



OmbudsmanSA

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## AUDIT REPORT

An assessment of complaint handling and compliance with the Service Standards set out in Schedule 5 of the *Return to Work Act 2014*

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Final Report

May 2021

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## Foreword

In 2014 the legislation which governs the recovery, return to work and support of employees who are injured at work was overhauled. On 1 July 2015 the *Return to Work Act 2014 (the Act)* came into effect, replacing the *Workers Rehabilitation and Compensation Act 1986*. In place of the former WorkCover Ombudsman, the new Act gave jurisdiction to the State Ombudsman. Since then, my Office has dealt with complaints under the Act.

Work injury claims are managed by either the Return To Work Corporation, the two claims agents (Employers Mutual Limited and Gallagher Bassett Services) or by self-insured employers.

Schedule 5 of the Act prescribes the Service Standards, which set out the principles that will be observed by an agency when it is dealing with a worker or an employer; provide a procedure for lodging and dealing with complaints about breaches of the Service Standards; and provide remedies for breaches of these standards. The aim of the Service Standards is to encourage positive relationships between the agencies managing the claims, the workers, and the employers, enabling these bodies to work together in order to achieve the best outcomes.

Good complaint handling is important for any agency, but particularly so for agencies dealing with injured workers. A worker's injuries can be exacerbated, and their recovery delayed, by poor claims management. Effective complaint management and resolution can enhance the service experience of injured workers.

I have an oversight function under the Act. Workers who are dissatisfied with the manner in which their complaint under the Service Standards was handled by the relevant agency may bring that complaint to my Office. I have experienced relatively low complaint numbers since the introduction of the Act. One purpose of this audit is to determine whether those low complaint numbers are the product of effective case management and complaint handling by the agencies, or the result of poor communication by the agencies about the availability of complaint processes. Another purpose is to identify best practice in complaint handling and to provide recommendations to the agencies for improvements.

As the Act has now been in force for almost six years, it is a pertinent time to examine the agencies and look at their performance and their complaint handling processes.

I am empowered to conduct this audit under section 14A of the *Ombudsman Act 1972* which deals with my power to conduct administrative audits if I consider it to be in the public interest.

I thank the agencies for their cooperation with this audit.



Wayne Lines  
SA Ombudsman

26 May 2021

## Executive Summary

Four agencies were included in this audit: the Return to Work Corporation of South Australia (**RTWSA**), Gallagher Bassett Services (**Gallagher Bassett**), Employers Mutual Limited (**Employers Mutual/EML**) and the Work Injury Services (**WIS**) division of the Department of Treasury and Finance. For ease of reference, I shall refer to the above as 'the agencies' throughout this audit report.

The key sources of evidence considered in this audit were written responses from each of the agencies, including any supporting documentation, and a sample of complaint files from each of the agencies. The agencies were also provided with a provisional audit report and had an opportunity to provide further submissions in response.

In summary, the evidence indicates that each of the agencies is providing a high standard of complaint handling and is consistently meeting most of the Service Standards. The agencies are meeting the benchmarks for timeliness, accessibility of complaint handling information and information relating to claim management, and continuous improvement. Each of the agencies also has a complaints process which is reasonably easy to navigate.

Areas for improvement identified by my audit were compliance with the requirement to inform complainants of their right to escalate a complaint to my Office, and improved consistency in the way complainants are advised of the outcome of their complaint and the reasons for that decision.

My provisional audit report contained three recommendations. I recommended to each of the agencies that they adopt a process of informing complainants of their complaint outcome in writing, and that they implement a file closure checklist. I made one additional recommendation to WIS regarding the contents of the form used to record complaints and complaint outcomes.

All of the agencies provided a response to my provisional report indicating that they accept my recommendations. Two of the agencies provided additional comments, which have been incorporated into my report.

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## Scope

1. RTWSA primarily has a regulatory role and is responsible for monitoring the return to work scheme, including providing education, oversight of self-insured employers, worksite inspections, and fraud investigations. RTWSA also has oversight of the two claims agents and can consider escalated complaints from workers or employers who are not satisfied with the complaint handling of the claims agents.
2. The two claims agents are Gallagher Bassett and Employers Mutual. These claims agents handle the majority of work injury claims in South Australia.
3. WIS is a business unit which currently sits within the Department of Treasury and Finance. The role of WIS is to help a large number of small to medium size government agencies with managing workers compensation claims. These government agencies are approved self-insured employers under the Act, but engage WIS for a variety of services including claims management, return to work consultancy and training.
4. Clause 4 of Schedule 5 of the Act sets out the Service Standards. All of the agencies included in this audit are bound by the Service Standards. The Service Standards provide that the agencies will:
  - (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;

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- (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.
  5. My audit has examined the agencies to determine whether they generally appear to be compliant with the Service Standards, with a focus on Service Standard 4(f) and 4(j).
  6. Clause 6 of Schedule 5 sets out the procedures to be followed in dealing with a complaint. Under clause 6, a reference to 'the Corporation' is interpreted to mean a reference to any of the agencies subject to this audit.
  7. Clause 6 provides:
    - (1) The Corporation will work with a person who lodges a complaint to help him or her to address and resolve problems and concerns and to find a resolution to the matter in an effective way.
    - (2) As an important part of the steps to be taken under subclause (1), the Corporation will advise the person of—
      - (a) what steps have been taken in relation to the relevant problem or concern; and
      - (b) the procedure that can be followed to lodge a complaint with the State Ombudsman if the person is not satisfied with the resolution of the matter by the Corporation.
    - (3) The Corporation will provide a response to a complaint within 10 business days after the complaint is lodged with the Corporation.
    - (4) If a matter requires extended investigation, the person will, within 10 business days, receive an interim response and an indication of when a final response will be provided.
  8. My audit has examined the agencies to determine whether they are compliant with clause 6.
  9. Clause 7 of Schedule 5 details the remedies available, in the event that one of the Service Standards has been breached. Clause 7 states:

If it is found that the Corporation has breached any of these standards, the Corporation is to do 1 or more of the following:

    - (a) provide a written or oral apology;
    - (b) furnish a written explanation;
    - (c) meet with the worker or employer to consider his or her views and to achieve a resolution of the matter;

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(d) furnish information to the worker or the employer, in an appropriate form, which outlines, where relevant–

- (i) the status of any claim and extent of entitlements; and
- (ii) the review rights that exist under this Act; and
- (iii) the services that are available and the timeframes that should apply in relation to a dispute;

(e) provide a worker with a copy of his or her file in accordance with section 180 of this Act or under the *Freedom of Information Act 1991*;

(f) invite feedback about any response and ensure that any questions are answered or requests are responded to in an appropriate manner;

(g) take any other reasonable steps to remedy the matter.

10. My audit has examined the agencies to determine whether they are compliant with clause 7.
11. Clause 8 of Schedule 5 to the Act creates an obligation upon the agencies to monitor complaints and look for trends, and to inform complainants about steps that have been taken to address their concerns. My audit has examined the agencies to determine whether they are compliant with clause 8.
12. A complete copy of Schedule 5 can be found at Appendix A.
13. My audit has also examined the agencies to determine whether they are complying with any internal complaint handling policies and procedures, as well as whether they are generally exhibiting good complaint handling practices.

## Methodology

14. My audit sought a written response from each of the agencies, as well as copies of documents which are provided to workers and employers at the beginning of a claim, and any policy documentation.
15. Further enquiries were made where necessary, in order to clarify certain matters with the agencies.
16. My audit then conducted a case review and examined the complaint files of 12 matters from each of the agencies.
17. The five benchmarks against which I assessed the agencies are Timeliness, Accessibility of Information, Navigation, Procedural Fairness and Continuous Improvement.
18. The period under review was a two year period comprising the calendar years 2019 and 2020.

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## PART 1 - Analysis of agency responses to the audit

19. The following enquiries were put to the agencies at the commencement of my audit:
  1. An overview of the complaints data for the review period, including the total number of complaints and the outcomes of those complaints
  2. An explanation as to whether the agency was compliant with the timeframes set out in Schedule 5 Clause 6
  3. An explanation of any processes the agency had in place, in the context of dealing with individual complainants, to ensure compliance with clause 6(1) and (2)
  4. An explanation as to the format in which complaints are accepted
  5. An explanation as to what provisions the agency makes for vulnerable persons or persons who need additional assistance to make a complaint
  6. An explanation of the procedures in place to ensure complainants are provided with procedural fairness
  7. Whether there is a regular report to senior management on complaint handling issues
  8. A summary of what the agency thinks it does well in its complaint handling
  9. A summary of areas of its complaint handling the agency thinks could be improved
  10. A summary of any improvements or changes to practices that have been made during the review period as a result of complaint handling.

### *Q1: An overview of the complaints data for the review period*

20. At the outset, I comment that each agency classifies complaints slightly differently. For example, Employers Mutual include enquiries in their complaint statistics, but Gallagher Bassett do not. Moreover, while Employers Mutual and WIS include Ministerial and Ombudsman SA enquiries in their complaints statistics, Gallagher Bassett do not.
21. I do not think this lack of consistency across the agencies is an impediment to my audit. I do not consider that there is one correct way to track complaints and compile complaints data, as long as it is effective for that particular agency. I comment on these differences to acknowledge them and note that I have taken them into account in comparing outcomes across the agencies.

## **RTWSA**

22. RTWSA defines complaints as dissatisfaction with the conduct, product or service provided by RTWSA, a claims agent or a self-insured employer. RTWSA does not record complaints in the context of a general request for information or explanation about a product or service.
23. RTWSA's Complaints Policy is based on the approach that an individual with a concern about whether RTWSA, a claims agent or a self-insured employer has complied with the Service Standards should raise the concern directly with the relevant business unit, claims agent or self-insured employer at first instance. If that individual is dissatisfied with the response received, they may then lodge a formal complaint with RTWSA. Therefore, RTWSA can be considered a second tier complaint handling body.
24. RTWSA advised that it conducted 33 formal complaint investigations during the review period (15 in 2019 and 18 in 2020). The following table illustrates a breakdown of those complaint investigations:

Agency	2019	2020
RTWSA	0	2
EML	9	6
GB	5	7
EML and GB	1	0
Crown	0	2
Private Self-Insured Employer	0	1
<b>TOTAL</b>	<b>15</b>	<b>18</b>

25. The following table illustrates the outcomes of the complaint investigations undertaken by RTWSA during 2019:

Agency	Outcome	Total
EML	Substantiated	5
	Partially Substantiated	1
	Not Substantiated	3
GB	Substantiated	1
	Partially substantiated	2
	Not Substantiated	1
	Not Determined	1

<b>EML and GB</b>	EML – Partially Substantiated	1
	GB - Substantiated	

26. The following table illustrates the outcomes of the complaint investigations undertaken by RTWSA during 2020:

Agency	Outcome	Total
<b>RTWSA</b>	Substantiated	1
	Not determined	1
<b>EML</b>	Partially Substantiated	2
	Not Substantiated	4
<b>GB</b>	Substantiated	4
	Not Substantiated	3
<b>Crown</b>	Partially Substantiated	2
<b>Private Self-Insured Employer</b>	Not Substantiated	1

27. It is important to note that RTWSA undertook a review of complaint processes in 2020 which sought to clarify the definition of complaints and enquiries. This resulted in changes to the process for complaint referrals from RTWSA to Employers Mutual and Gallagher Bassett. In light of that review, RTWSA has advised that a number of the 218 enquiries it recorded between January 2019 and March 2020 would now likely be classified as complaints.
28. RTWSA has also advised that individuals disputing claim related matters under the Act are directed to the South Australian Employment Tribunal (**SAET**) pursuant to section 97 of the Act (reviewable decisions by the SAET). In those instances, the approach is recorded as an enquiry.

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## Gallagher Bassett

29. Gallagher Bassett advised that it managed a total of 143 complaints during the review period, comprising 64 complaints in 2019 and 79 complaints in 2020. A breakdown of the outcomes of those complaints can be found in the following table:

Outcome	2019	2020	TOTAL
Substantiated	32	24	56 (39%)
Partially Substantiated	1	9	10 (7%)
Not Substantiated	22	40	62 (44%)
Not Determined	6	1	7 (4%)
Withdrawn	3	5	8 (6%)

30. Follow up enquiries were made with Gallagher Bassett regarding the meaning of 'not determined' as a complaint outcome. Gallagher Bassett explained that 'not determined' is used when a complaint is received that is not in relation to the Service Standards, or is beyond the control of Gallagher Bassett to resolve. The complaints are still recorded, but as the matter is not within Gallagher Bassett's remit, it is unable to be proven whether or not the complaint is substantiated.

## Employers Mutual

31. EML advised that during the review period, it received a total of 303 complaints (EML appears to have included enquiries in this figure). These complaints are broken down in the following table:

	2019	2020
Complaints	34	88
Enquiries	104	36
Ombudsman	8	7
Ministerial	11	12

<b>CEO</b>	1	2
<b>Total</b>	158	145

32. It is relevant to highlight that RTWSA worked alongside EML during 2020 to review its Complaints Management Procedure, which appears to have included redefining what constitutes a complaint or an enquiry. That definition was amended and is reflected in the table above (i.e. the increase in the number of complaints recorded during 2020).
33. The following table illustrates the outcomes to the 303 complaints and enquiries outlined in the previous table:

<b>Outcome</b>	<b>2019</b>	<b>2020</b>
<b>Substantiated</b>	10	18
<b>Not Substantiated</b>	12	36
<b>Partially Substantiated</b>	10	18
<b>Not Determined</b>	114	53
<b>Resolved Satisfactorily</b>	6	14
<b>Withdrawn</b>	3	2
<b>Unable to Contact</b>	2	0
<b>Not Coded</b>	1	4
<b>TOTAL</b>	158	145

34. Following the Complaints Management Procedure review in 2020 and the subsequent update to its procedures, EML now captures complaint outcomes as substantiated, not substantiated and partially substantiated.

## **WIS**

35. WIS advised that it manages approximately 300 return to work claims for 29 small to medium sized government agencies, which collectively represents approximately 10% of the South Australian public sector's workers compensation portfolio.

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36. In the review period, WIS received a total of 15 complaints (12 in 2019 and 3 in 2020). Of these 15 complaints, seven were substantiated, seven were not substantiated and one was partially substantiated.

*Q2: An explanation as to whether the agency is compliant with the timeframes set out in Schedule 5 Clause 6*

37. Clause 6 requires that agencies provide a response to a complaint within 10 business days, unless the complaint requires extended investigation. In that case, the agency is still required to contact the complainant within 10 business days.

## **RTWSA**

38. RTWSA has advised that if a complaint cannot be resolved within the 10-day timeframe as provided for by clause 6, its Complaints Team will advise the complainant accordingly, ordinarily by email, prior to the due date.
39. In 2019, RTWSA has stated that 60% of all complaint investigations were completed within 10 business days. However, in 2020, this decreased to 33%. That said, RTWSA considers that all complainants were advised that the timeframe would not be met prior to 10 business days elapsing.
40. RTWSA has provided the following reasons as to why a complaint investigation may exceed the 10 business day timeframe:
- extensive investigation required due to the involvement of multiple parties
  - delays in getting information from the relevant claims agent
  - lack of response from complainants when seeking further information
  - complainants raising further issues while the complaint investigation is in progress.

## **Gallagher Bassett**

41. Gallagher Bassett advised that it was fully compliant with the timeframe set out in clause 6, however it acknowledged there was one complaint during the review period where multiple efforts to reach the complainant via phone were attempted and the complainant did not have a message-bank facility. Gallagher Bassett stated that while it deemed its efforts to be compliant, it acknowledges that there was the opportunity to attempt to contact the complainant by email.
42. In the course of conducting case reviews, my audit discovered that one of the files had not been handled within the 10-day timeframe. Enquiries were made about this file, noting that it was open for 18 business days. Gallagher Bassett provided the following response:
- Gallagher Bassett needed additional time to gather information for this complaint due to staff leave. The RTWS spoke with the complainant briefly regarding the complaint prior to 16/9, at which time she requested permission to have the deadline for the complaint extended so it could be addressed in a face to face meeting on 2/9. I then confirmed this with the complainant on 16/9 via email and confirmation was received on the 19/9, 1 day before response was due. Therefore, we deem that our actions were in accordance with Schedule 5(6)(4).
43. I comment that none of the telephone calls or emails referred to were uploaded to the complaint file which was provided to my Office for the purposes of this audit, which raises an issue of effective record keeping.

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44. I also comment that the complaint was received by email on 8 August 2019, the complaint file was opened on 13 August 2019, the meeting took place on 2 September 2019 and the complaint file was closed on 5 September 2019. Therefore, whilst the Gallagher Bassett response refers to communications on 16 and 19 September, I consider it likely that such communications took place during August 2019, not September.
  45. Notwithstanding the above, I am prepared to accept that Gallagher Bassett complied with clause 6 in this instance, despite not providing evidence to that effect.
  46. Gallagher Bassett were also asked whether it was currently compliant with any additional timeframes within its complaint handling policies.
  47. Gallagher Bassett indicated that its internal policy required all complaints to be handled within five business days, rather than 10 business days, unless it was an in-depth complaint. Gallagher Bassett indicated it has a 96.5% rate of compliance with this internal policy.
  48. Gallagher Bassett also has a policy requiring that formal complaints must be acknowledged within one business day. Gallagher Bassett indicated it is fully compliant with this requirement.

### **Employers Mutual**

49. EML's Complaints Management Procedure confirms the timeframes detailed in clause 6, as well as requiring the acknowledgement of complaints within one business day. EML has indicated that following a review of the total complaints lodged within the review period, all complaints and enquiries were responded to within 10 business days.
50. EML has also noted that an internal Risk and Governance Audit, scheduled for the first quarter of 2021, will include a review of the timeframes outlined in its Complaints Management Procedure.

### **WIS**

51. WIS advised that of the 15 complaints it received in the review period, 13 were handled within 10 business days. Two of the complaints were not handled within 10 business days. One complaint was handled within 22 business days and the other was handled within 15 business days.
52. WIS provided the following information about these two complaints:

There were 2 complaints lodged directly with the Minister's Office by a solicitor representing a deceased worker's spouse, regarding the delay of determining the claim and the lack of information provided to his client. This case was a motor vehicle accident, which unfortunately resulted in the death of the worker. The circumstances were complex and extensive advice was sought from the Crown Solicitors Office as to liability and dependency. Both complaints received regarding this particular case were not addressed in 10 business days.
53. Clause 6(4) provides that if a complaint requires extended investigation, the person will, within 10 business days, receive an interim response and an indication of when a final response will be provided. Clarification was sought with WIS as to whether the complainant was contacted within 10 business days.

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54. WIS indicated that the complaints were lodged directly with the Minister's office. WIS was asked to prepare a briefing for the Minister. WIS did not provide an interim response as WIS did not have any direct communication with the complainant. I consider this to be reasonable. As WIS was not the agency that received the complaint, I do not consider this to be a breach of clause 6(4).

*Q3: An explanation of any processes the agency has in place, in the context of dealing with individual complainants, to ensure compliance with Clause 6(1) and (2)*

55. Clause 6 requires that an agency tell a complainant of the steps that have been taken in relation to the relevant problem, and to advise the complainant of their right to bring their complaint to Ombudsman SA if they are not satisfied with the outcome of the complaint.

## **RTWSA**

56. RTWSA has stated that its Complaints Team advises complainants about the complaints process at the outset, including information on escalation processes if dissatisfied with an outcome.
57. Further, if a complainant has not attempted to resolve their concerns with the relevant agency or individual who the complaint is about, the Complaints Team will record the complainant's details and refer the complaint the relevant business area or claims agent to deal with in the first instance.
58. RTWSA also responded as follows:

Complaints managed by RTWSA Complaints Team are assessed and issues prioritised. For example, any matters related to income support are given the highest priority to ensure speedy resolution. To do this, the Complaints Team consults with and uses the expertise of other business areas, including Scheme Legal, to provide positive outcomes for the complainant wherever possible.

Complaint outcomes are provided in writing outlining any actions taken to resolve the matter. At that point, complainants are again advised how to escalate their complaint to Ombudsman SA if not satisfied with the outcome.

59. Following my review of the RTWSA complaint files provided to my audit, it is evident that RTWSA consistently informs complainants, at the time of providing an outcome, of the procedure to escalate the matter to my Office if they are dissatisfied with the response provided by RTWSA to the particular complaint. I will discuss this further under the relevant Benchmark section.

## **Gallagher Bassett**

60. Gallagher Bassett provided the following response:

During the initial receipt of a complaint, our Customer Feedback Officer will work with the complainant to gather a comprehensive understanding of their expectations and where they have not been met. Gallagher Bassett strives to make this initial contact upon immediate, or as soon as practicable, receipt of the complaint. It is during this conversation the following areas are covered:

- Details of the complaint
- Desired outcome required
- The timeframes as to when to expect a response

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- The complaint process, including who will be managing and contacting them further regarding the complaint
  - The complainant is informed of their option to take the matter to the State Ombudsman if they are not satisfied with the resolution offered.

The complaint will then be passed on to the relevant manager who has accountability for the required service provision and expertise to investigate and review the matter. That manager will then contact the complainant within five business days of receipt of the complaint to work with them to resolve the complaint. It is at this time in the process where we cover clauses 6(1) and (2a). Telephone contact is the preferred resolution method as this allows for two-way discussion to ensure full understanding by both parties.

## **Employers Mutual**

61. EML has a framework designed to manage complaints across its business to ensure it is compliant with Schedule 5. This framework includes a centralized Customer Care Team, a Complaints Management Procedure and a National Complaint Management Policy.
62. EML's Customer Care Team provides support to the business and oversees the Complaints Management function. The Customer Care Team is comprised of two Customer Care Liaisons who independently review complaints to assist with their resolution by direct communication with complainants and recommendation and instigation of appropriate remedies. The Customer Care Liaisons also provide ongoing business support by delivering complaints management training to all new EML employees.
63. EML's Complaints Management Procedure sets out how complaints are identified and appropriately managed. It has been developed in line with RTWSA's Instruction to Claims Agents - Complaints Management. The instruction highlights the following key components with respect to complaints management:
  - remedy of complaints
  - a procedure to manage a complaint and providing a response within 10 business days
  - recording of complaints
  - provide assistance to people making complaints
  - provide escalation points.
64. Relevantly, EML has also advised that:

Complaints are encouraged to be resolved with the line manager (in most cases, this is the Team Leader) in the first instance. If the complaint is unable to be resolved, there are escalation processes in place, including our Customer Care Team, the RTWSA complaints team and the State Ombudsman. Stakeholders that are not satisfied with the response given for their complaint, are advised of the escalation options available.

The Customer Care Team have visibility through reporting of all complaints lodged. They monitor this weekly to ensure that complaints are resolved timely (sic) and appropriately.

## **WIS**

65. The WIS response relevantly states:

Internal procedures developed by WIS and the Practice Notes issued by the Office for the Commissioner of Public Sector Employment (OCPSE) ensure WIS staff are aware of and comply with the requirements of Clause 6(1) and (2) of Schedule 5...

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For every new claim, injured employees are contacted and provided with an information kit which includes a copy of the following documents: Internal Complaint Management Process, Injury Management Rights and Responsibilities document, The Road to Recovery Booklet.

The operational process WIS has in place for managing complaints is covered in the Complaint Management Procedure...and the SA Public Sector Injury Management Practice Note, Version 2 issued by OCPSE.

A summary of the key steps detailed in the Complaint Management Procedure are as follows:

- When a complaint is received, the matter is recorded in the WIS Corrective Action Register by the Quality Assurance and Reporting Officer
- The complaint will then be addressed by the Team Leader or Manager who will work with the complainant to address and resolve their concerns as soon as possible. This includes liaison with the worker's employing agency (where required)
- The Team Leader or Manager, will advise the complainant of:
  - o What steps have been taken in relation to the relevant problem or concern raised; and
  - o If not satisfied with the resolution of the matter, the complainant is advised of the avenues available for further escalation (if required)...

*Q4: An explanation as to the format in which complaints are accepted*

66. RTWSA receives complaints made by telephone, email, mail, online lodgment through its website and in person at RTWSA premises.
67. Gallagher Bassett indicated that it accepts complaints via telephone, email, in writing or face-to-face. Complainants are also able to complete a feedback submission form on the website.
68. EML accepts complaints through a variety of channels such as:
  - phone
  - email
  - in person
  - via post
  - feedback form on EML website
  - Net Promotor Score Service Recovery calls
  - online reviews.
69. WIS advised that complaints are normally submitted by email or letter, but any format is acceptable. WIS submitted that because all injured workers have a dedicated contact person at WIS, the number of complaints received is relatively low, primarily due to regular contact between the worker and the RTW Consultant and/or Claim Case Manager.

*Q5: An explanation as to what provisions the agency makes for vulnerable persons or persons who need additional assistance to make a complaint*

70. RTWSA is equipped to receive telephone calls through the National Relay Service from persons with hearing or speech impairments. Information on the complaints process is also available on RTWSA's website in a number of different languages (Arabic, Chinese, Dinka, Dari, French, Hindi, Kurdish, Persian, Punjabi, Swahili and Vietnamese.) RTWSA has stated that its Complaints Team have completed relevant training in working with interpreters and it also has an Interpreting and Translating Services Policy. Arrangements may be made to translate complaint responses into another language as required.

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71. In addition to the above, the RTWSA Complaints Team have completed training in dealing with angry and aggressive clients and most are trained in Applied Suicide Intervention Skills training. However, newer staff were unable to complete this training in 2020 due to COVID-19 related delays. The RTWSA Complaints Team has also completed The Accidental Counsellor training delivered by Lifeline. RTWSA has forecast that Applied Suicide Intervention Skills training will also be completed by the Complaints Team in 2021.
72. Gallagher Bassett advised that a translator can be arranged for those requiring assistance due to language barriers, as well as for those with hearing or speech difficulties. Provisions are also available for a support person and, for those under 18, to have a parent or guardian present.
73. EML has responded that it acknowledges and complies with Service Standard 4(h) in respect of providing additional assistance to persons who may require it when making a complaint. This includes consideration of the complainant's preferred language and format, their cultural background, gender or disability. EML has stated that it believes that everybody has the right to complain.
74. EML's National Complaints Management Policy outlines the following regarding accessibility:
- the ability to make a complaint is required to be accessible to everyone, particularly people who might require assistance, so that complaints can be made and captured
  - EML requires support to be provided to people to make a complaint if needed
  - EML acknowledges that a person or organisation may request that another person or organisation assist or represent them to make and progress their complaint. Complaints should be accepted from authorised representatives of the complainants
  - information about the various ways complaints can be made and the types of support available to people is required to be easily accessible to clients and customers.
75. EML further responded:
- EML seek to understand if any language barriers exist and if so ensuring that the customers preferred language for communication is adopted. We offer and promote the use of an interpreting service where appropriate. An interpreter can be engaged for phone calls and meetings, as well as for the translation of written correspondence to the preferred language, free of charge to the complainant.
76. WIS advised that if a vulnerable person required assistance to make a complaint, the Claim Case Manager and/or RTW Consultant would assist them by arranging a face-to-face meeting. WIS also noted that in some cases (e.g. if there was a risk of self-harm by the complainant) WIS may request the attendance of the worker's medical provider and identify the best way to resolve the issue.

*Q6: An explanation of the procedures in place to ensure complainants are provided with procedural fairness*

77. Question 6 sought information on how agencies are affording procedural fairness to complainants, including whether complainants are given a right of response to preliminary decisions made, whether sufficient reasons for decisions are provided, and the process in place to manage conflicts of interest.

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## RTWSA

78. RTWSA has responded to question 6 as follows:

### **Preliminary Decisions**

Complainants are encouraged to provide any evidence to support their complaint. It is not RTWSA's usual practice to provide complainants with a right of response to preliminary decisions. Where evidence has been requested and not provided by a complainant, however, the complainant is again invited to provide evidence before the complaint is closed.

### **Rationale for Decisions**

We endeavour to provide sufficient detail for outcomes and have noted this is an area we can improve.

### **Conflict of Interest**

If a RTWSA business unit cannot investigate a complaint due to a conflict of interest the complaint can be managed by RTWSA's Complaints Team. If a conflict of interest exists for a member of RTWSA's Complaints Team the complaint is allocated to another member of the team.

If a complainant believes that RTWSA is unable to independently investigate a complaint the complainant is encouraged to contact Ombudsman SA.

Where a person is seeking level advice and they do not have legal representation, the Complaints Team refers them to the Legal Services Commission.

## Gallagher Bassett

79. Gallagher Bassett provided the following response:

We encourage our staff to work with the complainant either over the phone or face-to-face when resolving the complaint as this allows for:

- Our Manager to present the findings of the investigation into the complaint and propose any decisions
- Back and forth discussion to ensure complete understanding from both parties
- The opportunity for the complainant to respond to preliminary decisions.

The Manager will also offer contact details for the complainant and encourage them to get in touch if they wish to discuss any matter further.

Where a response is only able to be provided via written communication, we ensure where possible, each matter is addressed and explanations are provided. We also make sure the complainant understands they have the option to respond if they would like to discuss any points further or any addition information.

To manage conflicts of interest, each new employee is educated on our Conflict of Interest Policy and asked to advise of any known conflicts which are then registered both with Gallagher Bassett and ReturnToWorkSA. They are also required to sign a written declaration. Companywide reminder checks are conducted every six months.

All conflicts are taken into consideration when assigning claims to be managed, to ensure no conflict by Claim Owner or Team Manager. This process being conducted early in the claims process generally eliminates any possibility of a conflict arising. However, on the off chance a conflict does arise, the staff member upon recognition of the conflict, is to advise their Manager of the conflict and what information has been accessed. The stakeholder is

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then notified of the breach, informed of what actions have taken place to ensure another breach does not occur, and an apology is given.

## Employers Mutual

80. EML have advised the following with respect to procedural fairness and its complaints process:

Procedural fairness is embedded throughout all our claims processes. All decisions are discussed verbally (unless the customer's preferred communication method differs) prior to a formal notification being issued. We invite responses and the right to supply further information for consideration. Our letters provide the customer with the process for requesting a review of the decision, this includes raising any concerns initially with the decision maker as well as the application for review process with the SAET.

Complainants are informed of their review rights for decisions, including escalation and complaint mechanisms.

81. Regarding preliminary decisions, EML have stated that prior to closing a complaint, it will seek confirmation from the complainant that they are satisfied with the outcome. If they are not, EML will invite further discussion as to whether there is anything further it can do to resolve the complaint to the person's satisfaction. Moreover, depending on the nature of the complaint, EML may also provide details to the complainant for the Legal Services Commission and also the SAET.
82. EML has advised that when providing a complaint outcome, information is included as to how it reached its decision. EML stated that complaints are not closed until it has explained its response to the complainant and invited discussion or questions from the complainant in respect of a decision.
83. EML also has a National Conflict of Interest Policy and Procedure for managing conflicts of interest. EML staff are required to declare all conflicts of interest which arise during their employment.

## WIS

84. In response to question 6, WIS referred me to page 5 of the WIS Injury Management Policy, and pages 4-5 of the Complaints Management Procedure.
85. Page 5 of the WIS Injury Management Policy sets out the following, under the heading Procedural Fairness:

The concept of procedural fairness is derived from the principles of natural justice. A process that demonstrates procedural fairness is one in which:

- Decision makers act fairly and provide reasons for decisions
- The person affected is given a fair hearing
- All parties to a matter have an opportunity to put their case where an adverse decision or finding is made; and
- All relevant arguments are considered and irrelevant arguments are excluded.

86. Pages 4-5 of the Complaints Management Procedure reproduce sections of the Act, and do not need to be reproduced as part of this audit report.
87. WIS submits that its Injury Management Policy ensures client agencies and their injured workers are given an opportunity to put their case forward where an adverse decision or finding is made by WIS. WIS submits that all decision makers provide reasons for decisions.

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88. WIS further submits that if there is a potential conflict of interest, the matter is referred to the Manager or Team Leader and, if required, the case may be reassigned to another member of the WIS team.

#### Ombudsman comment

89. Avoiding conflicts of interest is an important aspect of providing procedural fairness. I am pleased that all of the agencies have robust processes in place to manage conflicts of interest.

#### *Q7: Whether there is a regular report to senior management on complaint handling issues*

90. Question 7 asked agencies if they provided a regular report on complaints to their senior management, and if so, what issues were reported on and monitored.

91. RTWSA reports complaints data to Senior Management quarterly through a Key Result Area report. This includes:
- the number of complaints and enquiries received by the Complaints Team for EML, Gallagher Bassett, and RTWSA for the quarter, compared to the previous quarter
  - the number managed directly by the RTWSA Complaints Team
  - how many were referred to other business units for resolution
  - how many complainants had a previous complaint in the last 2 years (repeat complainants)
  - emerging trends/key issues are also included where relevant.

92. RTWSA has also stated that:

Complaints data is also reported to the RTWSA Board in the Scheme Performance Report monthly, and to the Treasurer quarterly, via the RTWSA Charter and Performance Statement Report. This reporting includes a running total of complaints received YTD for the last 3 financial years, and a comparison of complaints by respondent for the last 3 financial years. Complaints are also reported in the RTWSA Annual Report.

93. Gallagher Bassett provided the following response:

Monthly reporting is emailed out on the second Monday of every month to all Team Managers, Branch Managers and other Senior Leadership Managers. This report shows multiple levels of the business the following:

- a graph showing the number of complaints received each month in comparison to the number received each month last year
- where complaints are being received from (i.e. worker, employer, legal representative, etc.)
- number of complaints per team
- number of complaints per category (i.e. communication, medical expenses, income support, etc.)
- number of complaints either not substantiated or partially/fully substantiated
- staff with multiple communication complaints in a 6-month period (communication complaints are identified as Gallagher Bassett's highest complaint category).

Alongside the abovementioned reporting, a more detailed face-to-face trend analysis is conducted at the end of each month with Gallagher Bassett's General Manager which covers any points of concern (i.e. subject of complaints, staff members, trends etc). The

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General Manager also includes in her monthly operational report to Head Office, details on our complaint trends and any remediation plans that may be required.

94. EML's Customer Care Team present a monthly Customer Care dashboard to the Manager, Business Support which captures a number of key customer care areas, including complaints. This is also shared with the Senior Leadership Team at a monthly meeting and with EML's Chief Operating Officer at its bi-monthly Claims Performance Meeting. EML have advised that the Customer Care dashboard includes:
- the number of complaints each month
  - whether a complaint is substantiated, not substantiated or partially substantiated
  - key themes for the month
  - current activities - including continuous improvement opportunities identified.
95. WIS advised that at present there is no regular report provided to senior management regarding complaint handling issues, other than high level summary data.

*Q8: A summary of what the agency thinks it does well in its complaint handling*

96. RTWSA considers that by providing a relevant agency or business unit an opportunity to resolve a complaint at first instance, this maximises the opportunity to restore a positive, ongoing relationship between the complainant and the subject of the complaint. This is facilitated by the Complaints Team actioning the referral on behalf of the complainant.
97. RTWSA bases its process for investigating a complaint in accordance with *AS/NZS 10002:2014 - Guidelines for complaint management in organisations*. RTWSA utilizes a report template that provides for:
- clear identification of multiple issues
  - evidence gathering
  - chronology of events
  - segregation of duties, with the investigator making a recommendation as to whether the issues raised are substantiated, partially substantiated, or unsubstantiated, with the final decision made by a one-up manager after a further review. On occasions where complaint outcomes may not be suitable for the above classifications, RTWSA may consider a complaint not determined, withdrawn or unable to contact.
98. RTWSA further responded to my audit that:

Our Complaints Team collectively has broad experience in working with people from a range of backgrounds and vulnerabilities, excellent knowledge of the Return to Work Act 2014 and the Scheme, and skills in working with difficult and vulnerable people.

Where matters are not assessed as being a complaint, the Complaints Team endeavours to provide advice on which agency may be able to assist the person, i.e. Legal Services Commission, FairWork Ombudsman, SafeWork SA, Working Women's Centre, unions, Health and Community Services Complaints Commissioner or RTWSA's free ReCONNECT service.

99. Gallagher Bassett advised that:
- it ensures an independent party will review each complaint to allow for non-biased investigation
  - its detailed manual record keeping and reporting allows it to keep abreast of any developing trends and assist with implementing remedies to rectify these areas

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- it has a high-resolution rate with only two of the 180 complaints being escalated due to the complainant not being satisfied with the outcome provided. Both were escalated to RTWSA and both of their reviews delivered the same outcome.<sup>1</sup>

100. EML aims to minimise complaints by providing a positive customer service experience. EML has stated that this includes:

- providing a seamless claim lodgement process through its Service Advisory Centre
- EML's Mobile Claims Specialists provide face to face support to stakeholders early in the claims process to support a positive recovery and return to work outcome
- in instances where a return to work outcome is not achievable, EML continues to provide support through its Mobile Claim Specialists until the end of entitlement, ensuring customers are aware of any support services available to them
- the two designated Customer Care Liaisons, who are independent to EML's operating teams, have both held operational roles and leadership positions and accordingly have significant technical and operation knowledge
- to ensure continuous improvement, proactive service call programs are performed periodically by EML to gain customer feedback and input into its claims processes. EML has cited some recent examples as helping to shape the Whole Person Impairment process, and Recovery and Return to Work Planning.

101. WIS advised that it provides information on the complaints management process at the time of lodgment of all new claims. WIS also submitted that the Case Managers and/or RTW Consultants build a relationship with the injured worker and any issues identified through the life of the claim can be addressed by taking reasonable steps to remedy them, prior to a complaint arising.

*Q9: A summary of areas of its complaint handling the agency thinks could be improved*

102. RTWSA has stated that it regularly reviews its complaints process to identify opportunities for improvement, with the most recent review occurring in 2020. That review identified areas for improvement such as consistency of approach between RTWSA and the claims agents, data collection, and identification of systemic issues. RTWSA has stated that it continues to work on improving these areas as well as continuously improving the complaint outcome information provided to complainants.

103. Further, RTWSA advised that it will continue to refine the management of complaints relating to private self-insured employers and given the decrease in complaints completed in 10 days in 2020, will undertake a further review to ascertain if this can be improved.

104. Gallagher Bassett provided the following response regarding areas in which it thought it could improve:

We are continually working towards circumventing the need for formal complaints to be lodged by improving our customer service to our customers.

To assist with identifying and improving our customer service experience a dedicated group of staff members, from various areas within our business, joined together to form Project SERVE (Support, Engage, Respect, Value and Excel).

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<sup>1</sup> I comment that this differs from the statistics provided by RTWSA, which indicate that it reviewed 13 complaints about Gallagher Bassett and eight of those complaints were substantiated or partially substantiated.

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Communication is paramount and has formed the basis for most the key focus areas for Project Serve, which have included:

- Revamping of our customer service training for new starters.
- A review of our telephone standards; including an increase in monitoring of reporting and the implementation of customer centric interventions for internal transfers.
- A creation of a road map of the business to assist staff internally identify who is the best person to assist a customer with their query.
- Internal refresher training of the technicalities of WPRR's which has been identified as a pain point for our employers.

105. EML has identified the following areas for improvement:

- provide increased visibility of complaint themes and stakeholder feedback, and how it uses this information to make improvements within the business, through the development of a quarterly plan, capturing key priorities to focus on for the purposes of improving service and minimising complaints
- development of a support resource for staff, which will include template letters and reference tools
- improved awareness across its business about managing and recording complaints. This includes understanding the difference between a complaint and an enquiry.

106. WIS advised that it identified an opportunity to engage in more proactive internal review of complaints in order to identify opportunities for improvement and share relevant information with all team members. To address this, WIS implemented two actions following the commencement of my audit:

- complaints relating to WIS will be incorporated into the monthly reporting submitted to the Senior Leadership Team for all other service delivery areas in Government Services
- a specific agenda item regarding complaints will be discussed at the WIS monthly team meeting.

*Q10: A summary of any improvements or changes to practices that have been made during the review period as a result of complaint handling.*

## **RTWSA**

107. As mentioned earlier in this audit report, RTWSA's review of complaint handling occurred in 2020 and led to a change as to how complaints and enquiries are tasked by its Complaints Team to the claims agents for their management through to completion. RTWSA has advised that a post-implementation review six months after the introduction of these changes has found that the new process is straightforward and easy to adhere to, resulting in no negative impact on workload or responsibilities.

## **Gallagher Bassett**

108. Gallagher Bassett provided the following response regarding improvements or changes that have been made during the review period:

Over the last two years, we have identified some opportunities to several of our internal processes that could be streamlined or have sections added to help ensure a clearer understanding of expectations and timeframes. Namely, Ombudsman SA matter 2019/08708, the outcome of which is being considered by your organisation.

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Our complaints reporting allowed us to identify an increased level of similar complaints that were being received in the business. The analysis of this identified the root cause which was rectified by resourcing and targeted training.

We have identified and created a new process which will allow any staff member to quickly identify if a third party has been given permission by the claimant to speak on their behalf. This was in response to a Legal Representative not being assisted as the receptionist could not confirm if the worker had given permission for the representative to act on their behalf.

As the needs of our customers change, Gallagher Bassett believes it is important to flex our customer service delivery and subsequent experience. We acknowledge that there are always opportunities internally and across the Scheme to create an improved customer service model. The current segmented model has derived from the complexities and intricacies of certain aspects and needs of a claim. The balance between seeking out the expertise of those with different specialties throughout the claim process and having a single point of contact is something that requires ongoing review across the Scheme.

Interventions allowing customers to have greater choice is something that we continue to explore. The 'self-service' option from the MyClaim App is the first iteration of the future platforms for our customers. Working in partnership with ReturnToWorkSA on such interventions has been advantages to the Scheme and something we are committed to continuing to invest in.

## **Employers Mutual**

109. During the review period, EML commenced a number of activities including:
- implementation of a monthly Customer Care Dashboard, which provides visibility of complaints and identifies key themes and opportunities for improvement
  - monthly meetings with its Learning and Development team to provide details on opportunities and areas of improvement
  - monthly meetings with its Account Managers to provide any insights from employers or opportunities to improve service delivery
  - development of improved reporting to better identify key themes and insights from complaints
  - reviewing and updating of onboarding material for new employees with procedural updates.

## **WIS**

110. WIS advised that all policy and procedure documents are reviewed and amended on a periodic basis, and that WIS implemented a number of process improvements as a result of the two complaints received by the Minister during the review period.

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## Part 2 - Case Reviews

111. My audit considered a sample of complaint files from each of the agencies. Each agency provided access to the entire complaint file, including correspondence to and from the complainant as well as internal correspondence and documentation.
112. To maintain confidentiality, any names used in this audit report are pseudonyms.

### RTWSA

113. I have reviewed 12 complaint files provided to my audit by RTWSA.
114. RTWSA records each matter under a form titled 'Complaint/Enquiry' (**the Complaint Form**) which comprises the following sections:
- Details (including the date that the complaint file was opened and closed)
  - Lodgement (including the name and contact details of the complainant)
  - Background (information pertaining to the complaint)
  - Questions (questions posed to the relevant point of contact for the purposes of assessing the complaint)
  - Solution/Response (the responses to the above questions)
  - Outcome (outcome of the complaint, including any action taken by RTWSA following consideration of the issues raised in the complaint)
  - Result (classification of complaint outcome, i.e. whether substantiated or not substantiated).
115. In addition to the above form, RTWSA also completes a 'Complaint Investigation Report' which appears to contain more detailed information than the Complaint Form. The 'Complaint Investigation Report' includes a section that summarises the issues raised in the complaint and a detailed chronology of events relevant to the complaint.
116. I note that the 'Complaint Investigation Report' provides extensive information relating to a particular complaint, including background information and a summary of the relevant issues. In my view, I consider the 'Complaint Investigation Report' to be a comprehensive method of complaint record keeping that also adequately documents the actions undertaken by RTWSA and its reasons for arriving at an outcome.
117. Of the 12 complaint files provided to my audit, only two complainants were provided with an outcome within 10 business days. That said, in each instance, RTWSA ensured that it provides an interim response to a complainant advising that the matter requires further investigation. As discussed earlier, RTWSA has indicated that it will undertake a further review to ascertain whether timeliness can be improved. However, I accept the reasons provided by RTWSA as to why a complaint investigation may exceed the 10 business day timeframe given its oversight role in relation to the claims agents and self-insured employers.
118. In the majority of the 12 complaint files, RTWSA notified the complainant of an outcome by email. In some instances, it appears that a complaint outcome was first communicated by telephone and then a subsequent email was also sent, confirming that discussion.
119. There is one instance of an outcome being communicated by a telephone call, but a record of that call was not provided to my audit. However, RTWSA's Complaint form indicates that the particular complainant was advised of an outcome by telephone in addition to the remedy that would be actioned. Therefore, there is still a record of an

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outcome being communicated to the complainant. This was the only instance of a RTWSA file not also containing an email confirming the outcome. I comment that best practice in record keeping requires that all telephone calls be written up and recorded on the file.

120. In each complaint file provided to my audit by RTWSA, it is evident that the complainant was provided with an opportunity to provide feedback on how their complaint was managed. Further, RTWSA also communicates to complainants, at the time of advising of an outcome, that a complainant may escalate the particular matter to my Office if they are dissatisfied with the outcome of a complaint investigation by RTWSA. This is particularly important in the context of RTWSA complying with its own Complaints Policy, as well as clause 6 of the Service Standards.
121. Pursuant to RTWSA's Complaints Policy, it will classify a complaint outcome or decision as either substantiated, unsubstantiated or partially substantiated. While RTWSA's 'Complaint Investigation Report' will identify each issue raised within a complaint, and assign one of the above classifications to each issue accordingly, this does not appear to occur under the Complaint Form. That is to say, the Complaint Form assigns one outcome to the complaint, while the 'Complaint Investigation Report' may indicate that some issues within the complaint are substantiated, while other issues are unsubstantiated. However, it appears that when communicating an outcome to a complainant, RTWSA will advise as to the outcome of each issue raised within the complaint. It is likely the case that the Complaint Form serves as a snapshot of the matter, in contrast to the detailed information outlined in the 'Complaint Investigation Report'.
122. In the context of the above, I note one instance of communication from RTWSA to a complainant regarding a complaint outcome, where it does not appear that RTWSA explicitly advised of whether the complaint has been substantiated, unsubstantiated or partially substantiated. Instead, the outcome communicated to the complainant appears to detail each issue raised in the complaint, and the responses received by RTWSA from WIS. While the Complaint Form records the complaint as partially substantiated, that is not clear in the outcome communicated to the complainant. However, I acknowledge that the outcome communicated to the complainant provides details of the actions that WIS was taking in response to each of the issues raised in the complaint.
123. RTWSA will also categorise issues in a complaint as follows:
- breach of legislation (non-compliance with the provisions or timeframes of the Act and supporting legislation)
  - breach of Service Standards/policy/claims agent contract (non-compliance with published policies or Service Standards)
  - service recovery opportunity (where non-compliance with legislation or policy is not identified, but customer service and/or communication has been poor)
  - improvement opportunity (where non-compliance or service are not an issue but the opportunity to improve service or process is identified).
124. There appears to have been two complaint files from the 12 provided to my audit that were substantiated due to a breach of the Service Standards. With reference to the relevant 'Complaint Investigation Reports', one appears to detail which standards have been breached, while the other does not. In instances of substantiated complaints due to a breach of Service Standards, I am of the view that recording which Service Standard has been breached is fundamental to adequate complaint record keeping under the Act.

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125. Four of the complaints that I reviewed were substantiated while three were partially substantiated. The remaining complaints were unsubstantiated. With consideration of clause 7 (available remedies in the event of a breach of the Service Standards), RTWSA appears to action the appropriate remedies in accordance with the Act, notwithstanding one partially substantiated complaint. Five of those complaints appear to have resulted in an apology being issued<sup>2</sup> to the complainant by either RTWSA or the claims agent that was the subject of the complaint. In the event that a complaint outcome warrants an apology from the claims agent, RTWSA appears to communicate to the complainant that the apology will occur and ensures that it receives confirmation of that apology taking place (usually by telephone or email confirmation). In one instance, RTWSA took reasonable steps to remedy the matter (eligibility for a payment waiver upheld).<sup>3</sup>
126. As above, while one partially substantiated complaint did not appear to result in a remedy under clause 7, it is not evident that the partial substantiation was connected to a breach of the Service Standards. Further, RTWSA appears to have communicated actions to be taken by WIS in light of the issues raised in the complaint.
127. Although it appears that only two of the above seven complaints were substantiated or partially substantiated due to a breach of the Service Standards, it appears RTWSA ensures that the complainant is provided with a remedy, under clause 7, in the event the complaint outcome falls within any of the categories outlined at paragraph 123.

### **Gallagher Bassett**

128. I considered 12 case files from Gallagher Bassett, with a range of outcomes including substantiated, not substantiated or partially substantiated.
129. The primary form used by Gallagher Bassett to record the matter is the same Complaint Form that is used by RTWSA.
130. Gallagher Bassett's record keeping of complaints is generally very robust. The Complaint Form is comprehensively filled out, particularly the Questions section and the Solution/Response section.
131. Gallagher Bassett also provides clear information in the Outcome section, recording succinctly the reasons a complaint is/not substantiated, and which aspects were substantiated in the case of a 'partially substantiated' matter. Substantiated complaints generally include reference to which Service Standard has been breached, as well as whether there have been any breaches of any internal policies such as the RTWSA Business Model.
132. In some of the case files my audit considered, there were incidents where a telephone call appeared to have taken place, but there was no written record of that telephone call. In some instances, this was noticed during the complaint process and a telephone call was later uploaded, or was uploaded with further details if sufficient detail had not been provided. However, there were occasions where the Complaint Form stated that a telephone call had taken place, but no record was located anywhere on the complaint file.

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<sup>2</sup> Schedule 5 to the *Return to Work Act 2014*, clause 7(a).

<sup>3</sup> Schedule 5 to the *Return to Work Act 2014*, clause 7(g).

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133. Enquiries were made about this issue with Gallagher Bassett. Gallagher Bassett indicated that its record management policy requires all communications to be uploaded within 24 hours of the communication. Gallagher Bassett noted that a large portion of its staff are mobile and can experience challenges with connectivity issues or may be scheduled in a number of meetings in a day. Gallagher Bassett advised that it continues to embed the importance of records management to its staff.
134. My audit considered whether, in each of the sample case files, the complainant was advised of the outcome of their complaint. In all but one of the files, there was clear evidence that the complainant was advised of the outcome by either email or telephone (or in one matter, in a face-to-face meeting).
135. In the remaining matter, it was not clear from the documents whether the complainant, Edgar, had been advised of the outcome of the complaint. The Complaint Form had requested that a Team Leader contact Edgar. However, this did not occur - instead the Team Leader requested that the RTW Specialist contact Edger to 'provide an update'. The RTW Specialist did so but did not actually perform the role of addressing the complaint or advising of a complaint outcome. The issue Edgar was complaining about was a delay in a medical expenses payment being approved. At the date the complaint file was closed, the medical payment had still not been approved.
136. Information was sought from Gallagher Bassett about Edgar's complaint file, including an explanation as to why the file was closed at that time. Gallagher Bassett provided the following response:
- This complaint was closed as we were looking into whether there was a lack of action in processing the request for a bike and the refusal to supply equipment. As we determined there was no lack of action or refusal there was nothing further for us to investigate. If the complaint had been about the bike which had been approved but not supplied, the complaint would have been left open until the bike was received. However, in this situation any ongoing task such as getting the required approval for the bike and then purchasing of the bike are still monitored/tracked to ensure no further delay are incurred.
137. It would appear that the worker was never formally advised of the outcome of their complaint. Further, in my view the file should have been left open until a decision was made as to whether a bike would be provided, given that the worker was complaining about a delay in processing a request for a bike. In this individual matter, Gallagher Bassett fell short of optimal complaint handling and did not comply with clause 6(1) of Schedule 5 to the Act, which requires Gallagher Bassett to work with a person who lodges a complaint to help him or her to address and resolve problems and concerns and to find a resolution to the matter in an effective way.
138. My audit also considered whether Gallagher Bassett has been complying with clause 7, which deals with remedies to be applied in the event of a breach of a service standard.
139. Eight of the 12 complaint files were either substantiated or partially substantiated. In seven of the eight matters, one or more remedies were provided. In five matters, an apology was provided.<sup>4</sup> In two matters, a delayed claim was finalised.<sup>5</sup> In two matters,

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<sup>4</sup> Schedule 5 to the *Return to Work Act 2014*, clause 7(a).

<sup>5</sup> Schedule 5 to the *Return to Work Act 2014*, clause 7(d).

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a new RTW Specialist was allocated to the worker.<sup>6</sup> In one matter, a payment was made which had been denied in error.<sup>7</sup>

140. In the final matter, no remedy appeared to have been provided. The complaint was from a worker, Lily. Gallagher Bassett's Complaint Form indicates that it considered the complaint to be partially substantiated. However, in the email sent to Lily which detailed the outcome of her complaint, the email related to all of the issues which were considered unsubstantiated. It does not appear to me that Lily would have been aware that one of her issues was substantiated. The email did not contain an acknowledgement that Service Standard 4(e) had been breached nor did it contain an apology for this breach or any other remedy.
141. I note that the issue which was substantiated was a failure by Gallagher Bassett to return Lily's email within one business day. I note that this is a breach of an internal timeframe, rather than a statutory timeframe. Nevertheless, given Gallagher Bassett considered this aspect of the complaint to have been substantiated, and the Complaint Form specifically outlined that there had been a breach of schedule 5(4)(e), Gallagher Bassett was required to provide one of the remedies outlined in clause 7. In this instance, clause 7 was not complied with.
142. There was one file in which the complaint appeared to be substantiated, but Gallagher Bassett classified it as unsubstantiated. The complainant, Ulysses, was the legal representative for a worker and had provided an authority to represent the worker in dealings with Gallagher Bassett. For reasons which are unclear, the authority was not clearly identified on the electronic file. Therefore, after routinely dealing with one RTW Specialist for several months, Ulysses was surprised one day to find that the Gallagher Bassett receptionist refused to speak with him on the grounds that he was not an authorised contact, and the newly allocated RTW Specialist also refused to speak with him.
143. Following an investigation of this complaint, the matter culminated in a meeting between the Ulysses, the RTW Specialist and the Team Manager. The record of this meeting is contained in an email sent from the Team Manager to Ulysses, following the meeting. The Team Manager confirmed with Ulysses that internal coaching and development had been provided to the receptionist staff; that Ulysses had indicated that he was satisfied with this; and an apology was offered for the misunderstanding and frustration experienced by Ulysses.
144. Further, Gallagher Bassett provided information to my audit which indicated that in response to this complaint, a change of process had been implemented in how third party authorities were recorded, including a change of two internal policies: Maintaining Confidentiality and Privacy Breaches, and External Parties Accessing Claims Information.
145. Despite the above, Gallagher Bassett considered the complaint to be unsubstantiated. The Claims Form recorded the outcome as:

Not substantiated - whilst the [RTW Specialist] or the Receptionist did not locate the authorisation for [Ulysses] to speak on behalf of the worker...both the [RTW Specialist] and the receptionists acted in line with Gallagher Bassett's security procedures when the information given/presented to them seemed questionable.

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<sup>6</sup> Schedule 5 to the *Return to Work Act 2014*, clause 7(g).

<sup>7</sup> Schedule 5 to the *Return to Work Act 2014*, clause 7(g).

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Customer Feedback also acknowledges, that whilst [the RTW Specialist] and [the Receptionist] did not present [Ulysses] with the option of speaking to Customer Feedback to lodge a complaint which is a breach of the RTW Act, [Ulysses'] complaint did not cover this matter. Therefore, this information has not been considered for the outcome of the complaint. Customer Feedback also acknowledges that the purpose of this policy has been discussed with both staff members.

Also, a recommendation to the Technical Training Specialist Team to incorporate and (sic) enhancement which will allow us to place on each claim an authority alert for quick easy reference for staff who are not familiar with the claim (e.g. reception, the hub, etc). This alert [will] only need to be placed on one claim and it will be mirrored across all claims for that worker.

146. In all the circumstances, in my view this complaint ought to have been classified as substantiated.
147. It is pleasing to note that, with the exception of the three files discussed above, the Gallagher Bassett case files examined as part of this audit evinced good complaint handling practices. Gallagher Bassett appears to set itself a high bar when it comes to the provision of complaint management services. I am mindful that these case files are only a small snapshot of the complaints received by Gallagher Bassett. I consider Gallagher Bassett's performance, and compliance with the Act, further in this audit report in Part 3 - Benchmarks.

## **Employers Mutual**

148. I have reviewed 12 complaint files provided to my audit by EML.
149. EML also records matters on the Complaint Form. This appears consistent with RTWSA's 'Instruction to Claims Agents - Complaints management'.
150. EML also appears to comprehensively record information pertaining to a complaint that it receives, particularly the Background, Questions and Solution/Response sections of the Complaint Form.
151. Consistent with its formal response to my audit, it appears that EML provided an outcome to all 12 complainants within ten business days.
152. EML also appears to provide some detail in the outcome section of the Complaint Form, such as any actions undertaken to resolve a complainant's concerns and whether or not a complainant is satisfied with the outcome arrived at by EML.
153. I observed only one instance of a telephone call that was not accompanied by a written record of the call occurring. It appears that EML's Customer Care Liaisons send an email to their own inbox, outlining details of any phone calls that have been made during the complaint process. That said, I observed one instance of a Customer Care Liaison informing a complainant that a Team Leader would contact them, in addition to the Complaint Form recording in the Solution/Response section that the 'TL spoke to the employer and followed up with an email to resolve the concerns...an apology was issued and matter resolved'. However, there does not appear to be any written record of that occurring. I note that this particular matter was an enquiry from 2019.

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154. I also note that a small number of the complaint files from 2020 appear to contain internal memos titled 'Record Communication'. While not present in every complaint file, this appears to be utilised in certain circumstances to serve as a written record of a telephone call made by a Customer Care Liaison.
155. It is evident in each of the complaint files provided that EML notifies a complainant of an outcome to their complaint. In the majority of the complaints that I reviewed, it appears that communication occurred by telephone. Further, EML also appears to provide sufficiently detailed reasoning for arriving at a certain outcome to a complainant.
156. Of the twelve EML complaint files considered by my audit, seven complaints were partially substantiated and two were substantiated. In each instance, I have considered whether EML provided an appropriate remedy as required by clause 7 of the Act.
157. I consider that EML has complied with clause 7 in each of the complaint files that I have considered. EML appears to have provided the complainant with some form of apology<sup>8</sup> or taken steps to remedy the matter<sup>9</sup> on each occasion. I comment that EML also appears to outline any relevant 'next steps' as part of a complaint outcome, given that most of the complaints that were substantiated or partially substantiated appear to be about 'service delivery' or 'communication issues' in connection with an ongoing worker's claim. That is to say, EML may also inform a complainant of any actions it intends to undertake to progress a particular claim.
158. However, in all the EML complaint files that I considered that were substantiated or partially substantiated, there does not appear to be any reference, either internally or otherwise, of a particular Service Standard being breached. In circumstances where complaints have been upheld due to 'communication issues' or 'service delivery', I consider that standards 4(e) and 4(f) may be particularly relevant and should be recorded on the Complaint Form.
159. In its response to my provisional audit report, EML indicating that it will liaise with RTWSA to discuss the potential for system and/or process enhancement to address this observation.
160. I also comment that while the emails sent by EML Customer Care Liaisons appear to contain hyperlinks which allow a complainant to provide feedback in respect of customer service, I was not able to identify any instance of a complainant being informed of the option to escalate a complaint to my Office. I acknowledge that EML advised one complainant of RTWSA as an escalation point and I also observed a number of instances where EML advised a complainant they are able to contact again if any future issues arise (where complaint appears to have been satisfactorily resolved) and of EML committing to provide a complainant with timely updates regarding the progression of a claim (where complaint is partially substantiated).

## WIS

161. WIS had received only 15 complaints in the review period. Due to their unique nature and complexity, I determined my audit would not include a review of the Ministerial complaints. WIS identified that three of the 15 complaints had been Ministerial complaints. My audit therefore considered the remaining 12 complaints.

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<sup>8</sup> Schedule 5 to the *Return to Work Act 2014*, clause 7(a).

<sup>9</sup> Schedule 5 to the *Return to Work Act 2014*, clause 7(g).

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162. WIS advised that it used hard copy files for the claims files, but that it did have an electronic Corrective Actions Register (**CAR**) on which complaints were recorded. The form used to record complaints is titled the Corrective Action Form and comprises the following sections:
- CAR number
  - Date issued (the date the complaint was received)
  - The name of officer the complaint was issued to
  - Action description (a description of the complaint)
  - Action taken (a description of the action taken to investigate and resolve the complaint)
  - Date completed (the date the complaint file was closed).
163. I note that the Corrective Action Form does not have a section to record whether a complaint was substantiated or unsubstantiated. I acknowledge that WIS receives low complaint numbers. However, for data collection purposes, WIS should add a box denoting whether a complaint was substantiated or unsubstantiated. In many cases, a person reviewing the complaint file would need to read the whole file in order to determine whether or not a complaint had been substantiated. I address this further in my recommendations later in this report.
164. My audit also observed, based on the documentation and discussions with WIS, that WIS does not appear to assess complaints through the lens of considering whether there has been a breach of the Service Standards.
165. Five of the 12 complaints were from the same complainant, Stella. I acknowledge that Stella was at times difficult to deal with and there was a high level of contact between Stella and her RTW Consultant. However, this does not mean that all of her complaints are baseless. Three of the five complaints were not substantiated, one was substantiated and one was partially substantiated.
166. In relation to two of Stella's complaints (one unsubstantiated, one partially substantiated), my provisional audit report observed that WIS did not advise Stella of the outcome of the complaint. In both these matters, Stella originally lodged a complaint with RTWSA. As per its Complaints Policy, RTWSA referred the complaint to WIS to deal with in the first instance. This means it is the responsibility of WIS to assess the complaint, determine whether or not it is substantiated, and to advise the complainant of the outcome. In these two instances, WIS provided a response to RTWSA but did not appear to have contacted the complainant to advise her of the outcome.
167. There is no suggestion that RTWSA was obliged to, or did, communicate with Stella to convey the outcome of the complaint. In referring one of the complaints to WIS, RTWSA stated 'in line with RTWSA's complaints policy, this complaint is being referred to you to manage in the first instance'. Following the provision of a response from WIS, RTWSA stated 'as raised in my initial email to you, in line with ReturnToWorkSA's complaints policy, we will leave the continued management of [Stella's] concerns with you.'
168. My provisional audit report concluded that Stella was simply never advised of the outcome of these two complaints, and commented that this is both poor complaint handling practice, and a breach of clause 6 of the RTW Act.

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169. In its response to my provisional audit report, WIS submitted that in both cases, Stella's case manager made contact with Stella to address the issues raised in the complaint. WIS reiterated that Stella and her case manager had daily email correspondence. WIS also provided additional emails as evidence.
170. In relation to the partially substantiated complaint, having considered the additional evidence, I remain of the view that Stella was not formally advised of the outcome of her complaint. Stella's complaint to WIS raised five issues. I acknowledge that in some further emails from the case manager, some of the issues were discussed. However, a formal email from either the case manager or the complaints officer, acknowledging the complaint and responding to all five issues clearly, would have been preferable.
171. In relation to the unsubstantiated complaint, the additional emails indicate that whilst Stella was initially advised a pharmacy invoice would not be paid, Stella was advised later that day that the invoice had in fact already been paid. While the initial miscommunication caused some confusion, it does appear that Stella was informed of the outcome of her complaint.
172. In one other instance, a complainant was not formally advised of the outcome of his complaint. However, the facts of the matter were quite different. Felix had complained that he had not been provided with his documents within the 45 day timeframe stipulated by section 180 of the Act. The complaint was substantiated and the remedy provided was that Felix was provided with the documents. Whilst there was a practical resolution to the complaint, I consider it would have been good complaint handling practice to write separately to Felix with an apology for the delay and clarifying that his complaint was substantiated, but had now been resolved with the provision of the requested documents.
173. Apart from these instances, each other complainant was advised of the outcome of their complaint. This would not appear to be a systemic issue, but rather individual instances of sub-optimal complaint handling.
174. As noted above, WIS is currently not actively turning its mind to whether there has been a breach of the Service Standards. However, it did consider six of the complaints which I reviewed in my case reviews to have been substantiated or partially substantiated. I therefore considered whether WIS has been complying with clause 7, which deals with remedies to be applied in the event of a breach of a service standard.
175. One of these six complaints was not a complaint to WIS, but rather an enquiry from Ombudsman SA. I have not further considered this file.
176. Four of these complaints would appear to fall into the category of Service Standard 4(e) being breached: treat a worker and an employer fairly and with integrity, respect and courtesy, and comply with stated timeframes. Most of these complaints related to instances of delays.
177. One case has been mentioned above, and the remedy was that Felix was provided with a copy of his file.<sup>10</sup>
178. In one case, the complainant was provided with an apology and was allocated a new RTW Consultant.<sup>11</sup>

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<sup>10</sup> Schedule 5 to the *Return to Work Act 2014*, clause 7(e).

<sup>11</sup> Schedule 5 to the *Return to Work Act 2014*, clause 7(a) and 7(g).

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179. In one case, which involved a complaint about a delay in a claim being finalized, the complainant was provided with an apology and the claim was finalized.<sup>12</sup>
180. In one case, the complainant was provided with a written explanation for the delay.<sup>13</sup>
181. In the final case, WIS indicated to me that it considered the complaint to have been partially substantiated. The complainant, Stella, had raised 5 issues with RTWSA. As mentioned above, WIS did not contact Stella to advise her of the outcome of her complaint. Having considered the documents provided to my audit, it is unclear which issues, and how many issues, were considered to be substantiated, and which were considered to be unsubstantiated. No clause 7 remedy was provided to Stella.
182. Therefore, it appears that despite not actually turning its mind to whether the service standards had been breached, in all but one instance WIS had complied with clause 7 by providing an appropriate remedy. Nevertheless, WIS should be including in its CAR a section on which service standard is alleged to have been breached, and what remedy was provided. I address this further in my recommendations.

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<sup>12</sup> Schedule 5 to the *Return to Work Act 2014*, clause 7(a) and 7(g).

<sup>13</sup> Schedule 5 to the *Return to Work Act 2014*, clause 7(b).

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## PART 3 - BENCHMARKS

183. My audit assessed each of the agencies against five benchmarks: Timeliness, Accessibility of Information, Navigation, Procedural Fairness and Continuous Improvement.

### Timeliness

184. My audit assessed the agencies for compliance with Schedule 5, clause 6(3)-(4) which requires a response to a complaint within 10 business days, or if an extended investigation is required, an interim response.

185. Timeliness in complaint handling is important. In many instances, a complaint relates to a delay in the provision of a service, or the making of a decision, in relation to a return to work claim. Further delays in the complaint handling process would exacerbate the problem and lead to increased dissatisfaction on the part of the complainant.

186. I am pleased to note that each of the agencies is fully compliant with the statutory timeframes set out in clause 6.

### Accessibility of information

187. My audit assessed the agencies based on the information that is made accessible to the public, in any format, about its complaint handling practices. This includes information available in pamphlets, website information and information sheets. My audit considered the extent to which the agencies are compliant with Service Standard 4(f), which requires the agencies to provide accurate and complete information that is consistent and easy to understand, including options about any claim, entitlements, obligations and responsibilities. My audit also considered the extent to which the agencies are compliant with Service Standard 4(j), which requires the agencies to provide avenues for feedback, and to be clear about what can be expected as a response.

188. The area of return to work can be a complex area that workers may struggle to navigate. It is the role of the agencies to provide clear, simplified information to workers and employers, to enable them to traverse this area of law with as much ease as possible. Injured workers are a vulnerable category of persons, often facing personal and financial difficulties as a result of an injury. The importance of clear information being made accessible cannot be overstated.

189. In addition to considering the provision of information about a claim, my audit also considered the provision of information about the available complaint handling processes. As part of this, my audit assessed the agencies for compliance with clause 6(2)(b), which requires the agencies to advise a complainant of the procedure that can be followed to lodge a complaint with the State Ombudsman if the person is not satisfied with the resolution of the matter by the Corporation.

190. Clause 6(2)(b) therefore requires that **all complainants** be informed of their right to approach my Office with a complaint, regardless of whether they are satisfied with the outcome of the complaint handling of the agency in the first instance. I view this as a statutory right. I do not consider it is sufficient for an agency to only inform complainants of their right to approach Ombudsman SA if the complainant specifically indicates dissatisfaction with the complaint handling of the agency.

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191. As the statutory authority responsible for administering the Act, RTWSA provides extensive and easy to understand information on its website about its complaints process. This includes:
- information on how to make a complaint, including detailed information on the RTWSA complaints team and contact information for persons who may require further support when making a complaint
  - how RTWSA will manage a complaint, including a number of service commitments
  - an avenue which allows for the lodgment of online complaints
  - how to access information about a particular claim
  - a list of useful contacts for any RTW participants, including information about my Office, SAET, Legal Services Commission SA and SafeWork SA.
192. It is important to note, given RTWSA's responsibility for regulating all return to work scheme participants, that RTWSA also provides information on its website about the process for the escalation of complaints if a person remains dissatisfied with the organisation the complaint relates to (such as a complaint about a claims agent).
193. Gallagher Bassett makes available on its website a Frequently Asked Questions Section for workers and employers which contains information on lodging complaints. It also provides an opportunity for persons to provide feedback on experience with its service. Gallagher Bassett's service commitments are outlined in its Service Charter, which is also available on its website. In addition, the Gallagher Bassett website provides a link to the RTWSA website.
194. EML's National Complaint Management Policy outlines that 'Information about EML's complaint process is required to be readily available, written in plain English'. It appears that EML's website allows persons to lodge complaints through its 'Feedback' portal, and provides a person with the option of choosing the method of how EML responds to the complaint (such as by telephone, or face to face). That said, and while EML's *Customer Commitments* and *Service Standards* are also readily available on its website (which outline commitments such as responding to phone messages within one business day), I consider more visibility could be afforded to the public on EML's management of complaints and the subsequent process. I have arrived at this view following consideration of the information made available on its website, and in the absence of any further evidence provided to my audit as to how EML makes information accessible to the public about its complaint handling practices.
195. In its response to my provisional audit report, EML indicating that it is currently reviewing the National Complaints Policy as part of its annual review, and will incorporate this feedback within the scope of its review.
196. WIS have a 'Your Road to Recovery' booklet available on the Department of Treasury and Finance website which appears to serve as a useful public resource for informing an injured worker of their rights and responsibilities. This resource refers persons to their agency's complaint management procedure. WIS also make available the Internal Complaint Management Process. Both of these documents are provided to claimants at the start of the claims process.
197. My audit has considered whether the agencies are complying with Service Standard 4(f). I am satisfied that each agency provides sufficient information, which is consistent and easy to understand, to workers and employers about claims, entitlements, obligations and responsibilities. I have arrived at this view based on the information and responses provided to my audit, including the information that each

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agency makes publicly available. I also acknowledge that there are likely further resources that each agency provides to workers and employers in this context, such as the 'My Claim app'. Ultimately, in this regard, I consider that each agency is complying with Service Standard 4(f).

198. My audit has also considered whether the agencies are complying with Service Standard 4(j). I am satisfied that each agency has in place suitable avenues for the making of complaints. However, in my view some of the agencies could improve their communication to complainants about what can be expected as a response to their complaint. In making this comment, I am mindful that much communication with complainants occurs over telephone conversations, and even a thorough written record of a telephone call is not a transcript. I note that the RTWSA website has the most comprehensive information about the complaints process, and also note that the Gallagher Bassett website redirects users to the RTWSA website to seek more information about the complaints process. While I do not intend to make a formal recommendation, EML and WIS may wish to consider updating their website information to also provide a link to the RTWSA website.
199. In respect of compliance with clause 6(2)(b), based on the sample of complaint files provided to my audit, in addition to the information that is made publicly available, it is apparent that RTWSA is adhering to the legislated requirement of notifying complainants of their right to escalate a complaint to my Office in the event they may be dissatisfied with RTWSA's resolution of the matter.
200. It does not appear from my review of the Gallagher Bassett complaint files provided to my audit that it consistently advises complainants of the right to escalate a complaint to my Office. Whether or not this is occurring at the time of complainants being verbally advised of an outcome of their complaint, is not evident on the material before me. In a limited number of cases, the right to approach Ombudsman SA was included in an email sent at the start of the complaint process. In one of the 12 files, the complainant asked about their right to escalate the complaint and was advised of the contact information for Ombudsman SA. In one of the 12 files, in the email advising of the complaint outcome, the complainant was given information about my Office. On the evidence, it does not appear that this occurred in the other ten files, at the time that the complainant was advised of the outcome of their complaint. It would therefore seem that whilst Gallagher Bassett is complying with clause 6(2)(b) on occasion, it is not consistently complying with clause 6(2)(b).
201. It is not clear from my review of the EML complaint files provided to my audit that EML advises complainants of the right to escalate a complaint to my Office. While EML has indicated in its response that it has complaint escalation processes in place, and this is explicitly outlined in its National Complaint Management Policy, I am unable to form a view that this is happening in practice. While I acknowledge the complaint files provided to my audit may not reflect instances of complainant dissatisfaction, as aforementioned, clause 6(2)(b) requires that all complainants are to be informed of their right to approach my Office irrespective of whether they are satisfied with a particular agency's handling of their complaint.
202. The Road to Recovery booklet and the Internal Complaint Management Process, provided by WIS to workers at the commencement of a claim, contain references to Ombudsman SA's complaint handling jurisdiction. However, to comply with clause 6(2)(b) a complainant must be advised of their review rights at the conclusion of the complaint process, ordinarily at the time they are advised of the outcome of the complaint. I have therefore considered the case files to determine whether this has occurred.

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203. As mentioned above in this audit report, in two instances the complainant was not advised of a complaint outcome. I acknowledge that one of the 12 files was in fact an Ombudsman SA enquiry, and that five of the other complaints were received from the same individual. I also acknowledge that this individual was aware of both the existence and role of RTWSA and Ombudsman SA, and that WIS were aware of this. Therefore, this individual was aware of their review rights.
204. Regarding the remaining five matters, WIS did not inform any of these complainants about their right to approach my Office with their complaint. In one of these matters, WIS sent an email to RTWSA indicating that RTWSA may expect contact from the complainant, as the complainant was dissatisfied at the end of the complaint process. There is no evidence that WIS advised this complainant of a review right to RTWSA - the complaint was originally lodged with RTWSA and was then referred back to WIS for actioning and response.
205. In summary, I am concerned that in practice, and notwithstanding my comments on RTWSA's apparent compliance with clause 6(2)(b), this may not always be occurring, and I have identified compliance with this clause as an area for improvement by the remaining agencies. That said, I acknowledge RTWSA's oversight and regulatory role, and that generally speaking, RTWSA will often be the first point of escalation for complainants dissatisfied with the handling of a complaint by either Gallagher Bassett, EML or WIS. I have addressed this in the recommendations section of this report.

### Navigation

206. My audit assessed the agencies on how easy their complaint process is to navigate. This included whether they accept complaints in varied formats (telephone, in writing, in person, etc.), and whether they take additional steps to ensure that particularly vulnerable complainants can access the complaint handling framework.
207. I am pleased to note that all of the agencies accept complaints in a variety of formats.
208. All of the agencies are also taking steps to facilitate complaints from complainants who may need additional assistance to make complaints. Special provisions made include providing translation services for languages other than English, speech or hearing difficulties; facilitating a support person or an advocate to represent a person; and actively assisting a complainant to make their complaint including arranging a meeting in person.
209. It appears that all of the agencies have a complaint handling process which is reasonably easy to navigate.

### Procedural fairness

210. My audit considered whether the agencies are providing procedural fairness to complainants. The basic requirements of procedural fairness are that decisions should be made free from bias; decisions made should be rational and based on evidence; and people who are likely to be adversely affected by decisions should be given an opportunity to be heard before a decision is made.
211. My audit considered whether complainants are being given a right of response prior to a final decision being made regarding their complaint, and whether the agencies are providing sufficient reasons for their decisions.

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### *Right of response*

212. The purpose of providing a preliminary or tentative decision to a complainant, prior to advising them of the final decision, is to allow the complainant to correct any factual mistakes the decision maker may be relying on, and to allow the complainant to put forward any other submissions they may not yet have made.
213. RTWSA indicated that it does not provide complainants with a formal right of response to preliminary decisions. However, one way that RTWSA provides procedural fairness is to encourage complainants to provide any evidence to support their complaint, early in the complaint process. By asking clarifying questions or seeking further relevant information from a complainant, RTWSA can ensure that it has all of the relevant information before it, to enable it to make an informed decision.
214. Gallagher Bassett indicated that it generally notifies complainants of complaint outcomes via telephone call. This enables back and forth discussion and during this discussion, a complainant is able to raise any objections or add in any information that was not given previously. While in the case files that my audit reviewed, none of the files included a complainant providing further information at this stage of the complaint process, it would appear that Gallagher Bassett would be open to reviewing or re-making the decision, if this did occur.
215. Employers Mutual indicated that generally, all decisions are discussed verbally, and that its Customer Care Liaisons will invite responses, and offer the opportunity to supply further information, prior to finalising a decision.
216. WIS did not provide particular submissions on this issue, apart from referring to its Injury Management Policy which outlined the expectations regarding procedural fairness. Based on the case reviews considered by my audit, WIS does not appear to be formally providing complainants with a right of response, prior to a final decision being made. However, overall, it does appear that WIS is affording its complainants procedural fairness.
217. Another aspect of procedural fairness is the ability to escalate a matter to a higher complaint body, in order to have the matter independently reviewed. I have addressed this matter already in this audit report.

### *Sufficient reasons for decisions*

218. An important aspect of good complaint handling is providing sufficient reasons for decisions. This assists complainants in understanding why a particular decision was made, including understanding that the decision was made fairly and not capriciously. Providing reasons for decisions also empowers a complainant to seek a review of that decision, by escalating the complaint to RTWSA and/or to Ombudsman SA, if they believe the decision was incorrectly made. Without reasons for a decision, it is difficult to meaningfully dispute that decision.
219. Each of the agencies has indicated that they endeavour to provide a high level of service to workers and employers in the first instance, to reduce the incidence of complaints.
220. Each of the agencies has also indicated that they endeavour to follow good complaint handling practices and to ensure that the complainant is satisfied at the conclusion of the complaint process.

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221. However, there will always be instances where a complainant is not satisfied and wishes to take their complaint to another body to have it reviewed. To do so, the complainant must be informed about their review rights, informed about the outcome of the complaint handling decision at first instance, and informed about the reasons behind that decision. Generally, it is most important to provide detailed reasons for a decision when the decision is that a complaint is unsubstantiated. A complaint that has been substantiated, with an appropriate and effective remedy provided, is unlikely to be escalated to another complaint body.
222. In its response to my audit, RTWSA indicated that whilst it does endeavour to provide sufficient detail for outcomes, it has noted that this is an area which can be improved. In the files reviewed as part of my audit's case review, RTWSA appears to have provided every complainant with an outcome and does appear to have provided sufficient reasons for its decisions. However, I am mindful that my audit only considered a sample of case files which provided a snapshot of the complaints handled by each of the agencies.
223. Gallagher Bassett indicated that during its telephone conversations with complainants discussing the outcome of a complaint, or in written communications, explanations for decisions are provided.
224. With the exception of one file, discussed above in the case reviews section, in which the complainant was not formally notified of the outcome of their complaint, the other files all demonstrated that reasons for the decisions were given.
225. Employers Mutual indicated that when providing a complaint outcome to a complainant, reasons for the decision are provided. This is supported by the files considered in the case reviews section of this audit. My audit did not identify any instances where a complainant was not informed of the outcome of their complaint.
226. WIS informed my audit that all decision makers ensure that reasons for decisions are provided. Of the 12 files considered in my case review, this was true for the nine files in which the complainant was informed of the outcome of their complaint. However, in three matters, the complainant was not informed of the outcome of their complaint. Therefore, it is apparent that reasons for the decision were not provided in those three instances.
227. In summary, it appears that all of the agencies are affording procedural fairness to their complainants, with the exception of instances in which complainants are not formally notified of the outcome of their complaint. I have addressed this further in my recommendations section.

### Continuous improvement

228. My audit assessed the agencies for compliance with clause 8. This included an assessment of the involvement of upper management in tracking complaints, the agencies' openness to make changes if a complaint identifies an opportunity for improvement, and the agencies' proactivity in identifying and addressing systemic issues.
229. Clause 8 of Schedule 5 to the Act states:

The Corporation will consider and address the wider implications associated with the operation and effectiveness of these standards and any complaints that arise under them by -

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- (a) Monitoring and analyzing issues that arise from the complaints processes; and
  - (b) Identifying and addressing concerns with operational policies and processes; and
  - (c) Informing workers and employers about steps that have been taken to prevent the recurrence of breaches and complaints.

230. In respect of compliance with clause 8, I comment at the outset that I acknowledge the review that was undertaken by RTWSA during 2020, the participation from the claims agents in that review, and the resulting improvement in the process for complaint referrals from RTWSA to EML and Gallagher Bassett. I consider that such a review coincides with the aim of clause 8 of the Act.
231. It is evident that RTWSA is sufficiently reporting complaint handling data and issues to senior management. Moreover, complaints data is also reported to the RTWSA Board in its monthly Scheme Performance Report. RTWSA has also stated it regularly reviews its complaint process to look for improvement opportunities. I also consider it worth noting that RTWSA's Complaints Policy outlines that any issues raised in a complaint may result in a categorisation of 'improvement opportunity', where an opportunity to improve a service or process is identified. I am satisfied that RTWSA is complying with clause 8.
232. EML's monthly Customer Care dashboard, presented by its Customer Care Team to the Manager, Business Support, appears to operate as a mechanism for capturing complaints and ultimately serves as a method for EML to analyse complaint volumes and trends, and to consider improvement opportunities. I note that as stated by EML, this data is shared with its Senior Leadership Team at a monthly meeting and its Chief Operating Office at bi-monthly claims performance meeting. EML has also identified a number of areas as opportunity for improvement, such as improving awareness across its business about managing and recording complaints and providing increased visibility of complaint themes, in order to utilise that information to make internal improvements focused on better service and reducing complaints. Given that EML also appears to have implemented a number of improvements or changes to its practices, it is apparent that EML is adhering to clause 8.
233. Gallagher Bassett has a number of mechanisms in place to monitor data and issues relevant to the complaint process. Arising from that analysis, it appears the Gallagher Bassett General Manager provides operational reports to its Head Office, outlining complaint trends and any remediation plans that may be required. It appears that Gallagher Bassett has systems in place to enable it to monitor trends and identify any systemic issues. I consider Gallagher Bassett to be complying with clause 8 of the Act.
234. WIS advised that at present there is no regular report provided to senior management regarding complaint handling issues, other than high level summary data. I note that WIS made improvements to internal processes as a result of complaints which were received by the Minister. I also note that WIS has a small team of staff and receives very low complaint numbers and as such, systemic or repeated issues arising in complaints would likely be quickly identified. I also note that WIS put in place a number of changes in response to being notified of my audit.
235. In summary, I consider that all agencies are facilitating the tracking of complaints and appear to be striving towards continuous improvement in respect of complaint handling practices. In that context, I am of the view that each agency is complying with clause 8.

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## Recommendations

The following recommendations are made in accordance with section 14A of the Ombudsman Act. They are directed at achieving development in complaint handling practices and systems across the agencies, and assisting the agencies in achieving full compliance with Schedule 5 of the Act.

### 1. Complaint outcomes to be confirmed in writing

My audit report has reached the conclusion that none of the agencies are fully compliant with clause 6 of Schedule 5.

Clause 6(2)(a) requires that the agencies advise complainants of the outcome of their complaint and the steps that have been taken in relation to the problem. Clause 6(2)(b) requires the agencies to advise complainants of the procedure that can be followed to lodge a complaint with the State Ombudsman if the person is not satisfied with the resolution of the matter.

I accept that the wording of clause 6(2)(b) is somewhat ambiguous, and appears to have been largely interpreted by the agencies as a requirement to inform a complainant about their right of review to my Office only if the complainant expressly notifies the agency of dissatisfaction with the complaint process of the agency or the outcome of the complaint. This would go some way towards explaining the inconsistent approach of the agencies in notifying complainants of their review rights.

However, in my view clause 6(2)(b) should rightly be interpreted as requiring all complainants to be informed, at the conclusion of the complaint process, of their rights of review. I acknowledge that in the case of the claims agents, it would be appropriate to also advise a complainant of their right to escalate their complaint to RTWSA. However, given clause 6(2)(b) specifically refers to my Office, complainants must also be advised of their right to complain to Ombudsman SA. I also do not consider this right to be restricted to complainants whose complaints were unsubstantiated, or complainants who explicitly express dissatisfaction. This is a statutory right which applies to all complainants.

I wish to acknowledge that RTWSA has the highest rate of compliance, of the agencies included in this audit. In my view, RTWSA may be held to a higher standard than the claims agents, given its role under the Act and its function as a second tier complaint handling body.

I note that none of the agencies make use of templates, submitting that each complaint is unique and requires a tailored response. I accept that this is the case. I also note that it is common for the agencies to advise complainants of the outcome of their complaint in a telephone call, and accept the submissions about the advantages of doing so. I also acknowledge that a telephone call can be a difficult time to organically mention appeal rights, and the contact details for my Office and/or RTWSA, particularly if the complainant has expressly indicated satisfaction with the complaint process and outcome.

However, in my view, complainants should be advised of their complaint outcome in writing, even if they have also been advised in a telephone conversation (subject to the complainant having an email address). Such an email need not contain all of the same content in the level of detail as was included in the telephone call, but should confirm the

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outcome of the complaint, the remedy offered, and any next steps the agency has undertaken to pursue. Such an email should also include the rights of review to RTWSA and/or Ombudsman SA, including relevant contact information. I consider this to be good complaint handling practice, and the most practicable way to ensure all complainants are informed of their review rights.

### RECOMMENDATION 1

That ReturnToWorkSA, Gallagher Bassett, Employers Mutual and Work Injury Services introduce a practice of advising all complainants of their complaint outcome in writing, including their review rights.

## 2. File closure checklist

As noted above, the agencies do not use templates in their complaint handling practices. My audit has uncovered instances of clause 7 remedies not being offered, complainants not being notified of the outcome of their complaint, unclear record keeping which does not clearly indicate which issues in a complaint have been substantiated and which have been unsubstantiated, and a lack of clarity around which Service Standards have been acknowledged to have been breached, in the event a complaint is deemed to be substantiated.

I acknowledge that my review of the case files considered only a small sample of files from Gallagher Bassett, Employers Mutual and RTWSA. My audit has not uncovered systemic issues across the agencies. In the majority of cases, an appropriate clause 7 remedy was offered. RTWSA and Employers Mutual did not have instances of failing to notify complainants of their complaint outcome, whereas Gallagher Bassett and WIS did have instances of this. Gallagher Bassett had a strong culture of detailed record keeping on its Complaint Form, including identification of the relevant Service Standard, whereas Employers Mutual provided less detail and rarely identified the relevant Service Standard.

Whilst the agencies are generally providing a high standard of service in their complaint handling practices, my audit has identified that each of the agencies has areas in which it could improve in terms of consistency and compliance with Schedule 5 of the Act. Whilst these issues, on the available evidence, may only be affecting a small percentage of complainants, the agencies should be striving for best complaint handling practice.

I therefore recommend that each of the agencies adopt a File closure checklist, to be completed at the conclusion of the complaint handling process and prior to a complaint file being closed. Whilst I acknowledge that this is an additional administrative burden, I consider that the benefits in terms of achieving consistency and reducing human error outweigh the imposition. In the event that each step in the checklist has been completed, it will take a very small amount of time to complete, and will assist the agencies in identifying any gaps in a complaint file.

I have attached a sample File closure checklist at Appendix B to this audit report.

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## RECOMMENDATION 2

That ReturnToWorkSA, Gallagher Bassett, Employers Mutual and Work Injury Services implement the File Closure Checklist, as contained at Appendix B.

### 3. Update the Corrective Action Form

RTWSA, Employers Mutual and Gallagher Bassett all use the same Complaint Form. The Complaint Form is detailed and requires the input of relevant information relating to the complaint.

WIS uses a different form, the Corrective Action Form. This form contains fewer fields to input information into, and does not provide a section to record whether a complaint was substantiated, which Service Standard was breached, and which clause 7 remedy was offered. This information should be readily available, without the need to read through the whole complaint file to find this information.

## RECOMMENDATION 3

That Work Injury Services update the Corrective Action Form to include: a field about whether a complaint was substantiated; a field about which Service Standard, if any, was breached; and a field about which clause 7 remedy was provided if the complaint was substantiated.

## Schedule 5—Statement of service standards

### Part 1—Introduction

#### 1—Aim of these standards

- (1) These standards are intended to meet the reasonable expectations of workers and employers about how the Corporation should deal with them by—
  - (a) setting out principles that will be observed by the Corporation when it is dealing with a worker or an employer; and
  - (b) providing a procedure for lodging and dealing with complaints about breaches of these standards; and
  - (c) providing consequences and remedies for breaches of these standards.
- (2) These standards recognise that when a worker or an employer deals with the Corporation, it is reasonable for the worker and the employer to expect the highest standards of service and fairness.

#### 2—Interpretation

Unless the contrary intention appears, a reference in these standards to the Corporation includes—

- (a) a reference to a self-insured employer; and
- (b) a reference to a claims agent or to a provider of services engaged by the Corporation or a self-insured employer.

#### 3—Spirit of these standards

These standards encourage positive relationships between the Corporation, workers and employers and acknowledge that the Corporation, workers and employers need to work together in order to achieve the best outcomes for all, especially by adopting early intervention and return to work processes when a worker is injured at work.

### Part 2—The standards

#### 4—The standards

The Corporation will—

- (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.

## Part 3—Complaints about breaches of these standards

### 5—Overview

- (1) A worker or an employer who has a concern about whether the Corporation has complied with any of these standards may—
  - (a) raise the issue or concern directly with the Corporation so that it can be dealt with in an immediate way; or
  - (b) lodge a complaint with the Ombudsman (including in a case where the matter is a concern in relation to a self-insured employer or a provider of services engaged by a self-insured employer).
- (2) In connection with the operation of subclause (1)—
  - (a) the preference is to attempt to resolve a matter directly with the Corporation; and
  - (b) if the matter is referred to the Ombudsman, the Corporation will comply with any recommendation of the Ombudsman in order to ensure compliance with these standards; and

- (c) without limiting subclause (3), sections 17(1) and 25 of the *Ombudsman Act 1972* do not apply in relation to a matter referred to the Ombudsman.
- (3) If a complaint is lodged with the Ombudsman under subclause (1) in relation to a self-insured employer or a provider of services engaged by a self-insured employer—
- (a) the Ombudsman may, in investigating the complaint, exercise the powers of the Ombudsman under the *Ombudsman Act 1972* as if carrying out an investigation under that Act, subject to such modifications as may be necessary, or as may be prescribed; and
  - (b) the self-insured employer or provider will be taken for the purposes of the investigation to be an agency to which the *Ombudsman Act 1972* applies; and
  - (c) the Ombudsman must report to the Corporation on the outcome of the investigation.

## 6—Procedures for the Corporation to deal with a complaint

- (1) The Corporation will work with a person who lodges a complaint to help him or her to address and resolve problems and concerns and to find a resolution to the matter in an effective way.
- (2) As an important part of the steps to be taken under subclause (1), the Corporation will advise the person of—
  - (a) what steps have been taken in relation to the relevant problem or concern; and
  - (b) the procedure that can be followed to lodge a complaint with the State Ombudsman if the person is not satisfied with the resolution of the matter by the Corporation.
- (3) The Corporation will provide a response to a complaint within 10 business days after the complaint is lodged with the Corporation.
- (4) If a matter requires extended investigation, the person will, within 10 business days, receive an interim response and an indication of when a final response will be provided.

## 7—Remedies

If it is found that the Corporation has breached any of these standards, the Corporation is to do 1 or more of the following:

- (a) provide a written or oral apology;
- (b) furnish a written explanation;
- (c) meet with the worker or employer to consider his or her views and to achieve a resolution of the matter;
- (d) furnish information to the worker or the employer, in an appropriate form, which outlines, where relevant—
  - (i) the status of any claim and extent of entitlements; and
  - (ii) the review rights that exist under this Act; and

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- (iii) the services that are available and the timeframes that should apply in relation to a dispute;
  - (e) provide a worker with a copy of his or her file in accordance with section 180 of this Act or under the *Freedom of Information Act 1991*;
  - (f) invite feedback about any response and ensure that any questions are answered or requests are responded to in an appropriate manner;
  - (g) take any other reasonable steps to remedy the matter.

## Part 4—Wider issues

### 8—Wider issues

The Corporation will consider and address the wider implications associated with the operation and effectiveness of these standards and any complaints that arise under them by—

- (a) monitoring and analysing issues that arise from the complaints processes; and
- (b) identifying and addressing concerns with operational policies and processes; and
- (c) informing workers and employers about steps that have been taken under these standards to address their concerns and by taking steps to prevent the recurrence of breaches and complaints.

## Appendix B

## FILE CLOSURE CHECKLIST

The complainant has been informed of the outcome of the complaint:

- By telephone                       By other \_\_\_\_\_
- By email

The email or record of telephone call has been uploaded to the file:

If notified by telephone call, the complainant has also been notified by email, reiterating any important aspects including remedies or other steps to be taken, and advising the complainant of their appeal rights to RTWSA and/or Ombudsman SA:

The Complaint Form/CAR records which Service Standard or internal standard was breached, if any:

The Complaint Form/CAR clearly records whether or not the complaint was substantiated (if there were multiple issues and the complaint was partially substantiated, the form must clearly record which issues were substantiated):

If the complaint has been substantiated, which Clause 7 remedy has been provided? \_\_\_\_\_

Are there any outstanding, actionable commitments that are yet to be completed and when that will occur? (Such as a commitment to contact a complainant again in a month's time, or receive and assess a medical report relevant to a claim)

No

Yes  (provide details) \_\_\_\_\_

Officer name \_\_\_\_\_

Date \_\_\_\_\_