

Redacted Report  
Full investigation - *Ombudsman Act 1972*

Complainant	[The complainant]
Government Department	Department for Correctional Services (DCS) and South Australian Prison Health Service (SAPHS)
Ombudsman reference	2016/02044
DCS reference	SEC/16/0059
SAPHS reference	2017-00235
Date complaint received	4 March 2016
Issues	<ol style="list-style-type: none"><li>1. Whether DCS' decision to accommodate the complainant at Holden Hill Cells was wrong</li><li>2. Whether SAPHS' delay in providing the complainant's medication was unreasonable</li><li>3. Whether DCS' failure to retain official records was contrary to law</li></ol>

### Jurisdiction

The complaint is within the jurisdiction of the Ombudsman under the *Ombudsman Act 1972*.

### Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking numerous responses from the Department for Correctional Services (DCS) and the South Australian Prison Health Service (SAPHS) (together, the agencies)
- considering:
  - the *Correctional Services Act 1982*
  - the following DCS policies:
    - Standard Operating Procedure, *SOP 090 - Management of Prisoners at Risk of Suicide or Self Harm*, Approved: 30 May 2011
    - Standard Operating Procedure, *SOP 001A Custodial - Admission - Case Management*, Approved: 25 June 2014

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- Statewide Operations - Deputy Chief Executive Instruction 10 - 09v3, *Re: Detention Orders Under the Mental Health Act - Response Procedure*, 27 June 2013
  - Adelaide Remand Centre - Local Operating Procedure No: 62, *DCS Prisoners Housed at the City Watch House*, Issue Date: 5 December 2006
  - Statewide Operations - Deputy Chief Executive Notification 111-14, *Re: Prisoner Placement Advice From Crown Solicitor's Office*, 19 September 2014
  - Deputy Chief Executive Instruction 115-14v2, *Re: Management of HRAT Prisoners in Policy Custody Cells*, 11 December 2014
  - Yatala Labour Prison, *Daily Regime Holden Hill Cells*, signed by General Manager Yatala Labour
  - Yatala Labour Prison, *Holden Hill Operational Procedures 006/14*, 27 October 2014
  - Adelaide Remand Centre - Local Operating Procedure, *Interim LOP - DCS Prisoners Housed at Sturt Police Cells*, Approved 21 March 2014
  - o the following SAPHS policies:
    - Central Adelaide LHN, SA Prison Health Service, *Model of Care*, August 2016 (**the Model of Care**)
    - SA Prison Health Service Clinical Procedure, *Admission to Discharge Health Needs - Health Assessments*, effective 18 December 2013
    - Central Adelaide Local Health Network, SA Prison Health Service, *Medication Formulary/Prescribing Management*, effective from September 2015
    - SA Prison Health Service Clinical Procedure, *Medication Management*, Effective from 14 February 2013
    - SA Prison Health Service Clinical Procedure, *Suicide Risk Management*, Effective from 24 May 2013
    - SA Prison Health Service Clinical Procedure, *Medical Clinics*, effective from 2 October 2012
    - SA Prison Health Service Administration Process Flowchart, *Requests for Information (ROI's)*, effective from February 2016 (**the ROI Flowchart**)
  - o the following joint policies:
    - *Department for Correctional Services and Department of Health (Central Northern Adelaide Health Services, South Australian Prison Health Service, Forensic Mental Health Service & South Australian Dental Service) Joint Systems Protocol*, approved May 2010 (**the Joint Systems Protocol**)
    - *A Memorandum of Understanding Between the Central Northern Adelaide Health Service and the Department for Correctional Services Regarding the Provision of Prisoner Health Care Services*, November 2007 (**the MOU**)
    - A Memorandum of Understanding "MOU" between the South Australian Prison Health System "SAPHS" and the Department for Correctional Services "DCS" in respect of *The Administration of Healthcare Services to those detained under the Correctional Services Act 1982 (SA) "the Act" at the City Watch House "CWH"*, 2012
    - *Protocol for the Exchange of Information Between SA Health and the Department for Correctional Services for The Treatment, Care or Rehabilitation of a Prisoner*, 5 May 2015
    - Partnership Agreement between Department for Health and Ageing and Department, *for Correctional Services for the Provision of Health Care Services to People in Prison or on Remand in Department for Correctional Services Managed Facilities in South Australia*, commenced 1 July 2015
  - Preparing a provisional report and providing it to the parties for comment
  - preparing this report.

## Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.<sup>1</sup> It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...<sup>2</sup>

## Response to the provisional report

The Deputy Ombudsman made provisional findings in the provisional report dated 8 September 2017 (**the provisional report**).

The Chief Executive of Central Adelaide Local Health Network (**CALHN**) provided the following response to the provisional report on the basis that the SAPHS is a service of CALHN:<sup>3</sup>

The provisional report provides SA Prison Health Services (SAPHS) with feedback to improve areas of service provision including turnaround time for ROI information, medication management and strengthening communication between the Department for Correctional Services (DCS) and SAPHS related to prisoner/patients at risk. SAPHS commissioned and is implementing an Aboriginal Model of Care and this initiative will enhance the provision of services for this vulnerable group within the correctional setting and will address many of the issues raised in your report. The draft multi-agency Model of Care is attached for your information.

I have been advised by Mr Alan Scarborough, Director of Nursing Intermediate Health Care & SA Prison Health Service that a Quality Improvement Project has been convened to address the areas highlighted within your report and SAPHS will be happy to share the outcomes with you at a later date ...

The Chief Executive of DCS:<sup>4</sup>

- accepted that, in accommodating the complainant at Holden Hill Cells, DCS acted in a manner that was wrong and noted:

I acknowledge that [the complainant] should not have been transferred to Holden Hill and he should not have remained there following a HRAT assessment by the Social Worker on 2 March 2017.

To address your recommendation, *Deputy Chief Executive Instruction 115-14 v2 - Management of HRAT Prisoners in Police Custody Cells* (attached), will be re-issued to reiterate that HRAT prisoners should only be placed in police prisons when absolutely necessary and in consultation with SAPHS. The revised DCEI will include specific reference to the cultural needs of Aboriginal prisoners, and will emphasize that appropriate weight must be placed on the mental health needs of prisoners.

<sup>1</sup> This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

<sup>2</sup> *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

<sup>3</sup> Letter from the Ms Jenny Richter, Chief Executive, Central Adelaide Local Health Network, dated 17 October 2017.

<sup>4</sup> Letter from Mr David Brown, Chief Executive, Department for Correctional Services, Dated 20 October 2017.

In addition, and as a result of the shortcomings identified in your investigation, a full review of the HRAT processes at Yatala Labour Prison (YLP) will be undertaken. The HRAT review will cover case management, admission and placement procedures for complex needs prisoners, trigger and escalation processes and SOP 90. The review will address any gaps in the HRAT processes, with the aim of creating more robust practices that are attentive to the need of prisoners at risk of self harm or suicide, particularly Aboriginal prisoners, and are consistent with DCS procedures and my expectations.

...

In addition to responding to your specific recommendations, I wish to acknowledge that some of the previous information provided to you was inaccurate.

You were previously advised that [the complainant's] was cleared by DCS and SAPHS staff for transfer to Holden Hill Police Prison. Upon review, I can advise that this is not correct and [the complainant] should have remained at YLP.

- noted that although the second issue considered in the provisional report concerned the SAPHS, prioritising Release of Information (ROI) requests for prisoners subject to the High Risk Assessment Team (HRAT) will be discussed at a joint meeting between the agencies
- accepted the provisional view that, in failing to retain official records, DCS has acted in a manner that was contrary to law and noted:

As a result of enquiries I have made, it is clear that DCS has failed to retain documentation as required, therefore I accept your provisional view.

In relation to this matter, I wish to clarify the advice I previously provided, as there appears to have been some confusion in relation to [the complainant's] documentation and DCS records management processes generally.

I can advise that DCS has a policy and a standard operating procedure in place to clearly define the Department's requirements in relation to records management, including a records disposal program. A copy of *Policy 31 - Records Management* and *SOP 099 - Records Management* are attached for your information. The policy and procedure are in line with the *State Records Act 1997*.

To facilitate compliance with the above SOP and policy, all offender records received and processed by the Department's Records Management Unit (RMU) are scanned to electronic format and stored on a local network drive. The original hard copy is stored offsite, for the retention period of 100 years from the offender's date of birth. All record destructions are signed off by the relevant business unit before being approved by the Team Leader Records, as per the DCS disposal authorisation process in SOP 99. I can further advise that records management training and compliance assessments are undertaken by the Records Management Consultant on a regular basis.

When a prisoner enters DCS custody from SAPOL, the details from the SAPOL transfer form are entered into the Justice Information System (JIS). During the archival process, only SAPOL transfer forms that contain indicators of medical examination, self harm or violent behaviour are retained and processed as above, due to the business value of those records. Retaining the SAPOL transfer forms that contain these indications provides a quality assurance checkpoint on any queries regarding the accuracy of the JIS input.

On reviewing this case, it is my provisional view that all SAPOL transfer forms, whether they contain the above indicators or not, have continuing business value to the Department, and should therefore be retained. As such, I will be issuing a direction to the Executive Director People and Business Services to implement this change to the retention of SAPOL forms.

In relation to [the complainant's] missing Case Management File (CMF), I can advise that when a prisoner is released from prison, their CMF is meant to be transferred to the Department's RMU for appropriate archival. Unfortunately, [the complainant's] file was

never received by RMU, therefore has not been archived. Despite extensive searches being undertaken at a number of DCS sites, [The complainant's] file has not been located. This error is not acceptable and does not meet the requirements of the Department's policy or procedure with respect to records management. However, I am confident that this is a single error and is not indicative of a systemic issue.

As a result of the shortcomings identified, I can advise that DCS is undertaking a review of its records management processes and, as part of the review, the requirements in relation to the retention of documents will be reiterated to all DCS staff.

...

In addition, previous advice provided to you stated that [the complainant's] archived file for the imprisonment in question had been reviewed and no SAPOL documents were located. Given that [the complainant's] file has not been located, it appears that this review actually related to previous periods of imprisonment.

...

The complainant informed my Office that he was satisfied with the provisional report and re-emphasised that:<sup>5</sup>

- given a Notification Of Concern (**NOC**) had been raised in relation to the complainant, it was wrong that he was transferred to Holden Hill Cells and the delay in receiving his medication was unreasonable
- given all of the information known by both agencies, the complainant cannot understand how it was determined he was 'fit to be accommodated' at Holden Hill Cells, as submitted by DCS to my investigation<sup>6</sup>
- the department knew that Holden Hill Cells provide a basic environment for prisoners and the Social Worker's notes record that he made it clear he was not coping in that environment, therefore he considers that DCS failed to fulfil its duty of care.

I have considered the submissions made by each of the parties. I will address individual submissions where a submission has informed my final decision or I consider that it is reasonable to do so.

## Background

1. On 1 March 2016 the complainant was admitted to Yatala Labour Prison (**YLP**). The complainant was a remand prisoner and it was intended that he would be detained for less than 15 days.
2. I note that the Correctional Services Act defines remand prisoner as a person remanded in custody awaiting trial or sentence and *Prisoner* is defined as a person committed to a correctional institution pursuant to an order of a court or a warrant of commitment. For the purposes of this report a reference to prisoner is a reference to both.
3. When a prisoner is transferred from the custody of South Australia Police (**SAPOL**) to the custody of DCS, particular SAPOL forms concerning the prisoner are provided to DCS. When receiving the complainant, DCS received the South Australia Police Custody Transfer Form which recorded that the complainant had disclosed the following to SAPOL:

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<sup>5</sup> Telephone call from the complainant on 20 September 2017.

<sup>6</sup> Submission made by Letter from DCS dated 28 September 2016 and was quoted at paragraph 16 of the Provisional Report dated 8 September 2017.

- that he suffered from depression which was diagnosed by a Psychiatrist
  - that he took nightly medication for depression and separate medication for pain management
  - that he had previously attempted to hang himself in Queensland which he attributed to being alone; the complainant disclosed that there had been no issues since and the matter is being managed with the Psychiatrist
  - drug dependence.
4. DCS submits that the following occurred once the complainant was received:<sup>7</sup>
- [The complainant] underwent a formal admission process at YLP which consists of a number of formal admission checklists, discussions by DCS admitting staff and a history check on the Department's Justice Information System. Once this initial admission was completed [the complainant] was interviewed by SAPHS staff to discuss his health issues, medications and any concerns around self-harm.
- ... [the complainant's] history of self-harm and current risk was discussed at the time of admission and a NOC was raised.
5. The NOC referred to above is a Notification of Concern form which must be completed immediately by a staff member who becomes aware of a prisoner at risk or observes the behaviour or presentation of a prisoner as indicating an increase in risk of suicide or self harm.<sup>8</sup> Once a NOC is completed a prisoner is deemed to be high risk and is subject to oversight by the HRAT. *SOP 090 – Management of Prisoners at Risk of Suicide or Self Harm (SOP 090)*<sup>9</sup> applies to the management of that prisoner.
6. As part of the DCS Admission process, a DCS Prisoner Stress Screening Form was completed. This form records that the complainant disclosed:
- he had used drugs regularly in the last month to relax or block out problems
  - someone close to him had committed suicide which was still a major loss for him
  - that he had previously attempted to hang himself in Queensland
  - that he had fears about his imprisonment.
7. Because of particular disclosures made by the complainant, the DCS Prisoner Stress Screening Form required a NOC to be raised by DCS in relation to the complainant.
8. Following the DCS Admission process, the complainant was assessed by SAPHS.
9. During the Admission Nursing Assessment, the complainant consented to SAPHS arranging a ROI so that medical information held by his community health provider could be obtained and his medication could be continued.
10. The SAPHS Admission Nursing Assessment form records the following observations in relation to the complainant at the time of his admission:<sup>10</sup>
- DCS had allocated the complainant a Stress Score of 7
  - the complainant had consented to the ROI

<sup>7</sup> Letter from DCS dated 28 September 2016.

<sup>8</sup> Standard Operating Procedure, *SOP 090 - Management of Prisoners at Risk of Suicide or Self Harm*, Approved: 30 May 2011.

<sup>9</sup> Ibid.

<sup>10</sup> SAPHS, *Admission Nursing Assessment*, Stage 1, dated 1 March 2016.

- the complainant had a history of depression
  - the complainant had declared that he was a regular illicit drug user
  - the complainant had declared a history of suicide and had suffered a recent grief/loss/traumatic event
  - the complainant had expressed no current thoughts or plans of self harm, suicide or homicide
  - at the time of the Admission Nursing Assessment the NOC had not been completed and the complainant was not subject to the HRAT
  - the complainant was suitable for 'routine' placement.
11. At 16.10 on 1 March 2016 the nurse who completed the Admission Nursing Assessment recorded on the SAPHS Progress Sheet that Stage 1 admission had been completed.
12. The NOC was completed and signed by a SAPHS nurse at 16.30 and a DCS officer at 16.34. The NOC records:
- the NOC was raised due to 'previous attempts of self harm or suicide; within or outside prison and presenting with behaviour suggestive of current risk of suicide or self harm'; in particular, 'attempted hanging 2011 in QLD, diagnosed with depression'
  - the complainant should be accommodated in a 'normal' 'double cell' and placed under 'normal regime'.
13. At 16.47 a DCS officer recorded the following on the complainant's Offender Case Notes:
- Admission interview, stress score of 7. No current TOSH but attempted hanging in 2011. Diagnosed with depression. NOC raised. Phone call to relatives was successful. Lactose intolerance. Mainstream placement. Nil other issues identified during the admission process.
14. The acronym TOSH refers to Thoughts of Self Harm.
15. At 19.15 on 1 March 2016 a DCS officer recorded on the Offender Case Notes that the 'prisoner now resides at Holden Hill cells'. No record has been provided to me that documents the decision to transfer the complainant to Holden Hill Police cells (**Holden Hill Cells**). However, SAPHS submits:<sup>11</sup>
- ... there was no discussion on the movement, often SAPHS is not aware of prisoner movement or release until after the transfer/release.
16. In contrast DCS submits:<sup>12</sup>
- [The complainant] was formally assessed and cleared by the admitting supervisor and the SAPHS staff member for transfer to HH.
- ... The admitting officers and SAPHS both agreed at the time of admission that [the complainant] was fit to be accommodated at HH.

<sup>11</sup> Letter from SAPHS dated 21 September 2016.

<sup>12</sup> Letter from DCS dated 28 September 2016.

32. However, in response to the provisional report DCS provided:<sup>13</sup>

In correspondence dated 28 September 2016, David Brown advised that “[the complainant] was assessed by DCS and SAPHS staff and cleared for transfer to HH for an interim period. The admitting officers and SAPHS both agreed at the time of admission that [the complainant] was fit to be accommodated at HH”.

Upon receipt of the provisional report in relation to this matter, DCS undertook further enquiries, including review of the Initial Response Plan that was developed as a result of the Notice of Concern raised upon [the complainant’s] admission to YLP on 1 March 2016. Whilst the Initial Response Plan states that [the complainant] should be subject to normal placement conditions and a normal regime, it also indicates that he should be placed in a double cell. Given that there are no double cells at HH, [the complainant] should not have been transferred to HH, but should have remained at YLP.

17. On 2 March 2016, due to the complainant’s HRAT status, a Social Worker met with the complainant. The Offender Case Notes show that the complainant explained the following to the Social Worker:

- he had a history of attempted suicide, including an attempt in Queensland in 2011; the Social Worker noted the complainant was placed on the HRAT list due to that incident
- he was diagnosed with depression, had Post-traumatic Stress Disorder and anxiety
- he had consented to a ROI and was eager to commence his medication
- he was experiencing withdrawals from recent illicit drug use and had not slept for two weeks
- he was extremely frustrated at his placement at Holden Hill Cells which he considered provided an unsuitably basic environment for his needs.

18. The Offender Case Notes record that, in accordance with SOP 090,<sup>14</sup> a HRAT meeting was conducted on 3 March 2016 at which the complainant’s current condition was reviewed. The HRAT concluded that it was suitable for the complainant to remain at Holden Hill Cells but that he should remain on the HRAT list for further monitoring and any issues should be reported to the Supervisor or Accommodation Manager.

19. At approximately 11.50am on 4 March 2016 the complainant telephoned my Office from Holden Hill Cells. The complainant was extremely distressed. He explained that during his time at Holden Hill Cells he had been without antidepressants despite having consented to the ROI at the time of his admission. He said he was not coping. He explained that he is Aboriginal, he referred to Aboriginal deaths in custody and then made his own threats of suicide.

20. My Office contacted the then Acting General Manager of YLP so that the complainant’s safety and wellbeing could be addressed. Immediate action was taken by DCS and the complainant was transferred back to YLP.

21. The Offender Case Notes record that the Social Worker telephoned the complainant at 14.10 and it was arranged for the complainant to meet with the Aboriginal Liaison Officer (**ALO**).

<sup>13</sup> Email from DCS dated 14 November 2017.

<sup>14</sup> *SOP 090*, above n 8.



22. At 17.08 on 4 March 2016 it is recorded that the complainant was located back at YLP and had met with the ALO.
23. I have been informed that the ROI had been received and the complainant was provided medication on the afternoon of 4 March 2016 when he was transferred back to YLP.

## Relevant law

### *Correctional Services Act 1982*

24. Section 24(1) of the Correctional Services Act 1982 provides:

#### **24—CE has custody of prisoners**

- (1) The CE has the custody of a prisoner, whether the prisoner is within, or outside, the precincts of the place in which he or she is being detained, or is to be detained.

25. Section 22 of the Correctional Services Act provides:

#### **22 - Assignment of prisoners to particular correctional institutions**

- (1) A person who is remanded in custody awaiting trial or sentence will be detained in such correctional institution as the CE may determine.
- (2) Subject to this section, a person who is sentenced to imprisonment or committed to prison will be imprisoned in such correctional institution as the CE may determine.
- (3) Subject to this Act, a person who is sentenced to a term of imprisonment exceeding 15 days must not be imprisoned in a police prison.
- (4) A person may be detained in a particular correctional institution pursuant to this section notwithstanding that the warrant of commitment by virtue of which the person is detained in custody directs that he or she be detained in some other correctional institution.

## *Policies*

26. The MOU between SAPHS and DCS in relation to the provision of prisoner health care services provides:<sup>15</sup>

...  
The MoU is an agreement by the parties to work in cooperation to promote a safe and coordinated system of health care delivery to meet the needs of prisoners under the care and control of DCS.  
...

27. The Joint Systems Protocol provides:<sup>16</sup>

In South Australia, the Department for Correctional Services (DCS) has core responsibility for the provision of a secure and safe environment, accommodation and rehabilitation of prisoners ... The Department of Health [including SAPHS] ... is responsible for ensuring that people in prisons have access to an appropriate range of health and wellbeing services ...

<sup>15</sup> A Memorandum of Understanding Between the Central Northern Adelaide Health Service and the Department for Correctional Services Regarding the Provision of Prisoner Health Care Services, November 2007, p 3.

<sup>16</sup> Department for Correctional Services and Department of Health (Central Northern Adelaide Health Services, South Australian Prison Health Service, Forensic Mental Health Service & South Australian Dental Service) Joint Systems Protocol, approved May 2010.

Ensuring the proper delivery of the above services to people in prison requires a joint approach between all relevant Departments. The comprehensive management of this joint approach requires procedures and processes between DCS and SAPHS ... that acknowledge and accommodate the different roles of the agencies and supports the efforts of the staff in ensuring effective cross agency communication and cooperation.

28. *SOP 001A Custodial - Admission - Case Management (SOP 001A)* provides:<sup>17</sup>

### 3.9 Immediate Interventions

3.9.1 The operational supervisor must ensure:

...

(c) Special attention must be given to the risk/needs of Aboriginal or Torres Strait Islander prisoners ...

### 3.10 Accommodation Allocation

...

3.10.5 Prisoners are placed in suitable accommodation according to age, restricted mobility, protection status, supervision/monitoring requirements and cultural background.

...

### 3.14 JIS Case Noting

...

3.14.2 Case notes must be entered on JIS throughout the admission and induction processes detailing any issues that are identified that could have an impact on the health and welfare of a prisoner.

3.14.3 Issues that may have an impact on a prisoner's health and welfare could include, but are not limited to:

...

d) Cultural Background;

...

g) Personal health issues.

## *International Instruments*

29. Australia has signed and ratified a number of international instruments which aim to protect prisoners from human rights abuses:

- International Covenant on Civil and Political Rights (ICCPR)<sup>18</sup>
- United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)<sup>19</sup>
- International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>20</sup>

30. Article 10 of the ICCPR provides:<sup>21</sup>

### *Article 10*

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

...

<sup>17</sup> Standard Operating Procedure, *SOP 001A Custodial - Admission - Case Management* (Approved: 25 June 2014).

<sup>18</sup> International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession 16 December 1966 (entry into force 23 March 1976).

<sup>19</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession 10 December 1984 (entry into force 26 June 1987).

<sup>20</sup> International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession 16 December 1966 (entry into force 3 January 1976).

<sup>21</sup> *ICCPR*, above n 18.

33. Article 16 of the UNCAT provides:<sup>22</sup>

**Article 16**

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture ... when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in official capacity ...

34. Article 12 of the ICESCR provides:<sup>23</sup>

**Article 12**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - ...
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

35. Australia is also a signatory to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**).<sup>24</sup> OPCAT reaffirms that torture and other cruel, inhuman or degrading treatment or punishment, are prohibited. While Australia has not yet ratified this Protocol, on 9 February 2017 the Minister for Foreign Affairs and the Attorney-General announced that the Australian Government intends to ratify the OPCAT by December 2017.<sup>25</sup>

36. There are also international standards that provide guidance as to the acceptable standards for the treatment of prisoners. These include the three main United Nations standards relating specifically to prisons, namely:

- the Standard Minimum Rules for the Treatment of Prisoners (**the UN Standard Minimum Rules**)<sup>26</sup>
- the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (**the UN Body of Principles**)<sup>27</sup>
- the Basic Principles for the Treatment of Prisoners (**the UN Basic Principles**).<sup>28</sup>

37. Whilst the United Nations standards are not legally binding, they seek to describe a model prison system. The Australian Institute of Criminology website states that these standards:

... set out what is accepted to be good general principle and practice in the treatment of prisoners. They represent the minimum conditions which are accepted as suitable by the United Nations and, as such, are also intended to guard against mistreatment, particularly in connection with the enforcement of discipline and the use of instruments of restraint in penal institutions.<sup>29</sup>

<sup>22</sup> UNCAT, above n 19.

<sup>23</sup> ICESCR, above n 20.

<sup>24</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or degrading Treatment or Punishment, United Nations, 18 December 2002.

<sup>25</sup> Media release, 'Improving oversight and conditions in detention'. 9 February 2017, available at <<https://www.attorneygeneral.gov.au/MediaReleases/Pages/2017/FirstQuarter/Improving-oversight-and-conditions-in-detention.aspx>> last accessed 10 August 2017.

<sup>26</sup> Standard Minimum Rules for the Treatment of Prisoners, United Nations, 13 May 1977.

<sup>27</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations, 9 December 1988.

<sup>28</sup> Basic Principles for the Treatment of Prisoners, United Nations, 14 December, 1990.

<sup>29</sup> [http://www.aic.gov.au/criminal\\_justice\\_system/corrections/reform/standards.aspx](http://www.aic.gov.au/criminal_justice_system/corrections/reform/standards.aspx).

38. Rule 1 of the UN Standard Minimum Rules provides as follows:

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.<sup>30</sup>

39. Both the UN Body of Principles and the UN Basic Principles provide that prisoners should be treated in a humane manner, and with respect for the inherent dignity and value as human beings.<sup>31</sup>

40. An international instrument to which Australia is a party does not form a part of Australian law unless the relevant provisions have been given legislative effect.<sup>32</sup> The Administrative Decisions (Effect of International Instruments) Act establishes that an international instrument that does not have the force of domestic law cannot give rise to a legitimate expectation that an administrative decision in South Australia will conform to that instrument. Section 3(3) of this Act does, however, permit a decision-maker to have regard to such an international instrument 'if the instrument is relevant to the decision.'

41. The international instruments referred to in this report have not been relevantly incorporated into domestic law in the manner required by section 3 of the Administrative Decisions (Effect of International Instruments) Act. That said, I am of the view that in a community such as South Australia, we should be aiming to exceed these international minimum standards in the humane treatment of prisoners.

### ***State Records Act***

42. Section 13 of the *State Records Act 1997* provides:

#### **13—Maintenance of official records**

Subject to this Act, every agency must ensure that the official records in its custody are maintained in good order and condition.

43. Section 23(1) of the State Records Act provides:

#### **23—Disposal of official records by agency**

(1) An agency must not dispose of official records except in accordance with a determination made by the Manager with the approval of the Council.

### **Whether DCS' decision to accommodate the complainant at Holden Hill Cells was wrong**

44. In making his complaint to my Office, the complainant stated that he had made numerous staff members aware of his mental health concerns and his need for antidepressants. The complainant said that the severity of his situation had been underestimated and he had been told that he would have to wait for the ROI to be returned before anything could be done about his medication. As I have noted, the complainant explained to my Office that he is Aboriginal, he referred to Aboriginal deaths in custody and then made threats of suicide. It was clear that it was particularly difficult for him to be at the Holden Hill Cells.

<sup>30</sup> *The UN Standard Minimum Rules*, above n 26, Rule 1.

<sup>31</sup> *The UN Basic Principles*, above n 28, Principle 1.

<sup>32</sup> *Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh* (1995) 183 CLR 273 at [22] per Mason CJ and Deane J.

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45. The complainant has since explained that, in his view, Holden Hill Cells provided a very basic environment that was unsuitable for his needs.<sup>33</sup>
46. Both DCS and SAPHS have acknowledged that, in accordance with section 24 of the Correctional Services Act, DCS is responsible for the placement and movement of prisoners.
47. I accept that the Chief Executive of DCS had a discretion in relation to the placement of the complainant at Holden Hill Cells for the following reasons:
- pursuant to section 24(2) of the Correctional Services Act, the Chief Executive of DCS had the custody of the complainant
  - the complainant was a remand prisoner and section 22(1) of the Correctional Services Act provides that a person remanded in custody will be detained in such correctional institution as the Chief Executive of DCS determines
  - the Chief Executive of DCS has delegated his powers under section 22(1) of the Correctional Services Act to particular DCS Employees, including General Managers and Security Managers<sup>34</sup>
  - DCS submits that either the General Manager or Security Manager of YLP would have authorised the assignment of the complainant to Holden Hill Cells and although DCS was unable to provide me with a copy of the relevant paperwork (an issue I address later in my report), I accept that it is usual practice for either the General Manager or Security Manager to undertake such duties and therefore one of these officers would have authorised the assignment of the complainant to Holden Hill Cells
  - Holden Hill Police Station was declared a correctional institution for the purposes of the Correctional Services Act pursuant to section 18 of the Correctional Services Act.<sup>35</sup>
  - the Deputy Chief Executive Instruction titled *Management of HRAT Prisoners in Police Custody Cells (the Instruction)*<sup>36</sup> applies to all Police Cells used to accommodate HRAT prisoners and provides that HRAT prisoners accommodated at those sites must be managed in accordance with the usual procedures set out in SOP 090 and SOP 001A.
48. However, the question is whether accommodating the complainant at Holden Hill Cells was, in all the circumstances, appropriate.
49. As part of the Admission process, a decision is made in relation to where a prisoner should be placed. Although DCS has the discretion under the Correctional Services Act in relation to prisoner placement, the Admission process is a process that entails assessments of the prisoner by both DCS and SAPHS. The assessments should occur in accordance with DCS's Standard Operating Procedures and the Joint Systems Protocol.

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<sup>33</sup> Telephone call with the complainant on 9 August 2016.

<sup>34</sup> Schedule of Delegations to DCS Employees by the Chief Executive (2013), Schedule 2 - Part A, Table 1, p 2.

<sup>35</sup> Correctional Services Act 1982, sections 4 and 18; Correctional Services Act (Declaration of Police Prisons) Proclamation, 2007.

<sup>36</sup> Deputy Chief Executive Instruction 115-14v2, *Re: Management of HRAT Prisoners in Policy Custody Cells*, 11 December 2014.

50. SOP 001A and the Joint Systems Protocol address the prisoner Admission process. SOP 001A provides the following:<sup>37</sup>

### 3.8 Initial Health Assessment

- ...
- 3.8.3 The Joint Systems Protocols detail specific responsibilities for DCS and SAPHS relating to the Intake process. These responsibilities are:
- a) SAPHS must ... make placement/management recommendation here necessary for each prisoner that is admitted into a prison.
  - b) Joint discussion between DCS admission staff and SAPHS staff must take place in relation to both the placement and management of prisoners deemed to be high risk, taking into account both agencies risk assessments.
  - c) Prisoners should remain in the admissions area until joint discussion/communication has occurred regarding safe placement.
  - d) SAPHS must forward the completed Prisoner Health Information Sheet (F001/006) and any specific placement/management recommendations to DCS admission staff.
- ...

### 3.9 Immediate Interventions

- 3.9.1 The operational supervisor must ensure:
- ...
- (c) Special attention must be given to the risk/needs of Aboriginal or Torres Strait Islander prisoners
- ...

### 3.10 Accommodation Allocation

- ...
- 3.10.4 Upon completion of the admission interviews and assessments, accommodation is allocated taking into account the identification of the prisoners' immediate risk and/or needs in consultation with Prison Health Staff that have conducted the Initial Health Assessment during the admission process.
- 3.10.5 Prisoners are placed in suitable accommodation according to age, restricted mobility, protection status, supervision/monitoring requirements and cultural background.
- ...

### 3.14 JIS Case Noting

- ...
- 3.14.3 Issues that may have an impact on a prisoner's health and welfare could include, but are not limited to:
- ...
- d) Cultural Background;
- ...
- g) Personal health issues.

51. The general Admission process set out in SOP 001A provides that DCS should have considered:

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<sup>37</sup> SOP 001A, above n 17.

- SAPOL forms relating to the complainant<sup>38</sup>
  - any risk associated with the complainant in consideration of *SOP 090 - Management of Prisoners at Risk of Suicide or Self Harm (SOP 090)*<sup>39</sup>
  - the complainant's Prisoner Stress Screening rating<sup>40</sup>
  - the SAPHS Admission Nursing Assessment, any SAPHS recommendations in relation to placement and any other matters raised by SAPHS in a joint discussion.<sup>41</sup>
52. Accordingly, in deciding where to accommodate the complainant, DCS should have read and considered the complainant's SAPOL forms, the SAPHS Admission Nursing Assessment form and the Prisoner Stress Screening Form. When read together, I am satisfied that these forms clearly illustrate the complainant suffers from diagnosed depression for which he takes prescribed medication, has a history of self harm, had experienced recent trauma prior to his incarceration and was withdrawing from illicit drug use.
53. In addition, the department should have given special attention to the risk and needs associated with the complainant as an Aboriginal person in custody.
54. The records provided to me show that following the completion of the Admission Nursing Assessment, a NOC form was completed. The NOC form is signed by both DCS and SAPHS and records that it was completed due to the complainant's previous attempt of self harm and suicide and the complainant's diagnosed depression.
55. In responding to my investigation DCS acknowledged that, as provided for in the SOP 001A, prisoners are only accommodated at Holden Hill Cells if it is agreed to by SAPHS.<sup>42</sup> However, SAPHS has informed me that no joint discussion took place in relation to the complainant's placement and 'often SAPHS is not aware of prisoner movement or release until after the transfer/release'.<sup>43</sup>
56. Both SOP 001A and the Joint Systems Protocol provide that some form of joint discussion should have taken place between the agencies in relation to the placement of the complainant because he was deemed to be high risk. SOP 001A provides:<sup>44</sup>
- b) Joint discussion between DCS admission staff and SAPHS staff must take place in relation to both the placement and management of prisoners deemed to be high risk, taking into account both agencies risk assessments.
57. I have not been provided any document that records that a joint discussion occurred between the agencies during the complainant's admission process. Although the NOC was jointly signed by SAPHS and DCS indicating there was an agreement between the agencies that the complainant was at-risk, I cannot be satisfied that, in accordance with SOP 001A and the Joint Systems Protocol, any joint discussion took place in relation to both the placement and management of the complainant who was deemed to be high risk.
58. I find this concerning. In my view, the joint discussion required by the relevant policies is an essential element of both the admission process and the overall care of the

<sup>38</sup> Ibid, 3.5.4.

<sup>39</sup> Ibid, 3.7.1.

<sup>40</sup> Ibid.

<sup>41</sup> *Joint Systems Protocol*, above n 16 and *SOP 001A*, above n 17, 3.8.3.

<sup>42</sup> Letter from DCS dated 12 May 2016.

<sup>43</sup> Letter from SAPHS dated 21 September 2016.

<sup>44</sup> *SOP 001A*, above n 17, 3.8.3.

prisoner who has been determined to be high risk. Accordingly, a record should be made of such a discussion. If the joint discussion does not occur, there is an immediate lack of therapeutic input that could be provided by SAPHS in the early stages.

59. It makes sense that the location in which a prisoner is accommodated may contribute to that prisoner's wellbeing and care. As such, it is important that SAPHS has input in relation to the decision. In the case of HRAT prisoners SOP 090 recognises:<sup>45</sup>

The Department has a responsibility to minimise the risk of such behaviours through the provision of a safe environment and through the implementation of effective systems for assessing and managing prisoners deemed at-risk ...

60. I have personally toured each of the correctional institutions in South Australia, as well as the City Watch House and I am mindful that Police Cells provide a basic environment for prisoners. Further, I have been informed that SAPHS only provides a limited health service to Holden Hill Cells, carrying out a once-daily medication round and basic health assessments.<sup>46</sup>
61. With that in mind, I am concerned by the disclosures made by the complainant when he met with a Social Worker in accordance with SOP 090 on his second day in Holden Hill Cells:<sup>47</sup>

... [the complainant] presented as agitated and emotional at times ... [the complainant] expressed frustration at his current placement expressing that he is withdrawing from methamphetamine use and has "nothing" to do ay HH to positively occupy his time [sic] ... [the complainant] stated that he has been diagnosed with depression, PTSD and anxiety. He reported that it has been a "couple of weeks" since he took his medication due to his recent "Ice binge" and he is eager to commence this (awaiting ROI from GP). [The complainant] advised that he has a history of suicide attempts ... [The complainant] stated that this is his first time in Holden Hill and he is not coping. He stated on numerous occasions that he felt he would cope better at YLP ... [the complainant] reported experiencing high levels of stress and acknowledged that this could be as a result of no sleep in two weeks ... [the complainant] denied any current TOSH however stated that he's "not sure what I'm thinking in regard to self-harm and stating that he is not thinking clearly due to withdrawals and lack of sleep. He stated that he has no current plan ... [the complainant] stated that he would try "my best" with his placement at Holden Hill and continue to read books however he remains adamant that he would cope better at YLP indicating that his stability may decrease the longer he is there. At the time of the interview [the complainant] did not present as an acute risk of self-harm however his SAMI would indicate that he is MODERATE to HIGH due to his limited protective factors. He denied any current TOSH however his risk could increase should he remain at Holden Hill reporting limited access to coping strategies i.e. smokes, tv, writing material and phone calls. It is recommended that [the complainant] remain on the list for ongoing monitoring re - withdrawals, placement and limited coping strategies.

62. In my view, these disclosures clearly show that the complainant was struggling with his placement at Holden Hill Cells. Further, given the disclosures recorded by the Social Worker, I am extremely concerned that it was then determined appropriate to keep the complainant accommodated there.
63. As I have stated, I have toured the City Watch House and it is clearly not preferable that prisoners are accommodated in conditions designed only for use as Police Cells.
64. DCS has explained that the use of police cells:

<sup>45</sup> SOP 090, above n 8.

<sup>46</sup> Letter from SAPHS dated 21 September 2016.

<sup>47</sup> DCS Justice Information System notes relating to the complainant.



... was introduced as an emergency measure to assist DCS in times of increased demand. Due to the significant and sustained growth in prisoner numbers over recent years, DCS has relied heavily and largely continuously on various Police Cells to accommodate prisoners.<sup>48</sup>

65. I am mindful that prisoners accommodated at Police Cells are isolated from the full services and facilities available at other correctional facilities, including proper medical services, proper yard time and beneficial social interaction with other prisoners. I am mindful that such an environment may be detrimental to a person who is already mentally and culturally vulnerable.
66. International instruments protecting the human rights of prisoners provide that a prisoner shall be treated with humanity and respect,<sup>49</sup> and will not be subjected to acts of cruel, inhuman or degrading treatment.<sup>50</sup> In particular, Article 12 of the ICESCR provides:<sup>51</sup>

**Article 12**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

67. The World Health Organisation's *A WHO Guide to the Essentials in Prison Health* states:<sup>52</sup>

Several factors associated with imprisonment are intrinsically hazardous for the mental health of prisoners.

...

The presence of health care personnel does not guarantee good mental health. Maintaining good detention circumstances provides a further safeguard against the deterioration of mental health and promotes mental health.

68. The National Report of the Royal Commission into Aboriginal Deaths in Custody (1991)<sup>53</sup> identifies that there are underlying issues and vulnerabilities faced specifically by Aboriginal people and that these vulnerabilities contribute to Aboriginal deaths in custody. From the deaths examined by the Commission, the greatest specific risk identified for Aboriginal people in custody is self-harmful behaviour.<sup>54</sup> The Report highlights a number of factors as being precipitative of suicidal behaviour, including:<sup>55</sup>
- intoxication
  - emotional distress
  - mental disorder
  - previous attempts or threats to commit self-harm
  - age and gender (younger males appear to be the most vulnerable)
  - other situational factors
  - isolation in custody
  - there may not necessarily be any outward signs of depression.
69. Each of the factors listed above, were risks and vulnerabilities known to DCS about the complainant at his time of admission and during his placement in Holden Hill Cells.

<sup>48</sup> Letter from DCS dated 28 September 2016.

<sup>49</sup> *ICCPR*, above n 18.

<sup>50</sup> *UNCAT*, above n 19.

<sup>51</sup> *ICESCR*, above n 20.

<sup>52</sup> Health in Prisons, A WHO Guide to the Essentials in Prison Health (2007) *World Health Organisation*, 133.

<sup>53</sup> The National Report of the Royal Commission into Aboriginal Deaths in Custody (1991) (RCIADIC).

<sup>54</sup> *Ibid*, 23.5.7.

<sup>55</sup> *Ibid*, 23.5.9.

70. I accept that there are numerous considerations that DCS takes into account when determining appropriate accommodation for a prisoner. I note that SOP 001A provides that age, restricted mobility, protection status, supervision/monitoring requirements and cultural background are relevant considerations.<sup>56</sup>
71. However, in the complainant's circumstances there were numerous factors known to DCS which, on their own indicated that the complainant was at risk, and together escalated that risk. In light of the international instruments I have considered above, it appears that DCS failed to properly consider the risks associated with the complainant's mental health as well as the risks and vulnerabilities associated with the complainant as an Aboriginal person in custody. Further, DCS evidently failed to appreciate the effect that the environment in which he was placed would have on his health and wellbeing.
72. It is my view that, in accommodating the complainant at Holden Hill Cells, DCS failed to:
- place sufficient weight on the complainant's mental health concerns
  - place sufficient weight on the importance of providing good detention circumstances as a safeguard against the deterioration of the complainant's mental health<sup>57</sup>
  - place sufficient weight on the complainant's Aboriginality
  - place sufficient weight on the risks and vulnerabilities specific to the complainant as an Aboriginal person in custody and that these may be precipitative of self-harming and suicidal behaviour<sup>58</sup>
  - engage in a joint discussion with SAPHS in relation to the most appropriate location to accommodate the complainant which, as a consequence, denied full and effective therapeutic input in relation to the complainant's placement and care.
73. Accordingly, I consider that, in accommodating the complainant at Holden Hill Cells, DCS acted in a manner that was wrong within the meaning of the Ombudsman Act.
74. As foreshadowed in the provisional report, I maintain the view that:
- the practice of accommodating HRAT prisoners at Police Cells is one which should be exercised by DCS with caution. Although the Instruction requires that HRAT prisoners accommodated at police cells should be prioritised for relocation elsewhere, I consider that while Police Cells are used as a means of managing capacity issues, HRAT prisoners should only be placed at such locations in limited circumstances and only when absolutely necessary
  - in light of the Royal Commission into Aboriginal Deaths in Custody and the recognised risks and vulnerabilities specific to Aboriginal people in custody, an Aboriginal person who is a HRAT prisoner should never be accommodated at Police Cells
  - DCS must always engage in a joint discussion with SAPHS about a prisoner's placement during the Admission process and the reasoning for accommodating

---

<sup>56</sup> *SOP 001A*, above n 17, 3.10.5.

<sup>57</sup> *A WHO Guide to the Essentials in Prison Health*, above n 52, 133.

<sup>58</sup> *RCIADIC*, above n 53.

HRAT prisoners at Police Cells should be clearly recorded by both agencies (in the case of DCS, as a JIS note).

75. I consider that the Instruction should be updated and amended as such.

76. In response to the provisional report the Chief Executive of DCS:

- acknowledged that the complainant should not have been transferred to Holden Hill cells and should not have remained there following the HRAT assessment by the Social Worker
- further to this, the Chief Executive stated that although he had previously advised that the complainant had been cleared by DCS and SAPHS staff for transfer to Holden Hill Cells, a review of the matter had concluded that the complainant should have remained at YLP and the Chief Executive's previous submission was incorrect
- informed me that the Instruction will be re-issued to:
  - reiterate that HRAT prisoners should only be placed in police cells when absolutely necessary and in consultation with the SAPHS
  - include specific reference to the cultural needs of Aboriginal prisoners
  - emphasise that appropriate weight must be placed on the mental health needs of prisoners
- informed me that a full review of the HRAT processes at YLP will be undertaken including, case management, admission and placement procedures for complex needs prisoners, trigger and escalation processes and SOP 090
- DCS intends to create more robust practices that are consistent with DCS procedures as well as the Chief Executive's expectations and which are 'attentive to the need of prisoners at risk of self harm or suicide, particularly Aboriginal prisoners ...'.

77. I asked for further clarification by DCS in relation to why the previous submission that the complainant had been 'cleared' for transfer to Holden Hill Cells was incorrect. I also sought clarification in relation to why DCS now submits that the complainant should not have been transferred to Holden Hill Cells. By email dated 14 November 2017, the following explanation was provided:<sup>59</sup>

In correspondence dated 28 September 2016, David Brown advised that "[the complainant] was assessed by DCS and SAPHS staff and cleared for transfer to HH for an interim period. The admitting officers and SAPHS both agreed at the time of admission that [the complainant] was fit to be accommodated at HH".

Upon receipt of the provisional report in relation to this matter, DCS undertook further enquiries, including review of the Initial Response Plan that was developed as a result of the Notice of Concern raised upon [the complainant's] admission to YLP on 1 March 2016. Whilst the Initial Response Plan states that [the complainant] should be subject to normal placement conditions and a normal regime, it also indicates that he should be placed in a double cell. Given that there are no double cells at HH, [the complainant] should not have been transferred to HH, but should have remained at YLP.

78. It remained unclear whether the complainant had been formally cleared for placement at Holden Hill Cells. The following explanation was provided by telephone call with my Office:<sup>60</sup>

<sup>59</sup> Email from DCS dated 14 November 2017.

<sup>60</sup> Telephone call between my Legal officer and Manager of Executive Services, DCS on 22 November 2017.

- DCS has no documentation to show that the complainant was cleared for transfer to Holden Hill Cells
- the documentation that DCS does have indicates that the complainant was recommended for a double cell and therefore he should not have been transferred to Holden Hill Cells in the first place, given there are no double cells at Holden Hill Cells.

79. A further explanation was then provided by email:<sup>61</sup>

The documentation DCS has (Initial Response Plan) shows that [the complainant] was cleared for placement at Holden Hill. However, the document also indicates that he should have been placed in a double cell. Given that there are no double cells at Holden Hill, he should not have been transferred to that location.

80. I can confirm that the complainant's Initial Response Plan, which forms part of the NOC form, recommends that the complainant was to be placed in 'normal' accommodation under 'normal regime' in a 'double cell'.<sup>62</sup> Given that Holden Hill Cells are not double cells, it is clear that the complainant should not have been accommodated there.
81. Further, there is nothing noted on the Initial Response Plan that mentions the complainant was cleared to be placed at Holden Hill Cells. Accordingly, I have not been provided any documentation that records why the complainant was placed at Holden Hill Cells or that he was appropriately cleared to be placed there.
82. Although it is concerning that DCS does not have documentation to show that the complainant was cleared for the transfer to Holden Hill Cells, I am mindful that DCS is unable to locate the complainant's Prisoner Case File; an issue I consider separately in this report. I accept that DCS cannot confirm whether such clearance documentation ever existed and consequently, I am unable to make a finding either way. Regardless, I consider that because the complainant was recommended for a 'double cell', this only further supports the fact that DCS acted in a manner that was wrong in placing the complainant at Holden Hill Cells.
83. In the response to my provisional report, the Chief Executive also advised me that DCS intends to re-issue the Instruction as well as undertake a review of the wider HRAT processes and relevant SOP's. I note that DCS has also invited me to meet with key senior staff to discuss the HRAT processes. I have agreed to meet with DCS in early 2018 to discuss the HRAT review and processes.
84. It is worth noting that although the placement of the complainant at Holden Hill Cells was not a decision made by the SAPHS, in responding to the provisional report the SAPHS acknowledged my views and indicated full support of the strengthening of communication between DCS and the SAPHS. Encouragingly the SAPHS advised that a Model of Care for Aboriginal Prisoner Health and Wellbeing for South Australia has been commissioned and implemented by the SAPHS and advised that this Model of Care may address many of the issues raised in my report.
85. I have considered a draft copy of the Model of Care. The document has been prepared by Wardliparingga, the Aboriginal Health Research Unit at the South Australian Health and Medical Research Institute and endeavours to provide an evidence-based model of care specific to the health needs and complexities of the Aboriginal adult population in South Australia's prisons. Mental illness forms one of the five priority health conditions identified in the document.

<sup>61</sup> Email from Manager Executive Services, DCS dated 14 December 2017.

<sup>62</sup> Complainant's Notification of Concern form dated 1 March 2016.

## Opinion

In light of the above, I consider that, in accommodating the complainant at Holden Hill Cells, DCS acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

To remedy this, I recommend under section 25(2) of the Ombudsman Act that DCS update and amend the Instruction to include that HRAT prisoners should only be placed at Police Cells in limited circumstances, only when absolutely necessary and following a joint discussion with SAPHS. The reasons for doing so must be clearly recorded (in the case of DCS by making a JIS note). An Aboriginal person who is a HRAT prisoner should never be placed in Police Cells. I will meet with DCS in order to discuss the HRAT processes.

### Whether SAPHS' delay in providing the complainant's medication was unreasonable

86. The complainant was unable to take prescribed medication for the first four days of his detention.

87. DCS informed me that:

... whilst it is regrettable that [the complainant] went without his medication while information was sought from his community health provider, this is a matter for SAPHS and not something which DCS would generally be involved [sic].<sup>63</sup>

88. That said, DCS also provided the following information:<sup>64</sup>

- during the admission process, when a prisoner informs SAPHS that they are on medication, SAPHS sends a ROI to the relevant community health practice if the prisoner does not have a current script or current packaging of medication on them at the time
- some General Practitioners (GP) only respond to ROI's once a week
- it can take between four and seven days for the information to be released and therefore '1 March 2016 to 4 March 2016 is not considered an unreasonable length of time'
- SAPHS provides a daily service at Holden Hill Cells in which medications are issued to prisoners and prisoners at Holden Hill Cells have the opportunity to speak to SAPHS staff if they have any health concerns or require un-scripted medications such as paracetamol.

89. SAPHS has explained:<sup>65</sup>

- the ROI was faxed on the evening of 1 March 2016 and the GP's practice responded at 13.30 on 3 March 2016
- 'there is often not an immediate response to the ROI and the timeline does not appear to be prolonged as the GP may not be on duty every day and may have priority matters to deal with in their practice'
- SAPHS will re-issue a ROI if a response is not received within seven days.

<sup>63</sup> Letter from DCS dated 26 September 2016.

<sup>64</sup> Letter from DCS dated 26 September 2016.

<sup>65</sup> Letter from SAPHS dated 21 September 2016.

90. For these reasons, the agencies do not consider that the timeframe in which the complainant was provided medication was unreasonable.
91. I requested that DCS and SAPHS provide copies of all policies and procedures relevant to the provision of medication to prisoners, including those accommodated at Police Cells.
92. DCS informed me that no policy or procedure was in place in relation to the provision of medication to prisoners accommodated at Holden Hill cells.<sup>66</sup> DCS provided copies of a Local Operating Procedure (LOP) concerning the City Watch House,<sup>67</sup> and an interim LOP concerning the Sturt Police Cells.<sup>68</sup> Both LOP's address the provision of medical services to prisoners accommodated in those Police Cells. DCS has explained:

Whilst I am unsure why a LOP was not created for HH, I can advise that the Department is now looking to rectify this omission, as well as update the LOPs for CWH and Sturt.<sup>69</sup>

93. I asked that in responding to my report, DCS provide me with updated copies of LOP's for all Police Cells used by DCS.
94. SAPHS informed me that no policy or procedure existed in relation to the provision of health care at Police Cells as they are not intended to be 'long term care sites'.<sup>70</sup> However, I was provided with a copy of the SAPHS Model of Care and the ROI Flowchart.
95. The Model of Care dated August 2016 was in draft form at the time of the complainant's detainment. However, SAPHS submits that it simply formalises the practices and model of health care that was already in place concerning the care provided to all prisoners.<sup>71</sup>
96. The provision of health care to prisoners is the responsibility of SAPHS and the Model of Care provides that it is the responsibility of SAPHS to obtain information from external health providers to ensure that a prisoner has continuity of health care and medication.
97. The ROI Flowchart sets out the following process for obtaining the information from external health providers:

ROI's (or Patient Consents) signed by the patient and received from Medical Officer (MO) or Nursing staff are faxed by the ASO or nursing staff to the patient's external medical provider to obtain relevant and specific medical information pertaining to the patient's continuation of treatment and medication.

...

- ROI's are to be faxed **IMMEDIATELY**, when received by the ASO.
- ROI's marked **URGENT** require the ASO to make a follow up phone call to the external medical provider to ensure the request is received and to reiterate request urgency.

...

- The information recorded on the spreadsheet enables ASO's to track the ROI's to ensure reply information has been received.
- A turn-around period of 2 weeks is allowed to receive a reply (depending on the urgency of reply, as indicated on the ROI)

...

- ASO to follow up with external medical provider by phone if an ROI reply has not been received within the required time period. ASO to re-fax ROI and document in

<sup>66</sup> Letter from SAPHS dated 21 September 2016; letter from DCS dated 28 September 2016.

<sup>67</sup> Local Operating Procedure, No: 62, *DCS Prisoners Housed at the City Watch House*, Issue Date: 5 December 2006.

<sup>68</sup> Interim LOP - DCS Prisoners Housed at Sturt Police Cells, 21 March 2014.

<sup>69</sup> Letter from DCS dated 28 September 2016.

<sup>70</sup> Letter from SAPHS dated 21 September 2016.

<sup>71</sup> Email from SAPHS dated 31 May 2016.

Health Record. ASO to also document follow up requests on the Request for Information Spreadsheet.

- When the ROI information is received (either by fax/mail), the information must be brought to the attention of medical staff as soon as possible ...

98. In the complainant's case SAPHS did not consider the ROI to be 'urgent'. This means that, in accordance with the ROI Flowchart, it would have been acceptable for SAPHS to wait two weeks before recontacting the complainant's GP if the ROI had not been responded to.
99. In the complainant's case, the ROI was responded to and he received medication on the fourth day of his detainment. I accept SAPHS' submission that the complainant's ROI would have been re-issued if a response was not received in seven days.<sup>72</sup> However, I consider that four days is a considerable amount of time for a person to be without prescribed medication and I am particularly concerned that the ROI Flowchart provides that, unless an ROI is determined to be urgent, a prisoner could effectively be without prescribed medication for two weeks before SAPHS recontacts the relevant external health provider to obtain a response.
100. The ROI Flowchart does not indicate what conditions or circumstances would amount to an ROI being determined to be urgent and SAPHS has explained that there is no official policy document that specifically provides for this.<sup>73</sup> SAPHS provided the following information:<sup>74</sup>

The ROI request is a part of the admission process with escalation dependent on clinical risk factors related to the medical/nursing staff's assessment of underlying medical conditions, risk to self/others, or risk of clinical deterioration and covers general, mental health and substance abuse conditions. During the admission phase the public sector general and mental health data bases are checked. We are dependent on the turnaround time from the community provider. At the time of the admission and subsequent reviews, if assessed as requiring immediate clinical or mental health assessment the patient would be referred to the public sector emergency department for review.

101. Accordingly, the act of determining whether an ROI should be 'urgent' appears to form part of the medical assessment of a prisoner. I note that it is not my role to investigate the provision of health care and therefore I am unable to investigate the medical assessment undertaken by SAPHS. However, I am able to consider the administrative acts and practices related to ROI's.
102. The Model of Care clearly addresses that prisoner populations have a particular 'health profile' characterised by 'disadvantage' and with a 'greater burden of disease, both physical and mental' than the general population.<sup>75</sup> The model of Care identifies the following 'priority areas' and areas of 'highest health care needs' of prisoners:<sup>76</sup>
- Diabetes
  - Asthma
  - Cardiovascular Disease
  - Mental Health
  - Blood borne viruses and sexually transmitted infections
  - Medication Assisted Treatment for Opioid Dependence
  - Epilepsy
  - Annual Health Check
  - Complex Care Planning
  - Drug and Alcohol Dependency

<sup>72</sup> Email from SAPHS dated 31 May 2017.

<sup>73</sup> Email from SAPHS dated 6 June 2017.

<sup>74</sup> Ibid.

<sup>75</sup> Central Adelaide LHN, SA Prison Health Service, *Model of Care*, August 2016 Model of Care, 5.

<sup>76</sup> Ibid, 8.

- Falls Prevention
- Seizure Management.

103. The Model of Care also recognises that ‘Medication reconciliation is key to continuity of medication management’.<sup>77</sup>

104. International law accepts that an individual has a right to health and access to medicine is considered a part of this right.<sup>78</sup> The World Health Organisation recognises that.<sup>79</sup>

In forensic ethics regarding prison health care, the aim has to be to implement health care in the prison based on the principle of equivalence. This means that the level and quality of the basic health services should be the same as in the community.

105. In the context of the complainant’s circumstances, I am also mindful that the Royal Commission into Aboriginal Deaths in Custody recognised the particular importance of continuity of medication for Aboriginal people in custody:

The prevalence, and apparently poor management, of such long-term health conditions needs to be recognised by those responsible for the care of Aboriginal people in custody. Without such recognition, including recognition of the need for medication, needless deaths in custody will continue to occur. Much the same can be said for other long-term health conditions known to be more prevalent among Aboriginal people ... It is important that custodial authorities do all they can to ensure that people with the need for regular medications continue to receive them while they are in custody.

106. I accept that SAPHS is reliant on external health providers responding to ROI’s and that the complainant’s ROI was responded to and he received medication on the fourth day of his detainment, within the time provided for by the policy. However, I am of the view that the two week turn-around provided for by the ROI Flowchart (and even the seven day turn-around referred to by SAPHS) is a considerable amount of time to be without prescribed medication, particularly when prescribed medication relates to a priority area identified by the Model of Care. Such a length of time is fraught with very serious risks.

107. Further, the practice of waiting for seven to fourteen days before re-contacting an external health provider or re-issuing an ROI that has not been responded to, is clearly in conflict with the objectives of the Model of Care in relation to both managing the complex health needs of prisoners and ensuring continuity of medication and care, as well as in conflict with the expectations of international law.

108. Accordingly, I consider that the delay in SAPHS providing the complainant’s medication was in accordance with a policy and practice that is unreasonable for the purposes of section 25(1)(c) of the Ombudsman Act.

## Opinion

In light of the above, I consider that the delay in SAPHS providing the complainant’s medication was in accordance with a policy and practice that is unreasonable for the purposes of section 25(1)(c) of the Ombudsman Act.

To remedy this, I recommend under section 25(2) of the Ombudsman Act that SAPHS amend the ROI Flowchart to provide that ROI’s concerning medication must be immediately obtained from an external health provider so that the medication can be administered in accordance

<sup>77</sup> Ibid, 11- 12.

<sup>78</sup> World Health Organisation (WHO) Constitution (1946) the Universal Declaration of Human Rights (1948) and the *ICESCR*, above n 20.

<sup>79</sup> *A WHO Guide to the Essentials in Prison Health*, above n 52, 134.



with the dosage regimen prescribed for that patient and without a period of discontinuity of the medication.

In addition, I note that SAPHS responded to the findings and recommendation as expressed in the provisional report and advised that a Quality Improvement Project has been initiated in order to address the issues highlighted in this investigation. I look forward to the SAPHS informing me of the outcomes of that Project as well as advising me of the steps taken to implement this recommendation.

### Whether DCS' failure to retain official records was contrary to law

109. In considering the information provided to me by the agencies it became apparent that certain documents concerning the complainant's admission process either had not been provided to me, had not been retained by the agencies, or were not completed at the time of admission.

110. On the admission of a prisoner, DCS should receive the following forms from SAPOL:<sup>80</sup>

- Prisoner Screening Form (PD331)
- Prisoner Risk Assessment (PD331A)
- SAPOL Police Custody Transfer Form (PD346)
- Medical Examination of Prisoner (PD348)
- South Australian Police Prisoner Medication Advice (PD348A)
- Record of Prisoner Inspection, Contact and Risk Assessment Review (PD465)
- Prisoner Medical Record (PD465A)
- Record of Prisoner Inspection, Contact and Risk Assessment Review (Supplement) (PD466).

111. DCS is required to consider and place the SAPOL forms in the Prisoner Case File.<sup>81</sup>

112. DCS is then required to undertake an Admission Interview and the following forms are to be completed and retained by DCS in the Prisoner Case File:<sup>82</sup>

- Admission Checklist
- Specific Needs Assessment
- Prisoner Stress Screening Form
- Prisoner Interview Form
- Compatibility to Share Accommodation
- Prisoner Health Information Form
- PTS - Prisoner Declaration Access and Use Conditions.

113. The Joint Systems Protocol and SOP 001A (**the relevant policies**) provide that all SAPOL forms should be given to medical staff as soon as possible and SAPHS is to 'consider/action where appropriate'.<sup>83</sup> SOP 001A provides that DCS must give the SAPHS admitting nurse a copy of the DCS Prisoner Stress Screening Form and the SAPOL Prisoner Screening Form (PD 331) which must be retained on the Prisoner Medical File.<sup>84</sup> SAPHS must provide a copy of the completed Prisoner Health Information Sheet to DCS,<sup>85</sup> and DCS must retain the Prisoner Health Information Sheet in the Prisoner Case File.<sup>86</sup>

<sup>80</sup> SOP 001A, above n 17, 3.5.8.

<sup>81</sup> SOP 001A, above n 17, 3.5.9 and *Joint Systems Protocol* above n 16, p 4.

<sup>82</sup> SOP 001A, above n 17, 3.7.

<sup>83</sup> *Joint Systems Protocol*, above n 16, p 3 and *SOP 001A*, above n 17, 3.5.8.

<sup>84</sup> SOP 001A, above n 17, 3.7.6.

<sup>85</sup> *Joint Systems Protocol*, above n 16, p 5.

<sup>86</sup> SOP 001A, above n 17, 3.8.3 and *Joint Systems Protocol*, above n 16, p 5.

114. In undertaking this investigation I asked both agencies to provide me with copies of all documents relevant to the complaint. In addition to policy documents, HRAT Minutes and case notes, DCS provided a copy of the NOC form. SAPHS provided Progress Sheet notes, the Admission Nursing Assessment form, the ROI form, the NOC form, and both the DCS Prisoner Stress Screening Form and the SAPOL Police Custody Transfer Form (PD346) that had been received from DCS during the admission process.
115. I considered the documents provided to me and noted that:
- the SAPOL forms and Admission forms which should be retained by DCS in accordance with the relevant policies had not been provided to me
  - because SAPHS had retained the DCS Prisoner Stress Screening Form in accordance with the relevant policies, I could conclude that DCS provided that document to SAPHS as required
  - although the relevant policies require that SAPOL Prisoner Screening Form (PD 331) be provided to SAPHS by DCS, the Police Custody Transfer Form (PD346) had been provided to SAPHS which contains both information copied from the SAPOL Prisoner Screening Form (PD 331) as well as an extensive amount of additional information that may be of assistance in the admission process
  - SAPHS had completed and retained the Admission Nursing Assessment form as required by the relevant policies.
116. I wrote to DCS and asked that copies of the SAPOL forms be provided. The Chief Executive of DCS responded:<sup>87</sup>
- I can advise that pursuant to *SOP 001A Custodial - Admission - Case Management*, such documents received by the Department for Correctional Services (DCS) are placed on a prisoner's case file upon admission. However, once a prisoner is discharged and no longer under DCS supervision, during the archive process of the prisoner file (and pursuant to State Records archive requirements) not all documents from other agencies are retained (given those agencies should retain the documents themselves).
- ... A thorough review of [the complainant's] archived file has been conducted and I can advise that DCS has not retained any of the SAPOL documents requested by your office.
117. My Office then sought confirmation from DCS that the Admission Interview documents had been retained and requested copies of those documents. My Office also sought copies of paperwork relevant to the assignment of the complainant to Holden Hill Cells. My Office was informed that, despite undertaking searches, the complainant's Prisoner Case File could no longer be located.<sup>88</sup>
118. Accordingly, it appears that DCS has:
- not retained the SAPOL forms
  - is unable to locate the complainant's Prisoner Case File.
119. This was confirmed in DCS' response to the provisional report.

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<sup>87</sup> Letter from the Chief Executive of DCS dated 28 February 2017.

<sup>88</sup> Emails from DCS dated 13 July 2017 and 18 August 2017.

### SAPOL forms

120. The *State Records Act 1997* provides that every agency must ensure that 'official records' in its custody are maintained in good order and condition, and are only destroyed in certain circumstances. In particular the State Records Act provides:
- an official record is a record made or received by an agency in the conduct of its business<sup>89</sup>
  - agencies are required to keep official records in their custody in good order and condition<sup>90</sup>
  - agencies must ensure that official records are only disposed of in accordance with the Act and under relevant disposal schedules<sup>91</sup>
  - to *dispose* of an official record includes to carry out an act or process as a result of which it is no longer possible or reasonably practicable to reproduce the whole or a part of the information contained in the record<sup>92</sup>
  - Section 16 of the Act provides that if the record keeping practices of an agency are brought to the attention of the Manager of State Records as being inadequate, then the Manager is required to report this to the Minister.
121. I am satisfied that SAPOL forms are records 'received' by DCS and are therefore official records for the purposes of the State Records Act. In responding to my enquiries DCS advised that, in accordance with State Records 'archive requirements', it disposes of the SAPOL forms once a prisoner is discharged but did not reference the authority relied on to dispose of the SAPOL forms.
122. Section 23(1) of the State Records Act requires that an agency must not dispose of official records except in accordance with a determination made by the Manager of State Records, with the approval of the State Records Council. The provisional report noted that, as I understand it, the following disposal schedules authorise arrangements for the retention and destruction of DCS records in accordance with section 23 of the State Records Act:
- General Disposal Schedule No.30 - State Government Agencies in South Australia<sup>93</sup> (**the GDS**)
  - Operational Records Disposal Schedule - Department for Correctional Services (DCS) (and predecessor agencies) (**the RDS**).
123. The GDS authorises the disposal of a long list of record types and I do not consider that the SAPOL forms fall within those addressed by the GDS. The GDS also addresses the concept of Normal Administrative Practices (**NAP**), which provides for the routine destruction of drafts, duplicates and publications; in particular:
- items of an ephemeral or transitory nature created, acquired or collected by agency officers in the course of their official duties. Such material has no ongoing value and is not usually incorporated into the agency recordkeeping system.<sup>94</sup>

<sup>89</sup> *State Records Act 1997*, s 3(1).

<sup>90</sup> *State Records Act 1997*, s 13.

<sup>91</sup> *State Records Act 1997*, s 23.

<sup>92</sup> *State Records Act 1997*, s 3.

<sup>93</sup> State Records of South Australia, *General Disposal Schedule No. 30, State Government Agencies in South Australia*, Disposal Schedule (Effective from 1 January 2016 to 30 June 2026) Version 1.1.

<sup>94</sup> *Ibid*, p 18.

124. The GDS provides guidance in relation to what kinds of documents meet the NAP test for disposal. On the basis that the SAPOL forms ‘form part of an agency transaction’, ‘add value to an existing record’ and ‘show how a decision was made’, I do not consider that they meet the test.<sup>95</sup>
125. The RDS addresses records concerning Offender Management, including ‘Admission’ and ‘Offender Records’. Items 7.1 and 7.2 of the RDS concern records relating to a prisoner’s Admission to prison from police custody. However, these Items relate to records ‘prior to the implementation of the Justice Information System (JIS)’ and therefore are not relevant to the SAPOL forms.
126. Item 7.17.3 concerns Offender Records relating to ‘substantive administrative information required for the ongoing management of the offender, which may relate to future action’ and although SAPOL forms are not listed as an example, I am inclined to accept they would fall within this class. However, if that is the case, then records of this kind are to be retained and only destroyed ‘100 years after date of birth or 10 years after termination of Correctional Services Management, whichever is later’.
127. In the provisional report DCS was invited to provide clarification in relation to what authority is relied upon in relation to the disposal of the SAPOL forms. However, the provisional report also noted that my Office was actively making enquiries with DCS at the time the complainant was discharged from prison and that the RDS provides:
- Where DCS is aware that records may be required for use in litigation, for use in a government enquiry or the consideration of the Ombudsman, the records must not be destroyed. In such circumstances the records must be retained until two years after all cases and enquiries are complete (including appeals) and then have the original retention period applied to the records.
128. The provisional report noted that the SAPHS had provided information to my investigation in relation to Coronial Inquests concerning deaths in custody which have resulted in recommendations that aim to ensure the prisoner admission process is both administratively and risk effective. In particular the following recommendation stemmed from the Coroner’s Court Inquest into the death in custody of Mr Shane Rene Blunden:
- ...  
3) That the Chief Executive of the Department for Correctional Services ensure that all documentation that is received at the time of the arrival of a prisoner at a correctional institution in this State is seen and examined by the admitting officer and that a copy of all such documentation is placed within the prisoner’s case management file. A copy of the entirety of the documentation should be provided to the Prison Health Service upon admission of the prisoner. No document should be removed from the bundle of documentation that is received at the time of admission.  
...
129. The provisional report foreshadowed that I am satisfied that SAPOL forms provide a record of a prisoner at the time that person is taken into the care of DCS and these forms inform the Admission process. Retaining SAPOL forms would ensure there is a complete record of a prisoner’s admission process. Having complete and accurate records is both good administrative practice and important in the event that some form of inquiry later be required.
130. In his response to the provisional report, the Chief Executive of DCS:<sup>96</sup>
- acknowledged that DCS failed to retain documentation and therefore accepted the provisional view

<sup>95</sup> Ibid.

<sup>96</sup> Letter from Mr David Brown, Chief Executive, Department for Correctional Services, dated 20 October 2017.

- provided further information relating to DCS' records management processes generally that was not provided to me during the investigation, including:
  - that DCS has *Policy 31 - Records Management (Policy 31)* and *SOP 099 - Records Management (SOP 099)* in place defining DCS' requirements in relation to records management, including a records disposal program; the Chief Executive provided a copy of DCS' policy and procedure which are drafted in accordance with the State Records Act
  - that, in compliance with the relevant policies, all offender records received and processed by DCS' Records Management Unit (RMU) are scanned and stored on a local network drive. The original hard copy is stored off site for the retention period of 100 years from the offender's date of birth
  - in accordance with the DCS disposal authorisation process in SOP 099, all record destructions are signed off by the relevant business unit before being approved by the Team Leader Records
  - records management training and compliance assessments are undertaken by the Records Management Consultant on a regular basis
- explained that in relation to SAPOL forms:
  - when a prisoner enters DCS custody from SAPOL the details contained in the SAPOL forms are entered into the JIS
  - during the archival process only SAPOL forms containing indicators of medical examination, self harm or violent behaviour are retained due to the business value of those records and doing so 'provides a quality assurance checkpoint on any queries regarding the accuracy of the JIS input'
  - it is the Chief Executive's provisional view that all SAPOL forms have continuing business value and therefore should be retained and therefore the Chief Executive will be issuing a direction to the Executive Director People and Business Services to implement this change
- advised that DCS will now undertake a review of its records management processes and the requirements in relation to the retention of documents will be reiterated to all staff.

131. I acknowledge DCS' acceptance of the view that all SAPOL forms received on the transfer of a prisoner are records of business value to DCS and should be retained in accordance with the State Records Act. It is encouraging that the Chief Executive intends to issue a direction to implement changes in relation to this issue and to undertake a wider review of DCS records management processes as well as reiterating to staff, the requirements in relation to the retention of documents.

132. However, on the information before me I am satisfied that DCS has failed to retain SAPOL forms in accordance with the State Records Act and on this basis, it is my view that doing so was contrary to law within the meaning of the Ombudsman Act.

#### *The complainant's Prisoner Case File*

133. Again, I am mindful that an agency must ensure official records in its custody are maintained in good order and condition,<sup>97</sup> and an agency must not dispose of official records except in accordance with a relevant disposal schedule.<sup>98</sup>

134. Section 3 of the State Records Act provides the following:

*dispose of* an official record means -

...

<sup>97</sup> *State Records Act*, s 13.

<sup>98</sup> *State Records Act*, s 23(1).

- (b) carry out an act or process as a result of which it is no longer possible or reasonably practicable to reproduce the whole or a part of the information contained in the record; or ...

135. The Adequate Records Management Standard (**the Standard**), issued by State Records provides a practical records management framework to support agencies to satisfy their obligation to maintain records in good order and condition and assists State Records in determining whether a matter must be reported to the Minister under section 16 of the State Records Act. Outcome 5 of the Standard provides that agencies must ensure official records are protected from unauthorised or unlawful access and that 'measures are in place to prevent 'loss, damage and destruction' of records'.<sup>99</sup>

136. The provisional report foreshadowed that the apparent loss of the Prisoner Case File is contrary to law within the meaning of the Ombudsman Act and the Manager of State Records may also be informed of this matter also.

137. In response to the provisional report the Chief Executive provided:<sup>100</sup>

- when a prisoner is released from prison their Prisoner Case File is meant to be transferred to the DCS Records Management Unit for appropriate archiving (I note that DCS' archiving process has been described above in relation to the SAPOL forms)
- the complainant's Prisoner Case File was never received by the Records Management Unit and therefore was not archived
- despite extensive searches being undertaken at a number of DCS sites, the complainant's Prisoner Case File has not been located
- a previous submission was made to my investigation that the complainant's Prisoner Case File had been reviewed, however, given that the complainant's Prisoner Case File has not been located, it appears this review related to previous periods of imprisonment.

138. The Chief Executive stated:

Despite extensive searches being undertaken at a number of DCS sites, [the complainant's] file has not been located. This error is not acceptable and does not meet the requirements of the Department's policy or procedure with respect to records management. However, I am confident that this is a single error and is not indicative of a systemic issue.

139. As I have previously noted, DCS now intends to undertake a review of its records management processes and reiterate the requirements in relation to the retention of documents to all staff.

140. Again, it is encouraging that DCS has acknowledged that the complainant's Prisoner Case File cannot be located and that DCS will be undertaking a review of its records management processes. Also, I accept that the Chief Executive has acknowledged that this error is not acceptable and not in accordance with the requirements of the State Records Act. However, I am unable to determine whether this is a single error and not indicative of a systemic issue in circumstances where the loss of the complainant's Prisoner Case File only came to light due to my requests for information for the purposes of this particular investigation.

<sup>99</sup> State Records of South Australia, *Adequate Records Management Standard*, December 2013, Version 3.0, p 8.

<sup>100</sup> Letter from Mr David Brown, Chief Executive, Department for Correctional Services, dated 20 October 2017.

141. In light of this and given DCS' failure to retain the SAPOL forms, I intend to inform the Manager of State Records of the errors relating to DCS' records management identified in this investigation.

### Opinion

In light of the above, I consider that, in failing to retain official records, DCS acted in a manner that was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that, as proposed by the Chief Executive of DCS:

- the Chief Executive of DCS issues a direction to the Executive Director People and Business Services to implement the retention of SAPOL forms
- DCS undertakes a review of its records management processes
- DCS advises staff of the requirements in relation to the retention of documents in accordance with the State Records Act.

Further, I intend to inform the Manager of State Records of DCS' failure to retain records in accordance with the State Records Act.

### Summary and Recommendations

My final views are as follows:

1. In accommodating the complainant at Holden Hill Cells, DCS acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

To remedy this, I recommend that the Instruction should be updated and amended to include that HRAT prisoners should only be placed at Police Cells in limited circumstances, only when absolutely necessary and following a joint discussion with SAPHS. The reasons for doing so must be clearly recorded (in the case of DCS by making a JIS note). An Aboriginal person who is a HRAT prisoner should never be placed in Police Cells.

2. The delay in SAPHS providing the complainant's medication was in accordance with a policy and practice that is unreasonable for the purposes of section 25(1)(c) of the Ombudsman Act.

To remedy this, I recommend that the ROI Flowchart be amended to provide that ROI's concerning medication must be immediately obtained from an external health provider so that the medication can be administered in accordance with the dosage regimen prescribed for that patient and without a period of discontinuity of the medication.

In addition, I note that SAPHS responded to the findings and recommendation as expressed in the provisional report and advised that a Quality Improvement Project has been initiated in order to address the issues highlighted in this investigation. I look forward to the SAPHS informing me of the outcomes of that Project as well as advising me of the steps taken to implement this recommendation.

3. In failing to retain official records, DCS acted in a manner that was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that, as proposed by the Chief Executive of DCS:

- the Chief Executive of DCS issues a direction to the Executive Director People and Business Services to implement the retention of SAPOL forms
- DCS undertakes a review of its records management processes
- DCS advises staff of the requirements in relation to the retention of documents in accordance with the State Records Act.

Further, I intend to inform the Manager of State Records of DCS' failure to retain records in accordance with the State Records Act.

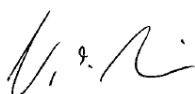
### Final comment

In accordance with section 25(4) of the Ombudsman Act DCS and SAPHS should report to the Ombudsman by **5 March 2018** on what steps have been taken to give effect to the recommendations above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

I have also sent a copy of my report to the Minister for Correctional Services and the Minister for Health as required by section 25(3) of the *Ombudsman Act 1972*.



Wayne Lines  
**SA OMBUDSMAN**

21 December 2017