

PART 1A INTERNAL GRIEVANCE PROCEDURE

Refer: Attorney-General's Department (AGD) policies
South Australian Modern Public Sector Enterprise Agreement Salaried 2017
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)
Public Sector Act 2009 (Public Sector Act)

1. INTRODUCTION

- 1.1. This procedure is issued as a direction by the Ombudsman pursuant to section 12(2a) of the Ombudsman Act and relates to the independence of the Ombudsman in exercising functions under the Ombudsman Act.
- 1.2. Although Ombudsman SA staff are employed by AGD under the Public Sector Act, staff operate under the direction of the Ombudsman in carrying out the work of the Ombudsman's Office. The Ombudsman's directions prevail over directions given by AGD to the extent of any inconsistency.
- 1.3. Section 12(2a) directions may be given by the Ombudsman in relation to any work performed for the purpose of the Ombudsman's statutory functions. For example the Ombudsman may give a direction about:
 - 1.3.1 how a complaint is to be assessed and whether it is to be investigated
 - 1.3.2 whether an Ombudsman discretion delegated to a staff member should be exercised to arrive at a certain outcome or in a certain way
 - 1.3.3 what investigations or external reviews will be given priority
 - 1.3.4 who will have conduct of a case and how the case will be conducted
 - 1.3.5 whether a case will be closed or not
 - 1.3.6 the manner and form of communications with agencies and complainants
- 1.4. The Ombudsman is an independent statutory officer and, 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 and the fulfilment by the Ombudsman of the statutory functions under the Ombudsman Act.

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

2. PROCEDURE - SECTION 12(2a) DIRECTIONS

- 2.1 This procedure applies to disagreements about directions issued by the Ombudsman or delegate pursuant to section 12(2a) of the Ombudsman Act.
- 2.2 If Ombudsman SA staff disagree with a section 12(2a) direction, they should firstly discuss their concerns with their line manager.
- 2.3 If the line manager cannot resolve the concerns to the staff members' satisfaction, they are to be raised directly with the Ombudsman, who will review the direction in question and either confirm, vary or rescind the direction.
- 2.4 The Ombudsman will advise the outcome of the review to the relevant staff in writing. The Ombudsman's decision is final in relation to matters within the scope of section 12(2a).

3. PROCEDURE - OTHER WORKPLACE MATTERS

- 3.1 The AGD *Employee Grievance Resolution Guideline and Procedure*¹ (**the Guideline**) applies to other grievances, covering both reviewable employment decisions as well as other grievances².
- 3.2 It is highlighted that the Guideline states that employees will try to resolve their concerns with the relevant person and at a local level³.
- 3.3 Accordingly, based on the content of the Guideline, there should be genuine attempts to address and resolve grievances raised by staff as soon as possible. It is expected that all parties will participate in good faith to resolve grievances.
- 3.4 Consistent with the Guideline, attempts at resolution at the local Ombudsman SA level would typically involve the following:

Step 1: In the first instance, staff will try to resolve concerns directly with the relevant staff or with the manager responsible for the decision that they are aggrieved by.

Step 2: If the individuals are unable to successfully resolve the concern directly or if it is otherwise inappropriate to do so, a grievance may be brought to the Deputy Ombudsman (**the Deputy**), who may require the grievance to be put in writing.

Step 3: The Deputy will attempt to resolve the grievance by firstly discussing it with the relevant staff and, where appropriate, proposing a conciliation process. This may involve consideration of a person from outside the Ombudsman's Office to conduct the conciliation.

Step 4: If a resolution cannot be achieved informally or by conciliation, the Deputy may conduct enquiries into the grievance.

¹ Approved 20 June 2016.

² Grievances about the conduct of statutory officers including the Ombudsman are not covered by the Guideline. Such grievances should be dealt with in accordance with the ICAC Act.

³ Note at Step 1, page 4: '*It is expected that in the first instance employees will always try to resolve concerns directly with the manager responsible for the employment decision and attempt to resolve the grievance at a local level*' and at Step 1, page 6 '*It is expected that in the first instance employees will try to resolve concerns directly with the person concerned and at a local level wherever possible*'.

- A. In the event the grievance is considered to not have merit, the Deputy can dismiss the grievance.
- B. In the event the grievance is substantiated, consultation will occur with the Ombudsman and AGD: Human Resources to consider the most appropriate course of action.

Step 5: The Deputy will advise the relevant staff of the outcome of Step 4 in writing and retain a record of the grievance and outcome.

Step 6: If the matter cannot be resolved at the local level, or the staff member who raised the grievance is dissatisfied with the outcome of Step 4, the processes outlined in the Guideline will continue to be applied. This can include an Internal Review which in many cases is conducted by a member of AGD: Human Resources.

- 3.5 If the grievance is about the Deputy or made by the Deputy, the Ombudsman will handle the grievance in accordance with Steps 2 to 5 above in place of the Deputy.
- 3.6 Please note, this procedure does not apply to workload grievances for the purpose of clause 15.11 of the *South Australian Modern Public Sector Enterprise Agreement Salaried 2017*.

4. MANAGEMENT OF ALLEGED MISCONDUCT OR MALADMINISTRATION WITHIN THE OMBUDSMAN'S OFFICE

- 4.1 Reports alleging misconduct or maladministration within the Ombudsman's Office (including alleged breaches of the professional conduct standards of the Code of Ethics) should be dealt with as follows:
 - 4.1.1 the Ombudsman must report to the Office for Public Integrity (OPI) any matter that the Ombudsman reasonably suspects involves misconduct or maladministration in public administration in the office of the Ombudsman⁴.
 - 4.1.2 Ombudsman SA staff are public officers and accordingly have an obligation, under the ICAC's Directions and Guidelines for Public Officers, to report matters they reasonably suspect involve serious or systemic misconduct or serious or systemic maladministration in public administration to OPI unless they know that the conduct has already been reported to the Ombudsman or the OPI.
 - 4.1.3 to ensure 5.1.2 is complied with, Ombudsman SA staff should themselves report to OPI, any matters they reasonably suspect involve serious or systemic misconduct or serious or systemic maladministration in the office of the Ombudsman where they have reported the matter to the Ombudsman and the Ombudsman has decided not to report the matter to OPI.

⁴ Directions and Guidelines for the South Australian Ombudsman issued pursuant to section 20 of the ICAC Act by letter dated 19 April 2017.

- 4.1.4 Ombudsman SA staff who reasonably suspect misconduct or maladministration in the office of the Ombudsman (which is not serious or systemic) should report that matter to the Ombudsman who will then, where appropriate, comply with 5.1.1, with the proviso that if the suspected misconduct or maladministration concerns the conduct of the Ombudsman, the matter should be reported to the Deputy Ombudsman who will then, where appropriate, report the matter to OPI.
- 4.1.5 Nothing in this procedure should be construed as preventing Ombudsman SA staff from reporting any matter directly to OPI.