

SUMMARY OF AN INVESTIGATION

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Failure to respond adequately to employee misconduct



Essential Insights

Public sector agencies should respond to allegations of employee misconduct in a robust manner. A failure to appropriately respond to allegations of a serious breach of the Code of Ethics for the South Australian public sector compromises accountability and trust in government: agencies have a duty to set and uphold expectations regarding integrity in public administration by holding employees to account for such conduct.

OWN INITIATIVE INVESTIGATION

The Ombudsman received a report from a health network (**the agency**) that a senior employee had failed to declare and manage an actual conflict of interest during an employment-related decision-making process. The failure to manage this conflict compromised the decision and required the agency to undertake the process a-fresh without involvement by the senior employee. The agency counselled the senior employee regarding their conflict and reminded them of their obligation to comply with the Code of Ethics for the South Australian public sector (**the code of ethics**). No formal finding was made on whether the employee had committed misconduct.

The Ombudsman was not satisfied that the agency took appropriate action in relation to the senior employee and commenced an investigation into the agency's handling of the alleged misconduct. The investigation considered the Public Sector Act, the Commissioner for Public Sector Employment's Misconduct Guidelines (**misconduct guidelines**) and the agency's human resources policy.

The Ombudsman formed the view that the agency had failed to handle the employee's suspected misconduct appropriately and that this amounted to error under the *Ombudsman Act 1972* for the following reasons:

- on its face, the conduct amounted to a breach of the code of ethics
- the agency had enough evidence available to make a finding on the employee's conduct, particularly as the employee had admitted to the conduct
- the failure to manage the conflict impacted the integrity of the agency's decision-making process; the employee's conduct was serious
- it appeared the agency was aware that the employee's conduct breached the code of ethics, and therefore would have amounted to misconduct under the Public Sector Act; however, the agency determined to resolve the matter informally with the employee
- a decision by the agency on whether, and if so what, disciplinary action was appropriate should only have occurred after a finding was made; it may then have been appropriate to counsel the employee
- because the matter was dealt with informally, the employee's record does not reflect that they breached the code of ethics, and the employee may not be required to disclose the matter when applying for public sector jobs in the future.

KEY OUTCOMES FOLLOWING THE OMBUDSMAN'S INVESTIGATION

The agency has recognised that more was required in handling this employee misconduct matter. It has implemented oversight and review processes in relation to alleged misconduct matters. The Ombudsman also recommended that training about the code of ethics and responding to misconduct allegations is provided to leaders and senior staff of the health network, and the agency has agreed to implement this.