



## Report

Full investigation - *Ombudsman Act 1972*

Complainant	Anonymous
Department	Department for Health and Wellbeing
Ombudsman reference	2020/01948
Department reference	CE-2020-4490
Date complaint received	1 May 2020
Issues	<ol style="list-style-type: none"> <li>Whether the practice of the Department for Health and Wellbeing in sharing social media content on the 'SA Health' Facebook account from the 'Steven Marshall' Facebook account was wrong within the meaning of section 25 of the Ombudsman Act 1972.</li> <li>Whether the dissemination, on 22 April 2020, by the Department for Health and Wellbeing of social media content that included the words 'Marshall Liberal Government' in reference to the decision to retain public ownership of SA Pathology was wrong within the meaning of section 25 of the Ombudsman Act.</li> </ol>

## Jurisdiction

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

The complainant in this matter has been considered by my Office to be an informant for the purposes of the *Public Interest Disclosure Act 2018 (the PID Act)*. As such, their identity has been kept confidential, as per section 8 of the PID Act.

## Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking responses from the Department for Health and Wellbeing (**the department**)
- assessing the department's response
- considering: the *Public Sector Act 2009 (SA)*; the *Code of Ethics for the South Australian Public Sector*; the South Australian Government Across Government Policy PDC/P11.1 *Social Media Policy*; the Premier and Cabinet Circular PC 048, *Communications Approval Process for the Government of South Australia*; the South

Australian Government *Marketing Communications Guidelines*; the South Australian Government *Social Media Guidance for Agencies and Staff*, and the department's 'SA Health Social Media Policy Terms and Conditions of Use', 'Employee Use of Social Media Policy', and 'Social Media Communications Policy Directive'

- considering relevant case law
- providing the complainant and the department with my provisional report for comment, and considering their responses
- preparing this report.

### 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.<sup>1</sup> 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 ...<sup>2</sup>

### Procedural fairness

Copies of my provisional report were provided to the complainant and to the department.

The complainant provided a response to my Provisional Report. The complainant noted the overarching role of the department in setting policy and strategy across Local Health Networks in South Australia, and expressed concern that all social media use by Local Health Networks was relevant to this matter. They also made suggestions as to potential recommendations I might make in this matter.

In its response to my Provisional Report, the department:

- confirmed its policies and guidelines governing social media use, which it had not done previously
- commented that it had removed from the SA Health Facebook account those live-streamed press conferences it had not streamed directly from the SA Health Facebook account
- provided further information that the decisions to share the posts discussed in issue two, in which the 'Marshall Liberal Government' was mentioned in reference to the decision to retain public ownership of SA Pathology, 'were made by relatively junior staff within the Department's Corporate Communications Team'. The department advised that these staff have 'been counselled about the inappropriateness of these actions'
- provided comment on certain issues raised by the complainant, including that:
  - the social media content on Facebook and Twitter concerning SA Pathology was first seen and was subsequently corrected by the SA Health Media Manager, rather than on the advice of an external party

<sup>1</sup> 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.

<sup>2</sup> *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

- the department restated that there was no evidence of any influence from the Premier's political advisors in the decision to share press conferences with the Premier's Facebook account
- regarding the complainant's allegation that the posts about SA Pathology were 'part of a pattern of behaviour', the department responded that these were isolated incidents.

The department also advised of the following actions it had taken in response to this complaint and my Provisional Report:

- that it had reviewed its processes for publishing social media content and advised of a new departmental process 'to ensure inappropriate or political content is not published in error on the Department's social media platform'
- the department identified a two-hour social media training session for communications staff from the department, Local Health Networks, and SA Ambulance. The department advised that there was a focus in the training on ensuring apolitical content
- the department advised that it is reviewing its operational policies, including social media policies, in light of the *Code of Ethics for the South Australian Public Sector* and the requirement for an apolitical public sector
- in case of future streaming of information in circumstances requiring social distancing, the department advised that it will consider alternative solutions, 'such as delaying the broadcasting or looking for an alternative media source'.

I have considered both the complainant's and the department's responses and have addressed both of their submissions where necessary in the body of this report. Ultimately, both the complainant's and the department's responses persuaded me to alter some of my recommendations. In particular:

- I amended Recommendation One in response to the department's response to my Provisional Report, in which it advised that it had removed social media content that was not live-streamed directly from its Facebook account, as well as the complainant's concerns that this practice was ongoing amongst Local Health Networks
- I amended Recommendation Two in response to the complainant's concerns about the department's role in determining policy not only for itself, but also for Local Health Networks, the department's confirmation of the relevant social media policy in this matter, and its revised process for the publication of social media material
- I amended Recommendation Four in response to the complainant's suggestion that the Ombudsman approve the wording of the proposed apology. I have now recommended that the department 'provide me with a draft of its acknowledgment and apology for review'.

I note that the department has recently provided training to communications staff in the department, Local Health Networks, and SA Ambulance. I have amended Recommendation Three with the suggestion that such training become part of the department's training and induction procedures.

## Background

### *The first complaint*

1. On 1 May 2020 I received a complaint (**the first complaint**) raising concerns about social media content produced by the department appearing to promote the Liberal Party of Australia (SA Division) (**the Liberal Party**), as well as the South Australian Premier, the Hon Steven Marshall MP, personally. The first complaint concerned the dissemination of certain press conferences by the department (through a Facebook account operated by the department under the name SA Health (**the SA Health**

Facebook account)), as well as the sharing of allegedly party-political material by the department on the SA Health Facebook and Twitter accounts.

2. I note that throughout the COVID-19 pandemic, press conferences concerning matters of public health in South Australia have been held with Premier Marshall and the South Australian Chief Public Health Officer, Professor Nicola Spurrer.
3. The first complaint alleged that throughout March 2020 those press conferences were published directly on the SA Health Facebook account (that is, the SA Health Facebook account 'hosted' the live-streams or other posting of these press conferences, rather than 'sharing' them from another Facebook account or another source).
4. In April 2020, and continuing into May 2020, the complainant alleged that the press conferences were published on the SA Health Facebook account by way of 'sharing' them as content from the 'Steven Marshall' Facebook account.
5. The complainant alleged that since the department started sharing - rather than hosting directly - press conferences from the Steven Marshall Facebook account, the Steven Marshall Facebook account had increased its number of followers. The complainant alleged that this growth was due to the department's sharing of content from the Steven Marshall Facebook account, noting that clicking on videos shared from the Steven Marshall account prompts the viewer to 'Follow' that account, thereby potentially increasing traffic to it.
6. The first complaint further alleged that the Steven Marshall Facebook account is not operated by the South Australian government, but is instead operated by the Liberal Party.
7. The 'About' section of the Steven Marshall Facebook account indicates the involvement of the Liberal Party in that account:

Thank you for being a fan of Steven Marshall on Facebook. The Liberal Party provides a variety of content and commentary on Facebook to encourage participation with the Liberal Party, our Members of Parliament and candidates.

Posted comments and images do not necessarily represent the views of the Liberal Party or Steven Marshall.

8. The complainant alleges that in sharing social media content in this way, there is a 'blurring of the lines between what is the official government health channel and what is the Premier's party-political messaging vehicle'.
9. In the first complaint, the complainant further alleged that on 22 April 2020, the department produced social media content on its SA Health Twitter and Facebook accounts promoting the SA Government decision not to privatise SA Pathology. Those posts included a statement that '[t]oday the Marshall Liberal Government announced that SA Pathology will remain in public ownership'. It was alleged by the complainant that those statements 'appear to be another element in a pattern of behaviour promoting the Liberal Party via SA Health Communications'.
10. The complainant states that after the issue was raised with the department, the posts were edited to remove the wording 'Marshall Liberal Government'. In its response to my Provisional Report, the department advised that '[w]hile it is correct that the post was quickly amended, the error was first seen by the SA Health Media Manager and a correction made before the Department was informed of the issue by external parties'. I do not consider it necessary to express a view on the circumstances by which this social media content was amended. I further note that in its response to my Provisional

Report the department refutes the complainants allegation that these posts were part of a 'pattern of behaviour promoting the Liberal Party via SA Health Communications', stating that these were isolated errors and that otherwise the department produces apolitical social media content related to issues of public health.

11. The complainant alleges that in producing social media content in this manner, the department has potentially breached the *Code of Ethics for the South Australian Public Sector (the Code)*, the SA Government *Marketing Communications Guidelines (the Marketing Guidelines)*, and the SA Government *Social Media Guidance for Agencies and Staff (the Social Media Guidance - cumulatively, the Code and Guidelines)*. In addition, the complainant also expressed concern that the department may have changed its practice in response to an instruction from 'political advisors of the Premier'. The complainant also raised certain issues that are outside of my jurisdiction.

#### *The second complaint*

12. By way of a second letter of complaint dated 13 May 2020 (the second complaint), the complainant noted that on 11 May 2020 the Steven Marshall Facebook account advertised a question and answer session between the Premier and the Chief Public Health Officer. This session was shared from the Steven Marshall Facebook account to the SA Health Facebook account in a similar manner to the press conferences noted in the first complaint, and the complainant reiterated their belief that this raised a potential breach of public sector impartiality.

#### *The department's response*

13. My Office sought further information from the department about the matters raised in these two complaints.
14. The Chief Executive of the department, Dr Christopher McGowan, provided a response to my enquiries concerning the first complaint on 6 July 2020. To date, I have not received specific information about the second complaint from the department, although I note that its response of 6 July 2020 and its response to my provisional report the department provided information that applied generally to both complaints.
15. In his response of 6 July 2020, Dr McGowan noted the importance of social media as a means of providing timely communication to the South Australian public. He viewed the department's Facebook account 'as a key source for the community to receive information directly from the Chief Public Health Officer and her delegates.'
16. Dr McGowan identified, with regard to the sharing of press conferences on the SA Health Facebook account, that prior to 3 April 2020 the SA Health Facebook account had hosted those conferences directly. At the conferences, the department had had a camera operator present who streamed COVID-19 related media conferences involving departmental spokespeople directly to the SA Health Facebook account.
17. However, after 3 April 2020 social distancing concerns meant that media conferences at the State Administration Centre or the department's Citi Centre Building were restricted to a maximum of 10 people. Dr McGowan advised that the following change in practice took place:

Initially the live Facebook feed was provided by a pooled camera operated by Channel 7 which was then broadcasted by the Premier's Facebook page. As this live feed was filmed using a camera and laptop, and not a mobile device, SA Health was able to cross-post the live feed from the Premier's Facebook page so that the footage would appear as though it was coming from SA Health. However, once the pooled camera was removed, subsequent media conferences were filmed on a mobile phone, and it was not possible for SA Health to cross-post the live feed to the SA Health page in a timely way.

As a consequence, it appears that direct publication on the SA Health Facebook account of the live Facebook feed of conferences involving the Premier was no longer undertaken for technical reasons. Instead, the department began sharing this content from the Steven Marshall Facebook account.

18. Dr McGowan noted that the department did continue to live-stream directly to the SA Health Facebook account wherever possible. On 26 May 2020 restrictions on social distancing eased and the department returned to using its own camera operator and posting directly on the SA Health Facebook account.
19. Dr McGowan advised that he understood from the relevant Communications team that the decision to share material from the Steven Marshall Facebook account was 'made to maximise timely information to the public regarding COVID-19 and that neither anyone from the Premier nor the Minister's offices were involved in the decision-making process.'
20. With regard to the social media content posted on the SA Health Twitter and Facebook accounts on 22 April 2020 that included the statement '[t]oday the Marshall Liberal Government announced that SA Pathology will remain in public ownership', Dr McGowan stated that he made enquiries into the these allegations.
21. McGowan noted that the posts did refer to the 'Marshall Liberal Government'. He stated that the social media text was 'erroneously copied from an existing media release, and once the error was identified, the post was swiftly removed, and a replacement post, without this reference, was issued in its place'. Dr McGowan stated that the original post was online for about 15 minutes.
22. Dr McGowan apologised for this error and has undertaken measures in response: '[I] have requested the Executive Director of Corporate Communications to review the unit's processes to avoid similar errors in the future'.
23. Dr McGowan also expressed the view that neither the Code nor the Marketing Guidelines were breached in these instances, but did not explain his reasoning.

### Relevant law/policies

*The Public Sector Act 2009 and the Code of Ethics for the South Australian Public Sector*

24. The *Public Sector Act 2009* (SA) and the *Code of Ethics for the South Australian Public Sector* establish the principles of neutrality and impartiality by which the South Australian public sector, including the department, are to operate.
25. Of particular note, section 5(2) of the *Public Sector Act 2009* states that:

The public sector is to—

  - Implement the Government's policies in a timely manner and regardless of the political party forming Government.
26. The *Code of Ethics for the South Australia Public Sector*, established under the *Public Sector Act*, reinforces the obligation upon the South Australian public sector to act in an impartial manner, establishing 'impartiality' as one of the 'four foundations of public service':

Public sector employees must be detached from political influence and the influence of partisan interests within the community. Instead, public sector employees must rely on

evidence to provide objective advice to Government and implement directions promptly and thoroughly.<sup>3</sup>

*Relevant South Australian Government Policies concerning Communications and Social Media*

27. Of the policies guiding the use of social media and other forms of electronic communication by South Australian government agencies, the following are relevant to the present investigation. These policies underscore the importance of the neutrality of the public sector, either through direct reference or by reference to the Code.
28. The Across Government Policy ‘Social Media Policy’,<sup>4</sup> identifies that public sector agencies must have a social media guidance in place for staff, and that ‘[g]uidance may form part of an agency’s Internet and email usage guidelines, and where possible should refer to the Code of Ethics for the South Australian Public Sector and Social Media Guidance for Agencies and Staff’.
29. The Premier and Cabinet Circular ‘Communications Approval Process for the Government of South Australia’<sup>5</sup> underscores that:

South Australian Government communications seek to inform, create dialogue with, and influence citizens, so that trust, respect and confidence are built

30. The Government of South Australia *Marketing Communications Guidelines*, which concern all government marketing communications, identify at numerous points a prohibition on government communications for political purposes, including with regards a politician or political party. Much of the Marketing Guidelines is concerned with the use of public funds for paid advertising, but the Guidelines also note that public funds can be used ‘to communicate matters that align to the government’s priorities’. However, these are not to ‘be used for party-political purposes’.<sup>6</sup> All government communications, the Marketing Guidelines note, must

comply with the highest standards of fairness, equity, probity, transparency and public responsibility. In particular communications should... Be clearly identifiable as government messages and distinguishable from party-political messages.<sup>7</sup>

31. The Government of South Australia *Social Media Guidance for Agencies and Staff* identify the opportunities presented by social media for the marketing and promotion of government activities and services.<sup>8</sup> They identify that when contributing on behalf of their agency, public sector staff should:

Ensure that any comment you make on matters of government policy is appropriate to the agency role you hold, and remains politically neutral.<sup>9</sup>

*SA Health Social Media Policies*

32. I note from the SA Health website that SA Health has a ‘Social Media Policy Terms and Conditions of Use’, an ‘Employee Use of Social Media Policy’, and a ‘Social Media Communications Policy Directive’. During my investigation, and in the absence of the department responding to my requests to provide its social media policies, I took these to be the policies that the department follows in the use of social media by SA Health,

<sup>3</sup> Code of Ethics for the South Australian Public Sector (2015), page 7.

<sup>4</sup> DPC/P11.1.

<sup>5</sup> PC 048.

<sup>6</sup> *Marketing Communications Guidelines*, page 4.

<sup>7</sup> *Marketing Communications Guidelines*, page 5.

<sup>8</sup> *Social Media Guidance for Agencies and Staff*, page 2.

<sup>9</sup> *Social Media Guidance for Agencies and Staff*, page 8.

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In its response to my Provisional Report the department confirmed that these were the policies and guidelines that governed the department's social media use.

33. The 'Social Media Policy Terms and Conditions of Use'<sup>10</sup> outlines the following relevant information:
- that the department manages SA Health's social media sites
  - that being 'followed' by SA Health does not imply endorsement of any kind
  - that SA Health 'does not engage on issues of State or Federal politics'.
34. The related SA Health 'Employee Use of Social Media Policy' identifies that it draws on the Code, and identifies specifically that '[i]n the context of social media, employees have an obligation to ensure that their communications do not undermine public trust in the integrity of the public sector by tarnishing its reputation or the reputations of its agencies (including SA Health) - or of its employees'.<sup>11</sup> I note that neither the 'Employee Use of Social Media Policy' nor the 'Social Media Communications Policy Directive' make reference to political messaging, nor the importance of the neutrality of the public service.

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<sup>10</sup> <https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/contact+us/social+media+policy+terms+and+conditions+of+use>.

<sup>11</sup> 'SA Health Employee Use of Social Media Policy', clause 3.1.



**Whether the practice of the Department for Health and Wellbeing in sharing social media content on the SA Health Facebook account from the Steven Marshall Facebook account was wrong within the meaning of section 25 of the *Ombudsman Act 1972*.**

35. This matter arises in the context of both the COVID-19 pandemic and the principles of neutrality and impartiality that underpin the operation of the public service.
36. I acknowledge that COVID-19 has placed a strain on government, and has required adaptation in the face of unique circumstances.
37. These adaptations, however, must be undertaken within the scope of the laws, regulations, and principles that define and delimit government power. In the current matter, I have considered whether actions taken by the department during COVID-19 and with regard to the department's use of social media are consistent with laws, regulations, and principles designed to ensure the neutrality and impartiality of the public sector that operate in support of the systems of responsible and representative government. These laws, regulations, and principles also serve to engender public confidence in the public sector, by ensuring the public sector operates in a manner that is politically neutral, and so is not, amongst other considerations, seen to be aligned with, or to support, a particular political party (as distinct from the government).
38. I note that in the recent High Court of Australia decision in *Comcare and Banerji*,<sup>12</sup> the Court reiterated the importance of an independent public service to the systems of responsible and representative government.
39. In the decision, the plurality (Chief Justice Kiefel and Justices Bell, Keane, and Nettle) opined of the Australian (i.e. Commonwealth) public service ('APS') that
- [r]egardless of the political complexion of the government of the day, or its policies, it is highly desirable if not essential to the proper functioning of the system of representative and responsible government that the government have confidence in the ability of the APS to provide high quality, impartial, professional advice, and that the APS will faithfully and professionally implement accepted government policy, irrespective of APS employee's individual personal political beliefs and predilections.<sup>13</sup>
40. In her Honour's concurring judgment Justice Gordon stated:
- [t]he need for, and importance of, an apolitical public service is not limited to the internal character and functioning of the APS. It is essential to upholding the constitutionally prescribed system of representative and responsible government and, no less importantly, the public's perception of that system. It is a defining characteristic of the system of responsible (and representative) government for which the Constitution provides. Accordingly, maintenance of an apolitical public service is a legitimate end or purpose.<sup>14</sup>
41. While I note that the High Court is referring specifically to the APS here, the same principles apply to the South Australian public service: that is, that an impartial, neutral public sector is essential both to the operation of responsible government and to public confidence in the operation of government.
42. This matter, then, raises concerns that, in its social media practices, and whether intentionally or not, the department has produced content that is contrary to these principles, as well as specifically contrary to the Code and Guidelines.

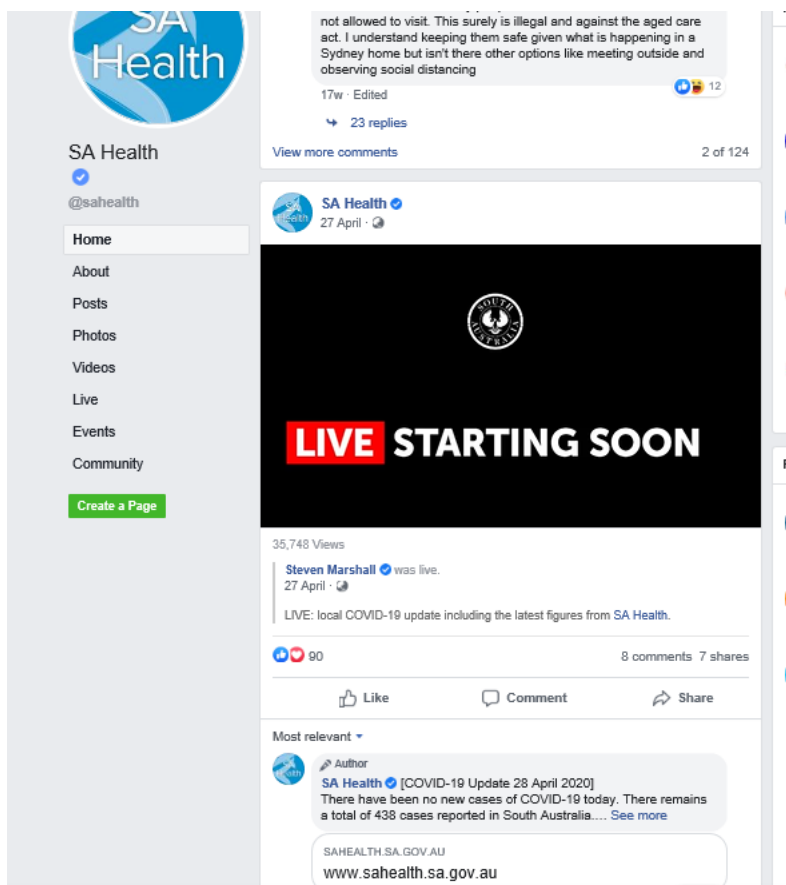
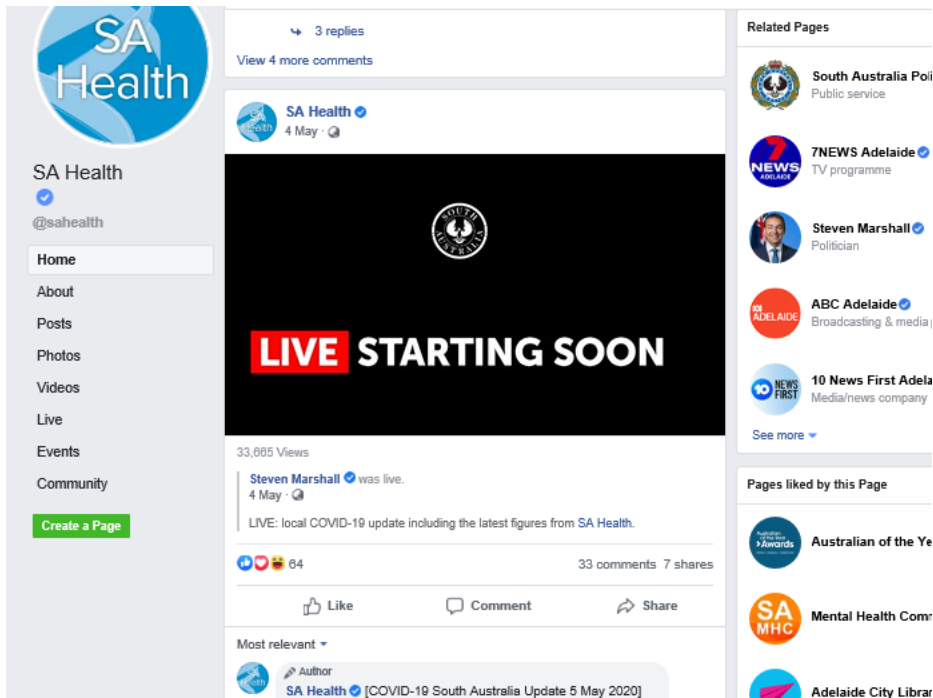
<sup>12</sup> *Comcare and Banerji* 93 ALJR 900.

<sup>13</sup> *Comcare and Banerji* 93 ALJR 900, 913.

<sup>14</sup> *Comcare and Banerji* 93 ALJR 900, 934.

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43. I note that the department has not, in the social media content I have considered in this aspect of the matter, explicitly endorsed a particular party. Concerns were raised by the complainant that there may have been instruction by the Premier's 'political advisers' that the department disseminate social media content in the manner that it did. That, of course, would be a very serious matter. It does not appear, however, on the material before me that there is evidence to support this allegation. Similarly, I do not have evidence that the department's actions in this matter were part of a *deliberate* pattern of behaviour by the department to promote the Liberal Party.
44. I am of the view, however, that the obligation for a neutral, impartial public sector envisioned by the High Court and in the Code and Guidelines requires more of the public sector than avoiding explicit endorsement. In their communications, public sector agencies must also avoid implicitly endorsing political parties or individual politicians or political candidates.
45. I note that contemporary government communications practices comprise a complex variety of media and methods of public engagement. This complexity requires public sector agencies be sophisticated in their communications strategies, including in their use of social media, and fully understand the consequences of their engagement with media. In the present instance, this includes how sharing, 'liking', or otherwise noting or commenting upon social media content might be seen as an endorsement or otherwise of that content.
46. I note that through March 2020, 'live-streams' of media conferences were hosted directly on the SA Health Facebook account, without directing viewers, whether actively or potentially, to another social media account. Assuming the content itself is apolitical, I consider this an appropriate method of disseminating social media content.
47. On the following dates, however, the department's practice changed and media conferences were 'shared' from the Steven Marshall Facebook account to the SA Health Facebook page. In investigating this matter, I note that, as on 9 July 2020, this sharing occurred on:
- April 2, 3, 8, 9, 11-16, 19-23, and 26-30, 2020
  - May 2-5 and 11, 2020.

The images below illustrate some examples of what this sharing of social media content looked like on the SA Health Facebook account:



48. I note that some of this content was, as of the writing of my Provisional Report, still available on the SA Health Facebook account, and the relevant social media posts continued to share content from the Steven Marshall Facebook account. In its response to my Provisional Report, the department advised that these posts now been removed from the SA Health Facebook account.

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49. In its response to my enquiries, the department advised that it changed its practice of live-streaming certain media conferences on 3 April 2020 due to social distancing requirements.
50. As I have noted above, the COVID-19 pandemic has created unique conditions for contemporary governance, and I acknowledge that social distancing practices designed to limit the potential spread of the COVID-19 virus undoubtedly impacted the department's communications practices.
51. However, it is unclear to me why, when presented with social distancing constraints, the department chose to act in the manner that it did. The department has failed to advise me, for example, why it did not turn its mind to an alternative to sharing from the Steven Marshall Facebook account, such as live-streaming these conferences directly from the SA Health Facebook account and having the Steven Marshall Facebook page share them. It is also unclear why the department considered alternatives to sharing from the Steven Marshall Facebook account would not provide this material in a timely manner. I have difficulty in accepting that other options were not readily available.
52. I note that the department did live-stream other media conferences, including those involving the Chief Public Health Officer or a Deputy Chief Public Health Officer, to the SA Health Facebook account.
53. The department has not identified any specific policies developed for the dissemination of information during the COVID-19 pandemic.
54. I note the 'Social Media Policy Terms and Conditions of Use' on the department's website identifies that the department 'does not engage on issues of State or Federal politics', and that the 'Employee Use of Social Media Policy' identifies that department employees have an 'obligation to ensure that their communications do not undermine public trust in the integrity of the public sector by tarnishing its reputation or the reputations of its agencies (including SA Health)'. There does not appear, however, to be an explicit prohibition on party-political content in these policies. That said, staff responsible for social media content within the department are of course subject to the relevant requirements of the Code and Guidelines.
55. I note also from the department's response that it is Dr McGowan's view that the Code and Marketing Guidelines were not breached, although his reasoning in this is unclear.
56. Having carefully considered the material before me, including the complaint and the department's responses, I consider that in sharing material from the Steven Marshall Facebook account, rather than disseminating it directly from the SA Health Facebook account, the department has acted in a manner that is wrong within the meaning of section 25(1)(g) of the Ombudsman Act.
57. On the one hand, I note that:
- the department's original social media content does not appear to have included party-political messaging
  - that the department changed its operations in response to COVID-19 social distancing requirements, and that this meant that its previous practices in disseminating media conferences had to change
  - that the department viewed sharing press conferences from the Steven Marshall Facebook page as a timely means of disseminating this material.
58. On the other hand, I note that:
- the department does not appear to have turned its mind to disseminating this content in a manner that would not have had the effect of promoting a party-political social media account

- alternatively, given that provision was in place for the department to disseminate certain media conferences directly from the SA Health Facebook account, it appears that it chose not to, or did not turn its mind to, doing the same for the social media content it shared from the Steven Marshall Facebook page
  - the department was able to live-stream other media conferences directly to the SA Health Facebook account
  - the department does not appear to have policies that advise staff of the inappropriateness of party-political messaging, and that provide guidance to staff in considering whether social media content is appropriately apolitical, impartial, and neutral
  - by sharing content from the Steven Marshall Facebook account, the department has arguably promoted that account in a way that may have led to that account receiving more followers.
59. I observe that the department has not explicitly endorsed a political party or a politician or political candidate in these messages. Nonetheless, as I discuss above, the requirement for an impartial and neutral public sector requires a more sophisticated understanding of the nature and effect of communications than the department has demonstrated here. In this instance, I am of the view that the department failed to appropriately consider the consequence of disseminating this social media content, and the ways in which its dissemination of this material may be viewed as partisan.
60. I am of the view that the department promoted, or has given the appearance of promoting, the Liberal Party and/or Mr Marshall, and so has not acted in a manner that is 'detached from political influence and the influence of partisan interests within the community'. While I have not been provided with information to show breaches of the Code by individuals, and I express no view in that regard, I consider that I can have regard to the principles underpinning the Code in considering the department's actions. On balance, I consider that the department's actions were contrary to those principles. Further, the department has not complied with the Marketing Guidelines, as this content is not 'clearly identifiable as government messages and distinguishable from party-political messages'. By incorporating material from the Steven Marshall Facebook account into the department's own social media content, the department has also not produced content that is 'politically neutral', as required by the Social Media Guidance. I further note that, while I have been advised that since this complaint was brought to the department's attention the department has reviewed, or is currently reviewing, its policies and processes for producing and publishing social media content, the department does not appear to have a current social media policy to guide staff in producing appropriate, apolitical social media content under the Code and Guidelines.

## Opinion

In light of the above, my view is that the department has acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

I include recommendations at the end of this report.

**Whether the dissemination, on 22 April 2020, by the Department for Health and Wellbeing of social media content that included the words ‘Marshall Liberal Government’ in reference to the decision to retain public ownership of SA Pathology was wrong within the meaning of section 25 of the Ombudsman Act.**

61. On 22 April 2020, the department released social media content on both Twitter and Facebook that identified that the ‘Marshall Liberal Government’ had announced that SA Pathology, which had been a possible subject of privatisation, ‘would remain in public ownership’.
62. In their first complaint, the complainant noted of this social media content that it was  

made available to the 123,000 Facebook followers and the 17,200 Twitter followers of SA Health. As you know, it is highly unusual for public sector employees when commenting publicly to praise or otherwise indicate favour or preference to a political party—let alone in official government communications... they appear to be another element in a pattern of behaviour promoting the Liberal Party via SA Health Communications.
63. As I discussed above, I have found no evidence of an explicit intent to promote the Liberal Party in the department’s social media.
64. I note that in his response, Dr McGowan identified that the department made an error in these social media messages. He stated the ‘social media text was erroneously copied from an existing media release, and once the error was identified, the post was swiftly removed, and a replacement post, without this reference, was issued in its place’.
65. Further, Dr McGowan, in his response, apologised for this error and has ‘requested the Executive Director of Corporate Communications [at the department] to review the unit’s processes to avoid similar errors in the future’.
66. I note that in its response to my Provisional Report that the department has advised that these messages ‘were made by relatively junior staff within the Department’s Corporate Communications Team’. The department advised that these staff have ‘been counselled about the inappropriateness of these actions’. I further note that the department has instituted further communications training, has reviewed its social media publishing processes, and is currently reviewing ‘all its operational policies, including media, marketing, and online policies, as well as our social media policies’.
67. Having carefully considered the submissions of the complainant and the department, and noting the actions of the department to review its social media policies and practices, for the reasons set out below I consider that the department, in disseminating, on 22 April 2020, social media content that included the words ‘Marshall Liberal Government’ in reference to the decision to retain public ownership of SA Pathology, acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.
68. On the one hand:
  - it appears that the error was inadvertent
  - the department immediately remedied the error once it came to its attention
  - the department has acknowledged an error in its actions
  - the department has sought to make amendments so that such an error does not reoccur.
69. On the other hand:
  - it is unclear whether the department had explicit policies that may have prevented this error from occurring
  - the social media content in these instances was clearly of a party-political nature

- the potential promotion of partisan interests in this instance was especially acute, having regard to the timing and circumstances of the post (i.e. a 'good news' story about the government's handling of a health issue in the midst of a global pandemic).
70. More overtly than many of the media conferences discussed above, this social media content made an explicit statement identifying a political party (that is, the Liberal Party). The statements identified that Premier Marshall and his party are currently in government; I am of the view that the public would also identify the statements as being in support of the Liberal Party and Premier Marshall. This is particularly the case given the very prominent role of SA Pathology in conducting tests for COVID-19, and the positive framing of these messages: the SA Health Facebook message, for example, stated that: 'SA Pathology has provided South Australians with a world-class COVID-19 testing service that has reduced the spread of the virus and saved lives'. Such messaging, in my view, has the potential effect of promoting the Liberal Party by framing the decision to retain SA Pathology in public ownership as a decision of the Liberal Party and Mr Marshall personally.
71. I consider that the use of the term 'Marshall Liberal Government' in this social media content operated to promote the Liberal Party and Mr Marshall personally. As such, I am of the view that the department promoted, or has given the appearance of promoting, the Liberal Party and/or Mr Marshall, and so has not acted in a manner that is 'detached from political influence and the influence of partisan interests within the community'. While I have not been provided with information to show breaches of the Code by individuals, and I express no view in that regard, I consider that I can have regard to the principles underpinning the Code in considering the department's actions. On balance, I consider that the department's actions were contrary to those principles. Moreover, the creation of this content appears to constitute a use of public funds to a party-political end, as a message that is indistinguishable from a party-political message, and so is contrary to the Marketing Communications Guidelines; I also do not believe that these messages were 'politically neutral', as is required by the Social Media Guidance.

## Opinion

In light of the above, my view is that the department acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

I include recommendations at the end of this report.

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## Summary and Recommendations

In light of the above, my view is that:

- by sharing social media content on the SA Health Facebook account from the Steven Marshall Facebook account, the Department for Health and Wellbeing acted in a manner that was wrong within the meaning of section 25(1)(g) of the *Ombudsman Act*
- in disseminating, on 22 April 2020, social media content that included the words 'Marshall Liberal Government' in reference to the decision to retain public ownership of SA Pathology, the Department for Health and Wellbeing acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act

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

### Recommendation One

That the department refrain from sharing or otherwise using content from the Steven Marshall Facebook account, or any other politically affiliated social media account or website, on its own digital platforms, including its websites and social media accounts. Where content from the Steven Marshall Facebook account or any other politically affiliated social media account or website has not yet been removed, the department should remove this content, replacing it with content located directly on the SA Health Facebook account, where necessary.

### Recommendation Two

That the department update its "Social Media Communications Policy Directive" to explicitly incorporate into its social media policies and procedures a prohibition on making party-political statements, sharing from social media pages run by political parties, politicians, or political candidates, or otherwise sharing material that is not clearly distinguishable from party-political messaging.

Once updated, the department should provide me with a copy of the revised Directive and the social media approval process it has advised me of in its response.

### Recommendation Three

That the department update its training and induction procedures to ensure they make clear to staff their obligations to ensure departmental communications are politically impartial and compliant with the *Code of Ethics for the South Australian Public Sector*, the SA Government *Marketing Communications Guidelines*, and the SA Government *Social Media Guidance for Agencies and Staff*.

### Recommendation Four

That the department publicly acknowledge and apologise for the above errors on its website and the SA Health Facebook account. Prior to publishing, the department should provide me with a draft of its acknowledgement and apology for review.



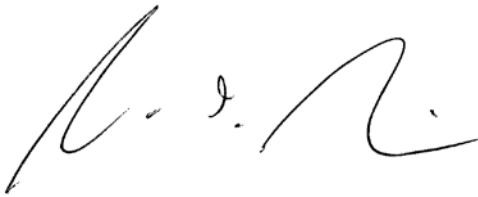
**Final Comment**

In accordance with section 25(4) of the Ombudsman Act the department should report to the Ombudsman by 12 March 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 Health and Wellbeing as required by section 25(3) of the *Ombudsman Act 1972*.



Wayne Lines  
**SA OMBUDSMAN**

11 December 2020