



OmbudsmanSA

STATEMENT ON INVESTIGATION

Published pursuant to section 26(3) of *Ombudsman Act 1972*

30 September 2019

Outcome of Ombudsman Investigation - Waiving of an expiation

The Ombudsman investigated, upon referral by the Independent Commissioner Against Corruption, two issues concerning a Chief Executive Officer of a council's decision to waive a parking expiation incurred by a council volunteer.

The Ombudsman's investigation found that the Chief Executive Officer:

- was initially under the false impression that the volunteer was acting in their capacity as volunteer when the expiation was incurred
- sought to have the expiation notice withdrawn on that basis
- subsequently changed his mind once he became aware that the volunteer was not acting in their capacity as a volunteer at the relevant time, but did not take steps to halt the waiver (noting that the volunteer had already been advised by telephone that the expiation would be withdrawn).

The Ombudsman considered that the Chief Executive Officer acted contrary to the *Expiation of Offences Act 1996* in withdrawing the expiation in circumstances not prescribed by that Act and had failed to act with reasonable care and diligence.

The Ombudsman accepted that the Chief Executive Officer:

- was not acting in bad faith, noting that he was not acting for the benefit of a friend or relative
- genuinely thought it was unfair for a council volunteer to be fined on the basis of the information before him at the time his decision was made
- acknowledged that he failed to follow correct process
- took steps to initiate a review of council's processes to ensure greater transparency.

That said, the Ombudsman noted:

- it was concerning that a person in the Chief Executive's senior position failed to be more diligent in being aware of and acting in accordance with legislative requirements
- there are sound reasons why the legislation limits the circumstances in which expiations can be waived
- if such conduct is left unchecked, it can seriously undermine public confidence in the fairness, propriety and transparency of council processes.

Outcome

While the Ombudsman had regard to the mitigating circumstances, he considered that the conduct was sufficiently serious to amount to misconduct for the purposes of section 5(3)(b) of the ICAC Act.

The Ombudsman also considered that the council acted contrary to law in failing to specify reasons in its notice of withdrawal, as required by the Expiation of Offences Act.

The Ombudsman recommended that the council remind staff of their obligations in relation to recording reasons for waiver of expiation fees and amend the council's procedures as necessary to prompt staff to record reasons.

In all of the circumstances, the Ombudsman did not consider it necessary to recommend that the council reprimand the Chief Executive Officer.