



SOUTH AUSTRALIA POLICE
SAFER COMMUNITIES



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4 April 2022

[REDACTED]
Executive Director
Commission of Inquiry relating to the Crime and Corruption Commission
Level 21, State Law Building
50 Ann Street,
Brisbane QLD 400

Dear [REDACTED]

I refer to correspondence forwarded by you on 2 March 2022. The call for submissions to the Commission of Inquiry has been appraised. Please see my responses to the following material sought, namely information regarding;

1. ***any use of seconded police officer in investigations conducted by the Independent Commission Against Corruption (ICAC) South Australia (SA) and in the process connected with decisions to commence prosecutions arising from those investigations.***
 - a. Prior to 7 October 2021, seconded SAPOL officers to ICAC SA conducted investigations in accordance with the *Independent Commissioner Against Corruption Act, 2012*, and referring matters for consideration of prosecution directly to the Office of the Director of Public Prosecutions (ODPP). The internal ICAC SA processes connected with this referral process is not known by SAPOL.
 - b. Following amendments to the now *Independent Commission Against Corruption Act, 2012* on 7 October, 2021 the resultant legislation now applies for the ICAC SA;
Section 36 (1) On completing an investigation or at any time during an investigation, the Commission may do either or both of the following:
 - (a) *refer a matter to the relevant law enforcement agency for further investigation and potential prosecution;*
 - (b) *refer a matter to a public authority for further investigation and potential disciplinary action against a public officer for whom the authority is responsible.*

The ICAC SA must not refer a matter directly to a prosecution authority, but may only refer it to a law enforcement agency (LEA) who will be responsible for any further investigation and prosecution of the matter. The internal processes used by ICAC SA to determine thresholds for when matters are to be referred to an LEA are a matter for ICAC SA.

2. ***whether seconded police officers can initiate charges arising out of investigations conducted by the ICAC SA (including where the seconded police officer is directly involved in the investigation).***
 - a. Seconded SAPOL members can not initiate charges. See above response.



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3. ***any expertise, qualifications and training required for a police officer to be seconded to the ICAC SA by your organisation and also by the ICAC SA (including the required expertise, qualification and training in areas of law other than criminal law that may affect investigations and decisions to prosecute, such as administrative law, public law, employment law and public sector corporate governance.***
 - a. ICAC SA specify the qualifications and training they seek in potential secondees within position documentation which includes job descriptors when advertising for staff. Any member of SAPOL holding the requisite qualifications sought can apply for the position/s. The positions sought from SAPOL are usually for an 'investigator' which is often a member with a 'Detective' qualification or a member with other investigative experience.
 - b. SAPOL officers seconded to ICAC are required to undergo regular SAPOL training such as a yearly Operational Readiness Qualification (firearm, baton, handcuff training etc) which enables them to carry operational equipment whilst carrying out ICAC SA duties.
4. ***any limitations on the length of time a police officer may be seconded to the ICAC SA.***
 - a. Three (3) years. After this time, seconded members are required to return to SAPOL or if they seek to remain employed with ICAC SA they have to resign from SAPOL.
5. ***any relevant law, policies, procedures and practices that require seconded police officers to obtain the approval or consent of the ICAC SA before commencing criminal prosecutions arising from ICAC SA investigations.***
 - a. See response to point 1.
6. ***the law, practice and any procedures governing decisions by any seconded police officers to commence criminal proceedings arising out (sic) investigations by the ICAC SA, including;***
 - ***the criteria for making those decisions;***
 - ***any training given to seconded police officers to inform the making of those decisions;***
 - ***any processes utilised to ensure that seconded police officers who make those decisions are competent to make them;***
 - ***any processes to ensure independent oversight of those decisions;***
 - ***any other law, practice or procedure that may affect those decisions, including any law, practice or procedure under which directions may be given to a police officer that may affect the decisions;***
 - a. SAPOL secondees cannot decide to commence criminal proceedings arising out of ICAC SA Investigations.
7. ***any issues arising from the use of seconded police officers and how those issues are managed by your organisation.***
 - a. The secondment of SAPOL member's to ICAC SA is formalised within a 'Memorandum of Administrative Arrangement' (MoAA) between the Commissioner of Police and the ICAC SA (2019). The MoAA includes conditions of employment, remuneration, dispute resolution and that secondees may continue to exercise all powers and authorities vested in the secondees under the Police Act, or another Act or law, as a member of SAPOL or constable in the exercise of functions or powers under the ICAC Act during the period of secondment.

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- b. SAPOL members retain the authority to arrest under *S75 Summary Offences Act 1953*, whilst on secondment to ICAC SA however a decision to arrest a suspect, would not of itself, amount to the commencement of criminal proceedings. A brief of evidence would still need to be adjudicated by a prosecutor and information laid before the court.
- c. Whilst the current MoAA states that the Commissioner can consider issuing secondees with a General Search Warrant (GSW) pursuant to S67(1) of the *Summary Offences Act 1953*, seconded members who already hold a GSW are not permitted to retain this authority and will only have a GSW reinstated upon return to SAPOL into a position where this is a requirement. Seconded SAPOL members apply for search warrants under other relevant legislation when required during ICAC SA investigations.
- d. SAPOL relies on the *Police Act 1998*, *Police Regulations 2014*, *Return to Work Act 2014* and a suite of General Orders (Human Resource Management) that set the framework for the MoAA, secondment employment conditions and the management of any issues arising from this agreement.

I further recommend that you pursue additional information from ICAC SA as SAPOL are unable to provide holistic responses to much of what is sought by the Commission of Inquiry on this occasion.

Yours sincerely,



Grant Stevens APM LEM
COMMISSIONER OF POLICE

