



Public Integrity Reform - *Independent Commissioner Against Corruption (ICAC)*

Thursday 19 September 2013



Kaurna Acknowledgment

We would like to acknowledge this land that we meet on today is the traditional land of the Kaurna people and that we respect their spiritual relationship with their country. We also acknowledge the Kaurna people as the custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the living Kaurna people today.



Master Of Ceremonies – Professor Kim Economides

Dean, Flinders Law School, Flinders University

Ministerial Opening – Hon John Rau MP

Deputy Premier; Attorney-General; Minister for Planning;
Minister for Industrial Relations; and Minister for Business Services and
Consumers

Key Note Speaker – The Honourable Justice Bruce Lander QC

Independent Commissioner Against Corruption (ICAC)

Grant Stevens APM

Acting Commissioner of Police, South Australia (SAPOL)

Erma Ranieri

Acting Commissioner for Public Sector Employment;
Chief Executive, Change@SouthAustralia; and
Deputy Chief Executive, Department for Manufacturing, Innovation, Trade,
Resources and Energy (DMITRE)

Richard Bingham

SA Ombudsman



Hon John Rau MP

Deputy Premier;
Attorney-General;
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Hon Justice Bruce Lander QC

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Erma Ranieri
Acting Commissioner for Public Sector Employment



Government of South Australia
Commissioner for Public Sector Employment
Office of Public Employment & Review



Commissioner for Public Sector Employment (CPSE)

- The *Public Sector Act 2009*, provides an employment framework that is driven by a set of principles and guides the day to day employment matters of public sector employees;
- The statutory functions of the CPSE are defined by the *Act*; and
- The CPSE's role includes advancement of the objects and principles of the Act, and promotion of their observance within the public sector.



Obligations Conferred by ICAC Act

- The Commissioner may refer a matter which raises a potential issue of misconduct or maladministration in public administration to the CPSE in the capacity of an inquiry agency;
- When a referral is made, the Commissioner may give directions or guidance to the agency or exercise the powers of the agency in respect of the matter; and
- In the absence of contrary direction from the Commissioner, the CPSE or other inquiry agency operates under specific directions.

Obligations Conferred by ICAC Act

- The CPSE must report to the OPI any matter that the CPSE reasonably suspects involves:
 - corruption in public administration;
 - serious or systemic misconduct in public administration;
 - serious or systemic maladministration in public administration; or
 - misconduct or maladministration in public administration in the office of the CPSE.
- The CPSE may report to the OPI any other matter that the CPSE considers appropriate; and
- The report must be made as soon as practicable.



What constitutes serious or systemic?

- The nature and circumstances of the allegations (including the number of allegations, the degree of organisation and planning - for example steps taken to cover up conduct);
- The status of the person(s) involved;
- The harm or potential harm to an individual or government resulting from the matter, including physical, financial or other harm; and
- Whether the matter is widespread, and involves more than one agency and occurs on a frequent basis.



A matter may be considered serious if it:

- Involves a senior public officer;
- Involves alleged misconduct or maladministration that has resulted in a substantial loss or damage to assets;
- Involves allegations that would, if proved, bring an agency or the Crown into disrepute; or
- Is otherwise of particular prominence or importance.



A matter may be considered systemic if it:

- Causes widespread disruption to services or programs;
- Affects a number of persons;
- Is spread throughout an agency or authority or is otherwise accepted or condoned; or
- Involves a large sum of public money.

Code of Ethics

- The Code of Ethics for the South Australian Public Sector is the Code of Conduct for the purposes of the Public Sector Act 2009.

- The Code of Ethics seeks to:
 - » Guide and support public sector employees in all of their professional activities;

 - » Strengthen public confidence in the public sector;

 - » Earn respect from citizens, government and employees for the public sector as an institution which is critical to good government in South Australia, and

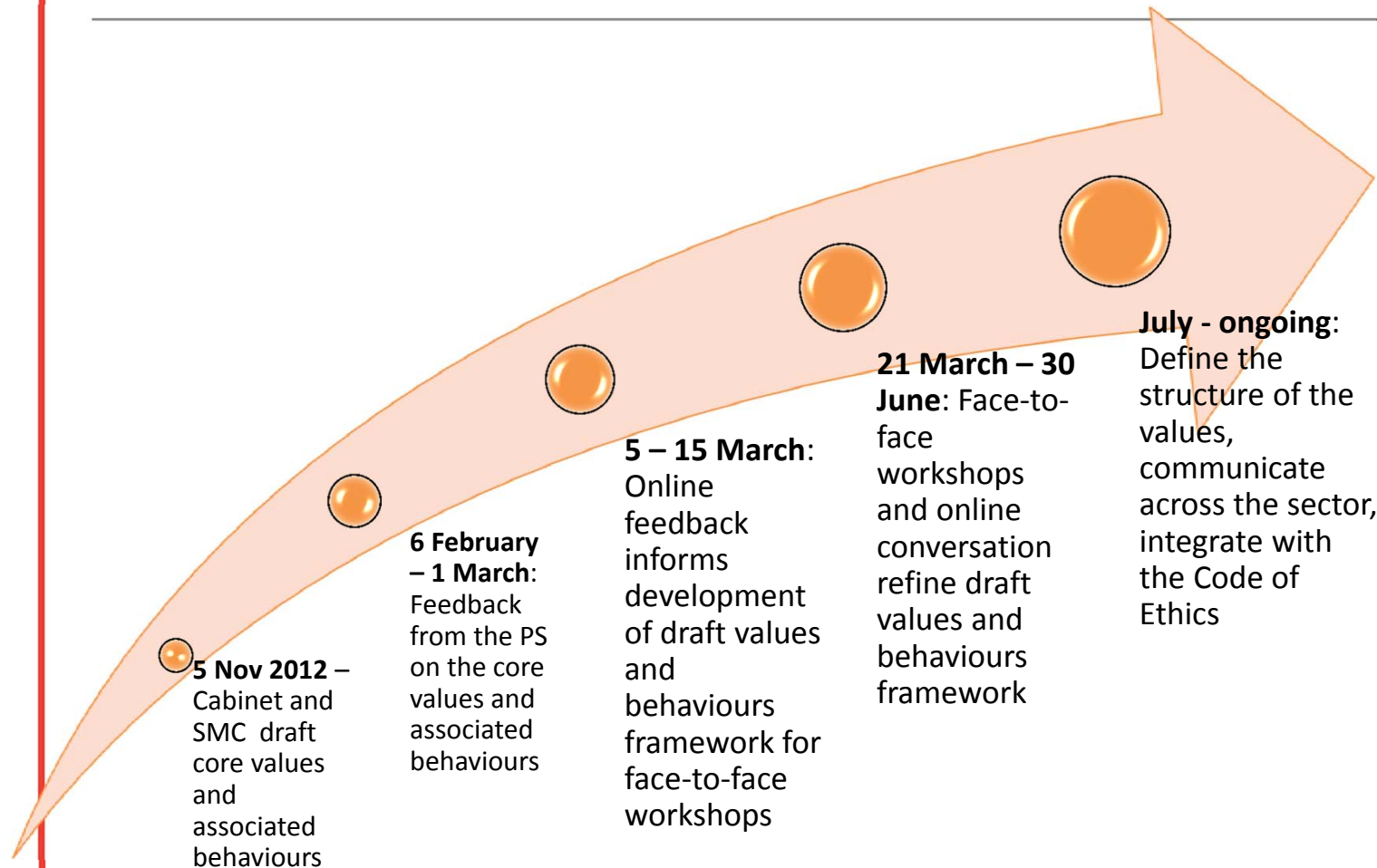
 - » Set out standards of professional conduct expected of every public sector employee.

Public Sector Values

Eight values developed over the last 12 months through in-depth engagement with over 600 public sector staff

- Our personal values of honesty & integrity and courage & tenacity are the individual traits that we bring to our work.
- Our professional values, focussed on collaboration & engagement, are those of trust, respect, service, and professionalism. They all enable us to work together as public servants, as well as with the community, business, and other partners.
- A focus on sustainability ensures that our services and policies provide maximum value from minimum resources and are fit for both current and future generations.

Values engagement process



Values engagement process – Organisational practices, behaviours and taboos

Items in *italics* have been provided by public servants during the YourSAY online consultation process

Value & description	Organisational practices	Behaviours	Taboos
We value the ethic of service to advance the lives of all South Australians			
<i>We recognise that service is defined in terms of citizen's expectations and needs.</i>	Public services are person centred and responsive to diversity Transparent and accountable decision making <i>Acknowledging the inherent knowledge that our clients/ customers have about their own needs</i> <i>Understanding and then designing services and policies in anticipation of meeting citizen expectations and need</i>	Willingness to "go the extra mile" so as to deliver better outcomes Tailoring solutions to individual/community <i>Genuine commitment to support the citizen access the services/supports they need to live their best lives</i> <i>Recognise and values internal and external customers</i>	"I don't Care" attitude Pursuing personal success at the expense of team or organisation goals <i>Not valuing internal customers service</i>

Public Sector Values

- Senior Management Council are “values champions”
- Major awareness-raising strategy to be targeted at all public sector employees
- A discussion guide will be developed for use by all middle managers
- Values will be written into the Code of Ethics
 - Code will set the eight core values alongside the professional standards of conduct, and democratic values (accountability, service to Ministers and so forth)
 - This will set “performance” values alongside “compliance” values
- Release date for eight values is anticipated to be November 2013 – Redrafted Code of Ethics released 2014

THANK YOU

Erma Ranieri

Chief Executive, Office for Public Sector Renewal

Acting Commissioner for Public Sector
Employment

Deputy Chief Executive, Department for
Manufacturing, Innovation, Trade, Resources
and Energy



Government of South Australia

Commissioner for Public Sector Employment
Office of Public Employment & Review



Richard Bingham
SA Ombudsman



OmbudsmanSA

Public integrity reform: The role of the Ombudsman

Richard Bingham
SA Ombudsman

19 September 2013



OmbudsmanSA

What I will speak about

- compare and contrast ICAC/OPI and Ombudsman SA
- an explanation of the amendments to the *Ombudsman Act 1972* and the *Local Government Act 1999* made by the ICAC Act



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ICAC, the Ombudsman and the Parliament

- both ICAC and the Ombudsman are independent statutory officers, appointed through a Parliamentary process
- both are accountable to the Crime and Integrity Policy Committee of Parliament
- either House of Parliament, or a Parliamentary committee, can refer a matter to the Ombudsman for investigation and report: provided it's within the Ombudsman's jurisdiction.



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Differences in jurisdiction

- ICAC
 - corruption
 - misconduct in public administration
 - maladministration in public administration
- Ombudsman
 - no role in corruption - referral to OPI/ACB
 - 'administrative act' by 'an agency to which the Act applies'
 - administrative error



OmbudsmanSA

Misconduct

- ICAC
 - ‘contravention of code of conduct ... that constitutes a ground for disciplinary action’
 - ‘other misconduct’
- Ombudsman SA
 - specific misconduct jurisdiction in relation to elected members of councils
 - evidence of misconduct by others must be reported to the ‘principal officer’ of the agency



OmbudsmanSA

Maladministration

- ICAC
 - ‘irregular and unauthorised use of public money or substantial mismanagement of public resources’
 - ‘substantial mismanagement’
- Ombudsman
 - any ‘administrative act’ by ‘an agency to which the Act applies’
 - we look for administrative error: the 7 administrative sins
 - summarised as ‘unlawful, unreasonable or wrong’
 - this doesn’t include policy matters*

* *City of Salisbury v. Biganovsky* (1990) 54 SASR 117



OmbudsmanSA

The seven administrative sins

- contrary to the law
- unreasonable, unjust, oppressive, or improperly discriminatory
- in accordance with an unreasonable, unjust, oppressive or improperly discriminatory law or practice
- done for an improper purpose, or based on irrelevant grounds
- not giving reasons for a decision
- based wholly or in part on a mistake of law or fact
- wrong.



OmbudsmanSA

Limitations on Ombudsman's jurisdiction

- the complaint must not have come to the complainant's notice more than 12 months before it's lodged*
- the complainant must not have an alternative remedy*
- the complainant must be 'directly affected'
- if the administrative act is done in the agency's capacity as an employer, it's not within jurisdiction

*Ombudsman has discretion to investigate the complaint



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Ombudsman matters

Category	Number 2012-13	Target timeframe
Registration	8,720	2 days
Assessment	2,907	14 days
Preliminary investigation	87	4 months
Full investigation	11	6 months
Section 25 report finding administrative error	64	NA
FOI external review	171	4 months
Total	11,960	



OmbudsmanSA

Differences - focus of work

- ICAC
 - investigative - preparing a brief of evidence
 - preventive/educative role
 - reviewing inquiry agency practices
- Ombudsman SA
 - investigation as one element of complaint resolution - e.g. conciliation is another
 - remedial - findings and recommendations
 - FOI external review role - transparency
 - conduct of audits



OmbudsmanSA

Differences - powers

- ICAC
 - extensive powers, but only in respect of corruption investigations
- Ombudsman
 - Royal Commission powers available in any investigation



OmbudsmanSA

Differences - confidentiality

- ICAC
 - offence to mention referral
 - investigations in private
 - no publication of brief of evidence
 - very limited public comment
- Ombudsman
 - investigations in private
 - statutory obligations to report to the complainant
 - publication of reports
 - other public comment where it is 'in the public interest'



OmbudsmanSA

‘Reports’ by the Ombudsman to OPI.....

- it is unlikely that Ombudsman SA will be reporting significant numbers of matters to OPI
- ICAC and ACB will continue to deal with any matter that may involve corruption
- OPI will need to recommend whether misconduct or maladministration (in ICAC terms) should be investigated by ICAC or Ombudsman SA



OmbudsmanSA

Referrals to the Ombudsman from OPI.....

- we haven't received any referrals so far
- ICAC must consult before referring
- ICAC will need to work out what the misconduct or maladministration issue (in ICAC terms) is, because its obligations are different depending on whether such an issue exists



OmbudsmanSA

Amendments to the Ombudsman Act

- new section 26 - confidentiality, disclosure of information and publication of reports
- new section 19A - 'injunctive' directions to agencies
- new section 12(2a) - directions to staff
- 'agency to which the Act applies' - new definition
- reporting to the Crime and Public Integrity Policy Committee, not the Statutory Officers Committee



OmbudsmanSA

Amendments to the Local Government Act

- replacement of sections 63 and 110 - single codes of conduct
- new section 263A - Ministerial referral of complaints against members of a council
- new section 263B - recommending sanctions
- replacement section 272-4 - Ministerial investigation of council or subsidiary to be carried out by the Ombudsman



OmbudsmanSA

In conclusion - some thoughts from Queensland.....

- What works well in the current system?
 - comprehensive network of bodies ensures integrity system is not dominated by one player
 - entities with specific technical expertise to respond to complex complaints
- What are the problems in the current system?
 - confusion about who does what undermines accessibility
 - time delays
 - duplication



OmbudsmanSA

www.ombudsman.sa.gov.au

PANEL MEMBERS

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