



LEGISLATIVE COUNCIL

SELECT COMMITTEE ON DAMAGE, HARM OR ADVERSE OUTCOMES RESULTING FROM ICAC INVESTIGATIONS

Plaza Room, Parliament House, Adelaide

Friday, 12 November 2021 at 1:05pm

BY AUTHORITY OF THE LEGISLATIVE COUNCIL

WITNESS

LANDER, BRUCE, Former Independent Commissioner Against Corruption	529
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MEMBERS:

Hon. F. Pangallo MLC (Chairperson)
Hon. N.J. Centofanti MLC (via videoconferencing)
Hon. T.A. Franks MLC
Hon. H.M. Girolamo MLC
Hon. J.E. Hanson MLC
Hon. R.P. Wortley

WITNESS:

LANDER, BRUCE, Former Independent Commissioner Against Corruption

3729 The CHAIRPERSON: Good afternoon, Mr Lander. Welcome to the meeting. The Legislative Council has given the authority for this committee to hold public meetings. A transcript of your evidence today will be forwarded to you for your examination for any clerical corrections. I advise that your evidence today is being broadcast via the Parliament of SA website.

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 a select committee. However, witnesses should be aware that privilege does not extend to statements made outside of this meeting. All persons, including members of the media, are reminded that the same rules apply as in the reporting of parliament. Would you like to identify yourself, Mr Lander? Then I will introduce you to the members of the committee.

The Hon. B. LANDER: Yes. My name is Bruce Lander. I was formerly the Independent Commissioner Against Corruption.

3730 The CHAIRPERSON: I will introduce you to the members of the committee. On the screen is the Hon. Nicola Centofanti. The Hon. Russell Wortley is to your right. To your left are the Hon. Tammy Franks and the Hon. Heidi Girolamo. Our researcher is Dr Doyle. Emma Johnston is our secretary today. Of course, we heard from you last time, Mr Lander. We received the statement that you sent to us, so we thank you for that. Would you like to refer to it again or would you accept questions arising from it from the committee?

The Hon. B. LANDER: I thought the process would be that I would accept questions.

3731 The CHAIRPERSON: Okay.

The Hon. B. LANDER: I provided two statements—one to be heard in private and the other one for public hearing.

3732 The CHAIRPERSON: I do have a series of questions for you.

The Hon. B. LANDER: Can I just say one thing before we start so that we are all on the same page? When I was the Independent Commissioner Against Corruption, I had the responsibility of investigating corruption. I did not have the responsibility of prosecuting anyone who was investigated. The prosecution of anyone I investigated was the responsibility of the DPP, and not for me.

3733 The CHAIRPERSON: I think we all knew that. Are you suggesting that inference has been made?

The Hon. B. LANDER: Yes.

3734 The CHAIRPERSON: By me?

The Hon. B. LANDER: Yes.

3735 The CHAIRPERSON: Well, okay.

The Hon. B. LANDER: In your speech, which led to the creation of this committee, the suggestion was that failed prosecutions were—

3736 The CHAIRPERSON: Well, yes—

The Hon. B. LANDER: Just a moment—

3737 The CHAIRPERSON: It may not have been. I will have to look at it and see if you took it out of context, the inference I was making on it, where you can actually prosecute a matter. In other words, a matter that you wish to explore as opposed to illegal—I think I've pretty well understood what your role was with ICAC but if I have misunderstood it, I apologise, because that wasn't the intention of that comment. I do have a list of questions. I will ask the committee if they have any they could start first.

3738 The Hon. T.A. FRANKS: No; you start first.

3739 The CHAIRPERSON: Mr Lander, firstly, I would like to deal with the matter of Mr Lawton and Mr Fuller. Are you okay if I do that?

The Hon. B. LANDER: Yes.

3740 The CHAIRPERSON: You know who Michael Fuller is?

The Hon. B. LANDER: I acted for him.

3741 The CHAIRPERSON: You acted for him?

The Hon. B. LANDER: For some months, in a trial in the Federal Court. He's sitting behind me.

3742 The CHAIRPERSON: Do you recall when you were ICAC that he complained to you personally, in an exchange of correspondence, about the conduct of your then deputy Michael Riches, your Director of OPI Fraser Stroud, and ultimately you personally, in connection with a complaint he and a Mr Ian Lawton made to OPI on or about 29 January 2019?

The Hon. B. LANDER: Yes, I do. I had previously recused myself from any participation in his complaints because I had acted for him. I had a conflict.

3743 The CHAIRPERSON: To refresh your memory, can I show you an email from Michael Fuller to the admin at OPI, to which is attached a case summary authored by him, to see if it refreshes your memory? Can I show you that, Mr Lander?

The Hon. B. LANDER: I am assuming, Mr Pangallo, you have not accepted my submission that this is outside your terms of reference.

3744 The CHAIRPERSON: I don't accept that; the committee doesn't accept that. We don't believe it is. I read your explanation for it. We believe it does fall within the terms of reference as it went to OPI and then also was considered by your deputy, so—

The Hon. B. LANDER: It wasn't the subject of an investigation.

3745 The CHAIRPERSON: No; but it was 'any related matter' and any adverse outcome or harm as a result related to that matter.

The Hon. B. LANDER: There's no point me arguing with you, but I think it's clearly outside your terms of reference.

3746 The CHAIRPERSON: Well, we are saying it's not. Are you happy to still answer questions?

The Hon. B. LANDER: I'll answer questions.

3747 The CHAIRPERSON: Thank you very much, Mr Lander; I appreciate that. I'll give you the documents for you to have a look at.

The Hon. B. LANDER: The other thing, Mr Pangallo: can I understand that both of my statements have been tabled?

3748 The CHAIRPERSON: Not as yet, no.

The Hon. B. LANDER: Will they be?

3749 The CHAIRPERSON: We'll discuss those in relation to some of the matters that could well be subject to current proceedings, in particular the Hanlon/Vasilevski matter.

The Hon. B. LANDER: Yes, that's why I suggested that be in private.

3750 The CHAIRPERSON: And also the Barr matter.

The Hon. B. LANDER: What proceedings are they?

3751 The CHAIRPERSON: We've received a letter from the police commissioner in relation to that—

The Hon. B. LANDER: I don't know anything about that.

3752 The CHAIRPERSON: —saying that perhaps because it's subject to an investigation, a coronial inquiry, it could be outside the terms of reference now. That's the advice we got from the police commissioner himself.

The Hon. B. LANDER: I haven't seen it.

3753 The CHAIRPERSON: I can show it to you. Would you like me to show you his letter?

The Hon. B. LANDER: Perhaps we will proceed without it. I'm not sure what the relevance of all that is, but anyhow. Mrs Barr has made a lot of public complaints, and she made them in this committee. I'm answering them.

3754 The CHAIRPERSON: Yes, she did. But there are also issues in relation to some harm in relation to some of those people involved in that matter that we have to take into consideration, Mr Lander. There are others involved in that investigation, and matters have come to my attention that some could be at risk.

The Hon. B. LANDER: The Barr matter?

3755 The CHAIRPERSON: Yes, it's in that report.

The Hon. B. LANDER: Yes, that's why I didn't mention their names.

3756 The CHAIRPERSON: If you have a look at the documents I have just given you, I will take you to the case summary. I ask you to look at paragraph 9 firstly, and then paragraphs 12 and 13, improper conduct, which describes a major indictable offence under the Criminal Law Consolidation Act, does it not?

The Hon. B. LANDER: What was the question?

3757 The CHAIRPERSON: If you have a look at those paragraphs, it describes a major indictable offence under the CLCA, does it not?

The Hon. B. LANDER: What's that offence? What offence are you talking about?

3758 The CHAIRPERSON: Paragraph 9.

The Hon. B. LANDER: Starting from 'This point in time'?

3759 The CHAIRPERSON: Yes.

The Hon. B. LANDER: What's the offence there? I can't see one. Who committed it?

3760 The CHAIRPERSON: I am just having a look here—here you go:

Shortly thereafter a PIR was issued to investigate possible breaches of the CLCA for deception, dishonestly dealing with documents and unlawful bias.

The Hon. B. LANDER: I am not following. When did this happen? What's that got to do with me?

3761 The CHAIRPERSON: Sorry?

The Hon. B. LANDER: What's that got to do with me?

3762 The CHAIRPERSON: This is the case summary, Lawton versus SAPOL.

The Hon. B. LANDER: Where are you reading from, please?

3763 The CHAIRPERSON: I am reading from the introduction down and then the case.

The Hon. B. LANDER: I am not following, Mr Pangallo.

3764 The CHAIRPERSON: It's actually the case No. 2.

The Hon. B. LANDER: No. 2, yes. There are two victims—Gills, Bluff?

3765 The CHAIRPERSON: 'Shortly thereafter PIR was issued', yes.

The Hon. B. LANDER: Sorry, I don't know where you're reading from.

3766 The CHAIRPERSON: You don't have the case summary?

The Hon. B. LANDER: I've got case summary in front of me, Lawton v SAPOL, introduction, paragraphs 1 to 13—I have that, yes. Just tell me which paragraph you are reading from.

3767 The CHAIRPERSON: Under the heading of 'The case'.

The Hon. B. LANDER: Heading of 'Case'?

3768 The CHAIRPERSON: See there, its subheading, 'The case'.

The Hon. B. LANDER: I've got that.

3769 The CHAIRPERSON: No. 2, 'Shortly thereafter PIR was issued to investigate possible breaches of the CLCA for deception, dishonestly dealing with documents and unlawful bias'.

The Hon. B. LANDER: Yes.

3770 The CHAIRPERSON: Further down at No. 5:

Lawton telephoned Della Sala on a regular basis but essentially received no information as to status or progress. A memo to Lawton from Michael Fuller, forwarded to Bolingbroke by Lawton suggested a direction for obtaining relevant material that was not responded to.

The Hon. B. LANDER: Yes.

3771 The CHAIRPERSON: That allegation is made inter alia against SAPOL Commissioner Stevens.

The Hon. B. LANDER: What did he do? There's nothing there that suggests he did anything. He wouldn't have been aware of this.

3772 The CHAIRPERSON: He should have been.

The Hon. B. LANDER: No, he can't be aware of every matter that's being investigated by SAPOL, surely?

3773 The CHAIRPERSON: 'A formal signed complaint in writing and supporting brief of documents supporting those allegations was delivered in person by Michael Fuller and Ian Lawton to the Office of the OPI', and that they were interviewed by officers of the OPI. Do you ever recollect that happening?

The Hon. B. LANDER: No, I wasn't party to that; I didn't interview anyone.

3774 The CHAIRPERSON: 'We know that this complaint was assessed in OPI under PCDA as a complaint against police and remitted to IIS about three days later, assuming that the complaint was as described by Michael Fuller'. A complaint of improper conduct was against senior officers, including Commissioner Stevens. Do you acknowledge now that its referral to IIS for assessment was inappropriate?

The Hon. B. LANDER: No.

3775 The CHAIRPERSON: You knew at the time, did you not, that this complaint to OPI had been made by Michael Fuller and you knew what it alleged because you told him in a later correspondence that you had recused yourself.

The Hon. B. LANDER: That's right.

3776 The CHAIRPERSON: Correct?

The Hon. B. LANDER: Yes, I have just said that.

3777 The CHAIRPERSON: Who at the time, then, was responsible for the decision-making at OPI as to how this complaint should be treated?

The Hon. B. LANDER: It would have been the director and the deputy commissioner. The director of the OPI.

3778 The CHAIRPERSON: You knew at the time, did you not, that Mr Fuller was an experienced lawyer, even if he wasn't practising?

The Hon. B. LANDER: Sorry, say again.

3779 The CHAIRPERSON: You knew at the time that Mr Fuller was an experienced lawyer, even though he wasn't practising.

The Hon. B. LANDER: I knew Mr Fuller very well. I acted for him for months in the Federal Court.

3780 The CHAIRPERSON: Michael Fuller and you engaged with each other in email communications beginning 28 June 2019 through to Michael Fuller's last two emails to you which, I understand, you didn't ever answer. Do you ever recall those communications taking place? If I show them to you, will it refresh your memory?

The Hon. B. LANDER: Show me what? Yes. Which communications are these? Yes.

3781 The CHAIRPERSON: Are you satisfied with those? Thank you. Given that the complaint to OPI alleged improper conduct against Commissioner Stevens in particular and on the assumption that the particulars of the persons and the conduct alleged, including improper conduct, was the referral by OPI to IIS appropriate?

The Hon. B. LANDER: Yes. Could I just ask, please, what is it that the OPI didn't do that it should have done or what did it do—

3782 The CHAIRPERSON: I'm getting to that. I will be getting to that.

The Hon. B. LANDER: Alright, because nobody has particularised what the complaint is.

3783 The CHAIRPERSON: Well, I will get that.

The Hon. B. LANDER: Okay.

3784 The CHAIRPERSON: There was in place at the time an instrument entitled 'Determination pursuant to section 16 of the Complaints and Discipline Act'. Do you have that, commissioner?

The Hon. B. LANDER: Yes, it was.

3785 The CHAIRPERSON: You've got that?

The Hon. B. LANDER: Not in front of me, no. But there was a determination made under the act that the commissioner had to make.

3786 The CHAIRPERSON: Yes, there was a determination that was made. I will get you a copy of that, which I have.

The Hon. B. LANDER: Yes.

3787 The CHAIRPERSON: Were you aware of that?

The Hon. B. LANDER: I was.

3788 The CHAIRPERSON: Have you ever shown this to Commissioner Stevens?

The Hon. B. LANDER: Have I ever what?

3789 The CHAIRPERSON: Shown it to Commissioner Stevens. Is it referred to. No?

The Hon. B. LANDER: Why would I do that? It's his document.

3790 The CHAIRPERSON: Yes, but it came through the police commissioner, then through, following a—

The Hon. B. LANDER: He was obliged to make that determination under the Police Complaints and Discipline Act. He made it. Why would I show it to him?

3791 The CHAIRPERSON: This instrument, you will see from the research by parliamentary library, was only tabled in parliament, pursuant to section 16(5) of the PCDA on 10 September 2019, some two years after its signing by your then deputy but at the time Director of OPI, Michael Riches, and SAPOL Commissioner Stevens. So, it wasn't public knowledge from 25 January 2019 to 6 September 2019, when Mr Fuller was pursuing his grievances with various of your officers and you over the dealing with his and Ian Lawton's complaint to OPI of 29 January 2019. Do you agree with that?

The Hon. B. LANDER: No, I don't know anything about that.

3792 The CHAIRPERSON: You don't know anything about it?

The Hon. B. LANDER: I don't know what the police commissioner did under section 16, but I was provided with that determination, which I thought he made lawfully under the act.

3793 The CHAIRPERSON: Nobody, from your director down, ever revealed its existence to Mr Fuller. Is that correct?

The Hon. B. LANDER: Revealed the existence of the determination?

3794 The CHAIRPERSON: Of the determination, yes. Are you aware if it was ever—

The Hon. B. LANDER: I don't know but I would be surprised if they did tell him because it wasn't relevant.

3795 The CHAIRPERSON: But you would recuse yourself anyway from that matter?

The Hon. B. LANDER: Yes.

3796 The CHAIRPERSON: So I imagine you didn't take much of an interest in it. Is that the case?

The Hon. B. LANDER: I took no interest.

3797 The CHAIRPERSON: No interest in it?

The Hon. B. LANDER: When you recuse yourself, you take no interest.

3798 The CHAIRPERSON: So you weren't conversant with what was going on with your deputy at the time?

The Hon. B. LANDER: I deliberately took no interest in it because I shouldn't because I had a conflict.

3799 The CHAIRPERSON: Can you tell me what you understand from the section 16 PCDA determination as conduct of a police officer, the subject of a complaint, which may only be eligible for management resolution? First, do you agree with the qualification only in the sense as it is expressed in terms of conduct not eligible? Have you seen that on the determination?

The Hon. B. LANDER: I am familiar with the determination, yes.

3800 The CHAIRPERSON: So that anything that has the potential at the lowest end of the spectrum, even disciplinary proceedings of the kind referred to in placita (1) to (4), is excluded as eligible. Would you agree with that?

The Hon. B. LANDER: Yes.

3801 The CHAIRPERSON: Do you accept that this section 16 PCDA determination requires IIS and OPI to have regard to the particulars of the conduct that is alleged and requires an assumption of guilt not allowing for any consideration of its prospects?

The Hon. B. LANDER: No. It's got nothing to do with guilt at that stage.

3802 The CHAIRPERSON: When personally directed to the particulars of the complaint made to OPI, you would have had to have known from the text of this instrument that Michael Fuller's and Ian Lawton's complaint to OPI on 29 January 2019 should have been referred to you for an investigation. Do you accept that?

The Hon. B. LANDER: I don't. There was no corruption in this matter.

3803 The CHAIRPERSON: From?

The Hon. B. LANDER: There was nothing alleged that would have had the effect of—

3804 The CHAIRPERSON: You just told the committee now that you didn't take much of an interest in it. So you knew enough that there wasn't—

The Hon. B. LANDER: I now know what it's all about. I didn't then.

3805 The CHAIRPERSON: You didn't know what it was all about, so okay.

The Hon. B. LANDER: I didn't know then.

3806 The CHAIRPERSON: You were bound, as Mr Fuller spelt out to you, to interfere and to investigate the handling of this complaint as soon as Mr Fuller alerted you, I suggest. Were you bound to interfere and then to investigate the handling of this complaint?

The Hon. B. LANDER: No, because I continued to have a conflict. It can't be resolved by making a complaint about it.

3807 The CHAIRPERSON: I suggest this was required of you as ICAC, even if that investigation involved suspected improper conduct or maladministration by your deputy commissioner, your director of OPI, and whomever of your senior assessors was involved in activating an assessment and recommendation by IIS.

The Hon. B. LANDER: I don't follow your question, I am sorry.

3808 The CHAIRPERSON: You don't think it was a requirement for you to be involved in that investigation once a complaint had been made about the way it was handled? You didn't feel that you had to be involved in that?

The Hon. B. LANDER: No. There was the machinery to deal with this and it wasn't to complain to me. It was to complain to Mr Sulan.

3809 The CHAIRPERSON: I refer you now to the text of the communications between you and Mr Fuller in August-September 2019, and I will ask you some more detailed questions. Are you prepared to answer if I now present them to you to refresh your memory?

The Hon. B. LANDER: Sorry, it's?

3810 The CHAIRPERSON: August-September 2019. Have you got those there?

The Hon. B. LANDER: I've got one of August from Mr Fuller, yes.

3811 The CHAIRPERSON: It starts with a communication from Michael Fuller to you on 28 June.

The Hon. B. LANDER: I haven't got that.

3812 The CHAIRPERSON: You haven't got that?

The Hon. B. LANDER: No, I don't think so.

3813 The CHAIRPERSON: You haven't got that one?

The Hon. B. LANDER: I don't think so.

3814 The CHAIRPERSON: I think I gave it to you. I think it should be part of those documents. If not, I will give you my copy.

The Hon. B. LANDER: What was the date?

3815 The CHAIRPERSON: It starts Friday 28 June 2019.

The Hon. B. LANDER: Sorry, I have got that.

3816 The CHAIRPERSON: You've got that one?

The Hon. B. LANDER: Yes, I have.

3817 The CHAIRPERSON: Okay. Do you acknowledge that Michael Fuller was spelling out to you with particulars that there was wholesale departure from the requirements of the ICAC Act attendant upon the consideration of his and Lawton's complaint to OPI of 29 January 2019?

The Hon. B. LANDER: I appreciate that he was making a lot of complaints, yes.

3818 The CHAIRPERSON: Yes? He made a specific request for action by you. I think paragraphs numbered 1 to 4. Can you see that?

The Hon. B. LANDER: Number 4?

3819 The CHAIRPERSON: One to four. Do you agree with that? He is asking for specific action from you.

The Hon. B. LANDER: I can't see it. Where is number 4?

3820 The CHAIRPERSON: We might have a hole through it there.

The Hon. B. LANDER: He asked me to suspend from office Riches and Stroud—a power I didn't enjoy, as I understood it.

3821 The CHAIRPERSON: Did you initiate any inquiry at that time at all, following—

The Hon. B. LANDER: Mr Pangallo, can I just say it one more time? I was conflicted. If he wanted to make a complaint about my staff, he had to make it to Mr Sulan, which he did eventually and Sulan dismissed it. I was conflicted at all times.

3822 The CHAIRPERSON: And you told him that?

The Hon. B. LANDER: Pardon?

3823 The CHAIRPERSON: Did you tell him that?

The Hon. B. LANDER: He knew that, yes.

3824 The CHAIRPERSON: No, did you tell him that?

The Hon. B. LANDER: Personally?

3825 The CHAIRPERSON: Well, did you send him a response to say you were conflicted?

The Hon. B. LANDER: I think I did, but I can't remember. I haven't got it.

3826 The CHAIRPERSON: You think you did? Because he continues to correspond with you. It seems that he is not unsure why you are not acting.

The Hon. B. LANDER: I would have been surprised if he had forgotten I acted for him.

3827 The CHAIRPERSON: Surely you would have even given him the courtesy of a response to say, 'As I have acted for you,' but I am sure that you have acted for others in the course of your period as ICAC.

The Hon. B. LANDER: A lot of people. I have acted for a lot of people.

3828 The CHAIRPERSON: Have you recused yourself other times, I imagine?

The Hon. B. LANDER: I don't think so. I think this is the only time I did recuse myself. I might be wrong about that.

3829 The CHAIRPERSON: Okay. So there was another email to you, dated 9 August 2019. Do you recall receiving that one?

The Hon. B. LANDER: No.

3830 The CHAIRPERSON: No?

The Hon. B. LANDER: I am not sure if I did.

3831 The CHAIRPERSON: So Mr Fuller is critiquing a communication to him by your deputy commissioner, Mr Riches, dated 3 July 2019, forwarded to him in the interim.

The Hon. B. LANDER: Yes.

3832 The CHAIRPERSON: His critique is detailed and highly critical of Mr Riches—

The Hon. B. LANDER: Yes, he is.

3833 The CHAIRPERSON: —and specifically indicates Mr Riches for corrupt, improper and dishonest conduct in public administration as defined in section 5 of the ICAC Act.

The Hon. B. LANDER: Yes.

3834 The CHAIRPERSON: Do you acknowledge that that was a reasoned and informed critique or not?

The Hon. B. LANDER: It was a reasonable report?

3835 The CHAIRPERSON: Was it a reasoned and informed critique of the—

The Hon. B. LANDER: No.

3836 The CHAIRPERSON: No.

The Hon. B. LANDER: No, Mr Fuller has a habit of taking extreme positions when anyone disagrees with him.

3837 The CHAIRPERSON: Many people do, I guess, Mr Lander. He then set out what I might—

The Hon. B. LANDER: It's a question of reasonableness, though.

3838 The CHAIRPERSON: He then set out what I might describe as a call to action by you?

The Hon. B. LANDER: A what? He sets out a what?

3839 The CHAIRPERSON: This is in that—

The Hon. B. LANDER: I still don't know what he's complaining about. I know who he is complaining about but I don't know what he's complaining about. I still haven't been told yet.

3840 The CHAIRPERSON: I think what he is complaining about, basically, is that there was improper handling of a complaint by SAPOL and then a subsequent complaint that was made about the conduct of the handling of that complaint. So he's—

The Hon. B. LANDER: Yes. How does that interest us?

3841 The CHAIRPERSON: It should, under the PCDA.

The Hon. B. LANDER: Not if it's judged to be a matter that could be handled by IIS as management resolution, no.

3842 The CHAIRPERSON: As management resolution, exactly. But when it comes to the PCDA—this is in one of your reports:

All complaints and reports received by either SA Police or the OPI must be referred to the Internal Investigations Section of SA Police within three days. IIS is the section of SA Police responsible for undertaking the assessment of complaints and reports and for carrying out investigations under the PCDA. The only exception is if the OPI is satisfied that a complaint or report made to the OPI should be referred to the ICAC.

Do you agree with that?

The Hon. B. LANDER: Yes, I do.

3843 The CHAIRPERSON: And:

The OPI does not have statutory function to undertake an assessment of police complaints or reports that are received. Each complaint or report received or referred to IIS under the PCDA must be assessed by IIS.

The Hon. B. LANDER: Yes.

3844 The CHAIRPERSON: Yes?

The Hon. B. LANDER: That's what the act says, yes.

3845 The CHAIRPERSON: And:

The PCDA provides that action may be taken by the designated officer receiving management resolution or the matter proceeding to investigation. The Commissioner of Police has the power to determine the kind of matter that should be dealt with by way of management resolution. The Commissioner of Police does that by publishing a determination which must be approved by the OPI.

Do you agree with that?

The Hon. B. LANDER: Yes.

3846 The CHAIRPERSON: It's here in your own reporting.

The Hon. B. LANDER: That's what section 16 says, yes.

3847 The CHAIRPERSON: Further:

The kind of matter that the Commissioner of Police has determined should be dealt with by management resolution involves a consideration of the consequences of the conduct if the conduct were accepted or established. It is conduct that, if proved, would not warrant termination, suspension, demotion or other serious consequences. If a matter is deemed as one that might warrant termination, suspension, demotion or other serious consequences it will progress to an investigation.

The Hon. B. LANDER: Yes; not necessarily by ICAC, though.

3848 The CHAIRPERSON: No; by whom?

The Hon. B. LANDER: By IIS.

3849 The CHAIRPERSON: Right; but they don't work in collaboration with OPI in these matters?

The Hon. B. LANDER: No. If IIS determines to investigate the matter, it does so using the powers under the police complaints act. OPI can give directions in relation to the manner in which the investigation proceeds. That's got nothing to do with corruption necessarily; it could, but not necessarily.

3850 The CHAIRPERSON: You sent him a letter on 12 August 2019, didn't you?

That's where you actually do express your conflict that you have acted for him?

The Hon. B. LANDER: That was the first time I corresponded with him.

3851 The CHAIRPERSON: Even though you have had previous correspondence from him?

The Hon. B. LANDER: No.

3852 The CHAIRPERSON: You have received previous correspondence from him, emails?

The Hon. B. LANDER: Yes, but at this stage I was telling him I was conflicted and I could do nothing about it.

3853 The CHAIRPERSON: So you tell him, firstly, that neither you nor any member of your office will take part in any further consideration of his complaint and, further, that you are satisfied there is no point in any further communicating with him in relation to it?

The Hon. B. LANDER: That's right.

3854 The CHAIRPERSON: So do you say to us that that response was an appropriate response by you as ICAC to a detailed series of accusations about the misconduct of your officers?

The Hon. B. LANDER: Yes. If you see the correspondence, his complaints escalate, and that has been the case ever since. He complains about the last person he has dealt with. He makes a complaint to someone and then complains about the person he has made a complaint to.

3855 The CHAIRPERSON: I think his complaint relates to a correspondence from Mr Riches, in which Mr Riches says that they have had a looking at everything and basically there was nothing untoward.

The Hon. B. LANDER: That's right.

3856 The CHAIRPERSON: And that it had been handled as a management resolution?

The Hon. B. LANDER: Yes. That was a determination made by the OPI and by IIS.

3857 The CHAIRPERSON: Did anyone ever check, apart from Mr Riches, to see if in fact the management resolution actually followed the guidelines that are required for one? Did anyone check that?

The Hon. B. LANDER: I don't know because I was recused.

3858 The CHAIRPERSON: It doesn't look like Mr Riches did.

The Hon. B. LANDER: I would be very surprised if Mr Riches missed anything; he is a very competent man.

3859 The CHAIRPERSON: If somebody had a look at the complaints management system entries, they may have been able to determine whether that matter was actually handled the way Mr Fuller claims it was or wasn't.

The Hon. B. LANDER: Are you suggesting Mr Riches didn't do that?

3860 The CHAIRPERSON: Well, if you go on that letter, he claims that there was a management resolution, Mr Lander, that it all complied. The only problem was that nobody had ever contacted Mr Lawton to tell him that the matter had been referred to a management resolution.

The Hon. B. LANDER: That's for SAPOL.

3861 The CHAIRPERSON: Don't you think that constitutes a perception of improper conduct that should be investigated, if it breaches the PCDA?

The Hon. B. LANDER: No.

3862 The CHAIRPERSON: Why not?

The Hon. B. LANDER: Because it doesn't do that. It doesn't breach the PCDA, as you say.

3863 The CHAIRPERSON: What, that—

The Hon. B. LANDER: That they didn't advise him that a matter—

3864 The CHAIRPERSON: But you are suppose to advise him under the act. If the matter is referred to a management resolution and a resolution officer is appointed, you would think the resolution officer would then have to contact the complainant.

The Hon. B. LANDER: Whose conduct are we addressing at the moment? I'm only responsible for the OPI and ICAC. Whose conduct are we addressing?

3865 The CHAIRPERSON: We are addressing the conduct of SAPOL, IIS, the commissioner, Mr Riches. Mr Riches is saying that he investigated the matter and looked at everything and there was nothing to find there.

The Hon. B. LANDER: Well said.

3866 The CHAIRPERSON: Except that if he had checked the matters, the facts, to find out whether Mr Lawton had actually been subjected to a management resolution he would have

found otherwise. The complaint was that Mr Lawton didn't receive any consultation or whatever from SAPOL about having a management resolution.

The Hon. B. LANDER: I thought the complaint was that SAPOL had incorrectly advised Mr Pangallo about what advice he had received from the DPP. I thought that is where it started.

3867 The CHAIRPERSON: It started initially as a fraud matter.

The Hon. B. LANDER: I know that.

3868 The CHAIRPERSON: You know about that?

The Hon. B. LANDER: Yes. It wasn't a fraud matter, but anyhow—

3869 The CHAIRPERSON: How do you know that?

The Hon. B. LANDER: I have had a look—

3870 The CHAIRPERSON: How do you know that?

The Hon. B. LANDER: Fifty years' experience.

3871 The CHAIRPERSON: Well, you have had a look at the case file?

The Hon. B. LANDER: I have had a look at the allegations: this was a civil matter, and the DPP was right in that respect.

3872 The CHAIRPERSON: Hang on, where did you see the case file, who showed it to you?

The Hon. B. LANDER: I haven't seen the case file.

3873 The CHAIRPERSON: Well, I'm a bit confused here, Mr Lander, because, firstly, you say you didn't take much of an interest in the matter—

The Hon. B. LANDER: I took no interest; I've told you that.

3874 The CHAIRPERSON: Okay. Now you're telling us that you determined that it was a civil matter, that you had a look at the document—

The Hon. B. LANDER: I didn't determine that. I'm just telling you it's a civil matter now. I now know that—

3875 The CHAIRPERSON: How do you know that? And I'm asking you, how do you know that it was a civil matter without you having to have a look at the documents that were presented to the—

The Hon. B. LANDER: Because for the purpose of this inquiry, I've read a lot of papers and it's clear to me this was a civil matter.

3876 The CHAIRPERSON: And what have you read? What papers have you read?

The Hon. B. LANDER: I can't remember. Reports—

3877 The CHAIRPERSON: Have you read documents that have been published on this committee's site? You've read Judge Fuller's—

The Hon. B. LANDER: I've read Mr Fuller's submission, yes.

3878 The CHAIRPERSON: What about Judge Fuller's appraisal of the matter?

The Hon. B. LANDER: I've read her evidence.

3879 The CHAIRPERSON: You've read her evidence? And you disagree with her?

The Hon. B. LANDER: It doesn't raise an issue of corruption.

3880 The CHAIRPERSON: No. We are talking about the fraud matter. You had an opinion about the fraud matter and you said that the fraud matter—

The Hon. B. LANDER: I'm sorry, yes.

3881 The CHAIRPERSON: —to you, was a civil matter.

The Hon. B. LANDER: I do disagree with her. It was not a fraud matter.

3882 The CHAIRPERSON: You disagree with her appraisal.

The Hon. B. LANDER: Yes.

3883 The CHAIRPERSON: Even though she has gone and had a look right through all the documents.

The Hon. B. LANDER: Yes, I disagree with her.

3884 The CHAIRPERSON: You disagree with her. You hadn't looked at those documents—

The Hon. B. LANDER: DPP—

3885 The CHAIRPERSON: —you're just disagreeing with Judge Fuller's appraisal of that matter.

The Hon. B. LANDER: Yes.

3886 The CHAIRPERSON: Well you are, aren't you?

The Hon. B. LANDER: Yes I am, because I agree with the DPP.

3887 The CHAIRPERSON: The DPP?

The Hon. B. LANDER: Yes. They didn't think it was a matter that should be prosecuted. They thought it was a civil matter.

3888 The CHAIRPERSON: Who said that from the DPP?

The Hon. B. LANDER: I don't know.

3889 The CHAIRPERSON: You don't know?

The Hon. B. LANDER: No.

3890 The CHAIRPERSON: I mean, I've got an email, which we published online. Let me just see if I've got it here. This is from an officer of the DPP, who is regarded as an expert in fraud matters. He has had a discussion with Detective Bolingbroke in relation to Ms Fuller's report, and this is what he says:

Hi Bolly [this is Mr Phillips]

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's 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.

[Signed] Gary

The Hon. B. LANDER: Did not the DPP in the end result determine that this matter should not be prosecuted and it was a civil matter?

3891 The CHAIRPERSON: No.

The Hon. B. LANDER: Alright. Then I've misunderstood.

3892 The CHAIRPERSON: Well, no. In fact, the DPP—there is a letter from—

The Hon. B. LANDER: Mr Pangallo, we're a long way away from the complaint—

3893 The CHAIRPERSON: I know that, but I'm just trying to get back to what you're telling us, that you've had a look at it and you've said nothing in it.

The Hon. B. LANDER: Tell me what the OPI should have done.

3894 The CHAIRPERSON: The OPI should have investigated, through Mr Riches, the conduct and the processes in handling the complaints by Mr Lawton in relation to the matter being, firstly, the way it was dropped and then the way it was handled, including coming to a management resolution that never happened. There was no management resolution, Mr Lander.

The Hon. B. LANDER: You would know, if you read the ICAC Act, the OPI had no such power. It had no power to investigate anything.

3895 The CHAIRPERSON: No, but you did; your office did.

The Hon. B. LANDER: But you said the OPI should have done it, not me.

3896 The CHAIRPERSON: Or it could have been referred, couldn't it?

The Hon. B. LANDER: Only if it was corruption.

3897 The CHAIRPERSON: You don't think it was corruption?

The Hon. B. LANDER: It certainly wasn't corruption.

3898 The CHAIRPERSON: What's your definition of corruption?

The Hon. B. LANDER: The definition of section 5 of the ICAC Act: 'The offence committed by a public officer while a public officer is committing his or her public duties.' What was the offence by SAPOL?

3899 The CHAIRPERSON: If you're breaching an act, does that constitute—no?

The Hon. B. LANDER: It doesn't constitute an offence.

3900 The CHAIRPERSON: You're breaching the public honesty and—

The Hon. B. LANDER: The accountability act?

3901 The CHAIRPERSON: Does that constitute?

The Hon. B. LANDER: I don't think that would apply.

3902 The CHAIRPERSON: It doesn't?

The Hon. B. LANDER: No. I think the act that would apply is the Police Complaints and Discipline Act. This is a storm in a teacup, I have to tell you.

3903 The CHAIRPERSON: It's not a storm in a teacup, and I will tell you why it isn't a storm in a teacup, Mr Lander: simply because what seems to have happened here is that a fraud matter has been, firstly, accepted by police and a PIR has been drawn up. We're not talking about nickel and dime stuff. I understand that the fraud matter could actually amount to millions of dollars. Police have firstly decided that, yes, there is a matter here. They have taken advice.

They have gone to the DPP. The DPP officer says, 'Yes, look, if I can trust that report from Ms Fuller, there's something here. We will have a look at it and I will wait for you to present me with the case file.' That never happened. Another policeman then talks to Judge Fuller and says, 'It went to the manager. The manager has had a discussion about this matter and we have received advice from the DPP that there's no reasonable prospect of a conviction.' There's a letter from Adam Kimber who says he never received anything from police.

The Hon. B. LANDER: It was his office that received it. Nobody has suggested that Kimber ever saw it, Mr Pangallo.

3904 The CHAIRPERSON: Are you saying the DPP didn't receive it?

The Hon. B. LANDER: They are talking about the office, clearly, Mr Pangallo. You are like Mr Fuller: you are being a literalist. They are talking about the office. Nobody is suggesting that Adam Kimber would have looked at this matter.

3905 The CHAIRPERSON: No, he's made the response to a letter. Here we are: 4 December 2018:

Dear Mr Lawton,

A letter dated 3 December 2018 delivered to my office on Monday 3 December 2018 was a letter from you dated the same day in a lever arch folder of documents. The letter appears to reflect the view that my office has some involvement in the matter. That is not the case. The office has never been asked to provide any formal advice to SA Police nor has it received any brief from SA Police—

bearing in mind that the police said they had actually gone to the DPP—

There has only been some informal contact which has not reached the point of this office having any responsibility. With respect to those aspects of your letter which relate to an apparent complaint you feel should be subject to an investigation by SA Police Anti-Corruption Branch, you will need to refer that issue to them. As a consequence of my office not having any responsibility for this matter, the materials in the lever arch folder will not be perused. They will be available for collection at the reception of this office.

That's Adam Kimber, the Director of Public Prosecutions, saying they hadn't heard anything from the police, they didn't get anything. Yet, police officers have gone and told Mr Lawton that they have gone and received an opinion that there was no reasonable prospect of conviction. There is nowhere that says that.

The Hon. B. LANDER: But it was given to the DPP on an informal basis for advice by SAPOL. SAPOL then wrongly advised, as Mr Riches has pointed out, Mr Lawton that they had received an opinion from the DPP that there would be no reasonable prospect of success. It wasn't an opinion. That was the only thing that perhaps needed any investigation, and that was looked at. This is a non-event, Mr Pangallo.

3906 The CHAIRPERSON: You are saying it's a non-event—

The Hon. B. LANDER: I am.

3907 The CHAIRPERSON: —but what it is, it's actually a white lie that has continued to be embellished all the way.

The Hon. B. LANDER: A white lie by whom?

3908 The CHAIRPERSON: SAPOL, and we have had evidence to that regard from Judge Fuller.

The Hon. B. LANDER: And what does ICAC do with a white lie?

3909 The CHAIRPERSON: When it leads to breaches of the PCDA, you're saying that that's not your remit?

The Hon. B. LANDER: It could be. It could be if it's a criminal offence.

3910 The CHAIRPERSON: But you are saying it's not, that that breach of the PCDA wouldn't constitute—

The Hon. B. LANDER: What was the breach?

3911 The CHAIRPERSON: Part of it would also be the fact that it referred to a management resolution that never took place.

The Hon. B. LANDER: That's not a criminal offence, Mr Pangallo. I can't investigate that.

3912 The CHAIRPERSON: But there was a document that was then tabled to parliament that one had taken place.

The Hon. B. LANDER: What document was tabled?

3913 The CHAIRPERSON: The section 16 determination. That had to be tabled in parliament.

The Hon. B. LANDER: You ought to speak to the former Attorney about that. That was his responsibility.

3914 The CHAIRPERSON: Her's. Was it his at the time? What's the date of it?

The Hon. B. LANDER: It was the former Attorney, wasn't it; 2017 it would have been.

3915 The CHAIRPERSON: It was the previous Attorney.

The Hon. B. LANDER: Yes, Mr Rau.

3916 The CHAIRPERSON: Yes, but it took two years for that to happen.

The Hon. B. LANDER: Well, take it up with Mr Rau. It's got nothing to do with anything, with respect.

3917 The CHAIRPERSON: So you're saying that anything that has to do with the PCDA, breaches of that, which you outline in your reports, doesn't constitute corrupt conduct and should be—

The Hon. B. LANDER: Unless it's a criminal offence. The only corrupt conduct under the ICAC Act has to be a criminal offence.

3918 The CHAIRPERSON: What about maladministration and misconduct? Does it fall under that?

The Hon. B. LANDER: It could; but that's not a criminal matter.

3919 The CHAIRPERSON: No; but that was your remit as well.

The Hon. B. LANDER: It could have been, yes.

3920 The CHAIRPERSON: So it could have fallen under maladministration and misconduct.

The Hon. B. LANDER: It could have—and it was dealt with that way.

3921 The CHAIRPERSON: By whom?

The Hon. B. LANDER: By IIS, by management resolution.

3922 The CHAIRPERSON: I've just said to you that there wasn't a management resolution—

The Hon. B. LANDER: I'm not—

3923 The CHAIRPERSON: There wasn't, Mr Lander. Mr Lawton was never spoken to by police. The first they had ever heard about a management resolution was when your Mr Riches sent this letter to them.

The Hon. B. LANDER: Let's assume that all of that's the case, what did the OPI do wrong?

3924 The CHAIRPERSON: They didn't investigate it.

The Hon. B. LANDER: They can't investigate anything. They have no power—

3925 The CHAIRPERSON: No, but—

The Hon. B. LANDER: Just a minute please—they have no power to investigate anything. Can we agree on that?

3926 The CHAIRPERSON: Well, investigate certain matters; but he says, in his letter—

The Hon. B. LANDER: They can't investigate anything.

3927 The CHAIRPERSON: He says in his letter that he did look into it.

The Hon. B. LANDER: He's not investigating it. You're attributing—

3928 The CHAIRPERSON: What did he do then?

The Hon. B. LANDER: —a power to the OPI that the OPI never has.

3929 The CHAIRPERSON: Why would he write that letter?

The Hon. B. LANDER: He's not carrying out an investigation for the OPI.

3930 The CHAIRPERSON: No; but he has investigated Mr Lawton's complaint and said, 'I've had a look at everything, nothing to see here.'

The Hon. B. LANDER: That's not an investigation. He is looking at the file to see whether anything should be done about it, and he's saying no.

3931 The CHAIRPERSON: He's just accepted what people have told him.

The Hon. B. LANDER: Has he?

3932 The CHAIRPERSON: I don't know.

The Hon. B. LANDER: Exactly, you don't know. Why did you say that—

3933 The CHAIRPERSON: Well, I don't. Mr Lander, we have asked to see the complaints management system entries in that matter, we've asked for documents to be produced by SAPOL, and they refuse to produce them. In fact, they have refused to produce any documents in relation to that case.

The Hon. B. LANDER: They take the same view as me, I think, that it's outside your remit.

3934 The CHAIRPERSON: It's not.

The Hon. B. LANDER: I could say to you—

3935 The CHAIRPERSON: This committee is the arbiter of what falls within the terms of reference, not SAPOL.

The Hon. B. LANDER: No; but it doesn't make it right by the committee saying so.

3936 The CHAIRPERSON: It doesn't, in your view.

The Hon. B. LANDER: No.

3937 The CHAIRPERSON: Okay. So—

The Hon. B. LANDER: We've taken an hour on this.

3938 The CHAIRPERSON: We have, and have actually been running around a bit.

The Hon. B. LANDER: We have, because nobody has been able to precisely identify for me what it is that the OPI should have done and didn't do or what the OPI did do and shouldn't have done. If you can articulate that we can probably get to the end of it very quickly.

3939 The CHAIRPERSON: I'm just saying to you that Mr Fuller remained in ignorance of the existence of section 16 of the PCDA determination; but you knew, as did Commissioner Stevens. So why did this remain a secret within the corridors of SAPOL and ICAC and OPI—

The Hon. B. LANDER: It wasn't a secret.

3940 The CHAIRPERSON: No-one knew about it. They didn't know about the determination until it was—

The Hon. B. LANDER: How do you assert that, that nobody knew about it?

3941 The CHAIRPERSON: I'm talking about those parties involved, Mr Lawton and Mr Fuller.

The Hon. B. LANDER: I'm sorry about that if they didn't know about it, but—

3942 The CHAIRPERSON: They should have been told, shouldn't they—

The Hon. B. LANDER: By whom?

3943 The CHAIRPERSON: —that there was a determination and there was a management resolution? They weren't told.

The Hon. B. LANDER: By whom should they have been told?

3944 The CHAIRPERSON: By the resolution officer.

The Hon. B. LANDER: Right: what is it that OPI didn't do? That's what I want to know, not what SAPOL didn't do.

3945 The CHAIRPERSON: OPI had to address a complaint that was made by Mr Lawton and Mr Fuller about the way it was handled.

The Hon. B. LANDER: They did. They thought it should have been dealt with by management resolution, which it had been done—

3946 The CHAIRPERSON: But did he check that? He didn't check that, he didn't check the veracity of that management resolution.

The Hon. B. LANDER: Who?

3947 The CHAIRPERSON: Mr Riches.

The Hon. B. LANDER: You know that?

3948 The CHAIRPERSON: I'm just going by his letter, and what you said to me. He says that this is what was done. Did he check the complaints management system entries?

The Hon. B. LANDER: I don't know, but he had access to them.

3949 The CHAIRPERSON: You could have checked them yourself, couldn't you?

The Hon. B. LANDER: Mr Pangallo, can I go back? I was recused. I couldn't do that. Why do we keep coming back to that?

3950 The CHAIRPERSON: So you accept—

The Hon. B. LANDER: You would not accept the fact that I have recused?

3951 The CHAIRPERSON: No, I accept the fact that you recused yourself; you said it. We have heard evidence from Chief Inspector Curtis that throughout the period of this saga direct and remote access was in place and provided to you as ICAC and OPI to the complaint management system maintained by IIS, pursuant to section 6 of the PCDA. You at all times were able to personally access the system whenever you saw fit. You say you couldn't because you were conflicted, so why wouldn't Mr Riches, as your deputy, then have a look at it?

The Hon. B. LANDER: Are you saying he didn't?

3952 The CHAIRPERSON: We don't know.

The Hon. B. LANDER: But you are making an allegation that he didn't do it. Are you saying that that's the case?

3953 The CHAIRPERSON: He says there was a management resolution.

The Hon. B. LANDER: Yes.

3954 The CHAIRPERSON: But we are saying, if you had a management resolution, the complainant would have been part of that resolution.

The Hon. B. LANDER: Maybe so.

3955 The CHAIRPERSON: And they weren't. I am just saying that the whole process—

The Hon. B. LANDER: You make allegations about people doing and not doing things without having any facts to bear them out. You can't do that, with respect. If you think Mr Riches did something wrong, put it to Mr Riches.

3956 The CHAIRPERSON: Well, we have attempted to do that. Unfortunately, he is no longer in South Australia.

The Hon. B. LANDER: He can answer a phone.

3957 The CHAIRPERSON: Well, we may well do that. I direct your attention to section 8(a) and (b) of the PCDA and the obligations of OPI. Do you agree as a general proposition that if there was credible evidence presented to you of failures at OPI and oversight of assessments and investigation of complaints and reports or, more generally, failures in oversight of the operation and enforcement of the PCDA, you were bound to investigate, or your officers, who may be concerned in such failures?

The Hon. B. LANDER: You've got a question?

3958 The CHAIRPERSON: Well, that's it.

The Hon. B. LANDER: What's it?

3959 The CHAIRPERSON: Do you believe that your own officers, or yourself, who may have been concerned with such failures to address failures at OPI in the oversight of assessments and investigation of complaints and reports or failures in oversight of the operation and enforcement of the PCDA, that your officers were bound to investigate. Do you think they should have? No?

The Hon. B. LANDER: They were not bound to investigate. They couldn't investigate. Can I make myself clear about that, please? They had oversight. They did not have power to investigate.

3960 The CHAIRPERSON: Given the purposes of the ICAC Act and your own tenure as ICAC, would it not be important for you as ICAC to be seen to investigate even a suspicion of misconduct or maladministration in any of your officers and report such investigation?

The Hon. B. LANDER: If I thought any of my officers had been guilty of misconduct or maladministration, I would have reported that to Mr Sulan. I didn't suspect that.

3961 The CHAIRPERSON: Why didn't it happen here, where it would appear from Mr Fuller's communications to you that he presented to you some credible evidence of suspected improper conduct and/or maladministration in public office by named officers of yours?

The Hon. B. LANDER: It wasn't credible evidence.

3962 The CHAIRPERSON: Did you at any time during your tenure as ICAC?

The Hon. B. LANDER: No.

3963 The CHAIRPERSON: Did you at any time as your tenure at ICAC ever have a reason to access the complaints management system entries? Did you ever have to do that?

The Hon. B. LANDER: Yes.

3964 The CHAIRPERSON: You did, or did you have somebody else do it?

The Hon. B. LANDER: Sometimes I did it.

3965 The CHAIRPERSON: Having regard to Mr Fuller's submissions to you in his email of 6 September 2019, why on earth did you not open your computer or laptop and access the complaints management system entries such as may have been entered in respect of Mr Lawton's complaint to Mr Stevens on 3 December 2018 and Mr Fuller and Mr Lawton's complaint to OPI on 29 January 2019? You just didn't think it was relevant?

The Hon. B. LANDER: I was conflicted, Mr Pangallo.

3966 The CHAIRPERSON: Okay, thank you.

The Hon. B. LANDER: Will you not accept that?

3967 The CHAIRPERSON: I do.

The Hon. B. LANDER: Would you accept that I can't do anything?

3968 The CHAIRPERSON: No.

The Hon. B. LANDER: Why not?

3969 The CHAIRPERSON: Well, you say you are conflicted.

The Hon. B. LANDER: Yes, so I can't do anything.

3970 The CHAIRPERSON: So you can't.

The Hon. B. LANDER: Do you agree with that?

3971 The CHAIRPERSON: Well, I agree with that. If you say you are conflicted, you can't do it, and you have expressed that.

The Hon. B. LANDER: So that's what I did—nothing, which is my duty.

3972 The CHAIRPERSON: I think anyone with an open mind would have immediately known from the text of Mr Riches' email to Mr Fuller that, firstly, you must have accessed the complaints management system and found nothing and that he then had sufficient hubris to spin nothing less than a fairytale to Mr Fuller.

The Hon. B. LANDER: What's the question?

3973 The CHAIRPERSON: The question is: had Mr Riches, after assessing the complaint from Mr Lawton and Mr Fuller, tried to satisfy himself that there was either something in it or not, he would then have been able to access the complaints management system.

The Hon. B. LANDER: He certainly could have. He could have.

3974 The CHAIRPERSON: And then he would have been able to find out whether there was any merit in their complaint, wouldn't he?

The Hon. B. LANDER: I would have thought so, but I don't know.

3975 The CHAIRPERSON: Okay, but if he found there was any merit in his complaint, he could have acted on that?

The Hon. B. LANDER: If he thought there was any merit in Mr Fuller's complaint, he could have acted on it. He didn't think there was any merit in Mr Fuller's complaint.

3976 The CHAIRPERSON: So what we don't know is whether he did access that.

The Hon. B. LANDER: I would be surprised if he didn't. He is very thorough. He is a very, very good lawyer.

3977 The CHAIRPERSON: I have no more questions on that matter.

3978 The Hon. T.A. FRANKS: Can I just ask a few supplementaries on that issue, Chair?

3979 The CHAIRPERSON: Yes.

3980 The Hon. T.A. FRANKS: Thank you, Mr Lander. On what date did you recuse yourself from this particular matter? You have noted that you have represented Mr Fuller previously. How was that conflict of interest noted, identified and recorded?

The Hon. B. LANDER: It would have been recorded in the case management system, and I recused myself very early when I heard that the complainant was Michael Fuller.

3981 The CHAIRPERSON: I have some questions on some other matters. Mr Lander, have you ever had to apologise to anybody as a result of an allegation that had been made against them—either you or any of your officers—of corrupt conduct? Has there been an occasion when either yourself or any of your officers have had to apologise to somebody who had been accused of corruption? Have you ever had to do that?

The Hon. B. LANDER: Are you saying did I ever apologise for someone else accusing someone of corruption?

3982 The CHAIRPERSON: Have you or any of your officers had occasion to accuse somebody of corruption and then found that there was no evidence to support it, and then you had to apologise? Have you ever done that?

The Hon. B. LANDER: We investigated a number of people for corruption and didn't find sufficient evidence to prepare a brief for the DPP on a number of occasions, but usually the person under investigation was unaware of the investigation, so, no, there was no apology given.

3983 The CHAIRPERSON: Have you made apologies yourself to anybody in relation to that?

The Hon. B. LANDER: I can't think that I have. I can't remember. I am not sure what I would be apologising for.

3984 The CHAIRPERSON: That you got it wrong perhaps, that ICAC had got it wrong or the investigators had got it wrong?

The Hon. B. LANDER: The investigators are tasked with investigating someone else's allegation, that's all they are. Why would you apologise for someone else's allegation?

3985 The CHAIRPERSON: I am just asking whether you ever had cause to do that—

The Hon. B. LANDER: No.

3986 The CHAIRPERSON: —to any person who may have been accused of corruption, and then it was found that the allegation was incorrect and an apology was given.

The Hon. B. LANDER: I can't think of the circumstances where I would apologise for someone else's allegation.

3987 The Hon. T.A. FRANKS: I was interested in the information you have presented to us, and there were two things I wanted to touch on. One was on page 82 of the submission you have made to us. It says that Ms Franks put to Ms Killmier, the Victims of Crime Commissioner, that there was an officer demoted through police disciplinary action and that the media story was out there and should there be an entitlement to expunge that from the record. You go on to say:

That is not the case in practice; usually there is no report of the outcome of the police disciplinary investigation and inquiry. Section 45 of the Police Complaints and Discipline Act forbids the publication of any evidence, except in the circumstances mentioned in that section. Section 46 also contains provisions that prevent publication of information.

I just wish to clarify something with you. I was talking about in fact a particular disciplinary action that was reported on prior to the introduction of the ICAC Act that has since been expunged from, if you like, the Google searches. This officer who was demoted for misconduct has managed to erase his online footprint.

I was certainly interested in Ms Killmier's attitude to that, because she said, in fact, victims of crime would like to be able to have their digital footprint erased in the same way so that the trauma of the crimes committed against them were able to be—as we know, some very fancy, clever people in IT can get a lot of money to do such work. So I just wish to clarify that with you and ask you if you think—

The Hon. B. LANDER: I must have misunderstood, I'm sorry about that.

3988 The Hon. T.A. FRANKS: That's okay. I just wanted to clarify that with you that that was the context of that. I was quite concerned, actually, that this officer was able to undertake work. They are still a serving officer and indeed I think the nature of their misconduct raises some concerns with the public about the particular role they currently hold. They have seen fit to do this work, I suspect. I was interested in the appropriateness of that.

The Hon. B. LANDER: I don't know how it was done, but I would agree with you it would probably be inappropriate that it could be done—that the system could allow for that to happen. There is a system whereby what are called spent convictions—

3989 The Hon. T.A. FRANKS: That's different.

The Hon. B. LANDER: But that's different to—yes.

3990 The Hon. T.A. FRANKS: And there is legislation regarding that.

The Hon. B. LANDER: That's right, yes. But, no, an officer shouldn't be able to do that, and I don't know how it was done in those circumstances.

3991 The Hon. T.A. FRANKS: Yes, and I do actually have concerns that this officer was able to remove their—

The Hon. B. LANDER: It's a relevant matter.

3992 The Hon. T.A. FRANKS: —previous misconduct from the public view.

The Hon. B. LANDER: And it could be a relevant matter in a criminal prosecution, the fact that the police officer had been found guilty of misconduct on a previous occasion. An accused person may want to cross-examine an officer, in those circumstances, on that. So it shouldn't be allowed to happen. I agree with that.

3993 The Hon. T.A. FRANKS: Thank you. So there was that, and then I was interested in some of the other correspondence you provided to us. I won't go into specifics, but I will talk about management to ensure protection of those who are investigated through the ICAC processes under the various guises. You have noted that in some cases the ICAC hadn't identified particular persons as persons at risk—was the language that you have used to. What were the processes in terms of identifying persons at risk of potential self-harm through this process?

The Hon. B. LANDER: No, I think it's probably anecdotal evidence that one relies upon to make an assessment as to whether a person is at risk. In the case of the person about whom I was talking there, I would expect I would have been advised by his employer if the employer had known that he was a person at risk, because of my relationship with his employer. I was never advised that he was a person at risk.

3994 The Hon. T.A. FRANKS: I understand, and yet, I think in this case what you would consider the employer wasn't aware that he was under investigation by ICAC has been the evidence that we have heard. So how would he know that that particular pressure was upon him?

The Hon. B. LANDER: The employer was aware that that gentleman had been investigated for corruption. I advised the Commissioner of Police in writing.

3995 The Hon. T.A. FRANKS: On what date did you advise him?

The Hon. B. LANDER: I've got the letter here somewhere.

3996 The Hon. T.A. FRANKS: That would be most helpful.

The Hon. B. LANDER: In 2018, I think. It was 15 August 2018. I wrote to the commissioner:

As you may be aware, the corruption investigation related to potential issues of corruption in public administration arising from the alleged conduct of—

A chief superintendent and an inspector. I can give you a copy of that letter, if you wish.

3997 The Hon. T.A. FRANKS: That would be most appreciated, Mr Lander.

The Hon. B. LANDER: You can have this one.

3998 The Hon. T.A. FRANKS: I am coming from not as strong an industrial background as the Hon. Russell Wortley, but I do come into this committee with a view of ensuring workplace health and safety and have some concerns about the provisions of the act having restricted people being able to get particularly psychological and those sorts of supports and medicals supports, as well as the employer being able to support people through this process, which can be an extraordinarily stressful one.

The Hon. B. LANDER: In that case I wasn't aware that Chief Superintendent Barr knew I was investigating him for corruption. I wasn't aware of that, and I didn't become aware of that until after he had committed the act which took his life.

3999 The Hon. T.A. FRANKS: I must say I had pause to reflect when I saw the CPIP inquiry correspondence and noticed that Douglas Barr's name was on the bottom of some of that correspondence back from one of those previous inquiries. I can imagine that put him in quite an invidious position of undue stress.

The Hon. B. LANDER: It's pretty clear that someone told him he was under investigation. It's probably one or two police officers who told him, both of whom denied that they told him. If I'd known that, I would have taken different action.

4000 The Hon. T.A. FRANKS: Yes, and we have heard evidence that the rumours were flying around, if you like. How somebody ends up in that position, with rumours flying around, is in some ways boxing shadows, if you like, not quite knowing what the allegations might be, but other people making all sorts of assumptions.

The Hon. B. LANDER: That happens and it particularly happens in a paramilitary organisation such as SAPOL. That's something that is difficult to deal with because you don't know what rumours are being circulated or for what reason. But, in this case, I didn't know that he knew. He wasn't told that a corruption investigation had ended because I didn't know he knew it had started.

Under the act, which has now been amended, people have to be told that a corruption investigation has ended even though they didn't know they were being investigated, which is an extraordinary proposition, frankly. All it will do is cause a lot of stress to people.

4001 The Hon. H.M. GIROLAMO: Just following on from the Hon. Tammy Franks' comments, I was keen to get your thoughts on the impact of these sorts of ICAC investigations, especially given the length of time they often take, the huge cost financially for people to defend themselves—and it obviously has been quite detrimental—and the difficulty in proving that it is corruption rather than maladministration or human error. From your experience, are there any lessons learned from the initial starting point, when you first came in, to when you finished up as commissioner?

The Hon. B. LANDER: The matters that came before my office when I was a commissioner were often very difficult to investigate. People don't boast about being corrupt. You're dealing with circumstantial evidence cases in every case. They often require a very long time to obtain evidence and they often end without sufficient evidence being obtained to send a brief to the DPP. They take as long as they take. It's very difficult to say how long they should take. I was always anxious for investigations to be dealt with as quickly as possible. Some, I think, took too long, I would have thought. I would accept that, I think. I think some took longer than they should have.

A lot of these investigations are also—and this happened in relation to Chief Superintendent Barr—often interrupted for significant periods of time by legal processes. You would have seen, in relation to Chief Superintendent Barr, that in 2020 I couldn't write a report because there were legal proceedings being taken. In 2018, I couldn't do anything because I was in dispute with the Crown Solicitor as to whether or not I had power to carry out the investigation. Some of these investigations take longer than they should because of legal proceedings. The best answer I can give is they take as long as they take, but I was always conscious that they should be dealt with as quickly as possible.

4002 The Hon. H.M. GIROLAMO: Touching on that case as well, in reality, he should not have had any knowledge that there was an investigation underway?

The Hon. B. LANDER: He shouldn't have known about it.

4003 The Hon. H.M. GIROLAMO: But there are cases where people do find out along the grapevine and it can be quite detrimental to them.

The Hon. B. LANDER: There must be cases of that kind. I accept there must be cases where I wouldn't have known that they knew.

4004 The Hon. H.M. GIROLAMO: But it does get leaked out from people being consulted or interviewed and then it can be quite detrimental to people. The word 'ICAC' obviously puts a lot of stress on people even if they know that they haven't done the wrong thing.

The Hon. B. LANDER: That's right. But in the case of Barr, I was anxious to find out if he did know. That's why I asked Inspector Clifton and Chief Inspector Koza whether they had told him.

4005 The CHAIRPERSON: Excuse me, Mr Lander, I think we need to be mindful that some of these officers, and their family, may be subjected to mental anguish. I am happy for you to answer, if we can—

4006 The Hon. H.M. GIROLAMO: Or keep it generic.

4007 The CHAIRPERSON: Or we can move in camera.

The Hon. B. LANDER: Perhaps, I won't further answer that question until we go into camera. When you move into camera, I'll answer the question.

4008 The Hon. H.M. GIROLAMO: If there are other questions that people would like to ask—

4009 The CHAIRPERSON: There are others.

4010 The Hon. H.M. GIROLAMO: I have a couple of questions for in camera.

4011 The CHAIRPERSON: I do have others that can go in camera.

4012 The Hon. T.A. FRANKS: I think we will just stay on this, move in camera and then move out of camera. Does that sound reasonable?

4013 The CHAIRPERSON: Okay, sure.

4014 The Hon. T.A. FRANKS: I will move that the committee move in camera.

Seconded by Hon. H.M. Girolamo.

Carried.

Hearing proceeded in camera

OPENING STATEMENT IN PUBLIC

THE HON BRUCE LANDER QC

In this opening statement I shall address the following issues in this order:

1. Introduction
2. Procedural Fairness
3. Procedural Fairness in other Parliaments
4. Rule Against Bias
5. The Terms of Reference
6. Operation Bandicoot
 - 6.1. The information provided by the whistleblower and their decision to investigate
 - 6.2. The decision to investigate X1's report
 - 6.3. The course of the investigation
 - 6.4. The decision to prosecute
 - 6.5. The course of the prosecution
 - 6.6. The decision to end the prosecution
 - 6.7. Conclusion
7. The Fuller Lawton complaint
8. The investigation
9. The investigation of
10. The investigation of
11. An investigation into a senior police officer
12. An answer to Mr Pangallo's general statements about ICAC
13. A Commentary on some of the evidence

1. Introduction

The task that the Legislative Council has given you means that this Committee is a decision maker and an inquisitorial fact finder. That imposes certain responsibilities on the Committee as a whole and the members individually.

The Enquiry and any report is likely to have important consequences for anti-corruption agencies in this State and throughout Australia. Academics and commentators across Australia will in due course examine and consider whether the constitution of this Committee was appropriate and whether the processes employed were fair; and whether its findings can be supported by the evidence that was provided to the Committee as a Committee. The reputation of the South Australian Parliament and in particular the Legislative Council and your reputations will suffer if in due course the Committee's membership, its processes and findings can be validly criticised.

None of the members of this Committee are lawyers and thereby familiar with administrative law and I suspect none of you have had experience as inquisitorial decisions makers.

I will put evidence before you that raise legal matters because many of the issues that are raised by the enquiry are legal issues. I cannot advise you of course.

If you are unsure as to whether some propositions I put to you should be accepted I urge you to obtain legal advice from the Crown and to disclose that advice in your report in due course.

You must each apply your minds individually to the task at hand.

You cannot delegate to one or other of you the decision making process.

Any decision at which you arrive must be your own decision arrived at on the evidence produced to the Committee, and no other evidence.

2. Procedural Fairness

It is a principle of the common law that where a decision maker is provided with the power to investigate and make findings that might adversely affect the rights, interests or legitimate expectations of other persons, the decision maker must act fairly and accord to the persons whose rights, interests or legitimate expectations might be adversely affected procedural fairness. Rights or interests include a person's reputation. If the decision of an inquisitorial decision maker's might impact on a person's reputation that person must be accorded procedural fairness.

Procedural fairness is a body of rules that have been laid down by the Courts to ensure decision makers act fairly. The rules are similar to the rules of natural justice that a Court must observe in any litigation, civil or criminal, in a Court.

This Committee would only not provide anyone, including myself, whose rights, interests or legitimate expectation might be adversely affected with procedural fairness if the Committee thought it did not need to act fairly.

It would be an astonishing proposition if this Committee resolved that it did not have to accord all the persons to whom I have referred procedural fairness.

There are two aspects of procedural fairness.

The first is that the decision maker must enter into the investigation or enquiry with an open mind. That is to say the decision maker cannot be biased or cannot have engaged in pre-judgement.

The rule against bias is a fundamental rule of procedural fairness. It is critical in ensuring public confidence in any decisions made by a public body. The rule requires a decision maker to be free from any actual or apprehended bias.

A decision maker who is infected by apprehended bias, that is not actual bias, cannot continue in the role of a decision maker.

The common law is quite clear that if a fair minded observer might reasonably apprehend that the decision maker might not bring an impartial mind to the resolution of the question the decision maker is required to decide, the decision maker is disqualified.

The second aspect of procedural fairness is that the decision maker must afford a person an opportunity to be heard before making a decision affecting that person's rights or interests.

Usually that requires the decision maker to give notice to a person whose interests or rights might be affected with notice of the matters that are the subject of the investigation or inquiry. The decision maker must provide that person with "the critical issues" to be addressed and of any information that is credible, relevant and significant to those issues. The decision maker must provide the person with a substantive hearing, an oral or written hearing, and with a reasonable opportunity to present that person's case. Lastly the decision maker must advise of the findings that might be made and give the person whose rights or interests or legitimate expectations might be affected adversely with an opportunity to address those possible findings.

In this case it would appear from what has transpired publicly that a number of police officers within SAPOL are persons whose rights or interests might be adversely affected. It would also appear from what has been stated publically that my rights or interests might be adversely affected.

3. Procedural Fairness in other Parliaments

There is no legal requirement in this State for Parliament or a parliamentary committee to observe procedural fairness. Indeed it is up to the Parliament to set rules for itself.

However, a number of Westminster Parliaments have adopted some form of procedural fairness to inform the manner in which parliamentary committees must operate.

The majority of Parliaments in Australia have adopted a form of procedural fairness procedure.

One of the reasons for adopting a requirement for procedural fairness is that “the public is entitled to expect that committees will have regard to principles of fairness when conducting their inquiries” and that “the public is entitled to expect that committees will have regard to principles of fairness when conducting their inquiries.

The Victorian Parliament has said its committees are increasingly trying to conduct inquiries in ways consistent with the requirements of procedural fairness because its committees perceive there is a link between procedural fairness and the legitimacy of committee reports. It has said:

“A committee’s findings and recommendations are open to question in the public arena if the committee has not accorded a fair hearing to participants or sought to avoid bias”.

In particular, Parliaments have been particularly careful to adopt extra procedural fairness protections when select or standing committees intend to making findings which affect the rights and reputations of individuals.

The SA Parliament stands as one of the few Parliaments that have not.

However, on 13 November 2019 the Legislative Council appointed a select committee to inquire into and report on, the effectiveness of the system of committees of the South Australian Parliament.

The Chairperson was the Hon Connie Bonaros MLC and two of its members were the Hon TA Franks and the Hon JE Hanson.

That committee has reported and the Report was laid before the Legislative Council on 25 August 2021. The Committee made a number of suggestions for consideration including:

“Potential to establish a Code of Conduct for the protection of witness before parliamentary committees, as exists in jurisdictions such as the Senate and which clearly stipulates the Parliament’s obligation to provide witnesses with procedural fairness”.

The Procedure and Privileges Committee of the Western Australian Parliament said in a report that procedural fairness including the hearing rule, rule against bias, means that only relevant evidence being heard and adequate notice being given to affected persons:

Such considerations are particularly important for privileges committees, and indeed for other committees when accusations are made against individuals or organisations. While standing and select committees are not usually placed in a position of recommending penalties in relation to individuals or organisations, the publicity associated with their inquiries and recommendations can have a significant effect on individuals and organisations.

The Senate Privileges Committee In Finding of Committee of Privileges, 150th Report considered an allegation of improper conduct against a Senator and a member of the public. The committee said that “the committee should apply the essential principles of natural justice in a manner appropriate to its inquisitorial role”.

The UK Joint Committee on Parliamentary Privilege 1999 said in its first report at [281]:

“In dealing with specially serious cases, we consider it is essential that committees of both Houses should follow procedures providing safeguards at least as rigorous as those applied in the courts and professional disciplinary bodies.”

It would be a remarkable result if a Committee of the South Australian Parliament thought that it could decide the matters entrusted to it by one of the Houses of Parliament by acting unfairly.

I want to say something about the obligation of a Member of Parliament who has made the complaint not thereafter participating in the Committee which is created to conduct the investigation or inquiry.

The UK Joint Committee on Parliamentary Privilege 1999 said in its first report at [283]:

... any person who has a personal interest in the matter under investigation, including a person who made the complaint, should be disqualified from participating in relevant proceedings of the committee or the House, other than as a witness. Again, this is elementary fairness, because those accused are entitled to a hearing by an impartial tribunal: no one should be judge in his own cause.

There are a number of precedents of Members of other Parliaments recusing themselves from sitting on committees because they believed their ongoing participation on it would taint any findings that would be made:

- In 2009 Mark McGowan voluntarily excluded himself from a Committee as he was of the opinion that as he had prosecuted the case for the inquiry in the House, it was inappropriate that he should also be involved in the investigation
- Senator David Hurley excused himself from a privileges inquiry because he had been part of the committee that referred a matter to the privileges committee.

- The former Attorney-General Senator the Hon George Brandis QC recused himself from a Senate Inquiry into the alleged improper conduct of other Senators and a member of the public. Senators had submitted that Senator Brandis should recuse himself because he “stood in the position of accuser” of the Senators and had “formed and publically proclaimed conclusions that are clearly adverse to the Senators in relation to the merits of the referred matter”. It was submitted that “a fair minded lay observer would, at the least, entertain a reasonable apprehension of bias on the part of Senator Brandis by reason of prejudgment because of his publically proclaimed views about the referred matter and Senator Brown”.

Senator Brandis voluntarily agreed to recuse himself and wrote to the Committee in the following terms:

As you are aware, the law recognizes two categories of case in which a judicial officer or other relevant decision-maker should stand aside from a hearing: where there is actual bias (for instance, where there is a direct conflict of interests) and apprehended bias (where, although there is no actual bias, a reasonable objective observer might conclude that there could be). Although the Privileges Committee is not, of course, a court or a quasi-judicial tribunal, it is nevertheless of central importance that it both act with neutrality and be seen to so act. For that reason, I consider the legal principles to which I have referred provide useful guidance and should generally be followed in a case such as this.

The committee considered this to be a “sound example” of the principles the Clerk of the Senate said should guide this type of decision.

The Clerk of the Senate has given advice on conflicts of interest and whether a Senator should excuse themselves from a committee inquiry. The Clerk has said:

It...is always a matter for the good judgement of senators whether they should refrain from participating in particular inquiries because they might be regarded as not bringing a completely impartial mind to them.

...

It has certainly been the case that members of the committee who have had an involvement in matters giving rise to a contempt to right of reply inquiry have excused themselves from participation on the grounds of that involvement. For example, Senator Hurley, as chair of the Economics Legislation Committee which conducted the inquiry into the Car Dealership Financing Guarantee Appropriation Bill 2009 at which Mr Godwin Grech appeared, did not participate in the subsequent inquiries by the Privileges Committee. In the past, when the committee investigated numerous allegations of unauthorised disclosure of committee proceedings, it was standard practice for any members of the committee who were also members of the affected committee to excuse themselves from participation in those inquiries. Many members in the past have also excused themselves from

consideration of applications under Privilege Resolution 5 on the grounds that it was they who made the remarks in the Senate at which the application was directed. These types of matters, however, can be distinguished from general inquiries where there is no issue of contempt involved, no question of individual conduct under consideration and therefore no issue of possible bias.

I shall assume that this Committee and all of its members intend to act fairly.

The Chairperson of this Committee, the Hon Mr Pangallo MLC is a person that a fair minded observer might reasonably apprehended might not bring an impartial mind to the resolution of the question and therefore should recuse himself.

The evidence to support that proposition is partly contained in the Chairperson's address to the Legislative Council on 2 December 2020 when he argued for the creation of this Committee, partly contained in comments and statements that the Chairperson has made during the course of this Committee's hearings and partly contained in the manner of examination of witnesses.

4. Rule Against Bias

Consistent with the above Mr Pangallo should recuse himself from the further participation in this Committee because a perception of bias may be considered to arise because he argued in the Legislative Council and actively campaigned for the creation and institution of the committee.

In prosecuting his case for the establishment of this Committee the Chair said:

At 2053 *In South Australia, ICAC has been operating for the past seven years. It has enormous clout and resources at its disposal. However, the jury is out in its performance. Over the past year, several and very serious matters concerning the conduct and standard of investigations by ICAC, OPI and joint SAPOL-ICAC investigations have come to my attention. I have been appalled and troubled by this and so should the public of South Australia, if they knew the facts. So should the media, had it taken the time to fully scrutinize the agency's conduct in some of its more high profile cases and failures. However, to my disappointment they chose not to, perhaps out of fear of raising the ire of the agency by questioning and evaluating the model that follows. Our previous ICAC, the Hon. Bruce Lander, scoffed at similar criticism by eminent QC Michael Abbott at a Crime and Public Integrity Policy Committee hearing in 2018, where he accused the agency of operating like a Star Chamber. It is a common belief based on its performance over the last seven years.*

*.....
ICAC's modest successes have been overshadowed by some spectacular failures, none more so than the scandalous and flawed six-year investigation and prosecution of innocent police officers from Sturt Mantle, who were acquitted of criminal charges. This wasted operation alone, codenamed Bandicoot, is estimated to have cost South*

Australian taxpayers tens of millions of dollars. I am trying to get the full cost of this operation but to no avail. I will further address this and other troublesome cases shortly.

- At 2356 *Operation Bandicoot is the lowest point for ICAC in its seven years. Operation Bandicoot was a joint investigation with SAPOL's Anti-Corruption Branch, led by Detectives Selina Dinning and Christine Baulderstone, and headed by Commissioner Lander, as was required by statute, and overseen by former policeman Mr Grant Moyle as director of operations.*
- At 2356 *It began in January 2014 on the hearsay and assumptions of a disgruntled police officer who had reported that several officers based Operation Mantle at Sturt, which deals with property confiscated from crime scenes, may have been involved in a cabal of theft and abuse of office. There was no evidence to substantiate any of the allegations of serious criminal conduct. More of that shortly.*
.....
- At 2356 *This brings me back to Operation Bandicoot, the South Australian ICAC's first big collar operation, announced in a blaze of publicity in October 2014 by the former ICAC, the Hon. Bruce Lander, and the previous police commissioner, Gary Burns. This was on the eve of ICAC's first report to the parliament, which really did not have that much to report. Ironically, in his first annual report, Mr Lander expressed misgivings about the quality of some investigations. He stated:*

As I said last year, where I refer a matter to a public authority for investigation, the investigation should be undertaken to determine the facts; to identify wrongdoing (if any); and to detect shortcomings in practice, policy and procedure. An investigation should have the overarching purpose of determining the truth and minimising opportunities for future misconduct or maladministration.
- At 2357 *There was some extremely shoddy, sloppy and, as it turns out, unlawful detective work in Operation Bandicoot. This was like slapstick Keystone Kops material.*
- At 2357 *One needs to question how the anti-Corruption Branch had the time to prepare a case for Mr Lander and Commissioner Burns for them to make those public statements when a second totally flawed and illegal integrity test, a bogus crime scene that had been set up by SAPOL, was completed only days before their arrests.*
- At 2357 *After reviewing court transcripts, associated documentation and statements made in the media, when it comes to the conduct and quality of the investigation in Operation Bandicoot, I would put heavy crosses through ICAC's six organisation values. I shall give some glaring examples that emerged in this tortuous five-year process that*

virtually destroyed the lives and career prospects of eight innocent good men and women serving in SAPOL.

At 2357 *The Anti-Corruption Branch, with the blessing ICAC, had conducted two integrity tests that were found to be unlawful or invalid because the applications, prepared by the Anti-Corruption Branch officer heading the investigation for the covert operation, failed to get the necessary approvals from the then director of operations, Mr Moyle, as required under the Criminal Investigation (Covert Operations) Act. The officer had also breached SAPOL's own policy in regard to these.*

At 2357 *Further, a relevant section 34 notice, issued by ICAC, had expired on 31 August 2014 yet was not renewed. Bear in mind those integrity tests were conducted soon after in September and October and could have placed those tests in legal jeopardy. New police officers, not under any suspicion of corruption, were assigned to Sturt Mantle during the investigation. How was this allowed to happen when contrary to section 4(2) of the Criminal Investigation (Covert Operations) Act 2009, they were put at undue risk to criminal conduct? Who approved this and were Mr Moyle or Commissioner Lander made aware of it.*

At 2358 *Before the dinner break I was describing the inept investigation of a joint ICAC and ACB investigation, known as Operation Bandicoot, and I will continue with that. The timing and existence of that SAPOL audit branch report and its contents is quite significant. It found numerous and serious breaches of protocols and policy, and poor bookkeeping and record-keeping in the property section of Sturt Local Service Area, far worse than was found at Sturt Mantle or what its members were accused of doing. In fact, the report noted that items destined and recorded for destruction were kept for personal use by other members at Sturt but not by Mantle officers. However, no officers were charged. That alone should have set off an early alarm about the direction the investigation was taking.*

Mr Pangallo referred to other matters – a report and complaint made by Mr Lawton and Mr Fuller. It is not entirely clear what this complaint about the OPI is but nevertheless Mr Pangallo said at 2362:

The Hon. F. PANGALLO: Fuller then emailed the then ICAC commissioner, the Hon. Bruce Lander, and made the allegation that Mr Lander was complicit in a cover-up of OPI involvement. Mr Lander denied that OPI had been complicit in any wrongdoing, and asserted the investigation conducted under the supervision of OPI was dealt with appropriately.

Mr Pangallo made this allegation against Commissioner Stevens:

Under the Police Complaints and Discipline Act, the police commissioner must inform the police minister, the Hon. Corey Wingard at the time, within 15 sitting days of making such resolutions, and these resolutions need to be tabled in parliament by the minister. There is no record of this being tabled.

Here is where questions need answers to resolve the impasse of this dispute and subsequent complaints.

There are serious penalties for breaches of the Police Complaints and Discipline Act. Did the police commissioner breach this by the inadequate management resolution investigation? Release of the complaints management system entries would reveal the trail of complaints and the veracity of a management resolution if it exists and which is disputed by Lawton and Fuller. Access to these documents and others would probably settle the dispute once and for all.

He then said in disparaging the present ICAC:

Lawton and Fuller are alleging a cover-up has been put in place to suppress any disclosure of OPI involvement in the initial reasons for the failure by SAPOL to act on the criminal allegations by Lawton in his original complaint to SAPOL. All the comprehensive material referred to above and tabled is contained in a submission requesting a further review of the original decisions and was delivered to the new ICAC, the Hon. Ann Vanstone. As Mr Lawton and Mr Fuller fully expected, it was flatly rejected, although it is not known if the material provided was scrutinised."

Mr Pangallo then referred to an investigation into the conduct of _____ at 2368. He said.

"Imagine waking up one Saturday morning and seeing your picture prominently plastered on the front page of the paper, accused with four others of credit card misuse after a 16-month ICAC investigation. This was part of the nightmare experience at the hands of ICAC that enveloped senior Department of Planning, Transport and Infrastructure _____ our years ago. The exclusive story was clearly what the media referred to as a 'drop', a selective tip-off.

Considering the nature of the investigation, which was described as intensive auditing by the department and ICAC officers, it could only have originated from one source and it came after Commissioner Lander granted a release under section 56 of the ICAC Act, which allows publication, and a month or so after _____ and the others were charged with over 30 offences and summonsed to appear in court. Allow me to read excerpts from that story.

Five Transport Department officers, including two senior managers, are accused of using government credit cards to buy and misappropriate an Aladdin's Cave of electrical and consumer goods. Goods worth tens of thousands of dollars—electrical items, four-wheel drive accessories, computer and camera equipment and outdoor clothing to building materials, tools and equipment and even a pool carpet—

I point out that, unlike Aladdin's, this was not a magic one—

were allegedly bought using government credit cards and then misappropriated.

Synonyms for the word 'misappropriated' include stolen, pocketed and embezzled. They were thieves and, of course, using the Aladdin's cave analogy, this was a veritable treasure trove. It would not surprise me if the staff at ICAC had a decent chuckle over their Saturday morning latte.

because of his seniority at the time, received the most prominence in the article that appeared to paint him in a bad light. He was charged with four counts of failing to act honestly, and dishonestly taking property on a work-related trip to Kangaroo Island, although that is not how the ICAC investigator saw it."

At page 2363 he referred to an investigation involving

He said:

"Just one of the five, was put through the wringer in a court case dogged in controversy over the validity of ICAC search warrants, which at the time rankled the former commissioner. Fearing he was going to be deep-pocketed by ICAC's legal muscle if he fought on, and wanting to bring it to an end to save his sanity, marriage and family home, opted to plead guilty to two charges. The sum total of the misappropriated Aladdin's cave goods was a little over \$2,000. What was the sum total of ICAC's investigation? Well, to hazard a guess, it would have run into a few million. Was it all worth it? As the Treasurer once said of ICAC: it would scare the bejesus out of public servants.

Finally he referred to an investigation and the prosecution of said at 2363:

. He

Another ICAC victim who came to see me expressing his disgust at the treatment he received is has a very impressive CV. He has worked in the international life sciences industry, served on many company boards, has extensive experience in venture capital funding, and he has listed companies—so impressive that he was appointed CEO of BioSA, the South Australian government's industry development organisation, where he secured funding for more than 90 bioscience companies.

However, a couple of his underperforming employees earmarked for the axe went to ICAC as whistleblowers, accusing of having conflicts of interest where he stood to gain a benefit from his job. It was not based on any credible evidence, just what they believed was going on, which is what happened in Operation Bandicoot. ICAC investigators seized thousands of documents—almost all of them irrelevant to the investigation—and trawled through his enormous files and forensically analysed bank accounts, credit card statements, tax returns, travel claims, grants paid to companies by BioSA and entertainment expenses going back 10 years.

ICAC investigators were unable to identify a single cent that was not properly accounted for. He maintains ICAC based all its investigations on hearsay. There was no case to answer and it should have been dropped. says even the DPP's senior prosecutor wanted the matter dropped as there was no reasonable prospect of finding him guilty of anything. They pressed

on. wonders whether any influence was put on the reluctant prosecutor. The trial by judge alone lasted five hours, three witnesses were called and not guilty of all charges.”

Michael Abbott QC gave evidence to this Committee on 26 March 2021 when he said he appeared on behalf of a female police officer currently a member of SAPOL whose name was suppressed in the proceedings. During the course of his evidence the Chairperson said

Para 33 *I will ask you some questions, Mr Abbott. Can I just ask you about your view—and you are an experienced barrister. The conduct of the ICAC and the ACB and SAPOL from the time of your client's arrest and through the investigation and the judicial process— if you can perhaps sum that up? I know it's difficult, because there were so many instances that had been raised in relation to illegality of some of the operations.*

Para 38 *Looking at the statements that were made that day, and I have gone through the transcripts of newspapers and also radio interviews that day, I don't think I ever saw once anyone, Commissioner Burns or the previous ICAC, mention that there was a presumption of innocence.*

Para 54 *If I get this right, it raised serious conflict in the evidence of Detective Baulderstone in regard to providing certain documents in relation to approval of those integrity tests and that she forgot, while admitting in evidence, that she didn't obtain approval for the integrity tests, as were required by SAPOL policy, and she was aware of it. Yet, she denied providing documents despite a forwarding minute to Mr Grant Moyle of the ICAC on them stating, 'Once you're happy with approval documents I will approve them.' So what can we deduce from that statement? I will give you my take on it, Mr Abbott, and correct me if I am wrong: that misleading and contradictory evidence had been presented by a key witness. Am I on the track there?*

Para 65 *Mr Abbott, this committee, as you know, was established to consider among other things reputational damage and harm as a result of ICAC investigations and whether exoneration protocols or remedies are required. The SA act does not provide for an exoneration protocol, although it does acknowledge reputational harm is a possibility. Do you feel that section 3 of the act offers adequate protections, apart from the fact they are supposed to be undertaken in private?*

Para 69 *Do you think, in relation to Operation Bandicoot, that the ICAC and the ACB confused police corruption with what should have actually been a matter of police discipline?*

An integrity test where they overlooked or forgot about their own exhibits that they didn't include, so I think it sort of highlighted the sloppiness of the investigation.

Para 71 *I note that the ICAC has a website that lists current prosecutions before a court and a list that have concluded to supposedly inform the community. Does it go far enough or should ICAC be compelled to publish a statement in a prominent publication and on their website at the appropriate time to inform the public that no adverse findings were made against individuals who had been prominently named and most likely shamed in media reports?*

Para 74 *I have one other question. Mr Abbott, would we ever know if there were serious failures in due process that don't ever make it to court if it weren't for inquiries like this? Do you think a stronger independent review oversight of our own ICAC is required, perhaps even to bolster the powers of the existing reviewer?*

Para 76 *Is there anything else you want to add, Mr Abbott, before we close the meeting?*

Mr ABBOTT: No, but my client is still waiting for an apology.

So are the other seven.

The language used by Mr Pangallo again might lead the fair minded observer to doubt that Mr Pangallo might bring an open mind to this inquiry.

On the examination of Detective Brevet Sergeant Dalton

Para 822 *The CHAIRPERSON: There was evidence that had been withheld from them. There was video of the targeted tests that had not been disclosed to the defence. There was an audit of Sturt SLA that also hadn't been disclosed to the defence. Were you aware of that? Were you aware of that audit during your investigations?*

Det. Brev. Sgt DALTON: I was aware at some point in time that an audit was being or had been undertaken, yes.

Para 823 *The CHAIRPERSON: Why wasn't it disclosed to the defence for at least five years? It was held for five years.*

Det. Brev. Sgt DALTON: I disagree with that statement.

Para 830 *The CHAIRPERSON: Can I put it to you that there was nothing unusual in those videos. It showed no items being stolen. In fact, the officers were behaving accordingly, as they would.*

Det. Brev. Sgt DALTON: I would disagree with your comments in relation to that.

Para 835 *The CHAIRPERSON: I am talking about your investigation. We were talking about your investigation. I am not talking about the other two officers. I am just saying there was video that was tendered as evidence,*

that was only discovered very late because it was accidentally revealed to the defence, that showed your ACB officers not handling the evidence accordingly, or less scrupulously. There are also items that they had reported as being stolen which actually hadn't been stolen, and they ended up turning up later on; is that correct?

Det. Brev. Sgt DALTON: No.

Para 847 *The CHAIRPERSON: Are you are aware of the minute that appears on that document that says, 'Sensitive. Do not disclose to defence'?*

Det. Brev. Sgt DALTON: No.

Para 864 *The CHAIRPERSON: Michael Abbott QC gave evidence to the committee and highlighted the inadequacies and the reckless conduct that went on with this investigation. He said he would give you a score out of 10 for your investigation: zero. Do you accept that it was reckless and hopelessly flawed?*

Det. Brev. Sgt DALTON: No.

Para 865 *The CHAIRPERSON: Do you accept his interpretation that your investigation was worth zero?*

Det. Brev. Sgt DALTON: No.

Para 868 *The CHAIRPERSON: Guilty and prison terms. 'Guilty as charged,' that's how I would rate success. How do you rate success? How would you rate success? Well, isn't that what happens? If it's 'guilty as charged' and convictions are recorded, and there may or may not be prison terms, that's success. But 'not guilty,' that isn't.*

Det. Brev. Sgt DALTON: 'Not guilty,' isn't. A hung jury isn't 'not guilty' either.

Para 873 *The CHAIRPERSON: But if those officers were found to have stolen something by the court, they would have been convicted, but the court found they didn't steal anything.*

Det. Brev. Sgt DALTON: The court didn't find they didn't steal anything.

Para 870 *The CHAIRPERSON: But you still believe that they may well not be innocent of any offending, any serious offending apart from not just keeping—*

Det. Brev. Sgt DALTON: Personal opinions of me are irrelevant at this point in time.

Para 876 *The CHAIRPERSON: It's not my opinion, it's actually what transpired. There was no evidence that they had taken anything.*

Det. Brev. Sgt DALTON: I disagree with that.

Para 879 *The CHAIRPERSON: I am saying, a \$2 ceramic elephant was one of the items allegedly that was taken by one of the officers and there was no evidence that this item had been taken. There was also an accusation against one officer that a UHF radio had been taken. It was actually sitting on his desk. But this officer was on annual leave and it wasn't on his desk at the time, or it disappeared, and he hadn't attended any of those fake crime scenes, yet he got dragged in as well. Was any evidence planted, Detective Sergeant, to try to make a case?*

Det. Brev. Sgt DALTON: No.

Para 880 *The CHAIRPERSON: Why weren't those videos—*

Det. Brev. Sgt DALTON: And to suggest that the ACB and police officers in general would plant evidence is extremely offensive and you should apologise for saying that.

Para 881 *The CHAIRPERSON: I asked the question; I didn't say you did it.*

Det. Brev. Sgt DALTON: Well, there is a reason behind you asking the question.

Para 882 *The CHAIRPERSON: Are you thinking that I am inferring that evidence had been planted?*

Det. Brev. Sgt DALTON: What's the purpose of you asking the question?

Para 893 *The CHAIRPERSON: Do you have any empathy for those officers who were dragged through that harrowing experience?*

Det. Brev. Sgt DALTON: It is irrelevant whether I have empathy for them or not at this point in time.

On the examination of Superintendent Dinning:

Para 595 *The CHAIRPERSON: Let me get this right. One of the strategies was that you get planted into Sturt Police Station CIB to keep an eye on them? Am I correct?*

Supt DINNING: No, Mr Pangallo, there seems to have been this narrative that keeps popping up about I was planted or I was—

Para 596 *The CHAIRPERSON: No, I am asking you. Were you or weren't you?*

Supt DINNING: No, that's simply not the case.

Para 609 *The CHAIRPERSON: Why did you allow the transfer of new officers under no suspicion of any wrongdoing to go into a unit subject to covert operation for criminal conduct between January and October 2014?*

Supt DINNING: Mr Pangallo, I think, once again, we need to realise that this is a point in time and a process. We were given the initial information; where that was going to lead we didn't know. By the time I got down to Sturt in fact three of the four personnel that were transferred into that unit had already been transferred in. In effect, the transfer of personnel had already occurred and therefore even if I was in a position to—which I certainly wasn't—I couldn't have interfered in that anyway.

Para 628 *The CHAIRPERSON: Is it a breach of the CICO Act and a breach of duty of care for placing officers in a situation as these officers were put in?*

Supt DINNING: No, I don't believe so.

Para 638 *The CHAIRPERSON: When officer F was arrested, did you go to her home and comfort her when she was in a highly distressed and agitated state?*

Supt DINNING: Within that next seven to 10 days I spoke with all the officers and, yes, I went to the majority of the officers' homes; that's right.

Para 639 *The CHAIRPERSON: The majority of officers' homes.*

Supt DINNING: Yes.

Para 640 *The CHAIRPERSON: The sympathy you showed to them, was it genuine or was it disingenuous?*

Supt DINNING: It was genuine. As I said right from the start in my opening statement, this is a life-altering moment. Regardless of what I knew or didn't know, these people were in genuine distress so, yes, there was nothing false about it.

Para 641 *The CHAIRPERSON: But these poor officers wouldn't have known that you knew they were going to be arrested.*

Supt DINNING: I can't unknow what I knew, Mr Pangallo. It was circumstance. As far as the officers concerned, if they asked me, I told them. If they didn't ask me, I didn't.

Para 663 *The CHAIRPERSON: So, there were other sections of Sturt where police officers weren't following appropriate protocols and, in fact, doing a lot worse than the Mantle officers were accused of doing. Am I correct in saying that?*

Supt DINNING: No, I don't think you are correct in that at all.

Para 664 *The CHAIRPERSON: No?*

Supt DINNING: No.

Para 665 *The CHAIRPERSON: There was no stealing, there was nothing like that— detectives or officers who were using property that didn't belong to them or belonged to SAPOL for personal use? You weren't aware of that?*

Supt DINNING: There was nothing in that report that came out like that, as far as I was aware?

Para 666 *The CHAIRPERSON: Are you sure?*

Supt DINNING: Yes, I am sure.

Para 667 *The CHAIRPERSON: Perhaps you might need to have a refresher and look and see what was found in there. Let me see if I've got a quote here.*

Para 672 *The CHAIRPERSON: As you are aware, there were not guilty verdicts tendered; there were some nolle prosequis. Do you consider these officers innocent?*

Supt DINNING: No.

Para 673 *The CHAIRPERSON: Why?*

Supt DINNING: A finding of not guilty or nolle prosequi or indeed there were some matters where the jury couldn't come to a determination so it was hung, that to me doesn't appear to be a resounding finding of innocence, Mr Pangallo, no.

Para 674 *The CHAIRPERSON: You don't believe their accounts that they didn't do anything wrong?*

Supt DINNING: The view that I formed perhaps came after I was asked during the prosecution process to review some material to assist the court and I saw a substantial amount of material that helped me form that view.

Para 688 *The CHAIRPERSON: Well, perhaps can I ask that you have a look at it, and we may need to recall you back. In that, he makes it quite clear that he was being accused of stealing items that were still at the Mantle office. He said, 'Well, hang on, you're accusing me of doing something, go and check the Mantle office because you'll find they are still there.' And they gave him a whole list: 'This is what we're accusing you of*

taking.' I think it was Brevet Sergeant Dalton who was 'a hundred per cent sure that we checked the office, and they were taken.' And they weren't. They were still there.

Supt DINNING: I can't comment on that, Mr Pangallo.

Para 689 *The CHAIRPERSON: No, of course you can't comment on it because it highlighted an inadequacy in the investigation didn't it?*

Supt DINNING: I don't believe so. I would like to see that before I made any comment. I think the information that I can provide to you, when I asked to be able to provide it on notice, will perhaps clarify some of those things for you.

Para 691 *The CHAIRPERSON: Evidence was withheld from the defence for five years, evidence that could have actually shown that what they were accused of doing was being done in so many other police stations around the state that the ACB and ICAC at the time could easily have gone out and charged thousands of police officers with the same offence.*

Supt DINNING: I doubt that to be the case, Mr Pangallo, but I'm perhaps not the best person to ask that of.

Para 713 *The CHAIRPERSON: Did you not make a signed, sworn statement that was tendered to the court as evidence that the TV set in the tactical office was a stolen item?*

Supt DINNING: No, I don't believe I did that at all.

Para 714 *The CHAIRPERSON: You don't believe that you made a statement that was tendered in court as evidence that that TV set was stolen? You don't recall making a sworn statement in relation to that?*

Supt DINNING: No, I recall saying that I thought it was highly unlikely that it had been purchased in the circumstances that were described to me.

Para 715 *The CHAIRPERSON: You made that as a sworn statement, though.*

Supt DINNING: I would like to see the statement, if that's—

Para 716 *The CHAIRPERSON: I am asking you: did you make one? You can't recall that?*

Supt DINNING: No, I did not make a statement to that effect.

Para 717 *The CHAIRPERSON: You are a pretty experienced police officer, and you outlined your length of service and it is quite impressive. Why didn't it occur to you, before you made that statement to somebody on that investigation, just to check the provenance of that TV set? Why wouldn't you just check—I better go and have a look and just see if the serial number is accurate and doesn't correspond to something that had been stolen' or 'Let me see if there's any documentation that would ascertain the provenance and who owned it and whether it was bought'? Why wouldn't you do that before you make a statement that it's highly probable it was knocked off?*

Supt DINNING: Mr Pangallo, I did. I sought to try to find a serial number to assist.

Para 718 *The CHAIRPERSON: You did?*

Supt DINNING: Yes, I did, and I gave this—

Para 719 *The CHAIRPERSON: Where did you look?*

Supt DINNING: I think what the committee perhaps is unaware of is the make-up of the Sturt Police Station. Whilst it's not an open plan, all of the offices have glass frontages and are visible to quite a number of staff. As the DCI, it would be highly unusual for me to run around lifting up TVs, moving them, looking for serial numbers.

Para 720 *The CHAIRPERSON: Hang on, we're not talking about something that you would do on a day-to-day basis. We're talking about a serious, secret operation that is targeting eight police officers whose careers are on the line if it is found to be true that they were stealing. These sorts of statements need to be accurate in an investigation, wouldn't you think? It's not just like I make an assumption that that teapot may have come from another department. If I do that, it's got nothing to do with whether a crime has been committed, but here we are talking about something totally different. Somebody is being accused of stealing a TV set as part of a major investigation and you are taking a guess—you're taking a guess—and it's somebody's career. Life is hanging on your decision and your affidavit.*

Supt DINNING: May I answer?

Para 721 *The CHAIRPERSON: Yes, of course.*

Supt DINNING: Right, thank you. I wasn't part of the investigation team at that point. I provided information that I thought it was prudent to provide. I tried to find a serial number. From there, it was a matter for the investigation team as to what they did with that information. I'm not going to go off the reservation, I guess, if you like, and start conducting my own investigation outside of the fact that, if I had tried to do anything out of the ordinary, it may well have raised red flags for the

investigation or the people concerned: 'What is she doing? This is not a normal process.'

Para 722 *The CHAIRPERSON: So instead you would hazard a guess and it gets added to the litany of charges against these innocent police officers so it builds a case, a convenient case, to prosecute them. It just added to the list of items that they were accused of taking, even though you couldn't verify the provenance of that TV set.*

Supt DINNING: That wasn't my role, Mr Pangallo, and I doubt that—

Para 723 *The CHAIRPERSON: But you're the one who instigated that. You told the ACB. Why couldn't you ask the ACB to investigate it then?*

Supt DINNING: I did. That was the point of providing the information, Mr Pangallo.

Para 724 *The CHAIRPERSON: And they didn't—clearly they didn't—because it had to be exposed in court about just what went on with that. It was sloppy detective work, very sloppy detective work when the lives and careers of many good officers are hanging on it.*

Supt DINNING: I don't agree with your assertion, Mr Pangallo. The receipt was found not long after. I doubt very much that that TV was actually part of the charges, as you assert.

Para 725 *The CHAIRPERSON: They were accused of stealing a TV. The accusation was that a TV was amongst the items that were stolen. If there had been more diligent detective work, that wouldn't have been part of any of those charges that were there. Anyone any other questions?*

Para 733 *The CHAIRPERSON: It became a circus.*

Para 738 *The CHAIRPERSON: I can tell you that I have gone through all the transcripts of interviews that were given by both, and not once do I ever see that these officers still have a presumption of innocence. We have to bear that in mind—there was nothing of that. It was, to quote the then police commissioner, 10 out of 10 in terms of criminality.*

Supt DINNING: That is something you would have to ask them.

Para 739 *The CHAIRPERSON: It is a serious comment to make before they had even been— in fact, some were still being charged when all that was happening. This whole thing was a set up, premeditated. You don't accept that?*

Supt DINNING: I can't comment on that; that's your view. I'm not prepared to make any comments about that.

Para 755 *The CHAIRPERSON: Just going by your comments that you don't believe that these officers were innocent, what does that say about their future career prospects then in the police force? They have none.*

Supt DINNING: Mr Pangallo, these matters have been, as you say, playing out for some time. It is difficult and it is a situation that has played out and it is unfortunate that it has played out the way it has and it will be very hard for these people to come back, yes.

Para 756 *The CHAIRPERSON: Inspector, thank you very much for your evidence today. It may be that we may need to recall you. Can I ask you: did you discuss your appearance today with any of the other two that appeared?*

Supt DINNING: Yes, we did.

Para 757 *The CHAIRPERSON: You did? Exchanged notes, I gather?*

Supt DINNING: No, Mr Pangallo, we didn't exchange notes.

On the examination of Superintendent Baulderstone:

Para 346 *The CHAIRPERSON: Thank you very much, Superintendent, and thank you for your service to South Australia, particularly during the pandemic, and thank you for attending today. As you know, this inquiry has been set up to look into reputational harm and damage arising out of ICAC and joint ICAC and SAPOL inquiries. As part of the committee's investigations, we are looking at the fallout from Operation Bandicoot and the impact this covert operation and the subsequent court determinations had on those charged. I take your note that those poor investigators had some issues with them. I am sure you are aware of the impact it's had on the victims themselves. As you played a prominent role, we have questions to put to you about SAPOL's anticorruption branch, the office of the previous ICAC and your own conduct in the proceedings, after viewing a lot of material, court transcripts, video and evidence that we have already heard. I will point out that many of the questions that will be given to you today have already been tabled in parliament from a document that was provided by the Police Association, which I am sure you are aware of.*

Supt BAULDERSTONE: I am, but I have not seen it.

Para 347 *The CHAIRPERSON: You've seen it?*

Supt BAULDERSTONE: No, I've not seen it.

Para 348 *The CHAIRPERSON: It's been tabled in parliament. It was tabled last year and goes through many of the issues that have caused concern as a result of this investigation. The committee has been examining possible miscarriage of justice to those eight innocent policemen when*

perhaps real corruption may have been found in your hopelessly flawed investigation and elsewhere. But we are keen to hear your evidence and ask you a series of questions. Can I ask you, firstly, would you now accept that the charges levelled at those police officers were not substantiated and they were innocent of the conduct you had accused them of?

Supt BAULDERSTONE: No, I don't agree with that, but I can't go into that because there are still investigations being undertaken, but I am happy to take your questions on notice.

Para 405 *The CHAIRPERSON: What did those targeted integrity tests turn up?*

Supt BAULDERSTONE: I will take that on notice, because there are still investigations being undertaken that relate to the—

Para 406 *The CHAIRPERSON: To the integrity tests?*

Supt BAULDERSTONE: Yes. Operation Bandicoot—

Para 407 *The CHAIRPERSON: Let me save you the time. They turned up nothing. In fact, they actually showed the officers at Mantle going about their duties and doing everything correctly.*

Para 445 *The CHAIRPERSON: Yes, with redacted names. Can I put it to you, superintendent, that there was sloppy detective work and you were an elite investigative unit. Senior Constable C, I will refer to him, was accused of stealing items that never left the faked crime scene. Senior Sergeant M was accused of stealing items, and he had never even attended those fake crime scenes but was told he was being arrested to stop him from stealing in future. Officer D was arrested for receiving. He wasn't even at the integrity test, was he?*

Supt BAULDERSTONE: I can't, as I said—

Para 446 *The CHAIRPERSON: You can't answer that?*

Supt BAULDERSTONE: I can't answer that. I will take them notice and if I can answer them I will.

Para 447 *The CHAIRPERSON: Alright. He was accused of stealing a UHF radio planted on his desk at a time when he was away on annual leave. How can you explain that?*

Supt BAULDERSTONE: I don't understand what you mean by the term 'planted'.

Para 448 *The CHAIRPERSON: It appeared on his desk while he was away on annual leave. It wasn't there when he left.*

Supt BAULDERSTONE: Yes—I don't understand your question. Are you saying that ACB planted it?

Para 449 *The CHAIRPERSON: I'm basically saying that somebody planted it on his desk—*

Supt BAULDERSTONE: That's inaccurate.

Para 450 *The CHAIRPERSON: —to make it look like he was responsible for it.*

Supt BAULDERSTONE: That's incorrect; however, I can provide you with a response to that. I will take that on notice because that is incorrect—

Para 486 *The CHAIRPERSON: This is actually quite a significant document, superintendent. It was exculpatory evidence. Why was this audit not voluntarily disclosed to the prosecution, as required under the Director of Public Prosecutions Act by the ACB?*

Supt BAULDERSTONE: If you recall my submission, they were. As you would appreciate, there was a lot of documentation that was seized and would possibly be tendered as evidence. It was made available for defence to look at.

Para 487 *The CHAIRPERSON: When was it made available? When it was suddenly discovered that it existed.*

Supt BAULDERSTONE: Sorry?

Para 488 *The CHAIRPERSON: It was only made available five years after it was undertaken.*

Supt BAULDERSTONE: That's not correct.

Para 489 *The CHAIRPERSON: When was it?*

Supt BAULDERSTONE: As I said in my opening submission, the actual declarations of the auditors who did the audit were submitted to the court on 18 August 2015. The case management, which disclosed the existence of the audit, and explained—

Para 490 *The CHAIRPERSON: Disclosed it to whom?*

Supt BAULDERSTONE: Disclosed to the court.

Para 491 *The CHAIRPERSON: Was it disclosed to the defence?*

Supt BAULDERSTONE: If it's disclosed to the court, it's disclosed to the defence because the documents are laid before the court and defence collect them, essentially.

Para 492 *The CHAIRPERSON: Superintendent, when it was finally discovered, there was a minute attached to it that said it was sensitive and not to be disclosed to the defence. Are you aware of that?*

Supt BAULDERSTONE: No.

Para 493 *The CHAIRPERSON: No. You are not aware who wrote it?*

Supt BAULDERSTONE: No, I don't recall that.

Para 494 *The CHAIRPERSON: You don't?*

Supt BAULDERSTONE: No.

Para 495 *The CHAIRPERSON: It wasn't you?*

Supt BAULDERSTONE: I can't recall that.

Para 496 *The CHAIRPERSON: No?*

Supt BAULDERSTONE: No.

Para 497 *The CHAIRPERSON: You didn't initial it?*

Supt BAULDERSTONE: I said I can't recall it.

Para 498 *The CHAIRPERSON: Okay. I guess there's one way that we can find out: if we ask for that minute or document to be disclosed to the committee.*

Supt BAULDERSTONE: Are you happy for me to disclose it?

Para 499 *The CHAIRPERSON: Yes, please, if you don't mind if you disclose that minute. You are not aware of that statement, 'not to be disclosed to the defence'?*

Supt BAULDERSTONE: No.

Mr Pangallo then examined Detective Superintended Baulderstone about the incident involving Sharon Smith.

Para 523 *The CHAIRPERSON: Superintendent, there seems to be a history of non-disclosure that follows SAPOL and perhaps yourself. Do you recall an incident in November 2013, a couple of months before you got onto Operation Bandicoot, in which you would driving a police car in Bent*

Street in the city and you struck a pedestrian by the name of Sharon Smith?

Supt BAULDERSTONE: Yes, I do remember that.

Para 524 *The CHAIRPERSON: This accident had a profound effect on her mental wellbeing, and she blames you for that. Do have a clear recollection of that?*

Supt BAULDERSTONE: Has this got any relevance to this committee?

Para 525 *The CHAIRPERSON: Well, yes, it has because it relates to non-disclosure of things. I will table her letter because it was sent to me as part of the committee. I seek leave to table that document.*

Moved by Hon. T.A. Franks.

Seconded by Hon. R.P. Wortley.

Carried.

Para 526 *The CHAIRPERSON: I table the document. I won't not read all of it, but I will go through some items and perhaps you might like to answer what Ms Smith has written. This is based on contemporaneous notes or a statement that she actually had written on the night that the collision occurred and was provided to the authorities as part of her official statement. This is after she was struck by a car that you allegedly were driving:*

I turned around to see the driver of the car hadn't moved; I recognised that she was wearing a police uniform. I was very surprised that a police officer would have made such an error in judgement in deliberately moving the car forward the second time when it hit me—if she hadn't seen me the first time before it came to a stop, she certainly would have seen me when she decided to put the car in motion a second time.

Then she goes on to say:

She motioned to me to come towards her. I thought she was going to ask if I was okay but she didn't; she told me she had to 'take my particulars'...She said I had to stay because she was a police officer and that she had to report what just happened because she was on duty; she had to have a blood alcohol breath test...

Did you have one?

Supt BAULDERSTONE: I had a breath test, yes.

Para 527 *The CHAIRPERSON: A blood alcohol one?*

Supt BAULDERSTONE: I had a breath test, blood alcohol.

- Para 528 *The CHAIRPERSON: And that blood alcohol breath test, was that disclosed to Ms Smith's lawyers?*
- Supt BAULDERSTONE: I've got no idea, and I don't see the relevance—*
- Para 529 *The CHAIRPERSON: Do you know what the result of that was?*
- Supt BAULDERSTONE: I don't see the relevance of this to this committee.*
- Para 530 *The CHAIRPERSON: Do you know what the result of that was?*
- Supt BAULDERSTONE: Sorry?*
- Para 531 *The CHAIRPERSON: Do you know what the result of that was?*
- Supt BAULDERSTONE: No, because I didn't do the investigation.*
- Para 532 *The CHAIRPERSON: No; the blood alcohol test.*
- Supt BAULDERSTONE: I was zero.*
- Para 533 *The CHAIRPERSON: Zero? Good. She goes on to say that you:*
- ...held the rank of chief inspector and realised as such a senior officer she would be worried about the ramifications of being responsible for colliding with a pedestrian.*
- She said she complied with your direction to wait on the footpath on Bent Street. She states:*
- At no time did she ask if I was okay, either physically or emotionally, or express any concern for my wellbeing or render assistance of any kind. Her attitude towards me was aggressive and accusatory, which left me rather confused...*
- Is that correct?*
- Supt BAULDERSTONE: I don't understand the relevance of this to this committee.*
- Para 534 *The CHAIRPERSON: I am asking: did that happen? According to this, you didn't ask anything about her wellbeing.*
- Supt BAULDERSTONE: I don't believe that this is relevant to this committee, so I'm not going to answer those questions.*
- Para 535 *The CHAIRPERSON: I will finish with this:*
- ...the officer (whose name was on the business card was Chief Insp Christine Baulderstone) was no longer on the footpath and another officer (Sgt Stuart Mee)*

was waiting to take my statement. I was surprised that Chief Inspector Baulderstone had left the scene so soon without advising me...

Is that appropriate conduct?

Supt BAULDERSTONE: Sorry, say that again.

Para 536 *The CHAIRPERSON: She says that the officer was you. You were no longer on the footpath. Another officer was there to take the statement, and she was surprised that Chief Inspector Baulderstone had left the scene so soon without advising her, 'either through courtesy or obligation'. Is that correct; did you leave the scene?*

Supt BAULDERSTONE: No, I didn't leave the scene, and this is not relevant to this committee, so I'm not answering any more questions.

Para 537 *The CHAIRPERSON: She goes on to say:*

I didn't think Sgt Mee was treating this seriously enough, because he didn't seem to be taking notes...

Ms Smith then goes on to say:

I was able to get to a doctor that night, but by that time I was nauseated, distressed and in a great deal of pain, particularly in one knee; so much that I passed out during the initial examination.

When I followed up with the Grenfell St Police Station about my statement, I was very upset to be told there was no statement taken from me that night and that I would need to make another one. Not only that, it meant that the details of all the people who had stopped to help me at the scene hadn't been recorded either, so they were no longer available to corroborate my version of events. I later had an operation to repair the injury to my right knee and was also diagnosed with PTSD...

At one point there were three separate inquiries into what happened—from the third party insurer (Allianz), the police Major Crash Investigation Unit and what I understood to be an internal police investigation. I was also later issued with a traffic infringement notice for my actions in crossing the road—a police officer tried to tell me that because Bent St was a common thoroughfare for police officers leaving the police station, the usual road rules were reversed and that the onus was on pedestrians to give way, rather than on drivers.

Was that correct?

Supt BAULDERSTONE: I'm not going into this. This is not relevant to any of the—

Para 538 *The CHAIRPERSON: Alright. She goes on to say the TIN was not issued in the end and, while she was threatened with being penalised for getting injured crossing the street, the person who hit her was later promoted within SAPOL. Then she says:*

I later lodged a complaint with the then Police Complaints Authority about the actions and demeanour of Chief Insp Baulderstone which was followed up by an officer from the Hindley St Police Station. This officer disclosed that three weeks prior to our phone call he had been a direct subordinate of Chief Inspector Baulderstone and my version of events didn't 'sound like the boss at all'. He said it sounded like a 'she said, she said' situation and that he was taking her side. I queried how objective and impartial this officer could be if he was so recently under her direct command, but did not hear any further about the outcome of this complaint.

As I needed to secure legal representation to defend myself against claims that I had done something wrong, my lawyer submitted a Freedom of Information request to obtain a copy of security video of the collision. It was denied on the basis that it could breach the intellectual property of anyone whose logo might appear on it in the background of the image. It was appealed and eventually my lawyer won the right to view the images for himself. Despite being told they did not exist we knew exactly what time of day to look for, so it wasn't difficult for my lawyer to direct the officers controlling the images. All three of them saw the video of the collision, which corroborated my version of events. This was the very next day after being told the Police Complaints Authority officer did not believe me. A further FOI request was needed to secure my own copy of the security images. This was denied on the basis that the images were no longer available; they had gone 'missing'.

I have never had so much as an apology of any kind from SAPOL: for the collision, for failing to render assistance at the scene, for erroneously threatening to issue me with a Traffic Infringement Notice or for 'losing' the security vision of the collision.

Was this subject to a police commissioner's report, this accident?

Supt BAULDERSTONE: I am not commenting on this because it's got nothing to do with the terms of reference of this committee. I don't—

Para 539 *The CHAIRPERSON: The reason is because there always seems to be a lack of disclosure. There has been a lack of disclosure in the Operation Bandicoot matter, and there was a lack of disclosure in this matter as well. Was there a police commissioner's investigation in this matter?*

Supt BAULDERSTONE: I couldn't tell you. I would assume there was, but—

Para 540 *The CHAIRPERSON: You would know, wouldn't you? Yes or no?*

Supt BAULDERSTONE: I have to remain independent. But this has got nothing to do with this committee. I don't understand why you are bringing it up.

On the questions asked of Mr Burns

Para 1274 *The CHAIRPERSON: I won't go into whatever happened after that. Can I read you some comments made by the current police commissioner, Mr Stevens, to the Crime and Public Integrity Committee on 28 May 2020. I asked the commissioner whether he agreed, after the not guilty verdicts were returned, that those officers were innocent of any criminal behaviour.*

I said, 'You agree that they are now innocent,' and Commissioner Stevens said, 'I abide by the finding of the judicial process.' I said, 'That's a yes.' He said, 'Yes.' I asked:

And that they didn't steal anything and there was insufficient evidence for a reasonable prosecution and that the case was completely without merit.

Commissioner Stevens then said, 'I think that's in the record.' I said, 'Do you agree with that?' He said, 'I accept the record.' Do you agree with Commissioner Stevens' assessment that these officers at Mantle should be considered innocent and there was no evidence in a case totally without merit?

Mr BURNS: I reject the comment that it was without merit. It obviously had merit because it went through the DPP process, it went through a committal process, and it went to court where a jury came up

Para 1289 *The CHAIRPERSON: No? Did you think it was acceptable that you make comments like that that could essentially make them appear guilty to the public, because that's what happened. After all the statements, the arrests, everything that transpired in the media, the indication could not have been more that they were guilty.*

Mr BURNS: It didn't impact the decision of the jury.

Para 1290 *The CHAIRPERSON: No, it didn't because there was no evidence—hardly any evidence of anything to support the charges.*

Mr BURNS: As I said, I haven't got the detail of the investigation because I wasn't intimately involved in the investigation, but it must have had evidence in there from my briefings and also the fact that the DPP took it to court and it went through a committal process, so there was evidence there. They all availed themselves of lawyers and quite rightly, and they went through the judicial process, the legal process, and there was an outcome, and from that outcome we are here today.

On the questions asked of Senior Sergeant Hammond:

Para 1021 *The CHAIRPERSON: I put it to you that your search was therefore unlawful under section 67.*

Snr Sgt HAMMOND: I'm not sure. I can't comment on that.

After a number of questions about the audit report were asked by Mr Hanson, Mr Pangallo said:

Para 1035 *The CHAIRPERSON: That information—your report—should have been disclosed. You may not know this, but it should have been disclosed to the defence under the DPP Act, and it wasn't. It took five years to get there. When you have a look at the contents of that report—and I will go through some of the elements with you later that you found; and quite a comprehensive report your unit did—you will actually see through your report that you found a lot worse conduct in some other areas of Sturt LSA than what these officers at Mantle were alleged to have done.*

They were alleged to have stolen stuff, but that was never shown. Your investigation at Mantle I think showed, basically, slack record keeping, some things that should have been secured that weren't. You found some empty beer bottles in a wastepaper bin that perhaps suggested there was a breach there and drinking of alcohol, contrary to police regulations. I don't know who opened the drawer and found the card knife. Who did that? Was that you that found the—

Snr Sgt HAMMOND: That was me, yes.

A number of misstatements were put to Detective Brevet Sergeant Dalton.

First Mr Pangallo put there was an audit report that was not disclosed to the defence. Later he said not disclosed for five years. That is not correct. Detective Superintendent Baulderstone has correctly stated how that audit report was used. She said in her opening statement:

"The purpose of the audit was to identify non-compliance with corporate policy. The audit was commenced on 15 October 2014, with the full audit report being completed on 10 December 2014. The audit report was documented in the case management of the investigation on 16 January 2015.

Assertions have been made that the audit report was not voluntarily disclosed. This is not true. Statements of all auditors containing the audit objectives were handed to the court on 18 August 2015. The case management file, containing entries and explanations regarding the existence of the audit report and stating 'Audit and Risk Management Section, audit of Sturt LSA property, equipment and financial management dated 18-12-14 and consists of 114 pages plus appendices A, B and C' was disclosed to the court on 6 October 2016.

The audit report, like all other documents and exhibits, was available for defence to view. It is not for the investigators to determine what is relevant to a person's defence, as this is up to the individual and their defence team. I can advise that when defence contacted ACB at various times to view documents and exhibits, such viewings were facilitated.

The audit of property is critical to determine competence and effectiveness of corporate and local controls and practices for the management of property in SAPOL custody. This is an important point, as it relates to property management in SAPOL custody. The audit found that, despite that there were some examples of poor property management, there was no evidence of deliberate theft. Rather, more often, it was linked to the placement of property within the SAPOL secure storage facilities and the recording of property being the issue, not its ownership. This must not be interpreted as an indication of any sort of widespread accepted practice of taking property home or at least out of police security either pre or post lodging."

Superintendent Baulderstone's evidence is truthful. It is untrue to say, as it has been repeatedly said that the audit report was not disclosed voluntarily and for five years. Mr Pangallo's questions ignore the only evidence before this Committee as to the manner in which that report was disclosed.

Unfortunately Mr Hanson and Mr Wortley have made the same error on a number of occasions.

Next Mr Pangallo put to Detective Brevet Sergeant Dalton that a minute exists in relation to the audit report that says: *'Sensitive. Do not disclose to defence.'*

There is no such minute. The only minute relevant to the audit report has been tabled and says nothing of the kind. It is a minute of 2 January 2015 to Detective Superintendent Pattison telling him that he should ensure that the Officer commanding ACB has knowledge of the contents of the report to ensure the ACB investigation is not compromised by the release of any information contained in the body of the report. It is referred to in question 1030 of Hammond's evidence.

A decision maker must be fair and must seek to elicit evidence. There is a theme running through the questions asked of the former police officers accusing them of dishonesty and unfairness. The allegations are made in some cases without evidence and in some cases contrary to the undisputed evidence.

The allegations put to Brevet Sergeant Dalton that she planted evidence is not supported by any evidence. Indeed there is no evidence that she did so.

The allegation put to Superintendent Dinning that she was planted has not been supported by any evidence to that effect.

The suggestion put to Superintendent Dinning and many other witnesses that the police officers who were charged are innocent reveals a serious misunderstanding of the criminal law and the criminal justice system. Those police officers who have gone to trial and been acquitted are not guilty of the offences for which they were charged. They have not been found innocent. That is not a verdict known to the law in Australia.

Those who have been tried but the jury was hung and those who have not been tried have no determinate status.

The last question asked of Superintendent Dinning was to accuse her of exchanging notes with other witnesses and Mr Pangallo claims by saying “*I gather*” that he knows that to be the case.

Mr Pangallo repeated his claims that evidence had been planted in Superintendent Baulderstone’s examination: Questions 448 to 450.

No evidence has been advanced to support that very serious allegation.

Next he referred to the audit report and asked why the report was not voluntarily disclosed by the prosecution, as required under the Director of Public Prosecution Act by the ACB.

That question as Superintendent Baulderstone said in her reply ignored what she said in her opening statement.

The allegations made by Mr Pangallo to Superintended Baulderstone and to other witnesses are incorrect.

Superintendent Baulderstone has correctly advised this Committee of the circumstances in which this audit report was criticised.

The questions asked of Superintendent Baulderstone between 523 and 540 including the incident with Sharon Smith were not relevant to this inquiry.

This Committee has concerned itself with Operation Bandicoot. In doing so, as I understand it, it has received no evidence from the police officers who were prosecuted.

This Committee has relied entirely on hearsay evidence for the case against the SAPOL/ICAC investigation.

It has received no direct evidence. True it heard from Michael Abbott but the relevant evidence he gave was also hearsay.

The statement made by Mr Pangallo on the 13th August 2021 when _____ gave evidence and responded on page 225:

“Before we start with you, _____ have a statement that I would like to make and I would like to put on the public record that I have been somewhat disturbed by the course the matter involving _____ i has taken in respect of this committee. Both initially agreed to appear before the committee last month to be able to put on record for the first time their account of the maelstrom they found themselves in when they were arrested and charged by ICAC more than three years ago.

They then pulled out at the last moment on legal advice, and because the Office of the DPP were still considering the astonishing and somewhat rare step of pursuing an ex officio to a high court, even though at their last Magistrates Court committal appearance prosecutors acknowledged the

evidence was insufficient to establish the charges. This is shocking to say the least. How can millions of dollars of taxpayers' funds be spent in the pursuit by ICAC of these senior and trusted public servants, who were simply doing their jobs?

This sorry saga has dragged on for the best part of three years and has cost both _____ dearly financially as well as their mental wellbeing. Then for the DPP to front court with nothing to show for it after all these years is unacceptable conduct, and the DPP will need to fully explain how it could have got to that point and, again, at considerable cost to taxpayers. Just what was the brief it was working on from ICAC? Who checked the brief to see if it would stack up? Who was briefing the prosecutors? These are serious questions that need answers.

It suggests to me, an outsider looking in, there is something serious amiss when the DPP cannot get its act together in a timely fashion for such a serious matter. There may be a case to argue that this is becoming a gross abuse of process. The South Australian government has an obligation to conduct itself as a model litigant. You have heard the saying justice delayed is justice denied, and yet it continues. The Attorney-General chimed in immediately the matter fell apart by foreshadowing the potential to lay an ex officio indictment. It was akin to planting a seed, in my view.

There is a foul-smelling political odour about this surprising ex officio business which, if it happens, could conveniently drag on well beyond next year's state election for some and then what? Does it die a death? The Attorney-General has a clear conflict here which she must disclose. It's already been divulged in this place by the Hon. Tom Koutsantonis that Ms Chapman, when she was in opposition as the member for Bragg, was the one who had laid an initial complaint to ICAC about _____ on behalf of disgruntled whistleblowers. She hasn't denied it and she can't deny it, because proof does exist of her involvement. Anyone who says it doesn't exist isn't telling the truth.

Following an estimates bombshell revelation in 2018 about the fate of two missing senior Renewal SA executives, including _____ his now perhaps explains the day in 2018 when she slipped up in issuing a media release in which she said she called the ICAC about whether any more information could be made available on the matter. This effectively identified persons involved in an ICAC investigation, breaking ICAC's code of secrecy into its investigations.

There was a perception that the widely distributed media release had contravened the ICAC Act. Her office was begging media outlets not to publish it. Why would they do that? The then ICAC commissioner, Bruce Lander, had to later that day release his own statement that he authorised the media to publish the Attorney-General's statement—a retrospective approval. How unusual, to say the least. What was this actually designed to do, I ask?

In November 2018, at a Crime and Public Integrity Policy Committee hearing, Mr Lander confirmed he did not give Ms Chapman permission to blurt out a statement on one of his criminal investigations. The controversy was later referred to the police commissioner to investigate. Nothing eventuated after quite some deliberation, but I do wonder if SAPOL was aware of what Mr Lander would have already known, that Ms Chapman was the one behind the initial ICAC complaint. Could that have changed the course of the investigation and any outcome?

The Chair made the allegations in the Legislative Council. He cannot now, with respect, decide whether his allegations have been proved to his satisfaction.

I could refer to the examination of other witnesses for example Mr Moyle and the further examination of Superintendent Dinning and Superintendent Baulderstone but I think the point has been made.

Mr Pangallo made these allegations in absolute terms in the Legislative Council and has asked questions of witnesses which might lead a fair minded observer to think that Mr Pangallo might not be able to bring an impartial mind to the decision making process.

The fair minded observer might think that Mr Pangallo was infected by apprehended bias.

For all of those reasons in my submission Mr Pangallo should recuse himself from the decision making process.

OPENING STATEMENT

5. The Terms of Reference

On 2 December 2020 the Legislative Council resolved to establish this Select Committee to enquire into the four matters mentioned in the Terms of Reference.

- (a) any damage, harm or adverse outcomes to any party/s resulting from investigations undertaken pursuant to the ICAC Act (other than adverse findings resulting from the conduct of persons investigated);
- (b) any damage, harm or adverse outcomes to any party/s resulting from prosecutions which follow investigations undertaken pursuant to the ICAC Act (other than adverse findings resulting from the conduct of persons prosecuted);
- (c) options that may prevent or reduce the likelihood of, or any harm or damage resulting from, such outcomes and whether exoneration protocols need to be developed; and

- (d) any other related matter; however, the committee shall not receive submissions or evidence in relation to any current investigation or current prosecution arising from such an investigation or any matter that is currently the subject of referral by the ICAC for further investigation and potential prosecution.

The Select Committee's jurisdiction is confined to the matters contained in the Terms of Reference.

There are two things I want to say about the Terms of Reference.

First I want to deal with the second term of reference so that there is no misunderstanding as to the role that the Independent Commissioner Against Corruption plays in a prosecution brought following an investigation by ICAC.

The decision to prosecute or not and the manner in which the prosecution is conducted is that of the Director of Public Prosecution (DPP).

The Commissioner has no power to prosecute but only has power to refer a matter to the DPP for prosecution: s 7(1a) of the *Independent Commissioner Against Corruption Act 2012* (the ICAC Act).

The Commissioner does not and cannot prosecute anyone.

The DPP will only prosecute a person, after an investigation by SAPOL or by ICAC, if the DPP considers that there is a reasonable prospect that the person who has been charged or is to be charged will be convicted. The DPP must also be of the opinion that the prosecution is in the public interest.

You must find, because it is the case, that the DPP or his office was of the opinion at the time that the prosecution was brought against each of the members of the Sturt Mantle team, that were the subject of Operation Bandicoot investigation, that there was a reasonable prospect of them being convicted as suggested in the first term of reference.

That was Judge Kimber's evidence.

You must also find that the DPP was of the opinion that it was in the public interest to prosecute each of those persons.

That was Judge Kimber's evidence.

I will say more about this.

The second matter I wish to address relate to the complaint made by Mr Lawton and Mr Fuller which does not, on any understanding of their complaint, come within the Terms of Reference.

No investigation was undertaken pursuant to the ICAC Act so the complaint is not within paragraph (a). No prosecution was brought following an investigation undertaken pursuant to the ICAC Act, so the complaint is not within part (b).

Paragraphs (c) and (d) are only engaged if there has been an investigation. For (d) it must be related to (a) and (b). That comes within paragraph (a) or a prosecution that comes within paragraph (b).

This Committee must find that the Lawton/Fuller complaint is outside the Terms of Reference and refuse to make any decision in respect to the complaint.

You must accept Commissioner Stevens' evidence in that regard.

The committee should also take Mr Fuller's complaint down from its website. The complaints contains numerous gratuitous defamations.

I shall now address the particular investigations. In this evidence I have relied on publicly available information or I have replied to allegations made in public. This evidence should be made public.

6. Operation Bandicoot

Operation Bandicoot was entirely unremarkable except that it related to the conduct of police officers, and SA Police invoked the powers given under the *Criminal Investigation (Covert Operations) Act 2009*. (the CICO Act).

The investigation was carried out using the powers given by the police at common law and under statute.

I will return to that.

6.1. The information provided by the whistleblower

It seems to have been suggested at least by PASA, and by inference, by Mr Pangallo that the conduct which was investigated by SAPOL should not have been investigated at all.

Indeed Mr Pangallo said at 2336:

"There was no evidence to substantiate any of the allegations of serious criminal conduct".

He also said at page 2358:

"There was no hard evidence against them that could reasonably result in a prosecution..."

Mr Pangallo also said at 2358:

“The integrity tests carried out at two bogus crime scenes turned up nothing to implicate those officers in any wrongdoing. In other words, there was no theft of any items or any evidence of abuse of public officer”

They are extraordinary propositions.

All of those statements are wrong.

If those statements were true it means that ACB completed an investigation and charged six police officers without any evidence; the DPP prosecuted those police officers without any hard evidence contrary to the DPP's own guidelines; a Magistrate found a case to answer when there was no hard evidence; and a Supreme Court Judge allowed a case to go to a jury when there was no hard evidence.

X1 was a whistleblower. She was a police officer who became a member of the Sturt Operation mantle team.

Mr Pangallo described her as a disgruntled police officer. He also described her report to the ACB senior officer who further reported later as hearsay and assumptions!

All of those assertions are untrue.

No one else, to my knowledge, except Mr Pangallo, has ever described X1 as a disgruntled police officer.

I do not know who provided that description of X1 to Mr Pangallo but it is unfair and seriously inaccurate and there is no evidence to support the allegation.

Moreover it is wrong to describe a whistleblower in that way.

The law recognises the importance of providing protection to whistleblowers and police informants from any adverse actions as a result of the assistance they provide police.

The Court of Appeal in New South Wales has said that to do otherwise, “sources of information would dry up and the prevention and detection of crime would be hindered: R v Smith (1996) A Crim R308 at 311 per Gleeson CJ, Clarke and Sheller JA; and D v National Society for the Prevention of Cruelty to Children (1978) AC 171 at 218.

Commissioner Stevens has told you something of X1's observations.

On two occasions X1 attended two separate properties at Glenelg South on 2 January 2014 and at Aberfoyle Park on 18 February 2014.

On 6 March 2018 the Hon. Justice Lovell a Judge of the Supreme Court, who has since been appointed a Judge of the Court of Appeal, handed down his reasons for judgment in an application brought by the members of the Sturt Mantle team seeking to exclude certain evidence at their trial. R v M, I & Ors [2018] SASC 24.

I have attached a copy of that judgment.

Commissioner Stevens referred to this judgment.

For some reason and until Commissioner Stevens mentioned it, Lovell J's judgment has not been referred to by this Committee during the course of its hearings and appears to have been ignored.

I wonder if members of this Committee have read it.

That would be surprising because Lovell J has directly addressed most of the issues raised by Mr Pangallo and answered them favourably to the SAPOL investigation.

Justice Lovell is a person with considerable experience in the criminal law, including as a prosecutor. His opinion is one which would greatly assist this Committee.

If the Committee plans to reject Justice Lovell's decision, and make a finding that contradicts His Honour's, the Committee should explain why His Honour was wrong.

The members of this Committee must read that decision which answers most of Mr Pangallo's particular criticisms.

Justice Lovell has described the circumstances in which X1 came into possession of information which she provided to the Anti-Corruption Branch.

Glenelg South

- 8 *X1 attended the crime scene with IM and MR along with Senior Constable S (S), Senior Constable W (W) and Senior Constable G (G). The information provided by X1 in relation to the Glenelg South residence was as follows:*
 1. *The premises were set up similar to that of an Albanian syndicate grow house.*
 2. *While assisting in the dismantling process, X1 heard from another room words to the effect of "that would look good in the office". X1 looked into the room and saw IM and S. S was disconnecting the cords to a television.*
 3. *X1 heard MR say "that's a decent fan, better get that out before Crime Scene gets here". X1 later saw the fan outside. S carried a bag of mulch/fertiliser from the premises. This bag and the television, disconnected by S, were seen by X1 in the police vehicle.*

4. *The owner of the premises, believed to be an ex-solicitor, arrived and observed the items in the police vehicle. After the owner's arrival MR returned the pedestal fan to the premises.*
5. *W later said to X1, referring to the attendance at Glenelg South, "normally it's only a pair of secateurs".*
6. *On 14 January 2014 X1 said that whilst she was in the middle room at office of the Mantle team, the television started to "blink". S said, "Gee, we could really do with an Albanian drug action about now".*
7. *The fan was not taken from the premises. X1, the next day, saw that the television had been entered into the Police Property Management System (PPMS).*

Aberfoyle Park

- 9 *X1 attended the crime scene with BR, MR, G and W. The house had clearly been used for the growing of a cannabis crop.*
- 10 *Whilst the grow house was being dismantled, W asked for something to break down a carbon filter. He said, "Has anyone got anything to break this down?" and then, "Oh nah, that's alright, I actually need a carbon filter." The carbon filter was placed in the Mantle trailer.*
- 11 *Later, investigations conducted by the ACB produced CCTV footage showing W unloading a carbon filter from the Mantle trailer at 1.49 pm after the Mantle officers returned from Aberfoyle Park. Property seized from Aberfoyle Park was booked in by BR to the Sturt PPMS but the carbon filter was not booked in.*
- 12 *This became relevant to a crime scene that W had attended months earlier. On 22 July 2013, Sturt Mantle officers including W had attended premises at 68 Albert Street, Goodwood and a carbon filter seized and entered on the Sturt PPMS system. It was said to have been delivered to the Ottoway police compound. The carbon filter was never received at Ottoway.*
- 13 *On 6 February 2014 Senior Constable T (T), from the Ottoway police compound, sent an email to W about the carbon filter having been booked in but not delivered.*
- 14 *At 2.05 pm on 18 February 2014, after the Sturt Mantle team officers returned from Aberfoyle Park, W sent an email to Senior Constable T advising that he had "just come back from leave and had attended down in the wash bay/holding area for hydro items and had located the carbon filter without a property label attached". The carbon filter mentioned by W was that seized from Aberfoyle Park but not booked in.*

As I have said Mr Pangallo described X1 as a disgruntled police officer.

Disgruntled means:

dissatisfied, discontented, aggrieved, resentful, fed up, disappointed, disaffected, malcontent, angry, crate, annoyed, cuss, exasperated, indignant, vexed, irritated, piqued, irked, put out, cut off, temper, sulky, sullen, petulant

She should not have been so described. There is not a shred of evidence that X1 made her report to the Anti-Corruption Branch because she was 'disgruntled'.

It is also wrong to describe her evidence as hearsay. The observations she made were not hearsay but direct evidence. The conversations she reported would have been admissible evidence as an exception to the hearsay rule.

She reported that conduct to a senior police officer who in turn reported to the Anti-Corruption Branch as that officer was obliged to do as a serving police officer.

Superintendent Baulderstone was then the Commanding Officer of the Anti-Corruption Branch. Inspector Dinning was second in command. Brevet Sergeant Dalton was a member of the ACB.

All those women had been appointed by the Commissioner of Police because of their reputations for integrity, fairness and competence. The ACB needed to be made up of people of that kind.

Justice Lovell had the advantage of seeing all the relevant witnesses including Superintendent Baulderstone, Inspector Dinning and Brevet Sergeant Dalton.

Mr Pangallo has made a number of criticisms of Superintendent Baulderstone, Superintendent Dinning and Detective Brevet Sergeant Dalton. During the course of their evidence he made serious allegations against all three of them.

He seems to have overlooked what Lovell J said of Baulderstone in his decision:

- 34 *"Baulderstone's evidence was strongly criticized by counsel but I found her to be generally an honest and reliable witness. There was much criticism of her approach to who she suspected on reasonable grounds to be part of the culture of dishonesty within the mantle team. For the reasons that follow I consider her approach, apart from her suspicion in relation to KF and JC, to have been correct. Much of the criticism is unwarranted."*
- 35 *Baulderstone was also criticised for her decision to proceed with the Tests despite the change in membership of the Mantle team over time. Further she was criticised for not rearranging the Tests to exclude certain members. I discuss those matters later in these reasons. In my view much of the criticism was unwarranted. Baulderstone along with the other investigators had a number of operational decisions to make. They decided to not do anything that would create any suspicion that a covert operation was underway. It was decided to allow matters within the Mantle team to continue "normally". While I accept that other pathways may have been taken, and I take that into account when considering the exercise of the discretions, in the overall*

context of this case these were operational decisions which were not unreasonable.

- 36 *I have considered the evidence of Baulderstone carefully. I generally accept her evidence as honest and reliable.*

Justice Lovell said of Dinning:

- 31 *"Dinning was an honest reliable witness and I accept her evidence"*

Justice Lovell said of Dalton:

- 30 *"Dalton was an impressive witness. I found her to be an honest, credible and reliable witness. Whilst her investigation was not free of errors, as one would expect in an investigation of this nature, Dalton was always quick to acknowledge her errors. I accept her evidence."*

The Judge also said:

- 37 *"I find that all witnesses attempted to comply with the CICO Act. In relation to all of the witnesses called by the prosecution I find that they acted in good faith."*

He later said of Baulderstone and Dalton:

- 283 *"I have already made findings about the conduct of Baulderstone and Dalton. In my view they did not attempt to mislead me in their evidence. The errors made in the granting of approvals was not a deliberate cutting of corners. The errors arose from the mistake in Baulderstone's assessment of "suspicion on reasonable grounds". The errors were not deliberate nor were they reckless."*

6.2. The decision to Investigate X1's report

Contrary to what has been put my Mr Pangallo there is not the slightest doubt that the conduct reported to the ACB had to be investigated.

Mr Pangallo has said that there was no evidence to substantiate any of the allegations of serious criminal conduct.

That is simply to ignore the evidence of the whistleblower. There was evidence of serious criminal conduct which the whistleblower provided to ACB as she was obliged to do as a police officer.

In relation to the investigation itself Lovell J found that not to investigate the conduct reported to the ACB would be "unthinkable".

He said this:

- 71 *The information the ACB received originated from a then serving member of the Mantle team, X1. The information came from a person operating within the team itself, not from, for example, an anonymous tip-off. X1 was concerned enough about what had happened to report the matter. Obviously the concern of X1 is not a matter that Baulderstone could have taken into account, but the source of the information was not unimportant.*
- 72 *There were comments overheard by and made directly to X1 during the raid by various officers of the Mantle team of the Glenelg South premises which raised concerns (to use a neutral expression) about the whole Mantle team. I will refer to only some of the information.*
- 73 *X1 alleged that she heard from another room words to the effect of “that would look good in the office”. X1 looked into the room and saw IM and S. S was disconnecting the cords to a television.*
- 74 *X1 heard MR say “that’s a decent fan, better get that out before Crime Scene gets here”. X1 later saw the fan outside. S carried a bag of mulch/fertiliser from the premises. This bag and the television, disconnected by S, were seen by X1 in the police vehicle.*
- 75 *The owner of the premises, believed to be an ex-solicitor, arrived and observed the items in the police vehicle. After the owner’s arrival MR returned the pedestal fan to the premises.*
- 76 *Constable W, later said to X1, referring to the attendance at Glenelg South, “normally it’s only a pair of secateurs”.*
- 77 *It cannot be overlooked that the owner of the premises arrived at the scene before the police had finished their duties. I have not overlooked that the fan was returned. Given the comments heard by, and said to, X1 and reported to ACB it is clear that an investigation was required. For the ACB not to have conducted an investigation, upon receipt of that information, would be unthinkable. (emphasis added)*

A Judge of the Supreme Court has found that it was clear that an investigation was required and not to have investigated the conduct would be unthinkable.

The rule of law requires this Committee to respect the Supreme Court decision.

There are other reasons why this investigation had to take place. The ACB had previous intelligence in relation to the Sturt Mantle team which was consistent with the report made by X1.

Moreover the allegations were very serious because the only right these police officers had to be on the premises was because one of the police officers had a general search warrant issued under Section 67 of the *Summary Offences Act 1953*.

Section 67(1) of the Summary Offences Act empowers the Commissioner of Police to issue general warrants to such police officers as the Commissioner thinks fit.

Section 67(4) gives those police officers who hold a general search warrant the powers mentioned in subsection (4).

Section 67(4) provides:

- (4) The police officer named in any such warrant may, at any time of the day or night, exercise all or any of the following powers:
 - (a) the officer may, with such assistants as he or she thinks necessary, enter into, break open and search any house, building, premises or place where he or she has reasonable cause to suspect that—
 - (i) an offence has been recently committed, or is about to be committed; or
 - (ii) there are stolen goods; or
 - (iii) there is anything that may afford evidence as to the commission of an offence; or
 - (iv) there is anything that may be intended to be used for the purpose of committing an offence;
 - (b) the officer may break open and search any cupboards, drawers, chests, trunks, boxes, packages or other things, whether fixtures or not, in which he or she has reasonable cause to suspect that—
 - (i) there are stolen goods; or
 - (ii) there is anything that may afford evidence as to the commission of an offence; or
 - (iii) there is anything that may be intended to be used for the purpose of committing an offence;

(Emphasis added)
 - (c) the officer may seize any such goods or things to be dealt with according to law.

You will understand therefore that a police officer who holds a general search warrant, or is assisting a police officer in the execution of a general search warrant, may seize any of the goods mentioned in section 67 (4)(b).

Relevantly for this investigation the only goods that could be taken away from the premises, when the police officers exercised the general search warrant, were anything that might afford evidence as to the commission of an offence or there was anything that might be intended to be used for the purpose of committing an offence.

None of the accused police officers were entitled to take away any other item or items except those mentioned in section 67(4).

They had no right as police officers to take away any other items.

There are many critics of the general search warrant.

Many persons are of the view that to provide police with a general warrant to enter people's premises without first obtaining a warrant from a judicial officer can lead to corruption.

The High Court has recently said in *Smethurst Anor v Commissioner of Australian Federal Police Anor* 2020 HCA14:

22. *The requirement that the offence to which a warrant relates be stated in the warrant has its origins in the common law's refusal to countenance the issue of general warrants^[7] and its strictly confining any exception to the principle that a person's home is inviolable^[8]. General warrants, as their name implies, contain no specification of the object of the search and purport to confer a free-ranging power of search. They were described in *Wilkes v Wood*^[9] as a discretionary power given to messengers to search "wherever their suspicions may chance to fall" and as "totally subversive of the liberty of the subject". They were infamously used for the purposes of controlling the writing and printing of seditious and radical political works^[10].*
23. *The power to search has always been regarded as an exceptional power, to be exercised only under certain justifying conditions^[11]. One essential condition, found in statutes authorising the issue of warrants for search and seizure, both Commonwealth and State and Territory, is that the object of the search be specified by reference to a particular offence^[12].*
24. *In *George v Rockett*^[13], the Court observed that in prescribing conditions governing the issue of search warrants the legislature has sought to balance the need for an effective criminal justice system against the need to protect the individual from arbitrary invasion of their privacy^[14]. A person's interest in privacy is recognised in all modern bills of rights and it has achieved a status in international human rights law^[15].*

25. *It may be accepted that the balance struck by the legislature to a greater extent favours the public interest in the investigation and prosecution of crimes. Nevertheless it remains a concern of the legislature, in enacting provisions authorising warrants for search and seizure, to provide a measure of protection to persons affected by a warrant. It does so in large part by ensuring that the object of the warrant is identified by reference to a particular offence and that the limits of the authority to search may thereby be discerned. The courts' insistence on strict compliance with the statutory conditions for a warrant gives effect to this legislative purpose[16].*

Mr Pangallo has recently enquired of the Commissioner of Police whether the general search warrant needs a review by Parliament and described the High Court as saying that it was that Court's opinion that these warrants were basically unsavory

It was vital therefore that the ACB investigate to determine whether the allegations supported a finding that the Sturt Mantle team was abusing the general search warrant given to the police officer within the Sturt Mantle who held that general search warrant.

This Committee cannot find in view of the matters reported by X1 to the ACB and in view of Lovell J's decision that this investigation was unwarranted.

You must reject Mr Pangallo's claims that X1's report should not have been investigated. As Lovell J said not to investigate this matter would be unthinkable.

6.3. The Course of the Investigation

Mr Pangallo said at 2357:

"There was some extremely shoddy, sloppy and, as it turns out, unlawful detective work in Operation Bandicoot. This was like slaptrack Keystone Keps material".

The conduct which Mr Pangallo has indicated justifies that extraordinary piece of rhetoric are:

1. The ACB, with the blessing of ICAC had conducted two integrity tests that were found to be unlawful or invalid because Superintendent Baulderstone failed to get an approval from Mr Moyle as required under the CICO Act.
2. The expiry of the s 34 notice
3. The carrying out of an audit which was not voluntarily disclosed to the prosecution by the ACB or ICAC under the Director of Public Prosecutions Act.

There was no requirement in the CICO Act for ACB to get Mr Moyle's opinion. That assertion is wrong. A reading of Lovell J's judgment will show Mr Pangallo's statement to be wrong.

There was an internal ACB policy that suggested Mr Moyle's agreement should be obtained but it did not apply to ICAC and the failure to comply with the policy was not in any way unlawful.

In any event the Judge found that Moyle had authorised the Approvals but the authorization was not in writing which was a matter of little weight: para 177

I exercised the power given to the ICAC under the ICAC Act to require the Commissioner of Police to conduct a joint investigation; section 34 of the ICAC Act.

Mr Pangallo criticised my conduct in relation to the non renewal of the s. 34 notice and said in the Legislative Council on 2 December 2020 at page 2357:

"Further, a relevant s 34 notice, issued by ICAC, had expired on 31 August 2014. It was not renewed. Bear in mind those integrity tests were conducted soon after in September and October and could have placed those tests in legal jeopardy."

Like much of what Mr Pangallo has asserted that is wrong. It merely reiterates Mr Abbott's argument in the Supreme Court; an argument which was rejected by the Justice Lovell.

The failure to give a further s 34 notice could not have placed the further investigation in any form of jeopardy.

In *R v M, I Anors* (2018) SASC 24 Lovell J said at paragraphs 45 to 48

- 45 *Mr Abbott QC on behalf of KF submitted that as the s 34 Notice had expired on 31 August 2014, the Targeted Integrity Tests conducted after that date, both of them, were conducted without lawful authority. It was submitted that everything done by the ACB after 31 August 2014, purportedly in furtherance of a joint investigation with the Commissioner, was in contravention of the ICAC Act and therefore the evidence obtained via a Targeted Integrity Test and the search of KF's house and vehicle on 13 October 2014 was unlawful.*
- 46 *I reject the submissions of KF in this regard. The interpretation urged by KF suggests that s 34 of the ICAC Act in some way regulates the power of the police to investigate. It does not do that. Sections 23 and 24 of the ICAC Act, in context, simply ensure that where the matter is assessed as raising a potential issue of corruption in public administration that somebody investigates the matter. It could be the Commissioner, the South Australian Police or another law enforcement agency. Section 34 confers a discretion on the Commissioner whereby he or she can authorise a joint investigation with for, example, the police.*
- 47 *Section 34 also confers a discretion on the Commissioner to direct the police to refrain from "taking action". The Commissioner in this case did not require the South Australian Police to refrain from taking action. The action was simply directed to be a joint action. The expiration of the time*

period specified in the s 34 Notice did not circumscribe the power of the police to continue with their investigations.

- 48 *Further, nothing in the ICAC Act prohibits the Commissioner from conducting an investigation at the same time as, for example, the police. Section 24(6) envisages concurrent investigations.*

There is no doubt that His Honour's construction of s34 of the *Independent Commissioner Against Corruption Act 2012* (the ICAC Act) was right.

This issue has been decided and decided adversely to the argument put by Mr Abbott and the allegation made by Mr Pangallo.

The claim made by Mr Pangallo was simply wrong and ignores a decision of a Judge of the Supreme Court which the rule of law requires this Committee to respect.

The audit was not part of the investigation. Mr Pangallo acknowledged that when he said it was not part of Operation Bandicoot.

I do not think I was ever aware of the audit.

I certainly was not aware that an audit was to be carried out before it was carried out. That supports the finding that the audit was not part of the investigation. Commissioner Stevens has said it was not part of the investigation.

It was an internal audit by SAPOL to ensure that its policies were being followed.

It is not true to say that the audit was not voluntarily disclosed to the prosecution and the defence by the ACB or ICAC under the DPP Act.

I will repeat the evidence. The audit itself was conducted by Audit and Risk Management Section (ARMS) commencing on 15 October 2014 at the direction of Acting Commissioner, Deputy Commissioner Stevens. The audit concluded on 10 December 2014. A final report documenting the audit process, findings and recommendations was finalised on 18 December 2014.

Statements documenting the audit were compiled by ARMS members. In particular Senior Sergeant Stephen Hammond made a detailed declaration on 23 June 2015 in which he referred to the audit at length. Those statements were disclosed on 18 August 2015.

These statements were provided voluntarily and in a timely fashion.

The defence was made aware of the audit as early as that date. They did not seek the audit report at that time as they could have done. It is just not true to say that the audit report was not provided to the defence for five years.

Further the Case Management File which included entries and explanations regarding the existence of the audit report was disclosed to the Court on 6 October 2016.

You must accept Chief Superintendent Baulderstone's and Commissioner Stevens' evidence in this regard.

The audit report was requested via a subpoena SCCRM-16-222 issued on behalf of dated 25 October 2018 and return documentation in compliance with this subpoena was lodged with Supreme Court Criminal Registry on 2 November 2018.

The Targeted Integrity Tests were not found to be illegal.

Mr Pangallo talks about ACB setting up bogus crime scenes which he said at page 2358 "turned up nothing to implicate these officers in any wrongdoing. In other words there was no theft or any items or any evidence of abuse of public office."

Commissioner Stevens has addressed that claim which is simply not correct. Mr Pangallo has asserted yet again there was no evidence of criminal conduct.

Commissioner Stevens has provided you with the substance of the evidence that implicates the police officers and I will not repeat that evidence.

However Mr Pangallo asserts that there was no evidence. He seems to know more than Lovell J, a Magistrate, the Commissioner of Police, the DPP and experienced investigators.

For the reasons I have already given the Committee must reject Mr Pangallo's allegation.

It would have been impossible to investigate this matter other than the way in which it was investigated by using targeted integrity tests.

It is clear as Lovell J acknowledged that the information provided by X1 was not sufficient to allow for the arrest of any of the members of the Sturt Mantle team.

Justice Lovell said:

78 *"It is also clear that on this information, along with the other matters reported to the ACB, there was insufficient evidence on which to arrest any member of the Mantle team". Baulderstone and Dalton, when giving evidence, accepted that position. The fact that they accepted that position was unsurprising as they considered at that time that further investigation was required. That decision was entirely appropriate. Meetings were held at ACB where discussion occurred as to what further investigations could be undertaken. It was certainly a reasonable decision (unrelated to section 4) by the ACB to consider techniques available given that there was at least some suspicion that the whole Mantle team may be involved.*

Dalton developed an investigation plan for Operation Bandicoot which on 12 February 2014 was approved by both Dinning and Baulderstone. It envisaged the use of a wide range of investigative tools including telephone intercepts, listening devices, human sources and whistleblowers, various banking and other records, physical surveillance and an undercover operation including Targeted Integrity Tests.

Justice Lovell found:

99 *I have not overlooked the force of the submissions of Mr Fabbian made on behalf of BR. In my view there were reasonable grounds to suspect that all then serving members of the Mantle team had engaged in serious criminal behavior whether they had attended the premises with X1 or not. The evaluation of the reasonableness of a suspicion must be undertaken in the context of the purpose of the power to approve and the civil liberties abrogated by its exercise.¹ As Baulderstone stated in evidence “from the information provided by WB that it was a cultural issue at Sturt Operation Mantle, that it was an accepted practice to steal items from crime scenes. That does not mean that she suspected the Mantle team as an entity. A fair reading of her evidence is that she suspected all members of the Mantle team individually upon receipt of the information from X1. The individual members made up the Mantle team. It is correct that she then considered that joining the Mantle team would make a person a suspect but that does not lead to the conclusion that she did not suspect the individuals making up the Mantle team. The reasonable grounds for suspicion for suspicion applied across all the Approvals.*

There can be no criticism of the ACB for determining that the matter should be further investigated by using Targeted Integrity Tests.

Nobody has suggested that the matter could have been investigated in any other way without the members of the Sturt Mantle team becoming aware of the fact that they were under investigation.

A Targeted Integrity Test is an appropriate form of investigation the purpose of which is to provide a person who is suspected of committing criminal offences with the opportunity of committing such an offence.

If of course the person under investigation does not commit any offence then the Targeted Integrity Test has been a valuable because it has shown that the person under investigation is not dishonest.

In this case the purpose of the Targeted Integrity Test was to determine which if any of the members of the Sturt Mantle team were dishonest.

¹ *R v Nyguen* (2013) 117 SASR 432, 437 [22].

ACB recognised appropriately in my view, that if a Targeted Integrity Test was to be carried out the investigators might have to involve themselves in some form of unlawful conduct.

The CICO Act recognises that it is necessary from time to time to provide an indemnity for a person against criminal prosecution in order to allow those persons to properly investigate the conduct of others.

Section 4 of the CICO Act empowers a senior police officer or the Independent Commissioner Against Corruption to approve undercover operations where the suspected corruption involves or may involve serious criminal behaviour.

Section 4(2) provides the criteria for such an approval and it provides:

- (2) *An approval may not be given unless the senior police officer or the Independent Commissioner Against Corruption (as the case may be)—*
 - (a) *suspects, on reasonable grounds, that persons (whose identity may—but need not—be known to the officer) have engaged, are engaging or are about to engage in serious criminal behaviour of the kind to which the proposed undercover operations relate; and*
 - (b) *is satisfied on reasonable grounds that the ambit of the proposed undercover operations is not more extensive than could reasonably be justified in view of the nature and extent of the suspected serious criminal behaviour; and*
 - (c) *is satisfied on reasonable grounds that the means are proportionate to the end; that is, that the proposed undercover operations are justified by the social harm of the serious criminal behaviour against which they are directed; and*
 - (d) *is satisfied on reasonable grounds that the undercover operations are properly designed to provide persons who have engaged, or are engaging or about to engage, in serious criminal behaviour an opportunity—*
 - (i) *to manifest that behaviour; or*
 - (ii) *to provide other evidence of that behaviour,**without undue risk that persons without a predisposition to serious criminal behaviour will be encouraged into serious criminal behaviour that they would otherwise have avoided.*
- (3) *Before giving approval, the senior police officer or the Independent Commissioner Against Corruption (as the case may be) must consider whether approval for similar operations has previously been sought, and, if sought and refused, the reasons for that refusal.*

- (4) *The approval must—*
- (a) *be in writing; and*
 - (b) *be signed by the person giving the approval; and*
 - (c) *specify—*
 - (i) *the date and time of the signing, and the time from which the approval takes effect (which may be contemporaneous with or later than the time of signing but cannot be earlier); and*
 - (ii) *the persons who are authorised to participate in the operations; and*
 - (iii) *the nature of the conduct in which the participants are authorised to engage; and*
 - (iv) *a period (not exceeding 3 months) for which the approval is given.*
- (5) *A senior police officer or the Independent Commissioner Against Corruption (as the case may be) may renew, from time to time, an approval for 1 or more further periods.*

In this case Lovell J found that Superintendent Baulderstone misunderstood some aspects of section 4 of the CICO Act and did not properly address the criteria in s 4(2)(b) and 4(2)d).

The challenge was that the decision making process was flawed. Justice Lovell found that the approval was therefore invalid.

It did not render the or investigation unlawful but meant that parts of undercover operations included illegal activity on the part of police: Para 153

It was a technical mistake on the part of Superintendent Baulderstone and that was what His Honour found.

His Honour also explicitly found that the mistake was not deliberate nor was it reckless: paragraph 271

He found that the police conduct did not affect the cogency of the evidence obtained during the course of the targeted integrity test.

Justice Lovell found that it would have been relatively easy for Superintendent Baulderstone to have complied with section 4. He found in particular “she was not attempting any shortcut or knowingly abusing her role”.

In particular he also found at paragraph 259:

“Indeed had she (Superintended Boulderstone) correctly assessed the position of JC and KF it is likely, given her evidence when challenged on the way the test was designed, the test would have gone ahead in the same manner.”

In particular he found there was no unfairness visited upon the members of Sturt Mantle by reason of the error made by Superintendent Boulderstone: paragraph 264

This Committee must reject the inference in Mr Pangallo’s speech that there was no evidence to support an investigation and that there should not have been an investigation.

I must accept, as this Committee also must, the ruling of the trial judge Justice Lovell.

The critical aspects of His Honour’s ruling that this committee must accept are:

1. Superintendent Boulderstone made an honest mistake.
2. If she had applied her mind correctly to the issue the result would have been same and the test would have gone ahead.
3. No unfairness was caused to the persons who were subjected to the Targeted Integrity Test.

That error was the only error that was made during the course of the investigation and it had no effect upon the manner in which the investigation proceeded or more importantly the admissibility of the evidence at the trial. To describe the investigation as shambolic is simply wrong and a serious exaggeration.

The ACB also used listening devices in the course of its investigation.

The use of listening devices is authorised by the *Listening and Surveillance Devices Act 1972*.

Importantly a listening device cannot be used in the course of an investigation without SAPOL or the ICAC obtaining a warrant from a judge of the Supreme Court.

Section 6 of the Listening Devices Act provides a process whereby a warrant may be obtained. It requires the applicant to make a personal appearance before the judge: s6(3). The grounds of the application must be verified by affidavit: s6(4).

Importantly a judge cannot issue a warrant unless the judge is satisfied that there are reasonable grounds for issuing the warrant taking into account:

- (6) *A judge may issue a warrant if satisfied that there are, in the circumstances of the case, reasonable grounds for issuing the warrant, taking into account—*

- (a) *the extent to which the privacy of a person would be likely to be interfered with by use of the type of device to which the warrant relates; and*
- (b) *the gravity of the criminal conduct to which the investigation relates; and*
- (c) *the significance to the investigation of the information sought to be obtained; and*
- (d) *the likely effectiveness of the use of the listening or surveillance device in obtaining the information sought; and*
- (e) *the availability of alternative means of obtaining the information; and*
- (f) *any other warrants under this Act applied for or issued in relation to the same matter; and*
- (g) *any other matter that the judge considers relevant.*

This Committee must assume, that a judge of the Supreme Court was satisfied that it was appropriate in the circumstances of this investigation to issue a warrant for the use of listening devices.

The evidence that was obtained by the use of the listening devices must be heard and watched by this Committee.

Commissioner Stevens has outlined that evidence which you must accept.

I am told that a witness has given this Committee a transcript of what was said.

Without providing you with the information or material derived from the use of the warrant I can tell you that once you have seen and heard the evidence obtained by the use of the listening devices you will hold a very different opinion to that expressed by Mr Pangallo in his speech to the Legislative Council. The evidence obtained by use of the listening device is damning.

If you do not obtain that evidence then you will be making a decision on incomplete evidence which would simply be unfair.

6.4. The Decision to Prosecute

These officers were charged by SAPOL. You have heard Commissioner Stevens' evidence. There is not the slightest doubt the police officers who arrested the police officers had reasonable cause to suspect. It has never been suggested in the Courts by any of the police officers who were prosecuted that the ACB officers did not have that reasonable suspicion.

However it is not the case that because a person is charged that that person will necessarily be prosecuted.

I have already said when discussing the Terms of Reference that the decision to prosecute was made by the DPP and I will say a little more about that.

You have Judge Kimber's evidence which you should accept.

You must find, because it is the undisputed fact that I did not prosecute those police officers or indeed anyone else during my term as ICAC.

The DPP has published a document entitled Statement of Prosecution Policy and Guidelines. The policy and guidelines are those governing the decision to prosecute criminal offences in South Australia and are part of the uniform prosecution policy adopted by the Directors of Public Prosecutions of all States and the Commonwealth of Australia in 1990.

It is stated that the primary obligation in a prosecutor is one of fairness: Page 3

It is stated that a prosecution should not proceed unless there is reasonable prospect of a conviction being secured: Page 5

The DPP has said

"This basic criterion is the cornerstone of the uniform prosecution policy adopted in Australia"

He has written:

The decision whether or not to prosecute is the most important step in the prosecution process. In every case great care must be taken in the interests of the victim, the suspected offender and the community at large to ensure that the right decision is made. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, tends to undermine the confidence of the community in the criminal justice system." Page 5

He has also written:

"It has never been the rule in this country that suspected criminal offences must automatically be the subject of a prosecution. A significant consideration is whether the prosecution is in the public interest. The resources available for prosecution action are finite and should not be wasted pursuing inappropriate cases, a corollary of which is at the available resources are employed to pursue those cases worthy of prosecution." Page 5

He has also said:

"The initial consideration in the exercise of this discretion is whether the evidence is sufficient to justify the institution or continuation of a prosecution."

A prosecution should not be instituted or continued unless there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the accused. There is a continuing obligation to assess the evidence as a matter proceeds.

The decision as to whether there is a reasonable prospect of conviction requires an evaluation of how strong the case is likely to be when presented in court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence which are plainly open to, or have been indicated by, the accused and any other factors which in the view of the prosecutor could affect the likelihood or otherwise of a conviction. This assessment may be difficult one to make, and of course, there can never be an assurance that a prosecution will succeed. Indeed, it is inevitable that some will fail. However, application of this test dispassionately after due deliberation by a person experiencing in weighing the available evidence, is the best way of seeking to avoid the risk of prosecuting an innocent person and pursuing a futile prosecution resulting in the unnecessary expenditure of public funds."

There is not a scintilla of evidence to suggest that the DPP and his office did not carry out his and their task according to the DPP's own guidelines.

This Committee therefore can be satisfied that the DPP or his office reached the level of satisfaction required to commence the prosecution against these officers.

Judge Kimber's evidence must be accepted.

You must therefore be satisfied that the investigation disclosed sufficient admissible evidence that would establish each of the elements of the offence charged against each of the police officers sufficient to justify their prosecution. You will also be satisfied that the DPP or his office was of the opinion that the prosecution of the Sturt Mantle police officer was in the public interest.

There seems to be an assumption that if a prosecution fails then there must have been something wrong with the investigation or alternatively the person should not have been charged and prosecuted.

That assumption is simply wrong and involves a misunderstanding of the criminal system.

I have taken figures from the DPP's latest annual report and you will see that that in the last financial year 44% of matters that went to trial resulted in the acquittal of the accused.

You will find that information in Table 11 of the key performance indicators in the annual report.

Commissioner Vanstone has told you 50% of matters that go to trial lead to an acquittal.

6.5. The Course of the Prosecution

Neither I nor my investigators were involved in any of the decisions that were made as to how the prosecution should proceed. All of those decisions were made by the Director of Public Prosecutions. PASA has been highly critical of the manner in which the prosecution proceeded. Any criticisms of the manner in which the prosecution proceeded should be taken up with the DPP.

But in any event Judge Kimber has addressed PASA's allegation in his evidence which you should accept.

However there are two aspects of the course of the prosecution which I wish to mention because they are important having regard to the criticisms made.

The first is in relation to the proceedings in the Magistrates Court.

The accused police officers first appeared in the Magistrates Court on 19 December 2014.

Between that date and November 2015 there were a number of what are called declaration hearings where material was disclosed to the defence in accordance with the obligations imposed upon the DPP as to disclosure.

I understand, but this is a matter that you would have to take up with the DPP, the DPP made disclosure in accordance with his obligations.

An application was made by all accused to the Magistrate to find that there was no case to answer on the part of the accused.

That application failed.

The Magistrate was of the opinion that there was sufficient evidence of every element of the charge for the accused to be put on their trial.

This was the second occasion where an independent person had reached the conclusion that the evidence obtained in the investigation was sufficient and that there was a reasonable prospect of a conviction.

The accused were originally arraigned in the District Court but later arraigned in the Supreme Court.

It was the DPP's intention to have a joint trial of each of the accused but the accused made an application to Lovell J for the severance of the charges between the accused and for separate trials for each of the accused.

Justice Lovell ruled that each of the accused should have a separate trial.

That impacted upon the manner in which the DPP intended to present the case against the accused.

The DPP reconsidered his position in relation to the prosecution and as a consequence abandoned some of the charges.

During the course of the proceedings against M, I and Ors an application was made for a voir dire hearing to exclude evidence obtained by SAPOL as a consequence of a covert operation authorised under the *Criminal Investigation (Covert Operations) Act 2009*.

If that application had been successful there would have been no evidence to present against any of the accused.

The application was critical.

Justice Lovell published his ruling on 6 March 2018 in the decision R v M, I and Ors to which I have already referred.

As I have said his judgment is essential reading for each of the members of this Committee because it answers many of the criticisms made by PASA.

Justice Lovell clearly thought there was sufficient evidence to support the prosecution otherwise he would have stayed the proceedings.

Critically the accused did not seek a stay on the basis there was no evidence.

6.6. The decision to end the prosecution

It was the DPP's decision to end the prosecution against those police officers who had been tried but no verdict had been delivered because the jury was hung and those police officers who had not yet been tried.

You will need to ask the DPP why it was the DPP decided that it was in the public interest to bring those prosecutions.

6.7. Conclusion

It is the case therefore that this committee must understand that during the course of this investigation and prosecution the following persons have applied their minds to matters under investigation:

1. A Judge of the Supreme Court was of the opinion that it would have been unthinkable not to investigate this matter.
2. Another Judge of the Supreme Court thought there was sufficient evidence to warrant the issue of a warrant for a listening device.
3. The Director of Public Prosecutions was satisfied that there was a reasonable prospect that a prosecution would result in a conviction and that it was in the public interest to prosecute each of these police officers.

4. A Magistrate thought there was sufficient evidence to put each of these police officers upon their trial.
5. Justice Lovell thought there was sufficient evidence for the prosecution to proceed to trial.

The difficulty with this enquiry and the manner in which the Committee has conducted itself is that it sends the wrong message to those who are engaged in anti-corruption investigations.

Can the ICAC's investigators or SAPOL assume at any time there is a failed prosecution that the Parliament will enquire into whether or not the investigation was carried out appropriately and whether or not the person should have been charged.

If that is the message that is intended to be conveyed to the ICAC's investigators and to SAPOL it will mean that the more difficult matters will not be investigated and persons who should be charged will not be charged in case the investigators are criticised for the way in which they went about their job.

7. The Fuller/Lawton Complaint

I have already pointed out that the Fuller/Lawton complaint is not within the Terms of Reference. If you agree with that proposition and decide not to entertain the complaint then what follows can be ignored. If you disagree with my submission your report should indicate how it is that you say their complaint is relevant.

It is not clear to me what these gentlemen say the OPI should have done or should not have done.

Fuller and Lawton will not agree with this, but their complaint however understood did not raise an issue of corruption.

Their complaint, I think, was whether Judge Fuller was correctly advised by SAPOL officers of the DPP's position in relation to the police investigation that followed Lawton's complaint about Cleland. The complaint was about SAPOL officers not the office of the DPP.

That does not raise an issue of corruption.

Mr Pangallo has articulated the complaint at page 2362.

"Lawton and Fuller are alleging a cover-up has been put in place to suppress any disclosure of OPI involvement in the initial reasons for the failure by SAPOL to act on the criminal allegations by Lawton in his original complaint to SAPOL. All the comprehensive material referred to above and tabled is contained in a submission requesting a further review of the original decisions and was delivered to the new ICAC, the Hon. Ann Vanstone. As Mr Lawton and Mr Fuller fully expected, it was flatly rejected, although it is not known if the material provided was scrutinised."

That is not the complaint. No complaint had been made to the OPI when SAPOL decided not to proceed with the investigation.

The complaint to the OPI was made after that time because Lawton and Fuller believed wrongly that SAPOL and the office of the DPP had given conflicting accounts as to how SAPOL had obtained the office of the DPP's advice before the investigation was terminated.

I think the complaint about the OPI is for OPI's failure to investigate the matter which of course it has no power to do.

After Fuller/Lawton complained the OPI decided, correctly, not to refer this matter to me as ICAC under s 29 of the Police Complaints and Discipline Act.

It was not sufficiently serious for me to investigate.

That means that the matter had to be dealt with as misconduct or maladministration. What should the OPI have done that it did not do or what should the OPI have not done that it did not do.

Mr Riches has described in a clear and concise way what occurred.

You have Mr Riches letter to Mr Fuller dated 3 July 2019. In that letter Mr Riches sets out in an objective and dispassionate way the events that occurred both before and after a complaint was made to the OPI. He said:

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 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 Tom 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 OP I'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 Tim 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 the Director OPI 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 Detective Brevet Sergeant Roberto 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 Sergeant 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 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.

His reaction may be compared to the vitriol that Mr Fuller has brought to his complaint that was taken up by Mr Pangallo in his speech.

I have spoken to Mr Riches who has told me that he has also provided this Committee with a full account of what transpired.

The OPI's involvement is disclosed in Mr Riches letter and evidence.

There is nothing in Mr Fuller and Mr Lawton's complaint.

The fact that they have now complained about the Premier, the Attorney-General, the Commissioner of Police, SAPOL the DPP, ICAC and the OPI rather indicates a lack of balance.

However this had been dealt with at a further level.

A complaint was made under the review process in the ICAC Act to the Hon John Sulan QC and dismissed.

A further complaint was made under the review process in the ICAC Act to the Hon Ann Vanstone QC and rejected.

12. An answer to Mr Pangallo's general statements about ICAC

I will deal with some of Mr Pangallo's general statements about the office of the ICAC before addressing the particular investigations to which he referred.

It is not easy to address the matters he raised in his speech because many of his remarks indicate a lack of awareness of the ICAC Act and all of his general comments are unsupported by any evidence.

His speech is long on rhetoric but short on facts.

On page 2354 Mr Pangallo addressed the possible unfairness to persons who are investigated by the ICAC. He relied on a letter written by Peter Graham to the Australian who said:

"Adversarial litigation endeavours to guarantee fairness. Inquiries, commissions against corruption and royal commissions are poor relations of court proceedings. Affected persons are not free to issue subpoenas, call witnesses or lead evidence. Under the New South Wales ICAC Act the Commission is not bound the rules or practice of evidence and investigations are to be conducted with as little emphasis on the adversarial approach as possible. In other words, these non-judicial investigations are star chambers, where safeguard and common law procedures provide for the protection of liberty of subjects are lacking."

He relied on Mr Graham's letter in his speech on 25 August.

Mr Graham was a colleague of mine when we served on the Federal Court. I disagree with his comments.

Mr Pangallo said it was a common belief based on information over the last seven years that the ICAC acted as a Star Chamber. I take exception to that statement.

It is highly defamatory. It repeats something Michael Abbott said under parliamentary privilege when appearing before the Crime and Public Integrity Policy Committee.

Neither Mr Abbott nor Mr Pangallo offered any evidence in support of that statement.

It is all very well to make extremely serious and defamatory statements under privilege about members of the Executive but they must be based on proven facts.

What did I do or not do that would warrant me being described having acted like as a Star Chamber.

I pause here to ask whether this committee should describe itself as a Star Chamber in view of the fact that this Committee has all of the indicia described by Peter Graham. This committee's decision may adversely affect the rights, interests and legitimate expectations of persons appearing before it. A person appearing before the Committee is not able to issue subpoenas, call witnesses or lead evidence. This Committee takes evidence in secret. This Committee is not bound by the rules or practice of evidence and this committee does not allow for a person to adopt an adversarial approach.

But even more this Committee unlike all other bodies to which Mr Graham referred is not subject to the jurisdiction of the Court by providing persons who appear before it with the right to apply for judicial review.

In any event Mr Graham was talking of different institutions that have no relevance to the South Australian ICAC.

When considering a question of corruption the ICAC, in this State, has only one role – as an investigator into criminal conduct. The bodies to which Peter Graham referred had different roles – the important distinction being those bodies could make a finding of corrupt conduct. That is not a power given to the South Australian ICAC.

The sole purpose of an investigation in respect to corruption in this State is to investigate criminal conduct by public officer or in limited cases persons dealing with public officers.

No investigation in relation to criminal conduct by any law enforcement agency allows persons under investigation to issue subpoenas, call witnesses or lead evidence. The rules of evidence have no relevance to an investigation.

Criminal investigations are not adversarial contests.

A person who is investigated, charged and prosecuted will be accorded natural justice at his or her trial. That is when that person is provided with natural justice not at the investigation stage.

The statement made by Peter Graham has no relevance to the South Australian ICAC.

Next Mr Pangallo said at 2354 that

“There have long been concerns that ICAC can also threaten the independence of the judiciary. Those concerns are held to this day, including in South Australia.”

He then relied upon a statement made by Mr Tony Fitzgerald which does not relate to the question of independence of the judiciary. Mr Pangallo has not identified those in South Australia, apart from apparently himself, who are concerned with the impact of the ICAC on the independence of the judiciary.

Those unidentified persons could only have those concerns if they misunderstand the respective roles of the ICAC and the Courts.

The ICAC is subject to the same scrutiny by the Courts as any other investigator or law enforcement agency.

There is no way that the existence of the ICAC has impacted or could impact on the independence of the judiciary.

Next he says, that anti-corruption bodies seem to assume that it is their role to determine guilt or innocence.

That comment has no relevance to the South Australian ICAC.

The ICAC Act in South Australia does not allow the ICAC to decide whether a person who has been under investigation for corruption is either innocent or guilty.

It is quite different from the system which prevails in New South Wales where the ICAC or the Commissioner can make a decision that a person has engaged in corrupt conduct. That is not a decision that can be made in South Australia and no decision of that kind has ever been made.

The reference to the conduct of the New South Wales Commission is simply misleading.

Next Mr Pangallo says South Australia’s ICAC sees itself as a law enforcement agency: Page 2355

“We have seen instances where matters have not been referred on to the South Australia Police to carry on the process of investigation and laying charges, but directly to the office of the Director of Public Prosecutions, where it has used its coercive powers to question defence witnesses even before they have given evidence at trials.”

I am not sure what point is sought to be made there but it is true that the ICAC does consider itself to be a law enforcement agency only because that is what the ICAC Act says it is.

Section 52 of the ICAC Act provides:

The Commissioner and members of the staff of the Commissioner are for the purposes of any other Act to be regarded as a body established for law enforcement purposes (however described).

There can be no more clearer statement of the fact that the ICAC is a law enforcement agency. The inference that the ICAC wrongly considered itself to a law enforcement agency must be rejected.

Mr Pangallo complained about witnesses being examined before an accused trial.

Of course witnesses have been examined before they have given evidence at a trial. That is the reason why the power is given so that the ICAC can determine whether there is evidence of criminal conduct. There would be no point in examining witnesses after the trial.

Next Mr Pangallo said:

"There has been a lacuna of oversight in our agency by the South Australian Parliament for the seven years of its existence and that needs to change. We need to look behind the veil of secrecy and protection that this limited oversight provides".

That is simply not correct.

Part 5 of the ICAC Act addresses ICAC's accountability.

Section 49 imposes obligations on the ICAC to provide information to the Attorney-General and the ICAC must keep the Attorney-General informed of the general functions of the ICAC and the OPI.

I scrupulously complied with that obligation as Mr Rau and Ms Chapman would confirm.

The *Parliamentary Committees Act 1991* holds the ICAC accountable to the Crime and Public Integrity Policy Committee. I complied in all respects with the requests made by the Committee during my time as Commissioner.

The ICAC investigators the OPI and the ICAC are always subject to review under the ICAC Act.

Schedule 4 required the Attorney-General to appoint a person, the Reviewer, to conduct annual reviews examining the operations of the Commissioner and the office during each financial year and to conduct reviews relating to relevant complaints received by the Reviewer and to conduct other reviews at the request of the Attorney-General or the Crime and Public Integrity Policy Committee.

For some reason the PASA and that Committee did not, in the case of PASA, request the Attorney-General to require the Reviewer to conduct a review of Operation Bandicoot, nor in the case of the Committee did it ask the Reviewer to conduct such a review.

What is the purpose of a Reviewer if this Committee intends to ignore that Reviewer's powers?

As I have said during the relevant period Mr Kevin Duggan QC carried out a review of each of the operations of the office during the relevant period.

Mr Duggan found no fault in the manner in which ICAC had performed its functions.

You should call Mr Duggan and enquire of Mr Duggan whether he carried out his functions appropriately.

Mr Pangallo said that Parliament cannot know whether there has been corrupt conduct because of ICAC 's secretive nature.

I do not know who he means by that.

All law enforcement agencies conduct their investigations in secret or privately.

Criminal conduct is not disclosed during an investigation but in Court which is the appropriate place for the investigation to become public.

He describes the NSW Commission as 21st century kangaroo court with public hearings and particularise the manner in which the NSW ICAC publicly examined the NSW Premier Gladys Berejiklian. That complaint has no relevance to the ICAC in South Australia because there is no power of the South Australian ICAC to hold public hearings in corruption investigations.

I have never suggested that there should be. I always strongly opposed public hearings for corruption investigations.

Mr Pangallo said that:

"In the proposed South Australian legislation, there was a similar measure for those facing corruption charges to seek a judicial review. However that was opposed on the grounds that it could be used as a deliberate ploy to delay and subvert proceedings".

That is incorrect.

Nothing of that kind was ever suggested by anyone. Mr Pangallo's statement indicates that he has misunderstood what was contained in the Bill. There was nothing in the Bill to give persons under investigation for corruption the right to seek judicial review.

The Bill did not deal with corruption but with public hearings for investigations into misconduct and maladministration.

My point was that anyone who was the subject of a hearing in relation to a matter of misconduct or maladministration was entitled as a matter of common law to apply for judicial review.

Public hearings for corruption investigations do not exist in South Australia.

Mr Pangallo then refers to Chris Merritt's criticism of the NSW ICAC.

The criticism that Mr Merritt makes has no application to the South Australian ICAC Act because as I have said there is no power to conduct public hearings into corruption and no power for the ICAC to make or finding of corruption or corrupt conduct.

To include the suggested processes in the Bill could lead to delays in the investigation.

Mr Pangallo criticised former Commissioner Burns and me for failing to respect the presumption of innocence.

He seems to suggest that an investigating authority cannot suggest, after someone is charged, that the accused committed the offences. That indicates a misunderstanding of the purpose of the presumption of innocence which exists to protect an accused person at his or her trial.

A jury is told, by the trial judge, that a person is presumed innocent until the prosecution has proved beyond reasonable doubt all the elements of the offence. The jury is told that the accused does not have to prove that he or she did not commit the offence but the prosecution always has that obligation to prove the accused's guilt. The jury is also told that the accused has the right to remain silent.

The purpose of the presumption of innocence is to reinforce to the jury that it is for the prosecutor to prove that the accused is guilty and no onus lies on the accused.

The investigator and the prosecutor do not presume the accused to be innocent. They could not do so, and charge and prosecute the accused if they did.

The general public understand that the investigator suspects the accused is guilty and the prosecutor believes that there is a reasonable prospect the accused will be convicted. It is common for police officers to comment on the evidence and the case against an accused before the accused is brought to trial.

The present Commissioner of Police routinely speaks of the conduct of accused persons before they have brought before the Courts and he is perfectly entitled to do so.

Look at all the comments that have been made about Operation Ironside.

There has been considerable speculation at all levels about the conduct of persons who have been investigated in that operation.

But in any event there is nothing in what I said that could be criticised.

Both the Commissioner and I spoke in circumstances where six police officers in one unit had been charged. It was important in my view that the public was assured that this was an isolated case and that the public could continue to have confidence in the South Australian police force.

That is why I said what I said which is recorded at page 2357.

What I said was perfectly proper. Mr Pangallo said to Commissioner Stevens "apprehended bias".

This committee must find that the general observations that Mr Pangallo made in the Legislative Council about the ICAC generally were factually wrong or based on a misunderstanding of the ICAC Act. In particular Mr Pangallo you must find what you said was factually and legally wrong.

That finding must be made because it is the only finding available on the evidence.

13.A comment on some of the evidence

Time does not allow me to comment on all of the evidence which has been presented to this Committee and been made public but there are some matters apart from those I have already mentioned that I wish to address.

Some of the evidence has been taken in private. I am told that Detective Superintendent Baulderstone, Detective Superintendent Dinning and Detective Brevet Sergeant gave written evidence to this Committee but it has been kept secret and without any explanation for why that has been done.

During the course of Mr Powell's evidence Mr Powell said that the prosecution of those police officers investigated in Operation Bandicoot was a straightforward case.

Mr Pangallo claimed at page 275 there was no evidence of criminal conduct.

What seems to have been overlooked by Mr Pangallo is that the items that were taken from the two premises that were the subject of the targeted integrity tests and were not signed in at the Mantle Police Station should never had been taken from those premises.

As I have said earlier police officers are only entitled when executing a search warrant to take away an item if that item has some evidential value.

The items that were taken had no evidential value at all. They should not have been removed from the premises.

The fact that they were removed indicates an intention to steal.

Mr Pangallo's statement also overlooks the evidence obtained by use of listening devices which is damning.

Again in Mr Powell's evidence a number of questions were put to him and suggestions put to him that the audit report was not disclosed.

The continuing questioning of witnesses and the proposition that proper disclosure was not made which has been put to witnesses is contrary to the evidence.

There is no evidence that the report was not disclosed for five years.

There is evidence that it was disclosed within eight months.

The consistent and continuing claim that the audit report was not provided to the defence for five years is contrary to the evidence and I am not sure why the members of the Committee who are putting those claims are persisting in doing so.

Mr Wortley asked Mr Powell whether the whistleblower should have some reasonable evidence to prove their allegations. That is the purpose of an investigation to determine whether there is any substance to the whistleblower's allegations.

Mr Carroll gave evidence. It was his conduct that initiated the claims that Mr Pangallo made in the Legislative Council to which I have addressed and which I will expect the Committee will find have not been made out.

Mr Carroll's purpose in initiating this inquiry was to embarrass the government into paying PASA's legal costs incurred in defending the police officers involved in Operation Bandicoot.

He makes it entirely clear in his evidence to this Committee.

It is no in my opinion a good reason for this inquiry.

Mr Carroll gave evidence in secret 'off the record' and where no record was kept of what was said to this Committee: Page 279.

Mr Wortley put to Mr Carroll that a whistleblower should be protected but their allegations should be tested. Both of those allegations are undoubtedly correct.

The purpose of an investigation is to determine whether the whistleblower's allegations are reliable. How else can you test a whistleblower's report or complaint but by an investigation.

However there is one thing I wish to comment on because Mr Pangallo put it to Mr Carroll.

At page 284 Mr Pangallo said this:

"The information I have been given is that while [redacted] was being ferried to the hospital and the paramedics were still working on saving his life – and I believe he passed away some five days afterwards – and his wife, I believe, was in the ambulance and the house was empty, my information is that a number of police, dozens of police and possibly ICAC investigators descended on the inside of the house, seized property and also began to remove decorations and amulets of [redacted] uniform. Were you made aware of that?"

The suggestion that any ICAC investigators were involved in the collection of that evidence is simply untrue.

I am not sure where Mr Pangallo got that information but I can tell you the person who reported that to you has lied.

No ICAC investigator ever attended [redacted] premises at any time that day.

In Mr Moyle's evidence Mr Pangallo suggested that Superintendent Dinning had been planted in the Sturt CIB to assist ACB in its investigation.

There is no evidence to support that suggestion. It has never been made by anyone as far as I am aware and I am not sure why it was put.

At page 24 of Mr Moyle's evidence Mr Pangallo said that there was no evidence that many of these items were actually stolen.

That is to ignore the evidence. Some of these items were found at the homes of the police officers. Indeed the item that Mr Abbott's client took away was found at her home and had been used by her.

Mr Moyle answered that proposition appropriately at page 247.

In answer to Mr Moyle Mr Pangallo said it would was a \$10 wrench hardly anything of great value.

There seems to be an underlying theme in some of the questions asked by some of the members of the Committee that because the items that were alleged to have been stolen were not of great value there should not have been an investigation or prosecution.

I take issue with that.

I hold the view that a police officer should not steal anything. I think that view would be shared by the members of the public.

As I have already said a police officer should not be entitled to steal anything of whatever value when exercising a general search warrant.

There was then some discussion about the wrench which was alleged to have been taken by Mr Abbott's client.

I was astonished to read Mr Abbott's evidence that he disclosed for the first time his client's account of how she came to be in possession of \$10 wrench.

I was surprised to read the evidence because Mr Abbott could only have known of his client's account as a consequence of being told by his client and that communication would have been subject to legal professional privilege.

Apparently he must have advised his client she should waive legal professional privilege so that he could give evidence of her account.

I cannot see how that could have been in his client's interests, but there it is.

In any event Mr Abbott's account of how his client came into possession of the wrench is in my opinion indicative of criminal conduct.

He claimed that she was authorised by a senior officer who was not named to take the wrench. No police officer can authorise another police officer to commit an offence unless that authorization is given under the CICO Act.

There is no suggestion that the senior officer had any authority under that act to authorise Mr Abbott's client taking the wrench.

The wrench had no evidential value. No police officer was entitled to take that wrench away from premises.

To do so indicates an intention to commit a criminal offence.

But moreover, no explanation has been given to why Mr Abbott's client felt entitled to take the wrench home and use it.

It was never hers and the fact that she took it home indicates again in my opinion that she engaged in criminal conduct.

For all of those reasons I am astonished that Mr Abbott advised his client that it was in her best interests that she should disclose for the first time the reasons for taking the wrench.

She has not been prosecuted and she is still liable to be prosecuted.

In the former Assistant Commissioner Killmier's evidence Mr Pangallo repeats the false allegation that the audit report was not disclosed for nearly five years to the defence: page 258.

I can only repeat again that allegation is false.

It was put to Commissioner Killmier that if SAPOL were to do an audit they would need a search warrant.

That is not necessarily true.

SAPOL is entitled to search any of its own premises without any warrant. It is only when SAPOL are searching the premises of some other party that it would be obliged to obtain a warrant or use a general search warrant.

Mr Wortley repeated the allegation at page 260.

Again I make the comment I find it surprising that the only direct evidence when the audit report was discovered to the defence is that of Superintendent Baulderstone, but it has been entirely ignored.

At page 260 Mr Wortley put to Commissioner Killmier that one particular officer who was involved in this, without saying what it was, took his own life.

I am not sure whether Mr Wortley is conflating the investigation into with Operation Bandicoot. But he goes on to say there was a report that exonerated this person of the charges 10 days before he took his own life. There is no such report of that kind.

That is untrue.

It is also untrue to say that the family were given the report on Christmas Eve.

Ms Franks put to Ms Killmier that were an officer demoted through police disciplinary action and the media story was out there should there be an entitlement to expunge that from the record.

That is not the case in practice. Usually there is no report of the outcome of the police disciplinary investigation and enquiry. Section 45 of the Police Complaints and Discipline Act forbids the publication of any evidence except in the circumstances mentioned in that section.

Section 46 also contains provisions that prevent publication of information.

Indeed it is a matter of some concern for those outside SAPOL that police officers remain anonymous even if they are being convicted of serious disciplinary matters.

During the course of Mr Sulan's evidence Ms Franks asked whether an assault could constitute the offence of abuse of public office.

Mr Sulan said he thought not. I can confirm that it does not. Section 251 of the Crime Law Consolidation Act does not address assaults but benefits and detriments.

Mr Wortley asked whether a person could be prosecuted for maladministration – not a criminal offence.

Corruption is criminal conduct; misconduct and maladministration is not.

During Commissioner Stevens' evidence Mr Pangallo said that Commissioner Burns and I were infected by apprehended bias as a result of what was said at the press conference.

Apprehended bias is not relevant to that conference. Apprehended bias only applies as I said earlier to a decision maker.

Neither I nor Commissioner Burns was a decision maker.

Again during Commissioner Stevens' evidence there was discussion about a person under investigation not being able to appeal to anyone about the investigation.

Section 54(3) of the Act allows a person to disclose information received to obtain medical or psychological assistance and to a close family member of the person.

There are at least two purposes for what was s 56 and is now s 54(5) and the first is to preserve the integrity of the investigation and the second to prevent a misuse of the complaint and reporting process by a person publicly stating that he or she has reported another person to the OPI for corruption. There were many instances of politicians doing this interstate so s 56 was included.

Unfortunately politicians in this State have tried to circumvent the section by publicly stating they have reported a person or matter to the Auditor General or Ombudsman.

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OUR REFERENCE NUMBER: A383937



15 August 2018

PROTECTED
Mr Grant Stevens
Commissioner of Police
South Australia Police
100 Angas Street
ADELAIDE SA 5000

Dear Commissioner Stevens

ICAC Investigation 2017/000076

I refer to your conversation yesterday with Team Leader Lyndon Miles and the above investigation of potential issues of corruption in public administration which was conducted by me (**the corruption investigation**). As you may be aware, the corruption investigation related to potential issues of corruption in public administration arising from the alleged conduct of Chief Superintendent Douglas Barr and Inspector Peter Clifton.

I advise that the corruption investigation has now concluded. No person will be the subject of a prosecution arising from matters identified in that investigation.

I have decided to exercise the powers of an inquiry agency to investigate potential issues of maladministration and misconduct in public administration which arise from or relate to the matters which were the subject of the corruption investigation. I am now conducting this investigation and will advise you of its outcome in due course.

As you are aware, I have also been conducting another investigation of potential issues in corruption in public administration which has the ICAC Reference 2016/001078. For the purposes of that investigation you were served with a Notice to Produce documents issued on 8 June 2017. I also wrote to you on 5 December 2017. That investigation is ongoing. I will advise you of the outcome of that investigation when it has resolved.

Yours sincerely

A handwritten signature in black ink that reads 'Bruce Lander'.

The Hon Bruce Lander QC
INDEPENDENT COMMISSIONER AGAINST CORRUPTION

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