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WHAT OSA MEANS TO LGA PROCUREMENT CONTRACTORS

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What we will speak about

- What we do
- How we impact on you as an 'agency'
- How we impact on council and its operations
- Issues we deal with



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What we do at Ombudsman SA

- Complaints/investigations/audits
- Improve governance
 - Challenges of LG procurement - reduce costs - increase performance - fair - efficient - effective
- FOI external reviews
- ISG



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How procurement matters might come to Ombudsman SA

- Nothing 'new'
- Investigate 'administrative error' by 'agency'
- Report corruption and serious or systemic misconduct or maladministration to OPI
- OPI may refer misconduct and maladministration to OSA
- Investigate council members and employees - code of conduct, section 21A Minister's Code



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We look for 'administrative error' on the part of an 'agency'

- Includes an act:
 - of a person engaged in the work of an agency (i.e. council)
 - done in performance of functions conferred under a contract for services with a council (where you provide the services of the council)
- To date - no findings of error on part of a contractor
- you might be the subject of an investigation (alone or jointly) or you might be a witness. You could be a complainant or a Whistle-blower



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Case studies

Mid Murray matter - tender process

- Issues:
 - Compliance with legislation by a contractor - environmental standards
 - Conflict of interest issues - managed in tender process?
- Consideration was given to legislation, common law, policies, adopted industry standards, training, adequacy of standard documentation, probity, community perceptions



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We look at your actions and consider whether they are:

- Reasonable
- Lawful
- Fair
- In accordance with relevant policies and standards
- In accordance with your contractual obligations
- Respectful of the standards expected of local government employees and elected members



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Your dealings with council staff and council members

- Code of Conduct council members
- Code of Conduct employees

- Ministers Code section 21A Development Act 1993
 - Gifts and benefits
 - Bias/prejudgment
 - Conflict of interest



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Ombudsman SA Investigations

- Complaint driven/own initiative/parliamentary referral
- Assess jurisdiction and facts and determine level of investigation
- We have extensive powers
 - Entry and inspection s24
 - Royal Commission Powers s19
 - No privilege/secretcy s20
- It is an offence for you to interfere (prevent hinder/obstruct)



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How might you/your contracts be impacted by an investigation

- Ombudsman can issue s19A direction that a council refrain from performing an administrative act:
 - prejudice an investigation, serious hardship, 45 days
 - But NOT if results in council breaching contract/legal obligation or cause third party hardship
- Ombudsman can make findings and recommendations



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Where findings or error - recommendations and publication of outcome

- Contrary to law, unreasonable, unjust s25
- Recommendations (on agency)
- Report to complainant
- Report to Minister

- Publication s 26
- Annual report



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FOI External Reviews

- When you engage in business with a council you are taken to be aware that the council is subject to the FOI Act and a regime of openness and accountability
 - Confidentiality
 - Contracts
 - Consultation not consent



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Further Information

- www.ombudsman.sa.gov.au