

PRESENTATION TO ENVIRONMENTAL DEFENDERS OFFICE (SA) INC

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Office for Public Integrity

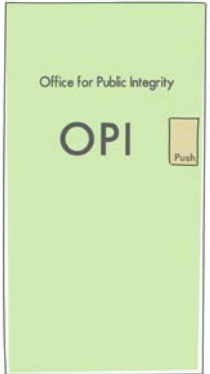
WHAT I WILL TALK ABOUT

- 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

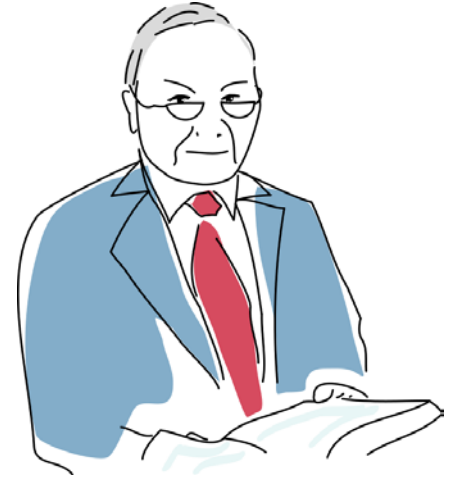
- Receives complaints and reports about police
- Oversees the manner in which those complaints and reports are dealt with
- Can substitute an assessment made by police in relation to a complaint or report or issue directions in respect of the investigation of a complaint or report

WHAT DOES THE INDEPENDENT COMMISSIONER AGAINST CORRUPTION (ICAC) DO?

- Law Enforcement Agency

Functions:

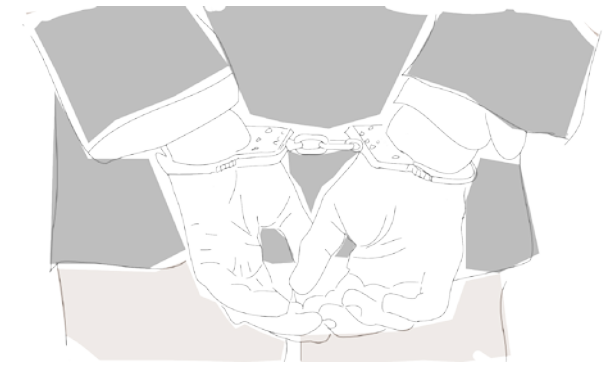
- Identify and investigate corruption in public administration
- Investigate serious or systemic misconduct or maladministration
- Assist agencies and authorities to identify and deal with misconduct and maladministration
- Evaluate the practices, policies and procedures of public authorities
- Conduct 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*)

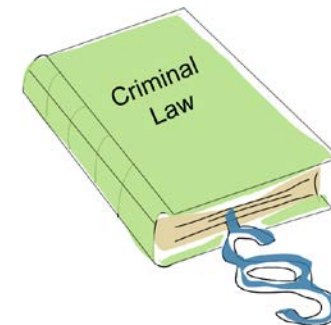
WHAT IS CORRUPTION?



Corruption is defined in the ICAC Act:

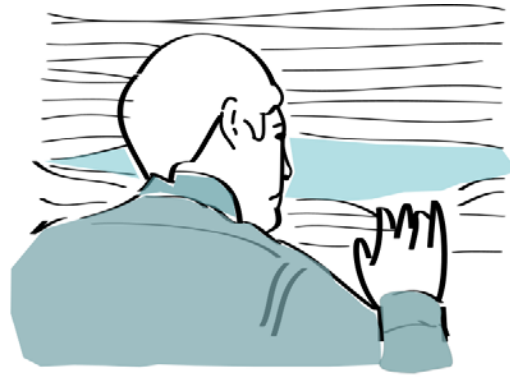
- Criminal conduct ordinarily engaged in by, or in relation to, a public officer
 - Bribery
 - Theft
 - Abuse of public office
- Any offence committed by a public officer while acting in his or her capacity as a public officer

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



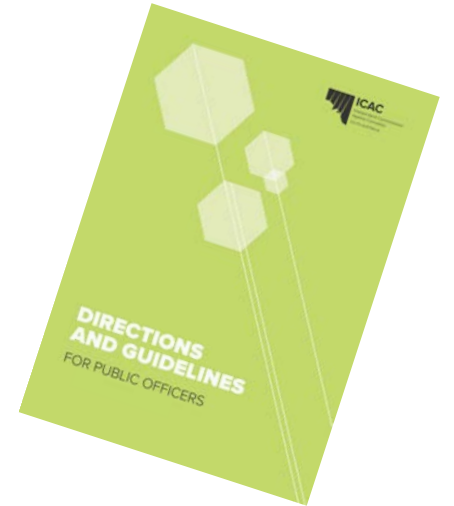
- Public servants
- Public sector employees
- A person assisting a public officer in enforcement of an Act
- A contractor to a public authority or the Crown



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 – 1 200 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.

THEMES

- 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).*

FROM LITTLE THINGS BIG THINGS GROW

- 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.

FROM LITTLE THINGS BIG THINGS GROW

- 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)

FROM LITTLE THINGS BIG THINGS GROW

- 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 of 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?**

