

January 2018: TAFE SA - Maladministration in public administration

The Ombudsman received an ICAC referral alleging maladministration in public administration and substantial mismanagement of public resources in relation to a former director's conduct in handling a staff misconduct complaint investigation and awarding a Total Voluntary Separation Package (TVSP). Whilst the former director had the complaint investigated internally by TAFE SA the Ombudsman's view was that the former director's conduct amounted to mismanagement in their official functions and duties because they:

- did not provide the alleged perpetrator with all the evidence against them to properly answer the allegations
- sought to terminate the employment of the alleged perpetrator without having complied with section 54(3) of the *Public Sector Act 2009* (SA)
- authorised converting the suspension with paid leave to suspension without pay without having sought legal advice as to whether TAFE SA had authority to do that
- offered the alleged perpetrator a TVSP at a cost of \$105,320.80 where the review of a restructure which would have seen the abolition of the alleged perpetrator's role was put on hold and a TVSP would not normally have been offered in these circumstances
- advised the alleged perpetrator of the intention to terminate their employment for misconduct then subsequently offered them a TVSP.

The Ombudsman determined that the former director's mismanagement in their official functions and duties was substantial because:

- of the significant cost of the TVSP
- the significant errors throughout TAFE SA's investigation of the staff misconduct complaint
- a TVSP was offered despite the fact that the restructure was placed on hold at the time
- the former director took action against the alleged perpetrator without legal advice despite the action having significant consequences for the employment of the alleged perpetrator
- the handling of the matter put TAFE SA in a poor bargaining position with respect to the alleged perpetrator who had made some admissions to TAFE SA in relation to their conduct.

The Ombudsman's view was that the former director committed maladministration in public administration for the purposes of section 5(4)(a)(i) of the ICAC Act. In light of the above circumstances the Ombudsman also considered that there was a substantial mismanagement of public resources for the purposes of section 5(4)(a)(ii) of the ICAC Act. The Ombudsman declined to make recommendations because the former director is no longer employed by TAFE SA.