



OmbudsmanSA

# Ombudsman SA

ANNUAL REPORT  
2014 / 2015



# What does Ombudsman SA do?

Ombudsman SA investigates complaints about South Australian government and local government agencies, and conducts Freedom of Information reviews.

The Ombudsman can also receive information about state and local government activities confidentially from whistleblowers.

If you're not sure whether Ombudsman SA can help you, we are happy to discuss your matter further. If it is not under our jurisdiction, we will be happy to point you to another agency who may be able to assist.

Visit our website for further information about our services or to register a complaint directly online:  
[www.ombudsman.sa.gov.au](http://www.ombudsman.sa.gov.au)

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The Honourable President  
LEGISLATIVE COUNCIL  
Parliament House  
Adelaide

The Honourable Speaker  
HOUSE OF ASSEMBLY  
Parliament House  
Adelaide

It is my duty and privilege to submit the South Australian Ombudsman's 43rd Annual Report for 2014-15 to the Parliament, as required by section 29(1) of the Ombudsman Act 1972.

A handwritten signature in black ink, appearing to read 'W. Lines'.

**Wayne Lines**  
SA OMBUDSMAN



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# THE YEAR IN REVIEW

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# The Year In Review

## Acknowledgment

On 18 December 2014, I was appointed as the sixth South Australian Ombudsman. This then is my first annual report. From the outset I wish to record my thanks and appreciation for the enormous contribution made to the Office by Ms Megan Philpot, the former Deputy Ombudsman. Ms Philpot was appointed Acting Ombudsman upon Mr Richard Bingham, the former Ombudsman, resigning in June 2014 and she ensured the high standard of the Office's work was maintained. By the time Ms Philpot left in January 2015 to take up an appointment as the Victorian Deputy Ombudsman, she had given over 20 years of service to the Office. Her influence on the staff and the quality of the Office's work cannot be overstated.

I also acknowledge the service rendered to this state by Mr Bingham in his capacity as the South Australian Ombudsman for the previous five years. Mr Bingham set the direction and focus of the Office that remains to this day.

When I took up the appointment, I inherited a team of dedicated staff who understand and unreservedly support the Ombudsman's function of promoting good administrative practice by local and state government agencies and due credit should be given to both Ms Philpot and Mr Bingham for that.

Every staff member has provided invaluable support to me as I have acclimatised to the new role and I extend my sincere thanks to them for their patience with me and their steadfastness during a time of transition.

## Complaints

My Office saw a 10% increase in complaint numbers in the 2014-15 financial year. The table below sets out the volume of complaints received and completed during the year:

	Received	Completed
Government Departments	1882	1857
Local Government	932	875
Other Authorities	622	607
<b>Total</b>	<b>3436</b>	<b>3339</b>

In addition, the Office received 557 general enquiries about the Office and a further 5,427 approaches that related to matters outside of my jurisdiction. The number of 'out of jurisdiction' enquiries is down from 7,353 in the previous year. There is no obvious explanation for this, but it is notable that the Office received almost 350 more complaints this year than last year. This means that a higher proportion of approaches to the Office have been within jurisdiction this year.

There has been a steady rise in the number of complaints referred back to an agency to address. In 2014-15, 1735 matters were referred back to an agency; up from 1406 in 2013-14 and 1181 in 2012-13. This is in line with the growing expectation that agencies will have the capacity and the policy framework to handle complaints emanating from their activities and that ideally my Office should be the last resort for complainants.

20 of the investigations completed by my Office for the year resulted in adverse findings. These in turn resulted in 33 recommendations and, of these, 29 were implemented as at the date of this report.

## The Independent Commissioner Against Corruption

In addition to the above complaint and investigation work under the Ombudsman Act, my Office completed its first full year of work arising from the *Independent Commissioner Against Corruption Act 2012 (the ICAC Act)*.

The Independent Commissioner Against Corruption (ICAC) sought my view in relation to 44 proposed referrals and referred 30 matters to my Office for investigation. I completed 27 investigations; 9 of these resulted in adverse findings. The investigation of allegations of misconduct and maladministration under the ICAC Act now comprises a significant proportion of the formal investigation work of my Office. I note that most referrals related to local government and a significant proportion of those arose from allegations of breaches of the mandatory code of conduct for elected members. The ICAC determined to exercise my powers in relation to four matters raising potential issues of misconduct or maladministration.

The procedure between my Office and the Office for Public Integrity (OPI) and the ICAC has developed favourably in two important respects.





Firstly, the ICAC has delegated to the Deputy Ombudsman and myself his power under sections 54 and 56 to authorise disclosure and publication of information relating to investigations undertaken by my Office under the ICAC Act. This has had the effect of reducing the amount of correspondence between our respective Offices as I no longer need to obtain the ICAC's permission in individual cases to disclose or publish confidential information when I deem it necessary or in the public interest. It has also meant that the level of disclosure of information arising from investigations conducted by my Office under the ICAC Act is more consistent with disclosure of information obtained through Ombudsman Act investigations.

Secondly, the ICAC and I have been able to clarify that not every referral from him to me will require a full investigation, but in some cases it will be appropriate after assessing the information available or after making limited enquiries to advise that no further action is warranted. My Office has given that advice on several cases this year.

On 13 February 2015, the ICAC released a discussion paper concerning a review of the legislative schemes governing the oversight and management of complaints about police and the making of complaints to the Police Ombudsman, OPI and my Office. I provided a written submission and then appeared before the ICAC at a public hearing on 23 April 2015.

In terms of the handling of complaints about public administration, my submission made the following points:

- It would not be effective to have OPI as the central body for receiving complaints about public administration because an effective central body would require the capacity to carry out both assessment and investigation of complaints and OPI presently can only assess complaints about public administration and cannot resolve or investigate valid complaints at an early stage, whereas my Office already has the power and established processes to do both.
- ICAC's oversight of my Office is unnecessary because
  - › prior to the ICAC Act, my Office's performance was satisfactory and ICAC's oversight is not needed to fix a problem
  - › ICAC's oversight results in duplication of effort that does not add value to either Office
  - › my Office's true line of accountability is to Parliament and ICAC's oversight is inconsistent with this

- › ICAC and my Office are established for different purposes and each have a different focus.
- Legislative change would be required to reduce duplication and inefficiencies in the receipt, assessment and resolution of complaints about public administration.

I also made these submissions to the Crime and Public Integrity Committee which I appeared before in March 2015.

The ICAC released his report of his review of the legislative schemes on 30 June 2015. He has not recommended that there be a central body to handle complaints about public administration. Of major relevance to my Office, ICAC has recommended that the ICAC Act be amended to:

- remove the power to direct or provide oversight of matters referred to my Office (Recommendation 25), and
- to provide that a matter referred to my Office under the ICAC Act is deemed to be a complaint under the Ombudsman Act (recommendation 26).

These are important recommendations, which if implemented would definitely reduce the inefficiencies in the current scheme.

## Audits

In November 2014 a report of this Office's audit of state government agencies' complaint handling was tabled in Parliament. Five recommendations were made. As at 30 June 2015, 11 of the 12 government agencies had implemented Recommendation 2 which requires all agencies to have an agency-wide complaints management policy. The other four recommendations required action on the part of the State Government and have either been implemented or are in train.

The Office's audit of state government departments' implementation of the *Freedom of Information Act 1991* was tabled on 3 June 2014. The audit made 33 recommendations. In December 2014, my Office followed up the implementation of the recommendations and ascertained by way of a recommendation implementation survey that half of the recommendations had been wholly or partially implemented by a majority of the agencies and most agencies had plans to implement all of the recommendations.

In June 2015, my Office commenced Stage One of an audit of local councils' implementation of the obligation under section 270 of the *Local Government Act 1999* to establish a procedure for an internal review of council

decisions. The purpose of the audit is to identify how often internal reviews are conducted by councils and whether they encounter difficulties in conducting them. Following an in-depth Stage Two process involving a sample group of 12 councils in late 2015, I intend to make findings and recommendations about councils' application of their section 270 internal review procedures. A report will be tabled in the early part of 2016.

## Freedom of Information Reviews

During the year, the Office received 137 applications for external review of agencies' Freedom of Information decisions and completed 98 reviews. Only 20 of the completed reviews resulted in a reversal or variation of the agency's decision. However, a high proportion of applications received arose from the failure of the agency to either determine the request for access to documents within 30 days as required by section 19(2) of the *Freedom of Information Act 1991* or conduct an internal review within the 14 day period stipulated by section 29 of the Act with the result that the agency is deemed to have refused access. In turn, this has required my officers to spend more time corresponding with the agency to encourage the agency to consider the original application rather than leaving it to my Office to make a decision on very limited information.

## Presentations

Since the beginning of 2015, I have spoken at several different forums to introduce myself and explain the role of the Office. I list them here:

- Local Government Association of South Australia New Council Members' Residential Seminar
- City of Port Adelaide Enfield Elected Members Workshop
- Self Insurers of South Australia Return to Work Act Workshops (x3)
- Local Government Metro CEO Lunch Time Meeting
- Local Government Authorised Persons Association Seminar
- Rural City of Murray Bridge Council Members Workshop
- Australian Institute of Administrative Law Lunch Time Seminar.

Staff have also presented at the following events:

- Local Government Association of South Australia Procurement Contractors

- Department for Correctional Services recruits presentation
- Council members workshops
- SA Health and Local Health Network staff meeting
- Various Information Sharing Guidelines workshops.

These presentations and other outreach activity undertaken by Office provides me with the opportunity to be informed of issues facing agencies, service providers and other stakeholders, and allows me to share issues with those groups that I consider important to achieving administrative excellence in state and local government.

## Submissions

The Acting Ombudsman gave evidence to the Crime and Public Integrity Policy Committee in December 2014 and I appeared before the Committee in March this year. I also gave evidence to the Select Committee on Child Protection and Care in South Australia and appeared before the ICAC Public Inquiry for Legislative Review. In addition, members of staff appeared before the Child Protection Systems Royal Commission in December 2014.

The Office has provided written submissions in relation to the mandatory code of conduct for elected members and to the following draft bills that have since been introduced into Parliament:

- *Local Government (Accountability and Governance) Amendment Bill 2015*
- *Judicial Conduct Commissioner Bill 2015.*

## Information Sharing Guidelines

In October 2014, my office published the *Information Sharing Guidelines for Promoting Safety and Wellbeing* (ISG). These Guidelines have been endorsed by Cabinet and are designed to provide a consistent and practical framework for information sharing between agencies and across both adult and child service sectors where there is risk of harm to vulnerable people whether or not consent is given.

In addition to the ISG, my Office has published and made available on the Ombudsman SA website 'A Guide to Writing an ISG Appendix' and 'ISG Decision Making Steps and Practice Guide'. These resources assist with the implementation of the ISG.

The Office's SA Principal Advisor Information Sharing has worked with six State Government agencies and a range of NGOs to ensure their procedures for implementing the ISG meet necessary requirements. As at 30 June 2015, three of the six government agencies had finalised their ISG procedure and the other three had developed their procedures to final draft stage. A further 23 individual NGOs have also established an ISG procedure.

Local councils are not bound by the SA Cabinet direction to implement the ISG, but they do provide a wide range of services to members of the community and play an important role in maintaining community wellbeing. They frequently do this through interagency partnerships. It is, therefore, pleasing that the Local Government Association of South Australia (LGA) decided to adopt the ISG and support individual Councils in this work. In April 2015 LGA promulgated *Circular 17.10* providing a generic template for an ISG procedure for South Australia's 68 Councils. The procedure guides and supports Council staff and volunteers to ensure they respect privacy and at the same time share information appropriately where there are risks to safety and wellbeing.

## Pending Return to Work Act Jurisdiction

The *Return to Work Act 2014*, became fully operational from 1 July 2015 and provides for my Office to have a complaint handling function within the new workers compensation scheme. Leading up to that date I spent considerable time preparing for the Office's involvement in this jurisdiction and I look forward to reporting on the Office's activity under the Return to Work Act in next year's annual report.

## Complaints about us

The Acting Ombudsman's report into an Audit of State Government agencies complaint handling made the following recommendation:

Recommendation 3: That the state government incorporate annual reporting of complaints from members of the public within PC013. This should indicate the extent and main features of consumer complaints and any services improved or changes as a result of complaints or consumer suggestions made.

PC013 was updated in accordance with Recommendation 3 prior to 30 June 2015.

In accordance with PC013, I report complaints about my office as follows:

Category of complaints by subject 2014-15	Number
Service quality / delivery	2
Behaviour of staff	2
Service access/processes/procedures	0
Other complaints	0
<b>Total Complaints</b>	<b>4</b>

Complaints about our services are dealt with in accordance with the Complaint Handling policy available on our website.

## Summary of Statistical Information

Ombudsman Jurisdiction	2012-13						2013-14						2014-2015					
	Government Departments	Local Government	Other Authorities	Minister	Total		Government Departments	Local Government	Other Authorities	Minister	Total		Government Departments	Local Government	Other Authorities	Minister	Total	
<b>Open Approaches &amp; Complaints</b>																		
Cases open at beginning of period	39	52	21		112		40	39	21		100		25	50	12		87	
Cases opened during period	1850	852	548	2	3252		1585	929	574	2	3090		1877	873	612	2	3364	
Total cases open	1889	904	569	2	3364		1625	968	595	2	3190		1902	923	624	2	3451	
<b>Less Closures</b>																		
Advice given	64	38	27	2	131		75	50	33	2	160		53	40	38	2	133	
Alt remedy another body	284	46	101		431		195	77	128		400		219	51	175		445	
Complainant Cannot be Contacted	27	21	15		63		15	15	9		39		6	5	2		13	
Declined	555	283	145		983		348	258	133		739		376	231	100		707	
S18(5) Referred evidence misconduct to principal officer		1			1													
s25 Finding/ Contrary to law	2	23	5		30		1	12	2		15			8			8	
s25 Finding/ No reason given									1		1							
s25 Finding/ Unreasonable	4	4	3		11		3		1		4				1		1	
s25 Finding/ Unreasonable law or practice			1		1			4			4		1	1			2	
s25 Finding/ Wrong	5	13	4		22		7	7	4		18		6	4	1		11	
Not substantiated/ No s25 Finding	12	25	12		49		3	17	5		25		1	12	4		17	
OMB comment warranted	4	1	1		6													

Ombudsman Jurisdiction	2012-13					2013-14					2014-2015				
	Government Departments	Local Government	Other Authorities	Minister	<b>Total</b>	Government Departments	Local Government	Other Authorities	Minister	<b>Total</b>	Government Departments	Local Government	Other Authorities	Minister	<b>Total</b>
Outside of jurisdiction	27	7	13		<b>47</b>	14	6	14		<b>34</b>	7		5		<b>12</b>
Referred back to agency	664	337	180		<b>1181</b>	761	423	222		<b>1406</b>	1007	482	246		<b>1735</b>
Resolved with agency cooperation	147	37	24		<b>208</b>	129	20	19		<b>168</b>	134	27	16		<b>177</b>
Report to OPI						3	5			<b>8</b>	4	3	1		<b>8</b>
Withdrawn by Complainant	67	17	18		<b>102</b>	35	24	14		<b>73</b>	43	11	18		<b>72</b>
<b>Total Approaches &amp; Complaints Closed</b>	1862	853	549	2	<b>3266</b>	1589	918	585	2	<b>3094</b>	1857	875	607	2	<b>3341</b>
<b>Still Under Investigation</b>	40	51	20	0	<b>111</b>	36	50	10		<b>96</b>	45	48	17		<b>110</b>
<b>Audit Completed</b>		12			<b>12</b>	12				<b>12</b>	12				<b>12</b>

FOI Jurisdiction	2012-2013						2013-2014						2014-2015					
	Government Departments	Local Government	Other Authorities	Minister	Total		Government Departments	Local Government	Other Authorities	Minister	Total		Government Departments	Local Government	Other Authorities	Minister	Total	
<b>Open External Reviews</b>																		
Cases open at beginning of period	17	7	9		33		34	2	11	7	54		10	3	7		20	
Cases opened during period	114	12	21	24	171		74	14	25	3	116		81	13	36	7	137	
<b>Total cases open</b>	131	19	30	24	204		108	16	36	10	170		91	16	43	7	157	
<b>Less Closures</b>																		
App dismissed lack of cooperation of applicant															5		5	
AfR withdrawn by applicant	11		2	5	18		11	2	1	1	15		8	2		2	12	
App settled during review	11	2	2	1	16		11		11		22		3	1			4	
Determination confirmed	20	6	4	4	34		20	2	12	2	36		12	7	7	1	27	
Determination reversed	16	4	4	1	25		3				3		6	1	1		8	
Det revised by Agency	2			1	3			1			1		9		2	2	13	
Determination varied	29	4	5	4	42		45	4	1	7	57		5	1	4	2	12	
Extension of time/ Discretion not exercised	1				1			1			1		1				1	
Outside of jurisdiction							8	3	4		15		7	2	7		16	
<b>Total External Reviews Closed</b>	90	16	17	16	139		98	13	29	10	150		51	14	26	7	98	
<b>Still Under Investigation</b>	41	3	13	8	65		10	3	7	0	20		40	2	17	0	59	

**Note:** Explanations of the FOI and Ombudsman outcomes are in Appendices C and D respectively.



ICAC JURISDICTION	2014-2015
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	Government Departments	Local Government	Other Authorities	Total
<b>Matters received</b>				
Proposed referrals	2	36	6	<b>44</b>
Referrals for investigation	3	23	4	<b>30</b>
	5	59	10	<b>74</b>

## Section 25 Reports completed 2014-15

Summaries of all of these reports appear later in this document.

Date (File number)	Respondent Agency	Nature of Matter	Outcome
4 July 2014 (2014/02552)	City of Marion	Breach of conflict of interest provisions by council member	s25(1)(a) Finding (Contrary to law)
21 July 2014 (2014/03637)	City of Marion	Repeated breaches of Part 2 of the council member code of conduct	s25(1)(a) Finding (Contrary to law)
28 July 2014 (2014/03786)	Attorney-General's Department	Wrongful disclosure of personal information	s25(1)(g) Finding (Wrong)
4 September 2014 (2014/02647)	City of Mitcham	Failure to provide procedural fairness at internal review	s25(1)(b) Finding (Unreasonable)
5 September 2014 (2013/10730)	District Council of Mount Barker	Unreasonable development assessment process	4 outcomes of s25(1)(g) Finding (Wrong)
11 September 2014 (2014/04019)	District Council of Mallala	Perceived conflict of interest	s25(1)(c) Finding (Unreasonable law or practice)
25 September 2014 (2014/03259)	Commissioner for Consumer Affairs	Inadequate investigation of complaint	2 outcomes of s25(1)(g) Finding (Wrong)
1 October 2014 (2014/04053)	City of Burnside	Failure to undertake adequate public consultation	s25(1)(a) Finding (Contrary to law) s25(1)(g) Finding (Wrong)
1 October 2014 (2014/04938)	City of Mitcham	Failure to advise of appeal rights under the Development Act	s25(1)(g) Finding (Wrong)
8 October 2014 (2012/09285)	Department for Communities and Social Inclusion	Failure to protect juvenile in care and to investigate that failure	2 outcomes of s25(1)(g) Finding (Wrong)
24 October 2015 (2014/01706)	Department for Correctional Services	Failure to follow procedure in relation to a prisoner's property	s25(1)(g) Finding (Wrong)
13 November 2014 (2013/08831)	Department of the Premier and Cabinet	Inadequate handling of complaint about employee conduct	s25(1)(g) Finding (Wrong)
27 November 2014 (2014/03150)	City of Playford	Breach of Local Government Act in recording meeting minutes	2 outcomes of s25(1)(a) Finding (Contrary to law)
5 January 2015 (2014/06021)	City of Marion	Unreasonable decision not to repair damaged cross over	s25(1)(g) Finding (Wrong)
8 January 2015 (2014/06052)	The Flinders Ranges Council	Failure to release confidential minutes	s25(1)(a) Finding (Contrary to law)
2 February 2015 (2014/05324)	District Council of the Copper Coast	Wrongful use of informal gatherings	s25(1)(g) Finding (Wrong)
17 March 2015 (2014/07388)	Coromandel Valley Primary School Governing Council	Unreasonable ban from accessing Out of School Hours Care services	2 outcomes of s25(1)(b) Finding (Unreasonable) s25(1)(g) Finding (Wrong)
7 April 2015 (2014/06327)	Department for Correctional Services	Unreasonable restriction on prison visits	2 outcomes of s25(1)(g) Finding (Wrong)
7 April 2015 (2014/09248)	Department for Correctional Services	Unreasonable ban on attending healing circle meeting	s25(1)(g) Finding (Wrong)
28 May 2015 (2015/00357)	Mid Murray Council	Unlawful publication of confidential information	s25(1)(a) Finding (Contrary to law)



# INVESTIGATIONS

Government Departments  
Local Government  
Other Authorities

# Investigations

## Government Departments

### Case Summaries

#### Attorney General's Department

##### Wrongful disclosure of personal information

2014/03786

##### *Complaint*

The complainant applied to the department's Fines Enforcement and Recovery Unit for the review of an enforcement determination. The Unit considered the application to be incomplete and returned it to the complainant. The documents sent to the complainant erroneously included information relating to a third party.

##### *Investigation and Outcome*

The Acting Ombudsman's investigation found the department<sup>1</sup>, in disclosing the third party's information, breached clause 10 of the Information Privacy Principles, which provide that 'an agency should not disclose personal information about some other person to a third person for a purpose that is not the purpose of collection'.

The Acting Ombudsman recommended that the agency write a letter to the person whose information was disclosed, including an apology, a description of the breach and what the agency has done to remedy the breach.

The department subsequently advised that it had implemented my recommendation.

#### Department for Communities and Social Inclusion

##### Protection of a juvenile and investigation of a complaint

2012/09285

##### *Complaint*

While the complainant was being held in a juvenile detention centre, he was stabbed with a pen by another resident, referred to as X. There was a history between the complainant and X, and the complainant submitted that he had made it known to departmental officers that he believed that X posed a serious risk to his safety and that he should not have been moved to the same centre as X.

The complainant had contacted the Office of the Guardian for Children and Young People, who subsequently raised complaints with the department and with my Office on his behalf.

##### *Investigation and Outcome*

The Acting Ombudsman's investigation considered:

- whether the department erred in failing to protect the complainant from X
- whether the department erred in relation to investigating the alleged failure to protect the complainant.

The Acting Ombudsman's investigation found:

- that X posed a risk to the complainant was known by the department
- the complainant had repeatedly told staff about threats made to him by X
- X's behaviour leading up to the incident indicated he was volatile
- X should not have been placed in a class with the complainant
- the complainant was a juvenile in the care of the department at the time, and his safety was the responsibility of the department. Indeed, security issues within the centre were properly the responsibility of the department (not of the Department for Education and Child Development (DECD) which was providing education services on the campus)
- the department failed to ensure that information concerning the risk posed to the complainant was made known to all relevant staff
- even if the risk was not quantifiable, the department failed the complainant by not disseminating the concerns held about X's behaviour and the complainant's concerns about X to relevant staff
- the department erred in relation to its management of X by failing to draw a connection between X and the complainant's concerns about X
- the department failed to treat the complainant's concerns with sufficient seriousness
- the department erred in failing to implement a strategy to ensure the complainant had no contact with X
- the department erred in failing to report the relevant context of the assault to Families SA's Child Abuse Report Line (that is, the possibility that the department had failed to provide the complainant adequate care)
- the department erred in failing to investigate the incident in response to the complainant's and Office of the Guardian for Children and Young People's requests
- the department failed to handle the Office of the

Guardian for Children and Young People's enquiries about the investigation in a satisfactory manner, with due regard to the importance of the matter and the role of the Office of the Guardian for Children and Young People.

The Acting Ombudsman recommended that the department:

- acknowledge its failings and provide a written apology to the complainant
- favourably consider any claim for compensation by the complainant.

The department subsequently advised that it had:

- written a letter of apology to the complainant
- implemented a number of actions to improve communication, systems and procedures in relation to issues of risk and safety at the youth detention centre
- not yet received an application for compensation from the complainant.

## Department for Correctional Services

### Failure to follow procedure in relation to a prisoner's property

2014/01706

#### Complaint

The complainant alleged that the department lost his orthotics when he was relocated to another part of the ARC. The complainant required orthotics to assist him in walking without discomfort. The complainant stated that the department undertook to replace the orthotics.

#### Investigation and Outcome

The Acting Ombudsman's investigation found:

- there was no prison record to show how the complainant's property was packed after he was removed from his cell
- the complainant alleged his former cell mate packed his belongings
- the department's Standard Operating Procedure (SOP) prescribed the procedure to be followed when packing a prisoner's property in their absence
- the department did not follow the requirements of the SOP
- there was no evidence that the department had lost the orthotics or that it had given an undertaking to replace them.

The Acting Ombudsman commented that having a prisoner pack a fellow prisoner's belongings and failing to record the property packed created an avoidable risk to the department in the event of a subsequent claim for missing property.

The Acting Ombudsman recommended that the SOP be reviewed to include a specific reference to the procedure to be followed when moving a prisoner within an institution.

The department subsequently advised the Acting Ombudsman that it was implementing the recommendation.

## Department for Correctional Services

### Unreasonable restriction on prison visits

2014/06327

#### Complaint

The complainant and his brother had been visiting another brother regularly at Yatala prison for two years. During one visit there was an altercation with a correctional services officer while the complainant and his brother were being processed through the prison security system. They were required to leave the facility without seeing their brother. The incident was recorded on CCTV.

The *Correctional Services Act 1982* enables a person to be restricted from attending a prison if there is interference with the good order or security of the institution. The department subsequently restricted the complainant and his brother from visiting any prison in the state until further order. The complainant alleged that the ban was unreasonable and unfair and sought a review of the decision by the department. Upon review, the decision was confirmed by the department's Chief Executive Officer (CEO).

#### Investigation and Outcome

My investigation considered whether the department's restriction on the complainant and his brother was unreasonable and unfair. I also considered whether the department conducted an adequate review of the decision to impose the restriction.

In relation to the first issue, my investigation found:

- that the complainant had visited his brother on 115 occasions without incident
- the department did not provide reasons for its decision when informing the complainant of the restriction
- the complainant was not informed of the allegations against him and given an opportunity to respond to them



- the department did not afford the complainant natural justice and acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

In relation to the second issue, my investigation found:

- the review considered the incident reports, letters from the complainant and other records kept by the department
- the review did not involve viewing the CCTV footage nor did it consider the previous prison attendance record of the complainant
- while acknowledging that the behaviour of the complainant and his brother could be viewed as being intimidating or aggressive, the reviewer did not adopt a balanced approach to the review process
- the department acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

I recommended:

- the relevant SOP be amended to ensure procedural fairness when imposing a period of restriction of greater than one month, and to clarify the process of conducting a review
- the Chief Executive conduct a review of the original decision having regard to my findings
- if the review concluded that the restriction was not to be lifted, that written reasons be given to the complainant and to me.

The department subsequently advised me that it was in the process of implementing my recommendations.

## Department for Correctional Services

### Unreasonable refusal of permission to attend a Healing Circle meeting

2014/09248

#### Complaint

The complainant, an Aboriginal prisoner, complained to my Office that he had been refused permission to attend a Healing Circle meeting with Aboriginal Elders.

The complainant had been confined to his Unit for a month for a minor breach. He was told that he could not leave the Unit for employment or recreational purposes, but that he could attend rehabilitation programs.

#### Investigation and Outcome

My investigation considered whether the department erred in refusing the complainant's request to attend a Healing Circle meeting.

My investigation found:

- officers on duty had discretion to permit the complainant to attend the Healing Circle meeting
- it is not clear that the officers understood the discretion
- the officers on duty should have exercised their discretion to permit the complainant to attend the Healing Circle meeting, in light of the following factors:
  - › the complainant's submissions as to the importance of the Healing Circle meeting to him in particular
  - › the complainant's submissions that the Healing Circle meeting is meaningful to Aboriginal prisoners and there should therefore be no distinction drawn with other rehabilitation programs
  - › the fact that the department supports the Healing Circle meetings
  - › the fact that senior officers in the department appeared to be of the view that the complainant should have been allowed to attend.
- it would have been preferable that the Change of Regime Notification form had specified that the complainant could attend the Healing Circle meeting
- the department was wrong in refusing to grant the complainant permission to attend the Healing Circle meeting.

In light of the fact that the staff involved were spoken to and the department acknowledged to the complainant the importance of the Healing Circle to Aboriginal prisoners, and given the specific nature of the matter, I decided it was not necessary for me to make any recommendations to redress the error.

**Coromandel Valley Primary School  
Governing Council**

**Unreasonable ban from accessing out of school  
hours service**

2014/07388

*Complaint*

A ban was imposed on the complainant by the school's governing council following an incident at the school's out of school hours care service. The ban excluded the complainant from:

- using the service, indefinitely
- entering any of the service's buildings
- having contact with any of the staff of the service.

*Investigation and Outcome*

My investigation found that the governing council lacked the power to impose an indefinite ban on the complainant and thereby acted in a manner that was unreasonable and wrong within the meaning of section 25(1) of the Ombudsman Act.

I also considered whether the complainant was afforded natural justice. My investigation found:

- that the governing council had not gone far enough to meet its natural justice obligations
- the governing council did not have a policy regarding exclusion of parents when the incident occurred in October 2010
- the complainant was not given a fair hearing before the ban was imposed
- the governing council did not give adequate reasons for its decision.

Further, my investigation found that the governing council failed to adequately review its decision to ban the complainant and in failing to do so, acted in a manner that was unreasonable within the meaning of section 25(1)(b) of the Ombudsman Act.

I recommended that the governing council:

- apologise to the complainant for not affording him an opportunity to make representations at the time the ban was imposed
- conduct a further review of its decision to ban the complainant.

The governing council subsequently advised that it was in the process of implementing my recommendations.

**Department of Planning, Transport  
and Infrastructure**

**Vehicle registration**

2015/01571

*Complaint*

The department had wrongly registered a vehicle which did not belong to the complainant in the complainant's name. As a result of multiple fines being incurred in the complainant's name, the department applied a 'Restriction on Transacting Business' order against the complainant. The complainant was not aware of the registration or the unpaid fines until she attempted to register her own vehicle.

*Investigation and Outcome*

An inspection of a copy of the false registration document found that the complainant's surname was misspelt. The department advised that there is no legal requirement to check the identification of the person registering the vehicle. The department admitted it was an error that should have been detected by the processing officer at the time of registration.

The department provided the complainant with an apology letter admitting the administrative error in order to assist her with further dealings with the South Australia Police (SAPOL) and the Fines and Recovery Unit (FERU) to have the fines quashed and the administrative charges waived.

The department undertook to ensure that the Services SA frontline officers make careful checks on transactions to avoid similar errors in the future.

**Department of the Premier and Cabinet  
Inadequate handling of a complaint regarding  
employee conduct**

2013/08831

*Complaint*

A complaint was made about the conduct of an Independent Member of the Legislative Council.

Initially the complaint was redirected to the Department of the Premier and Cabinet (DPC) as my office is one of last resort. The complainant subsequently contacted my Office to make a complaint about the way in which the complaint had been handled by the department. Specifically, the complainant alleged that they had not received any details about the process or outcome of their complaint.



### *Investigation and Outcome*

It is a basic principle of complaint handling that, when an investigation has been completed, the complainant should be notified of the outcome.

The Acting Ombudsman's investigation found:

- there was no evidence that the department considered all the relevant factors for and against disclosure of details to the complainant about the handling and outcome of the complaint
- by providing inadequate notice of the outcome of its consideration and investigation of the complainant's complaint about the employee, the department acted in a manner that was wrong
- at the time of the complaint the department did not have a policy for the handling of complaints about employees.

The Acting Ombudsman recommended:

- the department develop and complete an agency-wide complaint management policy
- that the complaint management policy address, among other things, the provision of information on code of conduct (including Code of Ethics) investigation outcomes to complainants.

The department subsequently advised me that it was implementing the Acting Ombudsman's recommendation.

# Summary tables - Government Agencies

## 1 July 2014 - 30 June 2015

### Complaints: Received

Government Department	No	Percentage of Total Complaints
Attorney-General's Department	117	6.2%
Department for Communities and Social Inclusion	152	8.1%
Department for Correctional Services	571	30.4%
Department Education and Child Development	218	11.6%
Department for Health and Ageing	18	0.9%
Department for Environment, Water and Natural Resources	26	1.4%
Department of Planning, Transport and Infrastructure	244	13.0%
Department of Primary Industries & Regions SA	7	0.4%
Department of State Development	8	0.5%
Department of the Premier and Cabinet	19	1.0%
Department of Treasury and Finance	45	2.4%
Electoral Commission of South Australia	1	0.1%
Environment Protection Authority	13	0.7%
SA Housing Trust	362	19.3%
SA Water Corporation	76	4.0%
<b>Total</b>	<b>1 877</b>	<b>100%</b>



## Complaints: Completed

Government Department	No.	Percentage of Total Complaints
Attorney-General's Department	118	6.4%
Department for Communities and Social Inclusion	143	7.7%
Department for Correctional Services	573	30.9%
Department for Education and Child Development	214	11.5%
Department for Health and Ageing	17	0.9%
Department of Environment, Water and Natural Resources	24	1.3%
Department of Planning, Transport and Infrastructure	239	12.9%
Department of Primary Industries & Regions SA	7	0.4%
Department of State Development	7	0.4%
Department of the Premier and Cabinet	21	1.1%
Department of Treasury and Finance	45	2.4%
Electoral Commission of South Australia	1	0.1%
Environment Protection Authority	14	0.7%
SA Housing Trust	358	19.2%
SA Water Corporation	76	4.1%
<b>Total</b>	<b>1 857</b>	<b>100%</b>



## Complaints: Outcomes

Outcome	Total	Percentage
Advice given	53	2.8%
Alternate remedy available with another body	219	11.8%
Complainant cannot be contacted	6	0.3%
Declined/Investigation unnecessary or unjustifiable	354	19.0%
Declined/No sufficient personal interest or not directly affected	16	0.9%
Declined/Out of time	5	0.3%
Declined/Trivial, frivolous, vexatious, not made in good faith	1	0.1%
Not substantiated/No s25 finding	1	0.1%
Out of Jurisdiction/Employment	3	0.2%
Out of Jurisdiction/Policy	4	0.2%
Referred back to agency	1 007	54.2%
Advice to authority	4	0.2%
Resolved with agency cooperation	134	7.2%
s25 Finding/Finding/Unreasonable law or practice	1	0.1%
s25 Finding/Wrong	6	0.3%
Withdrawn by complainant	43	2.3%
<b>Total</b>	<b>1 857</b>	<b>100%</b>

## Complaints: Issues

Issue	Total	Percentage
Abuse or Assault/Physical/By other detainees	2	0.1%
Abuse or Assault/Physical/By staff	3	0.2%
Abuse or Assault/Verbal/Threats/By other detainees	1	0.1%
Abuse or Assault/Verbal/Harassment/Threats/By staff	5	0.2%
Complaint Handling/Delay	36	1.8%
Complaint Handling/Inadequate processes	110	5.6%
Complaint Handling/Inadequate reasons	23	1.2%
Complaint Handling/Inadequate remedy	13	0.7%
Complaint Handling/Wrong conclusion	26	1.3%
Conduct/Assault	1	0.1%
Conduct/Discourtesy	20	1.0%
Conduct/Misconduct	14	0.7%
Correspondence/Communications/Records/Breach of privacy/Confidentiality	7	0.3%
Correspondence/Communications/Records/Delayed/No response	167	8.6%
Correspondence/Communications/Records/Incorrect	39	2.0%
Correspondence/Communications/Records/Lost	6	0.3%
Correspondence/Communications/Records/Withholding of information	20	1.0%
Correspondence/Communications/Records/Wrongful disclosure of information	5	0.2%
Custodial Services/Building and Facilities	5	0.2%
Custodial Services/Canteen	30	1.5%
Custodial Services/Cell conditions	39	2.0%
Custodial Services/Clothing/Footwear	12	0.6%
Custodial Services/Educational programs	5	0.2%
Custodial Services/Employment	13	0.7%
Custodial Services/Food	15	0.8%
Custodial Services/Health related services	36	1.8%
Custodial Services/Leave	3	0.2%
Custodial Services/Legal resources	4	0.2%
Custodial Services/Prisoner accounts	16	0.8%
Custodial Services/Prisoner mail	17	0.9%
Custodial Services/Property	53	2.7%

Issue	Total	Percentage
Custodial Services/Recreation programs & services	2	0.1%
Custodial Services/Rehabilitation programs	10	0.5%
Custodial Services/Telephone	43	2.2%
Employment	12	0.6%
Financial/Procurement/Facilities/Compensation/ Damage/Acquisition of land	1	0.1%
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury	3	0.2%
Financial/Procurement/Facilities/Compensation/ Damage/Property lost/Damaged	4	0.2%
Financial/Procurement/Facilities/Debts	19	0.9%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Cost of use	2	0.1%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Inadequate	4	0.2%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Sale/Lease	6	0.3%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Unsafe condition	1	0.1%
Financial/Procurement/Facilities/Procurement by Agencies/Decisions	1	0.1%
Financial/Procurement/Facilities/Procurement by Agencies/Late payment	1	0.1%
Financial/Procurement/Facilities/Procurement by Agencies/Tenders	6	0.3%
Financial/Procurement/Facilities/Rates/Amount	1	0.1%
FOI advice	46	2.4%
FOI practices and procedures	1	0.1%
Home detention	13	0.7%
Housing/Abandoned goods	2	0.1%
Housing/Allocation	38	1.9%
Housing/Arrears/Debt recovery	10	0.5%
Housing/Categorisation	2	0.1%
Housing/Damages	5	0.2%
Housing/Disruptive tenants	60	3.0%
Housing/Maintenance	114	5.8%
Housing/Rent	20	1.0%
Housing/Termination	10	0.5%
Housing/Transfer	20	1.0%
Prison Management/Discipline/Security/Daily regimen	15	0.8%
Prison Management/Discipline/Security/Discipline/ Management	37	1.9%

Issue	Total	Percentage
Prison Management/Discipline/Security/Drug testing	5	0.2%
Prison Management/Discipline/Security/Inspections/ Body searches	2	0.1%
Prison Management/Discipline/Security/Protection	1	0.1%
Prison Management/Discipline/Security/Transport	4	0.2%
Prison Management/Discipline/Security/Visits	29	1.5%
Prison Records/Official Correspondence/Delayed/No response	4	0.2%
Records management	2	0.1%
Regulation and Enforcement/Complaint handling	2	0.1%
Regulation and Enforcement/Enforcement Action/Excessive	35	1.8%
Regulation and Enforcement/Enforcement Action/Unfair	49	2.5%
Regulation and Enforcement/Fees	10	0.5%
Regulation and Enforcement/Infringements/Excessive penalty	9	0.4%
Regulation and Enforcement/Infringements/ Unreasonably issued	12	0.6%
Regulation and Enforcement/Inspections	4	0.2%
Regulation and Enforcement/Licensing/Conditions	13	0.7%
Regulation and Enforcement/Licensing/Refusal	5	0.2%
Regulation and Enforcement/Licensing/Renewal	5	0.2%
Regulation and Enforcement/Licensing/Suspension	20	1.0%
Regulation and Enforcement/Parking/Unreasonable enforcement	1	0.1%
Regulation and Enforcement/Permits	2	0.1%
Revenue Collection/Land Tax	18	0.9%
Revenue Collection/Stamp duty	5	0.2%
Revenue Collection/Water & sewerage	47	2.4%
Roads and Traffic/Charges/Fines	8	0.4%
Roads and Traffic/Licensing/Conditions	12	0.6%
Roads and Traffic/Licensing/Demerit points	3	0.2%
Roads and Traffic/Licensing/Fail to issue renewal	17	0.9%
Roads and Traffic/Licensing/Fees/Charges	2	0.1%
Roads and Traffic/Licensing/Medical test	7	0.3%
Roads and Traffic/Licensing/Tests	1	0.1%
Roads and Traffic/Registration/Conditions	3	0.2%
Roads and Traffic/Registration/Failure to issue renewal	9	0.4%

Issue	Total	Percentage
Roads and Traffic/Registration/Fees/Charges	4	0.2%
Roads and Traffic/Registration/Incorrect details on registration	3	0.2%
Roads and Traffic/Registration/Roadworthy	1	0.1%
Roads and Traffic/Road management	2	0.1%
Sentence Management/Classification	4	0.2%
Sentence Management/Parole	15	0.8%
Sentence Management/Placement/Location	36	1.8%
Sentence Management/Transfers	37	1.9%
Service Delivery/Abuse in care	3	0.2%
Service Delivery/Assessment	12	0.6%
Service Delivery/Conditions	25	1.3%
Service Delivery/Debts	2	0.1%
Service Delivery/Eligibility for services	11	0.5%
Service Delivery/Failure to Act/Provide	96	4.9%
Service Delivery/Fees and charges	43	2.2%
Service Delivery/Financial assistance	6	0.3%
Service Delivery/Quality	55	2.8%
Service Delivery/Termination of services	5	0.2%
<b>Total</b>	<b>1 961</b>	<b>%</b>

# Investigations

## Local Government

### Case Summaries

#### City of Burnside

##### Failure to undertake adequate public consultation

2014/04053

##### *Complaint*

The complainants, who were residents in the council area, complained that the council had failed to follow due process because they had not been consulted on the development of a two-storey house on an adjacent piece of land, nor had they received any information regarding the development.

##### *Investigation and Outcome*

The Acting Ombudsman considered whether the council:

- failed to undertake proper public consultation in relation to a category 2 development under the Development Act
- responded appropriately to the matters raised by the complainants.

The Acting Ombudsman's investigation found that the council:

- acknowledged its procedural error in identifying the properties to be notified during the public consultation, but identified that the council had no power to cancel the development authorisation granted by order of the Environment, Resources and Development Court
- acted in a manner contrary to law by failing to notify the landowners or occupiers of land adjacent to the development, including the complainants
- acted in a manner that was wrong by failing to notify the owners of land adjacent to the development (other than the complainants) of the procedural error made in processing the application.

The Acting Ombudsman recommended that the council:

- notify relevant property owners of the council's procedural error made in processing the application
- implement a proposed new checklist for public consultation of development applications.

The council subsequently advised that it had implemented the Acting Ombudsman's recommendations.

#### District Council of the Copper Coast

##### Wrongful use of informal workshops

2014/05324

##### *Complaint*

In recent years there have been a number of complaints made to my Office about the use of informal gatherings by some councils. Section 90 of the Local Government Act provides that council meetings are to be held in public except in special circumstances. Subsection 90(8) makes explicit that the use of informal gatherings by a council is permitted, provided that:

a matter which would ordinarily form part of the agenda for a formal meeting of a council or council committee is not dealt with in such a way as to obtain, or effectively obtain, a decision on the matter outside a formally constituted meeting of the council or committee.

The Acting Ombudsman released an audit report in late 2012 which recommended that 'all councils adopt a legally compliant, best practice approach to the use of informal gatherings and release this as a public document'.<sup>1</sup>

In January 2015, I finalised an investigation about, *inter alia*, the use of informal gatherings at the District Council of the Copper Coast. The complainant was a member of council at the time the complaint was made. She asserted that at a confidential workshop held in 2014, a decision was effectively made to remove from the draft Community Support Policy, then before council, a schedule related to retirement unit fees.

##### *Investigation and Outcome*

My investigation considered whether the council conducted workshops in breach of section 90(8) of the *Local Government Act 1999* on two separate dates, and whether the council erred in its policy of requiring all workshops and associated documentation to be held in confidence.

I concluded that there was insufficient evidence to make a finding that decisions were effectively made at the two cited confidential workshops held by the council. However, I found that the council erred in requiring all its workshops and associated documents to be held in confidence.

I considered these decisions to be inconsistent with accepted standards of open and accountable government.

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<sup>1</sup> *In The Public Eye* - An audit of the use of meeting confidentiality provisions of the Local Government Act 1999 in South Australian councils, page 70. Ombudsman SA. November 2012.

In finding error, I recommended that the council:

- pass a resolution to cease holding informal gatherings and workshop documents in confidence unless reasons are given on a case by case basis
- establish a policy on informal gatherings.

I further recommended that the state government:

- review operation of section 90(8) of the LG Act with a view to assessing the need for the issue of a Guideline for the conduct of informal gatherings by local government councils. Consideration may be given to the issue of building consensus for decisions and to any necessity to mitigate public perceptions of misuse of the provisions.

Whilst the District Council of the Copper Coast has agreed to establish a policy on informal gatherings, it has not accepted my recommendation to pass a resolution to cease holding informal gatherings and workshop documents in confidence unless reasons are given on a case by case basis.

I have advised the council that I consider their response to be unsatisfactory, and that I intend to report the matter here, and to the Minister for Local Government for his consideration and resolution. Should some councils continue to assert a right to blanket confidentiality for informal gatherings, I intend to renew my recommendation for the state government to issue a guideline or regulation to ensure appropriate transparency for members of the public.

## **The Flinders Ranges Council**

### **Failure to release confidential minutes**

2014/06052

#### *Complaint*

I conducted an 'own initiative' investigation, following a complaint alleging that the council failed to comply with the Local Government Act and council policy, and that the council's CEO had acted improperly. It was alleged that:

- the council incorrectly relied upon sections 90(3)(h) and 91(7) of the Local Government Act to consider and retain in confidence a report which investigated the CEO for misconduct
- the council erred in not releasing confidential minutes from a council meeting, following the expiry of a confidentiality order
- the CEO was improperly involved in the preparation of the report when it was forwarded to council.

#### *Investigation and Outcome*

In relation to the first issue, my investigation found that the council did not err in considering and retaining the report in confidence; as the report could be classified as legal advice, the council acted in accordance with sections 90(2), 90(3)(h) and 91(7) of the Local Government Act.

In relation to the second issue, my investigation found that the council failed to release the minutes upon expiration of the confidentiality order as required by section 91(4) of the Local Government Act and council policy

As the council released the minutes following the Ombudsman's provisional recommendation, it was not necessary for me to make a recommendation.

In relation to the third issue, my investigation found the CEO did not act improperly during the report's preparation or the council's dealings with the report. The report was prepared by other persons and the CEO declared an interest and vacated the room when it was discussed at council meetings.

## **District Council of Mallala**

### **Perceived conflict of interest**

2014/04019

#### *Complaint*

The Acting Ombudsman received a complaint alleging that a council member breached the conflict of interest provisions of the Local Government Act and clause 3.13 of the Code of Conduct for Council Members in relation to council decisions about three Development Plan Amendment (DPA) matters.

It was alleged that the council member was conflicted in relation to those matters due to his ownership of or interest in several commercial and residential properties in or around the area of his ward. It was also alleged that the council member did not represent the interests of all of the residents, but only the residents in his ward, and that he had expressed that view on a number of occasions.

#### *Investigation and Outcome*

The Acting Ombudsman's investigation consisted of considering the council member's conduct at one meeting about redevelopment in his ward.

In relation to the first issue, the Acting Ombudsman's investigation found:

- it was reasonable to conclude that the motions carried at the meeting would be likely to result in an increase in the value of the council member's properties. That said, all property owners in the relevant area would be likely to benefit from the increase in value and the 'shared interest exception' in section 73(1) of the Local Government Act would apply
- in light of that, the council member was not conflicted in considering the relevant motions and did not breach clause 3.13 of the Code of Conduct for Council Members
- nevertheless, the council member would have been perceived to have had a conflict of interest and would have done well not to have participated in the relevant decisions
- therefore, while the council member's actions were not in breach of the Local Government Act and the Code of Conduct for Council Members, his actions were 'in accordance with ... a provision of an enactment ... that is or may be unreasonable' within the meaning of section 25(1)(c) of the Ombudsman Act.

In relation to the second issue, the complainant provided examples of the council member's public comments in which he reportedly expressed that he was only interested in the residents of his ward. The council member provided examples to demonstrate that he acted in the interests of all residents and ratepayers in the council area. As such, on the evidence available to the investigation and on the basis of the case of *Briginshaw*, the Acting Ombudsman declined to make any finding in relation to that issue.

The Acting Ombudsman recommended that the Local Government Act be amended to address perceived conflicts of interest on the part of council members.

## City of Marion

### Breach of conflict of interest provisions by council member

2014/02552

#### Complaint

The Acting Ombudsman conducted an 'own initiative' investigation after receiving a complaint alleging that a former council member had breached the conflict of interest provisions of the Local Government Act and clause 3.13 of Part 3 of the Code of Conduct for Council Members. A separate complaint from the council's CEO

about the same matter was also received. It was alleged that, by being present during the debate about a master plan at the council meeting, and failing to declare a conflict of interest, the council member breached the conflict of interest provisions of the Local Government Act and clause 3.13 of the Code of Conduct for Council Members.

#### Investigation and Outcome

The Acting Ombudsman's investigation found:

- it was reasonable to expect that the decision to endorse and proceed with the master plan would have benefited the council member's political campaign, as he had promised to pledge funds to a particular development and the decision to not proceed with the master plan could have lost him votes
- the council member had an 'interest in a matter' in relation to the decision within the meaning of section 73(1) of the Local Government Act and that he thereby breached clause 3.13 of the Code of Conduct for Council Members
- by failing to declare the interest, seconding a motion in relation to the matter, and apparently remaining in the room during some of the debate about the matter, the council member breached the conflict of interest provisions of the Local Government Act, and acted in a manner that was contrary to law within the meaning of section 25(1) of the Ombudsman Act.

Given that the council member was no longer a member of the council at the time of the investigation, the Acting Ombudsman did not make any recommendations.

## City of Marion

### Repeated breaches of part 2 of the Code of Conduct for Council Members

2014/03637

#### Complaint

The complainant, a council member, was provided with a driver to take her home from four council meetings after she had fallen asleep at the wheel on her way home from a council meeting.

The complainant alleged that another council member who publically criticised the provision of a driver had:

- repeatedly breached Part 2 of the Code of Conduct for Council Members
- breached his general duties as an elected member



- breached Part 3 of the Code of Conduct for Council Members in the alleged misuse of council resources which had been used (and continue to be used) to further his campaign of bullying and harassment of the complainant
- breached his duties as an 'other person' under the *Work Health and Safety Act 2012*.

The council resolved to refer the complaint to this office for investigation.

#### *Investigation and Outcome*

The Acting Ombudsman's investigation found that the council member commented about the provision of the driver on many occasions through Twitter and spoke to the media about the issue, despite the fact that the use of the driver was consistent with the Local Government Act and the council's Expenses Policy. In doing so, it was found that the council member engaged in repeated or sustained inappropriate behaviour such as to constitute misconduct under Part 3 of the Code of Conduct for Council Members.

The Acting Ombudsman recommended that the council reprimand the council member, the council require the council member to issue a public apology to the complainant, both written and verbal and require the council member to agree to refrain from such conduct.

The council subsequently advised that it had implemented the Acting Ombudsman's recommendations.

### **City of Marion**

#### **Refusal to fix damage; compliance with the council's Complaints and Grievance Policy**

2014/06021

#### *Complaint*

The complainants alleged that the council refused to fix damage to the footpath and driveway crossover caused by a street tree planted on the verge outside their house. The complainants also alleged that the council had failed to handle their complaint about the damage in accordance with its Complaints and Grievance Policy.

#### *Investigation and Outcome*

The review supported the council's view that it had immunity under section 245(1) of the Local Government Act to repair any damage caused by a street tree.

The council's view was that while the crossover was damaged it was not as a result of the street tree, but of the poor compaction of the complainants' paved driveway

The complainants' view was that they had sufficiently notified the council about the trip hazard (pursuant to section 245(2) of the Local Government Act) and on that basis the council was liable for the damage caused (which would have been averted had the council taken action).

The council determined to remove the tree but its explanation to the complainants for that removal was different to the explanation provided to my Office. I did not consider that the council acted in a way that was unlawful, unreasonable or wrong in relation to the decision not to repair the crossover.

In relation to the second issue, my investigation found:

- an internal communication error caused delay in the council responding to the complainants' complaint
- the council acted in a manner that was wrong in the way it managed the complainants' complaint.

I suggested that the council's Complaints and Grievance Policy could be improved, particularly in relation to managing complainants' expectations in terms of acknowledgment, communication and timing.

### **Mid Murray Council**

#### **Breach of confidentiality provisions of the Local Government Act and the Council Employees Code of Conduct**

2015/00357

#### *Complaint*

The complainant was the lessee of a caravan park. The council and the complainant were negotiating the caravan park lease. The matter had been considered by the council on a number of occasions in confidence pursuant to section 90 of the Local Government Act.

The agenda papers for the relevant council meeting included a report from the council's CEO recommending release of the confidential documents relating to the three previous confidential resolutions of the council in relation to the caravan park lease.

The CEO's report included the minutes of the decisions which were made in confidence pursuant to section 90 of the Local Government Act. The report was published in the agenda papers on the council's website. As such,



the CEO's Report released the confidential minutes in the publicly available agenda before a resolution had been made to either release the information or retain it in confidence pursuant to section 90.

The council considered the CEO's report and resolved that the items remained confidential until the caravan park's market rental had been agreed or determined for the parties.

#### *Investigation and Outcome*

The CEO advised my investigation that he understood the confidentiality provisions of the Local Government Act and the confidential minutes were released accidentally.

He acknowledged that he did not have delegation to release the confidential minutes. Nevertheless, I found that by publishing confidential minutes in the CEO's Report, the council breached section 91(7) of the Local Government Act and the CEO breached clause 2.11 of the Code of Conduct for Council Employees.

I recommended that the council pass a resolution making a public apology to the complainant. The council subsequently advised me that it had implemented my recommendation.

### **City of Mitcham**

#### **Failure to provide procedural fairness in relation to an internal review of a decision**

2014/02647

#### *Complaint*

The council entered into a lease with Telstra for the construction of a tower in the north-west corner of a sports ground. The council acted as the relevant authority for the purposes of assessing the development application. The complainants sought an internal review of the council's decision to enter the lease, pursuant to section 270 of the Local Government Act. An internal review report was provided to council members as well as to the complainants for consideration before the next council meeting.

The complainants disagreed with the findings of the internal review report. The complainants alleged that the report incorrectly concluded that the council had 'complied with' its prior resolutions and that it misrepresented the data collected from public consultation. Further, the complainants alleged they were not afforded procedural fairness because they were not given ample time to consider and make submissions about the report before the council meeting at which it was considered.

#### *Investigation and Outcome*

The Acting Ombudsman's investigation found:

- the council was not the relevant development assessment authority for the project; section 34(1b) of the Development Act (which enables the council to be the relevant authority even where it has entered into agreements relating to the project) did not apply. Following the Acting Ombudsman's provisional recommendation, however, the council's request to the Minister that the Development Assessment Commission act as the relevant authority was declined. On that basis the Acting Ombudsman saw no need to make any recommendation and concluded that it was not unreasonable for the council to act as the relevant authority at the relevant meeting and that no consequences flowed from the council's mistake of law
- the complainants were not afforded procedural fairness given that they only had four days (coinciding with a long weekend) to consider the report, consult with co-complainants and prepare submissions for the next council meeting
- the internal review was correct in concluding that a council decision to propose the location of the tower at the north west corner of the sports ground was compliant with an earlier resolution stating that further discussion regarding the development in the north east corner would take place. The council was not prevented at law from considering a similar proposal
- while there were some errors in the review concerning the data collated from the public consultation, this error did not mislead council members. The council members still had an opportunity to see the actual community submissions and were made aware of the counting errors at a meeting.

The Acting Ombudsman recommended that the council offer the complainants a reasonable opportunity to make further submissions in relation to the report. The council subsequently advised me that it had implemented the Acting Ombudsman's recommendations.

### **City of Mitcham**

#### **Failure to advise of appeal rights under the Development Act**

2014/04938

#### *Complaint*

The complainant lived adjacent to a tennis club. The tennis club sought approval from council to install twelve light

poles (either 8 or 12 metres in height) around the tennis courts. The council categorised the development as Category 2. The council informed the complainant that as a result of that categorisation they had no third party appeal rights to the Environment, Resources and Development Court. The complainant, however, could challenge the categorisation of the development, pursuant to section 86(1)(f) of the Development Act.

#### *Investigation and Outcome*

The Acting Ombudsman's investigation found:

- that the council acted in a manner that was wrong by not advising the complainant of their right of appeal under section 86(1)(f)
- even though there was no strict obligation on the council to advise the complainant of their right to appeal, it is good administrative practice to do so particularly where it is clear a party is opposed to the development.

The Acting Ombudsman recommended that the council adopt a procedure for making residents aware of their rights pursuant to section 86(1)(f).

The council subsequently advised that it had implemented the Acting Ombudsman's recommendation by including the required information on their standard correspondence and information sheets.

### **District Council of Mount Barker**

#### **Unreasonable development assessment process**

2013/10730

#### *Complaint*

In response to two complaints raising a number of issues about the council's assessment of applications relating to a development, the Acting Ombudsman conducted an 'own initiative' investigation.

One of the complainants was the director of a company involved in the development. One of his complaints was in relation to the council giving clearance for the land divisions in accordance with section 51 of the Development Act.

Section 51 of the Development Act provides that, in relation to a development that involves division of land, a certificate from the Development Assessment Commission is required that it is satisfied that the 'prescribed conditions as to development' have been satisfied (or that the applicant has entered into a statutory bond for the

satisfaction of such a condition). Before the certificate was issued the council was required to provide appropriate information to the Development Assessment Commission as to compliance with a particular condition.

The other complainant was a resident who owned land adjacent to the development. Her complaints included that the council should have consulted her regarding the development, and that the council did not consider the impact of the proposed stormwater system associated with the development on her and other surrounding properties. The complainant also alleged, amongst other things, that the council erred in approving the development as it would increase stormwater discharge into the creek on her land.

The Acting Ombudsman considered whether:

- the council properly assessed stormwater management issues
- the council erred in giving section 51 clearance for the land divisions
- the council's assessment of the land division applications was unreasonably delayed
- the council should have advised the complainant of his rights under section 41 of the Development Act. Section 41 provides that if the council does not decide an application within the time prescribed by the regulations, the applicant can apply to the Court for an order requiring the relevant authority to make its determination within a time fixed by the court
- the council kept adequate records of its communications and assessments relating to the development applications.

#### *Investigation and Outcome*

The Acting Ombudsman's investigation found:

- the council did not properly assess stormwater issues associated with the land division applications
- the council issued the section 51 clearance for the land division when it was not satisfied that the prescribed conditions had been met
- the council's assessment of the development applications was not unreasonably delayed
- the council was wrong not to make the complainant aware of his option to make an application to the Court as per section 41 of the Development Act
- the council did not keep adequate records relating to the development applications.



The Acting Ombudsman recommended that the council:

- adopt a procedure for making applicants of development approval aware of their recourse under section 41 of the Development Act
- remind all staff of their obligations under the council's Records and Information Management Policy.

The council subsequently advised that it had implemented the Acting Ombudsman's recommendations.

## **City of Playford**

### **Breaches of Local Government Act in recording of meeting minutes**

2014/03150

#### *Complaint*

The Acting Ombudsman conducted an 'own initiative' investigation into the record of minutes and confidentiality orders relating to specific agenda items at a meeting of the council's strategic planning committee.

#### *Investigation and Outcome*

The Acting Ombudsman's investigation found:

- the council failed to comply with section 74(3) of the Local Government Act by failing to record in the minutes details of a council member's interest
- the council failed to comply with section 90(7) of the Local Government Act by failing to record in the minutes details of the grounds on which the confidentiality order was granted.

The Acting Ombudsman recommended that:

- the council include in its code of practice a specific reference to the requirement to record the details of the interest in the minutes of the meeting at which the interest is disclosed
- the council include in its code of practice a specific reference to the requirement to record the details of the grounds for making confidentiality orders in the minutes of the meeting at which the orders are made.

The council subsequently advised that it had implemented the Acting Ombudsman's recommendations.

# Summary tables - Local Government

## 1 July 2014 - 30 June 2015

### Complaints: Received

Local Council	Received	%	Population 30 June 2014	Complaints/10 000 population
Adelaide, City of	110	12.7%	22 690	48.4
Adelaide Hills Council	18	2.1%	39 873	4.5
Alexandrina Council	16	1.8%	25 136	6.3
Barossa Council, The	15	1.7%	22 964	6.5
Barunga West, District Council of	2	0.2%	2 453	8.1
Berri Barmera Council	8	0.9%	10 530	7.5
Burnside, City of	20	2.3%	44 734	4.4
Campbelltown, Corporation of the City of	17	1.9%	51 344	33.1
Ceduna, District Council of	5	0.6%	3 696	13.5
Charles Sturt, City of	47	5.4%	112 714	4.1
Clare and Gilbert Valleys Council	7	0.8%	9 029	7.7
Cleve, District Council of	1	0.1%	1 808	5.5
Cooper Pedy, District Council of	7	0.8%	1 810	38.6
Coorong District Council	7	0.8%	5 585	12.5
Copper Coast, District Council of the	18	2.1%	13 924	12.9
Elliston, District Council of	2	0.2%	1 068	18.7
Flinders Ranges Council, The	6	0.7%	1 637	36.6
Franklin Harbour, District Council of	4	0.5%	1 227	32.5
Gawler, Corporation of the Town of	4	0.5%	22 219	1.8
Goyder, Regional Council of	4	0.5%	4 242	9.4
Grant, District Council of	5	0.6%	8 174	6.1
Holdfast Bay, City of	12	1.4%	37 006	3.2
Kangaroo Island Council	17	1.9%	4 583	37.0
Kingston District Council	1	0.1%	2 368	4.2
Light Regional Council	4	0.5%	14 648	2.7
Lower Eyre Peninsula, District Council of	5	0.6%	5 079	9.8
Loxton Waikerie, District Council of	3	0.3%	11 477	2.6
Mallala, District Council of	16	1.8%	8 692	18.4
Marion, Corporation of the City of	30	3.5%	88 292	3.3
Mid Murray Council	7	0.8%	8 262	8.4
Mitcham, City of	32	3.7%	66 182	4.8

Local Council	Received	%	Population 30 June 2014	Complaints/10 000 population
Mount Barker, District Council of	26	3.0%	31 950	8.1
Mount Gambier, City of	2	0.2%	26 246	0.7
Mount Remarkable, District Council of	7	0.8%	2 827	24.7
Murray Bridge, Rural City of	8	0.9%	20 740	3.8
Naracoorte Lucindale Council	2	0.2%	8 449	2.3
Northern Areas Council	2	0.2%	4 512	4.4
Norwood, Payneham & St Peters, City of	13	1.5%	37 074	3.5
Onkaparinga, City of	61	7.0%	167 659	3.6
Orroroo/Carrieton, District Council of	1	0.1%	861	11.6
Peterborough, District Council of	3	0.3%	1 701	17.6
Playford, City of	28	3.2%	86 869	3.2
Port Adelaide Enfield, City of	39	4.5%	122 205	3.1
Port Augusta City Council	3	0.3%	14 557	2.0
Port Lincoln, City of	4	0.5%	14 888	2.6
Port Pirie Regional Council	7	0.8%	17 646	3.9
Prospect, City of	9	1.0%	21 247	4.2
Renmark Paringa, District Council of	4	0.5%	9 292	4.3
Robe, District Council of	4	0.5%	1 431	27.9
Roxby Council	2	0.2%	5 032	3.9
Salisbury, City of	43	4.9%	137 310	3.1
Southern Mallee District Council	1	0.1%	2 076	4.8
Streaky Bay, District Council of	3	0.3%	2 251	13.3
Tatiara District Council	2	0.2%	6 667	2.9
Tea Tree Gully, City of	33	3.8%	98 575	3.3
Tumby Bay, District Council of	3	0.3%	2 642	11.3
Unley, Corporation of the City of	21	2.4%	39 014	5.3
Victor Harbor City Council	11	1.3%	14 938	7.3
Wakefield Regional Council	1	0.1%	6 885	1.4
Walkerville, Corporation of the Town of	6	0.7%	7 401	8.1
Wattle Range Council	10	1.1%	11 578	8.6
West Torrens, City of	41	4.7%	58 625	6.9
Whyalla, Corporation of the City of	9	1.0%	22 754	3.9

Local Council	Received	%	Population 30 June 2014	Complaints/10 000 population
Yankalilla, District Council of	9	1.0%	4 630	19.4
Yorke Peninsula District Council	5	0.6%	11 068	4.5
<b>Total</b>	<b>873</b>	<b>100%</b>		

## Complaints: Completed

	Completed	%	Population 30 June 2014	Complaints/10 000 population
Adelaide, City of	110	12.6	22 690	48.4
Adelaide Hills Council	18	2.1	39 873	4.5
Alexandrina Council	16	1.8	25 136	6.3
Barossa Council, The	15	1.7	22 964	6.5
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Charles Sturt, City of	46	5.3	112 714	4.0
Clare and Gilbert Valleys Council	6	0.7	9 029	6.6
Cleve, District Council of	1	0.1	1 808	5.5
Coober Pedy, District Council of	4	0.5	1 810	22.0
Coorong District Council	7	0.8	5 585	12.5
Copper Coast, District Council of the	18	2.1	13 924	12.9
Elliston, District Council of	2	0.2	1 068	18.7
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Franklin Harbour, District Council of	4	0.5	1 227	32.5
Gawler, Corporation of the Town of	5	0.6	22 219	2.2
Goyder, Regional Council of	3	0.3	4 242	7.0
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Lower Eyre Peninsula, District Council of	5	0.6	5 079	9.8

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Loxton Waikerie, District Council of	3	0.3	11 477	2.6
Mallala, District Council of	18	2.1	8 692	20.7
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Mid Murray Council	7	0.8	8 262	8.4
Mitcham, City of	33	3.8	66 182	3.8
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Naracoorte Lucindale Council	2	0.2	8 449	2.3
Northern Areas Council	2	0.2	4 512	4.4
Norwood, Payneham & St Peters, City of	14	1.6	37 074	3.7
Onkaparinga, City of	59	6.7	167 659	3.5
Orroroo/Carrieton, District Council of	1	0.1	861	11.6
Peterborough, District Council of	3	0.3	1 701	17.6
Playford, City of	30	3.4	86 869	3.4
Port Adelaide Enfield, City of	39	4.4	122 205	3.1
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Victor Harbor City Council	11	1.3	14 938	7.3



	Completed	%	Population 30 June 2014	Complaints/10 000 population
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Walkerville, Corporation of the Town of	5	0.6	7 401	6.7
Wattle Range Council	10	1.1	11 578	8.6
West Torrens, City of	41	4.7	58 625	6.9
Whyalla, Corporation of the City of	8	0.9	22 754	3.5
Yankalilla, District Council of	8	0.9	4 630	17.2
Yorke Peninsula Council	5	0.6	11 068	4.5
<b>TOTAL</b>	<b>875</b>	<b>100%</b>		

## Complaints: Outcomes

Outcome	Total	Percentage
Advice given	40	4.6%
Alternate remedy available with another body	51	5.8%
Complaint cannot be contacted	5	0.6%
Declined/Investigation unnecessary or unjustifiable	227	25.9%
Declined/No sufficient personal interest or not directly affected	2	0.2%
Declined/Out of time	2	0.2%
Not substantiated	12	1.4%
Referred back to agency	482	55.2%
Advice to authority	3	0.3%
Resolved with agency cooperation	27	3.1%
s25 Finding/Contrary to law	8	0.9%
s25 Finding/Unreasonable law or practice	1	0.1%
s25 Finding/Wrong	4	0.4%
Withdrawn by complainant	11	1.3%
<b>Total</b>	<b>875</b>	<b>100%</b>

## Complaints: Issues

Issue	Total	Percentage
Advice	3	0.3%
Complaint handling/Conflict of interest	1	0.1%
Complaint handling/Delay	13	1.4%
Complaint handling/Inadequate processes	72	7.8%
Complaint handling/Inadequate reasons	22	2.4%
Complaint handling/Inadequate remedy	9	1.0%
Complaint handling/Wrong conclusion	33	3.6%
Conduct/Discourtesy	9	1.0%
Conduct/Failure to declare conflict of interest	4	0.4%
Conduct/Failure to follow proper process	14	1.5%
Conduct/Misconduct	14	1.5%
Correspondence/Communications/Records/Access	14	1.5%
Correspondence/Communications/Records/Breach of privacy/confidentiality (CCR)	4	0.4%
Correspondence/Communications/Records/Delay/No response	25	2.7%
Correspondence/Communications/Records/Incorrect	16	1.7%
Correspondence/Communications/Records/Wrongful disclosure of information	1	0.1%
Council member code of conduct/Breach of part 2	17	1.8%
Council member code of conduct/Breach of part 3/Act honestly	1	0.1%
Council member code of conduct/Breach of part 3/Bias and conflict of interest	13	1.4%
Council member code of conduct/Breach of part 3/Use of council resources effectively and prudently	1	0.1%
Council member code of conduct/Breach of part 3/Use council resources for private purposes	1	0.1%
Council member code of conduct/Breach of part 3/Repeated or sustained part 2 behaviour	5	0.5%
Council member code of conduct/Breach of part 3/Failure to comply with part 2 finding	2	0.2%
Council member code of conduct/Breach of part 3/Perform duties with reasonable care	3	0.3%
Council member code of conduct/Breach of part 3/Divulge confidential information	8	0.9%
Council member code of conduct/Breach of part 3/Perform unauthorised function	1	0.1%
Council member code of conduct/Breach of part 3/External relationships improper influence	2	0.2%
Council member code of conduct/Breach of part 3/Seek or accept gifts or benefits	1	0.1%
Council member code of conduct/Breach of part 3/Accept campaign donations	1	0.1%
Financial/Procurement/Facilities/Compensation/Damage/Physical injury	3	0.3%
Financial/Procurement/Facilities/Compensation/Damage/Property lost/Damaged	22	2.4%

Issue	Total	Percentage
Financial/Procurement/Facilities/Debts/Recovery action	2	0.2%
Financial/Procurement/Facilities/Debts/Unreasonable charge	2	0.2%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Buildings	2	0.2%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Drainage	4	0.4%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Parks and gardens	2	0.2%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Recreational facilities	2	0.2%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Roads/Streets	24	2.6%
Financial/Procurement/Facilities/Other fees and charges	8	0.9%
Financial/Procurement/Facilities/Procurement by agencies/ Tenders	5	0.5%
Financial/Procurement/Facilities/Rates/Administration	4	0.4%
Financial/Procurement/Facilities/Rates/Amount	24	2.6%
Financial/Procurement/Facilities/Rates/Recovery action	21	2.2%
Financial/Procurement/Facilities/Rates/Valuations	2	0.2%
FOI advice	23	2.5%
Governance/Confidentiality	6	0.6%
Governance/Failure to follow proper process	27	2.9%
Governance/Prudential	1	0.1%
Governance/Public consultation	10	1.1%
Regulation and enforcement/Animals/Excessive action	13	1.4%
Regulation and enforcement/Animals/Failure to act on complaints	16	1.7%
Regulation and enforcement/Building/Failure/Delay to issue permit	1	0.1%
Regulation and enforcement/Building/Inappropriate construction allowed	2	0.2%
Regulation and enforcement/Building/Unreasonable enforcement	1	0.1%
Regulation and enforcement/Enforcement action/Unfair	1	0.1%
Regulation and enforcement/Environmental protection/Excessive action	4	0.4%
Regulation and enforcement/Environmental Protection/Failure to action on complaints	4	0.4%
Regulation and enforcement/Local laws/Failure to enforce	4	0.4%
Regulation and enforcement/Local laws/Improper/Inappropriate	5	0.5%
Regulation and enforcement/Local laws/Unreasonable enforcement	6	0.6%
Regulation and enforcement/Nuisances/Failure to action on complaints	9	1.0%
Regulation and enforcement/ Parking/Failure to enforce restrictions	9	1.0%
Regulation and enforcement/Parking/Permits22	4	0.4%

Issue	Total	Percentage
Regulation and enforcement/Parking/Restrictions	3	0.3%
Regulation and enforcement/ Parking/Unreasonable enforcement	156	16.8%
Regulation and enforcement/Planning & Development/Failure to enforce condition	12	1.3%
Regulation and enforcement/Planning & Development/Failure to notify	14	1.5%
Regulation and enforcement/Planning & Development/Failure/ Delay to issue permit	16	1.7%
Regulation and enforcement/Planning & Development/Inappropriate development allowed	87	9.4%
Regulation and enforcement/Planning & Development/ Unreasonable conditions imposed	34	3.7%
Regulation and enforcement/Planning & Development/ Unreasonable enforcement	20	2.1%
Regulation and enforcement/Public health/Failure to act on complaints	2	0.2%
Regulation and enforcement/Public health/Unreasonable enforcement	7	0.7%
<b>Total</b>	<b>934</b>	<b>100%</b>

# Investigations

## Other Authorities

### Case Summaries

#### Commissioner for Consumer Affairs Investigation of complaint about a builder

2014/03259

##### *Complaint*

The complainants made a complaint to the agency about a builder they had engaged to undertake work for them, alleging that the builder had operated outside of his licence conditions. The complainants then made a further complaint to the agency about its handling of their initial complaint.

The complainants claimed, in effect, that:

- the agency's investigation of their complaint about the builder was inadequate
- the agency unreasonably accepted the builder's assertion that their property was a single storey property when they considered it to be a two storey property
- the agency failed to provide them with any explanation about its decision to grant the builder a new licence with more favourable licence conditions
- the agency did not properly communicate with them about either of their complaints.

##### *Investigation and Outcome*

The Acting Ombudsman's investigation found:

- the agency's investigation of the complaint about the builder allegedly operating outside of his licence conditions was inadequate
- the agency failed to provide the complainants with any information about the outcome of their complaint about the builder
- the agency failed to properly acknowledge either of the complaints
- the agency failed to take any action in relation to the complaint about the agency
- the agency failed to properly communicate with the complainants.

The Acting Ombudsman recommended that the agency:

- write to the complainants to respond fully to both of their complaints
- review its investigation procedures and record keeping in relation to this matter and consider whether it was able to reinvestigate the complainants' allegations that

the builder operated outside of the scope of licence; and if so, reinvestigate accordingly and in compliance with good complaint handling practices

- implement a complaint handling policy about agency complaints
- ensure agency staff were reminded of good complaint handling practices.

In response to the Acting Ombudsman's investigation, the agency reinvestigated the complainants' complaint about the builder. The agency also implemented complaint handling policies and procedures and advised staff of good complaint handling practices and of the application of the new policies and procedures.

#### Office of the Public Trustee

##### Financial assistance following a natural disaster

2015/03078

##### *Complaint*

The complainant's financial affairs were administered by the Office of the Public Trustee. After the complainant's home and contents were damaged in a flood, she requested urgent monetary relief from the agency to manage her day to day affairs. The agency had informed the complainant that her case manager was on leave and that she should either await his return or obtain quotes for replacing the contents of her home. Both these options were inappropriate for the complaint as she was in desperate need of relief.

##### *Investigation and outcome*

My Office contacted the agency and outlined the complainant's concerns.

As a result of my Office's involvement, the agency arranged for the complainant to receive immediate monetary relief and a sum of money to replace her furniture. The agency also agreed to ensure that the officer who initially spoke with the complainant would be counselled on the need to provide appropriate service in times of natural disaster.

# Summary tables - Other Authorities

## 1 July 2014 - 30 June 2015

### Complaints: Received

Authority	Received	%
Adelaide Cemeteries Authority	2	0.3%
Aldgate Primary School Governing Council	1	0.2%
Anangu Pitjantjatjara Yankunytjatjara Executive Board	2	0.3%
Centennial Park Cemetery Authority	2	0.3%
Central Adelaide Local Health Network	121	19.7%
Commissioner for Consumer Affairs	42	6.9%
Commissioner for Victims' Rights	1	0.2%
Coromandel Valley Primary School Governing Council	1	0.2%
Coroner	1	0.2%
Country Health SA Local Health Network	14	2.3%
Courts Administration Authority	7	1.1%
Eastern Health Authority	3	0.5%
Electricity Industry Superannuation Scheme	2	0.3%
Essential Services Commission of South Australia	1	0.2%
Eyre Peninsula Natural Resources Management Board	1	0.2%
Flinders University	11	1.8%
Guardianship Board	8	1.3%
Health and Community Services Complaints Commissioner	45	7.3%
HomeStart	4	0.7%
Legal Profession Conduct Commissioner	12	2.0%
Legal Services Commission	14	2.3%
Liquor & Gambling Commissioner	2	0.3%
Motor Accident Commission	21	3.4%
Northern Adelaide Local Health Network	10	1.6%
Office of the Technical Regulator	3	0.5%
Public Advocate	7	1.1%
Public Trustee	67	10.9%
Residential Tenancies Tribunal	15	2.5%
RSPCA Inspectorate	2	0.3%
SA Ambulance Service	18	2.9%
SA Country Fire Service	2	0.3%

Authority	Received	%
SACE Board of SA	5	0.8%
South Australian Civil and Administrative Tribunal	9	1.5%
South Australian Dental Service	3	0.5%
South Australian Small Business Commissioner	1	0.2%
South Australian Tertiary Admissions Centre	2	0.3%
Southern Adelaide Local Health Network	17	2.8%
Super SA Board	30	4.9%
TAFE SA	30	4.9%
Teachers Registration Board	2	0.3%
University of Adelaide	12	2.0%
University of South Australia	31	5.1%
Urban Renewal Authority	3	0.5%
Women's and Children's Health Network	3	0.5%
WorkCover Corporation	22	3.6%
<b>Total</b>	<b>612</b>	<b>100%</b>

## Complaints: Completed

Authority	Completed	%
Adelaide Cemeteries Authority	2	0.3%
Aldgate Primary School Governing Council	1	0.2%
Anangu Pitjantjatjara Yankunytjatjara Executive Board	2	0.3%
Centennial Park Cemetery	2	0.3%
Central Adelaide Local Health Network	121	19.9%
Commissioner for Consumer Affairs	42	6.9%
Commissioner for Victims' Rights	1	0.2%
Coromandel Valley Primary School Governing Council	1	0.2%
Coroner	1	0.2%
Country Health SA Local Health Network	13	2.2%
Courts Administration Authority	7	1.1%
Eastern Health Authority	3	0.5%
Electricity Industry Superannuation Scheme	3	0.5%
Essential Services Commission of South Australia	1	0.2%

Authority	Completed	%
Eyre Peninsula Natural Resources Management Board	1	0.2%
Flinders University	13	2.2%
Guardianship Board	8	1.3%
Health and Community Services Complaints Commissioner	46	7.6%
HomeStart	4	0.7%
Legal Profession Conduct Commissioner	11	1.8%
Legal Services Commission	14	2.4%
Liquor & Gambling Commissioner	2	0.3%
Motor Accident Commission	21	3.5%
Northern Adelaide Local Health Network	10	1.6%
Office of the Technical Regulator	3	0.5%
Public Advocate	7	1.1%
Public Trustee	66	10.9%
Residential Tenancies Tribunal	15	2.5%
RSPCA Inspectorate	2	0.3%
SA Ambulance Service	16	2.6%
SA Country Fire Service	2	0.3%
SACE Board of SA	4	0.7%
South Australian Civil and Administrative Tribunal	8	1.3%
South Australian Dental Service	3	0.5%
South Australian Small Business Commissioner	1	0.2%
South Australian Tertiary Admissions Centre	2	0.3%
Southern Adelaide Local Health Network	16	2.6%
Super SA Board	30	4.9%
TAFE SA Board	29	4.8%
Teachers Registration Board	2	0.3%
University of Adelaide	11	1.8%
University of South Australia	30	4.9%
Urban Renewal Authority	2	0.3%
Women's and Children's Health Network	3	0.5%
WorkCover Corporation	24	3.9%
WorkCover Ombudsman	1	0.2%
<b>Total</b>	<b>607</b>	<b>100%</b>



## Complaints: Outcomes

Outcome	Total	Percentage
Advice given	38	6.3%
Alternate remedy available with another body	175	28.8%
Complainant cannot be contacted	2	0.3%
Declined/Investigation unnecessary or unjustifiable	97	15.9%
Declined/No sufficient personal interest or not directly affected	1	0.2%
Declined/Out of time	2	0.3%
Not substantiated	4	0.6%
Out of jurisdiction/Judicial body	3	0.5%
Out of jurisdiction/Minister	1	0.2%
Out of jurisdiction/Policy	1	0.2%
Referred back to agency	246	40.5%
Advice to authority	1	0.2%
Resolved with agency cooperation	16	2.6%
s25 Finding/ Unreasonable	1	0.2%
s25 Finding/ Wrong	1	0.2%
Withdrawn by complainant	18	3.0%
<b>Total</b>	<b>607</b>	<b>100%</b>

## Complaints: Issues

Issue	Total	Percentage
Complaint handling/Conflict of interest	1	0.2%
Complaint handling/Delay	28	4.4%
Complaint handling/Inadequate processes	95	15.0%
Complaint handling/Inadequate reasons	11	1.6%
Complaint handling/Inadequate remedy	8	1.3%
Complaint handling/Wrong conclusion	35	5.5%
Conduct/Discourtesy	8	1.3%
Conduct/Misconduct	7	1.1%
Correspondence/Communications/Records/Breach of privacy/Confidentiality	2	0.3%
Correspondence/Communications/Records/ Delayed/No response	56	8.9%
Correspondence/Communications/Records/Incorrect	17	2.7%
Correspondence/Communications/Records/Lost	2	0.3%

Issue	Total	Percentage
Correspondence/Communications/Records/ Withholding of information	16	2.5%
Correspondence/Communications/Records/Wrongful disclosure of information	1	0.2%
Custodial services/Health related services	1	0.2%
Employment	1	0.2%
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury	5	0.8%
Financial/Procurement/Facilities/Compensation/Damage/Property lost/Damaged	2	0.3%
Financial/Procurement/Facilities/Debts	11	1.6%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Cost of use	3	0.5%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Denial of use	2	0.3%
Financial/Procurement/Facilities/Procurement by agencies/Late payment	1	0.2%
FOI advice	33	5.2%
FOI practices and procedures	1	0.2%
Records management	1	0.2%
Regulation and enforcement/Complaint handling	1	0.2%
Regulation and enforcement/Enforcement action/Excessive	6	0.9%
Regulation and enforcement/Enforcement action/Unfair	3	0.5%
Regulation and enforcement/Fees	3	0.5%
Regulation and enforcement/Infringements/Inadequate review	1	0.2%
Regulation and enforcement/Infringements/Incorrect details	1	0.2%
Regulation and enforcement/Infringements /Unreasonably issued	1	0.2%
Regulation and enforcement/Licensing/Conditions	3	0.5%
Regulation and enforcement/Licensing/Renewal	3	0.5%
Service Delivery/Abuse in care	5	0.8%
Service Delivery/Assessment	11	1.6%
Service Delivery/Conditions	15	2.4%
Service Delivery/Eligibility for services	9	1.4%
Service Delivery/Failure to act/Provide	115	18.2%
Service Delivery/Fees and charges	16	2.5%
Service Delivery/Financial assistance	2	0.3%
Service Delivery/Quality	60	9.5%
Service Delivery/Termination of services	14	2.2%
Superannuation	15	2.4%
<b>Total</b>	<b>632</b>	<b>100%</b>



# Administrative Improvement Activities

## Introduction

In all of the work we do, Ombudsman SA aims to promote administrative improvement within state and local government agencies. Exercising my power to make recommendations to agencies under section 25(2) of the Ombudsman Act and utilising my audit function under section 14A of that Act are key means of achieving this aim.

## Implementation of recommendations made under the Ombudsman Act

Each year my office initiates and conducts hundreds of investigations into complaints made against state agencies, local government councils and universities. Comparatively few investigations reach the Full Investigation stage and, of these, not all result in a finding of administrative error under section 25 of the Ombudsman Act.

Where I do find administrative error, I make a recommendation to remedy the error and/or to improve the administrative system which gave rise to the mistake. The exceptions to this rule are situations where agencies themselves recognise the mistake early in the investigation and advise me that they have taken corrective action. In these circumstances, and where there is evidence of remedial action, I usually decline to make a recommendation.

During the year 2014-2015 there were 17 investigation reports where I found administrative error and made recommendations under section 25 of the Ombudsman Act. I made 33 recommendations in total: 30, or 91% of my recommendations, were accepted across all agencies. Of the two recommendations not accepted, one is the subject of a further report to the Minister for Local Government and the other, requiring an apology to the complainant, has not yet been responded to by the agency concerned.

Of the 33 recommendations, 29 were implemented. This is an implementation rate of 88%. The outstanding recommendation proposed undertakings from DCS that required further dialogue between my Office and the agency.

The following table summarises Recommendations made pursuant to section 25 investigations finding agency error.

Report Date	Agency and Investigation	Recommendations	Accepted	Implemented
4 July 2014	<b>City of Marion</b> <i>Breach of council member code of conduct</i>	1	1	1
21 July 2014	<b>City of Marion</b> <i>Breach of council member code of conduct</i>	3	3	3
28 July 2014	<b>Attorney- General's Department</b> <i>Wrongful disclosure of personal information</i>	1	1	1
4 September 2014	<b>City of Mitcham</b> <i>Unreasonable failure to afford procedural fairness</i>	1	1	1
5 September 2014	<b>District Council of Mount Barker</b> <i>Unreasonable development application process</i>	2	2	2
11 September 2014	<b>District Council of Mallala</b> <i>Breach of council member code of conduct</i>	1	1	1
25 September 2014	<b>Commissioner for Consumer Affairs</b> <i>Unreasonable investigation of complaint</i>	4	4	4
1 October 2014	<b>City of Burnside</b> <i>Unreasonable development process</i>	2	2	2
1 October 2014	<b>City of Mitcham</b> <i>Wrongful failure to advise of appeal rights</i>	1	1	1
8 October 2014	<b>Department for Communities and Social Inclusion</b> <i>Failure to protect young offender</i>	1	1	1
24 October 2014	<b>Department for Correctional Services</b> <i>Wrongful failure to maintain a record of property</i>	1	1	0
13 November 2014	<b>Department of the Premier and Cabinet</b> <i>Unreasonable investigation of employee conduct</i>	2	2	2
27 November 2014	<b>City of Playford</b> <i>Unlawful recording of orders made in minutes</i>	2	2	2
2 February 2015	<b>District Council of the Copper Coast</b> <i>Wrongful use of informal gatherings</i>	3	2	2
17 March 2015	<b>Coromandel Valley Primary School Governing Council</b> <i>Unreasonable decision to ban from Out of School Hours Care</i>	2	1	1
7 April 2015	<b>Department for Correctional Services</b> <i>Failure to provide procedural fairness on review of decision</i>	5	5	4
27 May 2013	<b>Mid Murray Council</b> <i>Unlawful publication of confidential information</i>	1	1	1

	Total Number
Reports 1 July 2014 – 30 June 2015	17
Recommendations	33
Recommendations Accepted	31
Recommendations Not Accepted	1
Recommendations Not Yet Accepted	1
Recommendations Implemented	29
Recommendations NOT Implemented	4
Includes:	
a) those that were NOT accepted and NOT implemented; and	
b) those that were accepted, but whose implementation has not commenced, or has commenced but is incomplete.	

## Audit of state government agencies' complaint handling

In December 2013, the former Ombudsman Richard Bingham, wrote to all state agencies advising them that he was commencing an audit of their complaint handling practices and procedures. Through recent Ombudsman SA investigations and a review of recommendations made in reports where administrative error has been found under the *Ombudsman Act 1972*, evidence emerged that complaint handling in some state government agencies lacked structure, procedural fairness and consistency. Previous Ombudsman SA annual reports also highlighted examples of inadequate processes and failures to appropriately manage and investigate complaints.

### The audit group

The audit group consisted of the following state agencies:

- Attorney-General's Department
- Department for Communities and Social Inclusion
- Department for Education and Child Development
- Department of Environment, Water and Natural Resources
- Department of Further Education, Employment, Science & Technology
- Department for Health and Ageing<sup>2</sup>
- Department for Manufacturing, Innovation, Trade, Resources & Energy

- Department of Planning, Transport and Infrastructure
- Department of Primary Industries and Regions SA
- Department of the Premier and Cabinet
- Department of Treasury and Finance
- Environment Protection Authority.

The Department for Correctional Services was not included in the audit. DCS has recently been the subject of an Ombudsman audit on its management of prisoner complaint handling. This audit report was published and tabled in the Parliament in June 2012.<sup>3</sup>

### Terms of Reference

The subject of the audit was determined to be an assessment of:

- the extent to which agencies have in place policies, practices and procedures established to ensure appropriate standards of complaint handling for members of the public
- the extent to which the agencies have in place accessible information for the public to understand what might happen if they complain
- the systems and staff management approaches which agencies have in place for ensuring best practice complaint handling and service improvement outcomes
- whether recommendations are needed to encourage agency complaint handling practices and systems improvement across the agencies.<sup>4</sup>

### Audit findings

Through a process of survey reviews, agency interviews and agency self-assessments, the audit examined policy and performance in each agency and across the government sector as a whole. The main findings were as follows:<sup>5</sup>

- complaint handling is largely unplanned and inconsistent across state agencies
- seven of the twelve agencies audited did not have a complaint handling policy in place at the time of the

3 *An audit of prisoner complaint handling in the South Australian Department for Correctional Services – June 2012.*

4 Examination of the effectiveness of agency complaint resolution outcomes was not within the scope of the audit.

5 *An audit of state government agencies' complaint handling – November 2014.*

2 Also referred to in this report, and in the public sector, as 'SA Health'.



audit survey in December 2013<sup>6</sup>

- only two of the twelve agencies had best practice complaint handling systems in place
- there were some excellent 'sub-agency' examples of complaints management
- most of the agencies had sub-agency or divisional expertise and experience in complaint handling which was not shared across the agency
- those agencies with established complaints policies and procedures in place were better positioned to respond to complaints and to learn from mistakes
- the Australian Standard for complaint handling was not broadly recognised as the appropriate authority for a customer focused approach to complaint handling
- few agencies had complaint handling procedures in place that sought to meet the needs of vulnerable groups
- few agencies had clear, concise information on making a complaint available on their website
- few agencies analysed complaint trends for systemic problems
- all agencies were able to link their complaints to service improvement outcomes
- most senior executives understood the importance of front line complaint handling and resolution of grievances, but were disconnected from that contact with the public
- providing remedies for agency mistakes such as an apology, ex gratia compensation, change of decision, expedited action or a change to policy or practice were reported as complaint outcomes by most agencies. However, the responses suggested that some agencies are reluctant to directly admit mistakes for fear of admitting liability.

A principal finding from the audit was recognition by all agencies that effective complaint handling is a key to providing quality services to the public, and to upholding the reputation of the public service as efficient, fair, open and honest.

## Audit Recommendations

The audit made five Recommendations directed at achieving change and improvement in complaint handling across state agencies. In summary, they were:

1. That the Government of South Australia issue a DPC Circular requiring all agencies to have in place a complaint management system that conforms to the principles of the Australian Standard on Complaints Handling.
2. That all state government agencies have an agency-wide complaints management policy in place by 31 March 2015. The policy should be:
  - › focussed on complaints from members of the public about the agency
  - › consistent with the current Australian Standard
  - › succinct and written in plain language
  - › accessible to people from non-English speaking backgrounds
  - › published on the agency website
  - › linked to sub-agency policies and procedures for particular services, where appropriate
  - › subject to 'fit for purpose' criteria relevant to the agency's business diversity
3. That the Government of South Australia issue an update to the Department of the Premier and Cabinet Circular PC013 – Annual Reporting Requirements 2014 to incorporate annual reporting of complaints from members of the public. This should be included as a Mandatory Reporting Item in agency annual reports, and indicate the extent and main features of consumer complaints and any services improved or changed as a result of complaints or consumer suggestions made.
4. That the Government of South Australia consider amendment to the *Civil Liability Act 1936* to clarify that the provisions afford full legal protection to an apology made by any party. Ideally, the legislation should specifically provide that an apology does not constitute an admission of liability, and will not be relevant to a determination of fault or liability in connection with civil liability of any kind. Furthermore, the amendment should state that evidence of such an apology is not admissible in court as evidence of fault or liability. In conjunction with this, agencies should also consider creating policies regarding apologies.
5. That, commencing by 1 July 2015, the Senior Management Council of agency Chief Executives conduct an annual assessment of agency complaint management systems. The assessment should ensure ongoing compliance with the Department of the Premier and Cabinet Circular on complaints management and annual reporting requirements. It should also be seen as an opportunity for agencies to

<sup>6</sup> Some of the seven agencies had complaint handling policies in place for some of their business units.



share information and learning on significant complaint handling experiences and resource allocation issues.

## Implementation of Audit Recommendations

The Minister for the Public Sector, the Hon Susan Close MP, wrote to me on 12 May 2015 advising me that raising service standards across the public sector is a priority for the Government. Her letter noted that the findings of the audit 'provide an independent and thorough assessment of how complaints are handled across the public sector and what can be improved'. The Minister reported that:

Work is underway to implement the five recommendations of the audit. Your report has been considered by Senior Management Council and the *Department of Premier and Cabinet Circular 13: Annual Reporting Requirements* has already been updated in line with recommendation three of the report. A new DPC circular on complaints management will be released shortly.

Agency reaction to the audit findings has generally been positive and engaged. Through the active coordination efforts of the Office for the Public Sector (DPC), all agencies have now addressed the audit report findings and are in the process of responding to me. As at 30 June 2015, 11 of the 12 agencies have reported that they have either completed, or are in the process of completing, work to satisfy Recommendation 2.

I intend to write to agencies in the near future to commend the work done by them to date, to provide them with a Complaint Management Framework and Model Policy as a further resource, and to give notice of future compliance reviews by my Office. These will use the benchmark of the new Australian /New Zealand Standard *Guidelines for complaint handling in organisations* (AS/NZS 10002:2014).

I await further reports on implementation of Recommendation 4 to consider amendments to the *Civil Liability Act 1936* and Recommendation 5, for the Senior Management Council to initiate and conduct an annual assessment of agency complaint management systems.

## Good governance in agencies

The Ombudsman SA Strategic plan 2014-2017 cites **Good Governance in agencies** as a primary objective of the business of my Office. In addition to investigation reports and administrative audits, I have undertaken several good governance initiatives designed to assist

agencies within my jurisdiction to address issues which may give rise to poor administrative decision making or governance failures.

## Stage One: Audit of Local Government section 270 reviews

Section 270 of the *Local Government Act 1999* provides a process for the internal review of council decisions.

On 22 June 2015, I wrote to all 68 councils and to the Minister for Local Government, Hon Geoff Brock MP, advising that I intended to commence an administrative audit of council compliance with, and the implementation of, the section 270 requirements for internal review of council decisions.

In commencing Stage One of the audit, I seek to identify the incidence of section 270 internal reviews conducted by all SA councils, and to identify any impediments or difficulties faced by councils in implementing reviews. Following an in-depth Stage Two process involving a sample group of 12 councils in late 2015, I intend to make findings and recommendations relevant to administrative improvement in councils' use of the section 270 internal review provisions. I envisage that my report will be released to the Parliament and made public in early 2016.

My audit has some recent history. The November 2011 Ombudsman SA audit of complaint handling in SA councils, **Valuing Complaints**, identified that there was a low take-up rate by the public of the s.270 option for internal review of council decisions. The audit found that 8 of the 12 councils audited had procedures in place that did not comply with the LG Act.

The Ombudsman made three recommendations at that time:

1. That all councils ensure that their internal review of decision procedure is fully compliant with the requirements of section 270 of the Local Government Act
2. Further, that all councils consider a standard form of wording for exclusions and a statement about the exercise of discretion in accepting matters for review
3. As an adjunct to development of complaints policy, councils should consider the merits of establishing a network or panel of independent reviewers from which to draw support for internal review processes.



In February 2013 the former Ombudsman wrote to all councils requesting feedback on the implementation of the complaint handling audit recommendations. The responses from councils identified that only 41 of 68 councils had implemented the recommendation that all section 270 policy/procedures comply in full with the requirements established by law.

In April 2015, my Office conducted a desktop evaluation to assess the current state of policies/procedures of councils regarding the internal review of council decisions. All 68 councils were assessed and the following emerged:

- 8 councils did not have an internal review policy/procedure available on their website
- 21 councils had not yet reviewed their policy by the date they said they would
- 13 councils did not provide a date for the next review
- 15 councils had not included rate declaration issues or service charges as required by s. 270(2)(ca) of the Act.

The desktop evaluation also found a wide variation in council methods for citing exclusions, despite the Local Government Association of SA adopting and promoting a Model Policy and Procedure in 2012. There are also significant numbers of councils that did not provide details of the applications for internal review in their annual report as required. Some of the councils also have policies that are well beyond the review dates stipulated on the policy.

### University Complaint Handling Guidelines

In January 2015, I endorsed the final version of the NSW Ombudsman publication *Complaint Handling at Universities: Australian best practice guidelines* for the university sector in South Australia. I forwarded a copy of the guidelines to each of the three university Vice Chancellors for their information and reference. I have also published the guidelines on the Ombudsman SA website.

The guidelines were endorsed by a meeting of Australasian Deputy Ombudsmen in Darwin in May 2012 and were developed from work undertaken by the NSW Ombudsman over a number of years. The release of the revised Standards Australia standard on complaints handling in organisations, with a focus on effective investigation of complaints, has provided a timely benchmark for principles and processes outlined in the guidelines.

The guidelines are intended to assist universities to make their complaint handling systems more robust and effective. The purpose is not to infringe the independence

of universities, but to identify best practice standards that will protect the rights of students, staff and the university itself. The audience for these guidelines is executives, managers and complaint handling staff in universities. Other education providers, both public and private, may also find them useful.

### Personal email accounts and council members

In late 2014 my Office received a number of complaints alleging that some council members appear to be using private email addresses for the conduct of council business. In one instance, my Office investigated such a complaint and found that the council had been wrong to permit the forwarding of emails to private email addresses without ensuring that the necessary practice and policies were put in place to prevent breaches of the *State Records Act 1997*. The council has now rectified the problem.

In January 2015 I wrote to all 68 South Australian councils to remind council members of their obligations under the *State Records Act*, and to encourage councils to take steps to ensure that all council members use the council provided email addresses. My correspondence cited the positive example of the City of Prospect which recently revised its Elected Members Records Management Policy to state unequivocally that:

The Mayor and Elected Members will only utilise Council systems for official correspondence created or received in the conduct of their role in Council, i.e. personal email accounts will not be used.

I consider the City of Prospect policy to be leading practice in this area of public administration. Many other councils have written to me to indicate that they are considering a similar policy setting.

In my correspondence, I have acknowledged that the use of private email addresses is not, in itself, contrary to the *Local Government Act* or the *State Records Act*. However, under the *State Records Act* councils 'must ensure that official records of enduring evidential or informational value are preserved for future reference'. I have advised councils that I intend to continue to monitor this area of local government administration in 2015-2016.

### Department for Education and Child Development

In 2014-2015 additional funds were allocated to the Office by the Attorney-General to promote administrative



oversight of and improvement in the DECD in the wake of the DeBelle Royal Commission (2012-2013).

The Acting Ombudsman took the first step by engaging two additional staff; a senior officer designated the Manager Administrative Improvement (Education) and a legal officer, to lead the Office's involvement in this area.

With these additional staff, I decided to instigate investigations into certain administrative failures within DECD which had come to my attention using my own initiative powers, in addition to acting on complaints against DECD where appropriate and undertake full investigations. Those investigations have included matters involving breaches of the *Children's Protection Act 1993*, failure to investigate matters of concern sufficiently or at all and breaches of the Privacy Principles.

In the months following my appointment, the initiative has expanded into a review of complaint handling and investigative procedures and policies. Schools in the inner and outer metropolitan area and one country primary school have been visited by my officers to enquire about complaint handling practices. The results of this preliminary survey have been collated for the conduct of, firstly, an audit survey of complaint handling in selected schools in each of the twelve Government regions in South Australia and, secondly, a similar audit of all regional Directors of Education across the State. I anticipate that the audit will commence in late August or early September 2015, and once all the results are compiled and analysed, a report will be prepared for all stakeholders. I also anticipate that an audit of complaint handling and investigative procedures specifically focussed on Families SA will be conducted later in the financial year.

My officers have liaised closely with the Manager of the Education Complaints Unit, DECD (complaint resolution, complaint statistics and trends), the Director, Office of the Chief Executive (general assistance), Executive Director, Preschool and School Improvement (liaison with schools and education offices for audit purposes) and the Executive Director, Office for Children and Young People (assistance with complaints involving children with disabilities), all of whom have proven to be of considerable benefit to my officers who are either working to resolve complaints in the Education sector or are involved in administrative improvement initiatives.

# MATTERS REFERRED BY THE INDEPENDENT COMMISSIONER AGAINST CORRUPTION

Government Departments  
Local Government  
Other Authorities

# Matters Referred By The Independent Commissioner Against Corruption

The matters below are some of those assessed by the ICAC as raising potential issues of misconduct and/or maladministration in public administration and referred to me for investigation pursuant to section 24(2)(a) of the ICAC Act. 'Complaints' are made by members of the public whereas 'reports' describe matters reported to the OPI by public officers.

## Government Departments

### Refurbishment of offices

2013/09924

#### *Complaint*

The complaint arose out of an anonymous complaint to the Office for Public Integrity in relation to the expenditure of public funds on a second refurbishment of the office of the then Chief Executive of the department and the office of his executive assistant.

#### *Investigation and Outcome*

My investigation found that there were no statutory provisions, administrative instructions or directions which specifically guided the Chief Executive office's fit outs at the time of the refurbishments.

I accepted that the quality of the furniture and workmanship in the first refurbishment were below standards and its replacement was justified. I concluded that neither the former Chief Executive nor staff of the department committed an act of misconduct or maladministration in public administration in spending additional public monies on the second refurbishment.

### Payment of contractors

2014/03852

#### *Report*

It was alleged that an employee of the department committed maladministration in public administration by failing to organise payment of a contractor on time. The contract was for the upgrade of infrastructure in a remote community. It was alleged that as a result of the late payment, the contractor walked off the job, resulting in the community being without water for a period.

The infrastructure upgrade was part of an initiative between the Commonwealth and State governments. As part of that initiative, it was agreed that the State would

report to the Commonwealth on project milestones and the Commonwealth's funding instalments would be paid once those milestones were met.

The department employee was aware that the invoice was overdue but chose to delay payment on the basis that a Commonwealth funding instalment was due to be paid against a milestone.

#### *Investigation and Outcome*

I determined that the employee's failure to escalate the matter within the department and to wait for the Commonwealth funding needed to be considered in the following context:

- the department was relatively small at the time and had significant budgetary constraints
- the money of the employee's branch was largely external or 'hypothecated' funding linked to specific projects (i.e. it was not possible to use funding from one project on other projects)
- any appropriation from Treasury to cover the project was largely used on staffing and the department did not have a large discretionary fund that could be used to cover contingencies such as late payment by the Commonwealth
- there was little flexibility built into the arrangements with the Commonwealth which would have facilitated payment.

My investigation considered:

- the employee made considerable efforts to ensure that the milestone payment was paid and organised for payment of the invoice in his absence
- any disruption to the water supply, while a serious consequence, was not reasonably foreseeable
- while there may have been other steps that the employee, or the department itself, could have taken to progress payment of the invoice, on balance, I did not consider that the employee's conduct constituted substantial mismanagement
- the employee was not acting from any improper motive, nor was he incompetent or negligent
- the employee took considerable steps to progress payment of the Commonwealth funding instalment and was not responsible for the delays in having that money released
- ultimately steps were taken by department staff to fast track payment of the invoice once it came to the Executive Director's attention

- since the incident occurred in 2011, steps were taken by the department to revise the Commonwealth funding arrangements to allow for release of funds on completion of tendering processes
- Treasurer's Instruction 11 has since been amended to clarify that public authorities must not withhold payment of undisputed accounts on 'cash management' grounds without approval of the Treasurer or the Treasurer's delegate.

My investigation found that the employee did not commit an act of maladministration in public administration.

## Tendering process

2013/07046

### Report

The report alleged that:

- two employees of a department committed misconduct or maladministration in organising a trip to New Zealand with an incumbent supplier, during a tender process for provision of information and communication technology (ICT) services. It was alleged that the trip was organised covertly, and that the purpose of the trip was to give the supplier the opportunity to showcase the ICT service delivery model the supplier had implemented in New Zealand. It was alleged that the supplier may have had an unfair advantage. No other potential suppliers were informed of the trip and it was alleged that the preferential treatment in giving the supplier the opportunity to showcase its ICT service delivery model tainted the probity of the procurement process.
- the department committed misconduct or maladministration in granting leave without pay and allowing an employee to work with the supplier during the tender process. It was alleged that this decision was inappropriate and failed to pay due regard to a potential conflict of interest. The supplier was also a supplier under a contract with the department at the time and the department was negotiating an extension to the supplier's term.

### Investigation and Outcome

In relation to the first allegation, my investigation found that after the expression of interest closure date for the tender, but before the request for proposal period, the two employees travelled to New Zealand with a manager from the supplier.

In relation to the second allegation, the Chief Executive of the department received a letter from an employee seeking to take leave without pay and work with the supplier for approximately four weeks. The proposed work involved preparing a document to respond to submissions to the Victorian government. The employee's letter addressed conflict of interest issues, and the Chief Executive sought and received advice that the employee was not involved with nor had any knowledge of ICT procurement matters. The Chief Executive wrote to both the employee and the supplier advising of probity implications. The employee's approval was granted on the basis that he was not involved, engaged or otherwise contributed to any of the supplier's other work for the South Australian government. The supplier was warned that any breaches could see the supplier excluded from further consideration in South Australian government procurement processes.

In relation to the first issue, my investigation found:

- while there was a degree of covertness to the trip, on balance the two employees exercised sufficient caution so as not to prejudice the probity of the procurement process
- the two employees did not breach the relevant policy or the South Australian Public Sector Code of Ethics and did not fail in their responsibilities or duties as public officers. That said, I commented that the two employees could have been more circumspect about the appearance of favouritism
- the supplier's ICT model was not being considered as part of the tender process and consequently the trip to New Zealand did not result in an unfair advantage to the supplier
- the two employees did not commit misconduct or an act of maladministration in public administration.

In relation to the second issue, my investigation found:

- having considered the department's response and all of the documentation provided to the investigation, potential conflicts of interest were dealt with appropriately by the department when granting the employee to engage in work with the supplier
- the request for proposal period had closed prior to the employee's engagement with the supplier
- there were no acts of misconduct or maladministration in public administration.





## Local Government

### Council member conflict of interest

2014/06781

#### Complaint

The complainant operated a cruising restaurant business. He had applied to the council to relocate his business to council land. The complainant alleged that:

- the council had unfairly targeted him by introducing a Commercial Operator's License and associated fee
- a council member had a conflict of interest in the council's consideration of the complainant's request to operate his business, and its resulting decision to implement a license system for commercial boat business operators, as he also ran a business operating a commercial vessel in the council area.

#### Investigation and outcome

My investigation found that neither the CEO, nor any council employees, unfairly targeted the complainant. I formed this view having regard to, in part, the following:

- the council had identified two other potential operators that would be subject to the requirement for a licence and both operators had been provided with a copy of the terms of a proposed licence
- no 'deemed commercial operators' have been provided with an exemption from having a licence
- the decision regarding the fee for the licence was resolved by elected council members.

However, I found that a council member had a conflict of interest in the matter by virtue of his ownership of a business that would be affected by the proposal. Accordingly, I found that the council member breached the conflict of interest provisions of the Local Government Act and the Code of Conduct for Council Members and committed misconduct in public administration.

I recommended that the council reprimand the council member. The council subsequently advised me that it had implemented my recommendation.

### Alleged breach of confidentiality obligations

2013/10802

#### Report

The reporter alleged that, during a radio interview, the mayor disclosed information from a motion which was considered by the council in confidence.

#### Investigation and Outcome

My investigation considered whether the mayor had complied with the council's Code of Conduct in operation at the relevant time, the Local Government Act, and his common law fiduciary duties.

My investigation found that the mayor did not breach any of the relevant confidentiality obligations and did not commit an act of misconduct in public administration, because:

- the mayor was not present at the council meeting when the relevant item was considered
- the substance of the council's position on the matter had already been publicised in a media release, and
- the mayor was circumspect in his comments in the radio interview.

### Council member conflict of interest

2014/03929

#### Report

The CEO of the council made a report about three council members and their conduct in relation to the town's preparations for its Centenary Celebrations. The report alleged that:

- the council members breached the conflict of interest provisions of the Local Government Act and the Code of Conduct for Council Members
- the council members bullied and harassed other council members to vote in favour of decisions to pay council monies to the committees
- the council members breached council financial and budgeting policies by not providing appropriate paperwork for payments to the committees, and
- one of the council members misled the council by informing it that development approval had been granted for the construction of a welcome wall and a monument, when it had not.

### *Investigation and Outcome*

My investigation found that two of the council members who were members of organising committees for celebrations had interests that should have been declared in relation to a number of motions before council.

Those interests arose by virtue of, for example, purchasing materials towards building works for the centenary celebrations with the intention of being reimbursed, owning a business undertaking works associated with the celebrations and sitting on a committee which sought reimbursement of a Development Application fee.

My investigation therefore found that the two council members committed misconduct in public administration for their breaches of the conflict of interest provisions of the Local Government Act and the Code of Conduct for Council Members.

I recommended that the two council members be publicly reprimanded by the council. The council subsequently advised me that it had implemented my recommendation.

I did not find that any council members harassed or bullied other council members, or breached council finance policies; the organising committees were not section 41 committees under the Local Government Act, and therefore not official council committees which needed to comply with these policies.

I found that the council members who informed council that development approval had been granted had made an inadvertent error that was rectified quickly.

### **Council member conflict of interest**

2014/04312

#### *Report*

The report alleged that the former mayor of the council made decisions in relation to the location of a Wastewater Management Scheme whilst owning agricultural land adjacent to one of the proposed locations. It was alleged that the former mayor took part in discussions relating to the Wastewater Management Scheme at three council meetings and in public consultation meetings.

#### *Investigation and Outcome*

The former mayor denied that they had an interest that they needed to declare in the three council meetings where the location was discussed. The former mayor

believed that the proposed location nearest their property had been previously discounted by the council.

My investigation found:

- the former mayor did not have an interest because I could not be satisfied that they would receive a benefit or a detriment should it be determined that the Wastewater Management Scheme be located adjacent their land
- the wording of the council's motions at the relevant meetings did not give rise to a specific enough interest, and as such, the former mayor's interest could not be a 'conflict of interest at large'
- answering a question at a public consultation meeting did not give rise to an interest because a public meeting is not a meeting 'before the council'.

Accordingly, I found that the former mayor did not breach the conflict of interest provisions of the Local Government Act or the Code of Conduct for Council Members and the former mayor did not commit misconduct in public administration.

### **Council member conflict of interest**

2014/03266

#### *Report*

The reporter alleged that, on two occasions, a council member voted in council meetings in relation to the compliance of a marina resident with a Land Management Agreement. The council member lived with their partner in the same marina as the resident. The council member's partner had written and complained to the council about the increasing non-compliance of homes in the marina with Land Management Agreements. The complaint had made reference to the property that was the subject of consideration at the two council meetings.

#### *Investigation and Outcome*

My investigation found:

- the council member's house was opposite to the property that was the subject of consideration at the two council meetings
- the council member's partner was 'closely associated' with the council member for the purposes of the conflict of interest provisions of the Local Government Act
- the council member had an interest under section 73 of the Local Government Act because, as a close neighbour, the council member would have had an



expectation of receiving a benefit or suffering a detriment had the property in the marina complied with the Land Management Agreement

- the council member had a conflict of interest and should not have voted in the council meetings about Land Management Agreements at the marina.

Accordingly, I found that the council member breached the conflict of interest provisions of the Local Government Act and the Code of Conduct for Council Members, and the council member committed misconduct in public administration.

I recommended that the council member undertake specific training in relation to conflict of interest. The council subsequently advised me that it had implemented my recommendation.

### **Alleged dishonesty**

2015/00675

#### *Report*

The matter arose from two reports which alleged that the council member had provided an email, originally written to the council by a member of the public, to a former council member, and failed to admit that he had done so. It was alleged that the council member allowed the former council member to publicly state that she had forwarded the email to herself from the council member's iPad, without the council member's knowledge.

#### *Investigation and Outcome*

I considered whether the council member committed misconduct by acting dishonestly in breach of the council member Code of Conduct, at the relevant time, and the Local Government Act.

My investigation found:

- the council member was careless in allowing the former council member access to his iPad
- the council member may have told the former council member about the email
- the council member may have showed the email to the former council member
- there was not sufficient evidence to establish that the council member forwarded the email to the former council member, or that the council member acted dishonestly

- the council member did not breach the Local Government Act as, even if the council member deliberately showed the former council member the email, there was not sufficient evidence to establish that he did so in order to gain, indirectly or directly, an advantage to himself or another person
- the council member did not breach the relevant code of conduct and did not act in a way that was unlawful
- the council member did not commit misconduct in public administration.

### **Council member conflict of interest**

2014/05913

#### *Report*

The report alleged that a council member had a conflict of interest in the council's decision making in relation to the meetings about a Ministerial Development Plan Amendment. The DPA envisaged the rezoning of growth areas from horticultural to residential land. The council member had brothers-in-law, cousins and uncles living in the area subject to the DPA. The council member did not declare a conflict of interest in relation to the consideration of the DPA at several meetings.

#### *Investigation and Outcome*

The Acting Ombudsman's investigation found that:

- the council member did not have an interest in the items as the council member did not own land or live in the area which was the subject of consideration in the items
- the council member did not have an interest by virtue of his extended family living in the relevant area because brothers-in-law, cousins and uncles are not considered to be people who are 'closely associated' with a council member under the Local Government Act
- the council member did not breach the conflict of interest provisions of the Local Government Act or the codes of conduct of the relevant times
- the council member did not commit misconduct in public administration.

### **Council member conflict of interest**

2014/04225

#### *Report*

A council member resided and owned land in an area that was subject to a Ministerial Development Plan



Amendment. The DPA was to see the rezoning of growth areas from horticultural to residential land. The council member was also the Chair of a committee of residents of the area affected by the DPA, and a member of the council's Strategic Planning Committee.

The council's administration had sent a memorandum to all council members noting that the council would soon be making decisions in relation to the DPA. The memorandum raised the possibility of conflict of interest scenarios, and advised that council members may access legal advice to determine whether conflicts may exist based on their individual circumstances.

The council member received legal advice which noted that with the proposed rezoning under the DPA, landholders may receive a 'significant financial benefit' if the DPA proceeded. The advice concluded that the council member would be conflicted when the council made decisions in relation to the DPA; and that at council meetings, the council member should disclose the conflict and not participate.

When the council's Strategic Planning Committee considered the DPA the council member declared an interest in the item, and did not participate in the discussion or vote in relation to the item.

Approximately three months later, the DPA was considered again by the council's Strategic Planning Committee. The minutes of the meeting record that the council member declared an interest in the items which considered the DPA. However, after declaring an interest, the council member participated in the meeting in relation to the items.

#### *Investigation and Outcome*

The Acting Ombudsman's investigation found:

- the council member did not have an interest by virtue of his membership of the community committee, as it was a non-profit association
- the council member had an interest in the matter by virtue of his ownership of property in the area affected by the DPA
- the council member breached the conflict of interest provisions of the Local Government Act and the Code of Conduct for Council Members
- the council member committed misconduct in public administration.

Given that the council member was no longer a member of the council at the time of the investigation, the Acting Ombudsman did not make any recommendations.

## **Council member conflict of interest**

2014/05914

### *Report*

It was alleged that a council member had a conflict of interest in items considered by the council relating to a Ministerial DPA because his daughter owned property in the area that was subject to the DPA. The council member was a member of the council's Strategic Planning Committee.

The council member also received legal advice which concluded that he would be conflicted when the council made decisions in relation to the DPA; and that at council meetings, the council member should disclose the conflict and not participate.

### *Investigation and Outcome*

The council member declared a conflict of interest in relation to consideration of the DPA at an earlier council meeting.

The council member was present, but did not declare a conflict of interest, and participated and voted in relation to items considering issues involving the DPA at five subsequent council and Strategic Planning Committee meetings.

The Acting Ombudsman's investigation found:

- the council member's daughter was 'closely associated' with him for the purposes of the conflict of interest provisions of the Local Government Act
- the council member had an interest by virtue of his daughter's ownership of property in the area affected by the DPA because his daughter would have obtained a benefit or suffered a detriment if the matter had been decided in a particular manner
- the council member breached the conflict of interest provisions of the Local Government Act and the Code of Conduct for Council Members
- the council member committed misconduct in public administration.

The Acting Ombudsman did not make any recommendations.



## Confidentiality obligations

2014/03267 & 2014/03268

### Report

The report alleged that a council member had breached confidentiality by passing on information from a confidential council meeting to a landowner.

The council had considered an item concerning a land rezoning project in confidence under sections 90(2) and 90(3)(b) of the Local Government Act. The council's consideration of the matter concerned negotiations between the council, the state government and local landowners, about infrastructure deeds for the land rezoning project. The council member was in attendance at the meeting.

The day after the council meeting, an employee of the state government agency involved in the negotiations received an email from the landowner. The email included information about the negotiations from the confidential council meeting. It was alleged that the leaking of the confidential information to the landowner undermined the negotiating process and improperly influenced a commercial agreement.

### Outcome and opinion

The Acting Ombudsman's investigation found:

- the council member and the landowner discussed the confidential council meeting
- the council member breached the confidentiality order imposed by the council
- the council member's release of information which he knew was confidential, or should reasonably have known was confidential, constituted a breach of the Code of Conduct for Council Members
- the council member committed misconduct in public administration.

The Acting Ombudsman did not make any recommendations in relation to the finding.

## Procurement and tendering processes

2014/05926

### Complaint

The complaint alleged that the council had failed to follow proper tendering processes for works in relation to the construction of a facility in 2010.

### Investigation and Outcome

My investigation found that the council failed to adhere to its procurement policy, including:

- the council failed to prepare proper Request for Tender documentation
- the council failed to follow proper tender processes
- the council failed to maintain adequate records.

My investigation concluded that the procedures undertaken by the council resulted in an 'irregular and unauthorised use of public money or substantial mismanagement of public resources' within the meaning of section 5(4) of the ICAC Act. I reached my conclusion by giving consideration to section 5(4)(b), which provides that maladministration 'includes conduct resulting from impropriety, incompetence or negligence.'

However, I determined not to make any recommendations in light of the following factors:

- the age of the allegation
- the key staff members involved in the project no longer worked at the council
- the council had undertaken a review of the project
- the council had adopted a new procurement policy and procedures
- the council had recently undertaken an audit of its adherence to the procurement policy in relation to projects undertaken since the review, and was acting on the recommendations of the audit.

## Council member conflict of interest

2014/05038

### Complaint

The complaint alleged that a council member had a conflict of interest in the council's decision making in relation to the council's construction of a facility. It was alleged that this conflict arose because a contract for some work on the facility was granted to a company owned by the council member.

### Investigation and Outcome

The Acting Ombudsman's investigation found:

- the company granted the contract was a person that was 'closely associated' with the council member for the purposes of the Local Government Act

- the decisions relating to the construction of the facility that the council member voted on were in the nature of general decisions about the project
- it was not reasonable to expect the council member to have anticipated that, sometime in the future, the project might have required services that his company could provide
- when the council member became aware that the project would be within the scope of his company's expertise the council member took no further part in any council decisions about the construction of the facility
- the council member did not breach the conflict of interest provisions of the Local Government Act.

Accordingly, the council member did not commit misconduct in public administration.

### **Council member conflict of interest**

2014/05917

#### *Complaint*

The complaint alleged that the mayor had a conflict of interest in the council's decision making in relation to the council's construction of a facility. It was alleged that this conflict arose because a contract for works on the construction of the facility was granted to a company owned by the mayor's brother-in-law.

#### *Investigation and Outcome*

My predecessor's investigation found:

- the mayor did not himself have an interest in relation to the matters
- the mayor did not have an interest by virtue of his association with his brother-in-law, because brother-in-law is not a relationship category within the definition of 'relative' under the Local Government Act
- the mayor did not have any influence over the selection process for contractors
- the council member did not breach the conflict of interest provisions of the Local Government Act.

Accordingly, the council member did not commit misconduct in public administration.

### **Council member conflict of interest**

2014/05918

#### *Complaint*

The complaint alleged that a former council member had a conflict of interest in the council's decision making in relation to the council's construction of a facility. It was alleged that this conflict arose because a contract for works on the construction of the facility was granted to a company of which he was a partner.

The council member had not been a member of the council since 2010.

#### *Investigation and Outcome*

My predecessor's investigation found:

- the company granted the contract was a person that was 'closely associated' with the council member for the purposes of the Local Government Act
- over a period of approximately 18 months, the council member had participated in three council meetings which considered the construction of the facility
- the first two decisions that the council member participated in were general decisions about the project, and it was not reasonable to expect the council member to have anticipated that, sometime in the future, the project might have required services that his company could provide
- prior to the consideration of the matter at the third council meeting, the council member was aware of the opportunity for works to be awarded to his company because the council member's company had provided a quote to the council for works relating to the construction of the facility that was dated one day prior to the meeting
- the council member would have had a reasonable expectation of receiving a benefit or suffering a detriment had the item considering the construction of the facility at the third council meeting been decided in a particular manner.

Accordingly, in relation to the third council meeting, the council member breached the conflict of interest provisions of the Local Government Act and committed misconduct in public administration.

Given that the council member had not been a council member since 2010, the Acting Ombudsman did not make any recommendations in relation to this finding.



## Development application assessment

2014/04516

### Report

The report alleged that the CEO of the council committed misconduct in public administration by:

- using his position to delay the consideration of a development application in order to favour a competing application lodged by a couple who were alleged to be his friends
- seeking to improperly interfere with a meeting of the council's Development Assessment Panel by addressing the meeting and speaking against an application.

### Investigation and Outcome

In relation to the first issue, the CEO refuted the allegation that he used his position to delay the application to favour the competing application and noted the application was on foot before he commenced employment with the council. The planning officer who processed the application did not recall the CEO being involved in the decision to delay consideration of the application. Instead, the planning officer told my investigation that the decision to delay was a genuine attempt to get the competing parties to cooperate and was motivated by fairness concerns.

In relation to the second issue, the CEO did not dispute that he sought permission from the Presiding Member of the Development Assessment Panel to address the meeting or that he spoke against the application. I also considered the Development Assessment Panel's operating and meeting procedures and noted that those procedures were silent on the issue of council employees addressing a panel.

My investigation found:

- in relation to the first issue, it was not clearly established that the CEO was responsible for any delay in the assessment of the application, or that he otherwise interfered in the council's assessment of the application
- while I queried whether the approach taken by the council in delaying the processing of the applicant was consistent with the scheme of the Development Act, I did not consider that there was any improper motive behind that approach
- there was no evidence before the investigation to support the allegation that there was a personal relationship between the CEO and the couple who lodged the competing application

- in relation to the second issue, the CEO genuinely considered that the matters he raised were appropriate and relevant to the Development Assessment Panel's consideration of the further application
- on balance, while I accepted that the CEO had a personal view that the application should not proceed to assessment, I did not consider that he had any improper motive or personal interest in addressing the Development Assessment panel or that he improperly relied on his position as Chief Executive to exert undue pressure on the Development Assessment Panel to reach a particular conclusion
- while I queried the appropriateness of the Development Assessment Panel allowing persons other than those specifically envisaged by the Development Act and the procedures to address a Development Assessment Panel meeting, on balance, I did not consider that the CEO's actions were directly contrary to the procedures
- the CEO did not commit misconduct in public administration.

## The Code of Conduct for Development Assessment Panels

2014/04516

### Report

It was alleged that the presiding member of the council's Development Assessment Panel committed misconduct in public administration by:

- allowing the CEO of the council to address a Development Assessment Panel meeting in relation to an application for development approval, and
- by failing to allow the applicant to respond to the CEO's comments at the meeting.

### Investigation and Outcome

My investigation considered:

- the presiding member of the council's Development Assessment Panel was only given notice of the CEO's intention to address the meeting immediately prior to the meeting and he genuinely believed that the CEO would address the Development Assessment Panel Meeting on council matters pertaining to the application under consideration
- the CEO spoke strongly against the application and requested the Development Assessment Panel to consider refusing the application without proceeding to assessment

- the presiding member of the council's Development Assessment Panel told the investigation that if he had been aware of the true nature of the matters that the CEO intended to raise he would have advised him that it was not appropriate to address the meeting in the way that he did
- the presiding member's understanding at the time was that there was no legal impediment to a council officer (as opposed to a council member) being allowed to address a Development Assessment Panel meeting
- the presiding member of the council's Development Assessment Panel told the investigation that by not allowing the applicant to address the Development Assessment Panel meeting he was following the procedure in clause 7.2 of the Development Assessment Panel Procedures.

My investigation found:

- there was no evidence to suggest that the presiding member of the council's Development Assessment Panel breached the Development Assessment Panel Code of Conduct in relation to either issue
- while it was unfortunate that the presiding member of the council's Development Assessment Panel did not confirm with the CEO the capacity in which he intended to speak before the meeting, the CEO's behaviour was not the norm and was effectively 'sprung' on the presiding member at very short notice
- while I queried the appropriateness of the Development Assessment Panel allowing persons other than those specifically envisaged by the Development Act to address a meeting, I did not consider that there was any impropriety in the presiding member allowing the CEO to speak. Nor did I consider that in doing so the presiding member breached the Development Assessment Panel Code of Conduct or procedures
- the presiding member of the council's Development Assessment Panel did not commit misconduct in public administration.

### **Inappropriate removal of confidential file**

2014/06896

#### *Report*

A file containing a note relating to a human resources investigation by the council was removed without authorisation from the office of the CEO. Following the removal of the file, an anonymous note, including an extract of the file, was placed on a staff member's desk. It was

alleged that whoever left the anonymous note also had access to the file that was removed from the CEO's office.

#### *Investigation and Outcome*

My investigation found:

- there was conflicting evidence from council employees
- no conclusive evidence that the extract left on the CEO's desk originated from the missing file
- no evidence that any particular employee of the council committed misconduct in public administration.

### **Failure to accurately declare property interests in an ordinary return**

2015/02598

#### *Report*

The report alleged that a council member failed to declare an interest in a property when she lodged an ordinary return.

The council member had previously failed to include details of the property in eight ordinary returns. In 2014, after being advised by the council's CEO to review her returns, the council member lodged an accurate return. The council member lodged a further ordinary return three months later, in which she failed to disclose details of the property.

#### *Investigation and Outcome*

The council member advised my investigation that she understood her legal obligations in relation to lodging returns. She stated that her failure to include the property in the ordinary return was an oversight.

My investigation found:

- it was not possible to establish that the council member had the requisite knowledge to prove a contravention of section 69 of the Local Government Act.
- the council member did not contravene clause 3.1. of the Code of Conduct for Council Members or section 62(1) of the Local Government Act as she was not dishonest
- there was no evidence that the council member received any benefit, or avoided any detriment, by failing to disclose the property.

However, I found that the council member, in failing to lodge the return accurately and in failing to perform her duties with reasonable care and diligence, contravened clauses 3.2 and 3.11 of the Code of Conduct and sections



62(2) and 63 of the Local Government Act. Accordingly, the council member committed misconduct in public administration.

I recommended that the council reprimand the council member by means of public statement. The council subsequently advised me that it had implemented my recommendation.

## Other Authorities

### Allegations of inappropriately influencing decisions and stealing equipment

2015/01926

#### Complaint

The anonymous complaint alleged that an employee of a public authority had:

- stolen equipment and goods
- influenced the appointment of two friends to positions at the public authority, and

- influenced the public authority's decision to obtain services from a company which sponsored a sporting club of which the employee was a member.

#### Investigation and outcome

My investigation found the employee did not commit misconduct or an act of maladministration in public administration because:

- there was no evidence to support the allegation that the employee stole equipment or goods from the public authority
- the employee was not the sole decision maker in the appointment process and there was no evidence that he attempted to unduly influence other decision makers
- the employee did not influence the public authority's decision to obtain services from a company of which he was associated.

## Closed matters – ICAC Outcomes

	Government Departments	Local Government	Other Authorities	Total
<b>Response to proposed referrals</b>				
Agree to referral	1	12	2	15
Disagree to referral	2	18	1	21
ICAC exercise Ombudsman powers		1	5	6
Partially agree with referral		2		2
<b>Total</b>	<b>3</b>	<b>33</b>	<b>8</b>	<b>44</b>
<b>ICAC investigations</b>				
Discontinued		6		6
Finding of maladministration		1		1
Finding of misconduct		8		8
No finding of misconduct or maladministration	1	10	1	12
<b>Total</b>	<b>1</b>	<b>25</b>	<b>1</b>	<b>27</b>

**Note:** Explanations of the ICAC outcomes are in Appendix E.



# FREEDOM OF INFORMATION

Governments Departments  
Local Government  
Other Authorities  
Freedom of Information Audit

# Freedom of Information

## Case Summaries

### Government Departments

#### Attorney General's Department (SafeWork SA)

##### Information in relation to mining incident

2014/08510

##### *Access application*

The applicant originally sought access to various documents relating to a specific incident at a mine. The agency refused access to those documents, relying on the secrecy exemption in clause 12(1). The agency asserted that the exempted documents related to an investigation undertaken by SafeWork SA and that section 271 of the *Work Health and Safety Act 2012* prevented the release of information obtained by SafeWork SA inspectors in the course of exercising their powers and functions under that Act.

##### *Review*

I considered that the documents should be assessed under the Act under which they were obtained, being the *Occupational Health, Safety and Welfare Act 1986*.

I determined that:

- two of the documents contained information of a purely administrative nature which could be disclosed without offending the confidentiality provisions in section 55 of the OHSW Act (and on that basis were not exempt under clause 12(1))
- one of the documents contained publicly available information (and on that basis was not exempt under clause 12(1))
- the remaining nine documents contained information obtained by the relevant workplace inspector, the disclosure of which would amount to an offence under section 55 of the OHSW Act (and on that basis were exempt under clause 12(1)).

The mining company was provided with a copy of the relevant documents (with the agency's consent) and my provisional report as an interested third party. The mining company submitted that two of the documents related to its business affairs and on that basis were exempt under clause 7(1)(c).

##### *Determination*

I was not satisfied that disclosure of the relevant documents would have any adverse effects on the mining company's business affairs or that disclosure would impact on its future supply of such information to government (noting

that the company must continue to provide information to the government as required by law). Nor was I satisfied that releasing the information would be contrary to the public interest. To the contrary, I considered that there was a public interest in satisfying the objects of the FOI Act and ensuring transparency and accountability particularly in relation to safety issues and SafeWork SA's investigation of those issues.

I varied the agency's determination to allow access to the three documents which were not exempt under clause 12(1).

#### Department for Education and Child Development

##### Personal affairs and disclosure constituting an offence exemptions

2013/11965

##### *Access Application*

The applicant sought access to various documents recording observations or opinions about two foster parents during access visits with their foster child. The applicant was not satisfied that all relevant documents had been identified and provided.

##### *Review*

After the Acting Ombudsman advised the agency that the documents initially provided to my office appeared to be inadequate, a further 29 documents were provided. The searches conducted by the agency appeared to be insufficient and the Acting Ombudsman requested a statutory declaration as evidence that the agency had conducted adequate searches. Further documents and a statutory declaration from the agency's Acting Manager, attesting to his belief that all reasonable searches had been undertaken, were provided.

In total, the agency identified 94 documents within the scope of the application.

The Acting Ombudsman accepted the statutory declaration as evidence that all reasonable searches had been conducted by the agency and that the discovered documents had been provided.

##### *Determination and Comment*

The Acting Ombudsman was persuaded that four of the documents should be exempt on the basis of clause 6(1) as they related to the personal affairs of third parties and releasing them would have involved a breach of those people's privacy. The Acting Ombudsman was not, however,



persuaded that the further nine documents claimed to be exempt under clause 6(1) were in fact exempt.

The Acting Ombudsman was satisfied that many of the documents contained information relating to the personal affairs of a child or a guardian of a child which would, if disclosed, constitute an offence under the *Child Protection Act 1993* (and which should be exempt under clause 12(1)).

The Acting Ombudsman determined that the exempt information was pervasive throughout the documents so it was not practicable to provide partial release.

The Acting Ombudsman confirmed the agency's determination.

## **Department for Education and Child Development**

### **Refusing to deal with an application**

2014/08450, 08452, 08454

#### *Access application*

The applicant lodged three applications seeking access to various documents identifying the number of assaults on teachers by students in schools. The agency emailed the applicant seeking clarification in relation to the nature of assaults. The applicant replied by email on the following day that he was referring to physical assaults.

The agency did not determine the applications within the statutory timeframe, resulting in a 'deemed refusal' for each application.

On internal review, the agency refused to deal with the applications in accordance with section 18(1) of the FOI Act on the grounds that the applications would require a substantial and unreasonable diversion of the agency's resources. The agency requested that the scope be amended (e.g. by reference to a particular school or region).

#### *Review*

I did not consider the agency's email to the applicant fulfilled the obligations imposed on the agency by section 18(2) of the FOI Act to endeavour to assist the applicant to amend the application so that it would no longer unreasonably and substantially divert the agency's resources. I considered that the email was a request for clarification only.

While the internal review determination put forward suggestions to the applicant as to possibilities for amendment to the application, section 18(2) of the FOI

Act required that the assistance be given to the applicant prior to a determination being made.

#### *Determination*

I was not satisfied that the agency complied with section 18(2) prior to making a determination.

Consequently, my view was that the agency had no power to refuse to deal with the application under section 18(1).

I reversed the agency's determination accordingly.

## **Department for Education and Child Development**

### **Access to documents relating to removal of a child from their foster home**

2014/02968

#### *Access application*

The applicant, on behalf of the child's foster parents, requested access to documents relating to the removal of a child from their long term foster home. The agency failed to determine the application within the statutory timeframe at first instance and at internal review, resulting in a 'deemed refusal'.

#### *Review*

In total, 79 documents were identified by the agency as within the scope of the application, with a number of documents unable to be located. Although this was of concern to the applicant, I was satisfied the agency had undertaken reasonable searches to locate those missing documents.

The agency claimed exemption over many of the located documents on the basis of the 'secrecy' exemption (clause 12(1)). The agency submitted that disclosure would constitute an offence under s 58 of the *Children's Protection Act 1993*. The agency also claimed that the 'personal affairs' exemption (clause 6(1)) applied to some of the documents.

#### *Determination and comment*

The Acting Ombudsman accepted the agency's submissions that the release of the relevant information would amount to an offence, and additionally considered a number of documents not claimed as exempt by the agency actually fell under the 'secrecy' provisions of the FOI Act.



The Acting Ombudsman did not consider it unreasonable to release documents relating to the foster parents as they had provided authorisation for the release of that information.

The Acting Ombudsman's opinion was that the agency should provide access to documents 'from which the exempt matter has been deleted'. The Acting Ombudsman varied the agency's determination accordingly.

## **Department of Environment, Water and Natural Resources**

### **Cabinet documents**

2014/06247

#### *Access application*

The applicant sought access to 'all marine concept maps'. The agency identified one document within the scope of the application and refused access, claiming that exemptions in clauses 1(1)(e) and 1(1)(f) relating to cabinet documents applied.

#### *Review*

The agency did not initially provide any evidence to my office to support its claims of exemption.

At the Acting Ombudsman's request the agency provided a statutory declaration from the relevant manager attesting that:

- he met with the relevant Minister
- at that meeting he provided the Minister with 'a folder containing briefing materials which included "marine park concept maps"'
- the maps were prepared specifically for use by the Minister to help him decide on a marine park zoning proposal for Cabinet
- Cabinet considered the Minister's marine park zoning proposal, which was subsequently released for public consultation.

#### *Determination*

The Acting Ombudsman considered the statutory declaration provided sufficient evidence to support the agency's claims for exemption and confirmed the agency's determination.

## **Department of Environment, Water and Natural Resources**

### **Release of personal information**

2014/01493

#### *Access application*

The applicant sought access to a report regarding a preservation group.

The agency refused access to the report, claiming that the personal affairs exemption in clause 6(1) and the operations of agencies exemptions in clauses 16(1)(a)(iii) and (b) applied.

#### *Review*

The report provided the results of the investigation of complaints of bullying and harassment made by volunteers of the preservation group against another volunteer. The applicant was one of the people who made a complaint.

The Acting Ombudsman considered whether disclosure of the information would be unreasonable for the purposes of clause 6(1), having regard to the principles set out in the District Court case of *Treglown v SA Police*<sup>7</sup> in particular that:

- the information could properly be characterised as sensitive due its extremely personal nature
- the applicant had an interest in the report as one of the complainants. The applicant knew some of the information in the report as they provided that information; however, there was a significant portion of the document that related to information given by others
- it was extremely likely that the person about whom the allegations were made would not want the information disclosed. In addition, the applicant was only one of ten people who made complaints. Given the sensitive nature of the information revealed in the report, it was likely that the other complainants would also not want the information disclosed
- the agency asserted that the information was obtained in confidence.

The Acting Ombudsman's view was that it would be unreasonable to release the information in the report that did not deal with the complaints made by the applicant. However, it would not be unreasonable to release to the applicant the information relevant to their own complaint.

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<sup>7</sup> *Treglown v SA Police* [2011] SADC 139 at [133].

The Acting Ombudsman determined that the information which would be exempt under clauses 16(1)(a)(iii) and (b) would be identical to the determination of information which was exempt pursuant to clause clauses 6(1) and 6(2).

#### *Determination*

The Acting Ombudsman determined that the report was exempt for the purposes of clauses 6(1) and (2) and varied the agency's determination accordingly.

### **Department of the Premier and Cabinet** **Confidentiality, public interest considerations and sufficiency of search**

2014/02025

#### *Application for access*

The applicant sought access to various documents demonstrating the full costs of the advertising budget for promoting various government initiatives. The agency failed to determine the application within the statutory timeframe, resulting in a 'deemed' refusal.

#### *Ombudsman review*

The applicant was aggrieved by the agency's refusal to release certain information and questioned the sufficiency of the agency's searches for documents.

#### *Consideration - claims of exemption*

The Acting Ombudsman was satisfied that rates paid to individual media outlets, including their production costs, were subject to a contractual obligation of confidentiality. The Acting Ombudsman was also satisfied that a document was exempt because revealing an ad-serving cost in conjunction with another figure would reveal information subject to a contractual obligation of confidentiality.

The Acting Ombudsman rejected the remaining claims of exemption on the basis that:

- the relevant information did not have a commercial value to an agency or any other person in the requisite sense
- disclosure could not be reasonably expected to destroy or diminish the value of *that information*
- disclosure of the relevant information could not be reasonably expected to have a substantial adverse effect on the effective performance by the agency of its functions.

- In addition, the Acting Ombudsman was not satisfied that it would, on balance, be contrary to the public interest to disclose the relevant information, noting the following factors to be relevant:
- the information related to a particular point in time, and was more than six months old
- a figure in one of the documents that the agency had released
- multiple factors (including the advertising brief) undoubtedly determined the amounts, and multiple factors would invariably influence future costs and rebates; such factors were not necessarily evident from the figures
- disclosure was likely to facilitate the government, and by extension the public, obtaining the best possible deal in future tendering processes
- the objects of the FOI Act, particularly the strong public interest in members of the public being aware of how public money is spent and whether the government is getting value for its expenditure of public money, to ensure transparency and accountability within representative government and to promote openness
- expectations of confidentiality are 'always subject to the provisions of the FOIA [the FOI Act] and cannot be affected by any representation ... that greater confidentiality might be accorded to material than properly reflects the effect of the FOIA'.<sup>18</sup>

#### *Consideration - sufficiency of search*

The Acting Ombudsman was not satisfied that there were reasonable grounds to believe that additional documents within the scope of the application existed and were held by the agency. The Acting Ombudsman considered it likely that other agencies may have held relevant documents.

#### *Determination and comments*

The Acting Ombudsman varied the agency's determination to enable additional information to be released.

The Acting Ombudsman also expressed concerns about the rates and gross amounts charged by individual media outlets being exempt from disclosure.

8 *Ipx Information Technology Group Pty Ltd v The Department of Information Technology Services South Australia* (1997) 192 LSJS 54, 70.

## Department for Health and Ageing

### Documents within the scope of the application for access

2014/04455

#### *Application for access*

The applicant sought access to statistical information held by the agency's 'Pregnancy Outcomes Statistics Unit' for each hospital. Following internal review, the agency identified one document which it claimed was exempt on the basis that the personal affairs exemption (clauses 6(1) and 6(3a)), confidential information exemption (clause 13(1)(b)) and the contempt of court/parliamentary privilege exemption (clause 17(c)) applied.

#### *Review*

During the external review the agency submitted that it did not 'hold' any documents within the scope of the application. The external review considered whether there were reasonable grounds to believe that any documents within the scope of the application were held by the agency.

The Acting Ombudsman accepted that when the application for access was made, the three relevant documents did not exist, and were not capable of being produced using existing computer hardware and software programs on the basis of information held by the agency in computer storage.

In addition, the Acting Ombudsman concluded that forms required to be provided by individual hospitals under the *Health Care Regulations 2008* were outside the scope of the application.

Having regard to the terms of the application and the submissions from the parties, the Acting Ombudsman did not consider there were reasonable grounds to believe that any documents within the scope of the application existed and were held, or taken to be held, by the agency. The Acting Ombudsman accepted that for the agency to provide some or all of the requested data, additional computer codes would need to be written, and any document produced as a result would be outside the scope of the application for access.

#### *Determination and comment*

The Acting Ombudsman reversed the agency's determination following internal review as she was not satisfied that the agency held any documents within the scope of the application.

## Central Adelaide Local Health Network

### Amendment of records

2014/07023

#### *Access application*

The applicant sought amendment of the agency's records concerning their personal affairs contained in a relative's patient file. The agency refused to amend its records.

#### *Review*

The applicant sought five separate amendments to a record detailing a registered nurse's recollections of their conversations with the applicant and an administrative staff member of the agency.

Although the agency bore the onus of justifying its determination pursuant to section 48 of the FOI Act, I considered that the applicant had an onus to provide some measure of evidence in support of their application.

The applicant provided both telephone records and recollections of the events. The conversations were not recorded. The applicant first became aware of the document approximately six months after its creation.

I was satisfied that the document:

- contained information concerning the applicant's personal affairs
- was available for the agency's use in connection with its administrative functions
- was a contemporaneous record.

The case of *Jeffries v South Australia Police*<sup>9</sup> indicates that an opinion can be subject to an amendment under section 30 in instances where the facts underlying such judgments have been discredited. Along the same lines, my view was that an amendment to an opinion might be appropriate if such an opinion was formed upon the basis of incorrect factual evidence, or if there was no basis for the opinion at all.

#### *Determination and comments*

I was not satisfied that:

- the opinions and recollections recorded by the nurse were without factual basis

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9 *Jeffries v South Australia Police* [2003] SADC 2 (Unreported, Judge Anderson, 21 January 2003), [20].

- differing subjective views, for example about the volume of speech, were sufficient to warrant an amendment under the FOI Act
- the fact that the document only detailed the nurse's recollections of the salient points, and was not a transcript of the conversations, rendered it incomplete, incorrect, out of date or misleading
- the document was incomplete, incorrect, out of date or misleading.

I confirmed the agency's determination accordingly.

I commented that the applicant was entitled to require the agency to add a notation to its records pursuant to section 37(1) of the FOI Act, setting out her recollections of the relevant conversations.

## Department for Correctional Services

### Refusal to release documents used to determine the applicant's risk of reoffending

2014/07824

#### Access application

The applicant is serving a sentence of imprisonment and is not currently eligible to apply for release on parole. The applicant sought access to mail records and assessments used to determine his risk of reoffending. The agency refused to release one document. The agency claimed that the document was exempt on the basis that it concerned the operations of agencies (clauses 16(1)(a)(i); 16(1)(a)(ii); and 16(1)(a)(iv), each in conjunction with clause 16(1)(b)).

#### Review

The document was a generic assessment tool. The name of the assessment tool appeared on each page of the document and also included proposed questions and assessment methods.

Ultimately, I was satisfied that releasing the document could reasonably be expected to prejudice:

- the utility of future tests conducted by the agency, by enabling test subjects to provide answers that show them in a more favourable light
- the attainment of the objects of future tests conducted by the agency, by hampering the agency's ability to accurately assess offenders' risks of reoffending, as well as treatment and accommodation needs.

In addition, I was satisfied that disclosure would, on balance, be contrary to the public interest. I considered the following factors to be relevant in that regard:

- the objects of the FOI Act
- promoting transparency of the agency's risk assessment process, and assisting the applicant to understand how the agency had assessed his risk of reoffending
- promoting accountability of the agency and its staff
- the continuing relevance of the assessment tool to the agency
- the agency being able to manage prisoners and accurately assess them, including their treatment needs and risks of reoffending.

#### Determination and comment

I considered that ensuring the agency's ongoing ability to manage and accurately assess prisoners were persuasive considerations in this matter.

I concluded that the document was exempt under clauses 16(1)(a)(i) and 16(1)(a)(ii), both with clause 16(1)(b) and I confirmed the agency's determination accordingly.

I did not consider it necessary to address the agency's remaining claim of exemption.

That said, I expressed concerns about the inadequate reasons provided in the agency's notices of determination. I reminded the agency that it must engage in a 'public interest balancing process' in applying the public interest test. Merely satisfying the initial criteria in an exemption clause with a public interest test under the FOI Act is not enough to satisfy the test that disclosure would, on balance, be contrary to the public interest.

## Renewal SA

### Valuations undertaken for the Gillman Master Plan

2014/05108

#### Access application

The applicant sought access to all valuations undertaken for land identified in the Gillman Master Plan received by, or created by, the agency since 2009. The agency refused access to the relevant documents on the basis that the judicial functions exemption (clause 11(b)), economy of the State exemption (clause 14) and operations of agencies exemption (clause 16(2)) applied.

## Review

I advised the agency of my intention to try to effect a settlement between the parties. My legal officer met (separately) with agency representatives and the applicant. Following those discussions the agency agreed to reconsider its determination. The agency determined to release two documents with some redactions.

The agency claimed as exempt the assessed market value of the relevant land. Given the agency's *Real Property Marketing and Pricing Policy*, my view was that revealing the extent of the difference between the two valuations would not prejudice future negotiations. It was clear from the policy that the agency was required to sell the relevant land for a figure of at least the higher value of the two valuations.

Given that the sale price of the relevant land was in the public domain I did not accept that the valuation figures would be relevant in future negotiations concerning the sale of land. I did not accept the agency's submission that the disclosure of the two valuation figures would prejudice the competitiveness of the agency in carrying out its commercial activities.

## Determination

I determined that the exemption in clause 16(2) did not apply to the relevant documents.

My determination confirmed the agency's claims for exemption under clause 11(b) on the basis that the relevant documents were prepared for the purpose of proceedings in the Supreme Court relating to the process of offering compensation after the compulsory acquisition of land.

I varied the agency's determination accordingly.

## Renewal SA

### Material specifically prepared for Cabinet

2014/05301

#### Access application

The applicant sought access to various documents relating to the new Liberal government including documents relating to the contingency that a new Liberal government be elected.

The agency identified one document within the scope of the application and refused access on the basis that it was specifically prepared for submission to Cabinet (whether

or not it had been so submitted) for the purposes of clause1(1)(a).

## Review

The Acting Ombudsman noted that the terms 'specifically' means 'specially' prepared for submission to Cabinet. Whether a document has been specifically prepared for submission to Cabinet is to be ascertained by reference to the events at the time the document was created.

The Acting Ombudsman took account of the following:

- a letter to the Chief Executive of the agency from the DPC which provided that '[b]riefings to support Cabinet Ministers appointed following the March 2014 election will be considered at the first meeting of the Cabinet'
- each page of the document was marked : SENSITIVE: SA CABINET
- the agency's advice that, in accordance with instructions received from the Cabinet Office, the document was delivered to the Cabinet Office at a particular time and date.

## Determination and comment

The Acting Ombudsman's view was that the document was specifically prepared for submission to Cabinet and as such was an exempt document pursuant to clause1(1)(a). The Acting Ombudsman confirmed the agency's determination accordingly.

## Local Government

### Flinders Ranges Council

#### Access to an Investigation Report and related attachments into alleged misconduct

2013/11365

#### Access application

The applicant sought access to a report (and attachments) which detailed allegations of breaches of code of conduct and alleged breaches of law by the CEO of the council. The applicant had an interest in the outcome of the report as it was the applicant's complaints that were the subject of the investigation of the report.

The agency refused access to the report on the basis that the personal affairs exemption (clauses 6(1) and 6(2)), business affairs exemption (clause 7(1)(c)) and confidential material exemption (clause 13) applied.



## Review

The Acting Ombudsman was satisfied that the 'personal affairs' exemption in clause 6(1) applied to the report on the basis that it contained employment records. The report also contained allegations of improper conduct, which had not been established by 'judicial process' for the purposes of clause 6(2).

The Acting Ombudsman noted that the agency's claims that any investigation undertaken regarding the code of conduct be kept confidential were incorrect, as the code in place at the time did not contain such a requirement.

## Determination and comment

The Acting Ombudsman determined that the full report should not be released but that it would not be unreasonable to release the executive summary.

A number of attachments accompanying the report were also exempt under the FOI Act, as they related to 'personal affairs'. The Acting Ombudsman determined that other documents that were not exempt under the Act should be released.

The Acting Ombudsman varied the agency's determination to allow partial release of the relevant documents.

## Kangaroo Island Council

### Time extension regarding an FOI request

2014/05757

## Access Application

The applicant sought access to correspondence regarding a development application.

The agency delayed the response time on the FOI Request for the documents, relying on section 14A of the FOI Act to extend the time limit.

The agency claimed the extension was required because:

- the trained FOI officers had multiple staff changes during this time
- one staff member had gone on maternity leave
- another staff member had left the council
- another staff member had only recently been trained on FOI
- another FOI officer had a perceived conflict of interest.

## Review

The Acting Ombudsman was not persuaded that section 14A applied given that the agency relied on section 14A because of limited staff resources.

The extension of time provision in section 14A does not provide for extensions on the basis of a lack of staffing resources. Instead, section 14A allows for an extension where the application is for access to a large number of documents, or necessitates a search through a large quality of information, or requires consultation that could not reasonably occur within the statutory timeframe

## Determination and Comment

The Acting Ombudsman reversed the agency's determination that the time to deal with the application should be extended.

## District Council of Tumby Bay

### Refusal to deal with applications

2014/08201; 2014/08276; 2014/08277; 2014/08278; 2014/08279

## Access application

The applicant simultaneously made five separate applications to the agency, seeking access to documents about a broad range of topics. The applicant and some of his relatives owned property within the council area. The applicant was also a representative of a subcommittee of the local residents and ratepayers association. The agency refused to deal with his applications for access pursuant to section 18(2a) of the FOI Act (which allows an agency to refuse an application which it considers an abuse of the right to access or made for another purpose).

## Review

While the FOI Act is beneficial legislation and section 18(2a) is not to be used lightly, it serves to strike a balance between the right of access on the one hand and the resources utilised by an agency in dealing with an application in certain circumstances.

In *Gabrielsen v Nurses Board of SA*,<sup>10</sup> Justice Simpson's view was that in order to satisfy section 18(2a) of the FOI Act the agency need only be:

<sup>10</sup> *Gabrielsen v Nurses Board of SA* [2008] SADC 51 (Unreported, SA District Court, Judge Simpson, 2 May 2008).

of the (subjective) opinion that the application ... was part of a pattern of conduct that amounted to an abuse of the right to access, or was made for a purpose other than to obtain access to information.<sup>11</sup>

Her Honour expressed the view that the agency's opinion need not be necessarily right, but must be:

reasonably open on the material facts underlying the reasons given for the opinion - that it is not open to criticism on the basis of overlooking relevant material, or taking into account irrelevant or inaccurate factual material or because it was subject to illogicality in reasoning or was capricious or irrational.<sup>12</sup>

#### *Determination*

I concluded that there were sufficient grounds for the agency to reasonably form the view that the applicant's applications formed part of a pattern of conduct that amounted to an abuse of the right of access or were made for a purpose other than to obtain access to information.

In so doing, I had particular regard to factors including:

- the applicant's legitimate interest (as both a ratepayer and committee member) in how the agency conducted its business
- that during the previous 19 months the applicant had made numerous FOI applications and corresponded with the agency extensively. The agency had dealt with a number of those approaches, and provided numerous pages of documents to the applicant in response
- three previous FOI applications made by two of the applicant's associates
- the applicant's stated willingness to withdraw eight FOI applications if the agency 'responded to questions detailed in previous correspondence',<sup>13</sup> and that the agency's failure to respond to questions raised by the applicant to his satisfaction appeared to have precipitated other FOI applications.

I confirmed the agency's determinations accordingly.

## **Wattle Range Council**

### **Internal working document, legal professional privilege and operational document exemptions**

2014/04010

#### *Access application*

The applicant sought access to documents relating to a development application. The agency released seven documents in full to the applicant, refusing access in part to four documents (waiving legal professional privilege on parts of those documents) and refusing access in full to a further four documents.

The council claimed that the full and part exemption of the documents was justified on the basis that internal working documents exemption (clause 9(1), legal professional privilege (clause 10(1)) and operations of agencies (clauses 16(1)(a)(iv) and (b)) applied.

The council refused access to the Development Assessment Panel Minutes on the basis that the document was available for public inspection at the council.

#### *Review*

The Acting Ombudsman upheld the agency's claim of legal professional privilege regarding communication with the agency's solicitors on seven documents, some of which had been refused access in part, other documents refusing access in full.

The Acting Ombudsman was satisfied that given the availability of the Development Assessment Panel Minutes (including on the agency's website) the public inspection requirement was met and that the agency's determination was justified in that regard.

The Acting Ombudsman found it was not necessary to consider whether documents were exempt under the 'internal working document' or 'operation of agencies' exemptions.

#### *Determination and Comment*

I confirmed the agency's determination accordingly.

<sup>11</sup> *Gabrielsen v Nurses Board of SA* [2008] SADC 51 (Unreported, SA District Court, Judge Simpson, 2 May 2008), [21]; owing to the lack of reference to 'reasonable'.

<sup>12</sup> *Gabrielsen v Nurses Board of SA* [2008] SADC 51 (Unreported, SA District Court, Judge Simpson, 2 May 2008), [25].

<sup>13</sup> See email from the applicant to the agency dated 20 August 2014.



## Other Authorities

### Essential Services Commission

#### Release of resignation letter

2014/05988

##### *Access application*

The applicant sought access from the agency to all correspondence relating to the resignation of the former Chief Executive of the agency. The applicant agreed to limit the scope of the application to one document, being the former Chief Executive's resignation letter.

The agency determined to release a redacted version of the resignation letter. The agency determined that part of the letter was exempt on the basis that its release would have a substantial adverse effect on management of the agency's personnel and/or the effective performance of the agency's functions (clauses 16(1)(a)(iii), (iv) and (b)).

##### *Review*

The Acting Ombudsman's view was that a resignation letter formed a part of an employee's employment records and as such was information concerning the former Chief Executive's personal affairs for the purposes of clause 6(1).

The Acting Ombudsman consulted with the former Chief Executive who indicated that he did not object to the release of his information and that at all times he considered that his resignation letter would be subject to release under the FOI Act. Given the former Chief Executive's views, the Acting Ombudsman's view was that it would not be unreasonable to release the resignation letter and as such it was not exempt under clause 6(1).

The Acting Ombudsman accepted that:

- resignation letters provided a good opportunity for public sector agencies to learn about an employee's reasons for leaving the agency, and that this may lead to improvement in future practices
- this issue relates to the management of personnel
- if a resignation letter provided in confidence to management for the purposes of feedback only was to be released against the wishes of the author, it may lead to other employees tempering their views expressed in such documents.

That was not, however, the factual situation under consideration given that the author consented to the release of the document and did not indicate that he considered that the document was confidential.

The Acting Ombudsman noted that:

- the FOI Act has been in operation in South Australia for over two decades
- the public service and its employees can be taken to be aware of its operation - all communications and transactions are considered within the context of the operation of the FOI Act
- resignation letters are not in a class of documents that are automatically exempt under the Act.

The Acting Ombudsman accepted that the effective performance of the agency's functions required that it have sound stakeholder relations, as a result of which the agency is able to receive timely and meaningful information.

The Acting Ombudsman made the following observations:

- it was clear that the views expressed in the resignation letter were solely those of the former CEO, and it was highly unlikely that they would be imputed to the agency
- the views expressed in the resignation letter concerned only one stakeholder
- maintenance of the independence of the agency from the Minister was an integral part of the performance of its functions
- the letter was not critical of the functioning of the agency.

##### *Determination*

The Acting Ombudsman determined that it was unlikely that release of the resignation letter would have any adverse effect on the effective performance by the agency of its functions. The Acting Ombudsman noted that even if she was wrong, any adverse effect that may result from disclosure could reasonably be expected to be minimal and transitory (i.e. not 'substantial'). Resignation letters of that type are not uncommon, and the Acting Ombudsman noted that their disclosure in the public domain has not had any substantial deleterious effect on the operations of the relevant agency.

The Acting Ombudsman determined that the document was not exempt and varied the agency's determination accordingly.



## **Legal Practitioners Conduct Board**

### **Jurisdiction in relation to documents held by an exempt agency which replaced a defunct agency**

2013/10682

#### *Access Application*

The applicant sought access from the Board to various documents relating to the applicant's complaints concerning four legal practitioners. Access was refused to some of those documents.

#### *Review*

From 1 July 2014 the Board was replaced by the Legal Profession Conduct Commissioner. As of 30 June 2014, therefore, the Board became a defunct agency within the meaning of the FOI Act.

After enquiries, my Office was of the understanding that the documents the subject of the FOI application had been transferred to State Records, pursuant to the *State Records Act 1997*. My legal officer continued to assess the external review application on that understanding.

It was later discovered, however, that the documents were in the possession of the Commissioner, an exempt agency for the purposes of the FOI Act. The documents were in the Commissioner's possession because the amending legislation provided that the Commissioner would assume conduct of unresolved complaints received by the agency.

As the Commissioner was an exempt agency I did not have jurisdiction to conduct a review of the Commissioner's decision on whether or not to release the documents.

## **Minister for Sustainability, Environment and Conservation**

### **Whether draft documents are the subject of parliamentary privilege**

2014/08217

#### *Application for access*

The applicant sought access to various documents referring to Clovelly Park. The agency claimed that some of the documents were exempt as they contained matter the public disclosure of which would, but for the immunity of the Crown, infringe the privilege of Parliament (clause 17(c)).

#### *Review*

I considered that for documents to be exempt pursuant to clause 17(c) there must be the necessary level of proximity between a document and parliamentary proceedings.

#### *Determination and comment*

I was satisfied that various parliamentary briefing notes (and drafts that closely reflected their relevant final versions) had the necessary level of proximity.

I did not consider that the emails attaching the parliamentary briefing notes, along with other documents attached to those emails, had sufficient proximity to the proceedings of Parliament to be exempt under 17(c).

The agency claimed that one document, being an email attaching a Cabinet Note was exempt under clause 17(c). I considered that the Cabinet Note was instead exempt on the basis of the Cabinet documents exemption in clause 1(1)(a)) (and that the email attaching it was exempt pursuant to clause 1(1)(e)).

I varied the agency's determination accordingly.

## **South Australian Water Corporation (SA Water)**

### **Public interest exemption**

2014/04230

#### *Access Application*

The applicant requested information from the agency regarding the marginal cost per ML of supplying potable water from a number of different regions in South Australia, as well as the source of water utilised in particular regions.

The agency advised the applicant that it did not calculate costs on a marginal cost per ML basis.

The agency refused to release two documents on the basis that the business affairs exemption in clause 7(1)(b) applied.

#### *Review*

The Acting Ombudsman considered whether the documents were exempt on the basis that they were 'commercially valuable' and disclosure 'could reasonably be expected to destroy or diminish the commercial value of the information', and that release of the documents would be contrary to public interest.

### *Determination and Comment*

The Acting Ombudsman accepted in relation to both documents that they had 'commercial value' and that their disclosure 'could reasonably be expected to destroy or diminish the commercial value of the information' for the purposes of clause 7(1)(b).

The Acting Ombudsman was also satisfied that disclosure of the information would, on balance, be contrary to the public interest given that there was a significant public interest in maintaining the best possible price of water available to the South Australian community.

I confirmed the agency's determination accordingly.

### **The University of Adelaide**

#### **Access to an investigation report - 'unreasonable' and 'public interest' tests considered**

2013/10865

#### *Application for access*

The applicant sought access to an investigation report commissioned by the agency following a complaint made by one of its staff members about another staff member. The applicant was interviewed during the investigation and acted as the complainant's support person.

The agency released parts of the document not considered to be exempt following its original determination. The applicant sought an external review of the agency's refusal to release the remaining parts of the document.

#### *Review*

The agency claimed that the relevant information was exempt on the basis that the personal affairs exemption (clauses 6(1) and 6(2)), confidential information exemption (clause 13(1)(a)) and operations of agencies exemption (clause 16(1)(a)(v) with 16(1)(b)) applied.

The Acting Ombudsman was satisfied that the document contained information concerning the personal affairs of people other than the applicant and the complainant, which was interwoven throughout the document. The Acting Ombudsman did not consider that redacting the names of other individuals would avoid disclosing information concerning their personal affairs, having regard to information that had been disclosed and the size of the relevant faculty within the agency.

### *Determination and comment*

The Acting Ombudsman concluded that it would be unreasonable (for the purposes of clause 6(1)) to release the majority of the information, having regard to factors including:

- the objects of the FOI Act
- ensuring transparency and accountability
- individuals receiving fair treatment and procedural fairness
- the applicant's involvement in the process that gave rise to the document and the complainant's support for the application
- the applicant's knowledge of the events detailed in the document
- the applicant's and complainant's motives for seeking the document
- the agency treated the document confidentially
- the likelihood that people (other than the applicant and the complainant) whose personal affairs were included in the document would not want such information about them to be disclosed
- the purpose for which the agency created the document (namely to resolve the dispute, rather than to determine the allegations themselves)
- that the complainant was legally represented during the process.

The Acting Ombudsman was also satisfied that disclosure of the majority of the information could reasonably be expected to have a substantial adverse effect on the conduct of industrial relations by the agency and that disclosure would, on balance, be contrary to the public interest.

The Acting Ombudsman also considered the following factors:

- the nature of the information in the document, which included opinions and recollections about people and events, and allegations and suggestions of inappropriate behaviour
- that the complainant and the subject(s) of the complaint were employees of the agency when the complaint was made
- that disclosure would effectively resuscitate a matter that was resolved almost two years ago, by way of a confidential settlement
- the public interest in transparency and accountability of the agency's decision-making process.



The Acting Ombudsman concluded that the document was exempt under clauses 6(1) and 16(1)(a)(v) with 16(1)(b). As a result, it was not necessary to address the agency's claims under clause 6(2) or 13(1)(a).

The Acting Ombudsman was nevertheless satisfied that it would be practicable to release some information in accordance with section 20(4) of the FOI Act.

The Acting Ombudsman varied the agency's determination accordingly to enable such additional information to be released.

# Summary tables - Freedom of Information External Reviews 1 July 2014 - 30 June 2015

## External reviews: Received

Applicant	No Received
Adelaide Hills Council	2
Attorney-General's Department	3
Central Adelaide Local Health Network	14
City of Burnside	1
City of Onkaparinga	1
City of Playford	1
City of West Torrens	1
Country Health SA Local Health Network	2
Department for Communities and Social Inclusion	6
Department for Correctional Services	5
Department for Education and Child Development	19
Department for Health and Ageing	5
Department for Environment, Water and Natural Resources	5
Department of Planning, Transport and Infrastructure	11
Department of State Development	14
Department of the Premier and Cabinet	10
District Council of Tumby Bay	5
Domiciliary Care SA	1
Environment Protection Authority	2
Essential Services Commission of South Australia	1
Kangaroo Island Council	2
Legal Profession Conduct Commissioner	1
Minister for Education and Child Development	2
Minister for Health	1
Minister for Sustainability, Environment and Conservation	3
Northern Adelaide Local Health Network	2
Premier	1
SA Metropolitan Fire Service	1
SA Water Corporation	1
South Australian Fire and Emergency Services Commission	1
Southern Adelaide Local Health Network	1

Applicant	No Received
State Emergency Service	1
TAFE SA	7
University of Adelaide	1
University of South Australia	1
Urban Renewal Authority	1
Women's and Children's Health Network	1
<b>Total</b>	<b>137</b>

## External reviews: Completed

Applicant	No Completed
Adelaide Hills Council	1
Central Adelaide Local Health Network	10
City of Burnside	1
City of Mitcham	1
City of Playford	1
City of West Torrens	1
Country Health SA Local Health Network	1
Department for Communities and Social Inclusion	3
Department for Correctional Services	5
Department for Education and Child Development	16
Department Health and Ageing	5
Department for Environment, Water and Natural Resources	4
Department of Planning, Transport & Infrastructure	6
Department of State Development	2
Department of the Premier and Cabinet	8
District Council of Tumby Bay	5
Domiciliary Care SA	1
Essential Services Commission of South Australia	1
Kangaroo Island Council	2
Legal Practitioners Conduct Board	1
Legal Profession Conduct Commissioner	1
Minister for Education and Child Development	2

Applicant	No Completed
Minister for Health	1
Minister for Sustainability, Environment and Conservation	3
Northern Adelaide Local Health Network	2
Premier	1
SA Water Corporation	2
SACE Board of SA	1
South Australian Fire and Emergency Services Commission	1
Southern Adelaide Local Health Network	1
The Flinders Ranges Council	1
University of Adelaide	1
University of South Australia	2
Urban Renewal Authority	2
Wattle Range Council	1
Women's and Children's Health Network	1
<b>Total</b>	<b>98</b>

## External reviews: Outcomes

Outcome	Total	Percentage
Application dismissed because of lack of cooperation of applicant (s39(8))	5	5.1%
application for review withdrawn by applicant	12	12.2%
Application settled during review (s39(5))	4	4.1%
Determination confirmed (s39(11))	27	27.6%
Determination reversed (s39(11))	8	8.2%
Determination revised by agency (s19(2a))	13	13.3%
Determination varied (s39(11))	12	12.2%
Extension of time/Discretion not exercised	1	1.0%
Outside of jurisdiction	16	16.3%
<b>Total</b>	<b>98</b>	<b>100%</b>

## External reviews: Issues

Applicant	Total	Percentage
Access to documents/Deemed refusal	42	20.4%
Access to documents/Sufficiency of search	22	10.7%
Agency Determination to extend time (s14A)	7	3.4%
Agency Determination to refuse to deal with application/Abuse of process (s18(2a))	6	2.9%
Agency Determination to refuse to deal with application/Voluminous application (s18(1))	6	2.9%
Agency FOI processing errors	1	0.5%
Amendment of records	1	0.5%
Exemptions/Business affairs	15	7.3%
Exemptions/Cabinet documents	11	5.4%
Exemptions/Confidentiality	20	9.7%
Exemptions/Internal working documents	8	3.9%
Exemptions/Law enforcement	3	1.5%
Exemptions/Legal professional privilege	4	1.9%
Exemptions/Operation of agencies	8	3.9%
Exemptions/Other	2	1.0%
Exemptions/Personal affairs	18	8.9%
Exemptions/Secrecy provisions in legislation	9	4.4%
Exemptions/Subject to contempt	3	1.5%
Fees and charges (s53)	2	1.0%
Jurisdiction issues/Agency identity	2	1.0%
Jurisdiction issues/Extension of time for application for review (s39(4))	5	2.4%
Jurisdiction issues/Premature application for external review	10	4.9%
<b>Total</b>	<b>205</b>	<b>100%</b>



## Freedom of Information Audit

As an external review authority under section 39 of the *Freedom of Information Act 1991 (the Act)* my Office has an interest in how government departments fulfil their responsibilities under the Act. For this reason, and as part of the Ombudsman's role to promote administrative improvement in the public sector, the former Ombudsman conducted an audit of agencies' practices and processes in dealing with Freedom of Information applications under section 14A of the *Ombudsman Act 1972*.

12 state government departments were selected as the subject of the audit (**the agencies**):<sup>14</sup>

- Attorney-General's Department
- Department for Communities and Social Inclusion
- Department for Correctional Services
- Department for Education and Child Development
- Department for Health and Ageing
- Department of Environment, Water and Natural Resources
- Department of Further Education, Employment, Science and Technology
- Department for Manufacturing, Innovation, Trade, Resources and Energy
- Department of Planning, Transport and Infrastructure
- Department of Primary Industries and Regions SA
- Department of the Premier and Cabinet
- Department of Treasury and Finance.

The audit report was tabled in Parliament on 3 June 2014.<sup>15</sup> The audit made a number of findings and imposed recommendations accordingly. Key findings included:

- the Act is outdated
- the agencies' implementation of the Act is wanting, and demonstrates a lack of understanding or commitment to the democratic principles which underpin the Act
- most of the agencies are not coping with the volume and complex nature of recent FOI requests
- six of the agencies failed to determine over 50 percent of access applications within the timeframe required by the Act

- most of the agencies do not understand how to apply the exemptions and the public interest test under the Act
- it is common practice across all of the agencies to provide copies of FOI applications, determinations (draft or otherwise) and documents to their Minister to 'get the green light' prior to finalisation of access requests. While the Act permits a Minister to direct their agency's determination, evidence provided to the audit strongly suggests that ministerial or political influence is brought to bear on agencies' FOI officers, and that FOI officers may have been pressured to change their determinations in particular instances. If a ministerial decision or direction is involved, it should be clearly set out in the agencies' determinations
- the agencies' Chief Executives are not providing FOI or pro-information disclosure leadership
- only one agency stated that it has ever released an exempt document, despite the discretion to do so under the Act.

My Office contacted the agencies in December 2014 and requested completion and return of an audit recommendation implementation survey. I found that most agencies accepted all of the recommendations and at the time of completion of the survey half of the recommendations had been wholly or partially implemented by most of the agencies and most agencies had put plans in place to implement all of the recommendations.

I am pleased to see implementation by agencies of recommendations including with respect to:

- designation accreditation and training of staff (recommendations 3 and 4)
- current and complying FOI policies and procedures (recommendation 6)
- adopting policies to ensure that applications are acknowledged and that applicants are informed of their rights and relevant time lines (recommendation 8)
- improving 'searching' for documents by reminding staff about the need to be able to undertake and record sufficient searches and compliance obligations with respect to official records, and ensuring senior management has oversight of searches (recommendations 14, 15 and 16)
- on line publishing of FOI information statements and information that facilitates access to the FOI process (recommendations 27 and 29)
- senior management take greater responsibility for ensuring appropriate FOI practices (recommendation 31).

<sup>14</sup> As a result of machinery of government changes there are now 11 agencies.

<sup>15</sup> <http://www.ombudsman.sa.gov.au/wp-content/uploads/An-audit-of-state-government-departments-implementation-of-the-Freedom-of-Information-Act-1991-SA1.pdf>.

### *Proactive disclosure*

I share the view of the former Ombudsman that until the law catches up with the adopted government policy regarding transparency and open data, voluntary disclosure needs to be considered by agencies more and reflected in agency policies. Five agencies had commenced implementing my recommendation that agencies adopt a proactive disclosure policy (recommendation 17). One agency submitted that it did not consider it necessary to adopt a policy because the legislation allowed for proactive release, and another indicated that its current procedures already address this. Only one agency submitted that such a policy would be inconsistent with the legislative scheme; taking the erroneous view that 'where an 'absolute' exemption applies, an Accredited FOI officer must claim the exemption and cannot exercise the discretion'.

### *The Public Interest test*

Nine of the agencies accepted recommendation 23, which provided:

The agencies should develop a policy that in assessing the public interest in their FOI determinations, they should reject the Re Howard factors and focus on the content of the requested documents.

In light of recent decisions of the District Court which have affirmed the relevance of the Howard factors, I accept that agencies are not in a position to wholly 'reject' the Howard factors.

I do however, support the former Ombudsman's recommendation that law reform in this respect is timely, and necessary to give proper effect to current and accepted policy regarding transparent and accountable government and open data. I agree that the Act should be amended to provide that the following matters are irrelevant when assessing if disclosure of particular information would, on balance, be contrary to the public interest:

- the author of the document was or is of high seniority
- that disclosure would confuse the public or that there is a possibility that the public might misinterpret the information
- disclosure could reasonably be expected to cause embarrassment to the government or to cause loss of confidence in the government.

In the absence of legislative reform, I see the challenge for agencies is to avoid a reliance on the Howard factors as being determinative of what is in the public interest. The Howard factors may well be relevant, but what weight is to be given to them in each case must be carefully considered, and thoughtfully weighed up against other relevant factors (and having regard to the specific contents of the documents).



## INFORMATION SHARING GUIDELINES

# Information Sharing Guidelines for Promoting Safety and Wellbeing (ISG)

The public's attention was captured this year by the SA Coroner's inquest into the tragic death of four year old Chloe Lee Valentine who died in January 2012. The case highlights misconceptions about legislative privacy provisions leading to a lack of understanding about when information about the profound and complex needs of clients can, and in fact, often *must* be shared. There is a significant body of international evidence that upholds the principle that early intervention is enabled by information sharing and in turn, *informed* interagency service collaboration delivers more robust service interventions where there are threats to safety and wellbeing. The challenge is to provide clear, simple guidance that gives service providers the confidence that if they share information appropriately, they are doing the right thing.

Following lengthy consultation with government agencies, NGOs, the Commonwealth Privacy Commissioner, the SA Privacy Committee and the Crown Solicitor's Office, my Office published the *Information Sharing Guidelines for Promoting Safety and Wellbeing (ISG)* in October 2014. This updated guideline aligns information sharing practice across both adult and child service sectors. The ISG summarise, for service providers, the legal and practical framework that supports them in appropriate information sharing practice where there is risk of harm, even when consent is not given; and they outline the process and professional judgements that should underpin their decision making.

The SA Principal Advisor Information Sharing is employed by my Office to lead the state wide promotion of the ISG, monitor its implementation and application, and provide advice on information sharing and privacy matters.

## Promotion

My Office has a role in promoting the ISG to a diverse mix of NGO service providers, peak body associations and interagency forums. This year presentations were provided to:

- SACOSS Policy Council
- SA Health and Human Services Partnership Forum
- Easter Health Authority Squalor and Hoarding Regional Forum
- SA Health and Community Services Commission
- Community Centres SA
- Ceduna Vulnerable People Interagency Group
- Multi Agency Protection Services Interagency Group
- The Law Society of South Australia

Over the course of the year there were 4,687 visitors to the ISG page on the Ombudsman SA website. Along with the ISG, in the last year my Office has published the following resources (all are available in printed form and for download from the OSA website):

- ***A guide to writing an ISG Appendix:*** This booklet outlines the essential requirements for ISG policies and procedures and provides advice to agencies and organisations about how to successfully implement the ISG.
- ***ISG Decision Making Steps and Practice Guide:*** A two-page document which summarises the ISG flowchart process and provides explanations and advice on its practical application. This is a key resource for all staff to follow. It guides information sharing decisions and actions.

## Monitoring

Monitoring agencies' progress in implementing the ISG occurs in part, through the provision of practical support and advice about the content and quality of related policies and procedures and induction processes. Over the last year my office has worked with State Government agencies and a broad range of NGOs to ensure their procedures for implementing the Guidelines (called an ISG appendix) comply with the Guidelines' requirements.

### ISG implementation by SA State Government Agencies (at 30 June 2015)

Agency	ISG appendix finalised	ISG appendix not finalised
Department for Correctional Services	Completed	
Attorney Generals Department		final draft
SA Health		final draft
Department for Communities and Social Inclusion	Completed	
South Australian Police	Completed	
Department for Education and Children's Services		final draft

This year 23 individual NGOs have been directly supported in developing policies and procedures for ISG implementation and over 300 NGOs provided information about the ISG. Where possible, the collective capacity of peak associations is utilised to develop procedures for specific sectors.

Over several months, the SA Principal Advisor Information Sharing worked with Community Centres SA (CCSA) to develop a draft ISG appendix which was circulated for feedback throughout the sector before being finalised. For over 30 years the CCSA has been a catalyst for community development and capacity building in South Australia; comprising over 100 member organisations, and providing support and services to local communities across the state. They average over 2 million participant contacts per annum. This means, at times staff may be alerted to circumstances where an individual, family or group of people are facing adversity and may be in situations that place them at risk of harm or that pose a risk to the health, safety or wellbeing of others. By supporting a peak association such as CCSA to develop generic ISG procedures that can then be tailored to the circumstances of each unique organisation, my

Office contributes to earlier take up of the ISG, ensures related policies and procedures address necessary requirements and alleviates the (perceived) administrative burden of developing 'another piece of work'. Ultimately, by these organisations applying the ISG, this approach has the potential to contribute to community safety.

### Advice

This year my office responded to 22 requests for advice about use and disclosure of personal information. These enquiries most commonly arise where operational staff are working with clients and are seeking guidance about risk assessment, referral and case management, or clarification about obtaining consent and appropriate information sharing practice.

## Case Study

A regional service provider has a known number of clients considered to be very vulnerable adults and are frequent users of the service; they are mainly Aboriginal people who sleep rough, are consuming large quantities of alcohol, are socially disadvantaged and have a number of co-morbidities which every day place them at serious risk of harm. In addition to their engagement with SA Police, there are recurrent presentations by these clients to the local hospital emergency department due to intoxication, violence and self-harm. This group of vulnerable adults receive a broad range of services and interventions from both government agencies and NGOs in the community.

The service provider asked whether information about the needs of these clients could be shared in a multiagency case management environment *without* their consent?

### The Advice

The ISG promotes information sharing for earlier and more effective interventions through improved service coordination where there are threats to safety and wellbeing. Decisions to share information, with or without consent, should be made on a case by case basis and the ISG Decision Making Steps and Practice Guide should be used (see <http://www.ombudsman.sa.gov.au/isg/>).

Under the ISG informed consent should be sought wherever *reasonable and practicable*. In most cases, if you have consent, you can share information – so every feasible effort should be made to engage with the client to obtain their informed consent.

Staff from both NGOs and State Government agency should participate in a case management meeting to coordinate their efforts to protect these clients.

The risk assessments conducted by staff frequently indicate high thresholds of risk and serious threats to the safety and wellbeing of the client(s) and those they relate to.

Given that these clients are often heavily intoxicated, obtaining consent for their information to be shared with other service providers, may at times be *impracticable*.

Under the ISG:

*Disclosure of information without consent is permitted if:*

1. *it is authorised or required by law, or*
2. *(a) it is unreasonable or impracticable to seek consent; or consent has been refused; and (b) the disclosure is reasonably necessary to prevent or lessen a serious threat to the life, health or safety of a person or group of people.*

To share personal information without consent, it is first necessary to consider if the disclosure is permitted or required by law (as for (1)) – for example mandatory notification where there are child protection concerns, Intervention Orders, Mental Health Care Act, etc. If test (1) does not apply, the second arm (2) should be considered.

To gather evidence for the need for information sharing, a risk assessment should be undertaken to confirm the level of adversity and justify that the disclosure is '*reasonable*' under the circumstances. Records of what is shared and potential follow up action should be kept.



## Systemic Issues

Between February and May 2015 my Office joined a consortium of state jurisdiction Ombudsmen contributing to the Commonwealth Ombudsman's submission to NDIS Quality & Safeguarding Framework consultation - *A Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework*. The Principal Advisor also attended a national round table of Health Commissioners and Ombudsmen hosted by the Victorian Disability Services Commissioner to consider the scope of an NDIS Safeguarding Framework, where the issue of information sharing across state and commonwealth boundaries was considered.

There have been a number of matters raised with my Office this year where a lack of cooperation in information sharing between Commonwealth and State agencies and NGOs has been reported; even where the evidence would suggest parties would be permitted or authorised to do so. It appears in these cases, that applicable legislative privacy provisions are not understood by staff, and that client consent is not sought or obtained for the disclosure. If unsure, the safety of 'non-disclosure' becomes the default. This creates problems for service providers seeking to collaborate between State, Commonwealth and NGO sectors in response to threats to safety and wellbeing.

The test for disclosure under the ISG is compatible with SA Privacy Principles Instruction and the Commonwealth Privacy Act 1988. Under the ISG, if there is a legitimate purpose for sharing information, and the ISG process is followed, information can be shared with a broad range of other service providers including State Government agencies, NGOs, Local Government Councils and Commonwealth agencies. The ISG decision making steps and practice guide guard against inappropriate disclosure and ensure decisions are lawful and evidence based. It is not necessary that all participating organisations have implemented the ISG. What is important is that the ISG process is followed and information is sought or provided to those organisations because they are able to contribute in some way to safeguarding measures considered necessary to prevent threats to safety and wellbeing.

## ISG and Local Government

Local Councils are not bound by the SA Cabinet direction to implement the ISG; however Local Government provides a wide range of services to members of the community, through community centres, libraries, targeted services and community based activities. Local Government plays an important role in maintaining community wellbeing and frequently does this through interagency partnerships. Accordingly, along with their government agency and NGO partners, the Local Government Association of South Australia (LGA) made a decision to adopt the ISG and support individual Councils in this work. In April 2015 LGA promulgated *Circular 17.10* providing a generic template for an ISG procedure for South Australia's 68 Councils. The procedure guides and supports Council staff and volunteers to ensure they respect privacy and at the same time share information appropriately where there are risks to safety and wellbeing.

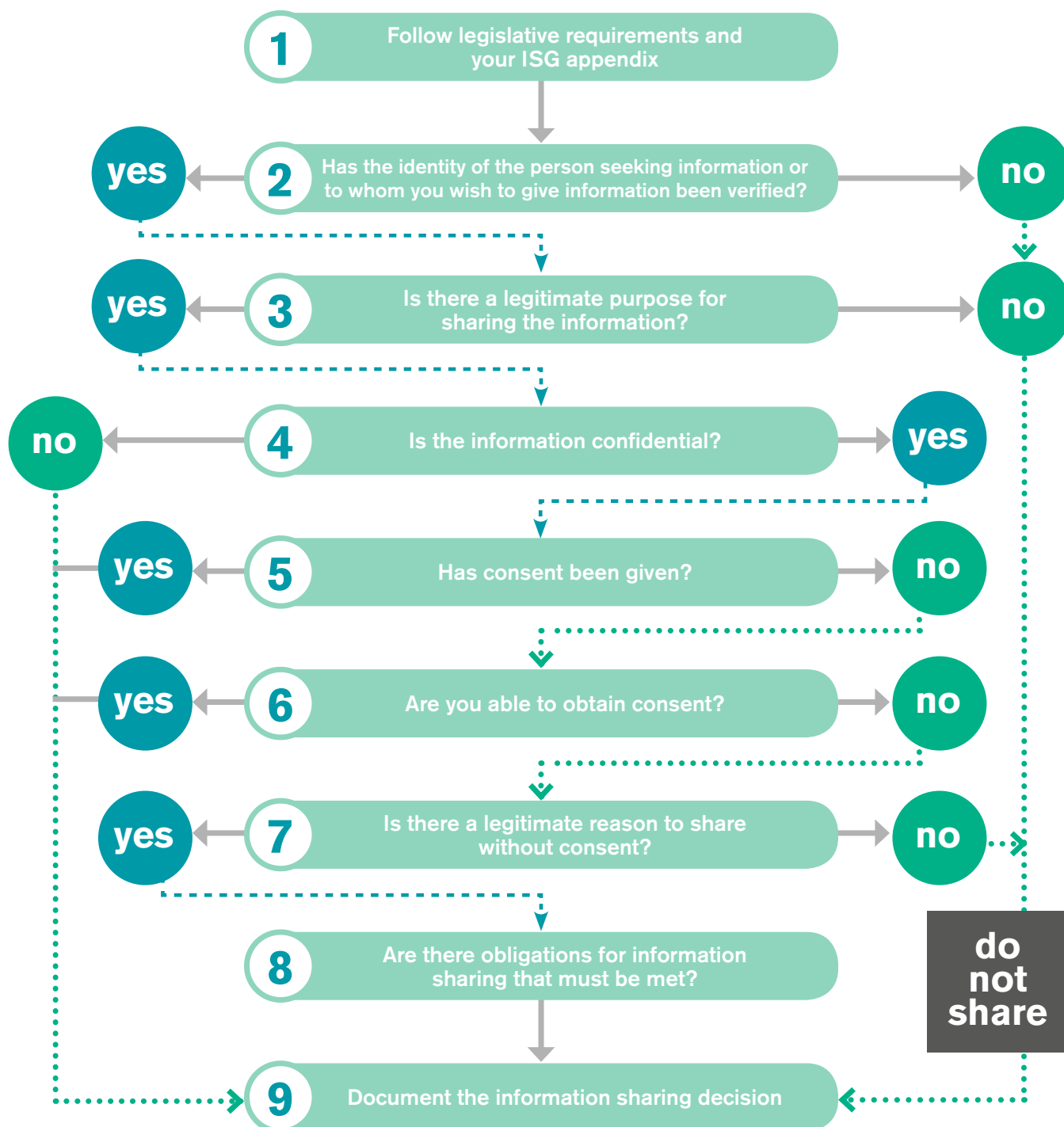
## Into the future

Further work needs to be done to fully embed the use and potential of the ISG. My Office will continue to provide advice and assistance to agencies and organisations in their implementation and application of the ISG; however the onus sits firmly with those who lead these organisations to resource and authorise ISG implementation.

It is my intention next year to develop and publish an audit tool for assessing the content and quality of organisation's ISG related policies and procedures. I will use this resource to conduct an audit of agencies and organisations to identify evidence of appropriate ISG implementation and I will publish those findings in due course.

# ISG decision making steps

# ISG



If you are unsure at any stage about what to do, consult your line manager/supervisor.  
If as a supervisor/line manager, you are unsure and need help or advice, you may need to seek legal advice or consult the SA Principal Advisor Information Sharing at Ombudsman SA on (08) 8226 8699 or 1800 182 150 (toll free outside metro area).

# ISG practice guide



1

## **Before proceeding, check your ISG appendix for guidance:**

- share information in a manner that is consistent with legal obligations and organisational policies and procedures
- follow the ISG STAR principles to make information sharing Secure, Timely, Accurate and Relevant
- collaborate with other providers to coordinate services and manage/mitigate risk.

2

## **If you do not know the person seeking information or to whom you wish to provide information, you need to verify who they are and for whom they work before sharing information**

3

## **You have a legitimate purpose for information sharing if you believe it is likely to:**

- divert a person from offending or harming themselves
- protect a person or groups of people from potential harm, abuse or neglect
- protect service providers in situations of danger
- help service providers more effectively address risks to safety and wellbeing
- alert other service providers to an individual's need for assistance.

4

## **Generally, information is considered confidential when the person providing it believes it won't be shared with others**

Assume that people will consider most information about themselves and their families to be confidential unless they have indicated otherwise.

5

## **Seeking informed consent is the first approach**

This means the person understands the purpose for information sharing, with whom it will be shared, and what might happen as a result of sharing. If informed consent has been obtained, information can be shared.

6

## **It may be unreasonable to obtain consent if you are concerned that in doing so, the person might:**

- move themselves or their family out of the organisation's or agency's view
- stop using a service seen to be necessary for the client or their children's safety or health
- coach or coerce a person to 'cover up' harmful behaviour to themselves or others
- abduct someone or abscond
- harm or threaten to harm others
- attempt suicide or self-harm
- destroy incriminating material relevant to a person or group's safety.

It may be impracticable to obtain consent if, for example, after reasonable attempts, you cannot locate the client. Discuss your concerns with a colleague/supervisor.

7

## **There is a legitimate reason to share information without consent if it is believed that failure to share information will lead to risk of serious harm**

Disclosure of information without consent is permitted if:

- (1) it is authorised or required by law, or
- (2) (a) it is unreasonable or impracticable to seek consent; or consent has been refused; and  
(b) the disclosure is reasonably necessary to prevent or lessen a serious threat to the life, health or safety of a person or group of people.

The decision to share without consent must be based on sound risk assessment and approved by the appropriate officer in your agency or organisation.

8

## **Situations where you must share information:**

- eg you hold a suspicion, on reasonable grounds, that a child or young person has or is being abused or neglected, you must report this to CARL (131 478).
- eg you believe a person poses a serious risk to themselves or others, consider if you should notify SA Police (131 444) or Mental Health Triage Services (131 465) (formerly known as ACIS).

9

## **Keep records – particularly in relation to consent issues**

As a minimum, document when sharing information is refused or occurs without consent. Follow your organisation's instructions about recording other significant steps.





# About Ombudsman SA

## What we do

The Ombudsman is empowered to:

- investigate the administrative acts of state government agencies, local government councils and statutory authorities; and also misconduct and maladministration in public administration on referral from the Independent Commissioner Against Corruption
- conduct audits of the administrative practices and procedures of state government agencies, local government councils and statutory authorities
- conduct Freedom of Information reviews about release of information
- receive information about state and local government activities confidentially from whistleblowers
- administer and provide advice on the Information Sharing Guidelines.

The aim of Ombudsman SA is to contribute to sound public administration within state and local government agencies in South Australia.

Visit our website for further information about our services or to register a complaint directly online: [www.ombudsman.sa.gov.au](http://www.ombudsman.sa.gov.au)

## The investigation process

Any party who is directly affected by an administrative act of a government department, council or statutory authority under our jurisdiction can make a complaint.

Investigations may be initiated by Ombudsman SA in response to a complaint received by telephone, in person, in writing or through the website from any person (or an appropriate person acting on another's behalf); a complaint referred to the Ombudsman by a Member of Parliament or a committee of Parliament; or on the Ombudsman's own initiative. We may also undertake audits of the administrative practices and procedures of an agency.

If the Ombudsman decides to investigate a complaint, we advise the agency and the complainant accordingly. As part of this process, we identify the issues raised by the complainant along with any other issues that we consider relevant. The Ombudsman can choose to conduct either an informal or a formal investigation (preliminary or full). If the Ombudsman decides not to investigate, the complainant is advised of this, along with the reasons for the decision.

Investigations are conducted in private and we can only disclose information or make a statement about an investigation in accordance with specified provisions of the Ombudsman Act.

At the conclusion of an investigation, the Ombudsman may recommend a remedy to the agency's principal officer, or recommend that practices and procedures are amended and improved to prevent a recurrence of the problem.

The Ombudsman should not in any report, make adverse comments about any person or agency unless they have been provided with an opportunity to respond.

The Ombudsman may make a recommendation to Parliament that certain legislation be reviewed.

We usually publish our reports and determinations on our website at <http://www.ombudsman.sa.gov.au/>.

## Our jurisdiction

Certain agencies are outside Ombudsman SA's jurisdiction. We do not have the power to investigate actions and decisions of:

- the South Australian Police
- employers – on matters that affect their employees
- private persons, businesses or companies
- Commonwealth or interstate government agencies
- government Ministers and Cabinet
- courts and judges
- legal advisers to the Crown.

The Ombudsman can decide whether to commence or continue an investigation. Some of the factors that may influence this decision include whether the matter is more than 12 months old; whether the complainant has a legal remedy or right of review or appeal and whether it is reasonable to expect the complainant to resort to that remedy; or whether a complaint appears to be frivolous, trivial, vexatious, or not made in good faith. In some cases an investigation may not be warranted, such as where an agency is still investigating the complaint or a complaint has not yet been made to the agency, or where another complaint-handling body may be more appropriate.

## Referral to other jurisdictions

Ombudsman SA also has an important referral role. Even though we may be unable to be of direct assistance to people who approach the office about matters that are not within our jurisdiction, we are often able to refer them to another appropriate source of assistance.

## Service principles

If the complaint is within the Ombudsman's jurisdiction, we will, in normal circumstances:

- provide an accessible and timely service, with equal regard for all people with respect for their background and circumstances
- provide impartial and relevant advice and clear information about what we can and cannot do
- provide timely, impartial and fair investigation of complaints
- ensure confidentiality
- keep people informed throughout the investigation of a complaint
- provide concise and accurate information about any decisions or recommendations made and provide reasons wherever possible.

## Complaints about Ombudsman SA

Parties who are unhappy with our service can find our complaints policy and procedures at <http://www.ombudsman.sa.gov.au/about-us/complaints-about-us/>.





## APPENDICES

**Appendix A:** Organisation Chart

**Appendix B:** Financial Statement

**Appendix C:** Description of outcomes - Ombudsman jurisdiction

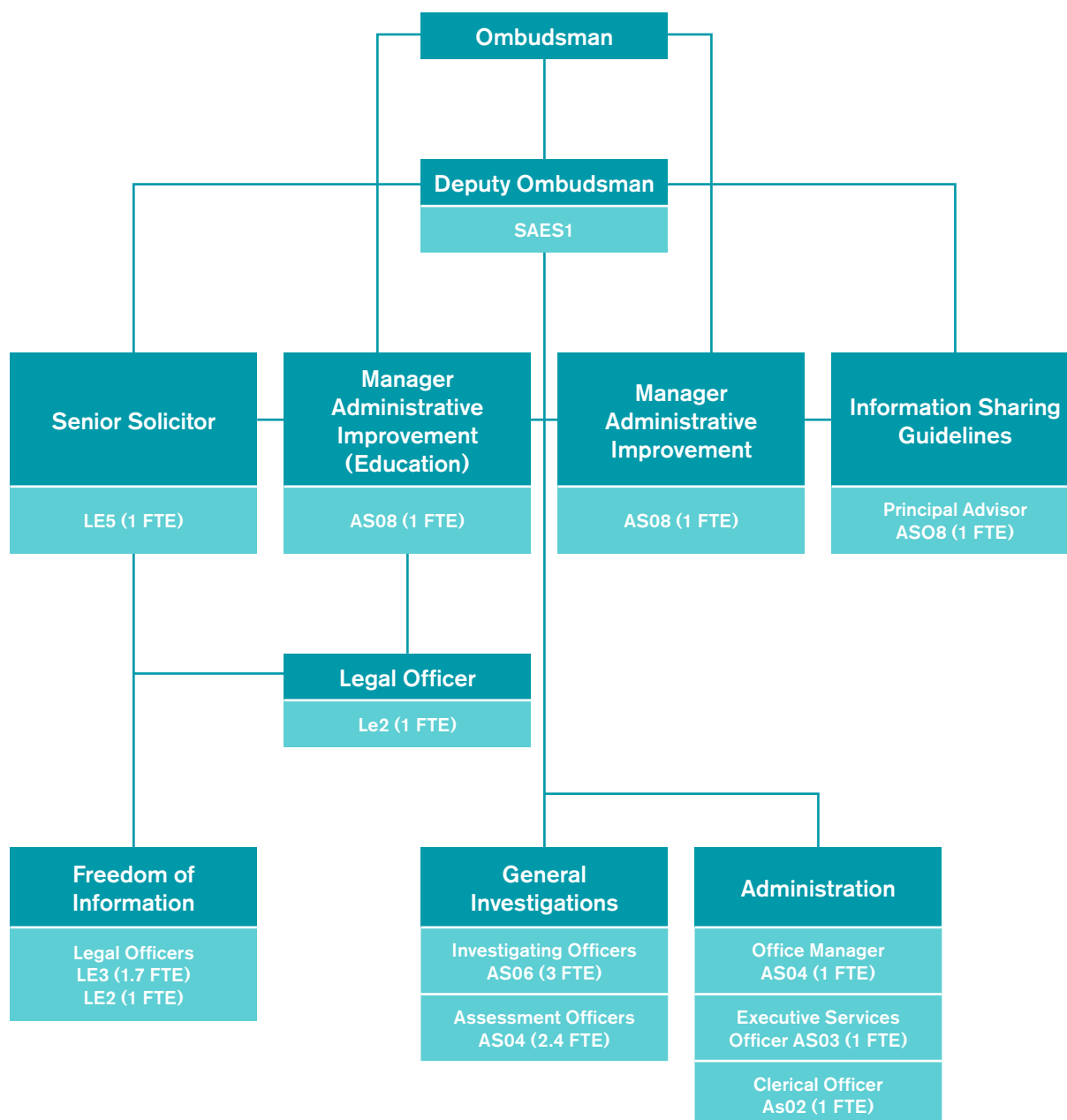
**Appendix D:** Description of outcomes - Freedom of Information jurisdiction

**Appendix E:** Description of outcomes - Independent Commissioner Against Corruption jurisdiction

**Appendix F:** Acronyms

# Appendix A

## Organisation Chart



# Appendix B

## Financial statement

Expenditure	2013/14	2014/15
Annual Report	6 370	2 380
Computer expenses	63 954	71 490
Conference costs	16 191	990
Equipment maintenance	3 683	2 722
Equipment purchases	1 197	10 426
Fringe Benefits Tax	7 473	9 783
* Motor vehicles	14 757	13 698
Postage	1 305	3 137
Printing and stationery	6 445	14 071
Publications and subscriptions	1 307	2 462
Staff development	13 749	25 964
Sundries	35 389	17 017
Telephone charges	9 780	15 005
Travel/taxi charges	9 547	18 898
Website Development	6 189	5 389
Sub-total	197 336	213 432
* Accommodation and energy	146 973	57 407
Consultant/Contract staff/Prof costs	106 869	83 115
Sub-total	253 842	140 522
* Salaries	1 883 039	1 896 667
Sub-total	1 883 039	1 896 667
<b>Income</b>	<b>(179)</b>	<b>(7 326)</b>
Sub-total	(179)	(7 326)
<i>* Figures include expenses incurred by the Ombudsman position (funded by Special Acts)</i>		
<b>Net expenditure</b>	<b>2 334 038</b>	<b>2 243 295</b>

# Appendix C

## Description of outcomes: Ombudsman jurisdiction

Outcome	Description
Advice Given	<p>This outcome is used when:</p> <ul style="list-style-type: none"> <li>• giving advice that does not relate to a specific approach or complaint</li> <li>• giving information or advice to the public about Ombudsman SA e.g. address details, a request for a copy of an annual report or pamphlets</li> <li>• giving FOI advice.</li> </ul> <p>For approaches or complaints, more specific outcomes are used — such as 'Referred Back to Agency', 'Alternate Remedy Available with Another Body', 'Out of Jurisdiction'.</p>
Out of Jurisdiction	<p>This outcome is not available when a matter reaches the stage of a complaint.</p> <p>It is used when:</p> <ul style="list-style-type: none"> <li>• the complaint body is not an 'agency' (section 3)</li> <li>• the act was performed by a Minister of the Crown</li> <li>• the complaint is not about an 'administrative act' because it was <ul style="list-style-type: none"> <li>› done in the discharge of a judicial authority (section 3)</li> <li>› done in the capacity of legal adviser to the Crown (section 3)</li> </ul> </li> <li>• the act relates to a police matter (section 5(2))</li> <li>• the act was strictly a policy decision (<i>City of Salisbury v Biganovsky</i> 54 SASR 117)</li> <li>• the act is a complaint by an employee about their current or past employer (section 17(1))</li> </ul>
Complainant cannot be contacted	<p>This outcome is used after all reasonable attempts have been made to contact the complainant by telephone, email or letter. It can be used at any stage of an assessment or investigation.</p>
Referred back to agency	<p>This outcome is used usually during the assessment phase, but may be used in the investigation phase.</p> <p>It is used when:</p> <ul style="list-style-type: none"> <li>• it is proper for the complainant to complain to the agency, or go back to the agency to seek a review of their complaint (Ombudsman SA policy — the Ombudsman is an 'office of last resort'), or</li> <li>• the complainant has a right of appeal, reference or review with the agency such as: <ul style="list-style-type: none"> <li>› with a council under section 270 of the Local Government Act</li> <li>› review processes for students in universities</li> <li>› review processes for prisoners in the Department for Correctional Services</li> <li>› review and appeal regarding land tax under the Taxation Administration Act</li> </ul> </li> </ul> <p>unless the Ombudsman is of the opinion that it is not reasonable, in the circumstances of the case, to expect that the complainant should resort or should have resorted to that appeal, reference, review or remedy (section 13(3)).</p>



Outcome	Description
Alternate remedy available with another body	<p>This outcome is only used when the agency being complained about is within jurisdiction.</p> <p>It is used where the complainant has a right of appeal, reference or review with another body such as:</p> <ul style="list-style-type: none"> <li>the Health and Community Services Complaints Commissioner</li> <li>the WorkCover Ombudsman</li> <li>the Environment, Resources and Development Court</li> </ul> <p><i>unless</i> the Ombudsman is of the opinion that it is not reasonable, in the circumstances of the case, to expect that the complainant should resort or should have resorted to that appeal, reference, review or remedy (section 13(3)).</p>
Resolved with agency cooperation	<p>This outcome is used usually during the assessment phase of a complaint where Ombudsman SA has made contact with the agency, and the agency has taken action to remedy the complaint to the satisfaction of the complainant.</p> <p>It is not used if Ombudsman SA has not had contact with the agency. In this case, the outcome 'Withdrawn by Complainant' will probably be applicable.</p>
Reports to OPI	<p>This outcome is used when the matter has been reported to OPI as raising a potential issue of corruption, maladministration or misconduct in accordance with the ICAC Act and the Commissioner's Directions and Guidelines issued under that Act.</p>
Withdrawn by complainant	<p>This outcome is used when the complainant expressly wishes to withdraw their complaint, even if Ombudsman SA has not contacted the agency. It can be used at any stage of an assessment or investigation.</p>
Declined/Trivial, frivolous, vexatious, not made in good faith (Section 17(2))	<p>This outcome is used for a complaint, where the Ombudsman decides</p> <ul style="list-style-type: none"> <li>not to commence an assessment or investigation or</li> <li>not to continue with an assessment or investigation</li> </ul> <p>because:</p> <ul style="list-style-type: none"> <li>the complaint is trivial (section 17(2)(a))</li> <li>the complaint was frivolous, vexatious or not made in good faith (section 17(2)(b)).</li> </ul>
Declined/No sufficient personal interest or not directly affected (Section 17(2))	<p>This outcome is used for a complaint, where the Ombudsman decides:</p> <ul style="list-style-type: none"> <li>not to commence an assessment or investigation or</li> <li>not to continue with an assessment or investigation</li> </ul> <p>because:</p> <ul style="list-style-type: none"> <li>the complainant or their representative did not have sufficient personal interest (section 17(2)(c))</li> <li>the complainant was not directly affected by the administrative act (section 15(3a)).</li> </ul>



Outcome	Description
Declined/Out of time	<p>This outcome is used for a complaint, where the Ombudsman decides:</p> <ul style="list-style-type: none"> <li>not to commence an assessment or investigation or</li> <li>not to continue with an assessment or investigation</li> </ul> <p>because the complaint was made more than 12 months after the day on which the complainant first had notice of the events alleged in the complaint.</p>
Declined/Investigation unnecessary or unjustifiable	<p>This outcome is used for a complaint, where the Ombudsman decides</p> <ul style="list-style-type: none"> <li>not to commence an assessment or investigation or</li> <li>not to continue with an assessment or investigation</li> </ul> <p>because having regard to the circumstances of the case, such action is unnecessary or unjustifiable (section 17(2)(d)). For example:</p> <ul style="list-style-type: none"> <li>after assessing or commencing an investigation of the complaint, it appears that there is no evidence of administrative error under section 25(1)(a)-(g)</li> <li>the complaint is minor</li> <li>the complainant and/or the agency has taken action to rectify the problem</li> <li>it would not be in the public interest for the Ombudsman to investigate or continue investigating the complaint.</li> </ul>
Not substantiated/ no section 25 finding	<p>This outcome is used:</p> <ul style="list-style-type: none"> <li>after a preliminary (or more rarely a full) investigation and a report has been completed, and</li> <li>there is no administrative error under section 25(1)(a)-(g).</li> </ul>
Ombudsman comment warranted	<p>This outcome is used <i>only</i> after a <i>preliminary</i> investigation.</p> <p>No administrative error has been found under section 25(1)(a)-(g), but an issue worthy of the Ombudsman's comment has been identified.</p>
Section 25(1)(a) finding: Contrary to law	<p>These outcomes are used <i>only</i> when making a finding of administrative error after a <i>full</i> investigation, and reflect section 25(1)(a)-(g) of the Ombudsman Act.</p>
Section 25(1)(b) finding: Unreasonable	
Section 25(1)(c) finding: Unreasonable law or practice	
Section 25(1)(d) finding: Improper purpose or irrelevant grounds or considerations	
Section 25(1)(e) finding: No reason given	
Section 25(1)(f) finding: Mistake of law or fact	
Section 25(1)(g) finding: Wrong	

# Appendix D

## Description of outcomes: Freedom of Information jurisdiction

Outcome	Description
FOI application for review withdrawn by applicant	<p>This outcome means that during or at the conclusion of the external review, the applicant decided to withdraw the application. For example, the applicant may have decided to pursue other avenues of redress; or with the passage of time, the applicant no longer wished to pursue document access.</p> <p>The outcome is relevant when the applicant seeks the external review before they have sought or finalised internal review processes, and hence the Ombudsman is unable to undertake an external review. This outcome does not include instances where the agency has revised its determination to give access to documents.</p>
FOI application settled during review (section 39(5))	This outcome means that the Ombudsman exercised settlement powers under section 39(5)(c). A 'Notice of Finalisation' is sent to parties. There is no formal determination by the Ombudsman under section 39(11).
FOI determination confirmed (Section 39(11))	<p>This outcome means that at the conclusion of the external review, the Ombudsman agreed (in whole) with the agency's determination (section 39(11)).</p> <p>*Note — the Ombudsman's reasons may differ from the agency (for example, a different exemption clause may apply).</p>
FOI determination reversed (Section 39(11))	This outcome means that at the conclusion of the external review, the Ombudsman disagreed (in whole) with the agency's determination (section 39(11)).
FOI determination revised by agency (Section 19(2)(a))	<p>This outcome means that all documents were released by the agency under section 19(2A) after the commencement of the external review.</p> <p>The outcome may occur, for example, in an external review dealing with an agency's 'double deemed refusal', where the agency has had a chance to consider the documents and decides that the documents should be released.</p>
FOI determination varied (Section 39(11))	This outcome means that at the end of the external review, the Ombudsman agreed in part and disagreed in part with the agency's determination (section 39(11)).
FOI extension of time for application for review (Section 39(4))	This outcome means that the Ombudsman did not exercise his discretion to accept an external review application out of time under section 39(4).
Discretion not varied	



# Appendix E

## Description of outcomes: Independent Commissioner Against Corruption jurisdiction

Outcome	Description
<b>Response to proposed referral</b>	<i>The Commissioner must seek the views of the Ombudsman in relation to a matter raising a potential issue of misconduct or maladministration before deciding to exercise the Ombudsman's powers in respect of the matter or referring the matter to the Ombudsman for investigation (see sections 36A and 37 of the ICAC Act).</i>
Agree to referral	This outcome means the Ombudsman agreed with OPI/ICAC that a matter raising a potential issue of misconduct or maladministration in public administration should be referred to this Office.
Disagree to referral	This outcome means the Ombudsman, in response to a proposal by OPI/ICAC that a matter raising a potential issue of misconduct or maladministration in public administration should be referred to this Office for investigation, expressed a view that the matter should not be referred to him.
ICAC exercise Ombudsman powers	This outcome means the Ombudsman considers that a matter raising a potential issue of misconduct or maladministration in public administration should be investigated by the Commissioner by exercising the powers of the Ombudsman.
Partially agree with Referral	This outcome means the Ombudsman, in response to a proposal by OPI/ICAC that matters raising potential issues of misconduct or maladministration in public administration should be referred to this Office for investigation, expressed a view that some but not all of the matters should be referred to this Office.
<b>ICAC Investigation</b>	<i>The Commissioner may refer matters raising potential issues of misconduct or maladministration to the Ombudsman for investigation (see section 24(2)(a) of the ICAC Act).</i>
Discontinued	This means that the Ombudsman has determined that an investigation into misconduct or maladministration on referral from the Commissioner is unnecessary or unjustifiable (for example, because of a lack of evidence).
Finding of Maladministration	This means a matter that has been referred from the Commissioner has resulted in the Ombudsman making a finding of 'maladministration' as defined in the ICAC Act 2012.
Finding of Misconduct	This means a matter that has been referred from the ICAC has resulted in the Ombudsman making a finding of 'misconduct' as defined in the ICAC Act 2012.
No finding of Misconduct or Maladministration	This means a matter that has been referred from the ICAC has resulted in the Ombudsman making a finding there has not been 'misconduct' or 'maladministration' as defined in the ICAC Act 2012.

# Appendix F

## Acronyms

AGD	Attorney-General's Department
ARC	Adelaide Remand Centre
CAA	Courts Administration Authority
CEO	Chief Executive Officer
DCS	Department for Correctional Services
DCSI	Department for Communities and Social Inclusion
DECD	Department for Education and Child Development
DEWNR	Department of Environment, Water and Natural Resources
DHA	Department for Health and Ageing
DPC	Department of the Premier and Cabinet
DPTI	Department of Planning, Transport and Infrastructure
DPA	Development Plan Amendment
DSD	Department of State Development
DTF	Department of Treasury and Finance
FERU	Fines and Recovery Unit
FOI	Freedom of Information
ICAC	Independent Commissioner Against Corruption
ICT	Information and Communication Technology
OPI	Office for Public Integrity
PIRSA	Department of Primary Industries and Regions SA
SAPOL	South Australia Police
SOP	Standard Operating Procedure





## Ombudsman SA values

Integrity - Impartiality - Fairness

## Our Culture

Ethical

Professional

Efficient

Learning

Communicating

Collaborating



OmbudsmanSA

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