

FINAL REPORT

Investigation pursuant to referral
Section 24(2)(a) *Independent Commissioner Against Corruption Act 2012*

Agency	Federation of Polish Organisations in SA Incorporated (FoPO)
Ombudsman reference	2014/08340
ICAC reference	2014/000458
Date of referral	28 July 2014
Issue to be assessed	Whether FoPO committed an act of maladministration in public administration

Jurisdiction

This matter was referred to the Ombudsman by the Commissioner pursuant to section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012* (**the ICAC Act**), as raising a potential issue of misconduct and/or maladministration in public administration within the meaning of that Act (**the referral**).

The referral arose out of a complaint to the Office for Public Integrity made by the former Director of Funds Management at the Department for Communities and Social Inclusion (**DCSI**). FoPO are an incorporated association that received funds under a contractual agreement with the Ministers for Families and Communities, Ageing, Disability and Housing (**the Ministers**). FoPO itself is not a public authority. Schedule 1 of the ICAC Act defines a public officer to include 'a person performing contract work if the work is performed for a public authority or the Crown authority, the public authority or, in any other case, the Premier'.

The Master Agreement between the Ministers and FoPO was signed on 21 April 2010. The Master Agreement describes FoPO as 'the service provider' which, 'provides services for the community of South Australia'.¹ In addition, the grants were provided through Service Agreements for each program.² I therefore consider FoPO to be a public officer for the purposes of the ICAC Act.

The referral alleged that FoPO had misspent grant funds received from DCSI in the sum of \$225,637 as at 30 June 2012. It is alleged that FoPO are unable to repay these funds, which have been 'in good intentions misplaced'.³

DCSI provided funding to FoPO through the joint Commonwealth and State Governments' Home and Community Care Program (**HACC**). On 1 July 2012 the Commonwealth Government took over some of the responsibility for all HACC programs⁴, therefore this report will only deal with the funding that was provided prior to 1 July 2012 when the state

¹ Recital E, Master Agreement, page 1.

² I have been provided with three service agreements examples for the period 1 October 2008 to 30 September 2009 (MS), and 1 May 2010 to 30 June 2011 (PSSS), 1 April 2011 to 31 March 2012 (MS).

³ Letter from FoPO to DCSI, 10 January 2014.

⁴ From 1 July 2012 80% of the PSSS was transferred to the Commonwealth Government, with the State Government administering funding for approximately 20% of the PSSS.

government (through DCSI and, from 1 July 2011 SA Health in relation to the Ethnic Aged Care Service only) funded FoPO.

Action taken

Using my powers under the *Ombudsman Act 1972*, I have conducted an investigation of the issue in response to the referral by:

- assessing the information provided by the Commissioner
- seeking several written responses from DCSI and FoPO
- considering:
 - the ICAC Act and the Ombudsman Act
 - the Master Agreement and Service Agreements
 - DCSI Policies and Treasurers Instructions
- preparing a provisional report and seeking the views of FoPO
- providing a provisional report to the Commissioner for comment and considering his response
- preparing this Final report.

Standard of proof

The standard of proof I have applied in my investigation and this report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336 (*Briginshaw*), I have considered the nature of the complaint and the allegations made and the consequences if they were to be upheld. *Briginshaw* recognises that greater care is needed in considering the evidence in some cases;⁵ and it is best summed up in the decision as follows:

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 ...⁶

Response to my provisional report

The Provisional Report was sent to FoPO on 3 June 2015 seeking the views of the President, Mr Chaustowski who replied on the 18 June 2015. Mr Chaustowski stated that 'some of the Reports assessments have been implemented, the President and committee members will undertake the reminder (sic) as soon as practicable.' Mr Chaustowski wrote that the 'new President and Committee Members will strive to manage (FoPO) affairs diligently, honestly and transparently'.

Background and evidence obtained in the investigation

1. FoPO unites 22 Polish member organisations that represent the Polish community and runs programs for people of Polish background. FoPO receives its funding through the Home and Community Care (HACC) program. DCSI operated the HACC program until 1 July 2012 when the Commonwealth government took over the majority of the management of the HACC program.
2. Up until 1 July 2012, FoPO had been receiving two sources of funding from the HACC program. FoPO had received recurrent funding for:

⁵ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

⁶ *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

- (a) the Polish Social Support Services (**PSSS**) for the period 1 July 2004 to 30 June 2012. This funding was paid quarterly in advance; and
 - (b) its Ethnic Aged Care Service (**EAC**) for the period 1 January 2006 to 30 June 2011 in the form of recurrent contracts. This funding was paid once off in advance.
3. FoPO also received non-recurrent funding to establish and run a Meals Service (**MS**) for the period 1 June 2004 to 30 June 2013 in the form of six one off HACC contracts. The contract dates were not sequential due to the irregular release of HACC funding for one off projects. This funding was paid once off in advance. Therefore the HACC funding paid to FoPO was for three separate projects: PSSS, EAC and MS.
4. From 1 July 2012, DCSI continued to administer the funding for only 20% of the HACC program to FoPO, which was approximately \$27,184 per annum. In April 2014 DCSI advised FoPO that further payments of the grant were expended due to non-resolution of the unexpended funds. Therefore FoPO is not currently funded by DCSI for any HACC programs.

Chronology

5. On 28 May 2012 FoPO wrote to DCSI seeking permission to retain unspent HACC funds to:
 - reimburse FoPO for costs incurred to cover the MS during unfunded periods between contracts
 - cover administration costs of the MS which FoPO did not include in their financial reporting; and
 - contribute towards an upgrade and expansion of FoPO's kitchen facilities.
6. An extract from FoPO's letter dated 28 May 2012 in relation to the 130 clients it services for its MS states:

This program has always been underfunded but we have, however, chosen to continue to deliver our best, struggling to manage insufficient financial and physical resources. Because of its non-recurring funding nature previous management has not been able to secure additional resources. The funds release timing and their funding cycle (not corresponding to financial years of July - June) may have also contributed to the underfunding and our accessing of unspent funds elsewhere. The current funding cycle is a good example where we face a dilemma: either to have to dip temporarily - we hope - into available funds or close the Program to avoid any further deficit. This second option is obviously socially unacceptable and unimaginable.

The Meals Program

1. was completely underfunded for 2 quarters for an amount of \$101,680 for the periods of 1/10/09-31/12/09 (444,696) and 1/1/11-31/3/11 (\$56,984). We kindly request that this amount be approved and formally carried over from the available PSSS surplus;
2. because of structural underfunding we did not deduct the customary 15% "administrative contribution" for 2010/11 amounted to \$18,000. At the time it was felt it would only be prudent and responsible not to deduct it and prevent further deficit. The truth is that the Meals Program requires considerable management and administrative input so the administrative contribution in this instance should be closer to 20% (of \$120,000 one-off Grant). Consequently, we kindly request that our PSSS surplus be used to cover this \$24,000 shortfall.
3. As discussed earlier, and clearly stated in our recent Food Audit (of our meals Program), our kitchen facilities are due - if not overdue - for a considerable upgrade and expansion. We have arranged for a detailed design and quote and

we are attaching an abridged version to this letter. The kitchen facilities are used exclusively for our seniors and, consequently, we are seeking your formal approval to use the unspent funds from our contracts to fund this project and commence it urgently. The quotation is comprehensive, is not excessive and covers essentials. Our community is also contributing to this kitchen upgrade/expansion project as presented in the project description. We request that \$140,000 quoted be considered to be approved as available towards this project from our surplus PSSS funds-to-date;

4. ...
7. In October 2012 DCSI advised FoPO that it was not able to respond to FoPO's request until all outstanding financial reports were received, which occurred in July 2013. The financial reports indicated that as at 30 June 2012 FoPO had a total of \$225,637 unexpended HACC funds.
8. DCSI verified this figure within its Financial Services division, and found that the PSSS had an underspend of \$225,637 and the EAC service had an underspend of \$70,659 but that the MS was overspent by \$104,997.
9. On 19 June 2013 DCSI Financial Services sent an invoice to FoPO for \$225,637 of unspent HACC funds during 2011/2012 from the PSSS project. The invoice requested payment within 30 days.
10. In a Minute dated 19 August 2013, Mr Joe Young, the former Funds Manager for Disability SA at DCSI recommended to the Chief Executive of DCSI that \$131,680 be retained by FoPO to cover unfunded periods from 2009/10 and 2010/11 for the HACC project MS. The Minute stated:

BACKGROUND:

During 2011/12, FoPO received \$312,700 of recurrent HACC funding to administer the Polish Social Support Program. The organization also received \$120,000 once off funding to administer the Polish Meals Service.

In addition, FoPO received funding from the Ethnic Ageing Grant program for the period 2005-2011, which is not administered by the Department for Health and Ageing.

FoPO have experienced a number of governance issues associated with financial reporting. Funds Management project officers have worked closely with the organization over the past 18 months to address these issues. FoPO has also recognized that they were potentially in breach of their service agreement and have made changes to their board and management structure to ensure compliance with HACC reporting requirements.

In July 2013, FoPO finalized all outstanding financial reporting. Their reports indicate that as at 30 June 2011, the organization had a total of \$202,402 unexpended funds.

It is recommended that \$131,680 be approved to cover the Polish Meals Services during unfunded periods of 2009/2010 and 2010/2011. These funds have already been expended.

FoPO also sought a contribution towards the upgrade of their kitchen facilities at Athol Park (which had been quoted at \$140,000) as well as \$24,000 to cover administration costs of the Polish Meals Service which they did not include in their financial reporting. These requests are not recommended by Funds Management.⁷

⁷ Minute from Mr Joe Young, Director, Funds Management, Disability SA to CEO of DCSI Ms Joslene Mazel, 19 August 2013, page ½.

11. The Chief Executive did not approve this recommendation and requested that DCSI Financial Services undertake a thorough review of FoPO expenditure dating back to 2004/05. DCSI Financial Services reported that as at 30 June 2012 FoPO had a total of \$333,989 of unspent funds from the PSSS and EAC programs.
12. On 6 November 2013 an internal meeting between Disability SA and DCSI Financial Services agreed that the amount to be retrieved from FoPO should be \$271,855.
13. On 14 November 2013 Disability SA and DCSI Financial Services met with FoPO to discuss the retrieval process, DCSI recommended that FoPO agree to the retrieval of \$225,637 due to DCSI already issuing an invoice to retrieve the lower amount of unspent funds and due to FoPO's 2011/12 audited financial report indicating they only had \$186,892 income on hand.
14. Therefore on 26 November 2013 DCSI sent a letter to FoPO President Mr Richard Chaustowski to formally request the retrieval of \$225,637 and included a proposed repayment schedule.
15. On 10 January 2014, FoPO replied as follows:

We are writing to you on behalf of the Polish Community and Federation of Polish Organizations in SA, it is unfortunate and disappointing that the past Board of FoPO had no inkling of how to address the funding deficits from different Social Support Services programs to support one highly underfunded program Polish Meals Program.

It is regrettable that States (sic) Government contributions to FoPO were in good intentions misplaced.

As you are aware FoPO is a Community based Organization it has not capacity of generating its own income we are reliant on Government funding for all of our Social Programs although the unspent funding was misdirected to fund much underfunded Polish Meals Program the money in no way was misappropriated, the funding was used for the benefit of highly vulnerable elderly individuals of Polish background.

Please do not misunderstand FoPO's intentions (sic) it's that we do wish to make amends for our past Management Board just we do not have the capacity to do so, We will in our power take any suggestions as ... how we can recon pence (sic) the situation we find ourselves in.⁸
16. On 14 March 2014, DCSI further advised FoPO by letter that the \$225,637 unexpended funds was required to be returned by 30 June 2014.
17. On 24 March 2014 FoPO responded in writing to DCSI. The 24 March 2014 letter is an exact copy of 10 January 2014 letter from FoPO to the Director, Funds Management.
18. On 23 April 2014, DCSI wrote to FoPO advising that future HACC payments had been put on hold and as a method to retrieve the funding offered a meeting.
19. On 27 May and 24 September 2014 DCSI met with FoPO. At the latter meeting the former Director of Funds Management, Ms Leeanne Head went with staff to the FoPO premises. It observed a new kitchen had been built and discussed strategies with the board members and staff for the funds retrieval. DCSI advise that it was decided at the meeting that the President of FoPO would advise the Board that it needed to consider strategies to start payment of the unspent funds. FoPO were advised that it

⁸ Letter from Mr Richard Chaustowski, President of FoPO to Mr Joe Young, 10 January 2014.

needed to contact DCSI by 27 October 2014 with a plan for repayment. In her letter to the Acting Ombudsman dated 21 November 2014 Ms Head stated:

From frank discussions at FoPO on the 24th September I formed the view that it was likely that FoPO did at least use some of the funds from the Polish Social Support Services for a more extensive and generous meals program than that for which they had been funded. Their record keeping was of poor quality and did not show this transfer of funds clearly. The new kitchen was of a good standard and had been required to be upgraded to this quality to enable FoPO to apply for grants from the Commonwealth for meals services. It was stated that much of the kitchen upgrade costs had been derived from fundraising.

At the meeting it was denied that the funds from the Polish Social Support Services were used for the kitchen upgrade.

On 6 November I received the letter which had been requested from the President of FoPO, Mr Chaustowski in which he stated that the meeting of the Board of FoPO and the member organisations could offer no plan for the repayment of the underspent funds.

I have commenced discussions with the DCSI Audit Services to look at the options available for the retrieval of funds.⁹

20. On 1 October 2014 I wrote to the President of FoPO, Mr Chaustowski asking him to provide information to assist my investigation pursuant to the referral. As Mr Chaustowski was overseas, I granted an extension of time for his response until 14 November 2014.
21. On 2 November 2014 FoPO advised DCSI by letter it does not have a strategy to reimburse the funds.
22. On 6 November 2014 DCSI advised FoPO by letter that the matter will be referred to DCSI Financial Services to commence the debt recovery process.
23. On 13 November 2014 I received a response from Mr Chaustowski to my Office's enquiries. The letter annexed an email string between Mr Chaustowski and FoPO's accountant Mr Arthur Salamon at Salamon Consulting. The letter stated that the Annual Reports were written in Polish and had not been translated. The emails stated that FoPO's financial reports for the years ended 2004/05 to 2008/09 would be delivered from the accountant to FoPO. Accounts for the remaining years 2009/10 to 2012/13 would be sent in a pdf version via email.
24. On 19 November 2014 my Office wrote to Mr Chaustowski asking for the financial records for the years ended 2011/12 to 2012/13 as they were not included in his response. My letter informed Mr Chaustowski that the financial records needed to be provided by 24 November 2014 at the latest otherwise a summons may be issued. In addition I asked for Mr Chaustowski's view as to the circumstances of the unexpended funds.
25. By letter dated 21 November 2014 Mr Chaustowski replied as follows:
 1. It is Federation of Polish Organizations in SA Inc. that the meals program was underfunded and money from other programs has been used to prop up the Meals Program, this has been shown in the reports given to OmbudsmanSA by FoPO's Accountant.
 - 2.- 6. ...

⁹ Letter from DCSI to the Acting Ombudsman, 21 November 2014, page 5.

7. Just clarify (sic) the situation
 - a) The Polish Meals come to existence because there was a great need in the aging Polish Community, perhaps naivety played a great deal in the funding the money was used to prop up the Meals Program.
 - b) The Meals Program for the elderly is expanding and the Polish Meals Program is catering for four other nationalities.
 - c) Polish Organisations and Clubs have contributed many thousands of dollars and great deal of time in refurbishing old and small kitchen to a state of the art kitchen that can cater for at least another 150 to 200 vulnerable community citizens that ... require meal to be delivered to them so that they can still be at their homes and not to be a burden to the rest of society.

I as newly elected President of Federation of Polish Organizations in SA and the new Committee are determined to put all past discrepancies and shortfalls to a satisfactory conclusion so that our elderly clients from Polish Extraction (sic) will not be disadvantaged, by our past FoPO Committees Management

26. FoPO's letter dated 21 November 2014 failed to enclose the financial records requested by my Investigating Officer on 19 November 2014.
27. On 15 December 2014 my Investigating Officer telephoned Mr Chaustowski to arrange service of the summons. The Secretary of FoPO, Mr Stanislaw Kramarczuk delivered the documents within an hour of the request, along with further requested documents on 17 December 2014.
28. On 29 January 2015 I wrote to DCSI requesting further written information. I was instructed to direct my enquiries to Mr Vince Raschella, the newly appointed Manager of Contracting and Section Liaison at DCSI following a restructure and the resignation of Ms Leanne Head. Mr Vince Raschella hand delivered the requested documents on the 18 February 2015.

Relevant law/policies

Legislation

Section 5(4) of the ICAC Act provides:

- (4) ***Maladministration in public administration***—
 - (a) means—
 - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
 - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
 - (b) includes conduct resulting from impropriety, incompetence or negligence; and
 - (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

Policies

Governing all DCSI grants is their Grants and Commonwealth Grant Revenue Policy (prior to 23 April 2014) (**Grant Policy**). The Grant Policy has since been replaced by the Unexpended Grant Money Policy and Unexpended Grant Money Procedure dated 23 April 2014.

The Grant Policy was created to ensure compliance with various Treasurer Instructions (TI) that the Department for Families and Communities (now DCSI) needs to comply with. T115 (Grant Funding) is relevant here.

The Grant Policy states:

Unexpended Grant Moneys are those grant moneys remaining at the end of the financial year or grant period that remain unspent.

T115

15.10 This clause applies to all grants with the exception of non-recourse grants and grants to which clause 15.9 applies. Where it is proposed to make a grant other than a non-recourse grant (other than a one-off grant payment for \$10,000 (GST exclusive) or less) to an entity, a written agreement setting out the terms and conditions of the grant must be entered into between the responsible Minister¹⁰ and the entity concerned (grant agreement). The Chief Executive of the administrative unit that is responsible for administering the grant will ensure that the grant agreement appropriately records the grant, associated financial arrangements and the administrative unit's control and monitoring requirements and that the grant agreement is legally enforceable. In this regard the Chief Executive must ensure that that agreement incorporates the conditions set out in the following clauses, together with any additional requirements and conditions which may be specified by the Minister.

Agreements

Type	Between	Program	Period	Amount
Master Agreement	Minister for Families and Communities, Ageing, Disability, Housing and FoPO		Unspecified Period Signed 21/4/10	Unspecified
Master Agreement (with variation)	As Above		1/7/11-30/6/12 Signed 23/9/11	\$312,700
Service Agreement	Minister for Ageing and FoPO	HACC	1/10/08-30/9/09	Unknown
Service Agreement	Minister for Ageing and FoPO	PSSS	1/5/10-30/6/11	\$312,700
Service Agreement	Minister for Ageing and FoPO	MS	1/4/11-31/3/12	\$120,000

Master Agreement

- 1.1 **"Allocated Funds"** means the allocated funds as specified in the Service Agreement payable by the Minister to the Service Provider for the provision of the Services by the Service Provider in accordance with this Master Agreement

¹⁰ Generally, a grant agreement may be entered into and executed by a Minister or alternatively an employee at a senior level of the administrative unit as agent of the Minister under a settled program or policy. This would require a written ministerial authorisation to the senior employee to execute this type of grant agreement.

and the Service Agreement (together with any annual funding indexation as determined by the Minister);

- 1.8 **“Derived Income”** means any funds in addition to the Allocated Funds received by the Service Provider that are directly associated with an arise from the provision of the Services including (but not limited to) rent, fees, client recoveries and interest. For the avoidance of doubt the Parties agree that Derived Income does not include monies received as a result of donations, fund raising or bequests;
- 1.22 **“Unexpended Allocated Funds”** means any Allocated Funds, plus any Derived Income as provided for under clause 7.5 of this Master Agreement, received by the Service Provider and not, at a given point in time, expended in accordance with the terms of this Master Agreement and the Service Agreement.

The Allocated Funds are considered to have been expended if set aside to meet any accrual or provision which is consistent with prudent management and proper accounting practice, including provisions for long service leave entitlements accrued by employees of the Service Provider.

...

1. THE MASTER AGREEMENT AND ITS APPLICATION

- 1.1 The Parties acknowledge and agree that in consideration of the payment by the Minister of the Allocated Funds in accordance with this Master Agreement and the Service Agreement:

- 1.1.1 this Master Agreement sets out the terms and conditions which will apply to the provision of the Services by the Service Provider under the Service Agreement(s) (if any) entered into by the Minister and the Service Provider from time to time; and
- 1.1.2 the terms and conditions of this Master Agreement are incorporated into the Service Agreement(s) (if any) entered into by the Minister and the Service Provider from time to time.

ALLOCATED FUNDS

...

- 7.2 The Service Provider must use the Allocated Funds solely to provide and administer the services.

...

- 7.4 The Service Provider must ensure that the Allocated Funds received under Service Agreement can be accounted for, and distinguished from monies received from other sources.

- 7.5 The Service Provider must use all Derived Income solely to provide and administer the Services and for no other purpose.

- 7.6 Upon the occurrence of any of the following:

- 7.6.1 the expiry or earlier termination of the Service Agreement;
- 7.6.2 the Service Provider ceasing to provide the Services at any time; or
- 7.6.3 the Service Provider breaching the terms and conditions of this Master Agreement or the Service Agreement;

the Service Provider must promptly provide to the Minister a report setting out the level of the Unexpended Allocated Funds and, unless specific approval is

given by the Minister for the Service Provider to retain the Unexpended Allocated Funds, the Service Provider must repay the Unexpended Allocated Funds to the Minister. If the Minister gives specific approval to the Service Provider to retain the Unexpended Allocated Funds, then the Minister may direct the Service Provider to apply the Unexpended Allocated Funds at the Minister sees fit.

- 7.7 Without limiting the Minister's rights in clause 7.6 or 23 in any way, if the Service Provider breaches the terms and conditions of this Master Agreement or the Service Agreement at any time, then the Minister may require the Service Provider to repay all or part of the Allocated Funds to the Minister (whether expended or not).

Whether FoPO committed maladministration in public administration

29. Maladministration is defined in the ICAC Act at section 5(4), above.
30. FoPO is an incorporated association, and run by an Executive Committee (EC). Between 11 July 2011 and 4 November 2013, the EC consisted of between 9 and 13 members. On 29 November 2010 Mr Richard Chaustowski was appointed President and Mr Stanislaw Kramarczuk was appointed Secretary. Both men currently hold the same positions on the EC. Mr Anthony Markowski was appointed Treasurer on 18 July 2013 and continues to hold the position. Various members held the position of first and second vice president since 20 November 2013.
31. Whilst the EC are members of an incorporated association, I consider FoPO to be a public authority for the purposes of the ICAC Act because under the Master Agreement and Service Agreements they are service providers for the Minister, expending public monies.
32. Grant funded organisations such as FoPO are required to adhere to the DCSI Master Agreement and approved DCSI Service Agreements/ Variations. The Master Agreement states at 7.2 and 7.4 that allocated funds are to be used solely to provide services that the service agreements provide for and must be distinguished from other sources.
33. The service description contained within the Service Agreements for each HACC program set the scope for each program.
34. The Master Agreement was signed on 21 April 2010 by Mr Krzysztof Balcerak who was the then President of FoPO. A second Master Agreement was signed a year later on 23 September 2011 by Mr Andrew Malecki, then 'Manager' of FoPO. The term of the second Master Agreement was from 1 July 2011 to 30 June 2012. It included a variation from the earlier signed agreement to amend the expiry date (30 June 2012), outputs for each program, and amount of allocated funds (\$312,000 total)
35. It is the opinion of the former Director, Funds Management Ms Leeanne Head that it was likely that FoPO used some funds from the PSSS grant for the MS. FoPO acknowledges that this occurred in their letters to DCSI dated 28 May 2012 and 10 January 2014. This is in breach of clause 7.4 of the Master Agreement.
36. I note President Chaustowski's explanation that the past Board of FoPO did not know how to address the funding deficits. However the Board of FoPO has had the same President (Mr Chaustowski) and Secretary (Mr Stanislaw) from 29 November 2010, at the time the Master Agreements were entered into. FoPO has also had the same accountant for at least ten years, Salamon Consulting.

37. Ms Head refers to FoPO's bookkeeping, and the communication with DCSI as being poor. My Offices has also experienced this - FoPO has co-operated sporadically and produced information only after a summons was about to be issued. Section 5(4)(b) of the ICAC Act includes conduct resulting from impropriety, incompetence or negligence. I find that FoPO's poor record keeping, communication and a lack of willingness to resolve this issue to be evidence of such conduct.
38. I also consider that on balance, some of the unexpended HACC funds in all likelihood were spent on FoPO's kitchen upgrade, due to FoPO's initial request for this expenditure, the fact that the kitchen was upgraded, and the question of whether FoPO could fundraise such a large amount in a short amount of time.
39. I note that DCSI are currently considering whether to take legal action to recover the funds from FoPO.
40. I therefore consider that the conduct of the Board of FoPO:
- in expending grant monies provided to them for one program (PSSS and/or EAC) on the provision of a different program (MS) in breach of the Master Agreement,
 - in choosing to use the surplus HACC funds to continue the MS rather than cease the MS to ensure the funding would be provided
 - in being unable to account for its misspending
 - in failing to propose or accept DCSI's repayment plan
 - in failing to repay the unexpended allocated funds in accordance with section 7.6 of the Master Agreement

is all evidence of its substantial mismanagement of public resources, and an unauthorised use of public resources. I therefore consider that FoPO has committed maladministration in public administration contrary to section 5(4)(a)(i).

Conclusion

In light of the above, my final assessment is that FoPO committed maladministration in public administration within the meaning of section 5(4)(a)(i) of the ICAC Act.

Summary and Recommendations

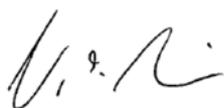
To remedy this error, I make the following recommendations under section 25(2) of the Ombudsman Act that:

1. I send a copy of this report to the Auditor-General Mr Andrew Richardson to obtain his views;
2. that all position holders of the Board of FoPO to undergo training about the responsibilities of being a Board member;
3. that FoPO is to obtain the services of a new accounting practice to prepare its financial reports and provide advice;
4. that a copy of this report be tabled at FoPO's Annual General Meeting and be sent to all members of FoPO;
5. that a copy of this report be sent to the Commonwealth Government Department responsible for HACC funding;
6. that a copy of this report be sent to the Consumer and Business Services as the regulatory body for incorporated associations in South Australia;

In accordance with section 25(4) of the Ombudsman Act, I foreshadow a request that FoPO report to me by **14 August 2015** on what steps have been taken to give effect to recommendations 2-4 above; and, if no such steps have been taken, the reason(s) for the inaction.

Final Comments

I intend to send a copy of my report to the Auditor General Mr Simon O'Neil, the Commonwealth Department responsible for HACCC funding, Consumer and Business Services and the Hon Zoe Bettison MP Minister for Communities and Social Inclusion as required by section 25(3) of the *Ombudsman Act 1972*.



Wayne Lines
SA OMBUDSMAN

6 July 2015