



OmbudsmanSA

DIRECTIONS AND GUIDELINES



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www.ombudsman.sa.gov.au

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November 2021
Version 1.0

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Introduction

These Directions and Guidelines are issued by the Ombudsman pursuant to section 12D(1) of the *Ombudsman Act 1972*.

The Ombudsman has been given the function of receiving, assessing and investigating or otherwise dealing with reports about misconduct and maladministration in public administration. These Directions and Guidelines govern the reporting of such matters to the Ombudsman, including how reports should be made. In accordance with section 12D of the Ombudsman Act, these Directions and Guidelines apply to public officers, public authorities and inquiry agencies.

We all share in the responsibility of promoting and supporting an effective, productive and fair public administration where public authorities and officers act with integrity and in the best interests of the public they serve. Reporting of misconduct and maladministration in public administration in accordance with these Guidelines will assist us in fulfilling this responsibility.



Wayne Lines
South Australian Ombudsman

November 2021

Guidelines for public officers, public authorities & inquiry agencies

While these Guidelines set out the Ombudsman's expectations for reporting to Ombudsman SA, it is important to note that the Office for Public Integrity (**OPI**) can also receive complaints and reports about public administration (including complaints and reports about corruption, misconduct and maladministration). The OPI may refer those complaints or reports to an inquiry agency, or determine to take no action in relation to the complaints or reports.

Misconduct

It is important to note that the Ombudsman **cannot** investigate misconduct by judicial officers or SAPOL officers. References to misconduct in these Directions and Guidelines should be read as excluding such misconduct.

It is also important to note that the definition of misconduct in section 4(1) of the Ombudsman Act is limited to contraventions of a relevant Code that are **intentional and serious**.

That said, the Ombudsman can consider reports that an elected member of a local government council has committed **misconduct** (for example, by breaching Part 3 of the Code of Conduct for Council Members), regardless of whether that conduct meets the threshold of an 'intentional and serious' contravention of the Code of Conduct for Council Members. Where council member conduct does not meet the threshold of an 'intentional and serious' contravention of the Code, it will be assessed and/or investigated under section 263A of the *Local Government Act 1999*.

Public officers & public authorities

Under section 12D of the *Ombudsman Act 1972*, public officers and public authorities **may** report to the Ombudsman **any** reasonable suspicion of misconduct or maladministration. While there is no mandatory obligation for a public officer or public authority to make a report to the Ombudsman, the following guidelines set out the Ombudsman's expectations in relation to matters that **should** be reported. Reporting in accordance with these guidelines will assist public officers and public authorities in meeting their ethical obligations.

The Ombudsman expects that public officers and public authorities **will** report to Ombudsman SA any matter that the public officer or public authority reasonably suspects involves misconduct in public administration (as defined in section 4(1) of the Ombudsman Act) **unless** the public officer or public authority knows that the conduct has already been reported to Ombudsman SA or the OPI (or otherwise come to the attention of either).

The Ombudsman expects that public officers and public authorities **will** report to Ombudsman SA any matter that the public officer or public authority reasonably suspects involves maladministration in public administration as defined in section 4(2) of the Ombudsman Act **unless** the public officer or public authority knows that the matter has already been reported to Ombudsman SA or the OPI (or otherwise come to the attention of either).

A public officer or a public authority **may** report to Ombudsman SA any other matter that involves potential misconduct or maladministration.

Inquiry agencies

While the Ombudsman cannot mandate reporting obligations for inquiry agencies, these guidelines set out the Ombudsman's expectations in relation to the type of matters to be reported by inquiry agencies. Apart from the Ombudsman, there are currently two other inquiry agencies – the Independent Commission against Corruption and the Judicial Conduct Commissioner. Any reference to misconduct or maladministration in this section should be taken to exclude matters that are being dealt with by an inquiry agency in exercising its legislative functions.

The Ombudsman expects that an inquiry agency **will** report to Ombudsman SA any matter that gives rise to a reasonable suspicion of misconduct in public administration (as defined in section 4(1) of the Ombudsman Act) **unless**:

- the Ombudsman would be prevented from investigating or otherwise dealing with the matter by section 13(2a) of the Ombudsman Act **or**
- the inquiry agency knows that the conduct has already been reported to Ombudsman SA (or otherwise come to the attention of Ombudsman SA).



The Ombudsman expects that an inquiry agency **will** report to Ombudsman SA any matter that gives rise to a reasonable suspicion of maladministration in public administration as defined in section 4(2) of the Ombudsman Act **unless**:

- the Ombudsman would be prevented from investigating or otherwise dealing with the matter by section 13(2a) of the Ombudsman Act **or**
- the inquiry agency knows that the matter has already been reported to Ombudsman SA (or otherwise come to the attention of Ombudsman SA).

An inquiry agency may report to Ombudsman SA any other matter that involves potential misconduct or maladministration.¹

The *Public Interest Disclosure Act 2018*

Any report that meets the definition of an appropriate disclosure of public interest information for the purposes of the *Public Interest Disclosure Act 2018 (PID Act)*, will be treated by Ombudsman SA in accordance with the requirements of that Act.

Where a public officer or public authority refers a matter to Ombudsman SA in their capacity as a relevant authority under the PID Act, the public officer should consider whether section 8 of the PID Act requires them to keep the identity of the informant confidential.

How to make a report

Subject to the exception in the following paragraph, anyone making a report **should** use the online complaint form on the Ombudsman SA website (unless it is not possible to do so). The complaint form prompts users to clearly identify their issue and provide all relevant information which means that a report can be properly and efficiently assessed.

Where a report relates to matters that are, in the Ombudsman's opinion, sensitive, complex or of significant public interest, a report may be made in person to an officer of Ombudsman SA, which can be organised by contacting Ombudsman SA on 8226 8699 or by email: ombudsman@ombudsman.sa.gov.au.

¹Note also that the Independent Commission against Corruption may also refer a matter to the Ombudsman - Section 7(1)(d) of the *Independent Commission Against Corruption Act 2012*.

A public officer's report to Ombudsman SA **should**:

- include the public officer's identity and the public authority responsible for the public officer
- provide the public officer's contact details
- provide details of the matter that the public officer suspects to involve misconduct (including reference to any relevant codes of conduct if known) and/or maladministration
- identify relevant persons and entities suspected of being involved
- explain how the matter came to the public officer's attention
- include any relevant documentation
- identify other persons who may relevant information.

While Ombudsman SA will assess any anonymous reports received, it is preferable that we are able to contact reporters to seek further information and clarification as necessary, and to advise of any outcome.

Reasonable suspicion

Suspicion is a state of mind that requires more than mere conjecture, but which is less than a knowledge or belief as to the existence of relevant events. A suspicion must have a factual basis. Whether or not a suspicion is reasonable will depend on the surrounding circumstances.

Relevant statutory definitions

Misconduct in public administration means:

...an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer (**section 4(1) of the *Ombudsman Act 1972***).

Maladministration in public administration means:

...(i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or

(ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and

(b) includes conduct resulting from impropriety, incompetence or negligence; and

(c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions (**section 4(2) of the *Ombudsman Act 1972***).

Public authority has the same meaning as in the *Independent Commission Against Corruption Act 2012* (**section 3 of the *Ombudsman Act 1972***) – see table at pp7-9 of these Directions and Guidelines.

Public officer has the same meaning as in the *Independent Commission Against Corruption Act 2012* (**section 3 of the *Ombudsman Act 1972***) – see table at pp7-9 of these Directions and Guidelines.

Inquiry agency means:

(a) the Independent Commission Against Corruption; or

(b) the Ombudsman; or

(c) the Judicial Conduct Commissioner[.] (**section 3 of the *Ombudsman Act 1972***)

What are public officers & public authorities?

For the purposes of the *Ombudsman Act 1972*, the definition of public officer and public authority is the same as is provided in the *Independent Commission Against Corruption Act 2012*. The table below lists public officers, the public authorities responsible for the officers and the Ministers responsible for the public authorities.

PUBLIC OFFICER	PUBLIC AUTHORITY	MINISTER
Governor	Attorney-General	Premier
a person appointed to an office by the Governor	Governor	Premier
a Member of the Legislative Council	Attorney-General	
an officer of the Legislative Council	Legislative Council	
a person under the separate control of the President of the Legislative Council		
a Member of the House of Assembly	House of Assembly	
an officer of the House of Assembly		
a person under the separate control of the Speaker of the House of Assembly		
a member of the joint parliamentary service	Joint Parliamentary Service Committee	
the principal officer of a judicial body	Attorney-General	Premier
a judicial officer that constitutes a judicial body		
a judicial officer (other than a judicial officer who is the principal officer of a judicial body or who constitutes a judicial body)	the principal officer of the judicial body of which the judicial officer is a member Attorney-General	Premier
a member of the staff of the State Courts Administration Council	State Courts Administration Council	Attorney-General
a person who constitutes a statutory authority or who is a statutory office holder	the Minister responsible for the administration of the Act under which the statutory authority is constituted or the statutory office holder is appointed	Premier

PUBLIC OFFICER	PUBLIC AUTHORITY	MINISTER
a person who is a member of the governing body of a statutory authority an officer or employee of a statutory authority or statutory office holder or a Public Service employee assigned to assist the statutory authority or statutory office holder	the statutory authority or statutory office holder	the Minister responsible for the administration of the Act constituting the statutory authority or statutory office holder
a member of a local government body an officer or employee of a local government body	the local government body	the Minister responsible for the administration of the <i>Local Government Act 1999</i>
the Local Government Association of South Australia	the Minister responsible for the administration of the <i>Local Government Act 1999</i>	Premier
a person who is a member of the governing body of the Local Government Association of South Australia an officer or employee of the Local Government Association of South Australia	the Local Government Association of South Australia	the Minister responsible for the administration of the <i>Local Government Act 1999</i>
the chief executive of an administrative unit of the Public Service	the Minister responsible for the administrative unit	Premier
a Public Service employee (other than a chief executive)	the chief executive of the administrative unit of the Public Service in which the employee is employed	the Minister responsible for the administrative unit
a police officer	Commissioner of Police	the Minister responsible for the administration of the <i>Police Act 1998</i>
a protective security officer appointed under the <i>Protective Security Act 2007</i>	Commissioner of Police	the Minister responsible for the administration of the <i>Protective Security Act 2007</i>
an officer or employee appointed by the Chief Executive under the <i>Education and Children's Services Act 2019</i>	the Chief Executive under the <i>Education and Children's Services Act 2019</i>	the Minister responsible for the administration of the <i>Education and Children's Services Act 2019</i>
a person appointed by the Premier under the <i>Public Sector Act 2009</i>	Premier	Attorney-General
a person appointed by the Minister under the <i>Public Sector Act 2009</i>	the Minister responsible for the administration of the <i>Public Sector Act 2009</i>	Premier

PUBLIC OFFICER	PUBLIC AUTHORITY	MINISTER
any other public sector employee	the public sector agency that employs the employee	<p>if the public sector agency is the Premier, the Attorney-General</p> <p>if the public sector agency is a Minister other than the Premier, the Premier</p> <p>in any other case, the Minister responsible for the public sector agency or the Premier</p>
a person to whom a function or power of a public authority or a public officer is delegated in accordance with an Act	the public authority or the public authority responsible for the public officer (as the case requires)	<p>If the public authority is the Premier, the Attorney General</p> <p>if the public authority is a Minister other than the Premier, the Premier</p> <p>in any other case, the Minister responsible for the public authority</p>
a person who is, in accordance with an Act, assisting a public officer in the enforcement of the Act	the public authority responsible for the public officer	the Minister responsible for the public authority
a person performing contract work for a public authority or the Crown	if the work is performed for a public authority, the public authority or, in any other case, the Premier	the Minister responsible for the public authority
a person declared by regulation to be a public officer	the person declared by regulation to be the public authority responsible for the public officer	the Minister declared by regulation to be responsible for the public authority and its public officers





OmbudsmanSA

Values

Honesty

Truthful, faithful, keeping promises, taking responsibility for our behaviour, admitting mistakes, sincere

Helpfulness

Empathetic, accessible, approachable, open to reason, encouraging, constructive, solution focussed, pleasant, embracing diversity, considerate, thinking the best of others

Professionalism

Striving for excellence, continuously improving, curious, courteous, respectful, ethical, undeterred by criticism, resilient, diligent, respectful of authority, efficient, self-reflective

Fairness

Impartial, objective, factual, evidence based, open-minded, consistent



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