



OmbudsmanSA

Ombudsman SA

ANNUAL REPORT 2015/2016



What does Ombudsman SA do?

Ombudsman SA investigates complaints about South Australian government and local government agencies, and conducts Freedom of Information reviews.

The Ombudsman can also receive information about state and local government activities confidentially from whistleblowers.

If you're not sure whether Ombudsman SA can help you, we are happy to discuss your matter further. If it is not under our jurisdiction, we will be happy to point you to another agency who may be able to assist.

Visit our website for further information about our services or to register a complaint directly online:
www.ombudsman.sa.gov.au

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OmbudsmanSA

The Honourable President
LEGISLATIVE COUNCIL
Parliament House
Adelaide

The Honourable Speaker
HOUSE OF ASSEMBLY
Parliament House
Adelaide

It is my duty and privilege to submit the South Australian Ombudsman's Annual Report for 2015-16 to the Parliament, as required by section 29(1) of the *Ombudsman Act 1972*.

Wayne Lines

SA OMBUDSMAN

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THE YEAR IN REVIEW

The Year In Review

Introduction

This has been a busy and productive year with an increase in complaints, formal investigations and Freedom of Information determinations. In all, there were 11,169 approaches to my office. The Office's new jurisdiction over complaints under the *Return to Work Act 2014* began on 1 July 2015. Two significant audits have reached advanced stages and procedures compliant with the Information Sharing Guidelines have been adopted by all relevant state agencies. I have also completed a schedule of visiting all 10 of South Australia's prison facilities.

Complaints

The trend of the previous years of increased numbers of complaints continued this year. The Office received 73 more Ombudsman Act complaints than last year. In addition, there were 424 complaints received in relation to the *Return to Work Act 2014*. Combined, this represents an increase of 14% in complaints handled by the Office. I made 31 findings of administrative error and issued 72 recommendations under section 25 of the Ombudsman Act.

Ombudsman Act complaints received and completed:

	Received	Completed
Government Departments	1902	1888
Local Government	909	881
Other Authorities	699	700
Total	3510	3469

My office handled 742 general enquiries and fielded 6,254 approaches that related to matters that were outside my jurisdiction. This was a 17% increase on last year.

ICAC Referrals

The number of complaints referred by the Independent Commissioner Against Corruption (ICAC) to my Office pursuant to section 24 of the *Independent Commissioner Against Corruption Act 2012* also increased from 30 in the 2014-2015 year to 46¹ this year. All of them required formal investigation. During the year my Office completed 31 referrals with 10 findings of misconduct or maladministration in public administration being made in five of those cases.

¹ NB. Actual referrals from ICAC numbered 42 but some of these involved more than one respondent and required separate investigations.

Return to Work Jurisdiction

From 1 July 2015, this Office commenced its new jurisdiction under the *Return to Work Act 2014* to receive and investigate complaints from injured workers and employers about breaches of the service standards set out in Schedule 5 of that Act. This jurisdiction departs from the traditional parliamentary ombudsman jurisdiction by extending my investigative powers under the Ombudsman Act to private companies that are self-insured employers with delegated powers and responsibilities under the workers compensation scheme. I am pleased to report that the transition to the new jurisdiction proceeded smoothly. A little over 400 complaints were received and resolved for the year. Two of the complaint investigations reached the formal report stage.

Freedom of Information

The Office received 131 applications for external review in the year. This is slightly less than the 138 received the previous year. However, more applications (126) were closed during the year compared to the previous year (99). Of the 126 applications closed, 75 were finalised by a formal determination, compared with 47 the previous year. The number of cases still under consideration at the year's end rose slightly from 59 last year to 64 this year.

My aim is to complete an external review within four months of receiving a request. This is a reasonable timeframe if the process runs smoothly. However, this is often not the case and many times I receive a request for external review because the agency has neither issued a determination nor conducted an internal review within the statutory periods. In these situations my staff have to spend more time following up the agency to ascertain its position in respect of the application. In addition, the work load has exceeded staffing levels within the FOI Team and I have had to address this by recruiting additional staff to fill a vacancy and cover staff on leave and spreading the work load to members of the Investigation and Assessment Teams.

I have also renewed the staff's focus on reaching a settlement of external review requests wherever appropriate. This reporting period saw a slight increase in the numbers of external reviews that settled.

Information Sharing Guidelines

All the main state government agencies that are responsible for providing services to children and adults who may be at risk of harm have adopted procedures that are compliant with the Cabinet endorsed Information Sharing Guidelines for Promoting Safety and Wellbeing (ISG). However, none have yet fully implemented the ISG to my satisfaction. There are still too many frontline staff and supervisors who are untrained in its use and who are not applying it in practice. To address this issue, my Office has developed an online ISG learning tool that since April 2016 has been made available for download from my website at no cost to agencies, NGOs and local government councils. Some agencies have been utilising this resource while others are yet to take advantage of it.

I have notified agencies of my intention to audit their implementation of the ISG. The audit program will commence in early 2017.

Audits

In June 2015 I advised all 68 councils and the Minister for Local Government that I would commence an audit of council compliance with section 270 of the *Local Government Act 1999* with respect to requirements for internal review of council decisions. The audit has progressed to a provisional report and it is expected that a final report will be tabled in November 2016.

As foreshadowed in my last report, I embarked on a full audit of the Department for Education and Child Development's complaint handling. At the time of preparation of this annual report, the Provisional Report had been delivered to the department and each of the five recommendations made has since either been accepted as drafted, or accepted in principle, subject to further discussion. I anticipate that the audit process will be completed by November 2016, when the report will be tabled in Parliament.

Office Structure

During the reporting period, I implemented a change to the structure of the Office to provide for a simpler line of reporting and more defined work teams in the areas of assessments and investigations. I believe the new structure will enable more collaboration between staff, ensure staff have more access to a line manager and assist the Office to respond more adeptly to changes in work or types of cases. The new structure is set out in Appendix A.

Other Activities

The Department for Correctional Services (DCS)

Prisoner complaints form a significant proportion (33%) of the total complaints received by my Office in relation to state government agencies. Consequently, in 2015 I arranged to meet with the Chief Executive of DCS and his senior officers on a quarterly basis. The meetings provide a 'clearinghouse' for current issues and a means of resolving prisoner complaint related matters without always going through the formal process of investigation. Five meetings were held in the reporting period. Significant agenda items included:

- DCS review of the DCS Prisoner Complaints and Advice Line
- Prisoner property: review of property complaints and procedures
- Restraint of prisoners: policy development and the use of soft restraints
- Forensic mental health patients under the care and control of DCS
- Prison smoking reduction strategy
- DCS initiatives with the Maximum Security and High Dependency Units.

From my perspective, the meetings have been constructive in promoting a greater awareness of our respective office's operations and ensuring progress with DCS' implementation of various recommendations made by me.

At my request DCS arranged for me to visit all prison facilities in the State. At each place I was able to ask questions of staff and meet with prisoners. It came as no surprise that a common concern of prisoners and staff was that each facility was either at full capacity or exceeding capacity with the flow on effect on prison conditions such as the availability of accommodation, access to educational programs and prison visits. At several prisons I was able to observe meetings of senior staff with prisoner representatives. These meetings are usually held monthly and provide an important avenue for prisoner concerns or needs to be raised with management and responded to promptly.

In addition, I was given a tour of the Adelaide Youth Training Centre at Cavan, over which the Department for Communities and Social Inclusion has oversight.

Speaking Engagements

During the course of the year I have spoken at a variety of forums to explain the role of the Office and discuss various topics of interest. I list these engagements here:

- Essential Services Commission of South Australia
- Self Insurers of South Australia General Meeting - Section 180, Return to Work Act Ombudsman Reviews
- Eyre Peninsula Local Government Association
- Public Sector Injury Manager Management Group - The Ombudsman's New Role under the Return to Work Act
- Murray Mallee Local Government Association
- The Legal Services Commission of South Australia - The Ombudsman's New Role under the Return to Work Act
- Governance Update for the Public Sector 2015 - The role of the SA Ombudsman - Observations and Expectations
- District Council of Elliston - New Conflict of Interest Obligations
- Central Local Government Region Meeting
- Interview with Sonya Feldhoff on 891 ABC Adelaide
- Electoral Commission of South Australia
- Local Government Association of South Australia Governance Forum 2015 - Ombudsman Update
- Environmental Health Australia SA Inc - The Value of an Ombudsman: Promoting Integrity Within Local Government
- Norman Waterhouse Lawyers
- Limestone Coast Local Government Association
- Southern Mallee Council
- Local Government Association of SA Board Meeting
- ANZOA conference - Complaints, corruption and maladministration - exploring the boundaries
- Kangaroo Island Council

Staff have also presented at the following events:

- Freedom of Information Accredited Officer training
- Department of Correctional Services officer recruit training
- Families SA Information Sharing Guideline training
- Various ISG information and training sessions
- SOCAP National Conference

Submissions

Upon invitation, my Office has provided submissions and comment on the following bills and draft regulations:

- *Statutes Amendment (Attorney-General's Portfolio) Bill 2015*
- *Disability Services (Inclusion and Monitoring) Amendment Bill 2016*
- *Police Complaints and Discipline Bill 2016*
- *Public Interest Disclosure Bill 2016*
- *Children's Protection (Access to Personal Information) Amendment Bill 2016*
- *Local Government (General) Variation Regulations 2016*
- *Statutes Amendment (SACAT No 2) Bill 2015*
- *Youth Justice Administration Bill 2015*
- *Local Government (General)(Accountability and Governance) Variation Regulations 2016*

A Human Rights Based Approach to the Work of the Ombudsman

In May 2016, I travelled to Belfast, Northern Ireland to attend a conference jointly convened by the Northern Ireland Human Rights Commission, the Northern Ireland Public Services Ombudsman and the International Ombudsman Institute to consider the growing awareness and application of human rights in the work of Ombudsmen internationally. The approach identifies the various human rights principles supported by international convention or state based law and uses those principles for the assessment of complaints and investigating whether a breach has occurred. The approach assists in making decisions about how to best use the Ombudsman's resources as well as deciding whether an administrative act is unfair, unreasonable or unlawful. I believe the approach has the potential to add value to the work of my Office and I intend to use it in a modified form here.

While in the United Kingdom I took the opportunity to meet with the Northern Ireland and Scottish Public Sector Ombudsmen to learn about their operations and key challenges.

Summary of Statistical Information

Ombudsman Jurisdiction	2013-2014						2014-2015						2015-2016			
	Government Departments	Local Government	Other Authorities	Minister	Total		Government Departments	Local Government	Other Authorities	Minister	Total	Government Departments	Local Government	Other Authorities	Total	
Matters received	1585	929	574	2	3090		1881	932	622	2	3437	1902	909	699	3510	
Matters closed	1589	918	585	2	3094		1857	877	607	2	3343	1888	881	700	3469	
Audit Completed	12				12		12				12					

FOI Jurisdiction	2013-2014						2014-2015						2015-2016			
	Government Departments	Local Government	Other Authorities	Minister	Total		Government Departments	Local Government	Other Authorities	Minister	Total	Government Departments	Local Government	Other Authorities	Minister	Total
External reviews received	74	14	25	3	116		82	13	36	7	138	75	20	23	13	131
External reviews closed	98	13	29	10	150		52	14	26	7	99	77	12	28	9	126

ICAC Jurisdiction	2014-2015					2015-2016				
	Government Departments	Local Government	Other Authorities	Total		Government Departments	Local Government	Other Authorities	Total	
Matters received under s24 referral	3	23	4	30		5	35	6	46	
Matters closed	5	59	10	74		6	22	3	31	

Return To Work Jurisdiction 2015-2016					
	Claims Agent	Self-Insured Employer	Service Provider	Total	
Matters received	253	109	62	424	
Matters closed	243	109	62	414	

Section 25 reports completed 2015-16

I made 31 findings of administrative error under section 25 of the *Ombudsman Act 1972* in relation to 26 final reports issued this financial year.

Date of report File number	Respondent Agency	Nature of Matter	Outcome
6 July 2015 2014/06158	Department for Communities and Social Inclusion	Unreasonable delay in recovering unexpended funds	s25(1)(b) Finding (Unreasonable)
6 July 2015 2014/07915	Department of Environment, Water and Natural Resources	Unreasonable advice regarding waiver of penalty	s25(1)(g) Finding (Wrong)
30 July 2015 2015/00747	Department for Education & Child Development	Failure to provide reasons for decision	s25(1)(g) Finding (Wrong)
31 July 2015 2014/09463	Department for Education & Child Development	Failure to comply with Information Privacy Principles	s25(1)(g) Finding (Wrong)
13 Aug 2015 2014/03382	Department for Education & Child Development	Failure to comply with obligation to report	s25(1)(g) Finding (Wrong)
2 Sep 2015 2014/08478	Department for Correctional Services	Unlawful separation of prisoner	2 outcomes of s25(1)(g) Finding (Wrong) s25(1)(a) Finding (Contrary to Law)
10 Sept 2015 2014/07721	City of Burnside	Breach of council member code of conduct	s25(1)(a) Finding (Contrary to Law)
23 Sept 2015 2015/05158	District Council of Mallala	Breach of council member code of conduct	s25(1)(a) Finding (Contrary to Law)
30 Sept 2015 2015/00463	Department for Education & Child Development	Failure to accord procedural fairness	s25(1)(g) Finding (Wrong)
7 Oct 2015 2015/04666	Department for Education & Child Development	Unreasonable investigation of complaint	s25(1)(b) Finding (Unreasonable)
7 Oct 2015 2014/07042	City of Salisbury	Breach of council member code of conduct	s25(1)(a) Finding (Contrary to Law)
15 Dec 2015 2015/05495	City of Charles Sturt	Use of discretionary ward allowances	2 outcomes of s25(1)(a) Finding (Contrary to Law)
15 Dec 2015 2014/09243	City of Salisbury	Breach of council member code of conduct	s25(1)(b) Finding (Unreasonable)
16 Dec 2015 2015/05912	Department for Correctional Services	Failure to have regard to medical advice when shackling prisoner	s25(1)(g) Finding (Wrong)
22 March 2016 2015/04205	City of Victor Harbor	Breach of council member code of conduct	s25(1)(a) Finding (Contrary to Law)
29 March 2016 2015/00235 (Master file)	Department for Communities and Social Inclusion	Unreasonable delays in processing screening applications	s25(1)(b) Finding (Unreasonable) s25(1)(g) Finding (Wrong)
29 March 2016 2015/04338	Berri Barmera Council	Misuse of confidentiality orders	s25(1)(g) Finding (Wrong)
31 March 2016 2015/09985	District Council of Mount Remarkable	Unauthorised removal of water from dam	s25(1)(g) Finding (Wrong)
21 April 2016 2014/08834	Department for Correctional Services	Unlawful shackling of prisoner in hospital	s25(1)(a) Finding (Contrary to Law)



Date of report File number	Respondent Agency	Nature of Matter	Outcome
2 May 2016 2015/04218	Kangaroo Island Council	Misuse of confidentiality orders	s25(1)(g) Finding (Wrong)
9 May 2016 2015/02653	Department of Planning, Transport and Infrastructure	Refusal to withdraw fine	s25(1)(g) Finding (Wrong)
25 May 2016 2015/08889	District Council of Coober Pedy	Breach of council member code of conduct	s25(1)(a) Finding (Contrary to Law)
6 June 2016 2015/10767	City of Victor Harbor	Breach of the Minister's code of conduct for CDAP members	s25(1)(g) Finding (Wrong)
6 June 2016 2015/07555	District Council of Franklin Harbour	Breach of council member code of conduct	s25(1)(a) Finding (Contrary to Law)
10 June 2016 2015/09639	The Barossa Council	Breach of council member code of conduct	2 outcomes of s25(1)(a) Finding (Contrary to Law)
15 June 2016 2015/04783	City of Onkaparinga	Breach of council member code of conduct	s25(1)(a) Finding (Contrary to Law)

COMPLAINTS AND INVESTIGATIONS

Ombudsman Act
Independent Commissioner Against Corruption Act
Return To Work Act

Ombudsman Act

The *Ombudsman Act 1972* empowers me to investigate complaints about state government departments and authorities and local government councils (agencies). I am also able to undertake investigations referred to me by Parliament and conduct investigations on my own initiative.

I have comprehensive powers to investigate administrative acts where I consider an agency's decision-making process or decision is flawed; section 25(1) of the Act empowers me to make findings that an administrative act was unlawful, unreasonable or otherwise wrong.

Some of my jurisdictional limits are: my Office is one of last resort, I must not investigate policy, a complainant must be directly affected by the relevant administrative act, generally the complaint must be made within 12 months of the complainant becoming aware of the matter, and generally I do not investigate where the complainant has alternative right of review. Further, I can decide not to investigate under section 17(2) of the Act, a matter where in all the circumstances of the case, an investigation is unnecessary or unjustifiable.

In exercising my discretion as to whether to investigate a matter I consider the public interest and the improvement of public administration, and am guided by the following criteria adopted by my predecessor, Mr Richard Bingham:

- does the alleged administrative error amount to a serious failure to meet expected standards of public administration?
- is the complaint about matters of serious concern and benefit to the public rather than simply an individual's interest?
- is there evidence of ongoing systemic failure in public administration?
- are the circumstances of the complaint likely to arise again?
- is the complaint about matters of process as well as outcomes?

- is the complaint about failures of ethical and transparent management?
- does the complaint relate to matters of public safety and security, the economic well-being of South Australia, the protection of public well-being and morals or the rights and freedoms of citizens?
- has the complainant suffered significant personal loss?
- would investigation of the complaint be likely to lead to meaningful outcomes for the complainant and/or to the improvement of public administration?
- has another review body considered the matter?
- what is the likelihood of collecting sufficient evidence to support a finding of administrative error?
- would investigation of the complaint involve effort and resources that are proportionate to the seriousness of the matter.

Where I have formed the view that there has been an administrative error, I am able to make recommendations to the agency involved. For example, I may recommend that action be taken to rectify or mitigate the effects of the error, that a practice be varied or legislation amended.

Early Resolution of Complaints

In addition to the 113 matters investigated by my Office this year, 311 complaints were resolved informally at an early stage in the complaint process. The early resolution of complaints by finding mutually acceptable outcomes for complainants and agencies is, by its very nature, an important part of what this Office does. It often yields results quickly, outcomes can be practical, trust in government can be restored and it is less resource-intensive than an investigation process. Below I highlight some of the matters resolved in this manner by my Intake and Assessment Team.

Case studies

Attorney General's Department

Unreasonable debt recovery

2015/09640

Complaint

The complainant was on a pension, had accrued \$5 000 in fines and had a payment arrangement in place with the Fines Enforcement and Recovery Unit (FERU) commencing in June 2015. As no payments were received, a 'cessation of business' had been issued with the Department of Transport. The complainant stated the agreement was to pay \$10 per week. She asked FERU if she could recommence the arrangement and pay \$25 a week but this request was denied unless she paid a lump sum immediately. The complainant stated she had no capacity to make such a payment.

Outcome

My Officer contacted FERU and was advised that the complainant had cancelled the arrangements to pay directly from her Centrelink pension the same day she agreed to the payment plan. However, given the financial circumstances of the complainant and the fact she had two young children, the team leader agreed to allow her to establish a new payment plan of \$25 per week without needing to make an initial lump sum payment. It was stressed to her that this option would not be extended again if she ceased making the payments.

Department for Correctional Services

Unreasonable delay in providing access to property

2015/07057

Complaint

The complainant was a prisoner who was transferred between prisons for the purpose of a court appearance the next morning. The complainant requested access to court documentation and civilian clothing for the court appearance. However, the agency did not provide the prisoner with those property items in time. The complainant advised my Office that he appeared in court dressed in prison issued clothing and without the relevant court documentation.

Outcome

The agency advised that on arrival in the evening, the complainant submitted a Prisoner Property Request Form for his court documentation. However, the agency was not able to process the request in the morning before the complainant had departed for court. It was unclear whether the complainant made a formal request for civilian clothing or whether the agency verbally asked the complainant if he wanted the clothing but the complainant declined.

The agency advised my Office that although it considered the circumstances to be an isolated incident, a Deputy Chief Executive Instruction (the Instruction) had been issued to agency staff, instructing that prisoners who transfer for the purpose of a court appearance within two business days may have specific items, including court documentation, sealed in a separate property bag so as to ensure priority access to those items prior to the court appearance.

Noting that the Instruction did not list civilian clothing as a priority item, my Office sought further comment from the agency and the agency advised that prisoner property procedures were currently under review and the addition of civilian clothing as a priority item would be considered.

On the information before me, I was satisfied that the agency had actively undertaken administrative improvement in order to address the issue of prisoner access to property items for the purpose of a court appearance within two business days of being transferred. Accordingly, I did not consider that further enquiries or an investigation into the complaint was necessary or justifiable.

Department for Education and Child Development
Unreasonable refusal to allow type of restraint for transport of student

2015/10559

Complaint

The complainant was the mother of an autistic child (X) living in regional SA. X attended special classes at a primary school which is a 30 minute journey from his home, and travelled to and from school by a departmental taxi. X had a tendency to unclip his seat buckle during these taxi rides, which presented a safety issue. The complainant purchased a seat belt cover called a 'Hurphy Durphy' which is designed to prevent children from being able to unclip their seatbelt. The complainant was advised by the principal of another school that the department did not permit the use of the device, and required a special 5-point harness as an alternative. This was purchased and did not work. X was allegedly banned from using the school taxi service because of the safety issues. The complainant complained that it was unreasonable of the agency to prevent X from using the Hurphy Durphy device, which resulted in him being banned from using the school taxi service.

Outcome

My Officer assessed the information provided by the complainant, sought a written response from the agency, liaised with parties by telephone and email to clarify the scope and details of the complaint, and provided the agency's response back to the complainant.

The agency advised my Office that the school had been in contact with the complainant to attempt to resolve the issue in advance of Term 1, 2016 commencement. However, the complainant considered that the agency had not been as helpful as they could have been and felt that she was given the run-around. The agency advised my Office that it did not have a ban on the use of Hurphy Durphy devices, rather the policy was that they must be used properly. At the time the complainant was advised that X could not use the device, the device was being used incorrectly.

As a result of the involvement of my Office, the agency provided a written response to the complainant regarding the safe use of the Hurphy Durphy, and the principal of the school was involved in devising therapies to ensure X was safe to travel in the school taxi. It was noted that the agency policy on school travel was currently being reviewed. The matter was resolved with agency cooperation.

Department of Planning, Transport and Infrastructure

Unreasonable refusal to install access ramp

2015/03610

Complaint

The complainant was legally blind, wheel-chair bound and suffered from a severe disability. The complainant approached my Office because she had not been able to persuade the agency to provide her with wheel-chair access to the footpath; this meant that, to reach her bus stop, she had to ride on the road a considerable distance. The area in question was around a busy intersection.

Outcome

My Office recommended that someone from the agency visit the complainant to hear her request and then inspect the site around the intersection. This recommendation was acted upon. The officer from the agency who carried out the on-site inspection was shocked at the danger involved in the complainant having to ride her wheel-chair for a considerable distance on the road in the traffic in order to gain access to the footpath.

The agency acted promptly. Pedestrian kerb ramps were installed so that the complainant had safe access to the footpath and to the bus stop. The complainant was delighted with the outcome.

Department of the Premier and Cabinet

Unreasonable requirements to change name on licence

2015/07076

Complaint

The complainant married in Bali in 1997 and did not register her marriage with Births, Deaths and Marriages in South Australia. She did, however, change her name on her driver's licence. The complainant later divorced and wished to change her licence details back to her maiden name. The complainant made the point that her marriage was never registered in South Australia and her passport was still in her maiden name. However, Services SA would not change her licence details unless her marriage certificate had an apostille stamp. When the complainant explored how she could fulfil this requirement, she was advised by the Indonesian embassy that this could only be done in Bali. The complainant also enquired with Births, Deaths and Marriages as to her options in South Australia and was

told she could register her married name and then in 12 months time register the divorce. The complainant thought that if her marriage was not registered and her passport name was unaltered, it was unreasonable of Services SA to insist on the apostille stamp.

Outcome

Following enquiries made by my Office, the agency agreed that the requirements imposed on the complainant were unreasonable and arrangements were made for her to change her licence details with the documents she currently held.

SA Housing Trust

Unreasonable refusal to upgrade television aerial

2016/00437

Complaint

The complainant moved into a home, formerly a SA Housing Trust property but now managed by a community housing group. The complainant stated that two years ago the SA Housing Trust had updated the television aerial connections in the area, but for some reason had missed her property; as a result it had poor television reception. The community housing group had told her that they do not provide service for television aerials and SA Housing Trust referred her back to the community housing group now managing the property.

Outcome

My Officer contacted SA Housing Trust and an officer in the maintenance section agreed to assess the matter further. The officer determined that there had been an upgrade of television aerials as the complainant stated and that her property should have been included. The officer organised for a maintenance contractor to attend the complainant's home and a socket was found, showing that part of the upgrade had been done. Another contractor was then organised to assess the cable and the complainant was informed of the work being organised to address the issue.

City of Adelaide

Unreasonable refusal to waive parking fine

2015/10731

Complaint

The complainant received a \$349 parking fine for parking in a park that required the driver to display a disability permit. The complainant, who suffers from a brain injury, was visiting a medical clinic and understood from the staff that she was able to park in this area by displaying a card they provided for her vehicle. The complainant said that the clinic staff had appealed the fine on her behalf but the council had refused to waive the fine.

Outcome

My officer contacted the council and established there were arrangements in place with the clinic to facilitate parking for patients attending appointments. The complainant could have parked in the street by displaying the clinic card but erroneously parked in park requiring a disability permit. However, the council recognised that patients to this clinic may have difficulty understanding instructions and that the complainant had not had any prior offences, and accordingly determined that it was reasonable to waive the fine.

City of Salisbury

Unlawful issuing of expiation notice

2016/02034

Complaint

The complainant received two parking fines from the council for "Contravene Permissive Parking Sign" under section 205(1) of the Australian Road Rules. The complainant was the holder of a disability parking permit and this permit was displayed clearly from the rear view mirror.

The complainant indicated in his appeal to council that, as the holder of a disability parking permit, he was entitled to park in a non-disability parking zone for double the time displayed in accordance with current legislation. The council declined to withdraw the expiation on the basis that his appeal did not constitute a defence under the Act and that the officer's evidence also supported the offence being committed.

Outcome

Following correspondence by my Office and in particular referring the council to the contents of Section 206 of the Australian Road Rules, the council advised it had decided to withdraw the expiation notice. The council stated that it confirmed that the complainant was parked in a standard car park with a disabled parking permit clearly visible, however, this was not observed by the parking inspector. The council confirmed that the appeal should have resulted in the expiation being withdrawn, however this did not occur due to an administrative error.

The council contacted the complainant by phone and in writing to apologise for the inconvenience caused and the need for him to take the matter further following the appeal. In addition, council officers were reminded of the rules relating to disability permit holders and of the importance of checking windscreens to determine if a disability parking permit is displayed.

South Australian Civil and Administrative Tribunal

Unreasonable scheduling of hearing

2016/00875

Complaint

The complainant, at the time of approaching my Office, was a party to a matter in the South Australian Civil and Administrative Tribunal (SACAT). The complainant alleged that SACAT had scheduled a hearing in conflict with the complainant's work commitments. The complainant explained that a previous hearing date had also conflicted with his work commitments, that he had lodged documentation with SACAT to request a change of date, including a copy of his work roster to avoid any other conflicts, and that still SACAT set the matter down on one of his rostered days. Unable to resolve this with SACAT, the complainant approached my Office.

Outcome

My officer contacted SACAT and raised the issues brought to my Office by the complainant. In response, SACAT was able to change the next hearing date to accommodate the complainants work commitments.

Government Agencies

Summary tables

1 July 2015 - 30 June 2016

Complaints: Received

Government Department	No	Percentage of Total Complaints
Attorney-General's Department	102	5.4
Department for Communities and Social Inclusion	139	7.3
Department for Correctional Services	626	32.9
Department Education and Child Development	295	15.5
Department for Health & Ageing	21	1.1
Department for Environment, Water and Natural Resources	23	1.2
Department of Planning, Transport and Infrastructure	195	10.3
Department of Primary Industries & Regions SA	3	0.2
Department of State Development	12	0.6
Department of the Premier and Cabinet	21	1.1
Department of Treasury and Finance	24	1.3
Environment Protection Authority	15	0.8
SA Housing Trust	362	19.0
SA Water Corporation	64	3.3
Total	1902	100%

Complaints: Completed

Government Department	No	Percentage of total complaints
Attorney-General's Department	101	5.3
Department for Communities and Social Inclusion	142	7.5
Department for Correctional Services	619	32.8
Department for Education and Child Development	285	15.1
Department for Health & Ageing	21	1.1
Department of Environment, Water and Natural Resources	25	1.3
Department of Planning, Transport and Infrastructure	196	10.4
Department of Primary Industries & Regions SA	3	0.2
Department of State Development	13	0.7
Department of the Premier and Cabinet	20	1.1
Department of Treasury and Finance	25	1.3
Environment Protection Authority	13	0.7
SA Housing Trust	361	19.1
SA Water Corporation	64	3.4
Total	1888	100%

Complaints: Issues

Issue	Total	Percentage
Abuse or assault/Physical/By other detainees	1	0.1
Abuse or assault/Physical/By staff	3	0.1
Abuse or assault/Sexual/By other detainees	2	0.1
Abuse or assault/Sexual/By staff	1	0.1
Abuse or assault/Verbal/Harassment/Threats/By other detainees	2	0.1
Abuse or assault/Verbal/Harassment/Threats/By staff	1	0.1
Complaint handling/Conflict of interest	1	0.1
Complaint handling/Delay	44	2.3
Complaint handling/Inadequate processes	119	6.3
Complaint handling/Inadequate reasons	13	0.7
Complaint handling/Inadequate remedy	31	1.6
Complaint handling/Wrong conclusion	45	2.4

Issue	Total	Percentage
Conduct/Assault	2	0.1
Conduct/Discourtesy	43	2.3
Conduct/Misconduct	9	0.5
Correspondence/Communications/Records/Breach of privacy/Confidentiality	3	0.1
Correspondence/Communications/Records/Delayed/No response	113	6.0
Correspondence/Communications/Records/Incorrect	23	1.2
Correspondence/Communications/Records/Lost	9	0.5
Correspondence/Communications/Records/Withholding of information	19	1.0
Correspondence/Communications/Records/Wrongful disclosure of information	2	0.1
Custodial services/Building and facilities	12	0.6
Custodial services/Canteen	21	1.1
Custodial services/Cell conditions	23	1.2
Custodial services/Clothing/Footwear	10	0.5
Custodial services/Educational programs	5	0.3
Custodial services/Employment	11	0.6
Custodial services/Food	17	0.9
Custodial services/Health related services	52	2.7
Custodial services/Leave	8	0.4
Custodial services/Legal resources	11	0.6
Custodial services/Prisoner accounts	25	1.3
Custodial services/Prisoner mail	14	0.7
Custodial services/Property	53	2.8
Custodial services/Recreation programs & services	2	0.1
Custodial services/Rehabilitation programs	9	0.5
Custodial services/Telephone	36	1.9
Employment	14	0.7
Financial/Procurement/Facilities/Compensation/ Damage/Acquisition of land	1	0.1
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury	2	0.1
Financial/Procurement/Facilities/Compensation/ Damage/Property lost/Damaged	3	0.1
Financial/Procurement/Facilities/Debts	11	0.6
Financial/Procurement/Facilities/Facilities owned/ Controlled by authority/Cost of use	2	0.1
Financial/Procurement/Facilities/Facilities owned/ Controlled by authority/Drainage	1	0.1

Issue	Total	Percentage
Financial/Procurement/Facilities/Facilities owned/ Controlled by authority/Nuisance	1	0.1
Financial/Procurement/Facilities/Facilities owned/ Controlled by authority/Sale/Lease	1	0.1
Financial/Procurement/Facilities/Procurement by agencies/Decisions	1	0.1
FOI advice	65	3.4
Home detention	22	1.2
Housing/Abandoned goods	2	0.1
Housing/Allocation	21	1.1
Housing/Arrears/Debt recovery	13	0.7
Housing/Damages	4	0.2
Housing/Disruptive tenants	32	1.7
Housing/Maintenance	126	6.6
Housing/Rent	20	1.1
Housing/Termination	15	0.8
Housing/Transfer	46	2.4
Prison management/Discipline/Security/Daily regimen	14	0.7
Prison management/Discipline/Security/Discipline/ Management	41	2.2
Prison management/Discipline/Security/Drug testing	8	0.4
Prison management/Discipline/Security/Inspections/ Body searches	4	0.2
Prison management/Discipline/Security/Protection	5	0.3
Prison management/Discipline/Security/Transport	3	0.1
Prison management/Discipline/Security/Visits	34	1.8
Prison records/Official correspondence/Delayed/No response	3	0.1
Prison records/Official correspondence/Incorrect	3	0.1
Records management	1	0.1
Regulation and enforcement/Complaint handling	1	0.1
Regulation and enforcement/Enforcement action/Excessive	30	1.6
Regulation and enforcement/Enforcement action/Insufficient	1	0.1
Regulation and enforcement/Enforcement action/Unfair	41	2.2
Regulation and enforcement/Fees	7	0.4
Regulation and enforcement/Infringements/Excessive penalty	3	0.1
Regulation and enforcement/Infringements/ Unreasonably issued	3	0.1
Regulation and enforcement/Inspections	2	0.1

Issue	Total	Percentage
Regulation and enforcement/Licensing/Conditions	12	0.6
Regulation and enforcement/Licensing/Refusal	7	0.4
Regulation and enforcement/Licensing/Renewal	3	0.1
Regulation and enforcement/Licensing/Suspension	16	0.8
Regulation and enforcement/Permits	2	0.1
Revenue collection/Emergency services levy	7	0.4
Revenue collection/Land tax	7	0.4
Revenue collection/Stamp duty	2	0.1
Revenue collection/Water & sewerage	42	2.2
Roads and traffic/Charges/Fines	6	0.3
Roads and traffic/Licensing/Conditions	14	0.7
Roads and traffic/Licensing/Demerit points	3	0.1
Roads and traffic/Licensing/Fail to issue renewal	4	0.2
Roads and traffic/Licensing/Fees/Charges	2	0.1
Roads and traffic/Licensing/Medical test	8	0.4
Roads and traffic/Licensing/Tests	2	0.1
Roads and traffic/Registration/Conditions	6	0.3
Roads and traffic/Registration/Failure to issue renewal	3	0.1
Roads and traffic/Registration/Fees/Charges	7	0.4
Roads and traffic/Registration/Incorrect details on registration	4	0.2
Roads and traffic/Registration/Roadworthy	2	0.1
Roads and traffic/Registration/Transfer without consent	4	0.2
Roads and traffic/Road management	4	0.2
Sentence management/Classification	3	0.1
Sentence management/Parole	19	1.0
Sentence management/Placement/Location	25	1.3
Sentence management/Transfers	28	1.5
Service delivery/Abuse in care	3	0.1
Service delivery/Assessment	16	0.8
Service delivery/Conditions	17	0.9
Service delivery/Eligibility for services	20	1.1
Service delivery/Failure to act/Provide	98	5.2

Issue	Total	Percentage
Service delivery/Fees and charges	34	1.8
Service delivery/Financial assistance	13	0.7
Service delivery/Quality	47	2.5
Service delivery/Termination of services	5	0.3
Superannuation	1	0.1
Total	1898	100%

Complaints: Outcomes

Outcome	Total	Percentage
Advice given	72	3.8
Alternate remedy available with another body	314	16.6
Complaint cannot be contacted	14	0.7
Declined/Investigation unnecessary or unjustifiable	329	17.4
Declined/No sufficient personal interest or not directly affected	20	1.0
Declined/Out of time	8	0.4
Not substantiated/No s25 finding	5	0.3
Out of Jurisdiction/Agency not within jurisdiction	2	0.1
Out of Jurisdiction/Employment	14	0.7
Out of Jurisdiction/Judicial body	1	0.1
Out of Jurisdiction/Minister	1	0.1
Out of Jurisdiction/Policy	1	0.1
Referred back to agency	780	41.3
Advice to authority	4	0.2
Resolved with agency cooperation	234	12.4
s18(5) Referred evidence of misconduct to principal officer	1	0.1
s25 Finding/Finding/Contrary to law	2	0.1
s25 Finding/Finding/Unreasonable	17	0.9
s25 Finding/Wrong	7	0.4
Withdrawn by complainant	62	3.3
Total	1888	100%

Case studies

Department for Communities and Social Inclusion Unreasonable delays in processing screening applications

2015/00235

Complaint

Under the provisions of the Children's Protection Act 1993, the department conducts assessments to determine the suitability of persons to be considered for child related employment. Following receipt of a number of complaints relating to delays in the department processing applications seeking a clearance, I commenced an own initiative investigation under section 13(2) of the *Ombudsman Act 1972*.

Investigation and Outcome

During the life of the investigation I continued to receive complaints about delays. It was a feature that while undertaking the investigation the department continued to introduce changes to processes and increased the number of staff and other resources available to meet the demand. This had the desired result of improving the processing times for applications.

My investigation found there had been a significant increase in the number of applications requiring assessment and the majority of assessments related to applications for child related employment. There had been a marked improvement in processing times as a result of additional staff being recruited and trained. This, however, was a reactive response and the increase in the number of applications was predictable. I gave examples of significant delays in processing some applications and commented on the hardship that this can cause applicants.

I made a finding that the failure of the department to process applications in a timely manner was unreasonable. I recommended that the department issue letters of apology to affected applicants. Further, I recommended changes to the reporting regime to identify delays in a timely manner and to include strategies to manage the effects of delays.

My investigation also considered whether applicants were provided with sufficient information about the screening process. During the course of the investigation the department introduced new processes that I considered would be fundamental in any assessment framework e.g. acknowledging receipt of application and, if there was a name match, what would happen next. I am pleased to record the positive changes the department has introduced.

Notwithstanding the statutory requirements that certain information not be disclosed to any person, I recommended that the department give reasons for refusing an application or granting a specific or conditional clearance. This would assist an applicant in considering whether to request a review of a decision.

I made a finding that the failure of the department to provide relevant information to parties was wrong. I recommended that the department review its information sources and provide regular reports on the status of applications to relevant parties.

Department for Correctional Services Unlawful shackling of prisoner in hospital

2014/08834

Complaint

This matter was referred to the Ombudsman by the Principal Community Visitor after a report made to him by clinical staff at the Royal Adelaide Hospital (RAH) Emergency Department.

Prisoner A was remanded in custody on charges of Threaten to Kill or Endanger Life. He was initially placed in the City Watch House. Due to his apparently strange behaviour, Prisoner A was seen by a doctor, who determined that he be detained under the Mental Health Act 2009. He was conveyed to the Emergency Department at the RAH and a hospital watch commenced by Department for Correctional Services officers. Prisoner A was taken from the RAH and admitted to Glenside Hospital four days later.

The substance of the complaint was an allegation that the prisoner had been injured during the four days he spent in hard shackles (hand/leg cuffs) during his hospital stay.

Investigation and Outcome

My investigation examined whether:

- Prisoner A was shackled in accordance with departmental policy during a hospital visit
- the department acted contrary to law in failing to exercise the necessary discretion in relation to shackling Prisoner A during a hospital visit
- the shackling of Prisoner A was otherwise unlawful, unreasonable or wrong

The reason the prisoner had been transferred to the RAH for a mental health assessment was because of a lack of beds in the mental health system. My investigation found that some aspects of DCS's use and monitoring of restraint practices to detain Prisoner A had been contrary to law.

Whilst there were also some technical matters related to policy and the exercise of discretion as to what force was 'reasonably necessary' to use, the main issue was the length of time the prisoner was restrained in hard shackles and the injury which resulted from their use. I found that the department's actions resulted in an unintended but entirely avoidable injury to the prisoner.

The investigation report made eight recommendations, including that:

- the DCS policy 'Use of Restraint Equipment' be immediately revised to incorporate a clear statement that the procedure applies to hospital watch situations as well as to prison situations
- DCS, in consultation with the SA Prison Health Service, Forensic Mental Health Services and the RAH, develop and implement a policy in relation to the transfer of prisoners detained under the Mental Health Act 2009 for psychiatric assessment and placement in a psychiatric institution. The policy should stipulate, with reasonable exceptions, that no prisoner will be transferred to the RAH or other hospital for a period longer than 24-hours in circumstances where restraints are necessary to prevent escape
- the DCS Hospital Compliance Checklist for Hospital Watches be immediately revised to include a requirement for Compliance Officers to report any apparent injury to the General Manager and to liaise immediately with the nursing/medical team to ensure any injuries are treated
- when circumstances justify the use of restraints, a soft form of restraint should be used.

The department subsequently advised me that it was in the process of implementing all my recommendations. One caveat has been a delay in implementing the soft restraints recommendation. Whilst work is underway, the soft restraint has yet to be fully developed and used in an operational setting. I continue to monitor that recommendation.

Department for Correctional Services

Failure to have regard to medical advice when shackling prisoner

2015/05912

Complaint

The complainant alleged that the department shackled his lower limbs while on a hospital visit despite medical advice from the senior consulting surgeon at the Royal Adelaide Hospital to avoid leg shackling.

The Department was aware that the prisoner had been diagnosed with deep vein thrombosis. The SA Prison Health Service (SAPHS) did not expressly advise the department of the recommendation to avoid leg shackling, however, the recommendation would have been on the complainant's prison health record.

Investigation and Outcome

My investigation considered whether the department acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act, by failing to consider the recommendation made by the senior consulting surgeon when determining the security requirements to be applied to the complainant.

My investigation found that the General Manager has discretion to determine the appropriate level of restraint to be used while prisoners are hospitalised and being escorted. Given the department had responsibility for the care, welfare and safety of the complainant, it should have further informed itself about his condition before exercising this discretion.

The failure to consider the complainant's critical health information was wrong. I recommended that:

the department ensure that it maintains a record of a prisoner's significant health events and that this information is used with the suite of other information maintained by the department for the purpose of managing the prisoner

the failure by SAPHS to inform the department of relevant health information in relation to the prisoner be communicated to the appropriate senior officer in SAPHS and that appropriate staff in SAPHS be reminded of the requirement to provide relevant and timely information to the department.

While the department has agreed to remind staff at SAPHS of the requirement to provide relevant and timely information to the department, they have not accepted my recommendation to maintain a record of significant health events as it is for the SAPHS to capture this information.

Department for Education and Child Development

Unreasonable investigation of complaint

2015/04666

Complaint

The complainants, who were foster carers, alleged that:

- they had been notified of a serious care concern involving a foster child but that the department unreasonably delayed providing them with the allegations
- the department unreasonably delayed providing the complainants an opportunity to respond to those allegations
- the investigation had been placed on hold without any reason provided
- there had been a presumption of guilt
- the basis for ongoing access arrangements throughout the period of investigation had never been made clear in writing
- the requirement for supervised access was unreasonable in the circumstances.

Investigation and Outcome

My investigation found:

- the delay in providing details of the allegations or any explanation for that delay was unreasonable
- the delay of at least ten months from when the care concern was first raised to the complainants being given a chance to respond by interview was unreasonable
- the fact that the investigation was put on hold and no reason provided other than 'workload' was unreasonable
- there was no evidence of a presumption of guilt by the department but more timely communication about the process may have alleviated the complainants' concerns in that regard
- it was not necessary to investigate the issue of access further given that the department reviewed the existing arrangements and communicated ongoing arrangements to the complainants in writing.

I recommended:

- that as soon as practicable after an allegation of abuse is made, a meeting should be convened (with approval and possible participation by SAPOL) outlining the allegations and the process to be followed
- subject to a police investigation being completed with no recommended criminal consequences, and while any internal investigation is ongoing, protocols of access and communication should be agreed
- the matters agreed should be communicated to the persons investigated in writing
- the department's investigation be finalised by mid November 2015 and a report on the outcome provided to the complainants and my Office by 30 November 2015.

The department subsequently advised that the investigation was finalised by mid November 2015 and certain policy changes made, with a review of the relevant practice manual to be undertaken in due course.

Department of Environment, Water and Natural Resources

Unreasonable advice regarding waiver of penalty

2014/07915

Complaint

The complainants operated a large dairy. It irrigated pasture for dairy cows using water taken from the River Murray prescribed Water Resource under a water licence under the Natural Resources Management Act 2004. The dairy purchased additional water on the temporary market if it needed to use more than its allocation. In 2013 the dairy made an error in calculating its water usage and as such overused its water allocation. The dairy was issued with a notice of a penalty of \$85,897.98 charged under section 115 of the Natural Resources Management Act. The complainants met with the department and were advised that they could seek a waiver or reduction of the penalty on the grounds of financial hardship. They wrote to the department and to the Minister asking that the penalty be reviewed. The department advised the Minister that there were no grounds to waive the penalty.

The complainants approached my Office raising a number of issues, including that the department had failed to advise them or the Minister of the effect of Treasurer's Instruction 5, Debt Recovery and Write Offs (TI 5), which provided that waiver of debts could apply in exceptional circumstances. The complainants were not advised of TI 5 or the exceptional circumstances test.

Investigation and Outcome

I determined to investigate whether the department properly advised the complainants of the grounds for seeking a waiver of the penalty, and whether the department's advice to the Minister was wrong, in that it did not advise of TI 5.

My investigation found that the department was wrong in:

- advising the complainants that 'financial hardship' was the ground on which they needed to make their submission to the Minister for waiver of the penalty
- failing to advise the complainants of the existence, terms and effects of TI 5
- failing to advise that the relevant test for waiver of the penalty is in 'exceptional circumstances' as provided by TI 5.

I also found that, in failing to alert the Minister to TI 5 and to the exceptional circumstances test, the department provided the wrong advice to the Minister.

In light of this, I found that the department acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

I recommended that:

- the department invite the complainants to make further submissions to the department and the Minister
- the department put the matter to the Minister again, after considering the matter afresh following receipt of the new submission from the complainants
- the department develop a policy as to the process and relevant factors to consider in determining how and whether a matter should go to the Treasurer as per TI 5.

Department of Planning, Transport and Infrastructure

Wrongful refusal to withdraw fine

2015/02653

Complaint

The complainant was acting on behalf of a student with limited English.

The student used a train ticket given to her by the complainant. The student was approached by an officer who told her to purchase a ticket as her ticket was invalid (it was an old ticket which had been superseded). The complainant says the student did not understand the officer. The student had no money so another passenger on the train gave her money, and she subsequently purchased a ticket. She would have been required to purchase a ticket to exit the station. The department says the student said "whatever" and sat back down, refusing to purchase a ticket. The student was issued an Expiation Notice for 'failing to purchase ticket on boarding passenger vehicle'.

The complainant wrote to the department seeking a review on the grounds 'the offence was trifling'. The department advised there were insufficient grounds to withdraw the expiation notice.

The version of events given by the complainant and the department were inconsistent.

Investigation and Outcome

The department provided an initial response to a provisional report, that it had not acted in a manner which was wrong by issuing and refusing to withdraw the expiation notice. An investigation found it was clear the student had difficulties with the English language. Further there was no reason to disbelieve her version of events. The student had boarded the train in good faith that she held a valid ticket. The investigation found the offence was potentially trifling on compelling humanitarian grounds, as the officer had failed to sufficiently attempt to assist the student in understanding she needed to purchase a valid ticket. However, it was accepted that the officer had believed that the student was deliberately trying to avoid purchasing a ticket.

The investigation found that the department was wrong in refusing to later withdraw the expiation notice on the grounds that it was trifling. It was found that the department did not properly consider that the student may not have understood what the officer on the train had said to her and failed to properly consider whether the offence was trifling.

Accordingly, I found that the department in refusing to withdraw the expiation notice, pursuant to section 8A(1) of the Expiation of Offences Act 1995 had acted in a manner which was wrong within the meaning of section 25(1) of the Ombudsman Act.

I recommended under section 25(2) of the Ombudsman Act that the department:

- provide a component of training specifically addressing dealing with people from non-English speaking backgrounds
- implement a policy and procedure for issuing expiation notices which includes guidance on the issuing of expiation notices to people from non-English speaking backgrounds
- implement a policy and procedure for considering withdrawal of expiation notices on the grounds that the offence was trifling.

Prior to me issuing my final report, the department used its discretion under section 16 of the Expiation of Offences Act to withdraw the expiation notice.

Department of State Development

Unreasonable process in relation to mining leases and mineral claims

2016/01094; 2016/01908; 2016/04271; 2016/01718

Complaint

The complainants raised various issues regarding the department's registration of certain mineral claims and mining lease applications and consultation processes in relation to mining lease applications. The complainants also complained about the department's approach to provision of Programs for Environmental Protection and Rehabilitation (PEPR).

Investigation and Outcome

My investigation determined for the purposes of section 17(2)(d) of the Ombudsman Act that further investigation of the issues raised was not necessary or justifiable, noting:

- in relation to consultation, the department appropriately delayed commencing public consultation until a relevant court dispute was finalised
- the department had authority to register the mineral claims and by registering those claims did not authorise mining operations over exempt land
- the department was not required to become involved in the issuing of prescribed notices by mining companies
- there is no requirement for exempt land to be identified in an application for an exploration licence
- the department has acknowledged that there is a public interest in parties having access to PEPRs and has a process in place to address that issue
- the Mining Act 1971 does not allow for disclosure of PEPRs in every situation.

Local Government

Summary tables

1 July 2015 - 30 June 2016

Complaints: Received

Local Council	Received	Percentage	Population 30 June 2015	Complaints/10,000 popn
Adelaide, City of	135	14.8	23 169	58.2
Adelaide Hills Council	32	3.5	40 031	7.9
Alexandrina Council	19	2.1	25 449	7.4
Barossa Council, The	8	0.9	23 104	3.4
Barunga West, District Council of	1	0.1	2 434	4.1
Berri Barmera Council	5	0.6	10 419	4.7
Burnside, City of	24	2.6	45 034	5.3
Campbelltown, Corporation of the City of	10	1.1	51 889	1.9
Ceduna, District Council of	7	0.8	3 716	18.8
Charles Sturt, City of	49	5.4	114 209	4.2
Clare and Gilbert Valleys Council	7	0.8	9 057	7.7
Cleve, District Council of	2	0.2	1 795	11.1
Cooper Pedy, District Council of	9	1.0	1 801	49.9
Coorong, District Council	5	0.6	5 556	8.9
Copper Coast, District Council of the	16	1.8	14 114	11.3
Elliston, District Council of	7	0.8	1 066	65.6
Flinders Ranges Council, The	1	0.1	1 608	6.2
Franklin Harbour, District Council of	3	0.3	1 234	24.3
Gawler, Corporation of the Town of	8	0.9	22 618	3.5
Grant, District Council of	2	0.2	8 235	2.4
Holdfast Bay, City of	15	1.7	37 263	4.0
Kangaroo Island Council	9	1.0	4 611	19.5
Karoonda East Murray, District Council of	2	0.2	1 014	19.7
Kimba, District Council of	1	0.1	1 097	9.1
Kingston District Council	1	0.1	2 363	4.2
Light Regional Council	12	1.3	14 841	8.0
Lower Eyre Peninsula, District Council of	1	0.1	5 087	1.9
Loxton Waikerie, District Council of	5	0.6	11 462	4.3
Mallala, District Council of	21	2.3	8 750	24.0
Marion, Corporation of the City of	27	3.0	88 983	3.0
Mid Murray Council	8	0.9	8 243	9.7
Mitcham, City of	27	3.0	66 347	4.0

Local Council	Received	Percentage	Population 30 June 2015	Complaints/10,000 popn
Mount Barker, District Council of	14	1.5	32 558	4.3
Mount Gambier, City of	5	0.6	26 348	1.8
Mount Remarkable, District Council of	9	1.0	2 773	32.4
Murray Bridge, Rural City of	2	0.2	20 971	0.2
Naracoorte Lucindale Council	2	0.2	8 390	2.3
Northern Areas Council	4	0.4	4 488	8.9
Norwood, Payneham & St Peters, City of	24	2.6	37 350	6.4
Onkaparinga, City of	51	5.6	168 798	3.0
Orroroo/Carrieton, District Council of	1	0.1	852	11.7
Peterborough, District Council of	8	0.9	1 673	47.8
Playford, City of	24	2.6	88 222	2.7
Port Adelaide Enfield, City of	29	3.1	123 754	2.3
Port Augusta City Council	4	0.4	14 522	2.7
Port Lincoln, City of	3	0.3	14 984	2.0
Port Pirie Regional Council	5	0.6	17 540	2.8
Prospect, City of	6	0.7	21 416	2.8
Renmark Paringa, District Council of	1	0.1	9 230	1.0
Robe, District Council of	2	0.2	1 428	14.0
Roxby Council	4	0.4	5 078	7.8
Salisbury, City of	38	4.2	138 535	2.7
Southern Mallee District Council	12	1.3	2 058	58.3
Streaky Bay, District Council of	4	0.4	2 249	17.7
Tea Tree Gully, City of	36	4.0	98 861	3.6
Tumby Bay, District Council of	4	0.4	2 668	14.9
Unley, Corporation of the City of	31	3.4	39 324	7.8
Victor Harbor City Council	18	2.0	15 169	11.8
Walkerville, Corporation of the Town of	5	0.6	7 673	6.5
Wattle Range Council	1	0.1	11 460	0.8
West Torrens, City of	59	6.5	58 964	10.0
Whyalla, Corporation of the City of	6	0.7	22 759	2.6
Yankalilla, District Council of	9	1.0	4 700	19.1
Yorke Peninsula Council	9	1.0	11 018	8.1
Total	909	100%		

Complaints: Completed

Local Council	Completed	Percentage	Population 30 June 2015	Complaints/10,000 popn
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Cleve, District Council of	2	0.2	1 795	11.1
Cooper Pedy, District Council of	11	1.2	1 801	61.0
Coorong District Council	5	0.6	5 556	8.9
Copper Coast, District Council of the	16	1.8	14 114	11.3
Elliston, District Council of	7	0.8	1 066	65.6
Flinders Ranges Council, The	2	0.2	1 608	12.4
Franklin Harbour, District Council of	3	0.3	1 234	24.3
Gawler, Corporation of the Town of	8	0.9	22 618	3.5
Goyder, Regional Council of	1	0.1	4 232	2.3
Grant, District Council of	1	0.1	8 235	1.2
Holdfast Bay, City of	13	1.5	37 263	3.4
Kangaroo Island Council	14	1.6	4 611	30.3
Karoonda East Murray, District Council of	2	0.2	1 014	19.7
Kimba, District Council of	1	0.1	1 097	9.1
Kingston District Council	1	0.1	2 363	4.2
Light Regional Council	12	1.4	14 841	8.0
Lower Eyre Peninsula, District Council of	1	0.1	5 087	1.9
Loxton Waikerie, District Council of	5	0.6	11 462	4.3
Mallala, District Council of	18	2.0	8 750	20.5
Marion, Corporation of the City of	23	2.6	88 983	2.5
Mid Murray Council	8	0.9	8 243	9.7

Local Council	Completed	Percentage	Population 30 June 2015	Complaints/10,000 popn
Mitcham, City of	27	3.1	66 347	4.0
Mount Barker District Council	13	1.5	32 558	3.9
Mount Gambier, City of	5	0.6	26 348	1.8
Mount Remarkable, District Council of	10	1.1	2 773	36.0
Murray Bridge, Rural City of	2	0.2	20 971	0.9
Naracoorte Lucindale Council	2	0.2	8 390	2.3
Northern Areas Council	4	0.5	4 488	8.9
Norwood, Payneham & St Peters, City of	22	2.5	37 350	5.8
Onkaparinga, City of	52	5.9	168 798	3.0
Orroroo/Carrieton, District Council of	1	0.1	852	11.7
Peterborough, District Council of	5	0.6	1 673	29.8
Playford, City of	24	2.7	88 222	2.7
Port Adelaide Enfield, City of	29	3.3	123 754	2.3
Port Augusta City Council	4	0.5	14 522	2.7
Port Lincoln, City of	3	0.3	14 984	2.0
Port Pirie Regional Council	4	0.5	17 540	2.2
Prospect, City of	5	0.6	21 416	2.3
Renmark Paringa, District Council of	1	0.1	9 230	1.0
Robe, District Council of	2	0.2	1 428	14.0
Roxby Council	5	0.6	5 078	9.8
Salisbury, City of	38	4.3	138 535	2.7
Southern Mallee District Council	12	1.4	2 058	58.3
Streaky Bay, District Council of	4	0.5	2 249	17.7
Tea Tree Gully, City of	35	4.0	98 861	3.5
Tumby Bay, District Council of	4	0.5	2 668	14.9
Unley, Corporation of the City of	30	3.4	39 324	7.6
Victor Harbor City Council	14	1.6	15 169	9.2
Walkerville, Corporation of the Town of	5	0.6	7 673	6.5
Wattle Range Council	1	0.1	11 460	0.8
West Torrens, City of	59	6.6	58 964	10.0
Whyalla, Corporation of the City of	7	0.8	22 759	3.0
Yankalilla, District Council of	10	1.1	4 700	21.2
Yorke Peninsula Council	9	1.0	11 018	8.1
Total	881	100%		

Complaints: Issues

Issue	Total	Percentage
Advice	1	0.1
Complaint handling/Delay	24	2.6
Complaint handling/Inadequate processes	53	5.8
Complaint handling/Inadequate reasons	15	1.6
Complaint handling/Inadequate remedy	38	4.1
Complaint handling/Wrong conclusion	43	4.8
Conduct/Discourtesy	11	1.2
Conduct/Failure to declare conflict of interest	3	0.3
Conduct/Failure to follow proper process	16	1.7
Conduct/Misconduct	8	0.9
Correspondence/Communications/Records/Access	6	0.7
Correspondence/Communications/Records/Breach of privacy/confidentiality (CCR)	3	0.3
Correspondence/Communications/Records/Delay/No response	26	2.8
Correspondence/Communications/Records/Incorrect	7	0.8
Correspondence/Communications/Records/Wrongful disclosure of information	2	0.2
Council member code of conduct/Breach of part 2	14	1.5
Council member code of conduct/Breach of part 3/Act honestly	6	0.7
Council member code of conduct/Breach of part 3/Bias and conflict of interest	13	1.4
Council member code of conduct/Breach of part 3/Use council resources for private purposes	2	0.2
Council member code of conduct/Breach of part 3/Failure to comply with part 2 finding	1	0.1
Council member code of conduct/Breach of part 3/Perform duties with reasonable care	2	0.2
Council member code of conduct/Breach of part 3/Divulge confidential information	5	0.5
Council member code of conduct/Breach of part 3/Perform unauthorised function	2	0.2
Council member code of conduct/Breach of part 3/External relationships improper influence	1	0.1
Financial/Procurement/Facilities/Compensation/Damage/Acquisition of land	3	0.3
Financial/Procurement/Facilities/Compensation/Damage/Physical injury	3	0.3
Financial/Procurement/Facilities/Compensation/Damage/Property lost/Damaged	15	1.6
Financial/Procurement/Facilities/Debts/Recovery action	3	0.3
Financial/Procurement/Facilities/Debts/Unreasonable charge	2	0.2
Financial/Procurement/Facilities/Facilities owned/Controlled by authority/Buildings	2	0.2
Financial/Procurement/Facilities/Facilities owned/Controlled by authority/Drainage	6	0.7

Issue	Total	Percentage
Financial/Procurement/Facilities/Facilities owned/Controlled by authority/Parks and gardens	3	0.3
Financial/Procurement/Facilities/Facilities owned/Controlled by authority/Recreational facilities	1	0.1
Financial/Procurement/Facilities/Facilities owned/Controlled by authority/Roads/Streets	18	2.0
Financial/Procurement/Facilities/Other fees and charges	13	1.4
Financial/Procurement/Facilities/Procurement by agencies/ Decisions	1	0.1
Financial/Procurement/Facilities/Procurement by agencies/ Tenders	10	1.1
Financial/Procurement/Facilities/Rates/Administration	9	1.0
Financial/Procurement/Facilities/Rates/Amount	20	2.2
Financial/Procurement/Facilities/Rates/Recovery action	24	2.6
Financial/Procurement/Facilities/Rates/Valuations	3	0.3
FOI advice	27	3.0
Governance/Confidentiality	1	0.1
Governance/Failure to follow proper process	20	2.2
Governance/Prudential	3	0.3
Governance/Public consultation	11	1.2
Regulation and enforcement/Animals/Excessive action	27	3.0
Regulation and enforcement/Animals/Failure to act on complaints	12	1.3
Regulation and enforcement/Building/Failure/Failure to enforce condition	1	0.1
Regulation and enforcement/Building/Failure/Delay to issue permit	2	0.2
Regulation and enforcement/Building/Inappropriate construction allowed	9	1.0
Regulation and enforcement/Building/Unreasonable conditions imposed	2	0.2
Regulation and enforcement/Building/Unreasonable enforcement	3	0.3
Regulation and enforcement/Environmental protection/Excessive action	2	0.2
Regulation and enforcement/Environmental protection/Failure to action on complaints	4	0.4
Regulation and enforcement/Local laws/Failure to enforce	1	0.1
Regulation and enforcement/Local laws/Improper/Inappropriate	4	0.4
Regulation and enforcement/Local laws/Unreasonable enforcement	7	0.8
Regulation and enforcement/Nuisances/Failure to action on complaints	7	0.8
Regulation and enforcement/ Parking/Failure to enforce restrictions	2	0.2
Regulation and enforcement/Parking/Permits	3	0.3
Regulation and enforcement/Parking/Restrictions	1	0.1
Regulation and enforcement/ Parking/Unreasonable enforcement	182	19.8

Issue	Total	Percentage
Regulation and enforcement/Planning & development/Failure to enforce condition	10	1.1
Regulation and enforcement/Planning & development/Failure to notify	6	0.7
Regulation and enforcement/Planning & development/Failure/ Delay to issue permit	8	0.9
Regulation and enforcement/Planning & development/Inappropriate development allowed	80	8.7
Regulation and enforcement/Planning & development/ Unreasonable conditions imposed	27	3.0
Regulation and enforcement/Planning & development/ Unreasonable enforcement	6	0.7
Regulation and enforcement/Public health/Failure to act on complaints	7	0.8
Regulation and enforcement/Public health/Quality of service delivered	1	0.1
Regulation and enforcement/Public health/Unreasonable conditions imposed	2	0.2
Regulation and enforcement/Public health/Unreasonable enforcement	3	0.3
Total	919	100%

Outcomes

Outcome	Total	Percentage
Advice given	38	4.3
Alternate remedy available with another body	61	6.9
Complaint cannot be contacted	2	0.2
Declined/Investigation unnecessary or unjustifiable	266	30.2
Declined/No sufficient personal interest or not directly affected	3	0.3
Declined/Out of time	4	0.5
Not substantiated	12	1.4
Out of jurisdiction/Policy	1	0.1
Referred back to agency	421	47.8
Advice to authority	2	0.2
Resolved with agency cooperation	41	4.7
s25 Finding/Contrary to law	8	0.9
s25 Finding/Unreasonable	1	0.1
s25 Finding/Wrong	4	0.5
Withdrawn by complainant	17	1.9
Total	881	100%

Case studies

Berri Barmera Council

Misuse of confidentiality orders

2015/04338

Complaint

The Ombudsman received a complaint that council made unlawful confidentiality orders under section 90 of the *Local Government Act 1999* (LGA), in response to prospective purchasers of land being council employees. It was also alleged that a subsequent review under section 270 of the LGA was conducted in a manner inconsistent with the Review of Council Decisions (RCD) policy.

Investigation and Outcome

I found that the council failed to understand the requirements of section 90 of the LGA, and acted wrongly in making their decision to move into confidentiality. I was not provided with any evidence, however, to support the claim council employees gained an advantage as prospective purchasers because of their employment. Further the council, in conducting their review, did act consistently with the RCD policy.

I made recommendations that all councils update their section 92 code of practice to ensure all procedures comply with the LGA and consider implementing a system of pre-meeting consultation for all proposals to make a meeting confidential.

City of Charles Sturt

Use of discretionary ward allowances

2015/05495

Complaint

The complainant raised issues in relation to the use of discretionary ward allowances (granted to assist organisations and community groups) by the council. In response to the complaint, I investigated the granting of discretionary ward allowances for the last two financial years and, in particular, whether relevant conflicts of interest were declared.

Investigation and Outcome

My investigation found:

- one council member failed to declare his interest in a community organisation at a council meeting at which a discretionary ward allowance for that organisation was voted on
- the same council member failed to declare his interest in the same community organisation on his ordinary returns for the years 2014 and 2015.

As the council member had recently undertaken compulsory training at which his interest in the community organisation was specifically addressed, and his response to my investigation indicated that he now understood his obligations, I decided not to make any recommendations.

City of Mitcham

Enforcement issues in relation to an emergency order

2015/04839

Complaint

The complainants alleged that:

- the council unreasonably failed to take action in relation to non-compliance with an emergency order issued against a neighbour in relation to a landslip onto the complainants' property
- as a result of the council's inaction, the complainants' property was devalued and there was a risk of further landslip.

Investigation and Outcome

My investigation found:

- as a general proposition, if a council determines that there are grounds for an emergency order, the council should be prepared to take reasonable steps to secure compliance with that order in the event of non-compliance
- that said, the purpose of an emergency order is to address urgent threats to safety rather than loss of amenity or value to land per se
- it was reasonably open to the council to hold off on enforcement action in light of its assessment that the immediate safety issues had been addressed and that the complainants' civil action against their neighbours was yet to be resolved

the council did not commit administrative error.



City of Victor Harbor

Breach of the Minister's code of conduct for CDAP members

2015/10767

Complaint

The complaint concerned whether a council member, a member of the City of Victor Harbor's Council Development Assessment Panel (the CDAP), had failed to comply with section 56A(7) of the Development Act 1993 and the Code of Conduct by

- engaging in consultation outside of the CDAP process with parties on a proposed development application that was likely to be heard by the CDAP
- giving advice to a third party (a neighbour to the proposed development site) on a development application after it had been lodged, outside of a CDAP meeting.

Two further issues investigated were whether the council member directed a person who was a council employee and/or attempted to influence that employee; and whether the council member failed to declare at the CDAP meeting on 10 November 2015 that he had acted in a manner that could bring into question his impartiality, and sat in assessment of the application.

Investigation and Outcome

My investigation found the first issue substantiated in that the council member had had contact with an interested party to the application which amounted to consultation within the meaning of clause 2.10(a) of the Code of Conduct. I found that because the council member should have been aware that the application was potentially controversial and likely to be determined by CDAP when he discussed the proposed development with that interested party, the council member breached clause 2.10(a) of the Code of Conduct.

I determined in relation to the second issue that the council member had not provided advice about the application to a third party.

The determination reached for the third issue regarding clause 2.8(a) was that by emailing the council employee and asking him to 'have a look at this proposal and consider imposing an 8mtr setback', the council member was not 'directing' the council employee to do something in breach of the Code. However, I considered that through

this email the council member could reasonably be said to have been attempting to influence the employee, in breach of clause 2.8(c) of the Code.

For the fourth issue, I determined that because the council member did not previously know the neighbours, and had nothing to gain from his attempts to assist them, he did not have a direct or indirect personal or pecuniary interest in the matter that he was required to disclose to CDAP. I also determined that given the council member's involvement with the neighbours and that he had met with them and taken on their issue for them, that there was a reasonable perception that he may have had an interest in respect of the application before the CDAP. I concluded that the council member should have advised the presiding member in writing that he might reasonably have been perceived to have an interest in the matter before it was considered by the CDAP, in accordance with clause 2.4 of the Code of Conduct; and left the room when the matter was discussed and voted on by the CDAP in accordance with clause 2.6 of the Code of Conduct.

In light of all of the above, I concluded that the council member had breached clauses 2.4 and 2.6 of the Code of Conduct, and as such acted in a manner that was contrary to law, within the meaning of section 25(1)(a) of the Ombudsman Act.

I made a recommendation under section 25(2) of the Ombudsman Act that the council require the council member to attend training on conflicts of interest and on the Code of Conduct.

Corporation of the City of Whyalla

Breach of the confidentiality provisions of the Local Government Act and the Code of Conduct for Elected Members

2015/000961

Complaint

The complainant was an employee of the council. The complaint alleged that a council member breached clause 3.3 of the Code of Conduct by releasing confidential council information about the Whyalla Foreshore Café. Information in relation to the tender of the lease of the council was ordered to be kept confidential in a council meeting. The lessee of the Café had taken legal action against the council in relation to the lease. Solicitors for the lessee of the café quoted information that was contained in the confidential minutes of the council meeting. The allegation was the elected member arranged and held

a meeting with the lessee and that at this meeting confidential information was provided to the lessee which was then passed onto solicitors.

Investigation and Outcome

My investigation took evidence from council members and the café lessee. My investigation found:

- that the lessee and the council member both denied the allegation
- that the lessee and the council member did have a meeting but both stated that no confidential information was exchanged but that the meeting was for the elected member to hear the grievance of the lessee
- it was the intention of the council member to perform a civic duty and meet with members of the community though some members of the council would consider the timing ill-advised given the legal action taken by the lessee against the council
- there was no evidence of a special friendship between the council member and the lessee
- that there was no reason to disbelieve the evidence of the lessee and the council member.

I concluded that the council member did not breach the provisions of the Local Government Act nor the Code of Conduct by holding a meeting with the lessee and that he had not disclosed confidential information to the lessee.

Corporation of the Town of Walkerville

Council member conduct

2015/03721

Complaint

The complaint alleged that the council member had breached the Council Member Code of Conduct and the Local Government Act due to her opposition to the opening of a proposed bar near the location of her house and her business. It was alleged that, in opposing the opening of the business, the council member made improper use of her position as a council member in order to gain, directly or indirectly, an advantage for herself or another person.

The council member had:

- telephoned the owner of the proposed business to object to the opening of the business
- attended a conciliation to support her husband, who had lodged an objection to the Liquor Licence Application
- had telephoned the council in relation to the development approval, and
- had signed a petition against the opening of the business.

Investigation and outcome

My investigation found that the council member had not acted contrary to the Code of Conduct as, in opposing the business, she had not been carrying out her function as a public official, but rather she had been acting in a personal capacity. As such, the Code of Conduct did not apply.

I also found that the council member had not breached section 62(4) of the Local Government Act as I was not able to establish to the requisite standard of proof that she:

- had asserted the power she had as a result of her position as a council member, or
- was not acting in a personal capacity, or
- made improper use of her position as a member of the council to gain, directly or indirectly, an advantage for herself or for another person or to cause detriment to the council.

My report noted that:

- the Code of Conduct should include an enforceable standard of conduct that requires council members to act in the best interests of the community members they represent at all times
- had the council member been involved in any council decisions relating to the matter she would have been required to do so without personal bias, and
- council members face difficulties when they have a personal interest in a matter concerning the council.



District Council of Mallala

Failure to conduct a review of the Chief Executive's performance

2015/09576

Complaint

The complainant made allegations against the former Chief Executive and Mayor of the council in relation to the council's failure to conduct a review of the Chief Executive's performance within the six month probationary period stipulated by the Chief Executive's contract.

I investigated the complainant's allegation that the former Mayor failed to act diligently by not coordinating the review and not providing members of the review committee with all relevant information in a timely manner. I did not consider it necessary or justifiable in the circumstances to investigate the former Chief Executive Officer's conduct.

I conducted an own initiative investigation in relation to the issue of whether the council failed to conduct the review.

Investigation and Outcome

My investigation found:

- by failing to meet its obligations under the contract to organise the review within the probationary period, the council acted in a manner that was wrong
- there was not sufficient evidence that the former Mayor failed to act diligently and further investigation of that issue was not necessary or justifiable.

I did not make any recommendations.

Regional Council of Goyder

Unreasonable demand for interest on rates arrears

2015/04243

Complaint

The complainant had a rate debt against his property which was a former hotel. The rate debt was incurred unbeknownst to the complainant by his former tenant. The tenant was a company that went into liquidation. The complaint alleged that the council did not inform him of the debt for several years and, because the debt was unpaid it incurred a large amount of arrears. The complainant argued that the council had a responsibility to inform him of the debt as the owner of the property and this would have saved him accruing arrears.

The former Ombudsman had previously looked at this matter and had made comments to the effect that it was unreasonable of the council to charge interest because the owner was unaware of the debt. The council continued to charge interest on the arrears and therefore the complainant considered that the council was not compliant with the former Ombudsman's views.

Investigation and Outcome

My investigation found that the council had in fact remitted the interest on rates arrears for a four year period as per the former Ombudsman's comments. It was determined that it was not unreasonable for the complainant to pay interest on the rates arrears after this period because:

- the complainant as the principal ratepayer under section 178 of the Local Government Act could have rung the council at any time and enquired if the rates were being paid
- he was being charged arrears on the debt only since the time he became aware of it
- as a result of the former Ombudsman's enquiries, the council had changed its administrative process to inform both owners and tenants of rate debts
- it was open to the council to refuse the complainant's request and charge him interest on the rates arrears as he was legally responsible for the debt.

I concluded that the council decision to charge the complainant interest on the rates arrears since the time he became aware of the debt was not unlawful, unreasonable or wrong pursuant to the Ombudsman Act.

Roxby Council

Risk management and internal financial control procedures

2015/04775

Complaint

The matter arose because I became aware via media reports of the District Court judgement against a former employee of Roxby Council for defrauding an amount of \$188,858.00 from the council between 2005 and 2008.

Notwithstanding the unique governance structure of the Roxby Council, I noted that all councils are required to responsibly manage their business operations and to comply with Chapter 8 of the Local Government Act regarding administrative and financial accountability.

I commenced an own initiative investigation, seeking details about what action Roxby Council had taken to establish or upgrade internal financial controls aiming to prevent fraud and corruption in the council.

Investigation and Outcome

During the course of my investigation, the administrator provided information about other aspects of Roxby Council governance, including the status of the council's powers under the Roxby Downs (Indenture Ratification) Act 1982. Specifically, I was advised that the 'Indenture Act' has not been amended to reference the *Local Government Act 1999* and instead still refers to the provisions of the *Local Government Act 1934*. This requires the council to rely upon the *Acts Interpretation Act 1915* to give effect to the indenture until such time as a statutory amendment occurs.

My investigation found that the council had taken appropriate action to ensure that adequate financial and risk management controls were in place following the discovery of a major fraud. Specifically, the council's Audit Committee has approved a series of internal audit activities to test the integrity of financial controls in parts of the accounts payable and payroll systems. The council has also put in place a Fraud and Corruption Prevention Policy to complement Risk Management policies and Audit Committee activities.

A number of issues came to light during the investigation which I considered required council attention. Amongst these was the revelation that some key council policies, such as the Fraud and Corruption Prevention Policy and the council Contracts and Tendering Policy were not displayed on the council website. This has been rectified. The council also moved to put in place publication of administrative decisions on the Roxby Council website as a public record of council decision-making. Previously decisions had not been published.



Other Authorities

Summary tables

1 July 2015 - 30 June 2016

Complaints: Received

Authority	Received	Percentage
Central Adelaide Local Health Network	121	17.5
Commissioner for Consumer Affairs	38	5.6
Commissioner for Equal Opportunity	2	0.3
Commissioner for Public Sector Employment	1	0.1
Construction Industry Long Service Leave Board	1	0.1
Coroner	2	0.3
Country Health SA Local Health Network	26	3.8
Courts Administration Authority	12	1.8
Development Assessment Commission	3	0.4
Domiciliary Care SA	1	0.1
Drug & Alcohol Services SA	1	0.1
Eastern Health Authority	15	2.2
Essential Services Commission of South Australia	1	0.1
Federation of Polish Organisations	1	0.1
Flinders University	17	2.5
Gawler River Floodplain Management Authority	1	0.1
Health & Community Services Complaints Commissioner	37	5.3
HomeStart	5	0.7
Legal Profession Conduct Commissioner	14	2.0
Legal Services Commission	15	2.2
Liquor & Gambling Commissioner	1	0.1
Motor Accident Commission	17	2.5
Northern Adelaide Local Health Network	15	2.2
Professional Building Services Australia Pty Ltd	1	0.1
Public Advocate	19	2.8
Public Trustee	80	11.5
RSPCA Inspectorate	10	1.4
SA Ambulance Service	30	4.3
SA Country Fire Service	1	0.1
SA Forestry Corporation	2	0.3
South Australian Civil and Administrative Tribunal	38	5.6

Authority	Received	Percentage
South Australian Dental Service	8	1.2
South Australian Motor Sport Board	1	0.1
South Australian Tertiary Admissions Centre	5	0.7
South Australian Tourism Commission	1	0.1
Southern Adelaide Local Health Network	24	3.5
State Emergency Service	1	0.1
Super SA Board	26	3.8
TAFE SA	33	4.8
Teachers Registration Board	5	0.7
University of Adelaide	21	3.0
University of South Australia	34	4.9
Urban Renewal Authority	4	0.6
Women's and Children's Health Network	2	0.3
Total	693	100%

Complaints: Completed

Authority	Completed	Percentage
Anangu Pitjantjatjara Yankunytjatjara Executive Board	1	0.1
Central Adelaide Local Health Network	121	17.5
Commissioner for Consumer Affairs	39	5.6
Commissioner for Equal Opportunity	2	0.4
Commissioner for Public Sector Employment	1	0.1
Construction Industry Long Service Leave Board	1	0.1
Coroner	2	0.4
Country Health SA Local Health Network	26	3.8
Courts Administration Authority	12	1.7
Development Assessment Commission	3	0.4
Domiciliary Care SA	1	0.1
Drug & Alcohol Services SA	1	0.1
Eastern Health Authority	15	2.2
Essential Services Commission of South Australia	1	0.1
Federation of Polish Organisations	1	0.1

Authority	Completed	Percentage
Flinders University	16	2.3
Gawler River Floodplain Management Authority	1	0.1
Health & Community Services Complaints Commissioner	35	5.0
HomeStart	5	0.7
Legal Practitioners Conduct Board	1	0.1
Legal Profession Conduct Commissioner	15	2.2
Legal Services Commission	15	2.2
Liquor & Gambling Commissioner	1	0.1
Motor Accident Commission	17	2.4
Northern Adelaide Local Health Network	15	2.2
Public Advocate	19	2.7
Public Trustee	79	11.5
RSPCA Inspectorate	10	1.4
SA Ambulance Service	31	4.5
SA Country Fire Service	1	0.1
SA Forestry Corporation	2	0.4
SACE Board of SA	1	0.1
South Australian Civil and Administrative Tribunal	39	5.6
South Australian Dental Service	8	1.2
South Australian Motor Sport Board	1	0.1
South Australian Tertiary Admissions Centre	5	0.7
South Australian Tourism Commission	1	0.1
Southern Adelaide Local Health Network	25	3.6
Super SA Board	26	3.8
TAFE SA	31	4.5
Teachers Registration Board	5	0.7
University of Adelaide	21	3.0
University of South Australia	35	5.0
Urban Renewal Authority	4	0.6
Women's and Children's Health Network	2	0.4
Total	694	100%

Complaints: Issues

Authority	Total	Percentage
Advice	2	0.3
Complaint handling/Delay	32	4.6
Complaint handling/Inadequate processes	91	13.2
Complaint handling/Inadequate reasons	11	1.6
Complaint handling/Inadequate remedy	16	2.3
Complaint handling/Wrong conclusion	33	4.8
Conduct/Assault	2	0.3
Conduct/Discourtesy	14	2.1
Conduct/Misconduct	9	1.3
Correspondence/Communications/Records/Breach of privacy/Confidentiality	2	0.3
Correspondence/Communications/Records/ Delayed/No response	39	5.7
Correspondence/Communications/Records/Incorrect	17	2.5
Correspondence/Communications/Records/Lost	5	0.8
Correspondence/Communications/Records/ Withholding of information	12	1.7
Correspondence/Communications/Records/Wrongful disclosure of information	1	0.1
Employment	9	1.3
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury	5	0.8
Financial/Procurement/Facilities/Compensation/Damage/Property lost/Damaged	3	0.4
Financial/Procurement/Facilities/Debts	19	2.7
Financial/Procurement/Facilities/Facilities owned/Controlled by authority/Cost of use	1	0.1
Financial/Procurement/Facilities owned/Controlled by authority/Sale/Lease	1	0.1
Financial/Procurement/Facilities/Procurement by agencies/Tenders	1	0.1
FOI advice	43	6.2
FOI practices and procedures	1	0.1
Housing/Rent	1	0.1
Records management	1	0.1
Regulation and enforcement/Complaint handling	2	0.3
Regulation and enforcement/Enforcement action/Excessive	2	0.3
Regulation and enforcement/Enforcement action/Insufficient	1	0.1
Regulation and enforcement/Enforcement action/Unfair	4	0.6
Regulation and enforcement/Fees	4	0.6

Authority	Total	Percentage
Regulation and enforcement/Infringements/Unreasonably issued	2	0.3
Regulation and enforcement/Inspections	1	0.1
Regulation and enforcement/Licensing/Conditions	1	0.1
Regulation and enforcement/Licensing/Refusal	1	0.1
Regulation and enforcement/Licensing/Renewal	2	0.3
Roads and traffic/Road management	1	0.1
Service delivery/Abuse in care	2	0.3
Service delivery/Assessment	18	2.6
Service delivery/Conditions	7	1.0
Service delivery/Debts	3	0.4
Service delivery/Eligibility for services	20	2.9
Service delivery/Failure to act/Provide	117	16.9
Service delivery/Fees and charges	23	3.3
Service delivery/Financial assistance	16	2.3
Service delivery/Quality	71	10.3
Service delivery/Termination of services	9	1.3
Superannuation	14	2.1
Whistleblower Protection Act advice	1	0.1
Total	693	100%

Outcomes

Authority	Total	Percentage
Advice given	55	7.9
Alternate remedy available with another body	205	29.6
Complainant cannot be contacted	1	0.1
Declined/Investigation unnecessary or unjustifiable	128	18.5
Declined/No sufficient personal interest or not directly affected	3	0.4
Declined/Out of time	4	0.6
Declined/Trivial, vexatious, not made in good faith	1	0.1
Not substantiated	4	0.6
Out of jurisdiction/Agency not within jurisdiction	1	0.1
Out of jurisdiction/Employment	6	0.9
Out of jurisdiction/Judicial body	4	0.6
Out of jurisdiction/Police matter	1	0.1
Out of jurisdiction/Policy	2	0.3
Referred back to agency	220	31.7
Advice to authority	1	0.1
Resolved with agency cooperation	36	5.2
Withdrawn by complainant	22	3.2
Total	694	100%

Case Studies

Flinders University

Cancellation of enrolment

2015/06730

Complaint

The complainant was an international student who was studying at the University on a student visa. The complainant completed Semester 1 of studies, however, complained that the University unreasonably made allegations of plagiarism against him and generally treated him unfairly. In addition, the complainant asserted that the University had sent him an email encouraging him not to enrol in Semester 2 and therefore he did not enrol which meant his Confirmation of Enrolment (COE) was cancelled leaving him potentially in breach of the conditions of his student visa.

Investigation and Outcome

The University advised it had conducted an investigation into the alleged plagiarism and found a breach of Academic Integrity in relation to four assignments. I found that the University had conducted the investigation in accordance with the relevant policy and had informed the complainant of his appeal rights. Although the complainant may have been confused about the process, I was satisfied that the University had advised him of the relevant University services to assist him as an international student and that the complainant had engaged with those services prior to approaching my Office.

In relation to the cancellation of the complainant's COE, my Office advised the complainant to contact the Department of Immigration and Border Protection immediately (the DIBP) as the cancellation of his COE meant he was potentially in breach of his student visa. Following enquiries with the University, I found that in accordance with the National Code, the University was required to cancel the complainant's COE and had notified the DIBP on the basis that the complainant had not enrolled in Semester 2, meaning he was in breach of his student visa.

I considered a copy of the email from the University which the complainant alleged had advised him not to enrol in Semester 2 and I found that unfortunately the email was likely misinterpreted by the complainant. Again, I advised the complainant to contact the DIBP immediately. I explained to the complainant that if he was aggrieved by the conduct of University staff, he could make a formal complaint to the University. However, I could not be satisfied that the University had acted in a way that was unlawful, unreasonable or wrong within the meaning of the Ombudsman Act.

University of Adelaide

Unreasonable investigation of complaint

2015/09185

Complaint

The complainant raised issues about the outcome of the investigation into a complaint about research misconduct and serious misconduct by a Senior Lecturer as the complainant was of the opinion that the person appointed to conduct the preliminary investigation was unsuitable as she did not possess the academic qualifications applicable to the area of research. I investigated whether or not the complaint was dealt with in accordance with the University's procedures for Managing Complaints of Research Misconduct/Serious Misconduct.

Investigation and Outcome

My enquiries found:

- the University received and investigated the complaint in accordance with its procedure for managing complaints of research misconduct and serious misconduct
- that the person appointed by the University to conduct the preliminary investigation was in accordance with its procedure for managing complaints of this nature
- the University allowed adequate time for the use of an interpreter by the complainant during an interview into the complaint.

As the University followed, and thereby complied with, its procedure for managing complaints of research misconduct and serious misconduct, it was not necessary or justifiable that I investigate the matter further.

Legal Profession Conduct Commissioner

Closure of a complaint

2015/06246

Complaint

The complainant alleged that:

- the now defunct Legal Practitioners Conduct Board proceeded to a finalisation of the complainant's complaint about a legal practitioner at its final meeting in the knowledge that a geriatrician's report had been sought on behalf of the complainant and not yet provided
- the Commissioner failed to further investigate in light of the geriatrician's report and to revisit the issue of capacity
- the Commissioner's reasons for closing the complaint suggested that the matter was of 'minor concern' to him
- the Commissioner failed to further investigate the practitioner's costs arrangements.

Investigation and Outcome

In relation to the first issue, my investigation found:

- the allegation was out of time and it was not proper in all of the circumstances to entertain the complaint, noting that the complainant and their legal representative were aware that the Board intended to consider the matter on a certain date and took no steps to seek an extension of time.

In relation to the second issue, my investigation found:

- it was reasonably open to the Commissioner to take the view that the geriatrician's report did not add anything to the previous information before the Board.

In relation to the third issue, my investigation found:

- while I could appreciate why the complainant was under the impression that the matter was of 'minor concern' to the Commissioner, I did not accept that that was the case.

In relation to the fourth issue, my investigation found:

- the Commissioner's approach to the costs arrangement was based on unequivocal advice from a barrister.

I found that the Commissioner had not acted in a way that was unlawful, unreasonable or wrong within the meaning of the Ombudsman Act.



Independent Commissioner Against Corruption Act

The Independent Commissioner Against Corruption (the ICAC) may refer matters that raise potential issues of 'misconduct' and/or 'maladministration' in public administration to the Ombudsman for investigation. The *Independent Commissioner Against Corruption Act 2012* defines misconduct and maladministration and sets out what constitutes 'public officers' and 'public authorities' for the purposes of the Act.

The matters referred may derive from complaints made to the Office for Public Integrity (OPI) by members of the public ('complaints') or by reports made to the OPI by public officers ('reports').

The Ombudsman investigates such referrals by exercising his powers under the Ombudsman Act and in accordance with any directions or guidance given by the ICAC in respect of the matter.

Closed matters - ICAC outcomes

	Government Departments	Local Government	Other Authorities	Total
Response to proposed referrals				
Agree to referral	2	27	3	32
Disagree to referral	2	5	1	8
ICAC exercise Ombudsman powers	1	1		2
Partially agree with referral	1	2	2	5
Total	6	35	6	47
ICAC investigations				
Discontinued	1	3		4
Finding of maladministration	1	1	1	3
Finding of misconduct	1	4		5
No finding of misconduct or maladministration	2	13	2	17
Finding contrary to law (s25)		1		1
Finding unreasonable (s25)	1			1
Total	6	22	3	31

Note: Explanations of the ICAC outcomes are in Appendix E

Case studies

Unreasonable delay in recovering unexpended funds

2014/06158

Report

The report alleged that an organisation receiving grant funds from a state government department for the purpose of delivering services to the community incorrectly expended monies to the sum of the \$225,637. In the course of determining whether the organisation had committed an act of maladministration under section 5(4) of the ICAC Act, it came to my attention that the actions taken by the department in recovering the unauthorised use of grant funds required investigation.

Investigation and Outcome

My enquiries established that the department:

- took 5 months to determine that the organisation's financial records were outstanding
- took 13 months to issue an invoice for the retrieval of the funds
- continued to provide some funding to the organisation even though the responsibility for the grant program mostly moved to the Commonwealth Government.

My investigation found that whilst the actions taken by the department in attempting to recover the funds did not amount to maladministration under the ICAC Act because it complied with its policies (which had since changed), it's actions were unreasonable pursuant to section 25(1)(b) Ombudsman Act.

I recommended to the ICAC that the department provide a copy of my report to the Commonwealth Government department responsible for this type of funding, which it has since done.

Suspension of a trainee

2015/08880

Complaint

It was alleged that:

- the department committed maladministration by suspending a trainee contrary to legislative requirements
- the department committed maladministration by misusing public funds for a 12 month suspension with no attempt at investigation.

Investigation and outcome

In relation to the first issue, my investigation found:

- the department did not refer the matter to the Industrial Relations Commission immediately as required by section 64 of the Training Skills and Development Act 2008
- while the initial suspension did not constitute maladministration for the purposes of the ICAC Act (as it did not in itself result in substantial mismanagement of public resources), it was contrary to law for the purposes of section 25(1) of the Ombudsman Act.

In relation to the second issue, my investigation found:

- the fact that the trainee was on paid suspension for 12 months before the matter was lodged with the Industrial Relations Commission or the allegations provided to them resulted in maladministration for the purposes of the ICAC Act
- the delays in investigating the allegations and providing those allegations to the trainee were unreasonable for the purposes of section 25(1)(b) of the Ombudsman Act.

Alleged conflict of interest and exercise of undue and improper influence in relation to development

2014/03383

Complaint

It was alleged that the Mayor of a local council had an undeclared conflict of interest in relation to a council decision to exclude a particular area from a Strategic Directions Review which would impact on a proposed development plan amendment. The conflict was alleged to arise because the Mayor owned property in the area to be covered by the Review.

It was also alleged that the Mayor exercised undue and improper influence on other council members by addressing council members prior to the vote on the Strategic Directions Review. It was alleged that the Mayor made it clear that he did not support the area being included in the Review and in the event that he had the opportunity to vote (i.e. because of a tied vote), he would vote against it. It was alleged, therefore, that he was not impartial and did not appropriately fulfil his role as presiding member and chair of the meeting.

Investigation and outcome

In relation to the first issue, my investigation found: the issue had to be determined in light of the wording of the relevant resolution which did not in itself give rise to a relevant interest for the purposes of the Local Government Act

- the Strategic Directions Review did not propose action in relation to the Mayor's property that required a decision by the council
- any alleged benefit to the Mayor by excluding the area (and therefore creating more demand for land) was merely speculative
- the Mayor did not have a relevant interest and as such he did not breach the Local Government Act
- the Mayor did not commit misconduct for the purposes of section 5(3) of the ICAC Act.

In relation to the second issue, my investigation found:

- there was no evidence that the Mayor breached Regulation 15 of the Local Government (Procedures at Meetings) Regulations. The issue was whether as principal member he could appropriately participate in the debate
- the fact that the Mayor expressed his views at the meeting could not reasonably be said to give rise to conduct that unduly influenced other council members
- there was no evidence that the Mayor had provided council members with false or misleading information or that he had a conflict of interest and was attempting to influence council members in order to gain a benefit or avoid a detriment
- the Mayor did not exercise undue or improper influence
- the Mayor did not commit misconduct in public administration within the meaning of section 5(3) of the ICAC Act.

Alleged misconduct and maladministration by public officers in a council

2015/02593

Complaint

It was alleged that:

- the council (including the Chief Executive Officer and the Mayor) were aware that certain assets requiring certification were uncertified and took no action
- the council failed to undertake due diligence in purchasing certain assets
- there was a conflict of interest in a Director overseeing a court appeal
- the Chief Executive Officer inappropriately provided the Director with confidential documents
- the Chief Executive Officer inappropriately approved a promotion of the Director against internal advice
- the Director was involved in bullying and harassment of various staff.

Investigation and outcome

I did not find that there was misconduct or maladministration on behalf of any of the parties (i.e. the council, the Mayor, the Chief Executive Officer, or the Director).

In relation to the first issue, my investigation found:

- the issue of certification was a complex matter inherited by the current council, and the council was taking steps to address the issue
- many of the uncertified assets were not owned by the council.

In relation to the second issue, my investigation found:

- the assets were not owned by the council and the council planned to undertake due diligence in relation to those assets if and when it becomes necessary.

In relation to the third issue, my investigation found:

- while the Director may have been at meetings at which the appeal was discussed, they did not oversee the court appeal, a fact that was confirmed by the council's lawyers.

In relation to the fourth issue, my investigation found:

- there was no evidence that the Chief Executive Officer provided the relevant information to the Director
- even if the Chief Executive Officer had made the relevant information available, I did not consider that that conduct would have amounted to misconduct.

In relation to the fifth issue, my investigation found:

- there was no suggestion that the Director was not a suitable candidate for the promotion and the recruitment process was appropriate
- the Chief Executive Officer had a broad discretion and the fact that other staff may have held a different view did not indicate misconduct on the Chief Executive Officer's behalf
- the reporter later clarified that the allegation related to an incremental pay rise rather than the promotion
- the Chief Executive Officer's decision to approve the incremental pay rise was not inappropriate.

In relation to the sixth issue, my investigation found:

- the allegations of bullying were vague and unsubstantiated and denied by the Director
- further investigation of the allegations of bullying was neither necessary nor justifiable.

Incorrect approval of development applications by public officers of a council

2014/07558

Report

The report, made by a whistleblower, was that three employee development officers and a former elected member had approved six different development applications that were contrary to the council's development plan. The approvals occurred between August 2012 to November 2013.

Investigation and Outcome

I obtained both written responses and evidence under oath from the implicated officers, former council member and staff of the council. I analysed the council's development plan, Development Act and Regulations, to determine whether the decisions made by the development officers were seriously at variance to the development plan, and therefore contrary to each officer/members obligations under the Codes of Conduct.

I determined that there was no evidence of the officers and elected member committing misconduct in public administration because the approved developments were not seriously at variance to the development plan. The development plan is a policy or guideline only and I had no reason to disbelieve the evidence of the individuals involved which for the most part corroborated each other.

Council employee conflict of interest

2015/05386

Report

The reporter alleged that a council employee breached the council's Code of Conduct for Council Employees when she employed a friend to work at the council in 2012. Both employees still work for the council.

Investigation and Outcome

My investigation took evidence from the council employee and obtained documentation in relation to the recruitment and archived council policies at the time of the recruitment.

My investigation found that:

- the council employee advised that she was instructed to recruit externally for the position from the former HR Manager at the council
- the council's recruitment policy and Code of Conduct for Council Employees in 2012 permitted external recruitment without advertising for the position. The policy and the Code have since been amended in this regard
- therefore the council employee did not breach the council's policy and Code at the time of the recruitment
- the employee had no power to appoint those she recruited
- the employee did not make the decision to recruit the friend but instead recommended the friend for the position
- there was evidence of serious workplace concerns about the council's former HR Manager by several council employees resulting in the HR Manager leaving the position.

Accordingly I found that the council employee did not breach the council's Code of Conduct and therefore she did not commit misconduct in public administration.



Alleged misconduct and maladministration in relation to construction of a community centre

2015/03754; 2015/03699

Complaint

It was alleged that:

- members and/or employees of two councils, who were undertaking a joint project to construct a community centre, committed misconduct by substantially altering plans for the centre after consultation
- members and/or employees of the councils misinformed and pressured council members in order to affect voting on plans for the community centre
- the councils committed to over-expenditure on the community centre.

Investigation and outcome

I did not find that there was misconduct or maladministration on behalf of individual council members or employees of either council.

In relation to one of the councils, my investigation found:

- there was nothing improper about the changes to the plans and it was ultimately a policy decision for that council as to which version of the plan it adopted
- there was no clear or specific evidence that the Mayor or Chief Executive of the council inappropriately pressured any council members so as to influence their vote
- there was no evidence of over expenditure and considerations in relation to the cost and nature of the community centre were ultimately policy decisions for the council.

I determined not to take any further action in relation to the allegations as they related to the other council.

Breach of council member code of conduct

2015/09687

Report

The reporter alleged that a council member breached the Code of Conduct for Council Members by breaching confidentiality when he shared information the council ordered to be kept confidential with a local journalist. The journalist then published the information.

Investigation and Outcome

My investigation obtained documentation from the council member and the journalist, as well as the council.

My investigation found that:

- the information contained in a ministerial Development Plan Amendment (DPA) was ordered to be kept confidential pursuant to section 90(3) of the Local Government Act
- several days later the council member was meeting the journalist about a separate matter and revealed that there were two further sites mentioned in the DPA
- the journalist published the information
- the council member and the journalist both confirmed that the council member had informed the journalist of the two sites.

Accordingly I found that the council member breached clause 3.3 of the Code of Conduct for Council Members and therefore committed misconduct in public administration.

Unauthorised expenditure of grant monies

2014/08340

Report

The reporter alleged unauthorised use of \$225,637 of grant monies by an organisation contracted by a government department to provide services to members of the community. It was determined the organisation was a 'public officer' for the purposes of the ICAC Act.

Investigation and Outcome

My investigation found that the organisation:

- expended monies on services other than those it was contracted to provide
- was in breach of the Master Agreement it had with the department
- was unable to account for its misspending
- failed to propose or accept the department's repayment plan
- still owed the funds to the department.

My report recommended that the organisation ensure training is provided to its Board members, engage a new accountant and table a report at its AGM. Further, I sent a copy of the report to the Auditor-General and Consumer and Business Services as the regulatory body for incorporated associations.

Alleged conflicts of interest and interference with tender process

2015/08245

Report

It was anonymously alleged that:

- the engagement of a Director to oversee submissions as part of a procurement process raised a conflict of interest as that person had taken 12 months leave as Chief Executive Officer of an organisation that had successfully tendered for the first stage of the process
- the Director's Manager was also conflicted due to the Manager's involvement in another organisation that had successfully tendered for the first stage of the process
- the Chief Executive of the relevant agency had told staff that they would set up a panel and that they had negotiated with each of the organisations on the panel as to which organisations would bid for which areas.

Investigation and outcome

In relation to the first issue, my investigation found:

- any potential conflict of the Director had been appropriately declared and managed
- there was no maladministration or misconduct.

In relation to the second issue, my investigation found:

- the actual conflict of the Manager had been appropriately declared and managed
- there was no maladministration or misconduct.

In relation to the third issue, my investigation found:

- bidding for particular areas had not yet occurred and the process by which that would occur was yet to be determined
- there was no evidence that the Chief Executive had inappropriately 'negotiated' with any of the organisations in relation to any of the stages of the process
- neither the Chief Executive nor the agency committed maladministration
- the Chief Executive did not commit misconduct.

Return to Work Act

As of 1 July 2015, the Workers Rehabilitation and Compensation Act 1986 was repealed and my jurisdiction under Schedule 5 of the *Return to Work Act 2014* (RTW Act) to investigate complaints about breaches of the Service Standards commenced. The Service Standards apply to both Return to Work SA (RTWSA) and the Crown and Private self-insured insurers, including providers of services engaged by the self-insured employers.

Only a worker or an employer may lodge a complaint with my Office if they believe that the Service Standards have been breached. Where an investigation by my Office identifies that a breach of the Service Standards has occurred, I may require the respondent to provide a written or oral apology, furnish a written explanation or other remedies as outlined in clause 7 of Schedule 5 of the RTW Act. The powers of the Ombudsman under the Ombudsman Act apply to self-insured employers as if they are agencies to which the Ombudsman Act applies.

In addition, under section 180(8) of the RTW Act, the Ombudsman can receive a request to conduct an external review of the decision by RTWSA or self-insured employer in relation to a worker's request to access information contained in their claim file. At the conclusion of the review, the Ombudsman may confirm, vary or modify the decision under review.

Due to the changes in entitlements under the RTW Act, the Ombudsman SA could not rely on previous data to project the volume of approaches and complaints it could expect to

receive from 1 July 2015. However, an analysis by my Office of the approaches received in the weeks preceding the RTW Act coming into effect, identified transitional provisions of the RTW Act and its impact upon income support and medical expenses were likely to be the types of complaints and approaches my Office would receive. The first two months of operation of the RTW Act confirmed this expectation. In addition, delays by RTWSA's claim agents in processing redemption payments to workers were a prominent type of complaint received by my Office.

During 2015-16 I met with the RTWSA's A/Director, Client Services & Scheme Initiatives on a quarterly basis to discuss statistical data for complaints received and investigations conducted by my Office. These meetings are an important forum in which the activities of the Corporation could be discussed.

Through the course of the year approaches to my Office steadily decreased. This decrease in approaches was also experienced by RTWSA and its agents. There is consensus between RTWSA and my Office that the decrease in approaches can be largely attributed to there being a reduction in the number of long term claimants remaining in the scheme due to them having their worker's compensation claims redeemed prior to the RTW Act coming into effect. It is acknowledged that due to complexities with their injuries and entitlements under the repealed Act those claimants represented a significant proportion of complaints received prior to 1 July 2015.

Summary tables

1 July 2015 - 30 June 2016

Complaints received per respondent per month

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
ReturntoWork SA	28	3	4	1	3	4	8	6	2	0	2	1	62
Employers Mutual Ltd	11	13	12	15	13	7	8	5	3	6	9	9	111
Gallagher Bassett Services	18	17	16	20	10	7	14	13	4	6	9	8	142
Crown Self Insured	10	7	2	7	5	7	4	2	1	3	4	2	54
Other Self Insured	3	6	7	2	9	2	5	4	6	2	7	2	55
Total	70	46	41	45	40	27	39	30	16	17	31	22	424

Outcomes

	Total	Percentage
Advice given	7	1.7
Alternate remedy available with another body	32	7.7
Breach of service standards	2	0.5
Breach of service standards not substantiated	15	3.6
Complainant cannot be contacted	3	0.7
Declined/Investigation unnecessary or unjustifiable	52	12.6
Out of jurisdiction	15	3.6
Referred back to compensating authority	175	42.3
Resolved with compensating authority's cooperation	86	20.8
Withdrawn by complainant	27	6.5
Total	414	100%

Issues

	Total	Percentage
Access to claims file	5	1.2
Service standards sch 5 s4(a)	31	7.1
Service standards sch 5 s4(b)	11	2.5
Service standards sch 5 s4(c)	9	2.1
Service standards sch 5 s4(d)	15	3.5
Service standards sch 5 s4(e)	128	29.5
Service standards sch 5 s4(f)	116	26.7
Service standards sch 5 s4(g)	21	4.8
Service standards sch 5 s4(h)	2	0.5
Service standards sch 5 s4(i)	13	3.0
Service standards sch 5 s4(j)	1	0.2
Other	82	18.9
Total	434	100%

Statement of Service Standards

Clause 4 of Schedule 5 of the Return to Work Act sets out the service standards that apply to RTWSA, claims agents and self-insured employers:

- a. View a worker's recovery and return to work as the primary goal if a worker is injured while at work;
- b. Ensure that early and timely intervention occurs to improve recovery and return to work outcomes including after retraining (if required);
- c. With the active assistance and participation of the worker and the employer, consistent with their obligations under this Act, ensure that recovery and return to work processes focus on maintaining the relationship between the worker and the employer;
- d. Ensure that a worker's employer is made aware of, and fulfils, the employer's recovery and return to work obligations because early and effective workplace-based coordination of a timely and safe return to work benefits an injured worker's recovery;
- e. Treat a worker and an employer fairly and with integrity, respect and courtesy, and comply with stated timeframes;
- f. Be clear about how the Corporation can assist a worker and an employer to resolve any issues by providing accurate and complete information that is consistent and easy to understand (including options about any claim, entitlements, obligations and responsibilities);
- g. Assist a worker in making a claim and, if necessary, provide a worker with information about where the worker can access advice, advocacy services and support;
- h. Take all reasonable steps to provide services and information in a worker's or employer's preferred language and format, including through the use of interpreters if required, and to demonstrate respect and sensitivity to a person's cultural beliefs and values;
- i. Respect and maintain confidentiality and privacy in accordance with any legislative requirements;
- j. Provide avenues for feedback or for making complaints, and to be clear about what can be expected as a response;
- k. Recognise a right of a worker or an employer to be supported by another person and to be represented by a union, advocate or lawyer.

Case Studies

Gallagher Bassett Services

Declining to reimburse the employer for weekly payments made to the injured worker that exceeded the worker's entitlement to weekly earnings.

2016/00674

Complaint

The complainant made the complaint on behalf of the pre-injury employer of an injured worker. She stated that she commenced weekly payments of income support to the injured worker at a certain rate per week. The complainant had contact with the agent on several occasions regarding the claim, however, the agent failed to inform the complainant of the exact rate of weekly payments she should be making to the injured worker, resulting in an overpayment.

Further, the complainant stated that she also informed the agent on multiple occasions that she was unable to continue to pay the injured worker; however, the agent did not take over direct payments.

Investigation and Outcome

In relation to the first issue, I found that the agent had failed to inform the employer of the correct rate of weekly payments to pay the worker and consequently the employer paid the worker above the legally required weekly earnings rate. Consequently, the agent agreed it did not afford the employer the level of service to which it was entitled. I found that the agency had acted in a manner that was in breach of clause 4(e) of the service standards set out in schedule 5 of the Return to Work Act.

I recommended that the agent reimburse the employer for payments it made to the worker above the determined weekly earnings rate between the date of injury and the date of claim determination.

In relation to the second issue, I found that in the event the pre-injury employer is unable to continue to pay an injured worker income support it is able to advise the agent at any stage during the claim and request the agent take over direct payments to the worker, other than the first two weeks of income support. In this instance the pre-injury employer did not provide evidence to me to support the assertion it had notified the agent of its inability to continue to pay the worker and that it required the agent to take over direct payments. I found that the agent had not acted in a manner that was in breach of the service standards.

Employers Mutual Limited

Unreasonable determination to reject claim for workers compensation

2016/00175

Complaint

The worker complained that the agent failed to provide medical reports within legislated timeframes, did not assist him with an early return to work and failed to determine his claim within legislated timeframes. The worker further complained that the agent colluded with both the pre-injury employer and the independent medical examiner to reject his claim for compensation.

Investigation and Outcome

In relation to the first issue, my enquiries found that the agent did fail to provide the worker with a copy of a medical report within seven calendar days as required by section 182 of the Return to Work Act. I found that the agent had acted in a manner that was in breach of clause 4(e) of the service standards set out in schedule 5 of the Act, but as the agent had already provided an apology to the worker there was no need to make a recommendation in relation to this finding.

In relation to the second issue, my enquiries found that the agent made early and regular contact with the worker. Further, the claim for compensation was determined within a reasonable timeframe and there was no evidence of any particular delay on the part of the agent in determining the claim. I found that the agent had not acted in a manner that was in breach of the service standards.

In relation to the final issue, my enquiries found that the independent medical examiner (IME) raised questions regarding industrial issues in the workplace in his report. The pre-injury employer provided additional information regarding the questions raised by the IME at the request of the agent. There was no evidence that the pre-injury employer disclosed information about the worker's claim to any other party. Further, there was no evidence to support the assertion that the agent colluded with the employer to reject the claim for compensation or sought information outside of the questions raised by the IME in the report. I found that the agent had not acted in a manner that was in breach of the service standards.



Department for Health and Ageing

Unreasonable process for mailing redemption lump sum cheques

2016/00436

Complaint

The complainant was an employee of the Department for Health and Ageing and had accepted a redemption offer for a substantial lump sum. The cheque was processed through Shared Services and sent via general mail. The complainant was not given the option of having the cheque sent by registered mail or paid into her bank account.

The complainant advised that she had contacted the agency and was advised by her Claims Consultant that the cheque had been sent to her street address. The complainant was stressed by this as she had previously advised the agency that she was having concerns with her mail being misdirected and requested that all correspondence be sent to her PO Box. The agency had complied with this request previously.

The complainant subsequently advised that she had since received the cheque which was sent to her PO Box and not her street address as previously advised. The cheque was not received until 11 days after processing. The complainant believes that there was undue delay in receipt of the cheque.

Investigation and Outcome

The agency advised that it is at the Claims Consultant's discretion where payment is by cheque, whether the cheque is sent for manual payment and the cheque then collected from Shared Services and delivered to the worker by courier. Where payment is to a legal representative or where bank details have been supplied, payment is by EFT. The agency confirmed that the complainant's cheque had been sent through the general mail.

The complainant was frustrated as she considered that the agency should have arranged for a cheque of a substantial amount to be forwarded through registered mail to enable tracking and prompt delivery. She was also concerned that the Claims Consultant provided her with inaccurate information in relation to the address the cheque was sent to. This caused the complainant undue distress.

I requested that the agency address the issue of the processing and mailing of cheques to workers for substantial sums and advise the Ombudsman of the outcome.

In response, the agency advised that the previous practice where a decision on how payment of lump sum amounts by cheque was to be made had been revoked and Section 12.12 of the SA Health Operations Manual for Injured Management Personnel would be updated to reflect the requirement that any lump sum payments will either be made by electronic funds transfer or where the payee refuses or fails to provide bank details, that a cheque is delivered to the payee by a secure and timely method (ie via courier or registered mail) to the worker's residential address or to the worker's representative's business address.

PROMOTION OF ADMINISTRATIVE IMPROVEMENT

Promotion of Administrative Improvement

In all of the work my Office undertakes, I aim to promote administrative improvement within state and local government agencies. Exercising my power to make recommendations to agencies under section 25(2) of the Ombudsman Act and utilising my audit function under section 14A of the Ombudsman Act are key means of achieving this aim, but not the only means.

There are a range of administrative improvement initiatives and achievements for 2015-2016 which I highlight in this section.

Implementation of recommendations made under the Ombudsman Act

Each year my Office conducts dozens of investigations into complaints made against state agencies, local government councils and universities. Comparatively few investigations reach the Full Investigation stage and, of these, not all result in a finding of administrative error under section 25 of the Ombudsman Act.

Where I do find administrative error, I make a recommendation to remedy the error and/or to improve the administrative system which gave rise to the mistake. However, I usually decline to make a recommendation where agencies themselves recognise the mistake early in the investigation and advise me that they have taken corrective action, or where no meaningful recommendation can be made.

Of the 26 investigation reports where I found administrative error, I made recommendations under section 25 of the Ombudsman Act in relation to 24 of them. I made 72 recommendations in total. 70, or 97% of my recommendations, were accepted across all agencies.

One recommendation not accepted was made to the Department for Correctional Services on the issue of the maintenance of prisoner health records. The department submitted, and I accepted, that the matter is the responsibility of the SA Prison Health Service.

The other was a recommendation made to the Department of Planning, Transport and Infrastructure proposing a new policy which includes guidance on the issuing of expiation notices to people from a non-English speaking background. The department submitted that its current Fare Evasion Policy adequately covers formal cautions and issuing of expiation notices to people of non-English speaking backgrounds. I am currently checking the relevance of that policy.

This year I made no formal reports to Ministers or to the Premier about recommendations not responded to by an agency of government or a local government council.

Of the 72 recommendations, 51 have been implemented as at the end of the reporting year. This is an implementation rate of 71%. I expect that rate to rise to the high 90% range when all implementation reports are received for recommendations I made towards the end of the reporting period.

Separate to the Ombudsman Act investigations, I issued five reports on cases referred by ICAC where I found allegations of misconduct or maladministration in public administration substantiated. In response to those findings I made 14 recommendations, 11 or 79% of which have been implemented during the reporting period.

The following tables¹ summarise recommendations made pursuant to investigations finding administrative error under section 25 of the Ombudsman Act:

1 July 2015 – 30 June 2016	Total Number
Reports where recommendations made	24
Recommendations	72
Recommendations Accepted	70 (97%)
Recommendations Not Accepted	2 (3%)
Recommendations Implemented	51 (71%)
Recommendations NOT Implemented ²	19 (26%)

¹ The tables record implementation completions as at 30 June 2016.

² Recommendations that were accepted, but where implementation has not commenced, or has commenced but is incomplete.

Report Date	Agency and Investigation	Recommendations	Accepted	Implemented
6 July 2015	Department for Communities and Social Inclusion Unreasonable delay in recovering unexpended funds	1	1	1
6 July 2015	Department of Environment Water and Natural Resources Unreasonable advice regarding waiver of penalty	3	3	0
30 July 2015	Department for Education and Child Development Failure to provide reasons for decision	1	1	1
31 July 2015	Department for Education and Child Development Failure to comply with Information Privacy Principles	1	1	1
13 August 2015	Department for Education and Child Development Failure to comply with obligation to report	6	6	6
2 September 2015	Department for Correctional Services Unlawful separation of prisoner	3	3	3
10 September 2015	City of Burnside Breach of council member code of conduct	1	1	1
23 September 2015	District Council of Mallala Breach of council member code of conduct	1	1	1
30 September 2015	Department for Education and Child Development Failure to accord procedural fairness	3	3	3
7 October 2015	City of Salisbury Breach of council member code of conduct	3	3	3
7 October 2015	Department for Education and Child Development Unreasonable investigation of complaint	4	4	4
16 December 2015	Department for Correctional Services Failure to have regard to medical advice when shackling prisoner	2	1	1
22 March 2016	City of Victor Harbour Breach of council member code of conduct	5	5	5
29 March 2016	Berri Barmera Council Misuse of confidentiality orders	2	2	2
29 March 2016 (Master file)	Department for Communities and Social Inclusion Unreasonable delays in processing screening applications	8	8	0
31 March 2016	District Council of Mount Remarkable Unauthorised removal of water from dam	3	3	3
21 April 2016	Department for Correctional Services Unlawful shackling of prisoner in hospital	8	8	4
2 May 2016	Kangaroo Island Council Misuse of confidentiality orders	1	1	1
9 May 2016	Department of Planning, Transport and Infrastructure Refusal to withdraw fine	3	2	0
25 May 2016	District Council of Coober Pedy Breach of council member code of conduct	1	1	1



Report Date	Agency and Investigation	Recommendations	Accepted	Implemented
6 June 2016	City of Victor Harbor Breach of Minister's Code of Conduct for CDAP Members	1	1	1
6 June 2016	District Council of Franklin Harbour Breach of council member code of conduct	7	7	7
10 June 2016	The Barossa Council Breach of council member code of conduct	1	1	1
15 June 2016	City of Onkaparinga Breach of council member code of conduct	3	3	1

Audit of state government agencies' complaint handling

In the Ombudsman SA Annual Report 2014-2015, I noted the progress made on implementation of recommendations from the November 2014 'Audit of state government agencies' complaint handling'.

The audit was conducted to establish the extent to which state government agencies have in place policies, practices and procedures established to ensure appropriate standards of complaint handling for members of the public.

A principal finding from the audit was recognition by all agencies that effective complaint handling is a key to providing quality services to the public, and to upholding the reputation of the public service as efficient, fair, open and honest.

Audit Recommendations

The audit made five recommendations directed at achieving change and improvement in complaint handling across state agencies. In summary, they were:

1. That the Government of South Australia issue a Department of the Premier and Cabinet Circular requiring all agencies to have in place a complaint management system that conforms to the principles of the Australian Standard on Complaints Handling.
2. That all state government agencies have an agency-wide complaints management policy in place by 31 March 2015. The policy should be:
 - › focussed on complaints from members of the public about the agency
 - › consistent with the current Australian Standard
 - › succinct and written in plain language
 - › accessible to people from non-English speaking backgrounds
3. That the Government of South Australia issue an update to the Department of the Premier and Cabinet Circular PC013 – Annual Reporting Requirements 2014 to incorporate annual reporting of complaints from members of the public. This should be included as a Mandatory Reporting Item in agency annual reports, and indicate the extent and main features of consumer complaints and any services improved or changed as a result of complaints or consumer suggestions made.
4. That the Government of South Australia consider amendment to the Civil Liability Act 1936 to clarify that the provisions afford full legal protection to an apology made by any party. Ideally, the legislation should specifically provide that an apology does not constitute an admission of liability, and will not be relevant to a determination of fault or liability in connection with civil liability of any kind. Furthermore, the amendment should state that evidence of such an apology is not admissible in court as evidence of fault or liability. In conjunction with this, agencies should also consider creating policies regarding apologies.
5. That, commencing by 1 July 2015, the Senior Management Council of agency Chief Executives conduct an annual assessment of agency complaint management systems. The assessment should ensure ongoing compliance with the Department of the Premier and Cabinet Circular on complaints management and annual reporting requirements. It should also be seen as an opportunity for agencies to share information and learning on significant complaint handling experiences and resource allocation issues.

Implementation of Audit Recommendations

Last year the (then) Minister for the Public Sector, the Hon Susan Close MP, wrote to me advising that raising service standards across the public sector is a priority for the Government. Her letter noted that the findings of the audit 'provide an independent and thorough assessment of how complaints are handled across the public sector and what can be improved'. The Minister reported that work was then underway to implement the five recommendations of the audit report – principally through the auspices of the Senior Management Council (SMC).

In July 2015, the Department of Premier and Cabinet issued 'DPC Circular 039 – Complaint Management in the South Australian Public Sector'. The DPC Circular requires all South Australian public sector agencies to establish and maintain an effective complaint management system that conforms to the principles in the Australian/New Zealand Standard: Guidelines for Complaint Management in Organisations (AS/NZS10002:2014). As at July 2015, I received confirmation that all state agencies are now compliant with the requirement to have a complaint handling policy in place.

I attended a meeting of the SMC on 30 March 2016 to discuss the audit findings and agency progress to date. I took the opportunity to encourage Chief Executives to fully support implementation of the outstanding recommendations.

Recommendation 4 from the audit addressed the issue of amendment to the Civil Liability Act 1936 to clarify the original provisions of section 75 relating to the status at law of an apology. These had been considered to be limited in scope and not as clear as they should be.

The legislation was introduced to the Parliament on 22 February 2016 and was proclaimed on 16 June 2016. The effect of the amendment, as stated by the Attorney General, is to 'give full legal protection to any civil liability in any form of apology made by a party'. The change has attracted favourable media coverage and positive recognition in the community.

Following the legislative amendment, I wrote to SMC requesting they now consider that part of the recommendation which related to state agencies putting in place policies to address apologies. I consider that it is clearly beneficial for government agencies to be seen to uphold good management practice and to respond to public expectations. I understand that SMC will be formally considering my request in the near future.

Recommendation 5 from the audit proposed that SMC conduct a comprehensive annual assessment of agency complaint management systems to ensure compliance with relevant standards and shared learnings on significant complaint handling experiences.

I have recently received confirmation from the Department of Premier and Cabinet that Service SA has been tasked with convening a working party to lead the annual assessment of agency complaint management systems. The working group will also develop an online space to share information and best practice approaches to complaint management across government. Preliminary discussions support the use of the Ombudsman SA 'Complaint Management Framework'² as the basis for an online assessment tool. I understand that the annual audit process will align with annual reporting requirements and collateral activities aimed at demonstrating service improvements arising from effective complaints and customer satisfaction assessment practices.

I have advised SMC that I will be undertaking an assessment of the operation of agency complaint management systems sometime after the commencement of the 2017-2018 financial year. In 2016-2017 I will monitor the Service SA initiative and commence planning for the Ombudsman SA assessment in the following year.

Good governance in agencies

The Ombudsman SA Strategic plan 2014-2017 cites 'Good governance in agencies' as an objective of the business of my Office. In addition to investigation of complaints, I have undertaken several initiatives designed to assist agencies within my jurisdiction to address issues which may give rise to poor administrative decision making or governance failures.

2 *Complaint Management Framework* – March 2016 – Ombudsman SA. See separate reference in this section.

Audit of Local Government section 270 reviews

Section 270 of the Local Government Act provides a process for the internal review of council decisions.

Section 13 of the Ombudsman Act stipulates that I must not investigate complaints that are open to a right of appeal or review with another body or tribunal. In short, Ombudsman SA is a review body of last resort for complainants. Consequently, most local government complaints are referred back to councils themselves to attempt to resolve in the first instance.

In the year 2015-2016, my Office received 909 complaints about councils. 881 were closed in the reporting period. 421, or 48% of them, were referred back to the council in question for action. I estimate that approximately half of these complaints were potentially section 270 review of decision matters.

In June 2015, I wrote to all 68 councils and the Minister for Local Government, the Hon Geoff Brock MP, advising that I intended to commence an administrative audit of council compliance with, and the implementation of, the section 270 requirements for internal review of council decisions.

My audit has some recent history. The November 2011 Ombudsman SA audit of complaint handling in SA councils, 'Valuing Complaints' identified that there was a low take-up rate by the public of the section 270 option for internal review of council decisions. At that time, the audit found that eight of the 12 councils audited had procedures in place that did not comply with the Local Government Act.

In commencing Stage One of the audit, I sought confirmation of each council's compliance with section 270(1) to (9) of the Local Government Act, including section 270(2)(ca) dealing with applications that relate to the impact of a declaration of rates or service charges on ratepayers. This compliance issue has been raised several times in recent years by my Office with councils.

Survey returns from councils received in July and August 2015 confirmed that 59, or 87% of the 68 councils were fully compliant with the Act. Only nine councils, or 13%, were non-compliant. All these councils have now committed to amending their internal review of council decisions policies to ensure full adherence to the Local Government Act.

Stage Two of the section 270 audit commenced in August 2015 with the selection of 12 councils based on

SA government administrative regions and a geographic and size spread of councils. I sent them all a ten part Questionnaire for completion by early September 2015. Building on the Stage One compliance survey, Stage Two of the audit sought to:

- review council methods for citing exclusions to their Internal Review Of Council Decisions Policy against the Local Government Association Model Policy and Procedure adopted in 2012
- identify the incidence of section 270 internal reviews conducted by councils and to identify any impediments or difficulties faced by councils in implementing reviews
- examine and assess the incidence of councils' engagement of an independent person or panel to conduct an internal review of decision
- examine any other matters relevant to the use of section 270 internal review procedures
- make findings and recommendations relevant to administrative improvement in councils' use of the section 270 internal review provisions.

In December 2015 and January 2016 I conducted follow-up interviews with the 12 audit councils and my Office analysed returns from each council reporting on the outcomes of those interviews.

In May 2016, I commenced the preparation of my provisional report titled 'Right of Review' for consideration and feedback from each council involved in the audit. I have made tentative findings and preliminary recommendations relevant to administrative improvement about councils' use of the section 270 internal review provisions. I envisage that my report will be finalised and made public in November 2016.

Audit of Department for Education and Child Development (DECD) complaint handling practices

In 2014-2015, additional funds were allocated to my Office by the Attorney-General to promote administrative oversight of and administrative improvement in DECD in the wake of the Debelle Royal Commission (2012 -2013).

As mentioned in my annual report for 2014-2015, I decided to instigate investigations into certain administrative failures within DECD which had come to my attention using my own initiative powers, in addition to acting on complaints against DECD where appropriate and undertake full investigations. Those investigations have continued into

the current reporting year, but I am pleased to report that the centrally located Education Complainants Unit (ECU) (the second tier of complaint handling pursuant to DECD's Consumer Complaints Management and Resolution Policy), has performed very well in resolving many complaints that would otherwise fall within my jurisdiction.

In addition, I commenced an audit of DECD complaint handling pursuant to section 14A(1) of the Ombudsman Act.

I determined the scope of the audit to be an assessment of:

- complaint handling processes and practices relating to education, including the roles of sites, regional offices and the ECU in the complaint handling process
- the policies, practices and procedures established to ensure appropriate standards of complaint handling at individual sites
- the extent to which the sites have in place accessible information for the public to understand what might happen if they complain
- the systems and staff management approaches which sites have in place for ensuring best practice complaint handling and service improvement outcomes
- the extent to which data about complaints is recorded and reported in order to lead to improvements, and whether recommendations are needed to improve complaint handling practices and systems improvement across the education system.

With the cooperation of the Chief Executive of DECD and the Executive Director, Preschools and School improvement, my Office circulated a comprehensive questionnaire to one representative primary or secondary school in each of the twelve government regions in South Australia, and all the Education Directors engaged in the various regional Education Offices (twenty in all).

Once the results of the questionnaire were collated and analysed, and information sought and obtained from earlier on-site visits by my staff, or otherwise obtained by enquiry were consolidated, a provisional audit report was prepared.

At the time of preparation of this annual report, the provisional report had been delivered to DECD and each of the five recommendations made has since either been accepted as drafted, or accepted in principle, subject to further discussion. I anticipate that the audit process will be completed by October 2016, when the report will be tabled in Parliament.

The complaint handling activities of Families SA, although part of DECD, were not subject to audit, although several investigations into complaints about Families SA's complaint handling were conducted.

For instance, I conducted a full investigation into a complaint about delays in mandatory reporting of child abuse or suspected child abuse through the Child Abuse Report Line. In the result, I found that the reported delays were unreasonable within the meaning of section 25(1) of the Ombudsman Act. However, I refrained from making any recommendation pending the release of the final report of the Child Protection Systems Royal Commission.

Publication of Ombudsman SA Complaint Management Framework

In February 2016, my Office negotiated with the Office of the New South Wales Ombudsman to adapt and publish a version of their Complaint Management Framework, published originally in June 2015.

The Complaint Management Framework brings together a large number of printed materials and guidelines into one concise resource. The Framework incorporates a Model Complaint Handling Policy that is intended to assist state agencies and local government councils to maintain a complaint management system that will ensure the efficient and effective handling of complaints made to or about them.

Annexure 1 - Organisation self-assessment checklists is a resource designed to equip senior managers and their complaint handling teams with a practical and useful appraisal tool to evaluate the effectiveness of internal complaint handling policies and practices.

In April 2016, I published the document on my website and disseminated copies to all state agencies and all local government councils encouraging its use. As reported above, the Department of Premier and Cabinet has now authorised the use of the Framework for the Service SA led annual assessment of agency complaint management systems.



Department for Correctional Services (DCS) Training

For a number of years my Office has provided training to new Correctional Services Officers prior to their deployment in prisons. Officers undergo an intensive six week training program delivered by DCS. The course covers a range of topics and Ombudsman SA delivers one component of that program. The program is delivered 4-5 times each year, mainly in the metropolitan area but occasionally in regional areas. The Ombudsman SA component informs officers of the role of the Ombudsman, how prisoner complaints are managed and emphasises that DCS officers are at the front line of prisoner complaint management.

Each session is evaluated in order to ensure it remains relevant and better suited to the program and attendees. Feedback from attendees during the reporting period suggests the sessions are informative and useful.

Roxby Downs Council Governance Review

In September 2015, I concluded my investigation of risk management and internal financial control procedures and governance matters in the Municipal Council of Roxby Downs (Roxby Council). As a consequence, I wrote to the Minister for Local Government and to the Chairman of the Roxby Downs Council Governance Review Committee on the matter of the accountability and transparency provisions in the Local Government Act that currently fall outside the legislative remit of Roxby Council.

Under the terms of the Roxby Downs (Indenture Ratification) Act 1982, Roxby Council is not bound by many of the provisions of the Local Government Act. An example is section 132(30(a) and (b) of that Act that relate to making agendas and minutes of council meetings available to the public on the internet. Indeed, the Indenture Act provides that the equivalent provisions to those in the original Local Government Act 1934 (repealed); now set out in Chapters 5 and 6 of the Local Government Act; do not apply in relation to Roxby Council for so long as an Administrator is appointed pursuant to the Indenture Act.

The effect of these exemptions has been to put Roxby Council behind all other councils in terms of accountability and transparency standards. I note, however, that there appears to be no obstacle to Roxby Council raising these governance standards as policy decisions of the administration. I have recommended this course of action as a desirable measure in advance of any legislative changes that may be made to the Indenture Act in the years to come.

In the meantime, I note that the Review Committee has recommended and released for public consultation a series of short, medium and long term recommendations for effecting separation of the governance role from the role of council management.

I welcome the inclusion of my accountability and transparency recommendation in the Review Committee's public consultation paper. Other reform proposals canvassed include:

- publishing council reports, decisions and policies on the council website
- an annual Audit Committee meeting held in Roxby Downs and open to the public
- separating the role of Administrators and Chief Executive Officer to make a clear distinction between political and operational responsibility
- over time, move to a fully elected council with councillors from the council area
- as appropriate, review the Indenture to facilitate the establishment of a fully elected council.

I appreciate these administrative improvement and governance reform proposals and commend the work of the independent Governance Review Committee. I look forward to further developments after the conclusion of the public consultation process in August 2016.

FREEDOM OF INFORMATION

Government Agencies

Local Government

Other Authorities

Ministers

Freedom of Information Act

The *Freedom of Information Act 1991* gives every member of the public a right of access to documents held by state government-related agencies, Ministers, statutory authorities, councils, public hospitals and universities) subject to certain exceptions.

Examples of documents that may be exempt include:

- documents that would lead to an unreasonable disclosure of another person's affairs
- documents that contain trade secrets or information of commercial value
- documents affecting law enforcement and public safety
- documents of exempt agencies as declared by the Freedom of Information (Exempt Agency) Regulations 2008.

Parties who are dissatisfied with determinations made by agencies may apply to my Office for an external review of the decision concerning access to documents. I can confirm, vary or reverse the agency's determination. In some cases, my Office may facilitate a settlement between parties.

The Freedom of Information Act also gives any person a right to have records which concern their personal affairs amended, if those records are incomplete, incorrect, out of date or misleading. I am also able to review agency decisions in relation to the amendment of records.

Parties to a Freedom of Information matter may appeal my determination to the District Court.

Government Agencies

Summary tables

1 July 2015 - 30 June 2016

External reviews: Received

Applicant	No Received
Attorney-General's Department	6
Department for Communities and Social Inclusion	4
Department for Correctional Services	6
Department for Education and Child Development	19
Department for Health & Ageing	12
Department for Environment, Water and Natural Resources	4
Department of Planning, Transport and Infrastructure	11
Department of Primary Industries and Regions SA	1
Department of State Development	4
Department of the Premier and Cabinet	4
Environment Protection Authority	3
SA Housing Trust	1
Total	75

External reviews: Completed

Applicant	No Completed
Attorney-General's Department	7
Department for Communities and Social Inclusion	4
Department for Correctional Services	6
Department for Education and Child Development	16
Department for Health & Ageing	6
Department for Environment, Water and Natural Resources	2
Department of Planning, Transport and Infrastructure	15
Department of State Development	13
Department of the Premier and Cabinet	5
Environment Protection Authority	3
Total	77

Case studies

Attorney-General's Department

Third party request for review of agency's decision to release document

2015/05567; 2015/05613; 2015/05614

Application for access

The original applicant sought access to a document relating to gambling revenue at clubs and hotels.

Upon internal review, the agency consulted with relevant clubs and hotels and reversed its original decision so as to allow access to the document. The three applicants sought external review of that decision in almost identical terms (one applicant in a representative capacity of various clubs and hotels).

Review

I considered that there was no evidence provided by the applicants that the document contained trade secrets for the purposes of clause 7(1)(a). The applicants' submissions addressed generally the impact of disclosure on their business rather than on the commercial value of the information per se. There was not sufficient evidence that the information had a commercial value that would be diminished or destroyed if released for the purposes of clause 7(1)(b).

While the information in the document broadly concerned the relevant venues' business, commercial or financial affairs, I was not satisfied that disclosure of the information would have an adverse effect on those affairs for the purposes of clause 7(1)(c). Any adverse effect was merely speculative.

Regardless, I did not consider that disclosure would be contrary to the public interest. I was not satisfied that the release of the information would render the relevant venues targets for criminals. I was not satisfied that there was a clear link between releasing the information and attracting problem gamblers or raising community concern about placement of gambling machines in particular socio-economic areas. I also considered that there is a high level of community interest in social problems related to problem gambling.

Determination

I confirmed the agency's determination.

Department for Correctional Services

Information concerning operations of agencies

2015/07226

Application for access

The applicant was a prisoner who made an application to the agency for access to documents concerning the cancellation of his Visa, including communication between the agency and the Department of Immigration and Border Protection (the DIBP). When the applicant made an application for external review to my Office, he was still a prisoner. During the external review process the applicant was transferred to an Immigration Detention Centre due to the cancellation of his Visa.

Review

The agency initially failed to determine the application within the 30 day period required by the FOI Act. By internal review the agency determined to release one document, in part. The applicant believed additional documents existed and when my Office raised this with the agency, it located a further eight documents. I suspended proceedings so that the agency could make a revised determination and attempt to affect a settlement with the applicant.

The agency made a revised determination and released the eight additional documents, in part, to the applicant however, a settlement was not affected. The external review proceeded on the basis that the applicant was dissatisfied that the agency had not initially located all the documents and information was redacted from the documents released.

Determination

In relation to the applicant's concern that the agency did not initially locate all of the documents within the scope of the applicant's request, I acknowledged that the agency had subsequently conducted further searches, located additional documents and released those documents to the applicant. Accordingly, I was satisfied that the agency had conducted reasonable searches for all relevant documents.

Several of the documents in question were email chains between the agency and the DIBP, the remaining documents were letters from the DIBP to the agency. The agency submitted that disclosure of the redacted information would have a substantial adverse effect on the functions of the DIBP, claiming clause 16(1)(a)(iv) of schedule 5 of the Act applied. I determined that the

DIBP is a Commonwealth agency and not an agency for the purposes of the South Australian FOI Act. Further, I determined that disclosure of the information could not reasonably be expected to have a substantial adverse effect on the agency itself as the information was already known to the applicant or in the public domain and I did not consider that disclosure of the information would, on balance, be contrary to the public interest.

Accordingly, I determined that the relevant information redacted by the agency pursuant to clause 16(1)(a)(iv) was not exempt and therefore it should be released to the applicant.

Department for Correctional Services
Substantial adverse effect on agency's functions
2015/05502

Application for access

The applicant applied for access to CCTV footage from the applicant's cell in G Division Yatala Labour Prison on [date] of an incident occurring between 1.00 pm and 4.00 pm.

The agency identified three documents within the scope of the application being CCTV footage taken during the relevant time from within the applicant's cell and immediately outside his cell (**the documents**).

The agency refused access to the documents on the basis that if disclosed the documents could reasonably be expected to endanger the security of the G Division building or prejudice a system or procedure for protecting persons or property (clause 4(2)) or have a substantial adverse effect on the effective performance by the agency of its functions (clause 16(1)).

Review

Having looked at the documents and considered the agency's submissions, I was not persuaded that disclosure could reasonably be expected to have the effect claimed.

I also considered whether the public interest considerations in favour of disclosure outweighed the considerations against disclosure.

Considerations I took into account included:

- the public interest in:
 - › fulfilling the objects of the FOI Act, in particular promoting openness

- › individuals receiving fair treatment in accordance with the law and having access to what is recorded about them (in particular having regard to the agency's Mission identified within its published Strategic Plan to contribute to public safety through the safe, secure and humane management of offenders³)
- › ensuring transparency within representative government (including where correctional officers are public officers and subject to particular conduct standards and the agency has adopted 'values' including integrity, accountability and respectful behaviours⁴)
- Parliament's intention that discretions under the FOI Act be exercised, as far as possible, in a way that favours disclosure without infringing personal privacy⁵
- the sensitivity of the information contained in the documents
- the level of risk to public safety if the documents were disclosed
- the importance of the documents' confidentiality to the agency's capacity to maintain security and good order within the prison.

Determination

I determined that the agency had not satisfied me that disclosure of the documents was contrary to the public interest and that the claimed exemptions did not apply. I reversed the agency's determination.

Department for Education and Child Development
Substantial and Unreasonable Diversion of Agency's Resources

2015/09702

Application for access

The applicants applied for access to all Families SA file and case notes made about them and all correspondence relating to them and a named agency employee.

3 Department for Correctional Services Strategic Plan 2014-2017: http://www.corrections.sa.gov.au/__files/f/3120/2014-17%20DCS%20Strategic%20Plan.pdf.

4 Department for Correctional Services Strategic Plan 2014-2017.

5 Section 3A(1)(b), FOI Act.



Review

The agency refused to deal with the application on the basis that the volume of documents would require the agency to substantially and unreasonably divert its resources from their use by the agency in the exercise of its functions and the applicants had refused to amend the application (section 18 of the FOI Act).

Determination

I was satisfied that

- the agency had attempted to assist the applicants to amend their application to reduce the work involved in processing the application
- the agency's estimate of 17,000 pages being within scope was reasonable
- undertaking the work to process the application would substantially and unreasonably divert the agency's resources.

I, therefore, confirmed the agency's determination.

Department of the Premier and Cabinet Confidentiality and public interest considerations

2015/00806

Application for access

The applicant sought access to:

Copies of invoices, documents or other summary information demonstrating the full costs of the advertising budget ... and the stationery and graphic design costs for promoting:

- a. The State Government's campaign to fight the Federal Government's unfair cuts to South Australian [sic] campaign
- b. The 'Federal Cuts Hurt' campaign.

Time frame: January 2014 to current date [5 September 2014].

The agency identified seven documents within the scope of the application for access. The applicant applied to my Office for an external review of the agency's 'deemed' determination refusing access to the documents.

Review

During the external review, the agency advised my Office that in its view it would be practicable to release the documents after deleting claimed exempt and out of scope matter. The agency advised that its position was consistent with an external review conducted by the former Acting Ombudsman, which involved the applicant, the agency, and one of the interested parties.

My Office consulted five interested parties during the external review; three advised that they did not object to information concerning them being released, two did not respond to my Office.

Determination

My Deputy considered whether the documents were exempt as:

- documents affecting business affairs
- documents containing confidential material.

Given that five of the documents included dollar amounts invoiced by the interested parties, my Deputy accepted that such information concerned the interested parties' business affairs.

Noting that the agency had raised no such claim, and in the absence of evidence, my Deputy was not satisfied that disclosure of the five documents:

- could reasonably be expected to have an adverse effect on the interested parties' affairs or prejudice the future supply of such information to the Government or an agency
- would, on balance, be contrary to the public interest.

In assessing the public interest, she had particular regard to the objects of the FOI Act and the fact that the information related to particular points in time; the information was more than ten months old.

My Deputy was satisfied that rates paid to individual media outlets, including their production costs, in two documents were subject to a contractual obligation of confidentiality (the contract itself was not under review), and both documents were confidential. The applicable contract was the same as that considered by the Acting Ombudsman in the previous external review.

My Deputy then proceeded to consider whether the information in the two documents not subject to a contractual obligation of confidentiality was exempt under the business affairs exemption. She accepted that:

- the two documents contained information concerning the business affairs of the agency and one interested party
- it was possible that the disclosure of the amounts charged by the interested party could reasonably be expected to have an adverse effect on their business affairs in future tendering processes.

My Deputy was not satisfied that:

- disclosure of the information could reasonably be expected to prejudice the agency's business affairs or prejudice the future supply of information to the agency. In saying this, she noted that businesses that have a financial interest in dealing with the government and agencies are unlikely to be deterred from contracting with them, or offering them innovative and competitive proposals, in the future as a result of the disclosure of such information
- disclosure of the information would make it less likely that the government would receive discounted rates, even if other clients and consumers demanded discounts, because the government is a large consumer of advertising
- disclosure of the information would, on balance, be contrary to the public interest, having regard to public interest considerations.

Accordingly, my Deputy varied the agency's determination to enable the documents to be released after redacting information subject to a contractual obligation of confidentiality and out of scope information.

Department of State Development

Cabinet documents

2015/02529

Application for access

Application for access to a copy of the report prepared for the contract DSD005 Red Tape Reduction Review – Vet and Apprenticeships and Trainees completion dated 30 June 2014.

Review

The agency identified one document within the scope of the application, described as being a Report to the Minister, prepared by independent reviewers who appear to be private sector consultants.

Access to the document was refused pursuant to clause 1(1)(e) (the cabinet documents exemption).

The agency submitted that:

- the document was provided by the Skills, Policy and Planning Directorate
- the document was intended to inform Government decision making about the future policy directions of publicly funded Vocational, Education and Training
- Cabinet further considered its policy position in March 2015 with the release of the WorkReady Policy.

The agency confirmed that there was no evidence of the document subsequently being noted by or submitted to Cabinet and I found that in any event, the agency had not provided information to show that releasing the document would disclose information concerning any deliberation or decision of Cabinet. The agency merely submitted that the document was intended to 'inform Government decision making about the future policy directions of publicly funded Vocational, Education and Training'.

Determination

I was not persuaded that there were any Cabinet deliberations and decisions that were influenced or shaped by the document or revealed information concerning Cabinet's process of deliberation or decision making. Accordingly, I did not make a finding that the document contained matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet.

I reversed the agency's determination.



Local Government

Summary tables

1 July 2015 - 30 June 2016

External reviews: Received

Applicant	No Received
City of Adelaide	5
City of Burnside	1
City of Charles Sturt	4
City of Onkaparinga	2
City of Tea Tree Gully	1
City of West Torrens	1
Clare and Gilbert Valleys Council	1
District Council of Yankalilla	2
Kangaroo Island Council	2
The Barossa Council	1
Total	20

External reviews: Completed

Applicant	No Completed
Adelaide Hills Council	1
City of Adelaide	1
City of Charles Sturt	3
City of Onkaparinga	1
City of Tea Tree Gully	1
City of West Torrens	1
Clare and Gilbert Valleys Council	1
District Council of Yankalilla	2
The Barossa Council	1
Total	12

Case Studies

The Barossa Council

Third party application for external review – documents concerning complaint submitted to the council

2015/06546

Application for access

The third party applicants were the owners of a bed and breakfast located across the road from a restaurant and vineyard/cellar door. The applicants submitted a complaint to the Commissioner of Liquor and Gambling, copying the letter to the Ombudsman SA and the Chief Executive of the Barossa Council. The complaint was that the owner of the restaurant (the licensee) was exceeding their liquor licence and development approval by hosting numerous functions, exceeding their guest capacity and exceeding their approved hours of operation. This was resulting in significant noise pollution affecting the applicants business. Once the licensee became aware that a complaint had been submitted about them, they applied to the council for access to the complaint, in order to have full knowledge of the content of the complaint against them, and also assist them in applying for new development approval. The applicants opposed the release of the complaint to the licensee.

Review

The council initially refused access to the complaint, on the basis that an investigation was ongoing and releasing the complaint to the licensee may jeopardise that investigation. The council also cited that the complaint related to the business affairs of the applicants. After conducting an internal review, the council made a revised determination and determined to partially release the document, redacting those parts that were considered to relate to the business affairs of the applicants. At this stage, the council investigation had concluded. The applicants then applied to the Ombudsman SA for external review, opposing the release of any part of the complaint.

The applicants submitted that the complaint should be exempt because it contained matter consisting of information concerning their business interests, the disclosure of which would have an adverse effect on their business, under clause 7(1)(c) of the FOI Act. The applicants also submitted that the complaint should be exempt because it was submitted in confidence, and disclosure of the complaint would deter future complaints to the council, under clause 13(1) of the FOI Act. The licensee submitted that the complaint should be disclosed,

as the grounds for refusal failed to pass any test of reasonableness, and the licensee was being denied natural justice by not being permitted to see the full context of the complaint made against them.

Determination

I determined that, while the complaint did contain some information concerning the business affairs of the applicants, the disclosure of the complaint could not reasonably be expected to harm their business as steps were being taken to regularise the activities of the licensee in accordance with relevant legislation:

- as both the council website and Liquor Licencing Commission website had disclaimers regarding privacy, which foreshadowed that these agencies might reveal complaints under the FOI Act, it could not be reasonably expected that disclosure of complaints would prevent future complainants coming forward
- the complaint was not submitted by the applicants in confidence, as the content of the complaint is not inherently confidential, and the complaint was not received on the basis of a mutual understanding of confidence
- I did not consider that disclosure of the information would, on balance, be contrary to the public interest.

Accordingly, I determined that the relevant sections of the complaint redacted by the agency were not exempt and therefore the entire complaint should be released to the licensee.

City of Charles Sturt

Access to information concerning code of conduct investigations

2015/06453

Application for access

The applicant sought access to various documents relating to the council's investigations into a range of complaints he had lodged regarding the conduct of several council members and employees. This included information relating to the complaints the applicant had lodged regarding the conduct of council members and employees in investigating his complaints and, in turn, the conduct of council members in investigating the applicant's complaints into the investigation of his complaints. The applicant also requested all correspondence between the council Chief Executive Officer and my Office regarding his complaints.

The council refused to deal with the application on the basis that the application was part of a pattern of conduct that amounted to an abuse of the right of access or was otherwise made for a purpose other than to obtain access to information (section 18(2a)).

Review

I noted that although section 18(2a) allows an agency to depart from the 'ordinary' course and refuse to deal with an application filed for improper purposes, the FOI Act is beneficial legislation and this section should not be applied lightly. In this regard, I considered the criteria on which the agency was found to be entitled to rely upon in *Gabrielsen v Nurses Board of SA*.

I considered that the number of previous applications lodged by the applicant with the council (six in total) was not sufficiently large so as to be 'regarded as excessive according to reasonable standards' and that the application in issue was not identical or otherwise very similar to the previous applications. I also found that in determining to refuse the application the council was not entitled to rely upon a letter, sent by the council to the applicant prior to the application, in which the council advised the applicant that it considered his complaints were becoming vexatious and that it would be unreasonable for the council to continue to spend resources in investigating them.

Determination

I determined that it was not reasonably open to the council to determine that the application was part of a pattern of conduct that amounted to an abuse of the right of access or otherwise made for a purpose other than to obtain access to information.

I reversed the determination accordingly.

City of Onkaparinga

Application for access to documents relating to a Community Wastewater Management Scheme

2015/01153

Application for access

The applicant sought access to an agreement between the council and a utilities provider and a breakdown of income from residents paid to the utilities provider for each year from 2004.

The agency refused access to two documents identified as within scope.

Review

I considered that the confidentiality clause in the agreement required the terms of the agreement to remain confidential and on that basis the exemption in clause 13(1)(a) (confidentiality) applied.

I considered that the income breakdown provided by the agency was not within the scope of the application as it was not possible to ascertain from that information what percentage of income from residents had been paid to the utilities provider. Regardless, even if that information was within scope, clause 13(1)(a) would also apply to that information.

Determination

I confirmed the agency's determination accordingly.

District Council of Yankalilla

Access to information concerning a development

2015/06665

Application for access

The applicant sought access to various documents concerning the consideration of his development application by the council, which he stated had been the subject of lengthy delays.

The council identified a large volume of material to be within scope of the application, of which it determined to release eight documents in full to the applicant. The council refused access to four documents on the basis that the legal professional privilege exemption (clause 10(1)) applied. It refused access to a further 30 documents on the basis that the personal affairs exemption (clause 6(3a)) applied.

Review

I advised the council that although it was my provisional view that the claim for exemption over documents subject to legal professional privilege appeared correct, I was of the view that there appeared to be no basis upon which the claimed exemption pursuant to clause 6(3a) could be sustained. I further advised the council that although it was my provisional view that some of the documents contained information concerning the personal affairs of third parties and that there may be a valid claim for exemption pursuant to clause 6(1) over this information, there did not appear to be a valid claim for exemption over information relating to communications between council employees regarding the proposed development.

I advised the council and the applicant of my intention to try to effect a settlement between the parties. I accordingly asked the council and the applicant to consider whether each would agree to a settlement of the matter through release of the information that did not concern the personal affairs of third parties or otherwise attract legal professional privilege.

The applicant accordingly agreed that he would not pursue access to:

- documents over which the council had claimed legal professional privilege
- documents authored by third parties
- information disclosing the names and contact details of third parties

The council subsequently agreed to provide the applicant with all documents authored by council employees and council members with the names and contact details of third parties redacted.

Settlement

I formally confirmed that a settlement had been effected between the parties in accordance with section 39(5)(c) of the FOI Act.



Other Authorities

Summary tables

1 July 2015 - 30 June 2016

External reviews: Received

Applicant	No Received
Central Adelaide Local Health Network	5
Country Health SA Local Health Network	2
Defence SA	1
Electoral Commission of South Australia	1
Northern Adelaide Local Health Network	1
SA Ambulance Service	3
South Australian Tourism Commission	1
Southern Adelaide Local Health Network	2
TAFE SA	3
Teachers Registration Board	1
University of Adelaide	2
Women's and Children's Health Network	1
Total	23

External reviews: Completed

Applicant	No Completed
Central Adelaide Local Health Network	8
Country Health SA Local Health Network	2
Defence SA	1
Northern Adelaide Local Health Network	2
SA Metropolitan Fire Service	1
Southern Adelaide Local Health Network	1
State Emergency Service	1
TAFE SA	9
University of Adelaide	1
Urban Renewal Authority	2
Total	28

Case Studies

Central Local Adelaide Health Network Equitable obligation of confidence and personal affairs

2015/09473

Application for access

The applicant applied to the agency for access to medical records. Nineteen of 173 pages of the applicant's patient file were relevant to my external review. The agency claimed that the nineteen pages were exempt as:

- documents affecting personal affairs
 - › documents containing confidential material.

Review

The primary issue in my review was whether information in two of the pages 'would found an action for breach of confidence'. I found that this was the case and therefore the relevant information was exempt under clause 13(1)(a) of the FOI Act because:

- the information was not common or public knowledge
- the information had the necessary quality of confidence
- the agency received the information in confidence, and an obligation of confidence existed between the agency and the confiders
- release of the information in question under the FOI Act would constitute its misuse
- disclosure of the information in question would be detrimental to the confiders because it would cause them distress.

The remaining 17 pages of the applicant's patient file contained information about other patients. In my view, medical information constitutes a person's personal affairs within the meaning of section 4(1). Accordingly, I concluded that the information about the other patients concerned their personal affairs.

I found that it would be unreasonable to release such information for various reasons, including that:

- the information was obtained by the agency in a clinical setting
- there is a strong likelihood that the patients in question would not wish the information to be disclosed
- there is a public interest in protecting the other person's personal affairs

- the surrounding, contextual information has been released to the applicant
- some of the information did not concern the applicant.

As a result, I was satisfied that the information about other patients was exempt under clause 6(1) of the FOI Act.

Determination

I confirmed the agency's determination to refuse access to parts of nineteen pages.

Defence SA

Cabinet documents, documents affecting intergovernmental relations, documents affecting personal affairs, and internal working documents.

2015/06911

Application for access

The applicant sought access from the agency under the FOI Act to:

...all Essential Media Communication (EMC) documents (acknowledging that consultation may need to occur), all draft documents and associated circulation emails, all final Defence SA documents that refer to or relate to EMC, all CE briefs, the acquisition plan and all purchase orders from 2004 onwards, excluding all duplicates and associated circulation emails and all purely administrative emails.

Review

The agency identified 49 documents within the scope of the application. I considered 27 documents, either disclosed with partial access or withheld from disclosure, in the external review. The agency's internal review determination was unclear in identifying the reason for document access refusal, either in part or in full, and generally fell short of the statutory requirement to give reasons for refusing document access. The agency also made broad, sweeping arguments in relation to 'groups' of documents rather than addressing the contents of individual documents, and failed to comprehensively consider the public interest factors favouring disclosure when discussing the public interest test.

While the agency and applicant did not provide submissions in response to my provisional determination, the Victorian Department of Economic Development, Jobs, Transport & Resources (the interested party) did respond with submissions, considered in the final determination.



The agency claimed that one document was partially exempt under the cabinet documents exemption with one paragraph redacted. While I considered that the agency had erred in claiming that the redacted information concerned the deliberations of Cabinet, I decided that the paragraph in question made reference to a decision that was made in Cabinet at some point in time and was therefore exempt under the cabinet documents exemption. I was not assisted by the agency in this regard because it did not provide adequate, specific reasons as to why this exemption applied in relation to the specific part of the document.

The agency alleged that six documents were exempt, either in full or in part, under the documents affecting intergovernmental relations exemption. The agency claimed that these documents 'would divulge information relating to confidential negotiations with another government'. I considered whether, in the circumstances, the Victorian government, in supplying the information and the South Australian agency receiving it, regarded the information as confidential at the time it was supplied. I did not consider that this clause had been satisfied in all the instances where it had been claimed by the agency. For completeness, I considered the public interest test and found that on balance, the documents were not contrary to public interest and therefore not exempt from release under the documents affecting intergovernmental relations exemption.

The agency claimed that seven documents were partially exempt pursuant to the personal affairs exemption. Following enquiries made as part of the external review, the applicant confirmed that she was not seeking access to the names and contact details contained in these documents. Therefore, I considered that the redacted details were out of scope of the application.

The agency claimed that fifteen documents were exempt under the internal working documents exemption. While the exemption was satisfied for several of the documents, the agency generally failed to specifically address how each of the individual documents contained matter which related to an opinion, advice or recommendation that had been obtained, prepared or recorded in the course of, or for the purpose of, the decision-making functions of the government. It was unclear how the disclosure of each of the documents identified would have 'an extremely serious adverse impact on the Government's ability to successfully implement the relevant strategies'. I came to the view that disclosure of the documents was not contrary to public interest and, as such, should be released.

Determination

I confirmed the agency's determination pursuant to the Cabinet documents exemption and the agency's determination pursuant to the personal affairs exemption in documents, noting that the applicant did not seek access to the names and contact details. I varied the agency's determination in each and all other aspects of the agency's determination.

Renewal SA

Exemption outside of the FOI Act and reasons why an agency might release an exempt document

2015/03435

Application for access

The applicant applied for access to '[a] copy of report on CCTV review in the Central Business District undertaken by the department and Adelaide City Council'.

Review

One document, the Closed Circuit Television (CCTV) System Review dated October 2013 (the document), was relevant to my external review. It was prepared by the Capital City Committee Directorate.

The agency relied on section 18(1)(a) of the City of Adelaide Act 1998 (the CA Act) to refuse access to the document in its entirety. Section 18(1)(a) of the CA Act provides that 'a document that has been specifically prepared for submission to the Capital City Committee (the Committee) (whether or not it has been so submitted)' will be taken to be an exempt document for the purposes of the FOI Act.

In support of its determination, the agency provided Committee meeting minutes.

Whether a document has been prepared for submission to the Committee is to be ascertained by reference to the events at the time the document was created. I had regard to the timeline of events, the meeting minutes, and the author and contents of the document.

Given this, I was satisfied that the document was prepared specifically for submission to the Capital City Committee, and was therefore exempt under the FOI Act pursuant to section 18(1)(a) of the CA Act.

Determination

Accordingly, I confirmed the agency's determination.

Section 39(12) of the FOI Act provides that if I am satisfied that a document is an exempt document, I do not have the power to make a determination to the effect that access is to be given to the document. I may however, if I think fit, offer reasons why the agency might give access to a document despite its exempt status.

In this case, I considered the following reasons existed as to why the agency might give access to the document notwithstanding its exempt status:

- there is a strong public interest in members of the public being aware of the bases for agencies' decisions
- more than two years has elapsed since the document was created
- the document contains information in the public domain.

I considered that access to the document would enhance public participation in discussions about CCTV in Adelaide, and would be consistent with the objects of the FOI Act of promoting openness and accountability, as well as the principles of administration.



Ministers

Summary tables

1 July 2015 - 30 June 2016

External reviews: Received

Applicant	No Received
Minister for Disabilities	1
Minister for Emergency Services	1
Minister for Health	1
Minister for Mineral Resources and Energy	1
Minister for Multicultural Affairs	1
Minister for Planning	2
Minister for Racing	1
Minister for Recreation and Sport	1
Minister for Sustainability, Environment and Conservation	1
Minister for the Arts	1
Minister for Youth	1
The Treasurer	1
Total	13

External reviews: Completed

Applicant	No Completed
Minister for Emergency Services	1
Minister for Health	1
Minister for Multicultural Affairs	1
Minister for Planning	2
Minister for Recreation and Sport	1
Minister for the Arts	1
Minister for Youth	1
The Treasurer	1
Total	9

Case Studies

Minister for Planning

Business affairs

2015/05252

Application for access

The applicant sought access to all correspondence between the Office of the Minister for Planning and Urban Development and Walker Corporation, including but not limited to representatives of that company acting as lobbyists, for the period 2010 to present.

The agency identified one document within the scope of the application (the document). The document comprised correspondence from Walker Corporations Pty Limited (Walker/the third party) to the Honourable John Rau regarding the Adelaide Festival Centre Carpark Project.

The agency refused access to the document in its entirety under the business affairs exemption.

Review

On the information before me I did not consider that the agency was able to establish that the document contained information that had a commercial value and that disclosure of the document could not reasonably be expected to destroy or diminish any purported commercial value of that information.

The third party made extensive submissions and maintained its objections to release of the document on the basis of the business affairs exemption. In particular, the third party stated that in the absence of a binding written development agreement between itself and the Government, the Deputy Ombudsman could not conclude that finalisation of the arrangement had occurred.

From information located on the third party's website, a reasonable inference could be made that an agreement (whether it be a binding written development agreement or not) had been reached between the third party and the Government. Regardless of whether or not there was a binding agreement between Walker and the Government, I was not satisfied that the document was exempt under clause 7(1)(c) and disclosure could reasonably be expected to prejudice the business affairs or prejudice the future supply of information between the third party and the government.

Determination

I reversed the agency's determination.

Minister for Recreation and Sport

Cabinet documents

2015/03690

Application for access

Application for access to:

Copy of the meeting agenda and minutes for the Steering Group meeting held during the week commencing 6 October 2014 as referred to on page 16 of the Standard Contract Terms and Conditions: Simple Services Agreement between Department of State Development and ACIL Allen Consulting PTY LTD dated 2 October 2014, contract ID 2014/2015-86.

The agency identified two documents within the scope of the application: a document described as the 'Agenda Paper Steering Group Meeting 8 October 2014' and a document described as 'Minutes of meeting 8 October 2014'.

Access to the documents was refused by the agency pursuant to clause 1(1)(e), the cabinet documents exemption.

Review

The agency provided a copy of an internal email which indicated that there was no objection to releasing document 1. Document 1 itself was marked as 'Cabinet in confidence', however it transpired that the document never went to Cabinet. I was not satisfied that adequate reasons were provided in this case to justify the determination.

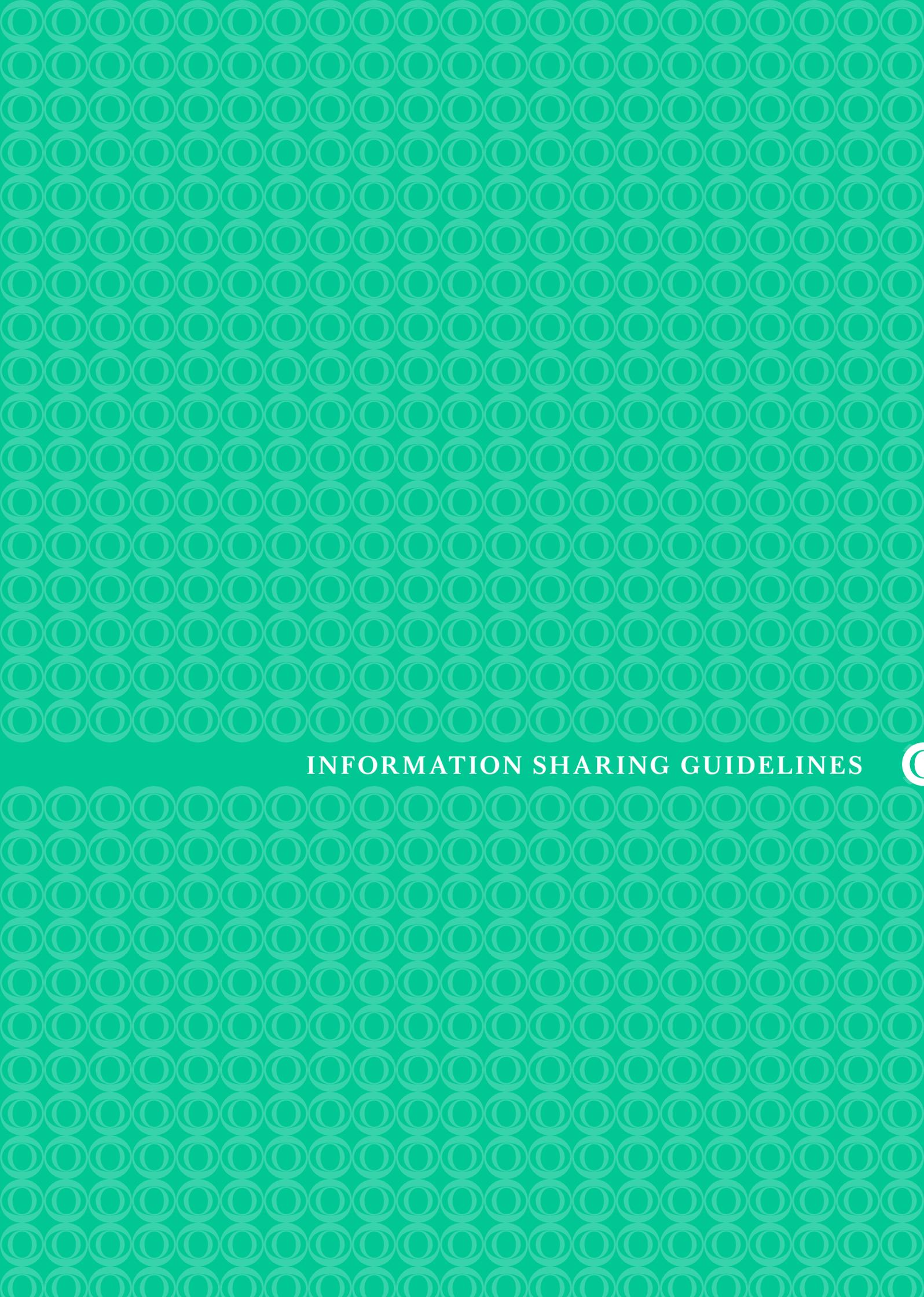
Document 2 was a Minute reflecting a meeting that was held between senior public servants on subject matter concerning the conduct of the External Evaluation of Skills for All. Document 2 was labelled as 'Cabinet-in-confidence'; however the contents of Document 2 did not record the minutes of a Cabinet meeting and there was no evidence that Document 2 went before Cabinet, or revealed information concerning Cabinet deliberation or decision making in Cabinet meetings.

My view was that the agency had not established how the contents of Document 2 shaped the course of, or outcome of, any deliberations of Cabinet, or how the disclosure of its contents could reveal information concerning the process of deliberation or decision-making.

Determination

I considered that the cabinet document exemption did not apply to prevent release of Document 1 or Document 2. I reversed the agency's determination.





INFORMATION SHARING GUIDELINES

Information Sharing Guidelines for Promoting Safety and Wellbeing (ISG)

'The SA Coroner's inquest into the tragic death of four year old Chloe Lee Valentine, who died in January 2012, highlighted misconceptions about legislative privacy provisions leading to a lack of understanding about when information about the profound and complex needs of vulnerable people can, and in fact, often must be shared. It is a myth that there exists a privacy law that prohibits the release of personal information under any circumstances. Regrettably some public officers have relied upon this myth to refuse to release important information to other agencies that could have intervened to prevent harm being caused to a particular person. It is not overstating the case to say that some officers' aversion to risking getting into trouble for releasing confidential information has actually put the lives and safety of others in jeopardy.

In recognition of this, the South Australian Cabinet approved Information Sharing Guidelines for promoting the safety and wellbeing of children, young people and their families as part of the government's 'Keeping them Safe' child protection agenda in 2008. Cabinet directed that the Guidelines ('ISG') be implemented throughout the public sector and by relevant NGOs. In 2013, Cabinet directed that the scope of the ISG be broadened to cover information sharing for all vulnerable people, including adults, and located responsibility for the ISG with the Ombudsman.

Following consultation with government agencies, NGOs, the Commonwealth Privacy Commissioner, the SA Privacy Committee and the Crown Solicitor's Office, my Office published the Information Sharing Guidelines for Promoting Safety and Wellbeing (ISG) in October 2014. This updated guideline aligns information sharing practice across both adult and child service sectors. The ISG summarise for service providers the legal and practical framework that supports them in appropriate information sharing practice where there is risk of harm, even when consent is not given. Essentially, the ISG prescribes a risk assessment process and supports the disclosure of personal information from one agency to another when there is a legitimate reason to share the information. It is a good example of risk management prevailing over risk aversion for the sake of safeguarding the vulnerable members of our community.'

My 2014-2015 Annual Report reviewed the progress of Government agencies against their requirement to develop procedures for implementing the *Information Sharing Guidelines for Promoting Safety and Wellbeing (ISG)*.

I also highlighted the need for improved information sharing practice and interagency collaboration in light of the Coroner's findings to that effect in the Chloe Valentine case. Regrettably media headlines about domestic violence and child abuse and neglect are seldom out of the public domain. In January 2016, in the inquest into the death of Ebony Napier ('Baby Ebony') the Coroner again discovered a misunderstanding of 'privacy' resulted in information vital for safeguarding not being shared. This embedded reluctance to share information because of a fear of breaching privacy is ill-informed and remains a roadblock for taking action to protect both children and adults from harm.

Implementation

Preventing or responding to harm, abuse and neglect will always involve a degree of information sharing between service providers; it is absolutely fundamental to risk assessment, case management, service planning and delivery. Reports to my Office about the application of the ISG indicate the guidelines have been welcomed by workers in the field. Where applied appropriately, the ISG has facilitated early intervention and good information sharing practice, such as joint and improved risk assessments, prioritization of needs, intake and referral, and collaborative case planning and management.

Despite the Government's commitment, through the ISG, to having a simple consistent State-wide approach to information sharing for safeguarding, and the clear benefits where applied, the ISG can only be effective if

agencies comply with the Cabinet Direction requiring they take steps to fully implement and apply the ISG in their work. Whilst I can report all relevant Government agencies⁶ have completed procedures (called an ISG Appendix), I am concerned that at the time of preparing this annual report, none have fully implemented the ISG to my satisfaction; far too many staff remain untrained in its use and therefore fail to apply the ISG in practice. Sadly, the consequences of this inaction will continue to impact on the most vulnerable members of our community.

Promotion, Advice and Enquiries

My Office provides support to all agencies and organisations in adopting the ISG. This year 29 presentations and workshops about the ISG were held in central, northern, western and southern metropolitan Adelaide, Port Lincoln, and Port Augusta involving over 150 organisations. Both adult and children's service providers took part, including those from the disability, aged care, housing, NGO, State and Local Government, alcohol and other drugs, mental health, allied health, advocacy, child protection, and community and family service sectors. Over the course of the year, the ISG page on the Ombudsman SA website received 14,740 hits. The Principal Advisor Information Sharing has supported a further 24 organisations in the development of their procedures for ISG implementation. My Office responded to 25 requests for advice; most commonly concerning interpretation of the ISG when making decisions about whether or not to share information in response to individual matters. Advice was also provided in regard to serious case reviews and inquests, the development of safeguarding initiatives including the Government's proposed Domestic Violence Disclosure Scheme, the National Disability Insurance Scheme Safeguarding Framework, and the development of interagency codes of practice.

Staff training and induction

Previous reports to my Office indicate that the number of staff trained is not necessarily an effective measure of appropriate induction, and I agree with this. Typically, finance officers, for example, would not require ISG training and induction; however, all policy makers, supervisors and service providers are required to apply the ISG as part of their duties and do need to receive detailed ISG induction. To address this issue and to relieve the real (or perceived) administrative burden of delivering the necessary training, my Office has developed an online ISG learning package that has been made available for download from my website at no cost to agencies, NGOs and Local Government Councils. There can be no further reasonable excuse for agencies failing to appropriately induct staff.

I am grateful to the following agencies that contributed funding towards the development of the online training tools:

- Department for Correctional Services
- Attorney Generals Department
- SA Health
- Department for Communities and Social Inclusion
- South Australian Police
- Department for Education and Children's Services.
- Embedding information sharing in practice for child protection

Child Protection in a Legal Context training has been on offer for Families SA staff for a number of years. This is a joint initiative between Families SA Learning and Practice Development Team and the Crown Solicitor's Office. The training is for Families SA staff who have case management and case support responsibilities; as well as Families SA practitioners who are engaged in developing policy; and providing consultation and quality assurance to field staff.

In response to the Coroner's recommendations following the Chloe Valentine Inquest in 2015, Families SA forged an important training partnership with my Office's Principal Advisor Information Sharing to deliver a specific ISG session within the existing 'Child Protection in a Legal Context' training. Participants report that the ISG sessions presented by Ombudsman SA have been an incredibly valuable way for a large number of Families SA staff to up-skill in the use of the ISG, build their confidence and understanding of privacy provisions, and to conduct case study analysis under expert guidance. In the 2015-2016 year, 167 Families SA staff participated in an Information Sharing Guidelines workshop.

⁶ Department for Correctional Services, Attorney Generals Department, SA Health, Department for Communities and Social Inclusion, South Australian Police, Department for Education and Children's Services.

Case study

Telephone call from a Families SA office re interstate agencies not cooperating in information sharing.

The matter involved a young mother on extended holiday in Adelaide; following notification and investigation, her child was removed by Families SA. Approximately one month later, the mother returned to her home state (Queensland), without her child. Families SA are now working towards reunification. As part of their assessment, Families SA contacted the interstate government housing organisation who advised that there had previously been serious concerns about the mother and that she had a child protection 'history'. When questioned about what that meant, they would not share information because it would 'breach privacy regulations' - they suggested Families SA should contact the local police.

Families SA did contact the police in Queensland but they would not share any information about the mother. The explanation given was that they do not have a protocol for information sharing with South Australian agencies. They said they did not feel the child would not be at risk of harm (however there was no evidence or risk assessment informing this judgment).

Advice from Ombudsman SA:

- Go through the ISG decision making steps and practice guide – that will help to clarify if there is a legitimate purpose for the disclosure, the possibility of obtaining consent, legitimacy of disclosure (with or without consent) and legal obligations for information sharing.
- Consent should be sought wherever safe and possible. Is it possible for Families SA to obtain consent from the mother or ask the interstate housing or policing organisation to obtain informed consent for the disclosure? Every effort should be made to engage

with the mother to obtain informed consent and explain the limits of confidentiality.

- Explain your concerns - why the information is required (ie. to enable Families SA to complete their assessment of risk and protective factors in consideration of reunification). Emphasize Families SA believes the disclosure is in the best interests of the child and the mother, and is reasonable in the circumstances.
- It is important to ask very clear questions (eg. are there any current concerns about this woman or those she relates to that may place her or a child at risk of harm) and openly share concerns (ie. we need to verify that it is safe for the child to be with the mother before we progress reunification).
- If further attempts to engage with the interstate agencies fail, it is appropriate to ask to speak to a more senior member of staff/supervisor and explain concerns and why information sharing is required. Continue to escalate the enquiry up the line.
- Ask why they believe they are unable to share the information – ask them to cite the privacy provision that prevents the disclosure – often staff do not know what the legislation says and they are wrong in their judgment that they are prevented by law from sharing information. This questioning can lead to clarification that the disclosure is in fact reasonably necessary to protect the child and permissible under both jurisdiction's legislation.

This case study highlights the lack of knowledge about privacy provisions, limited attention/effort devoted to obtaining consent, and a common reluctance to share information due to ill-founded concerns of breaching privacy.

To place this matter in context, Section 58(3)(c) of the South Australian Children's Protection Act 1993 states that Families SA staff must not divulge personal information they obtain (in their administration of the Act) about children and related adults unless they are authorized (by their employer) or required to do so by law. The ISG procedure for the agency is the relevant explanatory mechanism, clearly stating that Families SA staff are authorized to share personal information obtained about children and related adults when:

- a) the information is divulged to a person (Government or non-government personnel including carers) with a duty of care for a child or young person; and,
- b) it is necessary to divulge that information to that person in order to protect that child or young person from risk of harm

The Chief Executive, Department for Education and Child Development, has given a specific delegation to Families SA staff to authorize disclosure under this Section when:

- a legitimate purpose is identified (ISG Step 3)
- the risks of each individual case are assessed with the primary focus being the safeguarding of the child, and
- all ISG steps are followed in the information sharing process, including the approval of persons listed in section 5 (of their procedure) when information is shared without consent

Families SA staff are required by their employer to act to help prevent or limit serious harm to children and this responsibility takes precedence, where necessary, over the duty to maintain confidentiality.

The corresponding legislation in this case study is the Queensland Child Protection Act 1999. Chapter 5A covers Service Delivery Coordination and Information Exchange. The principles for disclosure of personal information in section 159B are clear:

- (f) service providers should work collaboratively and in a way that respects the functions and expertise of other service providers;
- (g) because a child's safety, wellbeing and best interests are paramount, their protection and care needs take precedence over the protection of an individual's privacy.

Importantly, neither jurisdiction's legislation prevents information sharing in the matter in question; in fact when administering these Acts, staff are compelled to share information to protect a child. The assessment of potential risk to safety and wellbeing and the identification of parenting capacity and other protective factors is the underlying reason for seeking information in this case study. This is essential when determining what outcome is in the best interests of this child. What is clear is the respective legislative provisions for use and disclosure of information are either unknown or misunderstood by staff involved in this matter.

In this case, 'privacy' is not a barrier to sharing information but, lack of guidance and knowledge about information sharing is a barrier to planning for this child's future safety and wellbeing.



Monitoring

In my previous annual report I explained the role of my Office in monitoring the extent and quality of ISG implementation. Given the potential capacity of the ISG to enable effective early intervention where there are risks to safety and wellbeing, I consider it is in the public interest that I conduct an audit of state government departments' information sharing practices and processes. In conducting the audit under Section 14A of the Ombudsman Act, I anticipate that by preparing for the audit, departments will identify for themselves where to focus their effort to ensure they comply with the State Cabinet Direction for ISG implementation. My Office has prescribed relevant standards and terms of reference for the audit in the recently published booklet, 'ISG Audit Tool: Assessing Organisational ISG Policies and Procedures for Content and Quality'. I also encourage NGOs and Local Government Councils to utilise this resource when conducting their own quality assurance activities. I will report on the findings of my audit in due course.

Recognition for the ISG

I take this opportunity to congratulate one of my staff who has been awarded a prestigious 2015 Winston Churchill Memorial Trust Fellowship. From April to June 2016, Donna Mayhew, SA Principal Advisor for Information Sharing, traveled to Canada, England and Scotland to investigate information sharing protocols and practices for safeguarding. The purpose of the Fellowship was to compare different information sharing arrangements, to assess if the ISG is sufficient, how might the ISG be improved, and what lessons have been learnt elsewhere that could be translated effectively into this jurisdiction. During the three months of the Fellowship, Ms Mayhew met with Information and Privacy Commissioners, Coroners and Ombudsmen, policy officers, service providers and academics. A report outlining Ms Mayhew's observations and recommendations will soon be published.

About Ombudsman SA

What we do

The Ombudsman is empowered to:

- investigate the administrative acts of state government agencies, local government councils and statutory authorities; and also misconduct and maladministration in public administration on referral from the Independent Commissioner Against Corruption
- conduct audits of the administrative practices and procedures of state government agencies, local government councils and statutory authorities
- conduct Freedom of Information reviews about release of information
- receive information about state and local government activities confidentially from whistleblowers
- administer and provide advice on the Information Sharing Guidelines
- investigate complaints about breaches of service standards under the *Return to Work Act 2014*.

The aim of Ombudsman SA is to contribute to sound public administration within state and local government agencies in South Australia.

Visit our website for further information about our services or to register a complaint directly online: www.ombudsman.sa.gov.au

The investigation process

Any party who is directly affected by an administrative act of a government department, council or statutory authority under our jurisdiction can make a complaint.

Investigations may be initiated by Ombudsman SA in response to a complaint received by telephone, in person, in writing or through the website from any person (or an appropriate person acting on another's behalf); a complaint referred to the Ombudsman by a Member of Parliament or a committee of Parliament; or on the Ombudsman's own initiative. We may also undertake audits of the administrative practices and procedures of an agency.

If the Ombudsman decides to investigate a complaint, we advise the agency and the complainant accordingly. As part of this process, we identify the issues raised by the complainant along with any other issues that we consider relevant. The Ombudsman can choose to conduct either an informal or a formal investigation (preliminary or full). If the

Ombudsman decides not to investigate, the complainant is advised of this, along with the reasons for the decision.

Investigations are conducted in private and we can only disclose information or make a statement about an investigation in accordance with specified provisions of the Ombudsman Act.

At the conclusion of an investigation, the Ombudsman may recommend a remedy to the agency's principal officer, or recommend that practices and procedures are amended and improved to prevent a recurrence of the problem.

The Ombudsman should not in any report, make adverse comments about any person or agency unless they have been provided with an opportunity to respond.

The Ombudsman may make a recommendation to Parliament that certain legislation be reviewed.

We usually publish our reports and determinations on our website at <http://www.ombudsman.sa.gov.au/>.

Our jurisdiction

Certain agencies are outside Ombudsman SA's jurisdiction. We do not have the power to investigate actions and decisions of:

- the South Australian Police
- employers – on matters that affect their employees
- private persons, businesses or companies
- Commonwealth or interstate government agencies
- government Ministers and Cabinet
- courts and judges
- legal advisers to the Crown.

The Ombudsman can decide whether to commence or continue an investigation. Some of the factors that may influence this decision include whether the matter is more than 12 months old; whether the complainant has a legal remedy or right of review or appeal and whether it is reasonable to expect the complainant to resort to that remedy; or whether a complaint appears to be frivolous, trivial, vexatious, or not made in good faith. In some cases an investigation may not be warranted, such as where an agency is still investigating the complaint or a complaint has not yet been made to the agency, or where another complaint-handling body may be more appropriate.

Referral to other jurisdictions

Ombudsman SA also has an important referral role. Even though we may be unable to be of direct assistance to people who approach the office about matters that are not within our jurisdiction, we are often able to refer them to another appropriate source of assistance.

Service principles

If the complaint is within the Ombudsman's jurisdiction, we will, in normal circumstances:

- provide an accessible and timely service, with equal regard for all people with respect for their background and circumstances
- provide impartial and relevant advice and clear information about what we can and cannot do
- provide timely, impartial and fair investigation of complaints
- ensure confidentiality
- keep people informed throughout the investigation of a complaint
- provide concise and accurate information about any decisions or recommendations made and provide reasons wherever possible.



Complaints about Ombudsman SA

Parties who are unhappy with our service can find our complaints policy and procedures at <http://www.ombudsman.sa.gov.au/about-us/complaints-about-us/>.

In accordance with Premier and Cabinet Circular 013, which was updated as a result of a recommendation made by the former Acting Ombudsman in 2014, I report that my Office actioned eight complaints made about my Office in the 2015/2016 year and I set out a summary of them below. In addition, I note that I instituted a policy whereby the Deputy Ombudsman and I meet on a quarterly basis to review the complaints about my Office in order to identify any systemic issues with our own complaint-handling and explore system improvements. We also record and review positive feedback we have received from stakeholders.

Complaints about Ombudsman SA 2015-16

Complaint type	Complaint subject matter	Outcome/Actions taken
Decision	Unreasonable decision not to investigate	Unsubstantiated
Decision	Request for internal review	Internal review not necessary or justifiable
Behaviour of staff / Service access	Unreasonable handling of complaint	Staff counselled; further enquiries made regarding complaint
Service access/process/procedures	Failure to refer complainant to OSA Complaints Policy	Staff counselled
Service access/process/procedures	Unreasonable decision to report complainant to Mental Health Triage	Withdrawn by Complainant
Service quality/delivery	Failure to make sufficient enquiries	Further enquiries made but decision not to investigate upheld
Service quality/delivery	Failure to take action	Further enquiries made but decision not to investigate upheld
Service quality/delivery	Failure to make sufficient enquiries	Acknowledgment made to complainant that OSA could have made further enquiries; staff counselled

APPENDICES

Appendix A: Organisation Chart

Appendix B: Financial Statement

Appendix C: Description of outcomes - Ombudsman jurisdiction

Appendix D: Description of outcomes - Freedom of Information jurisdiction

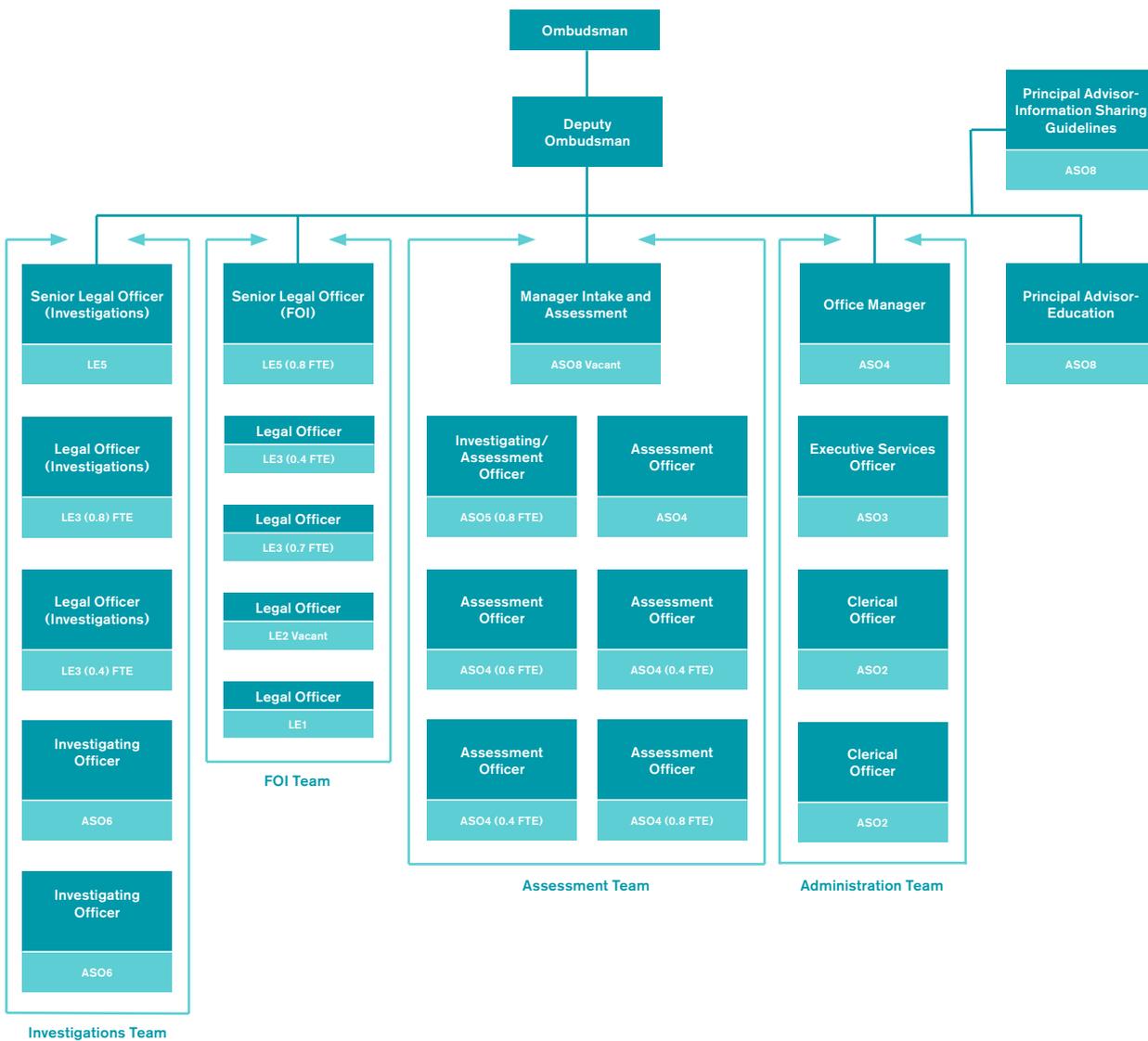
Appendix E: Description of outcomes - Independent Commissioner Against Corruption jurisdiction

Appendix F: Description of outcomes - Return to Work jurisdiction

Appendix G: Acronyms

Appendix A

Organisation Chart



Appendix B

Financial statement

Expenditure	2014/15	2015/16
Annual Report	2 380	2 667
Computer expenses	71 490	61 291
Contributions to projects	0	5 091
Equipment maintenance	2 722	1 343
Equipment purchases	10 426	8 035
* Fringe Benefits Tax	9 783	10 667
* Motor vehicles	13 698	17 351
Postage	3 137	3 039
Printing and stationery	14 071	11 970
Publications and subscriptions	2 462	5 070
Staff development	26 954	16 262
Sundries	17 017	9 077
Telephone charges	15 005	14 436
Travel/taxi charges	18 898	34 893
Website Development	5 389	37 426
Sub-total	213 432	238 618
* Accommodation and energy	57 407	226 340
Consultant/Contract staff/Prof costs	83 115	12 084
Sub-total	140 522	238 424
* Salaries	1 896 667	2 675 759
Sub-total	1 896 667	2 675 759
Income	(7 326)	**(624 979)
Sub-total	(7 326)	(624 979)
Net expenditure	2 243 295	2 527 822

* Figures include expenses incurred by the Ombudsman position (funded by Special Acts)

** Includes recovery of expenditure from ReturnToWorkSA



Appendix C

Description of outcomes: Ombudsman jurisdiction

OUTCOME	DESCRIPTION
ADVICE GIVEN	<p>This outcome is used when:</p> <ul style="list-style-type: none"> giving advice that does not relate to a specific approach or complaint giving information or advice to the public about Ombudsman SA e.g. address details, a request for a copy of an annual report or pamphlets giving FOI advice. <p>For approaches or complaints, more specific outcomes are used – such as ‘Referred Back to Agency’, ‘Alternate Remedy Available with Another Body’, ‘Out of Jurisdiction’.</p>
OUT OF JURISDICTION	<p>This outcome is not available when a matter reaches the stage of a complaint. It is used when:</p> <ul style="list-style-type: none"> the complaint body is not an ‘agency’ (section 3) the act was performed by a Minister of the Crown the complaint is not about an ‘administrative act’ because it was <ul style="list-style-type: none"> done in the discharge of a judicial authority (section 3) done in the capacity of legal adviser to the Crown (section 3) the act relates to a police matter (section 5(2)) the act was strictly a policy decision (<i>City of Salisbury v Biganovsky</i> 54 SASR 117) the act is a complaint by an employee about their current or past employer (section 17(1))
COMPLAINANT CANNOT BE CONTACTED	<p>This outcome is used after all reasonable attempts have been made to contact the complainant by telephone, email or letter. It can be used at any stage of an assessment or investigation.</p>
REFERRED BACK TO AGENCY	<p>This outcome is used usually during the assessment phase, but may be used in the investigation phase. It is used when:</p> <ul style="list-style-type: none"> it is proper for the complainant to complain to the agency, or go back to the agency to seek a review of their complaint (Ombudsman SA policy – the Ombudsman is an ‘Office of last resort’), or the complainant has a right of appeal, reference or review with the agency such as: <ul style="list-style-type: none"> with a council under section 270 of the Local Government Act review processes for students in universities review processes for prisoners in the Department for Correctional Services review and appeal regarding land tax under the Taxation Administration Act <p><i>unless</i> the Ombudsman is of the opinion that it is not reasonable, in the circumstances of the case, to expect that the complainant should resort or should have resorted to that appeal, reference, review or remedy (section 13(3)).</p>
ALTERNATE REMEDY AVAILABLE WITH ANOTHER BODY	<p>This outcome is only used when the agency being complained about is within jurisdiction. It is used where the complainant has a right of appeal, reference or review with another body such as:</p> <ul style="list-style-type: none"> the Health and Community Services Complaints Commissioner the WorkCover Ombudsman the Environment Resources and Development Court <p><i>unless</i> the Ombudsman is of the opinion that it is not reasonable, in the circumstances of the case, to expect that the complainant should resort or should have resorted to that appeal, reference, review or remedy (section 13(3)).</p>

OUTCOME	DESCRIPTION
RESOLVED WITH AGENCY COOPERATION	<p>This outcome is used usually during the assessment phase of a complaint where Ombudsman SA has made contact with the agency, and the agency has taken action to remedy the complaint to the satisfaction of the complainant.</p> <p>It is not used if Ombudsman SA has not had contact with the agency. In this case, the outcome 'Withdrawn by Complainant' will probably be applicable.</p>
WITHDRAWN BY COMPLAINANT	<p>This outcome is used when the complainant expressly wishes to withdraw their complaint, even if Ombudsman SA has not contacted the agency. It can be used at any stage of an assessment or investigation.</p>
DECLINED/ TRIVIAL, FRIVOLOUS, VEXATIOUS, NOT MADE IN GOOD FAITH (SECTION 17(2))	<p>This outcome is used for a complaint, where the Ombudsman decides</p> <ul style="list-style-type: none"> • not to commence an assessment or investigation or • not to continue with an assessment or investigation <p>because:</p> <ul style="list-style-type: none"> • the complaint is trivial (section 17(2)(a)) • the complaint was frivolous, vexatious or not made in good faith (section 17(2)(b)).
DECLINED/ NO SUFFICIENT PERSONAL INTEREST or NOT DIRECTLY AFFECTED (SECTION 17(2))	<p>This outcome is used for a complaint, where the Ombudsman decides:</p> <ul style="list-style-type: none"> • not to commence an assessment or investigation or • not to continue with an assessment or investigation <p>because:</p> <ul style="list-style-type: none"> • the complainant or their representative did not have sufficient personal interest (section 17(2)(c)) • the complainant was not directly affected by the administrative act (section 15(3a)).
DECLINED/ OUT OF TIME	<p>This outcome is used for a complaint, where the Ombudsman decides:</p> <ul style="list-style-type: none"> • not to commence an assessment or investigation or • not to continue with an assessment or investigation <p>because the complaint was made more than 12 months after the day on which the complainant first had notice of the events alleged in the complaint.</p>
DECLINED/ INVESTIGATION UNNECESSARY OR UNJUSTIFIABLE	<p>This outcome is used for a complaint, where the Ombudsman decides</p> <ul style="list-style-type: none"> • not to commence an assessment or investigation or • not to continue with an assessment or investigation <p>because having regard to the circumstances of the case, such action is unnecessary or unjustifiable (section 17(2)(d)). For example:</p> <ul style="list-style-type: none"> • after assessing or commencing an investigation of the complaint, it appears that there is no evidence of administrative error under section 25(1)(a)-(g) • the complaint is minor • the complainant and/or the agency has taken action to rectify the problem • it would not be in the public interest for the Ombudsman to investigate or continue investigating the complaint.
NOT SUBSTANTIATED/NO SECTION 25 FINDING	<p>This outcome is used:</p> <ul style="list-style-type: none"> • after a preliminary (or more rarely a full) investigation and a report has been completed, and • there is no administrative error under section 25(1)(a)-(g).
OMBUDSMAN COMMENT WARRANTED	<p>This outcome is used only after a preliminary investigation.</p> <p>No administrative error has been found under section 25(1)(a)-(g), but an issue worthy of the Ombudsman's comment has been identified.</p>



SECTION 25(1)(a) FINDING:
CONTRARY TO LAW

SECTION 25(1)(b) FINDING:
UNREASONABLE

SECTION 25(1)(c) FINDING:
UNREASONABLE LAW OR
PRACTICE

SECTION 25(1)(d) FINDING: These outcomes are used only when making a finding of administrative error after a *full*
IMPROPER PURPOSE OR investigation, and reflect section 25(1)(a)-(g) of the Ombudsman Act.
IRRELEVANT GROUNDS OR
CONSIDERATIONS

SECTION 25(1)(e) FINDING:
NO REASON GIVEN

SECTION 25(1)(f) FINDING:
MISTAKE OF LAW OR FACT

SECTION 25(1)(g) FINDING:
WRONG

Appendix D

Description of outcomes: Freedom of Information jurisdiction

OUTCOME	DESCRIPTION
FOI APPLICATION FOR REVIEW WITHDRAWN BY APPLICANT	<p>This outcome means that during or at the conclusion of the external review, the applicant decided to withdraw the application. For example, the applicant may have decided to pursue other avenues of redress; or with the passage of time, the applicant no longer wished to pursue document access.</p> <p>The outcome is relevant when the applicant seeks the external review before they have sought or finalised internal review processes, and hence the Ombudsman is unable to undertake an external review. This outcome does not include instances where the agency has revised its determination to give access to documents.</p>
FOI APPLICATION SETTLED DURING REVIEW (SECTION 39(5))	<p>This outcome means that the Ombudsman exercised settlement powers under section 39(5)(c). A 'Notice of Finalisation' is sent to parties. There is no formal determination by the Ombudsman under section 39(11).</p>
FOI DETERMINATION CONFIRMED (SECTION 39(11))	<p>This outcome means that at the conclusion of the external review, the Ombudsman agreed (in whole) with the agency's determination (section 39(11)).</p> <p>*Note – the Ombudsman's reasons may differ from the agency (for example, a different exemption clause may apply).</p>
FOI DETERMINATION REVERSED (SECTION 39(11))	<p>This outcome means that at the conclusion of the external review, the Ombudsman disagreed (in whole) with the agency's determination (section 39(11)).</p>
FOI DETERMINATION REVISED BY AGENCY (SECTION 19(2)(A))	<p>This outcome means that all documents were released by the agency under section 19(2A) after the commencement of the external review. The outcome may occur, for example, in an external review dealing with an agency's 'double deemed refusal', where the agency has had a chance to consider the documents and decides that the documents should be released.</p>
FOI DETERMINATION VARIED (SECTION 39(11))	<p>This outcome means that at the end of the external review, the Ombudsman agreed in part and disagreed in part with the agency's determination (section 39(11)).</p>
FOI EXTENSION OF TIME FOR APPLICATION FOR REVIEW (SECTION 39(4)) DISCRETION NOT VARIED	<p>This outcome means that the Ombudsman did not exercise his discretion to accept an external review application out of time under section 39(4).</p>



Appendix E

Description of outcomes: Independent Commissioner Against Corruption jurisdiction

Outcome	Description
Response to proposed referral	The Commissioner must seek the views of the Ombudsman in relation to a matter raising a potential issue of misconduct or maladministration before deciding to exercise the Ombudsman's powers in respect of the matter or referring the matter to the Ombudsman for investigation (see sections 36A and 37 of the ICAC Act).
Agree to referral	This outcome means the Ombudsman agreed with OPI/ICAC that a matter raising a potential issue of misconduct or maladministration in public administration should be referred to this Office.
Disagree to referral	This outcome means the Ombudsman, in response to a proposal by OPI/ICAC that a matter raising a potential issue of misconduct or maladministration in public administration should be referred to this Office for investigation, expressed a view that the matter should not be referred to him.
ICAC exercise Ombudsman powers	This outcome means the Ombudsman considers that a matter raising a potential issue of misconduct or maladministration in public administration should be investigated by the Commissioner by exercising the powers of the Ombudsman.
Partially agree with Referral	This outcome means the Ombudsman, in response to a proposal by OPI/ICAC that matters raising potential issues of misconduct or maladministration in public administration should be referred to this Office for investigation, expressed a view that some but not all of the matters should be referred to this Office.
ICAC Investigation	The Commissioner may refer matters raising potential issues of misconduct or maladministration to the Ombudsman for investigation (see section 24(2)(a) of the ICAC Act).
Discontinued	This means that the Ombudsman has determined that an investigation into misconduct or maladministration on referral from the Commissioner is unnecessary or unjustifiable (for example, because of a lack of evidence).
Finding of Maladministration	This means a matter that has been referred from the Commissioner has resulted in the Ombudsman making a finding of 'maladministration' as defined in the ICAC Act 2012.
Finding of Misconduct	This means a matter that has been referred from the ICAC has resulted in the Ombudsman making a finding of 'misconduct' as defined in the ICAC Act 2012.
No finding of Misconduct or Maladministration	This means a matter that has been referred from the ICAC has resulted in the Ombudsman making a finding there has not been 'misconduct' or 'maladministration' as defined in the ICAC Act 2012.

Appendix F

Description of outcomes: Return to Work jurisdiction

OUTCOME	Description
RTW - ADVICE GIVEN	<p>This outcome must only be used when:</p> <ul style="list-style-type: none"> giving advice that does not relate to a specific approach or complaint. information has been received and only needs to be noted. <p>*Note - more specific outcomes are preferable. Only use when matter is Cat 1 and no other outcome is suitable.</p>
RTW - OUT OF JURISDICTION	<p>This outcome is used where the complaint relates to a worker's compensation matter that relates to:</p> <ul style="list-style-type: none"> an agency that is not in jurisdiction; an interstate jurisdiction; where the worker is located in South Australia, however the claim has been made under the Commonwealth worker's compensation Act i.e. Comcare; or a judicial body i.e. SAET
RTW - COMPLAINANT CANNOT BE CONTACTED	<p>This outcome is used after all reasonable attempts have been made to contact the complainant by telephone, email or letter. It can be used at any stage of an assessment or investigation. Where a white telephone contact slip is responded to, this outcome is used when:</p> <ul style="list-style-type: none"> if there is no answer, a recorded message has been left stating the officer's name and that s/he is from Ombudsman SA. If the complainant does not respond, the file can be closed if there is no facility for a recorded message to be left, three contact attempts have been made over 2-3 days. If no contact has been made, the file can be closed where email or postal contact details have been provided, contact is attempted by this means, but no response is received within 7 days. <p>All attempts to contact the complainant must be clearly recorded.</p>
RTW - REFERRED BACK TO COMPENSATING AUTHORITY	<p>This outcome is used usually during the assessment phase, but may be used in the investigation phase.</p> <p>It is used when it is proper for the complainant to complain to, or seek a review of their complaint from the claims agent/RTW SA/self-insured employer - unless the Ombudsman is of the opinion that it is not reasonable, in the circumstances of the case, to expect that the complainant should resort or should have raised the complaint with the Corporation or delegate. See s5(1)(a) of schedule 5, Return to Work Act.</p> <p>Reasons for the outcome must be recorded.</p>
RTW - ALTERNATE REMEDY AVAILABLE WITH ANOTHER BODY	<p>This outcome is only used where the complainant has right of appeal, reference or review with another body such as the SAET.</p>
RTW - RESOLVED WITH COMPENSATING AUTHORITY'S COOPERATION	<p>This outcome is used usually during the assessment phase of a complaint where Ombudsman SA has made contact with the agency, and the agency has taken action to remedy the complaint to the satisfaction of the complainant.</p> <p>Reasons for the outcome must be recorded.</p>



OUTCOME	Description
RTW - WITHDRAWN BY COMPLAINANT	<p>This outcome is used when the complainant expressly wishes to withdraw their complaint, even if Ombudsman SA has not contacted the respondent. It can be used at any stage of an assessment or investigation.</p> <p>It must be established and recorded that the complainant wishes to formally withdraw the complaint.</p> <p>It must not be used when Ombudsman SA cannot contact the complainant. See 'Cannot Contact Person' Outcome.</p> <p>Reasons for the outcome must be recorded.</p>
RTW - DECLINED/TRIVIAL, FRIVOLOUS, VEXATIOUS, NOT MADE IN GOOD FAITH	<p>This outcome is used for a complaint, where the Ombudsman decides</p> <ul style="list-style-type: none"> • not to commence an assessment or investigation or • not to continue with an assessment or investigation <p>because:</p> <ul style="list-style-type: none"> • the complaint is trivial (section 17(2)(a) Ombudsman Act) • the complaint is frivolous or vexatious or is not made in good faith (section 17(2)(b)) Ombudsman Act)
RTW - DECLINED/NO SUFFICIENT PERSONAL INTEREST OR NOT DIRECTLY AFFECTED	<p>This outcome is used for a complaint, where the Ombudsman decides</p> <ul style="list-style-type: none"> • not to commence an assessment or investigation or • not to continue with an assessment or investigation <p>because:</p> <ul style="list-style-type: none"> • the complainant or their representative did not have sufficient personal interest • the complainant was not directly affected by the breach of service standards.
RTW - DECLINED/ INVESTIGATION UNNECESSARY OR UNJUSTIFIABLE	<p>This outcome is used for a complaint, where the Ombudsman decides</p> <ul style="list-style-type: none"> • not to commence an assessment or investigation or • not to continue with an assessment or investigation <p>because, having regard to the circumstances of the case, such action is unnecessary or unjustifiable (section 17(2)(d) Ombudsman Act). For example:</p> <ul style="list-style-type: none"> • after assessing or commencing an investigation of the complaint, it appears that there is no evidence of a breach of service standards • the complaint is minor • the complainant and/or the agency has taken action to rectify the problem • it would not be in the public interest for the Ombudsman to investigate or continue investigating the complaint.
RTW - BREACH OF SERVICE STANDARDS	<p>This outcome is only used when making a finding of a breach of the service standards after an investigation.</p>
RTW - BREACH OF SERVICE STANDARDS NOT SUBSTANTIATED	<p>This outcome is used</p> <ul style="list-style-type: none"> • after a preliminary (or more rarely a full) investigation and a report has been completed; and • when making a finding there has been no breach of the service standards.
RTW - OMBUDSMAN COMMENT WARRANTED	<p>This is to be used only after a preliminary investigation.</p> <p>No breach of the service standards has been found, but an issue worthy of the Ombudsman's comment has been identified.</p>

OUTCOME	Description
RTW - S180 REVIEW APPLICATION WITHDRAWN BY APPLICANT	<p>This outcome means that during or at the conclusion of the external review, the applicant decided to withdraw the application. For example, the applicant may have decided to pursue other avenues of redress; or with the passage of time, the applicant no longer wished to pursue document access.</p> <p>This outcome does not include instances where the agency has revised its determination to give access to documents.</p>
RTW - S180 REVIEW DECISION CONFIRMED	This outcome means that at the conclusion of the external review, the Ombudsman agreed (in whole) with the Corporation's decision (section 180(10)(b)).
RTW - 180 REVIEW DECISION VARIED	This outcome means that at the end of the external review, the Ombudsman agreed in part and disagreed in part with the Corporation's decision (section 180(10)(b)).
RTW - S180 REVIEW DECISION REVERSED	This outcome means that at the conclusion of the external review, the Ombudsman disagreed (in whole) with the Corporation's decision (section 180(10)(b)).
RTW - S180 REVIEW NO JURISDICTION	The outcome is relevant when the applicant seeks the s180 review before they have sought or finalised internal review processes, and hence the Ombudsman is unable to undertake a review.
RTW - S180 REVIEW REVISED DURING REVIEW	This outcome is used when the agency releases the documents after the commencement of the review.



Appendix G

Acronyms

AGD	Attorney-General's Department
ARC	Adelaide Remand Centre
CAA	Courts Administration Authority
CEO	Chief Executive Officer
DCS	Department for Correctional Services
DCSI	Department for Communities and Social Inclusion
DECD	Department for Education and Child Development
DEWNR	Department of Environment, Water and Natural Resources
DHA	Department for Health and Ageing
DPC	Department of the Premier and Cabinet
DPTI	Department of Planning, Transport and Infrastructure
DPA	Development Plan Amendment
DSD	Department of State Development
DTF	Department of Treasury and Finance
FERU	Fines and Recovery Unit
FOI	Freedom of Information
HACC	Home and Community Care
ICAC	Independent Commissioner Against Corruption
ICT	Information and Communication Technology
LSC	Legal Services Commission
ISG	Information Sharing Guidelines
OSA	Ombudsman SA
OPI	Office for Public Integrity
PIRSA	Department of Primary Industries and Regions SA
RTWSA	ReturnToWorkSA
SACAT	South Australian Civil and Administrative Tribunal
SAPOL	South Australian Police
SOP	Standard Operating Procedure
VOC	Victims of Crime

Ombudsman SA values

Integrity - Impartiality - Fairness

Our Culture

Ethical

Professional

Efficient

Learning

Communicating

Collaborating



OmbudsmanSA

Contacting Ombudsman SA

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