



Ombudsman South Australia

The Honourable President  
LEGISLATIVE COUNCIL

The Honourable Speaker  
HOUSE OF ASSEMBLY

It is my duty and privilege to submit my 34th Annual Report  
for 2005/06 as required pursuant to subsection (1) of section 29  
of the *Ombudsman Act 1972*.

Eugene Biganovsky  
OMBUDSMAN  
30 June 2006



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## Introduction

*“The Ombudsman is reliant on persuasion, and this must depend not only on the intrinsic merit of the Ombudsman’s reasons; nor only on the office holder’s personal qualities ; but also on the status of the office itself. A recommendation from the Ombudsman must be seen to be important - by the department concerned and by the public , if the other main weapon in the Ombudsman’s armoury - publicity or its potential - is to be effectively used.”*

Hon Justice K.J. Keith New Zealand  
22<sup>nd</sup> Australasian and Pacific Ombudsman Conference

In its 34<sup>th</sup> year the South Australian Ombudsman Office is as well established in the public mind as any other parliamentary ombudsman throughout the world. While there may be differences in office size and populations served by the Ombudsman, this Office is no less effective, for the reasons given by the Honourable Justice Keith at a conference of parliamentary ombudsmen, who share comparable legislative functions and powers.

One measure of this effectiveness is the large number of cases each year which are susceptible to prompt informal resolution. Another is the willingness of agencies to act upon the recommendations, if not suggestions of the Ombudsman, to examine their practices and procedures with a view to attaining betterment of administration.

During my twenty years in office I have kept pace as best I could with all the agencies within my jurisdiction and the many changes, large and small, affecting administration from year to year; and I think there is now more than customary acknowledgement of good governance in any part of the public sector. For instance, I am pleased to have seen throughout my review of practices and procedures relating to prisoners at risk of self-harm, a fully enlightened executive, committed to continuing improvement in various areas of prison administration, with a most significant downturn in complaints to the Ombudsman which also shows relevant correlation with that agency’s internal grievance system. My review of those particular practices and procedures has come to an end; but I am left in no doubt that on the part of the executive, there is a high level of commitment to good governance and adherence to principles of good administration, which are essentially about timeliness, relevance and fairness.

The days are also long gone when Dante’s inscription over the gate of hell, which translates “all hope abandon you who enter here” would apply to some internal complaints systems. Throughout the public sector there is a growing understanding of the need to have robust systems for reviewing public complaints and providing remedies for defective administrative action. This is no less important in local government councils. My new task will be to carry out an audit review of various agencies within my jurisdiction so as to assist those who need assistance in further improving internal grievance handling practices and procedures. Work carried out in other States has shown that the effectiveness of such internal grievance systems also makes good economic sense for agencies. Efficient and effective grievance handling makes for more efficient and effective administration and would ultimately be of financial benefit to the agency responsible for it’s own administrative actions. The converse also applies in that ineffective and inefficient systems of complaint handling only magnify the grievances and in turn, their ripple effect results in more wastage of valuable resources which would otherwise be better used serving primary areas of administration.

It may be that the provisions of the *Ombudsman Act 1972* itself need to be further fine tuned in order to boost this trend of effective internal grievance handling before any investigation by the Ombudsman is called for. As a growing number of cases often indicate, the barrier that stands between a complainant and the agency is the lack of sufficient explanation or reasons and there must also be a general requirement for this to occur at least as a part of a properly functioning internal grievance system.

Of course cracks can appear in the best systems and it is my opinion that the continuing work of the Ombudsman in auditing practices and procedures will contribute positively in detecting such cracks, if not further assisting agencies in establishing their own internal audit checks. My recent extensive audit of twenty one local government councils provided valuable insight into the areas of practice and procedures that were selected for review for both my audit team and the councils involved. The review is now practically at an end, with the exception of one council yet to be audited; and much change and improvement occurred concurrently with the Ombudsman's review. Many councils had prepared well in advance of the review by proceeding to engage independent auditors to look at similar areas of administrative concern. I commend those Chief Executive Officers who showed unwavering regard for the possibility of doing things better and displayed team competence in dealing with the areas under review. Clearly, at least five councils were at the front of a strong field of highly competent professional administration. Several councils struggled and I think it was mainly due to lack of human resources. However twenty councils who had fully participated during the Ombudsman's review all showed genuine interest in improving the relevant practices and procedures where that could be achieved. All Councils benefited I think, from the parallel project of the Local Government Association which established a suitable universal model for delegations under the *Local Government Act 1999*.

It is also pleasing to record the positive work of my staff throughout the year, pursuing the attainment of the broad remedial objectives of the Ombudsman legislation which are not lost, even in the quicksands of some longstanding quarrel between a citizen and the State. Staff have endured considerable pressure at times to meet reasonable deadlines in what is common in any Ombudsman Office, competing and shifting investigative priorities. Further effort will be made to measure the volume, scope and effectiveness of such work, as the bottom line to any successful endeavour can be shown to be a meaningful connection between time and cost. Even though the Office's services are free to the public, a fair treatment of reasonable public demand may be translated into reasonable use of limited resources - and time is money, whether it involves the resources of this Office, the resources of agencies or those of responsible complainants.

The professional legal team dedicated to freedom of information reviews (two permanent positions, and a third temporary) have worked hard throughout the year to enable the Ombudsman to provide quality decisions. This work rarely lends itself to the same degree of informality and early resolution as would an ordinary investigation. Serious regard must be had to the more precise legal context of a determination and the approach which must be taken by the Ombudsman, as laid down in the decision of *Department of Premier & Cabinet v. Redford* (2005) SADC 58 - i.e. even if an agency chooses not to rely upon an exemption notwithstanding that it is readily apparent from the face of the document; one would ordinarily expect the Ombudsman to consider the exemption. I am in no doubt that this part of my Office will continue to be challenged by workloads and by high public expectations for prompt answers even with the toughest questions.

## The work of the Office

During the year a substantial portion of the work of the Ombudsman included preliminary and full investigations into actions relating to matters of administration on the part of government agencies and Local Government Councils, as well as statutory and proclaimed authorities.

There were more than 7377 (9105 - previous year 2004-05) matters considered by the Ombudsman Office during the year, of which 2858 (3456- p/y) were complaints within the general jurisdiction of the Ombudsman; and 139 (608- p/y) complaints were against public hospitals and health services; and 380 (341- p/y) matters were treated under the *Freedom of Information Act 1991*. Other non-jurisdictional contacts and referrals were in excess of 4000 (4700- p/y) matters.

### General jurisdiction

The general jurisdiction covers State Government agencies, Other Authorities and Local Government Councils and accounted for 2653 (3147 p/y) new complaints. When these were added to 205 (309- p/y) existing complaints under investigation from the previous year, the Ombudsman Office considered 2858 (3456- p/y) complaints during 2005-06.

Of these, the Office conducted investigations (preliminary or full) into 1473 (1844- p/y) complaints; and of the remaining complaints, 1079 (1284- p/y) complaints were resolved by provision of advice to complainants; 3 (7- p/y) complaints resulted in conciliation conferences, 1 (5- p/y) determination was made by the Ombudsman pursuant to section 132 of the *Water Resources Act 1997* and a further 104 (111- p/y) complaints were disposed of as being outside jurisdiction, declined or withdrawn. At the end of the reporting year 198 (205- p/y) complaints were left over for investigation during 2006-07.

The level of new complaints decreased by 15.7% (increased by 4.7%- p/y) (3147 to 2653) and the number of matters finalised decreased by 18.2% (increased by 9.1%- p/y) (3251 to 2660).

The number of General complaints under investigation less than six months old increased from 67.8% of total number of General complaints under investigation in 2004-05 to 69.3% in the current reporting year. Whilst there will always be complex matters that can take up to two years to finalise this year saw the number of General matters still under investigation and greater than 12 months old decreased from 28 to 26.

Quite apart from lightening of the jurisdictional load of the Ombudsman resulting from the 'transfer' of complaints pertaining to public health services to the Health and Community Services Commissioner, there appears to be some positive evidence of significant improvements within the prison administration which has also resulted in an appreciable down-turn in complaints to the Ombudsman. There may well be similar happenings across the public sector as a whole which may take the shape of a more permanent trend particularly if and when internal grievance systems also provide sufficient explanation of 'adverse' actions or decisions.

GENERAL JURISDICTION 01 Jul 2005 to 30 Jun 2006			
	2005-06	2004-05	Variation
Number of cases open 01 Jul 05	205	309	-34%
Number of cases opened 01 Jul 05 to 30 Jun 06	2653	3147	-16%
Number of cases closed 01 Jul 05 to 30 Jun 06	2660	3251	-18%
Number of cases still under investigation 01 Jul 06	198	205	-4%

### Freedom of Information

Another responsibility of the Ombudsman is to conduct reviews under the Freedom of Information legislation. During the year there were 333 (280- p/y) contacts, of which 127 (167- p/y) were applications requesting review by my Office. With 47 (61- p/y) reviews carried over from the previous year, the total number of matters requiring review/advice during the year was 380 (341- p/y).

The Office determined 114 (106- p/y) applications for FOI reviews and conducted full and preliminary investigations into 14 (3- p/y) matters. Of the remaining 252 (232- p/y) matters, 192 (185- p/y) were satisfied with the provision of advice. At the end of the reporting year there were 60 (47- p/y) reviews remaining.

The level of new requests for assistance increased by 19% (60%- p/y) (280 to 333) and the number of matters finalised increased by 9% (increased by 108.3%- p/y) (294 to 320).

In this area of work the number of applications for review less than six months old increased from 57.1% of the total number of FOI review applications under consideration in 2004/2005 to 77.0% in the current reporting year. The number of determinations still to be made greater than 12 months old decreased from 15 to 3.

FREEDOM OF INFORMATION 01 Jul 2005 to 30 Jun 2006			
	2005-06	2004-05	Variation
Number of cases open 01 Jul 05	47	61	-23%
Number of cases opened 01 Jul 05 to 30 Jun 06	333	280	19%
Number of cases closed 01 Jul 05 to 30 Jun 06	320	294	9%
Number of cases still under investigation 01 Jul 06	60	47	28%

### Health jurisdiction

The *Health and Community Services Complaints Act 2004* was proclaimed on 3 October 2005 from which time the Health and Community Services Complaints Commissioner received any new Health and Community Services complaints. Until that time this Office received 104 (543- p/y) new complaints pertaining to public health agencies; with another 36 (65- p/y) under investigation from the previous year. The total number of complaints which required investigation during the year were 140 (608- p/y). My Office conducted investigations (preliminary or full) into 77 (338- p/y) matters; 37 (205- p/y) complaints were the subject of advice only; 11 (29- p/y) complaints were disposed of as being outside jurisdiction, declined or withdrawn; and 14 were transferred to the Health and Community Services Complaints Commissioner leaving 1 (36- p/y) complaint to be completed.

HEALTH 01 Jul 2005 to 30 Jun 2006			
	2005-06	2004-06	Variation
Number of cases open 01 Jul 05	36	65	-45%
Number of cases opened 01 Jul 05 to 30 Jun 06	104	543	-81%
Number of cases closed 01 Jul 05 to 30 Jun 06	139	572	-76%
Number of cases still under investigation 01 Jul 06	1	36	-97%

### Complaints outside jurisdiction

In addition to investigative and advisory roles, the Office receives numerous other enquiries from the public which are referred to other review or complaint handling agencies, such as the Health Complaints Commissioner, Commonwealth Ombudsman, Employee Ombudsman, Police Complaints Authority, Banking Ombudsman and various Industry complaint handling agencies. While these referrals are not routinely recorded, periodical data suggests these contacts would have exceeded 4000 (4700- p/y).

### Administration Audits

Section 14A of the *Ombudsman Act, 1972* was proclaimed 1 July 2004 and provided the Ombudsman with the power to conduct administrative audits of any agency covered by the jurisdiction of the *Ombudsman Act, 1972*.

During the reporting period a number of audits were conducted into the following agencies:

- 21 Local Government Councils
- Department of Correctional Services
- Department of Education and Children Services
- Central Northern Adelaide Health Service

### Ex-Gratia Payments

During the year a complainant sought substantial damages from an agency following findings by the Ombudsman of defective administrative action on the part of the agency.

It is not uncommon for complainants who have been the victims of defective administration or procedural error, to claim compensation. The amount sought may bear no relation to the 'financial loss' or damage suffered. Complainants think that the Ombudsman may award compensation for administrative wrong and that such award has the nature of general damages.

A reasonable and responsible authority, without any admission of legal responsibility or where there is no legal liability, may as a favour, pay an amount or forgo a debt, as reasonable settlement of some quantifiable loss, which was the natural and probable consequence of an intended or unintended administrative action. Apart from the misconception which complainants have, as referred to above, about the true basis of an 'act of grace payment', another misconception is that the Ombudsman's recommendation in such matters would be tantamount to an order which must be obeyed. There is, of course, no legal compulsion or requirement for such payment to be made; nor will such payment necessarily follow an event of defective administration as the obvious or most appropriate remedy.

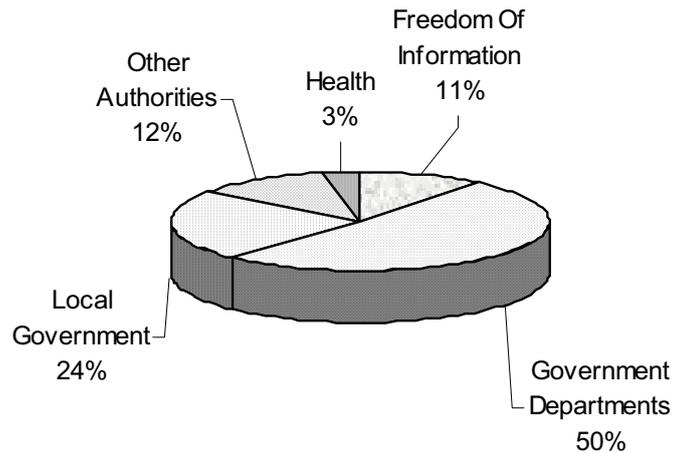
Agencies are not discouraged from exploring opportunities for swift and cost-free grievance resolution in cases when smaller monetary amounts may be involved. Inevitably, a proportion of such matters may be resolved as 'ex gratia' settlements by agencies acting readily in response to an Ombudsman inquiry. The conciliation process may also encourage parties to find a suitable remedy in the nature of an ex gratia payment by an agency to the complainant.

When the more immediate or dominant cause of the grievance is wrong in law or is a breach of contract, and the complainant is seeking compensation 'sounding in damages', then intervention by the Ombudsman would be viewed as an usurpation of a curial role. Even when such assumption of function may be justified as having some direct bearing on an administrative action of any agency, the recommendatory opinion of the Ombudsman may not be converted upon any stretch of imagination into the substance of a binding order or directive that any agency should make good a loss by pecuniary compensation.

When the Ombudsman recommends such remedy pursuant to section 25(2) of the *Ombudsman Act 1972*, it must logically follow the event of the Ombudsman's opinion that the defective administrative act must be the direct or a least dominant cause of the pecuniary loss suffered by the complainant. In the case referred to above, I was prepared to recommend that the agency pay the complainant's legal costs, reasonably incurred because of the mistaken assumptions and defective actions of the agency. While the agency was prepared to settle the matter on this basis, the complainant deferred his decision to accept settlement on such basis. There was no further recommendatory role for the Ombudsman in this case. Accordingly, the matter has stale-mated. If the complainant refuses the only remedy available to him, then there is no basis for the matter to be brought back to the Ombudsman. While the Ombudsman's investigation has largely succeeded in vindicating the complainant's reputation and integrity, even in libel cases substantial monetary damages are based on proper application of principles.

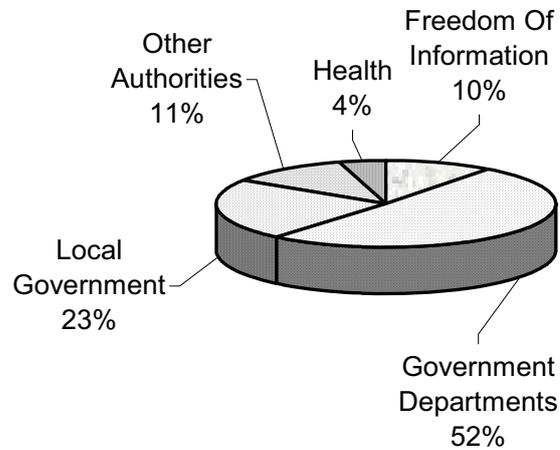
**OMBUDSMAN AND FREEDOM OF INFORMATION MATTERS RECEIVED**  
01 Jul 2005 to 30 Jun 2006

<b>New Cases</b>	<b>2005-06</b>	<b>2004-05</b>	<b>Variation</b>
Government Departments	1569	1921	-18%
Local Government	728	831	-13%
Public Hospitals and Health Services	104	543	-81%
Other Authorities	356	395	-11%
Freedom of Information	333	280	19%



**OMBUDSMAN AND FREEDOM OF INFORMATION MATTERS COMPLETED**  
01 Jul 2005 to 30 Jun 2006

<b>Complaint/Application</b>	<b>2005-06</b>	<b>2004-05</b>	<b>Variation</b>
Government Departments	1585	1961	-19%
Local Government	716	889	-19%
Public Hospitals and Health Services	139	572	-76%
Other Authorities	359	401	-10%
Freedom of Information	320	294	9%



# The Ombudsman Office

## Fundamental Values

The fundamental values in Australian public administration include openness, fairness, participation, impartiality and rationality.

The core elements of justice delivered by administrative law decision-makers include lawfulness, rationality and fairness. Other elements on the process side include accessibility and affordability by the citizen, equitable cost to the community, timeliness and intelligible explanation of decision-making.

The idea of the Ombudsman is to extend fairness to those circumstances in public administration which existing systems of justice may be unable to correct and also recommend that due process be observed. The Ombudsman has adopted within reasonable bounds, a receptive, albeit detached approach to jurisdiction and functions which are now governed by the provisions of the *Ombudsman Act 1972*, *Royal Commissions Act 1917*, *Local Government Act 1999*, *Freedom of Information Act 1991* and the *Whistleblowers Protection Act 1993*.

The Ombudsman has not preferred an unduly legalistic or technical approach; but that does not mean that the Ombudsman is at liberty to exceed his jurisdiction or will simply pursue an outcome which is not supported by relevant facts and demands of fairness.

Unless the complaint is obviously misconceived the Ombudsman proceeds on the basis of a presumption which weakly favours the complainant, until such time as a reasonable explanation is provided by the authority in response to his enquiries.

The Ombudsman has said in previous reports, that he cannot act simply as an aloof observer of a contest between the citizen and the agency, who will eventually decide the issue according to the weight of evidence presented to the Ombudsman.

In such contest the agency, supported by greater resources, would almost always be in the superior position. Generally, the Ombudsman considers his task as Ombudsman is to actively elicit and test the information from all sides who may be involved.

## Pursuit of Fairness

The staff of the Ombudsman Office function as a support team with a commitment to fairness and professionalism in the pursuit of their various tasks as assigned or delegated by the Ombudsman.

The synergy required to carry out all the various functions of such a jurisdictionally diverse office results from a common understanding of the institution of Ombudsman.

## Fairness in Administration

The State Ombudsman will in the exercise of Office core functions, promote the betterment of administrative actions and just, fair and reasonable treatment of all persons by State and local authorities.

The realisation of the fairness vision for the Office of the Ombudsman will be achieved by a continuing commitment to the pursuit of the aims and strategies laid down in the Office's Service Principles.

Role	Principles	Service Principles
<p>The role of the South Australian Ombudsman is to promote fairness, openness and good public administration in South Australia.</p> <p>The Ombudsman will:</p> <ul style="list-style-type: none"> <li>■ promote awareness of the role of the Ombudsman and the right to complain or seek review;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>■ independently and objectively: <ul style="list-style-type: none"> <li>● consider complaints and where appropriate investigate and recommend remedies;</li> <li>● conduct external reviews and issue decisions pursuant to Freedom Of Information legislation;</li> <li>● conduct conciliation conferences; and</li> <li>● encourage agencies to effectively respond to complaints made directly to them.</li> </ul> </li> </ul> <p>The above role is undertaken with reference to the following legislation:</p> <ul style="list-style-type: none"> <li>■ <i>Ombudsman Act 1972</i></li> <li>■ <i>Freedom of Information Act 1991</i></li> <li>■ <i>Local Government Act 1999</i></li> <li>■ <i>Royal Commissions Act 1917</i></li> <li>■ <i>Whistleblower's Protection Act 1993</i></li> <li>■ Other legislation affecting the Ombudsman</li> </ul>	<p>The Ombudsman Office work performance is based on the following principles:</p> <ul style="list-style-type: none"> <li>■ <b>Maintaining independence and impartiality</b> A commitment to act in a manner that maintains the independence and objectivity of the Ombudsman.</li> <li>■ <b>Facilitating access to services</b> A commitment to ensuring people can, and know how to, access the services through a range of technologies and other avenues.</li> <li>■ <b>Respect for the views of all parties</b> A commitment to ensuring that all parties' points of view are heard and considered so that action can be taken with regard to all relevant facts.</li> <li>■ <b>Fairness and integrity</b> A commitment to lawful action based on relevant considerations and at all times acting in good faith.</li> <li>■ <b>Transparency in dealings</b> A commitment to keeping people informed about their rights and any decisions affecting them, and in an appropriate manner.</li> <li>■ <b>Responsiveness in service delivery</b> A commitment to providing prompt service and facilitating prompt resolutions as defined by the Service Principles of the Office.</li> <li>■ <b>Accountability for actions</b> A commitment to using the Office resources efficiently, effectively and responsibly with a results oriented approach with ongoing critical appraisal and reports on performance.</li> </ul>	<p>The Ombudsman Office will consider all public complaints and will act within the statutory powers and the limits of the office resources. If the complaint is within the Ombudsman jurisdiction, the Office will, in normal circumstances:</p> <ol style="list-style-type: none"> <li>(i) Provide prompt service, but with equal regard for other complainants;</li> <li>(ii) Give careful consideration to matters which the Ombudsman deems to be relevant;</li> <li>(iii) Provide, if possible, a timely resolution.</li> </ol> <p>Throughout the enquiry the Ombudsman will be independent, impartial, fair and reasonable in the consideration of the complaint. The Ombudsman will <b>not</b> act as an advocate for any interested party including the complainant and the agency.</p> <p>If the complaint is found to be justified, the Ombudsman will, if he thinks it appropriate, devise and recommend an appropriate remedy.</p> <p>The Ombudsman may also recommend such administrative changes, as he thinks appropriate, in the circumstances of the case.</p> <p>If the complainant has not received a result or progress report from the Ombudsman Office after eight weeks, it is reasonable to telephone the officer assigned to consider the complaint to enquire about the progress. If the complainant is not satisfied with the response, the complainant is at liberty to contact the Ombudsman's Administrative Assistant and the complainant's concerns will be directly conveyed to the Ombudsman (or the Deputy Ombudsman) for further consideration and action, if necessary. Except in exceptional circumstances, the matter will not be reassigned to any other person within the Office.</p> <p><b>Note</b> These principles are only advisory in nature and do not affect any duties, functions or discretionary powers under the relevant legislation.</p> <p>There are similar Service Principles for the review process under the Freedom of Information Act.</p>

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## Conciliation

### **17A–Conciliation**

- (1) The Ombudsman may, at any time, decide to attempt to deal with a complaint by conciliation.*
- (2) The Ombudsman may, in attempting conciliation under this section, act personally or through some other person.*
- (3) The Ombudsman may, if satisfied that the subject of a complaint has been properly resolved by conciliation under this section, determine that the complaint should not be investigated or further investigated under this Act.*

*Ombudsman Act 1972*

The primary function of the Ombudsman is to carry out investigations into any acts relating to matters of administration on the part of agencies within the jurisdiction of the Ombudsman usually following complaints by members of the public who are directly affected by such actions and have a sufficient interest in the matters concerned. Conciliation is not a logical alternative to investigation.

Conferences are useful particularly when the only existing difference between the parties (agency and complainant) is not whether there has been defective administration, but the nature and extent of the remedy that would be appropriate in the circumstances of the case. In some cases, the conciliation process is particularly suited to establishing an agreed action plan and restoring practical lines of communication between the agency and the party.

Pursuant to section 9 of the *Ombudsman Act 1972*, the Ombudsman has delegated his functions under section 17A to those investigators who are sufficiently conversant with the process of conciliation subject to the Ombudsman's ultimate discretionary judgement which must be exercised for the purposes of section 17A(3) of the Act. In other cases, depending on the circumstances of the case, the Ombudsman has issued a delegation in respect of such functions for an investigator to proceed with the process of a conciliation in order to effect an appropriate settlement between the parties.

The conciliation process may not be used for the resolution of any matter of significant public interest with systemic implications if such use disregards the full remedial demands of the Act. Likewise, the conciliation process may not be used when there are serious departures from standards of good administration or when the matter of complaint raises a serious question concerning the quality of an administrative action. The conciliation process should not be used to deal with matters or events which are substantially outside the normal time limit for investigation or relate to complaints which are trivial, frivolous or vexatious or not made in good faith or deal with matters in which the complainant does not have sufficient personal interest. Conciliation is a valuable tool and process for effecting settlements in appropriate cases and cannot govern the principal objects of the Ombudsman legislation.

Invariably in any conciliation, confidentiality is a paramount consideration and upon there being a settlement of the case, most parties prefer the terms of settlement to remain confidential. This undoubtedly restricts the Ombudsman from reporting or publishing such cases in any detail. However some level of reporting may be desirable from time to time in showing the value of such form of alternative dispute resolution process at work in the Ombudsman Office.

The conciliation process does not detract from the traditional investigative work of the Ombudsman but is a valuable tool which may encourage some parties to find a common ground as to an appropriate remedy, and restoring trust and communication between the parties.

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## Case study

### **Veterinary Surgeons Board**

Alleged inadequate investigation of a complaint relating to the treatment provided to the complainant's pet galah "Cocky" : the value of a conciliation conference.

This matter was the subject of a full investigation pursuant to section 18 (1a) of the *Ombudsman Act, 1972* ("the Act"). The Ombudsman first wrote to the Board in September 2004 requiring its response to the complainant's allegations. A copy of the letter of complaint was provided to the Board, including the complainant's statutory declarations. In October 2004, the complainant was provided with a copy of the Board's subsequent response to the Ombudsman. The complainant provided his comments and the Ombudsman then undertook further investigation which included speaking with the Vet who had also treated the galah, "Cocky".

The Ombudsman wrote again to the Board in March 2005, identifying a number of issues which warranted further consideration, enclosing an edited copy of the complainant's letter and requiring the Board's comment. The Ombudsman also recommended that the Board refer all the relevant documentation to an avian expert for an independent review and opinion. The Board accepted this recommendation and referred the matter to an avian expert based in Queensland. Following receipt of the avian expert's views, the Board responded to the Ombudsman in June 2005. The Ombudsman requested a copy of the Board's letter to the expert, a full list of the documents provided to him and a copy of his review and opinion.

The Ombudsman advised the complainant of the Board's further response and that the Ombudsman had sought further information from the Board in relation to the opinion of the avian expert. The complainant provided further information for the Ombudsman's consideration and at a meeting at the Ombudsman Office the complainant was informed that the Ombudsman intended to contact the interstate expert to clarify a number of points with him. The complainant then provided a further written submission for the Ombudsman's consideration.

The Ombudsman's delegate met with the complainant in October 2005 to talk about the expert's opinion, to convey the further information the Ombudsman had obtained from the expert, to receive the complainant's comments and to discuss the progress of the complaint. At this meeting the delegate indicated to the complainant that, subject to seeking further clarification from the expert on some points, it was the Ombudsman's intention to meet with representatives of the Board to convey the Ombudsman's preliminary opinion about the complaint handling process generally and about specific aspects of the Board's handling of the complaint.

A further written submission was provided by the complainant and the Ombudsman subsequently contacted the complainant to convey the outcome of the further discussion with the expert and confirmed the intention to meet with representatives of the Board. The Ombudsman's delegate met with Board representatives and at this meeting he outlined the information obtained during the course of the investigation, explained the basis for the Ombudsman's preliminary opinion and discussed options in order to conclude the matter. One of the options discussed was the convening of a conciliation conference where the key issues would be discussed and positions put which could lead to certain outcomes being agreed and the matter being resolved. This option was also discussed with the complainant.

With the agreement of both parties, the Ombudsman's delegate held a conciliation conference in December 2005 pursuant to section 17A of the Act. The conference was attended by the complainant and three Board representatives.

At the conference, the complainant spoke to the key issues of concern in relation to both the treating vet's treatment of "Cocky" and the Board's handling of the complaint. The complainant also expressed his view on what he believed should be an appropriate outcome. The Presiding Officer of the Board responded that he appreciated the opportunity to hear the complainant's concerns personally. The Presiding Officer provided an explanation of how the Board operated and how some of its processes reflect its structure. It was acknowledged by the Presiding Officer that, while it was not the practice in the past, it would be more appropriate to put the veterinarian's response back to the complainant and that the Board had decided to do this to address any future complaints. The Presiding Officer acknowledged if it had been done in the complainant's case then it may have led to further investigation of the complaint by the Board and he apologised to the complainant for not taking this approach. It was further confirmed that it was the Board's intention to do things differently in future and to adopt a more rigorous complaint handling process.

The Presiding Officer explained that as the Board had formally advised the Vet that his actions did not constitute unprofessional conduct they were unable to retract that decision, although the Board could review the complaint handling process. Although the Presiding Officer advised that he was unable speak for the Board he did undertake to take a recommendation to the next Board meeting that the Registrar and a Board member speak to the Vet about the issues of concern which had emerged from the complaint and the Ombudsman's investigation. The Presiding officer indicated that the next Board meeting would take place in February 2006; that the meeting with the Vet would occur after that; and undertook to advise the Ombudsman of the outcome of the discussions with the Vet. As a result of the expert advice received, the Board highlighted the concerns as to the side effects of the use of corticosteroids in birds in a current newsletter to the profession.

The complainant expressed his appreciation to the Board representatives for their attention and response and welcomed the changes to the Board's complaint handling procedures. The complainant accepted the educative value of these actions for the treating Vet. The complainant was of the opinion that there was a need to lift the standard of veterinary care in relation to birds.

In summarising the issues and the agreed outcomes the Ombudsman made a number of recommendations. Future educational or training information provided by the Board could include the need for veterinarians to advise clients of the side effects of treatment/medication so that the client would be fully informed when considering the treatment options available. The letter from the Board seeking information from a person, not subject to a complaint, should clearly state that he/she was not the subject of a complaint but may be able to provide relevant information to the Board.

The conciliation conference had been conducted in good spirit and with the mutual respect of the parties. The complainant's ability to articulate his issues of concern and to listen and respond appropriately were key factors in the matter being resolved. The Ombudsman acknowledged that it would not have been easy for the complainant to confront issues of concern which had been so distressing for him in an unfamiliar environment and before unfamiliar people. The Ombudsman commended the complainant on achieving a satisfactory outcome to his complaint. The investigation and conciliation process provided the complainant with some answers and outcomes following the loss of his treasured "Cocky". The complainant was to be further advised by the Ombudsman on the outcome of the Board's proposed meeting and discussion with the treating Vet.



## Reports

### ***26–Publication of report of investigation***

*If the Ombudsman considers it to be in the public interest or the interests of an agency to which this Act applies to do so, the Ombudsman may have a report on an investigation published in such manner as the Ombudsman thinks fit.*  
*Ombudsman Act 1972*

#### **City of Tea Tree Gully**

Revocation of community land classification

#### **The complaint**

By letter dated 13 May 2005, the complainant provided extensive details of his concerns to the Minister in which he summarised one of his major concerns as being that throughout the revocation process the Council had no clear idea of the true nature of the proposed development on a local Reserve. The complainant further sought to question Council's policy on retirement living and aged accommodation development with regard to the "development site". The Ombudsman's plain task in this matter was to determine whether the Council had acted in compliance with section 194 of the *Local Government Act*.

#### **Ombudsman Investigation**

As the Minister had approved the proposal for revocation of the classification of the subject land as community land and the Council had in fact resolved to revoke the classification of the land, the Ombudsman embarked on a preliminary investigation in order to determine whether the Ombudsman should proceed to a full investigation.

A full investigation by the Ombudsman would be required if the Ombudsman were required to exercise statutory powers for the purpose of requiring all relevant information and forming an adverse opinion or making a formal report. The complainant raised concerns which required scrutiny of the provisions of section 194 and the terms of Council's public consultation policy.

The Ombudsman viewed the subject land; considered the complainant's detailed submissions; and further heard the complainant with another interested party on site. The Ombudsman also heard submissions from senior administrators of the Council who provided all relevant documents, sufficient for the purposes of determining the matters of complaint.

#### **Ombudsman Opinion**

Having regard to all relevant information the Ombudsman was satisfied that there had been compliance with the requirements of section 194 of the *Local Government Act*. Furthermore, the Minister was provided with, as required by the Act, the proposal with a report on all submissions made on it as part of the public consultation process.

The Ombudsman observed that some improvement to the form of the presentation of all relevant information could have provided greater degree of certainty that the relevant reports had been provided and steps to be taken as required by the Act had in fact been taken. For instance, the relevant reports may have been better referenced to the specific provisions of the Act and contained the "headings" which indicate the intent and purpose of the information viz., "summary of reasons" for the proposal, "statement of how the council proposes to use the proceeds", "assessment of how implementation of the proposal would affect the area and the local community" and such other requirements as may be applicable. Considering all the information provided, the Ombudsman was satisfied that Council had carried out all the necessary processes and work required for the compliance of the requirements of subsection(2) of section 194.

Moreover, the Ombudsman did not think that failure to use formal or technical language in the documents invalidated the process itself. There was concern about the 'true nature of the development' on the subject land. It was clear from the intent of section 194 that its application is not predicated on the precise nature of any future development of the subject land. Regard could be had to the general nature of a development which may occur but the factors which were of more direct significance were associated with the balance of considerations connected with the revocation proposal itself and formed part of the assessment of how the implementation of that proposal would affect the area and the local community (within the meaning of section 194(2) (a) (iv)).

Any future 'development' of the subject land was outside section 194 and could not be pre-determined by actions taken under section 194 but would be a discrete process governed by development laws. To expect then, details of a proposed development as part of the section 194 process, would not be a reasonable expectation of the community. The Ombudsman did not think however, having regard to all the circumstances of the case, that Council based its section 194 assessment on irrelevant considerations.

In considering relevant matters, a Council should at least have regard to the nature and creation of; physical layout and suitability; public usage; and other features of the subject site in determining its value to the local community. The Ombudsman noted that the criteria for suitability for exclusion and revocation of community land classification was provided in a Ministerial circular to local government elected members and CEOs dated July 2002.

The Ombudsman observed that the Council further received and acted upon independent legal advice in this matter. In the Ombudsman's opinion, that further underpinned the legality of Council's approach. It may have been otherwise, if the Council had ignored independent legal advice. Legal advice however, is at law, privileged and the Ombudsman was not at liberty to disclose that advice to the complainants.

As the matter was the subject of local media reporting, where legal advice appears to be correct and based on all relevant circumstances of the case, it is generally proper for the Ombudsman to accept an agency's reliance on such advice. "What more could the Council be reasonably expected to do than to obtain the advice of qualified solicitors whose competence they had some reason to doubt? (see *Dunlop v Woollahra MC* (1981) 1 ALL E R 1202,1209), in the interests of the local community and the Council, the Ombudsman published the report on the investigation pursuant to the provisions of section 26 of the *Ombudsman Act 1972*.

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## Freedom of Information

During the greater part of the reporting year the legal unit, whose main work involves Freedom of Information reviews and issues associated with Freedom of Information, comprised one permanent legal officer, one continuing temporary officer on permanent funding and one temporary officer on temporary funding. All three officers laboured well in these impermanent circumstances to bring conclusion to as many cases as they were able. It should be noted that unlike the ordinary investigations of the Ombudsman into matters of administration (which too, can involve serious and difficult questions), Freedom of Information investigations often involve intricate legal submissions that are not resolved without further relevant research by the Ombudsman's delegate. In addition, the external review process often lends itself to the use of settlement conferences, pursuant to section 39(5)(c) of the *Freedom of Information Act 1997* (the FOI Act), in an attempt to resolve or narrow the issues in dispute. Although the settlement conference is a valuable tool in the Ombudsman's armoury, its use takes time, and ultimately may not achieve the desired outcome.

While timeliness of external reviews by the Ombudsman remains a relevant factor, its attainment is not merely at the prompting of the Ombudsman. Other factors must also be taken fully into account as the judgment in *Department of Premier and Cabinet v Redford* (2005) 240 LSJS 171 has shown.

It has been the Ombudsman's opinion that three permanent positions in the legal unit will be sufficient to reasonably meet the demands in this area of work.

It has also been an obvious continuing problem for the unit that there are limited options to manage situations when all staff must take periods of leave, including extended periods of leave. At the time of writing this report, I have been advised of the provision of extra funding for a third permanent position. This provides truly welcome relief to the Ombudsman, the legal unit and applicants and agencies involved in Freedom of Information reviews and related work.

Many reviews by the Ombudsman contain valuable educative components for agencies and the public alike. Subsection (14) of section 39 of the FOI Act contemplates publication of 'reasons for determination made on a review' where the relevant review authority considers it to be in the public interest or in the interests of an agency to do so. This is not an insignificant undertaking; and while I have extrapolated material for this report, future stabilisation of the staffing of the legal unit will assist in the timely preparation of such material for publication, preferably on the Ombudsman's website.

## Freedom of Information

### ■ Applications Received 01 July 2005 to 30 June 2006

Adelaide Hills Council	2	0.6%
Alexandrina Council	1	0.3%
Attorney-General's Department	6	1.8%
Central Northern Adelaide Health Service	16	4.8%
Children, Youth and Women's Health Service	2	0.6%
Citrus Board	3	0.9%
City of Charles Sturt	9	2.7%
City of Holdfast Bay	2	0.6%
City of Norwood, Payneham & St Peters	2	0.6%
City of Onkaparinga	9	2.7%
City of Port Adelaide Enfield	4	1.2%
City of Salisbury	1	0.3%
City of Tea Tree Gully	3	0.9%
Commissioner for Equal Opportunity	1	0.3%
Corporation of the City of Adelaide	4	1.2%
Corporation of the City of Marion	8	2.4%
Corporation of the City of Unley	4	1.2%
Corporation of the Town of Walkerville	2	0.6%
Country Fire Services Board	1	0.3%
Courts Administration Authority	9	2.7%
Dental Board of South Australia	2	0.6%
Department for Correctional Services	9	2.7%
Department for Environment and Heritage	10	3.0%
Department for Families and Communities	9	2.7%
Department of Administrative and Information Services	11	3.3%
Department of Education & Children's Services	15	4.5%
Department of Health	9	2.7%
Department of Primary Industries & Resources	7	2.1%
Department of the Premier and Cabinet	6	1.8%
Department of Trade and Economic Development	29	8.7%
Department of Transport, Energy and Infrastructure	5	1.5%
Department of Treasury and Finance	9	2.7%
Department of Water, Land & Biodiversity Conservation	1	0.3%
Environment Protection Authority	7	2.1%
Flinders University Council	1	0.3%
Guardianship Board	4	1.2%
Health & Community Services Complaints Commissioner	1	0.3%
Kangaroo Island Council	1	0.3%
Legal Practitioners Conduct Board	4	1.2%
Liquor & Gambling Commissioner	2	0.6%
Lotteries Commission	1	0.3%
Medical Board of SA	6	1.8%
Metropolitan Domiciliary Care	1	0.3%
Mid Murray Council	1	0.3%
Minister for Education and Children's Services	2	0.6%
Minister for Emergency Services	1	0.3%
Minister for Environment and Conservation	2	0.6%
Minister of Health	3	0.9%
Mt Gambier & Districts Health Service Inc	3	0.9%
Noarlunga Health Services	1	0.3%
Northern Metropolitan Community Health Service	1	0.3%
Nurses Board of SA	1	0.3%
Office of Public Employment	1	0.3%
Outside Jurisdiction	19	5.7%
Police Complaints Authority	1	0.3%
Police Department	9	2.7%
Port Augusta City Council	1	0.3%
Port Augusta Hospital & Regional Health Services	1	0.3%
Port Lincoln Health Services Inc	1	0.3%
Public Trustee	2	0.6%
Repatriation General Hospital	1	0.3%
Riverland Community Health Services	1	0.3%
Rural City of Murray Bridge	1	0.3%
SA Ambulance Service	1	0.3%
SA Forestry Corporation	1	0.3%
SA Health Commission	1	0.3%
SA Housing Trust	4	1.2%
SA Metropolitan Fire Service	5	1.5%
Southern Adelaide Health Service	7	2.1%
State Electoral Office	1	0.3%
The Treasurer	1	0.3%
University of Adelaide Council	1	0.3%
University of South Australia Council	1	0.3%
Wattle Range Council	1	0.3%
WorkCover Corporation	17	5.1%
<b>Total</b>	<b>333</b>	

## Freedom of Information

### ■ Applications Completed 01 July 2005 to 30 June 2006

Adelaide Hills Council	2	0.6%
Alexandrina Council	1	0.3%
Attorney-General's Department	5	1.6%
Board of Examiners (Law Society)	1	0.3%
Central Northern Adelaide Health Service	15	4.7%
Children, Youth and Women's Health Service	2	0.6%
Citrus Board	3	0.9%
City of Charles Sturt	7	2.2%
City of Holdfast Bay	2	0.6%
City of Norwood, Payneham & St Peters	1	0.3%
City of Onkaparinga	7	2.2%
City of Port Adelaide Enfield	6	1.9%
City of Salisbury	1	0.3%
City of Tea Tree Gully	2	0.6%
Commissioner for Equal Opportunity	1	0.3%
Corporation of the City of Adelaide	4	1.3%
Corporation of the City of Marion	7	2.2%
Corporation of the City of Unley	4	1.3%
Corporation of the City of Whyalla	1	0.3%
Corporation of the Town of Walkerville	1	0.3%
Country Fire Services Board	2	0.6%
Courts Administration Authority	9	2.8%
Dental Board of South Australia	2	0.6%
Department for Correctional Services	8	2.5%
Department for Environment and Heritage	8	2.5%
Department for Families and Communities	12	3.7%
Department of Administrative and Information Services	10	3.1%
Department of Education & Children's Services	26	8.1%
Department of Health	9	2.8%
Department of Primary Industries & Resources	5	1.6%
Department of the Premier and Cabinet	3	0.9%
Department of Trade and Economic Development	29	9.1%
Department of Transport, Energy and Infrastructure	5	1.6%
Department of Treasury and Finance	6	1.9%
Department of Water, Land & Biodiversity Conservation	1	0.3%
Environment Protection Authority	4	1.3%
Flinders University Council	1	0.3%
Guardianship Board	4	1.3%
Health & Community Services Complaints Commissioner	1	0.3%
Kangaroo Island Council	1	0.3%
Legal Practitioners Conduct Board	1	0.3%
Liquor & Gambling Commissioner	5	1.6%
Lotteries Commission	1	0.3%
Medical Board of SA	5	1.6%
Metropolitan Domiciliary Care	1	0.3%
Mid North Regional Development Board	1	0.3%
Mid-West Health Services	2	0.6%
Minister for Education and Children's Services	1	0.3%
Minister for Emergency Services	1	0.3%
Minister for Environment and Conservation	2	0.6%
Minister of Health	2	0.6%
Mt Gambier & Districts Health Service Inc	3	0.9%
Noarlunga Health Services	1	0.3%
Northern Metropolitan Community Health Service	1	0.3%
Nurses Board of SA	1	0.3%
Office of Public Employment	1	0.3%
Outside Jurisdiction	19	5.9%
Police Complaints Authority	1	0.3%
Police Department	3	0.9%
Port Augusta City Council	1	0.3%
Port Augusta Hospital & Regional Health Services	1	0.3%
Port Lincoln Health Services Inc	1	0.3%
Public Trustee	2	0.6%
Repatriation General Hospital	1	0.3%
Riverland Community Health Services	1	0.3%
Rural City of Murray Bridge	1	0.3%
SA Ambulance Service	2	0.6%
SA Health Commission	1	0.3%
SA Housing Trust	4	1.3%
SA Metropolitan Fire Service	4	1.3%
Southern Adelaide Health Service	9	2.8%
State Electoral Office	1	0.3%
Trans Adelaide	1	0.3%
University of Adelaide Council	1	0.3%
University of South Australia Council	1	0.3%
Wattle Range Council	1	0.3%
WorkCover Corporation	16	5.0%
<b>Total</b>	<b>320</b>	

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## Description of outcomes

Apart from the Ombudsman's function to review agencies' determinations as an external review body under the *Freedom of Information Act 1991*, the Ombudsman provides advice and conducts investigations into freedom of information related administrative actions of agencies under the Ombudsman's jurisdiction pursuant to the *Ombudsman Act 1972*.

### ■ FOI Advice given

Formal or informal freedom of information advice was provided to the public and/or agency.

### ■ FOI Review - Revised determination directed

At the conclusion of the external review, the Ombudsman was satisfied that a different determination should be made by the agency in the circumstances of the case and directed the agency to make a revised determination in specified terms; or substituted his own determination (when dealing with determinations made after the commencement of the amendments to the *Freedom of Information Act 1991* on 1 January 2005).

### ■ FOI Review - Determination revised by agency

During external review and after receiving comment from the Ombudsman, the agency recognised that a revised determination was appropriate in part or in whole. There was no need for a formal direction by the Ombudsman to revise the determination/substituted determination.

### ■ FOI Review - Determination confirmed

At the conclusion of external review, the Ombudsman was satisfied that a different determination did not need to be made.

### ■ FOI Review - Withdrawn

During or at the conclusion of external review, the applicant decided to withdraw the application. The applicant may have decided to pursue other avenues of redress or document access; or with the assistance of the Ombudsman, the applicant's grievance with the agency may have been resolved in part or in whole; or with the passage of time, the applicant no longer wished to pursue document access.

### ■ FOI Investigation - Reasonable resolution

A formal or informal investigation was conducted into the FOI complaint and a reasonable resolution was achieved. This could involve delays in processing, locating missing documents, dealing with destruction of documents, etc.

### ■ FOI Investigation - Not sustained

The investigation of the FOI complaint revealed no administrative error on the part of the agency.

### ■ FOI Investigation - No jurisdiction to proceed

It was concluded that either the body the subject of complaint was not 'an agency' for the purposes of the *Freedom of Information Act 1991*, or the application for review to the Ombudsman was premature and the Ombudsman therefore lacked the jurisdiction to conduct the review.

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## Issue

### Diversion of scarce resources and the need to be fair to applicants

Applicant and the Central Northern Adelaide Health Service

In the context of the *Freedom of Information Act 1991* (the FOI Act) the Ombudsman is an independent review authority. The Ombudsman Office is not a vehicle for discovery, nor is the Ombudsman an advocate for applicants or agencies involved in the process. Given this and the Office's limited resources to deal with applications for external review, the Ombudsman directed his delegates not to respond to peripheral matters raised by applicants. This is to ensure that all freedom of information matters with the Ombudsman Office are given appropriate attention and are progressed as efficiently as possible.

The Ombudsman's delegates will not respond to persistent correspondence from applicants, beyond those that deal with the proper submissions on the matters under review.

It is relevant at this point to mention His Honour Judge Lee's remarks about the Ombudsman's role in an external review, made in *Department of the Premier & Cabinet v Redford*.

It seems to me that the function of the Ombudsman on an external review lies somewhere between the adversarial function of a court and the inquisitorial function of an administrative body. The function of a court is to determine a matter upon the basis of the material put before it by the parties without any enquiry of its own and by reference if necessary to an onus of proof. The function of an administrative body, unless constrained by legislative direction, is to arrive at the correct or preferable decision on the material before it, including any material that it has gathered as the result of its own enquiry. The function of the Ombudsman is neither wholly inquisitorial nor wholly adversarial. Not wholly inquisitorial, because an onus is imposed upon the agency by s.48. Not wholly adversarial, because the results of an investigation (if the Ombudsman chooses to conduct one), or the interests of the public (whether for or against disclosure), or the interests of a third person (as determined by consultation), may need to prevail over the wishes of the parties.

Applicants will be afforded the opportunity to make submissions in response to the agency's submissions and/or generally in support of their application. If an applicant remains dissatisfied with the process adopted by the Ombudsman's Office then the applicant may be entitled to commence appeal proceedings with the District Court, in accordance with section 40 of the FOI Act. Applicants are advised that if they wish to commence proceedings in the District Court in lieu of proceedings with the Ombudsman, formal withdrawal of their application(s) for external review with the Ombudsman is a pre-requisite (see section 40(4) of the FOI Act). Additionally, an applicant may be required to seek an extension of time to commence appeal proceedings before the District Court (see section 40(3) of the FOI Act). Finally, by reason of section 40(4) of the FOI Act the commencement of such proceedings bars any right to an external review by the Ombudsman.

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## Issue

### SAPOL and residual jurisdiction of the Ombudsman

Section 39(1) of the *Freedom of Information Act 1991* provides as follows:

**relevant review authority**, in relation to a determination, means—  
(a) if the determination was not made by a person described in paragraph (b)—the Ombudsman; or  
(b) if the determination was made by a police officer or the Minister responsible for the administration of South Australia Police in that capacity—the Police Complaints Authority.

Earlier this year it came to the attention of the Ombudsman and the Police Complaints Authority that a number of applications were being determined by civilian (ie non-sworn) officers of SAPOL. As such, the relevant review authority is the Ombudsman and not the Police Complaints Authority. Despite this, up until then, such matters were routinely entertained at external review by the Police Complaints Authority, SAPOL having advised the applicants to seek an external review from this body.

Though this may not have been what Parliament intended, in light of the establishment of the Police Complaints Authority as a relevant review authority for matters involving SAPOL and/or the Commissioner of Police, the Ombudsman was required to exercise his residual jurisdiction pending legislative amendment.

**Misunderstanding about the role of an external review body under the FOI Act**

Applicant (X) and Primary Industries and Resources SA (PIRSA)

X was keen to ascertain why the Minister decided to declare a certain development proposal a Major Development and what options existed to prevent the development proceeding.

During the external review the agency provided a brief summary of the steps that had occurred since the proposal was declared a Major Development, including public involvement, and what was expected to occur in the future. It was apparent that the process was at an advanced stage.

In addition, PIRSA consented to the Ombudsman disclosing additional information to X. This prompted the Ombudsman to inform PIRSA that it is not the Ombudsman's practice to release documents the subject of an application for access under the *Freedom of Information Act 1991* (the FOI Act) directly to applicants. As a result, PIRSA released certain documents in a form that disclosed additional information, directly to X.

**Ombudsman's role in the External Review**

At the outset, the Ombudsman advised X that, as the independent external review authority, it was his role to investigate and decide whether to confirm, vary or reverse the agency's determination to refuse X access to documents, or parts of documents, that fell within the scope of the application.

X applied for access to all documents and his application was couched in the following terms:

all documents concerning the decision making process by the Minister of Tourism and Minister of Planning then approval in regards to granting a major development status for the [development proposal] eg, communication notes between proponents, ministers concerned; market surveys and supporting documents to justify above grant.

The right in section 12 of the FOI Act to be given access to an agency's documents, is qualified by a number of provisions, in particular the exemption clauses contained in Schedule 1 to the FOI Act.

The Ombudsman noted that the FOI Act did not require the Ombudsman, or indeed PIRSA, to tell X specifically why the Minister made the decision he did, even if the answer was contained within documents, or to consider something that was not a document (someone's thoughts for example). X insisted on being informed as to why the Minister made the decision he did. X also sought further advice from the Ombudsman.

As the external review authority in this matter, the Ombudsman was not prepared to give the applicant advice about the options, if any, that existed to prevent the development from proceeding. It was noted, that the process was nearing completion. Furthermore, the applicant's attention was drawn to sections 48 and 48E of the *Development Act 1993*. Ultimately it was a matter for the applicant to decide whether to, for example, seek advice from a private solicitor and/or raise the issue with other individuals or groups.

A settlement conference was held during which the applicant was provided with information that would assist in the better understanding of the processes involved, but none of the substantive issues relevant to the external review were resolved. Subsequently, the Ombudsman decided the external review by confirming PIRSA's determination.

**The need to ensure that an agency addresses the public interest requirements in a claim of exemption under clause 9(1) (internal working documents) and demonstrate on balance that release is 'contrary to the public interest'**

Hon Angus Redford and Department of Treasury & Finance - SA Super Fund

The review related to an application made by the Honourable Angus Redford MLC (the applicant) under the *Freedom of Information Act 1991* (the FOI Act) to the Department of Treasury and Finance (the agency) for access to:

The recent review of the taxation status of the superannuation funds referred to by Hon Ron Roberts MLC in his letter to H.

The agency determined this application and refused access to the document in full on the basis of clause 9(1) of Schedule 1 to the FOI Act.

This determination was confirmed on internal review. The applicant requested external review by the Ombudsman who issued a Notice of External Review in this matter. The agency provided a written report, a copy of which was given to the applicant at a meeting with the applicant and the Ombudsman's delegate. Prior to that meeting the delegate met with representatives of the agency to clarify some of the issues raised by the agency in its report. The agency submitted that:

The original application was made by the Hon Angus Redford MLC and received by the department on 24 May 2005. It sought a copy of:

...The recent review of the taxation status of the superannuation funds referred to by Hon Ron Roberts MLC to Mr H.

The department located 1 relevant document and made a determination that refused access in full to the document. The accredited FOI Officer claimed exemption for the document under Clause 9(1) of Schedule 1 of the *Freedom of Information Act 1991* (FOI Act).

Mr Redford applied for an internal review of this determination. The Principal Officer confirmed the initial determination.

#### **Search Conducted**

Your Notice of Internal Review asked for detail on the steps taken and search methods employed by the agency to locate documents. In this case, the applicant was seeking a specific document. The department conducted a search of its records management database and then contacted Super SA, a branch of the department that has the specific responsibility for the administration of the State's superannuation funds. Super SA was aware of the letter of the Hon Ron Roberts and the specific document to which it referred and located a copy of that document.

#### **Reasons for Refusing Access**

The department claimed exemption for document 1 under Clause 9(1) of Schedule 1 of the FOI Act.

Document 1 is a document that contains opinion and advice obtained and prepared for the purposes of the decision-making functions of the Government.

Clause 9(1) requires the department to consider if the disclosure of the document would, on balance, be contrary to the public interest. The department considered this exercise in relation to other decisions made in applying the equivalent exemption in the FOI legislation of other jurisdictions.

#### **The relevant principles**

In *Re Howard and the Treasurer* (1985) 7 ALD 645 the Commonwealth Administrative Appeals Tribunal (AAT) identified a series of factors that may be taken into account in deciding whether it would be contrary to the public interest to disclose a document. Those factors were:

- The higher the office of the persons between whom the communications pass, and the more sensitive the issues involved, the more likely it will be that the communications should not be disclosed. The disclosure of evidence in the course of the promulgation of policy tends not to be in the public interest.
- Disclosure that will inhibit the frankness and candour in future communication is likely to be against the public interest.
- Disclosure may lead to confusion and unnecessary debate resulting from the disclosure of possibilities that are being considered.

In addition to these factors in *Re Howard*, the Victorian Civil and Administrative Tribunal in *Re Hulls and Victorian Casino and Gaming Authority* (1998) 12 VAR 483 identified several other considerations relevant to the determination of the public interest, ie:

- the right of every person to obtain access to documents under the Act;
- the degree of sensitivity of the issues involved in deliberation;
- the state of the policy development process when the document was created;
- the likelihood that the disclosure would inhibit the independence of officers or the making of proper and detailed research and submissions;
- the likelihood that disclosure would create mischief in one way or another; and
- the significance of the document.

In *Re Lianos and the Department of Social Security* (1985) 7 ALD 475 the Commonwealth AAT placed considerable emphasis on the effect of disclosure on the efficient administration of the agency. Factors that were identified as being relevant in assessing the public interest included the age of the document, the importance of the issues discussed, the continuing relevance of those issues in relation to matters still under consideration, the extent to which premature disclosure may reveal sensitive information that may be 'misunderstood' or misapplied by an ill-informed public, the extent to which the subject matter of the documents is already within the public domain, the status of the persons between whom and the circumstances in which the communications passed, the need to preserve confidentiality having regard to the subject matter of the communication and the circumstances in which the document was created.

#### **The document**

Document 1 is a review of the taxation status of the State superannuation schemes undertaken by the consultants, for the Department. It is still to be assessed fully by the Department. Most importantly, it has not yet been considered by the Treasurer. It is also of fundamental importance that any decision on the taxation status of the superannuation funds will inevitably be made by Cabinet.

Moreover, the report simply canvasses competing options with particular emphasis on the advantages and disadvantages to employer and employee. It is clear that the report is merely a preliminary step in what may potentially be a lengthy and rigorous decision making process.

#### **The document is merely preliminary**

In each of *Re Howard*, *Re Hulls* and *Re Lianos* the state of the policy development process when the document was created and the likelihood that disclosure may create unnecessary problems due to incomplete public understanding of the issues were identified as key considerations in assessing the public interest.

It is manifestly apparent that the Department of Treasury and Finance is merely conducting a preliminary examination of options and it might ultimately be decided that no change ought to be made to the existing arrangements. Any decision to change the existing arrangement would need to be made by Cabinet. The disclosure of the review could compromise the Government's position in relation to the taxation status of the funds before the Cabinet has had the opportunity to consider the matter and all the possible implications. The decisions referred to in the previous paragraph make clear that the disclosure of documents that are merely a preliminary step in a decision making process is contrary to the public interest. It is for these reasons I submit that disclosure would plainly be contrary to the public interest.

#### **Risk of confusion and unnecessary debate**

The subject matter of the consultant's report is technical in nature and persons who might potentially be affected by the decision that may, or may not, be made in the future would not necessarily gain a full understanding of the issues from reading the report. The disclosure of the document might lead to ill informed speculation and unnecessary concern by large numbers of superannuation fund members as to the possible effect of any change to the current taxation status of the funds. This could lead fund members to make decisions based on perceived future gains or losses to their benefits without full knowledge of the effect of any possible changes to the taxation status of the funds.

The decisions in *Re Howard* and *Re Lianos* indicate that a disclosure which may lead to confusion and unnecessary debate will be contrary to the public interest. I submit that this test is plainly satisfied in the present case.

#### **The document is tentative and cannot be relied upon**

In *Re Bracken* (1984) 7 AAD 243 the Administrative Appeals Tribunal held that disclosure of material that was statistically unreliable would be contrary to the public interest. I also note that in *Re Thwaites -v- Department of Human Services* (1998) 14 VAR 347 at 364; [1998] VCAT 580 at para 32 it was held by Judge Beach that it would be contrary to the public interest to disclose tentative advice.

The consultant's report expressly states at page 1 that further advice from an appropriately qualified tax expert is necessary before any action is taken, as the authors are not tax professionals. The report also notes at page 7 that "rigorous scenario testing" had not been carried out and at page 8 that further projections would be required to determine the feasibility of the options discussed. In this light I submit that the reasoning in both *Re Bracken* and *Re Thwaites* as to why disclosure would be contrary to the public interest is equally applicable in the present case.

## Summary

I therefore submit that the public interest in members of the public obtaining access to documents is plainly outweighed by the contrary public interest in facilitating effective decision making. That is the case because:

- (a) the document is merely a preliminary report that canvasses options. It may form the precursor to a long decision making process before the issue might ultimately be referred to Cabinet;
- (b) the report makes clear that it is tentative and its contents cannot be relied upon; and
- (c) disclosure may generate unnecessary and not properly informed debate and lead persons to make decisions contrary to their best interests when it is possible that no change to the current taxation arrangement may eventuate.

The document does not merely consist of factual and statistical material. The document is exempt in its entirety under clause 9 as disclosure would be contrary to the public interest. For these reasons I submit that the decision to refuse access was properly made. I also submit that it is not practicable to make deletions.

In addition to meeting with the agency and the applicant, the Ombudsman's delegate consulted with members of the SA Government Superannuated Employees Associations Inc (the Association). The applicant was consulted by the Association and that consultation was the basis of his application under the FOI Act. Although not parties to this review, the Ombudsman considered that, in light of their underlying interest in the matter, the association members were appropriate parties to consult in relation to the review, particularly given the applicant's *representative* interest in the matter and the Ombudsman's wide powers of investigation under the FOI Act and the *Ombudsman Act 1972*.

Clause 9(1) provides:

### **Internal working documents**

**9. (1) A document is an exempt document if it contains matter—**

**(a) that relates to—**

**(i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or**

**(ii) any consultation or deliberation that has taken place,**

**in the course of, or for the purpose of, the decision-making functions of the Government, a Minister or an agency; and**

**(b) the disclosure of which would, on balance, be contrary to the public interest.**

To justify claiming this clause as a basis for protecting the documents from disclosure, the agency must show that the documents satisfy paragraphs (a) and (b) in clause 9(1). Clause 9(1)(b) limits the expansive scope of clause 9(1)(a), and should be interpreted with the stated objects and intent of the FOI Act in mind. In an article in the *Federal Law Review*, 'Recurring themes in the interpretation of the Commonwealth Freedom of Information Act', the academic Peter Bayne commented:

The public interest connotes those matters favouring disclosure or non-disclosure, which regarded objectively, will promote the objects of the Act...

In *Harris v Australian Broadcasting Corporation*, a decision in relation to an equivalent provision in the Commonwealth *Freedom of Information Act 1982*, Beaumont J commented:

In evaluating where the public interest ultimately lies in the present case it is necessary to weigh the public interest in citizens being informed of the processes of their government and its agencies on the one hand against the public interest in the proper working of government and its agencies on the other.

In *Ipex Information Technology Group Pty Ltd v Department of Information Technology Services SA (Ipex)* Judge Lunn of the South Australian District Court outlined the responsibility of the agency claiming clause 9(1)(b):

This does not mean merely showing that there is something adverse to the public interest likely to flow from disclosure of the document, but that on balance the factors in the public interest against disclosure outweigh the factors in favour of disclosure.

Thus, a balancing process must be applied by the agency to show that release of the documents would be contrary to the public interest.

In relation to the submissions of the agency in reliance on the decision in *Re Howard and the Treasurer (Re Howard)*, the Ombudsman noted that this decision has been widely criticised: see the decision of *Eccleston and Department of Family Services and Aboriginal & Islander Affairs (Re Eccleston)* in which the Queensland Information Commissioner commented as follows:

The five *Howard* criteria have been subjected to telling criticism by Deputy Presidential members of the Commonwealth AAT in subsequent cases (some of which are referred to below), by academic critics (see for example S. Zifcak, "Freedom of Information: Torchlight but not Searchlight", *Canberra Bulletin of Public Administration* No. 66, October 1991, 162 at p.165; P. Bayne, "Freedom of Information : Democracy and the protection of the processes and decisions of government", (1988) 62 ALJ 538) and in the EARC Report on Freedom of Information at paragraph 7.121-7.127 inclusive. The five *Howard* criteria have also, however, been uncritically embraced and applied by some members of the Commonwealth AAT and some members of the Victorian AAT (doubtless influenced to some extent by the stature of the presiding member of the Tribunal), and probably also by a host of FOI decision makers eager to embrace a simple set of criteria set out in such general and easily manipulable terms, all of which are directed toward affording support for a finding that disclosure of documents would be contrary to the public interest.

In general terms the Ombudsman shared the concerns of the Queensland Information Commissioner in *Re Eccleston* in relation to the application of the five criteria referred to in *Re Howard* in respect of the consideration of the public interest factors relevant to disclosure of deliberative process documents. Whilst these factors may provide guidance in the appropriate case, ultimately each case must be considered on its merits, without recourse to formulaic considerations. The Ombudsman noted in this respect the comment of Judge Lunn in the decision of *Ipex* in relation to the application of the five criteria in *Re Howard*:

The concept of the public interest cannot be exhaustively defined: *Conway v Rimmer* [1968] AC 910 at 952. The statements in Howard's case are merely general indicators of where the public interest might lie, but they are neither necessarily definitive nor exhaustive.

Thus, while the Ombudsman was satisfied that there were a number of factors in favour of refusal of access, as outlined by the agency in its report, the Ombudsman considered that there were a number of factors in favour of release of the document, including the following:

1. accountability - disclosure of information about how government functions were (and are being) conducted can enhance the accountability of agencies and individual officers for the performance of their official functions;
2. public participation - disclosure of information about issues currently being considered by government can lead to more informed debate about the issues; and
3. public awareness - disclosure of information about issues of general concern can assist individuals to make decisions about their own activities.

The Ombudsman considered factor 2 - that of public participation in the affairs of government - to be compelling here, particularly given the potential impact of a change in government policy on the superannuation entitlements of a significant number of government employees. Release of the information into the public domain would enhance government decision making, if by no other reason than it would enable the contents of the document, and its underlying assumptions, to be scrutinised and reality-tested. Any deficiencies in the document in terms of it being of a preliminary nature, and/or its reliance on assumptions, were clear on the face of the document, and in any event the applicant was plainly on notice of such limitations. Concerns about potential misuse by the applicant of the contents of the document are in my view a matter for the political process, and the agency is clearly in a position to issue any clarifying material in reply to remedy any selective use or erroneous interpretation. These concerns may be addressed without the need for the document to be withheld by the agency. Indeed the Ombudsman agreed with the applicant's oral submissions that the agency's concerns arising from the potential for confusion or *unnecessary* debate were somewhat patronising in their nature.

Accordingly, notwithstanding the agency's extensive oral and written submissions to the contrary, and in light of the above, the Ombudsman was not satisfied that, on balance, it would be contrary to the public interest for the document to be released. It follows then that the Ombudsman was not satisfied that the document was exempt on the basis of clause 9(1) of Schedule 1 to the FOI Act.

Pursuant to section 39(11) the determination of the agency was reversed and the Ombudsman determined that the applicant be provided with access (in full) to the document the subject of this review.

**Increasing usage of section 14A (extensions of time in which an application is to be dealt with beyond the 30 days required under the FOI Act) and consequent increase in number of section 14A reviews**

Hon Rob Lucas MLC and the Minister for Education & Children's Services and Minister for Tourism

The office of the Minister for Education and Children's Services and Minister for Tourism (the agency) received an application from the Honourable Rob Lucas MLC (the applicant) under the *Freedom of Information Act 1997* (the FOI Act) for:

Copies of all documents that relate to the payment of any entertainment, meal, accommodation or travel expenses for the Minister since 1 January 2005.

The principal officer of the agency made a determination to extend the time for dealing with the application for 60 days, pursuant to section 14A of the FOI Act. The applicant was advised of the determination by letter and the applicant sought an external review of that determination by the Ombudsman pursuant to the provisions of section 39 of the FOI Act.

Section 14A of the FOI Act provides:

**14A—Extension of time limit**

(1) *The principal officer of an agency that is dealing with an application may extend the period within which the application would otherwise have to be dealt with under section 14 if satisfied that—*

- (a) *the application is for access to a large number of documents or necessitates a search through a large quantity of information and dealing with the application within that period would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions; or*
- (b) *the application is for access to a document in relation to which consultation is required under Division 2 and it will not be reasonably practicable to comply with Division 2 within that period.*

(2) *An extension under subsection (1) must be for a reasonable period of time having regard to the circumstances.*

(3) *The extension must be effected by giving written notice of the extension to the applicant within 20 days after the application is received.*

(4) *Such a notice must specify—*

- (a) *the period of the extension; and*
- (b) *the reasons for the extension; and*
- (c) *the rights of review and appeal conferred by this Act.*

(5) *An extension under subsection (1) is a determination for the purposes of this Act.*

**The Agency's Submissions**

The letter advising the applicant of the determination stated that the extension for dealing with the application was until 23 March 2006. During the external review, representatives of the agency informed the Ombudsman that this appeared to be in error. They submitted 27 February 2006 as the correct date. This date represented 61 days from the original due date of 28 December 2005, where the 60th day fell on a Sunday.

The agency's notice of determination included the following as reasons for the extension:

My processing of your application so far has revealed that the application catches a large number of documents and dealing with it by 28 December would have unreasonably diverted the agency's resources from their use by the agency in the exercise of its functions...

The circumstances that the Principal Officer took into account when he extended the time are as follows:

1. a shortage of staff over the Christmas/ New Year period
2. remaining staff are fully occupied in maintaining their normal duties and covering staff on leave
3. the only accredited FOI Officer for the Minister's Office will be away for the month of January and although the search will continue during that time, she will be unable to make an assessment on the documents found.

The agency further submitted:

1. The agency's Freedom of Information officer had been on leave since 28 December 2005 and was not scheduled to return until 23 January 2006.
2. Another employee was being trained as a Freedom of Information officer, but was not yet accredited.
3. During the period of time covered by the application there was a change of portfolios and the Minister held two portfolios.
4. The agency had commenced the process, with various documents having already been compiled. The documents compiled dated back to 2002, and some related to separate applications under the Act, not the subject of this external review.
5. A significant proportion of the compiled documents appeared to fall within the scope of the application for access underpinning the external review. A visual observation suggested that these documents comprised some 250 pages and half of all the compiled documents.
6. Further, the number of documents was liable to increase following the completion of searches, which were believed to be ongoing, despite the absence of the agency's Freedom of Information officer.

### Considerations

The FOI Act offers no guidance as to the meaning of the word 'large' in section 14A of the FOI Act. Furthermore, there is no case law as to how the word is to be interpreted in the context of the FOI Act. The Macquarie Dictionary definition of the word 'large' includes 'being of more than common size, amount or number'. The Ombudsman considered that this definition was relevant when deciding whether the application for access was to 'a large number of documents'.

On balance, the Ombudsman was satisfied that the application was for access to a large number of documents and considered:

1. the number of documents that appeared to have been captured by searches, particularly when compared to the number of documents apparently captured by searches in response to separate applications made by the applicant at about the same time.
2. the size and available resources of the agency (by way of explanation, if the agency were larger, the Ombudsman would have been less inclined to the view that the number of documents was large).

As to the issue of whether dealing with the application within the original period '*would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions*' the Ombudsman considered the following to be relevant:

1. the size of the agency.
2. the timing of the application and the resulting statutory deadline.
3. the resources available to the agency.

On balance, the Ombudsman was satisfied that to deal with the application by 28 December 2005 would have represented an unreasonable diversion of the agency's resources from their use by the agency in the exercise of its functions.

The Ombudsman was not satisfied that the period of time, as originally extended (to 23 March 2006) or as amended during the external review (to 27 February 2006) was reasonable having regard to the circumstances.

The Ombudsman considered that a due date of 13 February 2006 was reasonable, having regard to the resources available to the agency and the determinations that it would be required to make in response to the application underpinning the external review and applications for access made by the applicant that were not before the Ombudsman.

Accordingly, pursuant to section 39(11) of the FOI Act, the agency's determination was varied by amending the date by which the application was required to be dealt with to 13 February 2006.

**Strict compliance with time periods in section 14A required for valid extension of time**

Applicant (X) and the Department for Environment and Heritage

On 23 June 2006 the Ombudsman received an application for external review of a determination made by the Department for Environment and Heritage (DEH), in response to X's application for access to documents under the *Freedom of Information Act 1991* (the FOI Act).

The review sought by X pertained to DEH's determination to extend the time for dealing with his application, purportedly pursuant to section 14A of the FOI Act, for access to the following documents:

1. Valuation report prepared for DEH by Carter Property containing recommendations on the rentals to be applied to Milang shack sites as at December 2005.
2. Any communication since 28 May 2005, between DEH and Land Services Group, including all paper based or other types of documents, pertaining to the rental or site values of shacks at Milang.
3. Any communication since July 2004 between DEH and Alexandrina Council pertaining to the care or management of the Milang shack sites or shack area.
4. Any paper based or electronic memos or notations of relevance communicated between DEH staff with respect to the abovementioned requests.

The notice of determination was dated 16 June 2006 and referred to X's application as having been received by DEH on 31 May 2006. According to X he received the notice of determination on 22 June 2006, in an envelope post-marked 20 June 2006. The Ombudsman's delegate was informed that the 'sent stamp' on DEH's copy of the notice indicated that it was posted on 19 June 2006.

Section 14A(3) of the FOI Act requires that an extension under section 14(3) *'must be effected by giving written notice of the extension to the applicant within 20 days after the application is received'*. In this case it appeared that any such notice ought to have been *given* to X by 20 June 2006.

Section 47(b) of the FOI Act provides as follows:

*A notice that an agency is required by this Act to give to a person-*

...

(b) *is, if it is served by means of a letter, to be taken to have been given to the person at the end of the fifth day after the letter was posted.*

Regardless of whether the Ombudsman relied on X's claim that he received the notice on 22 June 2006, or the combined effect of DEH's claim that it posted the notice on 19 June 2006 and section 47(b) of the FOI Act, the conclusion was that the notice was given after 20 June 2006.

Accordingly, while the Ombudsman was satisfied that DEH was in the process of actively considering X's application for access, it was the Ombudsman's view that the notice, purportedly given to X under section 14A of the FOI Act, was invalid and the original time limit applied.

Accordingly, X was advised that he was eligible to apply for an internal review, as the agency was deemed to have refused him access to the documents sought by reason of section 19(2)(b) of the FOI Act.

**Determinations made on multiple applications for external review lodged by sitting MP prior to recent State election - ability to take into account multiple applications lodged by the one applicant when determining whether section 14A conditions are met**

Hon Rob Lucas MLC and the Department of Trade and Economic Development

The Ombudsman received an application for external review of 30 determinations made by the Department of Trade and Economic Development (the agency), pursuant to section 39 of *Freedom of Information Act 1991* (the FOI Act). The determinations under external review were the extensions of time, granted by the agency pursuant to section 14A of the FOI Act, until 22 March 2006 for dealing with 30 separate applications for access to documents under the FOI Act.

Section 14A of the FOI Act provides:

**14A—Extension of time limit**

- (1) *The principal officer of an agency that is dealing with an application may extend the period within which the application would otherwise have to be dealt with under section 14 if satisfied that—*
- (a) *the application is for access to a large number of documents or necessitates a search through a large quantity of information and dealing with the application within that period would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions; or*
- (b) *the application is for access to a document in relation to which consultation is required under Division 2 and it will not be reasonably practicable to comply with Division 2 within that period.*
- (2) *An extension under subsection (1) must be for a reasonable period of time having regard to the circumstances.*
- (3) *The extension must be effected by giving written notice of the extension to the applicant within 20 days after the application is received.*
- (4) *Such a notice must specify—*
- (a) *the period of the extension; and*
- (b) *the reasons for the extension; and*
- (c) *the rights of review and appeal conferred by this Act.*
- (5) *An extension under subsection (1) is a determination for the purposes of this Act.*

There were technically 30 applications for external review by the Ombudsman. The agency advised that as at 23 January 2006 it had determined ten of the applications, by granting the applicant full access to the documents sought and the Ombudsman did not decide the applications for external review relevant to these applications. In saying this the Ombudsman was mindful that section 19(2a) of the FOI Act enabled the agency to make 'a determination to give access to a document on an application after the period within which it was required to deal with the application (and any such determination is to be taken to have been made under this Act)'.

**Reasons for Decisions**

In relation to the remaining applications, the Ombudsman reached decisions with particular regard to the agency's submissions.

The FOI Act offers no guidance as to the meaning of the word 'large' in section 14A of the FOI Act. Furthermore, there is no case law as to how the word ought to be interpreted in the context of the FOI Act. The Macquarie Dictionary definition of the word 'large' includes 'being of more than common size, amount or number'. The Ombudsman considered that this definition was relevant when deciding whether an application for access was to 'a large number of documents'.

On balance, the Ombudsman was satisfied that the applications numbered 2, 3, 14, 15, 16, 18, 19, 28 and 29 were for access to a large number of documents. In saying this, the Ombudsman considered:

1. the number of documents that appeared to have been captured by the agency's searches, particularly when compared to the number of documents apparently made by the applicant at about the same time. Based on the agency's submissions all of these applications were for 48 or more documents, with application number 3 involving 2138 documents.
2. the size and available resources of the agency.

As to the issue of whether dealing with the application within the original period 'would unreasonably divert the agency's resources from their use by the agency in the exercise of its functions' the Ombudsman considered the following to be relevant:

1. the size of the agency.
2. the timing of the applications and the resulting statutory deadlines.
3. the resources available to the agency.
4. the number of individual pages requiring consideration (ranging from 166 to 2138 or more).

On balance, the Ombudsman was satisfied that to deal with each of the applications by 27 December 2005 would have represented an unreasonable diversion of the agency's resources from their use by the agency in the exercise of its functions.

The Ombudsman was satisfied that the period of time, as extended (to 22 March 2006) was reasonable having regard to the circumstances. In saying this the Ombudsman considered the following to be relevant:

1. the size of the agency.
2. the resources available to the agency.
3. the number of applications that the agency was required to deal with simultaneously.
4. the number of individual pages requiring consideration.

Accordingly, pursuant to section 39(11) of the FOI Act, the agency's determinations were confirmed with respect to the applications numbered 2, 3, 14, 15, 16, 18, 19, 28 and 29.

On balance, the Ombudsman was satisfied that the applications numbered 1, 8, 9, 10, 20, 21 and 22 were for access to documents in relation to which consultation was required under Division 2 and it would not have been reasonably practicable to comply with Division 2 by 27 December 2005.

In saying this the Ombudsman considered:

1. The number of consultations required (from 8 to 88) in the context of the number of documents (from 39 to 66) and individual pages (from 87 to 609) involved.
2. Having regard to point 1 (immediately above) and the apparent contents of the relevant documents, the amount of time that the parties consulted would likely require to offer an informed response.
3. The need for the agency to consider the views of any parties consulted before making a determination.
4. The size of the agency.
5. The resources available to the agency.
6. The timing of the applications and the resulting statutory deadlines.
7. The searches undertaken by the agency to locate the documents and parties requiring consultation.

The Ombudsman was satisfied that the period of time, as extended (to 22 March 2006) was reasonable having regard to the circumstances. In saying this he considered the following to be relevant:

1. The size of the agency.
2. The resources available to the agency.
3. The number of applications and consultations that the agency was required to deal with simultaneously.
4. The number of documents and individual pages requiring consideration.
5. The time that the parties consulted would likely require to offer an informed response, having regard to the number and apparent contents of the documents.

Accordingly, pursuant to section 39(11) of the FOI Act, the agency's determinations with respect to the applications numbered 1, 8, 9, 10, 20, 21 and 22 were confirmed.

The Ombudsman noted that two of the applications (numbered 28 and 29) involved both a large number of documents and consultations.

On balance, the Ombudsman was satisfied that the applications numbered 4, 5, 6 and 7 were for access to documents in relation to which consultation was required under Division 2 and it would not have been reasonably practicable to comply with Division 2 by 27 December 2005.

In saying this the Ombudsman considered:

1. The amount of time that the parties consulted would likely require to offer an informed response, having regard to the apparent contents of the documents.
2. The need for the agency to consider the views of any parties consulted before making a determination.
3. The size of the agency.
4. The resources available to the agency.
5. The timing of the applications and the resulting statutory deadlines.
6. The searches undertaken by the agency to locate the documents and parties requiring consultation.

That said, the Ombudsman was not satisfied that the period of time, as extended (to 22 March 2006) was reasonable having regard to the circumstances. This was primarily due to the relatively small number of documents involved (namely 3) and consultations required (from 4 to 13) in relation to each of the relevant applications.

The Ombudsman concluded that a due date of 3 March 2006 was reasonable having regard to:

1. The size of the agency.
2. The resources available to the agency.
3. The number of applications and consultations that the agency was required to deal with simultaneously.
4. The time that the parties consulted would likely require to offer an informed response, having regard to the apparent contents of the documents.

Accordingly, pursuant to section 39(11) of the Act, the Ombudsman varied the agency's determinations with respect to the applications numbered 4, 5, 6 and 7, by amending the date by which they had to be dealt with to 3 March 2006.

## Issue

### Invalid use of section 14A - extension of time - resulting in deemed refusal

Applicant (X) and the Department for Transport, Energy and Infrastructure

X made a request to the Ombudsman to externally review the Department for Transport, Energy and Infrastructure's (the agency's) determination dated 25 May 2006 made pursuant to section 14A of the *Freedom of Information Act 1991* (the FOI Act). The determination was to the effect that the agency would have until 7 July 2006 to process X's application.

X stated that he received the determination (dated 25 May 2006) on 26 May 2006, with the rest of his mail. This appeared to make sense, given the letter would have been posted on 25 May 2006. As such, he was 'given written notice' of the extension on 26 May 2006.

The relevant question was when did the agency receive X's application. X stated that he cycled down and hand delivered his application to the agency mid to late afternoon on 5 May 2006. He stated that the officer at reception went to photocopy or scan his pension card however could not get the equipment to work. The application was left with that officer at reception. X then cycled home and, on his copy of a letter he had written to the agency dated 29 March 2006, he wrote, 'Formal FOI application made on 5 May 2006, and Transport SA has not replied to above'.

The agency's copy of X's application was date stamped 'DTEI 08 MAY 2006 CORP MAIL'. During the investigation the agency outlined the procedures by which the agency's mail was sent to the relevant sections and date stamped. These procedures were not inconsistent with X's version of events.

It was the Ombudsman's view that X's application was received by the agency on 5 May 2006, as he stated, rather than on 8 May 2006. Even if the application was too late for the 4pm mail collection from the reception area, or for some reason was missed when the mail was collected, the Ombudsman had no reason to doubt that X hand delivered it, and as such it was received by the agency on 5 May 2006.

The Ombudsman was of the view that a determination made pursuant to section 14A of the FOI Act had to be given to X on 25 June 2006 or earlier. While it was only a day late, it was the Ombudsman's view that the agency's extension of time determination was invalid, and therefore the original time limit applied.

The Ombudsman advised X, by providing him with a copy of his decision and informed X that he was at liberty to apply for an internal review as, pursuant to section 19(2)(b) of the FOI Act, the agency was deemed to have refused him access to the documents he was seeking.

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## Issue

### **Extraordinary delay associated with original use of section 14A - failure to deal with application on basis of deemed refusal and lack of internal review - inconsistent with objects of the FOI Act**

Applicant (X) and Minister for Environment and Conservation

The Ombudsman provides general advice to freedom of information applicants as well as agency Freedom of Information Officers. While this utilises the limited resources available to deal with Freedom of Information reviews, the Ombudsman's Freedom of Information staff provide a valuable service in this regard as it often provides for the smoother running of applications and may narrow the issues requiring consideration in any future external review.

X availed himself of the Ombudsman's information service on several occasions. X applied to the Minister's predecessor for documents on 2 February 2006. On 6 February 2006 the application was acknowledged. On 20 February 2006 the Minister's predecessor extended the time in which to deal with the application, pursuant to section 14A of the *Freedom of Information Act 1991* (the FOI Act) until 6 April 2006.

On 1 March 2006 X contacted the Ombudsman and queried the extension of time, as it was not clear from the face of the document dated 20 February 2006 why the extension was necessary. The Ombudsman's delegate spoke to Mr K of the Minister's office who advised that he had suggested to X that an explanation of the information sought could be provided instead of the documents themselves, however X wanted the documents. As the 'project' X was interested in was a joint venture, the agency needed to consult with the Federal Government and Adelaide University. The Ombudsman's delegate was advised that the consultations had not yet occurred, however they would occur as soon as possible and it may be the case that a determination would be made before 6 April 2006. The Ombudsman's delegate relayed this information to X, who decided to be patient and not ask the Ombudsman to externally review the extension of time. A letter to this effect was sent to the agency on 6 March 2006.

On 12 April 2006 X again contacted the Ombudsman as he still had not received a determination of his application. The Ombudsman's delegate left messages with the agency on 12 and 18 April 2006. An officer, who appeared not to be an accredited Freedom of Information Officer, contacted the Ombudsman's delegate on 19 April 2006. The delegate understood that the consultations with other interested parties was yet to occur. On 20 April 2006 the Ombudsman's delegate informed X that he was at liberty to apply for an internal review. It appeared that he did not do so.

Subsequently X advised the Ombudsman's delegate that he was still awaiting a determination of his application and had not received anything from the agency since the 20 February 2006 extension of time. The agency's officer indicated that she had looked at the file which appeared to have been closed. The agency's officer stated there was a 'file note' dated 26 June 2006 to the effect that the agency was 'deemed' to have refused the application and the applicant had not requested an external review. It was agreed between the Ombudsman's delegate and the agency's officer (who apparently had not had much involvement with the matter due to other duties) that this did not appear to have been a particularly fair outcome. When asked about the consultations, the officer reported that they had not occurred.

The agency's officer contacted the Ombudsman again on 27 July 2006 with further information. It appeared that as most (or all) of the documents relating to the application were held by the Department of Environment and Heritage (DEH), rather than by the agency, the application was to be transferred to DEH.

The Ombudsman was unable to recall many instances where agencies decided not to continue dealing with freedom of information applications because they were 'deemed' to have refused the applications (by running out of time) and the applicants did not request an internal review. Such decisions are considered as not at all in keeping with the objects of the FOI Act, *especially* considering that in this case the agency had given itself a lengthy extension of time, and X had shown considerable patience. In the Ombudsman's view the provisions of the FOI Act providing for 'deemed refusals' were intended to provide applicants with a means of progressing to the next stage where an agency failed to deal with an application within the time limits, instead of the inappropriate purposes the agency had used it for.

Almost six months after X's application was lodged virtually nothing had been done to progress the matter, despite two officers within the agency indicating to the Ombudsman's delegate that the consultations were to occur. The Ombudsman considered the manner in which the agency handled the application to be appalling, and recommended that the agency use its best endeavours to ensure that the matter was progressed as quickly and efficiently as possible, whether it was handled by the Ministerial Office or by DEH.

X had review rights. If the matter remained with the agency, the agency was deemed to have refused the application on or about 7 April 2006. As such, X was outside of the time limit in which he could apply for an internal review. If the applicant applied for an internal review, the Ombudsman suggested that it would be in keeping with the objects of the FOI Act for the agency to extend the time in which X could apply for an internal review pursuant to subsection 29(2)(e) of the FOI Act.

If the application was transferred to DEH, pursuant to subsection 16(6)(b) of the FOI Act it would be taken to have been received 14 days after the day on which it was received by the agency, that is 14 days after 2 February 2006. Again, X was outside of the time limit to apply for an internal review. If X applied to DEH for an internal review, the Ombudsman suggested that it would be in keeping with the objects of the FOI Act for the principal officer of that agency to extend the time in which he could apply for an internal review pursuant to subsection 29(2)(e) of the FOI Act.

The Ombudsman noted that in addition to consulting with third parties, the Crown Solicitor's Office would need to be contacted. The Ombudsman indicated that seeking legal advice was not a valid reason for extending the time to handle an application. In any event, whichever agency dealt with the application, the time for granting extensions had well and truly passed.

Fairness to the applicant and the agency to which an application was to be transferred suggested that a transfer should occur as expeditiously as possible.

**Sufficiency of Search Reviews - Outcomes and Objectives**

Applicant (X) and TransAdelaide

Section 16 of the *Freedom of Information Act 1991* (the Act) enables an agency to transfer an application under the Act in certain circumstances. It does not compel them to do so. The applicant is at liberty to make an application under the Act to other agencies if the applicant considers that they may hold the documents sought.

The Ombudsman advised X:  
[with reference to previous correspondence from the Ombudsman to X]

As the agency has not claimed any exemptions in relation to the documents to which you have sought access, my role in this external review is limited to an investigation of whether the agency has carried out all reasonable searches and enquiries in an attempt to locate all of the documents in its possession falling within the scope of your application for access to documents under the *Freedom of Information Act 1991* (the FOI Act).

It is clear to me from the more recent correspondence emanating from the agency that the agency's initial response to your application was inadequate.

The agency has, however, provided a great deal more documentation following my letter to it dated 9 February 2005, and appears from its letter to you dated 1 April 2005 to have undertaken much broader consultations and searches in order to locate the documents sought by you.

I note your request that the matter be investigated utilising my powers of a Royal Commission. While it is correct that I have extensive powers when conducting external reviews under the Act, including the powers of a Royal Commission, I must have good reason to exercise those powers. In the present circumstances, while the agency may not at the outset have properly complied with its obligations under the Act, it appears to have rectified this situation, and at present I have difficulty concluding that the agency could or should carry out any further searches in order to comply with its legal obligations.

The Act is designed to achieve access to documents: see section 12 of the Act. It is not a device to seek answers to questions except where such answers are apparent from reading a document. The matter of the interpretation of such documents is also beyond the scope of the Act.

My general approach in reviews under the Act involving sufficiency of searches is as follows:

**What is involved in a 'sufficiency of search' review?**

In 'sufficiency of search' reviews, I will often ask the applicant to provide the following types of information:

1. details of the applicant's reasons for believing that the agency has additional documents that fall within the terms of the FOI access application;
2. copies of any evidence which supports the applicant's claims (such as an agency document which refers to the existence of other documents that appear to fall within the terms of the FOI access application); and
3. details of any further searches or inquiries which the applicant believes the agency could reasonably be asked to make in an effort to locate additional documents, including any information the applicant has about where such documents could, or should, be held.

I can then:

1. require the agency to conduct further searches, or make further inquiries;
2. make further inquiries directly to officers or former officers of the agency, or to other people who may have relevant information;
3. require the agency, or specified officers, to provide evidence about the alleged additional documents.

**What are the possible outcomes of a 'sufficiency of search' review?**

Not all 'sufficiency of search' applications result in the applicant being given access to additional documents. There are a number of possible outcomes:

1. The agency may locate some or all of the additional documents the applicant claims should exist. I may then make a decision on access to those documents.
2. I may be satisfied that there are no reasonable grounds to believe that the agency has possession or control of any additional documents, after the agency has made additional searches and inquiries, and/or explained the reasons for not having documents the applicant believes it should have.
3. Additional documents may exist, but have been legitimately transferred to another agency. In that case, those documents are no longer 'documents of the agency' to which the applicant applied, and that agency cannot be required to give the applicant access.

4. Additional documents may exist, but have never been in the agency's possession, and the agency has no right of access to them. This could include documents held by an independent consultant hired by the agency. Some documents, such as the consultant's final report, might be held by the agency, but working documents may remain the property of the consultant (and be outside the application of the FOI Act).
5. Additional documents may once have existed, but have been disposed of by the agency. No agency could keep all its documents indefinitely, and many documents become irrelevant to operational requirements with the passage of time. The *State Records Act* authorises Retention and Disposal schedules, covering the various categories of documents held by agencies and local councils, which permit the destruction of various categories of documents after a specified time period has elapsed.
6. Further documents may have existed, and should still exist, in the agency's possession, but they cannot be located. If I am satisfied that all reasonable searches and inquiries have been made by the agency to locate the documents, and there is no further evidence as to their present whereabouts, I would make a finding to that effect.
7. An applicant may believe that documents are covered by the terms of an access application, but the agency contends that they are not. I will decide that issue according to a fair and objective reading of the terms of the relevant access application. If the alleged additional documents fall outside the terms of the access application, the agency would be entitled to require the applicant to lodge a fresh access application for the documents.
8. An applicant may complain about missing documents, and inquiries establish that the documents do exist, but they came into the possession or control of the agency after the date the access application was made. Such documents fall outside the scope of the access application, and the agency would be entitled to require the applicant to lodge a fresh access application for the documents.

The essence of the review is a question of **reasonableness**. My decision in this matter does not preclude there being further documents that fall within the scope of your application and which the agency has an immediate right of access to. I am however unable to make a positive finding in your favour in that regard. In all the circumstances, I am satisfied that the agency has discharged its obligations in relation to the searches it has undertaken in this review. Accordingly, I do not consider it necessary to obtain statutory declarations from the agency's officers. I therefore formally conclude my review of this matter pursuant to section 39(3)(b) of the FOI Act and decline to make a direction on the basis that I am not satisfied a different determination should be made in this matter.

The Ombudsman advised the applicant of the right of appeal against this determination to the District Court pursuant to section 40 of the FOI Act. Any such appeal was required to be commenced within 30 days of receiving the Ombudsman's decision.

**Difficulty in providing procedural fairness to some applicants particularly those with a history of mental illness and/or those who are unable to make meaningful submissions**

Applicant (X) and Southern Adelaide Health Service - Noarlunga Health Service

X sought from the Southern Adelaide Health Service (the agency):

- a copy of documentation pertaining to his attendance in the Ward
- a summary of reasons for his attendance and treatment/progress pertaining to his attendance in the Ward
- a transcript of his health record pertaining to his attendance in the Ward

X sought internal review of the deemed determination of the agency to refuse access to these documents and the agency responded, confirming its deemed determination.

X sought external review of the agency's determination by the Ombudsman.

By Notice of External Review the Ombudsman sought a report from the agency in support of this determination. The agency responded to this notice by letter providing confidential submissions.

The agency relied upon clauses 4(1)(a), and 6(3a)(a) and (b) of Schedule 1 to the *Freedom of Information Act 1997* (the FOI Act).

These clauses provide as follows:

**Clause 4(1)(a)**

- (1) *A document is an exempt document if it contains matter the disclosure of which could reasonably be expected—*  
 (a) *to endanger the life or physical safety of any person; or*

**Clause 6(3a)**

- (3a) *A document is an exempt document if it contains matter—*  
 (a) *consisting of information concerning a person who is presently under the age of 18 years or suffering from mental illness, impairment or infirmity or concerning such a person's family or circumstances, or information of any kind furnished by a person who was under that age or suffering from mental illness, impairment or infirmity when the information was furnished; and*  
 (b) *the disclosure of which would be unreasonable having regard to the need to protect that person's welfare.*

The documents the subject of this application were provided to the Ombudsman to assist in the consideration of this matter. The applicant did not have access to the documents and was not in a position to contradict what was contained within them, nevertheless the Ombudsman took them into account in coming to a decision in this review. In addition, the following contents of the agency's determination on internal review which was conveyed to the applicant, was taken into account:

The reason for the exemption of documents ... is due to you suffering from a mental illness and the documented behaviour you displayed during the course of your illness and treatment at Noarlunga Health Services raises concerns about the safety of individuals.

From the Ombudsman's perusal of the documents, together with consideration of the agency's submissions, and the applicant's oral submissions in this matter, the Ombudsman was satisfied that the documents the subject of the review were exempt under the FOI Act on the basis of clause 6(3)(a) and (b) of Schedule 1 to the FOI Act. Accordingly, the Ombudsman confirmed the agency's determination to refuse X access to the documents pursuant to section 39(11) of the FOI Act.

The applicant was advised of his right of appeal against this determination to the District Court pursuant to section 40 of the FOI Act.

## Issue

**Increasing prevalence of secrecy provision, *vis a vis* clause 12(1) and the effect on the ability to access documents held by government agencies (however innocuous such documents may be and/or notwithstanding clear public interest factors in favour of release)**

Hannan (H) and the EPA and OneSteel

In this matter H sought from the agency pursuant to the *Freedom of Information Act 1991* (FOI Act), the following:

Plans (eng), concepts, designs, or any related data from any source including OneSteel regards to Project Magnet.

The agency identified a number of documents which fell within the scope of the application, and thereafter consulted with OneSteel in relation to the release of those documents. OneSteel provided written submissions to the agency advising of its objections to the release of the documents. The agency issued a determination in this matter and advised the applicant and OneSteel that it would release all documents in its possession that fell within the scope of the application. OneSteel then sought internal review of that determination.

Following an internal review the agency upheld its original determination with the exception that it found that one document, document 9, was exempt on the basis of clause 13(1)(a). OneSteel sought external review of the agency's determination by the Ombudsman pursuant to section 39 of the FOI Act.

The Ombudsman's delegate contacted OneSteel by telephone and invited it to provide any further submissions that it cared to make in the matter, with particular reference to the claim made pursuant to clause 7(1)(a) of Schedule 1 to the FOI Act, and partial release pursuant to section 20(4) of the FOI Act.

### Standing and Onus:

This review was pursuant to section 39(2) of the FOI Act which provides as follows:

- (2) A person—
- (a) who is aggrieved by a determination of an agency following an internal review; or
  - (b) who is aggrieved by a determination that is not liable to internal review, may apply to the relevant review authority for a review of the determination.

The Ombudsman considered that OneSteel was entitled to seek a review of the determination on the basis that it fell within the scope of section 39(2). It was clearly an 'interested person' as defined in section 39(1), which is as follows:

*interested person, in relation to a review, means a person who should, under Division 2 of Part 3, be consulted in relation to an application for access to a document the subject of the review;*

This type of application for external review is sometimes referred to as a 'reverse FOI'. The conduct of such a review necessarily involves a consideration of the views of the applicant for external review (OneSteel), the agency, and the first applicant (H). The operation of section 48 is somewhat modified here as the agency had no real interest in the matter given its determination to release most of the documents that fell within the scope of the application. In such circumstances the review becomes in effect a contest between the first applicant and the applicant for external review.

The agency retained the legal onus, pursuant to section 48 of the FOI Act, of justifying its determination in respect of the documents falling within the scope of this review. However, as this review was at the instigation of a third party to the original application, the Ombudsman adopted the approach taken by the Queensland Information Commissioner in the case of *Re Pope and Queensland Health* in relation to the Queensland equivalent to section 48 of the South Australian FOI Act:

Section 81 of the FOI Act provides that in a review under Part 5 of the FOI Act, the agency which made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant. In the present case, therefore, the formal onus remains on Queensland Health to justify its decision that the Seawright Report is not exempt under s.45(1)(c). Queensland Health can discharge this onus, however, by demonstrating that any one of the three elements which must be established to found a valid claim for exemption under s.45(1)(c) cannot be made out. Thus, the applicant in a 'reverse-FOI' case, while carrying no formal legal onus, must nevertheless, in practical terms, be careful to ensure that there is material before the Information Commissioner from which I am able to be satisfied that all elements of the exemption provision relied upon (in this case the three elements of s.45(1)(c)) are established.

For practical purposes therefore the second applicant, OneSteel, bore the onus, albeit an evidential one, in the conduct of this review. The agency was in effect able to discharge its onus under section 48 by rebutting any claims of exemption pursuant to Schedule 1 to the FOI Act which were made by OneSteel. That is, it was only necessary for the agency to demonstrate that an element of a claim of exemption was not satisfied in order to discharge its burden under the FOI Act. In assessing the issue of the discharge of the legal onus under section 48 of the FOI Act the Ombudsman, as a practical matter, took into account *inter alia* the contents of the agency's initial determination and its determination following the internal review.

#### **Exemption Provisions Claimed by OneSteel:**

##### **Clause 7(1)**

Clause 7 provides as follows:

###### **7—Documents affecting business affairs**

- (1) *A document is an exempt document—*
  - (a) *if it contains matter the disclosure of which would disclose trade secrets of any agency or any other person; or*
  - (b) *if it contains matter—*
    - (i) *consisting of information (other than trade secrets) that has a commercial value to any agency or any other person; and*
    - (ii) *the disclosure of which—*
      - (A) *could reasonably be expected to destroy or diminish the commercial value of the information; and*
      - (B) *would, on balance, be contrary to the public interest; or*
  - (c) *if it contains matter—*
    - (i) *consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and*
    - (ii) *the disclosure of which—*
      - (A) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and*
      - (B) *would, on balance, be contrary to the public interest.*
- (2) *A document is not an exempt document by virtue of this clause merely because it contains matter concerning the business, professional, commercial or financial affairs of the agency or other person by or on whose behalf an application for access to the document is made.*
- (3) *A document is not an exempt document by virtue of this clause if it is a contract entered into by the Crown or an agency after the commencement of this subclause.*

##### **Clause 12(1)**

There was also a claim of confidentiality in respect of the documents on the basis of section 121 of the *Environment Protection Act 1993* (EPA Act) which provides as follows:

###### **121—Confidentiality**

*A person must not divulge any information relating to trade processes or financial information obtained (whether by that person or some other person) in the administration or enforcement of this Act except—*

- (a) *as authorised by or under this Act; or*
  - (b) *with the consent of the person from whom the information was obtained or to whom the information relates; or*
  - (c) *in connection with the administration or enforcement of this Act; or*
  - (d) *for the purpose of any legal proceedings arising out of the administration or enforcement of this Act.*
- Penalty: Division 5 fine.*

Although not specifically articulated by OneSteel, this section gives rise to a consideration of clause 12 of Schedule 1 to the FOI Act, which provides as follows:

###### **12—Documents the subject of secrecy provisions**

- (1) *A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act.*
- (2) *A document is not an exempt document by virtue of this clause unless disclosure of the matter contained in the document, to the person by or on whose behalf an application for access to the document is made, would constitute such an offence.*

##### **Clause 13(1)**

OneSteel also relied on section 121 of the EPA Act as the basis for claiming exemption under both limbs of clause 13(1) of Schedule 1 to the FOI Act, which provides as follows:

### **13—Documents containing confidential material**

(1) A document is an exempt document—

- (a) if it contains matter the disclosure of which would found an action for breach of confidence; or
- (b) if it contains matter obtained in confidence the disclosure of which—
  - (i) might reasonably be expected to prejudice the future supply of such information to the Government or to an agency; and
  - (ii) would, on balance, be contrary to the public interest.

## **Analysis of Exemption Provisions**

### **Clause 7(1)(a)**

The Queensland Information Commissioner, in the decision of *Cannon and the Australian Quality Egg Farms Limited*, provided an excellent analysis of the law of trade secrets in relation to the application of their equivalent provision to clause 7(1)(a) of Schedule 1 to the FOI Act, which the Ombudsman adopted for the purposes of this review:

#### **Observations on s.45(1)(a) - trade secrets**

Section 43(1)(a) of the Commonwealth FOI Act appears to have appropriated the use of the term "trade secrets" from exemption 4 of the United States FOI Act. American law is generally more accepting of the concept of trade secrets as a species of property than is our law. For example, in *Ansell Rubber Co Pty Ltd v Allied Rubber Industries Pty Ltd* [1967] VR 37, Gowans J of the Victorian Supreme Court observed (at p.46) that "the conception of trade secrets" was only "a particular subject matter to which the principles relating to breach of confidence have been applied". It is true that there may be substantial overlap between s.45(1)(a) and s.46(1)(a) or (b) of the FOI Act, in that information which would disclose trade secrets is generally likely to have been communicated to a government agency in circumstances which would enliven the s.46(1) exemption (as to the requirements of which, see generally *Re "B" and Brisbane North Regional Health Authority*). However, the application of s.45(1)(a) depends primarily on the proper characterisation of the information in issue as matter that would disclose trade secrets of an agency or another person. There is no need to specifically identify a confider and confidtee, nor to explore whether the circumstances of communication of the information give rise to an obligation of confidence.

In the *Ansell Rubber* case, Gowans J found assistance in the American "Restatement of the Law of Torts" (1939; Volume 4, paragraph 757) which refers to a trade secret as "any formula, pattern or device or compilation of information which gives an advantage over competitors who do not know or use it". Gowans J referred to the following passage from the "Restatement of the Law of Torts":

Secrecy. The subject matter of a trade secret must be secret. Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as his secret. Matters which are completely disclosed by the goods which one markets cannot be his secret. Substantially, a trade secret is known only in the particular business in which it is used. It is not requisite that only the proprietor of the business know it.

He may, without losing his protection, communicate it to employees involved in its use. He may likewise communicate it to others pledged to secrecy. Others may also know of it independently, as, for example, when they have discovered the formula by independent invention and are keeping it secret. Nevertheless, a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are: (1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

The six factors referred to in the above passage were adopted by the Commonwealth Administrative Appeals Tribunal (the Commonwealth AAT) for the purpose of considering the application of s.43(1)(a) of the Commonwealth FOI Act in *Re Organon (Australia) Pty Ltd and Department of Community Services and Health* (1987) 13 ALD 588 at 593-4; however, the Commonwealth AAT added an additional factor, namely, "whether the information is of a technical character".

Interestingly, in cases under exemption 4 of the United States FOI Act the courts have adopted a narrower view of what constitutes a trade secret. In *Public Citizen Health Research Group v Food and Drug Administration*, 704 F.2d 1280 (1983), the Court of Appeal of the District of Columbia adopted a narrower test which stressed that there must be "a direct relationship between the information at issue and the productive process", so that, for the purpose of exemption 4, a trade secret was "a secret, commercially viable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort" (at p.1288).

In *Re Public Interest Advocacy Centre and Department of Community Services & Health and Searle Australia Pty Ltd* (Commonwealth AAT, Nos. N88/1222 and N89/529, O'Connor J (President), Mrs McClintock, Dr Thorpe, 19 September 1991, unreported) the applicant argued in the Commonwealth AAT that this narrower American view of the meaning of trade secret should be adopted in the interpretation of s.43(1)(a) of the Commonwealth FOI Act. The Commonwealth AAT said:

It is true that the United States courts have taken a restrictive approach to the interpretation of ["trade secrets"]. In so doing, however, the DC Circuit specifically noted in *Public Citizen*, supra at 1286-7, that there is a wider approach to that phrase in other contexts. We agree with the submissions of Miss Henderson and Dr Flick that that wider approach is the approach taken in Australia to the question of trade secrets. In general, we agree that the approach in *Re Organon*, supra, is a useful guide to the interpretation of "trade secrets".

The Tribunal went on to accept an argument by the applicant that health and safety data (in relation to an IUD contraceptive device) did not satisfy what the Tribunal referred to as one of the "tests" laid down in *Re Organon*, as it was not information of a technical character. The Tribunal observed that the information required no technical expertise to be understood and in fact could be understood by an educated lay person.

The *Searle* case went on appeal to a Full Court of the Federal Court of Australia (see *Searle Australia v Public Interest Advocacy Centre* (1992) 108 ALR 163) which held that this finding by the Tribunal involved an error of law. The court stressed that the indicia stated in *Re Organon* were merely guides. The Full Court observed (at p.172-4):

Reference was made during argument to several United States authorities. We do not think that they assist in the application of s.43(1)(a) of the FOI Act. The United States legislation is different to the Australian and the approach taken there to analogous provisions is not the same. The FOI Act has adopted an expression which is well known in commerce, in judicial decisions and in Australian legislation. It should be given the meaning well understood in this country.

The determination of what is a trade secret is primarily a question of fact for the administrative decision-maker. Nevertheless, it is an error of law for a decision-maker to define a statutory criterion in terms which are not reasonably open: see *Hope v Bathurst City Council* (1980) 144 CLR 1 at 7-8 per Mason J; 29 ALR 577; *Lombardo v Federal Commissioner of Taxation* (1979) 28 ALR 574 at 576 per Bowen CJ. There may also be an error of law if a decision-maker considers a case pursuant to criteria which are not stated by the statute in preference to the words which the statute uses. See for example Bowen CJ and Beaumont J in *Cockcroft*, supra, at FCR 190, ALR 106. This is because the words of the statute are the means which Parliament has adopted to convey its will. If a term is used in legislation, Parliament is to be taken as requiring that individual cases will be judged against that term, not against other terms or criteria not used in the statute.

In the present case the Tribunal applied the criteria listed in *Re Organon* (1987) 13 ALD 588. Those criteria are not stated in s.43(1)(a). They introduce a limitation, namely that the information is of a technical character, which does not appear in the statute and is not inherent in the term "trade secret". Information may be a secret whether or not it is of a technical character. In determining the facts on the criteria stated in *Re Organon* rather than the words of the statute, the Tribunal erred in law.

In so far as legal judgments elucidate the basic concept of what is a trade secret, it is useful to refer to *Lansing Linde Ltd v Kerr* (1990) 21 IPR 529, in which Staughton LJ said at 536:

In *Faccenda Chicken Ltd v Fowler* [1985] 1 All ER 724 Goulding J at first instance had defined three classes of information, as follows: (i) information which, because of its trivial character or its easy accessibility from public sources of information, cannot be regarded by reasonable persons or by the law as confidential at all; (ii) information which the servant must treat as confidential but which once learned necessarily remains in the servant's head and becomes part of his skill and knowledge; (iii) specific trade secrets so confidential that, even though they may necessarily have been learned by heart and even though the servant may have left the service, they cannot lawfully be used for anyone's benefit but the master's. There the dispute was as to the second class so defined. Goulding J expressed the view that it could be protected by an express covenant; this court was of the contrary opinion: see [1987] Ch 117; [1986] 1 All ER 617. Subsequently other judges have touched on the topic in *Balston Ltd v Headline Filters Ltd* [1987] FSR 330 and *Lock International plc v Beswick* (1989) 16 IPR 497; [1989] 3 All ER 373; [1989] 1 WLR 1268.

It appears to me that the problem is one of definition: what are trade secrets, and how do they differ (if at all) from confidential information? Mr Poulton suggested that a trade secret is information which, if disclosed to a competitor, would be liable to cause real (or significant) harm to the owner of the secret. I would add first, that it must be information used in a trade or business, and secondly that the owner must limit the dissemination of it or at least not encourage or permit widespread publication.

That is my preferred view of the meaning of trade secret in this context. It can thus include not only secret formulae for the manufacture of products but also, in an appropriate case, the names of customers and the goods which they buy.

There is no reason therefore why there cannot be trade secrets in respect of the manufacture of medical or health products as much as for other products. To take Staughton LJ's example, the trade secrets of such a manufacturer may include formulae for the products as well as information concerning customers provided, in each case, that the information is in fact kept secret and would be to the advantage of trade rivals to obtain.

The necessity for secrecy means that such matters as the dimensions of products, and of parts of products, already on the market are unlikely to be trade secrets, the products being inspectable, such matters usually will not be secret. Similarly, the composition of a product, though secret in the first instance, may cease to be secret because it has become known through testing, reporting in trade journals, or discussion at seminars or conferences. Information, originally secret, may lose its secret character as time passes. See *Attorney-General v Jonathan Cape Ltd* [1967] QB 752 at 771 ...

The indicia stated in *Re Organon*, supra, were merely guides. It may be that the more technical the information is, the more likely it is that, as a matter of fact, the information will be classed as a trade secret. But technicality is not required. Many valuable trade secrets could be readily understood by a lay person, if informed of them. See, for example, the reference by Staughton LJ to "the names of customers and the goods which they buy". As Farwell LJ said in *Sir W C Leng & Co Ltd v Andrews* [1909] 1 Ch 763 at 774:

... it would be a breach of confidence to reveal trade secrets, such as prices, &c, or any secret process or things of a nature which the man was not entitled to reveal.

Paragraph (a) of the indicia enunciated in *Re Organon* was not stated by Gowans J in *Ansell Rubber Co Pty Ltd v Allied Rubber Industries Pty Ltd* [1967] VR 37, whose indicia were otherwise adopted in *Re Organon*.

An aspect of the concept of "trade secrets" which was not discussed by the Tribunal is that the secrets must be used in or useable in the trade. A trade secret is an asset of the trade. Past history and even current information, such as mere financial particulars, may be confidential. The law may protect the disclosure of such information by a person who has obtained it in the course of a relationship which requires confidentiality, such as that of employee, solicitor or accountant. But such information may not be a trade secret.

It may be that some of the documents in issue before the Tribunal would disclose information of that type, namely information which Searle has maintained confidential to itself but which is not a trade secret because it is not information now used for the benefit of Searle's business.

The determination in any particular case of the question whether information is a trade secret is a determination of fact. Accordingly, it is for the Tribunal to determine whether the documents described by the undefined term, "health and safety data", contain trade secrets. No general statement may be made about those documents. As we understand the evidence in the present case, there is information in the possession of the Department concerning the efficacy and effects of "Gravigard", and "Mini-Gravigard" and regarding tests which had been undertaken on or in relation to them. This information has hitherto been kept confidential. It may, therefore, properly be described as "secret". It is less apparent that it is information now useable in trade. The question must be determined by the Tribunal, having regard to the content of each of the relevant documents but free of any requirement that the information contained in the document be of a technical character.

The net result of the Full Court's discussion of the meaning of "trade secrets" appears to be that the term should be given its usual meaning in Australian law, which appears to correspond very closely to the passage from the 1939 American "Restatement of the Law of Torts", as referred to by Gowans J in the *Ansell Rubber* case and subsequently applied by the Supreme Court of Victoria in *Mense v Milenkovic* [1973] VR 784. Certainly the Full Court accepted that the six indicia set out in that passage are appropriate for use as guides. As to the seventh added by the Tribunal in *Re Organon*, the Full Court emphasised that technicality is not a requirement, although the more technical the information is, the more likely it is that, as a matter of fact, the information will be classed as a trade secret. The other factors that received emphasis in the Full Court's judgment in *Searle* (nearly all of which are covered in the passage from the American "Restatement of the Law of Torts" are:

- the necessity for secrecy, including the taking of appropriate steps to confine dissemination of the relevant information to those who need to know for the purposes of the business, or to persons pledged to observe confidentiality;
- that information, originally secret, may lose its secret character with the passage of time;
- that the relevant information be used in, or useable in, a trade or business;
- that the relevant information would be to the advantage of trade rivals to obtain;
- that trade secrets can include not only secret formulae for the manufacture of products, but also information concerning customers and their needs.

The Ombudsman adopted the above analysis for the purposes of the interpretation of clause 7(1)(a) of Schedule 1 to the FOI Act.

Clause 7(1)(a) requires that the documents contain matter the disclosure of which would disclose trade secrets of any agency or any other person. On the evidence provided by OneSteel the Ombudsman was not satisfied that the documents contained trade secrets. Therefore in relation to the claim made in respect of clause 7(1)(a), the Ombudsman was not satisfied that the documents were exempt on that basis.

It was not apparent from the Ombudsman's review of the documents that the documents in their entirety contained information of a secret nature.

During the course of this review the Ombudsman's delegate advised OneSteel of the contents of section 20(4) which provides as follows:

(4) If-

- (a) it is practicable to give access to a copy of a document from which the exempt matter has been deleted; and  
(b) it appears to the relevant agency (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to such a copy, the agency must not refuse to give access to the document to that limited extent.

This advice was in response to OneSteel's submission that the FOI Act did not contemplate partial release. Clearly that submission was in error. However partial release only becomes relevant when the threshold issue of exemption is met - that is, partial exemption only becomes an issue when the Ombudsman is satisfied that the documents contain exempt matter. The Ombudsman was not satisfied that the documents were exempt in whole or in part by reason of clause 7(1)(a).

In all the circumstances the Ombudsman was not persuaded that the claim of exemption pursuant to clause 7(1)(a) was justified in relation to the documents.

#### **Clause 7(1)(b)**

In relation to the claim made in respect of clause 7(1)(b), the Ombudsman was satisfied that the documents may have contained information within the scope of clause 7(1)(b)(i). The Ombudsman was also prepared to accept for the purposes of the review that the disclosure of the information could reasonably be expected to destroy or diminish the commercial value of the information as required by clause 7(1)(b)(ii)(A). The Ombudsman was not satisfied that disclosure of the documents would on balance, be contrary to the public interest as required by clause 7(1)(b)(ii)(B). In reaching his view as to where the balance of the public interest lay the Ombudsman had regard to:

- the significant issue of the emissions of dust from OneSteel;
- the potential impact of such emissions on the health and wellbeing of residents of Whyalla including the applicant;
- the activities of the Whyalla Red Dust Action Group Inc (of which the applicant is a member) in raising awareness of these issues;
- the inability of the residents to participate in any meaningful debate about these issues in the absence of a full appreciation of the nature of the activities of OneSteel, including those that are associated with Project Magnet;
- the need for OneSteel's business interests to be protected;
- the nature of the regulation undertaken by the agency and the desirability of the nature of such regulation to be in the public domain;
- the objects of the FOI Act.

#### **Clause 7(1)(c)**

In relation to the claim made in respect of clause 7(1)(c), the Ombudsman was satisfied that the documents may have contained information within the scope of clause 7(1)(c)(i). He was prepared to accept for the purposes of this review that the disclosure of this information could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency as required by clause 7(1)(c)(ii)(A). He was however not satisfied that disclosure of the documents would on balance be contrary to the public interest as required by clause 7(1)(c)(ii)(B) for the same reasons as outlined above in relation to his consideration of clause 7(1)(b)(ii)(B).

#### **Clause 13(1)(a)**

In relation to the requirements of clause 13(1)(a), Bollen J, with whom King CJ and Mullighan J agreed, considered and applied this provision in the South Australian Supreme Court decision of *Bray and Smith v Workers Rehabilitation and Compensation Corporation and Stanley (Re Bray and Smith)*, in respect of the existence and nature of an action for breach of confidence. He cited with approval the comments of Brennan J (as he was then) in *Johns v ASC and Ors (Re Johns)*:

The condition of confidentiality [p]rima facie, it is the privilege of any person who possesses information to keep the information confidential. That person may wish not to disclose it at all or may wish to disseminate it or to authorise its dissemination only for a limited purpose or to a limited class of persons. In *Attorney-General v Guardian Newspapers (No 2)* (1990) 1 AC 109 at 214 - the Spycatcher case - Bingham LJ said:

'It is a well-settled principle of law that where one party (the confidant) acquires confidential information from or during his service with, or by virtue of his relationship with, another (the confider), in circumstances importing a duty of confidence, the confidant is not ordinarily at liberty to divulge that information to a third party without the consent or against the wishes of the confider.'

The jurisdictional basis or bases of this principle may not have been finally determined (116 ALR 567 at 577) but there is certainly jurisdiction in equity to grant relief against actual or threatened abuse of confidential information. In *Moorgate Tobacco Co Ltd v Phillip Morris Ltd (No 2)* (1984) 156 CLR 414 at 437-8; 56 ALR 193 at 208, Deane J said:

It is unnecessary, for the purposes of the present appeal, to attempt to define the precise scope of the equitable jurisdiction to grant relief against an actual or threatened abuse of confidential information not involving any tort or any breach of some express or implied contractual provision, some wider fiduciary duty or some copyright or trade mark right. A general equitable jurisdiction to grant such relief has long been asserted and should, in my view, now be accepted: see *Commonwealth v John Fairfax and Sons Ltd* (1980) 147 CLR 39, at 50-2; 32 ALR 485 at 491-3. Like most heads of exclusive equitable jurisdiction, its rational basis does not lie in proprietary right. It lies in the notion of an obligation of conscience arising from the circumstances in or through which the information was communicated or obtained.

In relation to the requirements of this provision, the Ombudsman referred also to the Queensland Information Commissioner's analysis in the case of *B v Brisbane North Regional Health Authority (Re B)*. In summary, the following four requirements must be met in order to claim clause 13(1)(a) as a basis for refusing access to documents. Should any of these requirements not be satisfied, an action for breach of confidence will not lie and reliance upon the clause as a basis for withholding access to the documents under clause 13(1)(a) will not be justifiable:

- a) The information in issue in the document must be **specifically identifiable** and **ascertainable**;
- b) The information in issue must possess a **'necessary quality of confidence'**. It must possess a degree of secrecy or inaccessibility sufficient for it to be the subject of an obligation of confidence, arising from the circumstances in or through which the information was communicated or obtained;
- c) The information in issue must have been communicated by the confider in such circumstances as to fix the confidant with an equitable obligation of conscience not to use the **confidential information** in a way that is not authorised by the confider.
- d) It must be established that disclosure would constitute a **misuse, or unauthorised use** of the confidential information in issue, and be to the detriment of the confider (it is not clear whether it is essential to establish that detriment is likely to be occasioned to the confider as a result of the unauthorised use; the cases show, however, that detriment is easily established).

In the absence of a contractual basis for an obligation of confidence, reliance must be placed on equitable obligations. As to the imposition of an equitable obligation upon a government agency, Gummow J, in the case of *Smith Kline & French Laboratories (Aust) Ltd & Others v Secretary, Department of Community Services & Health*, made the following observations:

In many situations, where a plaintiff establishes a case of disclosure of confidential information for a sole purpose, then any use of it for any other purpose including disclosure to any other party will be a breach of confidence; F Gurry, *Breach of Confidence* (1984), pp 113-114 ...

The considerations relied upon by the applicants in the SK & F proceedings do not make good their submission that the Department ought to have had the alleged 'knowledge'. Further, one would be cautious in attributing to one party a belief as to the purposes of another when that other party could not show that it had turned its mind to the crucial element in those alleged purposes, here, use as against disclosure.

Moreover, and this is a significant point, in assessing whether the Department ought to have had the 'knowledge' alleged, one should have regard to the effect of the legal framework within which the parties were dealing. One would be slow to attribute a regulatory authority knowledge that a party dealing with it expected it to act in a manner which would inhibit it in the exercise of its legal powers and obligations. One would be slow also to attribute to that party a purpose which if fulfilled would inhibit the regulatory authority in this way. Such conduct would not readily be regarded in accord with equity and good conscience.

The case of *Re B* also considered the special considerations attributable to government *vis a vis* equitable obligations:

Thus, when a confider purports to impart confidential information to a government agency, account must be taken of the uses to which the government agency must reasonably be expected to put that information, in order to discharge its functions. Information conveyed to a regulatory authority for instance may require an investigation to be commenced in which particulars of the confidential information must be put to relevant witnesses, and in which the confidential information may ultimately have to be exposed in a public report or perhaps in court proceedings ... It appears that a government agency cannot by agreement or conduct bind itself so as to guarantee that confidential information imparted to it will not be disclosed under the FOI Act. Thus, a Full Court of the Federal Court of Australia in *Searle Australia Pty Ltd v Public Interest Advocacy Centre* (1992) 108 ALR 163 at p.180 was prepared to say:

Prior to the coming into operation of the FOI Act, most communications to Commonwealth Departments were understood to be confidential because access to the material could be obtained only at the discretion of an appropriate officer. With the commencement of the FOI Act on 1 December 1982, not only could there be no understanding of absolute confidentiality, access became enforceable, subject to the provisions of the FOI Act. No officer could avoid the provisions of the FOI Act simply by agreeing to keep documents confidential. The FOI Act provided otherwise.

In relation to the claim of exemption pursuant to clause 13(1)(a) the Ombudsman was not satisfied that the information in the documents, which arguably fell within the scope of clause 13(1)(a) was specifically identifiable. This was implicitly acknowledged by OneSteel in its letter to the Ombudsman stating the following:

In OneSteel's opinion there is no scope under the Freedom of Information Act to deal with documents the subject of an application other than as a whole. In other words, partial release of documents is not contemplated. The annexure provides examples of trade secrets, trade processes and commercially and financially sensitive information only and in no way attempts to identify each and every aspect of the documents that is critical to OneSteel's objection. OneSteel is not suggesting that every page of every document contains a trade secret or is commercially and financially sensitive information. Whether or not each and every page contains such information is in OneSteel's opinion irrelevant as this is not the relevant test under the Act and the documents should be assessed as a whole.

Thus the Ombudsman considered that this claim was not sustainable in relation to the documents as a whole. In the absence of specifically identifiable and ascertainable portions of the document that fell within the scope of clause 13(1)(a), the Ombudsman was not persuaded that the claim pursuant to clause 13(1)(a) was satisfied in relation to the documents the subject of this review.

The comments below in relation to the Ombudsman's consideration of clause 12(1) were however of relevance here. The Ombudsman considered that in relation to those portions of the documents that fell within the scope of section 121 of the EPA Act such portions - and only such portions in the Ombudsman's view - would also be exempt on the basis of clause 13(1)(a). This was because the Ombudsman was satisfied as to the remaining elements of clause 13(1)(a) in relation to those portions of the document.

#### **Clause 13(1)(b)**

In relation to the claim pursuant to clause 13(1)(b), the Ombudsman was satisfied that the documents may contain information obtained in confidence. He was not satisfied that disclosure of that information might reasonably be expected to prejudice the future supply of such information to the Government or to an agency in light of the statutory obligations on OneSteel to provide such information to the agency. In any event, even if clause 13(1)(b)(i) was satisfied, the Ombudsman was not satisfied that disclosure of the documents would, on balance, be contrary to the public interest, for the same reasons as set out above concerning the operation of clause 7(1)(b)(ii)(B).

#### **Clause 12(1)**

In relation to clause 12(1), insofar as the documents contained 'information relating to trade processes or financial information obtained (whether by that person or some other person) in the administration or enforcement of the EPA Act, the Ombudsman was satisfied that such information was exempt pursuant to clause 12(1) of Schedule 1 to the FOI Act.

#### **Partial Release**

The Ombudsman considered the application of section 20(4) of the FOI Act in relation to a number of documents the subject of this review, particularly the meaning of the word 'practicable' in this section. The Queensland Information Commissioner commented on this issue in the decision of *NHL and The University of Queensland* in the context of the Queensland FOI Act.

It is evident ... that the University took the view that an agency's determination of practicability in the context of s.32(b) of the FOI Act is to be made on the basis of whether the document from which exempt matter has been deleted would be meaningful. However, the word "practicable" means: "that can be done, feasible" (*Australian Concise Oxford Dictionary*); "capable of being done; feasible" (*Collins English Dictionary*, Third Australian Edition). I consider that the word "practicable" in s.32(b) of the FOI Act refers to the feasibility of producing a severed version of a document from which exempt matter has been deleted, i.e., whether it is physically or mechanically possible, and whether the agency concerned has the available resources to do so. The question of whether the resulting document will be meaningful is, in my view, addressed in s.32(c) of the FOI Act, in requiring that the agency determine (by reference to the terms of the relevant FOI access application, or through consultation with the applicant) whether the applicant would wish to be given access to a copy of a document from which all exempt matter has been deleted. The question of whether the severed matter is intelligible at all must, I think, be taken into account, and common sense judgments made: see my remarks in *Re Fagan and Minister for Justice and Attorney-General and Minister for the Arts* (Information Commissioner Qld, Decision No. 95015, 26 May 1995, unreported) at paragraphs 42-45. I note, however, that it is arguable that the intention of s.32(c) of the FOI Act is that this question should ultimately be committed to the subjective judgment of the applicant for access.

In any event, I am satisfied that it is practicable, in the sense described above, to give the applicant access to the matter which I have decided is not exempt from disclosure to the applicant, by deleting from copies of the documents in issue the matter which I have found to be exempt under s.44(1) of the FOI Act. I also consider that the segments of matter which I have found are not exempt from disclosure to the applicant, would be intelligible to the applicant. Whether the applicant would wish to be given access to them is an issue which the University can take up directly with the applicant, but I find that the University is not entitled to rely on s.32(b) of the FOI Act as a ground for refusing to give the applicant access to the matter which I have decided is not exempt from disclosure to the applicant.

The Queensland Information Commissioner's decision of *Fagan and Minister for Justice & Attorney-General* was also considered apposite:

The Queensland FOI Act, on the other hand, contemplates that documents may be comprised either totally or partly of exempt matter, and the exemption provisions of the Queensland FOI Act require an evaluation of the matter in issue, rather than of a document in issue, so that attention is directed from the outset to the possibility of severance in accordance with s.32 of the Queensland FOI Act.

The Ombudsman agreed with and adopted the views of the Queensland Information Commissioner (concerning the operation of section 32 of the Queensland FOI Act) in relation to the application of section 20(4) of the South Australian FOI Act. Where, however, exempt and non-exempt material was inextricably intermingled, the Ombudsman's view was that section 20(4) could have no application, in light of the risk of inadvertently or otherwise revealing exempt matter. In all other cases however the Ombudsman considered that the application of section 20(4) should be considered even if the outcome was a document which appears on its face to be devoid of any meaning to the agency.

The Ombudsman did not consider it appropriate to then seek the views of OneSteel in relation to partial release, given that he had already sought such views previously via his delegate, who intimated to OneSteel that partial release was a likely outcome in the event that the Ombudsman was not persuaded that the documents were exempt in their entirety. The Ombudsman considered that OneSteel were given an adequate opportunity to address this issue and, having initially declined to do so, the Ombudsman did not consider that it was appropriate to once again invite such submissions. The Ombudsman was mindful of the need to bring finality to this matter in the most expedient fashion and considered that to seek OneSteel's further comment at this stage would prolong the matter unnecessarily. The Ombudsman was conscious of the delay in finalising the review, and the opportunities that OneSteel had had during the determination, internal review and external review phases, to put submissions in respect of the documents. He was also conscious of the developments in relation to Project Magnet which had transpired since the agency's determination.

The Ombudsman considered that, unless the information fell within the scope of section 121 of the EPA Act, and thus was exempt pursuant to clause 12 of Schedule 1 to the FOI Act, such information was not exempt under the FOI Act and ought to be released to the applicant in accordance with section 20(4) of the FOI Act. Pursuant to section 39(11) of the FOI Act the Ombudsman varied the agency's determinations, having decided that certain documents were exempt from release on the basis of clause 12(1) of Schedule 1 to the FOI Act.

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## Issue

### **Delineation between private and public affairs - not always clear cut where public figures (such as the Mayor of the City of Port Enfield) are involved**

Mayor and the City of Port Adelaide Enfield and Portside Messenger

The applicant for external review in this matter was the Mayor of the City of Port Adelaide Enfield (the Council).

The respondent was the City of Port Adelaide Enfield (the Council), an agency for the purposes of the *Freedom of Information Act 1991* (the FOI Act), pursuant to section 4(1) of the FOI Act.

The original applicant in this matter, the *Portside Messenger*, sought from the Council pursuant to section 12 of the FOI Act:

All documents from October 1, 2005 [the Council treated the application as relating to the period from 1 October 2004 to 14 January 2005, being the date of the FOI application] to the present day inclusive, including printouts of documents stored electronically, relating to the visit of HMAS Melbourne to Port Adelaide on October 22-27.

These documents should include, but not limited to, any and all reports correspondence and memos (electronic or otherwise) prepared or received by council staff or elected members in the lead up to, during and following the visit of the ship to Port Adelaide.

The Council identified a number of documents that fell within the scope of the application and thereafter consulted with a number of third parties (including the applicant in this external review) regarding the release of those documents. The Council then issued a (partial) determination in this matter in which it advised the applicant and the third parties that it would release all documents in its possession that fell within the scope of the application with the exception of the document the subject of this external review (the document), the reason being that the document was still the subject of consultation under the FOI Act. At the same time the Council sought the Mayor's views as to whether the document was an exempt document under the FOI Act.

By way of response, the Mayor's solicitors wrote to the Council advising of their client's objections to the release of the document on the basis of clause 6(1) of Schedule 1 to the FOI Act.

Notwithstanding this objection the Council determined to release the document. The Council notified the Mayor and the original applicant of its determination, and the Mayor of her review and appeal rights.

Subsequently, the Council wrote to the Mayor and advised her that the document would be released, the Mayor having failed to exercise her right to internal review of the determination in the interim. The Mayor's solicitors then sought internal review of the determination on her behalf. The application for internal review was processed by the Council and a decision on internal review was made which confirmed the earlier determination. The Mayor sought external review of the determination by the Ombudsman pursuant to section 39 of the FOI Act.

By Notice of External Review the Ombudsman sought submissions from the Council in justification of its determination. A copy of the Council's response to the Ombudsman was provided to the Mayor's solicitors who provided written submissions in reply. In the latter correspondence a claim of exemption pursuant to clause 7(1)(c) of Schedule 1 to the FOI Act was raised for the first time.

At the same time as raising a claim pursuant to clause 7(1)(c) of Schedule 1 to the FOI Act, the Mayor's newly appointed solicitors raised an objection on the basis that there had been no consultation with the Mayor pursuant to section 27 of the FOI Act during the determination and/or internal review phase. The Ombudsman did not consider that there was any obligation on the Council to consult with the Mayor pursuant to section 27 as the Council had not identified clause 7(1)(c) as being the basis of a claim of exemption. Even if it were obliged to do so, the Council had clearly consulted with the Mayor pursuant to section 26 of the FOI Act and at any stage in that process the Mayor could have raised a claim of exemption pursuant to clause 7(1)(c), or indeed any other provision of Schedule 1 to the FOI Act. The contents of the document were clearly made known to the Mayor during the consultation process.

The Ombudsman concluded that there had been no denial of natural justice and/or procedural fairness in the circumstances. In any event any deficiencies in the process were remedied during the external review phase when the Mayor's solicitors were advised of her ability to raise new claims of exemption during the course of the external review.

#### **The document under review**

The document consisted of a series of three email communications. Evidently the HMAS Melbourne was due to dock in Port Adelaide and the Mayor was scheduled to host a civic reception to coincide with its visit. A welcoming speech was prepared for the Mayor's approval.

#### **The Council's document**

The Mayor solicitors suggested that the Council should not have even considered the document in the determination of the application for access to documents, arguing that the Council did not 'hold' the document within the meaning of section 4(4) and (5) of the FOI Act, which provides as follows:

- (4) *An agency is to be taken to hold a document if the agency has an immediate right of access to the document.*
- (5) *Where—*
  - (a) *an agency holds information in computer storage; and*
  - (b) *a particular document is capable of being produced by the computer on the basis of information so stored,*  
*the agency is to be taken to hold that document.*

In relation to this submission, the Ombudsman referred to section 12 of the FOI Act, which provides as follows:

#### **12. Right of access to agencies' documents**

*A person has a legally enforceable right to be given access to an agency's documents in accordance with this Act.*

It was clear that once Email 3 which formed part of the document, had been sent to officers of the Council, it came into the possession of the Council. It is not clear whether anyone from the Council printed the email once it had been received. If it was printed, it was most certainly 'an agency's document' for the purposes of section 12. Even if it was not printed, it clearly fell within the scope of section 4(5).

The Ombudsman was however, satisfied that the Council correctly considered that the document was 'an agency's document' for the purposes of section 12 of the FOI Act, or alternatively that it was a document held by the Council for the purposes of section 4(4) and/or (5).

The Ombudsman noted that the application for access to documents sought documents including:

.... any and all reports, correspondence and memos (electronic or otherwise) prepared or received by Council staff or elected members in the lead up to, during and following the visit of the ship to Port Adelaide.

It was clear that the document was in the category of 'correspondence ... (electronic or otherwise) ... received by Council staff'.

#### **Procedural fairness**

During the determination phase, the Mayor's solicitors expressed their concern that a complete copy of the document (ie, without deletions) had not been provided and requested the complete document. They also expressed their concern that the Council had failed to inform the Mayor of the identity of the original applicant, stating that '[i]n our view this is critical to the determination of the request'. Further, the solicitors were concerned that the Council had not informed the Mayor how the document had come into the possession of the Council, the communication contained therein having 'originated from our client's email address'.

The Council did not address these matters until the internal review determination. Given that the solicitors had expressly reserved the right to make further submissions once the information requested had been provided, the Ombudsman considered that the Council ought to have responded to the Mayor's solicitors' requests prior to making its initial determination to permit access to the document under the FOI Act. In the circumstances, it was arguable that the Mayor was denied procedural fairness by the Council prior to the initial determination of the application for access to documents under the FOI Act.

However, the internal review process provided an opportunity for any lack of procedural fairness in the initial determination process to be rectified. In their request for internal review, the solicitors relied on the grounds set out in their earlier letter, and submitted that the document does not on its face appear to be a document in the possession of the Council. The reason for this is that there is nothing in the document which indicates that it was received by the Council or any representative thereof.' The previous request for a complete copy of the document was repeated, as well as a request for the document under section 61 of the *Local Government Act 1999*. The latter request was beyond the scope of this external review.

The solicitors' letter seeking internal review concluded:

In our submission, our client should not be expected, and is unable, to make further submissions in respect of her rights under the Act until this information is provided.

In its internal review determination, the Council addressed the question of whether the document was in its possession. It stated that:

irrespective of the content of the document, the document was held by Council records and, therefore, in accordance with Section 12 of the FOI Act it is capable of being accessed, should it fall within the ambit of an FOI application.

The Ombudsman considered that this adequately addressed the concerns of the solicitors as to how the document came into the Council's possession. As detailed above, the Ombudsman was satisfied that the Council correctly considered that the document was within the scope of the application for access to documents.

However, the Council did not, in the Ombudsman's view, adequately respond to the requests by the solicitors for:

- A complete copy of the document; and
- The identity of the applicant under the FOI Act.

#### **Complete copy**

It was not clear why the council did not provide a complete copy of the document to the Mayor. With the exception of email 3, she had already seen the document. The copy provided to her by the Council had a number of deletions, including:

- The name, telephone and facsimile numbers and email address of the sender of email 1.
- The name and email address of the recipient of email 2.
- The name (who was referred to only by surname) of a person referred to in the text of email 2.
- The names and email addresses of the sender and recipients of email 3.

However, the Ombudsman had difficulty in determining how the failure to provide a complete copy of the document had prejudiced the Mayor's rights under the FOI Act. While the Mayor may not have retained the email communications on her personal computer, one would presume that she knew who had prepared the draft speech, and hence who the sender and recipient of emails 1 and 2 were. Further, as the Mayor had prepared the text of email 2, one would also presume she knew what the missing name was in the text of that email. The only part of the document that she had not seen was the top five lines, indicating that the emails had been forwarded to certain Council officers. As the part of the email which the Mayor found objectionable was the text of email 2, her own text, the Ombudsman did not consider the failure by the Council to provide her with a complete copy of the document amounted to a lack of procedural fairness in the circumstances.

#### **Identity of the applicant**

In relation to the identity of the applicant, the Council addressed this matter for the first time in its report to the Ombudsman, stating:

The Council is not required under the FOI Act, nor is it appropriate that the identity of the person(s) who lodged the request be disclosed. The Applicant, ... would be required to lodge an FOI application seeking access to the original application.

While the Ombudsman accepted that the Council was not required under the FOI Act to disclose the identity of an applicant when consulting a third party under section 26, he was not so sure that it was correct to assert that it was inappropriate to disclose the applicant's identity. In the Ombudsman's Annual Report 2002-03 this issue was addressed, at page 52, as follows:

The Ombudsman Office was informed that some FOI officers had been advised during FOI Training Sessions that they were not legally permitted to release the names of applicants when consulting with third parties under sections 26 and 27 of the FOI Act; and if the third party was interested to know the identity of the applicant, then an FOI application would have to be lodged. This was apparently termed "FOI squared".

It is the Ombudsman's opinion that there is no obvious legal impediment to an agency releasing FOI applicants' names during the consultation process; and where applicants seek information concerning the personal or business affairs of a third party, it might reasonably be concluded that they have impliedly consented to release of their identity to the third party.

This being so, it may still be prudent for agencies to alert applicants about disclosure of their identities during the consultation process.

The Ombudsman did not, however, agree with the contention by the Mayor's solicitors that the identity of the applicant was 'critical to the determination of the request'. Disclosure of documents pursuant to an application under the FOI Act is considered to be disclosure to the world at large, so it should make little difference whether the applicant is a media outlet or an ordinary ratepayer. It was noted that the identity of the applicant was not one of the factors identified by the Administrative Appeals Tribunal in *Re Chandra and Minister for Immigration and Ethnic Affairs (Re Chandra)* as being relevant to whether disclosure of certain information might be 'unreasonable', although the Ombudsman did not conclude that the factor would be irrelevant in all cases. The Ombudsman made the point that the identity of the applicant in the present case was not critical to the determination of the matter.

The Ombudsman did not consider the failure by the Council to provide the Mayor with the identity of the applicant under the FOI Act to amount to lack of procedural fairness in the circumstances.

#### **Standing of the Mayor to apply for external review**

In determining whether the Ombudsman had the power to conduct an external review in this case, he had to determine whether the Mayor had standing to apply for external review. In this context the Ombudsman considered section 39(2), which provides as follows:

*A person—*

- (a) who is aggrieved by a determination of an agency following an internal review; or*
- (b) who is aggrieved by a determination that is not liable to internal review, may apply to the relevant review authority for a review of the determination.*

In the present case the Council had decided that the document concerned the Mayor's personal affairs, and accordingly had consulted with her. The Mayor objected to disclosure of the document. The Council had, notwithstanding the Mayor's objection, made a determination to disclose the document.

The Ombudsman had no difficulty in finding that the Mayor was a person who was aggrieved by the Council's determination, and that she was entitled to apply for external review.

#### **The Council's reasons for permitting access to the document**

The Mayor submitted that the Council failed to give adequate reasons for its findings, in particular, all the factors that the Council took into account in making the internal review determination.

The Council argued in response that it was not a requirement under the FOI Act to provide such reasons. Further, the Council stated that, prior to forwarding the internal review determination, its legal advisors had confirmed with the Ombudsman's Office that for the purpose of providing a determination to the Mayor, it was not necessary to set out the reasons for the determination or the factors taken into account in making that determination.

Section 26(3)(c)(i) of the FOI Act provides that a third party only has to be informed that the agency has determined that access to the document is to be given (additional provisions require notice of review and appeal rights to be given to the third party). There is no express obligation in the FOI Act for the Council to give reasons in these circumstances. This was in contrast to section 23(2)(f) of the FOI Act, which states that when an agency makes a determination to refuse access to a document on an application under the FOI Act, it must notify the applicant in writing of the refusal, specifying:

- (1) *the reasons for the refusal, including—*
  - (a) *the grounds for the refusal under section 20(1); and*
  - (b) *if a ground for the refusal is that the document is an exempt document—the particular provision of Schedule 1 by virtue of which the document is an exempt document and, if under the provision disclosure of the document must, on balance, be contrary to the public interest in order for the document to be exempt, the reasons why disclosure of the document would be contrary to the public interest; and*
- (2) *the findings on any material questions of fact underlying the reasons for the refusal, together with a reference to the sources of information on which those findings are based;*

Given that:

- 1) an aggrieved third party has equal rights of review and appeal to those of an applicant under the FOI Act; and
- 2) the objects of the FOI Act expressly recognise 'the preservation of personal privacy',

the Ombudsman commented that it seemed anomalous that there is no duty on an agency to give reasons to a third party for permitting access to documents when there is a duty to give reasons to an applicant for refusing access.

However, the lack of a statutory duty to give such reasons does not mean that it is undesirable for reasons to be given to a third party. The Ombudsman considered that, as a matter of practice, agencies ought to give reasons to third parties when they make determinations to permit access to documents in the face of an objection from that third party.

In the present case, the onus was on the Council, by virtue of section 48 of the FOI Act, to justify its determination, subject to the evidentiary onus on the Mayor. Any lack of procedural fairness shown to the Mayor by the Council in dealing with the application was cured by the right of external review to the Ombudsman as exercised by the Mayor, and the provision to her of the Council's report to the Ombudsman.

### **Legislative Framework**

The objects of the FOI Act are set out in section 3 of the FOI Act.

Section 3A then sets out the intention of Parliament.

Section 12 of the FOI Act provides that a person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act. However the right of access is a qualified right.

Section 20(1)(a) of the FOI Act, provides that an agency, in a determination in response to an application under the FOI Act, may refuse access to a document if it is an 'exempt document'. Schedule 1 to the FOI Act lists those documents which may be considered exempt for the purpose of the FOI Act.

Section 23 of the FOI Act sets out the information that an agency must provide in its notice of determination. These matters include the reasons for the refusal, including the grounds for the refusal, the findings on any material question of fact underlying the reasons for the refusal, and where such grounds relate to the document being an exempt document, the particular provision of Schedule 1 to the FOI Act relied upon.

In the external review the Ombudsman must consider whether he is satisfied that the agency's determination is justified. If he is satisfied that a different determination should be made, he may direct the agency to make a determination in specified terms. In relation to determinations made after 1 January 2005 the Ombudsman has the power to substitute his own determination for that of the agency's. The determination the subject of this review fell within the latter category.

### **External Review Process**

In considering an agency's submissions regarding the determination and the exemptions claimed in respect of the matter withheld from access, the Ombudsman emphasised the provisions of section 48 of the FOI Act which entails that the onus of establishing to the Ombudsman that an agency's determination is justified lies with the agency. In relation to this onus and the external review process the remarks of his Honour Judge Lee in the case of *Department of the Premier & Cabinet v Redford (the Redford decision)* apply.

In light of *the Redford decision*, the Ombudsman considered that his role in the external review was not confined to considering only those matters raised by an agency in support of its determination. That said, where an agency sought to assert that a consequence would follow from release of a document, there needed to be a degree of **probative evidence** presented to show that the claimed consequence would result from the disclosure, unless it was otherwise obvious or apparent from perusal or consideration of the document(s) the subject of the Ombudsman's review. To conclude otherwise would in the Ombudsman's view, render section 48 of the FOI Act meaningless.

The need for an agency to present supporting evidence during an external review was succinctly addressed by Owen J of the Supreme Court of Western Australia in *Manly v Ministry of the Premier and Cabinet*.

The Ombudsman considered these views to be pertinent to the external review process under the South Australian FOI Act.

This application for external review was noted to be somewhat different from the usual application under section 39 of the FOI Act. In this case the applicant for external review was not the person who sought access to documents under the FOI Act, but a person opposing the disclosure of documents. Consequently:

- the Ombudsman considered that consistent with section 48 of the FOI Act, the agency retained the legal onus of justifying its determination in respect of the document; and
- the Ombudsman adopted the approach taken by the Queensland Information Commissioner in the case of *Re Pope and Queensland Health* in relation to the Queensland equivalent to section 48 of the South Australian FOI Act:

Section 81 of the Queensland FOI Act provides that in a review under Part 5 of the FOI Act, the agency which made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant. In the present case, therefore, the formal onus remains on Queensland Health to justify its decision that the Seawright Report is not exempt under s.45(1)(c). Queensland Health can discharge this onus, however, by demonstrating that any one of the three elements which must be established to found a valid claim for exemption under s.45(1)(c) cannot be made out. Thus, the applicant in a 'reverse-FOI' case, while carrying no formal legal onus, must nevertheless, in practical terms, be careful to ensure that there is material before the Information Commissioner from which I am able to be satisfied that all elements of the exemption provision relied upon (in this case the three elements of s.45(1)(c)) are established.

- An *evidentiary* onus fell upon the applicant for external review to put sufficient material before the Ombudsman in order to persuade him that the document was exempt by virtue of one or more of the provisions of Schedule 1 to the FOI Act.

### Analysis of Exemption Provisions

#### Clause 6(1)

To succeed in claiming clause 6(1) as a basis for refusal of access to a document in an external review, the agency must show firstly, that the matter contained within the particular document comprises information concerning the personal affairs of any person (living or dead); and secondly, that the disclosure of that information would be unreasonable.

The term 'personal affairs' is defined in section 4 of the FOI Act:

*personal affairs* of a person includes that person's—

- (a) financial affairs;
- (b) criminal records;
- (c) marital or other personal relationships;
- (d) employment records;
- (e) personal qualities or attributes;

*but does not include the personal affairs of a body corporate;*

This definition is not exhaustive. Where matter within a document cannot be comfortably accommodated within the definition, regard may be had to the ordinary meaning of the term.

The Shorter Oxford English Dictionary defines 'personal affairs' as:

**personal:**

of, pertaining to, concerning or affecting the individual person or self; individual; private; one's own.

**affair:**

includes 'What one has to do, or has to do with; business; more vaguely a concern...ordinary pursuits of life'

The Macquarie Dictionary includes in its definition of the word **'personal'**:

of or pertaining to a particular person; individual; private; a personal matter; relating to, directed to, or aimed at, a particular person: done, affected, held, etc, in person: a personal conference, personal service;

and the word **'affairs'**:

matters of interest or concern; particular doings or interests; thing; matter (applied to anything made or existing, with a descriptive or qualifying term); a private or personal concern; a special function, business or duty.

In *Commissioner of Police v District Court of NSW*, Kirby P (as he then was) stated that '[i]n its context, the words "personal affairs" mean the composite collection of activities personal to the individual concerned.' In relation to the question of unreasonableness of disclosure, clause 6(1) is intended to prevent the unreasonable infringement of the privacy of third parties. In the Objects section of the FOI Act, whilst there is an apparent intent to make available as much information held by government as possible, there is an express concern that the right to privacy of individuals be protected.

In the case of *Re Chandra*, the Commonwealth Administrative Appeals Tribunal set out the relevant factors applicable to 'unreasonable disclosure' in relation to the personal affairs exemption in the Commonwealth *Freedom of Information Act 1982* (the Commonwealth Act). The tribunal stated:

Whether a disclosure is 'unreasonable' required a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance. Plainly enough what section 41 seeks to do is to provide a ground for preventing unreasonable invasion of the privacy of third parties.

These factors were approved by the South Australian District Court in the cases of *Barbaro v Liquor Licensing Commissioner* and *Pietruszka and North Western Adelaide Health Service*, meaning that it is appropriate that they be applied in consideration of the clause 6(1) claim of exemption made in an external review under the FOI Act.

In addition, the Ombudsman was mindful that case law shows that the question of unreasonableness of disclosure in clause 6(1) has 'at its core, public interest considerations'. This necessitated an examination of all the circumstances of the case at hand. There is a public interest in protecting personal privacy, and a public interest in the public enforcing their right of access to documents in fulfilment of the objects of the FOI Act.

In the Ombudsman's view, there is also a public interest in enhancing accountability within representative government. This extends to issues concerning transparency of expenditure by government of its monies; and the public's entitlement to know how much and on whom the government chooses to spend its monies in the exercise of its functions. The Ombudsman noted one of the premises upon which the FOI Act is based, as outlined by the then Attorney-General in the second reading speech in relation to the FOI Act, is '[a] government that is open to public scrutiny is more accountable to the people who elect it'.

In a decision of the Full Court of the Federal Court concerning the personal affairs exemption under the Commonwealth Act, Heerey J said:

I do not think it necessary in order to make out the [personal affairs exemption] that there is some particular unfairness, embarrassment or hardship which would inure to a person by reason of the disclosure. But if the information disclosed were of no demonstrable relevance to the affairs of government and was likely to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed, I think disclosure would be unreasonable.

#### **Clause 7(1)(c)**

This clause provides for exemption of documents affecting business, professional, commercial or financial affairs as follows:

(1) *A document is an exempt document—*

...  
(c) *if it contains matter—*

(i) *consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and*

(ii) *the disclosure of which—*

(A) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and*

(B) *would, on balance, be contrary to the public interest.*

In support of a claim that a document is exempt pursuant to clause 7(1)(c), it is therefore necessary for the agency to show that:

1. the matter in the document contains information concerning the business, professional, commercial or financial affairs of an agency or person;
- and**
2. the disclosure of that matter could reasonably be expected to have an adverse affect on those affairs; **or** impair the future supply of such information to the Government or to an agency;
- and**
3. the disclosure of the matter would on balance be contrary to the public interest.

### **Business/ Professional Affairs**

The terms 'business, professional, commercial or financial affairs' are not defined in the FOI Act, and should be accorded their ordinary meaning. However, guidance may be sought from interstate freedom of information case law. In respect of the term 'business affairs', the Ombudsman noted the Queensland Information Commissioner's views regarding the equivalent provision of the Queensland *Freedom of Information Act 1992* (section 45(1)(c)) in his decision of *Stewart and Department of Transport* that:

For a matter to relate to 'business affairs' in the requisite sense, it should ordinarily, in my opinion, relate to the affairs of a business undertaking which is carried on in an organised way (whether full time or only intermittent) with the purpose of obtaining profits or gains (whether or not they actually be obtained).

The Shorter Oxford Dictionary defines 'profession' as follows:

Vocation, a calling, esp. one requiring advanced knowledge or training in some branch of learning or science, spec. law, theology, or medicine;

In the Victorian case of *Re Croom and Accident Compensation Commission*, it was claimed *inter alia* that witness statements and a medical report obtained by the respondent in relation to an investigation concerning an industrial accident compensation claim was information which related to matters of a business, commercial or financial nature for the purposes of section 34(1)(a) of the Victorian *Freedom of Information Act 1982*. In rejecting this claim, the President of the Victorian Administrative Appeals Tribunal stated:

For the exemption to apply, the information must relate to matters of a business, commercial or financial nature not merely be derived from a business or concerning it or have some connection with it ... Is the essential quality or character of the matter business, commercial or financial? I am not persuaded that the information in issue here can be so categorised.

The President's view was upheld on appeal to the Full Court of the Supreme Court (*Accident Compensation Commission v Croom*), wherein Young CJ stated:

Under s.34(1)(a) it was said that disclosure of the witnesses' statements would disclose information acquired by the appellant from a business undertaking and that the information relates to 'other matters of a business nature'. I am clearly of the opinion, however, that the information in the investigator's report does not relate to matters of a business nature. The information is rather of a nature that concerns the investigation of an industrial injury and that is not covered by the exemption. Nor does the information in the medical report relate to matters of a business nature. It plainly relates to matters of a medical nature. ...the information in a particular document must relate to matters of a business nature before the exemption can be claimed and that requirement is not satisfied by the contention in this case that the information is required for the purposes of the appellant's business. The requirement can only be satisfied by the proper characterisation of the nature of the information itself. Here the information is of a medical and not of a business nature...

O'Bryan J took a similar view later in the judgment:

Although each of the words [in section 34(1)(a)] employed by the legislature must be accorded its ordinary meaning that meaning must, of course, be determined by reference to the context in which it is used. It is clear, I consider, that Parliament did not intend to exempt from the operation of the Act every piece of written information which is obtained by an agency merely on the basis that it had been acquired and provided by a business undertaking in the course of its ordinary activities...

The Ombudsman endorsed these views, and considered them applicable to the interpretation of clause 7(1)(c)(i).

### **Adverse Effect and/or Prejudice Future Supply**

The second criteria which must be established by the agency in order to satisfy the Ombudsman that it has discharged its burden of proving that the material is exempt pursuant to clause 7(1)(c)(ii) is that disclosure of the matter contained in the document could **reasonably** be expected to have an adverse effect on the business and/or professional affairs on the person concerned.

In *Ipex's case*, Judge Lunn of the District Court of South Australia, considered the meaning of 'could reasonably be expected to have an adverse effect' in the context of clause 7, and accepted as applicable to the provisions of the FOI Act, the dicta of the Administrative Appeals Tribunal (AAT) in *Re Actors Equity Association of Australia*, which concerned the relevant provision of the Commonwealth Act. The AAT stated:

...We are in the field of predictive opinion. The question is whether there is a reasonable expectation of adverse effects. It is to that question that the witness's evidence had to be directed, and their assertions are incapable of proof in the ordinary way. What there must be is a foundation for a finding that there is an expectation of adverse effect that is not fanciful, imaginary or contrived, but rather is reasonable, that is to say based on reason, namely 'agreeable to reason: not irrational, absurd or ridiculous'.... This is not very much to ask of evidence of an expectation of an adverse effect on a business.

Judge Lunn concluded:

Thus it is sufficient for clause 7(1)(c)(ii) if any adverse effect is established by the respondent. However, it must be something which can properly be characterised as an adverse effect and not something so de minimis [sic] that it would be properly regarded as inconsequential. In deciding whether an adverse effect has been established in respect of a matter coming within (c)(ii) the court is not confined merely to considering the effect of that particular document. It will be sufficient if the adverse effect is produced by that document in combination with other evidence which is before the Court on the appeal.

The Ombudsman endorsed these views, and considered them applicable to the interpretation of clause 7(1)(c)(ii)(A).

In the alternative, the Ombudsman must be satisfied that the disclosure of the information will impair the future supply of such information to the Government or to an agency.

### **Contrary to Public Interest**

In *Harris v Australians Broadcasting Corporation*, Beaumont J said:

In evaluating where the public interest ultimately lies ... it is necessary to weight the public interest in citizens being informed of the processes of their government and its agencies on the one hand against the public interest in the proper working of government and its agencies on the other ...

In *Ipex's case*, Judge Lunn made the following statement (in relation to the public interest in the context of another clause of Schedule 1 to the FOI Act):

Under clause 9(1)(b) it is for the respondent to show on the balance of probabilities that the disclosure in question would be contrary to the public interest. This does not mean merely showing that there is something adverse to the public interest likely to flow from disclosure of the document, but that on balance the factors in the public interest against disclosure outweigh the factors in favour of disclosure. The relevant factors are not merely those discernible from the document in question, but include all those available on the evidence which is properly before the court.

The public interest has many facets of course. For example, there is a public interest in the objects of the legislation being satisfied, and there is a public interest in ensuring just administration, accountability of representative government and the ability to scrutinise public administration.

It has also been recognised that there is a public interest in individuals receiving fair treatment in accordance with the law. The former Chief Justice of the High Court stated in the case of *Attorney General (NSW) v Quin* that the courts recognise that 'the public interest necessarily comprehends an element of justice to the individual'. This view is recognised in judgments of the Commonwealth Administrative Appeals Tribunal dealing with the provisions of the Commonwealth Act, such as *Re James and Ors and Australian National University*, in which Deputy President Hall stated:

In *Re Burns and Australian National University* (1984) 6 ALD 193] my colleague Deputy President Todd concluded that, for the purposes of the Commonwealth Freedom of Information Act, the concept of the public interest should be seen as embodying public concern for the rights of an individual. Referring to a decision of Morling J, sitting as the former Document Review Tribunal (*Re Peters and Department of Prime Minister and Cabinet* (No 2) (1983) 5 ALN No 218) Deputy President Todd said:

'But what is important is that his Honour clearly considered that there was a public interest in a citizen having such access in an appropriate case, so that if the citizen's 'need to know' should in a particular case be large, the public interest in his being permitted to know would be commensurately enlarged' (at 197).'

I respectfully agree with Mr Todd's conclusion...The fact that parliament has seen fit to confer upon every person a legally enforceable right to obtain access to a document of an agency or an official document of a minister, except where those documents are exempt documents, is to my mind a recognition by parliament that there is a public interest in the rights of individuals to have access to documents - not only documents that may relate more broadly to the affairs of government, but also to documents that relate quite narrowly to the affairs of the individual who made the request.

The Ombudsman endorsed these views, and considered them applicable to the interpretation of clause 7(1)(c)(ii)(B).

### **Analysis of the Document**

#### **Clause 6(1)**

Notwithstanding the Council's reliance on this exemption provision in respect of its consultation with the Mayor during the determination phase, the Ombudsman was not satisfied that the email contained information concerning her personal affairs.

The draft speech itself contained no such information. The Ombudsman accepted that emails 1 and 2 involved communications to and from the Mayor's personal email address. A personal email address could be described as relating to someone's 'personal affairs', but in this case no such address was apparent in the document, and even if it was, it could have been deleted from any copy of the document disclosed under the FOI Act.

The remarks made by the Mayor in email 2 contained no such information.

Nothing further in email 3 (forwarding emails 1 and 2 to the Council) related to the personal affairs of the Mayor.

Further, the context surrounding the series of emails revealed that the communications set out in the document were in respect of matters relating to her public duties as Mayor and were not in any personal capacity.

To the extent that anything set out in the document related to the personal affairs of people other than the Mayor, the council advised the Ombudsman that those people had been consulted and had expressed no objections to disclosure of the document under the FOI Act.

The Ombudsman was of the view that the document did not contain any matter the disclosure of which would involve the disclosure of information concerning the personal affairs of any person (living or dead).

In light of this conclusion, it was not strictly necessary to consider whether disclosure would be unreasonable.

However, even if the Ombudsman had been satisfied that the document contained information about the Mayor's personal affairs, he did not consider that the release of the information in the email would involve the unreasonable disclosure of her personal affairs. The Ombudsman relied on *Re Chandra*. In particular, although the Mayor clearly did not consent to release of the email, the Ombudsman considered that the other *Re Chandra* factors favoured release of the document. In support of this conclusion the Ombudsman referred to his discussion below in relation to his consideration of clause 7(1)(c)(ii)(B).

Accordingly, the Ombudsman was not satisfied that the email was an exempt document pursuant to clause 6(1) of Schedule 1 to the FOI Act.

#### **Clause 7(1)(c)**

The Ombudsman accepted that subclauses 7(1)(c)(i) and 7(1)(c)(ii)(A) were satisfied in relation to portions of the email. However he was not persuaded that subclause 7(1)(c)(ii)(B) was satisfied as he did not consider that on balance it would be contrary to the public interest to release the email. The reasons for this view were as follows:

- 1) the applicant was the Mayor of City of Port Adelaide Enfield and as such a public officer;
- 2) the email was created in the course of her official duties;
- 3) the contents of the email related to her conduct in carrying out her official duties;

- 4) the circumstances in which the agency obtained possession of the email were irrelevant to the issue of whether the email is an exempt document (and in any event, the Ombudsman considered that the circumstances surrounding the agency's possession of the email were entirely proper, as outlined above);
- 5) a previous email incident involving the Mayor, which was referred to by her solicitors in correspondence to the Ombudsman, was in the Ombudsman's view not a factor that would militate against release of the document; indeed arguably it was a factor in favour of release. This prior incident was reported at page 3 of the *Standard Messenger* on 18 August 2004 as follows:

**Email release shock**

A FORMER Port Adelaide Enfield staffer , who is considering legal proceedings against [the Mayor] , is appalled at the public release of emails which she claims racially vilify her."My initial response is that it's quite an appalling decision," [she] said.

- 6) any embarrassment for the Mayor associated with the release of the email was irrelevant in determining where the public interest lay;
- 7) the applicant, and by extension members of the public, have a *prima facie* right to know about the official conduct of its elected officials in order to assess their fitness for office;
- 8) the objects of the FOI Act would be promoted by the release of the email;
- 9) the reliance by the Mayor's solicitors on the decision of *Re Howard and Treasurer of the Commonwealth* and the 'frankness and candour' factor was unpersuasive in the circumstances in light of the contents of the email which appeared to be entirely gratuitous and completely unrelated to the purpose for which the email was forwarded to the Mayor;
- 10) the Ombudsman did not consider that any significant obligation of privacy arose in the circumstances, or could be advanced as a basis for refusing access, the email was an official document between the Mayor and the Council's consultant associated with an official duty of the Mayor; and
- 11) the public interest factors in favour of release were overwhelming in this matter.

Accordingly, the Ombudsman was not satisfied that the email was an exempt document pursuant to clause 7(1)(c) of Schedule 1 to the FOI Act.

**Summary of Decision**

Pursuant to section 39(11) of the FOI Act the Ombudsman varied the Council's determination as follows:

- i) The Ombudsman determined that the document was not an exempt document for the purposes of the FOI Act and should be released to the applicant.
- ii) That the agency should defer release of the email pending the exercise of the Mayor's rights of review and appeal in the District Court.

In all other respects the Ombudsman confirmed the agency's determination.

**Unreasonableness of disclosure influenced by material already in public domain associated with lack of consultation with interested third party prior to release**

Hon Dean Brown MP and the Mount Gambier and Districts Health Service Inc

In and around June 2005 a doctor who had been offered the position of Director of Medical Services with the Mount Gambier and Districts Health Service Inc (the agency), engaged in correspondence with the then Chief Executive Officer of the agency, about employment matters and travel arrangements. Soon after, the doctor decided not to take up the position with the agency, electing instead to return to New Zealand. Subsequently, the Honourable Dean Brown MP, made a request to the agency pursuant to the *Freedom of Information Act 1991* (the FOI Act), for copies of the correspondence. In his application, Mr Brown requested access to:

The letter or note left at the Mt Gambier Health Service, and any other correspondence, documents or emails, relating to the resignation of the doctor who flew in from New Zealand to accept the position of Medical Superintendent at the Mount Gambier Health Service.

The principal officer (also the Chief Executive Officer) of the agency, determined the application. The determination read:

As requested in your application, please find enclosed herewith copies of correspondence and emails relating to a doctor from New Zealand who was the intended Director of Medical Services.

In your application you refer to the letter or note left at the Mount Gambier and Districts Health Service Inc, however, I advise that this correspondence was a personal note addressed to [M] and not to [M], the Chief Executive Officer of the Mount Gambier and Districts Health Service Inc.

Pursuant to advice from the agency, Mr Brown applied for an internal review of the above determination. With regard to the document that was not released, he wrote:

You stated in your letter that one particular letter, that which appears to have contained the doctor's actual resignation, was withheld as it was "a personal note addressed to [M] and not as [M], the Chief Executive Officer of the Mount Gambier and Districts Health Service".

It appears, from the references to this letter contained in the correspondence which my office has received, that this document relates obviously to the business and administration of the Mount Gambier and District Health Service.

The agency's Freedom of Information officer decided on internal review to refuse access to the 'personal correspondence' (the document the subject of this review) on the grounds of subclauses 6(1) and 6(2) of Schedule 1 to the FOI Act. Clause 6 concerns 'documents affecting personal affairs'. That said, the Ombudsman noted that as the initial determination had been made by the principal officer, it was not (as a matter of law) subject to external review.

In his application for an external review the applicant submitted that:

Despite the apparent concord between the two letters of refusal, in that my application was refused both times under section 6 of the Act, I would point out that initially there was no suggestion of harm to the person which could arise from release of the correspondence. I would also question whether the release of the document in question could be described as "unreasonable disclosure". In addition, information of a 'personal nature' has already been disclosed in the correspondence which has been released to me.

**External review of the agency's decision**

The Ombudsman considered that as the document the subject of this review was a letter from the doctor to the person who happened to be the Chief Executive Officer, both were interested third parties. Pursuant to section 39(10) of the FOI Act, the Ombudsman consulted with them by inviting their submissions as to whether all or part of the letter should be considered exempt pursuant to Part 2 of Schedule 1 to the FOI Act.

The agency advised that it would not make any submissions.

In the initial determination, the Chief Executive Officer did not stipulate why he was not releasing the document the subject of this review, other than referring to it as 'a personal note'. In the internal review decision, the Freedom of Information officer indicated the document was exempt pursuant to subclauses 6(1) and 6(2) of Schedule 1 to the FOI Act, however no reasons for this view were provided.

Subclauses 6(1) and 6(2) of the FOI Act provide:

*6—Documents affecting personal affairs*

- (1) *A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).*
- (2) *A document is an exempt document if it contains allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) the truth of which has not been established by judicial process and the disclosure of which would be unreasonable.*

As to clause 6(2), the Ombudsman formed the view that the document did not contain any allegations or suggestions of criminal conduct by any person. In addition, the Ombudsman found it difficult to see how it could contain any allegations or suggestions of improper conduct (of the kind that could be tested by judicial process). In the Ombudsman's view, the document was not exempt pursuant to clause 6(2).

Subclause 6(1) concerns the 'personal affairs' of any person. The term 'personal affairs' is defined in section 4 of the FOI Act as follows:

*personal affairs of a person includes that person's—*

- (a) *financial affairs;*
  - (b) *criminal records;*
  - (c) *marital or other personal relationships;*
  - (d) *employment records;*
  - (e) *personal qualities or attributes,*
- but does not include the personal affairs of a body corporate;*

In conducting the review the Ombudsman had to be careful not to disclose the details of the document which had been claimed to be exempt by the agency. The Ombudsman accepted that the document contained 'information concerning the personal affairs' of a person (or persons), namely the doctor and the Chief Executive Officer. The question remained as to whether the disclosure of any or all such information would have been 'unreasonable' in the circumstances. In relation to the question of unreasonableness of disclosure, the Ombudsman noted that clause 6(1) is intended to prevent the unreasonable infringement of the privacy of third parties. While there is an intent in the objects of the FOI Act to make available as much information held by the government as possible, there is an express concern that the right to privacy of individuals be protected.

In the case of *Re Chandra and Minister for Immigration and Ethnic Affairs (Re Chandra)*, the Commonwealth Administrative Appeals Tribunal set out the relevant factors applicable to 'unreasonable disclosure' in relation to the personal affairs exemption in the Commonwealth *Freedom of Information Act 1982* (the Commonwealth Act). The tribunal stated:

Whether a disclosure is 'unreasonable' requires, in my view, a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance. Plainly enough what section 41 seeks to do is to provide a ground for preventing unreasonable invasion of the privacy of third parties.

These factors were approved by the South Australian District Court in *Barbaro v Liquor Licensing Commissioner* and *Pietruszka and North Western Adelaide Health Service*, meaning that it is appropriate that they be applied in the Ombudsman's consideration of a clause 6(1) exemption claim made in an external review under the FOI Act.

In a decision of the Full Court of the Federal Court concerning the personal affairs exemption, again in relation to the Commonwealth Act, Heerey J said:

I do not think it necessary in order to make out the [personal affairs exemption] that there is some particular unfairness, embarrassment or hardship which would inure to a person by reason of the disclosure. But if the information disclosed were of no demonstrable relevance to the affairs of government and was likely to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed, I think disclosure would be unreasonable.

The Ombudsman considered that this reasoning was applicable to a claim of clause 6(1).

In addition, the Ombudsman was mindful that case law shows that the question of unreasonableness of disclosure in clause 6(1) has 'at its core, public interest considerations'. This necessitated an examination of all the circumstances of the case at hand. There is a public interest in protecting personal privacy, and a public interest in the public enforcing their right of access to documents in fulfilment of the objects of the FOI Act.

The applicant submitted that 'information of a 'personal nature' had already been disclosed' to him. He was quite correct in making this assertion. Indeed, the information already available to him was relevant to the assessment of whether it was 'unreasonable' to disclose information in the document concerning personal affairs that had not been released.

The Ombudsman carefully considered all of the documents: those that were initially released by the Chief Executive Officer and the one document that had not been released (that is, the document the subject of this review). In particular, the Ombudsman noted that amongst the documents that *had* been released was an email from M to the doctor in response to the document the subject of this review, in which M essentially provided his side of the story.

Also amongst the documents that had been released was a letter to M from a recruitment firm. In this letter, the director of the firm related the doctor's wife's reasons for what happened when the doctor was in Australia.

All things considered, there was very little information in the document the subject of this review that was not otherwise ascertainable, or at least inferable, from the documents that *had* been released. While the Ombudsman accepted that the document contained information concerning the personal affairs of a person, he was of the view that it would not be unreasonable to release such information in the circumstances.

Pursuant to section 39(11) of the FOI Act the Ombudsman reversed the determination made by the agency and determined that the document the subject of this review was not an exempt document under the FOI Act. The Ombudsman added that his decision may well have been different if the Chief Executive Officer had not released the other documents to the applicant when he initially determined the application.

## Issue

### Ombudsman's first decision on the application of section 18(2a) - abuse of right of access and/or improper purpose other than to obtain access to information

Mrs X and Department of Education and Children's Services  
Mr X and Department of Education and Children's Services

These matters involved a series of twelve applications made by Mr X and Mrs X (the applicants) under section 13 of the *Freedom of Information Act 1991* (the FOI Act). Eleven of the applications were made to the Department of Education and Children's Services (the Department) and one application was made to the Minister of Education and Children's Services.

#### Background

Mrs X, a registered teacher, was retired from the teaching service of the State of South Australia. The Teacher's Appeal Board ordered that Mrs X be reinstated. The Director General of Education required Mrs X to submit to a medical examination prior to her reinstatement. Mrs X appealed to the Teacher's Appeal Board against this requirement but her appeal was dismissed.

Mrs X failed to submit to a medical examination and, after a number of warnings, was dismissed (in 1992), pursuant to section 26 of the *Education Act 1972*.

Mrs X appealed to the Teacher's Appeal Board against this dismissal and her appeal was dismissed (in 1994). In its decision, the Teacher's Appeal Board noted:

As emerges from the material tendered on the hearing there is a long history of disputation between the appellant, her husband and the Education Department ... At least from 1983 the appellant and her husband who at all material times were permanent officers of the teaching service were involved in disputes with the Department *inter alia* about the frequency and permanency of postings...

Moreover in light of all the circumstances we hold little hope that satisfactory medical examination will ever take place. The appellant shows little contrition for her actions and we envisage that her obsessive behaviour on the issue and her bitterness and outrage at her perceived ill treatment by the Department generally will continue to mitigate against the likelihood of examination in the foreseeable future. It was argued by counsel for the respondent [the Department] that the real motive for the appellant's [Mrs X's] actions was to avoid being placed in a teaching position while continuing to draw her salary and there is cogent evidence to support such a submission. In our view however an equally and more likely explanation is that the appellant and her husband have become so involved in their many disputes with the Department that they have simply lost touch with reality and the fundamental issues. We should make it clear however that we have some sympathy for the appellant on some issues but see no profit in pursuing them in these reasons as they do not impact on the central issues of this case.

Subsequently, Mrs X applied for employment as a Temporary Relieving Teacher and the Department had refused the application. Mr X continued to be employed by the Department.

The Ombudsman did not assume that simply *because* of the Teacher's Appeal Board's comments and findings that Mrs X's (or her husband's) current applications amounted to an abuse of the right of access or that either or both of them had acted unreasonably in the present matters. However, it seemed to the Ombudsman that when contemplating the operation of section 18 of the FOI Act it was appropriate to consider the applicants' present attitude to and relationship with the Department, which had clearly been influenced by Mrs X's previous dealings with it. Consequently, even though the decision of the Teachers' Appeal Board had been delivered some years previously, it evidenced the long-standing nature of the dispute between Mrs (and, to a lesser extent, Mr) X and the Department and their fundamental hostility (at that point in time) towards it.

It was readily apparent from the conduct of the applicants in the present reviews that they still harboured a deep mistrust of the Department and its officers. In particular, they refused to accept the legality of Mrs X's termination, or the subsequent decision of the Teacher's Appeal Board, nor did they appear to have come to terms with these decisions. This virtually intractable mistrust and suspicion made it difficult to resolve these external reviews by use of the settlement process. For example, the applicants had declined to meaningfully amend the scope of their applications pursuant to section 18(2) of the FOI Act so as to enable the Department to process them without substantially and unreasonably diverting its resources.

Unfortunately, the applicants' negative view of the Department had been reinforced by the significant delay in the Department's initial response to the various applications. Having said that, the Ombudsman acknowledged that by their very nature (for example, their magnitude, scope and number) the applications had not been easy for the Department to respond to, either initially or during the course of the external reviews, and that even to marshal its arguments on the operation of section 18 of the FOI Act utilised significant resources. Nevertheless an agency, particularly one of the Department's size, should be in a position to respond to applications in a timely fashion, even if relying on the operation of section 18 of the FOI Act.

#### **The Freedom of Information applications**

The Department failed to deal with any of the applications within the statutory 30-day period, nor did its principal officer utilise the power available pursuant to section 14A of the FOI Act to extend this period. Consequently by virtue of section 19(2)(b) of the FOI Act, the Department was taken to have determined the applications by refusing access, for the purposes of Division 3 and Part 5 of the FOI Act; the provisions dealing with reviews and appeals.

#### **Applications for internal reviews**

This meant that the applicants were then at liberty to apply for internal reviews of the deemed determinations, pursuant to section 29 of the FOI Act. The Department failed to determine the applications for internal review within the statutory (14-day) period, although by letter dated 18 March 2004, it purported to refuse to process the applications for internal reviews in respect of certain applications on the basis that the prescribed application fee had not been paid, and the copy of an expired Health Care card that accompanied the applications did not warrant waiver of the fee. By this time, however, it appeared that the 14-day period for determining the applications for internal review had already expired and, by virtue of section 29(5), the Department was, for the purposes of the FOI Act, taken to have confirmed the determinations. This issue was subsequently resolved when the Department agreed to accept the applications without any accompanying fees.

It was most unfortunate that the Department did not deal with the applications within the respective statutory periods, or extend the period within which they could initially be dealt with. The Department's belated reliance on the application of section 18 of the FOI Act, namely at the external review stage, provided the basis for the applicants to argue that the Department could not rely on the operation of section 18 of the FOI Act.

The Ombudsman pointed out to the Department that he considered that the FOI Act unequivocally provided for applications to be dealt with expeditiously. For example section 3(2)(a) includes in the Objects section of the FOI Act, the object of '*ensuring that information ... is readily available to members of the public*'. Further, section 3A provides that:

- (1) *It is the intention of the Parliament -*
  - (a) *that this Act should be interpreted and applied so as to further the objects of this Act; and*
  - (b) *that a person or body exercising an administrative discretion conferred by this Act exercise the discretion, as far as possible, in a way that favours the disclosure of information of a kind that can be disclosed without infringing the right to privacy of individuals.*
- (2) *Agencies are to give effect to this Act in a way that -*
  - (a) *assists members of the public and Members of Parliament to exercise rights given by this Act; and*
  - (b) *ensures that applications under this Act are dealt with promptly and efficiently.*

In the Ombudsman's opinion this meant that in carrying out its obligations and functions under the FOI Act, an agency should strive to ensure that determinations were not the product of the default deemed refusal of access provisions under the FOI Act. If the Department required more personnel to process applications in accordance with the FOI Act, then it should provide the necessary resources.

The Ombudsman was satisfied that, in the circumstances presently under consideration, the failure to deal with the twelve applications in a timely fashion was not due to either a negative attitude toward the applicant(s) or a cavalier attitude on the part of the Department to its responsibilities under the FOI Act. The Ombudsman was satisfied that the failure was due to a combination of the number, size and scope of the applications, together with the fact that they arrived over the 'Christmas' period, during which numerous Departmental staff were on leave and a number of public holidays occurred. In addition, the Department sought legal advice on the operation of section 18 of the FOI Act from the Crown Solicitor's Office, but this advice was not provided until after the expiration of the relevant statutory time periods, and once the matters were already at the external review stage.

### **Applications for external reviews**

The applicants applied to the Ombudsman for external reviews of the various determinations, pursuant to section 39 of the FOI Act.

### **Section 18 of the FOI Act - Initial considerations**

The Department first raised the operation of section 18 of the FOI Act in a letter to the Ombudsman advising that it was still awaiting the provision of a legal opinion from the Crown Solicitor's Office on that issue. The Department first formally argued that section 18 applied in a subsequent letter to the Ombudsman. At this point, the Department estimated:

There would be between five and six weeks of full-time work for an officer of the agency to recover the documents from their repository and access all files within to search for records relating to [Mr and Mrs X].

...

In our view it would be an abuse of the Act to insist that the considerable work and expenditure of public monies be undertaken.

...

It is our view that such diversion of resources for the purpose sought, giving consideration to the previous provision of documents entitles the agency to refuse to deal with this application.

It was unfortunate that the Department did not communicate this position directly to the applicants, as required by section 18(5) of the FOI Act. Shortly thereafter however, the applicants were advised of the Department's intention to rely upon the operation of section 18 by letters from the Ombudsman. In these letters, it was made clear to both of the applicants that the basis of the Department's argument was a combination of the number of applications, the sheer amount of documents sought, and the contention that most of the documents had been previously supplied.

That these external reviews remained unresolved, some 14 months later, despite the willingness of the Department to assist the applicants to amend their applications and the significant resources expended by the Ombudsman through the settlement process, was in large part due to the inflexible and unrealistic stance adopted by the applicants. Consequently, while the initial delay by the Department was regrettable, the applicants compounded the delay. Consequently the Ombudsman was of the view that, taking all of the circumstances into account, the applicants were not unduly inconvenienced or unfairly prejudiced by the initial delay.

Within a few months of the applications for external review the Department advised that it had allocated two full time equivalent positions (including a legal officer) in order to complete its report for the Ombudsman, as it had become obvious that additional resources were required to enable it to provide an adequate and timely response.

### **The 'Omnibus Report'**

The Department responded to the Ombudsman's notice of external review with an 'Omnibus Report'. This detailed report, a copy of which was provided to the applicants, presented the Department's various submissions up to that point. The Ombudsman made it plain to the Department that its contention at paragraph 5.5.3 of the report which stated:

Previous dealings with the applicants would indicate that DECS is unable to assist the applicants in amending their applications to meet their needs while making the requests more reasonable

was ill conceived, in that the Department could not seek to relinquish its present obligations under section 18(2) of the FOI Act by simply pointing to the applicants' past behaviour, even if it could satisfactorily prove such behaviour.

In addition, the Ombudsman rejected the Department's submission to the extent that it relied on 'the sheer quantity of applications made over the years' to support its section 18(2a) claim. The exception to this being where the Department could establish that the applicants had previously gained access to requested material.

In the main, the Department refused to 'deal with' the applications on the basis of both sections 18(1) and 18(2a) of the FOI Act. This meant that if successful, the Department would not have to identify, locate, claim as exempt or provide the documents sought. In essence, the major thrust of the Department's argument in this regard was that the elements of the respective sections were satisfied due to a combination of the following factors:

- the number of current applications;
- the huge amount of the material involved and the practical and administrative difficulties associated with the task of locating, assessing, dealing with (including appropriately claiming exemptions) and disseminating such large volumes of matter;
- the Department's finite resources;
- in many instances, the age of the documents in question and the overall cost to the agency;
- that the applicants had already had access to, whether through inspection or the provision of copies, or been lawfully denied access to the vast majority of the materials now sought, under previous freedom of information applications;
- the lack of an articulated reasonable basis to be re-supplied with such documents, given their age and the fact that it would appear that Mrs X has exhausted all appeal avenues open to challenge her dismissal.

Subsequent to the provision of the 'Omnibus Report', the Department's responsible officer revised its previous estimate, concluding that complying with the twelve Freedom of Information requests would take well over four months full time work. The officer stated at the settlement conference that an electronic search by the Department's records management section had come up with a 'staggering' amount of documents.

The basis for the revised estimate was that 65 Departmental files had been identified with a subject heading relating to either Mr or Mrs X, with a conservative estimate that these files contained approximately 12,000 documents. In addition to perusing all of these documents to determine their relevance to the applications and considering the application of the various exemption clauses, the officer stated that time would be required to recover each file and then to photocopy, collate and supply relevant documents.

Further, the agency's officer submitted that difficulties in dealing with the applications would be compounded in relation to Departmental files that did not have either of the applicants recorded in the subject heading, but nevertheless had documents relating to the applicants 'embedded' within them. The officer stated:

Information provided by [Mr and Mrs X] related to areas such as payroll and staffing would require a search of general records to determine if relevant material did or did not exist. I am informed by records management staff of the department that this would be a significant task within the current broad scope of the requests.

It is my assessment that the assertion in the report provided to the Ombudsman last year to answer the requests of [Mr and Mrs X] would take four months full time work is conservative.

Part of the difficulty stemmed from the fact that the documents released pursuant to previous freedom of information requests (approximately 10 years previously) had been returned to their parent files, along with exempt matter. Further, in addition to the 65 files, some 70 departmental files relating to the applicants, to which the Department considered it had an immediate right of access, were housed in the Crown Solicitor's Office.

### **Response to the 'Omnibus Report'**

The Ombudsman invited each of the applicants to respond to the 'Omnibus Report'. In the letter to Mrs X, the Ombudsman included the following:

In particular, whilst it is for the agency to persuade me that its determinations were justified, and you, as the applicant, are not required by the Act to provide reasons for your applications, you may nevertheless wish to provide my office with the reasons for your applications. This is because, as you will appreciate after reading the agency's submissions, the agency is maintaining that the practical effect of dealing with some of your applications (together with those of your husband) would amount to an "unreasonable" diversion of its resources, pursuant to section 18(1) of the Act. In addition, it is arguing that the applications in question are part of a pattern of conduct that amounts to an abuse of the right of access, pursuant to section 18(2a) of the Act. Consequently the reason(s) underlying your various applications may be relevant to the consideration of these two sections.

The applicants' responses included the following:

The applications under the *Freedom of Information Act 1991* were instituted when it became apparent that anomalies and contradictions existed in documentation which would indicate that access had not been provided to all relevant documents and that no claim of privilege had been made with respect to those documents.

In addition, Mr X submitted the following:

Furthermore, it should be noted in 1993, the Minister for Administrative Services by invoking s 43 of the then Act, prevented the court from exercising its authority/judgment in this matter, and also made it apparent that further applications for documents would be forestalled in a similar manner.

There is a right to reapply after the mandate has expired and this has been done in the applications of 2003/2004. The amended Act places more stringent provisions on an agency with respect to refusing to deal with applications and claims for exemptions, and it is not unreasonable for an applicant to reapply to gain the benefit of those provisions.

In the Ombudsman's opinion, if Mr (or Mrs) X were re-applying for a particular document or documents on the basis that circumstances had changed since disclosure was refused under the FOI Act, for example as a result of changes made to the FOI Act, then it was incumbent upon them to identify the actual document(s) to the best of their ability, and to articulate why the decision maker should (a) reconsider the matter, and (b) disclose the document(s), particularly if a Court had previously reached a decision in relation to the document. In this instance, neither of the applicants did so.

### **Settlement Conferences**

In order to try to effect a settlement between the respective participants to these reviews, the Ombudsman's delegate conducted a series of settlement conferences pursuant to the Ombudsman's powers under the FOI Act.

### **Documents Supplied**

During the course of the settlement conferences, the Department released, or agreed to release, a number of documents that had not been the subject of previous freedom of information applications.

At the initial settlement conference it appeared that the matters might be capable of resolution. Accordingly, the Ombudsman suspended the proceedings to enable the parties to discuss the applications directly, in an attempt to overcome the impasse that had developed, and which ongoing correspondence between the parties had failed to resolve. Following this conference, the Department released Mrs X's personnel file in its entirety.

However at a following settlement conference it became apparent that the settlement process had broken down irretrievably, and the Ombudsman re-instituted the external reviews.

### **Section 18 of the FOI Act**

This section provides as follows:

#### ***18—Agencies may refuse to deal with certain applications***

- (1) An agency may refuse to deal with an application if it appears to the agency that the nature of the application is such that the work involved in dealing with it within the period allowed under section 14 (or within any reasonable extension of that period under section 14A) would, if carried out, substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.*
- (2) An agency must not refuse to deal with such an application without first endeavouring to assist the applicant to amend the application so that the work involved in dealing with it would, if carried out, no longer substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.*
- (2a) An agency may refuse to deal with an application if, in the opinion of the agency the application is part of a pattern of conduct that amounts to an abuse of the right of access or is made for a purpose other than to obtain access to information.*
- (3) An agency may refuse to continue dealing with an application if—*
  - (a) it has requested payment of an advance deposit in relation to the application; and*
  - (b) payment of the deposit has not been made within the period specified in the request.*
- (4) If an agency refuses to continue dealing with an application under subsection (3)—*
  - (a) it must refund to the applicant such part of the advance deposits paid in respect of the application as exceeds the costs incurred by the agency in dealing with the application; and*
  - (b) it may retain the remainder of those deposits.*
- (5) An agency that refuses to deal with an application under this section must forthwith cause written notice of that fact to be given to the applicant.*
- (6) Such a notice must specify—*
  - (a) the reasons for the refusal; and*
  - (b) the findings on any material questions of fact underlying those reasons, together with a reference to the sources of information on which those findings are based.*
- (7) An agency is not required to include in a notice any matter if its inclusion in the notice would result in the notice being an exempt document.*
- (8) A refusal to deal with, or to continue to deal with, an application under this section is a determination for the purposes of this Act.*

### **The arguments against the use of section 18**

The applicants provided copious submissions, both written and oral. In particular, they argued that, in the circumstances of a deemed refusal both at the initial determination and on internal review, it was not open to the Department to belatedly attempt to apply sections 18(1) and (2a) of the FOI Act. For example Mr X stated:

I do not believe it is acceptable, or within the intent of the Act, for the Department to endeavour to rely on section 18 of the Act when they have consistently failed to comply with the mandatory provisions of s. 18, which are not onerous.

The applicants' argument was that once they had applied to the Ombudsman for external reviews, the determinations under review were the deemed refusals - that is, refusals of *access* (see the language of sections 19(2) and 29(5)), rather than refusals to deal with the applications. They maintained that sections 18(1) and (2a) were only available if an agency raised them within the time for dealing with an application, taking into account the objects and purpose of the FOI Act and the language of these sections. Section 18(1) in particular clearly contemplated that an agency would refuse to deal with an application within the 30-day time period or within a reasonable extension under section 14A. The Department had complicated its position by claiming section 18(1) before applying section 18(2) and failing to comply with section 18(5) in a timely fashion. The applicants therefore contended that even if the Ombudsman had a discretion as to whether or not to consider the application of section 18, he should decline to do so.

Other points made by the applicants included the following:

- It is inconsistent for the Department to spend so much time in preparing a costly report in an apparent endeavour to avoid providing the documents requested.
- The documents requested should have been catalogued for the discovery process for court and tribunal proceedings, and for previous Freedom of Information applications. Any further processing for subsequent years would have been minimal.

### **Arguments for the use of section 18**

The Department in contrast, argued that the FOI Act should be construed to give the Ombudsman, as the reviewing body, the same scope in an external review as that of an agency dealing with the initial application. It asserted that it would be an odd result if the Ombudsman were not able to take into account factors supporting the use of section 18 as the Ombudsman would then possess *less* powers at the external review stage than the agency had at the time of the initial freedom of information applications. It pointed out that, pursuant to section 39 of the FOI Act the Ombudsman possessed the same investigative powers as those conferred pursuant to the *Ombudsman Act 1972*, which, by virtue of section 19 of that Act, also vest the Ombudsman with the powers of a commission as defined in the *Royal Commission Act 1917*.

The Department argued that, given the wide powers of the Ombudsman in an external review, the FOI Act should be construed such that in an external review the Ombudsman could take into account all of the factors that the original decision maker could, including exercising a discretion to entertain the operation of section 18, even where it was not raised by the agency until after the commencement of the external review.

In addition, the Department asserted that, taken as a whole and in its context, each of the twelve applications formed part of a pattern of conduct that amounted to an abuse of the right of access. The basis of this argument was a combination of the fact that the applicants had already had access to, or been provided copies of, the vast majority of the materials now sought; together with the practical and administrative difficulties associated with the task of locating, assessing, dealing with and disseminating such large volumes of this material. Such difficulties were compounded by the Department's available resources and, in many instances, the age of the documents in question and the overall cost to the agency.

After considering the respective submissions, the Ombudsman agreed with this conclusion, particularly given the fact that the FOI Act clearly empowered the Ombudsman to take into account '*any relevant circumstances arising since the agency's determination was made*' when deciding whether he was satisfied that a different determination should be made in the circumstances of the case. In these matters, it was clear that at the time the 'deemed' determinations were made, arguments relating to the application of sections 18(1) and (2a) had not been considered. The Ombudsman took the view that these were relevant circumstances, arising since the Department's determination, for the Ombudsman to take into account in his reviews. The Ombudsman noted that at the time the applicants applied for internal and external reviews, it must have been clear to them that the Department had not 'dealt with' the applications.

### **The decision in *Department of the Premier & Cabinet v Redford***

On 1 June 2005, the South Australian District Court delivered judgment in the matter of the *Department of the Premier & Cabinet v Redford* (*Redford*). In this matter Judge Lee held that the Ombudsman, in conducting an external review pursuant to section 39 of the FOI Act, has a discretion whether or not to consider exemption clauses not raised by the agency whether in the course of its initial determination, on internal review or during the Ombudsman's external review. His Honour stated:

In the result, I consider that the Ombudsman has a discretion rather than an obligation to consider exemptions not relied upon by an agency. It necessarily follows, and counsel for the respondent did not contend otherwise, that his review is not confined, as a matter of law, to exemptions relied upon by the agency.

The Ombudsman considered that this decision supported the Department's contention, in the matters at hand, that the Ombudsman was not constrained from considering the application of section 18 in the present reviews. This view is, in the Ombudsman's opinion, supported by the reasoning of Judge Lee in *Redford*.

It seems to me that the function of the Ombudsman on an external review lies somewhere between the adversarial function of a court and the inquisitorial function of an administrative body. The function of a court is to determine a matter upon the basis of the material put before it by the parties without any enquiry of its own and by reference if necessary to an onus of proof. The function of an administrative body, unless constrained by legislative direction, is to arrive at the correct or preferable decision on the material before it, including any material that it has gathered as the result of its own enquiry. The function of the Ombudsman is neither wholly inquisitorial nor wholly adversarial. Not wholly inquisitorial, because an onus is imposed upon the agency by s.48. Not wholly adversarial, because the results of an investigation (if the Ombudsman chooses to conduct one), or the interests of the public (whether for or against disclosure), or the interests of a third person (as determined by consultation), may need to prevail over the wishes of the parties.

It would be illogical if, contrary to the wide powers that the Ombudsman otherwise possesses in an investigation pursuant to section 39 of the FOI Act (which he had utilised in calling for submissions and conducting settlement conferences in the present matters), he was prevented from considering the applicability of section 18 merely because the Department neglected to raise it prior to the deemed determinations. This may be contrasted with *Redford*, where the agency did not raise a particular exemption clause until the appeal, but submitted that the Ombudsman should nevertheless have considered it. The Department in the present matters at least raised the issue of the operation of section 18 well prior to the completion of the external reviews. Further, in the Ombudsman's opinion, the applicants had not been unduly prejudiced in terms of their ability to fully argue that the Ombudsman should not exercise his discretion to consider the application, or that, even if he decided to consider applicability that the Department had not discharged its burden pursuant to section 48 of the FOI Act.

### **The exercise of the Ombudsman's discretion**

The Ombudsman drew the parties' attention to the decision of *Redford*, and invited their submissions. Although it appeared, from their written submissions, that the applicants agreed the Ombudsman possessed a discretion, the applicants contended that the Ombudsman should not exercise such a discretion to entertain the applicability of section 18:

It is not for the Ombudsman to exercise his discretion to rectify the disadvantage that the agency has created for itself as a consequence of a deliberate course of action over such an extended period of time. The agency's position is not the result of an oversight, or of a lack of understanding of the requirements and/or procedures associated with applications under the *Freedom of Information Act 1991*, rather it was an intentional, considered, and calculated course of actions/inactions, which exhibited contempt for the Act. The Ombudsman should not consider s18(1) or s 18(2).

In the Ombudsman's opinion there was no evidence that the Department or any of its officers acted in such a deplorable fashion. The Ombudsman noted the repeated attempts of the officer acting on behalf of the Department to resolve these matters during the course of the settlement conferences. The officer, in written submissions, succinctly summed up the Department's case as follows:

I submit the applicants have either been supplied material they seek; the material is exempt or the applications form part of a pattern of conduct that amounts to an abuse of the right of access.

...

If the department is to be criticised in not trying to narrow the scope of the applications at the time of receipt this has consequently been remedied by our participation in settlement conferences and our contribution to exploring solutions, as demonstrated in obtaining and providing a copy of [Mrs X's] personnel file.

These efforts by the Department have not been reciprocated by the applicants, as demonstrated by their reluctance in reducing their requests in any way either through meetings or correspondence. The applicants have, in fact, further increased their demands on the department through additional FOI applications, since receipt of the applications the subject of the review, and on-going correspondence.

Despite the fact that the settlement process ultimately failed, the Ombudsman was satisfied that the Department had made a *bona fide* attempt to assist the applicants to amend their applications pursuant to section 18(2) of the FOI Act. In contrast, the Ombudsman was not satisfied that the applicants had genuinely attempted to amend their applications to the extent required to enable the Department to deal with their applications. That said, the Ombudsman accepted, given the applicants' attitude to the Department, that they found it difficult even to attempt to do so.

In the present circumstances, for the reasons expressed above, the Ombudsman exercised his discretion to consider whether section 18 of the FOI Act applied in the reviews.

#### **Application of section 18**

Having regard to the overall circumstances of the case, the Ombudsman was satisfied that, where the Department had shown that the applicants had either had access to or copies of documents sought under previous freedom of information applications, or been refused access to documents under previous applications, the Department's reliance on section 18(2a) of the FOI Act was made out and its onus under section 48 of the FOI Act had been discharged. Consequently the Ombudsman was not required to determine whether the Department could properly rely on the operation of section 18(1) in the present case. The Ombudsman was nevertheless of the view that while sections 18(1) and (2a) materially differ, there was sufficient overlap such that in the present matters he could take into account the number, size and scope of each application, together with the effect of dealing with the applications on the Department's overall resources, when considering whether they formed part of a pattern of conduct that amounted to an abuse of the right of access.

The Ombudsman considered that in the circumstances, the Department had established that the twelve applications formed a pattern of conduct that was an abuse of the right of access. In the Ombudsman's opinion, although the right of access was not to be taken away lightly, it was difficult to envisage such a clear-cut abuse of this right as was evident in this case.

The Department had speculated that each of the applications were made for a purpose other than to obtain access to information, for example to swamp its resources and thereby continue a campaign of attrition against the Department in protest of perceived on-going ill-treatment at its hands. While the Ombudsman agreed that this was a possible explanation for the applications, the Department did not satisfy the Ombudsman that this was in fact the case.

There were no reported cases on the operation of section 18(2a) of the FOI Act, and no identical provisions in other Australian jurisdictions. The Ombudsman noted, however that the Queensland Information Commissioner, in the matter of *Price and Local Government of Queensland Inc*, considered an application for an external review made in respect of documents which had been dealt with in a 'finalised, or soon-to-be finalised, application for review' to the Information Commissioner's office. The Information Commissioner stated:

Such an application by Mr Price would clearly be vexatious, and contrary to the principle that a decision by a court or tribunal resolves the issues in dispute between the parties. A litigant cannot seek multiple hearings of the same issues between parties - that is vexatious and oppressive to the other party and to the relevant court or tribunal, and unfair to other citizens waiting their turn to use the dispute resolution services, provided from public funds, by courts and tribunals. To the extent that Mr Price is seeking to re-open the issues that were dealt with in my decision dated 17 May 2001, which finalised application for review no. S 52/00, I decide, under s.77(1) of the FOI Act, not to review further those issues on the ground that the application is vexatious.

The Commissioner added:

It is equally vexatious and oppressive to agencies to make repeated applications for the same documents...

Making due allowance for the differences between section 77(1) of the Queensland *Freedom of Information Act 1992* and the South Australian FOI Act, the Ombudsman considered that the Queensland Information Commissioner's reasoning in respect of repeated applications was of some assistance in considering whether Mr and Mrs X's applications were part of a pattern of conduct that amounted to an abuse of the right of access.

While applicants under the FOI Act are not required to provide reasons for their application(s), the Ombudsman noted that both applicants readily admitted that they still retained copies of all records that had previously been supplied to them under the FOI Act. In addition, both applicants agreed that a significant part of their rationale in making the present applications was to see if the documents presently sought corresponded with those previously supplied.

The applicants were repeatedly urged, during the course of the settlement conferences, both by the Ombudsman's delegate and representatives of the Department, to 'lay their cards on the table' and simply point out any such 'anomalies and contradictions' to the agency, in order that any deficiencies could be relatively easily rectified, rather than persisting with broadly framed applications which resulted in the Department's claims under section 18 of the FOI Act. The applicants chose to persist with the applications in their wide reaching form and despite purporting to narrow their requests, in the Ombudsman's opinion at no stage were either of the applicants prepared to narrow the scope of their applications to a meaningful extent.

The Ombudsman had individually considered whether each of the twelve applications formed part of an overall 'pattern of conduct' for the purposes of section 18(2a) of the FOI Act, and decided that they did. The Ombudsman chose to deal with Mr and Mrs X's applications together, not because the applicants happened to be husband and wife, but because the subject matter, history and conduct of the twelve applications were inextricably inter-twined. In addition, the applicants had attended all settlement conferences together, and had, for all intents and purposes, approached their cases as one, despite making earlier submissions that their respective reviews should be considered separately. Section 18(2a) was, in the Ombudsman's opinion, framed to enable consideration of applications 'linked' together in the way that the twelve applications were, and it would have been quite artificial in the circumstances to treat the applications as if they were somehow separate, when the 'pattern of conduct' displayed patently involved all twelve applications.

**Comment on unreasonable and/or vexatious conduct - use of section 39(16)**

The applicant (X) and Department of Education and Children's Services

X applied pursuant to the *Freedom of Information Act 1991* (the FOI Act) to the Department of Education and Children's Services (the Department) for access to various documents. The application was couched in the following terms.

- (a) For DECS to collate and record all contracts for all year 3 to 7 classes, including NIT for the last three terms of this year, including composite classes so you can provide me with that information at the end of this year.
- (b) For list of all people and their position contacted, about me since 1999 by investigations, Human Resources, Minister of Education or any other branch of DECS. Including dates of contact, purpose of contact and all notes about contact. For every school contacted about me a list of dates I worked at that school before contact and list of dates I worked at that school after contact.
- (c) All communication and documents relating to me since November 2003, including internal notes about my application for permanent positions which I have applied for, including Job Specifications and all internal notes regarding the applications.
- (d) Copy of all tapes which DECS has of telephone messages from me.
- (e) Reason my Authority to Teach was not provided this year until after the start of the school year, well after other teachers had received theirs. The Ombudsman advises me the Authority to Teach was sent to me on February 15th, well after the school year started. Why was this so late.
- (f) List of every school I have worked at since 1999 and under the school name a list of every day I worked there.
- (g) Details of every note and detail of every investigation concerning me since 1999.
- (h) List of telephone account amounts for DECS phones for [specified DECS officers] from 1998 to 2003.
- (i) From Torrens River SAPSAS district, from 1996 to 2005, all SAPSASA exchanges and carnivals participated in, including boys and girls hockey, soccer, football, Netball, softball, cricket, tennis, swimming, athletics, cross country and all others. List of all district events and carnivals, including basketball, cross country, rugby, swimming, athletics and all others. Confirmation as to whether [a specified person] organized swimming and athletics for the district until 2001, when District Convenor took over the responsibility of organisation. List of amounts in bank at end of year from 1995 to 2005, what amounts were spent on equipment and uniforms during that period and what schools from district paid SAPSAS and district fees review during that period. That the districts not be informed I am making the request, this is confidential FOI application.
- (j) I seek list of every school and principal in Salisbury TRT scheme and which of those have represented not to use me again and when that request was made. All notes, memos, and information about me on file at the Salisbury TRT scheme.

Subsequently, the Department wrote to the applicant raising the possible application of section 18(2) of the FOI Act. Subsections (1), (2) and (2a) of section 18 provide as follows:

***18—Agencies may refuse to deal with certain applications***

- (1) *An agency may refuse to deal with an application if it appears to the agency that the nature of the application is such that the work involved in dealing with it within the period allowed under section 14 (or within any reasonable extension of that period under section 14A) would, if carried out, substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.*
- (2) *An agency must not refuse to deal with such an application without first endeavouring to assist the applicant to amend the application so that the work involved in dealing with it would, if carried out, no longer substantially and unreasonably divert the agency's resources from their use by the agency in the exercise of its functions.*
- (2a) *An agency may refuse to deal with an application if, in the opinion of the agency, the application is part of a pattern of conduct that amounts to an abuse of the right of access or is made for a purpose other than to obtain access to information.*

An officer of the Department advised the applicant that:

I have formed the view that the processing of the other matters in your application would constitute a substantial and unreasonable diversion of the Department's resources. It is substantial because it would require a very extensive search and because any documentation relevant to item (h) would contain exempt matter pursuant to clause 6(1) of the Act and would require deletion of exempt matter pursuant to section 20(4) of the Act. It is unreasonable, because of the demand of resources and the extent to which resources would be diverted from meeting the demands of other customers.

However, before refusing to deal with your application, I invite you to consider amending your application so that the work involved in dealing with it would no longer substantially and unreasonably divert the Department's resources in the exercise of its functions. I can say that [Mr R] of my office is happy to assist you to make such an amendment and would be willing to either meet with you to discuss or you may wish to ring him on..... If you have not contacted [Mr R] by the 6 June 2005, I will assume that you do not wish to make any amendment to your application.

**X**, by a two-page undated letter responded to the Department's letter and although he stated that "I note you say you have made a decision not to deal with my FOI application", he failed to respond to the Department's endeavours to assist him to amend his application. Indeed, **X** stated that "I understand you are deliberately ignoring these applications because of the damage it will do to DECS in trial." Presumably this was a reference to litigation involving **X** and the Department, because elsewhere the applicant stated:

As you know, the matter regarding Human Rights and Equal Opportunity is proceeding to trial. You are deliberately and dishonestly refusing to provide documents because they would hurt the Department in trial. You are deliberately with holding (sic) evidence.

Mr R, on behalf of the Department, wrote to the applicant and again invited the applicant to amend his application.

I confirm that I would be willing to meet with you to discuss, and assist, you in relation to amending your FOI application. Please note, however, that if I have no response to this offer by the 6 June 2005, I will assume that you do not wish to make any amendment to your application.

**X** responded to this by a two-page letter. Again, **X** failed to respond to the Department's endeavours to assist him to amend his application, instead making inflammatory, unnecessary and personal remarks, which illustrate a disregard for the mechanism provided for in section 18(2) of the FOI Act. The Department provided the applicant with yet another opportunity to amend his application. Then, by letter of determination, the Department refused to deal with the application, on the basis of section 18(1) of the FOI Act. The applicant sought an internal review of this determination. The Department conducted an internal review and by letter signed by its Chief Executive, upheld the original determination. The applicant sought external review.

### **Summary of Decision**

In this matter, the Ombudsman was satisfied that, bearing in mind the broad scope of the freedom of information application as detailed above, it was not unreasonable for the Department to endeavour to assist **X** to amend his application, thereby complying with its statutory duty under section 18(2) of the FOI Act. It did so in the face of inflammatory comments from the applicant, who at no stage displayed any inclination to participate in this process.

In this instance, in the Ombudsman's opinion it was appropriate to exercise his powers vested under section 39(16) of the FOI Act to comment that the applicant's conduct in this matter had been both unreasonable and vexatious. It had been unreasonable not to participate in the amendment process suggested by the Department. In addition, the tone of a significant portion of **X**'s correspondence to the Department had been vexatious, for example where the applicant stated that an employee of the Department would not attend meetings in the future '...because she was so dishonest with her promises before. Because of that a decision has been made to keep her from having to look me in the eye and go through details again'.

Pursuant to section 39(11) of the FOI Act, the Ombudsman confirmed the Department's determination.

## Interaction between *Whistleblower's Protection Act 1993* and *Freedom of Information Act 1991*

The applicant (X) and City of Tea Tree Gully

This matter involved two letters that were written in late 2002 or early 2003 to the Mayor of the City of Tea Tree Gully (the Council) about X's conduct as a councillor, to which X sought access under section 13 of the *Freedom of Information Act 1991* (the FOI Act).

The Council determined to grant the applicant access to one of the letters, but claimed that the other was exempt having regard to clauses 6(2), 13(a) and 16(1)(a)(iv) of Schedule 1 to the FOI Act. The Council upheld this determination following internal review. The Council also raised the *Whistleblowers Protection Act 1993* (the WP Act) as a basis for keeping the identity of the informant confidential. X sought external review by the Ombudsman.

### Council's submissions

In support of its determination to refuse X access to the letter the Council stated, *inter alia*, the following:

The letter contained a series of allegations against [X] who was at the time, and is now, a councillor of the City of Tea Tree Gully... The Whistleblowers Protection Act also requires at Section 7 that the identity of any informant be kept confidential...

Council in its many activities that it is involved in relies heavily on information supplied to it from its residents, ratepayers and users of various facilities. The provision and acceptance of this information is based on a general understanding that personal details will often be kept confidential.

In the aforementioned document [referring to the letter over which the Council had claimed the exemptions], the details of the information were expressly requested to be kept confidential and a subsequent discussion with the author has confirmed the author's request for the information to be kept confidential...

Council staff in assessing the application considered the option of concealing specific information in order to be able to release some parts of the exempt document to [X]. However it was identified that there would be so much information that needed to be withheld that it left the remaining information as meaningless. Furthermore it would have been a reasonably easy task for another person to identify the contents of some of the concealed sections due to the font used and the remaining gap left in the document after blanking out the relevant words...

In relation to the issue of confidentiality the agency stated:

We are of the view that if we fail to comply with such reasonable requests [to treat information with a high degree of confidentiality] from our residents and ratepayers, they will be reluctant to come forward in the future and our ability to provide services and meet our strategic goals will be substantially limited. We are of the opinion that by releasing certain information that has been supplied to us in confidence this is likely to have an adverse affect on our ability to perform various functions in the future.

The Council informed the Ombudsman's delegate that it was heavily reliant on information from the public when providing services to the community and managing community issues, in particular elected members and their performance, dogs and cats, rates, public health and waste and environmental services.

### Preliminary view

In a letter to X the Ombudsman expressed his preliminary view that section 7 of the WP Act operated to prevent the Council from disclosing the identity of the informant to X, notwithstanding the FOI Act. However, even if the WP Act did not apply, the Ombudsman considered that the letter was exempt under clause 13(1)(b) of Schedule 1 to the FOI Act.

Section 7 of the WP Act provides:

#### ***Identity of informant to be kept confidential***

7. (1) *A person to whom another makes an appropriate disclosure of public interest information must not, without the consent of that person, divulge the identity of that other person except so far as may be necessary to ensure that the matters to which the information relates are properly investigated.*
- (2) *The obligation to maintain confidentiality imposed by this section applies despite any other statutory provision, or a common law rule, to the contrary.*

One of the issues before the Ombudsman was whether the information provided by the informant could be said to be public interest information within the meaning of section 4 of the WP Act and, if so, whether the disclosure was appropriate.

'Public interest information' is defined in section 4 of the WP Act as follows:

- 'public interest information' means information that tends to show -*
- (a) that an adult person (whether or not a public officer), body corporate or government agency is or has been involved (either before or after the commencement of this Act)--*
    - (i) in an illegal activity; or*
    - (ii) in an irregular and unauthorised use of public money; or*
    - (iii) in substantial mismanagement of public resources; or*
    - (iv) in conduct that causes a substantial risk to public health or safety, or to the environment; or*
  - (b) that a public officer is guilty of maladministration in or in relation to the performance (either before or after the commencement of this Act) of official functions.*

While the investigation into the X's alleged conduct did not proceed to a formal finding of guilt or prosecution, the Ombudsman noted that the definition of 'public interest information' in section 4 of the WP Act encompassed information that tends to show that an adult person has been involved in illegal activity. The Ombudsman was satisfied that the contents of the letter *tended* to show that X had engaged in illegal activity. It was therefore the Ombudsman's preliminary view that the exempted letter contained 'public interest information' as defined in section 4 of the WP Act.

This led the Ombudsman to consider whether the informant had made an 'appropriate disclosure' of this public interest information. The criteria for ascertaining whether there has been 'appropriate disclosure' are set out in section 5(2) of the WP Act.

Sections 5(2) to 5(5) of the WP Act provide as follows:

5. (2) *A person makes an appropriate disclosure of public interest information for the purposes of this Act if, and only if--*
- (a) the person--*
    - (i) believes on reasonable grounds that the information is true; or*
    - (ii) is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated; and*
  - (b) the disclosure is made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure.*
- (3) *A disclosure is taken to have been made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure if it is made to an appropriate authority (but this is not intended to suggest that an appropriate authority is the only person to whom a disclosure of public interest information may be reasonably and appropriately made).*
- (4) *For the purposes of subsection (3), a disclosure of public interest information is made to an appropriate authority if it is made to a Minister of the Crown or--*
- (a) where the information relates to an illegal activity--to a member of the police force; ...*
    - (i) where the information relates to a matter falling within the sphere of responsibility of a local Government body--to a responsible officer of that body;*
- ...
- (5) *If a disclosure of information relating to fraud or corruption is made, the person to whom the disclosure is made must pass the information on as soon as practicable to--*
- (a) in the case of information implicating a member of the police force in fraud or corruption--the Police Complaints Authority;*
  - (b) in any other case--the Anti-Corruption Branch of the police force.*

The Ombudsman was satisfied that the Mayor, as the principal officer of the Council, was a reasonable and appropriate person to disclose the public interest information to, in accordance with section 5(2)(b) of the WP Act. Furthermore, the Ombudsman accepted that the author believed, on reasonable grounds, that the information contained in the letter was true. This was notwithstanding the fact that the investigation had concluded without a formal finding of guilt or prosecution.

Accordingly, the Ombudsman considered that the disclosure of the letter by the Council, whether under the FOI Act or otherwise, would constitute a breach of the statutory duty conferred upon the agency by section 7 of the WP Act.

The Ombudsman was satisfied that the identity of the informant was intrinsically linked to the contents of the letter and to disclose the contents would risk disclosing the identity of the informant. Furthermore, the Ombudsman was satisfied that it was not practicable to give access to a copy of the document from which the exempt matter had been deleted pursuant to section 20(4) of the FOI Act.

### Clause 13(1)(b) of the FOI Act

In the event that the WP Act did not apply the Ombudsman considered that the material would nevertheless be exempt from disclosure by reason of clause 13(1)(b) of Schedule 1 to the FOI Act.

Clause 13(1)(b) of Schedule 1 to the Act provides as follows:

13 (1) A document is an exempt document—

...

(b) if it contains matter obtained in confidence the disclosure of which—

- (i) might reasonably be expected to prejudice the future supply of such information to the Government or to an agency; and
- (ii) would, on balance, be contrary to the public interest.

The Ombudsman proceeded to outline the requirements for establishing a claim of exemption under this clause:

Firstly, in relation to the phrase 'matter obtained in confidence', it must be that the information in the document was 'received under an express or inferred understanding that [it] would be kept confidential.' In *Ipex Information Technology Group Pty Ltd v Department of Information Technology Services SA (Ipex)* his Honour Judge Lunn observed that:

the degree of confidentiality which could be expected is always subject to the provisions of the FOIA [a reference to the FOI Act] and cannot be affected by any representation by the respondent that greater confidentiality might be accorded to material that properly reflects the effect of the FOI Act.

Secondly, it must be shown that disclosure of the matter might reasonably be expected to prejudice the future supply of such information to the Government or an agency.

In relation to the phrase 'might reasonably be expected', I note her Honour Judge Trenorden's comments in *Sheppard and The SA Minister for Health* in relation to clause 13(b) of the FOI Act [as it was then]:

The use of the word "might" in contrast with the use of the word "could" in every other ground of exemption relied upon, would seem to exact a less stringent test; "might reasonably be expected" seeming to impart a greater sense of speculation than "could reasonably be expected". However, the opinion must be reasoned; the difference between each kind of reasonably held belief or opinion being that the consequences "might be expected" as opposed to "could reasonably be expected".

The third requirement of clause 13(1)(b), is that release of the documents must, *on balance*, be contrary to the public interest. In *Ipex* Judge Lunn made the following comments in relation to the 'public interest' test:

This does not mean merely showing that there is something adverse to the public interest likely to flow from disclosure of the document, but that on balance the factors in the public interest against disclosure outweigh the factors in favour of disclosure.

There is clearly a public interest in the effective and efficient workings of representative government and its agencies, as well as in ensuring just administration and accountability within representative government and the ability to scrutinise public administration. It is also recognised that there is a public interest in individuals receiving fair treatment in accordance with the law and being accorded procedural fairness within the administrative processes of government.

With respect to the letter over which the Council had claimed exemption, the Ombudsman was satisfied that the letter was provided to the Council on a confidential basis. Furthermore, the Ombudsman accepted that the disclosure of the letter to X might reasonably prejudice the future supply of information to the Council, in essence by deterring others from coming forward. Finally, the Ombudsman was satisfied that the Council relied heavily on information from members of the public when providing services and attempting to meet its strategic goals. In the Ombudsman's opinion these objectives would be jeopardised were the letter disclosed to X under the FOI Act. It was the Ombudsman's view that, on balance, these factors outweighed the public interest factors in favour of disclosing the letter to X. In arriving at this conclusion the Ombudsman considered the contents of the letter over which the Council had claimed exemption, the letter that had been released to X, as well as the outcome of the investigation, which was closed without any action being taken against X.

Given these views, it was not necessary for the Ombudsman to consider the Council's arguments to refuse X access to the letter on the basis of clauses 6(2) and 16(1)(a)(iv) of Schedule 1 to the FOI Act. Nevertheless, the Ombudsman intimated that he was of the view that this matter did not lend itself to a claim of exemption pursuant to clause 6(2). This was because clause 6(3) provides as follows:

*A document is not an exempt document by virtue of subclause (1) or (2) merely because it contains information concerning the person by or on whose behalf an application for access to the document is made.*

### Decision

Subsequently, the Ombudsman's preliminary view and therefore the Council's determination, were confirmed.

**Discretion to extend time for making of an application for external review - factors militating against include re-litigation of issues - option of notation preferred**

The applicant (X) and the Southern Adelaide Health Service

X's application for an external review was out of time. The Ombudsman then considered whether or not to exercise his discretion to extend the time for X to make his application, in accordance with section 39(4) of the *Freedom of Information Act 1991* (the FOI Act). In the course of considering this matter both X and the Southern Adelaide Health Service (the agency) provided the Ombudsman with submissions.

Following internal review, the agency upheld its original determination not to amend its records about X for the period 11 June 1997 to 16 June 1997, which were contained in medical case notes for the period 11 June 1997 to 6 July 1997. The agency informed the Ombudsman that it posted a letter advising X of this no later than 17 June 2005.

Assuming that the letter was, in fact, posted on 17 June 2005 (and not earlier), pursuant to section 47(b) of the FOI Act, X was deemed to have received it on 22 June 2005.

Section 39(3)(a) of the FOI Act required that X make an application for an external review to the Ombudsman within 30 days after being given notice of the agency's decision following internal review. In the Ombudsman's view this meant that, in the absence of an extension of time, such an application had to be received by the Ombudsman by 22 July 2005.

X's application for an external review to the Ombudsman carried a handwritten date, namely 15 July 2005. That said, the envelope that contained X's letter was postmarked 25 July 2005 and was only received by the Ombudsman on 26 July 2005.

#### **Applicant's submissions**

On 13 September 2005 X telephoned the Ombudsman Office and explained to the Ombudsman's delegate that he forgot to post the letter in a timely fashion due to his father's illness and his role in organising his father's admission to a nursing care facility. X's application for amendment of the agency's records stemmed from a belief that the records had been rewritten.

#### **Agency's submissions**

The agency's submissions included the following in support of its claim that there was no evidence to suggest that X's case notes 'have been re-written or in any other way falsified':

When there is an error of fact nursing and medical staff are advised that the correct way to make alterations to a patient's medical record is to put a single line through the incorrect notation, make a note that the information is incorrect, then sign and date the designated entry. Errors must not be erased or rendered illegible.

Please find enclosed a copy of the policy on documentation that is currently in place. Even though this policy is dated October 2003 I have been advised that the practices promoted in this document have been in place for a number of years, including 1997 the year of [X's] admission to .... Ward at Glenside Campus.

On examination of the documentation in [X's] medical record there are no lines or notations indicating that errors have occurred in the documentation process as described above.

Further, in order for the pages referred to by [X] to have been re-written it would have involved the collusion of a number of staff, some of whom were agency staff. In the absence of clear evidence to support the allegation that such collusion occurred, there was no alternative but to determine that the part of the record in question had not been rewritten or altered.

The agency informed the Ombudsman that the term 'agency staff' in the preceding paragraph meant staff who were employed on an *ad hoc* basis and whose services were sourced externally, such as from a nursing employment agency. The Southern Adelaide Health Service claimed that in these circumstances the likelihood of collusion was even more remote.

#### **Preliminary View**

The Ombudsman informed X that there were a number of cases that set out matters that may be relevant to whether or not the Ombudsman should exercise his discretion to grant X an extension of time. The Ombudsman listed the following matters:

1. the length of the delay;
2. the explanation for the delay;
3. any action taken to make the agency aware that its decision is being contested;
4. the prejudice to the agency if an extension is granted;
5. any hardship to the applicant if an extension is refused;
6. any wider prejudice to the general public in terms of disruption to established practices;
7. the merits of the application.

In addition, the Ombudsman advised that, as the matter currently stood, he was not minded to exercise his discretion to extend the time for **X** to apply for an external review.

In doing so, the Ombudsman was mindful that **X**'s delay in applying for external review was minimal and if an extension were granted this, in and of itself, was unlikely to prejudice the agency. The Ombudsman also took into account **X**'s explanation for the delay, namely his father's illness and his involvement in his father's transfer to a nursing care facility.

**X**'s ongoing dissatisfaction with the agency's refusal to amend his records was such that the Ombudsman doubted that the agency was surprised by **X**'s application for external review, even though it was belated.

Nevertheless, the Ombudsman's tentative view was that when these factors were viewed in the context of the application as a whole, it was not appropriate to exercise his discretion.

By way of explanation the Ombudsman noted from records held by his office that (in a previous application under the FOI Act) on 6 May 1999 **X** applied to the Statewide Health Service - Glenside Campus (Glenside) to amend his case notes from his time at Glenside Hospital from 10 June 1997 to 4 July 1997. In essence, **X** claimed that the case notes about him contained 'complete lies where referring [sic] me to being a paedophile, or being pre-occupied to a being a paedophile'.

In response to this application, by letter dated 3 June 1999, Glenside advised **X** that on 19 May 1999 it had determined to refuse to amend its records because the information provided by **X** did not support his assertion that the records were incorrect for the purposes of the FOI Act. By letter dated 9 July 1999 the Flinders Medical Centre advised **X** that following an internal review, it had decided to uphold Glenside's determination.

**X** subsequently applied to the Ombudsman for external review. Briefly stated, at the conclusion of this external review the Ombudsman was satisfied that Glenside's determination to refuse to amend entries was not improperly made within the meaning of section 39 of the FOI Act. When the Ombudsman advised **X** of this decision, by letter dated 22 October 1999, he made the following comments:

I understand that [my delegate] also advised you that she had examined the entries and noted that they were made by three different workers with the Glenside Hospital on three different occasions. She advised that there was no apparent evidence to show that there had been any conspiracy between the three workers or any coercion or pressure put upon the three workers by the police to record their respective entries in the manner that they did.

**X**'s 2005 application claimed that '5-6 complete days of case notes [from 11 June 1997 to 6 July 1997] were re-written and it was not just the paedophile references that were falsified'. In addition, **X** asserted that 'original notes should be re-included that were replaced'.

The period to which **X** referred in his 2005 application was clearly considered during the Ombudsman's 1999 external review. Further, on both occasions **X**'s concern centred on references to paedophilia in his case notes.

In 1999 the Ombudsman concluded that there was no evidence of conspiracy or coercion surrounding the creation of the case notes in question. There was no evidence before the Ombudsman to suggest that the case notes relevant to **X**'s 2005 application were rewritten or falsified in any way.

In the Ombudsman's opinion **X** was, in effect, asking him to re-decide his 1999 external review.

The Ombudsman considered that this was analogous to the decision of the Victorian Civil and Administrative Tribunal in the matter of *Knight v CORE*, where the Tribunal considered whether the applicant was 'seeking to re-agitate issues which have as a matter of substance already been determined in prior decisions'. In that case, Deputy President MacNamara dismissed the proceedings, holding that '[t]he doctrine of abuse of process applies by virtue of the finality of the first decision and the failure to attack it by means of the appeal process'. Similarly, the Ombudsman noted the Deputy Queensland Information Commissioner's comments in the matter of *Price and Local Government Association of Queensland Inc.*

A litigant cannot seek multiple hearings of the same issues between parties - that is vexatious and oppressive to the other party and to the relevant court or tribunal, and unfair to other citizens waiting their turn to use the dispute resolution services, provided from public funds, by courts and tribunals.

To this extent, the Ombudsman considered that the agency would be prejudiced if he were to grant **X** an extension of time to apply for external review of its determination.

Further, the Ombudsman noted that a decision not to extend the time for **X** to apply for external review would not preclude him from applying to amend the agency's records in the future. That was not to say that **X**'s application would be successful, however.

#### **Alternative option - notation**

The Ombudsman reminded **X** that he was entitled to have a 'notation' added to the agency's records, pursuant to section 37 of the FOI Act, as in essence, this would be an opportunity for **X**'s views to be added to the agency's records. Section 37 of the FOI Act provides as follows:

##### ***37—Notations to be added to records***

- (1) If an agency has refused to amend its records, the applicant may, by notice in writing lodged at an office of the agency, require the agency to add to those records a notation—
  - (a) specifying the respects in which the applicant claims the records to be incomplete, incorrect, out-of-date or misleading; and*
  - (b) if the applicant claims the records to be incomplete or out-of-date—setting out such information as the applicant claims is necessary to complete the records or to bring them up-to-date.**
- (2) An agency must comply with the requirements of a notice lodged under this section and must cause written notice of the nature of the notation to be given to the applicant.*
- (3) If an agency discloses to any person (including any other agency) any information contained in the part of its records to which a notice under this section relates, the agency—
  - (a) must ensure that, when the information is disclosed, a statement is given to that person—
    - (i) stating that the person to whom the information relates claims that the information is incomplete, incorrect, out-of-date or misleading; and*
    - (ii) setting out particulars of the notation added to its records under this section; and**
  - (b) may include in the statement the reason for the agency's refusal to amend its records in accordance with the notation.**
- (4) Nothing in this section is intended to prevent or discourage agencies from giving particulars of a notation added to its records under this section to a person (including any other agency and any Minister) to whom information contained in those records was given before the commencement of this section.*

#### **Decision**

Subsequently, the Ombudsman confirmed his preliminary view and in so doing, declined to exercise his discretion to extend the time for **X** to apply for external review.

## Severance of exempt from non-exempt matter where such matter not inextricably linked

The applicant (X) and the Southern Adelaide Health Service

This was an application for an external review of the determination made by the Southern Adelaide Health Service (the agency) to refuse X access to the nursing roster for a particular ward for the period 10 June 1997 to 26 June 1997.

At the Ombudsman's request the agency provided a copy of X's application, its determination, X's application for internal review and the nursing roster. The Ombudsman noted that the agency had claimed that the nursing roster was exempt under clauses 4(2), 6(1), 9(1) and 16(1)(a)(iv) of Schedule 1 to the *Freedom of Information Act 1991* (the FOI Act).

Further, on its own initiative, the agency provided the Ombudsman with a brief report in support of its determination. The agency's report stated, among other things, that:

Staff remain uneasy regarding the release of a document that discloses information they consider to be private between themselves and the agency... Additionally ...[senior staff] expressed more general concerns about the release of this type of document. Specifically these senior staff advised that if it was possible for a person to gain access to nursing rosters through a Freedom of Information application, then it would lead to pressure being exerted on the agency to alter the way rosters are prepared. Further, there were concerns that the actual roster itself may misrepresent the activities of staff on a particular day. The reason being that the roster document is merely a tool to assist managers to make decisions about staffing.

According to the agency, X had been provided with the names of all staff who had provided X with care during his stay at the ward, as is its practice.

### Preliminary view

The Ombudsman's preliminary view was that the nursing roster was exempt by reason of clause 6(1), as well as clause 16(1)(a)(iii) and (b) of Schedule 1 to the FOI Act. The reasons for this view are set out below.

### Clause 6

Clause 6(1) of Schedule 1 to the FOI Act provides as follows:

***Documents affecting personal affairs***

6(1) *A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).*

To succeed in claiming clause 6(1) as a basis for refusing access to a document in an external review, the agency must show firstly, that matter contained within the particular document comprises information concerning the personal affairs of any person (living or dead); and secondly, that the disclosure of that information would be unreasonable.

### Personal affairs

The term 'personal affairs' is defined in section 4 of the FOI Act as follows:

***personal affairs*** of a person includes that person's—

- (a) *financial affairs;*
- (b) *criminal records;*
- (c) *marital or other personal relationships;*
- (d) *employment records;*
- (e) *personal qualities or attributes;*

*but does not include the personal affairs of a body corporate.*

This definition is inclusive, and not exhaustive. Consequently, where matter within a document cannot be comfortably accommodated within the definition, the Ombudsman may have regard to the ordinary meaning of the term.

The term 'employment records' is not defined in the FOI Act, nor are the words defined separately. Accordingly, in the Ombudsman's view, it was appropriate that he consider the ordinary meaning of each word.

The Macquarie Dictionary includes the following definitions:

**employment**

... **1.** the act of employing. **2.** the state of being employed; employ; service ... **3.** that on which one is employed; work; occupation; business.

**record**

... **10.** the state or fact of being recorded, as in writing. **11.** an account in writing or the like preserving the memory or knowledge of facts or events. **12.** information or knowledge preserved in writing or the like...

Based on these definitions, the Ombudsman's preliminary finding was that the nursing roster was an 'employment record' and therefore 'personal information' for the purposes of the FOI Act.

Although, strictly speaking unnecessary, the Ombudsman considered whether the nursing roster comprised 'personal information', even if it was not an 'employment record'.

In doing so, the Ombudsman had regard to various decisions.

The first of these was a Victorian decision, *Re Cremmen and Frankston Hospital*. The applicant in that matter (a prolific letter writer who was serving a lengthy sentence for a violent crime) had sought access under the Victorian *Freedom of Information Act 1982* to the names of the doctors, nurses and general staff who may have witnessed his admission to a hospital after an altercation with police. By this time he had alleged police brutality. The hospital identified the treating doctor but refused access to documents which would identify nursing or general staff, asserting that it would involve the unreasonable disclosure of information relating to the personal affairs of the staff on duty within section 33(1) of the Victorian *Freedom of Information Act 1982*. On review Mr Howie, a member of the Victorian Administrative Appeals Tribunal, held that disclosure of the names of nursing and general staff would involve the unreasonable disclosure of information relating to the personal affairs of the staff. In addition, Mr Howie commented that the nursing and general staff were not as well qualified as the doctor to give evidence about the applicant's condition and the circumstances of his admission. At the time the matter was decided the Victorian *Freedom of Information Act 1982* did not define or offer any guidance as to what the term 'personal affairs' meant.

In *Monks and Logan City Council* the Queensland Information Commissioner contemplated whether a person's name may be considered their personal affairs and remarked that:

The task of characterising information comprising a person's name often gives rise to difficulties, and I recently recapitulated the relevant principles at paragraphs 21-23 of *Re Pearce and Queensland Rural Adjustment Authority* Information Commissioner Qld, Decision No. 99008, 4 November 1999, unreported:

A person's name, in isolation, does not ordinarily constitute information concerning that person's personal affairs. In *Commissioner of Police v the District Court of New South Wales and Perrin* (1993) 31 NSWLR 606, Mahoney JA said (at p.638):

A person's name would not, I think, ordinarily be, as such, part of his personal affairs. It is that by which, not merely privately but generally, he is known.

Likewise, in *State of Queensland v Albiez* [1996] 1 Qd R 215, de Jersey J said (at p.221):

I do not think that the name by which a person is known ordinarily forms part of that person's "personal affairs".

However, a person's name almost invariably appears in a document in the context of surrounding information. It is the characterisation of a person's name, in the context of the information which surrounds it, which may give rise to difficulties. Thus, Lockhart J, sitting as a member of a Full Court of the Federal Court of Australia, in *Colakovski v Australian Telecommunications Corporation* (1991) 100 ALR 111, said (at page 119):

There is a real question as to whether the name and telephone number can answer the description of 'information relating to the personal affairs' of that person under s.41(1). Viewed as an abstract conception I would be inclined to the view that it could not, but such questions are not considered by Courts in the abstract.

Thus, while disclosure of a person's name, in the abstract, would not ordinarily be a disclosure of information concerning that person's personal affairs, disclosure of that name in the context in which it appears may disclose information concerning the person's personal affairs (or it may not - there is always a question of the proper characterisation of the matter in issue, in its context, which must be addressed in each particular case).

Further, in *Rynne and Department of Primary Industries* Deputy Queensland Information Commissioner Sorensen found that two time sheets (being data entry sheets for the Department of Primary Industries' wages payroll system) for a member of the staff of the office where the applicant worked concerned the personal affairs of a third party. The Deputy Commissioner made the following comments:

In *Re Stewart* at p.261 (paragraph 92), the Information Commissioner said that there is a relevant distinction to be drawn in respect of matters that relate to an employee as an individual, rather than an employee as agent or representative of the employer, and some matters in the former category may fall within the meaning of the phrase "personal affairs"... While attendance at a place of work, and performance of allocated duties, does not concern a person's personal affairs, I find that a record of the variable hours worked by, and the income earned by, a person comprise information concerning the personal affairs of that person, and are therefore prima facie exempt from disclosure under s.44(1) of the [Queensland] FOI Act.

In *Argent v South Australian Police Department*, the South Australian District Court dealt with an application for access to records held by the respondent in relation to a traffic accident in which the appellant had sustained personal injury. The names and addresses of persons said to be witnesses to the accident were claimed to be exempt material, on the basis that disclosure would be an unreasonable disclosure of information concerning the personal affairs of a person. Having quoted the passage from Lockhart J's judgment in *Colakovski* that is set out above, the Court said:

I have no doubt that in the circumstances of this case, the information which has been withheld from the appellant is information ... which does not relate to the personal affairs within the meaning of the Act, of the bus operator. Each case must be looked at in its own circumstances to determine what might be involved in relation to what are personal affairs. The name and telephone number of the person in *Colakovski's* case, if alone disclosed, would not have resulted in the disclosure of information relating to personal affairs per se. But, because giving that information and the manner in which it had been obtained would effectively reveal other matters about a person's personal affairs it would in its own context involve the release of information about personal affairs.

Although the FOI Act differs from interstate freedom of information legislation the Ombudsman considered that the matters referred to above were relevant when assessing whether or not a person's name is 'personal information' for the purposes of the FOI Act. In particular, it was clear to the Ombudsman that an assessment must be made on a case-by-case basis.

In the event that the nursing roster was not an 'employment record' (which was contrary to the Ombudsman's view), the Ombudsman considered that information, such as rostered leave details and the variable hours worked, would be personal information for the purposes of the FOI Act. It was the Ombudsman's view, however, that the names of staff appearing on the nursing roster, in and of themselves, would not be personal information within the meaning of the FOI Act. This was because a person is generally known by his or her name.

### **Unreasonableness**

In relation to the question of unreasonableness of disclosure, clause 6(1) is intended to prevent the unreasonable infringement of the privacy of third parties. Indeed the objects section of the FOI Act qualifies the apparent intent of the legislation (to make available as much information held by government as possible), by referring to the preservation of personal privacy.

In the case of *re Chandra and Minister for Immigration and Ethnic Affairs*, the Commonwealth Administrative Appeals Tribunal set out the relevant factors applicable to 'unreasonable disclosure' in relation to the personal affairs exemption in the Commonwealth *Freedom of Information Act 1982*. The Tribunal stated:

Whether a disclosure is 'unreasonable' requires, in my view, a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance. Plainly enough what section 41 seeks to do is to provide a ground for preventing unreasonable invasion of the privacy of third parties.

The South Australian District Court approved these factors in the cases of *Barbaro v Liquor Licensing Commissioner* and *Pietruszka and North Western Adelaide Health Service*. Accordingly, the Ombudsman considered it appropriate that they be applied in consideration of a clause 6(1) claim of exemption in an external review under the FOI Act.

In addition to the above, case law reveals that the question of unreasonableness of disclosure in clause 6(1) has 'at its core, public interest considerations'. The public interest has many facets. There is a public interest in the objects of the legislation being satisfied. Further, there is a public interest in the effective and efficient workings of representative government, as well as ensuring just administration and accountability within representative government and the public's ability to scrutinise public administration. On the other hand there is a public interest in protecting personal privacy.

It is also recognised that there is a public interest in individuals receiving fair treatment in accordance with the law and being accorded procedural fairness within the administrative processes of government. In the case of *Attorney General (NSW) v Quin* Mason CJ commented that the courts recognise that 'the public interest necessarily comprehends an element of justice to the individual.' The Commonwealth Administrative Appeals Tribunal has recognised this in decisions relating to the Commonwealth *Freedom of Information Act 1982*. One such decision is *Re James and Ors and Australian National University*, in which Deputy President Hall agreed with a colleague of his who said that 'if the citizen's 'need to know' should in a particular case be large, the public interest in his being permitted to know would be commensurately enlarged'. For example courts and Tribunals consider that there is 'a public interest in a person having access to what was recorded about him'.

The Ombudsman considered that this reasoning was applicable to a claim involving clause 6(1).

It was the Ombudsman's view that the following factors were in favour of disclosing the nursing roster to X under the FOI Act:

1. X considered that case notes about him from 11 June 1997 to 16 June 1997 had been rewritten. X referred specifically to notes 'written in "essay" form rather than nursing notes'.
2. X was aggrieved by what he considered were references in these case notes that, in his words, 'portray me as confessed paedophile'.
3. Records of contact X had with the Ombudsman over the years clearly demonstrated that the references to paedophilia had caused him much concern.

It was the Ombudsman's view that the following factors were against disclosing the nursing roster to X under the FOI Act:

1. Disclosure to X would, in effect, represent disclosure to all the world. This is because the FOI Act does not restrict the way in which the information may be used once it has been released under the FOI Act.
2. The nursing roster comprised information about various staff associated with the ward for a specified period in mid-1997. It included their names and information about where they were rostered during that period, for example if they were rostered on at work or, alternatively, on leave.
3. Nursing shifts are cyclic in nature and disclosure of this information has the capacity to exacerbate the risks to staff and property as they attend or leave work (for example by making it easier to predict the whereabouts of staff). This is particularly so where staff arrive at or leave work early in the morning or late at night.
4. The nursing roster was created for the information of staff, in particular to assist the agency manage its human resource. The relevant information appeared to have been sourced internally. Given this and the nature of their employment, the Ombudsman considered that the staff listed on the roster would not wish to have the information pertaining to them disclosed without their consent.
5. The roster may misrepresent who actually worked on a particular day or at a particular time.
6. The agency had already provided X with the names of the staff who treated and cared for him during his stay at the ward. The Ombudsman considered that the nurses who were not involved with X's care and treatment would be less qualified to give evidence about his stay than those who did.
7. The information sought dates back to 1997 and appeared to be of little current relevance. In saying this the Ombudsman was mindful that X had been provided with the names of the staff that treated and cared for him and that the roster may not accurately represent who was on duty.
8. Disclosure of the document had the capacity to inhibit the agency's ability to manage its staff and, therefore, to provide patient care in the future. For example, if the information that X sought was disclosed, staff opposed to its disclosure were likely to exert pressure on the agency to alter the way in which roster details are recorded, resulting in the adoption of a less effective method.

### Conclusion regarding clause 6

The Ombudsman carefully weighed up the factors both in favour of and against disclosing the nursing roster to X, as detailed above. In so doing, the Ombudsman had particular regard to the objects and principles of administration of the FOI Act. It was the Ombudsman's preliminary view that, on balance, the factors against disclosure outweighed the factors in favour of disclosing the nursing roster to X.

As a result it was not strictly necessary for the Ombudsman to consider the other clauses claimed by the agency as justification for not disclosing the nursing roster to X.

### Clause 16

Nevertheless, the Ombudsman took the view that it was useful to discuss clause 16(1)(a)(iii) and (b) of Schedule 1 to the FOI Act, given that the Ombudsman's preliminary opinion extended to the view that the nursing roster would also be exempt under this clause.

Section 16 of the FOI Act provides as follows:

#### **16—Documents concerning operations of agencies**

(1) A document is an exempt document if it contains matter the disclosure of which—

- (a) could reasonably be expected—
  - (i) to prejudice the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency; or
  - (ii) to prejudice on the attainment of the objects of any test, examination or audit conducted by an agency; or
  - (iii) to have a substantial adverse effect on the management or assessment by an agency of the agency's personnel; or
  - (iv) to have a substantial adverse effect on the effective performance by an agency of the agency's functions; or
  - (v) to have a substantial adverse effect on the conduct of industrial relations by an agency; and
- (b) would, on balance, be contrary to the public interest.

(2) A document is an exempt document if—

- (a) it relates to an agency engaged in commercial activities; and
- (b) it contains matter the disclosure of which could prejudice the competitiveness of the agency in carrying on those commercial activities [emphasis added].

Although the agency claimed that the document was exempt pursuant to clause 16(1)(a)(iv) and not clause 16(1)(a)(iii) and (b), the Ombudsman considered that he had a discretion to consider the latter clause.

This was based on the decision of *Department of the Premier & Cabinet v Redford*. In that case his Honour Judge Lee of the South Australian District Court made the following remarks:

I consider that the Ombudsman has a discretion rather than an obligation to consider exemptions not relied upon by an agency...

If an agency chooses not to rely upon an exemption notwithstanding that it is readily apparent from the face of the document, one would ordinarily expect the Ombudsman to consider the exemption. Nevertheless, according to the view that I take of the Ombudsman's powers and obligations, he is not bound to do so. If he chooses to do so, his powers would be subject to an important qualification. In the interests of procedural fairness, he would need to give the applicant and the agency the right to be heard with respect to the exemption. Bearing in mind the onus imposed upon the agency by s.48, he would then be in a position to decide whether or not he is satisfied that a different determination should be made.

In order for the nursing roster to be exempt on the basis of clause 16(1)(a)(iii) and (b) it had to be shown that it contained matter the disclosure of which could reasonably be expected to have a substantial adverse effect on the management or assessment by an agency of the agency's personnel, and that disclosure would, on balance, be contrary to the public interest.

### 'Could reasonably be expected'

The phrase 'could reasonably be expected' is a commonly used phrase throughout Australian freedom of information legislation. It has been the subject of discussion by his Honour Judge Lunn in the South Australian District Court case of *Ipex Info Tech v Dept Info Tech Services SA*. In his consideration of clause 7(1)(c)(ii) of Schedule 1 to the FOI Act Judge Lunn commented:

As to the meaning of "could reasonably be expected" in (c)(ii) the Commonwealth Administrative Appeals Tribunal has said in respect of a similar provision in *Re Actors Equity Association of Australia* (No 2) (1985) 7 ALD 584 at 590:

... we are in the field of predictive opinion. The question is whether there is a reasonable expectation of adverse effects. It is to that question that the witness's evidence had to be directed, and their assertions are incapable of proof in the ordinary way. What there must be is a foundation for a finding that there is an expectation of adverse effect that is not fanciful, imaginary or contrived, but rather is reasonable, that is to say based on reason, namely 'agreeable to reason: not irrational, absurd or ridiculous'

In *AG v Cockcroft* (1986) 64 ALR 97 at 106 Bowen CJ and Beaumont said of this same Commonwealth provision:

In our opinion, in the present context, the words 'could reasonably be expected to prejudice the future supplied information [sic]' were intended to receive their ordinary meaning. That is to say, they require a judgment to be made by the decision maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous, to expect that those who would otherwise supply information of the prescribed kind to the Commonwealth or any agency would decline to do so if the document in question were disclosed under the Act. ... It is preferable to confine the enquiry to whether the expectation claimed was reasonably based...

The Ombudsman adopted these comments and considered that they represented the law applicable in this instance in relation to the phrase '*could reasonably be expected*' for the purposes of clause 16 of Schedule 1 to the FOI Act.

#### **'Substantial adverse effect'**

There is no definition in the FOI Act of these terms. The Macquarie Dictionary definition of 'substantial' includes the following:

2. of ample or considerable amount, quantity, size, etc.: a substantial sum of money...
6. of real worth or value: substantial reasons.

The Federal Court has held that the term 'substantial' in the phrase 'substantial adverse effect' as it appears in section 40(1)(c) (d) and (e) of the Commonwealth *Freedom of Information Act 1982*, is an indication of the degree of gravity which must exist in relation to the adverse effect; and the Commonwealth Administrative Appeals Tribunal has likewise held that the word 'substantial' means 'serious' or 'significant'.

The Macquarie Dictionary definitions of the words 'adverse' and 'effect' include the following:

#### **adverse**

... 2. opposing one's interests or desire: adverse fate; adverse fortune; adverse influences; adverse circumstances. 3. being or acting in a contrary direction; opposed or opposing: adverse winds. 4. opposite; confronting: the adverse page...

#### **effect**

... 1. that which is produced by some agency or cause; a result; a consequence: the effect of heat... 9. to produce as an effect; bring about; accomplish; make happen. 10. to produce or make...

In *Ipex Info Tech v Dept of Info Tech Services SA* his Honour Judge Lunn commented that he 'is satisfied if the respondent has proved any relevant adverse effect'.

The Ombudsman adopted the view that the term 'substantial' in clause 16(1)(a)(iii) means 'serious' or 'significant' and that 'adverse effect' means any relevant result contrary to the agency's interests.

#### **'Public interest'**

To be exempt under clause 16(1)(a)(iii) and (b) disclosure of the nursing roster must, on balance, be contrary to the public interest. This means showing not merely that there is something adverse to the public interest likely to flow from disclosure of the nursing roster, but that on balance, the public interest factors against disclosure outweigh the factors in favour of disclosure.

#### **Conclusion regarding clause 16**

The Ombudsman was of the view that it was reasonable to expect that disclosure of the document would have a substantial adverse effect on the agency's management of its personnel. The Ombudsman noted that senior agency staff were opposed to the release of the document. These staff were concerned that disclosure of the nursing roster would lead to pressure being exerted on the agency to formulate an alternative means of recording roster details (for example to cease recording the names of staff and their shifts collectively). The agency referred to the significant distress that release of the nursing roster was likely to cause to staff, and criticism of the format used by the agency that was likely to ensue once it was in the public domain. The rosters were tools used by agency managers to make decisions about staffing. Indeed the agency considered, and the Ombudsman accepted, that the format of its rosters was 'a very effective means of gaining an understanding of day to day staffing requirements'.

To change this procedure was likely to inhibit the agency's ability to manage its staff and ensure that adequate staffing arrangements were in place, particularly in the event of last minute changes. This, in turn, had the potential to compromise patient care and treatment. In addition, the Ombudsman was satisfied that, on balance, disclosure of the nursing roster to X would be contrary to the public interest. The Ombudsman was mindful of the factors in favour of and those against disclosing the nursing roster to X, referred to above in relation to clause 6 of Schedule 1 to the FOI Act.

Accordingly, the Ombudsman was satisfied that the nursing roster was exempt pursuant to clause 16(1)(a)(iii) and (b) of Schedule 1 to the FOI Act.

#### **Partial disclosure**

Section 20(4) of the FOI Act provides as follows:

- (4) If—
- (a) it is practicable to give access to a copy of a document from which the exempt matter has been deleted; and
  - (b) it appears to the relevant agency (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to such a copy, the agency must not refuse to give access to the document to that limited extent.

The Queensland Information Commissioner commented on this issue in the decision of *NHL and The University of Queensland*:

It is evident ... that the University took the view that an agency's determination of practicability in the context of s.32(b) of the [Queensland] FOI Act is to be made on the basis of whether the document from which exempt matter has been deleted would be meaningful. However, the word "practicable" means: "that can be done, feasible" (Australian Concise Oxford Dictionary); "capable of being done; feasible" (Collins English Dictionary, Third Australian Edition). I consider that the word "practicable" in s.32(b) of the FOI Act refers to the feasibility of producing a severed version of a document from which exempt matter has been deleted, i.e., whether it is physically or mechanically possible, and whether the agency concerned has the available resources to do so. The question of whether the resulting document will be meaningful is, in my view, addressed in s.32(c) of the FOI Act, in requiring that the agency determine (by reference to the terms of the relevant FOI access application, or through consultation with the applicant) whether the applicant would wish to be given access to a copy of a document from which all exempt matter has been deleted. The question of whether the severed matter is intelligible at all must, I think, be taken into account, and common sense judgments made: see my remarks in *Re Fagan and Minister for Justice and Attorney-General* and *Minister for the Arts (Information Commissioner Qld, Decision No. 95015, 26 May 1995, unreported)* at paragraphs 42-45. I note, however, that it is arguable that the intention of s.32(c) of the FOI Act is that this question should ultimately be committed to the subjective judgment of the applicant for access.

The Ombudsman agreed with the views of the Queensland Information Commissioner (concerning the operation of section 32 of the Queensland FOI Act) and considered that they were applicable to section 20(4) of the South Australian FOI Act. Where however, exempt and non-exempt material is inextricably linked, the Ombudsman's view is that section 20(4) can have no application, in light of the risk of inadvertently or otherwise revealing exempt matter.

#### **Conclusion - Preliminary view**

The Ombudsman was satisfied that in this instance it was practicable to sever non-exempt matter from the nursing roster. It was his view that the non-exempt matter was limited to information such as dates and the unit to which the nursing roster related.

#### **Decision**

Subsequently, the Ombudsman's preliminary view was confirmed, meaning that the agency's determination was varied to enable the non-exempt matter identified by the Ombudsman above to be disclosed to X.

**Misunderstanding of role of Ombudsman's office - Ombudsman not advocate**

The applicant (X) and the Department for Transport, Energy and Infrastructure

During the course of the external review X received copies of a number of documents from the Department for Transport, Energy and Infrastructure (the agency) that fell within the scope of his application under section 13 of the *Freedom of Information Act 1991* (the FOI Act).

Although X did not wish to persist with his external review application following receipt of these documents, the Ombudsman considered that it was appropriate to bring some matters to the agency's attention, in the hope of assisting it with future applications under the FOI Act.

Firstly, the Ombudsman outlined his view that it is good practice for an agency to identify all of the documents within the scope of an application, prior to making its determination, and to provide a list of these to the applicant as part of the notice of determination (provided that to do so would not reveal any claimed exempt matter). This is the Ombudsman's view even though the FOI Act does not require an agency to do so, either at first instance or following internal review. The Ombudsman considered that this suggestion would be relevant even where an agency claimed that all documents were exempt (as in this case). The reason being that such transparency often narrows the issues in dispute, or obviates subsequent applications (for example where an applicant either has, or is not interested in, a listed document). Further, it allows any questions as to the agency's storage, search and retrieval systems to be raised early on.

Secondly, the Ombudsman considered that some officers involved with applications under the FOI Act may benefit from additional training. One of the reasons for this view was that for a period of time during the external review some officers thought that the Ombudsman represented X in the proceedings, when in fact the Ombudsman constituted the relevant and independent review authority.

In addition, some officers appeared to have a limited understanding of when the obligation to consult arose under the FOI Act and the consequences that followed in this event. For example, in the Ombudsman's view it was arguable that some documents released to X by the agency, contained matter that constituted the 'personal affairs' of someone other than the applicant (for example the address and/or telephone number of a third party). As far as the Ombudsman was aware, however, these documents were not the subject of any consultation prior to release to X. If this was the case then not only was the third party deprived of the opportunity to express his views about release of the documents, he was also deprived of the opportunity to exercise review and appeal rights if he objected to their release.

The Ombudsman pointed out that if the documents contained matter that constituted the 'personal affairs' of someone other than the applicant, it would not necessarily be 'unreasonable' to release the documents. In such circumstances, consideration of whether or not releasing the documents would be 'unreasonable' might take into account any information already in X's possession. As the Ombudsman saw it, the problem was in the act of releasing the documents prior to consulting the third party (and in the event that the third party objected to the documents being released, to releasing them without affording the third party review and appeal rights).

**Dismissal of application pursuant to section 39(8) on the basis of failure to comply with requirements of Ombudsman pursuant to section 39(7) following settlement conference**

The applicant (X) and the Department of Education and Children's Services

A settlement conference, attended by X and a representative of the Department of Education and Children's Services (DECS), was conducted by the Ombudsman's delegate. During the conference a number of matters were discussed and X was provided with additional information. Shortly before concluding the conference, the Ombudsman's delegate requested that X contact her once X had considered the additional information.

Approximately two weeks later, having received no contact from X since the settlement conference, the Ombudsman's delegate left a message on X's answering machine requesting that X contact her. X did not do so.

Accordingly, the Ombudsman sent a letter requiring X to contact his delegate by a specified date. Furthermore, the Ombudsman informed X that subsections (7) and (8) of section 39 of the *Freedom of Information Act 1991* (the FOI Act) provide as follows:

- (7) The agency and the applicant must cooperate in the process proposed by the relevant review authority for the purposes of the conduct of a review under this section (including any attempt of the relevant review authority to effect a settlement between the participants), and must do all such things as are reasonably required to expedite the process.*
- (8) The relevant review authority may dismiss an application if the relevant review authority considers that the applicant has failed to comply with subsection (7).*

X did not respond to the Ombudsman's letter. The Ombudsman considered that this represented a failure to cooperate in the process adopted for the purposes of the conduct of his review; contrary to section 39(7) of the FOI Act.

Accordingly, pursuant to section 39(8) of the FOI Act, the Ombudsman dismissed the application for external review.

## Government Departments

### ■ Complaints Received 01 July 2005 to 30 June 2006

Attorney-General's Department	51	3.2%
Department for Correctional Services	591	37.6%
Department for Environment and Heritage	21	1.3%
Department for Families and Communities	186	11.8%
Department of Administrative and Information Services	29	1.8%
Department of Education & Children's Services	107	6.8%
Department of Health	5	0.3%
Department of Primary Industries & Resources	24	1.5%
Department of the Premier and Cabinet	2	0.1%
Department of Transport, Energy and Infrastructure	141	9.0%
Department of Treasury and Finance	51	3.2%
Department of Further Education, Employment, Science & Technology	23	1.5%
Department of Water, Land & Biodiversity Conservation	10	0.6%
Environment Protection Authority	9	0.6%
South Australian Housing Trust	231	14.7%
SA Water Corporation	86	5.5%
State Electoral Office	2	0.1%
<b>Total</b>	<b>1569</b>	

### ■ Complaints Completed 01 July 2005 to 30 June 2006

Attorney-General's Department	51	3.2%
Department for Correctional Services	603	38.0%
Department for Environment and Heritage	24	1.5%
Department for Families and Communities	180	11.3%
Department of Administrative and Information Services	28	1.8%
Department of Education & Children's Services	109	6.9%
Department of Health	4	0.3%
Department of Primary Industries & Resources	22	1.4%
Department of the Premier and Cabinet	2	0.1%
Department of Transport & Urban Planning	8	0.5%
Department of Transport, Energy and Infrastructure	135	8.5%
Department of Treasury and Finance	51	3.2%
Department of Further Education, Employment, Science & Technology	21	1.3%
Department of Water, Land & Biodiversity Conservation	15	0.9%
Environment Protection Authority	9	0.6%
South Australian Housing Trust	232	14.6%
SA Water Corporation	90	5.7%
State Electoral Office	1	0.1%
<b>Total</b>	<b>1585</b>	

## Government Departments

■ Complaints Received : Issues 01 July 2005 to 30 June 2006

	(Other)	Department for Correctional Services	Department for Families and Communities	Department of Education & Children's Services	Department of Transport, Energy and Infrastructure	SA Housing Trust	Total	Percentage
Access to educational services				14			14	0.9%
Access to treatment		3					3	0.2%
Administration	51	9	41	27	30	9	167	10.6%
Administration/general management	1				1		2	0.1%
Administrative practices/policies	83	15	97	28	46	19	288	18.3%
Animals	1						1	0.1%
Approvals (permits, licenses, registrations)	11				20		31	2.0%
Case Review		3					3	0.2%
Citizen Rights	7	3	4		1	1	16	1.0%
Communication	5	5	8		6	4	33	2.1%
Conduct				6			6	0.4%
Curriculum issues	2			2			4	0.3%
Daily routine		152					152	9.7%
Discipline		10		3			13	0.8%
Double up cells		7					7	0.4%
Drains/Sewers	4						4	0.3%
Duty of care		4	5	5		1	15	1.0%
Fees/charges/levies	44	2		3	7	4	60	3.8%
Financial assistance	1		9	2			12	0.8%
Financial issues	58	7	12	5	8	7	97	6.2%
Health	4	1			1		6	0.4%
Home Detention	1	23					24	1.5%
Housing		1	2			177	180	11.5%
Land Use	2						2	0.1%
Leave		6					6	0.4%
Mail		20					20	1.3%
Maintenance					3		3	0.2%
Medical		3					3	0.2%
None	5	11	3		1		20	1.3%
Officer misconduct	2	6	2		1	4	15	1.0%
Ordinances, Regulations, By-laws	5				2	1	8	0.5%
Other	3	60	1	2		1	67	4.3%
Planning and development	3						3	0.2%
Policy development and implementation				1			1	0.1%
Property		90					90	5.7%
Punishment		22					22	1.4%
Quality of treatment		4					4	0.3%
Rates and charges	13						13	0.8%
Record keeping	4	3	1		2		10	0.6%
Roads					2		2	0.1%
Security		3					3	0.2%
Segregation		2					2	0.1%
Services	3	2		1	6	2	14	0.9%
Tenders			1				1	0.1%
Transfers		70					70	4.5%
Transport				2	4		6	0.4%
Trees						1	1	0.1%
Visits		20					20	1.3%
Work and education		24					24	1.5%
Workers Compensation				1			1	0.1%
<b>Total</b>	<b>313</b>	<b>591</b>	<b>186</b>	<b>107</b>	<b>141</b>	<b>231</b>	<b>1569</b>	
	20.0%	37.6%	11.8%	6.8%	9.0%	14.7%		

## Government Departments

■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

	(Other)	Department for Correctional Services	Department for Families and Communities	Department of Education & Children's Services	Department of Transport, Energy and Infrastructure	SA Housing Trust	Total	Percentage
Advice Given	152	152	93	69	63	66	595	37.5%
Conciliated	1						1	0.1%
Declined	9	7	2	1	1	2	22	1.4%
Determination	1						1	0.1%
Full Investigation	9	5	1	5	1		21	1.3%
Preliminary Investigation	148	432	81	33	67	162	923	58.2%
Withdrawn	6	7	3	1	3	2	22	1.4%
<b>Total</b>	<b>326</b>	<b>603</b>	<b>180</b>	<b>109</b>	<b>135</b>	<b>232</b>	<b>1585</b>	
	20.6%	38.0%	11.3%	6.9%	8.5%	14.6%		

## Department for Correctional Services

### ■ Complaints Received 01 July 2005 to 30 June 2006

Access to treatment	1	0.2%
Access to treatment - Delay in receiving assessment/admission/treatment	2	0.3%
Administration - Delay	3	0.5%
Administration - Other	1	0.2%
Administration - Unreasonable administrative decision/policy	5	0.8%
Administrative practices/policies - Delay	1	0.2%
Administrative practices/policies - Failure to investigate or act	4	0.7%
Administrative practices/policies - Failure to respond	1	0.2%
Administrative practices/policies - Inadequate/inaccurate records maintained	2	0.3%
Administrative practices/policies - Misleading/wrong information or advice	1	0.2%
Administrative practices/policies - Unfair/discriminatory practices/policies	4	0.7%
Administrative practices/policies - Unreasonable use of authority/power	2	0.3%
Case Review - Disputes Decision	3	0.5%
Citizen Rights - Breach of privacy/confidentiality	3	0.5%
Communication	1	0.2%
Communication - Lack of care or consideration shown	1	0.2%
Communication - Unprofessional conduct/attitude of staff	3	0.5%
Daily routine	3	0.5%
Daily routine - Access to amenities/activities/	26	4.4%
Daily routine - Duty of care	18	3.0%
Daily routine - Food/diet	29	4.9%
Daily routine - General treatment	40	6.8%
Daily routine - Other	17	2.9%
Daily routine - Use of telephones	19	3.2%
Discipline - Exclusion	2	0.3%
Discipline - Punishment	8	1.4%
Double up cells	7	1.2%
Duty of care - Breach of policy/guidelines	2	0.3%
Duty of care - Failure to provide	2	0.3%
Fees/charges/levies - Imposition	2	0.3%
Financial issues	1	0.2%
Financial issues - Cost recovery	1	0.2%
Financial issues - Delays/refusal to pay	2	0.3%
Financial issues - Level of charges	1	0.2%
Financial issues - Miscalculation	1	0.2%
Financial issues - Penalty/refund	1	0.2%
Health	1	0.2%
Home Detention	2	0.3%
Home Detention - Declined home detention application	3	0.5%
Home Detention - Delays in processing home detention application	12	2.0%
Home Detention - Other	6	1.0%
Housing	1	0.2%
Leave	1	0.2%
Leave - Refusal	5	0.8%
Mail	2	0.3%
Mail - Delays	9	1.5%
Mail - Interception	9	1.5%
Medical - Access to dental, optical and medical services	3	0.5%
Officer misconduct - Threats/harassment/racism/intimidation	1	0.2%
Officer misconduct - Unreasonable use of power	4	0.7%
Officer misconduct - Unwarranted/unreasonable use of force or discipline	1	0.2%
Other	71	12.0%
Property	14	2.4%
Property - Confiscation	8	1.4%
Property - Damage	3	0.5%
Property - Delay in transferring	20	3.4%
Property - Failure to compensate	7	1.2%
Property - Loss	17	2.9%
Property - Refusal to Accept or Release	21	3.6%
Punishment - Excessive/Unfair	22	3.7%
Quality of treatment - Inadequate treatment/care	2	0.3%
Quality of treatment - Unsatisfactory hygiene/equipment/care	2	0.3%
Record keeping - Inaccurate records	3	0.5%
Security - Cell and strip searches	1	0.2%
Security - Urine analysis	2	0.3%
Segregation - Unreasonable/illegal	2	0.3%
Services - Access	2	0.3%
Transfers	8	1.4%
Transfers - Delay	9	1.5%
Transfers - Disputes Decision	45	7.6%
Transfers - Failure to approve	7	1.2%
Transfers - Form of transport	1	0.2%
Visits - Access	3	0.5%
Visits - Bans	16	2.7%
Visits - Searches	1	0.2%
Work and education	17	2.8%
Work and education - Removal of access	7	1.2%
<b>Total</b>	<b>591</b>	

<b>Department for Correctional Services</b>		
■ Complaints Completed 01 July 2005 to 30 June 2006		
Advice Given	110	18.2%
Advice Given - Other/General	21	3.5%
Advice Given - Referred to Agency	21	3.5%
Declined - Alternate Remedy	1	0.2%
Declined - Out of Time	1	0.2%
Declined - Refused to Investigate	5	0.8%
Full Investigation - Not Sustained - Explanation Given	1	0.2%
Full Investigation - Reasonable Resolution	4	0.7%
Prelim Investigation - Not Sustained	31	5.1%
Prelim Investigation - Not Sustained - Explanation Given	220	36.5%
Preliminary Investigation - Partly Resolved in Favour of Complainant	60	10.0%
Preliminary Investigation - Reasonable Resolution	121	20.1%
Withdrawn by Complainant	7	1.2%
<b>Total</b>	<b>603</b>	

## Case study

### Department for Correctional Services Prisoner unfairly separated from other prisoners

#### The complaint

The Ombudsman was contacted by a prisoner at the Adelaide Women's Prison who complained of unreasonable and unfair treatment in that she had been kept separate from other prisoners under a regime which included 24 hour observation and being placed "on canvas".

#### Ombudsman Investigation

The Department advised the Ombudsman that certain information had led prison management to suspect that the prisoner was concealing a quantity of a prohibited substance in a body orifice and that she would supply these to other prisoners. She was separated under s36 of the *Correctional Services Act* "in the interests of security and good order within the correctional institution". The prisoner was to remain separated indefinitely and it appeared that action was being taken to seek her transfer to a regional prison. As it eventuated, the prisoner remained separated on this basis for approximately five weeks, save for a brief period of association for some meals. The Ombudsman was advised that this period of association coincided with a number of prisoners being "off their face" and returning positive urinalysis tests, consistent with other information provided. This occurrence was considered further justification for keeping the prisoner separated from other prisoners.

The Ombudsman felt that, in the circumstances, it was unreasonable to keep a prisoner separated under such harsh conditions for so long for this purpose. It was felt that other options for resolving the impasse should have been explored. It was suggested that an internal search pursuant to section 37 of the Act could have occurred. When the Director of the Prison Health Service was consulted it was ascertained that this was not a reasonable option and at his suggestion, a CAT scan was proposed. This provided a more conclusive and less intrusive test. Prior to this occurring, the prisoner "gave up" a quantity of marijuana. The CAT scan was clear and other searches (body and cell) did not reveal any prohibited substance. On this basis the prisoner was returned to mainstream accommodation. While the prisoner did have in her possession a prohibited substance (marijuana), it appeared that she did not have the pills as suspected and other information, which was relied on to separate her, appeared to be wrong.

#### Ombudsman Opinion

Irrespective of the outcome, the Ombudsman was of the opinion that it was unreasonable to keep the prisoner separate under such conditions and for such an extended period, simply in order to "wait her out" on the suspicion she may be concealing a prohibited substance. The Ombudsman considered that other management options should have been explored much sooner.

Where an administrative action appears unreasonable or oppressive to the Ombudsman it would be usual for the Ombudsman to recommend rectification, mitigation or alteration to the effects of such action; and review of any relevant practices which may have given rise to such unreasonable action.

**The complaint**

A prisoner perceived an unwillingness on the part of prison staff to manage his imprisonment in a manner that would allow him greater exposure to other prisoners and would facilitate his transfer out of G-Division and possibly out of the Yatala Labour Prison altogether.

A prisoner complained that Prison management disregarded his grievance and were unresponsive to his requests for a reply. He further claimed that although a meeting was arranged with a psychologist to discuss the prisoner's wellbeing and incarceration plans, prison officials excluded him from participating at that meeting. The prisoner advised the Ombudsman that a Visiting Inspector was prevented by prison officers from carrying out his duties during a prison visit.

**Ombudsman Investigation**

## 1. The prisoner's overall situation

The Ombudsman investigation revealed that all relevant prison management staff and the Department's Chief Executive were aware of the prisoner's situation. Prison management staff were conversant with and valued the role played in the system by Visiting Inspectors. The Ombudsman investigation did not find any evidence of any attempt on the part of the prison staff to limit or hinder the activities of Visiting Inspectors within the boundaries of their legitimate functions within the prison system.

## 2. Handling of the prisoner's letter and psychological intervention

The prisoner's letter, which was handed to a Visiting Inspector, did not reach the prison General Manager at the time. The Ombudsman wrote to the General Manager recommending that communication channels with Visiting Inspectors be refined, so that any recurrence of the situation that the prisoner experienced would be averted. The Ombudsman was assured that the matter would be attended to by way of a Ministerial response to address the prisoner's separation within the prison and psychological assistance for the prisoner. As far as the prisoner's wellbeing was concerned, the Ombudsman was informed that the prison psychologist had worked with the prisoner for some years and it was the intention of the prison management staff that such sessions would continue to occur monthly.

## 3. Prisoner's exclusion from a case planning conference

Prison management agreed that the prisoner was barred from the meeting. However, neither prison officials nor the Visiting Inspectors Coordinator concurred with the prisoner's assertion that he was told he would be invited to participate at the meeting. The meeting was convened to review the overall management of the prisoner's imprisonment over the last decade (from a prisoner management perspective) and the prisoner's participation at the meeting was considered to be unwarranted.

## 4. Duties of the Visiting Inspector

The Ombudsman was advised that the proper role of Visiting Inspectors is to enquire whether a prisoner is properly accommodated and nourished and has access to physical exercise in accordance with prison regulations. As a Visiting Inspector has no authority regarding imprisonment planning there was no legitimate role for the Visiting Inspector to play in this case. The primary body with the responsibility for imprisonment planning is the Prisoner Assessment Committee. The Ombudsman was advised that on at least one occasion the prisoner had asked that any planning pertinent to him be halted as a judicial review was under way. The prisoner's request was declined because the *Correctional Services Act 1982* compels the planning process to continue.

## 5. The prisoner's rehabilitation, transfer or release

Irrespective of the particular grievances that the prisoner had raised, the overarching context of the situation is that prison officials have a duty to treat his rehabilitation and transfer desires in conjunction with prison order and the safety of other prisoners and staff. It was evident that the Prisoner Assessment Committee was not convinced at this juncture, that the prisoner's release from G-Division (let alone transfer to another prison) would be justified.

**Ombudsman Opinion**

In the interest of the prisoner's rehabilitation and future transfer or release prospects, the Ombudsman advised the prisoner to cooperate with prison officials and to work (with expert psychological help) on his behaviour and attitude. In considering all the relevant circumstances of the case the Ombudsman was unable to form an opinion that the prisoner's treatment by prison staff was unjust, unfair or unreasonable.

While the focus of the Ombudsman's task rightly appears to be gauged by the boundaries of section 25 of the Ombudsman Act, it is neither unusual nor without benefit for the Ombudsman to provide complainants with an assurance based on all relevant facts that the administrative actions of an agency comply with all norms of reasonableness. As to what those norms may be is not merely some subjective opinion of an investigator or even the Ombudsman, but an objective regard for what may be expected by the community of any reasonable administrator.

## Department for Families and Communities

### ■ Complaints Received 01 July 2005 to 30 June 2006

Administration	1	0.5%
Administration - Delay	3	1.6%
Administration - Inadequate investigation of complaint	14	7.5%
Administration - Other	7	3.8%
Administration - Payments	1	0.5%
Administration - Unreasonable administrative decision/policy	15	8.1%
Administrative practices/policies - Child Placement	43	23.1%
Administrative practices/policies - Conduct contrary to policies	6	3.2%
Administrative practices/policies - Delay	7	3.8%
Administrative practices/policies - Erroneous decisions	4	2.2%
Administrative practices/policies - Failure to give reasons for decisions	1	0.5%
Administrative practices/policies - Failure to investigate or act	15	8.1%
Administrative practices/policies - Failure to respond	4	2.2%
Administrative practices/policies - Inadequate/inaccurate records maintained	4	2.2%
Administrative practices/policies - Misleading/wrong information or advice	4	2.2%
Administrative practices/policies - Rude/biased/discriminatory/intimidatory	5	2.7%
Administrative practices/policies - Unreasonable use of authority/power	4	2.2%
Citizen Rights - Breach of privacy/confidentiality	4	2.2%
Communication - Lack of care or consideration shown	2	1.1%
Communication - Other	3	1.6%
Communication - Unprofessional conduct/attitude of staff	3	1.6%
Duty of care - Breach of policy/guidelines	1	0.5%
Duty of care - Failure to provide	4	2.2%
Financial assistance - Calculation of benefits	2	1.1%
Financial assistance - Eligibility criteria	5	2.7%
Financial assistance - Methods of payment	2	1.1%
Financial issues - Concessions	6	3.2%
Financial issues - Cost recovery	1	0.5%
Financial issues - Delays/refusal to pay	3	1.6%
Financial issues - Eligibility criteria unreasonable/unfair/misapplied	1	0.5%
Financial issues - Level of charges	1	0.5%
Housing - Maintenance	1	0.5%
Housing - Transfer	1	0.5%
Officer misconduct - Unreasonable use of power	2	1.1%
Other	4	2.1%
Record keeping - Inaccurate records	1	0.5%
Tenders - Unfair/improper/illegal practices	1	0.5%
<b>Total</b>	<b>186</b>	

### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	41	22.8%
Advice Given - Other/General	19	10.6%
Advice Given - Referred to Agency	33	18.3%
Declined - Alternate Remedy	1	0.6%
Declined - Refused to Investigate	1	0.6%
Full Investigation - Partly Resolved in Favour of Complainant	1	0.6%
Preliminary Investigation - Not Sustained	2	1.1%
Preliminary Investigation - Not Sustained - Explanation Given	41	22.8%
Preliminary Investigation - Partly Resolved in Favour of Complainant	19	10.6%
Preliminary Investigation - Reasonable Resolution	19	10.6%
Withdrawn by Complainant	3	1.7%
<b>Total</b>	<b>180</b>	

**The complaint**

The complainant alleged that the Department of Families and Communities (“DFC”), who referred an incident of abuse in the complainant’s home to the Special Investigations Unit (“SIU”), unreasonably assessed the matter, which involved the complainant’s invalid husband, and two children placed in the Department’s care.

**Ombudsman Investigation**

The Ombudsman’s investigation into the complaint revealed that the complainant reported the incident to police who subsequently carried out an investigation. Given the definitive parameters of police investigations, i.e. whether a criminal offence may have occurred or not, there was a need to identify whether or not any harm/risk may have occurred to the children whilst under the guardianship of the Minister. Additionally, foster-carers may also be at risk of unsafe placement/practices if the areas of concern are not immediately identified and addressed. Therefore, the matter was also referred to the SIU. The purpose of the SIU investigation was to ensure a timely independent assessment and investigation of allegations of harm or abuse by the complainant’s invalid husband towards the two children placed in their care.

When contacted by the Ombudsman, the Manager of SIU reiterated that:

- the complainant was advised both verbally and in writing as to how the SIU would conduct their investigation and similarly, the worker from Anglicare and the Vicar were informed of the investigative process;
- an officer from SIU did contact and inform the complainant that an interview would be held to discuss her concerns and that this interview would be tape recorded. The interview did not take place, as the complainant declined to have the interview taped;
- the SIU is required to audio record all interviews to ensure the accuracy of information recorded during an interview and this process also ensures that written notes are not solely relied upon, which could be misinterpreted.

The complainant did agree to meet with the investigating officer from the SIU at home to discuss the incident. Her husband was also in attendance; however, the investigating officer recognised that he was not able to sustain a conversation due to his mental state and complex health problems. The outcome of the home visit resulted in a report being written and provided to the complainant to inform her of the outcome of the investigation.

The Ombudsman was advised that the report outlined that the complainant had acted in an appropriate manner by requesting assistance and reporting the incident. Similarly, the report recommended that the complainant’s foster-care registration be reviewed by Anglicare in terms of the impact of caring for her husband, should he return to her care; the number of cats in the home and issues pertaining to the care of the children due to the complainant’s age.

The Ombudsman was aware that Anglicare reviewed the complainant’s foster-care status and reactivated her registration by placing children again in her care.

**Ombudsman Opinion:**

The Ombudsman gave full consideration to all relevant information, and formed the opinion that the Department had responsibly carried out their mandatory obligations under the *Children’s Protection Act, 1993* when it chose to refer the incident to the SIU for further investigation. Further, the Ombudsman was of the opinion that the SIU reasonably carried out their investigation into the matter.

The extent to which the Ombudsman will be concerned with an agency’s investigations is readily apparent from the provisions of section 25 of the Ombudsman Act. It is not the Ombudsman’s role to conduct re-investigation as if the Ombudsman were re-doing the work of the agency itself. However, if the Ombudsman were to find that regard was had to irrelevant considerations or no regard was had to relevant considerations, a recommendation would usually be made to correct such defect in administration.

## Department of Education & Children's Services

### ■ Complaints Received 01 July 2005 to 30 June 2006

Access to educational services	1	0.9%
Access to educational services - Ineligible to start school	1	0.9%
Access to educational services - Provision of special education services	9	8.4%
Access to educational services - Student choice of school	1	0.9%
Access to educational services - Transfer to another school	2	1.9%
Administration - Delay	1	0.9%
Administration - Inadequate investigation of complaint	7	6.5%
Administration - Unreasonable administrative decision/policy	19	17.8%
Administrative practices/policies - Conduct contrary to policies	3	2.8%
Administrative practices/policies - Erroneous decisions	3	2.8%
Administrative practices/policies - Failure to give reasons for decisions	1	0.9%
Administrative practices/policies - Failure to investigate or act	11	10.3%
Administrative practices/policies - Failure to respond	1	0.9%
Administrative practices/policies - Rude/biased/discriminatory/intimidatory	2	1.9%
Administrative practices/policies - Unfair/discriminatory practices/policies	3	2.8%
Administrative practices/policies - Unreasonable use of authority/power	4	3.7%
Communication - Other	3	2.8%
Communication - Unprofessional conduct/attitude of staff	2	1.9%
Conduct - Students	2	1.9%
Conduct - Teachers/staff	4	3.7%
Curriculum issues - Teaching quality	2	1.9%
Discipline - Exclusion	2	1.9%
Discipline - Suspension	1	0.9%
Duty of care	2	1.9%
Duty of care - Breach of policy/guidelines	2	1.9%
Duty of care - Failure to provide	1	0.9%
Fees/charges/levies - Imposition	3	2.8%
Financial assistance - Eligibility criteria	2	1.9%
Financial issues - Cost recovery	2	1.9%
Financial issues - Level of charges	1	0.9%
Financial issues - Penalty/refund	2	1.9%
Other	2	1.8%
Policy development and implementation - Major student policies	1	0.9%
Services - Access	1	0.9%
Transport	1	0.9%
Transport - Access to service	1	0.9%
Workers Compensation - Failure to comply with legislation	1	0.9%
<b>Total</b>	<b>107</b>	

### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	36	33.0%
Advice Given - Other/General	13	11.9%
Advice Given - Referred to Agency	20	18.3%
Declined - Refused to Investigate	1	0.9%
Full Investigation - Not Sustained - Explanation Given	3	2.8%
Full Investigation - Reasonable Resolution	2	1.8%
Preliminary Investigation - Not Sustained	3	2.8%
Preliminary Investigation - Not Sustained - Explanation Given	19	17.4%
Preliminary Investigation - Partly Resolved in Favour of Complainant	5	4.6%
Preliminary Investigation - Reasonable Resolution	6	5.5%
Withdrawn by Complainant	1	0.9%
<b>Total</b>	<b>109</b>	

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## Case study

### **Department of Education and Children's Services**

Alleged unreasonable action taken by the Department) in relation to the educational needs of a student not being met

#### **The complaint**

The complaint was lodged by a member of parliament on behalf of a parent who alleged that a high school had not met the educational needs of his son.

#### **Ombudsman Investigation**

A preliminary investigation was carried out into the complaint and a DECS solicitor sent a letter to the Ombudsman Office responding to the complainant's following concerns.

- alleged misuse of support hours by the school, as provided by the Department;
- alleged undue influence used by the school to convince the complainant's son to leave home
- alleged unfair refusal by the school to allow the complainant's daughter (also a student at the high school) to talk with her brother
- banning of the complainant from the school and consequent estrangement between himself and his son.

As a result of the above complaint the High School Principal advised of her intention to forward a recommendation to the school's Governing Council asking the Council to consider formulating a parent information booklet to clearly explain how the school would deal with complaints from parent and threats from parents, and how parents may lodge a complaint through the school's complaint handling process. It was the view of the principal that the information provided to parents in booklet form in relation to the school's complaint handling process would allow both parents and teachers to clearly understand how the school intended to address such issues in the future, before matters are referred to DECS' Legal Services Unit.

#### **Ombudsman Opinion**

The Ombudsman was of the opinion that the school's initiative of formulating a parent information booklet would assist in dispelling concerns which may otherwise arise from a lack of relevant information on the complaint handling process and acceptable conduct in the making of a complaint. From time to time cases with the Ombudsman show unnecessary agitation brought about by the lack of complaint handling information causing complainants and agencies to lose sight of the substantive issues of concern.

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## Case study

### Department of Education and Children's Services ("DECS") Alleged refusal to remove glue from a Primary School

#### The complaint

A complainant alleged that her granddaughter was allowed to use Aquadhere glue in a primary school classroom that was not suitably ventilated.

#### Ombudsman Investigation

An investigation into the complaint revealed that the principal of the school, spoke with the Occupational, Health and Safety section at DECS regarding the use of Aquadhere glue at the school and was informed that the product should only be used in proper ventilated rooms and that pop sticks should be used to alleviate children from getting the substance on their skin. The Principal then spoke with staff from the school and advised them on how the product should be used, by incorporating safety procedures in the next Staff Bulletin which stated that:

Use of Aquadhere in classrooms. This issue was discussed at a staff meeting recently. Although this substance is approved for use in the schools, please note that if you are using it in class, you need to ensure that the room is well ventilated eg windows open or used outside the classroom and that the students do not get the substance on their skin.

The Ombudsman was advised that the principal responded to the complainant's concerns in writing and as your concerns were not fully resolved, the Principal then arranged to meet with the complainant in person. At that meeting, the Principal acknowledged that the school used Aquadhere glue in the the complainant's granddaughter's classroom even though the classroom was not properly ventilated. The Principal expressed regret that the incident had occurred, and apologised to the complainant and took immediate action to prevent any recurrence. The Principal also advised staff not to allow the child to use Aquadhere glue, as the complainant had supplied alternative glue for her granddaughter's use in the classroom.

The complainant also wrote to DECS outlining her concerns and the DECS Chief Executive Officer responded to her concerns in a letter which outlined in general that solvent-based adhesives, instant glues and epoxy resins were not approved for use in primary schools due to health effects. He advised however, that white glues such as Aquadhere, Polyvinyl Acetate (PVA) and craft glue are preservative free water based products that are recognised as non-hazardous against strict assessment criteria by the National Occupational Health and Safety Commission ("NOHSC"). Consequently, it was reiterated that there was no intention to remove Aquadhere glue from the approved list of substances and that DECS would continue to support the use of the glue in their schools.

The complainant then lodged further concerns with the Ombudsman and a conciliation meeting was arranged with the primary school and the Eastern District Director. Due to a family crisis on the day the complainant was unable to attend the meeting and consequently another conciliation meeting was tentatively arranged after commencement of the following school year. This meeting did not eventuate as the complainant decided to withdraw her granddaughter from the primary school and enrolled her in another school for 2005.

#### Ombudsman Opinion

The Ombudsman acknowledged that the matter was of some concern to the complainant and her granddaughter, as the granddaughter's asthma was exacerbated when she used Aquadhere glue at the school. The school Principal had since apologised to the complainant for not ventilating the classroom when her granddaughter used the glue.

Further, in lieu of this matter being brought to the attention of the school, the Principal drafted a new policy on the "*Use of Aquadhere at XX Primary School*" which was then endorsed by the School Council. It was the Ombudsman's view that the principal dealt with the complaint in a reasonable manner by taking appropriate action to formulate a new policy that advised staff on the proper use of Aquadhere within the classroom.

This case neatly illustrates the twin benefits of an investigation by the Ombudsman, with an immediate remedy for the complainant, not only in raising awareness of an issue of significance, but an apology acknowledging the serious concern and the policy change which properly reflects the concern and prevents recurrence of such incidents.

**The complaint**

The complainant lodged a complaint concerning her belief that the Department failed to provide adequate educational services to her step-daughter and her daughter. The complainant stated that privately arranged psychological testing showed that her stepdaughter suffered dyslexia, a factor which the complainant claimed was not adequately addressed by the school she attended, and ultimately resulted in her not being able to find employment.

Results of the psychological testing of the complainant's daughter indicated that she was an above-average student and therefore, in the complainant's view, her daughter should have been promoted from year 6 to year 7. The complainant believed that the Primary School principal had acted unreasonably in failing to promote her daughter. A further complaint was that the complainant's daughter's education was impaired because she had eleven relief teachers during one school year.

The complainant stated that when her daughter moved from a Primary School to an Area School, the Primary School principal failed to take sufficient action to ensure her daughter would be promoted to year 8.

The complainant believed that the Department should refund the \$1,000.00 fee paid by the complainant for the psychological testing of her stepdaughter and daughter.

**Ombudsman Investigation**

The Primary School Principal advised that the complainant's daughter was in year 6 when the Principal took up her position mid-way through the school year. The Principal acknowledged that owing to a lengthy and unexpected illness suffered by a class teacher, there were, as the complainant claimed, a number of relief teachers employed to teach the complainant's daughter. However, the Principal stated that the school did the best it could, in difficult circumstances, to manage the situation.

The Principal advised that soon after arriving at the Primary School mid-way through the year, she recalled that the complainant approached her and spoke to her about her daughter. The Principal further recalled that when the complainant expressed the view that her daughter was an above-average student who was bored at school, and should, therefore, be promoted to year 7 to stimulate her interest in her school work she advised the complainant that it was not normal practice to advance students unless they were extremely gifted. At that time the Principal gave the complainant an undertaking that she would get to know her daughter, monitor the work she was doing and then, come to a view as to whether promotion to year 7 was the appropriate action to take.

It appeared that, during the weeks that followed, the principal took an active interest in the complainant's daughter's progress at school. Ultimately, the Principal concluded that, whilst she agreed with the general thrust of the psychological assessment that the daughter was an average to above-average student, she did not believe that she was so gifted as to warrant promoting her to year 7. To ensure her conclusions were fair, the Principal contacted one of the daughter's former Primary School teachers and, after some discussion, the teacher confirmed that from his knowledge of the complainant's daughter as a former student at his school, he would have to agree with the principal's assessment that promoting her to Year 7 would not be an appropriate course to follow.

Some time later, the complainant advised the Primary School that the family would be moving to a country town and that her daughter would be attending an Area School. Once again, the complainant expressed her own desire, and that of her daughter, that she be promoted to Year 8 when she entered the new Area School at the beginning of the next school year. The Primary School Principal recalled informing the complainant that a decision of that nature would ultimately have to be made by the Principal of the Area School and gave the complainant an undertaking she would ring the Area School Principal and inform him of the complainant's and her daughter's wishes and leave the decision up to him.

When the Ombudsman contacted the Area School Principal he confirmed that he did have a telephone conversation with the Primary School principal about the complainant's daughter's progress. From information provided by the Area School Principal it appeared that, although the daughter was not promoted to a higher grade at the Area School, she seemed happy with her new school life. He commented that the daughter was working hard, and has fitted in well to a year 6-7 class, as part of a small group of year 7 students. The teacher concerned reported that the complainant's daughter was performing well.

#### **Ombudsman Opinion**

The Ombudsman did not accept the complainant's assertion that her stepdaughter's inability to find employment was attributable to the Department's failure to provide her with adequate educational services. The condition of dyslexia is marked by difficulty in reading or understanding of written words and this difficulty can as readily be detected by parents as by educators. In any event, the complainant had made it clear when contacting the Ombudsman by telephone that the issues she raised in relation to her stepdaughter were of lesser importance to her at that time than were those she raised in relation to her daughter.

The complainant sought reimbursement of \$1,000.00 from the Department for cost incurred when she arranged psychological assessments for both girls. As the decision to have the children assessed was a personal decision, and not one that involved the Department in any way the Ombudsman was unable to find any administrative error on the part of the Department to justify making a recommendation that the fees for the psychological tests be repaid to the complainant.

The Ombudsman could not agree that the Primary School Principal failed to take sufficient action to ensure the complainant's daughter would be promoted either to Year 7 during the latter half of the school year, or to Year 8 at the commencement of the new school year. The determination as to what class her daughter was best suited to rested with the Principal of the relevant school. In both instances, the Principals had contact with the previous school before determining what class level was the appropriate one.

In response to the complainant's concerns that her daughter's education was impaired because she was taught by relief teachers, it was acknowledged that there was a lengthy and unexpected illness suffered by a class teacher, whose classroom duties were consequently carried out by a number of relief teachers. However, the Ombudsman was unable to view the school's management of this challenging situation as defective administrative action.

It is not uncommon for complainants to attribute a detriment or loss to a 'cause' which may be identified with an administrative action of an agency, disregarding other more compelling reasons for the alleged detriment or loss. Remedial recommendations of the Ombudsman may only follow the event of a defect of administration which may be shown to be at least the dominant cause for the loss or detriment.

## Department of Transport, Energy and Infrastructure

### ■ Complaints Received 01 July 2005 to 30 June 2006

Administration	2	1.4%
Administration - Delay	4	2.8%
Administration - Inadequate investigation of complaint	3	2.1%
Administration - Unreasonable administrative decision/policy	21	14.9%
Administration/general management of Councils - Complaint handling	1	0.7%
Administrative practices/policies - Conduct contrary to policies	1	0.7%
Administrative practices/policies - Delay	7	5.0%
Administrative practices/policies - Erroneous decisions	6	4.3%
Administrative practices/policies - Failure to give reasons for decisions	4	2.8%
Administrative practices/policies - Failure to investigate or act	3	2.1%
Administrative practices/policies - Inadequate/inaccurate records maintained	8	5.7%
Administrative practices/policies - Misleading/wrong information or advice	3	2.1%
Administrative practices/policies - Unfair/discriminatory practices/policies	11	7.8%
Administrative practices/policies - Unreasonable use of authority/power	3	2.1%
Approvals (permits, licenses, registrations, applications)	2	1.4%
Approvals (permits, licenses, registrations, applications) - Failure to approve	8	5.7%
Approvals (permits, licenses, registrations, applications) - Unreasonable	1	0.7%
Approvals (permits, licenses, registrations, applications) -	9	6.4%
Citizen Rights - Duty of care	1	0.7%
Communication - Lack of care or consideration shown	3	2.1%
Communication - Unprofessional conduct/attitude of staff	3	2.1%
Fees/charges/levies	1	0.7%
Fees/charges/levies - Imposition	5	3.5%
Fees/charges/levies - Method of calculation	1	0.7%
Financial issues - Concessions	1	0.7%
Financial issues - Cost recovery	2	1.4%
Financial issues - Delays/refusal to pay	2	1.4%
Financial issues - Level of charges	1	0.7%
Financial issues - Penalty/refund	2	1.4%
Health - Pollution/environmental concerns	1	0.7%
Maintenance - Streets	3	2.1%
None	1	0.7%
Officer misconduct - Unreasonable use of power	1	0.7%
Ordinances, Regulations, By-laws - Failure to enforce	1	0.7%
Ordinances, Regulations, By-laws - Unreasonable Determination	1	0.7%
Record keeping - Inaccurate records	2	1.4%
Roads - Traffic control	2	1.4%
Services - Access	4	2.8%
Services - Termination	2	1.4%
Transport	1	0.7%
Transport - Access to service	3	2.1%
<b>Total</b>	<b>141</b>	

### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	44	32.6%
Advice Given - Other/General	13	9.6%
Advice Given - Referred to Agency	6	4.4%
Declined - Alternate Remedy	1	0.7%
Full Investigation - Not Sustained - Explanation Given	1	0.7%
Preliminary Investigation - Not Sustained - Explanation Given	40	29.6%
Preliminary Investigation - Partly Resolved in Favour of Complainant	10	7.4%
Preliminary Investigation - Reasonable Resolution	17	12.6%
Withdrawn by Complainant	3	2.2%
<b>Total</b>	<b>135</b>	

**The complaint**

The complainant alleged that the agency unreasonably negotiated with him for the sale of his parents' property.

**Ombudsman Investigation**

The complainant ceased negotiations with the Department, as he was able to sell his parents' property through the private real estate market and the Ombudsman subsequently informed him that the investigation of his complaint would be discontinued, as he had obtained a reasonable remedy. However, some weeks later the complainant contacted the Ombudsman intimating that he was dissatisfied with the manner in which the Department managed the negotiations to purchase the property and requested that the investigation be reopened. At that time the complainant also sought and obtained legal advice and subsequently advised the Ombudsman that it was his intention to have the matter arbitrated through the judicial system. The Ombudsman advised him that the investigation would not be reopened as the matter was now being dealt through the judicial system.

Later in the year the complainant again contacted the Ombudsman to advise that a misunderstanding had occurred and that he no longer intended to take the matter to Court and again requested the matter be reopened.

The Ombudsman convened a meeting with the complainant and the agency for the purposes of providing the complainant with an opportunity to clarify his concerns. At that meeting the following significant points were raised by the complainant.

- The rear boundary of the property adjoined the construction site for a proposed City West Connector.
- During the process of identification of boundaries by the Department, it was observed that the subject property driveway was partially situated on Departmental land. The Department subsequently carried out a survey to ascertain the common boundary between the Department land and the complainant's parent's property. At this time the tenant who was renting the property terminated their lease and the complainant then approached the Department with a request to have the Department purchase the now untenanted property.
- Before the Department could commence negotiations, funding to purchase the property needed to be approved. Although funding approval was subsequently obtained; the process took some time. Such a delay in the approval process was unacceptable to the complainant.
- The Department obtained an independent valuation for the property and offered to purchase the property at that price. The complainant believed the offer was well below the market value and did not accept the Department's offer.

Following the meeting the complainant contacted the Ombudsman with a question as to why one block of land sitting in the middle of an \$8.9M development, which was going to be affected commercially and in the overall landscape of the area was not termed "*compulsory acquisition*". Under "*compulsory acquisition*", compensation would then be paid to the tenant and owners of the property for any inconvenience caused by the construction.

**Ombudsman Opinion**

The Department acknowledged at the meeting that the time taken to obtain funding approval to commence negotiations for purchase of the property was unreasonable. The Ombudsman recommended to the Department that the budget approval process be monitored and progressed more efficiently so that future negotiations on similar matters would not be unreasonably delayed.

There was a discrepancy between the price offered by the Department for the property and the amount of funding approved by the Department. Internal documentation provided to the complainant through the Freedom of Information process did indicate that an amount was approved by the Department to negotiate purchase of the untenanted property. The Department was also required to obtain an independent valuation before an offer could be made. The initial price offered by the Department to the complainant for the purchase of the property was the recommended valuer's price and the budget allocation was the total budget allocation approved by the Department to cover all costs incurred within the negotiation process. Although the complainant was at liberty to challenge the valuer's price by obtaining his own independent valuation he chose not to take up this offer.

An agency cannot utilise its compulsory powers of acquisition where it does not require the land. However, if the Department required the land, it would not be necessary to utilise such powers if it was able to negotiate a private settlement. The property was tenanted at the time the Department entered the property to survey the boundary and not long after the tenant terminated their occupancy. In these circumstances, the matter relating to the termination of the lease could only be remedied by appropriate legal action against the former tenant.

The Ombudsman acknowledged the protracted time it took the Department to obtain funding approval. However, after reviewing all documentation in relation to this matter, it was the Ombudsman's view that the administrative practices of the Department were not unreasonable or deficient and the complainant was not marginalised in the negotiation process with the Department. The complainant could have accepted the Department's offer and obtained his own independent valuation of the property which may have challenged the Department's initial offer, at no personal cost. He was also at liberty to sell his parents' property through the private real estate market.

A partial remedy which involved modification of practices and procedures to minimise delay does not translate into a full remedy of financial compensation when there is no actual financial loss suffered by a complainant by reason of defective administration.

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## Case study

### Department of Transport, Energy and Infrastructure Incorrect imposition of driver demerit points

#### The complaint

The complainant contacted the Ombudsman regarding an offence to which demerit points were incorrectly misattributed to him rather than the actual offender who was an interstate driver. When the complainant attempted to resolve his concerns with the agency none of the government officials was willing to deal with the issue, and the complainant referred from office to office. The complainant had an exemplary record as a licensed driver and was concerned that his record had been unjustly tarnished.

#### Ombudsman Investigation

The Ombudsman investigation revealed that the South Australian *Motor Vehicles Act 1959* (Part 3B) stipulates what action ensues once an offence has been recorded. As the complainant correctly pointed out, although the offence occurred in South Australia, the real offender was resident in another jurisdiction who did not share many personal particulars with the complainant. Ordinarily, whenever there is notice from the Courts Administration Authority to the Registrar of Motor Vehicles (pursuant to non-payment of the traffic infringement expiation notice), the affected individual's details are cross-checked against full name, address, date of birth and driver's licence number. In this case, as the fine processing system did not allow for entry of interstate licence numbers, there was a dearth of data used to compile the case which led to the imposition of the demerit points against the complainant.

In a letter to the complainant the Department of Transport, Energy and Infrastructure admitted that a mistake had occurred and informed the complainant that the incorrectly imposed demerit points had been removed from his driving record.

#### Ombudsman's Opinion

It was the Ombudsman's opinion that the imposition of demerit points against the complainant's driver's licence was unreasonable and unfair.

This complaint assisted in identifying an administrative inadequacy and the Ombudsman's intervention resulted in an admission of the error by the agency and the reversal of the demerit points, the remedial effects of the Ombudsman legislation further extended to systemic failures. The Ombudsman wrote to the Registrar of Motor Vehicles to recommend investigation of possible additional verification measures for all interstate motor traffic offenders to alleviate the current reliance upon the person's name which, as the complainant's unfortunate experience showed, could have adverse consequences for other drivers.

Cases such as this illustrate the true value of an effective grievance system which not only deals with the immediate concerns of the public, but when proper regard is had to the causes for concern, significant improvements may be made to the practices and procedures.

## South Australian Housing Trust

### ■ Complaints Received 01 July 2005 to 30 June 2006

Administration - Delay	1	0.4%
Administration - Inadequate investigation of complaint	5	2.2%
Administration - Unreasonable administrative decision/policy	3	1.3%
Administrative practices/policies - Delay	2	0.9%
Administrative practices/policies - Erroneous decisions	3	1.3%
Administrative practices/policies - Failure to give reasons for decisions	2	0.9%
Administrative practices/policies - Failure to investigate or act	3	1.3%
Administrative practices/policies - Inadequate/inaccurate records maintained	1	0.4%
Administrative practices/policies - Misleading/wrong information or advice	3	1.3%
Administrative practices/policies - Rude/biased/discriminatory/intimidatory	2	0.9%
Administrative practices/policies - Unfair/discriminatory practices/policies	2	0.9%
Administrative practices/policies - Unreasonable use of authority/power	1	0.4%
Citizen Rights - Breach of privacy/confidentiality	1	0.4%
Communication - Lack of care or consideration shown	1	0.4%
Communication - Unprofessional conduct/attitude of staff	3	1.3%
Duty of care - Failure to provide	1	0.4%
Fees/charges/levies	1	0.4%
Fees/charges/levies - Imposition	2	0.9%
Fees/charges/levies - Method of calculation	1	0.4%
Financial issues	1	0.4%
Financial issues - Cost recovery	1	0.4%
Financial issues - Delays/refusal to pay	2	0.9%
Financial issues - Miscalculation	1	0.4%
Financial issues - Undercharge/payment	2	0.9%
Housing	8	3.5%
Housing - Agreements	4	1.7%
Housing - Allocation	29	12.6%
Housing - Arrears/debt recovery	11	4.8%
Housing - Damages	2	0.9%
Housing - Disruptive tenants	24	10.4%
Housing - Maintenance	55	23.8%
Housing - Rent	9	3.9%
Housing - Sale	3	1.3%
Housing - Substandard Housing Order	1	0.4%
Housing - Termination	10	4.3%
Housing - Transfer	21	9.1%
Officer misconduct - Threats/harassment/racism/intimidation	3	1.3%
Officer misconduct - Unreasonable use of power	1	0.4%
Ordinances, Regulations, By-laws - Unreasonable Determination	1	0.4%
Other	1	0.4%
Services - Access	2	0.9%
Trees - Removal	1	0.4%
<b>Total</b>	<b>231</b>	

### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	52	22.4%
Advice Given - Other/General	8	3.4%
Advice Given - Referred to Agency	6	2.6%
Declined - Alternate Remedy	1	0.4%
Declined - Refused to Investigate	1	0.4%
Preliminary Investigation - Not Sustained	4	1.7%
Preliminary Investigation - Not Sustained - Explanation Given	74	31.9%
Preliminary Investigation - Partly Resolved in Favour of Complainant	31	13.4%
Preliminary Investigation - Reasonable Resolution	53	22.8%
Withdrawn by Complainant	2	0.9%
<b>Total</b>	<b>232</b>	

## Case study

### South Australian Housing Trust

Unreasonable decision by the SA Housing Trust ("SAHT") in relation to an alleged poorly constructed bathroom slab

#### The complaint

The complainant alleged that the South Australian Housing Trust had poorly constructed the bathroom slab of her home and as a result termites had infested the house.

#### Ombudsman Investigation

The investigation of the complaint revealed that:

- The property was built by the SAHT in 1984 and purchased in 1995 following a four-year tenancy.
- In December 2004 the complainant reported to the SAHT that termites were discovered in the bathroom of the home.
- The complainant's building inspector met with the Director SAHT Real Estate Services to discuss the complainant's concerns and a report was prepared by the building inspector and provided to the SAHT to substantiate the claim that the termites had infested the home due to the inferior construction of the bathroom slab, however the meeting did not produce a resolution to the matter.
- Not satisfied with the response from SAHT, the complainant requested another meeting to review the matter. Initially SAHT agreed to meet however, the meeting was cancelled as the complainant had referred the matter to the Ombudsman.
- Ombudsman investigating officers met with the complainant and at that meeting it was decided that the engineer from the SAHT, and the complainant's building consultant would meet at the home and inspect the bathroom area.
- Following the site inspection another meeting was held at the Ombudsman's Office to discuss the outcome of the site inspection. The meeting did not produce a resolution to the matter as the SAHT and the building consultant had different opinions on the interpretation of the relevant legislation at the time when the home was built in 1984.

The Ombudsman acknowledged the distress the situation had placed on the complainant and her husband over a protracted period of time and that the report prepared by complainant's building consultant was at variance with the view of the SAHT engineer in relation to how the relevant legislation was interpreted at the time the property was built. The complainant was advised that she was at liberty to seek independent legal advice in relation to this issue as it is not the role of the Ombudsman to provide any legal advice or provide conclusive rulings of law in the case of conflicting interpretations of the law, particularly when neither interpretation is obviously unreasonable.

#### Ombudsman opinion:

After reviewing all relevant documentation in relation to the complaint, as well as taking into consideration the site inspection, the Ombudsman was of the opinion that the actions by SAHT in dealing with the complaint were not unreasonable and therefore the SAHT was not deficient in its administrative practices.

The Ombudsman was later advised that the Minister for Housing had discussed a remedy with the complainant in an attempt to resolve the matter and made an offer to purchase the complainant's home at market value, less 50% of the cost of repairs to the property. The complainant accepted the Minister's offer.

While the Ombudsman's remedial recommendations are normally based on there being evidence of maladministration or defective administration, an agency may at all times be at liberty to provide a reasonable resolution to a problem particularly at the behest of the Ministry. There will be occasions when such conciliatory approach on the part of an agency will result in a just resolution having regard to all the circumstances of the case, even in the absence of defective administration on the part of the agency itself.

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## Case study

### South Australian Housing Trust

Alleged misuse of tenant records to calculate debt owed by tenant

#### The complaint

The complainant lodged a complaint against the South Australian Housing Trust in connection with a debt the agency claimed his spouse owed for additional rent on a property she formerly occupied as a Housing Trust tenant. The complainant advised the Ombudsman that the agency believed that he moved in with his wife to share the property, shortly after terminating his own tenancy with the agency, and that he remained with her for some time without ever advising the agency of his change in circumstance. As a consequence, the agency calculated that an amount of \$9,000.00, in the form of additional rent for a period of two years, remained outstanding.

At the heart of the complaint was the complainant's belief that the agency acted unreasonably in two regards:

- by accessing records in their possession concerning the complainant's personal affairs, i.e. information about his income at the time he was an agency tenant, which assisted them to calculate the debt and,
- by refusing to accept a range of information the complainant provided as proof of his address relevant to the period in question.

#### Ombudsman Investigation

The agency advised the Ombudsman that they were waiting for the complainant to provide them with the following information:

1. Centre Link address history statements for both the complainant and his wife for the relevant two year period and,
2. relevant income statements for the same period.

The agency advised the Ombudsman that they had informed the complainant that following receipt of the above information, it would be possible for a revision of the amount owing to occur.

#### Ombudsman Opinion

The Ombudsman recommended that the complainant cooperate with the agency by providing them with the information they require to enable the matter to be progressed further; and the Ombudsman advised the complainant that it was the Ombudsman's understanding that the Housing Trust's policy on debt recovery clearly stated that the officers assigned to a case were obliged to pursue the interests of the agency to recover debt, and are obliged to ensure that the policy was administered in a proper manner.

The complainant was advised that it was the Ombudsman's view that the agency had not acted unreasonably in requiring him to provide them with proof of his address and of his income as described above.

In the public mind it is often assumed that the real value of an Ombudsman is to provide remedial resolution for complainants affected by defective administrative action. Agencies prefer to be assured that their practices and procedures are fair and reasonable, where that is in fact the case. An Ombudsman sees all investigations as an opportunity to review the relevant practices and procedures which provide assurances for all who rely upon the services of the agencies concerned and there is further reinforcement of the process of an independent review by the Ombudsman.

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## Case study

### South Australian Housing Trust

Unreasonable refusal to allow tenant to purchase rental property

#### The complaint

The complainants alleged, that the South Australian Housing Trust had unreasonably refused to allow them to purchase the property they were renting from the Trust.

#### Ombudsman Investigation

The Ombudsman investigation revealed that the complainants contacted the Trust to lodge an intent to purchase the Trust property that they were renting. The Trust subsequently informed the complainants that they were not in a position to offer them the rental property for sale, as this property was required as part of their management plan for the region. The Trust determined which properties may be released for sale and which properties were to be retained, to meet the needs of the public in the future.

The complainants requested a review by the Public Housing Appeal Panel, a hearing was convened and the Panel's ruling was consistent with the Housing Sales Policy - clause 1.3.1 and in the Trust's favour not to sell the property to the complainants. The Housing Sales Policy states that the Trust has the *"right to refuse to make a property available for sale if the property is located in an area with low public housing supply and high demand"*. The Panel recommended to the Minister that the Trust's decision be affirmed and the Minister consequently accepted the Panel's recommendation.

When the complainants wrote to the Minister to express their dissatisfaction with the outcome of their appeal, the Minister responded to their concerns informing them that the Panel had given careful consideration to all information presented at the hearing before making their recommendation. However, the Minister recommended to the complainants that if they had any new or additional information that they wished the Panel to consider, they should forward such information to the Public Housing Appeals Unit and request that a further hearing be convened to review this information.

The complainants again wrote to the Trust with a further request to purchase the rental property and the Trust informed them in writing that there had been no change in the sale restrictions for the area and therefore, they were not in a position to offer the property for sale. Following this advice from the Trust, the complainants sought information from the SAHT file, pursuant to the *Freedom of Information Act 1991*.

For the purpose of clarifying information and to progress the investigation, the Ombudsman convened a meeting with the complainants and the Trust. At that meeting the Trust apologised to the complainants as the information provided to the complainants through the Trust's Freedom of Information process contained information pertaining to other tenants who had been able to purchase properties in the area, around the same time that the complainants were informed that they were not able to purchase their Trust rental property.

The complainants advised the Public Housing Appeal Unit that they wished to have their matter reopened to enable the Panel consider the new information about property purchases in their area. A new hearing with a new panel was convened and the Panel, after comprehensively reviewing the additional information, upheld Trust's decision not to offer the rental property for sale to the complainants on the grounds that there were significant differences between the decision in respect to the complainant's property and the properties which the Trust had decided to release in the area.

#### **Ombudsman opinion**

The Trust assured the Ombudsman that the administrative error that became evident in the release of information to the complainants received through the Freedom of Information process had been rectified. The Trust implemented additional screening procedures to ensure that the confidential information of Trust tenants would not be mistakenly released to other tenants in the future.

Following a comprehensive review of all documentation and consideration of the outcome of the appeal lodged with the Public Housing Appeal Unit, the Ombudsman formed the opinion that the Trust had reasonably assessed the complainant's request to purchase their rental property and dealt with their dissatisfaction appropriately through their internal complaint handling system as well as independently through the Public Housing Appeal Unit.

At no time were the complainants misled to believe that they may have been able to purchase the property as each property released for sale by the Trust was comprehensively assessed in accordance with the agency's Asset Management Plan. The complainant's request was evaluated against the Trust's Asset Management Plan and the property was deemed to be in high demand for rental. The property was assessed as not being *"unique in circumstance"* to allow the Trust to release the property for sale as other properties were, at the time the complainants lodged their initial intent to purchase.

The outcome may not have been what the complainants were seeking, however, the information provided during the Ombudsman's investigation has resulted in the complainants' better understanding of the Housing Trust's policies and asset management practices, which restrict the SAHT from releasing some rental properties for sale.

Significantly, there had been a thorough review of all relevant information at various levels of inquiry, appeal and investigation and the complainants legitimate expectations had been fully met, even though the 'decision' by the Housing Trust not to offer the subject property for sale remained the same. There was no defective administrative action or maladministration on the part of the agency that would give rise to any systemic concerns in any part of the dealings which the Trust had with the complainants.

## Government Departments (Other)

### ■ Complaints Received 01 July 2005 to 30 June 2006

Administration	1	0.3%
Administration - Delay	10	3.2%
Administration - Inadequate investigation of complaint	12	3.8%
Administration - Other	2	0.6%
Administration - Payments	1	0.3%
Administration - Unreasonable administrative decision/policy	25	8.0%
Administration/general management of Councils - Complaint handling	1	0.3%
Administrative practices/policies - Conduct contrary to policies	5	1.6%
Administrative practices/policies - Conflict of interest/bias	1	0.3%
Administrative practices/policies - Delay	8	2.5%
Administrative practices/policies - Erroneous decisions	9	2.9%
Administrative practices/policies - Failure to give reasons for decisions	1	0.3%
Administrative practices/policies - Failure to investigate or act	25	8.0%
Administrative practices/policies - Failure to respond	7	2.2%
Administrative practices/policies - Inadequate/inaccurate records maintained	8	2.5%
Administrative practices/policies - Misleading/wrong information or advice	4	1.3%
Administrative practices/policies - Unfair/discriminatory practices/policies	9	2.9%
Administrative practices/policies - Unreasonable use of authority/power	6	1.9%
Animals	1	0.3%
Approvals (permits, licenses, registrations, applications)	1	0.3%
Approvals (permits, licenses, registrations, applications) - Failure to approve	2	0.6%
Approvals (permits, licenses, registrations, applications) - Unreasonable	1	0.3%
Approvals (permits, licenses, registrations, applications) -	7	2.2%
Citizen Rights - Breach of privacy/confidentiality	6	1.9%
Citizen Rights - Duty of care	1	0.3%
Communication - Lack of care or consideration shown	2	0.6%
Communication - Other	1	0.3%
Communication - Unprofessional conduct/attitude of staff	2	0.6%
Curriculum issues - Subject range	1	0.3%
Curriculum issues - Teaching quality	1	0.3%
Drains/Sewers - Drainage schemes	2	0.6%
Drains/Sewers - Easements	1	0.3%
Drains/Sewers - Sewage schemes	1	0.3%
Fees/charges/levies	2	0.6%
Fees/charges/levies - Imposition	34	10.8%
Fees/charges/levies - Method of calculation	8	2.5%
Financial assistance - Methods of payment	1	0.3%
Financial issues	1	0.3%
Financial issues - Concessions	2	0.6%
Financial issues - Cost recovery	9	2.9%
Financial issues - Delays/refusal to pay	6	1.9%
Financial issues - Eligibility criteria unreasonable/unfair/misapplied	2	0.6%
Financial issues - Level of charges	23	7.3%
Financial issues - Miscalculation	3	1.0%
Financial issues - Overcharge/payment	3	1.0%
Financial issues - Penalty/refund	9	2.9%
Health	1	0.3%
Health - Noise control	1	0.3%
Health - Pollution/environmental concerns	2	0.6%
Home Detention	1	0.3%
Land Use - Purchase, acquisition, sale or lease	2	0.6%
Officer misconduct - Threats/harassment/racism/intimidation	1	0.3%
Officer misconduct - Unreasonable use of power	1	0.3%
Ordinances, Regulations, By-laws - Failure to enforce	2	0.6%
Ordinances, Regulations, By-laws - Unreasonable Determination	3	1.0%
Other	3	0.9%
Planning and development - General processing	8	2.6%
Rates and charges	1	0.3%
Rates and charges - Composition of rates	3	1.0%
Rates and charges - Late payments	3	1.0%
Rates and charges - Objections/appeals	2	0.6%
Rates and charges - Recovery	2	0.6%
Rates and charges - Remissions/discounts	2	0.6%
Record keeping - Failure to reply/supply information	2	0.6%
Record keeping - Inaccurate records	2	0.6%
Review of 14A extension	1	0.3%
Services - Access	3	1.0%
<b>Total</b>	<b>314</b>	

## Government Departments (Other)

Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	87	26.6%
Advice Given - Other/General	44	13.5%
Advice Given - Referred to Agency	21	6.4%
Conciliated - Reasonable Resolution	1	0.3%
Declined	1	0.3%
Declined - Alternate Remedy	3	0.9%
Declined - Out of Time	1	0.3%
Declined - Refused to Investigate	4	1.2%
Determination - Section 132 Water Resources Act	1	0.3%
FOI Review - Determination Revised by Agency	1	0.3%
Full Investigation - Not Sustained	1	0.3%
Full Investigation - Not Sustained - Explanation Given	2	0.6%
Full Investigation - Reasonable Resolution	6	1.8%
Preliminary Investigation - Not Sustained	3	0.9%
Preliminary Investigation - Not Sustained - Explanation Given	72	22.0%
Preliminary Investigation - Partly Resolved in Favour of Complainant	21	6.4%
Preliminary Investigation - Reasonable Resolution	52	15.9%
Withdrawn by Complainant	6	1.8%
<b>Total</b>	<b>327</b>	

## Case study

### Office of Consumer and Business Affairs

Failure to fully investigate your complaint concerning misleading conduct of a supplier associated with a Fuel Discount Voucher Scheme

#### The complaint

The complainant alleged the Office of Consumer and Business Affairs failed to fully investigate a complaint concerning misleading conduct of a supplier associated with a Fuel Discount Voucher Scheme.

#### Ombudsman Investigation

The complainant wrote to the Office of Consumer and Business Affairs (OCBA) outlining his complaint and OCBA responded to him expressing regret for the delay in responding to his complaint. The complaint had been checked with an OCBA regional office and the file was still open on the matter. The complainant was advised that his specific complaint had been raised many times across Australia and the matter was also investigated by the Australian Competition and Consumer Commission ("ACCC"). Subsequently the ACCC had decided that no law had been breached by the fuel outlet because there was a sign in place with the annotation "conditions apply - see in store for details".

The complainant informed the Ombudsman that when he recently returned to the same fuel outlet there were no signs to inform the public that fuel vouchers would not be accepted at that outlet. When the OCBA Regional Manager was contacted by the Ombudsman he subsequently visited the fuel outlet and then advised the Ombudsman by email with his site inspection report. The OCBA report stated that:

*On entrance to the LPG pump (I could only see the one pump), there is a large white sign with black text advising that "..... Fuel discount is not available on LPG" on the approach to the bowsers in the lane with LPG. In addition to this, on both sides of the LPG pump are stickers (which contrast with the colour of the bowsers) and are the width of the bowser, advising in two lines of print "..... Fuel discount is not available on LPG". In addition, there is another sticker which is also prominently displayed on both the LPG and Diesel bowsers, advising that gift cards/vouchers are not available on these pumps.*

#### Ombudsman Opinion

It is regrettable that the information offered to the complainant by the service station attendant in relation to his complaint was less than satisfactory and subsequently resulted in a break-down in communication between the complainant and the service station attendant. Added to this was the delay the complainant experienced with OCBA failing to inform him that ACCC was investigating the matter further.

The Ombudsman was advised by OCBA that since the matter had been raised with the ACCC most petrol stations are more vigilant in the placement of signage to enable customers to be more comprehensively informed as to what discounts apply.

Having considered all the information, as well as taking into consideration the site inspection report, the Ombudsman was of the opinion that the matter had been reasonably dealt with by OCBA in collaboration with the ACCC.

### The complaint

The complainants expressed concern that “*due process has not been followed by the Development Assessment Commission, Planning SA and the Environment Protection Authority*”. The complainants advised the Ombudsman that their concerns were mainly with Planning SA and their understanding of a statement made at a ‘public consultation meeting’ for a major Wind Farm project. The complainants developed an expectation that the relevant State Government Minister would form an opinion pursuant to section 47(2) of the *SA Development Act 1993* that a proposed amendment to the development would “*significantly affect the substance of the PER - i.e., the public environmental report*” which would mean for the purposes of the section that the amendment should not be made before interested persons have been invited by public advertisement, to make written submissions on the proposed amendment and the Minister considered the submissions (if any) received in response to the advertisement.

The so-called ‘public consultation meeting’ was in fact a ‘public meeting’ (to use the words of the Act), linked to the provisions of section 46C(5)(b) of the Act which provides that the Minister must ensure that copies of the public environmental report are available for public inspection and purchase and by public advertisement give notice of the availability of the report and invite interested persons to make written submissions to the Minister on it. The purposes of the public meeting are therefore specific to these functions. The same ‘complaint’ was referred to in the Parliament by a Member where the statement “*Moving the turbines more than 30 metres would result in an amended PER*” was attributed to an officer of Planning SA who chaired the meeting.

Other grievances related to conflicting noise predictions, anticipated driver distraction, quality of photomontages, maps used in various documents (Environment Protection Authority), and reasons for approval given by the Planning Minister in overriding a Departmental recommendation.

### Ombudsman Investigation

The Ombudsman conducted a preliminary investigation, which necessarily involved a jurisdictional inquiry and following receipt of an account as to the relevant circumstances of the case from the Department the Ombudsman was satisfied having regard to the provisions of the *Development Act* that the Minister was provided with sufficient information to base an opinion for the purposes of the Act. It was open for the Minister to form that opinion; and the Ombudsman informed complainants so in writing.

The complainants then expressed doubts and argued that the advice from Planning SA that the variation was minor was incorrect. The Ombudsman then advised the complainants that as a matter of completeness a site visit and meeting would be arranged to allow the complainants an opportunity to provide further particulars. At that meeting the complainants introduced as their spokesperson another party who was then joined by a third complainant. Subsequently, the Ombudsman further heard their viewpoints.

The Ombudsman investigation continued as a preliminary investigation not only because all necessary information was adequately provided and the principal questions were of a jurisdictional kind, but also in the absence of any prospect of a special report from the Ombudsman, it appeared unnecessary for the Ombudsman to issue a formal notice to any agency.

The Ombudsman also had the benefit of hearing a highly experienced and professional witness from Planning SA who showed a comprehensive understanding of all relevant issues, and provided full account of all relevant circumstances in a forthright and honest manner. As to what he did or did not say at the public meeting the Ombudsman had no hesitation in preferring his account. Moreover, his account was corroborated by another Planning SA officer. The first Planning SA officer recalled that he spoke of the requirement for any variation to the proposal to be reassessed. That is not the same as stating it would result in an amended proposal. It is more likely that those who heard the officer assumed that reassessment was tantamount to significant amendment and presumably, would require the Minister to be so advised.

This approach suffered from circularity of argument. The discretion was the Minister’s and the Minister’s alone to exercise. Neither the Department nor the officer could pre-determine the exercise of that discretion. Accordingly, even if the Ombudsman were persuaded that the officer had made some remark intimating that the Minister would be of the opinion sought by the complainants, that remark could not be made to logically fit some requirement for the Minister to so exercise his ministerial discretion, which remained unfettered. The Ombudsman adhered to his earlier opinion on the matter.

Could the Minister's discretion be challenged? Section 48E is what is known to lawyers as an '*ouster clause*'. The clause does not prevent the Ombudsman from looking at the relevant actions of the Department, and that was undertaken to the degree that was possible, but if the complainants wished to challenge the decision of the Minister, the scope and effect of the '*ouster clause*' upon any possible legal proceedings was a matter for the Courts. There are various opinions on the effect of ouster clauses in Federal legislation and State legislation. If the complainants were adamant in their challenge, then they were advised to seek independent legal advice on the matter. The Ombudsman only considered the '*ouster clause*' to the extent, whether on its wording it was possible to say it applied to any actions of the Department itself; but it was clear that was not the case. Furthermore, the protection from proceedings did not apply to investigations of the Ombudsman. The simple position was that the Ombudsman did not have jurisdiction to investigate the actions or decisions of the Minister.

As to the other grounds of complaint, it was clear to the Ombudsman that the Development Assessment Commission (DAC) was acting as a delegate of the Governor of South Australia by reason of section 48(8) of the Act. Neither the Governor nor DAC, in giving decisions on a major development, are subject to oversight by the Ombudsman. In any event, the decision had been made and published in the *SA Government Gazette*, and any investigation of administrative steps of the Department itself leading up to the decision cannot alter the decision. The Ombudsman declined jurisdiction; but even if the Ombudsman had jurisdiction, a full investigation in these circumstances would have been pointless.

As to the actions of the Environment Protection Authority (EPA), the Ombudsman understood that the discrepancy between a particular graph or map used in documents submitted to EPA had indeed been verified - but the Ombudsman was advised that it does not alter the veracity of data utilized in the different documents and graphic representations. The EPA conceded that in one instance a graph did not concur with its corresponding data; nevertheless, the data itself (the basis of EPA's assessment) was correct and the graph was revised accordingly.

#### **Ombudsman's Opinion**

It was the opinion of the Ombudsman that firstly, the actions of Planning SA could be investigated. However, the investigation found nothing in those actions which could be described as being unreasonable for purposes of the Ombudsman Act. Secondly, Ombudsman had no hesitation in accepting the Planning SA officer's account of the nature and purpose of the public meeting and what was said by him on the occasion of the meeting. Thirdly, in any event, the Minister's discretion may not be fettered and the information supported the view that it was open for the Minister to hold a certain view on the matter. This was not however, a matter for the Ombudsman's formal opinion as the Minister's action were not within the Ombudsman's jurisdiction; but it was open to make such observation for the purposes of saying that if the Minister's opinion is to be challenged that was a matter for a Court and the immediate obstacle to such challenge would be a legislative '*ouster clause*', the effect of which may itself only be finally determined by a Court.

### **The complaint**

The complainant alleged that the Department for Environment and Heritage had required that landowners enter into Heritage Agreements before their land subdivisions would be approved.

### **Ombudsman Investigation**

The Ombudsman conducted a preliminary investigation under Section 18(1) of the *Ombudsman Act* and interviewed a number of property owners who stated that they had been advised of the requirement to enter into a Heritage Agreement.

The Council and the Native Vegetation Council readily acknowledged there was a commitment to preserve native vegetation where possible and this was outlined in the region's Development Plan. Accordingly, where a Development Application required clearing of land and the removal of significant native vegetation, the Native Vegetation Council would be asked by the Development Assessment Commission ("DAC"), or Council, to conduct an assessment of the situation and provide a report, including recommendations.

In accordance with the Native Vegetation Act, where land development impacted upon relevant vegetation, the Native Vegetation Council may make a range of recommendations including that the landowner enter into a Heritage Agreement to preserve the remaining land, revegetate the land, or make a contribution to the Native Vegetation Fund.

The Native Vegetation Council stated that it did not have a mandate to require compliance with the recommendations and any suggestions would be put to Council which, within the provisions of the Development Act, determined whether the recommendations of the Native Vegetation Council should be included in any approved development application.

The Department for Environment and Heritage informed the Ombudsman that it may give advice to landowners and refer them to the Native Vegetation Council Secretariat if appropriate. The Department stated it did not make decisions requiring individuals to enter into Heritage Agreements in order to gain approval for subdivision by Council.

### **Ombudsman Opinion**

There was no evidence to suggest that the Native Vegetation Council had required individuals to enter into Heritage Agreements in order that land subdivision approvals were granted. The Council had, under certain circumstances, and in accordance with the Development Act, requested that applicants enter into a Heritage Agreement as a condition of approval of their land subdivision application.

Councils may, in accordance with the *Development Act*, place conditions upon the approval of development applications. The abovementioned condition was consistent with the region's Development Plan and the recommendations of the Native Vegetation Council and it was the Ombudsman's view that the Council had acted reasonably in this regard.

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## Case study

### Department for Environment and Heritage

Alleged inaction by authorities in the face of apparent animal cruelty

#### The complaint

The complainant contacted the Ombudsman with concerns that funding for inspectors to focus on prevention of cruelty to animals was inadequate. The complainant also reported cases of mistreatment or neglect of animals to the Department and this information was gratuitously forwarded to the Society for the Prevention of Cruelty to Animals (RSPCA).

#### Ombudsman Investigation

The Ombudsman investigation revealed that the South Australian Government allocates funds annually to investigations conducted under the provisions of the State's *Prevention of Cruelty to Animals Act 1985*. This funding level has been maintained over several years, despite some whole-of-portfolio budget reductions. The Ombudsman informed the complainant that although she understood there were only five inspectors employed by the RSPCA, South Australia actually has nine RSPCA inspectors. The Ombudsman was further advised that significantly, SA Police officers, as well as the National Parks and Wildlife wardens, are authorized under the Act to take appropriate action if confronted with an instance of animal cruelty.

The Ombudsman was also able to inform the complainant that her concerns raised in her earlier report concerning a South Australian Wildlife Park had been tabled at a meeting of RSPCA's Council, resulting in the subsequent remedial action involving the removal of some exotic animals and an upgrade of the park's general appearance through a work-for-the-dole scheme.

The complainant was informed that once the Department had been advised that the organization she represented did not wish any of its subsequent reports to be made available to RSPCA, the Department retained her subsequent report and acted upon it through the National Parks and Wildlife SA Division rather than the RSPCA. That report concerned another Wildlife Park and precipitated a thorough inspection of conditions in which animals were being kept. The ensuing report from that inspection attested to the genuineness of the care provided by the park's operators – clean enclosures, well-fed and very interactive animals etc. – despite some serious finance shortfalls that the Park owners had experienced.

#### Ombudsman's Opinion

The Ombudsman was unable to form an opinion that relevant actions on the part of the Department for Environment and Heritage were unreasonable in this case. It is inevitable that wildlife displays attract criticism, but such criticism of itself cannot be equated with any administrative failure by government agencies. If the ultimate aim of the organization represented by the complainant was to eliminate all artificial primate enclosures, that would be a decision for elected Members of Parliament to make and not a procedural administrative matter for the Ombudsman to pursue.

### The complaint

The complainant contacted the Ombudsman alleging that the Department unreasonably processed his application to become an accredited training provider. In his complaint to the Ombudsman the complainant expressed his concerns about the Department's audit findings and the intimation that he would be required to provide further equipment. The complainant was also concerned that the time taken to process his second application for accreditation was excessive. Overall, he had concerns about the validity, fairness and consistency of the agency's audit process.

### Ombudsman Investigation

The Ombudsman made contact with the Department and was advised that the Quality Branch is a business unit within the Department and this unit is obliged, under the *Training and Skills Development Act 2003* and the Minister, to assess applications for registration in the delivery of nationally recognised qualifications.

The Department advised that the first application lodged by the complainant did not comply with the accreditation standards under the *Training and Skills Development Act 2003* and the complainant subsequently, lodged the second application. An auditor, not involved with the first application, assessed the second application. A letter accompanying the second application, indicated that the complainant had been appointed the Educational Manager for the training company and identified the complainant as the person the Department would discuss issues with in relation to the assessment of the application.

The Department received correspondence on three occasions seeking information about the delay in processing of the second application. In response to the correspondence the Department advised that the audit process requested through the complainant was different from the standard procedure undertaken by the Quality Branch. At the request of the complainant it was agreed by the lead auditor that a full desk based audit of the material would be undertaken prior to a site audit. An initial desk base audit was conducted and due to the amount of documentation provided, a second desk based audit was conducted later that month. A report of the findings was prepared and forwarded to the complainant a week later.

The complainant sent a letter to the lead auditor and the Department's Director expressing dissatisfaction with the Department's delayed processing of the application. The following month the lead auditor received a report from the agency's technical expert on the sample material sent with the complainant's application. The report indicated that additional information was required which would be assessed at the site audit. The lead auditor informed the complainant that the technical expert's report was not a final report as it identified gaps that needed to be addressed.

The complainant emailed the Department outlining his concerns in relation to the technical expert's report. A site audit was carried out several weeks later and the complainant subsequently lodged a complaint with the Department. An acknowledgement letter was sent to the complainant and at that time the Department offered to meet to discuss the complaint, however this offer was declined. A letter was sent from to the complainant from the Department stating that the application did not meet the AQTF Standards for Registration as a training organization. This letter also acknowledged that a complaint had been lodged as a separate matter. The Department received a letter from the complainant several days later intimating that he did not accept the outcome of the audit. Two days later the complainant sent an email to the Department stating that it would be inconvenient to meet and discuss the concerns raised in the previous letter of complaint; and the Department then responded in writing to the grievances raised in relation to the processing of the application.

### Ombudsman Opinion

The Ombudsman was satisfied that the audit team assessed the evidence in the complainant's second application against the requirements of the training package. The Ombudsman was further satisfied that the suggestion made that further equipment would be required for the application to be approved was a reasonable request.

The Department acknowledged that the negotiated changes to the standard procedures and the amount of information needing to be audited, as well as the non-availability of technical experts, all contributed to delays in processing the complainant's second application. The Department agreed with the complainant's suggestion not to adhere to the normal standard procedures for assessing the second application, however the change in approach for assessing the second application did not indicate that the process was invalid, unfair or inconsistent, as both the complainant and the Department agreed to the changes with good intent, to enable the application to be progressed to the site audit stage.

The Ombudsman acknowledged the delays experienced in the processing of the second application had been somewhat distressful for the complainant over a protracted period of time. The Department stated that they sincerely regretted the delays which the complainant experienced and advised that they had fully considered the complainant's feedback. The Ombudsman recommended that to alleviate such time delays in the processing of future applications, the Department should adhere to their standard procedures.

It was the opinion of the Ombudsman that the actions of the Department were not unreasonable. The delays in processing the second application, although regrettable, did not influence the findings of the site auditor's report, which clearly identified the actions which needed to be taken before the application could be considered further.

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## Case study

### Department of Water, Land and Biodiversity Conservation

unreasonable in placing a first charge on their land for a debt incurred by their former tenant.

#### The complaint

The complainants were advised by the Department to temporarily transfer their water licence to their tenant. It was their understanding that the tenant would then be responsible for any charges. The Department acknowledged that the complainants *"may not have been fully conversant with the possible ramifications if the tenants defaulted on payment or absconded"*. However it was the Department's view that the arrangement did not *"negate the obligation for the debt to be paid"*.

#### Ombudsman Investigation

The complainants accepted the Departmental advice on the understanding that temporarily transferring the licence to the tenant was like an insurance policy. They had to pay for this temporary transfer and stated that there would have been no point in doing so, if they had known they would still be responsible for the tenant's debt in any event. The complainants maintained that, had they known they could still be responsible for overuse of water by their tenant, then they would have been able to take steps to prevent such overuse and limit or avoid their liability. These were persuasive comments. It seemed to the Ombudsman that the complainants acted in good faith, on advice from the Department and had an honest and reasonable belief that, by temporarily transferring their water licence, they would be protecting themselves from debts incurred by their tenant. Furthermore, it seemed that the reason the complainants were not *"fully conversant with the possible ramifications....."* is that they were not advised as such by the Department. This was an omission by the Department to not fully inform the complainants.

It was the Ombudsman's understanding that the purpose of the penalty charge is to discourage overuse and not to raise revenue. In this case, the complainants did not overuse water and as they have sold the land, would not do so in the future.

The Ombudsman subsequently received advice from the Department that it was considered appropriate for the complainants to receive a reimbursement for the penalty charge and interest payment. In reaching this decision the Department had taken into account:

- it was not unreasonable to expect the complainants to rely on the advice given to them by Department officers which led them to believe they would not be responsible for the charges incurred while the lessee of their land held the Water Licence;
- the complainants had taken positive steps to ensure that the person actually using the water on their land was responsible for payment of any charges;
- the complainants had historically taken proactive action to acquire additional water to cover overuse and make the property more viable in the long term;
- the impact of the loss of the money on the financial position of the complainants.

#### Ombudsman Opinion

Having regard to all the circumstances of the case, the Ombudsman remained of the view that the action of the Department to place a first charge over the complainants' land, while lawful, appeared to be unfair and unreasonable.

The Ombudsman acknowledged the complainants' debt was paid in full at the time the sale of their land was transacted but considered the Department should reimburse them the component which related to penalty charges and interest. A reimbursement cheque was forwarded from the Department to the complainants.

### The Complaint

The complainant alleged that the Department did not allow enough time for her to sign all documents and forward them before the offer to purchase her shack had expired.

### Ombudsman Investigation

An offer to freehold certain shacks was sent to all lessees in December 2000. This offer required the execution of a Deed and required that documents evidencing signed acceptance be returned to the Department no later than March 2001. A reminder letter was forwarded to the complainant at the end of March 2001 advising of an extension of three weeks. No response was received from the complainant and the Department's offer lapsed.

In June 2003, a letter was forwarded to the complainant seeking an indication as to whether she was interested in free-holding (as part of a general determination for free-holding the shacks). The complainant telephoned the Department the following month, expressing an interest in free-holding her shack. The complainant was informed that this had been noted; however, as the previous offer had not been accepted, the offer was no longer available.

The complainant again telephoned the Department in January 2004 and enquired as to whether free-holding was possible. At the time she was advised that the Minister had recently declined several similar requests to freehold and that the situation with her lease was similar.

In February 2004, the complainant wrote to the Minister seeking approval to freehold and this request was declined. However, in October 2004 the complainant was advised by letter that the Minister had approved a final offer being made to all Blanchetown shack owners, not under contract, and that a formal offer would be made in the near future. (This early advice was given to enable shack owners to arrange appropriate finance).

A formal written offer was made to the complainant in February 2005. The letter outlined *"The Minister for Environment and Conversation has approved the sale of the subject land to you for the purchase price of \$XX,000 dollars. If you wish to proceed to purchase the freehold of the land you must return to this office the following within 2 months of the date of this letter."*

One month later, a reminder letter was sent to the complainant advising that signed documents must be received no later than 11 April 2005 and that no further extension of time would be given.

On 4 April 2005, all lessees were forwarded an additional Execution page as it was brought to the attention of the Department that the Execution page was missing in the documents previously mailed out to some of the lessees. On 7 April 2005, the complainant contacted the Department and requested an extension of time to return her documents, as she did not receive the entire set of documents. The complainant also intimated that all documents had to be sent to one of the lessees in Queensland for signing and this could not be achieved by the due date.

In early May the complainant was advised in writing by the Department that the offer made on in February 2005 had lapsed as no signed documents had been received.

In a report forwarded to the Ombudsman in August 2005 the Department's Manager - Land Administration Branch reiterated that shack owners who entered into a contract in 2000/2001 were able to purchase their shacks at the then land valuation price. However, shack owners offered the option to freehold their shacks in 2005 would be subject to current land valuations.

### Ombudsman Opinion

The Ombudsman was of the opinion that the matter had been ongoing for a considerable period of time and that the matter was properly resolved when the Department informed the Ombudsman that, as a gesture of goodwill, the complainant would be offered another opportunity to purchase the shack freehold so as not to disadvantage her in any way, due to the Department's error in the mail-out process to some lessees. When there is a reasonable doubt that the loss or inconvenience suffered by a complainant may have been due to defective administrative action that doubt should normally be resolved in favour of the complainant.

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## Case study

### SA Water Corporation Disputed account for excess water

#### The complaint

A Member of Parliament approached the Ombudsman with a complaint from a constituent regarding an SA Water account for excess water. The complainant had received an account for excess water that resulted from a leaky valve on his water meter. The complainant was unable to stop the leak because the tap on the meter would not turn off. The resultant account was for a meter reading of 319 kilolitres whereas the usual average meter reading was around 13 kilolitres.

When the leak occurred the property was vacant however, once the leak had been detected at the water meter, the complainant reported the fault to SA Water on four separate occasions over a period of several months. The necessary repairs were finally carried out some time later with an explanation that the delay in carrying out the necessary repairs was due to excessive work load.

#### Ombudsman's investigation

The Department acknowledged that there had been an unreasonable delay in carrying out repairs to the water meter and that the complainant was unable to carry out the repairs himself. However, the Department investigation had revealed that they were not aware that there was a burst water pipe near the meter as the complainant's Leakage Allowance Application and correspondence had focused only on a leaking valve and the stopcock on the meter. The Department advised that the stopcock on the water meter was not intended to control water use and the Department was unable to accept responsibility for water wasted if the tap malfunctions. The Department further advised that a leaking stopcock did not activate the recording mechanism on the meter and therefore if any leakage occurred, it would not have registered on the meter.

Further correspondence from the complainant however, clearly demonstrated to the Department that he had suffered a burst water pipe near the meter that he was unable to repair due to the Department's delay in repairing the stopcock. When the Department contacted the complainant it was confirmed that he did indeed have a burst water pipe which he repaired as soon as the Department had repaired the stopcock.

The Department apologised to the complainant for any inconvenience caused to the complainant as a result of the misunderstanding. It was determined that the complainant's average water used for the three equivalent periods was 13 kilolitres. Accordingly, the complainant's water use of 319 kilolitres was reduced to 13 kilolitres and all summons costs and overdue payment fees were waived and an amended account was forwarded to the complainant.

#### Ombudsman opinion

The Ombudsman acknowledged SA Water's policy to grant allowances equivalent to 50% of the estimated quantity of water wasted due to concealed leakage in customers' private water piping, provided certain conditions have been met. These allowances are granted as an encouragement to customers to maintain their own water piping in good condition and prevent any unnecessary water wastage.

The Department took care to inform the complainant of his obligation to ensure that the water pipes on his property would be maintained in good operating order in the future as no further claims for any leakage allowance could be made in relation to the property for the next ten years.

The Department further advised the complainant that he may wish to consider installing a valve that he could lock in his own water pipeline close to the meter which would prevent any future possible leaks from occurring. In all the circumstances of the case the Ombudsman was of the opinion that the complaint was reasonably resolved.

### ■ Administrative Audits

#### INTRODUCTION

As foreshadowed in my last annual report (2004/05) I conducted audits of several Councils and present my report of the audit.

Section 14A of the *Ombudsman Act 1972* provides for the Ombudsman's review of certain administrative practices and procedures stating:

#### **14A—Administrative audits**

- (1) *If the Ombudsman considers it to be in the public interest to do so, the Ombudsman may conduct a review of the administrative practices and procedures of an agency to which this Act applies.*
- (2) *The provisions of this Act apply in relation to a review under subsection (1) as if it were an investigation of an administrative act under this Act, subject to such modifications as may be necessary, or as may be prescribed.*

The following 21 Councils were selected for the audit. The selection was made on a random basis to ensure a mix of small, intermediate and large metropolitan (12) and regional (9) Councils, having regard to those Councils that had comparatively high activities in the areas to be audited.

District Council of Grant  
City of Mount Gambier  
District Council of Robe  
City of Mitcham  
Rural City of Murray Bridge  
District Council of Mt Barker  
City of Onkaparinga  
Campbelltown City Council  
City of Tea Tree Gully  
City of Burnside  
Mid Murray Council  
City of Salisbury  
Kangaroo Island Council  
City of Playford  
City of Holdfast Bay  
City of Port Lincoln  
DC Lower Eyre Peninsula  
District Council of Ceduna  
District Council of Yankalilla  
City of Victor Harbor  
Alexandrina Council

#### OVERALL AIM

I considered that it was in the public interest to improve good governance in Local Government by ensuring that appropriate practices, procedures and compliance exist in relation to:

1. Section 50 (10) *Development Act*
2. Delegations under Section 44 of the *Local Government Act*
3. Section 61 *Local Government Act* and Regulation 19 *Local Government (Procedures at Meetings) Regulations 2000*
4. Native Vegetation recommendations in the case of development applications
5. Determination of advertising fee for proposed Category 3 developments pursuant to Section 38 *Development Act*.

During the latter part of the audit I conducted informal discussions with Councils in relation to Section 270 of the *Local Government Act* and in effect, added the following sixth audit topic.

6. To ensure that a grievance procedure is in place and that the public is made aware of access to the reviewing process pursuant to Section 270 - *Local Government Act*.

An explanation of the reasons for the selection of each topic is provided under the heading of Rationale.

#### **METHODOLOGY**

The audit was conducted in two stages. The first stage was a desk audit where Councils provided background information on the workings of Council in the areas to be audited.

The second stage of the audit was to visit the selected Councils and hold informal discussion with the administrators of Council.

The Elected Members were invited to raise any concerns or comments with the audit team on any of the topics to be audited.

#### **OMBUDSMAN COMMENT**

Except for one Council which was not subject to a full audit review by reasons which were outside the control of this Office and the Council, the review of the remaining twenty councils was completed at the time of preparation of this report. Each Council will be provided with a separate assessment following the review.

Following my announcement to conduct an audit, Councils were offered a health check by external consultants. Of the Councils selected for audit, five engaged external consultants for a health check. Of the 16 Councils who did not undertake the health check, six had undertaken similar checks in the form of a compliance review and/or a fraud audit and/or a due diligence report in the previous three years.

As a general comment it appeared that the Councils with a large rate base were better resourced to ensure compliance with its legislative requirements and undertake reviews and planning generally. Nevertheless, those Councils with a smaller rate base satisfied the minimum requirements of the topics audited.

The general observations and comment at the conclusion of the Ombudsman's review of the relevant practices and procedures of twenty councils were as follows:

### **TRUST ACCOUNT**

#### **AIM**

Confirm that Open Space Money received by Council is paid into a trust account.

Confirm that monies from trust account are used for the purpose of acquiring or developing land as open space.

#### **LEGISLATION**

##### ***Development Act 1993—17.11.2005***

*Part 4—Development assessment*

*Division 4—Supplementary provisions*

##### ***50—Open space contribution system***

(10) *Money received under this section—*

- in the case of money received by a council—must be paid into a trust fund and applied by the council for the purpose of acquiring or developing land as open space;*
- in the case of money received by the Development Assessment Commission—must be paid into the Fund.*

#### **RATIONALE**

This matter arose as the result of a particular complaint and investigation during which the Ombudsman was confronted with what appeared to be several conflicting opinions as to the proper practice to be followed. Furthermore the agency whose practices were under investigation suggested that its practices were in accord with those of other agencies.

There appears to be two views within Local Government in dealing with Open Space money received. One is that there is sufficient compliance if a separate ledger of all money received is kept. The other is that there is sufficient compliance if a separate ledger of all money received is kept and that such contributions are help or paid into a separate bank account.

The Ombudsman is inclined to favour the view as stated in section 50 (10) (a) that requires any money received to be paid into a Trust Fund and that the views adopted by Local Government Authorities do not comply with a strict interpretation of section 50(10).

It also seems to the Ombudsman that any income/interest earned from any monies should also be applied in accordance with section 50 (10) and would be easily identified if in a separate account.

#### **OMBUDSMAN COMMENT**

Generally, if a Local Government authority has its own independent legal advice contrary to the Ombudsman's view, it is considered to be good public administration to follow that legal advice. However in this case there were three differing opinions presented by Councils in support that its practices and procedures complied with section 50(10). As Ombudsman I had the benefit of reading all the legal opinions on the matter. My review revealed uncertainty and lack of consistency with the application of section 50 (10) of the Development Act.

The majority of Councils maintained a separate ledger account without there being a separate Trust or bank account. Some Councils appeared not to have been complying with this requirement or were yet to implement a practice or procedure upon receiving an open space contribution. Of those that held a separate bank account, none were Trust accounts. I was of the view that section 50(10) required the establishment of a separate Trust account although it did not seem unreasonable to suggest that a separate bank account tended to satisfy the spirit and intend of section 50(10).

In two instances it was found that the required open space contribution was either not collected or did not find its way to the account used by the Council for open space funds. In both cases, Councils amended its administrative process to minimise its reoccurrence. It was interesting to note that of the Councils that operated separate bank accounts for open space contributions the time that elapsed from receipt of the contribution to the payment into the separate account ranged from two working days to three months. Most Councils that operated a general ledger account only, made periodic manual adjustments for interest earned.

Where Councils directed open space contributions to projects, I was satisfied that it was applied in accordance with section 50 (10) "for the purpose of acquiring or developing land as open space".

To resolve the concerns about the application of section 50(10) I suggested to Planning SA that there be legislative clarification to the meaning of section 50(10). As this appeared likely to occur, I considered that this would resolve any concerns about future compliance with section 50(10) of the *Development Act*.

### **ADVERTISING FEE FOR PROPOSED CATEGORY 3 DEVELOPMENTS**

#### **AIM**

To ensure that the advertising fee for Category 3 Developments has been determined by the relevant authority as being appropriate to cover its reasonable costs in giving public notice of the application under Section 38 (5)(c) of the *Development Act* in accordance with Schedule 6 Part 7 contained in Development Regulations

#### **LEGISLATION**

##### **38—Public notice and consultation**

- (5) Where a person applies for a development assessment of a Category 3 development, notice of the application must be given, in accordance with the regulations, to—
- (a) the persons referred to in subsection (4); and
  - (b) any other owner or occupier of land which, according to the determination of the relevant authority, would be directly affected to a significant degree by the development if it were to proceed; a
  - (c) the public generally

##### **Development Regulations 1993—1.7.2005**

###### **Schedule 6—Fees**

- (6) If the proposed development is a Category 2 or Category 3 development for the purposes of section 38 of the Act—a Public Notification Fee **\$68.50**
- (7) If the proposed development is a Category 3 development for the purposes of section 38 of the Act—an Advertisement Fee

*An amount determined by the relevant authority as being appropriate to cover its reasonable costs in giving public notice of the application under section 38(5)(c) of the Act.*

#### **RATIONALE**

There appears to be a broad range of advertising fees set by local government authorities ranging from \$136 to \$465.

## OMBUDSMAN COMMENT

There had been complaints to the Ombudsman about the advertising fees for category 3 developments. My audit review of the practices and procedures adopted by the twenty councils showed that all councils properly justified the fees which were in fact set. In some cases councils undercharged. One positive outcome from this review was to alert Councils to an annual review of the fee to be approved by Council.

## ELECTED MEMBERS ACCESS TO INFORMATION

### AIM

To ensure that elected members of Council are given access to information pursuant to Section 61 of the *Local Government Act* and Regulation 19 of the *Local Government (procedures of meetings) Regulations 20*

### LEGISLATION

#### **61—Access to information by members of councils**

- (1) *A member of a council is entitled at any reasonable time, in connection with the performance or discharge of the functions or duties of the member (whether under this or another Act), without charge, to have access to any relevant council document, including (but not limited to)—*
  - (a) *a copy of a written contract entered into by the council, or a copy of a document relating to a contract that is proposed to be entered into by the council;*
  - (b) *accounting records kept by the council;*
  - (c) *financial statements and other documents prepared by the council under Chapter 8.*
- (2) *A request for access to a document under subsection (1) should be directed to the chief executive officer, or another officer specified by the chief executive officer for the purposes of this section.*
- (3) *The chief executive officer or another officer providing access to a document under subsection (1) may indicate to the member that information contained in the document is, or should be considered as, confidential.*

#### **Tabling of information**

19. (1) *A member may require the chief executive officer to table any documents of the council relating to a motion that is before a meeting (and the chief executive officer must then table the documents within a reasonable time, or at a time determined by the presiding member after taking into account the wishes of the meeting, and if the member who has required the tabling indicates that he or she is unwilling to vote on the motion until the documents are tabled, then the matter must not be put to the vote until the documents are tabled).*
- (2) *The chief executive officer may, in tabling a document, indicate that in his or her opinion consideration should be given to dealing with the document on a confidential basis under section 90 or 91 of the Act.*

### RATIONALE

The Ombudsman has received complaints from elected members in relation to access to information when the CEO was of the view that the information sought by councillors was not relevant to the motion before Council. There appeared to be a lack of understanding on the part of elected members of the application of section 61 and regulation 19. Again there are two views held by practitioners within Local Government. One is the strict adherence to section 61 and regulation 19 and the other is to provide all requested information under the guise of meeting the objective as set out in section 8 (a) of the *Local Government Act* to provide, open, responsive and accountable government.

## OMBUDSMAN COMMENT

The audit review of the twenty councils on the issue of elected members' access to information [with particular regard to section 61 of the *Local Government Act* and regulation 19 *Local Government Regulations (Procedures at Meetings)*] showed that Council administration was fully aware of relevant legal opinions and relevant information from the *Local Government Association* on the matter and had proper policies in place. In many Councils there appeared to have been no concerns with the application of the relevant provisions; and it was almost universally acknowledged that all relevant information was made readily available.

The method of accessibility to this information varied from Council to Council and in some cases it was only the CEO who provided the information whereas in other Councils the information was provided by other selected staff or any staff. Where a request was made to an authorised member of Council's administration staff and that request was refused due to relevance, all Councils had as part of its practices and procedures an option for the elected member to make that request at the Council meeting. Some elected members reported difficulties in accessing information when there was a division in Council itself as to what was relevant to the Council's consideration. The question arose mainly when there was a difference of opinion amongst elected members as to the relevance of certain historical documents and the motion was defeated. In such cases I am of the view that the democratic decision of the council is in accordance with its policy and legislative responsibility and it is not my role to investigate that resolution.

Practical difficulties could arise when there were a number of documents and the administration felt ambushed by a request without notice requiring almost immediate attention. It was also observed that where documents were provided to one Councillor by administration staff then the documents should be provided to all the Councillors.

In my opinion the legislation was sufficiently clear as to its intent and workability; but tensions could occur in certain "political" environments where there was a basis for strong debate as to what may be relevant to a Council's decision especially in circumstances involving use of relatively substantial amounts of Council/public expenditure. In my view the emphasis as to the best practice should be in providing the maximum amount of information to all Councillors wherever possible and avoidance of disputes about relevance unless it is patently obvious that a particular document is irrelevant to the matter under consideration. Administration can be expected only to make reasonable endeavours to provide all relevant information to all Councillors; and in doing so act in a timely manner as circumstances may reasonably permit. There can be no case of special favour or exclusivity of information for a selected member of council in the proper business context of the council body as a whole.

## DELEGATIONS

### AIM

To ensure any delegation provided by Council meets the requirements as set out under Section 44 and Section 101 of the *Local Government Act*

### LEGISLATION

#### *Division 4—Delegations*

#### **44—Delegations**

- (1) A council may delegate a power or function vested or conferred under this or another Act.
- (2) A delegation may be made—
  - (a) to a council committee; or
  - (b) to a subsidiary of the council; or
  - (c) to an employee of the council; or
  - (d) to the employee of the council for the time being occupying a particular office or position; or
  - (e) to an authorised person.
- (3) However, a council may not delegate
  - (a) power to make a by-law;
  - (b) power to declare rates or a charge with the character of a rate;
  - (c) power to borrow money or to obtain other forms of financial accommodation;
  - (d) power to adopt or revise a strategic management plan or budget of the council
  - (e) power to approve expenditure of money on works, services or operations of the council not contained in a budget approved by the council;
  - (f) power to determine annual allowances under Chapter 5;
  - (g) power to approve payment or reimbursement of expenses that may be paid at the discretion of the council and for which the council has not adopted a formal policy or made specific financial provision;
  - (h) power to establish a subsidiary, or to participate in the establishment of a regional subsidiary;
  - (i) power to make an application or recommendation, or to report or to give a notice, to the Governor or the Minister, being an application, recommendation, report or notice for which provision is made by or under this or another Act;
  - (j) power to fix, vary or revoke a fee under section 188(1)(d) to (h);
  - (k) a power or function excluded from delegation by the regulations.
- (4) A delegation—
  - (a) is subject to conditions and limitations determined by the council or specified by the regulations; and
  - (b) if made to the chief executive officer authorises the subdelegation of the delegated power or function unless the council directs otherwise and if made to anyone else authorises the subdelegation of the delegated power or function with the approval of the council; and
  - (c) is revocable at will and does not prevent the council from acting in a matter.
- (5) If a power or function is delegated to an employee of the council, the employee is responsible to the chief executive officer for the efficient and effective exercise or performance of that power or function.
- (6) The council must cause a separate record to be kept of all delegations under this section, and should at least once in every financial year review the delegations for the time being in force under this section
- (7) A person is entitled to inspect (without charge) the record of delegations under subsection (6) at the principal office of the council during ordinary office hours.
- (8) A person is entitled, on payment of a fee fixed by the council, to an extract from the record of delegations under subsection (6).
- (9) This section does not limit or affect a power of delegation under another Act

### **101—Delegation by chief executive officer**

- (1) *The chief executive officer may delegate (or subdelegate) a power or function vested or conferred in or on the chief executive officer under this Act.*
- (2) *A delegation may be made—*
  - (a) *to an employee of the council, or to the employee for the time being occupying a particular office or position; or*
  - (b) *to a committee comprising employees of the council; or*
  - (c) *to an authorised person.*
- (3) *A delegation—*
  - (a) *is subject to conditions and limitations determined by the chief executive officer; and*
  - (b) *may constitute the further delegation of a power or function delegated by the council to the chief executive officer, unless the council has directed otherwise; and*
  - (c) *is revocable at will and does not prevent the chief executive office from acting personally in a matter.*
- (4) *The chief executive officer must not subdelegate a power or function if its subdelegation is prohibited by the Act or instrument under which it was delegated to the chief executive officer.*
- (5) *This section does not limit or affect a power of delegation under another Act.*

### **RATIONALE**

There are a variety of forms of delegations and instruments of delegation and it is the aim of the Ombudsman to provide a model of delegation instruments. It is interesting to note the inconsistencies in the delegation formats used. For example, very few councils have considered delegating functions contained in the *Local Government Act 1939*.

### **OMBUDSMAN COMMENT**

The audit review highlighted that the practices and procedures in relation to delegations were not in all cases as timely and certain as they could have been. Instances occurred when some instruments appeared to be defective and lack compliance with the provisions of subsection (6) of section 44 - annual review. It was indeed timely and fortunate that the Local Government Association Delegations Template Project was completed during the time of the audit review. The audit and Local Government Association's delegations templates helped raise awareness across Local Government Councils which I think will give rise to and maintain good practices with all delegations. It was recommended that Councils adopt the Local Government Association delegation model thus addressing the concerns highlighted in the audit.

### **NATIVE VEGETATION**

#### **AIM**

To ensure that proper regard was given to recommendations made by Native Vegetation Council in relation to Development Applications

#### **LEGISLATION**

N/A

#### **RATIONALE**

When a land development application is lodged, the Development Assessment Commission may ask agencies such as CFS and the Native Vegetation Council to assess and report on the impact of development on the particular property. Native Vegetation may suggest to DAC or Council that conditions be placed on any development approval, or it might recommend that approval be denied altogether.

It is at the discretion of Council whether or not it acts on the advice of the Native Vegetation Council and the Ombudsman is interested in whether proper regard is given to any recommendations when Council makes its decision about the land development application.

In particular, if Council decides to ignore Native Vegetation recommendations, on what basis is that decision made?

#### **OMBUDSMAN COMMENT**

Another area of audit considered whether Councils were giving proper regard to recommendations of the Native Vegetation Council. This subject matter for audit review arose from several complaints which had been investigated in several areas of the State. I was satisfied that wherever it applied Councils did in fact give proper consideration to the recommendations made by the Native Vegetation Council as well as other relevant authorities in the treatment of development applications.

I was also satisfied that on a small number of occasions where Councils did not accept the recommendation the reasons were provided and appropriately minuted. It is a fundamental principle of good governance to provide reasons for decisions, especially where the decision disregards a recommendation.

## GRIEVANCE PROCEDURE

### AIM

To ensure that a grievance procedure is in place and that the public is made aware of access to the reviewing process.

### LEGISLATION

Section 270 - *Local Government Act*

#### **270—Council to establish grievance procedures**

- (1) A council must establish procedures for the review of decisions of—
  - (a) the council;
  - (b) employees of the council;
  - (c) other persons acting on behalf of the council.
- (2) The procedures must address the following matters (and may address other matters):
  - (a) the manner in which an application for review may be made
  - (b) the assignment of a suitable person to reconsider a decision under review;
  - (c) the matters that must be referred to the council itself for consideration or further consideration;
  - (d) the notification of the progress and outcome of an application for review;
  - (e) the time frames within which notifications will be made and procedures on a review will be completed.
- (3) A council is not entitled to charge a fee on an application for review.
- (4) A council, or a person assigned to consider the application, may refuse to consider an application for review if—
  - (a) the application is made by an employee of the council and relates to an issue concerning his or her employment; or
  - (b) it appears that the application is frivolous or vexatious; or
  - (c) the applicant does not have a sufficient interest in the matter.
- (5) A council must ensure that copies of a document concerning the procedures that apply under this section are available for inspection (without charge) and purchase (on payment of a fee fixed by the council) by the public at the principal office of the council.
- (6) A council may amend the procedures established by the council under this section from time to time.
- (7) Nothing in this section prevents a person from making a complaint to the Ombudsman at any time under the Ombudsman Act 1972.

### RATIONALE

Although the Ombudsman is an office of last resort, he uses his discretion as to the complaints he may refer back to the agency. The Ombudsman has received a number of complaints against Councils where complainants have contacted the Council about their concerns. However it appears that details of the Council's review process has not been provided to them as an option if they remained dissatisfied with the Council's response

### OMBUDSMAN COMMENT

When concluding the audit I quizzed a number of Councils as to the nature and workings of their internal grievance system. Early indications showed that while a system may be in place it may be under-utilized by reason of lack of public awareness. While sufficient information about such systems may be available on the Council website, apparent lack of referral by Council staff may contribute to its under-utilization. An effective internal grievance system should at least provide a sufficient explanation of an adverse decision or action. This is an area of review which may be further taken by the Ombudsman with a fresh cluster of Councils who have not yet experienced the Ombudsman's audit review.

### OVERALL CONCLUSION

Finally, as observed in the introduction to this annual report, the overall impression of the audit team was that most Councils had prepared themselves well in advance of the review and at least five if not more Councils showed high levels of competence and compliance in all areas under review.

Complainant numbers alone do not accurately reflect the ethos, integrity, leadership, competence and regard for good governance. On the contrary, a Council which is truly doing its job well may show higher levels of community interaction on certain issues and slightly higher complain numbers as internal and external grievance systems become fully utilized. A more certain indicator of relevance, timeliness and fairness will be found in the explanations which are provided for the actions under investigation or review.

However, high levels of complaints may also be indicators of systemic error and other administrative defects which should be given serious consideration by the Ombudsman or the Council with a view to further betterment of administration. In some cases this may result in legislative changes.

## Local Government

### ■ Complaints Received 01 July 2005 to 30 June 2006

District Council of Robe	9	1.2%
District Council of Streaky Bay	1	0.1%
District Council of Tatiara	2	0.3%
District Council of Tumby Bay	4	0.5%
Adelaide Hills Council	24	3.3%
Alexandrina Council	12	1.6%
City of Burnside	19	2.6%
City of Charles Sturt	31	4.3%
City of Holdfast Bay	21	2.9%
City of Mitcham	26	3.6%
City of Mount Gambier	5	0.7%
City of Norwood, Payneham & St Peters	13	1.8%
City of Onkaparinga	58	8.0%
City of Playford	20	2.7%
City of Port Adelaide Enfield	34	4.7%
City of Port Lincoln	1	0.1%
City of Prospect	12	1.6%
City of Salisbury	24	3.3%
City of Tea Tree Gully	30	4.1%
City of Victor Harbor	11	1.5%
City of West Torrens	25	3.4%
Clare and Gilbert Valleys Council	12	1.6%
Corporation of the City of Adelaide	36	4.9%
Corporation of the City of Campbelltown	11	1.5%
Corporation of the City of Marion	26	3.6%
Corporation of the City of Unley	17	2.3%
Corporation of the City of Whyalla	6	0.8%
Corporation of the Town of Walkerville	1	0.1%
District Council of Barunga West	1	0.1%
District Council of Ceduna	4	0.5%
District Council of Coober Pedy	1	0.1%
District Council of Coorong	4	0.5%
District Council of Grant	8	1.1%
District Council of Karoonda East Murray	1	0.1%
District Council of Kimba	2	0.3%
District Council of Lower Eyre Peninsula	5	0.7%
District Council of Loxton Waikerie	2	0.3%
District Council of Mallala	7	1.0%
District Council of Mount Barker	6	0.8%
District Council of Orroroo/Carrieton	3	0.4%
District Council of Peterborough	4	0.5%
District Council of the Copper Coast	3	0.4%
District Council of Yankalilla	10	1.4%
District Council of Yorke Peninsula	13	1.8%
Kangaroo Island Council	24	3.3%
Kingston District Council	3	0.4%
Light Regional Council	13	1.8%
Mid Murray Council	17	2.3%
Naracoorte Lucindale Council	5	0.7%
Northern Areas Council	3	0.4%
Port Augusta City Council	11	1.5%
Port Pirie Regional Council	4	0.5%
Regional Council of Goyder	2	0.3%
Renmark Paringa Council	5	0.7%
Roxby Downs Council	1	0.1%
Rural City of Murray Bridge	5	0.7%
Southern Mallee District Council	1	0.1%
The Barossa Council	10	1.4%
The Berri Barmera Council	6	0.8%
The District Council of Elliston	2	0.3%
The District Council of Mount Barker	16	2.2%
The Flinders Ranges Council	5	0.7%
Town of Gawler	8	1.1%
Wakefield Regional Council	8	1.1%
Wattle Range Council	14	1.9%
<b>Total</b>	<b>728</b>	

## Local Government

### ■ Complaints Completed 01 July 2005 to 30 June 2006

Adelaide Hills Council	24	3.3%
Alexandrina Council	15	2.1%
City of Burnside	17	2.4%
City of Charles Sturt	32	4.5%
City of Holdfast Bay	20	2.8%
City of Mitcham	24	3.3%
City of Mount Gambier	4	0.6%
City of Norwood, Payneham & St Peters	11	1.5%
City of Onkaparinga	55	7.7%
City of Playford	22	3.1%
City of Port Adelaide Enfield	34	4.7%
City of Port Lincoln	1	0.1%
City of Prospect	12	1.7%
City of Salisbury	24	3.3%
City of Tea Tree Gully	30	4.2%
City of Victor Harbor	12	1.7%
City of West Torrens	22	3.1%
Clare and Gilbert Valleys Council	13	1.8%
Corporation of the City of Adelaide	35	4.9%
Corporation of the City of Campbelltown	9	1.3%
Corporation of the City of Marion	24	3.3%
Corporation of the City of Unley	18	2.5%
Corporation of the City of Whyalla	7	1.0%
District Council of Barunga West	1	0.1%
District Council of Ceduna	2	0.3%
District Council of Cleve	1	0.1%
District Council of Coober Pedy	2	0.3%
District Council of Coorong	3	0.4%
District Council of Grant	8	1.1%
District Council of Karoonda East Murray	1	0.1%
District Council of Kimba	2	0.3%
District Council of Lower Eyre Peninsula	6	0.8%
District Council of Loxton Waikerie	2	0.3%
District Council of Mallala	9	1.3%
District Council of Mount Barker	6	0.8%
District Council of Orroroo/Carrieton	3	0.4%
District Council of Peterborough	4	0.6%
District Council of Robe	8	1.3%
District Council of Streaky Bay	1	0.1%
District Council of Tatiara	2	0.3%
District Council of the Copper Coast	5	0.7%
District Council of Tumby Bay	4	0.6%
District Council of Yankalilla	8	1.1%
District Council of Yorke Peninsula	13	1.8%
Kangaroo Island Council	24	3.3%
Kingston District Council	4	0.6%
Light Regional Council	15	2.1%
Mid Murray Council	14	2.0%
Naracoorte Lucindale Council	5	0.7%
Northern Areas Council	3	0.4%
Port Augusta City Council	10	1.4%
Port Pirie Regional Council	4	0.6%
Regional Council of Goyder	2	0.3%
Renmark Paringa Council	4	0.6%
Roxby Downs Council	1	0.1%
Rural City of Murray Bridge	4	0.6%
The Barossa Council	13	1.8%
The Berri Barmera Council	6	0.8%
The District Council of Elliston	2	0.3%
The District Council of Mount Barker	14	2.0%
The Flinders Ranges Council	4	0.6%
Town of Gawler	9	1.3%
Wakefield Regional Council	8	1.1%
Wattle Range Council	14	2.0%
<b>Total</b>	<b>716</b>	

## Local Government

### Complaints Received 01 July 2005 to 30 June 2006

	(Other)	City of Charles Sturt	City of Onkaparinga	City of Port Adelaide Enfield	City of Tea Tree Gully	Corporation of the City of Adelaide	Total	Percentage
Access to Information	1						1	0.1%
Administration	21	2				3	26	3.6%
Administration/general management	116	4	16	2	8	1	147	20.2%
Administrative practices/policies	63	6	4	2	4	8	87	12.0%
Animals	6						6	0.8%
Approvals (permits, licenses, registrations)	24	1	4	3	3	1	36	4.9%
Citizen Rights	4		1				5	0.7%
Communication	5		2	1			8	1.1%
Drains/Sewers	9		1				10	1.4%
Duty of care	1			1			2	0.3%
Fees/charges/levies	16	1			1	1	19	2.6%
Financial assistance	2						2	0.3%
Financial issues	22	3	3	1	1		30	4.1%
Health	6	2	1	1	1		11	1.5%
Housing	3						3	0.4%
Land Use	8						8	1.1%
Maintenance	8		1				9	1.2%
None	8		1			1	10	1.4%
Officer misconduct	3						3	0.4%
Ordinances, Regulations, By-laws	23	2	5	5	2	6	43	5.9%
Other	2			1		1	4	0.5%
Parking	16	2	1	3		7	29	4.0%
Planning and development	119	8	13	10	7	6	163	22.4%
Rates and charges	33		1	3	1		38	5.2%
Record keeping	2						2	0.3%
Roads	10		4				14	1.9%
Services						1	1	0.1%
Trees	8			1	2		11	1.5%
<b>Total</b>	<b>539</b>	<b>31</b>	<b>58</b>	<b>34</b>	<b>30</b>	<b>36</b>	<b>728</b>	
	74.0%	4.3%	8.0%	4.7%	4.1%	4.9%		

### Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

	(Other)	City of Charles Sturt	City of Onkaparinga	City of Port Adelaide Enfield	City of Tea Tree Gully	Corporation of the City of Adelaide	Total	Percentage
Advice Given	252	15	24	12	15	14	332	46.4%
Conciliated	1						1	0.1%
Declined	19	1	1	1		3	25	3.5%
Full Investigation	36	1	2	2	1		42	5.9%
Preliminary Investigation	215	15	26	18	13	16	303	42.3%
Withdrawn	7		2	1	1	2	13	1.8%
<b>Total</b>	<b>530</b>	<b>32</b>	<b>55</b>	<b>34</b>	<b>30</b>	<b>35</b>	<b>716</b>	
	74.1%	4.5%	7.7%	4.7%	4.2%	4.9%		

## City of Charles Sturt

### ■ Complaints Received 01 July 2005 to 30 June 2006

Administration - Unreasonable administrative decision/policy	2	6.5%
Administration/general management of Councils	4	12.9%
Administrative practices/policies - Delay	1	3.2%
Administrative practices/policies - Erroneous decisions	1	3.2%
Administrative practices/policies - Failure to give reasons for decisions	1	3.2%
Administrative practices/policies - Failure to investigate or act	3	9.7%
Approvals (permits, licenses, registrations, applications) - Failure to approve	1	3.2%
Fees/charges/levies - Imposition	1	3.2%
Financial issues - Level of charges	3	9.7%
Health	1	3.2%
Health - Garbage removal	1	3.2%
Ordinances, Regulations, By-laws - Failure to comply	1	3.2%
Ordinances, Regulations, By-laws - Unreasonable Determination	1	3.2%
Parking fines	2	6.5%
Planning and development - Failure to enforce compliance	2	6.5%
Planning and development - General processing	5	16.1%
Planning and development - Permits and approvals	1	3.2%
<b>Total</b>	<b>31</b>	

### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	9	28.1%
Advice Given - Other/General	5	15.6%
Advice Given - Referred to Agency	1	3.1%
Declined - Refused to Investigate	1	3.1%
Full Investigation - Partly Resolved in Favour of Complainant	1	3.1%
Preliminary Investigation - Not Sustained - Explanation Given	10	31.3%
Preliminary Investigation - Partly Resolved in Favour of Complainant	3	9.4%
Preliminary Investigation - Reasonable Resolution	2	6.3%
<b>Total</b>	<b>32</b>	

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## Case study

### City of Charles Sturt

Failure to ensure line marking and road sign were clearly visible

#### The complaint:

The complainant alleged that the Council failed in its responsibility to ensure that a yellow edge line and no-stopping sign were made clearly visible in a suburban street. He requested that Council waive the expiation notice issued when his vehicle was found to be parked in a no-stopping zone; however, Council refused his request.

#### Ombudsman investigation

A compliance officer at the Council advised the Ombudsman that the complaint had been the subject of two Council review processes. The officer also advised that, for the purposes of those reviews, the site where the offence took place was visited at various times by three Council inspectors. Each inspector reported that although the no-stopping sign was at that time, partly obscured by vegetation, nothing in their view, was indistinctive about the yellow edge line on the roadway. It was generally not the case, as the complainant suggested in his complaint, that yellow line markings have reflectors. Notwithstanding that, the Ombudsman understood that the yellow lines in that area had been repainted no longer than three or four months ago and would therefore have been reliably distinctive at the time. Furthermore, the Council's compliance officer and the three inspectors agreed that car headlights at night would be sufficient to illuminate the yellow edge line when a vehicle was negotiating the curve on the road into the street, when entering from an adjoining road. That the yellow edge line was visible at night appeared to be supported by Council's assertion that very few offences had occurred recently in that particular location.

The Ombudsman noted from examining a copy of the expiation notice which the complainant provided that the offence was described as "*Stop on continuous yellow edge line*", Australian Road Rule 169 (ARR 169). For this offence to occur, it was sufficient that a vehicle stopped on a continuous yellow line. Under the Rules, there was no additional requirement that a no-stopping sign should be displayed in conjunction with the yellow edge lines. The Rules make it clear that the offence of parking the complainant's vehicle on a continuous yellow line was sufficient to constitute a breach of the law.

The complainant raised another issue that the Council failed to make clear to him what law he had broken. The Ombudsman consulted the Australian Road Rules Guide which appeared on the Internet. The Guide states: "*Australian Road Rules provide rules to be followed by all road users. They are part of a national scheme to provide uniform road laws* [Ombudsman emphasis] *throughout Australia*". In addition, in South Australia, the Australian Road Rules are incorporated into the Road Traffic Act 1961. A breach of an Australian Road Rule, therefore, is a breach of the law. In this case, the compliance officer who issued the notice was a properly authorised person appointed by the Council to ensure compliance with the Rules and hence, with the law, is maintained.

#### Ombudsman opinion

Having considered all aspects of the complaint, the Ombudsman was satisfied that the Council's actions were reasonable and found no basis for the Council to waive the fine. While complaints concerning parking rules represent only a fraction of cases with the Ombudsman, these too are indicators of how seriously Council administration deal with grievances. In this case the Council had properly received the subject of the complaint. The Ombudsman is concerned not only about the substantive issues raised by a complaint, but the fairness and effectiveness of any internal review.

## City of Onkaparinga

### ■ Complaints Received 01 July 2005 to 30 June 2006

Administration/general management of Councils - Communication/attitude	1	1.7%
Administration/general management of Councils - Complaint handling	8	13.8%
Administration/general management of Councils - Exercise of powers and	6	10.3%
Administration/general management of Councils - Meetings	1	1.7%
Administrative practices/policies - Delay	2	3.4%
Administrative practices/policies - Failure to respond	1	1.7%
Administrative practices/policies - Misleading/wrong information or advice	1	1.7%
Approvals (permits, licenses, registrations, applications) - Unreasonable	3	5.2%
Approvals (permits, licenses, registrations, applications) -	1	1.7%
Citizen Rights - Breach of privacy/confidentiality	1	1.7%
Communication - Other	1	1.7%
Communication - Unprofessional conduct/attitude of staff	1	1.7%
Drains/Sewers - Sewage schemes	1	1.7%
Financial issues - Cost recovery	1	1.7%
Financial issues - Eligibility criteria unreasonable/unfair/misapplied	1	1.7%
Financial issues - Penalty/refund	1	1.7%
Health - Pollution/environmental concerns	1	1.7%
Maintenance - Streets	1	1.7%
None	1	1.7%
Ordinances, Regulations, By-laws - Failure to enforce	2	3.4%
Ordinances, Regulations, By-laws - Unreasonable Determination	3	5.2%
Parking fines	1	1.7%
Planning and development - Changes to development plan	2	3.4%
Planning and development - Failure to enforce compliance	4	6.9%
Planning and development - General processing	3	5.2%
Planning and development - Permits and approvals	4	6.9%
Rates and charges - Recovery	1	1.7%
Roads - Traffic control	4	6.9%
<b>Total</b>	<b>58</b>	

### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	15	27.3%
Advice Given - Other/General	4	7.3%
Advice Given - Referred to Agency	5	9.1%
Declined - Refused to Investigate	1	1.8%
Full Investigation - Partly Resolved in Favour of Complainant	1	1.8%
Full Investigation - Reasonable Resolution	1	1.8%
Preliminary Investigation - Not Sustained - Explanation Given	18	32.7%
Preliminary Investigation - Partly Resolved in Favour of Complainant	3	5.5%
Preliminary Investigation - Reasonable Resolution	5	9.1%
Withdrawn by Complainant	2	3.6%
<b>Total</b>	<b>55</b>	

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## Case study

### City of Onkaparinga

#### Unreasonable refusal to address stormwater issues

#### The Complaint

Residents lodged a complaint relating to ongoing issues of overland stormwater flow between private properties. The residents alleged that the Council did not enforce compliance with any planning/building regulations regarding stormwater management and did not use other powers to compel their neighbour to address the stormwater issue.

#### Ombudsman Investigation

The Council advised that the properties situated behind the complainants' home, received approval over ten years ago for their building and there were no conditions on this approval regarding stormwater. When consulted by the Ombudsman, the Office of Local Government and Planning SA advised that it was only in the last five years that it had become a more regular practice that conditions regarding stormwater management are placed on planning approvals. Having regard to the lack of specific conditions and the time that has elapsed since the complainant's building approval was granted, the Council stated that it was unable to act in an enforcement role in relation to this matter. The Council searched its archives to attempt to locate the original plans for the two properties and reported that these documents appeared to be missing and most likely went missing during the Council amalgamation in 1997. Ideally, these documents would still be available for reference purposes as they would be expected to detail the stormwater management for the site.

The Ombudsman referred to the *Local Government Act 1999* and confirmed with the complainants that there was no specific statutory power provided in this Act that would allow the Council to compel private property owners to address stormwater issues. Nevertheless, the Council's stormwater engineer undertook an on-site inspection to provide advice and information about suitable solutions to the stormwater issue to the complainants and other owners of properties in the vicinity.

#### Ombudsman Opinion

Due to the lack of planning approval conditions and the time that last elapsed since approval was granted for the affected properties, it was the Ombudsman's opinion that it was not unreasonable for the Council to hold the view that enforcement of stormwater conditions could not occur at the time.

Although there was evidence of poor record keeping practices in that the original plans for the affected properties were missing, this did not alter the overall situation which was that stormwater drainage within private properties is the responsibility of the property owners concerned and rectification of overland flows between private property was a civil matter involving the respective property owners. While the Ombudsman had sympathy with the complainants' situation, the Ombudsman could not take the view that the response provided to the complainants by the Council was unreasonable as there was no relevant act of maladministration on the part of the Council.

## Case study

### City of Onkaparinga

Failure to take appropriate and timely action in relation to several matters raised by the complainant

#### The complaint

The complainant advised the Ombudsman that the Council had failed to act in relation to three separate matters.

- vehicles parking on the road verge;
- maintenance of Council trees adjacent to his property; and
- contacting ETSA regarding the lopping of a potentially dangerous Eucalypt tree in front of the complainant's house.

#### Ombudsman Investigation

Subsequent to the complainant's telephone call to the Ombudsman, the team leader of the Council's Health and Ranger Services was contacted to provide further clarification.

The Ombudsman was advised that following the complaint about vehicles parking illegally on the road verge, Council conducted random checks over a period of time, but no offences were observed. The Ombudsman was satisfied that Council had made reasonable attempts to patrol the situation, taking into account the practical reality that Council inspectors cannot be expected to police an area twenty four hours a day. In any event, as the vehicles referred to by the complainant did not appear to be parked in front of his home, the Ombudsman did not consider that this was a matter that directly affected him within the meaning of the *Ombudsman Act*. Section 15(3a) of the *Ombudsman Act*, provides that "a complaint must not be entertained by the Ombudsman unless made by a person **directly affected** by the act to which the complaint relates".

In relation to the trimming of Council trees, the Ombudsman was informed by Council that a number of Acacia trees had been removed. However, the complainant maintained that the removal of some of the trees had not adequately addressed the problem of debris onto his property from the remaining trees. The Ombudsman advised the complainant that if it was the case that Council trees overhang his front garden and have a detrimental affect on the complainant and/or his property, he should take advice as to his legal rights to trim the trees back to the boundary (as he would in the case of a neighbour's tree(s) overhanging the boundaries). The complainant was further advised that any branches which he trimmed back could then either be chopped up and placed in his garden waste bin, or in the case of larger branches, he could contact the Council and arrange for them to collect the branches.

The Council contacted ETSA regarding removal of a large Eucalypt tree and expressed regret about the delay in ETSA responding to the situation. In the meantime, following recent storms, Council reassessed the condition of a number of trees in the area and the large Eucalypt adjacent to the complainant's property was marked for removal in the following weeks.

#### Ombudsman opinion

It was the Ombudsman's opinion that, other than the delay in responding to the complainant's MP's letter, (which Council acknowledged), the Council had acted reasonably in responding to matters raised by the complainant.

## City of Port Adelaide Enfield

### ■ Complaints Received 01 July 2005 to 30 June 2006

Administration/general management of Councils - Complaint handling	1	2.9%
Administration/general management of Councils - Exercise of powers	1	2.9%
Administrative practices/policies - Erroneous decisions	1	2.9%
Administrative practices/policies - Failure to investigate or act	1	2.9%
Approvals (permits, licenses, registrations, applications) - Unreasonable	3	8.8%
Communication - Unprofessional conduct/attitude of staff	1	2.9%
Duty of care - Failure to provide	1	2.9%
Financial issues - Cost recovery	1	2.9%
Health - Noise control	1	2.9%
Ordinances, Regulations, By-laws - Failure to comply	1	2.9%
Ordinances, Regulations, By-laws - Failure to enforce	2	5.9%
Ordinances, Regulations, By-laws - Unreasonable Determination	2	5.9%
Other	1	2.9%
Parking fines	3	8.8%
Planning and development - Failure to enforce compliance	3	8.8%
Planning and development - General processing	4	11.8%
Planning and development - Permits and approvals	3	8.8%
Rates and charges - Late payments	1	2.9%
Rates and charges - Objections/appeals	1	2.9%
Rates and charges - Recovery	1	2.9%
Trees - Removal	1	2.9%
<b>Total</b>	<b>34</b>	

### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	4	11.8%
Advice Given - Other/General	6	17.6%
Advice Given - Referred to Agency	2	5.9%
Declined - Refused to Investigate	1	2.9%
Full Investigation - Not Sustained	1	2.9%
Full Investigation - Partly Resolved in Favour of Complainant	1	2.9%
Preliminary Investigation - Not Sustained	3	8.8%
Preliminary Investigation - Not Sustained - Explanation Given	12	35.3%
Preliminary Investigation - Partly Resolved in Favour of Complainant	2	5.9%
Preliminary Investigation - Reasonable Resolution	1	2.9%
Withdrawn by Complainant	1	2.9%
<b>Total</b>	<b>34</b>	

### City of Tea Tree Gully

#### ■ Complaints Received 01 July 2005 to 30 June 2006

Administration/general management of Councils - Communication/attitude	2	6.7%
Administration/general management of Councils - Complaint handling	4	13.3%
Administration/general management of Councils - Exercise of powers and	1	3.3%
Administration/general management of Councils	1	3.3%
Administrative practices/policies - Delay	1	3.3%
Administrative practices/policies - Erroneous decisions	1	3.3%
Administrative practices/policies - Failure to respond	2	6.7%
Approvals (permits, licenses, registrations, applications)	1	3.3%
Approvals (permits, licenses, registrations, applications) - Failure to approve	1	3.3%
Approvals (permits, licenses, registrations, applications) - Unreasonable	1	3.3%
Fees/charges/levies - Imposition	1	3.3%
Financial issues - Overcharge/payment	1	3.3%
Health - Pollution/environmental concerns	1	3.3%
Ordinances, Regulations, By-laws - Failure to comply	1	3.3%
Ordinances, Regulations, By-laws - Unreasonable Determination	1	3.3%
Planning and development - General processing	5	16.7%
Planning and development - Permits and approvals	2	6.7%
Rates and charges - Composition of rates	1	3.3%
Trees - Lopping	1	3.3%
Trees - Removal	1	3.3%
<b>Total</b>	<b>30</b>	

#### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	8	26.7%
Advice Given - Other/General	4	13.3%
Advice Given - Referred to Agency	3	10.0%
Full Investigation - Not Sustained - Explanation Given	1	3.3%
Preliminary Investigation - Not Sustained - Explanation Given	11	36.7%
Preliminary Investigation - Reasonable Resolution	2	6.7%
Withdrawn by Complainant	1	3.3%
<b>Total</b>	<b>30</b>	

## Corporation of the City of Adelaide

### ■ Complaints Received 01 July 2005 to 30 June 2006

Administration - Inadequate investigation of complaint	1	2.8%
Administration - Unreasonable administrative decision/policy	2	5.6%
Administration/general management of Councils - Complaint handling	1	2.8%
Administrative practices/policies - Conflict of interest/bias	1	2.8%
Administrative practices/policies - Delay	1	2.8%
Administrative practices/policies - Erroneous decisions	3	8.3%
Administrative practices/policies - Failure to investigate or act	1	2.8%
Administrative practices/policies - Failure to respond	1	2.8%
Administrative practices/policies - Unreasonable use of authority/power	1	2.8%
Approvals (permits, licenses, registrations, applications) - Failure to approve	1	2.8%
Fees/charges/levies - Imposition	1	2.8%
Ordinances, Regulations, By-laws - Unreasonable Determination	6	16.7%
Other	2	2.8%
Parking	1	5.6%
Parking fines	6	16.7%
Planning and development - General processing	5	13.9%
Planning and development - Permits and approvals	1	2.8%
Services - Access	1	2.8%
<b>Total</b>	<b>36</b>	

### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	9	25.7%
Advice Given - Other/General	3	8.6%
Advice Given - Referred to Agency	2	5.7%
Declined - Alternate Remedy	2	5.7%
Declined - Refused to Investigate	1	2.9%
Preliminary Investigation - Not Sustained - Explanation Given	11	31.4%
Preliminary Investigation - Partly Resolved in Favour of Complainant	2	5.7%
Preliminary Investigation - Reasonable Resolution	3	8.6%
Withdrawn by Complainant	2	5.7%
<b>Total</b>	<b>35</b>	

## Local Government (Other)

### Complaints Received 01 July 2005 to 30 June 2006

Access to Information	1	0.2%
Administration - Delay	1	0.2%
Administration - Inadequate investigation of complaint	7	1.3%
Administration - Other	3	0.6%
Administration - Unreasonable administrative decision/policy	10	1.9%
Administration/general management of Councils - Communication/attitude	21	3.9%
Administration/general management of Councils - Complaint handling	28	5.2%
Administration/general management of Councils - Exercise of powers and	56	10.4%
Administration/general management of Councils - Financial management	5	0.9%
Administration/general management of Councils - Meetings	2	0.4%
Administration/general management of Councils -	4	0.7%
Administrative practices/policies	1	0.2%
Administrative practices/policies - Conduct contrary to policies	2	0.4%
Administrative practices/policies - Conflict of interest/bias	2	0.4%
Administrative practices/policies - Delay	3	0.6%
Administrative practices/policies - Erroneous decisions	4	0.7%
Administrative practices/policies - Failure to give reasons for decisions	4	0.7%
Administrative practices/policies - Failure to investigate or act	25	4.6%
Administrative practices/policies - Failure to respond	1	0.2%
Administrative practices/policies - Inadequate/inaccurate records maintained	3	0.6%
Administrative practices/policies - Misleading/wrong information or advice	3	0.6%
Administrative practices/policies - Rude/biased/discriminatory/intimidatory	2	0.4%
Administrative practices/policies - Unfair/discriminatory practices/policies	8	1.5%
Administrative practices/policies - Unreasonable use of authority/power	5	0.9%
Animals	6	1.2%
Animals - Fines	3	0.6%
Approvals (permits, licenses, registrations, applications) - Failure to approve	2	0.4%
Approvals (permits, licenses, registrations, applications) - Unreasonable	10	1.9%
Approvals (permits, licenses, registrations, applications) -	12	2.2%
Citizen Rights - Breach of privacy/confidentiality	4	0.7%
Communication	1	0.2%
Communication - Lack of care or consideration shown	3	0.6%
Communication - Unprofessional conduct/attitude of staff	1	0.2%
Drains/Sewers	2	0.4%
Drains/Sewers - Easements	1	0.2%
Drains/Sewers - Septic tanks	2	0.4%
Drains/Sewers - Sewage schemes	2	0.4%
Drains/Sewers - Wastewater management	2	0.4%
Duty of care - Failure to provide	1	0.2%
Fees/charges/levies	1	0.2%
Fees/charges/levies - Imposition	10	1.9%
Fees/charges/levies - Method of calculation	5	0.9%
Financial assistance	1	0.2%
Financial assistance - Eligibility criteria	1	0.2%
Financial issues - Cost recovery	4	0.7%
Financial issues - Delays/refusal to pay	3	0.6%
Financial issues - Eligibility criteria unreasonable/unfair/misapplied	2	0.4%
Financial issues - Level of charges	6	1.1%
Financial issues - Overcharge/payment	2	0.4%
Financial issues - Penalty/refund	5	0.9%
Health	2	0.4%
Health - Garbage removal	1	0.2%
Health - Noise control	1	0.2%
Health - Pollution/environmental concerns	2	0.4%
Housing	1	0.2%
Housing - Sale	2	0.4%
Land Use - Purchase, acquisition, sale or lease	8	1.5%
Maintenance - Streets	8	1.5%
Officer misconduct - Threats/harassment/racism/intimidation	1	0.2%
Officer misconduct - Unreasonable use of power	2	0.4%
Ordinances, Regulations, By-laws - Failure to enforce	9	1.7%
Ordinances, Regulations, By-laws - Unreasonable Determination	14	2.6%
Other	7	1.3%
Parking fines	16	3.0%
Planning and development - Changes to development plan	8	1.5%
Planning and development - Failure to enforce compliance	29	5.4%
Planning and development - General processing	45	8.3%
Planning and development - Permits and approvals	37	6.9%
Rates and charges	1	0.2%
Rates and charges - Composition of rates	22	4.1%
Rates and charges - Late payments	4	0.7%
Rates and charges - Objections/appeals	1	0.2%
Rates and charges - Remissions/discounts	5	0.9%
Record keeping - Inaccurate records	2	0.4%
Roads - Opening and Closing	2	0.4%
Roads - Traffic control	8	1.5%
Trees - Removal	8	1.5%
<b>Total</b>	<b>539</b>	

## Other

### ■ Complaints Completed 01 July 2005 to 30 June 2006

Advice Given	28	18.8%
Advice Given - Other/General	19	12.8%
Advice Given - Referred to Agency	7	4.7%
Conciliated - Reasonable Resolution	1	0.7%
Declined - Alternate Remedy	4	2.7%
Declined - Refused to Investigate	7	4.7%
Full Investigation - Not Sustained - Explanation Given	4	2.7%
Full Investigation - Partly Resolved in Favour of Complainant	2	1.3%
Preliminary Investigation - Not Sustained	4	2.7%
Preliminary Investigation - Not Sustained - Explanation Given	37	24.8%
Preliminary Investigation - Partly Resolved in Favour of Complainant	10	6.7%
Preliminary Investigation - Reasonable Resolution	22	14.8%
Withdrawn by Complainant	4	2.7%
<b>Total</b>	<b>149</b>	

## Case study

### District Council of Grant

Unreasonable Planning Amendment Report ("PAR") process the Council

#### The Complaint

The complainant alleged that the District Council of Grant produced a PAR which was misleading because maps outlining the areas to be re-zoned were inaccurate. Consequently, the complainant argued that the consultation process was flawed and the maps should be re-drawn and the PAR process repeated.

#### Ombudsman's Investigation

Examination of the PAR document demonstrated that the maps were incorrect and that it appeared a much larger parcel of the land was under consideration for back-zoning to primary industry than was actually the case.

The Council acknowledged the maps were inaccurate and that it had received a submission from the complainant on the matter. Planning SA was made aware of the error and advice was given to the Council about how to rectify the mapping problem.

The Ombudsman formed a preliminary opinion that the PAR consultation process was flawed. Recommendations were made to the Council that an appropriate remedy would be to correct the errors relating to the maps and proceed with a fresh consultation process.

Council staff acknowledged the Ombudsman's opinion and stated that any decision to withdraw a proposed rezoning site from a PAR ought not be taken lightly as it would mean a delay of around 8-12 months before the matter would be concluded and it would cost some thousands of dollars in additional costs. On that basis Council passed a motion that the current PAR, with appropriate changes to the maps, proceed.

#### Ombudsman's Opinion

Although it was the Ombudsman's preliminary view that the PAR consultation process ought to be repeated, the Council voted not to do so. The Ombudsman sought further independent information from planning experts which supported the view that the maps were incorrect and consequently, the consultation process was flawed. However, having regard to all the circumstances in this instance, it appeared that any requirement to restart the process would be disadvantageous to the greater community in terms of cost, and not commensurate with what was considered to be a minor flaw.

In considering what may be a fair and proper remedial action, the Ombudsman must have regard to the proportionality and reasonableness of the remedial action. This, in some cases must also weigh up the consequences to other persons in the community who may be affected by such action.

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## Case study

### Port Pirie Regional Council

Unreasonable refusal to allow complainant to erect a flagpole and fly a Scottish flag at the local Cemetery

#### The complaint

The complainant contacted the Ombudsman with his concerns that the Council had refused to allow him to erect a flagpole and fly a Scottish flag at the local cemetery. He stated that there were already two flagpoles at the cemetery and the Council itself flies flags; that other foreign flags are not only permitted but even encouraged in communities - albeit not within cemeteries; and that the Council's refusal to permit him to erect a flagpole had in his opinion, no validity.

#### Ombudsman Investigation

The Ombudsman investigation revealed that the Council treats cemeteries with due respect and endeavours to maintain uniformity of appearance so that all graves receive appropriate solemn attention.

It was correct that there were two flagpoles in existence within the cemetery; however, these flagpoles were not comparable to the complainant's proposal, because one was erected at the public entrance and the other adorned the Returned Service Personnel section of the cemetery. The Council's flying of the Australian Blue Ensign followed the Australian Government's encouragement that our national flag be proudly displayed for all to see and used to instil and strengthen civic pride and loyalty to the Commonwealth of Australia. Appropriately, no other ensigns were flown from the two flagpoles.

In light of the above considerations, the Council's stance that no flag (whether domestic or foreign) other than the Australian Blue Ensign was permitted to be flown from the two flagpoles at the cemetery, was not unreasonable.

As far as legal validity of the Council's stance on the matter was concerned, there existed formal sanction for it, because Council By-law #3 stipulates restrictions on activities conducted on Council land and contained a specific reference to cemeteries in §2(31)(b), which states that no person may, without the Council's permission erect any memorial on land comprising a cemetery.

The denotation of a *memorial* adopted by the Council from the Australian Standard 4204-1994 stipulates that it was "*an object erected...in memory of a deceased person*" and that can easily be construed to encompass a commemorative flagpole.

#### Ombudsman's Opinion

It was the Ombudsman's opinion that it was not unreasonable for the Port Pirie Regional Council to deem the complainant's proposal a memorial. The Ombudsman accepted that there was genuine concern about the complainant's intention to fly a foreign flag within the cemetery, because other foreign-born Australians were buried there and permission for the complainant to do so would invite numerous others to follow suit - detracting from the paramountcy of the Australian Blue Ensign.

The Ombudsman was unable to form an opinion that the Council's refusal to permit the complainant to erect a flagpole was unfair or discriminatory or unreasonable.

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## Case study

### City of Holdfast Bay

Failure to take appropriate and timely action in relation to illegal fill on adjacent land and acted in other ways in an unreasonable manner

#### The complaint

The complainant alleged that the Council had failed to take appropriate and timely action in relation to illegal fill placed on adjacent land.

#### Ombudsman Investigation

This matter was the subject of a full investigation pursuant to section 18 (1a) of the *Ombudsman Act, 1972*. The complainant attended the Ombudsman Office and provided a letter of complaint and *"a bundle of correspondence, reports and notes etc."* in support of her complaint. Preliminary enquiries were made of the Council and some background information obtained. An investigating officer then met with the complainant at her property to inspect the site and obtain further information about and clarification of the complaint.

The Ombudsman then wrote to Council requiring a detailed explanation as to why it considered it had acted reasonably in relation to the issue of illegal fill on the land adjacent to the rear of the complainant's property, together with its response to a number of specific allegations the complainant had made. A response was received from Council and a copy of this response was forwarded to the complainant to consider. When the investigating officer met again with the complainant she provided typed notes of her views on the Council's response and discussed these with the investigating officer. At this meeting certain issues were identified to be followed up in progressing the complaint.

Some time later the investigating officer made contact with a witness as suggested by the complainant. This witness was able to provide further background information and expressed opinions supportive of the complainant's allegations but was not able to provide substantial evidence in support of the allegations.

A former Council officer was subsequently interviewed and although he was no longer employed by the Council, he had been the planning officer responsible for the issue for much of the relevant time. The officer provided his general recollection of events and also responded to specific questions put to him. He recalled that he wrote to the owner of the adjacent property and his builder about 3 or 4 times asking that the illegal fill be removed and had several discussions with them in trying to negotiate an outcome. His view was that it was not sensible to pursue a costly enforcement action through the Environment, Resources and Development ("ERD") Court, with no real prospect of success, particularly when there was potential for a certain amount of fill to be allowed as part of any development on the site. The officer stated that he put a lot of effort into trying to achieve a good planning outcome; it made no difference who the owner was; and he most definitely did not come under any pressure from above (either from management or elected members) to act favourably towards the owner.

The investigating officer met with the complainant again to convey to her the information he had obtained from the former Council planning officer and to review the complaint. The complainant provided her comments on the further information obtained, raised further questions about Council's actions and provided him with a typed page questioning how Council had acted reasonably in the matter. The investigating officer acknowledged that the further information provided by the complainant had opened up more areas for investigation and indicated that he was inclined to speak with the complainant's solicitor before considering if he would put further matters back to Council for a response. An outline of the complaint summarising the Council's position and the Ombudsman assessment of the status of the matter was faxed to the solicitor with a request that he contact the investigating officer to discuss the matter, if he felt he could assist. The solicitor contacted the investigating officer and suggested that he contact the senior counsel, who represented the complainant in the ERD Court and who, he felt, would have a better knowledge of the detail of the complaint and therefore be in a better position to identify something untoward or unreasonable in Council's position, which could be further investigated.

The same information sent to the complainant's solicitor was then faxed, to the senior counsel and several weeks later the senior counsel contacted the investigating officer and expressed the view that, initially, he felt the Council had been "pussyfooting" around in relation to the illegal fill, but that he had subsequently come to recognise that Council had simply been pragmatic and he could not say its position was unreasonable and certainly not illegal. He also said he had no reason to believe the Council was unduly influenced by the developer. The complainant was provided with a copy of the information sent to the QC. The investigating officer then conveyed and discussed with the complainant the views of the senior counsel. During this discussion, the investigating officer indicated he doubted it could be concluded that the Council had acted unreasonably. The complainant raised some further questions about the propriety of Council's actions, particularly that it had adopted seemingly contradictory positions about the illegal fill and offered to provide some further information in writing to assist in any further investigation. The complainant emailed this information to the investigating officer in the form of a letter, setting out her comments in a chronology of events.

As the former planning officer was the Council officer responsible for the matter for much of the relevant time the investigating officer arranged to meet with him again to obtain his response to the points the complainant had more recently made. The relevant aspects of his response were as follows:

- He assumed that Council must have become aware of the fill on the eastern portion - that is why it put the condition on. He did try to prevent further fill being added by writing to and speaking to both the owner and the builder. For reasons previously explained, he tried the negotiation approach rather than enforcement action.
- Applications for land division do not deal with fill.
- In suggesting he (or Council) had adopted contradictory positions in advice he gave the complainant over time, he felt the complainant may be confusing the two separate and distinct issues of 1) enforcement action about illegal fill and 2) any fill which may be allowed as part of a development application. Legal advice indicated that the issue of enforcement for illegal fill could not be dealt with as part of a development application. He felt he had been consistent in his position that enforcement is done through the service of notices under the *Development Act* whereas, because some level of fill was likely to be allowed with a development, it was always his position that it was not practical to pursue the issue of illegal fill through enforcement, possibly have it all removed and then a development approval may have allowed for some of it to be put back.
- The statement in the Development Assessment Report (762/99) that "*Any concerns with the previous fill that has been deposited on the subject site cannot be dealt with as part of this application*" again reflected Council's legal advice that the issue of enforcement action about illegal fill could not be considered as part of the development application - they were separate issues.
- It was not necessary that fill be mentioned in the development application - the site levels including the level of fill proposed (above natural ground level) would have been shown on the plan. In any event, the issue of fill on this site was well known to Council.
- He remembered the meeting at which the Development Assessment Panel directed an enforcement notice be served. He said he had put forward his professional view, based on experience, (which he consistently held) that it seemed inevitable to him that some level of fill would be allowed. The complainant had lobbied some Councillors very effectively, the matter went to a vote with the result that it directed enforcement action be taken.
- The decision as to which section of the Development Act to use was made by Council's solicitors.
- His professional judgement, based on experience and on a balance of factors, was that some form of development with a certain level of fill would have been a reasonable planning outcome, consistent with the Development Plan.
- He said he would be surprised if he took the position that he did not know the original site level. He said one can get a fair idea from a visual inspection of the level on the complainant's block, from the height of the retaining wall on the northern boundary and the land division application would have had levels shown. He said the actual amount of illegal fill cannot be determined without it being surveyed.
- He said if it had been judged that the illegal fill was having a significant detrimental effect on the complainant at the time, then it was likely enforcement action would have been taken then.

The Ombudsman accepted that the complainant held the view that Council should have been more forceful in trying to have the illegal fill removed and should have taken enforcement action earlier. The Ombudsman acknowledged the complainant's desire to protect her environment and quality of life and her frustration or indeed anger, when she perceived that Council's actions were influenced by the identity of the owner of the adjacent land. However the Ombudsman is required to base his findings on factual, tested and substantive evidence.

#### **Ombudsman opinion**

Having regard to all of the information provided and obtained during investigation, the Ombudsman was of the opinion that he was unable to conclude Council had acted unreasonably in this matter. Council was entitled to take the position it did. It was common practice for Councils to regard the taking of enforcement action as a last resort, as ratepayers' money is expended and the prospects for success need to be properly considered. In this case, Council's position that a certain amount of fill may have been allowed as part of the development approval and it was practical to await on that result, did not seem unreasonable. There was no evidence to suggest it was influenced in its position by the identity of the adjacent landowner. The senior counsel came to the same conclusions. There were some administrative failings, acknowledged by Council, during this process but these on their own, were of a minor nature and were not indicative of a wider scheme to undermine the complainant's interests. In all the circumstances, it was considered that further investigation of the complaint was neither necessary nor justifiable within the meaning of section 17 (2)(d) of the *Ombudsman Act, 1972*.

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## Case study

### City of Unley

Advice received from a Council staff member was incorrect and caused financial loss

#### The complaint

Prior to purchasing a property the complainant sought advice from Council if she could subdivide the land and build two houses on it. She spoke to an officer who told her that she would be able to do this. She also spoke to him about the prospect of flooding and, after looking at a coloured plan on the counter, he identified the land, said it was subject to flooding, but by only 100mm. He said she would have no concerns because the footings would only have to be 100mm higher than normal. The complainant relied on this advice in purchasing the land. She subsequently spoke to other officers and was told the land could not be subdivided because it was subject to flooding, that there was to be no building of habitable areas within 10m of the creek and that any building would have to have very high footings. The complainant later met with another person who confirmed the above and later had a further meeting with Council and was accompanied by her solicitor. At that meeting, amongst other things, it was confirmed that there was no possibility of the land being subdivided and the complainant ascertained that there would be difficulties in obtaining Council approval for any suitable redevelopment of the land. The complainant felt obliged to arrange cancellation of the contract and forfeited her deposit and incurred other costs and fees. She claimed that the Council officer was negligent in the advice he gave and made a claim against Council for her losses.

#### Ombudsman Investigation

This matter was dealt with by way of preliminary enquiry and the Ombudsman sought and obtained the willing cooperation of certain Council staff (present and former) to be interviewed in relation to the issues around the purchase of the property. The information provided by Council was put to and discussed with the complainant and from the discussions some key issue emerged. When it was clear that the property the complainant was interested in buying was located in the flood plain area and, given the Council officer's own acknowledgement that there were concerns within Council about the impact of the draft Flood Plain Plan Amendment Report, it appeared that the officer should have referred the enquiry to senior staff as he (and other non planning staff) had apparently been instructed.

This question was put to the officer and he felt he may have suggested to the complainant that she would need to speak with senior staff but could not remember specifically doing so. The complainant was adamant that the officer did not suggest this and did not ever refer to the plan amendment report. It was pointed out that the complainant did subsequently come back to see other staff and felt this indicated he may have suggested this to the complainant. The complainant's position was that this occurred after she had purchased the property and her purpose for contacting other staff was to discuss the possibility of purchasing some extra land from the adjacent reserve. The Council officer concerned confirmed this was the reason the complainant came in to see him. While the Council officer disputed some parts of the complainant's recollection of her conversation with him, he agreed she did identify the property she was interested in purchasing, that he may have referred to the coloured plan on the counter although, as it is difficult to read, he referred to the plan on the computer and the complainant at the time, raised concerns about flooding, referring to a house across the road. The Council officer also said there was absolutely no doubt the property in question was on the creek and therefore subject (at the time) to the plan amendment report. He said he therefore would have expected the officer to have sought his advice. He said he was in his office most of the time and ordinarily, Council staff would come and check and if he was not available would make a time for the person to come back to see him. Another officer was of the same opinion.

#### Ombudsman's opinion

It was the Ombudsman's opinion that the officer should have realised the property about which the complainant was enquiring, was within the flood plain area subject to the draft Flood Plain Plan Amendment Report and should have arranged for the complainant to speak with another officer, as he had been instructed. However, such an administrative oversight did not seem representative of officer's usual performance or indicative of a systemic administrative deficiency.

The complainant claimed that her decision to purchase the property relied on the information she had obtained from the Council and that when she subsequently found out she would not be able to subdivide the property as she had planned, she felt obliged to cancel the contract and forfeited her deposit and incurred other costs and fees. The complainant requested that the Ombudsman make a recommendation that she should be compensated for the losses she reported to have suffered because of the Council officer's advice.

In considering if a recommendation for ex-gratia compensation was appropriate, the Ombudsman generally would have regard to what may be just and fair in all the circumstances, what action the complainant could have taken to mitigate or avoid the loss or detriment and the amount of any proven loss or expenses which was a natural and probable consequence of any defect in administration. In this case, it seemed to the Ombudsman that the complainant made a conscious, personal decision to cancel the contract and forfeit her deposit - this action was not a direct consequence of any advice she received from Council - it was equally open to the complainant to hold onto the property and it was unlikely she would have lost money - she may even have profited from a subsequent sale.

Furthermore, it was arguable that the complainant should not have based her decision to purchase on just one piece of advice - that a prudent purchaser, particularly one who had previously subdivided and redeveloped land, should have sought other opinions. Council has pointed to the fact that the Form 7 certificate, which was available to and was obtained by the complainant before the purchase was made, clearly referred to the draft Flood Plain Plan Amendment Report, outlined the key aspects, including stipulating floor levels and stated that *"no new buildings or structures should be erected within 10 metres of the centre line of a watercourse"* (pages 2 & 3 of 8) and stated that the subject property was affected by both a creek and was in a flood plain, that the *"development potential of the land may be restricted"* and also stated *"Please see Reference to Ministerial PAR in the Plan Amendment Report Detail above"* (page 7 of 8). Council claimed that, on this basis, even if the complainant did receive contrary or incomplete advice from the Council, another opinion from a qualified planner should have been sought, either within or external to Council.

Having regard to all the relevant information it was the Ombudsman's opinion that a recommendation for compensation could not be founded on any act of administrative or defective administrative action on the part of the Council.

**The complaint**

The complainant alleged that the Council's Dog Inspector acted in an unreasonable and inappropriate manner when following up on an allegation that the complainant's dogs had attacked a woman and her children at an Oval and that the Dog Inspector had either damaged his gate or instructed police officers to "bash down" the gate when they attended at the complainant's residence on the date of the alleged attack.

**Ombudsman Investigation**

The Ombudsman investigating officer met with the complainant, his voluntary carer; a staff member from the Helping Hand Centre and a Social Worker at Flinders Medical Centre (FMC). The complainant alleged that he had been harassed and treated unfairly by a number of Councils over dog management issues dating back 12 years, some of which had been before the Courts. The investigating officer explained that matters which had been or were currently before the Courts were not within the Ombudsman's jurisdiction and that, unless there were exceptional circumstances, matters over twelve months old would not be investigated.

The complainant also referred to some issues relating to his treatment by police officers but understood that these needed to be pursued through the Police Complaints Authority. The role of the Ombudsman and what may realistically be achieved through an investigation of a complaint by the Ombudsman was explained to the complainant. The discussion then focussed on issues which flowed from an alleged attack by the complainant's dogs on a woman and her children at an Oval some eight months earlier and the subsequent attendance of Council inspectors and police officers at the complainant's residence on the same day. The complainant stated that he had been issued with infringement notices for certain offences in November 2004; that he responded to Council, electing to be prosecuted in December 2004; was subsequently advised by Council that he would be prosecuted and issued with a summons later that month but had heard nothing since.

The complainant further alleged that he had been treated differently to other dog owners in that he was 'stalked' by Council staff waiting to find an offence, whereas other dog owners who do not control their dogs were being ignored. The complainant also felt there was a 'conspiracy' against him in that staff from a number of Councils were colluding against him and that such conspiracy may be 'politically motivated'.

The investigating officer indicated there were some administrative actions of Council staff he would follow up on. He also discussed with the complainant the legislative imperatives and community expectations placed on Councils to deal with dog management issues. The complainant acknowledged that another person had advised him similarly and that perhaps he needed to be more careful how he related to people.

The investigating officer ascertained that the Council had not taken any further action in relation to prosecuting the complainant over the alleged attack by his dogs in October 2004 and that, as the matter was now out of time, no further action would be taken. The complainant was advised of this in September 2005. However, he remained aggrieved by the actions and demeanour of the Council's Dog Inspector and the investigating officer undertook to follow up on these matters. When the investigating officer advised the complainant that the Dog Inspector had been away from work on both annual and sick leave but he was expected back the following week and he intended to interview him then, the complainant expressed a view that it sounded as though the Dog Inspector was trying to avoid the interview. The investigating officer assured the complainant that he did not have that impression and that he would continue to follow up the complaint and undertook to keep the complainant informed.

The investigating officer was not able to interview the Dog Inspector as he remained on sick leave. He did however meet with the Inspector's manager and inspected the Council file on the matter. The investigating officer contacted the complainant and advised he was satisfied it was proper for the Dog Inspector to act on the complaint received. The complainant accepted this but he remained aggrieved about the manner in which the Dog Inspector had acted towards him and the way he spoke to him. The investigating officer advised that he would investigate the remaining concerns and the complainant's allegations about property damage. The investigating officer explained that he needed to get the Inspector's side of the story and advised the complainant that the Inspector would be absent on sick leave for some time. During this conversation the complainant also alleged that a staff member from the Helping Hand Centre had spoken to a Sergeant at Holden Hill Police Station and that person had admitted to her that his officers had been directed by the Dog Inspector to break down the complainant's gate.

Some four weeks later the complainant contact the investigating officer with a concern about the actions of the Port Adelaide Enfield Council in relation to a matter currently before the Court. He said solicitors for that Council had not turned up to a hearing and he believed this was a deliberate strategy to cause inconvenience and expense to him when they knew the matter would not hold up in Court. The investigating officer followed up on this and advised the complainant that the Council's was not happy with the mistake by its solicitors, for which they had apologised, and it fully intended to pursue the matter against the complainant in Court as they regarded it as an important issue of public safety. The investigating officer explained that he could only look at the actions of the Council and he could not say they were unreasonable, given it seemed, the mistake was made by its solicitors. The complainant was advised that, as the matter was before the Court, the Ombudsman had no jurisdiction to investigate further and the complainant would have the opportunity to put his concerns to the Court. At the time, the investigating officer confirmed with the complainant that he would pursue the matter against the Prospect Council but he needed to wait for the Dog Inspector's return to work. More recently, the Ombudsman was advised that the Prospect Council Dog Inspector has resigned his employment with the Council.

Some time later the investigating officer checked with the Council and was advised that the Dog Inspector would be off work for at least another 6 or 7 weeks. That same day the investigating officer spoke to the staff member from the Helping Hand Centre about the complainant's allegation that a Police Sergeant had admitted to her that his officers had damaged the complainant's gate. The Helping Hand staff member did not support this claim - she said it was another Sergeant that she spoken to and she could not recall the issue of property damage being discussed - she said her issue of concern had been what she perceived as an over zealous approach by the attending officers at the complainant's residence. She said she was satisfied there had been a proper investigation of her complaint and was satisfied with the outcome. In relation to the gate she said she did not see any damage done as she was inside the house with the complainant and his carer at the time and her observation afterwards was that the gate did appear to be damaged as it was not able to be shut but that it was a makeshift gate in any event.

The investigating officer then spoke with the Sergeant from Holden Hill Police Station who did not have first hand knowledge of the event. He was provided with contact details for the attending officers subsequently obtained a copy of an affidavit prepared by one of them in response to the Police Complaints Authority investigation into the Helping Hand Centre staff member's complaint. The police officer stated that when he was unable to make contact with the person inside the house he walked around to the rear of the house, through a closed but unlocked gate and knocked on the rear door. He further stated that he could hear a dog barking from inside the house, that there had been no reason to force the rear gate and that he did not cause any damage to it. He observed that the gate was in a poor state of repair. He stated he then returned to the front of the house, closing the rear gate.

#### **Ombudsman Opinion**

The Ombudsman was unable to conclude Council has acted unreasonably in this matter. It seemed to be agreed that Council, having received a complaint about the complainant's dogs, was obliged to investigate. What was in dispute was the manner in which the Council's Dog Inspector acted towards and spoke with the complainant. It was not possible to interview the Dog Inspector due to his extended absence on sick leave, supported by medical certificates and his subsequent resignation. In order to advance this matter, the Ombudsman took the view that the Dog Inspector would have denied any inappropriate conduct towards the complainant, a view supported by an attending police officer. The complainant's position was supported by his carer.

The Ombudsman was left in the position of having conflicting accounts of the events which occurred at the complainant's residence. Unlike a court of law, where witnesses can be tested by examination and cross-examination and in the absence of any other corroborating and independent evidence, the Ombudsman was unable to prefer one version over the other. Even if the Ombudsman were to undertake further investigation, it was doubtful that it would 'prove' the complainant's version as the more reliable account of what was said and done that day.

Accordingly, the Ombudsman had no basis on which to conclude that the actions of the Council Inspector were improper or unreasonable or that he either caused damage to the complainant's gate or instructed it to be so damaged. Also, the Ombudsman was mindful that there would be no logical "remedy" available as, even if an adverse conclusion were reached about the Inspector's actions, as he was no longer an employee of the Council.

### The complaint

The complainant intended to build a residential dwelling in a street with an already well-established architectural character. The application was refused on the basis of the proposed development being in discord with the existing streetscape and the need for the Council to preserve the unique appearance and feel of the locality. The complainant alleged that the Council's assessment of the application was flawed and that one or more individuals who performed a dual role of Councillors and Development Assessment Panel (DAP) members had intimated support for the proposal and even an assurance that the application would be approved.

### Ombudsman Investigation

There were two main components of the complaint that the Ombudsman investigation examined, namely development application assessment processes employed by Council administration and the duality of roles fulfilled by some of the Councillors as Development Assessment Panellists.

The Ombudsman held a series of formal interviews with the selected Councillors and council administration personnel, and the development proposal assessment processes were discussed not only as they had been applied to the complainant's particular application but more broadly vis a vis procedural soundness on the part of the Council. As the development matter itself was already before the Environment, Resource and Development Court, the investigation did not encompass any appraisal of the DAP decision itself (being outside the scope of the investigation), but focussed instead on how planners and other staff approach development proposals, what they tell the applicant, to whom they refer the applicant for further discussion and general how they go about their work.

The other aspect, that of the duality of Councillor / Panellist roles was investigated in light of how the relevant individuals saw themselves fulfilling these roles, whether from their perspective there was or could be confusion in the minds of applicants in this regard, as well as what steps they took to delineate the two responsibilities. The investigation also probed information provided to development applicants in order to reduce or eliminate confusion that could be present amongst applicants and other parties.

### Ombudsman Opinion

The Ombudsman investigation, while it did not detect any wilful and unfair bias or malice towards the complainant (such as alleged by the complainant), on the part of Council personnel or elected members, nevertheless found that some practices utilized by Council planners were deficient, especially in relation to the interface between the applicant, the relevant planning officer and DAP members.

Although a Councillor, in a discussion with an applicant, may well repeatedly stress that he or she was not at that time acting in the capacity of DAP member, it was not difficult to see that in the mind of the applicant that individual was primarily a DAP member (as far as the application was concerned). In such an atmosphere, it was doubtless a challenge for the Councillor to act solely in that capacity and, in any case, it would be best if a DAP member had the benefit of only official planning assessment and recommendation when debating the proposal in DAP, rather than the interaction with the applicant in the capacity of Councillor. In essence, although at least in that particular Council, DAP members who double up as Councillors understood fully the separation of their roles, it did not follow that their constituents were equally knowledgeable about it.

The Ombudsman formally recommended that the Council review both its development proposal handling mechanisms and the appropriateness of the Councillor-DAP panellist duality of roles. The Council reacted positively to the Ombudsman's recommendations and formally debated preferred ways to enhance clarity of the respective roles for the residents and to refine assessment of development applications by Council planners. The Council undertook to review the situation and to agree on the outcomes of such a review prior to the next local government election, so that everything could be properly in place for the reconstituted Council. As far as the duality of Councillor/DAP panellist roles was concerned, it was worth noting that during the period covered by this report, the South Australian Parliament commenced deliberations over a Bill intended to regulate this. The *Development (panels) Amendment Bill 2006* seeks to compel councils to have their own DAPs – or if they join with other municipalities, regional DAPs – constituted in such manner that they have an independent or specialist Presiding Member who is not a Councillor or staff members, and at least a half of the remainder on such a panel to consist of independent or specialist individuals.

**The complaint**

The complainant contacted the Ombudsman with his concerns relating to the withdrawal of an earlier approval by Council to revegetate his roadside verge.

**Ombudsman Investigation**

The Ombudsman wrote to the Council on to advise of the decision to conduct a full investigation into this matter, pursuant to Section 18(1a) of the *Ombudsman Act 1972*. Further correspondence was forwarded to the Council during a period of some months. In these letters the Ombudsman sought to understand the Council's reasons for the decision to withdraw the earlier approval granted by Council to revegetate the complainant's roadside verge, and would only approve revegetation to occur 2m from the complainant's boundary line rather than the original approval of 6m from the boundary line.

Having considered all of the available information in this situation, the Ombudsman held the view that the reasons put forward by the Council were not supported by expert advice.

The Council stated that the complainant's neighbour may have experienced difficulties in the unloading and turning B doubles and the parking of machinery and trucks. A letter from the Council stated that the Manager of Works attended the site and assessed that there may have been an issue for the complainant's neighbour if the original approval to revegetate to approximately 6m from the carriageway occurred. The Manager of Works suggested a compromise of revegetation to a distance of 15m from the carriageway. The Manager of Works assessed that this provided adequate clearance for vehicular access to the neighbour's property. The Manager of Works also assessed that the 15m clearance provided a parking area for a number of trucks on sale days. The complainant agreed to this compromise.

In response to the Council's view that revegetation of the area would create 'a major fire hazard' the Ombudsman referred the Council to the report of a Fire Prevention Officer which stated - *"After inspecting the site I endorse the application to revegetate a section of the Spots Hill Road Reserve."*

**Ombudsman Opinion**

It was the Ombudsman's tentative opinion that it was unreasonable, pursuant to Section 25 (1)(b) of the *Ombudsman Act 1972*, for the Council to restrict the complainant's revegetation efforts to 2m from his property boundary into the road reserve. Given the above, there appeared to be no basis for the Council not to approve revegetation of the roadside verge to a distance of 15m from the carriageway.

The Ombudsman encouraged the Council to give serious consideration to his opinion on the matter and to act to alter its current decision. The Ombudsman further advised the Council that if it did not reconsider its current position or provide any supporting evidence that may persuade the Ombudsman that the facts, reasoning or understandings articulated above were incorrect, the Ombudsman may decide to report formally on this matter, pursuant to Section 25 of the *Ombudsman Act*. This may result in the publication of an adverse report pursuant to Section 26 of the *Ombudsman Act*. Any such report would recommend that the Council grant approval for the complainant to revegetate his roadside verge to a distance of 15m from the carriageway.

At a later Council meeting a Council resolution confirmed that the Council would reimburse the complainant for fencing contracting services that resulted from the Council withdrawing the original decision to approve the application. The Ombudsman commended the Council on that decision and advised that the complainant intended to forward an account to the Council for reimbursement once this matter was finalised.

The Council subsequently made a decision allowing a distance up to 12.5 metres from the complainant's fence line to be fenced and revegetated. Although the Ombudsman could see that the other proposed option for the Council to approve an area up to 15 metres from the carriageway, may have been more to the complainant's liking, and in the Ombudsman's opinion had some merit, the Ombudsman could not find that the final decision of Council was unreasonable as the decision took into account both the complainant's and his neighbour's concerns and was based on sound administrative reasons.

### The complaint

The complainant submitted claim from the Council for compensation for injuries sustained when she fell due to uneven pavers in the town's main street. The compensation claim was forwarded to the Local Government Association Mutual Liability Scheme and her claim was denied.

### Ombudsman Investigation

The Ombudsman was concerned to learn that there had been a number of falls in the Main Street although not all falls had occurred at the same location as the complainant's fall. As there were a number of incidents, the Ombudsman wrote to the Council advising of the intention to conduct a full investigation. The Ombudsman was mindful of legislation enacted on 1 May 2004 that provided Councils with wide ranging immunity in circumstances such as those described by the complainant. Section 42 of the *Civil Liability Act 1936* renders the Council not liable for any damages that may be incurred as a result of roads, footpaths or other thoroughfares accessible to the public not being maintained. With this legislation in mind the Ombudsman focussed the investigation on the Council's administrative processes for monitoring footpaths and responding to complaints about problem areas.

In relation to the general practice of the Council when responding to these issues, the investigation revealed the following:

- The Council monitors the condition of the footpaths in the Main Street on a yearly basis.
- The Council provided evidence to show that immediate action is taken to visit the site and assess the condition of the footpath when a specific incident about a trip or fall is reported to the Council. The Council reported that if any causative pavers are located during the site inspection, a referral is made to the Council Works Department for possible rectification work.
- As a result of the yearly monitoring, the Main Street was identified as an area that would benefit from an upgrade and it was anticipated that this would occur in 2004. However, the Council reported that due to a budget overrun, this area was unable to be upgraded in 2004 and the work was rescheduled for February 2005.
- The Main Street Streetscape project, completed in March 2005, resulted in the incident area being upgraded.

In relation to the actions of the Council in responding to the complainant's specific incident, the investigation revealed the following:

- After the complainant reported her fall to the Council, Council staff conducted a site visit and took photographs of any potential hazards.
- The Council reported a difficulty in identifying the pavers that may have caused the complainant to trip and fall: *"Photos taken of pavers by Council for the reported incident site were disputed by the complainant as being the causative pavers. Further investigation could not identify any foreseeable causative pavers in the fall area as indicated by the complainant that may have contributed to her fall"*.
- The Council forwarded the information about the fall to the Local Government Association Mutual Liability Scheme for assessment. Subsequently, a letter from the Mutual Liability Scheme was sent to the complainant stating that her claim would not be accepted.

### Ombudsman Opinion

The Ombudsman did not comment further on the matter of liability, as Section 42 of the *Civil Liability Act 1936* rendered the Council not liable for any damages that may be incurred as a result of footpaths accessible to the public not being maintained. In relation to the administrative practices followed by the Council, it was the Ombudsman's opinion that yearly monitoring of the Main Street along with immediate site inspections of any reported irregularities of footpaths was not an unreasonable administrative practice. As the Council took reasonable steps to attempt to locate causative pavers but was unable to, it was the Ombudsman's opinion that it was not unreasonable that the Council did not act to warn others of any potential danger.

### The Complaint

The complainant lodged a complaint on behalf of another person who received an expiation notice, from the Council indicating that she parked in a No Parking space at a time when parking in that location was prohibited. The complainant and the driver of the car claim that the No Parking sign, near to where vehicle was parked was not visible as it was obscured by a branch overhanging a School fence. On those grounds the complainant asked the Council to waive the fine, and the manager of Council's regulatory services declined the request.

### Ombudsman Investigation

Council provided the Ombudsman with copies of documentation relevant to the parking infringement. This included photographic evidence, obtained by the parking inspector, of where the car was parked and unattended.

To ensure Council had not erred in its decision-making process, an inspection of the location in question was made by the Deputy Ombudsman who made and reported the following observations:

- 1) to position a vehicle as indicated in the photograph, it would be necessary to align the vehicle with the kerb at a point nearer to the No Parking sign, and then reverse into position;
- 2) while the top of the sign was partially obscured by the leafy branch, the pole to which the sign was attached was quite obvious, and should have caused the motorist to check the sign before leaving the scene;
- 3) on the day the officer attended the site, a light breeze was blowing, and this created sufficient movement in the leaves to make the top of the sign visible to any motorist contemplating parking their vehicle in that area; This was not to say, however, that conditions were similar on the day of the incurred the infringement, merely that it is a possibility;
- 4) the proximity of the area around the No Parking sign to a school foot crossing was such as to suggest to motorists that special traffic controls were likely to be in place in that vicinity to ensure the safety of children using the crossing.

### Ombudsman Opinion

Without doubt, it would be desirable that traffic control signs be wholly and clearly visible. In this case, and with this in mind, the Council had undertaken to ask the school to correct the problem caused by overhanging foliage, by cutting the offending branch back to their fence line. However, even though the sign on top of the sign pole may have been completely obscured at the time of the infringement, the sign pole itself was clearly visible, and should have caused the driver to check the sign before moving off.

It was generally the case that at drop-off and pick-up times, special conditions applied to the movement of traffic within all school zones. It was, therefore, a relevant factor that the driver, as the mother of a child attending the School, could reasonably be expected to have an awareness that traffic control measures would apply in the area around that school.

The Ombudsman was of the opinion that the Council acted reasonably in adhering to its original decision to impose the fine, and also, in the action taken by Council to require the offending branch be lopped back to the school fence line.

### **The complaints**

One of the themes that emerged during the reporting period concerned the control of bees, especially in locations that had long housed apiaries and where the councils were on one hand lobbied by third parties to step in and remove the bees and, on the other hand, under pressure from beekeepers to allow the apiaries to remain.

One such apiarist from an outer metropolitan area and another from a country region complained (separately) to the Ombudsman about the council's approach to their beehives.

In each case, the complainant disagreed with the council's bee removal order and asked the Ombudsman to intervene with a view to retaining all or at least some of the hives in the complainant's possession.

### **Ombudsman Investigation**

The Ombudsman's investigation established that there were several considerations that the council had to heed, most notably neighbour and public reports of bee swarms, as well as the identity of bees frequenting the affected areas.

Of particular importance was the health aspect of the issue, because the council had received reports not only of bee stings inflicted on residents and visitors, but also reports of adverse allergic reactions to those stings. Allergenic properties of bee stings (in susceptible individuals) are well-known and, therefore, any reports of severe allergic reactions must be treated seriously.

Conversely, it was difficult to determine reliably the genesis of any bee, as they can readily traverse distances of several kilometres in a short period. Consequently, it was impossible to be absolutely certain about the origin of any particular bee or swarm.

Another essential aspect was the supply of potable water for the bees, as they will travel in search of water and - once they regard such supply as a regular source - they will return to the same location again and again.

It was then the council's duty to balance all these considerations and to arrive at a decision that either forces the destruction (or relocation) of the bees, reduces the number of hives and increases the regularity and volume of their water supply, or deems the offending bees not to originate from the complainant's hives (in which case the complainant's hives would be permitted to stay).

### **Ombudsman's Opinion**

The Ombudsman recognized that in both cases, there were competing imperatives that the councils had to contemplate and ultimately decide which outweighed the others.

Protection of public health - vis a vis allergenic qualities of bee stings - including the health of other residents and their visitors, was clearly a main consideration. The Ombudsman further acknowledged the potential for public liability claims against the council, if any person suffered severe adverse effects (possibly even a death) attributable to a bee sting from this particular source.

For the above reasons, the Ombudsman formed an opinion that, in these particular cases, public health and liability aspects took precedence over the measuring of adequacy of water supplies and attempting to determine with certainty the origin of some of the bees.

In both cases, the bees and the corresponding beehives were removed after council orders were upheld.

It was worth noting that, due to the encroachment of urban sprawl onto tracts hitherto sparsely populated and serving a variety of agricultural, horticultural and other purposes, matters of the impact of established activities (such as apiaries) are going to keep rising in prominence and, therefore, it would be prudent for all relevant councils to anticipate and plan for these situations before they occur.

### The Complaint

The complainant alleged that certain administrative actions of Council were unreasonable.

1. When the Council provided the terms of reference for the traffic engineer who undertook the road closure impact assessment, the Council did not include information on safety issues concerning delivery trucks parking illegally and caryard mechanics test driving vehicles in the street.
2. The road closure impact assessment was conducted on one day for a total of four hours. The complainant stated that this was insufficient and did not coincide with some of the times of major public risk problems near the caryard.
3. When the Council wrote to residents for notification and consultation purposes about the proposal to close the road, the Council unreasonably focused on traffic patterns and did not mention the safety issues that led to the complainant's proposal of a road closure and the petitioners supporting the closure as a solution.
4. The road closure impact assessment report unreasonably projects traffic flows and that this is unsupported by observation over varying times and days.
5. It was unreasonable that a road closure trial was not undertaken for a specific period of time to fully examine the resultant traffic patterns.

### Ombudsman Investigation

The Ombudsman commenced a formal investigation of this matter, pursuant to Section 18 (1a) of the *Ombudsman Act 1972* and required that Council provide a report that responded to the allegations and provided all relevant documents.

As to why the traffic consultant was not informed of the street safety issues the Council advised that they were of the view that the safety issue had been largely addressed by Council's liaison with the car yards who initiated policies to prevent loading and unloading in the street. From the information provided, it was clear that the role of the traffic consultant was to report on current traffic flow patterns and the impact of a road closure. To provide this information, the traffic consultant did not need to be aware of or comment on safety issues. Council acknowledged that trucks double parking on the street created a safety concern, therefore this information was not disputed. However, the Council's manager of compliance stated that in the past twelve months, traffic ranger's presence had been upgraded to daily checks and there had not been a report of a truck double parking in the street.

As to the length of time the traffic consultant spent in the area assessing traffic and not being in attendance during times when major public risk incidents occurred, the Ombudsman was advised that the Council spoke further with the traffic engineer about the time and day chosen. The Council were able to provide the traffic engineer with substantial current and historical traffic data; and it therefore followed that the traffic engineer would utilise this data and he had selected a Thursday morning and evening peak hours to conduct his assessment.

The Ombudsman acknowledged the complainant's concern that the Council, in its questionnaire sent to local residents, did not mention the safety issues outlined on the petition. While it may have been ideal that the Council provided information about this issue on the questionnaire, a number of people provided feedback that they did not know why the Council was proposing a road closure. If this information had been provided by the Council, then there would have been less confusion about the reason for the proposal. If residents were not directly affected by the safety issues, it could be expected that they would not support a road closure.

The Council discussed in detail the various options that could be utilised if the proposal to close the road was pursued. However, the Council did not implement any of these options given:

- The resident consultation process indicated that the majority of local residents opposed any road closure.
- That according to the Council, the safety issues that arose when trucks double parked in the street had been addressed by the car yard owners and regular monitoring by Council.
- That parking in the 15 minute parking spaces was monitored daily by Council rangers.
- That any dangerous driving in the area would be a police matter and outside of the Council's control.

The Council found that there was an unexpectedly high level of community anger that resulted from the proposal to close the street. Due to this, if a group of residents within this Council district requested a road closure in the future, the Council stated that it would approach the situation in a different manner. The Council asserted that it would be likely to commence the process by conducting a road safety audit to assess safety issues and would only consider community consultation if there was a clear indication that the existing situation needed to change. The Council stated that although the process used in the instant case was fair and reasonable, it had provoked a considerable level of anxiety in many local residents that could have been avoided.

#### **Ombudsman Opinion**

It was the Ombudsman's opinion that as the Council acknowledged safety issues, it was not unreasonable to employ a traffic consultant purely for the purpose of providing traffic flow and projected traffic impact of a road closure information to progress the consideration of a road closure.

The Ombudsman accepted that the traffic engineer's rationale that Thursday had the highest overall daily traffic volume which allowed modelling of worst case scenarios.

The Ombudsman anticipated that the outcome of the questionnaire would not have been significantly different if additional information about the safety concerns were provided by the Council. Whether or not this information may have changed the outcome of the questionnaire, the Ombudsman advised the complainant that he intended to advise the Council that while the information provided on the questionnaire was not unreasonable, it would have been better to provide more information about why the proposal was being suggested.

The Ombudsman considered the complainant's concerns that the road closure impact assessment report may have unreasonably projected traffic flows, particularly onto an adjoining street. In relation to this matter, it was noted that the Council relied on the expert advice of the traffic engineer. It is the Ombudsman's opinion that it was not unreasonable for the Council to rely on expert advice that is from an independent firm and based on data collected from the area.

In relation to parking issues on the street, the Council provided evidence about the level of parking enforcement in this street. The data provided by the Council indicated a large increase in the amount of infringement notices issued in 2005 as a result of regular surveillance. Additionally, the Council advised that if residents immediately notified the Council of any truck double-parking in the street, it may have been possible to send a parking ranger straight to the area to deal with the matter.

It was the Ombudsman's opinion that it was unreasonable and unnecessary for the Council to implement a road closure, temporary or otherwise, at this time.

### The Complaint

The complainants alleged that the Council did not clearly communicate its decision to them regarding their development application and that significant amounts of money and time were spent in proceeding with the development under the misapprehension that consent had been granted. The complainants further alleged that two Councillors were members of a Progress Association which was opposed to the planned land use and the complainants believed the Councillors should not have participated in the Council decision-making process regarding the development application, because they had a conflict of interest.

### Ombudsman Investigation

Although the Ombudsman did not require Council to provide a report at the time the formal investigation was initiated a decision was made to interview the persons and witnesses that the Ombudsman considered were able to assist in the investigation of the matters of concern. Based on the Ombudsman's discussions with Council's Mayor, Acting Chief Executive, and the newly-appointed Planning Officer, the Ombudsman understood that there would be ongoing discussions involving the complainants and the Council which may have provided the opportunity to resolve the complainant's principal concern - the apparent lack of opportunity to develop the property concerned. It was not the Ombudsman's intention proceed to determine any matter which may have been the subject of an appeal to the Environment Resources and Development (ERD) Court.

The Ombudsman investigation was conducted in two stages with the hearing of the complainants, the former Mayor, the Acting Chief Executive Officer and Planning Officer and further subsequent communications with the complainants. A Councillor whom the complainants alleged, was biased and had a conflict of interest as a member of the Development Assessment Panel was also interviewed by the Ombudsman.

### Ombudsman Opinion

In relation to the matter of "conflict of interest" the *Local Government Act* emphasizes it as "*not being a benefit or detriment that would be enjoyed or suffered in common with all or a substantial proportion of the ratepayers, electors or residents of the area or a ward or some other substantial class of persons.*" On the evidence before the Ombudsman a substantial proportion of the ratepayers of the area were members of the Progress Association and the Ombudsman did not think there was evidence to show that the Councillors were caught by the primary aspects of the definition of conflict of interest, under the Act.

It became apparent to the Ombudsman, nonetheless, that the complainants felt a sense of unfair treatment in the process, by reason of what they saw as a lack of transparency and failure in effective communication on the part of the Council and its administration. The complainants felt that whatever the planning merits their case may have had, local bias may have prevailed in the decision-making process. Lack of timely and effective communication which may have resulted from the actual dealings that took place would only have compounded such impressions on the complainant's part.

The Ombudsman did not hold the opinion that there was any intention on the part of the Council and administration to deceive the complainants as to the decision-making process. There had been some difficulties with an earlier administration and these problems have since been overcome. As there was no remedy for the Ombudsman to provide for the complainants it was not necessary to proceed to a more detailed analysis of what had occurred with the previous administration.

The Ombudsman reminded Council that clarity in communication is a cornerstone of good administration and decisions should be based on relevant matters - that is, relevant at law - and not based on speculative matters such as private opinion as to the possible consequences of an approved development. Likewise, decisions should be recorded appropriately to show transparency of the decision-making process.

### The Complaint

The complainant alleged that the Council failed to enforce conditions of the development approval relating to her residence. The property was developed under Community Title and the complainant represented a number of residents at that address.

### Ombudsman Investigation

The Ombudsman met with the complainant and a number of other residents on site and the complainant reported a number of problems which residents believed had not been properly managed by Council. These included

- House location not in accordance with development approval
- Inadequate off-road parking
- Inadequate room to turn vehicles around
- Retaining walls and fences poorly constructed
- Water tanks not installed
- Reserve not developed
- Water meter situated under private road
- Electricity meter for all houses situated in one residence

The complainant reported that Council was aware the homes had been built further into the block than the development application had stipulated and this had caused significant problems with vehicle turning and parking. The complainant understood that Council had threatened legal action against the developer for failing to comply with the development plan but this had not proceeded.

Senior Planning staff and Inspectors were interviewed during the Ombudsman investigation and it was the view of Council that, although it was acknowledged the developer was in breach of the development approval, negotiation was likely to produce a more satisfactory outcome for the homeowners than prosecution. With this in mind Council had, over a period of time, engaged in a number of negotiations with the developer resulting in amendments to the development. Council recognized that progress had been slow in some areas and that it was understandable that the affected residents were frustrated.

During the Ombudsman investigation the Council engaged the services of a Senior Planner specifically to work on the outstanding development issues. These included

- compliant fence construction
- installation of water tanks
- vehicle turning circle

The Ombudsman was advised that the water tanks have now been installed and Council was progressing the other matters. The Council provided the complainant with a progress report and the residents have responded to the Council with a range of other concerns for consideration.

### Ombudsman's Opinion

Issues such as the water meter and pavers were not considered by Council as they were matters for other authorities or for the property purchasers and developer to resolve.

With regard to the conditions of the development approval, it was the Ombudsman's opinion that the Council has taken reasonable steps to find an appropriate remedy in those areas where compliance has been an issue. Council has utilized the provisions of the *Development Act* to remind the developer about compliance and it has, where appropriate, negotiated to find a remedy which might satisfactorily address the concerns of the residents. It was recognized that the complainants had been dealing with problems relating to the development of the property for some years and that, understandably, there were tensions between Council, the developer and the residents. Some issues were specifically between the property purchasers and the developer and were not matters for Council to resolve. Others, which were deemed to be within the responsibility of Council were, in the Ombudsman's opinion, reasonably addressed.

## Other Authorities

### ■ Complaints Received 01 July 2005 to 30 June 2006

Aboriginal Housing Authority	20	5.6%
Adelaide & Mount Lofty Ranges NRM Board	1	0.3%
Adelaide Cemeteries Authority	2	0.6%
Adelaide Festival Centre Trust	1	0.3%
Central Northern Adelaide Health Service	4	1.1%
Chiropractors Board	1	0.3%
Citrus Board	1	0.3%
Commissioner for Equal Opportunity	1	0.3%
Coroner	5	1.4%
Country Fire Services Board	7	2.0%
Courts Administration Authority	33	9.3%
Dental Board of South Australia	1	0.3%
Development Assessment Commission	6	1.7%
Employee Ombudsman	1	0.3%
Flinders University Council	6	1.7%
Gawler Health Service	1	0.3%
Guardianship Board	7	2.0%
Health & Community Services Complaints Commissioner	10	2.8%
Home Start	1	0.3%
Institute of Medical & Veterinary Science	1	0.3%
Legal Practitioners Conduct Board	3	0.8%
Legal Services Commission	15	4.2%
Liquor & Gambling Commissioner	3	0.8%
Lotteries Commission	3	0.8%
Medical Board of SA	2	0.6%
Motor Accident Commission	7	2.0%
Native Vegetation Authority	1	0.3%
Physiotherapists Board	2	0.6%
Police Complaints Authority	13	3.7%
Public Advocate	8	2.2%
Public Trustee	69	19.4%
RSPCA Inspector	2	0.6%
SA Ambulance Service	11	3.1%
SA Community Housing Authority	1	0.3%
SA Forestry Corporation	1	0.3%
SA Metropolitan Fire Service	1	0.3%
SA Superannuation Board	6	1.7%
SA Tourism Commission	1	0.3%
Sheriff	1	0.3%
State Emergency Service	1	0.3%
Trans Adelaide	7	2.0%
University of Adelaide Council	10	2.8%
University of South Australia Council	11	3.1%
Veterinary Surgeons Board	1	0.3%
WorkCover Corporation	66	18.5%
<b>Total</b>	<b>356</b>	

## Other Authorities

### ■ Complaints Completed 01 July 2005 to 30 June 2006

Aboriginal Housing Authority	17	4.7%
Adelaide Cemeteries Authority	2	0.6%
Adelaide Festival Centre Trust	1	0.3%
Central Northern Adelaide Health Service	3	0.8%
Citrus Board	2	0.6%
Commissioner for Equal Opportunity	2	0.6%
Coroner	5	1.4%
Country Fire Services Board	5	1.4%
Courts Administration Authority	33	9.2%
Dental Board of South Australia	1	0.3%
Development Assessment Commission	7	1.9%
Employee Ombudsman	1	0.3%
Fleurieu Animal & Plant Control Board	1	0.3%
Flinders University Council	4	1.1%
Gawler Health Service	1	0.3%
Guardianship Board	8	2.2%
Health & Community Services Complaints Commissioner	9	2.5%
Home Start	2	0.6%
Institute of Medical & Veterinary Science	1	0.3%
Legal Practitioners Conduct Board	3	0.8%
Legal Services Commission	14	3.9%
Liquor & Gambling Commissioner	3	0.8%
Lotteries Commission	3	0.8%
Medical Board of SA	1	0.3%
Motor Accident Commission	7	1.9%
Physiotherapists Board	2	0.6%
Police Complaints Authority	11	3.1%
Public Advocate	9	2.5%
Public Trustee	71	19.8%
RSPCA Inspector	3	0.8%
SA Ambulance Service	12	3.3%
SA Forestry Corporation	1	0.3%
SA Metropolitan Fire Service	1	0.3%
SA Superannuation Board	8	2.2%
SA Tourism Commission	1	0.3%
Sheriff	1	0.3%
South Australian Local Government Grants Commission	1	0.3%
State Emergency Service	1	0.3%
Trans Adelaide	6	1.7%
University of Adelaide Council	11	3.1%
University of South Australia Council	8	2.2%
Veterinary Surgeons Board	2	0.6%
WorkCover Corporation	74	20.6%
<b>Total</b>	<b>359</b>	

## Other Authorities

### Complaints Received : Issues 01 July 2005 to 30 June 2006

	(Other)	Aboriginal Housing Authority	Courts Administration Authority	Legal Services Commission	Public Trustee	WorkCover Corporation	Total	Percentage
Access to Information						1	1	0.3%
Administration	43	1	12	3	18	20	97	27.2%
Administrative practices/policies	63	2	13	4	32	10	124	34.8%
Approvals (permits, licenses, registrations)	1						1	0.3%
Citizen Rights	1					2	3	0.8%
Communication	3		2		3	1	9	2.5%
Daily routine	1						1	0.3%
Duty of care	1						1	0.3%
Fees/charges/levies	7				1	1	9	2.5%
Financial assistance	1			2	1	3	7	2.0%
Financial issues	8	1	4		12	6	31	8.7%
Housing	2	16					18	5.1%
None	4				1	3	8	2.2%
Officer misconduct	4						4	1.1%
Ordinances, Regulations, By-laws	1						1	0.3%
Other			1				1	0.3%
Planning and development	5						5	1.4%
Record keeping			1				1	0.3%
Services	1			6	1	3	11	3.1%
Superannuation/Retirement Benefits	6						6	1.7%
Transport	1						1	0.3%
Workers Compensation						16	16	4.5%
<b>Total</b>	<b>153</b>	<b>20</b>	<b>33</b>	<b>15</b>	<b>69</b>	<b>66</b>	<b>356</b>	
	43.0%	5.6%	9.3%	4.2%	19.4%	18.5%		

### Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

	(Other)	Aboriginal Housing Authority	Courts Administration Authority	Legal Services Commission	Public Trustee	WorkCover Corporation	Total	Percentage
Advice Given	54	8	13	6	27	44	152	42.3%
Conciliated	1						1	0.3%
Declined	12						12	3.3%
Full Investigation	6		1		1	3	11	3.1%
Preliminary Investigation	73	9	16	7	43	25	173	48.2%
Withdrawn	4		3	1		2	10	2.8%
<b>Total</b>	<b>150</b>	<b>17</b>	<b>33</b>	<b>14</b>	<b>71</b>	<b>74</b>	<b>359</b>	
	41.8%	4.7%	9.2%	3.9%	19.8%	20.6%		

### Aboriginal Housing Authority

#### ■ Complaints Received : Issues 01 July 2005 to 30 June 2006

Administration - Inadequate investigation of complaint	1	5.0%
Administrative practices/policies - Failure to investigate or act	1	5.0%
Administrative practices/policies - Unfair/discriminatory practices/policies	1	5.0%
Financial issues - Cost recovery	1	5.0%
Housing	1	5.0%
Housing - Allocation	8	40.0%
Housing - Damages	1	5.0%
Housing - Disruptive tenants	2	10.0%
Housing - Maintenance	1	5.0%
Housing - Termination	1	5.0%
Housing - Transfer	2	10.0%
<b>Total</b>	<b>20</b>	

#### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	7	41.2%
Advice Given - Referred to Agency	1	5.9%
Preliminary Investigation - Not Sustained - Explanation Given	6	35.3%
Preliminary Investigation - Partly Resolved in Favour of Complainant	1	5.9%
Preliminary Investigation - Reasonable Resolution	2	11.8%
<b>Total</b>	<b>17</b>	

### Courts Administration Authority

#### ■ Complaints Received : Issues 01 July 2005 to 30 June 2006

Administration - Delay	9	27.3%
Administration - Unreasonable administrative decision/policy	3	9.1%
Administrative practices/policies - Conduct contrary to policies	1	3.0%
Administrative practices/policies - Erroneous decisions	1	3.0%
Administrative practices/policies - Failure to investigate or act	1	3.0%
Administrative practices/policies - Failure to respond	1	3.0%
Administrative practices/policies - Inadequate/inaccurate records maintained	2	6.1%
Administrative practices/policies - Misleading/wrong information or advice	4	12.1%
Administrative practices/policies - Rude/biased/discriminatory/intimidatory	2	6.1%
Administrative practices/policies - Unfair/discriminatory practices/policies	1	3.0%
Communication - Unprofessional conduct/attitude of staff	2	6.1%
Financial issues - Cost recovery	2	6.1%
Financial issues - Delays/refusal to pay	1	3.0%
Financial issues - Level of charges	1	3.0%
Other	1	3.0%
Record keeping - Inaccurate records	1	3.0%
<b>Total</b>	<b>33</b>	

#### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	9	27.3%
Advice Given - Other/General	2	6.1%
Advice Given - Referred to Agency	2	6.1%
Full Investigation - Reasonable Resolution	1	3.0%
Preliminary Investigation - Not Sustained - Explanation Given	9	27.3%
Preliminary Investigation - Partly Resolved in Favour of Complainant	3	9.1%
Preliminary Investigation - Reasonable Resolution	4	12.1%
Withdrawn by Complainant	3	9.1%
<b>Total</b>	<b>33</b>	

## Legal Services Commission

### Complaints Received : Issues 01 July 2005 to 30 June 2006

Administration - Delay	1	6.7%
Administration - Inadequate investigation of complaint	1	6.7%
Administration - Other	1	6.7%
Administrative practices/policies - Erroneous decisions	2	13.3%
Administrative practices/policies - Failure to give reasons for decisions	1	6.7%
Administrative practices/policies - Failure to respond	1	6.7%
Financial assistance - Eligibility criteria	2	13.3%
Services	1	6.7%
Services - Access	4	26.7%
Services - Termination	1	6.7%
<b>Total</b>	<b>15</b>	

### Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	2	14.3%
Advice Given - Other/General	4	28.6%
Preliminary Investigation - Not Sustained	1	7.1%
Preliminary Investigation - Not Sustained - Explanation Given	2	14.3%
Preliminary Investigation - Partly Resolved in Favour of Complainant	1	7.1%
Preliminary Investigation - Reasonable Resolution	3	21.4%
Withdrawn by Complainant	1	7.1%
<b>Total</b>	<b>14</b>	

## Public Trustee

### Complaints Received : Issues 01 July 2005 to 30 June 2006

Administration - Delay	7	10.1%
Administration - Other	1	1.4%
Administration - Payments	3	4.3%
Administration - Unreasonable administrative decision/policy	7	10.1%
Administrative practices/policies	1	1.4%
Administrative practices/policies - Conduct contrary to policies	1	1.4%
Administrative practices/policies - Delay	6	8.7%
Administrative practices/policies - Erroneous decisions	1	1.4%
Administrative practices/policies - Failure to give reasons for decisions	3	4.3%
Administrative practices/policies - Failure to investigate or act	2	2.9%
Administrative practices/policies - Failure to respond	5	7.2%
Administrative practices/policies - Misleading/wrong information or advice	2	2.9%
Administrative practices/policies - Rude/biased/discriminatory/intimidatory	2	2.9%
Administrative practices/policies - Unfair/discriminatory practices/policies	6	8.7%
Administrative practices/policies - Unreasonable use of authority/power	3	4.3%
Communication - Lack of care or consideration shown	3	4.3%
Fees/charges/levies - Imposition	1	1.4%
Financial assistance - Calculation of benefits	1	1.4%
Financial issues	2	2.9%
Financial issues - Cost recovery	2	2.9%
Financial issues - Delays/refusal to pay	5	7.2%
Financial issues - Miscalculation	2	2.9%
Financial issues - Overcharge/payment	1	1.4%
Services - Access	2	2.8%
<b>Total</b>	<b>69</b>	

### Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	19	24.6%
Advice Given - Other/General	4	5.8%
Advice Given - Referred to Agency	4	5.8%
Full Investigation - Reasonable Resolution	1	1.4%
Preliminary Investigation - Not Sustained	2	2.9%
Preliminary Investigation - Not Sustained - Explanation Given	24	34.8%
Preliminary Investigation - Partly Resolved in Favour of Complainant	8	11.6%
Preliminary Investigation - Reasonable Resolution	9	13.0%
<b>Total</b>	<b>71</b>	

## Public Trustee

Delay in administration of deceased estate

### The complaint

The complainant's spouse decided to entrust her testament in the Public Trustee of SA. Although there were numerous private sector operators willing to perform this function, the two spouses wanted to show support for and confidence in a public instrumentality when either of them became deceased and to administer the wishes as per the will.

Following the death of his spouse, the complainant approached PTSA requesting action to put into effect his spouse's wishes. Although the whole matter should have been relatively simple for PTSA to proceed, as the property concerned consisted largely of the family house with no complicating factors, a year had passed since the death of the complainant's spouse and the matter was nowhere near finalized.

It was then that the complainant, out of frustration and not prepared to wait any longer, requested the Ombudsman's intervention.

### Ombudsman Investigation

The ensuing investigation found that the complainant (and his financial adviser) promptly provide to PTSA all the documents required to act on the testament - when there was one document yet to be supplied, the investigation found that PTSA did not ask the complainant for it (thus further delaying any action).

The investigation also found that the complainant made repeated attempts to instigate action and was invariably given spurious reasons for the delays and a line of commitments that the issue would be resolved almost immediately - which did not occur anyway.

In agency favour, the investigation established that there were indeed some personnel and other restriction that made it harder than it otherwise would have been to attend to the will. These, nevertheless, were not administrative difficulties of such magnitude as to excuse such unresponsiveness as happened in this case.

### Ombudsman Opinion

The Ombudsman formed a view that the Public Trustee was indeed deficient in the manner in which the complainant spouse's testament was (or rather was not) put into effect.

Fortunately, as it turned out, there was no need for a formal Ombudsman recommendation, as PTSA readily conceded that it was at fault and accepted responsibility for the delays.

As a result of the Ombudsman's intervention, the complainant:

- received an official visit from two executives of the Public Trustee;
- obtained a formal PTSA apology for the situation;
- was refunded a large portion of the will administration fee;
- could finally be assured of appropriate and immediate action.

This case demonstrates that at times, a formal Ombudsman recommendation is unnecessary - when the Ombudsman's intervention alone prompts the agency to look closely at what has transpired, concede error and propose suitable remedial action.

**The complaint**

The alleged that the Public Trustee had failed to act regarding the disputed estate of his friend. It was the complainant's belief that some people were exploiting his friend with a view to becoming beneficiaries of his Will and that Public Trustee failed to protect him despite an Administration Order being granted by the Guardianship Board because of these very issues.

**Ombudsman Investigation**

The complainant had been a long-time friend of the now-deceased and a tenant in his home for many years. He alleged that while convalescing in hospital after an illness his friend was visited by a couple who asked him to make a Will leaving his estate to a woman friend of theirs and in return she would care for him for the rest of his life.

An employee at the hospital believed the complainant's friend may have been exploited by the visitors and the community health case manager was notified about the agency's concerns. An application to the Guardianship Board ("the Board") for an Administration Order was successful and the Board requested that the Public Trustee undertake an investigation to establish whether or not the complainant's friend had testamentary capacity at the time of making his Will.

The Public Trustee commenced an investigation and was provided with a medical report which raised questions about the friend's mental state when he made his Will. Before the investigation was completed, however, the man died.

The Public Trustee advised the Ombudsman that it had the option of requesting a two month extension from the Guardianship Board but it did not do so because it did not believe it could have completed the investigation within that time frame. Instead, it passed the relevant reports on to the lawyer representing the sole beneficiary because it believed the probate process would be an appropriate avenue to test the validity of the Will.

The complainant approached the Public Trustee for the medical report so he could challenge the Will and was told he could not have the information because he was neither a relative nor a beneficiary. The Public Trustee advised him that he could contact the beneficiary's lawyer and request the information and when he did this he was again told he could not have it because he had "*no legal interest in the matter.*"

The Will remained unchallenged and the sole beneficiary inherited the home and assets.

**Ombudsman Opinion**

The investigation showed that a number of agencies were sufficiently concerned about the complainant's friend's vulnerability to exploitation that the Guardianship Board granted an Administration Order with the expressed purpose of investigating matters relating to his mental capacity when he made his Will. An investigation was commenced and information was received placing further doubt about the man's mental capacity in recent months. However, rather than seeking an extension from the Guardianship Board so it could continue its investigation and provide relevant information for the purposes of probate, the Public Trustee relinquished its role and gave the information to the beneficiary's lawyer, expecting that he would make it available in the probate application.

The complainant, who believed his friend was being exploited and that he did not know what he was doing because he was mentally ill, was absent from the process. He could not access the information he needed to prove his theory and nor could he challenge the Will because he was deemed as having "*no interest in it.*"

The Public Trustee was the agency charged with the responsibility of representing the man's best interest and without its involvement there was no guarantee the information would have been provided with the probate application. It was the Ombudsman's view that the Public Trustee ought to have pursued the two month extension to ensure that the Probate Registry received all relevant information. There can be no remedy in this particular case but if similar circumstances were to arise in future the Ombudsman would recommend that a prudent measure would be for the Public Trustee to provide information independently to the Probate Registry to ensure that pertinent facts are given consideration.

## WorkCover Corporation

### ■ Complaints Received : Issues 01 July 2005 to 30 June 2006

Access to Information	1	1.5%
Administration - Delay	12	18.2%
Administration - Other	1	1.5%
Administration - Payments	2	3.0%
Administration - Unreasonable administrative decision/policy	5	7.6%
Administrative practices/policies - Delay	3	4.5%
Administrative practices/policies - Failure to respond	1	1.5%
Administrative practices/policies - Misleading/wrong information or advice	1	1.5%
Administrative practices/policies - Unfair/discriminatory practices/policies	3	4.5%
Administrative practices/policies - Unreasonable use of authority/power	2	3.0%
Citizen Rights - Breach of privacy/confidentiality	1	1.5%
Citizen Rights - Discrimination/harassment/racism/intimidation	1	1.5%
Communication - Failure to provide adequate/correct info re diagnosis/treatment	1	1.5%
Fees/charges/levies - Imposition	1	1.5%
Financial assistance	1	1.5%
Financial assistance - Calculation of benefits	1	1.5%
Financial assistance - Eligibility criteria	1	1.5%
Financial issues - Delays/refusal to pay	6	9.1%
Other	3	4.5%
Services - Access	3	4.5%
Workers Compensation	1	1.5%
Workers Compensation - Failure to comply with legislation	3	4.5%
Workers Compensation - Investigations	1	1.5%
Workers Compensation - Miscalculations	3	4.5%
Workers Compensation - Refusal to pay	2	3.0%
Workers Compensation - Unreasonable delay	1	1.5%
Workers Compensation - Unreasonable management of claim	5	7.6%
<b>Total</b>	<b>66</b>	

### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	22	29.7%
Advice Given - Other/General	4	5.4%
Advice Given - Referred to Agency	18	24.3%
Full Investigation - Not Sustained	1	1.4%
Full Investigation - Not Sustained - Explanation Given	2	2.7%
Preliminary Investigation - Not Sustained	1	1.4%
Preliminary Investigation - Not Sustained - Explanation Given	12	16.2%
Preliminary Investigation - Partly Resolved in Favour of Complainant	6	8.1%
Preliminary Investigation - Reasonable Resolution	6	8.1%
Withdrawn by Complainant	2	2.7%
<b>Total</b>	<b>74</b>	

## Other Authorities - Other

### ■ Complaints Received : Issues 01 July 2005 to 30 June 2006

Administration	1	0.7%
Administration - Delay	5	3.3%
Administration - Inadequate investigation of complaint	17	11.1%
Administration - Other	1	0.7%
Administration - Unreasonable administrative decision/policy	19	12.4%
Administrative practices/policies - Conduct contrary to policies	7	4.6%
Administrative practices/policies - Delay	3	2.0%
Administrative practices/policies - Erroneous decisions	12	7.8%
Administrative practices/policies - Failure to investigate or act	19	12.4%
Administrative practices/policies - Failure to respond	2	1.3%
Administrative practices/policies - Inadequate/inaccurate records maintained	1	0.7%
Administrative practices/policies - Misleading/wrong information or advice	3	2.0%
Administrative practices/policies - Rude/biased/discriminatory/intimidatory	2	1.3%
Administrative practices/policies - Unfair/discriminatory practices/policies	8	5.2%
Administrative practices/policies - Unreasonable use of authority/power	6	3.9%
Approvals (permits, licenses, registrations, applications) -	1	0.7%
Citizen Rights - Duty of care	1	0.7%
Communication - Unprofessional conduct/attitude of staff	3	2.0%
Daily routine - Duty of care	1	0.7%
Duty of care - Failure to provide	1	0.7%
Fees/charges/levies - Eligibility criteria	1	0.7%
Fees/charges/levies - Imposition	5	3.3%
Fees/charges/levies - Method of calculation	1	0.7%
Financial assistance - Eligibility criteria	1	0.7%
Financial issues - Cost recovery	1	0.7%
Financial issues - Delays/refusal to pay	1	0.7%
Financial issues - Level of charges	2	1.3%
Financial issues - Miscalculation	1	0.7%
Financial issues - Penalty/refund	3	2.0%
Housing - Agreements	1	0.7%
Housing - Maintenance	1	0.7%
None	4	2.6%
Officer misconduct - Threats/harassment/racism/intimidation	3	2.0%
Officer misconduct - Unreasonable use of power	1	0.7%
Ordinances, Regulations, By-laws - Unreasonable Determination	1	0.7%
Planning and development - General processing	4	2.6%
Planning and development - Permits and approvals	1	0.7%
Services - Access	1	0.7%
Superannuation/Retirement Benefits - Access to benefits	2	1.3%
Superannuation/Retirement Benefits - Interpretation of legislation	1	0.7%
Superannuation/Retirement Benefits - Miscalculation of benefits	2	1.3%
Superannuation/Retirement Benefits - Misleading advice	1	0.7%
Transport - Access to service	1	0.7%
<b>Total</b>	<b>153</b>	

### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

Advice Given	28	18.8%
Advice Given - Other/General	19	12.8%
Advice Given - Referred to Agency	7	4.7%
Conciliated - Reasonable Resolution	1	0.7%
Declined - Alternate Remedy	4	2.7%
Declined - Refused to Investigate	7	4.7%
Full Investigation - Not Sustained - Explanation Given	4	2.7%
Full Investigation - Partly Resolved in Favour of Complainant	2	1.3%
Preliminary Investigation - Not Sustained	4	2.7%
Preliminary Investigation - Not Sustained - Explanation Given	37	24.8%
Preliminary Investigation - Partly Resolved in Favour of Complainant	10	6.7%
Preliminary Investigation - Reasonable Resolution	22	14.8%
Withdrawn by Complainant	4	2.7%
<b>Total</b>	<b>149</b>	

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## Case study

### SA Ambulance Service

#### Unreasonable refusal of request to waive fee for patient transport

##### The complaint

The complainant expressed her concerns the ambulance service charged her the full fee for transport to hospital a time at which the complainant believed her membership of the service was still current. The account was disputed with the agency, with a request that the fee be waived however, the complainant's request was refused.

##### Ombudsman Investigation

The Ombudsman was provided with details of the complainant's membership from the service's computer records and was advised that the complainant's original membership application was dated December 2003. The payment for most of the membership fee was by the complainant in December with the remaining balance paid in April 2004.

In November 2004, the ambulance service sent out a notice reminding the complainant that her membership was coming up for renewal in December 2004. Shortly before the due date, another reminder notice was sent, again indicating that membership expired after 16 December 2004. The precise expiry time for membership renewal was midnight on 16 December, 2004. It was clear that when the complainant used the ambulance service on 21 December 2004, her membership had already expired five days earlier.

It appears that payment to renew your membership was not made until early in January 2005. Unlike other forms of insurance, no grace period is granted by the Ambulance Service after membership falls due. The agency requires that membership be current at all times, otherwise a full fee for service must be paid. In the complainant's case, because her membership had expired, she received an account for the use of an ambulance calculated on the basis of the standard fee for an emergency transport plus \$3.70 per kilometre for the journey. The Ombudsman was advised that the Minister, not the ambulance service, sets the fees, and fees can only be waived in special circumstances. Unfortunately, the complainant's circumstances were deemed not to give sufficiently good reason for the service to excuse payment.

The Ombudsman recommended that the complainant should contact the agency to arrange for the debt to be paid by instalments. The Ombudsman understood that, earlier this year, a collection agency was appointed by the ambulance service to instigate an instalment scheme for payment of this debt. Subsequently, an arrangement with the complainant was sought after to pay an amount per fortnight, with the first payment being due in January 2005. However, at the time the complainant made her intentions clear that she would be disputing the debt, and to accommodate this, the ambulance service did not, at the time, pursue the debt any further.

##### Ombudsman Opinion

It was the Ombudsman's view that the ambulance service did not act unreasonably in requiring the complainant to pay for a service they provided at a time when her membership had expired. In the circumstances, her request that the fee be waived could not be justified.

It was commendable that the ambulance service sent the complainant two reminder notices, one well in advance and the other closer to the renewal date, giving her ample opportunity to arrange payment by instalments to keep her membership current if she was experiencing financial hardship. The ambulance service also acted fairly in not requiring settlement of the debt before giving the complainant an opportunity to dispute the charge. However, since some time has passed, it was expected that the service would take the necessary steps to recover the debt. The Ombudsman recommended that the complainant contact the agency with a view to reaching an agreement as to how the account would be paid.

**The complaint**

The complainant stated that she was unfairly treated by a University College in that the same evidence which was presented to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) on review by the department's Student Compliance Officer, showed that she attended at least eighty percent of scheduled course contact hours for the period ending 29 October 2004 and the evidence of the education provider supported her claim of satisfactory attendance for the relevant period.

Moreover further evidence showed that there were extenuating circumstances for the complainant's non-attendance and that the evidence resulted in the revocation of cancellation of the visa under section 137L of the *Migration Act*. This in turn reflected on the opinion and actions of the education provider whose actions in pursuance of its obligations under the *Education Services For Overseas Students Act* resulted in the adverse circumstances in which the complainant found herself to be.

The complainant sought by way of a remedy, a refund of her first semester fees. During her meeting with the Ombudsman she said that the refund should be in the sum of \$3000 but provided no reasons for arriving at such figure.

**Ombudsman Investigation**

Initially the Ombudsman investigation resulted in a meeting between the Director of the College, the complainant, her partner and another support person. It seemed that the only ostensible purpose of the meeting was to seek clarification of the complainant's and the College's respective positions. However, as the meeting progressed it resulted in quite opposite opinions as to its nature and intent.

Upon reading all the relevant information before the Ombudsman, there were a number of unresolved material questions which went to the heart of the complaint itself. The Ombudsman pursued further particulars with the review officer and sought copies of any notes, transcripts or other details to assist in the investigation. The Ombudsman had no immediate right of access to the Federal file and asked that the Department give consideration to the Ombudsman's request for the file and advise accordingly. The Ombudsman further discussed his interest in that regard with another officer of the Department and then, with the Federal Ombudsman on the basis of reciprocal assistance between Ombudsmen Offices.

The Ombudsman further sought copies of the brief from the complainant's representative at the review. Those papers were provided. Confirmation of other matters was provided by the police officer who had been involved in an "extortion" case involving the complainant, one of the later and more serious concerns of the complainant.

The complainant was interviewed twice by the Ombudsman and on both occasions it appeared that there was a element of "vagueness" on her part, about the chronology of relevant events.

The College for its part, was genuinely concerned as it is for all overseas students, for the student's commitment to her course and her wellbeing when she failed to attend. The Ombudsman was of the opinion that the Director's conduct was at all times responsible and that the College's actions were taken in good faith. Looking at all the circumstances of the case the Ombudsman could understand the Director's lingering irritation with the complainant's claim for a refund in the apparent absence of any special circumstances.

The Ombudsman did not think it necessary to pursue this aspect of the matter by way of further investigation. The complainant had been given ample opportunity to make out her case and at its strongest, it appeared that her complaint simply turned on the finding in her favour during the review process of DIMIA.

### Ombudsman Opinion

The most that can be said is that the certified copy of the College's Absenteeism Summary for the student was misleading on the face of the document in that it appeared to refer to an attendance rate of 82.91 %. This computer-generated document should however been read as an integrated whole in order to understand its contents. It is highly probable now that the complainant's agent on review, was able to persuade the review person of the complainant's "*satisfactory attendance*" by a superficial reading of the certified document. In fact, had the particulars been properly interpreted by the Department's review officer during the review, the position could have been entirely different.

There were a number of factual trails in the case which gave rise to questions as to what real impact did the other special circumstances have on the complainant's lack of adequate attendance. None of the information before the Ombudsman provided a satisfactory basis for finding that there was any error, mistake or defect of administration on the part of the College in the treatment of the complainant's case. The only error was in the form of presentation of the Absenteeism Summary.

It may also be observed that the complainant in fact benefited from that form of presentation in achieving revocation of the cancellation of the visa. In that sense she gained a decision in her favour. In the Ombudsman's opinion there was no legal or moral basis whatsoever for any refund of the fees which she had paid. The refund could not be the reverse consequence of a successful review by the Federal authority.

The Ombudsman gave serious consideration as to whether there was any "*compensatory factor*" which remained in the case. Compensation must have a proper basis eg., frustration of contract or at least genuine moral considerations. At best, from the complainant's point of view, it appeared there may have been a borderline circumstance which had clouded the question of her entitlement; and that is the form of the absenteeism summary and what may have been tentatively described as an error of description from which other assumptions and possible inconvenience may have occurred. This form has since been corrected to prevent future recurrence of this problem.

As to the present case, and entirely at the discretion of the College, the Ombudsman suggest that a settlement amount of \$300 would be appropriate. It was emphasized that this was only an *ex gratia* settlement and consistent with the College's good faith in all its past dealings with the complainant, was an act of goodwill. The Ombudsman was prepared to treat such practical approach as proper and final conclusion to the case.

It was clear from the evidence that the College conducted its business in a highly professional and competent manner. The circumstances of this case were unique and did not reflect in any way upon the ordinary and proper business of the College. It was perhaps unfortunate that issues entirely unrelated to the work of the College had become inseparably combined in the case, casting some doubt as to the real reasons for the complainant's non-attendance at her course. However the Ombudsman's opinion must be based on the known facts and not presumptions.

**The complaint**

A doctor alleged that in 2004 he was advised by the Board that it had received a complaint about him and that it intended auditing his practice. However, when the Board learned the doctor was going to retire, the audit was allegedly cancelled. The doctor believed that Board had failed to appropriately deal with the complaint and that it should have given him details of the allegations and allowed him to respond.

**Ombudsman Investigation**

In 1997 the Medical Board received a number of complaints about the doctor's practice. The matters were still being considered in 1998 when the doctor asked the Board for a Certificate of Good Standing so that he could move interstate. The then Medical Board Registrar, informed the doctor that there were outstanding matters concerning his practice and the doctor was asked to enter into an undertaking to fulfil certain practice requirements. The doctor reluctantly consented to the undertaking arrangement so he would be given the Certificate of Good Standing from the Board.

In due course the Medical Board forwarded an "Information Form" to the interstate Medical Board enabling the doctor to obtain registration in that State. The Board informed the Ombudsman that it did not inform the interstate Board that the doctor had been investigated in this State or that he had agreed to an undertaking. The Board did not pass on the information about the undertaking because the agreement was a voluntary arrangement and the Information Form only asked if any special conditions applied to the doctor's registration. The Board said it believed it could have been in breach of privacy laws if it had mentioned the undertaking without the doctor's permission.

After forwarding the Information Form to the interstate Board, the South Australian Medical Board wrote to the doctor advising him that all "flags" on the National Compendium of Medical Registers had been lifted and all existing complaints were closed on the basis of the existing undertaking. The doctor stated that he believed the letter meant there were no longer any outstanding matters and he was not told at the time that the undertaking may later be reviewed. He maintained he was not approached by either Medical Board during the two years he was living interstate.

In 2001 the doctor returned to South Australia and in 2003 he was again investigated by the Medical Board. The allegation proved to be without substance but the doctor said the Board reminded him then about the 1998 undertaking.

In 2004 a further matter was investigated, and later in the year another concern was brought to the Board's attention. On this occasion, rather than conduct an investigation, the Medical Board asked if the doctor would submit to an audit to establish his level of compliance with the 1998 undertaking.

The doctor advised the Board that he wanted the audit held over until after he had provided evidence to an Inquiry which was, at that time, being held into the Medical Board. The Board responded that the doctor had voluntarily given undertakings about future practice in 1998 and a review before the Statutory Authorities Review Committee did not preclude the Board from fulfilling its statutory functions.

The Board informed the doctor it had received information suggesting he may have used treatment which contravened the 1998 undertaking and it had sought to conduct an audit to ascertain whether the doctor's treatment of other patients accorded with the guidelines. The Board added that it had recently learned that the doctor was retiring and it did not believe it would be necessary to proceed, but it would "revisit the matter" if the doctor resumed practice in the future. The doctor was asked to tell the Medical Board when he intended ceasing practice and to agree that he would advise the Board if he intended resuming his practice in the future.

In September 2005 the Board again wrote to the doctor stating that it was renewing its request to conduct an audit as it had not received the necessary documentation indicating the doctor's date of retirement. The necessary information was duly provided and the Medical Board did not pursue the audit.

### Ombudsman's Opinion

Under the *Medical Practitioners Act 1983*, and the *Medical Practice Act 2004* which replaced it, the Medical Board may choose whether or not to investigate a matter. In the circumstances of the matters concerning the complainant, the Board exercised its discretion not to investigate the specific allegations and, instead, to address key elements, as well as establish whether the doctor was complying with the 1998 undertaking, by asking if he would submit to an audit. Despite the doctor's belief he was being compelled to undertake an audit the Medical Board's letters to him always referred to a request to allow an audit to be conducted and not a requirement to do so.

The doctor stated he was not told the nature of the complaint and nor was he given an opportunity to respond to it. The Ombudsman investigation indicated, however, that whilst the doctor was not given specific details, he was advised that the information received suggested he may not have been complying with the undertaking and the audit was a mechanism for checking his practice against that undertaking.

It was the Ombudsman's preliminary opinion that the Board's actions with respect to the manner in which it attended to the complaint against the doctor were reasonable and was of the view that it was reasonable for the Board to seek a review of the 1998 undertaking and that the doctor was requested, not required, to submit to the audit.

With respect to the undertaking itself, the Ombudsman had some additional comment to make. A number of matters had been brought to the Board's attention and it was not unreasonable to request that the doctor enter into an undertaking around certain practices. However, when the doctor moved interstate there was no follow-through on the undertaking and it appeared to be essentially ignored until he returned to South Australia.

If it was the intention of the undertaking to be a serious attempt at ensuring compliance it should, in the Ombudsman's opinion, have specified that the conditions to which the doctor had agreed would be monitored periodically and that this might occur regardless of what State the doctor was practicing medicine in. Had this occurred, the Board would not have felt concerned about releasing details of the undertaking to the interstate Medical Board and the doctor's practice could have been monitored accordingly. The doctor too, would have clearly understood the conditions of the undertaking and he would not have been surprised to be asked to submit to an audit some years later.

The Ombudsman views with respect to the undertaking have been put to the Medical Board and it is the Ombudsman's understanding that such agreements now have reviews, with time frames, built into them and parties are advised in writing about conditions and expectations.

**The complaint**

The raised a series of questions about the operations of the Board, particularly about how it collected monies from growers and how it may contribute funds to the Australian Citrus Growers Federation.

**Ombudsman Investigation**

This matter was the subject of a full investigation pursuant to section 18 (1a) of the *Ombudsman Act, 1972*. There were parts of the complaint which were outside of the Ombudsman's jurisdiction such as matters relating to Court proceedings between the complainant and the Board and the actions of the Citrus Growers of South Australia which is not a State Government agency. Having considered the information provided by the complainant, the Ombudsman felt there were certain matters which were appropriate for investigation. The Ombudsman wrote to the Board requiring its response to a series of questions about the arrangements whereby it collected funds on behalf of the Citrus Growers of South Australia which it was alleged were then paid to the Australian Citrus Growers Federation. The Ombudsman also sought information about how the Board registered growers, how it determined and applied charges and the process by which growers may apply for a refund of such charges.

The Board's response was forwarded to the complainant for his consideration and comment. The complainant subsequently provided both verbal and written comments on the information provided by the Board. Around this time the Ombudsman received a like complaint from a second person and, with the complainant's joint concurrence, the Ombudsman dealt with both matters together in the one investigation.

The Ombudsman agreed there were matters not adequately answered by or requiring clarification from the Board and it was decided to undertake further investigation. The Ombudsman met with representatives of the Board and received further information relevant to the complaint. Documentary evidence from the Board was also sought to support its position on the funding arrangement issue.

At this meeting it was established that now the mechanism by which funds are collected from registered citrus growers, are as prescribed by the *Primary Industry Funding Schemes (Citrus Growers Fund) Regulations 2005*, a copy of which was subsequently provided to the complainant. These regulations prescribe arrangements, which are essentially the same as had been in place administratively whereby the Board, as an agent for the Citrus Growers of South Australia, collected grower contributions through registered packers and forwarded these to the Citrus Growers of SA who then forwarded monies to the Australian Citrus Growers Federation. The main difference now is that, under the regulations, the Fund is administered by the Minister, the Board forwards contributions it collects to the Minister who then may make payments to Citrus Growers of South Australia, which amongst other purposes can be applied for "*fees for affiliation of the body with regional, State or national citrus or horticulture industry bodies*".

Further documentary evidence provided by the Board showed that, following the formation of the Citrus Growers of South Australia in late 1993, there was a consultative process through direct postal communication with all registered growers and a series of meetings, which supported the Board collecting levies on behalf of Citrus Growers of South Australia. There was evidence that, in January 1994, the Board had advised the then Minister of Primary Industries that it would collect contributions from growers to fund Citrus Growers of South Australia. Further there was evidence that, in November 1995, the then Minister for Primary Industries, in response to a submission from the South Australian Farmers Federation that grower levies be directed to a grower's preferred representative organisation, rather than exclusively to Citrus Growers of South Australia, stated "*The original involvement of the Board in the collection of levies was on the basis of overwhelming industry support for the idea. I believe that any changes to the process can only be made on the same basis. Therefore, it is not appropriate for me to direct the Board in the manner that has been proposed*". The Minister also added "*I have encouraged both organisations to recommence discussions, so that a position that is supported by the whole of industry, or a substantial majority, can be presented to me*".

It was the case that historically, the Board did pay money out of its own funds directly to the Australian Citrus Growers Federation as a contribution to that organisation's running costs. Its position was that it did this to assist growers on the basis that a strong grower body was necessary in order to maintain an orderly market for citrus. This practice ceased in 2001 when the Board reached the view it was no longer appropriate for a statutory authority such as the Board to contribute to an industry agri-political body such as the Australian Citrus Growers Federation. The continued funding of the Australian Citrus Growers Federation became the responsibility of the Board and this was done from the levies collected on its behalf by the Board and now, through funds applied from the Fund administered by the Minister. There was a mechanism in place for growers, who did not wish to be members of the Board and therefore indirectly contribute to the Australian Citrus Growers Federation, to obtain a refund of their levies.

#### **Ombudsman Opinion**

The Ombudsman was unable to conclude the administrative actions of the Board were either unreasonable or improper in this matter. It seemed that the administrative arrangements which previously existed for the Board to act as a collection agent for Citrus Growers of South Australia were consistent with its powers pursuant to section 14 (g)(ii) of the *Citrus Industry Act* and were arrived at following a due process of consultation with growers. The complainant expressed the view that only a small number of growers attended the meetings at which the formation of Citrus Growers of South Australia and, amongst other things, the mechanism for the collection of levies were approved. However, given the Ombudsman's understanding that all registered growers were advised of the proposals and the meetings, it was not the fault of the Board if, through apathy or other reasons, the majority of growers were not in attendance. The Ombudsman understood that representatives of all the relevant industry and grower representative organisations were involved in this process.

Furthermore, the Ombudsman was mindful that the fundamental matter about which the complaint was made ie., the process by which levies are collected from growers and then applied, is now prescribed by the *Primary Industry Funding Schemes (Citrus Growers Fund) Regulations 2005*. Although the complainant believed these regulations may not be consistent with certain Federal legislation and were, in any event, unreasonable, the Ombudsman could not criticise the Board for observing them. The complainant's appropriate recourse was to either undertake political lobbying to try to bring about change, which he was doing, or to take legal advice about the prospect of a challenge to the regulations. The Ombudsman also understood that the matter of complaint was but a part of the complainant's wider concerns about the future of the citrus industry. It seemed to the Ombudsman that those concerns would best be addressed through the political process.

## Public Hospitals and Health Services

### ■ Complaints Received 01 July 2005 to 30 June 2006

Adelaide Central Community Health Service	3	2.9%
Ceduna District Health Services Inc	1	1.0%
Central Northern Adelaide Health Service	55	52.9%
Children, Youth and Women's Health Service	3	2.9%
Department of Health	4	3.8%
Drug & Alcohol Services Council	2	1.9%
Intellectual Disability Services Council Inc	1	1.0%
Leigh Creek Hospital Inc	1	1.0%
Medical Board of SA	1	1.0%
Mt Barker District Soldiers' Memorial Hospital Inc	1	1.0%
Mt Gambier & Districts Health Service Inc	2	1.9%
Northern Metropolitan Domiciliary Care	1	1.0%
Nurses Board of SA	1	1.0%
Port Pirie Regional Health Service Inc	1	1.0%
Repatriation General Hospital	5	4.8%
Riverland Community Health Services	1	1.0%
SA Psychological Board	1	1.0%
Southern Adelaide Health Service	19	18.3%
Whyalla Hospital and Health Services Inc.	1	1.0%
<b>Total</b>	<b>104</b>	

### ■ Complaints Completed 01 July 2005 to 30 June 2006

Adelaide Central Community Health Service	4	2.9%
Ceduna District Health Services Inc	1	0.7%
Central Northern Adelaide Health Service	70	50.4%
Children, Youth and Women's Health Service	3	2.2%
Department of Health	7	5.0%
Department of Human Services - Health	1	0.7%
Drug & Alcohol Services Council	2	1.4%
Flinders Medical Centre	1	0.7%
Intellectual Disability Services Council Inc	1	0.7%
Leigh Creek Hospital Inc	1	0.7%
Medical Board of SA	3	2.2%
Mt Barker District Soldiers' Memorial Hospital Inc	1	0.7%
Mt Gambier & Districts Health Service Inc	3	2.2%
Northern Metropolitan Domiciliary Care	2	1.4%
Northern Yorke Peninsula Regional Health Service	1	0.7%
Nurses Board of SA	2	1.4%
Port Pirie Regional Health Service Inc	1	0.7%
Repatriation General Hospital	6	4.3%
Riverland Community Health Services	1	0.7%
Royal Adelaide Hospital	2	1.4%
SA Psychological Board	1	0.7%
Southern Adelaide Health Service	22	15.8%
Whyalla Hospital and Health Services Inc.	1	0.7%
Women's & Children's Hospital	2	1.4%
<b>Total</b>	<b>139</b>	

## Public Hospitals and Health Services

### ■ Complaints Received : Issues 01 July 2005 to 30 June 2006

	(Other)	Central Northern Adelaide Health Service	Children, Youth and Women's Health Service	Department of Health	Repatriation General Hospital	Southern Adelaide Health Service	Total	Percentage
Access to treatment	2	6				3	11	10.6%
Administration	4	1			2	4	11	10.6%
Administrative practices/policies	1	2				1	4	3.8%
Communication	2	3	1		1		7	6.7%
Daily routine		6					6	5.8%
Financial issues	1	1		1			3	2.9%
Medical	2	2		1		1	6	5.8%
None	1	1	1	1			4	3.8%
Other		6				1	7	6.7%
Patient Rights		4		1			5	4.8%
Quality of treatment	4	20	1		2	9	36	34.6%
Services	1	3					4	3.8%
<b>Total</b>	<b>18</b>	<b>55</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>19</b>	<b>104</b>	
	17.3%	52.9%	2.9%	3.8%	4.8%	18.3%		

### ■ Complaints Completed : Outcomes 01 July 2005 to 30 June 2006

	(Other)	Adelaide Central Community Health Service	Central Northern Adelaide Health Service	Department of Health	Repatriation General Hospital	Southern Adelaide Health Service	Total	Percentage
Advice Given	7	3	16	2	1	8	37	26.6%
Declined	1		4		1		7	5.0%
Full Investigation	8		2			1	11	7.9%
Preliminary Investigation	10		40	3	4	9	66	47.5%
Transferred to HCSCC	3	1	6	1		3	14	10.1%
Withdrawn	1		2	1			4	2.9%
<b>Total</b>	<b>30</b>	<b>4</b>	<b>70</b>	<b>7</b>	<b>6</b>	<b>22</b>	<b>139</b>	
	21.6%	2.9%	50.4%	5.0%	4.3%	15.8%		

## Office Professionalism

### Ombudsman

#### July

- ▶2005 National Administrative Law Forum
- ▶Presentation to Indonesian Students

#### August

- ▶Office Local Government Governance Advisory Committee

#### September

- ▶Guest speaker, Rotary Club of Edwardstown
- ▶AIAL Seminar  
"Current issues and changes to the role of the SA Ombudsman in public administration"

#### October

- ▶Presenter, The 'State' of Customer Service
- ▶Guest speaker, Holdfast Justices Group Meeting

#### November

- ▶Presenter, 9th Asian Ombudsman Association Conference - Hong Kong

#### April

- ▶APOR Ombudsman Conference - Perth

#### June

- ▶Presenter, Anti Corruption Branch Seminar

### Legal Officers

#### July

- ▶2005 National Administrative Law Forum
- ▶Torts Law Update, Law Society
- ▶Appeals on Questions of Law, Law Society
- ▶Leading Teams in Government

#### August

- ▶Regional Development Board of SA Presentation on the FOI Act and its application to Development Boards in SA

#### September

- ▶LEADR Mediation Workshop
- ▶AIAL (SA Chapter) Current issues and changes to the role of SA Ombudsman in public administration

#### November

- ▶HCSCC- The Health & Community Services Complaints Act 2004 - What's it all about?
- ▶Association for Tertiary Education Management Presentation on the FOI Act and its application to universities and other tertiary education institutions

#### December

- ▶Presenter  
Dealing with an FOI application, including writing a determination', half-day training session

#### February

- ▶Law Society Administrative Law: Integrity in Government

#### April

- ▶9th Annual AIJA Tribunals Conference
- ▶FOI Officer's Forum "Auditing and the Ombudsman"

#### May

- ▶Past, Present, Future - An Introduction to Aboriginal Cultural Awareness
- ▶Presenter - Law Week - Berri "Role of the Ombudsman as an Independent Review Body"

#### June

- ▶Management of Vexatious and Unusually Persistent Complainants
- ▶Workplace Policy Training
- ▶Public Sector Lawyers Seminar, Law Society

## Deputy Ombudsman

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### July

- ▶ Guest speaker Glenelg Probus Club - Role of the Ombudsman

### September

- ▶ Deputy Ombudsman meeting - Melbourne

### October

- ▶ 4th Annual User Group Meeting, Computer Services

### November

- ▶ Australian Tertiary Education Managers Seminar - Role of the Ombudsman
- ▶ Mt Lofty Ranges Planners Group  
Guest Speaker - Role of the Ombudsman with particular reference to planning matters

### April

- ▶ National Deputy Ombudsman Meeting
- ▶ Presenter - LGA Training Course on Complaint Handling  
The role of the Ombudsman - reducing complaints and best practice for internal handling of complaints

### June

- ▶ Management of Vexatious and Unusually Persistent Complainants
- ▶ Workplace Policy Training

## Investigating and Assessment Officers

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### September

- ▶ AIAL (SA Chapter) Current issues and changes to the role of SA Ombudsman in public administration

### October

- ▶ The 'State' of Customer Service
- ▶ Justice Portfolio OH&S Conference

### November

- ▶ HCSCC- The Health & Community Services Complaints Act 2004 - What's it all about?

### February

- ▶ Intermediate Word

### June

- ▶ Management of Vexatious and Unusually Persistent Complainants

### During 2006

- ▶ Springboard

### During 2005/2006

- ▶ Department of Correctional Services - Staff Training re The Role of the Ombudsman

## Administration staff

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### September

- ▶ Managing Finances in Government

### October

- ▶ The 'State' of Customer Service
- ▶ Justice Portfolio OH&S Conference

### February

- ▶ Business Report Writing
- ▶ Intermediate Word

## Justice Access Referral Program

### Delegates

<b>Aldinga</b>	Rupert Delahoy
<b>Barmera</b>	Josie Koch
<b>Berri</b>	Francis Day, Baldev Dahiwal
<b>Bordertown</b>	Patrick Maloney
<b>Burra</b>	Celine Stockman
<b>Ceduna</b>	Des Whitmarsh, Neil Chandler
<b>Clare</b>	Bruce Thomas
<b>Coober Pedy</b>	Deane Clee, Fr Radomir Aleksic, Zaharulla Kyrtzaliotis
<b>Glossop</b>	John Sweet
<b>Hawker</b>	Keith Rasheed, John Teague, Mary Van Keulen
<b>Kadina</b>	Necia Ebert
<b>Kingscote</b>	John Grimes
<b>Kingston SE</b>	Jeffrey Grove
<b>Lameroo</b>	Glen Kelly
<b>Loxton</b>	Douglas Vaughan
<b>Metropolitan</b>	Inta Rumpe, Martha Krassovich, Domenica Beverdam, Giang Le Huy, Inaam A'Khizam, Kath Johnston, Anne Bachmann, George Genimahaliotis, Mario Feleppa, Michelle Dieu, Tarik Skaka, Karleeda Rasheed, Zita Ngor
<b>Millicent</b>	Dennis Clifford
<b>Mt Gambier</b>	James Galpin, Pat Willoughby
<b>Naracoorte</b>	Ann Bell, Bill Leitch
<b>Paringa</b>	Max Thompson
<b>Port Augusta</b>	Michael Mussara, George Parker
<b>Port Lincoln</b>	Josel Bautista, Judith Francis, Dudley James, Ros Hood, Joyce Sampson
<b>Port Pirie</b>	John Banfield, Dino Gadaleta, Sr Anne Higgins
<b>Peebinga</b>	Dean Kerly
<b>Peterborough</b>	Chris Woodman
<b>Quorn</b>	Peter Maloney
<b>Renmark</b>	Jack Papageorgiou, Robert Twyford, John Tzanavaras
<b>Roxby Downs</b>	Margaret Anchor
<b>Victor Harbor</b>	Ed Glasson, Brian Heyes
<b>Whyalla</b>	Rex Jordan, Teresa Nowak, Puring Olsen, Pablo Rosa

### New delegation

Josie Koch of Barmera was appointed as a Justice Access Referral delegate in November 2005. Josie is conveniently based during working hours at the Barmera Library.



### Delegates 'retire'

The Ombudsman and his staff would like to sincerely thank Judith Morris (Kingscote), John Patten (Maitland) and Judith Zanetic (Nuriootpa) for their services to the Ombudsman Office as JARP delegates. They have now "retired" as delegates due to family and other commitments.

### Delegations renewed

In September 2005, the Ombudsman travelled to Kadina, Port Pirie, Peterborough and Burra. Delegations were renewed for Kadina delegate Necia Ebert; Chris Woodman of Peterborough; Port Pirie delegates John Banfield, Dino Gadaleta and Sr Anne Higgins; Bruce Thomas of Clare and Celine Stockman of Burra.

Riverland delegates met with Ombudsman Office staff in November 2005. Francis Day from Berri; Renmark delegates Bob Twyford, Jack Papageorgiou and John Tzanavaras; Max Thompson of Paringa; Doug Vaughan of Loxton; Dean Kerley of Peebinga and Glen Kelly of Lameroo all renewed their delegations.

The Ombudsman and his staff look forward to visiting delegates in other regional and metropolitan areas during 2006/07 to renew their delegations.

Riverland delegates

Jack Papageorgiou - RENMARK



Bob Twyford - RENMARK



Glenn Kelly - LAMEROO



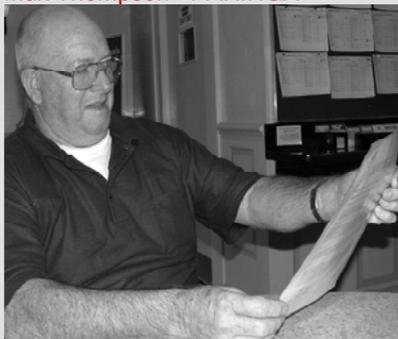
Doug Vaughan - LOXTON



Frances Day - BERRI



Max Thompson - PARINGA



Dean Kerley - Peebinga

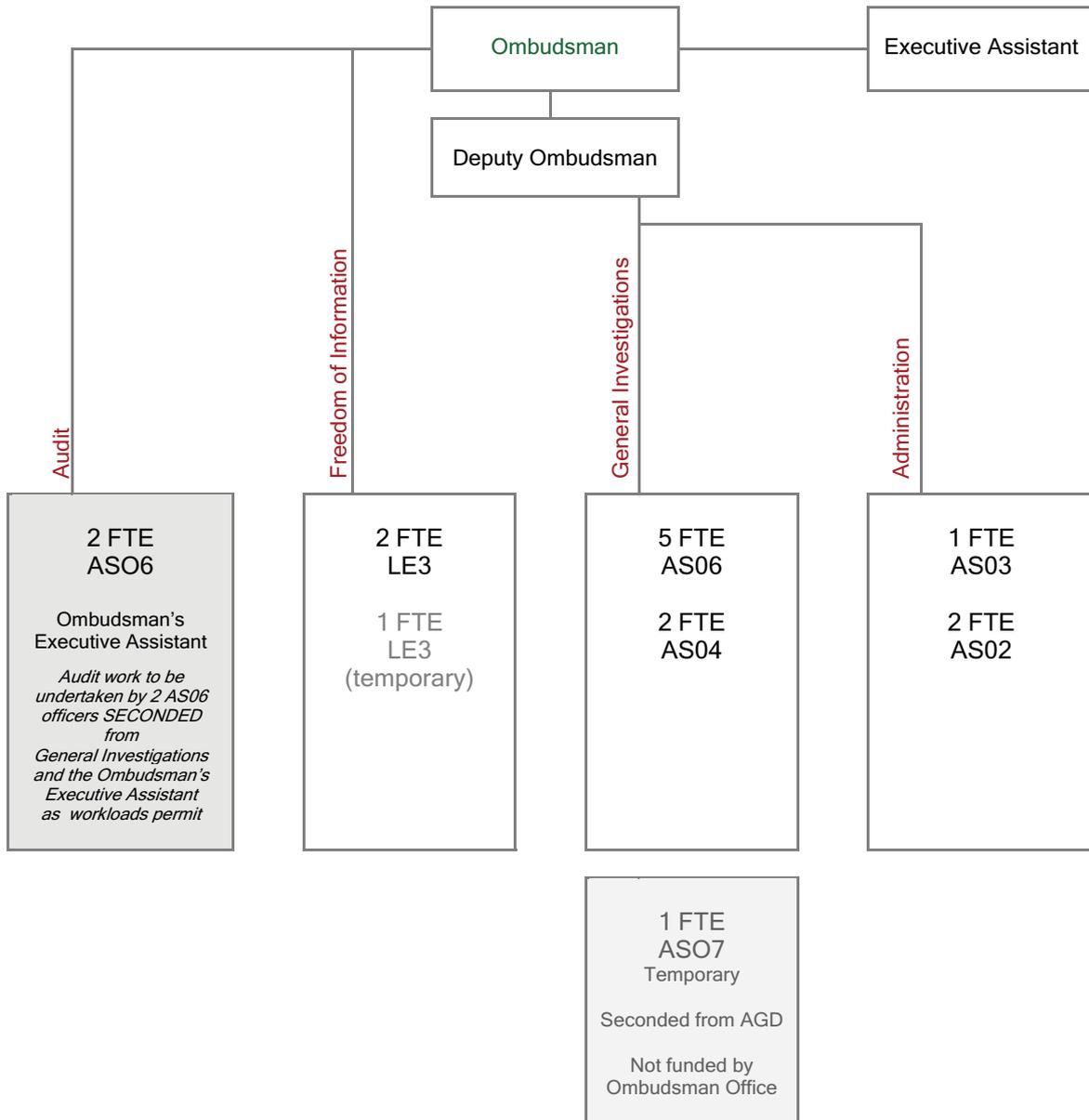


## Appendix

### Appendix A

Office Expenditure	2004/05	2005/06
Advertising	782	1 347
Annual Report	2 564	2 595
Promotional expenses	5 065	
Equipment maintenance	1 149	2 408
Equipment purchases	6 912	2 991
*Motor vehicles	11 537	20 970
Postage	2 252	3 896
Printing and stationery	9 057	7 441
Staff development	11 784	3 835
Publications and subscriptions	8 115	8 671
Sundries	21 504	19 417
Telephone charges	36 009	30 905
Travel/taxi charges	31 175	21 476
Computer expenses	34 301	30 562
Fringe Benefits Tax	18 141	19 719
Minor capital works - Reception area		23 646
Sub-total	200 347	199 879
*Accommodation and energy	102 588	108 402
Consultant/Contract staff	2 803	550
Sub-total	105 391	108 952
*Salaries	1 250 386	1 373 638
Sub-total	1 250 386	1 373 638
Income	(2 833)	(11 253)
Sub-total	(2 833)	(11 253)
<p>* 2005/06 figures include expenses incurred by the Ombudsman position (funded by Special Acts)</p>		
<b>Total expenditure</b>	<b>1 556 124</b>	<b>1 671 216</b>

### Organisational Chart 30 June 2006



Description of outcomes : General Jurisdiction

■ **Advice given**

Information or advice was provided to the public without contacting the agency complained against.

■ **Declined/Terminated/Withdrawn**

Matter was either withdrawn by the complainant, was declined on jurisdictional grounds, or was terminated at an early stage (eg because some action made further investigation unnecessary).

■ **Preliminary Investigation**

A *Preliminary Investigation* pursuant to section 18(1) of the Ombudsman Act is conducted to obtain preliminary information to determine whether the matter should proceed to a full investigation. Often such an investigation can involve a considerable amount of effort on the part of the investigator, without reaching the point where formal advice of a full investigation is necessary. Many complaints are resolved during this phase.

■ **Full Investigation**

A *Full Investigation* is commenced where sufficient background material has been gathered to indicate a basis for complaint. Section 18(1a) requires that the Principal Officer of the agency be advised of such an investigation. Such advice is usually (although not necessarily) provided in writing.

■ **Sustained**

A matter is classed as *Sustained* if an opinion has been formed pursuant to section 25(1) of the Ombudsman Act.

■ **Not Sustained**

A matter is classed as *Not Sustained* if the complaint has been investigated and sufficient information has been discovered to conclude that there is no basis to form an opinion pursuant to section 25(1).

■ **Not Sustained - Explanation Given**

A matter is classed as *Not Sustained - Explanation Given* if the complaint has been investigated and sufficient information has been discovered to conclude that there is no basis to form an opinion pursuant to section 25(1), but as a consequence of the information obtained the complainant is able to receive an explanation of the reasons for the agency's actions, and that explanation is in advance of the explanation or information which the complainant previously had from the agency

■ **Partly Resolved in Favour of Complainant**

A matter is *Partly Resolved in Favour of Complainant* if there is some benefit to the complainant or some action by the agency such that the substance of the complaint is partly addressed and resolved. This description would often apply where there would not have been sufficient information to sustain the complaint, but notwithstanding this the agency acts to partly remove the difficulty which was the basis of the complaint.

■ **Reasonable Resolution**

A matter is classed as having a *Reasonable Resolution* if, before an opinion is formed pursuant to section 25(1) of the Ombudsman Act, some action is taken by the agency to remedy (in the opinion of the Ombudsman) the cause of the complaint, or provision is made whereby the complaint can be properly addressed by the agency.

Description of outcomes : Freedom of Information

Apart from the Ombudsman's function to review agencies' determinations as an external review body under the *Freedom of Information Act 1991* the Ombudsman provides advice and conducts investigations into freedom of information related administrative actions of agencies under the Ombudsman's jurisdiction pursuant to the *Ombudsman Act 1972*

■ **FOI Advice given**

Formal or informal freedom of information advice was provided to the public and/or agency.

■ **FOI Review - Revised determination directed**

At the conclusion of external review, the Ombudsman was satisfied that a different determination should be made by the agency in the circumstances of the case and directed the agency to make a revised determination in specified terms; or substituted his own determination (when dealing with determinations made after the commencement of the amendments to the Act on 1 January 2005).

■ **FOI Review - Agency revised determination**

During external review and after receiving comment from the Ombudsman, the agency recognised that a revised determination was appropriate in part or in whole. There was no need for a formal direction by the Ombudsman to revise the determination/substituted determination.

■ **FOI Review - Determination confirmed**

At the conclusion of external review, the Ombudsman was satisfied that a different determination did not need to be made.

■ **FOI Review - Withdrawn**

During or at the conclusion of external review, the applicant decided to withdraw the application. The applicant may have decided to pursue other avenues of redress or document access; or with the assistance of the Ombudsman, the applicant's grievance with the agency may have been resolved in part or in whole; or with the passage of time, the applicant no longer wished to pursue document access.

■ **FOI Investigation - Reasonable resolution**

A formal or informal investigation was conducted into the FOI complaint and a reasonable resolution was achieved. This could involve delays in processing, locating missing documents, dealing with destruction of documents, etc.

■ **FOI Investigation - Not sustained**

The investigation of the FOI complaint revealed no administrative error on the part of the agency.

■ **Outside jurisdiction**

It was concluded that either the body the subject of complaint was not "an agency" for the purposes of the *Freedom of Information Act 1991*, or the application for review to the Ombudsman was premature and the Ombudsman therefore lacked the jurisdiction to conduct the review.

**Freedom of Information**  
Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

Agency	Agency Process Corrected	Complaint Not Sustained	Determination Confirmed	Determination revised by Agency	Determination Substituted (Varied and/or Reversed)	Advice Given	No Jurisdiction to proceed	Revised Determination Directed	Withdrawn	Total
Adelaide Hills Council						2				2
Alexandrina Council						1				1
Attorney-General's Department						5				5
Board of Examiners (Law Society)							1			1
Central Northern Adelaide Health Service	1	1	3			10				15
Children, Youth and Women's Health Service						2				2
Citrus Board			1			2				3
City of Charles Sturt			1	2		4				7
City of Holdfast Bay						2				2
City of Norwood, Payneham & St Peters						1				1
City of Onkaparinga						7				7
City of Port Adelaide Enfield			2			2	1		1	6
City of Salisbury						1				1
City of Tea Tree Gully			1			1				2
Commissioner for Equal Opportunity						1				1
Corporation of the City of Adelaide			1			2		1		4
Corporation of the City of Marion	1					7				8
Corporation of the City of Unley						4				4
Corporation of the City of Whyalla								1		1
Corporation of the Town of Walkerville								1		1
Courts Administration Authority		1				8				9
Dental Board of South Australia						2				2
Department for Correctional Services	1		1			5	1			8
Department for Environment and Heritage						8				8
Department for Families and Communities						9		3		12
Department of Admin and Information Services	1			1		6	1		1	10
Department of Education & Children's Services	1		11			8		6		26
Department of Health	1		1			7				9
Department of Primary Industries & Resources		1	1			2		1		5
Department of the Premier and Cabinet				1		1			1	3
Department of Trade and Economic Development			16	10	4					30
Department of Transport, Energy and Infrastructure						2		1	2	5
Department of Treasury and Finance			1			4		1		6
Dept of Water, Land & Biodiversity Conservation						1				1
Environment Protection Authority	1					2		1		4
Flinders University Council						1				1
Guardianship Board						4				4
Health & Community Services Complaints Commissioner						1				1
Kangaroo Island Council						1				1
Legal Practitioners Conduct Board									1	1
Liquor & Gambling Commissioner			1			1		3		5
Lotteries Commission						1				1
Medical Board of SA				1		4				5
Metropolitan Domiciliary Care						1				1
Mid North Regional Development Board								1		1
Mid-West Health Services			1					1		2
Minister for Education and Children's Services								1		1
Minister for Emergency Services									1	1
Minister for Environment and Conservation	1								1	2
Minister of Health						1	1			2
Mt Gambier & Districts Health Service Inc						2		1		3
Noarlunga Health Services						1				1
Northern Metropolitan Community Health Service						1				1
Nurses Board of SA						1				1
Office of Public Employment						1				1
Outside Jurisdiction						19				19
Police Complaints Authority							1			1
Police Department			1			1	1			3
Port Augusta City Council							1			1
Port Augusta Hospital & Regional Health Services						1				1
Port Lincoln Health Services Inc						1				1
Public Trustee		1				1				2
Repatriation General Hospital						1				1
Riverland Community Health Services						1				1
Rural City of Murray Bridge						1				1
SA Ambulance Service			1			1				2
SA Health Commission						1				1
SA Housing Trust		1				3				4
SA Metropolitan Fire Service	1					3				4
SAFECOM Board							1	1		2
Southern Adelaide Health Service			1			5	1	2		9
State Electoral Office						1				1
The Treasurer						1				1
Trans Adelaide				1						1
University of Adelaide Council								1		1
University of South Australia Council						1				1
Wattle Range Council						1				1
WorkCover Corporation			1	4		11				16
<b>Total</b>	<b>9</b>	<b>5</b>	<b>46</b>	<b>20</b>	<b>4</b>	<b>194</b>	<b>10</b>	<b>27</b>	<b>8</b>	<b>320</b>

**Freedom of Information**

Summary of outcomes of enquiries and reviews finalized 01 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
<b>Adelaide Hills Council</b>		
068735	Advice requested regarding Freedom of Information process	FOI Advice Given
069013	Advice requested regarding development grievance (breach of conditions)	FOI Advice Given
<b>Alexandrina Council</b>		
066800	Unreasonable fee charged	FOI Advice Given
<b>Attorney-General's Department</b>		
068543	Advice requested regarding external review process under the <i>Freedom Of Information Act</i>	FOI Advice Given
068931	Advice requested regarding Freedom of Information process/options	FOI Advice Given
069225	Advice requested regarding timelines involved with external review process	FOI Advice Given
069354	Advice requested regarding external review	FOI Advice Given
069938	Advice requested regarding missing documents	FOI Advice Given
<b>Board of Examiners (Law Society)</b>		
064201	Application for review of determination	FOI Review - No jurisdiction to proceed
<b>Central Northern Adelaide Health Service</b>		
066108	Application for review of determination	FOI Review - Determination Confirmed
066793	Advice sought regarding process for internal	FOI Advice Given
066797	Access to records	FOI Advice Given
066924	Advice requested regarding lost file by agency	FOI Advice Given
067032	Application for review of determination	FOI Review - Determination Confirmed
067959	Unreasonable process	FOI Investigation - Complaint Not Sustained
068377	Advice requested regarding Freedom Office Information process	FOI Advice Given
068595	Advice requested re section 22 of the Act - access to tissue samples	FOI Advice Given
068659	Advice requested regarding obtaining records from agency	FOI Advice Given
068743	Application for review of determination	FOI Review - Determination Confirmed
069303	Advice requested regarding obtaining documents from agency through Freedom of Information	FOI Advice Given
069368	Advice requested regarding obtaining records from the hospital	FOI Advice Given
069374	Advice requested regarding <i>Freedom Of Information Act</i>	FOI Advice Given
069598	Complaint regarding Freedom Of Information process	FOI Investigation - Agency Process Corrected
069798	Advice requested regarding Freedom Of Information process	FOI Advice Given
<b>Children, Youth and Women's Health Service</b>		
066798	Request for information	FOI Advice Given
066868	Advice requested regarding Freedom Of Information process	FOI Advice Given
<b>Citrus Board</b>		
067742	Advice requested regarding <i>Freedom Of Information Act</i>	FOI Advice Given
067982	Advice requested regarding Freedom Of Information process	FOI Advice Given
067985	Application for review of determination	FOI Review - Determination Confirmed
<b>City of Charles Sturt</b>		
065705	Application for review of determination	FOI Review - Determination Revised by Agency
066188	Application for review of determination	FOI Review - Determination Revised by Agency
067402	Advice requested regarding delay in processing application	FOI Advice Given
067705	Advice requested regarding refusal by council for access to documents	FOI Advice Given
068472	Application for review of determination	FOI Review - Determination Confirmed
069795	Advice requested	FOI Advice Given
070010	Advice requested regarding Freedom Of Information process	FOI Advice Given
<b>City of Holdfast Bay</b>		
066925	Advice requested regarding motion passed by agency on determination	FOI Advice Given
067526	Advice requested on refusal by council to see legal advice	FOI Advice Given
<b>City of Norwood, Payneham &amp; St Peters</b>		
069586	Advice requested regarding obtaining documents from council	FOI Advice Given
<b>City of Onkaparinga</b>		
066927	Advice requested regarding exemption on fees and charges	FOI Advice Given
067173	Advice requested regarding Freedom Of Information process	FOI Advice Given
067525	Advice requested regarding non release of all documents	FOI Advice Given
067631	Advice requested regarding Freedom Of Information process	FOI Advice Given
067773	Advice requested regarding Freedom Of Information process for external review	FOI Advice Given
067918	Advice requested regarding discussions on applying for an external review	FOI Advice Given
069349	Advice requested regarding clause 9 of the Act	FOI Advice Given
<b>City of Port Adelaide Enfield</b>		
065962	Application for review of determination	FOI Review - Withdrawn
066165	Application for review of determination	FOI Review - Determination Confirmed
066802	FOI process enquiry	FOI Advice Given
068270	Application for review of determination	FOI Review - Determination Confirmed
068271	Application for review of determination	FOI Review - No jurisdiction to proceed
069046	Advice requested regarding consultation with third parties pursuant to <i>Freedom Of Information Act</i>	FOI Advice Given
<b>City of Salisbury</b>		
068164	Clarification regarding information provided by council	FOI Advice Given
<b>City of Tea Tree Gully</b>		
067115	Application for review of determination	FOI Review - Determination Confirmed

## Freedom of Information

### Summary of outcomes of enquiries and reviews finalized 01 July 2005 to 30 June 2006

067151	Advice requested regarding internal review process and the <i>Freedom Of Information Act</i> generally	FOI Advice Given
<b>Commissioner for Equal Opportunity</b>		
067152	Advice requested regarding Freedom Of Information/Privacy Acts	FOI Advice Given
<b>Corporation of the City of Adelaide</b>		
066705	Application for review of determination	FOI Review - Determination Confirmed
066933	Application for review of determination	FOI Review - Revised Determination Directed
069423	Advice requested regarding Freedom Of Information process from perspective of third party	FOI Advice Given
<b>Corporation of the City of Marion</b>		
066869	Advice requested regarding lack of response from agency	FOI Advice Given
066932	Alleged dispute with neighbours	FOI Advice Given
069001	Advice requested regarding obtaining documents through Freedom Of Information process	FOI Advice Given
069784	Application for review of determination	FOI Investigation - Agency Process Corrected
069794	Access to information	FOI Advice Given
069862	Advice requested regarding Freedom Of Information process	FOI Advice Given
069937	Advice requested regarding undue delay in internal review	FOI Advice Given
070712	Advice requested re FOI	FOI Advice Given
<b>Corporation of the City of Unley</b>		
067756	Advice requested regarding making a complaint to the council under the Freedom Of Information Act	FOI Advice Given
067758	Advice requested regarding refusal of access	FOI Advice Given
067770	Advice requested regarding Freedom Of Information determination in neighbourhood complaint	FOI Advice Given
068227	Advice requested regarding Freedom Of Information process	FOI Advice Given
<b>Corporation of the City of Whyalla</b>		
065800	Application for review of determination	FOI Review - Revised Determination Directed
<b>Corporation of the Town of Walkerville</b>		
065890	Application for review of determination	FOI Review - Revised Determination Directed
<b>Courts Administration Authority</b>		
068434	Advice requested regarding transfers	FOI Advice Given
068742	Application for review of determination	FOI Investigation - Complaint Not Sustained
068991	Advice requested regarding accessing old documents	FOI Advice Given
069067	Advice requested regarding refusal to provide documents	FOI Advice Given
069299	Advice requested regarding process for access to documents	FOI Advice Given
069453	Advice requested regarding concerns of Freedom Of Information officer appointment	FOI Advice Given
069799	Advice requested regarding lack of Freedom Of Information advice on suppressed judgment	FOI Advice Given
069917	Advice requested regarding section 14A - extension of time	FOI Advice Given
070433	Advice requested regarding process	FOI Advice Given
<b>Dental Board of South Australia</b>		
068860	Advice requested regarding Freedom Of Information process/options	FOI Advice Given
068901	Advice requested regarding Freedom Of Information process for accessing documents	FOI Advice Given
<b>Department for Correctional Services</b>		
066667	Alleged failure to process an application	FOI Investigation - Agency Process Corrected
066920	Advice requested regarding Freedom Of Information external review	FOI Advice Given
066921	Advice requested as to why agency refused Freedom Of Information application	FOI Advice Given
066982	Advice requested regarding obtaining records from hospital	FOI Advice Given
067147	Advice requested regarding internal review under <i>Freedom Of Information Act</i>	FOI Advice Given
068686	Application for review of determination	FOI Review - No jurisdiction to proceed
068864	Application for review of determination	FOI Review - Determination Confirmed
069770	Advice regarding Freedom Of Information process	FOI Advice Given
<b>Department for Environment and Heritage</b>		
066951	Advice requested regarding access to information	FOI Advice Given
067284	Requirement sought for sufficiency of search for rainwater tests	FOI Advice Given
067340	Advice requested regarding an external review	FOI Advice Given
068228	Advice requested regarding obtaining documents from agency	FOI Advice Given
068736	Advice requested regarding Freedom of Information process	FOI Advice Given
068900	Advice requested regarding Freedom Of Information process	FOI Advice Given
070036	Advice requested regarding section 18(2) of the <i>Freedom Of Information Act</i>	FOI Advice Given
070166	Advice required regarding internal review rights and timelines	FOI Advice Given
<b>Department for Families and Communities</b>		
063756	Application for review of determination	FOI Review - Revised Determination Directed
065003	Application for review of determination	FOI Review - Revised Determination Directed
065004	Application for review of determination	FOI Review - Revised Determination Directed
066794	Alleged changing of records	FOI Advice Given
067619	Advice requested regarding Freedom Of Information process	FOI Advice Given
067827	Advice requested regarding obtaining documents from agency through Freedom Of Information process	FOI Advice Given
068363	Advice requested regarding Freedom Of Information process	FOI Advice Given

## Freedom of Information

### Summary of outcomes of enquiries and reviews finalized 01 July 2005 to 30 June 2006

069108	Advice requested regarding Freedom Of Information process	FOI Advice Given
069264	Advice requested under the <i>Privacy Act</i>	FOI Advice Given
069519	Advice requested regarding obtaining copy of report from agency	FOI Advice Given
069797	Advice requested regarding Freedom Of Information procedures	FOI Advice Given
069886	Access to information	FOI Advice Given
<b>Department of Administrative and Information Services</b>		
061635	Application for review of determination	FOI Review - Determination Revised by Agency
066952	Advice requested on sufficiency of search issue	FOI Advice Given
067142	Application for review of determination	FOI Review - No jurisdiction to proceed
067414	Advice requested regarding price paid for bus that was tendered through agency	FOI Advice Given
067894	Advice requested regarding the wording for a Freedom Of Information request	FOI Advice Given
068186	Advice requested regarding Freedom Of Information process	FOI Advice Given
068939	Advice requested regarding Freedom of Information process including statutory time periods	FOI Investigation - Agency Process Corrected
069010	Advice requested regarding s14 of <i>Freedom Of Information Act</i> as advertised	FOI Advice Given
069265	Advice requested regarding obtaining a report under the <i>Freedom Of Information Act</i>	FOI Advice Given
069562	Application to amend records	FOI Review - Withdrawn
<b>Department of Education &amp; Children's Services</b>		
060994	Application for review of determination	FOI Review - Determination Confirmed
060995	Application for review of determination	FOI Review - Determination Confirmed
060996	Application for review of determination	FOI Review - Determination Confirmed
061224	Application for review of determination	FOI Review - Revised Determination Directed
061225	Application for review of determination	FOI Review - Determination Confirmed
061229	Application for review of determination	FOI Review - Revised Determination Directed
061456	Application for review of determination	FOI Review - Revised Determination Directed
061457	Application for review of determination	FOI Review - Determination Confirmed
061458	Application for review of determination	FOI Review - Determination Confirmed
061459	Application for review of determination	FOI Review - Determination Confirmed
061460	Application for review of determination	FOI Review - Revised Determination Directed
061461	Application for review of determination	FOI Review - Revised Determination Directed
061462	Application for review of determination	FOI Review - Revised Determination Directed
065497	Advice requested regarding delay in application	FOI Investigation - Agency Process Corrected
065590	Application for review of determination	FOI Review - Determination Confirmed
066946	Application for review of determination	FOI Review - Determination Confirmed
067081	Application for review of determination	FOI Review - Determination Confirmed
067664	Advice requested regarding delay in obtaining documents	FOI Advice Given
067665	Advice requested regarding release of letter of complaint	FOI Advice Given
067895	Advice requested regarding non-receipt of documents sought	FOI Advice Given
067978	Advice requested regarding Freedom Of Information process	FOI Advice Given
068385	Advice requested regarding Freedom Of Information process	FOI Advice Given
068391	Application for review of determination	FOI Review - Determination Confirmed
068745	Advice requested regarding Freedom Of Information process	FOI Advice Given
069147	Advice requested regarding obtaining documents through Freedom Of Information	FOI Advice Given
070434	Advice requested regarding S22 of the Act	FOI Advice Given
<b>Department of Health</b>		
063996	Application for review of determination	FOI Review - Determination Confirmed
066900	Alleged failure to investigate or act	FOI Investigation - Agency Process Corrected
066922	Advice regarding Freedom Of Information request that has allegedly been lost by agency	FOI Advice Given
066983	Advice requested regarding access to health providers	FOI Advice Given
067618	Advice requested regarding Freedom Of Information process	FOI Advice Given
067814	Advice requested regarding Freedom Of Information process	FOI Advice Given
068858	Advice requested regarding Freedom Of Information process	FOI Advice Given
069691	Advice requested regarding <i>Whistleblowers Protection Act</i>	FOI Advice Given
069692	Advice requested regarding time limits under the <i>Freedom Of Information Act</i>	FOI Advice Given
<b>Department of Primary Industries &amp; Resources</b>		
066901	Application for review of determination	FOI Review - Revised Determination Directed
067333	Application for review of determination Section 14A review	FOI Review - Determination Confirmed
067986	Application for review of determination	FOI Investigation - Complaint Not Sustained
068525	Advice requested	FOI Advice Given
070436	Advice requested regarding determination	FOI Advice Given
<b>Department of the Premier and Cabinet</b>		
067764	Application for review of determination	FOI Review - Withdrawn
068244	Advice requested regarding sections 14A and 18 of the <i>Freedom Of Information Act</i>	FOI Advice Given
069838	Section 14A review	FOI Review - Determination Revised by Agency
<b>Department of Trade and Economic Development</b>		
068511	Application for review of determination	FOI Review - Determination Confirmed
070485	Application for review of determination	FOI Review - Determination Confirmed
070486	Application for review of determination	FOI Review - Determination Confirmed

## Freedom of Information

### Summary of outcomes of enquiries and reviews finalized 01 July 2005 to 30 June 2006

070487	Application for review of determination	FOI Review - Determination Substituted (Varied and/or Reversed)
070488	Application for review of determination	FOI Review - Determination Substituted (Varied and/or Reversed)
070489	Application for review of determination	FOI Review - Determination Substituted (Varied and/or Reversed)
070490	Application for review of determination	FOI Review - Determination Substituted (Varied and/or Reversed)
070491	Application for review of determination	FOI Review - Determination Confirmed
070492	Application for review of determination	FOI Review - Determination Confirmed
070493	Application for review of determination	FOI Review - Determination Confirmed
070494	Application for review of determination	FOI Review - Determination Revised by Agency
070495	Application for review of determination	FOI Review - Determination Revised by Agency
070496	Application for review of determination	FOI Review - Determination Revised by Agency
070497	Application for review of determination	FOI Review - Determination Confirmed
070498	Application for review of determination	FOI Review - Determination Confirmed
070499	Application for review of determination	FOI Review - Determination Confirmed
070500	Application for review of determination	FOI Review - Determination Revised by Agency
070501	Application for review of determination	FOI Review - Determination Confirmed
070502	Application for review of determination	FOI Review - Determination Confirmed
070503	Application for review of determination	FOI Review - Determination Confirmed
070504	Application for review of determination	FOI Review - Determination Confirmed
070505	Application for review of determination	FOI Review - Determination Confirmed
070506	Application for review of determination	FOI Review - Determination Revised by Agency
070507	Application for review of determination	FOI Review - Determination Revised by Agency
070508	Application for review of determination	FOI Review - Determination Revised by Agency
070509	Application for review of determination	FOI Review - Determination Revised by Agency
070510	Application for review of determination	FOI Review - Determination Revised by Agency
070511	Application for review of determination	FOI Review - Determination Confirmed
070512	Application for review of determination	FOI Review - Determination Confirmed
070513	Application for review of determination	FOI Review - Determination Revised by Agency
<b>Department of Transport, Energy and Infrastructure</b>		
067259	Application for review of determination	FOI Review - Withdrawn
067930	Application for review of determination	FOI Review - Withdrawn
068436	Advice requested regarding Freedom Of Information process	FOI Advice Given
068679	Advice requested regarding Freedom of Information process	FOI Advice Given
069895	Application for review of determination	FOI Review - Revised Determination Directed
<b>Department of Treasury and Finance</b>		
067094	Application for review of determination	FOI Review - Revised Determination Directed
068783	Application for review of determination	FOI Review - Determination Confirmed
068859	Advice requested regarding time limit to apply for external review	FOI Advice Given
069029	Advice requested regarding seeking external	FOI Advice Given
070057	Application for review of determination	FOI Advice Given
070075	Advice requested regarding Freedom Of Information process	FOI Advice Given
<b>Department of Water, Land &amp; Biodiversity Conservation</b>		
069254	Advice requested regarding Freedom Of Information process	FOI Advice Given
<b>Environment Protection Authority</b>		
065668	Third party rights	FOI Review - Revised Determination Directed
069424	Advice requested regarding obtaining documents through Freedom Of Information	FOI Advice Given
069603	Application for review of determination	FOI Investigation - Agency Process Corrected
070037	Advice requested regarding deferral of access to documents from agency	FOI Advice Given
<b>Flinders University Council</b>		
068394	Advice requested regarding section 22(2)	FOI Advice Given
<b>Guardianship Board</b>		
066801	Alleged unreasonable conduct by staff	FOI Advice Given
066803	Unreasonable action taken	FOI Advice Given
066804	Unreasonable action taken	FOI Advice Given
069606	Advice requested regarding agency claiming exemption from the Freedom Of Information Act	FOI Advice Given
<b>Health &amp; Community Services Complaints Commissioner</b>		
068187	Advice requested regarding Freedom Of Information process	FOI Advice Given
<b>Kangaroo Island Council</b>		
067145	Advice requested regarding obtaining documents under Freedom Of Information Act	FOI Advice Given
<b>Legal Practitioners Conduct Board</b>		
068199	Application for review of determination	FOI Review - Withdrawn
<b>Liquor &amp; Gambling Commissioner</b>		
065459	Application for review of determination	FOI Review - Revised Determination Directed
065529	Application for review of determination	FOI Review - Revised Determination Directed
066521	Application for review of determination	FOI Review - Revised Determination Directed
066704	Application for review of determination	FOI Review - Determination Confirmed
067064	Advice requested regarding Freedom Of Information process	FOI Advice Given
<b>Lotteries Commission</b>		
067992	Advice requested regarding Freedom Of Information process	FOI Advice Given
<b>Medical Board of SA</b>		
067090	Application for review of determination	FOI Review - Determination Revised by Agency

## Freedom of Information

### Summary of outcomes of enquiries and reviews finalized 01 July 2005 to 30 June 2006

067417	Advice requested regarding Freedom Of Information process	FOI Advice Given
068433	Advice requested regarding Freedom Of Information process	FOI Advice Given
068435	Advice requested regarding process following determination by agency	FOI Advice Given
068813	Advice requested regarding Freedom Of Information decision	FOI Advice Given
<b>Metropolitan Domicillary Care</b>		
067741	Advice requested regarding determination on concerns of safety	FOI Advice Given
<b>Mid North Regional Development Board</b>		
064263	Application for review of determination	FOI Review - Revised Determination Directed
<b>Mid-West Health Services</b>		
065833	Application for review of determination	FOI Review - Revised Determination Directed
065834	Application for review of determination	FOI Review - Determination Confirmed
<b>Minister for Education and Children's Services</b>		
068510	Application for review of determination	FOI Review - Revised Determination Directed
<b>Minister for Emergency Services</b>		
068782	Application for review of determination	FOI Review - Withdrawn
<b>Minister for Environment and Conservation</b>		
069085	Preliminary enquiries regarding Section 14A	FOI Review - Withdrawn
070517	Unreasonable delay in processing	FOI Investigation - Agency Process Corrected
<b>Minister of Health</b>		
068883	Application for review of determination	FOI Review - No jurisdiction to proceed
069939	Advice requested regarding internal review on health impacts	FOI Advice Given
<b>Mt Gambier &amp; Districts Health Service Inc</b>		
067605	Application for review of determination	FOI Review - Revised Determination Directed
068671	Advice requested whether minutes are exempt from the <i>Freedom Of Information Act</i>	FOI Advice Given
069721	Advice requested regarding obtaining documents and advice on application for internal review	FOI Advice Given
<b>Noarlunga Health Services</b>		
069871	Advice requested regarding Freedom Of Information process	FOI Advice Given
<b>Northern Metropolitan Community Health Service</b>		
067801	Advice requested regarding <i>Whistleblowers Protection Act</i>	FOI Advice Given
<b>Nurses Board of SA</b>		
067243	Advice requested regarding agency not providing complainant with all documents	FOI Advice Given
<b>Office of Public Employment</b>		
066939	Advice requested regarding <i>Whistleblowers Protection Act</i>	FOI Advice Given
<b>Outside Jurisdiction</b>		
067183	Advice requested regarding Freedom Of Information/Privacy Acts	FOI Advice Given
067184	Advice requested regarding Freedom Of Information	FOI Advice Given
067247	Advice requested regarding Freedom Of Information process	FOI Advice Given
067396	Advice requested regarding Freedom Of Information process	FOI Advice Given
067447	Advice requested regarding Freedom Of Information process	FOI Advice Given
067486	Advice requested regarding obtaining records	FOI Advice Given
067628	Advice requested regarding Freedom Of Information process	FOI Advice Given
067811	Advice requested regarding Freedom Of Information process	FOI Advice Given
069012	Advice requested regarding budget for Whistleblowers Act - Parliamentary Committee (NSW Ombudsman)	FOI Advice Given
069045	Advice requested regarding Freedom Of Information process	FOI Advice Given
069356	Advice requested regarding obtaining documents through Freedom Of Information	FOI Advice Given
069401	Advice requested regarding obtaining documents from a private doctor	FOI Advice Given
069694	Advice requested regarding Freedom of Information process	FOI Advice Given
069877	Advice requested regarding provision of second extension pursuant to section 14A	FOI Advice Given
069882	Advice requested regarding agency providing 'in confidence' letter to the media	FOI Advice Given
069967	Advice requested regarding cost of making an Freedom Of Information application	FOI Advice Given
069971	Advice requested regarding accessing information from a hospital	FOI Advice Given
070019	Advice requested regarding the <i>Whistleblowers Protection Act</i>	FOI Advice Given
070047	FOI advice requested	FOI Advice Given
<b>Police Complaints Authority</b>		
069482	Application for review of determination	FOI Review - No jurisdiction to proceed
<b>Police Department</b>		
069348	Application for review of determination	FOI Review - No jurisdiction to proceed
069588	Application for review of determination	FOI Review - Determination Confirmed
070136	Alleged discrepancy with credit rating	FOI Advice Given
<b>Port Augusta City Council</b>		
069480	Application for review of determination	FOI Review - No jurisdiction to proceed
<b>Port Augusta Hospital &amp; Regional Health Services</b>		
066820	Unreasonable process	FOI Advice Given
066923	Advice requested regarding Freedom Of Information	FOI Advice Given
<b>Public Trustee</b>		
067065	Advice requested regarding obtaining documents	FOI Advice Given
068550	Advice requested	FOI Investigation - Complaint Not Sustained
<b>Repatriation General Hospital</b>		
069579	Advice requested regarding amendment to records	FOI Advice Given

## Freedom of Information

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<b>Riverland Community Health Services</b>		
067274	Advice requested regarding Freedom Of Information procedures	FOI Advice Given
<b>Rural City of Murray Bridge</b>		
068437	Advice requested regarding Freedom of Information investigation	FOI Advice Given
<b>SA Ambulance Service</b>		
065844	Failure to amend records	FOI Review - Determination Confirmed
067810	Advice requested from lawyer regarding <i>Freedom Of Information Act</i>	FOI Advice Given
<b>SA Health Commission</b>		
069458	Advice requested regarding obtaining medical records	FOI Advice Given
<b>SA Housing Trust</b>		
067812	Advice requested regarding Freedom Of Information process on missing documents from file	FOI Advice Given
068328	Complaint regarding Freedom Of Information process	FOI Investigation - Complaint Not Sustained
068438	Advice requested regarding non-receipt of documents from agency	FOI Advice Given
069002	Advice requested regarding Freedom Of Information options	FOI Advice Given
<b>SA Metropolitan Fire Service</b>		
066961	Unreasonable process regarding job applications	FOI Advice Given
067141	Application for review of determination	FOI Investigation - Agency Process Corrected
067413	Advice requested regarding obtaining job selection process	FOI Advice Given
068986	Advice requested regarding Freedom Of Information process on external review	FOI Advice Given
<b>SAFECOM Board</b>		
065146	Application for review of determination	FOI Review - Revised Determination Directed
067606	Application for review of determination	FOI Review - No jurisdiction to proceed
<b>Southern Adelaide Health Service</b>		
065775	Application for review of determination	FOI Review - Determination Confirmed
066377	Application for review of determination	FOI Review - Revised Determination Directed
066935	Application for review of determination. Amendment to records	FOI Review - No jurisdiction to proceed
067449	Application for review of determination	FOI Review - Revised Determination Directed
068302	Advice requested regarding refusal to provide information	FOI Advice Given
068393	Advice requested regarding section 18(2A) of the <i>Freedom Of Information Act</i>	FOI Advice Given
068652	Advice requested regarding Freedom Of Information process	FOI Advice Given
069457	Advice requested regarding obtaining medical records	FOI Advice Given
069537	Advice requested regarding Freedom of Information process	FOI Advice Given
<b>State Electoral Office</b>		
068594	Advice requested whether information about political party membership is subject to the FOI Act	FOI Advice Given
<b>The Treasurer</b>		
070711	Advice requested re new application for review	FOI Advice Given
<b>Trans Adelaide</b>		
063387	Application for review of determination	FOI Review - Determination Revised by Agency
<b>University of Adelaide Council</b>		
067836	Application for review of determination	FOI Review - Revised Determination Directed
<b>University of South Australia Council</b>		
069796	Advice requested regarding Freedom Of Information process	FOI Advice Given
<b>Wattle Range Council</b>		
067189	Advice requested regarding Freedom Of Information relating to development application to the council	FOI Advice Given
<b>WorkCover Corporation</b>		
062540	Application for review of determination	FOI Review - Determination Revised by Agency
065025	Application for review of determination	FOI Review - Determination Revised by Agency
065080	Application for review of determination	FOI Review - Determination Revised by Agency
065308	Application for review of determination	FOI Review - Determination Revised by Agency
066790	Application for review of determination	FOI Review - Determination Confirmed
067040	Advice requested on how to apply to the agency to amend records	FOI Advice Given
067395	Advice requested regarding amendment to records and release of records to others	FOI Advice Given
067630	Advice requested regarding Freedom Of Information process	FOI Advice Given
067800	Advice requested regarding amendment of records	FOI Advice Given
067969	Advice requested regarding Freedom Of Information process	FOI Advice Given
068301	Advice requested regarding section 14A of the <i>Freedom Of Information Act</i>	FOI Advice Given
068524	Advice requested whether an external review had been lodged	FOI Advice Given
068526	Advice requested regarding third party review of agency's determination	FOI Advice Given
068657	Advice requested regarding section 18(2a) of the <i>Freedom Of Information Act</i>	FOI Advice Given
069936	Advice requested regarding internal review	FOI Advice Given
070435	Advice requested regarding release of information by agency to ex-wife	FOI Advice Given

**Government Departments**  
Summary of outcomes of complaints finalised from 1 July 2005 to 30 June 2006

Agency	Advice Given	Alternate Remedy	Declined	Not Sustained	Not Sustained - Explanation Given	Other/General	Out of Time	Partly Resolved in Favour of Complainant	Reasonable Resolution	Referred to Agency	Refused to Investigate	Section 132 Water Resources Act	Withdrawn by Complainant	Total
Attorney-General's Department	23				12			3	6	6	1			51
Department for Correctional Services	131	1		31	221	1	1	60	125	21	5		7	603
Department for Environment and Heritage	8			1	11			2	1				1	24
Department for Families and Communities	59	1		2	41	1		20	19	33	1		3	180
Department of Admin and Information Services	7	1			8			2	8	1	1			28
Department of Education & Children's Services	48			3	22			5	8	20	1		1	109
Department of Health	1				1			1	1					4
Department of Primary Industries & Resources	13				3	1		1	2	1	1			22
Department of the Premier and Cabinet				1									1	2
Department of Transport & Urban Planning					4				3				1	8
Department of Transport, Energy and Infrastructure	57	1			41			10	17	6			3	135
Department of Treasury and Finance	17	2			9	1		6	10	4	1		1	51
Department of Further Education, Employment, Science and Technology	9		1		2				6	3				21
Department of Water, Land & Biodiversity Conservation	6				5				3			1		15
Environment Protection Authority	4				2			1	1	1				9
SA Housing Trust	60	1		4	74			31	53	6	1		2	232
SA Water Corporation	38			2	17	1	1	5	18	5	1		1	90
State Electoral Office													1	1
<b>Total</b>	<b>481</b>	<b>7</b>	<b>1</b>	<b>44</b>	<b>473</b>	<b>5</b>	<b>2</b>	<b>147</b>	<b>281</b>	<b>107</b>	<b>13</b>	<b>1</b>	<b>22</b>	<b>1585</b>

## Government Departments

Summary of outcomes of complaints finalized 1 July 2005 to 30 June 2006

FILE No.	COMPLAINT DETAILS	OUTCOME
<b>Attorney-General's Department</b>		
065495	Allegedly improper issue of bond to tenant	Full Investigation - Reasonable Resolution
066583	Inadequate investigation of complaint	Preliminary Investigation - Not Sustained - Explanation Given
066675	Alleged failure to investigate or act	Advice Given - Referred to Agency
066751	Unreasonable delay in providing letter	Preliminary Investigation - Reasonable Resolution
066818	Unreasonable decision to refuse to waive fee	Preliminary Investigation - Not Sustained - Explanation Given
066886	Unreasonable refusal to change surname of son	Preliminary Investigation - Reasonable Resolution
066943	Unreasonable processing delay	Advice Given
067013	Alleged incorrect information provided	Advice Given
067036	Alleged failure to process application in a proper manner	Preliminary Investigation - Reasonable Resolution
067110	Unreasonable decision to increase payments to compensate victims of crime	Preliminary Investigation - Partly Resolved in Favour of Complainant
067174	Alleged inadequate investigation of complaint	Advice Given
067203	Unreasonable administrative decision to refuse claim	Declined - Refused to Investigate
067205	Unreasonable late payment charge for renewal of contractor's licence	Advice Given
067221	Alleged failure to compensate as a victim of crime	Advice Given
067306	Alleged failure to compensate for error	Preliminary Investigation - Not Sustained - Explanation Given
067309	Alleged failure to respond regarding rectify storm damage	Preliminary Investigation - Not Sustained - Explanation Given
067350	Unreasonable decision regarding registration of business	Advice Given
067425	Unreasonable investigation of complaint	Advice Given
067453	Alleged refusal to provide explanation of barring	Preliminary Investigation - Not Sustained - Explanation Given
067465	Alleged failure to take appropriate action on consumer complaint	Preliminary Investigation - Not Sustained - Explanation Given
067473	Unreasonable decision regarding renewal of	Advice Given - Referred to Agency
067544	Unreasonable refusal to issue birth certificate	Preliminary Investigation - Partly Resolved in Favour of Complainant
067699	Unreasonable assistance provided	Advice Given
067855	Unauthorised personal information contained on website	Advice Given - Referred to Agency
067950	Alleged failure to provide remedy for complaint	Advice Given
068193	Unreasonable decision to cancel licence	Advice Given
068319	Alleged failure to act on complaint in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
068338	Unreasonable delay in investigating complaint	Advice Given
068454	Unreasonable investigation into complaint	Advice Given
068455	Alleged maladministration resulting in two similar names being registered	Advice Given
068462	Alleged failure to address complaint in a timely manner	Preliminary Investigation - Partly Resolved in Favour of Complainant
068505	Alleged failure to investigate complaint	Advice Given
068571	Alleged inaction due to breach of legislation	Preliminary Investigation - Reasonable Resolution
068588	Alleged inadequate service	Preliminary Investigation - Not Sustained - Explanation Given
068596	Alleged failure to grant compensation as a victim of crime	Advice Given
068726	Alleged abusive behavior of staff member	Advice Given - Referred to Agency
068759	Incorrect process in issuing of birth certificate	Preliminary Investigation - Not Sustained - Explanation Given
068794	Alleged failure to divulge information	Advice Given
068854	Alleged failure to investigate complaint	Advice Given
068957	Alleged failure to investigate complaint	Advice Given
069104	Alleged failure to prosecute for non-compliance regarding business name	Advice Given
069231	Alleged failure to act on complaint regarding an unlicensed builder	Preliminary Investigation - Reasonable Resolution
069352	Alleged refusal of refund	Advice Given
069362	Unreasonable investigation of complaint	Preliminary Investigation - Not Sustained - Explanation Given
069371	Unreasonable refusal to grant licence	Preliminary Investigation - Not Sustained - Explanation Given
069686	Unreasonable refusal of home detention	Advice Given - Referred to Agency
069793	Alleged failure to investigate complaint	Advice Given - Referred to Agency
069828	Delay in processing application for licence	Preliminary Investigation - Not Sustained - Explanation Given
069941	Unreasonable manner by officer	Advice Given
070001	Alleged failure to compensate for loss	Advice Given
070138	Unreasonable assistance provided by officer	Advice Given
<b>Department for Correctional Services</b>		
050276	Unreasonable refusal	Full Investigation - Reasonable Resolution
064287	Unreasonable method of transport	Full Investigation - Reasonable Resolution
064876	Failure to take adequate care of prisoner	Full Investigation - Not Sustained - Explanation Given
065240	Unprofessional conduct by staff	Preliminary Investigation - Not Sustained
065645	Alleged unreasonable disclosure of information	Preliminary Investigation - Not Sustained - Explanation Given
065819	Alleged conflict of interest	Preliminary Investigation - Reasonable Resolution
066114	Unreasonable decision to transfer to another prison	Preliminary Investigation - Not Sustained - Explanation Given
066137	Failure to limit exposure from passive smoke	Preliminary Investigation - Not Sustained
066297	Unreasonable/unfair treatment	Preliminary Investigation - Reasonable Resolution
066459	Unreasonable ban on prison visit	Preliminary Investigation - Not Sustained - Explanation Given
066475	Unreasonable conditions for remand prisoners	Preliminary Investigation - Not Sustained - Explanation Given
066508	Alleged loss of property	Preliminary Investigation - Reasonable Resolution
066537	Unreasonable action by social worker	Preliminary Investigation - Not Sustained - Explanation Given
066562	Alleged concerns about drinking water	Preliminary Investigation - Reasonable Resolution
066565	Unreasonable delay in finalising claim	Preliminary Investigation - Reasonable Resolution
066573	Unreasonable refusal to supply mattress	Preliminary Investigation - Not Sustained - Explanation Given
066600	Alleged difficulty in securing accommodation for release	Preliminary Investigation - Partly Resolved in Favour of Complainant
066603	Alleged failure to provide written confirmation of an agreement	Preliminary Investigation - Reasonable Resolution
066604	Unreasonable delays in setting parole	Preliminary Investigation - Partly Resolved in Favour of Complainant
066625	Unreasonable decision not to release property	Preliminary Investigation - Not Sustained - Explanation Given
066636	Unreasonable decision to deny home detention	Advice Given
066642	Unreasonable suspension of visits	Preliminary Investigation - Not Sustained - Explanation Given
066643	Unreasonable requirement for prisoners to exercise in inclement weather	Preliminary Investigation - Reasonable Resolution
066644	Alleged inadequate remuneration for work	Preliminary Investigation - Reasonable Resolution
066645	Unreasonable delay in medical consultation	Preliminary Investigation - Reasonable Resolution

**Government Departments**  
Summary of outcomes of complaints finalized 1 July 2005 to 30 June 2006

FILE No.	COMPLAINT DETAILS	OUTCOME
066654	Unreasonable delay in case review	Full Investigation - Reasonable Resolution
066678	Alleged delay in releasing buys from canteen	Preliminary Investigation - Reasonable Resolution
066680	Alleged failure to enter monetary details onto an electronic database	Preliminary Investigation - Reasonable Resolution
066687	Alleged failure to provide adequate meals	Preliminary Investigation - Reasonable Resolution
066688	Alleged delay in assessing application for transfer of parole	Preliminary Investigation - Partly Resolved in Favour of Complainant
066710	Unreasonable delay in carrying out court decision	Preliminary Investigation - Not Sustained - Explanation Given
066712	Unreasonable security classification	Advice Given
066724	Alleged failure to provide adequate dietary needs	Preliminary Investigation - Partly Resolved in Favour of Complainant
066735	Alleged failure to provide proper assessment and support	Preliminary Investigation - Not Sustained
066747	Alleged unfair treatment from officer	Preliminary Investigation - Partly Resolved in Favour of Complainant
066750	Alleged confiscation of property	Preliminary Investigation - Reasonable Resolution
066755	Unreasonable delays in processing home detention application	Preliminary Investigation - Reasonable Resolution
066757	Alleged refusal by officer to pass documents to visiting justice	Preliminary Investigation - Not Sustained - Explanation Given
066765	Unreasonable decision to terminate employment	Preliminary Investigation - Not Sustained - Explanation Given
066770	Unreasonable maintenance delay	Advice Given
066774	Unreasonable decision to ban	Advice Given
066775	Unreasonable refusal to post letters	Advice Given
066777	Alleged failure to provide request	Advice Given
066792	Alleged loss of property	Advice Given
066795	Unreasonable decision to ban from visiting	Advice Given
066796	Alleged unfair treatment concerning release on home detention	Preliminary Investigation - Not Sustained - Explanation Given
066805	Alleged refusal to provide special diet following surgery	Preliminary Investigation - Partly Resolved in Favour of Complainant
066827	Unreasonable delay in accessing optical services	Preliminary Investigation - Reasonable Resolution
066828	Unreasonable doubling up of prisoners in single	Preliminary Investigation - Reasonable Resolution
066831	Unreasonable decision to change to low fat milk	Advice Given - Referred to Agency
066832	Unreasonable decision to introduce low fat milk	Advice Given - Referred to Agency
066833	Unreasonable termination of employment	Preliminary Investigation - Not Sustained - Explanation Given
066835	Unreasonable refusal to compensate for damaged clothing	Preliminary Investigation - Reasonable Resolution
066842	Unreasonable urine analysis	Preliminary Investigation - Reasonable Resolution
066848	Unreasonable decision to transfer to another unit	Advice Given
066857	Alleged incorrect assessment regarding security level	Preliminary Investigation - Not Sustained - Explanation Given
066858	Unreasonable action by agency regarding son's suicide	Declined - Refused to Investigate
066873	Alleged failure to respond to letter in a timely manner	Preliminary Investigation - Reasonable Resolution
066874	Unreasonable refusal of home detention application	Preliminary Investigation - Not Sustained - Explanation Given
066877	Alleged failure to provide appropriate medical assistance	Preliminary Investigation - Reasonable Resolution
066887	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
066888	Unreasonable requirement to go to the exercise yard	Preliminary Investigation - Not Sustained - Explanation Given
066889	Unreasonable delay in transferring funds	Preliminary Investigation - Not Sustained - Explanation Given
066893	Alleged failure to replace faulty canteen purchase	Preliminary Investigation - Not Sustained - Explanation Given
066899	Unreasonable delay in processing application	Preliminary Investigation - Reasonable Resolution
066913	Alleged failure to provide an item on 'buy'	Advice Given
066915	Unreasonable substitution of type of milk	Advice Given
066916	Unreasonable behaviour of officer	Preliminary Investigation - Not Sustained - Explanation Given
066919	Alleged failure to provide safe environment	Advice Given
066937	Unreasonable exposure to known enemy	Preliminary Investigation - Partly Resolved in Favour of Complainant
066938	Alleged denial of information regarding punishment	Preliminary Investigation - Not Sustained - Explanation Given
066940	Unreasonable punishment	Preliminary Investigation - Not Sustained - Explanation Given
066941	Alleged improper use of S24 to manage prisoner	Preliminary Investigation - Not Sustained - Explanation Given
066945	Unreasonable refusal to supply special diet	Advice Given
066965	Alleged inappropriate discipline	Advice Given - Referred to Agency
066971	Alleged failure to give access to property	Advice Given
066972	Complaint lodged on behalf of another prisoner	Declined - Refused to Investigate
066974	Alleged delay in releasing property	Preliminary Investigation - Partly Resolved in Favour of Complainant
066984	Unreasonable requirement for complainant to supply own materials	Preliminary Investigation - Not Sustained - Explanation Given
066986	Unreasonable punishment	Preliminary Investigation - Reasonable Resolution
066989	Unreasonable decision to refuse special 'buy'	Preliminary Investigation - Not Sustained - Explanation Given
066990	Unreasonable decision	Preliminary Investigation - Reasonable Resolution
066995	Unreasonable delay in transferring funds	Advice Given
067005	Unreasonable behaviour by officer	Advice Given
067015	Alleged unhygienic condition of food tray	Preliminary Investigation - Reasonable Resolution
067023	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained
067026	Unreasonable decision to refuse a medical appointment	Preliminary Investigation - Reasonable Resolution
067030	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
067050	Unreasonable refusal of 'buy'	Advice Given
067058	Unreasonable delay in providing appropriate bedding	Preliminary Investigation - Reasonable Resolution
067060	Alleged failure to provide adequate transport service to medical appointment	Preliminary Investigation - Not Sustained - Explanation Given
067067	Unreasonable decision not to forward mail	Preliminary Investigation - Not Sustained
067071	Alleged incorrect deduction from funds	Preliminary Investigation - Not Sustained - Explanation Given
067084	Alleged failure to provide required study material	Preliminary Investigation - Not Sustained - Explanation Given
067091	Failure to adequately compensate for damage to property	Advice Given
067092	Unreasonable decision to transfer to another facility	Preliminary Investigation - Not Sustained - Explanation Given
067101	Unreasonable refusal of visit	Advice Given
067106	Unreasonable delay in forwarding mail	Preliminary Investigation - Partly Resolved in Favour of Complainant
067108	Unreasonable quantity of food provided	Preliminary Investigation - Partly Resolved in Favour of Complainant
067120	Unreasonable delay in processing request to resume visits to prison	Preliminary Investigation - Reasonable Resolution
067127	Unreasonable delays in releasing prisoner property	Preliminary Investigation - Not Sustained - Explanation Given
067130	Unreasonable refusal of specific item for a special 'buy'	Preliminary Investigation - Not Sustained - Explanation Given
067132	Alleged inadequate treatment	Preliminary Investigation - Partly Resolved in Favour of Complainant
067153	Alleged failure to permit prisoner to call Ombudsman Office	Advice Given
067157	Alleged unfair treatment of prisoner	Preliminary Investigation - Reasonable Resolution
067159	Unreasonable change of security rating	Preliminary Investigation - Not Sustained - Explanation Given

**Government Departments**  
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FILE No.	COMPLAINT DETAILS	OUTCOME
067161	Unreasonable decision to transfer to another	Preliminary Investigation - Not Sustained
067162	Alleged failure to compensate for confiscated property	Advice Given
067176	Unreasonable decision to reduce pay	Advice Given - Referred to Agency
067182	Alleged failure to compensate for lost property	Preliminary Investigation - Not Sustained - Explanation Given
067186	Alleged failure to release property	Preliminary Investigation - Reasonable Resolution
067191	Unreasonable decision to limit category of entertainment	Preliminary Investigation - Not Sustained - Explanation Given
067192	Unfair decision regarding employment	Advice Given
067194	Alleged failure to respond to telephone messages	Preliminary Investigation - Reasonable Resolution
067210	Alleged delay in posting mail	Preliminary Investigation - Not Sustained - Explanation Given
067211	Unreasonable decision to open legal mail	Preliminary Investigation - Not Sustained - Explanation Given
067213	Alleged failure to cater for special dietary needs	Preliminary Investigation - Partly Resolved in Favour of Complainant
067214	Alleged failure to confirm correct date for court appearance	Preliminary Investigation - Partly Resolved in Favour of Complainant
067234	Appropriate use of regime management or charging under regulations	Advice Given
067235	Unreasonable delay in crediting money to phone account	Preliminary Investigation - Partly Resolved in Favour of Complainant
067251	Unreasonable decision regarding outgoing prisoner mail	Preliminary Investigation - Not Sustained - Explanation Given
067257	Unreasonable refusal to allow meal to be taken to cell	Preliminary Investigation - Reasonable Resolution
067261	Unreasonable procedure regarding checking prisoner mail	Advice Given
067262	Unreasonable milk supply for protected prisoners	Preliminary Investigation - Reasonable Resolution
067264	Unreasonable delay in replacing property damaged by agency	Preliminary Investigation - Reasonable Resolution
067269	Unreasonable refusal to allow access to bottom bunk due to medical condition	Preliminary Investigation - Reasonable Resolution
067275	Alleged delay in transferring property	Preliminary Investigation - Not Sustained - Explanation Given
067276	Alleged failure to replace damaged goods	Preliminary Investigation - Reasonable Resolution
067294	Unreasonable termination of employment	Preliminary Investigation - Partly Resolved in Favour of Complainant
067300	Unreasonable refusal of leave to attend funeral	Preliminary Investigation - Not Sustained - Explanation Given
067317	Alleged delay in forwarding mail and property	Preliminary Investigation - Reasonable Resolution
067325	Unreasonable decision to reduce income	Advice Given
067341	Unreasonable separation of prisoner	Preliminary Investigation - Not Sustained - Explanation Given
067342	Unreasonable delay in transferring monies to phone account	Advice Given
067356	Unreasonable delay in providing second mattress	Advice Given
067367	Unreasonable delay in refunding payment	Preliminary Investigation - Reasonable Resolution
067369	Alleged failure to respond	Advice Given
067372	Unreasonable decision to charge for minor breach	Preliminary Investigation - Reasonable Resolution
067373	Unreasonable refusal to organise release of property	Preliminary Investigation - Reasonable Resolution
067375	Alleged failure to compensate for lost property	Advice Given - Referred to Agency
067383	Unreasonable delay in providing results of scan	Preliminary Investigation - Reasonable Resolution
067386	Unreasonable release of offender on home detention	Preliminary Investigation - Not Sustained - Explanation Given
067388	Unreasonable refusal to purchase items	Preliminary Investigation - Not Sustained
067400	Alleged failure to credit money to telephone account in a timely manner	Preliminary Investigation - Reasonable Resolution
067403	Alleged inappropriate meal provided	Advice Given
067404	Alleged failure to provide electronic device in proper working order	Preliminary Investigation - Reasonable Resolution
067408	Alleged failure to grant access to telephone	Preliminary Investigation - Reasonable Resolution
067411	Alleged unauthorised search of cells	Preliminary Investigation - Not Sustained - Explanation Given
067421	Alleged failure to meet basic hygiene requirements	Preliminary Investigation - Not Sustained - Explanation Given
067424	Alleged delay in dental appointment and return to prison	Preliminary Investigation - Reasonable Resolution
067426	Unreasonable delay in supplying property item	Advice Given
067431	Unreasonable refusal for access to son	Advice Given
067432	Unreasonable delay in contacting complainant	Advice Given
067433	Allegedly different treatment of the complainant	Preliminary Investigation - Not Sustained
067440	Unreasonable refusal to have access to funds	Preliminary Investigation - Reasonable Resolution
067443	Unreasonable decision to remove medication	Advice Given
067444	Unreasonable refusal of visit	Preliminary Investigation - Not Sustained - Explanation Given
067445	Alleged loss of property	Advice Given - Referred to Agency
067446	Alleged failure to compensate for lost property	Preliminary Investigation - Not Sustained - Explanation Given
067450	Unreasonable delay in attempting to locate	Advice Given - Referred to Agency
067459	Alleged failure to permit funds from re-settlement fund to general account	Preliminary Investigation - Not Sustained - Explanation Given
067474	Unreasonable decision regarding work placement	Preliminary Investigation - Not Sustained - Explanation Given
067476	Unreasonable decision to move to another unit	Preliminary Investigation - Reasonable Resolution
067477	Unreasonable pricing of canteen item	Preliminary Investigation - Not Sustained - Explanation Given
067479	Alleged non-contact with fines department	Advice Given
067481	Alleged failure to provide adequate bedding	Preliminary Investigation - Reasonable Resolution
067490	Alleged loss of property	Preliminary Investigation - Not Sustained
067496	Unreasonable loss of items	Advice Given - Referred to Agency
067514	Alleged delay in releasing property	Preliminary Investigation - Partly Resolved in Favour of Complainant
067515	Unreasonable delay in locating letter	Preliminary Investigation - Partly Resolved in Favour of Complainant
067516	Alleged failure to respond to correspondence	Preliminary Investigation - Partly Resolved in Favour of Complainant
067518	Unreasonable punishment	Preliminary Investigation - Partly Resolved in Favour of Complainant
067529	Unreasonable refusal to change cells	Preliminary Investigation - Not Sustained - Explanation Given
067531	Alleged failure to provide adequate telephone service	Preliminary Investigation - Not Sustained - Explanation Given
067535	Unreasonable number of razors available for prisoner use	Preliminary Investigation - Not Sustained - Explanation Given
067547	Unreasonable delay to authorise for special buy	Preliminary Investigation - Reasonable Resolution
067552	Unreasonable delay in transferring money into phone account	Preliminary Investigation - Reasonable Resolution
067559	Alleged failure to advise date of release	Preliminary Investigation - Not Sustained - Explanation Given
067561	Unreasonable penalty for contravening kitchen guidelines	Preliminary Investigation - Not Sustained - Explanation Given
067562	Unreasonable decision to detain in management cell	Preliminary Investigation - Partly Resolved in Favour of Complainant
067564	Unreasonable delay in appearing before visiting tribunal	Preliminary Investigation - Partly Resolved in Favour of Complainant
067568	Unreasonable refusal to give immediate access to property	Advice Given
067569	Unreasonable delay in being returned	Preliminary Investigation - Not Sustained
067573	Unreasonable delay in receiving special 'buy' item	Preliminary Investigation - Not Sustained
067574	Unreasonable decision regarding personal	Preliminary Investigation - Reasonable Resolution
067576	Alleged failure to transfer funds correctly	Preliminary Investigation - Partly Resolved in Favour of Complainant

**Government Departments**  
Summary of outcomes of complaints finalized 1 July 2005 to 30 June 2006

FILE No.	COMPLAINT DETAILS	OUTCOME
067578	Unreasonable requirement to relocate	Preliminary Investigation - Not Sustained
067587	Unreasonable delay in receiving mail	Preliminary Investigation - Not Sustained - Explanation Given
067589	Unreasonable delay in provision of property	Preliminary Investigation - Reasonable Resolution
067591	Unreasonable refusal to provide new mattress	Preliminary Investigation - Reasonable Resolution
067593	Unreasonable delay in seeing medical	Preliminary Investigation - Not Sustained
067595	Alleged failure to confirm receipt of mail despite repeated requests	Preliminary Investigation - Not Sustained
067601	Alleged baseless refusal to release property from storage	Preliminary Investigation - Not Sustained
067602	Alleged baseless removal of a good rug from the cell	Preliminary Investigation - Reasonable Resolution
067603	Unreasonable delay	Preliminary Investigation - Not Sustained - Explanation Given
067610	Unreasonable placement within prison	Preliminary Investigation - Partly Resolved in Favour of Complainant
067624	Unreasonable placement in cell with smoker	Advice Given
067629	Alleged confiscation and subsequent loss of	Preliminary Investigation - Reasonable Resolution
067632	Unreasonable non provision of medication	Advice Given
067651	Unreasonable denial of access to cell during the day	Preliminary Investigation - Partly Resolved in Favour of Complainant
067652	Unreasonable damage to personal item.	Advice Given - Referred to Agency
067654	Unreasonable loss of items	Advice Given - Referred to Agency
067657	Unreasonable action to confiscate a draft letter during a cell search	Preliminary Investigation - Not Sustained - Explanation Given
067668	Unreasonable decision to deny access to property	Preliminary Investigation - Not Sustained - Explanation Given
067696	Unreasonable punishment	Preliminary Investigation - Not Sustained - Explanation Given
067700	Unreasonable delay in applying methadone program	Advice Given
067702	Alleged failure to compensate for lost property	Advice Given
067707	Unreasonable refusal to transfer	Advice Given
067714	Alleged failure to process home detention application in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
067718	Unreasonable refusal of special leave to attend funeral	Preliminary Investigation - Not Sustained - Explanation Given
067720	Alleged failure to transfer property in a timely manner	Preliminary Investigation - Partly Resolved in Favour of Complainant
067734	Unreasonable delay in processing case review	Preliminary Investigation - Partly Resolved in Favour of Complainant
067735	Unreasonable denial of home detention application	Preliminary Investigation - Not Sustained - Explanation Given
067745	Unfair termination of visit	Advice Given - Referred to Agency
067757	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
067759	Unreasonable requirement to address mail in specified manner	Preliminary Investigation - Not Sustained
067760	Unreasonable decision to cancel employment	Preliminary Investigation - Not Sustained
067767	Unreasonable delay in transferring property	Advice Given
067772	Alleged unreasonable confiscation of property	Preliminary Investigation - Reasonable Resolution
067778	Unreasonable decision to impose ban on visitor	Preliminary Investigation - Not Sustained - Explanation Given
067779	Unreasonable refusal to attend brother's funeral	Preliminary Investigation - Not Sustained - Explanation Given
067780	Unreasonable delay in review of ban on prisoner visits	Advice Given
067785	Alleged discovery of vermin in meal	Preliminary Investigation - Reasonable Resolution
067789	Alleged unhygienic conditions for urine testing	Preliminary Investigation - Not Sustained - Explanation Given
067797	Unreasonable decision to terminate visit	Preliminary Investigation - Not Sustained - Explanation Given
067803	Alleged failure to reimburse for goods not received	Preliminary Investigation - Reasonable Resolution
067807	Unreasonable punishment	Preliminary Investigation - Not Sustained - Explanation Given
067822	Unreasonable decision to move complainant	Preliminary Investigation - Not Sustained - Explanation Given
067823	Alleged failure to compensate for lost property	Preliminary Investigation - Not Sustained - Explanation Given
067829	Alleged delay in assessing appeal application	Preliminary Investigation - Partly Resolved in Favour of Complainant
067834	Alleged delay in processing application for parole	Preliminary Investigation - Not Sustained - Explanation Given
067839	Unreasonable mode of transport for transfer	Preliminary Investigation - Not Sustained - Explanation Given
067841	Alleged failure to act to transfer to non-smoking	Preliminary Investigation - Reasonable Resolution
067845	Unreasonable delay in seeing a doctor	Advice Given
067846	Unreasonable management of funds	Advice Given
067847	Alleged inaction by officer to facilitate medical appointment	Advice Given
067868	Unreasonable treatment in G Division	Preliminary Investigation - Reasonable Resolution
067877	Unreasonable refusal to supply square art board	Advice Given
067884	Alleged unfair discipline	Preliminary Investigation - Reasonable Resolution
067886	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained
067899	Alleged inadequate condition of bedding	Preliminary Investigation - Reasonable Resolution
067902	Unreasonable banning of visitor	Advice Given - Other/General
067908	Alleged failure to redirect mail	Preliminary Investigation - Partly Resolved in Favour of Complainant
067915	Unreasonable lack of contingency plan for provision of methadone during lock down	Preliminary Investigation - Not Sustained - Explanation Given
067916	Unreasonable action in searching cell	Preliminary Investigation - Not Sustained - Explanation Given
067921	Unreasonable decision to cancel home detention bail for breach	Advice Given
067929	Alleged failure to provide adequate diet	Preliminary Investigation - Reasonable Resolution
067933	Alleged failure to advise of sentence plan	Preliminary Investigation - Not Sustained - Explanation Given
067934	Unreasonable decision to refuse access to property	Preliminary Investigation - Not Sustained - Explanation Given
067952	Unfair punishment	Advice Given
067958	Unsatisfactory examination by optometrist	Advice Given
067963	Alleged breach of confidentiality	Preliminary Investigation - Reasonable Resolution
067964	Alleged breach of confidentiality	Preliminary Investigation - Reasonable Resolution
067965	Unfair ban on visitor	Preliminary Investigation - Not Sustained - Explanation Given
067972	Alleged refusal to provide medical care	Preliminary Investigation - Not Sustained
067974	Alleged retribution for reporting incident	Preliminary Investigation - Reasonable Resolution
067980	Alleged loss of personal property	Preliminary Investigation - Not Sustained - Explanation Given
067990	Alleged unfair process in charging prisoner	Preliminary Investigation - Reasonable Resolution
067993	Alleged inadequate range of food items	Preliminary Investigation - Not Sustained - Explanation Given
067998	Unreasonable decision to ban sister from visiting prison	Preliminary Investigation - Not Sustained - Explanation Given
068000	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained
068007	Unreasonable conduct of officer	Preliminary Investigation - Reasonable Resolution
068010	Unreasonable request	Preliminary Investigation - Not Sustained - Explanation Given
068016	Alleged failure to allow access to property in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
068017	Alleged failure to transfer property in a timely manner	Preliminary Investigation - Reasonable Resolution
068018	Unreasonable action regarding lack of water	Preliminary Investigation - Reasonable Resolution

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FILE No.	COMPLAINT DETAILS	OUTCOME
068019	Unreasonable administrative action	Preliminary Investigation - Not Sustained - Explanation Given
068020	Alleged preferential treatment when allocation of work	Preliminary Investigation - Not Sustained - Explanation Given
068021	Alleged inadequate supply of water to cell creating OH&S hazard	Advice Given
068110	Unreasonable decision to transfer from prison	Advice Given
068116	Unreasonable check of parole application	Preliminary Investigation - Not Sustained - Explanation Given
068118	Allegedly unwarranted delays in home detention application processing	Preliminary Investigation - Partly Resolved in Favour of Complainant
068140	Unreasonable refusal of visits and phone contact	Advice Given
068153	Alleged delay in advising about interstate transfer	Advice Given - Referred to Agency
068167	Unreasonable selection of movies shown in prison	Preliminary Investigation - Not Sustained - Explanation Given
068170	Alleged delay in processing application	Preliminary Investigation - Reasonable Resolution
068182	Alleged failure to provide employment	Advice Given
068189	Unreasonable bans on contact visits	Preliminary Investigation - Not Sustained
068195	Unreasonable process for handling prisoner mail	Preliminary Investigation - Not Sustained - Explanation Given
068209	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
068211	Alleged failure to process home detention application in a timely manner	Advice Given
068230	Declined request to advance funds to telephone account	Preliminary Investigation - Reasonable Resolution
068231	Advice regarding possible punishment if drug test is positive	Advice Given
068233	Unreasonable refusal to compensate for lost property	Preliminary Investigation - Not Sustained - Explanation Given
068234	Unreasonable transfer of prisoner	Preliminary Investigation - Not Sustained
068235	Unreasonable refusal to allow contact by	Preliminary Investigation - Reasonable Resolution
068245	Alleged delay in home detention process	Preliminary Investigation - Reasonable Resolution
068249	Alleged failure to provide items from canteen	Preliminary Investigation - Partly Resolved in Favour of Complainant
068252	Alleged failure to release special buy items to prisoner after signing for them	Preliminary Investigation - Not Sustained - Explanation Given
068255	Alleged failure to replace faulty appliance in prisoner accommodation unit	Preliminary Investigation - Reasonable Resolution
068257	Alleged failure to exercise duty of care	Preliminary Investigation - Partly Resolved in Favour of Complainant
068261	Alleged refusal to release property	Preliminary Investigation - Reasonable Resolution
068263	Unreasonable delay in providing employment or study opportunities	Preliminary Investigation - Not Sustained - Explanation Given
068264	Alleged delay in providing information about a possible transfer	Preliminary Investigation - Not Sustained - Explanation Given
068272	Unreasonable delays in delivering 'buys' from canteen	Preliminary Investigation - Not Sustained - Explanation Given
068276	Unreasonable decision to return prisoner to main stream	Preliminary Investigation - Partly Resolved in Favour of Complainant
068280	Alleged delay in approving transfer	Preliminary Investigation - Reasonable Resolution
068297	Unreasonable reduction in phone time	Preliminary Investigation - Not Sustained - Explanation Given
068303	Unreasonable decision not to allow prisoner into the mainstream of the prison	Advice Given
068306	Alleged failure to arrange money for release	Advice Given
068313	Alleged failure to adhere to original release date	Advice Given
068314	Unreasonable delay in releasing prisoner	Preliminary Investigation - Not Sustained - Explanation Given
068318	Alleged failure to permit officer assisted telephone call	Preliminary Investigation - Not Sustained - Explanation Given
068326	Unreasonable delay in transferring property	Preliminary Investigation - Not Sustained - Explanation Given
068327	Alleged failure to compensate for lost property	Preliminary Investigation - Not Sustained - Explanation Given
068329	Unreasonable delay in charging for offence in another institution	Preliminary Investigation - Reasonable Resolution
068343	Unreasonable decision to refuse attendance at training course	Advice Given
068366	Alleged miscalculation of finances	Advice Given
068369	Alleged failure to fix exhaust fans in cells	Preliminary Investigation - Reasonable Resolution
068376	Unreasonable decision to refuse transfer	Preliminary Investigation - Not Sustained - Explanation Given
068402	Alleged refusal to provide meal	Advice Given
068410	Alleged failure to provide access to information	Preliminary Investigation - Reasonable Resolution
068413	Alleged inability to provide policy document	Preliminary Investigation - Reasonable Resolution
068414	Alleged failure to respond to request for counseling	Preliminary Investigation - Partly Resolved in Favour of Complainant
068420	Unreasonable refusal to release items from	Preliminary Investigation - Reasonable Resolution
068426	Alleged failure to investigate complaint	Preliminary Investigation - Not Sustained - Explanation Given
068439	Unreasonable decision to ban girlfriend from visiting prison	Advice Given
068446	Unreasonable food supplied for special diet	Preliminary Investigation - Reasonable Resolution
068450	Alleged unfair refusal of officer assisted call	Preliminary Investigation - Reasonable Resolution
068451	Alleged failure to transfer property in a timely manner	Preliminary Investigation - Reasonable Resolution
068457	Alleged no increase in unemployment funds	Advice Given
068471	Access to information	Advice Given - Referred to Agency
068476	Unreasonable decision to ban visits to prison	Preliminary Investigation - Not Sustained - Explanation Given
068477	Alleged delay in appearing before Parole Board	Preliminary Investigation - Partly Resolved in Favour of Complainant
068480	Unreasonable decision to lock prisoner in cell	Preliminary Investigation - Not Sustained - Explanation Given
068482	Unreasonable placement of remand prisoner	Preliminary Investigation - Not Sustained - Explanation Given
068488	Alleged failure to provide property	Full Investigation - Reasonable Resolution
068493	Unreasonable decision to ban visits	Advice Given
068496	Unreasonable delay in returning property	Advice Given
068497	Alleged lack of medical attention for injury	Advice Given
068499	Alleged lack of access to service	Preliminary Investigation - Partly Resolved in Favour of Complainant
068500	Unreasonable early lockdown	Preliminary Investigation - Not Sustained
068529	Alleged failure to provide access to air conditioning	Preliminary Investigation - Not Sustained - Explanation Given
068541	Unreasonable conditions apply to home detention regime	Preliminary Investigation - Not Sustained - Explanation Given
068548	Alleged delay in processing home detention	Preliminary Investigation - Reasonable Resolution
068555	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
068559	Unreasonable delays to release	Preliminary Investigation - Not Sustained
068560	Unreasonable decision	Preliminary Investigation - Not Sustained - Explanation Given
068561	Alleged denial of access to Ombudsman's Annual Report	Preliminary Investigation - Reasonable Resolution
068562	Alleged failure to exercise duty of care when transferring prisoner	Preliminary Investigation - Partly Resolved in Favour of Complainant
068563	Unreasonable punishment	Declined - Alternate Remedy
068578	Alleged delay in processing request for prisoner 'buy'	Preliminary Investigation - Reasonable Resolution
068581	Alleged failure to transfer general funds in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
068583	Alleged underpayment of wages	Preliminary Investigation - Partly Resolved in Favour of Complainant

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FILE No.	COMPLAINT DETAILS	OUTCOME
068584	Alleged inappropriate imposition of charge	Preliminary Investigation - Not Sustained - Explanation Given
068585	Unreasonable decision to return prisoner to mainstream	Advice Given
068586	Alleged failure to release property	Advice Given
068589	Alleged denial of adequate time on prison visit with relative	Preliminary Investigation - Not Sustained - Explanation Given
068593	Unreasonable decision to terminate employment and transfer to another unit	Declined - Refused to Investigate
068600	Unreasonable banning of contact with another prisoner	Preliminary Investigation - Not Sustained - Explanation Given
068613	Unreasonable ban of prisoner visits	Preliminary Investigation - Not Sustained - Explanation Given
068616	Alleged failure to provide meal	Preliminary Investigation - Reasonable Resolution
068618	Unreasonable decision to remove from protection	Preliminary Investigation - Not Sustained - Explanation Given
068620	Unreasonable treatment	Preliminary Investigation - Not Sustained - Explanation Given
068638	Alleged failure to transfer property	Preliminary Investigation - Partly Resolved in Favour of Complainant
068640	Alleged failure to communicate information	Withdrawn - Withdrawn by Complainant
068648	Unreasonable delay in receiving legal aid appointment	Advice Given - Referred to Agency
068656	Unreasonable transfer	Preliminary Investigation - Not Sustained
068662	Unreasonable denial of prison issue clothing	Preliminary Investigation - Reasonable Resolution
068664	Alleged failure to amend records	Preliminary Investigation - Reasonable Resolution
068665	Unreasonable transfer	Advice Given - Referred to Agency
068670	Unreasonable decision to ban visits to prisons	Preliminary Investigation - Not Sustained - Explanation Given
068674	Alleged failure to replace faulty item from canteen	Preliminary Investigation - Partly Resolved in Favour of Complainant
068675	Unreasonable refusal to access property	Preliminary Investigation - Partly Resolved in Favour of Complainant
068676	Unreasonable search of visitor	Preliminary Investigation - Not Sustained - Explanation Given
068690	Unreasonable refusal to access property	Preliminary Investigation - Reasonable Resolution
068695	Unreasonable punishment	Preliminary Investigation - Partly Resolved in Favour of Complainant
068697	Alleged delay in processing home detention application	Preliminary Investigation - Not Sustained - Explanation Given
068698	Alleged unreasonable demands	Preliminary Investigation - Partly Resolved in Favour of Complainant
068704	Unfair transfer to another prison facility	Preliminary Investigation - Not Sustained - Explanation Given
068711	Unreasonable delays in fixing hole in fence	Preliminary Investigation - Not Sustained
068719	Unreasonable refusal to release property on transfer to another institution	Preliminary Investigation - Not Sustained - Explanation Given
068721	Alleged tardiness in depositing funds into	Preliminary Investigation - Not Sustained
068722	Unreasonable denial of access to telephone	Preliminary Investigation - Not Sustained - Explanation Given
068723	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
068730	Unreasonable treatment	Preliminary Investigation - Partly Resolved in Favour of Complainant
068739	Alleged excessive and unfair punishment	Preliminary Investigation - Not Sustained - Explanation Given
068750	Unreasonable lockdown in cell	Advice Given
068751	Unreasonable transfer	Advice Given
068758	Unreasonable decision to ban visits	Preliminary Investigation - Not Sustained - Explanation Given
068761	Unreasonable delays in releasing property	Preliminary Investigation - Reasonable Resolution
068767	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
068777	Alleged refusal to pay medical expenses	Preliminary Investigation - Not Sustained - Explanation Given
068778	Unreasonable decision to refuse release	Advice Given
068779	Alleged failure to provide access to rehabilitation courses	Preliminary Investigation - Reasonable Resolution
068801	Alleged failure to show GST on purchased items	Preliminary Investigation - Not Sustained - Explanation Given
068807	Alleged failure to process home detention application in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
068819	Unreasonable decision to refuse leave for birth of child	Preliminary Investigation - Not Sustained - Explanation Given
068820	Unreasonable requirement to access personal records	Preliminary Investigation - Not Sustained - Explanation Given
068827	Unreasonable requirement to share cell with smoker	Withdrawn - Withdrawn by Complainant
068832	Alleged unfair removal of access to work	Preliminary Investigation - Not Sustained - Explanation Given
068835	Unreasonable delay in releasing prisoner	Declined - Out of Time
068839	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
068843	Alleged unauthorised opening of prisoner mail	Preliminary Investigation - Not Sustained - Explanation Given
068844	Alleged intimidating behaviour by officer	Preliminary Investigation - Not Sustained
068846	Allegedly overzealous enforcement of telephone time limit	Preliminary Investigation - Not Sustained
068849	Alleged failure to provide report in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
068857	Unreasonable refusal to allow access to telephone	Preliminary Investigation - Not Sustained - Explanation Given
068861	Unreasonable treatment of husband	Advice Given
068862	Alleged missing property	Advice Given
068866	Alleged delays in providing details of application for home detention	Advice Given
068868	Unreasonable decision to refuse loan television	Preliminary Investigation - Partly Resolved in Favour of Complainant
068869	Unreasonable decision to forbid further work on the farm	Advice Given
068873	Unreasonable termination of visit	Preliminary Investigation - Not Sustained - Explanation Given
068876	Unreasonable security rating	Preliminary Investigation - Not Sustained - Explanation Given
068880	Unreasonable delay in processing property transfer	Preliminary Investigation - Not Sustained - Explanation Given
068904	Alleged inconsistent management of property	Advice Given
068912	Unfair decision to place in punishment cell	Preliminary Investigation - Not Sustained - Explanation Given
068922	Unreasonable delay to transfer	Preliminary Investigation - Partly Resolved in Favour of Complainant
068930	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
068941	Unreasonable amount of time spent in holding cell before court appearance	Preliminary Investigation - Not Sustained - Explanation Given
068952	Unreasonable decision to intercept and not forward mail	Preliminary Investigation - Reasonable Resolution
068956	Alleged opening of official mail	Preliminary Investigation - Reasonable Resolution
068962	Unreasonable removal of stamps from mail	Preliminary Investigation - Not Sustained - Explanation Given
068964	Alleged underpayment of wages	Preliminary Investigation - Not Sustained - Explanation Given
068970	Unreasonable decision to terminate home	Advice Given
068971	Unreasonable refusal of request for single cell	Preliminary Investigation - Not Sustained - Explanation Given
068979	Unreasonable decision to change regime	Preliminary Investigation - Not Sustained - Explanation Given
068985	Unreasonable punishment	Preliminary Investigation - Partly Resolved in Favour of Complainant
068987	Unfair decision to remove from job	Preliminary Investigation - Not Sustained - Explanation Given

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FILE No.	COMPLAINT DETAILS	OUTCOME
068990	Alleged refusal to transfer to other facility	Advice Given
068992	Alleged unfair decision to charge with offence	Preliminary Investigation - Not Sustained - Explanation Given
068994	Unreasonable refusal to grant leave for funeral	Preliminary Investigation - Not Sustained - Explanation Given
069015	Unreasonable refusal to provide access to service	Preliminary Investigation - Not Sustained - Explanation Given
069019	Alleged failure to transfer to another part in the prison	Preliminary Investigation - Not Sustained - Explanation Given
069023	Unreasonable refusal of access to stereo	Preliminary Investigation - Not Sustained - Explanation Given
069024	Alleged failure to transfer funds from prison in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
069036	Unreasonable decision to pursue incident after punishment	Preliminary Investigation - Not Sustained - Explanation Given
069040	Unreasonable refusal to send mail while confined to unit	Preliminary Investigation - Reasonable Resolution
069043	Unreasonable decision to shorten phone call	Preliminary Investigation - Reasonable Resolution
069047	Unreasonable transfer	Preliminary Investigation - Not Sustained - Explanation Given
069048	Unreasonable delay in compensating for lost property claim	Withdrawn - Withdrawn by Complainant
069075	Alleged inadequate explanation regarding punishment	Preliminary Investigation - Not Sustained - Explanation Given
069079	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
069098	Alleged overpayment of levy	Preliminary Investigation - Not Sustained - Explanation Given
069101	Alleged unfair decision	Preliminary Investigation - Partly Resolved in Favour of Complainant
069106	Unreasonable refusal to transfer to meet solicitor	Preliminary Investigation - Partly Resolved in Favour of Complainant
069107	Alleged failure to provide breakfast	Preliminary Investigation - Not Sustained - Explanation Given
069113	Alleged poor attitude/communication	Preliminary Investigation - Partly Resolved in Favour of Complainant
069114	Alleged denial of access to legal advice	Advice Given
069115	Alleged change of prison regime without charge	Preliminary Investigation - Not Sustained
069124	Unreasonable delay in transferring funds between institutions	Preliminary Investigation - Reasonable Resolution
069136	Unreasonable limitation on educational	Advice Given
069140	Unreasonable decision to ban son from visiting prison	Preliminary Investigation - Reasonable Resolution
069146	Unreasonable decision to reject claim for compensation for lost property	Preliminary Investigation - Not Sustained - Explanation Given
069152	Unreasonable delay in arranging contact with social worker	Preliminary Investigation - Reasonable Resolution
069156	Alleged failure to credit funds to phone card	Advice Given
069164	Alleged failure to provide appeal papers in appropriate time frame	Preliminary Investigation - Not Sustained - Explanation Given
069165	Alleged failure to advise of reasons for transfer	Advice Given
069169	Unreasonable delay in conducting local review	Preliminary Investigation - Not Sustained - Explanation Given
069170	Unreasonable decision to move prisoner to another unit	Preliminary Investigation - Not Sustained - Explanation Given
069179	Unreasonable decision not to segregate prisoner	Preliminary Investigation - Not Sustained - Explanation Given
069188	Unreasonable decision regarding transfer	Advice Given - Referred to Agency
069197	Alleged failure to inform family of prisoner's transfer	Preliminary Investigation - Not Sustained - Explanation Given
069198	Unreasonable decision to keep under surveillance	Preliminary Investigation - Partly Resolved in Favour of Complainant
069216	Alleged failure to transfer to another institution as anticipated	Preliminary Investigation - Not Sustained - Explanation Given
069221	Unreasonable refusal to grant access to exercise yard during power failure	Preliminary Investigation - Not Sustained - Explanation Given
069223	Unreasonable decision to suspend contact visits	Preliminary Investigation - Not Sustained - Explanation Given
069224	Alleged tardy processing of home detention application	Preliminary Investigation - Partly Resolved in Favour of Complainant
069235	Unreasonable delay in access to funds after transfer	Preliminary Investigation - Reasonable Resolution
069238	Allegedly incorrect information on a prison file.	Preliminary Investigation - Not Sustained - Explanation Given
069239	Unreasonable prisoner transfer	Withdrawn - Withdrawn by Complainant
069240	Alleged failure to act on complaint	Preliminary Investigation - Partly Resolved in Favour of Complainant
069246	Unreasonable decision to transfer to prison	Preliminary Investigation - Not Sustained - Explanation Given
069263	Unreasonable refusal to substitute blood test for urine testing	Preliminary Investigation - Not Sustained - Explanation Given
069267	Unreasonable refusal to remove allegations from record	Preliminary Investigation - Partly Resolved in Favour of Complainant
069273	Unreasonable decision to allow unsafe practice	Preliminary Investigation - Not Sustained - Explanation Given
069275	Unreasonable delay in transferring property	Preliminary Investigation - Not Sustained - Explanation Given
069277	Alleged loss of property during transfer to another facility	Preliminary Investigation - Not Sustained - Explanation Given
069278	Alleged unfair imposition of penalty	Preliminary Investigation - Not Sustained - Explanation Given
069282	Unfair decision to transfer to another facility	Preliminary Investigation - Not Sustained - Explanation Given
069283	Unreasonable refusal to release from prison	Preliminary Investigation - Not Sustained - Explanation Given
069305	Unreasonable refusal to offer work	Preliminary Investigation - Not Sustained - Explanation Given
069307	Unreasonable decision to change destination of transfer	Preliminary Investigation - Not Sustained - Explanation Given
069316	Alleged failure to approve transfer	Preliminary Investigation - Not Sustained - Explanation Given
069324	Unreasonable refusal to allow employment	Withdrawn - Withdrawn by Complainant
069327	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
069331	Unreasonable penalty	Preliminary Investigation - Not Sustained - Explanation Given
069336	Unreasonable refusal for complainant to access alternative laundry	Advice Given
069345	Allegedly charged for items that were not supplied	Preliminary Investigation - Not Sustained - Explanation Given
069353	Alleged delay in transferring property led to loss of items	Preliminary Investigation - Reasonable Resolution
069365	Unreasonable delay in conducting case review for parole board hearing	Preliminary Investigation - Not Sustained - Explanation Given
069376	Unreasonable denial of financial service	Preliminary Investigation - Reasonable Resolution
069386	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
069396	Unreasonable refusal to release property	Preliminary Investigation - Reasonable Resolution
069397	Alleged loss of property by officer	Preliminary Investigation - Reasonable Resolution
069404	Unreasonable removal of work opportunity	Preliminary Investigation - Reasonable Resolution
069407	Unreasonable allowance	Advice Given - Referred to Agency
069410	Unreasonable transfer	Preliminary Investigation - Reasonable Resolution
069416	Unreasonable treatment of prisoner	Declined - Refused to Investigate
069417	Unreasonable decision to place in induction unit	Advice Given
069422	Unreasonable to pay for copy of Act	Advice Given
069435	Unreasonable refusal to conduct urinalysis	Preliminary Investigation - Not Sustained - Explanation Given
069437	Unreasonable refusal to request to telephone appropriate authority	Preliminary Investigation - Partly Resolved in Favour of Complainant
069467	Alleged inability to purchase drinks	Preliminary Investigation - Reasonable Resolution
069483	Unreasonable review assessment	Advice Given
069487	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
069489	Unreasonable non-delivery of course	Preliminary Investigation - Not Sustained - Explanation Given
069500	Unreasonable decision to transfer	Advice Given

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FILE No.	COMPLAINT DETAILS	OUTCOME
069506	Unreasonable action regarding prisoner	Advice Given
069507	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
069508	Unreasonable delay in providing television	Preliminary Investigation - Not Sustained - Explanation Given
069512	Unreasonable ban on prisoner visits	Preliminary Investigation - Not Sustained - Explanation Given
069515	Alleged refusal to provide resocialisation program	Preliminary Investigation - Not Sustained - Explanation Given
069516	Unreasonable disclosure of information	Withdrawn - Withdrawn by Complainant
069527	Unreasonable decision to ban visits from sister	Declined - Refused to Investigate
069528	Unreasonable restrictions on telephone access to approved organisations	Preliminary Investigation - Not Sustained - Explanation Given
069530	Alleged denial of legal representation	Advice Given
069532	Unreasonable decision to provide less hot meals	Preliminary Investigation - Not Sustained - Explanation Given
069533	Alleged incorrect records regarding eligibility for parole	Preliminary Investigation - Not Sustained - Explanation Given
069548	Unreasonable basis for refusing single cell	Preliminary Investigation - Not Sustained - Explanation Given
069549	Alleged failure to change proposed date for release on home detention	Preliminary Investigation - Not Sustained - Explanation Given
069555	Unreasonable decision not to transfer money to account	Advice Given
069574	Unreasonable decision to restrict phone access	Preliminary Investigation - Reasonable Resolution
069582	Alleged incorrect records	Advice Given
069587	Alleged inappropriate management	Preliminary Investigation - Partly Resolved in Favour of Complainant
069591	Unreasonable penalty for minor breach	Preliminary Investigation - Not Sustained - Explanation Given
069616	Alleged failure to provide special diet at all times	Advice Given
069617	Unreasonable decision to exclude from obtaining employment	Advice Given
069620	Alleged assault by officers	Advice Given
069622	Alleged concerns regarding sentence plan	Advice Given
069626	Alleged failure to transfer	Advice Given
069631	Unreasonable decision not to transfer	Advice Given
069633	Unreasonable refusal to release game boy advance	Preliminary Investigation - Not Sustained - Explanation Given
069638	Alleged incorrect release date recorded on file	Advice Given
069643	Unreasonable decision to move item of property out of prison	Preliminary Investigation - Reasonable Resolution
069645	Unreasonable refusal to reimburse for lost monies	Preliminary Investigation - Reasonable Resolution
069651	Unreasonable delay in ceasing deductions	Preliminary Investigation - Not Sustained
069681	Alleged delay in releasing on home detention	Preliminary Investigation - Not Sustained - Explanation Given
069687	Alleged inadequate action regarding transfer of property to third party	Preliminary Investigation - Reasonable Resolution
069696	Unreasonable decision to ban visits	Advice Given
069697	Unreasonable decision to deny officer-assisted	Advice Given
069698	Unreasonable refusal to record property item on card	Advice Given
069699	Unreasonable transfer	Preliminary Investigation - Not Sustained - Explanation Given
069706	Unreasonable decision to cancel yard access	Advice Given
069707	Unreasonable use of authority	Advice Given
069709	Unreasonable decision to suspend wing	Advice Given
069711	Unreasonable attendance of security officers during medical consultation	Preliminary Investigation - Not Sustained - Explanation Given
069725	Alleged unfair requirement to travel to court for brief appearance	Advice Given
069736	Unreasonable removal of single cell	Preliminary Investigation - Not Sustained - Explanation Given
069737	Alleged inedible food	Preliminary Investigation - Not Sustained - Explanation Given
069739	Alleged failure to allow access to community corrections officer	Preliminary Investigation - Reasonable Resolution
069740	Unreasonable restriction to phone access	Preliminary Investigation - Reasonable Resolution
069741	Alleged failure to investigate complaint	Advice Given
069742	Unreasonably harsh punishment	Advice Given
069756	Unreasonable treatment	Withdrawn - Withdrawn by Complainant
069761	Unreasonable transfer	Preliminary Investigation - Reasonable Resolution
069800	Alleged failure to provide cleaning equipment	Preliminary Investigation - Reasonable Resolution
069804	Alleged failure to address concerns of safety	Preliminary Investigation - Partly Resolved in Favour of Complainant
069810	Unreasonably harsh penalty for positive urine test	Preliminary Investigation - Not Sustained - Explanation Given
069814	Unreasonable decision to refuse transfer to mainstream	Preliminary Investigation - Not Sustained - Explanation Given
069818	Unreasonable harsh punishment	Advice Given
069826	Alleged incorrect 'buy' charge	Advice Given
069830	Alleged insufficient rations of necessary food	Advice Given
069840	Unreasonable delay in supplying special items of clothing	Preliminary Investigation - Reasonable Resolution
069843	Alleged inadequate condition of meals served	Advice Given - Referred to Agency
069847	Unreasonable refusal to allow access to money in resettlement account	Advice Given
069852	Unreasonable decision not to transfer	Preliminary Investigation - Not Sustained - Explanation Given
069863	Alleged unfair removal of access to education	Preliminary Investigation - Partly Resolved in Favour of Complainant
069867	Alleged failure to provide with use of television set	Preliminary Investigation - Partly Resolved in Favour of Complainant
069869	Alleged lack of heating	Advice Given
069875	Unreasonable decision to deny employment	Preliminary Investigation - Not Sustained - Explanation Given
069876	Unreasonable treatment over breach of the rules	Preliminary Investigation - Not Sustained - Explanation Given
069878	Unreasonable behaviour of officers	Preliminary Investigation - Reasonable Resolution
069880	Alleged unfair confiscation of property	Advice Given
069887	Unreasonable decision to transfer whilst court appearances are occurring	Preliminary Investigation - Not Sustained - Explanation Given
069891	Unreasonable property confiscation	Advice Given
069899	Alleged insufficient daily rations	Advice Given - Referred to Agency
069910	Unreasonable decision to transfer to mainstream	Preliminary Investigation - Not Sustained - Explanation Given
069921	Alleged incorrect charge for 'buy'	Advice Given
069924	Unreasonable requirement to share cell	Preliminary Investigation - Reasonable Resolution
069935	Unreasonable confiscation of property	Preliminary Investigation - Reasonable Resolution
069948	Unreasonable harsh punishment	Advice Given
069966	Alleged failure to deposit money in prisoner account	Preliminary Investigation - Not Sustained - Explanation Given
069969	Alleged delay in processing home detention application	Preliminary Investigation - Partly Resolved in Favour of Complainant
069970	Alleged unreasonable imprisonment	Advice Given
069973	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
069978	Unreasonable decision to transfer	Preliminary Investigation - Not Sustained - Explanation Given
069983	Alleged assault by officer	Preliminary Investigation - Not Sustained - Explanation Given

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FILE No.	COMPLAINT DETAILS	OUTCOME
069989	Unreasonable decision to charge after incident	Advice Given
069994	Unreasonable decision regarding property	Advice Given
069998	Alleged damage to property during cell search	Preliminary Investigation - Not Sustained - Explanation Given
070003	Unreasonable delay in transfer	Advice Given
070007	Unreasonable action including failure to maintain proper records	Advice Given - Referred to Agency
070011	Alleged unfair refusal of compassionate leave	Advice Given
070015	Alleged inappropriate behaviour by officer	Advice Given
070021	Alleged difficulty in coordinating work placement after release	Advice Given - Referred to Agency
070051	Alleged failure to provide adequate heating	Preliminary Investigation - Not Sustained - Explanation Given
070083	Alleged insufficient cleaning products provided	Preliminary Investigation - Not Sustained - Explanation Given
070084	Alleged refusal of wing association and yard movement	Preliminary Investigation - Not Sustained - Explanation Given
070086	Unreasonable decision to change placement	Preliminary Investigation - Not Sustained - Explanation Given
070087	Unreasonable removal of work privilege	Preliminary Investigation - Not Sustained - Explanation Given
070094	Alleged failure to provide meals in accordance with religious beliefs	Preliminary Investigation - Reasonable Resolution
070095	Alleged loss of property	Preliminary Investigation - Not Sustained - Explanation Given
070096	Unreasonable decision to confiscate mobile	Advice Given
070137	Unreasonable behaviour/attitude of staff	Advice Given
070139	Unreasonable refusal to repair computers	Advice Given
070141	Unreasonable charges	Advice Given
070148	Alleged failure to release property item	Advice Given
070156	Unreasonable threat of punishment	Advice Given
070160	Unreasonable punishment	Preliminary Investigation - Not Sustained - Explanation Given
070169	Alleged failure to transfer to protection	Advice Given
070170	Alleged failure to provide television	Advice Given
070323	Alleged failure to agree to compassionate leave	Advice Given
<b>Department for Environment and Heritage</b>		
064627	Failure to resolve land sale	Full Investigation - Not Sustained - Explanation Given
065672	Alleged unreasonable process	Preliminary Investigation - Not Sustained - Explanation Given
066107	Unreasonable requirement to give up coastal land in order to freehold	Preliminary Investigation - Not Sustained - Explanation Given
066627	Unreasonable shack freeholding process	Preliminary Investigation - Partly Resolved in Favour of Complainant
066650	Unreasonable outcome to prosecution	Advice Given
066669	Unreasonable increase in public land valuation	Preliminary Investigation - Not Sustained - Explanation Given
066698	Unreasonable decision on boundary for freeholding purposes	Advice Given
066763	Unreasonable decision regarding erection of carport	Preliminary Investigation - Not Sustained - Explanation Given
067484	Unreasonable decision to require additional	Preliminary Investigation - Reasonable Resolution
067550	Alleged failure to act on report of cruelty to	Withdrawn - Withdrawn by Complainant
067791	Unreasonable disclosure of information	Preliminary Investigation - Not Sustained
067926	Alleged failure to investigate complaint relating to potential soil contamination	Advice Given
068546	Alleged failure to maintain area around pump	Preliminary Investigation - Partly Resolved in Favour of Complainant
068612	Unreasonable delay in payment	Advice Given
068641	Alleged inadequate inspections of zoos	Preliminary Investigation - Not Sustained - Explanation Given
068924	Alleged failure to process application in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
069051	Unreasonable refusal to take responsibility for incorrect communication	Advice Given
069441	Unreasonable action not to grant further extension of time for response	Preliminary Investigation - Not Sustained - Explanation Given
069747	Alleged unfair policy regarding conversion of perpetual leases to freehold	Advice Given
069766	Unreasonable process in freeholding of Crown perpetual leases	Preliminary Investigation - Not Sustained - Explanation Given
069789	Alleged failure to properly investigate complaint	Advice Given
069893	Unreasonable fee to traverse easement	Preliminary Investigation - Not Sustained - Explanation Given
070044	Alleged failure to respond to correspondence	Preliminary Investigation - Not Sustained - Explanation Given
070124	Unreasonable requirement to renew licence	Advice Given
<b>Department for Families and Communities</b>		
063837	Failure to properly investigate complaint	Preliminary Investigation - Not Sustained - Explanation Given
064253	Unreasonable investigation into complaint	Preliminary Investigation - Not Sustained - Explanation Given
065212	Inadequate assistance provided	Preliminary Investigation - Partly Resolved in Favour of Complainant
065551	Alleged failure to provide adequate support	Preliminary Investigation - Partly Resolved in Favour of Complainant
065921	Inconsistent procedure	Preliminary Investigation - Reasonable Resolution
066309	Alleged failure to allow approved access	Preliminary Investigation - Not Sustained - Explanation Given
066520	Unreasonable removal of children	Preliminary Investigation - Not Sustained - Explanation Given
066554	Alleged disregard of complainant's plight	Preliminary Investigation - Partly Resolved in Favour of Complainant
066585	Inappropriate advice regarding funeral assistance	Preliminary Investigation - Partly Resolved in Favour of Complainant
066601	Unreasonable administrative decision/policy	Preliminary Investigation - Partly Resolved in Favour of Complainant
066647	Alleged failure to advise of court proceedings	Preliminary Investigation - Partly Resolved in Favour of Complainant
066729	Alleged failure to facilitate visits with child	Preliminary Investigation - Not Sustained - Explanation Given
066737	Unreasonable decision to place child in foster care	Preliminary Investigation - Not Sustained - Explanation Given
066779	Alleged intimidatory behaviour by agency staff	Advice Given
066812	Unreasonable removal of child from care	Preliminary Investigation - Not Sustained - Explanation Given
066821	Unreasonable legislative basis for court order	Advice Given
066830	Unreasonable reduction of funeral benefit	Preliminary Investigation - Reasonable Resolution
066962	Unreasonable delay in processing rebate	Preliminary Investigation - Reasonable Resolution
066996	Alleged failure to take reports of child abuse seriously	Advice Given
067010	Unreasonable delay in organising access	Preliminary Investigation - Reasonable Resolution
067018	Unreasonable non-payment of concession	Advice Given - Referred to Agency
067052	Alleged failure to assist with difficult child	Preliminary Investigation - Not Sustained - Explanation Given
067053	Alleged inadequate investigation	Preliminary Investigation - Not Sustained
067070	Unreasonable management of housing transfer	Advice Given - Referred to Agency
067155	Unreasonable decision made by agency	Advice Given
067196	Unreasonable decisions made in relation to ongoing case management	Advice Given - Referred to Agency
067218	Unreasonable decision to restrict access to child	Preliminary Investigation - Not Sustained - Explanation Given
067249	Unreasonable decision to place child in multiple placements	Advice Given - Referred to Agency
067270	Alleged failure to respond to telephone calls	Preliminary Investigation - Reasonable Resolution

**Government Departments**  
Summary of outcomes of complaints finalized 1 July 2005 to 30 June 2006

FILE No.	COMPLAINT DETAILS	OUTCOME
067283	Alleged failure to follow proper process	Advice Given
067289	Alleged failure to advise of action regarding grandson	Preliminary Investigation - Partly Resolved in Favour of Complainant
067302	Unreasonable decision regarding child placement	Advice Given
067312	Alleged failure to send rebate to correct address	Withdrawn - Withdrawn by Complainant
067327	Alleged failure to pay rebate in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
067354	Alleged failure to correct inaccurate records	Advice Given - Referred to Agency
067365	Unreasonable delay in investigating complaints	Preliminary Investigation - Reasonable Resolution
067378	Alleged inadequate investigation of complaint	Advice Given - Other/General
067379	Unreasonable delay in responding to request	Advice Given - Referred to Agency
067406	Unreasonable investigation of child abuse notification	Withdrawn - Withdrawn by Complainant
067418	Unreasonable decision regarding child neglect	Advice Given
067488	Unreasonable refusal of electricity rebate	Advice Given
067503	Unreasonable treatment of children in care	Preliminary Investigation - Reasonable Resolution
067509	Alleged failure to adequately investigate	Advice Given
067517	Unreasonable delay in deciding upon application	Preliminary Investigation - Not Sustained - Explanation Given
067521	Unreasonable investigation of complaint	Advice Given
067528	Unreasonable decision to require child to go to respite care	Preliminary Investigation - Not Sustained - Explanation Given
067533	Alleged inappropriate action by staff	Preliminary Investigation - Partly Resolved in Favour of Complainant
067553	Unreasonable refusal of electricity concession	Preliminary Investigation - Not Sustained - Explanation Given
067560	Unreasonable delays in accessing concession	Preliminary Investigation - Partly Resolved in Favour of Complainant
067563	Unreasonably incorrect/misleading information provided	Advice Given - Referred to Agency
067567	Alleged release of confidential information	Advice Given
067586	Alleged inappropriate placement of children	Preliminary Investigation - Not Sustained - Explanation Given
067598	Alleged failure of agency to provide concession	Preliminary Investigation - Reasonable Resolution
067626	Unreasonable delay in reunification with child	Preliminary Investigation - Reasonable Resolution
067653	Alleged failure to process application for concession in a timely manner	Preliminary Investigation - Reasonable Resolution
067681	Alleged inadequate action regarding decision to restrict access to children	Preliminary Investigation - Not Sustained - Explanation Given
067689	Unreasonable policy regarding rent charges	Advice Given
067736	Alleged inadequate investigation of complaint of child abuse	Advice Given
067763	Unreasonable refusal of grant	Advice Given
067786	Alleged failure to observe conditions of court order regarding placement of child	Preliminary Investigation - Not Sustained - Explanation Given
067802	Unreasonable decision to require supervised access only to children	Preliminary Investigation - Not Sustained - Explanation Given
067805	Unreasonable denial of placement of children	Preliminary Investigation - Reasonable Resolution
067828	Alleged failure to investigate allegations of child abuse	Advice Given
067844	Alleged failure to act appropriately when convening access visit with child	Advice Given
067848	Alleged failure to act in relation to child placement in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
067850	Alleged failure to pay rebate on energy bills in a timely manner	Preliminary Investigation - Reasonable Resolution
067865	Alleged failure to process concession application in a timely manner	Preliminary Investigation - Reasonable Resolution
067866	Failure to respond to telephone calls	Preliminary Investigation - Reasonable Resolution
067887	Unreasonable actions in relation to a child being in long term state care	Advice Given
067889	Alleged failure to provide concession benefit	Preliminary Investigation - Partly Resolved in Favour of Complainant
067906	Unreasonable requirement to produce confidential reports	Advice Given
067914	Alleged inappropriate placement of children	Advice Given
067937	Unreasonable removal of child	Advice Given - Referred to Agency
067940	Alleged inconsistent information given regarding concession	Preliminary Investigation - Not Sustained - Explanation Given
067946	Alleged inadequate investigation of alleged child abuse	Advice Given - Referred to Agency
067968	Unreasonable delay in organising for complainant's child to be with her	Preliminary Investigation - Not Sustained - Explanation Given
067977	Unreasonable management of complainant's child and the access visits	Preliminary Investigation - Not Sustained - Explanation Given
067988	Unreasonable requirement to attend meeting	Preliminary Investigation - Partly Resolved in Favour of Complainant
067995	Unreasonable placement arrangements for	Declined - Alternate Remedy
068002	Inadequate investigation into allegations of child abuse	Advice Given
068111	Unreasonable behaviour of staff	Preliminary Investigation - Partly Resolved in Favour of Complainant
068159	Alleged failure to pay rent	Advice Given - Referred to Agency
068165	Unreasonable decision to require access visits with children to be supervised	Preliminary Investigation - Not Sustained - Explanation Given
068176	Unreasonable proposal to relocate children	Preliminary Investigation - Not Sustained - Explanation Given
068180	Unreasonable decision to apply for order	Advice Given
068194	Alleged failure to grant bonus on power bills	Advice Given
068214	Unreasonable management of child's welfare	Advice Given
068218	Unreasonable delay in paying for broken washing machine	Preliminary Investigation - Reasonable Resolution
068221	Unreasonable refusal to return child to mother's care	Preliminary Investigation - Reasonable Resolution
068251	Alleged ineligibility for energy concession	Advice Given
068266	Unreasonable restriction on access	Preliminary Investigation - Not Sustained - Explanation Given
068268	Alleged inaccurate records by agency	Advice Given
068274	Alleged failure to investigate reports of child abuse properly	Preliminary Investigation - Partly Resolved in Favour of Complainant
068278	Unreasonable decision to deny access to grandchild	Preliminary Investigation - Not Sustained - Explanation Given
068286	Unreasonable deduction of funds	Preliminary Investigation - Reasonable Resolution
068287	Alleged failure to return calls following allegations of child abuse	Advice Given - Referred to Agency
068294	Alleged failure by agency staff to return calls	Advice Given - Referred to Agency
068341	Unreasonable denial of unsupervised access	Advice Given
068362	Unreasonable decision regarding access visits	Advice Given
068399	Alleged intimidatory behaviour	Advice Given
068406	Unreasonable decision made to terminate reunification process	Preliminary Investigation - Partly Resolved in Favour of Complainant
068415	Unreasonable lack of action	Preliminary Investigation - Not Sustained - Explanation Given
068416	Unreasonable placement given historical allegation	Full Investigation - Partly Resolved in Favour of Complainant
068418	Unreasonable access provisions	Preliminary Investigation - Not Sustained - Explanation Given
068422	Unreasonable case management	Preliminary Investigation - Not Sustained - Explanation Given
068447	Unreasonable management of child visit	Preliminary Investigation - Not Sustained - Explanation Given
068470	Alleged inadequate investigation of abuse report	Preliminary Investigation - Not Sustained - Explanation Given

**Government Departments**  
Summary of outcomes of complaints finalized 1 July 2005 to 30 June 2006

FILE No.	COMPLAINT DETAILS	OUTCOME
068503	Unreasonable facilities provided for access visits	Preliminary Investigation - Not Sustained - Explanation Given
068540	Unreasonable treatment by agency	Advice Given
068572	Inadequate investigation of complaint	Advice Given - Referred to Agency
068577	Alleged failure to act in a timely manner	Preliminary Investigation - Partly Resolved in Favour of Complainant
068590	Alleged failure to keep accurate records	Preliminary Investigation - Not Sustained - Explanation Given
068636	Unreasonable placement of child	Advice Given
068639	Alleged inaccurate report issued by agency	Advice Given - Referred to Agency
068654	Unreasonable case management decision	Advice Given
068655	Unreasonable case management decisions	Advice Given
068666	Unreasonable case management	Advice Given
068688	Unreasonable follow up regarding reports concerning daughter	Preliminary Investigation - Partly Resolved in Favour of Complainant
068689	Alleged inadequate investigation of complaint	Advice Given - Referred to Agency
068760	Alleged failure to give reasons for termination of access	Preliminary Investigation - Not Sustained - Explanation Given
068787	Unreasonable disclosure of information	Preliminary Investigation - Partly Resolved in Favour of Complainant
068810	Alleged lack of objectivity in creating psychology reports	Advice Given
068822	Unreasonable application for long term order	Advice Given - Referred to Agency
068840	Alleged failure to provide reasons for supervised access only	Advice Given - Referred to Agency
068842	Unreasonable case management	Advice Given
068902	Unreasonable decision regarding children in care	Advice Given
068951	Alleged failure to provide financial assistance	Advice Given
068975	Unreasonable management of children's welfare	Advice Given
069008	Unreasonable use of authority to access personal records	Advice Given
069021	Alleged failure to respond to correspondence	Advice Given - Referred to Agency
069037	Unreasonable case management	Preliminary Investigation - Not Sustained - Explanation Given
069053	Unreasonable behaviour by officers	Advice Given
069068	Unreasonable disclosure of information	Preliminary Investigation - Partly Resolved in Favour of Complainant
069076	Alleged inappropriate placement of child	Advice Given
069088	Unreasonable decision to provide access to child	Preliminary Investigation - Not Sustained - Explanation Given
069122	Unreasonable treatment of family	Advice Given - Referred to Agency
069168	Unreasonable conduct of staff regarding refusal of financial support	Advice Given - Referred to Agency
069237	Alleged breach of confidentiality	Advice Given - Referred to Agency
069261	Alleged failure to act on report of child abuse	Preliminary Investigation - Not Sustained - Explanation Given
069329	Alleged refusal of access visits to child under protection order	Advice Given
069334	Unreasonable management of cases	Advice Given
069355	Alleged unfair removal of foster child	Advice Given
069359	Alleged failure to communicate regarding placement of children	Advice Given - Referred to Agency
069389	Unreasonable delay in responding to telephone calls	Preliminary Investigation - Reasonable Resolution
069419	Alleged incorrect information provided regarding movement of children in care	Preliminary Investigation - Not Sustained - Explanation Given
069454	Alleged failure to provide reason why foster care arrangement ceased	Preliminary Investigation - Not Sustained - Explanation Given
069469	Alleged incorrect assessment of eligibility for concession	Preliminary Investigation - Not Sustained - Explanation Given
069471	Unreasonable denial of access on public holiday	Advice Given - Referred to Agency
069484	Alleged failure to respond to concerns	Advice Given
069499	Unreasonable investigation of complaint	Advice Given
069502	Unreasonable decision regarding requested return of child	Preliminary Investigation - Not Sustained - Explanation Given
069525	Unreasonable support for housing development	Declined - Refused to Investigate
069547	Unreasonable decision not to return grandchildren to care	Advice Given
069554	Alleged failure to provide adequate support to complete required courses	Preliminary Investigation - Not Sustained - Explanation Given
069600	Alleged failure to give reasons for removal of children	Advice Given - Referred to Agency
069610	Alleged failure to properly investigate complaint prior to removal of children	Advice Given - Referred to Agency
069612	Alleged failure to act on complaint	Advice Given
069614	Alleged failure to provide written response to complaint	Advice Given
069627	Alleged failure to take appropriate action	Advice Given
069632	Unreasonable use of authority to access medical records	Advice Given - Referred to Agency
069653	Alleged failure to respond to request for	Advice Given - Referred to Agency
069656	Alleged failure to provide adequate information	Advice Given
069674	Unreasonable delay in fees for service	Preliminary Investigation - Reasonable Resolution
069728	Alleged inaction regarding inadequate care given by foster carers	Withdrawn - Withdrawn by Complainant
069780	Alleged failure to settle accounts	Advice Given
069808	Alleged difficulties in relation to child access	Advice Given - Referred to Agency
069817	Unreasonable management of complainant's welfare	Advice Given
069822	Alleged failure to exercise duty of care	Advice Given
069842	Unreasonable decision to terminate student placement	Advice Given
069855	Alleged failure to provide appropriate access to child	Preliminary Investigation - Not Sustained
069898	Alleged conduct contrary to policy	Advice Given
069907	Unreasonable decision regarding access to child	Advice Given - Referred to Agency
069950	Alleged failure to act regarding reported risk of child abuse	Advice Given
069984	Alleged failure to facilitate access visits	Advice Given - Referred to Agency
069985	Unreasonable action due to allegation made of abuse	Advice Given - Referred to Agency
070023	Unreasonable placement of person under restraining order	Advice Given - Referred to Agency
070033	Alleged failure to properly investigate complaint of suspected child abuse	Advice Given - Referred to Agency
070049	Alleged failure to adequately protect child at risk	Preliminary Investigation - Partly Resolved in Favour of Complainant
070142	Unreasonable refusal to allow to care for grandchildren	Advice Given
070154	Alleged failure to provide correct information in report	Advice Given
<b>Department of Administrative and Information Services</b>		
062251	Unreasonable bathroom renovation	Preliminary Investigation - Reasonable Resolution
063658	Unreasonable valuation	Preliminary Investigation - Not Sustained - Explanation Given
066663	Alleged incorrect billing	Preliminary Investigation - Partly Resolved in Favour of Complainant
066741	Alleged failure to properly address concerns regarding a vehicle purchased at government auction	Preliminary Investigation - Reasonable Resolution

**Government Departments**  
Summary of outcomes of complaints finalized 1 July 2005 to 30 June 2006

FILE No.	COMPLAINT DETAILS	OUTCOME
066863	Unreasonable delay in processing application	Advice Given
066894	Unreasonable delay in registration	Preliminary Investigation - Reasonable Resolution
066902	Unreasonable decision to refuse objection to property valuation	Preliminary Investigation - Partly Resolved in Favour of Complainant
067035	Unreasonable valuation of property	Advice Given
067046	Unreasonable increase in valuation	Declined - Alternate Remedy
067103	Unreasonable property valuation	Declined - Refused to Investigate
067281	Unreasonably high value of land	Advice Given
067358	Unreasonable valuation	Preliminary Investigation - Not Sustained - Explanation Given
067604	Alleged lack of communication	Advice Given
067612	Unreasonable delay in processing objection to valuation	Preliminary Investigation - Reasonable Resolution
067698	Alleged failure to register easement on title	Full Investigation - Reasonable Resolution
067967	Unreasonable requirement to pay stamp duty	Advice Given
068222	Unreasonable refusal to assist in dispute over moiety title	Preliminary Investigation - Reasonable Resolution
068371	Unreasonable valuation	Preliminary Investigation - Not Sustained - Explanation Given
068579	Unreasonably high rent charged on lease	Preliminary Investigation - Not Sustained - Explanation Given
068788	Unreasonable delay in processing property transfer	Preliminary Investigation - Not Sustained - Explanation Given
068805	Unreasonable increase in valuation	Preliminary Investigation - Not Sustained - Explanation Given
068925	Alleged failure to process case in a timely manner	Preliminary Investigation - Reasonable Resolution
069020	Alleged destruction of original documents	Advice Given - Referred to Agency
069065	Unreasonable disclosure of information	Preliminary Investigation - Not Sustained - Explanation Given
069475	Unreasonable delay in completing autopsy report	Preliminary Investigation - Reasonable Resolution
069556	Unreasonable requirement to clean up asbestos fibres in workplace	Advice Given
069575	Unreasonable transfer of land	Preliminary Investigation - Not Sustained - Explanation Given
069956	Alleged conduct contrary to policies	Advice Given
<b>Department of Education &amp; Children's Services</b>		
063772	Unreasonable requirement to pay fee	Full Investigation - Reasonable Resolution
063795	Unreasonable refusal to remove hazardous substance from school	Preliminary Investigation - Not Sustained - Explanation Given
065149	Alleged failure of Freedom of Information process	Full Investigation - Reasonable Resolution
066231	Delay in response to complaint	Preliminary Investigation - Reasonable Resolution
066489	Alleged failure to honour funding agreement	Full Investigation - Not Sustained - Explanation Given
066576	Unreasonable action regarding child with disability	Preliminary Investigation - Not Sustained - Explanation Given
066635	Alleged failure to give reasons for decisions	Advice Given
066649	Unfair decision to suspend child from school	Advice Given
066677	Alleged failure to adequately communicate regarding issues of concern	Advice Given - Referred to Agency
066689	Unreasonable decision to restrict parent contact with school	Preliminary Investigation - Not Sustained - Explanation Given
066837	Alleged discipline issues	Advice Given - Referred to Agency
066845	Unreasonable investigation into complaint	Advice Given
066847	Unreasonable bus service	Advice Given
066856	Unreasonable decision to suspend child from school	Advice Given
066879	Alleged failure to investigate complaint by agency	Advice Given
066912	Unreasonable application of school age policy	Advice Given
066917	Unreasonable action taken by school principal	Advice Given
066947	Unreasonable refusal of placement	Advice Given
066969	Unreasonable decision to exclude student from school	Preliminary Investigation - Partly Resolved in Favour of Complainant
066988	Unsatisfactory resolution to complaint	Preliminary Investigation - Not Sustained - Explanation Given
066998	Alleged failure to address complaint about child	Advice Given
067014	Inadequate reconsideration of educational arrangements during period of exclusion	Advice Given
067062	Alleged failure to disclose composition of survey sample	Advice Given
067156	Alleged failure to adequately investigate	Advice Given
067171	Unreasonable ban on entering school premises	Preliminary Investigation - Not Sustained - Explanation Given
067181	Alleged failure to provide a carer for a disabled child	Full Investigation - Not Sustained - Explanation Given
067253	Unreasonable decision regarding allocation of child care places	Advice Given - Referred to Agency
067255	Alleged failure to address bullying issues	Advice Given
067272	Alleged failure to report incident in school grounds	Preliminary Investigation - Not Sustained - Explanation Given
067307	Alleged failure to reimburse funds	Preliminary Investigation - Not Sustained - Explanation Given
067330	Alleged failure to provide a service as required	Advice Given
067448	Unreasonable absence of teacher	Advice Given
067523	Unreasonable care provided to child	Advice Given
067556	Alleged inadequate investigation of complaint	Advice Given
067565	Alleged inadequate investigation of complaint	Advice Given - Referred to Agency
067647	Unreasonable suspension	Advice Given
067656	Alleged inadequate action regarding allegation of abuse	Full Investigation - Not Sustained - Explanation Given
067684	Alleged inaction by school	Preliminary Investigation - Not Sustained
067708	Alleged failure to provide adequate special education service	Preliminary Investigation - Partly Resolved in Favour of Complainant
067775	Alleged failure to provide adequate education services	Preliminary Investigation - Not Sustained - Explanation Given
067825	Unreasonable suspension of child	Preliminary Investigation - Not Sustained - Explanation Given
067881	Unreasonable expulsion of student	Advice Given - Referred to Agency
067923	Failure to provide information regarding claim	Advice Given
067948	Alleged inappropriate action regarding pornographic magazine at school	Preliminary Investigation - Not Sustained
067981	Unreasonable management of child's behaviour	Advice Given
068215	Unreasonable process for recovering overdue school fees	Advice Given
068217	Unreasonable delay in addressing complaint	Advice Given
068246	Unfair decision regarding compulsory school uniform	Preliminary Investigation - Partly Resolved in Favour of Complainant
068259	Alleged failure to properly address allegations of bullying	Withdrawn - Withdrawn by Complainant
068289	Unreasonable process to require additional school fees	Preliminary Investigation - Not Sustained - Explanation Given
068308	Unreasonable ban on complainant's	Advice Given
068309	Alleged refusal to extend a school bus route	Preliminary Investigation - Not Sustained
068337	Alleged failure to act on complaint	Advice Given
068359	Alleged failure to provide duty of care	Advice Given - Referred to Agency
068404	Alleged delay in providing response to complaint	Advice Given
068632	Unreasonable explanation of course failure	Advice Given

**Government Departments**  
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FILE No.	COMPLAINT DETAILS	OUTCOME
068646	Alleged failure to follow proper process in selection of school principal	Preliminary Investigation - Not Sustained - Explanation Given
068701	Alleged incorrect refusal of school card	Preliminary Investigation - Not Sustained - Explanation Given
068713	Alleged inability to provide reason in regards to refusal of school card assistance	Preliminary Investigation - Not Sustained - Explanation Given
068727	Unreasonable refusal to enroll in school of choice	Advice Given - Referred to Agency
068762	Unreasonable placement of portable classrooms	Preliminary Investigation - Not Sustained - Explanation Given
068776	Alleged inadequate action regarding bullying at school	Preliminary Investigation - Not Sustained - Explanation Given
068792	Unreasonable disclosure of personal details	Advice Given
068797	Unreasonable administrative decision	Advice Given
068809	Unreasonable decision to refuse access to school bus service	Advice Given
068906	Alleged intimidatory behaviour by school staff	Advice Given
068944	Unreasonable decision not to allow complainant on school property	Advice Given
068945	Unreasonable treatment as child	Advice Given
068946	Unreasonable decision to revoke teaching	Advice Given
068958	Unreasonable standard of education for disabled child	Preliminary Investigation - Reasonable Resolution
069003	Unreasonable fee system	Advice Given
069031	Alleged failure to act regarding non-attendance of students	Preliminary Investigation - Not Sustained - Explanation Given
069032	Alleged failure to provide adequate educational services	Preliminary Investigation - Not Sustained - Explanation Given
069087	Alleged failure to provide special education at school of parent's choice	Preliminary Investigation - Reasonable Resolution
069102	Unreasonable proposal to re-route school bus	Advice Given
069105	Unreasonable directive given to senior students	Advice Given
069120	Unfair suspension from school	Advice Given - Referred to Agency
069150	Unreasonable decision to not allow daughter to enroll in school	Advice Given - Referred to Agency
069177	Alleged failure to provide adequate support for special needs student	Advice Given - Referred to Agency
069208	Unreasonable requirement	Advice Given
069242	Unreasonable refusal to issue authority to teach	Preliminary Investigation - Partly Resolved in Favour of Complainant
069243	Unreasonable refusal to provide apology	Advice Given
069257	Alleged failure to provide transport to special	Advice Given
069284	Alleged failure to replace demolished fence	Preliminary Investigation - Reasonable Resolution
069306	Alleged failure to respond to complaint	Advice Given
069312	Alleged inadequate timeframe given to pick up child from school	Preliminary Investigation - Reasonable Resolution
069321	Unreasonable barring from school grounds	Advice Given
069381	Unreasonable refusal to allow child to attend school of choice	Advice Given - Referred to Agency
069431	Unreasonable decision to suspend child	Preliminary Investigation - Not Sustained - Explanation Given
069443	Unreasonable refusal to recognise qualifications to teach psychology	Preliminary Investigation - Not Sustained - Explanation Given
069463	Alleged bias in appeal process	Advice Given
069602	Unreasonable suspension of student from school	Advice Given - Referred to Agency
069642	Alleged refusal of enrolment in school outside	Advice Given - Referred to Agency
069654	Alleged failure to provide information	Advice Given - Referred to Agency
069677	Alleged failure to provide adequate educational services	Advice Given
069710	Unreasonable action to initiate collection proceedings for an account	Preliminary Investigation - Reasonable Resolution
069724	Alleged failure to provide Open Access schooling	Advice Given - Referred to Agency
069861	Alleged delay in paying accounts	Preliminary Investigation - Partly Resolved in Favour of Complainant
069901	Unreasonable administrative decision	Advice Given
069930	Unreasonable failure to advise of attendance	Declined - Refused to Investigate
069951	Alleged failure to refund school fees	Advice Given
069965	Alleged failure to provide appropriate support for special needs student	Advice Given - Referred to Agency
069991	Alleged inadequate investigation of complaint	Advice Given - Referred to Agency
069995	Alleged failure to investigate incident adequately	Advice Given
070118	Unreasonable decision to accept enrolment due to school zoning policy	Advice Given - Referred to Agency
070143	Unprofessional conduct of staff	Advice Given - Referred to Agency
070152	Unreasonable fee increase	Advice Given
070172	Alleged failure to exercise due care	Advice Given - Referred to Agency
<b>Department of Health</b>		
067740	Unreasonable decision	Advice Given
067815	Unreasonable tendering practices	Preliminary Investigation - Not Sustained - Explanation Given
068223	Alleged failure to properly investigate complaint	Preliminary Investigation - Partly Resolved in Favour of Complainant
068806	Alleged failure to provide information	Preliminary Investigation - Reasonable Resolution
<b>Department of Primary Industries &amp; Resources</b>		
066742	Alleged failure to respond to correspondence	Preliminary Investigation - Reasonable Resolution
066776	Unreasonable request for further particulars for licence application	Advice Given
066780	Alleged failure to comply with legislative requirements	Advice Given
067006	Unreasonable investigation of complaint	Advice Given
067113	Unreasonable actions by inspector	Preliminary Investigation - Partly Resolved in Favour of Complainant
067377	Unreasonable decision to introduce additional fee for pilchard fishing	Advice Given - Referred to Agency
067398	Unreasonably high cost of identification tags	Declined - Refused to Investigate
067420	Unreasonable decision regarding changes to safety standards	Advice Given
067637	Unreasonable process	Advice Given
067901	Unreasonable refusal to compensate	Advice Given
068149	Alleged failure to grant exemption	Preliminary Investigation - Not Sustained - Explanation Given
068169	Alleged inadequate investigation of complaint	Advice Given
068383	Unreasonable restriction on blue crab fishing	Full Investigation - Reasonable Resolution
068693	Alleged breach of confidentiality	Advice Given
068890	Alleged refusal of application for charter fishing licence	Advice Given - Other/General
068898	Alleged breach of confidentiality	Preliminary Investigation - Not Sustained - Explanation Given
068977	Alleged incorrect decision	Advice Given
069187	Unreasonable delays in processing application for licence	Advice Given
069251	Alleged unfair requirement related to sale of fishing licence	Advice Given
069266	Unreasonable requirement to pay final licence fee installment	Preliminary Investigation - Not Sustained - Explanation Given
069372	Alleged refusal to compensate for stock losses	Advice Given
069543	Unreasonable land acquisition	Advice Given
<b>Department of the Premier and Cabinet</b>		
067428	Alleged failure to return items	Withdrawn - Withdrawn by Complainant

**Government Departments**  
Summary of outcomes of complaints finalized 1 July 2005 to 30 June 2006

FILE No.	COMPLAINT DETAILS	OUTCOME
068527	Alleged delay in providing response to complaint	Preliminary Investigation - Not Sustained
<b>Department of Transport &amp; Urban Planning</b>		
062072	Unreasonable offence notices	Full Investigation - Not Sustained - Explanation Given
064001	Unreasonable process	Preliminary Investigation - Not Sustained - Explanation Given
064874	Unreasonable refusal	Full Investigation - Reasonable Resolution
065447	Unreasonable location of access	Full Investigation - Reasonable Resolution
065602	Unreasonable decision	Preliminary Investigation - Not Sustained - Explanation Given
065975	Incorrect advice	Withdrawn - Withdrawn by Complainant
065976	Unreasonable delays	Preliminary Investigation - Reasonable Resolution
066278	Alleged failure to consult regarding installation of median strip	Preliminary Investigation - Not Sustained - Explanation Given
<b>Department of Transport, Energy and Infrastructure</b>		
066637	Allegedly unfair demand regarding contribution towards a new fence	Preliminary Investigation - Reasonable Resolution
066638	Unreasonable refusal to approve	Preliminary Investigation - Partly Resolved in Favour of Complainant
066661	Unreasonable proposal to install roundabout	Full Investigation - Not Sustained - Explanation Given
066720	Unreasonable delays in releasing vehicles after workshop inspection	Withdrawn - Withdrawn by Complainant
066726	Unreasonable decision regarding suspension of licence	Preliminary Investigation - Not Sustained - Explanation Given
066748	Alleged delay in carrying out inspection on vehicle	Preliminary Investigation - Not Sustained - Explanation Given
066756	Alleged failure to approve licence	Preliminary Investigation - Not Sustained - Explanation Given
066764	Alleged error in calculating fee for driver's licence	Preliminary Investigation - Not Sustained - Explanation Given
066786	Unreasonable assessment process	Advice Given
066787	Unreasonably decision to limit refund of registration fees	Preliminary Investigation - Not Sustained - Explanation Given
066788	Unreasonable assistance provided	Advice Given
066811	Unreasonable criteria applied to extend learner's licence	Preliminary Investigation - Not Sustained - Explanation Given
066817	Alleged failure to maintain correct records resulting in suspension of licence	Advice Given
066850	Unreasonable account	Advice Given
066910	Unreasonable refusal of application	Advice Given
066914	Unreasonable decision to suspend driver's	Advice Given
066918	Unreasonable service provided	Advice Given
066967	Alleged unfair treatment regarding licence to operate a business	Advice Given
066981	Unreasonable decision by agency regarding categorisation of replica cars	Advice Given
067020	Unreasonable refusal to renew registration	Advice Given
067043	Unreasonable requirement to obtain report	Advice Given
067044	Unreasonable requirement of medical report and fee before disabled parking permit is issued	Preliminary Investigation - Not Sustained - Explanation Given
067051	Alleged failure to process application	Preliminary Investigation - Partly Resolved in Favour of Complainant
067097	Unreasonably incorrect information provided	Advice Given - Referred to Agency
067117	Alleged poor customer service at regional office	Preliminary Investigation - Not Sustained - Explanation Given
067167	Unreasonable or incorrect use of power	Preliminary Investigation - Not Sustained - Explanation Given
067172	Unreasonable delay in accessing service	Preliminary Investigation - Not Sustained - Explanation Given
067195	Alleged inadequate investigation of complaint	Preliminary Investigation - Not Sustained - Explanation Given
067240	Alleged undue delay in fulfilling contract	Advice Given
067277	Unreasonable requirement to undertake medical examination	Advice Given
067303	Alleged error in registration process	Advice Given
067347	Alleged failure to grant heavy vehicle licence on basis of incorrect medical information	Advice Given
067390	Unreasonable decision to register vehicle with encumbrance	Preliminary Investigation - Not Sustained - Explanation Given
067419	Unreasonable requirement to surrender driver's licence	Advice Given
067434	Alleged unreasonable demand	Preliminary Investigation - Not Sustained - Explanation Given
067489	Unreasonable qualification imposed on regaining driver's licence	Advice Given
067505	Unreasonable suspension of driver's licence	Preliminary Investigation - Reasonable Resolution
067519	Unreasonable withdrawal of licence	Advice Given
067571	Unreasonable cancellation of licence	Withdrawn - Withdrawn by Complainant
067627	Unreasonable decision to cancel licence	Advice Given
067639	Unreasonable cancellation of inspection	Advice Given
067642	Alleged failure to issue replacement licence	Preliminary Investigation - Partly Resolved in Favour of Complainant
067669	Unreasonable extension of provisional permit	Preliminary Investigation - Reasonable Resolution
067685	Unreasonable delay in attending to	Advice Given
067695	Unreasonable approval of transfer of motor registration	Preliminary Investigation - Not Sustained - Explanation Given
067712	Alleged failure to approve issue of licence	Preliminary Investigation - Not Sustained - Explanation Given
067761	Alleged accrual of demerit points based on incorrect data	Advice Given
067781	Alleged failure to follow proper process in relation to fine	Preliminary Investigation - Partly Resolved in Favour of Complainant
067832	Alleged failure to approve application for licence in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
067871	Alleged roadworks caused damage to water pipes	Preliminary Investigation - Not Sustained - Explanation Given
067896	Unreasonable fare	Advice Given
067897	Unreasonable requirement for complainant to provide documentation	Advice Given
067928	Alleged failure to correct erroneous record	Preliminary Investigation - Not Sustained - Explanation Given
067942	Unreasonable requirements placed on older	Declined - Alternate Remedy
068004	Unreasonable decision to transfer car into partner's name	Advice Given
068015	Unreasonable decision to renew registration without authority	Preliminary Investigation - Not Sustained - Explanation Given
068113	Unreasonable requirements regarding registration of interstate vehicle	Advice Given - Referred to Agency
068212	Unreasonable delay in organising registration	Advice Given
068219	Unreasonable refusal to reissue licence	Preliminary Investigation - Not Sustained - Explanation Given
068224	Unreasonable refusal to slash roadside	Preliminary Investigation - Not Sustained - Explanation Given
068229	Erroneous decision by agency regarding driving licence	Advice Given
068250	Unreasonable decision not to give accreditation to drive	Advice Given
068281	Unreasonable requirement to undergo tests for renewal of licence	Preliminary Investigation - Partly Resolved in Favour of Complainant
068323	Alleged failure to provide parking permit within a reasonable time	Preliminary Investigation - Reasonable Resolution
068364	Unreasonable refusal to reimburse	Advice Given
068365	Unreasonable financial loss due to lease termination	Advice Given
068407	Unreasonable refusal to issue taxi vouchers	Preliminary Investigation - Not Sustained - Explanation Given

**Government Departments**  
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FILE No.	COMPLAINT DETAILS	OUTCOME
068421	Unreasonable decision to impose fine based on inaccurate records	Advice Given
068464	Unreasonably high registration fees	Preliminary Investigation - Reasonable Resolution
068507	Unreasonable discrepancies in tendering process	Advice Given
068532	Unreasonable decision to cancel licence	Advice Given
068603	Unreasonable delay on telephone enquiries line	Preliminary Investigation - Reasonable Resolution
068608	Unreasonable decision to cancel driver's licence	Preliminary Investigation - Not Sustained - Explanation Given
068685	Unreasonable validation of license	Preliminary Investigation - Not Sustained - Explanation Given
068715	Alleged failure to give reasons for decisions	Advice Given
068717	Unreasonable position of bus stop	Preliminary Investigation - Not Sustained - Explanation Given
068718	Unreasonable refusal to destroy incorrect information	Preliminary Investigation - Not Sustained - Explanation Given
068720	Unreasonable decision to pay full fee on balance of registration and driver's licence	Advice Given
068733	Unreasonable decision to refuse refund	Preliminary Investigation - Reasonable Resolution
068748	Alleged incorrect information provided	Advice Given
068773	Unreasonable management of rostering system	Advice Given
068796	Alleged error in registration of vehicle	Preliminary Investigation - Not Sustained - Explanation Given
068800	Alleged failure to enforce observance of taxi zoning	Preliminary Investigation - Not Sustained - Explanation Given
068847	Alleged incorrect details on driver's licence	Preliminary Investigation - Reasonable Resolution
068871	Alleged refusal to release bank guarantee	Preliminary Investigation - Reasonable Resolution
068910	Unreasonable delays in obtaining safety check on interstate vehicle	Preliminary Investigation - Not Sustained - Explanation Given
068932	Unreasonable decision in relation to driver's	Advice Given
068947	Unable to access service	Preliminary Investigation - Partly Resolved in Favour of Complainant
068973	Alleged failure to provide adequate access to service	Advice Given
069005	Alleged failure to provide suitable venue for written driving test	Advice Given
069018	Unreasonable refusal to allow water pipe along highway	Preliminary Investigation - Reasonable Resolution
069025	Unfair treatment by staff	Advice Given
069042	Unreasonable requirement to pay for new licence after disqualification	Preliminary Investigation - Not Sustained - Explanation Given
069081	Unreasonable charge	Advice Given
069125	Unfair decision to reduce number of access taxi vouchers	Preliminary Investigation - Partly Resolved in Favour of Complainant
069128	Unreasonable process to replace malfunctioning bus tickets	Advice Given - Referred to Agency
069141	Alleged refusal to reinstate licence	Advice Given
069210	Alleged failure to reinstate licence	Preliminary Investigation - Not Sustained - Explanation Given
069211	Unreasonable decision to put debt into collection agency	Preliminary Investigation - Reasonable Resolution
069213	Alleged failure to provide wheelchair access	Preliminary Investigation - Partly Resolved in Favour of Complainant
069230	Alleged inadequate telephone enquiry service	Preliminary Investigation - Reasonable Resolution
069234	Alleged unfair extension of licence	Advice Given
069293	Unreasonable communication of information provided	Advice Given
069295	Alleged delay in processing application	Preliminary Investigation - Partly Resolved in Favour of Complainant
069322	Unreasonable decision to suspend licence	Advice Given
069335	Unreasonable record management	Advice Given
069363	Alleged unfair trade practices	Advice Given
069409	Unreasonable alteration to boat permit conditions	Preliminary Investigation - Not Sustained - Explanation Given
069429	Unreasonable imposition of fine	Preliminary Investigation - Reasonable Resolution
069448	Unreasonable delay in returning licence	Preliminary Investigation - Not Sustained - Explanation Given
069452	Alleged refusal to compensate for expenses incurred due to road works	Advice Given
069503	Alleged poor service from call centre staff	Preliminary Investigation - Reasonable Resolution
069538	Unreasonable withdrawal of bus service	Advice Given
069608	Unreasonable cessation of bus route	Preliminary Investigation - Not Sustained - Explanation Given
069624	Alleged failure to respond to written request for information	Preliminary Investigation - Reasonable Resolution
069634	Unreasonable seizure of vehicle	Advice Given
069658	Unreasonable decision to bar complainant from participating in course	Preliminary Investigation - Not Sustained - Explanation Given
069673	Alleged failure to process application in a timely manner	Preliminary Investigation - Reasonable Resolution
069695	Unreasonable requirement to pay fee for boat identification by third party	Advice Given - Referred to Agency
069703	Unreasonable noise and pollution emanating from train platform	Preliminary Investigation - Not Sustained - Explanation Given
069713	Unprofessional conduct by staff	Advice Given - Referred to Agency
069719	Unreasonable licence disqualification	Preliminary Investigation - Not Sustained - Explanation Given
069752	Unreasonable withdrawal of service	Withdrawn - Withdrawn by Complainant
069763	Alleged dangerous road conditions	Advice Given - Referred to Agency
069764	Unreasonable decision to fail driving test	Preliminary Investigation - Not Sustained - Explanation Given
069823	Alleged failure to maintain roadway	Advice Given
069929	Unreasonable requirement to produce driver's licence	Preliminary Investigation - Reasonable Resolution
069940	Alleged incorrect processing of licence	Advice Given
069942	Unreasonable management of road closure	Advice Given
069955	Unreasonable decision to suspend licence	Preliminary Investigation - Not Sustained - Explanation Given
069959	Alleged failure to give reasons for not passing vehicle inspection	Advice Given
069980	Alleged failure to keep accurate records of demerit points	Preliminary Investigation - Not Sustained - Explanation Given
069997	Unreasonable decision to suspend licence	Advice Given
070056	Unreasonable decision to suspend licence	Advice Given
070098	Unfair decision to extend period of licence disqualification	Preliminary Investigation - Partly Resolved in Favour of Complainant
<b>Department of Treasury and Finance</b>		
065165	Unreasonable requirement to repay	Preliminary Investigation - Not Sustained - Explanation Given
066383	Incorrect advice	Preliminary Investigation - Partly Resolved in Favour of Complainant
066591	Inaccurate records	Preliminary Investigation - Reasonable Resolution
066613	Unreasonable penalty applied	Preliminary Investigation - Reasonable Resolution
066715	Unreasonable penalty	Preliminary Investigation - Partly Resolved in Favour of Complainant
066773	Unreasonable reduction of loan	Advice Given
066784	Unreasonable refusal to waive tax	Advice Given
066822	Unreasonable high valuation on land	Advice Given
066895	Alleged inadequate records maintained	Preliminary Investigation - Not Sustained - Explanation Given
066975	Unreasonable decision to pursue recovery of Emergency Services Levy	Preliminary Investigation - Not Sustained - Explanation Given
067104	Unreasonable decision to apply penalty charge for non payment	Preliminary Investigation - Reasonable Resolution

**Government Departments**  
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FILE No.	COMPLAINT DETAILS	OUTCOME
067224	Unreasonable fine	Preliminary Investigation - Reasonable Resolution
067293	Alleged failure to provide reasons for decision	Declined - Alternate Remedy
067401	Alleged failure to maintain accurate records resulting in misdirection of rates notice	Preliminary Investigation - Partly Resolved in Favour of Complainant
067456	Alleged failure to classify business correctly	Advice Given
067480	Alleged failure to notify when payment due	Preliminary Investigation - Not Sustained - Explanation Given
067594	Unreasonable decision to charge penalties	Declined - Refused to Investigate
067617	Unreasonable action regarding collection of Emergency Services Levy	Preliminary Investigation - Partly Resolved in Favour of Complainant
067749	Unreasonable management of Emergency Services Levy	Preliminary Investigation - Partly Resolved in Favour of Complainant
067766	Alleged miscalculation of land tax	Advice Given
067793	Alleged failure to provide adequate emergency service	Advice Given
067872	Unreasonable conduct by staff member	Advice Given - Referred to Agency
067882	Unfair method of calculating land tax on multiple properties	Advice Given
068014	Alleged unfair process in relation to recovery of	Advice Given - Other/General
068196	Alleged failure to refund land tax	Preliminary Investigation - Not Sustained - Explanation Given
068440	Unreasonably excessive land tax	Advice Given
068456	Alleged failure to amend records	Advice Given
068467	Unreasonable fees incurred due to non-delivery of accounts	Preliminary Investigation - Reasonable Resolution
068569	Unreasonable level of stamp duty	Preliminary Investigation - Not Sustained - Explanation Given
068647	Alleged imposition of penalty for late payment of Emergency Services Levy	Advice Given - Referred to Agency
068661	Unreasonable imposition of land tax	Advice Given
068712	Alleged incorrect calculation of Emergency Services Levy	Preliminary Investigation - Not Sustained - Explanation Given
068803	Unreasonable decision to refer to debt collector	Advice Given
068935	Alleged excessive land tax charges	Preliminary Investigation - Not Sustained - Explanation Given
068967	Alleged failure to correct records and respond to letters	Preliminary Investigation - Partly Resolved in Favour of Complainant
069070	Alleged failure to issue statement where account in credit	Preliminary Investigation - Reasonable Resolution
069118	Alleged failure to reply to correspondence	Advice Given
069157	Alleged unfair method of calculating land taxes	Advice Given - Referred to Agency
069241	Alleged failure to grant concession	Withdrawn - Withdrawn by Complainant
069531	Alleged failure to respond to request for progress of application	Preliminary Investigation - Reasonable Resolution
069592	Unreasonable refusal of first home owner's grant	Advice Given - Referred to Agency
069636	Unreasonable requirement to complete compliance notice	Advice Given
069672	Unreasonable obligation to pay due to error	Declined - Alternate Remedy
069676	Unreasonable refusal of grant	Advice Given
069846	Unreasonable imposition of fine due to misdirection of mail	Preliminary Investigation - Reasonable Resolution
069927	Alleged incorrect communication	Advice Given
069977	Alleged failure to respond to letter	Preliminary Investigation - Reasonable Resolution
070032	Unreasonably high tax	Advice Given
070042	Unreasonable delay in providing refund	Preliminary Investigation - Reasonable Resolution
070089	Alleged non-receipt of account led to court proceedings	Preliminary Investigation - Not Sustained - Explanation Given
070129	Alleged failure to refund overpayment in payroll tax	Advice Given
<b>Department of Further Education, Employment, Science &amp; Technology</b>		
066711	Alleged failure to deliver course as outlined in curriculum	Advice Given - Referred to Agency
066732	Unreasonable process to apply to pay by installments	Declined
066825	Unreasonable decision to refuse student fees	Advice Given
066861	Alleged failure to provide course entry	Preliminary Investigation - Reasonable Resolution
066970	Alleged failure to interview for potential	Advice Given
067034	Alleged failure to refund course fees	Advice Given
067075	Alleged failure to provide any employment introductions	Preliminary Investigation - Not Sustained - Explanation Given
067464	Unreasonable administrative decision to not refund course fees	Preliminary Investigation - Reasonable Resolution
067744	Unreasonable decision to terminate access to course	Advice Given
067795	Alleged failure to provide accurate advice	Advice Given
068208	Alleged failure to address complaints about	Preliminary Investigation - Reasonable Resolution
069097	Alleged failure to refund enrolment fees within reasonable time	Preliminary Investigation - Reasonable Resolution
069178	Unfair funding policy for traineeships	Advice Given
069281	Unreasonable condition of access to institution	Preliminary Investigation - Reasonable Resolution
069361	Unreasonable charge	Advice Given
069366	Alleged inadequate investigation of complaint	Advice Given
069434	Unreasonable timeframe to make informed	Advice Given - Referred to Agency
069782	Unreasonable refusal to refund course fees	Advice Given - Referred to Agency
069857	Unreasonable refusal to refund fees	Advice Given
069963	Alleged failure to provide certificate	Preliminary Investigation - Reasonable Resolution
070035	Alleged failure to give correct advice regarding eligibility for course	Preliminary Investigation - Not Sustained - Explanation Given
<b>Department of Water, Land &amp; Biodiversity Conservation</b>		
059795	Unreasonable rejection of application	Conciliated - Reasonable Resolution
061382	Unreasonable water licence allocation	Preliminary Investigation - Not Sustained - Explanation Given
063219	Unreasonable action regarding penalty charges	Determination - Section 132 Water Resources Act
064208	Unfair imposition of first charge on land	Preliminary Investigation - Reasonable Resolution
065523	Alleged failure to act	Preliminary Investigation - Not Sustained - Explanation Given
067031	Alleged conflict of interest by independent	Advice Given
067392	Unreasonable administrative actions	Advice Given
067555	Unreasonable decision regarding access road	Advice Given
067880	Alleged inability to pay penalty charge	Preliminary Investigation - Not Sustained - Explanation Given
068172	Unfair process for payment when purchasing water licences	Preliminary Investigation - Not Sustained - Explanation Given
068202	Alleged objection to Upper South East Project	Advice Given
068374	Unreasonable account	Advice Given
068375	Unreasonable imposition of penalty charges - hardship under s132 of Water Resources Act	Preliminary Investigation - Not Sustained - Explanation Given
069260	Unreasonable demand for payment of levy	Preliminary Investigation - Reasonable Resolution
069536	Alleged unfair conditions apply to water licence	Advice Given
<b>Environment Protection Authority</b>		
065877	Failure to adequately investigate	Preliminary Investigation - Partly Resolved in Favour of Complainant
066731	Alleged failure to adequately police action	Preliminary Investigation - Not Sustained - Explanation Given

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FILE No.	COMPLAINT DETAILS	OUTCOME
067460	Alleged inadequate investigation of complaint	Advice Given
067493	Alleged inadequate investigation of complaint	Advice Given
067987	Alleged failure to investigate complaint regarding noise pollution	Advice Given
068725	Alleged insufficient steps to suppress clamorous neighbours	Advice Given - Referred to Agency
068897	Alleged breach of confidentiality	Preliminary Investigation - Not Sustained - Explanation Given
069145	Alleged inadequate investigation of complaint	Advice Given
069202	Alleged failure to act regarding noise complaint	Preliminary Investigation - Reasonable Resolution
<b>South Australian Housing Trust</b>		
065352	Unreasonable refusal to sell home	Preliminary Investigation - Not Sustained - Explanation Given
065357	Unreasonable decision	Preliminary Investigation - Reasonable Resolution
065924	Unreasonable refusal of transfer	Withdrawn - Withdrawn by Complainant
066546	Unreasonable requirement to provide statutory declaration	Preliminary Investigation - Not Sustained
066590	Unreasonable decision to evict	Preliminary Investigation - Not Sustained - Explanation Given
066605	Alleged delays in attending to maintenance	Preliminary Investigation - Reasonable Resolution
066629	Alleged inadequate investigation of complaint	Preliminary Investigation - Not Sustained - Explanation Given
066640	Unreasonable refusal to renew lease	Advice Given
066665	Alleged carelessness by agency	Preliminary Investigation - Reasonable Resolution
066681	Unreasonable refusal to extend lease	Preliminary Investigation - Not Sustained - Explanation Given
066701	Alleged unprofessional conduct by staff	Advice Given
066707	Unreasonable waiting period for transfer	Preliminary Investigation - Not Sustained - Explanation Given
066713	Unreasonable maintenance delay	Preliminary Investigation - Reasonable Resolution
066734	Unreasonable refusal of application for transfer	Preliminary Investigation - Partly Resolved in Favour of Complainant
066766	Alleged failure to carry out maintenance in a timely manner	Preliminary Investigation - Partly Resolved in Favour of Complainant
066778	Alleged delays in carrying out maintenance work	Preliminary Investigation - Reasonable Resolution
066785	Unreasonable information provided	Advice Given
066815	Unreasonable fee charged	Preliminary Investigation - Reasonable Resolution
066826	Alleged failure to adequately compensate	Advice Given
066841	Alleged failure to approve housing transfer	Preliminary Investigation - Reasonable Resolution
066844	Unreasonable decision to apply for eviction	Preliminary Investigation - Not Sustained - Explanation Given
066890	Unreasonable refusal to provide accommodation	Preliminary Investigation - Partly Resolved in Favour of Complainant
066928	Alleged failure to carry out maintenance work	Preliminary Investigation - Partly Resolved in Favour of Complainant
066942	Unreasonable action by staff	Preliminary Investigation - Not Sustained - Explanation Given
066956	Unreasonable administrative decision	Advice Given
066997	Alleged failure to act on complaint	Advice Given
067003	Unreasonable tenancy conditions	Advice Given
067011	Unreasonable delay in providing housing	Advice Given
067016	Unreasonable delay in providing adequate maintenance	Preliminary Investigation - Reasonable Resolution
067024	Alleged failure to adhere to commitment to undertake maintenance	Preliminary Investigation - Not Sustained
067038	Unreasonable consent given for disruptive tenant to remain in house	Advice Given - Referred to Agency
067042	Alleged failure to act on advice	Preliminary Investigation - Reasonable Resolution
067049	Alleged failure to provide adequate maintenance service	Preliminary Investigation - Reasonable Resolution
067055	Alleged intrusion upon privacy through maintenance works	Preliminary Investigation - Not Sustained
067077	Alleged delay in attending to maintenance issues	Preliminary Investigation - Not Sustained - Explanation Given
067124	Alleged failure to rectify fault with sewage pipes	Preliminary Investigation - Partly Resolved in Favour of Complainant
067129	Alleged failure to refund overpayment of rent within a reasonable time	Preliminary Investigation - Reasonable Resolution
067133	Alleged failure to allocate priority housing	Preliminary Investigation - Not Sustained - Explanation Given
067187	Alleged failure to compensate for damage to property	Preliminary Investigation - Not Sustained - Explanation Given
067202	Alleged failure to rectify behaviour of disruptive tenants	Preliminary Investigation - Not Sustained - Explanation Given
067238	Unreasonable decision in relation to rental	Advice Given
067296	Alleged failure to respond to complaints in timely manner	Preliminary Investigation - Not Sustained - Explanation Given
067313	Alleged abuse by agency officer	Declined - Refused to Investigate
067324	Alleged failure to maintain property adequately	Advice Given
067326	Unreasonable assertion that money is owed	Advice Given
067329	Unreasonable decision to refuse transfer	Advice Given
067370	Alleged failure to adjust rent appropriately in lieu of changed circumstances	Advice Given
067429	Alleged long delay in purchasing house	Advice Given
067435	Alleged mishandling of accommodation arrangements	Preliminary Investigation - Not Sustained - Explanation Given
067482	Alleged failure to follow proper procedure regarding maintenance	Preliminary Investigation - Reasonable Resolution
067483	Alleged failure to act on request for maintenance	Preliminary Investigation - Reasonable Resolution
067499	Alleged delay in approving application for transfer	Preliminary Investigation - Not Sustained - Explanation Given
067527	Unreasonable refusal to provide housing	Preliminary Investigation - Not Sustained - Explanation Given
067532	Alleged failure to carry out necessary repairs	Preliminary Investigation - Partly Resolved in Favour of Complainant
067554	Unreasonable decision regarding contact person	Advice Given
067566	Alleged failure to deal with disruptive tenant	Advice Given - Referred to Agency
067581	Unreasonable refusal to transfer	Preliminary Investigation - Not Sustained - Explanation Given
067582	Unreasonable maintenance by agency	Advice Given
067600	Alleged failure to provide transfer in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
067611	Unreasonable delay in attending to mould in bathroom	Preliminary Investigation - Partly Resolved in Favour of Complainant
067614	Unreasonable delay for maintenance	Preliminary Investigation - Reasonable Resolution
067620	Unreasonable delay in attending to disruptive tenant problem	Preliminary Investigation - Reasonable Resolution
067638	Unreasonable decision to require transfer	Advice Given
067671	Unreasonable requirement to carry out repairs	Preliminary Investigation - Not Sustained - Explanation Given
067679	Unreasonable charge	Advice Given
067713	Unreasonable process followed in attempts to recover alleged debt	Preliminary Investigation - Not Sustained - Explanation Given
067715	Alleged incorrect rent calculation	Advice Given
067717	Alleged failure to take adequate action on complaint about neighbours	Preliminary Investigation - Not Sustained - Explanation Given
067721	Alleged failure to provide adequate maintenance service	Preliminary Investigation - Not Sustained - Explanation Given
067725	Unreasonable refusal to accept application for public housing	Preliminary Investigation - Partly Resolved in Favour of Complainant
067730	Unreasonable decision to demolish extension	Advice Given
067731	Unreasonable charges connected with dog	Preliminary Investigation - Not Sustained - Explanation Given
067733	Unreasonable refusal to deal with disruptive tenant	Preliminary Investigation - Not Sustained - Explanation Given

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FILE No.	COMPLAINT DETAILS	OUTCOME
067739	Unreasonable delay in fixing heater	Preliminary Investigation - Reasonable Resolution
067774	Alleged failure to provide adequate maintenance service	Preliminary Investigation - Reasonable Resolution
067794	Unreasonable delay in providing housing	Advice Given
067824	Unreasonable decision	Preliminary Investigation - Not Sustained - Explanation Given
067826	Unreasonable maintenance provided	Preliminary Investigation - Reasonable Resolution
067831	Unreasonable decision regarding application for transfer	Preliminary Investigation - Partly Resolved in Favour of Complainant
067854	Failure to adequately repair fence	Preliminary Investigation - Reasonable Resolution
067859	Unreasonable refusal to repaint property	Preliminary Investigation - Not Sustained - Explanation Given
067869	Alleged inappropriate payment	Preliminary Investigation - Partly Resolved in Favour of Complainant
067875	Alleged unfair treatment over tenancy	Advice Given
067893	Unreasonable account	Declined - Alternate Remedy
067904	Inadequate investigation of complaint	Preliminary Investigation - Not Sustained - Explanation Given
067927	Unreasonable decision to not allocate housing	Advice Given
067939	Unreasonable delay in providing housing	Withdrawn - Withdrawn by Complainant
067945	Alleged inadequate condition of housing	Preliminary Investigation - Not Sustained - Explanation Given
067961	Unreasonable delay in transferring	Preliminary Investigation - Not Sustained - Explanation Given
067975	Unreasonable management of problem tenants	Preliminary Investigation - Reasonable Resolution
068001	Unreasonable requirement to repay debt	Advice Given
068011	Failure to investigate complaint	Preliminary Investigation - Reasonable Resolution
068141	Unreasonable refusal to pay account	Advice Given
068143	Alleged incorrect calculation of rental	Preliminary Investigation - Partly Resolved in Favour of Complainant
068147	Unreasonable management of problem neighbours	Preliminary Investigation - Not Sustained - Explanation Given
068171	Alleged failure to allocate housing	Preliminary Investigation - Not Sustained - Explanation Given
068191	Alleged failure to notify of termination of tenancy	Preliminary Investigation - Not Sustained - Explanation Given
068273	Unreasonably short notice given for meeting	Preliminary Investigation - Not Sustained
068316	Alleged failure to clarify house type to be offered	Preliminary Investigation - Not Sustained - Explanation Given
068321	Alleged harassment by agency staff	Advice Given - Referred to Agency
068342	Alleged incorrect amount of rent being charged	Preliminary Investigation - Partly Resolved in Favour of Complainant
068344	Alleged delay in obtaining transfer	Preliminary Investigation - Not Sustained - Explanation Given
068347	Unreasonable decision regarding appeal	Advice Given
068348	Alleged maladministration causing financial loss and inconvenience	Advice Given
068349	Unreasonable maintenance	Preliminary Investigation - Reasonable Resolution
068350	Alleged delay in repairing damaged door	Preliminary Investigation - Reasonable Resolution
068412	Alleged delay in allocating housing	Preliminary Investigation - Not Sustained - Explanation Given
068423	Alleged failure to act regarding disruptive tenant	Preliminary Investigation - Partly Resolved in Favour of Complainant
068424	Unreasonable delay in facilitating transfer	Preliminary Investigation - Not Sustained - Explanation Given
068425	Alleged failure to deal with disruptive tenant	Preliminary Investigation - Not Sustained - Explanation Given
068427	Unreasonable conduct by staff	Preliminary Investigation - Reasonable Resolution
068430	Unreasonable pension deductions	Preliminary Investigation - Not Sustained - Explanation Given
068442	Unreasonable management of problem trees	Advice Given
068478	Alleged failure to act on complaint about disruptive tenants	Preliminary Investigation - Reasonable Resolution
068479	Alleged delay in providing maintenance	Preliminary Investigation - Not Sustained - Explanation Given
068487	Alleged inaccurate report provided	Advice Given
068491	Alleged breach of privacy	Advice Given
068495	Alleged failure to take action on application for housing	Advice Given
068512	Alleged failure to deal with disruptive tenant	Preliminary Investigation - Not Sustained - Explanation Given
068528	Alleged delay in allocating housing	Preliminary Investigation - Not Sustained - Explanation Given
068567	Alleged failure to correct error in calculation of	Preliminary Investigation - Reasonable Resolution
068573	Alleged failure to do maintenance work	Preliminary Investigation - Reasonable Resolution
068574	Alleged failure to secure property	Preliminary Investigation - Not Sustained - Explanation Given
068601	Alleged failure to reimburse full amount of rent overpayment	Preliminary Investigation - Not Sustained - Explanation Given
068609	Unreasonable delay in offering transfer property	Preliminary Investigation - Reasonable Resolution
068617	Unreasonable increase in amount of debt repayments	Preliminary Investigation - Not Sustained - Explanation Given
068644	Alleged failure to act urgently regarding disruptive tenant	Preliminary Investigation - Reasonable Resolution
068653	Alleged unreasonable charges	Preliminary Investigation - Reasonable Resolution
068667	Alleged failure to investigate complaint	Preliminary Investigation - Not Sustained - Explanation Given
068672	Alleged failure to provide adequate maintenance	Preliminary Investigation - Not Sustained - Explanation Given
068678	Alleged inadequate action regarding disruptive tenants	Preliminary Investigation - Partly Resolved in Favour of Complainant
068680	Unreasonable eviction	Advice Given
068710	Unreasonable refusal to include on waiting list	Preliminary Investigation - Not Sustained - Explanation Given
068728	Alleged refusal to refund costs associated with failure to secure contract of sale	Advice Given
068746	Unreasonable refusal to supply insulation	Advice Given
068780	Alleged failure to cease deducting rent	Preliminary Investigation - Reasonable Resolution
068785	Alleged failure to adequately respond to complaint regarding disruptive tenants	Preliminary Investigation - Not Sustained - Explanation Given
068808	Alleged delay in providing priority housing	Preliminary Investigation - Not Sustained - Explanation Given
068812	Alleged failure to address dampness problem	Preliminary Investigation - Not Sustained - Explanation Given
068814	Unreasonable process required to obtain higher category rating	Preliminary Investigation - Not Sustained - Explanation Given
068815	Unreasonably high rent	Preliminary Investigation - Not Sustained - Explanation Given
068816	Unreasonable action to threaten termination of tenancy	Preliminary Investigation - Reasonable Resolution
068823	Unreasonable maintenance provided	Preliminary Investigation - Partly Resolved in Favour of Complainant
068836	Unreasonable refusal to pay for removal expenses	Preliminary Investigation - Reasonable Resolution
068872	Alleged failure to calculate rent on correct information	Preliminary Investigation - Reasonable Resolution
068885	Unreasonable delay in replacing post	Preliminary Investigation - Reasonable Resolution
068903	Unreasonable delay in providing housing	Advice Given
068909	Unreasonable determination of category	Advice Given
068943	Alleged failure to adequately advise regarding amount of rent payable	Preliminary Investigation - Not Sustained - Explanation Given
068948	Alleged failure to attend to maintenance in a timely manner	Preliminary Investigation - Reasonable Resolution
068954	Alleged failure to attend to maintenance in a timely manner	Preliminary Investigation - Reasonable Resolution
068972	Alleged failure to classify for appropriate housing category	Advice Given

**Government Departments**  
Summary of outcomes of complaints finalized 1 July 2005 to 30 June 2006

FILE No.	COMPLAINT DETAILS	OUTCOME
068981	Unreasonable decision to allocate substandard housing	Advice Given
068983	Unreasonable decision to evict	Advice Given
068984	Unreasonable decision to evict	Preliminary Investigation - Not Sustained - Explanation Given
069004	Unreasonable delay in providing housing	Advice Given
069026	Unreasonable delay in granting certificate of	Advice Given
069041	Unreasonable refusal to remove vermin from property	Preliminary Investigation - Not Sustained - Explanation Given
069056	Unreasonable refusal of bond	Advice Given
069063	Unreasonable categorisation of housing application	Preliminary Investigation - Not Sustained - Explanation Given
069077	Unreasonable delay for allocation of priority	Advice Given
069083	Unreasonable refusal to provide fencing	Preliminary Investigation - Not Sustained - Explanation Given
069132	Unreasonable decision to remove housing offer	Preliminary Investigation - Partly Resolved in Favour of Complainant
069151	Alleged failure to provide correct advice about processes	Advice Given
069173	Alleged delay in allocating housing	Advice Given
069176	Alleged failure to complete maintenance within a reasonable time	Preliminary Investigation - Reasonable Resolution
069182	Alleged failure to take effective action concerning disruptive tenant	Preliminary Investigation - Reasonable Resolution
069190	Alleged error in calculating rent arrears	Advice Given - Referred to Agency
069194	Alleged delay in payments	Advice Given - Referred to Agency
069199	Unreasonable decision not to compensate for damage to property	Preliminary Investigation - Partly Resolved in Favour of Complainant
069201	Unreasonable requirement to maintain house whilst injured	Preliminary Investigation - Reasonable Resolution
069205	Unreasonable high charge for maintenance	Preliminary Investigation - Reasonable Resolution
069206	Alleged delay in providing maintenance to property	Preliminary Investigation - Partly Resolved in Favour of Complainant
069252	Unreasonable delay in providing housing	Preliminary Investigation - Not Sustained - Explanation Given
069276	Alleged failure to provide adequate housing	Preliminary Investigation - Reasonable Resolution
069292	Unreasonable lack of information supplied	Advice Given
069294	Unfair decision to evict	Preliminary Investigation - Not Sustained - Explanation Given
069300	Unreasonable refusal to deal with car parking problem	Preliminary Investigation - Not Sustained - Explanation Given
069302	Alleged failure to respond to complaint regarding disruptive tenant	Preliminary Investigation - Not Sustained - Explanation Given
069315	Unreasonable refusal to extend caretaking arrangements	Preliminary Investigation - Not Sustained - Explanation Given
069326	Alleged inadequate investigation of complaint	Preliminary Investigation - Partly Resolved in Favour of Complainant
069350	Alleged unfair refusal of caretaker arrangement	Preliminary Investigation - Reasonable Resolution
069364	Unreasonable tenancy conditions	Advice Given
069394	Unreasonable refusal to transfer	Advice Given
069400	Alleged inaction regarding disruptive tenants	Preliminary Investigation - Not Sustained - Explanation Given
069438	Alleged inadequate action taken regarding disruptive tenants	Preliminary Investigation - Reasonable Resolution
069456	Unreasonable refusal to grant housing	Preliminary Investigation - Partly Resolved in Favour of Complainant
069473	Unreasonable requirement to pay for repair	Preliminary Investigation - Partly Resolved in Favour of Complainant
069488	Alleged delay in processing housing application	Preliminary Investigation - Partly Resolved in Favour of Complainant
069505	Unreasonable refusal to allow the installation of skylight	Preliminary Investigation - Partly Resolved in Favour of Complainant
069526	Unreasonable refusal by staff member to speak to client	Preliminary Investigation - Reasonable Resolution
069539	Unreasonable refusal to clean up mess caused by intruder	Advice Given
069546	Alleged failure to allocate housing	Preliminary Investigation - Partly Resolved in Favour of Complainant
069553	Alleged failure to accept offer to purchase property	Preliminary Investigation - Partly Resolved in Favour of Complainant
069596	Alleged delay in allocating priority housing	Preliminary Investigation - Not Sustained - Explanation Given
069619	Alleged failure to act in relation to significant tree	Advice Given
069623	Alleged delay in allocating housing	Preliminary Investigation - Not Sustained - Explanation Given
069647	Unreasonable refusal to help replace fence	Advice Given
069648	Alleged failure to adequately deal with disruptive tenants	Preliminary Investigation - Partly Resolved in Favour of Complainant
069670	Alleged failure to provide adequate maintenance service	Preliminary Investigation - Not Sustained - Explanation Given
069716	Unreasonable delay in providing transfer	Advice Given
069743	Alleged failure to act courteously during house inspection	Advice Given
069753	Unreasonable refusal to effect repairs	Preliminary Investigation - Reasonable Resolution
069758	Unreasonable allegations regarding behaviour towards neighbour	Preliminary Investigation - Not Sustained - Explanation Given
069775	Unreasonable refusal of request to extend time to vacate premises	Advice Given
069776	Unreasonable pursuit of debt and possible	Advice Given
069821	Unreasonable location of electricity meter	Preliminary Investigation - Reasonable Resolution
069837	Unreasonable delay in processing application for transfer	Preliminary Investigation - Not Sustained - Explanation Given
069848	Unreasonable management of illegal tenant	Advice Given
069883	Unreasonable delay in allocating house	Advice Given
069900	Alleged failure to communicate regarding transfer	Preliminary Investigation - Not Sustained - Explanation Given
069904	Alleged failure to adequately deal with complaint	Preliminary Investigation - Reasonable Resolution
069916	Alleged failure to allocate priority housing	Preliminary Investigation - Not Sustained - Explanation Given
069925	Unreasonable decision to leave home improvement order in place	Preliminary Investigation - Partly Resolved in Favour of Complainant
069944	Alleged failure to notify of debt	Advice Given
069953	Alleged delay in facilitating transfer	Preliminary Investigation - Partly Resolved in Favour of Complainant
069968	Unreasonable refusal to provide fencing	Preliminary Investigation - Reasonable Resolution
069975	Alleged failure to deal with disruptive tenants	Advice Given - Referred to Agency
069981	Unreasonable requirement to pay electricity	Preliminary Investigation - Reasonable Resolution
069990	Unreasonable decision to not offer property for sale	Preliminary Investigation - Not Sustained - Explanation Given
069999	Alleged failure to allocate housing	Advice Given
070016	Alleged unfair decision to evict	Preliminary Investigation - Not Sustained - Explanation Given
070024	Unreasonable administrative decision	Preliminary Investigation - Not Sustained - Explanation Given
070039	Alleged failure to attend to maintenance in a timely manner	Preliminary Investigation - Partly Resolved in Favour of Complainant
070064	Unreasonable delay in providing heating	Preliminary Investigation - Reasonable Resolution
070069	Unreasonable decision to require vacation of premises	Advice Given
070074	Unreasonable maintenance provided	Preliminary Investigation - Not Sustained - Explanation Given
070097	Unreasonable process in attempting to recover debt	Preliminary Investigation - Partly Resolved in Favour of Complainant
070109	Alleged failure to install air-conditioning unit after relocation	Preliminary Investigation - Reasonable Resolution
070110	Unreasonable decision to evict if property not cleaned	Preliminary Investigation - Not Sustained - Explanation Given
070112	Alleged lack of service	Preliminary Investigation - Partly Resolved in Favour of Complainant
070162	Alleged failure to repair driveway	Preliminary Investigation - Reasonable Resolution

SA Water Corporation

**Government Departments**  
Summary of outcomes of complaints finalized 1 July 2005 to 30 June 2006

FILE No.	COMPLAINT DETAILS	OUTCOME
059866	Unreasonable location for trench	Full Investigation - Reasonable Resolution
064033	Unreasonable land acquisition process	Withdrawn by Complainant
064800	Unreasonable charge	Preliminary Investigation - Not Sustained
065335	Failure to remedy works	Full Investigation - Not Sustained
065388	Unreasonable charges	Preliminary Investigation - Not Sustained - Explanation Given
066161	Unexplained high water consumption	Preliminary Investigation - Not Sustained - Explanation Given
066568	Unreasonable refusal of pensioner water concession	Preliminary Investigation - Reasonable Resolution
066658	Alleged exorbitant excess water account	Preliminary Investigation - Reasonable Resolution
066671	Alleged failure to act on bullying complaints	Declined - Refused to Investigate
066716	Unreasonable water account	Preliminary Investigation - Not Sustained - Explanation Given
066721	Alleged failure to correctly install new sewerage connection	Preliminary Investigation - Reasonable Resolution
066762	Unreasonable decision to recover alleged unpaid charges	Advice Given
066839	Unreasonable compulsory acquisition of land	Advice Given
066930	Unreasonably excessive water account	Preliminary Investigation - Reasonable Resolution
067004	Unreasonable easement conditions	Advice Given
067039	Unreasonable decision to impose charge for infrastructure	Preliminary Investigation - Not Sustained - Explanation Given
067047	Unreasonable water account	Preliminary Investigation - Not Sustained - Explanation Given
067057	Unreasonable delay in rectifying damaged sewer pipe	Preliminary Investigation - Not Sustained - Explanation Given
067061	Unreasonable demand for payment of sewerage connection charge	Preliminary Investigation - Partly Resolved in Favour of Complainant
067073	Alleged incorrect charge for connection of water meter	Preliminary Investigation - Not Sustained - Explanation Given
067082	Unreasonable request for rate arrears based on current valuation	Advice Given - Referred to Agency
067085	Unreasonable water accounts	Preliminary Investigation - Reasonable Resolution
067109	Unreasonable conditions in relation to contract for extension of pipeline	Advice Given
067160	Unreasonable high cost of meter disconnection	Advice Given
067185	Unreasonable imposition of charge for water use	Preliminary Investigation - Not Sustained - Explanation Given
067278	Unreasonable documentation regarding water account	Advice Given
067328	Unreasonable request for additional funds	Advice Given
067344	Unreasonable imposition of fee for compliance	Advice Given
067351	Alleged failure to adequately respond to complaint	Advice Given
067410	Unreasonable imposition of charge for mains connection	Preliminary Investigation - Not Sustained - Explanation Given
067467	Alleged excessive cost of installing water main	Preliminary Investigation - Partly Resolved in Favour of Complainant
067539	Unreasonable charge for provision of water to allotment	Preliminary Investigation - Not Sustained - Explanation Given
067577	Alleged failure to maintain accurate records	Advice Given
067583	Alleged failure to maintain accurate records	Preliminary Investigation - Not Sustained - Explanation Given
067634	Alleged flooding of property due to water leak	Advice Given
067675	Alleged failure to continue concession	Advice Given
067677	Alleged failure to send original water accounts for properties where boundaries are split	Preliminary Investigation - Reasonable Resolution
067729	Unreasonably high cost of moving meter	Advice Given
067817	Unreasonable delay in forwarding account	Preliminary Investigation - Reasonable Resolution
067837	Unreasonable administrative decision regarding payment of account	Advice Given - Other/General
067907	Unreasonable charge for extended water mains	Advice Given
067951	Unreasonably high charge for installing water	Advice Given
067971	Unreasonable payment demand	Advice Given
067973	Unreasonable attempts to recover debt	Advice Given - Referred to Agency
067994	Unreasonably high charge for installing water meter	Preliminary Investigation - Not Sustained - Explanation Given
068242	Alleged incorrect address used to send account	Advice Given
068312	Unreasonable decision to impose charge for water meter	Preliminary Investigation - Reasonable Resolution
068322	Unreasonable requirement to pay for damaged meter	Preliminary Investigation - Reasonable Resolution
068325	Unreasonable charges for shifting water meter	Advice Given
068336	Unreasonable decision to terminate concession	Advice Given
068380	Unreasonable delay	Advice Given
068518	Unreasonably high account	Preliminary Investigation - Reasonable Resolution
068542	Unusually high water rates	Advice Given
068663	Allegation of unreasonable financial cost	Advice Given - Referred to Agency
068724	Alleged incorrect calculation of water usage	Preliminary Investigation - Reasonable Resolution
068831	Unreasonable requirement to pay for re-connection of service	Advice Given - Referred to Agency
068874	Unreasonable imposition of fees and charges	Preliminary Investigation - Reasonable Resolution
068893	Alleged incorrectly addressed accounts	Preliminary Investigation - Partly Resolved in Favour of Complainant
068980	Alleged failure to advise of availability of sewer connection	Preliminary Investigation - Partly Resolved in Favour of Complainant
068982	Unreasonable expectation that complainant pay account	Advice Given
069007	Unreasonable charge to relocate meter	Advice Given - Referred to Agency
069050	Unreasonable charge	Advice Given
069100	Unreasonable decision regarding installation of sewer main	Preliminary Investigation - Not Sustained - Explanation Given
069196	Inadequate services allegedly causing damage to property	Advice Given
069209	Alleged failure to provide adequate water supply	Advice Given
069227	Unreasonable excess water account	Preliminary Investigation - Reasonable Resolution
069301	Unreasonable objection to subdivision	Declined - Out of Time
069325	Unreasonable requirement to pay for second meter	Preliminary Investigation - Not Sustained - Explanation Given
069395	Unreasonable bill for replacement of water meter	Advice Given
069405	Unreasonable requirement for development to be connected to mains	Advice Given
069481	Unreasonable charge to terminate services	Preliminary Investigation - Reasonable Resolution
069581	Unreasonable charge	Advice Given
069628	Unreasonable requirement to contribute to cost of installing infrastructure	Advice Given
069704	Unreasonable explanation of account	Advice Given
069715	Unreasonable water flow	Advice Given
069722	Alleged unfair imposition of sewer connection charge	Preliminary Investigation - Not Sustained - Explanation Given
069727	Unreasonably high water consumption charges	Preliminary Investigation - Reasonable Resolution
069762	Unreasonable referral of matter to courts	Advice Given
069815	Alleged incorrect calculation of water usage	Preliminary Investigation - Reasonable Resolution
069825	Unreasonable demand to pay for sewerage infrastructure	Advice Given
069903	Unreasonable refusal to waive levy	Preliminary Investigation - Not Sustained - Explanation Given

**Government Departments**  
Summary of outcomes of complaints finalized 1 July 2005 to 30 June 2006

FILE No.	COMPLAINT DETAILS	OUTCOME
069934	Unreasonably high account	Preliminary Investigation - Partly Resolved in Favour of Complainant
070041	Unreasonable excess water account	Preliminary Investigation - Not Sustained - Explanation Given
070073	Alleged incorrect calculation of water usage	Advice Given
070092	Alleged failure to compensate for high water use	Preliminary Investigation - Reasonable Resolution
070099	Unreasonable charge for infrastructure	Advice Given
070107	Alleged refusal to allow refurbishment of carport due to easement	Advice Given
070151	Unreasonable recovery of rates	Advice Given
070155	Unreasonable requirement to pay for cost of repairs to pipe	Advice Given
<b>State Electoral Office</b>		
069522	Unreasonable delay in response to	Withdrawn by Complainant

**Local Government**  
Summary of outcomes of complaints finalised from 1 July 2005 to 30 June 2006

Agency	Advice Given	Alternate Remedy	Declined	Not Sustained	Not Sustained - Explanation Given	Other/General	Out of Time	Partly Resolved in Favour of Complainant	Reasonable Resolution	Referred to Agency	Refused to Investigate	Sustained - sec 25(1)(b) - unreasonable, unjust, etc	Sustained - sec 25(1)(c) - improper use of discretion	Withdrawn by Complainant	Total
District Council of Robe	1			1				1	3	2					8
District Council of Streaky Bay	1														1
District Council of Tatiara	1									1					2
District Council of Tumby Bay	1				3										4
Adelaide Hills Council	11			1	7	1		2		1	1				24
Alexandrina Council	7				7			1							15
City of Burnside	11				2			1	1	1				1	17
City of Charles Sturt	13				10	1		4	2	1	1				32
City of Holdfast Bay	5	1		1	4			1	2	4	1			1	20
City of Mitcham	10			1	5				3	4	1				24
City of Mount Gambier	3				1										4
City of Norwood, Payneham & St Peters	6	1			3			1							11
City of Onkaparinga	19				18			4	6	5	1			2	55
City of Playford	13				4			2	1	1				1	22
City of Port Adelaide Enfield	12			4	12			3	1		1			1	34
City of Port Lincoln								1							1
City of Prospect	5	1			2			1	3						12
City of Salisbury	10	1			6			6	1						24
City of Tea Tree Gully	8				12	4		2	3					1	30
City of Victor Harbor	1		1		3	1		3	1	1		1			12
City of West Torrens	7				7	4			3	1					22
Clare and Gilbert Valleys Council	8					3			2						13
Corporation of the City of Adelaide	9	2			11	3		2	3	2	1			2	35
Corporation of the City of Campbelltown	3				4	1								1	9
Corporation of the City of Marion	12	1			6			1	2	2					24
Corporation of the City of Unley	4	1			6	1		2	2	2					18
Corporation of the City of Whyalla	1			1	3	2									7
District Council of Barunga West					1										1
District Council of Ceduna	2														2
District Council of Cleve									1						1
District Council of Coober Pedy					1	1									2
District Council of Coorong						2		1							3
District Council of Grant	1				3	1		1	1	1					8
District Council of Karoonda East					1										1
District Council of Kimba	1				1										2
District Council of Lower Eyre Peninsula	1			1	2	2									6
District Council of Loxton Waikerie				1	1										2
District Council of Mallala	3	1			2	1			1				1		9
District Council of Mount Barker					2	2		1		1					6
District Council of Ororoo/Carrieton				1	1				1						3
District Council of Peterborough	1				2				1						4
District Council of the Copper Coast				1	2	2									5
District Council of Yankalilla	2				2	3					1				8
District Council of Yorke Peninsula	3				5	3		1	1						13
Kangaroo Island Council	2				6	5			11						24
Kingston District Council	3								1						4
Light Regional Council	3			1	2	2		2	4		1				15
Mid Murray Council	4	1		1	3	4			1						14
Naracoorte Lucindale Council	1				2	2									5
Northern Areas Council						2		1							3
Port Augusta City Council	2				3	2		1			1			1	10
Port Pirie Regional Council	2				2										4
Regional Council of Goyder					2										2
Renmark Paringa Council	2					1					1				4
Roxby Downs Council					1										1
Rural City of Murray Bridge	1							1	1					1	4
The Barossa Council	3			1	3	1	1	2	1		1				13
The Berri Barmerra Council	1			1				1	3						6
The District Council of Elliston	2														2
The District Council of Mount Barker	4				2	2		3	2				1		14
The Flinders Ranges Council	2					1								1	4
Town of Gawler	1		1	1	2	1		1	2						9
Wakefield Regional Council					3			3	2						8
Wattle Range Council	2				5	5		1		1					14
<b>Total</b>	<b>232</b>	<b>10</b>	<b>2</b>	<b>18</b>	<b>198</b>	<b>66</b>	<b>1</b>	<b>56</b>	<b>71</b>	<b>34</b>	<b>12</b>	<b>1</b>	<b>2</b>	<b>13</b>	<b>7166</b>

**Local Government Council**  
Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
<b>District Council of Elliston</b>		
067154	Unreasonable decision to impose levy	Advice Given
070031	Unreasonable imposition of dog fine	Advice Given
<b>District Council of Robe</b>		
062366	Unreasonable refusal of rate rebate	Full Investigation - Reasonable Resolution
063267	Unreasonable refusal	Full Investigation - Reasonable Resolution
065808	Alleged unfair treatment	Preliminary Investigation - Not Sustained
067655	Unreasonable refusal of rate rebate	Full Investigation - Reasonable Resolution
068892	Unreasonable consideration of large loan	Advice Given - Referred to Agency
068914	Unreasonable approval of development	Advice Given
069253	Alleged inadequate handling of complaint	Advice Given
069447	Alleged failure to address problem of overlooking	Preliminary Investigation - Partly Resolved in Favour of Complainant
<b>District Council of Streaky Bay</b>		
068232	Alleged failure to investigate complaint	Advice Given
<b>District Council of Tatiana</b>		
066898	Unreasonable approval of development	Advice Given - Referred to Agency
068304	Unreasonable behaviour by officer	Advice Given
<b>District Council of Tumby Bay</b>		
067029	Unreasonable refuse collection charge included in rates	Preliminary Investigation - Not Sustained - Explanation Given
067266	Unreasonably high charges for waste disposal	Advice Given
067310	Unreasonable imposition of refuse charge	Preliminary Investigation - Not Sustained - Explanation Given
067339	Unreasonable waste collection charge	Preliminary Investigation - Not Sustained - Explanation Given
<b>Adelaide Hills Council</b>		
066329	Alleged failure to enforce conditions of development approval	Preliminary Investigation - Partly Resolved in Favour of Complainant
066836	Unreasonable delay in processing planning application	Preliminary Investigation - Not Sustained - Explanation Given
067080	Unreasonable processing of development application	Full Investigation - Not Sustained - Explanation Given
067323	Unreasonable decision regarding home activity in rural area	Advice Given
067590	Unreasonable amount of advertising	Preliminary Investigation - Not Sustained
067723	Unreasonable request for amendment	Preliminary Investigation - Partly Resolved in Favour of Complainant
068005	Alleged bias on the part of a development assessment panel member	Advice Given
068166	Alleged biased comments from members of Development Assessment Panel	Preliminary Investigation - Not Sustained - Explanation Given
068267	Alleged unfair process in assessing development application	Advice Given - Other/General
068284	Alleged failure to follow proper processes	Preliminary Investigation - Not Sustained - Explanation Given
068498	Unreasonable refusal to allow street stall	Preliminary Investigation - Not Sustained - Explanation Given
068696	Alleged unauthorised accessing of bank account	Preliminary Investigation - Not Sustained - Explanation Given
068714	Unreasonable criteria applied to development application	Advice Given
068834	Unreasonable processing of application	Declined - Refused to Investigate
068850	Alleged unauthorised release of documents	Advice Given
068887	Unreasonable decision by council regarding significant trees	Advice Given
068896	Alleged breach of confidentiality	Preliminary Investigation - Not Sustained - Explanation Given
068921	Alleged refusal to allow camping on residential allotment while house is being built	Advice Given
068969	Unreasonable decision to close local library	Advice Given
069116	Unreasonable lack of information provided about proposed commercial venture	Advice Given - Referred to Agency
069308	Unreasonable requirements placed on development application	Advice Given
069339	Unreasonable management of dog complaint	Advice Given
069580	Unreasonable refusal to clear block	Advice Given
070108	Alleged failure to advise of road closure	Advice Given
<b>Alexandrina Council</b>		
063883	Inappropriate rating arrangements	Preliminary Investigation - Not Sustained - Explanation Given
064799	Incorrect information supplied	Full Investigation - Partly Resolved in Favour of Complainant
065009	Failure to address issues	Preliminary Investigation - Not Sustained - Explanation Given
066639	Alleged doubtful nature of possible actions	Advice Given
066994	Unreasonable rejection of application to build	Advice Given
067357	Unreasonable employment conditions	Advice Given
067816	Unreasonable assistance provided	Preliminary Investigation - Not Sustained - Explanation Given
067876	Alleged unreasonable planning decision	Advice Given
068175	Unreasonable requirement to pay levy	Preliminary Investigation - Not Sustained - Explanation Given
068192	Alleged erroneous decision on planning	Advice Given
068205	Unreasonable planning approval	Preliminary Investigation - Not Sustained - Explanation Given

**Local Government Council**

Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
068747	Unreasonable management of planning	Advice Given
068942	Alleged failure to enforce compliance	Preliminary Investigation - Not Sustained - Explanation Given
068961	Alleged refusal to replace green bin free of charge	Preliminary Investigation - Not Sustained - Explanation Given
070053	Alleged unfair rating policy	Advice Given
<b>Berri Barmera Council</b>		
066628	Unreasonable decision not to allow access	Preliminary Investigation - Not Sustained
067909	Alleged failure to maintain accurate records	Preliminary Investigation - Reasonable Resolution
067911	Alleged improper action in providing personal details to private business	Preliminary Investigation - Reasonable Resolution
069030	Unreasonable requirement to connect to STED scheme	Preliminary Investigation - Partly Resolved in Favour of Complainant
069269	Alleged failure to maintain roads	Preliminary Investigation - Reasonable Resolution
069996	Unreasonable imposition of parking fine	Advice Given
<b>City of Burnside</b>		
066768	Unreasonable refusal to waive fine	Advice Given
067304	Alleged failure to enforce compliance with development plan	Advice Given
067599	Unreasonable criteria applied to development application	Preliminary Investigation - Not Sustained - Explanation Given
067609	Alleged failure to enforce development approval	Preliminary Investigation - Not Sustained - Explanation Given
067809	Alleged excessive delays in processing development application	Advice Given
067862	Alleged failure to act regarding damage caused by street tree	Advice Given
067864	Alleged failure to resolve disruption from park	Preliminary Investigation - Reasonable Resolution
068384	Unreasonable delay in providing response regarding street tree	Preliminary Investigation - Partly Resolved in Favour of Complainant
068397	Unreasonable requirement for complainant to put pipes in easement	Advice Given
068441	Alleged failure to follow proper process regarding planning matter	Advice Given
069375	Failure to provide clear direction in relation to development application	Advice Given - Referred to Agency
069387	Unreasonable requirement to have approval for a satellite dish	Advice Given
069445	Unreasonable approval of development	Withdrawn - Withdrawn by Complainant
069472	Alleged incorrect address used for refund	Advice Given
069558	Alleged failure to act on encroachment issue	Advice Given
069611	Alleged concerns regarding the manner in which meetings conducted	Advice Given
069790	Alleged failure to provide correct information regarding future development of site	Advice Given
<b>City of Charles Sturt</b>		
061176	Unreasonable planning process	Preliminary Investigation - Not Sustained - Explanation Given
065704	Alleged failure to follow the requirements of the development plan	Preliminary Investigation - Not Sustained - Explanation Given
066182	Failure to minimise overlooking	Preliminary Investigation - Reasonable Resolution
066659	Unreasonable refusal of development application	Preliminary Investigation - Reasonable Resolution
066853	Unreasonable decision to include information on agency's website	Advice Given
067017	Unreasonable order to demolish house	Preliminary Investigation - Not Sustained - Explanation Given
067199	Alleged incorrect calculation of council rates	Preliminary Investigation - Not Sustained - Explanation Given
067244	Unreasonable determination to impose parking fine	Preliminary Investigation - Not Sustained - Explanation Given
067557	Alleged unreasonably high rates	Advice Given
067842	Alleged failure to address concerns regarding development	Preliminary Investigation - Partly Resolved in Favour of Complainant
067931	Alleged lack of consultation	Advice Given
068285	Unreasonable processing of development application	Preliminary Investigation - Not Sustained - Explanation Given
068307	Unreasonable parking fine	Advice Given
068310	Unreasonable charge	Advice Given
068334	Alleged unfair requirement to pay for replacement bin	Advice Given - Referred to Agency
068345	Unreasonable fee for cemetery memorial work	Full Investigation - Partly Resolved in Favour of Complainant
068351	Unreasonable imposition of parking fine	Advice Given
068387	Alleged failure to act on complaint in a timely manner	Preliminary Investigation - Partly Resolved in Favour of Complainant
068458	Unreasonable decision to refuse approval for development application	Advice Given
068564	Unreasonable attitude/policy regarding parking matter	Preliminary Investigation - Not Sustained - Explanation Given
068668	Allegedly oppressive hive removal order	Preliminary Investigation - Not Sustained - Explanation Given

**Local Government Council**

Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
068826	Alleged failure to collect rubbish	Preliminary Investigation - Not Sustained - Explanation Given
069268	Alleged failure to act regarding activity breaching criteria	Preliminary Investigation - Not Sustained - Explanation Given
069290	Unreasonable investigation into complaint	Advice Given
069511	Alleged inadequate action regarding complaint regarding barking dog	Preliminary Investigation - Partly Resolved in Favour of Complainant
069584	Alleged failure to act on complaints	Advice Given
069744	Alleged failure to properly notify residents of development	Advice Given
069745	Alleged failure to follow due process in advising residents of land development	Advice Given
069785	Unreasonable delays in approving development plan	Advice Given
069860	Alleged harassment by council officer	Advice Given - Other/General
069881	Alleged abuse of power by council in issuing & enforcing order under Local Government Act	Declined - Refused to Investigate
069926	Unreasonable requirement to lodge application for fence	Advice Given
<b>City of Holdfast Bay</b>		
059366	Failure to enforce court order	Full Investigation - Not Sustained - Explanation Given
065949	Failure to apply internal complaint handling process	Preliminary Investigation - Partly Resolved in Favour of Complainant
066829	Unreasonable imposition of parking fine	Advice Given - Referred to Agency
067360	Alleged failure to properly advise in relation to changes to development plan	Advice Given
067663	Unreasonable decision by council to inspect property	Advice Given
067747	Unreasonable decision by council to issue expiation notice	Advice Given
067808	Alleged failure to provide correct advice regarding display of goods in front of retail store	Advice Given - Referred to Agency
068324	Unreasonable determination regarding parking fine	Preliminary Investigation - Not Sustained - Explanation Given
068381	Unreasonable parking fine	Preliminary Investigation - Not Sustained - Explanation Given
068429	Unreasonable development approval	Preliminary Investigation - Not Sustained
068516	Unreasonable decision to impose parking fine	Preliminary Investigation - Reasonable Resolution
068582	Unreasonable action to require return of letter from whistleblower	Declined - Refused to Investigate
068607	Alleged failure to declare conflict of interest	Advice Given
068623	Alleged poor administrative process resulting in matter being referred to courts	Advice Given - Referred to Agency
068894	Alleged inadequate consultation process	Withdrawn - Withdrawn by Complainant
069033	Alleged failure to consult regarding development on adjoining property	Preliminary Investigation - Reasonable Resolution
069066	Unreasonable removal of vehicle	Declined - Alternate Remedy
069181	Alleged failure to investigate complaint in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
069640	Unreasonable development decision contrary to development plan	Advice Given - Referred to Agency
070070	Unreasonable imposition of fee for late payment	Advice Given
<b>City of Mitcham</b>		
064200	Unreasonable refusal to compensate	Full Investigation - Not Sustained
066332	Unreasonable development approval	Preliminary Investigation - Not Sustained - Explanation Given
066714	Unreasonable parking fine	Preliminary Investigation - Reasonable Resolution
066767	Unreasonable investigation into complaints	Advice Given
067138	Alleged changes to development plan	Advice Given - Referred to Agency
067248	Alleged failure to repair footpath	Preliminary Investigation - Reasonable Resolution
067263	Unreasonable decision regarding planning application	Preliminary Investigation - Not Sustained - Explanation Given
067348	Alleged failure to observe due process in considering development application	Preliminary Investigation - Not Sustained - Explanation Given
067393	Unreasonable development decision and failure to follow due process	Advice Given
067423	Alleged failure to act to remove rubbish	Declined - Refused to Investigate
067512	Unreasonable imposition of penalty	Advice Given - Referred to Agency
067674	Alleged failure to act on complaints	Advice Given
067976	Unreasonable assessment of road closure proposal	Full Investigation - Not Sustained - Explanation Given
068009	Unreasonable imposition of fine	Preliminary Investigation - Not Sustained - Explanation Given
068465	Unreasonable refusal to reimburse expenses	Advice Given - Referred to Agency
068769	Unreasonable planning decision	Advice Given
068828	Unreasonable requirement to supply certificate	Advice Given
068989	Alleged failure to maintain street tree adequately	Advice Given
069455	Unreasonable parking fine	Advice Given - Referred to Agency
069733	Alleged failure to provide information when requested	Preliminary Investigation - Reasonable Resolution

**Local Government Council**

Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
069884	Unreasonable decision to engage debt collectors	Advice Given
069885	Unreasonable delay in attending to hygiene	Advice Given
069949	Unreasonable heritage laws relating to suburb	Advice Given
070006	Unreasonable decision to approve expansion to shopping centre	Advice Given
<b>City of Mount Gambier</b>		
066854	Unreasonable decision regarding street tree planting	Advice Given
067225	Alleged failure to enforce zoning compliance	Advice Given
068185	Alleged failure to adequately respond to barking dog complaint	Preliminary Investigation - Not Sustained - Explanation Given
069461	Unreasonable approval granted for substandard structure	Advice Given
<b>City of Norwood, Payneham &amp; St Peters</b>		
063882	Failure to take adequate action	Full Investigation - Partly Resolved in Favour of Complainant
066882	Alleged failure to provide rates for rented property	Preliminary Investigation - Not Sustained - Explanation Given
067588	Unreasonable decision to introduce traffic management plan	Preliminary Investigation - Not Sustained - Explanation Given
067788	Alleged failure to grant concession on rates	Preliminary Investigation - Not Sustained - Explanation Given
067920	Unreasonable decision to list property as one having historic significance	Advice Given
068587	Unreasonable decision to impose parking fine	Advice Given
068775	Alleged refusal to compensate for clothing damaged in fall in street	Advice Given
068841	Unreasonable process in determining PAR	Declined - Alternate Remedy
069360	Alleged insufficient information supplied	Advice Given
069772	Alleged failure to enforce compliance with land management agreement	Advice Given
069972	Unreasonable use of power	Advice Given
<b>City of Onkaparinga</b>		
064165	Failure to follow correct process	Full Investigation - Reasonable Resolution
066519	Unreasonable impact on business from new green waste service	Withdrawn - Withdrawn by Complainant
066706	Unreasonable approval of development	Preliminary Investigation - Not Sustained - Explanation Given
066771	Unreasonable refusal of claim	Advice Given
066783	Alleged failure to compensate for damage to motor vehicle	Advice Given
066813	Alleged failure to address safety concerns regarding playground	Advice Given - Referred to Agency
066816	Alleged failure to follow up on complaint	Preliminary Investigation - Partly Resolved in Favour of Complainant
066958	Unreasonable decision to impose encumbrance	Preliminary Investigation - Not Sustained - Explanation Given
067135	Alleged failure to construct road in accordance with proposed design	Preliminary Investigation - Not Sustained - Explanation Given
067137	Alleged failure to enforce building code	Preliminary Investigation - Not Sustained - Explanation Given
067149	Unreasonable action regarding route of new electricity line	Preliminary Investigation - Not Sustained - Explanation Given
067197	Alleged failure to enforce requirement prohibiting vehicles parking on the footpath	Preliminary Investigation - Partly Resolved in Favour of Complainant
067258	Alleged failure to provide adequate reason regarding confidentiality	Preliminary Investigation - Not Sustained - Explanation Given
067285	Alleged failure to address issues of dust emission from development site	Advice Given - Referred to Agency
067301	Unreasonable refusal to grant a licence to keep animals	Advice Given
067596	Alleged failure to attend to problem	Preliminary Investigation - Partly Resolved in Favour of Complainant
067635	Alleged failure to ensure septic tank is adequate	Advice Given
067727	Unreasonable construction standard of retaining wall by neighbour	Declined - Refused to Investigate
067776	Unreasonable planning decision	Advice Given
067898	Unreasonable refusal to act	Advice Given
067925	Unreasonable imposition of fine	Advice Given
067957	Alleged delay in responding to complaint	Advice Given - Referred to Agency
067979	Unreasonable investigation into matter	Preliminary Investigation - Not Sustained - Explanation Given
068115	Alleged failure to provide correct advice or information	Advice Given - Referred to Agency
068117	Unreasonable approval to erect swimming pool	Advice Given
068142	Unreasonable release of confidential information	Advice Given
068145	Unreasonable staff selection process	Preliminary Investigation - Not Sustained - Explanation Given
068168	Unreasonable approval of development application	Preliminary Investigation - Not Sustained - Explanation Given
068282	Unfair handling of complaint	Advice Given - Referred to Agency
068283	Alleged failure to address issue of street parking	Preliminary Investigation - Not Sustained - Explanation Given
068305	Unreasonable decision to build bridge	Advice Given

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Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
068315	Alleged failure to respond to telephone calls	Preliminary Investigation - Reasonable Resolution
068373	Unreasonable refusal to address traffic problem	Advice Given
068396	Unreasonable construction of bridge	Full Investigation - Partly Resolved in Favour of Complainant
068401	Alleged failure to respond to request for	Preliminary Investigation - Reasonable Resolution
068466	Alleged failure to process development application in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
068544	Alleged failure to act on report of an offence	Preliminary Investigation - Not Sustained - Explanation Given
068611	Alleged disclosure of information to neighbour	Advice Given
068614	Unreasonable information provided	Advice Given
068650	Alleged failure to enforce compliance with building requirements	Preliminary Investigation - Not Sustained - Explanation Given
068692	Alleged impartial assessment of development application	Advice Given
068707	Alleged possible conflict of interest in council decision	Preliminary Investigation - Not Sustained - Explanation Given
068793	Unreasonable decision regarding property clean-up	Preliminary Investigation - Not Sustained - Explanation Given
068891	Unreasonable delay in assessment of development applications	Preliminary Investigation - Reasonable Resolution
068905	Alleged inadequate investigation of complaint	Preliminary Investigation - Reasonable Resolution
069084	Alleged damage to property by removal of tree	Advice Given
069092	Alleged failure to reply to emails	Preliminary Investigation - Not Sustained - Explanation Given
069161	Unreasonable decision to expiate	Preliminary Investigation - Reasonable Resolution
069162	Alleged failure to act to control neighbour's cats	Advice Given
069174	Alleged wrongful heritage listing of dwelling	Advice Given
069255	Unreasonable charge of legal fees	Preliminary Investigation - Not Sustained - Explanation Given
069465	Alleged flawed traffic survey	Withdrawn - Withdrawn by Complainant
069468	Unreasonable imposition of fine	Preliminary Investigation - Not Sustained - Explanation Given
069589	Unreasonable decision not to collect waste	Advice Given
069914	Alleged inconsistent application of development plan	Advice Given
<b>City of Playford</b>		
063605	Unreasonable delay in attending to parking problem	Preliminary Investigation - Partly Resolved in Favour of Complainant
064467	Failure to comply with legal requirements	Advice Given
066810	Alleged failure to maintain control of activities on council land	Preliminary Investigation - Partly Resolved in Favour of Complainant
067048	Unreasonable delay in assessing development application	Preliminary Investigation - Not Sustained - Explanation Given
067256	Alleged breach of confidentiality	Advice Given
067366	Unreasonable approval of development	Preliminary Investigation - Not Sustained - Explanation Given
067468	Unreasonable late fee for dog registration	Advice Given
067585	Alleged inaccurate advice regarding zoning of	Advice Given - Referred to Agency
067746	Alleged failure to repair security lights on council property	Preliminary Investigation - Not Sustained - Explanation Given
067790	Alleged failure to provide landscaping in new estate housing	Advice Given
067819	Alleged failure to act on complaint	Advice Given
067849	Alleged failure to act regarding barking dog complaint	Advice Given
068405	Alleged inadequate investigation of complaint	Advice Given
068452	Alleged failure to take adequate action regarding dog attack	Preliminary Investigation - Not Sustained - Explanation Given
068481	Alleged failure to trim overhanging trees	Withdrawn - Withdrawn by Complainant
068537	Alleged illegal development	Advice Given
068598	Alleged incorrect development approval of community plan by council	Advice Given
068630	Unreasonable rates, fees and charges	Advice Given
068658	Unreasonable agency valuation	Advice Given
068999	Alleged failure to respond to complaint	Preliminary Investigation - Reasonable Resolution
069137	Alleged failure to adequately respond to complaint	Advice Given
069943	Unreasonable barking by dog	Advice Given
<b>City of Port Adelaide Enfield</b>		
061186	Unreasonable processing of development application	Full Investigation - Partly Resolved in Favour of Complainant
065102	Unreasonable contract process	Full Investigation - Not Sustained
065229	Failure to act	Preliminary Investigation - Not Sustained
066692	Unreasonable approval of development	Advice Given
066695	Unreasonable approval of development	Advice Given
066744	Alleged failure to enforce development conditions	Preliminary Investigation - Not Sustained - Explanation Given
067041	Unreasonable decision to proceed to recover unpaid rates	Preliminary Investigation - Not Sustained
067223	Unreasonable requirement to repair damage to storm-water pipe	Advice Given

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Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
067704	Unreasonable delay in attending to barking dog problem	Preliminary Investigation - Reasonable Resolution
067737	Alleged incorrect calculation of rates	Preliminary Investigation - Not Sustained - Explanation Given
067755	Unreasonable development application process	Withdrawn - Withdrawn by Complainant
067765	Alleged failure to respond to complaint	Preliminary Investigation - Not Sustained - Explanation Given
067798	Unreasonable action in relation to dog management issue	Preliminary Investigation - Not Sustained - Explanation Given
067947	Alleged failure to remove problem trees	Preliminary Investigation - Not Sustained - Explanation Given
068160	Alleged failure by council to enforce regulations	Advice Given
068296	Alleged failure to enforce compliance	Advice Given
068320	Alleged failure to take adequate action regarding barking dog	Preliminary Investigation - Not Sustained - Explanation Given
068508	Alleged failure to forward correspondence	Preliminary Investigation - Not Sustained - Explanation Given
068597	Unreasonable decision to impose fine	Advice Given
069069	Unreasonable practices regarding fines on rates	Declined - Refused to Investigate
069099	Alleged obscured signage resulted in parking fine	Preliminary Investigation - Not Sustained - Explanation Given
069112	Unreasonable imposition of parking fines	Advice Given
069139	Alleged failure to control traffic around building	Advice Given
069229	Unreasonable parking fine	Preliminary Investigation - Not Sustained - Explanation Given
069244	Unreasonable condition imposed on planning application	Preliminary Investigation - Not Sustained
069330	Alleged failure to provide duty of care	Advice Given
069433	Unreasonable refusal to grant permission to operate	Preliminary Investigation - Partly Resolved in Favour of Complainant
069566	Alleged failure to process development application in a timely manner	Preliminary Investigation - Partly Resolved in Favour of Complainant
069649	Unreasonable management of planning	Advice Given
069679	Unreasonable approval of neighbouring development	Advice Given
069682	Alleged failure to ensure development compliance with approval	Preliminary Investigation - Not Sustained - Explanation Given
069701	Unreasonable decision to approve non-complying development	Preliminary Investigation - Not Sustained - Explanation Given
069735	Alleged failure by council to enforce bylaws	Preliminary Investigation - Not Sustained - Explanation Given
070165	Unreasonable decision to require removal of noisy roosters	Advice Given
<b>City of Port Lincoln</b>		
068795	Alleged failure to enforce compliance with development approval conditions	Preliminary Investigation - Partly Resolved in Favour of Complainant
<b>City of Prospect</b>		
066488	Unreasonable delay in enforcing planning	Preliminary Investigation - Reasonable Resolution
067146	Alleged unfair harassment	Preliminary Investigation - Not Sustained - Explanation Given
067216	Unreasonable increase in rates	Advice Given
068485	Unreasonable process for assessing development application	Full Investigation - Partly Resolved in Favour of Complainant
068765	Alleged failure to act on complaint	Declined - Alternate Remedy
069192	Unreasonable delay in refunding overpayment of rates	Preliminary Investigation - Reasonable Resolution
069212	Alleged conflict of interest by council officer in development matter	Advice Given
069245	Alleged unreasonable action regarding a development application	Full Investigation - Not Sustained - Explanation Given
069757	Unreasonable refusal to waive fine	Advice Given
069778	Unreasonable decision regarding driveway	Advice Given
069874	Alleged failure to enforce conditions relating to permit	Preliminary Investigation - Reasonable Resolution
070168	Unreasonable decision to impose parking fine	Advice Given
<b>City of Salisbury</b>		
065817	Unreasonable requirement	Preliminary Investigation - Not Sustained - Explanation Given
066322	Alleged failure to trim overhanging trees	Preliminary Investigation - Partly Resolved in Favour of Complainant
066772	Unreasonable decision to refuse to maintain footpath	Preliminary Investigation - Partly Resolved in Favour of Complainant
067495	Unreasonable refusal to contribute towards replacement fence	Advice Given
067649	Alleged failure to compensate for damage to property	Advice Given
067662	Unreasonable decision to not collect rubbish	Advice Given
067672	Unreasonable decision to plant tree on road reserve	Preliminary Investigation - Not Sustained - Explanation Given
067687	Unreasonable decision to issue parking fine	Preliminary Investigation - Not Sustained - Explanation Given
067716	Unreasonable negotiation in land acquisition	Advice Given
067777	Alleged failure to monitor street parking	Preliminary Investigation - Not Sustained - Explanation Given
067870	Unreasonable imposition of penalty for late payment of fine	Preliminary Investigation - Partly Resolved in Favour of Complainant

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FILE NO.	COMPLAINT DETAILS	OUTCOME
067919	Alleged refusal to remove problem tree	Advice Given
068003	Alleged failure to approve street tree removal	Advice Given
068177	Unreasonable release of confidential information	Preliminary Investigation - Partly Resolved in Favour of Complainant
068379	Alleged delay in acting regarding animals at risk	Preliminary Investigation - Partly Resolved in Favour of Complainant
068517	Alleged failure to enforce compliance	Advice Given
068974	Unreasonable refusal to remove tree	Preliminary Investigation - Reasonable Resolution
069035	Unreasonable investigation into barking dog problem	Preliminary Investigation - Not Sustained - Explanation Given
069233	Alleged unfair imposition of fine	Advice Given
069700	Alleged failure to enforce compliance for water run-off from pergola	Declined - Alternate Remedy
069851	Alleged refusal of claim for damages	Advice Given
069905	Unreasonable management of barking dog complaint	Preliminary Investigation - Not Sustained - Explanation Given
070117	Unreasonable delay in approval of development	Preliminary Investigation - Partly Resolved in Favour of Complainant
070121	Unreasonable action by council	Advice Given
<b>City of Tea Tree Gully</b>		
066045	Unreasonable delay in installing street lights	Preliminary Investigation - Not Sustained - Explanation Given
066728	Alleged failure to adequately investigate complaint regarding water seepage	Preliminary Investigation - Not Sustained - Explanation Given
066959	Unreasonable delay in processing application	Preliminary Investigation - Reasonable Resolution
067093	Alleged revocation of community land	Preliminary Investigation - Not Sustained - Explanation Given
067163	Unreasonable delay in being advised about change in access	Advice Given
067343	Alleged unfair treatment regarding dog escape	Advice Given
067359	Alleged failure to respond to complaints and subsequent ban from council premises	Preliminary Investigation - Not Sustained - Explanation Given
067472	Alleged failure to enforce compliance with noise emissions	Preliminary Investigation - Not Sustained - Explanation Given
067799	Alleged failure to prohibit ongoing breaches by councilor	Full Investigation - Not Sustained - Explanation Given
067813	Unreasonable refusal of permit to park heavy vehicle in driveway	Advice Given
067863	Alleged unwarranted rates Section 221 - Local Government Act, 1999	Preliminary Investigation - Not Sustained - Explanation Given
068146	Unreasonable practices in obtaining building approval	Preliminary Investigation - Not Sustained - Explanation Given
068237	Unreasonable delay in approving development application	Advice Given
068335	Alleged improper process regarding assessing development application	Withdrawn - Withdrawn by Complainant
068352	Alleged failure to establish and maintain verge	Advice Given
068633	Unreasonable delay on planning application	Advice Given
068908	Unreasonable delay in following up complaint	Advice Given
069093	Alleged inaction of council regarding neighbouring property	Advice Given
069095	Alleged inaction regarding problem with flooding from neighbouring property	Preliminary Investigation - Not Sustained - Explanation Given
069111	Unreasonable approval of development	Advice Given
069121	Alleged failure to grant development approval	Advice Given
069159	Unfair handling of complaint	Advice Given
069274	Unreasonable refusal of development application	Advice Given
069309	Unreasonable requirement to pay for broken kerbing	Preliminary Investigation - Not Sustained - Explanation Given
069357	Alleged failure to prevent overlooking by new development	Preliminary Investigation - Not Sustained - Explanation Given
069385	Alleged delay in responding to request for complaint handling information	Preliminary Investigation - Reasonable Resolution
069621	Unreasonable processing of application	Advice Given
069868	Unreasonable decision to approve removal of significant tree	Preliminary Investigation - Not Sustained - Explanation Given
070018	Alleged failure to adequately investigate	Advice Given
070114	Unreasonable charge for replacement of broken sump cover	Advice Given
<b>City of West Torrens</b>		
067641	Unreasonable parking fine	Advice Given
067820	Unreasonable management of planning	Advice Given
067852	Unreasonable delay in responding to disputed infringement notice	Preliminary Investigation - Reasonable Resolution
067853	Failure to forward dog registration renewal	Preliminary Investigation - Reasonable Resolution
067944	Unreasonable decision to cite association in telephone book under the wrong name	Preliminary Investigation - Not Sustained - Explanation Given
067954	Alleged improper process regarding application to remove tree	Advice Given

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FILE NO.	COMPLAINT DETAILS	OUTCOME
068178	Unreasonable restriction on access to leased premises	Preliminary Investigation - Not Sustained - Explanation Given
068236	Unreasonable lack of response to dog barking complaint	Advice Given
068382	Unsatisfactory process undertaken in seeking revocation of community land	Preliminary Investigation - Not Sustained - Explanation Given
068395	Unreasonable parking fine	Preliminary Investigation - Not Sustained - Explanation Given
068432	Unreasonable verbal abuse for felling dead tree	Advice Given
068445	Unreasonable parking controls	Preliminary Investigation - Not Sustained - Explanation Given
068453	Unreasonable investigation into complaint	Advice Given
068474	Alleged failure to act on advice of traffic control officers	Advice Given
068848	Alleged failure to apologise for rude behaviour	Preliminary Investigation - Not Sustained - Explanation Given
068919	Alleged attitude of council officer	Advice Given
069144	Alleged lack of community consultation regarding closure of library	Advice Given
069393	Alleged failure to provide information regarding development	Advice Given
069403	Alleged unfair imposition of fine	Preliminary Investigation - Not Sustained - Explanation Given
069750	Alleged failure to compensate for damage caused by council tree	Advice Given
069960	Unreasonable refusal of development application	Advice Given
070093	Alleged failure to enforce compliance with removing bins from footpath	Preliminary Investigation - Reasonable Resolution
<b>Clare and Gilbert Valleys Council</b>		
062948	Unreasonably high rates	Full Investigation - Reasonable Resolution
066761	Unreasonable refusal to waive fine	Advice Given
067002	Unreasonable management of road	Advice Given
067190	Unreasonably high rates on vacant land	Advice Given
067389	Inadequate investigation of complaint	Advice Given
067709	Alleged failure to provide adequate explanation regarding development matter	Advice Given
067752	Unreasonable refusal to address safety concerns and condition of road	Preliminary Investigation - Reasonable Resolution
067851	Unreasonable increase in council rates since amalgamation	Advice Given
068602	Unreasonable condition of approval regarding development application	Advice Given
068802	Alleged incorrect calculation of rates	Advice Given
069418	Alleged failure to properly advise about work conditions	Advice Given
069714	Unreasonable communication	Advice Given
069819	Unreasonable decision regarding development application	Advice Given
<b>Corporation of the City of Adelaide</b>		
066648	Unreasonable issuing of fine	Preliminary Investigation - Partly Resolved in Favour of Complainant
066719	Alleged failure to oversee property development which impacted upon small business	Preliminary Investigation - Not Sustained - Explanation Given
066885	Unreasonable refusal to erect ramp in street	Preliminary Investigation - Partly Resolved in Favour of Complainant
067180	Unreasonable process followed in development application	Advice Given
067230	Unreasonable development approval	Withdrawn - Withdrawn by Complainant
067286	Unreasonable imposition of fee to transfer residential parking permit	Advice Given
067452	Unreasonable closure of rest home	Preliminary Investigation - Not Sustained - Explanation Given
067511	Alleged failure to honour booking of parklands for private function	Preliminary Investigation - Not Sustained - Explanation Given
067536	Unreasonable development application process	Withdrawn - Withdrawn by Complainant
067537	Unreasonable decision to refuse parking permit	Preliminary Investigation - Not Sustained - Explanation Given
067592	Unreasonable demand for payment of parking fine	Advice Given
067636	Alleged failure to notify of change in parking arrangements	Advice Given
067984	Alleged failure to reply to enquiries	Preliminary Investigation - Not Sustained - Explanation Given
068378	Unreasonable imposition of parking fine	Advice Given
068492	Unreasonable imposition of fines	Advice Given
068592	Unreasonable provision of parking ticket	Advice Given
068605	Unreasonable imposition of parking fine	Preliminary Investigation - Reasonable Resolution
068752	Unreasonable parking fine	Advice Given
068837	Unreasonable refusal to provide membership	Preliminary Investigation - Reasonable Resolution
068929	Unreasonable imposition of parking fine	Advice Given
068949	Unreasonable decision to impose parking fine	Preliminary Investigation - Not Sustained - Explanation Given
069073	Unreasonable delay in assessing development application	Declined - Alternate Remedy

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FILE NO.	COMPLAINT DETAILS	OUTCOME
069080	Unreasonable charge for late fees	Advice Given
069117	Alleged failure to properly monitor parking	Preliminary Investigation - Reasonable Resolution
069142	Unreasonable decision to revoke parking fine	Advice Given
069204	Alleged unfair imposition of parking fine	Preliminary Investigation - Not Sustained - Explanation Given
069248	Unreasonable delay in considering a development application.	Preliminary Investigation - Not Sustained - Explanation Given
069338	Unreasonable parking fine	Advice Given
069392	Unreasonable denial of permit	Preliminary Investigation - Not Sustained - Explanation Given
069474	Unreasonable response to complaints	Declined - Refused to Investigate
069485	Unreasonable delay in assessing development application	Declined - Alternate Remedy
069514	Unreasonable penalty for non payment of parking fine	Advice Given
069542	Unreasonable refusal to allow access to impounded car	Advice Given
069787	Unreasonable decision to impose fee for late payment	Preliminary Investigation - Not Sustained - Explanation Given
069805	Alleged incorrect parking fine issued to vehicle with a permit to park	Preliminary Investigation - Not Sustained - Explanation Given
<b>Corporation of the City of Campbelltown</b>		
063662	Failure to consult community	Preliminary Investigation - Not Sustained - Explanation Given
066682	Unreasonable increase in council rates	Preliminary Investigation - Not Sustained - Explanation Given
067111	Unreasonable refusal to remove tree	Withdrawn - Withdrawn by Complainant
067315	Alleged failure to act regarding street light	Advice Given
067644	Alleged irregular tender process	Preliminary Investigation - Not Sustained - Explanation Given
067701	Unreasonable fine for non-registration of dog	Advice Given
068877	Alleged failure to control water run-off	Preliminary Investigation - Not Sustained - Explanation Given
069160	Alleged inconsistent advice regarding requirements for development approval	Advice Given
070029	Alleged mismanagement of planning application	Advice Given
<b>Corporation of the City of Marion</b>		
065522	Alleged failure to act	Preliminary Investigation - Not Sustained - Explanation Given
066846	Alleged inaccurate recording of information	Advice Given
066849	Unreasonable delay in resolving matter	Advice Given
066993	Unreasonable decision to consider changing use of a public park	Advice Given
066999	Unreasonable refusal to allow development	Advice Given
067282	Alleged failure to approve development	Advice Given
067287	Alleged failure to take adequate enforcement action concerning dog management	Preliminary Investigation - Not Sustained - Explanation Given
067349	Alleged failure to ensure proper conditions on development	Full Investigation - Not Sustained - Explanation Given
067361	Unreasonable planning application approved	Preliminary Investigation - Partly Resolved in Favour of Complainant
067970	Unreasonable pursuit of paid account	Advice Given
068150	Unreasonable restriction on content in council publication	Preliminary Investigation - Not Sustained - Explanation Given
068206	Alleged excessive rates for vacant land	Preliminary Investigation - Not Sustained - Explanation Given
068390	Alleged failure to respond to complaint in a timely manner	Advice Given
068535	Alleged failure to adequately address issue of damage to property caused by contractor	Advice Given
068677	Alleged failure to compensate for damaged tyre	Advice Given
068740	Unreasonable delay in granting approval for extension	Preliminary Investigation - Reasonable Resolution
069055	Unreasonable delay in addressing flooding	Advice Given
069256	Unreasonable planning decision	Advice Given
069297	Alleged failure to notify of neighbouring development	Preliminary Investigation - Reasonable Resolution
069451	Unreasonable criteria applied to development application	Preliminary Investigation - Not Sustained - Explanation Given
069462	Unreasonable requirement to submit development application	Advice Given
069689	Alleged incorrect financial records	Declined - Alternate Remedy
069824	Unreasonable delay in processing development application	Advice Given
070090	Alleged unfair imposition of parking fine	Advice Given
<b>Corporation of the City of Port Augusta</b>		
066738	Alleged unfair practices relating to planning decisions	Preliminary Investigation - Not Sustained - Explanation Given
066891	Unreasonable decision to evict complainant	Preliminary Investigation - Not Sustained - Explanation Given
067114	Unreasonable increase in rates	Preliminary Investigation - Not Sustained - Explanation Given

**Local Government Council**

Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
067692	Unreasonable decision by council in relation to indigenous electorate	Declined - Refused to Investigate
068774	Unreasonable refusal of claim	Advice Given
068851	Alleged failure to compensate for damage caused by council tree	Withdrawn - Withdrawn by Complainant
069466	Unreasonable charge for service	Advice Given
069583	Unreasonable fee for late payment of rates	Advice Given
069731	Unreasonable decision to approve aviary for racing pigeons	Preliminary Investigation - Partly Resolved in Favour of Complainant
069902	Alleged failure to address complaint	Advice Given
<b>Corporation of the City of Unley</b>		
064535	Incorrect advice	Preliminary Investigation - Partly Resolved in Favour of Complainant
066781	Alleged failure to adequately respond to complaint	Preliminary Investigation - Partly Resolved in Favour of Complainant
067025	Allegedly unreasonable decision to defer development approval	Advice Given
067099	Unreasonable assessment of development application	Declined - Alternate Remedy
067170	Unreasonable refusal to remove significant tree	Advice Given
067580	Unreasonable approval of development	Preliminary Investigation - Not Sustained - Explanation Given
067616	Unreasonable restriction on access to property	Full Investigation - Not Sustained - Explanation Given
067953	Unreasonable decision regarding development application	Advice Given
068460	Alleged refusal to compensate for tyre damage	Preliminary Investigation - Reasonable Resolution
068494	Unreasonably high charge for clearing land	Advice Given
068533	Unreasonable planning decision	Advice Given
068867	Alleged failure to process application in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
068923	Alleged incorrect imposition of fine for late payment	Preliminary Investigation - Not Sustained - Explanation Given
069009	Unreasonable decision relating to significant tree	Preliminary Investigation - Not Sustained - Explanation Given
069155	Unreasonable approval of stobie pole location	Advice Given
069494	Unreasonable delay in addressing complaint	Preliminary Investigation - Not Sustained - Explanation Given
069618	Alleged failure to act in relation to significant tree	Advice Given
069812	Unreasonable decision to enforce payment of parking fine	Preliminary Investigation - Reasonable Resolution
<b>Corporation of the City of Whyalla</b>		
061525	Failure to ensure structural soundness prior to	Full Investigation - Not Sustained
066929	Alleged failure to compensate for damage to property	Preliminary Investigation - Not Sustained - Explanation Given
067136	Unreasonable proposal to construct a new road	Preliminary Investigation - Not Sustained - Explanation Given
067949	Unreasonable increase in rate charges	Advice Given
068013	Unfair decision to not renew lease	Advice Given
068330	Unreasonable non-renewal of café lease	Full Investigation - Not Sustained - Explanation Given
070140	Unreasonable conduct by council	Advice Given
<b>Corporation of the Town of Gawler</b>		
062369	Unreasonable process at public meeting	Preliminary Investigation - Reasonable Resolution
066198	Alleged inaction	Preliminary Investigation - Partly Resolved in Favour of Complainant
066674	Unreasonable process applied	Preliminary Investigation - Not Sustained - Explanation Given
066957	Alleged unfair condition applied to development application	Preliminary Investigation - Not Sustained
067019	Unreasonable refusal to waive charges	Preliminary Investigation - Reasonable Resolution
067268	Unreasonable planning decision	Advice Given
069185	Unfair process regarding development application	Declined
069236	Alleged mishandling of lease agreement by	Advice Given
069928	Unreasonable delay in addressing glare problem	Preliminary Investigation - Not Sustained - Explanation Given
<b>Council of Roxby Downs</b>		
069552	Unreasonable price rise in supply of utilities	Preliminary Investigation - Not Sustained - Explanation Given
<b>District Council of Barunga West</b>		
069022	Alleged failure to mow grass on council land	Preliminary Investigation - Not Sustained - Explanation Given
<b>District Council of Ceduna</b>		
066966	Unreasonable use of authority	Advice Given
067239	Unreasonable requirement to pay for repairs to kerbing	Advice Given
<b>District Council of Cleve</b>		
061478	Unreasonable decision	Preliminary Investigation - Reasonable Resolution
<b>District Council of Coober Pedy</b>		
066532	Unreasonable demand for payment	Preliminary Investigation - Not Sustained - Explanation Given
068112	Unreasonable overcharging of council rates	Advice Given
<b>District Council of Coorong</b>		
069662	Unfair decision regarding rating policy	Preliminary Investigation - Partly Resolved in Favour of Complainant
069856	Alleged inappropriate and intimidatory behaviour by officer	Advice Given
070045	Unreasonable charge for replacement of bin	Advice Given
<b>District Council of Grant</b>		

**Local Government Council**

Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
064229	Failure to enforce conditions on development approval	Conciliated - Reasonable Resolution
066330	Inappropriate action regarding development	Preliminary Investigation - Not Sustained - Explanation Given
066950	Unreasonable approval of land development	Preliminary Investigation - Not Sustained - Explanation Given
067128	Unreasonable increase in rates	Advice Given
068288	Unreasonable process	Full Investigation - Partly Resolved in Favour of Complainant
068490	Unreasonable decision regarding proposed rezoning of land	Advice Given
068856	Alleged failure to enforce compliance with council's instructions	Preliminary Investigation - Not Sustained - Explanation Given
069889	Alleged failure to consult ratepayers about development	Advice Given
<b>District Council of Karoonda East Murray</b>		
066753	Unreasonable delay in providing details regarding previous development approval	Preliminary Investigation - Not Sustained - Explanation Given
<b>District Council of Kimba</b>		
066903	Alleged failure to enforce compliance with planning requirements	Preliminary Investigation - Not Sustained - Explanation Given
069585	Unreasonable management of tender	Advice Given
<b>District Council of Lower Eyre Peninsula</b>		
065835	Incorrect advice given	Full Investigation - Not Sustained
066646	Unreasonable approval of development application	Preliminary Investigation - Not Sustained - Explanation Given
066722	Alleged unfair criteria regarding eligibility for concessions	Preliminary Investigation - Not Sustained - Explanation Given
067074	Alleged refusal to approval to subdivide land	Advice Given
068565	Alleged failure to properly maintain road	Advice Given
069760	Alleged failure to address issue of dust from unsealed road blowing onto crops	Advice Given
<b>District Council of Loxton Waikerie</b>		
069052	Alleged lack of action taken to address noise from neighbor	Preliminary Investigation - Not Sustained
069607	Alleged inadequate maintenance of boundary fences	Preliminary Investigation - Not Sustained - Explanation Given
<b>District Council of Mallala</b>		
055553	Failure to act regarding noise, road access and planning problems	Full Investigation - Sustained - sec 25(1)(d) - improper use of discretion or irr
065292	Failure to act	Preliminary Investigation - Reasonable Resolution
066948	Unreasonable refusal to remove trees	Advice Given
068358	Alleged failure to address complaint	Advice Given
069398	Unreasonable refusal to allow concession	Preliminary Investigation - Not Sustained - Explanation Given
069450	Alleged failure to require development to cease until development approval is granted	Preliminary Investigation - Not Sustained - Explanation Given
069496	Alleged failure to act regarding unauthorised development	Declined - Alternate Remedy
069974	Alleged failure to follow due process in conducting meetings	Advice Given
070030	Unreasonable requirement to clear up block	Advice Given
<b>District Council of Mount Barker</b>		
067387	Unreasonable refusal of development application	Advice Given
068184	Unreasonable approval of development	Advice Given
068729	Allegations that Industrial operation is operating in a residential zone and against a court order	Advice Given
068731	Unreasonable restriction in Development Plan	Preliminary Investigation - Not Sustained - Explanation Given
069183	Alleged failure to address complaints	Preliminary Investigation - Not Sustained - Explanation Given
069813	Alleged failure to investigate complaint	Preliminary Investigation - Partly Resolved in Favour of Complainant
<b>District Council of Orroroo/Carrieton</b>		
058984	Unreasonable level of increase in rates	Full Investigation - Reasonable Resolution
069563	Unreasonable decision to appoint economic development planner	Preliminary Investigation - Not Sustained - Explanation Given
069564	Unreasonable decision not to provide a copy of the previous contract	Preliminary Investigation - Not Sustained
<b>District Council of Peterborough</b>		
067227	Unreasonable charge of fee to use community hall	Preliminary Investigation - Not Sustained - Explanation Given
069730	Unreasonable decision to permit neighbour to lease roadway	Preliminary Investigation - Reasonable Resolution
069777	Unreasonable decision to provide work to	Advice Given
070161	Unreasonably high rates	Preliminary Investigation - Not Sustained - Explanation Given
<b>District Council of Renmark Paringa</b>		
067280	Unreasonable imposition of fee for late payment of dog licence	Advice Given
067320	Unreasonable decision to sell caravan park	Declined - Refused to Investigate
070025	Unreasonable management of planning	Advice Given
070085	Failure to follow due process for tendering work	Advice Given

**Local Government Council**

Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
<b>District Council of the Copper Coast</b>		
064019	Unreasonable approval of development application	Preliminary Investigation - Not Sustained - Explanation Given
064462	Unreasonable approval of development	Preliminary Investigation - Not Sustained
068162	Alleged inadequate investigation of complaint	Advice Given
068928	Unfair decision to disallow bee farming	Advice Given
068955	Allegedly oppressive order for removal of bees	Preliminary Investigation - Not Sustained - Explanation Given
<b>District Council of Yankalilla</b>		
067299	Alleged failure to enforce compliance with development plan	Advice Given
067353	Alleged failure to enforce compliance with development plan	Preliminary Investigation - Not Sustained - Explanation Given
067478	Alleged failure to enforce compliance with development plan	Preliminary Investigation - Not Sustained - Explanation Given
067762	Alleged failure to enforce compliance with development plan	Declined - Refused to Investigate
068950	Unreasonably high council rates	Advice Given
069039	Alleged incorrect information regarding boundary	Advice Given
069103	Unreasonable conditions for development	Advice Given
069298	Alleged inadequate investigation of complaint	Advice Given
<b>District Council of Yorke Peninsula</b>		
065997	Failure to follow consistent process	Preliminary Investigation - Not Sustained - Explanation Given
066709	Unreasonable decision affecting caravan site lease holders	Advice Given
066754	Unreasonable priority given to road sealing	Advice Given
067212	Unreasonable delays in dealing with development application	Preliminary Investigation - Reasonable Resolution
067890	Unreasonable development assessment process	Preliminary Investigation - Not Sustained - Explanation Given
068144	Alleged inadequate record-keeping practices	Preliminary Investigation - Not Sustained - Explanation Given
068346	Unreasonable decision regarding development application	Advice Given
068389	Alleged failure to adequately respond to complaint	Advice Given
068501	Inadequate investigation of complaint	Preliminary Investigation - Not Sustained - Explanation Given
069421	Unreasonable attitude of staff member	Advice Given
069738	Unreasonable action taken to recover overdue rates	Preliminary Investigation - Not Sustained - Explanation Given
069759	Unfair requirement to connect to STED scheme	Advice Given
069836	Unreasonable request to connect to STED scheme	Preliminary Investigation - Partly Resolved in Favour of Complainant
<b>Kangaroo Island Council</b>		
065312	Alleged defective process regarding development application	Preliminary Investigation - Not Sustained - Explanation Given
066896	Unreasonable imposition of penalty on late payment of rates	Preliminary Investigation - Not Sustained - Explanation Given
067000	Unreasonably high rates	Advice Given
067012	Unreasonable explanation of charges	Advice Given
067072	Unreasonable increases in rates	Advice Given
067089	Unreasonable increase in rates and charges	Advice Given
067096	Unreasonable charge for waste collection for vacant block	Full Investigation - Reasonable Resolution
067100	Unreasonable restriction on development	Preliminary Investigation - Not Sustained - Explanation Given
067102	Unreasonable requirement to charge	Full Investigation - Reasonable Resolution
067105	Unreasonable increase in rates	Full Investigation - Reasonable Resolution
067237	Unreasonable increase in rates	Full Investigation - Reasonable Resolution
067246	Unreasonable rates	Full Investigation - Reasonable Resolution
067265	Unreasonable charge for waste collection	Full Investigation - Reasonable Resolution
067607	Unreasonable charge for waste collection	Full Investigation - Reasonable Resolution
067670	Unreasonable charge for waste collection	Full Investigation - Reasonable Resolution
067771	Alleged failure to act regarding smoke nuisance	Preliminary Investigation - Not Sustained - Explanation Given
067885	Unreasonable increase in rates	Full Investigation - Reasonable Resolution
067938	Unreasonable imposition of charge	Advice Given
067956	Unreasonable waste collection charge	Full Investigation - Reasonable Resolution
068610	Alleged failure to process development applications in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
068960	Unreasonable conditions regarding land	Advice Given
069016	Alleged failure to act on report of fire hazard	Preliminary Investigation - Reasonable Resolution
069310	Unreasonable requirement to pay waste collection levy for vacant land	Advice Given
069665	Unreasonably high rates	Preliminary Investigation - Not Sustained - Explanation Given
<b>Kingston District Council</b>		
066481	Alleged failure to inform residents of roadworks and construction of footpath	Preliminary Investigation - Reasonable Resolution
067164	Unreasonably excessive high rates	Advice Given
067457	Unreasonable requirement for planning	Advice Given
068443	Unreasonable sale of property	Advice Given
<b>Mid Murray Council</b>		

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Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
064536	Unreasonable process to assess development	Declined - Alternate Remedy
066582	Unreasonable approval of development application	Preliminary Investigation - Not Sustained - Explanation Given
066652	Unreasonable delay in approving development application	Preliminary Investigation - Reasonable Resolution
066859	Unreasonable development approval	Preliminary Investigation - Not Sustained - Explanation Given
066897	Alleged inappropriate use of land on river front	Advice Given
067648	Unreasonable management of planning	Advice Given
068197	Alleged failure to properly advise resident in relation to introduction of STED scheme	Advice Given
068247	Alleged failure to conduct proper community consultation in relation to introduction of STED scheme	Advice Given
068552	Alleged failure to advise of proposed changes to caravan park	Advice Given
068934	Unreasonable decision to deny collection of garbage	Advice Given
068988	Alleged failure to enforce compliance	Advice Given
069153	Alleged failure to act regarding unapproved use of property	Preliminary Investigation - Not Sustained - Explanation Given
069565	Alleged failure to require proper building	Preliminary Investigation - Not Sustained
069569	Alleged reversal of decision after approval was granted	Advice Given
<b>Naracoorte Lucindale Council</b>		
066662	Unreasonable proposal to install roundabout	Full Investigation - Not Sustained - Explanation Given
067806	Unreasonable and/or improper action in supporting construction of a roundabout	Full Investigation - Not Sustained - Explanation Given
067936	Unreasonable delays in processing development application	Advice Given
069027	Unreasonable decision to move soldier's	Advice Given
069272	Alleged improper behaviour by council officers	Advice Given
<b>Northern Areas Council</b>		
067254	Alleged failure to maintain gardens	Preliminary Investigation - Partly Resolved in Favour of Complainant
069464	Unreasonable approval to establish business	Advice Given
069765	Alleged failure to compensate for damage to property	Advice Given
<b>Port Pirie Regional Council</b>		
066584	Unreasonable refusal to allow flagpole on grave site	Preliminary Investigation - Not Sustained - Explanation Given
068225	Unreasonable refusal to grade driveway	Preliminary Investigation - Not Sustained - Explanation Given
068398	Alleged maladministration in zoning application	Advice Given
068918	Unreasonable decision to impose fine	Advice Given
<b>Regional Council of Goyder</b>		
067645	Alleged failure to enforce compliance with by-law	Preliminary Investigation - Not Sustained - Explanation Given
068744	Unreasonable delay in approving land subdivision	Preliminary Investigation - Not Sustained - Explanation Given
<b>Regional Council of Light</b>		
064067	Unreasonable decision	Full Investigation - Reasonable Resolution
065869	Unreasonable refusal of claim	Full Investigation - Not Sustained - Explanation Given
065920	Failure to introduce speed restrictions	Preliminary Investigation - Reasonable Resolution
066429	Unreasonable requirement on sub-division	Preliminary Investigation - Reasonable Resolution
066666	Alleged inaction by agency	Preliminary Investigation - Not Sustained
068203	Alleged failure to declare interest in development	Declined - Refused to Investigate
068260	Unreasonable refusal of development application	Advice Given
068936	Unreasonable decision to require building process to cease	Advice Given
068976	Unreasonable management of air strip	Advice Given
069129	Alleged failure to maintain roads	Preliminary Investigation - Reasonable Resolution
069420	Alleged delay in removing debris from creek	Preliminary Investigation - Partly Resolved in Favour of Complainant
069803	Unreasonable fines imposition for late payment of fee	Preliminary Investigation - Not Sustained - Explanation Given
069809	Alleged delays in processing development application	Advice Given
069866	Alleged misleading information given prior to lodging development application	Preliminary Investigation - Partly Resolved in Favour of Complainant
070034	Alleged failure to renew lease on rented premises	Advice Given
<b>Rural City of Murray Bridge</b>		
067843	Unreasonable refusal of application for	Withdrawn - Withdrawn by Complainant
068241	Unreasonable charge for kerbing	Preliminary Investigation - Partly Resolved in Favour of Complainant
068243	Alleged failure to enforce compliance regarding rubbish	Advice Given
068660	Alleged lack of legislative enforcement	Preliminary Investigation - Reasonable Resolution
<b>The Barossa Council</b>		
065150	Alleged lack of regard	Preliminary Investigation - Not Sustained - Explanation Given
065748	Unreasonable processing	Advice Given
066602	Alleged oppressive treatment	Preliminary Investigation - Partly Resolved in Favour of Complainant

**Local Government Council**

Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
067376	Unreasonable delay in ensuring development conditions met	Preliminary Investigation - Not Sustained - Explanation Given
067494	Failure to advise full details regarding dog registration	Advice Given
067838	Unreasonable decision to disallow business to display street signs	Preliminary Investigation - Not Sustained - Explanation Given
068339	Unreasonable land development process	Declined - Out of Time
068340	Unreasonable conduct	Declined - Refused to Investigate
068444	Unreasonable investigation into complaint regarding planning issues	Advice Given
068459	Alleged failure to enforce compliance with development legislation	Preliminary Investigation - Partly Resolved in Favour of Complainant
068895	Alleged failure to release bank guarantee	Preliminary Investigation - Not Sustained
069774	Unreasonable action to seek judgement	Preliminary Investigation - Reasonable Resolution
070022	Unreasonable refusal of development application	Advice Given
<b>The District Council of Mount Barker</b>		
066824	Alleged failure to refund proportion of dog licence fee	Advice Given
067522	Unreasonable management of planning	Advice Given
067682	Unreasonable order on rosters	Preliminary Investigation - Reasonable Resolution
067719	Unreasonable assignment of development	Preliminary Investigation - Not Sustained - Explanation Given
067783	Unreasonable imposition of fine	Advice Given
067900	Unreasonable approval of sub division	Advice Given
067905	Alleged failure to consider residents' concern in relation to proposed development	Advice Given
068190	Alleged failure to enforce compliance with conducting business from home	Preliminary Investigation - Not Sustained - Explanation Given
068515	Alleged failure to inform regarding future re-zoning	Preliminary Investigation - Partly Resolved in Favour of Complainant
068852	Alleged inadequate consultation in PAR process	Preliminary Investigation - Partly Resolved in Favour of Complainant
069523	Unreasonable use of power	Full Investigation - Sustained - sec 25(1)(d) - improper use of discretion or irr
069605	Alleged failure to act in a timely manner	Preliminary Investigation - Reasonable Resolution
069712	Unreasonable delays in processing development application	Advice Given
<b>The Flinders Ranges Council</b>		
067290	Alleged incorrect rating procedures	Withdrawn - Withdrawn by Complainant
067572	Alleged inadequate investigation of complaint	Advice Given
067768	Alleged failure to adequately investigate	Advice Given
068833	Unreasonable use of cemetery plot	Advice Given
<b>Victor Harbor City Council</b>		
063715	Unreasonable closure of meeting	Full Investigation - Sustained - sec 25(1)(b) - unreasonable, unjust, etc.
066277	Unreasonable approval of development	Declined
066676	Alleged failure to ensure compliance with conditions of development approval	Preliminary Investigation - Partly Resolved in Favour of Complainant
066823	Unreasonable approval of development	Advice Given
066883	Unreasonable increase in caravan fees	Preliminary Investigation - Not Sustained - Explanation Given
066992	Alleged failure to take into account impact of construction	Preliminary Investigation - Not Sustained - Explanation Given
067297	Alleged failure to enforce conditions	Preliminary Investigation - Reasonable Resolution
067534	Alleged failure to develop strategy for control of seagulls	Preliminary Investigation - Partly Resolved in Favour of Complainant
067579	Alleged failure to enforce encumbrance	Preliminary Investigation - Not Sustained - Explanation Given
068012	Alleged financial mismanagement	Advice Given
068417	Alleged failure to enforce compliance with planning regulations	Preliminary Investigation - Partly Resolved in Favour of Complainant
069171	Alleged failure to meet council commitment	Advice Given
<b>Wakefield Regional Council</b>		
067134	Unreasonable restriction on sale of caravan in caravan park	Preliminary Investigation - Reasonable Resolution
067204	Unreasonable restriction on sale of caravan in caravan park	Preliminary Investigation - Partly Resolved in Favour of Complainant
067229	Unreasonable restriction on sale of caravan in caravan park	Preliminary Investigation - Partly Resolved in Favour of Complainant
069017	Alleged harassment in relation to development	Preliminary Investigation - Not Sustained - Explanation Given
069078	Unreasonable fine regarding requirement to mow grass	Preliminary Investigation - Not Sustained - Explanation Given
069215	Alleged failure to grant rebate on fixed charge rate	Preliminary Investigation - Not Sustained - Explanation Given
069748	Alleged inappropriate practice	Preliminary Investigation - Partly Resolved in Favour of Complainant
<b>Wattle Range Council</b>		
063427	Alleged incorrect rating decision	Preliminary Investigation - Not Sustained - Explanation Given
066657	Alleged harassment by council employees	Preliminary Investigation - Not Sustained - Explanation Given

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## Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
067165	Alleged failure to provide information	Advice Given
067676	Unreasonable decision to restrict bird numbers	Advice Given
069402	Alleged failure to follow due process	Advice Given
069551	Alleged lack of communication regarding proposed by-pass	Advice Given
069576	Alleged inadequate consultation regarding land use	Preliminary Investigation - Not Sustained - Explanation Given
069786	Alleged failure to grant discounted rates	Preliminary Investigation - Partly Resolved in Favour of Complainant
069792	Alleged failure to follow due process regarding construction of proposed bypass	Advice Given
070040	Alleged unfair process followed in conducting survey	Preliminary Investigation - Not Sustained - Explanation Given
070048	Alleged unfair process in conducting survey	Preliminary Investigation - Not Sustained - Explanation Given
070072	Unreasonable process for sale of land not open to public	Advice Given
070158	Unreasonable approval of pulp mill in agricultural area	Advice Given
070159	Unreasonable requirement to trim back	Advice Given

**Other Authorities**  
Summary of outcomes of complaints finalised from 1 July 2005 to 30 June 2006

Agency	Advice Given	Alternate Remedy	Not Sustained	Not Sustained - Explanation Given	Other/General	Partly Resolved in Favour of Complainant	Reasonable Resolution	Referred to Agency	Refused to Investigate	Withdrawn by Complainant	Total
Aboriginal Housing Authority	7			6		1	2	1			17
Adelaide Cemeteries Authority	1						1				2
Adelaide Festival Centre Trust					1						1
Central Northern Adelaide Health Service		1		1		1					3
Citrus Board				2							2
Commissioner for Equal Opportunity			1	1							2
Coroner					3	1	1				5
Courts Administration Authority	9			9	2	3	5	2		3	33
Dental Board of South Australia				1							1
Development Assessment Commission	1	1		1			2		1	1	7
Employee Ombudsman							1				1
Fleurieu Animal & Plant Control Board				1							1
Flinders University Council	1			2	1						4
Gawler Health Service							1				1
Guardianship Board	6							1	1		8
Health & Community Services Complaints Commissioner	1			1	3	2	1		1		9
Home Start				2							2
Institute of Medical & Veterinary Science							1				1
Legal Practitioners Conduct Board				2			1				3
Legal Services Commission	2		1	2	4	1	3			1	14
Liquor & Gambling Commissioner				1	2						3
Lotteries Commission	1							1	1		3
Medical Board of SA									1		1
Motor Accident Commission	4			1		1	1				7
Physiotherapists Board				2							2
Police Complaints Authority			1	4	2	2		1	1		11
Public Advocate	2			4		1	2				9
Public Trustee	19		2	24	4	8	10	4			71
RSPCA Inspector	2		1								3
SA Ambulance Service	1			5	3		2			1	12
SA Forestry Corporation				1							1
SA Metropolitan Fire Service	1										1
SA Superannuation Board	2			3	1		1			1	8
SA Tourism Commission				1							1
SAFECOM Board					1	1	2	1			5
Sheriff							1				1
South Australian Local Government Grants Commission			1								1
State Emergency Service					1						1
Trans Adelaide		1		1		1	1	1	1		6
University of Adelaide Council	4			2		1	2	1		1	11
University of South Australia Council	1	1		2	1	1	1	1			8
Veterinary Surgeons Board	1						1				2
WorkCover Corporation	22		2	14	4	6	6	18		2	74
<b>Total</b>	<b>85</b>	<b>4</b>	<b>9</b>	<b>96</b>	<b>33</b>	<b>31</b>	<b>49</b>	<b>32</b>	<b>7</b>	<b>10</b>	<b>359</b>

## Other Authorities

Summary of outcomes of complaints finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
<b>Aboriginal Housing Authority</b>		
066655	Alleged failure to give reasons for refusal of application for transfer	Advice Given
066968	Unreasonable eviction	Advice Given
067382	Unreasonable management of abusive tenant	Advice Given
067710	Alleged failure to provide suitable housing	Preliminary Investigation - Not Sustained - Explanation Given
067769	Unreasonable delay in allocating priority housing	Preliminary Investigation - Not Sustained - Explanation Given
067955	Unreasonable requirement on application	Advice Given
068154	Alleged delay in moving to adequate housing	Preliminary Investigation - Reasonable Resolution
068449	Alleged failure to attend to maintenance issues	Preliminary Investigation - Partly Resolved in Favour of Complainant
068475	Alleged failure to maintain hot water service	Advice Given
068622	Alleged delay in allocating housing	Preliminary Investigation - Reasonable Resolution
068643	Alleged failure to provide housing in a timely manner	Preliminary Investigation - Not Sustained - Explanation Given
068863	Unreasonable requirement to repay debt	Advice Given
069314	Alleged inaction regarding complaint	Advice Given
069341	Alleged delay in allocating housing	Preliminary Investigation - Not Sustained - Explanation Given
069578	Unreasonable delay in providing housing	Advice Given
069754	Unreasonable refusal to provide emergency accommodation	Preliminary Investigation - Not Sustained - Explanation Given
070171	Alleged failure to respond to inquiries regarding housing allocation	Preliminary Investigation - Not Sustained - Explanation Given
<b>Adelaide Cemeteries Authority</b>		
066685	Alleged failure to act on complaint	Preliminary Investigation - Reasonable Resolution
066862	Unreasonable charges	Advice Given
<b>Adelaide Festival Centre Trust</b>		
067861	Inadequate investigation of complaint	Advice Given
<b>Central Northern Adelaide Health Service</b>		
068469	Unreasonable staff conduct	Preliminary Investigation - Partly Resolved in Favour of Complainant
068817	Unreasonable refusal of employment	Declined - Alternate Remedy
070046	Alleged forced administration of medication	Preliminary Investigation - Not Sustained - Explanation Given
<b>Citrus Board</b>		
066485	Alleged discrimination in registration decision	Full Investigation - Not Sustained - Explanation Given
067754	Unreasonable decision to fund organisation	Full Investigation - Not Sustained - Explanation Given
<b>Commissioner for Equal Opportunity</b>		
062554	Unreasonable handling of complaint	Preliminary Investigation - Not Sustained
066672	Alleged failure to investigate complaint	Preliminary Investigation - Not Sustained - Explanation Given
<b>Coroner</b>		
067784	Alleged delays in providing autopsy report	Preliminary Investigation - Partly Resolved in Favour of Complainant
068008	Unreasonable delay in forwarding autopsy report	Preliminary Investigation - Reasonable Resolution
068888	Unreasonable refusal to release report	Advice Given
069158	Alleged failure to divulge information in relation to a deceased person	Advice Given
069922	Alleged inadequate investigation of matter	Advice Given
<b>Courts Administration Authority</b>		
065889	Failure to adhere	Preliminary Investigation - Not Sustained - Explanation Given
066426	Delay in providing death certificate	Withdrawn - Withdrawn by Complainant
066725	Alleged failure to act promptly to rectify mistake	Preliminary Investigation - Partly Resolved in Favour of Complainant
066730	Alleged incorrect records caused arrest	Advice Given
066736	Unreasonable decision to enforce cancelled fine	Preliminary Investigation - Reasonable Resolution
066855	Unreasonable delay in complying with order	Preliminary Investigation - Partly Resolved in Favour of Complainant
067063	Alleged undue delay in accessing information	Advice Given
067233	Alleged delay in sending documentation to prison authorities	Preliminary Investigation - Not Sustained - Explanation Given
067374	Alleged delay in providing Coroner's report and death certificate	Preliminary Investigation - Not Sustained - Explanation Given
067436	Alleged incorrect issue of summons for non-payment of fines	Full Investigation - Reasonable Resolution
067658	Unreasonable delay in responding to letter	Preliminary Investigation - Partly Resolved in Favour of Complainant
067683	Alleged failure to provide report	Preliminary Investigation - Not Sustained - Explanation Given
067879	Unreasonable delay in finalising claim	Advice Given
067903	Alleged inability to locate information	Preliminary Investigation - Not Sustained - Explanation Given
068114	Alleged failure to follow proper process	Advice Given
068152	Unfair practice regarding expiation of speeding	Advice Given
068183	Alleged erroneous decision regarding court	Advice Given
068216	Unreasonable delay in providing information to another agency	Preliminary Investigation - Reasonable Resolution
068248	Unreasonable administrative decision	Advice Given

**Other Authorities**  
Summary of outcomes of complaints finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
068292	Alleged unfair court process relating to imposition of penalty	Advice Given
068354	Alleged delay in responding to enquiry	Withdrawn - Withdrawn by Complainant
068645	Alleged misleading job advertisement	Advice Given
068757	Alleged failure to provide correct advice resulting in escalation of costs	Advice Given
068763	Alleged failure to provide information	Preliminary Investigation - Not Sustained - Explanation Given
069082	Alleged inappropriate treatment	Advice Given
069286	Alleged inappropriate conduct by staff member	Preliminary Investigation - Not Sustained - Explanation Given
069291	Unreasonable decision to pay out debt in full	Advice Given
069337	Alleged failure to correct identity error	Preliminary Investigation - Reasonable Resolution
069440	Alleged duplication of fine	Preliminary Investigation - Not Sustained - Explanation Given
069460	Alleged unprofessional conduct by staff	Advice Given
069517	Unreasonable conduct by staff member	Preliminary Investigation - Not Sustained - Explanation Given
069534	Unreasonable refusal to cease direct debit	Withdrawn - Withdrawn by Complainant
069652	Unreasonable delay in refunding overpaid levy	Preliminary Investigation - Reasonable Resolution
<b>Dental Board of South Australia</b>		
067983	Alleged inadequate investigation of complaint	Preliminary Investigation - Not Sustained - Explanation Given
<b>Development Assessment Commission</b>		
064897	Unreasonable processing of development application	Withdrawn - Withdrawn by Complainant
065239	Alleged unfair process	Preliminary Investigation - Not Sustained - Explanation Given
066664	Unreasonable refusal to approve addition of annex to on-site caravan	Preliminary Investigation - Reasonable Resolution
067693	Unreasonable development proposal	Advice Given
068737	Alleged incorrect issue of refund without authority	Preliminary Investigation - Reasonable Resolution
069207	Alleged failure to uphold development decision	Declined - Refused to Investigate
069262	Unreasonable refusal of development application	Declined - Alternate Remedy
<b>Employee Ombudsman</b>		
067867	Unreasonable delay in responding to telephone	Preliminary Investigation - Reasonable Resolution
<b>Fleurieu Animal &amp; Plant Control Board</b>		
064626	Inappropriate account	Preliminary Investigation - Not Sustained - Explanation Given
<b>Flinders University Council</b>		
067384	Unreasonable charge for fees	Advice Given
068262	Unreasonable assessment process	Preliminary Investigation - Not Sustained - Explanation Given
068642	Alleged inadequate investigation of complaint	Preliminary Investigation - Not Sustained - Explanation Given
070081	Unreasonable decision not to allow completion of practical placement	Advice Given
<b>Gawler Health Service</b>		
068651	Unreasonable conduct by staff member	Preliminary Investigation - Reasonable Resolution
<b>Guardianship Board</b>		
066490	Incorrect decision regarding orders	Declined - Refused to Investigate
067208	Unreasonable decision to place under guardianship order	Advice Given
067439	Unreasonable refusal to supply information	Advice Given
068238	Unreasonable decision by agency	Advice Given
068531	Unreasonable restriction on access	Advice Given
069163	Alleged rude behaviour	Advice Given
069615	Unreasonable requirement to require financial statements	Advice Given
<b>Health &amp; Community Services Complaints Commissioner</b>		
067922	Unreasonable refusal to investigate complaint	Preliminary Investigation - Partly Resolved in Favour of Complainant
067991	Alleged failure to investigate complaint in a proper manner	Preliminary Investigation - Partly Resolved in Favour of Complainant
068995	Alleged failure to investigate complaint in a timely manner	Advice Given
069038	Unsatisfactory response	Advice Given
069049	Unreasonable refusal to accept complaint out of time	Preliminary Investigation - Not Sustained - Explanation Given
069130	Alleged inadequate investigation of complaint	Advice Given
069172	Alleged inadequate investigation of complaint	Declined - Refused to Investigate
069604	Unreasonable refusal to investigate complaint	Advice Given
070113	Alleged inability to access service	Preliminary Investigation - Reasonable Resolution
<b>Home Start</b>		
065010	Incorrect calculation of interest	Full Investigation - Not Sustained - Explanation Given
068277	Alleged failure to provide adequate funding	Preliminary Investigation - Not Sustained - Explanation Given
<b>Institute of Medical &amp; Veterinary Science</b>		
068917	Alleged failure to provide information	Preliminary Investigation - Reasonable Resolution
<b>Legal Practitioners Conduct Board</b>		
063306	Alleged unreasonable handling of complaint	Preliminary Investigation - Not Sustained - Explanation Given
068204	Unreasonable investigation process	Preliminary Investigation - Not Sustained - Explanation Given
069135	Alleged inadequate assistance with complaint	Preliminary Investigation - Reasonable Resolution
<b>Legal Services Commission</b>		

## Other Authorities

Summary of outcomes of complaints finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
066963	Unreasonable demand to repay legal aid funds	Preliminary Investigation - Not Sustained
067334	Alleged erroneous decision regarding legal aid	Advice Given
067442	Alleged inadequate investigation of complaint	Preliminary Investigation - Not Sustained - Explanation Given
067520	Unreasonable refusal of aid	Advice Given
067943	Failure to assist with application for legal aid	Preliminary Investigation - Partly Resolved in Favour of Complainant
068300	Unreasonable refusal of legal aid	Advice Given
068357	Unreasonable refusal of service	Withdrawn - Withdrawn by Complainant
068937	Unreasonable refusal of legal aid	Advice Given
068993	Unreasonable refusal of legal aid	Advice Given
069091	Alleged failure to provide a service	Preliminary Investigation - Reasonable Resolution
069203	Unreasonable grant of legal aid	Preliminary Investigation - Not Sustained - Explanation Given
069280	Unreasonable denial of legal aid	Advice Given
069820	Unreasonable delay in duty solicitor attending	Preliminary Investigation - Reasonable Resolution
069906	Unreasonable delay in accessing service	Preliminary Investigation - Reasonable Resolution
<b>Liquor &amp; Gambling Commissioner</b>		
069143	Alleged failure to allow reasonable extension of time for hearing	Preliminary Investigation - Not Sustained - Explanation Given
069149	Unreasonable decision to ban from venue	Advice Given
069854	Unreasonable refusal of liquor licence	Advice Given
<b>Lotteries Commission</b>		
067461	Alleged inadequate investigation of complaint	Advice Given
067728	Alleged failure to award prize on ticket	Advice Given
069059	Unreasonable practice to check lotto ticket	Declined - Refused to Investigate
<b>Medical Board of SA</b>		
068265	Unreasonable investigation	Declined - Refused to Investigate
<b>Motor Accident Commission</b>		
066949	Unreasonable finalisation of claim	Advice Given
066987	Unreasonable delay in response to claim	Preliminary Investigation - Partly Resolved in Favour of Complainant
067033	Unreasonable charge	Advice Given
067678	Unreasonable claim conditions	Advice Given
069191	Unreasonable requirement to pay excess	Preliminary Investigation - Reasonable Resolution
069509	Alleged denial of access to service	Preliminary Investigation - Not Sustained - Explanation Given
069870	Unreasonable delay in assessing claim	Advice Given
<b>Physiotherapists Board</b>		
067792	Alleged failure to take adequate action on complaint	Preliminary Investigation - Not Sustained - Explanation Given
067858	Unreasonable requirement for registration	Preliminary Investigation - Not Sustained - Explanation Given
<b>Police Complaints Authority</b>		
065099	Inadequate investigation of complaint	Preliminary Investigation - Not Sustained - Explanation Given
065443	Inadequate investigation of complaint	Declined - Refused to Investigate
066679	Unreasonable investigation	Advice Given
067112	Alleged inadequate investigation of complaint	Preliminary Investigation - Not Sustained - Explanation Given
067697	Unreasonable decision to refuse to investigate complaint	Preliminary Investigation - Not Sustained
068483	Alleged inadequate investigation of complaint	Preliminary Investigation - Partly Resolved in Favour of Complainant
068798	Alleged failure to adequately investigate complaint	Preliminary Investigation - Not Sustained - Explanation Given
069318	Alleged inadequate investigation of complaint	Preliminary Investigation - Not Sustained - Explanation Given
069783	Alleged inadequate investigation of complaint	Advice Given
069979	Alleged failure to investigate complaint	Preliminary Investigation - Partly Resolved in Favour of Complainant
070068	Alleged failure to investigate complaint	Advice Given
<b>Public Advocate</b>		
065755	Failure to manage	Preliminary Investigation - Not Sustained - Explanation Given
066043	Unreasonable and unprofessional investigation conducted	Preliminary Investigation - Partly Resolved in Favour of Complainant
066310	Alleged failure to arrange access with son	Preliminary Investigation - Not Sustained - Explanation Given
067545	Unreasonable requirement to pay account	Advice Given
068408	Unreasonable decision to place mother in fulltime care	Preliminary Investigation - Not Sustained - Explanation Given
068709	Alleged failure to ensure adequate conditions for protected person	Preliminary Investigation - Reasonable Resolution
069369	Unreasonable request by social worker to hand over house keys	Advice Given
069428	Unreasonable decision to refer matter to another authority	Preliminary Investigation - Not Sustained - Explanation Given
069641	Alleged failure to respond to correspondence	Preliminary Investigation - Reasonable Resolution
<b>Public Trustee</b>		
059433	Failure to wind up an estate in a timely manner	Full Investigation - Reasonable Resolution
064335	Failure to act regarding disputed estate	Preliminary Investigation - Not Sustained - Explanation Given
065633	Unreasonable delay	Preliminary Investigation - Partly Resolved in Favour of Complainant

**Other Authorities**  
Summary of outcomes of complaints finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
066531	Alleged inaction from agency	Preliminary Investigation - Not Sustained - Explanation Given
066586	Inappropriate handling of estate	Preliminary Investigation - Not Sustained - Explanation Given
066746	Alleged failure to keep informed regarding administration of estate	Advice Given
066789	Alleged failure to provide required reports	Preliminary Investigation - Partly Resolved in Favour of Complainant
066808	Alleged inadequate access to services	Preliminary Investigation - Not Sustained - Explanation Given
066871	Alleged failure to act in a timely manner	Preliminary Investigation - Reasonable Resolution
066884	Unreasonable management of funds	Advice Given
067027	Unreasonable denial to transfer control of finances	Preliminary Investigation - Partly Resolved in Favour of Complainant
067056	Alleged failure to receive reimbursement	Preliminary Investigation - Partly Resolved in Favour of Complainant
067098	Unreasonably low provision of income	Advice Given
067107	Unreasonable release of funds from trustee	Advice Given
067158	Unreasonable delays in the payment of accounts	Preliminary Investigation - Reasonable Resolution
067175	Unreasonable refusal regarding application for drivers licence	Preliminary Investigation - Not Sustained - Explanation Given
067200	Unreasonable management of affairs	Preliminary Investigation - Not Sustained - Explanation Given
067267	Alleged failure to provide adequate funds for personal use	Advice Given
067279	Alleged failure to observe proper process regarding mother's will	Advice Given
067321	Unreasonable delay in finalising estate	Advice Given
067355	Unreasonable delay	Advice Given
067485	Alleged failure to follow proper process in managing estate	Preliminary Investigation - Not Sustained - Explanation Given
067491	Unreasonable use of authority	Advice Given
067507	Unreasonable management of estate	Preliminary Investigation - Not Sustained - Explanation Given
067661	Allegation of inappropriate procedure	Preliminary Investigation - Not Sustained - Explanation Given
067690	Alleged inaction in effecting a testament	Preliminary Investigation - Not Sustained
067691	Unreasonable delay in selling item	Preliminary Investigation - Not Sustained - Explanation Given
067818	Alleged problem in accessing funds	Advice Given
067883	Alleged failure to pay account	Preliminary Investigation - Partly Resolved in Favour of Complainant
067888	Unreasonable administration of estate	Preliminary Investigation - Not Sustained
067917	Alleged failure to provide information	Preliminary Investigation - Reasonable Resolution
068148	Alleged inadequate action caused financial loss	Preliminary Investigation - Not Sustained - Explanation Given
068213	Unreasonable behaviour by officers	Advice Given
068293	Unreasonable delay in organising car registration	Preliminary Investigation - Reasonable Resolution
068468	Alleged administrative error in payment of account	Preliminary Investigation - Partly Resolved in Favour of Complainant
068502	Alleged non-receipt of voucher	Advice Given
068530	Alleged failure to release adequate funds	Preliminary Investigation - Not Sustained - Explanation Given
068534	Alleged failure to provide details of mother's	Advice Given
068624	Unreasonable reduction in allowance	Preliminary Investigation - Not Sustained - Explanation Given
068631	Alleged failure to properly administer funds	Preliminary Investigation - Not Sustained - Explanation Given
068755	Alleged failure to provide requested information	Preliminary Investigation - Not Sustained - Explanation Given
068756	Unreasonable management of finances	Preliminary Investigation - Partly Resolved in Favour of Complainant
068770	Unreasonable delay in responding to call	Advice Given
068771	Unreasonable management of finances	Advice Given
068811	Alleged failure to give reasons for requiring copy of father's will	Advice Given
068845	Alleged failure to provide information in a timely manner	Preliminary Investigation - Reasonable Resolution
069044	Alleged failure to respond - advice on how to lodge an appeal	Advice Given
069054	Unreasonable refusal	Advice Given
069166	Unreasonable delays in responding	Preliminary Investigation - Partly Resolved in Favour of Complainant
069175	Alleged failure to respond to written request for information	Preliminary Investigation - Reasonable Resolution
069195	Unreasonable charges to administer affairs	Advice Given
069228	Unreasonable charges	Preliminary Investigation - Not Sustained - Explanation Given
069279	Unreasonable delay in obtaining valuation	Preliminary Investigation - Reasonable Resolution
069313	Alleged inability to access service	Preliminary Investigation - Not Sustained - Explanation Given
069347	Alleged failure to provide financial statement	Preliminary Investigation - Not Sustained - Explanation Given
069411	Unreasonable delay in finalising estate	Preliminary Investigation - Reasonable Resolution
069459	Unreasonable refusal to pay accounts	Preliminary Investigation - Not Sustained - Explanation Given
069476	Unreasonable handling of estate	Preliminary Investigation - Not Sustained - Explanation Given
069540	Unreasonable management of son's finances	Advice Given

**Other Authorities**  
Summary of outcomes of complaints finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
069541	Unreasonable delay in supplying information	Advice Given
069545	Alleged failure to advance funds from inheritance monies	Preliminary Investigation - Reasonable Resolution
069590	Alleged failure to respond to enquiry	Advice Given
069630	Alleged failure to inform of caveat on property	Preliminary Investigation - Not Sustained - Explanation Given
069637	Unreasonable management of son's funds	Advice Given
069661	Alleged incorrect financial records	Preliminary Investigation - Not Sustained - Explanation Given
069675	Unreasonable delay in providing funds	Preliminary Investigation - Not Sustained - Explanation Given
069732	Alleged failure to provide information	Preliminary Investigation - Not Sustained - Explanation Given
069827	Unreasonable management of property sale	Advice Given
070000	Alleged poor treatment from case worker	Advice Given
<b>RSPCA Inspector</b>		
065525	Inadequate investigation	Preliminary Investigation - Not Sustained
067703	Unreasonable decision to remove dog from	Advice Given
068473	Unreasonable use of authority	Advice Given
<b>SA Ambulance Service</b>		
064257	Unreasonable administrative decision/policy	Preliminary Investigation - Not Sustained - Explanation Given
066651	Unfair imposition of charge for ambulance	Preliminary Investigation - Reasonable Resolution
066673	Unreasonable requirement to pay for ambulance transport	Preliminary Investigation - Not Sustained - Explanation Given
067245	Unreasonable decision to not refund money	Advice Given
067311	Unreasonable refusal to refund fee	Advice Given
067405	Alleged error in sending account to the wrong person	Preliminary Investigation - Reasonable Resolution
067470	Unreasonable refusal to refund membership fee paid in error	Preliminary Investigation - Not Sustained - Explanation Given
067732	Unreasonable imposition of fee	Withdrawn - Withdrawn by Complainant
067924	Alleged delay in responding to appeal against account	Advice Given
068207	Unreasonable refusal to refund membership fee	Preliminary Investigation - Not Sustained - Explanation Given
069635	Unreasonable call out fee for pensioners	Advice Given - Other/General
070063	Alleged incorrect issue of account	Preliminary Investigation - Not Sustained - Explanation Given
<b>SA Forestry Corporation</b>		
068566	Alleged inadequate action taken in relation to complaint	Preliminary Investigation - Not Sustained - Explanation Given
<b>SA Metropolitan Fire Service</b>		
066911	Unreasonable refusal of application	Advice Given
<b>SA Superannuation Board</b>		
064885	Incorrect advice	Full Investigation - Not Sustained - Explanation Given
066567	Alleged failure to allow to transfer superannuation fund	Preliminary Investigation - Not Sustained - Explanation Given
066733	Alleged failure to honour original legislated right	Withdrawn - Withdrawn by Complainant
067409	Alleged failure to calculate benefits at the correct rate	Preliminary Investigation - Not Sustained - Explanation Given
067506	Unreasonable refusal of invalidity benefit	Preliminary Investigation - Reasonable Resolution
067667	Unreasonable refusal to entitlement due to	Advice Given
068240	Alleged failure to provide information within a reasonable time	Advice Given
070020	Alleged failure to correct error in calculation of superannuation	Advice Given
<b>SA Tourism Commission</b>		
069134	Unreasonable interference in tourism proposal	Preliminary Investigation - Not Sustained - Explanation Given
<b>SAFECOM Board</b>		
059549	Unreasonable assessment of fire risk	Full Investigation - Partly Resolved in Favour of Complainant
066684	Unreasonable administrative decision	Advice Given
067399	Alleged failure to respond to correspondence in a timely manner	Preliminary Investigation - Reasonable Resolution
068978	Unreasonable charge for access to information	Advice Given
069072	Alleged failure to honour commitments	Preliminary Investigation - Reasonable Resolution
<b>Sheriff</b>		
067753	Unreasonable seizure of vehicle	Preliminary Investigation - Reasonable Resolution
<b>South Australian Local Government Grants Commission</b>		
063884	Failure to reply to correspondence	Preliminary Investigation - Not Sustained
<b>State Emergency Service</b>		
070079	Alleged failure to compensate for damages	Advice Given
<b>Trans Adelaide</b>		
067148	Unreasonable decision to change bus route	Declined - Alternate Remedy
067575	Alleged unprofessional conduct by security guard	Advice Given
067796	Alleged failure to respond to complaint	Preliminary Investigation - Partly Resolved in Favour of Complainant
069377	Unreasonable conduct of officer in relation to dress code incident	Declined - Refused to Investigate
069685	Alleged failure to provide adequate transport service	Preliminary Investigation - Not Sustained - Explanation Given
069781	Unreasonable refusal to refund money	Preliminary Investigation - Reasonable Resolution

**Other Authorities**  
Summary of outcomes of complaints finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
<b>University of Adelaide Council</b>		
066276	Refusal to refund fees	Full Investigation - Partly Resolved in Favour of Complainant
067548	Unreasonable policy regarding eligibility	Advice Given
068006	Unreasonable delay in assessing thesis	Advice Given
068220	Alleged harassment by staff	Withdrawn - Withdrawn by Complainant
068520	Unreasonable refusal to ascribe superannuation funds to preferred provider	Preliminary Investigation - Not Sustained - Explanation Given
068538	Unreasonable decision to refuse entry to medical school	Advice Given
068966	Unreasonable delay in assessing qualification	Preliminary Investigation - Reasonable Resolution
069609	Alleged misrepresentation of course content causing financial loss	Preliminary Investigation - Reasonable Resolution
069962	Unreasonable requirement to pay for damage to property	Preliminary Investigation - Not Sustained - Explanation Given
070125	Unreasonable delay in addressing complaint	Advice Given
070153	Unreasonable refusal to accept responsibility for damaged cable	Advice Given
<b>University of South Australia Council</b>		
066612	Alleged inadequate policies/practices	Preliminary Investigation - Reasonable Resolution
067139	Unreasonable refusal to extend student placement following illness	Advice Given
067471	Alleged failure to grant recognition for prior	Declined - Alternate Remedy
068311	Unreasonable decision regarding academic	Advice Given
068568	Unreasonable denial of placement in university course	Preliminary Investigation - Not Sustained - Explanation Given
068927	Unreasonable decision regarding tertiary admission	Preliminary Investigation - Not Sustained - Explanation Given
069344	Alleged inadequate investigation of complaint	Advice Given
069717	Unreasonable preclusion from course	Preliminary Investigation - Partly Resolved in Favour of Complainant
<b>Veterinary Surgeons Board</b>		
062848	Inadequate investigation of complaint	Conciliated - Reasonable Resolution
068400	Alleged abuse of power in relation to conduct of business	Advice Given
<b>WorkCover Corporation</b>		
062262	Alleged unreasonable management of claim	Preliminary Investigation - Not Sustained - Explanation Given
063106	Unreasonable disclosure of confidential information	Full Investigation - Not Sustained - Explanation Given
064762	Unreasonable collection of information	Preliminary Investigation - Reasonable Resolution
064763	Unreasonable discontinuation of payments	Preliminary Investigation - Not Sustained - Explanation Given
065550	Alleged failure to provide adequate assistance	Preliminary Investigation - Not Sustained - Explanation Given
065960	Failure to investigate allegations of fraud	Full Investigation - Not Sustained
066136	Alleged bullying into taking redemption	Withdrawn - Withdrawn by Complainant
066192	Alleged breach of confidentiality	Preliminary Investigation - Partly Resolved in Favour of Complainant
066569	Unreasonable delay in settling claim	Preliminary Investigation - Not Sustained - Explanation Given
066759	Unreasonable requirement to supply certificate	Advice Given
066760	Unreasonable management of claim	Advice Given
066782	Unreasonable action by agent	Advice Given
066881	Alleged failure to act in a timely manner	Preliminary Investigation - Partly Resolved in Favour of Complainant
067001	Unreasonable management of communication	Advice Given
067045	Alleged dispute regarding factual content of Statutory Declarations	Advice Given
067059	Alleged failure to provide medical report pursuant to section 109	Preliminary Investigation - Reasonable Resolution
067066	Alleged obstruction on the part of agency	Preliminary Investigation - Reasonable Resolution
067116	Alleged poor management of case	Advice Given
067169	Unreasonable management of claim	Preliminary Investigation - Not Sustained - Explanation Given
067217	Unreasonable delay in providing suitable duties	Advice Given
067250	Unreasonable delay in addressing issues relating to claim	Preliminary Investigation - Not Sustained - Explanation Given
067271	Alleged failure to provide adequate home help	Preliminary Investigation - Reasonable Resolution
067441	Unreasonable release of confidential information	Preliminary Investigation - Reasonable Resolution
067633	Unreasonable investigative practices	Full Investigation - Not Sustained - Explanation Given
067646	Unreasonable management of claim	Advice Given
067686	Alleged incorrect diagnosis	Advice Given
067688	Unreasonable delay in finalising claim	Advice Given
067743	Unreasonable decision to terminate payments for rehabilitation services	Advice Given
067751	Alleged delay in forwarding payments	Advice Given
067830	Alleged delay in forwarding payments	Advice Given
067840	Alleged failure to respond to complaint	Preliminary Investigation - Not Sustained - Explanation Given
067878	Unreasonable fine	Advice Given
067891	Alleged failure to pay accounts	Preliminary Investigation - Not Sustained - Explanation Given

**Other Authorities**  
Summary of outcomes of complaints finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
067962	Unreasonable surveillance	Preliminary Investigation - Not Sustained - Explanation Given
068174	Alleged failure to provide notice in required form	Preliminary Investigation - Not Sustained - Explanation Given
068181	Unreasonable decision to terminate claim	Advice Given
068269	Unreasonable decision to suspend payments	Advice Given
068279	Unreasonable reduction of payments	Preliminary Investigation - Not Sustained
068298	Alleged delays in reimbursing travel expenses	Advice Given
068448	Alleged inadequate settlement	Advice Given
068463	Alleged failure to approve redemption payment	Preliminary Investigation - Not Sustained - Explanation Given
068536	Alleged failure to pay income maintenance	Advice Given
068551	Application for review of determination	Preliminary Investigation - Reasonable Resolution
068554	Alleged lack of service	Preliminary Investigation - Partly Resolved in Favour of Complainant
068580	Unreasonable delay in processing claim	Advice Given
068591	Unreasonable system of contracting out services	Advice Given - Referred to Agency
068681	Alleged difficulty with finances	Preliminary Investigation - Not Sustained - Explanation Given
068694	Alleged inaccurate records resulting in failure to secure employment	Advice Given
068768	Alleged unfair refusal of claim	Preliminary Investigation - Partly Resolved in Favour of Complainant
068791	Unreasonable delay in processing of claim	Advice Given
068804	Alleged delay in making payments	Advice Given
068889	Unreasonable delays in clearing complainant for work	Advice Given
069258	Alleged failure to pay correct income maintenance	Advice Given
069304	Unreasonable handling of claim	Advice Given
069317	Unreasonable delay in paying account	Withdrawn - Withdrawn by Complainant
069340	Unreasonable decision to cease payments	Advice Given
069470	Alleged loss of paperwork has caused delay in payment	Preliminary Investigation - Partly Resolved in Favour of Complainant
069513	Alleged delays in payment	Advice Given
069557	Unreasonable decision to stop income payments	Advice Given
069559	Unreasonable delay in accepting claim	Advice Given
069560	Alleged incorrect payments for income	Advice Given
069561	Unreasonable delay in accepting claim	Advice Given
069613	Alleged delay in determining claim	Advice Given
069646	Unreasonable management of claim	Advice Given
069690	Unreasonable delay in processing claim	Advice Given
069705	Unreasonable refusal to continue claim	Advice Given
069791	Unreasonable refusal to pay medical expenses	Advice Given
069850	Unreasonable delay in processing claim	Advice Given
069864	Unreasonable delay in granting benefits	Advice Given
069964	Unreasonable decision to transfer from workplace	Advice Given
070026	Unreasonable policy regarding payments while on WorkCover	Advice Given
070052	Unreasonable delay in making payment	Preliminary Investigation - Partly Resolved in Favour of Complainant
070128	Unreasonable decision to terminate payments	Advice Given

**Public Hospitals & Health Services**  
Summary of outcomes of complaints finalised from 1 July 2005 to 30 June 2006

Agency	Advice Given	Alternate Remedy	Declined	Not Sustained	Not Sustained - Explanation Given	Other/General	Partly Resolved in Favour of Complainant	Reasonable Resolution	Referred to Agency	Refused to Investigate	Transferred to HCSCC	Withdrawn by Complainant	Total
Adelaide Central Community Health Service	3										1		4
Ceduna District Health Services Inc									1				1
Central Northern Adelaide Health Service	2	2	1	20			11	10	14	2	6	2	70
Children, Youth and Women's Health Service							1		2				3
Department of Health	1			1	1	2					1		7
Department of Human Services - Health				1									1
Drug & Alcohol Services Council					1			1					2
Flinders Medical Centre												1	1
Intellectual Disability Services Council Inc				1									1
Leigh Creek Hospital Inc				1									1
Medical Board of SA			1	1	1								3
Mt Barker District Soldiers' Memorial Hospital Inc				1									1
Mt Gambier & Districts Health Service Inc								2			1		3
Northern Metropolitan Domiciliary Care				1							1		2
Northern Yorke Peninsula Regional Health Service							1						1
Nurses Board of SA							1		1				2
Port Pirie Regional Health Service Inc								1					1
Repatriation General Hospital			1	1	1	1	2						6
Riverland Community Health Services											1		1
Royal Adelaide Hospital				1		1							2
SA Psychological Board				1									1
Southern Adelaide Health Service			1	4	3	3	3	5			3		22
Whyalla Hospital and Health Services Inc.			1										1
Women's & Children's Hospital				1		1							2
<b>Total</b>	<b>6</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>35</b>	<b>7</b>	<b>22</b>	<b>18</b>	<b>24</b>	<b>2</b>	<b>14</b>	<b>3</b>	<b>139</b>

**Public Hospitals & Health Services**

Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
<b>Adelaide Central Community Health Service</b>		
066326	Inadequate investigation of complaint	Transferred to HCSCC
067241	Unreasonable decision to deny medication	Advice Given
067487	Alleged failure to act promptly regarding medical issue	Advice Given
067549	Unreasonable decision to refuse medication	Advice Given
<b>Ceduna District Health Services Inc</b>		
067513	Alleged inadequate treatment and care	Advice Given
<b>Central Northern Adelaide Health Service</b>		
063711	Inadequate assessment/diagnosis	Transferred to HCSCC
064884	Inadequate dental care	Preliminary Investigation - Not Sustained - Explanation Given
065055	Alleged racial discrimination	Full Investigation - Partly Resolved in Favour of Complainant
065366	Inadequate treatment/care	Full Investigation - Partly Resolved in Favour of Complainant
065456	Inadequate care provided	Preliminary Investigation - Partly Resolved in Favour of Complainant
065548	Alleged failure to provide transport	Preliminary Investigation - Reasonable Resolution
065701	Unreasonable care provided	Transferred to HCSCC
065702	Inadequate treatment/care	Preliminary Investigation - Reasonable Resolution
065942	Inadequate treatment/care	Declined - Alternate Remedy
066160	Incorrect diagnosis/treatment/care	Transferred to HCSCC
066428	Inadequate treatment/care	Preliminary Investigation - Not Sustained - Explanation Given
066438	Inadequate investigation of complaint	Withdrawn - Withdrawn by Complainant
066458	Refusal to admit and/or treat	Preliminary Investigation - Not Sustained - Explanation Given
066496	Alleged failure to provide prescribed medication	Preliminary Investigation - Not Sustained - Explanation Given
066548	Inadequate treatment/care	Transferred to HCSCC
066631	Alleged refusal to admit and/or treat	Declined - Refused to Investigate
066633	Alleged miscalculation in charges for dental services	Preliminary Investigation - Reasonable Resolution
066694	Alleged inadequate access to service	Preliminary Investigation - Partly Resolved in Favour of Complainant
066697	Unreasonable delay created by officers meeting	Preliminary Investigation - Not Sustained - Explanation Given
066699	Alleged inadequate follow up care provided by doctor	Advice Given
066700	Unreasonable decision to end program	Preliminary Investigation - Not Sustained - Explanation Given
066702	Alleged inadequate discharge arrangements following major surgery	Advice Given
066749	Alleged inadequate treatment	Preliminary Investigation - Partly Resolved in Favour of Complainant
066758	Alleged denial of access to medical services	Preliminary Investigation - Partly Resolved in Favour of Complainant
066769	Unreasonable refusal to treat	Preliminary Investigation - Reasonable Resolution
066809	Unreasonable decision to limit visits to non contact	Preliminary Investigation - Not Sustained - Explanation Given
066819	Inadequate dental care provided	Advice Given
066834	Unreasonable detention in mental facility	Preliminary Investigation - Not Sustained - Explanation Given
066838	Alleged refusal to admit and/or treat	Preliminary Investigation - Reasonable Resolution
066840	Alleged inadequate treatment/care	Preliminary Investigation - Partly Resolved in Favour of Complainant
066852	Alleged failure to provide adequate medication	Advice Given
066867	Alleged failure to provide information regarding partner in hospital	Preliminary Investigation - Not Sustained - Explanation Given
066870	Alleged inadequate treatment/care	Preliminary Investigation - Reasonable Resolution
066904	Alleged delay in response	Preliminary Investigation - Not Sustained - Explanation Given
066905	Unreasonable delay in providing dental services	Withdrawn - Withdrawn by Complainant
066953	Alleged failure to provide medication	Preliminary Investigation - Not Sustained - Explanation Given
066960	Unreasonable delay in accessing medical and dental services	Preliminary Investigation - Partly Resolved in Favour of Complainant
067022	Inadequate treatment/care	Preliminary Investigation - Not Sustained - Explanation Given
067028	Alleged unfair decision	Preliminary Investigation - Not Sustained - Explanation Given
067037	Alleged inappropriate communication	Advice Given
067088	Alleged refusal to provide pain medication	Preliminary Investigation - Reasonable Resolution
067095	Alleged incorrect diagnosis and inadequate care	Advice Given
067121	Unreasonable delay in treatment	Declined - Refused to Investigate
067122	Alleged inadequate treatment of dental condition	Advice Given
067123	Alleged refusal of access to medical services	Advice Given
067131	Alleged inappropriate communication of	Advice Given
067150	Alleged failure to provide proper fitting dentures	Advice Given
067179	Unreasonable delay in providing dental services	Preliminary Investigation - Partly Resolved in Favour of Complainant
067198	Alleged inadequate care	Declined - Alternate Remedy
067206	Alleged delay in accessing dental service	Preliminary Investigation - Not Sustained - Explanation Given
067219	Alleged incorrect diagnosis	Advice Given
067222	Unreasonable delay in providing complainant with copy of records	Preliminary Investigation - Reasonable Resolution
067226	Alleged delay in accessing dental service	Preliminary Investigation - Partly Resolved in Favour of Complainant
067295	Alleged failure to provide adequate information regarding medical costs	Advice Given
067331	Unreasonable use of force used to detain patient	Preliminary Investigation - Not Sustained - Explanation Given
067337	Unreasonable refusal of methadone dose	Preliminary Investigation - Not Sustained - Explanation Given

**Public Hospitals & Health Services**

Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
067338	Alleged refusal to accept on buprenorphine program	Preliminary Investigation - Not Sustained - Explanation Given
067362	Unreasonable treatment	Transferred to HCSCC
067364	Unreasonable decision to detain	Preliminary Investigation - Not Sustained - Explanation Given
067368	Alleged refusal to discharge patient	Preliminary Investigation - Not Sustained - Explanation Given
067385	Alleged incorrect diagnosis and treatment	Advice Given
067394	Alleged failure to provide adequate medical attention	Preliminary Investigation - Partly Resolved in Favour of Complainant
067455	Alleged inadequate post-surgical follow up	Advice Given
067469	Unreasonable decision to lift detention order	Preliminary Investigation - Not Sustained
067475	Alleged failure to respond to maintenance issue	Advice Given
067497	Unreasonable refusal of medication	Preliminary Investigation - Not Sustained - Explanation Given
067498	Alleged incorrect medication supplied	Preliminary Investigation - Reasonable Resolution
067508	Unreasonable treatment	Transferred to HCSCC
067524	Alleged inadequate care/treatment	Advice Given
067551	Alleged delay in accessing methadone program	Preliminary Investigation - Reasonable Resolution
<b>Children, Youth and Women's Health Service</b>		
066653	Alleged inadequate treatment and care	Advice Given
066693	Alleged failure to keep parents adequately informed regarding diagnosis and treatment	Advice Given
066723	Alleged inadequate treatment/care	Preliminary Investigation - Partly Resolved in Favour of Complainant
<b>Department of Health</b>		
063358	Failure to investigate complaint	Preliminary Investigation - Partly Resolved in Favour of Complainant
066515	Allegation regarding quality of care	Transferred to HCSCC
066580	Unreasonable tender process	Preliminary Investigation - Partly Resolved in Favour of Complainant
066944	Unreasonable refusal of concession	Advice Given
066973	Alleged inability to access services	Preliminary Investigation - Not Sustained - Explanation Given
067437	Unreasonable conduct	Advice Given
<b>Department of Human Services - Health</b>		
059986	Failure to investigate complaint	Preliminary Investigation - Not Sustained - Explanation Given
<b>Drug &amp; Alcohol Services Council</b>		
066814	Unreasonable refusal to prescribe pain	Advice Given
067546	Unprofessional conduct by staff	Advice Given
<b>Flinders Medical Centre</b>		
056787	Unreasonable termination of traineeship	Withdrawn - Withdrawn by Complainant
<b>Intellectual Disability Services Council Inc</b>		
067021	Alleged lack of services	Preliminary Investigation - Not Sustained - Explanation Given
<b>Leigh Creek Hospital Inc</b>		
066892	Alleged inability to access service	Preliminary Investigation - Not Sustained - Explanation Given
<b>Medical Board of SA</b>		
061807	Alleged improper procedures followed	Preliminary Investigation - Not Sustained
066427	Unreasonable investigation	Full Investigation - Not Sustained - Explanation Given
067458	Alleged inadequate investigation of complaint	Advice Given
<b>Mt Barker District Soldiers' Memorial Hospital Inc</b>		
066668	Alleged lack of medical treatment	Preliminary Investigation - Not Sustained - Explanation Given
<b>Mt Gambier &amp; Districts Health Service Inc</b>		
066487	Unreasonable disclosure of information	Full Investigation - Reasonable Resolution
067363	Inadequate treatment/care	Transferred to HCSCC
067407	Alleged failure to act regarding improper staff conduct	Full Investigation - Reasonable Resolution
<b>Northern Metropolitan Domiciliary Care</b>		
066115	Inadequate investigation of complaint	Transferred to HCSCC
066745	Alleged failure to properly install safety ramp	Preliminary Investigation - Not Sustained - Explanation Given
<b>Northern Yorke Peninsula Regional Health Service</b>		
061399	Inadequate treatment/care	Full Investigation - Partly Resolved in Favour of Complainant
<b>Nurses Board of SA</b>		
063357	Failure to investigate complaint	Preliminary Investigation - Partly Resolved in Favour of Complainant
067308	Alleged unfair imposition of penalty for late payment of registration fee	Advice Given
<b>Port Pirie Regional Health Service Inc</b>		
067193	Alleged inadequate investigation of complaint	Preliminary Investigation - Reasonable Resolution
<b>Repatriation General Hospital</b>		
065750	Unreasonable treatment	Preliminary Investigation - Not Sustained - Explanation Given
066670	Alleged unprofessional conduct	Preliminary Investigation - Partly Resolved in Favour of Complainant
066740	Alleged inadequate treatment/care	Declined
067125	Unsatisfactory hygiene during hospital admission	Advice Given
067220	Unreasonable refusal to forward records to doctor	Preliminary Investigation - Reasonable Resolution
067391	Unreasonable delay in providing report	Preliminary Investigation - Reasonable Resolution
<b>Riverland Community Health Services</b>		
067288	Inadequate treatment	Transferred to HCSCC
<b>Royal Adelaide Hospital</b>		
059971	Incorrect diagnosis/treatment/care	Full Investigation - Not Sustained - Explanation Given
061263	Unreasonable treatment	Full Investigation - Partly Resolved in Favour of Complainant

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Summary of outcomes of enquiries and reviews finalised from 1 July 2005 to 30 June 2006

FILE NO.	COMPLAINT DETAILS	OUTCOME
<b>SA Psychological Board</b>		
066860	Alleged failure to adequately address allegation of misconduct by psychologist	Preliminary Investigation - Not Sustained - Explanation Given
<b>Southern Adelaide Health Service</b>		
063264	Failure to act on changed diagnosis	Full Investigation - Reasonable Resolution
063710	Inadequate assessment/diagnosis	Transferred to HCSCC
066057	Inadequate treatment/care	Preliminary Investigation - Not Sustained - Explanation Given
066656	Alleged inadequate treatment/care	Transferred to HCSCC
066686	Alleged inadequate treatment	Preliminary Investigation - Partly Resolved in Favour of Complainant
066752	Alleged inadequate treatment/care	Declined
066791	Alleged inability to access service	Preliminary Investigation - Partly Resolved in Favour of Complainant
066843	Alleged inadequate discharge arrangements	Preliminary Investigation - Reasonable Resolution
066872	Alleged inadequate treatment during hospital admission	Advice Given
066875	Alleged inadequate treatment and care	Advice Given
066876	Alleged inadequate provision of parking spaces for patients	Advice Given
066976	Alleged delay in receiving admission and treatment	Preliminary Investigation - Partly Resolved in Favour of Complainant
066985	Alleged inadequate care	Advice Given
067076	Inadequate treatment and care	Preliminary Investigation - Not Sustained - Explanation Given
067087	Unreasonable delays in obtaining outpatient appointment	Preliminary Investigation - Reasonable Resolution
067177	Alleged irrelevant information contained in records	Advice Given
067252	Alleged failure to contact next of kin	Advice Given
067291	Alleged incorrect surgical procedure	Preliminary Investigation - Not Sustained - Explanation Given
067298	Alleged failure to provide assistance with mental health issues	Transferred to HCSCC
067318	Alleged failure to allow access to buprenorphine program	Preliminary Investigation - Not Sustained - Explanation Given
067451	Alleged delay in investigating allegations of child abuse	Advice Given
067502	Unreasonable refusal of access to service	Advice Given
<b>Whyalla Hospital and Health Services Inc.</b>		
066717	Alleged inadequate assessment before transfer	Declined
<b>Women's &amp; Children's Hospital</b>		
059074	Inadequate service	Full Investigation - Not Sustained - Explanation Given
060900	Unreasonable dismissal as volunteer	Full Investigation - Partly Resolved in Favour of Complainant