

EVALUATION OF THE PRACTICES, POLICIES AND PROCEDURES OF THE PUBLIC TRUSTEE

THE HON. BRUCE LANDER QC
INDEPENDENT COMMISSIONER
AGAINST CORRUPTION

25 SEPTEMBER 2017



Evaluation of the Practices, Policies and Procedures of The Public Trustee
Published 25 September 2017

Level 1, 55 Currie Street
Adelaide SA 5000
(08) 8463 5173
GPO Box 11066
Adelaide SA 5001

www.icac.sa.gov.au

TABLE OF CONTENTS

Letter of Transmittal.....	3
Introduction	4
Methodology.....	6
Scope of the Evaluation.....	7
Prior Practices	8
Recommendations.....	9
Organisational Structure	9
Policies and Procedures.....	9
Internal Controls.....	9
Electronic Systems.....	9
Training.....	10
Serving the Community	10
Workload and Performance	10
Property	10
Part 1: Public Trustee's Role and Responsibilities.....	12
What Does Public Trustee Do?	12
Personnel and Stakeholders	15
Financial Performance.....	20
Part 2: Duties and Obligations.....	23
Legal Duties in Relation to Customers	23
Record Keeping Obligations	23
Financial Obligations.....	24
Reporting Requirements.....	24
Government Requirements	25
Part 3: Organisational Structure.....	26
Division of Responsibility for Files.....	27
Internal Communication.....	32
Recommendations.....	34
Part 4: Policies and Procedures	35
Divergences	35
Accessibility	36
Recommendations.....	37
Part 5: Internal Controls.....	38
Control Self-Assessment	38
High Risk Files.....	40

Recommendation	40
Part 6: Electronic Systems	41
Introduction	41
Staff Comments	42
Limitations and Constraints of CBIS	42
Peripheral Systems.....	44
Record Keeping.....	45
Cyber-Threats.....	46
Replacement Systems	46
Recommendations.....	48
Part 7: Training.....	49
Recommendations.....	51
Part 8: Serving the Community	52
Customer Visitation	52
Customer Satisfaction	56
Telephone Calls	57
Written Communication.....	59
Difficult Customers.....	60
Complaints	61
Recommendations.....	62
Part 9: Workload and Performance	64
Background.....	64
Factors Affecting Workload	64
Allocation of New Files	68
Assessing Performance.....	68
Recommendation	69
Part 10: Property	70
Securing and Storing Customers' Property	70
Vendors and Contractors.....	76
Real Estate – Conflicts of Interest	77
Responding to Instructions.....	78
Recommendations.....	79
Conclusion.....	80
Appendices	81
Appendix 1: Dictionary	81
Appendix 2: Response of the Public Trustee.....	85

LETTER OF TRANSMITTAL

The Honourable the President of the Legislative Council

The Honourable the Speaker of the House of Assembly

In accordance with section 40(3) of the *Independent Commissioner Against Corruption Act 2012* (SA), I present the report of my evaluation of the practices, policies and procedures of the Public Trustee.

Section 40(4) of the *Independent Commissioner Against Corruption Act 2012* (SA) requires that you lay the report before your House of Parliament on the first sitting day after receiving it.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bruce Lander', with a stylized flourish at the end.

The Hon. Bruce Lander QC
INDEPENDENT COMMISSIONER AGAINST CORRUPTION
25 September 2017

INTRODUCTION

Since September 2013, the Office for Public Integrity has received more than 30 complaints and reports about public officers who comprise Public Trustee's staff.¹ Some of those matters have resulted in criminal investigations, while other matters have been referred to Public Trustee for investigation into potential misconduct or maladministration in public administration. In many other cases, I have decided to take no further action. However the information contained within those complaints and reports has been useful in creating an understanding of the operations of Public Trustee.

The investigation by my office of one of those matters resulted in a former officer of Public Trustee, Ms Alana Bartels, pleading guilty to seven counts of abuse of public office.² That investigation also revealed potential weaknesses in Public Trustee's practices, policies and procedures.

Section 40(1) of the *Independent Commissioner Against Corruption Act 2012* (SA) ('ICAC Act') addresses the manner in which the Independent Commissioner Against Corruption ('Commissioner') must conduct an evaluation of the practices, policies and procedures of a public authority. Section 40(1) provides:

If, in performing the Commissioner's functions, the Commissioner decides to evaluate the practices, policies and procedures of an inquiry agency or public authority, the Commissioner must inform the agency or authority as to the nature and timing of the evaluation.

The section assumes that the Commissioner has power to make the decision to conduct the evaluation described in the section. Section 3(1)(a) of the Act includes as one of the primary objects of the ICAC Act:

- (a) *to establish the Independent Commissioner Against Corruption with functions designed to further—*

...
- (ii) *the prevention or minimisation of corruption, misconduct and maladministration in public administration, including through referral of potential issues, education and evaluation of practices, policies and procedures; ...*

Section 7(1)(d) prescribes as one of the Commissioner's statutory functions:

- (1) *There is to be an Independent Commissioner Against Corruption with the following functions:*

...
- (d) *to evaluate the practices, policies and procedures of inquiry agencies and public authorities with a view to advancing comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration;*

Section 7 includes all of the functions that repose in the Commissioner. Some of the other functions mentioned in section 7 are specifically addressed in other parts of the ICAC Act by conferring the power on the Commissioner consistent with the function. Other functions mentioned in section 7 are, like the function in section 7(1)(d), assumed to be empowered.

¹ The public officers working for Public Trustee, who are sometimes described as staff in this report, are employed by the Attorney-General's Department and assigned to Public Trustee.

² Contrary to s 251 of the *Criminal Law Consolidation Act 1935* (SA).

Because section 40 assumes the existence of the power, it can be said as a matter of statutory construction that the ICAC Act impliedly empowers the Commissioner to discharge the function referred to in section 7(1)(d).³

Although section 40(1) does not limit the evaluation process I think that because of the provision of section 7(1)(d) the evaluation must be carried out for the purpose of advancing comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration.⁴ The subsection does not authorise the Commissioner to carry out an evaluation at large but only for the purpose mentioned in section 7(1)(d). I think that is also consistent with the implication of the power.

On conducting an evaluation, section 41 of the ICAC Act empowers the Commissioner to make recommendations that Public Trustee:⁵

- (a) *change practices, policies or procedures in a specified way or review practices, policies or procedures to achieve specified outcomes; or*
- (b) *conduct, or participate in, specified educational programs or educational programs designed to achieve specified outcomes.*

After publication of the report to Public Trustee, if the Commissioner is not satisfied that Public Trustee has complied with the recommendations, section 41 of the ICAC Act sets out a procedure that could ultimately result in a further report to Parliament.⁶

The recommendations in this report are intended to provide practical ways to advance comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration.

Public Trustee is a public authority within the meaning of the ICAC Act.

On 9 March 2017, I notified Ms Debra Contala, the Public Trustee, of my intention to conduct an evaluation of the practices, policies and procedures of Public Trustee.

I commenced that evaluation on 28 March 2017 and concluded it on 8 September 2017.

I note that there have been many reviews and audits over the past 10 years of various aspects of Public Trustee.⁷ The focus of this report is on Public Trustee's practices, policies and procedures in relation to Public Trustee's core business – the administration of trusts, deceased and personal estates and the preparation of

³ Sections 41(1), 45(2), 48 and 54 assume the existence of the power.

⁴ In this report I have sometimes referred to corruption, misconduct and maladministration collectively as 'inappropriate behaviour'.

⁵ *Independent Commissioner Against Corruption Act 2012* (SA) s 41(1).

⁶ *Independent Commissioner Against Corruption Act 2012* (SA) ss 41(4)-(7):

- (4) If the Commissioner is not satisfied that an inquiry agency or public authority has complied with the recommendations of the Commissioner, the Commissioner must inform the agency or authority of the grounds of the Commissioner's dissatisfaction and give the agency or authority an opportunity to comment within a specified time.
- (5) If, after considering any comments received from the inquiry agency or public authority within the specified time, the Commissioner is still not satisfied, the Commissioner may submit a report to the Minister responsible for the agency or authority setting out the grounds of dissatisfaction, together with any comments from the agency or authority.
- (6) If, after considering any comments received from the Minister responsible for the inquiry agency or public authority within 21 days after the report was submitted to the Minister, the Commissioner is still not satisfied, the Commissioner may provide to the President of the Legislative Council and the Speaker of the House of Assembly a report setting out the grounds of dissatisfaction.
- (7) The President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after receiving a report, lay it before their respective Houses.

⁷ Most notably, the report tabled in Parliament on 1 December 2009 by the Statutory Authorities Review Committee as to its Inquiry into the Office of the Public Trustee.

wills. It is mainly those areas of Public Trustee's operations which have been the subject of complaints and reports to my office.

I have made 19 recommendations in this report which are brought together under the heading of 'Recommendations' at page 9 of this report. The recommendations that relate to the modernisation of electronic systems depend upon Public Trustee being appropriately resourced by Government to enable those recommendations to be implemented. The cost will not be insignificant. It is imperative that Public Trustee has procedures and processes that are consistent with the 21st century electronic age.

METHODOLOGY

In conducting the evaluation, I had the assistance of two seconded legal officers, Mr Tim Materne and Ms Emily Sims. I am very grateful to Mr Materne and Ms Sims who worked tirelessly and efficiently to obtain the evidence necessary for the purposes of this report and for their considerable assistance in the writing of this report. Collectively, I refer to our activities in this report using the terms 'we' and 'us'.

We interviewed the executives⁸ and staff,⁹ which comprised about one-third of Public Trustee's workforce and represented a diverse cross-section. The information provided during those interviews enabled me to understand the systems and practices of Public Trustee and to reach an understanding of the culture within the office of the Public Trustee. I am grateful to all those who contributed their time and provided that information.

We also consulted with various of other persons who have interacted with Public Trustee, including representatives of some of Public Trustee's interstate counterparts.

In addition to the interviews, we met on three occasions with Public Trustee's executives for the purpose of keeping the executives informed about the progress of the evaluation.

The consultations allowed me to gain a complete understanding of the context in which Public Trustee operates and assisted me to frame recommendations that I consider to be practical and appropriate.

I did not approach any of Public Trustee's customers¹⁰ for comment during the evaluation, but I did have regard to compliments and complaints made by them and other persons.

In addition to the interviews and meetings to which I have referred I was granted access to Public Trustee's intranet and library of policy documents. Public Trustee provided all information that we requested. We also attended training sessions held for Public Trustee's staff and observed daily activities.

On 17 August 2017, I provided the draft report to Public Trustee for comment. Public Trustee responded to the body of the report but not to the recommendations and I have addressed Public Trustee's response in the body of this report. Public Trustee then responded to the recommendations and that response in Appendix 2 to this report shows that Public Trustee has accepted all of the recommendations.

⁸ See Appendix 1: Dictionary.

⁹ See Appendix 1: Dictionary.

¹⁰ See Appendix 1: Dictionary. The term 'customers' is used by Public Trustee.

SCOPE OF THE EVALUATION

This was an evaluation, not an investigation. It did not involve the exercise of coercive powers or the exercise of the powers of an inquiry agency.

This was also not a review of management, nor was it an evaluation of the current industrial dispute involving Public Trustee's staff. However, to the extent necessary, we have considered those matters for the purpose of evaluating the effectiveness of the systems in place to prevent or minimise corruption, misconduct and maladministration.

Finally, I have considered Public Trustee's external audit, internal audit and consultants' reports but I have not repeated their findings here.

INVESTMENTS

As at 30 June 2016, \$922 million from customers and other investors¹¹ was held in Public Trustee's seven common funds.¹² The money in the common funds is invested by Public Trustee through the purchase of units, on behalf of customers, in one of five standard investment strategies.

Over the past 8 years the standard investment strategies have usually outperformed Public Trustee's established benchmarks.¹³

Public Trustee engages external fund administrators for five out of seven funds,¹⁴ and receives expert advice from a consultant, Mercer. In addition, there are internal committees and bodies which provide oversight and advice in relation to investments:

- the Investment Advisory Committee;¹⁵
- the Funds Management Forum; and
- the Corporate Investment Committee.

Public Trustee has a number of internal controls in relation to Public Trustee's investments, including the use of investment guidelines, prohibitions against certain staff investing in the common funds,¹⁶ and segregation of duties between the Manager, Investment Services and the funds administration and client asset management teams.

Public Trustee is required to disclose certain information about the funds, including the fees charged and the classes of investment in which common funds may be invested, in Public Trustee's annual report.¹⁷

The Auditor-General annually audits the common funds.

¹¹ For example, funds from Government agencies.

¹² *Auditor-General's Report 2016*, Public Trustee, p. 55.

¹³ See Public Trustee's annual reports for the following years: 2008-09 (p. 3), 2009-10 (p. 7), 2010-11 (p. 8), 2011-12 (p. 53), 2012-13 (p.10), 2013-14 (p.9) and 2015-16 (p. 37).

¹⁴ *Public Trustee Annual Report 2015-16*, p. 37.

¹⁵ A copy of the meeting papers is provided to the Department of Treasury and Finance and its representative may attend the quarterly meetings: *Public Trustee Annual Report 2015-16*, p. 40.

¹⁶ Staff Conflict of Interest and Associated Person's Investment Standard, p. 2.

¹⁷ *Public Trustee Act 1995* (SA) s 30(3).

I have not considered this aspect of Public Trustee's operations, for the following reasons:

- the evaluation has been conducted in a limited timeframe and I have prioritised the matters canvassed in this report;
- to properly evaluate Public Trustee's investment decisions and systems, specialised expertise such as actuarial knowledge would be required which I do not have; and
- neither the Auditor-General's reports nor the complaints and reports received by the Office for Public Integrity to date suggest any impropriety or maladministration in relation to Public Trustee's investments.

Public Trustee must be careful to ensure that Public Trustee's practices, policies and procedures in relation to the investments of Public Trustee's common funds and the investments of customers' monies are free of corruption, misconduct and maladministration.

PRIOR PRACTICES

Prior to the arrest in May 2016 of Ms Bartels, Public Trustee had a number of systems, controls and practices which had the purpose of reducing the risk of corruption, misconduct and maladministration. For example, Public Trustee:

- regularly reviewed and updated Public Trustee's policy documents;¹⁸
- had a proactive internal audit process;
- documented Public Trustee's processes using process maps;
- had an Audit and Risk Management Committee; and
- had introduced electronic systems which assist with the oversight of files and the segregation of duties.

Since the Bartels incident,¹⁹ Public Trustee has made various changes with the aim of minimising the risk of corruption, misconduct and maladministration, including:

- delivering fraud and corruption awareness training to all staff (updating earlier training);
- strengthening Public Trustee's Control Self-Assessment process;²⁰
- introducing a safe for the storage of keys associated with customers' estates;
- requiring the Australian Business Number of service providers to be supplied before receiving payments;
- increasing the frequency with which Public Trustee uses data analytics; and
- modifying Public Trustee's policy documents in high risk areas.

Public Trustee's efforts to reduce the risk of corruption, misconduct and maladministration continue and are commendable.

¹⁸ See Appendix 1: Dictionary.

¹⁹ See Appendix 1: Dictionary.

²⁰ Control Self-Assessment is discussed further in Part 5.

RECOMMENDATIONS

ORGANISATIONAL STRUCTURE

Recommendation 1: That Public Trustee reviews managerial and team structures to achieve:

- greater sharing of functions of officers by implementing shared caseloads or dividing responsibility by work streams or processes;
- more extensive knowledge of officers' files by team leaders; and
- an increased capacity for auditing, for example, through the creation of a dedicated audit role.

Recommendation 2: That Public Trustee provides greater support for staff by the executives:

- being more visible and accessible;
- increasing their understanding of the work performed by staff and the time it takes to complete certain tasks;
- listening to staff and engaging in genuine consultation;
- understanding and evaluating the impact of decisions upon staff workloads;
- communicating the reasons for decisions; and
- positively acknowledging and recognising staff for their work.

POLICIES AND PROCEDURES

Recommendation 3: That, in the course of conducting the two yearly reviews of policy documents, Public Trustee makes the documents more readable by removing duplication and by using consistent language.

Recommendation 4: That Public Trustee organises the policy documents on Public Trustee's intranet so that they can be browsed by topic or searched using the existing search function.

Recommendation 5: That, unless the cost of creating and maintaining hyperlinks is prohibitive, Public Trustee inserts hyperlinks to forms, templates and policy documents within the policy documents that are available on Public Trustee's intranet.

INTERNAL CONTROLS

Recommendation 6: That Public Trustee conducts random checks or an audit of key controls and high risk areas.

ELECTRONIC SYSTEMS

Recommendation 7: That, as and when integrated electronic systems for core business functions become available, Public Trustee changes the practices with a view to:

- reducing duplicated data entry;
- reducing the use of paper;
- recording approvals;
- allowing for workflows;
- preserving crucial approvals, invoices and vouchers presented for payment in a form which limits and monitors subsequent editing;

- managing contracts in a proper and timely fashion;
- storing all information relevant to a file to create a single source of truth;
- restricting and logging access to and editing of sensitive information;
- protecting against cyber-threats; and
- facilitating the provision of information to customers through an online portal.

Recommendation 8: That until the above electronic systems can be funded and implemented Public Trustee maximises the use of Public Trustee’s existing electronic systems and ensures consistent use of them.

Recommendation 9: That Public Trustee reviews present practices in relation to the storing of confidential identity information to reduce the risk of corruption, misconduct and maladministration in public administration in relation to the potential misuse of that information.

TRAINING

Recommendation 10: That Public Trustee ensures that relevant training is provided to all staff who start a new role, regardless of whether they are new to Public Trustee or have moved from another role within Public Trustee.

Recommendation 11: That Public Trustee reviews the manner in which Public Trustee delivers training to staff to ensure consistency.

SERVING THE COMMUNITY

Recommendation 12: That Public Trustee reviews telephone communication practices with a view to increasing compliance with Public Trustee’s Customer Service Standard.

Recommendation 13: That Public Trustee makes direct contact with Public Trustee’s new Personal Estates customers as soon as possible after appointment.

Recommendation 14: That Public Trustee takes active steps to foster a culture of recognition and reward rather than the existing culture of scrutiny and blame.

WORKLOAD AND PERFORMANCE

Recommendation 15: That Public Trustee changes existing practices in relation to allocating files within the Personal Estates and Estate Services sections to sufficiently take into account the complexity of the file and the current workloads of the officers who may be allocated the file.

PROPERTY

Recommendation 16: That Public Trustee reviews the arrangements for the initial visit to customers’ properties and the securing of estate assets to minimise the risk of corruption, misconduct and maladministration in public administration.

Recommendation 17: That Public Trustee ensures that any audit of the securities room is conducted by two persons who have not had any involvement with the receipting of security items or the storage of those items in the securities room.

Recommendation 18: That Public Trustee enters into written contracts with service providers which are frequently engaged on behalf of customers and ensures that the contracts contain appropriate conditions to uphold Public Trustee's legal obligations.

Recommendation 19: That Public Trustee implements more stringent procedures to limit access to information about real estate in customers' estates prior to its sale.

PART 1: PUBLIC TRUSTEE'S ROLE AND RESPONSIBILITIES

The Public Trustee is created by section 4 of the *Public Trustee Act 1995* (SA).

The Public Trustee is statutory officeholder.²¹

Public Trustee is a body corporate with the powers of a natural person.²² Public Trustee can act in various capacities, such as a trustee, an executor of a will, an administrator of an estate, a manager, a receiver, a committee, a curator, a guardian, a next friend, an agent, an attorney or a stakeholder.²³

Public Trustee is subject to control and direction by the Minister on matters of policy.²⁴

Public Trustee must, at the request of the Minister, report to the Minister on a specified matter.²⁵

Public Trustee has a long history. Public Trustee commenced providing services to the South Australian public in 1881.²⁶ The nature and complexity of Public Trustee's business has changed over time.

Public Trustee has approximately 170 staff members.

WHAT DOES PUBLIC TRUSTEE DO?

Public Trustee provides a range of services, some of which are essential for South Australia's most vulnerable persons.

The powers, functions and duties of Public Trustee are conferred by various Acts, including:

- *Public Trustee Act 1995* (SA) ('PTA');
- *Wills Act 1936* (SA);
- *Trustee Act 1936* (SA);
- *Real Property Act 1886* (SA);
- *Law of Property Act 1936* (SA);
- *Inheritance (Family Provision) Act 1972* (SA);
- *Guardianship and Administration Act 1993* (SA);
- *Burial and Cremation Act 2013* (SA);
- *Aged and Infirm Persons' Property Act 1940* (SA); and
- *Administration and Probate Act 1919* (SA).

²¹ *Public Trustee Act 1995* (SA) s 4(2).

²² *Public Trustee Act 1995* (SA) ss 4(4)(a), 5(1).

²³ *Public Trustee Act 1995* (SA) s 5(2).

²⁴ *Public Trustee Act 1995* (SA) s 6(1). The Minister is the Attorney-General.

²⁵ *Public Trustee Act 1995* (SA) s 6(3).

²⁶ *Operational Records Disposal Schedule, Public Trustee*, 8 April 2008 – 30 June 2018, pp. 13-14.

ESTATE SERVICES

Public Trustee's traditional work is referred to in this report as Estate Services and primarily consists of the administration of deceased estates and trusts.

DECEASED ESTATES

Public Trustee prepares wills and may be appointed executor and trustee of a person's will.²⁷ If Public Trustee has been named as the executor and trustee in a will, when that person dies Public Trustee must administer that person's estate. Public Trustee may also be appointed an administrator of an estate of a person in any of the circumstances mentioned in section 9 of the PTA.²⁸

Where appointed an executor of an estate, on the testator's death, Public Trustee may arrange for the deceased's funeral and Public Trustee thereafter has the responsibility of obtaining probate, if probate is required, and getting in the testator's assets and paying the testator's debts. The net assets of the estate must be distributed in accordance with the deceased's will.

²⁷ *Legal Practitioners Act 1981* (SA) s 21(3)(s).

²⁸ Section 9 of the *Public Trustee Act 1995* (SA) relevantly provides:

- (1) The Court may make an order (an administration order) granting administration of the estate of a deceased person to the Public Trustee, or authorising the Public Trustee to administer the estate of a deceased person—
- (a) if, in the opinion of the Court—
 - (i) the deceased has died bankrupt or insolvent; or
 - (ii) a creditor would be entitled to obtain administration of the estate or to institute an action for the administration of the estate, (and if, in such a case, probate or administration has been granted to a person other than the Public Trustee, the Court may revoke the probate or administration without prejudice to any proceedings taken or act done under it); or
 - (b) if the deceased has died wholly or partially intestate, leaving property within this State, but not leaving a spouse, domestic partner or next of kin resident in the State who is of or above 18 years of age; or
 - (c) if—
 - (i) the deceased has made a will without leaving an executor resident in this State willing to act and capable of acting in the execution of the will; and
 - (ii) there is no person of or above 18 years of age in this State entitled to obtain administration with the will annexed; or
 - (d) if the deceased has made a will and appointed an executor but probate of the will has not been obtained within four months from the death of the deceased; or
 - (e) if no person entitled to obtain administration (with or without a will annexed) obtains it within three months after the death of the deceased; or
 - (f) if probate or administration has been granted to a person who desires to retire from the office of executor or administrator (and, in such a case, the Court may revoke the probate or administration without prejudice to any proceedings taken or act done under it); or
 - (g) if—
 - (i) the estate or portion of it is liable to waste, of a perishable nature or in danger of being lost or destroyed, or great loss or expense may be incurred by reason of delay; and
 - (ii) the executor, person entitled to administration (with the will annexed), spouse, domestic partner or next of kin—
 - (A) is absent from the locality of the estate; or
 - (B) is not known; or
 - (C) has not been found; or
 - (D) is unfit or incapable; or
 - (h) if an executor, or person entitled to administration, requests the Public Trustee, in writing, to apply for an order under this section; or
 - (i) if part of an estate, already partly administered, is unadministered owing to the death, incapacity, insolvency, disappearance or absence from the State of the executor or administrator.
- (2) If it appears to the Court—
- (a) that there is reasonable ground to suppose that a person has died leaving property within this State; and
 - (b) that the person died intestate or without a will duly proved within a reasonable time after death, the Court may, without requiring strict proof of death, make an administration order authorising the Public Trustee to administer the person's estate for the benefit of the person's creditors and for the discharge of the person's liabilities as if the person were dead.

If a person named as a beneficiary in a will cannot be identified or located, Public Trustee is required to hold the monies which were bequeathed to that person by the deceased for a six year period.²⁹ If the beneficiary still cannot be identified or located after that time, Public Trustee is required to pay the unclaimed monies to the Department of Treasury and Finance.³⁰

TRUSTS

Public Trustee acts as a manager of various types of trusts, which include:

- trusts for money awarded by courts in legal proceedings;
- trusts established by wills;
- trusts established by deed for the benefit of minors;
- perpetual charitable trusts;
- scholarship trusts; and
- trusts which provide for an interest during a person's lifetime or for a specified period.

PERSONAL ESTATES

A second aspect of Public Trustee's work is to administer or manage estates for persons who do not have the capacity to do so themselves which I have in this report described as Personal Estates. In this regard, Public Trustee assists persons:³¹

- who are the subject of an order made by the South Australian Civil and Administrative Tribunal ('SACAT') under the *Guardianship and Administration Act 1993* (SA);
- who are the subject of a court order under the *Aged and Infirm Persons' Property Act 1940* (SA); and
- whose Enduring Powers of Attorney have been activated.

Public Trustee may be appointed with the power to make some or all of the person's financial and legal decisions. The assistance that Public Trustee provides may include paying accounts; budgeting and investing money; and purchasing and selling real estate.

Public Trustee may also be appointed by a South Australian court to act as a litigation guardian.³² Such appointments are made when a person is unable by reason of age or infirmity to make decisions in relation to legal proceedings. Public Trustee may be appointed as a litigation guardian to represent the interests of a child or a person under a disability. Public Trustee is thus empowered to make decisions on behalf of the child or person under a disability about the legal proceedings, but upon the advice of the lawyer acting on behalf of that person.

MONITORING PRIVATE ADMINISTRATORS AND MANAGERS

If SACAT appoints someone other than Public Trustee to administer the estate of a person under the *Guardianship and Administration Act 1993* (SA), that person is required to provide to Public Trustee an annual statement of the accounts of the estate disclosing the assets and liabilities of the estate, as well as the income

²⁹ *Public Trustee Act 1995* (SA) s 32(1).

³⁰ *Public Trustee Act 1995* (SA) s 32(1).

³¹ In this report, I refer to these persons as 'Personal Estates customers'.

³² *Supreme Court Civil Rules 2006* (SA) rr 78-79.

and expenditure.³³ Public Trustee is required to examine the statement of accounts and report to SACAT on the statement of accounts.³⁴

If the court appoints someone other than Public Trustee to manage the estate of a person under the *Aged and Infirm Persons' Property Act 1940* (SA), the manager must provide Public Trustee with statements disclosing the property in the estate, its condition and any dealings with it.³⁵ Public Trustee must prepare a report about the statement and provide it to the court and the manager of the estate.³⁶

Under the *Administration and Probate Act 1919* (SA), every person who has received a grant of letters of administration must deliver a statement and account to Public Trustee within six months from the date of the grant.³⁷

TAXATION

Public Trustee provides taxation services to customers, including the following:

- tax compliance;
- income tax;
- statutory reports to the Australian Taxation Office and the Australian Charities and Not-for-profits Commission; and
- assistance in relation to wages, superannuation and Centrelink.

MANAGEMENT AND CUSTODY OF PROPERTY

Because of the functions set out above, Public Trustee has approximately \$1.39 billion of trust funds under administration.³⁸

As at 30 June 2016, Public Trustee had responsibility for real estate valued at more than \$300 million.³⁹

Public Trustee is regularly required to make and receive payments on customers' behalf. In the 2015-16 financial year, Public Trustee made approximately 410,000 payments.⁴⁰

PERSONNEL AND STAKEHOLDERS

THE EXECUTIVES

Public Trustee's executive team is small and consists of:

- the Public Trustee, Ms Debra Contala;
- General Manager, Customer Services, Ms Frankie Anderson; and
- General Manager, Business and Client Financial Services, Mr Tony Brumfield.

While there are several staff positions reporting directly to the Public Trustee, the two General Managers are responsible for overseeing the activities of most officers of Public Trustee through their respective managers

³³ *Guardianship and Administration Act 1993* (SA) s 44(1).

³⁴ *Guardianship and Administration Act 1993* (SA) s 44(4).

³⁵ *Aged and Infirm Persons' Property Act 1940* (SA) s 19(2).

³⁶ *Aged and Infirm Persons' Property Act 1940* (SA) s 19(4).

³⁷ *Administration and Probate Act 1919* (SA) s 56.

³⁸ *Public Trustee Annual Report 2015-16*, p. 74.

³⁹ *Public Trustee Annual Report 2015-16*, p. 15.

⁴⁰ *Public Trustee Annual Report 2015-16*, p. 15.

and team leaders. The General Manager, Customer Services is responsible for most of the 'customer facing' operations through the Estate Services and Personal Estates sections, which are essentially the 'front end' of the organisation, while the General Manager, Business and Client Financial Services, handles the 'back end'. However it must be noted that the Taxation Service section and the regulatory services team, which are customer facing, fall within the Business and Client Financial Services sphere.

The Public Trustee holds the statutory office mentioned earlier. The Public Trustee is accountable, and reports, to the Attorney-General and the Chief Executive Officer of the Attorney-General's Department. The office of the Public Trustee is independent in that, although subject to Ministerial control and direction on matters of policy, the Public Trustee cannot be directed so as to affect the efficient discharge of the Public Trustee's duties in law or in equity.⁴¹

The Public Trustee interacts with a wide range of stakeholders including the Probate Registry of the Supreme Court, SACAT, the Department of Treasury and Finance, the Department for Communities and Social Inclusion, the Alliance for the Prevention of Elder Abuse, Disabilities SA, interstate Public Trustees, and many other agencies and offices within and outside of Government. The General Managers similarly interact with some of these parties in connection with their roles.

The present Public Trustee, Ms Contala, is a Certified Practising Accountant and has had an extensive career in the South Australian Public Service since joining as a graduate, specialising in government finance and accounting. She worked for 10 years in the Department of Treasury and Finance Budget branch, as Head of Finance and Corporate Services for Arts SA, and for 10 years in the Attorney-General's Department in which she held roles in procurement, contract management and as the Executive Director of Finance. She was appointed the Public Trustee in 2010.

The present General Managers have qualifications and experience in human resources and justice administration (Ms Anderson) and economics, accounting and management (Mr Brumfield). They were appointed in August 2011 and March 2012 respectively.

The Public Trustee has delegated functions and powers to different levels of staff throughout the organisation.

MANAGERS

Managers are responsible, to their respective General Managers, in respect of their sections.

There are seven⁴² operational-level managers (plus the Manager, Governance and Compliance who does not have any direct reports). The regulatory services team is led by a team leader who reports directly to the General Manager, Business and Client Financial Services.

Managers provide monthly and other reports to the executives and meet regularly with their team leaders who have delegations for various matters and may be involved in business improvement projects.

The largest section is the Personal Estates section, comprising 49 officers with five team leaders and one manager.

The manager of the Estate Services section is responsible for four team leaders and 49 officers.

⁴¹ *Public Trustee Act 1995* (SA) s 6.

⁴² These and other numbers cited in this report are based on organisational charts provided in April 2017 and may not reflect current levels of staffing.

Together with the executives and several team leaders, managers form part of the Senior Management Group. This group has a variety of functions but essentially works as a forum for the discussion of issues and projects relating to the strategic plan, policies and business practices. The group is intended to play a role in the internal communications of Public Trustee, especially between the executives and, ultimately, those at officer level.

Physically, the various sections of the organisation are accommodated on separate floors of Public Trustee's tenancy. The executives, together with most of the Business and Client Financial Services teams, are located on one floor, the Estate Services section and the Taxation Services section on another (with their managers), the Personal Estates section (with its manager) on its own floor, and the ICT section and the out-posted unit from the Crown Solicitor's Office on a separate floor.

There are service level agreements between particular sections and teams, setting out the intended response times and what each section or team expects or requires of the other.

TEAM LEADERS

Team leaders lead teams of up to 15 officers of mixed levels ranging from ASO2 to ASO5.⁴³ They are often highly experienced and are therefore natural subject matter specialists. In fact, together with the more experienced ASO4 and ASO5 level officers, they are the repository of the technical knowledge in the Personal Estates and Estate Services sections. The present executives and managers of the Personal Estates and Estate Services sections, although having other important skill sets, do not have the same level of experience in estate and trust matters as the team leaders and senior officers as a whole.

Team leaders have delegations and many of the procedures require officers to obtain a team leader's approval for various matters. The team leaders are also clearly intended to have managerial responsibilities in relation to their teams.

They are employed at ASO6 level.

Throughout the organisation there are 14 team leaders. The average length of service with Public Trustee of team leaders is approximately 24 years.

OFFICERS

There are approximately 140 officers⁴⁴ at Public Trustee, including approximately 100 in the Personal Estates and Estate Services sections.

It is a longstanding workforce, with some of the officers having been with Public Trustee for 40 plus years. The average time of service at Public Trustee of the officers that we interviewed was over 10 years.

Officers generally are at the South Australian Public Sector levels ASO2 to ASO5. Each team in the Personal Estates and Estate Services sections has a blend of junior and senior level officers.

⁴³ South Australian Public Service classification.

⁴⁴ See Appendix 1: Dictionary.

EXTERNAL RELATIONSHIPS

Control and Audit

External parties provide a degree of oversight or control over Public Trustee's activities, which is important from an integrity perspective. The Public Trustee is answerable (with the exceptions provided for in section 6 of the PTA) to the Minister. Because Public Trustee's officers are employees of the Attorney-General's Department, a number of that department's policies are applicable to the officers and that department has an involvement in relation to human resources.

Public Trustee is subject to an annual external audit by the Auditor-General and in addition, conducts an internal audit program usually consisting of up to nine separate areas or issues by employing private sector auditors.

The Audit and Risk Management Committee consists of experienced persons from the Auditor-General's Department, Department of Treasury and Finance and persons in the private sector, with the Public Trustee as an observer only.⁴⁵ The Committee meets at least five times a year for the purpose of providing independent scrutiny of Public Trustee's risk, control and compliance framework practices and internal and external accountabilities. In particular, the Audit and Risk Management Committee:

- is briefed with the results of the Control Self-Assessment process;
- considers and comments on Public Trustee's annual internal audit plan;
- considers whether specific matters should be the subject of internal audit; and
- monitors action taken to implement external audit recommendations.⁴⁶

Public Trustee deals with a number of persons and parties in the discharge of Public Trustee's functions.

Customers and Service Providers

The customers are most important to Public Trustee's business. In the Estate Services section, the 'customer' may include a testator or a person making an Enduring Power of Attorney; the family of the deceased person; and the settlor of a trust. Public Trustee deals with and provides services to co-executors of a deceased estate, other trustees, legatees, persons with life interests, remaindermen and beneficiaries.

In the Personal Estates section, the 'customer' may be a protected person under Part 4 of the *Guardianship and Administration Act 1993* (SA), or a person due to their age or infirmity subject to similar kinds of orders under Part 2 of the *Aged and Infirm Persons' Property Act 1940* (SA). Officers will often deal with that person through, or with the assistance of their legal guardian, social worker or family members. Personal Estates customers range from persons who are relatively inactive and live in nursing homes to highly challenging individuals with complex needs who live in the community.

Excellent people skills are required of officers in order to deal with persons commonly undergoing grief or trauma, who suffer from mental incapacity or who are addicted to alcohol or drugs. Officers are often subject to abuse and sometimes threats of physical harm from customers.

⁴⁵ Currently, the General Manager, Customer Services is a member of the Audit and Risk Management Committee.

⁴⁶ Audit and Risk Management Committee Charter dated 17 November 2016, [12].

Private Administrators

Under section 44 of the *Guardianship and Administration Act 1993* (SA), Public Trustee has the duty to receive financial statements prepared by private administrators appointed in respect of the estate of a protected person. The regulatory services team provides a Welcome Kit to new private administrators; corresponds with them; receives and checks their statements; and brings any problems to the attention of SACAT.

If the private administrators do not in fact submit financial statements as required SACAT may revoke their appointment and appoint Public Trustee as administrator in their place.

Somewhat similar procedures are in effect for private managers pursuant to section 19 of the *Aged and Infirm Persons' Property Act 1940* (SA) and section 56 of the *Administration and Probate Act 1919* (SA).

The Crown Solicitor's Office

A small unit of solicitors from the Crown Solicitor's Office are out-posted at Public Trustee and are available to provide legal advice and representation in certain types of matters. Some matters may be referred to private solicitors.

The Courts and SACAT

The Probate Registry of the Supreme Court is a major external stakeholder of Public Trustee because it receives applications for probate by Public Trustee. A number of the procedures in the *Supreme Court Probate Rules 2015* (SA) relate specifically to Public Trustee.

Public Trustee also conducts or is involved in certain proceedings in the Supreme Court in which Public Trustee may take an active role, for example where Public Trustee is challenging the validity of a will purportedly made by a Personal Estates customer, or taking action to protect a customer's property, or a more passive role, for example where families are disputing testamentary arrangements.

Section 57 of the *Guardianship and Administration Act 1993* (SA) requires SACAT to actively review the status of administration orders made under section 35 of that Act every three years. SACAT will also notify Public Trustee of urgent orders to take action to protect the property of Personal Estates customers.

Personal Estates customers or their families or other persons on their behalf may bring applications in SACAT that, for example, may allege that Public Trustee is unsuitable to act in the circumstances or the administration orders should be discharged.

Peers and Community Involvement

Public Trustee participates in bi-annual meetings and other communications with interstate counterparts which involves discussion of common issues including experiences of fraud and misconduct. Public Trustee is also a member of the Alliance for the Prevention of Elder Abuse, and in that capacity acts in conjunction with the Office of the Public Advocate, SA Police and not-for-profit organisations.

FINANCIAL PERFORMANCE

Public Trustee obtains revenue from:

- commission on capital and income from estates;⁴⁷
- other fees and charges payable by customers;⁴⁸ and
- return from other invested monies.

Most of the commissions, fees and charges are received from deceased estates and trusts in the Estate Services section. Public Trustee operates as a self-funding organisation.

As demonstrated in Figure 1,⁴⁹ Public Trustee's net profit has fluctuated between 2004 and 2016, but there is a discernible trend downwards.

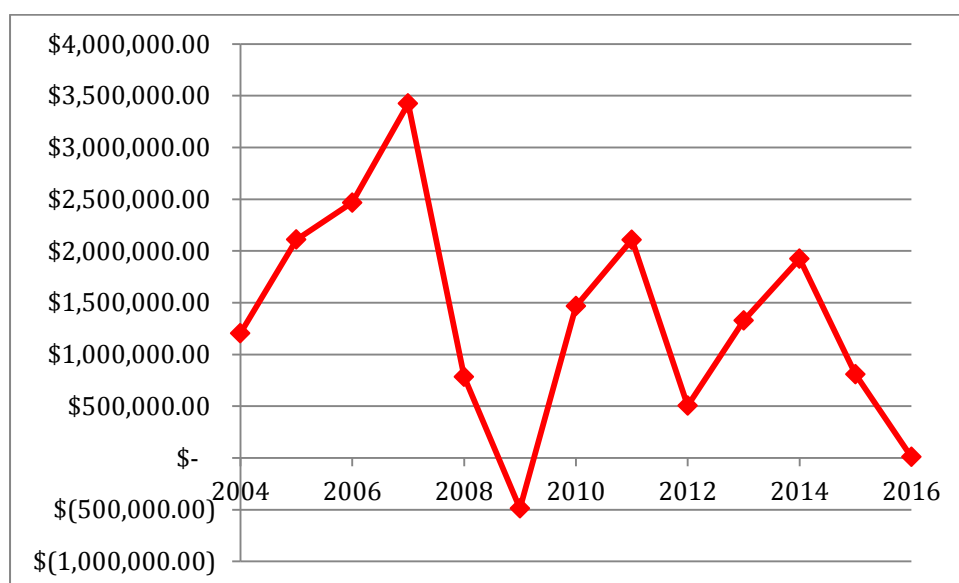


Figure 1: Public Trustee's profit after tax equivalent payments.

Although Public Trustee can control costs, Public Trustee has limited control over income which is affected by extraneous factors, such as the number of new deceased estates, the size of those estates and global financial markets.

ADMINISTRATION OF DECEASED ESTATES

The number of deceased estates administered by Public Trustee is declining which has been a long-term trend.

The extent of the decline is demonstrated by a fall of about 25 per cent in the number of applications for probate made to the Supreme Court by Public Trustee over the last four years.

The number of wills held by Public Trustee is also reducing. Between 2008 and 2015, the number of wills revoked exceeded the number of new wills written.

⁴⁷ Public Trustee Act 1995 (SA) ss 29(6a), 45.

⁴⁸ Public Trustee Act 1995 (SA) ss 29(6a), 29(10), 45.

⁴⁹ In 2007, Public Trustee sold the premises that Public Trustee occupied in part and acted as a landlord in part. Since that time, Public Trustee has occupied premises as a tenant which has had the effect of increasing Public Trustee's expenditure. Public Trustee has received income on the proceeds of sale. I have not attempted to determine whether the rent that Public Trustee has now incurred is offset by the income.

The decline in wills and estates under administration will have a negative impact on Public Trustee's future income.

ADMINISTRATION OF PERSONAL ESTATES

On the whole, Public Trustee does not profit from the Personal Estates' work.

In 2015-16, 17.8 per cent of Personal Estates customers under administration paid no fees.⁵⁰

Public Trustee considers that the costs of providing the service are not covered in approximately 80 per cent of Personal Estates' matters.⁵¹

INCOME FROM OTHER SERVICES

Private administrators who have been appointed to administer or manage estates must prepare and provide statements to Public Trustee which are examined by the regulatory services team. A fee is payable but the administrators may apply for a reduction of that fee on the ground of financial hardship.

Public Trustee does not derive any profit from the functions exercised by the regulatory services team or from Public Trustee's role as a litigation guardian.

DEMOGRAPHIC AND SOCIAL TRENDS

Demographic trends suggest that Public Trustee's customer-base will increase.

Care needs and mental health conditions arising from age, frailty and substance abuse are likely to result in more Personal Estates customers.

Real estate prices have increased and houses now often need to be sold in order to access nursing home care which creates an additional incentive for elder abuse. SACAT and Public Trustee are vigilant in combatting elder abuse which ultimately leads to an increase in the number of Personal Estates customers for Public Trustee through the revocation of the appointment of private administrators who have been acting inappropriately.

It is unsurprising that the work of the Personal Estates section is increasing. However the decline in the number of wills prepared and held, and the number of deceased estates administered by Public Trustee are not explained by demographic factors. The increase in Personal Estates' work is unlikely to increase Public Trustee's revenue sufficiently to cover the costs of undertaking that additional work.⁵²

COMPETITION

The profitable aspects of Public Trustee's functions are provided by the Estate Services section. Public Trustee faces competition from private trustee companies, lawyers and family members acting as executors. It does not appear that Public Trustee presently faces significant competition from wills kits.

COMPARISON WITH INTERSTATE COUNTERPARTS

A number of Public Trustee's interstate counterparts have successfully sustained or increased their income, even though several have experienced a decline in deceased estates and new wills.

⁵⁰ *Public Trustee Annual Report 2015-16*, p. 14.

⁵¹ Public Trustee, *Principal Agreement Paper*, March 2014, p. 5.

⁵² For example, for the 2016-17 financial year, Public Trustee received \$5.9 million in commissions, fees and charges for estates administered by the Personal Estates section which I was informed was 25.7 per cent of total revenue.

They face similar problems to the South Australian Public Trustee, including the increasing complexity of matters and the change in expectations of customers.

Techniques used by Public Trustee's interstate counterparts to increase their income include:

- changing their fee structure. At least two of Public Trustee's interstate counterparts do not charge commission but rather charge by unit cost for items of work which increases transparency and promotes efficiency, and tends to rebut the criticism that Public Trustee commonly faces; that Public Trustee's fees are too expensive;
- employing experts to provide financial planning advice;
- promoting the organisation's own will kits;
- writing wills for anyone, regardless of whether the testator appoints Public Trustee's counterpart as the executor;
- developing a mutually beneficial relationship with the legal profession;
- assisting executors to administer estates by undertaking specific parts of the process on a fee for service or hourly basis (similar to the service offered by some lawyers);
- assuming the function of holding confiscation of crime assets; and
- obtaining government funding in respect of work undertaken as a community service (predominantly Personal Estates' work).

The South Australian Public Trustee may not be able to introduce these innovations because Public Trustee is constrained by the present legislative framework and the existing systems. In order to remain self-sufficient, I would encourage Public Trustee to consider whether any of the above innovations used by Public Trustee's interstate counterparts could be adopted in South Australia.

PART 2: DUTIES AND OBLIGATIONS

In discharging the roles and functions given to Public Trustee by the legislative scheme discussed in Part 1, Public Trustee is subject to obligations outside of the PTA. This part briefly identifies and discusses the requirements insofar as they are relevant to the practices, policies and procedures under evaluation.

LEGAL DUTIES IN RELATION TO CUSTOMERS

Public Trustee has legal obligations.

Public Trustee is in a fiduciary relationship with Public Trustee's trust, deceased estate and personal estate customers, as well as Public Trustee's power of attorney customers during the period of the operation of that power.⁵³ Public Trustee is required to avoid any conflict of interest and is not to obtain any unauthorised profit from the trust or the estate.⁵⁴

As a trustee, Public Trustee's legal duties include:⁵⁵

- to identify, secure and collect all assets of the estate;
- to comply with the terms of any trust under which Public Trustee has been appointed;
- to account for trust property;
- to invest funds in the best interests of the beneficiaries of the trust;
- to identify and account to the correct beneficiaries; and
- to act impartially between beneficiaries.

Public Trustee may prepare wills and other testamentary instruments for fee or reward, even though Public Trustee's officers are not legal practitioners.⁵⁶ The *Legal Practitioners Act 1981* (SA) provides that where Public Trustee is 'to be named as one of the executors of a will or instrument, any commission or other remuneration that will, or might, become payable as a consequence of that appointment must be disclosed to the person on whose instructions the will or instrument is to be prepared'.⁵⁷

RECORD KEEPING OBLIGATIONS

Section 26(1) of the PTA requires Public Trustee to cause proper accounts to be kept of all estates under Public Trustee's control, and of all dealings and transactions in relation to the estates. Public Trustee must also cause proper accounts to be kept in relation to each common fund that Public Trustee maintains in which customers' monies may be invested, and of Public Trustee's own financial affairs.⁵⁸

Public Trustee is subject to the *State Records Act 1997* (SA) which requires official records to be maintained in good order and condition.⁵⁹

⁵³ When Public Trustee is appointed a customer's attorney under a power of attorney, Public Trustee must, during the period of the operation of that power, exercise its powers with reasonable diligence to protect the customer's interests. Public Trustee is liable to compensate the customer for loss caused by any failure to do so: *Powers of Attorney and Agency Act 1984* (SA) s 7.

⁵⁴ *Chan v Zacharia* (1984) 154 CLR 178, 198-199.

⁵⁵ See, GE Dal Pont and DRC Chalmers, *Equity and Trusts in Australia* (Lawbook Co., 4th ed, 2007) Chapter 22.

⁵⁶ *Legal Practitioners Act 1981* (SA) s 21(3)(s).

⁵⁷ *Legal Practitioners Act 1981* (SA) s 21(3)(s).

⁵⁸ *Public Trustee Act 1995* (SA) ss 30, 50.

⁵⁹ *State Records Act 1997* (SA) s 13.

FINANCIAL OBLIGATIONS

As already mentioned, Public Trustee is subject to audit by the Auditor-General.⁶⁰

Public Trustee is subject to the Treasurer's Instructions, which are administrative instructions made pursuant to the *Public Finance and Audit Act 1987* (SA).

Treasurer's Instruction 2 requires the Public Trustee 'to establish and maintain effective policies, procedures and systems for the identification, assessment, monitoring, management and annual review of financial and tax risks',⁶¹ and to adopt a policy 'with respect to the prevention, detection and control of fraud, corruption and other criminal conduct, maladministration and misconduct'⁶² at least to the equivalent of that issued and annually reviewed by the Commissioner for Public Sector Employment.⁶³

Treasurer's Instruction 8 requires an annual review of financial authorisations.⁶⁴

Treasurer's Instruction 28 requires public authorities to 'develop, implement, document and maintain a robust and transparent financial management compliance program'.⁶⁵

The PTA requires Public Trustee each financial year to consult with the Minister as to whether a dividend should be paid to the Treasurer and if so, the amount of the dividend.⁶⁶ In practice, Public Trustee is ordinarily required to make such a payment which is made to the credit of the Consolidated Account in the manner directed by the Minister and the Treasurer after consultation with Public Trustee.⁶⁷

REPORTING REQUIREMENTS

Public Trustee is required to deliver an annual report, incorporating audited accounts and financial statements for the year to the Minister.⁶⁸ The report is tabled by the Minister in both Houses of Parliament.⁶⁹ At the Minister's request, Public Trustee must report to the Minister on any specified matter, but in doing so, Public Trustee must not divulge customers' confidential information.⁷⁰

Public Trustee has various reporting requirements to courts and SACAT associated with acting for Estate Services and Personal Estates customers.⁷¹ For example, in relation to deceased estates, Public Trustee has a

⁶⁰ *Public Trustee Act 1995* (SA) ss 26(2), 30(2), 50(2).

⁶¹ Treasurer's Instruction 2, [2.6].

⁶² Treasurer's Instruction 2, [2.6.1], which also cites at [2.6.2] Australian Standard 8001-2008 Fraud and Corruption Control as being of assistance.

⁶³ Treasurer's Instruction 2, [2.6.1]-[2.6.2]. The South Australian Public Sector Fraud and Corruption Control Policy issued by the Commissioner for Public Sector Employment is informed by Australian Standard 8001-2008 Fraud and Corruption Control: Office for the Public Sector, *South Australian Public Sector Fraud and Corruption Control Policy* < <https://publicsector.sa.gov.au/wp-content/uploads/20160203-Fraud-and-Corruption-Control-Policy.pdf> > at p. 7.

⁶⁴ Treasurer's Instruction 8, [8.8]. In addition to these financial authorisations, the Public Trustee has delegated functions to staff of various classifications to facilitate internal operations.

⁶⁵ Treasurer's Instruction 28, [28.2].

⁶⁶ *Public Trustee Act 1995* (SA) s 48(1).

⁶⁷ *Public Trustee Act 1995* (SA) s 48(3).

⁶⁸ *Public Trustee Act 1995* (SA) s 51.

⁶⁹ *Public Trustee Act 1995* (SA) s 51(3).

⁷⁰ *Public Trustee Act 1995* (SA) ss 6(3)-(4).

⁷¹ See, *Administration and Probate Act 1919* (SA) s 121A; *Aged and Infirm Persons' Property Act 1940* (SA) s 19; *Guardianship and Administration Act 1993* (SA) s 45. Public Trustee also has reporting obligations to the courts and SACAT arising from its role in monitoring private administrators and managers.

duty to disclose to the court the assets and liabilities of the estate of a deceased person when applying for probate or administration or acting as executor, administrator or trustee of the estate.⁷²

SACAT has the power under section 45(2) of the *Guardianship and Administration Act 1993* (SA) to disallow expenses incurred by Public Trustee on behalf of customers, in the same way SACAT is empowered to do so if Public Trustee brings to its attention matters of concern in the financial statements provided by private administrators.⁷³ It appears that this procedure occurs infrequently.

GOVERNMENT REQUIREMENTS

Other statutory obligations are imposed on Public Trustee by virtue of Public Trustee's operations.⁷⁴

Public Trustee must comply with State Procurement Board requirements for corporate procurements.⁷⁵

Public Trustee's executives and staff, like all other public sector employees, are required to comply with the *Public Sector (Honesty and Accountability) Act 1995* (SA) ('PS (H & A) Act'), the *Public Sector Act 2009* (SA) ('PSA'), and the Code of Ethics for the South Australian Public Sector made under the PSA. The PS (H & A) Act imposes duties upon public sector employees, including a duty to act honestly and to avoid conflicts of interest.⁷⁶ Public sector employees are also guided by the public sector principles prescribed in the PSA.⁷⁷

Public Trustee's executives and staff are required to report any conduct that they reasonably suspect raises a potential issue of corruption or serious or systemic misconduct or maladministration in public administration to the Office for Public Integrity in accordance with the Directions and Guidelines I issued pursuant to section 20 of the ICAC Act.

Many of the practices, policies and procedures discussed later in this report have been developed having regard to the Public Trustee's duties and obligations set out above.

⁷² See, *Administration and Probate Act 1919* (SA) s 121A.

⁷³ See, *Guardianship and Administration Act 1993* (SA) s 44.

⁷⁴ For example:

- as a provider of taxation services, Public Trustee is governed by relevant Commonwealth legislation;
- as a person conducting a business or undertaking, Public Trustee is subject to the requirements of the *Work Health and Safety Act 2012* (SA).

⁷⁵ Purchases made on behalf of estates involve the expenditure of customers' funds rather than public funds. Consequently, the State Procurement Board requirements may not apply. However we were informed by Public Trustee that in relation to panel agreements for estate service providers, procurements are conducted in accordance with the State Procurement Board principles.

⁷⁶ *Public Sector (Honesty and Accountability) Act 1995* (SA) ss 26-27.

⁷⁷ For example, pursuant to section 5(6) of the *Public Sector Act 2009* (SA), public sector employees are to promptly report and deal with improper conduct and to treat the public and public sector employees with respect and courtesy.

PART 3: ORGANISATIONAL STRUCTURE

The organisational structure of Public Trustee is set out below.

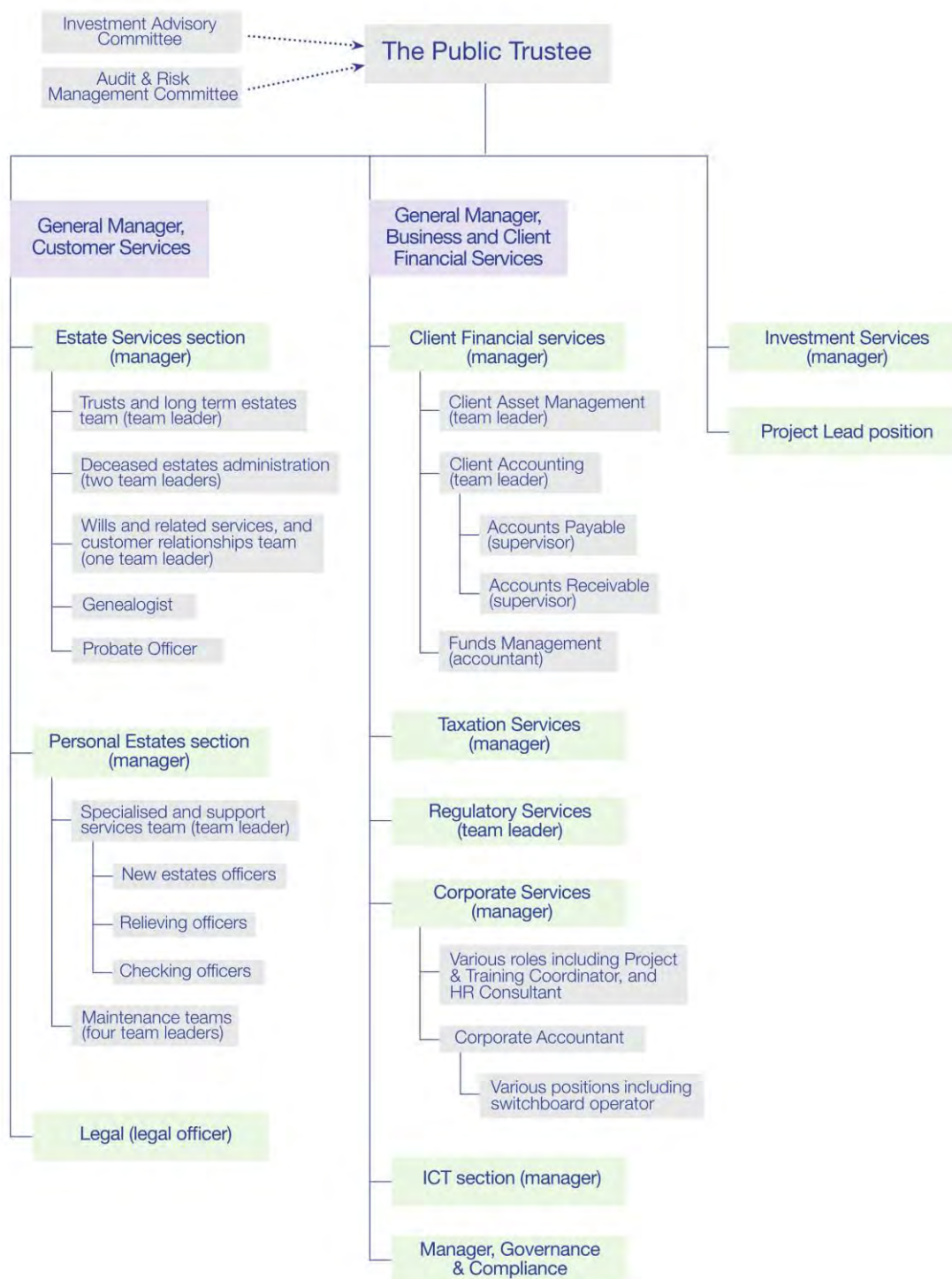


Figure 2: Public Trustee's organisational structure.

DIVISION OF RESPONSIBILITY FOR FILES

PRIMARY RESPONSIBILITY

Subject to any direction imposed by a court or SACAT, or the terms of a will or other instrument, or the Public Trustee's delegation to Public Trustee's officers, Public Trustee's officers have a broad discretion regarding the spending and the application of customers' assets which is a feature of the organisational structure that lends itself to potential abuse, in that it allows the officer responsible for the file the opportunity to inappropriately deal with the assets of the estate under administration.

For that reason, it is necessary that different persons have different responsibilities and that the conduct of the officer exercising the discretion is subject to the oversight of a separate officer.

The separation of roles is an important way to reduce the risk of inappropriate behaviour. Public Trustee already has some controls of this nature.

In the Personal Estates section, three different officers have carriage of a file at different times. The file is first dealt with by an officer in the new estates team until approximately three months after it was opened. It is transferred to a team leader of a maintenance team for allocation to an officer in that team ('maintenance officer'). The maintenance officer has conduct of the file until Public Trustee's appointment is revoked or the customer dies. In either of these events, the file is transferred to a third officer for completion.

Personal Estates files are subject to an annual review procedure conducted by a checking officer. Relieving officers may work on the file while the officer who has carriage of the file is on leave. An officer's files will be redistributed if that officer resigns or is transferred to a different role.

A Control Self-Assessment process instructs officers who are charged to determine the effectiveness of a particular control to gather samples, sometimes from files.⁷⁸

Team leaders should also have an awareness of their team members' files.

Although these various processes all serve useful purposes there is still room for improvement, particularly given that:

- a maintenance officer might have sole responsibility of a file for a substantial period of time. A particular Public Trustee officer can be the administrator of an estate of a Personal Estates customer for the remainder of the customer's life unless the officer is transferred or the order appointing Public Trustee is revoked.
- the annual check conducted by the checking officers is for the purpose of determining whether processes have been properly completed by the officer to whom the file has been assigned.⁷⁹ The checking officers are not specifically tasked to look for potential wrongdoing. It is not an audit aimed at detecting corruption, misconduct and maladministration.
- because relieving officers are commonly required to act for a number of other officers at any one time the relieving officers tend to only deal with urgent issues.

⁷⁸ See the further discussion in Part 5.

⁷⁹ Conduct Annual Review Procedure.

In the Estate Services section, administration of a deceased estate is often commenced by way of the customer relationships team arranging an interview with the beneficiary/contact person and obtaining the necessary details. The file is then allocated to an officer in one of the deceased estates teams.

Estate Services' matters are reviewed:

- by an audit officer who also checks financial accounts and draft statements before authorising distribution payments;⁸⁰
- by the team leader after a deceased estate has been administered for six months and eight months;⁸¹
- by the trusts and long-term estates team and its team leader, if the administration of an estate has exceeded 12 months and has been transferred to that team;⁸²
- by the manager, if the administration of an estate has exceeded 15 months and has not been transferred to the trusts and long-term estates team;⁸³
- by the team leader who works on the file in the planned absence of the officer who has responsibility for the file;
- by an ASO3 officer who assists with minor outstanding matters on files that are to be closed; and
- by a reviewer as part of any Control Self-Assessment sample.

SPECIALISED WORKSTREAMS

At least one of Public Trustee's interstate counterparts allocates responsibility to different work streams for separate phases of the lifecycle of the estate. For example, there is a specialist real estate team which deals with property inspections and sales.⁸⁴

Another option is to divide the work into three separate stages with different officers responsible for the file in each stage:

- commencement (which is already done in the Personal Estates section through the new estates team and, to some extent, in the Estate Services section through the customer relationships team);
- the main stage of administration; and
- the end of administration.

Both of these suggested structures limit each officer's responsibilities in relation to a file by time and function. The file would have exposure to different officers more often which would limit the opportunities for inappropriate behaviour and make it more likely that any such behaviour would be detected.

There may also be work efficiencies. At present, only senior officers are allocated estates which involve real estate. For some files, junior officers may be capable of dealing with all aspects of a file other than the real estate. A specialised unit of officers dealing solely with real estate may introduce efficiencies.

The lack of continuity of the officer who is the contact point for the file may not appeal to a customer. On the other hand, each customer would have a greater number of officers who are familiar with their file and therefore a greater likelihood of being able to speak to one of them about the file.

⁸⁰ Prepare Financial Statement Procedure, p. 4.

⁸¹ Reporting on Deceased Estate Administrations Standard, p. 2.

⁸² Reporting on Deceased Estate Administrations Standard, p. 2.

⁸³ Reporting on Deceased Estate Administrations Standard, p. 2; Create Administration Plan Procedure, p. 4.

⁸⁴ Prior to 1992, Public Trustee had a separate real estate section.

Although a restructure of this nature would be disruptive, from an integrity perspective clear distinction between functions would provide an additional safeguard.

SHARED CASELOAD

Two officers could be assigned to a joint caseload to minimise the risk of inappropriate behaviour.

A 'buddy system' is in place in relation to junior officers in the Estate Services and Personal Estates sections. They are mentored by more senior officers. A buddy system also exists informally in some teams so that officers will answer each other's telephone calls when the officer is away from the officer's desk. However, in both cases, the officers do not have an intimate knowledge of the other's files and there is not a shared caseload.

A structure in which more than one officer is familiar with and able to deal with another officer's files would embed a 'second pair of eyes' and would have the further advantage of that officer being able to communicate with customers and provide continuity of customer service. A shared caseload would also allow officers to work together to address matters requiring a higher priority.

The shared caseload could be in the form of a senior officer and a junior officer (such as an ASO5 officer with an ASO3 officer) which would have the further advantage of allowing the junior officer to observe the senior officer's work on the more complex aspects of the files, thereby providing ongoing training for the ASO3 officer.

Alternatively, the shared caseload could be allocated to two officers of the same level, which would ensure that both officers would be capable of undertaking all of the tasks required on the file, which would make it easier for one to deal with the other's work if the other is absent.

A shared caseload would ensure that matters are continued to be actioned when one of the officers is on leave. There are not enough relieving officers in the Personal Estates section to relieve all absent officers. A number of officers indicated that only the most urgent work is undertaken on their files while they are on leave. Due to the sheer volume of work identifying the urgent work appears to be reactive rather than proactive. There is, therefore, a risk that deadlines, such as the payment of insurance or an electricity bill, may be overlooked while an officer is on leave. There are no relieving officers in the Estate Services section.

However a shared caseload may be difficult in practice. The current caseload guide for an ASO3 Personal Estates officer in a maintenance team is 105 cases. It would be difficult for two officers to have in depth knowledge of 210 cases.

A shared caseload may result in some officers relying on their caseload partner to undertake a greater proportion of the work. Alternatively, both may rely on the other to complete a particular task but neither may complete it.

A shared caseload may also make it more difficult for Personal Estates officers to build a relationship with their customers which, in turn, may adversely impact their ability to make decisions on behalf of their customers.

However there is a tension between developing a relationship with Personal Estates customers and protecting the safety of the officers. Some Personal Estates customers can be threatening and aggressive towards officers.⁸⁵ One of Public Trustee's counterparts seeks to maintain some degree of anonymity for its Personal

⁸⁵ See the further discussion in Part 8.

Estates officers and in that jurisdiction the counterpart actively tries to keep the customers away from the counter where possible.

If the South Australian Public Trustee decides to implement this change, those issues would need to be considered.

OVERSIGHT OF FILES

Public Trustee operates predominantly by way of paper-based systems. The hardcopy file contains the key information relevant to a matter.⁸⁶

Managers and executives are unlikely to see a particular hardcopy file unless it is specifically brought to their attention, such as when a complaint is made. If an approval or authorisation is required, a memorandum and supporting documentation is usually sufficient.

Team leaders do not routinely receive or inspect original files but will give approvals based on forms, memoranda and copies of supporting documents. Team leaders may also consider information contained in electronic systems.

Although during regular meetings team leaders ascertain the status of a team member's files I understand that team leaders do not routinely inspect hardcopy files during those meetings.

Even if a review were conducted, the file does not necessarily contain all of the relevant information. Some parts of the file may have been sent to State Archives because of limited storage space. Other information may appear only on electronic systems.

There also does not appear to be a uniform approach to file keeping amongst staff which makes it more difficult to conduct a file review.

There does not appear to be a process of reviewing colleagues' files. While team members are co-located it appears that individual team members work quite separately.

We were told this was because of the high workload imposed upon individuals. While this may be a partial explanation, I consider that the systems employed and the manner in which responsibilities are distributed and divided lead to the result that there is little cooperation amongst team members.

In Part 8, I have suggested ways of improving the level of cooperation, engagement and teamwork within Public Trustee.

Critical to the maintenance of integrity and the minimisation of the risk of corruption, misconduct and maladministration is the role played by team leaders.

Team leaders are expected to have an understanding of each team member's caseload and be alert to risks that may arise therein. Team leaders should be aware of the day to day activities of their teams.

Different team leaders have different methods of being kept informed of their officers' caseloads. Team leaders are expected to meet with their team members monthly to reassess their caseloads. In practice, these meetings do not always occur as they take additional time out of the team leaders and officers' already busy day.

⁸⁶ See the further discussion in Part 6.

Team leaders in the Estate Services and Personal Estates sections are also expected to allocate resources and determine workflows. They are required to performance manage team members and manage absenteeism.

In the Estate Services and Personal Estates sections, team leaders are vital control points for the operation of internal controls in Public Trustee's current procedures and processes. Consequently, team leaders presently spend much of their day approving or authorising actions for their team members as required by the policy documents and delegations.

We were informed that on an average day some team leaders sign documents 40 to 50 times.

The time spent on those approvals, together with the large team sizes (up to 15 officers) and high caseloads for team members, mean that team leaders find it difficult to familiarise themselves with their team members' files.

From an integrity perspective, team leaders should have knowledge of each team member's files and so be in a position to identify risks, abhorrent behaviour or a team member's need for additional support or guidance. In practice, the amount of support for and oversight of officers varies depending upon the workloads of the team leader, the team and the officers involved.

Public Trustee would benefit from team leaders having greater knowledge of their team members' files which will only occur if they are able to relinquish some of their other tasks.

One step could be by relieving the team leaders of the responsibility for training and transferring that responsibility to specialist trainers.⁸⁷

Additionally, Public Trustee could consider creating new roles for technical specialists who would not have their own caseload but would instead be responsible for assisting officers with the technical aspects of their files which would allow officers and team leaders who have extensive knowledge and experience about estate and trust administration to share that knowledge with other officers. Currently, senior staff who have extensive technical expertise are required to undertake administrative duties for part of their day.

The technical specialist role would also provide an opportunity for a second person to become familiar with a file and would tend to reduce the risk of corruption, misconduct and maladministration.

The same result may be achieved or complemented by a dedicated internal audit role responsible for conducting random checks.⁸⁸

⁸⁷ See the further discussion in Part 7.

⁸⁸ See the further discussion in Part 5.

TEAM LEADER SHOPPING

Team leaders may grant approvals to any officers within their section and not just to the officers in their own team. Officers utilise other team leaders if their team leader is unavailable. Officers indicated that team leaders do not have a uniform approach to technical matters and consequently some officers deliberately seek approvals from team leaders other than their own.

That conduct creates an opportunity for inappropriate behaviour. An officer could seek a series of approvals in a particular estate asking different team leaders to sign off on each one. Each individual approval may not alert the particular team leader, but had all approvals been dealt with by the same team leader, inappropriate behaviour may have been identified.

This risk can be addressed by requiring an officer to gain approvals from the officer's team leader unless the officer can provide a good reason to another team leader why that officer cannot obtain that approval from the officer's own team leader. Team leaders should communicate with each other about any approvals they grant for other teams.

INTERNAL COMMUNICATION

In general terms, the executives communicate with staff by providing information to managers and team leaders which is expected to be relayed to other staff. The executives use the Senior Management Group to disseminate information and indirectly communicate with staff through weekly emails which are sent by managers to their sections. The executives also attend section and team meetings from time to time.

In addition, the executives communicate with staff:

- by posting articles on the intranet, such as articles about upcoming events or new initiatives;
- by setting up or sponsoring groups, such as the Wellness Group;
- by publishing The Big Picture, a regular newsletter available on the intranet;
- when dealing with complaints;
- through presentations or briefings; and
- on an *ad hoc* basis, such as at social events or in the common areas.

Officers are expected to communicate with the executives through their team leaders and managers.

We have been told by a number of staff members such that it was a common complaint that communication barriers exist between the executives and the staff.

If executives are not aware of what is occurring on an operational level within an organisation, it is difficult for them to accurately identify, assess and mitigate risks, regardless of how risk focused the executives may be.

If communications are too hierarchical there is a risk that relevant information may not come to the attention of the executives.

For example, I was informed that the executives were led to believe that all of the customers' personal items were being locked in the designated secure room ('securities room').

However prior to the Bartels incident, officers in the Estates Services section were storing customers' valuable property, such as jewellery, in or on their desks rather than in the securities room which was in direct

contravention of the relevant procedure. The widespread divergence from the procedure may have made it more difficult to detect the theft of items by Ms Bartels.

The executives' belief that procedures were being followed was very different to the reality. More effective communication (or a quick walk around the officers' desks by the executives) would have dispelled that belief.

We were also told by some staff that they had not been informed of the reasons for various decisions by the executives, including changes to policy documents. The staff found it difficult to understand the reasons for implementing the changes.

It is critical in my opinion that the executives, and more particularly the Public Trustee, communicate with all staff at all levels. The executives must know Public Trustee's staff and must know how the staff are discharging their duties. It is not possible to reform procedures and practices without having a good understanding of the work that is being performed.

SUPPORT

Opinions received about the level of support have informed my views as to the ways in which internal communication can be improved.

We asked many of the staff whether they felt supported by their colleagues, their team leaders, their manager, other sections, the executives and Public Trustee's electronic systems.

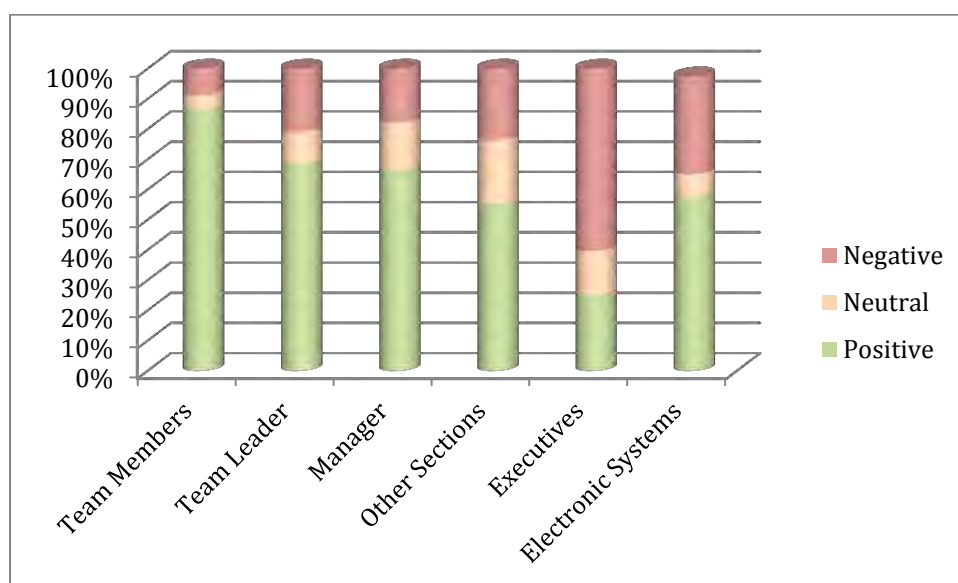


Figure 3: Responses by staff to questions about the level to which they feel supported by the persons and the systems within Public Trustee.

Most staff who responded to this question felt supported by their team members, team leaders and managers. However most staff did not feel as well supported by the executives. The responses in that regard were disappointing.

Drawing on the staff's descriptions of the level of support that they receive and their responses to other questions, I suggest the executives could better support the staff by:

- being more visible and accessible;
- increasing their understanding of the work performed by staff and the time it takes to complete certain tasks;
- listening to staff and engaging in genuine consultation;
- understanding and evaluating the impact of decisions upon staff workloads;
- communicating the reasons for decisions; and
- positively acknowledging and recognising staff for their work.

I consider that if the executives adopted these practices that would improve internal communication and reduce the risk of corruption, misconduct and maladministration.

Public Trustee should also reconsider the hierarchical communication system that I have described to determine whether it is appropriate for any particular communication. There may be good reasons why an officer may wish to communicate directly with the officer's manager or the executives. The overall size of the office would not seem to justify an inflexible rule of the kind that exists. Any failure to directly acknowledge well intended contributions by officers is likely to cause resentment and disengagement which may also stifle innovation and creativity.

RECOMMENDATIONS

Recommendation 1: That Public Trustee reviews managerial and team structures to achieve:

- greater sharing of functions of officers by implementing shared caseloads or dividing responsibility by work streams or processes;
- more extensive knowledge of officers' files by team leaders; and
- an increased capacity for auditing, for example, through the creation of a dedicated audit role.

Recommendation 2: That Public Trustee provides greater support for staff by the executives:

- being more visible and accessible;
- increasing their understanding of the work performed by staff and the time it takes to complete certain tasks;
- listening to staff and engaging in genuine consultation;
- understanding and evaluating the impact of decisions upon staff workloads;
- communicating the reasons for decisions; and
- positively acknowledging and recognising staff for their work.

PART 4: POLICIES AND PROCEDURES

Public Trustee conducts a complex, multi-faceted business, many aspects of which are process-driven. Public Trustee has documented those processes through policies, standards, procedures, system instructions and process maps ('policy documents') which has resulted in a large number of policy documents.

As of July 2017, there were:

- 34 policies;
- 131 standards;
- 345 procedures;
- 271 system instructions; and
- 300 process maps.

The policy documents referred to in this report are those which were in existence at 31 July 2017.

It is generally accepted by the officers that the large number of policy documents is necessary because of the complex nature of the business and we were informed by many officers that the content in the policy documents is generally useful.

However not all officers strictly comply with the policy documents. Some officers have developed their own ways of carrying out or completing particular tasks which they claim are more efficient than the documented processes.

If those claims are right and the manner in which the officers are completing the tasks do not compromise the proper functioning of internal controls Public Trustee should consider amending the policy documents and encouraging all officers to adopt the more efficient processes. Changes of this nature should be encouraged.

If a large number of officers are taking shortcuts, it may also indicate that a particular policy document is impractical and should be reviewed.

Where the more efficient processes might bypass key controls, officers should be required to comply with the documented processes.

A review of the policy documents shows there is scope for the policy documents to be made more readable by removing duplication and by using consistent language which would assist in interpretation.

Public Trustee incrementally reviews policy documents on a two year cycle or sooner if staff suggest improvements. In conducting those incremental reviews, consideration should be given to making the policy documents more readable by removing duplication and by using consistent language.

DIVERGENCES

More than half of the staff we interviewed acknowledged that many officers do not follow the processes prescribed in the policy documents.

One area in which divergences have been identified is in dealing with property. As mentioned, prior to the Bartels incident some officers kept their customers' valuable property in or on their desks rather than securing it in the securities room. Divergences of this kind, if permitted, make it more difficult to identify inappropriate behaviour because allowing officers to consistently ignore the documented process creates a risk of corruption,

misconduct and maladministration. Therefore, it is important that the policy documents are clearly written, concise, practical, relevant and promote practices which enjoy widespread acceptance.

ACCESSIBILITY

The policy documents are currently available on Public Trustee's intranet which is modern, user-friendly and contains an abundance of information about Public Trustee. We were informed that some officers use the policy documents daily and many times per week. Others indicated that they used them less frequently. However statistics about the number of times particular policy documents were viewed on the intranet suggest that many of the policy documents have been very rarely viewed in the last 12 months.

The policy documents are accessed through a search engine which works well and is highly regarded by some staff. However it could be improved by allowing officers to narrow their search to only 'policies' or only 'standards' or only 'procedures'. Currently, an officer must search all policies, standards and procedures simultaneously which can make it more difficult to locate the document of interest.

Further, the search engine is only useful if the officer knows a key word within the particular policy document that the officer wishes to read. It is difficult for an officer to know whether the officer has found all of the policy documents relevant to a particular topic. To this end, many policy documents contain a list of related policy documents and an indication within the policy document as to which staff members it applies. These features are useful.

GROUPED BY TOPIC

I consider that accessibility could be improved by allowing staff to browse the policy documents on the intranet by topic. For example, all policy documents related to the sale of real estate could be grouped together. The topics could be listed alphabetically, with some policy documents appearing within more than one topic.

HYPERLINKING

Staff informed us that hyperlinks would make the policy documents more accessible. As mentioned earlier, many policy documents include a list of related documents. It would be beneficial if the related documents were hyperlinked.⁸⁹ However an objection to the use of hyperlinks would be the need to maintain effective links when policy documents are amended as a result of regular reviews. We are not aware of the cost of creating and maintaining hyperlinks at this time.

If hyperlinking is used, it should extend to the process maps which are useful documents in that they clearly show the internal controls; the decision points; and the documents to be produced. They also often refer to other process maps and procedures. Ideally, each process map would contain hyperlinks to the forms and templates necessary to produce the documents identified in the map as well as to the policy documents identified in the map.

⁸⁹ Public Trustee may have already started hyperlinking the policy documents as at least one recently reviewed policy document contains a hyperlink to a form.

MANUALS

Manuals could be prepared for specific teams within Public Trustee (such as the deceased estates teams and the trusts and long term estates team) which would also improve accessibility to the policy documents. The manuals could include information about the circumstances in which particular policy documents should be used and could contain links to the particular documents. The manuals are likely to be of greater assistance to staff who are new to their roles than to staff who are already aware of the relevant policy documents.

The preparation of such manuals is likely to be labour intensive and would require input from officers from different sections of Public Trustee. The manuals must also be consistent with Public Trustee's training programs.⁹⁰ In view of the likely resources required and the impact on the workloads of those officers who can provide the resources, the preparation of manuals may need to be addressed as a long-term project.

RECOMMENDATIONS

The recommendations below are intended to improve access to the policy documents; make them easier to use and assist in ensuring adherence to the processes in those documents. As the risk of corruption, misconduct and maladministration is likely to be higher in circumstances where the processes are not strictly followed, I think that the recommendations, if implemented, would have the effect of minimising the risk of corruption, misconduct and maladministration within Public Trustee.

Recommendation 3: That, in the course of conducting the two yearly reviews of policy documents, Public Trustee makes the documents more readable by removing duplication and by using consistent language.

Recommendation 4: That Public Trustee organises the policy documents on Public Trustee's intranet so that they can be browsed by topic or searched using the existing search function.

Recommendation 5: That, unless the cost of creating and maintaining hyperlinks is prohibitive, Public Trustee inserts hyperlinks to forms, templates and policy documents within the policy documents that are available on Public Trustee's intranet.

⁹⁰ See the further discussion in Part 7.

PART 5: INTERNAL CONTROLS

CONTROL SELF-ASSESSMENT

Public Trustee's principal mechanism for providing management and the Audit and Risk Management Committee with information about the organisation's internal control environment is Control Self-Assessment.

Public Trustee has identified approximately 900 controls within the policy documents. Twice a year those controls are individually assessed and reviewed.⁹¹ The assessment is a subjective assessment by an officer as to the effectiveness of the control on a scale of one to five.⁹² The assessment is subject to a review by a staff member who is a manager or team leader in which the reviewer undertakes the same task, but does so by using randomly selected samples to determine the rating.⁹³

If a control is rated as one, two or three, the assessor and reviewer must prepare an action plan to improve the effectiveness of the control. The work involved in preparing an action plan may be an incentive to avoid low ratings.

Control Self-Assessment is a time consuming process, particularly for the reviewers. It is not a true audit process. However it does help Public Trustee meet the obligations under Treasurer's Instruction 28.

Control Self-Assessment also promotes a culture of risk awareness by tending to make staff aware of the controls applicable to their work and identifying areas in which there have been divergences from documented procedures. It may, therefore, prompt changes to policy documents or further consideration as to the reasons for the divergence.

Public Trustee appointed a Manager, Governance and Compliance following the Bartels incident. The Manager's role includes reviewing and testing the outcomes of Control Self-Assessment. Anecdotal evidence suggests that the incumbent's appointment has improved the Control Self-Assessment process by tightening the descriptions of controls; helping officers to better understand the process; and assisting officers to obtain appropriate samples for their controls.

Public Trustee is continuing to review the controls and intends to increase the number of officers involved in the Control Self-Assessment process. Public Trustee may be able to further improve practices in respect of Control Self-Assessment by:

- introducing uniform rules for the preservation of samples so that they can be reviewed by the Manager, Governance and Compliance;
- incorporating any improved descriptions of the controls into the relevant policy documents;
- ensuring that the officer who conducts the initial assessment of a control has first-hand experience of the relevant tasks (as some officers have been required to assess controls with which they are unfamiliar); and
- comparing the ratings of each control to previous assessment periods with a view to identifying the cause of any significant changes in respect of particular controls.

⁹¹ Manage Control Self-Assessment Procedure, p. 3.

⁹² Control Self-Assessment Standard, p. 3; Control Self-Assessment System Assessors Instruction Manual, Appendix A.

⁹³ Control Self-Assessment Standard, p. 3.

In my view, Control Self-Assessment is a useful process but is insufficient by itself to prevent corruption, misconduct and maladministration.

I consider that random checks of key controls would provide additional protection against those risks. Particular aspects of the estate administration process which could be randomly checked include:

- the registration of all security items which are stored in the securities room in the electronic RecFind system by comparing the entries to the original receipt.⁹⁴
- determining the purpose for which items were removed from the securities room by comparing the date in RecFind on which the item was removed with the information on the hardcopy file and in the Contact and Task Management System in relation to the item (including the Client Asset Management Securities Movement Form and the receipt signed by the recipient).⁹⁵
- monitoring the conduct of staff or service providers while at a customer's property.⁹⁶ I have suggested later in this report that service providers could conduct the initial visit to the customer's property, as well as the subsequent cleaning and clearing of it.⁹⁷ In that event, I have suggested that the service provider's employees should take a video which should be randomly selected for viewing to ensure that all of the customer's possessions are dealt with appropriately and that the service provider has complied with all conditions of its contract.
- comparing the vendors'⁹⁸ details in the relevant electronic system to the source documents and to information obtained from searches of data held by the Australian Securities and Investments Commission to determine whether the vendor still exists. These checks should identify any companies which have been deregistered and any that might have been added to the electronic system using fraudulent documents.
- checking the legitimacy of requested payments. For example, if a payment for membership fees has been apparently requested by a Personal Estates customer, Public Trustee could check the supporting documentation on file and also contact the organisation to ensure that the Personal Estates customer is a member and that fees are owing, which would identify circumstances in which documents might have been falsified.
- ensuring the accuracy and completeness of information kept on the hardcopy file and its consistency with that kept in the electronic systems.
- identifying high risk files as referred to below.

Random checks would encourage compliance with the processes contained in the policy documents and are likely to identify irregularities earlier than the Control Self-Assessment process. Public Trustee should consider adopting such checks to supplement the Control Self-Assessment process.

⁹⁴ See the further discussion in Part 10.

⁹⁵ See the further discussion in Part 10.

⁹⁶ See the further discussion in Part 10.

⁹⁷ See the further discussion in Part 10.

⁹⁸ See the definition of 'vendors' in Appendix 1: Dictionary.

HIGH RISK FILES

Files at high risk of the potential misappropriation of personal property include those where the beneficiaries of deceased estates are overseas or interstate; where the beneficiary is a charity; or where there is no family or contact person within South Australia. In those circumstances there may be no one who is familiar with the deceased's personal property at the time of the deceased's death. Where there is no one who can vouch for the personal property belonging to the deceased an opportunity for theft is presented.

Currently, there are no special procedures to deal with high risk files of this nature. These files could be subject to an additional specific audit process.

RECOMMENDATION

Recommendation 6: That Public Trustee conducts random checks or an audit of key controls and high risk areas.

PART 6: ELECTRONIC SYSTEMS

INTRODUCTION

Public Trustee's operations are mainly paper-based and manual.

Approximately 200 reams of paper are ordered by Public Trustee every fortnight.

Hardcopy forms are used for common tasks, such as the opening of entities in the accounting system. They are usually signed by the requesting officer and the team leader (plus any further delegation required).

Emails do not appear to be used for the purpose of obtaining approvals or authorisations, nor are scans of invoices currently used for processing or record keeping purposes.

There is a shortage of storage space as a result of which parts of multi-part hardcopy files are often sent to State Archives while the file remains open.

Disparate electronic systems are in use. In addition to the Core Business Information Systems ('CBIS') consisting of CRM, Financials and the Asset Management System ('AMS'), there are peripheral systems such as Electronic Document Generation for Estates ('EDGE'), Contact and Task Management System ('CTMS'), Customer Investment Tool ('CIT'), RecFind and a variety of Microsoft Excel or Microsoft Access based databases / spreadsheets.

Public Trustee is aware of the deficiencies arising from the age and multiplicity of the electronic systems and has unsuccessfully sought funding from the Government of South Australia on two occasions in the last three years.

HISTORY

The decisions to introduce the present business systems pre-date all of the current executives. Systems have always been necessary to handle the financial side of estates, from 'Ledger Machines' to a specialist trustee industry program 'TACT'. Prior to 2004, TACT managed the assets of customers, accounts payable and financials, and correspondence.

In the early 2000s, Public Trustee considered a system to replace TACT which was then considered to be old and difficult to support.

To replace TACT, Public Trustee purchased the CRM and Financials systems and the part of TACT that managed assets was replaced with Public Trustee's current AMS.

CBIS was implemented by Public Trustee with consultants' support between 2002 and 2006.

CBIS is a 'Tier 1' system which is apparently more suited to much larger organisations, such as global banks. It may be that the unsuitability of CBIS to Public Trustee's current needs has been compounded by the turnover in executives and in ICT personnel since CBIS was introduced. Various CBIS features have never been activated. It is apparently very expensive to modify. Patches are generally unavailable because of the age of the system. Upgrades to CBIS have not occurred given the additional funding required.

Public Trustee's consultants consider that a 'Tier 2' system should replace CBIS having regard to the functionality required and the size of the organisation.

STAFF COMMENTS

The members of staff that were interviewed provided mixed comments about the electronic systems in use at Public Trustee. Those in the Business and Corporate Services area were more positive. Staff in the Estate Services and Personal Estates sections, especially the former, were more negative which may be explained because of different systems in use by the corporate and the operational sides of the organisation. The operational side uses CRM and other systems, such as CTMS, that are not likely to be used to the same degree by other sections.

A number of officers had effective methods for working with the systems and some felt that the systems' capacities were untapped.

The view was also expressed that the current systems were 'cumbersome', 'antiquated' and 'don't really support the business',⁹⁹ particularly in providing accurate business intelligence.

CTMS, which is discussed further below, is a relatively new peripheral system that records customer contact which is an important function that CRM is unable, or has been not been programed, to perform. Officers recognise the importance of including this information in the system to make it available to others, and it forms part of the record keeping. However they complained to us that this task requires additional work on their part.

Officers had a high opinion of the support provided by the ICT section, which it was said was able to extract any necessary information required from the systems.

LIMITATIONS AND CONSTRAINTS OF CBIS

MANUAL SYSTEMS

In the 2015-16 financial year, Public Trustee made approximately 410,000 payments and receipted customers' funds of \$268 million.¹⁰⁰

In order to process a payment, an officer must send the Client Accounting team a hardcopy voucher or annotated original invoice bearing the appropriate signatures.¹⁰¹ After processing, the vouchers and invoices are returned to the Personal Estates or Estate Services sections, either for inclusion on the customer's file held by the officer or for inclusion in batches of paid invoices which are kept for a period of time as a reference source.¹⁰²

Client Accounting personnel conduct certain checks before processing a payment, including confirming that the payment is authorised by a person with the appropriate delegation, which may involve consulting a signature register.¹⁰³

Although the various procedures and checks are generally appropriate, and there are other relevant controls, especially in relation to the entry of vendors into the system, there is an inherent risk that hardcopy documents

⁹⁹ See also, Figure 3.

¹⁰⁰ *Public Trustee Annual Report 2015-16*, p. 15.

¹⁰¹ *Manage Payments Procedure*; Public Trustee's Delegation Schedule.

¹⁰² *Manage Payments Procedure*, p. 8.

¹⁰³ *Manage Payments Procedure*, p. 8.

and/or signatures may be falsified. There is also a risk that the documentation evidencing a transaction may, intentionally or accidentally, be lost between sections.¹⁰⁴

An automated system for authorising and conveying payment requests, particularly one in which the Client Accounting team retains scanned copies of the invoices actually paid, would assist in addressing these issues. However automation may create challenges of its own in that new controls will need to be developed to prevent or minimise inappropriate behaviour by ensuring accurate information is entered into the system.

A significant innovation in recent times has been the use of electronic funds transfer ('EFT') rather than payments by cheque. Accounting personnel consider EFT to be generally safer and less labour intensive than payment by cheque. It is not yet the only form of payment because the preference of many customers is payment by cheque.

The General Manager, Business and Client Financial Services has advised me that he is looking at a pilot project in which one team will 'go paperless', and also for the scanning of invoices at the end of processing. It is probably not feasible for scanning to occur at the start of processing under the existing systems.

DUPLICATION OF DATA ENTRY

As the systems are not integrated, certain information must be entered multiple times. For example, a CTMS and a CRM record may need to be created, and fields must be completed in EDGE before it can be used to generate documents although once this is done it should save officers considerable time.

Apart from being time consuming the possibility of operator error arises.

Old TACT records are kept in a separate archive. Different databases do not communicate with each other directly, which has necessitated the development of a 'datamart' which extracts data from the Oracle based systems for use in the Access and Sharepoint systems.

Because of the disparate systems there may be different data in different systems.

CBIS IS NOT FULLY FUNCTIONAL, PATCHED OR UPGRADED

Because CBIS is a Tier 1 system, as I have said, the cost of running or making changes to CBIS is high, particularly if it is to be maintained properly. The cost of bringing it up to the current version of CBIS would require a major rebuild and an outlay that would be, as I have said, prohibitive.

For quite a number of years, a policy of not upgrading CBIS has been followed. As mentioned, patches for CBIS are not always available. The result is that Public Trustee has been left with an outdated system which Public Trustee must eventually replace in full. The executives are actively exploring options to upgrade or replace CBIS.

¹⁰⁴ Another example of a manual system involves the checking in of security items which is discussed in Part 10.

PERIPHERAL SYSTEMS

UPTAKE BY STAFF

The peripheral systems used by Public Trustee provide the functionality that CBIS is unable to provide, and as mentioned, additionally assist different systems to share data. They are generally more modern than CBIS and therefore better able to meet Public Trustee's current needs.

The use and acceptance of new systems by staff may vary because the benefits may not be self-evident to staff, and their use may create additional work or affect the traditional way of carrying out the work.

The deceased estates teams are currently using EDGE which generates standard documentation used at different stages of the administration of an estate. It is planned that EDGE will be used by the trusts and long term estates team in the Estate Services section and the new estates team in the Personal Estates section. Apparently modifications would be required before EDGE could be used by the maintenance teams within the Personal Estates section.

The use of Outlook Task Tools was prohibited on consultants' advice. CTMS has a task function but it seems to be used inconsistently.

There are other peripheral systems, such as CIT, the use of which is mandated and embedded in procedures. CIT is a web-based application which *'applies consistent investment planning processes and objectives to Public Trustee clients'*.¹⁰⁵

CTMS

CTMS is the main electronic tool for recording contact with customers, information about customers, alerts or other issues relating to a particular customer or estate. Because CTMS is capable of storing documents, it would appear that it can effectively be used to create an electronic copy of the hardcopy file although only a few individual officers seem to use it in this way. Documents saved to the Estate Correspondence Document Library can be accessed via CTMS enabling team leaders and other persons to see the final form of letters sent out on a file. However I understand that those letters are not usually scanned, signed versions and that digital signatures are not used.

On 1 December 2009, the Statutory Authorities Review Committee tabled in Parliament a report of its Inquiry into the Office of the Public Trustee ('SARC Report').¹⁰⁶ The SARC Report recommended the introduction of a new computer system to increase efficiency and provide officers with easy access to a client database to allow officers to immediately answer customers' basic queries, which would enable the discontinuance of the use of voicemail by officers.¹⁰⁷

A further recommendation was for procedures to be amended to refer to officers being required to record all telephone enquiries made by clients and subsequent actions taken by officers.¹⁰⁸

CTMS was the outcome of the second of those recommendations.¹⁰⁹

¹⁰⁵ *Customer Investment Tool (CIT) User Guide* (April 2016), p. 5.

¹⁰⁶ Statutory Authorities Review Committee, Legislative Council, *Inquiry into the Office of the Public Trustee* (2009).

¹⁰⁷ Statutory Authorities Review Committee, Legislative Council, *Inquiry into the Office of the Public Trustee* (2009) Recommendation 4.

¹⁰⁸ Statutory Authorities Review Committee, Legislative Council, *Inquiry into the Office of the Public Trustee* (2009) Recommendation 5.

¹⁰⁹ *Response by the Public Trustee to the Report of the Statutory Authorities Review Committee Inquiry into the Office of the Public Trustee: Report 51* (December 2011) 15.

Although the use of CTMS by Public Trustee is an improvement on the voicemail system and has helped to address the lack of record keeping of telephone contacts with customers described in the SARC Report, the following issues arise:

- the use to which CTMS is put by officers is inconsistent and CTMS is probably not being used to its full capacity as a comprehensive electronic file and a task management tool. Currently only a small proportion of telephone calls taken by officers in different sections of Public Trustee become the subject of CTMS entries.
- the alerts function is widely used but appears to be cumbersome in practice. Further training may assist in fostering a common approach by officers.
- CTMS is designed to be readily accessible by officers. To the extent that sensitive or confidential information is stored on it (for example, relating to real property),¹¹⁰ widespread access is problematic.
- CTMS assists officers in their dealings with customers and makes available important information about a customer, but does not, of itself, increase customer service by ensuring that customers receive responses when their case officer is absent.

Comprehensive electronic files accessed through one system; with document control; tracking of editing; and a chain of evidence verifying that a document was in fact posted or emailed by the officer would be a significant improvement. CTMS does not currently have all of these functions but may be capable of enhancement.

RECORD KEEPING

SINGLE SOURCE OF TRUTH

From an integrity point of view, a serious defect in the present systems is that there is no single source of truth for any file.

The hardcopy file is meant to contain all important documents and correspondence needed to understand the matter including original documents; court or SACAT orders; insurance policies; memoranda or file notes explaining key decisions made by the officer; statements and financial documents; and emails.

It does not appear that there is a policy document providing for the way in which officers should keep hardcopy files.

Filing practices vary between officers. Not all officers print out and file CTMS entries recording contacts with customers. I note that the 'Recording of Customer Contact Procedure' mandating the use of CTMS to record customer contacts does not clearly indicate the need to record contact with other parties apart from the Ombudsman.

The physical structure of hardcopy files does not assist easy reference. Apart from the important documents kept in the sleeve, the file is in chronological order and does not extract important correspondence or memoranda.

To fully understand a file it may be necessary to:

¹¹⁰ See the further discussion in Part 10.

- obtain all of the parts of the physical file;
- consult CTMS, CRM, Financials and possibly other systems and databases;
- if access has been enabled, read the officer's Outlook inbox for emails that may not have been printed or captured in CTMS; and
- if necessary check batched invoices held by other teams or other documents retained by the Client Accounting team.

The task of reviewing or auditing a file is therefore made more difficult by the multiplicity of systems and locations in which relevant information may be stored which is likely to make corruption, misconduct or maladministration harder to detect and indeed may provide opportunities for such conduct.

CYBER-THREATS

Cyber-threats are an emerging area of risk.¹¹¹ Public Trustee has developed procedures in relation to ransomware attacks and USB use, and to comply with Government internet and infrastructure security requirements.¹¹²

Regular internal audits have examined different aspects of Public Trustee's systems and hardware.

Since the Bartels incident Public Trustee has changed the procedures in relation to safely dealing with customers' documents and cards, such as credit cards, pension cards, driver's licences and parking permits. Nonetheless, Public Trustee still retains in Public Trustee's files and systems valuable identity information including copies of those types of documents. In my view, the existing policy documents do not adequately protect that information from misuse.

I consider that Public Trustee should review the storage and access procedures for such material with a view to countering identity theft and other similar areas of risk.

Although at the present time, integrity or business efficiency considerations may not compel the expenditure on upgrading or replacing CBIS at some future time its vulnerability to cyber-attack will make that an imperative. Over time the ability of an outdated system to withstand sinister external manipulation will not be sufficient. Bearing in mind the significant funds controlled by Public Trustee, upgrading or replacing CBIS will become a necessity.

Public Trustee also uses data analytics to identify potentially inappropriate transactions which is a powerful tool that assists in detecting potential corruption, misconduct and maladministration involving financial systems. It may be able to detect fake service providers, or payments using different cost centres to try to avoid scrutiny.

REPLACEMENT SYSTEMS

I have already mentioned in terms of paper usage alone the maintaining of hardcopy files creates a very significant burden on Public Trustee's internal systems and archiving.

¹¹¹ Australian Standard 8001-2008 Fraud and Corruption Control relevantly provides at p. 7: 'Identity theft which is made possible by the penetration of information systems within the wider community, the pace of business and increased educational standards of the perpetrators, is becoming the most important fraud-related threat within the Australian economy.'

¹¹² See for example, Mobile Device Policy; Handling Virus / Malware and Ransomware Incidents Procedure; Portable Storage Device Restrictions – ICT Procedure; Information Security Incident Management Procedure.

Because systems are manual documents are collected with various signatures and are sent between teams. In such a busy environment, key pieces of paper can easily be lost and inappropriate behaviour can go undetected.

In contrast, appropriately integrated automated systems would improve record keeping, authorisations and detection of inappropriate behaviour. Until such systems are introduced, the risk of corruption, misconduct and maladministration will remain high.

INVESTMENT

The peripheral systems in use at Public Trustee have either been constructed in-house or developed externally, as part of the ICT team's budget.

The expenditure required to replace CBIS would be significant. Public Trustee has limited options for funding this project itself.

Pursuant to Public Trustee's Ministerial Charter, Public Trustee is obliged to pay a contribution to the Treasurer which usually represents most of Public Trustee's profit made during a financial year.¹¹³ Even if Public Trustee retained those amounts, Public Trustee's financial performance would still be unpredictable and dependent on external factors over which Public Trustee has no direct control.

Public Trustee has sizeable cash reserves which Public Trustee is unable to use without the Government's permission. Although those cash reserves are sufficient to meet the expense involved in the modern type of systems that Public Trustee requires, the expenditure of those funds would mean that the funds would no longer be available to generate investment income for Public Trustee.

The purchase of the required systems would impact on Public Trustee's financial position because a significant increase in depreciation would make Public Trustee less likely to be profitable.

The only other option is to seek an injection of funds for different stages of the project from the Government of South Australia.

I encourage Public Trustee and the Government of South Australia to consider options for funding a modern electronic system to integrate or align the case management and the financial administration functions to improve the efficiency of the business and to reduce the risk of corruption and maladministration.

As mentioned, Public Trustee manages significant funds. Public Trustee has all of the obligations of a trustee. Public Trustee is also called upon to act for vulnerable persons and other persons who need assistance in the management of their affairs. Public Trustee must have the general trust of the community. Public Trustee's office must be allowed to join the 21st century and build electronic systems which protect both the office of the Public Trustee and the members of the community which Public Trustee serves.

Public Trustee's electronic systems must be modernised in order to protect Public Trustee's customers and ensure the customers receive a service at least comparable to that which is provided by Public Trustee's interstate counterparts. If investment is deferred, the risk of corruption, misconduct and maladministration will increase over time.

¹¹³ *The Public Trustee Charter; Public Trustee Performance Statement Financial Year Ending 30 June 2017.*

RECOMMENDATIONS

Recommendation 7: That, as and when integrated electronic systems for core business functions become available, Public Trustee changes the practices with a view to:

- reducing duplicated data entry;
- reducing the use of paper;
- recording approvals;
- allowing for workflows;
- preserving crucial approvals, invoices and vouchers presented for payment in a form which limits and monitors subsequent editing;
- managing contracts in a proper and timely fashion;
- storing all information relevant to a file to create a single source of truth;
- restricting and logging access to and editing of sensitive information;
- protecting against cyber-threats; and
- facilitating the provision of information to customers through an online portal.

Recommendation 8: That until the above electronic systems can be funded and implemented Public Trustee maximises the use of Public Trustee's existing electronic systems and ensures consistent use of them.

Recommendation 9: That Public Trustee reviews present practices in relation to the storing of confidential identity information to reduce the risk of corruption, misconduct and maladministration in public administration in relation to the potential misuse of that information.

PART 7: TRAINING

Public Trustee offers various types of training to staff.

An officer is inducted into the officer's section of Public Trustee as well as receiving an induction to the Attorney-General's Department.¹¹⁴ Most of the induction program is delivered to the officer during the officer's first week. The induction is aimed at teaching new officers the fundamental aspects of the officer's role.

Officers are also required to undertake mandatory training in relation to security and ethics and have an awareness of fraud and corruption. Optional training sessions are provided on various other topics each year.

Since early 2017, Public Trustee's Project and Training Coordinator has run regular 'Super Friday' training sessions for officers about particular policies, procedures and systems. Those sessions appear to have been well received.

Since April 2017, Public Trustee's legal officer and the solicitors from the Crown Solicitor's Office who are outposted to Public Trustee have also provided optional training sessions.

Senior officers of ASO5 level have both a mentoring and a training component to their roles. They are responsible for mentoring new officers within their teams. Senior officers in the Personal Estates and Estate Services sections also deliver training to their colleagues.

I am informed that Public Trustee's approach to training is to use information obtained from performance development and review discussions with staff to develop an annual training plan. The Senior Management Group endorses the training plan which covers many individuals' requirements. Staff members are still able to seek other specific training to help them to address development targets.

One area in which Public Trustee's training program is deficient is the lack of training that is provided to an officer who has transferred from one role to another. A number of officers informed us that they received no, or very limited, training when they were transferred to a new role.

The Public Trustee's obligations as trustee place a high onus on the Public Trustee to ensure that officers are adequately trained for their roles. At present, there is a real risk of maladministration because officers are not properly trained before commencing their new roles.

Consistency in the information delivered through training is important for ensuring consistency in the application of policy documents. As mentioned earlier, consistent application makes it easier to identify inappropriate behaviour.

Officers learn many aspects of their work from their colleagues and if officers are allowed to diverge from the written processes there is a risk that new officers may be taught those practices and assume them to be appropriate. I therefore consider that a lack of consistent training has contributed to a culture in some teams in which it is acceptable to diverge from the documented policies and procedures.

New officers could also benefit from additional training. The induction program is meant to be complimented by on job training. We have been informed by some senior officers that they do not have time to provide that

¹¹⁴ I am informed that mandatory training is provided in relation to the following topics: information management/records management awareness; personal security; information security; fraud and corruption awareness; code of ethics; Aboriginal cultural awareness; equal opportunity awareness; and workplace health and safety.

training. Due to the complexity of the work and the large number of policy documents, it would be very difficult for a new officer to familiarise himself or herself with all of the policy documents relevant to the officer's role. It can take many months, if not years, for an officer to properly understand that officer's responsibilities.

In my view, the training for new officers could and should be improved.

Public Trustee's interstate counterparts appear to deliver more comprehensive training programs than in South Australia. In one jurisdiction, employees undertake a three month intensive training program delivered by a dedicated trainer. It is a combination of structured classroom teaching and learning on the floor alternating one week at a time for three months. When the new employee becomes part of a team the new employee is allocated a mentor. In that jurisdiction, that Public Trustee tries to provide the new employees with 6-12 months' training before they have contact with customers. In their deceased estates team the training takes approximately two months, rather than three.

In another jurisdiction, that Public Trustee provides two levels of training for all of that Public Trustee's employees who have a customer base. That Public Trustee provides extensive technical training in relation to trusts and estates. Employees who complete the in-house course receive Certificate IV accreditation. Unlike the courses offered by external institutions (which is the manner in which the South Australian Public Trustee and some counterparts train their employees), the course is integrated with the particular electronic systems used by the employees in their daily work.

Although officers in the South Australian Public Trustee would benefit from such a program, it may not be efficient to run that program in-house given the relatively small size of the South Australian Public Trustee. Nonetheless, Public Trustee should consider other ways of improving training for new officers.

The period of time and amount of training delivered to new officers before they have contact with customers should be increased. Training of new officers should include guidance in relation to the manner in which the officers' discretion in relation to requests by customers should be exercised.

New officers or officers who are new to their particular role would also benefit from additional one-on-one and small group training provided by specialist trainers or by the Project and Training Coordinator (through an extension of the role) about the policy documents relevant to their role.

Extension of the Project and Training Coordinator role or the appointment of specialist trainers would release team leaders and ASO5 officers from teaching new officers the procedural aspects of the role. That is likely to increase consistency in the application of the policy documents. However because they have specialist knowledge, I expect that team leaders and ASO5 officers would still be called upon to teach some of the technical aspects of the roles.¹¹⁵

Provided that the trainer has a sound understanding of the relevant policy documents and the practical application of the processes set out in those documents, I am confident that the trainer would improve compliance and, therefore, reduce the risk of corruption, misconduct and maladministration.

¹¹⁵ Unless roles for technical specialists are created. See the discussion in Part 3.

RECOMMENDATIONS

Recommendation 10: That Public Trustee ensures that relevant training is provided to all staff who start a new role, regardless of whether they are new to Public Trustee or have moved from another role within Public Trustee.

Recommendation 11: That Public Trustee reviews the manner in which Public Trustee delivers training to staff to ensure consistency.

PART 8: SERVING THE COMMUNITY

The nature of the business of Public Trustee has evolved over time. Public Trustee's core business used to be the preparation of wills, and trust and deceased estate administration.

Currently, more than 75 per cent of the estates administered by Public Trustee are for persons who are the subject of an order made by SACAT due to a mental incapacity; persons whose Enduring Powers of Attorney have been activated; or persons who are the subject of a court order.¹¹⁶

Public Trustee's business is such that customers' needs can differ greatly. As one staff member observed: 'A person with a closed head injury is very different to a person with schizophrenia in terms of how they take information on and their memory.' Both persons referred to would differ from a person whose enduring power of attorney has been activated (often due to age and frailty) or a beneficiary of a deceased estate who is of sound mind. This adds an additional layer of complexity to an officer's efforts in serving customers.

The issues discussed below, dealing with customer contact, satisfaction and communications, are relevant to the prevention and minimisation of corruption, misconduct and maladministration because:

- openness in dealing with customers is a protection against potential misuse of funds.
- effective communication assists an officer in the proper discharge of an officer's duties.
- the proper discharge of the officer's duties may be impacted by intimidation or threats.

CUSTOMER VISITATION

The SARC Report identified issues with Public Trustee's customer service and addressed that topic by making a number of recommendations.

The SARC Report relevantly provided:¹¹⁷

The Public Advocate explained that in the absence of an effective liaison person, the responsiveness of the system appeared to rely on the diligence of the individual Public Trustee officer in making inquiries about the needs of their clients and/or the ability of their clients to negotiate on their own behalf.

...

Ms Julie-Anne Dowling, Acting Assistant Public Advocate, gave the Committee another example which highlighted the need for such a visitor program, and concerned a female client in a nursing home. The woman had cold feet and needed slippers, however she had no family and no visitors to ensure that such a basic item was purchased. Ms Julie-Anne Dowling stated that this client was not visited by her Public Trustee Estate Officer either, resulting in nobody realising the slippers were required. The client had plenty of money in the bank with the Public Trustee, so the Office of the Public Advocate organised for money to be sent out for the slippers to be purchased.

...

¹¹⁶ Public Trustee Annual Report 2015-16, p. 14. This percentage was calculated by comparing the number of personal estates administered to the total number of deceased and personal estates administered. The number of trusts administered has not been included in the calculation.

¹¹⁷ Statutory Authorities Review Committee, Legislative Council, *Inquiry into the Office of the Public Trustee* (2009) 20, 24, 27.

The Committee is concerned that the Public Trustee currently focuses on the administration process in relation to servicing clients, and would rather the Public Trustee focus on the individual needs of their clients.

One recommendation in the SARC Report was that *'[t]he Public Trustee inquire into the most appropriate client visitation program, to be incorporated with the services provided by the Public Trustee in estate administration.'*¹¹⁸ In response to this recommendation, the Attorney-General said that Public Trustee would examine the client visitation programs in other jurisdictions and would recommend to the Attorney-General the program which would be most appropriate for Public Trustee, subject to resource and budget considerations.¹¹⁹ As an interim measure, an officer was appointed to manage, deliver and improve the existing visitation program.¹²⁰

We were provided with an example, based on Public Trustee's earlier practices, which demonstrated the practical implications of customer visitation. The customer was an elderly woman residing in a nursing home who was formerly a florist. Whenever flowers were delivered to anyone in the nursing home, the customer showed great interest in them. During a visit by a Public Trustee officer the officer noticed this interest. The customer had sufficient funds, so Public Trustee arranged for flowers to be sent to the customer fortnightly, which increased the customer's enjoyment of life because she was able to arrange and rearrange the flowers.

Visits by Public Trustee officers are likely to improve the officers' knowledge of their customers' needs and may inform the way in which the customers' money may be spent. Some customers have a liaison person who can communicate this information to Public Trustee. However not all of Public Trustee's customers have such support. Better knowledge of the customers' needs is likely to assist in avoiding potential issues of maladministration.

It appears that Public Trustee's approach to visitation improved following the SARC Report, but that in some respects Public Trustee has now reverted to the former ways.

The Personal Estates Customer Visitation Standard purportedly documents Public Trustee's current approach to customer visitation. Where possible Public Trustee requires customers to be visited by Public Trustee officers at the commencement of the administration of their estates and then annually thereafter.¹²¹ The standard also requires officers to conduct additional visits if requested.¹²²

The standard requires that if the customer is from the country and an officer was unable to make contact at the SACAT hearing, *'the new customer should be contacted by the New Estates Officer to provide the customer with details of Public Trustee's role as administrator and role of the liaison person, if one has been nominated, and answer any questions. The Public Trustee welcome pack will also be sent via post to the new customer and/or their liaison person or family by the New Estate officer.'*¹²³

The standard does not address contemporary practice because it says that the initial visit is to be conducted by the 'rostered ASO5 Duty Officer'¹²⁴ at the SACAT hearing.¹²⁵ Although it was the practice for a Public Trustee officer to attend SACAT hearings and Guardianship Board hearings (the predecessor to SACAT) one day per

¹¹⁸ Statutory Authorities Review Committee, Legislative Council, *Inquiry into the Office of the Public Trustee* (2009) Recommendation 1.

¹¹⁹ South Australia, *Response by the Attorney-General to the Report of the Statutory Authorities Review Committee Inquiry into the Office of the Public Trustee*, House of Assembly, 26 May 2010, p. 2.

¹²⁰ South Australia, *Response by the Attorney-General to the Report of the Statutory Authorities Review Committee Inquiry into the Office of the Public Trustee*, House of Assembly, 26 May 2010, p. 2.

¹²¹ Personal Estates Customer Visitation Standard, p. 2.

¹²² Personal Estates Customer Visitation Standard, p. 2.

¹²³ Personal Estates Customer Visitation Standard, p. 2.

¹²⁴ Personal Estates Customer Visitation Standard, p. 2.

¹²⁵ The standard also does not indicate the contact required for enduring power of attorney customers and customers who are the subject of a court order.

week this practice no longer applies. The program was discontinued as it was not an efficient use of Public Trustee's resources.

Public Trustee now relies upon SACAT to inform the customer of the effect of the order that has been made. Public Trustee has provided SACAT with welcome packs to hand out after an administration order is made appointing Public Trustee.

In the absence of the SACAT visitation program, Public Trustee will need to implement another means of engaging with customers to ensure that Public Trustee focuses on the individual needs of customers rather than the administration process as was identified in the SARC Report.¹²⁶

THE NEW ESTATES TEAM

The file of a Personal Estates customer is created by the new estate team which is then passed to a maintenance team and later completed by the officer charged with completions.

In general terms, the new estates team is responsible for *'the identification of financial details of an estate, next of kin and family contacts, relationship issues and lifestyle, health issues and creating records in the Public Trustee...[electronic] systems, establishing budget requirements and periodic payments, identification of legal issues and any other relevant estate matters'*.¹²⁷ As previously mentioned, after approximately 3 months, the new estates team transfers the file to a Personal Estates maintenance team which administers the estate for the rest of the person's life or until the order or appointment of Public Trustee as administrator, manager or attorney is revoked.

CONTACT WITH CUSTOMERS AND THIRD PARTIES

After receipt of a SACAT order and establishment of the requisite records the 'Commence Administration of New Estate – SACAT Procedure' indicates that an introductory letter is to be prepared and sent to the customer with the welcome pack.¹²⁸ That procedure also requires letters to be sent to the Australian Taxation Office, Medicare, the Pension Authority and any relevant bank.¹²⁹

We were informed that, in practice, an officer in the new estates team initially contacts the family members; the person who applied for the SACAT or court order; and anyone else who the officer thinks might have information about the customer's financial arrangements. The new estates officer writes to those persons first requesting that the customer's statement of affairs be completed. The new estates officer writes to Centrelink, Medicare and the Australian Taxation Office at approximately the same time. Once the form containing the statement of affairs has been returned, the new estates officer writes to the parties associated with the customer's estate to confirm the customer's assets, liabilities and any applicable insurance and directing any party who pays income to the customer to pay that to Public Trustee.

Many of Public Trustee's customers receive Centrelink benefits. As Public Trustee's role is to manage the customers' money it is essential that the customer's pension is transferred by Centrelink to Public Trustee. It takes some time for this to occur. We were informed by officers that on occasions it can take a number of months. We were informed by Centrelink that the processing time typically takes between 14 and 28 days. If the pension is the customer's only source of income during the intervening period Public Trustee is unable to provide

¹²⁶ Statutory Authorities Review Committee, Legislative Council, *Inquiry into the Office of the Public Trustee* (2009) 27.

¹²⁷ Commence Administration of New Estate – SACAT Procedure, p. 2.

¹²⁸ Commence Administration of New Estate – SACAT Procedure, p. 5.

¹²⁹ Commence Administration of New Estate – SACAT Procedure, p. 5; Process Map 10.3: New Estate – Create New Estates CRM Records & Physical File / Approve Records / Send Introduction Letters.

the service for which Public Trustee has been appointed. Accordingly Public Trustee's customers, who by the very nature of Public Trustee's appointment need help managing their finances, do not receive the assistance that they require.

Information provided by some of Public Trustee's interstate counterparts suggests that they do not experience the same delays in receiving the Centrelink benefits. One of these counterparts receives a customer's Centrelink funds within 24 hours for urgent requests and within approximately three days for non-urgent requests. In a different jurisdiction the trust team receives a turnaround from Centrelink in 12 to 24 hours while the deceased estates team receives a response within a few days.

To improve customer service I encourage the South Australian Public Trustee to work with Centrelink to reduce the time it takes for Public Trustee to receive customers' entitlements. Public Trustee could consider changing its processes to better align with Centrelink's processes. For example, improvements in turnaround may be possible if the relevant forms were to be lodged in person at a Centrelink service centre instead of being lodged by sending the forms by post or facsimile to an interstate address for processing. We have been informed that forms lodged at a Centrelink service centre would be processed at that time. Whether the lodgement of the forms in that manner would be practical would need to be considered by Public Trustee in conjunction with Centrelink.

Irrespective of whether Centrelink is involved, the intervening step between sending the statement of asset forms by the new estates team and contacting the parties affected by the estate for customers under SACAT and court orders is to '[a]ssess appropriateness, need, timing and attendees for client 1st interview. Schedule an interview with client (if required)'.¹³⁰ The purpose of the interview is to provide customers under SACAT orders with a welcome pack; obtain information about the customer; and describe the estate administration process to the customer.¹³¹ For a customer subject to a court order, the interview focuses on obtaining information about the customer.¹³²

However, in practice, the new estates team has limited direct contact with the customer. We were informed that Public Trustee sometimes but not always writes to the customer. We were also informed that the first time a customer might hear from Public Trustee could be three months after Public Trustee's appointment because statements are provided to customers every three months.

As a result of the above practices, Public Trustee generally does not make direct contact with the customer in person, by telephone or by correspondence prior to the transfer of a customer's Centrelink benefits and bank accounts. We were informed that, consequently, some customers feel panicked, angry, confused or anxious when they attend at their bank to withdraw money and are told that their money is no longer held by the bank but has been transferred to Public Trustee.

Public Trustee should take a proactive approach to communication with Public Trustee's customers by contacting new customers directly before their assets have been transferred, explaining the effect of Public Trustee's appointment and the process and timing of the transfer of the assets. Contacting the customers directly may also assist Public Trustee to gather information about the customers' assets and ascertain their immediate needs.

Because it takes weeks and sometimes months before a customer's income is redirected, there should be ample time for Public Trustee to make contact with the customer. Although it is more time consuming, customers may be

¹³⁰ Commence Administration of New Estate – SACAT Procedure, p. 5; Commence Administration of New Estates – Court Appointed Administration Procedure, p. 5.

¹³¹ Commence Administration of New Estate – SACAT Procedure, pp. 5-6.

¹³² Commence Administration of New Estates – Court Appointed Administration Procedure, pp. 5-6.

better able to understand the information being conveyed if officers contact them by telephone or meet with them, rather than simply writing to them.

To allow the new estates officers to take the time to meet with the new customers, the new estates team will need to be adequately resourced. In this regard, I note that Public Trustee has already attempted to address the workload issues in this team through the temporary provision of additional resources.

CUSTOMER SATISFACTION

Another recommendation in the SARC Report encouraged Public Trustee to measure client satisfaction using surveys.¹³³ Public Trustee has conducted such surveys since 2011 and has reported on them in Public Trustee's annual reports.

The Attorney-General's response to the SARC Report indicated that the Attorney-General and the Treasurer had signed a Charter and Performance Statement for Public Trustee.¹³⁴

The Performance Statement includes performance targets, one of which is for the ratio of total written complaints to total customers to be less than one per cent.¹³⁵ For the reasons that follow, such a target is not necessarily a true measure of Public Trustee's performance.

There is a tension between Public Trustee's desire to deliver quality customer service so as to avoid complaints and Public Trustee's need to comply with Public Trustee's legal obligations. For example, a Personal Estates customer may request \$1,000 for a new television in circumstances where the customer is struggling to meet the costs of the customer's food, accommodation and medication. Denial of the request may be the only outcome compatible with Public Trustee's legal obligations, but may result in a disgruntled customer and a complaint about Public Trustee.

I am concerned that this tension is not recognised in Public Trustee's current approach to complaints as stipulated in Public Trustee's Ministerial Charter. There is a real risk that the desire to meet performance targets compromises compliance with Public Trustee's paramount obligation. Management should be mindful of this tension when dealing with complaints, so that a culture in which officers agree to requests regardless of Public Trustee's legal obligations does not develop.

Many complaints made about Public Trustee are due to other reasons such as delay and poor communication.

During the SARC Inquiry, *'[a] number of clients and Agencies gave evidence to the Committee in relation to experiencing untimely responses to phone calls or correspondence from the [Office of the Public Trustee]. Some spoke of receiving no response at all.'*¹³⁶

Many of the complaints which have been made to the Office for Public Integrity since it opened its doors in September 2013 relate to poor communication by Public Trustee officers.

Failure to communicate can have serious consequences for a customer of Public Trustee. For example, the health of a customer could be put at risk if the customer requires funds to pay for medication urgently but is unable to get in contact with the customer's officer because emails and telephone calls are unanswered.

¹³³ Statutory Authorities Review Committee, Legislative Council, *Inquiry into the Office of the Public Trustee* (2009) Recommendation 2.

¹³⁴ South Australia, *Response by the Attorney-General to the Report of the Statutory Authorities Review Committee Inquiry into the Office of the Public Trustee*, House of Assembly, 26 May 2010, p. 1.

¹³⁵ *The Public Trustee Performance Statement Financial Year Ending 30 June 2017*, p. 2.

¹³⁶ Statutory Authorities Review Committee, Legislative Council, *Inquiry into the Office of the Public Trustee* (2009) 28.

TELEPHONE CALLS

Public Trustee's Customer Service Standard appropriately focuses on the officer's behaviour rather than the customer's response to that behaviour. Accordingly, it is applicable regardless of whether the customer's request is agreed or refused.

The Customer Service Standard provides that: *'All telephone calls will be answered by a Public Trustee staff member with a sense of urgency and with minimal or where possible, no use of voicemail.'*¹³⁷ The standard also provides that telephone calls are to be answered within 30 seconds or five rings.¹³⁸ These standards are not always met.

In May 2017, the deceased estates teams received 2,064 telephone calls, while the Personal Estates section received 5,325 calls.¹³⁹ Many of those calls would have been answered initially by a single switchboard officer who is responsible for transferring the calls to the appropriate officer within Public Trustee, or to the officer's team leader or a clerk if the officer cannot be contacted. The switchboard officer is required to juggle multiple calls. However it can take time to transfer a call as multiple numbers may need to be tried before the call is answered. Consequently other customers who have called the switchboard have to wait longer for their call to be answered or transferred.

The Customer Service Standard requires officers to answer the telephones of other officers if their telephones are unattended.¹⁴⁰ However when we tried to call particular officers, some of those calls went through to voicemail. They were not answered by another officer. Staff and executives acknowledged that this is a problem.

The returning of telephone calls is also a problem. We were informed that both customers and professional organisations call Public Trustee indicating that they have not had their last call returned.

I consider that the communication difficulties, particularly in relation to the answering of the telephones, may be due to a problem with the current systems and work practices, rather than with the staff. We were impressed by the dedication and commitment of staff to serving their customers.

I consider that changes need to be made to improve compliance with the telephone calls aspect of the Customer Service Standard. I have suggested potential changes for Public Trustee to consider in the paragraphs which follow.

¹³⁷ Public Trustee Customer Service Standard, p. 2.

¹³⁸ Public Trustee Customer Service Standard, p. 3.

¹³⁹ Public Trustee's statistics regarding incoming calls by workgroup from July 2016 to May 2017.

¹⁴⁰ Public Trustee Customer Service Standard, p. 3.

ESTABLISHING A CALL CENTRE

Public Trustee could set up a small-scale call centre by dedicating multiple officers to answering and dealing with telephone calls ('call officers'). The call officers could deal with simple questions and could gather information about more complex questions and provide that information to the relevant Estate Services officer or Personal Estates officer to action. Urgent calls could be transferred immediately. The call officers would be required to refer to and make notes in CTMS.

This change would assist in standardising the entries in CTMS and would reduce the work pressure on Estate Services officers and Personal Estates officers.¹⁴¹ It would also facilitate the recording of telephone calls for training and integrity purposes.

The introduction of call officers would to a limited extent reduce the risk of corruption, misconduct and maladministration because the call officers may need to read information on a file relevant to the question raised in order to respond to an enquiry. The call officers may identify inconsistencies between the information provided by callers and that which appears on the hardcopy file or in the electronic systems, thereby increasing the likelihood of detecting inappropriate behaviour.

For ease of access by multiple officers concurrently, the implementation of a call centre would best work if all information about each file is available electronically rather than in hardcopy. Accordingly, a change of this nature would need to be directly supported by improvements to Public Trustee's electronic systems.

COMMON TELEPHONE LINE AND EMAIL ADDRESS FOR TEAMS

Public Trustee could build upon the existing team structure in the Estate Services section by having a single telephone number and email address for each team. All customers of that team would be provided with the team's contact details and would be encouraged to use those details rather than the main switchboard.

A common telephone line and email address could also be used for Personal Estates customers once the customer's file has been transferred by the new estates team to a maintenance team which occurs approximately three months after Public Trustee's appointment.

A common telephone line and email address may create inefficiencies because calls would not necessarily be answered by the relevant officer and all officers would need to sort through emails intended for other officers. It would also increase the risk of a particular email being overlooked. However that risk is worth taking because the common email address would minimise the risk of corruption, misconduct and maladministration because all team members, including the team leader, would have oversight of communications, making it easier to identify inappropriate behaviour. This oversight of communications would have the added benefit of providing further information to the team leaders about their team members' files.

By placing responsibility for the answering of the telephone on the entire team, it is likely that more calls would be answered within the 30 seconds required in the Customer Service Standard.

SHARED CASELOADS

Another way to increase the likelihood of telephone calls being answered is to have two officers assigned to each file which would be a system of shared caseloads.¹⁴²

¹⁴¹ See the further discussion in Part 9.

¹⁴² See the further discussion in Part 3.

ONLINE PORTAL

Improved compliance with the Customer Service Standard may also occur by reducing the total number of telephone calls received by Public Trustee. The development of an online portal, similar to that which is available to a bank's customers, could assist in this regard by reducing the number of calls to Public Trustee about the funds available for a customer's personal expenditure or the progress of the administration of the estate.

Such a portal would be accessed from Public Trustee's website. Customers would enter a unique username and password to access the portal. The online portal would contain information, such as a customer's financial information and the status of their matter. For example, the online portal for an Estate Services customer could indicate the progress of their probate application. For Personal Estates customers, the portal could indicate the amount of funds which are available to them for personal expenses or when such funds will next be available.

I anticipate that the information available in the portal would obviate the need for some customers to telephone or email Public Trustee.

The concept of an online portal was canvassed during evidence heard by the SARC in which one witness raised the possibility of Public Trustee providing financial statements to customers in that way.¹⁴³

I recognise that an online portal may not be useful for all customers. Some customers may not have internet access. Others may be susceptible to manipulation and therefore, it may not be appropriate to provide them with certain information through a portal. For example, some customers sell their medication or clothing to others to obtain more money for tobacco and drugs. For those customers, restrictions may need to be placed on the information which is provided through the portal so as to reduce the likelihood of a drug dealer gaining access to the information.

I understand that Public Trustee has explored the practicality of an online portal and that it was found not to be possible for the current system but could be incorporated if CBIS was upgraded.

WRITTEN COMMUNICATION

FORM OF COMMUNICATION

Public Trustee communicates with customers, stakeholders and service providers in writing both by email and by post. I have been unable to find a policy document which contains a general rule as to when an email or when post should be used. However the 'Send Letters Procedure', the continued use of cheques and anecdotal evidence suggest that in most sections of Public Trustee communication still frequently occurs by post.

The regular postal service takes two to six days depending on the location and each letter incurs a cost.¹⁴⁴

In my view, post should be used for persons who do not have internet access or who indicate a preference to receive correspondence in that way. Public Trustee should consider sending other written correspondence by email. It would be more efficient and less costly.

It would also be consistent with the South Australian Premier's 'Digital by Default Declaration' in which he placed an expectation on South Australian Government agencies to transition their existing services and paper-based processes to digital ones.¹⁴⁵

¹⁴³ Statutory Authorities Review Committee, Legislative Council, *Inquiry into the Office of the Public Trustee* (2009) 48.

¹⁴⁴ Australia Post, *Domestic Letters* < <https://auspost.com.au/parcels-mail/sending-in-australia/domestic-letters> >.

POSITION BASED EMAIL ADDRESSES

Emails are sent by customers directly to their officer's personal email address. The officer's team leader and colleagues do not generally have access to those emails except where an officer plans to take leave when the officer may make arrangements for the officer's team leader or colleagues to have access to the email inbox.

For most officers, under the current system there is no oversight of the emails that are sent and received by them. If one of those officers were to take unexpected leave, the officer's inbox may contain emails which require urgent action. No one within Public Trustee would be aware of those emails.

Officers could provide their customers with position based email addresses instead of their personal email addresses. For example, the positions within the 'north' Personal Estates maintenance team could be designated 'North 1', 'North 2' etc and have the corresponding email addresses (e.g. pt.north1@sa.gov.au, pt.north2@sa.gov.au). Team leaders could be provided access to the email addresses for all positions within their teams. When an officer is called upon to relieve another officer, the relieving officer could be given temporary access to the email address.

As it is not unusual for officers to change caseloads, the use of a positional email address would provide continuity for the customers. The customer would have a single contact point even if the officer filling that position changes.

Position based email addresses would also provide team leaders with access to the communications between officers and customers and provide the team leaders with an opportunity to make an assessment of the manner in which the files are being handled. It would also allow the team leaders to better oversee the officers' actions and decisions, thereby minimising the risk of corruption, misconduct and maladministration.

The position based email address has been adopted by at least one of Public Trustee's interstate counterparts and, I am told, is currently being investigated by Public Trustee.

DIFFICULT CUSTOMERS

Public Trustee provides a vital service to many of the State's most vulnerable persons, including persons who have substance addictions or behavioural difficulties. Many of these persons are angry that their financial affairs are under Public Trustee's control and as a result they can be demanding and threatening particularly if Public Trustee officers refuse their requests for money.

Earlier this year, a customer set fire to furniture in Public Trustee's reception area.

In recent times, Public Trustee has taken a proactive approach to security by providing:

- closed circuit television cameras and duress alarms in some parts of the building;
- a warning light outside Public Trustee's two reception areas for use during security incidents;
- a security screen to secure the interview room; and
- mandatory personal security training to officers.

Public Trustee also undertakes regular security reviews which involve assessment of the security requirements for Public Trustee's building.

¹⁴⁵ The Hon. Jay Weatherill MP, *Digital by Default Declaration* (2014)
< https://digital.sa.gov.au/sites/default/files/content_files/declarations/Digital-by-Default-Declaration.pdf >.

The 'Incidents Involving Intimidation or Abuse by Customers Standard' requires that '[a]ll incidents of intimidation or threatened physical or verbal abuse must be reported to the General Manager'.¹⁴⁶ All incidents of assault or property damage are also to be reported to the police.¹⁴⁷ In relation to threats of physical or verbal abuse and intimidation, the standard provides that it is the officer who receives the threat or is subject to the intimidation who is to decide whether it is to be reported to the police.¹⁴⁸ Staff who are involved in incidents are required to complete a Security Incident Report and a Work Health Safety Incident Report.¹⁴⁹ The executives receive the Security Incident Reports and monitor the actions in those reports until they have been completed. I have been informed that the Attorney-General's Department Agency Security Adviser also reviews the Security Incident Reports.

Unfortunately, it is not uncommon for officers to receive threats of serious harm or death. The customers who make such threats often know the officer's name and can recognise the officer and are aware of the location of the officer's workplace. These customers therefore have sufficient information to be able to carry out the threats.

The information that has been provided suggests that Security Incident Reports are not completed in respect of every threat. When a threat is reported to management a risk assessment of the threat is sometimes conducted to determine whether to complete a Security Incident Report. We were informed that this assessment includes consideration of whether the person making the threat is incarcerated.

It is dangerous to assume that because of a customer's personal history or location that the threat may not be carried out. Despite a customer having made threats in the past that have not been acted on the customer's behaviour may escalate unpredictably. Similarly, a customer who is incarcerated could arrange for someone else to carry out the threat on that customer's behalf.

All threats of serious harm and death should be documented and treated seriously. Officers should be encouraged and indeed required to notify management about the threat and should be supported for doing so. Public Trustee should ensure that all officers in the Personal Estates and Estate Services sections receive training about the action to be taken in circumstances where a threat is made. Staff should also be encouraged to obtain counselling. I am assured by the Public Trustee that these measures are already in place.

COMPLAINTS

Public Trustee has a rigorous process for dealing with complaints received from members of the public who are Public Trustee's customers.¹⁵⁰ Each complaint is recorded in a central database. Following an internal investigation of the complaint, the team leader or manager is responsible for providing the executives with a response to the complaint within ten days.¹⁵¹ I understand that the executives consider and then sign the response for complaints referred by ministers or made directly to the Public Trustee.

As already mentioned, there is a tension between Public Trustee's legal duties and Public Trustee's desire to satisfy customers. Accordingly complaints do not necessarily indicate that an officer has engaged in

¹⁴⁶ Incidents Involving Intimidation or Abuse by Customers Standard, p. 2. It has been brought to my attention that the current practice is that when a security incident occurs officers are to advise those who may be adversely affected by the incident as well as the manager and, if necessary, alert the Attorney-General's Department Agency Security Adviser. I am also told that at least one of the Public Trustee executives is always available to take calls and provide an immediate response. Police security is also present at Public Trustee's office and can be contacted by staff in relation to security incidents.

¹⁴⁷ Incidents Involving Intimidation or Abuse by Customers Standard, p. 2.

¹⁴⁸ Incidents Involving Intimidation or Abuse by Customers Standard, p. 2.

¹⁴⁹ Incidents Involving Intimidation or Abuse by Customers Standard, p. 2.

¹⁵⁰ Compliments and Complaints Policy; Compliments and Complaints Procedure; Process Map 1. Manage Complaints Process.

¹⁵¹ Process Map 1. Manage Complaints Process.

inappropriate behaviour. Indeed the correct decision may have been made in accordance with legal obligations.

In the course of responding to complaints, the executives have developed operational knowledge and have gained some insight into officers' compliance with controls. However some officers informed us that their only interaction with the executives is when they have made mistakes or are assisting to deal with complaints. If that is the case that might explain the culture of scrutiny and blame which currently exists within Public Trustee.

I consider that the complaints process forms a necessary part of Public Trustee's community engagement. Complaints made should continue to be thoroughly considered and actioned quickly. The complaints and the investigation into those complaints should be used as a form of continuing education to assist Public Trustee to identify ways to improve. I commend Public Trustee's current practice of managers sending weekly emails to their sections containing reminders and other lessons and information learnt from complaints and investigations into those complaints.

However the culture resulting, in part, from the complaints process needs to change. It is not inappropriate for the executives to send a strong compliance message to officers but that is not the only message that should be sent in all cases.

One staff member said that colleagues feel personally responsible 'when things go wrong these days and are hung out to dry'. Another staff member said that it seems that there is a 'man hunt' for those who make errors or are at fault. A different staff member referred to the 'pointing of the finger at staff', but commented that it had improved during the six months prior to the interview with us. That staff member explained that officers are living in constant fear that something that they have accidentally done wrong (because of being so rushed and busy) will come back to haunt them.

I consider that Public Trustee should foster a culture of recognition and reward rather than one of scrutiny and blame. There is a formal staff recognition program. However that program has not been enough to foster a culture of recognition and reward. Officers are frightened to make mistakes which creates a risk that officers will try to hide mistakes rather than seeking help to deal with them. If officers notice something unusual, inappropriate or wrong, they are less likely to speak up for fear of being blamed. The present culture needs to change.

The effectiveness of Public Trustee's controls which are intended to prevent or minimise corruption, misconduct and maladministration is dependent on the officers' willingness to communicate to management any error that might have occurred or any issue that might have arisen.

Officers should be acknowledged and rewarded for bringing potential errors or other issues to the attention of management so that staff of Public Trustee as a whole can learn from errors or issues that have been identified.

A change in culture would reduce the risk of corruption, misconduct and maladministration.

RECOMMENDATIONS

Recommendation 12: That Public Trustee reviews telephone communication practices with a view to increasing compliance with Public Trustee's Customer Service Standard.

Recommendation 13: That Public Trustee makes direct contact with Public Trustee's new Personal Estates customers as soon as possible after appointment.

Recommendation 14: That Public Trustee takes active steps to foster a culture of recognition and reward rather than the existing culture of scrutiny and blame.

PART 9: WORKLOAD AND PERFORMANCE

BACKGROUND

An industrial dispute exists which involves staff from Public Trustee's Estate Services and Personal Estates sections.

As mentioned earlier, I have only considered the dispute for the purpose of evaluating the effectiveness of Public Trustee's systems to prevent or minimise corruption, misconduct and maladministration.

We were informed by a number of officers that they consider they do not have sufficient time to perform their duties. Some staff members feel that their own workload is manageable but that the workload of some of their colleagues is excessive.

Opportunities for inappropriate behaviour may arise if officers are or feel overworked, as there may be a tendency to ignore proper processes and hide mistakes. Further, oversight by team leaders, checkers, relievers and colleagues may be less effective if they themselves are or feel overworked.

FACTORS AFFECTING WORKLOAD

The officers' workloads are affected by a number of factors. I have discussed some of them in more detail below.

NEW WORK PROCESSES

Processes implemented in the last five years, such as the mandatory use of CTMS to record customer contacts, have added to the time taken by officers to complete their work.

As mentioned in the introduction, Public Trustee has made changes to procedures and practices as a result of the Bartels incident. A number of those changes have reduced the risk of corruption, misconduct and maladministration but at the same time increased the workload of staff at various levels.

We were informed that complying with the new procedures increases the officers' work in circumstances where they are already very busy.

Some officers questioned whether any of these measures would in fact have prevented the Bartels incident from occurring. Ms Bartels' offending was opportunistic and exploited weaknesses in Public Trustee's procedures, particularly in relation to record keeping. I consider that the new controls may have prevented some of the criminal activity engaged in by Ms Bartels or at least increased the possibility of earlier detection.

Although worthwhile and desirable in themselves, some of these measures may be at the expense of managers and team leaders being able to oversee officers' files and activities, which could be a more effective control against such activity.

EXPECTATIONS AND COMPLEXITY

We have been told that over the recent past customers' expectations have increased and they now expect more prompt service.

Many officers explained that the complexity of Public Trustee's work has also increased.

The complexity of the work undertaken by Estate Services officers has increased because estates' assets are now not so often limited to just a house and a bank account. Customers may now have multiple houses, superannuation, shares and other investments. Family relationships are often more complicated because a deceased person may have had children with different partners.

The prevalence of substance abuse has also affected the complexity of Public Trustee's work. The work of Personal Estates officers used to be less demanding as customers were often institutionalised and a paternalistic approach was taken to their welfare. Now, many Personal Estates customers live in the community which makes their financial arrangements more complicated.

The complexity of the work is likely to continue to increase, particularly given the legislative changes regarding superannuation and the introduction of the National Disability Insurance Scheme.

MANUAL PROCESSES AND MULTIPLE SYSTEMS

As mentioned, some processes require data entry to be duplicated because of the limitations inherent in Public Trustee's electronic systems. The completion of manual forms, the physical movement of those forms from one part of the office to another and manual processing techniques are also consequences of those limitations in Public Trustee's electronic systems.

In addition because files are kept in a hardcopy form, the need to keep them up to date is particularly time consuming.

WORKFORCE CHANGES

During its inquiry, the SARC heard evidence regarding staff workloads. The Committee was concerned that officers' workloads were as high as 300 plus customers for junior Personal Estates officers.¹⁵²

The SARC recommended that '*Public Trustee have a sufficient number of staff, in order to improve customer service.*'¹⁵³ In response, Public Trustee appointed nine new full time staff members to the Personal Estates section.¹⁵⁴

We were told this measure was initially successful in reducing officers' workloads. However as at April 2017, the cases allocated to new estates officers and some trust officers were in excess of those considered in the SARC Report.¹⁵⁵

In order to meet Public Trustee's budget savings target, I understand Public Trustee has not replaced a number of officers from the Personal Estates and Estate Services sections who have left the organisation through natural attrition or re-assignment.

¹⁵² Statutory Authorities Review Committee, Legislative Council, *Inquiry into the Office of the Public Trustee* (2009) 36-37, 42.

¹⁵³ Statutory Authorities Review Committee, Legislative Council, *Inquiry into the Office of the Public Trustee* (2009) Recommendation 3.

¹⁵⁴ *Response by the Public Trustee to the Report of the Statutory Authorities Review Committee Inquiry into the Office of the Public Trustee: Report 51* (December 2011) 6.

¹⁵⁵ Letter from the Public Trustee to the Public Service Association of SA, 26 April 2017; Statutory Authorities Review Committee, Legislative Council, *Inquiry into the Office of the Public Trustee* (2009) 36-37.

Staff informed us that rather than such positions being backfilled the caseloads were simply divided among existing officers.

New and Rotated Staff

As is inevitable in a workforce with a high proportion of very long serving experienced staff some of those staff members are retiring. New staff require extensive training and guidance adding to the workload of team leaders and senior officers.

The same can be said for areas where existing staff have been moved to new roles. While fresh eyes and attitudes can be a benefit, there is likewise a need for training and a consequent burden on those providing it.

Effects of the Workforce Changes

On an annual basis, the number of Personal Estates customers has been increasing steadily, while the number of Estate Services customers has been reducing. However the Estate Services section's clearance rate for deceased estates has not improved, indicating that there may be bottlenecks or other problems in delivering customer service.

In response to the industrial dispute four ASO3 officers have been temporarily assigned to assist with backlogs.¹⁵⁶

It is not clear to me that additional resources have otherwise been put into the Personal Estates section to keep up with the increased workload.¹⁵⁷

SACAT

In 2015, SACAT conducted a project to consider the levels of non-reporting private administrators.¹⁵⁸ SACAT has taken steps to conduct directions hearings and early reviews of administration orders.¹⁵⁹ Where appropriate, the private administrator is directed to take steps to report or their appointment is revoked often in favour of Public Trustee.¹⁶⁰

This project has caused additional work for Public Trustee's regulatory services team and Personal Estates section.

SACAT's processes differ from those of its predecessor, the Guardianship Board, which has also increased the workload in other ways. Staff provided the following examples:

- SACAT's notification of new matters is provided by email and is therefore constant, rather than in staggered batches sent by post;
- one of the daily duties of some team leaders is to read orders and email correspondence from SACAT;

¹⁵⁶ Letter from the Public Trustee to the Public Service Association of SA, 26 April 2017.

¹⁵⁷ A number of key appointments in the last few years have assisted the executives with their functions, rather than bolstering the number of officers available in the Personal Estates and Estate Services sections. Those appointments have been at the higher end of the salary range (ASO7 and LE4).

I make no criticism about the choices made in this regard, as Public Trustee's needs are not limited to having more hands available for Personal Estates and Estate Services' work. However it is consistent with the observation mentioned earlier in this part that while there may be more work in real terms, by numbers of files or through the complex nature of the files, the workforce has not increased to keep up with demand.

¹⁵⁸ *South Australian Civil and Administrative Tribunal Annual Report 2014-15*, p. 28; *South Australian Civil and Administrative Tribunal Annual Report 2015-16*, p. 18.

¹⁵⁹ *South Australian Civil and Administrative Tribunal Annual Report 2014-15*, p. 28; *South Australian Civil and Administrative Tribunal Annual Report 2015-16*, pp. 18-19.

¹⁶⁰ *South Australian Civil and Administrative Tribunal Annual Report 2015-16*, pp. 18-19.

- SACAT is more proactive than the Guardianship Board was in requiring officers to attend hearings; and
- there are occasions in which SACAT requires Public Trustee to take urgent action to protect assets.

On the other hand, the use of video conferencing and SACAT's responses to emails has improved officers' experiences in dealing with SACAT.

The Public Trustee actively liaises with SACAT and the Office of the Public Advocate, and more so than with the former Guardianship Board, which may improve the management of the additional work in the future.

COMPLAINTS

Improvements in Public Trustee's complaints management process has also increased the workload of the executives and staff.

The process for managing complaints involves various personnel from Public Trustee, ranging from an officer through to the General Manager, Customer Services and the Public Trustee herself.

I consider that a thorough process which ensures an accurate and timely response is justified and indeed necessary. However Public Trustee must accept that complaints give rise to considerable additional work for the officer who is the subject of the complaint, team leaders and managers.

From an integrity perspective, complaints must be carefully considered because they may be valuable sources of information about potential corruption, misconduct and maladministration.

ABSENTEEISM

Absenteeism, due to leave and flexi-time, is a problem for Public Trustee. The rate of sick leave is higher than the public sector average.¹⁶¹

The Personal Estates section has relieving officers who manage files while other officers are away on planned leave. In practice relieving officers are only able to attend to urgent matters as they are often required to backfill more than one other officer.

The Estate Services section does not have relieving officers. Team leaders attend to urgent issues and team members assist with answering telephone calls.

We were informed that it is not uncommon for an officer to have a backlog of work when the officer returns from leave.

From an integrity perspective, if relieving officers, team leaders or other team members are available during an officer's absence to manage that officer's files that will create opportunities for detecting corruption, misconduct and maladministration. However if team leaders are required to undertake work for absent team members, the team leaders' ability to lead and supervise the teams is impaired.

If files are not managed while an officer is absent deadlines may be neglected and estates may suffer losses.

¹⁶¹ In 2015-16, the average days of leave per full time equivalent employee for Public Trustee was 10.5 days: *Public Trustee Annual Report 2015-16*, p. 47. The average days of leave per full time equivalent employee for the South Australian Public Sector was 9.8 days: Office for the Public Sector, *Workforce Information Full Report 2016* < <http://publicsector.sa.gov.au/wp-content/uploads/2016-Workforce-Information-Full-Report.pdf> > p. 24.

ALLOCATION OF NEW FILES

By raw file count, not all of the teams within the Estate Services and Personal Estates sections seem to have excessive caseloads. However we were informed that the number of files alone is not determinative of an officer's workload. The complexity of the files must also be considered.

The 'Personal Estates Estate Allocation Standard' and the 'Deceased Estates Estate Allocation Standard' recognise that the complexity of the file should be considered prior to allocation of the file. The standards include features of the file which determine the level of officer to which it is to be allocated.¹⁶²

These standards are to be considered together with an officer's existing number of files. In some teams, there are limits on the number of files for different classifications of officers. We were informed that these limits reflect industrial agreement at an earlier time and are not the product of a current review of the time taken on files.

We were also informed that because senior officers already had the maximum number of cases allowed for their level junior officers in the Personal Estates section have been allocated files which were more complex than those which are usually dealt with by officers of their level.

When a file is first allocated the true complexity may not be apparent which is recognised by the 'Deceased Estates Estate Allocation Standard' which expressly allows files to be reallocated.¹⁶³ However a more junior officer may not request a reallocation if the senior officers are already at capacity.

I am concerned that the current file allocation system is causing some officers to be overloaded and overworked.

Public Trustee's interstate counterparts have various methods for assessing complexity and determining staff caseloads. Some use matrices and at least one of Public Trustee's interstate counterparts has a sophisticated system, involving the use of mathematical algorithms to determine the number of staff required to undertake caseloads.

I understand that Public Trustee is considering alternatives to the existing practices which should be made a matter of priority. The system adopted should, to the extent possible, accurately determine the likely work involved in the file and whether the particular officer to whom it is to be allocated has the capacity to deal with the complexities inherent in the file.

I would also encourage team leaders to discuss new files with their team members, rather than simply communicating the allocation of the new file by email. During this discussion, key issues can be identified and the priority with which the new file should be given (relative to the officer's other work) can be determined.

ASSESSING PERFORMANCE

The performance measures used by Public Trustee in some areas may not accurately reflect the desired outcomes. For example:

- performance of the checking officers in the Personal Estates section appears to be assessed by the number of files checked rather than the number of issues detected (i.e. the purpose for the checking).

¹⁶² Personal Estates Estate Allocation Standard, pp. 2-3; Deceased Estates Estate Allocation Standard, pp. 2-3.

¹⁶³ Deceased Estates Estate Allocation Standard, p. 2.

- the occurrence of complaints may be inevitable given the nature of the work and may be consistent with officers doing their jobs well.
- estates involved in litigation may be unable to be finalised within the desired timeframe, despite the best efforts of Public Trustee.

Public Trustee should ensure that the key performance indicators are true measures of performance. Such measures would assist in determining performance and thus, applicable workloads.

RECOMMENDATION

Recommendation 15: That Public Trustee changes existing practices in relation to allocating files within the Personal Estates and Estate Services sections to sufficiently take into account the complexity of the file and the current workloads of the officers who may be allocated the file.

PART 10: PROPERTY

SECURING AND STORING CUSTOMERS' PROPERTY

As mentioned in Part 1, in administering a deceased estate, Public Trustee's responsibilities include identifying, securing and getting in the deceased's assets and identifying the deceased's liabilities. The deceased's assets most often include a house and furniture, personal effects and a motor vehicle.

Public Trustee's officers attend at the customer's residence *'to ascertain what action may be required to clear, clean, store, itemise, value, secure or dispose of the items.'*¹⁶⁴ During this visit, the officers:¹⁶⁵

- prepare a list of the main items located at the residence (such as one television, six chairs and a dining table etc);
- take photographs of each room in the residence for the purpose of determining the time it will take to clear the residence and the cost of doing so;
- collect valuables such as jewellery, memorabilia and collectables; collect keys and documents which will assist in the administration of the estate such as a passport, identification cards, credit cards and documents identifying assets and liabilities. The officers handwrite a description of each item or document into a receipt book and return the valuables, keys, documents and the receipt book to Public Trustee's office (I will refer to these valuables, keys and documents as 'security items'). The officers are not required to photograph the security items.

The security items which are to be stored in the securities room are to be given to a client asset management officer who cross-checks the items against the receipt; types the description of the items into the electronic system ('RecFind'); and then places them in the securities room.¹⁶⁶

Personal Estates officers may also need to attend at a customer's residence and collect security items, for example, when a customer is moving to a nursing home. Similar procedures are applicable for those attendances.¹⁶⁷

The securing and storing of customers' property is a high risk area. The safeguards against corruption, misconduct and maladministration have been considerably strengthened since the Bartels incident because, in that case, the offending involved misuse of customers' personal property and potentially collusion with service providers.

Public Trustee's practices and procedures for dealing with security items are written to minimise the risk of corruption, misconduct and maladministration in that they require:

- two persons to be present at the initial visit to a customer's property ('the two person rule');
- the use of clearly labelled tamper proof bags for storage of security items in the securities room;
- the use of tamper proof tape to seal security items in boxes;
- the regular auditing of receipt books;

¹⁶⁴ Clear, Clean, Collect, Store, Value or Itemise Personal Items and other Effects Procedure, p. 2.

¹⁶⁵ Clear, Clean, Collect, Store, Value or Itemise Personal Items and other Effects Procedure, p. 4.

¹⁶⁶ Collection, Storage and Disposal of Security Items Procedure, p. 6; Map 1.12 Client Financial Services: Client Asset Management – Physical Securities – Receipt and storage of securities.

¹⁶⁷ Collection, Storage and Disposal of Security Items Procedure; Clear, Clean, Collect, Store, Value or Itemise Personal Items and other Effects Procedure; Dealing with Personal Items (not valuables) of Little or No Commercial Value Standard, p. 2.

- the use of a reconciliation process conducted by a client asset management officer in relation to security items itemised by the officer;
- the entry of security items to be stored in the securities room into an electronic system; and
- keys to be stored in a key safe.

I will mention additional methods which could be introduced by Public Trustee to further reduce the risk of corruption, misconduct and maladministration.

THE TWO PERSON RULE

The relevant procedure requires two Public Trustee officers to together attend at a customer's residence, except if the Public Trustee officer attends with the customer, a liaison person, a beneficiary or a contractor when only one Public Trustee officer needs to attend.¹⁶⁸ The Public Trustee officer is required to record who attended the residence with that officer.¹⁶⁹

The requirement for two persons to be in attendance during the initial attendance to a customer's residence is a key control against theft which has also been adopted by some of Public Trustee's interstate counterparts.

The effectiveness of the control is dependent upon compliance. Several officers informed us that strict compliance with the procedure does not occur. On occasions, officers have attended alone. On other occasions, officers have not attended at all. For example, one officer arranged for a contact person and a service provider to attend at the same time which the officer claimed justified the officer's non-attendance.

Unless permission is provided by a team leader, Public Trustee must conduct the initial attendance at the customer's property.¹⁷⁰ During the initial attendance, valuables, keys and useful documents are collected for storage in the securities room, key safe or bank deposit box and a summary of the main items in the house is prepared,¹⁷¹ which reduces the risk of theft of the customers' property.

After the initial attendance the residence is cleaned and the furniture and effects are cleared.¹⁷² Items of commercial value are sold.¹⁷³ Public Trustee engages a service provider to undertake this work,¹⁷⁴ which occurs without the supervision of a Public Trustee officer. The service provider must deliver any valuables to Public Trustee's office for storage in the securities room or at a bank.¹⁷⁵ Accordingly, the current process allows a service provider to be in a customer's residence unsupervised with valuables that have not been separately itemised or verified.

In my view, there is scope to improve the current system.

Public Trustee could be further resourced to allow Public Trustee to carry out the cleaning and clearing of customers' residences or be present while those services are provided. That procedure would require funding because attendances would often be very time consuming. However Public Trustee could charge the deceased estate for that cost.

¹⁶⁸ Clear, Clean, Collect, Store, Value or Itemise Personal Items and other Effects Procedure, p. 4.

¹⁶⁹ Clear, Clean, Collect, Store, Value or Itemise Personal Items and other Effects Procedure, p. 4.

¹⁷⁰ Clear, Clean, Collect, Store, Value or Itemise Personal Items and other Effects Procedure, p. 3.

¹⁷¹ Clear, Clean, Collect, Store, Value or Itemise Personal Items and other Effects Procedure, p. 4.

¹⁷² Map 1.1 Customer Services – Clean Clear Collect Store Value or Itemise Personal Items and Other Effects.

¹⁷³ Map 1.1 Customer Services – Clean Clear Collect Store Value or Itemise Personal Items and Other Effects.

¹⁷⁴ Map 1.1 Customer Services – Clean Clear Collect Store Value or Itemise Personal Items and Other Effects.

¹⁷⁵ Map 1.1 Customer Services – Clean Clear Collect Store Value or Itemise Personal Items and Other Effects.

Alternatively Public Trustee could outsource both the initial attendance and the cleaning and clearing. In order to do so, Public Trustee would need to have stringent contractual requirements to minimise the risk of theft and fraud, and ensure that the contractual delegation did not mean that Public Trustee was not discharging Public Trustee's legal obligations.

A rigorous audit regime would need to be implemented to ensure that the service provider was complying with its contractual obligations.

At least three of Public Trustee's interstate counterparts use contractors to collect the valuables and then clear other items from their customers' premises. One of them requires the contractor to photograph everything; prepare a report; and deliver the valuables to storage.

Another interstate counterpart minimises the risk of theft by the service providers by sending an employee to randomly selected premises in an estate before the service provider attends which allows that Public Trustee to compare the list of assets provided by the service provider with that which the employee obtained.

The third interstate counterpart retains the two person requirement even for its service provider. It also requires the employees of the service provider to wear video cameras. They are required to activate the film before entering the customer's premises. The time and date are included in the film to deter the provider from deactivating the cameras while still in the property. Valuables which are located in the property are sent by courier to the office of the Public Trustee.

If the initial visit were to be outsourced by the South Australian Public Trustee, Public Trustee could require two employees of the service provider to be present wearing video equipment and any security items located on the property to be receipted and sealed in tamper proof bags. Videos could be randomly selected and viewed by a designated Public Trustee officer to ensure the service provider has strictly complied with all conditions of the service provider's contract.

Engaging contractors to undertake the initial visit would provide Public Trustee officers with more time to attend to their other duties. There would be an additional benefit from a health and safety perspective as we were told customers' properties can be dangerous. We were informed about a property which had fleas, mice and needles, and another where there were faeces on the floor.

If Public Trustee were to adopt this approach, it would result in an increase in the cost to estates for the service provider's fees. However the fees incurred could be offset by deducting those fees from the commission or other fees charged by Public Trustee.

IDENTIFYING ITEMS OF VALUE

During the initial visit to a customer's property, officers are required to assess whether items are of little or no commercial value.¹⁷⁶ Officers are not trained valuers and need to obtain expert advice if funds are available. However officers require some knowledge to determine whether to engage the experts. Further, it is not appropriate to engage valuers in respect of all estates. Basic training to assist officers to assess whether items are of commercial value would be of benefit to the officers. If officers are properly briefed and are trained on the potential value of personal property there is less chance of maladministration if for example an officer inadvertently disposed of an item for significantly less than its true value.

¹⁷⁶ Clear, Clean, Collect, Store, Value or Itemise Personal Items and other Effects Procedure, pp. 4-5; Map 1.1 Customer Services – Clean Clear Collect Store Value or Itemise Personal Items and other Effects.

RECEIPT OF SECURITY ITEMS

Consistent with Public Trustee's paper-based approach, receipts for security items (other than cash) are prepared in triplicate using a hardcopy receipt book.¹⁷⁷ The original receipt is issued to the person who provided the security items. The second copy of the receipt is used by a client asset management officer to type the details into RecFind and is ultimately placed on the customer's file.¹⁷⁸ The third copy of the receipt is initialled by that client asset management officer to verify that the items provided match those in the receipt, before storing them in the securities room.¹⁷⁹ The third copy of the receipt remains in the receipt book and is checked by a team leader during the receipt book audit.

The receipting process is labour intensive in that it involves double-handling of information because the content of the receipt is initially handwritten and then typed into the electronic system.

The 'Collection, Storage and Disposal of Security Items Procedure' sets out the way in which the security items are to be described. The appendix to that procedure includes the following examples:¹⁸⁰

2 keys to Holden Sedan on a plain key ring

...

Ladies y/metal Timex w/watch with black band

...

1 pair y/metal sleeper earrings

The purpose of using 'y/metal' rather than 'gold' is presumably to reduce the risk to Public Trustee of a subsequent assertion that an item did not conform to a qualitative description.

The problem with the descriptions in the examples is that there is a risk that an officer could substitute for a pair of valuable gold sleeper earrings a pair of gold coloured sleeper earrings which are of no commercial value before the security items are provided to a client asset management officer.

The use of tamper proof bags and security tape in the securities room reduces the risk of that occurring once the items are in that room. The requirement for two persons to be present at a customer's property reduces the risk of theft occurring at the property. However there are other opportunities for an item to be substituted, particularly if the Public Trustee officer meets a family member or service provider at the property and then returns alone with the security items to Public Trustee's office.

Officers should be required to place security items in tamper proof bags and to seal them when they are at the property. They should be sealed while two persons are present and the barcode number of the bag should be recorded in the receipt. Client asset management officers should check that the barcode number is accurate when checking that the items in the receipt accurately reflect those which have been delivered to the office.

¹⁷⁷ Issue and Use of Manual Security Receipt Books Standard, p. 2.

¹⁷⁸ Collection, Storage and Disposal of Security Items Procedure, p. 6.

¹⁷⁹ Collection, Storage and Disposal of Security Items Procedure, p. 6; Map 1.12 Client Financial Services: Client Asset Management – Physical Securities – Receipt and Storage of Securities.

¹⁸⁰ Collection, Storage and Disposal of Security Items Procedure, p. 12.

A tamper proof bag should only ever be opened if two persons are present and the number of the bag should always be recorded to ensure that every bag is accounted for. I understand that Public Trustee has considered the use of tamper proof bags at customers' properties but has not yet implemented that procedure.

Photographing of security items or groups of security items before they are placed in tamper proof bags at a customer's residence would provide further protection against theft. It would also alleviate the need to include detailed descriptions of the items in the receipt. Public Trustee could prepare electronic receipts which have the photograph of each item or group of items attached. The electronic receipts could be emailed to the person who provided the security items. If the person does not use email, the receipt could be printed and posted, together with the photographs. The receipt and photographs could be uploaded to the customer's record in CTMS and attached to RecFind (if the system allows it).

Officers would need to be provided with tablets or mobile phones for use at customers' residences which are capable of taking photographs, preparing electronic receipts and sending emails.

If the initial visits to customers' residences are to be outsourced, the use of tamper proof bags, photographs, videos and the requirement for two persons to be present in the properties at any one time should be included as part of the contractual arrangements.

Where security items are delivered to Public Trustee's reception area photographs could be taken in the presence of the person delivering the items. A receipt could be immediately prepared electronically with the photographs attached. A tablet or mobile phone and tamper proof bags would need to be made available for officers in the reception area to allow for this suggested procedure.

Client asset management officers could check the security items against the photographs before placing the items in the securities room, key safe or bank deposit box which would create an additional layer of oversight, thereby minimising the risk of an officer (or service provider) taking items from the securities room or substituting them for less valuable ones.

I consider that the combined use of tamper proof bags and photographs, together with the existing controls, would reduce the risk of corruption, misconduct and maladministration.

STORAGE OF SECURITY ITEMS

Many security items are stored in the securities room which is located within Public Trustee's office. Access to the securities room is gained using a swipe-card. We were informed that only a limited number of staff have swipe-cards that allow them access to the room.

Although it does not appear to be expressly stated in any policy document, the general rule that is observed is that no one is to enter the securities room alone. Even client asset management officers who may enter the room multiple times per day comply with this unwritten rule. Everyone who enters the room is required to sign an entry in the hardcopy register which is located within the room. The entries in the register are reconciled against the audit log of the swipe-card access to the room on a monthly basis. As only one pass is required to gain access to the room an officer could enter the room alone but write two names into the register which would not be identified in the reconciliation.

Public Trustee could change the procedure to require both officers who are entering the securities room to swipe their cards before entering. If one of the officers does not have access to the room, that officer's attempt to enter will be recorded on the audit log as a 'fail'. Both officers should then complete the hardcopy register in the room. The register would then reflect the audit log of swipe-card access to the room. If there are any

discrepancies, they should be reported to senior management and investigated. Installing CCTV within the securities room or on the door to the securities room would assist in such an investigation. It would also deter inappropriate behaviour.¹⁸¹

An alternative way of restricting access to the securities room would be to install a system that requires two passes to be swiped in order to gain access to the room which is a method used by one of Public Trustee's interstate counterparts.

AUDIT OF SECURITY ITEMS

Annually a report of the security items held in the securities room is prepared. The report is used to audit the items in the securities room. One officer is required to follow the *'listing of items from the report while the other officer physically views the item or document stored.'*¹⁸² Any discrepancies are investigated and explanations obtained.¹⁸³ After the investigatory process has been completed, a report is prepared for the Manager, Client Financial Services.¹⁸⁴ The report is signed by the staff who conducted the audit.¹⁸⁵

The 'Manage Annual Audit Security Items Procedure' requires that two 'independent officers' conduct the audit.¹⁸⁶ In practice this audit is conducted by at least one officer who has regular dealings with security items. I recommend that the audit be conducted by two persons (internal or external) who do not have any involvement in the receipting of security items or the storage of those items in the securities room.

Given the important role of client asset management officers in the securities room procedures, rather than having a single officer perform all of the duties required for security items, it would be advisable for there to be further differentiation of duties in the interests of minimising potential corruption, misconduct and maladministration. Alternatively, random checks of the activities of client asset management officers could be conducted.

The Manager, Client Financial Services, with the assistance from consultants, is currently reviewing the security item processes. In considering the outcome of that review, I encourage the executives to consult with the client asset management team who have an impressive understanding of the potential risks. They have done their best with largely manual systems.

¹⁸¹ There is no suggestion that a present member of staff or the executive is suspected of engaging in any criminal conduct. The purpose of the recommendation is to protect staff, the executives and customers.

¹⁸² Manage Annual Audit Security Items Procedure, p. 3.

¹⁸³ Map 1.13 Client Financial Services: Client Asset Management – Physical Security – Security Receipt Books.

¹⁸⁴ Map 1.13 Client Financial Services: Client Asset Management – Physical Security – Security Receipt Books; Manage Annual Audit Security Items Procedure, p. 3.

¹⁸⁵ Manage Annual Audit Security Items Procedure, p. 3.

¹⁸⁶ Manage Annual Audit Security Items Procedure, p. 3.

STORAGE OF KEYS

As I have mentioned, following the Bartels incident, Public Trustee introduced a key safe. An officer who requires access to a customer's keys must sign and obtain a team leader's approval on a Client Asset Management Securities Movement Form in order to have the keys temporarily removed from the key safe.¹⁸⁷

Although the initial access to keys is tightly controlled, opportunity exists for an officer or third party to misuse the keys once they have been removed from the key safe. It is very difficult to prevent someone from cutting another copy of the keys. It is also difficult to prevent someone from using the keys after hours to gain unauthorised access to a customer's house or car because keys might remain checked out of securities for weeks or months at a time. There is no time limit for the temporary release of the keys. However the Client Asset Management Securities Movement Form records the date upon which the keys are expected to be returned. Client asset management officers follow up any keys which are not returned as expected.

It is difficult to write policy documents to cover every possible potential risk to an estate.

VENDORS AND CONTRACTORS

VENDORS

Public Trustee has a number of internal controls in place to ensure that persons and companies who receive payments from Public Trustee on behalf of their customers ('vendors') are in fact entitled to receive those payments.¹⁸⁸

Funds can only be paid to a vendor who or which is included in Public Trustee's electronic system.

The processes for creating a vendor or modifying the details of a vendor have been significantly tightened in recent years. All changes to vendors' details require verification of the accuracy of the information and approvals by team leaders, which is to prevent an external person making incremental changes to a vendor's details in the electronic system so that eventually the funds are diverted to that person.

A large number of vendors exists because Personal Estates customers, beneficiaries of estates and service providers all receive funds from Public Trustee and are treated as vendors and therefore need to be created as vendors in Public Trustee's electronic system.

On an annual basis, Public Trustee deactivates vendors who or which have been inactive for three years which provides an important control.¹⁸⁹ It reduces the risk of a payment being made to a person who legitimately existed as a vendor in the electronic system because of a past payment but who has no entitlement to any subsequent payment which is made to directly or indirectly benefit a staff member. If it is possible to do so, Public Trustee should consider reducing the time period for deactivation.

In relation to corporate vendors, Public Trustee should consider whether it is possible to run an automated check of current vendors against data from the Australian Securities and Investments Commission to determine whether any vendors are deregistered or insolvent. Such vendors could then be removed from the system.

¹⁸⁷ Collection, Storage and Disposal of Security Items Procedure, pp. 7-8.

¹⁸⁸ See, Manage Vendor Procedure.

¹⁸⁹ Manage Vendor Procedure, p. 4.

CONTRACTS

Restricting the companies that can be used for particular services by contractually engaging a particular company or a number of companies following an appropriate procurement process would be another way of minimising inappropriate payments.

Public Trustee has entered into panel contracts in relation to funerals, the sale of real estate and conveyancing and settlement services. Public Trustee has entered into contracts with a sole supplier for other services but has not done so for all services that are commonly used by Public Trustee's customers.

I am particularly concerned about the lack of contractual arrangements with the companies which clean properties and recover Public Trustee's customers' furniture and effects which are high risk activities. It is difficult to see how Public Trustee is discharging Public Trustee's legal obligations if corresponding obligations are not placed on service providers who have unsupervised access to the customers' personal effects.

Public Trustee should enter into written contracts with the service providers which Public Trustee's officers frequently engage on behalf of customers and should ensure that those contracts contain conditions which minimise the risk of corruption, misconduct and maladministration.

CODE OF CONDUCT

Public Trustee could, to some extent, deter inappropriate behaviour on the part of service providers by requiring each employee engaged to deliver services for a Public Trustee customer to act in accordance with a code of conduct developed by Public Trustee. The code of conduct could be provided to the service provider as part of the existing process for creating new vendors.

REAL ESTATE – CONFLICTS OF INTEREST

All officers are required to declare in writing any conflicts of interest (or perceived conflicts of interest) as part of their induction, at the commencement of each financial year and as situations arise.¹⁹⁰

In order to continuously manage conflict, these forms should be brought together in a register so as to be accessible to the executives, relevant managers and team leaders.

One area in which a conflict may arise is in relation to the sale of real estate.

In general terms, trustees are not permitted by law to purchase trust property unless:¹⁹¹

- the sale to the trustee is permitted by the trust instrument;
- all beneficiaries are of sound mind and have provided informed consent to the purchase and a fair price is paid by the trustee in an arm's length arrangement; or
- the court has approved the purchase in circumstances where the beneficiaries are unable to consent themselves.

The 'Employees Purchasing Estate Assets Standard' prohibits staff from bidding, tendering or otherwise offering to purchase an asset from an estate which is under Public Trustee's control.¹⁹² The only exception is if the staff

¹⁹⁰ Disclosure of Conflict of Interest Standard, pp. 2-3; Disclosure of Conflicts of Interest Procedure, p. 2.

¹⁹¹ GE Dal Pont and DRC Chalmers, *Equity and Trusts in Australia* (Lawbook Co, 4th ed, 2007) [22.95]-[22.110].

¹⁹² Employees Purchasing Estate Assets Standard, p. 2.

member has obtained approval from the Public Trustee or the General Manager, Customer Services, and if the person with whom Public Trustee is in the fiduciary relationship has consented to the purchase.¹⁹³

A risk with Public Trustee's current practice is that staff (or their family and friends) could gain an advantage in relation to the purchase of the asset from a customer's estate by virtue of the information which can be accessed from the hardcopy file and the electronic systems.

There are currently no special restrictions around the storage of valuations. In this regard, one officer informed us that *'...different people do different things. Some people store it on CTMS. I think always the hardcopy is on the file. As far as where people store [it] electronically – to be honest, there is probably 50 of us on the floor, but we probably do everything differently.'* Valuation documents on CTMS would be readily accessible by officers.

Real estate information held by Public Trustee may benefit an officer who is interested, either directly or indirectly, in purchasing real estate from a customer's estate. Access to that material, together with knowledge of the method by which the reserve price is determined, would also provide the officer with information of the likely reserve price. In today's competitive market, the officer could obtain a significant advantage.

A former employee of a Public Trustee in another State pleaded guilty to five counts of misconduct in relation to public office after accessing valuations and building inspection reports for properties owned by that Public Trustee's customers for her husband's benefit.¹⁹⁴ The former employee's husband apparently used the information to assist in deciding whether to bid on the properties.¹⁹⁵

I consider that the South Australian Public Trustee should implement more stringent procedures to limit access to sensitive material relevant to a real estate sale.

RESPONDING TO INSTRUCTIONS

A number of officers have raised concerns about Public Trustee's timeliness in acting upon instructions provided by customers.

One area of concern is the sale of shares. We were informed that on occasions, it can take up to a week from the receipt of the instructions for the sale of the shares to eventuate. A failure to act quickly where the share market falls would have an adverse effect upon the customer's entitlements.

Another area of concern is the timeliness of the reinvestment of the income made for Public Trustee's customers. It has been brought to our attention that on occasions there may be considerable delays in actioning requests.

Other examples of delay have also been brought to our attention. We were informed about a personal estate in which Public Trustee's failure to pay the customer's ambulance cover for approximately nine months resulted in a \$500 bill to the customer.

Public Trustee accepts that Public Trustee is liable to compensate an estate which, or a person who, has suffered a loss occasioned by Public Trustee's action or inaction.

¹⁹³ Employees Purchasing Estate Assets Standard, p. 2.

¹⁹⁴ Kay Dibben, *Public Trustee accountant walks free from court after pleading guilty to five counts of misconduct* (21 April 2016) The Courier Mail < <http://www.couriermail.com.au/news/queensland/public-trustee-accountant-walks-free-from-court-after-pleading-guilty-to-five-counts-of-misconduct/news-story/1f7d6a63b5a2a86218be0191ae9c97ff> >.

¹⁹⁵ Kay Dibben, *Public Trustee accountant walks free from court after pleading guilty to five counts of misconduct* (21 April 2016) The Courier Mail < <http://www.couriermail.com.au/news/queensland/public-trustee-accountant-walks-free-from-court-after-pleading-guilty-to-five-counts-of-misconduct/news-story/1f7d6a63b5a2a86218be0191ae9c97ff> >.

The staff that we interviewed showed themselves to be committed to serving their customers and for that reason I do not think the conduct is deliberate but it must be rectified.

Reducing the workload pressures may minimise delays and, therefore, reduce the risk of misconduct and maladministration. Improving training addressing the need for preserving estate assets and the investment of estate assets would assist.

RECOMMENDATIONS

Recommendation 16: That Public Trustee reviews the arrangements for the initial visit to customers' properties and the securing of estate assets to minimise the risk of corruption, misconduct and maladministration in public administration.

Recommendation 17: That Public Trustee ensures that any audit of the securities room is conducted by two persons who have not had any involvement with the receipting of security items or the storage of those items in the securities room.

Recommendation 18: That Public Trustee enters into written contracts with service providers which are frequently engaged on behalf of customers and ensures that the contracts contain appropriate conditions to uphold Public Trustee's legal obligations.

Recommendation 19: That Public Trustee implements more stringent procedures to limit access to information about real estate in customers' estates prior to its sale.

CONCLUSION

Public Trustee is a necessary institution for South Australians. Essentially, Public Trustee provides two services; the administration of trusts and deceased estates; and the administration of personal estates for persons who include the most vulnerable South Australians. Being a trustee Public Trustee must be trusted and Public Trustee can only be trusted if there is in place policies and procedures that minimise the risk of corruption, misconduct and maladministration. Because the institution is essential for the types of persons for whom Public Trustee provides services Public Trustee must be appropriately resourced so that Public Trustee can be trusted.

I have been made aware of the dedication and commitment of Public Trustee's executives and staff.

Since the Bartels incident, considerable work has been undertaken by Public Trustee to reduce the risk of corruption, misconduct and maladministration within the Public Trustee's office which was timely and appropriate but which has had the effect of increasing the workload of officers.

Many of the recommendations in this report would have the same effect but without the implementation of those recommendations, the risk of corruption, misconduct and maladministration will remain high. Accordingly Public Trustee will need adequate resourcing in order to effectively reduce that risk.

However resourcing is not the only theme of this report and will require a separate assessment by the Government of South Australia, having regard to the need to implement the recommendations. Public Trustee has identified in Appendix 2 some recommendations that could be complied with without requiring additional staff or funding.¹⁹⁶ It may be that, following further consideration, there are others that could also be complied with using existing staff and resources.

I am pleased that Public Trustee has accepted my recommendations and I urge Public Trustee to consider ways of implementing the recommendations at the earliest possible time.

I am very grateful for the assistance which was provided to me and my staff by the executives and staff of Public Trustee. Their willing cooperation was a further indication of their commitment and dedication.

¹⁹⁶ That is, recommendations 2, 9, 13 and 19.

APPENDICES

APPENDIX 1: DICTIONARY

AMS means the Asset Management System.

ASO means Administrative Services Stream which is a South Australian Public Sector classification.

Bartels incident means the arrest in May 2016 of a former officer of Public Trustee, Ms Alana Bartels, who subsequently pleaded guilty to seven counts of abuse of public office.

CBIS means the Core Business Information Systems.

CIT means the Customer Investment Tool.

Commissioner means the Independent Commissioner Against Corruption.

Corruption has the meaning in the *Independent Commissioner Against Corruption Act 2012* (SA) which, at the time of writing this report, was in the following terms:

- (1) **Corruption in public administration** means conduct that constitutes—
- (a) an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
 - (i) bribery or corruption of public officers;
 - (ii) threats or reprisals against public officers;
 - (iii) abuse of public office;
 - (iv) demanding or requiring benefit on basis of public office;
 - (v) offences relating to appointment to public office; or
 - (b) an offence against the *Public Sector (Honesty and Accountability) Act 1995* or the *Public Corporations Act 1993*, or an attempt to commit such an offence; or
 - (ba) an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence; or
 - (c) any other offence (including an offence against Part 5 (Offences of dishonesty) of the *Criminal Law Consolidation Act 1935*) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or
 - (d) any of the following in relation to an offence referred to in a preceding paragraph:
 - (i) aiding, abetting, counselling or procuring the commission of the offence;

- (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
- (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- (iv) conspiring with others to effect the commission of the offence.

(2) If the Commissioner suspects that an offence that is not corruption in public administration (an incidental offence) may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of corruption in public administration (whether or not the Commissioner has identified the nature of that corruption), then the incidental offence is, for so long only as the Commissioner so suspects, taken for the purposes of this Act to be corruption in public administration.

CTMS means the Contact and Task Management System, an electronic system in use at Public Trustee to record customer contact and for other purposes.

Customer includes clients and other persons to whom Public Trustee provides a direct service. For example, beneficiaries of a will for which Public Trustee is the executor.

EDGE means Electronic Document Generation for Estates, an electronic system in use at Public Trustee to generate template correspondence to be sent by officers.

EFT means electronic funds transfer.

Estate Services section means the section in Public Trustee comprised of the deceased estates teams, the trusts and long term estates team, the customer relationships team and the wills team.

Executives means the Public Trustee, the General Manager, Customer Services and the General Manager, Business and Client Financial Services.

ICAC Act means the *Independent Commissioner Against Corruption Act 2012* (SA).

ICT team means the Information Communications Technology team.

Maladministration has the meaning in the *Independent Commissioner Against Corruption Act 2012* (SA) which, at the time of writing this report, was in the following terms:

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

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

Misconduct has the meaning in the *Independent Commissioner Against Corruption Act 2012* (SA) which, at the time of writing this report, was in the following terms:

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.

Officer means any staff member of Public Trustee who is not a team leader, manager or executive.

Personal Estates customer means a living person for whom Public Trustee has been appointed to administer or manage the person's estate.

Personal Estates section means the section in Public Trustee which services Personal Estates customers.

Policy document means a policy, standard, procedure, system instruction or process map.

PSA means the *Public Sector Act 2009* (SA).

PS (H & A) Act means the *Public Sector (Honesty and Accountability) Act 1995* (SA).

PTA means the *Public Trustee Act 1995* (SA).

Public Trustee means the South Australian office of the Public Trustee.

SACAT means the South Australian Civil and Administrative Tribunal.

SARC Report means the report of the Statutory Authorities Review Committee's Inquiry into the Office of the Public Trustee which was tabled in Parliament on 1 December 2009.

Securities room means the designated secure room in Public Trustee's office.

Security item means a customer's valuable, key or document which is, or is to be, stored in Public Trustee's securities room, key safe or bank deposit box.

Senior Management Group means a formal group within Public Trustee comprising the executives, the managers and some team leaders and which serves as a management and leadership forum.

Staff means any staff member of Public Trustee who is not an executive.¹⁹⁷

Switchboard officer means an officer responsible for answering the telephone calls to Public Trustee's main telephone line.

¹⁹⁷ 'Staff' has been deliberately used to avoid disclosing the source of the information provided to us and to avoid identifying particular individuals.

The Public Trustee means the person appointed as the statutory officeholder under the *Public Trustee Act 1995* (SA).

Vendor means a person or company who has received, or is to receive, a payment from Public Trustee which may include customers of Public Trustee and external service providers.

APPENDIX 2: RESPONSE OF THE PUBLIC TRUSTEE



GPO Box 1338 Adelaide South Australia 5001 | T 08 8226 9200 | F 08 8226 9350
Country Freecall 1800 673 119 | www.publictrustee.sa.gov.au



Our Reference: PTCR17/066
Your Reference: A248025



CONFIDENTIAL

The Hon. Bruce Lander QC
Independent Commissioner Against Corruption
GPO Box 11066
ADELAIDE SA 5001

1 September 2017

Dear Commissioner

ICAC Draft Evaluation Report – Public Trustee Response

Please find attached the Public Trustee comments on the draft report provided to me on 17 August 2017.

Please contact me if you require any further information.

Debra Contala
Public Trustee

Enc

**Response by the Public Trustee to the Evaluation by the Independent Commissioner
Against Corruption of the Practices, Policies and Procedures of the Public Trustee**

The Evaluation by the Independent Commissioner Against Corruption of the Practices, Policies and Procedures of the Public Trustee, has found that management and staff of the organisation are dedicated to the service of customers and have been working continuously to improve that service.

We have made a number of significant changes since the Statutory Authorities Review Committee Report of 2009 and these improvements have been acknowledged and discussed in some detail in the Evaluation report.

The Evaluation findings acknowledge that Public Trustee faces increases in work from a number of sources including case complexity. Some additional staff have been recruited to cover this additional work, but to date, funding for this has been from within existing resources.

In line with the expenditure reductions required of most government agencies, Public Trustee has made ongoing annual operating savings of \$1.5 million – while delivering tax equivalent payments and a dividend to Government.

In 2016, all the staff of Public Trustee were shocked and saddened when Ms Alana Bartels, a former staff member of the deceased estates section, was charged with abuse of public office. The impact of the fraud has been difficult for everybody at Public Trustee.

Following Ms Bartel's arrest, Public Trustee responded quickly and made a number of necessary changes, some of these changes are discussed in the Evaluation. The aim of the changes was to immediately reduce the risk of any further corruption, misconduct or maladministration. The Commissioner's Evaluation has confirmed this work was timely and appropriate.

I agree that, as the Evaluation has found, there is more work to do. The Evaluation makes a number of wide-ranging recommendations for business transformation and new ICT systems which have resource implications for Government.

The business transformation and investment required is considerable but essential both in terms of customer service and risk reduction. Significant work has been done by Public Trustee on business cases and project scoping, but funding has not been available to date.

The Evaluation has found that the workload of staff and internal communications are areas that need to be addressed. In order to achieve this, we are working to resolve the current industrial dispute at Public Trustee as a critical first step to improved workplace harmony.

Staff consultation is key to any successful change process and will be a priority in the process of implementing the recommendations of the Evaluation. It represents an opportunity for better open consultation and staff engagement.

Some recommendations directly articulate the need for additional staff. Successful implementation of any of the Evaluation recommendations, however, will necessitate input from current experienced staff that, particularly in the customer services areas of Public Trustee, carry ongoing customer caseloads.

To meaningfully engage current staff in business change projects, arrangements will be required to relieve some or all of their direct caseload work. Project development and management resources will also be required to successfully manage the business transformation process.

I support all of the Evaluation recommendations and attached is a brief response to each one.

I have not been able to engage with the Attorney-General and the Government on the confidential draft Evaluation report. Accordingly, the views below about the Evaluation reflect my opinion only.

The changes that are proposed will require significant capital funding for new systems and ongoing funding to modernise the business while ensuring service delivery levels are maintained. Accordingly, implementation of the recommendations will require consideration by the Government.

As the Commissioner has recognised in this Evaluation Report, Public Trustee provides essential services to its customers and the people of South Australia and we are all committed to ensuring we fulfil these functions to the highest possible standard.

I wish to also acknowledge the hard work and dedication of the management and staff of Public Trustee.

Debra Contala
Public Trustee

SENSITIVE: PROTECTED

2

ORGANISATIONAL STRUCTURE

Recommendation 1: That Public Trustee reviews managerial and team structures to achieve:

- **greater sharing of functions of officers by implementing shared caseloads or dividing responsibility by work streams or processes;**
- **more extensive knowledge of officers' files by team leaders; and**
- **an increased capacity for auditing, for example, through the creation of a dedicated audit role.**

Public Trustee agrees with the recommendation.

The recommendation to divide responsibility by work streams or processes across all customer services areas is preferred to the suggestion of a shared caseload approach to estate management which may lead to uncertainty over task responsibilities and potential confusion for customers.

This reform will improve controls and represents a major change to work practices for Estate Services in Public Trustee.

Public Trustee agrees with the recommendations for more extensive knowledge of files by team leaders, the appointment of additional specialist training officers and a new audit function.

These changes will have resource implications to ensure service delivery levels are maintained.

Recommendation 2: That Public Trustee provides greater support for staff by the executives:

- **being more visible and accessible;**
- **increasing their understanding of the work performed by staff and the time it takes to complete certain tasks;**
- **listening to staff and engaging in genuine consultation;**
- **understanding and evaluating the impact of decisions upon staff workloads;**
- **communicating the reasons for decisions; and**
- **positively acknowledging and recognising staff for their work.**

Public Trustee agrees that improving internal communications and the opportunity for open discussion processes between staff and all levels of management is a priority.

Following Ms Bartel's arrest in 2016, Public Trustee responded quickly and made a number of necessary control enhancements to immediately reduce the risk of further corruption, misconduct or maladministration. The urgency of these changes, combined with the lack of information that could be provided to staff about Ms Bartel's crimes may have resulted in the view by some employees of a lack of consultation.

Whilst the Evaluation's scope did not cover the current industrial dispute about workload and flexitime at Public Trustee, the current industrial climate has relevance to Recommendation 2. The significant business reforms proposed in the Evaluation cannot commence until the current industrial dispute is resolved. A new consultative process has commenced to achieve resolution. The process will also result in an ongoing open consultative forum for the staff of Public Trustee.

The Attorney-General's Department has implemented an employee wellbeing program in a number of its business units. This is a structured process for identifying and implementing strategies to support and build employee wellbeing. It has been well received as it has a strong focus on staff communication and direct participation by employees. Public Trustee is proceeding to implement the program with the aim of building a constructive and positive work environment.

POLICIES AND PROCEDURES

Recommendation 3: That, in the course of conducting the two yearly reviews of policy documents, Public Trustee makes the documents more readable by removing duplication and by using consistent language.

Recommendation 4: That Public Trustee organises the policy documents on Public Trustee's intranet so that they can be browsed by topic or searched using the existing search function.

Recommendation 5: That, unless the cost of creating and maintaining hyperlinks is prohibitive, Public Trustee inserts hyperlinks to forms, templates and policy documents within the policy documents that are available on Public Trustee's intranet.

Recommendation 6: That Public Trustee conducts random checks or an audit of key controls and high risk areas.

Public Trustee agrees with the recommendations.

Additional resources will need to be engaged by Public Trustee to assist experienced staff from all areas of Public Trustee to lead the process and to ensure the practicality of the revised policy documents. Given the current caseloads levels, staff will need to be temporarily replaced in the customer services branches while they are working on the project.

Given the number of documents to be reviewed this will be an extensive project.

The establishment of increased audit capability is supported, consistent with Recommendation 1.

Additional resources will be needed to implement these recommendations and ensure that service delivery levels are maintained.

ELECTRONIC SYSTEMS

Recommendation 7: That, as and when integrated electronic systems for core business functions become available, Public Trustee changes the practices with a view to:

- reducing duplicated data entry;
- reducing the use of paper;
- recording approvals;
- allowing for workflows;
- preserving crucial approvals, invoices and vouchers presented for payment in a form which limits and monitors subsequent editing;
- managing contracts in a proper and timely fashion;
- storing all information relevant to a file to create a single source of truth;
- restricting and logging access to and editing of sensitive information; and
- protecting against cyber-threats

Recommendation 8: That until the above electronic systems can be funded and implemented Public Trustee maximises the use of Public Trustee's existing electronic systems and ensures consistent use of them.

Public Trustee agrees with the recommendations noting they will have resource implications.

Business transformation is needed for improved business efficiency, effectiveness and information security. Electronic workflow systems will standardise many business processes and reduce duplication of data entry.

Significant work has been done by Public Trustee on business cases and project scoping, but funding has not been provided to date.

There is no policy to not patch our systems. Patches are generally not available given the age of the system. When patches are released they are assessed and applied.

Contemporary, integrated systems will improve the security of information.

Given the technical obsolescence of the current core business systems there are risks to carrying out customisations to improve functionality however we are currently examining the viability of possible enhancements to existing electronic systems.

Recommendation 9: That Public Trustee reviews present practices in relation to the storing of confidential identity information to reduce the risk of corruption, misconduct and maladministration in public administration in relation to the potential misuse of that information.

Public Trustee agrees with the recommendation. The organisation has strengthened the security of personal identity document storage however a further review of practices is prudent.

SENSITIVE: PROTECTED

5

TRAINING

Recommendation 10: That Public Trustee ensures that relevant training is provided to all staff who start a new role, regardless of whether they are new to Public Trustee or have moved from another role within Public Trustee.

Recommendation 11: That Public Trustee reviews the manner in which Public Trustee delivers training to staff to ensure consistency.

Public Trustee agrees with these recommendations noting implementation will have resource implications to ensure that service delivery levels are maintained.

As the recommendation also includes seeks more staff time in training prior to the commencement of case work, more relieving staff will be required for implementation.

SERVING THE COMMUNITY

Recommendation 12: That Public Trustee reviews telephone communication practices with a view to increasing compliance with Public Trustee's Customer Service Standard.

Public Trustee agrees with the recommendation that a call centre to handle telephone calls be explored. Given the need to have customer information to hand when dealing with calls, this reform should be considered as part of the business changes made through the implementation of Recommendation 7: Electronic Systems.

Recommendation 13: That Public Trustee makes direct contact with Public Trustee's new Personal Estates customers as soon as possible after appointment.

Public Trustee agrees with the recommendation.

Recommendation 14: That Public Trustee takes active steps to foster a culture of recognition and reward rather than the existing culture of scrutiny and blame.

Fundamental to the role of trustee is the ethos of having the customer at the centre of everything we do. The customer, the Minister, the Ombudsman and ICAC have a justified expectation that management of any public sector organisation will take a proactive approach when dealing with community concerns and complaints. Unfortunately, this can at times be seen by some staff as a challenge. I do not agree there is culture of scrutiny and blame but I accept some staff can find dealing with management about complaint matters challenging.

The appointment of an additional officer with the appropriate skills to undertake complaints investigation and oversee a response process on behalf of the organisation would provide a valuable resource to deal with what can be complex matters. This arrangement is consistent with that which exists in many other government agencies and is justified given the nature and complexity of the complaints which come to Public Trustee.

This approach is likely to go some way to alleviating staff concerns and will provide them with better support to respond to complaints. The creation of such a role in Public Trustee will have resource implications to ensure that service delivery levels are maintained.

The managers of the customer services branches in Public Trustee have for some time regularly communicated with their branches, via email, covering a range of topics. These often include reminders to all staff about work practices. In this way we are able to share knowledge in a positive and error prevention approach. More strategies like this will be developed.

WORKLOAD AND PERFORMANCE

Recommendation 15: That Public Trustee changes existing practices in relation to allocating files within the Personal Estates and Estate Services sections to sufficiently take into account the complexity of the file and the current workloads of the officers who may be allocated the file.

Public Trustee agrees with the recommendation which will have resource implications. This will be a significant project requiring staff input, technology and change management.

Experienced staff from all areas of Public Trustee will need to be involved in the change process to ensure the practicality of the revised procedures. Given the current caseloads these staff will need to be temporarily replaced in the customer services branches while they are working on the project.

PROPERTY

Recommendation 16: That Public Trustee reviews the arrangements for the initial visit to customers' properties and the securing of estate assets to minimise the risk of corruption, misconduct and maladministration in public administration.

Public Trustee agrees with the recommendation; however, it could not be implemented from within existing resources.

The project will require staff input, technology changes and change management.

If implemented in the manner suggested in the Evaluation report, the proposed changes in practice will result in an increase in cost to Public Trustee customers that require this service.

Recommendation 17: That Public Trustee ensures that any audit of the securities room is conducted by two persons who have not had any involvement with the receipting of security items or the storage of those items in the securities room.

Public Trustee agrees with the recommendation.

Recommendation 1 proposes the creation of a new audit function for Public Trustee. Subject to funding, this function would be well placed to implement this recommendation.

Recommendation 18: That Public Trustee enters into written contracts with service providers which are frequently engaged on behalf of customers and ensures that the contracts contain appropriate conditions to uphold Public Trustee's legal obligations.

Public Trustee agrees with the recommendation. Additional specialist procurement capacity will be needed by Public Trustee which is likely to have resource implications.

SENSITIVE: PROTECTED

7

Recommendation 19: That Public Trustee implements more stringent procedures to limit access to information about real estate in customers' estates prior to its sale.

Public Trustee agrees with the recommendation.

It is important to note the Evaluation has made no finding that customer real estate information has been inappropriately accessed by any employee of Public Trustee.

Access to information about property valuations and the reserve prices for real estate auctions is already restricted.

Public Trustee agrees that there is opportunity to improve the control and co-ordination of the property function, including consideration of centralising some of these tasks.

SENSITIVE: PROTECTED

8



Level 1, 55 Currie Street
Adelaide SA 5000
(08) 8463 5173
GPO Box 11066
Adelaide SA 5001

www.icac.sa.gov.au

