Legal Compliance
Education and Awareness

Ombudsman Act 1972

(South Australia)
What does the Ombudsman Act do?

*Provides for the appointment of an Ombudsman to:*

- Provide resolution of complaints arising from actions & decisions by Government agencies;
  - *Free*
  - *Impartial*
  - *Informal*
  - *Timely*

- Review *Freedom of Information* (FOI) decisions made by Government agencies

- Promote fairness, openness & good public administration in South Australia
Why is the Act relevant to the University?

- The University is an *agency* within Ombudsman jurisdiction

- The Ombudsman *can* investigate as a result of a complaint or on his/her own initiative

- The Ombudsman *will only* investigate;
  - if it in the public interest to do so
  and
  - when a person has no other legal avenue to take

- A matter can be referred to the Ombudsman for investigation by;
  - persons directly affected
  - on behalf of persons affected
  - Parliament
How does the Act effect University staff?

- Actions undertaken in your University capacity may be investigated by the Ombudsman.

- If you are contacted by the Ombudsman to provide evidence or participate in an investigation, you must comply with his/her requests.

- The Ombudsman has extensive investigatory powers;
  - can summon you to attend a court appearance or meeting
  - can require you to give evidence under oath
  - can request access to premises (eg: your office) & information
What can the Ombudsman investigate?

• Any action or inaction by the University relating to University Administration, such as;
  – alleged misrepresentation of course content
  – disputed student attendance records

• The process the University used to make a decision, such as;
  – failure to follow policies & practices

• Unreasonable delay in taking any action, such as;
  – addressing a complaint
  – assessing a thesis

• Any University requirement which the complainant believes is unreasonable, such as;
  – unreasonable preclusion from a course

• The conduct of staff, such as;
  – alleged Harassment
What can’t the Ombudsman investigate?

- Decisions of a court or actions related to court decisions
- Complaints about employee or employer matters
- Actions of the Police
- Complaints deemed by the Ombudsman as:
  - trivial
  - vexatious
    - *complaints brought about solely to harass or suppress an adversary*
  or
  - not in *good faith*
    - *Complaints deemed not genuine*
Investigations

- An external review can only be conducted after an internal review has occurred & all internal appeals have been followed.
- It is expected you will have made reasonable attempts to resolve the matter yourself before the Ombudsman becomes involved.

*In an investigation the Ombudsman will:*

- Attempt to establish the facts of what has happened.
- Assess the fairness of the University's action.
- Consider the effect of an action on the complainant;
  - the actual loss directly attributable to the University's actions.
  - whether the University's process was fair.
  - whether the University had & properly considered all of the available information.
  - whether a reasonable person would consider the action appropriate.
- Determine if a decision is unreasonable or unlawful.
Post-Investigation

The Ombudsman can:

- Make recommendations to rectify the effects of the University’s decision, alter or review the decision
  - insist on changes to administrative practices
  - request an apology
  - require the University to make an ex gratia payment

- Report to the Minister, the Premier or State Parliament if the recommendations are not complied with

- Release the report of an investigation to the media, a publication or any other party if it is in the interests of the public or the University
Offences under the Act include

- Preventing, hindering or obstructing a person from making a complaint to the Ombudsman
- Divulging information obtained in the course of the investigation
- Making false or wilfully untrue statements to the Ombudsman
- Obstructing, hindering or resisting the Ombudsman during an investigation
What can happen if I don’t comply?

**Individual Consequences:**
- Fines of up to $2,000 for making false or wilfully untrue statements to the Ombudsman
- A breach of the Act may be misconduct actionable under the University’s Enterprise Agreement

**University Consequences:**
- Unfavourable media reports or tabling of negative reports in Parliament
  - *Damage to the University’s reputation*
  - *Attraction & retention of staff & students is compromised*
- Compensatory payments
- Changes to administrative practices
University obligations under the Act

- Permit the Ombudsman, or any person authorised by him to enter & inspect any University place, premises or thing
  - upon written request

- Assist & do not hinder or obstruct the Ombudsman in the performance of his/her duties

- Notify Legal & Risk of any Ombudsman investigation that you become aware of
  - 8313 4539
Additional Resources

- Richard Duddy, Legal Counsel
  - 8313 0085
- State Ombudsman of South Australia
- Complaint Handling at Universities: Australasian Best Practices Guidelines
- University of Adelaide Enterprise Agreement
- Ombudsman Act 1972 (SA)
- Freedom of Information Act 1991 (SA)
Disclaimer

The content of this material is intended only to provide a summary & general overview of the *Ombudsman Act* as it applies to the University of Adelaide.

It is not intended to be comprehensive nor does it constitute legal advice.

Please contact Richard Duddy, Legal Counsel or Legal & Risk if you are unsure of your compliance obligations under the Act.