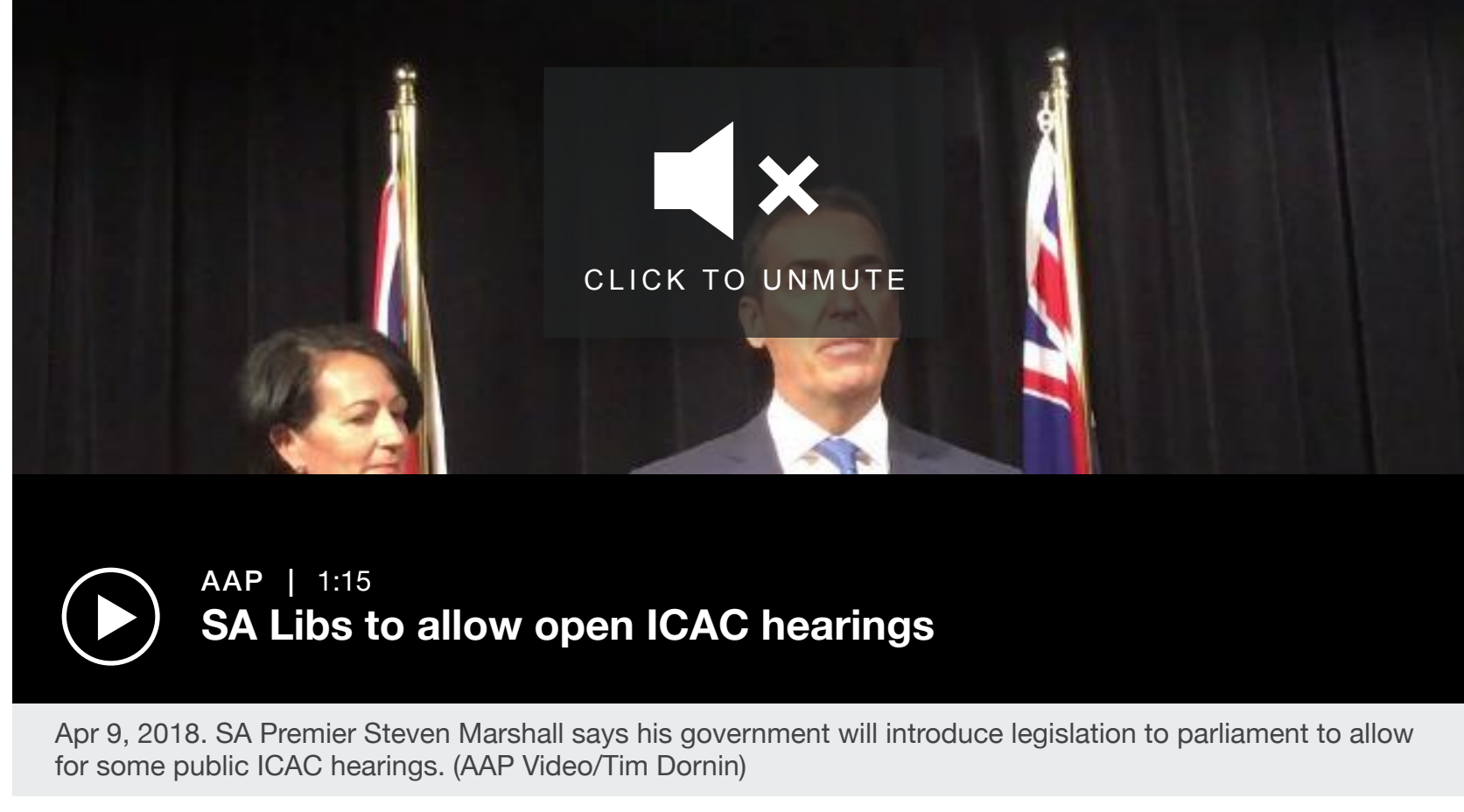


Police union slams new powers sought by ICAC in law review

The SA Police Association has argued that proposed new laws will take power away from the Police Commissioner and hand them straight to ICAC chief Bruce Lander.

Exclusive – Nigel Hunt

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Apr 9, 2018, SA Premier Steven Marshall says his government will introduce legislation to parliament to allow for some public ICAC hearings. (AAP Video/Tim Domin)

Drastic changes to police disciplinary legislation sought by anti-corruption watchdog Bruce Lander QC are designed to increase his power at the expense of the police commissioner, the police union claims.

In a hard-hitting submission to a review of the legislation, the Police Association of SA states Police Commissioner Grant Stevens' control and management would be "fundamentally altered" and his position "irremediably undermined" if many of the recommendations were adopted.

Police Association of SA (PASA) president Mark Carroll. Picture: AAP / Brenton Edwards

Police Commissioner Grant Stevens. Picture: Morgan Sette

Association president Mark Carroll states that rather than examine issues that would have revealed how the new legislative scheme was functioning "it seems to us that the focus of this review has been on a range of recommendations that are all designed to give the ICAC and OPI more power at the expense of the commissioner of police."

"In our view, it is critical for the effective control and management of SAPOL that the COP (commissioner) retains ultimate authority over his members in respect of discipline matters as envisaged by the Police Act," he states.

"Further, in our view, if these recommendations are accepted, the effect would be to fundamentally alter the character of the OPI (Office of Public Integrity) and complete the transformation of that body into an investigative body that uses SAPOL for its own purposes, rather than as an oversight body as the legislative scheme intends it to be."

The union declined to participate in the review and formally asked Attorney-General Vickie Chapman to appoint an independent judge from another state to conduct it.

Independent Commissioner Against Corruption Bruce Lander.

Ms Chapman declined to intervene and the review continued with Mr Lander – who initiated the review himself – making 18 recommendations for legislative change to the Police Complaints and Disciplinary Act 2016.

The Act was introduced following an initial review by Mr Lander in 2014 of all legislation governing police discipline and the oversight and management of complaints against police. That review recommended the repeal of the former Act and the introduction of the new Act.

It also led to the abolition of the office of the Police Ombudsman and its function transferred to the OPI under the ICAC's umbrella.

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While PASA has accepted 10 recommendations – some with qualification – from Mr Lander's 12-month review of the new Act, it strongly opposes the remainder and has severely criticised many of them.

Contentious recommendations PASA has rejected include allowing the OPI to raise its own complaints against an officer, amending the definition of misconduct to include when a police officer is off-duty and allowing the OPI to override recommended action determined by an internal police investigation into a matter.

In his submission, Mr Carroll states the latter recommendation is "offensive".

"The recommendation would have the practical effect of taking all discretion from the COP and turn the OPI into the ultimate decision-maker. This is alien to the function of an oversight body," he states.

Mr Carroll states that determining how the behaviour of police officers is dealt with and how various types of conduct are dealt with by way of educating and improving future conduct, as opposed to sanctioning, is central to the power of the police commissioner.

"Giving the OPI the power to decide for itself, at the expense of the COP's power to do so (because the OPI could always override the COP), how to deal with particular conduct would be a fundamental departure from the Police Act and the common law and removes one of the most important aspects of the control and management of SA Police from the COP," he states.

"It is not appropriate to have a faceless external body, staffed predominantly by lay persons, directing the COP as to how particular conduct should be dealt with."

But his most strident criticism is directed at the recommendation to include a police officer's off-duty actions in the disciplinary regimen – a recommendation SA Police has also rejected.

Mr Carroll said the power contained within the Act "has never extended to matters with no nexus whatsoever to a member's employment".

"If this recommendation is accepted, there is a risk that the case law that has developed over many years may well be abrogated," he states.

"This result would be completely unacceptable to PASA. There is no justification for the coercive powers in the PDCA to extend in a holus bolus manner to conduct in members' private lives for matters wholly unconnected to their officers as members of SA Police. There are few professions this is allowed.

"The parliament should be very careful to avoid creating unintended consequences for police officers by creating an ecosystem in which an Orwellian nightmare can eventuate as a result of changes of this type."

Ms Chapman yesterday said she welcomed Mr Lander's 12-month review of the Act. "Further to this review, the Parliament's Crime and Public Integrity Committee is undertaking a reference looking at all integrity bodies in SA," she said.

"The Act also has a requirement for a statutory review occurring in the next year.

"It is prudent to consider recommendations of all reviews and inquiries into the Police Complaints and Discipline Act 2016 prior to any single recommendations being considered or acted upon.

"Above all, the public must retain confidence in our police officers and any changes to the Act should have this at the forefront of reform."

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