



OmbudsmanSA

# STATEMENT ON INVESTIGATION

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24 June 2026

## Investigation of an agency's response to a complaint about sexual harassment by a staff member



### Essential Insights

Agencies must take action to ensure that alleged sexual harassment by agency employees is investigated and dealt with promptly and thoroughly.

Investigations of serious alleged misconduct often negatively impact the wellbeing of respondents. An employer's duty to eliminate or minimise risks to health and safety of their employee may present challenges in progressing an investigation.

Nevertheless, this duty must be balanced against an agency's obligation to respond to alleged misconduct promptly and thoroughly, and the duties it may owe to those affected or put at risk by the conduct in issue.

## THE INVESTIGATION

A report to Ombudsman SA alleged that an agency failed to properly respond to a complaint about alleged sexual harassment by a staff member towards a non-employee.

The agency was aware of previous allegations of similar behaviour by the staff member and had taken formal disciplinary action against the staff member prior to the events in issue. Some of the allegations came to the agency's attention through direct complaints;

the agency also received information suggesting other non-employees may have been affected but had not reported the conduct.

After investigating the complaint, the agency prepared to put the allegations and extensive supporting evidence to the staff member by letter. Shortly before this could occur, the staff member commenced sick leave. The staff member remained on paid leave for one year and eight months and then resigned.

During the staff member's period of leave, the agency formed the view that it could not progress the investigation and seek the staff member's response without negatively impacting their mental health and wellbeing. However, specific medical advice on the staff member's capacity to respond to the investigation was not sought for 19 months after they commenced leave and was not received until after the staff member resigned.

The letter of allegations was never sent to the staff member, and the investigation was terminated without a determination of their conduct. Due to a lack of clear records, the Deputy Ombudsman's investigation could not confirm whether the complainant was ever advised of how their complaint had concluded. The agency's response to the Deputy Ombudsman's investigation suggested that it did not attempt to advise the complainant of the outcome as they had withdrawn from the process at an earlier stage and had not responded to further communication by the agency.

## KEY OUTCOMES

In response to the Deputy Ombudsman's investigation, the agency maintained that it was not appropriate or safe to progress its investigation and put the allegations to the staff member while they were on extended sick leave. The agency accepted that it would have been preferable to seek fulsome medical advice on the staff member's capacity to respond at an earlier stage but maintained that it had not acted in error given the serious and legitimate concerns for the staff member's wellbeing and its duties to them as their employer.

The Deputy Ombudsman accepted that the agency owed the staff member a duty of care, and the concerns for their wellbeing were legitimate. Nevertheless, the Deputy Ombudsman concluded that these ought to have been balanced against:

- the agency's policies on sexual harassment, which emphasise a zero-tolerance approach and the need for timely responses to complaints
- the earlier disciplinary action against the staff member which stipulated it would be considered if allegations were made in the future
- the risk of liability and reputational damage to the agency
- the agency's duties to the person whose complaint had prompted the investigation
- the potential risk to others, noting that the alleged conduct had first occurred in the workplace but continued via private communication channels.

In all the circumstances, the Deputy Ombudsman considered that the agency ought to have sought detailed medical advice regarding the staff member's capacity to respond to the investigation, notwithstanding their period of extended leave. The Deputy Ombudsman

concluded that failing to do so for 19 months amounted to administrative error through a failure to properly respond to the complaint about the staff member.

The Deputy Ombudsman made recommendations requiring:

- the development and adoption of policies on:
  - the conduct, progression, and finalisation of investigations and disciplinary matters where an employee is absent from the workplace and/or their capacity to respond to allegations is uncertain
  - the timely progression and finalisation of investigations and disciplinary processes
  - identifying and responding to concerns about sexual assault and sexual harassment where a report has not been made directly to the agency
- that records of the investigations of the staff member be retained for an appropriate period should the staff member seek employment in the future
- contact with the complainant and, if they wish to receive this information, advice to them on the outcome of the investigation and an apology.