

PART 3 ASSESSING APPROACHES

Refer: *Criminal Law Consolidation Act 1935*
Freedom of Information Act 1991 (FOI Act)
Independent Commissioner Against Corruption 2012 (ICAC Act)
Local Government Act 1999 (Local Government Act)
Ombudsman Act 1972 (Ombudsman Act)
Whistleblowers Protection Act 1993 (Whistleblowers Protection Act)

TIMELY ASSESSMENT OF APPROACHES

Ombudsman SA aims to assess approaches within fourteen days of receiving the initial contact.

1. HOW TO REGISTER AN APPROACH

- 1.1. Register any initial contact with Ombudsman SA (whether by letter, email, telephone, Ombudsman SA website or in person) on Resolve as an APPROACH unless it is clearly:
 - a COMPLAINT i.e. it is within the jurisdiction of the Ombudsman
 - an FOI EXTERNAL REVIEW i.e. a request for a review by the Ombudsman of a determination under the FOI Act. Refer PART 11
 - an Ombudsman OWN INITIATIVE INVESTIGATION, i.e. investigation of an administrative act on the Ombudsman's own initiative. Refer PART 5.
- 1.2. An APPROACH is registered UNDETERMINED by default before it is assessed (see below).

ASSESS an APPROACH as:

- GENERAL ENQUIRY if it is seeking information directly from Ombudsman SA, where the Enquirer is not a party to a matter, for:
 - general advice on matters normally within the Ombudsman's jurisdiction where no complaint is made
 - FOI advice
 - publications such as copies of the Annual Report, brochures, an investigation report, poster or promotional item
 - an outreach activity such as a forum/seminar, mail-out or a visit to Ombudsman SA
 - information about Ombudsman SA website
 - information for research purposes
 - information for a survey
 - information about Ombudsman SA service delivery
 - statistics
 - response to a request for information from OPI/ICAC must be registered separately under OPI/ICAC.

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NOTE: An Enquiry about an investigation is not a GENERAL ENQUIRY and should be referred to the Case Officer, or the Ombudsman or Deputy Ombudsman.

2. HOW TO ASSESS AN APPROACH

2.1. Many approaches may become a COMPLAINT. MORE INFORMATION should be requested from the Enquirer if any of the following is required but is not clear:

- the Enquirer's name or contact details
- the Respondent Agency's name
- the subject of the Approach i.e. a brief description of the Enquirer's complaint or request. For complaints this should include:
 - a word or phrase describing the problem or shortcoming as stated by the Enquirer and
 - a word or phrase describing the generic service that the Enquirer sought from the Agency

For example, 'Unreasonable refusal to approve planning consent' or 'Inadequate advice about entitlements to urgent housing'.

2.2. If the Approach is assessed as GENERAL ENQUIRY, provide the information or item requested to the Enquirer.

2.3. The Enquirer should be informed that Ombudsman SA is generally considered to be an office of last resort. With the exception of a disclosure under the Whistleblowers Protection Act or a complaint about corruption, serious or systemic misconduct or maladministration in public administration under the ICAC Act and subject to paragraph 2.5 below, the Enquirer should demonstrate that the subject agency has been given the opportunity to resolve the matter at a senior level. This is to avoid a premature investigation of a matter that the agency is still considering, and to avoid duplication of effort.

2.4. The Enquirer should be referred (using the relevant template if a letter is appropriate):

- to the agency if the Enquirer has not given the agency the opportunity to respond to their complaint
- to the appropriate complaint-handling body if the matter is OOJ or is better dealt with by another complaint handling body.

The Enquirer should be advised to bring the matter back to the Ombudsman if they are not satisfied with the agency's response.

2.5. It may not always be appropriate for the Enquirer to be referred back to the agency, for example:

- if it is a recurring or particularly serious issue and the Ombudsman has concerns about the agency's handling of such matters
- if the Enquirer is unable to complain to the agency, for example, through physical or mental incapacity, language or age
- if the Enquirer is a prisoner who wishes to pursue a formal complaint, and the matter is of a serious nature

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- if the Enquirer has been through a council grievance procedure under section 270 of the Local Government Act and is still dissatisfied
- if the Enquirer has been through another complaint handling process such as the internal Department for Correctional Services complaint process, the Health and Community Services Complaints Commissioner, the WorkCover Ombudsman or another process and is dissatisfied.

If uncertain, staff should discuss the matter with the Deputy Ombudsman or the Ombudsman.

2.6. Approaches which relate to services provided by a water or sewerage provider, and which are within the jurisdiction of the Energy and Water Ombudsman of South Australia (EWOSA), generally should be referred to EWOSA in the first instance. A Memorandum of Understanding between Ombudsman SA and EWOSA dated 11 January 2013 (a copy of which is contained in Appendix 1 to these Policies) describes EWOSA's functions as follows:

3.2.1 In summary the jurisdiction of the Energy and Water Ombudsman SA, as set out in the Constitution of the Company, extends to:

- the supply, or failure to supply electricity, gas or water and sewerage services;
- billing disputes;
- the administration of credit and payment services;
- disconnection and security deposits;
- land or property access;
- referrals from the Essential Services Commission of South Australia or the Australian Energy Regulator;
- behaviour of electricity, gas and water entity staff, contractors and agents including sales and marketing; and
- other areas by agreement.

3.2.2 The functions of the Energy and Water Ombudsman do not extend to complaints relating to:

- electricity, gas, water or sewerage pricing policies and tariff structures;
- Government policies, legislation, licences and codes;
- commercial activities of members that are outside the scope of their licence;
- complaints that have already been considered by a Court, tribunal or arbitrator;
- customer contributions to the cost of capital works; or
- disputes between Members.

2.7. Note that the MOU acknowledges that Ombudsman SA retains jurisdiction to investigate administrative acts by water and sewerage providers which are 'agencies' under the Ombudsman Act. Accordingly, apparently serious maladministration or systemic shortcomings should be dealt with by Ombudsman SA. If uncertain, staff should discuss the matter with the Ombudsman or Deputy Ombudsman.

2.8. The Approach may be assessed as a COMPLAINT about an administrative act that may be investigated under the Ombudsman Act.

2.9. If the matter is assessed as an Ombudsman's OWN INITIATIVE INVESTIGATION, the MATTER SUBTYPE must be selected as:

- Own initiative i.e. investigation on the Ombudsman's own initiative under section 13(2) of the Ombudsman Act

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- Audit i.e. a review of the administrative practices of an agency under s14A of the Ombudsman Act (or relevant sections of the Local Government Act
 - Parliamentary referral for investigation under section 14 of the Ombudsman Act.
- 2.10. The matter may be assessed as an FOI EXTERNAL REVIEW i.e. an external review of a determination by the agency under the FOI Act.
- 2.11. The matter may be assessed as OPI/ICAC i.e. **(NOT OPERATIONAL)**
- an enquiry by OPI/ICAC
 - report to OPI under section 8 of the Directions and Guidelines made pursuant to section 20 of the ICAC Act
 - a consultation letter from OPI/ICAC pursuant to section 37 of the ICAC Act advising of a notice of intention to refer a matter for investigation by the Ombudsman or for the Commissioner to exercise the powers of the Ombudsman
 - a referral from OPI/ICAC for investigation by the Ombudsman or for the Commissioner to exercise the powers of the Ombudsman pursuant to section 24(2)(a) of the ICAC Act (marked as 'REFERRED')
 - a referral from OPI/ICAC pursuant to section 24(3) of the ICAC Act (marked as 'REFERRED').

3. ADVISING AN ENQUIRER OF THE OMBUDSMAN'S REPORTING OBLIGATIONS

- 3.1. The following is particularly relevant to Assessment Officers and Investigating Officers, but all Ombudsman SA staff must be aware of these obligations.
- 3.2. If the information provided to Ombudsman SA in the approach relates to fraud or corruption, the officer receiving the information must explain to the Enquirer the Ombudsman's reporting obligations under the Whistleblowers Protection Act. These obligations relate to passing the information on to the Anti-Corruption Branch of SA Police, and protecting the Enquirer's identity. Refer PART 2.
- 3.3. Ombudsman SA should also inform an Enquirer who discloses corruption, serious or systemic misconduct or maladministration in public administration within the meaning of the ICAC Act, of Ombudsman SA's reporting obligation to OPI (section 15 ICAC Directions and Guidelines). Refer PART 2.
- 3.4. The Ombudsman's reporting obligations to the ACB and OPI are set out in Ombudsman SA's Information Sheet.

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