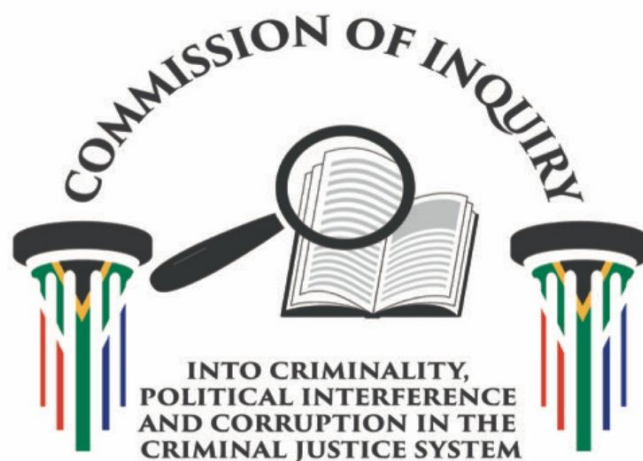


JUDICIAL COMMISSION OF ENQUIRY INTO CRIMINALITY,
POLITICAL INTERFERENCE AND CORRUPTION IN THE
CRIMINAL JUSTICE SYSTEM

HELD AT
BRIGITTE MABANDLA JUSTICE COLLEGE

9 JULY 2026

DAY 136



PROCEEDINGS ON 9 JULY 2026

CHAIRPERSON: Good morning, Mr Chaskalson. Good morning, Dr Schoeman.

ADV CHASKALSON SC: Today's witness is Dr Albertus Schoeman. He is going to testify about flaws in the existing asset disclosure regime and possible reforms to that system that might assist in strengthening the capacity of the SAPS to resist infiltration by organized crime. I just want to, a couple of matters of housekeeping. There should be two
10 files before the Commissioners, a very short witness statement file that includes a witness statement and a report and then a fairly large exhibit file that includes a series of articles and documents to which the report refers. And, Dr Schoeman, do you have those two files in front of you as well? Good. Then if we can begin. Dr Schoeman, in the statement – sorry.

CHAIRPERSON: Dr Schoeman, will you be swearing or affirming? Please pull both mics closer to you and be seated centrally in relation to them, please. Thank you.

20 **DR SCHOEMAN:** Thank you, Counsel. Correct?

CHAIRPERSON: Yes, yes. So will you be, did you say affirm?

DR SCHOEMAN: Sorry, say again?

CHAIRPERSON: Did you say you are affirming or swearing?

DR SCHOEMAN: I am affirming.

CHAIRPERSON: Affirming. Do you affirm that the evidence you are going to give is the truth, the whole truth, nothing but the truth.

DR SCHOEMAN: I do.

ALBERTUS SCHOEMAN (affirmed)

CHAIRPERSON: Thank you.

EXAMINATION-IN-CHIEF BY ADV CHASKALSON SC:

Thank you, Dr Schoeman. If we can then start by just
10 identifying that your very short witness statement, which covers the report, ends with your signature at the top of page 3. Can you confirm that is your signature?

DR SCHOEMAN: That is correct.

ADV CHASKALSON SC: And can you confirm that the contents of the short statement covering the report are true and correct?

DR SCHOEMAN: That is true.

ADV CHASKALSON SC: And then that the report to which we will refer in some detail represents your opinions based
20 on facts that you believe to be true and correct?

DR SCHOEMAN: That is right.

ADV CHASKALSON SC: So if we can start then with the witness statement. In paragraphs, or from paragraph 2, you really describe your work and qualifications and can I ask you to read paragraphs 2 to 5 into the record.

DR SCHOEMAN: Okay.

“I am an extended term consultant engaged by the World Bank and task team leader for the World Bank's program supporting anti-corruption reforms in Southern Africa. I hold a PhD in Politics from the University of Sussex. I have worked on anti-corruption programs for World Bank units across Southern Africa and South Asia. Prior to my work with World Bank, my work on anti-corruption and governance issues has included consulting for Transparency International, research and teaching at the University of Sussex in the UK, and research at the Institute for Security Studies. My work combines public policy research and technical assistance to inform public sector reform on topics including anti-corruption, civil service reform, and governance. This includes advisory support to a range of government entities in South Africa on anti-corruption reforms, including, among others, research for the National Anti-

Corruption Advisory Council on strengthening the country's anti-corruption response. I am the author of a book on the relationship between political parties and the state in the global south, with particular attention to the political administrative interface, state building, and corruption. I was previously a member of the Electoral Reform Consultation Panel appointed by the National Assembly in terms of the Electoral Amendment Act of 2023 to advise on reforms to the electoral system in line with recommendations from the Zondo Commission to strengthen parliamentary oversight and accountability.”

ADV CHASKALSON SC: Thank you, Dr Schoeman. Now, we have asked you to present your views on the existing disclosure regimes applicable to senior officers within the South African criminal justice system, and to suggest some reforms that might assist to improve these regimes in combating corrupt infiltration of the criminal justice system, and you have prepared a report in response to our request. Can I just ask you to identify that report as Annexure A

starts at page 4 of this bundle.

DR SCHOEMAN: That is correct, Annexure A.

ADV CHASKALSON SC: And you refer to several reports in your report, and you refer to reports prepared by an initiative called StAR. Can you just explain what StAR is?

DR SCHOEMAN: Sure. So the Stolen Asset Recovery Initiative is a joint work program between the World Bank Group and the UNODC, so the United Nations Office on Drugs and Crime. Together, they work on a lot of issues
10 around anti-corruption and money laundering, one of the issues being on asset disclosures and declarations and so a lot of the work that we have done in South Africa around understanding and analysing the financial disclosure system here is based on their work, and I have worked very closely with the colleagues within the StAR initiative.

ADV CHASKALSON SC: Thank you. If we can now turn to the report. You start with an introduction which essentially describes the field and states the problem. Can I ask you to begin with by just reading paragraph 1 of your report.

20 **DR SCHOEMAN**: Paragraph 1 says:

“Collusion and conflicts of interest are at the heart of the issues investigated by the Madlanga Commission. Testimony before the Commission reveals systematic conflicts between the duties

of public officials and their personal interests, where beneficial relationships with criminal actors have taken precedence over official duties. This includes the abuse of positions of authority to intervene in and obstruct investigations, the disclosure of confidential information to criminal actors, and the manipulation of procurement processes to direct contracts to associates, each underpinned by an expectation of reciprocal benefit, whether in the form of gifts, payments, or gratifications channelled through family members and private business interests.”

ADV CHASKALSON SC: So would it be fair to say that there are really, that what you speak to is a problem where, through corrupt infiltration, organized crime has been able to gain purchase over the SAPS through three different types of *quid pro quo* that come on the other side, and the first being abusive authority to intervene and obstruct investigations, the second being the disclosure of confidential information to criminal actors to assist them, and the third relating to procurement processes. You are

nodding your head there.

DR SCHOEMAN: I think that is correct. I think that is the evidence before the Commission.

ADV CHASKALSON SC: And that, of course, speaks to a serious failure in the institutional framework for detecting and combating corrupt infiltration of the SAPS. Again, I must ask you when you agree to say yes as opposed to nod your head because we, at a later stage, will have a written record.

10 **DR SCHOEMAN**: Sure, I agree.

ADV CHASKALSON SC: So can we speak to what that institutional framework currently comprises. And in paragraph 2, you talk to that and you identify the elements within the public service regulations and SAPS regulations that are relevant in this regard or what they are targeting in this regard. Maybe if I can ask you to pick up there in paragraph 2 and, well, to highlight what the system is designed to do.

DR SCHOEMAN: Sure. So within the current framework in
20 terms of the public service regulations as well as the SAPS' own employment regulations, there are a series of measures and mechanisms in place intended to deal with conflicts of interest, to manage integrity within the public sector as well as SAPS. And so that includes mechanisms around financial disclosures, so preparing forms, stating

your financial interests and assets. It includes protocols around conflict of interest management. If a conflict arises, what is the process in place to determine how to deal with that and a series of other measures such as protocols around gifts, the limitations on the value of a gift and when it can be received, how it should be reported, prohibitions in terms of outside remunerative work, permissions that have to be granted and process around that. So collectively, a series of regulations around ensuring that public sector
10 officials behave themselves in line with public sector values with the intention of preventing misconduct corruption.

ADV CHASKALSON SC: Now your report is in large part focused on identifying where the existing system is failing and what its weaknesses are. In paragraph 3, you essentially set out the topics that you are going to be addressing in the report and can I ask you to pick up there just providing essentially a road map to where we will go today.

DR SCHOEMAN: Sure. So the note starts by talking about
20 corruption prevention as a concept. So this is something distinct from what we often focus on in terms of investigating and prosecuting corruption. So when we talk about corruption prevention, it is all of the measures that I have just mentioned around how do we manage public sector integrity, how do we avoid conflicts of interest.

So I start by explaining why this is important in the public sector, why we should care about corruption prevention and why it matters. The rest of the report looks at corruption prevention in particular in SAPS, but as applicable to the broader public sector and a lot of this is through the lens of the financial disclosure system, which forms a very integral part of the corruption prevention architecture.

A lot of the accompanying processes build on the financial disclosure system when we talk about lifestyle audits, lifestyle reviews, conflict of interest management. A lot of this relies on the initial disclosure forms and so it is very reflective of the issues that we have within corruption prevention as a whole. So we focus on financial disclosure form and the accompanying institutional framework, the sanctions attached to that as a lens through understanding some of the deficiencies in the current framework for corruption prevention.

ADV CHASKALSON SC: And then still giving a roadmap to where we are going, in paragraph 4 you talk about areas of reform on which you are going to focus. Can you again highlight those.

DR SCHOEMAN: Sure. So effectively, and this is what, how the report is structured, but the three areas of reform that I will talk about is one, about the financial disclosure

form itself. The particular assets and interests that require, that are required to be disclosed by public officials. The second point being around the institutional and operational framework for how we manage financial disclosures as well as corruption prevention more broadly. And then the third point being around the sanctions in place. So the questions of consequence management, which are of course very important for closing the loop. And I think all of this effectively, as we go through the report and discuss today, I
10 think all of this, what this points towards is broader restructuring of anti-corruption architecture, both from a policy regulatory perspective, but also thinking about the necessary institutional reforms to address some of the deficiencies in the current system.

ADV CHASKALSON SC: If we then start getting to the substantive topics themselves, you deal broadly with the topic of corruption prevention from paragraph 5, and can I ask you to, well, to read paragraph 5, and if you do not want to read it, to speak to what paragraph 5 talks to.

20 **DR SCHOEMAN:** Let me speak to paragraph 5 so we can keep this as a discussion. So I have already mentioned corruption prevention as a concept, as something distinct from investigating and prosecuting corruption and we can essentially understand this as two types of prevention, the one being deterrent prevention. So it is about raising

transparency, ensuring that we have mechanisms in place to ensure that it is more difficult to commit corruption and to get away with it. So in this context we would talk about things like the financial disclosure system. We would talk about corruption risk assessments and hardening the system against corruption. We would think about transparency. So deterrent factors, it is about ensuring that it is more difficult to get away with corruption. It is easier to detect it and so it places external pressures on officials
10 to behave with integrity.

The second aspect of prevention that we can focus on is around your intrinsic motivations. So here we talk about constructive prevention and essentially this is the focus on ethics, on ethics training, on how you as an individual think about how you conduct yourself, your views on corruption. So when we talk about this kind of corruption prevention, we are more interested in the norms and values, the organizational culture and how we can change that.

20 So both of these form a very important part of the corruption prevention arsenal and toolkit and this is one aspect of the broader anti-corruption framework that we can think about to ensure public sector integrity.

ADV CHASKALSON SC: You identify the regulatory framework governing corruption prevention in South Africa

with reference to the SAPS in paragraph 6. But you make the point in paragraph 7, which I would like us to dwell on, that one needs to look at the implementation of the framework and one needs to look at how SAPS itself perceives the way in which it is implementing its framework. And you refer to the annual reports in 2023/24 and 24/25.

Those reports are in the, or extracts from those reports are in the exhibit bundle, 23/24 is at page 4 and 24/25 is at page 9. And maybe, I mean they are very
10 similar so I do not think we need to go through both. Maybe if I can ask you to focus on the more recent report, 24/25 at page 9 and to highlight what you think is relevant in that regard.

DR SCHOEMAN: Sure. So page 9 of SAPS' annual report speaks to the mechanisms, their internal mechanisms for reporting fraud and corruption and how they deal with these issues. And there is a particular section, a table there that deals with prevention and they mention the measures carried out by the risk and integrity management section.
20 They mention ethics workshops, minimum information security standards, the disclosure of financial interests, restrictions around applications for additional remunerative work. They speak to security screening, declarations around gifts and sponsorship. They speak to, there are measures for detection in terms of polygraph testing, et

cetera. And so what we see on paper, I think both in SAPS' annual reports and I refer in the same paragraph later to the Minister of Police's response to a Parliamentary question, we see this long list of mechanisms in place to support public sector integrity and support integrity in particular within SAPS. And so it would seem that all of these mechanisms are in place on paper, all of the standard requirements that one would expect.

Now, the question that I pose to the Commission is
 10 having heard the testimony so far and hearing this list of mechanisms in place to prevent corruption, it seems to me that there is a disjuncture between what is on paper and the impact that we see in the real world and we can get to that further, Matthew.

ADV CHASKALSON SC: Thanks. That is obviously what we are going to spend most of our time on. But before we do that, maybe if we can take that ministerial answer and which you quote at the foot of page 7. There was one point that struck me about it. I mean, the answer talks about a
 20 range of detection measures, including lifestyle reviews conducted through SAPS' analysis of a number of integrity control measures such as financial disclosures, gift management protocols, performance of remunerative work outside SAPS that determines red flags. And then anomalies which are detected or referred for further

lifestyle investigations and when necessary, forensic auditors are engaged for lifestyle audits. But do you know how many lifestyle audits have been done in the last 5 years?

DR SCHOEMAN: My understanding is that no lifestyle audits have been conducted within SAPS as of yet. There is a later Parliamentary question that I believe came out, I think it was last week, where the Acting Minister of Police indicated that they were still in discussions with the SIU to
10 second officials to SAPS to do these lifestyle audits for them.

ADV CHASKALSON SC: Can I take you to that question. It is actually at page 11 of the exhibit bundle. Sorry, page 78. I have got the wrong question. Page 78. And the critical information in the answer is in the table that is at page 79.

DR SCHOEMAN: Sorry Matthew, could you repeat that?

ADV CHASKALSON SC: 79. The table in page 79 gives you the statistics of what has been done where.

20 **DR SCHOEMAN**: So that is correct.

CHAIRPERSON: Sorry, before we go to the schedule, should we not actually read the question onto the record, the question itself?

ADV CHASKALSON SC: Yes, Chair, that makes a lot of sense. Can I ask you to read what the question was and

what the answer is, so we understand what the Minister was answering?

DR SCHOEMAN: So the question was:

“Whether any lifestyle audits have been conducted on senior leadership within the South African Police Service in the past 5 years. If not, why not? If so, what, (a), audits were conducted, (b), ranks were subjected to such audits, and what were the outcomes of the specified audits.”

The second part of the question is:

“Whether the SAPS has approached and or engaged the Special Investigating Unit or any other external body to conduct independent lifestyle audits of senior police leadership. If not, what is the position in this regard? If so, what are the relevant details?”

ADV CHASKALSON SC: And maybe we can start with the answer at 1(a), page 78.

DR SCHOEMAN: So on page 78, it says that:

“Lifestyle assessments, including reviews and investigations, were conducted within SAPS.”

And I think this is important to be specific about,

that reviews and investigations are separate from lifestyle audits. At a later stage within the report, I explained the difference, but effectively what SAPS has currently performed is just the reviews and investigations.

ADV CHASKALSON SC: And in 1, subparagraph (a), underneath 1, I think your point is made, albeit in the fine print, as it were.

DR SCHOEMAN: So it says:

10 “Based on the lifestyle investigations
 conducted for senior management service
 members, no cases escalated to full
 lifestyle audits during the period under
 review.”

ADV CHASKALSON SC: And the period under review in the question is the past 5 years.

DR SCHOEMAN: That is correct.

ADV BALOYI SC: Dr Schoeman, may I just understand, what is a lifestyle review and what is a lifestyle investigation?

20 **DR SCHOEMAN:** So a lifestyle review is something that is conducted by an ethics officer within a line department. So a review is based on the financial disclosure form. It looks at the assets that an official has reported. It compares that to an official's income, and they determine whether they believe that is consistent. If it is not consistent, they can

refer that to the head of department for a lifestyle investigation. Now this is the next level of assessment. The lifestyle investigation would be conducted by an investigator, so somebody who would have a bit more expertise in conducting these kinds of investigations. This would look at additional sources of information to determine whether there is potential unexplained wealth, to determine whether an individual might be receiving income from potentially nefarious sources or corrupt sources.

10 So the lifestyle investigation, that would include looking at bank records. That then goes into looking at a person's qualifications. It would look much more, at much greater scrutiny of the form and trying to back up what is there and potentially looking to see if a further kind of criminal investigation would be warranted.

ADV BALOYI SC: And how does an investigation differ from an audit?

DR SCHOEMAN: So an audit would be the next stage. An audit is once you involve a certified auditor and so they
20 would apply forensic audit techniques. So a forensic, excuse me, a lifestyle audit would essentially be a more sophisticated type of investigation being conducted.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: Now, in your answer to Commissioner Baloyi, you have essentially anticipated what

you say in paragraph 9 of your statement on page 9. Is there anything further that you would want to highlight in relation to the distinction between lifestyle reviews, lifestyle investigations and lifestyle audits?

DR SCHOEMAN: I think one of the things that we have not discussed in depth in terms of the response is that within SAPS, every year, there have been these lifestyle reviews conducted, and some of them have led, in very few cases, to lifestyle investigations. In each case, they have been
10 cleared. And I think this is an important part of the story to tell, that these are being conducted at the lifestyle review investigation process, but not necessarily turning up any results. And so I say on page 9, at paragraph 9.2:

“Between financial year 2021/2022 and 23/24, no SAPS officials were referred for lifestyle investigation. In 24/25, 5 of 823 SMS members underwent lifestyle investigations and all were cleared.”

ADV CHASKALSON SC: And you make the point in, at
20 paragraph 9.3 that the final stage, lifestyle audits, involves a cost. Can you amplify that, because that may also explain part of why they do not happen.

DR SCHOEMAN: Sure. So as I mentioned, the lifestyle audit framework, so to speak, that escalates from reviews to investigations to audits, it includes varying degrees of

specialty. So initially, we start with ethics officers. These are often more junior officials. They are not necessarily specialized investigators. Your lifestyle investigations would ordinarily be conducted by an investigator within the department. So in terms of the minimum anti-corruption capacity requirements, so this is a directive from cabinet, which requires every line ministry to include an internal investigation capacity. This is not always something that is fully functional. In many cases, line ministries do not
10 necessarily have all the capacity they need to conduct such investigations.

When it comes to the lifestyle audit process, this is a very particular skill set as it requires auditors. So this is beyond your potential, you might have internal auditors within your department, but it is not something that they would be conducting, these kinds of audits. And the lifestyle audit framework established by the Department of Public Service and Administration specifically states that lifestyle audits should not be conducted by internal
20 auditors.

So in the current framework, in lieu of this internal capacity to conduct lifestyle audits, what is happening is that departments are outsourcing these audits. So they would get an external company to conduct these lifestyle audits for them based on the financial disclosure records, or

they would enter a secondment arrangement with a special investigating unit. How this works in practice is that these SIU officials are seconded to the department and effectively no longer function with the SIU's powers. So they are functioning as if they were a departmental official. What that practically means is that they no longer have the same mandates, access to resources that they would ordinarily have as an SIU investigator and so one of the challenges I think within the current framework is both of the powers
10 related to the lifestyle audits, because this is a question of access to financial records.

In the current system, to conduct a lifestyle audit, you would rely on the auditee, so to speak, the declarant, the individual under investigation, to submit their own financial records to the auditee. The challenge with that being is that somebody could very well hide some of their bank records. They can determine what to send somebody. If you have an authority with access to financial systems, they would much more easily be able to see the full scope,
20 the full range of accounts with financial institutions. They would have much more access to government databases and systems to be able to conduct a thorough audit.

But what I should also mention in terms of the cost, so I mention here, and this is a cost that has been shared in public domain, of a single individual being audited, that it

would cost something between R30,000.00 to R50,000.00. And the reality across the public sector right now is that these lifestyle audits have turned up very little. And I do not think it is necessarily an indictment of the lifestyle audit process itself. I think it is a noble objective. It is an important part of the anti-corruption response.

I think the issue is with the current approach that we use, some of the gaps in our approach in terms of the financial disclosure forms, what officials are required to
10 disclose, the institutional framework around how these lifestyle audits happen. So this speaks to the issue of the powers that I have mentioned. And then the final aspect, being the question of consequence management if something were to turn up. And so much of what I would speak to today is around those three points, but highlighting here the issue that these are very costly, but currently largely ineffective.

ADV CHASKALSON SC: Can I just clarify, because it is a point that you have made, but it seems to me to be a
20 particularly important point, which is that whether they are conducted by private auditors or by SIU auditors seconded to SAPS, the persons conducting lifestyle audits have no statutory powers to collect information from financial institutions. So they depend entirely on information that is voluntarily provided by the person they are auditing.

DR SCHOEMAN: That is my understanding, that is correct.

ADV CHASKALSON SC: And at the moment, the system only reaches this lifestyle auditing stage after it has gone through, after a red flag has been triggered below it. There is no system of random auditing that takes place.

DR SCHOEMAN: So the expectation with the escalating audit or lifestyle review process is that you start from the baseline of the initial review to turn up red flags. It goes for further referral for more in-depth investigations. And so
10 this would, if there are suspicions in a particular case, this would escalate to the lifestyle audit phase.

Within the current context where there are a lot of concerns around corruption and misconduct within the senior management service, what a lot of entities have opted to do is to go straight to the lifestyle audit process to have blanket lifestyle audits for the senior management service. In some ways, I think in international examples, this is irregular. It would not be normal practice to conduct blanket lifestyle audits.

20 Ordinarily, a lifestyle audit is something that you do when you have good evidence that there is some kind of concern around an individual that warrants this kind of more in-depth investigation. In many cases, a full lifestyle audit in other jurisdictions would include speaking to their associates, determining, you know, who they have business

dealings with, doing a much more thorough investigation. This blanket approach, I think, is reflective of the fact that the financial disclosure system, the verification, the lifestyle reviews so far have not been turning up anything. But at the same time, we know from experience, we know from media reports, we know from what we see in Commissions such as yourselves, we know that there are these things happening, but they are not being detected and so the current approach has been to institute these blanket
10 lifestyle audits across the senior management service.

But as the Advocate mentions, what you will find in many jurisdictions is that the lifestyle audit process is more driven by good evidence of a particular case where you might want to do a much more in-depth investigation or to conduct random verifications, random audits to keep people on their toes and to potentially detect misconduct.

ADV CHASKALSON SC: Now, when you talk about the senior management service and lifestyle audits across the board, you are talking about the public service generally,
20 not SAPS, because we have seen there have been no lifestyle audits at SAPS.

DR SCHOEMAN: That is correct. So the Parliamentary question we referred to earlier, I believe it is at the end of the question, I think it is on page 80 to 81, the final paragraph of page 80 says:

“Engagement processes with the special investigating unit have been initiated. However, the secondment and full operationalization of the support remain in progress. In addition, all senior management service members are currently undergoing re-vetting.”

If I can also point to the paragraph in the middle, which is below the table, it is highlighted with a 2. It says:

10 “Yes, the South African police service has formally engaged the special investigating unit to assist with independent lifestyle audits. The National Commissioner signed a formal request on 5 August 2025, which was submitted on 6 August 2025, requesting the secondment of SIU personnel to support SAPS in conducting lifestyle audits.”

20 The parliamentary question in question was reply to this response that I am reading from now. This was early July. I think the exact date may be on here. Sorry, the 5th of June. So, as of the 5th of June, the SIU has not yet been seconded to SAPS to support lifestyle audits.

ADV CHASKALSON SC: That is 5th of June 2026.

DR SCHOEMAN: 26, that is correct.

ADV CHASKALSON SC: Now, we are going to get in due course to the problems of the disclosure form at the root of the problem, but before we do that, you make an important point in paragraphs 10 to 12 about the limits of, shall we say, cultural change attempts to address corruption in the present environment. Can I ask you to highlight those points?

DR SCHOEMAN: Sure. So you will recall at the start of
10 my presentation, I discussed the different approaches to corruption prevention in terms of deterrent prevention and constructive prevention. So essentially, the difference being whether we focus on rules and mechanisms to make it more difficult for people to get away with corruption, whether we more strongly enforce compliance with the rules, or whether we focus on trying to build integrity, so to speak, the softer norm change aspects of corruption prevention.

And what I speak to in paragraph 10 and 11 and 12
20 is about where we should place the emphasis effectively. Do we focus on an idea of building ethics and training people and encouraging them to engage ethically, or do we strengthen the legal and regulatory mechanisms to compel compliance with the rules, raise the standards. And in paragraph 10, I speak to, again to the SAPS annual report

in which they have a performance indicator related to this question of integrity and professionalism and there are some figures there that reflect the progress on this particular indicator, and this is based on internal workforce survey that was conducted to determine how SAPS see professionalism within their own organization. And I will read here from paragraph 10 on page 10 and it says, I will start in the middle, that it says:

10 “The latest SAPS survey conducted in
22/23 found that only 24.4% of SAPS
officials agreed that the police conduct
themselves professionally while 31.6%
agreed that the police do not abuse their
power.”

And so the point that I want to make here is by SAPS' own internal surveys, the way most people see their own organizational culture is that they do not see it as an institution with great integrity, that they recognize that their colleagues do not behave the way that they should. In
20 many cases, they understand that that misconduct is rife.

And so when we compare this to some of the initiatives mentioned in terms of advocacy programs, in terms of campaigns, in terms of statements to say that we do not tolerate corruption, it is very difficult to imagine how a message like that cuts through when people's everyday

lived experience is their colleagues engaging in misbehaviour. And so to turn around an organizational culture like this, you cannot solely rely on messages about ethics and integrity. What you really need to do is focus on strengthening these other types of controls around your legal and regulatory mechanisms, ensuring that you have the right policy framework, the right controls in place, the right measures for detecting this kind of misconduct to bring people into line.

10 And the purpose of that is that over time, when you have this kind of rule-based compliance, people realize that this is what has become the norm, that you see your colleagues, they are all filling out their financial disclosure forms correctly. They are treating citizens with the kind of respect that they deserve. So it is much more difficult for you to fall out of line with that.

 So once everybody starts complying with the rules, ethics starts developing in and of itself over time. And I will refer to here, I think often about, there is a Professor at the
20 University of Oxford, a gentleman by the name of Christopher Stone, who has done a lot of work looking at organizational turnarounds, particularly in law enforcement to deal with corruption around the world. And he always makes the argument that what you find in most organizations is a large middle group of people that are

neither extremely ethical nor unethical.

This is a group of people that go along with what the cultural norm is. They will turn a blind eye towards misconduct because they do not want to get involved. They will follow the rules and behave ethically because that is what is required of them. And so he makes the argument that to switch the organizational culture, to win over this middle, this middle that you can be persuaded, it is about these types of mechanisms to bring integrity back into the
 10 norm through rule-based following and that is the kind of approach that I think that South Africa should be focusing on, I think particularly within SAPS, but as the broader public sector as well, to restore ethics, to not just focus on issues such as training and promoting ethics, but really thinking about the types of controls that are in place to enforce discipline and ensure that there are consequences for misconduct.

ADV BALOYI SC: Before you proceed, this survey that you speak to, that you have read here, what does it measure?
 20 Does it measure financial behaviour or just generally the corruption in general, professionalism? What exactly was it measuring?

DR SCHOEMAN: So I do not have the exact question that was posed. This comes from the SAPS annual report and so I have used their particular wording around the

percentage of officials that agreed that their colleagues, the police, conduct themselves professionally and ethically. That was the question from the SAPS report.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: And just to amplify the point that you have been making, that you need a system that properly enforces rules if you are going to win over this middle ground that you speak to. Can I ask you just essentially to read paragraphs 11.1 and 11.2, which really speak to why
10 that is necessary?

DR SCHOEMAN: Sure. So 11.1 says:

“Where corruption is embedded in institutional culture, ethical appeals tend to fall flat because the system itself rewards corrupt behaviour and punishes those who resist it.”

The next paragraph:

“An individual with strong personal ethics operating inside a structurally corrupt system is largely powerless, lacking the
20 necessary institutional framework to support ethical behaviour and facing continued pressure to turn a blind eye to misconduct. Both the Zondo Commission and evidence before the Madlanga

Commission provide such examples of ethical officials under huge pressure and constant harassment from colleagues engaging in misconduct.”

So if we can move now to where you see the specific technical problems in the current system, and can we start at paragraph 13 on page 12, where you are talking about financial disclosure as the cornerstone of integrity management.

10 **DR SCHOEMAN**: Sure. So the starting point of the integrity framework to a large extent is the financial disclosure system. And the reason why I say this is that a lot of our other controls build on this or build around it. So when we speak to issues around conflicts of interest, the way that we currently determine whether an official has current conflicts of interest is through the financial disclosure form. It is the companies that they disclose on their forms that we then check whether they are on the central suppliers database, whether they might be engaging
20 in business with the state, or whether this company might be involved in a sector, for example, that might pose some kind of conflict of interest. It is the same with the lifestyle review and the lifestyle audit process, all of this builds on the initial disclosures.

So it is really a critical component, and it has such

downstream effects when we get this wrong, when there are omissions in this initial form, areas and blind spots that we do not check, down the line when we are trying to understand an individual's potential conflicts of interest, if we do not know what companies they themselves are involved in, if we do not know what companies their family members are involved in, we are much less able to determine what an individual's conflicts of interest are. It is much more difficult to put in place preventative controls so

10 that they divest from those conflicts or that we find some kind of way to get around that.

ADV CHASKALSON SC: And then in paragraph 14, you start detailing some of the problems that you see in the current disclosure regime. Paragraph 14, you just make the point that there are different disclosure regimes across the public service generally. But in paragraph 15, you identify what you see as the design deficiencies, and can you highlight these?

DR SCHOEMAN: Sure. So let me start with paragraph 14

20 because I think it is an important point to make. I have been speaking a lot about a financial disclosure system as if it is one framework within South Africa's current institutional context. The reality is that there are many different disclosure frameworks.

Members of parliament have a distinct framework

where they are required to disclose their interests. The Executive has a separate framework in terms of the Executive Ethics Act. The Judiciary has a separate framework and requirements in terms of the Judicial Services Commission Act. Local Government has a different framework both for counsellors as well as officials within local government administration. And so effectively what happens is that you have inconsistent standards across the board that some people are held to higher
10 standards maybe. Others are required to disclose less or their disclosure forms are not publicly available.

And the effect of this I think is that both that you have inconsistent standards but also that the kind of capacity that one needs to have a functional system of verification and follow-up investigations is effectively dispersed across all of these various institutions and it leads to a lot of inefficiencies. And part of the issue is when we talk about investigations one of the clear challenges that we know that we have that there is in South
20 Africa is around investigative capacity. We see some of the challenges with the speedy investigation of cases.

Within the current framework where we have this mandate dispersed across so many different places what we also then do is disperse all of this capacity for investigating or we require lower level officials not to diminish them but

officials such as ethics officers to be conducting their initial verification and review and this is a function that they might not necessarily be specialized in. They might not have the particular skill set, the capacity to understand how to conduct a proper investigation in order to prepare it potentially further down the line for a criminal investigation. And so one of the inefficiencies that I speak to at a later point is around the institutional framework for this and a large part of that comes from this initial issue that we have
10 with the dispersal of this mandate and with the various different types of systems that we have.

In paragraph 15 I start speaking at a high level to the core challenges that we have in the design of the financial disclosure system. And this is really just an overview of the rest of where we are going today and here I speak to some of the core gaps that include gaps in the disclosure requirements, leaving loopholes to conceal assets and interests, fragmentation of the institutional framework for collecting and verifying disclosures, creating
20 inefficiencies and undermining effectiveness, and the absence of a credible sanctions regime for applying consequences to non and false disclosures. And so this is essentially the framework that we will speak to in the subsequent sections.

ADV CHASKALSON SC: So the first gap in the disclosure

requirements that you identify is paragraph 17 where you talk to the exclusion of family members from disclosure obligations. Can you highlight that?

DR SCHOEMAN: Sure. So the current form and disclosure requirements only apply to the individual, whether that is a public servant, elected official, et cetera. In each of these cases, it is only you as a person. We know that this, from international experience we know that this is not sufficient. One of the easiest ways of concealing your financial
10 interests and wealth is to place these same companies in the name of your immediate family members. And so it does not really take that much to hide these assets in the current framework.

It does not require a whole lot of sophistication even to put a company in your wife's name that might be doing business with the state or in the name of your children, to put a car or a piece of property that you have been given as a gift to rather register that in somebody else's name. And part of the challenge with not extending
20 these requirements to your immediate family members is both the concealment of these assets and your financial interests, but the effect, the downstream effect that that has, for example, on managing conflicts of interest, if we, as I say, for example, as a Public Service Commission or line ministry, if we are not aware of your wife or husband's

financial interests in, for example, let us say, medical supplies and you work in the Department of Health, that can potentially pose a very direct conflict of interest and in the current regime, that is not something that we would be directly able to consider because we do not require that kind of disclosure to be made in the disclosure form.

There might be other places where you are required to report *ad hoc* conflicts of interest in a more formal way but separate to these requirements, but the form currently
10 is limited in this regard. And I mention this also because this is, as I have said, a very, very common issue that you see internationally. You see it locally as well. And so the way to get around that, what you will find is in many countries that they have started introducing requirements to also extend these kinds of disclosures to your immediate family members.

ADV CHASKALSON SC: A related problem you highlight in paragraph 18 is that it does not deal with beneficial ownership. Can you amplify that.

20 **DR SCHOEMAN:** Sure. So let me start by explaining what we mean by beneficial ownership. What you will often find in grand corruption cases, in money laundering cases, in tax evasion cases is that actors are sophisticated. They will put their financial interests, their business interests, their companies in complex legal structures. You have a

company that owns a company that is put into a trust, et cetera. And so this starts blurring the lines when you are an investigator and starts making it much more difficult to determine who ultimately benefits from this asset or this company, who has direct control over it.

And so Commissioners will remember over the last few years South Africa has been working on leaving the grey list in terms of the anti-money laundering requirements and the standards set by the Financial Action Task Force.

10 And so a lot of the amendments introduced as part of those reforms were around introducing beneficial ownership registers for companies, for property and even in the case of trusts determining who is the ultimate beneficiary of an asset.

And so this is a very relevant concept and issue when we talk about the disclosure of your financial interests and assets, because if we do not require an official, and we do not make this clear that an official needs to disclose their beneficial ownership and interests in companies or
20 property, effectively what we are leaving open again for them is to just use some kind of a nominee or intermediary structure that they can transfer all of those funds in, put it in a trust or find some kind of way that an official does not have to declare these assets or interests because they are not in your official name.

So purely by having this small arm's length of distance between you and an asset you can prepare your disclosure form entirely correctly. You can fill it out without having to worry about all of those things that you have not disclosed and you would be following the rules. And I think that is part of the challenge here that we have left open, I think, both with the family members and the beneficial ownership issues, we have left open two of the biggest gaps that we know internationally are used in grand corruption
10 schemes and these are issues that are quite significant and I think quite substantial vulnerabilities.

And it is something that is not just in one particular section of the financial disclosure requirements. It is a principle that needs to be applied throughout. So in every section that you would have to speak to your beneficial interests, for example, when it relates to property, when it relates to companies, et cetera.

ADV CHASKALSON SC: So we have now highlighted two blind spots of the form. In paragraph 19, you deal with
20 specific categories of assets that the form does not ask for and can you take us through those.

DR SCHOEMAN: Sure. So ...[intervenes].

ADV CHASKALSON SC: It is not just categories of assets, it is issues relating to assets.

DR SCHOEMAN: That is correct. So in the current

approach for each asset that you declare within a category, let me use the example of purchasing a house or owning a house, within this particular category, there are four or five specific pieces of detail that you need to provide about this property. You would have to explain where it is located. You might have to explain what the value of the property is. But there are additional pieces of information that are really important for subsequent processes when we get to the stage of lifestyle reviews and investigations.

10 So this additional information that one also needs to know is when was this property acquired? How was it acquired? What did you, you know, how much did it cost when you paid it? And so it is about more consistently being able to describe a full picture of your financial status so that over time with these forms we can see the changes, we can see a person disposed of this asset that freed up capital to purchase a new asset and so it helps us understand what these changes look like with time but also detect potential cases where somebody all of a sudden
20 shows up with assets that have previously been undeclared and you might have questions. Are these omissions from previous years or has this person now been able to buy a brand new house? Where has that money come from? Is it them that has paid for this house or car or is it potentially a gift that somebody might have given to them?

So there are little bits of pieces of information like that that consistently throughout the form are required to better understand the origins of these assets, to understand the context within which they were acquired, whether they were a gift, whether this is something that your spouse bought for example.

ADV CHASKALSON SC: Then moving on to the next category which I anticipated which is types of assets that fall outside the scope of the current form.

10 **DR SCHOEMAN:** Sure. So within the current form, the focus is largely on some of the more common and I guess high value items that one might consider. So it includes things like vehicles, it includes companies, it includes property in the form of a house for example.

But I argue that there are several other common asset types that also need to be considered and some of these can be quite important. And again, this is about building a full picture of not just a person's interests and assets but their financial means and this is one of the
20 consistent narratives or themes that I want to point out to. Across the form, what we need to do and what we need to be able to do is understand the kind of flows of an individual's financial status of what kind of wealth is coming in, where is it going, where is it being spent.

So some of the assets that I mentioned that

currently are outside of the scope of the form, this includes high value movable property other than vehicles and so for example things like jewellery, precious stones, livestock and other similar high value items that might hold quite significant value but might not necessarily be disclosed and are not required to be disclosed.

The second point is around virtual and intangible assets and here I particularly mean cryptocurrencies or other kind of digital tokens that can often hold substantial
10 value. And in many cases this is an asset that is extraordinarily easy to transfer, both between individuals, across borders, and can hold a huge amount of value and is not something that we would currently be considering in the framework.

The third point that I make is around monetary assets. So here I mean cash on hand that you might have, say, for example, in a safe. It means your bank accounts, being able to in your financial disclosure form not just say I own two cars and a house, to say I own two cars, a house,
20 and R2 million in a bank account, for example.

Having that level of detail is important for understanding the origins of assets down the line, for understanding people's financial means when they acquire new assets. And so, again, this is part about understanding the full picture, understanding changes over time. And then

I also raise a point around the form currently focuses on, it is a new section that was added I believe in the last amendment in 2023 that introduces a section where individual must report any liabilities, so loans that they owe somebody.

What you also need to understand is money that is potentially owed to an individual, so loans that they may have given out. So that is relevant both for the question of understanding a person's financial means, their sources of
10 income, and what is happening there, but also what kind of relationships they might have to other actors and their associates.

We might want to ask questions around why an individual is loaning potentially a large amount to somebody else and what kind of obligations are tied to that and what does that relationship look like practically.

ADV KHUMALO SC: Dr Schoeman, just, how do these forms treat, you know, it is a modern phenomenon where something is neither an asset, nor a loan in the true sense,
20 but a public official has the right of use of an asset, either a house or a car, that belongs to somebody else. How do the forms treat that, because it is not a loan to you, it is not an asset registered in your name. It belongs to a shady third party who purchases it in their own name, but you have access and right to use it as you please. Do the forms deal

with that and how do they deal with it?

DR SCHOEMAN: So it is an excellent question and this relates to our definition of beneficial ownership. So it is not just about ownership, but as you say, about beneficial use and making that clear and so the way to approach this in your form, and this is much simpler in an electronic format, but for each asset that you declare, that you state, this is an asset that I own under my name individually or that I have beneficial use of, I have beneficial control, or I have
10 joint ownership maybe with my spouse, et cetera.

And so this deals with that issue of beneficial use and so with something like this, you would have to very clearly establish what the requirements are and this is why good guidance is important, why you need advisory services to advise people on how to prepare their forms so that they can ensure that they are preparing the forms correctly. But it is a fantastic example of why it is important to ensure that these requirements are as broad as possible so that people can fill out all kinds of interesting situations that they might
20 find themselves in to ensure that we have a full picture of the circumstances of their interests.

ADV KHUMALO SC: Because I can imagine a situation where a senior General in the SAPS drives a R3 million car and then when it comes time to disclose, he says, well, it is not mine, so I do not have to disclose it and there is nothing

the SAPS can do about it because it is really not his car, it is his friend's car or somebody else's car, although it parks in his garage every day and he uses it every day.

DR SCHOEMAN: That is exactly it, and I think that is a great example of why this current gap in requiring disclosure of beneficial ownership or beneficial interest is such an important one because that official can entirely declare that they own zero cars and they would be following the rules, there is nothing we can do about them and it will
10 be correct. But we know there is another reality, there is a factual experience on the ground that differs from what is required.

ADV CHASKALSON SC: The last category that you speak to is the way the form treats income in paragraph 21. Can you elaborate there.

DR SCHOEMAN: Sure. So I have spoken to this a little bit in terms of how we need a kind of constant narrative throughout the financial disclosure form to understand the origins of each asset when it was purchased, what its value
20 was at purchase, but also in many cases when it was disposed of because this is about understanding our, the individual's kind of flow of financial means and what this looks like over time. So, when I speak about income here, we are not necessarily talking about this in the same way as an accounting practice of saying this was the revenue this

year, this was the expenditure. We need to understand things like taking on a loan is a type of income, right, because that extends to your financial means and so having a consistent view of what money is coming in and where it is being spent, this then feeds into the downstream processes on the lifestyle reviews, on the audits, and understanding what kind of lifestyle somebody is living.

So to speak to the question of, you know, beneficial ownership as well, and somebody potentially having a new
10 vehicle or property showing up on their declaration, for us to be able to credibly question the origins of, say, a vehicle or a new piece of property and whether an individual paid for that themselves, we would need to know whether they had that financial means to begin with.

If this year all of a sudden they have a new property that they did not declare last year, is it because they have disposed of some assets that have freed up cash? Is it because they have a large amount of money in a bank account that has been lying dormant waiting to
20 purchase this new asset? So, again, It speaks to the kind of understanding of the kind of constant flow over time of income and expenditure and so it is in part it is reflective of the current approach that I criticize, that our current approach in the financial disclosure form is essentially a list of assets that one owns. It is not intended to understand

these changes over time. It is not intended to understand the additional kind of interest that somebody might have.

And so some of these changes that I propose, and this is based on good practice internationally, it is about strengthening the downstream processes, about having the necessary information available to detect potential anomalies, and to support the kind of investigations that we need at a later stage.

ADV CHASKALSON SC: Now, a question that sort of
 10 comes to my mind is, I can see the logic of everything that you are saying about the needs to improve the substantive content of the disclosure form, to have a disclosure form that will give you much more useful information. But one needs to strike a balance between the utility of the disclosure form and making disclosure requirements so onerous that they are incredibly difficult to comply with and that, I mean, in an extreme case, they may drive people away from the public service, but even in a limited sense, if you make a form so difficult to comply with the capacity to
 20 say, well, you know, I did not actually understand, I had to do this or I had to do that, presents a defence when you start taking action on the basis of nondisclosures. What is your response to that?

DR SCHOEMAN: Sure, and I think this is an important question. I think you do have to find a balance between

ease of use and ensuring that people can effectively comply with the requirements, but you also want to be as wide as possible to find cases of people engaging in conduct that they should not and having interests that they should not. And I think what we need to understand is when one is filling out these forms, in many cases you would not have much to report in all of these categories.

I mentioned, for example, virtual currencies. Many public servants probably would not have to worry about
10 filling out that section of the form because they, for example, do not hold Bitcoin and it might be the case in many of these sections. 80% of your public servants will probably only have to declare two or three categories of information. It would be your house, it would be your car, maybe your bank account if we extend it to that and that is probably your average person.

And I use the example often of thinking about when we submit our e-filing for SARS, there are, I do not know,
20 different forms of income that we can report. Most of us only have to do a few sources of income and it is the exact same concept that in many cases you would not necessarily have to worry about all of these other categories of assets to declare or all of the complexities because most individuals would have a very normal, very standard straightforward profile.

Where this really matters is the complex cases, is the difficult ones, where people are trying to engage in funny business, trying to get around the rules and that is why it is important to have a form and disclosure requirements that are as broad as possible to ensure that the net is wide enough to capture those types of cases. But for most declarants it would be a relatively straightforward process.

And the next section speaks to the e-disclosure
10 system and digitization and one of the great advantages of digitization, even in the current e-disclosure system, an official, when you are preparing your declaration, you can import your submission from the previous year. So that already makes your life much more difficult. Unless you have had substantive changes, you have disposed of an asset, or you have had some kind of, you know, significant windfall gains, your disclosure form would probably look very similar year from year.

But what really matters is where you have those
20 interesting cases of people that are the anomaly.

ADV CHASKALSON SC: You said it makes your situation much more difficult. I think you wanted to say it makes your situation much more easy in relation to the e-disclosure form.

DR SCHOEMAN: Yes, sure.

ADV CHASKALSON SC: You are just importing. So essentially, if I understand your evidence, what you are saying is that if a comprehensive form is introduced, in most cases, it is not going to affect public servants because most public servants have a very limited range of income and assets that need to be disclosed. It is important to have the complicated or the comprehensive form because you need to have enough information to catch people who are essentially making unlawful income and hiding it.

10 There may be one or two, or there may be a limited class of people who have behaved perfectly legally but nevertheless find it a bit onerous to disclose all of their assets for reasons unrelated to corrupt income. But with an e-disclosure system, that is a once-off onerous, for the most part, that is a once-off onerous process. You will just import everything thereafter and it is only if there are dramatic movements in your assets and income that you need to disclose that it is going to be an ongoing problem and those cases are going to be few and far between.

20 **DR SCHOEMAN:** Ja, I think that is exactly right. I think for most people, for most categories, you would just say nothing to declare and you can move on to the next one. If you have this system where you can import information from the previous year, I mean how many houses does a person buy in their lifetime? This is something that should be

relatively consistent and so extending the form to requirements like beneficial ownership, most civil servants, I imagine, are not engaged in situations where they have some kind of a complex legal structure to hide their financial interests or the company interests and so something like that would not necessarily impact most people substantively.

ADV CHASKALSON SC: Can you then, we will now get to the e-disclosure system and can you take the Commission
10 through what you say in paragraph 22, which explains what the system currently does and then get to the deficiencies in the system?

DR SCHOEMAN: Sure. So the e-disclosure system in many ways in its current form is purely replicating what you would have on a paper form but just in a digital format. You would have, in your regulations you would find specific tables that say for example under immovable property, you would say this is the address of my place, this is what the value is, et cetera. That would be exactly replicated in the
20 digital space and the challenge I argue with that is that there is a huge amount of untapped potential in using this as a data source for understanding how these assets interact with one another, for comparing across profiles.

So for example, one of the things that you can do with an e-disclosure type system, and this is something that

is performed in other countries already, is to aggregate across all of the asset categories to do that initial lifestyle review automatically to be able to determine, it is a very straightforward algorithm, these are all assets that have been mentioned, this is their value attached to them, and this is why the income and value questions are so important, so that you can build that initial financial profile.

You can import a person's salary from the payroll system, you can have an automated system that determines
10 whether this checks out from year to year, you can have these kinds of comparisons to say that we know last year this person did not have a BMW, this year they have a BMW, does that make sense in terms of what has been disclosed, knowing what their annual salary is, and so that kind of automation and kind of algorithmic risk analysis can do a lot of the initial legwork that we are currently relying on for ethics officers to do, and there is a huge potential to free up those resources and to rather focus your human resources on investigating the anomalies, the strange
20 cases.

And so I think there is significant potential if we were to effectively change the approach of the e-disclosure system to think about all of this information as structured data, so that we can compare across years, we can compare across an individual profile, but also across

categories of declarants. So, for example, if you were to look at civil servants on level, say, 11, you would expect a relatively similar financial profile for most individuals. They earn the same amount, you maybe want to take into account how many years they have been at that level or figures like that, but you would have generally most people would fall in a very similar bucket, similar financial circumstances.

Within that context, if you find an individual that has, you know, two or three times as much wealth as the
10 person who works in the office next door to them, you might start raising questions like that. And something like this is potentially quite difficult to do manually. If you, as an ethics officer, are reviewing, say, 800 disclosure forms within your department, I doubt you would be able to remember everything and to manually be able to go through those forms and to make that kind of comparison.

And so I think it is one of the important benefits of a digitized system that is currently unrealized. So one of the functionalities that the system has currently is its
20 integration with the national traffic information system, the Companies and Intellectual Properties Commission for a company's data and the Deeds office for property. So it is an important starting point to be able to verify what a person has disclosed and what are on the official records to determine whether the two of those add up, right.

Currently it is not automated. So this information is pulled into the e-disclosure system and then the ethics officer themselves will have to look, the person declared this, on the official records we have this, and then determine whether this is correct. Again, this is something that can very easily be automated and immediately throw out red flags if there are these kinds of discrepancies. Ja, I think that covers most of the issues.

ADV CHASKALSON SC: Can I just highlight one point that
10 I think you made, but I just want to clarify I did not misunderstand you. You said earlier that in the e-disclosure system, it will automatically populate all of the line items with your last year's disclosure. But if I understood you just now, you were saying what the system does not do is flag discrepancies between this year's disclosure and last year's disclosure. So it has the information, but it does not do the automated comparison.

DR SCHOEMAN: That is my understanding, that is correct. So unless an ethics officer or an official from the Public
20 Service Commission that is reviewing these declarations and doing the verification, unless they were to go to an individual's previous year's disclosure, the system would not automatically pick that up. The only red flags that they currently have in the system is around other remunerative work and gift declarations.

So the e-disclosure digital architecture includes a gift registry and includes a section where one would upload the documents showing that they, that their other remunerative work was approved. If the person mentions outside work on their financial disclosure form, the one type of verification, automated verification that the system will do is to see whether a file is found within the register for other remunerative work. So the current system has very limited red flags, automated red flags, for detecting these

10 kind of anomalies.

ADV CHASKALSON SC: Then the next point that you make in relation to deficiencies in the current framework relating to financial disclosures, the absence of public access to financial disclosures, that is paragraph 24. Can you explain, well, can you explain the logic of your highlighting this point?

DR SCHOEMAN: Sure. So I think one of the things we have to recognize in an open democratic society is that civil society is a fantastic resource for public accountability and

20 making these kinds of disclosures public has enormous potential to support the verification process. Currently we are relying on individuals within line ministries to verify these disclosures. It is a very small cohorts of individuals.

But if we were to, if one were to make these disclosures publicly available, immediately you have much

more public interest. You have civil society organizations that would be supporting the verification process themselves and this has the potential to turn up, for example, complaints. If I know my neighbour is a civil servant and every month I see them driving a new car, I can go look at their public disclosure form online, determine this seems a bit odd, and submit a formal complaint to somebody to say that maybe they should investigate this.

So I think there are enormous benefits to public
 10 disclosure for broader kind of accountability and for supporting the verification of the system. In the current financial disclosure frameworks, so to speak, beyond the public service, currently members of parliament have their forms published publicly. I think it is a good example where we already see civil society taking that one step further.

So currently I believe it is the parliamentary monitoring group that they themselves have distilled this information into a website so that you can see from year to year what a member of parliament disclosed. And that also
 20 creates new kind of potential for civil society organizations themselves to develop you know, automated verification tools to be able to hold people accountable and so the idea of public disclosure, it is not foreign in South Africa. It is something we already do in isolated cases.

In the local government framework, there is

discretion to make financial disclosures public and so evidently this is something that would be possible within our legal framework. And I mentioned in the report, I mentioned two examples and they are, you know, representative of the ways many countries do this. But I mentioned, for example, Ukraine that publishes the declarations for nearly 800,000 individuals. Now, can you imagine if a handful of ethics officers had to verify 800,000 declarations themselves, it would take an extraordinary amount of time.

10 And using the, as I mentioned here, leveraging the public more broadly to hold their neighbours accountable, for civil society organisations to look into these disclosures, we start outsourcing the kind of verification and start strengthening the verification measures. And it is not necessarily that you have to publish every detail of the financial disclosure form.

So I mentioned here the example from Sri Lanka and from the Anti-Corruption Act that was recently adopted, where
20 these disclosures are published in a redacted form. So you would say that they own a property in this city for example, or they own this make of car, but you do not necessarily say the address, you do not say what the registration number of the car is, et cetera.

So you can find a balance between public access

and an individual's right to privacy. And the same applies when we speak to the issue of family members. So it is something that you will see in many cases that in cases where you require an individual to disclose the interests of their immediate family members as well, that those disclosures do not necessarily have to be made public because that then respects the privacy of the individuals that are outside of the public service.

But I think one of the common concerns around this
10 is what does the legal framework for this look like and whether you would be violating the rights of a public servant, their right to privacy. But one of the things we have to understand, even POPIA, the protection of information, personal information privacy, it recognizes that there are legitimate circumstances in which privacy can be restricted and it specifically talks about corruption and corruption investigations. And in many countries what they would do, it is part of your conditions of service, that you have to abide to certain code of conduct, to certain ethical
20 requirements and this kind of public disclosure would merely be part of those requirements as your conditions of service as a member of the civil service.

CHAIRPERSON: I actually wanted to ask a question that relates to privacy concerns, but in a slightly different context. You touched on it in the context of disclosures

being made public. My question relates to the instance where disclosures would have, as you touched on this before, would have to be extended beyond the official consent, for example, even to family members. So I thought before you touched on the privacy concerns, I actually thought of those because even your immediate family members are not you, the official. So there would naturally be privacy concerns there and I thought in South Africa there could possibly be constitutional issues around it, not
 10 that this would necessarily not be surmountable.

For example, we have section 36 of the Constitution which says there may be justification for the infringement of rights.

DR SCHOEMAN: Ja.

CHAIRPERSON: But at the stage when you first introduce this say through an act of parliament, you may not know whether the courts will ultimately say that this is justifiable. I just thought of raising that and maybe find out whether you have some experience in other countries about what
 20 has happened in this regard.

DR SCHOEMAN: I think that is an entirely fair question. But I think the way that you framed it, you know in terms of the constitutional requirements, it does recognize that there are instances in which these rights can be limited. And framing this within the context of your conditions of service

as a member of the civil service, for example, or an individual working in the public sector, creates a limited, creates a limitation on the infringement of these rights to privacy. If we were to ...[intervenes].

CHAIRPERSON: Oh, I am very sorry to interrupt you.

DR SCHOEMAN: Ja.

CHAIRPERSON: Your answer relates to the official's conditions of service.

DR SCHOEMAN: Yes.

10 **CHAIRPERSON**: The members of your immediate family are not employees, so this would not apply to them.

DR SCHOEMAN: Yes, that is correct. And then this is why we are saying in the Sri Lanka example that you often have redacted sections where you would not extend this necessarily, the public disclosure requirements to family members that are outside of the public service to respect their privacy.

CHAIRPERSON: I am talking even outside of public disclosure. I am talking about, you remember much, much
20 earlier, you said for effect, you would have to extend the disclosures to, for example, members of one's immediate family, meaning there should be disclosure even by them, as I understood you. So that has nothing to do with public disclosure. It is more them also disclosing.

DR SCHOEMAN: Ja.

CHAIRPERSON: Not necessarily publicly. Do you get what I mean?

DR SCHOEMAN: I follow.

CHAIRPERSON: And that is where my privacy concerns arise.

DR SCHOEMAN: I understand the question now. So it is the initial requirement for a family member to disclose, and I think that is a fair question. I do not think I would be able to confidently speak to, you know, what this would look like
10 in the South African context. I cannot pass a strong legal opinion on whether that would be allowed, but in international practice, I think it is something that you often find and I think there is a strong argument to be made for why it is relevant in the South African context.

CHAIRPERSON: And I would not criticize you. I would also not be able to venture an opinion as to what the courts might hold in this regard. Thank you. Thank you very much for that.

ADV BALOYI SC: May I just ask, having looked at the civil
20 service or the public service in general, but also the SAPS in particular, is it a case of, are you aware whether there has been, there is conversation about making these disclosures public and if there are such conversations, what has been identified as the constraints, why it is not happening?

DR SCHOEMAN: I have not yet come across a case where there is anybody within the government framework that is actively pushing for making these disclosures public. I am sure that people would have the same kinds of concerns around the right to privacy, you know, whether that is publicly available or you know, family members, et cetera. But as far as I can tell from discussions that I have had with various members and various parts of the state apparatus that deals with these kinds of issues, I have yet to come
10 across somebody making an active effort to introduce public disclosure.

ADV CHASKALSON SC: But can I just clarify that you do make the point, first of all, that parliamentarians have to make public disclosure. So the declarations of parliamentarians are made public. And you mentioned that the municipal legislative framework allows a municipality to decide whether they want their, I imagine council members as opposed to officials to have their declarations made public. Do you know how many municipalities have done
20 this?

DR SCHOEMAN: It is very difficult to have reliable information on this, but what I have seen some of the limited studies into this, it is not a function that, it is not something that many municipalities apply. And I think, you know, for obvious reasons that they would be concerned

around, you know, disclosing these. And the reality is in many cases when this kind of discretion is left to the individual, you will always choose to keep your information private and it really is something that should rather be compelled for the public good in the end.

ADV CHASKALSON SC: Can I ask one last question before we leave this topic. Speaking to the Chair's concern, do you know if the public disclosures of members of parliament extend to family members or are just limited
10 to the member themselves, the members themselves?

DR SCHOEMAN: I do not believe it extends to family members, but I stand under correction. I am not as familiar with the requirements for members of parliament. I know the public service framework and this is the same framework that applies to SAPS who have adopted the same requirements, but members of parliament I am not as familiar with.

ADV CHASKALSON SC: We can investigate that separately. Chair, we have some way to go, so we passed
20 11 o'clock long ago.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: I think it would be a convenient time to break for tea.

CHAIRPERSON: Let us break now and come back at 11:40. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. Just a couple of, well, not, one housekeeping matter. Over the break, we have printed out the extract from the 2022/2023 SAPS report that Dr Schoeman quoted about internal SAPS attitudes to professionalism and integrity and the like.

CHAIRPERSON: Is that the document with the blue strip at
10 the top?

ADV CHASKALSON SC: It is. Can I suggest we just paginate it from 493 at the end of the existing exhibits bundle.

CHAIRPERSON: As I always do, I rely on the attorneys to have mine where it should be.

ADV CHASKALSON SC: And then, picking up on the question that the Chair put to Dr Schoeman before the break, in one of the StAR reports that is in the bundle, there are two helpful tables which show how many jurisdictions
20 require the disclosure of family members' assets and also how many jurisdictions make disclosures publicly available. They are at page, the first one is at page 168. And there is a bar graph at the top of that page, which shows that, we are just having problems with the display at the moment. Chair, can I just ask if we have a minute just to try and sort

this out, because we will not be able to display anything. It is not, but this is a particularly important document that there will be other reasons to display it.

CHAIRPERSON: We will go out and you will indicate when you are ready. Let us adjourn.

ADV CHASKALSON SC: Thanks, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV CHASKALSON SC: Apologies, Chair.

10 **CHAIRPERSON**: No problem at all.

ADV CHASKALSON SC: So what we see at page 168 is that in relation to required disclosure of assets of family members, in low income countries, 38% of countries require such disclosure, in lower middle income countries, 79%, in upper middle income countries, 85%. What is interesting is when you get to high income countries, they are more concerned about hiding their family members assets. It drops to 51%.

20 At page 235, we have two tables which deal with the requirement of public disclosure, and the first is by region, and the second is by income category. So if we look at the first table, figure 6.2, the higher income OECD countries, 97% require public disclosure. Europe and Central Asia, 71%, Asia, 55%, Sub-Saharan Africa, 38%, Latin America and the Caribbean, 30%, Middle East and

North Africa, 27%.

And in relation to income categories, high income categories, disclosures required in, we do not see fixed percentages here, but it is over 80%, upper middle income in just below 50%, lower middle income also just below 50%, low income, just above 30%. So there certainly is a fairly widespread comparative precedent both for requiring disclosure of family members' assets and for making disclosure publicly available.

10 **ADV KHUMALO SC:** Mr Chaskalson, the date of this report it is as at when?

ADV CHASKALSON SC: For that I am going to ask Dr Schoeman to help. It is the, we will get a date. It is, Dr Schoeman ...[intervenes].

DR SCHOEMAN: It is 2017.

ADV CHASKALSON SC: 2017?

DR SCHOEMAN: 2017.

ADV CHASKALSON SC: Yes.

ADV KHUMALO SC: So, it is 9 years ago.

20 **DR SCHOEMAN:** That is correct. And I am sure we have seen progress since then.

ADV KHUMALO SC: The numbers may have improved or become worse.

DR SCHOEMAN: Absolutely.

ADV BALOYI SC: Sorry, I see at page 168 and I really, it

is where my eyes fell, so the very first paragraph after the table speaks of information not only from public officials but also from relatives. Do these statistics include members of the public service as in employees, at page 168 and 235?

DR SCHOEMAN: So this would be the filer. So ...[intervenes].

ADV BALOYI SC: This will be?

DR SCHOEMAN: The filer. So the declarant effectively, who in most instances would be either an elected official, a
10 member of the civil service, et cetera. So it would be public sector employees and their family members.

ADV BALOYI SC: Okay. And you say that because definition of public official includes a public sector employee. Is that why you say so?

DR SCHOEMAN: That is correct.

ADV BALOYI SC: Okay.

ADV CHASKALSON SC: Just to close off on the disclosure or the disclosure form issue, in paragraph 25, at page 22, you describe the knock-on effects of the weaknesses of the
20 disclosure form. It is an issue you have already addressed, but if you can just read what you have said in paragraph 25, because it is a foundational issue, the form.

DR SCHOEMAN: Sure. So let me read it verbatim so we can get this correctly. So paragraph 25 says:

“Collectively these gaps extend beyond

the disclosure form itself, hampering the efficacy of the whole integrity system that depends on it. Declarant can comply fully and honestly with every requirement of the current form while still holding substantial undisclosed wealth through a family member, exercising undisclosed control through a company, through a nominee arrangement, or accumulating assets whose origin and timing cannot be tested against legitimate income.”

The next paragraph says:

“As conflict of interest management and lifestyle review processes rely on the information the form generates, these design flaws are not confined to the form itself. Without amendments to the disclosure form, the impact of the integrity management framework is limited regardless of how well downstream processes are administered.”

ADV BALOYI SC: Before you move off that, speaking to the earlier discussion with Mr Chaskalson about striking a balance between getting a form or a disclosure mechanism that gives you meaningful and useful information and

balancing that with not overly burdening the requirement on the declarant because of the problems that you have picked up if it is overly burdensome, are you able to refer or have you considered what you would say are best practice jurisdictions in a way you say these seem to have struck the right balance that we can reference?

DR SCHOEMAN: I think it is an excellent question. And so the package that we have shared, this goes into a lot of those questions of looking at good international practice, 10 the graphs we have just shown on what the kind of standard approach is to specific issues. So a lot of those would be considered in these additional documents to understand exactly what good practice is internationally.

But I think an important point to emphasize is that it always has to be context specific and driven by the issues that a country faces. So the first graph that we looked at on the question of family members, we saw, for example, that in high income countries they do not have this kind of disclosure requirement and that might be the case because 20 the level of corruption and the kinds of challenges that they deal with do not necessarily warrant that kind of level of disclosure and invasion of privacy. And so these issues should always be tailored to your specific context, to your specific challenges, the scale of the corruption issue that you have in a country.

One of the documents that we have included in the package, it is titled, let me confirm that for you so I get it right. It is number 8. It is the StAR document, it is titled:

“Asset and interest disclosure: A technical guide to an effective form.”

And this, I think it sets out a really good explanation of the best practice guidance on what a form could look like on the specific variables consider the types of information that one should think about. It is a very
10 maximalist approach. So this particular form will, and the explanation accompanying it, will include every type of imaginable type of asset that somebody might declare. There is even mention of things like intellectual property rights, which might be relevant in some jurisdiction.

So it is very, very expansive, this example. But you would have to tailor something like that to the South African context to determine this does not make sense, we do not necessarily have to worry about that. But I think that there are some universal principles that I think make sense in
20 every jurisdiction and I think questions around beneficial ownership, the family member question, I think are particularly important and I think are very relevant to the South African context.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: Can I also just ask you to speak

specifically to the StAR document that looks at financial disclosure in South Africa, which is a document that possibly, I mean, a lot of it highlights the problems of our form, but it is looking at a form in the context of our specific country. It is published a couple of months ago, May 2026, and it is at page 311.

DR SCHOEMAN: So this is a document titled financial disclosure form and e-disclosure system of South Africa. This was an assessment conducted at the request of the
 10 Department of Public Service and Administration to both look at the form as well as the e-disclosure system and how it functions currently. So effectively what we have done in this report is the earlier documents I mentioned around designing an effective form to apply similar principles to the South African context to assess the current form against these international standards and good practice to determine what are some of the omissions in the South African context currently that should be considered and some of the priorities.

20 So what I have done in the base document, the main notes, is to really identify the most important issues that frame the overall context and challenges, but the second document on page 311, this gets into a lot more of the technical nitty gritty according to each disclosure category to say these are the two, three additional pieces of

information that one should ask about, for example, your property, your vehicle, et cetera, to have a more full form. And so this is I think when one considers, you know, recommendations for a form or what this could look like in future, I think there is a lot of kind of more in depth technical guidelines that we have prepared to share our recommendations tailored to the South African context.

ADV CHASKALSON SC: If we move off the form ...[intervenes].

10 **CHAIRPERSON:** We should, oh, sorry to interrupt. We should not forget that Dr Schoeman was to read the whole of 25 and I assumed even the subparagraphs. But please continue with your point, Mr Chaskalson.

ADV CHASKALSON SC: No, we have actually reached the end of 25 yes.

CHAIRPERSON: I must have been asleep. Apologies.

ADV CHASKALSON SC: But to move off the form itself and then to the institutional and operational framework, assuming you get the form right, you still need an
20 institutional framework that will respond to the information in the form and this is the issue that you addressed from page 23. And maybe if you can ...[intervenes].

CHAIRPERSON: Let me ask a question that I think goes to witnesses and which I think is relevant to what you have dealt with already. Some officials can be quite astute in

hiding their wealth and can fill in their disclosure forms in such a manner that no suspicion is raised. In such a case and absent blanket lifestyle audits, what would trigger a review that may culminate in a lifestyle audit? I am asking this because it is crucial that such officials should not fall through the cracks.

DR SCHOEMAN: It is a very good point. So in the South African context, but also in international experience, one of the issues that can trigger a more substantive investigation
10 such as a lifestyle audit is, for example, a whistleblower complaint or say an interdepartmental complaint that they suspect that there is maybe something suspicious happening with an individual that might warrant a more substantive investigation.

But this is also a core part of the verification process and why verification is so important. An official may lie on their disclosure form and we would want to detect that and part of the reason why I focus so much on the e-disclosure system and the question of integrations
20 with existing databases is around how we can effectively measure the disclosures against the truth and verify that it is accurate and what they state there is correct.

So in that verification process, if there are either discrepancies that come out that might warrant investigation, but beyond that, good practice is to also

consider additional investigations like that or complaints that may arise, or you might, in a case where you verify a disclosure and it is entirely correct, but there are some red flags that raise suspicions and it might be a case of somebody having a very large financial means that you might question why is that the form is entirely correct, but why is this person able to afford so much?

Maybe that is something that then warrants further investigation and so you can use a risk-based approach.

10 We touch on this in the same document I mentioned previously on the e-disclosure system around using a risk-based approach to determine where to prioritize your resources for these kinds of reviews, for the lifestyle audits. And in a context like that, you can identify certain priorities. So you say, for example, if somebody is in the senior management service, that is a high risk function. If somebody is in supply chain management or a financial officer, that is potentially higher risk and so we should apply more scrutiny.

20 But you can also, using kind of an algorithmic approach, you can say if somebody has a certain type of asset, for example, cryptocurrencies, we might consider that being high risk. If we were to reach a point where you start applying, for example, machine learning, you might start learning specific profiles where, based on past

experience, you know that if a disclosure form looks a certain way, they have these types of assets or they have this level of income beyond their means. That is a classic example of, you know, a high risk situation. So we can reach a point where you start taking into consideration these additional indicators to identify red flags that then might be the basis for triggering a more intensive investigation or audit.

ADV KHUMALO SC: Mr Chaskalson ...[intervenes].

10 **CHAIRPERSON:** Thank you. Thank you.

ADV KHUMALO SC: I have a question that is directed at you. I do not know if Dr Schoeman is able to answer. To what extent does the current system where senior officials get the security clearance, to what extent does it look at assets and ownership and interests in things outside of your normal employment? To what extent does it cover the very concern that Chair raises?

ADV CHASKALSON SC: I cannot answer that question because I do not know the details of it. It is supposed to do
20 some form of lifestyle audit. The details of what is done, we have not yet established, but we will.

ADV KHUMALO SC: Okay. And then, Dr Schoeman, my follow-up question is, is there any reason why, in respect of the senior Generals, there cannot be this external verification of the disclosure forms? So something short of

the audit, because it costs 30,000 to 50,000 per individual, but all the forms submitted by senior Generals, they have an external verification mechanism to look for those things that Chair says, you know, they might complete it, but leave out a lot of detail that makes it difficult for an ordinary person to see that actually this is not a full disclosure.

DR SCHOEMAN: I think this is a very good question. So the way these disclosures are currently verified for the SMS is through the Public Service Commission. So there is a
10 program that leads on anti-corruption and integrity, and there is a unit that would do all of the verifications for the senior management service across the public service and they would be your first line of verification that would look at the forms.

think the challenges that you mentioned, that this does not necessarily lead to anything right now, I think it is twofold. I think that the first challenge is, as I have mentioned, some of the gaps in the disclosure forms and how that leaves some deficiencies in areas that we might
20 miss the blind spots. I think the second aspect of it is I think the current approach is largely about assessing compliance. Have people submitted their forms? Is it verified that the property that is mentioned is the same as the Deeds registry? Is it the same as the NATIS system? Is it the same as the companies record? So I think the

current system in its approach is not yet geared up to more substantively identifying the red flags that one would need to consider to determine whether more substantive investigation is necessary.

And I think that is also, and I speak to this in the weakness of the institutional framework, I think it is also an issue of what kind of capacity we are using to verify these disclosures. So I mentioned within line ministries it is an ethics officer, in the Public Service Commission they have
10 this unit that verifies these disclosures. But it is not necessarily that these people are investigators or have, you know, strong training in anti-corruption and that is not to say that they have no training. I know that they do, but the kind of capacity that is needed for properly verifying these disclosures and for turning, you know, red flags into an investigation, I do not believe is there just yet and I think that is reflective in the results that we see that all of these forms are verified and it turns up nothing.

ADV BALOYI SC: I am sorry, are you carrying on from this
20 topic?

ADV CHASKALSON SC: Well, I am going, it does link to that topic, but ...[intervenes].

ADV BALOYI SC: Please go ahead.

ADV CHASKALSON SC: But it is leading into a whole new section, so I think ask your question.

ADV BALOYI SC: Let me ask my question then. The e-disclosure system, you have stated that it pulls data from the two systems, the three, I think you say CIPC, the NATIS and the Deeds office for verification. Now, I am mindful of the shortcomings that you say come with manual verification. What you have not listed and maybe suggested is whether it should not be able to pull data from the SARS system. Part of the things that I am concerned is that you get these indicators of wealth and income and then it seems
10 the most obvious question is why has SARS not picked this up? Is there a reason that this cannot happen, the same cannot be done with the SARS system?

DR SCHOEMAN: I think it is a very good point and this is something that I have definitely heard people speaking about in the public sector and it is one of the issues that people think about often and how that same kind of competency and systems and capability that you find in SARS, whether that could be applied to financial disclosures. The challenge of translating or using SARS'
20 existing resources is that SARS has, in terms of its mandate, it is very restricted in disclosing taxpayer information and that creates certain limitations.

But the data that they ultimately use that financial institutions are required to report to SARS, you can equally apply those same kind of standards to the financial

disclosure function. And in fact, I understand the Financial Intelligence Centre that there is a bill that has been, I think, I believe it is still being tabled for comment, that suggests that the FIC might have a future role in providing the data needed for financial disclosures. So I think that is a very positive development and it is a space where I think it is very important to start filling in those gaps of what kind of data is needed to properly and fully verify these disclosures.

10 **ADV BALOYI SC:** Thank you.

ADV CHASKALSON SC: I think building on your answer to Commissioner Khumalo's point, you deal at paragraph 26 with weaknesses in the current institutional framework and how this sort of process of verifying disclosures is dealt with in other jurisdictions, and maybe we can pick up there and go through the problem of [audio dip] framework as opposed to the disclosure form itself and how that might be improved upon.

DR SCHOEMAN: So let me read paragraph 26.1 because it
20 sets out very clearly what the current system looks like, particular to the public service. So it says:

“In the current framework ...”

So, this is the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit in the Department of Public Service and Administration.

“... sets the policy, framework and provides oversight. The Public Service Commission verifies financial disclosures and identifies conflicts of interest, which are then referred to line ministries. Ethics officers within line ministries conduct lifestyle reviews and verify disclosures below the SMS. The SIU proposes to lead lifestyle audits for all public entities, or this function is performed by external contractors. And any findings coming out of that are then referred either to SAPS or the Hawks for the criminal investigation or to the individual line ministry for disciplinary action.”

And I ...[intervenes].

ADV CHASKALSON SC: Can I just stop there just to clarify. You say the SIU proposes to lead lifestyle audits for all public entities, Would that be for all individuals at SMS level within public entities come what may, or would it only be for those whose lifestyle reviews have thrown up red flags? What is the proposal, because the ethics officers verify disclosures below SMS, Who deals with SMS's, which would be the Generals to whom Commissioner

Khumalo was speaking.

DR SCHOEMAN: So currently within the Public Service Commission, they will verify the SMS, the financial disclosures. The proposal from the SIU, and I am hesitant to speak fully on their behalf, but effectively what they have proposed, and they have said this quite publicly, is that they would want to reach a point where there is a blanket proclamation that allows them to conduct lifestyle audits across the public sector, and that would then get around
10 this current complexity around seconding officials to individual ministries to conduct these audits for them.

ADV CHASKALSON SC: And of course if there were that sort of proclamation, then they would be acting as SIU with the powers, the information gathering powers that the SIU Act vests in them.

DR SCHOEMAN: I believe that is correct. So as I mentioned before, under these secondment arrangements, effectively they function as if they were a member of that department rather than an SIU official.

20 **ADV CHASKALSON SC**: Sorry, I have taken you away from 26.2, but I think it is important to get to 26.2.

DR SCHOEMAN: Absolutely. So in 26.2, I effectively frame the same point from the previous paragraph to say that in most international examples, this kind of function would be in a single entity. And in South Africa, we have

dispersed the same function across many different institutions that have a small part and small role to play in implementing the system, and this is only in the case of the public service, SAPS, et cetera, which follow the same framework. And that is also within the context of how we kind of have these different standards for elected officials, for local government, et cetera. And so I believe at a later stage I mentioned the example of Botswana, but there are many other examples of this where this kind of preventative
10 function is within a dedicated anti-corruption agency. It is seen as a single, cohesive function because all of these different aspects of collecting disclosures, of setting the form, of verifying, of doing the follow-on investigations, all of these go hand in hand.

And when you have this long chain of handing over responsibility effectively from one official to another or one institution to another, you risk breakdowns in the chain if any of those institutions cannot follow through on their specific function, but you are also dispersing capacity
20 across all of these different institutions. And so the kind of line of sight and responsibility for this function starts getting a bit muddled and starts getting a bit lost on who exactly is responsible for this, who do we hold accountable if the system is not functioning, because currently it is so widely dispersed.

Later I speak to the benefits of having such a function in one entity around pooling resources, having consistent standards, developing the right kind of capacity, having the right access to databases, for example. If we speak to the issue around privacy concerns, for example, if one were to introduce access to individuals' financial records, would we be more concerned if there was a dedicated anti-corruption agency that had access to these records, or if, I think it is 42 national departments and 97
 10 provincial departments, if each of them had a unit with access to these financial records and these kinds of privacy violations?

So the reason why I mention that is that I think it is important that whatever entity has this kind of responsibility, they need to have a level of accountability, they need to have access to the right resources, they need the capacity to perform this function correctly, because as I have stated throughout, this is a whole value chain that connects to one another, and as soon as you have
 20 weaknesses in one area, it starts collapsing.

ADV CHASKALSON SC: Now, just to pick up on that point, you mentioned it at, in fact, in your statement, as opposed to your report, that you have done research for the National Anti-Corruption, is it NACAC, I forget what the second A stands for, the ...[intervenes].

DR SCHOEMAN: The National Anti-Corruption Advisory Council.

ADV CHASKALSON SC: Advisory Council. Now the NACAC report has recommended the creation of an office of Public Integrity. Now presumably if that recommendation is ever implemented, one of the functions of that office would be the centralized administration of disclosure form assessment and investigation flowing from disclosure forms. Would that be correct?

10 **DR SCHOEMAN**: So let me back up for a moment and speak to the work with the National Anti-Corruption Advisory Council, NACAC. So we, I had engaged with NACAC over the course of their term, so they were appointed in 2022, I believe it was August, they ended their term August 2025 and so we had relatively light level discussions with them for a long time, up until the last six months or so of the council's term, at which point their ideas started crystallizing around what this office of Public Integrity would look like.

20 And in our discussions with them, I think it became clear that I do not think that they had fully considered the financial disclosure function as being part of the preventative architecture or something that should be considered within a dedicated corruption prevention agency. And so upon realizing that we had offered to write this

research report for them. I believe it is in the package, I cannot see it right now, but effectively, and this report was also published as part of the council's final report to the President, there is a section on corruption prevention, and we wrote this to basically explain what corruption prevention concept entails as a concept, and to identify some of the core gaps currently in the broader corruption prevention architecture.

So that goes beyond financial disclosure, it also
10 looks at corruption risk assessment, and kind of corruption proofing, so to speak, of going into entities, looking at their processes, why it is not working, what are the vulnerabilities, and then helping them to rebuild those institutions. And so I think with NACAC's final recommendations, I think by the point, at the point where we had gotten involved and shared our views on this potentially being a function for a dedicated agency, I think their recommendations were largely cooked already, that they had, you know, already had their ideas and plans, and
20 so we came in at a very late stage to provide this kind of recommendation that financial disclosures might be one of the areas to consider for our office of public integrity.

But I think it is something that makes a lot of sense to centralize this kind of function, to include it within the context of the broader corruption prevention landscape, and

we have provided some recommendations elsewhere as well on what we envision or what we recommend a dedicated corruption prevention agency could look like, and that would include functions around financial disclosure, conflict of interest management, on corruption risk assessments, it could potentially include vetting if that is something that makes sense within that context, and so putting all of these related functions into one entity so that you can pull these resources and ensure that there is line of sight and clear

10 accountability for corruption prevention.

ADV CHASKALSON SC: Now in paragraphs 27 and 28, you have already touched on most or many of the issues that you deal with there, which point to the problems of the current decentralized regime. Is there anything you would want to just amplify in those two paragraphs?

DR SCHOEMAN: So I think an important point to emphasize in paragraph 27, and 27.1 in particular around the role of ethics officers, that this is a role that has a dual mandate, both to advise on disclosures and to verify those

20 same disclosures, and so there is a potential conflict there in terms of independent scrutiny, and the reality is these are also officials who are based within the Ministry, and so these would be your colleagues that you are being asked to verify their disclosures to determine whether they are engaging in potentially corrupt conduct, right.

And I think within the South African context, the known issues around capture, around the victimization of whistleblowers, I think these issues raise significant concerns around having this kind of responsibility placed within line ministries. I think this potentially exposes them to significant pressure to look the other way.

The reality of, you know, being in a space where you are being asked to verify your colleagues' disclosures, I think is potentially quite a risky environment for these types
10 of officials. But the ethics officer role itself, I think, is important to emphasize that in many cases this is not necessarily your only function or your primary function. These are officials that are often designated to be the ethics officer in addition to their day-to-day activities, so they might be somebody who is a human resources practitioner who now also has this responsibility to advise on ethics, to do ethics training, and now to also verify these disclosures.

So the training that they are coming with would not
20 necessarily be on anti-corruption issues, and it might not be the case that they are necessarily fully equipped to be able to do this with the level of scrutiny that we would ideally want from something like this.

ADV CHASKALSON SC: Then in 28, again you make certain observations about the weaknesses of the current

system. Several of them you have already, we have already addressed, but 28.1 and 28.2 we have not. I wonder if you could read those.

DR SCHOEMAN: Sure. So 28.1 says:

“Once an official leaves the department, the jurisdiction of the ethics officer ends, meaning that an ongoing investigation can simply be evaded by moving to another part of government.”

10 And this is not theoretical. This does happen. And
28.2 says:

“Even in cases where the SIU is seconded to conduct lifestyle audits, their recommendations for further investigation or disciplinary action are ultimately given to the head of department to consider and take forward or ignore.”

 And this ties in with the final paragraph of 27 that
20 you will see at the top of page 25. Even with the ethics officers, they ultimately report their findings to the head of the department, so the DG, and further lifestyle investigation or disciplinary action is then at the discretion of the DG.

 So again, that potentially creates inconsistencies in

how we apply the rules and again can create challenges with conflicts of interest. It might be that this official themselves are implicated in the corrupt network and so again, I think it strengthens the argument for why you need some level of arm's length scrutiny, both to verify but also to later apply your sanctions to determine what kind of additional investigations are needed.

CHAIRPERSON: Although centralizing would probably be much better, but I already foresee the possibility of those
 10 coming from the central point being bribed by those who are being investigated or on whom the audits are being performed, with the result that nothing will happen, at least in respect of some individuals. That cannot apply to everybody across the board.

DR SCHOEMAN: I think it is a perfectly fair comment, and I think it speaks to some of the debates that we often have in the South African context around what anti-corruption architecture should look like. Is it one central agency? Is it a number of different agencies? And I think generally
 20 recognizing the history of state capture, I think that there is, in many cases there is acknowledgement that there is that risk, and that a more diffuse model makes sense.

But it is a more diffuse model where you have, we still have clear responsibilities to say that this is the entity that does investigations and prosecutions. With the

corruption prevention mandate, it does not necessarily have to go into that same entity that does investigations and prosecutions, but at least keeping all of your preventative functions within one dedicated entity I think has a lot of benefits in terms of a lot of the issues that we have mentioned so far.

And the one issue that I have not talked about is the effect on oversight. If we have to oversee the efficacy of this framework across all of these departments and
10 ministries, it is extraordinarily difficult. If we have a single entity that can report on the performance against these metrics, we have a much clearer line of sight of what is happening. We know who to hold accountable and in terms of your question on, you know, capture and bribery, these are things that can be insulated against, right, that we have certain integrity measures that are applied to people to ensure when we are recruiting people to a dedicated agency that we have vetted them, we ensure that the head of this authority has sufficient independence, et cetera. And so I
20 think those concerns around, you know, bribery, et cetera, it is equally applicable to any corruption function, right.

CHAIRPERSON: And I should not be understood to be saying this should not necessarily be a solution, not at all. Surely we must come up with solutions. We cannot throw our hands up. I am just raising it as a possibility and I am

by no means saying, uh-uh, we cannot go there, not at all.

DR SCHOEMAN: And I think it is a, to reflect on that, I think it is a good point that there are lots of different models that can work. But what I think we have to recognize is that the current model is not working and that is something that needs to change.

CHAIRPERSON: Ja, I mean, also, the reality is that wherever you have human beings, corruption always inheres and we cannot say let us not try to come up with solutions.

10 It always inheres, whatever the setup.

ADV BALOYI SC: Is there an, or what would be the argument or an argument against centralizing this function within the Public Service Commission?

DR SCHOEMAN: I really like this question. One of the challenges with putting all of these mechanisms within the Public Service Commission is that the Public Service Commission's mandate only extends to the public service. So if we want to apply the same levels of scrutiny, independence, and sanctions to, for example, elected
20 officials, to people within the Judiciary, et cetera, the Public Service Commission's mandate would not be able to perform that kind of function and so everything that I have been saying about the gaps, the weaknesses in the public services framework, I think that equally applies to the other sectors, right, elected officials, local governments, et

cetera.

And so what you will often find in many jurisdictions is that you have one consistent framework that everybody applies to and that everybody reports to the same entity and having that level of independence then really helps to apply the same sanctions consistently and that can then extend to your elected officials.

ADV CHASKALSON SC: The last big topic is sanctions and possibly, well, not the most important, I do not want to
 10 say it is the most important because they are all important, but it is a particularly important section. You pick up on that at page 26, and well, maybe if you can read paragraph 29 because it speaks to just a system that is not working.

DR SCHOEMAN: Ja. So I think paragraph 29 effectively summarizes a lot of what I have said. So it states that:

20 “The gaps in the financial disclosure forms requirements and the vulnerabilities of a weak institutional framework help explain why no misconduct or unexplained wealth has been detected among SAPS officials over the last 5 years. However, even if any discrepancies, conflicts, or unexplained wealth were to be detected, the policy framework for issuing sanctions against

officials lacks teeth. Again, follow-up is decentralized, creating the same risk of capture, of pressure by colleagues, or of officials themselves being involved in corrupt networks. This delegation of authority allows for inconsistencies in applying consequence management based on the individual discretion of heads of departments and hampers effective oversight across 42 national and 97 provincial departments. This undermines the persuasiveness of the regime as officials can get away with discrepancies even if detected.”

ADV CHASKALSON SC: You then speak to the limited nature of the sanctions in paragraph 30. And again, maybe if you can read paragraphs 30.1 and 30.2.

DR SCHOEMAN: Let me read 30.1. It says:

“Sanctions range from verbal warnings, written warnings, suspension without pay, or referral for disciplinary steps. Only a single dismissal has thus far been reported in the public service over the last 2 years.”

ADV CHASKALSON SC: So can I just clarify what you are

saying there, that in relation to disclosure issues, false disclosures on the form, refusal to disclose, failure to disclose, there has literally across the entire public service only been one dismissal in the last two years?

DR SCHOEMAN: That is correct, but I would like to extend that to say that this also includes your lifestyle reviews, your lifestyle investigations.

ADV CHASKALSON SC: So even when you have been disclosed, you have been caught out through a lifestyle
10 audit across the entire public service, one dismissal over the last two years.

DR SCHOEMAN: That is as reported by the Department of Public Service and Administration.

ADV CHASKALSON SC: Then you make the obvious point in 30.2 that the impact of a disclosure system is linked to the sanctioning regime, which has to be effective, proportionate, and dissuasive. You make the point that we made already that the SIU, when it is brought in to conduct the lifestyle audits, does not get the statutory powers to
20 gather the information. But you address the issue of sanctions more systematically in paragraph 31, and maybe if you can take us through paragraph 31.

DR SCHOEMAN: Sure. So 31 speaks to:

“Disclosure related sanctions are crucial
for compliance and accurate

submissions. If there are no sanctions for non or late submission or they are not dissuasive enough or properly enforced, compliance with the submission requirements will be disincentivized. Similarly, a lack of sanctions for false or incomplete disclosures will make the system ineffective and lose credibility in the eyes of declarants.”

10 So most countries have such sanctions in place, and they can take many forms, and I will speak to some of those potential sanctions. But overall, sanctions should be proportionate to the offense, and disciplinary action or fines may be more appropriate for minor offenses, such as late disclosures, while still providing opportunities for offenders to offer explanations for late or non-submission.

ADV CHASKALSON SC: So can I then at that point take you to one of the reports which has a survey of sanctions across the world for late disclosures and non-disclosures
20 and that is at page 349. And at 349, sorry, 351 is probably a better place to start because it is there in tabular form, which is if you are not paginated, it is at page 8 of the “How to Put in Place Effective Sanctioning Provisions for Financial” – do you have it?

DR SCHOEMAN: I have it.

ADV CHASKALSON SC: So if you, is there anything, I mean this table essentially speaks for itself. It tells you what the penalties in other jurisdictions are for late submission or non-submission. Is there anything you would like to highlight there?

DR SCHOEMAN: So maybe I can speak to the document first. So the document is titled:

10 “How to Put in Place Effective
 Sanctioning Provisions for Financial
 Disclosure Related Violations”

The subtitle being:

 “Note for South Africa.”

 And so this is one of those cases where we had prepared this specifically for the Department of Public Service and Administration to share guidance on what disclosure related violations might look like. The key point here being that this is a very important aspect of the system to ensure that you have these credible measures in place and so we have in this document, we have a few tables that
20 provide examples from different countries on what this can look like legally to very particularly specify, for example, what the offence is for non-disclosure or for late submission.

 And the reason why that is important is that it helps with standardization and it removes some of the issues

around the kind of discretionary nature of how to sanction an official if they have any kind of misconduct related to non-submission or late submissions.

In the current system, this would be an ordinary disciplinary process because we do not have the same kind of sanctions in the public service regulations. So you would be effectively held, you would be disciplined for not following the public service relations without the consequences or the scale of the consequences being
10 specified. So the effect of that is that as a public official, you do not know how you get punished or whether you will be punished if you do not comply with the rules.

I am less worried about submission and non-submission in the South African context because I think at the point where the system is now, there is a very high level of compliance and I think that is a very important first step to getting a system like this working. In some of the other countries where I work, I was in Botswana two weeks ago, I have a call with colleagues in Lesotho tomorrow where their
20 primary challenge still is to get everybody to submit on time.

We have reached that point where people are complying. We saw 100% compliance in SAPS, for example. So, and I think we should give credit to the various departments that are involved in this for getting to

that point of compliance. I think some of the other violations that we might want to consider I think is really where it starts getting very important to have the right kind of sanctions in place.

ADV CHASKALSON SC: Well, then let us move there because you deal with false declarations or incomplete declarations at page 28, paragraph 32. And there, the same document which we have been referring has a series of comparative sanctions in a table that starts at page 357.

10 Again, is there anything that you would highlight in relation to that table or the issue more broadly?

DR SCHOEMAN: Sure. So I think the main point to make here is from 357, the examples from around the world of what this looks like in terms of an offence. In many cases where you will find that false disclosure itself is regarded as a criminal offence and it is a relatively low bar to be able to prove that. You did or you did not submit the form in the first instance.

Incomplete disclosures I think is an important part
20 of that as well. What we mean by incomplete is effectively there are assets that you have not disclosed. So when we are in that verification process, we compare this to what we have on records elsewhere and we find a particular instance where you have not disclosed a vehicle or house. You might have opportunity to explain why, what those

discrepancies are. But currently we do not have any kind of criminal or strong disciplinary sanctions for if we do find some kind of a violation. We would just send that to a disciplinary process.

So in effect you have very little persuasive measures to deter people from submitting false disclosures. You know that if you were to lie on your disclosure form, perhaps the worst that can happen to you is that you go through a disciplinary process and it might trigger an
10 investigation coming out of that to start looking into the criminal conduct. And so I think it is a really important part of closing the loop on all of this to ensure compliance, to ensure that the forms are accurate as well, to support the downstream processes.

ADV CHASKALSON SC: You then in paragraph 33 get to the sanction that would really bite, which is asset forfeiture, and you describe broadly the prospect of asset forfeiture linked to disclosure regimes. Maybe if you can deal with what you say, you can address what, the issue that you
20 raise in paragraph 33, but I would like, if you can, also to link that issue to the unexplained wealth order regime that one sees in other jurisdictions. I am not sure if you are able to do so. If you are, that would be great.

DR SCHOEMAN: Sure, I can speak to this. So one of the common instincts is that where you have this kind of, where

you come across unexplained wealth, that this in itself, illicit enrichment, should be a criminal offense. The reason why I caution against this is you have to recognize that once you turn this into a criminal investigation, that then uses a certain amount of resources that is then being focused on proving criminal conduct for, merely just for unexplained wealth. And you can end up in a state where you put so much resources in just investigating this kind of crime that you lose sight of the bigger issues, the grand
10 corruption schemes, the issues that really matter and that are the most important.

So the suggestion here is that rather than going through a process where you need to criminally prove the unexplained wealth and then as a result of that get the confiscation order, a more efficient process would be to introduce legal mechanisms around non-conviction based confiscation. So essentially what you then have is the disclosure form as your first line of evidence. This is what an official has said they have.

20 If you do the verification and you uncover something that has not been listed, you have a very easy case to be able to say they did not disclose this. That was against the rules and then you would not have to prove the underlying criminal intent and so the evidentiary bar is much lower, but it has a much faster effect in terms of

sanctioning officials and therefore a much stronger deterrent effect.

And the second part of why I say this should not necessarily be a criminal offence is that I think we should also recognise that our court processes are sometimes much slower than we would want and clogging them up with this kind of offence to prove criminal conduct for unexplained wealth is perhaps not the best approach. And I think we can use, for example, the SIU's special tribunal as
10 an example of a civil process that is much more efficient at doing something like this for this kind of confiscation or penalties. And so my suggestion is rather to focus on these kinds of administrative or civil penalties for non-conviction based confiscation.

CHAIRPERSON: There is in existence a dispensation that is not pegged on specific crimes and, but it goes through the court system. It is not administrative and cases in that context are instituted by the Asset Forfeiture Unit. But although I do not remember the specifics now, I was last
20 engaged in those sorts of cases when I was still in practice. So it also gets rid of the need to prove a specific offence. But I think there should be some, if I still remember the criteria, there should still be some underlying criminality, but you do not have to prove a specific offence for forfeiture to then follow. Just a comment.

ADV CHASKALSON SC: Again, I am not sure, I mean, you must choose to answer this or not, but I mean if it is within your expertise. But it does, I mean, picking up on the Chair's issue, our asset forfeiture regime currently depends on some proof, albeit on a civil standard, of underlying unlawful activity. There are other jurisdictions that have created an add-on which is based on what are called unexplained wealth orders, where an authority can issue an instruction or an order for you to explain wealth that cannot
10 necessarily be directly linked to criminal activity, but cannot be explained with reference to legitimate income. And then those regimes make provision for forfeiture in the absence of a reasonable explanation.

It seems to me that in this context, a legislative amendment along those lines may well make a lot of sense, because if someone can legitimately explain the origins of their wealth, in circumstances where, well, you have the disclosure history, which you can point to and which might found good cause to issue an unexplained wealth order, if
20 someone can explain the wealth, you know, they may have a separate problem explaining why they did not disclose it. But if they can explain a legitimate source for it, then it will not be forfeited. But if they cannot, then it would be and that would be a huge, a very powerful sanction in this context. I am not the expert, I am not the witness, but

these are my views and I would be interested in your response.

DR SCHOEMAN: But I think you are exactly right. I think what you have just described, this is what I mean by a non-conviction based confiscation, that you would use the same kind of principles just as you have articulated. It might just be a different kind of wording to talk about unexplained wealth order, but effectively, as you say, this is something that you could measure against what has been disclosed. If
10 they cannot explain something, they can be punished on that basis.

ADV CHASKALSON SC: Well, it would not necessarily be punished. It would be the confiscation of wealth that cannot be explained.

DR SCHOEMAN: Ja.

ADV CHASKALSON SC: Now, from page 29, you pull together essentially your conclusions and the recommendations for change. Before we get to page 29, it may be useful just very briefly to go through the various
20 detailed reports, but not in detail, just to explain at a very high level what each of these reports that are attached in the bundle address, because at a later stage when the Commission has to look to recommendations, it should understand what issues are being addressed in each of these reports so that if it wants to look for a particular

issue, it knows where to look.

DR SCHOEMAN: Sure. Sorry, I should apologize to the Commission because this is a very thick bundle of documents that we have shared. I think in one of the cases it might be a full book. It is almost 150 pages. But I think it is an excellent resource and so what we have shared as part of the bundle is a combination of documents that look at these types of issues at a more global level. So I mentioned at the start of the hearing the stolen asset
10 recovery initiative and this is a group that have done a lot of work on understanding what this regime looks like internationally. And so there are particular kind of global research reports that have been shared in the bundle looking at things like what an effective form should look like.

There is a document titled “Getting the Full Picture on Public Officials” that sets out kind of a comparative standards across the board for the whole system and so the graphs that we mentioned on public disclosure of family
20 members, for example, those are things that are captured in this document.

ADV CHASKALSON SC: Sorry, can I just for reference purposes, “Getting the Full Picture” is a document that starts at page 122. Before “Getting the Full Picture”, we have got the document at page 82, “Asset and Interest

Disclosure, A Technical Guide to an Effective Form”. That is at page 82. Can you just briefly give a kind of one-minute explanation of what that document is trying to do?

DR SCHOEMAN: Sure. So the “Asset and Interest Disclosure” one on 82, this is the form or the document I mentioned that speaks to what a form, an effective form could look like. So this gives intensive details on all of the different types of categories. One might need to consider the specific information that is relevant within a category.

10 So I mentioned, for example, you know, beyond understanding that a person has a vehicle, you should know when it was acquired, through what financing means, et cetera. So this gives a lot more detail on what a form could look like practically.

ADV CHASKALSON SC: Then at page 271, there is the document “Automated Risk Analysis of Asset and Interest Declarations of Public Officials”. Again, can you just give a very brief outline of what is being addressed there?

DR SCHOEMAN: Sure. So this is another one of these
20 kind of global research reports that provides guidance on what an automated asset and interest disclosure system could look like and what kind of risk analysis one can perform. So it gets into some of these issues around fully maximizing the use of a digital system, potential red flags that one could look into that could be applied to the South

African system.

ADV CHASKALSON SC: And then 311 is where you start, where the document start addressing South Africa specifically. 311 is “Financial Disclosure Form and E-Disclosure System of South Africa”, and that is a document in fact that we have spoken to already, but just again briefly to summarize what it addresses.

DR SCHOEMAN: So this document serves a dual purpose. It both looks at South Africa's current form and evaluates
10 some of its potential gaps and areas that it can be improved, and then it looks at the e-disclosure system as well and provides some recommendations on how data should be captured on how you could fully automate some of the verification functions, how you could introduce the kind of automated risk assessment of declarants' profiles.

ADV CHASKALSON SC: Page 344, “How to Put in Place Effective Sanctioning Provisions for Financial Disclosure Related Violations, Note for South Africa”.

DR SCHOEMAN: So this one was prepared specifically for
20 the South African context to identify potential options for introducing sanctions mechanisms. So a lot of the issues that we have just discussed, but it also provides a list of international examples, drawing on their laws to give examples of what this can look like within a legal framework.

ADV CHASKALSON SC: Then on 364, a short document entitled “Reform of the Financial Disclosure System in South Africa”.

DR SCHOEMAN: So this is effectively, this was the first document that we had written looking at the whole framework comprehensively. So it is very short. It provides effectively just a summary of how the current system works and some of the initial shortcomings. So it is at quite a high level, and the documents that we have just mentioned I
10 think gets into a lot more of the technical detail on areas for improving. But this one, it is a bit more at the institutional level how the framework could potentially address some of the fragmentation.

ADV CHASKALSON SC: And then at page 369 there is a document that we have not touched on yet, which is called “Preventing and Managing Conflicts of Interest in the Public Sector”. It is a G20 document as I understand, or was prepared for the G20 Anti-Corruption Working Group. Can you briefly, and again briefly because this is another book,
20 describe what is being addressed here?

DR SCHOEMAN: Ja, so this document is something that was prepared in collaboration between the World Bank, OECD, and UNODC. So it provides a lot of good practice guidelines on some of the issues we have discussed today that extend a little bit beyond financial disclosure. So

looking at how you can go about preventing conflicts of interest, policies around receiving gifts, incompatibilities, and by incompatibilities I mean, for example, limitations on officials being allowed to run companies on the side, conducting other remunerative work.

There are other aspects around kind of pre- and post-employment that you might want to think about in terms of the kind of conflicts of interest that that can raise or misconduct and so it is, I think, a good guide in terms of
 10 some of the issues that one might want to consider within the broader corruption prevention framework, integrity management, that that goes beyond financial disclosure in a narrow sense.

ADV CHASKALSON SC: I mean, one of the issues that we have not talked about is that as things stand, the disclosure form itself seems not to address, or not tied to any sanctions relating to performing substantial work or deriving substantial income from outside your official employment. And are there, first of all, are there rules that you are aware
 20 of in South Africa that govern that? And second, what are international best practices in relation to senior public service managers and outside work or outside remuneration?

DR SCHOEMAN: Sure. So there is a few issues here and maybe let me start with the question of conflicts of interest.

So one of the ways that the disclosure form is used currently is to identify potential conflicts, and that then being primarily whether an individual owns a company or is the director of a company. And in the current system, the main way for verifying that there is no conflict is to determine whether that company is on the central supplier's database. So these are companies that procure, sorry, that get government procurements, that tender for procurements.

And this is one of those instances where there is
10 existing rules around incompatibilities. So I believe it is the Public Administration Management Act that introduces this restriction which effectively says that public servants of the public sector is not allowed to do business with the state. So this is one of the checks that is currently being performed to determine whether there are any conflicts of interest.

Coming to the question of SAPS, in the Parliamentary questions, there is this response where the acting Minister of Police mentions, I believe every year it
20 was around roughly 30 changes, potential conflicts of interest that were reported by the Public Service Commission among the senior management service. And effectively, in most of these cases, what it would be is that somebody owns a company. The Public Service Commission checks that against the central supplier's

database. It determines that they are not getting government contracts. They say that is fine. They then report that to the executive authority, that being the Minister.

So in terms of both the public service regulations and the SAPS' employment regulations, they are both very similar, that when it comes to potential conflict of interest, the authority rests with the Minister to determine whether this is a genuine conflict. So we need to, when we talk
10 about conflicts of interest, we need to recognize that there is a difference between potential conflicts that could become actual conflicts and we use the example of, you know, doing business with the state. That is an actual conflict.

Owning a company is a potential conflict that might, at a later stage, put you into a place where you find yourself having a very direct conflict between your official duties and your own private interests. And in cases where this kind of potential conflict arises, in terms of the relevant
20 regulations, the executive authority is supposed to appoint a panel of at least two persons to consider the interest and provide independent recommendations on what should be done.

It is, the regulations are a bit thin in terms of what the potential solutions are, so it leaves it open to

interpretation, to the individual line ministries to determine how to deal with those conflicts and how to manage them. What you will find in a lot of other jurisdictions is that they will set out the different kinds of measures so that there is a lot more consistency to say under these conditions, the individuals should divest from their interests or they should give up their position in the public service or potentially, you know, move to another department where the conflict does not arise.

10 So I think you need to be a bit more specific around how to manage these conflicts. But again, the same issues that we have with having these verifications, having the lifestyle reviews decentralized, the same issues apply to conflict of interest management. It is discretionary. There is little oversight in terms of how this is handled down the line. But then speaking to the question on international practice and what this looks like in many other places is that you would have much higher standards in terms of prohibitions on civil servants engaging in business, not just
20 with the state, but in business more generally.

 So if I can use Poland as an example, in terms of their regulations, a public sector employee is not allowed to hold more than 10% of interest or shares in a company and so that helps diminish some of those potential conflicts of interest.

In other cases like Japan, they have restrictions which means that as a public sector employee, you are not allowed to be on the board of a company. You are not allowed to be the director of your own company and so it creates much, kind of higher standards for what kind of outside interests you are allowed to have in the first instance. And there are a few reasons why you would want to do that. It is about maintaining perceptions around impartiality, around public sector integrity.

10 But it is also a question of how these outside interests can, I think (a), distract you from your core business. If you are doing other remunerative work or you have a company on the side, where is your focus? What does your day look like? How much time are you spending on these outside interests? But (b) also, what are the risks related to having these additional interests? Are they being used to funnel bribes and turn them into seemingly legitimate income? And I think that is one of the major risks around having these kind of these rules where you
20 allow individuals to have outside business interests beyond their public sector role.

ADV CHASKALSON SC: Thank you very much. We have reached, we have to end very quickly, and, because we have another witness coming after lunch, but your conclusions are really tied together from pages 29 to 33.

And I mean the conclusions speak for themselves, so I am not going to ask you to read those pages. But is there anything in there, if you had one last word, what would your last word be to this Commission? It can be more than one word.

DR SCHOEMAN: It is a big question. I think, so I think a lot of the recommendations we have already discussed in pointing out some of the weaknesses of the current approach. I think the main message I wanted to drive home
10 is that a lot of the fragmentation and weaknesses that we see in the current framework are a result of incremental attempts to improve the system.

If we use the example of the SIU trying to fill in this gap to conduct lifestyle audits through secondment arrangements, this is an interim measure. I think the use of the Public Service Commission as a verifying agency is also one of these examples of a somewhat interim measure and so I think the system in its current form has reached the limit of incremental improvements and has reached a point
20 where you need the more substantive overhaul of how these functions are dispersed, of what the mandate looks like, what kind of powers are needed.

And this is I think where it feels to me that the only conclusion, looking at the deficiencies and gaps in the current system, the only conclusion is a substantive

overhaul that involves some kind of a dedicated corruption prevention agency. Whether that is the model proposed by NACAC that builds on the SIU is open to debate. I think people can have views on what the optimal model is. I think they have some great suggestions, but I think that there is more detail around the particular functions that still needs to be refined to understand how to overhaul the system so that you have a more cohesive institutional framework.

And so that is I think the kind of closing point that I
 10 would want to drive home, that incremental improvements is just not going to be enough. This is really a major overhaul that is needed. Thank you.

ADV CHASKALSON SC: Thank you very much.

ADV BALOYI SC: Can I just ask a question? It may well be it is in one of the reports. We have not had the benefit of looking at these reports. Has the work that you have done for South Africa in particular gone so far as to identify, for example, where say these kind of, given the current regime, you would need these kind of legislative
 20 changes? I will give you an example. One of the weaknesses that you identify is in this fragmented arrangement that pertains now is disciplinary action, an investigation is done, a review is done, a problem is picked up and then it still must go to the head of department or human resources to make a decision whether to discipline

or not and often that is where things die. You know, they end that. We have seen some cases like that in a different context. And yet there are appropriate cases where that is prescribed by law as matters stand and so my question is from that context that have you gone so far as to identify what changes would need to, legislative changes in particular, would need to be in place to address some of the problems that you have diagnosed? Have you gone that far?

- 10 **DR SCHOEMAN**: So in many of the cases, the documents that I have mentioned that are written particular to the South African context, it is both a diagnosis of the challenges. It introduces the international examples of how such measures are implemented in other countries and will usually end with recommendations for what can be done. A lot of that is particular to, for example, like you mentioned, the sanctions issues. But we have also worked on our suggestions for what we believe a dedicated corruption prevention agency could look like and it builds on NACAC's
- 20 recommendations to add on some additional functions in terms of financial disclosure, conflict of interest management, et cetera. And that is something that can be shared with the Commission if that is something that you would like. If there are other areas that we have not covered, we would of course be welcome to, or happy to

provide additional details on some of the areas that I maybe did not speak to today.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: Just picking up on that question, very specifically, if you are going to share that material with the Commission, it would be very useful to ensure that all documents essentially flag legislative changes that would be needed, or existing legislative provisions that would have to be made subject to whatever is being recommended
10 so that we have a greater, a more detailed sense of what the existing legislative architecture is that would be affected by changes in this regard.

ADV KHUMALO SC: Mr Chaskalson, 367, this reform document, does it not address Commissioner Baloyi's question to some extent? It starts on 364, but the recommendations on 367 have the legislative changes that need to be effected. So for example, item 2 talks about considering adopting a stand-alone act that will replace piecemeal regulation and encompass essential elements of
20 the new disclosure system and then it sets out.

ADV CHASKALSON SC: I mean, it does in certain respects, but I mean, if one takes the specific question raised by Commissioner Baloyi, I doubt you could ever have a stand-alone act that would be that would deal with internal departmental disciplinary matters without engaging

with the existing legislative framework quite carefully. And it may be that the stand-alone act will not focus on departmental discipline, it will focus on criminal liability, asset forfeiture. But if it is going to engage departmental, ja, labour matters and disciplinary matters, there is a world of other regulatory legislation and indeed parliamentary legislation with which it might have to engage, which we do not necessarily have at our fingertips and I suspect Dr Schoeman would be more familiar with.

10 There will be another, I mean, we are hoping to have a witness from the Public Service Commission to come as well and also in part to respond to Dr Schoeman and that witness, of course, would probably have that legislation at his or her fingertips. We will make sure to raise it in advance. But I mean, the more guidance we get in relation to these sorts of issues, the better, I think.

CHAIRPERSON: The next witness that Mr Chaskalson referred to is, or rather, not a witness. The next testimony we are going to hear relates to Major General Khan and as
20 already directed or ruled, that is going to continue in camera. Let us adjourn. Oh, thank you very much, Dr Schoeman. You are the first witness I have forgotten to thank. Apologies for that. Many thanks.

DR SCHOEMAN: That is all right. Thank you.

CHAIRPERSON: And we resume at 9:30 tomorrow.

ADV CHASKALSON SC: At 9:30 tomorrow, yes.

CHAIRPERSON: In open session or ...[intervenes].

ADV CHASKALSON SC: Yes, in open session.

CHAIRPERSON: Let us adjourn and resume at 9:30 tomorrow morning.

INQUIRY POSTPONED TO 10 JULY 2026

INQUIRY ADJOURNS
