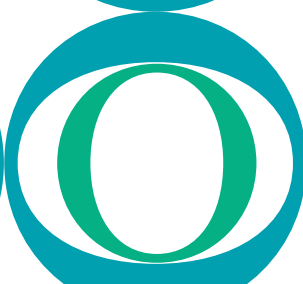
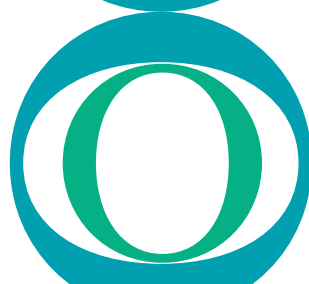
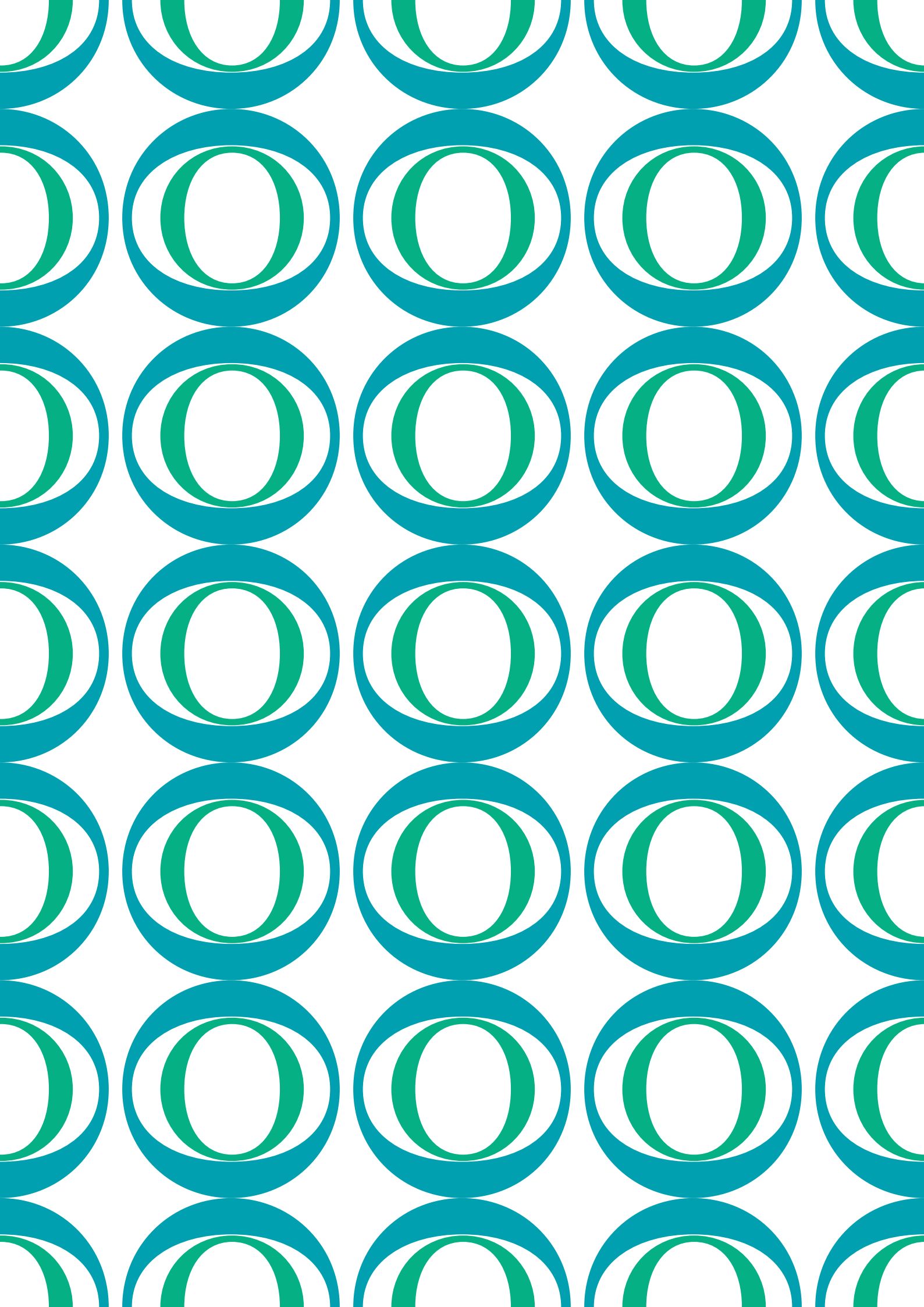




# Ombudsman SA

Annual Report  
2010/2011







OmbudsmanSA

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 39th Annual Report for 20010-11 to the Parliament, as required by section 29(1) of the *Ombudsman Act 1972*.

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OMBUDSMAN

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# In 2010-11 there was a 4.5 per cent increase in the number of people approaching Ombudsman SA.

## Workload of the office

In 2010-11 there was a 4.5 per cent increase in the number of people approaching Ombudsman SA, and a 6.3 per cent increase in our 'matters' workload arising from those approaches. This 6.3 per cent increase is on top of the 25 per cent increase last year.

The following table summarises our workload:

	2009-10	2010-11	Change (%)
<b>Approaches</b>	8 834	9 238	+4.5
<b>Ombudsman complaints</b>	2 982	3 167	+6.2
<b>FOI Reviews</b>	217	233	+7.8
<b>Total Matters</b> (i.e. Ombudsman complaints and FOI reviews)	3 199	3 400	+6.3
<b>Average Age of Matters</b> (as at 30 June)	90.3 days	72.0 days	-20.3

Of the 9 238 approaches we received this year, 5 611 (61 per cent) were dealt with by the provision of advice or referral to a more appropriate body. Quite apart from our complaint handling, FOI review and administrative improvement roles, Ombudsman SA continues to be a significant source of advice and referral for members of the South Australian community.

The 6.3 per cent increase in matter numbers this year is attributable to a 12 per cent increase in complaints against both government departments and local government, offset by a 20 per cent decrease in complaints against other authorities. The decrease in this category largely reflects the 1 July 2010 transfer of several State medical registration bodies to the national health practitioner registration scheme.

The 20 per cent reduction in the average age of the complaint files open on 30 June each year, from 90.3 days in 2010 to 72.0 days in 2011, reflects our work in improving turnaround times.

## City of Charles Sturt – Parliamentary referral

In December 2009, I received a reference from the Legislative Council to undertake an investigation into issues arising from the St Clair land swap undertaken by the City of Charles Sturt. On 16 June 2010 I agreed to suspend the investigation, pending the resolution of Supreme Court action by the council.

On 9 November 2010 the council representatives and I reached a mediated settlement, which was endorsed by the council on 13 December 2010. On 4 January 2010, I informed councillors and other witnesses that I was resuming my investigation. My office then took evidence from further witnesses and continued to receive approaches from members of the public about their concerns.

In total, my office took 118 hours of evidence on transcript from 28 witnesses, and conducted informal interviews and received written submissions from 17 members of the public.

On 28 June 2011 I published a provisional report on the reference. At the time of writing it is undergoing the natural justice phase of the investigation, with relevant people being given an opportunity to respond to my provisional findings and recommendations.

I intend to provide a final report to the Legislative Council in the near future.

My deputy managed my investigation and completed it with a part time solicitor and part time administrative assistant. In addition, a part time senior solicitor in my office assisted in drafting my provisional report. At various times, a former senior police officer, a part time project officer, and university law student interns assisted. We introduced a specialised case and evidence management database, Distributed Case Management System (**DCMS**) specifically for the investigation. This database will be available for use in future investigations.

With the exception of the legal costs referred to below, the full cost of my investigation has been met from within the existing budgetary allocation to my office for the 2009-10 and 2010-11 financial years. I estimate this full cost to amount to \$425 208, made up as follows:

Item	Estimated cost
Ombudsman SA ongoing staff	\$212 100
Ombudsman SA contracted staff	\$162 881
DCMS purchase	\$12 535
Transcribing costs	\$33 256
Other	\$4 436
<b>Total</b>	<b>\$425 208</b>

This figure does not include the cost of engaging legal representatives to respond to the challenges to my jurisdiction. This was \$55 009, which was met from a separate budget item within the Attorney General's Department.

In summary, I estimate the total investigation costs, from the commencement of the investigation in December 2009 to 30 June 2011, to be \$480 217.

### Audits of complaint handling

An important role of my office is administrative improvement and capacity building in public administration. In this context, a commitment to effective internal complaint handling mechanisms is fundamental to sound governance and responsive program and service delivery.

Local government councils provide a range of critical services to communities across our state. In recent years the numbers of complaints coming to my office about local government matters has been on the rise. The increasingly complex range of services provided to communities from our councils demands the highest standards of efficiency, accountability and responsiveness.

I commenced an audit of local government complaint handling systems across 12 councils in March 2011. Pursuant to section 14A of the *Ombudsman Act 1972* I determined the subject of the audit to be:

1. the policies, practices and procedures established in council for ensuring high standards of complaint handling for members of the public
2. the practices and procedures in council for ensuring compliance with the provisions of section 270 of the *Local Government Act 1999* with respect to internal review of decisions
3. the practices and procedures in council for ensuring practice and systems improvement in both complaint handling and internal review of decisions.

As a result of my survey and discussions with council officers, I have provided comments to individual councils. When completed, I intend to table in Parliament a general report on the audit regarding current practice standards for the information of all councils.

I am also undertaking an audit of complaint handling practices in the Department of Correctional Services, and expect to be in a position to table a report on this issue towards the end of this calendar year.

In addition, a specific complaint against the Department of Education and Children's Services required me to undertake an investigation of that department's complaint handling. The circumstances of that complaint are dealt with as a case study later in this report, but I have been gratified to note that the department has accepted my recommendations and is progressing well in a complete revision of its complaint handling practices.

DECS has advised me that:

Since receiving (the report of my investigation), DECS has:

1. considered existing parent complaint processes and materials
2. researched comparable policies and documents in education jurisdictions in Australia and overseas, and

I think it is important that the external review process conducted by my office should be active and expeditious.

3. identified ways in which policies can be improved, updated and made more accessible for parents and the general community

4. commenced updating the *Responding to Parents and Caregivers* document as an interim measure.

Prior to the start of the 2012 school year, DECS are working with key stakeholders to:

1. Develop a new overarching parent complaint policy with consistent practices across schools, regions and state office
2. Develop new information for parents
3. Develop new dedicated service for parents to access during the complaint process
4. Update resources for schools and preschools and improve organisational arrangements to support schools, preschools and regions in improving relationships and communication with parents
5. Publish all updated policies, procedures and resources on the DECS website.

#### **Conflicts of interest – local government**

A number of complaints to me over the past year have raised the issue of local government councillors not appreciating their responsibilities in relation to conflict of interest. Some

examples are provided in the local government case studies section of this report.

I gave a presentation to the Australian Institute of Administrative Law on this issue on 4 May 2011, the full text of which is on the Ombudsman SA website. I noted in particular a joint NSW ICAC and Queensland Crime and Misconduct Commission publication from November 2004, called *Managing Conflicts of Interest in the Public Sector – Guidelines*, which comments that:

Failure to identify, declare and manage a conflict of interest is where serious corruption often begins and this is why managing conflicts of interest is such an important corruption prevention strategy.

For the reasons set out in that paper, I consider that the existing legislative provisions governing this issue should be reviewed.

#### **Freedom of Information**

My office undertakes external reviews under the *Freedom of Information Act 1991*, a responsibility which in a number of other Australian jurisdictions sits with a separate Information Commissioner.

Our work this year has been characterised by:

- introducing the practice of releasing provisional determinations in appropriate cases, so that the parties can consider and make

representations on the relevant issues before a determination is finalised

- a high rate of applications by Members of Parliament. In 2010-11 we received 167 applications from MP's, representing over 80 per cent of the 205 applications we received over the year. I am aware that this also reflects the experience of a number of larger agencies
- an increase in applications which are deemed to have been refused by agencies at the determination and the internal review level, because time frames have not been met. Agencies have reported to me that this has been due to an increase in their FOI workloads
- at the external review level, deemed refusals mean that the agency will not have actively considered the documents or the FOI issues at stake. This can lead to additional complexity and time for my office in undertaking the external review process.

I think it is important that the external review process conducted by my office should be active and expeditious. I note that the Act says that agencies must deal with an original application 'as soon as practicable (and, in any case, within 30 days) after it is received'.

The average age of the external reviews which we finalised during 2010-11 was 113 days, which is within our current target of 4 months. In 2011-12, I will be endeavouring to reduce this time, particularly by

encouraging the parties to get together to narrow down the issues at the beginning of a review.

An ongoing issue is that agencies still often provide inadequate reasoning for refusing access to documents. There is a tendency amongst some agencies to look for the exemption provisions first, rather than the objects of the Act.

### **Report against the 2010-11 Business Plan**

Ombudsman SA's Business Plan for 2010-11 identified three priority initiatives:

- *To respond appropriately to the outcomes of the Attorney General's review of public integrity structures*  
In June 2010 I provided the Attorney General with a submission to his review, and in March this year I provided a response to the consultation paper which he published.
- *To commence a program of systemic audits*  
As noted above, we have undertaken audits of 12 local government councils, and the Department of Corrective Services, in relation to their complaint handling practices. This work is the subject of separate comment.

- *To complete documentation of all office policies and business rules.*  
All office policies have been documented and published on our intranet. Work on documenting our business rules is continuing, and will be completed in the next few months.

Other significant achievements over the past year included:

- the continued expansion and development of our law student internship program
- our continued participation in accredited training program for FOI officers, co-ordinated by the State Records Office
- holding regional workshops for local government on unreasonable complainant conduct
- in cooperation with the Commonwealth Ombudsman, providing an outreach service at the Women's Information Service and the Hutt St Centre

### **Administrative support**

Over the past year we continued to receive administrative support from the Attorney General's Department, and I record my appreciation to the Chief Executive Officer and his officers.

### **2011-12 Business Plan**

At the time of writing I have only recently been provided with the final budget allocation from the Attorney General's Department, and I have therefore been unable to finalise my business plan for 2011-12 as yet.

I intend to report against any identified initiatives in next year's Annual Report.



Richard Bingham  
Ombudsman  
September 2011

## Summary Statistical Information

Ombudsman Jurisdiction	2008-09				2009-10				2010-11				
	Government Departments	Local Government	Other Authorities	Total	Government Departments	Local Government	Other Authorities	Total	Government Departments	Local Government	Minister	Other Authorities	Total
<b>Open Approaches &amp; Complaints</b>													
Approaches & complaints open at beginning of period	65	93	44	202	65	64	26	155	48	48		35	131
Approaches & complaints opened during period	1148	624	348	2120	1569	685	573	2827	1781	794	2	459	3036
Total approaches & complaints open	1213	717	392	2322	1634	749	599	2982	1829	842	2	494	3167
<b>Less Closures</b>													
Advice given	525	350	189	1064	609	315	273	1197	244	125	2	91	462
Alt remedy another body					35	12	31	78	139	41		66	246
Cannot contact person									5	2			7
Conciliated					2			2					
Declined	50	64	41	155	90	40	34	164	99	54		25	178
Full investigation	6	26	6	38	9	20		29					
S25 Finding/Improper or irrelevant consideration										1			1
S25 Finding/Mistake of Law						1		1		2			2
S25 Finding/No reason given									1				1
S25 Finding/Unlawful						2		2		7		1	8
S25 Finding/Unreasonable					3	2	1	6	2	1			3
S25 Finding/Unreasonable law or practice									2	1			3
S25 Finding/Wrong							1	1		5		3	8
Not substantiated					116	52	32	200	325	167		75	567
Omb comment warranted					1	1		2	6	3		3	12
Out of time									5	9		2	16
Outside of jurisdiction	9	9	8	26	29	9	14	52	14	2		12	28
Preliminary investigation	545	194	122	861	376	124	77	577					
Referred back to agency					169	71	53	293	605	269		132	1006
Resolved with agency cooperation					95	25	13	133	258	51		45	354
Transferred to WorkCover Ombudsman			2	2									
Withdrawn	21	14	11	46	41	32	20	93	81	46		29	156
<b>Total Approaches &amp; Complaints Closed</b>	<b>1156</b>	<b>657</b>	<b>379</b>	<b>2192</b>	<b>1575</b>	<b>706</b>	<b>549</b>	<b>2830</b>	<b>1786</b>	<b>786</b>	<b>2</b>	<b>484</b>	<b>3058</b>
Still Under Investigation	57	60	13	130	59	43	50	152	43	56	0	10	109

FOI Jurisdiction	2008-09	2009-10	2010-11				
			Government Departments	Local Government	Minister	Other Authorities	Total
<b>Open External Reviews</b>							
External reviews open at beginning of period	54	37	14	2	2	10	28
External reviews opened during period	167	180	142	7	37	19	205
Total external reviews open	221	217	156	9	39	29	233
<b>Less Closures</b>							
FOI advice given	92	106					
FOI investigation	17	4					
FOI review	84	29					
FOI AfR withdrawn applicant		9	10		1	2	13
FOI App settled during review		3	11	1			12
FOI Determination confirmed		6	19	1	2	5	27
FOI Determination reversed		5	6		3	6	15
FOI Det revised by Agency		2	13		1	2	16
FOI Determination varied		8	14	2	2	6	24
Transferred to WorkCover Ombudsman		1					
Declined	1	2					
<b>Total External Reviews Closed</b>	<b>194</b>	<b>175</b>	<b>73</b>	<b>4</b>	<b>9</b>	<b>21</b>	<b>107</b>
Still Under Investigation	27	42	83	5	30	8	126

Note: Explanations of the Ombudsman and FOI outcomes are in Appendices 2 and 3 respectively.



I was advised that steps would be taken to amend the Act to authorise the imposition of the levy in the future.

**Attorney General's Department –  
Office of Recreation and Sport**  
***It was alleged that the South  
Australian Sports Institute erred in  
awarding cycling scholarships, and  
that the Office for Recreation and  
Sport prevented reasonable access  
to the Superdrome for training***

*Complaint summary*

The complainant raised a number of issues about his son's experiences as a scholarship holder. He was concerned about the process applied by SASI in awarding sporting scholarships, the assessment of the application of a particular athlete, the operation of the Superdrome under an arrangement with Cycling SA and the role of Cycling SA in the management of the facility.

*Ombudsman investigation*

The complainant's son provided materials relating to the purpose of the scholarship and his obligations as an athlete under the terms of the scholarship. These included the 2008-2009 SASI Cycling Squad Selection Policy, the Athlete Agreement and various correspondence between the applicant and coaches.

I also examined various aspects of the operation of the Superdrome, including documents outlining the basis for Cycling SA's role, and the relevant operating agreements.

*Outcome and opinion*

I concluded that SASI awarded scholarships in accordance with its policy. Its decision not to award a scholarship to the complainant's son

was consistent with the policy, and it provided appropriate reasons for its decision.

Although there is only limited opportunity for individuals to privately use the Superdrome facility because of high demand by Cycling SA, SASI and the Australian Institute of Sport, it was my view that there was no evidence to support the complainant's assertion that his son was not given a reasonable opportunity to train at the Superdrome.

**Department for Correctional  
Services**

***DCS has no legal authority  
to charge a levy on prisoner  
amenities***

*Complaint summary*

This investigation arose from two complaints I received from individual prisoners concerning charges on items purchased from prison canteens run by the Department for Correctional Services. As a result of the complaints I became concerned about the department's administration of an amenities levy (**the levy**) which is applied as a surcharge on items purchased from the canteens. I amalgamated the complaints into an own initiative investigation.

*Ombudsman investigation*

My investigation revealed that the department has charged the levy for over 25 years. According to section 32 of the *Correctional Services Act 1982*, the manager of a correctional institution must make available for purchase by prisoners such items of personal use or consumption as may

be prescribed. This provision does not empower the manager to operate a profit-making business by selling items to prisoners, and in my view does not provide legislative authority for the imposition of the levy. I also considered whether legislative authority for the levy could be supplied by the *Fees Regulation Act 1927*.

*Outcome and opinion*

I concluded that there was no legal authority for the imposition of the prisoner amenities levy and that the department's action in imposing the levy is unlawful. I did not make any recommendation as it was my view that there would be practical difficulty in identifying items purchased by individual prisoners and arranging reimbursement, there was no evidence that the funds collected were used for anything other than benefits to prisoners and I was advised that steps would be taken to amend the Act to authorise the imposition of the levy in the future.

**Department for Correctional  
Services**

***Unreasonable destruction  
of property and denial of  
compensation***

*Complaint summary*

Arising from four separate complaints, I undertook an own initiative investigation into the department's destruction of prisoners' property following a disturbance at Port Augusta Prison, and the subsequent blanket denial of compensation to prisoners for their property.

The complainants advised that the department unreasonably destroyed property that was in their cells at the time of the disturbance; but that the prisoner files located in the building prior to the disturbance were returned to service. The department had denied prisoners compensation for the destroyed property.

The department stated that in October 2008, unrest took place at the prison involving prisoners in one building, and resulting in extensive damage. The damage included breakage of asbestos eave linings, windows with sealant containing asbestos and floor tiles with asbestos backing. Some prisoner property was also exposed to water and effluent due to damaged toilet pans in cells.

Various contractors were engaged to undertake the clean up and repairs, including asbestos removal and asbestos fibre monitoring.

Following the unrest, prisoners' property in the building was searched for contraband, bagged and stored. The bagged materials and property, including some agency property, was suspected of contamination with asbestos fibres and effluent and was subsequently destroyed. The decision not to offer compensation for prisoner cell property was made in May 2009.

#### *Ombudsman investigation*

My investigation focussed on two issues: whether the decision to destroy prisoners' property on the basis of alleged asbestos contamination was reasonable, and whether the decision to deny prisoners reimbursement for destroyed property was lawful and reasonable.

On the first issue, the original complainants stated that most of the prisoners' personal property was packed into boxes and bags and not damaged during the unrest. I concluded that:

- there was no evidence that the prisoners' property was exposed to significant contamination by asbestos, measured by the legislated standards.
- the department apparently considered that the health and safety of its staff and prisoners were not jeopardised by the salvaging of some paperwork from the building

- the prisoners' property was bagged and stored by the department before the asbestos debris and material was removed
- the department asserted that there was a risk that the prisoners' property was contaminated by asbestos, given that three sources of damaged asbestos were identified.

I accepted that the department's decision to dispose of prisoners' property was based on advice of a risk of asbestos contamination. On that basis, my view was that the disposal of prisoners' property was not unreasonable.

On the second issue, the complainants advised that affected prisoners were advised in mid-2009 that the department would not be 'compensating' them for their disposed property because each prisoner's personal property and 'all Government owned property' was disposed of due to risks of exposure to asbestos for the health and safety of prisoners and staff.

I concluded that:

- prisoners have a legally conferred entitlement to hold some personal property whilst in prison
- to receive any property, prisoners are required to acknowledge that the department accepts no liability for it
- notwithstanding the above, the department's procedures provide for documented investigation and compensation for loss or damage to property owned by prisoners
- the department's decision in February 2009, to dispose of the prisoners' property was accompanied by approval of a recommendation to consider claims by prisoners for reimbursement for the property's recorded value
- the subsequent blanket denial of reimbursement to the prisoners for property damaged during the disturbance did not cite any legislative authority, nor is it specifically supported by relevant departmental policies. However, the offering of compensation in some circumstances is supported by one of the prison's Local Operating Procedures.

- the department considered its denial of reimbursement to prisoners for their destroyed property was a reasonable consequence of the disturbance in which some prisoners were involved. Nonetheless, in my view, each case should have been considered on its merits. I noted that the department concedes that only some, perhaps a minority, of the prisoners in the building were responsible for the disturbance and the resulting damage.

#### *Outcome and opinion*

In my view, the department's decision to deny reimbursement to every prisoner for the recorded value of their destroyed property was an unfair penalty on those prisoners who were not directly responsible for the disturbance or the damage to the building. This was not unlawful, but was unjust within the meaning of section 25(1)(b) of the Ombudsman Act.

Under sub-sections 25(2)(a) and 25(2)(b) of the Ombudsman Act I recommended that the department consider reimbursement to affected prisoners for the recorded value of their destroyed property, taking into account:

- the limit on the total value of a prisoner's personal property prescribed by regulation 7(1) (a) of the Correctional Services Regulations 2001
- the extent of the prisoner's participation in the disturbance.

The department declined to implement my recommendation. I accepted that the consideration of compensation to affected prisoners for their destroyed property was a matter for the Minister for Corrections and the department. I have no jurisdiction to investigate Ministerial decisions.

#### **Department for Correctional Services**

##### ***Investigation into anomaly with the Victims of Crime Act***

##### *Complaint summary*

The complainant, a prisoner, was convicted of murder in September 2004. Upon conviction he was liable to pay a levy of \$120 under section 32 of the *Victims of Crime Act 2001*. This levy was paid in full with money deducted from the complainant's weekly prison account. The

complainant subsequently appealed the conviction, and the High Court quashed the conviction in May 2008 and ordered a retrial. In May 2009 the complainant was again found guilty of murder. The court ordered that on conviction he was liable to pay a levy of \$240. This was also paid in full by the complainant from his prison account.

#### *Ombudsman investigation*

There was a failure to recognise the levy payments made by the complainant in 2004 and 2005. In my opinion, these payments should have been credited against the debt incurred in 2009. The levy had effectively been paid twice and the complainant should be credited with an amount of \$120 to reflect the overpayment.

#### *Outcome and opinion*

In my opinion the department was not acting unlawfully, unreasonably or wrongly in deducting the monies from the complainant's account. In my opinion, this anomaly could have implications for any convicted person serving a period of imprisonment and who may have a conviction quashed on appeal and a retrial ordered. I advised that in the event of a retrial and fresh conviction (and the imposition of the levy), that the department should consider if any previous payments had been made.

### **Department for Correctional Services**

#### ***Alleged failure to inform prisoner about relocation process***

##### *Complaint summary*

The complainant was a long term and high risk prisoner who alleged that the department was not endeavouring to return him to mainstream prison life and had given him misleading information regarding his prisoner management status.

#### *Ombudsman investigation*

The department advised me that it was considering a strategy to have the prisoner reintroduced into the mainstream prison system. The Serious Offender Committee (SOC – as the body replacing the defunct Prisoner Assessment Committee) was required to consider the matter and put forward recommendations to the department in relation to the future management of the prisoner. In this matter, the SOC was acting within its terms of reference and I was satisfied it was not

introduced as a delaying tactic as alleged by the complainant.

I conducted an investigation into whether the prisoner had been misled by the department. There was evidence to show that the complainant had been advised by prison staff that the matter was before the SOC, and the prisoner had a subsequent discussion with his Case Management Officer about the SOC and that any process to have him relocated would be an extensive one.

#### *Outcome and opinion*

I did not believe that the department had acted in a way that was unlawful, unreasonable or wrong, and I did not think further investigation would achieve a better result.

### **Department of Education and Children's Services**

#### ***Failure to comply with the department's complaint handling policy and procedures and to manage schooling of the complainant's children in accordance with the department's policies***

##### *Complaint summary*

This complaint arose from the complainant's dealings with the department about a number of issues relating to the schooling of his children. The complainant lodged a grievance with the department, as he alleged that the principal of his children's school bullied him and his partner. His subsequent complaint to my office was that the department failed to consider his grievance in accordance with its published policies.

The complainant was concerned that the investigation of his grievance was carried out, and decisions were taken, by two people who appeared to be closely associated with the person complained against. Further the complainant alleged that the department failed to comply with the law and relevant departmental policies in deciding to 'hold back' his children for the 2010 school year, and to offer them places in the Open Access College (the OAC).

#### *Ombudsman investigation*

At the outset, I had difficulty in identifying the department's complaint management process. After reflecting on the matter, in its response to my provisional report, the department

acknowledged that it would undertake 'a review of existing documents and procedures over the next six months to develop and publish a clear and specific process for parents and the general public'.

The department advised that it did not decide to hold the complainant's children back. It suggested some confusion may have arisen from the fact that the three children had the same teacher for 2010 as they did in the previous year, and this arose simply from the fact that the class was a mixed class taken by the same teacher. The department also advised that there is no legislative provision governing the OAC, but that access is left to the discretion of the Minister and department. It has a number of criteria for access to the OAC, and these are applied when considering access for specific students.

#### *Outcome and opinion*

My final view was that the department's failure to publish clearly accessible complaint procedures was wrong. I noted that it would have been prudent for the department to have made alternative arrangements for the management and investigation of the complaint against the principal and for a decision on its outcome to have been made by another disinterested person.

However, I welcomed the department's decision to comprehensively review its complaint handling policy and procedures. I have been consulted in the development of the new policy, and have been pleased with the progress which the department has made.

As the complainant's children had shifted to another school I considered that there was no need to further investigate the decision to 'hold back' his children for the 2010 school year, and to offer them places in the OAC.

### **Department of Transport, Energy and Infrastructure**

#### ***Ceasing dealings with registered owner of vehicle***

##### *Complaint summary*

The complainant was paying for the registration of (and driving) his daughter's car whilst she was living overseas. Without warning either the complainant or his daughter, the department made a decision to 'cease business' with the vehicle on the

basis that the registered owner was living overseas. The complainant was therefore not able to re-register the vehicle.

The complainant contacted the department to discuss the matter and was advised to register as a co-owner of the vehicle. This allowed him to continue to pay for the registration, which effectively resolved the situation.

#### *Ombudsman investigation*

However, I felt that further investigation was necessary to ascertain whether it was common practice for the department to cease business with registered car owners, upon learning they are overseas but without notification and therefore without permission. With the department's assistance, I ascertained that whilst not necessarily widespread, the practice was not uncommon.

I advised that in my view, ceasing business in this manner without permission or notification was impractical and possibly unlawful.

#### *Outcome and opinion*

As a result of my office's input, the department is planning to modify its registration system.

### **Department of Transport, Energy and Infrastructure**

#### ***Unreasonable fee to remove a worker's lien***

##### *Complaint summary*

The complainant and another person were the registered owners of a property. On 7 April 2008 a solicitor acting for a company demanded payment from the owners for work allegedly undertaken at the property within 28 days (that is, by 5 May 2008).

On 7 August 2008, the company lodged a notice of lien dated 5 May 2008 over the property under the *Worker's Liens Act 1893 (the Act)*, and the lien was registered on 20 August 2008. The department then notified the owners about the lien, and on 4 September 2008 the company commenced proceedings in the Magistrates Court to enforce the lien. When there was no appearance before the court by the company, the court dismissed the claim.

Briefly stated, a worker's lien enables 'a worker doing work for an owner or occupier' to 'have a lien for his wages

for such work on the estate or interest in land of the owner'.<sup>1</sup> It may only be 'registered before the expiration of twenty-eight days after the wages or contract price in respect of which such lien has arisen ... have become due'.<sup>2</sup> A lien ceases unless action to enforce it is brought 'within fourteen days from registration'.<sup>3</sup> The Registrar-General is obliged to register the lien upon receipt of a notice in the prescribed form,<sup>4</sup> and to record the end of the lien upon receipt of 'the prescribed fee and proof to his satisfaction'.<sup>5</sup>

The complainant complained that the worker's lien was invalid, and the cost of removing it was unfair.

Under section 32 of the Act, the complainant was able to apply to the court to have registration of the lien over the property cancelled. When the court dismissed the substantive claim for the lien, it failed to make such an order. In the circumstances I concluded that it would not be reasonable to expect the complainant to return to the court, and I decided to conduct a full investigation of her complaint.

#### *Ombudsman investigation*

- *Whether the worker's lien was invalid*

I had doubts about the validity of the lien. In reaching this view, I was mindful that the notice of lien was submitted for registration three months after the date on the notice, and was only registered after a further two weeks. This called into question the 'availability' to register the lien under section 10(1) of the Act, notwithstanding the department's submission that a subsequent demand could have ensured compliance with the 28-day time limit. In addition, it appeared that section 15 of the Act was not complied with (that is, court proceedings appeared to have been commenced more than 14 days after the lien was registered), and the lien should therefore have 'ceased'.

That said, I accepted that the department had a duty to register a lien submitted by a person lodging a notice with the General Registry Office in the prescribed form.<sup>6</sup> On this basis, I concluded that the department's actions in registering the lien were in accordance with the law.

- *Whether the cost of removing the worker's lien was unfair*

The department claimed that payment of the prescribed fee was a prerequisite to removal of the lien under section 16 of the Act. It further claimed that the Registrar-General did not have the discretion to waive the prescribed fee, but advised that the Treasurer did.

I formed the view that it ought to be possible for a person in the complainant's position to have the lien removed, thereby restoring them to the position they were in prior to the lien being registered. I did not think it was appropriate that the complainant should be left out of pocket by payment of the prescribed fee, or incurring court costs.

#### *Outcome and opinion*

My final view was that requiring the complainant to pay the prescribed fee to remove the lien was 'in accordance with a rule of law or provision of an enactment or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory', as set out in section 25(1)(c) of the Ombudsman Act.

The department agreed:

- to seek approval from the Treasurer to waive the prescribed fee (then \$121) to remove the lien over the property
- to explore the practicability of empowering the Registrar-General with the discretion to waive prescribed fees, and options to simplify the process of requesting a waiver.

As a result, I did not consider it necessary to make any formal recommendations.

1 Section 4(1) of the Act.

2 Section 10(1) of the Act.

3 Section 15 of the Act.

4 Section 11(a) of the Act and Schedule 2 of the *Worker's Liens Regulations 1999*.

5 Section 16 of the Act.

6 Schedule 2 of the *Worker's Liens Regulations 1999*.



Following my investigation, the Minister for Transport, Energy and Infrastructure informed me that the Registrar-General intended to seek approval from the Treasurer to waive the prescribed fee once the complainant had lodged the prescribed form. The complainant was informed of this, and was pleased with the result.

The Minister further advised that a significant reform program would be undertaken in relation to the 'suite of legislation administered by the Registrar-General', during which the other issues that the department had agreed to explore would be considered.

#### **Department of Treasury and Finance**

##### ***Unreasonable refusal to allow objection to valuation***

###### *Complaint summary*

The complainant disagreed with a residential valuation, but failed to formally object within the stipulated 60 day time period. The complainant asked the Valuer-General to exercise discretion by accepting the late objection, and review the valuation. The Valuer-General was given the discretion to extend the time limit by amendments to the *Valuation of Land Act 1971* in 2009. Section 24(1e) of that Act provides:

... the Valuer-General may, for reasonable cause shown by a person entitled to make an objection to a valuation, extend the period within which the objection may be made.

###### *Ombudsman investigation*

The State Valuation Office advised that the Valuer-General would only exercise his discretion if it could be shown that the complainant was overseas, seriously ill or suffering some other hardship preventing objection within the stipulated time period. The complainant complained to me that the Valuer-General should have exercised his discretion to 'correct a major overvaluation', and because the objection process was unclear and deficient.

###### *Outcome and opinion*

The complainant was clearly out of time and failed to object within the 60 day period, simply because he did not read the information on the back of the valuation notice properly. In my view this did not constitute reasonable cause for a time extension.

However, I considered that in other respects the State Valuation Office could have improved the information describing the process to apply for an extension of time. I considered that additional information detailing the types of circumstances in which the Valuer-General might exercise his discretion needed to be clearly available on the documents provided to the public. I also asked the Valuer-General to contact other agencies which relied on valuations, to ensure that enhanced information was included on valuation notices provided to the public.

#### **Department of Treasury and Finance**

##### ***Unreasonable land tax charge***

###### *Complaint summary*

The complainant objected to over \$1 000 in land tax charges between 2006 and 2009. She purchased a property in 1977 and was registered as the sole owner. In 1984 the title was transferred to her daughter. In 2001, after the relevant payments, the complainant and her daughter became joint owners of the property. However, this transaction was not registered with the Lands Titles Office, so the daughter remained registered as the sole owner of the property.

At some stage, the daughter asked that the property no longer be recorded as her principal place of residence. As she was the sole registered owner, land tax began to accumulate from 2006, even though the complainant was still a joint (albeit unregistered) owner, and the property was her principal place of residence.

When the complainant realised, she sought advice from Revenue SA. The department advised that the joint ownership should be registered, and the complainant did this in 2009. However, Revenue SA advised that the outstanding land tax amount remained as the Lands Titles Office could not backdate the joint title to 2001.

###### *Ombudsman investigation*

When I received the complaint, I asked the department for information supporting the land tax, and reasons for its decision that it could not waive the tax.

###### *Outcome and opinion*

In the course of my investigation, the department advised that it was

satisfied that the complainant's and her daughter's intention was to transfer the property into joint ownership in 2001, and as the property remained the complainant's principal place of residence during the relevant period, the land tax charges were withdrawn.

This matter was an example of the benefits to be achieved from a collaborative approach with both agencies and complainants in achieving flexible and satisfactory outcomes.

#### **Housing SA**

##### ***Unreasonable account for water usage***

###### *Complaint summary*

The complainant was a tenant in a Housing Trust property. The tenant's property and an adjoining property shared the same water meter. The complainant alleged that their neighbour used comparatively more water than them, and that the subsequent water bill was unreasonable.

###### *Ombudsman investigation*

Regulation 9 of the *South Australian Housing Trust Regulations 2010* provides that where there is no separate meter fitted to the premises the tenant is responsible for the water rates 'for the proportion of all water rates payable in respect of the premises.' This means that tenants are liable for the water rates incurred for their respective properties but Housing SA is liable for the supply charge.

Housing SA's Water Usage Policy provides that tenants with shared water meters are charged an average water charge after the subtraction of the 30 per cent landlord consumption. If a tenant considered that a neighbour was using excessive water, there is the opportunity to make the appropriate report to Housing SA or SA Water. The department can also consider the special needs of a tenant, and the complainant was at liberty to make the necessary approach to it.

###### *Outcome and opinion*

There are a significant number of properties in a shared water meter arrangement and it is acknowledged that the cost to provide each property with a meter is also significant.

In my opinion, in this case Housing SA did not act in a way that was unlawful, unreasonable or wrong.

**Government Departments**
**Approaches & Complaints Received  
1 July 2010 to 30 June 2011**

Attorney-General's Department	8	0.4%
Department for Correctional Services	573	32.2%
Department for Environment and Natural Resources	15	0.8%
Department for Families and Communities	128	7.2%
Department of Education and Children's Services	71	4.0%
Department of Further Education, Employment, Science & Technology	28	1.6%
Department of Health	20	1.2%
Department of Planning and Local Government	5	0.3%
Department of Primary Industries & Resources	9	0.5%
Department of the Premier and Cabinet	17	0.9%
Department of Transport, Energy and Infrastructure	261	14.7%
Department of Treasury and Finance	52	2.9%
Department of Water, Land and Biodiversity Conservation	2	0.1%
Department for Water	8	0.4%
Electoral Commission of South Australia	9	0.5%
Environment Protection Authority	19	1.1%
Office of Public Employment	1	0.1%
SA Housing Trust	365	20.5%
SA Police	8	0.4%
SA Water Corporation	182	10.2%
<b>Total</b>	<b>1781</b>	<b>100%</b>

Government Departments

Approaches & Complaints Received: Issues  
1 July 2010 to 30 June 2011

	Other	Department for Correctional Services	SA Housing Trust	Department of Transport, Energy & Infrastructure	SA Water Corporation	Department for Families and Communities	Total	Percentage
Abuse or Assault/Physical/By other detainees		2					2	0.1%
Abuse or Assault/Physical/By staff		6					6	0.3%
Abuse or Assault/Sexual/By other detainees		1					1	0.1%
Abuse or Assault/Verbal/Harassment/Threats/By other detainees		4					4	0.2%
Abuse or Assault/Verbal/Harassment/Threats/By staff		9					9	0.5%
Advice	1		1				2	0.1%
Complaint Handling/Delay	11	9	34	10	3	5	72	4.0%
Complaint Handling/Inadequate processes	33	15	45	22	10	16	141	7.9%
Complaint Handling/Inadequate reasons	5	7	7	3	7	1	30	1.7%
Complaint Handling/Inadequate remedy	8	4	25	7	4	2	50	2.8%
Complaint Handling/Wrong conclusion	6	1	5		2	4	18	1.0%
Conduct/Assault		2					2	0.1%
Conduct/Discourtesy	6	5	7	2			20	1.1%
Conduct/Misconduct	13	7	3	3	1	9	36	2.0%
Correspondence/Communications/Records/Delayed/No response	4		7	8	4	7	30	1.7%
Correspondence/Communications/Records/Incorrect	2	2	3	21	6	1	35	1.9%
Correspondence/Communications/Records/Lost		2	3	3			8	0.4%
Correspondence/Communications/Records/ Withholding of information	3		2	1		3	9	0.5%
Correspondence/Communications/Records/ Wrongful disclosure of information	2	1	1	2		6	12	0.7%
Custodial Services/Buildings and facilities		4					4	0.2%
Custodial Services/Canteen		5					5	0.3%
Custodial Services/Cell conditions		25					25	1.4%
Custodial Services/Clothing/Footwear		6					6	0.3%
Custodial Services/Employment		5					5	0.3%
Custodial Services/Food		18					18	1.0%
Custodial Services/Health related services		52					52	3.0%
Custodial Services/Legal resources		3					3	0.2%
Custodial Services/Prisoner accounts		10					10	0.5%
Custodial Services/Prisoner mail		21					21	1.2%
Custodial Services/Property		71					71	4.0%
Custodial Services/Recreation programs & services		4					4	0.2%
Custodial Services/Rehabilitation programs		3					3	0.2%
Custodial Services/Telephone		26					26	1.4%
Employment	5	4			1	1	11	0.6%
Financial/Procurement/Facilities/Compensation/ Damage/Acquisition of land				1			1	0.1%
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury				1			1	0.1%
Financial/Procurement/Facilities/Compensation/ Damage/Property lost/Damaged	1	2	1	1	4		9	0.5%
Financial/Procurement/Facilities/Compensation/ Damage/Psychological injury	1						1	0.1%
Financial/Procurement/Facilities/Debts	7		6		12		25	1.4%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Cost of use	1		4		8		13	0.7%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Denial of use					1		1	0.1%

Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Drainage	1				1		2	0.1%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Fencing				1			1	0.1%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Inadequate			3		1		4	0.2%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Nuisance			2				2	0.1%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Sale/Lease	1						1	0.1%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Unsafe condition			5				5	0.3%
Financial/Procurement/Facilities/ Procurement by Agencies/Decisions	1					1	2	0.1%
Financial/Procurement/Facilities/ Procurement by Agencies/Late payment	2					2	4	0.2%
FOI advice	32	2	4	2		8	48	2.7%
FOI practices and procedures	1			1		1	3	0.2%
Home Detention		7					7	0.4%
Prison Management/Discipline/Security/Daily regimen		26					26	1.4%
Prison Management/Discipline/Security/Discipline/Management		40					40	2.2%
Prison Management/Discipline/Security/Drug testing		9					9	0.5%
Prison Management/Discipline/Security/Inspections/ Body searches		3					3	0.2%
Prison Management/Discipline/Security/Protection		4					4	0.2%
Prison Management/Discipline/Security/Transport		4					4	0.2%
Prison Management/Discipline/Security/Visits		11					11	0.6%
Prison Records/Official Correspondence/Delayed/No response		1					1	0.1%
Prison Records/Official Correspondence/Improper access by staff		1					1	0.1%
Prison Records/Official Correspondence/Incorrect		4					4	0.2%
Prison Records/Official Correspondence/Lost		1					1	0.1%
Prison Records/Official Correspondence/ Wrongful disclosure of information		1					1	0.1%
Records management	1						1	0.1%
Regulation and Enforcement/Complaint handling	1		2				3	0.2%
Regulation and Enforcement/Enforcement Action/Excessive	4	7	3	6	3	4	27	1.5%
Regulation and Enforcement/Enforcement Action/Insufficient	2		1	1			4	0.2%
Regulation and Enforcement/Enforcement Action/Unfair	5	9	8	14	2	4	42	2.4%
Regulation and Enforcement/Fees	7		2	8	10		27	1.5%
Regulation and Enforcement/Infringements/Excessive penalty	1	1		4			6	0.3%
Regulation and Enforcement/Infringements/Incorrect details				1			1	0.1%
Regulation and Enforcement/Infringements/Unreasonably issued				6			6	0.3%
Regulation and Enforcement/Inspections	3		1	3			7	0.4%
Regulation and Enforcement/Licensing/Conditions	2			13	1		16	0.9%
Regulation and Enforcement/Licensing/Refusal	2			7			9	0.5%
Regulation and Enforcement/Licensing/Renewal	1			7			8	0.4%
Regulation and Enforcement/Permits	1			1			2	0.1%
Revenue Collection/Land Tax	24						24	1.3%
Revenue Collection/Stamp duty	4			1			5	0.3%
Roads and Traffic/Licensing/Conditions				8			8	0.4%
Roads and Traffic/Licensing/Demerit points				2			2	0.1%
Roads and Traffic/Licensing/Fail to issue renewal				5			5	0.3%
Roads and Traffic/Licensing/Fees/Charges				1			1	0.1%
Roads and Traffic/Licensing/Medical test				4			4	0.2%
Roads and Traffic/Licensing/Tests				4			4	0.2%
Roads and Traffic/Registration/Conditions				3			3	0.2%
Roads and Traffic/Registration/Failure to issue renewal				6			6	0.3%
Roads and Traffic/Registration/Fees/Charges				5			5	0.3%
Roads and Traffic/Road Management				7			7	0.4%
Sentence Management/Classification		2					2	0.1%
Sentence Management/Parole		11					11	0.6%



Sentence Management/Placement/Location		22					22	1.2%
Sentence Management/Transfers		34					34	1.9%
Service Delivery/Abuse in care	1	2				1	4	0.2%
Service Delivery/Assessment	3	1	1	2	1	4	12	0.7%
Service Delivery/Conditions	3	2	11	4	2	8	30	1.7%
Service Delivery/Debts			7	1	4		12	0.7%
Service Delivery/Eligibility for services	4	10	19	4	3	7	47	2.6%
Service Delivery/Failure to Act/Provide	22	17	90	18	3	20	170	9.5%
Service Delivery/Fees and Charges	10	1	30	11	76		128	7.2%
Service Delivery/Financial assistance	2		1			1	4	0.2%
Service Delivery/Quality	14	9	13	15	12	11	74	4.1%
Service Delivery/Termination of services	7		9	1			17	0.9%
Superannuation	1						1	0.1%
<b>Total</b>	<b>272</b>	<b>578</b>	<b>366</b>	<b>262</b>	<b>182</b>	<b>127</b>	<b>1787</b>	<b>100%</b>

## Government Departments

## Approaches & Complaints Completed 1 July 2010 to 30 June 2011

Attorney-General's Department	9	0.5%
Department for Correctional Services	578	32.4%
Department for Environment and Heritage	1	0.1%
Department for Environment and Natural Resources	12	0.7%
Department for Families and Communities	127	7.1%
Department for Water	7	0.4%
Department of Education and Children's Services	72	4.0%
Department of Further Education, Employment, Science & Technology	27	1.5%
Department of Health	20	1.1%
Department of Planning and Local Government	7	0.4%
Department of Primary Industries & Resources	8	0.4%
Department of the Premier and Cabinet	15	0.8%
Department of Transport, Energy & Infrastructure	262	14.7%
Department of Treasury and Finance	52	2.9%
Department of Water, Land and Biodiversity Conservation	2	0.1%
Electoral Commission of South Australia	9	0.5%
Environment Protection Authority	19	1.1%
Office of Public Employment	1	0.1%
SA Housing Trust	365	20.4%
SA Police	9	0.5%
SA Water Corporation	184	10.3%
<b>Total</b>	<b>1786</b>	<b>100%</b>

	Other	Department for Correctional Services	SA Housing Trust	Department of Transport, Energy & Infrastructure	SA Water Corporation	Department for Families and Communities	Total	Percentage
Advice given	56	49	39	46	29	25	244	13.6%
Alternate remedy available with another body	22	42	23	7	5	40	139	7.8%
Cannot contact person		1	2			2	5	0.3%
Declined/Investigation neither necessary nor justifiable	10	27	19	13	8	8	85	4.8%
Declined/No sufficient personal interest or not directly affected		5	2				7	0.4%
Declined/Trivial, vexatious, etc	1	1	1	2	2		7	0.4%
Not substantiated	45	130	53	54	34	9	325	18.1%
Ombudsman comment warranted	3	3					6	0.3%
Out of Jurisdiction/Agency not within jurisdiction	1	1		2		1	5	0.3%
Out of Jurisdiction/Employment	2				1		3	0.2%
Out of Jurisdiction/Judicial body	1		1			2	4	0.2%
Out of Jurisdiction/Minister			1				1	0.1%
Out of Jurisdiction/Police matter		1					1	0.1%
Out of time	1	1	1		2		5	0.3%
Referred back to agency	93	180	148	86	74	24	605	33.9%
Resolved with agency cooperation	20	112	57	32	26	11	258	14.4%
S25 Finding/No reason given	1						1	0.1%
S25 Finding/Unreasonable	1	1					2	0.1%
S25 Finding/Unreasonable law or practice		1		1			2	0.1%
Withdrawn by complainant	13	23	18	19	3	5	81	4.5%
<b>Total</b>	<b>270</b>	<b>578</b>	<b>365</b>	<b>262</b>	<b>184</b>	<b>127</b>	<b>1786</b>	<b>100%</b>
	15.1%	32.4%	20.4%	14.7%	10.3%	7.1%		

# In my view, what amounts to a 'reasonable expectation' should be determined objectively...

## **The City of Adelaide**

### ***Failure to disclose an interest at a council committee meeting, and failure to bring an open mind to committee deliberations***

#### *Complaint summary*

This investigation stemmed from a complaint received from a member of a public under the *Whistleblowers Protection Act 1993*. In order to protect the identity of the complainant I commenced an investigation on my 'own initiative'.

#### *Ombudsman investigation*

A council committee was considering whether or not to endorse a proposal that the council should submit to the Minister a Development Plan Amendment that dealt with heritage matters, and which would have increased the number of heritage listed properties in the city. One councillor was closely associated with a business which specialised in heritage planning and design, and the complainant alleged that he should have disclosed an interest and withdrawn from the meeting.

I also investigated whether the councillor allowed his views on the issue to cloud his impartial decision making judgement. The concept of maintaining an open mind doesn't require that a decision maker should have an empty mind, and that it is not reasonable or practicable to expect that a person will have no pre-existing personal views or preferences. Members of council are entitled to hold and express views, but what is important is that they should be able to

reconsider them in light of all evidence and arguments presented.

#### *Outcome and opinion*

I considered that in light of the nature of his business, the councillor had a reasonable expectation of obtaining a benefit or suffering a detriment as contemplated by section 73 of the *Local Government Act 1999*, and thus he was obliged to make a disclosure under section 74. In reaching this conclusion, I considered the following matters:

- in my view, what amounts to a 'reasonable expectation' should be determined objectively, according to the usual standards of the day. I considered that a lay observer would conclude that in the circumstances of the matter, the councillor had a reasonable expectation that he or his business would receive some benefit from increasing the number of heritage listings
- approximately 14 per cent of the councillor's business fees have come from heritage and conservation work. I considered this to be a not insignificant proportion of the company's income
- in my view, the company's website suggests that heritage matters form a substantial part of its business
- in my view, in cases where there is some doubt it is preferable that a councillor should err on the side of caution in declaring an interest

I concluded that the councillor acted in a way which was unlawful within

the meaning of section 25(1)(a) of the *Ombudsman Act 1972* in not disclosing his interest and withdrawing from the meeting.

However, on the second issue I concluded that the councillor didn't have a predetermined view; he had regard to the reports prepared by council and the contributions of elected members to the debate.

## **The City of Adelaide**

### ***The council issued a defective expiation notice***

#### *Complaint summary*

The complainant was of the view that the expiation notice she was issued by a council officer was defective in that it did not comply with the terms of the *Expiation of Offences Act 1996 (the Act)* and corresponding regulations. She alleged that the expiation notice was not in the prescribed form as it failed to:

- contain an allegation that a person committed an offence,
- address the expiation notice to a vehicle owner or driver,
- clearly identify a statement of outcome where no choice is made by the alleged offender
- include a statement saying that a person can dispute the allegation and elect to be prosecuted for the offence
- have a heading identifying it as an expiation notice.

She also believed that the council wrongly failed to withdraw the expiation notice.

#### *Ombudsman investigation*

The council was exercising its power under section 5(1) of the Act. Section 6(1)(b) provides that an expiation notice must be in the prescribed form, and regulation 5(1) of the Expiation of Offences Regulations states that Schedule 1 of the regulations prescribes the form. Schedule 1 does not specify the precise format in which an expiation notice must appear, but simply states the requirements with which a notice must comply. I analysed whether each alleged defect was a failure to comply with Schedule 1.

With regard to whether the council wrongly failed to withdraw the expiation notice I considered section 16 of the Act. This enables the issuing authority, in limited circumstances and within a specified period from the expiation of the notice, to withdraw the notice. I also considered the Supreme Court decision in *Riessen v The State of South Australia*,<sup>7</sup> in which the court decided that reimbursement of an expiation fee in comparable circumstances was not warranted.

#### *Outcome and opinion*

I concluded that the complainant's allegations about the defects had substance, except the one relating to the heading of the notice and the one with respect to the obligation to address the expiation notice to a vehicle owner or driver. I found that in issuing the notice the council acted contrary to the law.

Nevertheless, I was of the view that there was no administrative error in the council's decision not to withdraw the expiation notice. The complainant did not deny committing the offence, but sought withdrawal of the notice on the grounds that there were technical defects, and there is no statutory or common law obligation on the council to refund the payment.

### **City of Holdfast Bay**

#### ***Under section 270 of the Local Government Act 1999, the complainants had requested a review of a council decision to retain a street tree***

##### *Complaint summary*

The complainants made a request to the council to remove a non-significant street tree located on the verge adjacent to their property, because its roots were damaging their property. The council decided not to remove the tree because it was considered to be healthy, even though it was not a species planted by council due to its potential for suckering and resultant infrastructure damage

The complainants formally requested the council to review its decision under section 270 of the *Local Government Act 1999*. The review upheld the original decision.

##### *Ombudsman investigation*

The council's CEO stated that as the tree was exhibiting symptoms of distress; appeared to be self-seeded; and had a number of 'undesirable characteristics'; the argument for the removal of the tree was 'strengthened'. He further stated however, that it was council's policy and consistently applied practice not to support the removal of a healthy tree, and this course of action is reflected in the council's policy 3.17.

While one principle of policy 3.17 protected the removal of a significant tree which is healthy and complying with the Street Tree Strategy, several other policy principles which deal with the discretion of council administration staff to remove a non-complying tree and the requirement for the approval of the council to remove a healthy tree were, in my view, ambiguous. I did not consider that the policy required the council to consistently retain healthy, but non-significant or non-complying street trees.

##### *Outcome and opinion*

It was my view that the decision to retain the tree was based solely on the council's opinion that the tree was healthy. It appeared to me that the council did not sufficiently take into consideration the facts that the tree was not a significant tree, and did not comply with the Street Tree Strategy. It also did not consider the significant points raised by the complainant and by

council administration in their reports to council; which in my view, gave credence to a line of reasoning that supported the removal of the tree.

I was pleased to note that the council acknowledged that its policy should be amended, and at the council meeting held on 27 July 2010, a new policy *Street Tree Management* was adopted by council. It provides delegated authority to the General Manager, City Assets to authorise the removal of a tree that is non-complying or designated as a weed/nuisance species, regardless of the tree's health status.

### **City of Mitcham**

#### ***Alleged failure to consult***

##### *Complaint summary*

The complainants complained to the council over a number of years about the way in which the owners of the property adjacent to theirs had made alterations to the council owned road reserve in front of their and their neighbours' property. The complainants raised concerns about the way in which the council had dealt with their complaints over a number of years.

##### *Ombudsman investigation*

Although the complainants had not always been satisfied with their communication with the council, it appeared to me that the council's efforts to address the matter over some time, had been reasonable in the circumstances.

Further, whilst there may have been some minor shortcomings in the way that the council approved alterations to the public road under section 221 of the Local Government Act some years ago, a review of the council's procedures for considering alterations to the council owned land in front of private properties had since been undertaken.

The council had sought external advice where appropriate, and had acted upon it.

##### *Outcome and opinion*

I determined that my investigation of the issues raised by the complainants should be discontinued.

Although the complainants felt that the council did not 'seriously consider' their concerns regarding the unauthorised landscaping alongside the driveway

<sup>7</sup> [2001] SASC 71 (20 March 2001)

and as a result, they felt 'obliged' to seek and pay for independent planning advice, I did not share their view that they should be entitled to some reimbursement of their costs from the council.

#### **City of Mitcham**

##### ***Alleged failure to accord procedural fairness, and apprehended bias in considering development application***

###### *Complaint summary*

In August 2009 the complainants submitted a development application (DA) to the council. The DA was referred to the council's Development Assessment Panel (DAP) for consideration. The DAP deferred a decision to enable an amended site plan to be lodged. On further considering the DA it refused consent of the amended plan. The complainants successfully challenged the decision in the Environment, Resource and Development Court.

In March 2010, a differently constituted DAP approved the amended plan. The complainants allege that the original DAP had failed to properly consider the DA, and as a consequence they suffered unnecessary costs in pursuing an appeal.

Although the complainants exercised the available remedy i.e. an appeal, I considered that there were issues raised by the complaint that I should investigate.

###### *Ombudsman investigation*

The first element of the complaint related to the allegations that the DAP did not accord procedural fairness to the complainants. The DAP has a common law obligation to ensure that an applicant is accorded procedural fairness. In this respect, it entails the right to tell one's side of the story. However, procedural fairness does not afford an entitlement to address the DAP. Procedural fairness can be achieved by providing an adequate opportunity to put one's case in ways other than an oral hearing.<sup>8</sup>

In this case, the complainants submitted their DA and discussed it with the relevant council staff prior to the DAP consideration. There was no suggestion that the council staff misrepresented the nature of the application or included irrelevant matters in providing advice to the DAP. On the other hand, the complainants maintained that they had no opportunity to correct the DAP members' understanding about issues with the specifics of the DA.

On balance, I did not consider that the complainants were denied procedural fairness.

The second element of the complaint related to allegations of apprehended bias in the DAP's decision. The complainants alleged that the DAP had predetermined views about their application. The test for determining apprehended bias is:

Whether a fair minded, lay observer might reasonably apprehend that the decision maker might not bring an impartial and unprejudiced mind to the resolution of the question which must be decided.<sup>9</sup>

Apprehended bias does not require that the decision maker have an 'empty mind' and it is unreasonable and impractical to expect that a person will have no pre-existing personal views or preferences. What is important is that the decision makers should be able to reconsider their views in light of the arguments and evidence presented.

###### *Outcome and opinion*

I concluded that the fact that the DAP changed its mind and reasons did not establish bias on the part of the members. It may simply indicate the members were prepared to take into account new evidence.

On balance, there was insufficient evidence upon which I could base a finding of administrative error for apprehended bias or lack of procedural fairness.

#### **City of Mitcham**

##### ***Unreasonable refusal of claim for damages caused by falling trees***

###### *Complaint summary*

The complainant alleged that the council was liable for damage caused to his fence, sign board and garden by a falling tree. The tree was on council land near the complainant's property.

###### *Ombudsman investigation*

Section 245 of the *Local Government Act 1999* outlines when a council is liable for damage caused by falling trees. This section limits liability to circumstances where the owner or occupier of property has made a written request to the council to take reasonable steps to avert a risk of damage to property, and the council has failed to take reasonable action in response to the request.

In this matter the complainant made a request in 2002 for a fallen tree limb to be removed and the council actioned the request. There was no evidence to suggest that the tree causing damage in 2010 was the same tree as the one in the request, and there was no written request at any time for the tree to be removed. I found no evidence to show that the tree had a pattern of shedding limbs and causing damage. Instead, I found that this was a single event arising as a result of a severe storm.

###### *Outcome and opinion*

On the available evidence, the complainant did not satisfy section 245(2) of the *Local Government Act* in order to hold the council liable. In my opinion, the council did not act in a manner that was unlawful, unreasonable or wrong.

#### **City of Mitcham**

##### ***Alleged incorrect procedures regarding the development of mountain bike trails***

###### *Complaint summary*

The investigation arose from a complaint made to my office about the council's Mountain Bike Strategy (the MTBS). The complainants alleged that the council failed to submit a development application for the MTBS developments to the relevant authority, and undertook development while lacking approval. In addition, the complainants claimed that the extent of the development necessary

<sup>8</sup> *Kioa v Minister for Immigration and Ethnic Affairs (West)* (1985) 159 CLR 550.

<sup>9</sup> *Johnson v Johnson* [2000] HCA 48,11.

to implement the MTBS had not been fully disclosed or understood by the community. The complainants expressed a desire for protection of their identities, and I agreed to commence the investigation on my 'own initiative'.

#### *Ombudsman investigation*

The council provided me with a copy of legal advice upon which it relied in dealing with the matter. The council concluded that the use of recreation areas for the purposes of the MTBS would not involve a change in use, and that it therefore did not need to seek development approval for that reason.

I was of the view that the supporting report did not adequately disclose the extent of the earthworks to be undertaken in connection with the trails. Had that extent been properly understood and applied by council staff, they should have concluded that the DA was seeking approval for a non-complying development.

I made the point that had the DA been treated in this way, the council should have followed the public notification process under the *Development Act 1993*.

#### *Outcome and opinion*

I concluded that the council had failed to meet its obligations under the *Development Act 1993*, and undertook development without development assessment approval.

As the supporting report prepared by council was at odds with the Development Plan, and because the report did not adequately disclose the extent of the earthworks intended to be undertaken to build the tracks, the report was false or misleading in a material particular. Although the council acted contrary to law, as the work was completed by the time a determination was made a remedy was not available to the complainants.

#### **City of Port Adelaide Enfield** ***Failure to prevent or accept responsibility for the flooding of the complainant's property***

##### *Complaint summary*

The investigation arose from a complaint made by a member of the public whose property had flooded. She alleged that the council had not adequately dealt with the management

of stormwater in the vicinity of her property. A secondary issue was whether the actions of the Local Government Association Mutual Liability Scheme (the LGAMLS) in investigating the claim involved any administrative error. In order to investigate this I had to determine whether the LGAMLS was within the legal jurisdiction of my Office.

#### *Ombudsman investigation*

A council incident report revealed that the cause of the flooding was that the complainant's property was significantly lower than the adjoining laneway and street. The complainant had taken steps to mitigate the effect of this, but her ability to do so was limited due to the property being listed on the Local Heritage List.

I obtained documentation from the council, which in my view showed that reasonable steps had been taken to respond to the complainant's concerns. Drains in the vicinity of her property were checked and cleaned regularly.

I considered whether the council failed to accord sufficient priority to the undertaking of capital works to protect the complainant's property from flooding, but I concluded that this was a matter of council policy which I was unable to investigate.

Notwithstanding the lack of clarity as to whether the LGAMLS is within my jurisdiction, it was willing to provide me with information about the handling of the claim. I sought a report commissioned by the LGAMLS from an insurance loss adjuster. I was of the view that this report provided a reasonable basis for the LGAMLS to consider the claim.

#### *Outcome and opinion*

I concluded that the council had not acted unreasonably in the way that it dealt with the management of stormwater in the vicinity of the complainant's property. It had taken reasonable steps in undertaking preventative maintenance. I expressed the view that the LGAMLS did not make any administrative error in handling the claim.

#### **City of Onkaparinga**

#### ***Alleged breach of the Local Government Act 1999 in dealing with the CEO's remuneration review***

##### *Complaint summary*

The complainant was an elected member of the council. He stated that the remuneration package to be paid to the council's CEO was agreed at a meeting of the council's CEO review panel, and that the mayor had wrongly moved to exclude the public from that meeting and to deny public access of the report prepared for the consideration of that meeting.

The complainant alleged also that the council breached section 91(8)(a) of the Local Government Act, by making an order preventing the disclosure of the remuneration and conditions of service of an employee of the council after the remuneration or conditions have been determined.

#### *Ombudsman investigation*

I conducted a preliminary investigation. The council advised that the CEO performance review has two components. The first is review of the actual performance of the CEO against certain criteria contained in the contract of employment. The second component is remuneration review. The council's practice had been to consider both components together and to seek to invoke the relevant confidentiality provisions of the Act both in relation to the report prepared for the council meeting, and the minutes of that meeting.

The council was aware of its obligation to maintain a Register of Salaries which records details of the CEO's remuneration, and had complied with this even though there was a confidentiality order in place covering performance and remuneration reviews.

#### *Outcome and opinion*

I found that in dealing with the CEO's 2009 remuneration review, the council breached section 91(8)(a) of the Local Government Act and hence acted contrary to law. However, the council had recognised this fact and took remedial action immediately by changing its practices so that remuneration details would be excluded from any confidentiality order that might apply in relation to performance review.



In these circumstances I did not consider it necessary to make any recommendation in relation to this issue.

#### **Rural City of Murray Bridge**

##### ***Failure by two councillors to disclose personal interests, and to withdraw from council meetings***

###### *Complaint summary*

The complainant alleged that two councillors had failed to disclose their personal interests and to withdraw from council meetings when the matters in which they had an interest were discussed and decided.

The complainant stated that the first councillor had failed to declare a conflict of interest in the council's consideration of her request for attendance at an international conference, and the second councillor had failed to disclose an interest in a council decision on a proposal by a developer.

The complainant's identity was not disclosed to my office. I considered the information provided and decided to conduct an investigation on my 'own initiative'.

###### *Ombudsman investigation*

My investigation revealed that the first councillor had personal interests in the outcome of the decision. If the motion was supported, she would receive the personal benefit of travelling overseas as part of the delegation at the expense of the council. She had an interest in the council's consideration of the motion because if it was approved she would receive a direct pecuniary benefit.

My investigation into the conduct of the second councillor revealed that the matter considered by council was a proposal to sell and redevelop council land including a public reserve into an urban park including riverfront residential properties. The councillor had a personal interest in nearby land. If the council decided to proceed with the proposal he would suffer a non-pecuniary detriment. It was also conceivable that redevelopment would result in pecuniary benefit or detriment in the form of a change of value of his property.

###### *Outcome and opinion*

I concluded that both councillors had conflicts of interest; they had failed

to declare these and should have refrained from participating in decision making on the issues which they had an interest in.

#### **Town of Gawler**

##### ***The council failed to obtain a prudential report into a community development, and wrongly conducted business in confidence***

###### *Complaint summary*

I received a complaint about the council's failure to obtain a prudential report into the proposed construction of the Evanston Gardens Community Centre and Public Library. The complainant also expressed concern over the council's failure to consider the proposal in an open and transparent manner.

###### *Ombudsman investigation*

Section 48(1)(b)(ii) of the *Local Government Act 1999 (the Act)* provides that a council must obtain and consider a prudential report before engaging in any project 'where the expected capital cost of the project over the ensuing five years is likely to exceed \$4 000 000'.

Whilst the initial scope of the project was beneath this amount, the total project cost as it was finally agreed exceeded \$4 000 000. Thus, a report was required to be prepared. A report was sought, but was not received until after the council had committed itself to the delivery of the project in its entirety.

With regard to the complainant's second concern, the Act requires that council meetings should be open and accessible to the public. Nevertheless, it recognises that there are occasions where matters need to be considered in confidence. Parliament clearly intended that councils should not unnecessarily seek the protection of the Act to withhold information from the public.

The council discussed the proposed community centre on a number of occasions in 2009 and 2010. On all occasions the minutes of the meetings record that an order was made under section 90(2) of the Act that the public be excluded from attendance at the meeting due to the confidential nature of the business discussed.

###### *Outcome and opinion*

It was my opinion that the council failed to obtain a prudential report in accordance with its obligations under section 48 of the Act. It should have obtained the report before committing itself to the development and in failing to do so, it acted contrary to law.

I was not persuaded that any of the relevant documents or council debate would either divulge information provided on a confidential basis by or to a Minister of a Crown or another public authority or official; and that disclosure would be contrary to the public interest. In my view, the confidentiality orders made by the council were unlawful.

#### **Wakefield Regional Council**

##### ***Breach of process in council meetings***

###### *Complaint summary*

The complainant was an elected member of a local council. He alleged that the council breached regulations 10 and 20 of the *Local Government (Procedures at Meetings) Regulations 2000 (the regulations)*.

###### *Ombudsman investigation*

Regulation 10(1) of the regulations requires that questions on notice must be given to the CEO at least five clear days before the meeting. However, the council policy purportedly required questions on notice to be given 10 business days before the meeting. Where a council policy conflicts with a statutory requirement, the statutory position must prevail. On raising this matter with the council's Chief Executive Officer the error was acknowledged and remedied.

Regulation 20 provides for the ways in which business adjourned at a council meeting is raised at the subsequent meeting. The complainant raised the issue of matters being 'deferred' from one meeting to another. There is however no definition of the term 'deferred'. In my opinion, having regard to regulation 20(1) and (2) for business to be adjourned, there must have been some discussion or debate immediately preceding the motion to adjourn. The language in the minutes must use the term 'adjourned' if regulation 20(3) is to apply. This term was not used in the minutes.

Again the council acknowledged its error and rectified its practice.

#### *Outcome and opinion*

The matters raised were technical breaches which were quickly rectified when brought to attention. I was not prepared to make a formal finding of administrative error in these circumstances.

#### **Wattle Range Council**

##### ***Failure to act in accordance with caretaker conventions***

##### ***Failure by the mayor to disclose an interest at the relevant council meeting, and to bring an open mind to council deliberations***

#### *Complaint summary*

The complaint alleged that the mayor failed to disclose an interest at the relevant council meeting, and failed to bring an open mind to council deliberations about a proposed extension of the CEO's employment contract. The mayor had a longstanding personal friendship with the CEO, and the contract had another 18 months to run, but the council dealt with the matter just prior to the caretaker period and ensuing election.

#### *Ombudsman investigation*

Section 91A of the *Local Government (Elections) Act 1999* prohibits a council from making any decision about the CEO's employment or remuneration during the caretaker period prior to an election. In this case, the mayor signed the new contract during the caretaker period, but in pursuance of a council decision made one week before the period commenced.

The Local Government Act requires disclosure of interests where a person is 'closely associated' with a council member. However, a close personal friendship does not fall within that definition.

With regard to whether the former mayor brought an open mind to the council's deliberations, I considered the common law rules of natural justice, which require that public officers should make decisions free from any pre-judgement or bias.

The mayor didn't formally disclose the nature of his relationship with the CEO at any council meeting, and did not abstain from participating in those meetings. He personally sought and distributed a new contract for the CEO before the council's consideration of the issue. In my view he either

sought or acceded to requests from other councillors for a special meeting to consider this matter prior to the election period, when there was no compelling reason for urgency.

#### *Outcome and opinion*

The council did not act contrary to law by agreeing to extend the CEO's contract one week before the caretaker period commenced. Nonetheless in my view it was unreasonable and wrong for it to do have done so, because there was no necessity for the extension and there is a clear policy intent that a council should not enter into new employment arrangements for its CEO around the time of an election.

Because of the definition of 'closely associated' in the Local Government Act, I found that the mayor did not breach any obligation to disclose his interest and to refrain from participating in the relevant council meetings.

Nonetheless, I consider that a relationship of this nature ought to require disclosure. It is important that the community can be assured that decisions made by its representatives are made in the public interest not because of a close friendship or other personal relationship.

I concluded that the former mayor did not bring an open mind to the council's deliberations on the issue, and in this respect acted in a way which was contrary to law.



**Local Government**
**Approaches & Complaints Received  
1 July 2010 to 30 June 2011**

	Received	%	Population 30 June 2010	Complaints/10,000 popn
Adelaide Hills Council	27	3.4%	40 072	6.7
Alexandrina Council	19	2.4%	23 868	8.0
Berri Barmera Council	4	0.5%	11 270	3.5
City of Adelaide	66	8.3%	19 876	32.7
City of Burnside	12	1.5%	44 449	2.7
City of Charles Sturt	47	5.9%	108 332	4.5
City of Holdfast Bay	16	2.0%	35 923	4.2
City of Mitcham	36	4.5%	65 692	5.5
City of Mt Gambier	4	0.5%	26 128	1.5
City of Norwood, Payneham & St Peters	17	2.1%	36 498	4.7
City of Onkaparinga	38	4.7%	162 925	2.4
City of Playford	27	3.5%	79 850	3.4
City of Port Adelaide Enfield	41	5.2%	113 257	3.6
City of Port Lincoln	3	0.4%	14 726	2.0
City of Prospect	18	2.3%	21 105	9.0
City of Salisbury	24	3.0%	132 473	1.8
City of Tea Tree Gully	41	5.2%	100 593	4.0
City of West Torrens	26	3.3%	56 169	4.6
Clare and Gilbert Valleys Council	8	1.0%	8 882	7.9
Corporation of the City of Campbelltown	9	1.1%	49 716	1.8
Corporation of the City of Marion	26	3.3%	85 398	3.0
Corporation of the City of Unley	12	1.5%	38 767	3.1
Corporation of the City of Whyalla	7	0.9%	23 214	2.6
Corporation of the Town of Gawler	2	0.3%	21 041	1.4
Corporation of the Town of Walkerville	3	0.4%	7 408	4.0
District Council of Barunga West	3	0.4%	2 634	11.4
District Council of Ceduna	7	0.9%	3 834	18.3
District Council of Coober Pedy	8	1.0%	1 928	41.5
District Council of Coorong	2	0.3%	5 805	1.7
District Council of Elliston	4	0.5%	1 154	34.7
District Council of Franklin Harbour	1	0.1%	1 369	8.5
District Council of Grant	2	0.3%	8 270	2.4
District Council of Karoonda East Murray	1	0.1%	1 172	8.5
District Council of Lower Eyre Peninsula	7	0.9%	4 921	14.2
District Council of Loxton Waikerie	2	0.3%	12 073	1.7
District Council of Mallala	16	2.0%	8 535	17.6
District Council of Mount Barker	14	1.7%	30 540	4.6
District Council of Mount Remarkable	7	0.9%	2 966	23.6
District Council of Orroroo/Carrieton	2	0.3%	931	21.5
District Council of Renmark Paringa	2	0.3%	9 882	2.0
District Council of Robe	2	0.3%	1 502	13.3
District Council of Streaky Bay	2	0.3%	2 203	9.1
District Council of the Copper Coast	18	2.3%	13 144	13.7
District Council of Tumby Bay	1	0.1%	2 762	3.6
District Council of Yankalilla	9	1.1%	4 661	19.3
District Council of Yorke Peninsula	12	1.5%	11 782	11.9
Kangaroo Island Council	7	0.9%	4 661	17.2
Kingston District Council	1	0.1%	2 477	0.4
Light Regional Council	10	1.2%	13 984	7.2
Mid Murray Council	15	1.9%	8 599	17.4
Naracoorte Lucindale Council	1	0.1%	8 530	1.2

Northern Areas Council	6	0.8%	4 843	14.4
Port Augusta City Council	11	1.3%	14 784	6.8
Port Pirie Regional Council	6	0.8%	18 255	3.3
Regional Council of Goyder	3	0.4%	4 287	7.0
Roxby Council	8	1.0%	4 478	17.9
Rural City of Murray Bridge	12	1.5%	19 577	6.1
Southern Mallee District Council	7	0.9%	2 172	32.2
Tatiara District Council	1	0.1%	7 194	1.4
The Barossa Council	13	1.6%	22 908	5.6
The Flinders Ranges Council	1	0.1%	1 793	5.6
Victor Harbor City Council	12	1.5%	13 971	7.9
Wakefield Regional Council	14	1.7%	6 856	21.9
Wattle Range Council	11	1.3%	12 623	8.7
<b>Total</b>	<b>794</b>	<b>100%</b>		

## Local Government

## Approaches & Complaints Received: Issues 1 July 2010 to 30 June 2011

	Other	City of Adelaide	City of Charles Sturt	City of Port Adelaide Enfield	City of Tea Tree Gully	City of Onkaparinga	Total	Percentage
Complaint handling/Delay	24		2	4	2	1	33	4.2%
Complaint handling/Inadequate processes	56	1	1	4	2	3	67	8.5%
Complaint handling/Inadequate reasons	11	2	2	1	2	2	20	2.5%
Complaint handling/Inadequate remedy	39	2	3	2	4	2	52	6.5%
Complaint handling/Wrong conclusion	15	1	1	2			19	2.4%
Conduct/Discourtesy	6	1			1		8	1.0%
Conduct/Failure to declare conflict of interest	1		1				2	0.3%
Conduct/Failure to follow proper process	1						1	0.1%
Conduct/Misconduct	40	3	6	3	3		55	6.9%
Correspondence/Communications/Records/Access	6	1					7	0.9%
Correspondence/Communications/Records/Delay/No response	20		1	1	1	1	24	3.0%
Correspondence/Communications/Records/Improper access by staff	1						1	0.1%
Correspondence/Communications/Records/Incorrect	12	2	1	1	1	1	18	2.3%
Correspondence/Communications/Records/ Wrongful disclosure of information	1			1		1	3	0.4%
Financial/Procurement/Facilities/Compensation/ Damage/Acquisition of land	1						1	0.1%
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury	3						3	0.4%
Financial/Procurement/Facilities/Compensation/ Damage/ Property lost/Damaged	9		1	1		1	12	1.5%
Financial/Procurement/Facilities/Debts/Incorrect calculation	1					1	2	0.3%
Financial/Procurement/Facilities/Debts/Recovery action	1			1	1		3	0.4%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Building	1						1	0.1%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Drainage	6				1	1	8	1.0%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Parks and gardens	4						4	0.5%
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Recreational facilities	5						5	0.6%

Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Roads/Streets	8		1	1			10	1.3%
Financial/Procurement/Facilities/Other fees and charges	21	2	1	2	2	3	31	3.9%
Financial/Procurement/Facilities/ Procurement by agencies/Decisions	3					1	4	0.5%
Financial/Procurement/Facilities/ Procurement by agencies/Late payment						1	1	0.1%
Financial/Procurement/Facilities/Rates/Administration	8		1				9	1.1%
Financial/Procurement/Facilities/Rates/Amount	17	2	1	1		1	22	2.8%
Financial/Procurement/Facilities/Rates/Recovery action	7				1	1	9	1.1%
Financial/Procurement/Facilities/Rates/Valuations	3	2					5	0.6%
FOI advice	25	1		1	1	2	30	3.8%
FOI practices and procedures	1						1	0.1%
Governance/Confidentiality	1						1	0.1%
Governance/Failure to follow proper process (Governance)	1						1	0.1%
Governance/Public consultation			1				1	0.1%
Records management	1						1	0.1%
Regulation and enforcement/Animals/Excessive action	8	1	1		2	1	13	1.6%
Regulation and enforcement/Animals/Failure to act on complaints	3				1	1	5	0.6%
Regulation and enforcement/Building/Failure to enforce condition	2					1	3	0.4%
Regulation and enforcement/Building/Failure/Delay to issue permit	1	1				1	3	0.4%
Regulation and enforcement/Building/ Inappropriate construction allowed	9	1			2		12	1.5%
Regulation and enforcement/Building/ Unreasonable conditions imposed	4						4	0.5%
Regulation and enforcement/Building/Unreasonable enforcement	3						3	0.4%
Regulation and enforcement/Environmental protection/ Excessive action			1				1	0.1%
Regulation and enforcement/Environmental Protection/ Failure to action on complaints	1						1	0.1%
Regulation and enforcement/Local laws/Failure to enforce	4						4	0.5%
Regulation and enforcement/Local laws/Improper/Inappropriate	5		1				6	0.8%
Regulation and enforcement/Local laws/Unreasonable enforcement	8	1	2				11	1.4%
Regulation and enforcement/Nuisances/ Failure to action on complaints	3					1	4	0.5%
Regulation and enforcement/Parking/Permits	1		1	1			3	0.4%
Regulation and enforcement/Parking/Restrictions	2	1					3	0.4%
Regulation and enforcement/ Parking/Failure to enforce restrictions	35	37	9	5	6	2	94	11.9%
Regulation and enforcement/ Parking/Unreasonable enforcement	9		1		1		11	1.4%
Regulation and enforcement/Planning & Development/ Failure to enforce condition	11		1	3	1	1	17	2.2%
Regulation and enforcement/Planning & Development/ Failure to notify	13		1	1			15	1.9%
Regulation and enforcement/Planning & Development/ Failure/ Delay to issue permit	27	2	5	1	1	3	39	4.9%
Regulation and enforcement/Planning & Development/ Inappropriate development allowed	30	1	1	1	4		37	4.7%
Regulation and enforcement/Planning & Development/ Unreasonable conditions imposed	16		1	1		3	21	2.6%
Regulation and enforcement/Public health/ Failure to act on complaints	1						1	0.1%
Regulation and enforcement/Public health/Quality of service delivered	2					1	3	0.4%
Regulation and enforcement/Public health/ Unreasonable conditions imposed				1			1	0.1%
Regulation and enforcement/Public health/Unreasonable enforcement	1			1		1	3	0.4%
Whistleblower Protection Act advice	1						1	0.1%
<b>Total</b>	<b>560</b>	<b>65</b>	<b>49</b>	<b>41</b>	<b>40</b>	<b>39</b>	<b>794</b>	<b>100%</b>

**Local Government**
**Approaches & Complaints Completed  
1 July 2010 to 30 June 2011**

	Completed	%	Population 30 June 2010	Complaints/10,000 popn
Adelaide Hills Council	27	3.4%	40 072	6.7
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City of Charles Sturt	44	5.6%	108 332	4.1
City of Holdfast Bay	16	2.0%	35 923	4.4
City of Mitcham	40	5.0%	65 692	6.1
City of Mt Gambier	4	0.5%	26 128	1.5
City of Norwood, Payneham & St Peters	17	2.2%	36 498	4.6
City of Onkaparinga	39	4.9%	162 925	2.4
City of Playford	26	3.3%	79 850	3.2
City of Port Adelaide Enfield	41	5.2%	113 257	3.6
City of Port Lincoln	3	0.4%	14 726	2.0
City of Prospect	18	2.3%	21 105	8.5
City of Salisbury	24	3.1%	132 473	1.8
City of Tea Tree Gully	39	4.9%	100 593	3.9
City of West Torrens	26	3.3%	56 169	4.6
Clare and Gilbert Valleys Council	7	0.9%	8 882	7.9
Corporation of the City of Campbelltown	10	1.3%	49 716	2.0
Corporation of the City of Marion	27	3.4%	85 398	3.2
Corporation of the City of Unley	13	1.7%	38 767	3.3
Corporation of the City of Whyalla	6	0.8%	23 214	2.6
Corporation of the Town of Gawler	2	0.3%	21 041	0.9
Corporation of the Town of Walkerville	3	0.4%	7 408	4.0
District Council of Barunga West	3	0.4%	2 634	11.4
District Council of Ceduna	7	0.9%	3 834	18.2
District Council of Coober Pedy	8	1.0%	1 928	41.5
District Council of Coorong	1	0.1%	5 805	1.7
District Council of Elliston	5	0.6%	1 154	43.3
District Council of Franklin Harbour	1	0.1%	1 369	7.3
District Council of Grant	2	0.3%	8 270	2.4
District Council of Karoonda East Murray	1	0.1%	1 172	8.5
District Council of Lower Eyre Peninsula	7	0.9%	4 921	14.2
District Council of Loxton Waikerie	2	0.3%	12 073	1.6
District Council of Mallala	15	1.9%	8 535	17.6
District Council of Mount Barker	14	1.8%	30 540	4.6
District Council of Mount Remarkable	6	0.8%	2 966	20.2
District Council of Orroroo/Carrieton	2	0.3%	931	21.5
District Council of Renmark Paringa	1	0.1%	9 882	1.0
District Council of Robe	3	0.4%	1 502	20.0
District Council of Streaky Bay	4	0.5%	2 203	18.1
District Council of the Copper Coast	16	2.0%	13 144	12.2
District Council of Tumby Bay	2	0.3%	2 762	7.2
District Council of Yankalilla	8	1.0%	4 661	17.2
District Council of Yorke Peninsula	10	1.3%	11 782	8.5
Kangaroo Island Council	7	0.9%	4 661	15.0
Light Regional Council	10	1.3%	13 984	7.1
Mid Murray Council	16	2.0%	8 599	18.6
Naracoorte Lucindale Council	2	0.3%	8 530	2.3
Northern Areas Council	7	0.9%	4 843	14.4
Port Augusta City Council	9	1.1%	14 784	6.1
Port Pirie Regional Council	6	0.8%	18 255	3.3
Regional Council of Goyder	2	0.3%	4 287	4.7
Roxby Council	8	1.0%	4 478	17.9
Rural City of Murray Bridge	12	1.5%	19 577	6.1

Southern Mallee District Council	7	0.9%	2 172	32.2
Tatiara District Council	1	0.1%	7 194	1.4
The Barossa Council	13	1.7%	22 908	5.7
The Flinders Ranges Council	1	0.1%	1 793	5.6
Victor Harbor City Council	11	1.4%	13 971	7.9
Wakefield Regional Council	15	1.9%	6 856	21.9
Wattle Range Council	11	1.4%	12 623	8.7
<b>Total</b>	<b>786</b>	<b>100%</b>		

## Local Government

## Approaches & Complaints Completed: Outcome 1 July 2010 to 30 June 2011

	Other	City of Adelaide	City of Charles Sturt	City of Mitcham	City of Onkaparinga	City of Tea Tree Gully	Total	Percentage
Advice given	87	12	3	9	7	7	125	15.9%
Alternate remedy available with another body	31	5	2		3		41	5.2%
Cannot contact person			1			1	2	0.3%
Declined/Investigation neither necessary nor justifiable	27	8	2	6	1	2	46	5.9%
Declined/No sufficient personal interest or not directly affected	4		1				5	0.6%
Declined/Trivial, vexatious, etc	1	1				1	3	0.4%
Not substantiated	122	14	7	9	6	9	167	21.2%
Ombudsman comment warranted	3						3	0.4%
Out of Jurisdiction/Judicial body	2						2	0.3%
Out of time	8					1	9	1.1%
Referred back to agency	189	19	22	6	17	16	269	34.2%
Resolved with agency cooperation	36	1	4	6	2	2	51	6.5%
S25 Finding/Improper or irrelevant consideration	1						1	0.1%
S25 Finding/Mistake of law or fact	2						2	0.3%
S25 Finding/Unlawful	5	1		1			7	0.9%
S25 Finding/Unreasonable	1						1	0.1%
S25 Finding/Unreasonable law or practice	1						1	0.1%
S25 Finding/Wrong	3	1			1		5	0.6%
Withdrawn by complainant	37	2	2	3	2		46	5.9%
<b>Total</b>	<b>560</b>	<b>64</b>	<b>44</b>	<b>40</b>	<b>39</b>	<b>39</b>	<b>786</b>	<b>100%</b>
	71.2%	8.1%	5.6%	5.1%	5.0%	5.0%	100%	

## Other Authorities

The new policy provides that an amended or new refund form will be accepted...

### **Adelaide Health Service Incorporated, representing the Flinders Clinical Research Ethics Committee**

***The Ethics Committee took an excessive period of time to make its decisions and did not properly consider the applications made by the complainant***

#### *Complaint summary*

The complainant was a medical professor who had for some time been undertaking medical research at Flinders Medical Centre. In the past he had obtained ethics approval for his research through the Repatriation General Hospital Ethics Committee. With the introduction of new codes and ethical statements, the Flinders Clinical Research Ethics Committee (FCREC) was created to take over the role.

The complainant alleged that FCREC was unnecessarily slow in dealing with a number of applications, particularly those lodged soon after its establishment. He alleged also that FCREC did not properly consider the applications, in that it took into account irrelevant considerations and it failed to accord appropriate weight to decisions made by the former committee in support of his research.

The complainant also alleged in effect that the FCREC Chair did not bring an open mind to his dealings with the applications, and queried how he could be assured that future applications will be assessed fairly and expeditiously.

#### *Ombudsman investigation*

The AHS advised that the applications had been delayed due to concerns

raised by the chair of the Committee about whether previously collected human synovial biopsy samples were taken in an ethically appropriate manner, and that because FCREC was newly established, its processes were neither clearly defined, nor articulated.

The complainant advised me that the actions of FCREC had prevented his research technician from undertaking any productive research for seven months, what he believed to be an unreasonable time. The complainant also alleged that another professor had made assertions concerning the ethics of his research which were not factually correct.

From my investigation, it was evident that there had been some miscommunication between the parties about information that FCREC had sought from the complainant.

#### *Outcome and opinion*

Whilst I found that FCREC had properly considered the applications, I concluded that taking an excessive period to reach a decision on a number of the applications was wrong. I recommended that the AHS arrange reimbursement of the complainant's technician's salary for the period during which she was unable to conduct research due to the delay in FCREC approval.

I noted that FCREC had put in place new arrangements for subsequent applications from the complainant, and I considered that it was unnecessary to make a finding as to whether the FCREC Chair had brought an open mind to his dealings with the applications.

### **Courts Administration Authority**

***Failure to advise of jurisdiction, leading to financial detriment***

#### *Complaint summary*

The complainant lodged documents with the Magistrate's Court regarding a small claims matter, in which the defendant resided in New Zealand. She approached my office after being told that the matter would not be heard, because the defendant was overseas. She had still been charged the filing fee.

#### *Ombudsman investigation*

I determined that the matter was outside my jurisdiction, because the decision not to hear the matter was not an administrative decision, as required under the Ombudsman Act.

#### *Outcome and opinion*

Despite my lack of jurisdiction, my involvement brought the matter to the attention of the Authority, and led to resolution of this matter for the complainant. She was refunded her fee, and the reasons for the decision were explained to her.

### **Environment Protection Authority**

***Alleged failure to act on a breach of the Environment Protection (Noise) Policy by a rubbish removal operator.***

#### *Complaint summary*

The complainant contacted the Authority with allegations that the East Waste rubbish removal operations in his street were conducted in breach of the Environment Protection (Noise) Policy. He provided a sworn affidavit and

evidence in support of a prosecution for the breach.

The Authority declined to prosecute, and the complainant wrote to me to lodge a complaint about the Authority's decision.

#### *Ombudsman investigation*

Under the Ombudsman Act, I can investigate matters of administrative action. In this case, I could investigate whether the Authority properly considered the provisions of the relevant legislation, the noise policy and its guidelines in reaching the decision not to prosecute.

It appeared to me that the Authority had complied with the requirements of the relevant legislation, policy and guidelines. In particular, it had adequately reviewed and considered the 'mitigating factors' provided for in clause 28(1)(b) of the noise policy, and had decided that they enable the East Waste activities to be undertaken outside the specified hours.

#### *Outcome and opinion*

I concluded that the Authority's determination was not unlawful, unreasonable, or wrong.

As such, I determined that further investigation was unnecessary or unjustifiable under section 17(2)(d) of the Ombudsman Act.

### **Flinders University**

#### ***The university provided misleading and incomplete information about the Bachelor of Creative Arts (Screen) course.***

##### *Complaint summary*

The complainant claimed that the university website in 2009 misled his son to believe that he did not require a Tertiary Entry Ranking (TER) score for entry in the Bachelor of Creative Arts (Screen) course. The relevant part of the website set out that year 12 students were required to have year 12 qualifications, but no reference was made to any minimum level or TER score that was required.

In reliance on this information, the complainant's son ceased his year 12 studies and worked on his portfolio to gain entry into the course. The university subsequently advised him that he did not gain entry, apparently on the ground that his TER scores did

not meet the course's minimum entry requirements.

The complainant also claimed that university staff members provided misleading information at information sessions, and that the university initially advised him that his son was refused entry into the course due to his low TER score, but subsequently changed its position to advise that a low ranking for his portfolio was the reason.

#### *Ombudsman investigation*

The university advised me that it had screened applicants for entry into the Bachelor of Creative Arts (Screen) course and ranked them on the basis of their portfolio. Some applicants were offered an interview. The ranked applicants were then checked to ensure that they each met the university's minimum entry requirements. Offers were then made to applicants according to the initial ranking order, to those that met the university's minimum entry requirements, until the course was full.

The complainant's son's portfolio was assessed and ranked, and he was offered an interview. His application was then checked to ensure that it met the university's minimum entry requirements, but his TER score did not. Further, when the application was reviewed it became evident that his portfolio ranking was assessed as being lower than other candidates offered a place in the course for that year.

#### *Outcome and opinion*

I concluded that misleading information on the website contributed to the complainant's son deciding to prematurely cease his year 12 studies to focus on preparing his portfolio. In my view, this was wrong, within the meaning of section 25(1)(g) of the Ombudsman Act.

I noted that the university has reviewed its website and included a statement advising applicants what the minimum TER level is required for to be eligible to gain entry into the course.

I found also that the university initially provided the complainant incomplete information about why his son was not offered a place in the course of his choice, and that this was also wrong. The university corrected the information and offered an apology.

### **Health and Community Services Complaints Commissioner**

#### ***Failure to fully investigate a complaint alleging inappropriate provision of medical services***

##### *Complaint summary*

The complainant lodged a complaint to the Commissioner relating to the alleged misdiagnosis of her late husband's condition, and subsequent mismanagement of his treatment. She considered that the Commissioner had not properly investigated the matter.

#### *Ombudsman investigation*

The Commissioner undertook a preliminary enquiry and corresponded with the Medical Board to ascertain if it intended taking any action on the complaint.

As the death was reported to the State Coroner, the Medical Board stated that before making a response it would wait for the outcome of any coronial investigation. The Commissioner advised the complainant of the Medical Board's position and said that if an inquest was held, she would not investigate the matter further.

However, the Commissioner also sought and obtained information on the treatment given to the complainant's late husband. The Commissioner obtained an independent opinion from a psychiatrist and a pharmacological opinion.

The Commissioner informed the complainant that she would be taking no further action on the complaint, as it was not possible for her to prefer one expert opinion over another in order to assess whether the services provided met the accepted standards expected in circumstances. The Commissioner stated also that the complaint lacked 'sufficient public interest to warrant continued use of scarce resources'.

The issues that I investigated were:

- whether the decision by the Commissioner to conclude her investigation was unreasonable or wrong
- whether the decision by the Commissioner to engage expert opinions was unreasonable or wrong



- whether the Commissioner was wrong in considering a pharmacological opinion obtained by SA Health.

#### *Outcome and opinion*

I found no administrative error in the Commissioner's conduct of her investigation. The fact that she was unable to reach a conclusion was a reflection of the differing evidence, rather than inadequate inquiry, and in other respects her investigation was reasonable and was conducted in an open and transparent manner.

I noted that the complainant was kept informed of significant events, and the Commissioner endeavoured to accommodate her wishes. The decision to seek an independent opinion from a psychiatrist from another state was sensible, in that it removed any potential for localised bias. In my view it was also beneficial that a pharmacological opinion was also made available to the Commissioner.

However, I commented that the Commissioner should have explained in more detail the public interest considerations she had regard to in deciding not to proceed, and why the investigation would have had such a significant impact on her office.

### **Office of Consumer and Business Affairs**

#### ***Amending security bond returns***

##### *Complaint summary*

The complainant was a landlord. At the conclusion of a tenancy, he lodged a security bond refund form with the office. The form is required by law so that an appropriate proportion of a tenant's bond may be returned. The complainant subsequently discovered that the tenant had not paid a water bill, and he sought to amend the security bond refund form to claim the unpaid water bill amount from the bond.

The office advised the complainant that it was unable to accept an amended form, because the bond was in '10 day notice' status. This means that the tenant had been advised of the amount of the bond to be returned, and the period within which the amount could be disputed was running.

##### *Ombudsman investigation*

I decided not to further investigate the landlord's claim in this particular

case, because the tenant had by then advised the office that he accepted the amount of the refund set out in the 10 day notice. However, I remained concerned that the office's practice in not accepting an amended form during the 10 day notice period was unduly restrictive, and that the landlord had been disadvantaged unfairly. I took this matter up with the office.

I noted that the practice might also prevent a tenant from amending an application if he or she became aware of changed circumstances after an application for disbursement had been lodged.

#### *Outcome and opinion*

The office sought legal advice, and agreed to amend its Tenancies Branch policy on the acceptance of an amended bond refund form (other than a bond refund by consent) where it is likely that the matter could be disputed. The new policy provides that an amended or new refund form will be accepted if it is lodged prior to the notice of claim letter being sent out.

I advised the office that in my view this amendment reasonably addresses the issue, and I thanked it for its cooperation.

### **Office of the Coroner**

#### ***Unreasonable delay in closing case***

##### *Complaint summary*

The complainant approached my office after waiting almost 12 months for her husband's death certificate to be issued. She had been in contact with the coroner's office and had been told previously that the case was still open and no findings had been issued. The complainant was anxious to have this finalised so that she could resolve her personal affairs.

##### *Ombudsman investigation*

After the office conducted an extensive search for the file, it discovered that it had been incorrectly filed as closed, and had been assigned on the computer as 'for the file room'. The office admitted that it had made an error in doing so.

Upon realising the mistake, the office took steps to rectify its error. It 'fast-tracked' the issuing of findings in the case, under the personal supervision of the manager, so that these could be sent to the Office of Births, Deaths

and Marriages, for the issuing of a death certificate. The office also called the complainant to discuss with her what had happened, and to apologise for the delay.

The office also sought to ensure that this was not a more systemic problem. It searched for other files that may have been in the same situation, and all staff were reminded not to file anything that did not have a finding date recorded.

#### *Outcome and opinion*

The complainant told me that she received the death certificate promptly. She was very pleased to have the matter resolved.

I did not feel that it was necessary to conduct any further investigation.

I commend the office for acknowledging its error, taking responsibility for it and taking steps to address the issue expeditiously.

### **University of Adelaide**

#### ***The university's Student Grievance and Appeals Committee wrongly rejected an appeal by a medical student who had failed year 5.***

##### *Complaint summary*

The complainant requested a review of his grade from his 5<sup>th</sup> year final examinations. He advised the university that he understood that poor academic performance was not a sufficient reason for a review of his grade, and he based his request on his notion that the university had breached its *Assessment of Coursework Programs* policy and the *Examinations Policy*.

The university's Student Grievance and Appeals Committee (**the committee**) heard his appeal, and recommended that his grade for the year should remain. It considered 4 matters:

- the format and structure of the 2009 Year 5 Objective Structured Clinical Examination (**the OSCE**)
- the provision of examples or exemplars of previous examination tasks/questions
- the scheduling of the end-of-year Year 5 MBBS examinations
- the assessment process in Year 5 MBBS, and the relationship between previous redemption



opportunities and the lack of academic supplementary assessment opportunities.

#### *Ombudsman investigation*

The committee had upheld the School of Medicine's decision not to change the complainant's overall grade, but its report demonstrated that a number of the school's practices relating to student assessment and final examinations should be improved.

The committee made five separate recommendations covering the MCQ examination; the wording of the Year 5 Assessment Document; the information provided to students about the OSCE; the scheduling of MBBS examinations; and the clarification of the status of the MBBS program in relation to the University's Examinations Policy. The university agreed to implement all the recommendations.

I considered the 4 matters which were before the committee. I concluded that the manner in which the information about the format and structure of the OSCE was provided to Year 5 MBBS students was potentially misleading, and that the school did not provide access to exemplars or examples of previous assessment tasks and the standards expected, as required.

I also concluded that the university had not erred in dealing with the other two matters.

#### *Outcome and opinion*

In my view, the university's failure to provide accurate information and access to exemplars was wrong, within the meaning of section 25(1)(g) of the Ombudsman Act.

While I acknowledged the complainant's circumstances and preferred remedy, I pointed out that the Ombudsman Act did not empower me to overturn the committee's decision, nor to make a determination regarding the merits of the committee's decision.

I noted also that the university had acted to remedy its failures through the implementation of the committee's recommendations.

Accordingly, I declined to make any recommendation under section 25(2) of the Ombudsman Act.

**Other Authorities**
**Approaches & Complaints Received  
1 July 2010 to 30 June 2011**

Aboriginal Housing Authority	1	0.2%
Adelaide & Mt Lofty Ranges NRM Board	2	0.4%
Adelaide Health Service Incorporated	56	12.3%
Architects Board of South Australia	1	0.2%
Board of Examiners (Law Society)	1	0.2%
Centennial Park Cemetery	2	0.4%
Children, Youth & Women's Health Service	2	0.4%
Commissioner for Equal Opportunity	2	0.4%
Coroner	3	0.7%
Country Health SA	7	1.5%
Courts Administration Authority	18	4.0%
Dog and Cat Management Board	1	0.2%
Domiciliary Care SA	1	0.2%
Drug & Alcohol Services SA	1	0.2%
Eastern Health Authority	1	0.2%
Essential Services Commission South Australia	1	0.2%
Flinders University	12	2.6%
Guardianship Board	13	2.8%
Health & Community Services Complaints Commissioner	31	6.8%
History Trust of South Australia	1	0.2%
HomeStart	1	0.2%
Institute of Medical & Veterinary Science	1	0.2%
Land Management Corporation	5	1.1%
Legal Practitioners Conduct Board	2	0.4%
Legal Services Commission	17	3.7%
Liquor & Gambling Commissioner	4	0.9%
Lotteries Commission	2	0.4%
Motor Accident Commission	10	2.2%
Office of Consumer & Business Affairs	61	13.3%
Office of the Technical Regulator	3	0.7%
Outback Communities Authority	1	0.2%
Public Advocate	15	3.3%
Public Trustee	77	16.8%
Residential Tenancies Tribunal	5	1.1%
RSPCA Inspectorate	2	0.4%
SA Ambulance Service	18	4.0%
SA Country Fire Service	3	0.7%
SA Film Corporation	1	0.2%
SA Government Financing Authority	1	0.2%
SA Metropolitan Fire Service	1	0.2%
SACE Board of SA	4	0.9%
Sheriff	1	0.2%
South Australian Dental Service	3	0.7%
South Australian Tertiary Admissions Centre	1	0.2%
South Australian Tourism Commission	2	0.4%
South East Water Conservation and Drainage Board	1	0.2%
State Emergency Services	1	0.2%
Super SA Board	18	4.0%
Teachers Registration Board	1	0.2%
University of Adelaide	13	2.8%
University of South Australia	15	3.3%
WorkCover Corporation	11	2.4%
WorkCover Ombudsman	1	0.2%
<b>Total</b>	<b>459</b>	<b>100%</b>

## Other Authorities

Approaches & Complaints Received: Issues  
1 July 2010 to 30 June 2011

	Other	Public Trustee	Office of Consumer & Business Affairs	Adelaide Health Service	HCSCC	Courts Admin Authority	Total	Percentage
Complaint handling/Conflict of interest	1						1	0.2%
Complaint handling/Delay	9	8	3				20	4.3%
Complaint handling/Inadequate processes	20	3	6	1	8	1	39	8.5%
Complaint handling/Inadequate reasons	7	1	2		7		17	3.7%
Complaint handling/Inadequate remedy	4		4	1	3		12	2.6%
Complaint handling/Wrong conclusion	10		1		8		19	4.1%
Conduct/Discourtesy	7	3	1				11	2.4%
Conduct/Misconduct	6	3	1	1			11	2.4%
Correspondence/Communications/Records/Delayed/No response	8	7	2	1			18	3.9%
Correspondence/Communications/Records/Incorrect	4	3	1			3	11	2.4%
Correspondence/Communications/Records/Lost			1				1	0.2%
Correspondence/Communications/Records/Withholding of information	3	2					5	1.1%
Correspondence/Communications/Records/Wrongful disclosure of information	2	1	1		1		5	1.1%
Employment	2			1			3	0.7%
Financial/Procurement/Facilities/Compensation/Damage/Physical injury	2						2	0.4%
Financial/Procurement/Facilities/Debts	3	2				1	6	1.3%
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Cost of use		1					1	0.2%
Financial/Procurement/Facilities/Procurement by agencies/Decisions	1		1				2	0.4%
FOI advice	16			22			38	8.3%
FOI practices and procedures	1			1			2	0.4%
Records management	1						1	0.2%
Regulation and enforcement/Complaint handling	3		1				4	0.9%
Regulation and enforcement/Enforcement action/Excessive	1		1			1	3	0.7%
Regulation and enforcement/Enforcement action/Insufficient			1				1	0.2%
Regulation and enforcement/Enforcement action/Unfair	3		2	3		4	12	2.6%
Regulation and enforcement/Fees	1					2	3	0.7%
Regulation and enforcement/Infringements/Excessive penalty	1						1	0.2%
Regulation and enforcement/Infringements/Inadequate review	1						1	0.2%
Regulation and enforcement/Infringements/Incorrect details						1	1	0.2%
Regulation and enforcement/Infringements/Unreasonably issued	1			1		1	3	0.7%
Regulation and enforcement/Inspections	2						2	0.4%
Regulation and enforcement/Licensing/Conditions	1		2				3	0.7%
Regulation and enforcement/Licensing/Refusal	1						1	0.2%
Roads and Traffic/Charges/Fines						1	1	0.2%
Service Delivery/Assessment	3	1	2	1			7	1.5%
Service Delivery/Conditions	7		1	1			9	1.9%
Service Delivery/Eligibility for services	13	3	4	1			21	4.6%
Service Delivery/Failure to act/Provide	25	23	8	7	3		66	14.4%
Service Delivery/Fees and charges	8	3	4	1		2	18	3.9%
Service Delivery/Financial assistance	2	2					4	0.9%
Service Delivery/Quality	19	12	12	12	1	1	57	12.4%
Service Delivery/Termination of services	10			1			11	2.4%
Superannuation	6						6	1.3%
<b>Total</b>	<b>215</b>	<b>78</b>	<b>62</b>	<b>56</b>	<b>31</b>	<b>18</b>	<b>460</b>	<b>100%</b>

**Other Authorities**
**Approaches & Complaints Completed  
1 July 2010 to 30 June 2011**

Aboriginal Housing Authority	1	0.2%
Adelaide & Mt Lofty Ranges NRM Board	2	0.4%
Adelaide Health Service Incorporated	58	12.0%
Architects Board of South Australia	1	0.2%
Board of Examiners (Law Society)	1	0.2%
Centennial Park Cemetery	2	0.4%
Children, Youth & Women's Health Service	2	0.4%
Commissioner for Equal Opportunity	3	0.6%
Coroner	5	1.1%
Country Health SA	7	1.4%
Courts Administration Authority	19	4.0%
Dog and Cat Management Board	1	0.2%
Domiciliary Care SA	1	0.2%
Drug & Alcohol Services SA	1	0.2%
Eastern Health Authority	1	0.2%
Essential Services Commission South Australia	1	0.2%
Flinders University	13	2.7%
Guardianship Board	14	2.9%
Health & Community Services Complaints Commissioner	35	7.3%
History Trust of South Australia	1	0.2%
HomeStart	1	0.2%
Institute of Medical & Veterinary Science	1	0.2%
Land Management Corporation	5	1.1%
Legal Practitioners Conduct Board	2	0.4%
Legal Services Commission	17	3.5%
Liquor & Gambling Commissioner	4	0.8%
Lotteries Commission	2	0.4%
Medical Board of SA	9	1.8%
Motor Accident Commission	10	2.1%
Office of Consumer & Business Affairs	65	13.4%
Office of the Technical Regulator	3	0.6%
Optometry Board	1	0.2%
Outback Communities Authority	1	0.2%
Pika Wiya Health Advisory Council	1	0.2%
Public Advocate	14	2.9%
Public Trustee	78	16.2%
Residential Tenancies Tribunal	5	1.1%
RSPCA Inspectorate	2	0.4%
SA Ambulance Service	18	3.7%
SA Country Fire Service	3	0.6%
SA Film Corporation	1	0.2%
SA Government Financing Authority	1	0.2%
SA Metropolitan Fire Service	1	0.2%
SACE Board of SA	3	0.6%
Sheriff	1	0.2%
South Australian Dental Service	3	0.6%
South Australian Tertiary Admissions Centre	1	0.2%
South Australian Tourism Commission	2	0.4%
South East Water Conservation and Drainage Board	1	0.2%
State Emergency Services	1	0.2%
Super SA Board	17	3.5%
Teachers Registration Board	1	0.2%
University of Adelaide	12	2.5%
University of South Australia	16	3.3%
WorkCover Corporation	11	2.3%
WorkCover Ombudsman	1	0.2%
<b>Total</b>	<b>484</b>	<b>100%</b>

Other Authorities

Approaches & Complaints Completed: Outcome  
1 July 2010 to 30 June 2011

	Other	Public Trustee	Office of Consumer & Business Affairs	Adelaide Health Service	Health & Community Services Complaints Commissioner	Courts Administration Authority	Total	Percentage
Advice given	46	8	8	23	4	2	91	18.8%
Alternate remedy available with another body	33	6	4	21	2		66	13.7%
Declined/Investigation neither necessary nor justifiable	6	3	2	2	3	1	17	3.6%
Declined/No sufficient personal interest or not directly affected	3	1	1				5	1.0%
Declined/Trivial, vexatious, etc	1				1		2	0.4%
Declined/Withdrawn by complainant		1					1	0.2%
Not substantiated	32	12	14	1	12	4	75	15.5%
Ombudsman comment warranted	2				1		3	0.6%
Out of Jurisdiction/Agency not within jurisdiction	5		1	1			7	1.4%
Out of Jurisdiction/Employment	1						1	0.2%
Out of Jurisdiction/Judicial body	3					1	4	0.8%
Out of time	2						2	0.4%
Referred back to agency	66	33	18	4	5	6	132	27.3%
Resolved with agency cooperation	16	7	14	3	1	4	45	9.3%
S25 Finding/Unlawful	1						1	0.2%
S25 Finding/Wrong	2			1			3	0.6%
Withdrawn by complainant	10	7	3	2	6	1	29	6.0%
<b>Total</b>	<b>229</b>	<b>78</b>	<b>65</b>	<b>58</b>	<b>35</b>	<b>19</b>	<b>484</b>	<b>100%</b>
	47.3%	16.2%	13.4%	12.0%	7.2%	3.9%		

# There is a public interest in the public being aware of the decision-making processes of government...

## **Courts Administration Authority**

### ***Extension of time for external review and access to documents relating to judicial functions***

This determination is available in full on my website.

#### *Application for access*

The applicant, a member of the Legislative Council, made ten similar applications for sentencing information relating to different offences.

The agency refused access to the documents on the basis of clause 11 of Schedule 1 of the FOI Act (documents 'relating to the judicial functions of a court or tribunal'). It advised that judgments and sentencing remarks are publicly available for viewing on the agency's website.

#### *Ombudsman review*

The application to me for external review was out of time but I agreed to extend the time, because I considered there was public interest in considering the merits of this matter.

The Authority had previously disclosed information of the kind requested by the applicant, but in this case the requested documents did not in fact exist, and would have to be produced.

#### *Determination and comments*

In my view the documents sought clearly related to the judicial functions of the relevant courts, and were exempt under clause 11(a) of Schedule 1 to the FOI Act. I took this view notwithstanding that:

- the judgments and sentencing remarks relating to the documents had been available for view on the agency's website
- the information sought was statistical, and did not disclose the identities of defendants nor the facts of individual cases
- the Authority has provided the applicant with similar information in the past.

In a meeting with the Authority, I was advised that the information previously provided to the applicant was given in error, and that the courts are firmly of the view that the earlier release should not be perceived as a precedent.

I declined to suggest that the Authority might consider exercising its discretion to release the documents despite their otherwise exempt status.

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

### ***Obligations on third parties and public interest considerations***

This determination is available in full on my website.

#### *Application for access*

The applicant applied for access to 'all correspondence between the South Australian Heritage Council and the Minister for Environment and Conversation from 2009' under the FOI Act.

The applicant applied to me for an external review of the department's deemed refusal of access to the

documents, because it failed to make 'active' determinations on the applications for access and internal review within the periods required by the FOI Act.

#### *Ombudsman review*

During my external review, the department made a belated determination to grant full access to 34 of the 36 documents. Following consultation with the Minister for Environment and Conservation, the department was also prepared to release a further document.

The department, the Minister for Environment and Conservation and the Minister for Health claimed that parts of the remaining document, which related to Eastwood Lodge (part of the Glenside campus) were exempt. They relied on clause 9(1) of Schedule 1 to the FOI Act (internal working documents) to refuse access to parts of the document.

The Minister for Health also relied on clause 5(1) (inter-governmental or local governmental relations); clauses 7(1)(b) and 7(1)(c) (business affairs); and clauses 13(1)(a) and 13(1)(b) (confidential material) of Schedule 1 to the FOI Act. No submissions were provided in support of the claims under clauses 5(1) or 13(1).

#### *Determination and comment*

In relation to the business affairs exemption, I was not satisfied that the document contained information that either had a commercial value to 'an entity external to government' or to the government, or concerned

the business or commercial affairs of the government or any other person. Further, I was not persuaded that disclosure could reasonably be expected to have an adverse effect on anyone's affairs, or prejudice the future supply of information to the government or an agency, as required by clause 7(1)(c).

On the internal working documents exemption, I was satisfied that the document contained opinions and related to consultation regarding the decision-making functions of government, as required by clause 9(1)(a). My determination therefore turned on public interest considerations.

In my view there is a public interest in the public being aware of the decision-making processes of government, as a means of facilitating more effective participation in those processes and – in this case – debate about the future of Eastwood Lodge, and enhancing respect for the government. I also consider that there is a public interest in the broader community knowing how public resources have been used.

Ultimately, I was not satisfied that disclosure of the document would, on balance, be contrary to the public interest, or therefore that it was exempt under clause 9(1) of Schedule 1 to the FOI Act.

Section 48 of the FOI Act provides that the agency bears the onus of justifying its determination in an external review. Nevertheless, where a third party's claims go further than the agency's, my view is that the third party has an obligation 'to ensure that there is material before ... [me] from which I am able to be satisfied that all elements of the exemption provision relied upon are established.'<sup>10</sup>

## **Department for Families and Communities**

### ***External review of a refusal to grant access to documents relating to child special investigation***

#### *Application for access*

The applicant was the subject of an investigation under the *Children's Protection Act 1993*. She applied for documents relating to the investigation, including the original notification.

An accredited FOI officer for the department initially refused access to the documents under section 58 of the Act (duty to maintain confidentiality) in conjunction with clause 12 of Schedule 1 to the FOI Act (documents the subject of secrecy provisions). The department's Chief Executive Officer confirmed this determination following an application for internal review.

#### *Ombudsman review*

Section 13(2) of the Children's Protection Act imposes a confidentiality obligation on persons who receive notifications of child abuse or neglect, and section 58(1) of that Act imposes a confidentiality obligation on people engaged in the administration of the Act who become aware of 'personal information' relating to children, families and others.

These are both offence provisions, but there are some exceptions. Section 58(3)(c) relevantly provides that the section does not prevent a person engaged in the administration of the Act from divulging information if authorised or required to do so by his or her employer'.

#### *Determination and comments*

Because the notification contained the identity of the notifier, I was satisfied that the notification is an exempt document under clause 12 of Schedule 1 to the FOI Act because 'it contains matter the disclosure of which would constitute an offence' against the Children's Protection Act.

I was satisfied also that the other documents contained 'personal information', including background, medical and contact information about a child. They also included information about a person alleged to have abused, neglected or threatened a child. Although this person was the applicant, her implied consent is not an exception to section 58(1) of the

Children's Protection Act. I considered the information about the child and the applicant to be inextricably connected.

I accepted that the applicant was already aware of much of the information about the investigation. However, in the decision of *Ward v Courts Administration Authority*<sup>11</sup>, Judge Smith concluded that the word "divulge" should be construed so as to give paramountcy to protecting the child's interests', and warned of the difficulties in the department engaging in the 'intolerable task of speculating about what the applicant may or may not know' when determining whether to release information.

On this basis I was satisfied that the documents were exempt documents because they contained 'matter the disclosure of which would constitute an offence' against the Children's Protection Act.

Having arrived at this determination, I also took the view that the Chief Executive Officer should consider releasing the investigation report to the applicant, despite its otherwise exempt status (see section 39(12) of the FOI Act). I noted that the applicant had been given an audio recording of the lengthy record of interview between the special investigations unit and her; the investigation report was read out to her when she was advised of the outcome of the investigation; and in a subsequent letter to her lawyer, some other information about the investigation had been disclosed.

The applicant therefore was already aware of the information in the documents that was covered by secrecy provisions, including the name of the child, the allegations made about the applicant, and the evidence. Further, I considered that having the investigation report read aloud to the applicant, and her having access to the written results for future reference and consideration, may be very different.

<sup>10</sup> *Re Pope and Queensland Health* (1994) 1 QAR 616 at paragraph 17. A decision of the Queensland Information Commissioner in relation to the Queensland equivalent of section 48 of the South Australian FOI Act. I consider these comments applicable to section 48.

<sup>11</sup> [2003] SADC 18 (Unreported, Judge Smith, 21 February 2003) [57].



## Department of Planning and Local Government

### ***External review of a refusal to grant full access to the documents***

This determination, which is available in full on my website, is currently subject to an appeal in the District Court lodged by the department.

#### *Application for access*

The applicant, an MP, applied for access to 'submissions received by the State Government in regard to the Draft 30-Year Plan for Greater Adelaide'. Most submissions were already available on the department's website, but some were 'unavailable for public inspection at the request of the submitter'.

The department released a further 32, but determined that 89 documents in full and 10 documents in part were exempt, relying on clauses 7(1)(b) (business affairs) and 6(1) (personal affairs) of Schedule 1 of the FOI Act.

At internal review, the Chief Executive Officer confirmed the earlier determination. He also added a claim under clause 4(1)(a) (documents affecting law enforcement and public safety) because of 'individuals who were concerned about being identified by their contact details or by contextual information in their submissions'.

The applicant then applied to my office for an external review.

#### *Ombudsman review*

I categorised the documents into three groups; **individual submissions, organisation submissions and business submissions:**

- individual submissions were those made by individual community members, and related to issues of concern to them, including population growth, transit orientated developments, water and other sustainability issues
- organisation submissions were similar to the individual submissions in content but were made by organisations including community and interest groups
- business submissions were made by development and related companies or landowners.

#### *Determination and comments*

In addition to clauses 4, 6 and 7 of Schedule 1 to the FOI Act, which were relied upon by the agency, I also considered clause 12 (documents containing confidential information).

It was my view that there was insufficient evidence to conclude that disclosure of any of the documents could reasonably be expected to endanger the life or physical safety of any person, so I did not accept the claim under clause 4.

#### *The individual and organisation submissions*

Six people who made individual submissions consented to their submissions and identities being released, so I determined that those submissions were not exempt under clause 6(1). The applicant agreed to receive the remaining individual submissions with the identities of the submitters deleted. I considered that the removal of these names and details should also allay any residual concerns any submitter may have had about their safety.

I was not satisfied that the submissions of the organisations contained information concerning the 'personal' or 'business' affairs of the organisations.

#### *The business submissions*

Nine of the submitters consented to their submissions being released, so these submissions were not exempt. 11 submitters objected to the release of their submissions, whilst the majority didn't respond to my consultation letter.

Despite the objections of various parties (and the implied objections of those who did not respond), I came to the conclusion that the business submissions were not exempt documents under the FOI Act.

I disagreed that the department 'has an obligation to make provision for submissions provided by individuals and corporate entities to have their submissions kept confidential where requested'. Rather, the department cannot purport to give assurances of confidentiality, and any such assurances that were given were unfortunate.

I addressed numerous other arguments put to me. Ultimately, I considered

that the 30 Year Plan is an important government policy, and there is a strong public interest in government decision making about it being as open as possible.

I look forward to reading the decision of the District Court in due course.

## Department of the Premier and Cabinet

### ***Attachments to Cabinet documents not exempt***

### ***Estimates committee briefings exempt under parliamentary privilege***

#### *Application for access*

The applicant, an opposition MP, applied to the department for numerous types of documents relating to Carnegie Mellon University.

The department failed to make a determination within the statutory time frame, both at the initial application and internal review level.

#### *Ombudsman review*

During my review, the department submitted that two located documents in particular were Cabinet notes which had been specifically prepared for submission to Cabinet. The department submitted that they were exempt documents under clause 1(1)(a) of Schedule 1 to the FOI Act.

Six documents were claimed to be briefings prepared specifically for Estimates Committee hearings. The department submitted that disclosure of these documents would infringe the privilege of Parliament under clause 17(c) of Schedule 1 to the FOI Act.

#### *Determination and comments*

I accepted that the two documents the department claimed were prepared for submission to Cabinet, were in fact prepared for this reason and were exempt under clause 1(1)(a).

However, I noted that the attachments to the documents were not exempt, as clause 1(2) provides:

- (2) A document is not an exempt document by virtue of this clause—
- (ab) merely because it was attached to a document described in subclause (1)

I considered that final versions of the briefings could be protected by clause

17(c). I accepted the department's argument that the protection afforded by Parliamentary privilege is independent of the currency or sensitivity of the information, and that it was sufficient that documents relating to proceedings in Parliament may not be authorised for release. I recognised that the FOI Act does not require any public interest balancing exercise in clause 17(c), as it does in other exemption clauses in Schedule 1.

## Department of the Premier and Cabinet

### ***Internal draft documents are releasable under the FOI Act.***

#### *Application for access*

The applicant requested access to

... all documents including emails, memos and reports which relate to payments from the Federal Government Fund of \$15 million to the Royal Institution of Australia (RIA)

The department released the documents to the applicant, including the final letter from the Premier to the former Prime Minister, Hon Kevin Rudd MP. This letter requested funding from the Prime Minister for the RIA. However, the department refused access to a draft of this letter on the basis of the internal working document exemption in clause 9(1) of Schedule 1 to the FOI Act.

#### *Ombudsman review*

In my review, the department submitted that it was 'not in the public interest to release a draft document which was subsequently refined and changed prior to being sent'. The department also submitted that my office had previously upheld a 'similar determination' in which my predecessor had advised an applicant:

...while to an extent, the content of [the draft and final version of] the two documents is similar changes were made prior to the ultimate letter being sent. Given that the final letter was released to you, I do not consider there to be any significant public interest in you being provided with this **particular** draft. On the other hand, I consider there to be a public interest in the government being able to refine its correspondence prior to it being sent. On balance, I consider it

would be contrary to the public interest to release the draft. (my emphasis).

The department further argued that

- the Premier himself had made alterations to the draft letter that resulted in the final letter
- these are high level communications and as such should not be released.
- draft correspondence of a government requesting money should not be released
- there are some that did not approve of the funding sought by the Premier, being granted
- the issue of seeking Commonwealth funding for particular State projects is always sensitive, especially as there are always competing priorities
- releasing drafts of any documents is not of value to the public as 'decisions are made for competing reasons and having people second guessing final documents, is counter intuitive to progress in most areas'.

#### *Determination and comments*

I reversed the department's determination, to provide for release of the draft letter.

I was not persuaded by the department's arguments and commented:

- it was not clear how release of this draft letter was in any way different from releasing the final letter. The department had acknowledged that there was little difference between the draft letter and the final letter
- while the issue of seeking funding for particular state projects may be a sensitive one, the argument in this case ignores the fact that the department had released the final letter – which requested funding. The argument did not address the contents of the draft letter
- this was also the case with the department's argument about people 'second guessing final documents' – as the final document in this case had been released to the applicant. No 'second guessing' need occur

- whether or not, on balance, it would be contrary to the public interest to release a document under clause 9(1)(b) turns on *the contents of the document in question*. The contents of the draft did not seem to be of a sensitive nature
- the department had failed to address the particular contents of the draft, and argued on the basis of a 'class claim' about draft documents generally. This approach is incorrect. My predecessor's views related to the particular draft under consideration in the review at the time
- the seniority of a communication does not of itself have any bearing on whether a document should be protected under the South Australian FOI Act. (I noted with interest that seniority of communication has been expressly stated as being an irrelevant factor in deciding the public interest in Freedom of Information legislation of recent times in Queensland (Schedule 4 – Part 1 *Right to Information Act 2009*) and the Commonwealth (section 11B – *Freedom of information Act 1982*).)
- the department had not weighed up the public interest considerations in favour of and against disclosure, to show that 'on balance' disclosure of the draft would be 'contrary to the public interest' within the meaning of clause 9(1)(b).

## Minister for Health

### ***The benefits of document schedules***

#### *Application for access*

The applicant applied to me for an external review of the Minister's deemed refusal of access to certain documents about 'the EPODE or OPAL obesity prevention program'. The Minister was deemed to have refused access to the documents because he failed to make active determinations in response to the applications for access and internal review within the periods required by the FOI Act.

#### *Ombudsman review*

Before the Minister was notified of the application for external review, he determined to release some documents in full and some documents

in part, as permitted by section 19(2a) of the FOI Act. The Minister claimed that the information not released to the applicant was outside the scope of the application.

Notwithstanding the belated determination, the applicant wanted to proceed with the application for external review as the Minister had not explained 'why many of the documents ... have information blanked, [and] no schedule exists explaining why we have not been given access to the information.'

#### *Determination and comments*

I was not satisfied that parts of one document were outside the scope of the applicant. Accordingly, I varied the Minister's determination to enable those parts to be released.

During the course of my review I received a document schedule from the Minister's office containing four columns: 'Doc No'; 'Type of Document'<sup>12</sup>; 'Release status'; 'Exemption Clause'. The final column identified which documents contained information the Minister claimed was outside the scope of the application. No exemption clauses were claimed in this review. The schedule was likely only produced as a result of a letter from me, which specifically requested a schedule listing all relevant documents, and asking the Minister to ensure that the documents were numbered.

Given that one of the reasons the applicant wanted to proceed with the application for external review was the absence of a schedule 'explaining why we have not been given access to the information', I made the following comments about the benefits of document schedules in the reasons for my determination:

Although the FOI Act does not require an agency to produce a document schedule or provide it to the applicant, in my view it is helpful for the agency to do so. I understand that this view is consistent with State Records' accredited FOI officer training.

Numbering and describing the documents in a meaningful way helps to ensure that all parties are aware of the status of each document identified, and helps to clarify issues or raise queries with respect to particular documents. I therefore encourage the Minister to provide a copy of the schedule of documents to the applicant to assist him in understanding my determination.

In my experience, document schedules are particularly useful where applicants apply for all documents not previously released to them (especially if the same FOI officer is not dealing with the new application, or a significant amount of time has passed since the previous FOI application was made), or question the sufficiency of the department's searches to locate documents within the scope of the application.

I commend agencies who routinely provide document schedules to applicants.

#### **Minister for Health**

##### ***Whether the applicant was a 'person' for the purposes of the FOI Act***

###### *Application for access*

The applicant applied to me for an external review of the Minister's refusal to allow access to certain documents about the use of a room at the Glenside facility.

###### *Ombudsman review*

During the course of my external review, I received a submission claiming that the applicant was 'not a person', and therefore could not 'make a valid application' for access or external review under the FOI Act. The basis for the claim was that the name the applicant used to make their FOI application is a name that they use to make public comments, and is not their 'legal name and has not been for many years'. The submission alleged that the name the applicant used to make their FOI application appeared 'to be a pseudonym or false name'. The first name was the same, but the surnames were different.

I considered a number of factors in response to this submission, including the common law and statutory provisions.

At common law 'an adult may assume any surname by using such name and becoming known by it'<sup>13</sup>, 'provided its use is not calculated to deceive and to inflict pecuniary loss.'<sup>14</sup>

The FOI Act does not define the term 'person', however section 4(1) of the *Acts Interpretation Act 1915* provides that '[i]n this Act and in every other Act or statutory instrument, unless the contrary intention appears— ... *person* or *party* includes a body corporate.'

My staff and I had communicated with the applicant in the context of this and other matters in person, as well as via the telephone and email. During this time there was no evidence that the name the applicant used to make their FOI application was used in an attempt to deceive or inflict pecuniary loss.

#### *Determination and comments*

In light of this, I was satisfied that the applicant was a 'person' for the purposes of the FOI Act, and could therefore apply for access to documents and external review.

#### **Minister for Water**

##### ***Extension of time to deal with application***

###### *Application for access*

The applicant, an MP, applied to the Minister for Water for access to '[a]ll documentation held by the Office of the Minister for Water concerning the introduction of salary sacrifice arrangements for employees of SA Water created between 1 January 2010 and 26 January 2011' under the FOI Act.

The Minister determined to extend the period within which he was required to deal with the application by one month under section 14A of the FOI Act. The basis for the extension was that it would not have been reasonably practicable to comply with the obligation to consult under the FOI Act within 30 days after receiving the application. When deciding the period of the extension, the Minister took into account 'that the office's usual other resources are fully occupied in their usual tasks and the office (sic) requires extensive consultation with third parties'.

<sup>12</sup> It is useful to also include the date of the document, and its author and addressee, unless doing so would reveal claimed exempt matter.

<sup>13</sup> *Chapman v Palmer* (1978) 4 Fam LR 462 at 465  
<sup>14</sup> *Cowley v Cowley* [1901] AC 450 at 460.

### *Ombudsman review*

The applicant applied to me for an external review of the Minister's determination.

During the review I established that there was only one 60-page document within the scope of the application. The Minister was required to consult with three interested parties (two Commonwealth agencies and a large company) under section 27 of the FOI Act (documents affecting business affairs).

The Minister's office advised my office that the document had been quickly identified and the consultation letters had been sent a little over two weeks after receiving the application. At the time, there were only two accredited FOI officers in the Minister's office, including the Minister, one of whom was scheduled to be away from the office for approximately two weeks.

In support of the determination, a representative of the Minister's office explained that there was a short delay in commencing the consultation process while advice was sought about the Minister's consultation obligations under the FOI Act. In addition, there had been a sharp increase in FOI applications. In 2010 the Minister received approximately one application per month, and 12 applications in total. By March 2011, the Minister had already received 16 applications, all from Members of Parliament.

### *Determination and comments*

I reversed the Minister's determination as I was not satisfied that it would not have been reasonably practicable to consult with the interested parties (all of whom were easily contactable) about the document within 30 days after receiving the application.

### **South Australian Housing Trust/ Department for Correctional Services/Adelaide Health Service Incorporated**

#### ***Requests for amendment***

##### *Applications for amendment*

Over the past year there have been several applications for external review of determinations by agencies to refuse to amend records which include the opinions of others. The applications have involved applications to amend prisoner records, medical/health records and South Australian Housing

Trust files. The following provides an overview of when and how opinions can be amended.

### *Ombudsman review*

Under section 30 of the FOI Act, an applicant has a right to apply for amendment of an agency's records if:

- (a) the document contains information concerning the person's personal affairs; and
- (b) the information is available for use by the agency in connection with its administrative functions; and
- (c) the information is, in the person's opinion, incomplete, incorrect, out-of-date or misleading.

The agencies refused to amend their records under section 35 of the FOI Act. The burden of justifying the agency's determination rests with the agency by virtue of section 48 of the FOI Act. Nevertheless, it is my view that the applicant bears an onus to provide some measure of evidence in support of an application for amendment made under section 30 of the FOI Act.

In deciding whether records sought to be amended are 'incomplete, incorrect, out-of-date or misleading' for the purpose of the FOI Act, I referred to case law which stipulated it may be appropriate to amend records containing an opinion, if such an opinion was formed upon the basis of incorrect factual evidence, or if there was no basis for the opinion at all. The mere fact that the applicant may not agree with the opinion is not a sufficient basis for an amendment.<sup>15</sup>

<sup>15</sup> *Jefferies v South Australia Police* [2003] SADC 2 (Unreported, Judge Anderson, 21 January 2003) at paragraph 20.

### *Determination and comments*

In determining whether or not a document should be amended, I must be persuaded that the comments are 'incomplete, incorrect, out-of-date or misleading.' A document will not be amended if, after review of the agency's record as a whole, I am satisfied that the professional opinions have been made appropriately. A difference of professional opinion is not enough to show that an opinion is incorrect. In one instance, in order to complete the agency's record, I required a minor amendment to be made to make it clear that the opinion was that of the author.

It may be appropriate to amend a document if the opinion in question was formed upon the basis of incorrect factual evidence, or if there is no basis for the opinion at all. It may also be appropriate to require amendment of records where information is a statement of fact, rather than an opinion.

Pursuant to section 37 of the FOI Act, where an agency has refused to amend its records, the agency must add a notation to the records upon written request from the applicant.

### **WorkCover Corporation of South Australia**

#### ***Scope of FOI application***

##### *Application for access*

The applicant made an application under the FOI Act for information 'about workers who have committed suicide whilst on WorkCover' within the last five years. He did not want the names of the workers, but rather the number that committed suicide, the names of the case managers who were managing workers who committed suicide, and the number of workers who committed suicide for each of the named case managers.

The corporation responded by releasing statistics which identified the numbers of workers who have committed suicide over the last five years. It did not release names of the case managers who were the managers of the deceased, relying on clause 16(1)(a)(iii) of Schedule 1 to the FOI Act. This clause applies to documents the release of which 'could reasonably be expected to have a substantial adverse effect on the management or assessment by an agency of the agency's personnel'.

In making an application for internal review, the applicant stated 'I don't need the name of [the] case manager[s], just how many suicides under the various case managers'. The original determination was confirmed on internal review, but the applicant was additionally advised that there was a different case manager for each death claim.

Act is about the public's right to access documents held by an agency. Whilst an agency is not required to produce documents in order to answer questions posed by FOI applications for which no existing documents provide an answer, the corporation is to be commended for doing so in this case.

#### *Ombudsman review*

There were several problems with this matter. The first was that the application was worded more as a question than a request for documents containing information or matter of a certain type. Applications under the FOI Act in the form of questions are unproblematic as long as the agency possesses documents conveniently containing the answer to those questions. Where such documents do not exist within the agency, an issue arises.

Secondly, the scope of the application appeared to have diminished over time. By using the words in the application for internal review 'I don't need the name of [the] case manager[s], just how many suicides under the various case managers', I was of the view that the applicant agreed that the names of the case managers do not need to be provided.

#### *Determination and comments*

Taking the reduced scope into consideration, it appeared to me that the corporation had already answered the questions posed by the applicant by providing the number of workers who committed suicide within the last five years, and by advising that no case manager managed more than one worker who committed suicide.

Furthermore, without the identities of the workers and the identities of the case managers, it could no longer be said that any documents exist that are capable of answering the questions posed by the applicant. That is, if one cannot link a document to a particular worker or case manager (because their identities have been removed), one cannot calculate how many workers committed suicide for each case manager.

I therefore confirmed the corporation's determination as I was not satisfied that any documents fall within the scope of the application. The FOI



**Freedom of Information**
**External Reviews Received  
1 July 2010 to 30 June 2011**

Adelaide Health Service Incorporated	8
Architects Board of South Australia	1
Attorney-General's Department	4
City of Charles Sturt	1
City of Port Adelaide Enfield	4
Commissioner for Equal Opportunity	1
Country Health SA	2
Court Administration Authority	1
Department for Correctional Services	4
Department for Environment and Natural Resources	1
Department for Families and Communities	7
Department for Water	2
Department of Education and Children's Services	43
Department of Further Education, Employment, Science & Technology	1
Department of Health	11
Department of Planning and Local Government	4
Department of Primary Industries & Resources	2
Department of the Premier and Cabinet	54
Department of Trade and Economic Development	1
Department of Transport, Energy and Infrastructure	2
Department of Treasury and Finance	1
Land Management Corporation	1
Light Regional Council	1
Minister for Health	35
Minister for Water	2
Port Augusta City Council	1
RSPCA Inspectorate	1
SA Film Corporation	1
SA Housing Trust	4
SA Water Corporation	1
Veterinary Surgeons Board	1
WorkCover Corporation	2
<b>Total</b>	<b>205</b>

	Other	Department of the Premier and Cabinet	Department of Education and Children's Services	Department of Health	Adelaide Health Service Inc	Minister for Health	Total	Percentage
Access to documents/Deemed refusal	2	40	5	4		3	54	37.2%
Access to documents/Sufficiency of search	7	1	2		2	1	13	9.0%
Agency Determination to extend time (s14A)	5						5	3.4%
Agency Determination to refuse to deal with application/Voluminous application (s18(3))	0			4			4	2.8%
Agency Determination to refuse to deal with application/Voluminous application (s18(1))	0		1				1	0.7%
Amendment of records	2				1		3	2.1%
Exemptions/Business affairs	2	3	1			1	7	4.8%
Exemptions/Cabinet documents	12		1			1	14	9.6%
Exemptions/Confidentiality	4				1		5	3.4%
Exemptions/Internal working documents	1	1	1			2	5	3.4%
Exemptions/Judicial functions	1						1	0.7%
Exemptions/Law enforcement	1			1	1		3	2.1%
Exemptions/Legal professional privilege	1						1	0.7%
Exemptions/Operation of agencies	2				2		4	2.8%
Exemptions/Other	1	2					3	2.1%
Exemptions/Personal affairs	7	1	4		1		13	9.0%
Exemptions/Secrecy provisions in legislation	1	1		1			3	2.1%
Extension of time for application for review (s39(4))	2		2	1			5	3.4%
Third party review	1						1	0.7%
<b>Total</b>	<b>52</b>	<b>49</b>	<b>17</b>	<b>11</b>	<b>8</b>	<b>8</b>	<b>145</b>	<b>100%</b>
	35.9%	33.8%	11.7%	7.6%	5.5%	5.5%		



## Freedom of Information

External Reviews completed  
1 July 2010 to 30 June 2011

Adelaide Health Service Incorporated	12
Attorney-General's Department	3
City of Burnside	1
City of Charles Sturt	1
City of Mitcham	1
Country Health SA	1
Court Administration Authority	2
Department for Correctional Services	4
Department for Environment and Natural Resources	1
Department for Families and Communities	5
Department of Education and Children's Services	10
Department of Further Education, Employment, Science & Technology	2
Department of Health	9
Department of Planning and Local Government	3
Department of Primary Industries & Resources	4
Department of the Premier and Cabinet	23
Department of Transport, Energy and Infrastructure	1
Department of Treasury and Finance	2
Department for Water	1
Minister for Education and Early Childhood Development	2
Minister for Health	5
Minister for Water	2
Port Augusta City Council	1
SA Country Fire Service	1
SA Film Corporation	1
SA Housing Trust	5
SA Water Corporation	1
SA Tourism Commission	1
University of Adelaide	1
WorkCover Corporation	2
<b>Total</b>	<b>108</b>

## Freedom of Information 1 July 2010 to 30 June 2011

External Reviews Completed: Outcome

	Other	Department of the Premier and Cabinet	Adelaide Health Service Inc	Department of Education and Children's Services	Department of Health	Department of Families and Communities	Total	Percentage
FOI/Application for review withdrawn by applicant	5	4	1	1	1	1	13	12.0%
FOI/Application settled during review (s39(5))	2	2		4	5		13	12.0%
FOI/Determination confirmed (s39(11))	16	2	3	1	1	4	27	25.0%
FOI/Determination reversed (s39(11))	6	2	5	2			15	13.9%
FOI/Determination revised by agency (s19(2a))	3	12		1			16	14.8%
FOI/Determination varied (s39(11))	17	1	3	1	2		24	22.3%
<b>Total</b>	<b>49</b>	<b>23</b>	<b>12</b>	<b>10</b>	<b>9</b>	<b>5</b>	<b>108</b>	<b>100%</b>
	45.4%	21.3%	11.1%	9.3%	8.3%	4.6%		

# Our mission is to help make South Australia a state where all communities and individuals are treated fairly.

### Our Vision

Our vision is for this office, and for each agency within our jurisdiction, to provide services of the highest quality to the South Australian community.

### Our Mission

Our mission is to help make South Australia a state where all communities and individuals are treated fairly by:

- promoting sound public administration and accountability within State and local government; and
- keeping the Parliament, the Government and the community informed of matters of public importance.

### Our Functions

The Ombudsman contributes to sound public administration by South Australian State and local government agencies through:

- investigating, conciliating and resolving complaints in accordance with the *Ombudsman Act 1972*;
- undertaking investigations referred by Parliament, and conducting administrative audits and investigations on the Ombudsman's own initiative;
- making recommendations for change in procedures and legislation;
- reviewing decisions about release of information under the *Freedom of Information Act 1991*; and

- providing advice and training.

The Ombudsman is an independent statutory officer within the Attorney General's Department, and reports directly to Parliament.

### Our Values

In performing our work we are committed to:

- maintaining independence and impartiality  
*We are committed to acting in a manner that maintains the independence and objectivity of the Ombudsman.*
- facilitating access to our services  
*We are committed to ensuring people can, and know how to, access our services through a range of technologies and avenues.*
- respecting the views of all parties  
*We are committed to ensuring that all parties' points of view are heard and considered.*
- fairness and integrity  
*We are committed to acting in accordance with our powers, basing our actions on relevant considerations and at all times acting in good faith.*
- accountability in our dealings  
*We are committed to keeping people informed about their rights and any decisions affecting them, and to using our resources efficiently, effectively and responsibly. We will strive to refine means to measure and report on our performance.*

- responsiveness in our service delivery

*We are committed to providing prompt service and facilitating speedy resolutions where appropriate*

### 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 – which 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 has a discretion whether to commence or continue an investigation. Key issues of the complaint will be assessed to determine whether:

- special circumstances exist for matters over 12 months old
- 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

- a complaint appears to be frivolous, trivial, vexatious, or not made in good faith
- an investigation does not appear to be warranted in the circumstances, such as where the 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
- the complainant does not have a sufficient personal interest in the matter.

### **Investigations by Ombudsman SA**

Any individual person or organisation who is directly affected by an administrative action of a government department, authority or council under the Ombudsman's jurisdiction can make a complaint to the Ombudsman.

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 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.

### **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.

### **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 jurisdiction, it is often possible to refer them to another appropriate source of assistance. Therefore, an outcome of 'no jurisdiction' does not necessarily mean that the office has not been of assistance to the person who consulted us.

If a complaint is out of Ombudsman SA's jurisdiction we will attempt to refer the complainant to another complaint handling body which may be able to assist.

## APPENDIX 1

### Financial Statement

Expenditure	2009/10	2010/11
Annual Report	405	7 692
Branding Development	23 730	
Computer expenses	75 372	49 357
Equipment maintenance	13 993	4 934
Equipment purchases	15 755	288
Fringe Benefits Tax	4 492	8 445
* Motor vehicles	18 068	11 765
Postage	3 295	2 795
Printing and stationery	21 558	8 980
Publications and subscriptions	5 534	753
Recruitment costs	1 493	1 704
Research Grant	10 000	
Staff development	35 337	12 999
Sundries	27 363	29 508
Telephone charges	18 068	20 449
Travel/taxi charges	8 157	14 295
Website Development	13 101	3 680
<b>Sub-total</b>	<b>295 721</b>	<b>177 644</b>
* Accommodation and energy	112 745	123 007
Consultant/Contract staff	119 300	263 358
<b>Sub-total</b>	<b>232 045</b>	<b>386 365</b>
* Salaries	1 320 366	1 280 392
<b>Sub-total</b>	<b>1 320 366</b>	<b>1 280 392</b>
<b>Income</b>	<b>(9 761)</b>	<b>(15 360)</b>
<b>Sub-total</b>	<b>(9 761)</b>	<b>(15 360)</b>
<b>Net expenditure</b>	<b>1 838 371</b>	<b>1 829 041</b>

\* Figures include expenses incurred by the Ombudsman position (funded by Special Acts)

## APPENDIX 2

### Description of outcomes – Ombudsman jurisdiction

Ombudsman SA's case management system, and revised office procedures incorporating target timeframes for completion of files, commenced operation on 15 March 2010. As a part of this implementation, new reporting categories were introduced. This appendix provides an explanation of the new categories, and their relationship to categories included in Annual Reports prior to 2009-10.

#### 1. Current outcome categories

##### **Advice given (Continuing category)**

Information or advice was provided to the public, normally without contacting the agency complained against.

Whilst this category will continue, we expect its numbers (and consequently the total number of complaints) will reduce in future years.

From 15 March 2010, a number of matters which were previously recorded as complaints with an outcome of 'advice given', are being recorded as 'approaches' which are resolved without the lodging of a formal complaint. Because they are resolved speedily, Ombudsman SA has determined not to classify them as complaints.

##### **Alternative remedy available with another body (New category)**

The complainant had an alternative remedy available. Under section 13(3) of the *Ombudsman Act 1972*, Ombudsman SA must not investigate unless it is not reasonable for the complainant to exercise that remedy.

##### **Cannot contact person (New category)**

The complainant is unable to be contacted.

##### **Conciliated (New category)**

The complaint was conciliated under section 17A of the *Ombudsman Act 1972*.

##### **Declined (formerly included in 'Declined/Terminated/Withdrawn')**

The matter was terminated at an early stage because:

- further investigation was unnecessary or unjustifiable
- the complainant had no sufficient personal interest or was not directly affected, or
- the complaint was trivial or vexatious.

##### **Not Substantiated (formerly 'Not Sustained')**

A matter is classed as *Not Substantiated* if the complaint has been investigated and sufficient information has been discovered to conclude that there is no basis to form an opinion pursuant to section 25(1).

##### **Ombudsman comment warranted (New category, formerly included in 'Preliminary Investigation')**

These matters have been the subject of a preliminary investigation. No administrative error has been found but an issue worthy of comment has been identified.

##### **Out of jurisdiction (New category, formerly included in 'Advice given')**

After investigation the complaint is found not to be within jurisdiction because:

- the body complained about is found not to be an agency for the purposes of the *Ombudsman Act 1972*
- the matter arose from an employment relationship – section 17(1)
- it relates to an action by a judicial body
- it relates to action by a Minister, or
- it relates to a police matter.

##### **Out of time (New category, formerly included in 'Declined/Terminated/Withdrawn')**

After investigation the complaint is found not to be within jurisdiction because the matter arose more than 12 months previously.

##### **Referred back to agency (New category, formerly included in 'Declined/Terminated/Withdrawn')**

Ombudsman SA declines to investigate because the agency complained about has not had a reasonable opportunity to address the matter.

##### **Resolved with agency cooperation (formerly 'Reasonable Resolution')**

A matter is classed as having been resolved with agency cooperation if, before an opinion is formed pursuant to section 25(1) of the *Ombudsman Act*, some action is taken by the agency to remedy (in the opinion of the Ombudsman) the cause of the complaint, or provision is made whereby the complaint can be properly addressed by the agency.

##### **Section 25 Findings (New categories, replacing 'Full Investigation')**

These categories detail the outcome of a full investigation where a specific administrative error is found. They comprise:

- improper purpose or irrelevant consideration – section 25(1)(d)
- mistake of law or fact – section 25(1)(f)
- no reasons given – section 25(1)(e)
- unlawful – section 25(1)(a)
- unreasonable law or practice – section 25(1)(c)
- unreasonable, unjust, oppressive or improperly discriminatory – section 25(1)(b)
- wrong – section 25(1)(g)

##### **Withdrawn (formerly included in 'Declined/Terminated/Withdrawn')**

The matter was withdrawn by the complainant.

## **2. Outcomes included in previous years' Annual Reports, but now replaced**

### ***Full Investigation***

A *Full Investigation* is commenced where sufficient background material has been gathered to indicate a basis for complaint. Section 18(1a) requires that the Principal Officer of the agency be advised of such an investigation. Such advice is usually (although not necessarily) provided in writing.

The results of full investigations are now reported against the specific administrative error found, as section 25 findings.

### ***Not Sustained – Explanation Given***

A matter was classed as *Not Sustained – Explanation Given* if the complaint had been investigated and sufficient information has been discovered to conclude that there is no basis to form an opinion pursuant to section 25(1), but as a consequence of the information obtained the complainant was able to receive an explanation of the reasons for the agency's actions, and that explanation was in advance of the explanation or information which the complainant previously had from the agency.

### ***Partly Resolved in Favour of Complainant***

A matter was *Partly Resolved in Favour of Complainant* if there was some benefit to the complainant or some action by the agency such that the substance of the complaint was partly addressed and resolved. This description would often apply where there would not have been sufficient information to sustain the complaint, but notwithstanding this the agency acted to partly remove the difficulty which was the basis of the complaint.

### ***Preliminary Investigation***

A *Preliminary Investigation* pursuant to section 18(1) of the Ombudsman Act is conducted to obtain preliminary information to determine whether the matter should proceed to a full investigation. Often such an investigation can involve a considerable amount of effort on the part of the investigator, without reaching the point where formal advice of a full investigation is necessary. Many complaints are resolved during this phase.

Since 15 March 2010, the outcome of these investigations may be recorded as:

- not substantiated
- Ombudsman comment warranted
- out of jurisdiction
- out of time
- referred back to agency
- resolved with agency cooperation

### ***Reasonable Resolution***

A matter was classed as having a *Reasonable Resolution* if, before an opinion is formed pursuant to section 25(1) of the Ombudsman Act, some action is taken by the agency to remedy (in the opinion of the Ombudsman) the cause of the complaint, or provision is made whereby the complaint can be properly addressed by the agency.

### ***Transferred to WorkCover Ombudsman***

These matters are now recorded in the category 'Alternative remedy available with another body.'

## APPENDIX 3

### Description of outcomes – FOI jurisdiction

Ombudsman SA's case management system, and revised office procedures incorporating target timeframes for completion of files, commenced operation on 15 March 2010. As a part of this implementation, new reporting categories were introduced. This appendix provides an explanation of the new categories in the FOI jurisdiction, and their relationship to categories included in Annual Reports prior to 2009-10.

#### 1. Current outcome categories

##### ***FOI Review – Application dismissed for want of cooperation – section 39(8)***

The application is dismissed because an applicant did not meet his or her obligation to cooperate in the conduct of the review.

##### ***FOI Review – Application for review withdrawn by applicant (formerly FOI Review – withdrawn)***

During or at the conclusion of external review, the applicant decided to withdraw the application. The applicant may have decided to pursue other avenues of redress or document access; or with the assistance of the Ombudsman, the applicant's grievance with the agency may have been resolved in part or in whole; or with the passage of time, the applicant no longer wished to pursue document access.

##### ***FOI Review – Application settled during review – section 39(5) (formerly FOI Review – reasonable resolution)***

A formal or informal investigation was conducted into the FOI complaint and a reasonable resolution was achieved. This could involve delays in processing, locating missing documents, dealing with destruction of documents, etc.

##### ***FOI Review – Determination confirmed – section 39(11)***

At the conclusion of external review, the Ombudsman was satisfied that a different determination did not need to be made.

##### ***FOI Review – Determination reversed – section 39(11)***

At the conclusion of external review, the Ombudsman was satisfied that a different determination should be made by the agency, and directed it to make a revised determination in specified terms; or substituted his own determination (when dealing with determinations made after the commencement of the amendments to the Act on 1 January 2005).

##### ***FOI Review – Determination revised by agency – section 19(2a) (formerly FOI Review – Agency revised determination)***

During external review and after receiving comment from the Ombudsman, the agency recognised that a revised determination was appropriate in part or in whole. There was no need for a formal direction by the Ombudsman to revise the determination/substituted determination.

##### ***FOI Review – Determination varied – section 39(11)***

At the conclusion of external review, the Ombudsman was satisfied that a different determination should be made by the agency, and directed the agency to vary the determination in a specified way.

##### ***Outside jurisdiction***

After investigation, it was concluded that either the body the subject of complaint was not 'an agency' for the purposes of the *Freedom of Information Act 1991*, or the application for review was premature and the Ombudsman therefore lacked the jurisdiction to conduct it.

#### 2. Outcomes included in previous years' Annual Reports, but now replaced

##### ***FOI Advice given***

Formal or informal freedom of information advice was provided to the public and/or agency. Since 15 March 2010, this category has been treated as a type of approach, with FOI issues identified as their subject.

##### ***FOI Investigation***

An investigation under the *Ombudsman Act 1972* was conducted into a freedom of information related administrative action. These investigations are now categorised as complaints under the *Ombudsman Act 1972*, with FOI issues identified as their subject.

##### ***FOI Review***

An external review was conducted. This category has been replaced by the FOI review categories listed above.



## APPENDIX 4

### Speeches and Staff Development

#### Speeches and training provided by Ombudsman SA staff for agencies and councils

*(Adelaide unless noted)*

16 July 2010  
State Records  
Accredited FOI Officer Training  
2 staff

20 July 2010  
*Elected Members workshop*  
City of Marion  
Richard Bingham

6 August 2010  
*Local Government Update*  
Norman Waterhouse Lawyers  
Barossa Valley  
Richard Bingham

6 August 2010  
State Records  
Accredited FOI Officer Training  
2 staff

2 September 2010  
*CEO Residential Seminar*  
Local Government Association of South Australia  
Richard Bingham

13 September 2010  
State Records  
Accredited FOI Training  
2 staff

15 September 2010  
*Unreasonable Complainant Conduct workshop*  
Loxton  
Richard Bingham/Megan Philpot

22 September 2010  
*Telecommunications Industry Ombudsman Council*  
Loxton  
Richard Bingham

29 September 2010  
*Public Sector Codes of Ethics*  
Institute of Public Administration  
Richard Bingham

5 October 2010  
*Unreasonable Complainant Conduct workshop*  
Port Pirie  
Richard Bingham/Megan Philpot

20 October 2010  
*Annual Public Sector Update*  
Chartered Secretaries Association  
Richard Bingham

29 October 2010  
State Records  
Accredited FOI Training  
2 staff

16 November 2010  
*Unreasonable Complainant Conduct workshop*  
Mt Barker  
Richard Bingham/Megan Philpot

19 November 2010  
State Records  
Accredited FOI Officer Training  
2 staff

26 November 2010  
*Unreasonable Complainant Conduct workshop*  
Naracoorte  
Richard Bingham/Megan Philpot

29 November 2010  
*Unreasonable Complainant Conduct workshop*  
Coober Pedy  
Richard Bingham/Megan Philpot

10 February 2011  
*SA Institute of Rates Administrators – Annual Conference*  
Victor Harbour  
Richard Bingham

18 February 2011  
State Records  
Accredited FOI Training  
2 staff

24 February 2011  
*Governance and Accountability Conference*  
Canberra  
Richard Bingham

26 February 2010  
*New Elected Members Workshop*  
Local Government Association of South Australia  
Richard Bingham

30 March 2011  
*Integrity Principles, Systems and Operations for Local Government*  
Local Government Association of South Australia  
Richard Bingham

1 April 2011  
State Records  
Accredited FOI Training  
2 staff

4 May 2011  
Australian Institute of Administrative Law  
*Local Government Conflicts of Interest*  
Richard Bingham

29 April 2011  
State Records  
Accredited FOI Training  
2 staff

14 May 2011  
Law Week  
*Courts Open Day*  
10 staff

11 June 2011  
*Ombudsman SA/Anti-Corruption Branch staff seminar*  
Richard Bingham

#### Staff training and conferences attended

*(Adelaide unless noted)*

August/September 2010  
*ICETS Investigations training*  
All staff

September 2010  
*Information Day Conference and Association of Information Commissioners meeting*  
Brisbane  
Richard Bingham

October 2010  
The Law Society  
*Freedom of Information*  
1 staff

October 2010  
IPAA  
*2010 IPAA National Conference*  
Richard Bingham/staff

October 2010 Major Sumner, Lata Mayer & Kim McCaul <i>Past, Present, Future: An introduction to Aboriginal cultural awareness</i> 1 staff	May 2011 Business SA <i>Maximising your safety in the office</i> 1 staff
October 2010 Reg Chapman <i>Advanced Communication Techniques</i> All staff	May 2011 The Law Society <i>Privacy Law Update</i> 2 staff
November 2010 Australian and New Zealand Ombudsmen's Association <i>ANZOA Executive Committee meeting</i> Melbourne Richard Bingham	May 2011 <i>Time management for long term results</i> 1 staff
November 2010 <i>Deputy Ombudsman meeting</i> Victorian Ombudsman, Melbourne Deputy Ombudsman	May 2011 <i>Deputy Ombudsman meeting</i> NSW Ombudsman, Sydney Deputy Ombudsman
November 2010 The Law Society <i>Courts &amp; Tribunals</i> 1 staff	May 2011 Electus <i>Custom telephone techniques</i> 1 staff
February 2011 <i>Resolve Conference</i> Gold Coast Office manager	June 2011 Chubb <i>Accredited Warden &amp; Extinguisher training</i> 1 staff
February 2011 <i>Keyboard training</i> 1 staff	June 2011 Electus <i>Minute taking and meeting protocol</i> 1 staff
February 2011 Norman Waterhouse Lawyers <i>Development Act</i> All staff	June 2011 The Law Society <i>Practical Legal Ethics Seminar for Public Sector Lawyers</i> 3 staff
February 2011 Major Sumner, Lata Mayer & Kim McCaul <i>Past, Present, Future: An introduction to Aboriginal cultural awareness</i> 1 staff	
March 2011 The Training Advocate <i>Office of the Training Advocate</i> All staff	
March 2011 <i>AGS National Information Law Conference</i> Canberra 2 staff	
April 2011 <i>Association of Information Access Commissioners</i> Perth Richard Bingham	

## APPENDIX 5

### Complaints Received 2010-11 – Breakdown of Issues

#### Government Departments

Approaches & Complaints Received: Issues  
1 July 2010 to 30 June 2011

	AG's Department	DCS	DENR	DFC	DTEI	Dept for Water	DECS	DFEET
Abuse or Assault/Physical/By other detainees		2						
Abuse or Assault/Physical/By staff		6						
Abuse or Assault/Sexual/By other detainees		1						
Abuse or Assault/Verbal/Harassment/ Threats/By other detainees		4						
Abuse or Assault/Verbal/Harassment/Threats/By staff		9						
Advice			1					
Complaint Handling/Delay		9	2	5	10			1
Complaint Handling/Inadequate processes		15		16	22		16	5
Complaint Handling/Inadequate reasons		7		1	3		2	1
Complaint Handling/Inadequate remedy		4		2	7		6	1
Complaint Handling/Wrong conclusion	1	1		4			1	1
Conduct/Assault		2						
Conduct/Discourtesy		5			2		2	3
Conduct/Misconduct		7		9	3		4	4
Correspondence/Communications/Records/ Delayed/No response	1			7	8		1	
Correspondence/Communications/Records/Incorrect		2	1	1	21		1	
Correspondence/Communications/Records/Lost		2			3			
Correspondence/Communications/Records/ Withholding of information				3	1		1	
Correspondence/Communications/Records/ Wrongful disclosure of information		1		6	2		2	
Custodial Services/Buildings and facilities		4						
Custodial Services/Canteen		5						
Custodial Services/Cell conditions		25						
Custodial Services/Clothing/Footwear		6						
Custodial Services/Employment		5						
Custodial Services/Food		18						
Custodial Services/Health related services		52						
Custodial Services/Legal resources		3						
Custodial Services/Prisoner accounts		10						
Custodial Services/Prisoner mail		21						
Custodial Services/Property		71						
Custodial Services/Recreation programs & services		4						
Custodial Services/Rehabilitation programs		3						
Custodial Services/Telephone		26						
Employment		4		1			2	
Financial/Procurement/Facilities/Compensation/ Damage/Acquisition of land					1			
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury					1			
Financial/Procurement/Facilities/Compensation/ Damage/Property lost/Damaged		2	1		1			

Financial/Procurement/Facilities/Compensation/ Damage/Psychological injury	1							
Financial/Procurement/Facilities/Debts					1	2	1	
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Cost of use						1		
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Denial of use								
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Drainage					1			
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Fencing				1				
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Inadequate								
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Nuisance								
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Sale/Lease			1					
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Unsafe condition								
Financial/Procurement/Facilities/ Procurement by Agencies/Decisions				1				
Financial/Procurement/Facilities/ Procurement by Agencies/Late payment				2				
FOI advice	2	2	1	8	2		2	4
FOI practices and procedures				1	1			
Home Detention		7						
Prison Management/Discipline/Security/Daily regimen		26						
Prison Management/Discipline/Security/ Discipline/Management		40						
Prison Management/Discipline/Security/Drug testing		9						
Prison Management/Discipline/Security/ Inspections/Body searches		3						
Prison Management/Discipline/Security/Protection		4						
Prison Management/Discipline/Security/Transport		4						
Prison Management/Discipline/Security/Visits		11						
Prison Records/Official Correspondence/ Delayed/No response		1						
Prison Records/Official Correspondence/ Improper access by staff		1						
Prison Records/Official Correspondence/Incorrect		4						
Prison Records/Official Correspondence/Lost		1						
Prison Records/Official Correspondence/ Wrongful disclosure of information		1						
Records management								
Regulation and Enforcement/Complaint handling								
Regulation and Enforcement/Enforcement Action/ Excessive		7		4	6	1	1	
Regulation and Enforcement/Enforcement Action/ Insufficient					1			
Regulation and Enforcement/Enforcement Action/ Unfair		9	1	4	14		3	
Regulation and Enforcement/Fees					8			
Regulation and Enforcement/Infringements/ Excessive penalty		1			4			
Regulation and Enforcement/Infringements/ Incorrect details					1			
Regulation and Enforcement/Infringements/ Unreasonably issued					6			
Regulation and Enforcement/Inspections					3			
Regulation and Enforcement/Licensing/Conditions					13	2		
Regulation and Enforcement/Licensing/Refusal					7			1
Regulation and Enforcement/Licensing/Renewal					7			
Regulation and Enforcement/Permits			1		1			

Revenue Collection/Land Tax								
Revenue Collection/Stamp duty					1			
Roads and Traffic/Licensing/Conditions					8			
Roads and Traffic/Licensing/Demerit points					2			
Roads and Traffic/Licensing/Fail to issue renewal					5			
Roads and Traffic/Licensing/Fees/Charges					1			
Roads and Traffic/Licensing/Medical test					4			
Roads and Traffic/Licensing/Tests					4			
Roads and Traffic/Registration/Conditions					3			
Roads and Traffic/Registration/Failure to issue renewal					6			
Roads and Traffic/Registration/Fees/Charges					5			
Roads and Traffic/Road Management					7			
Sentence Management/Classification		2						
Sentence Management/Parole		11						
Sentence Management/Placement/Location		22						
Sentence Management/Transfers		34					1	
Service Delivery/Abuse in care		2		1			1	
Service Delivery/Assessment		1		4	2			
Service Delivery/Conditions		2		8	4		2	
Service Delivery/Debts					1			
Service Delivery/Eligibility for services		10		7	4		4	
Service Delivery/Failure to Act/Provide	1	17	2	20	18	1	5	3
Service Delivery/Fees and Charges		1	2		11		6	1
Service Delivery/Financial assistance			1	1			1	
Service Delivery/Quality	2	9		11	15		2	
Service Delivery/Termination of services			1		1	1	3	2
Superannuation								
<b>Total</b>	<b>8</b>	<b>578</b>	<b>15</b>	<b>127</b>	<b>262</b>	<b>7</b>	<b>72</b>	<b>28</b>

	Dept of Health	DPLG	Dept of Primary Industries	DPC	DTF	DWLBC	Electoral Commission of SA	Environment Protection Authority
Abuse or Assault/Physical/By other detainees								
Abuse or Assault/Physical/By staff								
Abuse or Assault/Sexual/By other detainees								
Abuse or Assault/Verbal/Harassment/Threats/By other detainees								
Abuse or Assault/Verbal/Harassment/Threats/By staff								
Advice								
Complaint Handling/Delay			1	1	2		1	3
Complaint Handling/Inadequate processes		1		2	3		2	4
Complaint Handling/Inadequate reasons	1						1	
Complaint Handling/Inadequate remedy				1				
Complaint Handling/Wrong conclusion			1	2				
Conduct/Assault								
Conduct/Discourtesy	1							
Conduct/Misconduct	1			3				
Correspondence/Communications/Records/Delayed/No response	1							1
Correspondence/Communications/Records/Incorrect					1			
Correspondence/Communications/Records/Lost								
Correspondence/Communications/Records/Withholding of information			1		1			
Correspondence/Communications/Records/Wrongful disclosure of information								
Custodial Services/Buildings and facilities								
Custodial Services/Canteen								
Custodial Services/Cell conditions								
Custodial Services/Clothing/Footwear								
Custodial Services/Employment								
Custodial Services/Food								
Custodial Services/Health related services								
Custodial Services/Legal resources								
Custodial Services/Prisoner accounts								
Custodial Services/Prisoner mail								
Custodial Services/Property								
Custodial Services/Recreation programs & services								
Custodial Services/Rehabilitation programs								
Custodial Services/Telephone								
Employment	1		1		1			
Financial/Procurement/Facilities/Compensation/Damage/Acquisition of land								
Financial/Procurement/Facilities/Compensation/Damage/Physical injury								
Financial/Procurement/Facilities/Compensation/Damage/Property lost/Damaged								
Financial/Procurement/Facilities/Compensation/Damage/Psychological injury								
Financial/Procurement/Facilities/Debts					2			1
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Cost of use								
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Denial of use								

Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Drainage							
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Fencing							
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Inadequate							
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Nuisance							
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Sale/Lease							
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Unsafe condition							
Financial/Procurement/Facilities/ Procurement by Agencies/Decisions					1		
Financial/Procurement/Facilities/ Procurement by Agencies/Late payment	1						1
FOI advice	1	3	1	6	2		2
FOI practices and procedures			1				
Home Detention							
Prison Management/Discipline/Security/Daily regimen							
Prison Management/Discipline/Security/Discipline/ Management							
Prison Management/Discipline/Security/Drug testing							
Prison Management/Discipline/Security/Inspections/ Body searches							
Prison Management/Discipline/Security/Protection							
Prison Management/Discipline/Security/Transport							
Prison Management/Discipline/Security/Visits							
Prison Records/Official Correspondence/ Delayed/No response							
Prison Records/Official Correspondence/ Improper access by staff							
Prison Records/Official Correspondence/Incorrect							
Prison Records/Official Correspondence/Lost							
Prison Records/Official Correspondence/ Wrongful disclosure of information							
Records management				1			
Regulation and Enforcement/Complaint handling							1
Regulation and Enforcement/Enforcement Action/ Excessive			1		1		
Regulation and Enforcement/Enforcement Action/ Insufficient							2
Regulation and Enforcement/Enforcement Action/ Unfair						1	
Regulation and Enforcement/Fees					6	1	
Regulation and Enforcement/Infringements/ Excessive penalty							1
Regulation and Enforcement/Infringements/ Incorrect details							
Regulation and Enforcement/Infringements/ Unreasonably issued							
Regulation and Enforcement/Inspections							3
Regulation and Enforcement/Licensing/Conditions							
Regulation and Enforcement/Licensing/Refusal						1	
Regulation and Enforcement/Licensing/Renewal			1				
Regulation and Enforcement/Permits							
Revenue Collection/Land Tax					24		
Revenue Collection/Stamp duty					4		
Roads and Traffic/Licensing/Conditions							
Roads and Traffic/Licensing/Demerit points							
Roads and Traffic/Licensing/Fail to issue renewal							
Roads and Traffic/Licensing/Fees/Charges							
Roads and Traffic/Licensing/Medical test							



Roads and Traffic/Licensing/Tests								
Roads and Traffic/Registration/Conditions								
Roads and Traffic/Registration/Failure to issue renewal								
Roads and Traffic/Registration/Fees/Charges								
Roads and Traffic/Road Management								
Sentence Management/Classification								
Sentence Management/Parole								
Sentence Management/Placement/Location								
Sentence Management/Transfers								
Service Delivery/Abuse in care								
Service Delivery/Assessment	1							
Service Delivery/Conditions					1			1
Service Delivery/Debts								
Service Delivery/Eligibility for services								
Service Delivery/Failure to Act/Provide	5	1	1		2		1	
Service Delivery/Fees and Charges					1			
Service Delivery/Financial assistance								
Service Delivery/Quality	7						2	
Service Delivery/Termination of services								
Superannuation					1			
<b>Total</b>	<b>20</b>	<b>5</b>	<b>9</b>	<b>16</b>	<b>53</b>	<b>2</b>	<b>9</b>	<b>19</b>

#### Government Departments

#### Approaches & Complaints Received: Issues 1 July 2010 to 30 June 2011

	Office of Public Employment	SA Housing Trust	SA Police	SA Water Corporation	Grand Total
Abuse or Assault/Physical/By other detainees					2
Abuse or Assault/Physical/By staff					6
Abuse or Assault/Sexual/By other detainees					1
Abuse or Assault/Verbal/Harassment/Threats/By other detainees					4
Abuse or Assault/Verbal/Harassment/Threats/By staff					9
Advice		1			2
Complaint Handling/Delay		34		3	72
Complaint Handling/Inadequate processes		45		10	141
Complaint Handling/Inadequate reasons		7		7	30
Complaint Handling/Inadequate remedy		25		4	50
Complaint Handling/Wrong conclusion		5		2	18
Conduct/Assault					2
Conduct/Discourtesy		7			20
Conduct/Misconduct		3		1	36
Correspondence/Communications/Records/Delayed/No response		7		4	30
Correspondence/Communications/Records/Incorrect		3		6	35
Correspondence/Communications/Records/Lost		3			8
Correspondence/Communications/Records/Withholding of information		2			9
Correspondence/Communications/Records/Wrongful disclosure of information		1			12
Custodial Services/Buildings and facilities					4
Custodial Services/Canteen					5
Custodial Services/Cell conditions					25
Custodial Services/Clothing/Footwear					6

Custodial Services/Employment				5
Custodial Services/Food				18
Custodial Services/Health related services				52
Custodial Services/Legal resources				3
Custodial Services/Prisoner accounts				10
Custodial Services/Prisoner mail				21
Custodial Services/Property				71
Custodial Services/Recreation programs & services				4
Custodial Services/Rehabilitation programs				3
Custodial Services/Telephone				26
Employment			1	11
Financial/Procurement/Facilities/Compensation/Damage/Acquisition of land				1
Financial/Procurement/Facilities/Compensation/Damage/Physical injury				1
Financial/Procurement/Facilities/Compensation/Damage/Property lost/Damaged	1		4	9
Financial/Procurement/Facilities/Compensation/Damage/Psychological injury				1
Financial/Procurement/Facilities/Debts	6		12	25
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Cost of use	4		8	13
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Denial of use			1	1
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Drainage			1	2
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Fencing				1
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Inadequate	3		1	4
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Nuisance	2			2
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Sale/Lease				1
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Unsafe condition	5			5
Financial/Procurement/Facilities/Procurement by Agencies/Decisions				2
Financial/Procurement/Facilities/Procurement by Agencies/Late payment				4
FOI advice		4	8	48
FOI practices and procedures				3
Home Detention				7
Prison Management/Discipline/Security/Daily regimen				26
Prison Management/Discipline/Security/Discipline/Management				40
Prison Management/Discipline/Security/Drug testing				9
Prison Management/Discipline/Security/Inspections/Body searches				3
Prison Management/Discipline/Security/Protection				4
Prison Management/Discipline/Security/Transport				4
Prison Management/Discipline/Security/Visits				11
Prison Records/Official Correspondence/Delayed/No response				1
Prison Records/Official Correspondence/Improper access by staff				1
Prison Records/Official Correspondence/Incorrect				4
Prison Records/Official Correspondence/Lost				1
Prison Records/Official Correspondence/Wrongful disclosure of information				1
Records management				1
Regulation and Enforcement/Complaint handling	2			3
Regulation and Enforcement/Enforcement Action/Excessive	3		3	27
Regulation and Enforcement/Enforcement Action/Insufficient	1			4
Regulation and Enforcement/Enforcement Action/Unfair	8		2	42
Regulation and Enforcement/Fees	2		10	27
Regulation and Enforcement/Infringements/Excessive penalty				6
Regulation and Enforcement/Infringements/Incorrect details				1
Regulation and Enforcement/Infringements/Unreasonably issued				6
Regulation and Enforcement/Inspections	1			7
Regulation and Enforcement/Licensing/Conditions			1	16
Regulation and Enforcement/Licensing/Refusal				9
Regulation and Enforcement/Licensing/Renewal				8
Regulation and Enforcement/Permits				2
Revenue Collection/Land Tax				24
Revenue Collection/Stamp duty				5
Roads and Traffic/Licensing/Conditions				8

Roads and Traffic/Licensing/Demerit points					2
Roads and Traffic/Licensing/Fail to issue renewal					5
Roads and Traffic/Licensing/Fees/Charges					1
Roads and Traffic/Licensing/Medical test					4
Roads and Traffic/Licensing/Tests					4
Roads and Traffic/Registration/Conditions					3
Roads and Traffic/Registration/Failure to issue renewal					6
Roads and Traffic/Registration/Fees/Charges					5
Roads and Traffic/Road Management					7
Sentence Management/Classification					2
Sentence Management/Parole					11
Sentence Management/Placement/Location					22
Sentence Management/Transfers					34
Service Delivery/Abuse in care					4
Service Delivery/Assessment		1		1	12
Service Delivery/Conditions		11		2	30
Service Delivery/Debts		7		4	12
Service Delivery/Eligibility for services		19		3	47
Service Delivery/Failure to Act/Provide		90		3	170
Service Delivery/Fees and Charges		30		76	128
Service Delivery/Financial assistance		1			4
Service Delivery/Quality	1	13		12	74
Service Delivery/Termination of services		9			17
Superannuation					1
<b>Total</b>	<b>1</b>	<b>366</b>	<b>8</b>	<b>182</b>	<b>1787</b>

## Local Government

Approaches & Complaints Received: Issues  
1 July 2010 to 30 June 2011

	Adelaide Hills	Alexandrina	Berri Barmera	Campbelltown	City of Adelaide	City of Burnside	City of Charles Sturt	Holdfast Bay	City of Marion	City of Mitcham	City of Mt Gambier
Complaint handling/Delay	1					1	2		2	1	1
Complaint handling/Inadequate processes	2	1		2	1	1	1	5	4	5	
Complaint handling/Inadequate reasons					2		2		1		
Complaint handling/Inadequate remedy	1	3		1	2	1	3	1	4	2	
Complaint handling/Wrong conclusion	2			2	1	2	1	1	1	1	
Conduct/Discourtesy	1				1			2			
Conduct/Failure to declare conflict of interest							1				
Conduct/Failure to follow proper process											
Conduct/Misconduct	5	1		1	3		6		1		
Correspondence/Communications/Records/Access		1			1					1	
Correspondence/Communications/Records/ Delay/No response			1				1			4	
Correspondence/Communications/Records/ Improper access by staff											
Correspondence/Communications/Records/Incorrect					2		1			2	
Correspondence/Communications/Records/ Wrongful disclosure of information						1					
Financial/Procurement/Facilities/Compensation/ Damage/Acquisition of land										1	

Financial/Procurement/Facilities/Compensation/ Damage/Physical injury			1						
Financial/Procurement/Facilities/Compensation/ Damage/ Property lost/ Damaged						1		1	2
Financial/Procurement/Facilities/Debts/Incorrect calculation									
Financial/Procurement/Facilities/Debts/Recovery action									
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Building									1
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Drainage			2						
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Parks and gardens		1							
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Recreational facilities								1	
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Roads/Streets		1	1			1		1	
Financial/Procurement/Facilities/Other fees and charges		1			2	1		3	1
Financial/Procurement/Facilities/ Procurement by agencies/Decisions		1							
Financial/Procurement/Facilities/ Procurement by agencies/Late payment									
Financial/Procurement/Facilities/Rates/Administration				1		1			
Financial/Procurement/Facilities/Rates/Amount			1		2	1			1
Financial/Procurement/Facilities/Rates/Recovery action				1					
Financial/Procurement/Facilities/Rates/Valuations			1		2				
FOI advice		2	2		1	1		2	3
FOI practices and procedures									
Governance/Confidentiality									
Governance/Failure to follow proper process (Governance)									
Governance/Public consultation						1			
Records management									
Regulation and enforcement/Animals/Excessive action					1	1			
Regulation and enforcement/Animals/ Failure to act on complaints									
Regulation and enforcement/Building/ Failure to enforce condition									
Regulation and enforcement/Building/ Failure/Delay to issue permit					1				
Regulation and enforcement/Building/ Inappropriate construction allowed			1		1	2			
Regulation and enforcement/Building/ Unreasonable conditions imposed						1			
Regulation and enforcement/Building/ Unreasonable enforcement									1
Regulation and enforcement/Environmental protection/ Excessive action						1			
Regulation and enforcement/Environmental Protection/ Failure to action on complaints									
Regulation and enforcement/Local laws/Failure to enforce									2
Regulation and enforcement/Local laws/ Improper/Inappropriate						1	1		1
Regulation and enforcement/Local laws/ Unreasonable enforcement					1	2			
Regulation and enforcement/Nuisances/ Failure to action on complaints									
Regulation and enforcement/Parking/Permits						1		1	
Regulation and enforcement/Parking/Restrictions			1		1				
Regulation and enforcement/Parking/ Failure to enforce restrictions				1	37	9	3	2	4
Regulation and enforcement/Parking/ Unreasonable enforcement		1				1	1	1	
Regulation and enforcement/Planning & Development/ Failure to enforce condition		1		1		1			

Regulation and enforcement/Planning & Development/ Failure to notify							1			3	
Regulation and enforcement/Planning & Development/ Failure/ Delay to issue permit	3	1			2	1	5	1	1		1
Regulation and enforcement/Planning & Development/ Inappropriate development allowed	3	2			1	1	1		1	1	
Regulation and enforcement/Planning & Development/ Unreasonable conditions imposed	1						1			1	
Regulation and enforcement/Public health/ Failure to act on complaints											
Regulation and enforcement/Public health/ Quality of service delivered		1									
Regulation and enforcement/Public health/ Unreasonable conditions imposed											
Regulation and enforcement/Public health/ Unreasonable enforcement											
Whistleblower Protection Act advice											
<b>Total</b>	<b>27</b>	<b>19</b>	<b>4</b>	<b>9</b>	<b>65</b>	<b>12</b>	<b>49</b>	<b>15</b>	<b>26</b>	<b>36</b>	<b>4</b>

## Local Government

## Approaches & Complaints Received: Issues 1 July 2010 to 30 June 2011

	City of Norwood Payneham St Peters	City of Onkaparinga	City of Playford	City of Pt Adelaide Enfield	City of Pt Lincoln	City of Prospect	City of Salisbury	City of Tea Tree Gully	City of Unley	City of Victor Harbor	City of West Torrens
Complaint handling/Delay	2	1		4			1	2			1
Complaint handling/Inadequate processes	1	3		4		2	2	2			4
Complaint handling/Inadequate reasons		2		1		1	1	2		1	
Complaint handling/Inadequate remedy		2	2	2			6	4	2	1	1
Complaint handling/Wrong conclusion				2			1			1	
Conduct/Discourtesy						2		1			
Conduct/Failure to declare conflict of interest											
Conduct/Failure to follow proper process											
Conduct/Misconduct	2			3			1	3	1	1	4
Correspondence/Communications/Records/Access			1								
Correspondence/Communications/Records/ Delay/No response	1	1	1	1				1	1		
Correspondence/Communications/Records/ Improper access by staff											
Correspondence/Communications/Records/Incorrect		1		1				1		1	
Correspondence/Communications/Records/ Wrongful disclosure of information		1		1							
Financial/Procurement/Facilities/Compensation/ Damage/Acquisition of land											
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury	1										
Financial/Procurement/Facilities/Compensation/ Damage/ Property lost/Damaged		1	1	1			1		1		1
Financial/Procurement/Facilities/Debts/Incorrect calculation		1									
Financial/Procurement/Facilities/Debts/Recovery action			1	1				1			
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Building											

Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Drainage		1					1			
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Parks and gardens									1	
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Recreational facilities	1		1							
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Roads/Streets				1						1
Financial/Procurement/Facilities/Other fees and charges	1	3	2	2		1	1	2		1
Financial/Procurement/Facilities/ Procurement by agencies/ Decisions		1								
Financial/Procurement/Facilities/ Procurement by agencies/Late payment		1								
Financial/Procurement/Facilities/Rates/Administration			1							
Financial/Procurement/Facilities/Rates/Amount	1	1		1						
Financial/Procurement/Facilities/Rates/Recovery action		1	2		1			1		
Financial/Procurement/Facilities/Rates/Valuations										
FOI advice		2	2	1		1		1	1	1
FOI practices and procedures										
Governance/Confidentiality										
Governance/Failure to follow proper process (Governance)										
Governance/Public consultation										
Records management										
Regulation and enforcement/Animals/Excessive action		1	1				3	2		
Regulation and enforcement/Animals/ Failure to act on complaints								1		
Regulation and enforcement/Building/ Failure to enforce condition		1								
Regulation and enforcement/Building/ Failure/Delay to issue permit		1								
Regulation and enforcement/Building/ Inappropriate construction allowed		1				1		2		1
Regulation and enforcement/Building/ Unreasonable conditions imposed			1							
Regulation and enforcement/Building/ Unreasonable enforcement										1
Regulation and enforcement/ Environmental protection/Excessive action										
Regulation and enforcement/Environmental Protection/ Failure to action on complaints										
Regulation and enforcement/Local laws/Failure to enforce						1				
Regulation and enforcement/Local laws/ Improper/Inappropriate					1					1
Regulation and enforcement/Local laws/ Unreasonable enforcement			1			1	2			
Regulation and enforcement/Nuisances/ Failure to action on complaints		1	1						1	1
Regulation and enforcement/Parking/Permits				1						
Regulation and enforcement/Parking/Restrictions			1							
Regulation and enforcement/Parking/ Failure to enforce restrictions	2	2	3	5		5	3	6	1	3
Regulation and enforcement/Parking/ Unreasonable enforcement								1		
Regulation and enforcement/Planning & Development/ Failure to enforce condition	1	1	2	3		1	1	1	1	1
Regulation and enforcement/Planning & Development/ Failure to notify				1			1			1
Regulation and enforcement/Planning & Development/ Failure/ Delay to issue permit		3	1	1	1	1		1	1	1
Regulation and enforcement/Planning & Development/ Inappropriate development allowed	1		1	1				4		
Regulation and enforcement/Planning & Development/ Unreasonable conditions imposed	2	3	1	1		2			1	1

Regulation and enforcement/Public health/ Failure to act on complaints									1		
Regulation and enforcement/Public health/ Quality of service delivered		1									
Regulation and enforcement/Public health/ Unreasonable conditions imposed				1							
Regulation and enforcement/Public health/ Unreasonable enforcement	1	1		1							
Whistleblower Protection Act advice											
<b>Total</b>	<b>17</b>	<b>39</b>	<b>27</b>	<b>41</b>	<b>3</b>	<b>19</b>	<b>24</b>	<b>40</b>	<b>12</b>	<b>11</b>	<b>26</b>

## Local Government

## Approaches & Complaints Received: Issues 1 July 2010 to 30 June 2011

	Clare & Gilbert Valleys	Coorong	Corp City of Whyalla	Corp Town of Walkerville	DC Barunga West	DC Ceduna	DC Coober Pedy	DC Eliston	DC Franklin Harbour	DC Grant	DC Karoonda East Murray
Complaint handling/Delay			1								
Complaint handling/Inadequate processes					1	1	2	1			
Complaint handling/Inadequate reasons								1			
Complaint handling/Inadequate remedy											
Complaint handling/Wrong conclusion				1			1				1
Conduct/Discourtesy											
Conduct/Failure to declare conflict of interest											
Conduct/Failure to follow proper process											
Conduct/Misconduct				1		3					
Correspondence/Communications/Records/Access											
Correspondence/Communications/Records/ Delay/No response	1		1								
Correspondence/Communications/Records/ Improper access by staff											
Correspondence/Communications/Records/Incorrect	1										
Correspondence/Communications/Records/ Wrongful disclosure of information											
Financial/Procurement/Facilities/Compensation/ Damage/Acquisition of land											
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury											
Financial/Procurement/Facilities/Compensation/ Damage/ Property lost/ Damaged											
Financial/Procurement/Facilities/Debts/Incorrect calculation											
Financial/Procurement/Facilities/Debts/Recovery action											
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Building											
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Drainage									1		
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Parks and gardens											
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Recreational facilities											
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Roads/Streets		1						1			
Financial/Procurement/Facilities/Other fees and charges			1								



Financial/Procurement/Facilities/Procurement by agencies/ Decisions												
Financial/Procurement/Facilities/Procurement by agencies/ Late payment												
Financial/Procurement/Facilities/Rates/Administration							1					
Financial/Procurement/Facilities/Rates/Amount												
Financial/Procurement/Facilities/Rates/Recovery action								1				
Financial/Procurement/Facilities/Rates/Valuations	1											
FOI advice							1					
FOI practices and procedures												
Governance/Confidentiality												
Governance/Failure to follow proper process (Governance)												
Governance/Public consultation												
Records management												
Regulation and enforcement/Animals/Excessive action											1	
Regulation and enforcement/Animals/ Failure to act on complaints	1											
Regulation and enforcement/Building/ Failure to enforce condition			1									
Regulation and enforcement/Building/Failure/ Delay to issue permit												
Regulation and enforcement/Building/ Inappropriate construction allowed				1								
Regulation and enforcement/Building/ Unreasonable conditions imposed	1											
Regulation and enforcement/Building/ Unreasonable enforcement												
Regulation and enforcement/Environmental protection/ Excessive action												
Regulation and enforcement/Environmental Protection/ Failure to action on complaints												
Regulation and enforcement/Local laws/Failure to enforce												
Regulation and enforcement/Local laws/ Improper/Inappropriate												
Regulation and enforcement/Local laws/ Unreasonable enforcement						1	1					
Regulation and enforcement/Nuisances/ Failure to action on complaints												
Regulation and enforcement/Parking/Permits												
Regulation and enforcement/Parking/Restrictions												
Regulation and enforcement/Parking/ Failure to enforce restrictions						1						
Regulation and enforcement/Parking/ Unreasonable enforcement												
Regulation and enforcement/Planning & Development/ Failure to enforce condition											1	
Regulation and enforcement/Planning & Development/ Failure to notify						1						
Regulation and enforcement/Planning & Development/ Failure/ Delay to issue permit							1					
Regulation and enforcement/Planning & Development/ Inappropriate development allowed	2		1		1							
Regulation and enforcement/Planning & Development/ Unreasonable conditions imposed			1									
Regulation and enforcement/Public health/ Failure to act on complaints												
Regulation and enforcement/Public health/ Quality of service delivered					1							
Regulation and enforcement/Public health/ Unreasonable conditions imposed												
Regulation and enforcement/Public health/ Unreasonable enforcement												
Whistleblower Protection Act advice								1				
<b>Total</b>	<b>7</b>	<b>1</b>	<b>6</b>	<b>3</b>	<b>3</b>	<b>7</b>	<b>8</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>1</b>	

	DC Lower Eyre Peninsula	DC Loxton Waikerie	DC Mallala	DC Mt Barker	DC Mt Remarkable	DC Orroroo/Carrieton	DC Renmark Paringa	DC Robe	DC Streaky Bay	DC Copper Coast	DC Tumby Bay
Complaint handling/Delay	1			2	1					2	
Complaint handling/Inadequate processes	1		4	1						3	
Complaint handling/Inadequate reasons			1	1						1	
Complaint handling/Inadequate remedy		1							2	2	
Complaint handling/Wrong conclusion											
Conduct/Discourtesy											
Conduct/Failure to declare conflict of interest											
Conduct/Failure to follow proper process					1						
Conduct/Misconduct			1	1		1		1			
Correspondence/Communications/Records/Access											
Correspondence/Communications/Records/ Delay/No response	1			2						1	
Correspondence/Communications/Records/ Improper access by staff											
Correspondence/Communications/Records/Incorrect	1				1						
Correspondence/Communications/Records/ Wrongful disclosure of information											
Financial/Procurement/Facilities/Compensation/ Damage/Acquisition of land											
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury											
Financial/Procurement/Facilities/Compensation/ Damage/Property lost/ Damaged			1								
Financial/Procurement/Facilities/Debts/Incorrect calculation											
Financial/Procurement/Facilities/Debts/Recovery action											
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Building											
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Drainage			1	1							
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Parks and gardens											
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Recreational facilities											
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Roads/Streets											
Financial/Procurement/Facilities/Other fees and charges			2	1	1					1	
Financial/Procurement/Facilities/ Procurement by agencies/Decisions											
Financial/Procurement/Facilities/ Procurement by agencies/Late payment											
Financial/Procurement/Facilities/Rates/Administration			1								
Financial/Procurement/Facilities/Rates/Amount										2	
Financial/Procurement/Facilities/Rates/Recovery action						1					
Financial/Procurement/Facilities/Rates/Valuations											
FOI advice					1						
FOI practices and procedures											
Governance/Confidentiality											
Governance/Failure to follow proper process (Governance)											
Governance/Public consultation											
Records management											
Regulation and enforcement/Animals/Excessive action		1					2				

Regulation and enforcement/Animals/ Failure to act on complaints											
Regulation and enforcement/Building/ Failure to enforce condition											
Regulation and enforcement/Building/ Failure/Delay to issue permit				1							
Regulation and enforcement/Building/ Inappropriate construction allowed											
Regulation and enforcement/Building/ Unreasonable conditions imposed											
Regulation and enforcement/Building/ Unreasonable enforcement			1								
Regulation and enforcement/Environmental protection/ Excessive action											
Regulation and enforcement/Environmental Protection/ Failure to action on complaints										1	
Regulation and enforcement/Local laws/Failure to enforce											
Regulation and enforcement/Local laws/ Improper/Inappropriate											
Regulation and enforcement/Local laws/ Unreasonable enforcement											
Regulation and enforcement/Nuisances/ Failure to action on complaints											
Regulation and enforcement/Parking/Permits											
Regulation and enforcement/Parking/Restrictions											
Regulation and enforcement/Parking/ Failure to enforce restrictions											
Regulation and enforcement/Parking/ Unreasonable enforcement											
Regulation and enforcement/Planning & Development/ Failure to enforce condition					1			1		1	1
Regulation and enforcement/Planning & Development/ Failure to notify										1	
Regulation and enforcement/Planning & Development/ Failure/ Delay to issue permit			1	1	1						
Regulation and enforcement/Planning & Development/ Inappropriate development allowed	2		1	3						1	
Regulation and enforcement/Planning & Development/ Unreasonable conditions imposed	1									2	
Regulation and enforcement/Public health/ Failure to act on complaints			1								
Regulation and enforcement/Public health/ Quality of service delivered											
Regulation and enforcement/Public health/ Unreasonable conditions imposed											
Regulation and enforcement/Public health/ Unreasonable enforcement											
Whistleblower Protection Act advice											
<b>Total</b>	<b>7</b>	<b>2</b>	<b>15</b>	<b>14</b>	<b>7</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>18</b>	<b>1</b>

	DC Yankallila	DC Yorke Peninsula	Kangaroo Island	Light Regional	Mid Murray	Naracoorte Lucindale	Northern Areas	Pt Augusta City	Pt Pirie Regional	Goyder	Roxby
Complaint handling/Delay				1	1		2			1	
Complaint handling/Inadequate processes	3				4		1		1		1
Complaint handling/Inadequate reasons											
Complaint handling/Inadequate remedy		2	1	2		1					
Complaint handling/Wrong conclusion											
Conduct/Discourtesy											
Conduct/Failure to declare conflict of interest								1			
Conduct/Failure to follow proper process											
Conduct/Misconduct			2	1						1	
Correspondence/Communications/Records/Access					1						
Correspondence/Communications/Records/Delay/No response	1			1			1		1		
Correspondence/Communications/Records/Improper access by staff								1			
Correspondence/Communications/Records/Incorrect											
Correspondence/Communications/Records/Wrongful disclosure of information											
Financial/Procurement/Facilities/Compensation/Damage/Acquisition of land											
Financial/Procurement/Facilities/Compensation/Damage/Physical injury											
Financial/Procurement/Facilities/Compensation/Damage/Property lost/ Damaged	1										
Financial/Procurement/Facilities/Debts/Incorrect calculation					1						
Financial/Procurement/Facilities/Debts/Recovery action											
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Building											
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Drainage					1						
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Parks and gardens											
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Recreational facilities		2									
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Roads/Streets				1					1		
Financial/Procurement/Facilities/Other fees and charges		2						1			
Financial/Procurement/Facilities/Procurement by agencies/Decisions		1									
Financial/Procurement/Facilities/Procurement by agencies/Late payment											
Financial/Procurement/Facilities/Rates/Administration			1	1							
Financial/Procurement/Facilities/Rates/Amount	1						1	1	2		6
Financial/Procurement/Facilities/Rates/Recovery action											1
Financial/Procurement/Facilities/Rates/Valuations											
FOI advice			1					2			
FOI practices and procedures				1							
Governance/Confidentiality											
Governance/Failure to follow proper process (Governance)			1								
Governance/Public consultation											
Records management											
Regulation and enforcement/Animals/Excessive action											

Regulation and enforcement/Animals/ Failure to act on complaints			1				1					
Regulation and enforcement/Building/ Failure to enforce condition	1											
Regulation and enforcement/Building/Failure/ Delay to issue permit		1								1		
Regulation and enforcement/Building/ Inappropriate construction allowed												
Regulation and enforcement/Building/ Unreasonable conditions imposed												
Regulation and enforcement/Building/ Unreasonable enforcement												
Regulation and enforcement/Environmental protection/ Excessive action												
Regulation and enforcement/Environmental Protection/ Failure to action on complaints												
Regulation and enforcement/Local laws/Failure to enforce		1										
Regulation and enforcement/Local laws/ Improper/Inappropriate							1					
Regulation and enforcement/Local laws/ Unreasonable enforcement					1							
Regulation and enforcement/Nuisances/ Failure to action on complaints												
Regulation and enforcement/Parking/Permits												
Regulation and enforcement/Parking/Restrictions												
Regulation and enforcement/Parking/ Failure to enforce restrictions												
Regulation and enforcement/Parking/ Unreasonable enforcement			1									
Regulation and enforcement/Planning & Development/ Failure to enforce condition		1										
Regulation and enforcement/Planning & Development/ Failure to notify												
Regulation and enforcement/Planning & Development/ Failure/ Delay to issue permit	1	2										
Regulation and enforcement/Planning & Development/ Inappropriate development allowed	1	1			1		2					
Regulation and enforcement/Planning & Development/ Unreasonable conditions imposed		1		1	3			2	1			
Regulation and enforcement/Public health/ Failure to act on complaints				1	2							
Regulation and enforcement/Public health/ Quality of service delivered												
Regulation and enforcement/Public health/ Unreasonable conditions imposed												
Regulation and enforcement/Public health/ Unreasonable enforcement												
Whistleblower Protection Act advice												
<b>Total</b>	<b>9</b>	<b>14</b>	<b>8</b>	<b>10</b>	<b>15</b>	<b>1</b>	<b>7</b>	<b>10</b>	<b>6</b>	<b>3</b>	<b>8</b>	

	Rural City Murray Bridge	Southern Mallee	Tatiara	Barossa Council	Flinders Ranges	Town Gawler	Wakefield	Wattle Range	Grand Total
Complaint handling/Delay	1						1		33
Complaint handling/Inadequate processes	1						2		67
Complaint handling/Inadequate reasons	1	1		1					20
Complaint handling/Inadequate remedy	1			1				1	52
Complaint handling/Wrong conclusion							1		19
Conduct/Discourtesy		1							8
Conduct/Failure to declare conflict of interest									2
Conduct/Failure to follow proper process									1
Conduct/Misconduct	2	2					6	2	56
Correspondence/Communications/Records/Access						1			6
Correspondence/Communications/Records/Delay/ No response				1				1	24
Correspondence/Communications/Records/ Improper access by staff									1
Correspondence/Communications/Records/Incorrect	1			1			3	1	18
Correspondence/Communications/Records/ Wrongful disclosure of information									3
Financial/Procurement/Facilities/Compensation/ Damage/Acquisition of land									1
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury				1					3
Financial/Procurement/Facilities/Compensation/ Damage/ Property lost/ Damaged									12
Financial/Procurement/Facilities/Debts/ Incorrect calculation									2
Financial/Procurement/Facilities/Debts/Recovery action									3
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Building									1
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Drainage									8
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Parks and gardens		2							4
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Recreational facilities									5
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Roads/Streets									10
Financial/Procurement/Facilities/Other fees and charges					1				31
Financial/Procurement/Facilities/ Procurement by agencies/Decisions							1		4
Financial/Procurement/Facilities/ Procurement by agencies/Late payment									1
Financial/Procurement/Facilities/Rates/Administration	1		1						9
Financial/Procurement/Facilities/Rates/Amount							1		22
Financial/Procurement/Facilities/Rates/Recovery action									9
Financial/Procurement/Facilities/Rates/Valuations								1	5
FOI advice				5					30
FOI practices and procedures									1
Governance/Confidentiality						1			1
Governance/Failure to follow proper process (Governance)									1
Governance/Public consultation									1
Records management		1							1

Regulation and enforcement/Animals/Excessive action									13
Regulation and enforcement/Animals/ Failure to act on complaints							1		5
Regulation and enforcement/Building/ Failure to enforce condition									3
Regulation and enforcement/Building/ Failure/Delay to issue permit									5
Regulation and enforcement/Building/ Inappropriate construction allowed									10
Regulation and enforcement/Building/ Unreasonable conditions imposed	1								4
Regulation and enforcement/Building/ Unreasonable enforcement									3
Regulation and enforcement/Environmental protection/ Excessive action									1
Regulation and enforcement/Environmental protection/ Failure to action on complaints									1
Regulation and enforcement/Local laws/Failure to enforce									4
Regulation and enforcement/Local laws/ Improper/Inappropriate									6
Regulation and enforcement/Local laws/ Unreasonable enforcement	1								11
Regulation and enforcement/Nuisances/ Failure to action on complaints									4
Regulation and enforcement/Parking/Permits									3
Regulation and enforcement/Parking/Restrictions									3
Regulation and enforcement/Parking/ Failure to enforce restrictions									92
Regulation and enforcement/Parking/ Unreasonable enforcement				1					7
Regulation and enforcement/Planning & Development/ Failure to enforce condition								1	22
Regulation and enforcement/Planning & Development/ Failure to notify									9
Regulation and enforcement/Planning & Development/ Failure/ Delay to issue permit						1			34
Regulation and enforcement/Planning & Development/ Inappropriate development allowed									33
Regulation and enforcement/Planning & Development/ Unreasonable conditions imposed	1			2				2	31
Regulation and enforcement/Public health/ Failure to act on complaints	1							1	7
Regulation and enforcement/Public health/ Quality of service delivered									3
Regulation and enforcement/Public health/ Unreasonable conditions imposed									1
Regulation and enforcement/Public health/ Unreasonable enforcement									3
Whistleblower Protection Act advice									1
<b>Total</b>	<b>12</b>	<b>7</b>	<b>1</b>	<b>13</b>	<b>1</b>	<b>3</b>	<b>15</b>	<b>11</b>	<b>794</b>



Other Authorities

Approaches & Complaints Received: Issues  
1 July 2010 to 30 June 2011

	Aboriginal Housing Authority	Adelaide Mt Lofty Ranges NRM Board	Adelaide Health Service	Architects Board of SA	Board of Examiners (Law Society)	Centennial Park Cemetery	Children, Youth & Women's Health Services
Complaint handling/Conflict of interest							
Complaint handling/Delay	1						
Complaint handling/Inadequate processes		1	1	1			
Complaint handling/Inadequate reasons					1		
Complaint handling/Inadequate remedy			1			1	
Complaint handling/Wrong conclusion							
Conduct/Discourtesy							
Conduct/Misconduct			1				
Correspondence/Communications/Records/Delayed/No response			1				
Correspondence/Communications/Records/Incorrect							
Correspondence/Communications/Records/Lost							
Correspondence/Communications/Records/Withholding of information							
Correspondence/Communications/Records/Wrongful disclosure of information							
Employment			1				
Financial/Procurement/Facilities/Compensation/Damage/Physical injury							
Financial/Procurement/Facilities/Debts							
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Cost of use							
Financial/Procurement/Facilities/Procurement by agencies/Decisions							
FOI advice			22				2
FOI practices and procedures			1				
Records management							
Regulation and enforcement/Complaint handling							
Regulation and enforcement/Enforcement action/Excessive		1					
Regulation and enforcement/Enforcement action/Insufficient							
Regulation and enforcement/Enforcement action/Unfair			3				
Regulation and enforcement/Fees							
Regulation and enforcement/Infringements/Excessive penalty							
Regulation and enforcement/Infringements/Inadequate review							
Regulation and enforcement/Infringements/Incorrect details							
Regulation and enforcement/Infringements/Unreasonably issued			1				
Regulation and enforcement/Inspections							
Regulation and enforcement/Licensing/Conditions							
Regulation and enforcement/Licensing/Refusal							
Roads and Traffic/Charges/Fines							
Service Delivery/Assessment			1				
Service Delivery/Conditions			1				
Service Delivery/Eligibility for services			1				
Service Delivery/Failure to act/Provide			7				
Service Delivery/Fees and charges			1			1	
Service Delivery/Financial assistance							
Service Delivery/Quality			12				
Service Delivery/Termination of services			1				
Superannuation							
<b>Total</b>	<b>1</b>	<b>2</b>	<b>56</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>2</b>

	Commissioner for Equal Opportunity	Coroner	Country Health SA	Courts Administration Authority	Dog & Cat Management Board	Domiciliary Care SA	Drug & Alcohol Service SA	Eastern Health Authority	Essential Services Commission	Flinders University
Complaint handling/Conflict of interest										
Complaint handling/Delay										1
Complaint handling/Inadequate processes				1						1
Complaint handling/Inadequate reasons										3
Complaint handling/Inadequate remedy										
Complaint handling/Wrong conclusion										
Conduct/Discourtesy										
Conduct/Misconduct										
Correspondence/Communications/ Records/Delayed/No response										1
Correspondence/Communications/ Records/Incorrect				3						
Correspondence/Communications/ Records/Lost										
Correspondence/Communications/ Records/Withholding of information										
Correspondence/Communications/Records/ Wrongful disclosure of information										
Employment										
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury										
Financial/Procurement/Facilities/Debts				1						
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Cost of use										
Financial/Procurement/Facilities/ Procurement by agencies/Decisions										
FOI advice		1	2							2
FOI practices and procedures			1							
Records management		1								
Regulation and enforcement/Complaint handling	2									
Regulation and enforcement/ Enforcement action/Excessive				1						
Regulation and enforcement/ Enforcement action/Insufficient										
Regulation and enforcement/ Enforcement action/Unfair				4						1
Regulation and enforcement/Fees				2						
Regulation and enforcement/Infringements/ Excessive penalty										1
Regulation and enforcement/Infringements/ Inadequate review										
Regulation and enforcement/Infringements/ Incorrect details				1						
Regulation and enforcement/Infringements/ Unreasonably issued				1				1		
Regulation and enforcement/Inspections										
Regulation and enforcement/Licensing/Conditions									1	
Regulation and enforcement/Licensing/Refusal										
Roads and Traffic/Charges/Fines				1						
Service Delivery/Assessment										
Service Delivery/Conditions			1				1			
Service Delivery/Eligibility for services			1							
Service Delivery/Failure to act/Provide		1				1				1

Service Delivery/Fees and charges				2						
Service Delivery/Financial assistance										
Service Delivery/Quality			2	1	1					
Service Delivery/Termination of services										1
Superannuation										
<b>Total</b>	<b>2</b>	<b>3</b>	<b>7</b>	<b>18</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>12</b>

	Guardianship Board	Health & Community Services Complaints Commission	History Trust of SA	Home Start	Institute of Medical & Veterinary Science	Land Management Corporation	Legal Practitioner Conduct Board	Legal Services Commission	Liquor & Gambling Commission	Lotteries Commission
Complaint handling/Conflict of interest	1									
Complaint handling/Delay	1									
Complaint handling/Inadequate processes	2	8						2		
Complaint handling/Inadequate reasons		7								
Complaint handling/Inadequate remedy		3							1	
Complaint handling/Wrong conclusion		8					1			1
Conduct/Discourtesy	1							1		
Conduct/Misconduct	2									
Correspondence/Communications/Records/Delayed/No response	3				1				1	
Correspondence/Communications/Records/Incorrect										
Correspondence/Communications/Records/Lost										
Correspondence/Communications/Records/ Withholding of information										
Correspondence/Communications/Records/Wrongful disclosure of information		1								
Employment										
Financial/Procurement/Facilities/Compensation/Damage/Physical injury										
Financial/Procurement/Facilities/Debts										
Financial/Procurement/Facilities/Facilities owned/Controlled by Authority/Cost of use										
Financial/Procurement/Facilities/Procurement by agencies/Decisions										
FOI advice	1					2				
FOI practices and procedures										
Records management										
Regulation and enforcement/Complaint handling										
Regulation and enforcement/Enforcement action/Excessive										
Regulation and enforcement/Enforcement action/Insufficient										
Regulation and enforcement/Enforcement action/Unfair										
Regulation and enforcement/Fees										
Regulation and enforcement/Infringements/Excessive penalty										
Regulation and enforcement/Infringements/Inadequate review							1			

Regulation and enforcement/Infringements/ Incorrect details										
Regulation and enforcement/Infringements/ Unreasonably issued										
Regulation and enforcement/Inspections										1
Regulation and enforcement/Licensing/ Conditions										
Regulation and enforcement/Licensing/ Refusal										
Roads and Traffic/Charges/Fines										
Service Delivery/Assessment										1
Service Delivery/Conditions	1									1
Service Delivery/Eligibility for services								7		
Service Delivery/Failure to act/Provide		3		1		1		3		
Service Delivery/Fees and charges			1							
Service Delivery/Financial assistance								1		
Service Delivery/Quality	1	1				1		2		
Service Delivery/Termination of services						1		1		
Superannuation										
<b>Total</b>	<b>13</b>	<b>31</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>5</b>	<b>2</b>	<b>17</b>	<b>4</b>	<b>2</b>

	Motor Accident Commission	Office of Consumer & Business Affairs	Office of the Technical Regulator	Outback Communities Authority	Public Advocate	Public Trustee	Residential Tenancies Tribunal	RSPCA Inspectorate	SA Ambulance Service	SA Country Fire Service
Complaint handling/Conflict of interest										
Complaint handling/Delay	2	3			2	8	1		1	
Complaint handling/Inadequate processes		6			2	3			3	
Complaint handling/Inadequate reasons		2				1			1	
Complaint handling/Inadequate remedy		4							1	
Complaint handling/Wrong conclusion		1								1
Conduct/Discourtesy		1		1		3	1		1	
Conduct/Misconduct		1	2			3				
Correspondence/Communications/ Records/Delayed/No response		2			1	7				
Correspondence/Communications/ Records/Incorrect		1			1	3	1			
Correspondence/Communications/Records/Lost		1								
Correspondence/Communications/ Records/Withholding of information	1				1	2				
Correspondence/Communications/Records/ Wrongful disclosure of information		1			1	1				
Employment										
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury	2									
Financial/Procurement/Facilities/Debts	1					2			1	
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Cost of use						1				
Financial/Procurement/Facilities/ Procurement by agencies/Decisions		1								
FOI advice										
FOI practices and procedures										
Records management										

Regulation and enforcement/Complaint handling		1						1		
Regulation and enforcement/ Enforcement action/Excessive		1								
Regulation and enforcement/ Enforcement action/Insufficient		1								
Regulation and enforcement/ Enforcement action/Unfair		2	1							
Regulation and enforcement/Fees										
Regulation and enforcement/Infringements/ Excessive penalty										
Regulation and enforcement/Infringements/ Inadequate review										
Regulation and enforcement/Infringements/ Incorrect details										
Regulation and enforcement/Infringements/ Unreasonably issued										
Regulation and enforcement/Inspections								1		
Regulation and enforcement/Licensing/Conditions		2								
Regulation and enforcement/Licensing/Refusal										
Roads and Traffic/Charges/Fines										
Service Delivery/Assessment		2				1				
Service Delivery/Conditions		1			1		1			
Service Delivery/Eligibility for services		4				3			1	
Service Delivery/Failure to act/Provide	3	8			3	23				1
Service Delivery/Fees and charges		4				3			6	
Service Delivery/Financial assistance						2				
Service Delivery/Quality	1	12			2	12	1		3	
Service Delivery/Termination of services					1					1
Superannuation										
<b>Total</b>	<b>10</b>	<b>62</b>	<b>3</b>	<b>1</b>	<b>15</b>	<b>78</b>	<b>5</b>	<b>2</b>	<b>18</b>	<b>3</b>

	SA Film Corp	SA Government Financing Authority	SA Metropolitan Fire Service	SACE Board of SA	Sheriff	SA Dental Service	SA Tertiary Admission Centre	SA Tourism Commission	South Eastern Water Conservation & Drainage Board	State Emergency Services
Complaint handling/Conflict of interest										
Complaint handling/Delay										
Complaint handling/Inadequate processes								1		
Complaint handling/Inadequate reasons				1						
Complaint handling/Inadequate remedy										
Complaint handling/Wrong conclusion										
Conduct/Discourtesy										
Conduct/Misconduct					1			1		
Correspondence/Communications/ Records/Delayed/No response										
Correspondence/Communications/ Records/Incorrect										
Correspondence/Communications/Records/Lost										
Correspondence/Communications/ Records/Withholding of information										
Correspondence/Communications/ Records/Wrongful disclosure of information	1									
Employment			1			1				

Financial/Procurement/Facilities/Compensation/ Damage/Physical injury										
Financial/Procurement/Facilities/Debts		1								
Financial/Procurement/Facilities/Facilities owned/ Controlled by Authority/Cost of use										
Financial/Procurement/Facilities/ Procurement by agencies/Decisions										1
FOI advice				1						1
FOI practices and procedures										
Records management										
Regulation and enforcement/Complaint handling										
Regulation and enforcement/ Enforcement action/Excessive										
Regulation and enforcement/ Enforcement action/Insufficient										
Regulation and enforcement/ Enforcement action/Unfair										
Regulation and enforcement/Fees										
Regulation and enforcement/Infringements/ Excessive penalty										
Regulation and enforcement/Infringements/ Inadequate review										
Regulation and enforcement/Infringements/ Incorrect details										
Regulation and enforcement/Infringements/ Unreasonably issued										
Regulation and enforcement/Inspections										
Regulation and enforcement/Licensing/Conditions										
Regulation and enforcement/Licensing/Refusal										
Roads and Traffic/Charges/Fines										
Service Delivery/Assessment				1						
Service Delivery/Conditions										
Service Delivery/Eligibility for services						1	1			
Service Delivery/Failure to act/Provide				1		1				
Service Delivery/Fees and charges										
Service Delivery/Financial assistance										
Service Delivery/Quality										
Service Delivery/Termination of services										
Superannuation										
<b>Total</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>1</b>

	Super SA Board	Teachers Registration Board	University of Adelaide	University of South Australia	WorkCover Corporation	WorkCover Ombudsman	Total
Complaint handling/Conflict of interest							1
Complaint handling/Delay							20
Complaint handling/Inadequate processes	1		2	3	1		39
Complaint handling/Inadequate reasons	1						17
Complaint handling/Inadequate remedy				1			12
Complaint handling/Wrong conclusion	1		1	5			19
Conduct/Discourtesy			1		1		11
Conduct/Misconduct							11
Correspondence/Communications/Records/Delayed/No response			1				18
Correspondence/Communications/Records/Incorrect	1		1				11
Correspondence/Communications/Records/Lost							1
Correspondence/Communications/Records/Withholding of information			1				5
Correspondence/Communications/Records/ Wrongful disclosure of information							5
Employment							3
Financial/Procurement/Facilities/Compensation/Damage/Physical injury							2
Financial/Procurement/Facilities/Debts							6
Financial/Procurement/Facilities/ Facilities owned/Controlled by Authority/Cost of use							1
Financial/Procurement/Facilities/Procurement by agencies/Decisions							2
FOI advice					4		38
FOI practices and procedures							2
Records management							1
Regulation and enforcement/Complaint handling							4
Regulation and enforcement/Enforcement action/Excessive							3
Regulation and enforcement/Enforcement action/Insufficient							1
Regulation and enforcement/Enforcement action/Unfair				1			12
Regulation and enforcement/Fees			1				3
Regulation and enforcement/Infringements/Excessive penalty							1
Regulation and enforcement/Infringements/Inadequate review							1
Regulation and enforcement/Infringements/Incorrect details							1
Regulation and enforcement/Infringements/Unreasonably issued							3
Regulation and enforcement/Inspections							2
Regulation and enforcement/Licensing/Conditions							3
Regulation and enforcement/Licensing/Refusal		1					1
Roads and Traffic/Charges/Fines							1
Service Delivery/Assessment	1						7
Service Delivery/Conditions					1		9
Service Delivery/Eligibility for services	1			1			21
Service Delivery/Failure to act/Provide	4		2		1	1	66
Service Delivery/Fees and charges							18
Service Delivery/Financial assistance	1						4
Service Delivery/Quality	1			1	3		57
Service Delivery/Termination of services			2	3			11
Superannuation	6						6
<b>Total</b>	<b>18</b>	<b>1</b>	<b>12</b>	<b>15</b>	<b>11</b>	<b>1</b>	<b>460</b>

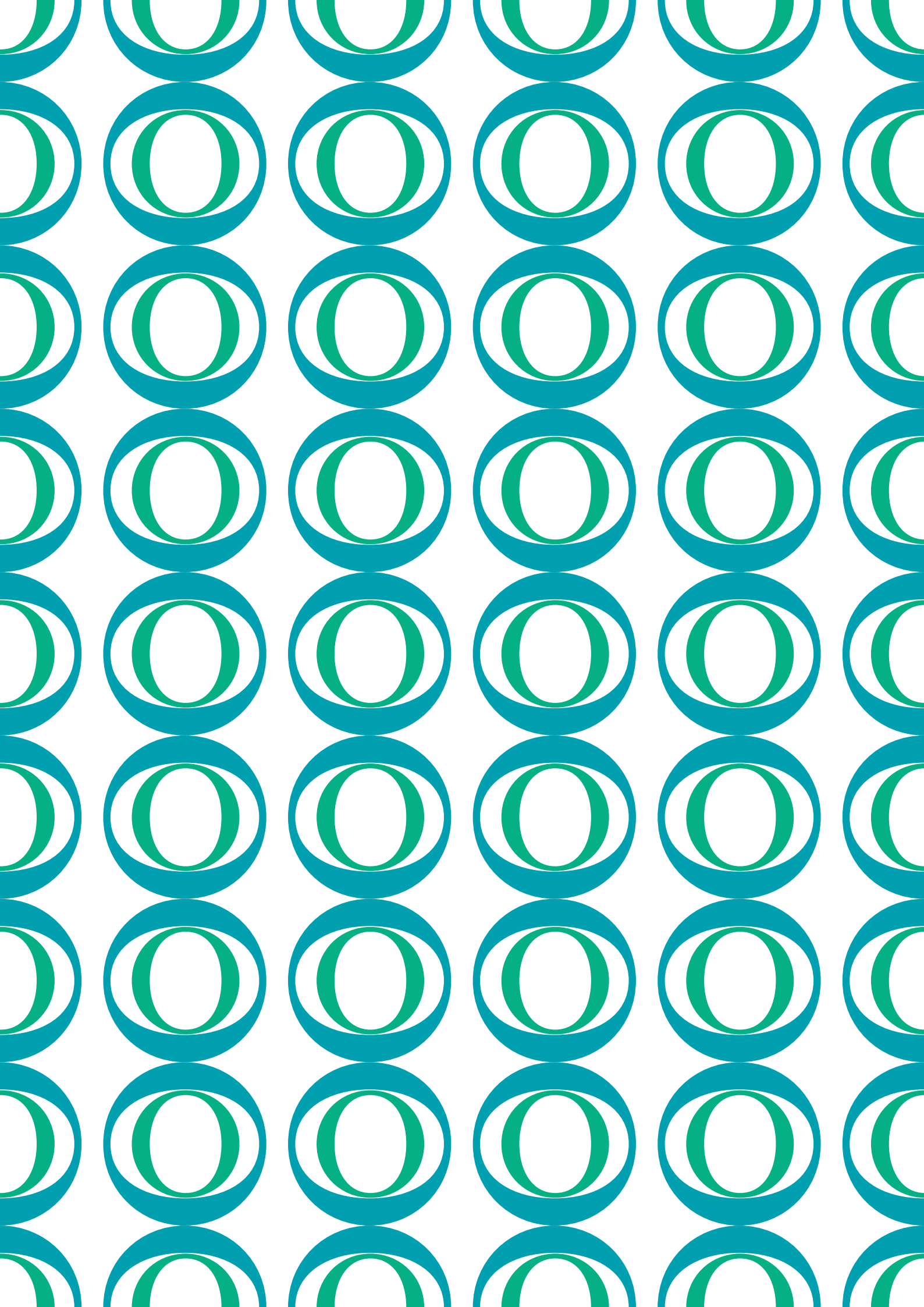


**Contact us**

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 are happy to point you to another agency who may be able to assist.

Visit our website for further information about our services or register your complaint directly online.

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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.



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