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Removal and appointment of the Adelaide Cemeteries Authority's Board's directors - Mr Stephan Knoll MP | August 2020



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Investigation of a matter referred to the Ombudsman pursuant to section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012* concerning Mr Stephan Knoll MP.

Ombudsman ref: 2019/08551

ICAC ref: 2020/000168; 2020/000656

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SENSITIVE: *Independent Commissioner
Against Corruption Act 2012*

(unless and until authorised by the Ombudsman)

Introduction

This investigation arises from a referral to the Ombudsman by the Independent Commissioner Against Corruption (**the Commissioner**) pursuant to section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012* (**the ICAC Act**).

The matter has been referred as raising potential issues of misconduct and maladministration in public administration within the meaning of that Act (**the referral**).

The referral was made following two reports to the Office for Public Integrity (**OPI**) regarding the conduct of then Minister for Planning, Mr Stephan Knoll MP (**Minister Knoll**)¹. The conduct related to Minister Knoll's attempt to remove three directors from the board of directors of the Adelaide Cemeteries Authority on 5 July 2019. A report was also made to OPI regarding the conduct of Minister Knoll in relation to the appointment of several new directors to that board on 2 August 2019.

Procedural fairness

A copy of my provisional report dated 16 April 2020 was provided to Minister Knoll, the two informants, [the Chief Executive Officer], Minister Knoll's Chief of Staff and the Hon Steven Marshall, Premier of South Australia. Responses were received from Minister Knoll and one of the informants.

I have carefully considered the responses and addressed those responses as I consider necessary in the body of this report. Ultimately, Minister Knoll's response persuaded me to reconsider my views concerning the applicable provisions of the Code and, given that I have reconsidered the basis for my views, I considered it fair to provide Minister Knoll and the one informant who responded to my provisional report with my revised provisional views for comment before proceeding to a final report.

Minister Knoll did not make any further submissions on my revised provisional views. The relevant informant made submissions on my revised provisional views which I have addressed as necessary in the body of this report.

Jurisdiction

Section 14B of the *Ombudsman Act 1972* provides:

14B—Referral of matter by OPI or ICAC

- (1) If a matter is referred to the Ombudsman under the ICAC Act, the matter—
 - (a) will be taken to relate to administrative acts for the purposes of this Act; and
 - (b) must be dealt with under this Act as if a complaint had been made under this Act and—
 - (i) if the matter was the subject of a complaint or report under the ICAC Act—as if the person who made the complaint or report under that Act was the complainant under this Act; or
 - (ii) if the matter was assessed under that Act after being identified by the Commissioner acting on the Commissioner's own initiative or by the Commissioner or the Office in the course of performing functions under any Act—as if the Commissioner was the complainant under this Act.
- (2) In this section—

Commissioner means the person holding or acting in the office of the Independent Commissioner Against Corruption under the ICAC Act;

ICAC Act means *Independent Commissioner Against Corruption Act 2012*,

Office means the Office for Public Integrity under the ICAC Act.

Broadly speaking, the referral concerns the alleged conduct of Minister Knoll in discharging, or purporting to discharge, certain functions under the *Adelaide Cemeteries Authority Act 2001* (**the Cemeteries Act**) in July and August 2019.

In particular, the following allegations were referred by the Commissioner:

1. That on 5 July 2019 Minister Knoll unlawfully purported to remove three persons from the board of directors of the Adelaide Cemeteries Authority.
2. That, prior to the purported removals, Minister Knoll contacted at least one director of the board to encourage her to resign from the board.
3. That Minister Knoll instructed the Adelaide Cemeteries Authority to interview potential candidates for the board of directors, some or all of whom were alleged to be close friends or school friends of Minister Knoll.

At all material times Minister Knoll was a public officer for the purposes of the ICAC Act because he was a member of the House of Assembly.

In considering the referral as it relates to alleged misconduct in public administration, I have had regard to the Ministerial Code of Conduct (**the Code**). In particular, my enquiries have led me to consider clause 2.4 and clauses 3.1 to 3.3 of the Code.

Investigation

The investigation has involved:

- assessing two reports made to the Office for Public Integrity
- seeking further information from the reporters
- seeking records and other information from the Cabinet Office of the Department of the Premier and Cabinet
- seeking enrolment records from the Department of Education and the SACE Board of South Australia
- interviewing five persons under oath or affirmation, including:
 - two public service employees
 - one former director of the board
 - a member of Minister Knoll's staff
 - Minister Knoll
- seeking records from the persons interviewed
- considering:
 - the Adelaide Cemeteries Authority Act
 - the Ministerial Code of Conduct
 - the ICAC Act
 - the Ombudsman Act
- preparing a provisional report and seeking the views of the parties
- considering responses to my provisional report made by:
 - Minister Knoll
 - one of the informants
- seeking further information from Minister Knoll
- preparing a revised provisional report and providing it to Minister Knoll and one of the informants for comment
- preparing this report.

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.² The principle 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 ...³

² This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp. 449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

³ *Briginshaw v Briginshaw* at pp. 361-362, per Dixon J.

BACKGROUND

The Adelaide Cemeteries Authority

1. The Adelaide Cemeteries Authority (**the Authority**) is established under section 4(1) of the Cemeteries Act.
2. The Authority is primarily responsible, among other things, for the administration and maintenance of Cheltenham Cemetery, Enfield Memorial Park and West Terrace Cemetery.⁴
3. The Authority is governed by a board of directors established under section 12(1) of the Cemeteries Act (**the Board**).
4. The Board is comprised of a maximum of seven directors appointed by the Governor on the nomination of the Minister for Planning, of whom:
 - one must be a person experienced in local government selected by a panel of persons nominated by the Local Government Association of South Australia
 - the remainder must include:
 - three who together have, in the Minister's opinion, the abilities and experience required for the role
 - one with experience in historical and heritage matters
 - one with experience in religious and community affairs
 - one with management experience in government (other than local government).⁵
5. Directors of the Board are appointed for fixed terms of a maximum of four years and are eligible for reappointment.⁶ The term of office of a retiring director continues until they are reappointed or a successor is appointed, as the case may be.⁷
6. The Governor may remove a director of the Board from office on the recommendation of the Minister.⁸ The Minister may recommend the removal of a director on any ground that the Minister considers sufficient.⁹
7. Administration of the Cemeteries Act is committed to the Minister for Planning.¹⁰
8. At the relevant time, Minister Knoll had been Minister for Planning since 22 March 2018.¹¹ Minister Knoll resigned as Minister on 26 July 2020.

⁴ Cemeteries Act, section 6.

⁵ Cemeteries Act, section 12(2).

⁶ Cemeteries Act, section 13(1).

⁷ Cemeteries Act, section 13(2).

⁸ Cemeteries Act, section 13(3).

⁹ Cemeteries Act, section 13(4).

¹⁰ Administrative Arrangements (Committal of Acts) Proclamation 2014, Gazette 22 May 2014 at page 2108; *see Administrative Arrangements Act 1994*, section 5.

¹¹ Gazette 22 March 2018 at page 1254.

The former Board

9. Prior to 5 July 2019, the Board was comprised of six directors: [REDACTED]
[REDACTED].
10. There was a vacancy on the Board due to the resignation of former director [REDACTED] in late 2018. [REDACTED] and [REDACTED] positions on the Board were also due to come to an end.

The current Board

11. The Minister told my investigation that, following consideration of the background and skills of each of the directors and discussions with [the Chair] and [the Chief Executive Officer] (the Chief Executive Officer of the Authority), he formed the view that the Board needed stronger property and financial experience. This was informed, in part, by a skills matrix provided to the Minister's office by [the Chief Executive Officer] regarding the then members of the Board.
12. Noting the specific skills required in the Cemeteries Act and the existing and upcoming vacancies on the Board, Minister Knoll made a decision to look at "a more holistic refresh of the Board".¹²
13. The subsequent changes to the Board are discussed in detail in this report. The current Board is comprised of seven directors: [REDACTED]
[REDACTED].

¹² Transcript of interview with Minister Knoll dated 4 February 2020 at page 6.

Minister Knoll's phone calls with the three directors

14. On 17 May 2019 Minister Knoll telephoned [the Chair] to advise her of his intention that she be removed from the Board and to ask her to consider her position.

15. [The Chair] gave my investigation the following account of the conversation:

.... [Minister Knoll] said that, you know, "As you know we are making, thinking of appointments to the board"..... "And we are thinking, you know, perhaps going in a new direction", and there was just something he said and I said "Are you planning to get rid of the whole board?" And he said "Well, basically yes." I said "Okay. And why?" He said "We are going to a new direction; someone with project management and finances." I said "Well, I've already discussed that with you." "And we think it's an opportune time that we can replace the board."

[...]

...and I said "So, what do you want me to do?" He says "I want you to write to me with your terms." I said "Okay." They were his exact words. Because I said "So chair as well?" He said "Yes." When he said, I said "So you want to replace the whole board basically?" "Yes." And under his breath "And the chair." I said "Pardon." And he said "New chair." I said "Okay, okay." I was a bit taken aback. I said "What do you want me to do?" And he said "I want you to write to me with your terms."¹³

16. [The Chair] also provided my investigation with a copy of her notes of the telephone conversation with Minister Knoll:

T/A Stefan Knoll 17/5/

Been working on new Board – they want to take a new direction.

With 3 that need replacing they want to take opportunity of taking a new direction more financials as you said & management & marketing presence.

They still have to hear back from LG Ass. but getting pretty close.

They want New Chair---& others. We have done a good job & want to recognize my good service for such a long time.

█: you have power under the Act to do this/to recommend. Are you replacing the whole Board? Pretty much so..that will be remaking the whole Board—that is their strong desire.

So? He wants me to write to him with my own terms.

17. Minister Knoll provided the following account:

So I rang and, off the top of my head ... the phone call only lasted a few minutes.

I was quite to the point in that I felt we needed to go in a different direction, and that I wanted [the Chair] to consider her position. My recollection of that was that we didn't, I didn't, sort of, elaborate to a great degree on that but, again and my impression was that she

was not necessarily happy with my decision, my thoughts, but seemed accepting of them.¹⁴

18. In relation to whether he asked [the Chair] to write to him setting out terms, Minister Knoll told my investigation:

No, well -- so essentially I said "Look, you know, I'd like you to consider your position and, sort of, come back to me with an answer". I may have said "Write back to me with an

¹³ Transcript of interview with [the Chair] on 26 November 2019 at page 14.

¹⁴ Transcript of interview with Minister Knoll on 4 February 2020 at page 11-12.

answer". Certainly if she was to formally resign then that would normally be done in writing and that have been my expectation.

....

I wouldn't have used the phrase, you know, "You can put to me what terms under which you would resign". It was a simple request that, in my mind, would have just elicited a simple letter.¹⁵

19. Whilst there are some discrepancies between these accounts, I do not consider the discrepancies to be material for the purposes of this report.
20. That same day, the Minister's Chief of Staff, telephoned [the first Director] and [the second Director] to advise that the Minister intended that they also be removed from the Board and asking them to consider their positions on the Board. The Chief of Staff told my investigators:

I believe my first conversation was with [the first Director] and [I] just advised that Minister had considered, sort of, skill set and requirements and future direction of the board and would be looking to, sort of, refresh and I wanted to give him an opportunity to consider his position. And he was, he was nice, that he'd be on the board for a very long time, had a lot of knowledge, and that was it, and I, sort of, said, given the opportunity to perhaps consider his position before the Minister would make any, would terminate and he didn't say "yes" or "no" on the phone at all. It was a pleasant conversation, and I left my details and said to give me a call back or wanted to discuss it.

.....

With [the second Director] -- [REDACTED], from memory was in the airport in Canberra about to catch a flight, and I think approached it in a similar way and she actually said to me "Just to be clear, does the Minister want me to step off?" And I said "Yes, he does, but he would obviously like to give you an opportunity to do that, before he --" and she said yes, she understood and yep, she didn't say "yes" or "no" she would or wouldn't, but she said she absolutely understood and then I said "Just give me a call back if you want to talk about it", and I didn't hear from her.¹⁶

21. When asked about the reason for these telephone calls, Minister Knoll informed my investigators that:

In contacting the Chair of the Board to advise of my intention to remove her from the Board (and instructing my Chief of Staff to do the same for [the first Director] and [the second Director]), I was seeking to act fairly, by providing an opportunity to allow them to comment on my proposed course, and also to show respect to them.¹⁷

22. Each of [the Chair, the first Director and the second Director] subsequently wrote to Minister Knoll indicating a desire to remain on the Board and outlining what they considered to be reasonable terms should they be removed from the Board.¹⁸

¹⁵ Transcript of interview with Minister Knoll on 4 February 2020 at page 12.

¹⁶ Transcript of interview with the Chief of Staff on 20 January 2020 at page 19.

¹⁷ Letter from Minister Knoll to Ombudsman dated 19 February 2020.

¹⁸ Letter from [the Chair] to Minister Knoll dated 23 May 2019, letter from [the first Director] to Minister Knoll dated 23 May 2019, letter from [the second Director] to Minister Knoll dated 27 May 2019.

Minister Knoll's letters to [the Chair, the first Director and the second Director]

23. On 5 July 2019, Minister Knoll wrote to each of [the Chair, the first Director and the second Director] in the following terms:

I acknowledge that you were appointed just prior to the state election, but advise that in accordance with the Adelaide Cemeteries Act Division 2(12)(4), I have made the decision to end your appointment effective immediately.

24. Division 2, section 12(4) of the Cemeteries Act (as referred to in the letters) provides that at least two directors of the Board must be women and at least two must be men. It does not authorise the Minister to remove directors from the Board.
25. The Minister did not otherwise have authority under the Cemeteries Act to remove directors from the Board. Under section 13 of the Cemeteries Act that power rests with the Governor, on recommendation of the Minister.
26. Both the Minister and his Chief of Staff told my investigation that the mistakes in the letters stemmed from an email prepared by the Minister's Chief of Staff.
27. On 3 July 2019, the Minister's Chief of Staff sent an email to the Minister's office manager setting out suggested wording for the letters (**the 3 July email**). The 3 July email relevantly provided:

Finally got around to the ACA Board letters, my apologies.

Please tweak and change as you see fit.

██████ - Chair
 ██████ - Director
 ██████ - Director

Thank them for their time served on the board (██████ as Chair) and the great contribution they have made.

Acknowledge that they were reappointed just prior to the state election, but advise that in accordance with the Adelaide Cemeteries [sic] Act Division 2(12)(4) the Minister has made the decision to end their appointment effective (immediately???) (Do we need to give a reason?)

With regard to your request to be paid out for your remaining term, that request is not accepted. Under neither the Act or your letter of appointment is compensation for early termination stated.

Again, I thank you for your service.

Can you please draft a similar letter to [a third Director]. ██████ is slightly different in that her tee [sic] expired and we are simply not reappointing.

.....

I understand their [sic] is a board meeting on the 4th or 5th. I suggested to [the Chief Executive Officer] that he may wish to cancel that, but I'm not sure what he decided. Can you call him once the Min has signed the letters and they have gone out.

28. The Minister's Chief of Staff acknowledged that in preparing the 3 July email she made an incorrect reference to section 12(4) of the Cemeteries Act and failed to note that the power to remove directors rested with the Governor and not the Minister.

29. She also acknowledged that this was despite having received information regarding the process from [the Chief Executive Officer] and having looked at the Cemeteries Act¹⁹. The information provided by [the Chief Executive Officer] has been provided to my investigation and makes clear that pursuant to section 13(3) of the Cemeteries Act, only the Governor can remove directors upon the Minister's recommendation.²⁰
30. The Minister's Chief of Staff explained that she was on leave at the time that she sent the 3 July email and under time pressure to complete the task. She acknowledged that she should have known the correct process and provided no explanation other than that that the errors were simply a mistake.
31. Letters were prepared based on the 3 July email, signed by the Minister and sent to [the Chair, the first Director and the second Director] on 5 July 2019.
32. The Minister indicated that the chain of events was as follows:
- the draft dated 3 July 2019 was prepared by [...], the Minister's Chief of Staff, which is where the mistake first appeared (that is, the erroneous view that the Minister could effect a direct removal);
 - the draft dated 3 July 2019 was then sent to the Office Manager, [...];
 - [another officer within the Minister's office] approved the final draft;
 - The unsigned letters, being the final draft, were provided to the Minister on 5 July 2020;
 - The Minister read the unsigned letters, formed the view that they were appropriate and that he had the power to remove the board members, and then signed them.²¹
33. On 8 July 2019, [the Chair] wrote to the Minister challenging her removal from the Board, relevantly providing.
- I refer to your letter to me of the 5th July 2019 received by email on today's date.
- First of all, I point out that s12(4) of the Act does not authorise you to immediately end my appointment
- If you intended to rely on s13 (4) of the Act you still have no authority to end my appointment immediately. Under that section you can only recommend my removal as a Director on a sufficient ground. It can only be the Governor pursuant to s13(3) who can remove me from office, and he has not done so.
- In your letter you also claim that neither the Act nor my letter of appointment states that compensation is available for early termination. In this regard I remind you that s13(1) of the Act provides that a Director is appointed for a 4 year term and would be eligible for reappointment at the expiration of that term. This, in law, is equivalent to a contract and, by law, I am entitled to be compensated for my contract being terminated early.
- I also note that you again thank me for the time I have served on the Board and the great contribution I have made during this time.
- I intend to pursue this matter.
34. That same day [the Chief Executive Officer] wrote to a member of the Minister's staff (with a copy to the Minister's Chief of Staff) relevantly providing:

¹⁹ Email from the Chief of Staff to my Office dated 22 January 2020.

²⁰ Email from [the Chief Executive Officer] to Chief of Staff dated 8 February 2018.

²¹ Email from Minister Knoll's legal representative to my Office dated 9 June 2020.

Thank you for speaking with me this afternoon regarding Director's [sic]] of the Board of the Adelaide Cemeteries Authority.

I confirm advise [sic] that the meeting of the Adelaide Cemeteries Authority's Board scheduled for tomorrow morning has now been postponed until further notice and that there are currently no matters that require the Board's immediate or urgent consideration for approval.

The next scheduled Adelaide Cemeteries Board and Committee meetings are:

- Wednesday 24 July - Heritage & Monument Committee
- Tuesday 13 August - Board Planning Day
- Wednesday 21 August - Finance, Audit & Risk Management Committee

Of these, only the Finance, Audit & Risk Management Committee is relatively critical to ensure that the Authority's audited 2018-19 financial statements are approved to meet reporting deadlines.

I advise that I received the following advice from [the Chair] this evening that it is her "legal opinion is that until the Governor removes me as Chair I am still Chair so you have to communicate with me for direction .. likewise [the first Director and The second Director] remain as Directors until the Governor has removed them..."

I seek the clarification from the Minister on my reporting responsibilities as Chief Executive Officer in the current circumstances.

.....

I am hopeful that the Board appointments can be resolved and will keep you updated of any urgent matters that may arise regarding the Adelaide Cemeteries Authority.

35. On 9 July 2019, [the first Director] wrote to Minister Knoll raising the same concerns as The Chair.
36. Two meetings of the Board scheduled for 9 July 2019 and 23 July 2019 were cancelled due to uncertainty amongst Board members about the status of the Board.
37. A planning day scheduled for 8 August 2019 was also cancelled.
38. It appears that the Board may also have had difficulty dealing with an industrial issue relating to an employee of the Authority. [The Chair] noted that this matter was ultimately able to be briefed out to an external party for resolution.

Minister Knoll's response

39. On 8 July 2019, [the Chair] wrote to the Minister pointing out the errors and challenging her removal from the Board. [The second Director and the first Director] subsequently wrote to the Minister in the same terms. According to Minister Knoll, after receiving these responses, his office sought advice and commenced a process to correctly remove the three directors from the Board.²²
40. [The Chair, the first Director and the second Director] were formally removed by the Governor on 2 August 2019.²³
41. The Minister also told my investigation that, shortly after the errors became apparent, [the Chief Executive Officer] was advised by the Minister's staff that the Authority should continue to consider [the Chair, the first Director and the second Director] as Board members whilst the errors were resolved and should continue to pay them accordingly.²⁴
42. The Minister understood that [the Chief Executive Officer] then had a conversation with those Board members.
43. [The Chief Executive Officer] confirmed that he was telephoned by someone in Minister Knoll's office on 8 July 2019 and was told that the Minister's office was aware of the errors in the letters and would take steps to resolve the issue.²⁵ [The Chief Executive Officer] confirmed that he passed on the Minister's view to one Board member (██████████) but denied speaking with any other Board members.
44. Given the different accounts, there is some ambiguity about what [the Chief Executive Officer] was told and what was then passed on to the Board. However, records provided by the Authority show that the Authority did continue to pay [the Chair, the first Director and the second Director] director's fees up until they were formally removed from the Board on 2 August 2019. In light of this I accept the Minister's account that his office did advise [the Chief Executive Officer] to continue to consider the three directors as Board members until the error was rectified.
45. No correspondence was provided by Minister Knoll to the Board between 5 July 2019 and 2 August 2019.

²² Transcript of Interview with Minister Knoll 4 February 2020 at page 16.

²³ Supplementary Gazette 2 August 2019 at page 2931.

²⁴ Transcript of Interview with Minister Knoll 4 February 2020 at pages 16 and 20.

²⁵ Email from the Chief Executive Officer to Ombudsman dated 24 February 2020.

Minister Knoll's relationship with the new directors

46. The supplementary Gazette records that the Governor appointed five new directors to the ACA Board on 2 August 2019: [REDACTED] (the new directors).
47. The referral raises the issue of whether Minister Knoll selected new directors based on a prior personal relationship with them. In particular, it is alleged that:
 - [The Chief Executive Officer] met some or all of the new directors at Parlamento restaurant
 - the Minister attended this discussion
 - the new directors disclosed to [the Chief Executive Officer] at this meeting that they were personally acquainted with the Minister.
48. [The Chair] informed my investigation that [the Chief Executive Officer] told her of a meeting that he attended with some of the new directors. [The Chair] was unsure of which directors [the Chief Executive Officer] met with, and the precise details of the meeting. [The Chair] said that she heard from [the Chief Executive Officer] that the Minister was present at the meeting and was greeted by the new directors as if he were an old friend. According to [the Chair], [the Chief Executive Officer] informed her that he received the impression that the Minister may have attended school with the new directors.
49. [The Chief Executive Officer] acknowledged meeting with [the first new Director] at Georges on Waymouth on 2 April 2019 and [the second new Director] at Pranzo Café on 4 April 2019. According to [the Chief Executive Officer], the Minister and [the first new Director] happened to be also present at Pranzo Café during the latter meeting. [the Chief Executive Officer] said this was a coincidence.
50. According to The Chief Executive Officer, the Minister briefly came over to greet [the second new Director]. [The Chief Executive Officer] acknowledged that both [the first new Director] and [the second new Director] appeared on friendly terms with the Minister, although denied that he received the impression that the trio had attended school together. [The Chief Executive Officer] also denied discussing this meeting with any of the former directors, contradicting [the Chair's] evidence.
51. The Minister did not recall attending a meeting with [the Chief Executive Officer] and any of the new directors prior to 5 July 2019. He did not recall being at Pranzo Café on 4 April 2019 but acknowledged the possibility that he may have walked past.
52. The Minister denied that he knew any of the new directors as a result of attending school with them. He did, however, acknowledge that he had previously met [three of the new Directors] through professional dealings and activities.
53. The Minister provided an explanation of how each of the new directors had come to his attention as potential Board candidates and the basis on which he felt that each of them would bring relevant professional skills to the Board.
54. Enquiries were made by my investigators with the Department for Education and the SACE Board. My investigators also reviewed the personnel files for the new directors held by the Authority. These enquiries support the Minister's evidence that he did not attend school with any of the new directors.
55. My investigation did not reveal any other evidence of any prior personal relationship between the Minister and any of the new directors.²⁶

²⁶ There was some evidence that [the first new Director] previously advised a business owned by the Minister's family, including a declaration by [the first new Director] that he had received an advisory fee in respect of Knoll Consultants and Investments Pty Ltd. I do not consider that this, without more, indicates a personal relationship.

Relevant Law

56. Section 5 of the ICAC Act relevantly provides:

(3) *Misconduct in public administration* means—

- (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
- (b) other misconduct of a public officer while acting in his or her capacity as a public officer.

(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.

(5) Without limiting or extending the conduct that may comprise corruption, misconduct or maladministration in public administration, this Act applies to conduct that—

- (a) occurred before the commencement of this Act; or
- (b) occurs outside this State; or
- (c) comprises a failure to act; or
- (d) is conduct of a person who was a public officer at the time of its occurrence but who has since ceased to be a public officer; or
- (e) is conduct of a person who was not a public officer at the time of its occurrence but who has since become a public officer.

57. Sections 12 and 13 of the Cemeteries Act provide:

12—Establishment of board

(1) A board of directors is established as the governing body of the Authority.

(2) The board consists of not more than seven directors appointed by the Governor on the nomination of the Minister, of whom—

- (a) one must be a person with practical knowledge of and experience in local government selected from a panel of three persons nominated by the Local Government Association of South Australia; and
- (b) the remainder must include—
 - (i) three who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Authority's business and management obligations; and
 - (ii) one with experience in historical and heritage matters; and
 - (iii) one with experience in religious and community affairs; and
- (iv) one with management experience in government (other than local government).

(3) The Minister must, in nominating persons for appointment to the board, have regard to the need for the Authority, in carrying out its functions, to be sensitive to the cultural diversity of the State.

- (4) At least two directors must be women and at least two must be men.
- (5) One director will, on the nomination of the Minister, be appointed by the Governor to chair meetings of the board.

13–Conditions of membership

- (1) A director will be appointed for a term, not exceeding four years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.
- (2) However, the term of office of a retiring director will continue until he or she is reappointed or a successor is appointed (as the case may be).
- (3) The Governor may remove a director from office on the recommendation of the Minister.
- (4) The Minister may recommend the removal of a director on any ground that the Minister considers sufficient.
- (5) The office of a director becomes vacant if the director–
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (f) is removed from office under subsection (3).

58. Other provisions of the Cemeteries Act are referred to as necessary throughout the body of this report.

59. Clause 2.4 of the Ministerial Code of Conduct provides:

2.4 Honesty

Ministers are expected to act honestly, diligently and with propriety in the performance of their public duties and functions. Ministers must ensure they do not deliberately mislead the public or the Parliament on any matter of significance arising from their functions.

It is a Minister's personal responsibility to ensure that any inadvertent error or misconception in relation to a matter is corrected or clarified, as soon as possible and in a manner appropriate to the issues and interests involved.

60. Clauses 3.1 to 3.3 of the Ministerial Code of Conduct provide:

3.1 Obligation

Ministers should avoid situations in which their private interests conflict, have the potential to conflict or appear to conflict with their public duty.

3.2 Nature of Conflicts of Interest

A conflict of interest may exist when a Minister is influenced or appears to be influenced by private interests. Private interests include not only a Minister's financial or other interests but the financial or other interests of the Minister's spouse, domestic partner or children. There are many circumstances in the context of the Minister's position in which conflicts of interest may arise. For example, a conflict may arise where a Minister:

- has a significant financial interest in a company with whom the Government is contracting;
- has a personal interest in the outcome of a process; or
- receives a right or commission in return for the provision of a benefit.

A conflict of interest does not only encompass actual or direct conflicts of interest between a Minister's public duty and private interests. A potential or perceived conflict of interest may also constitute a conflict of interest.

3.3 Disclosure of Actual, Potential or Apparent Conflicts of Interest

Ministers are under an obligation to advise the Premier (or in the case of the Premier, Cabinet) in writing as soon as possible after becoming aware of any conflict of interest between their public duty and private interests.

The advice to the Premier (or in the case of the Premier, Cabinet) should contain sufficient detail of the conflict of interest in order to enable the Premier (or Cabinet) to consider and determine the most appropriate course of action to be taken in the circumstances.

Where circumstances change after an initial disclosure has been made, so that new or additional facts become material, the Minister must promptly disclose the further information.

This obligation is additional to a Minister's obligations to notify the Cabinet Office of their private interests under the *Members of Parliament (Register of Interests) Act 1983*.

The fact that the Minister has raised an actual, potential or perceived conflict of interest with the Premier will be recorded on the Cabinet Register. This record is available for scrutiny by the Auditor-General.

If a Minister has any doubt as to whether or not an interest is likely to constitute a conflict of interest, the Minister should promptly consult the Premier (or in the case of the Premier, Cabinet).

[...]

Consideration

Whether Minister Knoll committed misconduct and/or maladministration in public administration in connection with the attempted removal of individuals from the Board on 5 July 2019

Misconduct

61. I have considered whether Minister Knoll's conduct in purporting to remove individuals from the Board without statutory authority amounts to "misconduct in public administration" as defined in either section 5(3)(a) or (b) of the ICAC Act.
62. To form the opinion that the Minister's conduct meets the definition of misconduct in public administration under section 5(3)(a), I must be satisfied that:
- the Minister acted in contravention of a code of conduct
 - that he did so while acting in his capacity as a public officer
 - that the Minister's conduct constituted a ground for disciplinary action.²⁷
63. To form the opinion that the Minister's conduct meets the definition of misconduct in public administration under section 5(3)(b), I must be satisfied there has been other misconduct by the Minister while acting in his capacity as a public officer.²⁸
64. In my opinion, the Code is a code of conduct for the purposes of the definition of misconduct in public administration under the ICAC Act. Accordingly, I have considered this matter under section 5(3)(a) of the ICAC Act.
65. In his response to my provisional report the Minister disagreed that the Code is a code for the purposes of this provision, contending that:
- ...the Ministerial Code of Conduct is expressly excluded as a Code of Conduct (as defined in s.5(3)) by s.5(6) of the ICAC Act. Interpreting the words in s.5(6) by giving them their plain and ordinary meaning leads to the conclusion that the Ministerial Code is a '*statement of principles applicable in relation to the conduct of members of Parliament*'. It has often been held that the expression 'in relation to' is of wide import and there is no basis for confining those words in the context of the ICAC Act. Further, the Ministerial Code, at a number of locations, expressly refers to the conduct of Ministers in their capacity as members of Parliament.
66. Section 5(6) of the ICAC Act relevantly provides:
- A reference in subsection (3) to a code of conduct does not include any statement of principles applicable in relation to the conduct of members of Parliament.*
67. I am not persuaded by the Minister's submission that section 5(6) operates in relation to the Code. The Code applies to the conduct of Ministers, not to members of Parliament more generally. Whilst Ministers are required to be members of Parliament,²⁹ the office of a Minister of the Crown is distinct from the role of member of Parliament. Further, the term 'statement of principles' is distinct from the term 'code of conduct' used elsewhere in section 5, suggesting that it is intended to have a different meaning. If Parliament had intended to exclude codes of conduct, it could have expressly done so.
68. I also note that it is not unusual for a statement of general principles to be distinguished from enforceable disciplinary provisions of a code of conduct (see, for example, the Public Sector Code of Ethics or the Code of Conduct for Council Members).

²⁷ Section 5(3)(a), ICAC Act.

²⁸ Section 5(3)(b), ICAC Act.

²⁹ Section 66, Constitution Act 1934 (SA).

69. In light of the above, my view remains that the Code is a relevant Code for the purposes of section 5(3) of the ICAC Act and I have proceeded on that basis.

Would contravention of the Code constitute a ground for disciplinary action under the Code?

70. Clause 1.4 of the Code provides that a Minister who engages in conduct that 'prima facie constitutes a breach of this Code' may be subject to a course of action determined by the Premier. This may involve the Minister being asked to apologise, being reprimanded or being asked to stand aside or resign.
71. As a breach of the Code can result in disciplinary action under clause 1.4, I consider that a prima facie breach of the Code constitutes a ground for disciplinary action for the purposes of section 5(3)(a) of the ICAC Act.
72. In his response to my provisional report, the Minister, through his legal representative, disagreed with this view, submitting:

In determining whether each element of the definition [of misconduct] has been satisfied, the pejorative nature of the label 'misconduct' must be kept firmly in mind. So, for example, even where there has been a breach of a Code it is not to be concluded that every sanction is to be regarded as 'disciplinary action' for the purposes of satisfying the condition. The term 'disciplinary action' is defined by s.4 of the ICAC Act to include 'any process for termination of employment or dismissal from office'. Accepting that the definition is inclusive (and therefore could include other consequences) it is indicative of what the legislation has in mind in terms of the types of sanctions which would be regarded as serious enough to constitute disciplinary action.

In the instant case, cl.1.4 of the Code gives the Premier the discretion to decide the course of action that should be taken, including asking for an apology, reprimanding the Minister, or asking the Minister to stand aside or resign. It can therefore be seen that, just any prima facie breach of the Code would not give rise to 'any process for termination or dismissal [of a Minister] from office', nor should it satisfy the requirements of s 5(3)(a) of the ICAC Act. The Minister's conduct is not of a sufficient severity to give rise to the type of disciplinary response which would give rise to a satisfaction of the definition of 'disciplinary action' under the ICAC Act.

73. As noted above, under clause 1.4 of the Code, the Premier has the discretion to determine what course of action, if any, is taken in relation to *any* prima facie breach of the Code. This can include actions that would, in the ordinary sense, be regarded as disciplinary actions, such as issuing a reprimand or asking the relevant Minister to step down. Whilst the Premier may not exercise the discretion in every case, this does not, in my view, alter the fact that there exists grounds for such action to be taken. Accordingly, I consider that any prima facie breach of the Code can, at the Premier's discretion, be a breach that constitutes a ground for disciplinary action under the Code for the purposes of section 5(3)(a) of the ICAC Act. Used in its ordinary sense, the term 'disciplinary action' has a broad meaning and may encompass a range of actions including a relatively minor action such as a reprimand as well as a more serious action such as dismissal. I do not accept that the term should be given the narrower definition suggested by the Minister in the context of section 5(3)(a) of the ICAC Act.

Was the Minister acting in his capacity as a public officer?

74. Each of the three letters of 5 July 2019 was signed by the Minister in his official capacity as the Minister for Transport, Infrastructure and Local Government and Minister for Planning. The Minister is, and was at all relevant times, a public officer for the purposes of the ICAC Act.

75. On this basis, I am satisfied that the Minister was acting in his capacity as a public officer in sending the letters.

Did the Minister's conduct breach the Code?

76. In my provisional report of 16 April 2020 I expressed the view that this matter involved potential breaches of both clause 2.5 and 2.4 of the Code. I have revised my view in light of submissions from the parties in response to my provisional report and have now considered this matter as raising potential breaches by the Minister of clause 2.4 of the Code.

77. Clause 2.4 of the Code provides:

Ministers are expected to act honestly, diligently and with propriety in the performance of their public duties and functions. Ministers must ensure they do not deliberately mislead the public or the Parliament on any matter of significance arising from their functions.

It is a Minister's personal responsibility to ensure that any inadvertent error or misconception in relation to a matter is corrected or clarified, as soon as possible and in a manner appropriate to the issues and interests involved.

78. It is not in dispute that the Minister initially failed to follow the proper statutory process for removing directors from the Board when he sought to remove [the Chair, the first Director and the second Director] from the Board on 5 July 2019. The question is whether the Minister's conduct in this regard breached the requirements in clause 2.4 of the Code, in particular the requirements to act diligently in the performance of his official functions and duties and to ensure that any inadvertent errors were appropriately corrected or clarified as soon as possible. There is no evidence before me that the Minister acted dishonestly or without propriety in respect of this matter.
79. The Minister and his Chief of Staff both confirmed that the Minister was not provided with and did not request specific advice about the legal process for removing directors from the Board prior to signing and sending the letters of 5 July 2019.³⁰
80. When asked what steps he took to satisfy himself that he had statutory authority to remove [the Chair, the first Director and the second Director] from the Board, the Minister told my investigation:

I relied upon the advice of my Chief of Staff, who, through other members of my staff, obtained advice from the Department of Premier and Cabinet (DPC), Boards and Committees, the Crown Solicitor's Office (CSO) and the Chief Executive of the Adelaide Cemeteries Authority (ACA).

I had no reason to doubt the advice of my Chief of Staff who has always acted diligently and honestly and who I knew was working closely with the Chief Executive of the ACA, a person with intimate knowledge of the agency and the Board. I was satisfied that my staff would make inquiries with relevant agencies across Government (such as DPC and CSO) in advising me about the process for removing members.³¹

81. The Minister also told my investigation:

[T]he removal of individuals from the Board happened over an extended period of time While I did not seek a specific briefing on the process for removing board directors, I had many conversations with my staff about the Board during that time.³²

³⁰ Transcript of interview with the Minister's Chief of Staff dated 20 January 2020 at page 23; Transcript of interview with Minister Knoll dated 4 February 2020 at pages 11 and 13; Letter from Minister Knoll to the Ombudsman dated 19 February 2020.

³¹ Letter from Minister Knoll to the Ombudsman dated 19 February 2020.

³² Letter from Minister Knoll to the Ombudsman dated 19 February 2020.

82. In response to further enquiries regarding the nature of the advice that the Minister said that he relied on, it was submitted on the Minister's behalf:

... it is not suggested that there was a conversation, or some form of correspondence, between the Minister and the Chief of Staff; there was not. The manner of informing the Minister that the mode of removal was direct was the contents of the then unsigned 5 July 2019 letters themselves.... The chain of events was as follows:

- the draft dated 3 July 2019 was prepared by [...], the Minister's Chief of Staff, which is where the mistake first appeared (that is, the erroneous view that the Minister could effect a direct removal);
- the draft dated 3 July 2019 was then sent to the Office Manager, [...]
- [another officer within the Minister's office] approved the final draft;
- The unsigned letters, being the final draft, were provided to the Minister on 5 July 2020;
- The Minister read the unsigned letters, formed the view that they were appropriate and that he had the power to remove the board members, and then signed them.

By the time the unsigned draft was provided to the Minister it had been considered by two people who had legal qualifications: [the Chief of Staff and other staff member]. [The Chief of Staff] is a graduate of [...] in Law and Politics. [The other officer] is a law graduate from [...]. Self-evidently, the initial error was not appreciated by [the other officer]. The unsigned letters, themselves, referred to a particular section of the *Adelaide Cemeteries Act* and, by necessary implication, stated that the particular section gave the power, in the Minister, to terminate the Board member's appointment immediately. In other words, the Minister was being informed, by the contents of the unsigned letters, that he had the power to remove the board members directly by reference to a specific section. When the Minister read the unsigned letters he made the natural assumption that there was a section within the Act which gave him a power to remove the Board members directly and that he was acting pursuant to that section. In other words, he was led to believe, by the contents of the unsigned letters, that he had a direct power of removal.³³

83. I accept that there may have been a reasonable basis for the Minister to form the view that he was empowered to remove the directors because:

- the Minister and his advisors had been considering changes to the membership of the Board for an extended period of time (since at least early 2019) and had engaged in multiple discussions about the subject
- the Minister was aware that, as part of this process, his Chief of Staff had obtained advice from the Department of Premier and Cabinet, Boards and Committees Unit, the Crown Solicitor's Office and the Chief Executive of the Adelaide Cemeteries Authority
- he therefore assumed that his Chief of Staff had sought the necessary information
- the draft letters were based on a template prepared by his Chief of Staff and were approved by another officer in the Minister's office, both of whom possessed legal qualifications
- he had no cause to question the material put before him in the draft letters.

84. However, I also note that:

- the Minister did not make any specific enquiries as to whether he had authority to remove directors from the Board, the nature of that authority, or the process to be followed despite this being an important part of his role as Minister responsible for administration of the Cemeteries Act

³³ Email from Minister Knoll's legal representative to the Ombudsman dated 9 June 2020.

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- the discussions regarding removal of the directors had been ongoing for some months, so there was ample opportunity for the Minister to seek advice regarding the process involved and the nature of his powers under the Cemeteries Act
 - there is no suggestion that the draft letters were accompanied by any explanatory information or advice or that any such information or advice was sought by the Minister
 - the decision to remove Board Members was a significant one with obvious repercussions for the Board itself and its individual members; it was essential that any risks were properly averted to and managed
 - whilst it may have been reasonable for Minister Knoll to rely on his staff to gather relevant information and provide him with advice, it is not clear that the draft letters, without any accompanying explanation or information, could reasonably be construed as 'advice' in these circumstances.
85. Weighing up the above, although it is not entirely unreasonable in the circumstances that the Minister assumed that he had authority to remove the directors based on the information in the draft letters, I consider that the Minister's failure to make enquiries as to his authority or the process at any time during the course of the extended discussions about the proposed removal of directors from the Board falls short of the standard of diligence expected of Ministers purporting to exercise a statutory power. As Minister responsible for administration of the Cemeteries Act, Minister Knoll ought to have known whether he had statutory authority to remove the directors and if he did not know, he ought to have sought advice or otherwise taken steps to satisfy himself that he had legal authority to act. Noting the significance of removing individuals from a statutory board, I do not consider that it was adequate to rely only on the contents of the draft letters, without more, in this regard.
86. While the Minister relied on his Chief of Staff, who has accepted responsibility for the error, ultimately, the error was his. The Minister has accepted in a general sense that it was his decision, but denies that he failed to act with due care and diligence. However, this is not a case of him assuming responsibility for the errors of officers employed within his department or his ministerial office in the course of them exercising delegated authority or performing statutory functions within his portfolio where he could argue that he was entitled to rely upon their diligence, knowledge and skill.
87. In my view, it is appropriate that the Minister accept responsibility for the decision. The decision was his decision, a decision for which he was answerable to Parliament. The decision was made under an Act under which he had specific responsibilities. In making that decision, it was the Minister who had to be diligent.
88. There is no evidence before me that the Minister's failure to act in accordance with the Cemeteries Act was intentional. In that regard, I note that a purported reliance on section 12(4) instead of 12(3) clearly made little sense in the circumstances, and there was little to be gained by a purported dismissal by the Minister instead of the Governor (given the likelihood of such a fundamental error likely being detected and acted upon).
89. That said, I have had some difficulty comprehending how such an error could be made by anyone who had turned their mind to the relevant sections of the Cemeteries Act, the requirements of which are unambiguous, and the advice provided by [the Chief Executive Officer] and the Boards and Committees Unit within the Department of Premier and Cabinet.
90. Accepting that the Minister's error was, however, inadvertent, I have considered whether the Minister acted to ensure that the error was appropriately corrected or clarified as soon as possible, having regard to the issues and interests involved.

91. In the circumstances, I consider that the Minister did act to ensure that the error was appropriately corrected or clarified as soon as possible. Upon realising the error, steps were taken to seek advice and commence the process to correctly remove the directors from the Board in accordance with the Cemeteries Act. This is evidenced by the fact that [the Chair, the second Director and the first Director] were formally removed from the Board on 2 August 2019.
92. Whilst there is some evidence that Board members were uncertain as to the capacity of the Board to operate during the period between 5 July 2019 and 2 August 2019, there is no evidence that either the Board or the Authority communicated this concern to the Minister or to any of his staff. On the contrary, on 8 July 2019:
- [The Chief Executive Officer] informed the Minister's office that there were no urgent matters requiring the Board's attention³⁴
 - [The Chair] informed the Minister that she considered the Minister's attempt to remove her from the Board to be ineffective.³⁵
93. Further, the members of the Board continued to be paid during this period.
94. Although I consider that the Minister might reasonably have taken the additional step of contacting the Board to provide clarification as to the Board's status, I do not consider that the Minister's failure to do so in these circumstances itself amounts to a failure to take appropriate action to rectify the error.
95. Nonetheless, I consider that the Minister's conduct in purporting to remove directors from the Board without taking adequate steps to satisfy himself of his authority to do so breached the requirement in clause 2.4 of the Code to act diligently in the performance of official powers and functions. Accordingly, my view is that Minister Knoll's conduct in this case amounted to misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act
96. The scheme of the ICAC Act envisages that there can be both serious and non-serious misconduct. It is important to note that while I consider that the Minister's conduct amounts to misconduct, in all of the circumstances as set out above, I would not necessarily characterise the misconduct as 'serious'.³⁶
97. One of the informants provided submissions in response to my revised provisional views. In those submissions, the informant:
- noted that the Minister would have needed to seek permission of the Attorney-General or Cabinet to seek advice from sources other than Crown Law
 - submitted that there was no evidence that relevant staff were qualified to provide legal advice (despite the fact that one staff member had 'legal training')
 - submitted that the fact that the Minister relied on those staff members to provide a 'legal opinion' was a breach of the fundamental requirement of a Minister to act lawfully
 - noted that it is clear that the Minister did not consult the relevant legislation
 - submitted that the Minister also failed to consider the consequences of his actions on the functioning of the Authority and the Board in that he potentially would have rendered the Board inquorate and unable to function; the fact that the Minister did not achieve this does not diminish the seriousness of his misconduct and maladministration
 - stated:
 - The Minister's submission seems to assign blame to his staff for his actions and ambitions, his staff have no legal authority in this matter, they are not assigned any

³⁴ Email from [the Chief Executive Officer] to Minister's staff dated 8 July 2019.

³⁵ Email from [the Chair] to Minister Knoll dated 8 July 2019.

³⁶ See, for example, section 24 of the ICAC Act and the Commissioner's Directions and Guidelines.

powers or function under the relevant legislation, are not independent public servant[s] offering independent advice, but political appointments.

98. Having carefully considered all of the informants' submissions, my view remains as set out in my revised provisional report, that is, the misconduct ought not be characterised as 'serious'. In reaching that view, it is important to note that my reasoning was based on the fact that the Minister did not purport to seek any advice. I did not form a view that the fact that staff were legally trained meant that the Minister could rely on those staff to provide legal advice. I also turned my mind to the potential consequences for the board in reaching my final view.

Maladministration

99. Pursuant to the referral, I have also considered whether Minister Knoll's conduct in attempting to remove individuals from the Board without statutory authority amounts to maladministration in public administration as defined in section 5(4) of the ICAC Act.
100. To form the opinion that the Minister's conduct meets the definition of maladministration in public administration, I must be satisfied that his conduct involved:
- substantial mismanagement in or in relation to the performance of official functions; or
 - an irregular and unauthorised use of public money or the substantial mismanagement of public resources.
101. As the second limb does not appear to arise on the facts, I have only considered whether Minister Knoll's conduct involved substantial mismanagement in or in relation to the performance of official functions.³⁷
102. In my view, Minister Knoll's actions could be seen as 'mismanagement in or in relation to the performance of official functions,' because he did not properly discharge his official functions in administering the Cemeteries Act.
103. The question is then whether the mismanagement could be considered to be 'substantial'. The ICAC Act does not define what is meant by 'substantial' in relation to mismanagement. In the circumstances, I interpret it as mismanagement that was significant and not trivial.
104. In determining what is significant, I consider that the nature and seriousness of the mismanagement and not just its consequences must be considered.
105. In my view, it is not trivial that the Minister purported to remove directors from the Board without seeking adequate advice or information about whether he was empowered to do so.
106. This was, in my opinion, a fundamental part of his role as Minister responsible for administering the Cemeteries Act.
107. Having carefully considered the Minister's submissions in response to my provisional report in totality, for the reasons set out below, I have revised my view that the Minister's actions amounted to substantial mismanagement of his official functions. In light of this, I do not consider that Minister Knoll's conduct constitutes maladministration in public administration for the purposes of the ICAC Act.

³⁷ As Minister Knoll's actions do not appear to have resulted in any expenditure of public money, I do not consider that Minister Knoll's actions resulted in irregular and unauthorised use of public money. Nor do I consider that Minister Knoll's actions resulted in 'substantial mismanagement of public resources,' as it does not appear that Minister Knoll mismanaged any public resources in relation to this matter.

108. In the Minister's response to my provisional report of 16 April 2020, the Minister argued that the conduct did not constitute substantial mismanagement. He submitted:

The concept of substantial mismanagement carries with it the inherent implication that there have been significant consequences (and so I disagree that the nature and seriousness are the focus - if that is what is suggested [...]). Even if that be wrong, where there have been no significant consequences surely that is a matter which is a very weighty factor telling against maladministration.

109. The Minister submitted that this was an honest error as to procedure with no significant consequences that fell well short of maladministration.
110. The task before me is to consider whether the Minister's conduct involved substantial mismanagement. My view remains that the actual consequences do not in itself determine the issue of whether mismanagement has been 'substantial'. I am willing to accept that the seriousness of possible consequences may be relevant to my consideration.
111. In the present case, the fact that the mistake was detected and quickly remedied can be attributed in large part to the quick actions of others in identifying the error to the Minister. That said, I accept that, as submitted on behalf of the Minister, even if the mistake had not been detected, the Board may still have been able to function and make valid decisions.
112. Further, while I consider that the Minister failed to take adequate steps to satisfy himself of his statutory authority in the first place, in considering his 'management' of the issue, it is appropriate to have regard to his management of the issue as a whole.
113. On the basis that the Minister's conduct resulted from an inadvertent error (which resulted from a lack of diligence), and the Minister took steps to remedy that error as soon as it came to his attention, my view is that while there was mismanagement on the Minister's part, that mismanagement was not 'substantial' for the purposes of section 5(4) of the ICAC Act.
114. In reaching that view, I have had regard to the informant's further submissions as summarised at paragraph 97.

Opinion

My view is that in connection with the attempted removal of individuals from the Board on 5 July 2019, Minister Knoll:

- committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act
- did not commit maladministration in public administration for the purposes of section 5(4) of the ICAC Act.

Whether Minister Knoll inappropriately pressured Board members to resign, thereby committing misconduct or maladministration in public administration

115. Prior to seeking to remove [the Chair, the first Director and the second Director] from the Board on 5 July 2019, Minister Knoll contacted [the Chair] to advise her of his intention that she be removed from the Board and to ask her to consider her position.
116. Minister Knoll arranged for his Chief of Staff to make similar telephone calls to [the first Director and the second Director]. The detail of these calls is set out in the Background.
117. I do not consider that the Minister's conduct in doing so breached any provisions of the Code. Nor do I consider that there is any evidence of other misconduct by the Minister in relation to these actions.
118. In reaching this conclusion I have taken into consideration the fact that:
- the Minister's intention was to provide notice of the proposed removals and to allow [the Chair, the first Director and the second Director] an opportunity to resign rather than be formally removed
 - there is no evidence that the Minister or his staff applied inappropriate pressure to any of the Board members during these calls
 - the Act provides the Minister with a very broad power to recommend removal on any ground he thinks sufficient.
119. In the circumstances, I do not consider that Minister Knoll's conduct in this regard constitutes misconduct for the purposes of section 5(3)(a) of the ICAC Act.
120. Nor do I consider that Minister Knoll's conduct amounts to maladministration in public administration for the purposes of section 5(4) of the ICAC Act. There is no basis, on the evidence before me, to form the view that substantial mismanagement of official functions or public resources has occurred in respect of this allegation, nor irregular and unauthorised use of public money.

Opinion

My view is that Minister Knoll did not commit misconduct or maladministration in public administration for the purposes of the ICAC Act by inappropriately pressuring Board members to resign.

Whether Minister Knoll selected one or more of the new directors for the Board based on a prior personal relationship, thereby committing misconduct and/or maladministration in public administration

121. The referral raises the issue of whether Minister Knoll selected any of the new directors based on a prior personal relationship with them. These allegations are based on a report that:
- [the Chief Executive Officer] met some or all of the new directors at Parlamento restaurant prior to their appointment to the Board
 - the Minister attended this discussion
 - the new directors disclosed to [the Chief Executive Officer] at this meeting that they were personally acquainted with the Minister.
122. It was further alleged that the Minister may have attended school with the one or more of the new directors.
123. In my view, these allegations concern potential breaches by the Minister of clauses 3.1 to 3.3 of the Code.
124. Clause 3.1 of the Code requires that “*Ministers should avoid situations in which their private interests conflict, have the potential to conflict or appear to conflict with their public duty*”.
125. Clause 3.2 describes circumstances when a conflict of interest may arise and clause 3.3 obliges Ministers to disclose actual, potential or apparent conflicts of interest to the Premier.
126. If Minister Knoll attended school with any of the new directors or otherwise had a prior personal relationship with them it is possible that he may have had an actual, apparent or perceived conflict of interest in relation to any decisions relating to their appointment to the Board of the new directors.
127. In my view the evidence does not establish that this was the case.
128. Based on the evidence, there is some considerable doubt as to whether Minister Knoll attended a meeting with [the Chief Executive Officer] and any of the new directors. However, even if he did, I do not consider that, on the basis of the evidence before me, it was necessarily inappropriate or otherwise evidence of misconduct.
129. The Minister denied that he knew any of the new directors as a result of attending school with them. He did, however, acknowledge that he had previously met [three of the new Directors] through professional dealings and activities.
130. Enquiries were made by my investigators with the Department for Education and the SACE Board. My investigators also reviewed the personnel files for the new directors held by the Authority. These enquiries support the Minister’s evidence that he did not attend school with any of the new directors.
131. The Minister provided an explanation of how each of the new directors had come to his attention as potential Board candidates and the basis on which he felt that each of them would bring relevant professional skills to the Board.
132. In the circumstances, although the Minister appears to have previously met and had dealings with some of the new directors, I do not consider that there is sufficient basis to conclude that Minister Knoll attended school with them or otherwise had a personal

relationship that would have led to a conflict of interest for the purposes of clauses 3.1 to 3.3 of the Code.

133. On the evidence available to me, I do not consider that Minister Knoll breached any of clauses 3.1 to 3.3 of the Code because of a prior personal relationship with any of the new directors. Accordingly, I do not consider there is any basis, on the evidence before me, to form the view that Minister Knoll committed misconduct in public administration in relation to the matters referred.
134. For the same reasons discussed above, I also do not consider that there is basis to form the view that in selecting the new directors, Minister Knoll committed maladministration in public administration for the purposes of the ICAC Act.
135. In response to my provisional report of 16 April 2020, one of the informants submitted that, contrary to the view expressed in my report, Minister Knoll has a personal relationship with at least two of the directors appointed to the board. The informant outlined alleged links between one director [REDACTED] and the Liberal Party. The informant also referred to the fact that another of the directors [REDACTED] formerly had professional ties to Barossa Fine Foods, a business owned by the Minister's family. A third director, [REDACTED] was also mentioned, although no additional information was provided about why it was considered that [REDACTED] had a personal relationship with the Minister.
136. As discussed above, I acknowledge that Minister Knoll knew these directors as a result of prior professional dealings but consider that there is insufficient information to conclude that Minister Knoll had a relevant prior personal relationship with them (which is the issue referred by ICAC).
137. In light of the above, the response provided by the informant has not persuaded me to change my views.

Opinion

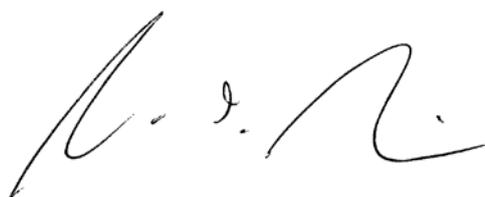
It is my view that Minister Knoll did not commit misconduct or maladministration in public administration for the purposes of the ICAC Act by selecting new directors of the Board based on a prior personal relationship.

Summary and recommendations

In light of the above, my final view is that:

1. In connection with the attempted removal of individuals from the Board of the Adelaide Cemeteries Authority on 5 July 2019, Minister Knoll:
 - committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act
 - did not commit maladministration in public administration for the purposes of section 5(4) of the ICAC Act.
2. Minister Knoll did not commit misconduct or maladministration in public administration for the purposes of the ICAC Act by inappropriately pressuring Board members to resign.
3. Minister Knoll did not commit misconduct or maladministration in public administration for the purposes of the ICAC Act by selecting one or more of the new directors of the Board based on a prior personal relationship.

In the circumstances, I do not propose to make any particular recommendations. However, I intend to provide a copy of my final report to the Premier so that the Premier may consider whether to take any further action.



Wayne Lines
SA OMBUDSMAN

5 August 2020