

Report

Full investigation - *Ombudsman Act 1972*

Complainant	Ms Krista Richards
Department	Department for Correctional Services
Ombudsman reference	2017/09006
Department reference	SEC/17/0188
Date complaint received	4 September 2017
Issues	<ol style="list-style-type: none">1. Whether the department unreasonably delayed amending its records to reflect that the complainant is female2. Whether the department's delay in amending the complainant's name on her cell door was improperly discriminatory3. Whether the department has unreasonably delayed the complainant's transfer to Adelaide Women's Prison

Jurisdiction

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

Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking a response and obtaining information from the department
- seeking further responses and information from the department
- seeking more particulars from the complainant
- considering the Ombudsman Act, the department's Transgender and Intersex Offenders and Prisoners Policy 35, the *Births, Deaths and Marriages Registration Act 1997*, State Government's Information Privacy Principles (**the IPPS**) Instruction PCO12, the *Freedom of Information Act 1972*, the *Acts Interpretation Act 1915*, the *Equal Opportunity Act 1984* and the *Sex Discrimination Act 1984*
- preparing a provisional report, and seeking a response to the provisional report from the parties
- 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.¹ 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 ...²

Response to my provisional report

In response to my provisional report, the department accepted my recommendations in full.

The complainant also responded to my provisional report, primarily with objections to statements made by the department. I have summarised the complainant's comments, and responded as follows:

Sandalwood

- the department's assertion that there was no verbal or written agreement that the complainant would spend six to eight weeks in Sandalwood only, before being transferred to the AWP, is not true
 - as noted in my provisional report, I am persuaded that there was a suggestion that the complainant would remain in Sandalwood for six to eight weeks only
 - whilst I had formed the view that the department ought to have taken better steps to manage the complainant's expectation around this proposal, I do not consider the department was bound by this suggestion, nor do I consider there was an unreasonable delay in transferring her given the complex process for transferring Serious Offenders
- the department has falsely represented that the reason a transfer to AWP was suggested in 2015, was that Sandalwood had been closed at that time, and that had this been a legitimate reason, the complainant would have been sent there immediately rather than be kept in a men's prison
 - the complainant's rejection of the department's reasons is noted, however, for the same reasons provided above regarding the complexities of transferring prisoners, and the discretionary nature of prisoner transfers in general, my view remains that the department did not unreasonably prevent or delay her transfer to AWP

Cell placement

- at the time the complainant was transferred to the women's section in Sandalwood, she was no longer in protective custody, and therefore department has dishonestly stated that the reason for placing her in Cell 10 was for her own protection
- the complainant disputes the department's assertion that she has a 'history of perpetrating domestic violence against females,' and states that she has only been subject to one accusation of domestic violence in the past, and that accusation was false; as such, this allegation should not be a relevant consideration when determining her cell placement

¹ 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.

² *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

- the department has falsely denied that the complainant has been placed in Cell 10 for punitive reasons, as it is well known that it was built for behaviour/mental health management purposes
 - the complainant's comments are noted, and whilst the department may wish to review the complainant's assertion that she no longer requires protective status, my view remains that the department has not acted unreasonably in placing her in this particular cell, given that a number of considerations were cited by the department for her placement, and the department ultimately has broad discretion with respect to prisoner placements.

Background

1. On 1 September 2017, my legal officer met the complainant, Ms Krista Richards, at Port Augusta Prison (**PAP**). The complainant is a transgender prisoner, who identifies as female.
2. In the presence of my legal officer at PAP, the complainant raised various concerns to an officer of PAP.
3. The issues that were articulated by the complainant to the PAP officer concerned the incorrect recording of her gender on her arrest warrant three years prior. The complainant asserted that she has faced ongoing issues and delays in being transferred between prisons as a result of the incorrect recording of her gender.
4. The complainant appeared particularly agitated by a letter she had recently received from the Supreme Court of South Australia stating that her application to have her gender on her arrest warrant amended had been refused.
5. Following that meeting, my legal officer contacted the complainant by telephone on 5 September 2017 seeking further information about the issues raised during the meeting on 1 September 2017.
6. During the telephone call on 5 September 2017, the complainant indicated that she wished to make a formal complaint about the matter to my Office, and provided the information and background to her complaint:
 - She has previously complained to the Equal Opportunity Commission (**EOC**) about the department. The basis for that complaint was that the department had acted discriminatorily by placing her in a male prison, making her shower with men, and denying her hormones for five years.
 - The matter went to the Supreme Court but settled in November 2015. As a result of the settlement, she was recognised as a female by the department, and the department agreed to transfer her to a women's prison.
 - The complainant alleged that in 2015, a panel determined that she should be transferred to the Adelaide Women's Prison (**AWP**). The complainant further alleged that one member of the panel, Ms Colleen Parkinson, A/Manager, Offender Development, suggested she be transferred to Sandalwood instead of AWP, but the rest of the panel disagreed with this. Despite the majority of the panel allegedly disagreeing with Ms Parkinson's views, the complainant's psychiatrist recommended a four week transition period in Sandalwood.
 - The complainant stated she had concerns that she would get 'stuck' in Sandalwood because of all her previous complaints to the EOC and my Office.

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- At the time of the phone call on 5 September 2017, the complainant had been in an isolated cell in Sandalwood for 7.5 months. The complainant queried why she had been placed in the isolated cell. The complainant feels her placement in a single cell is a form of punishment, as she does not enjoy the benefit of another person's company, and she has two cameras on her at all times whilst inside her particular cell.
 - The complainant stated that whenever she enquires about being transferred to AWP, or even to the other side of Sandalwood to a non-protective unit, she receives no response from the department.
 - On 26 April 2017, Mr Robert Gully, Supervisor, Operations, reportedly made an application for her to socialise with others in the non-protected unit in PAP, but this did not eventuate.
 - The complainant stated that she had been informed by an officer of the prison that the Local Consultative Committee (LCC) disapproved of her socialising with other women, but was then informed by a senior member of the LCC that it had been Mr Brenton Williams, General Manager, PAP, who stepped in and stopped her transfer.
 - The complainant stated that she had been told that she was not being transferred to AWP because her arrest warrant still says she is male, and officers have threatened to walk out on strike if she is transferred.
7. The complainant submitted to my Office in a letter dated 5 September 2017 that she has identified as female since 1986/1987. A Deed of Release and Discharge (**the Deed**) between the complainant and the Crown in right of the State of South Australia, in relation to a dispute involving the department that was settled in 2015, also reflects that the complainant took steps to identify as female in 1986.
8. Also attached to the complainant's letter dated 5 September 2017, was a copy of the letter from the Courts Administration Authority (**the CAA**) dated 25 August 2017 in response to her request to have her arrest warrant amended. The letter from the CAA states that:
- ...this is a matter for the Department of [sic] Correctional Services, not the Court. The court would not amend the original sentence court advice form, or the records retrospectively to change any personal details, as they are a true and accurate copy of the record of the matter at the time.
9. The complainant's letter stated that she had been advised by the department that in order to be transferred to AWP, she would need to:
- ...get my Birth Certificate done - (all documents are ready) changed to female KRISTA K.K RICHARDS and a copy thereof - ORIGINAL and change my warrant to female. Then I am told - But that is no guarantee that I will still go to AWP. Well I stated what's the purpose of me saving up \$300.00 to pay for it, if it is not going to make any difference to my consequences, situation. I could do all that six months before I get released in that case!
10. The complainant also made the following remarks in her letter, expressing her frustrations with the department:
- I am classed as a female by law, by the Commonwealth Federal, State, Human Rights, and Equal Opportunities and State Government. I'm put over in the women's prison after much, much discrimination and abuse and legally fighting. So why am I not treated equally as such? This I ask everybody...

11. My Office sought an initial response from the department, to the issues and allegations raised by the complainant, by way of letter dated 14 September 2017.
12. Ms Jackie Bray, A/Chief Executive of the department, provided a response to those initial enquiries by letter dated 6 October 2017 as follows:

Was there an agreement that Ms Richards would only remain in Sandalwood for a transition period of four weeks only? If so, please explain why Ms Richards has not yet been transferred to a lower security area or to Adelaide Women's Prison (AWP).

There was never an agreement in place with Ms Richards that she would be accommodated within Sandalwood for four weeks only. Ms Richards is being recognised as a female prisoner and accommodated in a bona fide women's unit in Port Augusta Prison. Sandalwood at Port Augusta Prison is a women's unit currently accommodating 24 women prisoners.³ Ms Richards has the opportunity to associate with other female prisoners within the unit on a daily basis.

Placement decisions are made after careful consideration of a range of factors that include, but are not limited to, a thorough assessment of the rehabilitative requirements of the prisoner, including health matters, a prisoner's security rating, safety, program participation, education or vocational needs, employment and prisoner's behaviour. Placement is continually monitored and reviewed in accordance with a prisoner's assessed needs and risks.

The Chief Executive recently approved for Ms Richards' status as a female prisoner to be updated and reflected on the Justice Information System (JIS). A meeting will occur with relevant parties in the next week to discuss the implementation of this decision and communication with Ms Richards and staff, following which a Special Case Review will be undertaken as a matter of priority, and an updated Placement Plan will be prepared reflecting her status as a female prisoner. An updated placement plan will take into consideration the further placement options available to female prisoners, including the larger side of Sandalwood and the AWP. An internal move within Port Augusta would be managed locally, however any change of prison placement to another site would need to be endorsed by the Serious Offender Committee and would not occur without the relevant briefings being undertaken at the appropriate time. Given Ms Richards' conditional release date of 2023, it would not be unusual for Ms Richards to spend some further time in Port Augusta Prison prior to a transfer to AWP later in her sentence to access reduced security and reintegration opportunities at the appropriate time, but that would become a standard matter about prisoner placement as opposed to an issue of gender.

Is DCS aware of any complaints by Ms Richards in regard to the issues identified above? If so, what actions has DCS taken to address these issues?

Ms Richards' preference to move to AWP is being managed as per any other complaint from prisoners with regard to their current and preferred prison placements. As mentioned above Ms Richards is being recognised as a female prisoner and accommodated in a bona fide women's unit in Port Augusta Prison.

Concerns regarding access to amenities have been addressed with Ms Richards, and she has been made aware that she will have the same access to amenities as other female prisoners, and that access to personal items will be dependent on her placement/regime and her own behaviour as it would for any female prisoner.

Staff will continue to be provided with information and education, and given the opportunity to raise any further concerns as they arise in regard to Ms Richards' care and management. The General Manager PAP has issued a clear and explicit memorandum to staff concerning procedural requirements, and if Ms Richards is transferred to AWP at a future date this process would be mirrored.

³ Although the Sandalwood unit may accommodate 24 prisoners, an Accommodation Assessment report provided by the departments reflects that the complainant resides in a section of the unit which only accommodates 7 prisoners.

Ms Richards has had numerous opportunities to work with the AWP Manager Accommodation, Ms Odedda Baker to discuss and manage any concerns with integrating into the female prisoner population. The most recent was on 4 July 2017, a Case Conference meeting between Ms Richards, the Principal Advisor Offender Services, Mr Lee Macdonald, and Ms Baker. At this meeting proposed future placement at AWP was discussed and Ms Richards was given the opportunity to raise any concerns.

Do DCS' records, including her arrest warrant, reflect that Ms Richards is female? If not, please explain why DCS has not amended those records, and provide any relevant policies in regard to the amendment of such records.

On 27 September 2017 the Chief Executive DCS approved for Ms Richards [sic] records on JIS to be amended to formally recognise her as female. As noted below this will be implemented imminently to ensure the relevant communications occur around this in parallel.

DCS is aware that Ms Richards recently made an application, under the Births Deaths and Marriages Registration Act 1996, to officially record her change of gender and change of name. Whilst the outcome of that application is unknown at this time, it was approved for JIS be [sic] amended to reflect her gender as female and her name as Krista. This will assure DCS staff that Ms Richards is to be treated as a female prisoner in all regards, and with the endorsement of DCS Executive.

Arrest warrants are not DCS documents and, as such, the Department is unable to initiate any amendments to these documents. The Courts Administration Authority has advised that any changes to name on a warrant would need to be initiated by Ms Richards through legal proceedings. The Department understands she has initiated that process without success, as court warrants contain a prisoner's name but do not specifically denominate a gender.

13. Following receipt of the initial response from the department above, my legal officer contacted the complainant by telephone on 11 October 2017 to obtain further information.
14. During this telephone call, the complainant clarified that there were no documents to show there was an agreement in place that she would only spend four weeks in Sandeewood, however, several people were present during meetings where this was discussed.
15. Those people, according to the complainant, included Ms Denise Lawler, A/Team Leader Complex Needs Unit (who was present and assisted the call), Mr Lee Macdonald, Snr Psychologist - Clinician, Ms Colleen Parkinson, A/Manager, Offender Development and Ms Debra Mathews.
16. The complainant informed my legal officer that Ms Lawler was present with her and near the telephone, and placed Ms Lawler on the phone to confirm to my officer the events that occurred at the meeting where the alleged conversation took place.
17. Ms Lawler confirmed to my officer that although she had not been present at all meetings, there had been discussions involving her, Ms Matthews, and other departmental staff where it had been proposed that Ms Richards would stay in Sandalwood for a four-week period.
18. The complainant then returned to the phone, and commented that as of 11 October 2017, the sign on her door still refers to her as 'Leslie Graham Richards', her birth name. The complainant stated that guards have refused to change the name on her cell door, as they still consider her to be male.
19. I informed the department by letter dated 27 September 2017 that I had decided to commence an investigation of the issues raised by the complainant. I also requested

further information from the department, and was provided with the following response from Mr David Brown, Chief Executive of the department by letter dated 17 November 2017 in reply:

In 2015, at the time when Ms Richards' transfer into female prison accommodation was initially being assessed and discussed, Sandalwood Unit at Port Augusta Prison (PAP) was closed to female prisoners for a short period. This meant that the Adelaide Women's Prison (AWP) was the only female prison which could be considered as a placement option at that time. The Sandalwood Unit has since been re-opened to female prisoners and, as such, was considered as a suitable female prisoner placement for Ms Richards as her current location.

DCS is unable to locate any written documentation or agreement specifying a four week transition timeframe to Adelaide Women's Prison.

...DCS acknowledges that although there is no written record of an agreement in relation to a four week transition period to AWP, there were a number of transition plan options discussed verbally with Ms Richards. All of the staff were interviewed in relation to this matter stated that none of these discussions mentioned a four week transition to AWP. Further, given that Ms Richards is classified as a Serious Offender, any change of prison placement to another site would need to be endorsed by the Serious Offender Committee (SOC) and ultimately approved by the Chief Executive. As such, those meeting [sic] with Ms Richards would only be able to present options and recommendations to the SOC for consideration, rather than approve a transfer.

When Ms Richards was interviewed, on 2 November 2017, she admitted that she has never had any written or verbal agreement with DCS regarding a four week transition period to AWP. Her earlier statement of an agreement was based on minutes from a meeting in 2015 that she received through an FOI application. Ms Richards was not present at nor party to this meeting. Upon reviewing the minutes, the only reference to a timeframe was that a second case conference would need to be scheduled in one months' time to undertake a further review of a number of cases. There is no reference to a four week transition period to AWP.

...Ms Richards' case has presented DCS with an opportunity to progress the engagement and status of transgender prisoners in South Australia. To ensure a safe and effective transition, DCS has supported Ms Richards to be accommodated in the women's area of the Complex Needs Unit (CNU) in Sandalwood at PAP. A transgender person involved in such a transition is vulnerable in terms of the acceptance and engagement from other prisoners. DCS is required to ensure all parties remain safe while a comprehensive risk assessment process occurs to support and determine the most appropriate placement for Ms Richards. Ms Richards' vulnerability and Serious Offender status was taken into consideration for the placement into a single cell within the CNU.

DCS has undertaken a comprehensive review of Ms Richards case and has updated a Transgender - Intersex Prisoner Management and Treatment Plan. This plan will guide the graded approach to supporting Ms Richards to engage and socialise with the larger side of the Sandalwood complex. This graded approach will support and inform the application to the SOC for possible future transfer to AWP.

...The CNU contains both single and double occupancy cells. Ms Richards' current cell is not considered to be an isolation cell, but a standard single occupancy cell.

Socialisation

...When interviewed, Mr Robert Gully advised that, on 26 April 2017, he submitted an application for Ms Richards to socialise in the non-protected person section of Sandalwood. This application was approved by the General Manager, Mr Brenton Williams, and the Team Leader, CNU, Ms Denise Lawler. This was considered to be a once-off socialisation opportunity, in which Ms Richards attended the non-protected section of Sandalwood for 30 minutes prior to lunch and 30 minutes following lunch. Mr Gully remained with Ms Richards during this entire visit. This one-off socialisation was permitted, pending the

completion of further risk management work to be incorporated into any decision to relocate Ms Richards.

Mr Gully advised that he has not submitted further applications for Ms Richards since that time. The next step in this process is to implement the Transgender - Intersex Management and Treatment Plan to support the graded approach to supporting Ms Richards to socialise in the larger side of Sandalwood as part of a progressive internal transfer to reside in the larger side of Sandalwood.

I have been advised by the General Manager that there has been no verbal or written threat, even informally from staff at PAP, to go on strike if Ms Richards were to be transferred to the larger side of Sandalwood Unit.

JIS

As stated in the previous response, on 27 September 2017, I signed the approval to commence the process for Ms Richards' records on the JIS to be amended to formally recognise her as female. To implement these changes, time was required to consult the staff as to what this official change would mean and plan how to implement the changes, including on IT systems. On 2 November 2017, Ms Richards' records on JIS were officially updated to recognise her as female. The social worker discussed these changes with Ms Richards on the same day and all ID cards were re-printed to reflect the changes on JIS. This includes changing the name on Ms Richards' cell door. After initial technical difficulties, Ms Richards' primary name has also been updated on JIS to show Krista Richards.

...As stated in the previous correspondence, changes to Ms Richards' official IDs, including on her cell door were not able to be implemented until the changes on JIS had been implemented.

20. I wrote a further letter to the department dated 20 November 2017 requesting that it respond to my enquiries with greater specificity and detail. In particular, with reference to Ms Bray's letter dated 6 October 2017, I sought a response:
- and any supporting documentation, to the *specific consideration*⁴ given to the complainant's request to be transferred out of Sandalwood to either a non-protected unit or to AWP
 - as to why the complainant has been placed in an isolated cell within a protected unit
 - as to why the JIS was not updated in 2015 when Ms Richards was legally recognised as a female.⁵
21. Mr Brown responded to my request for further and more specific information by letter dated 11 December 2017. The letter contained various documents such as case notes and risk assessments relating to the complainant, in addition to the following response:

...Each of these documents provides background and information regarding the planning and consultation that has occurred regarding Ms Richards' placement. In addition, Ms Richards' case review was presented to the Serious Offender Committee (SOC) on 15 August 2017, along with a request to review her accommodation options. SOC minutes stated "SOC support progression to AWP, subject to consultation being led by the Deputy Chief Executive. Making Changes Program to be amended, under Core Programs, to Making Changes Women. SOC recommend Prisoner Richards' name and gender be changed on JIS."

Some of the factors in the decision to transfer Ms Richards from the male Banksia Unit to the female Complex Needs Unit of Sandalwood at Port Augusta Prison, rather than the AWP, included:

⁴ The department had previously merely stated that the complainant's case was complicated and subject to extensive review, without providing any details or documents outlining the consideration that had been given.

⁵ This question had previously been put to the department by my Office, but the department failed to address it in previous responses.

- Small unit of female prisoners to enable gradual integration into the female prisoner population with close monitoring;
- Increased access to support staff and frequent one on one counselling with the Complex Needs Unit Team Leader to assist with ongoing issues;
- The unit has specially trained staff and is designed to be able to flexibly manage female prisoners who have complex needs;
- Familiar environment at Port Augusta Prison as she had regularly been accommodated there since 2012. This would result in less anxiety at a new environment whilst adjusting to living in the female prisoner population;
- Access to women's clothing, the women's buy list and conversation and association with female prisoners.

Evidence from the documentation reviewed indicates that Ms Richards has been placed in a single occupancy cell within a protected unit for a number of reasons. These include:

- Ms Richards was a Crown Witness in an attempted murder trial and requires protective status from other prisoners; and
- Ms Richards has a history of perpetrating domestic violence against females with an intervention order placed on her by a former partner.

DCS does not want these risks and issues to distract Krista from working successfully towards her progression.

As stated in my previous correspondences, Ms Richards is currently located within an appropriate bonafide female prisoner unit in a single occupancy cell, not an isolated cell. Ms Richards has the same opportunities for socialisation as the other female prisoners within the same wing of the Sandalwood Unit.

JIS

In 2015, Ms Richards' Management and Treatment Plan contained an agreed action for Ms Richards to make an application to Births, Deaths and Marriages to officially change her name and gender. DCS facilitated Ms Richards being able to complete her application forms, including obtaining the signed endorsement from her treating psychiatrist. To date Ms Richards has not yet submitted these forms to Births, Deaths and Marriages.

In 2017, DCS made a determination to change Ms Richards' name and gender on JIS, in line with her intent, rather than continue to wait for the official Births, Deaths and Marriages change of gender and name applications to be submitted by Ms Richards.

The Principal Advisor, Offender Services met with Ms Richards on 30 November 2017, to discuss her needs and work through how to move forward with improving her experiences at Port Augusta. This includes progression to a shared cell. When Ms Richards is moved to a shared cell, she will need to demonstrate positive behaviours over a period of several months before consideration of transition to the larger side of Sandalwood. Ms Richards agreed to the plan and expressed her preference for this approach rather than setting dates that may not eventuate.

Ms Richards also confirmed that her needs as a woman were being met in the Complex Needs Unit of Sandalwood and that this was a positive achievement of the prison team. The Principal Advisor has agreed to meet again with Ms Richards in approximately six weeks' time to continue providing support and monitor her progression.

Relevant law/policies

22. The department's Transgender and Intersex Offenders and Prisoners Policy 35 sets out that:

DCS staff are to address transgender and intersex offenders and prisoners according to their preferred name and gender in written or verbal communication. Alternatively, in verbal communication in prison context staff may choose to use an individual's surname.

23. Section 30 of the *Freedom of Information Act 1972* (**the FOI Act**), which sets out that:

A person to whom access to an agency's documents has been given may apply for the amendment of the agency's records if–

- (a) the document contains information concerning the person's personal affairs; and
- (b) the information is available for use by the agency in connection with its administrative functions; and
- (c) the information is, in the person's opinion, incomplete, incorrect, out-of-date or misleading.

24. The State Government's Information Privacy Principles (**the IPPS**) Instruction PCO12⁶:

Correction of Personal Information

(6) An agency that has in its possession or under its control records of personal information about another person should correct it so far as it is inaccurate or, having regard to the purpose of collection or to a purpose that is incidental to or connected with that purpose, incomplete, irrelevant, out of date, or where it would give a misleading impression in accordance with the *Freedom of Information Act 1991*.

25. Section 29(2)(d) of the *Equal Opportunity Act 1984* (**the EO Act**) sets out that:

- (2) For the purposes of this Act, a person discriminates on the ground of sex–
 - ...
 - (d) if the person requires a person of a particular gender identity to assume characteristics of a sex with which the person does not identify...

Whether the department unreasonably delayed amending its records to reflect that the complainant is female

26. The complainant has identified as female since 1986, and has undergone several medical procedures to identify as such. She was born 'Leslie Graham Richards', but identifies as 'Krista K.K Richards'.
27. The complainant refers to herself as 'Ms Krista Richards' in all correspondence with my Office. It is also my understanding that other prisoners and prison officers refer to the complainant as 'Krista Richards' in all communications.
28. I also note that the department entered into a binding legal agreement via the Deed, which itself clearly recognises the complainant as a female who identifies by the name 'Krista Richards'. The Deed itself also refers to the following legal proceedings involving state government departments, where the complainant is identified by the name 'Krista Richards':
- (i) Krista Richards v Department for Correctional Services (DCCIV-12-2046)
 - (ii) Krista Richards v SA Health (DCCIV-15-81); and
 - (iii) Krista Richards v Department for Correctional Services (DCCIV-15-84).
29. Although a person in South Australia may, under the *Births, Deaths and Marriages Registration Act 1996* (**the BDMR Act**), formally apply for registration of a change of sex or gender identity, formal recognition of a change to a person's gender is not essential for the purpose of seeking an amendment to South Australian government records and documents.

⁶ Premier and Cabinet Circular 12, as amended by Cabinet 20 June 2016.

30. Until recently, the process of making an application to change one's sex or gender under the *Sexual Reassignment Act 1988* (the **SR Act**), which has since been repealed,⁷ has been criticised for being particularly burdensome for applicants.⁸
31. For much of the time the complainant has been incarcerated, those requirements for making an application to change records of one's sex under the SR Act have applied. As such, it may not have been practicable for the complainant to have made an application to amend her official records under the SR Act prior to 23 May 2017.
32. I also note the complainant's submission that making an application under the BDMR Act is prohibitive due to the cost, which the complainant has cited as \$300. In my provisional report, I had commented that the fee cited for making an application to register change of sex or gender identity is set at \$48.75 under Schedule 1 of the *Births, Deaths and Marriages Registration Regulations 2011*, and on that basis, I did not consider that cost was an unduly prohibitive factor in considering the reasonableness of requiring that the complainant amend her official records.
33. The complainant has since explained to my legal officer that there are several other costs associated with changing her official records, give that she would need to make two separate applications to amend both her name and her gender. Having considered the complainant's calculations of the costs, I accept that the total amount would equate to approximately \$300.
34. That said, regardless of the difficulties in making an application under either the SR Act or the BDMR Act, I do not consider that the complainant was required to obtain formal recognition of her gender in order for the department to amend its own records.
35. The amendment of private and government records and documents was considered in a study on gender diversity conducted by the Australian Human Rights Commission, which concluded in a report, '*Sex Files: the legal recognition of sex in documents and government records*' (the **AHRC report**).
36. Of particular relevance to my investigation, is the following statement in the AHRC report, whereby the Commission notes that:
- ... under federal, state and territory privacy and freedom of information legislation, people generally have a right to request an alteration to records containing their personal information where that information is not, or is no longer, accurate.⁹
37. In South Australia, a person's right to apply for amendment of an agency's records is set out in section 30 of the *Freedom of Information Act 1972* (the **FOI Act**), which provides that:
- A person to whom access to an agency's documents has been given may apply for the amendment of the agency's records if—
- (a) the document contains information concerning the person's personal affairs; and
- (b) the information is available for use by the agency in connection with its administrative functions; and
- (c) the information is, in the person's opinion, incomplete, incorrect, out-of-date or misleading.

⁷ The *Sexual Reassignment Act 1988* was repealed by Sch 1 cl 1 of *Births Deaths and Marriages Registration (Gender Identity) Amendment Act 2016* on 23 May 2017.

⁸ Such criticisms, for example, as identified in an audit report by the South Australian Law Reform Institute, '*Discrimination on the grounds of sexual orientation, gender, gender identity and intersex status in South Australian legislation*', dated September 2015, include the requirement under the now repealed SR Act for applicant's to have undergone invasive medical reassignment procedures, which can only be undertaken by hospital or medical practitioners approved by the Minister.

⁹ Australian Human Rights Commission, '*Sex Files: the legal recognition of sex in documents and government records*' at 8.3.

38. The right to amend personal information is also referred to, with reference to the FOI Act, in the State Government's Information Privacy Principles (**the IPPS**) Instruction PCO12¹⁰:

Correction of Personal Information

(6) An agency that has in its possession or under its control records of personal information about another person should correct it so far as it is inaccurate or, having regard to the purpose of collection or to a purpose that is incidental to or connected with that purpose, incomplete, irrelevant, out of date, or where it would give a misleading impression in accordance with the *Freedom of Information Act 1991*.

39. Although it does not appear the complainant made any application under the FOI Act to amend her records on the department's internal record system, the Justice Information System (**JIS**), I am of the view that the department had the power to amend her records regardless of formal recognition under the BDMR Act.
40. Case notes provided by the department in relation to the complainant show that an amendment of the complainant's gender on the JIS was initially flagged by PAP officers in 2015. The relevant case notes state the following:

2/06/2015 Case Conference

Group asked to consider what a placement at PAP and AWP would look like for Ms Richards. Agreed by all that the ideal long term placement would be AWP, however highlighted that current accommodation matters needed to be addressed...
Nuala Billings [Principal Advisor Offender Services] to investigate how JIS could reflect a gender change (other than recording in section listing alias names)...

30/06/2015 Case Conference.

Ms Billing to seek detail from Court re process for a name change on a warrant.
Ms [Joanne] McFarland [Manager Offender Development] raised if name cannot be formally changed on JIS how could it be communicated to staff that Ms Richards wishes to be known as Krista - staff to be referred to Policy 35.

41. Despite the matter being raised as early as 2 June 2015, Mr Brown's letter dated 17 November 2017, shows that the department did not take steps to amend the JIS until 27 September 2017, shortly after I made my initial enquiries in relation to the matter by letter dated 14 September 2017:

As stated in the previous response, on 27 September 2017, I signed the approval to commence the process for Ms Richards' records on the JIS to be amended to formally recognise her as female. To implement these changes, time was required to consult the staff as to what this official change would mean and plan how to implement the changes, including on IT systems. On 2 November 2017, Ms Richards' records on JIS were officially updated to recognise her as female. The social worker discussed these changes with Ms Richards on the same day and all ID cards were re-printed to reflect the changes on JIS. This includes changing the name on Ms Richards' cell door. After initial technical difficulties, Ms Richards' primary name has also been updated on JIS to show Krista Richards.

42. I do not find this explanation for the delay in amending the JIS by the department satisfactory, for the reasons I have set out below.
43. I refer firstly to the following submission:

...time was required to consult the staff as to what this official change would mean and plan how to implement the changes, including on IT systems.

¹⁰ Premier and Cabinet Circular 12, as amended by Cabinet 20 June 2016.

44. Although the department stated that time was required to consult with staff and implement changes, it has failed to provide any evidence of what consultation was undertaken, or what steps were taken to plan for the amendment.
45. As the case notes demonstrate, the issue was flagged as early as 2 June 2015, yet it does not appear the agency took any steps to amend the JIS until 27 September 2017.
46. Secondly, the department has not offered any explanation, or referred to any policies or legislation, demonstrating there was an impediment to amending the JIS once the issue had been flagged in 2015.
47. Although the department has alluded to the fact that there may have been a belief that the complainant was required to firstly make an application to Births, Deaths and Marriages to officially change her name and gender, it has not provided any policy or legislative basis for requiring the complainant to undertake this process for the JIS to be amended.
48. Whilst I accept there may have been uncertainty as to whether the JIS could be amended, the department ought to have sought advice on the matter.
49. I consider there is ample evidence to reflect that the department was aware that the complainant identified as female, at least since 2015, when the department settled its dispute with the complainant. The department's agreement to place the complainant amongst female prisoners following the settlement of the dispute also indicates to me that it understood the complainant identifies as female.
50. The actions of the department, once finally initiated by Mr Brown on 27 September 2017, demonstrated that the amendment was a relatively uncomplicated process that had been prolonged unnecessarily by the department's own inertia.
51. Therefore, I am of the view that the department ought to have taken more immediate steps to amend the complainant's records on the JIS. By failing to do so, I am of the view that the department's actions were wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

Opinion

In light of the above, my view is that the department acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that the department:

1. issue a formal apology to the complainant
2. amend its Transgender and Intersex Offenders and Prisoners Policy (**the policy**) to require that the department amend records to reflect prisoners' identified gender as soon as practicable.

Whether the department's delay in amending the complainant's name on her cell door was improperly discriminatory

52. As noted above, the department submitted that the delay in amending the complainant's name on her cell door coincided with the delay in amending the JIS. The department stated specifically that:

... changes to Ms Richards' official IDs, including on her cell door were not able to be implemented until the changes on JIS had been implemented.¹¹

53. The department confirmed by email dated 6 March 2018 that the complainant's name on her cell door was amended on the same day that all JIS records were updated on 2 November 2017.
54. I do not find the department's explanation for the delay in amending the name on her cell door satisfactory.
55. The department has not explained why the change to the complainant's name on her cell door was contingent on the amendment to the JIS. In the absence of any explanation from the department, I do not see good reason as to why the department would have been prevented from amending the complainant's name on her cell door.
56. As noted above, there was no clear impediment to the department amending the JIS itself to reflect that she is female. Similarly, I see no impediment in amending the JIS to reflect that she identifies as 'Krista'.
57. That said, it is not clear to me why the name on the complainant's cell door could not be amended independently of any changes to the JIS.
58. The department was aware that the complainant identified as 'Krista', as demonstrated by its communications with her, the Deed, and previous legal proceedings.
59. As 'Krista' is the name the complainant identifies with, and is also the name by which she is known by others in their communications with her, the department ought to have ensured that her cell door reflected her chosen name, and the name that she is referred to in all other forms of communication.
60. I consider that the department's delay in amending the complainant's name on her cell door was improperly discriminatory for the reasons I have set out below.
61. Section 29(2)(d) of the *Equal Opportunity Act 1984* (the **EO Act**) sets out that:
 - (2) For the purposes of this Act, a person discriminates on the ground of sex—
...
(d) if the person requires a person of a particular gender identity to assume characteristics of a sex with which the person does not identify...
62. Although the EO Act does not define the term 'person', references to acts of discrimination by persons in the Act appear separate and distinct to discrimination by associations and qualifying bodies. Therefore, I am of the view the term 'person' refers to a person in the ordinary sense of the word. I also do not consider that the department could meet the definition of a person under the *Acts Interpretation Act 1915*, which defines that a person includes a 'body corporate', as the department is not a body corporate.
63. In light of the above, I do not consider the department's actions are likely to constitute the actions of a 'person' for the purposes of section 29(2)(d) of the EO Act. As such, I have not considered whether the department's actions were contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
64. Rather, I am guided by section 29(2)(d) in determining whether the department's actions may have been improperly discriminatory for the purposes of section 25(1)(b) of the Ombudsman Act.

¹¹ As noted above, the JIS was not amended until 2 November 2017.

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65. Section 29(2)(d) sets out that a person discriminates on the grounds of sex if they
- ...require a person of a particular gender identity to assume characteristics of a sex with which the person does not identify.
66. In the present circumstances, I will consider whether the department has required the complainant to assume the characteristics of a male, which is a sex that she does not identify with.
67. I am of the view that it is generally accepted that certain names are often associated with a specific sex, and therefore, a name could be considered a characteristic of a particular sex.
68. I do not consider that the name 'Leslie' would be considered by the general population to be a name that is only associated with males. I am satisfied, however, that for the complainant, the name 'Leslie' carries that association as it is the name she chose to disassociate with upon her transition as a woman.
69. As noted above, I am persuaded that the department was aware that the complainant did not identify by the name 'Leslie', and that it was a name she associated with being male.
70. Therefore, I am of the view that the department caused the complainant to assume the characteristics of a sex she does not identify with by delaying the change to her name on her cell door. As a result, I consider that the complainant was treated differently to other women in the prison, who are free to identify as women at all times.
71. As such, I consider the department acted in a way that was improperly discriminatory for the purposes of section 25(1)(b) of the Ombudsman Act.
72. By way of comment, I also note that the department's policy sets out that:
- DCS staff are to address transgender and intersex offenders and prisoners according to their preferred name and gender in written or verbal communication. Alternatively, in verbal communication in prison context staff may choose to use an individual's surname.
73. Although I do not consider that the complainant's name is likely to constitute 'written or verbal communication' for the purposes of the policy, I consider that ensuring the complainant's name on her cell door reflected her preferred name is consistent with the spirit of the policy. I also consider that the policy supports my view that there is no impediment to referring to transgender prisoners by their preferred name.

Opinion

In light of the above, my view is that the department's actions were improperly discriminatory for the purposes of section 25(1)(b) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that the department:

1. issue a formal apology to the complainant
2. amend the policy to require that the department identify transgender prisoners by their preferred name at all times, unless there is a lawful reason not to do so.

Whether the department has unreasonably delayed the complainant's transfer to Adelaide Women's Prison

74. The complainant asserted that in 2015, a proposal was made for her to spend a four week transitional period in the Complex Needs Unit (CPU) in Sandalwood at PAP prior to being transferred to AWP.
75. In response to the complainant's suggestion that a four week transition period had been proposed, the department stated in its letter dated 6 October 2017 that:

There was never an agreement in place with Ms Richards that she would be accommodated within Sandalwood for four weeks only. Ms Richards is being recognised as a female prisoner and accommodated in a bona fide women's unit in Port Augusta Prison. Sandalwood at Port Augusta Prison is a women's unit currently accommodation 24 women prisoners. Ms Richards has the opportunity to associate with other female prisoners within the unit on a daily basis.

Placement decisions are made after careful consideration of a range of factors that include, but are not limited to, a thorough assessment of the rehabilitative requirements of the prisoner, including health matters, a prisoner's security rating, safety, program participation, education or vocational needs, employment and prisoner's behaviour. Placement is continually monitored and reviewed in accordance with a prisoner's assessed needs and risks.

The Chief Executive recently approved for Ms Richards' status as a female prisoner to be updated and reflected on the Justice Information System (JIS). A meeting will occur with relevant parties in the next week to discuss the implementation of this decision and communication with Ms Richards and staff, following which a Special Case Review will be undertaken as a matter of priority, and an updated Placement Plan will be prepared reflecting her status as a female prisoner. An updated placement plan will take into consideration the further placement options available to female prisoners, including the larger side of Sandalwood and the AWP. An internal move within Port Augusta would be managed locally, however any change of prison placement to another site would need to be endorsed by the Serious Offender Committee and would not occur without the relevant briefings being undertaken at the appropriate time. Given Ms Richards' conditional release date of 2023, it would not be unusual for Ms Richards to spend some further time in Port Augusta Prison prior to a transfer to AWP later in her sentence to access reduced security and reintegration opportunities at the appropriate time, but that would become a standard matter about prisoner placement as opposed to an issue of gender.

76. Case notes in relation to the complainant support the department's assertion that there was no formal agreement in 2015 that the complainant would only spend four weeks in Sandalwood.
77. A case note dated 24 July 2016, however, refers to an email 'from N. Billings to Hayley Mills, Jackie Bray and cc Lee Macdonald' which states that.

The Case Conference group suggested that Ms Richards transfer to AWP following a placement in CNU [located in the Sandalwood unit in PAP] for 6-8 weeks. The Risk Assessment supports the recommendation from the Case Conference Group that Ms Richards be transferred to AWP. Ms Billings stated she supports the recommendation to transfer to AWP with or without a placement at CNU [my emphasis].

78. An Accommodation Assessment report dated May 2017 also states that:

This risk assessment concluded that the transfer of Ms Richards from the Port Augusta Sandalwood Complex Needs Unit which accommodates 7 prisoners may best suit Ms Richards prior to placement in a larger Female prison facility.

Actions would include:

- To provide a more intensive case management approach it is AWP intention to have Ms Richards in single cell __ for approximately 4 weeks with the intention to double her up to allow for appropriate assessments and reviews prior to placement in the AWP mainstream environment, Living Skills Unit or APC.
- Where possible a suitable cell mate should be identified and recommendation are that both prisoners relocate together. Prior to transfer it is recommended that the Principal Advisor Offender Services and the AWP Accommodation Manager attend Port Augusta Prison to assist in a special case review to assist with the transfer of Ms Richards.

79. In light of the case note and the Accommodation Assessment report, I am of the view there was at the very least a suggestion that the complainant would spend a limited transitional period at PAP before ultimately being transferred to AWP.

80. The case notes also make consistent references to the fact that the complainant had been recommended for transfer to AWP since 2015. The relevant case notes as follows:

30/06/2015 Case Conference.

...In progressing long term accommodation at AWP, group agreed initial process would be to undertake risk analysis of each accommodation option at AWP in line with Ms Richards High 2 security rating and Protective status. Neil Parkinson asked if an orientation day could be provided to Ms Richards, group considered this could be useful.

1/07/2015 Email.

Jackie Bray supports reducing a cell PAP Banksia Unit to single cell environment for Ms Richards. Requested Risk Assessment, how we are going to manage her in short and medium term at PAP.

?/02/2016 AWP and APC Risk Assessment for placement of Ms Richards and suggested progression through the AWP/APC Units.

16/09/2016 JIS states Lee Macdonald Colleen Parkinson met with Krista regarding discussion about move from Banksia and working toward move to AWP via CNU.

14/11/2016 JIS states Lee Macdonald met with Krista with Colleen Parkinson to go through the response letter. Transfer to AWP likely to happen but no clear on timeframes reported to Krista

81. Despite these recommendations and records of discussions dating back to 2015 that the complainant would be transferred to AWP, it is my understanding the complainant was placed in the CNU in February 2017 and remains there to this day.

82. The following case notes provide a chronology of events which outline the complainant's attempts to enquire about her transfer to AWP, and the department's response and any associated actions in relation to those enquiries:

16/07/2015 Letter from Krista to CE DCS outlining matters to do with Equal Opportunity matter and wanting to transfer to AWP amongst other matters.

8/10/2015 Letter from Camatta Lempens Lawyers on behalf of Krista to CE DCS enquiring on when transfer to AWP will occur.

7/12/2017¹² Copy of Letter from Krista to SAPHS Medical Head of Staff, frustrations re treatment and not yet transferred to AWP

¹² As the case notes appear to be in chronological order, I assume this date was recorded incorrectly and should be recorded as 2015.

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- ?/02/2016 AWP and APC Risk Assessment for placement of Ms Richards and suggested progression through the AWP/APC Units.
- 9/05/2016 Letter from Krista to DCS expressing concerns regarding time taking to transfer to AWP.
- Undated Undated letter from Krista to Lee Macdonald (possibly July 2016). Expressing concerns about length of time to transfer to AWP.
- 19/10/2016 Letter from Krista to Lee Macdonald expressing frustrations about time it is taking to transfer to AWP.
- 9/12/2016 Letter from Krista to Lee Macdonald (PAOS) expressing concerns about her transfer to AWP. Refers to date of 29/9/16 as date the transfer to AWP should have occurred according to her. She request "solid confirmation" of when the transfer will occur and claims it has been over 20 months since initial request.
- 6/01/2017 JIS states Krista expressed distress over placement issues and wishes to transfer to AWP.
- 8/01/2017 JIS entry describing Krista as 'distressed' over placement issues.
- 4/03/2017 Letter from Krista to Lee Macdonald (PAOS) re frustrations regarding placement to AWP.
- 23/03/2017 JIS states Krista raised AWP transfer
- 27/03/2017 JIS notes indicate Krista asked for update on placement to AWP
- 3/04/2017 HRAT review, JIS notes state Krista raised concerns with placement to AWP. Recommendation Krista be placed on BMF for review due to stressors related to AWP transfer.
- 6/04/2017 JIS states Krista asking about placement at AWP.
- 20/04/2017 JIS states Krista asking about placement at AWP.
- 28/04/2017 JIS states Krista raised concerns about placement to AWP.
- ?/05/2017 Draft Managers Memorandum from GM AWP to Staff AWP outlining questions and facts associated with transgender female prison transferring to AWP (draft only cannot confirm if this was ever finalised).
- 1/05/2017 JIS states Denise Lawler and Supervisor McPherson advised Krista the GM is liaising with AWP. Second JIS entry indicates Krista packed her personal property with intent to go to AWP or the other side.
- 11/05/2017 Letter from Krista to CE expressing frustration over the transfer to AWP. Explicitly quotes it was to be 6-8 weeks in CNU before she would be transferred to AWP and it has been 8 months. Other issues also outlined in letter.
- 15/05/2017 JIS states Krista complaining about transfer to AWP.
- 18/05/2017 JIS states Krista raising issues with placement at AWP.
- 19/05/2017 JIS states meeting with Krista, Denise Lawler and AMR Ms Mathew re a request form for progression to AWP.
- 30/06/2017 Letter received from Krista to Lee Macdonald (PAOS) expressing frustration regarding move to AWP.
- 12/07/2017 Letter received to Lee Macdonald from Krista expressing concerns about transfer to AWP and other matters.

- 15/7/2017 JIS states Krista raised issues about length of time taken for move to AWP.
- 19/7/2017 JIS entry Denise Lawler regarding Krista expressing frustration regarding placement issues.
- 30/07/2017 Letter from Krista to Lee Macdonald (PAOS). Expresses frustration regarding transfer to AWP.
- 4/08/2017 Lee Macdonald JIS entry for PSA and AWP management meeting regarding placement at AWP.
- 16/08/2017 JIS states Krista raised concerns over progression to AWP.
- 16/10/2017 JIS states Krista upset that it is over 8 months since move to Banksia and she anticipated move to occur over a 6 to 8 week period.
- 19/10/2017 JIS states Krista raised issue of placement to AWP in SAMI assessment. Notes state Krista anticipated a short stay in PAP and move to AWP. Claims it has taken over 8 months.
- 30/10/2017 JIS states Krista raised issues with placement to AWP with SW.

83. In response to enquiries by my Office as to what specific consideration and/or action had been taken to implement the recommendation that the complainant be moved to AWP, the department stated that:

...Each of these documents [the case notes, an accommodation assessment, and a risk assessment dated report] provides background and information regarding the planning and consultation that has occurred regarding Ms Richards' placement. In addition, Ms Richards' case review was presented to the Serious Offender Committee (SOC) on 15 August 2017, along with a request to review her accommodation options. SOC minutes stated "SOC support progression to AWP, subject to consultation being led by the Deputy Chief Executive. Making Changes Program to be amended, under Core Programs, to Making Changes Women.

Some of the factors in the decision to transfer Ms Richards from the male Banksia Unit to the female Complex Needs Unit of Sandalwood at Port Augusta Prison, rather than the AWP, included:

- Small unit of female prisoners to enable gradual integration into the female prisoner population with close monitoring;
- Increased access to support staff and frequent one on one counselling with the Complex Needs Unit Team Leader to assist with ongoing issues;
- The unit has specially trained staff and is designed to be able to flexibly manage female prisoners who have complex needs;
- Familiar environment at Port Augusta Prison as she had regularly been accommodated there since 2012. This would result in less anxiety at a new environment whilst adjusting to living in the female prisoner population;
- Access to women's clothing, the women's buy list and conversation and association with female prisoners.

Evidence from the documentation reviewed indicates that Ms Richards has been placed in a single occupancy cell within a protected unit for a numbers of reasons. These include:

- Ms Richards was a Crown Witness in an attempted murder trial and requires protective status from other prisoners; and

- Ms Richards has a history of perpetrating domestic violence against females with an intervention order placed on her by a former partner¹³

DCS does not want these risks and issues to distract Krista from working successfully towards her progression.

84. I acknowledge the department's reasons as to why a decision was made to initially transfer the complainant to the CPU in Sandalwood. I do not consider, however, that these reasons are relevant or demonstrate consideration as to the complainant's transfer to AWP as they are specific to the initial transfer from the male populated Banksia unit to the CNU.
85. That said, I note the department's submission that as a Serious Offender, any placement decisions in relation to the complainant require endorsement by the Serious Offender Committee (SOC) and approval by the Chief Executive of the Department.
86. Although there was a slight delay of five months upon placement in the CNU, a request to review the complainant's accommodation options was made to the SOC on 15 August 2017. As a result of this request, the SOC supported the complainant's progression to AWP.
87. In light of the request for a review of the complainant's accommodation on 15 August 2017, I am satisfied it has taken reasonable steps to progress her transfer to AWP.
88. Whilst I acknowledge the complainant's frustration with her current placement in the CNU, which provides her with limited contact with other prisoners and where she is placed in a single occupancy cell, I do not consider the department has acted unreasonably in regard to her placement.
89. The process of transferring Serious Offenders is more complicated than a simple administrative procedure, and requires various levels of approval. The department also has a broad discretion to make placement decisions according to the individual needs of prisoners, and broader movement considerations across the state.
90. Therefore, I do not consider the department has unreasonably delayed the complainant's transfer to AWP.
91. By way of comment, however, I consider that the department may wish to take better steps to manage prisoner expectations and to communicate the process of transfers in greater detail.

Opinion

In light of the above, I do not consider that the department acted in a manner that was unlawful, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

Summary and Recommendation

Issue one

My view is that the department's failure to take immediate steps to amend the complainant's records on the JIS was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

¹³ I note that a risk assessment conducted in May 2017 identified that the complainant presented as a greater risk toward domestic violence victims in the CNU at PAP compared to the AWP. The complainant was identified as a low risk to victims at AWP compared to a medium risk in the CNU.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that the department:

- 1) issue a formal apology to the complainant
- 2) amend its Transgender and Intersex Offenders and Prisoners Policy (**the policy**) to require that the department amend records to reflect prisoners' identified gender as soon as practicable.

Issue two

It is my view that the department's actions in failing to ensure that the complainant's name on her cell door reflected her chosen name was:

- improperly discriminatory for the purposes of section 25(1)(b) of the Ombudsman Act
- in breach of its policy, and therefore also wrong for the purposes of section 25(1)(g) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that the department:

- 3) issue a formal apology to the complainant.
- 4) amend the policy to require that the department identify transgender prisoners by their preferred name at all times, unless there is a lawful reason not to do so.

Issue three

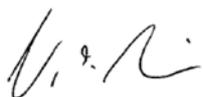
I do not consider that the department's actions in relation to her transfer to AWP are unlawful, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

In accordance with section 25(4) of the Ombudsman Act the department should report to the Ombudsman by **14 September 2018** on what steps have been taken to give effect to the recommendations above; including:

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

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

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



Wayne Lines
SA OMBUDSMAN

14 June 2018