

PART 1 ETHICAL CONDUCT

Refer: Attorney-General's Department policies
Code of Ethics for the South Australian Public Sector (Code of Ethics)
Independent Commissioner Against Corruption Act 2012 (ICAC Act)
Ombudsman Act 1972 (Ombudsman Act)
Parliamentary Committees Act 1991 (Parliamentary Committees Act)
Public Sector Act 2009 (Public Sector Act)
State Records Act 1997 (State Records Act)
Whistleblowers Protection Act 1993 (Whistleblowers Protection Act)

1. CODE OF ETHICS

- 1.1. The Code of Ethics made under the Public Sector Act establishes foundations, values and professional conduct standards to guide public sector employees in their professional conduct.
- 1.2. The Code of Ethics is binding on all public sector employees. It is important that Ombudsman SA staff are familiar with the requirements of the Code of Ethics, and conduct themselves in a manner that is consistent with its principles and standards.
- 1.3. A contravention of or a failure to comply with the professional conduct standards set out in the Code of Ethics will constitute misconduct as defined by the Public Sector Act and the ICAC Act. A failure to comply with these standards may result in disciplinary action and/or termination of employment.
- 1.4. Reporting obligations (including those under the ICAC Act) can also arise where a public sector employee reasonably suspects misconduct in the work place. These obligations are discussed below.
- 1.5. In addition to the Code of Ethics, Ombudsman SA staff must have regard to the standards of ethical conduct set out below and AGD's *Professional and Ethical Conduct Policy*. A failure to comply with them may result in disciplinary action, a direction from the Ombudsman and/or termination of employment.

2. MAINTAINING INDEPENDENCE AND IMPARTIALITY

2.1. Independence

- Under the Ombudsman Act, the Ombudsman is independent of government and reports to the SA Parliament.
- The Crime and Public Integrity Policy Committee of the Parliament has oversight over the Ombudsman, as well as over ICAC and the Police Commissioner (Part 5E Parliamentary Committees Act).
- Staff are employed by the Attorney-General's Department (AGD) and assigned to work in the office of the Ombudsman (section 12(1) Ombudsman Act).
- Ombudsman SA uses the corporate services of AGD.

This policy is a guide only. Staff must always refer to relevant legislation.

- Although Ombudsman SA staff are employed by AGD, staff operate under the direction of the Ombudsman (section 12(2a) Ombudsman Act). The Ombudsman's directions prevail over directions given by AGD to the extent of any inconsistency.
- While assigned to the office of the Ombudsman, staff must at all times act in a way that upholds and supports the independence of the Ombudsman.

2.2. Impartiality

- The Ombudsman and staff are objective, independent, and impartial.
- Ombudsman SA does not advocate for any party.

2.3. Conflict of interest

Ombudsman SA is committed to avoiding any perceptions of bias¹ or any actual,² perceived or potential³ conflicts of interest between their public duty and private interest.

The obligation is on staff to identify where it could reasonably be perceived that they could have a conflict of interest (actual, perceived or potential), and to bring it to the attention of the Ombudsman or the Deputy Ombudsman.

The Ombudsman and staff must:

- ensure that their personal beliefs and their private or financial interests do not influence or interfere with the performance of their role
- get approval for any outside employment, engagement or remunerative activity. Any outside engagement or employment must not compromise, or be perceived to compromise, official duties or the integrity of Ombudsman SA
- ensure that the interests of their family members, friends or associates do not influence or interfere with the performance of their role
- ensure that their membership of any board or committee, or any voluntary work they do, does not interfere with the performance of their role
- exercise reasonable judgement to ensure that there are no undisclosed personal relationships between them and any party involved in a matter
- promptly identify, and fully disclose in the Ombudsman SA Conflicts Register, any possible perceptions of bias or conflicts of interest which may be seen to impact on the impartial exercise of their duties in an individual matter or activity, including the name and position held by a relative or close associate employed in any agency whose work or activities are within the jurisdiction of the Ombudsman
- ensure that all conflicts of interest, or potential conflicts of interest, are recorded in the Conflicts Register and on the relevant files in Resolve
- declare on the Conflicts Register any local council to which they pay rates.

¹ **Perceived bias** The test for determining if a staff member could be perceived to have a 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. *Johnson v Johnson* [2000] HCA 48 at 11.

² **Actual conflict of interest:** A staff member has an actual conflict of interest if they have a specific duty relating to their role at Ombudsman SA and they have a personal or private interest which could reasonably be expected to conflict with their ability to act in the public interest in relation to that specific duty in question.

³ **Potential conflict of interest:** A potential conflict of interest exists when the staff member has an external interest or duty that does not presently conflict with their duties at Ombudsman SA but, in view of the types of work that they are regularly involved with, could reasonably be expected to give rise to a conflict of interest at some time in the future.

2.4. Public comment

Staff of Ombudsman SA must:

- refer all requests for public comment to the Ombudsman (or in the absence of the Ombudsman, the Deputy Ombudsman)
- ensure that their comments could not be perceived as official comments from Ombudsman SA and could not raise doubts about their ability to effectively and impartially undertake their official duties.

2.5. Gifts and benefits

The Ombudsman and staff will not be influenced by any attempts (real or perceived) to improperly influence the performance of Ombudsman SA's functions by the giving of gifts or benefits.

The Ombudsman and staff must:

- not, under any circumstances, accept gifts of money in connection with their official duties
- ensure that all gifts and benefits, apart from everyday hospitality, are recorded in the Gift Register. This includes gifts and benefits that are offered but are not accepted. Decisions on whether such gifts may be accepted are made on a case by case basis by the Ombudsman or the Deputy Ombudsman
- not accept gifts or benefits that are intended to, or could be seen to, influence them
- not accept any gift or benefit they believe is offered as a bribe. If any officer of Ombudsman SA believes that they have been offered a bribe they must advise the Ombudsman or the Deputy Ombudsman immediately
- take all reasonable steps to ensure that their family members are not the recipients of gifts or benefits that could be perceived to be an attempt to influence them
- declare any gifts or benefits offered to any family member that arise in connection with their official duties (or that could be perceived to be connected to their official duties).

3. FACILITATING ACCESS TO SERVICES

All Ombudsman SA staff have a role in facilitating access to the office, by ensuring that:

- the services of Ombudsman SA are accessible to all members of the public
- the services of Ombudsman SA are actively promoted, and made readily available, in regional South Australia
- they use plain English in accordance with the Ombudsman SA Style Guide
- the office is sensitive to the needs of people with a disability
- the office is sensitive to the needs of people from different language and cultural backgrounds
- they understand how to use interpreter services
- members of the public are advised about toll free telephone access to the office
- information about services is freely available in print form and on the internet

This policy is a guide only. Staff must always refer to relevant legislation.

- the Ombudsman SA website is kept up to date and is clearly understandable.

4. RESPECTING THE VIEWS OF ALL PARTIES

4.1 Professional behaviour

Staff of Ombudsman SA must:

- not act in a manner that will bring them, Ombudsman SA or the public sector into disrepute
- act in a manner that assists the Ombudsman to effectively discharge the Ombudsman's statutory functions
- treat members of the public, agencies and their colleagues fairly and consistently, in a non-discriminatory manner with proper regard for their rights and obligations, and always with respect and courtesy.

Staff also have the right to modify, curtail or decline contact in response to unacceptable behaviour by any party.

4.2 Discrimination and harassment

Ombudsman SA is committed to ensuring that its workplace is free from all forms of harassment and discrimination.

Staff have the right to expect a safe and healthy work environment.

4.3 Administrative law principles

Ombudsman SA must give effect to the legal entitlements of parties, and must:

- act only within the limits of their delegations
- act in good faith and not arbitrarily or capriciously
- act without bias or a personal interest in the outcome of a matter
- consider all matters and submissions required to be considered and not take into account irrelevant matters
- provide parties with the opportunity to respond to any provisional adverse views about their actions
- form findings that are reasonably based upon the material available
- not make a finding that no reasonable decision-maker could have properly made
- communicate findings to the parties with supporting reasons.

5. FAIRNESS AND INTEGRITY

5.1 Confidentiality

Refer PART 9.

5.2 Offences

Ombudsman SA staff must inform the Ombudsman in writing at the earliest possible opportunity if they are charged with or convicted of any offence, including summary offences (other than offences which are resolved by an expiation notice).

This policy is a guide only. Staff must always refer to relevant legislation.

6. REPORTING UNETHICAL BEHAVIOUR

6.1 Reporting unethical behaviour

Staff are encouraged to report to the Ombudsman, Deputy Ombudsman or an appropriate authority under the Whistleblowers Protection Act, workplace behaviour within Ombudsman SA that they believe could involve:

- misconduct
- maladministration (which includes impropriety and negligence)
- illegal activity
- irregular and unauthorised use of public money
- substantial mismanagement of public resources
- conduct that causes a substantial risk to public health or safety or the environment.

6.2 Reporting obligations to the Office for Public Integrity (OPI)

The Ombudsman must report to OPI any matter that the Ombudsman reasonably suspects involves misconduct or maladministration in public administration in Ombudsman SA (refer Directions given by the ICAC to the Ombudsman pursuant to section 20 of the ICAC Act by letter dated 19 April 2017 and published on the ICAC website).

Ombudsman SA staff are public officers and as such must report serious or systemic misconduct or maladministration in public administration to the OPI unless the public officer knows that the conduct has been reported to the Ombudsman or the OPI.

Refer PART 2 of the Policies.

7. ACCOUNTABILITY IN OUR DEALINGS

7.1 Use of government/public resources

Ombudsman SA staff must:

- not unreasonably use work time, office stationery or equipment for private purposes unless authorised. Infrequent and minor use of public resources (e.g. computers, phones, facsimiles, photocopiers) for private or family purposes will not infringe this rule
- not use their work email for private matters, unless in an emergency or where circumstances may not permit otherwise
- not use public resources for the purpose of private employment, profit or benefit.

7.2 Accountability to Parliament

The Ombudsman is accountable to the public of South Australia through the Parliament. The Ombudsman's performance is reported in the Annual Report which is provided to parliament. See section 29 Ombudsman Act. The Crime and Public Integrity Policy established under the Parliamentary Committees Act has the function of:

This policy is a guide only. Staff must always refer to relevant legislation.

- examining each annual report and other report provided by the Ombudsman to Parliament. See section 150(1)(a)(i) Parliamentary Committees Act
- inquiring into and considering the performance of functions and exercise of powers by the Ombudsman. See section 150(1)(d) Parliamentary Committees Act.

7.3 Record keeping

Staff are required to:

- create and keep full and accurate records of their actions on all files
- be aware of their obligations under the State Records Act
- comply with Ombudsman SA's Policies and Business Rules.

8. RESPONSIVENESS IN OUR SERVICE DELIVERY

Ombudsman SA staff must:

- provide a relevant and responsive service and provide all necessary and appropriate assistance in carrying out their duties
- ensure that all matters are assessed promptly, and endeavour to comply with KPIs
- answer letters, telephone, and email messages promptly
- ensure that regular contact is kept with the parties to a matter
- inform all parties of the outcome of their contact with Ombudsman SA.

This policy is a guide only. Staff must always refer to relevant legislation.