



OmbudsmanSA

# Ombudsman SA

ANNUAL REPORT 2016/2017

## 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](http://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 2016-17 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

The volume of work received by my Office has continued to expand this year with over 11,500 approaches to the Office, a 14% increase in complaints and a 44% increase in Freedom of Information Act external reviews. My Office has responded to this increasing demand effectively: I issued 89 final investigation reports, 53 of them relating to referrals from the Independent Commissioner Against Corruption, 71 determinations under the *Freedom of Information Act 1991* and 2 audits under the *Ombudsman Act 1972* which were tabled in Parliament in November 2016. An audit of 6 key departments' implementation of the Information Sharing Guidelines is also well underway.

Of course, the statistical information only tells part of the story. Behind the facts and figures and by resolving complaints, investigating administrative decisions, issuing recommendations to agencies, and settling and determining FOI applications, my Office ensures agencies' actions are lawful, sound, fair and transparent. I encourage you to read the case studies in this Report to get some idea of the important work we do. My thanks go to the conscientious and dedicated staff of Ombudsman SA who make all of this possible.

## Complaints

The year has seen a substantial increase in the number of Ombudsman Act complaints received; 4010, up from 3510 the previous year. The Office has kept pace with this increase and completed 4040 cases in the year.

Ombudsman Act complaints received and completed:

	Received	Completed
Government Departments	2247	2252
Local Government	965	991
Other Authorities	798	797
<b>Total</b>	<b>4010</b>	<b>4040</b>

*'First of all I would like to say a big thank you to the Ombudsman SA staff for a thorough job done on this review. It is appreciated and I acknowledge how much time this must have taken your Office.'*

Feedback from a member of the public

## Early resolution of complaints

Most of these in-jurisdiction complaints were actioned by my Intake and Assessment Team and were either referred back to the agency of origin to deal with in accordance with its complaint-handling processes in the first instance (1763) or assessed as not raising an issue that was necessary or justifiable for my Office to investigate further (816). A further 433 were resolved informally with the agency at an early stage in the complaint process.

You will see from the 'Early Resolution' case studies highlighted in this Report that the informal resolution work of my Office achieves important results: vulnerable people are assisted in getting fair and reasonable service from government; decisions that could have been better are re-considered, apologies are issued; and agencies amend policy. The efficiency and effectiveness of this approach is a vital complement to the formal investigations undertaken by my Office.

## Investigations

In determining whether to investigate matters formally under the Ombudsman Act, I continue to use the criteria set out in my predecessor's 2011 Annual Report; it is not possible to investigate every potential administrative error that comes to my attention and accordingly I must

assess whether it is in the public interest to do so. The case studies in this Report show the breadth of issues that, for different reasons, met this criteria: the unreasonable shackling of prisoners, a failure by an agency to provide procedural fairness, failures in investigating complaints or reviewing decisions, unreasonable use of public monies and misconduct on the part of council members.

My Office completed 36 formal investigations under the Ombudsman Act in the reporting period. 19 of the final reports resulting from these investigations were published on the Ombudsman SA website. There were 30 investigations that resulted in a finding of administrative error under section 25 of the Act. 94% of the recommendations I made (across Ombudsman Act and ICAC referrals) were accepted by agencies.

*'You have been so kind in what has been a difficult time for me. ...Thank you for treating me with respect.'*

Feedback from a member of the public



## ICAC Referrals

The Independent Commissioner Against Corruption (ICAC) referred 49 complaints of misconduct or maladministration in public administration to my Office pursuant to section 24 of the *Independent Commissioner Against Corruption Act 2012*.

In this reporting period I issued 53 final investigation reports on 42 matters referred to me by the ICAC. In 21 of those reports a total of 38 allegations of misconduct or maladministration in public administration were found to be substantiated across local and state government. I deemed it was in the public interest to publish six of these reports on the Ombudsman SA website.

The *Independent Commissioner Against Corruption (Miscellaneous) Amendment Act 2016* came into operation on 16 December 2016. The amending Act achieved a number of changes including removing ICAC's power to direct the way I deal with matters he refers to me and the requirement that he be satisfied that due and proper action has been taken in relation to the referral. This has both reduced the frequency of correspondence between us and increased my efficiency with completing referred matters.

## Return to Work Jurisdiction

In the second year of operation of the new Scheme, my Office received 225 complaints under the *Return to Work Act 2014*. These complaints raised 257 distinct issues. The majority of these complaints were referred back to the compensating authority for resolution or were determined to not require investigation by me. However, investigations on six matters were completed during the year resulting in findings of seven breaches of the Service Standards. A total of 11 recommendations were issued in response to these findings and I can report that all 11 have been implemented by the compensating authorities to my satisfaction.

During the year, I met with the Return to Work SA's Manager Client Services on a quarterly basis to discuss statistical data for complaints received and investigations conducted by my Office. These meetings are an important forum for exchanging information, identifying complaint trends and being kept up to date on developments occurring within the Scheme and Return to Work SA Corporation.

## Freedom of Information

The output of the FOI Team increased markedly this year with 186 external reviews completed compared to 126 the previous year. 71 of the external reviews were completed by way of a final determination by which the agency's determination was either confirmed, varied or reversed. I considered it in the public interest for 10 of these final determinations to be published on the Office's website.

The Office received 189 external review applications; a significant increase on the 131 applications received in 2015-2016. The increase is entirely due to the extra number of applications brought by non-government Members of Parliament; 104 for the year, compared to 36 the previous year.

In addition, the Office responded to 191 general enquires about FOI matters.

Of the 189 external review applications received this reporting period, 91 (nearly 50%) concerned 'deemed refusals', that is, where the agency had failed to determine the original application or internal review or both within the statutory time frames. It is an issue I have brought to the attention of the agency Chief Executives by circular letter wherein I provided advice on a number of strategies they could employ to ensure that applications are determined within time as often as possible. Their responses have been encouraging. I look forward to seeing fewer external review applications where the agency determination is a deemed refusal in the year ahead.

On 19 April 2017, amendments to the FOI Act came into effect such that applications for external review of decisions made by or on behalf of SA Police or the Minister for Police now come to my Office in place of the Police Ombudsman. I am pleased that this additional function came with some funding attached.

Another significant change in my FOI jurisdiction occurred as a result of an appeal to the South Australian Civil and Administrative Tribunal (**SACAT**) from one of my determinations. It has been the long-held practice of this Office to consider claims that agencies have not discovered all of the documents within the scope of determinations as 'determinations' subject to appeal under the Freedom of Information Act. However, in its decision in *El Shafei v Central Adelaide Local Health Network* [2017] SACAT 5, SACAT held that neither the Ombudsman nor the SACAT had jurisdiction to consider sufficiency of search issues under the Freedom of

Information Act; rather complaints of this nature would need to be considered under the *Ombudsman Act 1972*. Whilst I have commenced this practice, the approach has a number of drawbacks including being unwieldy, having no appeal rights attached to it and not being applicable to Minister's or SAPOL determinations. I intend to write to the Attorney-General to urge legislative reform along the lines of inter-state jurisdictions whose legislation makes it clear that these matters are to be dealt with in accordance with the relevant FOI processes.

## Information Sharing Guidelines (ISG)

In the 2015-2016 annual report I flagged my intention to commence an audit of the key agencies in regard to their implementation of the ISG. I report that the audit program commenced in October 2016. The sheer size of these agencies means that the audit will be a lengthy and time consuming exercise. However, I expect to be able to table the audit report by the end of the 2017-2018 financial year.

This year, my Office's SA Principal Advisor for Information Sharing, delivered 23 ISG presentations and workshops involving over 150 organisations. She also fielded 49 individual requests for advice on the ISG.

## Audits

In November 2016, the Ombudsman tabled two audit reports. The first was of an audit of the Department for Education and Child Development's education related complaint handling practices. Five recommendations were made for the improvement of the department's practices. The recommendations covered increasing awareness and accessibility of their procedure and improving record keeping and analysis of complaints. The department is in the process of implementing the recommendations.

The second audit report was of an audit of Local Government Internal Review of Council Decisions Procedures. The Ombudsman found that only a minority of councils had internal review procedures that were compliant with section 270 of the *Local Government Act 1999*. Seven recommendations were made. All councils have responded to the recommendations and their responses have been collated and summarised in a separate report that was provided to the Minister for Local Government in June 2017.

## Other Activities

### Speaking engagements

During the year I presented at the following forums:

- Southern and Hills Local Government Association - The Ombudsman and Local Government
- District Council of Coober Pedy - The Ombudsman and Local Government
- SOCAP Leadership Breakfast - Effective Apologies
- City of Port Augusta - The Ombudsman and Local Government
- Australasian Study of Parliament Group National Conference - External Scrutiny of Parliaments
- Eyre Peninsula Local Government Association - The Ombudsman and Local Government
- Governance and Policy Officers Network - The Ombudsman's Audit of Local Government Internal Review Procedures

Staff have also provided training at the following events:

- Freedom of Information Accredited Officer training
- Department of Correctional Services officer recruit training
- Various ISG information and training sessions

### Submissions

My Office has provided submission and comment on the following bills and draft regulations:

- *Local Government (General) Variation Regulations 2016*
- *Independent Commissioner Against Corruption (Miscellaneous) Amendment Bill 2016*
- *Police Complaints and Discipline Bill 2016*
- *Public Interest Disclosure Bill 2016*
- *Youth Justice Administration Regulations 2016*
- *Children's Protection (Access to Personal Information) Amendment Bill 2016*
- *Public Sector (Data Sharing) Bill 2016*
- *Public Sector (Data Sharing) Regulations 2017*
- *South Australian Civil and Administrative Tribunal (Fees) Regulations 2017*
- *National Disability Insurance Scheme Amendment (Quality and Safeguarding Commission) Bill 2017.*

In addition, I have provided comment on the NDIS Quality and Safeguarding Framework and Code of Conduct.

In March 2017 I provided a submission on my Office's work in the area of recommendation implementation to the International Ombudsman Institute's project on the effective implementation of Ombudsman recommendations.

### ANZOA Executive Committee

In November 2016, I was elected to the Executive Committee of the Australian New Zealand Ombudsman Association (ANZOA).

Incorporated in 2003, ANZOA is the peak body for ombudsmen in Australia and New Zealand. ANZOA members come from not-for-profit industry-based, parliamentary and other statutory external dispute resolution offices, which meet high standards of independence, impartiality and effectiveness and observe the *Benchmarks for Industry-Based Customer Dispute Resolution*.

The Executive Committee meets quarterly, usually by teleconference, to further ANZOA's focus on promoting best practice and the role and value of ombudsmen offices besides supporting the ombudsman community.

### Department for Correctional Services (DCS)

My tour of prison facilities continued this year with visits to the Adelaide Pre-Release Centre, Adelaide Women's Prison, Yatala Labour Prison, Mobilong Prison, Port Augusta Prison and the Adelaide Watch House.

At Port Augusta Prison I attended a Preventing Aboriginal Deaths in Custody forum for the first time. These forums are held each year in each prison and were established originally in 1995 to provide an avenue for Aboriginal prisoners, correctional services staff, service providers and other Aboriginal stakeholders to contribute to the development of policies and procedures to address the circumstances of Aboriginal people in DCS custody.

Each year about a third of all complaints received by my Office about government departments concern the Department for Correctional Services. This year is no different with 752 complaints received. Of this number 691 complaints were made by prisoners who were resident in the various prison facilities as revealed in the table below:

Complaints received from prisoners 2016-2017

Prison	Total
Adelaide Pre-Release Centre	8
Adelaide Remand Centre	84
Adelaide Women's Prison	72
Cadell Training Centre	17
City Watchhouse	3
Mobilong Prison	23
Mount Gambier Prison	111
Port Augusta Prison	143
Port Lincoln Prison	37
Sturt Watchhouse	1
Yatala Labour Prison	192
<b>Total</b>	<b>691</b>

*'...thankyou for your findings, your continued faith in me, and for the honesty and integrity of the Office of the SA Ombudsman. You have certainly restored my faith that there is some justice.'*

Extract from a Prisoner's letter to the Ombudsman

In recognition of the significant number of prisoner complaints to my Office, I meet with the Chief Executive of DCS and his senior officers on a quarterly basis. At these meetings we exchange information on issues relating to prisoner complaints and our respective progress with either investigating or responding to allegations.

Three meetings were held in the reporting period. Significant agenda items included:

- Ombudsman feedback on regular prison visits
- Restraint of prisoners: policy development and the use of soft restraints
- Forensic mental health patients under the care and control of DCS in hospitals
- Prisoner property: review of property complaints and procedures
- DCS initiatives with the Maximum Security and High Dependency Units.

DCS continues to liaise with NSW Correctional Services to develop and trial a prototype 'soft shackle'. However, I am concerned that this work has not yet delivered the promised secure soft restraint even though it has been ongoing for more than two years. I note that this Office first recommended that a soft restraint be developed in 2012 and it is disappointing that the work on it has not produced a result yet.

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 6 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.

## Legislative Developments

In the Child Protection Systems Royal Commission Report, *The Life They Deserve* (2016), Royal Commissioner Margaret Nyland made a number of recommendations, the implementation of which will have direct implications for my Office. The most significant of these provides:

*R 252 Amend the Ombudsman Act 1972 to ensure that complaints about the actions of government agencies, and other agencies acting under contract to the government, concerning child protection services, find principal jurisdiction with the Ombudsman, and not the Health and Community Services Commissioner, whether the complaint is about an administrative act.*

In response, the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* has been enacted and, when it commences, my Office will have specific and direct oversight of child protection related complaints.

Commissioner Nyland's report also made some important observations about the sharing of information between agencies and other services to ensure child safety and wellbeing. I absolutely support her findings in this respect and discuss them in more detail in the Information Sharing Guidelines section of this Report.

The *Public Sector (Data Sharing) Act 2016* commenced operation on 30 May 2017, and allows for public sector agencies to share data with other prescribed public sector agencies, either by their own volition or at the Minister's direction. I understand the policy intent behind this legislation to be that, by sharing data, agencies can more effectively target service delivery and policy development.

However, I am most concerned that my Office is subject to the Act, in particular that the Minister may compel me to share information with other parts of government. This, in my view, undermines and compromises the independence of this Office, and independence is the very foundation of a Parliamentary Ombudsman and indeed of the Ombudsman Act. Put simply, a Minister should not have the power to direct a Parliamentary Ombudsman to do anything.

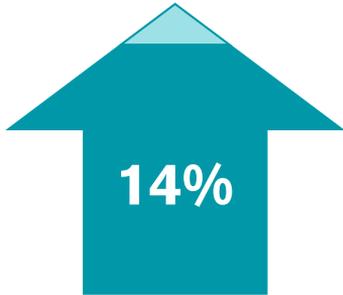
Under the Ombudsman Act I may authorise or require the disclosure of information obtained by me in the course of administering the Act but only if I am of the opinion that it is in the public interest to do so. The public interest test for disclosure is an appropriate one and should not be capable of being overridden by Ministerial direction.

I note the Regulations exempt other agencies, including the Independent Commissioner Against Corruption, from this requirement and I am at a loss to understand why this exemption was not afforded to my Office.

The Ombudsman is a crucial component in a healthy integrity system, and any compromise to its foundational principles is a threat to that system itself. I will continue to advocate for an amendment of the Public Sector (Data Sharing) Regulations to rectify this.

In the meantime, I encourage the reader to peruse the rest of this Report to get some insight into the value of the work of this Office.

## The Year at a Glance



COMPLAINTS  
RECEIVED **UP BY**  
14%



4040  
COMPLAINTS  
**RESOLVED**



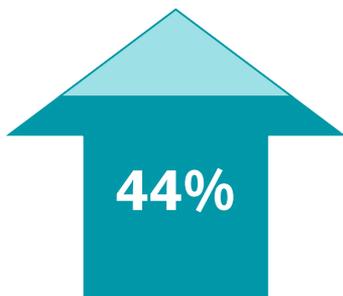
89  
INVESTIGATIONS  
**COMPLETED**



48  
ICAC REFERRALS  
**COMPLETED**



94%  
RECOMMENDATIONS  
**ACCEPTED**



FOI EXTERNAL REVIEWS  
RECEIVED **UP BY**  
44%



186  
FOI EXTERNAL  
REVIEWS **COMPLETED**

## Summary of Statistical Information

	Ombudsman Jurisdiction						2014-2015				2015-2016				2016-2017			
	Government Departments	Local Government	Other Authorities	Minister	Total	Government Departments	Local Government	Other Authorities	Minister	Total	Government Departments	Local Government	Other Authorities	Minister	Total			
Open matters	1881	932	622	2	<b>3437</b>	1902	909	699		<b>3510</b>	2247	965	798		<b>4010</b>			
Closed matters	1857	877	607	2	<b>3343</b>	1888	881	700		<b>3469</b>	2252	991	797		<b>4040</b>			
Audit Completed	12				<b>12</b>						1	12			<b>13</b>			

	FOI Jurisdiction						2014-2015				2015-2016				2016-2017			
	Government Departments	Local Government	Other Authorities	Minister	Total	Government Departments	Local Government	Other Authorities	Minister	Total	Government Departments	Local Government	Other Authorities	Minister	Total			
Open External Reviews	82	13	36	7	<b>138</b>	76	20	22	13	<b>131</b>	109	19	51	10	<b>189</b>			
Closed External Reviews	52	14	26	7	<b>99</b>	77	12	28	9	<b>126</b>	115	22	40	9	<b>186</b>			

	ICAC Jurisdiction						2014-2015				2015-2016				2016-2017			
	Government Departments	Local Government	Other Authorities	Total	Government Departments	Local Government	Other Authorities	Total	Government Departments	Local Government	Other Authorities	Total						
Matters received under s24 referral	3	23	4	<b>30</b>	5	35	6	<b>46</b>	7	27	15	<b>49</b>						
Matters Closed	5	59	10	<b>74</b>	6	24	3	<b>33</b>	6	35	7	<b>48</b>						

	Return To Work Jurisdiction				2015-2016				2016-2017			
	Claims Agent	Self-Insured Employer	Service Provider	Total	Claims Agent	Self-Insured Employer	Service Provider	Total	Claims Agent	Self-Insured Employer	Service Provider	Total
Matters received	253	109	62	<b>424</b>	148	58	19	<b>225</b>				
Matters Closed	242	109	62	<b>413</b>	151	55	18	<b>224</b>				

## Section 25 reports completed 2016-17

Ombudsman findings of administrative error under section 25 of the *Ombudsman Act 1972*

Date of report File number	Respondent Agency	Nature of Matter	Outcome
5 Jul 2016 2014/04024	City of Prospect	Unreasonable handling of complaint	s25(1)(b) Finding (Wrong)
14 July 2016 2015/04640	Department for Correctional Services	Unlawful shackling of a prisoner in hospital	s25(1)(a) Finding (Contrary to Law)
4 Aug 2016 2016/02172	City of Marion	Unreasonable complaint handling	s25(1)(b) Finding (Wrong)
8 Aug 2016 2015/08842	Rural City of Murray Bridge (Matter referred by ICAC)	Potential issues of misconduct and/or maladministration	s25(1)(b) Finding (Wrong)
9 Aug 2016 2015/09171	Rural City of Murray Bridge (Matter referred by ICAC)	Failure to enforce Development Act - P Bond & C Lewis	s25(1)(b) Finding (Wrong)
15 Aug 2016 2015/10485	City of Adelaide	Unreasonable internal review process	s25(1)(b) Finding (Wrong)
17 Aug 2016 2015/05799	Department for Communities & Social Inclusion	Unreasonable failure to advise complainant of tender process	s25(1)(b) Finding (Wrong)
19 Aug 2016 2015/05125	TAFE SA	Unreasonable action taken against student	s25(1)(b) Finding (Wrong)
5 Sept 2016 2015/07578	District Council of Loxton Waikerie (Matter referred by ICAC)	Council's failure to follow proper process regarding recruitment and division of funds	s25(1)(b) Finding (Wrong)
13 Sept 2016 2016/04181	City of Victor Harbor	Breach of council member code of conduct - Cr Peter Charles	s25(1)(a) Finding (Contrary to Law)
20 Sept 2016 2016/01306	City of Charles Sturt	Breach of council member code of conduct - Mayor Evans	s25(1)(a) Finding (Contrary to Law)
21 Sept 2016 2016/02992	District Council of Peterborough	Failure to adequately perform internal review of requirement to remove established garden bed	s25(1)(b) Finding (Wrong)
4 Oct 2016 2016/03486	City of Charles Sturt	Unreasonable decision to remove tree	s25(1)(e) Finding (No reason given)
12 Oct 2016 2016/04711	District Council of Mallala	Breach of council member code of conduct - Cr Strudwicke	s25(1)(a) Finding (Contrary to Law)
27 Oct 2016 2016/02988	Department for Education & Child Development	Failure to provide procedural fairness	s25(1)(b) Finding (Wrong)
1 Nov 2016 2016/01525	Department for Correctional Services	Unreasonable ban on prisoner mail	s25(1)(b) Finding (Unreasonable)
16 Nov 2016 2016/04680	Mid Murray Council (Matter referred by ICAC)	Breach of employee code of conduct - Mr Russell Peate	s25(1)(d) Finding (Improper purpose or irrelevant grounds or considerations)
9 Jan 2017 2016/05361	City of Charles Sturt	Failure to properly assess complaint	s25(1)(b) Finding (Wrong)
9 Jan 2017 2016/08315	District Council of Tumby Bay	Breach of council member code of conduct - Cr Laurie Collins	s25(1)(a) Finding (Contrary to Law)

Date of report File number	Respondent Agency	Nature of Matter	Outcome
3 Feb 2017 2015/08306	Department for Correctional Services	Unreasonable use of restraints on forensic patient	s25(1)(a) Finding (Contrary to Law)
7 Feb 2017 2016/04000	City of Onkaparinga (Matter referred by ICAC)	Unreasonable approval of reimbursement of golf club membership	s25(1)(b) Finding (Wrong)
17 Feb 2017 2016/08185	City of Burnside	Breach of council member code of conduct - Cr Felicity Lord	s25(1)(a) Finding (Contrary to Law)
22 Mar 2017 2017/00211	South Australian Civil and Administrative Tribunal	Failure to interview witnesses in investigation of complaint	s25(1)(b) Finding (Wrong)
22 Mar 2017 2015/07892	Department for Communities & Social Inclusion	Unreasonable delay processing employment screening application	s25(1)(b) Finding (Unreasonable)
10 Apr 2017 2016/03155	District Council of Peterborough	Breach of council employee code of conduct - P McGuinness	s25(1)(b) Finding (Unreasonable)
11 Apr 2017 2016/06774	Public Trustee	Unreasonable management of funds	s25(1)(b) Finding (Unreasonable)
15 Jun 2017 2016/10027	City of Adelaide	Breach of council member code of conduct - Cr Wilkinson	s25(1)(a) Finding (Contrary to Law)
27 Jun 2017 2016/04481	City of Onkaparinga	Unreasonable investigation of code of conduct complaints	s25(1)(d) Finding (Improper purpose or irrelevant grounds or considerations)
27 Jun 2017 2016/09720	Office of the State Coordinator General	Unreasonable decision regarding assessment of proposed development	s25(1)(b) Finding (Unreasonable)
29 Jun 2017 2016/10021	Department for Correctional Services	Unreasonable treatment of a prisoner	s25(1)(b) Finding (Wrong)

# 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 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.

# Government Agencies

## Summary tables

1 July 2016 - 30 June 2017

### Complaints: Received

Government Department	No	Percentage of Total Complaints
Attorney-General's Department	145	6.4
Department for Child Protection	126	5.6
Department for Communities and Social Inclusion	101	4.5
Department for Correctional Services	752	33.5
Department Education and Child Development	250	11.1
Department for Health & Ageing	27	1.2
Department of Environment, Water and Natural Resources	29	1.3
Department of Planning, Transport and Infrastructure	190	8.5
Department of Primary Industries & Regions SA	3	0.1
Department of State Development	9	0.4
Department of the Premier and Cabinet	27	1.2
Department of Treasury and Finance	38	1.7
Environment Protection Authority	12	0.5
SA Housing Trust	504	22.5
SA Police	2	0.1
SA Water Corporation	32	1.4
<b>Total</b>	<b>2247</b>	<b>100%</b>

## Complaints: Completed

Government Department	No	Percentage of Total Complaints
Attorney-General's Department	146	6.5
Department for Child Protection	120	5.4
Department for Communities and Social Inclusion	102	4.5
Department for Correctional Services	750	33.4
Department for Education and Child Development	262	11.7
Department for Health & Ageing	28	1.2
Department of Environment, Water and Natural Resources	29	1.3
Department of Planning, Transport and Infrastructure	190	8.5
Department of Primary Industries & Regions SA	3	0.2
Department of State Development	9	0.4
Department of the Premier and Cabinet	28	1.2
Department of Treasury and Finance	37	1.6
Environment Protection Authority	14	0.4
SA Housing Trust	500	22.2
SA Police	2	0.1
SA Water Corporation	32	1.4
<b>Total</b>	<b>2252</b>	<b>100%</b>

## Complaints: Issues

Issue	Total	Percentage
Abuse or assault/Physical/By other detainees	3	0.1
Abuse or assault/Physical/By staff	7	0.3
Abuse or assault/Verbal/Harassment/Threats/By other detainees	1	0.1
Abuse or assault/Verbal/Harassment/Threats/By staff	3	0.1
Complaint handling/Conflict of interest	1	0.1
Complaint handling/Delay	75	3.2
Complaint handling/Inadequate processes	133	5.6
Complaint handling/Inadequate reasons	41	1.7
Complaint handling/Inadequate remedy	58	2.4
Complaint handling/Wrong conclusion	90	3.8

Issue	Total	Percentage
Conduct/Assault	2	0.1
Conduct/Discourtesy	29	1.2
Conduct/Misconduct	11	0.5
Correspondence/Communications/Records/Breach of privacy/Confidentiality	7	0.3
Correspondence/Communications/Records/Delayed/No response	105	4.4
Correspondence/Communications/Records/Incorrect	51	2.2
Correspondence/Communications/Records/Lost	12	0.5
Correspondence/Communications/Records/Withholding of information	24	1.0
Correspondence/Communications/Records/Wrongful disclosure of information	8	0.3
Custodial services/Building and facilities	11	0.5
Custodial services/Canteen	34	1.4
Custodial services/Cell conditions	40	1.7
Custodial services/Clothing/Footwear	11	0.5
Custodial services/Educational programs	1	0.1
Custodial services/Employment	14	0.6
Custodial services/Food	17	0.7
Custodial services/Health related services	63	2.7
Custodial services/Leave	7	0.3
Custodial services/Legal resources	8	0.3
Custodial services/Prisoner accounts	27	1.1
Custodial services/Prisoner mail	20	0.8
Custodial services/Property	55	2.3
Custodial services/Recreation programs & services	5	0.2
Custodial services/Rehabilitation programs	15	0.6
Custodial services/Telephone	43	1.8
Employer/Employee	4	0.2
Employment	12	0.5
Financial/Procurement/Facilities/Compensation/ Damage/Acquisition of land	1	0.1
Financial/Procurement/Facilities/Compensation/ Damage/Property lost/Damaged	6	0.2
Financial/Procurement/Facilities/Debts	18	0.8
Financial/Procurement/Facilities/Facilities owned/ Controlled by authority/Denial of use	1	0.1
Financial/Procurement/Facilities/Facilities owned/ Controlled by authority/Drainage	1	0.1
Financial/Procurement/Facilities/Facilities owned/ Controlled by authority/Fencing	2	0.1

Issue	Total	Percentage
Financial/Procurement/Facilities/Facilities owned/ Controlled by authority/Sale/Lease	2	0.1
Financial/Procurement/Facilities/Procurement by agencies/Decisions	1	0.1
FOI advice	46	1.9
FOI practices and procedures	1	0.1
Home detention	30	1.3
Housing/Abandoned goods	1	0.1
Housing/Allocation	33	1.4
Housing/Arrears/Debt recovery	30	1.3
Housing/Categorisation	1	0.1
Housing/Damages	5	0.2
Housing/Disruptive tenants	58	2.4
Housing/Maintenance	186	7.9
Housing/Rent	28	1.2
Housing/Termination	24	1.0
Housing/Transfer	57	2.4
Prison management/Discipline/Security/Daily regimen	12	0.5
Prison management/Discipline/Security/Discipline/ Management	64	2.7
Prison management/Discipline/Security/Drug testing	13	0.5
Prison management/Discipline/Security/Inspections/ Body searches	3	0.1
Prison management/Discipline/Security/Protection	13	0.5
Prison management/Discipline/Security/Transport	6	0.2
Prison management/Discipline/Security/Visits	31	1.3
Prison records/Official correspondence/Delayed/No response	7	0.3
Prison records/Official correspondence/Improper access by staff	1	0.1
Prison records/Official correspondence/Incorrect	8	0.3
Prison records/Official correspondence/Lost	1	0.1
Regulation and enforcement/Animals/Excessive action	1	0.1
Regulation and enforcement/Complaint handling	3	0.1
Regulation and enforcement/Enforcement action/Excessive	57	2.4
Regulation and enforcement/Enforcement action/Insufficient	2	0.1
Regulation and enforcement/Enforcement action/Unfair	49	2.1
Regulation and enforcement/Fees	21	0.9
Regulation and enforcement/Infringements/Excessive penalty	8	0.3

Issue	Total	Percentage
Regulation and enforcement/Infringements/Inadequate review	1	0.1
Regulation and enforcement/Infringements/Incorrect details	3	0.1
Regulation and enforcement/Infringements/ Unreasonably issued	5	0.2
Regulation and enforcement/Inspections	5	0.2
Regulation and enforcement/Licensing/Conditions	15	0.6
Regulation and enforcement/Licensing/Refusal	6	0.2
Regulation and enforcement/Licensing/Renewal	6	0.2
Regulation and enforcement/Licensing/Suspension	17	0.7
Regulation and enforcement/Permits	2	0.1
Revenue collection/Emergency services levy	6	0.2
Revenue collection/Land tax	12	0.5
Revenue collection/Stamp duty	2	0.1
Revenue collection/Water & sewerage	20	0.8
Roads and traffic/Charges/Fines	7	0.3
Roads and traffic/Licensing/Conditions	4	0.2
Roads and traffic/Licensing/Demerit points	1	0.1
Roads and traffic/Licensing/Fail to issue renewal	1	0.1
Roads and traffic/Licensing/Fees/Charges	1	0.1
Roads and traffic/Licensing/Incorrect details on licence	2	0.1
Roads and traffic/Licensing/Medical test	3	0.1
Roads and traffic/Licensing/Tests	1	0.1
Roads and traffic/Registration/Conditions	1	0.1
Roads and traffic/Registration/Failure to issue renewal	3	0.1
Roads and traffic/Registration/Fees/Charges	4	0.2
Roads and traffic/Registration/Incorrect details on registration	1	0.1
Roads and traffic/Registration/Roadworthy	1	0.1
Roads and traffic/Registration/Transfer without consent	2	0.1
Roads and traffic/Road management	5	0.2
Sentence management/Classification	9	0.4
Sentence management/Parole	27	1.1
Sentence management/Placement/Location	45	1.9
Sentence management/Transfers	34	1.4
Service delivery/Abuse in care	5	0.2

Issue	Total	Percentage
Service delivery/Assessment	6	0.2
Service delivery/Conditions	26	1.1
Service delivery/Debts	1	0.1
Service delivery/Eligibility for services	19	0.8
Service delivery/Failure to act/Provide	80	3.4
Service delivery/Fees and charges	12	0.5
Service delivery/Financial assistance	13	0.5
Service delivery/Quality	61	2.6
Service delivery/Termination of services	3	0.1
<b>Total</b>	<b>2358</b>	<b>100%</b>

## Complaints: Outcomes

Outcome	Total	Percentage
Advice given	58	2.6
Alternate remedy available with another body	267	11.8
Complaint cannot be contacted	20	0.9
Declined/Investigation unnecessary or unjustifiable	434	19.3
Declined/No sufficient personal interest or not directly affected	20	0.9
Declined/Out of time	14	0.6
Not substantiated/No s25 finding	4	0.2
Out of Jurisdiction/Employment	13	0.6
Out of Jurisdiction/Judicial body	2	0.1
Out of Jurisdiction/Minister	1	0.1
Out of Jurisdiction/Police matter	5	0.2
Out of Jurisdiction/Policy	1	0.1
Referred back to agency	1017	45.1
Advice to authority	2	0.1
Resolved with agency cooperation	322	14.2
s25 Finding/Finding/Contrary to law	2	0.1
s25 Finding/Finding/Unreasonable	4	0.2
s25 Finding/Wrong	3	0.1
Withdrawn by complainant	63	2.8
<b>Total</b>	<b>2252</b>	<b>100%</b>

## Case studies

### **Attorney General's Department (Office of Consumer and Business Services)**

#### **Early resolution - unsatisfactory service by agency**

2017/03839

##### *Complaint*

The complainant was owed bond monies but had been unable to access the agency's online form to recoup them. She was living interstate and had been severely affected by floods. She was to be evicted due to non-payment of rent and urgently required the bond monies in the amount of \$1 640.

##### *Outcome*

Enquiries by my Office established that the agency would not accept any other way of claiming the bond other than by completing the form online, signing the form and providing suitable identification. Due to the flooding, the complainant had no access to a computer or printer and was unable to do this.

My Office was able to negotiate an alternative method of lodging the claim that was acceptable to the agency: the complainant copied the content of the relevant form onto a piece of paper, photographed the document and her identification, and emailed the paperwork to the agency using her mobile phone. The bond monies were then released to the complainant.

### **Attorney-General's Department (Births, Deaths and Marriages)**

#### **Early resolution - Unreasonable requirement imposed by agency**

2017/02567

##### *Complaint*

The complainant was the guardian of her grandson, who had been removed from the care of his mother and whose father (the complainant's son) had died. The complainant wished to have the father's name added to the child's birth certificate, and to also add a middle name to the birth certificate.

The complainant had experienced difficulty dealing with Births, Deaths and Marriages (BDM) and had been attempting to give effect to the changes to the birth certificate through a case worker at Families SA, but had not been successful thus far.

##### *Outcome*

My Office contacted BDM as to the applicable procedures and whether the complainant's wishes could be facilitated. After examining the file, BDM indicated that they were in possession of all of the details necessary to add the child's father to the birth certificate, as Families SA had provided the necessary details as well as a DNA report. This change could be effected immediately with no cost to the complainant.

BDM advised that to add a middle name to the birth certificate, a certain process would need to be followed, including an application form and a fee that must be submitted by the child's mother. Families SA could again facilitate this and had previously provided written evidence to show BDM that both parents of the child had previously consented to the addition of the middle name.

The complainant was advised of the successful outcome regarding the father's name and provided advice as to the necessary steps regarding the middle name. As the agency had been of assistance and the complainant was now armed with the knowledge to complete the process, no further enquiries were needed.

### **Attorney General's Department (Fines Enforcement and Recovery Unit)**

#### **Early resolution - Incorrect fines notice sent to complainant**

2016/07834

##### *Complaint*

The complainant received a notice from the Fines Enforcement and Recovery Unit for a Victims of Crime Levy for the amount of \$11 767.00. The notice caused the complainant great distress because he had not incurred the fine; on telephoning the agency he was informed the notice had been intended for a person with the same name but residing at a different address. The complainant sought a written apology from the agency.

##### *Outcome*

Enquiries by my Office resulted in the agency issuing a written apology to the complainant with an explanation of how the error occurred.

## Department for Correctional Services

### Investigation - Unreasonable ban on prisoner mail

2016/01525

#### Complaint

The complainant, a prisoner advocacy group, alleged that the department had placed a blanket ban on prisoners communicating with it.

#### Investigation and Outcome

The Department issued an administrative instruction which effectively prohibited communication between prisoners and Justice Action. The department was responding to the failure of Justice Action to remove prisoner profiles from its public website. The department also regarded Justice Action to be a media outlet thereby requiring that prisoners get approval from the Chief Executive before communicating with the media.

I made a finding that, at the time of issuing the administrative instruction, the Correctional Services Act and regulations did not prohibit the type of communication being prohibited. Further, section 51 of the Correctional Services Act could only relate to incoming mail and not outgoing mail. I commented that the new Correctional Services Regulations 2016 at regulation 11 prohibited communication if for the purpose of facilitating relationships, but this did not prohibit communication for another purpose. I made a determination that the administrative instruction operated contrary to the Correctional Services Act in banning all letters even when they do not offend section 33 of the Act.

I made a recommendation that the department amend the administrative instruction to ensure that it permitted lawful communication between prisoners and Justice Action.

## Department for Correctional Services

### Investigation - Unreasonable use of restraints on forensic patient

2015/08306

#### Complaint

The patient was charged and subject to a warrant issued pursuant to section 269X(1)(b) of the *Criminal Law Consolidation Act 1935* (SA). The warrant stated that the patient should be detained at James Nash House or other approved treatment centre and that they were to be remanded into the custody of the Clinical Director of

Forensic Mental Health. The patient was held in Flinders Medical Centre due to a lack of beds in James Nash House and was subject to a restraint regime in accordance with DCS policy. The complaint was around the treatment of the patient, the level of restraint provided being too harsh for the circumstances. The complaint provided evidence from medical staff at FMC that supported the assertion made by the complainant.

#### Investigation and Outcome

My investigation found that DCS took custody of the patient at FMC at the request of FMC staff and SAPOL despite having no authority over the patient according to the warrant. The patient was also restrained in accordance with the DCS restraint regime which defaulted to a High 2 classification because the patient was unknown to DCS and was secured in an unsecure location. Further, paperwork submitted by DCS officers was incomplete which could have resulted in the patients restraints being reduced. The patient was shackled for over eight hours without seeking approval in accordance with DCS procedure.

My investigation examined the use of DCS procedures in these circumstances and found that administrative errors occurred.

I made ten recommendations pursuant to section 25(2) of the Ombudsman Act:

- review bedside admission processes to ensure warrants interpreted correctly
- provide clarification about when a patient is considered a prisoner
- apologise to the patient for taking them into custody by mistake
- consider that the eight hour restraint rule apply to both compliant and non-compliant prisoners
- provide clarity around when to apply procedures that involve escorting the prisoner/patient and define escort
- ensure individual review of restraint regime by telephone so no automatic default
- clarify ambiguous wording in procedures
- include clarification around what circumstances are considered urgent and procedures on public holidays
- any proposed changes to the level of restraint be done by telephone and immediately recorded and implemented

- individual review of the restraint regime of any prisoner/patient be conducted by departmental officers upon taking custody.

DCS have procedures in place for implementation of eight of the ten recommendations and are considering implementation of the remaining two, including the apology to the patient.

## Department for Correctional Services Investigation - Unlawful shackling of prisoner in hospital

2015/04640

### 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 B came to Australia from East Africa and was 20 years of age at the time of his alleged offence. He was remanded in custody and initially placed in the City Watch House. Due to his non-compliant behaviour, Prisoner B 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 log commenced at 7.20pm on 17 October 2014. He was released from the RAH and admitted to James Nash House at 2.40 pm on 22 October 2014.

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

### Investigation and Outcome

My investigation examined whether:

- Prisoner B 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 B during a hospital visit
- the management of Prisoner B's custody in hospital 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 B had been contrary to law.

I found that the department's actions resulted in an unintended but entirely avoidable level of distress to the prisoner. This was due to the inadequacy of showering and toileting arrangements during a period of six days the prisoner was restrained in hard shackles.

The investigation report made nine 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
- DCS review the current SOP-013 'Standard Requirements' 3-level restraint regime for hospital admissions to consider a procedure that requires an individual assessment of the prisoner's risk(s).

The department subsequently advised me that it was in the process of implementing all nine recommendations. I continue to monitor progress on each of the recommendations.

## Department for Correctional Services

### Early resolution - Failure to organise Centrelink before release

2017/04785

#### *Complaint*

The complainant was a prisoner who was due to be released on a Saturday. He contacted my Office on the Wednesday before his release. He stated that he lived in Melbourne and he would be unable to get there as the department had not organised Centrelink arrangements for him. He complained that the department would transport him as far as Mount Gambier, where he would be stranded on a weekend and be unable to visit a Centrelink office himself until the following Monday. The complainant had only \$60 in his prisoner account and would have a strong likelihood of being either a victim or perpetrator of a crime if left in such a vulnerable position, without access to money for food, accommodation or travel.

#### *Outcome*

My Office enquired as to the arrangements that were in place for the complainant's release. The department confirmed that the prisoner's Centrelink had not been organised and that he did not have a bank card, and undertook to consider the matter further. Subsequently the department advised the following action was taken to remedy the situation: the complainant was released 24 hours early, so that he was released on the Friday morning, using relevant powers under the *Correctional Services Act*; the department paid for a bus ticket to take the complainant all the way to Melbourne and provided him with lunch and water for the trip; the department contacted Centrelink who had made a payment into his account so that he would have access to money once he arrived in Melbourne; the complainant's family in Melbourne were advised of his early arrival time.

## Department for Communities and Social Inclusion

### Investigation - Unreasonable failure to advise complainant of tender process

2015/05799

#### *Complaint*

The complainant is the CEO of Aboriginal Legal Rights Movement (ALRM).

For ten years ALRM had received funding from the department for provision of services under the Low Income Support Program (LISP). In June 2013 a tender process was commenced for the funding. The department unintentionally omitted to directly advise ALRM of the tender process even though in March 2013 verbal assurances had been given that when the tender was opened ALRM would be notified. ALRM had not checked the public notification of the tender on government websites and missed out on tendering.

An email from ALRM's LISP co-ordinator was sent to the department's Chief Project Officer the day before the tender opened to enquire about the funding arrangements for LISP after December 2013 and 'possible expectant changes' to the current arrangement. The Chief Project Officer was on leave at the time the email was sent and was never responded to.

#### *Investigation and Outcome*

The department admitted that it had inadvertently failed to directly notify ALRM of the tender process. However, it had publicly advertised the tender on the Tenders SA website and the Family and Community Development Program on line portal.

Since ALRM had been given verbal assurances from departmental officers a few months before the tender that it would be notified, ALRM had a reasonable expectation that it would be directly notified of when the funding would be opened up to public tender.

In addition, ALRM's LISP co-ordinator had emailed the department's Chief Project Officer to enquire about whether the funding arrangements would be changed soon. The email was not responded to because the officer was on leave at the time and the department's procurement protocol stipulated that all communications with organisations about the tender had to be made through the department's Procurement and Grants Advisor. Even so, it was remiss of the Chief Project Officer to neglect to follow up ALRM's email upon his return from leave and ensure that the email had been acted.

In light of the above I concluded that the department had acted in a manner which was wrong within the meaning of section 25(1) of the Ombudsman Act.

To remedy this error, the Ombudsman recommended under section 25(2) of the Ombudsman Act the department issue a written apology to the complainant for omitting to notify her directly of the 2013 tender release date and for failing to respond to the email from ALRM.

## **Department for Education and Child Development**

### **Early resolution - Unreasonable failure to cater to deaf child**

2016/06600

#### *Complaint*

The complainant was the parent of a deaf child who would enter high school in 2017. As of August 2016, the high school had no arrangements in place to cater to the deaf student, such as providing AUSLAN in the classroom. As the complainant lived in a rural area, options for alternative schools were limited. The school had informed the complainant that they lacked the funding to cater to her daughter.

#### *Outcome*

Following enquiries by my Office, including formal correspondence with the Chief Executive, the department took the following action: a full-time SSO was secured to support the deaf student five days a week; a number of AUSLAN fluent relief teachers had been identified who could assist if the SSO was away; basic AUSLAN training would be provided to all teachers; the student's timetable was crafted in such a way as to limit the number of different teachers she was in contact with; and a teacher had been secured for one day per fortnight to provide additional support and training to the teaching staff in dealing with the deaf student. Funding had been successfully secured in order to cater to the complainant's daughter.

## **Department for Education and Child Development**

### **Investigation - Failure to provide procedural fairness**

2016/02988

#### *Complaint*

The complainant alleged that the department improperly cancelled her approval as a foster parent. There was a history of conflict between the complainant and the department in relation to her role as a foster parent.

#### *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 afford the complainant procedural fairness and failing to review the decision to remove the complainant as a foster parent.

My investigation found that the department informed the complainant in general terms that it was intending to cancel her approval as a foster parent. The department however, relied on a significant body of information in arriving at the decision. Details of that information were not provided to the complainant. The complainant stated her intention that if she was removed as a foster carer she would object to the decision. The department subsequently cancelled her approval as a foster carer. The department failed to give reasons for the decision but did inform the complainant that she could have the decision reviewed. The complainant requested a review of the decision. The Chief Executive Officer subsequently informed the complainant there would be no further communication in relation to the matter.

The failure to provide the complainant with procedural fairness so she could clearly understand the department's rationale for the decision was wrong. The failure of the department to conduct a review of the decision was also wrong.

I recommended that the department:

- provide further details to the complainant explaining the rationale for the decision made on 1 December 2015
- invite the complainant to make a submission in writing, identifying why she considers the decision made on 1 December 2015 to cancel her approval as a foster parent be reviewed
- on receipt of the submission or if no submission is made by the complainant, the Chief Executive Officer conduct a review of the decision made on 1 December 2015 to cancel the approval of the complainant as a foster parent
- amend the Carer and Registration Procedure to provide for clear and detailed reasons to be given to a foster parent to explain the decision to cancel their approval
- amend the Carer and Registration Procedure to include a process explaining how a review of a decision is to be conducted.

## **SA Housing Trust**

### **Early resolution - Failure to do maintenance on roof**

2016/07907

#### *Complaint*

The complainant was a long term Housing Trust resident, having lived in her house for 22 years. There were a number of maintenance problems, including a leaking roof, mould on her ceiling, her gutters were not connected, her eaves had dropped, and she wanted a large gum tree in her yard to be looked at. The complainant had put in a number of maintenance requests, and followed up with regular phone calls, but had not had her maintenance issues addressed.

The complainant was also upset that many other Housing Trust properties had been renovated or rebuilt, but hers had not. The present situation meant that she wanted a transfer to a better maintained house.

#### *Outcome*

Enquiries by my Office established that there had been five maintenance orders for the property which had dropped off the system, as the contractor had attended the property when the tenant was not home and the tenant had not called the contractor to follow up.

In response to the enquiries, the agency arranged a Maintenance Inspector to attend the property and advise as to whether it was possible, and economically feasible, to repair the property to an acceptable standard. If it was possible, the property would be repaired. If it was not possible, the tenant would be relocated. The complainant was subsequently informed of the action that would be taken to repair the property. The agency also arranged for an arborist to assess the gum tree to determine whether it was safe.

## **SA Housing Trust**

### **Early resolution - Unreasonable refusal to repair retaining wall**

2016/07973

#### *Complaint*

The complainant owns a private home which adjoins a Housing SA home. After the complainant took ownership of his home, the agency erected a house and installed a retaining wall. The fence was then erected by the agency on top of the retaining wall. Following damage over time to the fence, the agency requested half of the replacement costs of the fence from the complainant. There followed a dispute between the parties about the retaining wall, the complainant submitting that the retaining wall needed to be repaired/replaced prior to the fence being replaced. The agency then requested \$9,972.00 from the complainant being his contribution to the cost of replacing the retaining wall and fence.

#### *Outcome*

During the assessment of this complaint and following further enquiries with the agency it was established that under the *Fences Act 1975*, the complainant is not responsible for contributing to the cost of replacing the retaining wall. Accordingly, the replacement of both the retaining wall and the fencing was undertaken by the agency, with the complainant paying half of the cost of the fencing only.

## **SA Housing Trust**

### **Early resolution - Unreasonable level of service regarding housing**

2016/06366

#### *Complaint*

The complainant, an older man with a brain injury, had previously been living with his carer and wanted to live independently. He was fast-tracked through the agency's waiting list and shown a property for which he signed a lease. He did not view the inside of the property before signing because the agency officer did not bring the keys to the inspection.

When the complainant and his carer picked up the keys and entered the flat, they discovered there was no running hot water. As this was the middle of winter, the complainant decided not to move in until the hot water had been repaired. Despite a few efforts from the agency, maintenance failed to arrive at the scheduled times and, after two weeks, the complainant became distressed and decided he did not want to live there anymore. When he cancelled his lease, he was told he would be charged a total of six weeks rent, despite never having moved into the property.

#### *Outcome*

Due to the particular vulnerability of this complainant, and the fact that he did not move into the flat at all, my Office enquired as to whether the agency would be willing to refund the rent paid. The agency agreed it would refund the money in this instance. This early decision by SAHT meant that I could end my assessment and no investigation was necessary, with a good result for the complainant. It was heartening that although the complainant did change his mind, and SAHT had no legal obligation to refund the money, SAHT clearly shared our view that the complainant's brain injury made him particularly vulnerable, and found that it was reasonable to provide a refund.

## **SA Housing Trust**

### **Early resolution - Unreasonable cessation of government funding**

2017/03155

#### *Complaint*

The complainant and his partner who was eight months pregnant, had been receiving government funding through Housing SA for hotel accommodation for a period of 17 nights. The funding was due to cease on the date of the complaint, and the complainant was seeking an extension of the funding due to his partner's condition.

#### *Outcome*

During the assessment of this complaint and following further enquiries with the agency and Hutt Street Centre, it was apparent that the agency had provided significant assistance to the complainant. Nevertheless the agency extended the accommodation for a further two nights, and then arranged travel vouchers for the complainant and his partner to go to another town where they were given accommodation by a friend.



# Local Government

## Summary tables

1 July 2016 - 30 June 2017

### Complaints: Received

Local Council	Received	Percentage	Population 30 June 2016	Complaints/10,000 popn
Adelaide, City of	92	9.6	23 615	38.9
Adelaide Hills Council	34	3.5	40 013	8.4
Adelaide Plains Council/Mallala, District Council of	14	1.4	8 806	15.8
Alexandrina Council	18	1.9	25 585	7.0
Barossa Council, The	7	0.8	23 410	2.9
Barunga West, District Council of	1	0.1	2 453	4.0
Berri Barmera Council	7	0.8	10 350	6.7
Burnside, City of	28	2.9	45 337	6.1
Campbelltown City Council	10	1.0	51 983	1.9
Ceduna, District Council of	2	0.2	3 743	5.3
Charles Sturt, City of	49	5.1	114 677	4.2
Cooper Pedy, District Council of	9	0.9	1 782	50.5
Coorong, District Council	3	0.3	3 743	8.0
Copper Coast, District Council of the	15	1.5	14 299	10.4
Elliston, District Council of	3	0.3	1 056	28.4
Flinders Ranges Council, The	1	0.1	1 567	6.3
Franklin Harbour, District Council of	3	0.3	1 211	24.7
Gawler, Town of	22	2.3	23 192	9.4
Goyder, Regional Council of	6	0.6	4 213	14.2
Grant, District Council of	2	0.2	8 326	2.4
Holdfast Bay, City of	20	2.1	37 376	5.3
Kangaroo Island Council	10	1.0	4 635	21.5
Kingston District Council	2	0.2	2 369	8.4
Light Regional Council	7	0.8	15 031	4.6
Lower Eyre Peninsula, District Council of	1	0.1	5 072	1.9
Loxton Waikerie, District Council of	9	0.9	11 396	7.8
Marion, City of	25	2.6	89 777	2.7
Mid Murray Council	17	1.8	8 268	20.5
Mitcham, City of	25	2.6	66 314	3.7
Mount Barker, District Council of	26	2.7	33 117	7.8
Mount Gambier, City of	11	1.1	26 317	4.1

Local Council	Received	Percentage	Population 30 June 2016	Complaints/10,000 popn
Mount Remarkable, District Council of	7	0.8	2 774	25.2
Murray Bridge, Rural City of	17	1.8	21 163	8.0
Naracoorte Lucindale Council	1	0.1	8 305	1.2
Northern Areas Council	7	0.8	4 454	15.7
Norwood, Payneham & St Peters, City of	21	2.2	37 496	5.6
Onkaparinga, City of	65	6.8	169 575	3.8
Orroroo/Carrieton, District Council of	1	0.1	854	11.7
Peterborough, District Council of	9	0.9	1 696	53.0
Playford, City of	40	4.1	89 676	4.4
Port Adelaide Enfield, City of	38	3.9	125 083	3.0
Port Augusta City Council	16	1.6	14 441	11.0
Port Lincoln, City of	3	0.3	14 997	2.0
Port Pirie Regional Council	5	0.5	17 345	2.8
Prospect, City of	5	0.5	21 410	2.3
Renmark Paringa, District Council of	3	0.3	9 117	3.2
Robe, District Council of	10	1.0	1 424	70.2
Roxby Council	5	0.5	4 985	10.0
Salisbury, City of	35	3.7	140 212	2.4
Southern Mallee District Council	3	0.3	2 056	14.5
Streaky Bay, District Council of	4	0.4	2 267	17.6
Tatiara District Council	1	0.1	6 570	1.5
Tea Tree Gully, City of	34	3.5	99 118	3.4
Tumby Bay, District Council of	6	0.6	2 659	22.5
Unley, City of	23	2.5	39 518	5.8
Victor Harbor City Council	11	1.1	15 337	7.1
Wakefield Regional Council	1	0.1	6 870	1.4
Walkerville, Town of	5	0.5	7 694	6.4
Wattle Range Council	4	0.4	11 258	3.5
West Torrens, City of	84	8.7	59 312	14.1
Whyalla, City of	10	1.0	22 582	4.4
Yankalilla, District Council of	2	0.2	4 777	4.1
Yorke Peninsula Council	10	1.0	10 966	9.1
<b>Total</b>	<b>965</b>	<b>100%</b>		

## Complaints: Completed

Local Council	Completed	Percentage	Population 30 June 2016	Complaints/10,000 popn
Adelaide, City of	98	10.0	23 615	41.4
Adelaide Hills Council	37	3.7	40 013	9.2
Adelaide Plains Council/Mallala, District Council of	17	1.7	8 806	19.3
Alexandrina Council	18	1.8	25 585	7.0
Barossa Council, The	8	0.8	23 410	3.4
Barunga West, District Council of	1	0.1	2 453	4.0
Berri Barmera Council	6	0.6	10 350	5.7
Burnside, City of	28	2.8	45 337	6.1
Campbelltown, City of	11	1.1	51 983	2.1
Ceduna, District Council of	3	0.3	3 743	8.0
Charles Sturt, City of	53	5.3	114 677	4.6
Clare and Gilbert Valleys Council	1	0.1	9 059	1.1
Coober Pedy, District Council of	9	0.9	1 782	50.5
Coorong District Council	3	0.3	5 516	5.4
Copper Coast, District Council of the	16	1.6	14 299	11.1
Elliston, District Council of	3	0.3	1 056	28.4
Flinders Ranges Council, The	1	0.1	1 576	6.3
Franklin Harbour, District Council of	4	0.4	1 211	33.0
Gawler, Town of	19	1.9	23 192	8.1
Goyder, Regional Council of	6	0.6	4 213	14.2
Grant, District Council of	3	0.3	8 326	3.6
Holdfast Bay, City of	19	1.9	37 376	5.0
Kangaroo Island Council	8	0.8	4 635	17.2
Kingston District Council	2	0.2	2 369	8.4
Light Regional Council	7	0.7	15 031	4.6
Lower Eyre Peninsula, District Council of	1	0.1	5 072	1.9
Loxton Waikerie, District Council of	9	0.9	11 396	7.8
Marion City of	29	2.9	89 777	3.2
Mid Murray Council	17	1.7	8 268	20.5
Mitcham, City of	26	2.7	66 314	3.9
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Northern Areas Council	7	0.7	4 454	15.7
Norwood, Payneham & St Peters, City of	23	2.4	37 496	6.1
Onkaparinga, City of	63	6.4	169 575	3.7
Orroroo/Carrieton, District Council of	1	0.1	854	11.7
Peterborough, District Council of	12	1.2	1 696	70.7
Playford, City of	40	4.1	89 676	4.4
Port Adelaide Enfield, City of	38	3.8	125 083	3.0
Port Augusta City Council	16	1.6	14 441	11.0
Port Lincoln, City of	3	0.3	14 997	2.0
Port Pirie Regional Council	6	0.6	17 345	3.4
Prospect, City of	7	0.7	21 410	3.2
Renmark Paringa, District Council of	3	0.3	9 117	3.2
Robe, District Council of	9	0.9	1 424	63.2
Roxby Council	5	0.5	4 985	10.0
Salisbury, City of	37	3.7	140 212	2.6
Southern Mallee District Council	3	0.3	2 056	14.5
Streaky Bay, District Council of	4	0.4	2 267	17.6
Tatiara District Council	1	0.1	6 570	1.5
Tea Tree Gully, City of	33	3.3	99 118	3.3
Tumby Bay, District Council of	6	0.6	2 659	22.5
Unley, City of	23	2.4	39 518	5.8
Victor Harbor City Council	16	1.6	15 337	10.4
Wakefield Regional Council	1	0.1	6 870	1.4
Walkerville, Town of	6	0.6	7 694	7.7
Wattle Range Council	4	0.4	11 258	3.5
West Torrens, City of	82	8.3	59 312	13.8
Whyalla, City of	10	1.0	22 582	4.4
Yankalilla, District Council of	2	0.2	4 777	4.1
Yorke Peninsula Council	7	0.7	10 966	6.3
<b>Total</b>	<b>991</b>	<b>100%</b>		

## Complaints: Issues

Issue	Total	Percentage
Advice	2	0.2
Complaint handling/Conflict of interest	1	0.1
Complaint handling/Delay	64	6.3
Complaint handling/Inadequate processes	73	7.1
Complaint handling/Inadequate reasons	13	1.3
Complaint handling/Inadequate remedy	60	5.9
Complaint handling/Wrong conclusion	42	4.1
Conduct/Discourtesy	11	1.1
Conduct/Failure to declare conflict of interest	7	0.7
Conduct/Failure to follow proper process	19	1.9
Conduct/Misconduct	14	1.4
Correspondence/Communications/Records/Access	7	0.7
Correspondence/Communications/Records/Breach of privacy/confidentiality (CCR)	6	0.6
Correspondence/Communications/Records/Delay/No response	24	2.3
Correspondence/Communications/Records/Incorrect	12	1.2
Correspondence/Communications/Records/Wrongful disclosure of information	3	0.2
Council member code of conduct/Breach of part 2	17	1.7
Council member code of conduct/Breach of part 3/Lodge register of interests	2	0.2
Council member code of conduct/Breach of part 3/Bias and conflict of interest	21	2.0
Council member code of conduct/Breach of part 3/Use of council resources effectively and prudently	1	0.1
Council member code of conduct/Breach of part 3/Use of public funds	1	0.1
Council member code of conduct/Breach of part 3/repeated or sustained part 2 behaviour	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	6	0.6
Council member code of conduct/Breach of part 3/Divulge confidential information	6	0.6
Council member code of conduct/Breach of part 3/External relationships improper influence	2	0.2
Financial/Procurement/Facilities/Compensation/Damage/Physical injury	2	0.2
Financial/Procurement/Facilities/Compensation/Damage/Property lost/Damaged	20	1.9
Financial/Procurement/Facilities/Debts/Level of charges	2	0.2
Financial/Procurement/Facilities/Debts/Recovery action	2	0.2
Financial/Procurement/Facilities/Facilities owned/Controlled by authority/Drainage	9	0.9

Issue	Total	Percentage
Financial/Procurement/Facilities/Facilities owned/Controlled by authority/Parks and gardens	2	0.2
Financial/Procurement/Facilities/Facilities owned/Controlled by authority/Recreational facilities	4	0.4
Financial/Procurement/Facilities/Facilities owned/Controlled by authority/Roads/Streets	10	1.0
Financial/Procurement/Facilities/Other fees and charges	11	1.1
Financial/Procurement/Facilities/Procurement by agencies/ Tenders	6	0.6
Financial/Procurement/Facilities/Rates/Administration	10	1.0
Financial/Procurement/Facilities/Rates/Amount	35	3.4
Financial/Procurement/Facilities/Rates/Recovery action	23	2.2
Financial/Procurement/Facilities/Rates/Valuations	3	0.2
FOI advice	18	1.8
Governance/Confidentiality	2	0.2
Governance/Electoral	1	0.1
Governance/Failure to follow proper process	19	1.9
Governance/Prudential	3	0.2
Governance/Public consultation	13	1.3
Records management	1	0.1
Regulation and enforcement/Animals/Excessive action	20	1.9
Regulation and enforcement/Animals/Failure to act on complaints	10	1.0
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	6	0.6
Regulation and enforcement/Building/Unreasonable conditions imposed	3	0.2
Regulation and enforcement/Building/Unreasonable enforcement	2	0.2
Regulation and enforcement/Environmental protection/Excessive action	4	0.4
Regulation and enforcement/Environmental protection/Failure to action on complaints	6	0.6
Regulation and enforcement/Local laws/Failure to enforce	2	0.2
Regulation and enforcement/Local laws/Improper/Inappropriate	4	0.4
Regulation and enforcement/Local laws/Unreasonable enforcement	6	0.6
Regulation and enforcement/Nuisances/Failure to action on complaints	10	1.0
Regulation and enforcement/ Parking/Failure to enforce restrictions	9	0.9
Regulation and enforcement/Parking/Permits	2	0.2
Regulation and enforcement/Parking/Restrictions	2	0.2

Issue	Total	Percentage
Regulation and enforcement/ Parking/Unreasonable enforcement	188	18.4
Regulation and enforcement/Planning & development/Failure to enforce condition	11	1.1
Regulation and enforcement/Planning & development/Failure to notify	6	0.6
Regulation and enforcement/Planning & development/Failure/ Delay to issue permit	8	0.8
Regulation and enforcement/Planning & development/Inappropriate development allowed	59	5.8
Regulation and enforcement/Planning & development/ Unreasonable conditions imposed	29	2.8
Regulation and enforcement/Planning & development/ Unreasonable enforcement	10	1.0
Regulation and enforcement/Public health/Failure to act on complaints	5	0.5
Regulation and enforcement/Public health/Unreasonable conditions imposed	2	0.2
Regulation and enforcement/Public health/Unreasonable enforcement	1	0.1
<b>Total</b>	<b>1021</b>	<b>100%</b>

## Outcomes

Outcome	Total	Percentage
Advice given	29	2.9
Alternate remedy available with another body	78	7.9
Complaint cannot be contacted	4	0.4
Declined/Investigation unnecessary or unjustifiable	254	25.7
Declined/No sufficient personal interest or not directly affected	6	0.6
Declined/Out of time	7	0.7
Declined/Trivial, frivolous, vexatious, not made in good faith	1	0.1
Not substantiated	9	0.9
Out of jurisdiction/Policy	1	0.1
Referred back to agency	476	48.0
Advice to authority	4	0.4
Resolved with agency cooperation	63	6.4
s25 Finding/Contrary to law	8	0.8
s25 Finding/Unreasonable	1	0.1
s25 Finding/Improper purpose or irrelevant grounds or consideration	1	0.1
s25 Finding/No reason given	1	0.1
s25 Finding/Wrong	6	0.6
Withdrawn by complainant	42	4.2
<b>Total</b>	<b>991</b>	<b>100%</b>

## Case studies

### City of Adelaide

#### Investigation - Unreasonable internal review process

2015/10485

##### Complaint

My investigation considered a complaint about the council's decision to remove a tree and the subsequent section 270 review undertaken by the council. The complainant asserted that the council failed to appropriately consider the merits of the decision to remove the tree and also did not consider all information that was available to it at the time of making the decision, in particular, an arborists report commissioned and supplied by the complainant to the council as part of the internal review.

##### Investigation and Outcome

My investigation considered whether the council had acted in manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act by failing to consider the merits of the decision to remove the tree during the section 270 process. The investigation also considered whether the council's original decision to remove the tree was made appropriately.

My investigation found that the council's original decision to remove the tree was appropriately made based on the information it had before it at the time and that it was reasonably open to the council to decide to remove the tree.

However, my investigation found that, in undertaking the s270 review, although the council reviewed its decision making process, it failed to also appropriately consider the merits of the decision to remove the tree and in doing so, acted in manner that was wrong within the meaning of section 25(1) of the Ombudsman Act.

I recommended that the council:

- review its Corporate Complaint Operating Guideline (including section 270 internal review of council decisions or grievances) to clearly outline how the council will undertake its section 270 review process and to make clear that such a process should include an assessment of the merits of the decision, including a requirement to:
  - › review all documentation and information relevant to the decision
  - › review all relevant council policies and procedures relied upon in making the decision

- › obtain additional information or clarification from the parties as required
- › keep the parties up to date with the progress of the review
- reconsider its decision to remove the tree in light of all information that is now before it, including the Nicolle report in its entirety, as well as a consideration of the merits of the decision to remove the tree.

### City of Adelaide

#### Investigation - Breach of council member code of conduct - Cr Wilkinson

2016/10027

##### Complaint

I was alerted to the report of Cr Sandy Wilkinson's conduct via a media report that was published on 15 December 2016. As a result, I commenced an own initiative investigation.

Cr Wilkinson was alleged to have failed to declare a conflict of interest in relation to Item 5, Recommendation 5.10, at a council meeting that was held on 22 November 2016.

During the council meeting, Cr Wilkinson participated in a vote to increase the City of Adelaide's professional fees subsidy for heritage restoration, without declaring a potential conflict of interest in relation to his business, Alexander Wilkinson Design Pty Ltd, which provides heritage restoration services. In participating in the vote, it was alleged Cr Wilkinson failed to properly deal with a material, actual or perceived conflict of interest under the Local Government Act 1999, which is also a breach of Part 3.13 of the Code of Conduct for Council Members.

##### Investigation and Outcome

I found that whilst Cr Wilkinson did not have a material conflict of interest, he did have an actual and perceived conflict of interest. I also found that Cr Wilkinson failed to deal with the conflict of interest in breach of section 75A of the Local Government Act 1999 and Clause 3.13 of the Code of Conduct, and thereby acted in a manner that was unlawful within the meaning of section 25(1)(a) of the Ombudsman Act.

I recommended that Cr Wilkinson issue a public apology to the Council within two ordinary meetings of the Council for failing to appropriately deal with the conflict of interest at the meeting of 22 November 2016.

## City of Burnside

### Investigation - Breach of council member code of conduct - Cr Felicity Lord

2016/08185

#### Complaint

It was alleged that a council member breached Part 3 of the Code of Conduct for Council Members by failing to comply with a council resolution.

The resolution arose from an investigation into a complaint that the council member had made comments to a reporter about a council employee, and in doing so breached clauses 2.2-2.5, 2.7 and 2.11 of the Code of Conduct. The council considered the investigation report into the complaint and resolved to accept the recommendations including recommendation 4 which required the council member to make a public apology to the council employee at a council meeting by 30 September 2016. The Councillor did not comply with the recommendation by that date. The Mayor referred the matter to this Office as a complaint under Part 3 of the Code of Conduct.

#### Investigation and Outcome

My investigation found that the council member failed to comply with a finding of an investigation under Part 2.22 of the Code of Conduct. I found that, in failing to comply with the council resolution the council member breached section 63 of the Local Government Act and clause 3.2 of the Code of Conduct. In doing so, the council member acted in a manner that was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

I recommended that my findings be tabled at a public meeting of the council and that the member be reprimanded by the council and required to make a public apology to the council employee at the meeting at which my report was tabled.

## City of Charles Sturt

### Investigation - Breach of council member code of conduct - Mayor Evans

2016/01306

#### Complaint

It was alleged that:

- the council's Mayor inappropriately accepted a motion without notice contrary to the *Local Government (Procedures at Meetings) Regulations 2013* and the council's code of practice for meeting procedures (**the code of practice**)
- the Mayor's acceptance of the motion without notice was contrary to the Code of Conduct
- the council member who proposed the motion without notice acted contrary to the *Local Government (Procedures at Meetings) Regulations 2013*.

#### Investigation and Outcome

In relation to the first issue, my investigation found that the Mayor acted in a manner that was wrong by breaching the code of practice. This was on the basis that the motion was not urgent.

In relation to the second issue, my investigation found that the Mayor acted in breach of clause 3.2 of the Code of Conduct. This was on the basis that by breaching the code of practice, the Mayor failed to act with reasonable care and diligence.

In relation to the third issue, my investigation found that the council member who proposed the motion without notice was not bound by the Guiding Principles in the *Local Government (Procedures at Meetings) Regulations 2013* and the discretion to accept or decline the motion rested with the Mayor. On that basis, I considered that investigation of the council member's conduct was not necessary or justifiable.

I recommended that the council review the code of practice to include a provision requiring contemporaneous documentation of decisions made by the Principal Member to accept a notice without motion, noting especially an explanation of the relative urgency of the matter.

## City of Onkaparinga

### Early resolution - Unreasonable notice provided for a development assessment panel meeting

2016/07885

#### *Complaint*

The complainant called to raise concerns about a notice issued for a council development assessment panel meeting. The notice dated 4 October 2016 informed her that a meeting would take place on 6 October 2016. According to the complainant the letter also stated that it was a requirement that the council provide five business days' notice of the date of the meeting. The complainant called the council and an officer confirmed that an error had been made but the meeting would not be deferred. The complainant said that she needed more time to prepare submissions for the meeting.

#### *Outcome*

My officer called the council on 6 October 2016 and spoke with an officer in the governance area. The officer informed me that they accepted an administrative error had occurred and that the meeting would be deferred to 27 October and all parties would be advised by telephone. My Office accepted this was a reasonable remedy and informed the complainant.

## District Council of Peterborough

### Investigation - Failure to adequately perform internal review

2016/02992

#### *Complaint*

It was alleged that:

- the council's decision to enforce a by-law to require the complainant to remove vegetation from council land was unreasonable
- the council unfairly discriminated against the complainant by requiring removal of the vegetation
- the council failed to conduct an internal review in accordance with its internal review policy.

#### *Investigation and Outcome*

In relation to the first issue, my investigation found that the council explored conciliatory and informal options to resolve the matter and it was reasonably open for the council to enforce the by-law.

In relation to the second issue, my investigation found that the council had required other residents to remove material from council land and on that basis the council did not act in a manner that was discriminatory.

In relation to the third issue, my investigation found that the council was wrong in failing to provide sufficient reasons in relation to its internal review and failing to assist the complainant to effectively participate in the review.

I recommended that the council:

- review its internal review policy to clarify the substance and form of a section 270 review report
- write to the complainant explaining the process and procedure of the internal review and the reasons for the council's decision, and apologising for failing to assist the complainant to effectively participate in the review.



## City of Port Adelaide Enfield

### Early resolution - Failure to facilitate improved communication

2016/06225

#### *Complaint*

The complainant was a person who is Deaf. His first language is AUSLAN. Consequently, he was unable to sufficiently understand or respond to the council's attempts to communicate with him in relation to a roofing issue. The complainant requested a meeting with staff of the council along with an interpreter. The council arranged a meeting but was unwilling to provide an interpreter, instead utilising a staff member who was able to communicate in sign language. This person was not a qualified interpreter and could only sign letter-by-letter which hindered fluent communication. The complainant left the meeting and subsequently received further correspondence which he was, again, unable to understand or respond to. The complainant had experienced similar incidents with the council previously and, in his view, these interactions had caused council staff to develop an attitude towards him.

#### *Outcome*

My officer contacted the council to discuss the issues raised by the complainant, including the council's approach to people who have a disability, such as deafness. My officer suggested that it would be appropriate for the council to create a policy to guide and inform staff about what process to follow when interacting with people with disabilities. In response, the council arranged a meeting with the complainant and an AUSLAN qualified interpreter. This was productive and both parties were able to express their views effectively. Additionally, the council initiated a process to promote understanding amongst staff and reduce the barriers for people with different communication needs who approached the council. This involved staff training on use and booking of interpreter services, as well as training with a provider of interpreter services. The agency also undertook to develop policies and procedures accordingly.

Although the council had acted poorly in its initial approach to the complaint, which essentially raised issues of discrimination, I was satisfied with the action taken by the agency in response and that the measures implemented would ensure similar incidents did not occur in the future.

## City of Victor Harbor

### Investigation - Breach of council member code of conduct - Cr Peter Charles

2016/04181

#### *Complaint*

The complainant alleged that the council member failed to disclose a material conflict of interest, therefore breaching the provisions of section 62 of the Local Government Act and clause 3.13 of Part 3 of the Code of Conduct.

It was alleged that the council member remained present during an agenda item, in which a report of an Ombudsman investigation concerning the disclosure of confidential information by the council member in question was put before the council. Item 16.1.2 covered the five recommendations that were made in relation to the matter, which relevantly called for the council member to be reprimanded and attend training.

#### *Investigation and Outcome*

The Ombudsman first found that the council member had a material interest within the meaning of section 73(1) of the Local Government Act if they would receive a direct or indirect benefit or detriment depending on the outcome of a matter at the meeting. Section 74 of the Act requires a council member with a material conflict of interest to inform the meeting of the conflict and leave the meeting room.

Of the five recommendations, the Ombudsman found that three directly affected the council member. It was found that the council member would suffer a direct loss of a personal nature through a loss of reputation with the adoption of the recommendations. The council member admitted that he did not leave the room during item 16.1.2 and in fact voted on the item. It was found that he did have a material conflict of interest and that he failed to disclose this interest. It was not relevant that the council member voted in favour of the recommendations being adopted.

It was recommended under section 25(2) of the Ombudsman Act that the council make arrangements for the member to attend training on the conflict of interest provisions of the Local Government Act. As he did not exhibit an intention to gain a benefit or suffer a loss, there was no recommendation of the penalty set out in section 74(1) of the Local Government Act.

# Other Authorities

## Summary tables

1 July 2016 - 30 June 2017

### Complaints: Received

Authority	Received	Percentage
Adelaide Cemeteries Authority	3	0.4
Anangu Pitjantjatjara Yankunytjatjara Executive Board	3	0.4
Central Adelaide Local Health Network	146	18.3
Commissioner for Consumer Affairs	36	4.5
Commissioner for Equal Opportunity	2	0.3
Commissioner for Victims' Rights	3	0.4
Coroner	3	0.4
Country Health SA Local Health Network	31	3.9
Courts Administration Authority	18	2.2
Development Assessment Commission	4	0.5
Dog & Cat Management Board	1	0.1
Drug & Alcohol Services SA	4	0.5
Electoral Commission of South Australia	1	0.1
Essential Services Commission of South Australia	1	0.1
Flinders University	15	1.9
Health & Community Services Complaints Commissioner	44	5.6
HomeStart	3	0.4
Independent Gambling Authority	1	0.1
Law Society of South Australia	1	0.1
Legal Profession Conduct Commissioner	7	0.9
Legal Services Commission	14	1.7
Liquor & Gambling Commissioner	5	0.6
Local Government Association Mutual Liability Scheme	1	0.1
Lotteries Commission	1	0.1
Minda Incorporated	1	0.1
Motor Accident Commission	12	1.5
National Rail Safety Regulator	2	0.3
Northern Adelaide Local Health Network	16	2.0
Office of the State Coordinator-General	1	0.1
Office of the Technical Regulator	5	0.6
Office of the Training Advocate	1	0.1

Authority	Received	Percentage
Outback Communities Authority	2	0.3
Public Advocate	9	1.1
Public Trustee	132	16.6
RSPCA Inspectorate	8	1.0
SA Ambulance Service	34	4.3
SA Country Fire Service	1	0.1
SA Film Corporation	3	0.4
SA Forestry Corporation	1	0.1
SA Metropolitan Fire Service	2	0.3
SACE Board of SA	1	0.1
South Australian Civil and Administrative Tribunal	43	5.4
South Australian Dental Service	9	1.1
South Australian Employment Tribunal	1	0.1
Southern Adelaide Local Health Network	37	4.6
State Emergency Service	2	0.3
Super SA Board	25	3.2
TAFE SA	38	4.8
Teachers Registration Board	1	0.1
University of Adelaide	15	1.9
University of South Australia	33	4.1
Urban Renewal Authority	10	1.2
Women's and Children's Health Network	5	0.6
<b>Total</b>	<b>798</b>	<b>100%</b>

## Complaints: Completed

Authority	Completed	Percentage
Adelaide Cemeteries Authority	3	0.4
Anangu Pitjantjatjara Yankunytjatjara Executive Board	1	0.1
Central Adelaide Local Health Network	145	18.2
Commissioner for Consumer Affairs	36	4.5
Commissioner for Equal Opportunity	2	0.3
Commissioner for Victims' Rights	3	0.4
Coroner	3	0.4
Country Health SA Local Health Network	32	4.0
Courts Administration Authority	18	2.3
Development Assessment Commission	4	0.5
Dog & Cat Management Board	1	0.1
Drug & Alcohol Services SA	4	0.5
Essential Services Commission of South Australia	1	0.1
Flinders University	16	2.0
Health & Community Services Complaints Commissioner	43	5.5
HomeStart	3	0.4
Independent Gambling Authority	1	0.1
Law Society of South Australia	1	0.1
Legal Profession Conduct Commissioner	7	0.9
Legal Services Commission	13	1.6
Liquor & Gambling Commissioner	5	0.6
Local Government Association Mutual Liability Scheme	1	0.1
Lotteries Commission	1	0.1
Minda Incorporated	1	0.1
Motor Accident Commission	12	1.5
National Rail Safety Regulator	2	0.3
Northern Adelaide Local Health Network	16	2.0
Office of the State Coordinator-General	1	0.1
Office of the Technical Regulator	5	0.6
Office of the Training Advocate	1	0.1
Outback Communities Authority	2	0.3

Authority	Completed	Percentage
Professional Building Services Australia Pty Ltd	1	0.1
Public Advocate	9	1.1
Public Trustee	132	16.6
RSPCA Inspectorate	8	1.0
SA Ambulance Service	35	4.4
SA Country Fire Service	1	0.1
SA Film Corporation	3	0.4
SA Forestry Corporation	1	0.1
SA Metropolitan Fire Service	2	0.3
SACE Board of SA	1	0.1
South Australian Civil and Administrative Tribunal	43	5.5
South Australian Dental Service	9	1.1
South Australian Employment Tribunal	1	0.1
Southern Adelaide Local Health Network	37	4.6
State Emergency Service	3	0.4
Super SA Board	24	3.0
TAFE SA	41	5.2
Teachers Registration Board	1	0.1
University of Adelaide	12	1.5
University of South Australia	33	4.1
Urban Renewal Authority	11	1.4
Women's and Children's Health Network	5	0.6
<b>Total</b>	<b>797</b>	<b>100%</b>

## Complaints: Issues

Authority	Total	Percentage
Complaint handling/Delay	39	4.8
Complaint handling/Inadequate processes	78	9.6
Complaint handling/Inadequate reasons	24	2.9
Complaint handling/Inadequate remedy	30	3.7
Complaint handling/Wrong conclusion	57	7.1
Conduct/Discourtesy	16	2.0
Conduct/Misconduct	13	1.6
Correspondence/Communications/Records/Breach of privacy/Confidentiality	6	0.7
Correspondence/Communications/Records/ Delayed/No response	48	5.9
Correspondence/Communications/Records/Incorrect	18	2.2
Correspondence/Communications/Records/Lost	8	1.0
Correspondence/Communications/Records/Sufficiency of search	2	0.3
Correspondence/Communications/Records/ Withholding of information	19	2.4
Correspondence/Communications/Records/Wrongful disclosure of information	2	0.3
Custodial services/Health related services	1	0.1
Employer/Employee	1	0.1
Employment	6	0.7
Financial/Procurement/Facilities/Compensation/ Damage/Physical injury	2	0.3
Financial/Procurement/Facilities/Compensation/Damage/Property lost/Damaged	5	0.6
Financial/Procurement/Facilities/Compensation/Damage/Psychological injury	1	0.1
Financial/Procurement/Facilities/Debts	15	1.8
Financial/Procurement/Facilities/Facilities owned/Controlled by authority/Cost of use	2	0.3
Financial/Procurement/Facilities/Facilities owned/Controlled by authority/Denial of use	4	0.5
Financial/Procurement/Facilities owned/Controlled by authority/Sale/Lease	1	0.1
Financial/Procurement/Facilities/Procurement by agencies/Decisions	1	0.1
FOI advice	49	6.0
FOI practices and procedures	1	0.1
Housing/Maintenance	1	0.1
Records management	1	0.1
Regulation and enforcement/Complaint handling	1	0.1
Regulation and enforcement/Enforcement action/Excessive	8	1.0

Authority	Total	Percentage
Regulation and enforcement/Enforcement action/Unfair	8	1.0
Regulation and enforcement/Fees	5	0.6
Regulation and enforcement/Infringements/Unreasonably issued	1	0.1
Regulation and enforcement/Inspections	2	0.3
Regulation and enforcement/Licensing/Conditions	3	0.4
Regulation and enforcement/Licensing/Refusal	1	0.1
Service delivery	1	0.1
Service delivery/Assessment	11	1.3
Service delivery/Conditions	12	1.5
Service delivery/Debts	2	0.3
Service delivery/Eligibility for services	11	1.3
Service delivery/Failure to act/Provide	120	14.8
Service delivery/Fees and charges	25	3.1
Service delivery/Financial assistance	24	2.9
Service delivery/Quality	109	13.5
Service delivery/Termination of services	5	0.6
Superannuation	12	1.5
<b>Total</b>	<b>812</b>	<b>100%</b>

## Outcomes

Authority	Total	Percentage
Advice given	50	6.3
Alternate remedy available with another body	224	28.2
Complainant cannot be contacted	5	0.6
Declined/Investigation unnecessary or unjustifiable	137	17.2
Declined/No sufficient personal interest or not directly affected	4	0.5
Declined/Out of time	6	0.7
Not substantiated	3	0.4
Out of jurisdiction/Employment	4	0.5
Out of jurisdiction/Judicial body	7	0.9
Out of jurisdiction/Policy	1	0.1
Referred back to agency	270	33.9
Advice to authority	2	0.2
Resolved with agency cooperation	54	6.8
s25 Finding/s25(1)(b) finding/Unreasonable	2	0.2
s25 Finding/s25(1)(b) finding/Wrong	2	0.2
Withdrawn by complainant	26	3.3
<b>Total</b>	<b>797</b>	<b>100%</b>

## Case Studies

### Courts Administration Authority

#### Early resolution - Inconsistent advice – breakdown in process for interstate plaintiffs

2016/06350

##### Complaint

The complainant lived in Sydney and was the plaintiff in a civil claim in the Adelaide Magistrates Court. The complainant contacted the Court and asked for a phone hearing. The complainant was informed by the Quality Control Officer that she could not have a phone hearing, but also that she did not need to fly to Adelaide for the hearing, as the presiding officer would act on her behalf. On the date of the hearing, neither the plaintiff nor the defendant attended, so the presiding officer struck out the Summons. The complainant contacted the CAA to complain about the inconsistent advice she had received and was told she would have to lodge a new application.

##### Outcome

My Office contacted the Deputy Registrar and discussed the lack of communication within the agency about the complainant's circumstances, the fact that there was no consistent policy on how to deal with out-of-state litigants, and whether the agency might be able to offer redress to the complainant, who had had her matter struck out and would incur expenses to have to re-file and re-serve her claim.

The same day my Office received confirmation that the Registrar had decided to rescind the order to strike out the Summons and to adjourn the hearing to a later date. This meant the complainant suffered no additional expense due to the lack of procedure and miscommunication within the agency.

The agency also put in place a consistent policy on dealing with out-of-state litigants and undertook to conduct further training to ensure all agency officers were aware of the new policy.

### Office of the State Coordinator-General

#### Investigation - Unreasonable decision regarding assessment of proposed development

2016/09720

##### Complaint

My investigation considered a complaint from the City of Burnside concerning the determination of the State Coordinator-General to appoint the Development

Assessment Commission as the relevant assessment authority in relation to a proposed 'On The Run' development on Kensington Road.

Under the Development Regulations, the State Coordinator-General is empowered to make such a determination in relation to developments with a total cost of more than \$3 million, where satisfied that the development in question is 'of economic significance to the State'.

##### Investigation and Outcome

I found that it was reasonably open to the Office of the State Coordinator-General to determine that the total cost of the proposed development would exceed \$3 million.

I found that the determination of the Office of the State Coordinator-General that the proposed development was of economic significance to the State was based on an irrelevant consideration, namely the perceived benefit of a 'single assessment authority' to the developer.

I also found that the Office of the State Coordinator-General's failure to seek and assess economic estimates specific to the proposed development was wrong in the circumstances.

I found that the Office of the State Coordinator-General's determination that the proposed development was of economic significance to the State was unreasonable in all the circumstances.

I recommended that the Office of the State Coordinator-General develop internal guidelines indicating how proposed developments are to be appropriately assessed against the criteria within the Development Regulations.

### Public Trustee

#### Investigation - Failure to manage client's funds

2016/06774

##### Complaint

It was alleged by the complainant that the Public Trustee:

- failed to appropriately manage the complainant's finances
- failed to explain to the complainant how his tax debt accumulated
- failed to provide the complainant with a copy of bills
- failed to manage the complainant's child support liability
- acted unreasonably in relation to a formal valuation of the complainant's home

- charged excessive income commission fees, and failed to properly explain the reasons for excess fees
- failed to conduct a formal review and appropriately respond to the complainant's complaint
- inappropriately managed the complainant's tax liability by failing to lodge an Application for Release.

#### *Investigation and Outcome*

My investigation found that by deciding to cease PAYG instalments on behalf of the complainant, the agency acted in a manner that was unreasonable within the meaning of section 25(1)(b) of the Ombudsman Act

To remedy this error, I recommended under section 25(2) of the Ombudsman Act that the agency develop and implement a guideline for ceasing payments to the Australian Taxation Office, within two months from the date of the final report, which clearly sets out that such decisions can only be made:

- with the written authority of a delegate
- only in exceptional and temporary circumstances, and not as a general means of decreasing overall budget expenditure
- only in the event that all other avenues for meeting the liability have been explored and exhausted.

I also considered that:

- the agency's actions in regard to submitting the Code 21 was wrong within the meaning of section 25(1)(g) of the Ombudsman Act
- the agency's failure to lodge an Application for Release was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

I did not make recommendations in regard to these findings as the errors were made by individuals and did not appear to be systemic or a reflection of the agency's practices in general.

In regard to the other matters I investigated, namely whether the Public Trustee:

- failed to explain to the complainant how his tax debt accumulated
- inappropriately failed to provide the complainant with a copy of bills
- acted reasonably in relation to a formal valuation of the complainant's home
- charged excessive income commission fees, and failed to properly explain the reasons for excess fees

- failed to conduct a formal review and appropriately respond to the complainant's complaint

my view was that the agency did not act in a manner that was unlawful, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

## **South Australian Civil and Administrative Tribunal**

### **Investigation - Failure to interview witness in investigating complaint**

2017/00211

#### *Complaint*

The complainant alleged that SACAT failed to properly investigate her complaint alleging inappropriate conduct by a bailiff while executing a SACAT order.

#### *Investigation and Outcome*

SACAT when investigating the complaint had regard for the allegations made by the complainant and also sought the views of the bailiff. SACAT did not interview any of the witnesses identified by the complainant as being present. The allegations were denied by the bailiff and SACAT declined to make an adverse finding against the bailiff.

I found that there was a failure by SACAT to speak to witnesses and that it accepted the bailiff's version of the incident. I found that the failure to interview the witnesses was wrong. The SACAT complaints policy did not adequately consider the existence of witnesses when outlining how a complaint should be investigated.

My investigation concluded that one of the witnesses identified by the complainant would have provided compelling evidence, but that person was not interviewed. I also found that the SACAT Bailiffs' Manual did not provide information on how a complaint against a bailiff would be considered.

I recommended that:

- SACAT conduct a fresh investigation of the complaint
- the SACAT complaints policy be amended at Step 5 to make explicit that a person investigating a complaint should consider speaking to any person who may assist in the investigation of the complaint
- the Bailiffs' Manual be amended to include reference to how complaints against a bailiff will be processed and the application of the SACAT Complaints Policy to any complaint made against a bailiff.

# 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').

Pursuant to section 14B of the Ombudsman Act, a matter referred to the Ombudsman by the Commissioner is dealt with under the Ombudsman Act as if a complaint had been made under the Ombudsman Act. Accordingly, the Ombudsman investigates such referrals by exercising his powers under the Ombudsman Act.

## Closed matters - ICAC outcomes

	Government Departments	Local Government	Other Authorities	Total
<b>Response to proposed referrals</b>				
Agree to referral	7	21	12	40
Disagree to referral		6		6
ICAC exercise Ombudsman powers	1		2	3
Partially agree with referral	1	1		2
<b>Total</b>	<b>9</b>	<b>28</b>	<b>14</b>	<b>51</b>
<b>ICAC referrals</b>				
Discontinued	2	3	2	7
Finding of maladministration		2	2	4
Finding of misconduct		6	2	8
No finding of misconduct or maladministration	4	19	1	24
Finding of administrative error under the Ombudsman Act (s25)		5		5
<b>Total</b>	<b>6</b>	<b>35</b>	<b>7</b>	<b>48</b>

Note: Explanations of the ICAC outcomes are in Appendix E

## Case studies

### Expenditure on alcohol

2016/08293

#### Report

It was alleged that an agency committed an act of maladministration in public administration through excessive expenditure on alcohol.

#### Investigation and Outcome

My investigation found that the agency committed an act of maladministration in public administration through excessive expenditure on alcohol. The agency's practices and policies in relation to expenditure on alcohol had resulted in irregular and unauthorised use of public money and a substantial mismanagement of public resources within the meaning of section 5(4)(a)(i) of the ICAC Act.

Over a period of about two years, the agency spent \$7,826.31 on alcohol. Many of these purchases were not consistent with the agency's guidelines, which were also considered too broad and did not provide sufficient limitations on alcohol expenditure.

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

- update its policy in relation to alcohol expenditure to provide clear guidelines and limitations on purchases of alcohol
- reassess its Rewards and Recognition Program to align it with expectation of public service, and eliminate any potential public perception of employees receiving inappropriate benefits.

### Employee conflict of interest

2015/00772

#### Complaint

It was alleged that an Acting Chief Executive Officer of a council:

- committed misconduct by arranging the purchase of three vehicles on behalf of the council from an auction house that employed his brother
- committed maladministration by transacting the purchase of the vehicles.

#### Investigation and Outcome

In relation to the first issue

- the Acting Chief Executive Officer confirmed that he did organise the transaction of three vehicles from an auction house that employed his brother to fulfil a strategy whereby the council could consider purchasing a quality used vehicle instead of a new vehicle
- the requirements of the Local Government Act requires Chief Executive Officers to complete a register of interests form which the Acting Chief Executive Officer did not do therefore he was in breach of the legislation
- I found that the Acting Chief Executive Officer had informed the council that his brother was employed at the auction house but that he acted in breach of clauses 2.2, 2.4 and 2.6 of the Code of Conduct for Council Employees in not submitting a register of interests and on that basis committed misconduct for the purposes of section 5(3) of the ICAC Act.

In relation to the second issue my investigation found:

- that the Acting Chief Executive Officer's conduct did not result in an 'irregular and unauthorised use of public money' nor 'substantial mismanagement of public resources' as the purchases were budgeted for and approved by the Mayor, Deputy Mayor and other elected members
- the Acting Chief Executive Officer did not commit maladministration for the purposes of section 5(4) of the ICAC Act.

I made no recommendations on the basis that the Acting Chief Executive Officer no longer had involvement in vehicle acquisition and had lodged a register of interest form.



## Reimbursement of golf club membership

2016/04000

### Complaint

Issues referred for investigation by ICAC included:

- whether the council committed maladministration by approving reimbursement of the Chief Executive Officer's golf club membership
- whether the Chief Executive Officer committed maladministration by failing to include the reimbursement of the golf club membership on the Register of remuneration, salaries and benefits
- whether the council committed maladministration by making confidentiality orders in relation to the golf club membership reimbursement.

### Investigation and Outcome

In relation to the first issue, I found that while the council did not commit maladministration for the purposes of the ICAC Act, it acted in a manner that was wrong for the purposes of section 25(1)(g) of the Ombudsman Act. My investigation found that the council's decision to reimburse the golf club membership was not consistent with the terms of the Chief Executive Officer's contract, given that:

- the golf club was not a 'professional organisation' for the purposes of reimbursement
- playing golf was not 'reasonably consistent' with the Chief Executive Officer's duties
- it was not reasonable for the council to reimburse 100% of the joining fee, given that the golf membership was at least partly for the Chief Executive Officer's own benefit.

I did not accept that there was a 'substantial benefit' to the council in reimbursing the fee.

In relation to the second issue, I found that the Chief Executive Officer did not commit maladministration by failing to include the reimbursement on the Register, given that it did not form part of the Chief Executive Officer's salary package but was instead an expense incurred in the performance of his official duties for the purposes of section 105(5) of the Local Government Act.

In relation to the third issue, I found that while the council did not commit maladministration for the purposes of the ICAC Act, it acted in a manner that was wrong for the purposes of section 25(1)(g) of the Ombudsman Act. I was not satisfied that the reimbursement concerned the Chief Executive Officer's personal affairs but observed that even if it did, disclosure would not be unreasonable.

I recommended that the council lift the confidentiality orders in relation to the reimbursement.

## Unauthorised expenditure

2015/10292

### Complaint

ICAC referred to my Office an allegation that there was an overspend on a project that was outside the council-approved budget, and that the overspend necessitated a budget reallocation.

### Investigation and Outcome

My investigation found:

- there was no evidence before my investigation that the relevant officer knowingly authorised the overspend, and the overspend only became apparent as the project came to a close
- the relevant officer acknowledged that the council should have been notified and given its approval for reallocation before any overspend occurred, and in that sense there was an unauthorised use of public money
- the overspend was not 'irregular' for the purposes of section 5(4)(a)(i) of the ICAC Act, being clearly within the scope of the project and on that basis did not constitute maladministration.

I was satisfied that once the relevant officer became aware of the extent of the overspend, they took reasonable steps to appropriately seek a budget reallocation.

## Misconduct and maladministration in a council

2015/09623

### Complaint

ICAC referred two related complaints in relation to various allegations of misconduct and maladministration on behalf of the former Chief Executive Officer and Finance and Administration Manager of the council and maladministration on behalf of the council itself.

I investigated the following alleged conduct involving the former Finance and Administration Manager and former Chief Executive Officer:

- failure to pay contractors for work and use of grant money for another purpose
- a request that the ex-Mayor use the council's common seal on a debenture without a council resolution
- provision of misinformation to council members and improper pressure to approve a proposed loan
- failure to apply for disaster relief
- mismanagement of council finances
- failure to lodge Business Activity Statements
- systemic non-compliance with auditing requirements.

I also investigated the following alleged conduct involving the former Finance and Administration Manager:

- failure to take prompt action in relation to a third party fraud against the council
- failed to take action in relation to a debt owed by a local business
- remuneration of employees for leave to which they were not entitled
- general mismanagement in relation to work health and safety and risk management.

### Investigation and Outcome

The only allegation against the former Chief Executive Officer which was substantiated was the request in relation to the common seal.

My investigation found that the:

- council committed maladministration by failing to pay the contractors, in particular by not having separate accounts for incoming grant funding and mechanisms for tracking grant expenditure
- former Finance and Administration Manager committed maladministration by failing to pay the contractors, and in particular by not ensuring that grant money was applied for the purpose of the grant
- former Finance and Administration Manager and former Chief Executive Officer committed maladministration by requesting the former Mayor to use the common seal
- former Finance and Administration Manager committed misconduct and maladministration by failing to submit an application for disaster relief
- former Finance and Administration Manager committed maladministration by failing to lodge Business Activity Statements
- former Finance and Administration Manager committed maladministration by failing to take appropriate action in relation to the debt owed by a local business
- former Finance and Administration Manager committed maladministration by remunerating an employee for leave to which he was not entitled.

None of the other allegations were substantiated.

I recommended that the council:

- review its practice of receiving all funds into one account
- devise a written policy in relation to handling of grant funding, in particular to ensure that grant funding is appropriately applied for the purposes of the grant
- devise a written policy in relation to approval of employee leave entitlements.

As neither the Finance and Administrator nor the Chief Executive Officer are currently employed by the council, I did not make any recommendations in relation to them.



## Procurement processes, expenditure and internal processes

2016/00616

### Complaint

It was alleged that maladministration occurred within the council over a period of approximately fifteen years which included:

- failure to follow proper procurement processes in relation to numerous direct engagements
- inappropriate expenditure and lack of transparency
- failure to properly address allegations of bullying and harassment.

### Investigation and Outcome

My investigation found:

- the council committed maladministration in that the various direct engagements resulted in substantial mismanagement of public resources, noting that by failing to properly test the various proposals from the contractors, the council did not manage its resources appropriately and that there was a large number of direct engagements and significant amount of money involved
- the former council Administrator committed maladministration by:
  - › entering the various contracts without tendering or having given proper consideration to tendering
  - › failing to keep proper records in relation to the contracts
  - › failing to implement a tender policy for a period of time
  - › failing to comply with tender policies once implemented
- while no formal complaints were received in relation to the alleged bullying and harassment, the council acted in a way that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act by:
  - › failing to have in place a clear, comprehensive and appropriate procedure for dealing with claims of bullying and violence
  - › failing to appoint an Equal Opportunity Officer for the purposes of its policy

- the council acknowledged that certain documents had been 'destroyed' and on that basis the council acted in a way that was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act by disposing of records other than in accordance with the *State Records Act 1997*.

I recommended that the:

- council review its contracts and tendering policy and amend it to provide that reasons must be recorded for entering into contracts other than those resulting from a tender process
- council review its violence and bullying policy and procedures to provide a more detailed process for dealing with complaints
- council appoint a designated Equal Opportunity Officer
- council remind all staff of their obligations under the *State Records Act*.

## Council response to breaches of the Development Act

2015/09171

### Complaint

It was alleged that:

- the former Chief Executive Officer of the council committed maladministration by consistently failing to act in relation to a company's breaches of the Development Act
- the Mayor of the council committed maladministration by consistently failing to act in relation to a company's breaches of the Development Act
- the council committed maladministration by consistently failing to act in relation to a company's breaches of the Development Act.

### Investigation and Outcome

In relation to the first issue, my investigation found that while the former Chief Executive Officer's response to the breaches was flawed (in particular by continuing to take a 'collaborative approach' despite the company's long history of non-compliance), on balance, the relevant conduct did not constitute substantial mismanagement.

In relation to the second issue, my investigation found that while the Mayor was involved in both internal and external discussions about the company's non-compliance, generally, the responsibility for enforcement lay with council administration rather than the Mayor, and that much of the non-compliance occurred before the Mayor commenced in that role.

In relation to the third issue, my investigation found:

- while the council did not commit maladministration, the council's failure to act was wrong for the purposes of the Ombudsman Act
- the council took into account irrelevant considerations in determining its approach to enforcement, including:
  - › allegations against the council by the company
  - › the council's reputation as being 'open for business'
  - › community desire for jobs retention and growth.

I recommended that the council review its policy concerning unlawful development in particular to provide guidance as to when a matter will be escalated to civil enforcement proceedings and making statutory requirements (including time limitations for enforcement action) clear.

## **Unnecessary payment to another agency**

2016/01231

### *Complaint*

It was alleged that an employee of an agency (the first agency) committed maladministration by making a payment to another agency (the second agency) for a voluntary separation package.

### *Investigation and Outcome*

My investigation found that:

- the employee confirmed that he made an irregular payment to the second agency at the conclusion of a contract
- there was no requirement to pay that sum to the second agency at the conclusion of the contract as the relevant staff were employed by the second agency, not the first agency
- the employee sought the advice of the first agency's Acting Chief Executive as to whether a sum ought to be paid but before the advice was provided, he proceeded to pay the sum as per his delegation
- the employee committed substantial mismanagement in public resources and therefore maladministration for the purposes of section 5(4)(a)(ii) of the ICAC Act.

There were no recommendations due to the employee not having the contract renewed.



# 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 1972* 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 material relevant to their claim. At the conclusion of the review, the Ombudsman may confirm, vary or modify the decision under review.

## 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.

## Summary tables

### 1 July 2016 - 30 June 2017

#### Complaints received per respondent per month

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
ReturntoWork SA	4	2	3	0	0	2	1	1	2	0	1	3	19
Employers Mutual Ltd	5	6	10	4	7	4	3	1	8	1	5	2	56
Gallagher Bassett Services	11	4	7	11	7	5	12	6	12	4	4	9	92
Crown Self Insured	1	4	1	2	2	3	2	3	1	4	8	7	38
Other Self Insured	1	1	2	2	2	1	0	2	4	2	2	1	20
<b>Total</b>	<b>22</b>	<b>17</b>	<b>23</b>	<b>19</b>	<b>18</b>	<b>15</b>	<b>18</b>	<b>13</b>	<b>27</b>	<b>11</b>	<b>20</b>	<b>22</b>	<b>225</b>

#### Outcomes

	Total	Percentage
Advice given	6	2.7
Alternate remedy available with another body	34	15.2
Breach of service standards	7	3.1
Breach of service standards not substantiated	2	0.9
Complainant cannot be contacted	6	2.7
Declined/Investigation unnecessary or unjustifiable	41	18.3
Out of jurisdiction	3	1.3
Referred back to compensating authority	66	29.5
Resolved with compensating authority's cooperation	49	21.9
s180 review decision varied	1	0.4
Withdrawn by complainant	9	4.0
<b>Total</b>	<b>224</b>	<b>100%</b>

## Issues

	Total	Percentage
Access to claims file	2	0.8
Service standards sch 5 s4(a)	24	9.3
Service standards sch 5 s4(b)	16	6.2
Service standards sch 5 s4(c)	10	3.9
Service standards sch 5 s4(d)	12	4.7
Service standards sch 5 s4(e)	95	36.9
Service standards sch 5 s4(f)	53	20.6
Service standards sch 5 s4(g)	11	4.3
Service standards sch 5 s4(h)	1	0.4
Service standards sch 5 s4(i)	3	1.2
Service standards sch 5 s4(j)	3	1.2
Service standards sch 5 s4(k)	3	1.2
Other	24	9.3
<b>Total</b>	<b>257</b>	<b>100%</b>

## Case Studies

### Department for Health and Ageing

#### Review of a decision to withhold access to documents on claims file

2016/09033

##### *Complaint*

Under section 180(1) of the RTW Act a worker is entitled, upon request, to a copy of their claim file. However, pursuant to section 180(3) of the RTW Act, the agency is not obliged to provide material that relates to an investigation of suspected dishonesty or is protected by legal professional privilege or if disclosure could reasonably be expected to endanger the life or safety of any person. The applicant in this case was provided a copy of his claim file but was dissatisfied with the agency's decision to not provide certain documents. The applicant applied to the Ombudsman for a review of the agency's decision pursuant to section 180(8) of the RTW Act.

##### *Investigation and Outcome*

I found that the agency wrongfully withheld from the applicant documents it considered to be administrative in nature. I also found that although the agency was permitted to not provide the applicant with documents determined to be subject to legal professional privilege, it had failed to specify that in its determination. I further determined that the applicant was entitled to complete copies of certain emails relevant to his claim.

I varied the agency's determination and required that the agency provide to the applicant:

- access to those documents referred to and marked as 'Not included – Admin info only', 'Withheld – Administrative Info only', 'Information withheld'
- complete copies of emails, not subject to legal professional privilege.

### Employers Mutual Limited

#### Unreasonable management of claim

2016/05231

##### *Complaint*

The worker complained that the agent had breached a number of service standards by failing to ensure that the recovery and return to work processes focused on maintaining the relationship between the worker and the pre-injury employer, failing to ensure that the pre-injury employer understood their recovery and return to work obligations and failing to provide a copy of a medical report to the worker within the statutory timeframe.

##### *Investigation and Outcome*

My investigation found that the agent had breached the service standards by failing to establish in a timely manner the nature and extent of the pre-injury employer's obligations in relation to the provision of suitable duties for the worker, delayed in engaging the pre-injury employer in the return to work process, including engaging the pre-injury employer in discussions about mediation and failed to provide a copy of a medical report to the worker within the statutory timeframe. I found that the agent acted in a manner that was in breach of clauses 4(c), (d) and (e) of the Service Standards set out in schedule 5 of the *Return to Work Act 2014*.

I recommended that the agent:

- provide a written apology to the worker for the failure to ensure that the recovery and return to work processes focused on maintaining the relationship between the worker and the employer
- provide me with the outcome of the agent's review to improve the processes when undertaking investigations into the pre-injury employer's obligations
- provide a written apology to the worker for the failure to provide the medical report within the statutory timeframe, and
- advise me of specific actions the agent has undertaken to ensure this type of delay does not happen again in the future.



**Employers Mutual Limited**  
**Failure to treat the worker fairly**  
2016/03278

*Complaint*

The complainant, who is the accountant of the worker, stated that he was asked by the worker to prepare a range of financial information in order to determine if the worker was a worker within the meaning of the *Return to Work Act 2014*. Due to a number of circumstances the complainant was delayed in providing some of the financial information. In the interim the agent determined to go ahead and reject the worker's claim for compensation on the basis that he had failed to furnish information required to determine the claim. The agent did not inform the worker it intended to reject his claim prior to doing so.

*Investigation and Outcome*

My investigation found that the agent had failed to afford the worker a reasonable opportunity to provide the requested information prior to rejecting the claim. There was no evidence to support that the worker or the complainant were unwilling to provide the requested information; rather there was a delay in the provision of the information. In my view, the agent needed to satisfy itself prior to rejecting the claim whether the complainant intended to provide the requested financial information. 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.

I recommended that the agent:

- review its internal policy - Claim Determination Guidelines: Working Director and Psychological Injury Claims, to include an obligation that the agent make reasonable attempts to make direct contact with the worker or their representative prior to the final rejection of the claim if the claim is likely to be rejected on the basis of a failure or refusal to furnish information under section 31(3)(a) of the Act
- provide a written apology to the worker for the management of the claim determination.

**ReturntoWorkSA (RTWSA)**  
**Failure to properly investigate a complaint**  
2016/09691

*Complaint*

The complainant, who is the advocate for the worker, states that he lodged a number of complaints with RTWSA in regards to the actions of the agent, Gallagher Bassett Services (**the agent**). One specific complaint related to the agent and its decision to only communicate with the worker's legal representative on all claim related matters which resulted in the worker incurring additional legal costs. When RTWSA investigated the complaint, it accepted the information provided to it by the agent and did not undertake any independent assessment which resulted in incorrect information being provided to the complainant.

*Investigation and Outcome*

My investigation found that RTWSA had relied upon information the agent had provided that the worker agreed to the arrangement to direct all communications to his legal representative and that it did not undertake any independent assessment of the information that the agent had provided. Further, the way in which RTWSA investigated complaints demonstrated that its investigation process failed to identify whether the agent had provided it with accurate and reliable information. RTWSA has now implemented a new complaints investigation process that addresses the deficiencies this type of complaint has identified. Therefore, I was satisfied that RTWSA took corrective action to prevent this type of complaint from occurring again. Nevertheless, on the information before me I was of the view that RTWSA had breached clause 4(f) of the Service Standards set out in schedule 5 of the *Return to Work Act 2014*.

I recommended that RTWSA provide a written apology to the worker for the failure to appropriately investigate the complaint and provide a response that was accurate and supported by evidence.



## IMPLEMENTATION OF RECOMMENDATIONS

# Implementation of Recommendations

## Complaint Investigations

During the year 2016-2017 there were 36 investigation reports where I found administrative error and made recommendations under section 25 of the Ombudsman Act. This number represents a 50% increase over the number of reports with recommendations in 2015-2016.

This year I made 86 recommendations in total. 81 or 94% of my recommendations, were accepted across all agencies. One recommendation not yet accepted was made to the Department for Correctional Services on the issue of unreasonable treatment of a prisoner. That matter is the subject of ongoing discussions between my Office and the department.

Two recommendations from a report to the City of Burnside and a further two from a report to TAFE SA are currently matters subject to my internal review processes and have not been finalised at the time of report. I expect a resolution to these matters in 2017.

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 86 recommendations, 74 have been fully implemented at the date of this report. This is a completion rate of 86%. I expect that rate to rise to the 90% range when all implementation reports are received from recommendations made towards the end of the reporting period.

The following table summarises recommendations made pursuant to investigations finding administrative error under section 25:

	Total	Percentage
Reports 1 July 2016 – 30 June 2017	36	
Recommendations	86	
Recommendations Accepted	81	94
Recommendations Not Accepted	5	6
Recommendations Implemented	74	86
Recommendations NOT Implemented Includes those that were NOT accepted	12	14

## Audits under Section 14A of the Ombudsman Act

### Audit of Local Government section 270 internal reviews

Section 270 of the *Local Government Act 1999* provides a process for the internal review of council decisions.

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.

Section 13 of the Ombudsman Act stipulates that I must not investigate complaints that are open to a right of appeal 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 the matter in the first instance.

In the year 2015-2016, my Office received 1,011 complaints about councils. 420, or 42% of them, were referred back to the council in question for action. I estimated that approximately half of these complaints were potentially section 270 review of decision matters.<sup>1</sup>

Commenced in August 2015, my audit sought to:

- examine and assess council compliance with the section 270(1) to (9) requirements for internal review contained in the Local Government Act
- 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 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.

The audit report was tabled in the Parliament of South Australia and published in November 2016. Titled *Right of Review*, it contained seven recommendations for all councils to consider. In summary, my findings and recommendations on the key issues were as follows:

#### 1. Availability of internal review policy/procedure to the public

I found that all audited councils recognised the importance of making their internal review of decisions procedure available to the public. However, most councils do not actively promote the procedure, preferring to steer complainants towards informal or negotiated procedures to resolve grievances. Whilst this is appropriate, I consider that councils should make people aware of their right to a formal review of decision.

I recommended that all councils highlight a direct link on their website page to a plain English description of the procedure available for making an application for internal review of council decision. The procedure could usefully be linked to the council's complaint handling policy information that also outlines steps that can be taken for informal resolution of complaints.

#### 2. Compliance with the Local Government Act

Despite an earlier Ombudsman SA audit on complaint handling conducted in 2011, I found that half of the 12 audited councils in the recent survey were still not compliant with the law as it applies to grievances that relate to the impact that any declaration of rates or service charges may have had on ratepayers. All audit councils accepted that this omission needed to be remedied.

I recommended that all councils ensure that their internal review of decisions procedure is fully compliant with the requirements of section 270 of the Local Government Act. Further, that all council CEOs confirm in writing to the Ombudsman their full compliance with section 270 of the Act by 31 March 2017.

<sup>1</sup> In 2016-2017 my Office received 1021 complaints about councils. 476 or approximately 47% of them were referred back to the council in question for action. In total, my Office responded to 4346 complaints in the year 2016-2017.

### 3. Time limits on applications for review

My audit found that section 270 procedures allow for varying or no time limits for acceptance of applications for internal review of decisions. The Act is silent on the issue and there is no fetter on applying a time limit. There is an argument for consistency in approach across all councils. Most councils consider that a period of six months or more is appropriate. Councils are mindful that section 270 reviews may be resource intensive and are reluctant to consider older matters when no application was received at or near the time of decision.

I recommended that all councils include a reference to a six month time limit for accepting internal review of council decision applications in a revised version of their internal review of decisions procedure. Consideration should also be given to the exercise of discretion by councils to allow a longer time limit to apply in particular cases.

### 4. Decisions to which the internal review process can apply/cannot apply

My audit found that there is a wide range of policy positions determined by councils in South Australia on appeal and review arrangements in the areas of planning, development and expiation of offences. Some councils wrongly decline to consider a section 270 application for review in these categories on the basis that the area is covered, or should be covered, by the provisions of legislation outside the Local Government Act, e.g. the Development Act.

I recommended that all councils revise the part of their internal review of decision procedure that deals with 'Matters outside the scope of the policy and procedures' to explicitly state that matters that fall outside statutory appeals procedures will be considered for the conduct of a section 270 review on the merits of the individual application. Further, I recommended that councils discuss with the LGASA the desirability of including this commitment in the LGASA *Internal Review of a Council Decision Model Policy and Procedure*.

### 5. Independent conduct of an internal review of decision

My audit found that South Australian councils have, generally speaking, developed internal review practices that seek to manage situations where an original decision-maker (often the CEO) may have a conflict of interest. Whilst internal senior delegation of responsibility is a preferred option, many councils are willing to involve independent reviewers where possible and when available.

I recommended that all councils, through the auspices of regional Local Government Associations, consider and report to me, by 31 March 2017, on the option of developing regional panels of independent reviewers who can assist councils with complex review matters.

### 6. Learning outcomes from internal reviews of decision

My audit found that statistics from the Local Government Grants Commission show that section 270 applications received by councils have doubled in the past seven years. Whilst the numbers are still low, and concentrated largely in metropolitan councils, there is some evidence that councils are willing to use the internal review mechanism more now than in the past. I found that councils have shown an ability to analyse review outcomes to inform better administrative practice.

I recommended that all councils periodically evaluate their section 270 review investigations and document learning outcomes relevant to their administrative practices and functional responsibilities. As appropriate, these learning outcomes should be shared with the Local Government Governance and Policy Officers Network (GPON) and relevant local government interests.

### 7. Do councils need more governance support?

My audit found strong evidence from councils about the value of the GPON as a forum for issues of common interest in governance policy and practice. A majority of South Australian councils now participate in the Network and there is a clear body of support for GPON to extend its influence and relevance across the local government sector in its area of expertise.

I recommended that the existing membership and leadership of GPON consider if there is a case to be made to all councils for an expanded role for the Network – whether this be expanded membership, development of a website and/or project and research relevant to governance standards in councils – or other governance priority identified by the Network.

As part of the recommendations implementation process, I wrote to all 68 councils asking for their individual response to my report and to the recommendations made in it. I am pleased to report that all councils responded, most to all of my recommendations. The responses confirmed 100% compliance with the Local Government Act requirements for internal review procedures.

Other recommendations received majority support from councils, except recommendation 5 where the view on the desirability of regional panels was evenly divided amongst councils. Recommendation 7 was supported by 37% of councils. Most councils wanted the Governance and Policy Officers Network to continue its work without taking on an expanded role.

In June 2017 I wrote a detailed report to the Minister for Local Government outlining the responses received from all councils on my audit recommendations.

In the concluding comments for *Right of Review*, I reported evidence that indicates councils are now conducting internal reviews more confidently, openly and with clearer resolutions in mind. I expressed optimism that such an approach would add to the credibility and positive public image of councils.

Under the Local Government Act, councils have a responsibility to report on the numbers, types and outcomes of section 270 reviews of council decisions. Along with the annual 'census' of council section 270 reviews taken by the South Australian Local Government Grants Commission, I consider this to be a useful tool for government to continue to monitor the use and efficacy of the internal review provisions.

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

Since the 2014-2015 year of operation, my Office has been actively working to promote administrative oversight of and administrative improvement in DECD in the wake of the DeBelle Royal Commission (2012 -2013).

Acting on a series of complaints against DECD, and as reported in 2015-2016, I decided to embark on a full audit of DECD complaint handling pursuant to section 14A(1) of the Ombudsman Act.

I determined that the focus of the audit would be an assessment of complaint handling processes and practices relating to education, including the roles of sites, regional offices and the Education Complaints Unit (ECU) in the complaint handling process. I also sought to examine the policies, practices and procedures established to ensure appropriate standards of complaint handling at individual sites and the extent to which the sites have in place accessible information for the public to understand what might happen if they complain.

My final audit report was tabled in the Parliament of South Australia and published in November 2016. The report contained five recommendations for the department to consider. In summary, my findings on the key issues were as follows:

- complaint handling is, to a large extent, unplanned and inconsistent across education sites
- complaints are not always recorded or reported to DECD by schools
- staff are not provided with adequate training in complaint handling
- there are inconsistent policies published by a number of schools
- staff at school sites often have difficulty identifying complaints
- many school sites do not have a trained contact person responsible for handling complaints
- the Australian Standard for complaint handling was not broadly recognised across DECD as the appropriate authority for a customer focused approach to complaint handling



- few sites had clear, concise information about making a complaint available on their main website and often relied on a brochure which pre-dated the implementation of the Consumer Complaints Management and Resolution Policy and the Consumer Complaints Management and Resolution Procedure published on 25 August 2015 (**the policy and procedure**)
- the advent of the ECU (formally the Parent Complaint Unit) appears to have caused some school sites, if not a majority, to rely heavily on the second level of complaint handling, rather than applying resolution skills at first or subsequent point of contact, which the Australian Standard recognises as being the optimum or best practice.

The evidence from the audit showed that the ECU, as the second level of complaint handling under the policy and procedure, has been effective in managing complaints. However, I noted that unless level one practices are substantially improved, it will be unable to perform the complete role and suite of responsibilities which the policy and procedure allocates to its function.

My five recommendations were, in summary:

1. That the DECD brochure entitled 'Parental Guide to Raising a Concern or Complaint' is amended or replaced by a new document, to reflect the current policy and procedure and to carry contact information about individual schools. As and from 1 January 2017, the amended or new brochure be mandated for use in all schools and education.
2. That as and from 1 January 2017, each school and education site must ensure that any internal procedures for managing complaints in accordance with the policy and procedure are in place and published on its website.
3. That prior to the commencement of the 2017-2018 financial year, each school or site manager shall ensure that proper and consistent record keeping of all complaints received is implemented in accordance with the departmental policy.

4. That consideration is given to developing and introducing, prior to the commencement of the 2019 school year, an adjunct module to the proposed EMS computer system for recording and reporting complaints and accompanying information, in relation to all complaints recorded.
5. That school or site managers monitor and record complaint handling compliance, statistics and trends at least once annually. Particulars of the volume, nature and results of complaint handling, including whether resolution occurred locally, or was referred to the ECU for determination, should be included in the relevant annual report for the school or site. In addition, the ECU should provide an analysis of this information to the Senior Executive Group as part of the department's annual reporting requirements.

At the conclusion of the audit, I received a formal response from the Chief Executive of DECD that accepted recommendations 1-3 in their entirety and accepted recommendations 4 and 5 in principle.

In March 2017, I received a report from the Chief Executive on the actions taken by the department to implement my recommendations. His report provides evidence that all recommended actions are either completed or underway at the time of this report. I expect to receive a final implementation report in September 2017.

# 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 personal 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 have my determination reviewed by the South Australian Civil and Administrative Tribunal (prior to 8 December 2016 the appeal right lay to the District Court).

## Outcomes of external reviews conducted by Ombudsman 2016-17

Outcome	Total	Percentage
Application dismissed because of lack of cooperation of applicant	1	0.5
Application for review withdrawn by applicant	62	33.3
Application settled during review	10	5.4
Determination confirmed	26	14.0
Determination reversed	4	2.2
Determination revised by agency	19	10.2
Determination varied	41	22.0
Out of Jurisdiction	23	12.4
<b>Total</b>	<b>186</b>	<b>100%</b>

# Government Agencies

## Summary tables

1 July 2016 - 30 June 2017

### External reviews: Received

Applicant	No Received
Attorney-General's Department	9
Department for Child Protection	1
Department for Communities and Social Inclusion	2
Department for Correctional Services	4
Department for Education and Child Development	7
Department for Health & Ageing	13
Department of Planning, Transport and Infrastructure	43
Department of State Development	19
Department of the Premier and Cabinet	4
Department of Treasury and Finance	2
Environment Protection Authority	1
SA Police	4
<b>Total</b>	<b>109</b>

### External reviews: Completed

Applicant	No Completed
Attorney-General's Department	10
Department for Child Protection	1
Department for Communities and Social Inclusion	5
Department for Correctional Services	5
Department for Education and Child Development	15
Department for Health & Ageing	4
Department of Environment, Water and Natural Resources	39
Department of Planning, Transport and Infrastructure	1
Department of State Development	8
Department of the Premier and Cabinet	5
Department of Treasury and Finance	1
Environment Protection Authority	3
SA Housing Trust	1
SA Police	2
<b>Total</b>	<b>115</b>

## Case studies

### Attorney-General's Department and the Department of the Premier and Cabinet

2015/08536 & 2015/09132

#### *Application for access*

The applicant, the President of the Late Night Venue Association of SA, made twin applications to the Attorney-General's Department and the Department of the Premier and Cabinet for access to documents arising out of a review of the General Code of Practice and the Late Night Trading Code of Practice established under the *Liquor Licensing Act 1997*. The purpose of the review was to ascertain whether the codes had achieved their aims and, in particular, whether the Late Night Code had reduced alcohol-related antisocial behaviour in the CBD in the early hours of the morning.

#### *Review*

There were 56 contentious documents in issue at the time of my external review, the disclosure of which had been refused by either AGD or DPC. On the whole, I rejected the agencies' claims for exemption and determined that they should grant the applicant full access to 29 of the documents and partial access to 28 of them.

The review of the codes was conducted by a since disbanded group called the Internal Consultancy Services Group, which was hosted by DPC. I noted in my external review that the ICS group had saved emails in Word document format. However, attachments referred to in the emails did not form part of the Word documents. Because of this method of saving emails, it was not possible for DPC to identify which documents represented the correct attachments to the emails in question. I was concerned about this apparent failure to comply with the record keeping obligations imposed by the *State Records Act 1997* and provided a copy of my determination to the Manager of State Records.

#### *Determination*

I varied the agencies' determinations.

### Department for Education and Child Development

2016/04931

#### *Application for access*

The applicant, a member of the State Opposition, applied for access to a report arising out of a review of South Australia's State school funding. The agency refused access.

#### *Review*

I was satisfied that the document in question related to advice or recommendation that had been obtained in the course of, or for the purposes of, the decision-making functions of the agency. The report had been commissioned by the agency specifically for its decision-making functions. No decisions had been made by the agency and the report's recommendations had yet to be considered by the Minister. The agency had yet to undertake consultation with stakeholders. I accepted that disclosure of the document in advance of Ministerial consideration and stakeholder consultation could impede the agency's ability to effectively evaluate and explore the options discussed in the report.

#### *Determination*

I confirmed the agency's determination.

## Department for Health and Ageing

2015/02469

### *Application for access*

Following an incident involving the Sellicks Beach Community Wastewater Management Scheme, a ratepayer applied, inter alia, for access to documents arising out of communications between the agency and the City of Onkaparinga regarding the sewerage system, treated effluent and reclaimed water and the Sellicks Beach Waste Water Treatment Plant.

### *Review*

At external review the agency abandoned its claim that any documents were exempt or partially exempt from production. The City of Onkaparinga however took a different view, claiming that parts of two documents were exempt on the bases that disclosure would affect intergovernmental relations and that they were internal working documents.

Taking into account the council's resolute and longstanding opposition to disclosure of one of the passages at issue, I was satisfied that there was a possibility that disclosure of that passage could damage its relationship with the agency. However, I rejected the council's submission that the objection of an interested party to disclosure could be determinative, in and of itself, of that issue.

In considering whether full disclosure of the two documents would, on balance, be contrary to the public interest, I noted that it was for the council to show on the balance of probabilities that this would be so and that the public interest factors against disclosure outweighed the factors in favour of disclosure. I concluded that the likelihood of any impact on intergovernmental relations was not high nor was it likely to be severe. The council itself was subject to the FOI Act and would have been aware of the possibility that its communications might be released to members of the public. Moreover, the council was in any case legally required to cooperate with the agency in matters of public health. In those circumstances, it was unlikely that the council would fail to provide the agency with information in future.

### *Determination*

I varied the agency's determination.

## Department of State Development

2016/08203

### *Application for access*

The applicant is the leader of the SA Greens in the Legislative Council. He applied to the agency for access to a copy of Beach Energy's waste water management plan for water extracted during fracking in the South East. Such waste water was being used to irrigate certain rural properties.

The agency determined to provide the applicant with partial access to each of six documents it held. It redacted information from the documents that tended to identify specific landholders stating that disclosure of such information would constitute the unreasonable disclosure of those persons' personal and business affairs. It was submitted that gas exploration activities are extremely unpopular in the South East and there was a reasonable apprehension that landholders who allowed these irrigation practices could be targeted by protesters should disclosure occur.

### *Review*

I determined that although the information did concern both the personal and business affairs of the landholders, disclosure of the property locations would not, on balance, be contrary to the public interest. Central to my determination was my finding that the possibility of landholders being targeted was remote and there was a clear public interest in meaningful scrutiny of activities with the potential to impact the environment and public health.

### *Determination*

I varied the agency's determination.



# Local Government

## Summary tables

1 July 2016 - 30 June 2017

### External reviews: Received

Applicant	No Received
Adelaide Hills Council	1
Adelaide Plains Council	1
City of Adelaide	4
City of Burnside	1
City of Charles Sturt	1
City of Mount Gambier	1
City of Onkaparinga	1
City of Port Adelaide Enfield	1
City of Tea Tree Gully	2
District Council of Grant	1
Kangaroo Island Council	3
Town of Gawler	1
Yorke Peninsula Council	1
<b>Total</b>	<b>19</b>

### External reviews: Completed

Applicant	No Completed
Adelaide Plains Council	1
City of Adelaide	7
City of Burnside	2
City of Charles Sturt	2
City of Mount Gambier	1
City of Onkaparinga	3
City of Tea Tree Gully	1
Kangaroo Island Council	5
<b>Total</b>	<b>22</b>

## Case Studies

### City of Adelaide

2015/05831

#### *Application for access*

The applicant, a reporter with News Limited, applied for access to documents including the minutes of a special meeting of the City of Adelaide held on 9 March 2016. The agency refused access to the minutes, stating that they contained matter that would be privileged from production in legal proceedings on the ground of legal professional privilege, and also that they contained matter the disclosure of which would found an action for breach of confidence.

#### *Review*

On external review, I noted that all but page 4 of the five page minutes were publicly accessible. In those circumstances, any legal professional privilege that may have attached to the pages had obviously been waived and the information in those pages no longer had the necessary quality of confidence. Disclosure of parts of page 4 would found an action for breach of confidence but the agency could delete such matter and provide a redacted copy of the minutes to the applicant.

I commented that the agency had failed to comply with the FOI Act by not giving the applicant any reasons for its refusal of access.

#### *Determination*

I varied the agency's determination.

### Kangaroo Island Council

2016/04672

#### *Application for access*

The applicant sought access to a copy of tender documents submitted by the business that successfully tendered for the upgrade of the Kangaroo Island airport. The agency refused access on the basis that the information should be treated as 'commercial-in-confidence' prior to the award of a contract and that the information was inherently confidential and known only to the agency and a particular government department.

#### *Review*

I was unable to determine whether a contractual obligation of confidence was attached to the tender process. However, I considered that an equitable obligation of confidence did arise in respect of most parts of the tender. In reaching this conclusion, I took account of the technical detail of the application, the likely benefit to the applicant if disclosure occurred, the recentness of the tender and the fact that the information was not in the public domain. In addition, as the tender had been received by the agency through a secure website, it had been received in circumstances which imported an obligation of confidence.

#### *Determination*

I varied the agency's determination.



# Other Authorities

## Summary tables

1 July 2016 - 30 June 2017

### External reviews: Received

Applicant	No Received
Adelaide Festival Centre Trust	1
Anangu Pitjantjatjara Yankunytjatjara Executive Board	7
Arts South Australia	1
Central Adelaide Local Health Network	7
Country Health SA Local Health Network	4
Electoral Commission of South Australia	1
Flinders University	2
Northern Adelaide Local Health Network	8
SA Ambulance Service	1
SA Film Corporation	2
South Australian Dental Service	1
Southern Adelaide Local Health Network	6
TAFE SA	2
University of Adelaide	4
Urban Renewal Authority	3
Women's and Children's Health Network	1
<b>Total</b>	<b>51</b>

## External reviews: Completed

Applicant	No Completed
Adelaide Festival Centre Trust	1
Arts South Australia	1
Central Adelaide Local Health Network	5
Country Health SA Local Health Network	4
Electoral Commission of South Australia	1
Flinders University	2
Northern Adelaide Local Health Network	3
SA Ambulance Service	4
SA Film Corporation	1
South Australian Tourism Commission	1
Southern Adelaide Local Health Network	1
State Emergency Service	7
TAFE SA	3
Teachers Registration Board	1
University of Adelaide	2
Urban Renewal Authority	2
Women's and Children's Health Network	1
<b>Total</b>	<b>40</b>



## Case Studies

### Central Adelaide Local Health Network

2015/06372

#### *Application for access*

The applicant, who wished to obtain accreditation as a medical specialist, sought access to emails exchanged between a number of agency staff over a 26 month period. On external review the applicant raised concerns about the sufficiency of the agency's searches for documents, including the agency's failure to restore the email inboxes of individuals identified in his application.

#### *Review, Determination and Appeal*

In my determination, I concluded that the agency had undertaken adequate searches for documents. In doing so, I took account of a number of factors including the cost of mailbox restores (around \$230 per period per mailbox) and the fact that, in any case, such restorations would not recover emails which had been permanently deleted by the user.

The applicant sought a review of my decision by SACAT. SACAT accepted the agency's argument that it had no jurisdiction to hear or determine the issues raised by the application and dismissed the application for review on that basis. Executive Senior Member Stevens concluded that, upon external review, the only outcomes open to me were to confirm, vary or reverse an agency's determination. There was no power to order the agency to conduct further searches for documents or to consider the sufficiency of an agency's search for documents. Although Stevens ESM considered that the sufficiency of an agency's search for documents could be reviewed under the *Ombudsman Act*, I in fact lack jurisdiction to conduct such reviews when the agency concerned is either SA Police or a Minister of the Crown.

### Southern Adelaide Local Health Network

2016/09030

#### *Application for access*

The applicant sought hospital records relating to the diagnosis of his late mother, who had died while an inpatient. The agency had refused access to the records in reliance on section 93 of the *Health Care Act 2008* which makes it an offence for healthcare staff to release personal information without the consent of the person to whom the information relates, their guardian, medical agent or substitute decision-maker.

#### *Review and Determination*

On external review, I confirmed the agency's determination. The FOI Act provides that documents are exempt from disclosure if they contain matter the disclosure of which would constitute an offence. In this case, disclosure of the hospital records to the applicant would have constituted an offence.

The applicant exercised his right to have my determination reviewed by SACAT, who upheld my determination.

## **TAFE SA**

2016/07951

### *Application for access*

The Deputy Leader of the Opposition sought access to agendas and minutes arising out of meetings of the agency's board. The agency made a late determination to grant the applicant partial access to 66 documents. In refusing full access to 23 of the documents, the agency claimed that parts of them were exempt from release under clause 1(1)(e) because disclosure would disclose information concerning a deliberation or decision of Cabinet.

### *Review*

On external review, I concluded that clause 1(1)(e) only applied to two of the 23 documents in respect of which it had been claimed. In reaching this conclusion, I explored the purposes of the Cabinet documents exemption, which are to protect the Westminster convention of collective responsibility for Cabinet decisions, and to prevent the disclosure of material preceding formal announcements of such decisions.

In varying the agency's determination, I referred to authorities for the proposition that the mere fact that a document, or part of a document, went before Cabinet or was considered by Cabinet does not make the information in the document information 'concerning' a deliberation or decision of Cabinet. A document could reveal information concerning the process of deliberation or decision-making if it is so central to a Cabinet meeting that it shapes the course of, or outcome of, Cabinet's deliberations. However it could not be concluded that merely because a document was before Cabinet at a meeting, that it was deliberated upon.

My approach in this matter was similar to the approach taken by His Honour Judge Tilmouth in *Department of State Development v Pisoni* [2017] SADC 34.

### *Determination*

I varied the agency's determination.

## **Teachers Registration Board**

2015/06948

### *Application for access*

The applicant, a teacher, was involved in proceedings before the Teachers Registration Board. She sought access to documents held by the agency relating to those proceedings. On external review, the issue for decision was whether the agency should grant access to a particular document referred to as a 'Summary to the Registrar'. Two persons who were named in the summary strongly opposed the release of information concerning them.

### *Review*

The agency claimed that the summary was exempt from disclosure because it related to opinion, advice or recommendation obtained, prepared or recorded in the course of, or for the purposes of, its decision-making functions and that disclosure would be contrary to the public interest. While I accepted that there is a public interest in agency staff giving frank and fearless advice to the Registrar, I noted that this must be weighed against the duty on staff to be accountable for giving candid, frank and correct advice in any event, particularly when the Registrar is making determinations that impact upon the rights and interests of individuals. There is a strong public interest in individuals having access to information recorded about them by government and in scrutiny of the reasons for agency decisions.

I rejected the interested parties' submissions that disclosure of the document would involve the unreasonable disclosure of their personal affairs. In doing so I noted that the information in question had been given to the agency by the applicant. In those circumstances, it could not be unreasonable to disclose it to her.

### *Determination*

I varied the agency's determination.



# Ministers

## Summary tables

1 July 2016 - 30 June 2017

### External reviews: Received

Applicant	No Received
Minister for Agriculture, Food & Fisheries	1
Minister for Communities and Social Inclusion	1
Minister for Correctional Services	1
Minister for Investment and Trade	1
Minister for Recreation and Sport	1
Minister for Sustainability, Environment and Conservation	2
Minister for Transport & Infrastructure	2
The Treasurer	1
<b>Total</b>	<b>10</b>

### External reviews: Completed

Applicant	No Completed
Minister for Communities and Social Inclusion	1
Minister for Correctional Services	1
Minister for Disabilities	1
Minister for Mineral Resources and Energy	1
Minister for Racing	1
Minister for Sustainability, Environment and Conservation	2
Minister for Transport & Infrastructure	1
The Treasurer	1
<b>Total</b>	<b>9</b>

## Case Studies

### Minister for Mineral Resources and Energy

2015/10743

#### *Application for access*

A Member of Parliament applied to the Minister for access to documents received from Alinta Energy relating to the potential closure of the Northern Power Station at Port Augusta. The Minister identified one document within scope of the request and refused access to it on the basis that it contained information concerning Alinta's business affairs and that disclosure of the same would be contrary to the public interest. In making this determination, the Minister did not address all elements of clause 7(1)(c) of the FOI Act, on which he purported to rely.

#### *Review*

While conducting my external review, I consulted with Alinta who submitted that disclosure of the document could reasonably be expected to have an adverse effect on its business affairs. It was also submitted that disclosure would prejudice the future supply of such information to the Government.

I reversed the Minister's determination. Although I was satisfied that the document contained information concerning Alinta's business affairs, Alinta had not provided me with any evidence as to how disclosure could reasonably be expected to have an adverse effect on those affairs, or to prejudice the future supply of such information to the Government. I also rejected the Minister's submission that Alinta's assertions should themselves be determinative of these issues.

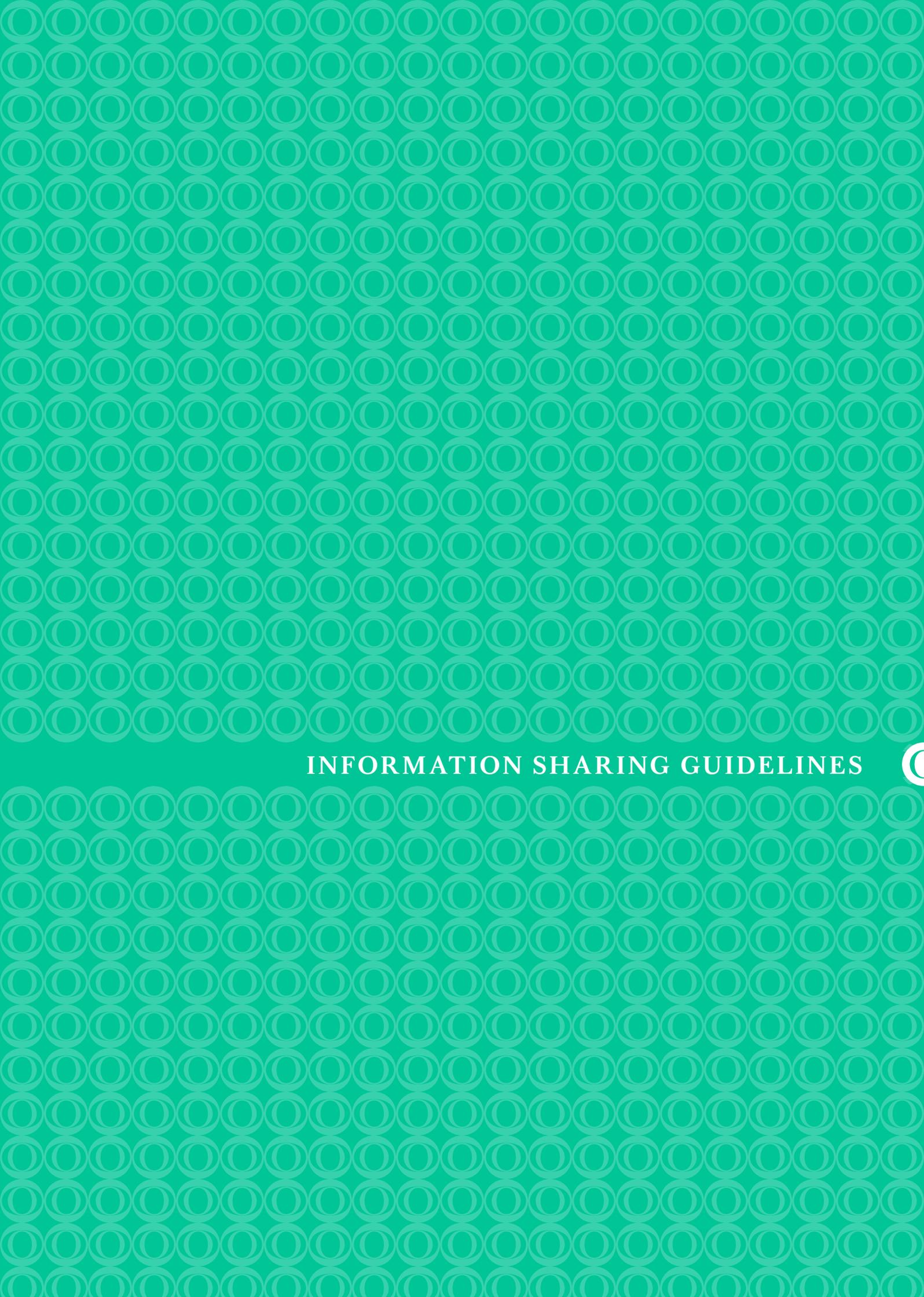
Having regard to the contents of the document and information that was already in the public domain, I was not satisfied that there were real and substantial grounds to suspect that disclosure of the document would have an adverse effect on Alinta's business affairs. Nor was I satisfied that the information in the document was sufficiently sensitive that Alinta or other businesses would be likely to abstain from voluntarily supplying similar information in the future. In particular, the document did not contain any information about the Board of Alinta's deliberations that a reasonably informed individual would not have anticipated finding.

#### *Determination*

I reversed the Minister's determination.







# INFORMATION SHARING GUIDELINES

# Information Sharing Guidelines for Promoting Safety and Wellbeing (ISG)

Royal Commissioner Margaret Nyland in her Child Protection Systems Royal Commission report, *The Life They Deserve* (2016), described many complexities, strengths and weaknesses across the continuum of the South Australian child protection system and made extensive recommendations for improvement. Reminiscent of former Commissioners Honorable Ted Mulligan QC (*Children in State Care* and *Children on the APY Lands* 2004) and Honorable Robyn Layton QC (*Our Best Investment: A state Plan to Protect and advance the Interests of Children* 2002), Nyland turned her mind to in depth analysis of the many factors contributing to harm of children and how best to redress them. As in previous reviews and inquiries, she too found variable and often poor information sharing, collaboration and cooperation between agencies as a consistent reoccurring theme.

*“Caution about information sharing between government departments and other non-government services has created administrative barriers to meeting the needs of children.”*

Commissioner Nyland<sup>1</sup>

Commissioner Nyland made a number of recommendations relating to information sharing and interagency collaboration to promote child safety and wellbeing<sup>2</sup>. The Commissioner stated in her report that the balance should shift from (unnecessary) caution about information sharing to a greater emphasis on proactive information sharing as a responsibility of those working in the child protection system.

Whilst I welcome and concur with the Commissioner's findings, I emphasize that the need for improved information sharing practice to facilitate improved service planning and collaboration in response to risks to safety and wellbeing is not uniquely the purview of the children's protection systems. The body of evidence from comparable enquiries, reviews and coronial inquests highlight the need for improved information sharing practice across both child and adult service systems. This shift to appropriate pro-disclosure is in the public interest and this is the premise on which the ISG has been built.

## Monitoring

South Australia is unique in that it has in the ISG a simple consistent state-wide approach to information sharing for safeguarding. Feedback from service providers who actively use the ISG in their work indicates that when applied, the ISG provides clear guidance for appropriate information sharing, and enables earlier and more effective interagency interventions where there are risks of harm.

*“Our general experience is that collaborative work with other agencies is easier to achieve because the information sharing groundwork is already done and the traditional arguments about confidentiality are unnecessary.”*

ISG Focus group participant<sup>3</sup>

No matter how good the policy framework may be, in the absence of full training and induction and subsequent application of the ISG, behaviours based on misconstrued understanding of privacy and confidentiality that can limit legitimate information sharing, will not be altered. In my 2015 -16 Annual Report I expressed my concern that, despite the weight of a State Cabinet Direction requiring relevant government agencies to implement the ISG and the inherent public interest in doing so, few agencies have fully implemented the ISG to my satisfaction. At that time I announced my intention to conduct an audit of state government's information sharing policies and practice. Section 14A of the Ombudsman Act 1972 provides:

(1) If the Ombudsman considers it to be in the public interest to do so, the Ombudsman may conduct a review of the administrative practices and procedures of an agency to which this Act applies.

The primary purpose of this audit is to assess to what extent and standard the selected group of government agencies have implemented the ISG. The agencies within the scope of this audit are:

- the Attorney General's Department
- the Department for Education and Child Development
- the Department for Child Protection<sup>4</sup>

<sup>3</sup> Discussion Paper <http://www.ombudsman.sa.gov.au/isg/>.

<sup>4</sup> At the time of commencing the audit Families SA was part of the Department for Education and Child Development portfolio and applied DECD ISG procedures. Following from recommendations of the Nyland Royal Commission, the former Families SA became the new Department for Child Protection (DCP) in November 2016. New DCP ISG procedures are being implemented.

<sup>1</sup> See page xxviii [https://www.agd.sa.gov.au/sites/g/files/net2876/ff/preface\\_summary\\_and\\_recommendations.pdf](https://www.agd.sa.gov.au/sites/g/files/net2876/ff/preface_summary_and_recommendations.pdf).

<sup>2</sup> Recommendations 18, 47, 80, 143, 240(e), 242(a)(b), 243 - see <https://www.agd.sa.gov.au/projects-and-consultations/projects-archive/child-protection-systems-royal-commission>.

- SA Health
- the Department for Communities and Social Inclusion
- South Australian Police
- the Department for Correctional Services.

Last year my Office published the ISG Audit Tool<sup>5</sup>. This document effectively sets the standards for ISG implementation and prescribes the terms of reference for this audit. In preparation, Chief Executives were provided a copy of the Audit Tool in April 2016. I can report that the audit of state government agencies commenced in October 2016. Stage 1 of the audit, involving a review of each agency's ISG procedures, has been completed. Stage 2 commenced in January 2017 with a review of submissions from each agency providing evidence of compliance with the ISG audit tool standards and noting plans for corrective action. At the time of writing this report, random site visits of agencies are being conducted (Stage 3). The fourth and final stage of the audit, a case file evidence analysis is also under way. The audit is an extensive process involving review of several thousand pages of documentation. I do not intend to forecast the outcome of the ISG audit at this time; I will report my findings in due course.

## Promotion

Every year, the SA Principal Advisor for Information Sharing, based in my Office, undertakes a number of strategic promotional activities. This year 23 ISG presentations and workshops took place involving over 150 organisations. Service sectors targeted this year included Community Housing Providers, DECD Support Service staff and Wellbeing Coordinators, SA Health staff attending Grand Medical Rounds in public hospital settings, government and non-government interagency partnerships in Coober Pedy, Ceduna, Port Augusta and Central, Southern and Western Metropolitan Adelaide.

Over the course of the year, there were 19,208 hits to the ISG page on the Ombudsman SA website. Included in those numbers were 130 SCORM package registrations for organisations downloading the ISG on-line training resources.

## Advice and Enquiries

There was an increase in requests to my Office for ISG advice this year, with 49 individual enquiries being received.

Typically, enquiries seek clarification regarding application of the ISG process to determine if information can be shared without consent. Despite the ISG position of obtaining consent wherever reasonable and practicable and the importance of explaining the limits of confidentiality to clients, I suggest that this is an area of practice that needs to be further developed. In many cases it is clear that due consideration has not been given to whether it is reasonable or practicable to obtain consent in the first instance. Many enquiries reveal that staff are seeking to rely on the ISG to permit disclosure without consent, even in circumstances where it is possible and reasonable to seek consent. I am also advised there appears to be across many organisations a strong reliance on consent forms, rather than ongoing dialogue with a client about their evolving circumstances and the benefits of information sharing.

During this reporting period, my Office was consulted on the NDIS Code of Conduct and the NDIS Quality and Safety Framework and Regulation Impact Statement. Following the publishing of Ms Mayhew's Winston Churchill Memorial Trust Fellowship report on information sharing for safeguarding<sup>6</sup>, she met with staff from the Commonwealth Royal Commission into Institutional Response to Child Sexual Abuse regarding the strengthening of information sharing arrangements within and across jurisdictions.

In order to implement the ISG in a manner that responds to the (unique) operational context of individual organisations, each one is required to develop a procedure called an ISG Appendix. For consistency sake, each ISG Appendix includes these sections<sup>7</sup>:

- appropriate information sharing processes (legislative requirements, related policies and procedures)
- ISG decision making steps and practice guide
- protocols for gaining consent from clients and discussing the limits of confidentiality
- lines of approval and supervision
- documentation practice and record keeping
- cultural guidance
- sample case studies.

This year a further 38 organisations were supported by my Office in the development of their ISG policies and procedures.

5 ISG Audit Tool Assessing organisational ISG policies and procedures for content and quality.

6 <https://www.churchilltrust.com.au/fellows/detail/4048/Donna+Mayhew/>.

7 A Guide to Writing an ISG Appendix <http://www.ombudsman.sa.gov.au/isg/>.

## Case study

### Sharing information for safeguarding children in response to family violence concerns

#### *The issue*

Request to Ombudsman SA for advice from a Department for Education and Child Development (DECD) Child Wellbeing worker regarding seeking information from another service provider about a family they are currently supporting.

The DECD worker was contacted by the Family Violence division at a local police station about a referral the worker had made to a Family Safety Framework strategy meeting regarding a mother and children they are supporting. The case involves a number of complex issues related to serious and ongoing domestic violence. SAPOL advised they would not action the referral given that an Intervention Order (IO) is currently in place protecting the mother and children from the father and a referral has been made to the local Domestic Violence service (DV service). SAPOL could not advise whether the referral had been allocated to the DV Service or whether the mother had engaged with the DV service.

The DECD worker contacted the local DV Service in the area who advised that they would not provide any information about whether a referral had been made or whether the mother had engaged with them. The DECD worker explained her concerns for the children and the mother and her concern that the mother was making efforts to sever her relationship with the school following the school becoming aware of the latest DV incident. The Mother had attempted to avoid meeting with the social worker and advised via SMS that she does not wish to talk about her situation. The DECD worker requested information from the DV service about whether or not the service had attempted to make contact with the mother and whether she is engaging with them. The DECD worker explained her concerns that, if they were not providing services to the mother there would be no protective factors in place for her or her children over the school holidays.

The DECD worker sought advice from Ombudsman SA as to whether the DV service can share information about whether the mother has been contacted and whether she is willing to engage and receive help (thereby also protecting the children from harm).

### Intervention Orders (Prevention of Abuse) Act 2009

The objective of IOs is to assist in preventing domestic and non-domestic abuse, and the exposure of children to the effects of domestic and non-domestic abuse. For the purposes of the act, abuse may take many forms including physical, sexual, emotional, psychological or economic abuse. An application for an IO can be made to the police or to the Magistrates Court of South Australia.

The Act deals with use and disclosure of information in two ways:

#### Part 5 – Offences and enforcement

##### Division 1 – Offences 33 – Publication of report about proceedings or orders

A person must not publish by radio, television, newspaper or in any other way a report about proceedings under this Act, or an order issued or registered under this Act, if the report identifies, or contains information tending to identify:

- a. any person involved in the proceedings (including a witness but not including a person involved in an official capacity or the defendant); or
- b. any person protected by the order; or
- c. a child of a person protected by the order or of the defendant, without the consent of that person.

##### Division 3 – Disclosure of information

##### 38 – Disclosure to police of information relevant to locating defendant

A public sector agency that is bound by the State's Information Privacy Principles, or a person providing services to a public sector agency under a contract that provides that the person is bound by the State's Information Privacy Principles, must, on request, make available to a police officer information under the control of the agency or person that could reasonably be expected to assist in locating a defendant on whom an intervention order is to be served.

### *Ombudsman SA advice to the agency*

The DV service is able to advise the DECD worker that they suspect the mother or her children may be at risk of harm and the efforts that are or may be made to maintain their safety and wellbeing. That should clearly be the line of enquiry – not specific details about the terms of the IO or the mother's situation. They may for example, choose not to give any detailed information about the mother's location or about what actual assistance she is receiving, or who the relevant parties are, but they can advise that the children's safety and wellbeing has been considered and they believe appropriate protections for them are in place. The DECD worker should make contact with the DV service again and explain their concerns for the children and obligations under the Children's Protection Act (to protect them from harm). The Agency was referred to the ISG STAR principles for consideration of 'Relevance' (see ISG page 12).

#### **ISG STAR Principles – Secure Timely Accurate and Relevant**

**Relevant:** 'Relevant' information is the information needed to meet the objectives of information sharing, no more. Depending on the purpose, this can range from a yes/no response to whether someone is accessing a particular service, to detailed advice about how providers can amalgamate their services for a common client, to receiving hard copies of confidential personal records. Whatever information is shared must be appropriate to the purpose and not include unnecessary detail. Providers are more likely to give and receive what is purposeful, and thus avoid wasting time in repeat requests, if they talk about exactly what is needed at the start. Providers should guard against the temptation to share more than is necessary simply because they have developed familiar interagency relationships.

At this point, all the DECD worker really needs to hear from them is that the children's safety and wellbeing are being maintained. The request for this information is reasonable. If the DV service worker will not cooperate, it is absolutely appropriate for the DECD worker to ask to speak to a more senior member of staff in the organisation to explain their concerns and to seek clarification that the children are safe. A record of what takes place must be made. The DECD worker could go through the two page ISG decision making steps and practice guide over the phone with the DV service worker – that way they can both talk through each step, assessing risk together and deciding if there is a legitimate reason for the disclosure.

#### *The outcome*

Excerpt from the DECD Wellbeing Coordinator's email:

*Thank you for your prompt response. That information was very helpful. I was able to speak with the DV service again this afternoon and they were able to advise me of the level of engagement that they have had with the mother for the purpose of maintaining hers and the child's wellbeing and safety. Thank you again.*







# 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](http://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
- the Office for Public Integrity and the Independent Commissioner Against Corruption
- 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 responded to 25 complaints made about my Office in the 2016/2017 year and I set out a summary of them below.

Matter Number	Complaint subject matter	Outcome/Actions taken
2016/02221	Complaint about OSA services	Withdrawn by complainant
2016/03204	Unreasonable decision not to investigate	Errors identified in assessment process; complaint investigated
2016/03352	Request for Internal Review	Internal Review not warranted
2015/05586	Complaint about OSA services	Not substantiated
2016/03451	Complaint about OSA services	Not substantiated
2016/04048	Complaint about OSA services	Not substantiated
2016/05874	Complaint about OSA services Unreasonable decision not to investigate	Not substantiated Outcome confirmed
2016/06638	Request for internal review	Internal Review not warranted
2016/08121	Unreasonable decision not to investigate	Outcome confirmed
2016/08204	Agency complaint: Complaint about OSA services – investigation took unreasonable length of time Failure to make recommendation	Accepted – improvements to line of supervision implemented Further reasons provided for decision
2016/08318	Unreasonable decision not to investigate	Substantiated – matter investigated
2016/08990	Request for Internal Review	Internal Review not warranted
2016/05961	Unreasonable decision not to investigate	Internal Review not warranted
2016/06603	Complaint about OSA services – failure to provide Jewish religious text for the purposes of swearing an oath	Substantiated – apology provided and relevant texts purchased
2016/09211	Unreasonable decision not to investigate	Outcome confirmed
2017/00551	Unreasonable decision not to investigate	Outcome confirmed
2017/00713	Unreasonable decision not to investigate Complaint about OSA services	Outcome confirmed Not substantiated
2017/02265	Unreasonable decision not to investigate	Outcome confirmed
2017/03460	Unreasonable decision not to investigate - repeated complaints	Outcomes confirmed
2017/03642	Unreasonable decision not to investigate	No action taken – complainant did not provide reasons
2017/04570	Complaint about OSA Services – victimisation under <i>Whistleblowers Protection Act 1993</i>	Referred to Equal Opportunity Commission
2017/04894	Unreasonable assessment that complaint was out of jurisdiction	Outcome confirmed
2017/05077	Unreasonable decision not to investigate	Outcome confirmed
2017/05440	Complaint about our services	Not substantiated
2017/05536	Complaint about our services	Not substantiated

## 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

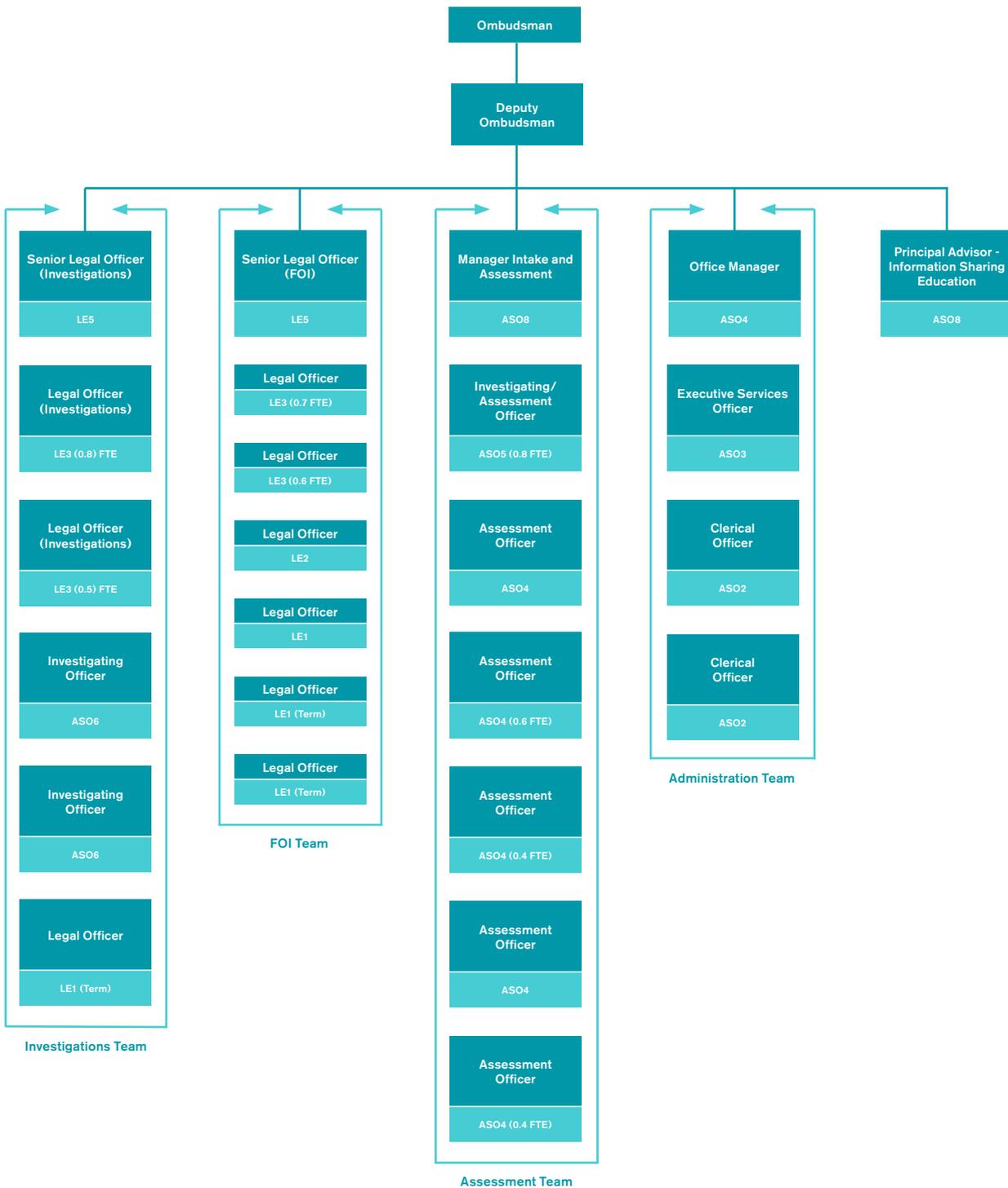
**Appendix E:** Description of outcomes - Independent Commissioner Against Corruption jurisdiction

**Appendix F:** Description of outcomes - Return to Work jurisdiction

**Appendix G:** Acronyms

# Appendix A

## Organisation Chart



# Appendix B

## Financial statement

Expenditure	2015/16	2016/17
Annual Report	2 667	3 069
Computer expenses	61 291	56 571
Contributions to projects	5 091	0
Equipment maintenance	1 343	2 884
Equipment purchases	8 035	2 400
* Fringe Benefits Tax	10 667	9 133
* Motor vehicles	17 351	16 073
Postage	3 039	5 347
Printing and stationery	11 970	24 582
Publications and subscriptions	5 070	6 810
Staff development	16 262	20 285
Sundries	9 077	16 184
Telephone charges	14 436	18 005
Travel/taxi charges	34 893	18 376
Website Development	37 426	4 371
Sub-total	238 618	204 090
* Accommodation and energy	226 340	304 877
Consultant/Contract staff/Prof costs	12 084	37 041
Sub-total	238 424	341 918
* Salaries	2 675 759	2 509 904
Sub-total	2 675 759	2 509 904
** Income	(624 979)	(594 620)
Sub-total	(624 979)	(594 620)
* Figures include expenses incurred by the Ombudsman position (funded by Special Acts)		
** Includes recovery of expenditure from ReturnToWorkSA		
<b>Net expenditure</b>	<b>2 527 822</b>	<b>2 461 292</b>



# Appendix C

## Description of outcomes: Ombudsman jurisdiction

Outcome	Description
ADVICE GIVEN	<p>This outcome is used when:</p> <ul style="list-style-type: none"> <li>giving advice that does not relate to a specific approach or complaint</li> <li>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</li> <li>giving FOI advice.</li> </ul> <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"> <li>the complaint body is not an 'agency' (section 3)</li> <li>the act was performed by a Minister of the Crown</li> <li>the complaint is not about an 'administrative act' because it was               <ul style="list-style-type: none"> <li>done in the discharge of a judicial authority (section 3)</li> <li>done in the capacity of legal adviser to the Crown (section 3)</li> </ul> </li> <li>the act relates to a police matter (section 5(2))</li> <li>the act was strictly a policy decision (<i>City of Salisbury v Biganovsky</i> 54 SASR 117)</li> <li>the act is a complaint by an employee about their current or past employer (section 17(1))</li> </ul>
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"> <li>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</li> <li>the complainant has a right of appeal, reference or review with the agency such as:               <ul style="list-style-type: none"> <li>with a council under section 270 of the Local Government Act</li> <li>review processes for students in universities</li> <li>review processes for prisoners in the Department for Correctional Services</li> <li>review and appeal regarding land tax under the Taxation Administration Act</li> </ul> </li> </ul> <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"> <li>the Health and Community Services Complaints Commissioner</li> <li>the Environment Resources and Development Court</li> </ul> <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	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. 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.
WITHDRAWN BY COMPLAINANT	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.
DECLINED/ TRIVIAL, FRIVOLOUS, VEXATIOUS, NOT MADE IN GOOD FAITH (SECTION 17(2))	This outcome is used for a complaint, where the Ombudsman decides <ul style="list-style-type: none"> <li>• not to commence an assessment or investigation or</li> <li>• not to continue with an assessment or investigation</li> </ul> because: <ul style="list-style-type: none"> <li>• the complaint is trivial (section 17(2)(a))</li> <li>• the complaint was frivolous, vexatious or not made in good faith (section 17(2)(b)).</li> </ul>
DECLINED/ NO SUFFICIENT PERSONAL INTEREST or NOT DIRECTLY AFFECTED (SECTION 17(2))	This outcome is used for a complaint, where the Ombudsman decides: <ul style="list-style-type: none"> <li>• not to commence an assessment or investigation or</li> <li>• not to continue with an assessment or investigation</li> </ul> because: <ul style="list-style-type: none"> <li>• the complainant or their representative did not have sufficient personal interest (section 17(2)(c))</li> <li>• the complainant was not directly affected by the administrative act (section 15(3a)).</li> </ul>
DECLINED/ OUT OF TIME	This outcome is used for a complaint, where the Ombudsman decides: <ul style="list-style-type: none"> <li>• not to commence an assessment or investigation or</li> <li>• not to continue with an assessment or investigation</li> </ul> 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.
DECLINED/ INVESTIGATION UNNECESSARY OR UNJUSTIFIABLE	This outcome is used for a complaint, where the Ombudsman decides: <ul style="list-style-type: none"> <li>• not to commence an assessment or investigation or</li> <li>• not to continue with an assessment or investigation</li> </ul> because having regard to the circumstances of the case, such action is unnecessary or unjustifiable (section 17(2)(d)). For example: <ul style="list-style-type: none"> <li>• 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)</li> <li>• the complaint is minor</li> <li>• the complainant and/or the agency has taken action to rectify the problem</li> <li>• it would not be in the public interest for the Ombudsman to investigate or continue investigating the complaint.</li> </ul>
NOT SUBSTANTIATED/NO SECTION 25 FINDING	This outcome is used: <ul style="list-style-type: none"> <li>• after a preliminary (or more rarely a full) investigation and a report has been completed, and</li> <li>• there is no administrative error under section 25(1)(a)-(g).</li> </ul>
OMBUDSMAN COMMENT WARRANTED	This outcome is used <i>only</i> after a <i>preliminary</i> investigation. No administrative error has been found under section 25(1)(a)-(g), but an issue worthy of the Ombudsman's comment has been identified.



Outcome	Description
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: IMPROPER PURPOSE OR IRRELEVANT GROUNDS OR CONSIDERATIONS	These outcomes are used <i>only</i> when making a finding of administrative error after a <i>full</i> investigation, and reflect section 25(1)(a)-(g) of the Ombudsman Act.
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
<b>Response to proposed referral</b>	<i>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).</i>
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.
<b>ICAC Investigation</b>	<i>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).</i>
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

Outcome	Description
RTW - ADVICE GIVEN	<p>This outcome must only be used when:</p> <ul style="list-style-type: none"> <li>giving advice that does not relate to a specific approach or complaint.</li> <li>information has been received and only needs to be noted.</li> </ul> <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"> <li>an agency that is not in jurisdiction;</li> <li>an interstate jurisdiction;</li> <li>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</li> <li>a judicial body i.e. SAET</li> </ul>
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.</p> <p>Where a white telephone contact slip is responded to, this outcome is used when:</p> <ul style="list-style-type: none"> <li>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</li> <li>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</li> <li>where email or postal contact details have been provided, contact is attempted by this means, but no response is received within 7 days.</li> </ul> <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.</p> <p>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"> <li>not to commence an assessment or investigation or</li> <li>not to continue with an assessment or investigation</li> </ul> <p>because:</p> <ul style="list-style-type: none"> <li>the complaint is trivial (section 17(2)(a) Ombudsman Act)</li> <li>the complaint is frivolous or vexatious or is not made in good faith (section 17(2)(b) Ombudsman Act)</li> </ul>
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"> <li>not to commence an assessment or investigation or</li> <li>not to continue with an assessment or investigation</li> </ul> <p>because:</p> <ul style="list-style-type: none"> <li>the complainant or their representative did not have sufficient personal interest</li> <li>the complainant was not directly affected by the breach of service standards.</li> </ul>
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"> <li>not to commence an assessment or investigation or</li> <li>not to continue with an assessment or investigation</li> </ul> <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"> <li>after assessing or commencing an investigation of the complaint, it appears that there is no evidence of a breach of service standards</li> <li>the complaint is minor</li> <li>the complainant and/or the agency has taken action to rectify the problem</li> <li>it would not be in the public interest for the Ombudsman to investigate or continue investigating the complaint.</li> </ul>
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"> <li>after a preliminary (or more rarely a full) investigation and a report has been completed; and</li> <li>when making a finding there has been no breach of the service standards.</li> </ul>
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	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. This outcome does not include instances where the agency has revised its determination to give access to documents.
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
DCP	Department for Child Protection
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
ICAC	Independent Commissioner Against Corruption
ICT	Information and Communication Technology
LSC	Legal Services Commission
ISG	Information Sharing Guidelines
OPI	Office for Public Integrity
PIRSA	Department of Primary Industries and Regions SA
RTWSA	Return to Work SA
SACAT	South Australian Civil and Administrative Tribunal
SAPOL	South Australian Police
SOP	Standard Operating Procedure

# Notes



# Notes

## Ombudsman SA values

**Integrity - Impartiality - Fairness**

## Our Culture

**Ethical**

**Professional**

**Efficient**

**Learning**

**Communicating**

**Collaborating**



OmbudsmanSA

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