PRESENTATION TO ENVIRONMENTAL DEFENDERS OFFICE (SA) INC

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WHAT I WILL TALK ABOUT

• Some history
• What we do
• The workings of the ICAC Act
• Statistics
• Common issues and trends
• The future
HISTORY

• *Independent Commissioner Against Corruption Act 2012 (ICAC Act)*
  • Passed in December 2012
  • Most of the provisions in the ICAC Act did not come into effect until September 2013

• ICAC Act created two offices
  • Independent Commissioner Against Corruption
  • Office for Public Integrity

• ICAC / OPI commenced operations on 2 September 2013
WHAT DOES THE OFFICE FOR PUBLIC INTEGRITY (OPI) DO?

• Receive and assess complaints (from members of the public) and reports (from public officers)
• Refer complaints and reports to appropriate authority or make recommendations to the Commissioner
• Give directions and guidance to authorities where appropriate

Since September 2017

Independent oversight of police
• Receives complaints and reports about police
• Oversees the manner in which those complaints and reports are dealt with
• Can substitute an assessment made by police in relation to a complaint or report or issue directions in respect of the investigation of a complaint or report
WHAT DOES THE INDEPENDENT COMMISSIONER AGAINST CORRUPTION (ICAC) DO?

• Law Enforcement Agency

Functions:

• Identify and investigate corruption in public administration
• Investigate serious or systemic misconduct or maladministration
• Assist agencies and authorities to identify and deal with misconduct and maladministration
• Evaluate the practices, policies and procedures of public authorities
• Conduct or facilitate conduct of education programs
WHAT TYPE OF CONDUCT IS ICAC/OPI INTERESTED IN?

• Corruption in public administration

• Misconduct in public administration (focus on serious or systemic misconduct)

• Maladministration in public administration (focus on serious or systemic maladministration)
WHAT IS CORRUPTION?

Corruption is defined in the ICAC Act:

- Criminal conduct ordinarily engaged in by, or in relation to, a public officer
  - Bribery
  - Theft
  - Abuse of public office

- Any offence committed by a public officer while acting in his or her capacity as a public officer

If it is not a crime it is not corruption.
WHAT IS MISCONDUCT?

• Inappropriate behaviour
• Breach of code of conduct
• Other misconduct

Misconduct is not a criminal offence but it may result in disciplinary action.
WHAT IS MALADMINISTRATION?

• Irregular and unauthorised use of public money
• Substantial mismanagement of public resources
• Substantial mismanagement in, or in relation to, the performance of official functions
  • Impropriety
  • Incompetence
  • Negligence
WHAT IS A PUBLIC OFFICER?

Schedule 1 of the ICAC Act lists public officers including:

- Members of Parliament
- Members of the judiciary
- Police
- Elected members of local government
- Employees of local government
- Public servants
- Public sector employees
- A person assisting a public officer in enforcement of an Act
- A contractor to a public authority or the Crown
REPORTING OBLIGATIONS OF PUBLIC OFFICERS

Public officers must report to the Office for Public Integrity (OPI):

• Any matter reasonably suspected to be corruption
• Any matter reasonably suspected to be serious or systemic misconduct and maladministration
WHAT IS SERIOUS AND SYSTEMIC?

• Defined in the ICAC Act

• Misconduct or maladministration in public administration will be taken to be "serious or systemic" if the misconduct or maladministration—
  • is of such a significant nature that it would undermine public confidence in the relevant public authority, or public administration generally; and
  • has significant implications for the relevant public authority or for public administration generally (rather than just for the individual public officer concerned).
WHAT HAPPENS WITH A COMPLAINT OR REPORT (OTHER THAN POLICE MATTERS)?

• Received and assessed by the OPI
  • Further information might be sought
  • One complaint or report might raise a number of issues for assessment
  • Every issue is assessed as to whether it raises a potential issue of corruption, misconduct or maladministration

• 2016/2017 Financial Year – 1200 complaints and reports received (428 complaints / 772 reports)
CORRUPTION?

• If assessed as potential corruption:

  • Commissioner may decide to investigate
    • Generally serious or systemic corruption allegations
    • ICAC resources – investigators, lawyers, intelligence analysts, forensic accountants, digital forensic analysts. Covert and overt methods of investigation, including coercive examinations before an examiner.
    • Criminal investigation – objective is always to find out what happened. May result in presentation of brief of evidence to the DPP for consideration of criminal charges.

    • Often highly complex and protracted investigations involving significant volumes of evidence
CORRUPTION?

• If assessed as potential corruption:
  
  • Commissioner may decide to refer to another law enforcement agency
    • Generally referred to SAPOL
    • Most corruption matters referred to SAPOL
  
  • Commissioner may decide to conduct a joint investigation with SAPOL or another agency
MISCONDUCT OR MALADMINISTRATION?

• If assessed as potential misconduct or maladministration:

  • Commissioner or OPI may decide to refer to the Ombudsman or a public authority for investigation

  • Referrals to a public authority can include directions, including a direction to report back on the investigation and any action taken. Commissioner can be dissatisfied with manner in which public authority has dealt with a referral

  • Commissioner may decide to investigate serious or systemic misconduct or maladministration
MISCONDUCT / MALADMINISTRATION INVESTIGATIONS CARRIED OUT BY ICAC

• Jurisdiction to investigate conferred by the ICAC Act

• Powers come from the Ombudsman Act
  • Include all powers of a Royal Commission
  • Investigation must be conducted in private

• May result in a published report:
  • Sale of Land at Gillman
  • Oakden Older Persons Mental Health Service
OVERSIGHT OF POLICE

• **Police Complaints and Discipline Act 2016**
  • Came into effect on 4 September 2017
  • Police Ombudsman abolished

• OPI responsible for independent oversight of complaints and reports about police
  • OPI receives complaints and reports
  • Ordinarily refer to SAPOL for assessment (unless referred to ICAC)
  • Review assessment undertaken by SAPOL. Can substitute assessment and SAPOL bound by the substituted assessment

• Scheme operates on basis that SAPOL will investigate, but OPI will oversee investigations and can give directions in respect of investigation

• ICAC can investigate or take over an investigation in respect of SAPOL

• ICAC to report to Parliament on sanctions issued by SAPOL in respect of police misconduct
STATISTICS

• Between 1 July 2017 and 24 April 2018, OPI has received **2628** complaints and reports:
  • **1772** complaints  (cf 428 complaints 2016/2017)
  • **856** reports  (cf 772 reports 2016/2017)
  • Increase largely attributable to new police complaints scheme  (81% of complaints relate to police / 35% of reports relate to police)

• **21** corruption investigations underway
• **11** matters currently before courts (21 person charged with corruption offences)
• **6** Misconduct or Maladministration investigations underway
• Overseeing **152** investigations being undertaken SAPOL in relation to alleged police misconduct
• Overseeing **98** referrals of alleged misconduct or maladministration to other agencies
• Commissioner and staff have presented to around **19,000** persons since commencement
  • Education programs
    • Internal Investigation Training
    • Ethics and Leadership
    • Integrity in Policing
    • Conflict of Interest

• **64** staff (55.7FTE), including OPI.
• When a person is invested with a discretionary power, there is a risk that the power might be abused:

• Selection and promotion of staff
• Tenders and procurement
• Development processes
• Access and misuse of confidential information
• Regulatory decision making (issuing of permits, licensing, inspectors etc)
• Allocation of grants
• Care of vulnerable persons
• Financial management
MOTIVATORS FOR CORRUPTION

• Often persons who engage in corruption are in significant positions of trust.

  • Greed
  • Love
  • Hate
  • Ideology
  • Jealousy
  • Desperation
  • Entitlement
  • Fear
  • Pressure (peer / financial)
  • Revenge
  • Self justification
CORRUPTION NOT THE ONLY FOCUS

• Corruption often occurs in an environment of underlying maladministration

• Weaknesses in processes and policies create an environment where improper conduct can thrive

• ‘Maladministration in public administration is a scourge. Based upon my experience over the last two and a half years I am of the view that maladministration is the biggest threat to the integrity of public institutions in this state’ (Commissioner – ICAC/OPI Annual Report 2015/16 Page 50).
Dan Ariely – Professor of Psychology (Duke University)

Experiment

- Participants given a paper with 20 math questions. Given a time limit (intentionally not enough time to complete the questions). Told they would receive $1 for each question they answered correctly.
- At the end of the time answers were placed on the board and each student was asked to count how many questions they got correct.
- Then asked to shred their answer paper.
- Advise the test administrator how many correct answers and paid accordingly.
• Dan Ariely – Professor of Psychology (Duke University)

• Experiment
  • Shredder had been tampered with (only shredded the sides of each paper).
    • On average solved 4 problems but claimed to have solved 6
  • 40,000 participants
  • Around 20 BIG CHEATERS who claimed they solved all 20 questions (cost $400)
  • Around 28,000 LITTLE CHEATERS (cost $50,000)
• Low level impropriety can be widespread and have a significant economic impact.

• An environment where low level impropriety occurs unchallenged can provide the foundation for more significant wrongdoing.
CORRUPTION AND MALADMINISTRATION OFTEN INTERRELATED

• Abuse of government credit card
  • No policy of appropriate use (or policy not adhered to)
  • No regular audit of expenses
  • No follow-up in relation to suspect expenditure

• Misuse of government resources
  • Known by management
  • No action taken to stop behavior (turning a blind eye)
  • Behaviour continues and becomes normalized
ORGANISATIONAL CULTURE A KEY INGREDIENT TO INTEGRITY

• Executive management responsible for setting and maintaining a culture of respect, accountability and excellence

• Clear focus on the public good is the foundation of good governance in public administration
  • Know the risks and understand the business
  • Develop controls that balance the need to be able to do business with measures designed to reduce the likelihood of improper behaviour
    • Increase effort
    • Decrease reward
    • Increase likelihood of detection
    • Remove excuses

• Insist on high standards of propriety and act on failures to meet those standards
OUR ROLE?

• Reactive
  • Detect and investigate corruption
  • Investigate serious or systemic misconduct or maladministration

• Proactive
  • Assist agencies to identify and deal with improper behavior
  • Educate on risks, red flags and good governance
  • Evaluate practices, policies and procedures and make recommendations for change
  • Report on trends, themes and common issues
  • Support agencies to be responsible for the conduct or their staff and for promoting a culture in public administration that meets public expectation
FUTURE

• New process for misconduct / maladministration investigations (including public hearings)

• Report on first 12 months of new Police Complaints Scheme

• Reports to Parliament on some completed investigations, trends and issues in certain sectors

• Results of Public Integrity Survey
THANK YOU QUESTIONS?