



**Investigation into parking infringement  
notices issued by Melbourne City Council**

April 2006



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To

**The Honourable the President of Legislative Council**

and

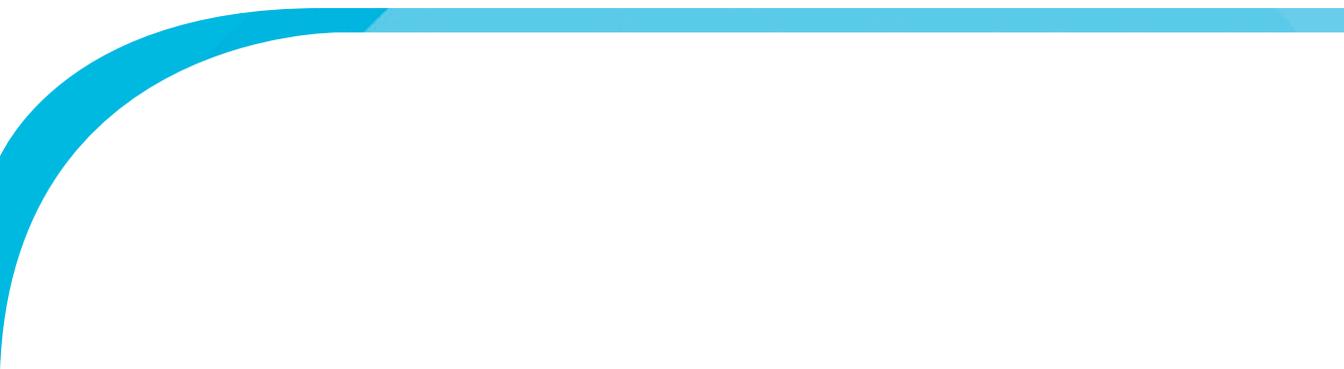
**The Honourable the Speaker of the Legislative Assembly**

I have the honour to present the report of an investigation into parking infringement notices issued by Melbourne City Council. The report is made pursuant to section 25 of the Ombudsman Act 1973.



G E Brouwer

**OMBUDSMAN**



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## EXECUTIVE SUMMARY

Parking problems are the source of numerous complaints to my office. In February 2005 as a result of allegations made by whistleblowers, I commenced an investigation into Melbourne City Council's Parking and Traffic Branch. The allegations concerned the improper management of traffic and parking services and the mismanagement of public funds in the provision of parking services including the issue of Parking Infringement Notices (PINs). The allegations particularly focussed on the service the Council provided to the VicUrban Development Authority in the Docklands area and included the lack of appropriately authorised parking officers and prosecutors; issuing PINs with incorrect penalties; improper administration of PINs and the Council's inability to enforce PINs before the court.

My investigation found:

- Some PINs were incorrectly registered with the PERIN Court
- A large number of PINs were issued for an incorrect offence
- PIN processes required reviewing to ensure they complied with the law
- Serious issues regarding the management and structure of the branch responsible for issuing PINs
- The need to develop an appropriate debt recovery strategy.

The Council has agreed with my conclusions and recommendations. It

has seen my report as an additional catalyst for the review of the Parking and Traffic Branch structure and its processes. It has confirmed that it will undertake a comprehensive review of all Branch business processes and systems and will progress the recommendations made by the consultant referred to in my report.

The Council has also agreed to work with my office to ensure that senior management, staff and councillors are aware of the role of my office and my powers of investigation.

Finally I should add that:

- Generally I am satisfied that the PINs issued by the Council's parking officers have been issued bona fide for genuine parking offences; and
- Where, due to the various administrative errors identified in my report PINs have been issued incorrectly, the issuing officers did so in good faith.

## BACKGROUND

### Introduction

In February 2005, I commenced an investigation under the *Whistleblowers Protection Act 2001* (the Act), into allegations that Melbourne City Council (the Council), on behalf of the VicUrban Development Authority (the Authority), was improperly issuing parking infringement notices (PINs) in the Docklands area.

The whistleblower/s' initial allegations concerned the improper management of traffic and parking services by the Council in the Docklands area and the substantial mismanagement of public funds in the provision of this service.

The allegations also related to the issuing and enforcement of PINs in the Docklands area and included:

- The lack of appropriately authorised parking officers and prosecutors
- The issuing of PINs with incorrect penalties
- The provision of misleading PIN and courtesy letter information
- Improper administration of withdrawals of PINs
- The Council's inability to enforce matters in the PERIN or open courts.

The investigation also considered allegations of a similar nature, raised by the whistleblower/s in the provision of parking and traffic services in the wider

City of Melbourne precinct. General allegations were also made about the Council's culture, management practices and administrative systems.

I determined that the allegations were public interest disclosures as defined in Part 4 of the Act and, on 24 February 2005, I wrote to the Council and the Authority formally notifying them of my intention to conduct an investigation into the matters raised by the whistleblower/s. The Council was also informed that the allegations to be investigated included the management of PINs within its own precinct.

### ***Whistleblowers Protection Act 1981***

The main objective of the Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies, and to establish a system for these matters to be investigated. Whistleblowers are often vulnerable and in difficult and stressful workplace situations. It is therefore important that appropriate support is provided to individuals who come forward and report improper conduct in their workplace.

In complying with the Act, public bodies (including councils) must identify a Protected Disclosure Coordinator (the Coordinator) who is responsible for ensuring that the public body carries out its responsibilities under the Act. As part of this role the Coordinator is responsible for ensuring all necessary steps are taken to keep the identity of the whistleblower

confidential and that where required, a welfare manager is appointed to support the whistleblower.

The Act provides protection for a person who makes a disclosure and remedies where detrimental action has been taken against them. Public bodies are required to protect whistleblowers from reprisals. Maintaining the confidentiality of the whistleblower is an important part of the process to prevent reprisals being made.

The Act also sets out that I may obtain information from any person and in any manner I think fit for the purpose of an investigation and includes the power to interview on oath and summons witnesses if required. For the purpose of investigating a disclosed matter, the Act overrides any provisions in other legislation that impose confidentiality requirements on a public officer. To obtain relevant information the Act also provides the power for my officers to enter any premises used or occupied by a public officer or public body and inspect those premises or anything on those premises.

It is a criminal offence for a person without lawful excuse to wilfully obstruct or hinder my investigation or make any statement that is false or misleading or attempt to mislead my investigation of a disclosed matter.

A public interest disclosure is one that I am satisfied shows or tends to show that a public officer or public body has engaged in improper conduct. Improper conduct is defined as including:

- Corrupt conduct; or
- A substantial mismanagement of public resources

that would, if proved constitute -

- a criminal offence; or
- reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of a public officer who was, or is, engaged in that conduct.

## Legislative framework

The legislative framework of the parking infringement process is set out in a number of Acts and regulations, including:

- *Road Safety Act 1986*
- *Road Safety (General) Regulations 1999*
- *The Magistrates' Court Act 1989*
- *Local Government Act 1989*
- *Council's Activities Local Law Act 1999*
- *Evidence Act 1958*

## The Parking Infringement Notice process

PINs must be issued in compliance with the legislation in order for them to be enforceable. A PIN provides an offending motorist with information about the issuing authority, the amount they are required to pay within a set period, usually 28 days and payment advice. The PIN also advises the motorist of the right to contest

the infringement in court. If a motorist disputes a PIN he/she may take the matter to the Magistrates' Court.

An appearance at the Magistrates' Court provides motorists with the option of arguing their case and having it decided by a Magistrate. The issuing body cannot negotiate a lower penalty. However, a Magistrate may impose a penalty that is different to the face value of the PIN.

In accordance with the procedures outlined in Schedule 7 of the *Magistrates' Court Act 1989* and the *Road Safety Act 1986*, if the PIN is not paid a courtesy letter may be issued to the registered owner of the vehicle, seeking to recover the outstanding penalty. As completing the prosecution process includes sending courtesy letters, an employee of the issuing body or their prosecutor must sign and provide courtesy letters on the issuing body's letterhead. This provides a further 28 days to pay and an additional fee is imposed.

If no action is taken then the issuing body may register the infringement with the Penalty Enforcement by Regulation of Infringement Notices (PERIN) Court. The PERIN process is strictly regulated and was set up to process bulk infringements, with no appearances required by the council or the offending motorist.

In order for a PIN to be enforced I understand the following conditions must be met:

- An authorised officer issues a PIN
- The PIN accurately identifies the breach, where it occurred, the time and date, the amount to be paid and the issuing body (this information is recorded by the parking officer)
- If the penalty is not paid, a courtesy letter is provided to the motorist by the issuing body
- The issuing body has the ability to contest matters through both the PERIN and Magistrates' Courts, if the penalty remains unpaid.

## Court processes

### PERIN Court

The *Magistrates' Court Act 1989* sets out the procedures involved in registering a PIN at the PERIN Court. This includes the provision to the PERIN Court of PIN data and a signed certificate attesting to its accuracy. The Council incurs a lodgement cost of \$61.40 per PIN for this process.

Once a PIN is registered, the PERIN Court will make an enforcement order against the registered owner of the offending vehicle for the amount of the unpaid infringement penalty plus costs. The total amount then becomes a fine. The PERIN Court automatically issues court orders in respect of uncontested infringement notices and its penalties are enforceable.

The PERIN Court may issue penalty enforcement warrants for unpaid fines relating to PINs. The Sheriff may then

- A motorist breaches a parking regulation

enforce the warrant by going to the motorist's address and requesting that they pay the fine and costs within seven days. If the motorist does not take any action, the sheriff may seize and sell property to cover the amount. It should be noted that these actions can only take place if the PERIN or Magistrates' Court has dealt with the matter.

### *Magistrates' Court*

A motorist may elect to contest an infringement in the Magistrates' Court. In this case the issuing body must submit a statement to the court titled 'Statement Pursuant to the S55B (1) of the Evidence Act 1958'. This statement lists the information on the PIN and the parking officer's notes, which are entered onto their hand held computer at the time the PIN is issued.

These notes are a fundamental part of the prosecution process, as they are generally the only evidence recorded by the parking officer. Where this information is transferred or taken from a computer based system the person responsible for the integrity of this data is required to certify that the information on the statement is true and correct.

## **The Authority, Docklands and the Council**

The Docklands precinct was excised from the City of Melbourne (the Council) in the early 1990s. The Docklands Authority was established at that time to govern this new

precinct. The Docklands Authority was given all the powers and functions of a municipal council under the *Docklands Act 1991*. The Authority outsourced many of the services, normally provided by a municipal council, including the management of parking and traffic in the precinct.

The Victorian Urban Development Authority was created and is governed by the *Victorian Urban Development Authority Act 2003*. This Authority was formed as a result of a merger of the Docklands Authority and the Urban Regional Land Corporation. As the Victorian Urban Development Authority has a dual role and was preceded by the Docklands Authority I will refer, for the purpose of this report, to both authorities as 'the Authority'.

The Authority became aware in 1999 that the new State Government intended to return governance of the Docklands to the Council. I understand this is planned to occur in 2007/2008. In order to prepare for this arrangement the Authority decided to transfer the administration and enforcement of its local laws and responsibilities to the Council at a commercially competitive rate. In April 2002 the Council put forward a proposal to provide services to the Authority for the administration and enforcement of parking and traffic and local laws in Docklands.

The Authority accepted the Council's proposal with a planned commencement date of 29 May 2002. Prior to this date Chubb Security provided the service. My investigation has not examined the

management of parking infringements prior to May 2002.

Signed and dated Memoranda of Agreements (MOAs) were provided for the financial years 2003/2004 and 2004/2005. For 2002/2003 a signed and dated letter on file accepts the proposal however an executed MOA was not located. I was advised as of October 2005, that a contract for 2005/2006 had not been executed due to a failure to reach agreement over the terms and conditions surrounding prosecutorial services.

The MOAs outlined the services to be provided by the Council, which included:

- Issuing parking infringement notices when offences were detected
- Responding to any correspondence and receipt of payments
- Administration of the infringement process.

The Council was contracted on a fee for service basis, with all revenue from PINs retained by the Authority. Under the MOA the Authority was required to seek legal advice and to arrange the necessary authorisations and delegations to enable the Council to carry out its duties.

On the 29 May 2002, Council parking officers began issuing PINS in Docklands. From that time to 31 May 2005 Council issued 19,777 PINs within the Docklands area with the potential to generate revenue in the order of \$1.5 million dollars.

## **Parking and Traffic Branch (the Branch)**

The Parking and Traffic Branch (the Branch) is the arm of the Council responsible for the provision of parking and traffic services and reports to the Director of Finance. There are approximately 120 parking officers employed in the Branch, managed by 3 team leaders, with one senior executive.

In undertaking this work the Branch uses a computer based system to record parking infringements and manage their processing. Each parking officer operates a hand held computer known as a Personal Data Assistant (PDA), which records evidence in the form of notes and prints out an individual PIN for each offence. The PIN details and notes are downloaded by individual parking officers at the end of each shift into the Branch's computer.

# THE INVESTIGATION

## Introduction

I have a central role under the Act to ensure disclosures of improper conduct are properly investigated and dealt with. During this investigation sixteen current and former officers from the Council and the Authority were interviewed on oath. Information was also obtained from a number of agencies including the PERIN Court and Traffic Camera Office.

One of the allegations made by the whistleblower/s was that staff members of the Branch changed documents and supplied misleading information to my office. I was also aware of the potential for documents and computer records to be altered or removed and was presented with oral and documentary evidence that records had been changed.

My investigation officers obtained a download of Council's computer documents, including emails and a copy of backup tapes of its document management and financial systems. This approach enabled a forensic analysis of the data to be undertaken and my investigators were able to identify any changes that were made, when they were made and by whom.

My investigation officers analysed the computer files which record changes and access to the Branch Procedures Manual section on 'Authorisations of Enforcement Officers'. This analysis provided useful information about the

management of the Parking and Traffic Branch during my investigation.

My investigation found that, after the commencement of my investigation, changes were made to backdate both the Branch's procedures manual and authorisations. The Branch has described these processes as "just a clumsy effort to align these" with the terms of the Council's contract with the Authority. Unfortunately, in doing so, it has left the Council open to criticism. The Council has acknowledged that its processes broke down and that there was no audit program in place for delegations.

## Compliance with Whistleblower legislation

There was an early reluctance by some members of senior management in both the Council and the Authority to supply information for my investigation unless they were summonsed. Following a meeting in June 2005 between the Deputy Ombudsman and senior management of the Council there was a greater level of cooperation in providing access to staff and relevant documents.

My Deputy made it clear to the CEO when he met with him in June 2005 that the provisions of the Act required that I conduct my investigations in private. My guidelines indicate the need to closely confine knowledge of whistleblower investigations with the purpose of protecting the identity of whistleblower/s.

Following this meeting the CEO quite appropriately sent a memorandum to the Lord Mayor, Deputy Lord Mayor and Councillors advising them:

*The Whistleblower Legislation imposes restrictions on what I can discuss and disclose. Accordingly, it will be best for all parties if the matter is not discussed further until the Ombudsman's report has been received.*

It became apparent early in the investigation that the whistleblower/s did not have confidence in the Council's ability to either protect their identities or provide them with any real support in terms of their welfare. This is not unusual. In many situations certain officers within an agency quickly work out the identity of whistleblowers, despite efforts to ensure anonymity. Also, whistleblowers often raise their concerns within the organisation prior to contacting my office. The failure of the public body to adequately deal with the matter leads to suspicion and distrust, particularly where an allegation concerns senior members of management.

## Issuing of PINs in Docklands

### *Authorisation of parking officers*

Preliminary legal advice on the authorisation of parking officers provided by VicUrban's lawyers on 28 May 2002 to the Authority stated:

*We have real doubts about the validity of any general authorisation of MCC. [Council Staff] A far safer option would be for the Docklands Authority to authorise particular*

*members of staff of MCC to serve parking infringement notices.*

More comprehensive advice was provided to the Authority on 30 May 2002.

This advice made it clear the relevant legislation required the Authority to authorise Council's parking officers to issue PINs in Docklands. It was recommended that individual instruments of appointment and authorisation for each member of Council staff to issue PINs in Docklands on behalf of the Authority were required. This advice was not acted upon.

On 30 May 2002, clarification was provided to Docklands on the requirement of the authorisations:

*An appointment and authorisation form should be used under which the MCC [Council] staff member agrees to perform his or her function in writing and in accordance with performance criteria established by the Authority.*

*The Authority could need to satisfy itself that an MCC [Council] staff member was:*

- *competent to exercise such a function; and*
- *of good repute, having regard to character, honesty and integrity.*

*The Authority should require MCC [Council] management to produce evidence, such as references or performance appraisals, that a MCC [Council] staff member meets these standards. Alternatively, the MCC [Council] could be required to certify or warrant*

*that a staff member is competent and of good repute.*

It is clear that these conditions needed to be satisfied in order for Council parking officers to be validly authorised by the Authority. There is no evidence that the Authority sought written agreement of any Council parking officers to perform services in Docklands, or satisfied itself that these officers were competent to exercise such a function and of good repute.

My investigation revealed that the Council was made aware by the Authority of the need to ensure that parking officers were appropriately authorised. This is confirmed in emails and legal opinions.

The Branch's Acting Team Leader Legal Compliance sent an email on 28 June 2002 to the Branch Manager, requesting advice on parking infringements in Docklands. He requested a further legal opinion regarding PINs issued under the Council logo/emblem and questioned the Council's authority to issue PINs in Docklands. He also asked:

*Under what act or regulation or section is Docklands Authority authorised to set a penalty of \$50 if Road Safety regulations prescribe a penalty of \$20.*

My investigation revealed shortly after these concerns were raised the Council's Corporate Solicitor reviewed the earlier advice provided to the Authority. He then provided legal advice on authorisations in memorandums to the Branch on 9 July 2002, 31 July 2002 and 9 August 2002.

The advice stated that the Authority could authorise individuals, including Council officers to issue PINs.

On 23 August 2004 I received an anonymous letter from a person or persons purporting to be from the Parking and Traffic Branch. The letter which had allegedly been sent to the Council CEO, raised numerous allegations including:

*...officers issuing tickets in Docklands were not authorised under the relevant section...*

*all infringements issued during this time [past two years] were invalid...*

*[nominated officer] continued to allow the issuing of PINs within Docklands knowing full well that the authorisations were invalid...*

*none of the PINs were lodged in PERIN Court, anyone who asked for their ticket to be heard in court had the ticket withdrawn and others were left to expire by SOL [Statute of Limitations]...*

*City of Melbourne logo and name appeared on all tickets. There was no reference on the tickets to the Docklands Authority, again misleading the general public...*

*The penalty infringement notices incurred under green parking signs is only \$20 however Municipal Councils can set a maximum penalty of \$50. All of the parking infringement notices issued in the Docklands under green signs were for \$50, which is \$30 above the set penalty.*

Apparently no action was taken by the Council regarding matters raised in this

letter. The Council has said that this was because other reviews/investigations were already underway and it was considered unnecessary to separately act on the anonymous letter.

It would appear that the Authority and the Council did not act on the legal advice and obtain the required authorisations in writing until July 2005. I note this was only after the commencement of my investigation and a QC provided further advice to the Council on 28 June 2005.

On 30 July 2005, external legal advice to Council was that:

- *The MCC [Council] is on notice that there may be legal difficulties with parking infringement notices that have been issued by its officers in the Docklands area.*
- *The MCC has received legal advice from a QC which states unequivocally that parking infringement notices issued by MCC [Council] officers in the Docklands area will be invalid unless those officers are authorised by VicUrban [the Authority] in accordance with section 87 (1A) of the Road Safety Act and which comply with the requirements of section 87 (1C).*
- *Parking infringement notices involve collecting money from the public.*
- *If the MCC [Council] is aware of circumstances that indicate that its officers may not be properly authorised by VicUrban [the Authority] and notwithstanding this knowledge, permits*

*or encourages its officers to issue parking infringement notices and collect money from the public in the Docklands area, it may be accused of being knowingly involved in activities which may not comply with the relevant law.*

- *It follows from the above that while it is VicUrban's [the Authority's] responsibility to ensure that its authorisations are valid, it would be imprudent for the MCC [Council] to ignore any information that it has its possession which indicated that the authorisations are not valid.*

Whilst Council parking officers are rostered to cover various Melbourne city shifts additional resources may be required for special events in Docklands such as football games at the Telstra Dome. Consequently, I understand that any parking officer employed by the Council may be required to issue PINs in Docklands.

I note that the Branch Manager became aware in October 2005 that 32 permanent Council parking officers had not been authorised appropriately in accordance with legal requirements and Council procedures. These officers commenced employment as agency staff and were authorised under section 87 of the *Road Safety Act 1986* (RSA) with their authorisations signed by the Branch Manager. These officers have since obtained permanent positions requiring authorisation under section 77 of the RSA.

My investigators found many instances of past and present parking officers who had

not been appropriately authorised and yet issued PINs in the Council's precinct.

The Council was not able to accurately identify the number of unauthorised officers. Estimates ranged from 7 to 21. It became apparent that the Council does not have an adequate system in place to issue and monitor the authorisations of parking officers issuing PINs in Docklands or within the Council's jurisdiction.

The Council has acknowledged that its processes for authorising officers broke down due to human error. It has advised that it has reviewed its authorisation processes and has put in place an audit program to ensure that it does not face the same situation in the future.

### ***The issuing of PINs with incorrect penalties***

The RSA sets a penalty for overstaying a standard parking place, designated by a green sign as \$20 unless proper procedures are taken to approve a higher charge. Section 87(4) of the RSA requires a resolution by a council to increase the penalty on these PINs. The Council penalty for overstaying on green signs is \$50 throughout its boundaries.

The Council commenced issuing \$50 PINs for green signs in Docklands on 29 May 2002 at the commencement of its agreement with the Authority.

In June 2002, the legal compliance area of the Branch raised concerns about the legality of the Council raising the value of

the PINs without proper process from \$20 to \$50. In August 2002 a question posted on the Council internal intranet system also raised concerns about the Council issuing \$50 tickets within Docklands:

*Staff from the traffic and parking branch has been issuing parking infringement notices in the Docklands area. It would appear that these parking infringements may be invalid for a number of reasons, e.g. the parking tickets should indicate the Docklands Authority not the City of Melbourne, as it currently does and, the penalty of \$50 used for certain offences is also questionable.*

The Council's reply was as follows:

*As you are probably aware, Council has been contracted by Docklands Authority to issue parking tickets in the Docklands area. Councils' traffic officers also have the relevant delegated authority and therefore power under the Road Safety Act and regulations to issue infringements notices and prosecute infringements within Docklands area on behalf of the Docklands Authority.*

On 31 July 2002 the Council's Corporate Solicitor referred the Branch to a 2000 amendment to the RSA, which provided the power for the Authority to increase PINs to \$50. The power to increase the PIN amount was however, conditional upon (the Board) of the Authority passing an appropriate resolution. The Corporate Lawyer advised the Branch:

*I understand this has not been done.*

On 9 August 2002, the Corporate Lawyer provided further legal advice to the Branch on this issue. He expanded his comments in reference to the required Authority resolution:

*You should be satisfied that this has been done. If not (and assuming the PINs are challenged) the PINs are likely to be found to be invalid.*

On 20 August 2002 external legal advice was emailed to the Authority on this issue. The advice confirms that by resolution the Authority can in accordance with section 87(4) of the RSA, and section 35C(1)(c) of the *Docklands Act 1991*, fix PINs at \$50.

On 27 September 2002 the Branch Manager emailed the Authority's Operations Manager and confirmed that the Authority must have the appropriate resolution to fix PINS at \$50:

*If the Authority has made a resolution, the City of Melbourne can continue to allow the fixed penalty of \$50 on the current infringements. Parking and Traffic Branch will require a certified copy of this resolution to confirm this has been done. However, if no resolution has been made, one will be required as a matter of urgency from the Authority.*

Further to this email the Council provided a copy of the Council's resolution to the Authority showing the extract from the Council's meeting, which purportedly demonstrated the resolution process, for their information.

My enquiries indicated that in June 2005 the Council was aware of a Municipal Sub-Committee resolution of 7 October 2002. Whilst the sub-committee minutes indicate the matter may have been considered with a note 'report adopted' on the agenda, my investigators were unable to identify any evidence that the Board of the Authority had passed a resolution approving \$50 PINs in October 2002.

I was provided with conflicting advice from the Authority on the manner in which this matter was considered by the Board:

- On the 8 June 2005 the General Manager, VicUrban advised that a resolution to increase the penalty was passed at the Board meeting held on 7 October 2002. He said that the minutes provided were not from the Board meeting but were from the sub-committee meeting. The relevant section of the minutes of the October Board meeting confirmed the matter was not discussed:

*Committee Chairperson's Report.  
Deferred to next month.*

- On 24 June 2005 the CEO, VicUrban subsequently advised me that the official Board minutes were erroneous in reporting that the various recommendations in the sub-committee report were deferred.

*...when in fact the matter was not discussed, nor was it deferred. Therefore the recommendation was adopted 'on the papers'; as was the convention with*

*'unstarred' agenda items in respect of which there was not discussion.*

VicUrban enclosed a copy of the original minutes and an amended set of minutes, with a memorandum signed by the CEO, VicUrban and the Company Secretary, Docklands Authority to confirm the matter.

- The General Manager, VicUrban provided a further explanation under oath, on 11 August 2005, in that he delegated himself to increase the penalty on the PINs.

*... the only thing I took to the Board was the request from Melbourne (Council) to go from \$20 to \$50 because they were insistent that I do that, but I didn't believe I had to do that because I thought that my delegation would have covered it off, and I in fact did it under delegation initially.*

He was unable to produce any notes, delegations or reports of any kind to substantiate this claim.

In its defence, the Authority argued that the City Manager was of the view that he was entitled under his delegation of authority to increase the penalty to \$50. The Authority acknowledges that the record of this decision cannot be located as the file note has been mislaid.

The Authority has advised that it is willing to refund the \$50 PINs issued between May 2002 and 10 October

2002, based on the 'legal uncertainty highlighted' by my investigation.

## **Conclusion**

It is evident that the Authority was aware of the need to pass a resolution to allow the Council to issue \$50 PINs instead of \$20 PINs. It was the Authority's responsibility to ensure from May 2002 that PINs were issued for the correct amounts. While I am now satisfied that a resolution was passed increasing the penalty to \$50 the lack of an accurate record of the decision is of concern.

## **Prosecuting officers**

On 30 May 2002 the General Manager, Docklands, was provided with legal advice that the Authority remained responsible for prosecuting any PINs if Council parking officers issue them. The Authority did not employ prosecuting officers at this time nor were any appointed over the next three years.

On 9 August 2002, the Council's Corporate Solicitor, provided internal legal advice on this and other issues to the Branch Manager. He concluded:

*So, even though section 35C(1)(c) of the Docklands Authority Act 1991 gives the Docklands Authority the powers of a Council, it does not appear to have the power to delegate the power to prosecute parking offences to a member of Council staff due to the express provisions in the Road Safety Act.*

The Corporate Solicitor recommended that the regulations be amended to include Docklands as an authority to have the power to delegate and he stated that if agreed the Parking and Traffic Team should contact him to do this. He offered a short-term solution that the Authority hire the Council's prosecution officers on a part time basis. However, he highlighted that other issues such as long service leave, annual leave, OH&S and WorkCover may also require attention.

A further legal opinion dated 20 August 2002 was provided to the General Manager, Docklands, as follows:

*As discussed in our earlier advice of 30 May 2002, we think it would be unlawful for the Authority to authorise members of staff of the MCC [Council] to prosecute for offences under the RSA.*

*Accordingly, the Authority may authorise its own officers to prosecute any parking infringements, but cannot empower MCC [Council] staff to perform such a function.*

In an email dated 27 September 2002 to the Operations Manager, Docklands, the Branch Manager indicates that he agrees with the legal advice provided on the issue of prosecutors. He stated:

*As advised by Governance, the City of Melbourne can have prosecutors authorised by the Docklands Authority if they became 'members of staff'...*

*The disadvantage is Docklands Authority will need to consider the issues of*

*WorkCover, sick leave, superannuation and so on.*

In drafting the authorisations to prosecute, the Authority requested the Branch to confirm whether employing Council Prosecutors for \$1 per year would legally make them employees.

On 18 February 2003 the Council's Corporate Solicitor, emailed a response to the Authority's query. He raised concerns that while employees on paper, it may not be legally accepted as being 'employment' if it was challenged in a court. He also reminded the Authority of its earlier recommendation to have the regulations amended.

Further correspondence led to the Authority sending documents on 31 July 2003 to appoint two Council employees as prosecution officers. The documents include a letter from the Authority, which reads:

*I am please [sic] to confirm your appointment as an officer of the Docklands Authority effective 31 July 2003 until 30 June 2004.*

*Your annual remuneration is to be \$1.00. Your principal duties will be to prosecute parking and local laws infringements and offences at the Magistrate's Court.*

*A separate authorisation for that purpose is attached.*

*Please complete and return the attached employment documentation."*

Both Council employees state that they did not sign any documentation to become

employees. There is no documentation to indicate that either were ever paid the \$1.00 or placed on the employment roll at the Authority. The Authority agreed that neither Council prosecutor was made an employee.

I note that on 9 June 2005, subsequent to offers of employment from the Authority to the Council's prosecution officers, the Manager, Parking Branch advised:

*To the best of my knowledge, this offer was not provided by VicUrban in 04. Therefore, Parking and Traffic Branch did not submit any matters to the PERIN Court on behalf of VicUrban. This resulted in a substantial write off (I will check final figures) of PINs that reached the statute of limitations. VicUrban was advised of this matter and the cause of the write off in May/June 04.*

I also note that the proposed employment arrangement was on the basis of a 12-month contract, the first of which would have lapsed at the end of June 2004. After becoming aware that no proposed employment agreements had been drafted to carry on from the first 12-month contract, the Authority sent new employment agreements to the Council prosecutors on 18 April 2005. The letter purported to backdate the authorisation of the Council prosecutors as Authority employees as of 1 July 2004. The documentation was not signed or returned.

The Manager, Docklands, advised my investigation officers that he was authorised in July 2005 to prosecute PINs issued in Docklands.

## Conclusion

My investigation found that there were no authorised prosecutors in place from 29 May 2002 until July 2005 to prosecute unpaid PINs before Court on behalf of the Authority. Consequently no PINs issued in Docklands have been taken to court since 29 May 2002.

## Courtesy letters

I note that the Council received legal advice dated 5 September 2005 stating that as the service of providing a courtesy letter is likely to be viewed by the Court as a prosecutorial step, Council staff are not appropriate officers to perform that function. The advice stated that the appropriate officer must lodge PINs in the PERIN court by signing a certificate and certify that an appropriate officer, namely the Authority's prosecutor, has served a courtesy letter. The advice stated:

*An appropriate officer is required, both to send out a courtesy letter and to submit the registration of the infringement penalty. Note in the case of Docklands the Council is not an enforcement agency and the Authority has not appointed appropriate officers.*

On 14 October 2005 further legal advice provided to the Council suggested remedies to address its inability to properly serve courtesy letters. One remedy set out in the advice is:

*4.1 (d) The MCC then prepares the courtesy letters and applies a digital signature of the*

*staff member of the Authority to the letters as authorised by the email.*

I am advised that as at November 2005 Council had not acted on this advice. My investigation found the Council continues to process all Docklands PINs with Council PINs and does not differentiate in the format of courtesy letters. Motorists that do not pay PINs issued in Docklands are issued with a courtesy letter on Council letterhead without the appropriate signature from the Authority.

Although the Council was aware that it did not have processes in place to take motorists to court and prosecute infringements issued in Docklands the courtesy letters state:

*If you ignore this courtesy letter, a Notice of Enforcement Order will be issued against you by the Court and will immediately result in a further fee.*

## Conclusion

It is clear that as an 'appropriate officer' had not been appointed, outstanding PINs issued in Docklands could not be enforced. At the time these courtesy letters were sent, the Council was aware that PINs issued at Docklands were not able to be registered in the PERIN Court and hence a Notice of Enforcement Order was not going to be issued resulting in further fees. However, the Council continued to include this misleading statement in courtesy letters.

Whilst the Authority now has an authorised prosecutor able to prosecute

PINs, I understand current and past PINs cannot be prosecuted at this time, as it would appear that Council has not issued courtesy letters in an appropriate manner.

## Inability to prosecute PINs issued in Docklands

I understand that over one hundred motorists have elected to have their PINs contested in court since the Council first issued PINs in the Docklands precinct. It would appear that Council made the decision to allow these PINs to expire after 12 months under the statute of limitations, as it was unable to prosecute.

In May 2005 the Council became aware it had lodged 721 PINs issued in Docklands with Council's normal PINs under a Council certificate at the PERIN Court. As previously noted the Council was not able to register the Authority's PINs with the PERIN Court. The Council recognised this problem and attempted to withdraw the PINs but not before 146 motorists paid fines and the associated court costs.

I note that neither the Authority nor the Council have attempted to prosecute any other PINs issued in Docklands since May 2002.

## Conclusion

I consider that the 146 fines paid as a result of PINs issued in Docklands being incorrectly registered before the PERIN Court, should be refunded. This refund should also include any associated Court costs. The Council has agreed to do so.

## Withdrawals and refunds

The Council uses a decision matrix to assist it in deciding whether a PIN should be withdrawn. I am advised that the Branch will withdraw PINs that meet certain criteria set out in the matrix. These include where there is little likelihood of recovery because the motorist is from overseas; if a sign is faulty; or the motorist provides a valid reason. Where a complaint is received the matter is usually investigated and withdrawn if appropriate.

However, Council's processes only allow the withdrawal of a PIN if a motorist objects or request the matter proceeds to court. In my view where the Council has identified an invalid PIN, for example as a result of a sign or meter fault, the PIN should be withdrawn regardless of whether a complaint is made.

I consider it to be unfair when, having applied the matrix, the Council records the PIN as being withdrawn on the computer system and does not notify the motorist. In such circumstances the PIN remains withdrawn and no further action is taken to enforce the PINs if the motorist takes no action. However, if a motorist pays the penalty the status of the PIN is changed on the computer system to allow for payment to be received.

I am also concerned that the Council does not appear to have a policy of refunding money where a PIN is shown to be incorrectly issued or invalid. For example in 2002 the Council issued PINs in Docklands

for an offence under the *Crown Lands (Reserves) Act 1978*. In July 2005 Council realised there were no gazetted reserves under the *Crown Lands (Reserves) Act 1978* in the Docklands area. The Branch identified 287 PINs issued and paid at the time of this report that should be refunded. These penalties have not been repaid although the Council is aware that the PINs were incorrectly issued. I note, as a result of my investigation, the practice ceased.

## Conclusion

I would expect that if the Council makes a reasoned decision to withdraw a PIN then the system would not permit a payment to be accepted and the penalty should be refunded.

In particular, the Council should refund the payments made by the motorists for the 287 PINs, which were incorrectly issued. The Council has agreed to do so.

## PINs revenue driven

After rates, PINs are the next highest source of revenue for the Council, with reportedly a yearly contribution after costs estimated at around \$15 million. Council's projected revenue in the 2004/2005 financial year from parking infringements was approximately \$27.5 million for the Melbourne City area. I am advised that the Council estimated that at least 466,000 infringement notices would need to be issued in 2004/2005 to meet this revenue target.

Officers of the Branch informed my investigators that to meet Council's

predicted revenue in 2004/2005, a monthly team target of at least 30 tickets per day per parking officer was required. I also understand that if a parking officer did not meet the 30 parking infringements per day average, or keep within 5 per cent of their group, that they were counselled, warned and may face dismissal. I am advised that Council uses quotas as a performance management tool.

The Council has advised that no parking officer failed to achieve incremental salary increase or end-of-band payment for failure to achieve 'quota'.

During my investigation I became aware this pressure to perform may discourage officers from reporting non-conforming areas and signs and malfunctioning or broken parking meters.

In May 2005 an independent consultant's report was completed on Leadership Development at the Parking and Traffic Branch (the Report). The Report provided my investigation with the results of surveys and comments from parking officers and management. The Report noted 64 per cent of staff commented on the revenue focus of the Branch as:

*REVENUE FOCUS -Apart from revenue the core goals and expectations are not clearly relayed; the focus is to book and report more cars where management stand for revenue first and Officer safety or customer service after the fact.*

I also note from the Report that parking officers consider themselves as revenue

collectors rather than providing safe, amenable traffic flow and equitable access for motorists to parking spaces and as a consequence morale and job satisfaction are low and absenteeism is high. The Report concludes:

*The current environment of significant morale problems, low discretionary effort, absenteeism and complaints of bullying and harassment constitute a governance issue, which we believe cannot be ignored.*

It is fair to say however, that despite the various administrative errors identified during my investigation, there was no evidence that PINs were being issued other than for what would appear to be genuine parking offences, except for the matters referred to in this report.

## Conclusion

It is my view that parking officers and the Council should focus on the quality of the provision of parking and traffic services and support systems not on the quantity of PINs and the revenue that may flow from the number of PINs issued.

## Data management and financial reporting

### Data management

The Council has a data management system in place specifically designed to track income from infringements. This system is capable of producing detailed and complex reports about the data collected.

It is apparent that there is no analysis of PINs issued. This prevents the identification of systemic issues or common problems. Consequently parking officers may continue to issue PINs where faulty parking meters or problems with signs exist.

During my investigation my investigators learnt how Council manages what they call 'lost PINs'. These occur when parking officers download data from their handheld computers to the main system and data is lost during the transfer.

The technology used by the Council has been reported as poor. In the report it was noted:

*...there was concern about the level of technology within the branch with particular emphasis on the ineffectiveness and unreliability of the handheld units used by Officers as well as some of the software not performing in a reporting sense.*

The 'lost PINs' result in the Council only knowing the identifying number of each PIN issued as all other identifying data and information about the infringement is missing. These PIN numbers are recorded on the main computer system as 'NOS' (Not On System). If payment is received for 'NOS' PINs Council accepts the money and records as much detail as possible from the payment. Management has directed the Branch staff to continue the penalty collection process when unsuspecting people telephone or write to Council about a PIN.

I am advised it is a work practice for the Branch to where ever possible collect missing data from motorists' calls or letters so that further requests for payment can be made using this data. In such circumstances if the matter remains unpaid and proceeds to prosecution stage the Council will withdraw the matter due to a lack of evidence.

## **Conclusion**

I consider that the practice of pursuing the recovery of PINs issued when the data has been lost, is inappropriate. In particular, seeking information from the motorist when they make an enquiry about the PIN is unfair and misleading.

## **Financial reporting**

I am advised Council meets every month with the Authority to present a cheque and a financial report on infringement penalty collection data. The reports provided by the Council have been described as:

*...they're not concise, executive ...they come in reams of paper with long lists of things and information on it and... there's no executive summary on it...which is probably what I need.*

The Council has continued to provide such reports to the Authority and the Authority has continued to accept reports that would appear to provide them with inadequate explanations to enable the monitoring of the services provided by the Council. I note in the Memorandum of Agreement, part 6:

*If the supervisor is not satisfied with the service delivery as provided by the contractor the supervisor may request from the contractor's Chief Executive the reasons why the service/s have not been performed to the standard specified.*

I am advised that at no stage of the agreement has the Authority actioned this clause.

On the 22 July 2005 the Branch supplied a document entitled *Docklands Withdrawals June 2002-May 2005*, which lists 1812 PINs with a value of \$148,164.20. This document was created on 15 June 2005. On 14 October 2005 the Authority supplied my office with the total withdrawals for the same period with a total value of \$119,241, and advised that *'this information had been sourced from MCC monthly reports provided to VicUrban'*.

In approximately March 2004 the Branch Manager requested a meeting with the senior management of the Authority to discuss the withdrawal of PINs to the value of approximately \$227,000 for the period May 2002 to March 2004. Council advises me that the average penalty for PINs issued in Docklands is \$66. The \$227,000 would equate to approximately 3,400 PINs.

I am advised that the Branch Manager met with officers from the Authority at AFL House to discuss the proposed withdrawals. In August 2005 the Authority supplied my investigators with notes of the meeting that state that the Branch Manager advised:

*'\$227,000 of unpaid tickets (issued in Docklands) needed to be withdrawn.'*

When asked why the Authority was advised that:

*...he believed that there may be an issue with regard to the City of Melbourne issuing PINs in Docklands on City of Melbourne letterhead.*

The costs of the PERIN Court process were also provided as a reason for the withdrawals.

Documents obtained during the investigation relating to this matter include the Branch Manager's handwritten notes of a meeting held on 15 June 2005. The notes refer to \$240,000 written off on statute of limitations. He notes three issues:

- *CoM [City of Melbourne] ticket*
- *recovery rate of PERIN*
- *cost.*

According to these notes and further information supplied during interviews the matter of the Council's inability to prosecute was not raised at this meeting in June 2005 or the previous March 2004 meeting. An Authority officer advised my investigators the reasons given to the Authority were commercial grounds and the Authority was not made aware of the Council's inability to prosecute on its behalf.

My investigators were not provided with any written evidence to substantiate the \$227,000 figure as the Council could not

locate a copy of the report relating to this issue.

Neither organisation appears to have been appropriately advised of this significant financial decision. I understand that the CEO of the Authority was the only officer with the authority to authorise this number of withdrawals. Neither the Authority nor the Council have provided any evidence to support authorisation of the withdrawal by the CEO. The Authority says that it was unaware of decisions made by Council not to bring prosecutions.

## Conclusion

The lack of appropriate reporting and authorisations relating to the issuing and enforcement of PINs by the Council raise issues about the administrative practices associated with the management of public funds.

The Authority has advised that more comprehensive financial reporting arrangements are now in place. I am satisfied that this is the case.

## Data cleansing and data corrections

During interviews it was identified that the Branch employed a practice called 'data corrections' or 'data cleansing'. This process occurs when the original data downloaded from a parking officer's PDA is modified or when data known to be incorrect is modified or changed. The practice is employed when Branch staff note errors in the issuance of a PIN, such as; time, date,

registration of the vehicle or location in the notes associated with the PIN. Examples of this practice were revealed through analysis of computer records. For instance, in one case changes were made to the infringement locations from Docklands to City of Melbourne precinct. In these cases the data was changed to reflect the most likely location.

In such circumstances, if the motorist does not pay the infringement and the matter is taken to court, the process requires a council officer to swear the information provided on the PIN is correct. The Branch member who corrects the data also signs the Statement Pursuant to S55B (1) of the Evidence Act, which certifies the information *'is derived from the information supplied to the said computers in the ordinary course of the activities during the said period'*. The information placed on this statement includes the PIN data and the officers' notes.

I have been informed that this practice has been employed over the past four years. It would appear that the data cleansing process may have affected the integrity of the information that has been provided to court over the last four years.

An examination of computer records found that on 6 July 2005 during a branch management meeting the topic of data cleansing was discussed. At this meeting it was made clear to senior management that this practice should not be employed. I note from internal Council documents that the practice is continuing.

## Council's use of debt collectors and letters of demand

The use of third parties by councils to collect PIN fees is a common practice. In September 1997 the Public Accounts and Estimates Committee recommended that private sector companies should not be involved in the collection of unpaid fines due to privacy considerations.

The Council has trialed at least four separate initiatives using debt collection agencies to recover unpaid parking infringement fees. Senior management at the Council advised my investigators that the use of these agencies was solely aimed at increasing the revenue from the payment of infringements by avoiding PERIN lodgement fees and improving recovery rates.

The Council has trialed the use of different wording, provided scripts for follow up phone calls and used a variety of companies and firms. I understand that the Council continues to trial various approaches in what it refers to as its 'debt management initiative'. Council staff confirmed that these initiatives have not proved to be any more cost effective than the PERIN system, particularly in terms of the percentage of money recouped. The Council has advised that there has been no further use of debt collection agencies since June 2005.

The Council sought legal advice in 2004 on the wording of collection letters that included second and final notice letters

and letters signalling the Council's intention to lodge a PIN in Court. The following advice was provided on 16 November 2004:

- *The letters should not be ambiguous nor mislead recipients into thinking there is a legally enforceable liability to pay;*
- *The use of words and phrases commonly used in debt collection should be avoided;*
- *The terms of the letter should reflect that the letter is a reminder and a request for payment; and*
- *The letter should be consistent with the PERIN procedure and not overstate the consequences of non-payment.*

## Conclusion

Despite trialing different debt recovery processes, it would appear that the Council has not settled on an effective process.

## Management issues

In 2005 the Council commissioned an independent consultant to survey and recommend actions to address morale problems, absenteeism and complaints of bullying and harassment in the Branch. The consultant's report concluded:

*The current environment of significant morale problems, low discretionary effort, absenteeism and complaints of bullying and harassment constitute a governance issue which we believe cannot be ignored.*



The report noted that senior management recognised that the Branch was performing less than optimally. It questioned the appropriateness of the current management structure and suggested it be reviewed following an evaluation of the skills, abilities and attitudes of leadership staff.

## **Legal advice**

On numerous occasions between May 2002 and June 2005 Council's Legal and Governance unit and an external legal firm provided legal advice to the Branch to assist it to carry out parking and traffic services in Docklands. VicUrban also provided the Council with legal advice.

For instance legal advice on the matter of authorisations was sought and provided in 2002, 2003, 2004, and 2005 and the advice generally confirmed the original advice to VicUrban of 30 May 2002.

Council's Legal and Governance unit generally supported the external legal advice obtained. The advice was specific and suggested actions to address issues which did not appear to be onerous or difficult to implement.

The Council and the Authority sought and were provided with extensive legal advice to enable them to carry out parking and traffic activities within Docklands in accordance with their legislative obligations. Had action been taken on the advice obtained many of the issues identified by my investigation could have been avoided.

## CODE OF CONDUCT

The issue of elected officials making representations on behalf of other persons was identified during my investigation. This issue has since attracted media attention.

I note that the Council has taken steps to address this matter and has provided me with its revised Good Governance Charter, which was signed by all Councillors, the Lord Mayor and the CEO, on 11 November 2005. In particular, each Councillor has acknowledged the Councillor Code of Conduct, which addresses the issues of good governance, transparency in decision-making and accountability.

In addition, the CEO has sought to hold a workshop to address such issues for Council's senior management and Councillors.

## RECOMMENDATIONS

I recommend that the Council:

1. Refund the 146 penalties and associated court costs paid by motorists issued with PINs in Docklands that were incorrectly registered with the PERIN Court.

**Agreed to by Council**

2. Refund the 287 PIN fines collected as a result of PINS being incorrectly issued for an offence under the Crown Lands Act, in the Docklands.

**Agreed to by Council**

3. Review its PIN processes to ensure they comply with the law.

**Agreed to by Council**

4. Review the management and structure of the Branch, and reporting lines, in the light of my report and the independent consultant's report.

**Agreed to by Council**

5. Ensure that correct and lawful processes are in place for its dealings with the Authority, especially in relation to the issue of PINs.

**Agreed to by Council**

6. Develop an appropriate debt recovery strategy based on legal advice.

**Agreed to by Council**

7. I also recommend that the Authority refund the \$50 PINs issued between May and October 2002.

**The Authority has agreed to do so**

**Ombudsman Victoria**

Level 3, South Tower  
459 Collins Street  
Melbourne VIC 3000

**Phone** 03 9613 6222

**Fax** 03 9613 0246

**Toll free** 1800 806 314

**Email** [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)

**[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)**