Ombudsman’s recommendations –
Second report on their implementation

October 2010

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LETTER TO THE LEGISLATIVE COUNCIL AND THE LEGISLATIVE ASSEMBLY

To
The Honourable the President of the Legislative Council
and
The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the Ombudsman Act 1973, I present to the Parliament the second report on the implementation of my recommendations.

G E Brouwer
OMBUDSMAN
6 October 2010
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OVERVIEW

This report

1. This report is provided to the Parliament pursuant to section 25(2) of the Ombudsman Act and, in so far as the report relates to recommendations made pursuant to the Whistleblowers Protection Act 2001, section 103 of that Act.

2. The names of persons against whom disclosures have been made under the Whistleblowers Protection Act have generally not been included in this report. Where such persons have been named or where it may be possible to identify certain of those persons, this has only occurred where the name or identity of the person has been included in an earlier report made pursuant to section 103 of that Act which set out a statement made pursuant to section 22A. In so far as it is necessary to comply with section 22A of the Whistleblowers Protection Act for the purposes of this report, I determine that it is in the public interest to disclose particulars likely to lead to the identification of persons against whom protected disclosures have been made. As reasons for that determination, I refer to and reiterate the reasons included in those earlier reports and consider that without disclosing such particulars, it would not be possible to serve the public interest of reporting to the Parliament regarding responses to recommendations made earlier.

3. This report covers a wide range of areas of government and subject matters. The 10 investigation reports addressed are:

- Probit controls in public hospitals for the procurement of non-clinical goods and services (August 2008)
- Crime statistics and police numbers (March 2009)
- Investigation into corporate governance at Moorabool Shire Council (April 2009)
- *Whistleblowers Protection Act 2001* Investigation into alleged improper conduct of councillors at Brimbank City Council (May 2009)
- *Whistleblowers Protection Act 2001* Conflict of interest and abuse of power by a building inspector at Brimbank City Council (June 2009)
- An investigation into the Transport Accident Commission’s and the Victorian WorkCover Authority’s administrative processes for medical practitioner billing (July 2009)
- A report of investigations into the City of Port Phillip (August 2009)
- Brookland Greens Estate – Investigation into methane gas leaks (October 2009)
Own motion investigation into the tendering and contracting of information and technology services within Victoria Police (November 2009).

The 10 investigation reports were accessed by the public via Ombudsman Victoria’s website on nearly 13,500 occasions. The whistleblower investigations into the alleged improper conduct of councillors at Brimbank City Council and issues at Bayside Health received 4,003 and 2,137 hits respectively.

To ensure my reports achieve the desired impact and reach target audiences who can most benefit from my conclusions and recommendations, I send a copy of relevant reports to the Chief Executive Officer of each agency in the relevant sector. For example, a copy of the Brimbank City Council report was provided to all other 78 councils.

Administrative improvements

The recommendations in my investigation reports are aimed at addressing administrative deficiencies and guiding agencies to implement changes that can: improve administrative processes; achieve tangible systemic reforms in vital areas; ensure compliance with standards or regulations; and improve delivery of services. For example, the investigations addressed in this report resulted in systematic, structural and ongoing reforms in government which:

- have led to reductions in the order of $6 million in the period January 2008 to January 2009 in billings by medical practitioners to the Transport Accident Commission (TAC)
- have removed conflict of interest and duty as local government councillors may no longer work for a Member of Parliament as Ministerial officers, Parliamentary advisors, or electorate officers during their term on council
- will ensure health care provided to patients who have suffered traumatic injury is appropriately screened by the health service
- will improve processes and accountability by doctors claiming on the TAC and WorkSafe
- will improve accountability for crime statistics and police numbers in Victoria Police
- will address corruption and maladministration in councils
- will improve probity in local government and hospital and health services procurement
- will strengthen monitoring and enforcement over environmental matters
- will bring about cultural change to promote accountable and transparent decision-making practices in a local council
- will ensure a greater understanding of good governance and conflict of interest in local government.
My own motion investigations highlight issues which have not been addressed by agencies often over a long period of time or where high complaint numbers are indicative of a problem.

In 2009-10 whistleblower complaints to my office increased 81.3 per cent over the previous year. Such complaints highlighted their usefulness in identifying and addressing corrupt and improper conduct. Three of the investigations followed up in this report were conducted under the Whistleblowers Protection Act.

Most of the whistleblower investigations I undertake are by their very nature significant and complex. My office has undertaken this role in Victoria and the evidence suggests that it has done so successfully. My office has gathered significant intelligence on government agencies. This together with the information I have obtained dealing with complaints over more than 30 years, gives me a good insight into public administration across the Victorian public sector.

Ombudsman’s investigations: civil vs criminal standards of proof

Some of the individuals who were subject to adverse comments in my reports subject of this review have attempted to distract attention from their wrongdoing by attacking my office. Some have attempted to undermine my office following revelations identified in my reports. For example, these attempts have been made by people or by elected officials following my reports dealing with Brimbank City Council. This is not surprising and is experienced by integrity bodies worldwide.

My reports to Parliament speak for themselves and are supported by evidence in each report from which I draw my conclusions and make recommendations. My ability to report to Parliament frankly and at times to name those responsible for issues I identify in investigations is an important part of my role as an impartial and independent officer of Parliament and is an effective safeguard against the undermining of my office. Another safeguard is that as Ombudsman, I am responsible for reporting direct to Parliament and to each House, rather than via a Minister.
12. In the case of some investigations where I have identified improper conduct of councillors or other public officers, there has been some suggestion by those about whom I made adverse comments that they have been vindicated by the decisions taken by Victoria Police, the Municipal Inspector or other regulatory agencies not to prosecute. This is not the case. A decision to prosecute necessitates that the respective agency be satisfied that it will be able to satisfy a court beyond reasonable doubt that the events occurred. Such a decision not to prosecute does not mean that the individuals ‘did not do it’; rather that there is no reasonable prospect that guilt can be established to the criminal standard.

13. My role is different. I investigate administrative actions and improper conduct in order to identify problems in government and I report my conclusions so as to allow others to remedy the wrongdoings. The relevant standard of proof for my investigations is the civil standard of proof – on the balance of probabilities – a lower threshold than the criminal standard.

14. The fact that an agency does not prosecute does not demonstrate vindication of those involved, nor does it call into question the merit of my conclusions. Rather, it reflects the differences in our respective roles and the different standards of proof that apply. It may also be an indicator of the commitment or otherwise agencies have to discharging their statutory enforcement responsibilities. In my annual report I noted that my investigations consistently identified deficiencies in the way agencies discharged their regulatory functions. To perform effectively, regulatory agencies require a clear understanding of their statutory duties and powers. It is apparent that in some situations agencies are either unaware of their responsibilities or their organisational cultures do not encourage enforcement action.¹

Key themes: Reports tabled between August 2008 and November 2009

15. There are a number of recurring key themes apparent in the 10 investigation reports examined in this report. Table 1 outlines these themes and the associated investigation reports in which they are raised. Awareness or management of conflict of interest matters, procurement practices, record-keeping and abuse of power by councillors and public officers remain areas of concern in the public sector.

Table 1: Key themes: Reports tabled between August 2008 and November 2009

<table>
<thead>
<tr>
<th>Key Themes</th>
<th>Reports that directly address theme</th>
</tr>
</thead>
</table>
| Poor procurement and contract management processes.                       | • Probity controls in public hospitals for the procurement of non-clinical goods and services (August 2008)  
• A report of investigations into the City of Port Phillip (August 2009) 
• Own motion investigation into the tendering and contracting of information and technology services within Victoria Police (November 2009) 
• Brookland Greens Estate – Investigation into methane gas leaks (October 2009) |
| Public officers that abuse their position of power either for personal or professional gain, often monetary in nature. | • Whistleblowers Protection Act 2001 Investigation into alleged improper conduct of councillors at Brimbank City Council (May 2009) 
• Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council (June 2009) |
| Lack of oversight in relation to the practices of public officers.        | • Whistleblowers Protection Act 2001 Report of an investigation into issues at Bayside Health (October 2008) 
• An investigation into the Transport Accident Commission’s and the Victorian WorkCover Authority’s administrative processes for medical practitioner billing (July 2009) |
| Concerns regarding the integrity of data which is used to inform policy and resource decisions. | • Crime statistics and police numbers (March 2009) |
| Failure to ensure that practices or policies are in place to limit the influence of councillors on council staff. | • Investigation into corporate governance at Moorabool Shire Council (April 2009) 
• Whistleblowers Protection Act 2001 Investigation into alleged improper conduct of councillors at Brimbank City Council (May 2009) |
| Significant conflicts of interest that were not identified or adequately managed by the public body. | • Whistleblowers Protection Act 2001 Investigation into alleged improper conduct of councillors at Brimbank City Council (May 2009) 
• Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council (June 2009) 
• A report of investigations into the City of Port Phillip (August 2009) 
• Brookland Greens Estate – Investigation into methane gas leaks (October 2009) |
| Failure to investigate complaints adequately. | • Whistleblowers Protection Act 2001 Investigation into alleged improper conduct of councillors at Brimbank City Council (May 2009) 
• Brookland Greens Estate – Investigation into methane gas leaks (October 2009) |
| Legislative provisions that limited an agency’s investigative capacity. | • Whistleblowers Protection Act 2001 Investigation into alleged improper conduct of councillors at Brimbank City Council (May 2009) |
| Poor record-keeping.                                                      | • Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council (June 2009) 
• A report of investigations into the City of Port Phillip (August 2009) 
• Own motion investigation into the tendering and contracting of information and technology services within Victoria Police (November 2009) 
• Brookland Greens Estate – Investigation into methane gas leaks (October 2009) |
# Overview

## Table 1: Key themes: Reports tabled between August 2008 and November 2009 continued

<table>
<thead>
<tr>
<th>Key Themes</th>
<th>Reports that directly address theme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to adhere to statutory obligations, resulting in adverse consequences for individuals or members of the public.</td>
<td>• Brookland Greens Estate – Investigation into methane gas leaks (October 2009)</td>
</tr>
</tbody>
</table>

## Acceptance and implementation of my recommendations

16. This report covers 268 recommendations and the 10 investigation reports in which they were made. These recommendations were primarily made to public sector agencies, however some were also made to private organisations that were contracted by government agencies or involved with them.

17. The acceptance rate by agencies at the time of tabling each report was high at 98.1 per cent (263 recommendations), signalling an encouraging public commitment by the agencies concerned. In my last recommendations report, for the 10 reports I tabled between July 2006 and June 2008, 93.5 per cent of my recommendations were either accepted or under consideration by the agency concerned.

18. Action has been taken on my recommendations in all 10 reports. In examining the implementation of my recommendations, I require evidence from agencies not only that they have given effect to the recommendations where they have stated that they have, but also of the impacts these changes have made on the agency.

19. At the date of this report, 76 per cent of the accepted recommendations had been implemented; this was slightly higher than for the 10 reports I tabled between July 2006 and June 2008. The remaining recommendations mainly comprised significant undertakings that were to be implemented over several years. I am pleased with the action taken by most agencies in implementing my recommendations and have gained assurance that in the main my investigation conclusions will be or have been addressed effectively and in a timely manner.
INDIVIDUAL STATUS REPORTS

1. PROBITY CONTROLS IN PUBLIC HOSPITALS FOR THE PROCUREMENT OF NON-CLINICAL GOODS AND SERVICES (AUGUST 2008)

Background

20. In 2007 I conducted an investigation into whether probity controls in the Victorian public hospital system adequately address the risks related to the procurement of non-clinical goods and services. This investigation came about as a result of a whistleblower investigation I conducted in 2006 which identified significant weaknesses in probity controls in a major public hospital.

21. My investigation focused on the procurement of non-clinical goods and services below the threshold for public tender. I considered this to be an area of significant risk as local procurement practices had been allowed to develop in non-clinical areas, outside of the hospital mainstream, which did not comply with the regulatory framework guiding procurement in the Victorian public hospital system.

22. I examined one metropolitan and one rural hospital and investigated the areas responsible for:
   - supply, building and engineering
   - food and catering
   - information technology
   - cleaning and fleet management.

23. Four inter-related themes were considered during my investigation, including:
   - value for money
   - accountability and transparency
   - impartiality
   - conflicts of interest.

24. Overall, my investigation identified:
   - a lack of probity controls in relation to the selection and management of contractors in each of the engineering departments examined
   - a lack of probity in local purchasing arrangements and in the use of supplies and equipment
   - shortcomings in financial controls over the procurement of non-clinical goods and services
   - cash flow problems compromising one hospital’s ability to achieve value for money in the provision of non-clinical services.
Recommendations

25. I considered that all Victorian public hospitals and health services would benefit from conducting a review of existing probity controls, in order to determine how adequately they deal with risks associated with the procurement of non-clinical goods and services.

26. I made 39 recommendations for improving hospital probity controls which were all accepted by the Department of Human Services. In 2009, the Department of Health (the department) assumed responsibility for overseeing the health system in Victoria and implementing my recommendations.

27. In broad terms, my recommendations were for public hospitals and health services to:
   - improve the selection and management of external contractors, with a view to achieving greater transparency
   - centralise purchasing arrangements and controls over supplies
   - improve controls over procurement to eliminate probity risks
   - review cash flows and develop a plan to meet debts and obtain payments as they fall due
   - revise policies, procedures and training in relation to dealing with gifts, benefits and conflicts of interest.

28. I also decided to refer my report to the Auditor-General to consider conducting a sector wide review. The Auditor-General has planned to review procurement in public hospitals in detail in their 2011-12 program.

Implementation

29. In March 2010 I was advised by the department that 34 (87 per cent) of the 39 recommendations have been implemented.

30. The department advised that the following key actions had been taken:
   - informing all public hospitals and health services of my recommendations
   - requiring all public hospitals and health services to report to the department in July 2009 and February 2010 on their progress in implementing the recommendations
   - requiring hospitals to meet the Victorian Government Purchasing Board’s standards of probity as a minimum condition of department funding of hospitals in 2009-10
   - working with Health Purchasing Victoria to implement the inaugural Strategic Supply Forum, held in May 2010, which brought together Supply Managers from public hospital and health services across Victoria to examine best practice in supply and measure cost savings
   - developing a customised training course for public hospital staff in relation to contractor selection and monitoring.

31. The implementation of the five remaining recommendations is dependent on the department developing a customised probity training program for public hospital staff. The department advised that a training provider has been engaged and delivery of this program will be completed by 31 December 2010.
Table 2 shows the extent to which public hospitals and health services have taken action on my recommendations.

<table>
<thead>
<tr>
<th>Recommended action</th>
<th>Hospitals and public health services that have completed action %</th>
<th>Hospitals and public health services that are yet to take action %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Develop a formal process for the selection of trade contractors</td>
<td>86</td>
<td>14</td>
</tr>
<tr>
<td>Establish a process for checking contractor work</td>
<td>85</td>
<td>15</td>
</tr>
<tr>
<td>Implement procedures to provide for payment of trade contractors within agreed timelines</td>
<td>98</td>
<td>2</td>
</tr>
<tr>
<td>Develop strategies to meet debts and obtain payments as they fall due</td>
<td>97</td>
<td>3</td>
</tr>
<tr>
<td>Review the purchasing of IT equipment and supplies with a view to centralising procurement under the Supply Department</td>
<td>91</td>
<td>9</td>
</tr>
<tr>
<td>Take steps to identify and centrally manage contracts</td>
<td>85</td>
<td>15</td>
</tr>
<tr>
<td>Implement specific strategies to address financial risks</td>
<td>94</td>
<td>6</td>
</tr>
<tr>
<td>Review financial controls in engineering departments relating to the payment of contractor invoices</td>
<td>98</td>
<td>2</td>
</tr>
<tr>
<td>Review controls over fleet motor vehicle usage</td>
<td>95</td>
<td>5</td>
</tr>
<tr>
<td>Audit the use of corporate credit cards</td>
<td>100</td>
<td>--</td>
</tr>
<tr>
<td>Provide staff with training on gifts and benefits</td>
<td>77</td>
<td>23</td>
</tr>
<tr>
<td>Implement a system that registers and monitors supplies and equipment. This system should include regular stocktakes.</td>
<td>73</td>
<td>27</td>
</tr>
</tbody>
</table>

Source: Information provided by the Department of Health.
Ongoing issues

33. The department has made considerable progress in ensuring that public hospitals and health services implement my recommendations. However, some public hospitals and health services are yet to implement my recommendations relating to managing gifts, benefits and conflicts of interests. Only 77 per cent of public hospitals and health services have provided their staff with training on gifts and benefits. I consider gifts, benefits and conflicts of interests to be areas of risk for the Victorian public sector as highlighted in previous investigation reports I have tabled in Parliament.2

34. Despite identifying weaknesses in the controls over the use of supplies and equipment in hospital engineering departments, only 73 per cent of public hospitals and health services have since implemented a system that registers supplies and equipment and which includes regular stocktakes. I consider this an important issue which needs to be addressed by all public hospitals and health services.

35. I have asked the Secretary of the department to contact each of the public hospitals and health services who are yet to comply with my recommendations and provide me with further updates. The department has advised that it ‘… will continue to monitor progress to ensure that all recommendations from this investigation are fully implemented’. I will follow up non-compliance in the future.

36. As a result of this investigation, there is continuous improvement in procurement practices of hospitals and health services. As processes and practices become more robust and effective, the opportunities for corruption and maladministration diminish. However, without constant vigilance by my office and the Auditor-General in such areas, probity issues are likely to return.

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2 See for example: Ombudsman Victoria, Conflict of interest in the public sector, March 2008.

**Background**

37. This investigation related to the conduct of a senior medical practitioner, Mr Thomas Kossmann (the doctor) in the Trauma Department at Bayside Health (now known as Alfred Health). A whistleblower had made a disclosure about the doctor’s conduct. Furthermore, it was alleged that the health service had failed to deal with this matter despite being aware of it for several years.

38. The delivery of safe, high quality care is the primary objective of all those involved in the public health system. Victoria prides itself on having one of the best health systems in the world. To maintain this status there must be effective systems in place to monitor performance, identify vulnerabilities and minimise risks to the public. These systems rely on the integrity of those who play pivotal roles within the health service.

39. By and large trauma patients have no say in the selection of their treating surgeon. In many cases they are admitted to hospital following major trauma and they are allocated a surgeon according to the rostering in the receiving hospital.

40. My investigations identified billing practices of several medical practitioners which warranted further investigation.

**Recommendations**

41. Recommendations were made to several agencies and included:

**Bayside Health**

- review all private practice arrangements
- identify and review all current arrangements entered into by medical practitioners with medical supply companies
- ensure contract arrangements or agreements with any full-time or part-time medical practitioner are fully documented and executed by the parties
- review its conflict of interest policies and remind all staff of their obligations in relation to conflicts of interest and ensure its Gifts and Benefits, Code of Conduct and Probity in Procurement policies are regularly reviewed and updated
- require medical staff to obtain written approval to undertake secondary employment
- improve the existing system of regular peer review of surgery to ensure that all cases in all disciplines are screened
- devise and put into effect a complaints process for use by medical officers concerning the clinical performance of another medical officer.

**The then Department of Human Services**

- establish a transparent process for the financing of Trauma Fellow positions
develop and implement a strategy to ensure that any restrictions to a surgeon’s practising certificate are brought to the attention of the surgeon and health care services that employ them

monitor the implementation of [Bayside Health Chief Executive’s] action plan.

Minister for Health

request that the Royal Australasian College of Surgeons provide him with a report on how it has dealt with the relevant recommendations made in the Australian Competition and Consumer Commission’s (ACCC) review of the assessment of overseas trained surgeons.

TAC and WorkSafe

establish a transparent process for the financing of Trauma Fellow positions

TAC review all of the doctor’s billings with a view to recovering overcharged or incorrectly charged items

TAC and WorkSafe complete the investigations they are currently undertaking into the doctor’s billings for services rendered during the whole of the period of his employment with Bayside Health to determine if the amounts claimed accord with the Medical Benefits Scheme (MBS) and are appropriate in the circumstances.

Monash University

take into account the matters raised in my report, particularly the Peer Review Panel’s comments, in relation to its review of the allegations of the doctor’s research misconduct and academic fraud.

Implementation

Alfred Health advised me that all 10 recommendations were accepted and eight had been completed; the remaining two are to be completed in late 2010. It stated that:

private practice arrangements have been reviewed and reforms involving ‘rolled up’ remuneration have been agreed to

custom of interest, Code of Conduct and policies on gifts and benefits and procurement are regularly reviewed and updated and staff are reminded about their respective obligations

significant suppliers are now required to seek written approval from the hospital before entering into relationships with staff

secondary employment is now also managed through a written approval process

peer review processes have been tightened

all deaths are screened within 24-48 hours and reported to a Mortality Panel within a fortnight

a complaints policy for clinical staff is now in place that provides a mechanism for medical staff to raise concerns about the clinical performance of peers.
43. **WorkSafe** informed me that clarification has been provided by it and the TAC to all hospitals about the funding arrangements for, and supervision of, Trauma Fellow positions. This should enhance the transparency for the financing of the positions.

44. In relation to my recommendation: to complete the investigation then being undertaken into the doctor’s billing for services during the whole period of his employment with Bayside Health, WorkSafe’s investigation was completed in January 2009. I note that:

- WorkSafe reviewed a sample of the doctor’s invoices billed to them in the period of his employment at Bayside Health, 2001-2008. The review covered 244 items billed to WorkSafe from March 2006 to August 2007 and was aimed at assessing whether the invoices for the services performed, were appropriate and correct (that is services billed for were actually performed and billed only once). In the seven years at the hospital, the doctor made 1,931 billings to WorkSafe. WorkSafe advised the key reasons for reviewing a sample of the doctor’s total billings was the ‘appropriate deployment of investigative resources and focusing WorkSafe’s investigation on matters of priority’. It also advised that, ‘the task of investigating the selected patient cases was both time consuming and complex’. Senior counsel engaged by WorkSafe also indicated that to investigate all of the 1,931 items invoiced by the doctor, would have been ‘unwieldy and impractical’.

- WorkSafe’s review of the 244 items, ‘… revealed a range of possible discrepancies’ including:
  - potential incorrect claims for payment for certain MBS items – 11 claims for payment
  - invoicing for additional MBS items – 9 claims for payment
  - insufficient documentation to support the billing of MBS items – 10 claims for payment.

- WorkSafe stated it took this approach to concentrate its investigation on the alleged billing anomalies identified in the Peer Review and in my report and specifically on cases which appeared to offer the strongest prospects of establishing offences under the *Accident Compensation Act 1985* or the *Crimes Act 1958* (Vic) (Crimes Act).

45. WorkSafe also advised that the sample billings of the doctor that it reviewed were selected having regard to the findings arising from the Peer Review Panel and my investigation.

46. In relation to my recommendation that WorkSafe provide the results of their investigation to appropriate authorities, on the 15 June 2009 WorkSafe referred to the Medical Practitioners Board of Victoria\(^3\) (the Board, now the Australian Health Practitioner Regulation Agency) payments made to the doctor for 20 services identified as part of their investigation to be beyond the scope of the doctor’s registration for orthopaedic and associated surgery. This WorkSafe investigation involved the review of the total 1,931 billings made by the doctor over the period of his employment at the hospital and was undertaken between February and June 2009. These services specifically related to vascular, cardiothoracic and urological services.

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\(^3\) From 1 July 2010, the Medical Practitioners Board ceased to operate and the Australian Health Practitioner Regulation Agency was established to regulate the conduct or clinical practices of medical practitioners. The Victorian state office of the Australian Health Practitioner Regulation Agency undertakes the administrative work relating to investigations conducted in Victoria.
47. WorkSafe advised me that it did not refer the doctor’s billings to the Board until this date as it:
   • did not understand there were issues in relation to payments to the doctor for non-orthopaedic services to injured workers and therefore, credentialing or clinical privileges. WorkSafe’s review in this area was therefore completed following their initial investigation focusing on criminal conduct.
   • did not want the referral of matters to the Board to interfere with the criminal investigation by Victoria Police. (See Attachment A for Victoria Police’s decision not to prosecute the doctor.)

48. WorkSafe advised me that there is no legislative provision which would provide a basis for WorkSafe to recover from the doctor payments for services outside any limitations on his registration.

49. In March 2010 WorkSafe approached the doctor stating that ‘he may have submitted invoices incorrectly’ claiming payment for certain Medical Benefits Schedule (MBS) items. The letter details 68 MBS numbers or medical procedures relating to 15 patients and a total invoice value of $48,131, and stated:

   … assistance by way of an explanation or clarification, including where it appears that you may have submitted invoices incorrectly claiming payment for certain … (MBS) items.

   If you discover that the item(s) arose out of a billing error, [it] would be pleased to receive reimbursement of the amount involved and will consider that issue closed.

50. WorkSafe informed me in July 2010:

   WorkSafe is still in dialogue with [the doctor] requesting explanation and clarification regarding payments for certain services by WorkSafe’s Agents to [the doctor] were appropriate and reasonable.

51. The doctor argues that the law allows for bills to be paid on behalf of compensable patients in accordance with what is reasonable pursuant to section 60 of the *Transport Accident Act 1986* and section 99 of the *Accident Compensation Act 1985*.

52. However my recommendation was that the TAC and WorkSafe complete their investigations to determine if the amounts claimed accorded with the MBS and were appropriate in the circumstances, that is, whether appropriate item numbers were used, and whether the amounts claimed were reasonable.

53. At the date of this report, no amounts had been repaid by the doctor to WorkSafe in relation to his previous billings.

54. The Medical Practitioners Board (now the Australian Health Practitioner Regulation Agency) advised WorkSafe in May 2010 that its investigation into the professional conduct of the doctor had been completed. WorkSafe wrote to the Australian Health Practitioner Regulation Agency in July 2010 seeking confirmation of the outcome of its investigation of the doctor as follows:

   We now understand that the Board has settled the matter by agreement between the Board and [the doctor] pursuant to section 59(2)(c) of the *Health Professionals Registration Act 2005* and that the terms of this agreement involve the Board auditing any spinal and pelvic surgery [the doctor] performs in the next 2 years.
55. I note that WorkSafe is continuing to examine the doctor’s response to its requests for explanation and clarification, regarding the appropriateness of payments made to him by WorkSafe’s Agents.

56. The TAC advised that action had been taken on my four recommendations, one of which had been completed: providing clarification to all hospitals about the funding arrangements for, and supervision of, Trauma Fellow positions. The remaining three recommendations are estimated to be finalised by the end of October and November 2010.

57. In relation to my recommendation that the TAC review all of the doctor’s billings with a view to recovering overcharged or incorrectly charged items, the TAC advised that it has initially reviewed the doctor’s billing practices for the period January 2004 to September 2007.

58. This initial review by the TAC identified anomalies in the doctor’s invoices submitted for payment for services to TAC clients. The invoices amounted to $205,113, involved 257 medical procedures and related to 70 patients. The TAC advised the doctor in March 2010 that it required ‘... an explanation or clarification, including where it appears that you may have submitted invoices incorrectly claiming payment for certain Medical Benefits Schedule items’.

59. The TAC advised me in April 2010 that it had advised appropriate bodies that it had ‘... formed a reasonable belief that [the doctor] may have breached the Act’. The Medical Practitioners Board (now the Australian Health Practitioner Regulation Agency) responded to the TAC in May 2010:

I refer to the Board’s investigation into the professional conduct of [the doctor] and confirm that the investigation has been completed.

The TAC subsequently advised the doctor that its investigation had ‘not established fraud or misconduct’ on his behalf. (See Attachment B.)

60. In July 2010 TAC received an explanation from the doctor regarding the invoices and billings and without any reimbursement of funds that had been paid to the doctor. Currently, the doctor’s submission in relation to the anomalies is undergoing clinical review by the TAC to determine the validity of the explanation provided by the doctor and the future action to be taken.

61. On 22 April 2010 the doctor signed an agreement with the Medical Practitioners Board. The Australian Health Practitioner Regulation Agency, the Board’s successor, has advised me that ‘the agreement is achieving what it was put in place to do, which is to protect the public of Australia’. A copy of the agreement is in Attachment C.

62. The agreement states that since its investigation commenced the Board has been provided with evidence that the doctor has:

- undergone further training in pelvic and spinal surgery
- has undertaken education with an orthopaedic surgeon in respect of billing under the MBS and the schemes used by compensable patients.
- has completed a Mastering Professional Interactions workshop developed to provide doctors with insight and communication skills with colleagues.

63. I understand that the review of the doctor’s invoices, the investigation into his services rendered whilst at Bayside Health and provision of results to the relevant body, will be completed by the TAC in October and November 2010.
In October 2009, the Minister for Health referred matters relating to the doctor’s handling of his taxation obligations to the Deputy Commissioner of Taxation for consideration and investigation. The Minister also informed me that he had received from the Royal Australasian College of Surgeons, material relating to the implementation of recommendations made in ACCC’s review of the assessment of overseas trained doctors in line with my recommendation.

I have attached a number of documents provided to me by the doctor. In addition to Victoria Police’s decision (Attachment A), the TAC letter (Attachment B) and the agreement between the doctor and the Medical Practitioners Board of Victoria (Attachment C) there are letters from Monash University, Royal Australasian College of Surgeons, the Australian Taxation Office and the Medical Practitioners Board of Victoria (see Attachment D). The doctor argues that an analysis of these documents demonstrates that he has not been found to have acted improperly. However I do not agree with this interpretation which goes beyond what the documents indicate.

The Department of Health informed me that the four recommendations have been actioned and:

- funding for Trauma Fellows has been reviewed and a transparent process for the financing of such positions established
- the [Bayside Health Chief Executive’s] 18 point action plan has been fully implemented
- the Medical Practitioners Board of Victoria has investigated the doctor’s professional conduct
- steps have been taken to improve the communication processes relating to conditions imposed on a medical practitioner’s registration. I understand that under the national registration and accreditation scheme, commencing on 1 July 2010, registration boards will be required to inform employers of the imposition of conditions on the registration of a medical practitioner.

During my investigation in 2008, Monash University advised that, ‘… there have been several policy and process shortcomings associated with [the doctor’s] appointment with the University that need urgent attention to ensure that certain systemic weaknesses identified in this case are not repeated’.4

More recently the University has advised me that it has undertaken a review of its research misconduct protocols and procedures. In doing so consideration was given to my Guide to Complaint Handling, the Australian Standard Guidelines for Complaints handling in Organisations and the National Health and Medical Research Council’s Code for the Responsible Conduct of Research. The revised procedures provide a useful guide to staff responsible for the management of allegations of research misconduct.

Ongoing issues

As a result of my investigation a broad range of administrative improvements have been made by a number of agencies responsible for the delivery of safe, high quality care in our public health system. By responding to my recommendations, the transparency and accountability in dealing with concerns about the clinical conduct of medical practitioners and in the use of public funds by insurers to pay for their services, have been improved. For instance, total medical payments by the TAC fell by $6 million in the period January 2008 to January 2009. This is discussed later in this report.

4 Whilst employed by the Alfred Hospital, the doctor also held a professorial appointment with Monash University.
70. The agreement between the Medical Practitioners Board of Victoria and the doctor requires a number of undertakings from the doctor over a two year period. For example, the doctor must provide auditors each quarter with information across 14 areas updated monthly, for each and every pelvic and spinal surgery patient seen by him for the two year period from the date he resumes surgical practice.

71. WorkSafe confirmed that they have requested from the doctor explanation and clarification regarding the appropriateness and reasonableness of payments he received for certain services and:

Based on the information available to WorkSafe to date there is no suggestion, finding or allegation of impropriety or fraud against [the doctor] with respect to these matters. … The question of whether or not any monies are indeed owing by [the doctor] (or in fact whether WorkSafe owes monies to [the doctor]) cannot be determined until [the doctor’s] explanations have been thoroughly examined by our expert clinicians. Given the number of services under review … and when there [sic] queried services were actually provided, it is understandable that the process will take some time and may require further consultation and engagement with [the doctor] and his lawyers before an outcome is reached. Despite the complexities, WorkSafe is determined to complete the necessary process expeditiously and to act accordingly with the outcome.

72. In summary, I made 20 recommendations to the various agencies and all have been accepted. Around 75 per cent of my recommendations have already been actioned with the remainder being completed later in 2010 or in 2011. These actions will ensure the avoidance of the issues identified by the Peer Review Panel and in my investigation. Health services have tightened their systems to ensure they are effective in monitoring practitioner performance, identifying vulnerabilities and minimising risks to the public. Particular outcomes achieved by my investigation include:

- all private practice arrangements reviewed by Alfred Health
- all current arrangements entered into by medical practitioners with medical supply companies have been identified and reviewed
- improvements in the existing system of peer review of surgery to ensure that all cases in all disciplines are screened
- Monash University has updated its protocols and procedures used to guide staff in managing allegations of research misconduct
- the doctor, the subject of my investigation, has been required to enter into an agreement which will ensure medical procedures he undertakes in the two years after he resumes surgical practice, will be monitored
- the identification of anomalies in the doctor’s billing practices which is the subject of ongoing review by both TAC and WorkSafe
- a more transparent process for the financing of Trauma Fellow positions has been implemented by the Department of Health and TAC and WorkSafe.

73. This investigation also highlighted significant flaws in TAC and WorkSafe’s capacity to detect inappropriate medical practitioner billing practices. I discuss these issues elsewhere in this report.
3. CRIME STATISTICS AND POLICE NUMBERS (MARCH 2009)

Background

74. In April 2008 I received a complaint from the Leader of the Opposition, in relation to the potential manipulation of crime statistics and/or police numbers. Upon receiving the complaint it was my view that uncertainty regarding the validity of crime statistics and police numbers needed to be resolved.

75. My investigation was concerned with two key issues. First, whether Victoria Police crime statistics accurately reflect the community’s experience of crime as it is reported to police. Second, whether the information about the number and availability of police in Victoria is accurately reported.

76. I established that:

- Administrative practices for recording crimes are time-consuming, ad-hoc and antiquated.
- Victoria Police’s Law Enforcement Assistance Program (LEAP) is plagued by weaknesses which raise serious concerns regarding its functionality and value for money.
- The data captured by Victoria Police is limited and excludes many incidents of a public order nature and some serious alleged offences in which police are called to assist through the 000 call service (CAD system). This has resulted in under recording of crime by police.
- A contributing factor to the lower than expected crime statistics relates to the previous model of crime recording which ceased implementation on 30 June 2008. Specifically, police needed to be satisfied that a crime had occurred before recording it rather than recording the details of an alleged crime on a prima facie basis. My investigation concluded that the recent policy change to move toward a prima facie model has been poorly implemented and inadequately understood by police.
- There are delays in recording crime onto LEAP which affect the reliability of decisions when information is out-of-date.
- Some police misuse the procedures for recording cleared crime to make it appear that more crime has been successfully solved than is actually the case.
- Audit procedures in Victoria Police for crime data are focused on the management of reported crime once details have been entered on LEAP, with no attention to the process of recording crime to ensure consistent and quality decision-making.
- The workload of operational police is poorly measured which has implications for the management of demand for police services.
Recommendations

77. I made 25 recommendations in total, 23 of which were made to Victoria Police, one to the Office of Police Integrity and one to the Victorian government. Nineteen of the 23 recommendations I made to Victoria Police were accepted at the time I tabled my report. Of particular significance to my investigation were the following recommendations:

- Victoria Police compare LEAP records to CAD data, Victims of Crime Assistance Tribunal records and crime victim surveys as part of its auditing
- the Office of Police Integrity investigate falsification of police records associated with Victoria Police practices in relation to clearance rates and finalising crime reports as identified in my investigation
- Victoria Police review the LEAP manual for recording crime and incorporate, where appropriate, the National Crime Recording Standard requirements. Victoria Police should strengthen its commitment and support for the implementation of these requirements
- Victoria Police review the training in crime recording and provide specialist and refresher training for police on the recording and use of crime statistics
- Victoria Police ensure effective progress on the LINK project and that it incorporate the elimination of manual forms for the recording of crime data
- Victoria Police review its approach to the reporting of crime statistics, with a view to better meeting the needs of the Victorian public, such as by providing more timely data, with a range of access tools
- the Victorian Government give consideration to establishing a unit external to and independent of Victoria Police to develop and maintain statistical databases on crime; to monitor trends in crime and publish regular reports on crime trends; and with a capacity to audit crime statistics and crime recording practices
- Victoria Police in conjunction with the Emergency Services Telecommunications Authority review the way in which the CAD dispatch system locates and seeks Victoria Police response units’ real time availability to emergency situations.

78. The following recommendations were not accepted by Victoria Police:

- the use of Victim of Crime Assistance Tribunal records and crime victim surveys to enable recorded crime statistics to be compared and validated
- consider alternative ways of measuring police workloads in the piloting of the new Member Activity Sheets
- reviewing the way in which the CAD dispatch system locates and seeks Victoria Police response units’ real time availability to emergency situations
- review the People Allocation Model with a view to improving its usefulness by the inclusion of other data such as CAD data relating to demand for non crime-related services provided by police.

79. I propose to have further discussions with Victoria Police with a view to encouraging them to review their position on these recommended actions.
Implementation

Victoria Police

80. On 18 February 2010 I requested a progress report on the implementation of my recommendations from the Chief Commissioner of Police. I was provided with a further progress report on 8 April 2010. I considered the information in this report to be insufficient and lacking the necessary detail or evidence to demonstrate the implementation of recommendations. I therefore wrote to the Chief Commissioner again on 19 April 2010 to request supporting documentation.

81. Victoria Police acknowledges that its communication regarding their progress in implementing my recommendations required improvement. It is now tracking and monitoring progress more closely with monthly reports to the Victoria Police Executive.

82. Documentation was provided to me on 2 July 2010 along with a progress report which stated that nine of the 19 recommendations accepted by Victoria Police have been implemented. The documentation provided to my office for the implemented recommendations included:
   - a handbook to assist in the interpretation and use of CompStat statistical information. The handbook covers a number of areas on which Victoria Police collects data for example, traffic enforcement and intervention orders
   - a Data Management Strategy which sets out the long-term strategic direction for the collection, maintenance and use of data
   - detail regarding the development of a Management Index which will enable Victoria Police to collect information on work performance and capacity of its staff. This includes the collection of data on operational performance and workload
   - an overview of ‘HR Assist’, software which will assist planning for the better management of recruitment and workforce-related issues.

83. Victoria Police advised me that of the remaining 10 recommendations accepted:
   - four are being implemented
   - one is awaiting advice from the Office of Police Integrity (refer below)
   - four are on hold pending the outcomes of the National Crime Statistics Unit Board working group who are exploring the differences between the States in the implementation of National Crime Recording Standards
   - one recommendation is reliant on the LINK project which is currently suspended pending expert advice.

Office of Police Integrity

84. In August 2009 the Office of Police Integrity (OPI) in response to my recommendation, commenced an investigation into the alleged falsification of police records associated with Victoria Police practices in relation to clearance rates and finalising crime reports. OPI’s investigation is continuing.
Department of Justice

85. Due to Victoria Police’s transition from LEAP to LINK the Department of Justice has informed my office that it temporarily suspended the implementation of my recommendation to the Victorian Government. The Secretary of the Department of Justice advised me that consultation between the Department of Premier and Cabinet, Victoria Police and other stakeholders is now proceeding. A range of options are being considered and will be presented to the Government for consideration during 2010-11 for implementation during 2011-12.

Ongoing issues

86. I am concerned that only nine of the 19 recommendations accepted by Victoria Police in my March 2009 report have been implemented to date. I note that the postponement of LINK as well as ‘external constraints’ have impeded Victoria Police’s capacity to finalise the implementation of my recommendations. However, I consider that Victoria Police has had sufficient time to progress further than it has.

87. I consider it important that Victoria Police continue its close monitoring of the implementation of my recommendations given the important role that crime statistics play for Victoria Police and for public understanding of the extent of crime in Victoria.
4. INVESTIGATION INTO CORPORATE GOVERNANCE AT MOORABOOL SHIRE COUNCIL (APRIL 2009)

Background

88. In March 2008 I tabled my report in Parliament titled Conflict of interest in local government. In this report, I found that problems associated with conflicts of interest often arose from poor governance rather than deliberate misconduct and that the main factors contributing to these problems were:

- lack of transparency
- inappropriate interaction between councillors and officers
- poor organisational culture
- poor conceptual understanding of conflict of interest
- poorly worded policies

89. Following the tabling of the report, I received a complaint about Moorabool Shire Council’s failure to adopt the recommendations set out in that report. I then commenced an investigation into governance issues at the council. The investigation identified that:

- the council suffered from high turnover of staff
- offices were physically separated which did not promote a shared corporate culture
- the council failed to comply with policies and procedures, particularly in relation to the operation of councillor forums
- councillors did not sign the Code of Conduct
- councillors engaged in operational matters that led to the perception of inappropriate influence on council staff
- the council failed to handle conflicts of interests appropriately
- staff culture and customer service was poor in comparison to other councils.

90. However, I also identified that the council had markedly improved in its governance since amalgamation. The council’s Chief Executive Officer also reported that my decision to investigate had accelerated the rate of positive change.

Recommendations

91. I made 15 recommendations to the council and all were accepted by the council. My recommendations included that the council separate elected councillors from the day-to-day operational activities of council administration by:

- not assigning councillors to informal working parties
- ensuring council briefings or forums do not include any provision for the direction of council officers and are for clarification, information and advice
• minimising the Chief Executive Officer’s involvement in operational issues to meet councillors’ requirements better
• ensuring all reports and recommendations for councillor consideration and/or decision, be signed off by one or more of the Executive prior to provision to councillors.

92. I also recommended that the council:

• review its policies, practices and procedures in responding to members of the public
• finalise its Code of Conduct with sign-off by all relevant parties
• examine its internal communication practices.

Implementation

93. The council has implemented all 15 recommendations. The council stated that it:

... welcomed [my] report and the Councillors and staff have been working together to implement all of the recommendations.

94. As a result of my report, the council has:

• established protocols regarding interactions between councillors and council staff. Councillors were advised that direction to council officers can only be undertaken by councillors through a formal council motion
• advised the Senior Management Team of the processes regarding interaction between councillors and council staff
• developed a protocol whereby reports and recommendations for councillors’ consideration have to be authorised by senior council staff
• developed a Customer Service Charter and a Customer Request Management system to improve its interaction with members of the public
• revised its delegation practices, adopted by the council on 15 July 2009, to ensure a balance is maintained in relation to workload
• adopted an Internal Communication Strategy on 3 August 2009
• adopted a new Councillor Code of Conduct during its meeting on 7 October 2009. A copy of this policy was provided to my office and has also been placed on the council’s website.
5. WHISTLEBLOWERS PROTECTION ACT 2001
INVESTIGATION INTO ALLEGED IMPROPER CONDUCT OF
COUNCILLORS AT BRIMBANK CITY COUNCIL (MAY 2009)

Background

95. On 1 August 2008, I received a complaint concerning matters raised by Mr George Seitz MP in the Legislative Assembly of Parliament on 30 July 2008 in relation to the Brimbank City Council (the council). Mr Seitz had made allegations of ‘threats, bribery, intimidation, misuse of council funds, mismanagement, improper behaviour and council’s failure to govern effectively’. As a result, I commenced an investigation into the alleged conduct.

96. Early in my investigation, I received two independent disclosures under the Whistleblowers Protection Act 2001 in relation to the alleged improper conduct of the councillors. I determined them to be public interest disclosures and commenced an investigation into the conduct of the councillors.

97. My investigation revealed a council that was generally dysfunctional and marked by significant in-fighting and interpersonal conflicts between the elected councillors. It was clear that the council had split into two groups, the ‘ruling faction’ and the minority councillors, and that the council was unable to govern as a whole. I identified the following specific issues into the conduct of the councillors:

- The operation and governance of the council was influenced by individuals who held no elected local government office, including individuals who would be, or were in the past, precluded from holding office because of criminal convictions.
- Conflicts of interest had not been identified and managed by the council for example:
  - Members of the ‘ruling faction’ had conflicts between their public duties and private interests. However, the broader issue of conflict of interest was not solely confined to the ‘ruling faction’.
  - A Brimbank councillor was employed in the office of a Member of Parliament, creating a conflict of duty and duty. I identified instances where the councillor’s duty to the Member of Parliament impacted upon the performance of the councillor’s public functions as an elected official.
- Councillor behaviour was often not concerned with ‘peace, order or good government’, as is required under the Local Government Act 1989 (the Act). For example:
  - Decisions appear to have been made for personal gain; to cause detriment to the council; or in retaliation for broken promises.
  - Some councillors bullied, pressured and harassed council staff to the point where one officer left and another went on leave. In one example of such behaviour, one councillor successfully demanded that staff allocate $680,000 of council’s budget to works at a sporting club linked to family.
  - Some councillors misused council funds and property, for example by failing to reimburse council for personal calls on their council mobile phones and purchasing lavish gifts with council funds.
One councillor leaked confidential council information to the media.

Another councillor provided several confidential council documents to an international company and to others, to gain an advantage in his attempt to start a private business competing with a local government supplier. He also obtained electoral information for tens of thousands of Victorian citizens from a representative of the Australian Labor Party (ALP), in contravention of the Victorian Electoral Act 2002.

In November 2008, prior to tabling my report in Parliament, local government elections were held. Only three councillors were re-elected. Despite this, my investigation identified that there was a risk that the factionalism that existed within the last elected council (2005-08) was continuing within the new council. I remained concerned about whether the newly-elected council was capable of governing in accordance with its statutory objectives.

Recommendations

I made 30 recommendations in relation to the council, Local Government Victoria, the Minister for Local Government and the Victorian Electoral Commission. All of my recommendations were accepted and all have been implemented.

In particular, I recommended:

- The Minister for Local Government:
  - amend the Local Government Act to prohibit elected councillors from being employed by Federal and State Members of Parliament during their term on council
  - ensure Local Government Victoria is sufficiently resourced to meet its statutory requirements in relation to investigating breaches of the Act

- Local Government Victoria:
  - investigate possible breaches of the Act by several councillors
  - introduce a dedicated investigative team to investigate complaints under the Act

- The Victorian Electoral Commission investigate possible breaches of the Victorian Electoral Act 2002 by the ALP

- Council review its policies and processes in relation to councillor mobile telephone use; allocation of community facilities and reserves; councillor access to council files and requests to council staff for information.

Implementation

The Minister

On 12 May 2009, the State Government announced that Mr Bill Scales AO had been appointed as an Inspector of Municipal Administration to oversee the governance of the council and monitor the council’s implementation of my recommendations.
102. In September 2009, Mr Scales’ Report on the monitoring of the ongoing activities and performance of the Brimbank City Council was tabled in Parliament. Mr Scales reported:

My monitoring and investigations over the past three months has proved that a majority of Councillors of the current Brimbank City Council have continued to exhibit in important areas some of the very same poor practices that led to the Ombudsman’s initial investigation and his recommendations …

…

Taking all these matters into account and given the systemic nature of the problems with the Brimbank City Council I have decided to recommend that you consider suspending and/or dismissing the Councillors of Brimbank City Council.

103. The councillors were subsequently suspended by an Order in Council on the recommendation of the Minister for Local Government. On 18 November 2009, the council was dismissed and replaced with administrators under the *Local Government (Brimbank City Council) Act 2009*. The administrators will govern Brimbank until general council elections in November 2012.

104. In 2009, the Local Government Act was amended to prohibit elected councillors from being employed by Federal and State Members of Parliament as Ministerial officers, Parliamentary advisers or electorate officers during their term on council.5

*Brimbank Council*

105. I was advised in December 2009 that all of my recommendations around revised policies, councillor training and the use of community facilities, had been implemented.

106. Copies of its new or revised policies including the revised *Councillor Code of Conduct* (the code), were provided to my office by the council. The code included measures to respond to my recommendations and was drafted by council officers, in consultation with councillors and the Municipal Association of Victoria. It was adopted by the elected council in June 2009.

107. The code includes the following significant requirements:

- councillors declare to the Chief Executive Officer and in the council chamber all representations made by a Member of Parliament in relation to a council decision
- councillors submit their council laptops to the chief executive officer no less than twice a year to ensure appropriate use of council equipment
- councillors comply with the *Councillor Access to Information Policy*, which states councillors are ‘only entitled to council information that is publicly available, save and except that councillors are entitled to access such council information as is required by them to make informed decisions on matters before council in the Chamber’
- councillors ‘will not direct, or seek to direct council staff or request staff alter any recommendations made by officers or imply that recommendations should be changed … all decisions to modify, change or reject officer recommendations must only be made at formal council meetings’.

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5 Section 28A of the *Local Government Act* 1989, Disqualification to be a Councillor due to conflicting duties.
108. I consider that the code and Councillor Access to Information Policy represent good governance practice in local government. Good policy is not sufficient in itself. It is important that the code is enforced where breaches are identified. In this regard, I note that councils are now able to apply for a Councillor Conduct Panel to discipline a councillor for breaches of the code. Serious misconduct can result in a Victorian Civil and Administrative Tribunal hearing and the possible suspension or dismissal of a councillor.

**Local Government Victoria**

109. In response to my recommendations, the Premier announced in August 2009 the establishment of the Local Government Investigations and Compliance Inspectorate (the inspectorate). This resulted in a separation of Local Government Victoria’s two roles of policy leadership and enforcement of the Local Government Act. The Minister for Local Government advised that the establishment of the inspectorate as an independent Administrative Office:

- improved the resourcing of the investigatory function of the department
- enabled the allocation of dedicated resources to that function.

110. The inspectorate, led by a Chief Municipal Inspector, subsequently assumed responsibility for implementing my recommendation that Local Government Victoria investigate possible breaches of the Local Government Act by several councillors.

111. In 2010 I received advice from the Secretary, Department of Planning and Community Development that the inspectorate had investigated the matters recommended in my report, but had decided not to prosecute any of the individuals involved, either due to insufficient evidence to support a prosecution, or because no breach of the Local Government Act had been detected.

112. There have been some suggestions that such a decision vindicates those against whom I made adverse comments. This is not the case. A decision to prosecute necessitates that the inspectorate be satisfied that there is a reasonable prospect that it will satisfy a court, beyond reasonable doubt, that the events occurred. As such a decision not to prosecute does not mean that the individuals ‘did not do it’; only, that guilt cannot be established to the criminal standard.

113. My role is different. I report my conclusions following investigations into administrative actions and improper conduct based on the civil standard – the balance of probabilities. On that standard I was and remain of the view that the improper conduct at Brimbank Council reported in my May 2009 report occurred, and that the individuals referred to in that report were responsible for that improper conduct.

**Victorian Electoral Commission**

114. On 7 December 2009, the Victorian Attorney-General provided me with a copy of the Victorian Electoral Commissioner’s (the Commissioner) response to my recommendations.
115. In relation to my recommendation that he investigate possible breaches of the Electoral Act by the ALP, the Commissioner stated:

... after considering the [Victorian Electoral Commission] investigator’s report and legal advice, the VEC has concluded that it would be inadvisable to commence proceedings in the light of the substantial obstacles to prosecution.

116. The Commissioner noted in his response that his investigation was made difficult as he ‘has limited investigative power: there is no legal requirement for witnesses to answer the Commissioner’s questions or to produce material relating to breaches of the Electoral Act’. As such, the ALP representative who had provided the electoral information to the councillor and the councillor both refused to be interviewed on the basis of legal advice.

117. The Commissioner further noted that there is a legal inconsistency between the Commonwealth Electoral Act 1918 and the Victorian Electoral Act 2002. He advised that while Commonwealth legislation permits use of Australian Electoral Commission data for local government elections, the Victorian legislation provides that Victorian Electoral Commission data may only be used for State purposes. The Commissioner stated that this inconsistency ‘has led to confusion and, in this case, to a likely inadvertent technical breach of the Electoral Act’ and has made enforcement of the Electoral Act ‘extremely difficult’.

118. The Electoral Commissioner further advised:

The fact that the Electoral Commissioner does not have the power to require witnesses to answer questions or produce material was a hindrance to my inquiries into possible breaches of the Electoral Act. However, the main reason why the VEC did not prosecute was the practical inconsistency between Commonwealth and State law, with an action being simultaneously legal under Commonwealth law and illegal under the State’s Electoral Act, and the consequent lack of clear harm done.

I am not advocating an extension of the Electoral Commissioner’s investigative powers. I consider that it is inappropriate for the Electoral Commissioner to have such police-like powers, and that it would distract from the Electoral Commissioner’s central function of conducting elections. If a possible breach of electoral law is serious enough, the Electoral Commissioner can request the police to investigate.

Amending the State Electoral Act to come into line with Commonwealth legislation would put an end to the problem of breaches of State electoral law. However, the effect of doing so would be to allow councillors and council candidates associated with a registered political party unrestricted access to enrolment information. I consider that the current State legislation is superior in principle, in that it better protects electors’ privacy, provides that information collected by one level of government is used only at that level of government, and puts candidates on a more equal footing.

119. I note that the Commissioner has written to registered political parties and State Members of Parliament about permitted uses of the enrolment information provided by the Victorian Electoral Commission. The Commissioner has also amended regular correspondence with registered political parties and State Members of Parliament to ensure that they were aware of the permitted uses under the current legislation.
Ongoing issues

120. As discussed in my April 2010 investigation report into Local Government Victoria’s response to the inspectors’ report on the City of Ballarat, I do not have jurisdiction over Municipal Inspectors of Administration. I consider that this is a significant gap in my jurisdiction, which leaves inspectors who exercise significant statutory powers, exempt from independent scrutiny.

121. Remediing this gap would go some way towards seeing that all individuals paid from the public purse are subject to a similar level of scrutiny.

122. The Brimbank City Council investigation looked at members of Parliament and Ministers, federal and state, Mayors, local councillors, electoral staff, local government staff and state public servants. The issues I have reported on were a broad spectrum of administrative actions and behaviour, including corrupt conduct, involving: undue influence; conflict of interest; improper use of power; bullying and intimidation; misuse of funds and equipment; and inappropriate use of electoral information. Many of these issues were not uncovered until the investigation was underway. It does not appear that such a breadth of coverage and issues could be achieved under the proposed new system for handling corruption in Victoria with its fragmentation of jurisdiction and powers. Such a fragmented arrangement will only result in a lessening of transparency and accountability in government.
6. **WHISTLEBLOWERS PROTECTION ACT 2001**

**CONFLICT OF INTEREST AND ABUSE OF POWER BY A BUILDING INSPECTOR AT BRIMBANK CITY COUNCIL (JUNE 2009)**

**Background**

123. On 14 October 2008 Brimbank City Council (the council) referred a complaint to me that I determined to be a public interest disclosure pursuant to the *Whistleblowers Protection Act 2001*.

124. The disclosure alleged that council’s building inspector had used information and influence in his role to obtain a personal advantage in the purchase of a property. It was also alleged that the advantage was obtained dishonestly and adversely affected the honest performance of a public officer’s function.

125. I conducted an investigation pursuant to Part 5 of the Whistleblowers Protection Act. My investigation established that the building inspector:

- was assigned to investigate an allegation that there were non-compliant buildings on the property
- formed the opinion there were non-compliant structures on the property and consequently caused council to issue a Building Notice and then a Building Order
- took advantage of an opportunity to express an interest in purchasing the property before there had been compliance with the Building Order
- failed to notify his employer formally of his intention to enter into a contract to purchase the property which he was responsible for inspecting
- purchased the property in a private sale
- used his position at the Brimbank City Council to cause repairs to the property he was in the process of purchasing
- denies destroying the building complaint file in relation to the property, despite evidence to the contrary
- had within four months of purchasing the property ordered the demolition of structures which had been the subject of the Building Order
- had within four months of purchasing the property made enquiries for sub-dividing and building on the property.

126. My investigation also identified poor practices within council such as the sharing of a computer username and password and inconsistent policies regarding record-keeping. For example, the property’s 2008 building complaint file was disposed of in a manner contrary to statutory requirements.

127. The building inspector resigned from the council during my investigation.

**Recommendations**

128. I made 10 recommendations to the council, all of which were accepted. Of particular significance to my investigation were the recommendations that the council:

- provide all employees with training on the Code of Conduct, including conflict of interest
• re-write the Building Control Services Department’s (the building department) policies to ensure the department’s record-keeping practices are consistent with the council’s information management policy and relevant legislative requirements

• provide the building department’s employees with training regarding the revised record-keeping policies

• conduct a bi-annual audit of the building department’s record-keeping practices to check compliance with the information management policy

• refer the allegations that the building inspector destroyed the 2008 building complaint file and his purchase of the property while a public officer, to Victoria Police for its consideration as to whether a criminal investigation should be conducted in relation to possible breaches of:
  o section 19 of the Public Records Act 1973
  o section 254 of the Crimes Act 1958
  o the common law misdemeanour of misconduct in public office.

**Implementation**

129. In September 2009 the council advised that the 10 recommendations had been implemented as follows:

• A training program has been developed regarding the Code of Conduct and covers topics such as: corrupt conduct; conflict of interest; personal conduct expected of staff; work performance; and lawful and reasonable directions by supervisors or managers. The training is provided to induct staff as well as provide compulsory refresher training to all staff.

• Council has developed a policy on ‘dealing with complaints’ and includes detailed flow charts for registering, tracking, resolving and finalising building-related complaints. The charts emphasise the recording of information through the Customer Request System and provide a step-by-step process of what to do with a complaint and its corresponding documents, from start to finish.

• Employees in the building department were provided with hands-on training regarding the council’s records management policy and the council’s electronic database, TRIM. Training attendance sheets signed by individual staff members were provided to my office to confirm the conduct of training by the council.

• The council committed to auditing record-keeping practices in the building department twice annually and auditing each department within the council once every two years. My office has been provided with an auditing check-list and a suggested timeline for auditing until June 2011.

• The council referred the allegations about the building inspector to the Sunshine Police. The council was not informed as to whether charges were laid against the building inspector in relation to possible breaches of the Public Records Act or the Crimes Act. My office’s enquiries with Victoria Police revealed that key witnesses who may have assisted in providing information about the building inspector’s conduct would not consent to a police interview. Victoria Police were therefore unable to obtain the necessary evidence to proceed with charging him.
7. AN INVESTIGATION INTO THE TRANSPORT ACCIDENT COMMISSION’S AND THE VICTORIAN WORKCOVER AUTHORITY’S ADMINISTRATIVE PROCESSES FOR MEDICAL PRACTITIONER BILLING (JULY 2009)

Background

130. Given the considerable amounts of money involved in administering the Transport Accident Commission (TAC) and the Victorian WorkCover Authority (WorkSafe) schemes, it is imperative that both organisations make sound investments in ensuring their systems and processes minimise financial waste.

131. As a result of my investigation into issues in Bayside Health in October 2008 I commenced an own motion investigation into the TAC’s and WorkSafe’s systems for detecting inappropriate medical practitioner billing practices. My investigation highlighted significant flaws in both agencies’ capacity to detect inappropriate medical practitioner billing practices.

132. The potential for TAC and WorkSafe’s systems to be exploited, intentionally or otherwise by medical practitioners, existed. Both agencies were vulnerable to fraud and to being taken advantage of by service providers.

133. My investigation found that in relation to both the TAC and WorkSafe:
   • their electronic payment systems and associated controls failed to detect billing practices that were inconsistent with the Commonwealth Medical Benefits Schedule (MBS) rules
   • there were inadequacies in TAC and WorkSafe’s audit frameworks for detecting and dealing with outlier medical practitioner billing behaviour
   • adequate civil recovery strategies were not in place.

Recommendations

134. I recommended that both the TAC and WorkSafe:
   • provide further information regarding the new treatment payment system and how it will be designed to ensure medical practitioner billing is compliant with the MBS
   • advise the outcome of audits conducted to assess the effectiveness of changes introduced to their current account processing systems and controls
   • provide the results of investigations into outlier medical practitioner billing behaviour
   • report on the development of policies for recovering money from service providers or others when it is established that such money has been incorrectly paid, regardless of whether or not any prosecutorial action is taken.

135. Both agencies acknowledged that their systems and associated controls in place were not sufficiently robust and that too much reliance was placed on a belief that medical practitioners would conduct themselves in an honest and professional way.
136. WorkSafe accepted my conclusion that their systems for dealing with surgical costs within the scheme needed improving. The TAC also accepted my conclusions that its payment processes and associated controls were not designed to monitor the accuracy of medical practitioner billings against the MBS.

Implementation

137. Both the TAC and WorkSafe have subsequently undertaken extensive audits of medical practitioner billing practices with a view to minimising opportunities for fraudulent behaviour in the treatment of trauma patients.

138. In August 2009 I was informed that the TAC:

- had identified 19 ‘high risk’ surgeons and 101 ‘medium risk’ surgeons
- as a result, made improvements to work practice controls
- commenced an analysis of radiology, pathology and anaesthetic service billings. A detailed report is to be provided to my office by 31 October 2010
- reviewed their policies in relation to medical practitioner recovery actions and prosecutions.

139. I was also informed in August 2009 that WorkSafe:

- implemented a program to check and monitor agents’ and health care practitioners’ compliance with system controls and work practices in relation to surgeon billing
- reported on the findings of both the retrospective audit team’s investigation into the ‘16 very high risk’ surgical providers and, on the activities and findings of the prospective audit team’s activities. For 12 of the providers, WorkSafe was seeking reimbursement in relation to potential overpayments of almost $40,000
- advised that following its review of seven surgeons it has sought further explanation from two providers; sought reimbursement of $26,180 from two providers and referred one of the providers to the Medical Practitioners Board of Victoria; and assessed no further action was necessary in relation to three providers.

140. The TAC and WorkSafe have also informed me that a new treatment payments system had been approved for implementation by both their boards. A fundamental component of the system is the introduction of a ‘rules engine’ designed to ensure compliance with the MBS rules. Practitioner invoices that do not satisfy the automated rule criteria will be forwarded to the appropriate TAC staff member or WorkSafe agent for further action. The system is expected to:

- achieve consistency in the application of all payment rules
- process provider invoices more efficiently
- reduce payments through more comprehensive and accurate application of MBS rules
- have an improved ability to cross-check against policies, standards and guidelines
- detect a range of other anomalies in medical practitioner billing such as bill splitting; step down and multiple operations rules; and outlier behaviour as identified in my October 2008 investigation report into issues at Bayside Health.
As a result of my investigations, both agencies have committed considerable resources of approximately $45 million for system planning, development and implementation to address the deficiencies identified. Recent advice from the TAC is that the new system will be operational for WorkSafe by the end of 2010 and for the TAC by mid-2011.

During my investigation in 2007-08 into the Alfred Hospital and the ensuing publicity, total medical payments by the TAC fell by $6 million from approximately $49 million in January 2008 to $43 million in January 2009. I was further informed by the TAC that during this time, there were significant reductions in both:

- the average cost per claim involving surgery (by 27 per cent); and
- the number of and cost per claim for radiology, pathology and anaesthetic services.

### Ongoing issues

Both organisations have accepted and implemented the 13 recommendations I made. This has resulted in TAC and WorkSafe undertaking extensive reviews of both practitioner billing practices and systems and controls, to ensure payments for surgical and other services are legitimate and reasonable.

The underlying problems identified by my investigation were that the TAC and WorkSafe’s systems had at the time limited, if not non-existent ability to detect rorting and thus they were vulnerable to exploitation by medical practitioners.

It is clear from the updates that have been provided by both the TAC and WorkSafe since the completion of my investigation reports, that the agencies have confirmed the significance of the weaknesses in their systems and improved their effectiveness by implementing my recommendations.
8. A REPORT OF INVESTIGATIONS INTO THE CITY OF PORT PHILLIP (AUGUST 2009)

Background

146. This report includes three investigations I conducted, under both the Whistleblowers Protection Act 2001 and the Ombudsman Act 1973, into poor governance processes at the City of Port Phillip (Port Phillip).

147. My investigation found that the procurement practices at Port Phillip were deficient and that it had:
   - poor tender and contract management practices
   - failed to act on conflict of interest matters
   - not complied with purchasing guidelines
   - poor record-keeping
   - several cases that raised questions about compliance with provisions of the Local Government Act 1989 (the Act), especially in relation to section 186 which requires councils to tender for purchases above a prescribed amount.

148. I identified the following contributing factors:
   - inattentive culture with respect to procurement practices
   - decentralised procurement model
   - lack of resources
   - lack of technical expertise
   - lack of training
   - inadequate oversight.

Recommendations

149. I made 19 recommendations to Port Phillip and two recommendations to Local Government Victoria (LGV). All recommendations were accepted. My recommendations to Port Phillip included that it:
   - review existing procurement policies and practices and establish new policies and processes regarding contractors
   - provide training to employees involved in procurement processes
   - review the Building Maintenance Unit’s compliance with purchasing requirements
   - commission an external independent audit of the Building Maintenance Unit
   - strengthen the involvement of the Audit Committee and the Executive Team
   - develop a conflict of interest policy and institute regular training for all staff regarding conflict of interest and the staff misconduct policy
   - review a number of engagements of contractors and tender processes.
150. I recommended LGV:

- review the support and guidance it provides to councils on the interpretation of section 186 of the Act and best practice in procurement
- actively support Port Phillip towards compliance with the Act.

Implementation

151. Port Phillip has advised that it has implemented all 19 recommendations and:

- reviewed and promulgated a tendering and contracts policy as at 30 December 2009. A copy of this policy has been provided to my office and covers topics such as tender administration, legislative requirements, tender evaluation and complaints management. A follow up audit of tendering and procurement processes is due by June 2010
- trained staff in relation to the new tendering and contracting processes. A requirement to comply with procurement procedures has also been added in performance and development plans for managers, coordinators and other relevant staff
- contracted a consulting firm to conduct an audit of building maintenance review in September 2009. The audit identified a number of management actions where opportunities exist for improvement, such as the segregation of duties for the assignment, processing and approval of purchase orders
- centralised its tendering process in the Governance Department and established a Contracts Unit with increased staff resources
- ensured all staff have signed off on the council’s Code of Conduct which includes provisions relating to conflicts of interest
- placed the issue of compliance with procurement processes on the agenda of the monthly executive meetings.

152. LGV advised that while it commenced a scoping exercise to inform its review of the guidance it provided to councils on section 186 of the Act, progress has been delayed due to resource constraints and the absence of key staff. Notwithstanding this, the review of the Local Government Procurement Best Practice Guidelines is due to be completed prior to the end of 2010.

153. In addition, in March 2010 LGV issued a circular to all councils on the procurement of insurance for municipal assets and councils’ obligations pursuant to Section 186 in the procurement of insurance cover.6

154. In relation to actively supporting Port Phillip in complying with the Act in undertaking its procurement activities, LGV advised my office that it had met with the council on two occasions primarily regarding the progress made in implementing my recommendations and that:

LGV’s offer to assist the Council with issues of compliance with the Act remains open. Further meetings with the Council will be arranged if required.

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6 Circular No. 04/2010, Contracts for Insurance and Compliance with Section 186, Local Government Victoria, 23 March 2010.
155. A manager at Port Phillip advised that ‘… the real issue lies in the lack of advice provided to all local government … in relation to Section 186 …’, that is, the requirement for councils to go to tender for purchases above a prescribed amount.

**Ongoing issues**

156. In a February 2010 report to Parliament titled *Tendering and Contracting in Local Government*, the Victorian Auditor-General’s Office reported that there is scope for improvement in the procurement process of Victorian councils. Specifically, the overall conclusion of the report states:

> Council procurement policies were adequate. Nevertheless limited guidance to staff coupled with weaknesses in local management controls and oversight arrangements meant there was generally less than desirable assurance that probity standards had been consistently applied, and that conflicts of interest were avoided.

> There is significant scope at the councils examined to achieve better value for money through procurement. There is a lack of attention to the benefits of strategic procurement, and a lack of clarity on statutory obligations was evident when aggregate payments to suppliers exceeded the tender thresholds. This situation is not conducive to a culture of effective procurement within councils, and does not reinforce the imperatives for seeking and demonstrating value. LGV needs to address this in consultation with councils.8

157. I also note the recommendation that:

> LGV should review and enhance guidance to councils on strategic procurement in consultation with stakeholders. This should include amending the Local Government Regulations to: better prescribe the range of circumstances under which a council’s statutory obligations to tender apply, and specifically address situations involving cumulative spend with suppliers.

158. Following the tabling of my report, my office continued to receive complaints about procurement processes in local government. In late 2009 I received a complaint about a council in relation to similar issues that I identified in my Port Phillip investigation. I made enquiries with the relevant council and proposed that it conduct an investigation and audit into its building maintenance unit. The council accepted my proposal and referred to the recommendations I made in my Port Phillip investigation report in order to address the issues and improve its practices.

159. I similarly encourage all Victorian councils to review the recommendations made in my Port Phillip investigation report and draw on these recommendations as a means of strengthening their procurement processes.

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8 ibid, page viii.
9. BROOKLAND GREENS ESTATE – INVESTIGATION INTO METHANE GAS LEAKS (OCTOBER 2009)

Background

160. In September 2008, methane gas, a component of landfill gas which can cause explosions when ignited, was detected leaking at dangerous levels from the site of the closed Stevensons Road landfill (the landfill). The landfill is positioned adjacent to the Brookland Greens housing estate (the estate) in Cranbourne and methane had also been detected in estate homes. The Country Fire Authority Victoria advised estate residents to consider evacuating.

161. On 15 September 2008, I received a letter from the Acting Premier, the Hon Rob Hulls MP, regarding methane leakage from the landfill and requesting that I consider an investigation into this matter. I considered it was in the public interest to do so and commenced an investigation on my own motion.

162. My investigation sought to provide the community with answers as to how the methane gas leaks occurred and to make recommendations to reduce the risk of this type of incident from recurring in the future.

163. The investigation was concerned not only with the declaration of the emergency and the state of the landfill, but also with the administrative actions of the various agencies involved. This included the regulatory approval process that allowed the landfill to be created in the first place; regulatory oversight of the landfill; and the process that allowed the housing estate to be built adjacent to the landfill.

164. My investigation focused on the following key issues:

- approval for the landfill
- management of the landfill
- Environment Protection Authority (EPA) enforcement of the landfill
- planning decisions affecting the estate
- safety of residents in the estate.

165. I concluded that the methane leak was brought about by a series of missed opportunities by the responsible agencies, including the EPA which is the regulatory body for environmental issues and the City of Casey and the Frankston City Council, the landfill owners. Sub-standard conditions were implemented from the outset at the landfill and were not rectified over a long period of time. These conditions directly contributed to problems which created the risk of a methane explosion in the estate. Had activities relating to monitoring, enforcement, contract management and management of conflicts of interest been conducted more thoroughly, the emergency situation at the estate may not have occurred.

Recommendations

166. I made 65 recommendations to various agencies including the EPA, the City of Casey, the Frankston City Council, the Office of the Emergency Services Commissioner, the Victorian Civil and Administrative Tribunal (VCAT), the Metropolitan Waste Management Group, and private land developer Peet Limited. All of my recommendations have been accepted with the exception of one which was not accepted by the City of Casey.
167. My recommendations included that:

- EPA review its policy for assessing works approvals to ensure assessments are made by suitably qualified officers and all assertions made by applicants are verified fully before a works approval is granted
- City of Casey develop specific procedures to manage conflicts of interest where it is both the applicant or permit holder and the responsible authority
- City of Casey and the Frankston City Council each centrally manage all future contracts through an officer or team with contract management expertise
- EPA ensure that all licences are reviewed annually and amendments made where existing standards are below best practice
- EPA revise its compliance and enforcement procedures to ensure strong and decisive enforcement action in response to non-compliance
- EPA develop and make available comprehensive policies and procedures to guide its decision-making in relation to becoming a party to legal proceedings
- The Office of the Emergency Services Commissioner conduct a detailed review of the emergency response to the methane gas risk at the estate and publicly report its findings.

The City of Casey

168. At the time of tabling my report, the City of Casey accepted 17 of my 18 recommendations. The recommendation it did not accept related to the waiving of rates payments for all residents in the estate for the 2009-10 financial year, as a measure of good faith and in response to the inconvenience experienced by the community. In rejecting this recommendation, the City of Casey stated that it had already ‘waived payment of rates to all residents in the estate for the 2008-09 financial year’.

169. The EPA, Frankston City Council, the Office of the Emergency Services Commissioner, VCAT, the Metropolitan Waste Management Group, and Peet Limited accepted my recommendations.

Implementation

EPA

170. In March and July 2010, the EPA advised that it has developed five key projects to address my recommendations, as follows:

1. Reform to works and licensing approval through the restructure of the EPA to a centralised statutory decision-making model. The EPA has also implemented a licence reform project which involves reviewing and reissuing all EPA licences. The EPA anticipates all licences will be re-issued by 30 December 2010.

2. The implementation of a client management system to address weaknesses which I identified in its record-keeping and file management systems. The EPA expected to commence implementation of this system by August 2010, with completion over a staged period of 18 months.
3. Review of the EPA’s Best Practice Environmental Management – Siting, Design, Operation and Rehabilitation of Landfills (BPEM) publication, specifically to make provision for the risks associated with landfill gas migration. The EPA expects to complete this policy review later in 2010.

4. Review of the EPA’s compliance framework to address inconsistencies in its approach to compliance and enforcement. In December 2009, the EPA developed a new compliance framework which is scheduled to be phased in across all regulatory services by mid-2011.

5. The implementation of an enforcement and compliance reform project to address a range of compliance, enforcement and pollution service delivery issues. A final project report is due by 30 December 2010.

171. I am satisfied with the progress made by the EPA in implementing my recommendations. To date, it has implemented 12 of my recommendations (32 per cent), with a further 19 (52 per cent) anticipated to be completed by the end of 2010. The remaining six recommendations (16 per cent) are to be completed in the next two years as a major new client management system is implemented.

172. The EPA has also developed a centralised approach to implementing, monitoring and reporting on the implementation of my recommendations, as well as engaging an external auditor to verify its progress.

City of Casey

173. In March 2010, the City of Casey advised me of the following major initiatives it has undertaken in response to my recommendations:
   - implementation of a new procurement policy
   - centralisation of electronic files relating to the landfill
   - staff training in record-keeping and management
   - audit of all council licences and permits
   - development of a specific procedure to manage conflicts of interests
   - revision of the council’s code of conduct.

174. The City of Casey reported that 11 (61 per cent) of my recommendations have either been completed, or processes were already in place at the time of tabling my report. The remaining six recommendations (35 per cent) are ongoing in nature, such as continuing to support the Brookland Greens estate community.

Frankston City Council

175. In response to my recommendations, the Frankston City Council has:
   - published its procurement policy on its website in November 2009
   - established an electronic document management system to centralise and improve its record-keeping
   - improved oversight of contracts and tenders including the appointment of a Contract Management Consultant to assist council’s contract supervisors with contract management processes
• reviewed its procurement and tendering procedures to ensure that they are consistent with the Local Government Act 1989 and council’s procurement policy
• included key performance indicators within contracts where appropriate, to measure performance of the services or works contracted
• ensured all relevant licences and permits for sites and facilities owned by council, are in council’s name where appropriate.

The Office of the Emergency Services Commissioner

176. The Office of the Emergency Services Commissioner (the Commissioner) accepted all four recommendations. My recommendations included that the Commissioner conduct a timely and detailed review of its emergency response to the methane gas risk at the estate and publicly report its findings. I considered that this report would be of considerable benefit to other emergency service agencies should similar problems occur in the future.

177. I also recommended that this review should take into account the findings of my investigation and consider whether structural changes are required to Victoria’s emergency management system.

178. The Secretary, Department of Justice advised:

As you would be aware, the 2009 Victorian Bushfires Royal Commission (VBRC) has involved a significant examination of the State’s emergency management arrangements. There are a broad range of findings and recommendations that, whilst specific to bushfire, in many cases have more general application to the State’s “all hazards all agencies arrangements”, including the “Hazmat” incidents at Brookland Greens.

The Government’s response to the VBRC’s Interim Report has involved, among other things, improvements to the State’s emergency command, control and coordination arrangements, upgrading incident control centres, enhanced community warnings and a range of relevant amendments to the Emergency Management Act 1986 and the Emergency Management Manual Victoria.

... 

To build on the considerable work undertaken in emergency management, I have requested that the Emergency Services Commissioner further consider the findings and recommendations in your Brookland Greens Estate-Investigation into Methane Gas Leaks (October 2009) report in the context of these recent and further planned changes. In particular, I have asked the Office of the Emergency Services Commissioner (OESC) to conduct a review of a range of relevant factors, with a focus on the seven areas identified by you in recommendation 55 of your investigation.

This process will involve a meta-analysis including the results of your investigation, the Lessons Learned Forum conducted on 22 December 2008 by OESC, and all relevant recent emergency management investigations, reviews and reports. The Lessons Learnt Forum of all relevant stakeholders will be re-convened to assist this process and identify matters for incorporation into the State’s arrangements.
**Peet Limited**

179. I made one recommendation to private land and housing development company Peet & Co Casey Land Syndicate Limited (Peet Limited), in relation to a Section 173 Agreement it had entered into with the City of Casey. The purpose of the agreement was to restrict the development of dwellings in close proximity to surrounding industries, including the landfill.

180. I identified that this agreement failed to make any mention of the landfill or the actual use of this land. The agreement instead referred to the landfill as a ‘sand extraction facility’. I considered this an important issue as during my investigation several residents had complained that they had not been provided with information from Peet Limited about the nearby landfill at the time of purchasing their property.

181. In March 2010 Peet Limited advised me that:

- a special condition making it clear that the disused landfill site neighbours the estate will be included in the contract of sale for remaining land in the estate
- references to ‘sand extraction facility’ in the Section 173 Agreement should be read as references to the landfill
- the special condition will also refer prospective purchasers to the EPA and the City of Casey’s websites for further information on works and management measures being undertaken in relation to the landfill.

182. Peet Limited has agreed to provide my office with this special condition for review and comment before its implementation.

**VCAT**

183. I made two recommendations to VCAT aimed at addressing shortcomings in its administrative procedures and in particular, improving the quality of its transcription and recording facilities. The former President of VCAT accepted both my recommendations.

184. In April 2010, Justice Iain Ross commenced as the President of VCAT. Justice Ross advised that he fully supports my recommendations and has incorporated them into VCAT’s strategic plan titled *Transforming VCAT* which was officially launched by the Attorney-General on 13 September 2010. Justice Ross stated that he intends to upgrade VCAT’s existing audio recording systems and to expand the facilities to all venues where VCAT conducts hearings. He also intends to make available audio recordings of VCAT hearings for a small fee.

185. I was advised by Justice Ross that the Tribunal has now implemented recorded hearings in Bendigo, Frankston and Geelong as part of a scheduled rollout. The Tribunal is also working closely with the Courts Technology Group within the Department of Justice to trial a system whereby recordings are started and stopped electronically when the Member enters and leaves the hearing room. It is anticipated that the first hearing room will be operational by the end of October 2010.

**Metropolitan Waste Management Group**

186. I recommended the Metropolitan Waste Management Group (the group) develop policies and procedures to clarify eligibility and access for financial assurance funds it administers for landfills.
187. The group informed me that my recommendations had been implemented. Specifically, it has:

- liaised with Local Government, EPA and Clayton Regional Landfill User Group
- developed a discussion paper for the Metropolitan Waste Management Group Board’s (the Board) consideration. The Board resolved to dissolve the financial assurance fund and implement appropriate arrangements to address EPA and local government issues
- commenced meetings in May 2010 with landfill owners, participating councils and the EPA. The group is finalising sign off on the legal process required and will be corresponding to all parties in the near future to confirm and outline the process of redistribution and replacement of securities for the three landfills (Stevensons Road, Clayton Regional and Spring Valley) going forward.

**Ongoing issues**

188. Since tabling my report, extensive remediation works have been undertaken at the former landfill site, including the construction of an $11 million deep wall along the northern and western boundaries designed to contain the methane gas. Despite these works, it is concerning that methane gas alarms in homes within close proximity to the landfill have continued to be triggered. In May 2010, methane readings of 1 per cent were reported in a home on two separate occasions. The elderly owners of the property were offered the option to vacate their home and re-locate to rental accommodation for several months while the City of Casey and its consultants endeavoured to control the methane gas leak. As of late September 2010, the owners had not returned to their home. The City of Casey has advised that methane readings at the particular property do not indicate that gas from the landfill is actively migrating. It also said that remnant methane trapped beneath the house slab contributed to these recent readings and that this property is unusual in that monitoring results have shown low but recurring detections.

189. The City of Casey has foreshadowed increasing property rates by up to 11 per cent to fund the estimated $100 million required to remediate the landfill in the long-term.

190. The City of Casey has advised:

> The recommendations of the Ombudsman have been and are continuing to be addressed by Council.

> ...

> Most significantly, Council has worked diligently to restructure the ongoing management and monitoring of the Stevensons Road Closed Landfill to provide best value for the community.

191. I will continue to monitor the City of Casey’s implementation of my recommendations.
10. OWN MOTION INVESTIGATION INTO THE TENDERING AND CONTRACTING OF INFORMATION AND TECHNOLOGY SERVICES WITHIN VICTORIA POLICE (NOVEMBER 2009)

Background

192. In late 2008 and early 2009 I received several complaints regarding the management and conduct of Victoria Police’s Business & Information Technology Department (BITS).

193. As a result I commenced an investigation on Victoria Police’s tendering and contract management of information technology services.

194. BITS is responsible for the procurement and management of Victoria Police’s information technology systems and infrastructure which are critical in day-to-day policing activities. In 2008-09 BITS had an annual budget of $191 million.

195. My investigation identified a number of concerns, including:
   - a projected gap of $39 million between BITS funding and contract expenditure commitments
   - numerous instances where the financial delegations were breached by BITS management
   - multiple breaches of the Victorian Government Purchasing Board (VGPB) procurement guidelines
   - a culture of BITS management accepting offers of hospitality and entertainment from IT vendors
   - poor record-keeping practices including missing documentation regarding multi-million dollar contracts
   - a failure by Victoria Police to act upon a number of earlier investigations, audits and reviews in this area.

Recommendations

196. I made 30 recommendations to Victoria Police including the need to:
   - develop and implement a policy that prohibits adjustment to any contract over a specified monetary value without obtaining prior approval
   - establish a central major projects management facility responsible for the procurement and contract management responsibilities allocated to BITS, the Procurement Management Division and other areas of Victoria Police
   - review practices and procedures to ensure compliance with VGPB procurement policies in relation to the disclosure of major contracts in the Central Register of Major Contracts
   - review the terms of reference of the Corporate Management Review Division (or its replacement service) to ensure that the demarcation between ‘audit’ and ‘investigation’ is clearly understood and applied
• develop policy and procedure for staff in relation to the covert use of listening devices to record conversations, consistent with the provisions of the Surveillance Devices Act 1999
• commission an independent audit of expenditure committed to communication tower facilities over the past five years to determine if public monies have been improperly expended
• implement a review of file and record-keeping standards and practices to ensure they comply with government and archival requirements and best practice
• appoint a senior executive with the responsibility for managing BITS
• develop a policy that prohibits the involvement of contractors employed by, or through potential tenderers, in any formal procurement process.

197. Victoria Police accepted all 30 recommendations.

Implementation

198. Victoria Police advised me that:
• 23 recommendations (76 per cent) have been fully implemented. In relation to three recommendations that reviews be conducted, the subsequent reviews identified further improvements that are to be actioned by Victoria Police within the next 12 months.
• seven recommendations (24 per cent) were in the process of being implemented, of which four could be described as imminent. Only one of the remaining recommendations, the creation of a Central Major Projects Management Facility, was unlikely to be implemented in the next 12 months due to the requirement for significant funding and resources.

Ongoing issues

199. On 26 March 2010 Victoria Police announced that the replacement of the Law Enforcement Assistance Program (LEAP) database with the LINK system had been delayed by six months as the project has turned out to be ‘a more technically challenging and costly process than was envisioned’.

200. The tendering and procurement process for the LINK contract was not managed by BITS and the contract was awarded after the commencement of my investigation. Therefore, I am unable to comment on the circumstances that have led to its delayed implementation.

G E Brouwer
OMBUDSMAN
ATTACHMENT A

1 December 2009

Mr Richard Burn
Richard Burn & Associates
GPO Box 2577
Melbourne 3001

Dear Mr Burn

Police Investigation into Allegations by the Traffic Accident Commission and Others of Criminal Conduct by Professor Thomas Kossmann

I wish to advise that the investigation conducted by Victoria Police into allegations of fraudulent conduct on the part of Professor Thomas Kossmann has now concluded.

You may recall that central to various complaints against Professor Kossmann were allegations surrounding inappropriate billing practices. It was alleged these practices occurred between September 2001 and August 2007 while Professor Kossmann was employed as Head of Trauma at the Alfred Hospital.

There were also a number of other allegations against Professor Kossmann involving questionable surgical practices, banking arrangements, secondary employment and private business interests. However, these matters were not considered to be of a criminal nature and therefore were not investigated.

The Victorian Police Fraud Squad undertook a detailed examination of invoices and other documentation provided by the TAC. Relevant patient and financial records as well as charging codes, descriptors and the general guidelines contained in the Commonwealth Medical Benefits Schedule were examined.
Investigators also interviewed key personnel from a number of agencies to obtain background information and current billing practices within the public hospital system.

Professor Kossmann was formally interviewed by police investigators where he responded to the allegations and denied any wrongdoing.

Based on an assessment of the available material, it has been concluded there is insufficient evidence to support the proposition that Professor Kossmann's billing practices were either criminally dishonest or deceptive in nature.

As a result, I am of the view that the prospect of successfully prosecuting Professor Kossmann in the criminal courts would be extremely difficult taking into account the standard of proof required to obtain a conviction.

Therefore I wish to formally advise that the police will be taking no further action in relation to the matter.

Should you require further clarification, I invite you to contact [Redacted] at the Fraud Squad on telephone [Redacted]

Yours faithfully

[Signature]

John Potter
Detective Inspector
Fraud Squad
ATTACHMENT B

13 July 2010

Mr Gary Taylor
Clark Toop & Taylor
P.O Box 13144
Law Courts,
Victoria 8010

Dear Mr Taylor,

Re: Professor Thomas Kossmann (your ref)

Thank you for your fax dated 2 July 2010. In response to your two queries:

1. Our investigation has not established fraud or misconduct on your client’s behalf.

2. I do not consider it appropriate for us to comment on any conclusions of the Alfred Peer review.

As you know, we are awaiting your client’s response to the queries outlined in our previous correspondence. I look forward to resolving these queries as a priority with Professor Kossmann.

Yours sincerely,

Roger Box
Senior Manager,
Compliance Group
AGREEMENT

The Medical Practitioners Board of Victoria ("the Board") has conducted an investigation without notification into the professional conduct of Dr Thomas Kossmann. The Board considered the matters brought to its attention by the Alfred Hospital Peer Review Panel and the Ombudsman in his investigation. As a result of the Board’s investigation, these matters are resolved on the basis of the following agreement. In recognition that:

A. Dr Kossmann has specific registration and like all medical practitioners recognises that he is required to abide by the terms of his registration;

B. That since the investigation commenced, the Board has been provided with evidence that Dr Kossmann:

1. has undergone further training in pelvic and spinal surgery that has been independently reviewed by an orthopaedic surgeon at the request of the Royal Australasian College of Surgeons and that the training undertaken is considered reputable;

2. has undertaken education with an orthopaedic surgeon identified to the Board in respect of billing under the Medicare Benefits Schedule and the schemes used by compensable patients and that the orthopaedic surgeon advised the Board that he considered that Dr Kossmann has understood the appropriate and ethical use of item numbers in respect of orthopaedic surgery;

3. has completed a Mastering Professional Interactions workshop at The Cognitive Institute that was developed to provide doctors with insight and communication skills with colleagues;

the Board and Dr Kossmann have agreed pursuant to sections 59(2)(c) of the Health Professions Registration Act 2005 (Vic) that:

1. On the Board receiving this agreement signed by Dr Kossmann, the Board will release Dr Kossmann from the undertaking given on 10 August 2008.

2. Dr Kossmann agrees to an audit program for all pelvic and spinal patients for a period of two years from the date he resumes surgical practice after the signing of the agreement.

3. Dr Kossmann will have his performance routinely assessed by the regular peer review processes of each and every institution where he is working.

4. Two years from the date Dr Kossmann recommences surgical practice all reports relating to all the audits of pelvic and spinal patients will be reviewed by the Board to determine if Dr Kossmann has complied with the agreement. Dr Kossmann acknowledges that this agreement remains in force until revoked or amended by the Board.

Compliance:

5. That until released from this agreement Dr Kossmann will advise the Board’s compliance officer in writing of:
6. That Dr Kossmann will co-operate fully with audits that will involve two auditors approved by the Interim CEO of the Board or her successors.

7. That Dr Kossmann will provide both auditors by 31 March, 30 June, 30 September and 31 December with the following information tracked on an Excel spreadsheet and updated monthly in respect of each and every patient seen in respect of pelvic and/or spinal surgery in the period covered by this agreement:

- The full patient's name and age
- Symptoms reported
- The preoperative diagnosis
- The postoperative diagnosis
- The exact kind of operation performed
- The length of the patient's hospital stay
- The length of time the patient was in ICU
- Unexpected return to operation theatre
- Complications
- Severe intra-operative bleeding
- Infection
- Post-operative haematoma
- All unexpected neurological deficits
- All misplaced screws.

8. That Dr Kossmann will do all things necessary to facilitate the audit including the provision of any additional information, documentation or records in respect of any patient if requested to do so by either auditor.

9. That Dr Kossmann will do all that is necessary to facilitate the auditors each providing a report to the Board on or by the 28th day of April, July, October and January advising if the audit has identified any concerns.

10. That in the event that one and/or both auditors advise the Board that the information provided by Dr Kossmann identifies or may identify concerns, Dr Kossmann authorises the auditor(s) to communicate with the Board and/or provide to the Board any information that may assist the Board in its consideration of the concerns raised.

11. That Dr Kossmann will provide statutory declarations to the Board by 30 June and 31 December every year until he is released from this agreement verifying that he has routinely had his patients assessed by the regular peer review processes of each and every institution where he is undertaking surgical practice.

12. That Dr Kossmann authorises the Medical Director (or nominee) at every institution he is undertaking surgical practice during the period of this agreement to prepare a report to the Board every three months confirming that Dr Kossmann's cases have been routinely assessed in the regular peer review processes of the institution.
ATTACHMENT C – continued

13. That Dr Kossmann will do all that is necessary to facilitate the provision of the reports to the Board from the Medical Director(s) and/or nominee confirming that Dr Kossmann’s surgical cases have been routinely assessed in the regular peer review processes of the institution.

14. That Dr Kossmann authorises the Medical Director(s) and/or nominee to communicate with the Board and/or provide to the Board any information requested by the Board.

15. That Dr Kossmann will be responsible for all the costs associated with the audit and peer-review and the necessary reports to the Board.

Signed: ____________________________
   Dr Thomas Kossmann

Dated: 30/04/2010
ATTACHMENT D

MONASH University

Professor Adam Shoemaker
Deputy Vice-Chancellor & Vice-President (Education)

16th January 2009

Mr Thomas Kossmann

Dear Mr Kossmann,

I am writing to you in reference to your letter to [redacted] dated 16 December 2008.

In your letter you refer to an article in The Age newspaper dated Monday 15 December 2008 which refers to a Monash University Investigation in relation to allegations of academic fraud and research misconduct made against you.

I am able to confirm that Monash University conducted inquiries following a request from [redacted] on behalf of Bayside Health, emanating from the Peer Review Panel Report that Bayside Health instituted and which was completed in around March 2008.

I am able to confirm that those inquiries have been completed and the Deputy Vice-Chancellor (Research) has determined that the allegations of research misconduct should not be referred to a Preliminary Investigation Committee. The CEO of Bayside Health has been advised of this outcome.

In the absence of any new and material information the University does not intend to take any further action in relation to the allegations of research misconduct and academic fraud that were referred to it by Bayside Health.

Yours sincerely

[Signature]

Professor Adam Shoemaker
Acting Vice-Chancellor
15 December 2009

Professor Thomas Kossmann, FRAcS

Email

Dear Professor Kossmann

Assessment of Overseas Trained Surgeons (International Medical Graduates)

As you are aware, the College of Surgeons reviewed your clinical training, experience and recency of practice when you applied for Fellowship of the College of Surgeons under the College’s processes at that time (Article 21) in 2001.

This involved review against the College’s then applicable criteria of your Curriculum Vitae and interview by representatives of the College in the specialties of General Surgery, Orthopaedics and Neurosurgery, and the College then required oversight by your hospital of your practice when you commenced work at the Alfred Hospital as an Orthopaedic Surgeon specialising in Trauma.

The review at the Alfred Hospital, and then later investigation by the Ombudsman, has meant that the College undertook a review of your assessment, which review confirmed that your assessment in 2001 was in accordance with College policy. As you are aware as President of the College, I met with the Minister of Health of Victoria shortly after the release of the report in 2003 and confirmed to him that the College was satisfied with its review of the College processes, and its consideration of the material submitted to the assessment process and its outcome, in your case.

Yours sincerely

[Signature]

Professor Ian Gough
President

Cc: Dr David Hilts, Chief Executive Officer
    Mr Michael Gorton AM, College Solicitor
Dear Prof. Kossmann,

Completion of Audit
For your information

We have completed our recent Income Tax audit of your tax return for the tax periods 1 July 2004 to 30 June 2007. Thank you for your cooperation during this audit.

We do not propose to take any further action. We accept the information provided substantiates the:
- income declared
- deductions claimed.

We have noted that you have under claimed interest expense by $926.00 in 2007. If you wish to claim the correct amount of interest you should put in a request to amend your tax return within the prescribed time limit.

Your rights and obligations
The enclosed Taxpayers' Charter Explanatory Booklet - If you're not satisfied, explains what you can do if you believe your legal rights or our service and other standards have not been met.

Records you need to keep
It is important you keep comprehensive tax records. These will help you complete your tax return accurately, and assist you if you are selected for review or audit in the future. You need to keep your tax records for five years after the records were prepared or obtained, or five years after the completion of the transactions they relate to, whichever comes later.

More information
If you need help with your tax affairs in the future, you can contact the Tax Office by:
- phoning our infoline on 13 28 66
- visiting our website at www.ato.gov.au
- writing to us at PO Box 3575 ALBURY NSW 2640
If you have any questions, please phone [Redacted] on [Redacted] between 8.00am and 5.00pm, Monday to Friday.

Yours sincerely

Erin Holland
Deputy Commissioner of Taxation
Private & Confidential

Perry Maddocks Trollope
Lawyers
PO Box 21083
LITTLE LONSDALE STREET VIC 8011

Dear Sirs,

Section 47 Investigation
Your Client: Dr T Kossmann

I am writing to confirm that the Board seeks to settle this matter by agreement between the Board and Dr Kossmann pursuant to section 59(2)(c) of the Health Professions Registration Act 2006 (the Act).

If the agreement is acceptable to Dr Kossmann and he signs the enclosed written agreement, the matter would then be settled.

Please note that all terms of the agreement must be complied with and if any term is not adhered to, that in itself may form the subject matter of a new investigation as breach of an agreement with the Board is unprofessional conduct under section 3(1) of the Act.

If you wish to discuss this matter or have any questions, please do not hesitate to contact [redacted] Investigating Officer.

Yours sincerely,

[Signature]
Kath Kelsey
Manager
Professional Standards Department

End Agreement

L. 16, 189 Lonsdale St
Melbourne VIC 3000
Facsimile: 03 8655 6620
www.ombudsman.vic.gov.au

attachment d   61
OMBUDSMAN’S REPORTS 2004-10

2010

Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct October 2010

Whistleblowers Protection Act 2001 Investigation into an allegation of improper conduct within RMIT’s School of Engineering (TAFE) – Aerospace July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments June 2010

Own motion investigation into Child Protection – out of home care May 2010

Report of an investigation into Local Government Victoria’s response to the Inspectors of Municipal Administration’s report on the City of Ballarat April 2010

Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey March 2010

Ombudsman’s recommendations – Report on their implementation February 2010

2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre December 2009

Own motion investigation into the Department of Human Services – Child Protection Program November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police November 2009

Brookland Greens Estate – Investigation into methane gas leaks October 2009

A report of investigations into the City of Port Phillip August 2009

An investigation into the Transport Accident Commission’s and the Victorian WorkCover Authority’s administrative processes for medical practitioner billing July 2009

Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council June 2009

Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council May 2009

Investigation into corporate governance at Moorabool Shire Council April 2009

Crime statistics and police numbers March 2009

2008

Whistleblowers Protection Act 2001 Report of an investigation into issues at Bayside Health October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services August 2008

Investigation into contraband entering a prison and related issues June 2008

Conflict of interest in local government March 2008

Conflict of interest in the public sector March 2008

2007

Investigation into VicRoads’ driver licensing arrangements December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre November 2007

Investigation into the Office of Housing’s tender process for the cleaning and gardening maintenance contract – CNG 2007 October 2007

Investigation into a disclosure about WorkSafe’s and Victoria Police’s handling of a bullying and harassment complaint April 2007
Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong
*February 2007*

**2006**

- Conditions for persons in custody
  *July 2006*
- Review of the *Freedom of Information Act 1982*
  *June 2006*
- Investigation into parking infringement notices issued by Melbourne City Council
  *April 2006*
- Improving responses to allegations involving sexual assault
  *March 2006*

**2005**

- Investigation into the handling, storage and transfer of prisoner property in Victorian prisons
  *December 2005*
- *Whistleblowers Protection Act 2001* Ombudsman’s guidelines
  *October 2005*
- Own motion investigation into VicRoads registration practices
  *June 2005*
- Complaint handling guide for the Victorian Public Sector 2005
  *May 2005*
- Review of the *Freedom of Information Act 1982*
  *May 2005*
- Review of complaint handling in Victorian universities
  *May 2005*
- Investigation into the conduct of council officers in the administration of the Shire of Melton
  *March 2005*
- Discussion paper on improving responses to sexual abuse allegations
  *February 2005*

**2004**

- Essendon Rental Housing Co-operative (ERHC)
  *December 2004*
- Complaint about the Medical Practitioners Board of Victoria
  *December 2004*
- Ceja task force drug related corruption – second interim report of Ombudsman Victoria
  *June 2004*