



# PortAugusta

CITY COUNCIL

## 1. STATUTORY POLICY/PROCEDURES

### 1.1 LOCAL GOVERNMENT ACT 1999

POLICY NUMBER	1.1.17	Public Document?	Council or Administration		PAGES	7
		Yes	Administration			
SUBJECT						
<b>COMPLAINTS POLICY</b>						
COUNCIL MEETING	AR12/3839	ISSUE DATE	27/02/2012	REVIEW DATE	MT - 16/1/2013 AR14/8515 - 24/3/2014 AR15/7044 - 23/2/15 MG - 10/01/2018 AR18/11703 - 26/3/18	DELETED DATE
<b>EXTERNAL LEGISLATION</b>  Section 270 - Local Government Act 1999  Schedule 2A Local Government (General) Regulations 2013				<b>INTERNAL/EXTERNAL REFERENCES</b>  SA Ombudsman's Enquiry Procedure - A Guide for Councils - Appendix A - AR11/825  How to investigate a complaint - Appendix B - AR12/311  Framework of strategies for managing unreasonable complainant conduct - Appendix C  Australian Standard ISO10002-2006, Customer Satisfaction - Guidelines for complaint handling in organisations  Online Submissions - <a href="http://www.portaugusta.sa.gov.au">www.portaugusta.sa.gov.au</a> under Online Forms		
<b>RELATED POLICIES</b> Code of Conduct Elected Members 1.1.01 Internal Review of Council Decision 1.1.05 Customer Service Charter 2.2.03 Request for Service Policy 2.2.10 Whistleblowers Protection Policy 2.4.01 Fraud and Corruption Prevention 2.6.08				<b>RESPONSIBLE OFFICER</b>  Chief Executive Officer		

#### PART 1 - COMPLAINTS REGARDING PRODUCT AND SERVICE DELIVERY OF COUNCIL

##### 1.0 POLICY STATEMENT

- 1.1 Local Government provides an extensive range of services and infrastructure to communities, and discharges obligations under many pieces of legislation.

- 1.2 Council is committed to the provision of quality service to customers and regards complaints as an opportunity to improve practices and procedures as well as resolve the matter. The aim of this policy is to provide a fair, consistent and structured process for Council's customers if they are dissatisfied with a Council action, decision or service. Lessons learnt from complaint investigations will be used to directly inform service improvements.
- 1.3 Emphasis will be placed on resolving complaints as quickly as possible. However, where complaints cannot be settled in the first instance Council will ensure that they are dealt with through appropriate, more formal procedures by staff with the authority to make decisions. This process is broadly consistent with the Australian Standard for complaint handling.

## 2.0 PRINCIPLES UNDERLYING THE POLICY

- 2.1 This policy is based on five principles, which will be fundamental in the way Council approaches complaint handling. They are:
  - a) Fairness: treating complainants fairly requires impartiality, confidentiality, and transparency at all stages of the process
  - b) Accessibility: to be accessible there must be broad public awareness about Council's Policy and a range of contact options.
  - c) Responsiveness: this will be achieved by providing sufficient resources, well trained staff and review and improvement of the systems.
  - d) Efficiency: complaints will be resolved as quickly as possible, while ensuring that they are dealt with at a level that reflects their level of complexity.
  - e) Integration of different areas of Council where the complaint overlaps functional responsibilities.

## 3.0 RESPONSIBILITY & REVIEW

- 3.1 The Chief Executive Officer is responsible for ensuring the adherence by staff to the provisions of this policy.
- 3.2 To be reviewed within 12 months following a General Election, in line with any legislative changes or by resolution of Council.

## 4.0 INTERPRETATION

- 4.1 **Council** refers to the Port Augusta City Council
- 4.2 **Employee** includes a person employed directly by Council in a full time, part time or casual capacity (whether that position is permanent or contractual) and persons providing services to, or on behalf of, the Council even though they may be employed by another party.
- 4.3 **Business Day** means a day when the Council is normally open for business i.e. Monday to Friday, excluding public holidays.

## 5.0 DEFINITION OF A COMPLAINT

For the purposes of this policy, a complaint is defined as:

- 5.1 An expression of dissatisfaction with a product or service delivered by the Council or its representatives that has failed to reach the standard stated, implied or expected. This includes complaints about a service that has been, or should have been delivered.

- 5.2 Council also receives service requests and feedback across all areas of operations and clarification may be necessary to make the distinction for the purposes of this policy.
- 5.3 Complaints which are determined to be about matters that are not Council's responsibility, such as disputes between neighbours, will not be handling under this policy.
- 5.4 A **Request for Service** is an application to have Council or its representative take some form of action to provide a Council service (refer Request for Service Policy 2.2.10).
- 5.5 **Feedback** can take the form of comments, both positive and negative, about services provided by Council without necessarily requiring a corrective action, change of services or formal review of a decision. Feedback may, however, influence future service reviews and delivery methods.
- 5.6 Where Council has failed to meet the normal standards for a service which has been, or should have been, delivered this policy and the associated procedures apply.

## 6.0 COUNCIL'S COMMITMENT TO COMPLAINT HANDLING

- 6.1 Council welcomes complaints as a way of improving its services and programs as well as providing an opportunity to put things right.
- 6.2 This policy will be made widely accessible to ensure that customers are fully aware of their right to complain. Information about how to lodge a complaint will be placed in a prominent position on Council's website.
- 6.3 Except for minor Tier 1 responses, (see Clause 10 Procedures for resolving complaints below) Council will try to ensure that, whenever possible, complaints will be handled independently of the original decision-maker or officer involved in the matter that is the subject of the complaint.
- 6.4 A person can make a complaint in a number of ways:
  - a) Complete the appropriate form on Council's Website
  - b) Telephone
  - c) Fax
  - d) Email
  - e) Letter
  - f) Visit a Council customer service office.
- 6.5 Complainants will be advised of the likely timeframe required to investigate and resolve a complaint and regularly updated as to progress where necessary.
- 6.6 Employees will be trained to manage complaints efficiently and effectively, and provided with a level of delegated authority appropriate for the nature of complaints they are expected to resolve.
- 6.7 Communication with the complainant is an important ongoing process while undertaking the actions necessary to resolve a complaint.

## 7.0 SEVEN STEPS TO THE COMPLAINT HANDLING PROCESS

- 7.1 The following steps will be followed by staff to ensure complaints are dealt with efficiently and effectively:
  - a) Acknowledge complaints promptly

- b) Assess the complaint - simple problems may not need to be investigated
- c) Plan the investigation where one is warranted
- d) Investigate the complaint
- e) Respond to the complainant with a clear decision
- f) Follow up any customer service concerns
- g) Consider whether there are systemic issues which need correction.

7.2 In addition to the above, it is also essential that upon receipt of a complaint that may have consideration to the Whistleblowers Protection Policy the following must be assessed:

- a) take into consideration circumstances when a complainant may not specifically state that he or she wishes to invoke whistleblower status so as to be afforded protection under the Whistleblowers Protection Act; and
- b) recognise that each complaint received by the Council must be assessed to determine whether the Whistleblowers Act has any application to the information disclosed.

The consideration of the two items above must be clearly evident in the initial assessment documentation.

## 8.0 TIMEFRAMES FOR RESPONSE

Where a complaint cannot be resolved immediately the complainant will be advised of the process to be undertaken. **Council will respond within ten (10) business days**, acknowledging receipt of the complaint and, where possible, resolving it at that time. If a resolution is not possible at that time, the complainant will be kept regularly informed of progress, either by email, letter or personal contact.

## 9.0 RECORDS MANAGEMENT

- 9.1 All written complaints, whether received by letter, fax, standard form, Council's website or email are to be forwarded to Records Management for registration into Council's Record Management System (TRIM) and to be assigned to the appropriate officer.
- 9.2 Complaints will be recorded in Council's records management system in such a way that the information can be analysed for service improvement opportunities.
- 9.3 All documents, notes, photographs and correspondence must be retained and stored in accordance with Council's Records Management Policy (2.7.02) and Electronic Communications Management Policy (2.7.01) required by Section 125 of the *Local Government Act 1999*.

## 10.0 PROCEDURES FOR RESOLVING COMPLAINTS

10.1 Complaints may vary greatly in their level of complexity and seriousness. Wherever possible complaints will be resolved when first reported, but if necessary officers will escalate complaint handling as set out below:

- a) Tier 1 - *Immediate response to resolve the complaint*

All staff are empowered to handle complaints in the first instance and it is preferable that they are dealt with promptly at the initial point of contact and at the appropriate officer level.

- b) Tier 2 - *Complaint escalated to a more senior officer*

A complaint will be directed to a more senior officer in the Council, where circumstances indicate that the complaint would be more appropriately handled at a higher level. This may occur, for example, where an officer has been involved in the matter that is the subject of the complaint, where the complaint is about an issue that requires a decision to be made at a more senior level, or where a complaint concerns a matter that ranges across more than one Council work area.

c) Tier 3 - *Internal review of a Council decision by statutory process*

Internal review of a Council decision is available under Section 270 of the *Local Government Act 1999* (refer Council's Internal Review Policy/Procedure 1.1.05). This is a process established by legislation that enables a Council to reconsider all the evidence relied on to make a decision, including new evidence where relevant. This process is generally a last resort in the complaint handling process, but may also be used in situations which are not able to be resolved by other means, such as a complaint about a decision of the Chief Executive Officer.

10.2 While Council prefers to work with its customers to resolve complaints quickly and effectively, a complainant will always retain the right to seek other forms of resolution, such as contacting the Ombudsman, or taking legal action at any time. Note however, that as a general rule, the Ombudsman prefers a complaint to be addressed by Council in the first instance, unless this is not appropriate in the circumstances (refer Council's Protocol - Ombudsman Enquiry Procedure - Attachment A).

## 11.0 ASSISTING WITH THE LODGEMENT OF A COMPLAINT

11.1 It is essential that no one is excluded from lodging a complaint because of any difficulties they may have representing themselves. All staff are expected to offer assistance where appropriate and provide it on request, including assistance in documenting the complaint in writing when circumstances warrant.

If necessary arrange access to interpreters, aids or advocates to ensure that a complainant is treated equitably.

## 12.0 ALTERNATIVE PROCEDURES

12.1 There are also other complaint procedures which apply to particular types of complaints. If a complaint would be more properly dealt with by another process, this will be explained to the complainant at the outset. For example:

- a) Complaints against a Councillor or the Chief Executive Officer
- b) Freedom of Information applications
- c) Insurance Claims
- d) Decisions made under legislation other than the *Local Government Act 1999*, such as the *Development Act 1993* or *Expiation of Offences Act 1996*.

12.2 In some instances, it may be appropriate to consider mediation, conciliation or neutral evaluation under the Council's scheme authorised by Section 271 of the *Local Government Act 1999*. Costs and expenses of the appointment and work of a mediator, conciliator or evaluator will be shared equally between the Council and the other party.

## 13.0 UNREASONABLE COMPLAINANT CONDUCT

13.1 All complaints received by Council will be treated seriously and complainants will be treated courteously. However, occasionally the conduct of a complainant can be unreasonable. This may take the form of unreasonable persistence, unreasonable demands, lack of cooperation, argumentative or threatening behaviour. What can be termed 'unreasonable' will vary depending on a number of factors and Council aims to manage these situations in a fair and equitable manner.

- 13.2 Where a complainant's behaviour consumes an unwarranted amount of Council resources or impedes the investigation of their complaint, a decision may be made to apply restrictions on contact with the person. Before making any decision to restrict contact, the complainant will be warned that, if the specified behaviour(s) or actions continue, restrictions may be applied.
- 13.3 Any decision to suspend action on a complaint will be made by the Chief Executive Officer or his/her delegate and communicated in writing to the complainant.

#### **14.0 USING COMPLAINTS TO IMPROVE SERVICE**

- 14.1 Quality of service is an important measure of Council's effectiveness. Learning from complaints is a powerful way of helping to develop the Council and increase trust among the people who use our services.
- 14.2 In addition to making changes to procedures and practices where appropriate, Council will review and evaluate the information gained through its complaints handling system on an annual basis to identify systemic issues and improvements to service. Council will receive a report on the number and nature of complaints received, including the percentage of unresolved complaints, at least once a year.
- 14.3 Where appropriate, complainants will be provided with an explanation of changes proposed or made as a result of the investigation of their complaint.

#### **15.0 PRIVACY AND CONFIDENTIALITY**

- 15.1 Complainants have a right to expect that their complaint will be investigated in private, to the extent possible. The identity of complainants will be made known only to those who need to know in the process of investigating the resolving the complaint. The complaint will not be revealed or made public by the Council, except where required by law.
- 15.2 All complaints lodged with Council are subject to the *Freedom of Information Act 1999* and confidentiality cannot be guaranteed under the provisions of that legislation.

#### **16.0 REMEDIES**

- 16.1 Where complaints are found to be justified Council will, where practicable, remedy the situation in a manner which is consistent and fair for both Council and complainants. The solution chosen will be proportionate and appropriate to the circumstances.
- 16.2 As a general principle the complainant should, so far as possible, be put in the position he or she would have been in, had things not gone wrong. This may mean providing the desired service or changing a decision. Sometimes, however, it may only be possible to offer an apology.
- 16.3 Compensation will only be offered in cases where the loss or suffering is considered substantial. The Elected Council and the Chief Executive Officer are the only representatives authorised to offer financial compensation and may consult with the Local Government Association Mutual Liability Scheme before taking any such action.

#### **17.0 ALTERNATIVE REMEDIES**

- 17.1 Council may seek to use alternative dispute resolution methods such as mediation to resolve a complaint in circumstances where the Chief Executive Officer or his/her delegate deems such a course of action appropriate and the complainant is amenable to that process.
- 17.2 When advising a complainant of the outcome of an investigation of a complaint, Council will provide information about alternative remedies, including any rights of appeal and the right to make a complaint to an external agency such as the SA Ombudsman.

## 18.0 STAFF RESPONSIBILITIES

- 18.1 All Council staff who may be involved in receiving or processing a complaint in the course of their work are to adhere to this policy/procedure.
- 18.2 Officers will act reasonably and transparently, demonstrate good customer service, undertake their responsibilities in a proficient manner and use their judgement where necessary to ensure an outcome in line with this document.

## 19.0 AUDITS

- 19.1 The Director - City and Cultural Services will be responsible for reporting to Council on an annual basis in relation to the number, nature and category of complaints received throughout the year and how many complaints remain unresolved.

## 20.0 FURTHER INFORMATION

This policy will be available for inspection at the Council Office, 4 Mackay Street, Port Augusta during ordinary business hours and available to be downloaded, free of charge, from Councils Website: [www.portaugusta.sa.gov.au](http://www.portaugusta.sa.gov.au)

## 21.0 COMPLAINTS REGARDING CODE OF CONDUCT FOR COUNCIL EMPLOYEES

- 21.1 Where a person alleges -
- a) an employee (or a relative of an employee) has sought or received a gift or benefit that is, or could reasonably be taken to be, intended or likely to create a sense of obligation on the part of the employee to a person or to influence the employee in the performance or discharge of the employees functions or duties; or
  - b) an employee has failed to record, or correctly record, details of a gift or benefit received by the employee (or a relative of an employee) on the gift and benefits register; or
  - c) the CEO has not appropriately maintained a register for gifts and benefits received by employees of the Council,

they may submit a complaint alleging that an employee of Council has contravened or failed to comply with the Code of Conduct for Council Employees, as prescribed in Schedule 2A of the *Local Government (General) Regulations 2013*.

- 21.2 A complaint must be given to the Chief Executive Officer. In the case of a complaint against the Chief Executive Officer, a complaint must be given to the principal member of the council, except in circumstances where it would be inappropriate to do so (such as where legislation requires the matter to which the complaint relates to remain confidential).
- 21.3 A complaint will be investigated and resolved according to the industrial and human resource procedures of the Council.

## 22.0 FORMS AND ATTACHMENTS

- 22.1 SA Ombudsman's Enquiry Procedure-A Guide for Councils (AR11/825) Attachment A



**Local Government Association**  
of South Australia

The **Voice**  
of Local  
Government

# **PROTOCOL – OMBUDSMAN’S ENQUIRY PROCEDURE**

**A Guide for Councils**

**December 2010**

## 1. Purpose

The purpose of this protocol is to ensure that Councils and Council staff are aware of the procedures applied by the SA Ombudsman's Office in dealing with complaints it receives relating to Councils. It is also intended to facilitate the prompt and proper response by Councils to enquiries or investigations arising from these complaints, to ensure the proper documentation and record-keeping in a Council's records management system and appropriate internal communication through the levels of management.

## 2. Background Information

2.1 Under the *Ombudsman Act 1972*, the Ombudsman may investigate matters raised by complainants or referred from other sources. Complaints can be made to the office via:

- Personal visit
- Letter
- Email contact via the SA Ombudsman's website  
<http://www.ombudsman.sa.gov.au/index.php?page=contactus>
- Telephone.

2.2 In many cases, an Assessment Officer from the Ombudsman's office undertakes preliminary enquiries to seek further information from the complainant and/or the Council to determine whether there are grounds to commence a full investigation. A preliminary enquiry may include an enquiry by telephone or email to any officer in the Council. These preliminary enquiries are usually directed to the officer directly involved in the matter about which the complaint is made.

2.3 If, in the first instance, the Assessment Officer considers there is sufficient information and the complaint warrants a full investigation, this may commence without any further preliminary enquiries.

2.4 If a complainant has not complained first to the Council, it is Ombudsman policy to refer the matter back to the Council in the first instance, to enable the Council to address the complaint. However, depending on the circumstances, this may not be appropriate (for example, a complaint made under the *Whistleblowers Protection Act 1993*).

2.5 The Ombudsman will always consider whether there are any underlying systemic issues in complaints which warrant investigation and this can lead to the widening of an investigation beyond the particular issue raised by a complainant. There are also issues that arise independently of complaints and investigations of these issues may be conducted on the Ombudsman's own initiative (s.13 (2) of the *Ombudsman Act*).

2.6 A copy of the investigation framework for Ombudsman's investigations is attached - see Attachment A.

## 3. Protocols

3.1 Subject to the requirements of the *Ombudsman Act*, the Ombudsman can determine the procedure for an investigation. The procedure may therefore vary from case to case. The Ombudsman may also, at any time, decide to attempt to deal with the complaint through conciliation.

### ***Preliminary Enquiries***

- 3.2 The Ombudsman has no obligation to inform a Council that a preliminary inquiry is being carried out. The Assessment Officer will determine to which Council officer (or officers) they will direct preliminary enquiries.
- 3.3 The relevant Council officer should respond to these enquiries promptly, accurately, fully and respectfully, cooperating fully with the Assessment Officer and report the matter to the CEO through the appropriate manager.
- 3.4 Where a Council officer is unable to respond to the query, or is unsure of the complete answer, the matter should be promptly referred to the relevant team leader or departmental manager.
- 3.5 All details of the enquiry should be recorded in a file note, including:
- Name and contact details of the Assessment Officer
  - Name and address of the complainant (where known)
  - Information provided to the Assessment Officer
  - Cross references to any other relevant information or Council records
  - Agreed actions and/or outcomes.
- [A *pro-forma* for the suggested file note is at Attachment B]

This is an essential record in the event that the matter progresses to full investigation.

- 3.6 The file note should be incorporated into the Council's records management system and a copy provided to your Manager [and Group Manager] for their information. The CEO should also be informed of the enquiry.
- 3.7 Follow up information may be requested by the Assessment Officer by email or phone call. The appropriate Council officer should respond to these requests promptly, fully, accurately and respectfully. A copy of the follow up email and the response should be incorporated into the Council's records management system and a copy provided to the appropriate Manager [and Group Manager] for their information. File notes should also be made of the contents of any telephone conversations with the Assessment Officer. The CEO should be informed of the enquiry.
- 3.8 All correspondence from the Ombudsman is to be responded to in writing, signed by the CEO [or relevant Group Manager].
- 3.9 Preliminary inquiries provide an opportunity to clarify the issues and to resolve the matter in the initial stages. A Council should therefore endeavour to provide all relevant materials and information to assist in avoiding escalation to a full investigation.
- 3.10 A CEO should use judgement as to whether the preliminary enquiry is likely to identify issues that should be reported to the Council.

### ***Full Investigations***

- 3.11 If a full investigation proceeds, the following procedure sets out a typical example of a process that might be followed. Some of these steps are mandated by legislation, while others are the result of the Ombudsman's policy, which may change from time to time.

- 3.12 The Ombudsman must, by law, inform the principal member (Mayor/Chairperson) that an investigation will be commenced. This will usually be done by a letter to the Mayor/Chairperson with a copy to CEO. Sometimes the Ombudsman will direct the Mayor/Chairperson and CEO not to disclose the fact, nature or scope of the investigation to the full Council, if he or she judges that confidentiality is required.
- 3.13 The Ombudsman may take the following measures to prevent the disclosure of information to others, and to protect the confidentiality of documentary information:
- The Ombudsman may assert an implied power from section 18(2) and section 18(6)) to require secrecy.
  - The Ombudsman may make an order pursuant to section 16A of the *Royal Commissions Act 1917*
  - The Ombudsman may invoke section 22
  - The Ombudsman may consider section 18(6), which provides that, subject to the Act, the procedure to be adopted in relation to an investigation will be as determined by the Ombudsman.
- 3.14 Where the Ombudsman does not make a direction under section 18(6) that the nature of the investigation must be kept confidential, the Mayor/Chairperson should consider whether to inform the full Council. However, before doing so, the Mayor/Chairperson should take the precaution of obtaining the Ombudsman's agreement to that course of action. The information about the Ombudsman's investigation should be provided at an ordinary Council meeting. Depending on the circumstances of the particular investigation, it may be appropriate to provide the information in confidence. Sections 90(3)(a), 90(3)(g) and 90(3)(j) concerning respectively 'personal affairs', 'duty of confidence' and 'disclosure of information provided by a public official' may provide a basis for a Council going into confidence.
- 3.15 The letter will usually contain information about the nature of the matter under investigation and will generally include the name of complainant and the nature of complaint (if the investigation is a result of a complaint).
- 3.16 The investigation must be conducted in private and may involve multiple requests for further information, by letter, email or telephone. It may also involve interviewing Council staff, Council Members and members of the public. A person may be interviewed more than once and should provide all relevant information known to the person.
- 3.17 Where a complaint involves Council staff or a Council Member and potentially provides grounds for disciplinary action, the Ombudsman must, by law, advise the Mayor/Chairperson of any evidence of breach of duty or misconduct. As a matter of policy, the Ombudsman will advise in writing. This will enable appropriate internal investigations to proceed as appropriate (note that investigations of an industrial nature do not fall within the Ombudsman's jurisdiction). As a general rule, advice on these matters will be copied to the Council CEO, but this may depend on the nature of the allegations and the identities of the parties involved.
- 3.18 Under the rules of procedural fairness, the Ombudsman will allow the staff member or Council Member concerned an opportunity to comment on the allegations, before advising the Mayor/Chairperson.

- 3.19 Before finalising a report affecting the Council, the Ombudsman must give the Mayor/Chairperson a reasonable opportunity to comment on the subject matter of the report. This provides an opportunity to correct any errors of fact or to provide further information which may mitigate the issues dealt with in the report. For example, if the Council or CEO has taken steps to reform particular procedures or to establish new policies, this should be stated in response to the draft report.
- 3.20 It is important for Councils to acknowledge any failings in the administrative system and to learn the lessons inherent in any findings of poor administration. If failings are identified, Council should move to address them immediately rather than waiting for the Ombudsman’s final recommendations.
- 3.21 The Ombudsman can investigate any ‘administrative act’ (s.3 of the *Ombudsman Act*) which gives him or her a broad jurisdiction for enquiries. While the Ombudsman cannot investigate policy decisions, he or she can ‘look behind’ the policy and investigate the administrative decisions that led to the policy.
- 3.22 Section 25 of the *Ombudsman Act* sets out the general findings that an investigation can reach. These include findings that an administrative act appears to have been contrary to law, unreasonable, unjust, oppressive, improperly discriminatory or wrong. It is important to note that the Ombudsman can find that an administrative act was in accordance with law, but was nevertheless unreasonable or unjust, etc in its outcome.
- 3.23 In general, materials produced by Ombudsman SA should be kept confidential whilst an investigation is underway. When an investigation is completed, the investigation report can be made publicly available. During an investigation Ombudsman SA will seek to ensure that the contents of any letters or reports relating to the investigation are kept confidential.
- 3.23 It is an offence to obstruct, hinder or resist the Ombudsman in the exercise of his or her powers (s.24 of the *Ombudsman Act*)

#### 4. References

- *Ombudsman Act 1972*
- [*Complaints Handling Policy*]
- *Attachment A – The Ombudsman of SA – Investigations*
- *Attachment B – Pro Forma File Note*

Reference Number:	
First Issued/Approved:	
Review Frequency:	
Last Reviewed:	
Next Review Date:	
Responsible Officer/s:	
Council File Reference:	
Related Policies:	

### The Ombudsman of South Australia - Investigations

The Ombudsman of South Australia is established by section 6 off the *Ombudsman Act 1972* (the OA). Note that unless otherwise indicated, all of the sections referred to in this document are references to the OA. This document does not discuss every section of the OA, only those that concern investigations.

The OA sets out the things that the Ombudsman *must* or *may* do and provides the framework for how the Ombudsman conducts his or her investigations. This document sets out the statutory framework first, and then how it is implemented in an actual investigation.

#### Preliminary points

- Section 3 empowers the Ombudsman to investigate the *administrative acts* of agencies as defined by the OA. Generally speaking, most South Australian State Government Departments and agencies can be investigated by the Ombudsman. So can local councils. The Ombudsman cannot investigate the South Australian Police; they are investigated by the Police Complaints Authority (phone number 8226 8677). Ministers are not agencies within the meaning of the OA and therefore he or she may not investigate Ministers or Ministers' offices.
- Section 3 provides that *administrative act* means—
  - (a) *an act relating to a matter of administration on the part of an agency to which this Act applies or a person engaged in the work of such an agency; or*
  - (b) *an act done in the performance of functions conferred under a contract for services with the Crown or an agency to which this Act applies,*

*but does not include—*

  - (c) *an act done in the discharge of a judicial authority; or*
  - (d) *an act done by a person in the capacity of legal adviser to the Crown; or*
  - (e) *an act of a class declared by the regulations not to be an administrative act for the purposes of this definition. (As at 4 August 2008, there are no regulations.)*
- Section 3 also provides that:

*act includes—*

  - (a) *an omission;*
  - (b) *a decision, proposal or recommendation (including a recommendation made to a Minister of the Crown),*

*and the circumstances surrounding an act.*
- Section 28 provides that any disputes about whether the Ombudsman has jurisdiction to investigate are decided by the Supreme Court.

- Section 9 empowers the Ombudsman to *delegate* his or her powers to any person. Officers who contact agencies seeking information have been delegated the power to do so under section 9.
- Section 24(a) makes it an offence to, without lawful excuse, obstruct, hinder or resist the Ombudsman or delegate in the exercise or performance of powers or functions under the OA. (Penalty \$2,000.00.)
- Section 24(b) makes it an offence to, without lawful excuse, fail or refuse to comply with any lawful requirement of the Ombudsman or delegate under the OA. (Penalty \$2,000.00.)
- Section 24(c) makes it an offence to, wilfully make any statement that is false or untrue in a material particular to the Ombudsman or delegate under the OA. (Penalty \$2,000.00.)
- The Ombudsman is an impartial investigator; not an advocate for complainants.
- The Ombudsman does not give legal advice, either to agencies or complainants.
- Section 17(3) provides that the Ombudsman must inform the complainant if the Ombudsman decides not to investigate or not to continue an investigation and give reasons for the decision.
- Section 17A provides that any time in an investigation, the Ombudsman may decide to attempt to deal with the complaint by way of conciliation.
- Sometimes, people complain about many issues and some of those issues are more serious than others. When this happens the Ombudsman may not investigate all of the issues, but will decide which are most appropriate and investigate those only.

### ***Royal Commission Act 1917***

- Section 19 provides that for the purposes of an investigation, the Ombudsman has the powers of a Royal Commission.
- The Ombudsman may use the powers of a Royal Commission to obtain documents under subpoena and oral evidence under oath or affirmation. If a person gives false evidence under oath or affirmation, he or she commits an offence and could be liable to prosecution.

### **Procedure on investigation**

- Section 18(6) provides that subject to the OA, the procedure to be adopted in the investigation will be as determined by the Ombudsman.
- Section 18(1) provides that the Ombudsman may make a *preliminary investigation* of an administrative act to decide whether a *full investigation* is necessary.
- Section 18(1a) provides that if the Ombudsman proceeds to a *full investigation*, he or she must inform the *principal officer* of the agency. The identity of the *principal officer* is determined by reference to section 3. In the case of a government department, it is the *CEO*. In the case of a local council, it is the principal member of the council that is the Mayor of Chairperson.

- Section 18(3) provides that the Ombudsman is not required to hold a hearing but may do so. He or she may obtain evidence from such persons and in such manner as the Ombudsman sees fit and may determine whether any person to whom the investigation relates may have legal or other representation.
- Section 18(2) provides that every Ombudsman investigation is to be conducted in *private*.
- Section 22 provides that it is an offence (penalty \$2,000.00) for information obtained by or on behalf of the Ombudsman in the course of or for the purposes of an investigation to be disclosed *except for the purpose of the investigation and of any report or recommendation to be made under the OA or for the purposes of any proceedings under the Royal Commissions Act 1917*.
- Section 27(1) provides that the Ombudsman must inform the complainant of the result of an investigation.
- Section 27(2) provides that if a complaint is investigated, *and* the Ombudsman makes a recommendation, *and* the Ombudsman is of the opinion that reasonable steps have not been taken to implement the recommendation within a reasonable time, the Ombudsman must inform the complainant of that opinion and may make other comments *that appear appropriate in the circumstances*.
- Section 26 provides that the Ombudsman may have a report of an investigation published, in such manner as he/she thinks fit, if the Ombudsman considers it to be in the public interest or in the interests of the agency.
- Section 18(4) provides that before making a report *affecting* an agency, the Ombudsman must allow the principal officer a reasonable opportunity to comment on the subject matter of the report.
- Section 18(5) provides that the Ombudsman must report, to the principal officer of the agency, *any evidence of breach of duty or misconduct on the part of a member, officer or employee of the agency*.
- Section 19A provides that the Ombudsman may issue a notice requiring an agency to refrain from taking action in relation to a particular *administrative act*.

## **Recommendations**

- Section 25(1) provides that if the Ombudsman investigates, and is of the opinion that the *administrative act* to which the investigation relates amounts to *maladministration*, the Ombudsman may make one or more of the *recommendations* listed in section 25(2).
- *Maladministration* is the shorthand used by the Ombudsman to describe the range of conduct that he or she investigates.

- Section 25(1) does not use the word *maladministration* but instead lists the type of defects in *administrative acts* that activate the recommendation making power in section 25(2). Section 25(1) identifies the defects as follows:
  - (a) *appears to have been made contrary to law; or*
  - (b) *was unreasonable, unjust, oppressive or improperly discriminatory; or*
  - (c) *was in accordance with a rule of law or a provision of an enactment or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory; or*
  - (d) *was done in the exercise of a power or discretion and was so done for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations; or*
  - (e) *was done in the exercise of a power or discretion and the reasons for the act were not but should have been given; or*
  - (f) *was based wholly or in part on a mistake of law or fact; or*
  - (g) *was wrong.*
  
- Section 25(2) provides that: *In the case of an investigation to which this section applies in which the Ombudsman is of the opinion—*
  - (a) *that the subject matter of the investigation should be referred back to the appropriate agency for further consideration; or*
  - (b) *that action can be, and should be, taken to rectify, or mitigate or alter the effects of, the administrative act to which the investigation related; or*
  - (c) *that the practice in accordance with which the administrative act was done should be varied; or*
  - (d) *that any law in accordance with which or on the basis of which the action was taken should be amended or repealed; or*
  - (e) *that the reason for any administrative act should be given; or*
  - (f) *that any other steps should be taken,*

*the Ombudsman must report that opinion and the reasons for it to the principal officer of the relevant agency and may make such recommendations as the Ombudsman thinks fit.*
  
- Section 25(3) provides that where the Ombudsman makes a recommendation under section 25(2), the Ombudsman must provide a copy of *any report or recommendation under subsection (2) to the responsible Minister and in the case of a report or recommendation relating to the sheriff, to the Courts Administration Authority.*
  
- The Ombudsman may ask the agency to report back on implementation of the recommendations (section 25(4)). If the agency does not implement them within a reasonable time, the Ombudsman may report the matter to the Premier and to both Houses of Parliament with a request that the report be tabled (sections 25(5) and (6)).

[SA Ombudsman - 4 November 2008]

[XYZ COUNCIL]

**FILE NOTE – Enquiry from Ombudsman’s Office**

**FROM:** Author

**DATE OF ENQUIRY:** Date

**NAME OF COMPLAINANT:**

**ISSUE UNDER INVESTIGATION:**

**ASSESSMENT OFFICER:**

**COUNCIL FILE REFERENCE:**

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[Insert text here:

- Details of enquiry
- Name and address of the complainant (where known)
- Name and contact details of the Assessment Officer
- Information provided to the Assessment Officer
- Cross references to any other relevant information or Council records
- Agreed actions and/or outcomes.]

Noted:

	<i>Initial</i>	<i>Date</i>
Manager		
Group Manager		
CEO		

## How to investigate a complaint

### Planning

Complaints that are straightforward can often be resolved on first contact. If this is not the case and the complaint requires investigation, a short written plan should be prepared. The plan should:

- define what is to be investigated
- list the steps involved in investigating the complaint and state whether further information is required, either from the complainant or from another person or organisation
- provide an estimate of the time it will take to resolve the complaint
- identify the remedy the complainant is seeking, whether the complainant's expectations are realistic or need to be managed, and other possible remedies
- note any special considerations that apply to the complaint—for example, if the complainant has asked for their identity to be withheld from others or if there is sensitive or confidential information that needs to be safeguarded

A written plan will focus attention on what is to be investigated. This will ensure that important matters are not overlooked and that the investigation does not wander off course. A plan also allows a supervisor and other officers to review the course of the investigation. This is especially important if the investigation cannot be completed by the officer to whom the complaint was initially assigned. A common cause of inefficiency and delay in complaint investigation is that responsibility for investigating a complaint is passed from one officer to another, without adequate handover or planning.

Planning and conducting an investigation is a dynamic and ongoing process. It is not always possible to know at the outset how an investigation will develop, and more complex investigations can take a long time. It is important to revisit the investigation plan regularly and make adjustments as circumstances change and new information becomes available.

### Investigation

The purpose of an investigation is twofold: to resolve the complaint by reaching a fair and independent view on the issues raised by a complainant; and to provide an appropriate remedy.

The three principles of fair investigation are:

**Impartiality** Each complaint should be approached with an open mind, and the facts and contentions in support of a complaint should be weighed objectively.

**Confidentiality** A complaint should be investigated in private, and care should be taken when disclosing to others any identifying details of a complaint.

**Transparency** A complainant should be told about the steps in the complaint process and be given an opportunity to comment on adverse information before a complaint is dismissed.

These three principles echo the requirements of administrative law, which public sector agencies must also observe during complaint investigation. The administrative law requirements are outlined in five best-practice guides published by the Administrative Review Council (at [www.ag.gov.au/arc](http://www.ag.gov.au/arc)). The following are among the requirements that are relevant to complaint investigation:

- A finding on a disputed factual matter must be based on evidence that is relevant and logically capable of supporting the finding—not on guesswork, preconceptions, suspicion or questionable assumptions
- A written record should be kept of evidence that is provided orally
- A complainant is not obliged to substantiate each fact or element in their complaint, although it is reasonable for the investigator to ask them to assist the investigation by providing documents they have or explaining things they know
- The rules of evidence that apply in court proceedings do not apply to administrative investigation, and an investigator can use reliable information obtained from any source
- To accord natural justice, a complainant should be given an opportunity to comment on contrary information or claims from another source before a decision is made to dismiss the complaint

It is not always possible to resolve each disputed matter. The evidence available to the investigator might be scant, inconclusive or evenly balanced, and this should be explained to the complainant. Thought should also be given to resolving the complaint differently, by exploring the options for reaching a settlement or understanding between the complainant and those being complained about.

### 3.4. Framework of strategies for managing unreasonable complainant conduct

The unreasonable complainant conduct commonly seen by many agencies can, in most cases, be grouped into five categories:

- unreasonable persistence
- unreasonable demands
- unreasonable lack of cooperation
- unreasonable arguments
- unreasonable behaviour.

Table 1 sets out these conduct categories, the associated trigger conduct and the corresponding strategy for managing that conduct. This framework is a guide – it should be applied flexibly, bearing in mind that more than one category of conduct may need to be managed at one time.

The use of these strategies must also be based on the clear understanding that:

- every complainant deserves to be treated with fairness and respect
- in the absence of very good reasons to the contrary, members of the public have a right to access the agency
- no complainant, regardless of how much time and effort is taken up in responding to their complaint, should be unconditionally deprived of having their complaint properly and appropriately considered
- a complainant whose conduct is unreasonable may have a legitimate complaint
- the substance of the complaint dictates the level of resources allocated to it, not the complainant's wishes, demands or behaviour.

See also Chapter 4: Communicating with complainants.

Table 1. Management strategies

Conduct category	Unreasonable conduct (trigger)	Management strategies
<b>Unreasonable persistence</b>	<p>Unreasonable persistence includes:</p> <ul style="list-style-type: none"> <li>• persisting with a complaint even though it has been comprehensively considered by an agency, and all avenues of review have been exhausted</li> <li>• reframing a complaint in an attempt to get it taken up again</li> <li>• showing an inability to accept the final decision</li> <li>• insisting that a particular solution is the correct one in the face of valid contrary or alternative arguments</li> <li>• persisting in interpreting the law or policy in a way that is not in accordance with generally accepted or expert views on the issue and insisting that action be taken accordingly</li> </ul>	<p>Strategies for dealing with unreasonable persistence are about saying 'no'. They include:</p> <ul style="list-style-type: none"> <li>• communicating clearly and transparently – eg telling complainants firmly that something is 'not going to happen'</li> <li>• to the 'where-do-I-go-to-now' question, telling complainants that not all problems have an institutional solution and they may have reached the end of the line, unless a realistic referral can be made</li> <li>• requiring complainants who want a review to provide an argument for one – eg to tell the agency how it has erred or provide new information – and, if they don't, their file will remain closed</li> </ul>

\* extracted from the 'Managing Unreasonable Complainant Conduct Practice Manual' endorsed by Australian Parliamentary Ombudsman

Table 1. Management strategies cont'd

Conduct category	Unreasonable conduct (trigger)	Management strategies
<b>Unreasonable persistence cont'd</b>	<ul style="list-style-type: none"> <li>persisting in wanting to know where to go next, when it has been explained that there is nowhere else to go</li> <li>demanding a review because it is available, but not arguing a case for a review</li> <li>making an issue out of anything</li> <li>getting gratification from the process of regular contact with the case officer, possibly including inventing unnecessary reasons for having such contact.</li> </ul>	<ul style="list-style-type: none"> <li>providing one review only</li> <li>maintaining a 'no means no' stance following review</li> <li>adopting, when appropriate, a firm no-further-correspondence or contact stance and requiring any variation from this to be authorised at a high level</li> <li>not allowing complainants to reframe the complaint to re-enter the process, unless they raise new and important issues</li> <li>ending telephone calls that are unproductive</li> <li>asserting the agency's position – eg 'I acknowledge that your view is ..., we see it differently', or 'I acknowledge that your view differs from ours, however, our job is to make a decision about ... and this is what we have decided'</li> <li>making it clear that our decision is final and, for better or worse, we have made our decision.</li> </ul> <p><b>Managing unreasonable persistence also includes:</b></p> <ul style="list-style-type: none"> <li>managing expectations from the beginning, including ensuring initial expectations are realistic</li> <li>adopting a firm and authoritative communication style both in writing and verbally</li> <li>defining key issues and keeping the focus on them.</li> </ul>
<b>Unreasonable demands</b>	<p><b>Unreasonable demands include:</b></p> <ul style="list-style-type: none"> <li>insisting on outcomes that are unattainable</li> <li>insisting on a 'moral' outcome – eg justice in the community interest, when really a personal interest is at stake</li> <li>demanding an apology or compensation when no reasonable basis for expecting such outcomes exists</li> </ul>	<p><b>Strategies for dealing with unreasonable demands are about setting limits. They include:</b></p> <ul style="list-style-type: none"> <li>letting complainants know in advance how the agency intends to deal with the complaint – having a plan and sticking to it</li> <li>making sure the complainant is clear that the agency decide how the complaint should be handled</li> </ul>

\* extracted from the 'Managing Unreasonable Complainant Conduct Practice Manual' endorsed by Australian Parliamentary Ombudsman

Table 1. Management strategies cont'd

Conduct category	Unreasonable conduct (trigger)	Management strategies
Unreasonable demands cont'd	<ul style="list-style-type: none"> <li>• wanting revenge, retribution</li> <li>• wanting what is not possible or appropriate – eg copies of sensitive documents, names and contact details of staff, other complainants or whistleblowers</li> <li>• issuing instructions and making demands about how a complaint should be handled</li> <li>• providing supporting details that are extraordinarily detailed when such detail is not relevant to the complaint</li> <li>• making unreasonable resource demands, out of proportion to the seriousness of the issue</li> <li>• wanting regular and lengthy phone contact where this is not warranted</li> <li>• showing reactions or demand for action that are out of proportion to the significance of the issue</li> <li>• moving the goal posts – changing the desired outcome</li> <li>• shopping for a sympathetic ear in the agency – demanding to talk to a supervisor or the manager personally</li> <li>• placing the agency on an extensive email copy list and expecting responses to these emails</li> <li>• consistently creating complexity where there is none</li> <li>• presenting as overly needy or dependent – eg wanting to transfer responsibility for their wellbeing to the complaint handler or agency.</li> </ul>	<ul style="list-style-type: none"> <li>• clarifying the limitations of the particular complaint handling system</li> <li>• avoiding being drawn into hypothesising, catastrophising, conspiracy theories, unproductive argument and personal attacks more generally</li> <li>• restricting contact to defined times and staff members where necessary</li> <li>• responding only to emails and mail addressed to the agency directly – not responding to mail where the agency is copied in</li> <li>• ending telephone calls that are unproductive</li> <li>• limiting contact to writing only</li> <li>• not doing for unreasonably demanding complainants something the agency would not normally do for any other complainant, just to appease them</li> <li>• as a last resort, informing the complainant that the agency finds their interactions unreasonably demanding and setting defined limits for further contact.</li> </ul> <p>Managing unreasonable demands also includes:</p> <ul style="list-style-type: none"> <li>• managing expectations from the beginning, including ensuring initial expectations are realistic</li> <li>• adopting a firm and authoritative communication style both in writing and verbally</li> <li>• defining key issues and keeping the focus on them.</li> </ul>

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Table 1. Management strategies cont'd

Conduct category	Unreasonable conduct (trigger)	Management strategies
Unreasonable lack of cooperation	<p>Unreasonable lack of cooperation includes:</p> <ul style="list-style-type: none"> <li>presenting a large quantity of information which is not organised, sorted, classified, summarised, where the complainant is clearly capable of doing this</li> <li>presenting information in dribs and drabs – refusing to present all information at the outset</li> <li>refusing to define issues of complaint – ‘the attached (usually a large amount of information) speaks for itself’ – where the complainant is clearly capable of doing this</li> <li>focusing on principles rather than substantive issues</li> <li>changing the complaint and raising new issues while the complaint is in the process of being considered</li> <li>displaying unhelpful behaviour – eg withholding information, being dishonest, misquoting others, swamping the agency with documents.</li> </ul>	<p>Strategies for dealing with unreasonable lack of cooperation are about setting conditions. They include:</p> <ul style="list-style-type: none"> <li>requiring complainants to organise or summarise the information they have provided before the agency will look at the complaint (where they are capable of doing this)</li> <li>requiring complainants to define what their issues are or to pursue further inquiries before the agency will look at the complaint</li> <li>telling complainants that the agency will not look at their complaint until all the information has been presented</li> <li>ending the agency’s involvement in the complaint if it is discovered that the complainant has been wilfully misleading or untruthful in a significant way.</li> </ul> <p>Managing unreasonable lack of cooperation also includes:</p> <ul style="list-style-type: none"> <li>managing expectations from the beginning, including ensuring initial expectations are realistic</li> <li>adopting a firm and authoritative communication style both in writing and verbally</li> <li>defining key issues and keeping the focus on them.</li> </ul>

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Table 1. Management strategies cont'd

Conduct category	Unreasonable conduct (trigger)	Management strategies
Unreasonable arguments	<p>Unreasonable arguments include:</p> <ul style="list-style-type: none"> <li>• holding irrational beliefs – eg seeing cause and effect links where there are clearly none</li> <li>• holding what is clearly a conspiracy theory unsupported by any evidence</li> <li>• interpreting facts in a clearly irrational/unreasonable way and insisting this interpretation is the correct one.</li> <li>• arguing the clearly bizarre</li> <li>• insisting on the importance of an issue that is clearly trivial.</li> </ul>	<p>The strategy for dealing with unreasonable arguments in complaints is primarily about declining or discontinuing the agency's involvement.</p> <p>These complaints need to be declined at the beginning, or discontinued as soon as it becomes clear that the complaint is groundless.</p> <p>Alternatively, if unreasonable arguments are mixed with reasonable arguments, the strategy should be to refuse to deal with the unreasonable portion.</p> <p>This category of conduct is often associated with mental illness.</p> <p>See also 4.4 Script ideas for dealing with unreasonable demands and persistence.</p>
Unreasonable behaviour	<p>Unreasonable behaviour includes:</p> <ul style="list-style-type: none"> <li>• displaying confronting behaviour – eg rudeness, aggression, threats or harassment</li> <li>• sending rude, confronting or threatening letters</li> <li>• making threats of self harm</li> <li>• making threats of harm to others</li> <li>• displaying manipulative behaviour – overly ingratiating, tears or veiled threats.</li> </ul>	<p>The strategies for dealing with unreasonable behaviour are primarily about 'saying no' to unacceptable behaviours, and setting limits and conditions for future interactions.</p> <p>Overt anger, aggression and threats in person, on the phone or in writing are never acceptable. Dealing with these includes having risk management protocols in place.</p> <p>Also:</p> <ul style="list-style-type: none"> <li>• Return letters framed in rude and intemperate language and request that the complainant reframe their concerns in more moderate language.</li> <li>• Point out that more moderate language is clearer and therefore more likely to achieve better outcomes.</li> <li>• End telephone calls and interviews if the complainant becomes abusive and confronting.</li> </ul> <p>See also 4.4 Script ideas for dealing with unreasonable demands and persistence.</p>

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