A review of the year's work

Introduction

I'd like to record my great appreciation to Mr MacPherson for his work, and to the staff of the office ……

This is my first Annual Report as State Ombudsman, following my appointment on 1 June 2009. Plainly the substantive content of this report reflects very much the work of my predecessor in office - Mr Ken MacPherson - who held the office of Acting Ombudsman throughout the first 11 months of the reporting year.

I'd like to record my great appreciation to Mr MacPherson for his work, and to the staff of the office for making my introduction to the role an entirely pleasant experience.

Ombudsman Investigations

We will not investigate a complaint which may relate to fraud or corruption, unless the ACB has first indicated to me that it does not propose to take any action on the matter.

In his Annual Report last year, the Acting Ombudsman noted that under the *Whistleblowers Protection Act 1993*, the Ombudsman has the responsibility to refer disclosures that raise issues of corruption to the Anti-Corruption Branch of the South Australian Police Department (or if the information relates to a member of the police force - to the Police Complaints Authority). Some complaints made to this Office allege fraud or corruption by public officers.

Following the receipt of Crown Law advice early in June 2009, my Office has reaffirmed its procedures for dealing with such complaints. We will not investigate a complaint which may relate to fraud or corruption, unless the ACB has first indicated to me that it does not propose to take any action on the matter.

……..it would be appropriate to modify the confidentiality provision ……

The Acting Ombudsman also observed in his Annual Report last year that the confidentiality provision in the *Ombudsman Act 1972*, s22(1) may prevent the Ombudsman from informing Parliament or a Parliamentary Committee of a complaint unless and until a report is published. The provision could also prevent the Ombudsman from informing appropriate authorities about a complaint (other than by way of case study in the Annual Report) which does not proceed to a formal report.

In my view it would be appropriate to modify the confidentiality provision to provide a general discretion to the Ombudsman to inform others of the outcome of a complaint which does not proceed to a formal report.

A substantial part of my Office's investigative workload over the past year has involved local government. This is to be expected given the nature of my jurisdiction and the responsibilities of councils.

As the sphere of government which is closest to the people, many local government decisions have direct impacts on individual citizens' daily lives. Thus it is all the more important that good administrative practice should be followed.

…..in some instances, those investigations have revealed significant shortcomings….

As an example, over the past year, my Office has conducted full investigations into the way in which a number of councils have dealt with apparently abandoned motor vehicles. In some instances, those investigations have revealed significant shortcomings in matters such as delegation to staff members, the exercise of powers in a way authorised by law, and the charging of fees.

I am pleased to report that for the most part, when shortcomings have been identified, councils have responded appropriately to address them.

The investigations also suggested that the legislative framework governing abandoned vehicles could be improved, and Government has taken up this issue.

In my view this example demonstrates well the ultimate purpose of intervention by the Ombudsman, which is to improve standards of public administration.

Freedom of Information

…..in the coming year I intend to publish appropriate FOI decisions on the Ombudsman office website

The confidentiality provision referred to above (the *Ombudsman Act 1972*, s22(1)) does not apply in relation to external reviews conducted under the *Freedom of Information Act 1991*. I take the view that, consistently with the practice in other jurisdictions, it is in the public interest for some decisions under that Act to be made publicly available, and in the coming year I intend to publish appropriate FOI decisions on the Ombudsman office website.

…. any decision to refuse access must be justified by reference to specific exemptions, and specific information within documents.

In a number of recent external reviews, agencies have sought to justify a decision not to release information with general arguments which do not link to specific information within the particular documents. For example, it has been argued that if information of the type contained within the documents was released, third parties would fear that sensitive information might be released in the future, and therefore would be less likely to engage in exchanges of information with government.

Such arguments are known as 'class claims' and they will rarely succeed. It is important that any decision to refuse access must be justified by reference to specific exemptions, and specific information within documents.

…… an exemption worded to exempt access to documents revealing rather than concerning a decision or deliberation of Cabinet would be more appropriate….

Another issue raised by more than one determination in the past year is the extent of the Cabinet exemption under the FOI Act, Schedule 1, clause 1(1)(e). This specifies that a document is exempt 'if it contains matter the disclosure of which would disclose information **concerning** any deliberation or decision of Cabinet' (emphasis added). I note that interstate and Commonwealth FOI legislation apart from NSW, does not have such a broad exemption as clause 1(1)(e). I consider that an exemption worded to exempt access to documents *revealing* rather than *concerning* a decision or deliberation of Cabinet would be more appropriate, and would protect Cabinet confidentiality and also conform to the objectives of the FOI Act.

Management of the Office

In 2008-09, the key achievements of the Office included:

- We considered 2543 cases in total - 2322 Ombudsman cases and 221 FOI cases. This is slightly less than the 2779 cases considered in 2007-08, made up of 2515 Ombudsman cases and 264 FOI cases. More details are in the tables below.
- We made good progress in reducing the number of open cases, particularly in relation to FOI reviews. The number of FOI cases open at the end of the financial year decreased from 54 in 2007-08 to 27 in 2008-09, with open cases greater than 9 months old reducing from 22 to 3 over the same period.
- We began collecting detailed information on the total number of approaches to the office, which we estimate to be around 12000 per year.
- We commenced work on the procurement and implementation of a new case management system, in partnership with Justice Business Services and other small agencies in the Attorney General's Department.
- We refined our investigative processes under the *Ombudsman Act 1972*;
- We undertook enhanced staff training and development in investigative practices, administrative law and statutory interpretation. Guest speakers also gave regular talks on relevant subjects; and
- We developed our intranet to be a resource for our staff on jurisdictional issues and office procedures.

Over the past year we continued to receive administrative support from the Attorney General's Department, and I record my appreciation to the Chief Executive Officer and his officers.

We want to continue ….. the implementation of a new case management system

The Office's Business Plan for 2009-10 identifies three priority initiatives:

- We want to continue enhancement and quality assessment of office procedures, in conjunction with the implementation of a new case management system;
- We want to continue and expand our program of staff training; and
- We want to commence planning for an enhanced outreach capability, and improved accessibility of our services.

I intend to report on progress in these priorities in the Annual Report next year.

Richard Bingham
OMBUDSMAN

October 2009

Summary statistical information

OMBUDSMAN JURISDICTION	2006-07				2007-08				2008-09			
	Government Department	Local Government	Other Authorities	Total	Government Department	Local Government	Other Authorities	Total	Government Department	Local Government	Other Authorities	Total
OPEN CASES												
Cases open at beginning of period	72	80	35	187	68	83	29	180	65	93	44	202
Cases opened during period	1353	598	339	2290	1365	594	376	2335	1148	624	348	2120
Total cases open	1425	678	374	2477	1433	677	405	2515	1213	717	392	2322
LESS CLOSURES												
Advice given	513	269	157	939	450	293	174	917	525	350	189	1064
Conciliated	1	1		2								
Declined	21	17	14	52	35	21	15	71	50	64	41	155
Determination - *Water Resources Act s32*	1			1								
Full investigation	20	20	9	49	9	10	4	23	6	26	6	38
Outside of jurisdiction	22	2	8	32	26	6	12	44	9	9	8	26
Preliminary investigation	749	278	149	1176	821	245	144	1210	545	194	122	861
Transferred to HCSCC	7			7								
Transferred to WorkCover Ombudsman											2	2
Withdrawn	25	11	9	45	27	12	12	51	21	14	11	46
TOTAL CASES CLOSED	1359	598	335	2292	1368	587	361	2316	1156	657	379	2192
STILL UNDER INVESTIGATION	66	80	39	185	65	90	44	199	57	60	13	130

FOI JURISDICTION	2006-07	2007-08	2008-09
OPEN CASES			
Cases open at beginning of period	61	50	54
Cases opened during period	234	214	167
Total cases open	295	264	221
LESS CLOSURES			
FOI advice given	177	145	92
FOI investigation	11	14	17
FOI review	55	53	84
Declined			1
TOTAL CASES CLOSED	243	212	194
STILL UNDER INVESTIGATION	52	52	27

Note: Explanations of the FOI and Ombudsman outcomes are in Appendices 2 and 3 respectively.

Freedom of Information

Case studies

Legal Practitioners Conduct Board

Jurisdiction
Legal Professional Privilege

Application for access

For a considerable period of time this office conducted several external reviews under the *Freedom of Information Act* ('the FOI Act') involving the same applicant and the Legal Practitioners Conduct Board ('the Board'). The applicant, a legal practitioner, was seeking documents held by the Board concerning himself.

There were two issues of note in these external reviews: firstly, a jurisdictional issue; and secondly, whether the Board's agenda items are subject to legal professional privilege.

Jurisdictional issue

A significant (and time consuming) issue in these reviews was whether the Board is subject to the FOI Act, and in turn whether this office has jurisdiction to conduct reviews involving the Board. Historically, by virtue of the FOI Act s6, the Board considered itself entitled to refuse to deal with applications for access to documents purportedly made pursuant to that Act on the basis that the Act does not apply to the Board. The Board's position was largely based on various opinions (not necessarily from within the Board) given over a long period of time. Whilst the issue had arisen on several occasions, it had never been formally resolved.

A significant (and time consuming) issue in these reviews was whether the Board is subject to the FOI Act…..

[It should be noted that, section 6 aside, the Board otherwise falls within the definition of an 'agency' as defined by the FOI Act, and is not prescribed as an exempt agency.]

The FOI Act s6(2)(a) provides:

> *(2) For the purposes of this Act-*
>
> *(a) neither a tribunal nor an officer vested with power to determine questions raised in proceedings before a tribunal is to be regarded as an agency or part of an agency.*

'Tribunal' is defined in section 4 to mean 'any body (other than a court) invested by the law of the State with judicial or quasi-judicial powers'.

Although the issue has not, to my knowledge, been judicially determined, it is certainly arguable that the Board is vested with at least some 'quasi-judicial powers' (for instance, when it is dealing with minor misconduct matters under the *Legal Practitioners Act 1981* s77AB). Section 6(2)(a) therefore becomes relevant.

The Board was of the view that the FOI Act does not apply to it *at all*. The difficulty lies in the wording of subsection 6(2)(a). One interpretation is that a body that is a tribunal for the purposes of the FOI Act is not an agency for the purposes of the Act *at all*. The other interpretation is that a body that is a tribunal for the purposes of the FOI Act is not an agency *in relation to its judicial or quasi-judicial functions*, but *is* an agency in relation to its non-judicial and non-quasi-judicial functions.

The importance of this issue is evident. If the first view is correct (that is, if the Board is not to be considered an agency in any capacity with regard to the FOI Act), no applications pursuant to the FOI Act may be made to the Board. If the second view is correct, applications may be made to the Board for documents relating to the Board's *administrative* functions, but not for documents relating to its judicial or quasi-judicial functions.

Whilst the first view is at least arguable given the slightly awkward wording of subsection 6(2)(a), this office did not accept that this is what Parliament intended. Whilst a body, otherwise falling within the definition of 'agency', may be charged with judicial or quasi-judicial functions, these may constitute only a negligible proportion of the agency's overall functions. The preferable approach is that Parliament intended for such an agency to escape the FOI Act *only* with *respect* to these judicial or quasi-judicial functions, but not with respect to its other functions. This office therefore disagreed with the Board, deciding that the second view is the correct approach.

….. Parliament intended for such an agency to escape the FOI Act only with respect to these judicial or quasi-judicial functions ……

It was therefore necessary to determine when the Board was acting in an administrative manner and when it was acting in a judicial or quasi-judicial manner. Having regard to the matters subject to the external reviews, the Board was performing functions described by the previous Ombudsman as 'investigative', 'adjudicative' and 'prosecutorial'. It was decided that these are administrative or executive functions, rather than judicial or quasi-judicial functions.

Accordingly the Board was regarded as an agency for the purposes of the FOI Act, and this office had jurisdiction to conduct the external reviews.

I make one further point before turning to the substantive issues in the review themselves.

Other than processing actual applications, an agency subject to the FOI Act has various other responsibilities. Under section 9(1a), an agency (other than a State Government agency) must, at intervals of not more than 12 months, cause an up-to-date information statement to be published in a manner prescribed by regulation. The regulations stipulate that an information sheet must be published either on the website or in the annual report. Furthermore, under section 54AA, an agency must furnish to the Minister administering the FOI Act certain information (as gazetted). This information is included in the Freedom of Information annual report compiled by State Records.

To date, the Board does not appear to have discharged these responsibilities. I have recently discussed the issue with the Director of the Board who has indicated that the relevant provisions will be complied with in the future.

Ombudsman review

One of the categories of documents considered exempt by the Board were the Board's 'agenda items', or the reports to the Board. The agenda items are produced by the Board's employed solicitors, and contain legal advice to the Board. Accordingly, the Board's argument was that the agenda items are subject to legal professional privilege, and are therefore exempt pursuant to the FOI Act, Schedule 1, clause 10(1).

My predecessor was of the view that the role of the Board's solicitors is multi-faceted. Sometimes they will be acting in an administrative capacity, while at other times they will be acting as legal practitioners, in a solicitor-client relationship with the Board, where legal professional

privilege may attach to their communications. It was accepted that the agenda items contain information concerning the provision of legal advice to the Board on the facts and legal consequences of those facts in connection with an investigation, including advising the Board on the probative value of the information and applicable legal and equitable principles, and the likely success of charges laid before the Tribunal. Ordinarily, such communications would be subject to legal professional privilege. However, my predecessor was of the view that the agenda items also contained information concerning the mere reporting to the Board on the facts involved in an investigation, and that such information formed an important part of the documents, as the Board cannot make decisions without knowing the relevant facts. He did not accept that such communications would necessarily attract legal professional privilege.

…. the agenda items also contained information concerning the mere reporting to the Board on the facts involved in an investigation, …(which) … did not …. attract legal professional privilege.

In making his determination my predecessor followed a test similar to the one followed in the Queensland Information Commissioner's decision in *Queensland Law Society Inc and Legal Ombudsman* [1998] QICmr 5. There are at least two purposes behind the production of the agenda items: the provision of legal advice to the Board, and the reporting to the Board on the facts involved in an investigation. The Board cannot exercise its statutory decision making function unless it knows the facts. My predecessor was not satisfied that the provision of legal advice was the *dominant* purpose of the production of the agenda items, and therefore they were not documents subject to legal professional privilege. The determination was that they should be released, other than records of communications (reproduced within the agenda items) between the Board and its external legal counsel, as these communications are themselves privileged.

Comments

It should be noted that my predecessor's determination regarding the agenda items and other documents is currently under appeal in the District Court. I look forward to the Court's decision.

Department of Health

Personal Affairs

Application for access

The applicant, a Member of Parliament, applied under the *Freedom of Information Act 1991* ('the FOI Act') to the Department of Health ('the agency') for all documents relating to the appointment and discontinuance of a Chief Executive Officer of a rural health service. Issues involving this health service had been in the media for some time.

The agency determined to release several documents, but refused to release 18 documents under the FOI Act, Schedule 1, clause 6(1) on the basis that the documents contained information concerning the personal affairs of the ex-Chief Executive Officer ('the third party'), and it would be unreasonable to release such information.

Ombudsman review

In general terms, the 18 documents related to:

- contractual arrangements, and contained:
  - information relating to negotiations leading up to the third party's contract of employment;
  - the resultant contract of employment; and
  - information relating to periodic increases in remuneration; and
- other employment matters concerning the third party including their performance in the role of Chief Executive Officer of the health service.

……the contract and other arrangements …. constitute the third party's 'personal affairs' …… Nevertheless, where a person is a public officer, there is a strong public interest in disclosing the overall remuneration, including periodic increases.

One of the reasons for the agency not releasing the contract of employment was that the contract pre-dates the more recent government policy of disclosing employment contracts at the executive level (other than information such as home addresses). The timing of the contract was considered irrelevant; it is the wording in the FOI Act that is paramount. It was accepted that the contract and other arrangements (including the remuneration and periodic increases to the remuneration) constitute the third party's 'personal affairs' within the meaning of the FOI Act s4(1) and Schedule 1, clause 6(1. Nevertheless, where a person is a public officer, there is a strong public interest in disclosing the overall remuneration, including periodic increases. The public interest is in knowing the total amount of public funding allocated to the position. My predecessor determined that it would not be unreasonable to release such information.

Ordinarily, details regarding a person's work performance are not considered their personal affairs within the meaning of section 4(1) and Schedule 1, clause 6(1). However, certain aspects of a person's work performance, including details of negative comment levelled against them, may be considered personal affairs, especially where such information could be said to form part of the person's employment records. My predecessor considered it would be unreasonable to release some of the information of this type within the documents, and it was therefore exempt pursuant to the FOI Act, Schedule 1, clause 6(1). In arriving at this conclusion it was accepted that, in the circumstances, there was also a public interest in the information being disclosed.

Department of Health

Cabinet Exemption
Breach of Confidence

Application for access

The applicant, a Member of Parliament, sought access to documents and correspondence between the Department of Health (and the relevant Minister) and the owners of the Frewville shopping centre about the government's desire to acquire a portion of the existing shopping centre, the possible purchase by the shopping centre owners of a portion of the Glenside Hospital site known as 'Precinct 4', and the removal and/or relocation of the hospital's heritage wall.

The Department of Health ('the agency') located 25 documents falling within the scope of the application. After consulting with the shopping centre owners ('the third party'), the agency determined that eight documents fell within the 'Cabinet documents' provision in the FOI Act and were therefore exempt (clause 1), one document could be released in full and one in part, and that the remaining documents were exempt for other reasons. The applicant accepted the 'Cabinet' claims but sought internal review with respect to the other documents claimed to be exempt by the agency. The principal officer of the agency essentially confirmed the original determination. The applicant applied to my office for external review.

…..eight documents fell within the 'Cabinet documents' provision in the FOI Act and were therefore exempt

Ombudsman review

It was quickly established that the 25 documents were not, in fact, individual documents, but rather consisted of several documents apiece, taking the tally of individual documents somewhat higher than 25. However, certain concessions were made by the agency and the third party. Of the remaining documents in dispute, the exemption claims largely rested on the FOI Act, Schedule 1, clause 13(1)(a) - documents containing confidential material.

Clause 13(1) provides:

> *13(1) A document is an exempt document-*
>
> *(a) if it contains matter the disclosure of which would found an action for breach of confidence*

There was no contractual obligation of confidence between the agency and the third party. Therefore, the test was whether the documents contain matter the disclosure of which would found an action for an equitable breach of confidence, which is a duty not to disclose (or make an unauthorised use of) information because the information was given and received in circumstances which would make it unconscionable for the confidant to disclose (or otherwise make an unauthorised use of) the information in a way the confider has not authorised. There are several factors relevant to any such assessment.

… the test was whether the documents contain matter the disclosure of which would found an action for an equitable breach of confidence …

Apart from a moderate amount of information within two documents highlighted by the third party, my predecessor was not satisfied with the claims of confidence. To an extent, the arguments put to my office appeared to be broad, general claims to the effect that all information concerning commercial negotiations with the government is covered by an obligation of confidence, on the basis that such information would be considered 'by the reasonable person' to have been given and received in such circumstances as to import an obligation of confidence. This is a version of the idea of 'commercial in confidence', although I note that such a term is not used in the FOI Act.

In my view, for an agency or a third party involved in commercial negotiations with the government to successfully claim that information is covered by an equitable obligation of confidence, the information claimed confidential must be clearly identified (and cannot be a 'class claim'), it must be confidential (in the sense that it is not widely known), and the information must be of a kind that the reasonable person would consider it to have been given and received in confidence. Not all information will be of such a kind, and clause 13(1)(a) is not a 'catch-all' exemption for all information within commercial negotiations.

Comments
It should be noted that my predecessor's determination is, in part, currently under appeal in the District Court. I look forward to the Court's decision.

City of Charles Sturt
'Class Claim'

Application for access
The City of Charles Sturt ('the Council') owns a building called the Brocas on Woodville Road, Woodville. The Brocas is of historical significance, and since 1975 has housed a museum run by the Historical Society of Woodville. In 2008, the Council was considering changing the use of the Brocas and invited expressions of interest in leasing the building. The issue sparked interest in the local community (including in the local media) and an application was made for all relevant documents.

The Council determined to release some documents but refused access to others under the FOI Act, Schedule 1, clauses 7 (business affairs) and 9 (internal working documents.

Ombudsman review
Arguments put forward by the Council as to why documents were exempt under clause 9 included the following:

- the documents contain matter that relates to consultation and deliberation that has taken place in the course of the decision making functions of the council - and disclosure would be contrary to the public interest as it would jeopardise the crucial flow of information between council officers and/or elected members which enables informed and/or fair and considered decision making by the council;
- disclosure of documents would be contrary to the public interest as the documents are draft documents and contain information which is now erroneous and has been superseded, and may therefore be relied on to the detriment of members of the public;
- disclosure of documents would be contrary to the public interest as it would hinder communication between officers of the council, hinder the council's ability to assess tender applications, and thereby jeopardise the council's ability to fulfil its statutory duties;
- disclosure of documents would be contrary to the public interest as the consultation and deliberation is preliminary in nature and may be relied upon to the detriment of members of the public;

and variations of the above.

These arguments are general and the Council did not provide evidence tying them to specific information within the particular documents

These arguments are general and the Council did not provide evidence tying them to specific information within the particular documents. Rather, and as an example, the Council argued that if information of the type contained within the documents was released in this instance, Council officers and elected members would fear that

sensitive information might be released in the future, and therefore would be less likely to engage in exchanges of information. Such arguments are known as 'class claims' and they will rarely succeed. The Council also claimed that the public would rely on the information within the documents to its detriment.

In providing the Council with his preliminary view for the purpose of inviting further submissions, my predecessor made certain comments about the above arguments. Council officers and elected members each have their respective roles to fulfil. They need to exchange information to fulfil these roles, and they should be aware that the question of whether certain information should be released turns on the information itself, not on a wider notion that the information was 'exchanged' between Council staff and elected members.

The idea that it is contrary to the public interest to release a document merely because it is a draft document is misconceived....

The idea that it is contrary to the public interest to release a document merely because it is a draft document is misconceived, and in any event, the process to which some of the draft documents relate has already been concluded, so it can hardly be said that the public will rely on the information to its detriment. The public will realise that documents are 'drafts' and therefore will not rely on them to its detriment. It was also pointed out that, at least in this case, there is a public interest in knowing how council arrived at its ultimate conclusion.

The council subsequently withdrew the majority of its exemption claims, and released the documents. A small number of exemptions on the basis of clause 7 were accepted by my predecessor.

Department of Transport, Energy and Infrastructure

Identity of the parties
Amending exemption claims during external review
Cabinet Exemption

Application for access

The applicant sought requested documents from the Department (the agency) concerning the estimates of costs for the previous four years to upgrade the portion of the narrow gauge rail line from Thevenard to Kevin in the rail network on the Eyre Peninsula.

My office's research from the South Australian parliamentary website[1] showed that Genesee Wyoming Australia (GWA) is the current owner-operator of the rail line, which was purchased from Australian National in 1997 by Australian Railroad Group (ARG) (using the business name of Australian Southern Railroad), GWA's predecessor. At that time also, ownership of the land was transferred from Australian National to the South Australian Government, and the land was then leased on a long term basis by the Government to ARG for a peppercorn rent.

The agency found two documents to be within the scope of the application:

- 'Application to the Minister South Australia - Eyre Peninsula Scope of Works'
- Presentation (power point) 'Eyre Peninsula Rail Infrastructure'

[1] Official Hansard Report, House of Assembly, Public Works Committee *Eyre Peninsula Gran Rail Project,* Wednesday 15 February 2006, p 3

The documents were submissions to the Minister for Transport made in December 2003 by ARG seeking funding assistance for the upgrading of Eyre Peninsula railway network, including the Thevenard to Kevin line. This line is used principally for the transportation of gypsum mined by Gypsum Resources Australia.

The agency was obliged under the FOI Act to consult with a third party; after which time the agency determined to refuse access to the documents pursuant to the FOI Act, Schedule 1, clause 7(1)(c).

This clause exempts business affairs documents. The agency confirmed this determination after internal review.

Ombudsman review

….the applicant and the third party expressed their respective wish to remain anonymous - as they had done so with the agency in the initial determination process.

The applicant requested an external review by my office. During the review, the applicant and the third party expressed their respective wish to remain anonymous - as they had done so with the agency in the initial determination process. I saw no difficulty with this request in the circumstances of this case. However, I could envisage situations where this would cause some difficulty for my office, in fulfilling my obligation to give reasons for my determination in section 39(13) of the FOI Act.

….. the agency withdrew its exemption claim of clause 7(1)(c), but later amended it to clause 1(1)(e) which concerns Cabinet documents.

During the review, the agency withdrew its exemption claim of clause 7(1)(c), but later amended it to clause 1(1)(e) which concerns Cabinet documents.

Clause 1(1)(e) provides:

> *(1) A document is an exempt document–*
>
> *(e) if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet;*

My predecessor considered that the wording of clause 1(1)(e) was expansive, by virtue of the use of the words 'information concerning' in the body of paragraph (e).[2]

My predecessor noted that the wording had mirror provisions in the NSW *Freedom of Information Act 1989.* In the case of *McGuirk v Director General, The Cabinet Office*[3] which considered these mirror provisions, the Administrative Decisions Tribunal commented that clause 1(1)(e) is concerned with 'disclosing information concerning any deliberation or decision of Cabinet', not just disclosing a deliberation or decision of Cabinet.

…..clause 1(1)(e) is concerned with 'disclosing information concerning any deliberation or decision of Cabinet', not just disclosing a deliberation or decision of Cabinet.

The Tribunal said:

> 35 I agree that only documents created contemporaneously with, or subsequent to, active discussion and debate within Cabinet are capable of disclosing Cabinet deliberations, however clause 1(1)(e) is not merely concerned with "disclosing Cabinet deliberations". It also concerns "information concerning any deliberation or decision of Cabinet". This is a broader concept.
>
> 36 [In] my view it is possible that a document that pre-dates a Cabinet meeting could still contain information that is 'relevant to' or 'concerns' the deliberative or decision-making process. I agree with the Cabinet Office's submissions that documents created before a Cabinet meeting which are deliberated upon during that Cabinet meeting may profoundly influence the course of any debate or discussion that takes place during that meeting and hence, any deliberations made during that meeting. For example, a Cabinet Minute that contains a series

[2] *Rann v SA Water* unreported 9 August 1996 DCCIV-96-1009, p 5 .
[3] [2007] NSWADT 9 at 35

> of recommendations upon which Cabinet deliberates logically contains subject matter that is 'relevant' to or 'about' these deliberations. To the extent that any document is so central to a Cabinet meeting that it shapes the course of, or outcome of, any deliberations of Cabinet, the disclosure of its contents could reveal information concerning the process of deliberation or decision-making.

My predecessor considered this interpretation was applicable to clause 1(1)(e) under the South Australian FOI Act; but was concerned that there must be a clear nexus between the information in the documents and the decision or deliberation of Cabinet, not just a vague topical or thematic connection.

Determination and comment
The agency presented the factual basis for its claim, and my predecessor considered its approach was justified. He confirmed the agency's determination to refuse access to the documents albeit on a different ground. The applicant disputed my predecessor's ability to make such a determination. However, in light of the District Court case of *Department of the Premier and Cabinet v Redford,*[4] my predecessor was satisfied that his approach was correct. This case provides that:

> *… the Ombudsman has a discretion rather than an obligation to consider exemptions not relied upon by an agency. It necessarily follows, … , that his review is not confined, as a matter of law, to exemptions relied upon by the agency.*

He confirmed the agency's determination to refuse access to the documents albeit on a different ground.

As a final comment, I note that interstate and Commonwealth FOI legislation apart from NSW, does not have such a broad exemption as clause 1(1)(e). I consider that an exemption worded to exempt access to documents *revealing* rather than *concerning* a decision or deliberation of Cabinet would be more appropriate, and would protect Cabinet confidentiality and also conform to the objectives of the FOI Act.

Primary Industries SA, Department of the Premier and Cabinet University of Adelaide

Cabinet Exemption

Application for access
The applicant Member of Parliament applied for access to documents from Primary Industries SA (the agency) concerning the Management Plan for the Glenthorne research farm submitted by the University of Adelaide to the State Government in 2006 and any documents relevant to a government response to the plan.

Ombudsman review
The applicant sought an external review of the agency's determination to refuse access to some of the documents. During the review, my office consulted with the Department of the Premier and Cabinet and also the University of Adelaide. Both objected to release of some of the documents, including the University's Management Plan prepared pursuant to a Deed of Agreement between the State government, the University of Adelaide and the Winemaker's Federation.

Arguments of confidentiality, the business affairs exemption and the internal working document exemption, with its public interest test, were put to my office as reasons for refusing access to the documents.

[4] http://www.austlii.edu.au/au/cases/sa/SADC/2005/58.html

Determination and Comments
While my predecessor was not persuaded by these arguments, he was persuaded by DPC's submission later in the review that some of the documents, including the Management Plan were Cabinet documents under the FOI Act, Schedule 1, clause 1(1)(e) (see the preceding case study).

*…..although the Management Plan did not disclose actual deliberations or a decision of Cabinet, it was pivotal or 'central' to a Cabinet meeting such that if disclosed it would reveal information **concerning** a decision of Cabinet*

Within the limitations of section 39(15) of the Act which prevents my office from disclosing exempt material, my predecessor advised that although the Management Plan did not disclose actual deliberations or a decision of Cabinet, it was pivotal or 'central' to a Cabinet meeting such that if disclosed it would reveal information **concerning** a decision of Cabinet within the meaning of clause 1(1)(e).

As noted elsewhere, in my opinion, the breadth of clause 1(1)(e) goes beyond protecting the secrecy of the Cabinet process. I consider the equivalent provision in other interstate jurisdictions that refers to a document being exempt if its disclosure would reveal a deliberation or decision of Cabinet is sufficient to protect Cabinet confidentiality.

Department for Families and Communities

Broad secrecy provisions in child protection legislation

Application for access
The applicant mother sought access to a psychological report prepared by the Department in relation to her son - who attended primary school - and the issue of access. Her son had been placed under a guardianship order four years previously.

The Department refused access to parts of the report under the FOI Act, Schedule 1, clause 12(1). This clause provides that a document is exempt if it contains 'matter the disclosure of which would constitute an offence against an Act.' The 'Act' in this instance was claimed to be the *Childrens Protection Act 1993* [**the CP Act**] s58. Section 58 relevantly provides:

*….a document is exempt if it contains 'matter the disclosure of which would constitute an offence against an Act .. in this instance … the Childrens Protection Act 1993 s*58.

> *58–Duty to maintain confidentiality*
>
> *(1) A person engaged in the administration of this Act who, in the course of that administration, obtains personal information relating to a child, a child's guardians or other family members or any person alleged to have abused, neglected or threatened a child, must not divulge that information.*
>
> *Maximum penalty: $10 000*
>
> *(3) This section does not prevent–*
>
> *(a) a person from divulging information if authorised or required to do so by law; or*
> *(b) a person from divulging statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates; or*
> *(c) a person engaged in the administration of this Act from divulging information if authorised or required to do so by his or her employer.*

Ombudsman review
My predecessor considered the contents of the report, and made the following observations concerning the interpretation and operation of the CP Act s58 as it applied to the report:

- Section 58(1) creates a criminal offence for the purposes of clause 12(1).
- An offence will be committed against section 58(1) of the CP Act if all of the following criteria are satisfied;
    - the particular information is 'divulged';
    - the information meets the description of 'personal information relating to a child, a child's guardians or other family members or any person alleged to have abused, neglected or threatened a child';
    - the information was obtained by a person engaged in the administration of the CP Act;
    - the information was obtained in the course of that person's engagement in the administration of the CP Act;
    - none of the exceptions enumerated in section 58(3) apply.

In interpreting the CP Act s58, my predecessor had regard to the reasons for the decision in the SA District Court of *Ward v Courts Administration Authority* [2003] SADC 18.

My predecessor considered that the information in the report would be divulged. He noted that the administration of the CP Act is committed to the Minister for Families and Communities.[5] The Minister, the Chief Executive and the Department are conferred wide powers and functions directed to the fulfillment of the objects of the Act.[6] The CP Act s57 provides for the delegation of any of the powers of the Minister or Chief Executive, and s51(1)(e) provides *inter alia* that the Minister may arrange for the professional examination or treatment of a child under the guardianship of the Minister 'as may be necessary or desirable'.

My predecessor noted that the report was prepared by clinical psychologists of the Department in response to a request by a Departmental social worker for an assessment of the son of the applicant's emotional and behavioral functioning, and the issue of contact with the applicant.

He was informed that the relevant Departmental officers were acting under the delegation of the Minister at the relevant time.

My predecessor therefore accepted that the officers were engaged in the administration of the CP Act. For these reasons he was satisfied that the officers are persons 'engaged in the administration' of the CP Act within the meaning of section 58(1) and that the information in the deleted parts of the report was obtained in the course of that administration.

My predecessor therefore accepted that the officers were engaged in the administration of the CP Act ….. and that the information in the deleted parts of the report was obtained in the course of that administration.

My predecessor also considered that the information related to the applicant, the applicant's son and the foster mother. After noting the definition of 'guardian' in the CP Act, he considered that the information comprised 'personal information relating to a child, a child's guardians or other family members'.

Determination and comment

My predecessor was satisfied that none of the exceptions in section 58(3) applied to allow disclosure of the information. In particular he noted that there had been no authorisation for disclosure of the information. In addition, he considered that there was no authorisation or requirement of law for the divulgence of the information.

[5] *Administrative Arrangements Act 1994* (SA), s 5.
[6] See definitions of 'Chief Executive' and 'Department' in s 6(1); *Children's Protection Regulations 2006* (SA), r 5.

He considered that the reference in section 58(3)(a) to 'the law' is not a reference to the general entitlement to access documents conferred by the FOI Act.

The section 58 secrecy provision is to protect the privacy of children and the child protection process; and not even parents, whether guardians or not, have a prima facie right of access to information falling within the provision.

The section 58 secrecy provision is to protect the privacy of children and the child protection process

Eastern Health Authority Inc

External review of a refusal to release information
Immediate right of access to information

Application for access

The applicants sought access to 'transcripts of all records together with a summary of enforcement action taken' containing information about the applicants' personal affairs. The applicants had made multiple complaints to the Eastern Health Authority Inc (**the Authority**) about wood smoke emissions from neighbouring properties.

The Authority initially determined to refuse access to all documents within the scope of the application, but summarised the actions it had taken in response to the applicants' complaints in a separate letter. As the determination was made by the Authority's principal officer, the applicants were able to proceed directly to external review by my office (that is, without the need for an internal review).

As the determination was made by the Authority's principal officer, the applicants were able to proceed directly to external review…….

The Authority was established under the *Local Government Act 1999* s43 to provide public and environmental health services in a number of council areas. The Authority is therefore an agency for the purposes of the FOI Act

Ombudsman review

On external review, the Authority determined to release various documents to the applicants pursuant to the FOI Act s19(2)(a), which provides that an agency may make a belated determination to give access.

During the course of the external review, the applicants questioned the sufficiency of the Authority's searches to locate documents within the scope of their application. As a result of further enquiries by my office, additional documents were located. Among these were documents about a second property complained of, and electronic records maintained by the Environment Protection Authority to which the Authority has access.

The Authority originally only dealt with documents relevant to one of the two properties the applicants had complained about, because the application was made during the course of correspondence about that property. The application itself was not limited to a specific property, however. When consulted by my office, the applicants confirmed they wanted access to documents relevant to both properties.

The Authority initially took the view that it did not hold the electronic records maintained by the Environment Protection Authority for the purposes of the FOI Act.

Following discussions with my office, the Authority agreed to deal with documents relevant to the second property and the records maintained by the Environment Protection Authority, and determined to release them to the applicants.

Determination and Comments
Having regard to information in the public domain, and information released to the applicants, my predecessor determined to release the contact details of the neighbours complained of. My predecessor accepted that some statements within one of the documents were exempt pursuant to the FOI Act, Schedule 1, clause 6(1) (documents affecting personal affairs).

When processing FOI applications, it is important for agencies to be mindful of the FOI Act s4(4), which provides that '[a]n agency is taken to hold a document if it has an immediate right of access to the document.'

When processing FOI applications, it is important for agencies to be mindful of the FOI Act s4(4), which provides that '[a]n agency is taken to hold a document if it has an immediate right of access to the document.' In this case, although the electronic records were maintained by the Environment Protection Authority, they were readily accessible to staff of the Authority. As a result, my predecessor took the view that the Authority held the records for the purposes of the FOI Act (so too would the Environment Protection Authority).

……agencies may be taken to hold documents held outside their premises …..

It is relevant to note that agencies may be taken to hold documents held outside their premises, (for example documents held by external service providers, such as solicitors and consultants) to which agencies have an immediate right of access.

WorkCover Corporation of South Australia

External review of a refusal to deal with an application for access

Application for access
The applicant, a former employee of Mitsubishi Motors Limited (**Mitsubishi**), sought access to documents relevant to four of his compensation claims. At all relevant times Mitsubishi was a self-insured employer.

Following internal review, the WorkCover Corporation of South Australia (**WorkCover**) refused to deal with the majority of the application for access pursuant to the FOI ACT s18(2a), and claimed not to hold a Scheme Critical List bearing the applicant's name. WorkCover had nevertheless released certain reports to the applicant following its initial determination.

The FOI Act s18(2a) provides that:

> *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.*

WorkCover determined that the FOI application amounted to an abuse of the right of access……

WorkCover determined that the FOI application amounted to an abuse of the right of access *and* was part of an attempt to commence further litigation, rather than to obtain access.

In its notice of determination, WorkCover referred to the extensive history of litigation commenced by the applicant against Mitsubishi and WorkCover's Chief Executive Officer, much of which was unsuccessful.

The applicant denied that his application was an attempt to commence further litigation. He claimed to be trying to ascertain his obligations with respect to Medicare Australia, which was seeking to recover $30,000 from him. He submitted that reports released to him by WorkCover showed that Mitsubishi had not paid him compensation ten years earlier, and as such he should not have to repay Medicare Australia. The applicant further insisted that WorkCover should hold a copy of the list bearing his name.

Ombudsman review
During the course of the review, my office received submissions and supporting documentation from the applicant and WorkCover. For his part, the applicant provided a copy of the list in question.

In addition, consideration was given to a recent decision of the District Court of South Australia about the FOI Act s18(2a), involving a review of a determination made by the Nurses Board of South Australia (**the Board**): *Gabrielsen v Nurses Board of SA* [2008] SADC 51 (unreported, Judge Simpson, 2 May 2008). Her Honour Judge Simpson concluded in that case that an agency need only be:

> *of the (subjective) opinion that the application … was part of a pattern of conduct that amounted to an abuse of the right to access, or was made for a purpose other than to obtain access to information.*[7]

Her Honour noted, however, that an agency must show that the opinion was:

> *reasonably open on the material facts underlying the reasons given for the opinion - that it is not open to criticism on the basis of overlooking relevant material, or taking into account irrelevant or inaccurate factual material or because it was subject to illogicality in reasoning or was capricious or irrational.*[8]

Although her Honour was mindful that 'each case would very much depend on its own facts',[9] she listed various matters that the Board was entitled to have regard to.[10]

Determination and Comments
The FOI Act provides a clear right to access. As such, it is not something to be taken away lightly.

Nevertheless, my predecessor concluded that it was appropriate and reasonable for WorkCover to take into account the applicant's history of litigation, and the apparent connection between the wording of his FOI application and his compensation claims. In addition, my predecessor considered that the number of previous applications, and the similarity between their terms, was relevant. It was apparent that WorkCover had given the applicant access to documents on a number of previous occasions under the FOI Act, or the *Workers Rehabilitation and Compensation Act 1986* s107B.

…. it was appropriate and reasonable for WorkCover to take into account the applicant's history of litigation, and the apparent connection between the wording of his FOI application and his compensation claims.

On balance, my predecessor was not persuaded that the applicant had made his FOI application for the reason he had stated. Rather, he was satisfied that WorkCover had reasonable grounds to form the opinion it had.

Accordingly, pursuant to the FOI Act s39(11) my predecessor confirmed WorkCover's refusal to deal with the majority of the application. In so doing, he conveyed some background information to the applicant about what was recorded on WorkCover's electronic database, noting that WorkCover is not expected to take possession of the relevant claim files from Mitsubishi until 2012.

Finally, my predecessor was satisfied that WorkCover had conducted all *reasonable* searches to locate a Scheme Critical List bearing the applicant's name.

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[7] *Gabrielsen's case* at [21].
[8] *Gabrielsen's case* at [25].
[9] *Gabrielsen's case* at [43].
[10] *Gabrielsen's case* at [41].

Adelaide City Council

Public Interest Considerations - Notices and Orders issued under the Food Act 2001

The applicant ….. sought access to a list of premises 'served with Improvement Notices, Prohibition Orders and Expiations……

Application for access

The applicant, a Member of Parliament, sought access to a list of premises 'served with Improvement Notices, Prohibition Orders and Expiations in accordance with the *Food Act 2001*' (**the Food Act**) and details 'in relation to the [five] most serious transgressions'.

The Adelaide City Council (**the Council**) originally located four documents within the scope of the application. Documents 1 and 3 listed all premises issued with notices and orders, and the resultant penalty. Documents 2 and 4 listed what were, in the Council's view, the five 'worst' premises for each of the financial years, including a brief description of the reasons underlying the issue of the notices and/or orders.

The Council determined to refuse access to all four documents pursuant to the FOI Act, Schedule 1, clause 7(1)(c). It concluded that release of the information would have an adverse effect on the businesses concerned, and would be contrary to the public interest as the information was outdated. Following internal review, the Council confirmed its original determination.

By contrast, the applicant argued that the Council had failed to give sufficient weight to the public interest factors in favour of release:

> *The lack of information on the face of it, suggests there are currently insufficient consequences of transgressing our food health laws. There would be a tremendous motivation on the part of businesses to improve if they stood the risk of being named for breaches of the standards - this would provide the public with much better protection.*

Ombudsman review

In addition to documents 1 to 4, this office was provided with copies of six expiation notices and two prohibition orders served on seven businesses considered to be within the scope of the application.

My predecessor consulted with the seven businesses that were issued with expiation notices and/or prohibition orders (**the interested parties**) under section 39(10) of the FOI Act.

Two of the four responding businesses objected to information about them being released.

Among other things, both of the objecting businesses referred to the time that had elapsed since the Council's inspection and issue of the notice (one specifically pointed to improvements it had made in the interim). One of the businesses claimed that releasing the information may give a 'false and/or misleading impression of the Business and the premises'. The other business claimed that releasing the information may 'mislead and confuse the public' about the state of its kitchen.

The FOI Act, Schedule 1, clause 7(1)(c) provides that a document is an exempt document if it contains matter:

> *(i) consisting of information … 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.*

My predecessor accepted that the documents contained information concerning the businesses' business affairs, and that disclosure of that information could reasonably be expected to have an adverse effect on those affairs (in a financial sense and to their reputation generally). In coming to this view, he noted the comments of Judge Lunn in *Ipex Info Tech v Dept of Info Tech Services* (1997) 192 LSJS 54 at 65:

> *… it is sufficient for s7(1)(c)(ii) if any adverse effect is established by the respondent. However, it must be something which can be properly categorised as an adverse effect and not something so de minibus that it would be properly regarded as inconsequential.*

My predecessor's determination turned on whether disclosure of the information would, on balance, be contrary to the public interest.

Determination and comment

Pursuant to the FOI Act s39(11), my predecessor varied the Council's determination to enable the six expiation notices and two prohibition orders, and parts of documents 1 to 4 to be released.

In reaching this conclusion, my predecessor took the view that there is a public interest in promoting safe and hygienic practices within restaurants, and in diners being able to make informed choices about where they eat, having regard to the public health issues raised in the expiation notices and prohibition orders issued under the Food Act. The objects of the Food Act, which include *inter alia* 'to ensure food for sale is both safe and suitable for human consumption', and the public interest in furthering the objects of the FOI Act, were borne in mind. In addition, it was thought likely that disclosure would facilitate the Council's accountability in discharging its responsibilities under the Food Act and its administration of the legislation.

…..there is a public interest in promoting safe and hygienic practices within restaurants, and in diners being able to make informed choices about where they eat…..

My predecessor rejected claims that release of the expiation notices or the prohibition orders would create a false or misleading impression, as they included the date of, and the reasons underlying, their issue. None of the expiation notices were challenged, nor were the prohibition orders appealed.

My predecessor was mindful of the apparent public interest in food safety issues in South Australia, interstate, and overseas, as reported in the media and accessible via Google.

My predecessor balanced these factors against the adverse effect disclosure may have on the interested parties; the time that had elapsed since the notices and orders were issued and the inspections conducted, and changes that may have been made in the intervening period; and the possibility that the Council may be hampered in its ability to obtain information from businesses (for example, information provided voluntarily). Bearing in mind the powers available under the Food Act, my predecessor was satisfied that the Council would be able to discharge its functions under that Act, notwithstanding his determination.

My predecessor balanced these factors against the adverse effect disclosure may have on the interested parties; the time that had elapsed ….. and the possibility that the Council may be hampered in its ability to obtain information from businesses……..

My predecessor was, however, satisfied that it would, on balance, be contrary to the public interest to release information revealing that improvement notices were issued, or the reasons they were issued, from documents 1 to 4. In reaching this conclusion he had regard to the fact that improvement notices may be issued for many and varied reasons, and do not necessarily reflect any alleged failures on the part of individual businesses.

The Council conceded that the risk to public health at the time that some of the improvement notices were issued was at the lower end of the scale. In addition, there was evidence that at least one of the improvement notices was issued at an unusually busy trading time, and another was issued as a preventative measure.

The apparent intermingling of the reasons underlying the issue of the notices and orders in documents 2 and 4 meant that it was not practicable to provide further partial access to these documents, as envisaged by the FOI Act s20(4).

Department of Health

Public Interest Considerations - Advertising for a New Hospital

Application for access

The applicant, a Member of Parliament, sought access to 'creative concepts prepared for, and final script submitted for, each advertisement as part of the "Marjorie Jackson-Nelson Hospital" advertising campaign'.

The Department of Health (**the Department**) originally located 15 documents. It determined to release five of them in full, and claimed that the remaining ten were exempt pursuant to the FOI Act, Schedule 1, clause 9(1). Following internal review, the Department confirmed its original determination.

Ombudsman review

On external review, my office noted a number of similarities between the documents released to the applicant and those claimed exempt. As a result, further submissions were sought from the Department about its reasons for refusing access. At the time, the Department was reminded that pursuant to section 48 of the FOI Act the onus was on the Department to justify its determination.

....my office noted a number of similarities between the documents released to the applicant and those claimed exempt.

My office received written and oral submissions from, or on behalf of, the Department about the ten documents to which it had previously refused access, along with 22 additional documents. Of the 32 documents under external review, the Department agreed to release 17 in full (14 subject to addition of the word 'rejected'), and most of the information in the remaining 15 documents, subject to addition of the word 'rejected'. It claimed certain information was exempt, however, namely:

- a pictorial representation on document 12, pursuant to the FOI Act, Schedule 1, clause 9(1) (the internal working documents exemption). The Department claimed that certain text included in the pictorial representation was misleading, and was 'wildly speculative and simply a "pitch" by an advertising contractor engaged by the Department to design possible concepts for the communications to the public'. It described the representation as 'mere puffery', which did not form part of the brief to the advertising agency. The idea was rejected. The Department claimed that its release would add absolutely no value to public debate, and would distract everyone from dealing with the real issues.

- a heading on documents 12 to 15, pursuant to the FOI Act, Schedule 1, clauses 16(1)(a)(iv) and 16(1)(a)(v), with 16(1)(b) (clauses relevant to documents concerning operations of agencies; specifically the effective performance by the agency of its functions, and the conduct of industrial relations by an agency). The Department submitted that the heading was speculative, and another example of the advertising contractor's 'creativity'.

  The Department was concerned that despite its rejection, release of the heading would give the public a mistaken impression about its views, which could in turn lead to staff unrest, detrimentally affect its relationship with staff, and disrupt the operations of other hospitals, including services to the public. The Department submitted that release of the heading would be contrary to the public interest, given its inaccuracy, the potential results of release, 'and that it would make no valuable contribution to the public debate'. The Department provided three examples about the effect of similar statements on staff and the public alike, two of which the Department conceded contained errors or omissions.

- a word or number on documents 30 to 37, pursuant to the FOI Act, Schedule 1, clause 9(1). The Department claimed that the word or number was a typographical error, which was misleading, would confuse the public debate, and make no valuable contribution to it.
- three words from a table on documents 27 to 29, and the second question and accompanying table on documents 30 to 37, pursuant to the FOI Act, Schedule 1, clause 9(1). The Department claimed that release of this information would create unreasonable public expectations, could confuse the public debate about the new hospital (given that the concept was rejected), and would make no contribution to the debate. The Department referred to its media experience but, despite a request from my office, did not provide any evidence to support this claim specifically. Nevertheless, my predecessor accepted that the examples provided in support of the Department's claim regarding documents 12 to 15 showed how public statements could be interpreted in a way that was not intended.

Determination and Comments

My predecessor had regard to the contents of the documents; the submissions made the parties; the applicable law (including the 'objects' and 'principles of administration' in the FOI Act ss3 and 3A); the circumstances that existed at the time; and information in the public domain, including information presented by the Department.

.....my predecessor reversed all of the Department's claims of exemption.

Pursuant to the FOI Act s39(11) my predecessor reversed all of the Department's claims of exemption.

Although my predecessor was satisfied that documents 12 and 27 to 37 satisfied the FOI Act, Schedule 1, clause 9(1), on balance he was not persuaded that disclosure of the claimed exempt matter would be contrary to the public interest, as required by the FOI Act, Schedule 1, clause 9(1)(b).

My predecessor noted that the text in pictorial representation on document 12 made it obvious that the document was both outdated and about an event that had not come to pass.

Although documents 30 to 37 included a typographical error, the correct figure appeared in publicly available documents. In addition, document 29 showed a handwritten correction of the error.

Having regard to the contents of documents 27 to 37, and their purpose, my predecessor was not persuaded by the Department's view of how they would be interpreted by members of the public. Further and in any event, the Department's position on the issue was publicly available.

The Department did not persuade my predecessor that disclosure of the last heading on documents 12 to 15 could be reasonably expected to have a *substantial* adverse effect on the effective performance of its functions *or* the conduct of its industrial relations, as required by clause 16(1)(a)(iv) or clause 16(1)(a)(v), respectively. In my predecessor's view, any such risks were nominal given the documents would be clearly marked as having been 'rejected'. Further and in any event, my predecessor was not satisfied that release would, on balance, be contrary to the public interest, as required by clause 16(1)(b). In addition to the word 'rejected' being added to the documents, the Department had publicly released a similar statement in other documents.

In my predecessor's view, the difference between the final text and draft versions, whilst important, was subtle. The examples provided by the Department indicated that problems had arisen as a result of public statements. The Department, however, did not suggest that such statements were qualified in any way, for example by identifying them as rejected ideas.

When assessing the public interest, my predecessor balanced the Department's submissions against the public interest in promoting accountability and public participation within representative government….

When assessing the public interest, my predecessor balanced the Department's submissions against the public interest in promoting accountability and public participation within representative government, as envisaged by the objects of the FOI Act. The applicant was not opposed to the Department marking the documents in issue with the word 'rejected'. In my predecessor's view, this, together with correct, publicly available information, significantly reduced the potential risks claimed by the Department. In addition, my predecessor was mindful of the ongoing public interest in the new hospital (as reported in the media), and the estimated cost of the project. Although advertising is an ancillary cost, my predecessor considered there was a public interest in the fruits of that expense being publicly accessible on this occasion, particularly in light of the ongoing political and public debate, and its potential to become a major issue at the 2010 election.

City of Tea Tree Gully

External review of a refusal to release information
Adverse Comment Following Destruction of Documents

Application for access

The applicant sought access to documents relevant to his previous employment with the City of Tea Tree Gully (**the Council**). The applicant's employment with the Council was terminated in 2008, following an investigation into alleged breaches of the *Occupational Health, Safety and Welfare Act 1986*, as well as the Council's Code of Conduct and Enterprise Agreement.

Ombudsman review

During the course of the external review under the FOI Act the Council provided a number of documents to this office so that the sufficiency of the Council's searches to locate relevant documents could be assessed.

Among those documents was a summary of complaints about the applicant, which had not been released to him (parts of the summary were subsequently released to the applicant). The summary indicated that some of the interviews conducted with staff, including the applicant, had been recorded without their knowledge.

This office requested the recordings for the purposes of the review. Unfortunately, the Council had destroyed them. (Even if the recordings were available, it does not necessarily follow that they would have been released to the applicant under the FOI Act.)

This office requested the recordings for the purposes of the review. Unfortunately, the Council had destroyed them.

The Council used the recordings to write synopses of the interviews and then destroyed them. It did not transcribe the interviews verbatim beforehand.

Included in the Council's response to a provisional view from this office that the recordings had been destroyed contrary to the *State Records Act 1997* (**the State Records Act**), the Council submitted the following:

> *We … would like to assure you that staff did not understand the ramifications of the action of wiping the audio recordings. They acted in what they believed was an appropriate manner and the destruction was certainly not wilful or intentional... It was deemed appropriate at the time that the audio recordings be deleted due to the nature in which they were obtained and the purpose they were used for.*
>
> *Staff will certainly be counselled about their recordkeeping responsibilities under the State Records Act 1997 and we will also be undertaking a review of current practices. The Coordinator, Records Management will be undertaking a communication and awareness program across the City of Tea Tree Gully to ensure all staff understand their responsibilities and the correct procedures to follow, especially when it comes to the destruction of records. We will also continue to liaise with State Records.*

Adverse Comment

Section 39(16) of the FOI Act provides that:

> *In publishing reasons for a determination, a relevant review authority may comment on any unreasonable, frivolous or vexatious conduct by the applicant or the agency.*

In the reasons for my determination, I commented that the Council's destruction of the audio recordings was both contrary to the State Records Act s23 and unreasonable.

….the Council's destruction of the audio recordings was both contrary to the State Records Act s23 and unreasonable.

The State Records Act s23 provides that:

> *[a]n agency must not dispose of official records except in accordance with a determination made by the Manager [of State Records] with the approval of the [State Records] Council.*

In reaching this conclusion I was mindful of the meaning of 'official records' in the State Records Act s3(1) and item 12.29.5 of the *General Disposal Schedule 20 for Local Government Records in South Australia* (third edition). Item 12.29.5 of Schedule 20 provides that '[r]ecords relating to cases where employees are formally disciplined', including 'records relating to internal inquiries and … appeals', are to be retained for a minimum of six years after the employee's separation from the council. The applicant only separated from the Council in 2008. The Council did not suggest to my office that it had the necessary approvals to destroy the recordings.

I accepted that the Council and its employees were not acting in bad faith, but under a misguided assumption that the recordings were no longer relevant.

I accepted that the Council and its employees were not acting in bad faith, but under a misguided assumption that the recordings were no longer relevant. I noted the Council's intention to educate its employees about their obligations under the State Records Act, and to liaise with State Records. I considered this to be an appropriate response by the Council in the circumstances.

This is a timely reminder to agencies and their staff to be mindful of the obligations imposed by the State Records Act.

Freedom of Information • Requests for Reviews Received • 1 July 2008 to 30 June 2009		
Adelaide Hills Council	2	1.2%
Alexandrina Council	3	1.8%
Attorney-General's Department	2	1.2%
Berri Barmera Council	1	0.6%
Booleroo Centre District Hospital & Health Services Inc	1	0.6%
Central Northern Adelaide Health Service	21	12.6%
Chiropractic and Osteopathy Board of South Australia	1	0.6%
City of Adelaide	1	0.6%
City of Burnside	2	1.2%
City of Charles Sturt	4	2.4%
City of Mitcham	3	1.8%
City of Playford	1	0.6%
City of Salisbury	2	1.2%
City of Tea Tree Gully	2	1.2%
City of West Torrens	1	0.6%
Corporation of the City of Unley	1	0.6%
Corporation of the City of Whyalla	3	1.8%
Corporation of the Town of Gawler	3	1.8%
Country Fire Service	1	0.6%
Department for Correctional Services	4	2.4%
Department for Environment and Heritage	3	1.8%
Department for Families and Communities	15	9.0%
Department of Education & Children's Services	19	11.4%
Department of Health	5	3.0%
Department of Primary Industries & Resources	1	0.6%
Department of Transport, Energy and Infrastructure	5	3.0%
Department of Treasury and Finance	3	1.8%
District Council of Mount Barker	1	0.6%
Eastern Health Authority	1	0.6%
Environment Protection Authority	3	1.8%
Flinders University Council	4	2.4%
Gawler Health Service	5	3.0%
Health & Com Services Complaints Commissioner	1	0.6%
Independent Gambling Authority	1	0.6%
Legal Practitioners Conduct Board	2	1.2%
Mid Murray Council	2	1.2%
Minister for Education and Children's Services	1	0.6%
Minister for Environment and Conservation	1	0.6%
Minister for Health	1	0.6%
Motor Accident Commission	1	0.6%
Northern Areas Council	1	0.6%
Nurses Board of SA	1	0.6%
Office of Consumer & Business Affairs	1	0.6%
Optometry Board	1	0.6%
Outside Jurisdiction	1	0.6%
Port Pirie Regional Health Service Inc	1	0.6%
Public Trustee	1	0.6%
Rural City of Murray Bridge	1	0.6%
SA Housing Trust	3	1.8%
SA Tourism Commission	1	0.6%
SA Water Corporation	4	2.4%
Southern Adelaide Health Service	10	6.0%
The Treasurer	1	0.6%
Wakefield Regional Council	1	0.6%
Whyalla Hospital & Health Service	1	0.6%
WorkCover Corporation	4	2.4%
Total	**167**	**100**

Freedom of Information • Reviews Completed • 1 July 2008 to 30 June 2009		
Adelaide Hills Council	2	1.0%
Alexandrina Council	3	1.5%
Attorney-General's Department	2	1.0%
Berri Barmera Council	1	0.5%
Booleroo Centre District Hospital & Health Services Inc	1	0.5%
Central Northern Adelaide Health Service	21	10.8%
Children, Youth & Women's Health Service	2	1.0%
City of Adelaide	1	0.5%
City of Burnside	2	1.0%
City of Charles Sturt	5	2.6%
City of Mitcham	3	1.5%
City of Playford	1	0.5%
City of Salisbury	2	1.0%
City of Tea Tree Gully	2	1.0%
City of West Torrens	1	0.5%
Corporation of the City of Unley	1	0.5%
Corporation of the City of Whyalla	3	1.5%
Corporation of the Town of Gawler	2	1.0%
Country Fire Service	1	0.5%
Department for Correctional Services	4	2.1%
Department for Environment and Heritage	5	2.6%
Department for Families and Communities	15	7.7%
Department of Education & Children's Services	30	15.5%
Department of Health	8	4.1%
Department of Primary Industries & Resources	2	1.0%
Department of the Premier and Cabinet	3	1.5%
Department of Transport, Energy and Infrastructure	8	4.1%
Department of Treasury and Finance	3	1.5%
District Council of Mallala	1	0.5%
District Council of Mount Barker	1	0.5%
Eastern Health Authority	2	1.0%
Environment Protection Authority	4	2.1%
Flinders University Council	4	2.1%
Gawler Health Service	5	2.6%
Health & Com Services Complaints Commissioner	1	0.5%
Legal Practitioners Conduct Board	5	2.6%
Medical Board of SA	1	0.5%
Mid Murray Council	2	1.0%
Minister for Education and Children's Services	1	0.5%
Motor Accident Commission	1	0.5%
Mt Gambier & Districts Health Service Inc	2	1.0%
Northern Areas Council	1	0.5%
Nurses Board of SA	1	0.5%
Office of Consumer & Business Affairs	1	0.5%
Optometry Board	1	0.5%
Port Pirie Regional Health Service Inc	1	0.5%
Public Trustee	1	0.5%
Regional Council of Goyder	1	0.5%
Rural City of Murray Bridge	1	0.5%
SA Housing Trust	3	1.5%
SA Tourism Commission	1	0.5%
SA Water Corporation	3	1.5%
Southern Adelaide Health Service	10	5.2%
Wakefield Regional Council	1	0.5%
Whyalla Hospital & Health Service	1	0.5%
WorkCover Corporation	3	1.5%
Total	**194**	**100**

Freedom of Information • Applications for Reviews Received : Issues • 1 July 2008 to 30 June 2009

	(Other)	Central Northern Adelaide Health Service	Department for Families and Communities	Department of Education and Children's Services	Department of Transport, Energy and Infrastructure	Southern Adelaide Health Service	Total	Percentage
Access to Information	93	20	14	18	5	10	160	95.8%
Amendment of Records	1	1	1	1			4	2.4%
Review of Fees and Charges	1						1	0.6%
Third Party Rights	2						2	1.2%
Total	**97**	**21**	**15**	**19**	**5**	**10**	**167**	**100%**
	58.1%	12.6%	9.0%	11.4%	3.0%	6.0%		

Freedom of Information • Reviews Completed : Outcome • 1 July 2008 to 30 June 2009

	(Other)	Central Northern Adelaide Health Service	Department for Families and Communities	Department of Education & Children's Services	Department of Transport, Energy and Infrastructure	Southern Adelaide Health Service	Total	Percentage
Declined	1						1	0.5%
FOI Advice Given	53	11	8	9	3	8	92	47.4%
FOI Investigation	9	4	2	2			17	8.8%
FOI Review	47	6	5	19	5	2	84	43.3%
Total	**110**	**21**	**15**	**30**	**8**	**10**	**194**	100%
	56.7%	10.8%	7.7%	15.5%	4.1%	5.2%		

Government Departments

Case studies

Department of Transport Energy and Infrastructure (DTEI)

Complaint summary
The complainant claimed that he had been unreasonably treated by staff at the Netley division of DTEI when he attempted to lodge his application to renew his heavy vehicle licence.

Ombudsman Investigation
On 15 December 2008 the complainant attended the Netley Accreditation and Licensing Centre (ALC) with an application for the renewal of his heavy vehicle licence.

The complainant was informed by a staff member that the information he provided was insufficient as he had filled out his medical details on the incorrect medical form. He had received this form from DTEI in the mail. When the complainant was informed of this fact he became aggressive and threatened front counter staff.

The complainant was informed by a staff member that the information he provided was insufficient as he had filled out his medical details on the incorrect medical form. He had received this form from DTEI in the mail.

As a result of the complainant's outburst, front counter staff did not progress the complainant's application. The complainant returned to the Netley office the next day and apologised to the front counter staff for his unacceptable behaviour the previous day. The complainant's application was not able to be processed at that time as he did not have the required identification paperwork. The complainant subsequently returned the following day with all the appropriate documentation. At that time he was also asked to meet with the manager of the office who informed him that, as he had threatened the front counter staff, his application was referred to the Passenger Transport Committee for its consideration.

System records indicated that there was no automatic postage of forms to the complainant from the ALC office. However, it was deemed possible that the incorrect medical form was provided to the complainant by another area of government.

Outcome and opinion
When all the circumstances of the matter were considered, I was of the opinion that the actions of ALC staff (post the complainant's outburst) could be interpreted as retributive as:

1. the complainant's apology for his inappropriate outburst was not acknowledged or considered before his application had been forwarded to the Passenger Standards Transport Committee for consideration.
2. ALC staff chose not to examine the complainant's documentation in its entirety in the first instance. This escalated the situation rather than attempting to defuse it. The complainant had a letter from his physician stating that he was medically fit to drive a public vehicle in addition to the fact that he been forwarded the incorrect medical form to fill out.

I reminded the ALC staff of the value of offering customers helpful service delivery when presented with emotionally charged situations

In light of the above and as a similar issue had been brought to my attention prior to this matter regarding how staff at the Netley office processed another application, I reminded the ALC staff of the value of offering customers helpful service delivery when presented with emotionally charged situations.

Families SA (Department of Families and Communities)

Unlawful disclosure of personal affairs under the FOI Act

Complaint summary

The complainant's son ('X') and his partner ('Y') had a child together. The relationship soured acrimoniously. Serious allegations (including threats of violence and threats to life) were levelled by X against Y. As a result, X and his parents obtained silent phone numbers, X moved residence, and a restraining order was served on Y. Allegations of breaches of the restraining order by Y ensued.

At the time the complaint was made, X had custody of the child. Families SA however had been involved for several years, and possessed significant amounts of information about X, Y, the child, and various family members (including X's parents).

It was alleged to my office that, as a result of an application made under the FOI Act, Y had been given access to the silent telephone numbers of X and his parents, and to X's new address ('the contact details'). As a result of Y being provided with the contact details, the unwanted attention from Y resumed. Notably, after the complaint had been made to my office, an allegation of home-invasion and attempted assault was made by X against Y.

…..Y had been given access to the silent telephone numbers of X and his parents, and to X's new address

Ombudsman investigation

According to the complainant, Y had advised them that she obtained the contact details under the FOI Act. My office subsequently obtained the numerous files that Families SA held regarding X and Y, including copies of the documents that had been released to Y.

It was apparent from the files that any departmental officer reading them (with a view to making a determination under the FOI Act) would quickly come to realise the history of the matter, including the history of the alleged behaviour of Y towards X, the restraining order, X's relocation and the fact that X and his parents saw fit to obtain silent telephone numbers to escape the attention of Y. In fact, the silent telephone numbers were obtained at the suggestion of Families SA.

It was also clear that any reasonable FOI officer should have realised that the new contact details should not have been released to Y. Indeed, the contact details *were* in fact deleted from some of the documents released to Y. Unfortunately, as was evident from the file, the new contact details remained on other documents released to Y.

…..the contact details were in fact deleted from some of the documents …. Unfortunately, …. the new contact details remained on other documents released to Y.

Outcome and Opinion

My predecessor accepted that the release of the contact details to Y was inadvertent, and that a lesson in diligence had been learned. Nevertheless, the lesson came at a cost.

Prior to issuing the formal report, my office convened a meeting between X, his parents and the department officer who was responsible for the determination to release the information to Y. X and his parents were able to articulate the unfortunate affect the determination had had on their lives. In return, they were given what was considered to be a sincere personal apology. Effective recommendations were also discussed. Whilst not necessarily appropriate in all such matters, the meeting in this one proved to be of value.

In his final report to the Chief Executive Officer under the *Ombudsman Act* s25 my predecessor expressed the opinions that, in the circumstances of the matter:

- the contact details amounted to information concerning the *personal affairs* of X and his parents for the purposes of the FOI Act s26, and that the release of the information without prior consultation with X and his parents was contrary to law under the *Ombudsman Act 1972* s25(1)(a); and
- the contact details amounted to *personal information* within the meaning of the *Children's Protection Act 1993* s58, and that the release of the information was contrary to law under the *Ombudsman Act 1972* s25(1)(a).

My predecessor added that, as the Families SA officers involved acted inadvertently, they are protected from liability for the breach of the *Children's Protection Act* s58 by the FOI Act s52.

….as the Families SA officers involved acted inadvertently, they are protected from liability for the breach of the Children's Protection Act s58 by the FOI Act s52.

Under the *Ombudsman Act* s25(2), it was recommended that:

- the department take all reasonable steps to relocate X, paying the incidental costs of the relocation;
- X and his parents receive written apologies; and that
- amongst other minor procedural matters, the FOI section of Families SA internally discuss the importance of diligently perusing files prior to the making of determinations under the FOI Act.

I was subsequently advised by the Chief Executive Officer of the Department of Families and Communities that she had undertaken to ensure my recommendations were acted upon and implemented.

Department of Transport Energy and Infrastructure (DTEI)

Unreasonable refusal to provide refund

Complaint summary

The complainant has a vehicle he uses solely for a primary production purpose. He initially registered this vehicle approximately 16 years ago. In 1997 the complainant applied for a concession to reduce his third party bodily insurance component. This was not correctly recorded on the system despite his eligibility. Recently the agency identified that he was paying the incorrect insurance for this vehicle's registration. Therefore the complainant believed that the agency should refund the overpaid monies. He made several attempts to organise this himself by phoning and emailing the agency but was not successful.

……the complainant applied for a concession to reduce his third party bodily insurance component. This was not correctly recorded on the system despite his eligibility.

Ombudsman Investigation

My office contacted the agency and was advised that due to an updated computer system being installed, a number of these cases had been discovered. Apparently the new system has a superior code cross checking capacity that recognises these types of anomalies. As a consequence there have been a number of similar cases discovered. Currently there are two agency officers attending to these matters.

The agency acknowledged that this complainant made several attempts to address the matter with the agency himself and they could not explain why he was not referred to the appropriate staff. To fully resolve the issue the agency agreed to send a letter of apology to him and also provide him with a cheque for $1624 being the amount he overpaid for the period 20 March 1997 to 4 December 2007.

To fully resolve the issue the agency agreed to send a letter of apology to him and also provide him with a cheque…..

Outcome and opinion
I was of the opinion that had this complainant been correctly redirected in the first instance, the matter would have been quickly remedied. The agency recognised that this was where the real administrative error lay (in addition to the incorrect processing of the original concession application) and reminded staff with similar queries that they must be referred to the appropriate staff.

Department of Transport Energy and Infrastructure (DTEI)

Incorrect management of records

Complaint summary
The complainant bought a car which was registered in this state and he presumed that the vehicle was in all respects "lawful". Upon further investigation he discovered the car did not have a compliance plate and when he raised this with his insurance company they referred him to the Department. When the complainant contacted the Department it was explained to him that he would need to have the car inspected to ensure it met all lawful requirements and when that was achieved he would be issued with a certificate and sticker as proof of the process being successfully conducted. This certification is in lieu of a compliance plate.

The complainant questioned Departmental staff as to why this was his responsibility, given the car was currently registered in this state. He was also concerned that either the Department or possibly the police had erred in allowing the car to be incorrectly registered when it should have been identified at the time of registration that the car had no compliance plate. The previous owner would then have then been responsible for organising and paying for the standards check.

…. either the Department or possibly the police had erred in allowing the car to be incorrectly registered …..

Ombudsman Investigation
The investigative process established that the error actually occurred within the Department and not the police. The original owner of the vehicle owned the car for over 12 months in another state and therefore all he was required to do was complete an application form to transfer over the registration to this state. He did so on 22 May 2006.

When this application was made he correctly advised the Department that the car had no compliance plate. The *Road Traffic Act 1961* s 110B(1) states that a vehicle must bear an identification plate. At that time the Department should have refused the registration until the car was assessed and met required standards. This was clearly overlooked and had it been correctly identified then the onus would have fallen onto the previous owner and not the current owner (the complainant).

The Department acknowledged the error and that the complainant was now being inconvenienced. It was agreed by the agency that an appropriate remedy would be for it to still assess the car as the law requires, but that the complainant would not be charged for this. The Department regularly visits country locations and would within a short time span assess the car and process the certification. A letter explaining this was sent to the complainant and the Department was happy to deal with his insurer should there be any interim concerns pending the certification being granted. It should also be noted that the vehicle's registration was not suspended pending this process being completed.

The Department acknowledged the error …..(and) agreed that an appropriate remedy would be for it to still assess the car as the law requires, but that the complainant would not be charged for this.

Outcome and opinion
The Department upon contact from my office identified that the error was created by its own staff. So as to not create further hardship for the complainant, an offer to assess the car free of charge and to provide advice on the matter to other concerned parties was an acceptable remedy.

Department for Correctional Services

Unreasonable interception of correspondence

Complaint summary
The complainant was a prisoner at Mount Gambier Prison. His partner and co-offender was in the Adelaide Women's Prison. They regularly corresponded but the letters sent by the complainant started to be intercepted and then withdrawn from the recipient. The complainant believed his partner was issued with a notice which advised her that the letters would not be provided to her as they were in a foreign language, and this was against prison regulations. The complainant accepted and understood the concerns of the Department and proceeded to write only in English, but he still thought his letters were not being received.

Ombudsman investigation
The investigative process necessitated contacting the intelligence officer at the Adelaide Women's Prison. She advised that concerns had been raised relating to the content of the letters and the fact that they appeared to be written both in English and a "kind of code". A notice was served under the *Correctional Services Act 1982* ss 33 (3)(i) and (10)(a)(ii) to the female prisoner and since then all future correspondence checks showed no other problems with the communications. In total only three letters were withdrawn and placed directly into the female prisoner's property.

….. only three letters were withdrawn by the agency, and the basis for this action was both reasonable and procedurally correct.

Outcome and opinion
My office was able to confirm that only three letters were withdrawn by the agency, and the basis for this action was both reasonable and procedurally correct.

Department for Correctional Services

Failure to properly manage proceedings against prisoner

Complaint summary

The complainant alleged that a charge had been brought against him under the *Correctional Services Regulations 2001* (the Regulations) outside the statutory period. He alleged that the proceedings were being held over him should the police or DPP not take proceedings in the courts.

The complainant alleged that …. the proceedings were being held over him should the police or DPP not take proceedings in the courts.

Ombudsman investigation

The preliminary investigation involved seeking a response from the agency to the complainant's allegations. As a result of information provided the investigation was initially discontinued. However, further material provided by the complainant resulted in the matter being reopened as a full investigation. A meeting ensued with key agency staff.

Outcome and opinion

There was evidence to support the complainant's allegations against the agency. The complainant was charged with an offence under the Regulations relating to an incident at the Port Augusta Prison which resulted in the complainant and other prisoners being transferred to Yatala Labour Prison. The charge was brought outside the 8 week statutory period.

There was evidence to support the complainant's allegations against the agency.

There was a breakdown in the internal communications within the agency that resulted in the proceedings being issued and served on the complainant. Furthermore, this also resulted in wrong information being provided to my office during the preliminary investigation phase. When the agency became aware that the proceedings had been wrongly issued, there was no attempt to withdraw the charge until my office raised it with the agency. The agency then withdrew the charge.

When the agency became aware that the proceedings had been wrongly issued, there was no attempt to withdraw the charge until my office raised it .

The Chief Executive of the agency apologised for the wrong information provided to my office. Furthermore, he accepted that there was a failure by the agency to properly respond to the issue once it had become aware of it. The agency gave an undertaking to conduct a comprehensive review of systems and policies relating to prisoner behaviour management and the exercise of delegated authority. Advice would also be sought from the Crown Solicitor in relation to possible abuse of process claims in relation to this matter.

Department for Correctional Services

Failure to follow proper procedure

The prisoner complained that he was not provided with a copy of the urinalysis test results and that this was the first he knew of the positive result.

Complaint summary

I received a complaint from a prisoner concerning the procedure regarding the manner in which positive urine results are managed. The prisoner informed me that he was on his way to a contact visit when he was informed by an officer of the prison that he returned a positive urinalysis and was therefore to be placed on 30 day non-contact visits. The prisoner complained that he was not provided with a copy of the urinalysis test results and that this was the first he knew of the positive result.

Ombudsman Investigation

My predecessor contacted the relevant prison about the prisoner's concerns. The prison confirmed that the prisoner had provided a positive result to a drug test, and had received a regime restriction resulting in 30 days non contact visits. This restriction complied with the prison's guidelines for regime restrictions/changes for positive urine tests established in accordance with the *Correctional Services Act 1982* s24(2)(b).

The prison also informed my predecessor that all drug testing is conducted in accordance with its Standard Operating Procedure *SOP008A - Drug Testing, Sampling of Prisoners.* It was noted that a requirement of the SOP provides that prisoners *'must be provided with a copy of the laboratory test result'*.

Whilst, in this particular case the SOP was followed in conducting the drug test, the prison acknowledged that it did not provide the prisoner with a copy of the results and in doing so did not follow the SOP.

As a result of this complaint, the prison undertook to review its processes to ensure that prisoners subjected to the drug testing process are provided with a copy of the results. The prison has also undertaken to provide further staff training, particularly for those officers responsible for managing the issue of positive urine results.

….. the prison identified a deficiency in its procedure and took appropriate action to implement additional processes to eliminate the possibility of a similar occurrence in the future.

Outcome and opinion

Having regard to the circumstances of the matter, it was my opinion that further investigation of this matter was neither warranted nor justifiable in accordance with the *Ombudsman Act 1972* s17(2)(d).

This is because the prison identified a deficiency in its procedure and took appropriate action to implement additional processes to eliminate the possibility of a similar occurrence in the future. Accordingly the matter was closed.

Primary Industries and Resources South Australia

Unreasonable process regarding implementation of cost recovery process for the Aquatic sector.

Complaint summary

A number of complaints were received from aquaculture growers at new fees levied on their industry, which saw some growers' fees increase substantially.

Ombudsman investigation

My office made preliminary enquiries as to the process applied and the how the decision was made. The decision to adopt the new fees was one that was made by the Governor, with the advice and consent of Executive Council in the form of a regulation.

The decision to adopt the new fees was one that was made by the Governor, with the advice and consent of Executive Council in the form of a regulation.

Outcome and opinion

The *Ombudsman Act 1972* only empowers this Office to investigate administrative acts of government agencies. It is the passing of a regulation which was the cause of the concerns or complaints raised in this matter. In my predecessor's opinion, the act involved in this matter was 'legislative' and not administrative. Further neither the Governor nor Executive Council is an agency pursuant to the *Ombudsman Act 1972*. Accordingly, my predecessor did not have jurisdiction to investigate this complaint.

…. my predecessor did not have jurisdiction to investigate this complaint

Whilst my predecessor was unable to investigate the complaint, there was a process available to seek to have the regulation revoked, for which the complainants were advised to seek independent legal advice or to consult their local Member of Parliament.

Department of Education and Children's Services (DECS)

Unreasonable requirement for grandson to wear uniform

Complaint summary

The complainant has a grandson attending a state high school. He had been advised by the school principal that the child must wear a school shirt when outside on breaks and also on excursions. The complainant questioned the school's authority in making this request. He is of the view that uniforms are not desirable nor should they be made compulsory in any situation.

The complainant …. had been advised by the school principal that the child must wear a school shirt when outside on breaks …..

Ombudsman investigation

The investigation into this matter relied on information provided by the principal, school records (although some records were lost in a fire) and the *Education Regulations 1997, Regulation 77*. The regulations prescribe that schools, in consultation with its community, can determine a uniform or dress code for a school. There are provisions for applying for an exemption. The complainant did this but his application was refused. The school principal argued that the shirts were necessary for the safety and security of students and staff. When the children were in the school yard, or on an excursion, school staff need to be able to readily identify their students, and other persons who should not be present.

There are provisions for applying for an exemption …. but his application was refused.

My predecessor did not think the decision unreasonable.

Outcome and opinion
My predecessor did not think the decision unreasonable. Given the fact that the child in question is provided with a school top by the school (at no expense) and his access to education is not affected, there was no reason to question the school's management of the situation.

Department for Environment and Heritage

Unreasonable valuation determination made for the sale of Crown Land

Complaint summary
The complainant disputed the valuation upon which the agency relied to determine the selling price of the Crown Land that had been leased to him for some years. Following receipt of the advice of the selling price, the complainant obtained a private valuation which provided a significantly lower valuation than that provided by the Office of the Valuer-General, and he sought to have the selling price reviewed.

The complainant disputed the valuation upon which the agency relied to determine the selling price of the Crown Land……

Ombudsman investigation
My office obtained details of the agency's actions and its records in this matter. An investigating officer also held discussions with the Valuer-General's officer who conducted the valuation, about the methodology applied in determining the valuation, and assessing the complainant's valuer's valuation.

The Valuer-General's officer advised that following discussions with the complainant's valuer, he was not convinced to alter the valuation and that the purchase price remained unchanged.

Outcome and opinion
It is a fundamental principal of public administration that the Crown must act consistently with its lawful obligations and take all necessary steps to protect its assets and the revenue. This includes matters associated with the sale of Crown Land. To ensure that the determined value is independent of the agency concerned, the Department of Premier and Cabinet has developed a policy on the purchase and disposal of Government Real Property, including Crown Land. This policy sets out that the selling price of Government Real Property, including Crown Land must be determined by the Valuer-General.

…. the Crown must act consistently with its lawful obligations and take all necessary steps to protect its assets and the revenue.

On the information provided, the agency has complied with the Department of Premier and Cabinet Policy in the determination of the selling price.

My office does not have the function of determining valuations. However, based on the information provided by the Valuer-General's officer, it is clear he gave consideration to the valuation provided by the complainant's valuer and also to a discussion he had with the complainant's valuer. However, he was not persuaded to alter his valuation.

On the information provided, I considered that further investigation of this matter was neither necessary nor justifiable within the meaning of the *Ombudsman Act 1972* s17(2)(d).

Nevertheless, in the spirit of conciliation, the agency agreed to allow the complainant's valuer to meet with the staff of the Office of the Valuer-General to discuss the valuation. The meeting did not result in any change to the agency's decision.

Government Departments • Complaints Received • 1 July 2008 to 30 June 2009		
Attorney-General's Department	5	0.4%
Department for Correctional Services	473	41.2%
Department for Environment and Heritage	11	1.0%
Department for Families and Communities	29	2.5%
Department of Education & Children's Services	60	5.2%
Department of Health	2	0.2%
Department of Primary Industries & Resources	12	1.0%
Department of the Premier and Cabinet	7	0.6%
Department of Trade and Economic Development	1	0.1%
Department of Transport, Energy and Infrastructure	172	15.0%
Department of Treasury and Finance	45	3.9%
Dept of Further Education, Employment, Science & Technology	13	1.1%
Dept of Water, Land & Biodiversity Conservation	6	0.5%
Environment Protection Authority	10	0.9%
SA Housing Trust	210	18.3%
SA Water Corporation	92	8.0%
Total	**1148**	**100%**

Government Departments • Complaints Received : Issues • 1 July 2008 to 30 June 2009

	(Other)	Department for Correctional Services	Department of Education and Children's Services	Department of Transport, Energy and Infrastructure	SA Housing Trust	SA Water Corporation	Total	Percentage
Access to educational services		1	3				4	0.3%
Access to Information	2	1					3	0.3%
Administration	34	12	17	58	21	13	155	13.5%
Administrative practices/policies	48	19	20	85	21	17	210	18.3%
Approvals (permits/licences,/registrations)	2			10			12	1.0%
Case Review		3					3	0.3%
Citizens' Rights	2				1		3	0.3%
Communication		1			1	1	3	0.3%
Conduct			6				6	0.5%
Daily routine		144					144	12.5%
Discipline		6	1				7	0.6%
Double up cells		14					14	1.2%
Duty of care	2	3	4	3	1		13	1.1%
Fees/charges/levies	16		2	1	2	23	44	3.8%
Financial assistance	1		1				2	0.2%
Financial issues	22	4	5	6	8	24	69	6.0%
Health	1	2					3	0.3%
Home Detention		9					9	0.8%
Housing					150		150	13.1%
Leave		5					5	0.4%
Mail		6					6	0.5%
Officer misconduct	1	12	1	3	2	1	20	1.7%
Ordinances, Regulations, By-laws	1						1	0.1%
Other		44		1	2		47	4.1%
Property		97					97	8.4%
Punishment		18					18	1.6%
Rates and charges	9			1	1	12	23	2.0%
Record keeping		4					4	0.3%
Review of Fees and Charges		1					1	0.1%
Roads				2			2	0.2%
Security		3					3	0.3%
Services		1				1	2	0.2%
Transfers		37					37	3.2%
Trees				1			1	0.1%
Visits		6					6	0.5%
Work and education		20					20	1.7%
Workers Compensation				1			1	0.1%
Total	**141**	**473**	**60**	**172**	**210**	**92**	**1148**	**100%**
	12.3%	41.2%	5.2%	15.0%	18.3%	8.0%		

Government Departments • Complaints Completed • 1 July 2008 to 30 June 2009		
Attorney-General's Department	5	0.4%
Department for Correctional Services	479	41.4%
Department for Environment and Heritage	10	0.9%
Department for Families and Communities	29	2.5%
Department of Education & Children's Services	65	5.6%
Department of Health	3	0.3%
Department of Primary Industries & Resources	11	1.0%
Department of the Premier and Cabinet	7	0.6%
Department of Trade and Economic Development	1	0.1%
Department of Transport, Energy and Infrastructure	171	14.8%
Department of Treasury and Finance	43	3.7%
Department of Further Education, Employment, Science & Technology	13	1.1%
Department of Water, Land & Biodiversity Conservation	7	0.6%
Environment Protection Authority	9	0.8%
SA Housing Trust	210	18.2%
SA Water Corporation	93	8.0%
Total	**1156**	**100%**

Government Departments • Complaints Completed : Outcome • 1 July 2008 to 30 June 2009								
	(Other)	Department for Correctional Services	Department of Education & Children's Services	Department of Transport, Energy and Infrastructure	SA Housing Trust	SA Water Corporation	Total	Percentage
Advice Given	73	163	35	89	108	57	525	45.4%
Declined	13	11	5	7	13	1	50	4.3%
Full Investigation	1	3		2			6	0.5%
Outside of Jurisdiction	1	2	1	3		2	9	0.8%
Preliminary Investigation	46	297	23	62	85	32	545	47.1%
Withdrawn	4	3	1	8	4	1	21	1.8%
Total	**138**	**479**	**65**	**171**	**210**	**93**	**1156**	**100%**
	11.9%	41.4%	5.6%	14.8%	18.2%	8.0%	100%	

Local Government

Case studies

City of Holdfast Bay

Seizure of alcohol in dry zone by security personnel

Complaint summary

On New Years Eve 2008 the complainant went to Glenelg to watch the fireworks. Her intention afterwards was to go to a friend's party nearby, and for this purpose she was carrying a six pack of alco-pops. The alcohol was unopened.

The complaint relates to what occurred within the dry zone. The complainant stated that she alighted from a bus and was met by two security officers. She admitted to having alcohol in her bag, and explained it was for a friend's party afterwards. When told by the security officers that the alcohol had to be confiscated, she asked if she could reboard the bus and leave with the alcohol. The complainant asserted that the security officers refused her request, and she felt that she had no options: the alcohol was going to be taken from her. She did not know what happened to the alcohol, and stated that no police were present at any stage.

The investigation of the complaint concerned …. how the dry zone was being enforced.

Ombudsman Investigation

The investigation of the complaint concerned not whether the complainant was committing an offence, but with how the dry zone was being enforced. The security officers were employed by the City of Holdfast Bay ('the Council'), and therefore had no further powers than did officers of the Council. The complainant was of the view that she had no options with respect to the alcohol: it was going to be taken from her. My predecessor accepted her version of events and was of the view that the alcohol was essentially seized from her. Neither Council officers nor the Council's contracted security officers are police officers, and did not have lawful authority to seize the complainant's alcohol, even if she was committing an offence at the time. Accordingly, my predecessor concluded that the complainant's alcohol was unlawfully seized from her by agents of the Council.

Neither Council officers nor the Council's contracted security officers are police officers, and did not have lawful authority to seize the complainant's alcohol….

Outcome and opinion

The Council accepted my predecessor's conclusions and agreed to implement his recommendations, which proposed better instruction for security officers operating in such situations.

The Council accepted my predecessor's conclusions and agreed to implement his recommendations.

The instructions will detail their duties and importantly, the level of authority they have in the performance of their employment. I accept this extra measure as a suitable and reasonable remedy to ensure this situation does not arise at future festivities.

Alexandrina Council

Misleading information resulting in financial loss

The complainants alleged that the Council failed to properly consider a request for advice in relation to proposed development options…..

Complaint summary

The complainants alleged that the Council failed to properly consider a request for advice in relation to proposed development options for a parcel of land. The complainants alleged that as a result of the advice given by the Council, they incurred significant costs in pursuing a development application that was never going to satisfy the Council's Development Plan and obtain approval from the DAP.

Ombudsman Investigation

The investigation involved seeking a response from the Council to the complainant's allegations. There was an exchange of correspondence with the Council which included discussing its role in giving advice and the Ombudsman's role in investigating certain aspects of the complaint. There was a subsequent meeting with the Chief Executive Officer and members of the planning section, the complainants and their architect.

There was evidence to support the complainants' allegations. The Council gave an undertaking to amend its procedures…….

Outcome and opinion

There was evidence to support the complainants' allegations. The Council gave an undertaking to amend its procedures and to add a disclaimer to its correspondence in relation to such matters. Although the Council maintained that there would be problems with the development application satisfying the Development Plan, the complainants continued with their application on the advice of their architect. Ultimately the complainants obtained approval for the development.

District Council of Mallala

Failure to provide an easement or right of way

In 1966 the Council facilitated the closure of a road to a property, effectively land locking a parcel of land.

Complaint summary

In 1966 the Council facilitated the closure of a road to a property, effectively land locking a parcel of land. All subsequent attempts by the current property owner failed to elicit action on the part of the Council to create an easement.

Ombudsman Investigation

The investigation involved seeking a response from the Council to the complainant's allegations. This included legal advice to the agency. Historical records relating to the road closure were also obtained.

There was no clear evidence to explain why the road was closed ….

The Council's opinion was that the current complaint arose from a family dispute that it should not get involved in. There was no clear evidence to explain why the road was closed by the agency in 1966. It would have been obvious to the Council and the owners of the relevant parcels of land that one parcel would be landlocked as a direct result of the road closure. The relevant land parcels remained in the family but are owned by different family members. The complainant sought to purchase a strip of land from the adjoining property in order to create a right of way but this was refused by the owner. The *Roads (Opening and Closing) Act 1991* and the *Local Government Act 1999* empower local councils in relation to the operation of roads.

Outcome and opinion

In my opinion the Council should have considered exercising its power under the *Roads (Opening and Closing) Act* to facilitate access to and egress from the complainant's property. The creation of a land locked parcel of land following the action of the Council was untenable.

The creation of a land locked parcel of land following the action of the Council was untenable…… there was a successful outcome negotiated……

I recommended that the Council should enter into discussions with the various parties to resolve this issue. Should a satisfactory outcome not be negotiated, the Council should consider exercising its statutory powers to resolve the impasse.

It transpired that there was a successful outcome negotiated and a road process (opening) commenced. The complainant undertook to pay the costs of the road process up to the amount of $6500.

City of Burnside

Failure to properly manage a complaint

Complaint summary

The complainant alleged impropriety by a member of staff in giving misleading information to him about a proposed development. The complainant alleged that he incurred significant costs in pursuing a development application that was never going to satisfy the Council's Development Plan and obtain approval from the DAP. The Council failed to adequately respond to the complaint.

The complainant alleged impropriety by a member of staff in giving misleading information to him ….

Ombudsman Investigation

The investigation involved seeking a response from the Council to the complainant's allegations. Documentary material was provided by the Council and there was a subsequent interview with the Chief Executive Officer. As the officer the subject of the complaint had left the employ of the Council it was necessary to interview him separately. Other staff members who were required to implement the Chief Executive's decision to conduct an internal investigation were also interviewed.

Outcome and opinion

There was no evidence to support the complainant's allegation …(although)….. the Council had an opportunity to investigate the veracity of the complainant's allegations but failed to do so.

There was no evidence to support the complainant's allegations against the Council officer. The complainant contributed to his predicament by not exercising due diligence when developing his application. His financial loss could not be attributed to the actions of the agency in the planning process.

Prior to the matter being brought to my office the Council had an opportunity to investigate the veracity of the complainant's allegations but failed to do so. Although the Chief Executive Officer requested an internal investigation no one in authority conducted the investigation. The Council's failure was contributed to by staff movement and resignations (including the staff member the subject of the complaint). However, the significant contributor was the lack of internal control within the Council to ensure that the investigation was carried out.

….. the Council stated that it would put in place a "follow up" system to better manage its complaints.

Despite stating in a letter to the complainant that there would be an investigation, the Council failed to inform the complainant of its failure to conduct the investigation until the intervention by my office. On receipt of my report the Council stated that it would put in place a "follow up" system to better manage its complaints.

City of Port Adelaide Enfield

Failure to properly manage a complaint

Complaint summary

The complainant alleged that the Council has failed to deal with a long-standing complaint regarding the development of a retaining wall and fence by his next door neighbour, on the boundary between their properties. It alleged that the development of the retaining wall and fence was proceeding without consent and that some aspects of its construction were unsafe.

The complainant alleged that ….. the development of the retaining wall and fence was proceeding without consent and that some aspects of its construction were unsafe.

Ombudsman Investigation

The complaint indicated that the matter had been the subject of an appeal to the Environment, Resources and Development (ERD) Court. My predecessor sought and obtained a report from the Council regarding the actions it had taken to monitor the development to ensure its compliance with the order of the ERD Court, and other relevant documentation. The Council responded that:

- It had considered five Development Applications relating to this development.
- In response to the complainant's appeal against the Council's decision on the second Development Application, the ERD Court issued an order.
- As required by the ERD Court order, the complainant's neighbour demolished and re-built the retaining wall and fence.
- Following further complaints regarding details of the construction of the retaining wall and fence, the Council inspected and required the neighbour to remove and relocate parts of the construction a second time.
- To reflect the amended retaining wall and fence details, as built, the Council required an amended Development Application. Council then issued the final Development Approval.
- The Council had then responded in writing to the complainant.

As the Council's response did not satisfy my predecessor that it had taken all necessary steps to ensure that the fence and retaining wall had been re-built in accordance with the ERD Court order, he sought additional information. He also asked for a copy of legal advice provided to the Council concerning the issuing of an amended development approval for structural details.

The Council responded with further information, including the legal advice, as requested.

Outcome and opinion

My predecessor advised the complainant that he was aware that part of the initial complaint had been the subject of an appeal to the ERD Court, and that he was not empowered to investigate matters referred to a court.

My predecessor …. was not empowered to investigate matters referred to a court…. (and) ….. he was satisfied that the Council had taken all necessary steps to ensure that the fence and retaining wall were built in accordance with the ERD Court order.

My predecessor further advised the complainant that, based on all of the information provided, he was satisfied that the Council had taken all necessary steps to ensure that the fence and retaining wall were built in accordance with the ERD Court order.

My predecessor also noted that the final position of the footings for the retaining wall had been adjusted, as directed by a Council officer seeking to satisfy the complainant's concerns regarding encroachment. The Council then required the submission of a further variation application to ensure that the Development Approval reflected the exact location of the retaining wall and fence, as re-built.

On the information provided, my predecessor's opinion was that the Council had not acted unlawfully, unreasonably or wrongly. He also considered that further investigation of the matter was neither necessary nor justifiable within the meaning of f the *Ombudsman Act 1972* s17(2)(d).

A point of interest in this complaint was the complainant's interpretation of the ERD Court's order which said, inter alia, that *"the applicant shall ensure that …. no part of the structure herein approved, encroaches on the property boundary."*

The complainant believed that this requirement included the footings below ground level. He persuaded one of the Council's Development Officers of this interpretation, resulting in the relocation of excavations for the retaining wall footings. A second Council Development Officer then raised two concerns:

- that the retaining wall, in its final location, did not comply with the current Development Approval, requiring the Council to issue a fifth Development Approval
- the face of the retaining wall was now 165 mm from the boundary, so that it did not comply with the Building Code which requires a structure to be on the boundary or at least 600 millimetres from the boundary.

The Council decided to place a note on the final Development Approval to deal with risks that may result from this discrepancy.

The Council later advised the complainant that it is common practice to approve retaining walls with the face on the boundary and footings encroaching into a neighbour's property below ground level.

City of Marion

Neighbour's development not properly categorized, and therefore subsequent decisions about the development were incorrect

Complaint summary

The complainants were neighbours to a development in Glengowrie. They complained that this development was not correctly categorized, and its categorization as 'row developments' or as 'Category 1' development was wrong. Consequently, subsequent decisions regarding the development were incorrect such as swimming pool, side boundary walls, garages and carports, floor area ration, side and rear setbacks, site area and dimensions.

The complainants …… complained that this development was not correctly categorized….

Ombudsman investigation

My predecessor reviewed documentation, contacted the City of Marion and spoke to its representatives. He also obtained legal advice about the issue.

Outcome and opinion

The legal advice concluded that the dwellings, including the swimming pool, the land division and others were correctly classified and processed as 'Category 1' developments. The decision to grant consent to the development was correctly exercised within the limits of the *Development Act 1993* s35(2).

…. legal advice concluded that the dwellings, …. were correctly classified….

Under the above circumstances further investigation was not justified as the agency had not acted unlawfully, unreasonably or wrongly.

The agency informed my predecessor that it has taken legal action against the owner of the development in the Environmental Resources and Development Court for erecting an illegal development in the form of an 'outbuilding at the rear of the pool and an enclosure of the pool'.

City of Unley

Unreasonable refusal to renew lease

Complaint summary

The complainant had been a tenant of premises that were leased to him by the Council for the past 11 years (that is from 1997) in periods of three years. In the latest period of tenancy (which was from 2005 to 31 July 2008), the complainant believed he was subject to discrimination by the Council, as there was a Confidential Property Report that he was not allowed to access.

The complainant also argued that the size of the rented premises was not accurate and that he was being overcharged in his rent.

Ombudsman investigation

The complainant had not put his intent to renew the lease in writing by the deadline required on the lease agreement.

My office reviewed documentation, contacted the Council and spoke to its representatives. My office also obtained legal advice about the issue.

Outcome and opinion

Council had made a decision to not renew the complainant's lease …..

The complainant had not put his intent to renew the lease in writing by the deadline required on the lease agreement. Furthermore the complainant was a 'difficult' tenant (which was subject of the Confidential Property Report) in that he had not allowed repairs to be carried out to a balcony attached to the tenanted premises. There was some monies owed by the complainant to the Council as well. The Council had made a decision to not renew the complainant's lease as a result of these issues.

The Council had obtained legal advice which confirmed that it was able to make such a decision. The complaint pertained to a commercial arrangement as that of landlord and tenant. As such it was a matter that could only be resolved in accordance with the terms of the complainant's contract with the Council.

The complainant was urged to obtain ….. legal advice…..

The complainant was urged to obtain independent legal advice and to provide any further information within 14 days. No such information was forthcoming and the file was closed.

District Council of Mount Barker

Alleged improper procedure regarding seizure and sale of vehicle

Complaint: summary

The complainants' truck had been parked on the side of the road in front of a neighbour's property. Following receipt of a complaint that the vehicle may have been abandoned as it had been in the same location for some time without being moved, Council placed a notice on the truck requiring that it be moved within 24 hours. The notice advised that failure to remove the truck within 24 hours would result in it being seized and removed by Council.

Despite the complainants complying with the notice, Council seized and removed the vehicle and later dumped the contents …..

The complainants moved the vehicle to a location on the verge in front of their premises. Despite the complainants complying with the notice, Council seized and removed the vehicle and later dumped the contents of the truck including work materials and tools and sold the truck for $200. The complainants valued the truck and its contents in excess of $30,000.

Ombudsman investigation

My office interviewed the complainants, the purchaser of the truck, an occupant of the household that reported the truck as potentially abandoned, Council staff involved in the process and their supervisor.

Outcome and opinion

On the information provided during the course of the investigation my predecessor found that Council staff had:

……my predecessor found that Council staff had ….. unlawfully removed the truck …..; (and) sold the vehicle contrary to the Local Government Act 1999…..

- unlawfully removed the truck after it had been substantially moved following the issue of a towing notice, contrary to subsection 237(1) of the *Local Government Act 1999*.
- failed to personally serve a notice or place a notice in a newspaper circulating throughout the state informing the owner that the vehicle had been removed and details of how to reclaim the vehicle, contrary to the *Local Government Act 1999* ss237(2) and (3). A notice was posted to a post box address and returned unclaimed. On receipt of the notice Council searched its records and found an address within its district and posted a letter to that address. The address was the location from which the vehicle had been removed. The complainants denied receiving any notices.
- sold the vehicle to a third party for $200.00 prior to the expiration of the second notice contrary to the *Local Government Act 1999* s237(4), and at a price significantly below its value. The owner claimed it to be worth in excess of $25,000.
- disposed of the contents of the vehicle without having regard to the requirements of the *Unclaimed Goods Act 1987*.
- failed to ensure that appropriate policies, practices, and procedures were implemented and maintained to ensure compliance with statutory requirements and achieve standards that reflect good administrative practices contrary to the *Local Government Act 1999* s132A.

Council …. reviewed and updated its written operating procedures (and) ….. also encouraged the complainants to lodge a claim against Council's insurers ….

During the course of the investigation, Council embarked on a review of its structures and procedures in its Regulatory Services Group. It also reviewed and updated its written operating procedures and where there were none, wrote a standard operating procedure. It also encouraged the complainants to lodge a claim against Council's insurers for compensation for the loss of their truck. I understand that

the claim was accepted, assessed and a payment made to the complainants.

A report was prepared to the Council setting out my predecessor's findings and making a number of recommendations for Council to address the deficiencies revealed by the investigation including:

- review its delegation procedures against the model recommended by the Local Government Association and introduce procedures to achieve best practice. In particular each delegate should be provided with a separate instrument of delegation detailing his or her delegated powers.
- review its compliance with the *Local Government Act 1999* s 132A and to develop suitable guidelines and control measures for:

  1. the work of authorised officers
  2. the whole of the regulatory services functions of Council; and
  3. to the extent necessary, the Council's operations generally.

- review all positions in the Regulatory Services group of the Council, including reconsideration of workload distribution, responsibilities, classification levels, and criteria of suitability for appointment.
- ensure that there is in place a proper control environment that will provide reasonable assurance that the operations of the Council are conducted properly and lawfully. The new control environment should include a requirement for quarterly reporting to Council on all the performance indicators and compliance records provided by the new systems.
- review and formally endorse the control environment that is to be implemented.
- review the *Local Government Act 1999* s237 and, if it is still thought necessary to retain the general power it gives, it should be re-written to conform with the general principles of statutory forced sales that exist in other Acts

Council has advised me that it is taking steps to implement all of the recommendations made and that it is committed to ensuring that significant improvements will occur to Council's administrative procedures……

A copy of the report was forwarded to the Minister State/Local Government Relations pursuant to the *Ombudsman Act 1972* s25(3).

Council has advised me that it is taking steps to implement all of the recommendations made and that it is committed to ensuring that significant improvements will occur to Council's administrative procedures and practices so that it not only meets, but exceeds its statutory and moral obligations as a public entity serving its community.

District Council of Orroroo

Refusal by the council to publish a complainant's "Public Notice" in the council's local Gazette.

Complaint summary

The complainant requested the Council to publish a "Public Notice" in the local Gazette advising the community that a report by the Economic and Finance Committee of the Parliament of South Australia into "Local Government Audit and Oversight" could be accessed on the Parliament's website.

Ombudsman Investigation

The issue was raised with Council representatives. The reason given by the Council to the complainant for refusing to publish the Public Notice was that the placement of the advertisement created too great a potential for litigation against the Council.

The reason given ….. for refusing to publish the Public Notice was that the placement of the advertisement created too great a potential for litigation……

Outcome and opinion.

My predecessor took the view that the Public Notice was not a notice in a statutory sense. It was rather a notice, or advertisement informing the community of a particular matter. In his opinion, the Council reached its decision not to publish the advertisement based on an irrelevant consideration, being that of potential legal proceedings against it.

My predecessor took the view that …. the Council reached its decision not to publish the advertisement based on an irrelevant consideration…….

The Council had a history of dealings with the complainant, who often sought information about the conduct of its responsibilities, and who had been critical of its actions about a variety of matters. It seemed very much more likely that the Council did not wish to publish the advertisement in its own publication pointing ratepayers to a submission to Parliament by the complainant that was critical of its actions. If the reason given by the Council for the non publication of the advertisement was not the true reason, then in my predecessor's opinion the council's response to the complainant was disingenuous and the Council's act was wrong.

District Council of Mount Barker

Issue of Expiation Notices regarding dog control matters.

Complaint: summary

A complaint was made to my office that the Council had failed to respond to a complaints that dogs from a neighbour's property were barking such as to cause a nuisance, and that the dog owners were keeping up to four dogs on the property (in contravention of council By-law No 5 setting a maximum of two dogs per property).

Ombudsman investigation

After receiving the complaint, my predecessor began a preliminary investigation by seeking information from the Council. The evidence was clear that there was a barking dog problem and possible breaches of By-law No 5.

Whilst the Council took steps to resolve the complaints made, through the issue of Expiation Notices to the dog owners, there was concern over the practices adopted by Council staff in the exercise of their delegated authority in so doing.

…… there was concern over the practices adopted by Council staff in the exercise of their delegated authority …..

My Investigating Officers interviewed the complainant, the General Inspector of the Council who was directly involved in this matter, the Manager, Regulatory Services at the Council, and two of the dog owners.

Outcome and opinion
My predecessor was of the opinion that there had been serious administrative failures in the issue of expiation notices based on the complaint.

In issuing an expiation notice, a public officer makes an allegation that the recipient has committed a criminal offence. Such an action can have a serious consequence for a member of the community against whom such an allegation has been made. An expiation notice must only be issued where there is evidence to establish a prima facie case and for the purpose of bringing an alleged offender to account.

An expiation notice must only be issued where there is evidence to establish a prima facie case and for the purpose of bringing an alleged offender to account.

The obligation rests with the public officer to ensure that, especially in the case of a third party complaint, there is evidence to support the issue of the Expiation Notice. This is essential to protect a member of the community from malicious informers.

Issuing the Expiation Notices
In this case, a total of twenty one Expiation Notices were issued, twelve for barking and nine for exceeding the limit of the dogs.

The twelve Notices for barking were issued to three dog owners on four occasions over 3 days. In my predecessor's view the officer made no proper inquiry of the complainant, and had they done so they would have readily established that there was no evidence to support the issue of Expiation Notices against two of the dogs or their owners.

Further, the issue of twelve Expiation Notices, (with aggregate fines of $1260.00) where there were allegations of intermittent barking over a short period of time, was manifestly excessive. In the opinion of my predecessor, this was an abuse of power as a public officer.

The Expiation Notices also contained a misdescription of the offence, and an incorrect reference to the appropriate section. Consequently they did not provide the recipients with proper information as to the allegation that was being made against them.

Of the nine Notices issued for exceeding the limit, one was issued in September 2006 and the remaining eight were issued in the months of November 2006, January 2007, February 2007 March 2007, April 2007 and May 2007. There was no evidence of any inspections or complaints being received in relation to the Expiation Notices issued in 2007.

Some of the twenty one Notices were later withdrawn by Council administration staff in the mistaken belief that as action for the non payment of the expiation fees had not commenced within six months, no further action could be taken.

On the information provided to my predecessor's investigation these shortcomings were a result of a systemic failure in the Regulatory Services group's internal administration and internal controls.

….. these shortcomings were a result of a systemic failure in the Regulatory Services group's internal administration and internal controls.

It is important to note that the Council had, during the course of this investigation, developed Standard Operating Procedures and reporting requirements across a range of matters within the responsibilities of the General Inspectors.

District Council of Mount Barker

Issue of Proposed Dog Control Orders

Complaint summary

The investigation into a complaint about barking dogs (as outlined in the previous case study) also revealed some concerns about the manner in which Proposed Dog Control Orders were issued.

No Control (Barking Dog) Order can be issued unless there are circumstances that would constitute an offence against the *Dog and Cat Management Act 1995*. A control order cannot be issued unless the Council Standard Operating Procedures have been met. The authorised signatory must take all reasonable steps to satisfy himself/herself that the available evidence supports the issue of a Proposed Dog Control Order.

A control order cannot be issued unless the Council Standard Operating Procedures have been met.

Ombudsman investigation

My Investigating Officers sought written advice from the Council in relation to some of Proposed Dog Control Orders that it had issued.

In one matter it was clear that no attempts were made to identify the offending dog/s. The evidence was that only one was barking persistently. There was no evidence to support the signing of a dog control order against another two dogs.

My predecessor therefore concluded that in signing the order, the Council officer was acting with reckless indifference in the exercise of a public power. In my predecessor's opinion, this was unreasonable and oppressive conduct.

Further, had the officer examined the file it would have revealed that one of the other dogs could not have barked as she was whelping. Accordingly, in my predecessor's opinion, the signing of the proposed order against this dog was improper and a breach of duty.

In another matter involving an alleged attack, the officer did not sight either of the dogs subject to a proposed Dog Control (Menacing Dog) Order, prior to it being issued.

After the issue of the two proposed orders, a Council officer observed, during a visit to the dogs owner's property, that one of the dogs allegedly involved in the attack was suffering from severe arthritis. The officer considered at that time that this dog would have had little if any involvement in the attack.

My predecessor concluded that the proposed order against the arthritic dog originally was signed without sufficient evidence to support it. This constituted a grossly improper exercise of powers as a public officer, and a breach of duty.

My predecessor concluded that the proposed order …… was signed without sufficient evidence to support it. This constituted a grossly improper exercise of powers as a public officer……

In the event, the proposed order on this dog did not proceed, as it plainly did not pose a risk to the community or other animals.

Further, Council's Dog Control Order Procedure required that proposed control orders and control orders should be sent to dog owners by registered mail. From the information provided by Council there was nothing to indicate that this requirement had been adhered to.

On the basis of these examples, my predecessor believed that there had been systemic failure by Council officers to properly consider what is being signed, a failure to supervise staff properly, and a failure of the internal controls within the Regulatory Services group.

It is important to note that the Council had, during the course of this investigation, developed Standard Operating Procedures and reporting requirements to address these issues.

District Council of Mount Remarkable

Unreasonable refusal to connect water supply.

Complaint: summary

Under the terms of a Land Management Agreement (LMA), a developer agreed with the Council to form a water company to provide water to each allotment of a subdivision. The LMA was registered on the title of a lot owned by the complainants.

The water company entered into an agreement with SA Water for the supply of water. The water company was using only a small proportion of its entitlement from SA Water, but it became clear that it would not be able to meet the likely extent of future demands on the scheme. The developer and the water company asked the Council to take the scheme over.

The Council agreed, and resolved not to process any applications for a water connection until it had increased its capacity to supply water to all residents. The complainants applied for a water connection as they wished to commence building, and the Council declined their application. The complainants considered this to be in breach of their entitlement under the LMA.

The Council …. resolved not to process any applications for a water connection until it had increased its capacity to supply water to all residents …. The complainants considered this to be in breach of their entitlement under the LMA.

Ombudsman investigation

The investigation involved seeking information from the Council and subsequent discussions with the Chief Executive Officer.

Outcome and opinion

My predecessor took the view that the owners of lots with an existing LMA had a legitimate expectation of a water connection and supply. It is clear that the water company, through the LMA, had a legal obligation to the property owners to provide them with water, and the Council agreed to assume this responsibility.

As the Council itself was a party to the original agreement, it had a responsibility to ensure the developer complied with the requirement to deliver a water supply.

Based on the information provided by the Council - and in particular, the small amount of water being used from the allocation - my predecessor considered that Council's resolution not to permit any further connections until the remaining components of the scheme were constructed was unreasonable, wrong and arguably unlawful.

My predecessor recommended that Council reconsider its resolution as it applied to the complainants…..

My predecessor recommended that Council reconsider its resolution as it applied to the complainants and any other property owners that had legitimate rights to connect to the system.

My predecessor also recommended that the Council should advise all property owners of its position on the approval of water connections once the engineer's reports on the capacity of new system are known, and following negotiations with SA Water.

The Council accepted the recommendations….

The Council accepted the recommendations and the complainant was connected to the water supply.

Local Government • Complaints Received • 1 July 2008 to 30 June 2009

	Received	%	Population : 30 June 2008	Complaints/10,000 popn.
District Council of Elliston	5	0.8%	1 161	43.1
Adelaide Hills Council	26	4.2%	39 703	6.5
Alexandrina Council	9	1.4%	22 613	4.0
Berri Barmera Council	3	0.5%	11 283	2.7
City of Adelaide	27	4.3%	18 990	7.0
City of Burnside	11	1.8%	44 010	2.5
City of Charles Sturt	30	4.8%	105 573	2.8
City of Holdfast Bay	16	2.6%	35 525	4.5
City of Mitcham	15	2.4%	64 891	2.3
City of Mount Gambier	1	0.2%	24 928	0.4
City of Norwood, Payneham & St Peters	11	1.8%	35 893	3.1
City of Onkaparinga	26	4.2%	158 061	1.6
City of Playford	15	2.4%	75 323	2.0
City of Port Adelaide Enfield	33	5.3%	109 922	3.0
City of Port Lincoln	6	1.0%	14 452	4.1
City of Prospect	7	1.1%	20 710	3.4
City of Salisbury	20	3.2%	127 514	1.6
City of Tea Tree Gully	27	4.3%	99 886	2.7
City of West Torrens	25	4.0%	55 064	4.5
Clare and Gilbert Valleys Council	5	0.8%	8 653	5.8
Corporation of the City of Campbelltown	12	1.9%	48 593	2.5
Corporation of the City of Marion	27	4.3%	82 971	3.3
Corporation of the City of Unley	16	2.6%	38 146	4.2
Corporation of the City of Whyalla	7	1.1%	22 801	3.1
Corporation of the Town of Walkerville	1	0.2%	7 258	1.8
Corporation of the Town of Gawler	8	1.3%	20 257	3.9
Council of Roxby Downs	6	1.0%	4 453	13.5
District Council of Barunga West	4	0.6%	2 614	15.3
District Council of Ceduna	5	0.8%	3 731	13.4
District Council of Cleve	1	0.2%	1 921	5.2
District Council of Coober Pedy	4	0.6%	1 942	20.6
District Council of Coorong	3	0.5%	5 831	5.6
District Council of Grant	7	1.1%	8 542	8.2
District Council of Lower Eyre Peninsula	3	0.5%	4 731	6.3
District Council of Loxton Waikerie	4	0.6%	12 068	3.3
District Council of Mallala	11	1.8%	8 365	13.2
District Council of Mount Barker	19	3.0%	29 149	6.5
District Council of Mount Remarkable	4	0.6%	2 957	13.5
District Council of Peterborough	3	0.5%	2 004	15.0
District Council of Renmark Paringa	2	0.3%	9 868	2.0
District Council of Robe	2	0.3%	1 453	13.8
District Council of Streaky Bay	4	0.6%	2 159	18.5
District Council of the Copper Coast	23	3.7%	12 496	18.4
District Council of Tumby Bay	1	0.2%	2 706	3.7
District Council of Yankalilla	5	0.8%	4 497	11.1
District Council of Yorke Peninsula	14	2.2%	11 670	12.0
Kangaroo Island Council	3	0.5%	4 536	6.6
Kingston District Council	1	0.2%	2 442	4.1
Light Regional Council	5	0.8%	13 318	3.8
Mid Murray Council	14	2.2%	8 451	16.6
Naracoorte Lucindale Council	3	0.5%	8 440	3.6
Northern Areas Council	4	0.6%	4 856	8.2
Port Augusta City Council	8	1.3%	14 542	5.5
Port Pirie Regional Council	8	1.3%	18 050	4.4
Regional Council of Goyder	3	0.5%	4 284	7.0
Rural City of Murray Bridge	12	1.9%	19 101	6.2
Southern Mallee District Council	6	1.0%	2 198	27.3
The Barossa Council	15	2.4%	22 172	6.8
The Flinders Ranges Council	2	0.3%	1 827	10.9
Victor Harbor City Council	15	2.4%	13 247	11.3
Wakefield Regional Council	8	1.3%	6 679	12.0
Wattle Range Council	3	0.5%	12 508	2.4
Total	**624**	**100%**	**1 583 889**	**3.9**

Local Government • Complaints Received : Issues • 1 July 2008 to 30 June 2009

	(Other)	City of Adelaide	City of Charles Sturt	City of Port Adelaide Enfield	City of Tea Tree Gully	Corporation of the City of Marion	Total	Percentage
Administration	29	2	2	1	2	2	38	6.1%
Administration/general management of Councils	137	3	6	5	7	7	165	26.4%
Administrative practices/policies	59	2	4	4	2	3	74	11.9%
Animals	14		2	1	1	1	19	3.0%
Approvals (permits/licences/registrations,)	1	1	1				3	0.5%
Citizens' Rights	1						1	0.2%
Communication	2		1				3	0.5%
Drains/Sewers	4				1	1	6	1.0%
Fees/charges/levies	8				1		9	1.4%
Financial issues	14	1	1	3			19	3.0%
Health	13				1	1	15	2.4%
Maintenance	7				1		8	1.3%
None	1						1	0.2%
Officer misconduct	15				1		16	2.6%
Ordinances, Regulations, By-laws	4						4	0.6%
Other	4						4	0.6%
Parking	18	17	2	2	1		40	6.4%
Planning and development	105	1	8	9	5	10	138	22.1%
Rates and charges	22		1	5	1		29	4.6%
Record keeping	1						1	0.2%
Roads	6			1	1	2	10	1.6%
Services	1						1	0.2%
Trees	14		2	2	2		20	3.2%
Total	**480**	**27**	**30**	**33**	**27**	**27**	**624**	**100%**
	76.9%	4.3%	4.8%	5.3%	4.3%	4.3%		

Local Government • Complaints Completed • 1 July 2008 to 30 June 2009

	Completed	%	Population : 30 June 2008	Complaints/10,000 popn.
District Council of Elliston	5	0.8%	1 161	43.1
Adelaide Hills Council	26	3.9%	39 703	6.5
Alexandrina Council	11	1.7%	22 613	2.1
Berri Barmera Council	4	0.6%	11 283	2.8
City of Adelaide	28	4.2%	18 990	6.8
City of Burnside	15	2.3%	44 010	3.4
City of Charles Sturt	33	5.0%	105 573	3.1
City of Holdfast Bay	18	2.7%	35 525	5.1
City of Mitcham	17	2.6%	64 891	2.6
City of Mount Gambier	1	0.2%	24 928	0.4
City of Norwood, Payneham & St Peters	11	1.7%	35 893	3.1
City of Onkaparinga	30	4.5%	158 061	1.9
City of Playford	17	2.6%	75 323	2.3
City of Port Adelaide Enfield	34	5.2%	109 922	3.1
City of Port Lincoln	3	0.5%	14 452	2.1
City of Prospect	7	1.1%	20 710	3.4
City of Salisbury	22	3.3%	127 514	1.7
City of Tea Tree Gully	30	4.5%	99 886	3.0
City of West Torrens	23	3.5%	55 064	4.2
Clare and Gilbert Valleys Council	4	0.6%	8 653	4.6
Corporation of the City of Campbelltown	14	2.1%	48 593	2.9
Corporation of the City of Marion	31	4.7%	82 971	3.7
Corporation of the City of Unley	15	2.3%	38 146	3.9
Corporation of the City of Whyalla	7	1.1%	22 801	3.1
Corporation of the Town of Walkerville	3	0.5%	7 258	4.1
Corporation of the Town of Gawler	9	1.4%	20 257	4.4
Council of Roxby Downs	6	0.9%	4 453	13.5
District Council of Barunga West	4	0.6%	2 614	15.3
District Council of Ceduna	5	0.8%	3 731	13.4
District Council of Cleve	1	0.2%	1 921	5.2
District Council of Coober Pedy	4	0.6%	1 942	20.6
District Council of Coorong	3	0.5%	5 831	5.6
District Council of Grant	5	0.8%	8 542	5.9
District Council of Lower Eyre Peninsula	4	0.6%	4 731	8.5
District Council of Loxton Waikerie	3	0.5%	12 068	0.3
District Council of Mallala	13	2.0%	8 365	15.5
District Council of Mount Barker	25	3.8%	29 149	8.6
District Council of Mount Remarkable	4	0.6%	2 957	13.5
District Council of Orroroo/Carrieton	2	0.3%	949	21.1
District Council of Peterborough	3	0.5%	2 004	15.0
District Council of Renmark Paringa	2	0.3%	9 868	2.0
District Council of Robe	4	0.6%	1 453	27.6
District Council of Streaky Bay	4	0.6%	2 159	18.5
District Council of Tatiara	1	0.2%	7 089	1.4
District Council of the Copper Coast	18	2.7%	12 496	14.4
District Council of Tumby Bay	1	0.2%	2 706	3.7
District Council of Yankalilla	7	1.1%	4 497	15.6
District Council of Yorke Peninsula	14	2.1%	11 670	12.0
Kangaroo Island Council	3	0.5%	4 536	6.6
Kingston District Council	1	0.2%	2 442	4.1
Light Regional Council	4	0.6%	13 318	3.0
Mid Murray Council	18	2.7%	8 451	21.3
Naracoorte Lucindale Council	3	0.5%	8 440	3.6
Northern Areas Council	5	0.8%	4 856	10.3
Port Augusta City Council	8	1.2%	14 542	5.5
Port Pirie Regional Council	7	1.1%	18 050	3.9
Regional Council of Goyder	4	0.6%	4 284	9.3
Rural City of Murray Bridge	12	1.8%	19 101	6.2
Southern Mallee District Council	6	0.9%	2 198	27.3
The Barossa Council	12	1.8%	22 172	5.4
The Flinders Ranges Council	2	0.3%	1 827	10.9
Victor Harbor City Council	14	2.1%	13 247	10.6
Wakefield Regional Council	8	1.2%	6 679	12.0
Wattle Range Council	2	0.3%	12 508	1.6
Total	**660**	**100%**	1 591 927	**4.1**

Local Government ● Complaints Completed : Outcome ● 1 July 2008 to 30 June 2009								
	(Other)	City of Charles Sturt	City of Onkaparinga	City of Port Adelaide Enfield	City of Tea Tree Gully	Corporation of the City of Marion	Total	Percentage
Advice Given	268	18	15	21	15	15	352	53.3%
Declined	48	2	3	2	4	5	64	9.7%
Full Investigation	23				2	2	27	4.1%
Outside of Jurisdiction	9						9	1.4%
Preliminary Investigation	144	11	11	11	9	8	194	29.4%
Withdrawn	10	2	1			1	14	2.1%
Total	**502**	**33**	**30**	**34**	**30**	**31**	**660**	
	76.1%	5.0%	4.5%	5.2%	4.5%	4.7%	100%	

Other Authorities

Case studies

Courts Administration Authority (CAA)

Unreasonable management of appeal

Complaint summary

The complainant was fined by the police in January 2008 for riding a bicycle in an unsafe manner. The fine was $44 and he decided to lodge a review with the police to have the fine cancelled. This appeal was rejected and the fine was (after some time) referred to the CAA to pursue the debt, which now had additional fees due to non-payment by the complainant.

…..the complainant ….. did not have any further contact from either the CAA or the police so he assumed that the fine was cancelled.

In August 2008, the complainant visited a court office and lodged an application for a review of the enforcement order. He assumed that if this review was successful the fine would be cancelled. He did not have any further contact from either the CAA or the police so he assumed that the fine was cancelled.

…..he was aggrieved that the CAA had …..(placed)…. these suspensions without notifying him.

He subsequently visited the Department of Transport to change his registration details and discovered that both his registration and licence had been suspended. The complainant had assumed that the fine was no longer existing and he was aggrieved that the CAA had taken such extreme action by placing these suspensions without notifying him.

Ombudsman Investigation

The CAA were contacted to establish how the complainant's application for review had been processed. The application was lodged on 29 August 2008 and it was assessed by a special justice on 11 September 2008, and on 15 September 2008 the application for review was granted. This meant that the additional fees and charges had been removed leaving the original fine outstanding. The complainant was notified by letter of the result of the review, including his obligations, and the letter was mailed to the address he supplied on his review form on 15 September 2008.

The CAA then referred the original fine back to the police for them to resolve with the complainant.

The complainant failed to pay the original fine when contacted by the police and so the matter was then referred back to the CAA on 13 November 2008. An additional three letters were then sent by the CAA to the complainant, and the fines and penalties accumulated culminating in the suspension of his registration and licence in January 2009. None of these letters were answered or returned unopened.

In March 2009, the complainant contacted the CAA after attempting to renew his registration, and at that time he provided another contact address. The CAA then advised him that his best course of action would be to lodge another review form for consideration.

It was my predecessor's view that the CAA managed the process correctly.

Outcome and opinion

It was my predecessor's view that the CAA managed the process correctly. Rather, the complainant erred in not making himself aware of the review process, and by failing to provide current contact details.

Environment Protection Authority (EPA)

Unreasonable action taken by the authority in relation to the clean up of asbestos pollutants and requirement to pay for substantial cost of the clean up of asbestos pollutants.

Complaint summary

The complainant contacted my office following an EPA investigation of a report that the work undertaken to clean the complainant's roof had caused asbestos pollutants to be discharged onto her property, her neighbour's property and onto the surrounding footpaths and roadways. The EPA authorised a private contractor to carry out the clean up work and the EPA took action to recover the significant costs relating to the clean up work from the complainant.

.....the EPA took action to recover the significant costs relating to the clean up work from the complainant.

Ombudsman investigation

EPA authorized officers responded to a complaint from a resident who was concerned about the potential exposure to asbestos fibre due to the dispersal of debris resulting from the use of a high pressure water cleaner to clean the complainant's roof.

Following an inspection of the property and surrounding area the EPA authorized officer issued a verbal *Clean Up Order* pursuant to the *Environment Protection Act 1993* (the EP Act) s99 and the *EPA Compliance and Enforcement Guidelines* (the Guidelines). A subsequent risk analysis conducted by the Department of Public Health determined that there was a potentially high risk of exposure to asbestos fibre on and around the property. As a result, an Emergency Clean Up Authorization was issued pursuant to the EP Act s100 and the Guidelines.

The EPA obtained two quotes for the clean up work and other costs associated with the removal of trees and the insulating of adjacent power lines. The EPA accepted the lowest quote and the complainant was subsequently advised by letter about the decision to issue a *Clean Up Order*, the estimated cost of the work and the action to be taken by the EPA to recover costs associated with the clean up from her. She was also advised that the EPA may consider taking further action in relation to certain breaches of the Act.

The matter was referred to the Environment Protection Enforcement Options Committee for consideration and the Committee decided that further investigation was warranted. The EPA advised my office that the investigation was ongoing and a brief of evidence would be adjudicated by the Crown Solicitors Office.

The EPA advised my office that the investigation was ongoing ..

Outcome and opinion

Based on the information available to my office, it was determined that the EPA acted within its jurisdiction. Furthermore, in the course of exercising its statutory powers, the EPA did not perform any act or omission that amounts to maladministration.

The information provided to my office by the complainant and the EPA was thoroughly considered and although my predecessor had a genuine regard for the complainant's personal circumstances in the matter, the investigation established that the EPA acted reasonably and within its statutory powers.

.....although my predecessor had a genuine regard for the complainant's personal circumstances in the matter, the investigation established that the EPA acted reasonably and within its statutory powers.

The complainant was advised of my predecessor's opinion that none of the information that she had provided to the Ombudsman persuaded him that it would not be reasonable for her to resort to the legal remedies available to her. With this in mind, the complainant was advised that If she believed that the person who cleaned her roof could be liable for the dispersal of the asbestos material, she should obtain her own legal advice.

Public Trustee

Complaint summary
This was a complaint against the South Australian Public Trustee (Public Trustee). The complainant claimed the protracted timeline around finalising her father's estate was unreasonable, especially as the estate was granted probate on 8 August 2006.

Ombudsman Investigation
My office requested clarification from the Public Trustee about the delays in finalising the estate. and the costs to the estate of its administration.

On review of all the documentation forwarded to my office by the Public Trustee, my predecessor was satisfied the Public Trustee administered the first disbursement (13 April 2007) of the estate, within reasonable time lines. However, from that point on there were unacceptable delays in finalising the estate.

…..from that point on there were unacceptable delays in finalising the estate.

The Public Trustee acknowledged that the beneficiaries of the estate had not received an acceptable level of service. This being the case the Public Trustee refunded one third of the capital commission to be taken on the estate and to be shared equally with the beneficiaries, counselled relevant staff, developed new systems to monitor timeliness, and sent a letter of apology to the beneficiaries.

……the Public Trustee had properly addressed its inaction and that new procedural changes implemented will limit any problems in the future

Outcome and opinion
In light of the above my predecessor was satisfied that the Public Trustee had properly addressed its inaction and that new procedural changes implemented will limit any problems in the future.

University of SA

Flawed selection and recruitment process

Complaint summary
The complainant alleged that the agency failed to properly consider his applications for a number of positions at the University. He alleged a bias against him and a failure by the University to comply with its policies regarding recruitment and selection.

The complainant …. alleged a bias against him and a failure by the University to comply with its policies regarding recruitment and selection.

Ombudsman Investigation
The investigation involved seeking a response from the University to the complainant's allegations. The complainant was interviewed to seek clarity and additional information in support of his complaint. Further information was then sought from the University.

Outcome and opinion
There was evidence to support the complainants' allegations against the University. It failed to have regard for certain policies relating to the recruitment of staff,, including a failure to provide opportunities to seek feedback on the complainant's applications and to have regard for the academic requirements for an incumbent to be able to properly perform the duties of certain positions.

Although some of the positions on offer sought the preferred applicant to hold a doctorate qualification the policies were inconsistent in dealing with this.

The University will conduct a review of its selection and recruitment policies …..

The University will conduct a review of its selection and recruitment policies to ensure consistency and clarity. Furthermore, steps would be taken to ensure selection panels were aware of and will apply the University's policies regarding recruitment and selection.

The Nurses Board of South Australia

Complaint summary
The complainant claimed that the Board had unreasonably assessed her English Language Proficiency test scores, resulting in her not being able to register as an enrolled nurse.

Ombudsman Investigation
In 2006 the Nurses Board approved the alignment of the English Language Proficiency Requirements for registration as a nurse. This required evidence of English language proficiency for applicants who were non-native speakers of English. In May 2008 all current students were advised of the amendments to the Requirements. The complainant was informed on 17 April 2008 of the new requirements.

Outcome and opinion
My predecessor was of the opinion that it was regrettable that the Board did not inform the complainant sooner of the new English competency requirements. Nonetheless, the complainant had adequate time to prepare as the Board had informed her of the new requirements in April 2008, and she took the test in October 2008, some six months preparatory time.

In relation to the method by which the Board determined the complainant's test scores, my predecessor noted that the Board exercised its functions in accordance with the *Nurses Act 1999*. This being the case public interest considerations were paramount as the potential for misunderstanding in the discharge of the professional nursing role had the potential to place the public at risk.

.....public interest considerations were paramount as the potential for misunderstanding in the discharge of the professional nursing role had the potential to place the public at risk.

My predecessor was of the opinion that the Board had no option but to decline her registration on the grounds that she did not achieve the required (written) score level.

Other Authorities • Complaints Received • 1 July 2008 to 30 June 2009		
Aboriginal Housing Authority	1	0.3%
Adelaide & Mount Lofty Ranges NRM Board	4	1.1%
Adelaide Cemeteries Authority	3	0.9%
Board of Examiners (Law Society)	1	0.3%
Centennial Park Cemetery	1	0.3%
Central Northern Adelaide Health Service	2	0.6%
Children, Youth & Women's Health Service	2	0.6%
Commissioner for Equal Opportunity	2	0.6%
Coroner	3	0.9%
Country Fire Service	2	0.6%
Courts Administration Authority	21	6.0%
Dental Board of South Australia	7	2.0%
Department of Health	1	0.3%
Environment Protection Authority	1	0.3%
Flinders University Council	2	0.6%
Guardianship Board	12	3.4%
Health & Com Services Complaints Commissioner	18	5.2%
Home Start	3	0.9%
Independent Gambling Authority	1	0.3%
Institute of Medical & Veterinary Science	1	0.3%
Legal Practitioners Conduct Board	4	1.1%
Legal Services Commission	17	4.9%
Liquor & Gambling Commissioner	1	0.3%
Lotteries Commission	1	0.3%
Medical Board of SA	4	1.1%
Motor Accident Commission	2	0.6%
Native Vegetation Council	1	0.3%
Northern Adelaide Waste Management Authority	1	0.3%
Nurses Board of SA	6	1.7%
Office of Consumer & Business Affairs	41	11.7%
Optometry Board	1	0.3%
Physiotherapists Board	1	0.3%
Police Superannuation Board	1	0.3%
Public Advocate	6	1.7%
Public Trustee	96	27.5%
Residential Tenancies Tribunal	4	1.1%
RSPCA Inspectorate	1	0.3%
SA Ambulance Service	11	3.2%
SA Community Housing Authority	6	1.7%
SA Film Corporation	1	0.3%
SA Metropolitan Fire Service	1	0.3%
SA Psychological Board	1	0.3%
SACE Board of SA	2	0.6%
South Australian Tertiary Admissions Centre	2	0.6%
Super SA Board	15	4.3%
Teachers Registration Board	2	0.6%
Trans Adelaide	2	0.6%
University of Adelaide Council	7	2.0%
University of South Australia Council	15	4.3%
Veterinary Surgeons Board	1	0.3%
WorkCover Corporation	6	2.0%
Total	**348**	**100%**

Other Authorities • Complaints Received : Issues • 1 July 2008 to 30 June 2009

	(Other)	Courts Administration Authority	Health & Community Services Complaints Commissioner	Legal Services Commission	Office of Consumer & Business Affairs	Public Trustee	Total	Percentage
Access to Information	3						3	0.9%
Administration	47	6	10	3	19	27	112	32.1%
Administration/general management	1						1	0.3%
Administrative practices/policies	63	11	7	7	17	33	138	39.5%
Approvals (permits/licences/registrations)	1				2		3	0.9%
Case Review	1						1	0.3%
Citizens' Rights	2						2	0.6%
Communication	1	1			1	2	5	1.4%
Conduct	2						2	0.6%
Curriculum issues	1						1	0.3%
Duty of care	1					3	4	1.1%
Fees/charges/levies	4				1		5	1.4%
Financial assistance	2			1		5	8	2.3%
Financial issues	7	2		3		26	38	10.9%
Housing	1						1	0.3%
Officer misconduct	2	1					3	0.9%
Other			1				1	0.3%
Parking	2						2	0.6%
Quality of treatment				1			1	0.3%
Rates and charges	2						2	0.6%
Record keeping	1			1			2	0.6%
Services				1	1		2	0.6%
Superannuation/Retirement Benefits	7						7	2.0%
Visits	1						1	0.3%
Workers Compensation	4						4	1.1%
Total	**156**	**21**	**18**	**17**	**41**	**96**	**349**	**100%**
	44.7%	6.0%	5.2%	4.9%	11.7%	27.5%		

Other Authorities • Complaints Completed • 1 July 2008 to 30 June 2009		
Aboriginal Housing Authority	1	0.3%
Adelaide & Mount Lofty Ranges NRM Board	4	1.1%
Adelaide Cemeteries Authority	3	0.8%
Board of Examiners (Law Society)	1	0.3%
Centennial Park Cemetery	1	0.3%
Central Northern Adelaide Health Service	3	0.8%
Children, Youth & Women's Health Service	1	0.3%
Chiropractic and Osteopathy Board of South Australia	2	0.5%
Commissioner for Equal Opportunity	2	0.5%
Coroner	3	0.8%
Country Fire Service	2	0.5%
Courts Administration Authority	19	5.0%
Dental Board of South Australia	7	1.8%
Department of Health	1	0.3%
Dog & Cat Management Board	1	0.3%
Environment Protection Authority	1	0.3%
Flinders University Council	1	0.3%
Guardianship Board	13	3.4%
Health & Com Services Complaints Commissioner	26	6.9%
Home Start	3	0.8%
Independent Gambling Authority	1	0.3%
Institute of Medical & Veterinary Science	1	0.3%
Legal Practitioners Conduct Board	4	1.1%
Legal Services Commission	18	4.7%
Liquor & Gambling Commissioner	1	0.3%
Lotteries Commission	1	0.3%
Medical Board of SA	6	1.6%
Motor Accident Commission	3	0.8%
Native Vegetation Council	1	0.3%
Northern Adelaide Waste Management Authority	1	0.3%
Northern Yorke Peninsula Community Health Services	1	0.3%
Nurses Board of SA	6	1.6%
Office of Consumer & Business Affairs	41	10.8%
Optometry Board	1	0.3%
Physiotherapists Board	1	0.3%
Police Superannuation Board	1	0.3%
Public Advocate	7	1.8%
Public and Environmental Health Council	1	0.3%
Public Trustee	105	27.7%
Residential Tenancies Tribunal	5	1.3%
RSPCA Inspectorate	1	0.3%
SA Ambulance Service	11	2.9%
SA Community Housing Authority	6	1.6%
SA Metropolitan Fire Service	1	0.3%
SA Psychological Board	1	0.3%
SACE Board of SA	1	0.3%
Senior Secondary Assessment Board of SA	1	0.3%
South Australian Tertiary Admissions Centre	2	0.5%
Southern Adelaide Health Service	1	0.3%
State Emergency Service	1	0.3%
Super SA Board	15	4.0%
Teachers Registration Board	2	0.5%
Trans Adelaide	2	0.5%
University of Adelaide Council	7	1.8%
University of South Australia Council	16	4.2%
Veterinary Surgeons Board	1	0.3%
WorkCover Corporation	9	2.4%
Total	**379**	**100%**

Other Authorities ● Complaints Completed : Outcome ● 1 July 2008 to 30 June 2009

	(Other)	Courts Administration Authority	Health & Community Services Complaints Commissioner	Legal Services Commission	Office of Consumer & Business Affairs	Public Trustee	Total	Percentage
Advice Given	82	10	5	13	20	59	189	49.9%
Declined	26		8	1	4	2	41	10.8%
Full Investigation	2		2			2	6	1.6%
Outside of Jurisdiction	4	3	1				8	2.1%
Preliminary Investigation	49	5	9	4	16	39	122	32.2%
Transferred to WorkCover Ombudsman	2						2	0.5%
Withdrawn	5	1	1		1	3	11	2.9%
Total	**170** 44.9%	**19** 5.0%	**26** 6.9%	**18** 4.7%	**41** 10.8%	**105** 27.7%	**379**	**100%**

The Ombudsman Office

What we do

Our Vision

Our vision is for this office, and for each agency within our jurisdiction, to provide services of the highest quality to the South Australian community.

Our Mission

Our mission is to help make South Australia a state where all communities and individuals are treated fairly by:

- Promoting sound public administration and accountability within State and local government; and
- Keeping the Parliament, the Government and the community informed of matters of public importance.

Our Functions

The Ombudsman contributes to sound public administration by South Australian State and local government agencies through:

- Investigating, conciliating and resolving complaints in accordance with the *Ombudsman Act 1972*;
- Undertaking investigations referred by Parliament, and conducting administrative audits and investigations on the Ombudsman's own initiative;
- Making recommendations for change in procedures and legislation;
- Reviewing decisions about release of information under the *Freedom of Information Act 1991*; and
- Providing advice and training.

The Ombudsman is an independent statutory officer within the Attorney General's Department, and reports directly to Parliament.

Our Values

In performing our work we are committed to:

- Maintaining independence and impartiality
  We are committed to acting in a manner that maintains the independence and objectivity of the Ombudsman.
- Facilitating access to our services
  We are committed to ensuring people can, and know how to, access our services through a range of technologies and avenues.
- Respecting the views of all parties
  We are committed to ensuring that all parties' points of view are heard and considered.
- Fairness and integrity
  We are committed to acting in accordance with our powers, basing our actions on relevant considerations and at all times acting in good faith.
- Accountability in our dealings
  We are committed to keeping people informed about their rights and any decisions affecting them, and to using our resources efficiently, effectively and responsibly. We will strive to refine means to measure and report on our performance.
- Responsiveness in our service delivery
  We are committed to providing prompt service and facilitating speedy resolutions where appropriate

Jurisdiction

The *Ombudsman Act 1972* provides wide ranging discretionary powers to assist in determining the scope and nature of investigations. The Ombudsman will ascertain whether the agency complained about is within the Ombudsman's jurisdiction.

The Ombudsman has a discretion whether to commence or continue an investigation. Key issues of the complaint will be assessed to determine whether:

- special circumstances exist for matters over 12 months old
- the complainant has a legal remedy or right of review or appeal and whether it is reasonable to expect the complainant to resort to that remedy
- a complaint appears to be frivolous, trivial, vexatious, or not made in good faith;
- an investigation does not appear to be warranted in the circumstances, such as where the agency is still investigating the complaint or a complaint has not yet been made to the agency, or where another complaint-handling body may be more appropriate;
- the complainant does not have a sufficient personal interest in the matter.

Certain agencies are outside the Ombudsman's jurisdiction. The Ombudsman does not have the power to investigate actions and decisions of:

- the South Australian Police
- employers - which affect their employees
- private persons, businesses or companies
- Commonwealth or interstate government agencies
- government Ministers and Cabinet
- courts and judges
- legal advisers to the Crown

Investigations by the Ombudsman

Any individual person or organisation who is directly affected by an administrative action of a government department, authority or council under the Ombudsman's jurisdiction can make a complaint to the Ombudsman.

Investigations may be initiated by the Ombudsman in response to a complaint received by telephone, in person, in writing or through the website from any person (or an appropriate person acting on another's behalf); a complaint referred to the Ombudsman by a member of Parliament or a committee of Parliament; or on the Ombudsman's own initiative.

If the Ombudsman decides to investigate a complaint, the Ombudsman advises the agency and the complainant accordingly. As part of this process, the Ombudsman identifies the issues raised by the complainant along with any other issues that we consider relevant. The Ombudsman can choose to conduct either an informal or a formal investigation (preliminary or full). If the Ombudsman decides not to investigate, the complainant is advised of this, along with the reasons for the decision.

Investigations are conducted in private and the Ombudsman can only disclose information or make a statement about an investigation, subject to compliance with specified provisions of the Act.

At the conclusion of an investigation, the Ombudsman may recommend a remedy to the agency's principal officer or recommend that practices and procedures are amended and improved to prevent a recurrence of the problem.

The Ombudsman should not in any report, make adverse comments about any person or agency unless they have been provided with an opportunity to respond.

The Ombudsman may make a recommendation to Parliament that certain legislation be reviewed.

Service principles

If the complaint is within the Ombudsman's jurisdiction, the Ombudsman will, in normal circumstances

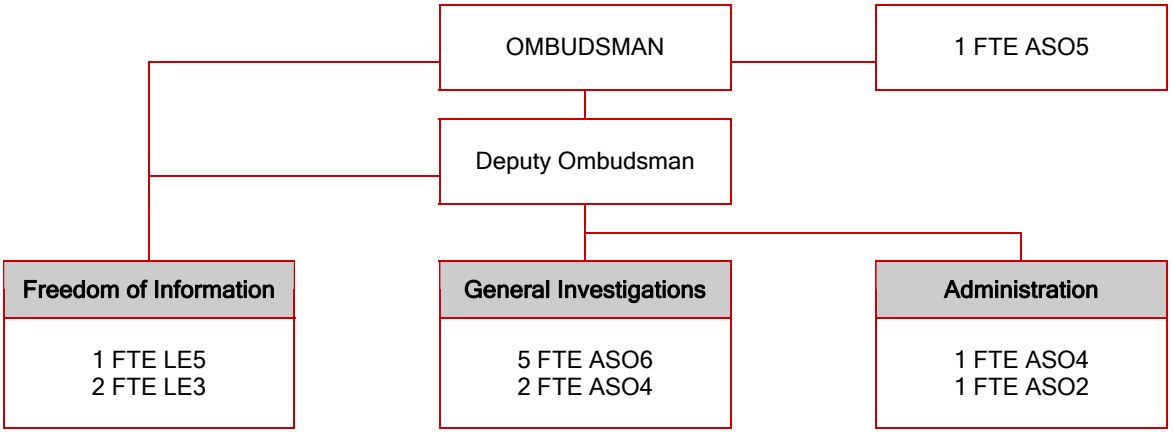
- provide an accessible and timely service, with equal regard for all people with respect for their background and circumstances
- provide impartial and relevant advice and clear information about what we can and cannot do
- provide timely, impartial and fair investigation of complaints
- ensure confidentiality
- keep people informed throughout the investigation of a complaint; and
- provide concise and accurate information about any decisions or recommendations made and provide reasons wherever possible

Referral to other jurisdictions

The office also has an important referral role. Even though we may be unable to be of direct assistance to people who approach the office about matters that are not within jurisdiction, it is often possible to refer them to another appropriate source of assistance. Therefore, an outcome of 'no jurisdiction' does not necessarily mean that the office has not been of assistance to the person who consulted us.

If a complaint is out of the Ombudsman's jurisdiction we will attempt to refer the complainant to another complaint handling body which may be able to assist.

Organisational Chart



Appendices

1. Financial statement

Office Expenditure		2007/08	2008/09
Annual Report		1 538	446
Equipment maintenance		1 914	1 395
Equipment purchases		11 604	
* Motor vehicles		13 929	15 299
Postage		1 285	1 121
Printing and stationery		5 561	8 360
Staff development		22 201	5 241
Publications and subscriptions		1 788	2 231
Sundries		18 610	14 265
Telephone charges		21 327	21 459
Travel/taxi charges		8 607	10 621
Computer expenses		29 656	24 562
Fringe Benefits Tax		5 357	3 140
Recruitment costs		3 867	58 457
	Sub-total	147 244	166 597
* Accommodation and energy		109 131	110 722
Consultant/Contract staff		67 321	145 879
	Sub-total	176 452	256 601
* Salaries		1 397 892	1 373 424
	Sub-total	1 397 892	1 373 424
Income		(7 623)	(13 300)
	Sub-total	(7 623)	(13 300)
* Figures include expenses incurred by the Ombudsman position (funded by Special Acts)			
	Total expenditure	**1 713 965**	**1 783 322**

2. Description of outcomes - FOI jurisdiction

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.

3. Description of outcomes - Ombudsman 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.

4. Staff Development

Seminars, training for agencies

July 2008
Freedom of Information Act 1991
Society of University Lawyers

July 2008
Role of the Ombudsman
Correctional Officer Training Course (DCS)

September 2008
Role of the Ombudsman
Correctional Officer Training Course (DCS)

November 2008
Role of the Ombudsman
Authorised Persons Seminar (LGA)

November 2008
FOI Act and processes for LGA
Joint presentation with Norman Waterhouse
Council FOI Officers.

November 2008
Attendance at Deputy Ombudsman meeting, Tasmania

December 2008
Role of the Ombudsman
Planning and Building Officers Seminar (LGA)

March 2009
FOI and role of Ombudsman
Wallmans Lawyers Six of the Best Seminar Series
Local Government

April 2009
Role of Ombudsman, FOI
University of Adelaide

May 2009
Role of the Ombudsman
Law Week, Mt Gambier

June 2009
Freedom of Information Act
Local Government Association

Staff training

July 2008
Development Act 1993
Crown Solicitor's Office
Roz Daniell and Sarah Beasley
Attended by all staff

August 2008
Practising Administrative Law
Australian Institute of Administrative Law - various speakers
Legal officers

September 2008
Proof Reading and Editing
IPAA South Australia - Anne Bastion
Legal Officer

December 2008
Risk Management Training
Acting Deputy Ombudsman/Office Manager

December 2008
Victorian Ombudsman Office presentation
Attended by all staff

March 2009
Cabinet Processes
Ray Dennis, DPC
Attended by all staff

March 2009
PMD
Acting Deputy Ombudsman

April 2009
Legislative structure State Government
Greg Parker - Deputy Crown solicitor
Attended by all staff

June 2009
Legislation and the Office of the Parliamentary Counsel
Annette Lever and Shirley Fisher
Attended by all staff

FOI Act

September 2008
Consultation re amendments with State Records

March 2009
Consultation with State Records