



OmbudsmanSA

FINAL REPORT

DEPARTMENT FOR PLANNING, TRANSPORT AND
INFRASTRUCTURE (formerly Transport, Energy and
Infrastructure)

April 2012

Ombudsman SA
PO Box 3651
Rundle Mall SA 5000

Telephone	08 8226 8699
Toll free	1800 182 150 (outside metro SA only)
Facsimile	08 8226 8602
Email	ombudsman@ombudsman.sa.gov.au

CONTENTS

JURISDICTION	1
INVESTIGATION	2
STANDARD OF PROOF	3
RESPONSES TO MY PROVISIONAL REPORTS	3
Provisional report	3
Revised provisional report	3
BACKGROUND	4
Whether the department wrongfully paid concession reimbursements to a coach operator, for school bus services not provided by that operator	5
Opinion	7
Whether the department wrongfully relied on false claim forms to pay concession reimbursements to a coach operator	7
Opinion	9
ATTACHMENT A	10

FINAL REPORT

Date complaint received	5 September 2011
Agency	Department For Planning, Transport And Infrastructure (formerly Transport, Energy and Infrastructure)
Complainant ¹	Mr Steven Griffiths MP
Allegations	<ol style="list-style-type: none">1. The department wrongfully paid concession reimbursements to a coach operator, for school bus services not provided by that operator2. The department wrongfully relied on falsely completed claim forms to pay concession reimbursements to a coach operator

JURISDICTION

1. The complainant has lodged his complaint on behalf of Mr Dean McGinty, in accordance with Section 15(3) of the *Ombudsman Act 1972*. Mr McGinty is directly affected by the matters which are the subject of the complaint.
2. Section 16 of the Ombudsman Act provides that I must not entertain a complaint if it is made after 12 months from the day on which the complainant first had notice of the matters alleged in the complaint, unless I consider it proper to do so. This complaint concerns the department's payment of concessional reimbursements to a contracted provider for August, September and October 2008.
3. However, the materials supporting the complainant's allegation only became available following an FOI application lodged in April 2011. In these circumstances I consider it proper to entertain the complaint.
4. In accordance with my obligations under section 5(5) of the *Whistleblowers Protection Act 1993*, I referred the complaint to the Officer In Charge of the Anti-Corruption Branch of the South Australia Police (**the ACB**). This obligation arises if I consider that a disclosure **may** involve fraud or corruption, but (in answer to a question asked by the complainant in his response to my provisional report) it is not necessary for me to find evidence of fraud for this to occur.
5. On 4 November 2011, the Officer in Charge advised that as there was not sufficient evidence of any criminal offence, it is not a matter which the Anti-Corruption Branch would investigate.
6. Accordingly the complaint is fully within the jurisdiction of the Ombudsman.
7. However, I consider it appropriate to comment on three other jurisdictional issues.

¹ I do not consider that there is any demonstrable public interest in publishing the name of the complainant, and she has requested that I do not do so.

8. First, I note that the department has not been prepared to provide a copy of a relevant sub-contract, without the consent of the parties to the sub-contract. Whilst the complainant apparently has now obtained a copy from another source, I agree with the department's view that if the complainant wished to obtain a copy of the sub-contract from the department, he could have made an application under the *Freedom of Information Act 1999*. Because it is possible that I may be required to conduct an external review of any departmental determination arising from such an application, I do not consider it appropriate in such circumstances to exercise my powers under the Ombudsman Act to obtain the document.
9. However, for the purposes of this investigation I have sighted the relevant sub-contract and satisfied myself of its existence, and that its contents are as the department describes them.
10. Second, in his response to my provisional report, the complainant commented about the content of Service Contract 2007/05 relating to the Murray Mallee Region, made between Murray Bridge Passenger Service (**MBPS**) and the delegate of the Minister for Transport, as follows:
- ...surely Service Contract 2007/05 should ensure that payments are being made to a legitimate provider of a service, or indeed require documentation which will pass any scrutiny that where the service is sub-contracted that the prime contractor is claiming concession payments but also providing evidence that payments are being made to the sub-contractor, thus ensuring that the parent (sic) of the children, who are paying for the service, are receiving the benefit of tax payer support?
- The content of the service contract in my view is a matter of government policy, and is therefore outside my jurisdiction.²
11. Third, the complainant also asked whether I am prepared to write to the Minister suggesting that the power under Clause 15.2.2 of the service contract should be exercised so as to ensure that only the actual providers of service receive the benefit of the concession claims. A Minister is not an agency within the meaning of the Ombudsman Act, and thus the complainant's request is outside my jurisdiction.

INVESTIGATION

12. My investigation has comprised:
- assessing the information provided by the complainant
 - meeting with the complainant and Ms Isobel Redmond MP on 22 September 2011
 - meeting with Mr Dean McGinty on 28 October 2011
 - seeking a response from the department, including relevant documentation
 - referring the matter to the ACB, and meeting with ACB officers on 1 November 2011
 - considering the application of relevant provisions in the *Passenger Transport Act 1994*, (**the Act**); the Passenger Transport Regulations 2009 (**the regulations**); the relevant service contract; and the deed of novation
 - considering further materials apparently provided by Mr McGinty, which I received on 22 November 2011
 - preparing a provisional report, and circulating it to the parties for comment
 - considering the parties' responses
 - meeting with the complainant and Mr McGinty on 27 January 2011
 - seeking clarification of some matters from the department
 - meeting with departmental officers on 17 February 2012 to sight documents

² *City of Salisbury v. Biganovsky* (1990) 54 SASR 117

- preparing a revised provisional report and circulating it to the parties for comment
- considering the parties responses, including two folders containing further materials provided by the complainant
- preparing this report.

STANDARD OF PROOF

13. The standard of proof applied is on the balance of probabilities. However, in determining whether that has been met, in accordance with the *Briginshaw* principle I have borne in mind the nature of the allegations and the consequences if they were to be upheld. That decision recognises that questions of fact vary greatly in nature, and greater care is needed in scrutinising the evidence in some cases.³ It is best summed up in the following statement of Dixon J:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.⁴

RESPONSES TO MY PROVISIONAL REPORTS

Provisional report

14. The agency responded to my provisional report by letter dated 19 December 2011, indicating that it had no further comment to make.
15. The complainant responded by letter dated 14 December 2011. He questioned a number of issues regarding the process of my investigation, and stated that he did not consider that the fundamental issue of his complaint had been properly understood. He stated that the relevant service was a private service carried out for the St Francis de Sales school by Lofty Coaches (whose principal is Mr McGinty), and that no payments were received by Lofty Coaches from the area rights holder. Any concession reimbursements received by the area rights holder were not passed on to the service provider.
16. He offered further comment on a number of specific matters, and I have amended this report as I consider appropriate to take account of these comments.
17. After receiving the complainant's letter of 14 December 2011 letter, I considered it appropriate to meet with him and Mr McGinty. At this meeting I agreed to put some further questions to the department. The complainant and Mr McGinty agreed to contact a further witness to see if he was willing to provide more information, but I have not received any advice of the outcome of this.

Revised provisional report

18. The complainant responded to my revised provisional report by email dated 5 March 2012 stating that he had no further comment. He also provided two folders containing a briefing note and attachments prepared by lawyers acting for Mr McGinty. He asked me to consider these materials in finalising my report.

³see *Briginshaw v Briginshaw* (1938) 60 CLR 336. Applied in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* [1992] HCA 66; (1992) 110 ALR 449 at 449-450 per Mason CJ, Brennan, Deane and Gaudron JJ

⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-362

19. I have considered these materials, but they do not change my views about the matter. I note in particular that they confirm the existence of a subcontract between MBPS and Magors Bus Service, the existence of which was not known to Mr McGinty at the time he purchased Magors' business.
20. The department responded on 8 March 2012. It indicated that it accepted my provisional views, and noted that

at (the relevant) time the Public Transport Services Division was not aware that the 'blue forms' had been signed by any other person other than those authorised. This was only identified as part of recent investigations into this matter.

BACKGROUND

21. This complaint arises from the operation of school bus services for the St Francis De Sales school at Mt Barker (**the St Francis De Sales service**) by Lofty Coaches, whose principal is Mr McGinty. This service is operated within the Murray Mallee region, and is regulated by the Public Transport Services Division (**PTSD**) of the department. At the relevant time it was a 'regular passenger service' within the meaning of the Act, but since 1 March 2010 it has held an exemption from that definition under regulation 6(2) of the regulations.
22. Also at the relevant time, MBPS held area rights for the Murray Mallee region under a service contract with the Minister for Transport. The current version of the contract was made on 4 August 2008.
23. In the past, the St Francis De Sales service was operated by MBPS. However, on 1 April 2005, MBPS received approval from PTSD for a subcontract arrangement with Magor's Bus Service for the operation of the service. This approval expired on 30 September 2007, when MBPS's (then) area contract expired. PTSD subsequently extended approval for the subcontract for a year (i.e. to 30 September 2008).
24. I have sighted a copy of a signed agreement documenting the subcontract, which is dated 3 October 2007 and is held by PTSD. A copy is also contained in materials submitted to me by the complainant following publication of my revised provisional report to him. Schedule 3 to the subcontract lists the services to which it applies, and the St Francis de Sales service is included there.
25. On 1 May 2008 Mr McGinty's family acquired Magor's Bus Service, including the subcontract arrangement for the St Francis De Sales service. The purchasing entity for the McGinty family was Teilta Pty Ltd T/A Lofty Coaches. Mr McGinty states that the subcontract was never brought to his or his lawyer's attention during the sale process, and hence he did not consider it to be a part of the purchase. It was only brought to his attention some months later, when LinkSA sought to have a representative of the McGinty's endorse the subcontract.
26. In August 2008 LinkSA acquired MBPS, including the benefits and responsibilities of the area contract (including the pre-existing subcontract arrangement). For a period of time late in 2008, Mr McGinty provided information to Link SA, which enabled Link SA to claim student concession entitlements for the St Francis de Sales service.
27. Mr McGinty has advised me that he met with Link SA representatives on 27 February 2009. He has provided me with a copy of his notes from that meeting which are as follows:

Meeting with Mark Dunlop & Grant Elsworthy

Discussed sub contract regarding bus services to Murray Bridge and Callington. Mark informed Leigh and myself that we are to supply Link SA with names, addresses & phone numbers of all students that we carry on these two runs as this was our responsibility re the sub contract. This info was need (sic) by Link SA so to claim re-imburement on these children via tickets from the PTD.

Leigh & myself both agreed that these two services were private charter from a private school with no fees being collected by us from the passengers therefore they had no legal right to claim monies from the Govt.

Both Mark and Grant conceded that this was in fact true but still wanted our passengers personal information. I refused to obtain this information for them as this re-imburement appeared illegal and suggested to contact the school to obtain it if required.

Meeting closed at 12.47pm

28. On 24 June 2009, the Acting Executive Director of PTSD wrote to Mr McGinty raising concerns that services run by Lofty Coaches may not be operating in accordance with the provisions of the Act. Following a meeting between the Minister and the Bus and Coach Association and various other pieces of correspondence, Lofty Coaches wrote to the Acting Director on 18 February 2010 seeking an exemption under Regulation 6 of the regulations for the St Francis De Sales service. On 1 March 2010 the Minister made a declaration providing this exemption. Mr McGinty has noted that the granting and continued existence of this exemption requires the permission of LinkSA.
29. Mr McGinty is concerned that in 2008 Link SA wrongly claimed concession reimbursements for the St Francis De Sales service, and that PTSD has wrongly paid those reimbursements to Link SA. He has referred me in particular to invoices sent to the department by Link SA dated 31 August 2008, 30 September 2008 and 31 October 2008, which together involve an amount of \$24 238.60.
30. The department has advised that PTSD conducted an audit of all documentation with respect to the St Francis De Sales service, and claims for concession reimbursements made by LinkSA. This confirmed that LinkSA claimed reimbursement for student concessions for the St Francis De Sales School for the remainder of the 2008 school year.
31. In his response to my provisional report, the complainant queried whether the PTSD audit had considered public statements by Mr Michael Jaensch (who I understand was an employee of MBPS, then Link SA) that he had falsified parents' names in completing concession reimbursement claims.
32. At Attachment A is a chronology provided to me by the department which sets out (from the department's perspective) the major milestones in this matter.

Whether the department wrongfully paid concession reimbursements to a coach operator, for school bus services not provided by that operator

33. Under Part 5 of the Passenger Transport Act, the legal requirements regarding service contracts for regular passenger services are set out. The department has advised, and I accept, that the definition of a regular passenger service includes a school service which operates on a regular basis and route. I note in particular that section 40(1)(f) requires that:

(1) A service contract must make provision with respect to -

...

(f) the manner in which the holder of the service contract will be remunerated or gain revenue from the provision of services under the contract (including arrangements as to any subsidy)

34. The entitlement to claim a concession reimbursement therefore arises from the terms of the contract between the area service provider and the government. In this case, the relevant contract is Service Contract 2007/05 relating to the Murray Mallee Region, made between MBPS and the delegate of the Minister for Transport. The department has provided me with a copy of the contract, and advised that it was signed by the Minister's representative on 4 August 2008, and by MBPS on 23 July 2008.
35. Clause 15.2 of this contract provides as follows:
 - 15.2 Concession Reimbursement**
 - 15.2.1 If there is in place at any time during the Term a government policy of reimbursing operators of Regular Passenger Services for certain types of concession tickets issued by operators, then the Contractor, on application to the Minister, in the prescribed form, in accordance with the policy, is entitled to reimbursement for tickets so issued by the Contractor if and to the extent that the policy allows.
 - 15.2.2 The procedures applying to concession reimbursement at the Commencement Date are contained in Schedule 5. The procedures for concession reimbursement may be changed or withdrawn by the Minister with 30 days written notice. The Minister is not liable in any way for any loss or expense sustained by the Contractor arising from a change or withdrawal of a policy for concession reimbursement.
36. Schedule 5 to the service contract sets out the concession policy, which applies to student concessions amongst other things.
37. The department has provided me with a copy of a Deed of Novation made between 'MBPS Frazer Pty Ltd (formally (sic) Murray Bridge Passenger Service Proprietary Limited) (ACN 007 595 208)'; Australian Transit Enterprises Pty Ltd (operating as Link SA); and the Minister for Transport. This deed provides in effect that Link SA should take over as a party to Service Contract 2007/05. It was signed by MBPS on 10 October 2008 and by ATE (LinkSA) on 28 October 2008.
38. In summary, it appears to me that because LinkSA now holds the area contract with the Minister for Transport, it is eligible to claim concession reimbursement for services within the contract area. As a contractual relationship exists with LinkSA, it is the only approved operator able to lodge concession reimbursements for services within its area.
39. The department has advised me that whilst contractors are permitted to enter into subcontract arrangements with other accredited operators, the remuneration for the provision of services is a private arrangement between these two parties. It states that arrangements could include a variety of financial remuneration measures, to which the department is not a party.
40. It therefore appears to me that in this case there was no 'fraud' by LinkSA as the contracted service provider, because the department had knowledge of its actions, and LinkSA was not dishonest about its dealings. In this context, I have sighted documents and the subcontract held by PTSD which confirm that it was aware of the arrangement between MBPS and Magors Bus Service, and later Lofty Coaches. Further, the ACB has confirmed to me that there is nothing in the materials that provides any indication of criminal conduct.

41. I acknowledge the existence of the policy issue about whether the department should make such payments to LinkSA, or to any other service provider in a similar position. It could be argued that under the terms of the contract, there should be no requirement to pay what may be perceived as compensation to the contracted service provider simply because another non-contracted service provider provides bus services in the contracted area.
42. The department suggests that when a contracted service provider such as LinkSA subcontracts its services to a subcontractor, it is a matter for them as to the terms of the agreement reached between them. It states that when the Minister consents to the subcontracting of the service contract the issue is whether the subcontractor is accredited. If the parties agree that the contractor will retain the concessional rebate payable under the contract with the Minister, that is a private commercial matter between the parties.
43. On balance, I agree with the department's assessment. There is no doubt the persons who are entitled to travel under a concessional fare have used these services, and there is still a requirement to pay the concessional rebate under the contract, whether the service is provided by the contractor or a subcontractor to the contracted service provider.
44. I understand that this result may appear curious, in that the service contract entitled MBPS and its successor Link SA to claim concession reimbursements for school children carried on the St Francis De Sales service, which was provided by another operator. However, that appears to be the result of government policy as evidenced in the service contract. Matters of policy are beyond my jurisdiction, as a result of a 1990 Supreme Court decision.⁵
45. In these circumstances, I can see no administrative error by the department. My view is that in accepting the entitlement of LinkSA to the concessional reimbursements for August, September and October 2008, the department has not acted in a way which is unlawful, unreasonable or wrong, within the meaning of section 25(1) of the Ombudsman Act.

Opinion

46. In accepting the entitlement of LinkSA to the concessional reimbursements for August, September and October 2008, the agency did not act in a manner which is unlawful, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

Whether the department wrongfully relied on false claim forms to pay concession reimbursements to a coach operator

47. A further issue concerns the public statements made by Mr Michael Jaensch in a television program⁶ to the effect that he wrongly completed claim forms for the concession reimbursement, by falsely signing parents' names. I have viewed the television program in which Mr Jaensch states that he did so. Whilst the program is not explicit as to the time at which the conduct occurred, it is accepted that Link SA has not claimed concession reimbursements for the St Francis de Sales service since late in 2008. I conclude that Mr Jaensch's conduct occurred before that time.
48. The department's explanation of the situation is as follows:

⁵ *City of Salisbury v. Biganovsky* (1990) 54 SASR 117

⁶ *Today Tonight*, <http://www.todaytonightadelaide.com.au/> 'Bus confession'

Claims for concession reimbursements must include a Monthly Concession Statement outlining fare revenue and value of concession fares provided, a list of all students carried for the relevant month and a Blue/Yellow Application for Student Concession Pass. At the beginning of each school year (or at the commencement of travel for a new student regardless of time of year) the parents of students seeking a student concession pass must complete an Application form. This yellow form is signed by the parents and also by the School to confirm that the student is enrolled at the nominated school (there is no suggestion that these forms were signed by any party other than those authorised).

The forms referred to by Mr Jaensch are the blue Application forms which relate to each subsequent pass period (there are 10 pass periods per school year with the yellow form representing the first pass period). At the commencement of each new pass period, a Blue Application form must be completed verifying that the student is still travelling and is a full time student. This pass is not required to be signed by the school and in some cases had been signed by the Bus Contractor as many parents strongly objected to having to sign 10 forms each year (more if they had multiple children) when they had already completed and signed the initial Yellow form at the commencement of the school year. The form sought a signature from a Parent/Guardian, however PTS recognises that this should have also included "Authorised Person" to enable the Bus Provider to sign.

In response to ongoing complaints from parents regarding the need to sign these blue forms, they will no longer be used from the 2012 school year.

49. In this context, the complainant claims that in a meeting held on 2 September 2011 between officers from PTSD, and representatives from St Francis de Sales School, the PTSD officers 'agreed that the concession claims were not correct'. I asked the department to comment on this suggestion, and it responded as follows:

At our meeting with representatives of St Frances De Salles, the above circumstances were explained. The comment that the "concession claims were not correct" is incorrect, our comments related to the blue forms where it was acknowledged that the PTS should have made these forms clearer to include the ability for an "authorised person" to sign these forms in lieu of parents/guardians.

Copies of the Yellow and Blue forms were also presented to confirm with the school that the initial Yellow Forms had been signed by parents and a representative of the school for each student who had travelled on the relevant Lofty Coaches service. At that meeting it was also acknowledged by the school that they were aware that parents had in the past complained about the requirement to continually sign the blue forms.

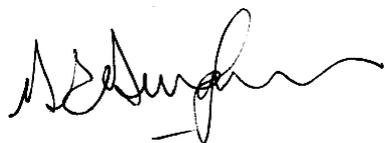
As outlined above, from the 2012 school year procedures have been altered to respond to these concerns and also require additional information to be provided by contractors to verify travel. Parents and schools will still be required to complete the initial Yellow Application form however will not be required to complete a Blue form for each Pass Period. To claim concessions each month, bus contractors will be required to submit a list of all students travelled (name, school, fare paid and receipt number for fares received) along with their concession claim. In addition, at the commencement of each term, the bus contractor will be required to supply the school with a list of all students travelling for verification that the student is a full time student of the nominated school. This list must also be provided to the PTS each term. Adhoc site audits of bus contractors will also be undertaken regularly to verify claims for concessions, including the requirement to produce receipts that correspond with monthly concession claims.

50. It appears to me that the essential issue is whether the department had sufficient evidence upon which to pay a concession reimbursement to the area service provider. It is not disputed that the department held properly completed 'yellow forms' confirming that each student was enrolled at St Francis de Sales school. The 'blue forms' signed by Mr Jaensch related to different 'pass periods' within the school year. According to their terms, they should have been signed by the student's parent or guardian, rather than by the service provider.

51. In response to my revised provisional report, the department noted that at the relevant time PTSD was not aware that the 'blue forms' had been signed by someone other than those authorised, and that this was only identified as part of recent investigations into this matter.
52. Nevertheless, PTSD now acknowledges that it should not have relied on the falsely completed 'blue forms', and has changed its administrative system so that there is now no requirement for the blue forms to be completed at all. In my view, at the time the concession reimbursements were paid, the department should not have accepted 'blue forms' signed by anyone other than those persons who were expected to certify that the student had travelled on the service during the 'pass period' i.e. parents or guardians.
53. In these circumstances, I consider that the administrative error by the department is at the lower end of the scale. However, my view is that in relying on falsely completed forms to pay the concessional reimbursements to LinkSA for August, September and October 2008, the department acted in a way which was wrong, within the meaning of section 25(1) of the Ombudsman Act.

Opinion

54. In relying on falsely completed forms to pay the concessional reimbursements to a coach operator, the agency acted in a manner which is wrong within the meaning of section 25(1)(g) of the Ombudsman Act.
55. In light of the actions already taken by the department, I do not make any recommendations to remedy this error.



Richard Bingham
SA OMBUDSMAN

13 March 2012

ATTACHMENT A

CHRONOLOGY PROVIDED BY DEPARTMENT FOR PLANNING, TRANSPORT AND INFRASTRUCTURE

- Sept 1997 Murray Bridge Passenger Service (**MBPS**) held area rights for Murray Mallee region under a Service Contract with the Minister for Transport
- 15/1/2005 MBPS sought approval to subcontract one school run to Magor's Bus Service – service for St Francis De Sales
- 1/4/2005 Office for Public Transport (**OPT**) approved subcontract request until 30/9/2007 (until end of contract period)
- 1/10/2007 Sub-contract document between MBPS and Magors until 30/9/2008 with further 1 year extension clause
- 30/4/2008 The McGinty Family Trust purchased Magor's Bus Service and the sub-contract agreement between MBPS and Magor's Bus Service was transferred. Teilta Pty Ltd was the purchasing entity for the McGinty Family Trust and the purchased company was rebranded as Lofty Coaches. Lofty Coaches acquired 3 private school runs (St Francis) and the subcontract arrangement. Notice on Magor's Bus Service letterhead and signed by representatives Directors of both Magors and MBPS that the sub-contract arrangement with MBPS shall be "transferred in full" to McGinty Family Trust (Lofty Coaches) on the sale of Magor's Bus Service.
- 1/8/2008 LinkSA acquired MBPS
- 5/4/2009 Email from LinkSA to PTD seeking clarification regarding Passenger Transport Act and Regulations, particularly with respect to the St Francis De Sales school run and the ongoing operation of this service. Confirmed that no student reimbursement claims had been sought while this issue is "sorted through".
- 24/9/2009 PTD Executive Director and the Minister for Transport attended a meeting with the Bus and Coach Association (**BCA**) regarding various issues, including the basis upon which services were operated by Lofty Coaches to St Francis De Sales school. The BCA indicates that the services in question related to pre-existing arrangements which had operated for a number of years.
- 30/9/2009 Original subcontract approval expired. No request from Lofty Coaches for extension and no application received for a Regulation 4A exemption (now Regulation 6).
- 1/10/2009 PTD wrote to both LinkSA and Lofty Coaches advising of the September 2009 meeting with the RCA and the Minister and also seeking a summary of events from each perspective to enable the issue to be resolved.
- 15/10/2009 LinkSA wrote to PTD outlining a summary of facts with respect to services to St Francis De Sales School. In this letter, LinkSA indicated that ongoing discussions had occurred between them and the RCA in an attempt to resolve the issue with respect to the subcontract arrangement with Lofty Coaches. It appears that discussions had occurred between LinkSA and the BCA's legal advisers where Lofty Coaches were advised by these legal advisers to enter into discussions with LinkSA to arrange new subcontract agreements. At the time of the letter the previous subcontract arrangement with Lofty had expired (30/9/2009) and Lofty Coaches had

made no efforts to seek an extension. The letter also asserts that LinkSA has suffered a negative commercial impact over the past 12 months while this issue was being resolved (this also confirmed in an email dated 5/4/2009 where LinkSA confirmed that they were not claiming concession reimbursements for students of the relevant St Francis De Sales service).

- 16/10/2009 Lofty wrote to PTD confirming the arrangements with Magors and also confirmed that services were still operating – 3 private runs for St Francis and one under subcontract arrangements with MBPS (for St Francis). This letter indicated that lawyers acting on behalf of Lofty Coaches did not inform them of their responsibilities with respect Regulation 4A requirements, a matter which they were “taking further” with their lawyers. Dean McGinty asserts that his first knowledge of requiring a Regulation 4A exemption was a facsimile sent from the PTD to his office in February 2009.
- 22/1/2010 Letter from PTD to Lofty Coaches regarding need for Regulation 6 (formally Regulation 4A) exemption for all school services prior to the commencement of the 2010 school year
- 18/2/2010 Lofty Coaches formally sought approval for a Regulation 6 exemption for services to St Francis e Sales and Murraylands Christian School
- 1/3/2010 Lofty Coaches approved to operate 5 services for St Francis and one service for Murraylands Christian School under a Regulation 6 exemption (App: 025/2009)
- Oct 2010 Allegations that LinkSA were inappropriately claiming concession reimbursements for students attending St Francis De Salle students who were being transported by Lofty Coaches.