragraphs of the letter as follows:<sup>229</sup>

*12. The abject failure by the [CoP] to respond to the allegations made against him inculcates him as the influencer of the conduct of Yeomans and Bolingbroke.*

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<sup>228</sup> Exhibit 27 (Volume 1) – ‘Case Summary’ document provided to the OPI at p 1-2 [8]-[11].

<sup>229</sup> Exhibit 27 (Volume 1) – ‘Case Summary’ document provided to the OPI at p 2 [12]-[13].

13. *Yeomans and Bolingbroke would not risk their careers and act as they did without a clear understanding that they were complying with the [CoP's] wishes in the matter.*

125. The basis for the complaint against the CoP rested on: (a) his failure to personally respond to Mr Lawton's complaint dated 3 December 2018; and (b) the belief that Yeomans and Bolingbroke would have only acted as they had done if they were complying with the CoP's wishes. No evidence was provided to indicate that the CoP was personally aware of Mr Lawton's complaint or had any involvement in considering it.
126. On 29 January 2019, Mr Lawton and Mr Fuller met with two OPI employees. At that time a handwritten complaint was made and signed by Mr Lawton and Mr Fuller against the CoP, Yeomans and Bolingbroke.<sup>230</sup> This complaint alleged that each officer complained of had "*engaged in improper conduct and abuse of public office contrary to Part Seven Division Four (Offences Relating to Public Officers) of the CLCA*" with the conduct occurring between May and December 2018. Persons relevant to the complaint were identified as Ms Fuller, the DPP, Mr Fuller (here described as "*Retired Solicitor*" and director of Company E) and Mr Lawton (as director of Company E). Annexed to the complaint was an extract of the CLCA containing sections 146 to 149 inclusive.
127. Handwritten notes taken by the two OPI employees record that the complainants provided two folders of information.<sup>231</sup> One member's notes record the complainants concerns that the matter was "*being covered up or swept aside*" and that there was some "*corrupt influence*". This member also records "*Connections to members of Adel club. Familiar w/ Comm*".<sup>232</sup>
128. The other OPI employee's notes record: "*Adelaide Club – Commission and Ian & members - persons implicated in complaint members of Adelaide Club*".<sup>233</sup> The reference to "*Commission*" here appears to be a reference to the CoP. The reference to 'Ian' appears to be a reference to Mr Lawton. The other "*persons implicated*" are recorded as C, a lawyer who is a partner in the law firm which prepared all the relevant purchase/transfer documentation (i.e., the SPA, SPA 2 and AA) and that law firm. Immediately under those names is recorded "*targets know in advance this is going to happen*" and "*proper investigation implicated members of Adelaide Club*".<sup>234</sup>
129. These handwritten notes (and the OPI's subsequent reference to these when referring the complaint to the IIS), were the only time that the alleged

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<sup>230</sup> Exhibit 79 (Volume 1) – Handwritten OPI complaint.

<sup>231</sup> Exhibit 80 (Volume 2) – OPI handwritten notes at p 1; Exhibit 160 (Volume 2) – Running Sheet 2019/002957 at p 14.

<sup>232</sup> Exhibit 80 (Volume 2) – OPI handwritten notes at p 1-2.

<sup>233</sup> There is a private members club known as The Adelaide Club located on North Terrace, Adelaide.

<sup>234</sup> Exhibit 80 (Volume 2) – OPI handwritten notes at p 3-4.

connections to the Adelaide Club were put forward by Mr Lawton and Mr Fuller as some kind of explanation for why SAPOL had improperly/corruptly terminated the criminal investigation. Despite Mr Fuller subsequently making very lengthy and detailed complaints/submissions to various persons, he never once returns to the Adelaide Club connections as a potential motive for why the criminal investigation was terminated. Given that Mr Lawton was also asserted to be a member of the Adelaide Club it is entirely unclear as to why membership of this club would have given rise to any kind of conflict of interest or preferential treatment.

130. Both sets of notes made by the OPI members record that there had been correspondence received from the DPP and that there had been further correspondence with another SAPOL officer, Detective Chief Superintendent Osborn.<sup>235</sup> The second OPI employee's notes record "*junior DPP officer spoken to by Bolingbroke*".<sup>236</sup> This is important as it demonstrates that the OPI was aware that some informal legal advice had been obtained from the DPP.
131. The folders provided to the OPI included Ms Fuller's letter dated 10 May 2018, Lawton's statutory declaration and annexures, the complaint to the CoP and DPP dated 3 December 2018 and the letters/emails/file notes provided with that complaint. In addition, the following additional records were provided:
  - (a) An email from Bolingbroke to Ms Fuller dated 3 July 2018 in which Bolingbroke states that he has completed "*an assessment of the matter*", that an "*investigation management meeting*" was held late last week, that a police incident report (PIR 18/E17253) has been submitted for "*dishonest dealing with documents as well as the offence of Unlawful Bias in a commercial relationship – S 149 CLCA*", that "*the matter will remain in our office for investigation*" and he anticipates that it "*should be allocated to an investigator by the end of the month*".<sup>237</sup>
  - (b) An email from Ms Fuller to Della Sala dated 22 September 2018 in which Ms Fuller notes that she has not received a response to her email dated 17 September 2018 and requests a response so that she can provide advice to Mr Lawton regarding the decision not to investigate.<sup>238</sup>
  - (c) A letter from the then-DPP Mr Adam Kimber SC (**Mr Kimber SC**),<sup>239</sup> to Mr Lawton dated 4 December 2018 advising that his office has "*never been asked to provide any formal advice to SA Police, nor has it received*

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<sup>235</sup> Exhibit 80 (Volume 2) – OPI handwritten notes.

<sup>236</sup> Exhibit 80 (Volume 2) – OPI handwritten notes at p 4.

<sup>237</sup> Exhibit 55 (Volume 1) – Email from Bolingbroke to Ms Fuller, 3 July 2018.

<sup>238</sup> Exhibit 63 (Volume 1) – Emails Ms Fuller and Della Sala, 17 to 22 September 2018.

<sup>239</sup> The Honourable Adam Kimber SC was appointed a Justice of the Supreme Court of South Australia in June 2022. I will refer to His Honour as 'Mr Kimber SC' given his role as the DPP at the time.

*any brief from SA Police. There has only been some informal contact which has not reached the point of this Office having any responsibility*".<sup>240</sup>

- (d) An email from Mr Lawton to the CoP dated 6 December 2018 providing the above response from Mr Kimber SC. Mr Lawton asserts that the response *"is conclusive evidence that the above have been guilty of at least misconduct, if not improper conduct, in and about the termination of their investigation of my Complaint as detailed in my letter and its attachments"*. Mr Lawton states that he requires acknowledgement of his letter and *"confirmation that you have referred it to your Anticorruption Branch as a matter requiring urgent investigation"* (original emphasis).<sup>241</sup>
- (e) Email from Mr Lawton to the CoP dated 12 December 2018 noting that 10 days have passed since his complaint of 3 December 2018 and noting that given the content of his complaint he *"would have expected your urgent attention to it and your advice that you have implemented the actions requested by me"*. Mr Lawton then makes the following assertions and demands:<sup>242</sup>

*The personnel referred to must have been secure in the knowledge that they were acting with the approval of 'higher authority' to have invented a detailed but false reason for the termination of the investigation under their control.*

*Failure by you to act immediately and responsively to my requests will only increase my concern as to how high up the chain of command the influence goes.*

*Failure by you to act immediately and responsively will only suggest to me that the influence 'knocks on your door'.*

*The evidence against your officers that I have provided to you is overwhelming.*

*A decision by you should therefore in the circumstances be almost instantaneous.*

*A positive response by you should not need to extend beyond COB Friday the 14th of December.*

*I would not expect to receive from you any excuse for further delay.*

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<sup>240</sup> Exhibit 57 (Volume 1) – Letter from Mr Kimber SC to Mr Lawton, 4 December 2018 at p 2.

<sup>241</sup> Exhibit 59 (Volume 1) – Email from CoP to Mr Lawton, 6 December 2018 at p 1.

<sup>242</sup> Exhibit 59 (Volume 1) – Emails to/from CoP and Mr Lawton, 12 December 2018 at p 4-5.

- (f) Emails from the CoP's office dated 6, 7 and 12 December 2018 acknowledging Mr Lawton's correspondence has been received and that a response will be provided at the earliest opportunity.<sup>243</sup>
- (g) A series of emails between Mr Lawton and Osborn sent on 14 December 2018.
- (i) The first email begins with Osborn noting Mr Lawton's complaint about the failure of SAPOL's MFIS to undertake an investigation into allegations of fraud reported on his behalf by Ms Fuller "*has been directed to me to resolve as may be possible*". Osborn advises Mr Lawton that to undertake that task it will be necessary for him to speak to each of the members he has nominated in his correspondence and that it is his intention to inform himself and then come back to him at the earliest opportunity;<sup>244</sup>
  - (ii) A responding email from Mr Lawton saying that he is not satisfied; that the appropriate officer to investigate his complaint is an ACB officer and a request that Osborn advise whether he is a member of that branch;<sup>245</sup>
  - (iii) A response from Osborn confirming that he is not a member of ACB but by rank and position is second in charge of Crime Service within SAPOL which is a branch providing a specialist investigation service within SAPOL relating to serious, organised or complex criminal activity including major fraud;<sup>246</sup> and
  - (iv) An email from Mr Lawton asserting that Osborn is "*clearly revisiting my original complaint of fraud*", for which he states he is pleased, but then asserts that Osborn is "*not empowered obviously to investigate my more recent and far more serious complaint of corruption by the very officers you intend to speak too [sic]*" and states that Osborn's intention to interview those officers before ACB has had a chance to review all of the material is "*a mistake*". Mr Lawton concludes by noting his intention to forward a copy of his email to the CoP and request that he give a direction to ACB to investigate the matter.<sup>247</sup>
- (h) An email from Mr Lawton to the CoP dated 14 December 2018 forwarding the above emails, noting his dismay at "*what appears to be a refusal by you to personally address my complaint of corruption*" and in

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<sup>243</sup> Exhibit 59 (Volume 1) – Emails to/from CoP and Mr Lawton, 6 and 12 December 2018 at pp 1-3, 5.

<sup>244</sup> Exhibit 58 (Volume 1) – Email from Osborn to Mr Lawton, 14 December 2018 at p 1.

<sup>245</sup> Exhibit 58 (Volume 1) – Emails to/from Osborn and Mr Lawton, 14 December 2018 at p 2.

<sup>246</sup> Exhibit 58 (Volume 1) – Emails to/from Osborn and Mr Lawton, 14 December 2018 at p 3.

<sup>247</sup> Exhibit 58 (Volume 1) – Emails to/from Osborn and Mr Lawton, 14 December 2018 at p 4.

which Mr Lawton states that he requires the CoP to tell him “*directly and in person that you decline to refer my complaint of corruption to [ACB] or that you will now do so*”.<sup>248</sup>

- (i) Part of an extract relating to Company E showing that Mr Fuller was appointed a director on 9 January 2019.<sup>249</sup>
132. By the time Mr Lawton and Mr Fuller complained to the OPI in January 2019 (both in writing and in person), Mr Lawton had been informed that Osborn was considering his complaint, would be speaking to the officers concerned in the investigation of his criminal complaint and had been directed to attempt to resolve the complaint if possible. Mr Lawton’s response to this was to assert that Osborn simply could not look into his complaint of “*corruption*” and to demand that this complaint be referred to ACB. In my view, this was a clear indication that Mr Lawton did not accept Osborn’s authority to review his complaint and did not intend to cooperate with Osborn.
133. Correspondence of the nature sent to the CoP dated 12 and 14 December 2018 was to become a common feature of correspondence sent by Mr Lawton and Mr Fuller. Mr Lawton and Mr Fuller demanded, in a peremptory manner, that action be taken within an urgent time frame. If the demand was not met, that became evidence itself, in the author’s mind which implicated the CoP in improper or unlawful conduct.

## **OPI refer the complaint made to the OPI to IIS and receive further communications from Mr Lawton and Mr Fuller**

134. On 31 January 2019, the OPI referred Mr Lawton and Mr Fuller’s complaint to the IIS and in doing so provided the IIS with all of the documents provided to the OPI by Mr Lawton and Mr Fuller as well as the OPI members’ handwritten notes.<sup>250</sup> The OPI summarised the complaint as:<sup>251</sup>

- *SAPOL failed to investigate allegations of fraud;*
- *The investigation into the alleged fraud was terminated on a false pretence that the DPP had advised the investigating officers that there was no reasonable prospects of conviction.*

*Complainant believes investigation may have been halted due to connections between the persons the allegations of fraud were made against, the Commissioner of Police and the Adelaide Club.*

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<sup>248</sup> Exhibit 60 (Volume 1) – Email from Mr Lawton to CoP, 14 December 2018.

<sup>249</sup> Exhibit 61 (Volume 1) – ASIC extract.

<sup>250</sup> Exhibit 84 (Volume 2) – OPI record file 2019/002957, 31 January 2019; Exhibit 160 (Volume 2) – Running Sheet 2019/002957 at p 14.

<sup>251</sup> Exhibit 84 (Volume 2) – OPI record file 2019/002957, 31 January 2019.



135. Mr Lawton and Mr Fuller were both informed of the referral by email and were provided with a *“fact sheet”* about complaints under the PCD Act.<sup>252</sup> This fact sheet informed Mr Lawton and Mr Fuller that the IIS has *“primary responsibility for the management of complaints about the conduct of police”* and that OPI would refer complaints about police to the IIS within three days unless the OPI decides to refer the matter to the ICAC. The fact sheet noted that matters that *“may be referred to the ICAC include conduct that raises a potential issue of corruption or serious or systemic misconduct or maladministration”*. The fact sheet also advised that where complaints made to the OPI were referred to the IIS, the OPI *“oversees the manner in which complaints about police are managed”* and is *“able to reassess matters already assessed by SAPOL, and can issue directions to SAPOL about the investigation of complaints”*. The fact sheet did not indicate that the IIS would investigate all complaints referred to it and it was silent as to what process the IIS would engage in upon receiving a complaint from the OPI.<sup>253</sup>
136. Mr Lawton responded within an hour to say, *“Thank you”* and noted he could be contacted should any further information be needed.<sup>254</sup>
137. On 1 February 2019 Mr Fuller responded raising a number of issues for the OPI to consider. Mr Fuller, like Mr Lawton, did not raise any objection about the fact the matter had been referred to the IIS rather than being dealt with by the OPI in some other manner.<sup>255</sup> Mr Fuller stated that *“it may be important to the investigation to interview Mr Gary Phillips a member of the office of the Director of Public Prosecutions. Miss Fuller spoke to him to verify the information provided separately to her and Lawton by Della Sala. Her recall of her conversation with Phillips is in an e/mail to me attached”*.
138. The attached email chain contained an email from Mr Fuller dated 23 October 2018 asking Ms Fuller if Mr Phillips had responded to her. Ms Fuller responded to Mr Fuller on the same day as follows:
- (a) She spoke to Mr Phillips on 22 October 2018 as a result of her *“asking a solicitor in the fraud prosecution section if he could ask in his section if anyone had dealt with it”*;
  - (b) Mr Phillips said that Bolingbroke showed him Ms Fuller’s letter and Mr Phillips *“did not sight anything else”*;

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<sup>252</sup> Exhibit 82 (Volume 2) – Email from the OPI to Mr Fuller 31 January 2019; Exhibit 83 (Volume 2) – Email from the OPI to Mr Lawton, 31 January 2019; Exhibit 272 (Volume 4) – New Police Complaints Scheme September 2017 Factsheet.

<sup>253</sup> Exhibit 272 (Volume 4) – New Police Complaints Scheme September 2017 Factsheet.

<sup>254</sup> Exhibit 81 (Volume 2) – Email from Mr Lawton to the OPI, 31 January 2019.

<sup>255</sup> Exhibit 85 (Volume 2) – Email from Mr Fuller to the OPI, 1 February 2019.

- (c) *“On the strength of my letter he advised Bolingbroke that he thought there was something in it and it was up to the Fraud squad to investigate it. He said that was the limit of his involvement”*;
  - (d) If Mr Phillips were to give advice as to the prospects of success he would require a brief from the police – *“he certainly didn’t give any advice that there were no reasonable prospects of success and had no dealings with Della Sala”*;
  - (e) Mr Phillips was not aware of anyone else at the DPP *“being involved”* but that to find out if any other advice was given *“he said I should ask the police”* and
  - (f) She had spoken to a receptionist at the DPP *“last week”* and the receptionist had no record of any file or request for advice about this matter.<sup>256</sup>
139. Returning to Mr Fuller’s email to the OPI dated 1 February 2019,<sup>257</sup> in addition to the above Mr Fuller informed the OPI that on 29 January 2019 Mr Lawton had received a letter from Osborn dated 25 January 2019. Mr Fuller describes the letter from Osborn as *“another attempt to whitewash the conduct of Yeomans and Bolingbroke at the behest of [CoP] Stevens. Osborn is now doing the [CoP’s] bidding, while the [CoP] himself says nothing and puts nothing on the record in the face of direct accusations of misconduct”*. Mr Fuller provided the OPI with a copy of Osborn’s letter and a *“draft”* response and asked the OPI to advise if it considers that the content of the draft response has the potential to *“compromise the investigation”*. Mr Fuller also advised that his email and the attachments could be forwarded to the IIS.<sup>258</sup>
140. Osborn’s letter dated 25 January 2019 informed Mr Lawton that his letter was a response to Mr Lawton’s correspondence to the CoP in December 2018 and confirmed that he had reviewed the response of the members of the MFIS to Mr Lawton’s allegations of deception reported in May 2018.
141. Although Osborn’s letter clearly informed Mr Lawton that it was in response to his correspondence to the CoP in December 2018, the letter did not explain that this complaint had been dealt with under the PCD Act nor outline the process that had been followed under the PCD Act. As there had been a decision made to deal with the complaint under Part 3 of the PCD Act (i.e., by MRP) this meant that the complaint did not need to be formally investigated by the IIS.<sup>259</sup> Osborn’s letter did not explain this. It would have been preferable for

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<sup>256</sup> Exhibit 86 (Volume 2) – Attachment to email from Mr Fuller (email from Ms Fuller to Mr Fuller, 23 October 2018).

<sup>257</sup> Exhibit 85 (Volume 2) – Email from Mr Fuller to the OPI, 1 February 2019.

<sup>258</sup> Exhibit 85 (Volume 2) – Email from Mr Fuller to the OPI, 1 February 2019.

<sup>259</sup> PCD Act s 21(2)(a) (see **Appendix B**).

this information to be imparted to Mr Lawton and Mr Fuller at this time because this would have provided important context to the content of Osborn's letter.

142. In his letter Osborn states that his review required him to speak to the investigators whose actions Mr Lawton had complained of in order to understand their reasons for the conclusion that there was insufficient evidence to support a criminal investigation. Osborn notes that it is his understanding that Mr Lawton has asserted that Yeomans and Bolingbroke have engaged in corrupt practice and that this allegation is "*founded on your belief that their decision to not further investigate was to advantage the other party*". Osborn then states:<sup>260</sup>

*While many investigators in SAPOL have had an involvement in fraud investigations, the subject experts are the very experienced members of the Major Fraud Investigation Section (MFIS) who provide the specialist criminal investigation service for the prevention, investigation and detection of major, complex and pattern frauds. The Officers possess a related level of knowledge and investigational expertise not present elsewhere in SAPOL, or South Australia.*

*The conclusions reached by the members whose inaction you complain of has been, at my request, considered by other current senior members of Major Fraud Investigation. Additionally I sought an independent opinion from a former Officer in Charge of Commercial and Electronic Crime Branch. Each Officer with whom I consulted agreed with the original reasoning which included:*

- *That there is insufficient evidence to support a prima facie criminal offence and therefore there is an unlikelihood of a successful criminal conviction.*
- *The matter is a contractual dispute best addressed through a civil avenue.*

*Whilst it is not uncommon for investigators to seek advice and opinions from legal counsel in the Office of the Director of Public Prosecution (ODPP) such approaches are largely informal and do not occur in the furtherance of an agreed arrangement. The ODPP requires a brief of evidence prior to committing to a formal assessment. On this occasion the engagement between Della Sala and the ODPP was in the form of a discussion.*

*It is my understanding that information has previously been provided to you on the reasoning that was applied by the investigators to conclude that the matter of complaint was not criminal and rather akin to a contractual dispute with the recommendation made that redress should be advanced through civil proceedings. While you are clearly not accepting of that position, I again highlight that the SAPOL members who have reached that conclusion comprise a number of the most experienced and senior fraud investigators in the South Australia Police.*

143. The draft 'response' that Mr Fuller provided to the OPI as an attachment to his email dated 1 February 2019 was a draft letter addressed to Osborn (with the

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<sup>260</sup> Exhibit 88 (Volume 2) – Letter from Osborn to Mr Lawton, 25 January 2019.

CoP copied to the correspondence) and was stated to be from Mr Lawton. It commenced with the following:

*You have now obviously joined the Grant Stevens cabal. There are others, (not named), if your advice is to be believed. You are all closing ranks to protect the obviously corrupt members of SAPOL who have had oversight of the investigation of my original complaint.*

144. The draft response goes on to assert that Osborn has “*glossed over and refuse[s] to confront the essential element of my complaint*” which is then described as being “*the spinning of an elaborate deception overtime that the DPP had formally been consulted for advice and further at the end the DPP had advised that ‘there were no reasonable prospects of conviction’. This was a blatant lie, spun overtime [sic], and is fully documented as a lie*” (original emphasis). The draft response goes on to assert that Osborn is now inculcated “*in an attempt to pervert the course of justice and more particularly aiding and abetting after the fact, the improper conduct of Yeomans, Bolingbroke and [CoP] Stevens*”.<sup>261</sup>
145. In fact, this was the first time that Mr Lawton and/or Mr Fuller had asserted the existence of “*formal*” consultation for advice with the DPP. In any event, it is clear from Osborn’s letter that he was satisfied that informal advice occurred in the form of a discussion and that there was no formal advice because the DPP requires a brief of evidence before providing a formal assessment. Further Osborn appropriately went to significant lengths to seek out advice from SAPOL officers who were not directly involved in the original investigation and that those officers consulted supported the decision to terminate the investigation.
146. Osborn cannot be criticised for not dealing with the information contained in Ms Fuller’s email of 23 October 2018 relating to her discussions with Mr Phillips, as this information was never provided to SAPOL (nor to the OPI) until after Osborn’s letter had been sent.
147. When Ms Fuller’s email to Mr Fuller dated 23 October 2018 (see paragraph [138] above) and Osborn’s letter dated 25 January 2019 are considered together, they are consistent in that both record that the DPP will only provide formal advice once a brief of evidence is provided. Read together it also becomes clear that it is likely that at least two separate relevant discussions have occurred: (i) the discussion Mr Phillips said he had with Bolingbroke; and (ii) the discussion Osborn says Della Sala had with a DPP member.
148. This was realised by Mr Fuller as in a second email sent to the OPI on the same date (1 February 2019) he says that he has realised that Osborn has referred

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<sup>261</sup> Exhibit 87 (Volume 2) – Attachment to email from Mr Fuller (‘Draft response’).

to Della Sala having a discussion with a DPP member when Ms Fuller reported that Mr Phillips had spoken with Bolingbroke and had not spoken with anyone else within SAPOL. Mr Fuller describes this is an “*inconsistency*” which he says is “*striking in the face of the asserted rigour of Osborn’s enquiry*”.<sup>262</sup>

149. Thus, rather than consider the possibility that there were two different conversations that occurred, one involving Bolingbroke and the other involving Della Sala, Mr Fuller has drawn the conclusion that Osborn has made an error as a result of inadequate enquiries. Rather than asking the IIS and/or the OPI to specifically look into the issue of whether a second DPP member was consulted by SAPOL, Mr Lawton and Mr Fuller instead reached the conclusion that lies have been told, that Osborn has joined the CoP’s “*cabal*” and is now also guilty of unlawful and improper conduct.
150. There is no evidence at all that the CoP or any other SAPOL officers participated in a plot against Mr Fuller and Mr Lawton by declining to investigate a complaint of fraud and then covered up that “*corrupt*” decision.
151. Mr Fuller’s email to the OPI, and the draft correspondence to Osborn in particular, demonstrates a clear lack of objectivity and rational thinking on the part of the author. It appears that Mr Lawton and Mr Fuller had, by this point in time, decided that there was corruption at the heart of their complaint. If anyone failed to accept their complaint, that itself indicated corruption on their part. Nothing anyone said would convince them otherwise.
152. The OPI forwarded Mr Fuller’s email and attachments to the IIS and informed him that this had occurred.<sup>263</sup>
153. On 4 February 2019 Mr Fuller emailed the OPI advising that Mr Lawton had now responded to Osborn (via an email which Mr Fuller states he “*drafted*”). The content of the response was somewhat different from the earlier draft but maintained the position that Osborn had joined the CoP’s “*cabal*” and referred to a failure to address the gravamen of Mr Lawton’s complaint being the deception that the DPP “*had been formally consulted for advice*”. The response also infers that SAPOL should have preferred the advice of their “*experienced counsel*” Ms Fuller over their own views.<sup>264</sup>

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<sup>262</sup> Exhibit 89 (Volume 2) – Second email from Mr Fuller to the OPI 1 February 2019.

<sup>263</sup> Exhibit 90 (Volume 2) – Email from the OPI to Mr Fuller, 1 February 2019; Exhibit 160 (Volume 2) – Running Sheet 2019/002957 at p 13.

<sup>264</sup> Exhibit 92 (Volume 2) – Email from Mr Fuller to IIS, 4 February 2019; Exhibit 93 (Volume 3) – Letter to Osborn from Mr Lawton, 4 February 2019.

## OPI review of IIS' assessment of 6 February 2019

154. On 5 February 2019, a record was made by the OPI that this complaint file “*is in management resolution*” and that it has been added to “*an existing file*”.<sup>265</sup> A PCD Act “*Management Resolution Report*” of this date was uploaded to the PCD Act complaint management system. It is clear that this document was reviewed by the OPI. This document records the following:

- (a) the resolution officer was Osborn;
- (b) the designated officers concerned had been notified of the allegations made against them: those officers being Della Sala, Yeomans and Bolingbroke;
- (c) the complainant was contacted regarding their complaint with the following further information noted: “*Communication between the complainant and the undersigned [i.e., Osborn] has been by email and letter. From the outset the complainant indicated (email 14/12/2018) that he believed that members of the MFIS who determined his matter was civil were corrupt asserting that his complaint should be investigated [(sic)] by ACB. He was told despite his views the merits or otherwise of SAPOL pursuing the investigation would be revisited. He was also advised by letter on 25 January that in the opinion of the undersigned based on enquiry and advice that his matter is a contractual dispute which has prompted him to now report the matter to the OPI*”;
- (d) Osborn had ticked a box to indicate that there was benefit in conciliating the matter but had also ticked a box to indicate that the complainant had not agreed to conciliate the matter with the further following information noted: “*The complainant will only be satisfied if a criminal investigation and prosecution is instituted into his report of May 2018 that he was the victim of fraud by his accountant. The advice from SAPOL’s most senior fraud investigators is that there is insufficient evidence of fraudulent behaviour in the material provided to police to prove any offence beyond reasonable doubt and in actual fact the matter is more likely a contractual dispute (Investigation assessment of Sept 2018 attached ‘In confidence’)*”;
- (e) in relation to why no action was taken, the original IIS assessment records that the IIS discussed the matter with two senior SAPOL officers (one current officer and one former officer) who were not directly involved in the original investigation who were “*each of the opinion that the matter is civil*”;

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<sup>265</sup> Exhibit 160 (Volume 2) – Running Sheet 2019/002957.

- (f) the matter was resolved by “No action” being taken with the reasons for this recorded as: “*The content of the ‘Investigation Assessment’ document reporting the considerations of MFIS in Sept 2018 which determined that the matter should not be further investigated was discussed with the Officers involved. An opinion was sought from Det Sen Sgt Malcolm Brown of MFIS who wasn’t involved in the original consideration as well as from Det Supt Mark Wieszyk, a former investigator in and O/C of CECB. Each were of the opinion that the matter is civil*”; and
- (g) the complainant was informed of the outcome by letter and the designated officers were advised of the outcome on 25 January 2019.<sup>266</sup>
155. Attached to the Management Resolution Report was a five-page document which was headed “*Commercial and Electronic Crime Branch Investigation Assessment – Protected*”. This document had been signed by Della Sala on 1 September 2018, by Bolingbroke on 5 September 2018 and by an Operations Inspector on 12 November 2018.<sup>267</sup> This document records that an Investigation Assessment Group Meeting occurred on 5 September 2018 at which Bolingbroke, Yeomans, the Operations Inspector and a Detective Sergeant were present.<sup>268</sup>
156. Without specifying all of the information contained within this document, it is pertinent to note that it contains a summary of the factual matters relevant to Mr Lawton’s complaint of criminal conduct by C and identifies a number of legal and evidentiary issues that arise. Two of those issues are whether Mr Lawton had appointed C as his financial and legal agent and whether by signing SPA 2 (and not having been induced to do so by fraud or misrepresentation) Mr Lawton had engaged in conduct contrary to his claim of fraud in relation to the AA. The document also notes that C stood to lose the same as Mr Lawton as a result of the AA. The document identifies (by tick boxes) that the evidence of a criminal offence was assessed as “Low”, the urgency was assessed as “Low”, the value of the offending was estimated as \$120,000.00, there was one victim, and the matter would involve a “*Complex investigation*”. Comments in this document indicate that it was the view of the investigation team that there was insufficient evidence to prove criminal charges beyond reasonable doubt, that it appeared that the complainant was using potential criminal charges “for a civil end”, that the matter is “*more likely a contractual dispute*”, the matter is “*best addressed through a civil avenue which has a lower burden of proof and access to additional material sought can be obtained through the discovery process*” and it is “*not in the public interest to investigate and ultimately*

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<sup>266</sup> Exhibit 117 (Volume 2) – Management Resolution Report 5 February 2019 at p 3-5.

<sup>267</sup> Exhibit 117 (Volume 2) – CECB Investigation Assessment, 5 September 2018 at p 6-10.

<sup>268</sup> Exhibit 117 (Volume 2) – ECB Investigation Assessment, 5 September 2018 at p 6-10.

*prosecute*” (original emphasis). This document also referred to the views of the investigation team being informed by *“further assessment and discussions with the ODPP”*. No specific DPP member is identified nor are the dates of any discussions.

157. The PCD Act complaint management system also contained some further internal SAPOL records that the OPI may have considered at this time. These included a SAPOL Detailed Occurrence Report relating to the allegation of criminal conduct dated 10 December 2018 (which was stated to constitute a *“Data Conversion Report”* which contained data exported from one SAPOL system to another and valid as at 13 November 2018).<sup>269</sup> This document recorded that Bolingbroke had entered an accurate summary of the allegation of criminal conduct alleged by Mr Lawton (through Ms Fuller) on 29 June 2018 but did not provide any information as to why the investigation had been terminated.<sup>270</sup> Another additional document available to the OPI was internal SAPOL email correspondence including an email from Osborn sent on 5 February 2019 submitting the Management Resolution Report to the Officer in Charge of the IIS, Chief Inspector Curtis (**Curtis**).<sup>271</sup> In this email Osborn informs Curtis that he considers that the original complaint of criminal conduct was *“considered at length by MFIS before it was determined a civil matter”* and that the officers he discussed the matter with (being Yeomans, Bolingbroke, an Operations Inspector, Brown and Wieszyk) are the *“subject experts”*.
158. On 6 February 2019, an OPI employee conducted a review of the IIS’ assessment of the matter. This OPI employee was not the same person who had performed the assessment on 11 December 2018 but was a person familiar with the content of Mr Lawton and Mr Fuller’s complaint to the OPI. The OPI employee noted that the matter *“appears to raise a potential issue of performance of Orders/Duties (Clause 4)”*. The OPI employee recorded that the assessment under section 14 of the PCD Act of the initial complaint was that it raised potential *“Maladministration/Misconduct”* with the recommended action of *“Management Resolution”*. The OPI employee noted many of the features of the IIS’ assessment detailed above. The OPI employee noted that since Osborn had informed Mr Lawton of the outcome of his complaint, Mr Lawton had reiterated his allegation that the CoP was involved in the decision not to

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<sup>269</sup> Exhibit 298 (Volume 4) – Detailed Occurrence Report, 10 December 2018 at p 3.

<sup>270</sup> Exhibit 298 (Volume 4) – Detailed Occurrence Report, 10 December 2018 at p 5-6.

<sup>271</sup> Exhibit 300 (Volume 4) – Emails to/from Osborn and Curtis, 5 February 2019.



investigate the alleged fraud and had asserted that Osborn has “*joined the Grant Stevens Cabal*”. The OPI member records their views as follows:<sup>272</sup>

*While in their original rationale IIS state there is no conduct issues evident in the manner in which the file was dealt with, in all of the circumstances I think the course of sending the entire matter for management resolution to review was reasonable.*

*Given the current complaint, the steps already taken by SAPOL in regards to the complaint, and the Crime Services Branch have been notified that further information has been received, I agree with IIS’ decision to add this complaint to the existing file.*

*Recommendation*

*I recommend that this matter does not proceed to consultation.*

159. The following relevant events occurred after the OPI assessment of 6 February 2019:

- (a) On 12 February 2019, the OPI’s system was updated to record that the above OPI member’s views were to be recorded as the OPI’s “*Record Outcome*” for the matter.<sup>273</sup>
- (b) On 14 February 2019 an OPI assessor sent an email to the Officer in Charge of the IIS, Curtis, summarising the IIS’ earlier assessment of the matter and stating that “*While the OPI considers the complainant’s second complaint requires no further action (noting that it concerns the same conduct as that complaint made directly to IIS; and that steps were already taken previously to conciliate the matter), we anticipate the complainant will be awaiting a decision/correspondence in relation to the complaint he made directly to the OPI. Can you advise whether you intend to write to the complainant to inform him that no further action will be taken in relation to his complaint made directly to the OPI?*”<sup>274</sup> Curtis responded on the same date advising that when he responds to the second complaint, he will ensure this is covered.<sup>275</sup> I note that Former Senior OPI Employee 1 was copied to this email correspondence.
- (c) On the same date, Mr Fuller emailed the OPI (copying the IIS) to complain that he had not heard anything since his complaint was referred to the IIS (which I note had only occurred some ten business days prior). Mr Fuller went on to state that he has concerns as to whether the IIS is the appropriate body to investigate his complaint given that he has alleged that the CoP himself is involved in improper conduct and given the failure of the CoP to personally respond to allegations made

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<sup>272</sup> Exhibit 117 (Volume 2) – OPI Record 2019/002957 22 February 2019 at p 11-12; Exhibit 160 (Volume 2) at p 11-12.

<sup>273</sup> Exhibit 160 (Volume 2) – Running Sheet 2019/002957 at p 10.

<sup>274</sup> Exhibit 97 (Volume 2) – Email from the OPI to Curtis, 14 February 2019.

<sup>275</sup> Exhibit 101 (Volume 2) – Email from Curtis to the OPI, 14 February 2019.

against him since December 2018. He concludes his email by stating *“With the concurrence of Ian Lawton I now request that his complaint be referred directly to ICAC”*.<sup>276</sup> The OPI acknowledged receipt of this email on the same date.<sup>277</sup>

- (d) On the following day, 15 February 2019, Mr Fuller emailed the OPI to again complain about the IIS not acknowledging his complaint and stating that his and Mr Lawton’s view is *“now confirmed that it is inappropriate for IIS to investigate this complaint”* on the basis that they *“expect another attempt at whitewash”* and that if the complaint is not investigated by ICAC it *“has the potential to develop into a scandal of epic proportion”*.<sup>278</sup>
- (e) On 19 February 2019 the IIS informed the OPI that the IIS had written to the complainant on the same date advising that the IIS had reviewed the additional information provided and were satisfied that no conduct issues had been identified.<sup>279</sup> The OPI obtained a copy of this letter, sent by Curtis, which advised Mr Lawton that his original complaint made on 3 December 2018 had been *“referred to Osborn, Crime Service to undertake Management Resolution under Part 3 of the Police Complaints and Discipline Act 2016”*. The letter advised that Curtis had *“reviewed the management resolution undertaken by Osborn and also the material provided to me from the Office for Public Integrity”*, that Curtis was *“satisfied that there are no conduct issues regarding any members of SAPOL”* and as such he would not be taking any further action and the file would be closed”.<sup>280</sup>

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<sup>276</sup> Exhibit 98 (Volume 2) – Email from Mr Fuller to the OPI and IIS, 14 February 2019.

<sup>277</sup> Exhibit 100 (Volume 2) – Email from the OPI to Mr Fuller, 14 February 2019.

<sup>278</sup> Exhibit 102 (Volume 2) – Email from Mr Fuller to the OPI, 15 February 2019.

<sup>279</sup> Exhibit 160 (Volume 2) – Running Sheet 2019/002957 at p 9-10.

<sup>280</sup> Exhibit 117 (Volume 2) – Letter from Curtis to Mr Lawton, 19 February 2019 at p 13.

## My review of the OPI's review of IIS' assessment of 6 February 2019

### Referral of 3 December 2018 complaint to IIS and IIS' assessment

160. The first issue the OPI needed to consider when reviewing this assessment was whether Mr Lawton's original complaint to the CoP and DPP of 3 December 2018 was properly referred to the IIS. It was plainly a complaint about "*designated officers*" as defined in the PCD Act, namely Bolingbroke, Yeomans and potentially Della Sala: each a member of SAPOL.<sup>281</sup> The CoP, as a member of SAPOL,<sup>282</sup> was therefore required to refer the complaint to the IIS as soon as reasonably practicable, and in any event within 3 days..<sup>283</sup> The CoP was not obliged to personally deal with the complaint and there can be no criticism of the fact he did not do so.<sup>284</sup>
161. Once the complaint had been received by the IIS, the IIS was required to record information about the complaint within the complaint management system.<sup>285</sup> The next step was to assess the complaint and determine whether it raised a potential issue of corruption in public administration that could be the subject of a prosecution, or a potential issue of misconduct or maladministration in public administration, or some other issue that should, in the opinion of the officer in charge of the IIS, be referred to the OPI.<sup>286</sup> The IIS was only required to notify the OPI if the complaint raised a potential issue of corruption in public administration that could be the subject of a prosecution or if it raised some other issue that the officer in charge considered should be referred to the OPI.<sup>287</sup> In this case, the complaint was not assessed as falling into either category and there was therefore no requirement to notify the OPI.
162. The IIS assessed Mr Lawton's complaint dated 3 December 2018 as raising a potential issue of misconduct and/or negligence and/or failing in duty. The IIS stated that they did not consider that there were any "*conduct issues with investigation and handling of file*". By assessing the matter in this manner, the IIS necessarily formed the view that the matter did not raise a potential issue of corruption in public administration.
163. The IIS assessed that the matter should proceed by way of MRP under Part 3 of the PCD Act in order to "*further communicate with complainant and provide*

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<sup>281</sup> PCD Act s 3(1) (see **Appendix B**).

<sup>282</sup> *Police Act 1998* (SA) s 3.

<sup>283</sup> PCD Act s 13(1) (see **Appendix B**).

<sup>284</sup> I note that the CoP has a broad power to delegate within s 19(1) *Police Act 1998* (SA). Pursuant to this section the CoP can delegate any powers or functions conferred on or assigned to him by that Act and any other Act.

<sup>285</sup> PCD Regulations r 6 and Sch 2.

<sup>286</sup> PCD Act s 14(1) (see **Appendix B**).

<sup>287</sup> PCD Act s 14(4) (see **Appendix B**).

*further explanation*".<sup>288</sup> This meant that the complaint did not need to be formally investigated.<sup>289</sup>

## OPI's review of 11 December 2018 and MRP

164. Although the IIS was not required to notify the OPI of its assessment of Mr Lawton's complaint dated 3 December 2018, the OPI received information from the IIS about this assessment on 11 December 2018. At this point in time the OPI reviewed the information entered by the IIS into the complaint management system.
165. The OPI had a discretion under section 28 of the PCD Act to reassess the complaint and/or substitute its assessment of the complaint for that entered in the complaint management system but it could only take such action "*after consultation with the officer in charge of the IIS*".<sup>290</sup> The OPI could also give directions to the CoP and/or IIS pursuant to section 27 of the PCD Act.
166. The OPI did not reassess the complaint or substitute its assessment of the complaint under section 28 of the PCD Act. The OPI did not take any other action (such as issuing directions under section 27 of the PCD Act). No written record of the matters considered by the OPI at this time were made.
167. In conducting this review, the OPI, exercising its oversight function, should have had regard to:
- (a) whether the matter should have been assessed as not raising a potential issue of corruption in public administration;<sup>291</sup> and
  - (b) whether, on its face, the complaint was one that could properly have been dealt with by the MRP having regard to the section 16 PCD Act determination that was in place.<sup>292</sup>
168. Mr Lawton and Mr Fuller contend that Mr Lawton's complaint should have been assessed as raising a potential issue of corruption in public administration. I do not agree with this contention.

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<sup>288</sup> Exhibit 29 (Volume 1) – Running Sheet 2019/002345 at p 2; Exhibit 273 (Volume 4) – Email from the Commission, 15 November 2023; Exhibit 274 (Volume 4) – Screen shot attachment to email from the Commission; Exhibit 299 (Volume 4) – IIS File Allocation at p 2.

<sup>289</sup> PCD Act s 21(2)(a) (see **Appendix B**)

<sup>290</sup> PCD Act ss 28(1), 28(2) (see **Appendix B**). When the latter occurs the OPI's substituted assessment is taken, for the purposes of the PCD Act, to be the assessment of the IIS in respect of the complaint.

<sup>291</sup> PCD Act ss 8, 14(1) (see **Appendix B**).

<sup>292</sup> PCD Act ss 8, 16 (see **Appendix B**).

169. Mr Lawton and Mr Fuller also contend that the complaint should **not** have been dealt with by MRP because the key allegation was that the police officers lied about the issue of obtaining DPP advice. I agree with this contention. The OPI should have consulted with the officer in charge of the IIS with a view to issuing a written direction to the IIS under section 27(1) of the PCD Act that the matter should not be dealt with by MRP and/or that the matter should be investigated by the IIS pursuant to section 21 of the PCD Act.
170. As no record was made by the OPI assessor who reviewed the IIS' assessment of the matters considered, I do not know what matters were considered by the OPI assessor. I will return to this failure to record the reasons later in this Report. Despite this failure, I am nevertheless able to consider what information was known by the OPI at this point in time (by reviewing relevant OPI records) in order to consider whether the decision not to take any action was appropriate.

### *Potential issue of corruption in public administration*

171. Mr Lawton's complaint dated 3 December 2018 was that there had been "*misconduct, criminal in nature*" and "*corrupt conduct*" by Bolingbroke and Yeomans, and possibly Della Sala in order to benefit the targets of the investigation. More specifically, it was alleged that Della Sala lied about the reasons for the termination of the investigation and had lied about obtaining advice from the DPP that there were no reasonable prospects of obtaining a conviction.
172. At the time of Mr Lawton's complaint, the term "*corruption in public administration*" was defined as set out in **Appendix A**.
173. The potentially relevant offences within that definition were:
- (a) the offence of abuse of public office contrary to section 251(1) of the CLCA;<sup>293</sup> and
  - (b) the offence of failing to act honestly in the performance of duties contrary to section 26(1) of the *Public Sector (Honesty and Accountability) Act 1995 (SA) (PSHA)*.<sup>294</sup>
174. At the relevant time (being when the criminal investigation was terminated on 5 September 2018) the offence of abuse of public office contrary to section 251(1) of the CLCA contained the following elements, which would each need to be proven by the prosecution beyond reasonable doubt:
- (a) the accused was at the relevant time a public officer; and
  - (b) the accused improperly:

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<sup>293</sup> ICAC Act s 5(1)(a)(iii) (see **Appendix A**).

<sup>294</sup> ICAC Act s 5(1)(b) (see **Appendix A**).

- (i) exercised power or influence that he/she had by virtue of his/her public office; or
    - (ii) refused or failed to discharge or perform an official duty or function; or
    - (iii) used information that he/she had gained by virtue of his/her public office; and
  - (c) the accused did (b) with the intention of:
    - (i) securing a benefit for him/herself or for another person; or
    - (ii) causing injury or detriment to another person.
175. Further, in order for the accused to have acted *“improperly”* (see (b) above), section 238 of the CLCA required that the accused must have *“knowingly or recklessly”* acted *“contrary to the standards of propriety generally and reasonably expected by ordinary decent members of the community to be observed by public officers of the relevant kind”* and required that the accused’s conduct *“warranted”* a criminal sanction. Section 238 of the CLCA also expressly provided that a person will not be taken to have acted *“improperly”* if:
- (a) the person acted in the honest and reasonable belief that he/she was lawfully entitled to act in the relevant manner; or
  - (b) there was a lawful authority or a reasonable excuse for the act; or
  - (c) the act was of a trivial character and caused no significant detriment to the public interest.
176. At the relevant time (being when the criminal investigation was terminated on 5 September 2018) the offence of failing to act honestly in the performance of duties contrary to section 26(1) of the PSHA contained the following elements which would each need to be proven by the prosecution beyond reasonable doubt:
- (a) the accused was at the relevant time a public sector employee; and
  - (b) the accused failed to act honestly in the performance of their duties.
177. However, section 26(2) of the PSHA provided that the offence within section 26(1) *“does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest”*.
178. Regarding section 251(1) of the CLCA, there was no objective evidence that any of the police officers had improperly exercised their power or refused to perform their duty. There was also no objective evidence that any of these officers acted with the intention of securing a benefit for themselves or for another person or with the intention of causing injury or detriment to another person. If there was an implied assertion that the officers had acted with the intention of

securing a benefit for C, there was no objective evidence which supported such an allegation. In my view, it was open to the OPI to agree with the IIS' assessment that the complaint did not raise a potential issue of corruption in public administration that could be the subject of a prosecution under section 251(1) of the CLCA.

179. In relation to the potential offence against section 26(1) of the PSHA, Mr Lawton's complaint of "*lies*" on the part of Yeomans and Bolingbroke (and possibly Della Sala) arose in the context of the reasons given to Mr Lawton for the termination of the investigation into his complaint and, specifically in relation to the issue of whether DPP advice was obtained. This was clearly an allegation that Yeomans and Bolingbroke (and possibly Della Sala) had failed to act honestly in the performance of their duties.
180. SAPOL had a wide discretion whether to investigate Mr Lawton's complaint against C as a criminal matter. It was not required to do so. There was no reason for any SAPOL officer to lie about why they decided not to pursue the investigation. That is the context in which OPI's review should be seen. I find that it was appropriate for the IIS to assess that Mr Lawton's complaint did not raise a potential issue of corruption in public administration in relation to the potential offence contrary to section 26 of the PSHA Act.
181. In short, I find that it was appropriate for the IIS to assess Mr Lawton's complaint as one that did not raise a potential issue of corruption in public administration that could be the subject of a prosecution (under neither section 251(1) of the CLCA or section 26(1) of the PSHA) and to decide not to refer the matter to the OPI.

### *Management Resolution Process*

182. As outlined in paragraph [101] above, the section 16 determination provided that a complaint about a designated officer could be dealt with by MRP in accordance with Part 3 of the PCD Act unless the alleged conduct, if proven, would result in termination of the officer's appointment, suspension of the officer's appointment for any period, reduction of the officer's rank, seniority or remuneration or the imposition of a fine.<sup>295</sup>
183. The reasons given for the IIS for dealing with the complaint by MRP are outlined in paragraph [114] above. I note that these reasons identify that the IIS considered that there were no "*conduct issues with [SAPOL's] investigation and handling of file*".
184. No record was made by the OPI assessor who reviewed the IIS' assessment on 11 December 2018 of the matters that they considered. I am therefore

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<sup>295</sup> Exhibit 161 (Volume 2) – Determination Pursuant to section 16 of the PCD Act (an attachment to a letter from Mr Fuller and Mr Lawton to Commissioner Vanstone) at p 44.

unable to make any findings as to whether the OPI assessor performed the task of analysing the precise allegations made by Mr Lawton alongside the terms of the section 16 determination to reach their own view as to whether on its face, the complaint was one that could properly have been dealt with by the MRP.

185. In determining whether the matter was suitable for a MRP, the IIS was obliged by the section 16 determination to consider what might be the outcome of the complaint **if** the allegations of lies by SAPOL officers concerning whether the criminal investigation had been improperly terminated were found to be **proven**. The IIS was required to form the view that if the allegations were proven this would likely not result in Bolingbroke or Yeomans (or Della Sala) having their appointments terminated or suspended for any period, being subject to reductions in rank, seniority or remuneration nor the imposition of fines. If it is decided that the complaint may be dealt with by MRP then the options available to the CoP to deal with the conduct are limited (see subsections 18(4)-(7) of the PCD Act in **Appendix B**).
186. Making such an assessment of likely outcome, based only on allegations and prior to any inquiries being made, is no easy task. The case at hand establishes why that is so. On its face an allegation of a lie told by a police officer to a complainant about the reason for the termination of an investigation of their complaint is a serious matter.
187. Any action to be taken against a police officer for a conduct issue is in my view likely to be impacted by various factors. The factors might include whether the conduct was an isolated incident, the officer's motives for their conduct, whether other senior officers were aware of and approved of the conduct, the impact on any person (and extent of that impact) and any acknowledgement of wrongdoing. Whilst some of these matters may be known to the IIS at the time of assessing a complaint, others will only become apparent once the complaint is considered in detail and a response obtained from the officer.
188. Yeomans had already provided Mr Lawton with an explanation for why the investigation had been properly terminated in his email of 5 November 2019. SAPOL has a broad discretion with respect to whether it investigates and when it terminates an investigation. Nevertheless, if a lie is told to a complainant about why an investigation is terminated, this would be a serious matter.
189. It appears that when Mr Lawton's complaint dated 3 December 2018 was received by the IIS it was viewed as raising communication issues on the part of the investigative team with respect to how the decision to terminate the investigation was conveyed and explained to Mr Lawton.
190. However, Mr Lawton's complaint could not properly be characterised as raising allegations relating to communication issues only. It was plainly a complaint of lies being told about the issue of obtaining DPP advice. It was premature for the IIS to have considered that no "*conduct issues*" arose and to have



considered the complaint to be one relating to communication issues only. Some inquiries or investigation needed to occur in order to first determine whether or not any lies had been told.

191. It follows that I do not agree that it was appropriate for the IIS to consider the complaint to be one suitable for MRP. The OPI erred in agreeing with the IIS that the matter should be dealt with by MRP and taking no action. The OPI should have consulted with the officer in charge of the IIS with a view to issuing a written direction to the IIS under section 27(1) of the PCD Act that the matter should not be dealt with by MRP and/or that the matter should be investigated by the IIS pursuant to section 21 of the PCD Act.
192. However, as the remainder of this Report will make clear, there is no evidence that the IIS' initial determination that the matter should be dealt with by MRP had any adverse impact in relation to the handling of Mr Lawton's complaint given the investigative steps that were taken by the resolution officer Osborn during the MRP and the outcome of those steps. In short, Osborn made proper inquiries into the issue of whether any lies were told about the DPP advice issue and found that no lies were told. I have also formed the view, based on all the evidence before me, that no lies were told by any SAPOL officer. Accordingly, although the IIS was in error in dealing with the complaint by MRP and the OPI was in error in accepting this course, I consider that this error was of no material relevance.
193. I have considered whether this error by the OPI could amount to evidence of corruption, misconduct or maladministration in public administration in respect of the OPI assessor or the OPI as an institution. I do not consider that such evidence exists. I acknowledge that the OPI is obliged to review and exercise judgment in respect of a significant volume of matters, often with very little time to do so and in the face of competing priorities. In the 2018-19 financial year the OPI reviewed 2,305 complaints and reports assessed by the IIS.<sup>296</sup> The error in this case was, in essence, a failure to critically examine the IIS' characterisation of the complaint as one which primarily went to communication issues. It was a failure to apply rigorous analysis to the allegations and the section 16 determination. The failure could not amount to any of the criminal offences constituting corruption in public administration.<sup>297</sup>

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<sup>296</sup> Exhibit 410 (Volume 6) – ICAC and OPI, 2018-19 Annual Report at p 35.

<sup>297</sup> Pursuant to ICAC Act s 5(1) (see **Appendix A**).

194. There is no provision within the Code of Ethics for the South Australian Public Sector in force at the time which could potentially be said to have been breached in these circumstances.<sup>298</sup> Further there is no evidence that the OPI assessor's conduct involved substantial mismanagement in relation to the performance of official functions nor that the OPI had a practice, policy or procedure that resulted in an irregular and unauthorised use of public money or substantial mismanagement of public resources.<sup>299</sup> There is no evidence before me of the OPI or any staff of the OPI acting dishonestly or in bad faith. I do not agree with Mr Fuller's contention that the OPI's error must constitute either misconduct (if intentional) and negligence and maladministration (if not intentional).<sup>300</sup>

### **OPI's referral of Mr Lawton and Mr Fuller's January 2019 complaint to IIS**

195. Once Mr Lawton and Mr Fuller made a separate complaint to the OPI in January 2019, the OPI was required to refer that complaint to the IIS pursuant to section 13(2) of the PCD Act unless the complaint was to be referred to the ICAC under section 29 of the PCD Act. In order to refer under section 29 of the PCD Act, the OPI must be satisfied that the complaint or report relates to matters that should be dealt with by the ICAC under the PCD Act or the ICAC Act.

196. At the time of the referral to the IIS on 31 January 2019 the content of the complaint was in all relevant respects the same as that contained in the complaint made to the CoP and DPP on 3 December 2018. There was no further information provided by Mr Lawton or Mr Fuller – with the exception that the potential motive of membership of the 'Adelaide Club' had been identified. Given the lack of any specific information, this potential motive was purely speculative. It therefore does not change my view (stated above) that it was open, in this case to the OPI, to agree with the IIS' assessment that the complaint did not raise a potential issue of corruption in public administration that could be the subject of a prosecution. I also note that both Mr Lawton and Mr Fuller took no issue with the OPI referring their complaint to the IIS at the time of the referral.

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<sup>298</sup> Pursuant to ICAC Act s 5(3) (see **Appendix A**); Exhibit 382 (Volume 5) – Code of Ethics for the South Australian Public Sector issued 19 May 2017 pursuant to s 15 of the *Public Sector Act 2009* (SA).

<sup>299</sup> Pursuant to ICAC Act s 5(4) (see **Appendix A**).

<sup>300</sup> Exhibit 412 (Volume 6) – Submission of Mr Fuller, 22 April 2024 at [63]-[73] (see **Appendix F – Mr Fuller's submission**).

197. On 1 February 2019 (the day following the referral), Mr Fuller provided further relevant information to the OPI about the complaint by email.<sup>301</sup> There were two important points about this further information:

- (a) First, there was evidence that a particular DPP member (Mr Phillips) had spoken to Ms Fuller on 22 October 2018. According to Ms Fuller, Mr Phillips had reviewed her covering letter referring the matter to SAPOL at Bolingbroke's request and had informed Bolingbroke that "*he thought there was something in it and it was up to the Fraud squad to investigate it*". Mr Phillips had not reviewed any brief of evidence nor provided a formal opinion and was not aware of anyone else at the DPP "*being involved*". Ms Fuller had asked Mr Phillips how she could find out if anyone else at the DPP had provided advice about the matter and Mr Phillips suggested that Ms Fuller should ask the police.
- (b) Secondly, Mr Lawton had received Osborn's letter dated 25 January 2019 which informed Mr Lawton that the letter was a response to his complaint to the CoP made in December 2018. Without repeating all of the content of this letter, the letter clearly informed Mr Lawton that:
  - (i) Osborn had taken steps to consult with the investigators assigned to the matter who had provided an explanation, which he accepted, for the discontinuance of the investigation;
  - (ii) Osborn had taken steps to consult with other independent senior members of SAPOL and seek their opinions with respect to the allegations of criminal conduct. Each agreed with the original reasons for discontinuing the investigation. Those reasons included that there was insufficient evidence to support a prima facie criminal offence and therefore there was an unlikelihood of a successful criminal conviction. Further, that the matter was a contractual dispute best addressed through a civil avenue;
  - (iii) informal advice is commonly sought from DPP legal practitioners without a brief of evidence being submitted for a formal assessment; and
  - (iv) on this occasion there was informal engagement between Della Sala and the DPP "*in the form of a discussion*".

198. In addition, Mr Fuller now alleged, for the first time, that SAPOL had represented that the DPP had "*formally been consulted*" and this was a lie. Mr Fuller also now asserted that Osborn had engaged in an improper cover up,

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<sup>301</sup> Exhibits 85 to 90 (Volume 2), Emails from Mr Fuller to the OPI, 1 February 2019 and attachments.

had attempted to pervert the course of justice and had aided and abetted after the fact, the improper conduct of Yeomans, Bolingbroke and the CoP.

199. In my view, rather than support Mr Lawton and Mr Fuller's complaint of corruption involved in the termination of the criminal complaint, the further information referred to by Mr Fuller in his emails of 1 February 2019, significantly undermined it. The further information indicated that:
- (a) no formal advice was sought from the DPP (and no brief of evidence provided to the DPP) but rather informal advice was instead sought on two occasions: once by Bolingbroke when he spoke with Mr Phillips; and once by Della Sala with (at that time) an unidentified DPP member;
  - (b) the process of seeking informal advice from the DPP was not unusual nor out of the ordinary; and
  - (c) the underlying merits of the criminal complaint, had been carefully considered by the investigators assigned to the matter and also by independent senior officers within SAPOL (at Osborn's request) who agreed that the investigation should be terminated.
200. Further, Mr Fuller's response demonstrated that upon becoming aware of the above, rather than seek further information about the informal advice provided by the DPP to Della Sala, he instead modified his complaint such that he now expressly asserted that SAPOL had represented that there had been "*formal*" advice sought from the DPP. Mr Fuller asserted that there was an "*inconsistency*" in Osborn's letter insofar as it referred to Della Sala speaking with the DPP. This enabled Mr Fuller to continue to assert that there had been a "*deliberate lie*" and subsequent cover up of that lie. There is no objective evidence of any deliberate lie, nor is there any evidence of a cover up of a lie.
201. In light of the above, I do not consider that the OPI should have taken any action other than forward the additional information provided by Mr Fuller to the IIS which is what occurred.

## OPI's review of the IIS' assessment of 6 February 2019

202. I have already set out in detail the information provided by the IIS to the OPI on 5 February 2019 and the OPI's review and assessment of that information conducted on 6 February 2019. This involved the OPI reviewing the decision to add the complaint made to the OPI in January 2019 to the existing IIS complaint file, the OPI reviewing the MRP undertaken by Osborn and the ultimate outcome reached by Osborn.<sup>302</sup> The result of this review was that the OPI determined to not reassess the complaint nor substitute its assessment of the complaint pursuant to section 28 of the PCD Act, nor take any other action (such as issuing directions under section 27 of the PCD Act). As noted above, this is the first key decision of the OPI that is central to my review in this matter.
203. In reviewing this determination by the OPI, I have had close regard to the records maintained under the PCD Act and the OPI's records including the 'complaint management system' records maintained under the PCD Act. I have also had close regard to further information supplied to me by Osborn in the form of a statutory declaration.<sup>303</sup>
204. For the reasons set out in paragraphs [196]-[201] above, it was reasonable for the IIS to add the complaint made by Mr Lawton and Mr Fuller to the OPI in January 2019 to the existing complaint which was already being dealt with by the MRP and to not take any further action when further information was provided by Mr Fuller on the day after the referral to IIS.
205. In relation to the OPI's oversight of the conduct of the MRP, in my view, the OPI needed to consider whether the obligations placed on Osborn, as the "*resolution officer*", by section 18 of the PCD Act, had been complied with and, if any had not, whether this was of any material relevance. As I am reviewing the OPI's oversight role, it is necessary for me to also consider whether the obligations placed on Osborn had been complied with and, if not, whether this was of any material relevance.
206. Subsections 18(2)(a) and (b) of the PCD Act provided that Osborn was to ensure that the designated officer(s) concerned were informed of the complaint, report or allegation made against him or her and given an opportunity to inform Osborn of any information they thought relevant in respect of the matter. Osborn's Management Resolution Report made it clear that the "*designated officers*" to whom the complaint related had been informed of the allegations made against them. Further, Osborn had discussed the content of the

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<sup>302</sup> That there would be no action taken as no misconduct had been established on the part of any SAPOL officer.

<sup>303</sup> Provided to me by Osborn in response to a requirement issued under ICAC Act Sch 4 cl 7, as currently in force.

Investigation Assessment document<sup>304</sup> with the designated officers. Those officers were Della Sala, Yeomans and Bolingbroke. At the time of the first complaint of 3 December 2018, there was no allegation against the CoP.<sup>305</sup> Accordingly, I consider that Osborn complied with subsections (2)(a) and 2(b) and there was no reason for the OPI to consider otherwise.

207. Section 18(10) of the PCD Act provided that upon completing the MRP, Osborn was required to inform the designated officer concerned and the complainant of the outcome. The Management Resolution Report submitted by Osborn identified that both the complainant and the designated officers were informed of the outcome of the MRP on 25 January 2019.<sup>306</sup> The OPI also had a copy of Osborn's letter to Mr Lawton of the same date. Osborn had therefore complied with the requirements of subsection (10) and there was no reason for the OPI to consider otherwise.
208. The obligations placed on Osborn by sections 18(2)(c) and 18(3) of the PCD Act are less straightforward.
209. Section 18(2)(c) provided that Osborn was required to: (i) contact the complainant and explain to them that the matter was to be resolved under Part 3 of the PCD Act (including an explanation of the processes involved and possible outcomes); and (ii) to give the complainant an opportunity to inform Osborn of any further information the complainant considered relevant. The complainant of the original complaint of 3 December 2018 was Mr Lawton (not Mr Fuller). The Management Resolution Report submitted by Osborn identified that he had contacted the complainant regarding their complaint by email and letter.<sup>307</sup>
210. Mr Lawton and Mr Fuller had provided the OPI with a series of communications between Mr Lawton and Osborn on 14 December 2018. These are outlined in detail earlier in my Report at paragraphs [131(g)-(h)]. In the first email Osborn informed Mr Lawton that his complaint about the failure to investigate allegations of fraud "*has been directed to me to resolve as may be possible*". It also informed him that he will be speaking to each of the members he has nominated in his correspondence, and that once he had informed himself he intended to come back to Mr Lawton.<sup>308</sup> This email did not expressly inform Mr Lawton that Mr Lawton's complaint was being dealt with under Part 3 of the PCD Act, nor did it refer to the process as a MRP. Whilst the email set out some of the process to be followed, it did not provide any detailed explanation of the

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<sup>304</sup> Reporting the considerations which led to the determination that the matter should not be further investigated.

<sup>305</sup> Exhibit 117 (Volume 2) – Management Resolution Report at p 3-5.

<sup>306</sup> Exhibit 117 (Volume 2) – Management Resolution Report at p 3-5.

<sup>307</sup> Exhibit 117 (Volume 2) – Management Resolution Report at p 3-5.

<sup>308</sup> Exhibit 58 (Volume 1), Email from Osborn to Mr Lawton 14 December 2018 at p 1.

processes involved, nor did it outline the possible outcomes. By failing to state these matters, Osborn's email failed to fully comply with section 18(2)(c) of the PCD Act.

211. As outlined earlier in my Report (see paragraphs [131(g)-(h)] above), Mr Lawton's response to Osborn's initial email on 14 December 2018 informed Osborn that Mr Lawton was not satisfied with Osborn's email, that the appropriate officer to investigate his complaint is an ACB officer. Mr Lawton asked Osborn to advise whether or not Osborn was a member of that branch. When Osborn informed Mr Lawton of his position within the Crime Service of SAPOL, Mr Lawton responded stating that he was pleased Osborn was revisiting his original complaint of fraud, but that Osborn was *"not empowered obviously to investigate my more recent and far more serious complaint of corruption by the very officers you intend to speak too [sic]"*. Mr Lawton stated that Osborn's intention to interview those officers before ACB could do so was *"a mistake"*. Mr Lawton stated that he will be forwarding a copy of his email to the CoP and requesting that the CoP give a direction to ACB to investigate the matter.<sup>309</sup>
212. I am of the view that Mr Lawton's email communications with Osborn on this date evidenced a clear indication that Mr Lawton did not accept Osborn's authority to review his complaint and did not intend to cooperate with Osborn. It is in this context that Osborn's failure to fully comply with subsection (2)(c) needed to be assessed by the OPI. In my view, and in light of all of the circumstances, including that no conduct issues were identified by Osborn, it was reasonably open to the OPI to consider this failure to comply with section 18(2)(c) was of no significance.
213. In relation to section 18(3) of the PCD Act, this provision required Osborn to turn his mind to whether or not there would be a benefit in undertaking conciliation between the complainant and SAPOL. If Osborn formed the opinion that there would be a benefit, then he was obliged to discover whether the complainant would agree to undertake conciliation. If the complainant did so agree, then Osborn must attempt to resolve the matter by way of conciliation.
214. The Management Resolution Report submitted by Osborn identified that when contact was made with Mr Lawton by email on 14 December 2018, Mr Lawton asserted that his complaint should be investigated by ACB. It also identified that Osborn did consider that there was benefit in conciliating the matter but that the complainant had not agreed to conciliate the matter. Osborn noted: *"The complainant will only be satisfied if a criminal investigation and prosecution is instituted into his report of May 2018 that he was the victim of fraud by his accountant. The advice from SAPOL's most senior fraud investigators is that*

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<sup>309</sup> Exhibit 117 (Volume 2) – Management Resolution Report at p 3-5.

*there is insufficient evidence of fraudulent behaviour in the material provided to police to prove any offence beyond reasonable doubt and in actual fact the matter is more likely a contractual dispute (Investigation assessment of Sept 2018 attached 'In confidence')*".<sup>310</sup>

215. Osborn provided the following further relevant evidence to me, in the form of a statutory declaration:

- (a) At the time of the MRP, Detective Chief Superintendent Osborn was the Officer in Charge, Serious Crime Coordination Branch, Crime Service.<sup>311</sup> He had been a police officer for 50 years;<sup>312</sup>
- (b) He had worked within the EPSB/IIS this was for a short period of time over 25 years previously;<sup>313</sup>
- (c) He had not previously undertaken the role of a 'resolution officer' under the PCD Act;<sup>314</sup>
- (d) He believed that at the time he was allocated as the 'resolution officer' for this complaint, he understood that he was required *"to determine what had actually occurred which had given rise to the complaint and as possible address the complainants concern"*. Osborn believed he would have *"sought to identify what the role required"* most likely by identifying information relevant to the role by reference to SAPOL's intranet;<sup>315</sup>
- (e) Osborn accepts that when he first made contact with Mr Lawton on 14 December 2018, he did not inform Mr Lawton that Mr Lawton's complaint was being dealt with under Part 3 of the PCD Act nor did he inform Mr Lawton of the MRP. However, he did inform Mr Lawton that his complaint had been directed to Osborn *"to resolve as may be possible"*;<sup>316</sup>
- (f) The only communications Osborn had with Mr Lawton were the emails of 14 December 2018 and the letter of 25 January 2019 although he believes he tried to telephone Mr Lawton on one or more occasions but did not get through to him;<sup>317</sup>
- (g) Mr Lawton did not accept that Osborn had the ability/authority to resolve his complaint and demanded that his complaint be referred to ACB. Osborn *"would have"* informed the IIS of this demand (over which he

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<sup>310</sup> Exhibit 117 (Volume 2) – Management Resolution Report at p 3.

<sup>311</sup> Exhibit 376 (Volume 5) – Osborn's statutory declaration at p 2 (1)(a)-(b).

<sup>312</sup> Exhibit 376 (Volume 5) – Osborn's statutory declaration at p 2 (1)(a)-(b).

<sup>313</sup> Exhibit 376 (Volume 5) – Osborn's statutory declaration at p 2 (1)(d).

<sup>314</sup> Exhibit 376 (Volume 5) – Osborn's statutory declaration at p 2 (1)(f).

<sup>315</sup> Exhibit 376 (Volume 5) – Osborn's statutory declaration at p 3 (2)(c)-(d).

<sup>316</sup> Exhibit 376 (Volume 5) – Osborn's statutory declaration at p 3-4 (3)(a).

<sup>317</sup> Exhibit 376 (Volume 5) – Osborn's statutory declaration at p 4 (3)(b).



says he had no authority) but has no recollection of any advice he received in response;<sup>318</sup>

- (h) Despite Mr Lawton's demand for his complaint to be dealt with by ACB, Osborn *"continued to undertake enquiries in the weeks that followed into the appropriateness of the determination of SAPOL's Commercial and Electronic Crime Branch to not pursue an investigation into his claims of fraud committed on him"*;<sup>319</sup>
- (i) Osborn was aware of Mr Lawton's *"reasoning"* through the documentation that was available to him. Osborn understood that Mr Lawton's complaint was one of *"corruption related to Officers of the Commercial and Electronic Crime Branch not taking action into the fraud he claimed was committed"*. Osborn *"didn't believe he [Mr Lawton] would be contributing any information that hadn't already been communicated to SAPOL"*;<sup>320</sup>
- (j) Specific steps Osborn took, and matters he had regard to, were the following:
  - (i) Osborn communicated the existence of the complaint and the allegations to designated officers Yeomans, Bolingbroke and Della Sala;
  - (ii) Osborn contacted Mr Lawton to advise him that his complaint had been directed to him to resolve as may be possible;
  - (iii) Osborn reviewed material provided to him by the IIS which he believes would have included Mr Lawton's letter to the CoP and DPP dated 3 December 2018 and the documents attached to that (including a copy of Lawton's statutory declaration and annexures, a copy of the brief and Ms Fuller's covering letter of advice);
  - (iv) Osborn reviewed/considered material provided to him by one or more of the designated officers relating to the alleged criminality reported by Mr Lawton in May 2018. Although Osborn cannot now recall precisely what that material was, he believes it included the 'Investigation Assessment Report' which was submitted by Della Sala on 1 September 2019 and documented the considerations behind the determination to terminate the investigation;

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<sup>318</sup> Exhibit 376 (Volume 5) – Osborn's statutory declaration at p 4 (3)(b).

<sup>319</sup> Exhibit 376 (Volume 5) – Osborn's statutory declaration at p 4-5 (3)(b).

<sup>320</sup> Exhibit 376 (Volume 5) – Osborn's statutory declaration at p 5 (3)(c).

- (v) Osborn spoke with each of the designated officers and discussed *“what had occurred and the reasoning for the action to not advance the investigation”* with a view to assuring himself (and Mr Lawton) that that determination was *“appropriate”*;
  - (vi) Osborn believes that he was informed that the DPP lawyers had *“confirmed informally”* that the MFIS assessment *“was sound and that if they proceeded with a criminal brief, there was not a reasonable prospect of conviction as the matter lay within the civil jurisdiction”*. Whilst Osborn does not have a recollection now, he believes he would have spoken to Della Sala and Bolingbroke about the advice received from the DPP and is confident that such advice was obtained noting that his *“general understanding that such advice is sought and provided as normal practice”*;
  - (vii) Osborn provided a copy of the investigation documentation and the Investigation Assessment to Detective Superintendent Wieszyk *“for his consideration and opinion given his lengthy experience as a fraud investigator and role as the Officer in Charge, Commercial and Electronic Crime Branch”*;
  - (viii) Osborn had regard to the *“long standing experience”* of the Detective Senior Sergeants within the MFIS making them *“subject experts”* in fraud; and
  - (ix) Osborn had regard to the fact that *“regular informal meetings”* took place between MFIS members and members of the DPP which provided an opportunity to *“discuss cases and the merits of further investigations, prospects for conviction, criminal charges or civil liability matters”* and that these discussions *“contributed to decisions being made”* by MFIS;<sup>321</sup>
- (k) Each of the officers Osborn spoke to *“were of the view that the matter was civil”* and he ultimately formed the opinion that the determination by MFIS to not further investigate the fraud allegations had been *“appropriate”*;<sup>322</sup>
- (l) At the time, Osborn understood the term *“conciliation”* to mean *“negotiation towards achieving an agreement”* which he accepts may be an *“incorrect”* meaning. However, this is an outcome that he believes to be *“desirable in all matters irrespective of the nature of the complaint or the complainant”*;<sup>323</sup>

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<sup>321</sup> Exhibit 376 (Volume 5) – Osborn’s statutory declaration at pp 4-6 (3)(b)-4(b), p 7 (4)(e).

<sup>322</sup> Exhibit 376 (Volume 5) – Osborn’s statutory declaration at p 6 (4)(b).

<sup>323</sup> Exhibit 376 (Volume 5) – Osborn’s statutory declaration at p 6 (4)(c).

- (m) *“Given the position taken by Mr Lawton in his communications with SAPOL I was of the view that he would in no way be accepting of the conclusion I had reached”*,<sup>324</sup>
  - (n) Osborn did not ask Mr Lawton if he would agree to conciliate the matter. Mr Lawton had made it clear from the beginning of the process that he objected to Osborn’s involvement in his complaint;<sup>325</sup>
  - (o) *“Given my conclusion that the determination by the Major Fraud Investigation was appropriate I believed that he [Mr Lawton] would not be accepting of conciliation that did not result in the investigation being re allocated to [ACB] for investigation”*.<sup>326</sup>
  - (p) Osborn has no memory of enquiring as to who the DPP lawyers were that provided advice in this matter but believes that he was told (i.e., of their identities) at the time. Osborn did not make any enquiries with any employee of the DPP himself as he did not think it was necessary for him to contact them and he believed the information provided to him (i.e., by other SAPOL officers) about the advice the DPP lawyers had provided.<sup>327</sup>
216. I am satisfied that Mr Lawton was never invited to conciliate the matter. Although Mr Lawton’s email responses to Osborn indicated that Mr Lawton did not accept Osborn’s authority to conduct a resolution of the matter and would only find a referral to ACB acceptable, this did not constitute a constructive refusal to conciliate in circumstances where Mr Lawton presumably did not know that conciliation was an option being considered by Osborn. Osborn should not have ticked the box within the Management Resolution Report indicating that Mr Lawton had not agreed to conciliate the matter.
217. However, Osborn’s reasons for why he did not invite Mr Lawton to conciliate the matter are compelling. Mr Lawton had made it clear that he did not accept Osborn’s ability or authority to resolve his complaint. Osborn had made appropriate inquiries to satisfy himself that the termination of the criminal investigation was appropriate. He had formed the view that this was indeed the case and that there had been no wrongdoing or misconduct of any kind by SAPOL officers. Osborn did not consider there was any likelihood of Mr Lawton accepting an offer for conciliation.
218. The obligation to attempt to resolve a complaint by way of conciliation only arose if Osborn was *“of the opinion that there would be a benefit in undertaking conciliation between the person who made the relevant complaint or allegation*

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<sup>324</sup> Exhibit 376 (Volume 5) – Osborn’s statutory declaration at p 7 (4)(c).

<sup>325</sup> Exhibit 376 (Volume 5) – Osborn’s statutory declaration at p 7 (4)(d).

<sup>326</sup> Exhibit 376 (Volume 5) – Osborn’s statutory declaration at p 5 (4)(b).

<sup>327</sup> Exhibit 376 (Volume 5) – Osborn’s statutory declaration at p 7 (4)(f)-(g).

*and SA Police*” and if the person agrees to undertake conciliation. The person’s consent (or lack of consent) is irrelevant absent the resolution officer first holding a genuine opinion that there would be benefit in undertaking conciliation. Osborn’s evidence was to the effect that he did not consider that there was any benefit in undertaking any type of conciliation process with Mr Lawton. I accept Osborn’s evidence in this regard. I therefore find that there was no obligation on Osborn to attempt to conciliate the matter. His error ticking the box within the Management Resolution Report indicating that Mr Lawton had not agreed to conciliate the matter, was therefore of no importance.

219. When the OPI reviewed the MRP, the issues identified above in relation to sections 18(2)(c) and 18(3) of the PCD Act were not identified. As I have outlined above, part of its oversight function required the OPI to consider whether the requirements of the PCD Act relating to the MRP had been complied with. The failure by the OPI to identify these matters meant that no further clarifying information was sought by the OPI from Osborn, or from the IIS. This in turn led to the OPI on 14 February 2019 incorrectly forming the view that *“steps were already taken previously to conciliate the matter”*.<sup>328</sup> However, the information available to the OPI included the steps taken by Osborn as part of the MRP. It also included the outcome, being that no conduct issues were identified. In particular, no lies were told by any SAPOL officer. Accordingly, this failure was not material to the outcome of the complaint.
220. Osborn took appropriate steps to (a) understand why the criminal investigation was terminated and (b) whether advice had been sought from the DPP in relation to the termination. I am satisfied that Osborn had:
- (a) taken appropriate steps to obtain and review the original reasons recorded by the investigation team for the termination in their Investigation Assessment which recorded that *“discussions with the ODPP”* had occurred;
  - (b) appropriately sought out the views of two independent senior SAPOL officers with relevant experience;
  - (c) ascertained that the decision to terminate the investigation was informed by informal advice from the DPP provided to Della Sala;
  - (d) had made enquiries as to why informal advice only had been obtained and had obtained a response which was both entirely reasonable and logical;
  - (e) was met with hostility when he attempted to communicate with Mr Lawton about his complaint; and

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<sup>328</sup> Exhibit 97 (Volume 2) – Email from the OPI to Curtis, 14 February 2019.

- (f) had informed Mr Lawton of the steps he had taken in relation to the matter in his letter advising of the outcome.
221. Osborn did **not** need to either ascertain or disclose the identity of the DPP members who spoke with any MFIS members. Osborn did **not** need to provide Mr Lawton with any detail of the DPP advice provided to SAPOL. There are strong public policy reasons why SAPOL officers ought to be able to obtain informal advice from the DPP on a confidential basis. It seems likely to me that such advice would be protected by LPP which can only be waived by the CoP. As I have outlined above (see paragraph [61] above), the Acting CoP has waived privilege to enable me to include otherwise privileged information within this Report. I do not consider that this should be something that occurs on a regular or routine basis even where a complaint is made which has some connection to the provision of DPP advice.
222. Overall, I am satisfied that the outcome of Mr Lawton's complaint to the CoP dated 3 December 2019 was both reasonable and appropriate. I am also satisfied that Mr Lawton was appropriately informed by Osborn in his letter dated 25 January 2019 of the steps taken by Osborn as part of the MRP and the outcome of the MRP.
223. I am also satisfied that the OPI's review and oversight of the IIS' handling of the complaint was appropriate and reasonable. Based on all the information available to the OPI, there was no basis for the OPI to have reassessed the complaint nor substituted its assessment of the complaint pursuant to section 28 of the PCD Act, nor to have taken any other action (such as issuing directions under section 27 of the PCD Act).
224. Nevertheless, in his letter to Mr Lawton dated 25 January 2019, it would have been preferable if Osborn had explained how his complaints had been handled under the PCD Act given that this had not occurred earlier. Osborn should have informed Mr Lawton that:
- (a) Mr Lawton's original complaint made to the CoP on 3 December 2018 was referred to the IIS in accordance with section 13(1) of the PCD Act;
  - (b) Mr Lawton's original complaint was assessed by the IIS as not raising a potential issue of corruption in public administration that could be the subject of a prosecution or as raising some other issue that should be referred to the OPI;
  - (c) that the OPI had reviewed the above assessment and decided not to conduct a reassessment nor substitute its own assessment;
  - (d) that a decision was made to deal with the complaint by way of the MRP under Part 3 of the PCD Act which meant that a formal investigation did not need to occur;

- (e) that he, Osborn, was the resolution officer for the purposes of the MRP;  
and
  - (f) that no conciliation had been attempted and why that was the case.
225. Had the above information been provided, Mr Lawton (and Mr Fuller) would have been in a better position to understand how their complaint had been handled. The information that no conciliation had been attempted (and the reasons for that decision) would also have been of assistance to the OPI. In short, there should have been full compliance with section 18(2)(c) of the PCD Act.
226. I find that Osborn's failure to comply with the PCD Act was probably due to his inexperience in performing the role of a resolution officer. There is no evidence to suggest that Osborn deliberately withheld information from Mr Lawton or that he was influenced by any improper motive.
227. There is also no evidence to indicate that the CoP was personally aware of Mr Lawton's complaint or of Osborn's MRP.<sup>329</sup> Mr Fuller's submission to me, containing numerous assertions against the CoP personally,<sup>330</sup> fails to recognise that SAPOL is a very large organisation and that whilst the CoP has ultimate responsibility for many matters under various pieces of legislation, he has the ability to delegate to others,<sup>331</sup> and cannot be expected to be aware of all correspondence addressed to him which is received by SAPOL nor of all complaints being handled by the IIS under the PCD Act.
228. When the OPI reviewed the MRP, the shortcomings which I have identified above were not clearly identified. Ms Townsend has submitted that it is unclear whether the OPI had any power to intervene (by, for example, issuing a written direction), once the MRP was concluded and that in this regard it is relevant that section 20 of the PCD Act provides that the CoP is responsible for monitoring and reviewing all matters dealt with by MRP with a view to maintaining proper and consistent practices.<sup>332</sup> It is not necessary for me to form a view on that issue because, even if the OPI did have power to intervene and issue directions, it was appropriate for the OPI to take no action after reviewing the MRP conducted by Osborn.

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<sup>329</sup> Records indicate that Mr Lawton hand-delivered his complaint to SAPOL Angas Street marked for the CoP's attention: Exhibit 57 (Volume 1) – Letter from Mr Lawton to the CoP, 6 December 2018 at p 1. There is no evidence that the CoP personally dealt with the correspondence upon receipt.

<sup>330</sup> See **Appendix F – Mr Fuller's submission**.

<sup>331</sup> Section 19(1) of the *Police Act 1998* (SA) enables the CoP to delegate any powers or functions conferred on, or assigned to, the Commissioner under that Act or any other Act.

<sup>332</sup> Exhibit 406 (Volume 6) – Submission of the Director of the OPI, 17 April 2024 at [3].

229. The OPI's omissions, when reviewing the MRP conducted by Osborn, do not amount to evidence of corruption, misconduct or maladministration in public administration on the part of the OPI. They could not amount to any of the criminal offences constituting corruption in public administration. There is no provision within the Code of Ethics for the South Australian Public Sector in force at the time which could be said to have been breached in these circumstances.<sup>333</sup> There is no evidence that the OPI assessor's conduct involved substantial mismanagement in relation to the performance of official functions nor that the OPI had a practice, policy or procedure that resulted in an irregular and unauthorised use of public money or substantial mismanagement of public resources. There is no evidence before me of the OPI or any staff of the OPI acting dishonestly or in bad faith.
230. A timing issue arises in that the MRP in relation to Mr Lawton's complaint dated 3 December 2018 was completed by Osborn when he wrote to Mr Lawton on 25 January 2019. This was prior to the OPI referring Mr Lawton and Mr Fuller's complaint to the OPI to the IIS on 31 January 2019. Mr Fuller contends that an entirely new process ought to have commenced in relation to Mr Lawton and Mr Fuller's complaint to the OPI. However, as Osborn's Management Resolution Report had not been submitted when Mr Lawton and Mr Fuller complained to the OPI, the MRP as a whole was still ongoing. In these circumstances I consider it reasonable for the complaint to the OPI to have been added to the existing complaint. Taking this approach did not result in the additional material provided to the OPI being ignored. It was forwarded to the IIS and was considered by the Officer in Charge of the IIS, Chief Inspector Curtis. Further the OPI informed IIS, on 14 February 2019, that the complainant would be likely awaiting further correspondence from the IIS in relation to the complaint made directly to the OPI and Curtis undertook to ensure that further correspondence was sent to Mr Lawton.
231. On 19 February 2019, Curtis wrote to Mr Lawton informing him that his original complaint made on 3 December 2018 had been referred to Osborn to undertake a MRP under Part 3 of the PCD Act. This letter informed Mr Lawton that Curtis had reviewed the MRP along with the additional material provided to Curtis from the OPI. Curtis' brief letter simply informed Mr Lawton that Curtis was "*satisfied that there are no conduct issues regarding any members of SAPOL*" and as such he would not be taking any further action and the file would be closed.<sup>334</sup>

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<sup>333</sup> Exhibit 382 (Volume 5) – Code of Ethics for the South Australian Public Sector issued 19 May 2017 pursuant to s 15 of the *Public Sector Act 2009* (SA).

<sup>334</sup> Exhibit 117 (Volume 2) – Letter from Curtis to Mr Lawton, 19 February 2019 at p 13.

232. The OPI was notified of the above on the same date.<sup>335</sup> The OPI did not perform any additional assessment nor take any further action at this time.
233. Curtis' letter was the first time Mr Lawton had been expressly informed that his original complaint had been dealt with under the PCD Act and had been handled by way of MRP. Although Curtis told Mr Lawton that he had also considered the material provided by the OPI and he was satisfied that there were no conduct issues arising, his letter did not expressly explain that Mr Lawton and Mr Fuller's complaint to the OPI had been added to the existing IIS complaint from December 2018 and that a decision had been made not to take any further action (although this was nevertheless clear).<sup>336</sup> In my view it would have been preferable for this information to be imparted to Mr Lawton and Mr Fuller at this time as this would have provided important context to the content of Curtis' letter.
234. As to the reasonableness and appropriateness of Curtis' decision to not take any further action, I am satisfied that no further action was necessary given the steps Osborn had already taken and the further information provided to Mr Lawton by Curtis' letter of 25 January 2019. However, having said that Curtis should have realised that it was only after Osborn sent his letter of 25 January 2019 that Mr Fuller and Mr Lawton provided further information about conversations between Ms Fuller and Mr Phillips and that after receiving Osborn's letter, Mr Fuller and Mr Lawton continued to assert that there had been deliberate lies told about the issue of DPP advice and had asserted that there had been a representation of formal advice. If Curtis was aware of this, then it clearly would have been preferable for him to provide further information to Mr Lawton about the consultation that Osborn said had occurred between Della Sala and the DPP.
235. In terms of the OPI's oversight at this point in time, whilst it may have been preferable for the OPI to have been more proactive in requesting that Curtis' response to Mr Lawton<sup>337</sup> specifically address the DPP advice issue, I do not consider that this amounts to evidence of corruption, misconduct in public administration nor maladministration in public administration on the part of the OPI nor any of the OPI's employees. This shortcoming was of a minor and procedural nature only.

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<sup>335</sup> Exhibit 160 (Volume 1) – Running Sheet 2019/002957 at p 9.

<sup>336</sup> PCD Act s 21(2)(c) (see **Appendix B**) which provides that where the conduct that is the subject of a complaint is being, or has previously been, assessed by the IIS then the obligation within section 21(1) for the IIS to investigate the complaint does not apply.

<sup>337</sup> Which I note should also have been sent to Mr Fuller as a co-complainant to the complaint made to the OPI.



# Mr Riches' review and letter of 3 July 2019

## Background: Correspondence 20 to 25 February 2019

236. On 20 February 2019 Mr Fuller sent a further email to the OPI complaining about the lack of a response to his emails from 14 and 15 February 2019.<sup>338</sup> Mr Fuller stated that he would “*expect to be advised today of a time we can meet with your Director*” (original emphasis). Mr Fuller complained that he had not received any response from Osborn or the CoP and asserted that these failures “*are probative of misconduct*”.<sup>339</sup> Mr Fuller received a response from the OPI advising that the OPI was currently reviewing his previous correspondence and that he would receive a response “*in due course*”.<sup>340</sup> Mr Fuller replied stating that “*in due course*” was “*not satisfactory*” and that he required a substantive response by tomorrow.<sup>341</sup>
237. On 21 February 2019 Mr Fuller sent four separate emails to the OPI. As will be seen below, the content and tone of these emails became increasingly hostile.
238. In his first email, Mr Fuller noted that he was waiting to receive a substantive response and requested that, pending a substantive response, the OPI forward “*a copy of the referral letter and/or advice by OPI to IIS on 31 January 2019 and any follow up request requiring confirmation of registration, or for that matter any communication post 31 January 2019 by and between OPI and IIS*”. Mr Fuller asserted that the delay in responding to him was “*approaching unprofessional and is seriously undermining my initial confidence that OPI personnel were equipped to investigate this complaint with the propriety and rigour the public interest required*”.<sup>342</sup>
239. This was the first time Mr Fuller requested access to OPI/IIS records. Section 54 of the ICAC Act and sections 44 and 45 of the PCD Act impose strict confidentiality on such records. Despite receiving various communications from the OPI directing his attention to section 54 of the ICAC Act,<sup>343</sup> Mr Fuller continued to demand that the OPI/ICAC provide him with confidential records.
240. In his second email, sent just over an hour and a half after the first, Mr Fuller asserted that his complaint should never have been assessed as appropriate for investigation by IIS. Mr Fuller stated that he would allow time for “*a positive response from you that you will refer the matter to ICAC by cob tomorrow Friday*”

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<sup>338</sup> See paragraph [159(b)-(c)] above.

<sup>339</sup> Exhibit 105 (Volume 2) – Email from Mr Fuller to the OPI, 20 February 2019.

<sup>340</sup> Exhibit 106 (Volume 2) – Email from the OPI to Mr Fuller, 20 February 2019.

<sup>341</sup> Exhibit 107 (Volume 2) – Second email from Mr Fuller to the OPI, 20 February 2019.

<sup>342</sup> Exhibit 109 (Volume 2) – Email from Mr Fuller to the OPI, 21 February 2019.

<sup>343</sup> For example, the first email sent to Mr Fuller from the OPI on 25 January 2019: Exhibit 28 (Volume 1).

21/2/09. Failure to do so will only compel me to refer the matter to the Commissioner myself with a complaint that OPI has failed to treat this complaint with recognition of the Public Interest and sensitivity due to a complaint of misconduct as a public officer by SAPOL Commissioner and three senior officers of SAPOL” (original emphasis).<sup>344</sup>

241. The OPI emailed Mr Fuller to acknowledge his emails dated 20 and 21 February 2019 and to advise that the Director of the OPI was aware of his matter. The OPI advised Mr Fuller that the Director declined to meet with him as his matter was currently being reviewed. The OPI advised Mr Fuller that continued email correspondence would not result in his matter being prioritised and that the OPI was unable to provide Mr Fuller with internal correspondence between the OPI and the IIS (and that the OPI was exempt from Freedom of Information requests).<sup>345</sup>
242. In his third email, Mr Fuller expressed the view that the OPI had “*demonstrated ineptitude of major proportion in and about the investigation of this complaint*”. Mr Fuller complained about the OPI hiding behind the Freedom of Information exemption and stated that that it was a “*disgrace*” for the OPI to “*resort to this excuse*”. Mr Fuller advised that he was now persuaded that he was wasting his time with the OPI “*as it is now in cover up mode for what I am now persuaded to the point of moral certainty is complete and utter ineptitude*”. Mr Fuller completed this email by stating that he will be referring every communication to the ICAC Commissioner to have his complaint competently handled and for the Commissioner to “*assess the competency of OPI personnel involved in this unseemly debacle*”.<sup>346</sup>
243. In his fourth email, which was addressed to the “*Director of Investigations*”, Mr Fuller complained that it “*should have taken no more than one (1) hour for you to have read and digested the brief of communications supporting the complaint to the OPI and the subsequent communications between me and OPI Admin*” and that this should have led to “*an immediate grasp by you of the implications for ICAC from a failure to promptly undertake an investigation by ICAC itself of the complaint of improper conduct by [CoP] Grant Stevens, Yeomans, Bolingbroke and latterly Osborn of SAPOL*”. Mr Fuller then asserted that this has implications “*for the very fabric of governance in SA*” and that “*political mileage*” will likely be made out of the failure by the OPI to correct its error and refer his complaint to ICAC for investigation. Mr Fuller then repeated his request for his complaint to be immediately referred to ICAC.<sup>347</sup>

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<sup>344</sup> Exhibit 110 (Volume 2) – Second email from Mr Fuller to the OPI, 21 February 2019.

<sup>345</sup> Exhibit 111 (Volume 2) – Email from the OPI to Mr Fuller, 21 February 2019.

<sup>346</sup> Exhibit 112 (Volume 2) – Third email from Mr Fuller to the OPI, 21 February 2019.

<sup>347</sup> Exhibit 113 (Volume 2) – Fourth email from Mr Fuller to the OPI, 21 February 2019.

244. I note that this express acknowledgement by Mr Fuller that *“political mileage”* of this matter will now occur, at a time when he was aware the Director of the OPI was personally reviewing his matter, is concerning. As subsequent events demonstrate, Mr Fuller indeed has taken considerable steps to ensure that this matter has received political attention.
245. On 22 February 2019 Mr Fuller telephoned the OPI. The file note of the call records that Mr Fuller wished to contact the Commissioner as he has reported a matter to the OPI and was dissatisfied with the performance of the OPI. Mr Fuller was informed that if he was unhappy with the conduct of the OPI he could make a complaint to the ICAC Reviewer and was provided with the Reviewer’s name and email address. Mr Fuller was also informed that he could address any correspondence to the Commissioner using the OPI Admin email address. Mr Fuller was unhappy about using this email address as the OPI was the entity he wished to complain about. Mr Fuller was assured that if he addressed the email to the Commissioner then it would be brought to the Commissioner’s attention.<sup>348</sup>
246. On the same date, Mr Fuller made a complaint to former Reviewer Duggan. Although it is not my role to review the conduct of the Reviewers, I briefly deal with Mr Fuller’s complaints to the Reviewers **below**.
247. On the same date, Former Senior OPI Employee 1 informed Mr Fuller that he was currently considering his matter and anticipated contacting him on the next business day in order to obtain additional information from him.<sup>349</sup>
248. Mr Fuller responded on the same date, indicating that Former Senior OPI Employee 1’s response *“may be a case of too little too late”* as *“the only thing that will assuage my anger and disbelief at the lack of professionalism in your outfit was an immediate reference to ICAC”*. Mr Fuller advised that he was willing to meet with Former Senior OPI Employee 1 *“but you should know that I have reason to believe that the forces who have influenced Grant Stevens are at play w/in OPI”*. He also advised of his belief that there *“needs to be an enquiry into the handling of this complaint by OPI, and I intend to pursue this no matter what you now decide to do”*.<sup>350</sup>
249. Thus, Mr Fuller made it clear that he would be pursuing the matter further irrespective of what actions were now taken and irrespective of the content of any response he received from Former Senior OPI Employee 1.

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<sup>348</sup> Exhibit 117 (Volume 2) – OPI file note 2019/002957, 22 February 2019 at p 25;  
Exhibit 160 (Volume 2) – Running Sheet 2019/002957 at p 8.

<sup>349</sup> Exhibit 114 (Volume 2) – Email from Former Senior OPI Employee 1 to Mr Fuller, 22 February 2019.

<sup>350</sup> Exhibit 115 (Volume 2) – Email from Mr Fuller to Former Senior OPI Employee 1, 22 February 2019.

250. In a second responding email, Mr Fuller advised that he had looked at the website of ICAC and the OPI and noted that Former Senior OPI Employee 1 has *“a pre-existing association with the Police Integrity Unit”* and that Former Senior OPI Employee 1 therefore should be *“specially equipped by experience to recognise police corruption when it is staring you in the face”*.<sup>351</sup>
251. On the same date an internal memorandum to Mr Lander was finalised by an OPI employee about the matter.<sup>352</sup> The memorandum provided some background information as to when Mr Lawton and Mr Fuller had complained to the OPI, the referral to IIS, the fact that IIS had already received a previous complaint dated 3 December 2018 and the IIS’ assessment of the subsequent complaint to the OPI.
252. The memorandum noted that as the matter had previously been addressed, *“IIS attached the OPI referral to the existing matter and did not take further action”*. The memorandum noted that this determination had been reviewed by an OPI employee who *“agreed with the IIS assessment and recommended that the matter not proceed to consultation”*. The memorandum referred to Mr Lawton being advised of the outcome of the OPI referral by letter dated 19 February 2019. The memorandum noted that since that time Mr Fuller had emailed the OPI *“on 16 occasions with increasingly unreasonable demands”*. The OPI staff member who drafted the memorandum expressed the view that Mr Fuller’s email correspondence *“does not add any weight to his complaint and he has not provided any additional information in support of his allegations”*. The OPI staff member expressed the view that the matter *“has been dealt with appropriately by both the Major Fraud Squad of SAPOL and IIS”* and recommended that no further action be taken. Attached to the memorandum was Osborn’s Management Resolution Report, the OPI assessment and the letter to Mr Lawton from Curtis dated 19 February 2019 (along with numerous emails from Mr Fuller to the OPI).<sup>353</sup>
253. Handwritten notes appear on the above memorandum dated 22 February 2019 which indicate that *“particulars”* were to be requested and further consideration given to what Mr Lawton and Mr Fuller were told *“about DPP”*.<sup>354</sup> Former Senior OPI Employee 1 has provided evidence to me that the handwritten notes on this memorandum are not his but that it is likely that he read the memorandum.<sup>355</sup>

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<sup>351</sup> Exhibit 116 (Volume 2) – Second email from Mr Fuller to Former Senior OPI Employee 1, 22 February 2019.

<sup>352</sup> Exhibit 117 (Volume 2) – Memorandum to Mr Lander, 22 February 2019 at p 1-2.

<sup>353</sup> Exhibit 117 (Volume 2) – Memorandum to Mr Lander, 22 February 2019 at p 2; Exhibit 160 (Volume 2) – Running Sheet 2019/002957 at p 9-10.

<sup>354</sup> Exhibit 117 (Volume 2) – Memorandum to Mr Lander, 22 February 2019 at p 1.

<sup>355</sup> Exhibit 337 (Volume 5) – Former Senior OPI Employee 1’s statutory declaration at p 3 [2].

254. On 24 February 2019 (a Sunday) Mr Fuller emailed the OPI on three occasions.

255. First, Mr Fuller advised that he had received Curtis' letter sent by post to Mr Lawton and had been provided a copy. Mr Fuller asserted that, "*The cover up continues and now extends to and includes the Officer in charge of IIS*". Mr Fuller stated that before he could assign culpability exclusively to Curtis, he required the OPI to disclose to him the OPI referral to IIS and an index to the materials provided to IIS. Mr Fuller then complained that his "*status as a complainant*" was not acknowledged by the IIS and that they did not communicate with him, interview him, or seek a written submission from him. Mr Fuller alleged this was "*deliberate*" so that there was nothing on the record from him that required a response. Mr Fuller then stated:

*To demonstrate the improper conduct of all the SAPOL Officers, Yeomans, Bolingbroke, Osborn now Curtis and (at their head) Commissioner Grant Stevens I put to you rhetorically two questions:*

- 1) *If it was a proper and professional exercise of judgment of the fraud squad officers to terminate the original investigation, why was it necessary to invent a false reason?*
- 2) *Why has every SAPOL officer (including now Curtis of IIS) reviewing this conduct ignored this aspect of the termination?*

*The answers are obvious.*

*The original investigators and the reviewers of their conduct are all members of a Grant Stevens (30 years a serving officer of SAPOL) cabal whose purpose was and continues to be to prevent any proper and independent investigation of the original complaint and to frustrate the possible charging of [C] and others with Major Indictable Offences.*

256. Mr Fuller stated that he amends his original complaint to the OPI to include the conduct of OPI and Curtis. In relation to Curtis, Mr Fuller stated that he has reasonable grounds to suspect Curtis has engaged in "*improper conduct as a public officer*". He then stated that he will be contacting Curtis to put this allegation to him.<sup>356</sup>

257. Mr Fuller's second email is an email sent to Curtis to which he copied the OPI. In this email Mr Fuller complained about the following matters:

- (a) that Curtis' letter dated 19 February 2019 referred to Mr Lawton's complaint dated 3 December 2018 (made to the CoP and DPP) when Curtis should have been tasked to consider the complaint made by Mr Lawton and Mr Fuller to the OPI which was delivered in person on 29 January 2019;

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<sup>356</sup> Exhibit 118 (Volume 2) – Email from Mr Fuller to Former Senior OPI Employee 1, 24 February 2019; Exhibit 119 (Volume 2) – Letter from Curtis to Mr Lawton, 19 February 2019.

- (b) that Mr Fuller and Mr Lawton were not consulted by IIS despite being assured by the OPI that they would be;
  - (c) that Curtis did not consult with the DPP (Mr Kimber SC) nor refer to the DPP's letter *"refuting the assertion by Della Sala that the basis for termination was that 'the DPP had advised that there were no reasonable prospects of conviction'"*;
  - (d) that Curtis did not seek to interview Ms Fuller;
  - (e) that Curtis did not seem to have turned his mind to the fact that Della Sala had *"conveyed a false reason on instructions from 'management' ie Yeomans and Bolingbroke"*; and
  - (f) that Curtis' investigative failures mean that he is *"but the latest member of the Grant Stevens cabal of senior SAPOL officers to identify himself as complicit in the attempt to airbrush out of the anecdotal record the lies and deceit practised by Yeomans and Bolingbroke to terminate an otherwise meritorious complaint of Deception, Publication of Misleading Documents, and Unlawful Bias made against persons of influence in SA business and commerce and thereby frustrate any independent examination (by the DPP) of the Complaint and the prospects of conviction on those charges if preferred"*.
258. Mr Fuller concluded this email by asserting that Curtis' report is a disgrace and a blot on the reputation of SAPOL, that publication of it will *"deliver a blow to public confidence in SAPOL from which it will not recover for quite a while"*, that in due course he will be pressing the SA Government *"for a Royal Commission into the governance of SAPOL"* and that Curtis has now put himself *"in the frame"*.<sup>357</sup>
259. In his third email, directed to Former Senior OPI Employee 1, Mr Fuller referred to his email to Curtis and noted the reference to Mr Fuller asking the SA Government to establish a Royal Commission. Mr Fuller then stated that Former Senior OPI Employee 1 has the discretion and power to refer the matter to ICAC immediately if he is so minded. Mr Fuller indicated that he will be relying on his communications with the OPI and Former Senior OPI Employee 1 going forward.<sup>358</sup>
260. I note that in the emails sent by Mr Fuller on 24 February 2019, he omitted any reference to the fact that Osborn's letter of 29 January 2019 informed Mr Lawton that there had been informal engagement between Della Sala and the DPP in the form of a discussion. Mr Fuller instead maintained that there had

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<sup>357</sup> Exhibit 120 (Volume 2) – Email from Mr Fuller to Curtis, 24 February 2019.

<sup>358</sup> Exhibit 121 (Volume 2) – Second email from Mr Fuller to Former Senior OPI Employee 1, 24 February 2019.

been a false reason given for the termination of the investigation. This is the key allegation from which every subsequent allegation of corruption or wrongdoing is based. Mr Fuller's emails of 24 February 2019, fail to acknowledge this important matter, whilst at the same time he continued to declare the existence of a "cabal" and called for a Royal Commission into the governance of SAPOL.

261. On 25 February 2019 Mr Fuller emailed Former Senior OPI Employee 1 notifying him that in Mr Fuller's view Curtis' report was a "disgrace" and the OPI was "hopelessly conflicted". Mr Fuller asserted that, "*The only recourse for you (if you wish to avoid personal implication) now is to refer as requested ad nauseum our complaint to the ICAC to include a review of the possible involvement of OPI personnel in the inappropriate dealing with this complaint*". Mr Fuller then repeated his request for a copy of the OPI's referral to IIS and any report received from the IIS noting that he would "*allow 24 hours to establish your bona fides by complying with my request*".<sup>359</sup>
262. Mr Fuller's email included a threat to Former Senior OPI Employee 1: either do as I demand and refer my complaint to ICAC, or there will be personal implications for you. Such threatening conduct towards a public officer is completely unacceptable.
263. Former Senior OPI Employee 1 responded to Mr Fuller on the same date: (a) acknowledging Mr Fuller's six recent emails and stating that he appreciates that the matter is of pressing importance to Mr Fuller and Mr Lawton; (b) explaining that this matter is not the only complaint being considered by the OPI; and (c) stating that he was currently reviewing this matter and Mr Fuller's requests for additional information. Former Senior OPI Employee 1 informed Mr Fuller that "*attempts to place unreasonable demands on me to respond to your requests will not assist in expediting your matter*" and that he did not intend to correspond with Mr Fuller until he had the opportunity to consider Mr Fuller's matter.<sup>360</sup>
264. In my view, Former Senior OPI Employee 1's measured response was appropriate and professional.
265. Mr Fuller responded on the same date expressing regret that, "*the subject matter does not seem to be a factor in whatever priority you assign to a matter. Extraordinary!*"<sup>361</sup>

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<sup>359</sup> Exhibit 122 (Volume 2) – Email from Mr Fuller to Former Senior OPI Employee 1, 25 February 2019.

<sup>360</sup> Exhibit 123 (Volume 2) – Email from Former Senior OPI Employee 1 to Mr Fuller, 25 February 2019.

<sup>361</sup> Exhibit 124 (Volume 2) – Email from Mr Fuller to Former Senior OPI Employee 1, 26 February 2019.

## Mr Riches' review: Request for particularisation of complaints and response

266. On 27 February 2019 Former Senior OPI Employee 1 sent a detailed email to Mr Fuller advising that he had now reviewed Mr Fuller's file and the documentation provided to the OPI. Former Senior OPI Employee 1 requested that Mr Fuller assist by providing further information with respect to the following 7 issues:<sup>362</sup>

- (a) DPP advice – Mr Fuller was asked whether he wanted anything “*over and above*” the following to be investigated:
  - (i) Was advice (whether deemed formal or informal) ever obtained by SAPOL from the ODPP?
  - (ii) If yes, the number of times advice was obtained;
  - (iii) If yes, who from and when?
  - (iv) If yes, how was it received orally or in writing?
  - (v) If yes, exact details of what the advice said;
  - (vi) If yes, the bearing the advice had on the decision not to proceed with the investigation;
  - (vii) If no advice informal or formal was obtained an investigation of the representations made that it was;
- (b) Conduct of Della Sala, Yeomans and Bolingbroke – Mr Fuller was asked to particularise the conduct that he alleged amounts to corruption on the part of each officer;
- (c) Conduct of Osborn – Mr Fuller was asked to particularise “*any conduct or criminal allegations*” that he made against this officer;
- (d) Conduct of CoP – Mr Fuller was asked to particularise the conduct that he alleged amounts to corruption on the part of the CoP;
- (e) Failure to investigate – Mr Fuller was asked to provide additional reasons as to why he believed that SAPOL had not adequately addressed Mr Lawton's allegations of criminal conduct;
- (f) IIS – Mr Fuller was asked to provide particulars as to the specific issues he wished to raise in respect of the conduct of Curtis and/or officers within the IIS; and

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<sup>362</sup> Exhibit 125 (Volume 2) – Email from Former Senior OPI Employee 1 to Mr Fuller, 27 February 2019.



- (g) OPI – Mr Fuller was informed that the OPI had provided him with the details of the Reviewer who deals with complaints about OPI.
267. Mr Fuller was also informed that he was able to add any additional allegations or clarification as he wishes and that his request for the matter to be referred to ICAC would be considered in light of his responses.<sup>363</sup>
268. On 4 March 2019 Mr Lawton emailed Former Senior OPI Employee 1 to advise that Mr Fuller was away and unable to respond until next week.<sup>364</sup> The OPI acknowledged receipt of this email on the same date.<sup>365</sup>
269. On 12 March 2019 Mr Fuller emailed Former Senior OPI Employee 1 expressing his frustration at being asked to provide particulars but nevertheless addressing each of the 7 issues above as follows:
- (a) DPP advice – *“The only question/issue for investigation (had you in fact digested the brief of documents) is; Why did officers of SAPOL direct that Ms Fuller and Lawton be falsely advised that the ODPP had provided advice to SAPOL that there were no reasonable prospects of conviction, and (inter alia) that it was a civil matter? The remaining questions you pose are irrelevant”;*
  - (b) Conduct of Della Sala, Yeomans and Bolingbroke – *“Della Sala was the SAPOL officer who gave the above false advice to Ms Fuller and to Lawton. What is not clear is whether he knew the advice he was giving was false, or whether he was a mere cipher for Yeomans and Bolingbroke. Further investigation will illuminate which or all of the above officers were aware that the advice was false and who directed that this be conveyed to Ms Fuller and Lawton”.* Mr Fuller then mentioned that Curtis’ letter was **“a disgraceful document”** but also noted that it provides an **“opportunity to confirm the allegations by me and Lawton that Osborn is a member of the Grant Stevens cabal and latterly so is Curtis”** (original emphasis). Mr Fuller then suggested that Former Senior OPI Employee 1 should immediately obtain **“a full log of the interviews (if any) of Yeomans and Bolingbroke and Della Sala conducted by either Osborn and/or Curtis”** and that he should **“call for the running sheets for each investigation”** (original emphasis). Mr Fuller demanded that the results be furnished to him. Mr Fuller’s

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<sup>363</sup> Exhibit 125 (Volume 2) – Email from Former Senior OPI Employee 1 to Mr Fuller, 27 February 2019.

<sup>364</sup> Exhibit 126 (Volume 2) – Email from Mr Lawton to Former Senior OPI Employee 1, 4 March 2019.

<sup>365</sup> Exhibit 127 (Volume 2) – Email from the OPI to Mr Lawton, 4 March 2019.

email then refers again to Della Sala, Yeomans and Bolingbroke's conduct and alleges "*corruption*" on the basis that:

- (i) making of a false statement by a public officer to a potential victim of a crime and/or his legal representative is an offence against Part 7, Division 4, of the CLCA (Public Office offences);
  - (ii) section 251 of the CLCA "*sanctions abuse of public office by improperly exercising power and influence that the public officer has by virtue of his or her public office and/or improperly refusing or failing to perform an official duty or function with the intention of securing a benefit to himself or another person*";
  - (iii) section 238 of the CLCA defines "*acting improperly*"; and
  - (iv) section 26 "*(Honesty and Accountability) Act 1955*"<sup>366</sup> provides that a public sector employee must at all times act honestly in the performance of his or her duties;
- (c) Conduct of Osborn – Mr Fuller asserted that Osborn "*ignored the cogent evidence in the anecdotal record of 'the lie' proffered to Ms Fuller and to Lawton by Della Sala as the reason for termination of the investigation*". Mr Fuller asserted that Osborn's failure to address the "*gravamen of Lawton's allegation*" is "*inexcusable and implies complicity in the improper conduct of Yeomans and Bolingbroke, by assisting in an attempt after the event to cover up that improper conduct*". Mr Fuller noted that Osborn had not responded to the allegation that he is "*doing the bidding*" of the CoP;
- (d) Conduct of CoP – Mr Fuller asserted that the CoP failed to respond at all to the allegations made in email correspondence and "*has been conspicuous in not identifying himself as associated with the investigation and report by Osborn*". Mr Fuller asserts that this raises questions as to the CoP's "*involvement in 'the lie' and/or the attempted coverup of it, by Osborn in particular, and whether he has thereby contravened s 251 CLCA and/or s 26 (Honesty and Accountability) Act 1955*".<sup>367</sup> Mr Fuller also asserted that the CoP "*must have directed Osborn to carry out the 'investigation'*" and in that event the CoP "*will have approved the terms of the letter from Osborn to Lawton*";
- (e) Failure to investigate – Mr Fuller asserted that "*The fact of 'the lie' is incontestable and is demonstration of itself, that the termination of the*

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<sup>366</sup> It appears that Mr Fuller meant to reference the *Public Sector (Honesty and Accountability) Act 1995 (SA)*.

<sup>367</sup> It appears that Mr Fuller meant to reference the *Public Sector (Honesty and Accountability) Act 1995 (SA)*.

*investigation by Della Sala under the direction of Yeomans and Bolingbroke, was not a mere 'failure to investigate' but was attended by improper conduct under s 238 CLCA, a contravention of s 251 CLCA and by virtue of ICAC Act 'corrupt conduct' by public officers". Mr Fuller goes on to assert that if the officers were satisfied that Mr Lawton's complaint did not raise a reasonable suspicion of criminality, then 'the lie' was not required – "A lie is only required if there is recognition by the investigators that without 'the lie' there was no justification for the termination of the investigation". Mr Fuller asserted that because "the lie" was told over a series of weeks in conversations with Della Sala and Ms Fuller and Mr Lawton, and then when follow up questions were asked about the DPP advice there was a failure to respond, this is "indicative of forward planning for a predetermined termination at a later date". Mr Fuller then particularised that 'the lie' comprised three false statements by Della Sala as follows:*

- (i) the matter had been referred to the DPP for advice and recommendations as to prospects of conviction;
  - (ii) advice had been received from the DPP and was being considered by management; and
  - (iii) the DPP "*had opined that there were no reasonable prospects of conviction*" with some supporting detail for the advice being provided to both Mr Lawton and Ms Fuller (as recorded in Ms Fuller's notes);
- (f) IIS – Mr Fuller asserted that the IIS investigation "*should have included a number of lines of enquiry and interviews of personae dramatis*" including the interviewing of Mr Lawton, Mr Fuller, Ms Fuller or Mr Phillips, the CoP, Osborn, Yeomans, Bolingbroke and Della Sala. Mr Fuller stated that if the SAPOL officers had been interviewed "*then they will have either admitted 'the lie' denied 'the lie' or declined to answer on the ground that the answer may tend to incriminate*". Mr Fuller also complained that IIS did not make contact with him or Mr Lawton and did not provide a reference number for the IIS investigation until the letter sent by Curtis dated 19 January 2019. Mr Fuller asserted that this was an "*intentional limiting of opportunity*" for himself and Mr Lawton to put matters on the record that Curtis would then need to address; and
- (g) OPI – Mr Fuller asserted that the allegations made to the OPI were of conduct which, if proved, amounts to the commission of major indictable offences. Mr Fuller asserted that he warned the OPI about a "*whitewash*" when requesting termination of IIS involvement and direct referral to ICAC but was told that his request would be dealt with "*in due course*" and that continuing to communicate his concerns would not accelerate

the response time. *“By this stratagem Curtis bought time for SAPOL and OPI was used ... whether wittingly or unwittingly? ... as an instrument in the continuing SAPOL coverup of improper conduct by its most senior officers in and about the termination of the original complaint by Lawton to SAPOL”*. Mr Fuller *“postulate[s] that OPI gave no instructions to IIS as to the lines of enquiry to be pursued or persons to be interviewed and held no strategy meeting with IIS in the period 4 February 2019 to 19 February 2019”*. Mr Fuller questions *“Where was your Director of Investigations in all of this?”* Mr Fuller also asserts that his complaint should never have been referred to the IIS for investigation and should have been referred directly to ICAC.<sup>368</sup>

270. I note that, as with the emails sent by Mr Fuller on 24 February 2019, Mr Fuller omitted any reference to the fact that Osborn’s letter of 29 January 2019 informed Mr Lawton and Mr Fuller that there had been informal engagement between Della Sala and the DPP in the form of a discussion.
271. The OPI acknowledged Mr Fuller’s email on the same date that it was received and advised Mr Fuller that the email would be brought to Former Senior OPI Employee 1’s attention.<sup>369</sup>

## Mr Riches’ review and letter of 3 July 2019

272. On 15 March 2019 an internal memorandum was finalised by an OPI employee about the further particulars provided by Mr Fuller and was addressed to Mr Lander.<sup>370</sup> The OPI’s records demonstrate that a meeting occurred on the same day between the OPI employee who wrote the memorandum, Mr Riches, and Former Senior OPI Employee 1.<sup>371</sup> Former Senior OPI Employee 1 has provided evidence to me that it is likely he read this memorandum.<sup>372</sup>
273. On the same date, Former Senior OPI Employee 1 emailed the Acting Officer in Charge of the Ethical and Professional Standards Branch of SAPOL (**EPSB**). In this email Former Senior OPI Employee 1 provided some background to the matter and advised that Mr Fuller had provided very detailed submissions regarding potential corruption in the matter. Former Senior OPI Employee 1 stated that it was his view that *“the real issue relates to whether major fraud ever got advice from the DPP which they intimated to the complainants they were [sic] and was part of their reason for not proceeding with the investigation”*. Former Senior OPI Employee 1 stated that this was *“a valid area of complaint*

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<sup>368</sup> Exhibit 128 (Volume 2) – Email from Mr Fuller to Former Senior OPI Employee 1, 12 March 2019.

<sup>369</sup> Exhibit 129 (Volume 2) – Email from the OPI to Mr Fuller, 12 March 2019.

<sup>370</sup> Exhibit 130 (Volume 2) – Memorandum to Mr Lander, 14 March 2019.

<sup>371</sup> Exhibit 160 (Volume 2) – Running Sheet 2019/002957 at p 5-6.

<sup>372</sup> Exhibit 337 (Volume 5) – Former Senior OPI Employee 1’s statutory declaration at p 3 [3(a)] and [3(c)].

*from what I can see*” noting that the DPP had said that no formal advice was given but there may have been informal advice. Former Senior OPI Employee 1 noted that requests to SAPOL about the advice *“were not initially answered and then correspondence seems to be silent on the subject”* before a letter being sent *“suggesting there was informal advice”*. Former Senior OPI Employee 1 said that *“This issue remains outstanding and I think needs addressing in terms of exactly what did or did not happen in terms of the DPP advice”*. Former Senior OPI Employee 1 requested a time to meet to discuss the matter.<sup>373</sup>

274. Former Senior OPI Employee 1 has provided evidence to me that this email *“may reflect the instruction/direction of Deputy Commissioner Michael Riches”* given at the meeting he attended on 15 March 2019.<sup>374</sup> He has also given evidence that his recollection is that no meeting subsequently occurred between himself and the Officer in Charge of the EPSB,<sup>375</sup> which is supported by the lack of any records of such a meeting occurring.
275. On the same date, Former Senior OPI Employee 1 wrote to Mr Fuller by letter (sent via email) acknowledging Mr Fuller’s email dated 12 March 2019 and informing him that the matter had been brought to the attention of Mr Riches who would be apprised of the progress of the matter and that Mr Fuller will receive a response *“in due course”*.<sup>376</sup>
276. Mr Fuller responded advising *“This is too little too late”*, that Mr Fuller *“cannot have any further dialogue with you”*, that Former Senior OPI Employee 1 should be *“taken off the case entirely”* and that Mr Fuller will only communicate with Mr Riches. Mr Fuller also notified Former Senior OPI Employee 1 that he had made a complaint to the Reviewer against Former Senior OPI Employee 1 contravening section 256 of the CLCA in relation to the complaint by Mr Lawton and himself.<sup>377</sup> Section 256 of the CLCA is the offence of attempting to obstruct or pervert the course of justice or due administration of the law.
277. The OPI acknowledged receipt of Mr Fuller’s email.<sup>378</sup> Mr Fuller responded requesting that the email address of the *“Deputy Director ICAC”* be provided to him urgently and asking for confirmation that his emails had been referred to the *“Deputy Director”*.<sup>379</sup>

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<sup>373</sup> Exhibit 131 (Volume 2) – Email from Former Senior Employee 1 to Acting Officer in Charge EPSB, 15 March 2019.

<sup>374</sup> Exhibit 337 (Volume 5) – Former Senior OPI Employee 1’s statutory declaration at p 3 [3(c)].

<sup>375</sup> Exhibit 337 (Volume 5) – Former Senior OPI Employee 1’s statutory declaration at p 3 [4(a)].

<sup>376</sup> Exhibit 133 (Volume 2) – Letter from Former Senior OPI Employee 1 to Mr Fuller, 15 March 2019; Exhibit 134 (Volume 2) – Email from the OPI to Mr Fuller, 18 March 2019.

<sup>377</sup> Exhibit 135 (Volume 2) – Email from Mr Fuller to the OPI, 18 March 2019.

<sup>378</sup> Exhibit 136 (Volume 2) – Second email from the OPI to Mr Fuller, 18 March 2019.

<sup>379</sup> Exhibit 137 (Volume 2) – Second email from Mr Fuller to the OPI, 18 March 2019. Mr Fuller appears to have meant the Deputy Commissioner, Mr Riches.

278. On 19 March 2019 Mr Fuller emailed the OPI, marking his email attention to Mr Riches. In this email, Mr Fuller, reiterated his complaint that Former Senior OPI Employee 1 had committed an offence against section 256 of the CLCA and advised that as Mr Riches had allowed the Former Senior OPI Employee 1 to continue his involvement this *“signals to me an inherent incapacity in ICAC to deal with improper conduct in its senior officers”*. Mr Fuller stated that Mr Riches had *“failed the first test of (ICAC) capacity to effectively ensure an independent and rigorous investigation of the complaint I and I referred to OPI late January this year”*. The email lists six *“minimum actions”* that Mr Fuller said he expected of Mr Riches, namely:
- (a) Removal of Former Senior OPI Employee 1 and the OPI from further involvement in the matter and suspend Former Senior OPI Employee 1 from office pending the outcome of the investigation into his conduct;
  - (b) Have ICAC investigate the original complaint and also include the conduct of Former Senior OPI Employee 1;
  - (c) Confer with Mr Lawton and Mr Fuller in person next week at an agreed time;
  - (d) Refer the original complaint to the DPP for advice as to the prospects of conviction;
  - (e) Appoint *“a specialist team of investigators to include independent legal counsel and forensic accountant in private practice”*; and
  - (f) Provide Mr Lawton and Mr Fuller with the particulars and CV of each of the individuals proposed to form part of the investigation team.
279. Mr Fuller concluded the email by reiterating his misgivings about the *“capacity of ICAC to investigate its own”* but says *“Demonstrate to me that I am wrong!”* Lastly Mr Fuller asked for a separate email address to use to contact Mr Riches.<sup>380</sup>
280. An OPI employee sent an internal email to Mr Riches on the same date concerning an appropriate response to be sent to Mr Fuller. Mr Riches responded advising that he was not minded to exclude Former Senior OPI Employee 1 from the matter as Mr Riches was not satisfied that Former Senior OPI Employee 1 had engaged in any wrongdoing. Former Senior OPI Employee 1 was also advised that he should seek further information from SAPOL.<sup>381</sup>
281. On the same date Mr Riches responded to Mr Fuller noting that Mr Fuller had made *“a number of serious allegations”* in respect of a person employed by

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<sup>380</sup> Exhibit 138 (Volume 2) – Email from Mr Fuller to Mr Riches, 19 March 2019.

<sup>381</sup> Exhibit 139 (Volume 2) – OPI internal emails, 19 March 2019.

ICAC and assigned to the OPI and had raised concerns about the independence of any internal investigation. Mr Riches stated that in those circumstances the most appropriate course was for Mr Fuller to raise his allegations with the Independent Reviewer of the ICAC and the OPI. Mr Riches noted the independence of the Reviewer's role, that the Reviewer could address complaints relating to employees of the Commission and the OPI, and that the Reviewer was able to access all information held by the ICAC and the OPI. Mr Riches advised that in the meantime he had asked the OPI to obtain further information from SAPOL in respect of the subject matter of Mr Fuller's original complaint and that once he had received this and considered the information he would write to Mr Fuller. Until then, he said he would not respond to Mr Fuller's numerous communications.<sup>382</sup>

282. Mr Fuller responded on the same date describing Mr Riches' response as *"borders on the disgraceful"*, reiterating that the focus of his complaint is not the original complaint to police but the failures of the OPI in its oversight of the IIS investigation, and in particular, the failure to set proper parameters for the IIS investigation. Mr Fuller then requested that Mr Riches disclose to him all communications between the OPI and IIS from 4 to 29 February 2019. Mr Fuller asserted that a failure to do this will tell Mr Fuller that Mr Riches is *"lending [his] authority to a continuing cover up"* and that whether or not Mr Fuller makes an accusation of improper conduct against Mr Riches *"depends on whether you make full disclosure to me of the information I have requested"*. Mr Fuller complained that he had previously said that Former Senior OPI Employee 1 should call for the running sheets and recorded interviews between Osborn and Curtis and the CoP, Yeomans, Bolingbroke and Della Sala and this is what Mr Riches should now be doing rather than *"a limp wristed exercise of inquiry not investigation"*. Mr Fuller concluded by stating: *"And you are Deputy Commissioner!! Froth certainly rises to the top at ICAC. I continue to be amazed and disillusioned by what I see as the gross ineptitude of senior personnel at OPI and ICAC"*.<sup>383</sup>
283. This response by Mr Fuller contained numerous unacceptable demands and threats. It is to be contrasted with the measured, appropriate and professional email sent by Mr Riches. Both Former Senior OPI Employee 1 and Mr Riches continued to carefully and properly consider Mr Fuller's complaint.
284. On 22 March 2019 Former Senior OPI Employee 1 again wrote to the Officer in Charge of the EPSB about this matter noting that Mr Fuller remained dissatisfied with the outcome of his complaint and alleged that the conduct of the officers who investigated his original complaint constituted criminal offending which ought to have been referred to the ICAC. Former Senior OPI

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<sup>382</sup> Exhibit 140 (Volume 2) – Email from Mr Riches to Mr Fuller, 19 March 2019.

<sup>383</sup> Exhibit 141 (Volume 2) – Second email from Mr Fuller to Mr Riches, 19 March 2019.

Employee 1's letter notes that Mr Fuller is also "under the impression that this matter has been investigated by IIS and asserts that this investigation was unsatisfactory". Former Senior OPI Employee 1 goes on to state:<sup>384</sup>

*Mr Fuller's complaint centres on representations made by Della Sala in respect of advice obtained by the Office of the Director of Public Prosecutions (ODPP). Mr Fuller alleges that Della Sala advised Mr Lawton and his barrister, Ms Joana Fuller, that he was awaiting ODPP advice in respect of the fraud investigation. Ms Fuller then sent email correspondence to Della Sala, requesting the ODPP advice. SAPOL responses were silent on the ODPP advice. The complainant provided correspondence between himself and the Director of Public Prosecutions (DPP) in which the DPP states that the ODPP did not provide formal advice in respect of this matter and that informal advice was sought.*

*Consequently, Mr Fuller has alleged that the ODPP advice was a fabrication and that the investigation was inappropriately terminated.*

*I think that a formal inquiry should be undertaken with Major Fraud to ascertain the exact nature of the advice requested from the ODPP. It should include each contact with the ODPP, when it was issued, for whom, by whom and in what form. Any supporting documents regarding the advice such as emails, notes or relevant information should also be provided to the OPI.*

285. Former Senior OPI Employee 1 has provided evidence to me that he did not meet with the Officer in Charge of the EPSB after sending this correspondence.<sup>385</sup>
286. On 26 April 2019, the Officer in Charge responded to Former Senior OPI Employee 1 by email noting a previous discussion about having an Inspector within IIS review the investigation and correspond with Bolingbroke. The Officer in Charge advised Former Senior OPI Employee 1 to review Bolingbroke's response (which was attached to the email) and said, "I am happy there is no conduct here".<sup>386</sup> The Officer in Charge forwarded two emails to Former Senior OPI Employee 1.
287. First, was an email from Bolingbroke to an Inspector within IIS sent on 17 April 2019 to which Della Sala and Brown were copied. In this email Bolingbroke stated the following:
- (a) He conducted the initial assessment of the brief provided to him by Ms Fuller;<sup>387</sup>
  - (b) Ms Fuller had apparently sought a SAPOL contact from a member of the DPP who provided his (Bolingbroke's) name, and this resulted in an

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<sup>384</sup> Exhibit 143 (Volume 2) – Letter from Former Senior OPI Employee 1 to Acting Officer in Charge EPSB, 22 March 2019.

<sup>385</sup> Exhibit 337 (Volume 5) – Former Senior OPI Employee 1's statutory declaration at p 3 [4(b)].

<sup>386</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 3.

<sup>387</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 4.



email being sent directly to him and a file later couriered to him on or about 10 May 2018;<sup>388</sup>

- (c) Bolingbroke agreed to review the matter given its “*obvious complexity*” – “*it was not a simple matter and took some months to properly review and assess*”,<sup>389</sup>
- (d) Bolingbroke’s initial impression was that “*the matter was more civil – i.e. contractual in nature rather than criminal – I still hold that view*”,<sup>390</sup>
- (e) The file was reviewed by “*other senior members of MFIS and several meetings were held about this matter – particularly the criminal vs civil considerations*”,<sup>391</sup>
- (f) On 5 June 2018 “*consultation was held with SAPOL forensic accountants re their view and also from a tax perspective*” – they were “*unable to add anything further – however also held the view that the matter would be better dealt with civil due to breaches of contract*”,<sup>392</sup>
- (g) On or about the 12 June 2018 “*I arranged an **informal meeting** with a member of the DPP where I provided a basic outline of the matter. There **was no formal advice or opinion provided** – however the DPP member suggested that the offence of Unlawful Bias in a Commercial Relationship S149 of the CLCA could be considered*” (original emphasis);<sup>393</sup>
- (h) On 29 June 2018, a formal management meeting (known as an Investigation Assessment Group – IAG meeting) was convened with the Officer in Charge of CECB and senior members of MFIS. At that meeting a decision was made by the Officer in Charge to conduct an investigation into the information provided. Subsequently Bolingbroke raised a police incident report (PIR 19/E17253) with the matter being allocated to Della Sala “*one of our most senior and experienced fraud investigators within the branch*” for Della Sala to “*conduct enquiries and make contact with the complainant*”,<sup>394</sup>
- (i) Bolingbroke is aware that Della Sala met with and had numerous interactions with Mr Lawton and that Mr Fuller attended the first meeting with Mr Lawton. Bolingbroke is aware that it appeared to Della Sala that it was Mr Fuller who was “*driving this matter*” as he “*provided*

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<sup>388</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 4.

<sup>389</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 4-5.

<sup>390</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 5.

<sup>391</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 5.

<sup>392</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 5.

<sup>393</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 5.

<sup>394</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 5.

*documentation effectively detailing what the police needed to do – who they needed to speak to where they needed to search and what records were to be seized”;*<sup>395</sup>

- (j) Bolingbroke is aware that after having meetings with Mr Lawton and Mr Fuller and reviewing the further information provided, Della Sala *“held similar concerns that the matter was more contractual I.e. civil in nature rather than criminal – and better suited to civil processes. It was also the view that Lawton (or Fuller) were using criminal means for a civil end – which also lead [sic] to question as to whether this matter was in the public interest to investigate/prosecute”;*<sup>396</sup>
- (k) Bolingbroke is aware that it is **“longstanding policy that the DPP will not provide formal advice - without a full brief of evidence. This provides a dilemma as it causes issues for this office where there is no clear criminal conduct identified – or whether the matter should be more appropriately dealt with in the civil jurisdiction. A balance is required between investing valuable resources into an unnecessary lengthy investigation, when based on past experience, the matter is not ultimately proceeded with. The police have finite resources and cannot prosecute every allegation made”** (original emphasis);<sup>397</sup>
- (l) Bolingbroke is aware that on 15 August 2018, *“To confirm the thinking of Della Sala ... an **INFORMAL** meeting was arranged with another DPP member experienced in fraud who was appraised of this matter in detail – in particular the contractual – civil vs criminal issues in order [sic] provide some informal guidance. The DPP was consulted as they ultimately would be the appropriate prosecuting authority”* (original emphasis);<sup>398</sup>
- (m) On 29 August 2018, another meeting was held and *“The DPP member clearly articulated to police that they would not provide a written or formal opinion without a brief of evidence and that the discussions had between SAPOL and DPP were on the **understanding that it was done under legal professional privilege**. That said, the DPP person essentially confirmed the view and thinking of police. **No formal opinion was given**”* (original emphasis);<sup>399</sup>
- (n) Della Sala then *“prepared a second assessment based on his findings and a subsequent IAG was held with senior MFIS members and the Ops*

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<sup>395</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 5.

<sup>396</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 5.

<sup>397</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 5.

<sup>398</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 6.

<sup>399</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 6.

*Inspector to discuss the filing of this matter*". At that meeting the decision was made to discontinue the investigation and this was later ratified by the Officer in Charge of CECB. It was agreed that the complainant would be told of the decision to discontinue and the reasons for this which included that, *"There is insufficient evidence to support a prima facie criminal offence and therefore there is an unlikelihood of a successful criminal conviction."*,<sup>400</sup>

- (o) Della Sala informed Mr Lawton and Mr Fuller by phone and a letter was sent from the Officer in Charge of CECB. The complainants were not happy with this outcome and further emails were sent,<sup>401</sup> and
  - (p) In Bolingbroke's view, *"Consultation with the DPP fraud liaison person under these circumstances is preferable, and is considered normal and a pragmatic approach for when guidance is sought when rationalising the direction and ultimate prosecution of a fraud matter"*. However, ultimately it was the decision of the Officer in Charge of CECB to not continue the investigation – a decision he says was not taken lightly and only once a *"significant amount of time and resources"* had been put into considering the matter with a number of persons being consulted and meetings being held.<sup>402</sup>
288. Secondly, there was an email from the Inspector within IIS to the Officer in Charge of EPSB providing Bolingbroke's email above. The Inspector within IIS expressed the view that the MFIS had *"followed appropriate and robust investigation practices in relation to this matter"* with the *"only area of debate"* being whether formal advice should have been sought from the DPP. The Inspector also expressed the view that Bolingbroke had provided *"thoughtful and thorough reasoning"* as to why informal advice was sought and, in their view, *"the practice adopted appears to be reasonable given the circumstances"*.<sup>403</sup>
289. On 3 May 2019 Former Senior OPI Employee 1 responded to the Officer in Charge of the EPSB by email. However, as he was aware that this officer was absent at that time, the email was also sent to another officer of the rank of Detective Superintendent. The email was also copied to two other SAPOL officers, one of whom was Detective Superintendent Trenwith. In his email, Former Senior OPI Employee 1 noted the Officer in Charge's view that no conduct issues had been identified. However, Former Senior OPI Employee 1

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<sup>400</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 6.

<sup>401</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 6.

<sup>402</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 6.

<sup>403</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 3-4.

stated, that at that point in time, he did not accept that view as despite the work that had been done on the matter, there were still unanswered questions.

290. Former Senior OPI Employee 1 noted Bolingbroke's advice that there had been informal advice given by the DPP. Former Senior OPI Employee 1 referred to the content of Ms Fuller's file notes and emails. Specifically, that Ms Fuller was told by Della Sala that the investigation was closed on the basis that the DPP had provided advice that there was no reasonable prospect of conviction. Further, that Ms Fuller was given some further detail by Della Sala as to the fact that C was the agent of Mr Lawton and had implied authority to transact financial matters on Mr Lawton's behalf. Former Senior OPI Employee 1 also referred to Ms Fuller's disappointment to have not received responses to her email requests sent on 17 September 2018 and 10 October 2018 seeking further information about any DPP advice. Former Senior OPI Employee 1 noted that although Yeoman's letter dated 5 November 2018 informed Mr Lawton that there would be no action taken, the letter but did not make any reference to the DPP nor did it answer any of Ms Fuller's questions. Former Senior OPI Employee 1 stated that in light of these matters, he refers back to his original question: "*If there was no formal advice or opinion offered by the DPP why was Ms Fuller told that there was?*"<sup>404</sup>
291. For the purposes of this email, Former Senior OPI Employee 1 acted on Mr Fuller's assertion that Ms Fuller had been told that there was some "*formal advice or opinion*" and asked SAPOL to explain why that was the case. Whether in fact Former Senior OPI Employee 1 accepted at that time that there had been a representation by SAPOL that "*formal*" advice or opinion had been given is not to the point: he was clearly putting Mr Fuller's assertion to SAPOL and providing SAPOL with an opportunity to respond to that assertion.
292. An officer Acting as the Officer in Charge of the EPSB at the time responded to Former Senior OPI Employee 1's email on the same date noting that he was acting in the position until 6 May 2019 and that following this Trenwith would be filling the position until 11 June 2019. The Acting Officer in Charge stated that Trenwith or the other officer copied to the email would review Former Senior OPI Employee 1's email and respond.<sup>405</sup>
293. On 14 June 2019 Former Senior OPI Employee 1 emailed the Officer in Charge of the EPSB advising that he had not received any update since the Acting Officer in Charge's email on 3 May 2019.<sup>406</sup> On 17 June 2019 the Officer in Charge responded advising that she would have Trenwith look at this.<sup>407</sup>

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<sup>404</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 1-3.

<sup>405</sup> Exhibit 145 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 3 May 2019 at p 1.

<sup>406</sup> Exhibit 146 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 22 June 2019 at p 1-2.

<sup>407</sup> Exhibit 146 (Volume 2) – Emails between the OPI and SAPOL, 17 April to 22 June 2019 at p 1.

294. On 18 June 2019 Trenwith responded to Former Senior OPI Employee 1 seeking some clarification as to what further information Former Senior OPI Employee 1 required. Trenwith noted that the complainant was informed by Osborn's letter dated 25 January 2019 that the advice from the DPP in this instance "*was informal*".<sup>408</sup>
295. Former Senior OPI Employee 1 spoke with Trenwith about the matter on 21 June 2019.<sup>409</sup> Former Senior OPI Employee 1 has provided evidence to me that he can recall that during this telephone call, Trenwith confirmed that he was aware of the names of the two DPP solicitors who provided advice to SAPOL in the matter. However, Trenwith was only prepared to release the names to the OPI/ICAC on the basis that the names would not be disclosed to the complainants due to concerns for the welfare of those solicitors stating something to the effect that if Mr Fuller had their names that he "*would make their lives a misery*".<sup>410</sup>
296. On 25 June 2019 Former Senior OPI Employee 1 emailed Trenwith providing further clarification. Former Senior OPI Employee 1 noted that Mr Fuller had asserted that "*the investigation was terminated in September 2018 on asserted grounds that were known to be false by Yeomans and Bolingbroke, namely that the Office of the DPP had provided advice that there was no reasonable prospect of conviction*". Former Senior OPI Employee 1 noted that Bolingbroke has said that representatives from the DPP met with officers from Major Fraud on three occasions: 12 June 2018, 15 August 2018 and 29 August 2018, and that informal advice was provided. Former Senior OPI Employee 1 requested the names of the DPP officers so that the OPI "*can be satisfied that such meetings took place*".<sup>411</sup>
297. Trenwith responded on the same date advising Former Senior OPI Employee 1 that the two DPP solicitors that were involved in providing informal advice were Mr Phillips and Mr Longson. Trenwith advised that he was providing these names on the understanding that they would not be disclosed to the complainants. Trenwith stated:<sup>412</sup>

*As previous [sic] stated, the advice sought from the DPP was informal. D/B/Sgt Della Sala concedes he may have used the word 'opinion' when talking with Ms. Fuller who has perhaps misunderstood and assumed that SAPOL was obtaining formal written advice from the DPP, D/B/Sgt Della Sala advises that he did not intend to convey the impression that formal advice was being obtained. D/B/Sgt Della Sala confirms the*

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<sup>408</sup> Exhibit 147 (Volume 2) – Email from Trenwith to Former Senior OPI Employee 1, 18 June 2019.

<sup>409</sup> Exhibit 148 (Volume 2) – Email from Former Senior OPI Employee 1 to Trenwith, 25 June 2019 at p 1.

<sup>410</sup> Exhibit 337 (Volume 5) – Former Senior OPI Employee 1's statutory declaration at p 4 [5].

<sup>411</sup> Exhibit 148 (Volume 2) – Email from Former Senior OPI Employee 1 to Trenwith, 25 June 2019 at p 1-2.

<sup>412</sup> Exhibit 301 (Volume 4) – Emails between the OPI and SAPOL, 17 April to 26 June 2019 at p 3.

*informal advice sought from DPP was to ensure the MFIU<sup>413</sup> assessment was accurate, on the right track, and to ensure MFIU had not missed anything during their assessment process. The DPP confirmed, informally, that the MFIU assessment was sound and that if they proceeded with a criminal brief, there was not a reasonable prospect of conviction as the matter lay within the civil jurisdiction. Being informal advice, nothing was provided in writing.*

298. Former Senior OPI Employee 1 has provided evidence to me that he did not make contact with Mr Phillips or Mr Longson as he had “*no reason to doubt the veracity of the information*” provided to him by Trenwith. Former Senior OPI Employee 1 has also given evidence that after he provided the information supplied by Trenwith to Mr Riches, Mr Riches was satisfied with the response and did not advise or instruct him to contact the DPP solicitors.<sup>414</sup> Mr Riches has also informed me that he agreed with Former Senior OPI Employee 1 that no further enquiries needed to be undertaken.<sup>415</sup>
299. On 28 June 2019 Mr Lawton complained to the then Commissioner, Mr Lander. This complaint will be discussed below.
300. On 3 July 2019 Mr Riches wrote to Mr Fuller. As the content of this letter is significant, I have set it out in full below:

*I write further to my email of 19 March 2019 in which I informed you I had asked the Office for Public Integrity (OPI) to obtain further information from the South Australia Police (SAPOL) regarding the complaint made by Mr Lawton and you.*

*I have now received the information I had sought. It is regrettable that it took longer than expected for SAPOL to respond to our requests for additional information.*

*I acknowledge at the outset that you are aggrieved at the manner in which your allegations have been dealt with and I accept that this letter may not resolve those grievances. Nevertheless, having considered the matter I am not inclined to take any further action save to write to SAPOL in the terms I will describe later in this letter.*

*Much of your more recent correspondence focusses upon alleged impropriety or incompetence by staff of the OPI and, more recently, by me. I do not intend to address those matters as they are properly matters that you should raise with the Hon. John Sulan QC, the Independent Reviewer of the Independent Commissioner Against Corruption (ICAC) and the OPI.*

*It is my intention to focus only upon the initial complaint made by Mr Lawton and you.*

*I think it appropriate to provide a chronology of the action that has been taken.*

*Mr Lawton first made a complaint directly to SAPOL on 3 December 2018. The matter was assessed by the Internal Investigation Section (IIS) of SAPOL pursuant to section 14 of the Police Complaints and Discipline Act 2016 (PCDA) as raising a*

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<sup>413</sup> It appears to me that ‘MFIU’ is an acronym for ‘Major Fraud Investigation Unit’. In fact, the correct title of the relevant SAPOL section was the MFIS.

<sup>414</sup> Exhibit 337 (Volume 5) – Former Senior OPI Employee 1’s statutory declaration at p 4 [6].

<sup>415</sup> Exhibit 402 (Volume 6) – Submission of Mr Riches, 14 April 2024 at p 3.

*potential issue of misconduct /maladministration. The IIS determined that the matter proceed by way of management resolution, which is a mechanism contemplated under the PCDA.*

*In accordance with the PCDA on 11 December 2018 a Senior Assessment Officer in the OPI reviewed the assessment made by the IIS and determined that there was no reason to consider a re-assessment.*

*As I understand it SAPOL's attempt to conciliate the complaint with Mr Lawton as part of the management resolution process was unsuccessful. Consequently, Detective Chief Superintendent Osborn reviewed the matter and wrote to Mr Lawton on 25 January 2019. The second page of the letter advises Mr Lawton that the engagement of the Office of the Director of Public Prosecutions (DPP) was informal and by way of discussion.*

*Mr Lawton and you attended at the OPI on 29 January 2019 to make a complaint.*

*In accordance with section 13 of the PCDA the OPI referred your complaint to the IIS for assessment.*

*I understand that the OPI did not exercise its statutory function under section 29 of the PCDA because it was not satisfied the matter should be dealt with by the ICAC.*

*Having received your complaint the IIS determined to take no action on the basis that the conduct the subject of the complaint had previously been dealt with. That assessment was reviewed by a Senior Assessment Officer in the OPI in accordance with the PCDA on 12 February 2019. The Senior Assessment Officer determined not to exercise the OPI's statutory power to re-assess the matter.*

*You contacted the OPI and IIS on 14 February 2019 by email and expressed your dissatisfaction with SAPOL's response and your concerns that IIS would not appropriately address the complaint.*

*The OPI wrote to IIS to request that Mr Lawton and you be informed of the outcome of your complaint.*

*The IIS closed the file and Chief Inspector Curtis wrote to Mr Lawton on 19 February 2019.*

*You continued to write to the OPI to express your dissatisfaction with SAPOL's determination.*

*On the 27 February 2019 [Former Senior OPI Employee 1] wrote to you by email requesting that you further particularise your complaints.*

*You responded to this request by email dated 12 March 2019.*

*In summary you contend SAPOL falsely informed Mr Lawton that the Office of the DPP had provided advice that there was no reasonable prospect of conviction.*

*Your dissatisfaction led to the complaint being brought to my attention as the Commissioner determined not to involve himself, having previously acted as your legal representative.*

*Having been brought to my attention I asked that the OPI seek further information from SAPOL as to the DPP's involvement in the investigation and decision to close the investigation.*

*A number of exchanges subsequently occurred between the OPI and SAPOL in order to obtain the information I had requested. Ultimately information that I considered was sufficient was provided by SAPOL on 25 June 2019.*

*In the end I am satisfied that SAPOL met with the DPP on three separate occasions and discussed this matter. The view of two different DPP solicitors was sought. Formal advice was not requested nor provided. That is consistent with the position of the DPP that a formal opinion will not be provided in the absence of a full brief of evidence.*

*To the extent that conversations or correspondence between SAPOL and Mr Lawton, or a person acting on behalf of Mr Lawton, left the impression that a formal DPP opinion had been provided, that was incorrect.*

*Nevertheless, I have no reason to doubt that views were sought from the DPP and that the views offered by the DPP formed part of the decision to discontinue the investigation.*

*I add that I have been informed that Della Sala has reflected upon his conversations with Ms Joana Fuller. He concedes he may have used the word 'opinion' during a conversation. I am advised that Della Sala states that it was not his intention to convey that there was in existence a formal opinion from the DPP.*

*In my view the issue could have been avoided or at least ameliorated had a more timely and accurate explanation been provided by SAPOL in respect of its decision to discontinue the investigation. I intend to convey that view to SAPOL.*

*Beyond communicating with SAPOL in respect of the need to ensure timely and accurate information is conveyed to persons who have an interest in an investigation, it is not my intention to agitate this issue further. In the end I do not consider that the complaint made by Mr Lawton and you raises a potential issue of corruption, misconduct or maladministration in public administration that ought to be the subject of further action, beyond what has already taken place.*

*As I have already said, I anticipate that you will remain dissatisfied by this decision. You are, of course, at liberty to raise the matter with the ICAC Reviewer.*

*Mr Sulan can be contacted by emailing [icacreviewer@sa.gov.au](mailto:icacreviewer@sa.gov.au) or writing to the Reviewer, GPO Box 2371, Adelaide South Australia 5001.*

*In the meantime this office will not be taking further action other than to write to SAPOL in the terms outlined in this letter.*

*I intend to cause a copy of this letter to be provided to Mr Lawton and to SAPOL.<sup>416</sup>*

301. I will discuss the content of this letter further below but for now I simply note that it clearly addressed how Mr Lawton and Mr Fuller's complaints had been dealt with under the PCD Act and the oversight provided by the OPI. Most

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<sup>416</sup> Exhibit 157 (Volume 2) – Letter from Mr Riches to Mr Fuller, 3 July 2019.



importantly this letter confirmed that the SAPOL officers investigating Mr Lawton's original complaint had sought and obtained **informal** DPP advice which formed part of the decision to discontinue the investigation.

302. It is clear that Mr Riches was satisfied that there was no "*lie*" nor any "*false*" advice or reasons given for the termination of the investigation; there may have been miscommunication about the fact that the advice was informal, but this was all. Given this finding, there was no need for Mr Riches to examine all the subsequent complaints made against other SAPOL officers and the CoP as logically they could not be involved in a cover up of something that simply did not occur. In relation to the conduct of the OPI, whilst the same could be said, Mr Riches correctly identified that this was a matter that Mr Fuller could raise with the Reviewer should he wish to do so.
303. On 9 July 2019 Mr Fuller wrote back to Mr Riches asserting that by his letter of 3 July 2019, Mr Riches had "*written your own indictment for aiding and abetting Corruption*" in SAPOL by the CoP, Osborn, Yeomans, Bolingbroke, Curtis and in the OPI by Former Senior OPI Employee 1. Mr Fuller informed Mr Riches that he would be complaining to the Commissioner (ostensibly, Mr Lander).<sup>417</sup>
304. On 14 August 2019 Mr Riches wrote to the CoP and provided a copy of the letter to Mr Fuller dated 3 July 2019. Mr Riches confirmed that he does not consider that the matter requires any action beyond what has taken place but that in his view the initial complaint "*might have been avoided or at least ameliorated if a more timely and accurate explanation regarding the involvement of the ODPP had been provided to the complainants*". Mr Riches stated that "*As always it is important that timely and accurate information is provided to persons who have an interest in an investigation*".<sup>418</sup> I agree with Mr Riches' observation.

## My review of Mr Riches' review and letter of 3 July 2019

305. Some communications sent by Mr Fuller were threatening in tone and context. Despite this, both Former Senior OPI Employee 1 and Mr Riches gave the complaints appropriate and detailed consideration and made appropriate enquiries. Both also communicated with Mr Fuller in a calm, rational and professional manner.
306. In light of SAPOL's discretion as to what matters it investigates and the case law cited above at paragraphs [27]-[35], the ultimate question for the IIS, the OPI, Former Senior OPI Employee 1 and Mr Riches to address was whether the SAPOL investigative team had given due and proper consideration

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<sup>417</sup> Exhibit 307 (Volume 4) – Email from Mr Fuller to Mr Riches, 9 July 2019.

<sup>418</sup> Exhibit 159 (Volume 2) – Letter from Mr Riches to CoP, 14 August 2019 at p 1.

to whether the matter ought to be investigated and then acted appropriately on the view formed. If they had, and there were no exceptional circumstances,<sup>419</sup> then there was no basis to interfere with the decision to terminate the investigation. Here an exceptional circumstance had been alleged: namely that there had been a dishonest refusal to investigate. The alleged dishonesty was lies told to Mr Lawton relating to DPP advice for why the investigation had been terminated. That allegation was not substantiated and indeed was refuted by the evidence obtained.

307. I am satisfied that Former Senior OPI Employee 1 and Mr Riches undertook an appropriate review of Mr Fuller and Mr Lawton's complaints including by making appropriate enquiries with the IIS of SAPOL in order to verify Osborn's finding that there had been informal engagement with the DPP in the context of the decision to discontinue the investigation. Former Senior OPI Employee 1, in particular, ensured that SAPOL provided him with specific details as to how and when DPP advice was sought.
308. I have made my own inquiries by compelling the production of documents from SAPOL and the DPP and compelling the provision of information from Mr Phillips and Mr Longson.
309. By way of background, Mr Phillips provided evidence to me that when he was consulted about this matter in June 2018, he had been employed within the DPP for just under 16 years. Mr Phillips had worked as a solicitor for the first decade, primarily in the area of fraud, and had been working as trial counsel in the counsel section for about six years which included prosecuting a range of offences including fraud.<sup>420</sup> When working as a solicitor, primarily in the area of fraud, *"It was considered good practice to get involved in early discussions with detectives as matters developed to provide efficiencies in often complex scenarios"*. This enabled *"more focused consideration"* to be given to matters early on which included *"consideration of what might be the appropriate charges, what evidence might be sought, what complications may need to be worked through ... and to 'report' rather than 'arrest' as appropriate"*.<sup>421</sup> This meant that Mr Phillips would *"often have discussions with detectives about their matters whilst they were compiling briefs"*.<sup>422</sup>
310. Further by way of background, Mr Longson provided evidence to me that when he was consulted about this matter in August 2018, he had been a trial prosecutor within the DPP for over 9 years.<sup>423</sup> He advised that he often met

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<sup>419</sup> See in particular paragraph [35] above where Kyrou J in *Slaveski v Victoria* [2010] VSC 441 is cited.

<sup>420</sup> Exhibit 380 (Volume 5) – Phillips' statutory declaration at p 1 [1]-[4].

<sup>421</sup> Exhibit 380 (Volume 5) – Phillips' statutory declaration at p 1 [4].

<sup>422</sup> Exhibit 380 (Volume 5) – Phillips' statutory declaration at p 2 [7].

<sup>423</sup> Exhibit 379 (Volume 5) – Longson's statutory declaration at p 2 [4].

with members of SAPOL in informal circumstances, including over a coffee, and discussed matters both under investigation and matters before the courts. On a few occasions he would attend meetings within the “*fraud section*” of SAPOL “*where multiple matters would be discussed*” and “*At times I may be asked for legal advice, but this did not occur on each occasion*”. These meetings “*were a way of keeping the ODPP in the loop of what fraud matters may be coming through in the future. It also assisted in developing a relationship between the fraud section and the ODPP*”. Mr Longson recalled previously meeting with Bolingbroke in this context stating he “*met him often for coffee*” and “*may or may not have, discussed matters*”. Mr Longson could not recall ever providing “*formal written advice*” at any of those meetings stating that his advice “*was always informal*” as it did not involve any formal request to the Director. He also noted that informal advice has the “*positive attribute of being given in a timely manner*”.<sup>424</sup>

311. SAPOL and DPP records produced to me, along with the evidence of Mr Phillips, establish that:

- (a) on 10 May 2018, the original complaint to SAPOL (i.e., Ms Fuller’s letter, Lawton’s statutory declaration and annexures) were received by Bolingbroke and a SAPOL ‘Case Running Sheet’ was created for the matter on 12 May 2018;<sup>425</sup>
- (b) on 23 May 2018, Bolingbroke recorded that he had reviewed this “*complex file*”, had consulted three other Detectives (including Brown) “*re offending criminal v civil considerations*” and had met with two forensic accountants for “*their perspective from accounting point of view*” - with the file handed to the accountants for review on 1 June 2018;<sup>426</sup>
- (c) on 5 June 2018, Bolingbroke met with the two forensic accountants who were “*unable to provide any further clarification in respect to the ATO or contractual side of this matter*” and who “*agree that there is a question whether this matter is better suited dealt [sic] civilly given the potential breach of contract and where this is in the public interest / complyt [sic] utilising crim offences for civil end*”,<sup>427</sup>
- (d) on 12 June 2018, Bolingbroke met with Mr Phillips and discussed the alleged offences. Bolingbroke’s notes record that they also discussed “*DPP policy etc. re prosecutions*” and that Mr Phillips agreed to review Ms Fuller’s referral letter and provide a response.<sup>428</sup> Mr Phillips provided

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<sup>424</sup> Exhibit 379 (Volume 5) – Longson’s statutory declaration at p 2 [6]-[7] and p 3 [15].

<sup>425</sup> Exhibit 346 (Volume 5) – SAPOL Case Management System Case Running Sheet Report at p 1.

<sup>426</sup> Exhibit 346 (Volume 5) – SAPOL Case Management System Case Running Sheet Report at p 1.

<sup>427</sup> Exhibit 346 (Volume 5) – SAPOL Case Management System Case Running Sheet Report at p 2.

<sup>428</sup> Exhibit 346 (Volume 5) – SAPOL Case Management System Case Running Sheet Report at p 2.

evidence that he recalled meeting with Bolingbroke about this matter and that Mr Longson was on leave at the time. Mr Phillips formed the impression Bolingbroke and Della Sala were looking to make a decision as to whether there was something of a criminal nature in the matter, rather than civil, and, if there was potential criminal liability, what might be the appropriate offences including potential fiduciary offences “*which are rarely prosecuted under state law*”.<sup>429</sup> Mr Phillips agreed to “*have a look at it*”, subject to his trial commitments, and Bolingbroke gave him a copy of Ms Fuller’s letter relating to the matter.<sup>430</sup> Mr Phillips did not receive any further documents but understands that at some (presumably later) stage Mr Fuller tried to deliver his own “*brief*” to the DPP which Mr Phillips’ clerk would not accept.<sup>431</sup>

- (e) on 28 June 2018 Mr Phillips sent an email to Bolingbroke about the matter stating (in full):<sup>432</sup>

*Hi Bolly,*

*I have had a look at it. I will work on the assumption the summary provided by Joana is an accurate reflection of the documents.*

*Assuming it is, there would be a prima facie case of deception by omission – the failure to disclose the oral agreement compounded by the amending agreement with no notice.*

*It will be a difficult matter due to the commercial structures but that should never be a bar to further looking at it in my opinion.*

*Keep me in the loop. It might be that I ask to take it on as a file, alongside my trial commitments. I think it will need the close attention and cooperation we used to do with your section, and besides it is interesting and up my alley.*

*If you decide to action it let me know and I will get permission to ‘take it on’ when I return from leave in a few weeks (I will be checking emails).*

*Gary*

- (f) Mr Phillips noted in his evidence to me that this email expressed his “*preliminary view*” which was “*based on [Ms] Fuller’s version of the matter*”. Mr Phillips said that he left the decision to “*action it*” to Bolingbroke knowing that Bolingbroke would have understood that SAPOL would need to “*prepare a full brief independent of [Ms] Fuller’s assertions*” and that only then the DPP would “*apply the ‘reasonable*

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<sup>429</sup> Exhibit 380 (Volume 5) – Phillips’ statutory declaration at p 2 [9].

<sup>430</sup> Exhibit 380 (Volume 5) – Phillips’ statutory declaration at p 2 [10]-[11].

<sup>431</sup> Exhibit 380 (Volume 5) – Phillips’ statutory declaration at p 2 [11].

<sup>432</sup> Exhibit 380 (Volume 5) – Phillips’ statutory declaration at p 2 [12] and Annexure A. Reference to ‘Joana’ in the email is a reference to Ms Fuller.

*prospects' and 'public interest' tests before prosecuting*".<sup>433</sup> Mr Phillips did not provide any further advice to SAPOL and "expected once [Mr] Longson had returned that they would have taken it up with him";<sup>434</sup>

- (g) on 29 June 2018, an IAG meeting occurred (attended by Bolingbroke, Yeomans, Brown, a Detective Acting Inspector, and a Detective Senior Sergeant). At this meeting it was resolved that the matter would be investigated, that it would remain with MFIS to be allocated to an investigator, that the victim would be advised through his barrister Ms Fuller, and that PIR 18/E17253 would be submitted for dishonestly dealing with documents and unlawful bias in a commercial relationship.<sup>435</sup> The IAG Assessment document produced as a result of this meeting accurately recorded the factual assertions underpinning Mr Lawton's allegation of criminal conduct by C. Under the heading 'Recommendation' the following were noted:<sup>436</sup>
- (i) *"Whilst the value of the fraud is on the lower level of offending in terms of loss, it is relatively complex and likely beyond the resources and expertise of a local LSA"*<sup>437</sup>;
  - (ii) *"Forensic Accountants and the DPP have been consulted when considering this assessment"*;
  - (iii) Ms Fuller has advised that *"a decision to commence any civil process has been deferred pending the assessment of the material by SAPOL and any subsequent investigation and prosecution"*;
  - (iv) Ms Fuller has said that the offending *"was not uncovered until late 2017 as a result of a review of historical transactions in connection with a dispute over partnership distribution of sale of proceeds"*;
  - (v) Ms Fuller also asserts that C *"actively concealed the AA from Lawton"* and *"further states that 'Lawton has been deprived by funds in other transactions of the partnership which leaves him vulnerable to 'deep pocketing' if he chose not to report criminal behaviour and instead commence civil proceedings against a high net individual"*;

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<sup>433</sup> Exhibit 380 (Volume 5) – Phillips' statutory declaration at p 2 [12]

<sup>434</sup> Exhibit 380 (Volume 5) – Phillips' statutory declaration at p 2 [13]-[14]

<sup>435</sup> Exhibit 346 (Volume 5) – SAPOL Case Management System Case Running Sheet Report at p 2.

<sup>436</sup> Exhibit 342 (Volume 5) – IAG Meeting Record, 29 June 2018 at p 5-6.

<sup>437</sup> I understand (from SAPOL's website) that the acronym 'LSA' referred to a 'Local Service Area' and that South Australia was divided into a number of LSAs within which SAPOL provided services.

- (vi) *“Whilst a prima facie criminal offence can be made out, the pertinent question is whether this matter is in the public interest to investigate and ultimately prosecute and whether the complainant is using criminal means for a civil end. This is a decision to be considered by the IAG”*; and
- (vii) *“It is envisaged that any criminal prosecution would be keenly contested”*.

312. SAPOL records produced to me, along with the evidence of Mr Longson, establish that:

- (a) On 19 July 2018 Della Sala was instructed by Bolingbroke to investigate this matter and to prepare an investigation plan. Della Sala was asked to consider the offence of unlawful bias in a commercial relationship on the basis that it *“may well fit better”* and was informed that Mr Phillips *“has some knowledge around this offence”*,<sup>438</sup>
- (b) A detailed MFIS Investigation Plan was subsequently prepared for the investigation of the three potential criminal offences against the CLCA: section 139 (Deception), section 140 (Dishonest Dealings with Documents) and section 149 (Unlawful Bias in a Commercial Relationship). Della Sala was designated as the Investigating Officer,<sup>439</sup>
- (c) On 25 July 2018 Della Sala met with Mr Lawton and Mr Fuller at which time Mr Fuller provided two documents:
  - (i) a document titled *“Summary of drivers of AA”* which in essence is a legal submission about possible reasons for why C might engage in fraudulent conduct when the conduct would result in a loss to C (i.e., as well as a loss to Mr Lawton);<sup>440</sup> and
  - (ii) a document titled: *“To: David Whitbread – From Michael Fuller – About Michael Fuller”*. There is no explanation as to who David Whitbread is or why this document, which largely recites Mr Fuller’s work history, has been prepared. I describe a similar document prepared by Mr Fuller in paragraph [52] above. In this document Mr Fuller states that he was approached in October 2016, *“to review the circumstances surrounding the sale of Mt Lyndhurst Station and to recommend to [Mr Lawton] if so*

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<sup>438</sup> Exhibit 343 (Volume 5) – SAPOL Forwarding Minute.

<sup>439</sup> Exhibit 340 (Volume 5) – SAPOL Investigation Plan.

<sup>440</sup> Exhibit 344 (Volume 5) – Summary of drivers of AA, 25 July 2018.

*advised to retain a Solicitor and Counsel to prosecute any claim for compensation that I thought worthy”;*<sup>441</sup>

- (d) On 6 August 2018 Mr Lawton emailed Della Sala and explained that he received the AA from his then solicitor by email dated 29 April 2014.<sup>442</sup> In this email Mr Lawton also explained that he was currently facing pressure to agree to *“a winding up of the partnership as a condition to pay me out”* which *“would mean giving away all my claims against [C] and others and prejudice your investigation”*. Mr Lawton asks whether, if he comes under further pressure, Della Sala could *“convey”* to others his *“interest in the affairs of the partnership”* whilst in the meantime Mr Lawton says he will *“resist the blackmail as best I can”*;<sup>443</sup>
- (e) On 15 August 2018 Della Sala made a record of having met with Mr Longson about the *“Mount Lyndhurst Station investigation”* and recorded that he handed Mr Longson a *“file”* for *“an opinion”*.<sup>444</sup> SAPOL records indicate that the *“file”* comprised Ms Fuller’s covering letter, Lawton’s statutory declaration and annexures.<sup>445</sup> Mr Longson could recall this meeting with Bolingbroke and could *“vaguely recall”* Della Sala also being present. Mr Longson thought that another Detective Sergeant may also have been present but he couldn’t be sure of this.<sup>446</sup> Mr Longson could not recall what was said at the meeting except that he recalled Della Sala saying that when he met with Mr Lawton, Mr Fuller was also present and that Mr Fuller *“did all the talking and asked Det. D/Sgt. Della Sala if he had a general search warrant and that he, Det B.Sgt. Della Sala should use his general search warrant to go to some particular place, the details of which I cannot now recall. I think that stuck with me because of the hubris it exhibited for a member of the public to say such a thing to a detective. It seemed very strange behaviour”*. Mr Longson’s recollection was that Bolingbroke asked him to *“look at the*

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<sup>441</sup> Interestingly, in this document Mr Fuller asserts that there is *“a reasonable suspicion that the offences of an aggravated nature such as conspiracy to defraud and theft may have been committed in pursuance of a conspiracy”* and then identifies the conspirators as being three people who have not been named in any other complaint or document: two of which appear to be employees of Landmark and a third who is described as *“their undisclosed client and eventual purchaser”*. This is the only time that these three persons are named and their relationship with C, if any, is entirely unclear. The third person named appears to be one of the persons reported to have purchased the Station from Mr Lawton and C in April 2016. Mr Fuller therefore appears to be asserting some further type of fraud in connection with the sale of the Station in 2016: i.e. an entirely separate alleged fraud to the alleged fraud by C in mid-2013 in the context of Mr Lawton purchasing an interest in the Station.

<sup>442</sup> The fact that Mr Lawton had received the AA by email dated 29 April 2014 is inconsistent with a document produced by Mr Fuller attached to an email dated 17 August 2018 discussed later in this report.

<sup>443</sup> Exhibit 347 (Volume 5) – Emails from Mr Lawton to Della Sala, 6 August 2018 at p 1.

<sup>444</sup> Exhibit 341 (Volume 5) – Handwritten notes Della Sala at p 1.

<sup>445</sup> Exhibit 338 (Volume 5) – Lettering A/CoP with index.

<sup>446</sup> Exhibit 379 (Volume 5) – Longson’s statutory declaration at p 2 [9].

*material they had*” but that this was in the context of SAPOL having “*already determined that the matter was not going to proceed as a criminal investigation and the matter had been signed off*”. Mr Longson agreed to look at the material, and received a folder containing the material, but could not now recall whether Bolingbroke said anything specific about why he wanted Mr Longson to look at the material;<sup>447</sup>

- (f) Mr Longson subsequently read the brief and made annotations to it.<sup>448</sup> The annotations themselves make it clear that some of the assertions made by Ms Fuller were not accepted by Mr Longson and that some inconsistencies in Mr Lawton’s evidence were identified by him;<sup>449</sup>
- (g) Mr Lawton sent an email to Della Sala on 17 August 2018 attaching a document that Mr Fuller had prepared on the same date. The document is essentially a submission about potential offences allegedly committed by C. The document identifies C and other persons of interest as targets for “*search warrants to establish a basis for charging*”. Mr Fuller also asserts in this document that the existence of the AA was not “*disclosed to Lawton nor was it in any way accounted for until 2015*” (which contradicts Mr Lawton’s statement in his email of 6 August 2018 where he says it was provided to him on 29 April 2014);<sup>450</sup>
- (h) Della Sala met with Mr Longson on 29 August 2018 at which time a discussion about the brief occurred.
  - (i) Della Sala made notes of the issues discussed including a note stating: “*Civil avenue – lower threshold, which is not evident in material, where you say there exists evidence of fraudulent behaviour – the disclosure – discovery process. Contractual dispute*”;<sup>451</sup>
  - (ii) Mr Longson provided Della Sala with a case, *L’Estrange v F Graucob, Limited*, in which it was held that a written agreement which had been signed by a defendant was “*proved by proving his signature and, in the absence of fraud, it is wholly immaterial that he has not read the agreement and does not know its contents*”.<sup>452</sup> In evidence provided to me, Mr Longson could not

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<sup>447</sup> Exhibit 379 (Volume 5) – Longson’s statutory declaration at p 2-3 [10].

<sup>448</sup> Exhibit 379 (Volume 5) – Longson’s statutory declaration at p 3 [19];

Exhibit 338 (Volume 5) – Letter from A/CoP at p 2.

<sup>449</sup> Exhibit 348 (Volume 5) – marked up / annotated letter of Ms Fuller;

Exhibit 349 (Volume 5) – marked up / annotated statutory declaration of Lawton.

<sup>450</sup> Exhibit 347 (Volume 5) – Emails from Mr Fuller to Mr Lawton and from Mr Lawton to Della Sala, 17 August 2018 with attachment at p 2-4.

<sup>451</sup> Exhibit 341 (Volume 5) at p 2. This appears to be a reference to the requirement in clause 3.5.1 of the SPA for purchasers to carry out an inventory of the sheep during May 2013.

<sup>452</sup> *L’Estrange v F Graucob, Limited* [1934] 2 KB 394; Exhibit 350 (Volume 5)



recall providing this case nor his reasons for doing so but stated that he *“must have thought it was relevant in some way”*;<sup>453</sup> and

- (iii) Mr Longson could not recall this meeting nor what he said to Della Sala but did recall *“thinking this was a civil matter that was years out of time and there being no explanation as to why this matter was being reported to the SAPOL at this time”* which led him to wonder *“whether this may have been an attempt by the complainant to achieve ‘discovery’ via the use of police powers, given what Michael Fuller was alleged to have said to Det. B/Sgt. Della Sala, without filing proceedings and having to make his own discovery and exposing himself to a potential costs order”*. Mr Longson could only now *“assume I said words to that effect”*. Mr Longson noted in his evidence to me that as he *“thought it was a civil matter ... therefore I would have had nothing contrary to say to the position already reached by SAPOL”*.<sup>454</sup>
- (i) Della Sala commenced preparing a formal assessment of the matter on 31 August 2018 which he completed on 1 September 2018. The assessment records that he gave detailed consideration to the issues arising in the matter;<sup>455</sup>
- (j) Della Sala’s assessment was discussed at an IAG Meeting on 5 September 2018 (noting a copy of the outcome being the document titled *“Commercial and Electronic Crime Branch Investigation Assessment – Protected”* was obtained by Osborn and attached to his Management Resolution Report and is discussed in paragraphs [154]-[155] above);<sup>456</sup>
- (k) On 11 September 2018 Della Sala spoke with Mr Lawton and informed him that MFIS would not be investigating the matter further and his notes record: *“Reasons outlined. The appropriate jurisdiction to settle this matter is the civil jurisdiction. Lawton requested that I speak w Joana Fuller because he doesn’t understand the legal issues. I agreed to explain the reasons to [Ms] Fuller”*;<sup>457</sup> and
- (l) On 12 September 2018 Della Sala spoke with Ms Fuller about the matter and his notes record: *“Explained why matter is not being*

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<sup>453</sup> Exhibit 379 (Volume 5) – Longson’s statutory declaration at p 3 [23].

<sup>454</sup> Exhibit 379 (Volume 5) – Longson’s statutory declaration at p 3 [21].

<sup>455</sup> Exhibit 341 (Volume 5) – Della Sala’s handwritten notes at p 4.

<sup>456</sup> Exhibit 341 (Volume 5) – Della Sala’s handwritten notes at p 4.

<sup>457</sup> Exhibit 341 (Volume 5) – Della Sala’s handwritten notes at p 5-6.

*investigated by MFIS. Has requested writer advice [sic] for reasons matter is not being investigated by MFIS”.*<sup>458</sup>

313. I am satisfied that the views reached by Mr Riches were indeed correct and the only reasonable views available in the circumstances. There was no “lie” nor any deceptive conduct on the part of any SAPOL officer in relation to the termination of the criminal investigation. Informal advice had been sought from the DPP from both Mr Phillips and Mr Longson. However, Mr Phillips’ advice was based only on Ms Fuller’s letter and was preliminary in nature. It was only Mr Longson who had been asked to, and who did, consider the content of Lawton’s statutory declaration and annexures.
314. Mr Longson was under the impression that SAPOL had “*already determined that the matter was not going to proceed as a criminal investigation and the matter had been signed off*”.<sup>459</sup> The SAPOL records available to me clearly demonstrate that this was **not** the case as this decision was only made at the IAG Meeting on 5 September 2018 (and Mr Longson was consulted in August 2018). That is not to say that the SAPOL investigators did not have concerns about the allegations. The IAG meeting record from 29 June 2018 recorded that “*the pertinent question is whether this matter is in the public interest to investigate and ultimately prosecute and whether the complainant is using criminal means for a civil end*”.<sup>460</sup> I am satisfied that the SAPOL investigators informed Mr Longson of their concerns in this regard and that this informed his approach to reviewing the material supplied to him.
315. However, ultimately Mr Longson agreed to review the underlying material (i.e., Lawton’s statutory declaration and annexures) and after doing so formed his own view that the matter was more appropriately considered a civil matter.
316. I am also satisfied that the SAPOL investigators had regard to Mr Longson’s views when deciding to discontinue the investigation. In my view there was no improper basis for the SAPOL discontinuing the criminal investigation into the Mt Lyndhurst matter.
317. Finally, I note that SAPOL records produced to me demonstrate that at the time when the decision to discontinue the investigation into Mr Lawton’s complaint of criminal conduct occurred, SAPOL’s General Order on Crime Reporting did not provide guidance as to how the discretion to discontinue an investigation was to be exercised.<sup>461</sup> Rather, the General Order simply provided instructions as to what was to occur following a determination that an investigation would

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<sup>458</sup> Exhibit 341 (Volume 5) – Della Sala’s handwritten notes at p 6.

<sup>459</sup> Exhibit 379 (Volume 5) – Longson’s statutory declaration at p 2-3 [10].

<sup>460</sup> Exhibit 342 (Volume 5) – IAG Meeting Record, 29 June 2018 at p 5-6.

<sup>461</sup> Exhibit 351 (Volume 5). This version of the General Order was issued on 9 May 2018 and was in force from 24 April to 12 September 2018. General Orders are issued by the Commissioner of Police pursuant to s 11 of the *Police Act 1998* (SA).

be discontinued. The General Order stated that the victim must be notified as soon as practicable, and an entry made in the investigation diary endorsing details of the notification including the victim's response.<sup>462</sup>

318. However, a later version of the General Order (which came into force on 12 September 2018) did contain further guidance on the discretion to discontinue an investigation. This later version specified that prior to discontinuing an investigation into a major indictable offence the investigator must conduct a thorough risk assessment process using a risk assessment tool which involves the investigator considering, amongst other things, whether any other form of engagement with the alleged victim would be appropriate.<sup>463</sup> This later version of the Order also required the investigation diary and supporting documentation to be reviewed and endorsed by another officer who was to determine if the matter is to be endorsed as finalised or reallocated for further investigation.<sup>464</sup>
319. I make no criticism of SAPOL for not having in force a detailed policy about the discretion to discontinue a prosecution at the time when the decision was made to discontinue the investigation into Mr Lawton's complaint. The evidence available to me demonstrates that proper consideration was given to a range of relevant factors by the investigative team prior to deciding to discontinue the investigation, including the advice provided by Mr Longson. The decision was properly documented and reviewed by senior officers. There is no evidence to suggest that the police officers concerned were acting dishonestly or unreasonably in reaching their decision. There were no exceptional or extraordinary circumstances.<sup>465</sup> Mr Lawton was advised of the decision in a timely manner and was provided with information as to why the investigation was discontinued. Had the later risk assessment tool been in force at the time, there would not have been any different outcome.
320. I agree with Mr Riches that in essence what occurred was a miscommunication and misunderstanding about the nature of the DPP advice that was obtained. The fact that there had been no formal advice or opinion sought or obtained from the DPP was not made clear to Mr Lawton or Ms Fuller.
321. I agree with Mr Riches that "... *the issue could have been avoided or at least ameliorated had a more timely and accurate explanation been provided by SAPOL in respect of its decision to discontinue the investigation*".<sup>466</sup> Whilst SAPOL does not have a legal obligation to inform a complainant as to why an

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<sup>462</sup> Exhibit 351 (Volume 5) at p 12.

<sup>463</sup> Exhibit 352 (Volume 5) at pp 2, 9-13 marked 'Appendix C'. This version of the General Order was in force from 12 September 2018.

<sup>464</sup> Exhibit 352 (Volume 5) at p 2.

<sup>465</sup> See in paragraphs [27]-[35] above and in particular paragraph [35] where Kyrou J in *Slaveski v Victoria* [2010] VSC 441 is cited.

<sup>466</sup> Exhibit 157 (Volume 2) – Letter from Mr Riches to Mr Fuller, 3 July 2019.

investigation has been terminated, there are clearly good reasons for this to occur in order to promote transparency and accountability in the police and criminal justice system. Of course, in a particular case, there may be good reasons not to provide a complainant with a full explanation for why an investigation has ceased. Examples might include where there is another ongoing investigation which may be compromised, where the complainant themselves is suspected of criminal conduct, where the reasons may result in confidential and sensitive information being disclosed, to name but a few. Absent any particular concerns of that nature, however, I agree that best practice involves a complainant being provided with a timely and accurate explanation of why an investigation has been terminated.

322. I have found no evidence of corruption, misconduct in public administration nor maladministration in public administration on the part of the OPI nor the ICAC nor any of the employees of these organisations including Former Senior OPI Employee 1 and Mr Riches. There was no need for Former Senior OPI Employee 1 or Mr Riches to disclose to Mr Fuller and Mr Lawton the identities of the two DPP lawyers who had provided informal advice. Indeed there was good reason to restrict that information as it was clear by this time that any individual who did not conform to Mr Fuller's intractable views would themselves become the subject of offensive and threatening conduct.
323. As Mr Riches informed SAPOL of his views with respect to complainants being provided with timely and accurate explanations of why an investigation has been terminated, I do not consider that any further action was required to be taken by the OPI or ICAC. Similarly, I do not consider that there is any need for me to take any further action.
324. I do not consider that there was any unreasonable delay on the part of Former Senior OPI Employee 1 in considering all relevant information before him prior to asking Mr Fuller to provide further particulars on 27 February 2019. Mr Fuller's complaints about the time taken for Former Senior OPI Employee 1 to consider the matter are unfounded and indeed his expectations as to timing were unrealistic. Once Mr Fuller provided particulars, on 12 March 2019, Former Senior OPI Employee 1 took appropriate steps to make inquiries into the issue of the DPP advice. There was no delay on the part of Former Senior OPI Employee 1. Whilst there was some delay on the part of the IIS on two occasions<sup>467</sup>, I do not consider that either delay was unreasonable nor significant. I do not consider that there was any reason for Former Senior OPI

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<sup>467</sup> First when Former Senior OPI Employee 1 asked for information from IIS on 22 March 2019 and when a response was provided on 26 April 2019 and secondly when Former Senior OPI Employee 1 sought further information from IIS on 3 May 2019 and a substantive response was received between 18 and 21 June 2019,

Employee 1 to have been stood aside from considering the matter as alleged by Mr Fuller.

# Mr Lander's decision to take no action on 12 August 2019

## Background: Complaint to Mr Lander

325. On 28 June 2019 Mr Fuller complained to Mr Lander (that is prior to receiving Mr Riches' letter of 3 July 2019). In this complaint Mr Fuller asserted that it was clear to any reader that his complaint to the OPI in January 2019 raised "*a potential issue of corruption in public administration that could be the subject of a prosecution*" and exposed a potential issue of "*systemic corruption*" at SAPOL. However, notwithstanding these matters and his "*repeated protests*", the complaint was referred to the IIS when it should have been referred to Mr Lander.<sup>468</sup>
326. As I have outlined above, when the complaint was first referred to the IIS by the OPI, neither Mr Fuller nor Mr Lawton made any complaint about that course of action. It was only on 14 February 2019 that Mr Fuller stated that he and Mr Lawton wanted the matter referred to ICAC. By that time, of course, the IIS had already assessed the matter and the OPI had already agreed with the IIS' assessment.
327. Returning to Mr Fuller's complaint to Mr Lander, Mr Fuller asserted that "*After the predicted 'whitewash' by Curtis of IIS, [Former Senior OPI Employee 1] and Riches have declined and refused to refer the complaint to you as Commissioner for investigation. This conduct by each of them is the gravamen of my allegations against them against my reasoned argument in the anecdotal record of communications*". Mr Fuller goes on to assert that Former Senior OPI Employee 1's actions were at their lowest "*incompetent*" and constitute "*maladministration*" but also that his conduct "*arguably exposed him as complicit in corrupt and/or improper conduct by the SAPOL officers who [sic] conduct was the subject of the complaint*". In relation to Mr Riches, Mr Fuller's complaint was that it had now been over three months since his last communication which "*itself is incompetence and negligence in the performance of his function as Deputy Commissioner*" and also constitutes "*maladministration*".<sup>469</sup>
328. Mr Fuller asserted that both Former Senior OPI Employee 1 and Mr Riches are "*prima facie guilty of at least maladministration, if not complicity in a cover up of corruption*" by the CoP and other SAPOL officers including those within IIS.

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<sup>468</sup> Exhibit 150 (Volume 2) – Email from Mr Fuller to Mr Lander, 28 June 2019 at p 1.

<sup>469</sup> Exhibit 150 (Volume 2) – Email from Mr Fuller to Mr Lander, 28 June 2019 at p 1.

Mr Fuller demanded that Mr Lander personally intervene, respond to Mr Fuller within five business days and take the following five specific actions:<sup>470</sup>

- (a) refer the original complaint to the DPP;
  - (b) refer a brief to the DPP concerning the CoP, Osborn, Yeomans, Bolingbroke and Curtis for *“Improper Conduct and Corruption”*;
  - (c) refer a brief to the DPP concerning Former Senior OPI Employee 1 for *“Improper Conduct, Corruption, and maladministration”*;
  - (d) refer a brief to the DPP concerning Mr Riches for *“complicity in all of the above”*; and
  - (e) suspend Former Senior OPI Employee 1 and Mr Riches *“pending the outcome”*.
329. Mr Fuller’s email noted that he had already written to the President of the Law Society of South Australia about the matter, that he intended to publish this email to the CPIPC as well as any response provided by Mr Lander and that a *“failure to respond pro actively may inculcate you personally”*.<sup>471</sup>
330. Again I note that Mr Fuller’s correspondence contained a threat to Mr Lander: either do as I demand or there will be personal implications for you. I reiterate that such conduct towards a public officer is never acceptable. I also note that Mr Fuller did not provide any new information or evidence to support his allegations of improper and corrupt conduct.
331. After sending the above, Mr Fuller received Mr Riches’ letter of 3 July 2019 and Mr Fuller sent his response of 9 July 2019 (see paragraph [303] above).
332. On 9 August 2019 Mr Fuller sent an email to Mr Lander complaining that, despite the serious allegations he had made in his email dated 28 June 2019, Mr Lander had not responded. Mr Fuller asserted that this silence created *“distinct echoes of chaos, dysfunction and a morbid inertia”*. Mr Fuller referred to receiving Mr Riches’ letter dated 3 July 2019 and said that he had inferred that Mr Lander had read this before it was provided to him and had *“put Riches forward to articulate a response that you prefer not to provide to me personally as Commissioner”*. Mr Fuller referred to his response to Mr Riches dated 9 July 2019 in which Mr Fuller asserted that Mr Riches had written his *“own indictment for aiding and abetting Corruption in SAPOL”*. Mr Fuller advised that should Mr Lander fail to address him personally with a proposal for the investigation of the particularised charges against Mr Riches, Former Senior

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<sup>470</sup> Exhibit 150 (Volume 2) – Email from Mr Fuller to Mr Lander, 28 June 2019 at p 2.

<sup>471</sup> Exhibit 150 (Volume 2) – Email from Mr Fuller to Mr Lander, 28 June 2019 at p 2.

OPI Employee 1 and the SAPOL officers then he “*will have approbated their respective conduct and be inculpated if prosecution ultimately ensues*”.<sup>472</sup>

333. Once again, I note that Mr Fuller issued a demand with a threat to a public officer.
334. Mr Fuller went on to critique Mr Riches’ letter dated 3 July 2019. In relation to the issue of the DPP advice, Mr Fuller asserted that Mr Riches failed to obtain corroboration from the DPP, and wrongly accepted Della Sala’s “*refashioning*” as to what was said about DPP advice. Mr Fuller stated that Mr Riches failed to consider that there were multiple conversations in which Della Sala conveyed that “*management’ had sent the brief to the ODPP for advice and recommendations*”, was waiting for advice and that advice had been received and was being considered by management.
335. In relation to the OPI’s oversight, Mr Fuller identified that Mr Riches’ letter referred to the OPI reviewing an IIS assessment on 11 December 2018 which was prior to the complaint to the OPI in January 2019. Mr Fuller also complained that the OPI and Former Senior OPI Employee 1 deliberately withheld information from Mr Fuller about the IIS assessment/involvement and that Osborn’s letter of 25 January 2019 also withheld information by not referring to the involvement of IIS. Mr Fuller asserted that all at OPI have been “*accessories to and aiders and abettors of the Improper and Corrupt conduct of the SAPOL officers*”. For Mr Riches, Mr Fuller goes further, asserting that he is a “*fool and an incompetent*” because he relied on information from SAPOL and OPI assessors without subjecting the information to “*any critical analysis*”.<sup>473</sup>

## Mr Lander’s decision to take no action on 12 August 2019

336. On 12 August 2019 Mr Lander wrote to Mr Fuller stating the following:<sup>474</sup>

*When I first became aware of your initial complaint I recused myself from any consideration of that complaint because of our previous association.*

*You will recall that I acted for you for many months and appeared for you in litigation in the Federal Court in the early 1990s.*

*My previously close involvement with you made it inappropriate for me to involve myself in your complaint about the conduct of SAPOL officers.*

*Clearly SAPOL officers would have been entitled to object to me considering the complaint in view of our previous involvement. There would have been an arguable perception of bias.*

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<sup>472</sup> Exhibit 161 (Volume 2) – Email from Mr Fuller to Mr Lander, 9 August 2019 at p 81-4.

<sup>473</sup> Exhibit 161 (Volume 2) – Email from Mr Fuller to Mr Lander, 9 August 2019 at p 81-4.

<sup>474</sup> Exhibit 158 (Volume 2) – Letter from Mr Lander to Mr Fuller, 12 August 2019.



*You have by reason of the very serious allegations and complaints about my officers put me in a position such that I must respond to your latest email. I now inform you that neither I nor any members of my office will take part in any further consideration of your complaint.*

*I am satisfied that your complaint has been dealt with appropriately and that there is no point in further communicating with you in relation to it.*

*You are of course at liberty to take whatever action you wish as a consequence of my decision.*

337. On 15 August 2019 Mr Fuller sent a further email to Mr Lander stating that by his letter of 12 August 2019 he has “*explicitly approbated the actions of your officers in and about the assessment and ultimate disposition of the above complaint and are complicit*”. Mr Fuller stated that Mr Lander, like Mr Riches, had now “*written his own indictment*”. In particular, Mr Fuller complained that Mr Lander had failed in his statutory duty to investigate corruption in public administration and had incorrectly determined that he could not investigate the matter due to apprehended bias.
338. Mr Fuller went on to make further criticisms of IIS and the OPI including that Curtis’ letter dated 19 February 2019 made no reference to IIS and the OPI having treated the January 2019 complaint as being previously dealt with. Mr Fuller complained that Mr Lander’s response “*is to ignore, to throw a blanket over the misconduct by your officers so nobody in the public arena gets to know about it and any investigation is impossible because there is no mechanism in the ICAC Act to call you to account*”. Mr Fuller asserted that Mr Lander has “*chosen to protect your officers, your organisation and SAPOL from investigation for corruption over your primary duty and object Sect. 32(2)(a) ICAC Act ‘to investigate corruption in public administration’ wherever it may be found*” (original emphasis).<sup>475</sup>
339. On 6 September 2019 Mr Fuller sent a further email to Mr Lander complaining that 15 business days had elapsed from his last email with no response. Whilst acknowledging that Mr Lander had stated in his previous letter that he would not engage in further communications with him, Mr Fuller nevertheless persisted stating that this does not mean Mr Lander can “*ignore with impunity my subsequent submissions to you*” in relation to Mr Riches’ letter of 3 July 2019. Mr Fuller then stated:

*I provide below a summary of my indictment of you (based on the statements in your letter of 12 August 2019) for aiding and abetting, and being accessory to the Improper and Corrupt conduct of all your officers at OPI and ICAC having material input into the disposition of the above referenced complaint.*

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<sup>475</sup> Exhibit 161 (Volume 2) – Email from Mr Fuller to Mr Lander, 16 August 2019 at p 86-9.

340. I will not set out all the detail from this very lengthy email. The email is largely a repetition of previous complaints. However, the email includes additional assertions that: there was a failure by the IIS to enter the complaint, and particulars of the complaint, in the complaints management system in accordance with the PCD Act and PCD Regulations; a failure by Osborn to identify himself as the resolution officer for the complaint; and a failure by Osborn to keep Mr Lawton informed of the progress and resolution of the complaint as required by section 9 of the PCD Act. These failures are described by Mr Fuller as “*calculated deceit*”. Mr Fuller concludes this email by informing Mr Lander that he will be making a submission to the CPIPC that “*all OPI and ICAC officers involved and you are unfit for office*” (original emphasis), that he will be forwarding his email to the CPIPC, and he is “*not susceptible to intimidation by you*”.<sup>476</sup>
341. On 9 September 2019, an OPI employee recorded that no response would be sent to Mr Fuller’s recent communications in accordance with Mr Lander’s letter of 12 August 2019.<sup>477</sup>

## **My review of Mr Lander’s decision to take no action on 12 August 2019**

342. As I have outlined above, Mr Fuller complained to Mr Lander prior to receiving Mr Riches’ letter alleging that there was “*systemic corruption*” within SAPOL, that there had been a “*whitewash*” by the IIS, Former Senior OPI Employee 1 and Mr Riches and that this constituted maladministration, if not complicity in a cover up of corruption. After receiving Mr Riches’ letter, Mr Fuller’s position only became more entrenched. Mr Fuller provided no new information or evidence yet asserted that Mr Lander had “*put Riches forward to articulate a response that you prefer not to provide to me personally as Commissioner*” and that Mr Riches had written his “*own indictment for aiding and abetting Corruption in SAPOL*”.
343. Mr Fuller had previously identified in a document supplied to the OPI on 25 January 2019 that Mr Lander had acted for him in earlier legal proceedings. It should have come as no surprise to Mr Fuller that Mr Lander had therefore taken no substantive role in relation to his complaint due to the risk of this previous professional relationship creating an apprehension of bias. There is no evidence before me to suggest that Mr Lander had any role in preparing, or instructing Mr Riches with respect to Mr Riches’ letter of 3 July 2019. Indeed,

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<sup>476</sup> Exhibit 161 (Volume 2) – Email from Mr Fuller to Mr Lander, 6 September 2019 at p 75-80. This email was forwarded to the CPIPC on the same date.

<sup>477</sup> Exhibit 160 (Volume 2) – Running Sheet at p 2.

all the evidence before me demonstrates that this letter was prepared by Mr Riches and with assistance from Former Senior OPI Employee 1.

344. As Mr Fuller directed his correspondence following 3 July 2019 to Mr Lander, and made personal threats against Mr Lander, it was appropriate for Mr Lander to provide some response. Given that Former Senior OPI Employee 1 and Mr Riches had already comprehensively reviewed the handling of Mr Lawton and Mr Fuller's complaint and had determined to take no further action (other than write to the CoP), the role of both the OPI and the ICAC was complete by the time Mr Lander came to consider Mr Fuller's correspondence. In my view, Mr Lander's response to Mr Fuller was appropriate in that Mr Lander informed Mr Fuller that he was satisfied that his complaint had been dealt with appropriately, that employees of ICAC and the OPI and ICAC would not take part in any further consideration of his complaint and that there was no point in further communicating with him about it. Any further complaint about the conduct of the OPI or ICAC needed to be made to the Reviewer. I make no criticism of Mr Lander not referring to the Reviewer in his correspondence given that the OPI were already aware that Mr Fuller had previously complained to the Reviewer.
345. Once a complaint has been thoroughly assessed and considered by the OPI and/or ICAC, and a determination made that no action will be taken, there is a clear public interest in that determination not being revisited unless there are good reasons to do so. Section 24(4) of the ICAC Act provides that no action need be taken in relation to a matter where there is "*good reason why no action should be taken*". In this case the complaint had already been thoroughly assessed. There were no good reasons to revisit the matter. No new information or evidence had been provided. Mr Fuller and Mr Lawton were aware that they had a further avenue to raise their concerns: the Reviewer. They had already availed themselves of that avenue and had informed the OPI of this fact. There was no good reason for Mr Lander to take any further action. There was nothing further that Mr Lander could or should have done in the circumstances.
346. I have found no evidence of corruption, misconduct in public administration nor maladministration in public administration on the part of Mr Lander in refusing to take any further action.

## The OPI's decision to take no further action on 13 December 2019

### Background: Complaints to the Deputy Commissioner of Police and seven Assistant Commissioners

347. On 2 December 2019 Mr Lawton and Mr Fuller made a new, 15-page written complaint, to the Deputy Commissioner of Police (**Deputy CoP**) and seven Assistant Commissioners of Police. The complaint was signed by Mr Lawton and Mr Fuller in both their personal capacities and as directors of Company E. The complaint was against the CoP, Osborn, Yeomans, Bolingbroke, Curtis, Della Sala and *“Officer/s of IIS and a senior assessor at OPI, whose identities are not presently known to the Complainants”*. The complaint stated that it related to the handling of Mr Lawton's complaint to Yeomans on 9 November 2019 and the handling of Mr Lawton's complaint to the CoP dated 3 December 2018.
348. The persons complained of were alleged to have: hindered or obstructed the making of complaints in breach of section 41 of the PCD Act, to have engaged in improper and corrupt conduct in public administration as defined in section 5 of the ICAC Act *“in and about the subsequent stifling and suppression of an investigation”* into the original complaint of criminal conduct, to have committed breaches of Part 5 (Offences of dishonesty), Part 7 Division 4 (Offences relating to public officers) of the CLCA and to have breached section 16 of the PSHA Act.
349. The allegations were said to be based on the *“new information”* contained in Mr Riches' letter of 3 July 2019. Mr Riches, Former Senior OPI Employee 1 and Mr Lander were also alleged to have *“aided and abetted and are complicit”* in the improper and corrupt conduct. This complaint did not provide any new information or material, nor did it provide any explanation for why the explanation provided by Mr Riches as to the DPP advice issue was not accepted. In large part the complaint focused on alleged non-compliance with the PCD Act.<sup>478</sup>

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<sup>478</sup> Exhibit 302 (Volume 4) – Mr Lawton and Mr Fuller's complaint to Deputy CoP and seven Assistant Commissioners, 29 November 2019 at p 4-19.

## IIS' assessment of Complaint and the OPI's decision to take no further action

350. Mr Lawton and Mr Fuller's complaint dated 2 December 2019 was referred to the IIS (as required by section 14 of the PCD Act). An assessment of this complaint was made by the IIS on 11 December 2019. This assessment determined that no action would be taken as the matter had been previously assessed. The rationale recorded as:<sup>479</sup>

*Matter previously assessed and MR provided by D/C/Supt Osborn in Feb 2019. A further formal enquiry undertaken at request of OPI with Major Fraud and DPP with response provided in June 2019. ICAC provided further written response to complainant in Aug 2019 that they are satisfied the complaint required no further action.*

351. On 13 December 2019, a letter from the then-Officer in Charge of the IIS, Chief Inspector Isherwood, (dated 12 December 2019) was sent by email to Mr Lawton and Mr Fuller. Isherwood noted that *"these matters have previously been assessed"*. Isherwood referred to the fact that previously Osborn completed a MRP under Part 3 of the PCD Act and it was determined that the original complaint of criminal conduct was a civil matter and that the police officers had not acted improperly. Isherwood referred to Osborn's letter to Mr Lawton dated 25 January 2019 advising of the outcome of that complaint. Isherwood also referred to Curtis' review of the matter and his letter to Mr Lawton dated 19 February 2019 noting that Curtis was satisfied that there were no misconduct issues regarding any SAPOL officers and that he would not be taking further action. Isherwood informed Mr Lawton and Mr Fuller that he had determined to take no further action pursuant to section 15(a) of the PCD Act as the complaint has already been dealt with.<sup>480</sup>
352. On the same date an OPI employee recorded that they *"reviewed the information submitted by Mr Fuller to SAPOL dated 3 December 2019, added to IA Pro file ... I am of the view that no OPI action is required in respect of this correspondence"*.<sup>481</sup>
353. Mr Fuller responded to the IIS' email dated 13 December 2019 asserting that Isherwood had not addressed Mr Fuller's complaint and its particulars and was therefore *"either incompetent, but more likely a member of the Stevens loyal cohort sent once again to divert a proper and competent investigation"*. Mr Fuller informed Isherwood that he was now added to Mr Fuller's list of SAPOL officers *"complicit in the Improper and Corrupt Conduct of your*

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<sup>479</sup> Exhibit 303 (Volume 4) – IIS File Allocation at p 2.

<sup>480</sup> Exhibit 305 (Volume 4) – Letter from Isherwood to Mr Lawton and Mr Fuller, 12 December 2019 at p 5-6.

<sup>481</sup> Exhibit 160 (Volume 2) – Running Sheet at p 2.

*Commissioner Stevens*". In this email Mr Fuller also requested that he be provided with *"the entries in the Complaint Management System that you consulted in order to conclude that this complaint had been previously dealt with by way of 'management resolution'"*.<sup>482</sup>

354. On 14 December 2019 Mr Fuller emailed the Deputy CoP complaining about Isherwood's *"investigation"* and alleging that Isherwood had *"misdirected himself as to the offending alleged and the persons against whom the allegations were made"*. Mr Fuller also asserted that Isherwood, and the Deputy CoP and all Assistant Commissioners of Police *"are now complicit"* and suggested that they should *"abandon the 'Pirate Ship Stevens'"* (original emphasis).
355. On 16 December 2019, another IIS officer replied to Mr Fuller's email to Isherwood, advising that Isherwood had declined to provide copies of any documents from the IIS Complaint Management System and informing Mr Fuller that no further action will be taken in relation to his complaint.<sup>483</sup>
356. Mr Fuller responded on the same date asserting that the SAPOL officer was *"obliged by PCDA"* to provide all entries in the complaints management system relating to Mr Lawton's complaint dated 3 December 2018 and that by failing to do so he has *"joined the list of offenders who have and continue to 'Hinder and Obstruct' Lawton's Complaint contrary to Sect. 41 PCDA"* and has made himself *"an accessory to the Improper and Corrupt conduct of [CoP] Stevens"*.<sup>484</sup>
357. On 17 December 2019 Mr Fuller again wrote to the Deputy CoP, forwarding his email correspondence above, and noting that the *"list of corrupt officers at SAPOL continues to grow"*. Mr Fuller continued to assert that if Mr Lawton's complaint had been dealt with by way of management resolution, then there had been a failure to comply with the PCD Act in relation to that process but then asserted that *"it now no longer matters what, is or is not entered in the 'complaint management system', the 'game is up' for all of you"*.<sup>485</sup>
358. The email communications sent after Isherwood's letter dated 12 December 2019 were brought to Isherwood's attention. On 17 December 2019 Isherwood directed that the communications be saved to the IIS file but that no response be sent. Isherwood noted, *"As I have previously explained to Mr Fuller, Mr Lawton was advised of the outcome. IIS are not required to supply a copy of the MR outcome"*.<sup>486</sup>

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<sup>482</sup> Exhibit 305 (Volume 4) – Email from Mr Fuller to Isherwood at p 3.

<sup>483</sup> Exhibit 305 (Volume 4) – Email from IIS to Mr Fuller, 16 December 2019 at p 2-3.

<sup>484</sup> Exhibit 305 (Volume 4) – Email from Mr Fuller to IIS, 16 December 2019 at p 2.

<sup>485</sup> Exhibit 305 (Volume 4) – Email from Mr Fuller to Deputy CoP, 17 December 2019 at p 1.

<sup>486</sup> Exhibit 305 (Volume 4) – Email from Isherwood, 17 December 2019 at p 1.

## **My review of the OPI's decision to take no further action**

359. Although Mr Lawton and Mr Fuller complained to the Deputy CoP and seven Assistant Commissioners of Police none of those persons had an obligation to deal with the complaint personally: rather the complaint was required to be referred to the IIS pursuant to section 13(1) of the PCD Act, which occurred.
360. A determination was made by the Officer in Charge of the IIS, Isherwood, pursuant to section 15(a) of the PCD Act to decline to take further action in respect of the complaint on the basis that the conduct of the complaint had been previously dealt with under the PCD Act. By this time, the complaint had both been dealt with by Osborn under Part 3 of the PCD Act, had been reviewed by the previous Officer in Charge of IIS, Curtis, and had been the subject of detailed consideration by Former Senior OPI Employee 1 and Mr Riches. Although Mr Lawton and Mr Fuller were now also complaining about the actions of Osborn, Curtis, Former Senior OPI Employee 1 and Mr Riches, there was no new information or material to support such complaints beyond bare assertions. In these circumstances, I consider it entirely appropriate for Isherwood to decline to consider the complaint further pursuant to section 15(a) of the PCD Act.
361. I also consider it was entirely appropriate for the OPI to have not reassessed the complaint nor taken any further action.
362. I have found no evidence of corruption, misconduct in public administration nor maladministration in public administration on the part of the OPI in deciding to take no further action.

## Complaints to the Reviewers

363. In conducting my review, I have had access to the records held by the former Reviewers. Although my role does not involve a review of the conduct of, or actions taken by, the Reviewers, I have found it useful to review those records and briefly set out relevant matters arising from them.
364. Whilst Reviewer Duggan commenced reviewing a complaint made by Mr Fuller in February 2019 and had numerous communications with Mr Fuller about his complaint, Reviewer Duggan did not finalise his review before he completed his role as Reviewer in April 2019.<sup>487</sup>
365. Reviewer Sulan had various communications with Mr Fuller from December 2020 through to April 2021.<sup>488</sup> Mr Pangallo was copied to a number of emails sent by Mr Fuller to former Reviewer Sulan.
366. From his notes, and those kept by the OPI, it is clear that Reviewer Sulan personally attended the OPI office on 8 April 2021 and met with a senior OPI employee. It is clear that at this time Reviewer Sulan personally viewed the OPI's system and records within that system that were also records kept within the PCD Act (IAPro system) complaint management system.<sup>489</sup> It is also clear that Reviewer Sulan personally spoke with two members of the DPP: Mr Phillips and Mr Longson.<sup>490</sup>
367. Reviewer Sulan's notes record that he spoke to Mr Longson on 12 April 2021 and at that time Mr Longson informed him that he had spoken to a person within the fraud squad "*who consulted him informally to advise whether their decision not to take further action was correct. He looked at material and confirmed their decision to take no further action*".<sup>491</sup>
368. By letter dated 9 April 2021 Reviewer Sulan responded to Mr Fuller's complaint advising Mr Fuller of the following:<sup>492</sup>

*Upon examination of the file and of the records of ICAC and OPI, it is evident that OPI considered the allegations of corruption and misconduct by officers of the Fraud Squad and the IIS determination. In this case, IIS dealt with the complaint and reported their action to OPI. There was correspondence between OPI and IIS. There was correspondence between the Deputy Commissioner of ICAC and SAPOL. Ultimately, OPI determined not to direct IIS to deal with the matter in any different way.*

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<sup>487</sup> Exhibits 170 to 201 (Volume 2) – Reviewer Duggan's records.

<sup>488</sup> Exhibits 202 to 216 (Volume 2) – Reviewer Sulan's records.

<sup>489</sup> Exhibit 160 (Volume 2) – Running Sheet at p 1-2; Exhibit 216 (Volume 2) – Reviewer Sulan's handwritten notes.

<sup>490</sup> Former Reviewer Sulan referred to Longson as 'Longston', but I am satisfied that this was a typographical error.

<sup>491</sup> Exhibit 216 (Volume 2) – Reviewer Sulan's handwritten notes at p 1.

<sup>492</sup> Exhibit 210 (Volume 2) – Letter from Reviewer Sulan to Mr Fuller, 9 April 2021.



*Clearly, you have been dissatisfied with the decisions made by SAPOL, IIS, the Fraud Squad investigator, OPI and Mr Lander, the former Independent Commissioner Against Corruption. You are also dissatisfied with the decision of the current Commissioner and you allege that Mr Riches, the Deputy Commissioner, has breached his duty. You allege that the Fraud Squad officers and senior officers of SAPOL are corrupt. You also allege incompetence and corruption by officers of ICAC and OPI.*

*I have reviewed the ICAC file. I have also had access to and have now reviewed the Case Management System maintained by OPI. I do not have jurisdiction over the conduct of the IIS. My jurisdiction is limited to the conduct of employees of ICAC and OPI. I have no jurisdiction to review decisions made by SAPOL or IIS in respect of investigations conducted by them.*

*As I have indicated, I have now accessed the Case Management System maintained by OPI. In interrogating that system, I have not found evidence of corruption, improper conduct or misconduct by officers of ICAC or OPI.*

*It is not part of the role of the Reviewer of ICAC to second-guess decisions made by ICAC or OPI. The Reviewer's role is limited to considering and determining whether the Commissioner or employees of ICAC or OPI have abused their power, acted improperly or otherwise misconducted themselves. In my opinion, in order to enliven my jurisdiction, the conduct must be of a kind that involves an action or actions, or inactions, of the Commissioner, employees or ICAC or OPI which are of a serious nature. In other words, I consider that a serious degree of wrongfulness must be shown before my jurisdiction is enlivened.*

*As I indicated, I have made a number of inquiries. I am satisfied that the officers investigating the alleged fraudulent conduct consulted with officers of the Director of Public Prosecutions (DPP). The decision not to further investigate the allegations is ultimately a decision of SAPOL.*

*As to the IIS determination, upon my examination, including the OPI records and of the Case Management System, there is no evidence of abuse of power, impropriety or other misconduct which would enliven my jurisdiction.*

369. Mr Fuller responded to Reviewer Sulan on the same day asserting that Reviewer Sulan had “*chosen (I infer deliberately) to conflate the ‘case management system’ maintained by OPI with the ‘complaints management system’ maintained by IIS to which I have referred you ad nauseam*” (original emphasis). Mr Fuller asserted that this conduct was a deliberate choice by Reviewer Sulan taken “*for fear of consequence to the ICAC/OPI system in which you sit, and the comity of former judicial office you share with Lander and Vanstone*”. The email includes various insults towards Reviewer Sulan including that he does not have “*the ticker for the task*”, that his letter to Mr Fuller is “*now the ‘Sword of Damocles’ hanging over your head*” and that “*Others will judge you in the end*” (original emphasis).<sup>493</sup>

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<sup>493</sup> Exhibit 211 (Volume 2) – Email from Mr Fuller to Reviewer Sulan, 9 April 2021.

370. Mr Fuller sent a further email along the same lines on 10 April 2021 in which he accused Reviewer Sulan of *“intellectual dishonesty in the wilful failure to perform your office and function”* (original emphasis).<sup>494</sup>

371. On 13 April 2021 Reviewer Sulan spoke with the senior OPI employee that he had previously met with when accessing records relating to this matter at the OPI’s office. The OPI employee’s notes record that:<sup>495</sup>

*Mr Sulan wished to confirm whether the system I showed him last week was the complaint management system referenced in the PCD Act. I confirmed that this was the same system. I explained that the complaint management system is a restricted access system – largely limited to EPSB/IIS and the OPI. I explained that general police work is recorded on other general access SAPOL databases.*

372. On the same date Reviewer Sulan wrote to Mr Fuller advising that he had interrogated the system maintained by the OPI and that the reference in his letter of 9 April 2021 to the *“Case Management System”* should have been a reference to the *“Complaint Management System”*. He further stated that this system is the system maintained by the CoP and which has been provided to the ICAC and the OPI pursuant to section 6(3) of the PCD Act. He concluded by stating:<sup>496</sup>

*It follows that I have interrogated the system to which you refer in your emails. As I indicated to you, I have found no evidence of abuse of power, impropriety or other misconduct by officers of ICAC or the OPI which would enliven my jurisdiction.*

373. On the same date Mr Fuller sent a lengthy further email to the Reviewer Sulan containing various assertions and allegations of wrongdoing on the part of the Reviewer Sulan. No response was sent to this email, and I will not outline its contents here.<sup>497</sup>

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<sup>494</sup> Exhibit 212 (Volume 2) – Email from Mr Fuller to Reviewer Sulan, 10 April 2021.

<sup>495</sup> Exhibit 160 (Volume 2) – Running Sheet at p 1.

<sup>496</sup> Exhibit 213 (Volume 2) – Letter from Reviewer Sulan to Mr Fuller, 13 April 2021.

<sup>497</sup> Exhibit 214 (Volume 2) – Email from Mr Fuller to Reviewer Sulan, 13 April 2021.

# Commissioner Vanstone's decision to take no action on 20 October 2020

## Background: Complaint to Commissioner Vanstone

374. Commissioner Vanstone commenced in her current role as Commissioner on 2 September 2020.
375. On 7 October 2020 Mr Lawton and Mr Fuller made a complaint to Commissioner Vanstone. The complaint itself was ten pages long and there were 82 pages of attachments. Although both Mr Lawton and Mr Fuller signed the complaint,<sup>498</sup> it reads as a complaint made by Mr Fuller as “I” is used throughout to describe actions taken by Mr Fuller. Accordingly, I will describe the statements and assertions made within the complaint as being made by Mr Fuller.
376. The complaint identifies that it is a complaint against Mr Lander, Mr Riches, Former Senior OPI Employee 1 and “*presently unidentified ‘senior assessor/s’*” and that it related to Mr Lawton’s complaint to the CoP made on 3 December 2018 and the subsequent complaint by Mr Lawton, Mr Fuller and Company E to the OPI. The particulars of the complaint were stated to be the same as alleged in Mr Fuller’s emails to Mr Lander on 15 August 2019 and 6 September 2019.<sup>499</sup>
377. The complaint referred to (and provided copies of) submissions Mr Fuller had made to the CPIPC. Mr Fuller stated that, as “*suggested to me by the Hon Frank Pangallo*”, he intends to ask the CPIPC to request that the present ICAC Reviewer revisit his submission made to the previous Reviewer Duggan for intervention and that he is informing Commissioner Vanstone of this in order that this not take her by surprise.<sup>500</sup>
378. Mr Fuller went on to state that the ICAC/OPI officers and staff, as led by Former Senior OPI Employee 1 and Mr Riches, “*requires a ‘root and branch’ cleansing for you to have any prospect of avoiding the damage to the reputation of and loss of the public confidence in ICAC which otherwise will be the calamitous legacy of your predecessor Lander*”. Mr Fuller then asserted that the “*genie is well and truly out of the bottle*” and it is “*only a matter of time before this Lawton saga bursts into the public domain*”. Mr Fuller also informed Commissioner Vanstone the accusations he makes “*are capable of proof beyond any*

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<sup>498</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller’s complaint to Commissioner Vanstone at p 7.

<sup>499</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller’s complaint to Commissioner Vanstone at p 1 under ‘Introduction’ and [1].

<sup>500</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller’s complaint to Commissioner Vanstone at p 2 [10]-[11].

*reasonable doubt*” by the “*production and tender*” of the OPI file, the IIS file and the complaints management system entries maintained by the IIS.<sup>501</sup>

379. Again, I note that this correspondence is threatening in tone and content: either Commissioner Vanstone does as Mr Fuller wishes or she will face personal consequences.

380. In the complaint, Mr Fuller makes the following specific allegations:

(a) In relation to Mr Lander – by failing to take any action when asked to personally intervene when he “*had to have known*” the content of the “*so-called Sect 16 Determination*”:

(i) he “*hindered or obstructed*” in breach of section 41 of the PCD Act;<sup>502</sup> and

(ii) has “*made himself an accessory to the improper and corrupt conduct of the other dramatis personae including, in particular, Riches, [Former Senior OPI Employee 1], and senior OPI assessor/s*”.<sup>503</sup>

(b) In relation to Mr Riches – by his letter of 3 July 2019:

(i) he has exposed himself to “*indictment for various criminal offences*”; and

(ii) he has established “*non-compliance with the so called Sect 16 PCDA determination ... signed on 1 September 2017*” which was not forwarded to the Attorney-General to ensure ministerial compliance.<sup>504</sup>

(c) Mr Fuller also provided the following list of persons reasonably suspected of criminal conduct and the offences he says have been committed:

(i) The CoP, Yeomans, Bolingbroke and Della Sala in relation to the termination of Mr Lawton’s original complaint of criminal conduct for the offences of:

- improper conduct (section 238 CLCA);

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<sup>501</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller’s complaint to Commissioner Vanstone at p 2-3 [12]-[17].

<sup>502</sup> PCD Act s 41 provides that “*A person must not – (a) prevent another person from making a complaint or report under this Act; or (b) hinder or obstruct another person in making such a complaint or report. Maximum penalty: \$10,000 or imprisonment for 2 years*”.

<sup>503</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller’s complaint to Commissioner Vanstone at p 4-5 [23]-[25].

<sup>504</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller’s complaint to Commissioner Vanstone at p 4 [20]-[21].

- abuse of public office (section 251 CLCA);
  - publication of a misleading document (section 140 CLCA);
  - corrupt, improper, and dishonest conduct in public administration (section 5 ICAC Act and Parts 5 and 7 CLCA); and
  - failing to act honestly as a public officer (section 16 and/or section 26 PSHA Act).<sup>505</sup>
- (ii) Yeomans in relation to Mr Lawton's complaint of 9 December 2018 for the offences of:
- hindering or obstructing a complaint (section 41 PCD Act)
  - failing to act honestly as a public officer (section 16 and/or section 26 PSHA Act); and
  - corrupt, improper, and dishonest conduct (section 5 ICAC Act and Parts 5 and 7 CLCA).<sup>506</sup>
- (iii) The CoP, Isherwood, an unknown OPI senior Assessor, Osborn, Former Senior OPI Employee 1 in relation to Mr Lawton's complaint to the CoP of 3 December 2018:
- hindering or obstructing the making of a complaint (section 41 PCD Act);
  - failing to act honestly as a public officer (section 16 and/or section 26 PSHA Act);
  - corrupt, improper, and dishonest conduct in public administration (section 5 ICAC Act and Parts 5 and 7 CLCA);
  - improper conduct (section 238 CLCA); and
  - abuse of public office (section 251 CLCA).<sup>507</sup>

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<sup>505</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller's complaint to Commissioner Vanstone at p 8 [1].

<sup>506</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller's complaint to Commissioner Vanstone at p 8 [2].

<sup>507</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller's complaint to Commissioner Vanstone at p 8-9 [3].

(iv) An unknown OPI senior Assessor, Curtis, Former Senior OPI Employee 1, Mr Riches, Mr Lander in relation to Mr Lawton and Mr Fuller's complaint to the OPI in January 2019:

- hindering or obstructing the making of a complaint (section 41 PCD Act);
- failing to act honestly as a public officer (section 16 and/or section 26 PSHA Act);
- corrupt, improper, and dishonest conduct in public administration (section 5 ICAC Act and Parts 5 and 7 CLCA);
- improper conduct (section 238 CLCA); and
- abuse of public office (section 251 CLCA).<sup>508</sup>

381. In addition, and apparently for each of the above persons, *“Generally: Aiding and Abetting counselling or procuring the commission of the above, Attempting to Pervert or obstruct the Administration of Justice, Conspiracy to commit he above”*.<sup>509</sup>

382. Mr Fuller advises that other *“Persons of interest”* are: *“The former partners of Ian Lawton, [C] and [Company A and B’s] family, The accounting advisors to the Partnership ..., The legal advisor to the Partnership ... The legal advisors to [the accounting advisors] ...The Attorney-General Vickie Chapman, The Premier Steven Marshall, The former Police Minister Corey Wingard”*. Mr Fuller advised that other *“Persons of interest”* are: *“The former partners of Ian Lawton, [C] and [Company A and B’s] family, The accounting advisors to the Partnership ..., The legal advisor to the Partnership ... The legal advisors to [the accounting advisors] ...The Attorney-General Vickie Chapman, The Premier Steven Marshall, The former Police Minister Corey Wingard”*.<sup>510</sup>

383. Mr Fuller also asserted that he has *“reasonable cause to suspect”* that the *“wrongful termination”* of Mr Lawton’s complaint of criminal conduct by C *“had its genesis in political influence upon Stevens at the behest of persons close to the present Marshall Government and likely one or more of the persons who would have been the targets of any investigation”*. These *“persons close to the Marshall Government”* are not identified in any way nor does Mr Fuller provide

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<sup>508</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller’s complaint to Commissioner Vanstone at p 9 [4].

<sup>509</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller’s complaint to Commissioner Vanstone at p 9-10.

<sup>510</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller’s complaint to Commissioner Vanstone at p 10.

any further information or material which would enable this assertion to be assessed.<sup>511</sup>

384. Mr Fuller requested that Commissioner Vanstone be “*open and transparent with me*” and to that end provide him and Mr Lawton with “*a copy of the ‘complaints management system’ entries made by IIS*” in relation to their complaint along with any related OPI file entries “*with the right and liberty to convey the same to the Hon. Frank Pangallo, presiding officer CPIPC*”.<sup>512</sup>
385. I note here that this complaint to Commissioner Vanstone is the first time that Mr Lawton and Mr Fuller complained to ICAC/OPI about what they called “*the so called Sect 16 Determination*”.

### **Commissioner Vanstone’s decision to take no further action**

386. On 12 October 2020, an OPI employee wrote an internal memorandum to the Director of the OPI and Commissioner Vanstone relating to Mr Lawton and Mr Fuller’s complaint of 7 October 2020. The OPI member set out the background of the matter in detail and attached a copy of Mr Riches’ letter of 3 July 2019. The OPI member summarised Mr Lawton and Mr Fuller’s complaint of 7 October 2020 identifying first that the complainant continues to assert that lies were told about advice from the DPP and that the OPI and ICAC had corruptly covered this up. The OPI member secondly identified the various arguments made in the complaint about the MRP and the section 16 determination. The OPI member expressed the view that in relation to the first matter, Mr Lawton and Mr Fuller had not provided any further information that would warrant further consideration of that matter. In relation to the second matter, the OPI member expressed the view that given that the complaints related primarily to conduct of OPI/ICAC officers there was a more appropriate avenue in which to raise those complaints, namely, with the Reviewer.<sup>513</sup>
387. On 20 October 2020 Commissioner Vanstone wrote to Mr Fuller advising that she had been provided with his letter of 7 October 2020 along with its enclosures. Commissioner Vanstone referred to Mr Riches’ letter of 3 July 2019 and Mr Riches’ view that the complaint did not raise a potential issue of corruption, misconduct or maladministration in public administration requiring further action, beyond that which had already taken place. Commissioner Vanstone also referred to Mr Fuller’s subsequent email to Mr Lander on 9 August 2019 in which he renewed his complaint and also alleged criminal conduct on the part of Former Senior OPI Employee 1 and

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<sup>511</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller’s complaint to Commissioner Vanstone at p 6 [36].

<sup>512</sup> Exhibit 161 (Volume 2) – Mr Lawton and Mr Fuller’s complaint to Commissioner Vanstone at p 5 [29].

<sup>513</sup> Exhibit 163 (Volume 2) – OPI internal memorandum, 12 October 2020.

Mr Riches. Commissioner Vanstone also referred to Mr Lander's response in which he advised that he was satisfied that the complaint had been dealt with appropriately and that there was no further point in communicating with Mr Fuller about it. Commissioner Vanstone noted that Mr Fuller had since raised his complaint with other persons which was his prerogative to do. Commissioner Vanstone then stated:<sup>514</sup>

*As you know, I recently took up the position of Commissioner. The duties falling to me in that role are demanding. Valuable resources are available to me to help me fulfil my role. Part of my role takes in the responsible deployment of those resources. I take the view that revisiting matters which appear to have comprehensively [sic] considered and dealt with some time ago is not justifiable. That is particularly the case where, as here, I can see nothing to indicate that the consideration given to the matter was anything but careful and comprehensive.*

*In the circumstances, I do not consider that there is any point in our communicating further.*

388. Mr Fuller sent further communications to Commissioner Vanstone following this as follows:

- (a) On 3 November 2020 Mr Fuller sent an email to Commissioner Vanstone advising that she had rejected the opportunity he had provided to her by his complaint of 7 October 2020 and *"now will have to bear personally the consequences of that rejection"*. Mr Fuller then informed Commissioner Vanstone of his *"indictment of you"* which, in essence, was that her failure to personally interrogate the complaints management system maintained by IIS and the OPI system *"is more than reckless, it is wilful, in the sense of wilful blindness"* and has made her *"complicit in the offending of the dramatis personae"*. Alternatively Mr Fuller asserts that if Commissioner Vanstone did interrogate these systems then her response to him *"inculpates you as, an accessory to and aider and abettor of, the offending of the dramatis personae and to have relevantly joined the long list of dramatis personae who have hindered or obstructed (contrary to Sect.41 PCDA), the making of the Lawton complaint to Stevens of 3 December 2018 and the complaint by Lawton and me presented in person to OPI on 29 January 2020"*. Mr Fuller also asserted that Commissioner Vanstone had demonstrated her *"unfitness for office as ICAC"*. Mr Fuller attached a number of previous communications between himself and Commissioner Vanstone and Mr Lander to this email.<sup>515</sup>
- (b) On 4 November 2020 Mr Fuller sent an email to Commissioner Vanstone stating: *"I authorise and direct you to release to the Hon Frank*

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<sup>514</sup> Exhibit 165 (Volume 2) – Letter from Commissioner Vanstone to Mr Fuller, 20 October 2020.

<sup>515</sup> Exhibit 166 (Volume 2) – Email from Mr Fuller to Commissioner Vanstone, 3 November 2020.



*Pangallo MLC all such particulars (including my personal particulars) and documents as he may require from time to time for the purposes of a mention in Parliamentary session/s of the conduct by ICAC/OPI of the above Complaints*". Mr Pangallo, and Mr Lawton, were copied to that email.<sup>516</sup>

- (c) On 9 November 2020 Mr Fuller sent an email to Commissioner Vanstone providing a copy of the section 16 determination which he had mistakenly omitted to send to Commissioner Vanstone on 3 November 2020. Mr Fuller asserted that no one, including the CoP, IIS officers and OPI assessors, could have *"consistently with honesty and integrity"* have recommended and/or agreed that Mr Lawton's complaint of 3 December 2018 be dealt with by way of management resolution and that no one, including Former Senior OPI Employee 1, Mr Riches, Mr Lander and Commissioner Vanstone, could have *"consistent with honesty or integrity"* have concluded that the complaint had been dealt with appropriately. He concluded his email by stating: *"There is no room now, for you to avoid the necessary inference that you are now complicit in a cover up of the improper and corrupt conduct of the dramatis personae whether by reason of actual knowledge or wilful blindness. There is no reason for me to correspond with you further. The cards will now fall where they may. Respect is no longer due"*. That email was also copied to Mr Lawton and Mr Pangallo.<sup>517</sup>
- (d) On 15 December 2020 Mr Fuller emailed Commissioner Vanstone to complain about her evidence before the CPIPC on 10 December 2020 and in particular her acceptance and reliance of Mr Riches' letter dated 3 July 2019. I will not set this complaint out in any detail as it is essentially a repetition of previous complaints made by Mr Fuller. This email was copied to a number of people including Mr Lawton and Mr Pangallo.<sup>518</sup>

389. No response was sent by the OPI, ICAC or Commissioner Vanstone to Mr Fuller's emails of 3, 4, 9 November and 15 December 2020.

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<sup>516</sup> Exhibit 174 (Volume 2) – Email from Mr Fuller to Commissioner Vanstone, 4 November 2020.

<sup>517</sup> Exhibit 175 (Volume 2) – Email from Mr Fuller to Commissioner Vanstone, 9 November 2020.

<sup>518</sup> Exhibit 177 (Volume 2) – Email from Mr Fuller to Commissioner Vanstone, 15 December 2020.

## My review of Commissioner Vanstone's decision to take no further action

390. Mr Fuller and Mr Lawton's complaint to Commissioner Vanstone generally falls into the same category as their complaint to Mr Lander. However, in relation to the complaint to Commissioner Vanstone there were arguably two new issues raised:
- (a) it was asserted that the termination of the criminal investigation "*had its genesis in political influence upon Stevens at the behest of persons close to the present Marshall Government and likely one or more of the persons who would have been the targets of any investigation*"; and
  - (b) it was asserted that the determination in place under section 16 of the PCD Act had not been tabled in Parliament as required by that section and that there had been non-compliance with the determination.
391. The first matter identified above was vague and speculative in nature. I do not consider it provided any reason for Commissioner Vanstone to reconsider this matter.
392. In relation to the second matter, I have already discussed the determination made under section 16 of the PCD Act on 14 August 2017 and signed by the Chief Executive Officer of the OPI on 1 September 2017 (see paragraphs [100] – [101] above). As I stated above, it is not my role to inquire further into why there was a delay in the tabling of this document nor to consider whether the delay in tabling had any legal effect upon the determination.
393. I do not consider that the delay in the tabling of the section 16 determination or the alleged non-compliance with its content was a matter which fundamentally altered the nature of Mr Lawton and Mr Fuller's complaint, nor which amounted to new and compelling information or evidence. The key aspect to Mr Lawton and Mr Fuller's complaint remained the allegation that Mr Lawton (and Ms Fuller) had been lied to with respect to the reasons for terminating the criminal investigation in relation to the issue of the obtaining of DPP advice. All other wrongdoing was alleged to have flowed as a consequence of that initial wrongdoing. The complaint to Commissioner Vanstone and the information provided with that complaint did not relate to, nor undermine, the findings of Mr Riches with respect to the fact that informal advice had been obtained from the DPP in the context of the decision to terminate the investigation. In these circumstances, even if there had been merit to any of the allegations relating to the section 16 determination, this would not have impacted upon the key allegation which had been found by Mr Riches to not have any foundation (other than with respect to a miscommunication).

394. The steps taken by Commissioner Vanstone, and her response to Mr Fuller of 20 October 2020, were appropriate. I agree with Commissioner Vanstone that the resources of her office are to be deployed responsibly and that revisiting matters which have already been comprehensively considered and dealt with is not justifiable. I also agree with Commissioner Vanstone that there was nothing to indicate to her that the consideration previously given to the matter was anything but careful and comprehensive. I do not consider that there was anything further that Commissioner Vanstone should have done in the circumstances.
395. I have found no evidence of corruption, misconduct in public administration nor maladministration in public administration on the part of Commissioner Vanstone in refusing to take any further action.

## Conclusion

396. I have found no evidence of dishonesty on the part of SAPOL officers in relation to the termination of Mr Lawton's complaint of criminal conduct. There appears to have been miscommunication between Mr Lawton and SAPOL officers. Importantly, SAPOL had a wide discretion to decide whether it was in the public interest to investigate the allegations of criminal conduct. SAPOL had given the matter due and proper consideration including by obtaining informal advice from the DPP.
397. I find that there was no dishonesty or improper conduct by any relevant SAPOL officer in the decision to terminate the criminal investigation. I, therefore, find that that there was no cover up of the conduct of the relevant SAPOL officers by more senior SAPOL officers, the IIS, the OPI or the ICAC.
398. For the reasons outlined above, I am satisfied that the OPI and ICAC acted in an appropriate manner in relation to all of Mr Lawton and Mr Fuller's complaints. The public officers who corresponded with Mr Lawton and Mr Fuller did so in a professional manner. Despite being subject to offensive and threatening communications, those public officers remained steadfast and objective in their dealings with Mr Lawton and Mr Fuller and did not allow those communications to influence their approach to the matter.
399. I disagree with the determination by the IIS that Mr Lawton's complaint dated 3 December 2018 was suitable for MRP and with the OPI's agreement with that determination.
400. However, those errors did not result in any adverse impact on the outcome of Mr Lawton's complaint. Osborn conducted appropriate inquiries as part of the MRP which ensured that Mr Lawton's complaint was effectively dealt with. Osborn's inquiries found that there had been no lies told by any SAPOL officer relating to seeking or obtaining advice from the DPP.
401. I have found no evidence of corruption, misconduct in public administration nor maladministration in public administration on the part of the OPI nor ICAC nor any employee of either.
402. I have found no evidence of unreasonable delay in the conduct of the matters under review nor any unreasonable invasions of privacy.
403. In this case, neither the OPI nor ICAC made any public statements whatsoever about the matters under review. Mr Fuller and Mr Lawton raised their complaints of their own volition with the Committee and the CPIPC. In these circumstances there could be no undue prejudice to the reputations of either Mr Fuller or Mr Lawton.
404. Mr Riches has made a submission to me that the conduct of Mr Fuller and Mr Lawton has occasioned damage to the reputation of the public officers who

dealt with their complaints. He has submitted that this damage has been exacerbated by the Committee's website publishing the unfounded allegations of Mr Fuller and Mr Lawton in circumstances where a submission he made in response was never published nor referred to (other than in a footnote) in the Committee's final report.<sup>519</sup> Whilst it is not a matter for me to comment on what material the Committee publishes on its website, I agree that the unfounded allegations made by Mr Fuller and Mr Lawton against many public officers had the potential to cause damage to the reputation of those officers.

405. There is no evidence that the practices and procedures of ICAC or the OPI were ineffective or inefficient. Neither ICAC or the OPI carried out their functions in a manner that was unlikely to assist in preventing or minimising corruption in public administration.
406. I note that significant time and resources have already been spent in the consideration of this matter on the part of IIS, the OPI, ICAC, the Reviewers, the Commission and now my Office in circumstances where, at the very least since 3 July 2019 (when Mr Riches wrote to Mr Fuller), Mr Lawton and Mr Fuller have been given a full explanation as to why their complaint raises no issues of corruption, misconduct nor maladministration. In relation to both the request of the Attorney-General and the complaint by Mr Fuller, I consider that there is no need for any further action to be taken and I make no recommendations to the OPI, the Commission or the Attorney-General.
407. Finally, I note that one matter has caused me significant concern in my review of this matter. That is the threatening conduct repeatedly engaged in by Mr Fuller directed at public officials. This Report details the threatening content and tone of Mr Fuller's communications with various public officials. Whatever the intention behind those threats were, the mischief caused by threatening communications is the potential for the recipients of those communications to be intimidated or cowed into not performing their public duties properly.
408. Public officials should not be expected to tolerate such behaviour from complainants. Whilst the content of any properly made complaint cannot be ignored, public officials should feel comfortable to call out threatening behaviour in all its forms including when there is no threat of physical force.
409. In some circumstances such conduct could amount to the offence of threatening to cause harm within section 19(2) of the CLCA (noting harm includes mental harm) and/or the offence of stalking of a public officer within sections 250(1) or 250(2) of the CLCA.
410. Once a person has been properly warned that their conduct is threatening and unacceptable (and potentially warned of any criminal offences being

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<sup>519</sup> Exhibit 402 (Volume 6) – Submission of Mr Riches, 14 April 2024 at p 3-4.

committed), if that behaviour continues, the public officer concerned should have no hesitation in refusing to further communicate with the person concerned and/or reporting the person's conduct to a relevant law enforcement body.

# Appendix A

## *Independent Commissioner Against Corruption 2012 (SA)*

The following extracts from the ICAC Act appear as they were between 4 September 2017 to 6 October 2021.<sup>520</sup> These were therefore the applicable provisions at all relevant times when OPI and ICAC were considering complaints made by Mr Lawton and Mr Fuller.

### Part 1—Preliminary

#### 3—Primary objects

- (1) The primary objects of this Act are—
  - (a) to establish the Independent Commissioner Against Corruption with functions designed to further—
    - (i) the identification and investigation of corruption in public administration; and
    - (ii) the prevention or minimisation of corruption, misconduct and maladministration in public administration, including through referral of potential issues, education and evaluation of practices, policies and procedures; and
  - (b) to establish the Office for Public Integrity to manage complaints about public administration with a view to—
    - (i) the identification of corruption, misconduct and maladministration in public administration; and
    - (ii) ensuring that complaints about public administration are dealt with by the most appropriate person or body; and
  - (c) to achieve an appropriate balance between the public interest in exposing corruption, misconduct and maladministration in public administration and the public interest in avoiding undue prejudice to a person's reputation (recognising that the balance may be weighted differently in relation to corruption in public administration as compared to misconduct or maladministration in public administration).
- (2) Whilst any potential issue of corruption, misconduct or maladministration in public administration may be the subject of a complaint or report under this Act and may be assessed and referred to a relevant body in accordance with this Act, it is intended—
  - (a) that the primary object of the Commissioner be to investigate corruption in public administration; and
  - (b) that matters raising potential issues of misconduct or maladministration in public administration will be referred to an inquiry agency or to a public authority (unless the circumstances set out in section 7(1)(cb) or (cc) apply).

#### 5—Corruption, misconduct and maladministration

- (1) **Corruption in public administration** means conduct that constitutes—
  - (a) an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
    - (i) bribery or corruption of public officers;

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<sup>520</sup> Although the ICAC Act was amended on 1 July 2020 the provisions cited here (ss 3, 5, 7, 23 and 24) were not amended.

- (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;
  - (c) any other offence (including an offence against Part 5 (Offences of dishonesty) of the *Criminal Law Consolidation Act 1935*) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or
  - (d) any of the following in relation to an offence referred to in a preceding paragraph:
    - (i) aiding, abetting, counselling or procuring the commission of the offence;
    - (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
    - (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
    - (iv) conspiring with others to effect the commission of the offence.
- (2) If the Commissioner suspects that an offence that is not corruption in public administration (an *incidental offence*) may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of corruption in public administration (whether or not the Commissioner has identified the nature of that corruption), then the incidental offence is, for so long only as the Commissioner so suspects, taken for the purposes of this Act to be corruption in public administration.
- (3) **Misconduct in public administration** means—
- (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
  - (b) other misconduct of a public officer while acting in his or her capacity as a public officer.
- (4) **Maladministration in public administration**—
- (a) means—
    - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
    - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
  - (b) includes conduct resulting from impropriety, incompetence or negligence; and
  - (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- (5) Without limiting or extending the conduct that may comprise corruption, misconduct or maladministration in public administration, this Act applies to conduct that—
- (a) occurred before the commencement of this Act; or
  - (b) occurs outside this State; or
  - (c) comprises a failure to act; or
  - (d) is conduct of a person who was a public officer at the time of its occurrence but who has since ceased to be a public officer; or



- (e) is conduct of a person who was not a public officer at the time of its occurrence but who has since become a public officer.
- (6) A reference in subsection (3) to a code of conduct does not include any statement of principles applicable in relation to the conduct of members of Parliament.

## Part 2—Independent Commissioner Against Corruption

### 7—Functions

- (1) There is to be an Independent Commissioner Against Corruption with the following functions:
  - (a) to identify corruption in public administration and to—
    - (i) investigate and refer it for prosecution; or
    - (ii) refer it to a law enforcement agency for investigation and prosecution;
  - (b) to assist inquiry agencies and public authorities to identify and deal with misconduct and maladministration in public administration;
  - (c) to refer complaints and reports to inquiry agencies, public authorities and public officers and to give directions or guidance to public authorities in dealing with misconduct and maladministration in public administration, as the Commissioner considers appropriate;
  - (ca) to identify serious or systemic misconduct or maladministration in public administration;
  - (cb) to exercise the powers of an inquiry agency in dealing with serious or systemic maladministration in public administration if satisfied that it is in the public interest to do so;
  - (cc) to exercise the powers of an inquiry agency in dealing with serious or systemic misconduct in public administration if the Commissioner is satisfied that the matter must be dealt with 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.
- (2) The Commissioner is not subject to the direction of any person in relation to any matter, including—
  - (a) the manner in which functions are carried out or powers exercised under this or any other Act; and
  - (b) the priority that the Commissioner gives to a particular matter in carrying out functions under this or any other Act.
- (3) The Attorney-General may request the Commissioner to review a legislative scheme related to public administration and to make recommendations to the Attorney-General for the amendment or repeal of the scheme.
- (4) The Commissioner is to perform his or her functions in a manner that—
  - (a) is as open and accountable as is practicable, while recognising, in particular, that—
    - (i) examinations relating to corruption in public administration must be conducted in private; and
    - (ii) other Acts will govern processes connected with how misconduct and maladministration in public administration is dealt with; and

- (b) deals as expeditiously as is practicable with allegations of corruption in public administration; and
  - (c) as far as is practicable, deals with any allegation against a Member of Parliament or member of a council established under the *Local Government Act 1999* before the expiry of his or her current term of office.
- (5) For the purposes of exercising his or her functions under subsection (1)(d) or (e), or for reviewing a legislative scheme under subsection (3), the Commissioner—
- (a) may conduct a public inquiry; and
  - (b) may regulate the conduct of the inquiry as the Commissioner thinks fit, (and, for the avoidance of doubt, the inquiry will not be a proceeding for the purposes of section 55).

## **Part 4—Procedures and powers**

### **23—Assessment**

- (1) On receipt by the Office of a complaint or report, the matter must be assessed as to whether—
- (a) it raises a potential issue of corruption in public administration that could be the subject of a prosecution; or
  - (b) it raises a potential issue of misconduct or maladministration in public administration; or
  - (c) it raises some other issue that should be referred to an inquiry agency, public authority or public officer; or
  - (d) it is trivial, vexatious or frivolous, it has previously been dealt with by an inquiry agency or public authority and there is no reason to reexamine it or there is other good reason why no action should be taken in respect of it, and a determination made as to whether or not action should be taken to refer the matter or to make recommendations to the Commissioner.
- (2) The Commissioner may also assess, or require the Office to assess, according to the criteria set out in subsection (1), any other matter identified by the Commissioner acting on his or her own initiative or by the Commissioner or the Office in the course of performing functions under this or any other Act.
- (3) The Office or the Commissioner may, for the purpose of assessing a matter, by written notice, require an inquiry agency, public authority or public officer to produce a written statement of information about a specified matter, or to answer specified questions, within a specified period and in a specified form, verified if the written notice so requires by statutory declaration.
- (4) A person must not refuse or fail to comply with a requirement of a notice under subsection (3).
- (5) Maximum penalty: \$10 000 or imprisonment for 2 years.

### **24—Action that may be taken**

- (1) If a matter is assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution, the matter must be—
- (a) investigated by the Commissioner; or
  - (b) referred to South Australia Police or other law enforcement agency.
- (2) If a matter is assessed as raising a potential issue of misconduct or maladministration in public administration, the matter must be dealt with in 1 or more of the following ways:
- (a) the matter may be referred to an inquiry agency;
  - (b) in the case of a matter raising potential issues of serious or systemic maladministration in public administration—the Commissioner may exercise the powers of an inquiry agency in dealing with the matter if satisfied that it is in the public interest to do so;

- (c) in the case of a matter raising potential issues of serious or systemic misconduct in public administration—the Commissioner may exercise the powers of an inquiry agency in dealing with the matter if the Commissioner is satisfied that the matter must be dealt with in connection with a matter the subject of an investigation of a kind referred to in subsection (1)(a) or a matter being dealt with in accordance with paragraph (b);
  - (d) the matter may be referred to a public authority and directions or guidance may be given to the authority in respect of the matter.
- (3) If a matter is assessed as raising other issues that should be dealt with by an inquiry agency, public authority or public officer, the matter must be referred, or the complainant or reporting agency advised to refer the matter, to the agency, authority or officer.
  - (4) If a matter is assessed as trivial, vexatious or frivolous, the matter has previously been dealt with by an inquiry agency or public authority and there is no reason to reexamine the matter or there is other good reason why no action should be taken in respect of the matter, no action need be taken in respect of the matter.
  - (5) The same matter, or different aspects of the same matter, may be dealt with contemporaneously under more than 1 subsection.

**Example—**

A matter that is assessed as raising a potential issue of corruption in public administration that could be the subject of a prosecution and a potential issue of misconduct or maladministration in public administration may be dealt with under both subsection (1) and subsection (2).

- (6) A matter may be dealt with under this section even if it is a matter referred to an inquiry agency or public authority under another Act.
- (7) The making of an assessment, and whether action is taken, and what action is taken, in respect of a matter is at the absolute discretion of the Commissioner and, if an assessment is modified in the course of dealing with the matter, the Commissioner may deal with the matter according to the modified assessment.
- (8) Subject to any directions of the Commissioner, reasonable steps must be taken to ensure that a complainant or reporting agency receives an acknowledgement of the complaint or report and is informed as to the action, if any, taken in respect of the matter.

# Appendix B

## *Police Complaints and Discipline Act 2016 (SA)*

The following extracts from the PCD Act appear as they were between 4 September 2017 to 6 October 2021. These were therefore the applicable provisions at all relevant times when OPI and ICAC were considering complaints made by Mr Lawton and Mr Fuller. (Note Part 3 of the PCD Act comprises sections 16 to 20 inclusive).

### **Part 1—Preliminary**

#### **8—Functions of OPI under Act**

The functions of the OPI under this Act are—

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

### **Part 2—Making complaints and reports**

#### **13—Action to be taken on receipt of complaint or report**

- (1) A designated officer or police public servant to whom a complaint is made must, as soon as is reasonably practicable (but in any event within 3 days) after the complaint is made, refer the complaint to the IIS in accordance with this section.
- (2) Subject to this Act, the OPI must, as soon as is reasonably practicable (but in any event within 3 days) after receiving a complaint or report, refer the complaint or report to the IIS in accordance with this section.
- (3) The OPI need not refer a complaint or report to the IIS if the complaint or report is, or is to be, referred to the ICAC under section 29.
- (4) A referral under this section must comply with any requirements determined by the Commissioner and approved by the ICAC.
- (5) The officer in charge of the IIS must, as soon as is reasonably practicable (but in any event within 7 days) after receiving a complaint or report under this section, cause the information required by the regulations in respect of the complaint or report to be recorded on the complaint management system.

#### **14—Assessment of complaints and reports by IIS**

- (1) Each complaint or report received by or referred to the IIS under this Act must be assessed as to whether—
  - (a) it raises a potential issue of corruption in public administration that could be the subject of a prosecution; or
  - (b) it raises a potential issue of misconduct or maladministration in public administration; or
  - (c) it raises some other issue that should, in the opinion of the officer in charge of the IIS, be referred to the OPI.
- (1) Subsection (1) does not apply to a particular complaint or report if—
  - (a) the conduct that is the subject of the complaint or report is being, or has previously been, assessed by the IIS, the OPI or the ICAC; or

- (b) the conduct that is the subject of the complaint or report has been previously dealt with under this Act, the *Police (Complaints and Disciplinary Proceedings) Act 1985* or the *Police Act 1998*; or
  - (c) the matter raised in the complaint or report is, in the opinion of the officer in charge of the IIS, trivial; or
  - (d) the complaint or report is, in the opinion of the officer in charge of the IIS, frivolous or vexatious or not made in good faith; or
  - (e) in the case of a complaint—having regard to all the circumstances of the case, an investigation of the complaint is unnecessary or unjustifiable.
- (2) Subject to this Act, an assessment under this section may be conducted in such manner as the officer in charge of the IIS thinks fit.
- (3) If a particular complaint is assessed as being a complaint referred to in subsection (1)(a) or (c), the officer in charge of the IIS must, in a manner and form determined by the OPI, notify the OPI of that fact.

### **15—Commissioner may decline to act in relation to certain complaints**

- (1) The Commissioner may decline to take further action in respect of a particular complaint or report if—
- (a) the conduct that is the subject of the complaint or report has been previously dealt with under this Act, the *Police (Complaints and Disciplinary Proceedings) Act 1985*, the *Police Act 1998* or the *Independent Commissioner Against Corruption Act 2012*; or
  - (b) the matter raised in the complaint or report is, in the opinion of the Commissioner, trivial; or
  - (c) the complaint or report is, in the opinion of the Commissioner, frivolous or vexatious or not made in good faith; or
  - (d) in the case of a complaint—having regard to all the circumstances of the case, the Commissioner is of the opinion that an investigation of the complaint is unnecessary or unjustifiable (including, to avoid doubt, where the alleged conduct of the designated officer concerned is not sufficiently related to the exercise, performance or discharge (or purported exercise, performance or discharge) of his or her official powers, functions or duties).

## **Part 3—Certain matters to be resolved by management resolution**

### **16—Application of Part**

- (1) This Part applies to matters of the following kinds:
- (a) a complaint or report determined by the Commissioner<sup>521</sup> to be a complaint or report that may be dealt with under this Part;
  - (b) an allegation relating to conduct of a designated officer of a kind determined by the Commissioner to be conduct that may be dealt with under this Part.
- (2) The Commissioner may vary or revoke a determination under this section.
- (3) On making or varying a determination under this section, the Commissioner must submit the determination or variation (as the case requires) to the OPI for approval.
- (4) A determination, or variation of a determination, has effect from the day on which it is approved by the OPI.
- (5) The Minister must cause notice of each determination, and each variation of a determination, to be tabled before both Houses of Parliament within 15 sitting days after the day on which it is approved.

### **17—Further matters relating to operation of Part**

- (1) The Governor may, by regulation—

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<sup>521</sup> Commissioner in the context of the PCD Act means the Commissioner of Police.

- (a) specify the kinds of complaints, reports and conduct that should, or should not, be the subject of a determination under section 16; and
  - (b) set out procedures for dealing with matters under this Part (including, to avoid doubt, making provision for the conciliation of complaints); and
  - (c) make further provisions relating to the operation of this Part.
- (2) The Commissioner must, in respect of the operation of this Part, have regard to, and seek to give effect to, the following principles:
- (a) the purpose of a management resolution under this Part is to avoid formal disciplinary proceedings by dealing with the matter as a question of educating, and improving the future conduct of, the designated officer concerned;
  - (b) management resolution of matters under this Part is to be conducted as expeditiously as possible and without undue formality.

### **18—Dealing with matters by way of management resolution**

- (1) A matter to which this Part applies is to be dealt with by the Commissioner causing the matter to be referred to a suitable member of SA Police (the resolution officer) for resolution in accordance with this Part.
- (2) Without limiting subsection (1), the resolution officer must ensure that—
- (a) the designated officer concerned is informed of the complaint, report or allegation made against him or her; and
  - (b) the designated officer is given the opportunity to inform the resolution officer of any information the designated officer thinks relevant in respect of the matter; and
  - (c) he or she contacts the person who made the complaint, report or allegation and—
    - (i) explains to the person that the matter is to be resolved under this Part (including an explanation of the processes involved and possible outcomes); and
    - (ii) gives him or her the opportunity to inform the resolution officer of any further information he or she thinks relevant in respect of the matter.
- (3) If—
- (a) the resolution officer is of the opinion that there would be a benefit in undertaking conciliation between the person who made the relevant complaint or allegation and SA Police; and
  - (b) the person agrees to undertake conciliation,
- the resolution officer must attempt to resolve the matter by way of conciliation.
- (4) In the course of a management resolution under this Part, the Commissioner may take action, or order the taking of action, of 1 or more of the following kinds in respect of the designated officer:
- (a) impose a restriction on the ability of the designated officer to work in a specified position, or to perform specified duties, within SA Police;
  - (b) remove, or impose conditions on, any accreditation, permit or authority granted by SA Police to the designated officer;
  - (c) provide the designated officer with counselling;
  - (d) issue the designated officer with a reprimand.
- (5) However, the Commissioner may only take action of the kind referred to in subsection (4)(a) or (b) if he or she is satisfied that—
- (a) the action is appropriate in order to—
    - (i) provide an opportunity for the designated officer to undertake remedial education or training; or
    - (ii) establish that the designated officer is competent and capable of carrying out specified duties; and

- (b) it is appropriate in all of the circumstances to take the action, having considered—
    - (i) the potential impact of the action on the designated officer concerned; and
    - (ii) the risks to other members of SA Police and the community of not taking such action.
- (6) If the Commissioner takes action of the kind referred to in subsection (4)(a) or (b), the Commissioner must—
  - (a) advise the designated officer of the remedial education or training to be undertaken, and the competencies (if any) required to be demonstrated before the relevant action will be revoked; and
  - (b) provide remedial education or training, and an opportunity to demonstrate the required competencies, to the designated officer as soon as may be reasonably practicable.
- (7) The Commissioner must revoke any action taken under subsection (4)(a) or (b) if—
  - (a) the designated officer successfully completes the required remedial education or training and has demonstrated to the Commissioner that the designated officer is competent and capable of carrying out specified duties; or
  - (b) a period of 3 months has elapsed since the action was taken, whichever occurs first.
- (8) Information obtained in the course of a management resolution under this Part is not to be used in relation to a prescribed determination relating to the designated officer concerned.
- (9) However, subsection (8) does not apply to information referred to in that subsection if the Commissioner is of the opinion that—
  - (a) the designated officer has engaged in a pattern of unsatisfactory conduct (whether the conduct is of the same kind or of different kinds) or unsatisfactory performance (as contemplated by section 46 of the *Police Act 1998*); and
  - (b) it is appropriate for the information to be used in relation to a prescribed determination relating to the designated officer, having first sought and considered any views of the designated officer as to the use of the information.
- (10) On completion of a management resolution under this Part, the resolution officer must inform the designated officer concerned and the person who made the relevant complaint, report or allegation of the outcome of the management resolution.
- (11) In this section—
 

**prescribed determination** means—

  - (a) a determination relating to the promotion or transfer of a designated officer (whether on application or otherwise); and
  - (b) a determination relating to an award of a medal or other accolade (however described); and
  - (c) any other determination prescribed by the regulations for the purposes of this definition.

### **19—Reporting results of management resolution of matter**

- (1) The resolution officer must, in accordance with any requirements set out in the regulations, prepare a report in relation to each matter dealt with by way of management resolution under this Part.
- (2) The resolution officer must cause a copy of a report under subsection (1) to be provided to—
  - (a) the IIS; and
  - (b) the designated officer concerned.

- (3) The officer in charge of the IIS must, as soon as is reasonably practicable (but in any event within 7 days) after receiving a report under subsection (2), cause the information required by the regulations in respect of each matter dealt with by way of management resolution under this Part to be recorded on the complaint management system.

## **20—Monitoring of management resolutions under Part**

The Commissioner must cause all matters dealt with under this Part to be monitored and reviewed with a view to maintaining proper and consistent practices.

## **Part 4—Formal proceedings for breach of discipline**

### **21—Investigations of complaints and reports by IIS**

- (1) Subject to this Act, each complaint or report referred to the IIS under this Act must be investigated by the IIS.
- (2) Subsection (1) does not apply to a particular complaint or report if—
  - (a) the complaint or report is dealt with, or is to be dealt with, under Part 3; or
  - (b) the complaint or report is, or is to be, referred to the ICAC under section 29; or
  - (c) the conduct that is the subject of the complaint or report is being, or has previously been, assessed by the IIS, the OPI or the ICAC; or
  - (d) the conduct that is the subject of the complaint or report has been previously dealt with under this Act or the *Police (Complaints and Disciplinary Proceedings) Act 1985*; or
  - (e) the matter raised in the complaint or report is, in the opinion of the officer in charge of the IIS, trivial; or
  - (f) the complaint or report is, in the opinion of the officer in charge of the IIS, frivolous or vexatious or not made in good faith; or
  - (g) in the case of a complaint—having regard to all the circumstances of the case, the officer in charge of the IIS is of the opinion that an investigation of the complaint or report is unnecessary or unjustifiable (including, to avoid doubt, where the alleged conduct of the designated officer concerned is not sufficiently related to the exercise, performance or discharge (or purported exercise, performance or discharge) of his or her official powers, functions or duties).
- (3) Subject to this Act, an investigation may be conducted in such manner as the officer in charge of the IIS thinks fit.
- (4) A member of the IIS may, for the purposes of an investigation, make inquiries and obtain information, property, documents or other records relevant to the investigation, as he or she thinks fit.
- (5) A member of the IIS may, for the purposes of the investigation, direct a designated officer to furnish information, produce property, a document or other record, or answer a question, that is relevant to the investigation.
- (6) For the purposes of this Act and the *Police Act 1998*, a direction given by a member of the IIS under subsection (5) has effect as if it had been given by the Commissioner.
- (7) A member of the IIS must, before giving any direction under subsection (5) to the designated officer whose conduct is under investigation, inform the officer of— (a) the time and place at which the conduct is alleged to have occurred; and (b) the nature of the alleged conduct.
- (8) Subsection (7)(a) does not apply if the time and place at which the conduct is alleged to have occurred is not known.
- (9) Subsection (7) does not apply if the member of IIS believes on reasonable grounds that so informing the designated officer may prejudice the investigation.
- (10) Without limiting any other provision of this or any other Act, a designated officer who—



- (a) without reasonable excuse, refuses or fails to furnish information, produce property, a document or other record or answer a question when so required under this section; or
  - (b) furnishes information or makes a statement to a member of the IIS knowing that it is false or misleading in a material particular, may be dealt with under this Act for a breach of discipline.
- (11) If a designated officer is directed under subsection (5) to furnish information, produce property, a document or record or answer a question, the officer is not excused from complying with the direction on the ground—
- (a) that the furnishing of the information, the production of the property, the document or record or the answering of the question—
    - (i) would be contrary to the public interest; or
    - (ii) would contravene the provisions of any other enactment; or
  - (b) that the information, the property, the document or record or the answer to the question might tend to show that he or she has committed a breach of discipline.
- (12) A designated officer may refuse to furnish information, produce property, a document or record or answer a question if the information, the property, the document or record or the answer to the question might tend to incriminate him or her or a close relative of his or hers, but a designated officer who does so refuse may be dealt with under this Act for a breach of discipline.
- (13) A designated officer who furnishes information, produces property, a document or record or answers a question is not liable to a penalty under the provisions of any other law prohibiting such an act if the act is done in compliance with a direction given by a member of the IIS under this section.
- (14) The officer in charge of the IIS may, subject to any directions of the Commissioner, require a police officer not serving in the IIS to assist the IIS in conducting investigations under this section or to conduct investigations on behalf of the IIS, and, in that event, the provisions of this section apply as if the police officer were a member of the IIS.
- (15) This section does not limit or affect the powers or duties that a police officer would have apart from this Act in connection with the investigation of an offence.

## **Part 5—Oversight of complaints and reports by OPI etc**

### **27—OPI may direct Commissioner etc in relation to handling of complaints and reports**

- (1) Without limiting any other power or function of the OPI, the OPI may, in relation to a complaint or report, give such directions to the Commissioner, the IIS or to a police officer assisting in an investigation or conducting an investigation on behalf of the IIS as the OPI thinks fit.
- (2) Without limiting the generality of subsection (1), a direction may include—
  - (a) a requirement that the IIS or a specified person provide specified information relating to a specified complaint or report; or
  - (b) a requirement that the IIS or a specified person produce to the OPI a specified document or record relating to a specified complaint or report that is under the control of SA Police; or
  - (c) the methods to be employed, the matters to be investigated or the evidence to be obtained in relation to a specified investigation or class of investigations.
- (3) A direction—
  - (a) must be by notice in writing; and
  - (b) may only be given after consultation with the officer in charge of the IIS.
- (4) The OPI may, by notice in writing, vary or revoke a direction.
- (5) The Commissioner must ensure that any direction under this section is complied with without undue delay.

## **28—Reassessment of certain complaints and reports by OPI**

- (1) The OPI may, within 3 business days after the information required by the regulations relating to an assessment of a complaint or report by the IIS is entered in the complaints management system, do 1 or both of the following:
  - (a) reassess the complaint or report;
  - (b) substitute its assessment of the complaint or report for that entered in the complaints management system (and the substituted assessment will, for the purposes of this Act, be taken to be the assessment of the IIS in respect of the complaint or report).
- (2) The OPI may only take action under subsection (1) after consultation with the officer in charge of the IIS.
- (3) The officer in charge of the IIS must, as soon as is reasonably practicable (but in any event within 7 days) after becoming aware of a substituted assessment under subsection (1)(b), cause the information required by the regulations in respect of the substituted assessment to be recorded on the complaint management system.

## **29—OPI may refer complaints and reports to ICAC**

- (1) The OPI may refer a complaint or report to the ICAC if the OPI is satisfied that the complaint or report relates to matters that should be dealt with by the ICAC under this Act or the *Independent Commissioner Against Corruption Act 2012*.
- (2) For the purposes of the *Independent Commissioner Against Corruption Act 2012*, a complaint or report referred under this section will be taken to be a complaint or report received under that Act.
- (3) The ICAC may give such directions as he or she thinks fit to the Commissioner in relation to a complaint or report referred under this section or a related complaint or report (including, to avoid doubt, a direction that the Commissioner not take, or stop taking, specified actions in respect of the complaint or report).

## **30—ICAC may investigate matters under section**

- (1) The ICAC may investigate under this section a complaint or report referred to the ICAC under section 29 if the ICAC is satisfied that it is appropriate to do so.
- (2) The ICAC may, on its own initiative, investigate under this section any other complaint or report if the ICAC is satisfied that it is appropriate to do so.
- (3) If the ICAC investigates a complaint or report under this section, the ICAC must (unless the ICAC is of the opinion that to do so may prejudice the investigation) notify the Commissioner, by writing, of the matter to be investigated and furnish him or her with particulars of the matter.
- (4) In investigating a complaint or report under this section, the ICAC will be taken to have all the powers of a member of the IIS.

## Appendix C – Terms of Reference

The Attorney-General has requested that I, Philip Strickland, Inspector, review the Office for Public Integrity (OPI) and Independent Commissioner Against Corruption (ICAC)'s involvement in the matter described as PIR18/E1725.

I conduct this review pursuant to Schedule 4, clause 2(1)(c) of the Independent Commission Against Corruption Act 2012 (ICAC Act).

My review will examine ICAC and OPI's involvement in matter PIR18/E1725, including:

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

The areas of the matter that will be the subject of the review include:

1. The decision by OPI in February 2019 to confirm the determination of the Internal Investigation Section (IIS) of SAPOL not to proceed with the investigation in relation to possible criminal charges arising from the purchase of Mt Lyndhurst Station by Mr Lawton (the Lawton matter).
2. The decision by the Deputy Commissioner dated 3 July 2019 not to take further action in relation to the Lawton matter.
3. The decision by Commissioner Vanstone dated 20 October 2020 not to take further action in relation to the Lawton matter.
4. Whether the Lawton matter raised issues of corruption, misconduct or maladministration which required OPI or ICAC to further investigate the matter.

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 D – Amended Terms of Reference

The Attorney-General has requested that I, Philip Strickland SC, Inspector, review the Office for Public Integrity (OPI) and Independent Commissioner Against Corruption (ICAC)'s involvement in the matter described as PIR18/E1725 (in fact relating to PIR18/E17253). In this matter Mr Lawton made a complaint of criminal conduct in relation to his purchase of an interest in the Mt Lyndhurst Pastoral Station. South Australia Police (SAPOL) commenced an investigation into the complaint but then determined to terminate the investigation. Mr Lawton (and later Mr Fuller) complained about the conduct of various SAPOL officers in relation to the termination of the criminal investigation.

I conduct this review of the above matter pursuant to Schedule 4, clauses 2(1)(b) and 2(1)(c) of the Independent Commission Against Corruption Act 2012 (ICAC Act).

My review will examine ICAC and OPI's involvement in the above matter, including:

Whether there was evidence of corruption, misconduct or maladministration on the part of ICAC, OPI or employees of ICAC or OPI.

- Whether there was unreasonable delay in the conduct of investigations under the ICAC Act.
- Whether there were unreasonable invasions of privacy by ICAC, OPI or employees of ICAC or OPI.
- Whether undue prejudice to the reputation of any person was caused.
- Whether the practices and procedures of ICAC and OPI were effective and efficient.
- Whether ICAC and OPI carried out functions in a manner that was likely to assist in preventing or minimising corruption in public administration.

The areas of the matter that will be the subject of the review include:

1. The decision by OPI on about 6 February 2019, when reviewing the assessment of the Internal Investigation Section (IIS) of SAPOL and the management resolution process undertaken under the Police Complaints and Discipline Act 2016 (SA) (PCD Act), to not reassess the complaint nor substitute its assessment of the complaint pursuant to s 28(1) of the PCD Act and to take no further action.
2. The decision by Mr Riches on 3 July 2019 to take no further action in relation to the above matter other than writing to the Commissioner of Police about the need to provide timely and accurate explanations to persons who have an interest in an investigation.
3. The decision by Mr Lander on 12 August 2019<sup>522</sup> to take no further action in relation to the above matter.
4. The decision by the OPI on about 13 December 2019, when reviewing the assessment of the IIS to take no action in relation to a further complaint made by Mr Lawton and Mr Fuller, to not reassess the complaint nor substitute its assessment of the complaint pursuant to s 28(1) of the PCD Act and to take no further action.
5. The decision by Commissioner Vanstone on 20 October 2020 to take no further action in relation to the above matter.
6. Whether the above matter raised issues of corruption, misconduct or maladministration which required OPI or ICAC to further investigate the matter or take any other action.

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<sup>522</sup> The Amended Terms of Reference originally stated this date as 12 October 2019 – this was an error and the correct date is 12 August 2019.

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 E – Authorisations

On 9 March 2023 I informed Commissioner Vanstone of the Attorney-General's request for me to review this matter and sought an authorisation pursuant to section 54 of the ICAC Act.<sup>523</sup>

On 21 March 2023 Commissioner Vanstone issued me with two authorisations.

The first authorised me, pursuant to section 54(5) of the ICAC Act, to publish or cause to be published information in relation to or connected with ICAC Matters 2019/002345 and 2019/002957, being complaints made by Mr Lawton and Mr Fuller to SAPOL and the OPI and dealt with under the PCD Act, insofar as that information is contained within any report on the review I was asked by the Attorney-General to conduct into those matters notwithstanding that the information would otherwise fall within section 54(5)(a)-(f) of the ICAC Act.<sup>524</sup>

The second authorised me, pursuant to section 46 of the PCD Act, to publish or cause to be published information in relation to or connected with ICAC Matters 2019/002345 and 2019/002957, being complaints made by Mr Fuller and Mr Lawton to SAPOL and the OPI and dealt with 54(5)(a) under the PCD Act, insofar as that information is contained within any report on the review I was asked by the Attorney-General to conduct into those matters, notwithstanding that the information would otherwise fall within section 46(1)(a)-(f) of the PCD Act.<sup>525</sup>

On 29 August 2023 Commissioner Vanstone issued me with a standing authorisation pursuant to s 54 of the ICAC Act. This authorisation was not specific to my review of the complaints made by Mr Lawton and Mr Fuller. By this authorisation Commissioner Vanstone approved me as a person who may give authorisations to disclose information and a person who may give authorisations to publish information (where that disclosure or publication would otherwise be prohibited pursuant to section 54 of the ICAC Act) subject to the following two conditions:

1. that I form the opinion that the disclosure or publication is necessary in order for me to perform my functions as the Inspector; and
2. that any publication does not include information from which a complainant or reporter or an employee or former employee of the Commission could be identified.<sup>526</sup>

Commissioner Vanstone's authorisation issued on 29 August 2023 did not specifically revoke her earlier authorisations issued on 21 March 2023. At the time I did not consider that any revocation had occurred. I did not raise this issue with Commissioner Vanstone at the time.

On 14 September 2023, the Director of the OPI, Ms Emma Townsend, issued me with a standing authorisation pursuant to section 54 of the ICAC Act. This authorisation was not specific to my review of the complaints made by Mr Lawton and Mr Fuller. By this authorisation Ms Townsend approved me as a person who may give authorisations to disclose information and a person who may give authorisations to publish information (where that disclosure or publication would otherwise be prohibited pursuant to section 54 of the ICAC Act) subject to the following five conditions:

1. that I form the opinion that the disclosure or publication is necessary in order for me to perform my functions as the Inspector;
2. any disclosure does not include information from which a complainant or reporter could be identified or located, except where the disclosure is made to the complainant or reporter, or the

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<sup>523</sup> Exhibit 390 (Volume 5) – Email and letter to Commissioner Vanstone, 9 March 2023.

<sup>524</sup> Exhibit 260 (Volume 4)

<sup>525</sup> Exhibit 260 (Volume 4)

<sup>526</sup> Exhibit 391 (Volume 5) – Authorisation from Commissioner Vanstone, 29 August 2023.

complainant or reporter has provided consent for that information to be disclosed to a third party; and

3. any disclosure does not include information from which an employee or former employee of the Office for Public Integrity could be identified, unless the identity of the employee or former employee is already known by the complainant or reporter; and
4. with respect to any disclosure, the recipient is advised that the information disclosed is confidential pursuant to section 54 of the Act and cannot be further disclosed or published without authorisation of the Commissioner, the Director of the OPI or the Inspector; and
5. any publication does not include information from which a complainant or reporter; or, an employee or former employee of the Office for Public Integrity, could be identified.<sup>527</sup>

On 3 October 2023, Ms Townsend, issued me with two standing authorisations pursuant to the PCD Act. Neither authorisation was specific to my review of the complaints made by Mr Lawton and Mr Fuller.

By the first authorisation Ms Townsend approved me as a person who may give authorisations to disclose information (where that disclosure would otherwise be prohibited pursuant to section 45(3) of the PCD Act) subject to the following five conditions:

1. that I form the opinion that the disclosure is necessary in order for me to perform my functions as the Inspector; and
2. the disclosure does not include information from which a complainant or reporter could be identified or located, except where the disclosure is made to the complainant or reporter or the complainant or reporter has provided consent for that information to be disclosed to a third party; and
3. the disclosure does not include information from which a designated officer or former designated officer could be identified, except where the disclosure is made to the designated officer or former designated officer or unless the identity of the designated officer or former designated officer is already known by the complainant or reporter; and
4. the disclosure does not include information from which an employee or former employee of the Office for Public Integrity could be identified unless the identity of the employee or former employee is already known by the complainant or reporter; and
5. the recipient is advised that the information disclosed is confidential pursuant to section 45 and 46 of the [PCD] Act and cannot be further disclosed or published without authorisation of the Commissioner of Police, the ICAC, the OPI or the Inspector.

By the second authorisation, Ms Townsend approved me as a person who may give authorisations to publish information (where that publication would otherwise be prohibited pursuant to section 46(1) of the PCD Act) subject to the following four conditions:

1. that I form the opinion that the publication is necessary in order for me to perform my functions as the Inspector; and
2. the publication does not include information from which a complainant or reporter could be identified or located; and
3. the publication does not include information from which a designated officer or former designated officer could be identified; and

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<sup>527</sup> Exhibit 392 (Volume 5) – Authorisation from Ms Townsend, 14 September 2023.

4. the disclosure does not include information from which an employee or former employee of the Office for Public Integrity could be identified.

On 12 December 2023 I sought an authorisation from Ms Townsend pursuant to section 45 of the PCD Act to enable me to disclose some information within my possession to former SAPOL officer Mr Osborn (the ‘management resolution officer’ in this matter) and to Former Senior OPI Employee 1 in order that they may each provide me with written evidence in the form of a statutory declaration.<sup>528</sup>

On 14 December 2023 Ms Townsend authorised me, pursuant to section 45(3) of the PCD Act, to disclose information to both of these individuals that would otherwise be prohibited pursuant to section 45(3) of the PCD Act, despite that information identifying complainants who had not provided prior consent to the disclosure, on the basis that both individuals were already aware of the identity of the complainants having dealt with previous complaints by them.<sup>529</sup>

On 18 March 2024 I received a letter from Commissioner Vanstone about a number of matters that I was reviewing including this matter. In this letter Commissioner Vanstone informed me that when she had issued the general authorisation to me on 29 August 2023, she had included a condition that did not permit me to name any current or former Commission employees on the basis that this would apply generally including to this matter. Commissioner Vanstone informed me that she now revoked her authorisation dated 21 March 2023 specifically relating to this matter. Commissioner Vanstone provided me with reasons for why she did not consider it appropriate for the names of employees and former employees to be published including the potential negative impact on the mental health and wellbeing of such employees.<sup>530</sup>

Enclosed with Commissioner Vanstone’s letter was a new authorisation, dated 18 March 2024, issued pursuant to section 46 of the PCD Act. This authorisation authorised me to publish or cause to be published information in relation to or connected with ICAC Matters 2019/002345 and 2019/002957, being complaints made by Messrs Fuller and Lawton to South Australia Police and the Office for Public Integrity and dealt with under the *Police Complaints and Discipline Act 2016*, insofar as that information is contained within any report on the review I have been asked by the Attorney-General to conduct into those matters, notwithstanding that the nature of the information would otherwise fall within section 46(i)(a) to (f) of the *Police Complaints and Discipline Act 2016*. This authorisation was subject to the following two conditions:

1. that I form the opinion that the publication is necessary in order for me to perform my functions as Inspector; and
2. that any publication does not include information from which an employee or former employee of the Commission could be identified.<sup>531</sup>

On 26 March 2024 Commissioner Vanstone wrote to me primarily in relation to another matter I was reviewing. However, within that letter Commissioner Vanstone confirmed her position regarding the naming of Commission employees and former employees. Commissioner Vanstone stated that she was now of the view that separate authorities for different matters should not be issued and that it is preferable to standardise the approach to all such matters by only keeping in force the general approval she issued to me on 29 August 2023. Commissioner Vanstone stated that she revoked the specific authority relating to the Lawton and Fuller matter, so that that matter, too, can be governed by the general approval. Commissioner Vanstone also noted I remain free to publish the names of the

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<sup>528</sup> Exhibit 393 (Volume 5) – Letter to Ms Townsend, 14 September 2023.

<sup>529</sup> Exhibit 374 (Volume 5) – Authorisation from Ms Townsend, 14 December 2023.

<sup>530</sup> Exhibit 388 (Volume 5) – Letter from Commissioner Vanstone, 18 March 2024.

<sup>531</sup> Exhibit 389 (Volume 5) – Authorisation from Commissioner Vanstone, 18 March 2024.



Commissioners and former Deputy Commissioners as they are statutory office holders (not employees).<sup>532</sup>

On 28 March 2024 I wrote to Commissioner Vanstone seeking authorisation pursuant to section 54 of the ICAC Act to publish the names of the complainants in this matter, being Lawton and Fuller (as condition 2 of the authorisation issued on 29 August 2023 did not permit publication of these names). In the same letter I requested that Commissioner Vanstone consider whether she wished to issue a further authorisation pursuant to section 46 of the PCD Act which related to ICAC file 2021-001428 which also related to Lawton and Fuller and which was a file I had reviewed in conducting my review of this matter (but was not a file dealt with under the PCD Act).<sup>533</sup>

On 10 April 2024 Commissioner Vanstone responded advising that she considered the existing publication authorisations issued by her were sufficient to enable me to name Mr Lawton and Mr Fuller in this Report. Commissioner Vanstone also informed me that she did not consider any further authorisation relating to ICAC file 2021-001428 was required.<sup>534</sup> I have accepted Commissioner Vanstone's views about these matters.

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<sup>532</sup> Exhibit 394 (Volume 5) – Letter from Commissioner Vanstone, 26 March 2024.

<sup>533</sup> Exhibit 397 (Volume 5) – Letter from Inspector to Commissioner Vanstone, 28 March 2024.

<sup>534</sup> Exhibit 398 (Volume 5) – Letter from Commissioner Vanstone, 10 April 2024.

# Appendix F – Mr Fuller’s submission

## SUBMISSION OF MICHAEL FULLER

DRAFT REPORT 2024/MM

REVIEW of PIR 18 E 17253 and Complaint of Michael Fuller

TO: Inspector Strickland

### **Denial of procedural fairness to me and Judge Fuller:**

1. You refer to the principle of *procedural fairness* as having application to the process of your review and cite in the footnote to paragraph 85 **Kioa v West and Applicant VEAL of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs.**
2. You confine the application of the principle to the right of a person “whom I have included adverse information or made an adverse finding about in this Report” to make a submission in response to passages in the report.
3. I contend that when uttered by you the words *procedural fairness* are token only and in application by you empty of substance.
4. I say firstly that in the context that I am one complainant amongst others, subject to or concerned in, an immediate past and/or current review conducted or being conducted by you, that I am entitled to equal treatment by you, but have been unfairly discriminated against.
5. Secondly that you have declined and refused to receive my complaint and its accompanying documentation into evidence denying to me the opportunity to present evidence to meet new and/or previously unknown material in the course of the process of your review.
6. You have declined and refused me that opportunity despite and in the face of repeated requests by me to afford me that opportunity.
7. Then finally, after providing me with your draft report in purported compliance with the principles of *procedural fairness* demonstrate how token it is by refusing my requests for copies of the statutory declarations of Osborn, Longsdon, and Phillips and the Complaints Management System entries containing Osborn’s resolution report which you have accessed.
8. Contrastingly you have offered this opportunity to others (Hanlon and Lawton that I am aware of)) but not to me. Let us see in due course whether I am uniquely discriminated against.

9. I assert that active discrimination against me will be proven should other reports, yet to be released, reveal that complainants and/or interested parties have been accorded that opportunity, which is a central pillar of the observance of the principle of *procedural fairness*.
10. I refer you to **Bellinz v FCT (1998) 155 ALR 220 @ 232-3** “where a decision maker, including the Commissioner of Taxation, has a discretion, a principle of fairness will require that that discretion be exercised in a way that does not discriminate against taxpayers.”
11. Understand from this that the citation above is one of general application, not to be construed as confined to taxpayers.
12. I was first entitled to be heard, and on oath, then with Judge Fuller entitled to be heard, in relation to matters in contention and to give evidence in response to new material not previously known to either of us.
13. If this wasn’t enough you have, contrary to the acknowledged limits of your statutory mandate explored contentious material in relation to the circumstances of the termination of the investigation of **PIR 18/E 1725**.
14. You have taken statutory declarations from ODPP officers Phillips and Longsdon, interviewed officers from CECB including Della Sala, and then made “findings” that officers of CECB had acted appropriately in and about the termination of the investigation.
15. Those “findings” are made in the context, and notwithstanding that, you have at the commencement of your review amended the terms of reference forwarded to you by the Attorney General to reflect your opinion that your jurisdiction did not entitle you to enquire into and/or make “findings” in relation to the conduct of SAPOL officers concerned in the decision to terminate the investigation.
16. What then did you immediately do?
17. Incredibly, you as the first order of business, embark on an enquiry into the conduct of SAPOL officers involved in the investigation and its termination and in the result make “findings” that everybody in SAPOL CECB acted appropriately.
18. As observed above you did not grant to me and to Judge Fuller the opportunity to be heard in relation to the “lie”. “the lie” was before you in the notes of Judge Fuller of conversations she had and e/mails

she exchanged with Della Sala. It was also contained in her testimony before the Select Committee.

19. Similarly “ the lie” is described by me in the anecdotal record of communications had by Lawton with Della Sala by telephone on speaker phone in my presence. I too gave testimony about the lie to the Select Committee. “The lie” was asserted and described by Lawton in his testimony to the Select Committee.
20. It can be asserted, and I do assert against you, that you have abandoned the very premise upon which you altered the terms of refence, declined and refused to hear sworn testimony from me and neglected to hear sworn testimony from Judge Fuller.
21. This conduct was not simply a denial of procedural fairness to me and to Judge Fuller ( and for that matter to Lawton also) but was by any measure “ a device” employed to, on a superficial level, make positive “findings” (“findings” in relation to matters expressed by you to the Attorney General as beyond your jurisdiction) of **appropriate conduct** by those SAPOL officers.
22. These findings you then call in aid of your ultimate “finding” that departures from the requirements of PCDA by IIS, OPI, Cop, and Osborn which you “find” relevantly “wrong” do not matter or attract consequence in the result because nothing in those departures and subsequent suppression of them {about which I have more to say later ) has had any effect on the outcome which would have been the case had full disclosure of the “true” circumstances surrounding the termination of **PIR/18 E 1725** been made as you have found them to be
23. I am entitled to and have been entitled in accordance with *procedural fairness*, to have had from you without request, *a fortiori*, upon request, any new information and all of the new information relied upon, or regarded by you as material to your proposed decision making.
24. I was entitled to this information (including that information inappropriately obtained) in timely fashion after it came to light in the course of your inappropriate enquiry into the circumstances of the termination of the investigation, and your enquiry into the facilitation by OPI of the subsequent *faux* Management Resolution (MR) of Lawton’s complaint to Cop 3 December 2018.

25. Then and only then would I have had the opportunity to put before you through me or other witnesses sworn testimony including in particular from Judge Fuller, to deal with new information previously unknown to me, information adverse to me, adverse to Judge Fuller or comment by you adverse to me or to Judge Fuller.
26. For the last category example in relation to me paragraphs 403 to 405. In relation to Judge Fuller you have left hanging in the air, so to speak an imputation of unprofessional conduct.
27. To have done as above was a requirement of *procedural fairness*.
28. Had you taken from me and Judge Fuller sworn evidence in relation to the “lie”, you would have been bound to call also Della Sala, Yeomans from CECB, and Phillips, Longsdon from ODPP.
29. Had you pursued that *procedurally fair* course of action, you well knew I say, would have presented an insurmountable obstacle for you get by in order to have ignored “the lie” as you have done.
30. I can assume that the “adverse comments” in your report have been circulated to a number of the interested parties. \*
31. The adverse comment in relation to Judge Fuller carries with it an imputation of breach by her of the Legal Profession Conduct and Bar Council conduct rules.
32. It is defamatory of her and has been relevantly “published”.
33. Your publication of this slur on her professional conduct is scandalous.
34. As an officer of the Court and a senior counsel it was incumbent upon you as a matter of simple courtesy, to seek a private audience with her to agitate any concerns that you had before being enshrining them in your draft report, published to a number (presently unknown) of interested parties and then served upon her in purported compliance with *procedural fairness* for her to answer.
35. Your conduct was unprofessional, intentional, carried with it an imputation of unprofessional conduct on her part and was relevantly “published”. Shame on you!
36. You ought to have known as a Senior Counsel that Judge Fuller was and continues to be constrained by reason of her judicial office from engaging with you to contend any findings or imputations

affecting her or any matter of controversy canvassed in your draft report with which she was familiar or was involved.

37. You ought to have, if you wished to obtain any comment or further contribution from her in relation to your fact finding, followed protocol and have summonsed her to give sworn evidence.
38. Not as you have scandalously done presented her with a draft report and invited her to make a submission!
39. To facilitate her appearance before the Select Committee the clerk to the Legislative Council issued her with a summons to appear and give evidence. She then sought and obtained as a formality the consent of the Chief Judge to provide testimony.
40. This is the protocol you ought to have followed. As a senior counsel there is no excuse available to of mistake or ignorance for this scandalous conduct.
41. Your failure to accord to me and to Judge Fuller procedural fairness is exacerbated by your failure to observe protocol in providing to her a proper avenue for response to your slurs and innuendo.
42. What you have wrought you now cannot undo. Your conduct is not simply an egregious denial of *procedural fairness* but professional misconduct.
43. This denial to me and to Judge Fuller of procedural fairness exacerbated by your misconduct in dealing with Judge Fuller is sufficient to render any final report you now deliver utterly lacking in probity.

**Errors, omissions to interview material witnesses, and false reasoning:**

44. You have relevantly found that the approval by OPI of the recommendation by IIS to refer the matter of Lawton's complaint to Cop of 3 December 2018 for MR was "in error" but notwithstanding that finding ultimately do not ascribe to that finding evidence of corruption, misconduct, or maladministration in public administration by any of the persons named in my "relevant complaint".
45. I will shortly examine this finding of "error" in conduct by OPI (sic senior assessor), where it leads in terms of other actors, and the consequences that necessarily flow to those actors.

46. Your ultimate justification for a conclusion that there is no evidence of corrupt conduct, misconduct, or maladministration in public administration by any of the *dramatis personae* at OPI/ICAC from senior assessors to Director, from Deputy ICAC, to successive ICAC, to successive ICAC Reviewers is based on false reasoning.
47. False reasoning because it has as its premise that departures from statutory prescription in dealing with Lawton's complaint to Cop and my and Lawton complaint to OPI are of no legal consequence.
48. Of no legal consequence because you have found on a skewed exploration of the facts (attended by a lack of *procedural fairness* described above) that the termination of PIR 18/E 1725 was not attended by impropriety, and therefore everything that happened afterward was irrelevant.
49. This results from false reasoning.
50. Let us now expose that reasoning for the sophistry that it is.
51. You acknowledge that the "Sect 16 Determination" was lawful and binding on Cop and OPI.
52. As such it was a statutory instrument executed in August/September 2017 by Cop for SAPOL and for OPI by Riches its then director.
53. Regardless of non-compliance with Sect 16 (5) PCDA by Cop and Riches at OPI (which meant it was not public knowledge) it was in force and binding (as a statutory instrument) on Cop/IIS and OPI/ICAC at the time of Lawton's complaint to Cop 3 December 2018 and my and Lawton's complaint to OPI 29 January 2019.
54. There can be no dispute that the Section 16 Determination was known or was presumptively known to be operative and binding by and on each of the Chief Superintendent IIS, Cop, OPI assessors.
55. The fact of the Section 16 Determination was known to each of Director OPI F. W. Stroud, Deputy ICAC M Riches, ICAC Lander, ICAC Vanstone, ICAC Reviewers Duggan and Sulan when I appealed to each of them to make proper enquiry into my allegations.
56. The fact of the existence of the Section 16 Determination and its binding nature was however not known to me until August 2019.
57. **Until August 2019 I was ignorant. Ignorant of all that which was known to each person I appealed to.**

58. When known to me it figured heavily in my e/mail to Lander of 6 September 2019 in which I analysed for him to register in his mind the provisions of PCDA and PCDR as they should have impacted on Lawton's complaint to Cop and my and Lawton's complaint to OPI, but from the information imparted in Riches e/mail to me of 3 July 2019 had been manipulated and perverted by Cop, IIS, facilitated (wittingly or unwittingly) by senior assessor/s at OPI.

59. **From the knowledge gained by you (now imparted to me in your draft report) of the fact of entries in the IIS maintained Complaints Management System by Osborn, including his "resolution report" and the uplifting of those entries to the OPI maintained Case Management System is the evidence of that same knowledge by all those I have along the way appealed to at OPI/ICAC to intervene.**

60. **On and after her appointment the Section 16 Determination was presumptively known to ICAC Vanstone. I delivered to her a confidential "for her eyes only" brief of all the anecdotal history of complaint.**

61. What I sought from Lander, Vanstone, Duggan and Sulan was for them and each of them a report of what if anything was in the IIS managed Complaints Management System by way of entry with respect to the dealing with Lawton's complaint to Cop 3 December 2018 and my and Lawton's complaint to OPI of 29 January 2019. Duggan said he called for and examined the OPI file.

62. We now know from your draft report that at all material times from 6 December 2018 the date when the MR response was set in motion up to and including 11 December 2018 when a senior OPI assessor approved of the recommendation of IIS that Lawton complaint be referred to MR Case Management entries were being entered up in the OPI system and by 29 January 2019 the fact of the completion of the MR process (including a failed conciliation attempt) had been recorded in the IIS Complaints Management System and uploaded to the OPI Case Management System.

63. Let us now consider where your finding paragraph 189 "*It follows that I do not agree that it was appropriate for the IIS to consider the complaint to be one suitable for MRP. THE OPI erred in agreeing with the IIS that the matter should be dealt with by MRP and*



*taking no action. The OPI should have issued a direction to the IIS under s 27 (1) of the PCD Act that the matter should not be dealt with by MRP” leads when considered in the context of other Sections of PCDA which you have overlooked.*

64. Before doing so I observe that your finding above was, that there had been a clear breach of the statutory imperatives of PCDA by both of IIS and OPI having regard to the terms of the Section 16 Determination.
65. The two institutions mandated by PCDA to protect and ensure protection of the public interest in complaints by citizens against Police being openly and transparently processed in accordance with law i.e. PCDA and PCDR had in this instance found by you to have failed comprehensively.
66. There is no excuse for this failure. If it is intentional conduct it was relevantly “misconduct”, if it was negligent (not contestable) it was relevantly “maladministration”.
67. What do you find I ask rhetorically? Nothing I answer!!
68. By virtue of Sect 5 (3) PCDA IIS reports directly to Cop.
69. If and when IIS assesses a complaint as suitable for MR it is bound to refer its assessment as a recommendation to OPI (and to Cop), and then OPI either approves that recommendation or disagrees with it-Section 8 (a) PCDA .
70. In this case a senior assessor at OPI was notified by IIS of the particulars of the complaint and the recommendation of IIS that it be dealt with by MR and OPI endorsed that recommendation.
71. If OPI disagrees with an assessment and/or recommendation OPI then is required to substitute its own assessment and either refers the matter to ICAC or back to IIS with appropriate direction Cop.- see Sections 28 & 29 PCDA (acknowledged by you).
72. In this case the recommendation by IIS and approved by OPI was to refer Lawton’s complaint for MR.
73. The recommendation by IIS to refer Lawton’s complaint (to Cop 3 December 2018) for MR was clearly and indisputably wrong as was OPI’s approval of it as you have identified.
74. I now fast forward to **paragraph 224 “ There is no evidence to indicate that the Cop was personally aware of Mr. Lawton’s**

**complaint or of Osborn's MRP**". This quotation is underlined and in bold for emphasis.

75. It is a conclusion so demonstrably wrong to the point of absurdity in the context of PCDA requirements and the obvious incontrovertible fact known to you that Lawton's complaint was made to Cop personally, that he was thereby constituted the "designated officer". But there is more that I can and below bring to bear.
76. This absurd statement cannot be withdrawn. It renders this review a farcical, incompetent exercise proof positive of my allegation that you and Plummer have been since your respective commencement of function by your writings and now by this draft report unfit for office.
77. After receipt of Lawton's complaint and its acknowledgement of receipt he Cop then knew everything there was to know about the circumstances of the termination of PIR 18/E 1725 and the gravamen of Lawton's complaint to him.
78. Cop was then required to keep the complainant informed- see Section 9 PCDA but did not so. Cop did not inform Lawton that IIS had recommended that his complaint be dealt with by MR, that OPI had approved that recommendation, and that he Cop had implemented that recommendation by the appointment of Osborn.
79. Cop was the person to appoint the "resolution officer" and must have done so. See Section 18 (1). He appointed Osborn.
80. It follows that IIS was knowingly "wrong" to have made the recommendation for MR, OPI was knowingly "wrong" to have approved the recommendation, and Cop was knowingly "wrong" to have countenanced it, and knowingly "wrong" then to have implemented it by the appointment of Osborn as resolution officer.
81. Because it was knowing conduct in breach of a statutory imperative it was and is evidence of "misconduct".
82. It further follows that Cop would have been kept informed by IIS. This has to be so because Cop may disregard any assessment by IIS- see particularly section 15 (d) PCDA. See also section 18 (4) PCDA- Cop may intervene in MR.
83. Cop as previously stated failed in his statutory obligation Sect.6 PCDA to keep Lawton informed, in fact he did not

communicate at all with Lawton after acknowledging receipt of Lawton's complaint.

84. Thereafter as you acknowledge Osborn did not comply with Sects.18 (2) (c) (i) and (ii) PCDA and inform Lawton that Lawton's complaint had been referred to him for MR and explain to Lawton the process.
85. Osborn's intrusion into the mix has to be, (but is not by you), seen in the context of a total vacuum of information conveyed to him and to me: No advice or information from Cop, IIS, or for that matter OPI that any process pursuant to PCDA has been triggered and is underway.
86. Osborn's communication is on its face deceptive and misleading in the context of the vacuum of information.
87. Cop likely knew of the text of the Osborn communication given that he appointed Osborn knowing that the process he thereby implemented was illegitimate having regard to the section 16 determination to which he personally was a signatory.
88. **What we have now revealed, the significance of which you decline see or understand, is firstly, an egregious knowing manipulation and perversion of the process of dealing with Lawton complaint between 3 December 2018 and 29 January 2019 presided over by COP, implemented by IIS and Osborn, and approved of by a senior assessor OPI.**
89. **From 29 January 2019 the compounding of that egregious knowing manipulation and perversion of the process of dealing with Lawton complaint in the process of dealing with my and Lawton complaint to OPI of 29 January 2019.**
90. **The persona involved now include the, or another senior assessor OPI, IIS, Cop, presided over by F. W. Stroud (directorOPI), M. Riches deputy ICAC, and B. Lander ICAC.**
91. **Since the date of the uplifting of the entries in the SAPOL Complaints Management System to the OPI Case Management System there is undeniable knowledge in every officer in OPI, Riches, successive ICAC, Lander and Vanstone, successive Reviewers Duggan and Sulan of the MR entries with respect to the Lawton complaint.**

92. **It is astonishing, but having regard to the statement by you in paragraph 224 demonstrating your total lack of grasp of the facts and the statutory regime of PCDA impacting the decisions of IIS, Cop, and OPI, with respect to Lawton complaint to Cop and my and Lawton complaint to OPI, your review has totally miscarried.**
93. **Error is not retrievable.**
94. The purported investigation (not MR) conducted by Osborn over Lawton's protest and which reported to Lawton a finding of "no conduct issues" was actually a clandestine MR process conducted by Osborn of which Cop had to have been aware and approved of.
95. There exists to your knowledge now what can only be described as a fictitious account of the clandestine MR in the Complaints Management System controlled by IIS which has been uplifted at some point in time (undisclosed) and incorporated in the Case Management System maintained by OPI.
96. The knowledge of all of this is acquired and ultimately the shared knowledge at various points in time by Cop, IIS, OPI (a senior assessor and the director OPI Fraser W. Stroud), ICAC (Lander, Riches), Osborn, successive ICAC Reviewers (Duggan and Sulan), and more recently ICAC Vanstone.
97. Ultimately after Riches in his e/mail to me of 3 July 2019 exposes to me the hitherto unknown to me and to Lawton clandestine MR process conducted by Osborn I make a final submission to Lander (which later is incorporated in my submission to Vanstone) 5 September 2019.
98. This submission you mention but do not recite from. Deliberately perhaps?
99. It is a comprehensive essay of complaint by me which canvasses all the relevant provisions of PCDA and makes the case against him Lander and all those under him for knowing and active suppression of what can now only describe as **"misconduct" by OPI personnel (in bold and underlined by me for emphasis)**
100. I made the case to Duggan and Sulan.
101. Finally I made the case to Vanstone.
102. All of them were likely possessed, at the relevant time of respective involvement, of the knowledge in the Case Management

System uploaded from the Complaints Management System maintained by IIS containing the entries with respect to the clandestine MR resolution of Lawton's complaint to Cop.

103. There is no opportunity now for any of them to deny that they were put on enquiry by my complaints and submissions and no room for misunderstanding.
104. **Each and every one of Cop, successive Chief Superintendents IIS, Osborn, OPI assessors, F. W. Stroud director OPI, M. Riches Deputy ICAC, Lander ICAC, successive ICAC Reviewers Duggan and Sulan, and lately ICAC Vanstone have either been actors in the manipulation and perversion of the PCDA complaints system and process or accomplices after the event by active suppression of the truth in the face of my complaints.**
105. **To dismiss this reality as not deserving of consequence to these actors is an absurdity, but unsurprising in the light of your statement in paragraph 224.**
106. I refer you to a passage in the speech of Lord Reid in the seminal case *Ridge v Baldwin* [1964] 1 AC 40 @ p 68 dealing with the determinates for the application of the rules of natural justice (in that case the dismissal of a police constable). His Lordship opined that it was very doubtful whether the argument that it could have made no difference could be used as an excuse for not complying with the rules of natural justice (underlining mine)
107. I say to you Inspector *a fortiori* when it is not principle at play but a mandated requirement under a statutory regime i.e. PCDA and PCDR
108. **Each of them whom I have addressed overtime have in the face of my complaints to each of them actively suppressed from exposure to me the knowledge that they had.**
109. **All of your conclusions in paragraphs 393 to 401, your statement at paragraph 402 is an indictment of you and your forensic failures for all to see upon tabling in both the Houses of Parliament and the exposed total lack of probity.**
110. **You now stoop to the role of bully to castigate me and threaten me in paragraphs 403 to 405 with prosecution!!**

**111. By reason of the comprehensive denial of natural justice to me and to Judge Fuller, your scandalous conduct directed at her and in circumstances in which you have not accorded her the respect of by observing protocol I DEMAND THAT YOU PUBLISH THIS SUBMISSION WITH YOUR REPORT.**

**112. A failure to publish this submission will be a matter of exacerbation of already incompetent conduct of the review itself and of your scandalous conduct directed at Judge Fuller.**

**Michael Fuller 22/04/ 2024**

## Appendix G – Chronology

Date	Details
10 May 2018	SAPOL first aware of Mr Lawton's allegations against C as Ms Fuller's letter enclosing Lawton's statutory declaration and annexures delivered to MFIS.
5 Jun 2018	Bolingbroke consults with SAPOL forensic accountants in relation to Lawton's statutory declaration and annexures.
12 Jun 2018	Bolingbroke has an informal meeting with DPP solicitor Mr Phillips where Bolingbroke provided Mr Phillips with Ms Fuller's letter. Mr Phillips suggested that the offence of Unlawful Bias in a Commercial Relationship could be considered.
28 Jun 2018	Mr Phillips emails Bolingbroke advising that, assuming Ms Fuller's summary is accurate, there would be a prima facie case of deception by omission.
29 Jun 2018	IAG meeting held by SAPOL – decision made to investigate Lawton's allegations against C. Investigation allocated to Della Sala.
3 Jul 2018	Bolingbroke informs Ms Fuller that a police incident report has been created.
15 Aug 2018	Della Sala meets with DPP solicitor Mr Longson and provides him with a file comprising Ms Fuller's letter, Lawton's statutory declaration and annexures.
29 Aug 2018	Della Sala meets with DPP solicitor Mr Longson. Mr Longson expresses the view that the matter is a civil matter.
5 Sep 2018	IAG meeting held by SAPOL – decision made to terminate investigation into Lawton's allegations against C.
10 to 12 Sep 2018	Della Sala informs Mr Lawton and Ms Fuller about decision to terminate investigation into Lawton's allegations against C.
17 Sep 2018	Ms Fuller emails Della Sala to request for further information about the potential offences that SAPOL referred to the DPP for advice and opinion and the DPP advice.
9 Oct 2018	Letter from Yeomans to Mr Lawton advising Mr Lawton's allegations against C did not warrant further criminal investigation by SAPOL.
22 and 23 Oct 2018	Ms Fuller discusses allegations with DPP solicitor Mr Phillips and follows up with email correspondence to Mr Fuller the next day.
26 Oct 2018	Mr Lawton writes to Yeomans seeking an explanation regarding the termination of the investigation.
5 Nov 2018	Yeomans writes to Mr Lawton in relation to termination of investigation.
3 Dec 2018	Mr Lawton complaints to the CoP and DPP about the termination of the investigation of his allegations against C.
4 Dec 2018	Mr Kimber SC advises Mr Lawton that his office has <i>"never been asked to provide any formal advice to SA Police, nor has it received any brief from SA Police. There has only been some informal contact which has not reached the point of this Office having any responsibility"</i> .
6 Dec 2018	Mr Lawton emails CoP forwarding correspondence from Mr Kimber SC dated 4 Dec 2018.
11 Dec 2018	IIS provides assessment of Mr Lawton's 3 Dec 2018 complaint to the OPI via the complaint management system. The OPI reviews the IIS' assessment.
12 Dec 2018	Mr Lawton emails CoP about his 3 Dec 2018 complaint.
14 Dec 2018	Emails between Osborn and Mr Lawton.
9 Jan 2019	Mr Fuller is appointed as a Director of Company E (alongside Mr Lawton).
21 to 25 Jan 2019	Mr Lawton and Mr Fuller complain in writing to the OPI about SAPOL's decision to terminate the investigation into Lawton's allegations against C.

25 Jan 2019	Letter from Osborn to Mr Lawton in response to his 3 Dec 2018 complaint.
29 Jan 2019	Mr Lawton and Mr Fuller meet with two OPI staff members in relation to their complaint and a handwritten complaint is signed by Mr Lawton and Mr Fuller against the CoP, Yeomans and Bolingbroke. Two folders of information are provided by Mr Lawton and Mr Fuller.
31 Jan 2019	OPI referred Mr Lawton and Mr Fuller's Jan 2019 complaint to the IIS.
1 and 4 Feb 2019	Mr Fuller emails the OPI raising a number of issues for the OPI to consider in relation to the Jan 2019 complaint and provides a draft and then final response to Osborn.
5 Feb 2019	Information regarding IIS's assessment of Jan 2019 complaint including Osborn's Management Resolution Report is uploaded to the complaint management system.
6 Feb 2019	OPI reviews IIS's assessment of Jan 2019 complaint which includes reviewing the decision to join the Jan 2019 complaint to the 3 Dec 2018 complaint.
12 Feb 2019	OPI review outcome is recorded.
14 Feb 2019	OPI assessor emails Officer in Charge of IIS, Curtis, querying whether Mr Lawton and Mr Fuller would be advised of the outcome of their Jan 2019 complaint. IIS informs OPI that Mr Fuller and Mr Lawton would be contacted about the outcome.
14 and 15 Feb 2019	Mr Fuller emails the OPI complaining about the time taken by IIS to investigate his complaint and requesting that the complaint be referred to ICAC.
19 Feb 2019	Curtis writes to Mr Lawton about the outcome of his complaints and informs Mr Lawton that his 3 Dec 2018 complaint was dealt with by MRP. Curtis advises Mr Lawton that his Jan 2019 complaint had been reviewed and Curtis was satisfied that no conduct issues had been identified regarding SAPOL officers and as such no further action would be taken.
20 to 25 Feb 2019	Mr Fuller sends voluminous correspondence to the OPI.
22 Feb 2019	Mr Fuller complains to Reviewer Duggan about the conduct of OPI officers.
27 Feb 2019	Former Senior OPI Employee 1 sends Mr Fuller a detailed email requesting further information and particularisation of his complaint.
12 Mar 2019	Mr Fuller provides OPI Senior Employee 1 with further particulars as requested.
15 Mar 2019	Memorandum prepared by an OPI employee addressing further particulars provided by Mr Fuller in his 12 March 2019 email. Meeting between memo author, Mr Riches and Former Senior OPI Employee 1 about the same.
15 Mar 2019	Former Senior OPI Employee 1 emails Officer in Charge of EPSB with background to Lawton/Fuller complaints about discrete issue of whether the MFIS ever got advice from the DPP prior to terminating investigation.
15 Mar 2019	OPI advises Mr Fuller that his complaint is being reviewed by Mr Riches and that a further update would be provided in due course.
15 to 19 Mar 2019	Mr Fuller emails the OPI and ICAC several times largely repeating previous allegations, but also levelling serious allegations against Former Senior OPI Employee 1.
19 Mar 2019	Mr Riches decides not to exclude Former Senior OPI Employee 1 from dealing with the matter and advises Mr Fuller that he was seeking further information from SAPOL. Regarding Mr Fuller's allegations concerning Former Senior OPI Employee 1, Mr Riches provided information about the Reviewer's jurisdiction.



22 Mar 2019	Former Senior OPI Employee 1 writes to Officer in Charge of EPSB seeking further information about the exact nature of any legal advice received from the DPP.
17 Apr 2019	Bolingbroke emails IIS Inspector regarding initial assessment of Ms Fuller's brief.
26 Apr 2019	Officer in Charge of EPSB writes to Former Senior OPI Employee 1 and provides Bolingbroke's email dated 17 April 2019.
3 May and 14 Jun 2019	Former Senior OPI Employee 1 seeks further clarification from Officer in Charge of EPSB.
18 to 25 Jun 2019	Former Senior OPI Employee 1 obtains further information from Trenwith about the names of the two DPP solicitors who provided advice to SAPOL and why those names should not be disclosed to Mr Lawton and Mr Fuller.
28 Jun 2019	Mr Fuller complains to Mr Lander.
3 Jul 2019	Mr Riches writes a detailed letter to Mr Fuller advising him of the outcome of his review. Mr Riches declined to take further action save for writing to SAPOL about the need for timely and accurate information to be provided to complainants. Regarding Mr Fuller's allegations concerning OPI employees and Mr Riches himself, Mr Riches directs Mr Fuller to Reviewer Sulan.
9 Aug 2019	Mr Fuller emails Mr Lander renewing complaint about Former Senior OPI Employee 1 and Mr Riches.
12 Aug 2019	Mr Lander advises Mr Fuller that he is satisfied that Mr Fuller's complaint has been dealt with appropriately and that there is no point in further communicating with him in relation to it.
14 Aug 2019	Mr Riches writes to the CoP about the need for timely and accurate information to be provided to complainants.
15 Aug to 6 Sep 2019	Mr Fuller sends further emails to Mr Lander largely repeating previous allegations. No response is sent per Mr Lander's decision on 12 Aug 2019.
2 Dec 2019	Mr Lawton and Mr Fuller make new complaint to the Deputy CoP and seven Assistant Commissioners of Police. Complaint ostensibly arises out of "new information" from Mr Riches' 3 July 2019 letter.
13 Dec 2019	The Acting Officer in Charge of the IIS, Isherwood, advises Mr Fuller and Mr Lawton that their complaint had already been dealt with and that he determined to take no further action pursuant to section 15(a) of the PCD Act.
13 Dec 2019	The OPI review's IIS' assessment of 2 Dec 2019 complaint including IIS's decision to take no further action. The OPI determine to take no further action.
7 Oct 2020	Mr Fuller and Mr Lawton complain to Commissioner Vanstone about Mr Lander, Mr Riches, Former Senior OPI Employee 1 and other OPI employees about the handling of the 3 Dec 2018 and Jan 2019 complaints.
20 Oct 2020	Commissioner Vanstone advises Mr Fuller of her determination to take no further action in relation to his 7 Oct 2020 complaint on the basis that she was satisfied that his previous complaint had been dealt with appropriately.
3 Nov to 15 Dec 2020	Further emails from Mr Fuller to Commissioner Vanstone. Most of Mr Fuller's emails repeat earlier allegations or complaints, however he raised a new issue about Commissioner Vanstone's evidence before the CPIPC and in particular her acceptance and reliance of Mr Riches' letter dated 3 July 2019. Neither the Commissioner, ICAC or the OPI responded to Mr Fuller.

8 Apr 2021	Reviewer Sulan attends the OPI and views some of the complaints management system entries relating to Mr Lawton's and Mr Fuller's complaints.
9 Apr 2021	Reviewer Sulan advises Mr Fuller about the enquiries he undertook and states that he is satisfied that there is no evidence of corruption, improper conduct or misconduct by officers of ICAC or OPI.
9 to 10 Apr 2021	Mr Fuller emails Reviewer Sulan complaining that he has not interrogated the correct system (being the complaint management system required to be maintained under the PCD Act).
13 Apr 2021	Reviewer Sulan writes to Mr Fuller confirming that the system he viewed was the 'complaint management system' required to be maintained under the PCD Act and provided to the OPI pursuant to section 6(3) of the PCD Act.
30 Nov 2021	The Committee delivers its Final Report.
6 Mar 2023	Letter from the Attorney-General to the Inspector referring to the Committee's Final Report and requesting that the Inspector undertake a review of ICAC and the OPI's involvement in the 'PIR18/E1725' matter.
5 Aug 2023	Mr Fuller emails the Inspector about his complaint dated 3 Aug 2023 delivered to Office of the Inspector's GPO Box on 4 Aug 2023.