



THE UNIVERSITY
of ADELAIDE

Legal Compliance Education and Awareness



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Ombudsman Act 1972

(South Australia)

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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 is 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.