

SUMMARY OF FINAL REPORT IN RELATION TO SA HEALTH'S EPAS PROCUREMENT ISSUES

The Ombudsman investigated, upon referral by the ICAC:

- whether the Department for Health & Ageing (**the department**) committed maladministration by engaging ZED Business Management (**ZED**) to manage and lead the implementation of the new Electronic Patient Administration System (**EPAS**)
- whether the department committed maladministration by failing to publicly disclose its contracts with ZED
- whether the Chief Executive Officer at the relevant time (**the then Chief Executive**), and/or the Chief Medical Officer of the department had close personal relationships with the founders of ZED that gave rise to a conflict of interest
- whether the Chief Medical Officer of the department and/or the Chief Information Officer committed misconduct by publicly endorsing ZED.

The Ombudsman also considered whether administrative error occurred for the purposes of the Ombudsman Act in relation to the department's procurement processes and record keeping.

The Ombudsman's view was that, while the department could have managed the various engagements of ZED better, any flaws in the department's processes did not amount to maladministration. In reaching that view, the Ombudsman had regard to a number of factors including:

- the decision to engage ZED by direct negotiation rather than open tender was not inconsistent with relevant guidelines
- the State Procurement Board extensively scrutinised the department's procurement processes in relation to the EPAS program and was ultimately satisfied that an appropriate approach had been taken
- the department had a genuine rationale for engaging ZED by direct engagement based on a complex series of factors
- the engagement of ZED did not in itself result in a substantial mismanagement of public resources.

In relation to the department's failure to disclose the ZED contracts, the Ombudsman's view was that, while ZED was referred to as a 'contractor' in various documents, ZED actually met the definition of a consultant rather than a contractor, and on that basis the contracts should have been disclosed as required by Department of the Premier and Cabinet Circular PC 027. In reaching that view, the Ombudsman considered that nothing in the various contracts suggested that ZED was subject to direction from the department and had regard to examples of 'contractors' in SA Health' Procurement Policy and its policy directive concerning disclosure requirements.

The Ombudsman also had regard to various issues concerning the contracts that were identified as part of the department's internal audit. Those issues included:

- insufficient information in Acquisition Plans as to the rationale to justify the direct engagement approach
- use of default, or template based statements which had not been tailored to the relevant procurement
- contracts not reflecting the scope of the actual work performed by ZED
- ongoing engagement of ZED despite contracts having expired
- insufficient detail in relation to risk management
- incorrect contract amounts
- a lack of probity reviews.

While the Ombudsman did not consider that the department's practice in itself amounted to maladministration, his view was, however, that the cumulative procedural errors in relation to contract execution and the failure to disclose the contracts was particularly significant given the scale and nature of the EPAS project and the public interest in its implementation. While the Ombudsman accepted that the department has taken steps to address those deficiencies, his final view was that the failure to observe proper procurement processes was wrong for the purposes of section 25(1) of the Ombudsman Act.

The Ombudsman also considered that by failing to maintain records of a significant number of invoices, the department's actions appear to have been contrary to law for the purposes of section 25(1) of the Ombudsman Act, given that there was no evidence that those records were destroyed in accordance with the *State Records Act 1997*.

To remedy the error, the Ombudsman recommended that SA Health disclose all ZED contracts to which Department of the Premier and Cabinet Circular PC 027 applies.

The Ombudsman has also provided a copy of his final report to the Manager of State Records.

The Ombudsman considered that none of the information provided to his investigation indicated that either the then Chief Executive Officer or the Chief Medical Officer had close personal relationships with ZED which gave rise to a conflict of interest that was required to be addressed in accordance with the conflict of interest policy, the Code of Ethics or the SA Health Probity in Procurement Policy. The Ombudsman also noted that the Chief Medical Officer did not appear to play any role in the various procurement processes involving ZED. The Ombudsman did not consider that either the then Chief Executive or the Chief Medical Officer committed misconduct.

The Ombudsman was also satisfied that neither the Chief Medical Officer nor the Chief Information Officer authorised ZED to include testimonials on its website and on that basis neither officer committed misconduct.