CRIME AND PUBLIC INTEGRITY POLICY COMMITTEE

PUBLIC INTEGRITY

Plaza Room, Parliament House, Adelaide

Thursday, 10 December 2020 at 2:10pm

(OFFICIAL HANSARD REPORT)

PARLIAMENT OF SOUTH AUSTRALIA

WITNESSES

MEMBERS:

Hon. F. Pangallo MLC (Presiding Member)
Hon. J.E. Hanson MLC
Hon. D.W. Ridgway MLC
Hon. A. Koutsantonis MP
Mr D.R. Cregan MP
Mr S.P. Murray MP

WITNESS:

VANSTONE, ANN, Independent Commissioner Against Corruption

3752 The PRESIDING MEMBER: Welcome, commissioner. Thank you for being here. I am the Hon. Frank Pangallo, the Presiding Member of the Crime and Public Integrity Policy Committee. I would like to thank you for appearing before the committee today. The Legislative Council has given the authority for this committee to hold public hearings. However, due to the current situation concerning COVID-19, the committee has resolved to exclude strangers from the gallery.

The proceedings will be broadcast to the public online via the Parliament of South Australia website. Hansard will be recording your evidence today. The executive officer will forward you a copy of the transcript for your examination. Please notify him if you wish for any clerical corrections to be made. Should you wish at any time to present confidential evidence to the committee, please indicate and the committee will consider your request.

Parliamentary privilege is accorded to all evidence presented to the committee and, therefore, protects the witnesses from any legal action arising in regard to the evidence. However, witnesses should be aware that privilege does not extend to statements made or documents circulated outside of this meeting. The committee will consider any documents presented to it and will determine whether the documents will be received and form part of the evidence. All persons, including members of the media, are reminded that the same rules apply as in the reporting of parliament.

Commissioner, I would like to introduce the members of our committee. To your left are Steve Murray, the member for Davenport; Dan Cregan, the member for Kavel; and the Hon. David Ridgway. To your right are the Hon. Justin Hanson and the Hon. Tom Koutsantonis, member for West Torrens. Would you like to introduce yourself, commissioner, and make an opening statement?

The Hon. A. VANSTONE: Thank you very much, Mr Chairman. I am pleased to have the opportunity to come to address you. I thought I would start by telling you something about what I found when I arrived at the office of the independent commissioner. I took up my position on 2 September this year, so I have been there just over three months. The first impressions I have formed of the office are that it's very well organised and very well run, and that's a tribute to my predecessor, the Hon. Bruce Lander QC, and a tribute to his deputy and now my deputy, Michael Riches, and all the leaders at the office.

I am extremely impressed with the culture. They are a group of committed, diligent individuals who respect the organisation and its charter, and they operate with great integrity. If South Australians knew a lot more of the office and how it's run and the sort of people who staff it, they would be very proud. I think the committee knows my staff are not public servants. They are on contracts of varying lengths of time, generally around three years, so there is a degree of turnover within the office.

I, of course, have had a steep learning curve. The act is complicated, as the members know, and the office itself is quite complicated. It has a lot of different sections, which I will mention in a minute. But all those parts of it are important and they work effectively, both in

themselves and collaboratively, with other divisions. I have always found that multidisciplinary teams are wonderfully fruitful and good to work in.

So we have our own corporate services section, and that includes our own finance and business section and our own HR. Most separate entities such as us wouldn't have that. For instance, the Ombudsman relies on the Attorney-General for those sorts of services. We have our own technical and ICT specialists, and we finance that ourselves. Again, for instance, the Ombudsman relies on the Attorney-General for his information systems. Our systems are standalone and they're super strong and that, of course, is expensive.

Then we have a prevention and communication section. Not enough attention is given to that, I believe, and, indeed, I have been struck by it. Prevention is a fundamental part of our role and it's at least as important, in my view, as investigating isolated instances of corruption. That's self-evident in a way because one can investigate corruption when it becomes apparent, but it's far more effective to prevent it from occurring. We can do a great deal in that regard, and we do.

We do evaluations, as you probably know, and they're in-depth examinations of particular agencies. We have done, for example, SafeWork SA, the Public Trustee and the City of Playford. Indeed, the City of Playford has just, in the last few days, published a whole new policy framework, which is informed by the recommendations we made. We are currently evaluating the Department for Correctional Services, which is a huge department, of course. It takes up much public funding and is important.

Our evaluations are not just useful to the particular agency that they are focused on. Others pick them up as well and use our recommendations. Indeed, the SafeWork SA evaluation was picked up interstate and my deputy has spoken interstate about that evaluation, the lessons learned from it and the recommendations contained within it. Then there's education, and again it's easy just to wipe that off and think, 'Well, everyone does a bit of that.' But again it's very important because public officers need to understand what their obligations are in terms of reporting and they need to understand the guidelines that operate and oblige them to make reports.

We also publish a lot of written material and we make speeches. My deputy, our research officer, our principal legal officer and I are all involved in informing public officers in South Australia of their obligations. So we are in demand. I just want to impress that, fundamental to our role is our prevention strategy and role. And, from what I have seen, I think we are very good at it. It is a large part of what we do. There is a tendency abroad to assess our success—the success of ICAC—in terms of convictions. With great respect to those who hold that view, in my view it's entirely myopic. A prosecution that leads to an acquittal does not imply an inadequate investigation. Moreover, we don't prosecute: we investigate. If a matter goes to trial, it's a decision made by the Director of Public Prosecutions.

If it goes to trial, then the director prosecutes it. If it leads to an acquittal, that's simply the criminal justice system at work. It is hard to get convictions in the superior courts. I haven't looked it up, but I would think that the conviction rate in the superior courts is about 50 per cent. In my day as a prosecutor, back in the late seventies, eighties and early nineties, it could have been a bit higher, I am not sure, but these days it has gone down a bit.

Even if one of our matters does go to trial and even if there's an acquittal or an acquittal of some charges, we always take out lessons from that. We always gain in terms of the advice we give to the particular agency from where the matter emanated, the information we disseminate and the recommendations we make to them to prevent recurrences of that sort of conduct. Corruption gets its foot in the door when there's maladministration. That's how it begins. There's some sort of corruption risk because of maladministration and corruption takes hold if there's some sort of individual there who is minded to take advantage of it.

As the committee knows—and I am going to say a bit more now about maladministration and misconduct—the office of the commissioner commenced late in 2013. Originally its charter of corruption, maladministration and misconduct was very wide. In 2016, the role, with respect to maladministration and misconduct, was reduced or circumscribed by some changes to section 24. From then the commissioner could only investigate serious or systemic maladministration and misconduct, and only if it was in the public interest to do so.

So investigations of maladministration and misconduct in recent times have been a very small part of our work. I think it has been reducing to the extent where I wonder whether the committee has any idea of how many such investigations we have on at the moment. Of course you don't, because you cannot know, but I can tell you: zero—and I don't anticipate that we will have any, unless something extraordinary happens that needs immediate attention, immediate investigation, and is something important that requires that. That is my view of where maladministration and misconduct sit in terms of our role. Having said that, though, I want to emphasise that I don't see that there is a bright line between misconduct and maladministration and corruption. As I said, they are linked, because maladministration can give rise to corruption.

Corruption generally starts in a small way. People exploit some sort of weakness, and they do so in a small way and, as they get more confident, if there is no redress they keep doing it and it grows. Even if corruption is nipped in the bud, and it is quite small when it is found out about and investigated, that doesn't mean that it wasn't going to lead on to something big.

I want to say something about the committee's review. My office received an electronic copy on 2 December, and I admit that I have not read it thoroughly—I just haven't had time to do that. But, one point I picked up when I skimmed through the recommendations and some of the text was that it is thought that we should refocus our attention on corruption. It will be immediately apparent from what I have just said that there is no refocusing to be done: we are firmly focused on corruption.

Indeed, in a sense that has always been the case—it is a question of degree—because section 3 of the act has always had it that the independent commissioner focuses, as a primary object, on corruption. But, of course, there are degrees of that and judgement may vary about what is important and what should take the time. I am happy to answer questions that might arise from that review, but I don't pretend that I have achieved a working knowledge of it yet.

I would like also to touch on the establishment of the select committee in the Legislative Council. I have read *Hansard* of 2 December, and I see that the committee is to examine, among other things, damage, harm and adverse outcomes relating to ICAC investigations and prosecutions which have ensued. I confess that I am perplexed at this initiative, absolutely perplexed. I ask myself: what is the point of this? Anyone reading the transcript of *Hansard* might infer that ICAC operates outside a regulatory framework and acts like cowboys and neither of those things is true in the least. Nothing could be further from the truth.

Let me just take a moment, if I may, to expand on our regulatory regime. It goes without saying that parliament set up ICAC and parliament decided what powers ICAC would have. It provided the rules that govern us and the powers that we have, which are significant. They are a bit more than the police have. They are significant. They are given to us in recognition of the fact that corruption is insidious, it's hard to uncover and it's hard to get evidence of it. So we need those powers. But associated with those powers that we are given, including the power to seek warrants and hold private examinations, are checks and balances.

First, we have a reviewer, as the committee knows, whose duties include generally examining our operations and the exercise of our powers; determining whether there has been undue delay, invasions of privacy or damage to reputation; examining whether our practices and procedures are efficient and effective; and making recommendations. The reviewer—of course, that's the Hon. John Sulan QC—can ask for anything he wants from us. In fact, he has open access to all our IT, all our documents. We are perhaps not essentially a paperless office but largely a paperless office.

Every document we have is on our system, and Mr Sulan, from his remote location, can go straight into any file that he wants to examine and read it. I am not saying that he has to do it remotely; he can also come into our office and talk to me and my deputy and my officers. He can refer matters back to me under the legislation, under the schedule, or he can refer matters to a public authority. He reports to the Attorney-General, and the Attorney-General then reports to both houses. Mr Sulan is the second reviewer in the time of ICAC; the Hon. Kevin Duggan AM QC was the first one. That's the first check and balance.

Then, if there's a person whom we are investigating who is aggrieved, he can take judicial review action in the Supreme Court. If he claims we have acted outside our jurisdiction, he

can argue that in the Supreme Court. Or, if he's already in the court system as an accused person, he can argue that we have acted unlawfully and ask for evidence to be excluded. Then, in relation to our use of powers under the commonwealth Telecommunications Act, an aggrieved person can go to the commonwealth Ombudsman and argue that we have exceeded our powers there.

Then there is this committee, and the legislative imperative of this committee is to inquire into our operation, the performance of our functions and the exercise of our powers, which is, with respect, a very wide brief. We are not afraid of examination or scrutiny. We expect it, of course. If significant powers are given, there should always be checks and balances. That's the framework within which we operate. But in my submission we are amply regulated and overseen.

So what is the allegation against us? If it's reputational damage that we have inflicted, it should be remembered that our act is set up to prevent that. It's the very reason why the hearings we have are in private. They must be in private, unlike New South Wales, where of course they are in the public arena, and plainly reputational damage is inflicted there. Section 3 of our act requires us to avoid undue prejudice to a person's reputation; we are required to do that.

Of course, we are not a court; we don't make findings against anyone in the corruption area. We just investigate. The New South Wales regime is quite different. They can actually make findings of corruption against someone that stand. Even if that person goes on to trial and is acquitted, that finding of corruption stands. Of course, in that context, there has been discussion of exoneration protocols, but that's a very different system from ours.

We conduct our investigations in private, just as the police do, and the matter becomes public when it goes to court, if it does. When we complete an investigation, we may or may not send it to the Director of Public Prosecutions. Many times, we don't. That doesn't mean we won't have achieved something out of it. We generally will have located areas of weakness, corruption risk, within that agency, and we can report to them about that.

If it does go to the DPP, like me he is independent. The DPP decides whether to prosecute. He decides what charges will be prosecuted. He only prosecutes if there are reasonable prospects of conviction and if it's in the public interest to do so, and then he is responsible for the prosecution in court.

I would just like to offer a word of caution to those persons who might be interested in trawling through ICAC's history. Of course, that history has really nothing to do with me. None of the matters that were mentioned in *Hansard* that I read about had anything to do with me, but I am of course an interested observer. If Mr Lander or former investigators—because I think they are all former investigators—are asked to justify their actions in any of those previous matters, if that happens, they will be setting out, laying out, if you like, to the select committee what evidence they acted on.

A lot of that will previously have been unseen. For instance, there might be evidence that a witness gave to investigators but the witness didn't come up to proof at trial, or the witness might have died before trial, or that evidence might have been excluded by the judge for one reason or another. The witness might have disappeared. The DPP might have chosen not to prosecute certain matters. But that doesn't change the fact that those investigators and Mr Lander had all that information before them when they were making decisions about proceeding with an investigation and going to the DPP with it if they chose to. If that evidence comes out, that might be very embarrassing to people who were being investigated. That person might have been acquitted, but that person still would not want that sort of evidence and the reasons why he was investigated, charged and tried, to be aired.

It would be ironic if a committee of the upper house, in attempting to redress a perceived slight of reputation, led to the airing of evidence that damned that reputation. That's just a note of caution that I offer.

Then the question is: is it suggested that we abuse our power? That brings me to a matter which gained some recent publicity and which was described as an error in regard to the installation of surveillance devices. I know the committee can't really ask me about this because of section 15O, because it's a current investigation, if for no other reason, but I read that certain things have been said about that conduct, that error, which I might say emerged in the reviewer's annual report.

Far from evoking shades of what happened in East Timor or being scandalous or raising serious questions or being possibly corrupt conduct, I suggest that this incident attests to the integrity of ICAC—not that I can claim credit for that; of course it happened before my time. But this is almost an ideal incident to describe the level at which ICAC operates.

I just remind the committee that the Supreme Court had issued a warrant enabling installation of surveillance devices in a government department building. There was one device, one or more, that could film what was happening in that room, and there was another one to record the audio. The condition was the audio could only be recorded when a certain person was in the room, the person of interest. It was known there was going to be an important meeting in that room, and that's why those devices were installed there.

Just go back a step. The Supreme Court only grants a warrant on sworn evidence of an investigator or legal officer of the ICAC, and in that sworn evidence, done by affidavit, the investigator sets out what is being investigated, what is being done to investigate that issue and how it is thought that the granting of a warrant and the gathering of some sort of live product will advance that investigation.

That all goes before a Supreme Court judge absolutely openly—well, nothing is held back from the judge; of course, it happens in chambers—and by and large, we find that the Supreme Court judges grant those warrants. I have never known one to be refused. There might be slight differences to the length of time over which the warrant is to operate or how many devices, but by and large they are granted.

So these devices were installed. We don't have the capacity to do that ourselves. There are specialists who do that, and in an organisation as small as ours we can't afford to employ those people, so we use either SAPOL or an interstate agency. They had the devices that they were to install pursuant to our warrant. They put them in the first meeting room, meeting room 1, and important information was gained on day one.

Then it was learned that that meeting was to be transferred to a different meeting room the next day, so they were instructed that they needed to move them to meeting room 2. As it happened, they couldn't both retrieve the original devices and install them or new ones in the second meeting room. They did not have enough time. That agency—not ICAC but that agency—decided, 'That's alright. We'll disable the original devices and use new ones in meeting room 2.'

That wasn't immediately communicated to our director of investigations but, as soon as it was, he put a stop to it all. He instructed the agency to quarantine the product that had been gained from meeting room 2 and to quarantine the notes that had been made by the agency, not us, of the meeting room 2 events. He instructed the reviewer as to what had happened, he got the director of our legal section to advise the Supreme Court of what had happened—the judge who had granted the warrant—and he told the commissioner straightaway.

And so, once it was known, nothing more could have been done. No more steps could have been taken to rectify that error, which was not our error at all. So all I can do is repeat: this to me shows our integrity. Remember, if the director of operations and the commissioner had decided, if they had got their heads together and said, 'Well, we won't let this see the light of day. This was a bad scene, but it didn't really matter, and the other devices were turned off anyway and what does it matter?' No-one would ever have known about it.

It was us who published the event, the 'error' as it was called, to the reviewer and to the court. So where could any criticism be levelled at us over that incident? I actually think it demonstrates the depth of integrity of our organisation. Anyway, even if it were an error of ours, which of course it wasn't, as I have told you, an error doesn't equate with an abuse of power. They are two different things. Everyone makes errors, all human beings make errors, but an abuse of power is some sort of deliberate misuse of a power that has been given, and that was nothing like that. That was something that was unfortunate, but it was immediately rectified. I'm glad to have had the opportunity to mention that matter. Those are the only remarks I would like to make in opening.

3753 The PRESIDING MEMBER: Thank you, commissioner. Perhaps I will address those remarks you made in relation to the select committee. As you would know, I called for that committee. I will just say that I didn't do that lightly and it was as a result of representations that had been made

to me over a period of a year and a half from people who had been subjected to ICAC inquiries and then were either acquitted of those charges or the matter just did not even proceed, and they felt that they were quite aggrieved by it.

I think you would accept that to be named in an ICAC investigation is probably one of the most severe penalties that somebody could have on their reputation, and these people feel that their reputation has been tarnished perhaps forever. They had no recourse to try to find some kind of exoneration for matters that just didn't exist as far as they were concerned. That was essentially part of the reason we decided to investigate their claims: because they had nowhere else to go.

Are you saying to this committee that all the cases that were put together and prosecuted by ICAC in the past—and this is before your time—were done so without any flaws in the investigation process or the manner in which they are prosecuted?

The Hon. A. VANSTONE: I don't know of any prosecution that I have been involved in which doesn't have flaws. There are always flaws because human beings conduct them and human beings are the witnesses. I don't say that.

3754 The PRESIDING MEMBER: They do have a considerable impact on the parties concerned.

The Hon. A. VANSTONE: Absolutely, and so does what is said in parliament have an impact on the officers, my diligent officers, of course. People everywhere are impacted by what is said elsewhere about them, no question.

3755 The PRESIDING MEMBER: Do you not think that there should be some kind of scrutiny on the manner of investigations that are carried out by ICAC, or should we just think, 'They have fallen over. Bad luck. Get on with your life,' and let's get on with the next one?

The Hon. A. VANSTONE: As I tried to explain, something comes out of every investigation. Something fruitful comes out of every investigation, but I can't speak to those previous investigations, of course. I don't know the details and I'm not inclined to brief myself on them; I am looking forward. To me, this is a new seven-year period. Much has been learned.

Remember, the office was set up from nothing. Mr Lander started with nothing, with a deputy. They had to employ staff. They had to devise systems, they had to work out what they would take on and what they wouldn't. To start from nothing is a huge task. I don't know that many people could have done it, but of course they were learning as they went, no doubt, and I'm sure he wouldn't mind me saying that. But what I have inherited today is just an outstanding office.

3756 The PRESIDING MEMBER: I am just saying that after seven years of operation there hasn't been an appropriate review of the ICAC as it was set up and also of the act itself. I think we are only just starting to learn, commissioner, some of the things that perhaps also went wrong.

The Hon. A. VANSTONE: It's an ideal time to look at the act, I must say. I know it is being looked at and no doubt there are improvements that could be made in it.

3757 The PRESIDING MEMBER: I am not sure whether you have followed the proceedings of this committee over the past couple of years that led to our report.

The Hon. A. VANSTONE: I'm sorry, I haven't.

3758 The PRESIDING MEMBER: There have been criticisms of the way the ICAC has operated. There have been accusations of abuse of powers, that they also operated as a Star Chamber. You may well have heard that, not just for the ICAC in South Australia, but also around the country.

The Hon. A. VANSTONE: That seems to me rather an extravagant term, I must say. I don't know who would have coined that; perhaps an extravagant lawyer, I don't know.

3759 The PRESIDING MEMBER: A former Federal Court judge, as a matter of fact, has referred to it in New South Wales, and of course we have actually had lawyers and silks that have referred to it, so—

The Hon. A. VANSTONE: Of course, in our examinations of witnesses, people are represented by lawyers; they don't just come along by themselves, and we don't tie them up or give them water torture or anything. I've only been present at three examinations in my several months, and to me they were almost too cordial. If one went into the Family Court, one wouldn't find that sort of deference to the comfort of people and deference to their feelings. It's nothing like a Star Chamber.

3760 The Hon. A. KOUTSANTONIS: That wasn't my experience.

3761 The PRESIDING MEMBER: I have some other questions, but if Mr Koutsantonis would like to—

3762 The Hon. A. KOUTSANTONIS: Commissioner, thank you very much for your opening statement. Thank you very much, I think, for the way you are conducting yourself. I think all of the committee's members are very impressed with the way you have conducted yourself since you have become commissioner, even though we don't have a big line of sight into how you conduct yourself in the office.

I just want to point out a few things about the wire tap or the intercept in a government building. The concern that I certainly had about that intercept was a couple of things. First, I wasn't sure if you were talking about the parliament or a government department, so I ask you to tell us: was that intercept in the parliament or in a government department? Because they are separate; this is not a government department building.

The Hon. A. VANSTONE: I don't recall receiving any information from you, Mr Koutsantonis, or any request from—

3763 The Hon. A. KOUTSANTONIS: No, I didn't request anything from you. My concern was whether the intercept was in this building.

The Hon. A. VANSTONE: Yes, well, perhaps you could have asked me.

3764 The Hon. A. KOUTSANTONIS: I am doing it now. I can't compel you to answer anything—

The Hon. A. VANSTONE: I thought it was clear from my public statement that it was a government department building.

3765 The Hon. A. KOUTSANTONIS: In my experience in government, cabinet committees often meet in government departments. I will assume cabinet is exempt from your intercepts, but often public officers and department heads present to cabinet committees. Are cabinet meetings and subcabinet committees exempt from your intercepts?

The Hon. A. VANSTONE: Under the act, do you mean?

3766 The Hon. A. KOUTSANTONIS: Yes.

The Hon. A. VANSTONE: There's no specific mention, I don't think. But can I just reiterate that a Supreme Court judge granted that warrant. If it were in a cabinet office, then a Supreme Court judge must have granted it for that purpose in a cabinet office. Of course, it wasn't.

3767 The Hon. A. KOUTSANTONIS: Thank you.

The Hon. A. VANSTONE: I think you knew that, with respect.

3768 The Hon. A. KOUTSANTONIS: No, I am being legitimately honest here: I did not know that, because I know that often we would convene subcabinet committees in department government buildings ad hoc.

The Hon. A. VANSTONE: There was a certain person of interest, so unless that person of interest was in that room nothing was going to be recorded from it. The audio was not even going to be turned on. This happened sometime last year or the year before.

3769 The Hon. A. KOUTSANTONIS: I understand that once it was discovered it was rectified.

The Hon. A. VANSTONE: Yes.

3770 The PRESIDING MEMBER: Was there a breach of law in the fact that these two rooms had been set up? Was there a breach of law in relation to that? Considering the approval that had been given by a Supreme Court judge, was it unlawful that there was this device that had been disabled?

The Hon. A. VANSTONE: The agency that installed the devices took the view that, by disabling them in room 1 and installing others in room 2, there was no breach of the warrant. My director of investigations took a different view, and Mr Lander—I don't know what his view was, but obviously, from what followed, I assume that he agreed with the director and disagreed with the agency. But that question hasn't been determined as far as I know. The fact was that the warrant specified a certain number of devices. It didn't say operating devices or turned on devices or receiving devices. It just specified a number of devices and, as it turned out, there were more devices in the room than the number referred to in the warrant.

3771 The PRESIDING MEMBER: Can I give you a hypothetical, commissioner, in relation to parliamentary privilege? Let's just say that the ICAC is investigating a number of ministers for a particular matter and that your office then undertakes to get approval for listening devices or to bug telephones, for instance. Those members of parliament actually take their devices into this parliamentary precinct and, as a result of that, ICAC would probably be able to listen in on those conversations. Do they listen in to those conversations? Are they taken into account?

The Hon. A. VANSTONE: I'm not sure how much you understand about warrants. What ICAC does is done pursuant to a warrant granted by a Supreme Court judge. If it was determined that an office in parliament should be bugged, as it were, there would be specific instructions about it. A certain person would have to be present. There would have to be a certain aim that was thought to be achieved by bugging that office. A Supreme Court judge would have had to have approved that course of action.

Let me go back a step. Many years ago, in 1995, I was involved in a royal commission in Western Australia concerning an alleged breach of executive power. One of the persons involved in that was Dr Lawrence, the then Premier of Western Australia. We took evidence of what had been discussed in cabinet about the petition that was going to be presented to parliament. We took evidence about it. Of course, matters that are arguably an abuse of power or arguably illegal could take place anywhere.

3772 The PRESIDING MEMBER: I'm just trying to ascertain: it's quite feasible that if there are members of parliament who are under investigation and they happen to have their devices being monitored, it could happen that you would be listening to any discussions they had within these precincts.

The Hon. A. VANSTONE: I'm not sure how that would happen, Mr Chair. Unless the phone were on speaker or we were recording all the conversations in the room in some way, I can't see how that would happen.

3773 The PRESIDING MEMBER: Commissioner, there's actually very sophisticated software available now through which your phone can actually be turned into a transmission device.

The Hon. A. VANSTONE: I think it would be very difficult to get the Supreme Court to acquiesce in the grant of such a wide warrant.

3774 The PRESIDING MEMBER: So you're saying it wouldn't happen? If there was a phone that perhaps was being bugged and it was of an MP who would be taking it into parliament, that wouldn't happen and it wouldn't have been allowed?

The Hon. A. VANSTONE: No, I'm not exactly saying that. Obviously, if we are bugging a member's phone or intercepting a phone, firstly that would be a big step to take, of course. Listening to anyone's phone is a big step to take and we debate whether it's really necessary or not. If we did, then conceivably you would catch conversations between that person and everyone else he speaks to and that might include another member of parliament.

3775 The PRESIDING MEMBER: In this precinct? That's what I am just trying to ascertain. It could also happen in this precinct?

The Hon. A. VANSTONE: He could bring the phone into Parliament House.

3776 The PRESIDING MEMBER: He could bring it into Parliament House and it would be there. Would you see that by using that information, if it was to be used, it could be perceived as being a breach of privilege?

The Hon. A. VANSTONE: I don't follow that. I must say my knowledge of parliamentary privilege seems to be outdated because it seems to be, at least in Australia, expanding like Topsy, I must say.

3777 The Hon. A. KOUTSANTONIS: It is.

The Hon. A. VANSTONE: Only this week I read something to suggest that. No, I don't see how that would be a breach of parliamentary privilege.

3778 Mr MURRAY: If I could summarise my understanding from your answers: were it possible for you to convince the Supreme Court to issue a warrant to place a listening device in a room, or in an area, of the parliamentary precinct, were you able to convince the Supreme Court of the efficacy and the objective need to do so, there would be nothing that would preclude the Supreme Court from granting that request, given that you (a) brought the request to them and (b) adequately documented it to the Supreme Court's satisfaction. Is that a reasonable summary?

The Hon. A. VANSTONE: I think so.

3779 Mr MURRAY: On a related question, and back to the matter of the error to which you referred, you said in your opening remarks that that had emerged in the reviewer's report, which is true, but what I was interested to note was that was a matter that had been brought to the reviewer's attention by ICAC, so it was not a classic case. Please correct me if you feel that I am wrong, but I would submit that as a check and balance that was not something that was ascertained by the reviewer; it was something that was brought to the reviewer's attention by ICAC.

I guess my question is: what is your view of the likelihood of the reviewer independently ascertaining a breach of the sort to which you are referring? I would submit it would be unlikely, given the complexities involved and the technology, and the limited resources the reviewer has.

The Hon. A. VANSTONE: I think if some sort of irregularity happened with respect to the execution of a warranted installation of listening devices, that would be subject to a report to the commissioner, which would be in writing. As I said before, the reviewer has complete access to all our documents.

3780 Mr MURRAY: Let's assume a situation in which breaches occur but, in a complete reversal of what we have seen in this instance, it hasn't been disclosed up the chain of command within ICAC. It's simply been glossed over, for whatever reason.

The Hon. A. VANSTONE: At that point, perhaps, but of course if—

3781 Mr MURRAY: Would you expect the reviewer would ascertain that particular sort of breach independently?

The Hon. A. VANSTONE: Not unless it was committed to writing within the ICAC office, no. But later, if for instance new material were gained and sought to be used as evidence, then there is a strong likelihood it would come out then.

3782 Mr MURRAY: You made mention about being perplexed with regard to the Legislative Council committee focus on reputational damage. I speak as a member of the lower house, so I can be somewhat light-hearted about it. In my electorate, I have the Sturt Police Station and I am particularly interested in the eight police officers who were the subject of quite extensive and protracted investigation under Operation Bandicoot. I think it went for about six years.

As a subjective assessment, I would respectfully submit that they have suffered reputational damage. You made the point in your opening comments that there are checks and balances to prevent that, that you have secret hearings, etc. Would you concede that, on the face of it at least, those police officers have suffered some incidental reputational damage, not to mention the quite extensive financial and emotional costs they have incurred as well?

The Hon. A. VANSTONE: My recollection is that they were acquitted. Were they all acquitted?

3783 Mr MURRAY: They were all.

3784 The PRESIDING MEMBER: I will correct that: most of them, commissioner. A couple had nolle prosequis.

3785 Mr MURRAY: None of them were found guilty, though. They either had charges dropped or the majority of them were acquitted.

The Hon. A. VANSTONE: In a sense, I suppose, an acquittal goes some distance to addressing any reputational damage. Of course, everyone who goes to trial and is acquitted and whose name has been published in the media, I suppose, feels that they have suffered reputational damage. That's just a function of the criminal justice system.

3786 The Hon. A. KOUTSANTONIS: Commissioner, have you read the decision of Judge Chapman and the appeal to the Supreme Court or the judgement of the Full Court? Have you read both?

The Hon. A. VANSTONE: Yes, I have.

3787 The Hon. A. KOUTSANTONIS: I just want to ask you a few questions about that in terms of practice, not in terms of the particular case. Some of the issues that I'm concerned about relate to the principles of a fair trial. What I have understood from my reading and interpretation of this is that the ICAC investigation does not halt at the time of referral to the DPP and that once its referral has occurred the DPP and the ICAC and South Australia Police can continue their investigations during the trial process; is that correct?

The Hon. A. VANSTONE: It wouldn't usually be the ICAC and the South Australian police.

3788 The Hon. A. KOUTSANTONIS: It is one or the other?

The Hon. A. VANSTONE: It's usually one or the other, yes. Of course, yes, investigations continue because it's very unusual to have a brief that's perfect as at the day it's delivered.

3789 The Hon. A. KOUTSANTONIS: Again, I'm not a lawyer but, from my reading of this, the appeal found that the ICAC do have the power to continue their investigations and take evidence. My question is about the appropriateness of that. Is it appropriate for the ICAC to continue an investigation after a referral and use its powers of compulsion to interview witnesses that the defence may be using?

The Hon. A. VANSTONE: I'm not sure that it was done in that case. I can't remember whether it was done in that case. I don't think it was. It's not something that I would do—not use compulsory powers, that is. Of course, the investigation would continue and to me there doesn't seem anything exceptional about delivering subpoenas to witnesses, although the court says we shouldn't do that, so we won't do it; nor is there anything exceptional about taking an information from the DPP's office over to the court. But in terms of compulsory examinations, I would not think of any example of a time when I would conduct one after a charge had been laid.

3790 The Hon. A. KOUTSANTONIS: That does please me because—

The Hon. A. VANSTONE: I don't want to imply that that was done there. I just can't for the moment think whether it was or not. I don't think it was.

3791 The Hon. A. KOUTSANTONIS: On my reading of it, I think the argument that you can't go directly to the DPP is ridiculous. That's my view. I think courts should be able to brief the DPP; that makes complete sense. My concerns are all about what happens after the DPP makes a decision to prosecute. You said that you don't particularly like the idea of using your powers of compulsion to interview potential defence witnesses which would inform the DPP's rebuttal of those witnesses.

The Hon. A. VANSTONE: Not once a charge is laid, but remember, though, that I won't know who potential defence witnesses are. When I'm conducting my investigation, I won't know who they are unless you say—

3792 The Hon. A. KOUTSANTONIS: With all due respect, you might, because you might have intercepts. There were accusations of breaches of legal professional privilege in both documents. Again, I don't like talking about particular cases because I don't want to prejudice any court action but, as a policy principle, if ICAC is intercepting telephone conversations of a subject and that subject is on the telephone to their lawyer, there are accusations that ICAC used that to then go off and compulsorily inquire of witnesses, gained from knowledge through that legally privileged conversation. I'm not sure if that's occurring. I don't think I have seen evidence of it occurring. I have heard it being accused but I don't know if it has actually happened. I am asking you: can it happen and is it legal to happen under the current act?

The Hon. A. VANSTONE: I think it's so hypothetical that I just can't address it. It just doesn't seem to me to be grounded in reality.

3793 The Hon. A. KOUTSANTONIS: Well, that's one of the pleadings in this case.

The Hon. A. VANSTONE: In which case? Bell?

3794 The Hon. A. KOUTSANTONIS: Yes.

The Hon. A. VANSTONE: Are you looking at the judgement?

3795 The Hon. A. KOUTSANTONIS: I'm looking at the judgement in R v Bell, yes.

The Hon. A. VANSTONE: The actual judgement of the Full Court?

3796 The Hon. A. KOUTSANTONIS: Not the Supreme Court judgement, the Chapman judgement.

The Hon. A. VANSTONE: I didn't bring it with me.

3797 The Hon. A. KOUTSANTONIS: We will move on. Is it common practice for investigators of ICAC, after they have done a compulsory examination of a witness, to transcribe that examination into affidavit form and then approach witnesses to sign it to make it admissible to court?

The Hon. A. VANSTONE: The examinations are done by either me or my deputy, yes. Then, someone within ICAC, whether it's an investigator or not, yes, would usually make up a statement from what is said and may well take it to the witness asking them to sign it if it's correct.

3798 The Hon. A. KOUTSANTONIS: Why?

The Hon. A. VANSTONE: Because evidence that's presented by the DPP to the court, along with the charges, must be in affidavit form. If one is wanting to lead evidence from that witness, then it has to go into affidavit form.

3799 The Hon. A. KOUTSANTONIS: That, again, is my point, that when you coerce evidence it's inadmissible in court.

The Hon. A. VANSTONE: That transcript is, yes. But there may be nothing inadmissible that's said. For instance, if a witness makes some admission about themselves, then that's not admissible in a court, but most of what a witness says before me, for example, would be admissible in court subject to relevance.

3800 The Hon. A. KOUTSANTONIS: Don't you think it could be intimidating to a witness to have their coerced transcript taken to them and say, 'We would like you to sign this so we can present this coerced evidence to a court'?

The Hon. A. VANSTONE: The statement either contains factual material or it doesn't.

3801 The Hon. A. KOUTSANTONIS: Hang on. They have taken an oath before they have given you the evidence, so why are they being asked to affirm it twice?

The Hon. A. VANSTONE: Well, I just explained that it has to be in affidavit form.

3802 The Hon. A. KOUTSANTONIS: Is that appropriate practice, do you think, for an ICAC?

The Hon. A. VANSTONE: Yes, very.

3803 The Hon. A. KOUTSANTONIS: And that's a practice born out of the Australian Crime Commission?

The Hon. A. VANSTONE: No. Let's take another example. If a witness gave evidence to a royal commission, that would be on oath. Then if it is sought to charge someone arising out of that royal commission, then an appropriate way to proceed, rather than making the witness give a whole new statement, would be to put together a proof, take it to the witness, and they can read it through and say, 'Well, that's not right' or 'That's right' and 'Yes, I'll sign it.' There's nothing exceptional about that.

3804 The Hon. A. KOUTSANTONIS: Does ICAC ever intercept legally privileged conversations with counsel?

The Hon. A. VANSTONE: I imagine that's inevitable. But there is a mechanism, the whole schedule of the act, designed to deal with it.

3805 The Hon. A. KOUTSANTONIS: Schedule 3.

The Hon. A. VANSTONE: Yes.

3806 The Hon. A. KOUTSANTONIS: So it's incumbent on the individual, then, to know that they have been intercepted, take it to the Supreme Court judge, ask the Supreme Court judge to rule on it, and then the onus is all on them rather than you.

The Hon. A. VANSTONE: The purpose of intercepting phone material is to get information. If that information is fruitful and relevant, then it will be presented as part of the brief, so the person of interest will find out about it.

3807 The Hon. A. KOUTSANTONIS: Isn't legal professional privilege the cornerstone of our justice system?

The Hon. A. VANSTONE: The cornerstone?

3808 The Hon. A. KOUTSANTONIS: Yes.

The Hon. A. VANSTONE: I wouldn't go that far.

3809 The Hon. A. KOUTSANTONIS: What, talking to your lawyer without anyone listening? I would have thought that's fundamental.

The Hon. A. VANSTONE: It's a privilege. It is a privilege, as is parliamentary privilege, as is the privilege against self-incrimination. They are all privileges. I don't know that they are fundamental to a criminal justice system, but they are important.

3810 The Hon. A. KOUTSANTONIS: Do your investigators or ICAC give evidence to the DPP that they know is inadmissible in order to convince them of the ultimate success or otherwise of any potential investigation? That is, they provide them with evidence and say, 'Look, you can't use any of this. We've found this out, but if you prosecute it shows you that the crime occurred, therefore you should attempt your prosecution.'

The Hon. A. VANSTONE: Well, I have no personal knowledge of that. The DPP really is interested in admissible evidence not inadmissible evidence.

3811 The Hon. A. KOUTSANTONIS: No, I wouldn't have thought so.

The Hon. A. VANSTONE: It's not going to change their mind about whether they are prosecuted or not just because they think that there's some evidence out there somewhere that this person admitted the crime to someone who won't give evidence.

3812 The Hon. A. KOUTSANTONIS: When the DPP or counsel for the DPP speaks to witnesses potentially in their cases, are ICAC investigators present if it's an ICAC referral?

The Hon. A. VANSTONE: You are asking me about things that I have no knowledge of. Remember that after Judge Chapman's decision we had to stop giving briefs to the DPP, and I

think the DPP stopped work on the briefs that we had previously given them. A hold was put on that. We haven't been providing anyone to sit in on any interviews in the last few months.

3813 The Hon. A. KOUTSANTONIS: My policy consideration there, rather than the specific issue, is that subject A is called into ICAC, they are given a compulsory examination, they are then spoken to by the DPP, where they have all these rights and privileges to silence: they don't have to talk to DPP at all if they don't want to. But while the ICAC investigator is sitting there, listening to this conversation, they can reveal information to the DPP about what that witness has or has not said in coerced evidence. In my view, I think that's an inappropriate power balance.

The Hon. A. VANSTONE: I don't know if it's inappropriate or not, but from going back to my own days at the DPP I didn't have police officers sitting in with me, so I doubt that they do now.

3814 The Hon. A. KOUTSANTONIS: If I can go back, I don't really understand, because I'm not a lawyer, about this no property in a witness proposition in common law. If ICAC can coerce a public officer who was a witness in a case after the referral, can that person who is the subject of that prosecution still gain a fair trial?

The Hon. A. VANSTONE: That's hypothetical, but the answer is yes.

3815 The Hon. A. KOUTSANTONIS: Because that evidence would be inadmissible?

The Hon. A. VANSTONE: Sorry, which evidence will be inadmissible? What the person said?

3816 The Hon. A. KOUTSANTONIS: I have a forensic accountant I'm going to use in my defence. ICAC find out that I'm about to call this person as a witness. He is a public officer, he is called in, he is examined coercively. All that information is given to the DPP in advance, and they can prepare a counterargument. Can I still get a fair trial through that process?

The Hon. A. VANSTONE: Yes.

3817 The Hon. A. KOUTSANTONIS: Could you explain to me how?

The Hon. A. VANSTONE: You would have to explain to me why not. The forensic accountant has presumably said truthful things to ICAC. ICAC has told the DPP, so they know of these truthful things. A person is on trial. What's the problem? I'm not saying that we would do that—this is incredibly hypothetical—but I don't see the problem.

3818 The Hon. A. KOUTSANTONIS: I do. I see it as a policy principle. My view is—and this is just my view; this is not necessarily the committee's view—that I have no problem with everything you have said in your lead-up, in your preamble to your evidence here about the way ICAC conducts itself, especially in corruption investigations, but once that's handed over to the DPP the idea that that corruption investigation can continue while that person is facing the courts I don't think is conducive to justice.

The Hon. A. VANSTONE: Can I just clarify this, though. Just assume that the investigation continues but there is no compulsory examination. I take it you don't have a problem with that?

3819 The Hon. A. KOUTSANTONIS: It depends what powers you are—

The Hon. A. VANSTONE: Without use of compulsory powers.

3820 The Hon. A. KOUTSANTONIS: Yes.

The Hon. A. VANSTONE: Let's leave aside ICAC for a moment. Let's speak of the police. Normally, they investigate the great majority of cases and they give a brief to the DPP. The DPP will say, 'Well, we need more evidence. We need this, we need that, we need some admissions made in gaol from this person. We will bug the cell of that person, hoping that he'll make some admissions to his gaol mate,' and they will give all that material to the DPP. If you don't have a problem with that, then I'm not sure—

3821 The Hon. A. KOUTSANTONIS: Because the police don't have the power of compulsion; you do.

The Hon. A. VANSTONE: We have a listening device here in the cell. Alright, leave that out. What I'm asking you is: if you're not using your compulsive powers with respect to witnesses in this example, is there no problem then?

3822 The Hon. A. KOUTSANTONIS: My concerns are about the privileges that you use as an ICAC to investigate public officers being used once it's into the judicial system.

The Hon. A. VANSTONE: But you are specifically talking about compulsory examinations.

3823 The Hon. A. KOUTSANTONIS: Yes, I am.

The Hon. A. VANSTONE: As I said to you, as far as I know, they are not used after a charge is laid.

3824 The Hon. A. KOUTSANTONIS: Do you have a problem with the act being amended to prohibit ICAC doing that?

The Hon. A. VANSTONE: I would have to think about it. I've never thought about this before.

3825 Mr MURRAY: I have a related series of policy questions, certainly from my perspective, arising from the Bell matter. I refer to the judgement of 3 December from the Supreme Court, pages 68 and 69. This relates to the non-disclosure notations on the summons or notice given. An example was provided of Mrs Bell being issued with a summons in January 2017, attached to which were conditions prohibiting disclosure of information about the summons or any official matter connected with it. Those conditions were not formally removed until June 2020.

To Mr Koutsantonis's question, I would be of the view—and I would be interested whether you would agree or disagree with my view—that a condition in this instance, using Mrs Bell as an example, whereby for three years she is effectively prevented from discussing the matter with anyone, including her spouse, is a condition which is unique, as I understand it, to the powers that are afforded to ICAC. In the context of an ongoing investigation, my view is that that is a substantial power. The court expressed a view:

> We respectfully suggest that this provision, and indeed all of the provisions in the Act relating to confidentiality, warrant the attention of Parliament.

Have you formed a view on, first of all, the fairness or otherwise of someone who is the subject or is related to an investigation being subjected to that very onerous provision, particularly in the case of a spousal relationship, for three years? Secondly, do you have any views as to what, if any, changes, certainly that are alluded to by the Supreme Court, are in your view desirable in any review of the act?

The Hon. A. VANSTONE: The prohibition is not against discussing the matter at large with any person. The prohibition is against discussing the evidence that's been given to ICAC. That is quite a different matter, with respect. Plainly, those directives should have been lifted earlier—no question.

Certainly, if the person giving evidence to ICAC is the spouse of the person of interest, that is a difficulty. I noted what the Court of Criminal Appeal said. Indeed, I have only today written to the Chief Justice, asking if he is going to send something to the Attorney about that and, if not, whether he would like to tell me what his views are and I could communicate them.

3826 Mr MURRAY: Do you have any specific views at this stage as to whether or not that power should be varied or at least clarified?

The Hon. A. VANSTONE: I think where one is conducting an investigation and there are a number of people who it is sought to take evidence from, who are linked in some way—for instance, members of the same office or whatever—it is important that they don't speak to one another about their evidence before they give evidence. That's the point of that sort of provision. But for it to stand beyond its usefulness and for it to impact on members of the family is potentially problematic.

3827 Mr MURRAY: Would you agree that it's problematic? I apologise if I stray into the too granular or specific, but the anecdotal allegations I have heard in similar cases are that where

these notations have been applied, people who have subsequently spoken to their spouse about the fact that they are the subject of an investigation by ICAC—and that admission is picked up by listening devices by ICAC—are then subjected to the further use of leverage by ICAC by virtue of breaching that disclosure notice, even if it is with their spouse. This is a very specific example of the spouse being placed under those conditions for a three-year period.

The Hon. A. VANSTONE: I don't know anything about that matter or those other matters that you refer to. These directives have a certain period of usefulness and they should be discharged when that's over, so three years does seem a long time.

3828 Mr MURRAY: Would you agree that three years is a position of leverage for ICAC which, I submit, is contrary to what the majority of people would deem to be fair or reasonable?

The Hon. A. VANSTONE: I don't agree with the word 'leverage', but I think people would be surprised if it were necessary to maintain that sort of directive against speaking about what evidence was given for three years.

3829 Mr MURRAY: Perhaps I can explain my use of the word 'leverage'. What I meant was a situation where ICAC has in place, for three years, a prohibition on someone making any form of disclosure relating to a case—

The Hon. A. VANSTONE: I'm sorry to interrupt, but that's not what the directive is about. It's about revealing information that has come to that person from ICAC. It's not a prohibition on speaking generally about the matter; it wouldn't stop a defence witness going to a person of interest and saying, 'This is what I can tell you.' It just wouldn't impinge on that.

3830 Mr MURRAY: The non-disclosure notation that is referenced in this judgement for Mrs Bell talks about prohibiting disclosure of information about the summons or any official matter connected with it.

The Hon. A. VANSTONE: The fact of giving evidence and what evidence was given; that's what it means.

3831 Mr MURRAY: It's what prevented from being disclosed.

The Hon. A. VANSTONE: Yes, I imagine so, but I haven't got it in front of me.

3832 The Hon. A. KOUTSANTONIS: You have said you have read it, but I'm not sure when you got it. Paragraph 323—

The Hon. A. VANSTONE: I don't have it with me now, Mr Koutsantonis. It is a current matter. It has to go back to the court. I really think there is a limit to the—

3833 The Hon. A. KOUTSANTONIS: I agree. I don't want to impinge on it either. I agree with your assertion that you don't want ministers talking to each other about what evidence they have given to ICAC—I think that's incredibly important—until charges are laid. When charges are laid, surely the defence is entitled to speak to those witnesses about what evidence they gave.

The Hon. A. VANSTONE: The directive should be lifted, certainly.

3834 The Hon. A. KOUTSANTONIS: Yes.

The Hon. A. VANSTONE: When it has outlived its usefulness it should be lifted.

3835 The Hon. A. KOUTSANTONIS: Is it your contention that it is only useful until charges are laid?

The Hon. A. VANSTONE: It may be before that that it could be lifted.

3836 The Hon. A. KOUTSANTONIS: Yes, especially if it's a spouse or something. That could be a bit different, I suppose.

The Hon. A. VANSTONE: Not only that; if the investigation on that issue is mainly concluded then there won't be any problem with those witnesses speaking about it, I guess. You can't stop people talking to one another.

3837 The Hon. A. KOUTSANTONIS: You can.

The Hon. A. VANSTONE: Well, no. In human nature, people are going to talk about their going to court, talk about what's happened and what they are going to be talking about, what their statements are. That's what happens in real life.

3838 The Hon. A. KOUTSANTONIS: Yes. My policy concern is over once you have finished your investigation and referred it, that the defence be given every opportunity to defend themselves because they are up against the state and all the resources of the state. Obviously they would be allowed to depose witnesses.

From what I can tell about what you just said, there must be a misunderstanding between people understanding the ICAC Act, because I think from your evidence of course people can depose witnesses and talk to them before to mount their defence and this was just an oversight rather than a deliberate tactic.

The Hon. A. VANSTONE: That's my understanding.

3839 The PRESIDING MEMBER: Commissioner, just to go back to the Bell matter, I don't want to delve into too much detail here, but in the event that Mr Bell decides to seek to appeal this matter to the High Court, would that mean a further hold on another 11 cases that are pending while this is dealt with?

The Hon. A. VANSTONE: No.

3840 The PRESIDING MEMBER: So that would continue and it would go on with that. Can I take you to the annual report? There was a significant increase in the sum of contracts for legal services. In fact, it was a massive jump from $79,000 in 2018-19 to $314,000 in 2019-20. Do you have any explanation for that?

The Hon. A. VANSTONE: No.

3841 The PRESIDING MEMBER: Can I update you on some comments that were made by the previous commissioner in relation to access to justice? I will quote him:

> Justice now is only affordable by those who are very wealthy or those who are very poor, and I think the justice system takes far too long to resolve issues…You couldn't afford a decent case.

He said the middle class is effectively denied access to justice because of costs. I think he suggests that it should be more of an inquisitorial system. Do you have any views on that?

The Hon. A. VANSTONE: No, nothing I am particularly interested in expanding on.

3842 The PRESIDING MEMBER: It's only because it has been pointed out to me that, when ICAC appears with the DPP in matters, it does so armed with probably the most high-powered expensive silks that it can afford, yet when the accused have to go to court they are forced to either sell their homes or cash in their super just to stay in the game of defending themselves.

The Hon. A. VANSTONE: My experience is quite the contrary actually. My experience is that ICAC sends a brief to the DPP and they assign a prosecutor who is usually not a silk and they come up against the cream of the South Australian bar.

3843 The PRESIDING MEMBER: I think in the Bell matter there was quite a significant presence by others in that appeal process.

The Hon. A. VANSTONE: On the appeal? Well, of course. We felt—I felt and Mr Lander felt—that we had to seek declarations about it. It was such an important issue. But that's not a typical matter, of course. Normally we are not represented at all.

3844 The PRESIDING MEMBER: Can I go to a couple of matters that I think we brought to your attention, the Lawton and Fuller matter? I am not sure. Are you aware of that one?

The Hon. A. VANSTONE: Mr Fuller wrote to me.

3845 The PRESIDING MEMBER: Yes. I will just give you a—

The Hon. A. VANSTONE: Look, I have some recollection of that matter and I am—

3846 The PRESIDING MEMBER: I am just asking you whether—

The Hon. A. VANSTONE: I am perplexed at that being raised as well.

3847 The PRESIDING MEMBER: Have you reviewed that file?

The Hon. A. VANSTONE: No, and I am not going to.

3848 The PRESIDING MEMBER: Any reason for that?

The Hon. A. VANSTONE: It has been reviewed and reviewed. It's essentially a civil matter, a dispute between two citizens over a large amount of money. For some reason, Mr Lawton, I think it was, chose not to take civil action against Mr Cleland, and then brought pressure to bear on the police and the DPP and the ICAC to make the police investigate it. It could never have succeeded as a criminal matter because you simply had two people of good reputation who presumably disputed a commercial dealing. What's it got to do with ICAC?

3849 The PRESIDING MEMBER: So you have had a look at the dossier.

The Hon. A. VANSTONE: No, I haven't but I have gleaned that from Mr Fuller's letter to me.

3850 The PRESIDING MEMBER: Just from his letter. Did you seek any—

The Hon. A. VANSTONE: And Mr Riches, my deputy—

3851 The PRESIDING MEMBER: And Mr Riches.

The Hon. A. VANSTONE: —made a report on it which I read.

3852 The PRESIDING MEMBER: You have read Mr Riches' report.

The Hon. A. VANSTONE: He reported to Mr Lander and I read Mr Riches' report.

3853 The PRESIDING MEMBER: That was a report from 3 July 2019. It was a report that Mr Riches had sent to Mr Lawton and Mr Fuller in relation to why they weren't taking the complaint any further. Their complaint actually has more to do with the process of handling of complaints than the initial allegation of fraud that was brought to the police.

What they had been saying is the manner in which those complaints were handled by SAPOL (the internal investigation section), the OPI and ICAC did not follow proper procedure because they say, and according to Mr Riches in his own letter, there had been a management resolution on the matter, except that that was all news to Mr Lawton and Mr Fuller because nobody from SAPOL, who were conducting a management resolution, actually consulted with them and sat them down and went through the matter. That was their complaint. That's what they are saying: it wasn't followed properly.

The Hon. A. VANSTONE: I can tell you that since I took up my post, I have had many what we call recontacts. If I took the time to explore all those matters, I could go back to 2013 and start to move forward and I wouldn't have any time to look at current investigations.

3854 The PRESIDING MEMBER: I understand that.

The Hon. A. VANSTONE: That one, in my view, has received more time than it ever deserved.

3855 The PRESIDING MEMBER: There is one simple way of resolving it quite quickly and that is if the entries in the complaints management system were reviewed to see whether, in fact, the process was followed.

The Hon. A. VANSTONE: Mr Chair, if I can agree to disagree with you, that would never solve that problem. That would never put it to rest. After that, there would be another problem and after that, there would be another problem and it would never cease. That's what we see in the OPI and in ICAC, and, indeed, I have seen it in the judicial conduct commissioner work, too. These complaints don't go away. You might think that one careful, clever move might solve the problem, but it never does.

3856 The PRESIDING MEMBER: Okay. I think they beg to disagree with that. They are just wanting to try to get to the bottom of their complaint, but I imagine it will continue.

There's another matter in relation to Mrs Deborah Barr. On 7 October, Mrs Barr, who was the wife of a distinguished police officer who took his own life during an investigation, sought an

exemption from you to be able to talk to me about certain matters, particularly issues surrounding an outstanding WorkCover claim.

You wrote to her on 15 October denying the exemption to protect the confidentiality of an ICAC investigation and authorising her to disclose your letter to me. I point out that your predecessor has given exemptions in some cases previously. Were you suggesting to Mrs Barr that she is prevented from talking to a member of parliament?

The Hon. A. VANSTONE: I think I wrote back to you actually and explained that I said no such thing.

3857 The PRESIDING MEMBER: I'm sorry, I haven't seen that.

The Hon. A. VANSTONE: On 12 November I wrote back to you.

3858 The PRESIDING MEMBER: I haven't seen that letter and I apologise for that.

The Hon. A. VANSTONE: You wrote to me on the 11th and I wrote back to you on the 12th. Shall I read it to you? I said:

> I refer to your letter of 11 November. Ms Barr sought an authorisation from me under section 54 of the ICAC Act. I declined to give her such an authorisation. I did not advise Ms Barr that she was not authorised to communicate with a member of Parliament of South Australia.

That was quoting from your letter. I said:

> If parliamentary privilege means that Ms Barr is free to discuss ICAC investigations with you, as you assert, then no authorisation in terms of section 54 would be required. In any event, there's an important distinction to be drawn between discussing an investigation and discussing events which might have been the subject of investigation.

I'm sorry if you didn't receive that letter.

3859 The PRESIDING MEMBER: That's okay. We will see if we can get that, thank you. Just in relation to public hearings, parliament chose to put that legislation on hold for various reasons, among them natural justice, due process and concerns for those under investigation. Can I ask your views on public hearings, particularly at a time when in New South Wales they have been condemned as being unnecessary intrusions and publicity opportunities for their agency?

The Hon. A. VANSTONE: Can I ask whether you are referring to corruption investigations or maladministration and misconduct investigations?

3860 The PRESIDING MEMBER: I think it would have been corruption that they would have held.

3861 The Hon. A. KOUTSANTONIS: Maladministration and misconduct.

3862 The PRESIDING MEMBER: Misconduct and maladministration.

The Hon. A. VANSTONE: I think that would have been a useful thing to have in a scenario where, if the commissioner undertook such an investigation he (talking of Mr Lander) would have been exercising the powers of an inquiry agency, and he could have made findings. To have that heard in public has advantages. It also has disadvantages in terms of reputational damage. I can see arguments going both ways, but certainly I wouldn't approve of public hearings for corruption investigations.

3863 The PRESIDING MEMBER: Would you be speaking to the Attorney-General in relation to public hearings again as to legislation?

The Hon. A. VANSTONE: I have no arrangement to speak to the Attorney-General.

3864 The PRESIDING MEMBER: Mr Lander believes secrecy aspects were overengineered that made public interest reporting extremely difficult. Do you agree with that?

The Hon. A. VANSTONE: I think there are some refinements that could be made.

3865 The PRESIDING MEMBER: He felt that it would be a bad mistake to constrain the ICAC to corruption-only matters, with misconduct and maladministration going to the Ombudsman, as recommended in our report, which was tabled last week. Are you supportive of that?

The Hon. A. VANSTONE: As I have said, I don't see maladministration and misconduct as being big on the horizon in my term of office. There may be occasions where it would be helpful to have such a power if something needs to be dealt with quickly and efficiently, and a report needs to be got out. I see some value in retaining it, but by and large I think those investigations should be made elsewhere, either by the agency itself or the Ombudsman.

3866 The PRESIDING MEMBER: I think you also mentioned that you are still going through the act itself, and you have said that it is quite a complex document, and I think I am finding that as well. I am not a lawyer, commissioner, but going through it, it is quite a complex document to process. From what you have seen going through that act, are there any areas in there that perhaps concern you as a jurist that warrant some amendments?

The Hon. A. VANSTONE: The secrecy provisions have caused problems. I don't think they are well understood, and I think that in as much as Mr Lander lived and breathed that act for seven years and recommended they be changed, that is indicative of the fact that there is a need for change.

3867 The PRESIDING MEMBER: Do you think there is a shield there for self-incrimination in the act?

The Hon. A. VANSTONE: You can't decline to answer a question in a compulsory examination on the basis of self-incrimination, but it can't be used against you subsequently.

3868 The PRESIDING MEMBER: I think section 56A covers the use of evidence as information that can be used against another, or be used by others, and in a corruption hearing you are examined in a corruption inquiry and that information could be handed elsewhere; is that possible?

The Hon. A. VANSTONE: If it discloses criminality, for example, one would want to send it on to the police for them to investigate.

3869 The PRESIDING MEMBER: In that event, would the privilege of self-incrimination go?

The Hon. A. VANSTONE: No, that privilege would still attach to it, and it couldn't be used later, but it could be used as a basis for investigation.

3870 The PRESIDING MEMBER: I think schedule 2, section 8 subsections (4) and (5) cover admissibility of evidence. If inadmissible in one matter, it can then be handed over to anyone for further investigation. If you combined 56A and 8 in schedule 2, which covers corruption, could it be perceived that there is no shield? Would you like to take that on notice, perhaps, commissioner?

The Hon. A. VANSTONE: Perhaps I didn't make myself clear. Evidence given by a witness under compulsory examination can't simply be tendered in a subsequent trial for either that matter or any other matter, but it could be given to another agency. They would use that as some sort of springboard to investigate so that they could then go to that witness and ask those questions for themselves.

3871 The Hon. A. KOUTSANTONIS: Section 56A(1)(b)(i) provides that law enforcement can refer to:

> (i) law enforcement agencies and prosecution authorities for the purposes of any criminal investigation or proceedings or proceedings for the imposition of a penalty…

That's a court, isn't it?

The Hon. A. VANSTONE: Sorry, which one are you reading from?

3872 The Hon. A. KOUTSANTONIS: Section 56A(1)(b)(i).

The Hon. A. VANSTONE: Yes, it can be received, but that doesn't make it admissible in another court.

3873 The Hon. A. KOUTSANTONIS: So what is that in proceedings for the imposition of a penalty?

The Hon. A. VANSTONE: That's some sort of civil penalty.

3874 The Hon. A. KOUTSANTONIS: I see.

The Hon. A. VANSTONE: So if someone cut down trees when they shouldn't have, or something like that. If it weren't an offence it might be some sort of civil penalty.

3875 The PRESIDING MEMBER: Just one other question, commissioner. I imagine you, through your reports, get hundreds of matters coming to your office that are investigated. What happens to them?

The Hon. A. VANSTONE: Not hundreds; we don't conduct that many investigations in our—

3876 The PRESIDING MEMBER: No, but there are complaints and whatever that come to your office.

The Hon. A. VANSTONE: There are, yes, several thousand, yes.

3877 The PRESIDING MEMBER: They are on top of the investigations. What happens to that information when those matters don't progress?

The Hon. A. VANSTONE: That's very important, because the OPI really is the clearing house, as you know. It receives all that information, and some of it is extremely good intelligence, which is very valuable. For instance, to take a simple example, there might be an allegation relating to a particular area of the Public Service—a particular public officer or his or her department—and then later there might be some other intelligence that bears on that same person. Being able to combine those two bodies of information is very important, so we keep that information. I can't tell you whether it's destroyed after a certain length of time, but it's securely kept.

3878 The PRESIDING MEMBER: Should it be destroyed?

The Hon. A. VANSTONE: I don't think so. It's safe; it's not disclosed to anyone. It simply lies there and won't be used unless some search brings it up in a different context.

3879 The Hon. A. KOUTSANTONIS: Commissioner, your predecessor made some public statements regarding members of parliament and claims against the parliamentary scheme that allowed MPs from regional areas to claim against accommodation in the city. The guidelines in that scheme show that you could make claims if you lived a certain distance from the CBD and travelled to the city. You could acquit that against known expenses.

We know, from an ABC investigation, that a number of MPs decided to pay money back to that scheme because they had made inaccurate claims against that scheme, and they repaid the money. In some cases, MPs resigned their ministerial positions. Other MPs have claimed money when they might not even have been eligible to claim. The questions I have for you are (1) is your investigation ongoing and (2) for members of parliament who have repaid money to the scheme from which they acquired money inappropriately, how is there no finding of misconduct or maladministration, or do you not have the jurisdiction to do so?

The Hon. A. VANSTONE: As you know, that whole issue is still under consideration. Investigations are ongoing, so I don't want to say anything about that. Just to be clear, I have not made any finding that anyone has not committed corruption, maladministration or misconduct. I have never said that. But I do think it's important to raise the question of the lack in this state of a code of conduct for parliamentarians. This state is the only state not to have such a code, and it's a matter of great regret.

Theoretically—actually, I am not even sure it is theoretical—it at least would impede me or the Ombudsman in investigating and making findings about the conduct of parliamentarians. I think it's essential that the parliament implement a code of conduct. The statement of principles that I think the parliament has approved was I think described by my predecessor as offering 'aspirational principles'. In terms of findings of misconduct, it's not a helpful document. It's not a useful document.

3880 The PRESIDING MEMBER: Can I point out, commissioner, that that's one of the recommendations in our report, which was tabled in parliament.

The Hon. A. VANSTONE: That's good news.

3881 The Hon. A. KOUTSANTONIS: Given some of those members of parliament may not have been even eligible to claim from the scheme—may, I say; it is alleged—have you forwarded any evidence you may have received or collected to the Australian Taxation Office or federal authorities?

3882 Mr CREGAN: Point of order, Mr Chairman. This is an ongoing investigation. The witness cannot answer.

The Hon. A. VANSTONE: Yes. I am not prepared to answer.

3883 The PRESIDING MEMBER: Yes. Commissioner, I think it would probably be inappropriate at this point.

3884 The Hon. A. KOUTSANTONIS: If you can't answer that question, can you explain to me your public statement? You said in your previous answer that you had not said that anyone had not committed maladministration or misconduct. Can you explain to the committee then your public statement that you weren't proceeding with the investigation? You named a series of members of parliament.

The Hon. A. VANSTONE: As I explained in that public statement, there were two processes. There was an investigation and there was an assessment by the Office for Public Integrity. What I said was:

> Due to the publicity that these matters have attracted, I think it is in the public interest that where I have reached a view on the information currently available to me that there will be no further inquiry or investigation of a particular Member, I should say so publicly.

I agree that I perhaps clothed what I said carefully. I didn't say, 'In relation to this member, there will be no further investigation,' or, 'In relation to this member, there will be no further inquiry.' I didn't divide the list into two. But what I essentially said was there was no evidence to further investigate these people, or some of them, for corruption.

Indeed, in relation to some of them, the ones that the Office for Public Integrity had assessed—and again, you are not to know which ones they are—there was no evidence revealed of misconduct. So I haven't actually said there is no misconduct, but I have said there is no evidence that has been uncovered so as to give rise to an investigation of those people.

3885 The Hon. A. KOUTSANTONIS: As a follow-up question to that, why did they pay money back?

The Hon. A. VANSTONE: You're making an assumption that the ones I am referring to, who were assessed by the Office for Public Integrity, paid money back, and I haven't said that.

3886 The Hon. A. KOUTSANTONIS: I see. I am more confused than when I started.

The Hon. A. VANSTONE: I agree it's confusing. I didn't want to go beyond what was already in the public arena in what I said, but I accept that without knowing more it is hard to follow. I agree.

3887 Mr MURRAY: Chair, could I ask a related question. Commissioner, my question goes to trying to assess the difference in focus. You talked on the one hand, if I recall correctly, about maladministration being at the root of corrupt behaviour, providing a vector or an enabling mechanism or opportunity or opening.

The Hon. A. VANSTONE: Yes, an opportunity.

3888 Mr MURRAY: You have also, perhaps somewhat contradictorily, made mention of the fact that maladministration, in its own right at least, is unlikely to be a major focus for you moving forward. To add to the confusion that engenders, my recollection of the commentary from your predecessor insofar as the lack of a code of conduct for parliamentarians was concerned was that it essentially made it impossible for a maladministration claim to succeed against a parliamentarian. They seem to me to be competing or notionally at odds perspectives or viewpoints to have.

The Hon. A. VANSTONE: I suspect he might have said 'misconduct'. As it stands, I could investigate maladministration and misconduct of a member of parliament. What I have said is

that I can't see that I would. But assuming maladministration and misconduct go to the Ombudsman, he will be impeded in the same way that the commissioner has—by a lack of a code of ethics.

3889 Mr MURRAY: Can I somewhat cheekily assume that the Chair's reference to our recommendations as a committee that a code of conduct be implemented as part of a broader suite of anticorruption measures is something that you will take a fresh look at when you get the opportunity and/or perhaps endorse?

The Hon. A. VANSTONE: I will certainly read the report, perhaps over Christmas, I think.

3890 The Hon. A. KOUTSANTONIS: That's some good Christmas reading. Commissioner, your public statement of 15 October 2020 names the Hon. David Basham, the Hon. Geoff Brock, Mr Edward Hughes, Mr Stephan Knoll, Mr Nicholas McBride, Mr Adrian Pederick, Mr Peter Treloar, the Hon. Dan Van Holst Pellekaan and the Hon. Timothy Whetstone. From my recollection, I know of at least four members on that list who have repaid moneys.

The Hon. A. VANSTONE: I see.

3891 The Hon. A. KOUTSANTONIS: Mr Whetstone repaid money, Mr Knoll has repaid, famously, thousands of dollars, and I understand Mr Treloar repaid money. I can't remember if Mr Basham did or not. I don't want to make an aspersion against him, but I don't remember if he did or he didn't. I also understand that Mr Pederick repaid money, again recently, which was revealed in an estimates committee two weeks' ago. Your evidence before was that the people who you are not investigating and who were paying money back don't correlate. I'm confused.

The Hon. A. VANSTONE: I don't know of four in that list who repaid money.

3892 The Hon. A. KOUTSANTONIS: Pederick.

The Hon. A. VANSTONE: You might be talking about one or two nights' accommodation.

3893 The Hon. A. KOUTSANTONIS: Knoll repaid thousands.

The Hon. A. VANSTONE: I don't want to go into specifics but, as far as I'm concerned, my recollection is that three of those people have paid back money.

3894 The Hon. A. KOUTSANTONIS: The three that I know of, the ones that I know of—

The Hon. A. VANSTONE: It doesn't matter who they were, but I stand by what I said: that so far as the members investigated, or assessed I should say, by the Office for Public Integrity, I found no evidence against them that would warrant the matter being investigated.

3895 The Hon. A. KOUTSANTONIS: That's the part I find confusing, given they paid money back.

The Hon. A. VANSTONE: You see, I didn't say that.

3896 The Hon. A. KOUTSANTONIS: I will leave it there then, commissioner, because I am not following what you're saying. If you find no evidence, my question is: why would an individual pay money back if they have done nothing wrong?

3897 Mr CREGAN: Point of order, Mr Chair: this is asking that—

The Hon. A. VANSTONE: Well, it's not only that. It's a non sequitur you are asking me.

3898 The PRESIDING MEMBER: Thank you, commissioner, for appearing here before the committee today. The executive will forward you a copy of the transcript for your examination if there are any corrections that need to be made. Is there anything you would like to say in closing?

The Hon. A. VANSTONE: No. Thank you for having me to appear before you and merry Christmas.

3899 The PRESIDING MEMBER: Same to you and we look forward to seeing you in the new year.

3900 Mr MURRAY: Enjoy that Christmas reading.

The Hon. A. VANSTONE: I will.

THE WITNESS WITHDREW