



THE UNIVERSITY
of ADELAIDE

Legal Compliance Education and Awareness



CRICOS PROVIDER 00123M

Ombudsman Act 1972 (South Australia)

Amendments to the Ombudsman Act came into effect in October 2021. This resource is currently under review and will be updated to reflect those changes.

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seek LIGHT

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.