

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

Ordered to be printed
Victorian government printer
Session 2006-10
P.P. No. 294

This page has been intentionally left blank.

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 Parliament my report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat.



G E Brouwer

OMBUDSMAN

14 April 2010

CONTENTS

EXECUTIVE SUMMARY	6
BACKGROUND	8
Appointment of Inspectors of Municipal Administration	8
OMBUDSMAN INVESTIGATION	11
Local Government Victoria	11
The inspectors' investigation	11
Natural justice	12
Local Government Victoria's actions	13
Other issues	14
Jurisdictional issues	15
CONCLUSIONS	17
RECOMMENDATIONS	19

EXECUTIVE SUMMARY

1. On 9 October 2008, a report titled *Investigation into Ballarat City Council* was tabled in Parliament by the Hon. Richard Wynne MP, Minister for Local Government. The report dealt with a number of allegations which were raised by a former City of Ballarat Councillor, Mr Wayne Rigg and investigated by Inspectors of Municipal Administration.
2. The investigation was conducted by two inspectors, Mr David Clements and Mr Christopher Mangioni, employees of PriceWaterhouseCoopers. The inspectors were appointed following an expression of interest process that led to Local Government Victoria contracting PriceWaterhouseCoopers to conduct the investigation. Local Government Victoria sought expressions of interest from firms with relevant expertise because it considered that it did not have the resources or the in-house forensic skills necessary at the time to undertake the investigation.
3. While both Mr Clements and Mr Mangioni were appointed as inspectors, Mr Clements was the senior of the two and took the lead in PriceWaterhouseCoopers' dealings with Local Government Victoria.
4. On 22 June 2009, I received a complaint from Mr Ted Baillieu MP, Leader of the Opposition, in which he alleged the investigation conducted by the inspectors was inadequate. Mr Baillieu raised concerns that the report stated Mr Richard Hancock, the former Chief Executive Officer, City of Ballarat, had not been interviewed as the inspectors had been informed that Mr Hancock was residing and working in the Middle East. Mr Baillieu also complained that the inspectors did not interview Mr Mike Chiodo, a consultant who had been engaged by the City of Ballarat when Mr Hancock was Chief Executive Officer.
5. Following the tabling of the report in Parliament, the media reported that Mr Hancock was in fact a senior public servant with the Northern Territory Government. The media reports claimed Mr Hancock had not been living or working in the Middle East as stated in the inspectors' report, and that Mr Chiodo was working in Mr Hancock's department in the Northern Territory.
6. Mr Baillieu complained that this error may indicate that the investigation conducted by the inspectors was inadequate. He asked me to:

... review the investigation of the Ballarat City Council and ensure that there is a full public accounting of any misconduct or failings of governance that may have occurred in the Council, and the role of any elected or appointed officials of the Council.
7. After making preliminary enquiries, I decided to conduct an investigation into the complaint pursuant to section 14 of the *Ombudsman Act 1973*. The *Ombudsman Act* does not provide me with the jurisdiction to investigate the administrative actions taken by an Inspector of Municipal Administration and as a result my investigation focused on the actions taken by Local Government Victoria (which is part of the Department of Planning and Community Development) in its handling of the matter.
8. This investigation has highlighted a gap in the overall integrity coverage in Victoria which leaves Inspectors of Municipal Administration, who exercise significant statutory powers, exempt from independent scrutiny except where the *Whistleblowers Protection Act 2001* would apply. The recent establishment of the Local Government Investigations and Compliance Inspectorate has reinforced my view that there needs to be changes to the *Ombudsman Act 1973* to address this gap.

9. My investigators located and interviewed Mr Hancock and Mr Chiodo during my investigation.
10. I note that the inspectors' report led to the successful prosecution of two former councillors, Mr Gary Anderson and Mr David Vendy, for breaching sections of the *Local Government Act 1989*. They were both fined and placed on good behaviour bonds.
11. The report also included adverse comments regarding Mr Hancock, one of which concerned the employment of, and payments to, Mr Chiodo. These comments could also be regarded as adverse to Mr Chiodo. It is also apparent, as the report was quite clear on this issue, that neither Mr Hancock nor Mr Chiodo had been interviewed regarding the report's findings nor were they given an opportunity to respond to these comments.
12. My investigation has identified concerns with the process by which reports of Inspectors of Municipal Administration are finalised and tabled in Parliament.
13. Individuals who are subject to adverse comments in such reports should have an opportunity to respond to any criticisms, and have that response taken into account before a report is finalised and, more importantly, tabled before Parliament. The failure to give Mr Hancock and Mr Chiodo an opportunity to respond is a failure to provide them with natural justice.
14. When a Minister tables a report in Parliament, the Minister is responsible to the Parliament and the community for any effect flowing from that tabling. Accordingly, the task of departments before they advise a Minister to table a report is to examine the report. They do so to determine, among other things, the likely effect that the tabling will have, particularly on any persons named in the report, and to advise the Minister of the possible consequences.
15. In this case it was clear that neither Mr Hancock nor Mr Chiodo had been provided with the opportunity to respond to the adverse comments in the report. Yet Local Government Victoria did not address that issue in its advice to the Minister or advise him of the possible consequences to Mr Hancock and Mr Chiodo of tabling the report.

BACKGROUND

16. Local Government Victoria's role is to work co-operatively with Victoria's 79 local councils to ensure that Victorians enjoy responsive and accountable local government services. Some of Local Government Victoria's activities and key responsibilities include:
- developing a strong partnership between the State Government and local councils
 - supporting and encouraging best value and continuous improvements in local government service delivery, organisational performance and governance
 - encouraging an integrated whole of government approach to the local government sector and advocating within the State Government on local government issues
 - providing legislative advice to the Minister for Local Government to ensure that local government concerns are addressed by legislation and regulation, where appropriate
 - providing support and advice in relation to the electoral provisions of the Local Government Act
 - facilitating and supporting good governance in local government
 - providing effective and timely support to the Victoria Grants Commission
 - developing the public library system
 - managing the funding program for public libraries.¹
17. By letter dated 29 February 2008 Mr Wayne Rigg, a former City of Ballarat councillor, wrote to the Hon. Richard Wynne MP, Minister for Local Government, making a number of allegations against the City of Ballarat and two of its councillors, Mr Gary Anderson and Mr David Vendy.

Appointment of Inspectors of Municipal Administration

18. My investigators interviewed staff from Local Government Victoria and were advised that Local Government Victoria received quotations from three companies to investigate the City of Ballarat. PriceWaterhouseCoopers submitted the winning quote.
19. Following this decision the inspectors were appointed. The terms of reference for the investigation were:
- To investigate and advise in relation to allegations by Mr Wayne Rigg relating to governance and processes of the City of Ballarat, which may constitute possible breaches of the *Local Government Act 1989*.
- To advise on any other matters arising during the course of the investigation.
- To report on the above.²
20. The Executive Director of Local Government Victoria signed the terms of reference on behalf of Local Government Victoria.

1 See <www.dvc.vic.gov.au>.

2 Inspector of Municipal Administration, *Investigation into Ballarat City Council*, page 4.

21. Mr David Clements and Mr Christopher Mangioni were appointed as inspectors under section 233A of the Local Government Act by the Hon. Richard Wynne MP, Minister for Local Government. Mr Clements was the senior of the two.
22. The report subsequently prepared by Mr Clements identified that the allegations made by Mr Rigg could be divided into the following categories:
 - the Civic Hall redevelopment tender process
 - building permits obtained by councillors and their associates
 - directorships of companies owned by councillors
 - the Chief Executive Officer recruitment process
 - Councillor Jones' business interests
 - councillor involvement in funding a film called 'The Writer'.³
23. Between 12 May and late August 2008, the inspectors conducted an investigation into the allegations made by former Councillor Rigg. By letter dated 4 September 2008, the inspectors advised the Minister for Local Government of the outcome of their investigation. This culminated in the tabling in Parliament of the report *Investigation into Ballarat City Council* (No. 144 Session 2006-08) on 9 October 2008.
24. The inspectors made a number of findings relating to former Councillor Rigg's allegations and reached a view that Councillor Gary Anderson and Councillor David Vendy had breached various sections of the Local Government Act. Subsequently both were prosecuted, fined and placed on a good behaviour bond.
25. In addition to the findings against the councillors, the inspectors reported other findings that were not the subject of the allegations by Mr Rigg. These included:

In the Inspectors' view, there is evidence Mr Richard Hancock, ("Mr Hancock"), the previous Chief Executive Officer ("CEO"), and the previous General Manager Organisational Development of Council appointed consultants who were paid in excess of \$100,000 in fees without advertising the roles. If this is the case, this may constitute a breach of *section 186(1) Local Government Act 1989*.

The Inspectors note that Mr Hancock has not been examined in relation to this matter. No penalty provisions apply to the contravention of this section, but the consultants are not included in the list of non-compliant Section 186(1) contracts required under Regulation 11(q) of Local Government (General) Regulations 2004.⁴

³ Inspector of Municipal Administration, *Investigation into Ballarat City Council*, page 6.

⁴ *Ibid*, page 2.

26. In addition to the findings in the report, the inspectors identified a number of areas that the City of Ballarat may wish to investigate. These were identified as:
- low staff morale
 - transparency in recruitment processes
 - transparency in tendering and contractual processes
 - transparency in termination and redundancy processes
 - councillor involvement with council staff below senior management.⁵
27. Following the tabling of *Investigation into Ballarat City Council* there was considerable media attention both in Ballarat and in the Northern Territory. In this regard Mr Hancock, after ceasing employment with the City of Ballarat, was appointed as the Chief Executive Officer, Department of Planning and Infrastructure, Northern Territory Government.
28. The inspectors' report also identified Mr Michael Chiodo as a contractor who was remunerated in excess of \$100,000 by the City of Ballarat. The report noted that details of Mr Chiodo's engagement were not recorded in the Register of Senior Officers' Remuneration. Mr Chiodo also now holds an executive position with the Department of Planning and Infrastructure, Northern Territory Government.

⁵ Inspector of Municipal Administration, *Investigation into Ballarat City Council*, page 3.

OMBUDSMAN INVESTIGATION

29. My investigation involved:
- examining Local Government Victoria documentation
 - interviewing key Local Government Victoria witnesses
 - interviewing Mr Clements, Inspector of Municipal Administration
 - interviewing Mr Hancock and Mr Chiodo, two persons named in the report prepared by the Inspectors of Municipal Administration.

Local Government Victoria

30. Local Government Victoria appointed officer A and officer B to manage the contract with PriceWaterhouseCoopers.
31. At interview, officer A and officer B stated that they had no involvement in the conduct of the investigation and their contact with the inspectors related primarily to investigation costs and timelines.
32. Officer A stated in response to my draft report:
- ... my role was to develop the terms of reference for the investigation, commission the investigation and liaise with the appointed inspectors in regard to their carrying out their contractual obligations. The actual conduct of the investigation itself was, of course, a matter for the inspectors to determine, in accordance with the terms of reference.
33. My investigators questioned the Executive Director as to whether Local Government Victoria had directed or provided investigation advice to the inspectors. He advised that no direction or advice had been provided and stated it would have been inappropriate had that occurred.

The inspectors' investigation

34. The inspectors' investigation itself was not examined as I do not have jurisdiction to investigate the administrative actions taken by the Inspector of Municipal Administration. My investigation focused on the actions taken by Local Government Victoria as a result of this investigation. Mr Clements was interviewed to establish the actions taken by Local Government Victoria in relation to the investigation.
35. Mr Clements confirmed with my investigators the methodology relating to his appointment. During his interview he stated that he undertook the investigation in line with the terms of reference and confirmed that Local Government Victoria did not influence or direct the investigation. Mr Clements stated that advice was provided by Local Government Victoria on how the report should be structured but it did not advise on matters of content.
36. Mr Clements further stated that during the preparation stage of the report, copies were forwarded to Local Government Victoria and the General Counsel, PriceWaterhouseCoopers, and feedback was received from the former during that stage.

37. In regard to the investigation Mr Clements stated that he was of the view that Local Government Victoria had appointed him to conduct the investigation and left him to undertake that role independently.
38. In relation to Mr Hancock not being interviewed during the investigation, Mr Clements stated the terms of reference were to investigate the complaint of Mr Rigg and report on any other issues. In Mr Clements' view, the issues concerning Mr Hancock were a side issue as he appeared not to have committed any offence for which there was a penalty. Mr Clements stated it was irrelevant to him whether Mr Hancock was overseas or in the Northern Territory as he was, in any event, outside of Victoria.
39. In relation to his dealings with Mr Hancock, on 15 October 2008 Mr Clements sent an email to officer A that included the following comment:

Yes I have been following the Hancock matter. When these issues first arose I made initial enquiries with the NT govt. – Chief Minister's Department, as I had initially been informed that he had moved to a role in that Department. I got a 'no one of that name works here' response. Subsequently we interviewed two separate people who independently both advised us that he was in Dubai, having left the NT government. Nothing else came to light after that to indicate that he was actually still in NT. I'm not sure how that story would have circulated, but as the people who made the comment wouldn't have had any motive to mislead us we believed them and didn't continue searching for him in NT. That's about the long and short of it. Hindsight is a wonderful thing!

40. Mr Clements said he had not asked Local Government Victoria to make any enquiries to locate Mr Hancock.

Natural justice

41. Mr Clements was asked whether there had been any discussion with Local Government Victoria concerning providing natural justice to persons named in the report, so as to allow them to be given an opportunity to be heard prior to the finalisation and tabling of a public report. Mr Clements advised that, despite the report being provided to General Counsel, PriceWaterhouseCoopers and Local Government Victoria, he received no advice or feedback on that issue.
42. One of the key issues identified throughout my investigation, and which was reported by the media, was that Mr Hancock and Mr Chiodo had not been interviewed. The report states that Mr Hancock was not interviewed as the inspectors had been informed that Mr Hancock was working and residing in the Middle East, information that turned out to be incorrect. Mr Hancock told my investigators:

What an unbelievable statement to make by the inspectors when a simple google search would have found me.

43. It is evident from reading the report prepared by the inspectors, and from the interview with Mr Clements, that he was not going to seek to interview Mr Hancock once he was advised that he was located in the Middle East.

44. However the inspectors' report included a number of findings that Mr Hancock may have breached sections of the Local Government Act. The report also generally reflected on Mr Hancock's management of the City of Ballarat.
45. When interviewed on 14 September 2009 Mr Hancock said that he became aware that he had been mentioned in a report tabled in Parliament when he received a telephone call from a senior executive in the Northern Territory Government asking whether he was aware that he had been named in a report tabled in Parliament. Mr Hancock was overseas at the time and took the call at a Canadian airport.
46. Mr Hancock stated that if the inspectors had spoken to him, the recommendations may not have changed but the inspectors may have changed some of the facts. Mr Hancock stated that:

I find it just extraordinary that I had no opportunity to put forward [into the investigation] any form of information.

47. Mr Chiodo also expressed concern to my investigators that he had been named in the report without being afforded an opportunity to respond to the issues raised.
48. Mr Clements stated in response to my draft report:

Our report made no adverse comments relating to Mr Chiodo. He was mentioned as one of three consultants who received payments in excess of \$100,000 per year and who came within the definition of a senior officer under the Local Government Act. He was never more than a potential witness.

Mr Mangioni had no comment to make on the relevant sections of my draft report.

Local Government Victoria's actions

49. There is no statutory obligation to table in Parliament a report by Inspectors of Municipal Administration, and I have been advised by the department that the majority of such reports are not tabled.
50. The tabling of a report requires a decision by the Minister to take that action and for that purpose departmental advice is normally sought, as it was in this instance from Local Government Victoria. The Minister is responsible to the Parliament and the people for his actions and the consequences of his actions, including those arising from the tabling of a report. The Minister, when exercising this power, is entitled to the best advice from his department encompassing all matters relevant to the responsibilities of the Minister. In this instance, I do not believe that Local Government Victoria's advice to the Minister satisfied that test.
51. The Executive Director in his response to my draft report stated:

The advice provided to the Minister for Local Government in this instance was consistent with the long established practice for tabling of reports of Inspector's [sic] of Municipal Administration.
52. The advice provided by Local Government Victoria in this instance concentrated on prosecution issues. My investigation identified that the Minister was not provided with advice regarding the consequences of failing to interview Mr Hancock. Nor was the Minister advised that some of the substantial findings in the report, which tabling would make public, were against individuals who had not had the opportunity to respond to the findings.

53. The Executive Director advised that prior to the tabling of the report some discussions were held between the Victorian Government Solicitor's Office and Local Government Victoria regarding potential prosecution action. He explained that this is a normal practice.
54. The Executive Director said he was aware that, prior to the tabling of the report, Mr Hancock had not been interviewed, as this was referred to by the inspectors in their report. However, it was Local Government Victoria's view that had Mr Hancock been interviewed it would have been of interest, but 'it was not critical'. He explained that the reason for the interest was that a number of matters identified in the report happened under Mr Hancock's administration as Chief Executive Officer.
55. The Executive Director said that the performance of the Chief Executive Officer is the responsibility of council. He explained that Chief Executive Officers are appointed on performance based contracts in accordance with the Local Government Act and councils are responsible for their performance management. He therefore considered that had Mr Hancock remained employed by the council, it would have been for the council to deal with issues relating to his conduct. He said that these were not matters for Local Government Victoria to address.
56. Following the tabling of the report, the Executive Director wrote to Mr Hancock in Darwin, providing him with a copy of the report and stating that he 'Welcome[d] the opportunity to discuss matters referring to you'. Mr Hancock responded positively to the offer to discuss the report; however, that discussion never occurred. Mr Hancock told my investigators that he discussed the possibility of being interviewed with Local Government Victoria but felt there was a mutual decision made at the time not to proceed.
57. However the Executive Director stated in response to my draft report:

Mr Hancock advised me that he would be coming to Melbourne over the Christmas period and we agreed that he would contact me at the time to arrange to meet with me to discuss the report. Mr Hancock subsequently failed to contact me to arrange the meeting. There was no 'mutual decision not to proceed'.

Other issues

58. In addition to findings regarding former Councillors Anderson and Vendy, the Inspectors of Municipal Administration identified areas which the City of Ballarat may wish to investigate separately. Those areas were:
 - low staff morale
 - transparency in recruitment processes
 - transparency in tendering and contractual processes
 - transparency in termination and redundancy processes
 - councillor involvement with council staff below senior management.⁶
59. My investigators examined documentary evidence regarding Local Government Victoria's efforts between October 2008 and August 2009 to follow up on progress made by the City of Ballarat on the issues identified by the inspectors. My investigators were advised by the Executive Director that he held some concerns as to the speed of progress being made by the City of Ballarat in addressing the issues identified in the report.

⁶ Inspector of Municipal Administration, *Investigation into Ballarat City Council*, page 3.

60. In response to my draft report he stated:

Local Government Victoria has subsequently corresponded with the City of Ballarat on a number of occasions seeking copies of documents and advice on progress in a number of detailed areas. The most recent letter was sent to the City of Ballarat on 29 January 2010 ... and details information still outstanding.

61. The Executive Director said that Local Government Victoria's follow up regarding these issues is consistent with its legislative mandate to ensure the City of Ballarat has improved its practices.
62. Having examined Local Government Victoria's file and interviewed witnesses, I am satisfied that appropriate steps are being taken by Local Government Victoria to address outstanding matters with the City of Ballarat.

Jurisdictional issues

63. Section 13 of the Ombudsman Act empowers me to investigate administrative actions taken in government departments, by public statutory bodies or by any member of staff of a municipal council. I do not have jurisdiction to investigate a decision of a Minister.
64. A government department includes a department within the meaning of the *Public Administration Act 2004* and an office specified in section 16(1) of that Act.
65. A public statutory body is a body of persons, whether corporate or unincorporate, constituted or established under an Act for a public purpose, in respect of which the Governor in Council or a Minister has a right to appoint all or some of its members.
66. I note that appointments to the office of Inspector of Municipal Administration are ministerial appointments made pursuant to section 223A of the Local Government Act. Section 223A(3) of the Local Government Act specifically provides that an inspector is not, in respect of his or her office as an inspector, subject to the Public Administration Act. Section 223A(3) applies regardless of whether the inspector is a public servant when they are appointed or not.
67. An inspector's administrative actions cannot therefore be considered to be actions taken in a government department. As inspectors are appointed singularly, they also do not meet the definition of a public statutory body as an inspector is not 'a body of persons'.
68. As such, I consider that I do not have jurisdiction under the Ombudsman Act to enquire into or investigate the actions taken by an Inspector of Municipal Administration in respect of his or her office as an inspector.
69. However, these officers would be subject to my jurisdiction under the provisions of the Whistleblowers Protection Act as they meet the definition of 'public officer' in section 3, paragraph (j) of that Act: 'the holder of an office established by or under an Act to which the right to appoint is vested in the Governor in Council or a Minister'.
70. On 12 August 2009, the Premier announced the formation of the Local Government Investigations and Compliance Inspectorate, which is an administrative office of the Department of Planning and Community Development.

71. Notwithstanding that future investigations by Inspectors of Municipal Administration will be conducted by employees of an administrative office, I am concerned that my jurisdiction under the provisions of the Ombudsman Act will not extend to cover the administrative actions of these employees when they are appointed as Inspectors of Municipal Administration under the Local Government Act.
72. During the course of my investigation Mr Clements was co-operative. However, jurisdictional issues delayed the conclusion of my investigation as PriceWaterhouseCoopers raised issues with my office regarding the purpose of the interview with Mr Clements and my role in respect to his functions as an inspector.

CONCLUSIONS

73. My investigation confirmed that Local Government Victoria had a support role in respect to the Inspectors of Municipal Administration who conducted the investigation into the City of Ballarat.
74. In my opinion the actions taken by Local Government Victoria in providing support to the inspectors prior to and during the investigation were appropriate. The inspectors were left to undertake their statutory functions as they saw fit.
75. I have also concluded that Local Government Victoria actively monitored the City of Ballarat's response to the issues identified in the inspectors' report to ensure the City of Ballarat improved its practices and processes. I note that Local Government Victoria is continuing to monitor the follow up of outstanding issues.
76. However, I am concerned that Local Government Victoria did not appear to appreciate the consequences of Mr Hancock and Mr Chiodo not being interviewed when it advised the Hon. Richard Wynne, Minister for Local Government to table the report. The advice provided to the Minister mentioned that the inspectors were not able to interview Mr Hancock. It did not draw to his attention the issue of natural justice and the risk that Mr Hancock's reputation may have been affected by the comments in the report without Mr Hancock having had the opportunity to defend himself.
77. Well established principles of administrative law include the obligation for decision makers, including investigators, to provide natural justice to persons who may be affected by the conclusions or recommendations in a decision or report, particularly those whose reputation may be adversely affected by a report. Providing natural justice includes the obligation to advise persons adversely referred to in reports of the material that is prejudicial against them and to give them an opportunity to respond.
78. I note that there is no obligation to inform individuals of the substance of any allegations or other matters in issue if they do not directly affect an individual's rights or interests. For example, the subject of a complaint does not need to be notified when investigators collect information for a preliminary report to management to determine whether action can be taken. However, once findings and/or recommendations are made about a matter, agencies and departments must observe the rules of natural justice and allow the person adversely commented upon to make submissions about the proposed decision and/or sanction.
79. While it is not for me to comment on or criticise the procedures adopted by Mr Clements and Mr Mangioni, as they are not within my jurisdiction, it is clear that the investigators did not provide Mr Hancock, and possibly Mr Chiodo, with natural justice as neither were interviewed.
80. I note that the inspectors identified in the report (on three occasions) that Mr Hancock had not been interviewed.⁷
81. In my view, the Local Government Victoria officers should have recognised that the inspectors were required to provide Mr Hancock, and possibly Mr Chiodo, with natural justice and drawn this issue to the Minister's attention.

⁷ Inspector of Municipal Administration, *Investigation into Ballarat City Council*, pages 2, 59 and 61.

82. Local Government Victoria could have taken a number of steps once it recognised that natural justice had not been provided and that tabling the report in its original form could unnecessarily damage the reputation of the persons adversely named in the report. It could have:
- requested the inspectors undertake further investigations so as to provide natural justice to Mr Hancock and Mr Chiodo; or
 - requested the inspectors provide an altered report omitting the adverse comments which were not supported by natural justice; or
 - advised the Minister to table the report, but with the offending passages redacted; or merely
 - alerted the Minister to the issue.
83. Instead, Local Government Victoria advised the Minister to table the report in the form provided by the inspectors.
84. The failure by Local Government Victoria staff to brief the Minister on these issues seems to indicate either a lack of staff awareness of the requirements of natural justice and/or the consequences of, and Ministerial responsibility for, tabling a report in Parliament. In either case, I consider that additional training should be provided to relevant departmental staff regarding those two issues so as to prevent a recurrence of this incident.
85. I note that local government investigations are now the responsibility of the Local Government Investigations and Compliance Inspectorate.
86. My investigation has also highlighted a gap in my jurisdiction. My inability to investigate the administrative actions of Inspectors of Municipal Administration leaves such inspectors, who are exercising significant statutory powers, unaccountable and exempt from independent scrutiny.
87. While I received the co-operation of Mr Clements in this matter, this issue had a material effect as my investigation took longer to complete than desirable due to issues about my jurisdiction. The investigation was also complicated by Mr Clements being based in Perth and the need to interview him there.

RECOMMENDATIONS

I recommend that:

Recommendation 1

The Minister for Local Government require that Inspectors of Municipal Administration provide persons named adversely in reports the opportunity to respond to any criticism before the report is completed.

Department of Planning and Community Development response

'I refer to the recent establishment of the Local Government Investigations and Compliance Inspectorate as an Administrative Office of the DPCD, and advise that since its inception, the Inspectorate's investigations have been guided by the *Inspector of Municipal Investigations – Investigations Manual*. Section 8 of the *Investigation Manual* obliges Inspectors of Municipal Administration to provide persons named adversely in a report with an opportunity to respond to any criticism before the report is completed.'

Recommendation 2

The Secretary of the Department of Planning and Community Development introduce training for persons in the department and associated administrative offices who are involved in advising Ministers regarding the tabling of reports of the requirements of natural justice.

Department of Planning and Community Development response

Agreed.

Recommendation 3

The Premier and the Minister for Local Government consider legislative amendments to provide the Ombudsman with jurisdiction to investigate the administrative actions of Inspectors of Municipal Administration under the Ombudsman Act.

G E Brouwer

OMBUDSMAN

OMBUDSMAN'S REPORTS 2004-10

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*
Discussion paper
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