PUTTING IT RIGHT

A report on the implementation of the Ombudsman's recommendations by agencies for the period 1 July 2009 to 31 March 2013

June 2013

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LEGISLATIVE COUNCIL
Parliament House
Adelaide

The Honourable Speaker
HOUSE OF ASSEMBLY
Parliament House
Adelaide

Pursuant to section 26 of the *Ombudsman Act 1972*, I present to the Parliament a report on the implementation of my recommendations for administrative change to agencies under section 25(2) of the *Ombudsman Act 1972*.

Richard Bingham
SA OMBUDSMAN

June 2013

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CONTENTS

FOREWORD

This report chronicles the level of response by state agencies and local government councils to recommendations for administrative improvement made by me under section 25(2) of the *Ombudsman Act 1972*. It covers the period 1 July 2009 to 31 March 2013.

It is sometimes said that reports about government can sit on the shelf and collect dust, and that their recommendations can be largely ignored. The purpose of this report is to ensure that this is not the fate of Ombudsman SA recommendations. This report represents an important accountability measure, not only for the agencies within my jurisdiction, but also for my office.

As the reader will see, in most cases the state agency or council under investigation has agreed to put things right. Willingness to learn from mistakes is essential to improvement of governance and accountability standards in the public sector.

Richard Bingham
SA OMBUDSMAN

EXECUTIVE SUMMARY

Background

As Ombudsman, my role is to independently investigate administrative acts of agencies within the jurisdiction of the *Ombudsman Act 1972*.[1] I have jurisdiction to investigate over more than 170 agencies, including professional boards, councils, universities, government departments, schools and prisons. I also undertake investigations referred by the Parliament; and I conduct administrative audits and investigations on the Ombudsman's 'own initiative' to encourage capacity building and administrative improvement.

The primary purpose of an investigation is to determine if the agency has fallen into administrative error under section 25(1) of the Ombudsman Act, and if so, to make necessary recommendations to rectify the error under section 25(2) of the Act.

In accordance with section 25(4) of the Ombudsman Act, my practice is to request that the agency concerned report to me by a stipulated date on what steps it has taken to give effect to my recommendations. If no steps have been taken, I request its reason(s) for the agency's inaction.

This report chronicles the level of response by agencies to their implementation of my recommendations. The report covers the period 1 July 2009 to 31 March 2013.

The results

During this period, I made 230 recommendations across the 86 investigation reports where I found administrative error. It is encouraging that 224, or over 97% of my recommendations, were accepted across all agencies. Of the six recommendations not accepted, three concerned one report which I forwarded to the Premier.

Of the 224 recommendations, 186 have been implemented as at the date of this report. This represents an implementation rate of 83%. Some of the remaining recommendations proposed undertakings that were to be implemented over a period of time. Others related to consideration of legislative change by the government, which has not yet reached a final outcome. For example, 20 of the 38 recommendations 'pending action' are concerned with proposed amendments to the *Local Government Act 1999*.

The public interest

Under section 26 of the Ombudsman Act, if I consider it to be in the public interest or the interests of an agency, I can publish a report on an investigation in such manner as I think fit. As a matter of practice, I exercise this discretion to table a report in the Parliament; to publish it on the Ombudsman SA website; or to include case summaries in my Annual Report.

Factors which I take into consideration in deciding the public interest include whether the investigation reveals major error or systemic failure; the broader community being aware of the process and the results of an investigation; and the need to respect the privacy of the complainant.

In the case of this report, I consider the public interest is served by publishing an overview of the 86 reports where I have found administrative error, and a summary of the actions taken by agencies to put right the mistakes made.

[1] Section 3 of the *Ombudsman Act 1972* defines the term 'agency' and includes state government departments, statutory authorities, local government councils and public universities.

In the relevant period, I published four major investigation reports. All are included in this report. They are:

- **Unreasonable process regarding St Clair land swap**. A key finding was that the community had reason to be concerned about some City Of Charles Sturt councillors' potential conflicts of interest in the council's decision to revoke the community status of the St Clair land; and that local government legislation fails to match community expectations and capture these conflicts.

- **Unreasonable delays in imposing licence disqualification.** A key finding was that the out-dated computing system operated by the Courts Administration Authority failed to inform the Registrar of Motor Vehicles of offences resulting in a delay in issuing disqualification notices.

- **Restraining and shackling of prisoners in hospital.** A key finding was that the Department for Correctional Services' acts of restraining prisoners and using force that was not reasonably necessary in the circumstances of particular cases, exceeded power under section 86 of the *Correctional Services Act 1982*.

- **Unreasonable denial of exemption from waste collection service charge.** A key finding was that the District Council of Yorke Peninsula had unreasonably imposed and enforced a rural area service charge for a service which the particular ratepayer did not use.

I also published three reports from administrative audits which I conducted in areas where my office receives high numbers of complaints. All are included in this report. They are:

- **An audit of complaint handling in 12 South Australian councils.** A key finding was that the standard of complaint handling policy and procedure documents across audited councils was inconsistent, and many councils struggled to distinguish between complaints and requests for service.

- **An audit of prisoner complaint handling in the South Australian Department for Correctional Services.** A key finding was that the department's complaint handling standards and procedures did not meet the minimum benchmarks set by the *Standard Guidelines for Corrections in Australia* and the Australian complaint handling standard.

- **An audit of the use of meeting confidentiality provisions of the *Local Government Act 1999* in 12 South Australian councils.** A key finding was that councils were overusing meeting and document confidentiality orders, and providing insufficient details of their reasons for excluding the public from meetings.

Putting it Right documents the details of agencies' implementation of my recommendations after investigation. The case studies demonstrate a range of agencies' administrative errors, such as: the imposition of unreasonable charges; unreasonable handling of complaints; unreasonable treatment of prisoners and unlawful failures to comply with legislative requirements. The report shows that in most cases the identified errors have been appropriately addressed.

PART 1

THE OMBUDSMAN'S JURISDICTION

1.1 Ombudsman's jurisdiction and approach to investigations

1. As Ombudsman, I have a responsibility to scrutinise the administrative decisions made in the public sector which impact on the life of individuals and the community. I am required to look at both individual conduct and systemic issues.

2. My role is to independently inquire into or investigate administrative acts of government departments, statutory authorities or local government councils.

3. I have jurisdiction over more than 170 public sector agencies, including professional boards, universities, government schools and prisons. My office can also investigate private organisations contracted to perform functions for government agencies. In addition, my jurisdiction extends to complaints bodies such as the Employee Ombudsman, the Health and Community Services Complaints Commissioner and the WorkCover Ombudsman.

4. Certain agencies are outside the Ombudsman's jurisdiction. I do not have the power to investigate actions and decisions of:
   - the South Australian Police
   - employers – which affect their employees
   - private individuals, businesses or companies
   - Commonwealth or interstate government agencies
   - Government Ministers and Cabinet, courts and judges
   - legal advisors to the Crown.

5. The majority of my enquiries and investigations are prompted by members of the public registering a complaint against a state government department, council or other authority.

6. I also undertake investigations referred by the Parliament; and I conduct administrative audits and investigations on the Ombudsman's 'own initiative' to encourage capacity building and administrative improvement.

7. The primary purpose of an investigation is to determine if the agency has fallen into administrative error.

8. If I decide to investigate a complaint, my office advises the agency and the complainant accordingly. As part of this process, we identify the issues raised by the complainant along with any other issues that we consider relevant. I can choose to conduct either a preliminary or full investigation. If I decide not to investigate, the complainant is advised of this, along with the reasons for my decision.

9. My investigation reports speak for themselves. They outline the issues under investigation, and they set out the evidence which forms the basis for my findings and recommendations. The parties are given the opportunity to provide a response which is then reflected in my final report. I may also allow individuals to be legally represented during an investigation.

10. Ombudsman investigations are conducted in private; and my office can only disclose information or make a statement about an investigation in accordance with confidentiality provisions in section 22 of the Ombudsman Act.

1.2 Making a finding of administrative error

11. I make recommendations when I am satisfied, on the evidence available to me, that an agency has made an administrative error which should be remedied.[2]

12. I generally summarise these findings as whether the administrative act was unlawful, unreasonable or wrong.[3] A detailed list of potential findings in section 25(1) of the Ombudsman Act reflects basic administrative law principles.

13. The potential findings are:
    - an act was contrary to the law (The exception here is where my office does investigate if criminal conduct may have been revealed.) [4]
    - an act was unreasonable, unjust, oppressive, or improperly discriminatory
    - an act was in accordance with an unreasonable, unjust, oppressive or improperly discriminatory law or practice
    - a discretionary act was done for an improper purpose, or based on irrelevant ground
    - reasons were not given for a decision
    - an act was based wholly or in part on a mistake of law or fact
    - an act was wrong.

1.3 Proceedings on the completion of an investigation

14. In the case of an investigation where I make a finding of administrative error, I may recommend redress such as referring the matter back to the agency for further consideration; specific mitigating action be undertaken; varying a practice; amendment to the law; or that the agency give reasons for the administrative act.

15. My findings from an investigation must be reported to the principal officer of the agency, along with the reasons for my opinion and any recommendation I think appropriate. Sections 25(3) – (6) of the Ombudsman Act stipulate:

> (3) The Ombudsman must send a copy of any report or recommendation made under subsection (2) to the responsible Minister and, in the case of a report or recommendation relating to the sheriff, to the State Courts Administration Council.
>
> (4) The principal officer of an agency in relation to which a recommendation is made under subsection (2) must, at the request of the Ombudsman, report to the Ombudsman within a time allowed in the request on what steps have been taken to give effect to the recommendation and, if no such steps have been taken, the reason for the inaction.
>
> (5) If it appears to the Ombudsman that appropriate steps have not been taken to give effect to a recommendation made under this section, the Ombudsman may make a report on the matter (containing a copy of the earlier report and the recommendation) to the Premier.
>
> (6) Where the Ombudsman reports to the Premier under subsection (5), the Ombudsman may forward copies of the report to the Speaker of the House of Assembly and the President of the Legislative Council with a request that they be laid before their respective Houses.

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2 On some occasions I have also chosen not to make a formal recommendation because I have been satisfied that the agency has taken appropriate remedial action during the course of the investigation.

3 Section 25(1) of the Ombudsman Act.

4 Currently my obligations under section 5(5) of the *Whistleblowers Protection Act 1993* mandate referral of possible fraud or corruption to the Anti-Corruption Branch of SAPOL. In the near future this obligation will be extended to a referral to the Independent Commission Against Corruption (ICAC).

PART 2

MAKING RECOMMENDATIONS

2.1 Acceptance and implementation of my recommendations

16. Although I make recommendations, as Ombudsman I have no power to compel agencies to implement or comply with them, nor would this be appropriate. It is for the Parliament and the Executive, or the elected members of a council, to decide what actions they will take on the basis of my findings and recommendations.

17. My practice is to request that the agency concerned report to me by a stipulated date on what steps have been taken to give effect to my recommendations. If no steps have been taken, I request the reason(s) for the inaction.[5]

18. I am then able to make a report to the Premier on the agency's lack of response to my recommendations; and forward copies of my report to the Speaker of the House of Assembly and the President of the Legislative Council to request that the report be tabled.[6] I have chosen to make a report to the Premier only once in the course of the 86 investigations documented below.

19. In total, I made 230 recommendations across the 86 investigation reports issued between July 2009 and March 2013 where I found administrative error. It is encouraging that 224 or over 97% of my recommendations were accepted across all agencies. Of the six recommendations not accepted, three concerned one report which I forwarded to the Premier.

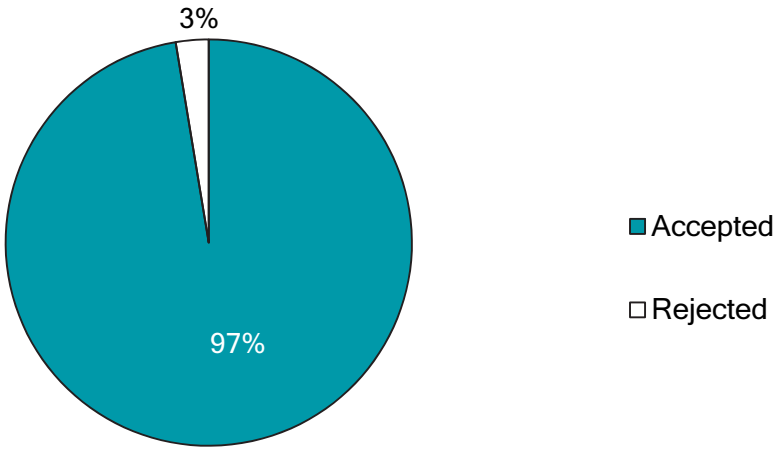


Figure 1: Recommendations accepted by all agencies

20. Of the 224 recommendations accepted by agencies, 186 have been implemented as at the date of this report. This represents an implementation rate of 83%. Some of the remaining recommendations proposed undertakings that were to be implemented over a period of time. Others related to consideration of legislative change which requires government and parliamentary consideration.

[5] Section 25(4) of the Ombudsman Act.
[6] Section 25(5) and (6) of the Ombudsman Act.

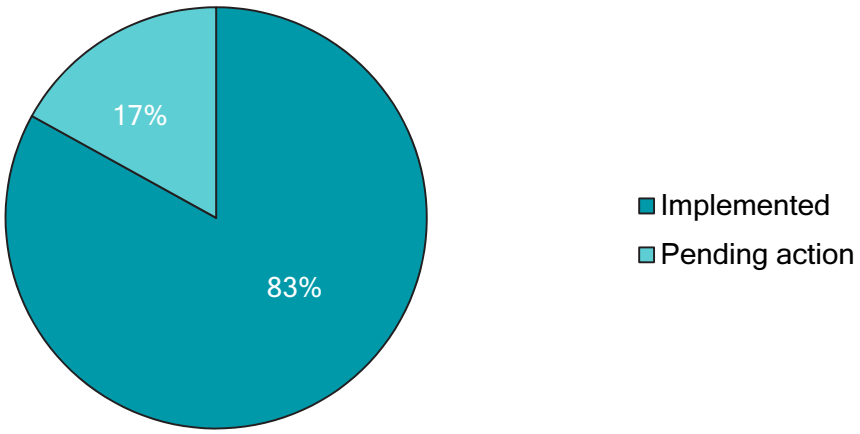


Figure 2: Recommendations implemented and recommendations pending action

21. Of the 186 recommendations implemented by agencies to date, 91 have been addressed by state agencies, 137 by local government councils and 2 by universities. Figure 3 represents a breakdown of the recommendations 'pending action' by sector. As at June 2013, there are 24 recommendations outstanding from state agencies and 14 from local government councils. As noted above, 20 of the 38 recommendations 'pending action' are proposals for the state government to consider amendments to the Local Government Act.

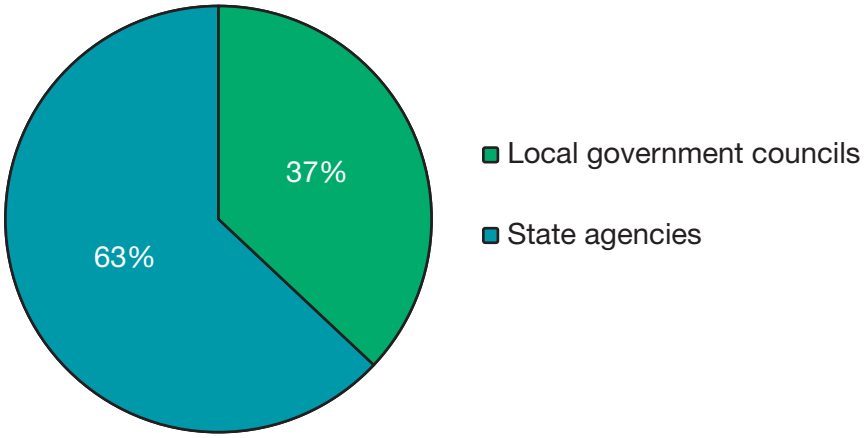


Figure 3: Recommendations 'pending action' by sector

22. In most of my investigation reports summarised below, my recommendations were supported or accepted by the agencies concerned. In the main, the action taken has been prompt and appropriate with confirmation made to my office of recommendation implementation details. This is an encouraging response by the agencies concerned.

23. For some of the major reports tabled in the Parliament, implementation of the recommendations has taken a period of time. In the case of City of Charles Sturt – St Clair land swap report, the Restraining and Shackling of Prisoners in Hospitals report and the Audit of Prisoner Complaint Handling in the Department for Correctional Services, I have had ongoing engagement with the agencies concerned. This has usually involved discussion of progress reports on actions taken. In some cases, a formal dialogue on the specifics of planned remedial action has occurred between the agency and my office as part of the implementation process.

2.2 Agency monitoring of my recommendations

24. My audit identified many different approaches which agencies took to monitoring and tracking progress and changes relevant to my recommendations. Most did not have in place a systematic framework or approach to monitor the progress of implementation and evaluate its impact.

25. In some cases, this resulted in a 'disconnect' between the principal officer of the agency and the staff who were required to give effect to the recommendations. In one of my reports to the Parliament, the agency involved made an early response to the recommendations indicating support and identifying an action plan for implementation over a period of time. However, the 'action plan' did not progress until my office made inquiries about progress after 12 months.

26. Another agency has taken quite a different approach by outlining a detailed implementation plan and engaging my office in a series of rolling reports and consultations over implementation details. In so doing, the agency has taken necessary action to remedy problem areas and guard against the recurrence of systemic and cultural problems which gave rise to the original investigation. This is good practice in public sector management.

27. In an ideal world, follow-up enquiries from my office should not be necessary to ensure agencies deliver on the commitments they make regarding implementation of my recommendations. However, I consider it is in the public interest for my office and the agencies involved to be accountable for maximising outcomes from recommendations made under section 25 of the Ombudsman Act. To that end, I have established a Recommendations Implementation Team in my office to follow-up on the results of my investigations.

2.3 Future reports on my recommendations

28. My focus in this report is on the evidence agencies have provided about changes made in response to my investigation recommendations. With a small Recommendations Implementation Team now in place, it is my intention to inform the Parliament and the public on an ongoing basis of outcomes from future investigations where I find administrative error. This will usually take the form of a dedicated section of the Ombudsman SA Annual Report.

29. It is noteworthy that in 2011-2012, there were 9 690 approaches made to my office resulting in 3 457 complaints within my jurisdiction.[7] As complaint and investigation numbers rise, I anticipate an ongoing increase in the effort required to monitor and report on outcomes from my investigations. My office will also be considering further ways of measuring and highlighting the continuous improvement that has occurred as a result of agency implementation of my recommendations.

[7] I expect that number to exceed 12,000 approaches in the 2012-2013 year.

PART 3

REPORTS TABLED IN THE PARLIAMENT

1. City of Charles Sturt: - Unreasonable process regarding St Clair land swap. Report date: 8 November 2011

Background

In December 2009, the City of Charles Sturt revoked the community status of land in St Clair Reserve under the *Local Government Act 1999*, in order to swap this land with land from the former Sheridan industrial site owned by the state government's property arm, the (former) Land Management Corporation. This swap enabled the council and the government to deliver on a significant target in the new planning strategy set out in the 30 year Plan for Greater Adelaide, through the establishment of one of the first of 14 proposed transit oriented developments (**TOD**) near the Woodville Railway Station adjacent to the St Clair Reserve.

The Land Management Corporation had earlier purchased the Sheridan land from developers for $15.8m (exclusive of GST) with the intention of achieving the land swap and establishing the TOD.

Some sectors of the council's community expressed concern about the influence of the ALP (in particular the Member for Croydon) in the council's revocation decision, as 12 out of 17 of its councillors were members of the ALP and six were employed within state government. Concerns were also raised about the council's lack of genuine community consultation about the revocation and its inattentiveness to prudential risks about conflict of interest.

The matter was referred to me for investigation by the Legislative Council; and I resolved to use my own initiative investigation powers under the Ombudsman Act. My investigation revealed that:

- the community had reason to be concerned about some councillors' potential conflicts of interest in the revocation decision, including those of state government employees and electorate officers of state MPs
- local government legislation fails to match community expectations and capture these conflicts
- some councillors had minimal understanding or appreciation of conflict of interest, and the public officer nature of their roles and responsibilities and what that entails
- there was no evidence that the Member for Croydon exerted improper influence on any councillor and no councillor was wrongly influenced by the views of the Member for Croydon, in relation to the land swap. However, there was evidence that some councillors may have breached the council's code of conduct in how they dealt with some issues arising from the land swap
- although the council followed legislative requirements, it appeared reluctant to engage fully and openly with the community on the land swap
- the council wrongly moved into confidence on each occasion it considered the land swap issue up to the consultation period, and wrongly withheld some information from public access
- the council properly obtained a prudential report, but there were some shortcomings in its preparation, and it did not consider governance risks.

This was an important example of the implementation of TODs under the state government's 30 year plan. It represented an opportunity for state and local government to learn valuable lessons about the need to be open and consultative with the community from the beginning of such large projects.

Recommendations

The final report made 21 recommendations in total. Eight of these were specific to the City of Charles Sturt. Another 13 were recommendations for amendment of the *Local Government Act 1999*.

Of those directed to the council, five recommendations focussed on the council's need for improved management of confidentiality of meetings and documents under sections 90 and 91 of the Local Government Act.

Another three recommendations concerned the council's need for improved prudential management policies, practices and procedures under section 48 of the Local Government Act.

The primary focus of the 13 recommendations for amendment of the Local Government Act aimed to prevent potential conflicts of interest involving elected members. In summary:

- I proposed that elected members should be compelled to amend their Register of Interests in a timely manner, and that there be an objective test to determine whether there is a conflict of interest

- I proposed a review of the rules governing electorate office staff employed under the *Public Sector Act 2009* and also serving as elected council officers

- I proposed a single code of conduct with coercive sanctions, as well as better training for elected members to understand their obligations as public officers.

Implementation

All of the eight recommendations I made to the City of Charles Sturt were accepted by the council, with one qualification. This related to the proposal that the council should consider engaging an independent party to prepare a prudential report for larger projects which have involved significant prior contribution by council staff.

More recently, the council has advised me that it has developed and implemented a policy which requires the independence of prudential report authors, and it has outsourced this work routinely.

On the matter of preparing valid meeting confidentiality orders, the council has advised me of changes to its Code of Practice for Meeting Procedures that now incorporates inclusion of reasons for the making of an order. The council has also planned information and training sessions for staff and elected members on the use of an enhanced template to prepare recommendations for confidentiality.

With regard to the 13 recommendations for amendments to the Local Government Act, I have been advised by the Office for State/Local Government Relations that 12 of these have been included for consideration as part of the Minister for State/Local Government Relations' legislative program for 2013.

The remaining recommendation, Recommendation 6, proposed that officers employed under section 72 of the Public Sector Act should be ineligible to stand for council elections. It was referred to the Under Treasurer for consideration. His office advised me that, after taking advice from the Crown Solicitor, the government did not support the recommendation.

The Crown Solicitor's opinion was that electorate office staff do not have a conflict of interest merely because they are elected members of a local council. Whilst agreeing that an actual or potential conflict of interest may arise when particular issues are being dealt with either in the electorate office or the council, the Crown Solicitor believed the situation should be declared and managed proactively and transparently by the council.

Regarding Recommendation 11 on code of conduct matters, I note that the Attorney General has confirmed the government's intention to implement a single code of conduct for elected members with coercive sanctions for breaches in amendments to sections 63 and 263B of the Local Government Act.

2. Courts Administration Authority - Unreasonable delays in imposing licence disqualification. Report date: 6 July 2012

Background

I commenced the investigation following complaints by individual licence holders in and after August 2011. A total of 113 complaints were eventually received. Each complained about the unfairness caused by the issuing of disqualification notices by the Registrar of Motor Vehicles (**the Registrar**) some considerable period of time after the commission of an offence/s.

I investigated the handling of the matter by the Courts Administration Authority (**CAA**) and its implications for the Registrar within the Department of Transport, Infrastructure and Energy (**DPTI** as it then was - now the Department of Planning, Transport and Infrastructure).

The evidence demonstrated that in many cases, the delay in issuing disqualification notices by the Registrar impacted more on individual licence holders than it would have if the sanction had been imposed within a reasonable time after the matter was dealt with by the court. I was advised that in the time between the commission of the offence and the commencement of the disqualification, some licence holders had secured employment, taken out mortgages or progressed to different licence categories. A number of complainants informed me that a loss of licence resulted in a loss of their employment.

The CAA operated a legacy computer system that was required to perform a myriad of functions. A programming change resulted in an unidentified error that contributed to the delay. My principal finding from the investigation was that in not establishing internal controls to monitor the transfer of data to the Registrar, the CAA acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

I found that in issuing disqualification notices, the Registrar complied with the law. However, I also found that the Registrar's failure to have in place a risk mitigation strategy to ensure the integrity of data upon which the Registrar relied to fulfil a statutory duty, was also wrong.

Recommendations

The final report made one recommendation, that:

> the Courts Administration Authority and the Department of Transport jointly consider what action should be taken to prevent a recurrence of the failure in data transmission, and the failure of internal controls in both the Authority and the department. This action should include appropriate governance arrangements to manage inter agency communication, including enhancing systems interfaces; and should include effective internal controls in both agencies to detect any shortcomings in data transmission.

Implementation

During my investigation, the Registrar took the initiative to put in place a procedure whereby people who were directly affected by this issue could apply for reimbursement of out of pocket expenses. I supported this course of action.

Following release of the investigation final report, the agencies advised me that they had taken the following action:

- established an interagency governance group comprising representatives of the CAA, DPTI and SA Police to oversee the agreed actions resulting from the Ombudsman's recommendations and to provide oversight of interagency communications and data transfers upon implementation of new arrangements, systems and controls.

- established a technical operations group between the three agencies to develop an interagency agreement to clarify and support the lawful and efficient interagency transfer, management and auditing of information, in alignment with the legislative framework.

- established an additional technical operations group between the three agencies to develop and implement procedures to improve, monitor and audit interagency data transfers.

The interagency governance and technical work is ongoing. Regular updates are provided to my office. In addition, the Minister for Transport and Infrastructure acted on 11 July 2012 to introduce an amendment to the *Motor Vehicles Act 1959.* The *Motor Vehicles (Disqualification) Amendment Act 2012* came into effect on 31 January 2013. It does not allow the Registrar of Motor Vehicles to send a notice of disqualification if the sending of the notice has been delayed by 12 months or more due to an administrative error.

3. Department for Correctional Services – Unlawful shackling of prisoners. Report date: 19 July 2012

Background

In early 2011, following the escape of three prisoners from hospital escorts in 2010, the Department for Correctional Services ordered a review of the security arrangements for prisoners in non secure locations (such as hospitals), and as a result set new minimum standards for restraint of prisoners in hospitals.

The new minimum standards required that prisoners being held in hospital should be handcuffed to the bed using chain; leg cuffed to the bed; and should have their legs shackled together.

Following the change, my office received several complaints from medical professionals who were concerned about the excessive restraining of prisoners. From these complaints I examined the circumstances of six prisoners who were receiving treatment for significant medical conditions, including end-of-life care, and giving birth. I commenced an own initiative investigation into the complaints.

My investigation acknowledged that the use of restraints in some circumstances is appropriate for community safety reasons. However, it revealed generally that:

- the act of restraining prisoners using force that is not reasonably necessary in the circumstances of the particular case exceeds the power of the department under section 86 of the *Correctional Services Act 1982*. The department had apparently assumed that its power to impose conditions on a prisoner's leave of absence permitted the imposition of restraints without regard to this provision
- the department's arrangements were not consistent with internationally and nationally accepted standards, and lacked necessary flexibility and discretion
- the arrangements did not, and should, require that restraints must be rotated to avoid them causing harm to the prisoner.

The six specific case investigations revealed that

- some individual prisoners, including a dying man, a pregnant woman, and some low risk prisoners were unnecessarily restrained; and were not afforded dignity as a consequence
- some prisoners were restrained for unnecessarily long periods of time
- medical staff were unaware that they were able to request the alteration or removal of restraints in some circumstances; and they were unable to contact prison management in a timely manner
- there was a lack of adequate communication between guards and prison management in relation to the use of restraints.

Recommendations

The final report made ten recommendations. In summary, my recommendations were that the department:

- consider individual circumstances and the use of reasonable force
- ensure the level of restraint is commensurate with assessed risk
- use soft restraints, not chains
- ensure ongoing assessment of prisoners when restraints are used
- ensure pregnant women are not restrained in labour
- ensure the use of restraints is clearly and accurately recorded
- ensure guards seek advice from the prison manager if harm may be caused
- ensure same gender guards are used in certain cases
- ensure guards are not present during a medical appointment or examination unless there is serious risk of escape
- ensure guards are not present when a woman is in labour and giving birth.

On 11 July 2012, the department's Chief Executive advised me in response to my provisional report that:

Consistent with the legal advice provided by the Crown Solicitor the Department for Correctional Services is committed to ensure that the use of restraints complies with legislative requirements whilst at the same time meeting its obligation to provide for public safety and security. I am confident that the proposed changes to policies, practices and procedures will appropriately address these requirements whilst also maintaining the public confidence into the department ensuring the highest level of community safety for prisoners in non-secure locations.

Implementation

On 13 December 2012, the Chief Executive again wrote to me to respond to the final report recommendations in considered detail:

The department has prepared a Recommendation Implementation Report which indicates acceptance of all ten recommendations and details work undertaken to address each of them.[8] In an initial response to the investigation, the department has:

(a) issued Executive Director's Instruction 73-12 (EDI) on the use of restraints as an interim measure while revised Standard Operating Procedures (**SOPs**) are being reviewed and consulted upon
(b) redrafted SOP 013 – Prisoners at Hospital
(c) redrafted SOP 031 – Prisoner Escort.

The department has advised that the recommendation relating to the restraint of pregnant women was accepted. Procedures were modified under a policy of no restraints for pregnant women in the third trimester of pregnancy unless individual circumstances require a level of restraint, but never during periods of child birth.

The department has also advised that a requirement has been introduced that enables the prison General Manager undertake a review of the level of restraints applied. In addition, the department has continued to improve the operational processes surrounding compliance checks.

Whilst the department reports progress on eight of the ten recommendations, it advises me that two are 'problematic'. Recommendation 3, covering the use of soft restraints and Recommendation 9, covering the non-presence of guards during a medical appointment or examination (unless there is serious risk of escape) are ongoing. Work is continuing on implementing both of these recommendations.

Regarding Recommendation 3, the department has advised me that, to date, soft restraints suitable for stopping or deterring escapes have not been found. In response, I urged the department to do further research and to source suitable soft restraints, given its commitment to do so. The Chief Executive has recently advised me that the department is trying to locate or commission the production of soft restraints and that this work will continue in order to implement the use of a suitable soft restraint in the future.

Regarding Recommendation 9, the department has advised me that implementation is difficult given the 'requirement for an escort officer to maintain custody of the prisoner at all times'. In response, I have urged the department to revisit its commitment to develop an assessment tool to determine the risk of escape or threats to staff and public while a prisoner is in hospital.

[8] The department has qualified its acceptance of Recommendations 3, 4, 8 and 9.

I have also raised concerns with the Chief Executive regarding practices around unplanned escorts of prisoners. In my view there is still not sufficient acknowledgement of the need to consider what force is warranted in the particular circumstances of each escort. I am not satisfied that the compliance regime for officers is providing an effective check as yet.

I have advised the Chief Executive of my view that the revised minimum standards (as set by the revised EDI and the draft SOPs) suggest using force that may not be reasonably necessary in the circumstances of a particular case and that, as such, the department is still exceeding power under section 86 of the Correctional Services Act.

Discussions between senior staff of the department and my office on implementation of the report's recommendations are ongoing.

4. District Council of Yorke Peninsula – Unreasonable denial of exemption from waste collection service charge. Report date: 30 July 2012

Background

In October 2008, the District Council of Yorke Peninsula introduced a waste and recycling service charge to cover the operating costs of its waste collection service. The service was established under the council's policy, which was adopted on 11 March 2008 and which provided for 'standard entitlements'.

The complaint I received from a member of the public had two elements - one relating to whether the council had made an administrative error in the way in which it imposed the charge; and a second relating to whether the charge had an unfair or unreasonable impact on the complainant.

The second element arose under section 187B of the *Local Government Act 1999*, which commenced operation in 2007. It conferred a specific new jurisdiction on the Ombudsman.

The council put to me that because of a 1990 decision of the Supreme Court, [9] under section 187B I was not able to investigate the policy behind the decision to declare the service charge. I did not agree with this suggestion. Indeed, I considered that section 187B in effect required me to consider that policy, to determine whether it may involve an unfair or unreasonable impact on a particular ratepayer.

The council's policy distinguished between properties within town and rural areas, both in terms of the number of bins provided to each property, and in identifying the point from which the bins were to be collected. For rural properties, residents were required to transport their rubbish bins to a local 'drop-off' collection site, which the collection truck then serviced. These residents were also required to arrange to retrieve their bins from the collection site.

The complainant was an Adelaide resident who owns a holiday home at Cockle Beach, in the council area. His property is situated 3.5km from the nearest collection site. He stated that he did not use the service, and he objected to the fact he had to pay the charge annually. He stated that in fact he transported his garbage back to Adelaide, because he was not at his Yorke Peninsula property enough to be able to retrieve his bin after garbage collection from the collection site. He stated that if he were to use the service he would be more than happy to pay the charge.

[9] *City of Salisbury v. Biganovsky* (1990) 54 SASR 117.

The complainant asked the council for exemption from the charge on two occasions but was denied on both. He also made submissions to a review of the waste and recycling service conducted by the council in February 2009, and these were acknowledged by council.

I found that the imposition of the service charge had an unfair impact on the complainant.

During the course of the debate between the complainant and the council about his liability to pay the charge, the government introduced the *Local Government (Accountability Framework) Amendment Bill 2009* to the Parliament. Subsequently passed, the new legislative provisions operate to permit the council to impose a service charge on the complainant after 1 July 2012, which is calculated in accordance with a formula prescribed in the regulations.

Recommendations

Having regard to the circumstances of the case, I recommended that the council should recalculate the amount of the service charge due to it from the complainant for the period from 13 October 2008 when the service charge was imposed, to 10 December 2011 when the Local Government (Accountability Framework) Amendment Act commenced operation. I proposed that this recalculation should apply the same 'sliding scale' as is now in force under regulation 9B of the Local Government (General) Regulations.

I recommended also that the council write off the difference between the recalculated amount and the service charge and fines accrued by the complainant between 13 October 2008 and 10 December 2011.

Further, I recommended that the council should consider the suggestion made by the complainant about changing the current collection route in his area, (i.e. to move the route 'from where it is currently servicing 4 properties to around the Cockle Beach Road where it could service 13 properties for only another 4 kms'); and should provide reasons as to whether it considers this suggestion feasible.

Implementation

In response to my report, the council advised me that it would not adopt my recommendation that it should recalculate the service charge due from the complainant for the period 13 October 2008 to 10 December 2011.

Further, the council considered that my recommendation to recalculate the amount owed by the complainant, and not for every other affected ratepayer, would establish an inequitable precedent.

The council also declined to implement the suggested changes to the collection route as it considered this would result in a net additional cost to council of $3 675.

I therefore decided to table my report in the Parliament and report the matter to the Premier.

5. An audit of complaint handling in South Australian councils. Report date: 22 November 2011

Background

In 2010-2011 my office received 794 complaints about local government councils – a 16 per cent increase over the previous year. Of this number, 191 matters, or 25 percent of the total workload concerned complaint handling in councils. This was a significant number coming directly to my office that may otherwise be dealt with by councils.

Against this background and pursuant to section 14A of the Ombudsman Act, I decided to audit complaint management systems in a selected number of councils to assess whether they provided a reasonable means of resolving complaints.

The focus of the audit was on general complaints and the use of statutory provisions under section 270 of the *Local Government Act 1999.* The audit was intended to collect information about the methods and standards of complaint handling across local government; establish what best practice is; identify any gaps; and make suggestions for improvement.

Twelve councils from the 68 councils across SA were chosen randomly to participate in the audit. The selection was made on the basis of a good spread of population densities, geographic locations and council size.

The audited councils were:

- Adelaide City Council
- City of Tea Tree Gully
- City of Holdfast Bay
- City of Port Adelaide Enfield
- Adelaide Hills Council
- District Council of Mallala
- City of Victor Harbor
- Corporation of the City of Whyalla
- Port Augusta City Council
- Kingston District Council
- Coorong District Council
- Clare and Gilbert Valleys Council.

The audit's major findings were that:

- councils were generally responsive to complaints from members of the public, but they recognised the need to improve all aspects of their complaint handling
- the standard of complaint handling policy and procedure documents across audited councils was inconsistent
- many councils struggled to distinguish between complaints and requests for service. Some requests for service became complaints simply through delay and inaction
- it was the exception rather than the rule for councils to have publicised, readily available 'how to complain' information which is easy to read and understand
- senior management review and learning from complaints is was limited in scope and infrequent
- complaint handling, conflict resolution and mediation skills needed to be improved through training at all levels of council administration – not just for the front-line staff

- improved communication with the office of Ombudsman SA would assist the monitoring of complaints, encourage more learning from investigations and improve council Annual Reports to the public
- a majority of audited councils had section 270 internal review procedures in place which are not fully compliant with the Local Government Act
- councils would benefit from a more confident approach to use of internal reviews as a valid mechanism for dealing with complaints.

All 12 councils involved in the audit received a report on issues relevant to their own complaint handling practices.

Recommendations

Based on the audit findings, I made 11 recommendations in the published Audit Report. These were primarily around council culture, standards, systems improvement and implications for the legislative and regulatory framework. They included:

- that all councils review their policy and procedures documents to establish best practice and to comply fully with legislative requirements
- that all councils put in place systems to enable logging, tracking and analysis of complaints and to separate these from requests for service. This should include a system for monitoring complaint outcomes, and identifying systemic weaknesses
- that all councils regularly review complaints at the level of senior management. As appropriate, a summary should be prepared, including outcomes, for publication in the councils Annual Report
- that all councils establish a role for a dedicated liaison officer to facilitate the flow of information, analysis and learning from complaints handled by Ombudsman SA about that particular council
- that consideration be given by government to the merits of a regulated code of practice for complaints and internal review of council decisions which would establish minimum standards for complaint handling.

Implementation

I received responses on my recommendations made specifically to each of the 12 councils. In general terms, my recommendations have been accepted and agreed to, with evidence provided to me of improved policy and procedures for handling complaints; a separation of complaint handling from requests for service; and clearer processes for internal complaint handling.

Many more councils are now also highlighting a direct link on their website homepage to a plain English description of the policy and procedures for making complaints.

My audit also emphasised the important role the Local Government Association of South Australia (LGA) plays in supporting administrative improvements across the sector. The LGA stated that 'the audit's findings will give us some direction on the changes that need to be made to improve council complaint handling mechanisms'.

In early 2012, after consultation with my office, the LGA finalised a suite of new model policies and procedures for complaint handling and requests for service which were published to assist all South Australian councils.

In early 2013, I wrote to all councils requesting feedback on the implementation of my recommendations at the local level. All 68 councils responded to my request to indicate their acceptance of and action taken on each of my nine recommendations relevant to councils. Appendix A provides details of the survey response outcomes. The data and feedback from each council shows evidence of substantial improvement in complaints management practice and responsiveness across local government.

Two recommendations were also put to the state government proposing consultation with the local government sector on the merits of a regulated code of practice for complaints and internal review of council decisions.

I am advised by the Office for State/Local Government Relations (**OSLGR**) that councils will be allowed a reasonable time to consider and implement the new requirements of section 270 of the Local Government Act with the assistance of the relevant Model Policy and Procedures developed by the LGA. OSLGR will continue to monitor and assess the progress of councils towards meeting best practice standards and remains open to the development of a regulated code of practice if warranted.

6. An audit of prisoner complaint handling in the Department for Correctional Services. Report date: 10 July 2012

Background

I initiated the audit in October 2010, after a review of hundreds of complaints made to my office by prisoners and their families against the Department for Correctional Services.

In 2010-2011, I received 573 complaints about treatment of prisoners and prison conditions. This is the largest number of complaints recorded in my office against any department. A similar number of complaints from prisoners were recorded by the department through its internal Prisoner Complaint Line.

Prisoner complaints range from 'housekeeping' issues about cell conditions, lost or stolen property and transfers between prisons through to allegations of mistreatment or abuse by corrections officers.

I advised the Chief Executive that the principal objective of my audit was to determine the adequacy of the department's existing complaint handling policies and procedures; to determine the extent to which departmental staff complied with the policies and procedures; and to identify and recommend appropriate improvements to complaint handling policies and procedures and the complaint management system.

The audit's major findings were that:

- the department's complaint handling standards and procedures did not meet the minimum benchmarks set by the *Standard Guidelines for Corrections in Australia* and the Australian complaint handling standard
- the department had not provided all prisoners across the system with accessible and visible information about its complaint management process
- the prison-level Local Operating Procedures for complaints used across the corrections system were confusing and outdated, and lacked procedural fairness
- the internal Prisoner Complaint Line was limited in its ability to deal with serious matters appropriately

- data collection, reporting and system review procedures did not permit objective analysis, trend identification and system improvement in prisoner complaint handling.

In a positive finding I noted the work done by the department in recent years to improve the circumstances of Aboriginal people in custody arising out of the Royal Commission into Aboriginal Deaths in Custody. This work provided a foundation upon which to build a stronger and more productive complaint handling system for all prisoners.

Recommendations

The Chief Executive responded to my provisional report accepting seven of the 13 recommendations without qualification and another four with some qualifications. One other recommendation was referred to the Minister for Correctional Services. Another, relating to a proposed review of the Prisoner Complaints Line, was accepted at a later date. In particular, the department made an immediate commitment to the development of a consistent Standard Operating Procedure across all prisons, with enhanced complaint handling.

The final report recommendations included that:

- the department ensure that on admission to prison, all prisoners be provided with clear, simple information about how to make a complaint and where to take different types of complaints
- the department review the operational focus of its Prisoner Complaint Line, including seeking prisoner input to build a more proactive and consistent service
- the department accelerate development and implementation of a Standard Operating Procedure (**SOP**)for prisoner complaint management to be used across the system
- the department strengthen measures to ensure that retribution against prisoners who have made a complaint is not tolerated at any level in the system
- the department establish new procedures for handling complaints against officers, including a requirement that all investigations involving an allegation of assault be referred to the department's Intelligence and Investigation Unit for action (as well as to SA Police)
- the Correctional Services Advisory Council (established under the *Correctional Services Act 1982* and reporting to the Minister for Correctional Services) should be responsible for receiving regular reports and for monitoring prisoner complaints management by the department.

Implementation

In October 2012, the Chief Executive wrote to me indicating acceptance of my recommendation for a review of the Prisoner Complaints Line. He also proposed timelines for implementation of all 13 recommendations; and in particular the development of a draft Policy and SOP for prisoner complaints management.

Subsequently I was advised that the Chief Executive has put in place a high level Project Management Group chaired by the Executive Director, Strategic Services to deliver:

1. effective reporting and appropriate accountability for all complaints received within the department
2. implementation of recommendations of the Ombudsman in his Audit of Prisoner Complaint Handling.

My office has received regular written updates from the department on progress towards implementing all 13 recommendations. As a direct response to the recommendations, the department has developed a Policy and SOP for prisoner complaint management. The Policy has since been approved and published.

The SOP has been drafted and reviewed by staff of my office and is currently in the consultation stage. Posters about the prisoner complaint process have been developed, distributed and are displayed in all prisons. Brochures and pamphlets detailing the complaints process are also available.

In addition, I now meet the Chief Executive on a quarterly basis to discuss correctional services matters relevant to my office. This includes details of progress on the implementation of the audit recommendations.

7. An audit of the use of meeting confidentiality provisions of the *Local Government Act 1999* in South Australian councils. Report date: 27 November 2012

Background

I initiated the audit in October 2011 after a number of findings from investigations revealing breaches of the *Local Government Act 1999*. Some of these concerned the validity of resolutions for holding meetings behind closed doors. There were also high numbers of closed meetings in some councils.

Against this background and pursuant to section 14A of the Ombudsman Act, I decided to assess the practices and procedures of councils with respect to public access to council and committee meetings and documents (sections 90 and 91 of the Local Government Act and associated provisions).

The aim of the audit was to establish what best practice is, identify councils' possible misunderstandings of the confidentiality provisions of the Local Government Act, and make recommendations for improvement.

Twelve councils from the 68 councils across SA were chosen to participate in the audit. The selection was made on the basis of a spread of population densities, geographic locations and council size.

The 12 audited councils were:

- Alexandrina Council
- District Council of Barunga West
- City of Burnside
- District Council of Ceduna
- District Council of Coober Pedy
- District Council of Grant
- Light Regional Council
- District Council of Mount Barker
- Rural City of Murray Bridge
- City of Onkaparinga
- City of Playford
- City of West Torrens.

The audit's major findings were that:

- the number of meeting confidentiality orders made by the 12 audited councils in the period 2009-2011 was 725 from a total of 8044 of all business items discussed
- this number represents a confidentiality order rate of 9% of all business items. I recommended 3% as a maximum. (that equivalent number would be 241 orders)
- over 40% of the 68 South Australian councils failed to review their confidential meetings code of practice within the required 12 months following the council elections in 2010
- councils generally were providing insufficient details of their reasons for excluding the public from meetings
- councils were sometimes moving into confidence over matters of local sensitivity or controversy in an attempt to debate issues without pressure from the public
- procedural mistakes were commonplace in the making of document orders, with some examples of decisions being made beyond the powers given under the Act
- there were some poor practices in councils where minutes and documents were continuing to be held after confidentiality orders had expired
- there were instances where documents which relate to a council decision are not being cited or copied in the confidential minutes making for incomplete public records.

Recommendations

The final report contained 18 recommendations. They included that:

- all councils review their confidentiality code of practice by May 2013 to ensure that all procedures comply with the Local Government Act
- all councils aim to deal with 3% or less of their agenda items in confidence
- the government consider amending the Local Government Act to clarify that an explanation of reasons must be recorded in the minutes for closing a meeting to the public
- the government consider amending the Local Government Act to specify that controversy or sensitivity over a matter in the community is not a reason for closing a meeting to the public
- the government consider amending the *Local Government (Procedures at Meetings) Regulations 2000* to require minutes to record a reference to any document or briefing presented to council on a matter of council business.

Implementation

Following my correspondence to each of the 12 audited councils, I received responses on the recommendations made specifically to each of them. In general terms, my recommendations have been accepted and agreed to by these councils.

Evidence to date indicates improvements either planned or already implemented. They include:

- raised awareness for managers and administration staff aiming to reduce numbers of items considered in confidence
- fully explaining the reasons for closing a meeting to the public under particular paragraphs of section 90(3)
- understanding and observing the requirements of section 90(3) which require multiple tests to be met before closing a meeting to the public
- applying greater diligence to review document confidentiality orders

- improving public access to documents released from confidentiality orders
- taking care to ensure that the conduct of council informal gatherings does not breach the Local Government Act
- improved council annual reporting practices.

Seven of the audit recommendations proposed changes to the Local Government Act or to the *Local Government (General) Regulations 1999*, and were therefore directed to the state government.

I am advised by the Office for State/Local Government Relations (**OSLGR**) that six of the seven recommendations have been included for consideration as part of the Minister for State/Local Government Relations legislative program for 2013.

Recommendation 9, which deals with matters related to informal gatherings, will be consulted on and considered separately by OSLGR.

In late 2013 I intend to follow-up the implementation of my recommendations with all councils and with the state government. I will make a further report on the audit recommendation outcomes in 2014.

PART 4

STATUS REPORTS: STATE AGENCIES[10]

[10] The term 'State Agencies' is used to describe state government departments, state administrative units and statutory authorities.

1. Department for Families and Communities - Wrongful disclosure of information: Report date: 20 July 2009

Background

The complaint concerned an application for access to documents under the *Freedom of Information Act 1991* (**FOI Act**). The complainant alleged that the department had inappropriately released information in documents about her to the FOI applicant.

My office obtained the department's file concerning the FOI application and decided that there were five references to the complainant in the documents released to the applicant.

The department acknowledged that it did not consult with the complainant prior to the FOI applicant being provided with the documents.

My investigation found that the department had failed to take steps to obtain the complainant's views as to whether or not the documents were exempt documents under the FOI Act, and was in breach of section 26(2) of the Act.

Recommendations

The final report made two recommendations, that:

(1) the department provide the complainant with an apology

(2) the department deal promptly with any application the complainant may elect to make under the FOI Act.

Implementation

The department agreed that there had been a breach of the FOI Act and accepted my recommendations. The Executive Director of Families SA wrote a letter of apology to the complainant shortly after my report was released. The department also confirmed that it had responded promptly to a further FOI request from the complainant.

2. Environment Protection Authority – Unreasonable decision to issue an Emergency Authorisation. Report date: 26 February 2010

Background

The complaint concerned an issue associated with the development approval process conducted by the Wakefield Regional Council for expansion of a chemical fertiliser distribution facility in Brinkworth. An earlier complaint against the council had been investigated by my predecessor, who concluded in February 2009 that 'the council had not performed any act or omission of maladministration'.

Upon receipt of new information, I decided to investigate a complaint against the Environment Protection Authority (**EPA**) specifically related to issue of an Emergency Authorisation (**Authorisation**) 'to operate a Chemical Storage and Warehousing facility in Brinkworth in breach of conditions which have not been met.' An Authorisation may be issued under section 105 of the *Environment Protection Act 1993*.

My investigation found that there had been an Authorisation approved by the EPA in unusual circumstances, namely the unanticipated arrival of a consignment of fertiliser at the Easter break. I accepted that the Authorisation was intended only to cover a temporary situation and did not include every condition for addressing environmental impacts. Whilst I found that it was reasonable for the EPA to issue the Authorisation in the circumstances, I was concerned that the EPA had no record of the reasons for issuing it.

Recommendations

The final report made two recommendations, that:

(1) when deciding whether to issue or refuse an Emergency Authorisation, the EPA should specify the factors upon which it has based its authorisation

(2) where an Authorisation is issued, this should be recorded on the file.

Implementation

The EPA accepted my recommendations. It advised me that it has devised and issued a new assessment procedure for approval of an Emergency Authorisation. The procedure involves formal documentation of the explanation of the circumstances of urgency for the application. It also requires details supporting a declaration that the Authorisation is needed to protect life, the environment or property.

3. Department of Education and Children's Services – Unreasonable failure to comply with complaint handling procedures. Report date: 24 March 2010

Background

The matter arose from the complainant's dealings with the department about a number of issues relating to the schooling of his children, who at the relevant time attended a public primary school. The complainant raised issues of bullying by staff, and bias in the department's dealings with him.

My investigation found that it would have been prudent for the department to have made alternative arrangements for the management and investigation of the complaint against the principal, and for a decision on its outcome to have been made by an independent person.

I also found that the department should have established an alternative mechanism to deal with the complainant's complaint, in order to overcome a reasonable apprehension of bias; and it should have advised him that under the department's relevant policy, he was entitled to seek a review by the Chief Executive.

Recommendations

The final report made one recommendation, that:

> the department undertake a review of existing documents and procedures over the next six months to develop and publish a clear and specific complaints process for parents and the general public.

Implementation

The department accepted my recommendation. It reviewed complaint policies and documents in other education jurisdictions in Australia and overseas. It developed a new overarching parent complaint policy with consistent procedures across schools, regions and state office. The department also published all updated policies, procedures and resources on its website.

I subsequently met with key departmental staff, and discussed changes to the complaint handling process to take effect from the start of the 2012 school year.

In October 2011, the Minister for Education announced the establishment of the Parents Complaints Unit to begin operations at the start of the 2012 school year.

4. State Procurement Board – Unreasonable tender approach for Across Government Printing Services. Report date: 13 May 2010

Background

The complaint was brought by the Printing Industries Association of Australia following the State Procurement Board seeking tenders for the provision of printing services to the state government. The Association was involved in early discussions about the tender methodology. The selection process took 12 months to complete and was the subject of a complaint from an unsuccessful tenderer.

An audit was conducted by Ernst & Young. A shadow re-evaluation of the selection process resulted in some different selection outcomes, but the Board confirmed the original selection outcomes. I accepted this as a fair process and the outcome an issue for the Board to determine.

My investigation found that the selection period of 12 months was too long, and potentially put a number of applicants in a difficult position. Applicants during the period would have needed to make business decisions that could have compromised their capacity to provide printing services.

Recommendations

The final report made two recommendations, that:

(1) when conducting a review of the provision of services to government, the Board should consider how it will communicate the impact of the review on current service providers

(2) if, as part of a process, there is a requirement to implement an evaluation plan or similar strategy, any departure from that should be properly documented to show the rationale for the departure. Furthermore, consideration should be given to whether the departure might compromise the intended or stated objectives of the evaluation plan or strategy.

Implementation

The Treasurer indicated that the Board and the Under Treasurer accepted my recommendations. He advised that a review of across government procurement and contract management procedures would be conducted. This would include a requirement to document the rationale and justification for any departures from any evaluation plan or methodology, and an independent review of procurement documents at various stages during the tender process.

I was subsequently advised that the Board would not be continuing with the Across Government Printing Services Contract beyond its expiry date, as it did not produce the expected benefits to government or the industry.

5. Department of Water, Land and Biodiversity Conservation – Unreasonable investigation of complaint. Report date: 26 May 2010

Background

The complaint concerned the quality of water a landowner had obtained from the well on his land, located at Virginia. He stated that the salinity of the water had increased, and as a consequence he had lost that year's crop of wine grapes because 'the wine had excess salt in it'. He advised the department that as a result of advice given to him by a drilling contractor, he had collected a sample from a well on an adjoining property. The sample collected by the complainant indicated that the salinity in that well also was excessive.

The complainant considered that the excessive salinity in his well may have been caused by the faulty operation of the adjoining well, and he sought the department's assistance to address the issue. Over the following 18 months, he became dissatisfied with the lack of response from the department and with progress on an order to backfill the adjoining well after it had been found to be leaking saline water.

My investigation found that whilst the department had taken action to enforce a notice to seal and backfill the leaking well (an obligation under section 145 of the *Natural Resources Management Act 2004*), the action had been protracted. I found that the department had taken assessment action only after the intervention of the Minister.

Recommendations

The final report made one recommendation, that:

> the department take positive action to ensure that the leaky well is filled in by 30 June 2010.

Implementation

The department wrote to me on 29 June 2010 to advise me that the leaky well had been successfully backfilled to the surface with cement. The work was overseen by the department's drilling inspector who confirmed that the backfill operation went as scheduled.

Ombudsman comment

Resource allocation for a necessary 'leaky well investigation process' had not been a priority for the department. In this case, the complainant's action brought to the department's attention a well that was leaking, and thus assisted the department to meet its obligation to protect the state's water resource. In my view, the department's processes should reflect and acknowledge the benefit in such matters being brought to its attention by members of the public.

6. Department for Correctional Services – Unreasonable destruction of personal property. Report date: 25 August 2010

Background

Following a number of complaints received from prisoners involved in a prison disturbance at Port Augusta Prison in October 2008, I commenced an 'own initiative' investigation. The complaints were that in the clean up after the disturbance, the department destroyed the personal property of several prisoners who were not instigators of the disturbance, and that no compensation was provided for their loss.

I established from the outset that none of the four complainants was involved in answering charges before the courts in relation to the disturbance.

Following the unrest, prisoners' property had been searched for contraband, bagged and stored at the prison. The bagged materials and property, including some department property, was suspected of being contaminated with asbestos fibres and effluent and was subsequently destroyed. The decision not to offer compensation for prisoner cell property was made by the Acting Chief Executive in May 2009.

My investigation found that there was no evidence that the prisoners' property was exposed to significant contamination by asbestos as measured by the legislated standards. However, the department put to me that there had been a risk of contamination and I accepted that assertion.

On the matter of the department's decision not to consider prisoner property claims on a case by case basis, and instead to issue a blanket denial of reimbursement to prisoners for their destroyed property, I found the department's action was unjust.

Recommendations

The final report made one recommendation, that:

> the department consider reimbursement to affected prisoners for the recorded value of their destroyed property, taking into account the limit on the total value of a prisoner's personal property prescribed by regulation 7(1)(a) of the *Correctional Services Regulations 2001*, and the extent of the prisoner's participation in the disturbance.

Implementation

The department did not accept my recommendation. This was on the basis that it would be impossible to calculate the extent of each prisoner's involvement in the disturbance.

Further, any assessment done could indicate to the prisoner that the department had intelligence information about them. The department's view was that any compensation should be paid only as a result of 'established legal liability'.

I informed the Minister for Correctional Services and the department that I acknowledged that the issue of compensation was a matter for the department to resolve.

7. Department of Treasury and Finance – Unreasonable treatment over land tax assessment. Report date: 5 January 2011

Background

The complaint involved a land tax assessment for a property with three owners, one having a minor interest. The complainant requested that the Commissioner of State Taxation ignore the minor interest for the purpose of assessing land tax liability. The Commissioner declined to do so but failed to give clear reasons for the decision. In the absence of clear reasons the complainant could not appeal the decision of the Commissioner.

The complainant advised me that he was unable to exercise his right of appeal to the Treasurer, available under section 82 of the *Taxation Administration Act 1996,* because he had not been provided with adequate notice under section 13A(8) of the *Land Tax Act 1936*.

From my examination of the evidence, I formed the view that the complainant had received 'mixed messages' about the grounds for the Commissioner's decision. Accordingly, I concluded that the complainant had not been provided with proper notice of the Commissioner's decision.

My investigation found that the failure to provide proper notice of the Commissioner's decision amounted to an administrative error, and to an act which was done 'in the exercise of a power or discretion for which reasons were not but should have been given'.

Recommendations

The final report made one recommendation, that:

> the Commissioner provide detailed reasons for his decision to the complainant, so that the complainant may exercise his entitlement under section 82 of the *Taxation Administration Act 1996* to lodge with the Treasurer a formal objection to the decision by which he is aggrieved.

Implementation

The department accepted my recommendation. The Commissioner wrote to the complainant on 25 January 2011 providing detailed reasons.

8. Adelaide Health Service Incorporated – Unreasonable failure to properly consider an application. Report date: 14 April 2011

Background

The complaint involved medical ethics approval by the Flinders Clinical Human Research Ethics Committee (FCREC) for a number of research projects, sought by a senior medical professional. Delays in processing the applications resulted in lost opportunities for the complainant.

The complainant sought to resolve the dispute with the Adelaide Health Service before complaining to my office but was unsuccessful. At the time of making the complaint to my office, the complainant had one application outstanding.

My investigation found that whilst there had been understandable difficulties associated with the establishment of a new medical ethics committee, with revised responsibilities and new personnel and procedures, there was nonetheless an unreasonable delay in FCREC's decision making. In particular, I concluded that the 10 month delay in approving the application was excessive.

At the conclusion of the investigation I noted the assurance given to me by the Adelaide Health Service matters relating to the ethics approval of the complainant's past and future research projects had been resolved to his satisfaction. The one outstanding issue remained reimbursement of his technician's salary for the relevant period.

Recommendations

The final report made one recommendation, that:

> the Adelaide Health Service arrange reimbursement of the salary of the complainant's technician for the period from 1 May 2010 to 31 October 2010, during which she was unable to conduct synovial tissue research due to the delay in FCREC approval.

Implementation

The Adelaide Health Service accepted my recommendation. The complainant provided confirmation of the amount to be reimbursed and completed a form of release and discharge to accept reimbursement as a resolution of the complaint.

9. Department for Correctional Services – Unreasonable financial charge and misrepresentation of surcharge on items purchased from prison canteen. Report date: 7 June 2011

Background

Following a number of complaints received from prisoners, I commenced an 'own initiative' investigation into the application of the prisoner amenities levy. This levy funded an amenities account which was used to buy recreational items for prisoners. I was concerned about the legal authority to create the levy, that prisoners were not informed of the application of the levy, and about a miscalculation of the GST component.

In my investigation, I noted that the department's responsibilities extend to the provision of facilities to ensure that prisoners are gainfully occupied during their incarceration. However, I accepted as a matter of principle that it is reasonable for prisoners to make a contribution towards the cost of recreational items which assist in making their terms of imprisonment less burdensome than would otherwise be the case.

My investigation found that there was no legal authority for imposing the prisoner amenities levy, and that the department had failed to specifically disclose the existence of the prisoner amenities levy as a component of the price of items supplied under section 32 of the *Correctional Services Act 1982.*

I also found that the department's consistent failure to consult and inform prisoners on how funds raised through the prisoner amenities levy are disbursed was wrong.

Recommendations

The final report made one recommendation, that;

> the department review its practices to ensure that system-wide procedures are in place to consult and inform prisoners about how such funds raised through the prisoner amenities levy are disbursed.

Implementation

The department advised me that it 'did not agree with the findings' on the basis of its view that the 10% margin applied to non-tobacco canteen sales to prisoners was not a levy, but rather a cost recovery component.

The department conceded, however, that the old Prisoner Amenities Directive was 'very much out of date' and took action to rewrite and update a policy and procedure in relation to the operation of the Prisoner Amenities Reserve Account. The department agreed to consult with prisoners in relation to how it may apply funds for prisoner amenities.

After my report was completed, the government decided to amend the Correctional Services Act. The effect of the amendments was to empower the Chief Executive of the department to enable any surplus funds raised through the sale of goods to prisoners to be deposited in a Prisoner Amenity Account. The funds may then be used for the provision of amenities to prisoners.

10. Department of Environment and Natural Resources – Wrong advice on the effect of a heritage agreement. Report date: 27 July 2011

Background

The complaint involved advice given by the department to a property owner in relation to the effect of a heritage agreement over land. The property owner in turn passed the information to the complainant who was leasing the land and who acted on the information. The advice was misleading and the department acknowledged this, but the property owner did not inform the complainant. On becoming aware of the misleading advice, the complainant approached the department for compensation for his loss, but the department declined.

My investigation found that the complainant had complied with a zoning request made by the department in error, and sold off stock and equipment as a consequence. Having discovered that he was not precluded by the heritage agreement from agisting stock on the land, he sought reimbursement of the costs which he had incurred.

The department declined to enter into any negotiations with him about compensation. Whilst providing detailed reasons for its decision, I found that the department's action in failing to negotiate compensation with the complainant was wrong.

Recommendations

The final report made one recommendation, that:

> the department recommence negotiations with the complainant regarding the quantifiable losses which he had suffered.

Implementation

The department accepted my recommendation. It agreed a sum with the complainant by way of an *ex gratia* payment.

11. Department for Correctional Services – Unlawful charge of breaching regulations. Report date: 28 October 2011

Background

The complaint arose from an incident where a prisoner at Yatala Labour Prison was charged with a serious breach of the *Correctional Services Regulations 2001*. The charge was laid outside of the statutory period and the department's Standard Operating Procedure. Despite the error being brought to the attention of the prison by the complainant and my office, it proceeded with prosecuting the complainant. A finding of guilt and penalty was subsequently revoked by the Visiting Tribunal.

My investigation found that bringing a charge against the complainant outside the eight week period prescribed by the regulations was unlawful. Further, I found that the responses of the department's officers were slow, unreliable and fell well short of the standard expected.

During the course of my investigation, the issue of whether the Visiting Tribunal had jurisdiction to revoke the finding of guilt and the penalty was raised. I suggested that the department consider getting legal advice on this point. The Crown Solicitor's advice to the department was that the Tribunal had, in the circumstances, the power to make the decision.

Recommendations

The final report made one recommendation, that:

> the department conduct a review of its procedures relating to the charging of prisoners under the *Correctional Services Act 1982*.

Implementation

The department accepted my recommendation. It undertook a review of recent prosecutions at all institutions to identify if there had been any procedural irregularities. All relevant Standard Operating Procedures were reviewed and amended.

The department indicated it has completed Prosecutions Training which has increased the number of Prosecution Officers, and also provided the necessary training to senior managers within prisons.

12. SA Water Corporation – Unreasonable charge for mains water connection. Report date: 24 November 2011

Background

The complaint involved a property owner and his neighbour and a proposed sub-division of their respective properties. Using the same surveyor, the owners obtained quotes for the extension of mains water to their properties. The complainant declined to proceed with the matter as the cost was too high. The neighbour wanted to have the connection proceed and was put in the position by SA Water of having to pay the full amount (including the amount declined by the complainant).

Two years later on returning from interstate, the complainant wanted the connection to proceed. SA Water included the amount paid by the neighbour, that is, the complainant's share, in its second quote for the work. This was despite the fact that there was no evidence of any agreement between the parties that the cost be shared.

My investigation found that SA Water had no grounds to require the complainant to repay costs paid by his neighbour. I concluded that the SA Water charge was unreasonable.

Recommendations

The final report made one recommendation, that:

> SA Water reissue the second costing letter to the complainant and remove the requirement that the complainant reimburse half of the cost of the previous extension of the water main up to the neighbouring allotment.

Implementation

SA Water accepted my recommendation. The complainant resubmitted an application and a new estimate was calculated. The revised amount was paid by the complainant.

13. Department for Correctional Services – Unreasonable failure to honour *ex gratia* payment. Report date: 13 December 2011

Background

The complainant was a prisoner at Mobilong Prison. In March 2001, he purchased a computer upgrade for $2 300 using his own funds. He was given approval for this purchase by prison staff. The computer was delivered to the prison in the same month, but had not been given to the complainant.

In November 2003, two and half years after it was purchased, the complainant received his computer from the department, with the mouse and speaker having been damaged. In May 2004 the complainant lodged a claim in the Murray Bridge Magistrate's Court against the department for lost, stolen and damaged property and punitive damages in the sum of $22 475.

Following a court finding in favour of the complainant and a second court action in November 2010 to recover storage fees from the department, the complainant contacted my office in relation to an *ex gratia* payment which my predecessor had recommended. He alleged that the department had unreasonably refused to honour it.

My investigation found that the department had failed to comply with the earlier recommendation of my predecessor to award an *ex gratia* payment to the complainant. I also found that the department had failed to record its apparent decision not to make the *ex-gratia* payment and communicate this to the complainant.

Recommendations

The final report made one recommendation, that:

> the department make an *ex-gratia* payment of $1 500 to the complainant for the loss and/or detriment the complainant experienced in the delay in receiving his computer.

Implementation

The department accepted my recommendation. I received a letter from the department advising me that the Minister for Correctional Services had approved an *ex gratia* payment of $1 500. The letter confirmed that the payment would be applied to the complainant's outstanding debt under the *Criminal Injuries Compensation Act 1978.*

14. Department of Education and Children's Services – Unlawful imposition of materials and services charge. Report date: 22 December 2011

Background

The complaint involved the setting of a materials and services charge without the school following the relevant administrative instruction. On becoming aware of the failure, the school applied the instruction and fixed a different amount. The complainant also challenged one of the elements of the costing used in setting the charge.

The *Education Act 1972* requires that the basis for the proposed charge must be disclosed by a school principal to the school council for the latter's prior approval. I was advised that the standard approach taken is for the school to consider previous budgetary expenditure, and to project the predicted costs into the next school year.

My investigation found that the school had sought to impose a materials and service charge which included a component for 'Staff Macbooks'. These were the costs associated with lap tops for teachers in the context of teachers having to interact with students on educational matters outside of the class room. I found that in seeking to impose this additional charge, the department acted contrary to law.

Recommendations

The final report made three recommendations, that:

(1) the department ensure all school principals and members of school councils are fully aware of the requirements of section 106A of the Education Act and the department's Administrative Instructions and Guidelines

(2) the department ensure that it is provided with appropriate information by schools explaining the details of their calculation of the materials and services charge

(3) the department continue to ensure schools comply with the Education Act and the Administrative Instructions and Guidelines.

Implementation

The department accepted my recommendations. It indicated it would place updated information on its intranet site and circulate the information to schools. Schools would also be offered training and information sessions on calculating the charge. Information on the responsibility of schools in setting the charge and compliance with the Administrative Instructions and Guidelines would be circulated.

In order to strengthen internal controls and compliance, the department amended its database to ensure that there is certified compliance by the appropriate school officer before the 'notice to parents' is referred to the department for approval.

15. Department of Education and Children's Services – Unreasonable decision to exclude father from pre-school premises. Report date 20 January 2012

Background

The complaint concerned the conduct of a pre-arranged interview at a pre-school centre attended by the complainant (the father of an enrolled child). At the interview, the director informed the complainant that he could not attend the centre when his child was present because under a family court order, he was not allowed to have unsupervised access. This was not correct. There were further issues arising from an accusation of the complainant behaving in an intimidating manner.

From the information provided to me, and as admitted by the department, it appeared that the centre director interpreted the complainant's custody arrangements incorrectly. The director also did not have due regard to the policies and guidelines of the department.

My investigation found that whilst the department later informed the complainant of its error in incorrectly interpreting the custody arrangements, its subsequent actions in dealing with the complainant on the basis of his alleged aggressive behaviour was unreasonable.

Recommendations

The final report made one recommendation, that:

> the department remind all pre-school directors of the relevant part of the 'Family Law Guideline' in relation to their role in family court disputes, and the existence and outcome of this investigation.

Implementation

The department accepted the first part of my recommendation. The department wrote and advised me that the School Enrolment Policy and the Year 8 Enrolment Handbook for curriculum consultants and schools regarding enrolment of students with separated parents had been updated.

The department also confirmed that a circular and procedure had been sent to pre-school directors, principals and regional directors regarding the implementation of Intervention Order legislation, which contains information for staff about working with individuals and families in relation to Intervention Orders.

In response to my further enquiries, the department advised that it considered 'the most appropriate course of action as needing to provide guidance to all schools and pre-schools rather than highlighting the failure of one particular service'.

It therefore advised me that it has not implemented that part of my recommendation which relates to advising pre-school directors of the existence and outcome of my investigation.

16. Department for Correctional Services - Wrongful opening of mail. Report date: 5 March 2012

Background

The complaint concerned the opening of a prisoner's mail at Port Augusta Prison by department staff. The prisoner complained that staff at the prison had failed to act according to the department's Standard Operating Procedure (SOP) in relation to his incoming and outgoing mail.

The complainant stated that some of his incoming mail had been opened without any acknowledgement of the error, and also that outgoing mail addressed to his mother interstate had been opened without the requisite acknowledgement.

During my investigation, it became apparent that the department had not acted to address the situation because the complainant did not raise his concerns at the time he collected and signed for his mail. Nonetheless, the department agreed that some mail had been opened in error.

My investigation found that the department had breached section 33(8) of the *Correctional Services Act 1982* in opening the complainant's mail from Members of Parliament and the Adelaide Legal Outreach Service.

Recommendations

The final report made one recommendation, that:

> the department ensure that the comments box on the Justice Information Service Prisoner Mail application is appropriately notated. Further, that an Employee Report be completed and a copy of the report indicating the details provided to the relevant office.

Implementation

The department accepted my recommendation. It advised me that it had undertaken training sessions for all staff responsible for opening prisoner mail at Port Augusta Prison.

The department also advised that the office of the Minister for Correctional Services had made a change to Ministerial office envelopes containing correspondence to prisoners by attaching an identifying label to the back of the envelope.

In relation to the SOP, the department redrafted the procedure to include recognition of Freedom of Information applications as legal mail and confirmed that an Executive Director's Instruction had been issued reminding staff of the requirements of the SOP.

17. Consumer and Business Services – Unreasonable failure to provide notification to licence holder to produce photograph and to respond to request to waive the penalty. Report date: 24 May 2012

Background

The complainant held a licence issued under the Building Work Contractors Act since 2000. At the time of issuing the licence in 2000, the office of Consumer and Business Services (**CBS**) had obtained a photograph of him.

During a routine licence renewal process, the complainant paid the required renewal fee for his licence but did not supply a photograph to update his licence records. As a consequence, a penalty notice was issued for failure to comply with a request from the Commissioner for Consumer Affairs to supply a photograph.

The complainant subsequently requested that the penalty imposed be waived. The request was made on the basis that when the licence was renewed, the complainant was not aware that a photograph was required as he had 'not received an introductory letter stating same'.

My investigation found that CBS failed to provide the complainant with clear information to enable him to understand his obligations. Further, I found error in the failure by CBS to comply with its operational guidelines when processing the complainant's emails, and to inform the complainant of its decision in relation to the request to waive the penalty.

Recommendations

The final report made three recommendations, that:

(1) CBS review all documents forwarded to licence holders to ensure that licence holders are informed in a timely manner of a requirement to provide a photograph and the penalty that can be imposed for failing to comply with a direction to provide a photograph

(2) CBS ensure that staff are aware of and comply with the relevant policies and guidelines relating to the management of correspondence

(3) CBS develop guidelines to ensure that requests to waive penalty fees are properly recorded, responded to by people having the appropriate delegations, and that reports on the number of applications are reported to senior management.

Implementation

CBS accepted my recommendations. In correspondence dated 21 June 2012 it advised me that it had carried out an audit of its processes and procedures and determined to amend and simplify the renewal process.

CBS has since confirmed that:

(a) the Letter of Introduction has been retitled to better reflect the legislative requirement for a new photograph to be taken

(b) a statement explaining the consequences of not providing a photograph to enable licensee's to clearly understand their obligations under the Act are now included in the 'Photograph Notice' of the letter

(c) procedures have been developed for all requests for waivers/refunds which include an escalation process to delegated officers who will action and report on their decisions

(d) training has been provided to CBS staff in the new processes and procedures to be followed.

18. Health and Community Services Complaints Commissioner – Unreasonable failure to conduct appropriate investigation. Report date: 28 May 2012

Background

Following the death of her husband at a private hospital in December 2009, the complainant approached the Health and Community Services Complaints Commissioner (HCSCC) seeking an investigation into the treatment provided to her husband at Hampstead Rehabilitation Centre.

After outlining the events which gave rise to the complaint, the complainant sought a range of outcomes. These included an apology for mistakes made at the Hampstead Rehabilitation Centre and evidence that processes had been put in place to ensure that patients at Hampstead were not at risk of similar mistakes and mistreatment.

The complaint was acknowledged by the Commissioner and her letter noted the possibility of consultation with the Australian Health Practitioner Regulation Agency (AHPRA). The time frame within which the complaint would be assessed was also outlined.

After a preliminary investigation, the Commissioner decided to take no further action on the complaint. This was communicated to the complainant by letter dated 17 August 2011.

My investigation found that the Commissioner's decision not to take any further action on the complaint was unreasonable. Further, in failing to refer to AHPRA the conduct of a doctor and in delaying the referral of the conduct of a nurse, the Commissioner acted contrary to law.

Recommendations

In my provisional report, I foreshadowed making a recommendation that the Commissioner forthwith make a notification to AHPRA regarding the doctor's conduct.

In response, the (newly appointed) Commissioner advised that he had consulted with AHPRA about the doctor, and an AHPRA officer had later advised him that he 'should continue to deal with the complaint because of its systemic features and the lack of information pointing to grounds on which the (Medical Board of Australia) might investigate the doctor'. Accordingly I saw no need to finalise the foreshadowed recommendation.

Further, in my provisional report, I noted that the Commissioner had made a voluntary notification regarding the nurse's conduct. In response, the Commissioner advised that, AHPRA had provided him with the outcome of its investigation. AHPRA indicated that it had decided to caution the nurse, and had written to the complainant advising her of this.

The final report made one recommendation, that:

> the Commissioner should complete the investigation, and advise the complainant of the results.

Implementation

In December 2012, the HCSCC sought and received an independent opinion on the systemic aspects of the case. The HCSCC advised me that it has sought comment on the opinion from the complainant and the service provider before considering the next steps in the investigation.

19. Department of Treasury and Finance – Unreasonable refusal to provide refund/financial compensation for overpaid land tax. Report date: 4 June 2012

Background

The complaint concerned a refund request for a land tax assessment under the *Taxation Administration Act 1996.* A trustee had mistakenly paid land tax for four properties located at Marden SA.

When the error was noticed, the trustee requested a refund from the department. This was initially refused on the grounds that the department considered the ownership structure of the four properties meant that the properties comprised a single trust. There were a number of ancillary issues to the matter, including one related to a request for a refund against lodgement of a formal objection to the assessment. A refund for the mistakenly paid land tax was later paid to the complainant without an interest payment.

My investigation found that the department erred by failing to notify the complainant of its determination regarding the 'refund request' under the Taxation Administration Act.

My investigation also found that the department's failure to treat the complainant's initial contact as an 'objection' under section 82 of the Taxation Administration Act, was wrong.

Recommendations

The final report made one recommendation, that:

> the department consider extending an *ex gratia* payment to the complainant which reflected the interest that would have accrued on the $14 195 over the relevant time period.

Implementation

The department accepted my recommendation. The Minister for Finance wrote to me to advise that he had approved an *ex gratia* payment to the complainant of an amount equal to the interest that would have otherwise been payable on the refund.

20. Department for Correctional Services – Unreasonable treatment of a prisoner regarding transfer. Report date: 12 June 2012

Background

The complaint concerned a prisoner who alleged that the department had failed to fulfil an agreement to transfer him to Port Augusta Prison and to ameliorate his regime of separation. The prisoner further complained that the department did not provide reasons for failing to transfer him, and that he had not been provided with an opportunity or means for him to progress from his regime.

My investigation found no evidence of an 'agreement' to transfer the prisoner to Port Augusta Prison. However, I did find that the department had erred in failing to provide the complainant with his procedural rights under sections 23(4) and 23(5) of the *Correctional Services Act 1982* and in not giving reasons for the decision not to transfer him to another prison.

I also found that the department had failed to communicate to the complainant the issues upon which future decisions regarding his continued separation would turn.

Recommendations

The final report made four recommendations, that:

(1) the department implement a policy to ensure that the procedure provided for under section 23 of the Correctional Services Act is complied with, and that the department provide me a copy of that policy

(2) the department apply the correct procedure for the assessment and determination of the complainant under section 23, and that the department provide me with evidence that this has occurred within 3 months of the date of the report

(3) the department incorporate into the policy recommended above, a statement regarding the provision of reasons following a decision under section 23

(4) the department adopt a policy or procedure to ensure that rehabilitation programs are communicated to prisoners in a clear and meaningful way and, in particular, that those prisoners separated under section 36 of the Correctional Services Act are regularly informed in writing of the criteria against which their future conduct will be tested.

Implementation

The department accepted recommendations 1, 2 and 4 without qualification. Recommendation 3 was accepted in part. The outcome for that recommendation was a negotiated compromise whereby the department provide written reasons for decisions in a limited range of circumstances.

The department developed an action plan to identify the actions required for each recommendation, determine timelines and to monitor and measure implementation.

A draft Standard Operating Procedure was developed which details all areas that must be considered by the delegate/case review committee when undertaking a regular case review. A subsequent case review was conducted with the prisoner, with evidence provided that the correct procedure was applied.

Rehabilitation programs are now communicated to prisoners as standard practice, and prisoners are now informed in writing of the criteria against which their future conduct will be tested.

21. Consumer and Business Services – Unlawful failure to comply with legislative requirements. Report date: 8 August 2012

Background

On 19 August 2011 the complainant lodged a notice to Consumer and Business Services (**CBS**) under section 19 of the *Mutual Recognition Act 1992* (**section 19 notice**). The purpose of the notice was for a plumber and gas fitter licence to be issued under the *Plumbers, Gas Fitters and Electricians Act 1995*.

On 10 January 2012 the complainant complained to my office about delays in CBS processing his notice and returning his phone calls. That same day, a CBS Licensing Officer advised my office that the complainant's notice had been processed and granted.

My investigation found that CBS's failure to grant, refuse or postpone the complainant's section 19 notice within the timeframe set by section 21(1) and to comply with requirements of section 24 of the Mutual Recognition Act was contrary to law.

I also found that CBS's failure to establish internal controls to ensure compliance with the timeframe fixed by the Mutual Recognition Act was wrong, and that CBS wrongly failed to maintain an adequate record of its communication with the complainant.

Recommendations

After noting CBS's procedural changes made during the course of my investigation to improve the processing time of applications received under the Mutual Recognition Act, the final report made two recommendations, that:

(1) CBS review its internal control mechanisms to identify and report on actual or imminent failures of compliance with the Mutual Recognition Act. These mechanisms should include the timely reporting to a manager as to the level of compliance with the Mutual Recognition Act and any other relevant legislation

(2) CBS establish appropriate policies and operational guidelines to ensure all relevant contact with applicants and licensees more generally is recorded.

Implementation

CBS accepted my recommendations. CBS has established an automated Mutual Recognition Aged Profile report which details all mutual recognition applications pending determination. This report flags applications that are at risk of not being determined within legislated timeframes. The new policy and procedures provide that at risk applications will be brought to the attention of the supervisor/manager together with details of the action being taken to ensure these applications are determined within those timeframes.

CBS informed staff of the importance of maintaining appropriate records of relevant contact with applicants and licensees. The new policy and procedures require all officers to record and maintain records of conversations between staff and applicants. More generally, Licensing and Registration is reviewing its record keeping procedures with a view to establishing general policies and procedures to ensure that all relevant contact with licensees and applicants is appropriately recorded.

22. Department for Correctional Services – Unreasonable delay in transferring prisoner's property and unreasonable management of complainant's requests for his property. Report date: 3 October 2012

Background

The complaint involved a prisoner's property transfer to Port Augusta Prison. After a transfer from Mobilong Prison and a short period in Yatala Labour Prison in December 2011, the prisoner complained to the Prisoner Complaints Line and to prison management that his property had not arrived.

The transfer of the complainant from Mobilong to Port Augusta was completed within seven days, but the subsequent movement of his property took 33 days.

My investigation found that the department had not complied with Standard Operating Procedure (**SOP**) 21 which requires that a prisoner's property must be transported at the same time as the prisoner, but which allows for a seven day lag in certain circumstances.

I also found that the department had failed to understand and adequately respond to the complaint.

Recommendations

The final report made three recommendations, that:

(1) the department conduct a review of the SOP and relevant prison Local Operating Procedures (**LOPs**) to provide for a complete and consistent approach to prisoner property movement

(2) the department review the operational focus, resourcing and training available for the Prisoner Complaints Line, including seeking prisoner input to build a more proactive and consistent service

(3) the department accelerate development and implementation of a SOP for prisoner complaint management to be used across the system. Further, that the new SOP underpin a comprehensive review of all LOPs to establish consistency and minimum standards whilst recognising different security classifications and local conditions.

Recommendations 2 and 3 were based on existing recommendations from my June 2012 *Audit of prisoner complaint handling in the South Australian Department for Correctional Services*.

Implementation

Recommendation 1 was accepted by the department and the SOP is currently being reviewed as a matter of priority. In the interim, a Deputy Chief Executive's Notification directs staff to ensure that prisoner property is transported at the same time as the prisoner. The Notification also directs that alternative arrangements must be made when this is not possible due to insufficient space in transport vehicles. If this occurs, arrangements must be made to ensure that the property arrives at the receiving institution within seven days.

Recommendation 2 has been included in work planning for the first half of 2013 and will commence once the SOP is developed.

Recommendation 3 has been fully implemented with the adoption of a prisoner complaints policy and the drafting of the SOP for prisoner complaint management to be used across the prison system. The draft SOP is currently in the consultation phase before going to the department's Executive for final endorsement.

23. Super SA Board – Unreasonable failure to provide authority for demands. Report date: 9 October 2012

Background

The complaint concerned a written requirement by the Super SA Board (**the Board**) that the complainant (a retired judge) must complete a 'Confirmation of Income Entitlements' form declaring that he was entitled to the fortnightly payment under the provisions of the *Superannuation Act 1988*. The letter from the Board stated that non-receipt of the form would result in suspension of the complainant's fortnightly income payment.

The complainant had written to the Board querying the purpose of requiring him to complete the form. The complainant's letter asked the following two questions:

(1) Upon what legal authority does the Judges Pensions Scheme rely to demand that I annually complete a form known as the 'Confirmation of Income Entitlement Form'?

(2) Upon what legal authority does the Judges Pension Scheme rely to suspend my judge's pension if I fail to complete and return the form?

After several inconclusive exchanges of correspondence, the complainant approached my office. In his opinion, the Board had not responded to the two questions he had asked regarding its authority.

My investigation found that it is fair and reasonable for a member of the public to expect a response from an agency to questions asked. I expressed the view that it is important for an agency to engage with the community it serves in order to maintain open and accountable government. I did not consider that Board's correspondence, whilst outlining its position, responded adequately to the questions asked.

I also found that the Board had no legal authority to require the complainant to complete the form.

Recommendations

The final report made one recommendation, that:

> the Board amend the process it uses to confirm members' entitlements.

Implementation

Super SA accepted the recommendation, and wrote to me confirming that annual evidence of 'proof of life' from retired judges would be conducted in a sensitive manner.

The Minister for Finance also informed me that that the practice of warning members of the Judges Pension Scheme that pensions will be suspended if evidence as to 'proof of life' is not produced, had ceased.

24. SA Ambulance Service – Unreasonable requirement to disclose identity details. Report date: 29 October 2012

Background

The complaint concerned the method of the SA Ambulance Service (SAAS) in handling complaints. The complainant had written a letter of complaint on behalf of one of her patients about the treatment of the patient by SAAS officers. There were two issues involved: a requirement for the patient to provide a copy of signed photo identification as proof of identity and also a requirement for a witness to the patient's signature to provide signed photo identification.

My investigation established that the collection of driver's licence information did not appear to be a specific requirement of any of the relevant policies of SAAS. Neither was there a policy requirement to provide a copy of current signed photo identification for either a patient or a witness to a patient's signature.

Commonwealth legislation and state privacy principles both contain requirements to the effect that agencies should not collect personal information unnecessarily. I considered that the collection of the copies of driver's licences by the agency was unnecessary and excessive. In requiring the collection of driver's licence information, the SAAS was acting in a manner inconsistent with state privacy principles.

My investigation found that not providing individuals with a choice to verify their identity by other means was unreasonable. I also noted that there may be individuals who wish to obtain a copy of their records from SAAS who do not possess a driver's licence.

Recommendations

The final report made three recommendations, that:

(1) SAAS review its practices, having regard to the Information Privacy Principles contained in the Government of South Australia's Cabinet Administrative Instruction 1/89 and, to the extent that the agency is bound by them, the NPP in the *Privacy Act 1988* (Cth)

(2) SAAS review its blanket requirement for the collection of a patient's driver's licence, to allow for other methods of verifying the identity of the patient requesting authority to release information

(3) SAAS review whether its collection of the witness driver's licence information was necessary and consider removing this requirement.

Implementation

The SAAS accepted my recommendations. The Minister for Health and Ageing confirmed with me that the SAAS no longer requires a copy of photographic identification from witnesses of *Patient Authority for Release of Information* forms.

The Minister also advised that the SAAS now allows for patients requesting or authorising release of their medical records to complete a statutory declaration in place of providing photographic evidence of their identity.

25. Health and Community Services Complaints Commissioner – Unreasonable investigation of complaint. Report date: 11 January 2013

Background

The complaint concerned a mother whose adult daughter suffers from mental illness. Over a number of years, the daughter had been the subject of Community Treatment Orders issued by the Guardianship Board under the *Mental Health Act 2009*. On a number of occasions, she had also been detained in mental health facilities pursuant to Detention and Treatment Orders under the Act when experiencing acute episodes of her illness.

The complainant's concerns were about the adequacy of the treatment and support provided to her daughter. Further issues arose during the course of the investigation regarding an allegation of sexual assault committed on her daughter, and also about her daughter's request for non-disclosure of her personal information to her mother. The Public Advocate was involved as an advocate for the complainant in her dealings with SA Mental Health Services and the Health and Community Services Complaints Commissioner (HCSCC).

My investigation found that the HCSCC appropriately managed the balance between responding to the issues raised by the complainant while ensuring that personal information of her daughter was not disclosed.

However, I found that the HCSCC was in error in its handling of the mother's complaint about Mental Health Service's late application for an extension of a Community Treatment Order regarding her daughter.

I also found error in the handling of the sexual assault allegation. By not ensuring that the service provider had complied with SA Health policy in relation to notifying police or making referrals, and in failing to follow up the outcome of the investigation by the relevant regulatory authority, the Nurses and Midwifery Board of South Australia (**NMBSA**), the HCSCC was in error.

Recommendations

The final report made five recommendations, that:

(1) HCSCC request the Mental Health Directorate to ensure that applications for hearings are provided within the timeframes requested by the Guardianship Board

(2) HCSCC take further steps to ensure that the Mental Health Directorate has adequately considered its processes for ensuring that applications for interim community treatment orders are made in a timely manner, and has taken any necessary steps to address this issue

(3) HCSCC clarify its internal processes to ensure that service providers make appropriate notifications to police even in matters that the HCSCC refers to the Australian Health Practitioner Regulation Agency (**AHPRA**) for investigation

(4) HCSCC clarify its internal processes for following up on the outcome of matters referred to the AHPRA for investigation, and receive advice of the outcome of the matter in hand if it has not already received such notification

(5) HCSCC assess the outcome of the investigation conducted by the NMBSA and advise the complainant of the outcome of its own consideration of her complaint.

Implementation

During the process of the investigation, HCSCC requested in writing that the Mental Health Directorate ensure that all future applications for hearings are within the timeframes requested by the Guardianship Board.

HCSCC accepted my other recommendations and provided evidence of the action taken to address each of them.

26. Consumer and Business Services – False information released on website Report date: 21 January 2013

Background

The complaint concerned action taken by CBS in the District Court against the company and the complainant for breach of the *Building Work Contractors Act 1995*. The action consisted of six grounds. The company admitted fault in relation to four grounds, including negligent workmanship.

The agency subsequently prepared a media release which was published on its website. The media release gave details of the complaint as well as an earlier civil action between the complainant and the homeowners.

The complainant subsequently raised concerns that the media release appeared to be incorrect in a number of areas and omitted to note important findings from the District Court case regarding the company's previously 'untarnished record'.

My investigation found that in one respect the agency published false or misleading information. Given the foreseeable negative consequences of this to the complainant's reputation, CBS ought to have taken greater care during the drafting process.

Moreover, I found that CBS ought to have taken steps to ensure that the request for removal of the media release was carried out in a timely manner and that the appropriate amendments were made. I could see no reasonable justification for information which CBS knew was false or misleading to have remained publicly available for 16 months without action.

Recommendations

The final report made two recommendations, that:

(1) CBS send a letter of apology to the complainant for the errors identified in my report

(2) CBS take immediate steps to ensure the complete removal of the media release and its parts from the internet, through expert re-checking of its own website and contacting Google and other relevant search engines as necessary.

Implementation

CBS accepted my recommendations and advised me that the media release had been removed from its website, and that additional efforts had been made to remove all links to the document through internet search engines.

A letter of apology was sent to the complainant. Further, CBS has considered strategies to ensure 'version control' to ensure similar errors are not made in the future and that media reviewing processes are put in place.

27. SA Ambulance Service – Unreasonable assessment of hardship application. Report date: 20 February 2013

Background

The complaint concerned a woman who used the transport services of the SA Ambulance Service (SAAS) at the insistence of her doctor. She subsequently received an ambulance service account and submitted a financial hardship application.

SAAS advised that it agreed to waive her ambulance service account, on the condition that she purchase and maintain a membership for ambulance cover with the department.

The complainant complained to SAAS that it had handled her matter badly; had given her incorrect information; and that she considered it blackmail to be asked to take out and maintain Ambulance Cover. She explained the imposition of paying Ambulance Cover in her financial circumstances, and asked that her account be unconditionally waived.

My office contacted SAAS in relation to the complaint, and requested that it review its decision. On review, SAAS confirmed its decision.

Subsequently, my investigation found that SAAS erred in its assessment of the complainant's hardship application by requiring her to take out Ambulance Cover. Further, I found that SAAS erred by seeking to recover debt owed other than in accordance with the Treasurer's Instruction Number 5. I noted that a person who contravenes or fails to comply with an instruction issued by the Treasurer under this section is guilty of an offence under section 41 of the *Public Finance and Audit Act 1987*.

Recommendations

The final report made four recommendations, that :

(1) SAAS seek advice from the Crown Solicitor as to whether those people taking out Ambulance Cover during the period 2007 to 21 October 2012, on the understanding that they were legitimately required to do so, should be recompensed

(2) SAAS inform those people that they are not required to maintain their Ambulance Cover

(3) SAAS ensure that its practices, procedures and documentation is reviewed in light of my findings and the advice of the Crown Solicitor

(4) SAAS take other appropriate action consistent with the advice of the Crown Solicitor.

Implementation

The agency accepted my recommendations. As a result of Crown Solicitor advice, SAAS sent an apology letter to the affected hardship applicants advising that an error had occurred, and as a consequence, they were entitled to be repaid the total amount paid for their Ambulance Cover.

SAAS informed those people that they were not required to maintain their Ambulance Cover.

SAAS reviewed its practices, procedures and documentation and stopped issuing debt waivers as of October 2012. A revised letter to debtors assessed under hardship guidelines was put in place.

28. Housing SA – Unreasonable failure to lodge bond in association with private rental assistance. Report date: 22 February 2013

Background

The complaint concerned a private property owner who agreed to rent her premises to a client of Housing SA. It transpired that the client did not occupy the premises herself, but her sons took up residence, unknown to the owner. On becoming aware of this, the owner took steps for the property to be vacated. About $100 damage was caused to the property during the tenancy which lasted about one month.

Following this, the owner contacted Housing SA. She advised that no bond had been lodged for the tenancy and that no further rent had been paid by the client. Consequently she incurred a financial loss as a result of the tenancy. She was referred to the Residential Tenancies Tribunal should she wish to take action against the client.

My investigation found that as the bond guarantee had not been lodged with the Tenancies Branch it was cancelled by Housing SA. The practical effect of cancelling the bond guarantee was that the owner was left with the understanding that she could not claim for her loss against the bond.

My investigation found that the role of Housing SA in this matter was to enable the Housing SA client to enter the private rental market. Once in the market the landlord and tenant would be protected by the relevant provisions of the *Residential Tenancies Act 1995*. On Housing SA becoming aware that the tenancy had been terminated by the owner and that she had incurred a financial loss, it should not have cancelled the bond guarantee.

Recommendations

The final report made one recommendation, that:

> Housing SA contact the owner and provide her with a bond guarantee in the same terms as the guarantee issued for the tenancy to the Housing SA client, thereby enabling the owner to lodge a claim with the Residential Tenancies Tribunal.

Implementation

Housing SA accepted my recommendation, and agreed to forward the bond guarantee to the owner.

29. Department for Correctional Services – Unreasonable banning of the complainant from visiting his brother. Report date: 28 February 2013

Background

The complaint concerned section 34 of the *Correctional Services Act 1982* which provides that a prisoner is entitled to receive visitors. A person can be banned from attending a specific prison (by the General Manager) or all prisons (by the Chief Executive).

The relevant Standard Operating Procedure (SOP) covering visits provides that all visits to prisoners be on an appointment basis unless the General Manager of the prison directs otherwise. Details of restrictions placed on visitors are required to be recorded on the

department's Justice Information System (**JIS**). The rationale for this is to allow for an assessment of the visitor's suitability.

Following an incident involving the complainant when visiting his brother in jail at the Port Augusta Prison, the General Manager banned him from attending that prison for 12 months. After his brother was transferred to Yatala, the complainant was also banned from visiting that prison.

In late 2012, the department sent a series of letters to the complainant. The letters gave conflicting advice as to the length of the ban imposed. Another apologised for earlier errors in the duration of the ban.

My investigation found that there had been an error in recording a 12 month ban at Port Augusta on the JIS. I found that the ban imposed at Port Augusta could not be applied at Yatala. Further, I found that the Yatala ban was imposed without proper consideration of the fact that wrong information on the JIS was the catalyst for the imposition of the ban.

Recommendations

The final report made one recommendation, that:

> if the department is to rely on reports generated from the JIS as an indicator of a person's unsuitability to visit prisons, ensure that final checks be done with the JIS before informing a person that they cannot attend at a prison.

Implementation

The department accepted my recommendation. It has reviewed its management of visitor restrictions. As a result of the review it is proposed that all visitor restrictions will be managed by the newly formed Safety and Security Directorate.

When a visitor restriction is in place, documentation will be forwarded to the affected visitor and General Manager(s), confirming the implemented ban and a warning will be displayed on the JIS informing any officer booking visit sessions of the restriction.

The department has agreed to my request that it should provide me with a copy of the Executive Director's Instruction once it is issued. The department should also report to me at the conclusion of the review of the JIS data on the findings of that review.

30. Veterinary Surgeon's Board – Unreasonable investigation. Report date: 28 February 2013

Background

The complaint concerned the treatment of sheep on the livestock carrier MV '*Al Messilah*' in Port Adelaide in September 2011. In November 2011, two complainants from the organisation Stop Tasmanian Animal Cruelty wrote to the Veterinary Surgeons's Board (**the Board**) to make two complaints. The letter referred to a veterinarian who was reported in the media to have provided services for the Australian Livestock Export Corporation (**ALEC**) on a consignment of sheep unloaded from the MV '*Al Messilah*'.

The complaints questioned the veterinarian's registration to practice in South Australia and what action, if any, was to be taken under sections 21 and 22 of the *Veterinary Practice Act 2003*. The issue of potential negligence or misconduct was also raised where the complainants alleged a failure by other veterinarians to carry out sufficiently rigorous testing to prevent the deaths of sheep on the subsequent voyage/s. During my investigation, I designated these as 'complaint 1' and 'complaint 2'.

My investigation found that the Board did not ask for a copy of the veterinarian's contract to confirm assertions that he was not engaged as a veterinarian in his treatment of the sheep. There appeared to be no reason why the contract was unable to be obtained by the Board. I considered that it would have contained information about whether or not the veterinarian was formally engaged as a veterinarian and hence, whether there could be a *prima facie* case of unprofessional conduct. I concluded that the Board had failed to properly investigate 'complaint 1'.

On the matter of 'complaint 2', I found that while the Board's correspondence to my investigation indicated it had considered the complaint, the evidence suggested that the Board had not taken any steps to investigate whether the treatment provided to the sheep by any other veterinarians could have amounted to unprofessional conduct, as alleged by the complainants in November 2011. Accordingly, I considered that the Board had failed to properly investigate 'complaint 2'.

Recommendations

The final report made two recommendations, that:

(1) the Board ask for a copy of the veterinarian's contract, and if that contract indicates he was employed by ALEC as a veterinary surgeon, review its assessment of the complaint accordingly

(2) the Board review its investigation of complaint 2, in accordance with its investigation processes and the Veterinary Practice Act, with a view to ascertaining if any of the other veterinary surgeons involved in treating the sheep unloaded from the MV *'Al Messilah'* were engaged in unprofessional conduct.

Implementation

The Board accepted my recommendations, and reopened its investigation into complaint 1. It requested a copy of the veterinarian's contract with ALEC from both parties, and corresponded with the complainants to advise them of the reopened investigation and to invite their submissions.

The Board also commenced an investigation into complaint 2; wrote to the complainants informing them of the processes to be followed; and sought their confirmation as to the substance of their allegation/s.

31. Department of Treasury and Finance – Unreasonable management of Freedom of Information application. Report date: 28 February 2013

Background

The complaint concerned an application to the department under the *Freedom of Information Act 1991* (FOI Act) for documents produced in the last two years containing information about an expected growth in the number of poker machines and associated revenue projections and cost benefit analysis. The application was refused because the department failed to determine the application within the statutory timeframe of 30 days.

Following correspondence to the department about their refusal, the complainant took issue with the way his FOI application was handled. (He did not request an internal review of the department's refusal under the Act).

My investigation found that the department misapplied the scope of the FOI application, and failed to advise the applicant of his review and appeal rights. This, along with a significant delay in responding to the complainant to advise him that the documents would not be released, suggested a deficiency in understanding its obligations under the FOI Act.

Recommendations

To remedy these errors, I considered a recommendation that the department extend the time for accepting the complainant's internal review application. However, in light of the fact that no documents appeared to fall within the temporal scope of the application, this recommendation would have served no useful purpose.

The final report made five recommendations, that:

(1) the department consider assisting the complainant to resubmit his application in accordance with the FOI Act with a suitably broad temporal scope

(2) the department consider waiving the application fees

(3) the department consider having the Principal Officer of the department determine the new application, in order to expedite the process

(4) the department consider providing the complainant with a copy of the Deputy Under Treasurer's minute dated 1 June 2011, in light of the objects of the FOI Act

(5) the department consider providing additional or refresher training for FOI unit staff within the department.

Implementation

The department accepted and implemented all of my recommendations. In addition, the department reviewed and updated all its documentation and procedures relevant to its responsibilities under the FOI Act.

32. Department of Further Education, Employment, Science and Technology - Wrongful disclosure of information. Report date: 22 March 2013

Background

The complaint concerned an allegation that an employee of the department had been operating a private business from her workstation in conjunction with her departmental duties. These were with the Quality and Risk Management Group at the Gilles Plains campus of TAFE SA, Adelaide North Institute.

In 2011, the complainants wrote a series of letters to the Minister for Employment, Training and Further Education and the Premier complaining about the conduct of the officer, and alleging that the employee was responsible for their loss of the $14,000 Home Savings Boost grant.

I focussed my investigation on whether the department breached section 7 of the *Whistleblowers Protection Act 1993*. Specifically, I examined whether the department had failed to keep the identity of the complainants confidential during an internal investigation into the allegations about the employee. I also examined whether the department's handling of the employee's alleged misconduct was appropriate.

I found that there was insufficient evidence to support the complainants' concerns that the department breached section 7 of the Whistleblowers Protection Act. However, I considered that the department acted in a manner that was wrong in not providing sufficient caveats on its electronic systems to prevent access by employees on the Total Records and Information Management System (TRIM). In particular, the department was wrong to have the relevant documents about the complaint entered into a TRIM folder with security access controls set to 'everybody'.

On the matter of whether the department's handling of the employee's conduct was appropriate, I found in my provisional report that the department had erred in approving the employee's outside employment. In its response, the department provided me with an amended copy of its policy/procedure relating to outside employment and advised that all staff were reminded of it on 1 March 2013.

The department further advised that all delegations relating to the approval of outside employment had been withdrawn and all applications now require the approval of the Chief Executive. This is confirmed by the department's amended 'Outside Employment' procedure document. Therefore, I saw no need to make formal recommendations on this issue.

Recommendations

The final report made one recommendation, that:

> the department review its policies and procedures in relation to TRIM security access controls.

Implementation

The department accepted my recommendation. An FOI Workgroup security setting was created within TRIM to strengthen the security of records.

As part of its review of policies and procedures relating to TRIM security access controls the department proposed to:

(a) review the security access control, settings of TRIM Super users and align TRIM access to the functions and duties of the role/position

(b) develop an ongoing communication strategy to ensure Super users are regularly reminded about the importance of setting appropriate security access controls

(c) develop a TRIM in-house training program to meet the needs of Super users.

PART 5

STATUS REPORTS: LOCAL GOVERNMENT COUNCILS

1. Mid Murray Council – Unreasonable development approval. Report date: 6 August 2009

Background

The complaint involved council approval of a building development. The complainants asserted that the development was non-complying based on the principles of Development Control outlined in the council's Development Plan. As the development had been processed as a complying development, they alleged that the application had been incorrectly categorised by the council. Further, as a result of this, they claimed they had been denied the opportunity to make a representation on the development.

My investigation found that council's decision to approve the application was unreasonable. The evidence indicated that council's decision was based on insufficient and inadequate information.

During the course of the investigation I was advised that the council had taken appropriate action to review internal planning processes and the Development Plan to ensure that proper assessment and reporting is carried out by council planning staff in similar situations in the future.

Recommendations

I requested that the council provide a report to me about action taken in relation to its decision to review certain inadequacies in the Development Plan by preparing the River Murray Zone Minor Amendment Development Plan Amendment.

Implementation

The council accepted my recommendation and reviewed the inadequacies in the plan, most notably ambiguities surrounding certain development principles. In collaboration with consultants, the council created and adopted a River Murray Zone Minor Amendment Development Plan Amendment.

2. City of Burnside – Unlawful failure to provide documents. Report date: 24 August 2009

Background

The complaint involved the council's processing of the complainant's Freedom of Information (**FOI**) application for access to certain documents. The complainant alleged that the council refused to allow him to inspect original documents which were the subject of his FOI application, and that the council could not locate certain original documents. I indicated in my provisional report which original documents the complainant should be permitted to inspect. The council agreed to permit access.

My investigation found that three original documents held by the council had been unlawfully destroyed in circumstances which could not be verified. However, I did not find that council officers had destroyed the documents deliberately or in the clear knowledge that disposal was contrary to the provisions of the *State Records Act 1997*. I noted that the destruction of the documents had compromised the complainant's rights under the *Freedom of Information Act 1991*.

Recommendations

The final report made one recommendation, that:

> the council educate its employees about their obligations under the State Records Act and liaise with State Records, which has administrative responsibility for the Act. The council should contact State Records and inform them of what has occurred, and ask for their advice with the view to implementing an appropriate records management refresher course for council staff.

Implementation

The council accepted my recommendation and agreed to liaise with State Records. The complainant inspected the original documents to which he was permitted access. Council staff also completed records management awareness training with an external consultant.

3. District Council of Copper Coast – Unreasonable failure to properly manage complaints. Report date: 28 August 2009

Background

My investigation involved two separate complaints. One arose from a resident's complaints to the council over a lengthy period of time about a lack of monitoring and enforcement of relevant controls on industrial noise and pollution caused by businesses. The central allegation was that the council had inadequately documented and managed the complaints.

The second complaint involved a request for an internal review, under section 270 of the *Local Government Act 1999*, of the council's handling of another complaint about a neighbour's improper effluent and storm water disposal. I found there were no records available of the investigations the council claimed it had conducted, or of interviews between the complainant and the neighbour; or of the council's attendance at the properties.

My investigation found that there was a lack of internal complaint management control and a deficiency in record-keeping of both matters where complaints had been made to the council. The council could not verify the actions it claimed to have taken regarding its investigations, nor did it provide meaningful information to my office to assist my investigation.

Recommendations

The final report made six recommendations, that:

(1) the council have in place a system to enable a full and meaningful response to any formal approach from the Ombudsman seeking information or documentation. While requests for information from the Ombudsman can be varied, the council should be able to put a request in its proper context to enable it to identify all relevant information, documentation and knowledge held in relation to the matter the subject of the complaint

(2) the council establish a policy in relation to the management of complaints received by it. The policy should include:
- guidelines for council staff to follow to ensure consistency in actions taken
- timelines for the various components of an investigation of a complaint
- identification of position holders responsible for the management of complaints
- a system of reporting to senior management to ensure that complaints are actually responded to and that there is an auditable path from date of receipt to date of conclusion
- staff should be made aware of the existence of the policy and appropriate training provided to ensure compliance with it

(3) the council ensure that it maintains an appropriate record of actions taken by its officers in discharging statutory or other functions. In particular, the recording of interviews, observations and other evidentiary sources that may be relied upon should be a standard part of complaint management. An appropriate level of training should be provided to officers to facilitate the proper recording and use of such material

(4) the council ensure that published objectives in a Strategic or Business Plan be supported with appropriate policies, standard operating procedures or other operational guidelines to facilitate and measure the level of achievement of the objectives

(5) the council undertake a review of its policies, practices and procedures to ensure compliance with section 132A of the *Local Government Act 1999*

(6) the council have proper regard for the purpose of section 270 of the Local Government Act and ensure that a grievance lodged relying on that section is properly managed and reported on. Staff generally should be made aware of the existence of the council's grievance policy and officers charged with conducting a review need to be trained in the application of the policy and their role in conducting a review of any decision made.

Implementation

The council accepted my recommendations. The council undertook a full due diligence audit by a legal firm to ensure policies and procedures were compliant with the law.

The council reviewed complaints handling procedures and revised them to establish a Complaints Handling and Grievance Procedure Policy, guided by the NSW Ombudsman's publication 'Effective Complaint Handling'. The council adopted an external Customer Service Standard to achieve Strategic Plan and Business Plan objectives. Senior management training was also conducted with a legal firm, focusing on administrative law and decision making.

The council advised me that it had taken steps to ensure staff awareness of the legislative requirements for effective complaints handling, record keeping, grievance policy and investigative procedures. This was to be conducted through training, policy development and supporting business procedures.

4. City of Holdfast Bay – Unlawful seizure and sale of motor vehicle. Report date: 4 November 2009

Background

The complaint concerned the alleged improper exercise of power by the council in seizing and disposing of a motor vehicle. A car parked outside the council Civic Centre was impounded and disposed of under section 237 of the *Local Government Act 1999*. I conducted an 'own initiative' investigation into the matter.

My investigation found that the council did not properly notify the owner of the vehicle of its removal and disposal, nor did it advertise the impounding of the vehicle in a newspaper as required by the Act. Consequently, it had no lawful authority to dispose of the vehicle.

I also found that the council lacked a system for valuing impounded and unclaimed vehicles. In this case, the person who directed the removal of the car lacked the requisite authority to do so. I found a number of deficiencies with the council's Abandoned Vehicle Operating Procedure, including the process of giving notice to the owner of the vehicle and the fees levied if the vehicle is not claimed.

Recommendations

The final report made eight recommendations, that:

(1) the council undertake a comprehensive review of its practices and procedures relating to the proper exercise of powers vested in the agency and its officers under section 237 of the Local Government Act

(2) the council have in place a process whereby there is an evidentiary trail to ensure that the lawful exercise of authority can be established in terms of:
- the actual power being exercised
- the person exercising the power and their authority for doing so, the date and if relevant, time the power is exercised

(3) in exercising the power under section 237, the council only recover from a vehicle owner the costs lawfully incurred by it

(4) the council conduct a full review of its governance arrangements relating to the delegation of powers under the Local Government Act and the instruments used to record the delegation of power

(5) the council undertake a comprehensive review of its training procedures for staff exercising delegated authority or in their performance as authorised persons

(6) any vehicle impounded under section 237(1) should be independently assessed to determine its true market value prior to any attempt to dispose of the vehicle

(7) the council give consideration to an *ex gratia* payment to the owner of the vehicle

(8) the 24 hour notice used by the council be amended to reflect a vehicle owner's responsibility in terms of section 237(1) of the Local Government Act.

Implementation

The council accepted my recommendations. Following a review of the practices and procedures relating to powers vested in officers under section 237, the council implemented new documentation and record keeping systems regarding the appointment of Authorised Officers.

The council established a process trail to ensure the lawful exercise of authority under the Abandoned Vehicle Operating Procedure. Only the costs lawfully incurred by removal of the abandoned vehicle are now recovered by the council from the owner.

A new system of recording and notification regarding Delegated Authority was implemented. Education and staff development was provided to officers to ensure understanding of the powers, duties and responsibilities regarding delegations. Ongoing training was implemented for Authorised Officers.

Abandoned vehicles are now independently assessed prior to disposal.

The council negotiated an *ex gratia* payment with the vehicle's insurer who held a lien over the vehicle at that time. An amount of $4 342.33 was paid to them as the vehicle owner in November 2009.

The 24 hour notice used by Authorised Officers has now been amended to indicate the owner of the vehicle has responsibility in terms of section 237(1) of the Local Government Act .

5. Port Pirie Regional Council – Unreasonable failure to enforce development conditions. Report date: 1 April 2010

Background

The complaint concerned an allegation of two failures on the part of the council to enforce conditions of development approval for a property used for respite care. In the first instance, the complainant claimed that Condition 3 of the Development Plan Consent was not met. This required driveway and car parking areas to be surfaced, drained and marked to the reasonable satisfaction of the council prior to occupation of the property by the tenant, a respite care service provider.

The second allegation concerned a breach of Condition 4, namely excessive driveway car parking lighting from the property that spilled onto adjoining properties.

My investigation found that Condition 3 of the Development Plan Consent had not been met, despite the lapse of more than 12 months since the condition had been imposed. In relation to Condition 4, I found that the claim of unreasonable light spill associated with the subject land was not sustained.

Recommendations

The final report made one recommendation, that:

> the council ensure that the requirements of Condition 3 of the Development Plan Consent 354/493/08 are met as soon as is reasonably practicable.

Implementation

The council accepted my recommendation. The council requested that the conditions be complied with within 28 days. The respite care provider advised the council that it would comply with the condition. They also indicated to the council that they were investigating alternatives so that the car parks were not permanently marked in the paved area.

6. City of Port Adelaide Enfield – Unlawful seizure and sale of motor vehicle. Report date: 23 April 2010

Background

The complaint concerned action taken by the council following a report that a vehicle had been in the same location for a period of time. The complainant was the owner who had allowed a family member to use the vehicle. Responding to the report, the council commenced a process that resulted in the seizure and disposal of the vehicle.

My investigation found that the notice of removal did not comply with section 237 of the *Local Government Act 1999*. Consequently there was no service of the notice on the complainant. Further, I found that the sale of the vehicle was unlawful by reason of the council not having regard to the value of the vehicle.

Recommendations

The final report made two recommendations, that:

(1) the council give consideration to an *ex gratia* payment to the complainant. Such payment should reflect the fact that there was a detriment to the complainant that was aggravated by a range of administrative errors

(2) the council develop a process whereby a vehicle impounded under section 237 is, prior to disposal to another party, assessed to establish a monetary value against which offers can be assessed.

Implementation

The council accepted the first recommendation. An *ex-gratia* payment was made to the complainant.

The council accepted the second recommendation in part. Whilst disagreeing that it should establish the value of all vehicles impounded prior to sale, the council agreed to amend its Standard Operating Procedure to ensure that an independent valuation of all vehicles which may have a value of more than $5 000 is obtained.

Ombudsman comment

During the course of discussions with the council on implementation of recommendation 2, I agreed that section 237 of the Local Government Act does not require that every vehicle should be valued prior to disposal. However, as a matter of good administrative practice and fairness to the owners, I proposed that this process should be applied.

7. District Council of Tumby Bay – Unreasonable change to Land Management Agreement. Report date: 4 May 2010

Background

The complaint concerned private home ownership issues in the marina development in Tumby Bay. A requirement of property ownership was sign-up to a Land Management Agreement (**LMA**) which could be altered only if all residents of the marina agreed. Changes made to the LMA by the council redefined the term 'private residential use' to include holiday rentals. This decision raised issues about control of noise from tenants and tenant behaviour in an adjoining property, and resulted in a complaint to the council.

My investigation found that the council's response to the complaint was lawful but was not reasonable. It did not fully follow the advice of the council's legal adviser, and did not remind a third party (another property owner) of an obligation to comply with the relevant provisions of the LMA. I noted the council's response to my provisional report that it had not intended to favour any party in the matter. Nonetheless, I concluded that the council's response to the complaint had the effect of unfairly disadvantaging the complainant and favouring the third party.

Recommendations

The final report made four recommendations, that:

> the council act on the recommendations of its legal adviser to:
>
> (1) make a proper assessment of [the third party's] claim that her property is not a commercial enterprise, including a survey of the occupancy rates of other rental properties in Tumby Bay
>
> (2) seek more information on the extent to which the complainant's property is available for rental and specifically short-term or holiday rental
>
> (3) based on the above information and in consultation with the council's legal adviser, assess the feasibility of enforcing the terms of the LMA using the civil enforcement provisions in section 85 of the *Development Act 1993*
>
> (4) remind [the third party] of her obligations to abide by the provisions of the LMA, in particular clause 4.1 and clause 29.1.10.

Implementation

The council accepted my recommendations. Recommendations 1, 2 and 4 were implemented in May 2010.

The council sought further legal advice on recommendation 3, after which it wrote to the complainant advising that it would not proceed with enforcement proceedings under section 85 of the Development Act. Council's legal advice was that there was a risk involved in doing so and undertook to reassess the matter if circumstances changed or if further information became available.

My office was subsequently advised there had been no change in the circumstances which may lead to reassessment of enforcement proceedings.

8. City of Unley – Unreasonable failure to allow representation at a CDAP meeting. Report date: 27 May 2010

Background

The complaint concerned the refusal of the council to permit the complainants' late representations to the Council Development Assessment Panel (CDAP). Correspondence received from a council officer on the day the representations were due indicated that the representations would be accepted the next day. The representations were lodged one day late and were refused by the council on the basis that the CDAP had no discretion to permit late representations. This position was confirmed upon later receipt of legal advice by the council.

The complainants complained that the council provided misleading advice about an extension of time to submit a representation. They also alleged that the council wrongly failed to provide the complainants' representations to the CDAP meeting, and to permit the complainants to be heard.

My investigation found there was no legal basis for the council's indication to the complainants' planning consultants that representations lodged the following day would be accepted. As a consequence, the complainants had effectively lost their entitlement to lodge a valid objection. I concluded that the council had provided misleading advice about an extension of time to submit a representation. However, I did not find that the council had erred by disallowing the complainants' representations to the CDAP meeting.

Recommendations

The final report made one recommendation, that:

> the council take steps to ensure that its staff are adequately trained to ensure that correct advice is given to people seeking to make a representation about an application under the *Development Act 1993*.

Implementation

The council accepted my recommendation. The council arranged for a two hour training session which concentrated specifically on the legislative requirement of public notification and the provision of advice to applicants. It also included a question and answer session with scenarios specific to the handling of the types of queries which had been posed by the complainants.

9. Rural City of Murray Bridge – Unlawful failure to disclose a conflict of interest. Report date: 27 October 2010

Background

This anonymous complaint concerned a council meeting in May 2010 when the council considered and approved a request from one of its councillors to pay for travel costs to an overseas conference. The allegation was that the councillor (**Councillor A**) failed to declare a conflict of interest in the matter, and attended and voted at the meeting.

It was also alleged that at the same meeting, another councillor (**Councillor B**), did not declare a conflict of interest and participated in decision-making in relation to a presentation on a redevelopment proposal for land adjacent to property owned by the councillor.

I decided to conduct an 'own initiative' investigation into both allegations.

My investigation found that in participating in the council's consideration of an item relating to personal interests, Councillor A should have declared an interest and withdrawn from the meeting. On the second matter, I found that Councillor B should also have declared a conflict of interest and not participated in the decision making process. However, because the motion which gave rise to Councillor B's error was dealt with separately by the council, I saw no need to make a recommendation on the matter.

Recommendations

The final report made one recommendation, that:

> the council should consider rescinding its decision to financially support the travel costs of Councillor A to attend the Shanghai World Trade Expo from 5th to 11th June 2010.

Implementation

The council accepted my recommendation. It rescinded the approved financial support for the councillor's travel costs.

10. City of Holdfast Bay – Wrongful decision to retain a street tree. Report date: 4 November 2010

Background

The complaint concerned the council's decision to retain a street tree despite it being 'non-significant' and 'non-complying.' The council's decision to retain the street tree was based on current council policy which provided for the non-removal of healthy trees in all instances. Residents living adjacent to the verge on which the tree was located requested that I investigate the council's review of its decision to retain the tree. The review was conducted pursuant to section 270 of the *Local Government Act 1999*.

My investigation found that the decision to retain the tree appeared to be based solely on the council's opinion that the tree was healthy. I had no information to show that the council took into consideration that the tree was not a significant tree; non-complying with the Street Tree Strategy; or whether it had considered the significant points raised by the complainant and by council administration in their reports to council. In my view, the

reports gave credence to a line of reasoning that supported the removal of the non-complying tree.

I concluded that the council acted wrongly in that it did not have adequate regard for all the relevant factors relating to the condition and detrimental characteristics of the non-significant, non-complying street tree.

Recommendations

The final report made two recommendations, that:

(1) the council remove the tree, with removal costs to be met by the council, as provided for in its Street Tree Management Policy

(2) deal with the matter at a full meeting of the newly elected council as soon as practicable; and in doing so. consider the matter with regard to the council's new Policy for Street Tree Management.

Implementation

During the course of my investigation, the council adopted a new Street Tree Management Policy. The policy was consistent with the findings and foreshadowed recommendations made in my provisional report.

The council accepted my recommendations. A resolution was passed that the tree be removed and replaced, with removal costs to be met by the council as provided for by the new Street Tree Management Policy.

11. Wakefield Regional Council - Unreasonable management of land sale. Report date: 19 January 2011

Background

The complaint concerned the sale of council land to a private buyer. The complainant alleged that he had also approached the council to express an interest in the property, but was informed that the property would not be placed on the open market. He was told that his offer would not be considered unless negotiations with the private buyer failed. It was alleged that the council was acting contrary to its sale and disposal of land policy, and that it had made other administrative errors in the provision of information to elected members.

My investigation found that the council had contravened its sale and disposal of land policy by indicating the council's intention to negotiate with only one party, and by making it known that interest from other parties would only be considered if negotiations with the first party failed.

I concluded that when other interest in the property became apparent, there was no reason why the council could not have considered all expressions of interest of all, having regard to the same factors for each. Such an informal tender process would have been more in line with the policy. I found that the council erred in closing the sale process by expressing its intention to negotiate on what was effectively a first-come first-served basis.

Recommendations

The final report made one recommendation, that:

> the council cease current negotiations with the private buyer and reapply its sale and disposal of land policy by opening up the sale process.

Implementation

The council accepted my recommendation. It noted my report and decided to offer the sale of the former works depot via open tender.

Tenders were considered at the following council meeting and the highest bidder was chosen.

12. District Council of Tumby Bay – Wrongful failure to have land properly valued. Report date: 2 February 2011

Background

The complaint concerned the council's proposed road closure adjacent to two properties; one zoned residential, one farming. The council offered the land made available by the road closure to a landowner and a potential landowner of the adjacent properties with no reasoning for its valuation method. The council later received a valuation of the land much greater than what had been offered to the landowner, but did not make a decision in relation to the different valuations.

The complainant alleged that the land to be disposed of was of a significantly greater value than would be recouped by the council by the sale. The complainant also asserted that the council failed to have regard to its policy regarding disposal of an asset; that the council failed to ensure it was fully informed on matters that should have influenced its decisions about the proposed disposal of the land; and that the council proposed to dispose of an asset for a price that did not reflect the market value of the asset.

My investigation found that the valuation of the land as first submitted to the council by the council CEO was unreliable. On the available evidence, this valuation represented a significant underestimation of its potential value. I concluded that the council's failure to obtain independent valuation advice prior to deciding to offer the land to the adjoining land owners was unreasonable and wrong.

Recommendations

The final report made two recommendations, that:

(1) the council seek advice on what if any legal options are open to it to remedy the situation

(2) review its policy on the Sale and Disposal of Land and other Assets to ensure that it properly reflects the council's obligations under the *Roads (Opening and Closing) Act 1991*, and its obligation under section 125 of the *Local Government Act 1999* to ensure that it has in place internal controls to ensure adherence to management policies, to safeguard the council's assets.

Implementation

The council accepted my recommendations. It obtained legal advice on its options and reviewed its policy, resulting in a new policy adopted by the council on 15 March 2011. The new policy addressed the weaknesses of the previous one, particularly in respect of adoption of procurement and disposal methods.

The council wrote to the potential landowner advising that its communications did not constitute an offer to sell the land at a particular price.

The council resolved to engage a qualified person to undertake the Road Opening and Closing process for the land on its behalf. It also resolved to seek the best possible sale price for the land if sold, and stated it would get two independent valuations of the land to achieve this purpose.

13. District Council of Yorke Peninsula – Unlawful failure to authorise tree removal. Report date: 23 February 2011

Background

The complaint concerned a community group which removed trees from highway road reserves in the Minlaton/Stansbury/Maitland area over a number of years. In their place they planted native species. Neither the (former) Department for Transport, Energy and Infrastructure nor the council had authorised the group, as both understood the other had responsibility to approve activities relating to the roadside.

The council has statutory responsibility for the roads as it owns the public roads from which the group removed the trees. This includes authorisation of vegetation removal and a duty of care to minimise foreseeable risks to users of its public roads. The complaint concerned whether the council responsibly managed its roads by authorising or penalising the removal of roadside trees by others.

My investigation found that the council had a statutory responsibility to consider whether to authorise the removal of trees from the sides of highways in its area by a community group. The council also had a duty of care to minimise foreseeable risks to users of its public roads. I concluded that the council's failure to authorise the tree removal by the community group, or to take action to enforce section 221 of the *Local Government Act 1999* was unlawful and unreasonable.

Recommendations

The final report made four recommendations, that:

(1) the council put in place an appropriate process for assessing, and authorising if appropriate, future proposals by community groups to alter public roads by removing trees or other vegetation under section 221 of the Local Government Act. This should include considering what conditions the council should apply in authorising any similar proposed work

(2) inspect the highway roadsides from which the [community group] has removed Aleppo Pines, and consider whether any action is necessary to maintain the road reserve appropriately

(3) inform relevant agencies and community groups and the public about the process recommended above

(4) extend its moratorium on removal of Aleppo Pine trees in the district, until it has implemented the above recommendations.

Implementation

The council accepted my recommendations. It advised me that it had continued with an initial moratorium on removal of Aleppo Pines on the department's roads and introduced a process where any future proposals to alter roads by removing trees or other vegetation must be in writing to the council and must include considerations in relation to road safety, public liability and insurance.

The council also initiated discussions with departmental representatives to arrange clearance and appropriate maintenance of the road reserve sites.

14. City of Adelaide – Wrongful failure to exercise discretion. Report date: 10 March 2011

Background

The complaint concerned a valuation of property undertaken by the council's Principal Property Valuer. The complainant had raised concerns with the council about the valuation of his property. He complained he was not provided with any information about his objection entitlements. Later, when he sought to make a formal objection he was told it was outside the time provisions for objection.

My investigation found that the council had not provided the complainant with reasons as to why it declined to exercise its discretion to accept a late objection. It had simply stated that the objection was out of time.

Whilst the complainant had received the benefit of a re-assessment by the council valuer, which in my view was equivalent to what he could expect had he lodged a formal objection, he had been deprived of the opportunity to have the matter further reviewed by the Valuer General. I concluded that the council's decision not to accept the objection was wrong.

Recommendations

The final report made two recommendations, that:

(1) the council accept and deal with the late objection lodged by the complainant

(2) review its Valuation and Rate Notice to ensure that ratepayers are fully advised of their objection rights as set out in section 169(3) of the *Local Government Act 1999*.

Implementation

The council accepted my recommendations. The council agreed to accept and process the objection received from the complainant. It also undertook to amend its Rate Notice to provide more information about the public's entitlement to lodge an objection.

15. District Council of Mount Remarkable – Unlawful approval of the installation of a septic tank and grey water diverter. Report date: 25 May 2011

Background

The complaint concerned the approval of an application by council to upgrade a septic tank system, and later to install a grey-waste water diverter. The complainant was the applicant's neighbour and alleged that the council had failed to properly approve the installation of both the initial septic tank and the grey water diverter. The complainant also alleged that the council had failed to take appropriate action in response to his complaints in relation to the neighbour's pumping out their septic water and grey water systems.

My investigation found no evidence that the original application was not properly considered by the council. However, the council acknowledged that the application should have been referred to the SA Department of Health for consideration. I concluded that because the council was not the relevant authority responsible for approving the grey water diverter application, its purported approval of the application was contrary to law.

Recommendations

The final report made three recommendations, that:

(1) the council advise the neighbour of my opinion, and refer the grey water diverter system to the SA Department of Health to be inspected and approved in accordance with *Public and Environment Health (Waste Control) Regulations 1995 and 2010*

(2) in the future, refer all permanent grey water diverter applications lodged with the council to the SA Department of Health for approval

(3) take legal advice as to any enforcement options against the neighbours.

Implementation

The council accepted recommendations one and two. The council agreed that all proposed actions be undertaken to address the recommendations, and that all relevant employees be made aware that permanent grey water diverter applications must be lodged with the SA Department of Health.

The council did not accept recommendation three. The council did not seek legal advice as it did not consider taking legal action against the property owners appropriate in the circumstances.

16. District Council of Coober Pedy – Unlawful breach of *Whistleblowers Protection Act 1993*. Report date: 29 March 2011

Background

The investigation involved two separate complaints with a total of seven elements. The initial complaint arose after the complainant notified the mayor of alleged irregularities in the licensing of people engaged in construction of public infrastructure. The complainant alleged that the council had breached the provisions of the *Whistleblowers Protection Act 1993* by revealing his identity to that company. The complainant also alleged that the council was responsible for falsification of water rates documentation, and that it had not obtained development approvals for an extension of a council works depot.

The second complaint concerned a report by the complainant of improper use of council equipment by a council employee. The complainant again alleged that the council had breached provisions of the Whistleblower Protection Act in disclosing his identity after he had notified council of his observations. I found no evidence to substantiate this second complaint.

My investigation revealed an administrative error by the council in extending its works depot without seeking development approval. However, as the council remedied the error immediately by removing materials from the site, I saw no need to make a recommendation on this issue.

I concluded that in relation to the initial matter of the construction site disclosure, in revealing the complainant's identity as the source of the disclosure, the council had acted unlawfully.

Recommendations

The final report made one recommendation, that:

> the council apologise to the complainant for its error in revealing the complainant's identity.

Implementation

The council accepted my recommendation. A letter of apology was sent by the council to the complainant.

17. Wattle Range Council – Wrongful failure to disclose a conflict of interest. Report date: 11 May 2011

Background

The complaint involved an allegation that the council had acted in breach of its caretaker policy in making a decision to execute a new employment contract with the CEO during an election period. The complainant further alleged that the (then) mayor had failed to disclose an interest of long-term friendship with the CEO at the relevant council meetings, and had failed to bring an open mind to council's deliberations on the matter.

My investigation found that, as a matter of law, the council had not contravened section 91A of the *Local Government (Elections) Act 1999* that relates to conduct of a council during an election period. However, I found that the mayor:

- did not disclose formally the nature of his relationship with the CEO at any council or panel meeting, and did not abstain from participating in those meetings
- personally sought and distributed a new contract for the CEO after the panel's consideration, and before the council's consideration of the issue
- either sought, or acceded to requests from other councillors to seek, a special meeting of the council in September 2010 to consider this matter, and one other matter, just prior to the election period and in the absence of any compelling reason for urgency.

I concluded that the council's actions in entering into the new contract with the CEO were unreasonable and wrong. Further, I found that the mayor did not bring an open mind to the council's deliberations on this issue, and in this respect acted wrongly.

Recommendations

The final report made no recommendations to the council. Instead I recommended that:

> sections 73 and 74 [the conflict of interest provisions] of the *Local Government Act 1999* should be amended.

Implementation

The Minister for State/Local Government Relations advised me that he would take my views into account, along with any advice from the Crown Solicitor on related matters, and from the Attorney-General about possible reform of the laws relating to public integrity institutions in South Australia.

18. Town of Gawler – Unlawful failure to obtain a prudential report. Report date: 6 July 2011

Background

The complaint involved an Infrastructure Master Plan for New Southern Urban Areas (**the Master Plan**) that was developed for the council. The Master Plan envisaged a community centre facility including a library. There were no detailed plans for the community centre at that time, but the proposed facility would include the upgrading of the existing community hall. The Master Plan noted that there would need to be negotiations with the owners of the community hall.

The complaint alleged a failure by the council to obtain a prudential report; failure to properly consider the financial implications of the proposed community centre; failure to consider the matter in an open and transparent manner; and failure to consider a relevant risk analysis.

My investigation found that the council failed to obtain a prudential report in accordance with its obligations under section 48 of the *Local Government Act 1999*. Although the council later did so, it should have obtained a prudential report before committing itself to stage 2 of the project. In failing to do so at the appropriate time, the council acted contrary to law.

I also found that the council had made a number of unlawful section 90 meeting confidentiality orders in relation to the matter, and that the council wrongly failed to undertake a risk assessment before committing to the project.

Recommendations

The final report made two recommendations, that:

(1) the council review its existing governance policy and procedures relating to the application of section 48 of the Local Government Act

(2) review its existing governance policy concerning the application of section 90 of the Local Government Act and conducting of council meetings.

Implementation

The council accepted my recommendations. A resolution was carried which charged the council's Governance, Strategy and Economic Sustainability Committee with a review of my investigation report and a report back to the council.

The Committee recommendation 'that Policy 1.2 *Code of Practice for Access to Council and Committee Meeting and Council Documents* as amended' was endorsed by the council at a meeting held in August 2011. The council reviewed and adopted its updated Prudential Management Policy in March 2013.

19. City of Prospect – Wrongful decision to maintain confidentiality. Report date: 26 July 2011

Background

A complaint was made to the council that a councillor had breached the Code of Conduct required during development application dealings. The allegation was that the councillor had inappropriately discussed a matter at a council meeting that was then before the Development Assessment Panel.

The council conducted a formal investigation into the allegation, and later considered its findings.

The complainant was not satisfied with the outcome and considered that the council's decision in relation to the complaint had been made prior to the council's meeting where the matter was formally discussed. It was further alleged that the resolutions passed by the council in relation to the complaint were inadequate; that the matter should not have been kept confidential, and that the council was biased.

My investigation found insufficient evidence to support a finding that the decision in relation to the Code of Conduct complaint was made prior to the formal council meeting.

Whilst I accepted that the Code of Conduct matter was reasonably discussed in confidence by the council, I found that the council's decision to maintain a confidentiality order over the report, attachments and minutes relating to this matter was wrong.

Recommendations

The final report made one recommendation, that:

> the council lift the confidentiality order over the relevant report, attachments and minutes.

Implementation

The council accepted my recommendation. It advised me that it had lifted the confidentiality order over the report, attachments and minutes.

As a result of my investigation, the council also resolved to review its Code of Conduct for Development Assessment Panel members to include a complaint handling process.

20. Kangaroo Island Council - Unlawful failure to make employee incident reports available to elected members. Report date 26 August 2011

Background

The complaint involved three councillors who were concerned about the way in which the mayor had conducted a special meeting of the council. At the special meeting, 'employee incident reports to be considered in confidence' were discussed, and it was resolved that they would be investigated independently. The complainants later discovered they were the subject of the incident reports, the details of which the mayor had refused to disclose at the special meeting.

The complainants alleged that the mayor erred in conducting the meeting in confidence; that the mayor failed to inform affected elected members of the nature of a matter before them; that the mayor failed to make available to elected members reports relating to the matter; and that the council had wrongly published identifying information about one of the complainants.

My investigation found no administrative error in the way in which the mayor conducted the special meeting or in the failure of the council to inform elected members of the detail of the incident reports. I found no administrative error in the publication of the minutes from the meeting. However, I concluded that in failing to provide elected members with the incident reports, the council had acted contrary to law.

Recommendations

The final report made one recommendation, that:

> the council provide the complainants with access to the incident reports. I note that in my view the mayor's expressed intention to provide access without providing copies of the documents meets the councillors' entitlement under section 61 of *the Local Government Act 1999.*

Implementation

The council accepted my recommendation. The council advised me that it had provided the three elected members with the opportunity to view the incident reports under the supervision of the mayor and deputy mayor.

Subsequently, one of the elected members chose to view the documents.

21. Regional Council of Goyder – Unlawful failure to disclose a conflict of interest. Report date: 27 September 2011

Background

The complaint involved an alleged failure by a council member of the Development Assessment Panel to disclose an interest. The member voted on two applications before the panel, one for a temporary wind monitoring tower and the other for a wind monitoring mast, without disclosing to the panel that he had financial and personal interests in wind farming in the local area.

The complainant also argued that the member had not brought an open mind to the panel's deliberations on the two matters.

My investigation found that the member's failure to disclose an interest at the relevant meetings was contrary to law in that he breached section 56A(7) of the *Development Act 1993* and the Minister's Code of Conduct pursuant that Act.

On the matter of an open-minded appraisal, I concluded that that a fair-minded lay observer may reasonably apprehend that the member was not prepared to consider the two applications on their merits. I therefore found that the member had acted contrary to law.

Recommendations

The final report made two recommendations, that:

(1) the council facilitate appropriate conflict of interest training of all newly appointed council members, including those appointed to DAPs

(2) all councillors undertake ongoing training about the public officer aspect of their roles and concomitant responsibilities.

Implementation

The council accepted my recommendations. It resolved that all elected members should attend Conflict of Interest, Register of Interests, Governance Roles and Responsibilities training session held in May 2012 in Adelaide.

22. District Council of Yorke Peninsula – Wrongful failure to manage infrastructure. Report date: 10 October 2011

Background

The complaint involved a Community Wastewater Management Scheme (**CWMS**) that had been constructed by an earlier council administration under the then *Health Act 1935*. As a result of this scheme, many pipes had been placed within private properties, but without the requirement that easements for access be registered on those individual property titles. The complainant had such a pipe running through his property, but no easement registered for council maintenance. The complainant alleged that the council had failed to appropriately manage this infrastructure, as well as his complaint about the damage to his house due to the infrastructure.

My investigation found that by not taking the necessary steps to ensure that it had clear legal access to its CWMS infrastructure on private property, either through the Local Government Association (**LGA**), the Minister, or by canvassing the idea of purchasing easements, the council had wrongly failed to appropriately manage its infrastructure.

On the matter of the handling of the complaint, I found that by not taking further steps to adequately consider the complainant's approaches to the council and the information he provided, both at first instance and when he requested an internal review under section 270 of the *Local Government Act 1999*, the council had acted unreasonably.

Recommendations

The final report made two recommendations, that:

(1) the council provide me with, or that the council arrange for the LGA to provide, six monthly updates on the progress of the matter. If, at the expiration of 18 months, no solution has been reached, I propose to conduct an audit involving all such infrastructure within the state that is not covered by easements

(2) the council obtain an independent report and negotiate a reasonable settlement with the complainant based on the report's conclusions.

Implementation

The council accepted my recommendations. An independent assessment was carried out on the property. This was analysed and a copy provided to the council's insurer. The complainant was sent a copy.

On the broader issue raised by the complainant, the Chief Executive Officer of the Local Government Association advised me that the *Water Industry Bill 2011* which was then awaiting assent, would provide rights of access to infrastructure by third parties such as councils.

The *Water Industry Act 2012* provides for such access at section 26, 'Third party access regime'.

23. Light Regional Council – Unlawful failure to comply with the procedural requirements of the *Freedom of Information Act 1999*. Report date: 12 October 2011

Background

The complaint followed an investigation by the council into an anonymous complaint about a barking dog. The complainant, the owner of the dog, made an application to the council under the *Freedom of Information Act 1991* (**FOI Act**) for certain information relating to the complaint, but was refused. The complainant alleged that in dealing with her FOI application, the council had failed to comply with the FOI Act and failed to adopt good administrative practice. The complainant also raised concerns about the council's application of its confidentiality policy, and general conduct while investigating the barking dog complaint.

My investigation found that the council had not made an error in conducting the investigation into the original anonymous complaint. However, I considered that the council's decision to adopt differing approaches to the release of personal information about complainants in similar situations was wrong.

Further, I found that the council's failure to respond to the complaint about the investigation was wrong. On the FOI matter, I concluded that the original FOI determination did not comply with the requirements of the FOI Act and was therefore contrary to law.

Recommendations

The final report made two recommendations, that:

(1) the council review its procedures to ensure full compliance with the provisions of the FOI Act. In this context, I note that the council has indicated to me that it will undertake training for all staff in relation to FOI, and in particular some further training for accredited officers

(2) review its information management policies to ensure a consistent method of dealing with the release of personal information, in connection with the enforcement activities of the council.

Implementation

The council accepted my recommendations. It has reviewed its information management policies and practices and conducted refresher training for two staff in the management of the FOI Act provisions.

The council has advised me that it is conducting ongoing work to ensure a consistent method of dealing with the release of personal information, in connection with the council's dog and cat management enforcement activities.

24. Town of Gawler - Unlawful breaches of confidentiality provisions. Report date: 7 November 2011

Background

The complaint involved the council's level of compliance with the meeting confidentiality provisions of the *Local Government Act 1999*. The central allegation was that the council had not complied with the provisions since at least 2008 and lacked transparency in its handling of confidential items.

A further allegation was that the council had incorrectly applied section 91(7) of the Local Government Act relating to the keeping of minutes and the release of documents. The complainant also alleged that the council had failed to comply with section 94A of the Local Government Act, which requires that an up to date schedule of meetings should be made available on the internet.

My investigation found that the council had acted contrary to the Local Government Act in failing to provide detailed reasons in its minutes for moving into confidence under sections 90(2) and (3); failing to comply with section 91(8) by preventing disclosure of the pay and conditions of a council officer; failing to comply with the requirements of section 91(9)(b) to ensure that appropriate notes were made in the public minutes; and failing to specify and record in the public minutes the duration of the confidentiality orders or the circumstances in which the orders would cease to apply.

During the course of my investigation, the council resolved the schedule of meetings issue by posting an easily accessible council diary on its website. At that time, the council also advised me that it had begun addressing deficiencies in its meeting confidentiality processes and procedures.

Recommendations

The final report made one recommendation, that:

> the council continue to improve its processes and procedures in relation to the confidentiality provisions of the Local Government Act, particularly in regard to the revoking of confidentiality orders.

Implementation

The council accepted my recommendation. It advised me on that it had resolved to continue to review and improve council administration procedures in relation to confidential orders. Further, the council's Corporate & Community Services Committee was tasked to review my investigation's final report and recommend further improvements to the council's policies.

I have subsequently been advised that the council has improved governance procedures and processes through the appointment of a full time Manager, Governance. A review of the council's *Code of Practice for Access to Council and Committee Meetings and Council Documents* is scheduled for July 2013.

25. City of Port Adelaide Enfield – Unlawful failure to have adequate claims management procedure in place. Report date: 19 December 2011

Background

The complaint involved dissatisfaction with the council's conduct in relation to tree trimming near the complainant's property. The complainant alleged that council employees engaged to trim the trees caused damage to his property. Further concerns were raised that the council had failed to adequately manage the complainant's claim for damages and failed to have appropriate procedures in place to manage such claims, and that there was an unreasonable delay in responding to the original letter of complaint.

My investigation found that the council erred in not recognising the complainant's letter as a claim against it and had failed to forward it to the council's insurer. Further, I found that the delay of almost 14 months for the council to respond to the complainant's letter was unreasonable and had effectively compromised his position in bringing a claim before a court.

I concluded that the council's failure to properly manage the claim was due to its failure to identify, track and report on the claim and to ensure that the claim was brought to the attention of the insurer in a timely manner. I found that the failure of the council to have in place proper administrative policies and procedures for the management of claims was a breach of section 125 of the *Local Government Act 1999*.

Recommendations

The final report made three recommendations, that:

(1) the council enter into negotiations with the complainant in relation to his claim and give consideration to making an *ex gratia* payment to the complainant

(2) the council take appropriate steps to ensure there are adequate controls in place to ensure that claims made against council are properly identified and assessed, are subject to a predictable case flow, and can be tracked through every step of the process

(3) the council have in place a process whereby there are regular reports to senior management on the status of claims made against the council.

Implementation

The council accepted my recommendations. It advised me it would review its claims management policies and procedures; commence negotiations with the complainant about an *ex gratia* payment; and review the claims management system.

The council also advised me it would evaluate and improve internal controls in its claims management, by scheduling an internal audit of claims management systems and processes, and assure the City Manager that such processes were functioning and meeting performance standards.

I subsequently received confirmation from the council that all of my recommendations had been implemented, including settlement with the complainant by way of a negotiated *ex gratia* payment.

26. City of Port Lincoln – Unlawful issuing of expiation notices. Report date: 20 December 2011

Background

The investigation arose from information first provided to my office in February 2010 by an individual complainant. The complainant was concerned that the council lacked rigorous policies and procedures for dealing with expiation of offences, particularly parking offences; and that in issuing and withdrawing expiation notices, council officers were exercising their judgment inappropriately.

This information coincided with other complaints lodged with my office about expiation notices issued by a number of South Australian councils. One of these matters was dealt with separately, and resulted in my report being tabled in the Parliament in July 2011. In this case I resolved to conduct an own initiative investigation.

During my investigation, the council took steps to remedy operational shortcomings. Specifically, action was taken to put in place an appropriate policy and operating instructions for staff relating to the detection and reporting of parking offences.

My investigation concluded that the council had failed to comply with Item 1(e) of Schedule 1 of the *Expiation of Offences Act 1996* because it issued an expiation notice which did not contain a statement that if the alleged offender considers that the offence is trifling, he or she may apply to the issuing authority for a review.

Recommendations

The final report made one recommendation, that:

the council review the form of its expiation notices.

Implementation

The council accepted my recommendation. The council's expiation notice is now in the prescribed form pursuant to the *Expiation of Offences Act 1996* and the *Expiation of Offences Regulations 1996*.

27. Adelaide Hills Council - Unreasonable failure to implement a council resolution. Report date: 31 January 2012

Background

The complaint involved the Adelaide Hills Council's passing and implementation of resolutions in relation to the Stirling Linear Park Management Plan. The issues raised by the complaint centred around a resolution passed by the council on 3 November 2009 that related specifically to dog access to the park. The resolution was not implemented, and was instead effectively reversed by a later council resolution on 22 March 2011. The complainant sought an internal review of the later decision under section 270 of the *Local Government Act 1999*. The allegation to my office included the conduct of this internal review and the conduct of the council in response to the findings of the review.

My investigation examined a number of related issues including the outcome of the section 270 review, the actions of the CEO in handling a rescission motion on the matter, and the conduct of two informal gatherings where the matter was discussed. I found no administrative error in the conduct of these proceedings.

However, there were clearly problems arising from decisions taken after the council resolution of 3 November 2009. In particular, these related to a failure to erect signage indicating that dogs were to be allowed 'off-leash under effective control' on defined paths. I found that the council's failure to implement the resolution of the 3 November 2009 was unreasonable.

Recommendations

The final report made one recommendation, that:

> the council vary its practice to ensure that council resolutions are implemented in a timely and effective manner.

Implementation

The council accepted my recommendation. The council resolved that the Action List which is prepared after each council meeting would now be a standard item for discussion and review at each fortnightly Management Executive Group meeting. In this way the Executive Team (consisting of the CEO, Director Engineering, Director Planning and Development Services, Director Finance and Manager HR) now take joint responsibility for effecting council decisions, not just the actioning officer.

In addition, managers are now able to access the Action List from their team location on the council's internal management system.

28. District Council of Barunga West - Unlawful failure to declare a conflict of interest. Report date: 7 February 2012

Background

The complaint concerned a private lease holding area consisting of 405 shack sites. A director of the holding company was the mayor's sister. It was alleged that the mayor had breached the conflict of interest provisions of the *Local Government Act 1999* by considering matters relating to the lease holding area. The mayor's conduct had previously been the subject of a written conflict of interest warning from the Executive Director of the Office for State/Local Government Relations, based on advice from the Crown Solicitor.

It was further alleged that two councillors, being members of the council's Development Assessment Panel (**DAP**), were also in breach of the conflict of interest provisions in considering matters relating to the company as the DAP was the relevant planning authority.

My investigation found that the two councillors had no conflict of interest case to answer. This was because at the relevant time the DAP was no longer involved in these particular development matters and the Development Assessment Commission had become the relevant planning authority.

On the complaint about the mayor's conflict of interest, I found that the mayor had an interest and that he should have disclosed his interest and absented himself from a second meeting under section 74 of the Local Government Act - as he had at an earlier meeting. Further, I concluded that the mayor should not have proposed the notices of motion, taken part in the discussions, or voted in relation to the items - as required by section 74(4) of the Act.

Recommendations

The final report made one recommendation, that:

> the Minister lodge with the District Court a complaint against the mayor under section 263 and 264 of the Local Government Act.

Implementation

My recommendation was accepted. The Minister for State/Local Government Relations sought advice from the Crown Solicitor on the matter and a complaint was lodged with the District Court against the mayor under the Local Government Act.

The District Court decision was delivered on 1 March, 2013 by His Honour Judge Clayton. The complaint was heard on the basis that only two particular resolutions proposed by the mayor formed the 'matter' for the purposes of the Local Government Act provision.

His Honour held that the resolutions did not create an interest. Therefore there had been no interest to disclose, as there had been no decision which would give rise to a detriment or a benefit. The complaint was dismissed.

29. City of Tea Tree Gully – Unreasonable failure to follow public consultation policy. Report date: 20 February 2012

Background

The complaint concerned the council proceeding to plant a tree on the verge outside the complainant's house pursuant to the council's Tree Management Policy, despite the complainant's request to the contrary. The complainant sought an internal review of the council's decision under section 270 of the *Local Government Act 1999*. The review confirmed that the council had complied with legislative and policy requirements. The complainant then lodged a complaint with my office.

The complainant alleged that there was an error in the council's consultation process, in that no letter was received from the council informing residents of the tree planting program, or, if it was sent, it was sent after the commencement of the program.

The complainant also alleged that the council had failed to follow its Community Engagement (Public Consultation) Policy in relation to planting a tree on the verge outside the complainant's house; and that the application of the council's Tree Management Policy in this circumstance was unreasonable.

My investigation found that the council was obliged to follow its public consultation policy prior to the commencement of the tree planting program, and had failed to do so. I also concluded that in applying the tree management policy without regard to the particular circumstances of the complainant, the council had acted unreasonably.

Recommendations

The final report made the two recommendations, that:

(1) the council routinely follow its public consultation process as set out in its Community Engagement (Public Consultation) Policy before it commences a tree planting program in accordance with its Tree Management Policy

(2) the council remove the tree from the verge adjacent to the complainant's property, and refrain from planting a tree on that verge for as long as the complainant resides there and wishes there to be no street tree.

Implementation

The council accepted my recommendations. The council advised me that the Tree Management Policy would be reviewed to incorporate changes including clarification of what is to be considered when determining whether the public consultation policy will apply.

Council officers will now determine and document, prior to planting trees, whether the planting will have a significant impact, and if so, the steps in the public consultation policy will be followed.

The council advised me that the tree had been removed.

30. Wakefield Regional Council – Unlawful failure to declare a conflict of interest. Report date: 16 March 2012

Background

The complainant alleged that a councillor had failed to disclose to the council his interest in a tender for the purchase of council property. His interest was that his father was one of those who submitted a tender for purchase of the council property. In addition, it was alleged that he had failed to bring an open mind to council deliberations, and had failed to properly complete the Register of Interests as required under *the Local Government Act 1999.*

My investigation considered evidence that, as the councillor's father was interested in purchasing the property for business reasons, the councillor may have obtained a pecuniary benefit from any council decisions relating to the sale of the property. I concluded that the councillor's failure to disclose an interest at the relevant meetings breached section 74(1) and (4) of the Local Government Act.

I also found that the councillor had a conflict of interest in council motions as to the method of sale of the land and the selection of the successful tender. I considered that a fair-minded lay observer might reasonably apprehend that the councillor was not prepared to consider the matters on their merits. In this respect, the councillor acted in a way was in breach of his duty under the Code of Conduct for Council Members and was also contrary to law.

On the matter of the Register of Interests, I found that the councillor had acted contrary to law by failing to declare income source and assets.

Recommendations

The final report made two recommendations, that:

(1) the apparent failure of the councillor to lodge an accurate return in 2011 in relation to declaring income source and assets be referred for consideration by the Director of Public Prosecutions

(2) the Local Government Act be reviewed and amended to provide a penalty or suspension where an elected member continually breaches the conflict of interest provisions.

Implementation

The matter was referred to the Director of Public Prosecutions who then referred it to the Commissioner of Police. It was not pursued at that level.

The Minister for State/Local Government Relations considered my report and noted that recourse to the District Court is available under the Local Government Act. Accordingly, under section 267 of the Act, a complaint was laid before the District Court against the councillor.

The District Court decision was delivered on 20 December 2012 by His Honour Judge Muscat. His Honour upheld the complaint finding that the councillor had failed to disclose to the council his interest in the matter before council. His Honour commented that it was surprising none of the other council members had thought to raise with the councillor his obvious conflict interest.

31. Campbelltown City Council – Unlawful failure to comply with requirements of the *Development Act 1993*. Report date: 29 March 2012

Background

The complaint concerned an application made to the Development Assessment Commission (DAC) for consent to subdivide land. The application was forwarded to the council by the DAC, where it was handled by a consultant planner before being forwarded to the council's delegate, the Development Assessment Panel, for decision. The application was refused.

The complainant made several allegations against the council including significant time delays in assessment; a failure to comply with the *Development Act 1993,* and a failure to advise applicants of their rights under that Act.

My investigation found that the assessment of the application took significantly longer than the time prescribed by the regulations, and was therefore contrary to law. In the course of investigating the length of time taken by council to assess the application, I discovered other administrative errors in relation to the exercise of powers and functions under section 39 of the Act. One of these was a request which went beyond the legitimate scope of section 39(2) by seeking that the applicant amend the development proposal.

I also found that in taking two months to provide feedback to the complainant on proposed plans, the council acted unreasonably. Further, in these circumstances, by failing to make the complainant aware of his option to make a section 41 application for a timing order to the Environment, Resources and Development Court, the council acted wrongly.

Recommendations

The final report made four recommendations, that:

(1) the council provide training for all relevant officers in respect of the operation of section 39(2) of the Development Act

(2) the council implement practices to ensure that it is clear whether a request is being made of an applicant under section 39(2) or whether an applicant is being given an opportunity to request under section 39(5a) that council allow it time to amend or otherwise address issues associated with its application

(3) the council implement practices to ensure that where a request is made of an applicant under section 39(2) it is done so in writing with express reference to the legislative provision

(4) the council implement practices to ensure that where an applicant is making a request pursuant to section 39(5), that council allow time to amend or otherwise address issues associated with an application, and that it does so in writing (or is confirmed by council in writing) with express reference to the legislative provision.

Implementation

The council accepted my recommendations. All staff completed refresher training in the assessment of land division applications. Staff were also reminded of the importance of addressing these matters with formal correspondence which references the relevant provisions of the Development Act.

In addition, the council made two modifications to its work practices, including the introduction of a monthly report on all outstanding applications to the Team Leader.

Further, a new standard letter has been created and issued at the beginning of the assessment process to inform applicants of their rights pursuant to section 41 of the Development Act.

32. City of Onkaparinga - Unlawful breach of caretaker conventions. Report date: 16 April 2012

Background

The complaint concerned the council's decision to construct a toilet on the Willunga Golf Course in 2008. The complainant alleged that in organising the construction of the toilet, the council had failed to follow appropriate procurement procedures or keep proper records. He further alleged that in conducting a review of that procurement process and publishing its 'Annual Review' during an election period, the council had breached its caretaker policy. The complainant also alleged that the CEO had personally breached his duty during the review of the procurement process, by making misleading claims and withholding information.

My investigation found that the council's failure to keep the procurement policy schedule up to date amounted to an administrative error. However, I did not agree that it amounted to a breach of section 49 of the *Local Government Act 1999* because that section permits the council to alter a policy at any time. I noted also that the council had adopted a new policy during the course of my investigation.

I determined that some related policy matters concerning value for money and the specifications of the construction fell outside of my jurisdiction, which is limited to a consideration of the council's administrative acts. The issue of the alleged breach of duty on the part of the CEO I considered not to be substantiated on one occasion, and out of time for investigation on the other.

On the matter of the council's record-keeping, I considered this was less than ideal, as evidenced by the council's failure to produce all documentation when I requested it. I concluded that in failing to keep proper records on the project, the council acted wrongly. I accepted that the council's subsequent adoption of a new procurement policy which contained revised record-keeping obligations was sufficient remedy to this issue.

Regarding caretaker conventions, I found that the council had not breached the caretaker policy by appointing a consultant to undertake the review of the Willunga Golf Club toilet procurement. However, I found that publication during the election period of its Annual Review, with its CEO and mayoral messages, constituted a breach of section 91A of the *Local Government (Elections) Act 1999*.

Recommendations

The final report made one recommendation, that:

> the council review its practice and avoid publication of similar material in future elections.

Implementation

The council accepted my recommendation. The council advised me that an elected member's workshop has been scheduled for 20 August 2013, at which the council will review and discuss the contents of its Caretaker Policy and Procedure.

The outcomes from the workshop will help in the development of a revised Caretaker Policy and Procedure which will be presented to the council for adoption prior to the next scheduled council general election.

33. District Council of Grant – Unlawful decisions regarding uses of Land Management Agreements. Report date: 1 August 2012

Background

The complaint concerned the council's use and administration of Land Management Agreements (**LMA**). The complainant alleged that the council had not been properly keeping its register of LMAs and not property regulating land subject to a LMA for compliance. The complainant was also concerned that the council was using the LMAs to overcome council's development plan objectives.

My investigation found that there were problems with the council's reliance on its 'second dwelling policy', in that the policy was inconsistent with some of the planning principles and objectives in the council's development plan. I concluded that in adopting policies that were inconsistent with parts of its development plan, the council acted in a manner that was contrary to law.

On the matter of keeping a register of LMAs in accordance with section 57(2c) of the *Development Act 1993*, I found that the council had failed to do this, but had remedied the error during the course of my investigation. Accordingly, I made no recommendation.

Recommendations

The final report made one recommendation, that:

> the council review the existing 'second dwelling' and LMA policies to ensure that they are consistent with the council's development plan.

Implementation

The council accepted my recommendation. It has comprehensively reviewed existing policies regarding use of LMAs. This was conducted via a council report, council workshop, and a final report for adoption of the amended policy by the council in April 2013. Review of the LMA register is current and ongoing work for the council administration.

34. Campbelltown City Council - Unlawful use of confidentiality order. Report date: 5 September 2012

Background

The complaint concerned a Code of Conduct complaint made by the mayor against a council member. As a result of the complaint the council appointed an independent assessor to prepare a report for the council following an investigation into the complaint.

The mayor alleged that a confidentiality order should not have been made over the report; that the Code of Conduct for elected members had been breached by the council in dealing with the report; and that the council member, the subject to the complaint, had acted contrary to the *Local Government Act 1999* as he had been in the vicinity of a chamber while a matter in which he had declared an interest was being discussed.

My investigation was informed that the council had voted to keep the report from the assessor confidential because it considered that it affected the security of the council. I found that use of section 90(3)(e) of the Act to justify the confidentiality order was inappropriate in this case, because there was nothing in the report that could be said to be a security issue. I concluded that the council acted in a manner that was contrary to law by not explaining the reason why the confidentiality order was made, as required by section 90(7) of the Act.

I found the council had no case to answer on the allegations that the Code of Conduct had been breached in dealing with the report, or on the matter of the council member's proximity to the chamber during the discussion of the item.

Recommendations

The final report made two recommendations, that:

(1) the council's Code of Conduct be amended to allow the CEO discretion over whether to make the assessor's report confidential or not. This will facilitate a debate over whether a confidentiality order should be made under section 90(3) of the Act and if so, the appropriate subsection

(2) the council make it its usual practice to record in the minutes the reasons why a confidentiality order is made in accordance with section 90(7) of the Act.

Implementation

The council accepted my recommendations. In January 2013 the council adopted a revised Code of Conduct for Elected Members, Development Assessment Panel Members and Committee Members.

The council has also developed a new template for any future matters that are proposed for discussion in confidence. This includes a prompt for council to include 'reasons' for the specific determination.

35. Flinders Ranges Council - Wrongful failure to follow due process. Report date: 3 October 2012

Background

The complaint concerned a council decision to install solar lights in a parkland area in the town of Hawker. The complainant was unhappy with the location chosen for the lights and so initiated an internal review of the decision under section 270 of the *Local Government Act 1999*. Following this, the complainant alleged that the review had been inadequate and that the council had acted inappropriately in deciding upon the location of the lights.

The complainant further alleged that the council had inappropriately handled his complaint; that the mayor and the CEO had breached his privacy in correspondence to the Hawker Community Development Board and in putting information on Facebook.

My investigation report noted that the council's Code of Conduct policies provide for using independent assistance to conduct investigations. I considered that it would have been appropriate for the CEO to seek independent assistance to investigate these allegations. Instead, the complainant was referred to my office. I found that in failing to investigate the allegations that the mayor and the CEO had breached the Code of Conduct, the council acted wrongly.

On the matter of the adequacy of the section 270 review, I decided that there was substantial doubt as to whether the review was sufficiently independent. I therefore concluded that the council's conduct of the review was unreasonable.

My report noted that the council's original decision about where to locate the lights was a policy question for the council to consider rather than an administrative matter. On this basis I found no administrative error in that decision.

Recommendations

The final report made two recommendations, that:

(1) in accordance with its policies regarding code of conduct matters, the council arrange for an independent person to investigate the complaints regarding alleged breaches of the Code of Conduct by both the mayor and the CEO

(2) the council arrange for an independent review pursuant to section 270 of the Local Government Act of its decision about the location of the solar lights in Hawker.

Implementation

The council accepted my recommendations. The council acted immediately to implement recommendation 2 by appointing a Chief Executive Officer from another council to undertake an independent section 270 review of the solar light complaint decision.

I was not initially satisfied that the council had implemented recommendation 1. I made a further suggestion that the Local Government Association's Governance Panel (**LGAGP**) consider the Code of Conduct complaints. An investigator was appointed by the LGAGP to investigate the complaint against the mayor. The council has initiated separate action to engage an appropriately qualified independent person to investigate the Code of Conduct complaint against the CEO.

36. Regional Council of Goyder – Wrongful failure to provide information to an applicant. Report date: 16 October 2012

Background

The complaint concerned the council's assessment of a development application for a proposed storage shed. I independently noted that the partner of one of the applicants was an employee of my office. After I disclosed this to the complainant, the complainant alleged that my employee had influenced the assessment process. In particular, the complainant alleged that my employee's presence at a council Development Assessment Panel (CDAP) meeting had influenced the CDAP's decision to consent to the application.

It was further alleged that there had been errors in the council's assessment process; that it had been unreasonable for the council to rely upon its planning advisers; and that the council had failed to take appropriate enforcement action against the applicant.

I requested an independent investigation by the Office of the Commonwealth Ombudsman. It found that my employee's involvement in the application had not impacted on her public servant responsibilities. On this basis my office was cleared to investigate the substantive complaint.

On the matter of errors in the assessment process, my investigation found that the council's processes fell short in its failure to alert the parties to their rights of appeal and review available in the Environment, Resources and Development Court.

I considered that the principles of fair and responsible governance require that people be advised of the existence of such rights, or be advised to seek legal advice in relation to their rights in the planning process. I concluded that in failing to advise the complainant of his rights under section 86 of the *Development Act 1993*, the council acted wrongly.

On the related matters concerning council's reliance on its planning advisors and its decision not to take enforcement action in relation to the development, I found the council had not erred.

Recommendations

The final report made one recommendation, that:

> the council implement the practice of advising applicants and adjoining landowners and occupiers in writing of the decision of a delegate as to the category of development and the reasons for the determination, and their rights of review.

Implementation

The council accepted my recommendation. The council has commenced the practice of advising applicants and adjoining landowners and occupiers in writing of the decision of the delegate as to the category of development and the reasons for the determination, and their rights of review.

The council advised me that this recommendation has been incorporated in the existing administrative procedure when notifying category 2 and 3 types of development. The council does not consider that category 1 matters are relevant to this advice.

37. City of Salisbury - Wrongful failure in procurement process. Report date: 5 December 2012

Background

The complaint involved an industrial property owner who had leased his property to a company to be used as a waste transfer station to store and distribute used tyres. The company was later engaged by the council to remove and dispose of used tyres. The complainant alleged that the council was wrong in engaging this company to transfer and dispose of the tyres, as it did not have development approval or an appropriate Environment Protection Authority (EPA) licence.

My investigation found that, because the council employee who engaged the company did not check whether it had the correct EPA licence to store and dispose of the tyres, nor the appropriate development approvals in place, the council had failed to ensure the contractor it had chosen complied with the law.

Whilst the company had the correct EPA licence for transfer, it did not have the correct licence for storage and disposal of the tyres, nor development approval under the *Development Act 1993*. The council could have discovered this information easily by contacting its own planning department. I concluded that the council had acted wrongly.

Recommendations

The final report made two recommendations, that:

(1) the council collect the tyres it authorised to be sent to the property and deal with them appropriately

(2) the council amend its procurement policy to include a requirement to ensure compliance with all laws, as set out in the Local Government Association's model procurement policy.

Implementation

The council accepted my recommendations. The tyres were collected and appropriately disposed of.

The council commenced a mapping project against the new Local Government Association Procurement Handbook to ensure consistency in procurement application.

Additionally, the learnings from my final report were disseminated through the contract and procurement services area, and have formed the basis for ongoing risk identification training.

The council intends to adopt a simple risk assessment process to be utilised for all purchasing to capture risk in low value purchases. The council has also advised me that updating of the procurement policy to include compliance with all relevant legislation will be undertaken in July 2013.

38. Wakefield Regional Council – Unlawful failure to review confidentiality orders. Report date: 22 January 2013

Background

The complaint concerned council meeting procedures and the attempted re-making of a 2005 document confidentiality order over a council agenda item. The complainant alleged that the presiding member of the council had breached the *Local Government (Procedures at Meetings) Regulations 2000* (**the regulations**) by failing to table documents requested by an elected member at the August 2012 meeting of the council. The complainant also alleged that the mayor had breached the regulations by allowing a motion to be withdrawn after there had been a request for documents to be tabled. The investigation also considered the validity of the original confidentiality order and the re-making of that confidentiality order by the council.

My investigation found that whilst the mayor and the CEO had erred in not ensuring information relevant to a prior agenda item was at hand for elected members to consider for the August 2012 meeting, they did not act to prevent discussion, debate or dissent from being expressed by councillors when they insisted that such information be made available to them. I found no administrative error in this, nor in the related issue of withdrawal of the motion in dispute.

On the matter of the validity of meeting and document confidentiality orders, I found the council's failure to provide details of its reasons to exclude the public under section 90(2) and 90(3)(d) of the *Local Government Act 1999*, at a meeting on 9 November 2005, had rendered the original resolution for the agenda item invalid. Because no valid meeting confidentiality order was in place, the council should have conducted the meeting in a place open to the public. As such, I concluded that the council acted in a manner that was contrary to law. I made the same finding in relation to an invalid document confidentiality order from that meeting which had been extended several times without legal authority.

Recommendations

The final report made five recommendations, that:

(1) the council record details of its reasons for excluding the public in meetings under section 90(2) and section 90(3) of the Local Government Act

(2) the council identify all outstanding section 90(2) confidential meeting orders to ensure they comply with the Act and take lawful remedial action as required

(3) the council review and amend its Code of Practice for Access to Meetings and Associated Documents to stipulate a process for review and re-making section 91(7) orders according to law

(4) the council immediately release and make available to the public the minutes and all documents associated with Minute 145 Economic Development (Port Wakefield)

(5) the council identify and redress all non-compliant current section 91(7) and 91(9)(a) orders.

Implementation

The council accepted my recommendations. The council has endorsed a new *Code of Practice for Access to Meetings and Associated Documents* that clearly identifies the need to record details of its reasons for excluding the public from council meetings. The new code includes a revised section that specifies the correct process for the review and re-making of orders.

The council has also released and made available on its website all documents held in confidence that were deemed to be non-compliant with the legislation.

Further, the council has included a page on its public website that identifies items held in confidence and those that have been removed from confidence.

39. City of Onkaparinga – Unreasonable failure to enforce a condition of development consent. Report date: 22 January 2013

Background

The complaint involved concerns that the council had not responded appropriately to alleged breaches of the *Development Act 1993*. The complainant was unhappy about an application for proposed development approval by his neighbour in relation to an already constructed free standing deck. An Environment, Resources and Development (ERD) Court order had granted conditional development consent. The complainant alleged that the council did not take enforcement action against the neighbour when the development did not meet the condition.

My investigation found that the development was not in accordance with the approved plans. My report noted that it would have been appropriate for the council to issue an enforcement notice requiring that changes be made to the construction in accordance with the approval. As such, I did not consider that the council's regulatory response to the breach had been adequate. I concluded that in deciding not to take formal enforcement action, the council had acted unreasonably.

Recommendations

My final report included one recommendation, that:

> the council continue with its review of its enforcement policies and report to me in writing by 1 March 2013 on the progress of the review.

Implementation

The council accepted my recommendation. In August 2012, a project was commenced to draft and implement a high level regulatory policy. A review of the enforcement policies and procedures relating to the council's City Development Department was initiated at this time.

The council subsequently advised me that its Governance Unit had commenced work to identify and assess the relevance and currency of existing regulatory policies and practices. There has also been work done to assess the capacity and core competencies of regulatory officers, and to deliver two workshops 'Making and Taking Statements' and 'Governance Induction and Awareness' to regulatory officers.

40. Kingston District Council – Unreasonable approach when invoicing for work done. Report date: 23 January 2013

Background

The complaint involved an allegation that it was unreasonable of the council to undertake and charge for 'private works' on the complainant's driveway. The complaint alleged that the council conducted works on the complainant's driveway and invoiced the complainant for the full amount, without the complainant having requested the work.

My investigation found that there were differing recollections of what had been agreed to verbally between the council works employees and the complainant. Despite this, I noted that the council had a responsibility, when engaging with residents for 'private works', to explain in writing what authority it has to charge money for the service it is providing - particularly when the driveways are part of council property. Secondly, the council should provide a written quotation to the resident, and they should agree the price by signing the quotation.

The council was unable to refute the complainant's allegations because all communication had been verbal. Reducing any agreement to writing would have avoided the conflict situation, and is usual in the ordinary course of business. I concluded that the council acted in a manner that was unreasonable.

Recommendations

The final report made two recommendations, that:

(1) the council revise the complainant's invoice to the amount of $408.60 (half the invoiced amount) and that the council pay the remainder of the amount for the contracted work

(2) the council create a policy in relation to payment for services it performs, including a procedure in respect of the new Quotation Form.

Implementation

The council accepted my recommendations. It revised the invoice to the complainant for the private driveway works and resolved that the council would pay the remainder of the amount for the contracted work.

The council has created a new Private Works Order form which forms part of the revised Internal Control Procedure to rectify the issue of documenting any future private works. The council determined that its existing Internal Control Policy is adequate.

41. City of Playford – Unreasonable investigation of dog attack complaint. Report date: 19 February 2013

Background

The complaint concerned the council's handling of a dog attack incident in which the complainant's dog was killed and she was attacked by the neighbour's dogs when attempting to retrieve her pet's body. My investigation considered whether the council erred in its investigation of the dog attack incident; in concluding that it could not take enforcement action under the *Dog and Cat Management Act 1995;* and in its failure to take action under that Act.

Pursuant to the Dog and Cat Management Act, councils have a responsibility to make satisfactory arrangements to cover incidents such as dog attacks. In this case, the council had in place a Standard Operating Procedure (SOP) which required the council to provide all records of the investigation and the inspector's recommendation to the council's Registrar of Dogs for final determination of what action the council should take. The council did not follow its SOP in this regard.

My investigation found that the council's inspector failed to consider whether enforcement action should be taken in relation to the attack on the complainant. The inspector had only focussed on the death of the complainant's dog. I also found that the council erred in deciding it could not take enforcement action.

The fact that the council did not follow the SOP requirements, combined with its failure to consider whether enforcement action should be taken in relation to the attack on the complainant, led to my conclusion that the dog attack investigation was unreasonable.

I also found that the council inspector's conclusion that it could not take other enforcement action under the Dog and Cat Management Act in relation to the dog attack incident was wrong.

Recommendations

The final report made three recommendations, that:

(1) the council write to the owners of the two dogs and:
- refer to the dog attack incident and put the owners on notice of the dogs' aggressive tendencies
- require the dog owners to be vigilant in managing these tendencies by ensuring the dogs are always under effective control when in public and giving consideration to muzzling the dogs when they are walked
- provide notice that any future incidents are likely give rise to a control order being issued in accordance with section 50(1) of the Dog and Cat Management Act

(2) the council notify the City of Onkaparinga of the dog attack incident, so that it may update its records of the [attacking dog's] history

(3) the council review its dog attack investigation procedures and consider:
- developing a checklist to record an inspector's consideration of the relevant policies, procedures and guideline, during the course of a dog attack investigation
- providing further guidance to inspectors regarding the level of detail required to be recorded in an investigation file, including documenting the outcome of discussions with the Team Leader and/or Registrar of Dogs, regarding the outcome of an investigation
- ensuring all dog attack investigations are signed off by the council's Registrar of Dogs before a decision is made as to what action, if any, the council should take.

Implementation

The council accepted my recommendations. The council contacted the new owner of the dogs and informed them of the dogs' involvement in the attacks and of their responsibility to take adequate steps to ensure the protection of persons by managing the dogs' aggressive tendencies.

The council has also advised the City of Onkaparinga, where the dogs are currently kept, of the attack on a person and an animal within the Playford council area.

The council is currently reviewing its Dog Attack SOP. All officers responsible for dog attack investigations have been made aware of the procedure for investigations and importance of documenting decision making processes.

42. City of Onkaparinga – Unlawful failure to provide information on fees and charges. Report date: 20 February 2013

Background

The complaint concerned an increase in boat ramp fees which affected a local business operator. The complainant operates a kiosk and boat ramp. He alleged the council did not notify him of increases in boat ramp fees and that as a result, he lost revenue by not charging the public correct fees for usage of the boat ramp. He further complained that the council erred in not updating the boat ramp fee sign within a reasonable timeframe following the fee increases.

A related issue was the council's delegation of several powers and duties to the CEO, including the setting of the boat ramp fees. During the course of the investigation I was satisfied that the decisions to increase the boat ramp fee for the 2010/2011 and 2011/2012 financial years were lawfully made in accordance with the relevant delegated authority under the *Local Government Act 1999*.

However, my investigation found that the council failed to take reasonable steps to notify the complainant of the increased boat ramp fees for the 2010/2011 and 2011/ 2012 financial years. On this basis, the council was in breach of section 188(7)(b) of the Local Government Act. I also found that the council erred by failing to update the boat ramp fee sign following the fee increases for both financial years.

Recommendations

The final report made one recommendation, that:

> the council consider extending an *ex gratia* payment or making some other financial arrangement, in acknowledgement of the complainant's lost opportunity by not being notified of the correct fees to charge members of the public to use the boat ramp during the 2010/2011 and 2011/2012 financial years.

Implementation

The council accepted my recommendation. During my investigation, the CEO advised me that the council agreed that the process of notifying affected parties required improvement. He reported that this had been implemented by the relevant council department.

The council has considered the issue of an *ex gratia* payment to the complainant. I am advised that an agreement has been reached between the parties and an offer of settlement has been made and accepted.

43. District Council of Mount Barker – Unlawful failure to consider Aboriginal heritage issues. Report date: 22 February 2013

Background

The complaint concerned the council's processing of development applications in the Mount Barker Township Expansion area. The complainants alleged that the council had breached section 20 of the *Aboriginal Heritage Act 1988* by failing to report the existence of Aboriginal heritage sites to the Minister for Aboriginal Affairs and Reconciliation. Further, they alleged that the council had failed to adequately consider Aboriginal heritage when considering development applications which fell within the Mount Barker Township Expansion area. Finally, it was submitted that the council had a duty of care in relation to Aboriginal sites and had failed in that duty.

My investigation found that council had not breached section 20 of the Aboriginal Heritage Act because Aboriginal occupation of the land in question did not amount to discovering a site on that land. Therefore there was no obligation for the council to make such a report to the Minister. I also found the council had no general 'duty of care' in relation to Aboriginal heritage sites.

On the matter of whether the council had adequately considered Aboriginal heritage issues as part of its development approval process, I found the council was under an obligation to take 'all reasonable measures' to ensure any Aboriginal heritage is conserved. In my view, the council delegate should have done more to ensure heritage would not be damaged as a result of the proposed development. I concluded that the council had acted unlawfully by failing to consider Aboriginal heritage issues in accordance with the Development Plan in respect of 14 development applications considered in the Mount Barker Development Plan Amendment Urban Growth Zone.

Recommendations

The final report made one recommendation, that:

> the council adopt a policy or procedure to ensure Aboriginal heritage is considered during the development application process in accordance with the Development Plan.

Implementation

The council accepted my recommendation. The council has developed a draft Aboriginal Cultural Heritage Policy for consultation. The policy commits the council to the protection of Aboriginal cultural heritage in the context of the Development Plan approval process under the *Development Act 1993*.

Relevant Aboriginal groups and the Local Government Association will be part of the consultation process. A final policy will be endorsed and released in the second half of 2013.

44. City of Playford – Wrongful failure in procurement process. Report date: 1 March 2013

Background

The complaint involved a company engaged by the council to transfer and dispose of tyres at its tyre sorting facility. The complainant alleged that it was wrong for the council to have engaged the company, as it knew the company did not have development approval to operate a tyre sorting facility or an appropriate Environment Protection Authority (EPA) licence.

My investigation established that at no time did the council contact the EPA in relation to this matter.

I noted that the council has in place a procurement policy which states that in determining the method of procurement for purchases less than $10 000, the council will make the procurement decision with regard to six fundamental principles. One of the six principles of the procurement policy is 'accountability and transparency'.

My investigation found that it was incumbent on the council to make further enquires as to the location of the tyres once they had been removed from the council depot. This is important in light of the council's environmental responsibilities. I concluded that the council's actions were wrong because it did not ensure that the tyres that it engaged the company to remove were being properly stored and/or disposed of.

Recommendations

The final report made two recommendations, that:

(1) the council collect the tyres it authorised to be transported by the company from the property and dispose of them appropriately

(2) the council amend its procurement policy to include an onus on the council to perform due diligence even in small value procurements.

Implementation

The council accepted my recommendations. The council's contractor removed the tyres the council had authorised the company to dispose of originally. The tyres were transported to a recycling depot for crumbling and further recycling.

The council has also engaged a change management consultant to undertake a review of its Corporate Services which include procurement. The council advised me that this will include a complete review of the current procurement policy, procedures and guidelines and subsequent training for staff.

45. District Council of Yorke Peninsula – Unlawful failure to have a complaints policy. Report date: 7 March 2013

Background

The complaint concerned aspects of a Land Management Agreement over a residential subdivision. Following complaints about management of stormwater run-off, an internal review on the issues was conducted by council under section 270 of the *Local Government*

Act 1999. The complainant alleged that the review had not been conducted properly, and that the council did not have a policy in relation to complaints as required by the Local Government Act.

My investigation confirmed that the CEO of the council undertook the section 270 review after offering this course of action to the complainant. The review concluded that the council had acted reasonably and had 'not incorrectly constructed [infrastructure] or redirected stormwater in a manner to cause damage to property'. I found the conduct of the review and its conclusion to be reasonable.

On the matter of the council having a complaints policy in accordance with section 270(a1)(b) of the Local Government Act, I found the council had no such policy in place. I noted that had the council had a complaints policy and an established procedure for dealing with complaints, it would have responded to the complainant's written complaint sooner. I concluded that at the council had acted unlawfully by not having a complaints policy.

Recommendations

The final report made one recommendation, that:

> the council draft a separate complaints policy in order to satisfy section 270(a1)(b) of the Local Government Act.

Implementation

The council accepted my recommendation. It has advised me that the finalised complaints policy has been adopted and made available to the public on the council website.

PART 6

STATUS REPORTS: UNIVERSITIES

1. University of Adelaide – Wrongful failure to comply with stated audition requirements. Report date: 3 February 2012

Background

This complaint concerned an application for admission to the Elder Conservatorium of Music at the university. The complainant alleged that the university had not complied with its stated audition requirements as he had not been asked to perform at his audition. As a result, the complainant alleged his skills and future potential had not been properly assessed.

My investigation found that the wording of the application form was ambiguous as to whether the audition requirement was to bring recordings and demonstrate proficiency on an instrument. From my examination of the wording of the application form, I found that the complainant had reasonably expected that he would be required to demonstrate proficiency on his instrument. On this basis, I concluded that the university had been wrong not to ask the complainant to perform at his audition.

On the related question of a proper assessment of the complainant's skills and potential, I did not consider that the university's conclusion involved an administrative error. In my view, the university properly addressed the criteria for the audition in relation to skills and future potential, and made a decision which was reasonably open to it in the circumstances.

Recommendations:

The final report made one recommendation, that:

> the wording of the application form should be clarified.

Implementation

The university accepted my recommendation. It revised the information in the form relating to the Popular Music and Creative Technologies interview/audition process to state, in part:

> In some instances, where an applicant is unable to provide recordings, songs/ compositions may be performed live during the interview. Where recordings are provided, applicants may be asked to further demonstrate their technical and musical proficiency on an instrument/voice, as determined by the panel. Applicants will be advised of this additional requirement at the time of the interview and should be prepared to perform if deemed necessary.

The university has subsequently advised me that the form has been approved and is now in use in the Undergraduate Music Program Guide.

2. University of South Australia – Wrongful application of the university's Academic Review Policy. Report date: 2 April 2012

Background

The complaint involved the university's dealings with a student undertaking study through a self-paced learning mode. The complainant had been struggling with her university studies, and as a result, was sent a series of five notification letters. These letters advised her of the actions available to the university if her unsatisfactory performance was not addressed.

The complainant contended that she did not receive the second, third or fourth of these notification letters. As a result she had failed to lodge an internal appeal against the university's decision to preclude her from further study. The complainant alleged that the university had failed to comply with its policies in precluding her from study.

My investigation found that the complainant had not received a completed Academic Review Action Plan (**ARAP**) as a part of a counselling process she had been required to undertake due to her poor academic performance. The university confirmed that there was no record of an ARAP on her file. This was required under the university's Academic Review Policy.

I noted that had the complainant been provided with an ARAP at the notification 1 stage, the further notification stages would have been drawn to her attention. It would have protected the university and informed the student of what was to come if her studies did not improve.

On the basis of the evidence, I found it difficult to believe that the complainant had not received three out of the five letters sent by the university. However, I considered that as the complainant had not responded to these letters to indicate receipt, the university had not appropriately implemented its policy of ensuring student welfare by following-up the letters with other contact. I concluded that, in precluding the student from further study, the university had failed to follow its policy, and had therefore acted wrongly.

Recommendations:

The final report made one recommendation, that:

> the university remind all academic and Learning and Teaching Unit staff who counsel students in relation to academic review, of their obligation to complete an ARAP under section 10.2.6 of the policy. It would be helpful if the ARAP is completed at the first occasion a student is counselled.

Implementation

The university accepted my recommendation. It reminded all academic staff and the staff of the Learning and Teaching Unit of their obligations under section 10.2.6 of the Assessment Policies and Procedures Manual.

APPENDIX A - *VALUING COMPLAINTS* - An audit of complaint handling in South Australian councils

Survey of 68 council responses to the Ombudsman audit recommendations

In early 2013, I wrote to all 68 councils requesting feedback on the implementation of my complaint handling audit recommendations. All responded, indicating their acceptance of and action taken on each of my nine recommendations relevant to local government. The aggregate results are detailed here.

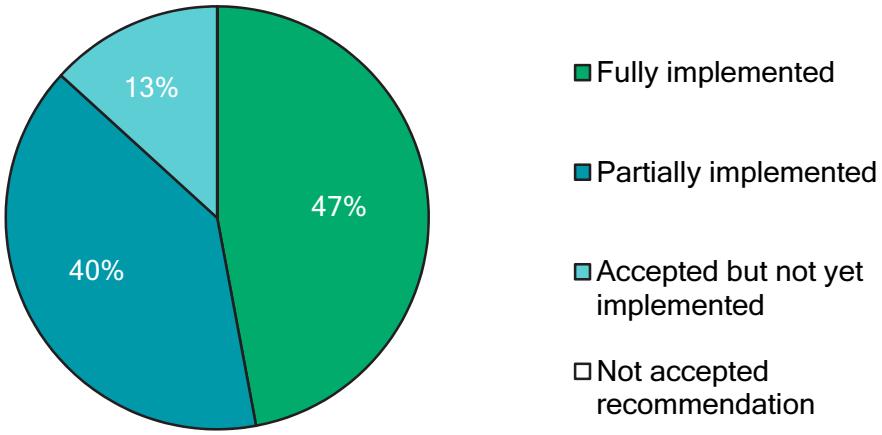
1. A complaint valuing culture.

Recommendation 1 of the audit final report read:

> That all councils promote a complaint valuing culture and revise policy and procedures to incorporate the three elements of quality management principles, improved accountability and better decision making.

From the total of 68 councils, 32 have fully implemented the recommendation; 27 have partially implemented the recommendation and 9 councils have accepted but not yet implemented the recommendation. No council rejected the recommendation. Figure 1 expresses the results as percentages.

Figure 1: A complaint valuing culture



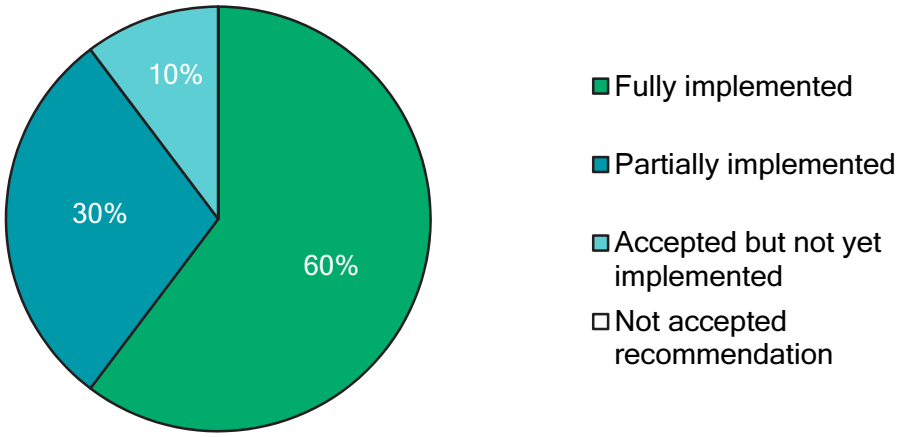
2. Policy development and standards

Recommendation 2 of the audit final report read:

> That all councils review their general complaints and internal review of council decisions policy and procedures documents to establish best practice and comply fully with the requirements established by law.

From the total of 68 councils, 41 have fully implemented the recommendation; 20 have partially implemented the recommendation and 7 councils have accepted but not yet implemented the recommendation. No council rejected the recommendation. Figure 2 expresses the results as percentages.

Figure 2: Policy development and standards



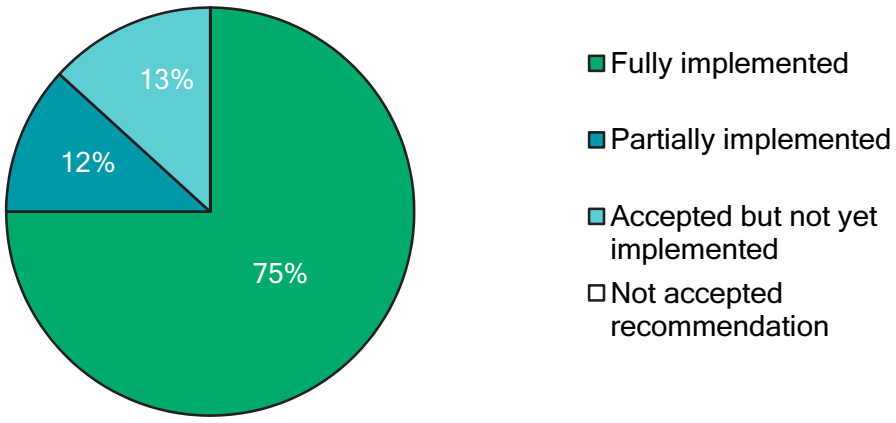
3. Defining complaint procedures and requests for service

Recommendation 3 of the audit final report read:

> That all councils establish a clear process of internal graduated complaint handling; including first point of contact, optional referral to senior staff for investigation and section 270 internal review procedure.

From the total of 68 councils, 51 have fully implemented the recommendation; 8 have partially implemented the recommendation and 9 councils have accepted but not yet implemented the recommendation. No council rejected the recommendation. Figure 3 expresses the results as percentages.

Figure 3: Defining complaint procedures and requests for service



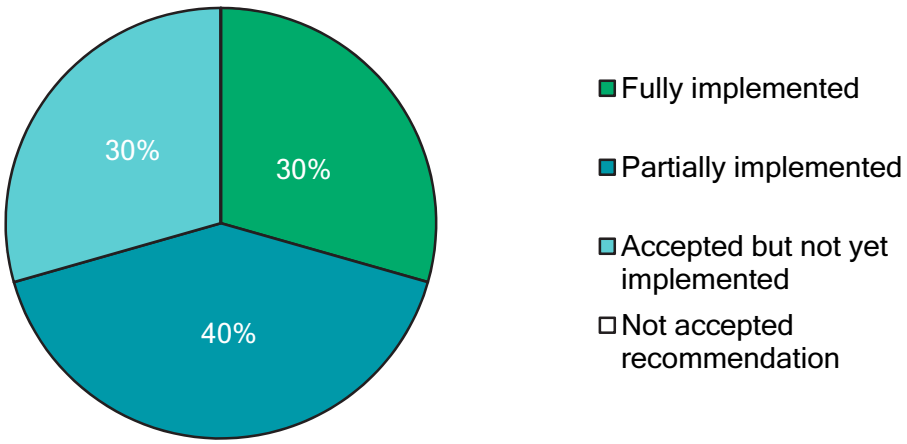
4. Complaint management information systems

Recommendation 4 of the audit final report read:

> That all councils have in place systems to enable logging, tracking and analysis of complaints and to separate these from requests for service. This should include a system for monitoring complaint outcomes, the implications for council policy and decision making and the identification of systemic weaknesses and underlying problems.

From the total of 68 councils, 20 have fully implemented the recommendation; 28 have partially implemented the recommendation and 20 councils have accepted but not yet implemented the recommendation. No council rejected the recommendation. Figure 4 expresses the results as percentages.

Figure 4: Complaint management information systems



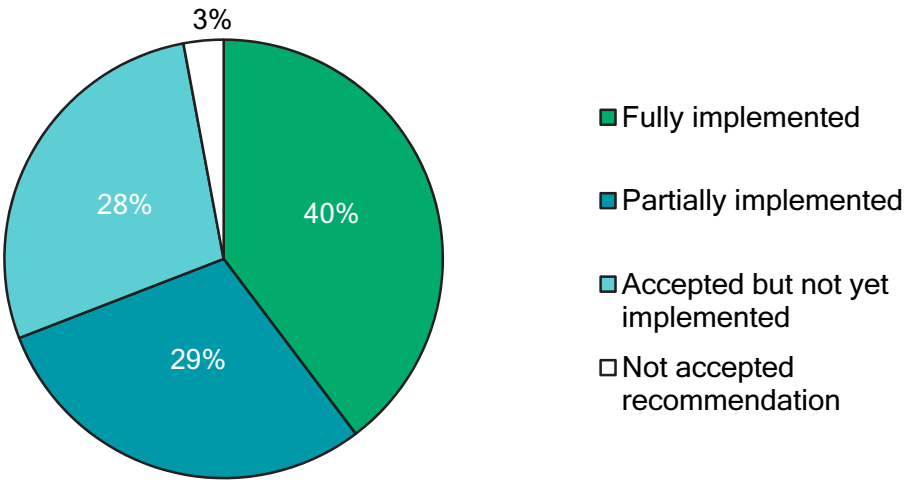
5. Information for the public

Recommendation 5 of the audit final report read:

> That all councils highlight a direct link on their website homepage to a plain English description of the policy and procedures for making complaints. This should include rights of review and (if chosen) an opportunity for registering a compliment or making a comment.

From the total of 68 councils, 27 have fully implemented the recommendation; 20 have partially implemented the recommendation and 19 councils have accepted but not yet implemented the recommendation. Two councils rejected the recommendation. Figure 5 expresses the results as percentages.

Figure 5: Information for the public



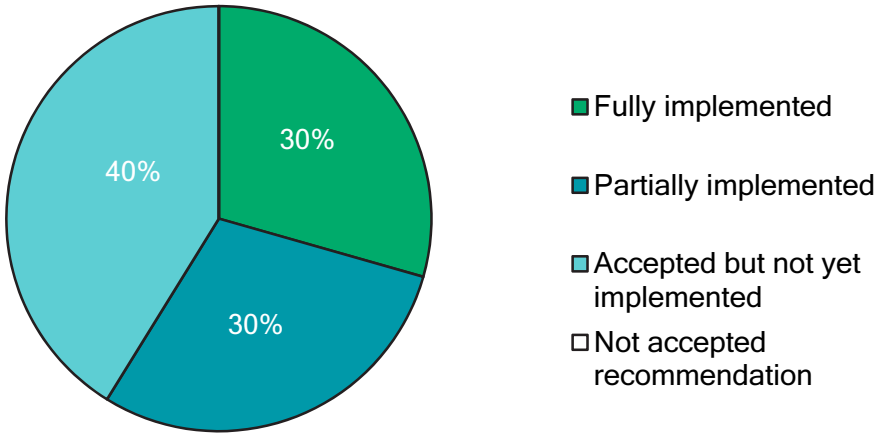
6. Monitoring complaints at senior management level

Recommendation 6 of the audit final report read:

> That all councils regularly review complaints at the level of senior management. As appropriate, a summary should be prepared, including outcomes, for the council Annual Report.

From the total of 68 councils, 20 have fully implemented the recommendation; 20 have partially implemented the recommendation and 28 councils have accepted but not yet implemented the recommendation. No council rejected the recommendation. Figure 6 expresses the results as percentages.

Figure 6: Monitoring complaints at senior management level



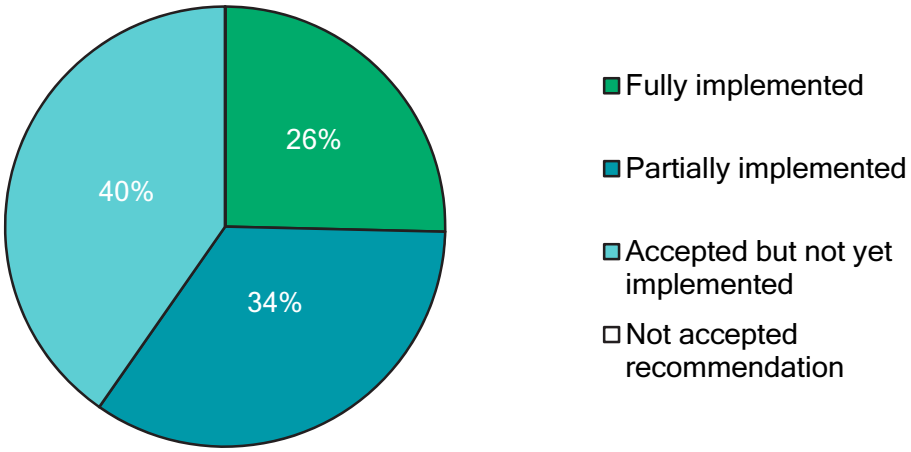
7. Training matters

Recommendation 7 of the audit final report read:

> That all councils prioritise training for staff in the appropriate handling of complaints, including an understanding of alternative dispute resolution approaches, and the in-house policy and procedures for section 270 internal reviews.

From the total of 68 councils, 18 have fully implemented the recommendation; 23 have partially implemented the recommendation and 27 councils have accepted but not yet implemented the recommendation. No council rejected the recommendation. Figure 7 expresses the results as percentages.

Figure 7: Training matters



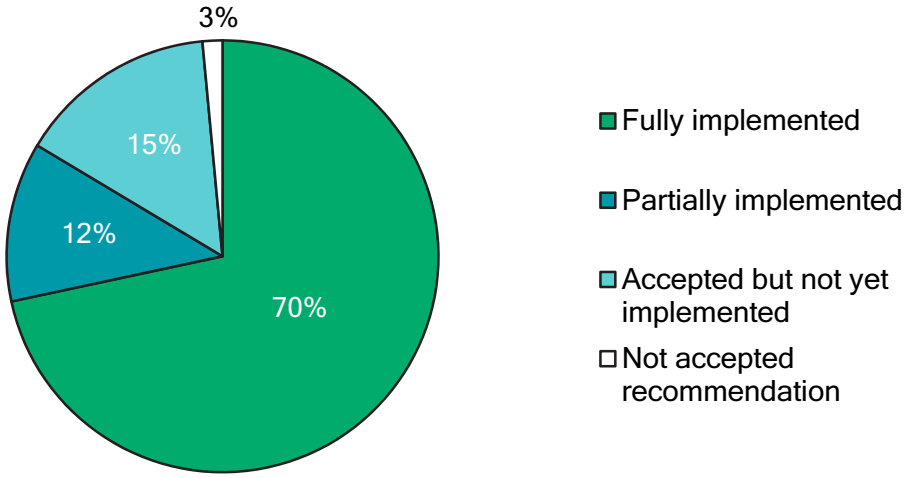
8. Communication with Ombudsman SA

Recommendation 8 of the audit final report read as follows:

> That all councils establish a dedicated liaison officer role to facilitate information flow, analysis and learning from complaints handled by Ombudsman SA as related to that particular council.

From the total of 68 councils, 48 have fully implemented the recommendation; 8 have partially implemented the recommendation and 10 councils have accepted but not yet implemented the recommendation. One council rejected the recommendation whilst one other did not respond to the question. Figure 8 expresses the results as percentages.

Figure 8: Communication with Ombudsman SA



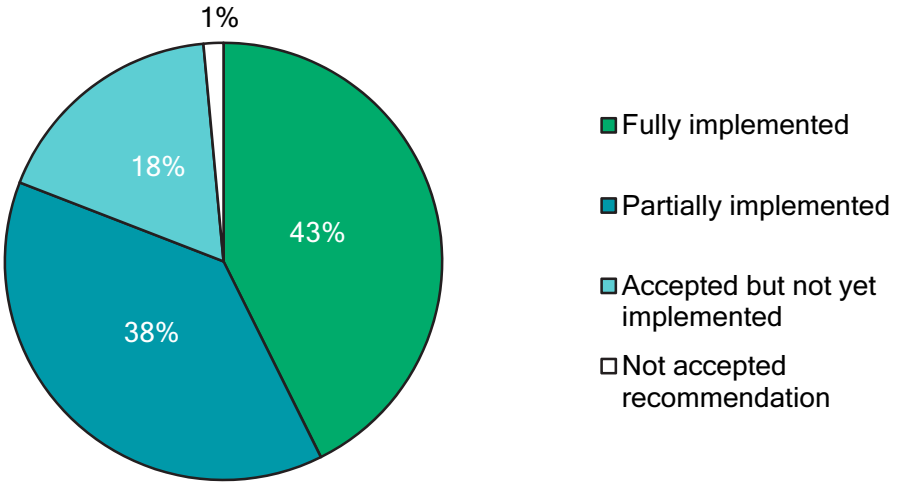
9. Section 270: Internal review of council decisions

Recommendation 9 of the audit final report read:

> That all councils ensure that their internal review of decision procedure is fully compliant with the requirements of section 270 of the *Local Government Act 1999*. Further, that all councils consider a standard form of wording for exclusions and a statement about the exercise of discretion in accepting matters for review. As an adjunct to development of complaints policy, councils should consider the merits of establishing a network or panel of independent reviewers from which to draw support for internal review processes.

From the total of 68 councils, 29 have fully implemented the recommendation; 26 have partially implemented the recommendation and 12 councils have accepted but not yet implemented the recommendation. One council rejected the recommendation. Figure 9 expresses the results as percentages.

Figure 9: Section 270: Internal review of council decisions



10. Self Assessment: Complaints management best practice

Part C of the Audit Recommendations Survey asked councils to self-assess the performance of their business in handling and managing complaints from members of the public. The questions are listed on the opposite page.

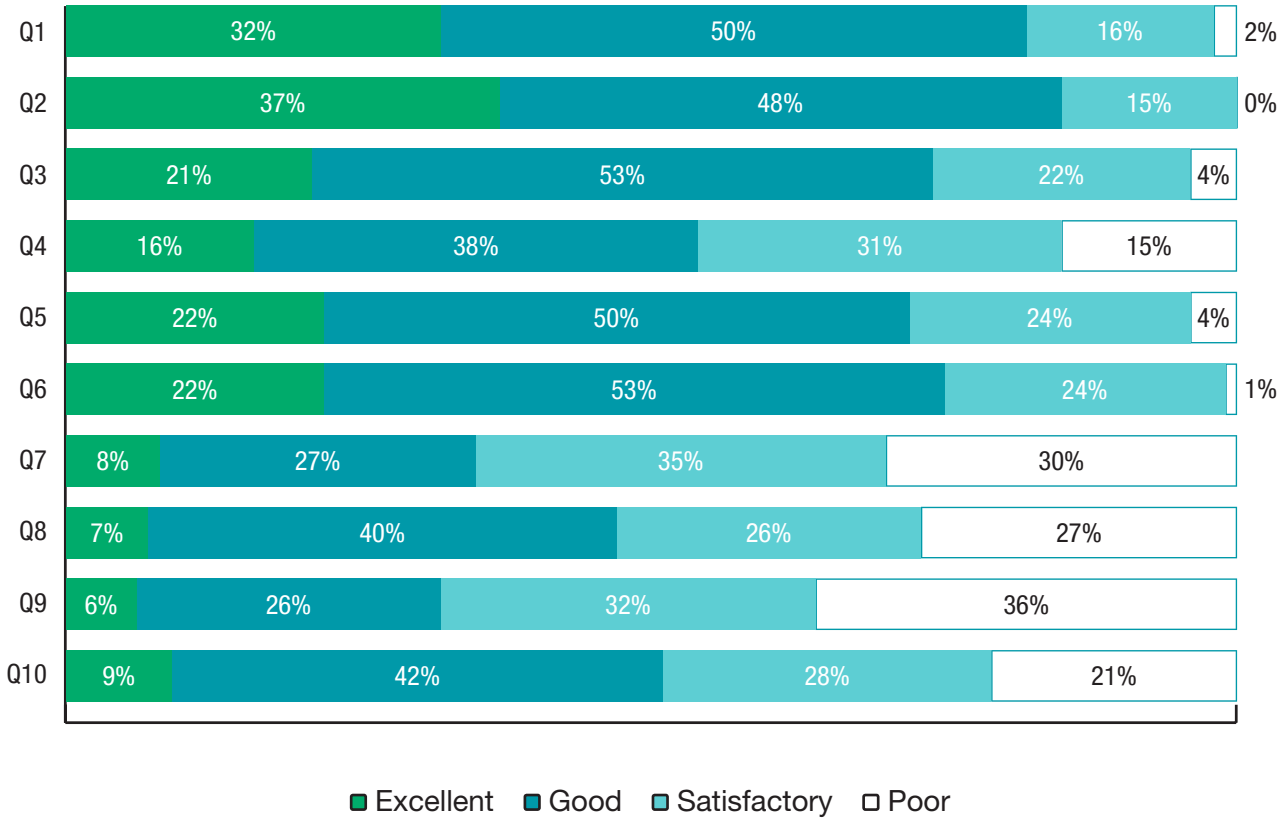
The graph shows the aggregate responses expressed as percentage of the total, i.e. 68 councils =100%.

Questions 4, 7, 8, 9 and 10 identified a significant minority of councils where practices in information to the public; data collection and recording; identification of recurring problems; reporting against standards and ensuring effective complaint handling outcomes were rated as Poor.

By contrast, a majority of councils indicated Good or Satisfactory performance in these areas.

On questions about a complaint welcoming culture; fair treatment to the parties; allocation of resources to complaint handling; an accessible complaint handling process and a responsive complaints process; a significant majority of councils rated themselves as Good or Excellent.

Graph 1: Complaints management best practice



Please rate your council against the following core elements of the Australian Standard for Complaints Handling (AS ISO 10002-2006):

1. A commitment at all levels within the council, which is reflected through a culture acknowledging citizens have a right to complain about matters which affect them

   ☐ Excellent ☐ Good ☐ Satisfactory ☐ Poor

2. Fair treatment to both the person complaining ("the complainant"), and the section or person against whom the complaint is made

   ☐ Excellent ☐ Good ☐ Satisfactory ☐ Poor

3. Allocation of adequate resources for handling complaints, with sufficient levels of delegated authority to the personnel dealing with complaints

   ☐ Excellent ☐ Good ☐ Satisfactory ☐ Poor

4. Publicised, readily available information about complaint handling processes, which is easy to read and understand

   ☐ Excellent ☐ Good ☐ Satisfactory ☐ Poor

5. A process which is accessible to all, with assistance provided for complainants to lodge complainants where required

   ☐ Excellent ☐ Good ☐ Satisfactory ☐ Poor

6. A responsive process, where complaints are dealt with quickly, and complainants are treated with respect

   ☐ Excellent ☐ Good ☐ Satisfactory ☐ Poor

7. Data collection and recording, with a systematic review and analysis

   ☐ Excellent ☐ Good ☐ Satisfactory ☐ Poor

8. Identify recurring problems which need to be addressed

   ☐ Excellent ☐ Good ☐ Satisfactory ☐ Poor

9. Report against documented standards

   ☐ Excellent ☐ Good ☐ Satisfactory ☐ Poor

10. Ensure the complaint handling system is delivering effective outcomes

    ☐ Excellent ☐ Good ☐ Satisfactory ☐ Poor

APPENDIX B – Table 1: Recommendation implementation outcomes

The following table shows recommendation implementation outcomes for each agency investigation where a finding of error was made by the Ombudsman under section 25(1) of the *Ombudsman Act 1972*.

State Agency	No. of recommendations made	Accepted	Implemented	Pending Action	Rejected
Adelaide Health Service Incorporated	1	1	1	0	0
Consumer and Business Services	3	3	3	0	0
Consumer and Business Services	2	2	2	0	0
Consumer and Business Services	2	2	2	0	0
Courts Administration Authority*	1	1	1	0	0
Dept for Correctional Services	1	0	0	0	1
Dept for Correctional Services	1	1	1	0	0
Dept for Correctional Services	1	1	1	0	0
Dept for Correctional Services	1	1	1	0	0
Dept for Correctional Services	1	1	1	0	0
Dept for Correctional Services	4	4	4	0	0
Dept for Correctional Services	3	3	3	0	0
Dept for Correctional Services	1	1	1	0	0
Dept for Correctional Services*	10	10	8	2	0
Audit: prisoner complaint handling in the SA Dept for Correctional Services*	13	13	13	0	0
Dept of Education and Children's Services	1	1	1	0	0
Dept of Education and Children's Services	3	3	3	0	0
Dept of Education and Children's Services	1	1	1	0	0
Dept for Environment and Natural Resources	1	1	1	0	0
Dept for Families and Communities	2	2	2	0	0
Dept of Further Education, Employment, Science & Technology	1	1	1	0	0
Dept of Treasury and Finance	1	1	1	0	0
Dept of Treasury and Finance	1	1	1	0	0
Dept of Treasury and Finance	5	5	5	0	0
Dept of Water, Land and Biodiversity Conservation	1	1	1	0	0
Environment Protection Authority	2	2	2	0	0
Health and Community Services Complaints Commissioner	5	5	5	0	0
Health and Community Services Complaints Commissioner	1	1	1	0	0
Housing SA	1	1	1	0	0
SA Ambulance Service	3	3	3	0	0
SA Ambulance Service	4	4	4	0	0
SA Water Corporation	1	1	1	0	0
State Procurement Board (Dept of Treasury and Finance)	2	2	2	0	0
Super SA Board	1	1	1	0	0
Veterinary Surgeon's Board	2	2	2	0	0

*The colour green denotes a report tabled in the Parliament

Council	No. of recommendations made	Accepted	Implemented	Pending Action	Rejected
Adelaide Hills Council	1	1	1	0	0
Audit: complaint handling in SA councils*	11	11	9	2	0
Audit: the use of meeting confidentiality* provisions of the Local Government Act 1999 in SA councils[11]	18	18	0	18	0
Campbelltown City Council	2	2	2	0	0
Campbelltown City Council	4	4	4	0	0
City of Adelaide	2	2	2	0	0
City of Burnside	1	1	1	0	0
City Of Charles Sturt*	21	20	8	12	1
City of Holdfast Bay	8	8	8	0	0
City of Holdfast Bay	2	2	2	0	0
City of Onkaparinga	1	1	0	1	0
City of Onkaparinga	1	1	1	0	0
City of Onkaparinga	1	1	1	0	0
City of Playford	3	3	3	0	0
City of Playford	2	2	1	1	0
City of Port Adelaide Enfield	2	2	2	0	0
City of Port Adelaide Enfield	3	3	3	0	0
City of Port Lincoln	1	1	1	0	0
City of Prospect	1	1	1	0	0
City of Salisbury	2	2	1	1	0
City of Tea Tree Gully	2	2	2	0	0
City of Tea Tree Gully	2	2	2	0	0
City of Unley	1	1	1	0	0
District Council of Barunga West	1	1	1	0	0
District Council of Copper Coast	6	6	6	0	0
District Council of Coober Pedy	1	1	1	0	0
District Council of Grant	1	1	1	0	0
District Council of Mount Barker	1	1	1	0	0
District Council of Mount Remarkable	3	2	2	0	1
District Council of Tumby Bay	2	2	2	0	0
District Council of Tumby Bay	4	4	4	0	0
District Council of Yorke Peninsula	4	4	4	0	0
District Council of Yorke Peninsula	2	2	2	0	0
District Council of Yorke Peninsula	1	1	1	0	0
District Council of Yorke Peninsula*	3	0	0	0	3
Flinders Ranges Council	2	2	2	0	0
Kangaroo Island Council	1	1	1	0	0
Kingston District Council	2	2	2	0	0
Light Regional Council	2	2	2	0	0
Mid Murray Council	1	1	1	0	0
Port Pirie Regional Council	1	1	1	0	0
Regional Council of Goyder	2	2	2	0	0
Regional Council of Goyder	1	1	1	0	0

[11] Note: The 12 councils involved in the confidentiality audit have given some information to Ombudsman SA on initial action taken as a result of the audit. However, the table lists all 18 recommendations in the 'Pending Action' category because no comprehensive follow-up has yet been done on recommendation implementation with all 68 councils and with the state government on possible changes to the Local Government Act.

Council/University	No. of recommendations made	Accepted	Implemented	Pending Action	Rejected
Town of Gawler	2	2	2	0	0
Town of Gawler	1	1	1	0	0
Wakefield Regional Council	2	2	2	0	0
Wakefield Regional Council	5	5	5	0	0
Wakefield Regional Council	1	1	1	0	0
Wattle Range Council	1	1	0	1	0
University of Adelaide	1	1	1	0	0
University of South Australia	1	1	1	0	0
Total	**230**	**224**	**186**	**38**	**6**

Total number of recommendations made	Accepted	Implemented	Pending Action	Rejected
230 (100%)	**97%**	**81%**	**16%**	**3%**
From 216 recommendations accepted		**Implemented**	**Pending Action**	
100%		**83%**	**17%**	

OmbudsmanSA