

Redacted Report
Full investigation - *Ombudsman Act 1972*

Complainant	[The complainant]
Government Department	Housing SA
Ombudsman reference	2018/02346
Date complaint received	23 February 2018
Issues	Whether the agency's delay in addressing the asbestos at the complainant's property was wrong under the <i>Ombudsman Act 1972</i>.

Jurisdiction

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

The South Australian Housing Authority was established on 1 July 2018. The Authority is a statutory corporation, and brings together housing strategy, asset management and service delivery functions that were previously provided separately by Renewal SA and Housing SA. Housing SA remains, and now administers services on behalf of the South Australian Housing Authority.

I will refer to both the South Australian Housing Authority and Housing SA as 'the agency' in my report.

The agency is a unit of the Department of Human Services.

As a result of Machinery of Government changes that took effect on 17 May 2018, the Department for Communities and Social Inclusion (DCSI) was replaced with the Department of Human Services.

I will refer to both DCSI and the Department of Human Services as 'the department' in my report.

Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking a response from the agency
- considering:
 - *Work Health and Safety Act 2012* (SA)
 - *Work Health and Safety Regulations 2012* (SA)
 - Housing SA, 'Asbestos Management Procedure', September 2017.

- Housing SA, 'Maintenance Centre Operators Guide', April 2018
- The National Construction Code
- providing the agency and the complainant with my provisional report for comment, and considering their responses
- preparing this report.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.¹ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...²

Response to my provisional report

In response to my provisional report the agency responded by letter dated 4 December 2018. The response included, in summary, the following:

- the agency acknowledged and shared my concerns about the operation of maintenance services provided in this instance
- the agency agreed to reimburse the complainant for the report he obtained
- the agency acknowledges that it must provide 'a quality and timely response' to tenants
- this matter is being referred to Internal Audit to review and make recommendations to improve internal processes
- the agency is embarking on a number of immediate and longer term strategies to improve its performance in this area, including:
 - development of systems to improve the performance of Multi-Trade Contractors
 - changes to the Maintenance Inspector role to refocus on compliance with quality standards
 - creation of a Maintenance Liaison Officer role
 - staff communication regarding the application of the Asbestos Management Procedure
- the agency has engaged the services of an independent consultant to review the Multi-Trade Contractor model maintenance and is currently analysing the final report and its suggested improvements.

The agency also requested that I remove the name of a person who was named in the report in circumstances where it was not necessary or in the public interest to include the name. I agree that the naming of this person is not necessary or relevant to my investigation and, as such, I have removed this person's name.

The complainant provided a response to the provisional report by speaking with my Investigating Officer on the telephone on 3 December 2018. Overall, the complainant was satisfied with my investigation.

¹ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

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

The complainant was concerned that there appears to be some confusion on the part of the agency between two maintenance jobs at his property. It was explained to him that his concerns would be noted but, given that the investigation has highlighted that the agency's maintenance records were confusing, continuing to clarify the records was unnecessary and would not change the outcome of the investigation.

In addition, the complainant wanted it made clear in the final report that in saying that the evidence was confusing, this was not a result of any action by him. The report has been amended slightly to address this.

Background

1. In 2013 Housing SA entered into contracting arrangements with a number of contractors for the delivery of maintenance services to its tenants. The multi trade (head) contractors are responsible for the maintenance work and repairs to all Housing SA properties, through the management of trades, for a specific geographic area.
2. On 17 October 2017 the multi trade contractor, Lakes Maintenance Pty Ltd (**the contractor**), engaged an electrician to undertake work replacing a faulty fuse on a meter box in the communal foyer area of the block of units (**the property**) where the complainant lives as a Housing SA tenant.
3. The electrician advised that four new load centres were required and the asbestos lining backboard needed to be replaced.
4. On 24 October 2017 the contractor attended and removed the backboard panel and placed it in an approved asbestos bag. After the contractor carried out the work it was unable to close the doors on the meter box as they no longer fit properly because the new load centres were larger than the ones which were replaced.³ The doors were screwed back on temporarily and a carpenter was requested to fit larger, properly fitting doors.
5. The complainant said that after the work was completed the doors were left open and 'blowing in the wind', and he identified 'off white particles and dust' inside the meter box cabinet that was 'obviously created during the ... process but not cleaned up'. The complainant suspected that the material was asbestos, particularly given that asbestos had been removed from the eaves of the premises a few years earlier. The complainant contacted the agency and reported his concerns.
6. The complainant told a neighbour that he suspected the material was asbestos and the neighbour wired the doors of the meter box shut.
7. The complainant alleges that the work on the meter box resulted in asbestos being exposed which posed a risk to him and other tenants at the property, and that the agency failed to take action in a reasonable time.
8. Prior to the neighbour wiring the meter box doors shut, the complainant took a sample of the asbestos and sent the sample to be tested. The report, dated 6 November 2017, gave the results as positive for asbestos. The testing cost the complainant \$49.50.
9. On 30 October 2017 the complainant contacted SafeWork SA and requested advice about asbestos. The call operator referred the complainant to the SafeWork SA website for further information about asbestos.

³ Email from Lakes Maintenance to Mr Simon Richards and Mr Michael Mezzina, 9 March 2018.

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10. On 30 October 2017, six days after the work was done on the meter box and the complainant had contacted the agency about the asbestos, two officers of the agency attended the property to view the meter box.
11. The complainant subsequently contacted the agency to advise that, after the officers attended the property, the meter box would not close.
12. When work is required on a property the agency issues a Work Order to the contractor, pursuant to which the contractor will carry out the instructed works. The work is allocated a priority. The agency's Maintenance Centre manages requests for work on a property and the raising of Work Orders for that work to be undertaken by a multi trade contractor.
13. On 31 October 2017, after attending the property, Mr Stuart Ridge-Cook, Housing Officer, emailed the Maintenance Centre:
- The possible asbestos is located within the box containing the 4 x load centres for the units.
- Some of the edges of the asbestos are damaged possibly exposing fibres?
- Some of the tenants have raised concern with the high wind blowing through recently they may be exposed to fibre?
- Are we able to have the box inspected to confirm there is no danger?
14. An officer from the Maintenance Centre replied:
- Please note an order cannot be raised on anything containing asbestos if there is no damage, as long as the item is intact there is no danger. Thanks.
15. Mr Ridge-Cooke replied:
- The possible asbestos is located within the box containing the 4 x load centres for the units.
- Some of the edges of the asbestos are damaged possibly exposing fibres?
- Some of the tenants have raised concern with the high wind blowing through recently they may be exposed to fibre?
- Are we able to have the box inspected to confirm there is no danger?
16. The Officer from the Maintenance Centre replied:
- From what I can see there is an order already in the system to modify the switchboard to the complex for units [...]. This could mean the contractors are already possibly aware. I will send through a message to follow up.
17. My investigation has not been able to locate any further correspondence to suggest that this was followed up by the agency.
18. It appears that the Order referred to is Work Order Number 61 00509144. This Work Order was for replacing the backing panel for the meter box.
19. On 6 November 2017 the meter box was vandalised. It is not clear to me whether the doors were removed completely by the vandalism, or whether they remained but were no longer able to be wired securely closed.

20. On 7 November 2017 the complainant contacted the agency to ask what was happening in relation to the asbestos, as he had not had any contact about it.
21. On 7 November 2017 Mr Grant Mathers, Maintenance Inspector, emailed the Maintenance Centre with a request for a Priority 1 Work Order to repair the meter box doors and remove asbestos fibres:

Please raise an order

...

AC010 remove AC fibres from m/box in foyer

EL618 REPAIR METER BOX Repair doors to meter box.

Tenant states m/replaced recently and asbestos fibres weren't removed

P1

CC00

22. On 7 November 2017 Work Order 61/00511105 was raised as priority 1 for asbestos fibres to be removed from the meter box. Work Order 61/511105 contained the following description of the Work required:

REMOVE ASBESTOS CEMENT MATERIAL
REMOVE AC FIBRES FROM METER BOX IN FOYER

REPAIR METER BOX
DOORS TO METER BOX
TENANT STATES METER REPLACED RECENTLY AND ASBESTOS FIBRES WERE NOT REMOVED

23. It appears that, as a result of Work Order 61/00511105, an asbestos contractor inspected the meter box that day.
24. The Clearance Certificate issued on 7 November 2017 by the asbestos contractor states:

Date of Inspection:	07/11/17 AAM Job ID: ZTOT279 Your Order/Job: 73356
Work done by:	Total Asbestos Services
Notification:	n/a
Address:	[address] [address] [address]
Work description:	Cleaning and sealing of asbestos lining.
Location of work:	meter box in foyer to [address].
Inspection:	All visible and accessible surfaces within the completed sections of the work area, as defined by the removal contractor, were inspected for visible asbestos debris, none found.
Inspection limitations:	Nil.
Additional:	Internals of meter box PVA sealed.
Inspection by:	[...]

If applicable please adjust your Asbestos Register to indicate these changes.

25. Further, the Result Sheet for the clearance certificate testing states that samples were taken 'south of foyer' and 'north of foyer' and that there were less than 0.01 fibres per millilitre of air. The Worksafe Australia exposure limit for airborne asbestos is 0.1 fibres per millilitre of air.
26. The records are unclear as to whether asbestos debris was present on 7 November 2017, with records alternatively stating:
- contractor attended site and reported back to the contractor that the meter box was clad/lined with asbestos, which needed 'to be removed before any repairs [were] carried out'.⁴
 - no asbestos debris was present at the site when Adelaide Air Monitoring attended⁵
 - an 'asbestos removal team removed the asbestos material from the meter box and vacuumed the switchboard to remove any dust.'⁶
27. It is not clear to me from the information provided from the agency whether the asbestos contractor found no signs of asbestos debris or whether they vacuumed the debris prior to the air testing. For example, a Housing SA Incident Detail and Asset Outcome Report (**the Insurance Report**)⁷ described the following action as having been taken:
- Order has been raised and the doors have been repaired. An order was raised to asbestos removal contractor and they vacuumed the switchboard to remove dust and the air monitoring results are attached.
28. Although the agency's records are unclear and difficult to follow, my understanding is that it is alleged that the asbestos debris that was reported by the complainant 14 days earlier had, at the time of the testing, either blown away or been vacuumed, which is why the contractor did not detect airborne asbestos.
29. However, the agency appears to have taken the view that the contractor 'found no signs of asbestos' and, as such, no further action was required to be taken. For example, an email from Mr Simons to the contractor on 9 March 2018 included:
- ...Asbestos contractor attended and found no signs of asbestos. The contractor then called lake maintenance to ask if they should be removing all the wall linings as no debris present to clean up, and would the electrician be attending to disconnect all cable. LM advised not required, linings to remain to maintain fireproof rating. The asbestos contractor then PVA sealed the internals of meter box as an additional precaution. Please see attached clearance certificate and air monitoring results for this order. Electrician attended as per order also and noted doors removed from meter box by unknown persons...⁸
30. Irrespective of whether the asbestos debris had been vacuumed or had blown away, the complainant remained concerned that the material in the meter box was damaged and asbestos was exposed.
31. The invoice for the 7 November 2017 Work Order 61/511105 states the completion date as 15 November 2017. The invoice states that the asbestos cement material was removed and the atmospheric monitoring was completed. However, the work to doors was describe as 'INABILITY TO PERFORM WORK' because:

Doors to meter boxes need to be adjusted so they shut properly by a carpenter.

⁴ Lakes Maintenance - Summary of Works Orders.

⁵ Email from Lakes Maintenance to Mr Mark Manuel, 2 February 2018.

⁶ Email from Mr Shane Hewish, DCSI, to Mr Mark Manuel, DCSI, and Mr Kevin Bignell, Renewal SA, 31 January 2018.

⁷ Completed by Mr Mark Manuel, dated 14 November 2017, for DCSI Insurance Services.

⁸ Email from Lakes Maintenance to Mr Simon Richards and Mr Michael Mezzina, 9 March 2018.

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32. Maintenance Records provided to my investigation by the agency state that Work Order 61/511105 was remitted on 23 November 2017. However, the doors remained open and the complainant remained concerned about the asbestos debris in the damaged material in the meter box. He continued to contact the agency about the matter.
33. As a result, on 8 November 2017, Mr Mathers emailed the contractor and asked if the 'asbestos removal contractor had to remove asbestos fibres and the air monitor results please'. The contractor replied by email on 9 November 2018:

Our asbestos removalist vacuumed the switchboard to remove any dust and noted that as this is the older type timber switchboard cabinet, the lining is made with asbestos as a fire retardant. Please find attached the air monitoring results and clearance certificate.

I have been advised that the panel has been updated (the panel also contained asbestos and these can be replaced quite easily) however the new panels are slightly larger, which means the meter box needs adjusting so that the doors can close properly. The matter is currently with our Senior Administrator to check if the carpentry works can be undertaken on this work Order (61/00511105).

Once I have confirmation that all works have been completed, I will advise...

34. The contractor emailed the agency again on 16 November 2017:

Just a follow up email that the adjustments to the meter box have now been completed, so the doors close properly.

35. On 16 November 2017 the complainant emailed the agency to request that he be reimbursed for the asbestos testing he had arranged and paid for.
36. On 17 November 2017 the complainant phoned the agency.
37. On 20 December 2017 the complainant phoned and emailed the agency again in relation to the asbestos. He requested reimbursement again for the testing. He also advised that workmen had again drilled into the asbestos and disturbed it. In the phone call the complainant requested that an officer phone him to discuss the matter. There is no evidence that any attempt was made by anyone at the agency to phone the complainant. The complainant's email was forwarded to an officer by the Maintenance Centre; I am unable to establish if it was responded to.
38. Sometime around this time, on a date that is unclear to me, the complainant contacted the Minister for Social Housing about the matter.
39. On 24 January 2018 Ms Lucy Musgrove, Communications Officer - Risk and Compliance, emailed Mr Kevin Bignell, Senior Insurance Officer, DPTI, in relation to the complainant's request for reimbursement of the cost of the asbestos testing he arranged. Mr Bignell replied:

From an Insurance Services perspective we do not believe there is any justification to pay for the asbestos testing the tenant arranged.

40. By letter dated 16 February 2018, Mr Tony Harrison, the Chief Executive of the department (**the CE**), wrote to the complainant in response to his communication with the Minister, including:

Thank you for your email to the Minister for Social Housing, Hon Zoe Bettison MP, regarding Housing SA and the reimbursement for the cost to analyse a sample of asbestos and to receive an explanation of the work conducted by an electrician inside your complex foyer. The Minister has asked that I respond on her behalf.

Housing SA advises me that an electrician attended your complex on 17 October 2017 for repairs to another unit, tracing a fault back to the switchboard in the meter box. On 24 October 2017, the electrician removed the switchboard panel containing the asbestos, before installing the new larger panel. The switchboard cupboard doors were screwed back on until a carpenter could attend to modify the switchboard cupboard.

Housing SA further advises me that in response to your ongoing concern, an Asbestos Removal Team attended the site on 7 November 2017 to inspect and remove any asbestos fibres. No sign of asbestos debris was found and a Clearance Certificate stating this was provided to Housing SA.

As you privately arranged for asbestos testing, you are responsible for that cost. I appreciate your concern about residents safety. Contractors are required to comply with legislation. Safework SA is the regulator, ensuring work health and safety and public safety standards are met. You may seek advice from SafeWork SA's help centre on 1300 365 255, if you still have concerns about safe work practices in relation to asbestos.

I hope you find this information helpful.

41. On 20 February 2018 the complainant again contacted the Maintenance Centre and reported the poor condition of the meter box. The records record his report as follows:

[The complainant] FROM [address] ADV THAT THE METER BOX NEAR HIS UNIT NEEDS MAJOR REPAIRS. ENTIRE METER BOX CASING IS ABOUT TO FALL OFF ITS HINGES.

42. As a result, Work Order 61/520897 was raised, instructing the contractor to repair the meter box. This work was allocated as Priority 3, which means that the contractor was required to commence the work within 10 business days and complete it within 20 business days.⁹

43. On 23 February 2018 the complainant made a complaint to SafeWork SA about the alleged presence of asbestos. The complaint was assessed by SafeWork SA and was allocated to an inspector.

44. On 23 February 2018 the complainant emailed Mr Ridge-Cooke:

Hello Stuart, would you give me a call asap. I received a brief letter stating no asbestos debris existed. This is clearly false and untrue as you and your co-worker attended and photographed debris (as I did) which I had tested returning as positive. A clean up team attended with air monitors and most certainly did vacuum and apply sealer to broken asbestos edges.

45. My investigation has been provided with the photographs taken by Mr Ridge-Cooke when he attended the property on 30 October 2017. The photographs clearly show that the asbestos material was aged and degraded.

46. A chronology of action taken by the contractor states that on 27 February 2017 the asbestos contractor attended the site and:

... vacuumed debris in meter box, paint sealed remaining asbestos inside meter box, removed doors containing asbestos, conducted air monitoring and then completed inspection.

47. On 1 March 2018 the complainant again contacted the agency to report that the meter box needed major repairs.

⁹ See paragraph 104.

48. On 6 March 2018 the contractor replied to a request for an update from the agency by email including:

You are correct, attendance is required by 6/3/2018. I have spoken with the contractor and he attended on 27/2 at 1pm. Attached is his photos, as you can see the box is still secure and locked. The hinge at the bottom has blown out though.

Current meter box is timber clad with sheet metal fitted externally and internally asbestos clad. I have discussed the options to repair put forward by the contractor. I have advised to proceed with removing the existing doors and have two galvanised doors made to replace with hasp and staple padlock top and bottom. It is not preferable to replace meter box complete as this will eliminate the fire rating given by the asbestos and would require a major upgrade to the electrical supply and consumer mains, including new breakdown box, public lighting and sub main circuit protection.

Contractor is seeking quote for doors today and I will have this information tomorrow, along with an ETA.

49. On 14 March 2018 an inspection took place at the property with Mr Simon Richards, Manager, Maintenance Operations, the complainant and the SafeWork SA inspector. The complainant was initially not invited to attend the inspection but subsequently was at the suggestion of my Office. SafeWork SA and the agency have advised my investigation that no asbestos debris was observed at this time, but that there was asbestos material in the meter box that needed to be removed and labelled. At this inspection Mr Richards agreed to take the following steps, to be completed by 29 March 2018:
1. all material containing asbestos from the meter box located adjacent to the complainant's unit will be removed
 2. the contractor will be instructed to assess all meter boxes on the property and to provide a report back to Housing SA on the presence of, and condition of any material that may contain asbestos within the meter boxes
 3. if asbestos products exist, but are safe, signage will be used to alert people to the presence of the asbestos
 4. if asbestos is found to be unsafe, remediation will be undertaken to make the area safe
 5. the doors of the large electrical distribution boxes will be repaired and secured in accordance with SA Power Networks' requirements.
50. On 15 March 2018 Mr Richards emailed an administrative officer of the agency and asked for a credit note to be arranged to reimburse the complainant for the amount of the testing he had done.
51. On 15 March 2018 Mr Richards emailed Mr Paul Brophy, Maintenance Inspector:

Hi Paul, you may or may not be aware Lucy and I have been working through multiple complaints from [The complainant] regarding the [sic] what he alleges to be the recent poor management of asbestos removal in a meter box next to his apartment. He has provided complaints to the Minister's office, the Ombudsman and to Safework SA.

Safework and I attended yesterday to speak with [The complainant] and to look at the work done by the MTC.

From the point of view of the asbestos removal there is sufficient evidence to support the view that our contractors did all they could to effectively manage the asbestos and provided air monitoring results, asbestos test results and clearance certificates to us when requested, [The complainant] now suggests these results were falsified.

Although it is not my preferred response, I have agreed to the following and I would like you to arrange orders accordingly. This has been supported by Safework SA.

1. Remove all material containing asbestos from the meter box located adjacent to [The complainant's] unit at [address] and replace.
2. Arrange to [sic] the MTC to assess all meter boxes on the [...] site and provide a report back to Housing SA on the presence of, and condition of any material that may contain asbestos within the meter boxes.
3. If asbestos products exist but is safe, apply an asbestos sticker to alert people to the presence of it.
4. If unsafe arrange remediation to make safe.
5. Arrange repairs to doors of large electrical distribution boxes per photos and secure in accordance with SAPN requirements.

Suggest you might want to attend but have attached photos for your reference.

Please provide status update to me by 22 March 2018.

52. At 9:05am on 19 March 2018 my Assessment Officer emailed Mr Richards to request an update as to action taken in relation to this matter. At 11:41am Mr Richards replied to my Officer:

There is very little to update on at this stage, I have instructed that orders be raised to have any asbestos product removed from the electrical box outside [The complainant's] apartment and for the others to be assessed. As I understand it [The complainant's] complaint centred around his belief of poor contract management of recent work undertaken to the electrical box. As you know Safework SA is also investigating this. I am awaiting the formal outcome of Safework's investigation to discover if there was any incidence of poor workmanship or deviation from acceptable practice.

53. At 11:47am on 19 March 2018 Ms Musgrove emailed Mr Richards to request an update, stating that she was not able to find any Work Orders and asking if he knew whether Mr Brophy had processed this request yet. At 11:57am Mr Richards replied to Ms Musgrove:

Wouldn't have a clue, like all of us somewhat too busy to monitor closely

54. On 20 March 2018, Mr Brophy emailed Mr Richards:

I have raised a P 4 order for this work to be completed by 29/03/18.

55. On 20 March 2018 two Work Orders were raised, being Work Order 61/523730 and Work Order 61/523731.
56. Work Order 61/523730 directed the contractor to remove 'asbestos cement material at [address] and 'renew doors' of the meter box.
57. Work Order 61/523731 directed the contractor to 'test and check condition of all meter boxes to complex and report to Paul Brophy'.
58. In accordance with Work Order 61/523731, the contractor organised further testing to be done by Total Asbestos Services. Total Asbestos Services commissioned Ax4 to undertake a survey of the asbestos at the property and a Senior Asbestos Consultant inspected the meter boxes on 27 March 2018 'with the objective of reporting the condition and quantify the asbestos containing material prior to any electrical maintenance on the site'. Samples were taken away to be tested.
59. The Invoice for Work Order 61/523731 states that the work was completed on 27 March 2018. The description on the invoice states:

ASBESTOS TESTING (65 - COMPLETE)
Asbestos Result: Positive

Sample - 1 Location Name Main Switch Board Cabinet Lining to Units 29-36
 Description Fibre Cement Sheeting Result Chrysotile (white) asbestos detected
 Sample 2 - Location Name Internal Sub Board Lining to Units 33-36
 Description Fibre Cement Sheeting
 Result Chrysotile (white) asbestos detected
 Sample 3 - Location Name Electrical Backing Board Cabinet to Units 13-16
 Description Resin Board
 Result Chrysotile (white) asbestos detected

60. By letter dated 21 March 2018, Mr Tim Baker, Director, Property and Contract Management, wrote to the complainant advising that the agency had 'agreed to remove all material containing asbestos from the meter box' and to 'assess all of the meter boxes at the complex by the end of March 2018'.

61. In February 2018 a memo was provided to the CE in relation to the matter. The memo includes the following statements which are not necessarily supported by the evidence that is available to me:

[The complainant] called Housing SA on 30 October 2017 to state a contractor had inspected the meter box and [The complainant] was concerned it will not close, as there is asbestos. [The complainant] was advised his Housing Officer would inspect the property later that day.

The Housing Officer confirms viewing the area and noting no visible asbestos fragments. The Housing Officer considered there was no risk to [The complainant], as the meter box had doors.

...

Following [The complainant's] claims and to ensure there was no risk to [The complainant], an Asbestos Removal Team attended the site at 12 noon, 7 November 2017 to inspect and remove any asbestos fibres that may exist. They found no sign of asbestos debris, however applied PVA sealant to the internals of the meter box as an additional precaution. They noted it appeared that someone had pulled off the doors of the switchboard. A carpenter was arranged to rectify this.

The Asbestos Removal Team provided a clearance certificate and results to the air monitoring conducted during the time of their work.

...

62. By letter dated 23 March 2018, the CE wrote to the complainant advising that new doors were being made for the meter box to replace the existing doors and that this work would be completed by 21 March 2018. I note that, on the date of the letter the proposed completion date had already passed.

63. On 3 April 2018 Ms Fiona Clarke, Manager, Maintenance Strategy & Contract Management, emailed Mr Brophy to request an update on the works. Mr Brophy replied on 4 April 2018:

I talked to the builder this morning and he has had a delay in obtaining the new doors for this meter box. He will pick them up this Friday 6/04/18 and then [sic] the asbestos contractor will remove the existing asbestos doors then the new doors will be fitted. All works will be completed this Friday 6/04/18.

64. On 5 April 2018 the report of the testing that was done on 27 March 2018 was completed (**the Asbestos Survey Report**). The Asbestos Survey Report records that chrysotile (white) asbestos was present in the following locations:

- main switch board cabinet lining to units 29-36
- internal sub board lining to units 33-36
- electrical backing board cabinet to units 13-16.

65. The Asbestos Survey Report also identified the following:
- high levels of risk for all of the pressed asbestos millboard sheet linings to the sub-cabinets
 - medium levels of risk for the asbestos cement sheeting internal linings of the main cabinets
 - low levels of risk for the asbestos impregnated resin board zelemite fuse backing boards to the sub-cabinets and the asbestos cement sheeting external wall cladding the main cabinets.
66. The Glossary in the Asbestos Survey Report defines 'High level of risk' as:
- Left undisturbed, normal occupational activity will generate airborne asbestos fibres.
67. The Asbestos Survey Report also stated that 'some' of the cabinets were 'vandalised, and damaged, leaving fragments of asbestos containing material in poor condition scattered within and without the cabinets'.
68. Annexed to the Asbestos Survey Report is a Summary Table (**the Table**) which provides an overview of the asbestos inspections of the main electrical cabinets and all of the sub-cabinets on the property.
69. The Table records that all of the sub-cabinets contained pressed asbestos millboard lining that was unsealed and in a 'poor' condition with friable asbestos present, and with millboard debris at the base of the cabinets.¹⁰
70. The Glossary in the Asbestos Survey Report defines 'poor condition' as:
- Showing a large amount of damage or deterioration or that material is unserviceable for its intended use.
71. Friable (non-bonded) asbestos products means that they contain loosely packed asbestos fibres that are potentially dangerous because they can be released in to the air.¹¹
72. Non-friable (bonded) asbestos products means that they are usually bonded or mixed with cement or a similar material. The asbestos fibres are tightly bound in the product and are not normally released into the air unless they are disturbed, damaged or badly weathered. If non-friable asbestos products are in good condition and are left undisturbed they present no known health risks. However, non-friable asbestos products that have been damaged or badly weathered may become friable.¹²
73. The Table records that the door for the sub-cabinet for units 9 to 12 was 'not present' and that asbestos material was exposed.
74. The table also recorded that the main electrical cabinet for units 9 to 20 of the building was identified as having asbestos cement sheet cladding that was unsealed and in a 'medium' condition with bonded asbestos, and fibrous cement fragments as debris at the base of the cabinet.

¹⁰ The sub-cabinets for units 1-4, 5-8, 9-12, 13-16, 21-24, 25-28, 29-32, 33-36. Note that report states that the sub-cabinet for units 17 to 20 were 'not accessed due to tenants padlock', however it could be assumed that the cabinet contained unsealed, friable, pressed asbestos millboard lining in a 'poor' condition, and that there would be millboard debris at the base of the cabinet.

¹¹ Asbestos Management Procedure (Housing SA) Sept 2017, page 4.

¹² Ibid.

75. On 6 April 2018 the asbestos doors of the meter box were removed, the remaining asbestos backboard was sealed and replacement doors were installed.¹³
76. On 12 April 2018 Mr Mark Manuel, Maintenance Field manager, emailed the contractor and Mr Brophy asking further questions about the progress of the works, including:

...

And Paul

As a result of the findings in the report Appendix (which I can only hope you received) what additional work has been raised in relation to those findings/recommendations. For example; what subsequent orders have been raised for each of the meter boxes identified in the appendix to have remedial action taken, eg; orders to remove the broken/damaged/debris, 'asbestos' warning signs on the outside of the meter boxes where the product is in fact safe and undisturbed, to alert people of its presence. (just because there's asbestos in there, doesn't mean we need to do anything about it unless it is damaged or we are undertaking renewal of meters switchboards etc in which case we would want to be removing the asbestos from the meter box at the same time.

Paul, please confirm what you are doing about the other meter boxes, (see report attached)

Both the tenant that initially complained, and the Ombudsman's office are expecting a meaningful response from Housing SA.

77. The contractor replied, inter alia, that there were delays 'attributable to the manufacturing of the doors'.
78. I have been unable to locate any response from Mr Brophy to Mr Manuel.
79. On 16 April 2018 at 3:27pm, Mr Richards emailed the contractor:

...I have attended above address and have found that contrary to my instructions and orders raised in March the material inside the meter box adjacent to [address] has not been removed and replaced. I gave my assurances to both SafeWork SA and the Ombudsman's office that this work would be completed by end of March and orders with a finish date of 29 March were issued. Please explain why this work has not been completed and make urgent arrangements to have this work completed. I have been provided with the report and will review this as a matter of urgency.

I expect advice when this work is complete.

80. At 4:59pm on 16 April 2018 the contractor replied to Mr Richards:

Hi Simon,

To reiterate, we have received the following Work Orders, none of which included a directive to remove the asbestos from inside the meter box:

Work Order 61/523730 (raised 20/03/2018) - TO METER BOX NEXT TO [address] RENEW DOORS NEXT TO METER BOX NEXT TO [address] (PAUL BROPHY [PHONE NUMBER])

This appears to be a duplicate of Work Order 61/520897 given the task description (see below). Work did not progress on this Work Order because work had already commenced on Work Order 61/520897.

Work Order 61/520897 (raised 20/02/2018) -[The complainant] FROM [address]... ADV THAT THE METER BOX NEAR HIS UNIT NEEDS MAJOR REPAIRS. ENTIRE METER BOX CASING IS ABOUT TO FALL OFF ITS HINGES.

¹³ Email from Lakes Maintenance to Ms Lucy Musgrove, 9 April 2018.

On 6/4/18, asbestos doors were removed from the meter box and replacement doors installed.

Work Order 61/523731 (raised 20/03/18) - TEST AND CHECK CONDITION OF ALL METER BOXES TO COMPLEX AND REPORT TO PAUL BROPHY...

Asbestos samples taken (returned a positive result). Detailed report prepared as per the Work Order and provided previously - no instruction from Housing SA since.

The attached photos you have provided are from the switchboard at the complex. Previous Work Order November 2017 (61/511105) was issued with the following outcome:

Order 61/511105 - REMOVE AC FIBRES FROM METER BOX IN FOYER REPAIR DOORS TO METER BOX TENANT STATES METER REPLACED RECENTLY AND ASBESTOS FIBRES WERE NOT REMOVED (GRANT MATHERS [PHONE NUMBER])

Asbestos Removalist (and associated Air Monitoring) attended the property and found no visible asbestos debris. The inside of the switchboard was then PVA sealed - Clearance Certificate and associated Air Monitoring results were provided to Housing SA on 2 February 2018.

FYI - on 06/03/2018, Lake Maintenance advised Housing SA that it's not preferable/common practice to remove the asbestos (complete) as it eliminates the fire rating provided by the asbestos product.

81. On 17 April 2018 at 3:27pm, Mr Richards emailed other agency staff:

All.

Attended [the property] yesterday on return from my leave to visually inspect progress of works in relation to the recent asbestos complaint. All work including provision of the asbestos report we requested has been completed with the exception of the removal of asbestos material from the meter box adjacent to [The complainant's] unit. From communication yesterday it would appear that Lake Maintenance have misinterpreted the order to remove the asbestos from this meter box though I am unsure what was unclear in the working [sic] of the order which stated as follows:

AC010 REM ASBESTOS CEMENT MATERIAL 65 TO METER BOX NEXT TO FLAT [...]

Yesterday afternoon I issued instructions to Lake Maintenance to complete this work and to provide advice to me when complete.

We will now review the report and take action to provide warning labelling or make repairs to electrical cabinetry as necessary.

Mark, can you ask Paul Brophy to provide a timeline for review of the report and order raising please.

82. On 17 April 2018 Mr Richards forwarded the following email from Mr Manuel to SafeWork SA:

Paul and I reviewed the appendix table in the report.

We are raising a P4 order against the complex code, for all meter boxes to be cleaned up, Eg wherever the report states loose/debris in meter boxes, these will be HEPA vacuumed, any exposed edges of boards sealed, usually with paint, and if not already in there, red and white 'asbestos' warning signs to alert contractors etc to the presence of asbestos (although not required due to the building classification...)

The cost to remove the asbestos from these meter boxes will be in the tens of thousands of dollars, and will require:

A tenant communication strategy

Tenants moved out temporarily (as the power will need to be disconnected temporarily and reconnected, a logistics nightmare)

Coordination of asbestos and SAPN/AGL and Lakes's asbestos removal contractor.

Given that these walk up flat groups are all under review, with the FPI=FDI, the expense cannot be justified, so we will proceed as above and we expect the clean up work to be completed by 27/4/18. We have spoken to Brett at Lake Maint and explained what we need done.

83. On 17 April 2018 Work Order 61/00526379 was raised. The Work Order instructed the contractor to undertake the following work:

REM ASBESTOS CEMENT MATERIAL AS PER COMMENTS COLUMN OF SUMMARY TABLE OF ASBESTOS INSPECTION CONDUCTED MARCH 2018

MAKE SAFE EXPOSED EDGES OF EXISTING ASBESTOS THAT HAS FRAYED EDGES

RELATED ORDER 61/523731

84. The contractor's invoice for Work Order 61/00526379 states that the work started on 19 April 2018 and was completed on 1 May 2018.

85. Further testing was done by Adelaide Air Monitoring on 27 April 2018 and 30 April 2018, and there was no presence of asbestos.

86. The invoice for Work Order 61/00527404 states that work started on 1 June 2018 and was completed on 8 June 2018. Invoice records description of work done as:

MODIFY SWITCHBOARD (65 - COMPLETE)

Replaced x 2 backing panels BACKING BOARDS/SWITCHBOARD FOR UNITS 5-8 AS PER 61/525250

RENEW LOAD CENTRE (65 - COMPLETE)

Coc M942825 Renewed load centre for unit 9-12. FOR UNITS 5-8 AS PER 61/525250

87. On 12 May 2018 the contractor emailed the agency and SafeWork SA to advise that 'all asbestos work required' had been completed.

88. The new doors were installed on 25 June 2018.¹⁴

89. On 29 June 2018 Lakes Maintenance emailed the agency and SafeWork SA:

I can confirm that all works related to this site in regards to asbestos and electrical are complete. Please find attached copy of the COC and photo of completed load centers on WO 61/00527404. Carpenters will be attending early next week to put new doors as they were found to be missing when inspected by LM Field Supervisor and HAS MI. This will be done early next week.¹⁵

90. On 3 July 2018 the SafeWork SA inspector visited the site and confirmed that appropriate asbestos warning labelling had been put in place and that the doors had been secured on the meter boxes.

¹⁴ Email from Lakes Maintenance to Mr Simon Richards and Mr Sagar Saeed, 29 June 2018.

¹⁵ Email from Lakes Maintenance to Mr Simon Richards and Mr Sagar Saeed, 22 June 2018.

Relevant law/policies

91. Part 3 of the *Work Health and Safety Regulations 2012* sets out the management of asbestos and associated risks in a workplace.
92. A person with management or control of a workplace must ensure that an asbestos register is prepared and kept at a workplace. An asbestos register is not required under the Regulations for a premises that is used only for residential purposes.¹⁶
93. Given that the property is a residential premises, the agency is largely guided by its internal procedure in relation to the management of asbestos at the property.
94. The preamble to the agency's 'Asbestos Management Procedure (Housing SA) Sept 2017' (**the Asbestos Procedure**) states:

Asbestos fibres are known to be hazardous when inhaled. Fibres can be released into the air when products containing asbestos are incorrectly handled, removed or transported for disposal. Asbestos related diseases include pleural plaques, asbestosis, lung cancer and mesothelioma.

The production, importation and use of all forms of asbestos or asbestos containing materials are still banned in Australia. However, some houses built or renovated before 1990 may still contain asbestos containing materials. For more details on asbestos go to asbestos.sa.gov.au.

95. The purpose of the Asbestos Procedure includes:

The purpose of this procedure is to ensure Housing SA staff, Contractors, subcontractors and representatives are aware of their responsibilities within the identification, testing and removal of asbestos in Housing SA properties, as well as the requirements that need to be complied with, asbestos training and record keeping.

96. The Asbestos Procedure includes the following relevant definitions:

2. DEFINITIONS

Asbestos means the asbestiform varieties of mineral silicates belonging to the serpentine or amphibole group of rock forming minerals, including actinolite asbestos, grunerite (or amosite) asbestos (brown), anthophyllite asbestos, chrysotile asbestos (white), crocidolite asbestos (blue) and tremolite asbestos, or a mixture of any of these.

Airborne Asbestos means any fibres of asbestos small enough to be made airborne. For the purposes of monitoring airborne asbestos fibres, only respirable fibres are counted.

Asbestos containing material means any material or thing that, as part of its design, contains asbestos.

Asbestos Contaminated Dust or Debris means dust or debris that has settled within a workplace and is (or assumed to be) contaminated with asbestos.

...

97. The Asbestos Procedure provides the following general consideration in relation to asbestos:

3.1.7. Immediate removal may not be necessary. Removal will be subject to a risk assessment and Codes of Practice.

¹⁶ Regulation 421 of the Work Health and Safety Regulations 2012.

98. The Asbestos Procedure provides the actions and responsibilities of the contractor in relation to asbestos:

3.2.1 Contractor

- Manage sampling, testing, monitoring, and removal of asbestos products from Housing SA properties.
- Create and maintain Asbestos Registers for buildings classified as a work place under planning approvals.
- Supervise all asbestos removal, transport, storage and disposal work and ensure work is carried out in accordance with all relevant legislation, regulations and guidelines.
- Ensure all employees and sub-contractors, are licensed, and have received all required training.
- Ensure employees and sub-contractors do NOT remove vinyl floor covering or tiles until testing confirms the product is asbestos free.
- Must maintain records required by the WHS Act and Regulations for all asbestos testing and removal activities performed within Housing SA properties.

99. The Asbestos Procedure provides the actions and responsibilities of the agency in relation to asbestos:

3.2.2 Housing SA

- Instigate sampling, testing and removal of asbestos products to Contractor, when required.
- Approve asbestos works in accordance with the appropriate financial levels of authority.
- Ensure staff have received all relevant training required by the relevant legislation.

100. The Asbestos Procedure provides the actions and responsibilities of contractors and the agency in relation to the identification and testing of asbestos:

3.5 Asbestos Identification and Testing

- 3.5.1 Where asbestos products are suspected to be present within an area of intended maintenance at a property, the Housing SA Instigator will raise a Works Order to the Contractor to arrange sample testing (Item Code AC005).
- 3.5.2 Contractor will if results are **negative**:
- Notify Housing SA Instigator of results; and
 - Remove and renew product if necessary, in accordance with the Accommodation Standards.
- 3.5.3 Contractor will if the results are **positive**:
- Notify Housing SA Instigator of results;
 - Remediate asbestos affected location as identified in sample testing report; and
 - Undertake atmospheric monitoring as required.
- 3.5.4 During the course of asbestos removal work, general demolition and associated works must not be undertaken.
- 3.5.5 Only authorised persons are permitted on site.

101. The agency entered in to a 'Conditions of Tenancy' agreement (**the Conditions of Tenancy Agreement**) with the complainant commencing on 4 July 2015. Clause 5 of the Conditions of Tenancy Agreement state that the agency agrees:

... to keep the premises in suitable repair at its cost...

102. Clause 3 of the Conditions of Tenancy Agreement states that the agency agrees that:

...where the premises are in a state of disrepair likely to cause injury to person or property or undue inconvenience to the tenant, the tenant may, in accordance with Trust policies,

carry out such repairs as are reasonably required to overcome the risk of injury and/or the inconvenience...

103. Clause 7(h) of the Conditions of Tenancy Agreement states that the tenant must not:

... make or permit to be made any alterations, additions or improvements to the premises or erect any structure on the land without obtaining written permission of the Trust. Where any damage to the premises is raised in undertaking or removing alterations, additions or improvements, the tenant must compensate the Trust for any expenses incurred by the Trust in repairing the damage.

NOTE BEFORE CARRYING OUT ANY WORK ON THE PREMISES, THE TENANT MUST CHECK WITH THE TRUST ABOUT ASBESTOS AND LEAD BASED PAINTS AND OTHER HAZARDOUS SUBSTANCES.

104. The agency entered into a contract with Doherty Plumbing Pty Ltd (now called Lake Maintenance) on 8 July 2013 (**the Maintenance Agreement**). The Maintenance Agreement includes:

6 REQUIREMENTS - WORKS ORDERS

6.1 For all maintenance Works Orders the Contractor must comply with the priority designation specified by the Principal in the Works Order and must commence and complete maintenance requests and other Works Orders according to the time frames in Table 1.

Table 1

Priority	Commencement	Completion
1 (P1)	Urgent priority within 4 hours	Within five (5) Business Days
2 (P2)	High priority within 24 hours	Within seven (7) Business Days
3 (P3)	Works within 10 Business Days	Within 20 Business Days
4 (P4)	Vacant Property Maintenance and other Works Orders as Directed by the Principal	As Directed by the Principal

105. The Maintenance Agreement includes:

4 Specialised Maintenance Works

4.1 Asbestos Management

4.1.1 Housing built prior to 1990 may have some asbestos products contained within the fabric of the building. Asbestos testing and removal is covered under existing legislation and the Contractor should refer to the Technical Specification for details.

4.1.2 The Contractor will receive either a Works Order with an assigned Priority for testing suspect materials, or a Check and Report Works Order that require an inspection of the Site and result in the identification of suspect materials.

4.1.3 Where Work is to be carried out and it is believed by the Principal that there may be asbestos products present, the Principal will provide to the Contractor:

- (a) Information when known, concerning the Site address, occupancy details and location of suspected asbestos building product;
 - (b) Details of previous Asbestos related testing or Works undertaken at that Site (Note: the Principal does not have a complete history of asbestos related work. For example, if one section of wall lining that contained asbestos has been removed; that contains asbestos; the location of the lining removed is not identified); and
 - (c) The locations of properties such as Board Houses and Supported Residential Facilities, where official asbestos registers are required.
- 4.1.4 On receipt of a Works Order from the Principal, the Contractor must respond in accordance with the Directions on the Works Order and must:
- (a) Undertake the asbestos sampling, testing, checking, removal and Disposal and management of Works through appropriately licensed and qualified contractors, and in accordance with Legislative Requirements including work health and safety Acts, regulations and codes of practice and safe work practices;
 - (b) Ensure that where asbestos has been removed, the Site is made safe;
 - (c) Ensure all documents and, where required, Asbestos Registers are updated and maintained in accordance with Legislative Requirements, including annual updating Registers;
 - (d) Ensure only accredited laboratories are used to test and analyse product samples; and
 - (e) Maintain an asbestos file for all asbestos testing and removal for inspection in accordance with current legislation and as requested by the Principal and in accordance with the Technical Specification.
- 4.1.5 When and where it becomes necessary, the Principal will relocate Tenants and their furnishings, in order to provide reasonable access for the Contractor.

106. The agency's Maintenance Centre Operators Manual sets out how it prioritises Work Orders:

3.12 How does Housing SA prioritise 'Work Orders' to contractors?

Priority 1 (P1): Refers to any emergency work which affects the health and safety of the tenant or public in general, and needs to be completed immediately.

For example: disasters, electrical faults resulting in injury, shocks or fires, vehicle damage caused to buildings where a dangerous situation exists, security where main door locks are inoperable or where Housing SA receives a request from any of the emergency services.

Priority 1 (P1) work shall commence within 4 (four) hours of receiving notification from Housing SA.

- Any Priority 1 (P1) job confirmed to a contractor after 2:00pm and before 6pm on a normal working day shall be raised as a duty call, in these cases, no after-hours call loading will apply.
- Any Priority (P1) work order required to be issued and completed as an after-hour call, shall be raised as a duty call. In these cases, an after-hours loading is to be raised with the order. (Refer to question 3.16 What is a Duty Call?).

Priority 1 (P1) Works Orders are to be completed within five (5) working days, or in the case of an emergency, an immediate response may be required as determined by Housing SA. Any Priority 1 (P1) job confirmed to a contractor after 1:45pm on a normal working day shall constitute a duty call.

All duty calls raised after a certain time on a business day are to be cleared manually to the Contractor by the Operator. Refer to page 14.

Priority 2 (P2): Work shall commence within 24 hours of receiving notification from Housing SA, or such time as determined by Housing SA.

- When issuing a Priority 2 (P2) Works Order, Operators are to establish a time (either AM or PM) within the 24 hours.
- Operators should also let tenants know a timeframe in which they can expect the repair to commenced.
- Operators are to advise tenants that if a card is left by the Contractor due to non-access, tenant should call the number on the card and not the Maintenance Centre. This advice is also given in the 'on hold messages'.
- If a tenant's first access day is more than 24 hours away the Operator must raise a Priority 4 (P4) work order.
- Work priorities could change due to tenant availability. For example a tap repair can be issued as a Priority 2 (P2). However, the tenant may inform the Centre they will not be home until 72 hours after the contractor receives the order. In these instances the Works Order is raised as a Priority 4 (P4) with the start/finish times entered on the system in line with the Priority 2 (P2) completion timeframe.
- Where tenants call with a number of maintenance requests across a number of trades, each Works Order will be assigned a priority.

Examples of Priority 2 (P2) Works Orders are; no light; no power (depends on how many rooms affected), no water, blocked sewers, no hot water, leaking pipes or taps, major roof leaks.

Priority 2 (P2) Works Orders raised on weekends, advise the tenant a contractor will attend within 24 hours commencing from Monday 8:00am.

Priority 3 (P3): Works Orders shall commence within 10 working days of receiving notification from Housing SA.

Where no other individual trade item code can be used or where the Operator is not able to determine the exact repairs required, a trade Check and Report Works Order is to be raised to the Contractor.

Priority 3 Works Orders are to be completed within 20 working days.

...

Priority 4 (P4): Works Orders where a specific start and/or finish date are determined by Housing SA representatives.

...

107. The Maintenance Centre Operators Manual sets out what priority is to be given to various maintenance requests. It states the following in relation to repairs involving asbestos:

2. REFERENCE FOR REPAIRS / ITEM DESCRIPTIONS

ITEM	CODE	INFORMATION	PRIORITY
ASBESTOS			
		Works Orders cannot be raised on anything containing asbestos if there is no damage. If a tenant calls regarding an	

		<p>item they suspect contains asbestos, inform the tenant as long as the item is intact there is no danger.</p> <p>If there is a breakage and the tenant suspects the item may contain asbestos, then raise a repair code for the item in question (e.g. Repair Door, Repair Fence).</p> <p>If tenant is reporting buried Asbestos on the property, raise AC971 "Check and Report," record details on Works Order for the Contractor. Priority 2 (P2)</p>	
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Whether the agency's delay in addressing the asbestos at the complainant's property was wrong under the Ombudsman Act

108. The complainant first contacted the agency about his concerns on 24 October 2017. The agency took six days to attend the site to inspect the property. The emails from Mr Ridge-Cooke and the photographs taken by him when he inspected the property suggest that there was damaged asbestos material present and that there may have been cause for concern. However, the agency took two weeks to test for asbestos after it was disturbed. Given this, I consider that it is reasonable to conclude that by this time the asbestos debris had blown away.
109. Further, after the asbestos was disturbed on 24 October 2017 the agency did not determine that there was no further risk of exposure to asbestos until 27 April 2018, and it appears that the meter box doors were not secured until 25 June 2018, approximately eight months after the asbestos material was disturbed.
110. I do not consider that the agency complied with the Asbestos Procedure, in that:
- contrary to part 3.2.2, it failed to instigate sampling, testing and removal of the asbestos product in a timely manner; I do not consider that the air testing was sufficient testing
 - contrary to part 3.5.1, it failed to suspect that asbestos was present within an area of intended maintenance at the property and to arrange sample testing¹⁷
 - contrary to part 3.1.7, it failed to ensure that an appropriate risk assessment was undertaken.
111. Further, I do not consider that the agency complied with the Conditions of Tenancy Agreement, in that it failed to 'keep the premises in suitable repair at its cost' during the period of delays and inaction.
112. Given the above, my view is that the agency acted in a manner that was wrong in the circumstances.
113. I note that, pursuant to section 3(b) of the Ombudsman Act, I have jurisdiction to investigate the conduct of the contractor. I have carefully considered this but have determined that, in these circumstances, it is not necessary. I consider that it is the role of the agency to manage the contractor, including ensuring that work is done in a timely and satisfactory manner. Further, the contractor is only able to undertake work as instructed by the agency in accordance with the details provided to it on a Work Order. I also note that the contractors have satisfied SafeWork SA and my Office that the relevant persons on the site were properly trained and certified in relation to asbestos.

¹⁷ Given that asbestos was previously identified at the property I consider it reasonable that the agency should have suspected that asbestos may have been present prior to the works being undertaken on the meter box.

-
114. Having carefully considered all of the agency's evidence available to me, I do not think that there was any deliberate covering up of the asbestos at the property or any evidence of records being falsified. Rather, the evidence suggests a system that is disordered and poorly managed, as well as failings in applying procedures and failings in clearly communicating with the contractor and the complainant.
115. The evidence also shows a lack of consistency and/or reasoning in:
- assigning priorities to work requested
 - who within the agency is responsible for ensuring that Work Orders are raised, and
 - who within the agency is responsible for ensuring that work is properly carried out by the contractor in a timely manner.
116. Further, the agency's records that are available to me are difficult to follow and, as such, it has been very time consuming for my Office to get a clear understanding of this matter.
117. I note that these factors are evident in relation to many of the approaches about housing maintenance issues that are made to my Office.
118. My Office has seen an increase in complaints about the agency and maintenance issues, with a 215% increase in complaints about SA Housing trust maintenance issues over the last six years.¹⁸ The complaints made to my Office involve all multi agency contractors and the administrative and complaint handling practices of the agency.
119. The role of my Office is to investigate the administrative failings of agencies. Complainants should only have to approach my Office as a last resort, however, my Office is increasingly being expected to play a role in resolving maintenance issues for complainants, including communicating with complainants about the actions and inactions of the agency. This is not the role of my Office and I consider that steps need to be taken by the agency to ensure that:
- maintenance requests are taken seriously and promptly actioned or declined
 - decisions and/or actions relating to maintenance requests are communicated to complainants, with clear reasoning given
 - complaints about maintenance issues are taken seriously and promptly addressed
 - complainants are regularly updated about their issues
 - wherever practicable, a single officer has oversight of a matter.
120. In this matter, the issue was eventually resolved, albeit after significant delays, and, in my view only because of the complainant's persistence. This in itself raises concerns because it is not always the case that a tenant is able to advocate for themselves, which is more concerning when maintenance issues have the potential to cause health risks. The complainant should not have been put in the position whereby he had to agitate for appropriate action to be taken, and I understand that it must have been stressful for him.
121. I have carefully considered possible recommendations to:
1. provide some remedy for the complainant, and
 2. assist in ensuring that in the future such matters are more promptly and appropriately handled by the agency.

¹⁸ In the 2011/2012 financial year my Office received 59 complaints about SA Housing Trust maintenance issues. Whereas, in the 2016/2017 financial year my Office received 186 complaints about SA Housing Trust maintenance issues. See Ombudsman SA Annual Reports, available at <http://www.ombudsman.sa.gov.au/publications/annual-reports/>.

122. In relation to 1 above, I note that the complainant made a number of requests to the agency for reimbursement of the cost of the testing he arranged. It is not clear to me whether the complainant has been reimbursed or not. Whilst on 15 March 2018 Mr Richards asked for a credit note to be arranged to reimburse the complainant, the letter to the complainant from the CE on 16 February 2018 advised him that, as he had privately arranged for the asbestos testing, he is responsible for the cost.
123. I understand the agency's refusal to reimburse the complainant given that it did not authorise the complainant to have the material tested. That said, I also note clause 3 of the Conditions of Tenancy Agreement, which provides that:
- ...where the premises are in a state of disrepair likely to cause injury to person or property or undue inconvenience to the tenant, the tenant may, in accordance with Trust policies, carry out such repairs as are reasonably required to overcome the risk of injury and/or the inconvenience...
124. Given that the agency had an obligation to test the material and the amount that the complainant requested to be reimbursed is minimal, being \$49.50, I consider that in the circumstances of this matter, it would be reasonable for the agency to reimburse the complainant for the cost of the testing for asbestos. In its response to my provisional report the agency advised that it was accepting of my recommendation that it reimburse the complainant.
125. In relation to 2 above, I note that the CE advised me that agency 'has recently commenced conducting asset surveys on all properties', stating:
- ...The contractors conducting these surveys are required to report the presence of any product that may potentially contain asbestos and to report damaged material that may contain asbestos. Where considered urgent, the contractors will submit reports for urgent action...
126. Whilst I consider that the asset survey is a positive step to address asbestos risks, I note that the survey will take a number of years and, as such, consider that the agency should conduct a review of its processes and procedures in responding to maintenance requests and complaints as a priority. In its response to my provisional report the agency advised that it is embarking on a number of immediate and longer term strategies to improve its performance in this area. I commend the agency for its openness and willingness to acknowledge the issues and commitment to improvement.

Opinion

In light of the above, I consider that the agency acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

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

1. reimburse the complainant for the cost of the asbestos testing
2. review and revise its maintenance processes and procedures to address the concerns raised in my report and to:
 - clarify the priorities of requested maintenance works
 - ensure that contractors comply with priorities
 - establish clear rules and timeframes for communicating with tenants about their maintenance requests, issues and complaints

- establish clear roles and responsibilities for staff oversight of maintenance requests, issues and complaints.

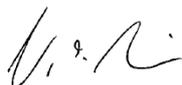
Final comment

In accordance with section 25(4) of the Ombudsman Act the agency should report to the Ombudsman by 1 April 2019 on what steps have been taken to give effect to the recommendations above; including:

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

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

I have also sent a copy of my report to the Minister for Human Services as required by section 25(3) of the *Ombudsman Act 1972*.



Wayne Lines
SA OMBUDSMAN

14 December 2018