

17 January 2025

Australia's Public Universities and Public Accountability

The Australian Association of University Professors (AAUP) acknowledges the permission granted by the South Australian Ombudsman to disclose her letter (attached), which we believe warrants public attention and government action.

Our Council holds a strong view that an independent investigation into the merger of the University of South Australia and the University of Adelaide is necessary, given the significant involvement of private interests and the current lack of public scrutiny. We have chosen to publish the letter to inform the public about these issues.

We also note, however, that similar problems regarding the failure of Ombudsmen to investigate university matters have been reported in other states. In Tasmania, a recent inquiry by the Legislative Council Select Committee (handed down on 23 December last year) recommended that their Joint Standing Committee on Integrity investigate the performance of Tasmania's Integrity Commission and their Ombudsman in relation to complaints regarding the University of Tasmania. In New South Wales, the Ombudsman's handling of a university whistle-blower case has raised similar serious questions about that office's willingness and effectiveness in relation to university matters.

The AAUP Council is troubled by these instances, which suggest a widespread pattern of inadequate investigation into potential wrong-doing in our public universities. It is imperative that the ombudsman's office acts as mediator between citizens and government agencies, promoting transparency, accountability, and fairness in public administration across Australia.

The failure properly to investigate significant issues can undermine the credibility of the ombudsman's office, erode public trust, and diminish the legitimacy of its role in promoting accountability within government agencies, including our public universities. It can also impede individuals' access to justice and remedies for grievances against government actions.

We believe that both State and Federal parliaments should consider strengthening relevant legislation to ensure that their ombudsman's offices can operate independently and effectively in addressing all grievances concerning government agencies, including those related to our public universities. We believe this is essential to restore public confidence in the work of our universities and ombudsman's offices alike.

The Council of the Australian Association of University Professors (AAUP)

www.professoriate.org

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PRIVATE AND CONFIDENTIAL

Eugene Reinboth
Belperio Connell
By email: eugene@bclaw.au

Dear Mr Reinboth

A complaint by the Australian Association of University Professors

I refer to the former Deputy Ombudsman's letter to Professor Jill Blackmore of the Australian Association of University Professors (**the AAUP**). I understand that Belperio Connell are instructed to act on behalf of the AAUP in its complaint to Ombudsman SA about the University of Adelaide and Mr David Hill.

In his letter, the former Deputy Ombudsman, Mr Steven Strelan, explained his assessment of the AAUP's complaint and his view that it is not in the public interest¹ for my office to take further action in relation to the complaint. Mr Strelan invited the AAUP to contact my office if it thought it could identify an error in our assessment.

You contacted my office on the AAUP's behalf on 16 July 2024 in response. I understand the AAUP disagrees with our assessment for the following reasons:

- that we have not sufficiently considered and addressed issues that were referred to our office by the Office for Public Integrity (**the OPI**). The issues you identified are:
 - that the South Australian Cabinet acted in a manner amounting to maladministration under the *Ombudsman Act 1972* by failing to obtain and consider the full business case for the merger of the University of Adelaide (**the university**) and the University of South Australia
 - that Deloitte Australia may have conducted the feasibility study for the merger before it applied and was selected to be the Integration & Transition Partner (**I&T Partner**) for the merger. You allege that 'if Deloitte (either in its broadest sense or in the persona of Mr David Hill) was appointed to assist to any degree in the feasibility study and business case ... then Deloitte would have been privy to detailed internal information', and Deloitte and Mr Hill would have been in a position of conflict, thereby giving rise to bias in the tendering process
- the AAUP remains of the view that a conflict of interest on Mr Hill's part was unmanageable because:
 - it hinges on an email from Mr Hill to the effect that he did not speak with anyone at Deloitte regarding the merger
 - the email from Mr Hill disclosing his conflict of interest was sent on 4 September 2023, after Deloitte was selected as the successful tenderer (but prior to that decision being 'signed off')
 - that email did not satisfy Mr Hill's disclosure obligations under section 17 of the *University of Adelaide Act 1971*
 - there is no evidence that the email has been produced for examination by OPI or my office
 - Mr Hill, as CEO of Deloitte, 'was intimately embedded into the UofA through his role on Council, and the embedding of the Deloitte Academy into the UofA'

¹ *Ombudsman Act 1972* s 12H(1)(c).

- Mr Hill resigned from the Council on 24 August 2023, and the Deloitte I&T Partner contract was signed on 14 September 2023
- the AAUP remains of the view that the Premier proposing to establish an independent commission to investigate the feasibility of the merger, but then reneging on this proposal, amounts to maladministration
- the AAUP remains of the view that there may be 'an insider network at play to favour appointments that support a merger' and that, if the CEO of Deloitte has played a role in those appointments and financially benefits from the merger, this merits investigation.

I have carefully reconsidered my office's assessment of this matter. While I note you disagree with that assessment and reiterate that an investigation would be in the public interest, I do not consider that further action by my office is warranted.

Firstly, I retain full discretion when assessing and investigating matters referred to me by the OPI.² Notwithstanding that my discretion is not fettered or directed in any way by the OPI's assessment, my office gave detailed consideration to the OPI's assessment of your client's complaint. I therefore respond as follows to your submissions on the two issues you have identified as arising from the OPI's assessment:

- it is not possible for my office to investigate Cabinet's alleged failure to obtain a full business case for the merger. Cabinet is not an agency within the definition of the Ombudsman Act, or a public authority as defined in Schedule 1 of the *Independent Commission Against the Corruption Act 2012*. Therefore, Cabinet is not within my jurisdiction. Further, Cabinet proceedings and any document relating to such proceedings are expressly protected from the Ombudsman's jurisdiction.³
- I understand the AUUP is of the view that it has provided sufficient evidence to suggest that Deloitte may have conducted the merger feasibility study before applying for the position of Integration & Transition Partner. Based on information obtained by my office for the purpose of assessing your client's complaint, I do not consider that an investigation of this issue is warranted as a finding of administrative error, maladministration or misconduct is highly unlikely.

I address your remaining submissions as follows.

While I note that your client maintains that Mr Hill's conflict of interest was inherently unmanageable, I am of the view that you have not identified an error in my office's assessment. Accordingly, based on information provided by your client and my office's own, independent enquiries, I confirm my office's assessment that it is not in the public interest to conduct an investigation of this issue. My reasons are:

- I am satisfied that sufficient and appropriate steps were taken by Mr Hill to manage his conflict
- the steps taken were consistent with the expectations of the *University of Adelaide Act 1971*⁴ and the university's accompanying policy
- an investigation is unlikely to lead to a finding that Mr Hill engaged in misconduct as defined by the Ombudsman Act.⁵

In addition, in respect of your client's allegations against the Premier or of 'an insider network' involved in the merger, my view is also that you have not identified an error in this Office's assessment. Specifically, you have not identified any new information or clarified

² *Ombudsman Act 1972* s 12E.

³ *Ombudsman Act 1972* s 21.

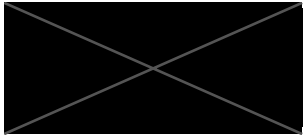
⁴ *University of Adelaide Act 1971*, s 17(1).

⁵ *Ombudsman Act 1972*, s4(1).

how the information has been misunderstood. While I understand your client maintains that an investigation would be in the public interest, I am not persuaded to depart from my office's assessment.

Accordingly, I confirm the former Deputy Ombudsman's assessment of 28 June 2024 and will now close my file. I authorise disclosure of this letter by the AAUP as it sees fit.

Yours sincerely



Emily Strickland
SA OMBUDSMAN

20 December 2024