

## Redacted Report

Full investigation pursuant to referral under  
section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012*

Public Authority	Public Trustee
Public Officer	[The Personal Estates Officer]
Ombudsman reference	2016/09246
ICAC reference	2016/000944
Date of referral	24 October 2016
Issues	<ol style="list-style-type: none"><li>1. Whether [The Personal Estates Officer] committed maladministration in public administration by failing to obtain Age Pension entitlements from Centrelink in the management of the estate of [Person A]</li><li>2. Whether [The Personal Estates Officer] committed misconduct in public administration by failing to obtain Age Pension entitlements from Centrelink in the management of the estate of [Person A]</li><li>3. Whether [The Personal Estates Officer's] failure to obtain Age Pension entitlements from Centrelink in the management of the estate of [Person A] was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act</li><li>4. Whether [The Personal Estates Officer] committed maladministration in public administration by failing to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined</li><li>5. Whether [The Personal Estates Officer] committed misconduct in public administration by failing to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined</li><li>6. Whether [The Personal Estates Officer's] failure to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined was contrary to law within the</li></ol>

meaning of section 25(1)(a) of the Ombudsman Act

7. Whether, by failing to ensure [Person A's] estate was properly managed, the agency acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act
8. Whether the agency's handling of the matter, subsequent to a complaint made by [Person A's] son, amounted to maladministration in public administration
9. Whether the agency's handling of the matter, subsequent to a complaint made by [Person A's] son, was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

## Jurisdiction

This matter was referred to the Ombudsman by the Commissioner pursuant to section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012* (the **ICAC Act**), as raising potential issues of misconduct and maladministration within the meaning of that Act (the **referral**).

Section 14B of the Ombudsman Act provides:

### 14B—Referral of matter by OPI or ICAC

- (1) If a matter is referred to the Ombudsman under the ICAC Act, the matter—
  - (a) will be taken to relate to administrative acts for the purposes of this Act; and
  - (b) must be dealt with under this Act as if a complaint had been made under this Act and—
    - (i) if the matter was the subject of a complaint or report under the ICAC Act —as if the person who made the complaint or report under that Act was the Complainant under this Act; or
    - (ii) if the matter was assessed under that Act after being identified by the Commissioner acting on the Commissioner's own initiative or by the Commissioner or the Office in the course of performing functions under any Act—as if the Commissioner was the complainant under this Act.

- (2) In this section—

**Commissioner** means the person holding or acting in the office of the Independent Commissioner Against Corruption under the ICAC Act;

**ICAC Act** means Independent Commissioner Against Corruption Act 2012;

**Office** means the Office for Public Integrity under the ICAC Act.

The referral arose out of a report to the Office for Public Integrity made by a whistleblower.

The referral gives rise to five issues in relation to the administration of the estate of [Person A], being:

1. whether [The Personal Estates Officer] committed maladministration in public administration by failing to obtain Age Pension entitlements from Centrelink in the management of the estate of [Person A]
2. whether [The Personal Estates Officer] committed misconduct in public administration by failing to obtain Age Pension entitlements from Centrelink in the management of the estate of [Person A]
- ...
4. whether [The Personal Estates Officer] committed maladministration in public administration by failing to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined
5. whether [The Personal Estates Officer] committed misconduct in public administration by failing to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined
- ...
8. whether the agency's handling of the matter, subsequent to a complaint made by [Person A's] son, amounted to maladministration in public administration
- ...

In addition, section 13 of the Ombudsman Act provides:

**13 - Matters subject to investigation**

- (1) Subject to this Act, the Ombudsman may investigate any administrative act.
- (2) The Ombudsman may make such an investigation either on receipt of a complaint or on the Ombudsman's own initiative and, where a complaint is made, the Ombudsman may investigate an administrative act notwithstanding that, on the face of it, the complaint may not appear to relate to that administrative act ...

I have determined to undertake an 'own initiative' investigation under section 13(2) of the Ombudsman Act to consider:

- ...
3. whether [The Personal Estates Officer's] failure to obtain Age Pension entitlements from Centrelink in the management of the estate of [Person A] was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act
- ...
6. whether [The Personal Estates Officer's] failure to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act
7. whether, by failing to ensure [Person A's] estate was properly managed, the agency acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act
- ...
9. whether the agency's handling of the matter, subsequent to a complaint made by [Person A's] son, was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

## Investigation

My investigation has involved:

- assessing the information provided by the reporter and the Commissioner
- seeking a response from several officers of the agency
- considering:
  - Volumes 12 to 14 of [Person A's] estate file which contain records from the years 2007 to 2016
  - the following legislation:
    - the ICAC Act
    - the Ombudsman Act
    - the *Public Trustee Act 1995 (Cth)*
    - the *Social Security Act 1991 (Cth)*
    - the *Aged Care Act 1997*
  - the following policies of the agency:
    - Personal Estates Administration Policy<sup>1</sup>
    - Compliments and Complaints Policy<sup>2</sup>
    - Compliments and Complaints Procedure<sup>3</sup>
    - Maximising Centrelink Benefits Standard<sup>4</sup>
    - Underpayments and Overpayments Standard<sup>5</sup>
    - Corporate Finance - Deficits and Other Losses<sup>6</sup>
- providing the agency and the reporter with my provisional report for comment, and considering their responses
- preparing this report.

## Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.<sup>7</sup> It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...<sup>8</sup>

## Response to my provisional report

In response to my provisional report, the Reporter advised by email dated 9 October 2018, that they had nothing further to add.

<sup>1</sup> Public Trustee, 'Personal Estates Administration Policy' (2011).

<sup>2</sup> Public Trustee, 'Compliments and Complaints Policy' (2001).

<sup>3</sup> Public Trustee, 'Compliments and Complaints Procedure' (2012).

<sup>4</sup> Public Trustee, 'Maximising Centrelink Benefits Standard' (2013).

<sup>5</sup> Public Trustee, 'Underpayments and Overpayments Standard' (2011).

<sup>6</sup> Public Trustee, 'Corporate Finance -Deficits and Other Losses' (2004).

<sup>7</sup> This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

<sup>8</sup> *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

By letter dated 26 October 2018 the agency advised that it accepted my provisional views and provided submissions in response to my proposed recommendation. The agency informed me that it had commenced enquiries in response to my provisional report and provided an update in relation to the progress of those enquiries. My Office sought clarification from the agency on some matters and further detail was provided by the agency in a letter dated 21 November 2018.

I address the information that was provided to me by the agency in the body of this report.

By email dated 29 October 2018 [The Personal Estates Officer] advised that he had no comment to make.

A copy of my provisional report was provided to the Team Leader however, he did not provide a response.

## Background

1. The Public Trustee (**the agency**) provides estate planning, administration and trustee services for some of the most vulnerable people in South Australia.
2. The role of the agency is to:<sup>9</sup>

... provide all South Australians with access to Will making services, powers of attorney preparation and deceased estate and trust administration. PT also has a role in managing the financial affairs of those people in the community who lack the capacity to manage their own affairs as determined by the Courts, the South Australian Civil and Administrative Tribunal (SACAT) or through activation of powers of attorney.
3. The Public Trustee was appointed by the Court as full administrator of [Person A's] estate on 22 July 1988. [Person A] was 51 years of age at the time. The Public Trustee remained administrator until [Person A's] death at the age of 76 years on 19 January 2014.
4. At the time the Public Trustee commenced administration of the estate, [Person A's] assets and income precluded her from receiving Centrelink benefits.
5. I note that Centrelink falls under the auspices of the Commonwealth Department of Human Services. For the purposes of this report, any correspondence and communication between the agency and Centrelink that I refer to, is in fact correspondence and communication with the Department of Human Services.
6. The following background information was provided to me by the agency's former General Manager, Customer Services, Ms Frankie Anderson:<sup>10</sup>

At the commencement of Public Trustee's administration, [Person A's] assets and income were derived from her investments which were sufficiently high to preclude her from receiving a Centrelink pension. During her life time [Person A] moved into various accommodation facilities paying entry bonds or licenses to occupy. Upon leaving the facilities the return to the estate was substantially less than entry costs. With deteriorating health, [Person A] moved into aged care with assessed cost of her care and support being high, her assets and income diminished overtime.
7. [The Personal Estates Officer] commenced employment with the agency in April 2007 and is thus a public officer for the purposes of the ICAC Act. In September 2007 he was

<sup>9</sup> Public Trustee, '2016-17 Annual Report' (2017).

<sup>10</sup> Letter from Ms Frankie Anderson, former General Manager Customer Services, dated 13 January 2017.

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awarded the role of Personal Estates Officer ASO3 and was transferred to a different Personal Estates Officer position in November 2007. It was at that point [The Personal Estates Officer] was allocated [Person A's] file.<sup>11</sup>

8. [Person A] remained [The Personal Estates Officer's] client until her death in January 2014.
9. At the time the file was allocated to [The Personal Estates Officer] in November 2007, [Person A] was approximately 69 years of age. By age alone, [Person A] potentially would have been eligible to receive the Age Pension. However, eligibility for the Age Pension is income tested, whereby a person's income and assets are assessed to determine whether that person can receive a pension and how much they are eligible to receive.
10. On 21 August 2008 the agency was advised that [Person A] had commenced living in residential aged care.
11. On 26 September 2008 the agency received a letter from Centrelink, on [Person A's] behalf, explaining that in addition to the basic daily care fee, people entering residential aged care may have to pay an income tested fee based on their income and level of care they need.
12. The letter from Centrelink explained that, in order for the Department of Health and Ageing to calculate whether [Person A] needed to pay the income tested fee, Centrelink needed to provide the Department of Health and Ageing with details of [Person A's] assessed income. Enclosed was a Residential Aged Care Fee Income form to be filled out on behalf of [Person A] so that relevant information could be provided to the Department of Health and Ageing. The letter stated that the form was to be completed within 28 days. It was noted that if the form was not returned to Centrelink within that time, [Person A] may have to pay the maximum fee to her aged care service provider.
13. The agency has internal procedures and controls in place to ensure errors and oversights are picked up. This is done through an Annual Review of client files, undertaken by internal Reviewing Officers. If an issue is identified by the Reviewing Officer, it is marked on an Annual Review Statement. I understand that the Annual Review Statement is provided to the Manager and/or Team Leader and the relevant officer who has conduct of the file is required to take action to amend any issues and review the matter.
14. I have been informed that an Annual Review of the file was undertaken on 22 August 2007, that is, three months prior to [Person A's] file being allocated to [The Personal Estates Officer]. The Reviewing Officer noted that [Person A] would not have been entitled to pension entitlements at that point in time as her assets were too high.<sup>12</sup>
15. During the time [The Personal Estates Officer] had conduct of [Person A's] file, the following occurred in relation to Annual Reviews:
  - it appears that no Annual Reviews were undertaken of the file in the years 2008 or 2009
  - an Annual Review was undertaken on 21 July 2010. The Annual Review Statement contains a checklist. In this case, 'entitlement to pension/rental assistance/mobility allowance reviewed' is marked 'yes'. A handwritten note states that action was being taken by [The Personal Estates Officer]. It has been explained to me that this indicates the Reviewing Officer identified that an

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<sup>11</sup> Letter from [The Personal Estates Officer], sent by email dated 10 March 2017.

<sup>12</sup> Letter from [The Team Leader], Team Leader, sent by email dated 23 December 2016; Letter from [The Personal Estates Officer], sent by email dated 10 March 2017.

application should be made to Centrelink 'to establish whether the client would be entitled to a pension or at the very least, a part pension'.<sup>13</sup> It is recorded that the form was to be referred to the Team Leader for follow up

- it appears that No Annual Review occurred in 2011
- an Annual Review was undertaken on 19 September 2012. The issue concerning pension entitlements is marked 'no'. Therefore, it appears an issue concerning pension entitlements was not identified during that Annual Review process. It is recorded that the form was to be referred to the Team Leader for follow up
- an Annual Review was undertaken on 18 November 2013. The Statement contains a manual entry marked next to the issue concerning pension entitlements however, the manual entry is not visible. There is also a manual entry next to the issue of 'Accommodation fees', which similarly is not visible. It is recorded that the form was to be referred to the Team Leader for follow up.

16. On 20 January 2014 the agency was informed of [Person A's] death.
17. The agency then commenced its completion process in relation to [Person A's] estate. It appears that during the completion process, officers of the agency became aware that [Person A] had not been receiving a pension at the date of her death, despite appearing to have been eligible for a part pension, and had been paying high residential aged care fees despite a change in her financial circumstances. From there, the agency commenced taking steps to determine if/when [Person A] was eligible to receive pension entitlements and whether Centrelink had been notified of her change in financial circumstances.
18. By telephone call on approximately 17 June 2014 [Person A's] son expressed concern that [Person A's] funds had depleted in recent years and that she had not been receiving an income of any kind.<sup>14</sup> The Executor of the estate wrote to the agency on 18 June 2014 requesting full statements from 2005 to date.
19. On 14 August 2014 the agency received a letter from Herve & Co Solicitors who were acting for the Executor of the estate. The letter set out concerns about the depletion in [Person A's] funds and stated:

... It appears that this shortfall is a result of two things:

1. The deceased's aged pension inexplicably ceased several years ago.
2. It appears that there was an overpayment for some years made to Kiandra for bed and accommodation fees for the deceased.

... We therefore request that you firstly ascertain the date when the pension ceased and the total value of the pension that would have been paid from that date to the date of death and secondly, contact Kiandra and ascertain details of all payments made during the period when the deceased was a resident and clarify with them the amount of any overpayment made and the reason therefore.

In the meantime it will also be necessary for Public Trustee to take steps to recover the unpaid pension from Centrelink and any overdue accommodation fees paid to Kiandra.

20. The agency commenced a review of the file during the months following 14 August 2014 and concluded that, at some stage since the 2010 Annual Review, [Person A's] assets no longer precluded her from receiving some form of Age Pension payments. The agency maintains that it has been unable to identify the exact date of [Person A's] eligibility. The agency sought assistance from Centrelink to calculate an estimate of [Person A's] Age Pension entitlements.

<sup>13</sup> Letter from [The Team Leader], Team Leader, sent by email dated 23 December 2016.

<sup>14</sup> Public Trustee, Internal Memorandum, dated 17 June 2014.

21. On 12 February 2015 the Executor of the estate requested that the investigation be escalated. [The Personal Estates Officer] was then asked to assist in the process.<sup>15</sup>
22. Centrelink provided calculations in relation to [Person A's] Age Pension entitlements to the agency on 28 October 2015. The agency's internal processes proceeded and on 8 December 2015 the Manager of Personal Estates sought Executive approval for an amount to be paid from Corporate Reserves to the estate for unclaimed pension benefits.
23. On 12 May 2016 the agency received a Ministerial request from the office of the Attorney General concerning a complaint made by [Person A's] son on 6 May 2016. The agency responded to the Ministerial on 31 May 2016, advising of the intention to provide a corporate reimbursement to the estate for missed pension payments and advising that enquiries had been made in relation to the issue of nursing home fees but a satisfactory response had not yet been obtained from the Commonwealth.
24. On 31 May 2016 the Public Trustee at the time, approved a Corporate Reimbursement to the estate of \$66,479.65 for unclaimed Centrelink pension entitlements and \$11,872.82 for interest missed as well as reimbursement of administration and audit fees that had been charged to the estate.
25. The cheque was mailed to the Executor on 10 June 2016 and [Person A's] son was advised by letter from the agency dated 26 July 2016 that the amount of \$79,036.47 was credited to the estate in full.
26. No reimbursement was made at the time in relation to any potential overpayment made by [Person A] in relation to residential aged care fees.

### Relevant law

27. Section 5(3) of the ICAC Act provides:

(3) *Misconduct in public administration* means—

- (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
- (b) other misconduct of a public officer while acting in his or her capacity as a public officer.

28. Section 5(4) of the ICAC Act provides:

(4) *Maladministration in public administration*—

- (a) means—
  - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
  - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
- (b) includes conduct resulting from impropriety, incompetence or negligence; and

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<sup>15</sup> Internal Memorandum from [The Team Leader] to [The Personal Estates Officer] dated 5 March 2015.

- (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

29. The 'professional conduct standards' of the Code of Ethics for the South Australian Public Sector (**the Code of Ethics**) relevantly provide:

**Professional and Courteous Behaviour**

...  
Public sector employees will be diligent in the discharge of their role and duties and not act in a way that is negligent.  
...

**Whether [The Personal Estates Officer] committed maladministration in public administration by failing to obtain Age Pension entitlements from Centrelink in the management of the estate of [Person A]**

30. The referral contained the following allegations concerning [The Personal Estates Officer]:
- [The Personal Estates Officer] was allegedly advised on at least four occasions prior to [Person A's] death that he needed to apply for a pension for [Person A] but he did not do so due to laziness
  - although [Person A] was originally only entitled to receive a part pension, [The Personal Estates Officer's] failure to apply for [Person A's] pension entitlements allegedly resulted in [Person A] paying exorbitant fees, not receiving rebates or concessions in relation to her nursing home accommodation and chemists
  - [Person A's] savings quickly dwindled, meaning she later became eligible to receive a full pension
  - the file allegedly contains a handwritten note stating 'I have asked [The Personal Estates Officer] why he has not organised a pension for this client and he says he is organising it' and contains an unopened Centrelink Pension Pack containing all relevant forms that were to be completed by [The Personal Estates Officer]
  - [The Personal Estates Officer] remains employed as a Personal Estate Officer.
31. Pursuant to section 5(4)(a)(ii) of the ICAC Act, a public officer commits maladministration through conduct involving substantial mismanagement in or in relation to the performance of official functions. This includes conduct resulting from 'impropriety, incompetence or negligence'.<sup>16</sup>
32. [The Personal Estates Officer] has explained that his role as Personal Estates Officer ASO3 involves providing a personal administrative service to individual customers for protected, award and power of attorney estates under the control of the Public Trustee. [The Personal Estates Officer] has explained that doing so includes applying for 'correct entitlements for clients, such as Centrelink pensions'.<sup>17</sup>
33. The Job and Person Specification concerning the role of Personal Estates Officer ASO3 provides the following:
- the primary purpose of the role is to:
    - provide a personal administrative service to individual customers under the officer's control and ensure that the customer's needs are satisfied within the provision of relevant Acts, Regulations and agency policies and procedures

<sup>16</sup> Independent Commissioner Against Corruption Act 2012, section 5(4)(b).

<sup>17</sup> Letter from [The Personal Estates Officer], sent by email dated 10 March 2017.

- provide a check of critical estate management processes for each Personal Estate file on an Annual basis to ensure accuracy, integrity and reliability of financial records
  - a key responsibility of the role is to ensure the effective planning, organisation and administration of the estate by, among other things, ensuring that each customer receives their full Centrelink entitlements
  - a key responsibility of the role is to review and check for the completion of entitlements to pension and other income entitlements
  - an 'essential technical expertise' of the role includes 'knowledge of Centrelink and other health/welfare support agencies'.
34. The agency's policy document titled 'Maximising Centrelink Benefits Standard (2013)', seeks to ensure that customers receive the appropriate Centrelink benefits to which they are entitled and to highlight changes in customer circumstances that may lead to changes to the benefits to which they are entitled. The Standard applies to all Personal Estate Officers and provides:
- From time to time a customer's circumstances or living arrangements may change, resulting in changes to their Centrelink entitlements. Estate Officers need to be vigilant to ensure any changes in customer's circumstances are detected early and to consider any impact on customer's Centrelink benefits.  
Changes in circumstances may result in a decrease or increase in their Centrelink benefits.
- ...  
Compliance with this Standard will be monitored as part of Personal Estates Control Self-Assessment and as part of the Annual Review of Estates.
35. I am satisfied that the role and duties of [The Personal Estates Officer], as the Personal Estate Officer charged with the day to day administration of [Person A's] estate, included the responsibility to detect any changes in [Person A's] financial circumstances, to ensure that [Person A] received Centrelink benefits to which she was entitled and to review and check for the completion of any such matters as they arose. In fact, this is identified as a key responsibility in the Personal Estates Officer ASO3 Job and Person Specification.
36. I must now consider whether [The Personal Estates Officer] failed to discharge his responsibilities and, if so, whether such failure amounts to 'substantial mismanagement' in or in relation to the performance of official functions.
37. The wording of section 5(4)(a)(ii) provides that I must be satisfied that the conduct of [The Personal Estates Officer] involved 'substantial mismanagement in or in relation to the performance of official functions'. Accordingly, the mismanagement must be 'substantial' and have occurred either 'in' or 'in relation to' the performance of [The Personal Estates Officer's] official functions.
38. I will consider whether, at any stage, [The Personal Estates Officer] was aware or should have been aware of a change in [Person A's] financial circumstances that consequently made her eligible for the Age Pension. I must also consider any action or inaction on the part of [The Personal Estates Officer].
39. Having considered the Volumes of the file provided to me, I am satisfied that there is nothing to indicate exactly when a change occurred in relation to [Person A's] financial circumstances.
40. [The Personal Estates Officer] has provided a somewhat contradictory submission in that he has stated that, at the time [Person A's] file was allocated to him:<sup>18</sup>

<sup>18</sup> Letter from [The Personal Estates Officer], sent by email dated 10 March 2017.

... she did in fact meet the criteria of eligibility for a Centrelink benefit; however it had not been applied due to an oversight by the previous Personal Estates Officer to which she has [sic] been assigned.

41. However, in the same submission, [The Personal Estates Officer] then stated:<sup>19</sup>

...  
File notes from an internal annual review dated 22 August 2007 stated that she was not entitled to a pension due to her assets ...

42. I note that [The Personal Estates Officer] has not provided any evidence to support the assertion that [Person A] was eligible to receive Age Pension payments prior to the file being allocation to him.

43. [The Team Leader] has confirmed that the 22 August 2007 Annual Review recorded that [Person A] was, at that stage, precluded from pension entitlements due to her assets.<sup>20</sup> Accordingly, it appears that [Person A's] assets precluded her from receiving Age Pension benefits at the time the file was allocated to [The Personal Estates Officer] and therefore I am unable to conclude that [The Personal Estates Officer] had or should have had knowledge of [Person A's] potential eligibility at that time.

44. [The Personal Estates Officer] has submitted:<sup>21</sup>

I did not pick up the oversight of the previous officer until sometime later (from memory in 2008) when I had the chance to undertake a review of her file as part of a lengthy and time consuming process of reviewing each of the client files that I had been assigned at the time.

From memory, upon discovering [Person A] was not receiving a pension to which she may have been entitled, I lodged a paper application to Centrelink for an Aged Pension on behalf of the client. The usual procedure is to keep a hardcopy of said application on file, however during a recent search, I cannot locate this document. Subsequent to lodging the application, a letter was received from Centrelink stating this application was incomplete and required further information to complete the assessment.

... This application was subsequently denied by Centrelink as Public Trustee could not provide sufficient identification (e.g. 100 points of ID) to Centrelink at the time.

45. However, I note that a Memorandum dated 12 March 2015 authored by [The Personal Estates Officer] and addressed to [The Team Leader] states:

...  
No Centrelink Income and Assets form was completed or submitted to Centrelink when client moved to Kiandra Nursing Home in 2008. Client was charged nursing home fee as well as an [sic] daily accommodation charge whilst residing there due to the income and assets form not being submitted.

No application for Centrelink pension was made during time of administration.

...

46. For completeness, I have considered the relevant Volumes of [Person A's] file in order to determine if there is evidence of any action taken by [The Personal Estates Officer] in 2008 in relation to potential entitlements for [Person A].

47. The file contains an empty envelope that is marked 'return to sender', which is stamped as being received back by the agency on 2 September 2008 and has a handwritten

<sup>19</sup> Letter from [The Personal Estates Officer], sent by email dated 10 March 2017.

<sup>20</sup> Letter from [The Team Leader] sent by email dated 23 December 2016.

<sup>21</sup> Letter from [The Personal Estates Officer], sent by email dated 10 March 2017.

note attached to it stating 'Vol 12, no handwritten note, or envelope of pension pack, Monday/Aug 08'. It is unclear to me who wrote the handwritten note or why it refers to a 'pension pack'. I have not been able to identify an unopened pension pack in the file.

48. Although the empty envelope indicates that a letter of some description was sent out of the agency and was returned to sender, I am unable to satisfy myself that it contained some form of communication or application between [The Personal Estates Officer] and Centrelink in relation to obtaining the Age Pension on behalf of [Person A].
49. [The Personal Estates Officer] has suggested that Centrelink responded to the alleged application by letter explaining that insufficient information had been provided on behalf of [Person A]. I note that the file does not contain such a letter.
50. The file does contain a letter from Centrelink dated 26 September 2008 advising of the need to assess [Person A's] income in order to determine appropriate residential aged care fees. However, this letter does not relate to an application for the Age Pension and I intend to address this letter as a separate issue in my report.
51. Accordingly, I am unable to conclude that [The Personal Estates Officer] was aware of [Person A's] potential eligibility for the Age Pension in 2008.
52. The agency's Annual Review process provides some assistance in determining when [The Personal Estates Officer] had, or should have had, knowledge of [Person A's] potential eligibility to receive Age Pension payments.
53. I have noted that there is no record of an Annual Review being undertaken in 2008 or 2009. The first Annual Review after the file's allocation to [The Personal Estates Officer] was undertaken on 21 July 2010. The 2010 Annual Review Statement records that the Reviewing Officer had identified 'entitlement to pension/rental assistance/mobility allowance reviewed' as requiring follow-up. A handwritten notation states '... action being taken by [The Personal Estates Officer]'.
54. Therefore, it appears that the matter of [Person A's] potential eligibility for pension entitlements was discussed with [The Personal Estates Officer] as part of the 2010 Annual Review process and [The Personal Estates Officer] had indicated he would take action in relation to that matter at that point in time.
55. There is no record in the file indicating that any action was taken by [The Personal Estates Officer].
56. I intend to address the agency's failure to undertake regular Annual Reviews separately in my report.
57. There is no record of an Annual Review having occurred in 2011. The next Annual Review Statement is dated 19 September 2012, where it appears that the issue of pension entitlements was not identified. However, the Annual Review Statement dated 18 November 2013 records that the issue of pension entitlements was identified again that year. Unfortunately a manual entry made on the 2013 Statement is not visible on the hard copy documents provided to me.
58. A document titled Statement Issues and dated 21 January 2014 lists the issues that were identified with [Person A's] file during the Annual Review process. The document provides a priority in relation to each issue and the current status. The document records:

Review client's entitlement to Pension / Rental Assistance ... 1- High Not Started.

59. Accordingly, I am satisfied that, at the very least, [The Personal Estates Officer] had knowledge of [Person A's] potential eligibility for Age Pension entitlements for at least four years prior to the date of her death. At a minimum [The Personal Estates Officer] was required to take some form of action after he was notified of the issue during the 2010 Annual Review process. However, [The Personal Estates Officer] failed to do so. Three years later the issue was raised again and [The Personal Estates Officer] still took no action on [Person A's] behalf, as the issue remained 'not started' in 2014.

60. [The Personal Estates Officer] has submitted that:<sup>22</sup>

I was the ongoing PEO for [Person A] until her death on 19 January 2014; however I did not have sole responsibility for her estate. I was responsible for the daily administration of the estate under the supervision and guidance of a team leader and manager. The team leader was responsible for ensuring files are managed appropriately and making sure any issues were resolved. The auditing of the file was performed by the Internal Checking Officers. As stated before, Public Trustee had been appointed the administrators for [Person A] by the Guardianship Board in 1998, during which time there were a number of PEO's administering her affairs before me.

61. However, in the same submission to me, [The Personal Estates Officer] stated 'I accept that it was part of my role to follow this matter up' and that the only explanation as to why he did not was:

... due to the large amount of complex and high maintenance issues in my caseload being dealt with at the same time. There was also considerable lack of training for a role I was very new to at this time.

62. In 2017 the Commissioner conducted an evaluation of the practices, policies and procedures of the agency (**the Evaluation**).<sup>23</sup> The Commissioner noted that teams are generally made up of officers of mixed levels ranging from ASO2 to ASO5, with ASO4 and ASO5 being the more experienced level officers.<sup>24</sup>

63. The Evaluation considered the complexity of files in the context of workload and performance at the agency at the time. The Commissioner noted that the complexity of a file must be considered at the time a file is allocated to an officer and that he had been informed that some junior officers were allocated files that were more complex than those normally dealt with by officers at that level. The Commissioner recommended that the agency change existing practices in relation to allocating files within the Personal Estates section to sufficiently take into account the complexity of the file and the workload of the officer who may be allocated the file.<sup>25</sup>

64. It is concerning that more junior officers may be responsible for the complex estates of vulnerable people. However, I am not satisfied that this was necessarily the case in relation to [Person A's] file.

65. At ASO3 level, while not at the most senior level, [The Personal Estates Officer] could hardly be described as 'junior'. I accept that at the time [Person A's] file was allocated to [The Personal Estates Officer], he appears to have been inexperienced in the role.<sup>26</sup> However, by the date of the 2010 Annual Review, when [The Personal Estates Officer] should have taken action in relation to the identified issue, [The Personal Estates Officer] had over three years of experience in the role.

<sup>22</sup> Letter from [The Personal Estates Officer], sent by email dated 10 March 2017.

<sup>23</sup> The Hon. Bruce Lander QC, Independent Commissioner Against Corruption, 'Evaluation of the Practices, Policies and Procedures of the Public Trustee' (September 2017).

<sup>24</sup> The Hon. Bruce Lander QC, Independent Commissioner Against Corruption, 'Evaluation of the Practices, Policies and Procedures of the Public Trustee' (September 2017), Recommendation 15.

<sup>25</sup> The Hon. Bruce Lander QC, Independent Commissioner Against Corruption, 'Evaluation of the Practices, Policies and Procedures of the Public Trustee' (September 2017), Recommendation 15.

<sup>26</sup> Letter from [The Personal Estates Officer], sent by email dated 10 March 2017.

66. Further, in relation to [The Personal Estates Officer's] workload, the former Public Trustee informed me:<sup>27</sup>

Caseload guidelines for the various classification levels were agreed a number of years ago (pre 2010). AS03 officers in Personal Estates have a guideline caseload of 105 customers. A perusal of [The Personal Estates Officer's] caseload over the past years (prior to part time employment in 2017) indicates he was allocated files in line with other AS03 officers over this period (at or under 105 estates).

There were a few short time periods when [The Personal Estates Officer's] file caseload was slightly over 105. This was quickly rectified to ensure he was under the caseload ceilings.

67. Complexity and workload aside, it is clearly identified in the AS03 Job and Person Specification that it was a key responsibility of [The Personal Estates Officer's] role to ensure [Person A], and any customer for that matter, received full Centrelink entitlements to which she was entitled to and that the completion of any entitlement to a pension was reviewed by [The Personal Estates Officer]. In [Person A's] case, [The Personal Estates Officer] failed to do so.
68. This aside, I am mindful that the Team Leader, Manager and even the practices of the wider agency may have a role to play in ensuring issues identified with individual files are addressed by the relevant Personal Estates Officer or escalated if required. I intend to consider the actions of the wider agency separately in this report.
69. Lastly, for a point of comparison, I have considered the amount reimbursed to [Person A's] estate in comparison to other corporate reimbursements. The payment made to [Person A's] estate amounted to \$78,352.47. The former Public Trustee informed me that this amount is 'significant' when considered in the context of other corporate reimbursements over recent years. This is supported by the following:
- for the years 2010/2011 the highest reimbursement was \$15,582.33 for a 'Failure to claim Centrelink rental assistance'
  - for the years 2011/2012 the highest reimbursement was \$16,269.00 for a 'Failure to claim Centrelink benefit'
  - for the years 2012/2013 the highest reimbursement was \$41,758.43 for 'Property inspections not completed'
  - for the years 2013/2014 the highest reimbursement was \$5,773.00 for 'termination of lease payment'
  - for the years 2014/2015 the highest reimbursement was \$13,029.64 for 'funds receipted by PT taken as acceptance of legal dispute'
  - for the years 2015/2016 the highest reimbursement was \$78,352.47, relating to [Person A's] estate, for 'no application made to Centrelink for pension consideration & reimbursement administration and audit fees'
  - for the years 2016/2017 the highest reimbursement was \$20,005.76 for 'delays in paying invoice'
  - for the year 2017/2018 (to September 2017) the highest reimbursement was \$245.53 for 'charged commissions and should not have been charged [sic]'
70. A financial consequence is not required in order to find that a public officer has committed substantial mismanagement in, or in relation to, the performance of official functions. However, in this case, I am mindful that the inaction by [The Personal Estates Officer] over a four year period in relation to pursuing [Person A's] Age Pension entitlements amounted to a significant financial loss to [Person A], even in comparison to other losses.

<sup>27</sup> Letter from the former Public Trustee, Ms Deb Contala, dated 27 October 2017.

71. [The Personal Estates Officer] has submitted:

I do acknowledge a mistake was made on my behalf, however it was unintentional and I accept that it led to a financial loss to the client which needed to be rectified. At all times I acted honestly. Had I known or been alerted to the fact that it would lead to a financial loss to the client, I would have acted immediately to correct the matter and mitigate the consequences. In addition to my own oversight, it is unfortunate that the annual review system at the time also failed to correct the issue and it is the type of matter that could, and should have been corrected following a review by my team leader and manager.

Throughout the time that I was assigned to [Person A's] file, I have acted honestly and with a genuine commitment to acting in the client's best interests. Where a detriment was incurred it was caused by an oversight and an ongoing failure to identify and remedy the situation.

72. I accept that public officers may, from time to time, make mistakes that must then be rectified. Review processes, such as the agency's Annual Reviews assist in the identification of some matters that may have been overlooked. However, I consider that it is the role of the particular officer who has conduct of a matter, to act when such issues are identified.

73. From the information before me, I am satisfied that [The Personal Estates Officer] should have been aware of a change in [Person A's] circumstances that made her eligible to receive Age Pension entitlements and [The Personal Estates Officer] should have made an application to Centrelink on [Person A's] behalf.

74. Further, I am satisfied that [The Personal Estates Officer] was informed of the need to pursue Age Pension entitlements for [Person A] at least at the date of the 2010 Annual Review and that, despite indicating that he would take action, [The Personal Estates Officer] failed to do so. Although the Annual Review process appears to have not occurred in 2011 and did occur in 2012 but did not identify the outstanding issue, the Annual Reviews for 2013 identified that [The Personal Estates Officer] had failed to check for the completion of the issue three years after the issue was first identified. Once again, [The Personal Estates Officer] failed to take action and failed to review the matter. The issue remained un-actioned in 2014, only to be detected at the time of [Person A's] death. [The Personal Estates Officer's] failure to act resulted in:

- [Person A] not receiving the part-pension she was likely entitled to quite early on in [The Personal Estates Officer's] management of her estate
- [Person A's] savings consequently being depleted
- [Person A] not receiving the full-pension she was likely entitled to due to the further depletion of her estate
- [Person A] potentially not receiving additional benefits/savings she would have been entitled to had she been receiving pension payments.

75. As an ASO3 Personal Estates Officer, it was [The Personal Estates Officer's] responsibility to understand that a failure to seek Centrelink benefits on [Person A's] behalf would result in a financial loss [Person A]. It was one of [The Personal Estates Officer's] key responsibilities to take action and it was his responsibility to review the matter. In accordance with the Maximising Centrelink Benefits Standard, [The Personal Estates Officer] was expected to have an awareness of [Person A's] changing financial circumstances and take timely action in obtaining Centrelink benefits on behalf of [Person A].

76. Given that these responsibilities were central to [The Personal Estates Officer's] role, it is difficult to accept that [The Personal Estates Officer] could not appreciate the consequences of him not taking the required action.

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77. I also note with concern that [The Personal Estates Officer's] contradictory response to my investigation and the suggestion that the previous officer may have erred in relation to the matter, demonstrates a concerning lack of insight.
  78. It cannot be overlooked that, by the very virtue of Public Trustee being appointed full administrator of [Person A's] estate, [Person A] was a vulnerable person. [Person A] was further vulnerable by virtue of her age.
  79. The Annual Report published by the agency at the year of [Person A's] death acknowledged that particular vulnerabilities are associated with being an older person and that the agency played a role in the prevention of elder abuse by responding to the abuse and exploitation of older people in South Australia.<sup>28</sup> In my view, this only further emphasises the importance of the agency managing the estates of its vulnerable customers diligently.
  80. [The Personal Estates Officer], as Personal Estates Officer, was entrusted to manage [Person A's] estate responsibly on her behalf. This included the responsibility to apply for income support from Centrelink on [Person A's] behalf. By failing to do so, [Person A] was denied something to which she had a right as identified by the 'Guide to the Rights of Older South Australians'.<sup>29</sup>
  81. I consider that [The Personal Estates Officer's] repeated inaction in relation to pursuing [Person A's] entitlements with Centrelink despite [The Personal Estates Officer's] knowledge of [Person A's] potential eligibility, amounts to substantial mismanagement in or in relation to the performance of [The Personal Estates Officer's] official functions.
  82. Accordingly, it is my view that [The Personal Estates Officer] committed maladministration in public administration for the purposes of section 5(4)(a)(ii) of the ICAC Act.
  83. I note that under section 5(4)(a)(i) of the ICAC Act, maladministration in public administration also means conduct of a public officer that results in an irregular or unauthorised use of public money or substantial mismanagement of public resources.
  84. [Person A's] estate was under the control and management of the agency so that it could be managed by the agency, on her behalf. The estate itself was not public money or public resources. Although [The Personal Estates Officer's] conduct resulted in a significant corporate reimbursement of public money being made to the estate, I am mindful that reimbursements are anticipated and budgeted for by the agency in relation to losses incurred in the administration of estates. The agency's policy titled Underpayments and Overpayments Standard and the Corporate Finance - Deficits and Other Losses, provides that estate administration losses are budgeted for and that the loss is reimbursed from Corporate Reserves.
  85. Accordingly, the fact that a corporate reimbursement was required to be made is not in itself an irregular or unauthorised use of public money or a substantial mismanagement of public resources. The manner in which the corporate reimbursement was made is a separate consideration to the conduct of [The Personal Estates Officer] in managing [Person A's] estate that resulted in the need to make the corporate reimbursement.
  86. On this basis, I am of the view that it is unnecessary to consider whether by failing to obtain Age Pension entitlements from Centrelink in the management of [Person A's] estate, [The Personal Estates Officer's] conduct amounted to an irregular or

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<sup>28</sup> Public Trustee, 'Annual Report for the year 2013/14', 24.

<sup>29</sup> 'Knowing Your Rights - A Guide to the Rights of Older South Australians', Government of South Australia (2016).

unauthorised use of public money or substantial mismanagement of public resources pursuant to section 5(4)(a)(i).

## Opinion

It is my view that, [The Personal Estates Officer's] repeated inaction in relation to pursuing [Person A's] Age Pension entitlements with Centrelink, despite having knowledge of [Person A's] potential eligibility, amounts to substantial mismanagement in or in relation to the performance of official functions.

In light of the above, I consider that [The Personal Estates Officer] committed maladministration in public administration for purposes of section 5(4)(a)(ii) of the ICAC Act.

### **Whether [The Personal Estates Officer] committed misconduct in public administration by failing to obtain Age Pension entitlements from Centrelink in the management of the estate of [Person A]**

87. Under section 5(3)(a) of the ICAC Act, a contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer, that constitutes a ground for disciplinary action against the officer, will amount to misconduct.
88. Contravention of the professional conduct standards of the Code of Ethics constitutes grounds for disciplinary action under the Public Sector Act.
89. [The Personal Estates Officer] is a public sector employee for the purposes of the Code of Ethics. Therefore, I have considered whether [The Personal Estates Officer's] conduct, in failing to obtain Centrelink Age Pension benefits for [Person A], amounted to a breach of the requirement in the Code of Ethics to act diligently in his role and duties and not act in a way that is negligent.
90. As I have already set out in this report, the Job and Person Specification concerning the role of Personal Estates Officer ASO3 provides the following in relation to the role and associated duties:
  - a primary purpose of the role is to ensure the customer's needs are satisfied within the provisions of relevant Acts, policies and procedures; this includes ensuring each customer receives the Centrelink benefits they are entitled to under the *Social Security Act 1991* and the *Aged Care Act 1997* and, in accordance with the agency's 'Maximising Centrelink Benefits Standard' ensuring any changes in a customer's circumstances are 'detected early' so that any impact on a Centrelink entitlements can be considered
  - a primary purpose of the role is to provide a check of estate management processes for each file on an annual basis; this includes undertaking a review to ensure the completion of any pension entitlements for the customer.
91. Accordingly, [The Personal Estates Officer's] role and duties as the Personal Estate Officer charged with managing [Person A's] estate, included ensuring that:
  - any changes in [Person A's] circumstances were detected 'early' so that her eligibility for Age Pension entitlements under the Social Security Act could be considered
  - [Person A] received the full Centrelink benefits she was entitled to
  - he undertook a review of [Person A's] file on an annual basis, so that, among other things, he had ensured completion of any action taken (or required to be taken) in relation to Centrelink entitlements.

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92. As I have addressed earlier in my report, at the time [Person A's] file was allocated to [The Personal Estates Officer] in 2007, [Person A's] assets precluded her from receiving Centrelink entitlements. There is nothing in the file to indicate exactly when [Person A's] circumstances changed so that she became eligible.
  93. No Annual Reviews occurred in relation to [Person A's] file in 2008 or 2009. The failure by the agency to undertake Annual Reviews on a yearly basis as required, is something I will consider later in my report. However, [The Personal Estates Officer's] Job and Person Specification provides that the Personal Estates Officer must undertake checks for completion of critical estate management processes; this includes 'entitlements to pension and other income entitlements reviewed'.
  94. [The Personal Estates Officer] has provided contradictory submissions to my investigation. On the one hand, [The Personal Estates Officer] stated that he made an application to Centrelink on behalf of [Person A] in 2008 but failed to follow that up when the application was deemed to be incomplete. On the other hand, [The Personal Estates Officer] stated that he did not make an application due to an oversight on his part.
  95. I have already noted that there is nothing in the file to satisfy me that [The Personal Estates Officer] took any action in relation to obtaining Age Pension entitlements for [Person A] in 2008.
  96. I have noted that the Annual Review statements indicate that [The Personal Estates Officer] was informed of [Person A's] potential eligibility for Age Pension payments in 2010 and [The Personal Estates Officer] indicated that he would take action. However, [The Personal Estates Officer] failed to take action and failed to check for the completion of that action as the issue was raised three years later in the 2013 Annual Review process. [The Personal Estates Officer] again took no action and failed to check for the completion of the issue, as evidenced by the 2014 Statement Issues where any action in relation to [Person A's] pension entitlements remained 'Not Started'.
  97. I have expressed the view that [The Personal Estates Officer] had the day to day responsibility for managing the file and that, in accordance with the Job and Person Specification this included obtaining Centrelink entitlements for which [Person A] was eligible. I have noted that public officers may, from time to time, make mistakes or oversights that need to be rectified.
  98. However, in the circumstances of this matter, I am mindful that [The Personal Estates Officer] failed to perform duties he was required to perform as part of the day to day management of [Person A's] files. [The Personal Estates Officer] failed to do so on a repeated basis, over several years. This was despite the matter being formally brought to [The Personal Estates Officer's] attention. The continued failure by [The Personal Estates Officer] to perform the important function of obtaining [Person A's] Age Pension benefits and then the failure to check on the completion of the issue, resulted in [Person A] not receiving a significant sum of pension payments to which she was entitled and consequently a further depletion to her estate.
  99. In these circumstances, I consider the conduct of [The Personal Estates Officer] was sufficiently serious enough to amount to a contravention of the requirement of the professional conduct standards of the Code of Ethics to act diligently in his role and duties and not act in a way that was negligent.
  100. On this basis, it is my view that the conduct of [The Personal Estates Officer] amounted to misconduct pursuant to section 5(3)(a) of the ICAC Act.

## Opinion

It is my view that [The Personal Estates Officer's] repeated inaction in relation to pursuing [Person A's] Age Pension entitlements with Centrelink, despite having knowledge of [Person A's] potential eligibility, amounted to a contravention of the requirement of the professional conduct standards of the Code of Ethics to act diligently in his role and duties and not act in a way that was negligent.

In light of the above, I consider that [The Personal Estates Officer] committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.

### Whether [The Personal Estates Officer's] failure to obtain Age Pension entitlements from Centrelink in the management of the estate of [Person A] was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act

101. Above, I have expressed the view that the failure by [The Personal Estates Officer] to obtain Age Pension entitlements from Centrelink on behalf of [Person A], was sufficiently serious enough to amount to a contravention of the requirement of the professional conduct standards of the Code of Ethics to act diligently in his role and duties and not act in a way that was negligent.
102. Pursuant to section 14B of the Ombudsman Act, a matter referred to me under the ICAC Act is taken to relate to administrative acts for the purposes of the Ombudsman Act and must be dealt with as if a complaint had been made under the Ombudsman Act.
103. Section 3(1) of the Ombudsman Act provides the following definitions:
- 3-Interpretation**
- (1) In this Act, unless the contrary intention appears-
- administrative act* means-
- (a) an act relating to a matter of administration on the part of an agency to which this Act applies or a person engaged in the work of such an agency; or
- ...
- administrative unit* means an administrative unit of the Public Service;
- agency to which this Act applies* means-
- ...
- (b) an administrative unit
- ...
104. Accordingly, I am satisfied that I may also consider [The Personal Estates Officer's] failure to obtain Age Pension entitlements from Centrelink on behalf of [Person A], in the context of the Ombudsman Act.
105. I have formed the view that the failure to obtain the Age Pension entitlements amounted to a breach of the Code of Ethics.
106. Section 6 of the Public Sector Act 2009 provides:

#### 6-Public Sector Code of Conduct

Public sector employees must observe the public sector code of conduct.

107. Accordingly, it is my view that the failure to obtain the Age Pension entitlements appears contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

### Opinion

In light of the above, I consider that [The Personal Estates Officer] acted in a manner that was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

Pursuant to section 25(2) of the Ombudsman Act, I may make recommendations to remedy any errors I have identified under the Ombudsman Act.

In my provisional report I foreshadowed recommending that [The Personal Estates Officer] undertake the Code of Ethics Training available for public sector employees. However, the agency has advised that [The Personal Estates Officer] did so on 11 May 2018.

Accordingly, I do not consider it necessary to make any recommendations in response to this particular issue.

### **Whether [The Personal Estates Officer] committed maladministration in public administration by failing to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined**

108. The referral contained the following allegations:

- due to [The Personal Estates Officer's] failure to apply for the Age Pension on behalf of [Person A], [Person A] paid exorbitant nursing home fees and did not receive the concessions to which she was entitled
- in the years leading to [Person A's] death she paid between \$200,000 and \$300,000 for nursing home fees and other expenses.

109. As I have noted, pursuant to section 5(4)(a)(ii) of the ICAC Act, a public officer commits maladministration through conduct involving substantial mismanagement in or in relation to the performance of official functions. This includes conduct resulting from 'impropriety, incompetence or negligence'.<sup>30</sup>

110. Again, I am mindful of the Personal Estates Officer ASO3 Job and Person Specification which provides that:

- the primary purpose of the role includes ensuring that client needs are satisfied within the provisions of the relevant Acts, Regulations and agency's policies and procedures as well as undertaking an annual check of critical estate management processes for files on an annual basis in order to check for 'accuracy, integrity and reliability'. This includes residential aged care subsidies under the *Aged Care Act 1997*
- key responsibility of the role is to review entitlements to pension and 'other income entitlements' and to ensure that 'accommodation and like fees' are ratified and correct
- an 'essential technical expertise' of the role includes 'knowledge of Centrelink and other health/welfare support agencies'.

111. Accordingly, I am satisfied that, as the Personal Estates Officer with the responsibility of managing [Person A's] estate, [The Personal Estates Officer] was required to have knowledge of entitlements to which [Person A] may have been eligible, review [Person

<sup>30</sup> ICAC Act section 5(4)(b).

A's] entitlements and to ensure that her accommodation fees were correct. In fact, it was a key responsibility of [The Personal Estates Officer's] role.

112. I must now consider whether [The Personal Estates Officer] failed to discharge this responsibility and, if so, whether such failure amounts to 'substantial mismanagement' in or in relation to the performance of official functions.
113. On 21 August 2008, the agency was advised by [Person A's] previous place of accommodation that she was now residing at a Residential Aged Care facility.
114. On 26 September 2008 the agency received a letter from Centrelink, on [Person A's] behalf. The letter explained that, in addition to the basic daily care fee, people entering residential aged care may have to pay an income tested fee, based on their income and level of care they need. The letter stated:

Before the Department of Health and Ageing can work out if you need to pay this fee, Centrelink needs to give them details of your assessed income. The form 'Helping you with the assessment of your residential aged care fee' is used to collect relevant information for this purpose. We have enclosed a copy of that form for you to complete and return to us within 28 days of the date of this letter using the enclosed reply paid envelope.

... Our authority to request this information is contained in section 44(24) of the Aged Care Act 1997.

If the form is not returned to Centrelink, you may have to pay the maximum fee to your aged care service provider ...

115. The Commonwealth *Aged Care Act 1997* in force at the time provided that:
- the residential aged care subsidy is a payment by the Commonwealth to approved providers for providing residential aged care to care recipients<sup>31</sup>
  - the amounts of the residential aged care subsidy payable to an approved provider are worked out under Division 44 of the Act in respect of each residential aged care service. The amount relating to each residential aged care service is determined by using the residential aged care subsidy calculator set out in the Act, in relation to each individual care recipient receiving that service<sup>32</sup>
  - one consideration taken into account when undertaking subsidy calculations is the care recipient's total assessable income, under division 44-24 Centrelink sought [Person A's] details so that an income assessment could be undertaken.
116. In accordance with his Job and Person Specification, [The Personal Estates Officer] should have been aware that once [Person A] moved to a residential aged care facility, she should have undertaken an income assessment in order to determine whether she was required to pay an additional fee on top of the basic daily fee. Given that the letter from Centrelink addressed this need, it was clearly and unambiguously brought to [The Personal Estates Officer's] attention.
117. The file does not contain a record of [The Personal Estates Officer] providing [Person A's] financial details to Centrelink in response to the letter dated 26 September 2008. The file does contain a Memorandum dated 12 March 2015, the time the issues with [Person A's] estate were being looked into, authored by [The Personal Estates Officer] and addressed to [The Team Leader], stating:

...  
No Centrelink Income and Assets form was completed or submitted to Centrelink when client moved to Kiandra Nursing Home in 2008. Client was charged nursing home fee as

<sup>31</sup> *Aged Care Act 1997*, division 41-1.

<sup>32</sup> *Aged Care Act 1997*, division 44-1.

well as an [sic] daily accommodation charge whilst residing there due to the income and assets form not being submitted.

118. In my provisional report, I formed the view that based on the information before me, it appeared [The Personal Estates Officer] had failed to submit the required information to Centrelink on [Person A's] behalf and by doing so, it is likely that [Person A] was charged additional residential aged care fees between the date of her transition to residential aged care and her death.
119. I noted that in relation to 'Accommodation Fees', the Annual Review statements record that:
- at the 21 July 2010 Annual Review, accommodation fees were not deemed to be in issue
  - at the 19 September 2012 Annual Review, accommodation fees were not deemed to be in issue
  - at the 19 November 2013 Annual Review, a 'Manual Issue' notation was made. This is the same Annual Review where a manual issue was entered in relation to pension entitlement however, no manual issue is visible.
120. Therefore, as with the entitlement to pension issue, the issue of [Person A's] residential aged care fees remained unresolved at the date of her death.
121. My provisional report noted that although the Annual Review process did not detect the issue of [Person A's] residential aged care fees until 2013, given that [The Personal Estates Officer] received the letter from Centrelink dated 26 September 2008 on [Person A's] behalf, I was satisfied that [The Personal Estates Officer] likely had and most definitely should have had knowledge of the need for [Person A's] information to be provided to Centrelink so that her residential aged care fees could be properly assessed.
122. I formed the provisional view that the failure by [The Personal Estates Officer] to submit the information within 28 days to Centrelink, potentially resulted in [Person A] paying additional residential aged care fees to those to which she was required to pay for a significant period of time. This would have potentially resulted in the depletion of [Person A's] assets further, rendering her potentially eligible for the full-pension at some stage.
123. In response to my provisional report the agency advised that it had commenced enquiries in order to ascertain any overpayments of residential aged care fees that may have resulted from [The Personal Estates Officer's] failure to provide information to Centrelink. The agency advised that its enquiries had resulted in the following thus far:
- legal advice was sought by the agency at the time [Person A] entered into residential aged care in relation to a residential aged care agreement. The legal advice dated 14 April 2009 states that [Person A's] residential aged care provider had informed the solicitor that it understood Centrelink had assessed [Person A] as having to pay an additional income tested fee of \$58.96 per day
  - from a review of a sample of invoices from 2009 to 2014 it appears to the agency that the Basic Daily Fee and Accommodation Charges were correctly charged against the estate and do not require further investigation. However, there appears to be incorrect charges of the Income Tested Fee. The agency also noted that the Income Tested Fee increased over time when the estate was significantly reducing
  - the agency has sought the assistance of Centrelink and the Residential Aged Care facility in order to determine the amount to be refunded in relation to the error.

124. Having considered a copy of the legal advice referred to by the agency, I note that it does refer to [Person A's] residential aged care provider being of the understanding that Centrelink may have undertaken some form of assessment of [Person A's] income. Given that the legal advice is dated six months after the letter from Centrelink requesting [Person A's] information, I have considered whether it is possible that [The Personal Estates Officer] may have, at some stage, submitted [Person A's] information to Centrelink for an assessment of her residential aged care fees. However, I am mindful of the following:
- in 2015 when the agency was first investigating the matter, [The Personal Estates Officer] advised that he did not complete or submit the require form
  - [The Personal Estates Officer] had no comment to make in response to my provisional views
  - the agency accepted my provisional views and noted that it too could not find any evidence that [The Personal Estates Officer] had provided [Person A's] information to Centrelink in response to the letter.
  - the agency has since discovered that there appears to be incorrect charges of the Income Tested Fee. I am mindful that this may be indicative that information was not provided to Centrelink for a proper assessment.
  - I understand that Centrelink may undertake an assessment using information it already has available to it about a client.<sup>33</sup>
125. Accordingly, on the balance of probabilities, my view remains that [The Personal Estates Officer] failed to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined at the time she entered into residential aged care.
126. Later in my report, I address how the agency then handled the issue of [Person A's] residential aged care fees.
127. It is my view that, as an ASO3 Personal Estates Officer, it was central to [The Personal Estates Officer's] role to understand that [Person A's] information needed to be assessed in order to determine what residential aged care fees she paid. It was his responsibility to respond to the letter from Centrelink on [Person A's] behalf and provide the relevant information to Centrelink for assessment. It was his responsibility to understand what impact the failure to do so would have.
128. The failure to take the required action after receiving the letter in 2008 and again failing to take action once the issue was identified in the 2013 Annual Review Process, coupled with the impact this failure would have had on [Person A's] estate, in my view, amounts to substantial mismanagement in or in relation to the performance of [The Personal Estates Officer's] official functions.
129. Accordingly, it is my view that [The Personal Estates Officer] committed maladministration in public administration for purposes of section 5(4)(a)(ii) of the ICAC Act.
130. Again, I do not consider that [The Personal Estates Officer's] failure to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined related to an irregular or unauthorised use of public money or a substantial mismanagement of public resources. Other than the corporate reimbursement which is budgeted for, as discussed by me earlier, in my view, there is no public money or public resources in question in relation to this issue.

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<sup>33</sup> Information provided to my Office by the Commonwealth Ombudsman's office and available on <<https://www.myagedcare.gov.au/costs/aged-care-homes-costs-explained/income-and-assets-assessment-aged-care-home-costs>>.

131. Accordingly, I do not consider it necessary whether in failing to provide the information to Centrelink, [The Personal Estates Officer's] conduct amounted to an irregular or unauthorised use of public money or substantial mismanagement of public resources pursuant to section 5(4)(a)(i).

## Opinion

It is my view that, [The Personal Estates Officer's] repeated inaction in relation providing relevant information to Centrelink and ensuring that [Person A] paid only the residential aged care fees she was required to pay, despite having knowledge of the requirement to do so, amounts to substantial mismanagement in or in relation to the performance of official functions.

In light of the above, I consider that [The Personal Estates Officer] committed maladministration in public administration for purposes of section 5(4)(a)(ii) of the ICAC Act.

### **Whether [The Personal Estates Officer] committed misconduct in public administration by failing to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined**

132. As I have already addressed in this report, under section 5(3)(a) of the ICAC Act, a contravention of the Code of Ethics by a public officer while acting in his or her capacity as a public officer, will amount to misconduct.
133. I have noted that as a public sector employee, the Code of Ethics provides that [The Personal Estates Officer] was required to act diligently in his role and duties and not act in a way that was negligent when managing [Person A's] estate.
134. [The Personal Estates Officer's] Job and Person Specification sets out [The Personal Estates Officer's] role and duties when managing [Person A's] estate, including:
- knowledge of entitlements to which [Person A] may have been eligible
  - reviewing [Person A's] entitlements
  - ensuring [Person A's] accommodation fees were correct.
135. [Person A] moved to residential aged care in August 2008. Centrelink's letter advising of the need to provide information for the purposes of an income assessment in order to determine the residential aged care fees [Person A] should pay was sent in September 2008.
136. [The Personal Estates Officer] failed to provide the relevant information in response to that letter on [Person A's] behalf.
137. The 2013 Annual Review process appears to have identified this failure and still [The Personal Estates Officer] failed to take action, despite the matter coming to [The Personal Estates Officer's] attention. Once again, the matter remained unresolved at [Person A's] death. As I have noted, this resulted in [Person A's] income not being assessed in order to determine the relevant fees she should have been paying. This consequently meant [Person A] paid higher than required fees, potentially for quite some time and to significant detriment to [Person A's] estate.
138. In these circumstances, I consider the conduct of [The Personal Estates Officer] was sufficiently serious so as to amount to a contravention of the requirement of the professional conduct standards of the Code of Ethics to act diligently in his role and duties and not act in a way that was negligent.

139. On this basis, it is my view that the conduct of [The Personal Estates Officer] amounted to misconduct pursuant to section 5(3)(a) of the ICAC Act.

### Opinion

It is my view that [The Personal Estates Officer's] repeated inaction in relation to providing relevant information to Centrelink on [Person A's] behalf and ensuring [Person A's] residential aged care fees could be properly determined, despite having knowledge of the requirement to do so, amounted to a contravention of the requirement of the professional conduct standards of the Code of Ethics to act diligently in his role and duties and not act in a way that was negligent.

In light of the above, I consider that [The Personal Estates Officer] committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.

### **Whether [The Personal Estates Officer's] failure to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act**

140. I have formed the view that the failure by [The Personal Estates Officer] to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined, was sufficiently serious enough to amount to a contravention of the requirement of the professional conduct standards of the Code of Ethics to act diligently in his role and duties and not act in a way that was negligent.

141. I have addressed earlier in this report that pursuant to section 6 of the Public Sector Act, public sector employees must observe the public sector code of conduct and therefore the administrative act that amounts to a breach of the Code of Ethics may be considered contrary to law within the meaning of the Ombudsman Act.

142. Accordingly, it is my view that by failing to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined, [The Personal Estates Officer] acted in a manner that was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

### Opinion

In light of the above, my view is that by failing to provide relevant information to Centrelink so that [Person A's] residential aged care fees could be properly determined, [The Personal Estates Officer] acted in a manner that appears contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

In my provisional report I noted that, at the commencement of my investigation, the agency informed me that steps were taken to performance manage [The Personal Estates Officer]. I asked that the agency advise me of the outcome of the performance management process and in particular whether the agency is satisfied that [The Personal Estates Officer] has sufficient knowledge and competency in relation to Centrelink age pension entitlements and residential aged care entitlements.

In response to my provisional report the agency advised that:

- a performance management meeting occurred in January 2017 which was attended by the Acting General Manager Customer Services, Human Resource Consultant, Team Leader and [The Personal Estates Officer]. This resulted in a managerial direction letter being provided to [The Personal Estates Officer] in February 2017. In addition, twelve meetings occurred between the Team Leader and [The Personal Estates Officer] from

- January 2017 through to June 2017, in an effort to increase oversight of [The Personal Estates Officer's] case files and provide training support and direction.
- the agency considers [The Personal Estates Officer] now has sufficient knowledge and competency in relation to Centrelink Age Pension entitlements and Residential Aged Care entitlements.

Accordingly, I do not consider it necessary to make any recommendations in response to this particular issue.

However, later in this report I consider whether recommendations are necessary in relation to the issue of residential aged care fees in the context of the agency's wider handling of the matter.

**Whether, by failing to ensure [Person A's] estate was properly managed, the agency acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.**

143. In undertaking this investigation, I have identified the following issues with the agency's Annual Review process relating to [Person A's] estate:
- there is no record of Annual Reviews having occurred in 2008, 2009 or 2011
  - the 2010 Annual Review process identified pension entitlements as being unresolved. The 2012 Annual Review failed to identify that the issue still remained unresolved and the issue was not detected again until the 2013 Annual Review
  - the issue of 'Accommodation fees' was also identified in the 2013 Annual Review and remained unaddressed
  - while as part of the Annual Review process, the Team Leader and Manager were aware of the issues identified, they continued to remain unresolved.
144. In addition [The Personal Estates Officer] has sought to rely on wider pressures at the agency, including a workload that was too high and a lack of proper training in the role, as attributing to the difficulties he had in managing [Person A's] estate.

*Annual Reviews*

145. I have noted that [Person A's] file does not contain records evidencing that Annual Reviews took place in relation to the file in either 2008, 2009 or 2011. [The Personal Estates Officer] has submitted:

Reviews are scheduled to occur annually by the internal Checking Officer; however, due to resource issues at Public Trustee, this was not always possible as seen in this case.

...

Since this time, there has been update in procedures, and each file is now the subject of more regular reviews, most often on an annual basis.

146. In the context of [Person A's] pension entitlement, although the agency has been unable to determine exactly when [Person A's] financial circumstances changed, had an Annual Review been undertaken in 2008 and 2009, [Person A's] potential eligibility for Centrelink benefits may well have been detected earlier than the 2010 Annual Review. Similarly, had an Annual Review been undertaken in 2011, there would have been a greater chance that it would have been detected that [The Personal Estates Officer] had not taken action in relation to the pension issues identified in the 2010 Annual Review.
147. In the context of the accommodation fees, it is concerning that the issue was not identified until 2013, given that [Person A] moved into the residential aged care facility

in 2008. Had more regular annual reviews been undertaken, I would expect that the matter would have been identified much earlier.

148. In light of the above, I consider that the agency's failure to undertake regular Annual Reviews had a significant impact on [Person A's] estate.
149. I acknowledge that the Annual Review process is not fool proof and that it is used as a means of detecting issues that have not been resolved by the relevant officer, rather than detecting an issue with the file per se. The 2012 Annual Review statement indicates that in 2012 it was not detected that the pension issue identified in 2010 remained unresolved. However, by failing to undertake regular Annual Reviews, the agency denied itself the opportunity to detect [The Personal Estates Officer's] continued inaction and in turn meant that the estate of a vulnerable individual remained improperly managed.

### *Supervision*

150. [The Personal Estates Officer] has noted:

In addition to my own oversight, it is unfortunate that the annual review system at the time also failed to correct the issue and it is the type of matter that could, and should have been corrected following a review by my team leader and manager.

151. [The Personal Estates Officer] considers that, given that the Team Leader is also provided a copy of the Annual Review Statement, management had a responsibility to ensure issues identified on the Statement were followed up.
152. The Job and Person Specification for the ASO3 Personal Estates Officer role provides that [The Personal Estates Officer] reported to a Team Leader, ASO6, within the Personal Estates Branch. The relevant Team Leader was [The Team Leader].
153. As Team Leader, [The Team Leader] was responsible for 'managing, leading, developing and monitoring a team and its workload' and 'monitoring and undertaking risk assessment and evaluation and overseeing prudent financial management and the investment of estates'.<sup>34</sup> [The Team Leader] was accountable to the Manager Personal Estates, [Manager Personal Estates].
154. There is nothing in the file to indicate that [The Team Leader], or any other manager, took action to oversee whether [The Personal Estates Officer] had taken action to obtain Centrelink benefits on [Person A's] behalf, even after her potential eligibility had been identified in the 2010 Annual Review process and again in 2013.
155. I accept that because Annual Reviews did not occur regularly and did not necessarily identify the issues consistently, those officers above [The Personal Estates Officer] may not have been aware that matters remained unresolved. However, I consider that, in the context of the entitlement to pension issue, the fact that the issue was identified once again in the 2013 Annual Review Process, should have raised concerns and triggered some form of closer oversight or scrutiny by management.
156. In my view, the failure to undertake proper oversight of the management of [Person A's] file demonstrates a lack of appreciation by management of the importance of managing the personal estates of vulnerable people, such as [Person A], with diligence and care.

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<sup>34</sup> Job and Person Specification, ASO6, Team Leader, Personal Estates.

157. I consider that the failure by management to properly oversee [The Personal Estates Officer's] management of [Person A's] Centrelink entitlements only further compounded the wider failure to obtain the benefits to which [Person A] was entitled.

#### *Wider Agency Pressures*

158. [The Personal Estates Officer] has submitted that:

- at the time [Person A's] file was allocated to him, [The Personal Estates Officer] 'had very little training and no prior experience in the financial management of personal estates'
- his case load at the time of approximately 130 files was too high; [The Personal Estates Officer] submits that following Industrial Action and an internal review undertaken by the agency, the file case load number was reduced to 100 files but the Industrial Action was continuing because Personal Estate Officers continued to consider the caseload was too high
- the agency's system whereby a personal estate can be allocated to a Personal Estate Officer for almost seven years, as in the case of [Person A's] file, allows for errors to go unnoticed over time.

159. I accept that [The Personal Estates Officer] may have considered himself to have been overworked and undertrained. I have already noted the Commissioner's Evaluation which looked at the wider practices of the agency at the time. I do not consider it necessary for me to consider the wider pressures of the agency in relation to file load or training, given that the Commissioner did so in his Evaluation of the agency and consequently made recommendations in relation to such issues. I understand that the recommendations have since prompted extensive changes to the processes of the agency.

160. Further, I do not consider that file load or training were necessarily in issue in this case, given that:

- the former Public Trustee has informed me that [The Personal Estates Officer's] caseload at the time was not outside those of his peers
- [The Personal Estates Officer] had approximately three years of experience as a Personal Estates Officer by the time the issue of [Person A's] potential entitlement to Centrelink benefits was identified in the 2010 Annual Review Process and still [The Personal Estates Officer] failed to take action
- It was [The Personal Estates Officer's] responsibility to take action in relation to both obtaining [Person A's] pension entitlements and providing relevant information to Centrelink to ensure [Person A's] income was assessed to determine what residential aged care fees she should have been paying.

161. Wider agency pressures aside, it is my view that, by failing to ensure regular Annual Reviews were undertaken in relation to [Person A's] file and failing to properly oversee [The Personal Estates Officer's] management of [Person A's] entitlement to Centrelink benefits, the agency acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

#### **Opinion**

It is my view that by failing to ensure regular Annual Reviews were undertaken in relation to [Person A's] file and failing to properly oversee [The Personal Estates Officer's] management of [Person A's] estate, the agency acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

However, it is my view that, in the circumstances, recommendations are not necessary for the following reasons:

- An agency Memorandum dated 31 May 2016 identified that the Annual Review process failed to identify the outstanding issues with [Person A's] estate and noted that the matters had never been actioned or escalated. It was noted that controls had since been put in place to address circumstances in which Personal Estate Officers fail to address issues with estates. This includes an immediate escalation requirement so that such matters are addressed urgently and rectified. It was also noted that staff were to familiarise themselves with Centrelink entitlements, the Aged Care Act and the importance of completing Income and Asset Assessment forms for clients
- since the Commissioner's Evaluation of the agency, policy and procedural changes have occurred at the agency, I understand that this includes changes to the management of the Personal Estates section and oversight of officer's file
- the officers in the role of General Manager Customer Services and Public Trustee at the time have since left the agency
- the agency ensured that [The Personal Estates Officer] was performance managed in response to the issues related to his management of [Person A's] estate.

**Whether the agency's handling of the matter, subsequent to a complaint made by [Person A's] son, amounted to maladministration in public administration**

162. The referral also concerned the manner in which the agency dealt with the matter, subsequent to a complaint made by [Person A's] son.
163. Pursuant to section 5(4)(a)(i) of the ICAC Act, a public authority engages in maladministration if a practice, policy or procedure of the public authority results in:
- an irregular or unauthorised use of public money; or
  - substantial mismanagement of public resources.
164. The agency's Compliments and Complaints Policy provides:
- complainants are to be provided a suitable remedy in a 'fair, timely and consistent manner'
  - at the time of assessing complaints, a 'risk rating' will be assigned in order to determine the resources required to effectively and efficiently respond to the complaint and to assign a level of priority; the risk rating is based on the severity of the outcome to the client or to the agency and the likelihood of reoccurrence
  - a letter of acknowledgement will be sent on receipt of a complaint outlining the expected timelines; complainants will be advised if the investigation is expected to take longer.
165. The agency's Compliments and Complaints Procedure provides:
- the following timeframes:
    - a complaint must be acknowledged within 24 hours
    - a written response must be provided within 10 working days of receipt of the complaint
    - a final resolution must be provided within 21 working days from the date of acknowledgement of the complaint or 'as negotiated with the complainant
  - the Branch Manager, Team Leader and/or the Personal Estates Officer are to:
    - investigate a complaint
    - contribute to the drafting of a Memorandum to the Public Trustee with a summary of the complaint and recommended course of action

- record the complaint in the agency's Compliments and Complaints system
- the Manager is to finalise the response which is then perused by the Executive and signed off by the Public Trustee
- in accordance with the risk rating table which sets out the level of risk to be assigned to a complaint:
  - a loss greater than \$50,000 would have 'severe' consequences. If it were determined that there was an 'almost certain' or 'possible' likelihood of reoccurrence then such a complaint would receive a 'high' risk rating. However, if it were determined to have a rare likelihood of reoccurrence then the risk rating would be 'medium'
  - 'Medium' risk complaints must be discussed with the Manager and General Manager within 48 hours and prior to a formal response. In relation to 'High' risk complaints, the Public Trustee and General Manager must be immediately notified to ensure an appropriate response and resources are allocated
- Ministerial complaints are to be brought to the immediate attention of the Public Trustee via the General Manager's Executive Assistant and are to be considered 'high risk'. Ministerial complaints are to be handled in the following manner:
  - once a complaint has been recorded in the system, if required, a meeting may occur between the relevant Manager and Team Leader and/or other staff members to discuss the approach
  - the Team Leader is to investigate and prepare a response for the Executive
  - if an extension is required in that investigation process the Branch Manager is to make a request to the GM's EA who then make a request to AGD
  - the Public Trustee reviews and signs all correspondence.

166. Although the referral concerns the agency's handling of the matter after [Person A's] son made a complaint, I note that it took [The Personal Estates Officer] approximately five months to finalise the estate before transferring the file to a Completions Officer by Memorandum dated 10 June 2014. The transfer Memorandum noted that Annual Review issues had not been completed in relation to [Person A's] file. Following this [The Team Leader] was informed of a potential issue with [Person A's] pension entitlements by Memorandum dated 11 June 2014. On that same day [an agency employee] emailed Centrelink noting that, at the date of [Person A's] death, it appeared she was not receiving a pension and requesting advice as to whether [Person A] would have been eligible at that date.

167. From the file, I can see that a formal 'complaint' was made about [Person A's] potential eligibility for pension entitlements by letter from Herve & Co Solicitors dated 14 August 2014 (**the formal complaint**). However, [Person A's] son had expressed concern in relation to the possible depletion of [Person A's] funds, by telephone call on 17 June 2014. The Estate Administrator had similarly done so by letter dated 18 June 2014.

168. [An agency employee] noted in a Memorandum to [another agency employee] dated 17 June 2014 that [the agency employee] had spoken with [Person A's] son about his concerns. That Memorandum indicated that [The Team Leader] had also spoken to [Person A's] son. It is not recorded in the file when that discussion took place but [the agency employee] noted in the Memorandum that:

He understands as advised by [The Team Leader] that this file is under investigation. He advised that this investigation may go on for about a year.

Would you please be able to organise for an AS05 or an appropriate officer to check this file.

169. Given that I cannot determine when [The Team Leader] spoke to [Person A's] son, for the purposes of the referral and this investigation, I will consider the agency's handling

of the matter from the date of [an agency employee's] call with [Person A's] son on approximately 17 June 2014.

170. On 18 June 2014 the Acting Manager of Personal Estates asked [The Team Leader] to look into the matter and provide a report, including any remedial action that could be taken to address possible losses to the estate.<sup>35</sup> It is unclear what action was then immediately taken by either [The Team Leader] or the agency.
171. I note that Centrelink provided a response to [an agency employee's] letter on 8 August 2014, almost two months after the request, and failed to answer the questions asked by [the agency employee]. The response simply stated:

...  
There was no unpaid pension due to [Person A] at her death.

172. The file indicates that the next action taken by the agency was by Memorandum dated 29 August 2014 whereby [The Team Leader] explained to [Manager Personal Estates] that the response from Centrelink had provided no insight and that due to concerns about the time and resources that would likely be involved in investigating the matter, [The Team Leader] requested that the matter be allocated to [an agency employee], another Personal Estates Team Leader.
173. The Memorandum to [Manager Personal Estates] contains handwritten notations recording [Manager Personal Estates] view that it was 'not appropriate' to allocate the file to [an agency employee] and that she had instead approved [The Personal Estates Officer] to investigate the matter. [The Personal Estates Officer] was approved despite another notation made by [Manager Personal Estates] which stated:<sup>36</sup>

However ... provide me with a briefing as to why [The Personal Estates Officer] did not follow up his annual review.

174. There are no records of action being taken by [The Personal Estates Officer] during the immediate time following [Manager Personal Estates] Memorandum. However, [The Team Leader] has submitted:<sup>37</sup>

...  
When the matter was raised by [The Executor], the Manager of Personal Estates considered that the investigation could be undertaken by [The Personal Estates Officer], but it soon became apparent that this was beyond [The Personal Estates Officer's] capabilities and I suggested to [The Personal Estates Officer] that he could try [a Centrelink employee] (Centrelink) to ascertain what support could be provided.

175. I note that the next correspondence on the file between [The Team Leader] and [The Personal Estates Officer] is a Memorandum dated 5 March 2015 whereby [The Team Leader] advised that he had sought agreement from Centrelink to assist in providing estimates of [Person A's] pension entitlements and asking [The Personal Estates Officer] to:
- review the file in order to determine [Person A's] eligibility
  - advise whether an Income and Asset Assessment Application had ever been lodged with Centrelink on behalf of [Person A]
  - if the Application had not been lodged, to determine what would have been an appropriate level of nursing home fees for [Person A] had such an application been lodged.

<sup>35</sup> Memorandum dated 18 June 2014 from [an agency employee], Acting Manager of Personal Estates, to [The Team Leader].

<sup>36</sup> Handwritten note initialled by [Manager Personal Estates] and dated 29 August 2014.

<sup>37</sup> Letter from [The Team Leader] sent by email dated 23 December 2016.

176. If, as [The Team Leader] submits, that it 'soon became apparent' that [The Personal Estates Officer] was incapable of undertaking the investigation, it is unclear to me why it then took approximately seven months from the date of [Manager Personal Estates] approval, for an agreement to be reached with Centrelink for assistance and then to still seek [The Personal Estates Officer's] assistance with further matters.
177. I note that this is despite:
- the solicitors requesting an update on the progress of the matter in December 2014
  - [The Team Leader] advising the solicitors by letter dated 15 January 2015 that investigations had stalled due to lack of useful communications from Centrelink however, the agency was still pursuing the issue
  - the Estate Administrator requesting that the matter be escalated on 12 February 2015.
178. [The Personal Estates Officer] responded to [The Team Leader's] request by Memorandum on 12 March 2015, outlining the history of [Person A's] estate and noting:
- No Centrelink Income and Assets form was completed or submitted to Centrelink when client moved to Kiandra Nursing Home in 2008. Client was charged nursing home fee as well as an [sic] daily accommodation charge whilst residing there due to the income and assets form not being submitted.
- No application for Centrelink pension was made during time of administration.
- ...
179. Estimates of [Person A's] Age Pension entitlements were provided by Centrelink on 28 October 2015, some seven months after an agreement to do so had occurred by telephone call with [The Team Leader]. I appreciate that the processes of Centrelink are outside of the control of the agency however, given the already ongoing delays in the matter, I consider it would have been reasonable for the agency to have attempted to expedite the process through contact with Centrelink. The file contains no record of any such action being taken by the agency.
180. On 5 November 2015, [The Team Leader] sent an internal agency email asking for a calculation of the interest that would have accrued based on the estimates provided by Centrelink. I am mindful that [The Team Leader] was first asked by the then Acting Manager of Personal Estates to provide a report on the matter on 18 June 2014.
181. I understand that the former Public Trustee received a Memorandum from [Manager Personal Estates] in relation to seeking Corporate Reimbursement in December 2015 and that the former Public Trustee then met with [Manager Personal Estates] and [The Team Leader].<sup>38</sup> At this meeting it was apparently discussed that the Estate Administrator had been waiting some time for the agency to calculate and resolve the issue of unclaimed Centrelink Benefits, and that Centrelink had provided pension estimates but further details were required in relation to the estimates provided.<sup>39</sup>
182. [Manager Personal Estates] emailed Centrelink on 27 January 2016 requesting further details in relation to the calculations. Centrelink did not respond. The file records that [Manager Personal Estates] then contacted Centrelink again in February 2016. On 8 March 2016, at the former Public Trustee's request, [The Team Leader] made an internal request for a recalculation up to the date of 31 March 2016.

<sup>38</sup> Letter from former Public Trustee, Ms Deb Contala, to the Commissioner dated 16 September 2016.

<sup>39</sup> Letter from former Public Trustee, Ms Deb Contala, to the Commissioner dated 16 September 2016.

183. No further action was taken by the agency until [The Team Leader] contacted Centrelink on 10 May 2016. [The Team Leader's] email explained that he had returned from extended leave and had noted the matter still had not been followed up. On 17 May 2016 [The Team Leader] emailed Centrelink again and explained that the matter had now become extremely urgent as the agency had received a complaint through the Attorney-General.
184. The Ministerial complaint was received by the agency on 12 May 2016. I understand that the former Public Trustee and Ms Anderson handled the Ministerial complaint.
185. An email from Ms Anderson to [The Team Leader] dated 30 May 2016 and titled '[Person A] Ministerial' stated:

[The Team Leader]

I am proposing to Debra that we take a corporate loss for the [Person A] matter that is equivalent to the missed Centrelink plus the corresponding missed interest. I am proposing we do not take any capital commission on interest earned and also that any A & A fee taken since date of debt be reversed.

The draft letter from the Attorney to [The Executor] indicates that we will finalize [sic] this estate during this week.

I expect that Debra will agree my proposal [sic] and will want to sign off on the corporate loss etc urgently - to that end please prepare the minute seeking approval for the corporate loss urgently and deliver to me.

186. A Memorandum from [Manager Personal Estates] to Ms Anderson dated 31 May 2016 is titled 'Claim on Corporate Reserves to rectify an oversight by the Personal Estate Branch to apply for Centrelink pension along with Public Trustee interest adjustment on the un paid pension [sic]'. The copy I have been provided is evidently a draft version as it contains handwritten amendments. However, the Memorandum states:

#### **Recommendation**

It is recommended that:

The sum of \$66,256.00 Centrelink pension plus \$11,846.72 Public Trustee interest, a total of \$78,102.72 is paid from Corporate Reserves to the Estate of [Person A] 0256920FG0100 as a result of the Personal Estate Officer failing to make an application to Centrelink for pension consideration.

...

#### ***Background***

...

As per the General Manager Customer Services email dated 30 May 2016 and attached to this memorandum, no income commission is to apply on the \$11,846.72 Public Trustee interest adjustment on the unpaid Centrelink pension.

It will also be recommended to the Public Trustee that Administration and Audit fees since the date of debt be reversed. If this recommendation is accepted, the Accounts section will need authorisation to have these fees reversed and credited back to the estate.

#### ***Minimising the Risk - Strengthening the Controls***

The annual review process reviews many issues and did in this particular case raise the concern as to whether the client would be entitled to a Centrelink pension. The matter was raised in further annual reviews as a concern, but although it was made known to the Personal Estate Officer, the matter was not escalated ~~whereby it was regularly reported to Senior Staff Member~~ [handwritten note says: nor actioned appropriately].

There are sufficient controls now [added note: in place] to deal with matters that have failed to be addressed by the Personal Estate Officer and as such, will reduce such issues occurring in the future.

[handwritten note: The introduction of an immediate escalation category ensures matters of this nature are dealt with urgently and rectified]

Ensure that all staff familiarise themselves with Centrelink entitlements, the new Aged Care Legislation and in particular the importance of the accuracy when completing income and Asset Assessments for Public Trustee clients.

187. On 31 May 2016 the former Public Trustee approved the Corporate Reimbursement of \$79,036.47 to the estate. I understand that on the same day, the former Public Trustee provided a briefing to Attorney-General and a draft letter of response from the Minister to [The Executor] on 31 May 2016.<sup>40</sup>
188. Accordingly, it appears the Ministerial complaint was responded to in accordance with the Compliments and Complaints Policy and Procedure.
189. I note that an internal agency email dated 2 June 2016 concerning the '[Person A] Ministerial' was responded to by [The Team Leader] who stated he had spoken with [Person A's] son and passed on the agency's apology and had advised that the agency would make contact shortly in relation to an offer of settlement.
190. On 10 June 2016 a cheque for the reimbursement was mailed to the Executor. This indicates that things moved quickly from the time of the receipt of the Ministerial complaint on 12 May 2016.
191. For completeness I note that sometime later, the agency took steps to performance manage [The Personal Estates Officer]. I understand this included an allocation of a different ASO3 caseload and [The Personal Estates Officer] reporting to a new Team Leader and Manager.
192. In consideration of the steps taken by the agency to manage the pension issue following the complaint made by [Person A's] son, I have identified the following areas of concern:
  - delays in the agency's handling of the matter
  - the appropriateness of [The Personal Estates Officer] investigating the matter
  - the failure to address the issue of residential aged care fees.

### *Delays*

193. I note that the five months taken for [The Personal Estates Officer] to finalise the estate in preparation for transfer of the file to a completions officer, is outside of the terms of the referral. However, numerous delays ensued from that point.
194. In particular, I am mindful that there appears to be:
  - a two month period of inaction between [The Team Leader] being asked to commence looking into the matter and when [The Team Leader] advised [Manager Personal Estates] that the response from Centrelink provided no insight
  - approximately a seven month period of relative inaction between [Manager Personal Estates] approving [The Personal Estates Officer's] involvement in the investigation of the matter and [The Team Leader] advising [The Personal Estates Officer] that Centrelink had agreed to assist

<sup>40</sup> Letter from former Public Trustee, Ms Deb Contala, to the Commissioner dated 16 September 2016.

- 
- approximately a seven month period of inaction between an agreement being reached with Centrelink in relation to assisting with pension estimates and those estimates being provided
  - approximately a three month period of inaction between [Manager Personal Estates] attempting to contact Centrelink for further clarification and [The Team Leader] noting the matter was unresolved on his return from leave.
195. The delays when combined, were extensive and occurred at multiple levels of the agency. I appreciate that [Person A's] estate was complex and the agency had difficulty in determining exactly when [Person A] became eligible to receive Centrelink benefits. I also accept that the agency required the assistance of Centrelink to calculate pension estimates and that the processes of Centrelink are outside the control of the agency. However, I consider that at multiple times in the process, there was opportunity for action to have been taken by the agency to expedite the matter, including making contact with Centrelink or determining to take alternative action internally. It appears that this did not occur until the Ministerial complaint was received by the agency and was dealt with by Senior Management.
196. The Compliments and Complaints Procedure provides that the level of risk applied to a complaint consequently determines the level of involvement by senior staff.
197. I am unable to determine from the file if a risk rating was applied to the complaint made by [Person A's] son. If it was, I am unable to determine the rating that was applied. However, I note that, in accordance with the Procedure, a loss greater than \$50,000 with an 'almost certain' or 'possible' likelihood of reoccurrence, would receive a 'high' risk rating. However, if it were determined to have a rare likelihood of reoccurrence then the risk rating would be 'medium'.
198. 'Medium' risk complaints must be discussed with the Manager and General Manager within 48 hours and prior to a formal response. In relation to 'High' risk complaints, the Public Trustee and General Manager must be immediately notified to ensure an appropriate response and resources are allocated.
199. Given that the Acting Manager Personal Estates requested that [The Team Leader] coordinate an investigation of the matter by Memorandum dated 18 June 2014, I accept that this may fall within the timeframe of a 'Medium' risk complaint. However, it is evident from the file that it took some time for any involvement in the matter from officers above the Manager of Personal Estates, despite repeated requests for updates and a request for escalation of the matter. Had the matter been escalated, perhaps it may have been resolved at an earlier date, as demonstrated by the more expeditious handling of the Ministerial at Executive level.
200. When considering the delays in the context of the Compliments and Complaints Policy and Procedure, I am satisfied that:
- the matter was not handled in a 'timely and consistent manner'
  - although the agency informed [Person A's] son of the likelihood of the investigation taking a year, the process exceeded even that timeframe and there is no evidence on the file of the extended timeframe being 'negotiated' with [Person A's] son, as required by the Procedure
  - although a written response was provide to the Solicitor's formal complaint there is no evidence on the file of a written response being provided to [Person A's] son within the required 10 working days.
201. I accept that the agency informed Herve & Co Solicitors by letter dated 29 August 2014 that the review of the matter being undertaken by the agency should not preclude an application for a grant of probate, given that additional disclosures could be made at a

later date. I also note that a cheque for an interim distribution of funds was provided in relation to the estate on 6 February 2015. However, it appears that numerous inexplicable delays occurred, action was not taken when it should or could have been and this contributed to a wider agency mismanagement of the matter.

202. I will consider below whether, in my view, this contributed to what amounts to 'substantial' mismanagement.

*[The Personal Estates Officer] and the investigation*

203. [The Personal Estates Officer] has explained his involvement in the 'investigation' process included the following:<sup>41</sup>
- at the request of [The Team Leader] he assisted in obtaining a pension estimate from Centrelink by gathering data from [Person A's] file
  - in response to [The Team Leader's] request for information on 5 March 2015, [The Personal Estates Officer] provided information by Memorandum dated 12 March 2015
  - [The Personal Estates Officer] then provided a spreadsheet to [The Team Leader] on 4 June 2015. The spreadsheet was submitted to Centrelink, outlining details of [Person A's] cash balance, assets and investments held by the agency during the whole administration of her affairs. [The Personal Estates Officer] has explained that this involved extensive work.
204. [The Personal Estates Officer] submits that he had no further involvement in the matter and cannot provide any information in relation to the manner in which the estimates were sought from Centrelink or the timeframe associated with the matter being finalised.<sup>42</sup> [The Personal Estates Officer] has noted that he had no involvement in relation to the residential aged care fees issue.<sup>43</sup>
205. [The Team Leader] has submitted that [The Personal Estates Officer] had difficulties in assisting in the investigation process.<sup>44</sup> It is evident that [The Team Leader] had early concerns, as he requested that [Manager Personal Estates] allocate the matter to [an agency employee]. [Another agency employee] also made an internal request that the matter be allocated to an ASO5 officer.
206. However, [Manager Personal Estates] approved [The Personal Estates Officer] to investigate the matter, despite noting herself that [The Personal Estates Officer] had failed to follow up the pension issue through the Annual Review process.
207. The Compliments and Complaints Procedure provides that a Personal Estates Officer may be involved in the investigation process, in conjunction with the Team Leader and Manager. Therefore, [Manager Personal Estates] approving [The Personal Estates Officer's] involvement was not outside the provisions of the relevant policy.
208. However, in the circumstances of this matter, I consider that it was a poor decision to allow [The Personal Estates Officer] to do so. [The Personal Estates Officer] had already significantly failed to manage the pension issue appropriately and this is what had led to the complaint being made. Concern had been expressed about [The Personal Estates Officer] undertaking the review and quite early on, it became evident that those concerns were likely warranted. [The Personal Estates Officer] himself has submitted that the enormity of the task was burdensome for him.

<sup>41</sup> Letter from [The Personal Estates Officer], sent by email dated 10 March 2017.

<sup>42</sup> Letter from [The Personal Estates Officer], sent by email dated 10 March 2017.

<sup>43</sup> Letter from [The Personal Estates Officer], sent by email dated 10 March 2017.

<sup>44</sup> Letter from [The Team Leader] sent by email dated 23 December 2016.

209. Given the complexity of the matter and the already existing mismanagement of the file, I consider that it was inappropriate to then determine that [The Personal Estates Officer] should be involved in the investigation process.

#### *Residential Aged Care Fees*

210. It is unclear to me when it was determined that the failure to contact Centrelink in relation to [Person A's] Residential Aged Care fees did not need to be resolved in conjunction with the issue of the unclaimed Age Pension.
211. Between the date of the complaint and 12 March 2015, there is no indication of what action was taken by the agency in relation to the issue of residential aged care fees.
212. [The Personal Estates Officer] in a Memorandum to [The Team Leader] dated 12 March 2015 addressed both issues, noting that he did not complete an Income and Assets application for [Person A] in 2008 which resulted in her paying higher residential aged care fees and also noting that no application was made for Age Pension benefits.
213. A file note made by [The Team Leader] and Dated 11 March 2016 records that [The Team Leader] had spoken with [Person A's] son and:

... advised that I have not been able to progress my inquiries as to whether the appropriate nursing home fees were being assessed against the client as her assets and income declined over the years.

214. An email from Ms Anderson to [The Team Leader] dated 30 May 2016 notes:

...  
I am proposing to Debra that we take a corporate loss for the [Person A] matter that is equivalent to the missed Centrelink plus the corresponding missed interest. I am proposing we do not take any capital commission on interest earned and also that any A & A fee taken since date of debt be reversed.  
...

215. Accordingly it is unclear to me when the decision was made not to take further action in relation to the issue of residential aged care fees or who made the decision. The former Public Trustee in a letter to the Commissioner explained:<sup>45</sup>

A decision was made that that [sic] time to take no further action in relation to a potential variation to nursing home fees. This was because the issue of nursing home fees had caused such significant delays in resolving the matter and there had been no indication from the Commonwealth Government or any other source about how the estimate of possible higher nursing home charges due to not claiming the pension could be made. We were also advised that the nursing home providers would need to make any appropriate refunds to [Person A's] estate.

216. I note there is no record in the file of [Person A's] son, the Executor or the Solicitors having been advised of the agency's decision not to handle the issue of residential aged care fees in conjunction with the Age Pension issue.

217. [The Team Leader] has submitted:<sup>46</sup>

Public Trustee has undertaken investigations as to whether there may have been a further benefit to the estate with regards to the nursing home fees, but has not at this stage been able to obtain a satisfactory answer to this inquiry. Public Trustee will write to the Department of Human Services requesting support in addressing the concerns raised by [The Executor] as to whether [Person A's] diminishing income and assets over the period in question would have impacted on her nursing home fees.

<sup>45</sup> Letter from former Public Trustee, Ms Deb Contala, to the Commissioner dated 16 September 2016.

<sup>46</sup> Letter from [The Team Leader] sent by email dated 23 December 2016.

218. I have not been advised whether any further action was taken by the agency in relation to the residential aged care fee issue.
219. I appreciate that it had never been determined exactly what level of residential aged care fees [Person A] should have been paying at the time she resided in residential aged care. I also appreciate that, had it been determined that [Person A] was in fact eligible to receive a subsidised fee, any such subsidy payment would have been made by the Commonwealth to the residential aged care provider. I understand that on this basis, the agency considered that any overpayment made to the provider should be reimbursed to [Person A's] estate by the provider. Further, given time constraints, the agency determined not to pursue a resolution of the issue at the time the complaint made by [Person A's] son was being handled.
220. However, I am mindful that it was the agency's failure to ensure that the relevant application form was submitted to Centrelink which resulted in calculations not being undertaken to determine the exact level of fees [Person A] should have been paying at the time she resided in residential aged care. For the agency to then determine not to pursue a resolution of the matter when handling the complaint by [Person A's] son, in my opinion, contributes the mismanagement of matters subsequent to the complaint made to the agency by [Person A's] son.

#### *Maladministration*

221. To find that the agency's management of the matter following the complaint by [Person A's] son amounted to maladministration, I must be satisfied that a practice, policy or procedure of the agency resulted in:
- an irregular or unauthorised use of public money; or
  - substantial mismanagement of public resources.
222. In relation to the agency's management of the matter, there was no use of public money other than the Corporate Reimbursement made to the estate for the unclaimed Age Pension benefits.
223. The former Public Trustee has explained that the agency makes corporate reimbursements for detriment that has been caused to an estate by an act or omission of an officer. In relation to [Person A's] estate, the former Public Trustee noted that the Memorandum seeking approval for a corporate reimbursement was signed by the Manager Personal Estates and endorsed by Ms Anderson. The former Public Trustee explained that such matters are handled on a 'case by case basis' and only the Public Trustee has delegation to approve a Corporate Reimbursement.
224. I am satisfied that the Corporate Reimbursement was approved by the former Public Trustee in accordance with the agency policy 'Corporate Finance - Deficits and Other Losses'. Accordingly, I am satisfied that the Corporate Reimbursement was not an irregular or unauthorised use of public money.
225. I must then consider whether a practice, policy or procedure of the agency resulted in substantial mismanagement of public resources.
226. I consider that the following errors in the agency's management of the matter, when considered together, are substantial. I address those errors later in this report.
227. The errors occurred in the agency's complaint handling process. The errors, in my view, were not directly related to the management of public resources. Accordingly, I am unable to find that these practices of the agency resulted in a substantial mismanagement of public resources.

228. However, I consider below whether the errors are instead administrative errors under the Ombudsman Act.
229. Accordingly, it is my view that the manner in which the agency dealt with the issues identified with [Person A's] estate, subsequent to a complaint being made to the agency by [Person A's] son, did not amount to maladministration for the purposes of section 5(4)(a)(i) of the ICAC Act.

### Opinion

It is my view that the practices of the agency when dealing with issues identified with [Person A's] estate following a complaint made by [Person A's] son, did not amount to a substantial mismanagement of public resources.

In light of the above, I consider that the agency did not commit maladministration in public administration for purposes of section 5(4)(a)(i) of the ICAC Act.

### **Whether the agency's handling of the matter, subsequent to a complaint made by [Person A's] son, was wrong within the meaning of section 25(1)(g) of the Ombudsman Act**

230. I have set out in detail above that, in my view, following the complaint made to the agency by [Person A's] son:
- the matter was not handled in a 'timely and consistent manner' by the agency, in accordance with the Compliments and Complaints Policy
  - although the Compliments and Complaints Policy provides that an extended timeframe may be 'negotiated' with a complainant, [Person A's] son was informed that the investigation may take one year however, there is no evidence of this timeframe being negotiated with [Person A's] son and one year is significantly outside of the 21 day timeframe provided for by the Procedure
  - no real effort was made to escalate the matter internally despite repeated requests for updates, a request for the matter to be escalated and the agency's own awareness of the delays
  - determining that [The Personal Estates Officer] should contribute to the investigation process despite his failure to deal with the substantive issues in the first place, the complexity of the investigation and the concerns expressed by other officers about [The Personal Estates Officer's] involvement, was not appropriate
  - determining to not pursue a resolution of the issue of residential aged care fees and to do so without proper explanation and without communicating this to [Person A's] son, despite the issue forming part of the formal complaint to the agency, was not appropriate.
231. For each of these reasons, it is my view that the agency acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

### Opinion

It is my view that, for the following reasons, the agency acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act:

- failing to address [Person A's] son's complaint in a reasonable time and in accordance with the Compliments and Complaints Policy
- failing to take reasonable steps to escalate the matter

- determining it appropriate to involve [The Personal Estates Officer] in the complaint handling process
- determining it appropriate to not pursue a resolution of the residential aged care fees issue.

I am unable to ignore the extent of the agency's mismanagement of matters following the complaint made by [Person A's] son. This was at the detriment of [Person A's] estate, including the financial detriment associated with leaving the residential aged care fee issue unaddressed, despite the issue itself having resulted from a failure by the agency.

In my provisional report I noted that changes to the policies and procedures of the agency have been made since the Commissioner's Evaluation of the agency. However, given the extent of the agency's mismanagement of [Person A's] son's complaint, to the detriment of the estate, I foreshadowed recommending that the agency take steps to ascertain the amount of any overpayment of [Person A's] residential aged care fees and then make an ex-gratia payment in relation to the identified overpayments.

In response to my provisional report the agency advised that a review of invoices has indicated that there appears to have been an incorrect charge of the residential aged care Income Tested Fee between 2009 and 2014. The agency is continuing to make enquiries with Centrelink and the relevant aged care provider in order to determine the amount that should be refunded to [Person A's] estate. The agency noted that rather than making an ex-gratia payment for any overpaid fees, the agency has a liability to the customer as a result of any errors and therefore the agency proposed that it would be more suitable to make a distribution to the estate in the settlement of the matter.

Accordingly, I recommend under section 25(2) of the Ombudsman Act that:

1. the agency continue to take action to ascertain the approximate overpayment of [Person A's] residential aged care fees and once that figure is obtained, make a distribution to the estate for that overpayment.

## Conclusion

The mismanagement of [Person A's] estate between 2007 and her death in 2014 was attributable to failures by both [The Personal Estates Officer] and the agency. As the officer who had conduct of [Person A's] file, [The Personal Estates Officer] failed to take significant action on [Person A's] behalf. The agency failed to demonstrate sufficient oversight of the management of [Person A's] estate and then failed to diligently address the errors in the management of the estate when those errors were brought to the agency's attention. Of greatest concern to me, is that the failures by both [The Personal Estates Officer] and the agency occurred in relation to the estate of a vulnerable person, whose affairs were being managed by the agency because that person was not deemed able to do so on their own. The management of the affairs of vulnerable people is at the core of the agency's business. Such failures simply should not have occurred.

## Summary and Recommendation

In light of the above, my final view is that:

- [The Personal Estates Officer's] repeated inaction in relation to pursuing [Person A's] Age Pension entitlements with Centrelink, despite having knowledge of [Person A's] potential eligibility, amounts to substantial mismanagement in or in relation to the performance of official functions.

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Accordingly, [The Personal Estates Officer] committed maladministration in public administration for the purposes of section 5(4)(a)(ii) of the ICAC Act.

- [The Personal Estates Officer's] repeated inaction in relation to pursuing [Person A's] Age Pension entitlements with Centrelink, despite having knowledge of [Person A's] potential eligibility, amounted to a contravention of the requirement of the professional conduct standards of the Code of Ethics to act diligently in his role and duties and not act in a way that was negligent.

Accordingly, the conduct of [The Personal Estates Officer] amounted to misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.

- [The Personal Estates Officer] also acted in a manner that appears contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

On the basis that [The Personal Estates Officer] has recently undertaken the Code of Ethics Training for public sector employees, I do not consider it necessary to make a recommendation to remedy this error.

- [The Personal Estates Officer's] repeated inaction in relation to providing relevant information to Centrelink and ensuring that [Person A] paid only the residential aged care fees she was required to pay, despite having knowledge of the requirement to do so, amounts to substantial mismanagement in or in relation to the performance of official functions.

Accordingly, [The Personal Estates Officer] committed maladministration in public administration for the purposes of section 5(4)(a)(ii) of the ICAC Act.

- [The Personal Estates Officer's] repeated inaction in relation to providing relevant information to Centrelink on [Person A's] behalf and ensuring [Person A's] residential aged care fees could be properly determined, despite having knowledge of the requirement to do so, amounted to a contravention of the requirement of the professional conduct standards of the Code of Ethics to act diligently in his role and duties and not act in a way that was negligent.

Accordingly, the conduct of [The Personal Estates Officer] amounted to misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.

- [The Personal Estates Officer] also acted in a manner that appears contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

On the basis that [The Personal Estates Officer] has been performance managed by the agency and the agency is satisfied that [The Personal Estates Officer] now has sufficient knowledge and competency in relation to Centrelink age pension entitlements and residential aged care entitlements, I do not consider it necessary to make a recommendation to remedy this error.

- By failing to ensure regular Annual Reviews were undertaken in relation to [Person A's] file and failing to properly oversee [The Personal Estates Officer's] management of [Person A's] estate, the agency acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

However, in the circumstances, recommendations are not necessary for the following reasons:

- An agency Memorandum dated 31 May 2016 identified that the Annual Review process failed to identify the outstanding issues with [Person A's] estate and noted that the matters had never been actioned or escalated. It was noted that controls had since been put in place to address circumstances in which Personal Estate Officers fail to address issues with estates. This includes an immediate escalation requirement so that such matters are addressed urgently and rectified. It was also noted that staff were to familiarise themselves with Centrelink entitlements, the Aged Care Act and the importance of completing Income and Asset Assessment forms for clients
  - since the Commissioner's Evaluation of the agency, policy and procedural changes have occurred at the agency, I understand that this includes changes to the management of the Personal Estates section and oversight of officer's file
  - the officers in the role of General Manager Customer Services and Public Trustee at the time have since left the agency
  - the agency ensured that [The Personal Estates Officer] was performance managed in response to the issues related to his management of [Person A's] estate.
- The practices of the agency when dealing with issues identified with [Person A's] estate following a complaint made by [Person A's] son, did not amount to a substantial mismanagement of public resources.

Accordingly, the manner in which the agency dealt with the matter did not amount to maladministration for the purposes of section 5(4)(a)(i) of the ICAC Act.

- For the following reasons, the agency acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act:
  - failing to address [Person A's] son in a reasonable time and in accordance with the Compliments and Complaints Policy
  - failing to take reasonable steps to escalate the matter
  - determining it appropriate to involve [The Personal Estates Officer] in the complaint handling process
  - determining it appropriate to not pursue a resolution of the residential aged care fees issue.

I am unable to ignore the extent of the agency's mismanagement of matters following the complaint made by [Person A's] son. This was at the detriment of [Person A's] estate, including the financial detriment associated with leaving the residential aged care fee issue unaddressed, despite the issue itself having resulted from a failure by the agency.

I understand that changes in the policies and procedures of the agency have taken place since the Commissioner's Evaluation of the agency. However, given the extent of the agency's mismanagement of [Person A's] son's complaint, to the detriment of the estate, I recommend under section 25(2) of the Ombudsman Act that:

1. the agency continue to take action to ascertain the approximate overpayment of [Person A's] residential aged care fees and once that figure is obtained, make a distribution to the estate for that overpayment.

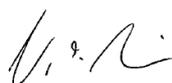
## Final comment

In accordance with section 25(4) of the Ombudsman Act the agency should report to the Ombudsman by 28 March 2019 on what steps have been taken to give effect to the recommendation above; including:

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

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

I have also sent a copy of my report to the Attorney-General as required by section 25(3) of the *Ombudsman Act 1972*.



Wayne Lines  
**SA OMBUDSMAN**

21 December 2018