

Report

Full investigation - *Ombudsman Act 1972*

Complainant	Ms Amani O'Brien
Agencies	South Australian Country Fire Service (the CFS) and South Australian Fire and Emergency Services Commission (SAFECOM)
Ombudsman reference	2019/09614
Date complaint received	18 November 2019
Issues	<ol style="list-style-type: none">1. Whether the CFS and SAFECOM failed to properly assess and handle the complainant's complaint of sexual harassment in the first instance2. Whether CFS and SAFECOM failed to properly consider and respond to the complainant's concerns about the handling of the initial complaint and her request to escalate her complaint3. Whether SAFECOM failed to provide appropriate advice to the CFS in relation to its sexual harassment policies

Jurisdiction

The complaint is within the jurisdiction of the Ombudsman under the *Ombudsman Act 1972*.

I am of the view that the complainant, who is a volunteer of the CFS, is likely a public officer and an informant under the *Public Interest Disclosure Act 2018* (the PID Act).

The complainant consented to the disclosure of her identity for the purposes of my investigation by telephone on 19 November 2019.

My investigation of this complaint initially considered the actions of the CFS only. I had intended to comment on the actions of SAFECOM and advice provided by its officers separately. Upon further consideration, however, I decided that the consequences of the actions and advice provided by SAFECOM are not only intrinsically linked to the actions by the CFS, but are also serious enough to warrant formal consideration by me in this report.

Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking a response from the CFS
- seeking a response from SAFECOM
- seeking more particulars from the complainant
- considering the Ombudsman Act, the Public Interest Disclosure Act, *the Equal Opportunity Act 1982*, the *Human Rights and Equal Opportunity Commission Sexual Harassment - Code of Practice for Employers (2004)*, the *Fire and Emergency Services Act 2005 (the FES Act)*, the *Fire and Emergency Services Regulations 2005 (the FES Regulations)*, the *Work Health and Safety Act 2012*, and the CFS's Progressive Disciplinary Guideline
- preparing a provisional report, and seeking a response to that provisional report from the complainant, the CFS, SAFECOM, and the former Equal Opportunity Commissioner, Dr Niki Vincent.

Standard of proof

The standard of proof I have applied in my investigation and 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, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.¹ 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 ...²

Procedural fairness

A copy of my provisional report was provided to the CFS, SAFECOM, the former Equal Opportunity Commissioner, Dr Niki Vincent, and the complainant.

The CFS did not respond to my provisional report, and confirmed by telephone that they did not intend to provide any comment.

SAFECOM provided the following comment, by way of letter dated 16 October 2020:

I agree with your view that the advice provided by SAFECOM's Volunteer Services Branch (VSB) failed to assess the seriousness of the allegations. This matter should have been referred to a formal investigation process and [REDACTED] should have been suspended during the investigation process.

As you are aware, this matter has been suspended *sine die* by the Equal Opportunity Commission of SA (EOC) pending an investigation by SA Police (SAPol). [REDACTED] service as a volunteer with the CFS has been suspended until further notice.

¹ 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.

² *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

Generally, when a public sector employee/volunteer is under investigation by SAPol an investigation by the agency is suspended so as not to interfere with the investigation process being conducted by SAPol. You may wish to consider this with respect to your foreshadowed recommendation under section 25(1)g of the *Ombudsman Act 1972*.

With respect to your foreshadowed recommendations to SAFECOM:

1. I am of the view that it is appropriate that an apology is issued to Ms Armani (sic). A written apology has been sent by Australia Post to Ms O'Brien today;
2. The VSB is currently liaising with the EOC to arrange an appropriate training program to be delivered to relevant SAFECOM employees and CFS Regional Commanders. The VSB is also evaluating appropriate training options from other training providers with respect to improving employees' knowledge of the *Work Health and Safety Act 2012* and the *Fire and Emergency Services Regulations 2005*.
3. SAFECOM will seek the assistance of an appropriately qualified person to review relevant CFS policies and guidelines in accordance with SAFECOM's obligations under the *Fire and Emergency Services Act 2005*.

I have noted the response from SAFECOM, and amended my recommendations accordingly.

Dr Vincent also responded to my provisional report by email dated 28 September 2020. Dr Vincent provided feedback on my recommendations, and referred me to a relevant report on preventing and responding to sexual harassment in the workplace for consideration.³ I have considered Dr Vincent's feedback in this final report, and thank her for her contribution.

Background

1. Between October 2017 and February 2018, the complainant, Ms Amani O'Brien, was alleged to have been subject to sexual harassment by another CFS volunteer, [REDACTED], whilst volunteering with the CFS. The following is a description of the events that allegedly occurred between [REDACTED] and the complainant:
 - Monday night training, February 2018: arm pressed across my chest in an attempt to 'Christian side hug' me after I made it clear I was uncomfortable hugging him goodbye.
 - humming and approaching whilst playing volleyball, trying to grab at my waist.
 - when I was retrieving the volleyball, he was 'trying to help' by putting his hand up my shirt and holding onto my upper abdomen, just along my bra line.
 - Lifting me up so I could see the water gauge on the truck by bear hugging me from behind, with his arms around my thighs.
 - Stroking my foot, with his wife by his side on a social night
 - October 2017: Forced tight hug, I was hunched down on the pavement out the front of the station. A lieutenant ([REDACTED]) sent a text to apologise the next day (see attached screenshot).

³ *Disrupting the System, Preventing and responding to sexual harassment in the workplace*, Male Champions for Change, February 2020.

- constant sexual innuendos, suggestions that I am sexually inexperienced and would be 'good quality'.

- sexual innuendos made so frequently I have to be careful not to use some words and phrases, particularly 'come' or 'are you coming' etc.

- During a strike team at Clare, truck consisting of myself, [REDACTED], [REDACTED] and [REDACTED] slept at 4am. I was in front seat as OIC, he leant over from the backseat and whispered close in my ear, inaudible as I got a fright and elbowed him away. [REDACTED] laughed and remarked she was happy I'd done that.

- Monday night training, went to Tea Tree Gully CFS to see new ambulances and speak with paramedics. I was chosen to hold a neck brace, to which [REDACTED] remarked to Para captain [the Brigade Captain], 'they chose her because her hands make it look bigger'. Making sure I had noticed, [REDACTED] retold me this later and informed me that [the Brigade Captain] had laughed. [REDACTED] and [REDACTED] also commented on the female paramedics (sic) bodies, and asked which one I would choose.⁴

2. The complainant reported the allegations to [REDACTED], [REDACTED], Volunteer Services Branch (VSB), SAFECOM, and on 26 February 2018, [REDACTED] reported the behaviour to the Para Reserve Brigade Captain, [REDACTED], on the complainant's behalf.
3. According to the complainant, [the Brigade Captain] informed her that he 'would speak to [REDACTED] and make an announcement to the brigade.' By way of comment, I note that although it appears this did not occur, this suggestion was entirely inappropriate given that the matter concerned was highly private in nature.
4. On 26 March 2018, [REDACTED] apologised to the complainant at a CFS training session, and asked to have a 'formal meeting' with the complainant and [the Brigade Captain].
5. An informal meeting was held on 8 April 2018 pursuant to the CFS's Progressive Disciplinary Guideline (the **Guideline**). [the Brigade Captain], [REDACTED], and the complainant were in attendance. I am advised that during that meeting, the complainant and [REDACTED] agreed to 'act amicably', and the CFS took the view at this point that the matter was resolved.
6. On 15 April 2018, the complainant contacted [REDACTED] to express her concerns about the informal meeting, stating that she had expected it to have resulted in more serious consequences for [REDACTED]:

Just thought I'd follow up your last email, I had a meeting with [the Brigade Captain] and [REDACTED] last Monday night in which I aired my concerns. The impression I got was that all his actions were an accident and his hand slipped on a number of occasions, which I expressed could not have been accidental at all. At this stage, things are a little tense and awkward, and I was left wondering what it would have taken to see him at the very least suspended for a period of time.

I feel as though [REDACTED] lacked empathy in the conversation, asking me at the end of the meeting what jokes he was allowed to make, since I want to be treated equally. [my emphasis]

Do you have any further advice for things I can say and do to make the situation better?

7. On 17 April 2018, [REDACTED] forwarded the complainant's email to [the Brigade Captain], and enquired as to whether the issue had been resolved at Brigade level.
8. [the Brigade Captain] informed [REDACTED] by reply email dated 18 April 2018 that the informal meeting held on 8 April 2018:

⁴ Submitted by the complainant via Ombudsman SA website enquiry form on 18 November 2019.

...went fine & I believe all of her concerns have been addressed & [REDACTED] has been spoken to & is clear on expectations. They both advised that they should be able to continue co-working in an amicable manner. At this point both parties wish to move on & in my opinion at this time there is no need to further meetings or action.

9. [REDACTED] then emailed the complainant on 19 April 2018, advising her that:

...The informal meeting/mediation is always the first step in resolving conflict and more often than not, we find that this is all that is needed. The informal process is not about punishment or suspension. It is a chance for parties to resolve their issues and for behaviours to change.

I received an email from [the Brigade Captain] advising the meeting had gone ahead and that both you and [REDACTED] have agreed to move forward (sic) work alongside each other amicably. This sounds like a wonderful outcome. [the Brigade Captain] assures me that [REDACTED] has been spoken to and the expectations going forward are very clear. There should be no excuse for [REDACTED] to behave in an inappropriate behaviour (sic) going forwards.

I believe that the situation should improve by itself from here on in, but should the behaviour continue you will need to tell [REDACTED] at the time is (sic) inappropriate and then report it to [the Brigade Captain] straight away. If it continues, then [the Brigade Captain] will be able to advise on how to make a formal complaint.

If you were not happy with the outcome of the meeting, then you will need to speak to [the Brigade Captain] and explain why.

10. On 13 July 2018, the complainant raised her concerns with [REDACTED], Liaison Officer, Region Two, CFS. This email from the complainant suggests that [REDACTED] had agreed to arrange an ethics training session for the Brigade where [REDACTED] volunteered:

Hi [REDACTED],

In regard to the behaviour within my brigade we discussed recently, here is the email I sent to [S]afecom outlining the approximate timeline of events. Since this time, we had a meeting between [the Brigade Captain], [REDACTED] and myself, where we agreed to act amicably.

I continue to feel uncomfortable in training, although his behaviour has stopped. I would expect that this behaviour is not accepted in the CFS, and a harsher penalty such as expulsion or suspension should occur. The woman I discussed this with, [REDACTED], informed me that she would arrange an ethics night at the brigade, however I have not heard from her on the matter.

Thank you for your help,

Amani.

11. [REDACTED] discussed the matter with Acting Regional Commander, [REDACTED], and then contacted [REDACTED], Regional Commander, by email dated 24 July 2018 to seek his thoughts on the matter.

12. [REDACTED] then contacted the VSB, and in an email dated 24 July 2018, raised his concerns about the seriousness of the allegations, stating:

...It would seem that these are fairly serious allegations. Given the Chief's statement on dealing with issues of this nature, I would think an investigation as opposed to leadership training is more appropriate?

13. On 24 July 2018, [REDACTED], SAFECOM, replied to [REDACTED]:

It seems from what im (sic) piecing together in this email is that Amani raised her concerns with the Captain and there was a meeting held, which, at least until this point, seemed to have resolved the problem. This is a perfectly reasonable response and in line with the sector guidelines on managing bullying and harassment. It also gives [REDACTED] a reasonable opportunity to change his behaviour.

Amani has mentioned in her email that the behaviour has stopped but that she still feels uncomfortable. Is she able to clarify why? Is she unsatisfied with the outcomes of the process (i.e. immediate disciplinary action)? Amani is well within her rights to make a formal complaint to the Captain outlining her specific concerns which could lead to a formal investigation.

My advice would be to talk to Amani and explain the options available, including submitting a formal complaint. We could then support the brigade and Region in dealing with this matter.

As for the ethics training, [REDACTED] has been on sick leave and is now on recreation leave but I can touch base with her when she returns. **It's not an unreasonable option to pursue for brigades after they've dealt with minor issues but perhaps until this is resolved it might be better to put on hold.** [my emphasis]

14. On 26 July 2018, [REDACTED] also sent an email to [REDACTED] advising him that the complainant should direct any further follow up complaints or concerns to her Brigade Captain.
15. On 6 December 2019, the complainant verbally requested an update on the status of her complaint, to [REDACTED].
16. [REDACTED] advised the complainant by email dated 6 December 2019 that:

...In relation to your request for update (sic) on your report sent to your captain in April, I am unable to provide one. [REDACTED] from SAFECOM wrote to you in response to that complain (sic) stating that there had been a meeting (as advised from [the Brigade Captain]) and that the issue had been dealt with informally. I have not been advised of further complaints from what was made originally and as such believed the matter to be resolved.
17. The complainant responded to [REDACTED] by email dated 6 December 2019, stating that the matter had been addressed informally, but that the seriousness of the alleged conduct had warranted a formal investigation:

...The issue was addressed informally, however I believe the issue should have been submitted as a formal report. I would like it to be formally investigated based on the following incidents of harassment...

...The incidents were not isolated, and the culture within the brigade further normalised and encouraged this behaviour for a long period of time. Whilst I am grateful it did not escalate further, I'm certain it would have if I had not lodged a complaint. Furthermore, the incidents that have occurred warrant serious review.
18. [REDACTED] replied to this email by further email dated 6 December 2019, stating that the actions taken had been consistent with the CFS' disciplinary policy (the guideline), and that no further action would be taken:

...The correspondence that I saw indicates that the issue was resolved informally. It is unreasonable to agree that things are resolved if you're (sic) expectation is still that you're wanting a penalty to be applied.

The outcome of the meeting was reported to me as: "They both advised they should be able to continue co-working in an amicable manner. At this point both parties wish to move on & in my opinion at this time there is no need for further meetings or action"

From a CFS disciplinary policy perspective, you have stated that the issue is addressed, as such, **no further action will be taken unless there are issues which have occurred since the meeting. If you wanted a harsher penalty at the time you would have needed to make that clear at that point** [my emphasis]. Further inappropriate behavior, now it has been made know (sic) that there is an issue, will be treated extremely seriously. [my emphasis]

19. The complainant then telephoned the CFS Headquarters on 6 December 2019, and advised ██████ that she had never been informed that she was required to go back to her Captain if she was dissatisfied with the outcome of the complaint. ██████ stated that this was incorrect, and referred to an email sent on 19 April 2018. The email, does not, in my view, make this process clear, it merely states that:

...If you were not happy with the outcome of the meeting, then you will need to speak to [the Brigade Captain] and explain why.⁵

20. On 9 December 2019, ██████ sent an email to ██████ advising that ██████, Group Officer, would call the complainant to discuss matters with her further, and also stated that:

...I have advised Amani that it is inappropriate to go against procedure not to use her chain of command. Now that she is dealing with ██████, I have told her that this is her point of contact and that there should be no need to contact the Regional Commander at first instance.

21. In a letter to this Office dated 10 January 2020, Mr Mark Jones, Chief Officer of SA CFS, described the complainant's various attempts to seek advice as follows:

...In review it would seem that Ms O'Brien was contacting various individuals trying to get a different answer on the same matter.

22. On 16 December 2019, a meeting was held between Group Officer ██████ and the complainant. The complainant expressly indicated that she wished for more serious disciplinary action, such as a suspension or dismissal, to be taken against ██████. Notes of the meeting indicate that Group Officer ██████ said this would be difficult given the perception that the matter had already been dealt with. The complainant stated that she felt the matter had been swept under the rug.
23. Group Officer ██████ agreed to send a formal letter to ██████ warning him of his behaviour, however, as of 7 January 2020 the letter had not yet been sent due to significant operational activities.⁶
24. On 21 April 2020, the complainant advised my investigation by telephone that as a result of her complaint to the Equal Opportunity Commission (**the EOC**), the CFS had agreed to undertake a conciliation with her in March 2020.
25. The complainant was subsequently advised by the EOC, however, that the conciliation would not take place due to the existence of an ongoing investigation of her complaint by South Australian Police. It is my understanding that the investigation by the South Australian Police is still ongoing.

SAFECOM's response to investigation

26. As highlighted at the outset of my report, I made a decision to include the actions of SAFECOM in this report given the actions of the agencies in this matter are intrinsically

⁵ I have further discussed this email, and conversation between ██████ and the complainant, below in my report.

⁶ I note that at this time, the agency was presumably responding to an unprecedented bushfire crisis across the State.

linked.

27. SAFECOM was notified of my investigation by way of letter dated 5 August 2020. In my notice of investigation, I queried:
- what SAFECOM's role was as an advisory body to the CFS
 - what its obligations were in relation to ensuring the safety of CFS volunteers
 - what training its officers have in relation to providing advice on sexual harassment complaints and other serious behavioural matters
 - whether it considered advice provided to the CFS in regard to the complaint was appropriate.
28. Mr Dom Lane, Chief Executive, SAFECOM, responded to my investigation by letter dated 18 August 2020 as follows:

What role does SAFECOM have in the forming of CFS policies?

SAFECOM develops policies for the Emergency Services Sector (ESS) comprised of:

- SA Fire and Emergency Services Commission (SAFECOM);
- SA Country Fire Service (SACFS);
- South Australian State Emergency service (SASES); and the
- SA Metropolitan Fire Service (SAMFS).

Policies are developed in consultation with the Emergency Service Organisations (ESO) listed above.

Generally SAFECOM is not involved in and has no input into agency specific policies such as the:

- CFS Code of Conduct
- CFS Doctrines
- CFS Standard Operating Procedures (SOP)

Other SACFS specific policies are developed by SACFS and SAFECOM is invited to comment on these. The SACFS Volunteer Progressive Discipline Guideline is an example of such a document.

What is SAFECOM's role generally in overseeing the CFS?

In accordance with section 58(2) of the *Fire and Emergency Services Act 2005* ("FES Act"):

"The Chief Officer of the SACFS is responsible for the management and administration of SACFS (and will, in undertaking this responsibility, also be the Chief Executive of SACFS)."

SAFECOM's function and powers is as prescribed in Division 2 of the FES Act. Division 2 of the FES Act is attached for your reference.

What obligation does SAFECOM have to ensure the safety of CFS volunteers?

SAFECOM provides functional support to the SACFS with respect to work health and safety and health and wellbeing issues. The Responsible Officers for SACFS are the Chief Officer and SACFS senior management.

What training do SAFECOM employees, including [REDACTED] and [REDACTED], have in relation to providing advice on sexual harassment complaints and other serious behavioural matters?

All SAFECOM employees have completed the Office for the Commissioner of Public Sector Employment online training for the *Code of Ethics for the South Australian Public Sector*.

██████ and ██████ are both qualified trainers who have completed a Certificate IV in Training and Assessment. Both are involved in training volunteers in ethical conduct.

SAFECOM employees are advised to refer matters of sexual harassment and other serious matters to either their manager, Contact Officer or Human Resources. SAFECOM Human Resources staff are qualified to provide advice with respect to these matters.

Does SAFECOM consider that the advice provided by ██████ and ██████ to the CFS in regard to Ms O'Brien's complaint was appropriate?

Advice provided by ██████ and ██████ was in accordance with the CFS Volunteer Progressive Discipline Guideline. I have also spoken to one of the officers mentioned in your letter and I am satisfied that the advice provided at the time was appropriate.

A copy of the SACFS Volunteer Progressive Discipline Guideline, CFS Code of Conduct and other documents relevant to this matter were provided to your office by the CFS Chief Officer, Mr Mark Jones in January 2020. I have enclosed a copy of Work, Health, Safety & Injury Management Responsibilities which is provided to all SAFECOM employees as part of the induction process upon commencement of employment.

29. The relevant provisions under Part 2, Division 2 of the FES Act, referred to by Mr Lane, that set out SAFECOM's functions and powers, state:

8–Functions and powers

- (1) The Commission has the following functions:

...

- (c) to ensure that appropriate strategic, administrative and other support services are provided to the emergency services organisations;

...

- (g) to ensure that the emergency services organisations maintain appropriate risk-management systems and practices;

...

- (i) to ensure that the emergency services organisations meet their statutory responsibilities and comply with the provisions of this or any other relevant Act;

- (j) to ensure the observance of high ethical standards within the emergency services sector...

Relevant law

30. The Equal Opportunity Act relevantly sets out that:

Section 5(1)

...

employee–

- (a) includes the holder of a public or statutory office (not being a judicial or magisterial office); and
- (b) includes an unpaid worker;

Section 87–Sexual harassment

(1) It is unlawful for a person to subject to sexual harassment–

- (a) a person with whom he or she works; or
- (b) a person who is seeking to become a fellow worker

31. Part 2, Division 2 of the FES Act sets out that:

8–Functions and powers

(1) The Commission has the following functions:

...

(c) **to ensure that appropriate strategic, administrative and other support services are provided to the emergency services organisations;** [my emphasis]

...

(i) **to ensure that the emergency services organisations meet their statutory responsibilities and comply with the provisions of this or any other relevant Act;** [my emphasis]

(j) to ensure the observance of high ethical standards within the emergency services sector...

32. Regulation 22 of the FES Regulations sets out that:

Conduct and discipline of members

(1) A member of an SACFS organisation who–

...

(h) behaves in any other manner that reflects seriously and adversely on SACFS,

is liable to disciplinary action.

Whether the CFS and SAFECOM failed to properly assess and handle the complainant's complaint of sexual harassment in the first instance

33. I accept that the allegations against ██████ have not yet been either substantiated or unsubstantiated. That said, I note at the outset that the allegations are, in my view, serious.

34. The Guideline relevantly sets out the following process for responding to a conduct complaint:

1. Determine the facts

A report of an alleged infraction can be received either verbally, written or witnessed. It is important to ensure that all the facts of the infraction are collected, e.g. when, where, specific circumstances, who was involved, witnesses, etc. Only individuals who were directly involved in the alleged infraction should be interviewed. Facts should be gathered in a timely manner and accurately documented.

2. Determine rule infraction

It is important that any disciplinary response clearly identifies which rule or rules have been breached. Assistance in identifying the specific rule/s can be obtained from Regional staff. References for this purpose may include the SA Fire and Emergency Services Act and Regulations 2005, SACFS training manuals, SOPs, COSOs, SACFS policies and procedures, SACFS Code of Conduct, Fire Ground practices, AIIMS manual, etc.

3. Root cause analysis

Many disciplinary problems can have underlying causes such as lack of training or knowledge, other mitigating circumstances, poor induction processes or lack of supervision/guidance. It is important to identify any root causes that may have led to the infraction and address those issues either within the Brigade or highlighting to the Group/Region for addressing by the SACFS.

4. Determine level of response

When determining the level of response, it is important to consider the following:

- The seriousness of the infraction
- Whether the member has a history of infractions
- Whether the infraction was wilful, unintentional or malicious
- Whether there are any mitigating circumstances
- The lowest level of response that will address the issue.

The levels of disciplinary response, in descending order of severity, are as follows:

1. Informal Counselling
2. Formal Counselling
3. Brigade Written Warning
4. Brigade Sanction
5. Service Reprimand
6. Service Demotion/Suspension
7. Service Dismissal

35. Even though the original complaint was not made formally, it is clear from the above that the various processes in the Guideline apply. That is, lodging a formal complaint is not a pre-requisite to the processes in the Guideline being followed.
36. In considering the Guideline above, it is apparent that either there was a fundamental misunderstanding or disregard for its contents.
37. I firstly note that it does not appear that anyone within the CFS or SAFECOM, at any point, provided the complainant with the Guidelines, or explained the complaint process and possible outcomes, other than providing piecemeal, inaccurate advice.
38. It also appears that upon receiving the report from the complainant, no attempt was made to consider what specific 'rules' had been breached, what the root cause of that behaviour was, and most significantly, what the level of response should be.
39. Had the steps set out in the Guideline been properly considered, I am doubtful the CFS would have taken the steps that it took in relation to the complainant's report.
40. Firstly, it is unclear what specific rule breach(es) had been considered. I note that the CFS' Code of Conduct does not make any reference to bullying or sexual harassment, references which, in my view, ought to be included to avoid any ambiguity in regard to acceptable behaviour.
41. In the absence of a relevant breach of the Code of Conduct, the CFS ought to have considered the Fire and Emergency Services Regulations 2005 (**the FES Regulations**),

which are specifically referred to under the Guideline. Regulation 22 of the FES Regulations sets out that:

Conduct and discipline of members

(2) A member of an SACFS organisation who—

...

(h) behaves in any other manner that reflects seriously and adversely on SACFS,

is liable to disciplinary action.

42. The CFS also should have turned its mind to whether [REDACTED] conduct was in breach of any other legislation, for example, the Equal Opportunity Act, or the Work Health and Safety Act.
43. It is also not clear whether the root cause of the alleged conduct was identified or considered.
44. Of particular significance, however, was the failure to consider the relevant criteria in assessing the appropriate level of response.
45. According to the Guideline, a Level 1 (informal counselling) response should be used for a 'first offence, unintentional or minor infraction'. While that wording could be clearer, I understand that it is meant to apply to a first offence which is also an unintentional or minor infraction. It cannot be meant to apply to a first offence, no matter how serious it is. As discussed below, I do not see how the allegations could reasonably be viewed as constituting a 'minor infraction.'
46. In considering the allegations made by the complainant, I am of the view that a reasonable person would conclude that [REDACTED] alleged conduct was highly serious given its potentially criminal nature, the fact that it was directed towards an officer that was much younger and more vulnerable than he is,⁷ and the fact that the behaviour appeared to be persistent and wilful.
47. Whilst it is not for me to determine whether [REDACTED] conduct was unlawful, it is necessary to note, given that it highlights the seriousness of the allegations, that the Equal Opportunity Act sets out that:

87—Sexual harassment

(1) It is unlawful for a person to subject to sexual harassment—

(a) a person with whom he or she works; or

(b) a person who is seeking to become a fellow worker.⁸

48. I also note that the seriousness of the allegations did not go completely unnoticed, with [REDACTED] pointing out in his email dated 24 July 2018 that more serious action be taken:

...It would seem that these are fairly serious allegations. Given the Chief's statement on dealing with issues of this nature, I would think an investigation as opposed to leadership training is more appropriate?
49. It is unclear to me why [REDACTED] concerns were disregarded, particularly given that his email refers to a preferred approach by the CFS.
50. Whilst I acknowledge the Guideline states that the lowest level of response should be considered to address the issue, I find it difficult to comprehend how it could be considered appropriate to address an issue of alleged persistent sexual harassment through informal counselling.

⁷ It is my understanding the complainant was 19 years of age at the time of the incidents.

⁸ *Equal Opportunity Act 1984*, section 5(1): an employee includes an unpaid worker.

51. As noted above, the complainant was 19 years old, and significantly younger than [REDACTED] at the time the conduct occurred. The nature of the allegations also made her significantly more vulnerable, making it entirely inappropriate, in my view, to require her to undertake counselling in the presence of [REDACTED].
52. Rather than considering the Guideline as a tool for assessing the level of response depending on the seriousness of the conduct, it appears that officers within the agency only considered the least serious disciplinary measure, and failed to consider, or have any flexibility in regard to, taking more serious measures.
53. It is unclear who made the initial decision to proceed with informal counselling at first instance, whether it was a decision made by [the Brigade Captain], or at [REDACTED] request,⁹ however, the response from [REDACTED] in her email to the complainant dated 19 April 2018 indicates a misinterpretation of the Guideline, which may have informed the agency's response:
- ...**The informal meeting/mediation is always the first step in resolving conflict** and more often than not, we find that this is all that is needed. The informal process is not about punishment or suspension. It is a chance for parties to resolve their issues and for behaviours to change...
- If you were not happy with the outcome of the meeting, then you will need to speak to [the Brigade Captain] and explain why.
54. The Guideline does not state that an 'informal meeting/mediation is always the first step in resolving conflict.' This is merely one of many steps that can be taken at first instance, and in my view, this approach should only be taken as a preliminary measure where the seriousness of the conflict between officers is commensurate.
55. Had the Guideline been considered more carefully, I am of the view that the facts and seriousness of the allegations ought to have prompted, at least, consideration of a much more serious disciplinary measure.
56. Further, it appears that there was no consideration by the CFS or SAFECOM:
- of the potential criminal nature of the allegations, noting the provisions of the Equal Opportunity Act
 - of the agency's obligations under the Work Health and Safety Act
 - as to whether disciplinary action under the Fire and Emergency Services Regulations was necessary
 - of the fact that the complainant was young and junior and might require extra support
 - of what outcome the complainant was seeking.
57. There also does not appear to have been any consideration of whether the matter needed to be reported higher within the organisation, and I query whether it is appropriate that responsibility for dealing with matters of this nature should stop with the Brigade Captain, given that they do not appear to have any specialized training or knowledge in dealing with such matters.
58. Brigade Captains will also often have a high potential for conflicts of interest, given the close working relationship between Brigade Captains and volunteers. It is particularly concerning to me that there was no consideration of this issue in the circumstances, given that [the Brigade Captain] was allegedly implicated in the inappropriate behaviour:

⁹ See paragraph three: [REDACTED] requested informal counselling on 26 March 2018.

- Monday night training, went to Tea Tree Gully CFS to see new ambulances and speak with paramedics. I was chosen to hold a neck brace, to which [redacted] remarked to Para captain [redacted], 'they chose her because her hands make it look bigger'. Making sure I had noticed, [redacted] retold me this later and informed me that [the Brigade Captain] had laughed. [redacted] and [redacted] also commented on the female paramedics (sic) bodies, and asked which one I would choose.¹⁰

59. The advice provided by SAFECOM, in particular by [redacted] and [redacted], was entirely inappropriate, and lacked an understanding of the seriousness of the issue, and how to handle such complaints in the context of ensuring various ethical and legal obligations were met by the CFS.
60. This in turn led to further poor acts of judgement by the CFS, in particular by [the Brigade Captain], who does not appear to have any relevant qualifications or training of his own to deal with such matters, and in my view, failed to lead an adequate, or victim-led process.
61. Rather than work with the complainant from the outset, by providing her with an overview of the complaints process and options available to her, [the Brigade Captain] appeared to be directed by [redacted], noting that it appears that it was he who requested the informal meeting in order to resolve the complaint, rather than the complainant.
62. In light of the above, I do not consider that the CFS and SAFECOM handled the complaint appropriately at first instance.

Opinion

In light of the above, my view is that the CFS and SAFECOM failed to properly handle and assess the complaint of sexual harassment at first instance, and therefore acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that the CFS:

1. reinvestigate the complaint once the SAPOL investigation has concluded
2. obtain appropriate expert guidance in order to review its policies, procedures and guidelines on inappropriate sexual contact and sexual harassment, with a view to introducing a policy or policies that are understandable and incorporate relevant legal obligations, including conflict of interest provisions
3. develop guidelines that state that complainants should be provided with information on the complaints process from the outset, and that there should be a strong emphasis on the complainant's wellbeing throughout the process
4. provide training to every person responsible for implementing sexual harassment policies and guidelines
5. provide training across the whole of the agency on sexual harassment and ethics
6. issue a formal apology to the complainant for its handling of her complaint
7. provide the complainant with appropriate support through the reinvestigation process.

I also recommend under section 25(2) of the Ombudsman Act that SAFECOM:

1. issue an apology to the complainant for their response to the complaint
2. provide its officers with comprehensive training in order to improve their understanding of the Work Health and Safety Act, Equal Opportunity Act and the Fire and Emergency Services Regulations.

¹⁰ Email to [redacted] dated 6 December 2019.

Whether the CFS and SAFECOM failed to consider and respond to the complainant's concerns about the handling of her complainant and her request to escalate her complaint

63. Soon after the informal counselling meeting between the complainant and [REDACTED] on 8 April 2018, the complainant contacted [REDACTED] on 15 April 2018 to express her concerns about his conduct and the action taken by the agency:

...I had a meeting with [the Brigade Captain] and [REDACTED] last Monday night in which I aired my concerns. The impression I got was that all his actions were an accident and his hand slipped on a number of occasions, which I expressed could not have been accidental at all. At this stage, things are a little tense and awkward, and I was left wondering what it would've taken to see him at the very least suspended for a period of time.

I feel as though [REDACTED] lacked empathy in the conversation, asking me at the end of the meeting what jokes he was allowed to make, since I want to be treated equally. Do you have any further advice for things I can say and do to make the situation better?

64. It is necessary to note that [REDACTED] forwarded the complainant's email set out above to the Brigade Captain, [REDACTED], thereby putting him on notice that the complainant was dissatisfied with the outcome of the informal meeting.
65. [REDACTED] replied to the complainant by email dated 19 April 2018, stating that should the conduct continue, [the Brigade Captain] would advise her of the process of making a formal complaint. [REDACTED] also advised that any dissatisfaction in relation to the informal meeting held on 8 April 2018 should also be raised with [the Brigade Captain]:

I am pleased that there has been a meeting and your concerns have been aired. The informal meeting/mediation is always the first step in resolving conflict and more often than not, we find that this is all that is needed. The informal process is not about punishment or suspension. It is a chance for parties to resolve their issues and for behaviours to change.

I received an email from [the Brigade Captain] advising the meeting had gone ahead and that both you and [REDACTED] have agreed to move forward (sic) work alongside each other amicably. This sounds like a wonderful outcome. [the Brigade Captain] assures me that [REDACTED] has been spoken to and the expectations going forward are very clear. There should be no excuse for [REDACTED] to behave in an inappropriate behaviour (sic) going forward.

I believe that the situation should improve by itself from here on in, but should the behaviour continue you will need to tell [REDACTED] at the time is (sic) inappropriate and then report it to [the Brigade Captain] straight away. If it continues, then [the Brigade Captain] will be able to advise on how to make a formal complaint.

If you were not happy with the outcome of the meeting, then you will need to speak to [the Brigade Captain] and explain why.

66. At no point in [REDACTED] email did she refer to the Guidelines or any formal complaints procedure as the basis for her advice.
67. I also do not consider that [REDACTED] email made it clear that reporting back to a Brigade Captain is the expected process for escalating a complaint, or that the matter would not be escalated through any other channel, as the complainant attempted to do.
68. Further, I find it difficult to comprehend why [REDACTED] did not give further consideration to the complainant's comments about her dissatisfaction with the meeting, instead labelling the outcome as 'wonderful'.
69. I query why [REDACTED] informed the complainant that she was required to report to the Brigade Captain, when [REDACTED] had already blind copied him into the email where the

complainant specifically stated that she was unhappy with the outcome. At this point, [the Brigade Captain] ought to have taken steps to investigate the matter further, and I consider that his failure to do so, was wrong.

70. Following [REDACTED] email, the complainant attempted to escalate her complaint through another channel by expressing her concerns to [REDACTED].
71. The complainant informed my investigation by telephone call on 21 April 2020 that she initially raised her concerns with [REDACTED] in person during a training course, as there 'aren't very many women in the CFS' and she 'respects and trusts' [REDACTED]. The complainant also stated that [REDACTED] is one of the only paid officers in Region 2, and has been in the services for '20 or 30 years', so she assumed [REDACTED] would be an appropriate person to provide her with advice on how to escalate the matter. The complainant stated that [REDACTED] advised her that she would raise the matter with [REDACTED].
72. The complainant followed up on her discussion with [REDACTED] by email dated 13 July 2018, voicing her concern that her complaint had not been treated seriously enough:

... we had a meeting between [the Brigade Captain], [REDACTED] and myself, where we agreed to act amicably. I continue to feel uncomfortable in training, although his behaviour has stopped. I would expect that this behaviour is not accepted in the CFS, and a harsher penalty such as expulsion or suspension should occur.

73. [REDACTED] then sought advice on the matter, which led to the receipt of advice from [REDACTED] in an email dated 24 July 2018, as follows:

...Amani has mentioned in her email that the behaviour has stopped but that she still feels uncomfortable. Is she able to clarify why? Is she unsatisfied with the outcomes of the process (i.e. immediate disciplinary action)? Amani is well within her rights to make a formal complaint to the Captain outlining her specific concerns which could lead to a formal investigation.

My advice would be to talk to Amani and explain the options available, including submitting a formal complaint. We could then support the brigade and Region in dealing with this matter.

74. On 26 July 2018, [REDACTED] also sent an email to [REDACTED] advising him that the complainant should direct any further follow up complaints or concerns to her Brigade Captain:

...I don't know what the conversation Amani has had with [REDACTED] but Amani should be directed back to the Brigade Captain in the first instance as I have suggested in my email to her.¹¹ She is aware that she needs to speak to [the Brigade Captain] if she feels uncomfortable or wants to proceed with a formal complaint.

75. [REDACTED] responded by email dated 26 July 2018 that he had relayed that advice to the complainant. I have not, however, been provided with any documentation of this having occurred, and an email from [REDACTED] to the complainant dated 6 December 2019, sent at 11:26am, indicates that either this advice was not provided, or not made clear, to the complainant:

Dear Amani

In relation to a request for update on your report sent to your captain in April, I am unable to provide one. [REDACTED] from SAFECOM wrote to you in response to that complain (sic) stating that there had been a meeting (as advised from [the Brigade Captain]) and that the issue

¹¹ I assume [REDACTED] is referring to her email dated 19 April 2018, which I have discussed in my report above.

had been dealt with informally. I have not been advised of further complaints from what was made originally and as such believed the matter to be resolved.

76. It does not appear that the complainant was informed at any stage that her complaint to ██████ would not result in the escalation of the matter.
77. Accordingly, the email from ██████ on 6 December 2019, sent at 12:55 pm,¹² appears to be the only update the complainant received following her complaint to ██████, and the email simply reiterated the initial outcome of the informal meeting that occurred in April 2018:

The correspondence that I saw indicates that the issue was resolved informally. It is unreasonable to agree that things are resolved if you're (sic) expectation is still that you're wanting a penalty to be applied.

The outcome of the meeting was reported to me as: "They both advised they should be able to continue coworking in an amicable manner. At this point both parties wish to move on & in my opinion at this time there is no need for further meetings or action"

From a CFS disciplinary policy perspective, you have stated that the issue is addressed, as such, **no further action will be taken unless there are issues which have occurred since the meeting. If you wanted a harsher penalty at the time you would have needed to make that clear at that point...**[my emphasis]

78. I am of the view that this email from ██████ is part of a series of unhelpful communications to the complainant that fail to recognise her attempts to escalate her complaint, and also fail to assist the complainant in navigating the complaints process.
79. Not only did ██████ fail to provide the complainant with helpful information or options to escalate her complaint, he expressly told her that no further action would be taken.
80. The complainant has described to my investigation that she feels that attempts to escalate her complaint have been 'swept under the rug' by the CFS. Based on the responses I have read and set out in this report, I am unsurprised the complainant feels this has occurred.
81. By December 2019, it ought to have been clear that the complainant was seeking a formal investigation, as evidenced by the repeated attempts to escalate the matter, in addition to an email dated 6 December 2019, sent at 11:49 am, where she expressly stated:

...The issue was addressed informally, however I believe the issue should have been submitted as a formal report. **I would like it to be formally investigated...**[my emphasis]

82. I am of the view that ██████ refusal to entertain this request, stating that a harsher penalty should have been sought earlier, is an example of the agency's inflexibility and refusal to entertain her repeated requests to reinvestigate her complaint. I am also of the view that the decision to not reinvestigate the complaint at this stage, particularly where it was specifically requested by the complainant, was wrong.
83. Following ██████ email, the complainant telephoned the CFS Headquarters on 6 December 2019, and advised ██████ that she had never been informed that she was required to go back to her Captain if she was dissatisfied with the outcome of the complaint.

¹² This email was sent almost 18 months after the complainant contacted ██████.

84. ██████ stated that this was incorrect, and referred to her email dated 19 April 2018. In an email to ██████ dated 6 January 2020, ██████ set out her recollection of that telephone conversation:

...On the afternoon of Friday 6 December 2019, CFS Headquarters put through a call to me. It was Amani, she was upset and crying and stating that it was not fair because she was never told that she had to go back to her Captain if she was not happy with the decision. When I advised that I had actually told her in an email in April and that I believe that you had stated this in an email in July, she changed to say she didn't because she was just a baby then and she didn't feel confident turn it into a formal complaint (sic).

When I advised her again that she needed to go back to her Brigade Captain to start the process, she stated that she already had. This contradicts the email she sent to you and her initial statement about not knowing how, but I said I would investigate and get back to her.

85. As set out above, I do not consider the email dated 19 April 2018 makes it clear that reporting the matter back to [the Brigade Captain] was the formal process for escalating the matter under any procedure, policy or guideline.
86. In regard to ██████ statements that the complainant contradicted herself, it is unclear whether the complainant was referring to her initial complaint to her Brigade Captain, or whether there was some other misunderstanding.
87. In my view, it would have been understandable that the complainant did not wish to report back to the Brigade Captain, given that the complainant had initially expressed her hesitancy towards reporting the matter to [the Brigade Captain] as was indicated in an email from ██████ to ██████ dated 6 January 2020:

...I advised Amani (on telephone) as per procedure, that she would need to report this to her Brigade Captain so he could start investigating. Amani said she did not want to do this.

Due to the nature of the allegations, I contacted her Brigade Captain, ██████ (with Amani's permission to discuss).

88. It is also necessary to note that the complainant alleged that the Brigade Captain had previously appeared to condone the inappropriate behaviour by ██████:

- Monday night training, went to Tea Tree Gully CFS to see new ambulances and speak with paramedics. I was chosen to hold a neck brace, to which ██████ remarked to Para captain ██████, 'they chose her because her hands make it look bigger'. Making sure I had noticed, ██████ retold me this later **and informed me that [the Brigade Captain] had laughed** [my emphasis]. ██████ and ██████ also commented on the female paramedics bodies, and asked which one I would choose.¹³

89. Regardless of whether there was confusion, or an intentional decision by the complainant to not report back to the Brigade Captain, I am of the view that the repeated failures to assist the complainant, other than attempting to direct her back to [the Brigade Captain], was wrong.
90. I do not consider that the Guideline in any way stipulates, either expressly or implicitly, that the only way for a complainant to escalate a matter is to report it back to the Brigade Captain.
91. Regardless, I am concerned that the message was that no further consideration would be given to the complainant's concerns unless she further raised them formally. Given

¹³ Email from the complainant to ██████ dated 6 December 2019.

the serious nature of the allegations, and the concerns raised by the complainant about how they were handled, I am concerned that no one in the agency appeared to take responsibility for any follow up, instead putting the onus entirely on the complainant.

92. Further, I note that disciplinary measures 1 - 4 (Informal Counselling, Formal Counselling, Brigade Written Warning, Brigade Sanction) each include a review/follow up process. I am of the view that each attempt by the complainant to escalate her complaint ought to have been considered as part of the review/follow up process.
93. I also note that although many of the disciplinary measures state that reports must be made to the Brigade Captain, or other persons, nowhere does it state that the responsibility for making such reports lies with the potential victim or person aggrieved by the complaint. As noted above, the Brigade Captain was made aware of the complainant's concerns about the informal resolution when he was blind copied into the complainant's email on 18 April 2018. I am of the view that this should have been considered a report to the Brigade Captain, and that further action should have been taken at this point.
94. I am of the view that the attempts made by the complainant to have her concerns escalated and treated more seriously were not appropriately actioned on several occasions, and at no point did any of the persons involved attempt to take responsibility for ensuring her concerns were heard and properly assessed.
95. There were numerous occasions where those involved had the opportunity to report, what I consider to be serious behaviour, back to the Brigade Captain for assessment, and I am of the opinion that this ought to have occurred.
96. I query why the matter could not have been raised higher in the chain of command.
97. In my view, the inflexible approach that the only way further consideration would be given to the matter was if the complainant lodged a 'formal complaint' was not warranted in this situation, particularly given that the complainant had already made it very clear she had requested a 'formal investigation' in her email dated 6 December 2019.
98. It concerns me that the agency appears to have shown a lack of sensitivity towards allegations of sexual misconduct. The complainant appears to have been shut down, misdirected, and at times even belittled by those involved in the matter.
99. On numerous occasions, the complainant was told that she should have raised her dissatisfaction with the Informal Counselling meeting at the time it occurred. For example, the email from [REDACTED] dated 9 December 2019, which states:

If you wanted a harsher penalty at the time you would have needed to make that clear at that point...
100. From the timeline of events, however, this is exactly what the complainant appears to have done just seven days after the meeting occurred, and several occasions after this. It is not apparent to me how the complainant could have made her wishes any clearer. Regardless, it is not solely for the complainant to determine the 'penalty' in any particular situation. It is a matter for the agency.
101. It has also been suggested that the complainant had no right to later express her dissatisfaction with the process, as she agreed to an amicable resolution during the meeting on 8 April 2018.

102. Firstly, I find it highly inappropriate that the agency appears to have treated the complaint as a dispute between the two parties, rather than an issue of serious potential misconduct by ██████.
103. Secondly, I find it highly probable that any person, let alone a much younger potential victim, would find the process of a meeting with the accused intimidating, and may agree to a resolution under such duress. There was evidence prior to the informal meeting that the complainant was uncomfortable with the process, including reporting to the Brigade Captain, as is reflected by ██████ email to ██████ dated 6 January 2020 set out in my report above.
104. Finally, I do not consider it unusual that the complainant should reflect on the process and subsequently express her concern about it. In those circumstances, the concerns should have been at least further explored with the complainant.
105. In all of the circumstances, I am of the view that both agencies failed to appropriately action, or otherwise follow up on the complainant's concerns about the initial handling of the complaint, and her requests to escalate her complaint.

Opinion

In light of the above, my view is that CFS and SAFECOM failed to action, or otherwise follow up on, the complainant's concerns about the initial handling of her complaint, and her request to escalate her complaint, and therefore acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

I am of the view that the recommendations set out above would appropriately address this error also.

Whether SAFECOM failed to provide appropriate advice to the CFS in relation to its sexual harassment policies

106. It is apparent from the timeline of events set out above that the CFS relied heavily on the advice of SAFECOM.
107. As noted in the response from SAFECOM, Part 2, Division 2 of the FES Act sets out that it has the following functions:

8—Functions and powers

- (1) The Commission has the following functions:

...

- (c) **to ensure that appropriate strategic, administrative and other support services are provided to the emergency services organisations;** [my emphasis]

...

- (i) **to ensure that the emergency services organisations meet their statutory responsibilities and comply with the provisions of this or any other relevant Act;** [my emphasis]

- (j) to ensure the observance of high ethical standards within the emergency services sector...

108. Although the response from SAFECOM advised my investigation that it is not involved in and has no input into agency specific policies such as the Code of Conduct, and that it merely provided comment on the Guideline, it is unclear to me why there is such little involvement given its functions under the FES Act set out above.

109. Accordingly, I am of the view that it is appropriate for SAFECOM to provide advice on any policies, guidelines or procedures that would generally be expected to incorporate or provide guidance on those statutory responsibilities.
110. It is unclear to me from the response provided by SAFECOM as to what level of advice it provided to the CFS in relation to its guideline, which is the only document that appears to provide guidance on handling sexual harassment complaints.
111. It is also unclear to me whether the CFS' policies and guidelines comply with all relevant statutory responsibilities in regard to sexual harassment, or whether SAFECOM's contribution, or lack thereof, to the CFS' policies and guidelines has resulted in the CFS failing to otherwise meet those statutory responsibilities.
112. I am of the view, however, that the quality of the CFS' policies and guidelines reviewed in the course of the investigation are generally quite lacking, and has likely contributed to the poor handling of this complaint.
113. Therefore, I consider that SAFECOM's failed to provide adequate advice on the drafting of the CFS's policies and guidelines with respect to sexual harassment.

Opinion

In light of the above, my view is that SAFECOM failed to provide appropriate advice to the CFS in relation to its sexual harassment policies, and therefore acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that SAFECOM:

3. review any relevant CFS policies and guidelines that are of relevance to SAFECOM fulfilling its obligations set out under the FES Act, with the assistance of an appropriately qualified person when providing advice on the drafting of policies and guidelines.

Summary and Recommendations

In light of the above, my view is that the CFS and SAFECOM failed to:

- properly handle and assess the complaint of sexual harassment at first instance, and therefore acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act
- action the complainant's request to escalate her complaint, and therefore acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

To remedy these errors, I recommend under section 25(2) of the Ombudsman Act that the agency:

1. reinvestigate the complaint once the SAPOL investigation has concluded
2. obtain appropriate expert guidance in order to review its policies, procedures and guidelines on inappropriate sexual contact and sexual harassment, with a view to introducing a policy or policies that are understandable and incorporate relevant legal obligations, including conflict of interest provisions
3. develop guidelines that state that complainants should be provided with information on the complaints process from the outset, and that there should be a strong emphasis on the complainant's wellbeing throughout the process

4. provide training to every person responsible for implementing sexual harassment policies and guidelines
5. provide training across the whole of the agency on sexual harassment and ethics
6. issue a formal apology to the complainant for its handling of her complaint
7. provide the complainant with appropriate support through the reinvestigation process.

It is also my view that SAFECOM failed to provide appropriate advice to the CFS in relation to its sexual harassment policies, and therefore acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

I also recommend under section 25(2) of the Ombudsman Act that SAFECOM:

1. issue an apology to the complainant
2. provide its officers with more comprehensive training in order to improve their understanding of the Work Health and Safety Act, Equal Opportunity Act and the Fire and Emergency Services Regulations
3. review any relevant CFS policies and guidelines that are of relevance to SAFECOM fulfilling its obligations set out under the FES Act, with the assistance of an appropriately qualified person when providing advice on the drafting of policies and guidelines.

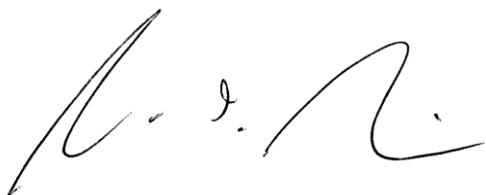
Final comment

In accordance with section 25(4) of the Ombudsman Act, the CFS and SAFECOM are required to report to the Ombudsman by **3 February 2021** on what steps have been taken to give effect to the recommendations above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

I have also sent a copy of my report to the Minister for Emergency Services as required by section 25(3) of the *Ombudsman Act 1972*.



Wayne Lines
SA OMBUDSMAN

3 November 2020