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WALLMANS
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District Council of Yankalilla Regulatory Audit

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November 2010

STATUTORY COMPLIANCE ACTION LIST

Section		Statutory Compliance Recommendation
Dog and Cat Management Act 1995		
Section 26A	Plans of Management relating to Dogs and Cats	<ul style="list-style-type: none"> Review Council's Management Plan in relation to dogs and cats before June 2012 Ensure the revised plan is forwarded to the Board for approval.
Section 30	General Powers of Dog Management Officers	<ul style="list-style-type: none"> Ensure expiation Notices are only issued where there is sufficient evidence. Review Council's standard expiation Notice to ensure that it includes the specific due date for payment.
Section 50 & 51	Control Orders and Grounds on which Orders may be Made	<ul style="list-style-type: none"> Ensure that only persons with delegated authority are responsible for issuing control orders.
Section 68	Cat Management Officers Appointed by Board or a Council	<ul style="list-style-type: none"> Ensure the appointment of any Cat Management Officer is made in writing.
Fire and Emergency Services Act 2005		
Section 81	An Authorised Officer may Issue a Permit to Light and Maintain a fire	<ul style="list-style-type: none"> Obtain approval from the CFS to authorise Council's FPO for the purposes of this section.
Section 105F	Duty to Prevent Fire on Private Land	<ul style="list-style-type: none"> Ensure reasonable notice is given to any land owner or occupier before entering onto the land for the purposes of effecting enforcement action. Amend Council's template section 105F Notice to ensure it complies with the requirements of Schedule 12.
Food Act 2001		
Section 29	Nature of Offences	<ul style="list-style-type: none"> Ensure expiation Notices include <u>all</u> the information required under Schedule 1 of



Section		Statutory Compliance Recommendation
		the Expiation of Offences Regulations.
Section 49	Request for Re-Inspection	<ul style="list-style-type: none">• Ensure that where any request to reinspect a food premise is received following a prohibition order having been issued, that it is inspected within 2 business days from the date of request.
Road Traffic Act 2001		
Section 17	Installation of Traffic Control Devices	<ul style="list-style-type: none">• Ensure that when staff exercise powers under the Minister's Notice that the conditions contained therein are observed.
Section 33	Road Closing and Exemptions for Certain Events	<ul style="list-style-type: none">• Ensure that when exercising this power, the CEO observes strict compliance with the conditions contained in clause F of the Minister's Notice.
Public and Environmental Health Act 1987		
Section 15	Prevention of Insanity Conditions on Premises	<ul style="list-style-type: none">• Ensure Council has sufficient evidence before a Notice is issued.

RECOMMENDED BEST PRACTICE ACTION LIST

Note: While it is not a statutory requirement to action these matters they are nevertheless recommended as examples of best management practice.

Section		Best Practice Recommendation
Dog and Cat Management Act 1995		
Section 26	Council Responsibility for management of Dogs	<ul style="list-style-type: none"> Ensure any arrangement Council enters into with a private pound facility is managed under a contract agreement that has been established in accordance with the Council's Contracts & Tenders Policy. Undertake a review of Council's fees and charges in early 2011.
Section 27	Appointment of Dog Management Officers	<ul style="list-style-type: none"> Ensure Dog Management Officers receive training in relation to investigations and enforcement procedures.
Section 30	General Powers of Dog Management Officers	<ul style="list-style-type: none"> Ensure that when Dog Management Officers attend a site inspection they take a note book with them to record details of <u>all</u> call outs and attendances. Conduct regular reviews of the note taking, record keeping and evidence gathering practices of Dog Management Officer: Maintain a register of all expiation Notices issued including: <ul style="list-style-type: none"> the name and address of the recipient of the Notice; the date that the Notice was issued; and the details of the relevant offence.
Section 48	Power to protect persons or property from dogs	<ul style="list-style-type: none"> Develop and implement a policy in relation to the destruction of dogs.
Section 50 & 51	Control Orders and Grounds on which Orders may be Made	<ul style="list-style-type: none"> Maintain a register of all control orders issued for dogs within Council's area. Review Council's Control Orders on an annual basis to ensure that the relevant dog owner continues to comply with the requirements of the Notice. Have regard when issuing control orders to the incident severity scale endorsed by the



Section		Best Practice Recommendation
		Dog and Cat Management Board.
Section 52	Procedure for making and Revoking Orders	<ul style="list-style-type: none">• Develop a policy document which sets out the considerations that Council will take into account in determining to issue a control order.• Personally serve orders on recipients.
Section 53	Directions about how to Comply with Order	<ul style="list-style-type: none">• Where a control order is breached, consider prosecution or 'upgrading' the order as appropriate.
Section 55	Contravention of Order	<ul style="list-style-type: none">• Develop a procedure for ensuring compliance with any control orders issued.
Section 59A	Prohibition Orders	<ul style="list-style-type: none">• Ensure that all Dog Management Officers are aware of the nature of and requirements for making a prohibition order.• Adopt an administrative procedure or guidelines for making a prohibition order.
Section 60	Power to Seize and Detain Dogs	<ul style="list-style-type: none">• Develop formal guidelines for the seizure of dogs.
Section 61	Procedure following Seizure of Dog	<ul style="list-style-type: none">• Review Council's lost dog register to include details of all dogs that are seized and detained under the Act.
Section 62	Limits on Entitlement to Return of Dog	<ul style="list-style-type: none">• Ensure any request for payment of relevant fees and charges made to a person seeking the return of their dog be made in writing.• Develop guidelines or standard criteria for the waiving of outstanding fees.
Section 70	Area Limitation on Cat Management Officers	<ul style="list-style-type: none">• Ensure Dog Management Officers are aware of the limitations of their powers.
Section 87	Service of Notices and Documents	<ul style="list-style-type: none">• Effect service of Notices and documents by way of personal delivery.
Section 90	By-laws	<ul style="list-style-type: none">• Develop a standard application form in relation to a request to keep more than the prescribed maximum number of dogs on any premises.• Develop a guidelines or policy document which sets out the considerations that will be taken into account in determining whether or not a person may keep more than then prescribed maximum number of



Section		Best Practice Recommendation
		dogs on any premises.
Fire and Emergency Services Act 2005		
Section 81	An Authorised officer may issue a permit to light and maintain a fire	<ul style="list-style-type: none">• Adopt the <i>CFS Permit to Light and Maintain Fire Policy</i>.
Section 105B	Fire Prevention Officers	<ul style="list-style-type: none">• Ensure Council's FPO undertakes regular general enforcement training.
Section 105C	Functions of Fire Prevention Officers	<ul style="list-style-type: none">• Review Council's hazard register to include further detail about the actions required to be undertaken to minimise hazards and details of any hazard reduction work that has been undertaken by the Council.• Provide written advice to residents regarding bushfire safety in medium or high risk bushfire areas.• Ensure all activities undertaken by the FPO are documented.
Section 105F	Duty to prevent fire on private land	<ul style="list-style-type: none">• Develop and adopt a policy to ensure staff exercise consistent decision making and in doing so, have regard to the LGA's Fire Hazard Reduction and Notice Standard Operating Procedure.• Contact any land owners / occupiers before Council undertakes any default works on the land.• Prepare a template covering letter to accompany Notices which sets out the date for re-inspection and the action the Council will take in the event the Notice is not complied with.• Refrain from including the details of any contractor on Council's Notices.• Maintain a register of all section 105F(5) Notices issued which includes details of:<ul style="list-style-type: none">• the date of the Notice and the date by which the requirements must be met;• the recipient's details and the address of the land to which the Notice relates; and• any expiation Notice issued in relation to the Notice and whether any default works were undertaken by the Council.



Section		Best Practice Recommendation
Section 105G	Council Land	<ul style="list-style-type: none">• Maintain Council's Bushfire Prevention Plan and continue to work towards achieving the objectives contained therein.• Conduct a review of Council's Bushfire Prevention Plan and in doing so, have regard to the recommendations contained within the 2009 Victorian Bushfires Royal Commission's Report.• Ensure Council keeps adequate records of the work it has taken to manage Council's land in the interests of bushfire prevention.
Food Act 2001		
Section 37	Powers of Authorised officers	<ul style="list-style-type: none">• Take steps to capture as much of the current EHO's knowledge and experience as possible so as to assist any other officer who is appointed to the role in the future.• Ensure EHOs undertake training in relation to enforcement and investigation and evidence gathering skills.• Maintain a register of the training attended by Council's staff.• Where possible, ensure EHOs attend any follow up inspection.
Section 38	Search Warrants	<ul style="list-style-type: none">• Develop a standard templates for a warrant and supporting affidavit.
Section 43	Unclear or Unfit Premises, Vehicles or Equipment	<ul style="list-style-type: none">• Adopt a policy addressing the frequency of inspections within Council area and the procedures to be implemented where there is serious non-compliance.• Maintain a register of all food businesses within Council area that details the dates of each inspection of the premises by the Council and any follow up action required.• Ensure Council has sufficient evidence to justify the issue of an improvement Notice.• Ensure evidence (includes photographs evidencing the identified issues on non-compliance) are included on the relevant file.• Diarise all dates for routine and follow up inspections.



Section		Best Practice Recommendation
Section 44	Improvement Notice	<ul style="list-style-type: none">• Consider issuing expiation Notices in respect of any failure to comply with an improvement Notice;• Ensure all improvement Notices are accompanied by a covering letter setting out the reasons for the Notice and notifying the recipient of the consequences of non-compliance with it.• Develop a standard template letter to accompany Notices.• Ensure requests for an extension of time to comply with an improvement Notice are provided in writing• Ensure that Council's response to any request for an extension of time is confirmed in writing and documented on the file and reasons be recorded as to why an extension was/ or was not granted.
Section 46	Prohibition Order Issued by Council	<ul style="list-style-type: none">• Consider issuing a prohibition order where there are continued and serious breaches of the Food Act.
Section 49	Request for Re-Inspection	<ul style="list-style-type: none">• Develop and maintain a register of all prohibition orders issued, which includes details of the following:<ul style="list-style-type: none">○ details of the food premises and recipient of the order;○ details for any requests for inspection made under section 49 by the proprietor;○ the date of the follow up inspection; and○ the date that the certificate of clearance was issued.
Section 52	Review of Order	<ul style="list-style-type: none">• Ensure EHO's have sufficient and reliable evidence collated in respect of any non-compliance with an improvement Notice which may warrant a prohibition order being issued.
Section 92	Exercise of Functions by Enforcement Agencies	<ul style="list-style-type: none">• Ensure EHO's are familiar with the guidelines prepared by the Australian New Zealand Food Authority.• Regularly inspect the Australian New Zealand Food Standards website



Section		Best Practice Recommendation
		http://www.foodstandards.gov.au/ for useful publications and guidelines which may be adopted by the Council to assist Council's officers.
Section 94	An Enforcement Agency may Appoint Authorised Officers	<ul style="list-style-type: none"> • Ensure that in appointing EHOs in the future, that they have best practice qualifications. • Revise the list officers authorised under the Act, which is contained in the Annual Report to include details of: <ul style="list-style-type: none"> ○ date of appointment; ○ any relevant conditions or limitation to which the appointment is subject; ○ the expertise and qualifications of the persons appointed; and ○ the date their appointment ceased.
Section 111	Disclosure of Certain Confidential Information	<ul style="list-style-type: none"> • Mark Council's files as "private and confidential".
NA	General Comments regarding Evidence Gathering and File Maintenance	<ul style="list-style-type: none"> • Ensure EHO's record sufficient evidence within inspection reports and checklists including detailed descriptions of any non-compliance and photographs. • Include detailed description of what photographs depict and the date and time they were taken. • Maintain a separate register in respect of each food premises which lists all the inspection dates and details of any Notices, orders and/or expiations issued. • Develop an evidence collection procedure.
Road Traffic Act 2001		
Section 17	Installation of Traffic Control Devices	<ul style="list-style-type: none"> • Ensure that all relevant staff are familiar with the provisions of the Code. • Ensure that relevant Council staff are aware of their authorisations under the Minister's Notice.
Section 40N	Removing Unattended or Broken Down Vehicle or Danger or Obstruction	<ul style="list-style-type: none"> • Ensure that Council officers are aware of the powers contained in this section and the limitations upon them.
40P	Notice of Removal of Vehicle and Disposal of	<ul style="list-style-type: none"> • Where Council wishes staff to exercise its



Section		Best Practice Recommendation
	Vehicle if Unclaimed	<p>powers and functions under this section, insert the following words into Council's Schedule of delegations under the <i>Road Traffic Act 1961</i>:</p> <p><i>"the power, in accordance with section 40P(5) of the Act, if –</i></p> <ul style="list-style-type: none"> ○ <i>a vehicle removed under section 40N if offered for sale by public auction but is not sold at auction; or</i> ○ <i>the delegate reasonably believes that the proceeds of the sale of the vehicle be unlikely to exceed the costs incurred in selling the vehicle;</i> <p><i>to dispose of the vehicle in such manner as the delegate thinks fit".</i></p>
Road Traffic (Miscellaneous) Regulations 1999		
Regulation 21	Prohibition of Parking in Certain Public Places	<ul style="list-style-type: none"> ● Ensure Council's authorised officers are familiar with this offence provision.
Australian Road Rules (under the Road Traffic Act 1961)		
Part 12	Restrictions on Stopping and Parking	<ul style="list-style-type: none"> ● Undertake a review of Council's parking areas. ● Once parking areas have been identified erect signs to ensure parking is effectively regulated in those areas. ● Prepare a template expiation Notice for parking infringements. ● Ensure sufficient evidence is collected before issuing an expiation which includes a photograph of the offending vehicle.
Public and Environmental Health Act 1987		
Section 12A	Powers and duties of relevant authorities	<ul style="list-style-type: none"> ● Develop a Strategic Health Plan which identifies the manner in which Council will seek to implement Council's functions and duties and include details of any programs the Council intends to put in place (or, which already exist) to achieve this.
Section 15	Prevention of insanity conditions on premises	<ul style="list-style-type: none"> ● Ensure evidence is maintained on each file. ● Ensure a register is maintained of all Notices issued which details the date of the Notice, the date that Council's requirements are to be complied with and



Section		Best Practice Recommendation
		any follow up actions and inspection dates. <ul style="list-style-type: none">• Ensure Council's section 15 Notice complies with best practice standards.
Part 3	Protection of Public Health – Offences	<ul style="list-style-type: none">• Ensure EHOs undertake training in relation to investigation procedures and evidence gathering.• Refrain from taking enforcement action where there is insufficient evidence.
Section 18	Discharge of waters	<ul style="list-style-type: none">• Be vigilant in ensuring known mal-practices of businesses within the area do not give rise to further breaches of the Act in the future.• Consider expiating and/or prosecuting any land owner who continuously breaches the Act.
Section 19	Private thoroughfare	<ul style="list-style-type: none">• Ensure that Council's EHOs are aware of the requirements of this section.
Section 20	Provision of adequate sanitation	<ul style="list-style-type: none">• Ensure that Council's EHOs are aware of the requirements of this section.
Section 21	Pollution of water	<ul style="list-style-type: none">• Ensure that Council's EHOs are aware of the requirements of this section.
Section 22	Sources of water supply may be closed	<ul style="list-style-type: none">• Ensure that Council's EHOs are aware of the requirements of this section.
Section 36	Action to prevent the spread of infection	<ul style="list-style-type: none">• Ensure that Council's EHOs are aware of the requirements of this section.
Section 38	Inspections etc	<ul style="list-style-type: none">• Ensure that Council's officers who exercise powers under this Act receive training in relation to them.
Section 41	Power to Require Information	<ul style="list-style-type: none">• Ensure that all relevant officers are aware of this power which may be of assistance in the investigation of offences under the Act.
Section 42	Confidentiality	<ul style="list-style-type: none">• Label files "<i>private and confidential</i>".
Section 45	Offences against the Act	<ul style="list-style-type: none">• Obtain legal advice in relation to the reliability of evidence before making any decision to prosecute.

DOG & CAT MANAGEMENT ACT 1995

Section 26

Council Responsibility for Management of Dogs

Requirement

The Council is required to administer and enforce the provisions of the Act relating to dogs within its area and, for that purpose must –

- (a) maintain a register of dogs containing information required by the Board that is to be readily available for public inspection; and
- (b) ensure the Board is provided with information contained in the register as required by the Board from time to time; and
- (c) appoint a suitable person to be Registrar; and
- (d) make satisfactory arrangements for issuing or replacing certificates of registration and registration disks; and
- (e) appoint at least one full time Dog Management Officer; and
- (f) make satisfactory arrangements for the detention of dogs seized under the Act; and
- (g) make satisfactory arrangements for fulfilling other obligations under the Act.

The Council must also keep separate accounts of monies received under the Act, which must be expended only in the administration or enforcement of the provisions of the Act.

Council may also charge fees as prescribed under this section.

Compliant

Yes.

Comment

Council maintains a Dog Register which is available for public inspection. The Board requires the following information to be contained in the Register:

- the name of the dog;
- the breed;
- its colour;
- any markings;
- sex of the dog; and
- the phone numbers of the registered owner of the dog.

We sighted an extract of the Register and it was apparent that the Register contains additional information to that required by the Board, including the addresses of dog owners.

We **recommend** that the Council immediately review the Register that is available for public inspection to ensure that it only includes the information required by the Board so that the privacy of dog owners is adequately protected.

We were informed that the Council has appointed its Chief Executive Officer, Roger Sweetman as Registrar under the Act.



The Council has appointed a full time Dog Management Officer and has appointed other officers under the Act who can assist in exercising Council's responsibilities under the Act where necessary.

We were informed that the Council uses the RSPCA facility in Lonsdale to detain dogs that have been seized within the Council's area. However, dogs are not ordinarily detained on a regular basis as Council staff will return them to their owners in the first instance.

We were also informed that consideration is presently being given to engaging the services of a private pound that is used by a neighbouring Council for the detention of dogs by the Council in the future. We **recommend** that Council ensure that any arrangement that it enters into with the private pound facility is adequately managed under a contract agreement that has been established in accordance with the Council's Contracts & Tenders Policy.

With respect to the fees set by the Council under the Act, by cover letter dated 20 April 2010, the Council forwarded its Dog Registration Fees Schedule to the Board for the Minister's approval. The Council received confirmation from the Board by letter dated 1 July 2010 that the Minister had approved the Council's proposed fees schedule.

Where the Council wishes to increase its fees for the 2011/2012 registration year, it is required to provide the revised schedule to the Board by 13 March 2011. Accordingly, we **recommend** that the Council undertake a review of its fees and charges under the Act in early 2011 to ensure that it has sufficient time to obtain the Minister's approval with respect to any change in fees.

Section 26A

Plans of Management relating to Dogs and Cats

Requirement

The Council must prepare plan relating to the management of dogs and cat within its area. The plan must make provisions for parks where dogs may be exercised off leash and for parks where dogs must be under effective control by means of physical restraint and, may make provisions for parks where dogs are prohibited.

The management plan must be approved by the Board and must cover a 5-year period.

Compliant

Yes.

Comment

The Council has adopted an animal management plan which is dated March 2007. The plan was presented to and approved by the Board in June 2007. The plan was established for a period of 5 years, namely from June 2007 – June 2012. The plan makes provisions for areas in which dogs may be exercised off leash and provides that the Yankalilla Youth Park is an area in which dogs are required to be physically restrained at all times.

The Council is preparing to undertake a review of its plan to ensure it adequately addresses the needs of the community. In any event, we **recommend** that the Council complete this review before June 2012 in preparation for the adoption of a revised plan that will operate from 2012 to 2017. The revised plan must also be forwarded to the Board for

approval.

Section 27

Appointment of Dog Management Officers

Requirement

Council may appoint suitable persons to be Dog Management Officers for the purposes of the Act.

Compliant

Yes

Comment

The Council has appointed Mark Piro as its primary Dog Management Officer. We sighted Mr Piro's instrument of appointment which is dated 28 July 2010. The instrument is consistent with the LGA best-practice template instruments of appointment.

The Council has also appointed two other persons as dog management officers to assist Mr Piro in exercising Council's powers and functions under the Act. The appointment of one of these officers (Paul Williams) is subject to the limitation that the officer may only exercise powers to seize and impound dogs.

There are currently no statutory requirements for Dog Management Officers to possess formal qualifications. That said, the TAFE Certificate IV (regulatory services) qualification is highly desirable for Dog Management Officers. Mr Piro has obtained this qualification and has also attended the recent training sessions provided by TAFE and the Board.

We **recommend** that Council's Dog Management Officers receive training in relation to investigations and enforcement procedures (including issuing expiations and Notices and/or orders) which also addresses evidence gathering.

Section 28

Identification of Dog Management Officers

Requirement

Dog Management Officers must be issued with an identity card in a form approved by the Board.

Compliant

Yes.

Comment

We sighted a copy of the identity card issued to Mark Piro. The identity card complies with the card endorsed by the Dog and Cat Management Board for the purposes of this section.

The Council's Dog Management Officer understands his obligation to produce his card before inspection upon request.

Section 29

Area Limitation on Council Dog Management Officers

Requirement

Dog Management Officer appointed by the Council may only exercise their powers under the Act within the area of Council or, outside the area

of Council in limited circumstances.

Compliant

Yes.

Comment

The Council's Dog Management Officer is aware of and understands the area limitation on his powers.

Section 30

General Powers of Dog Management Officers

Requirement

Section 30 sets out the general inspectorial powers conferred upon Dog Management Officers, which may be exercised for the purposes of the administration and enforcement of the Act.

Compliant

Yes

Comment

Council's Dog Management Officer has a sound understanding of his powers and functions under the Act and the limitations upon them. The Officer is aware of and has regard to the Standard Operating Procedures that are available of the LGA website to assist officers in exercising their powers and functions under the Act.

We **recommend** that all Dog Management Officers ensure that when attending a site inspection they take a note book with them to record details of all call outs and attendances.

We **recommend** that Management conduct regular reviews of Council's files to ensure that the note taking, record keeping and evidence gathering practices of Dog Management Officer are of a satisfactory standard. Specifically, Officers must:

- keep detailed file notes of all investigations and attendances;
- sign and date all file notes and statements; and
- where there has been a breach of the Act or an offence has been committed, ensure photographs are taken and placed on the file so as to ensure that sufficient evidence is collated.

Part 5

Offences

Requirement

This Part sets out a number of offences under the Act including, but not limited to:

- dogs wandering at large;
- dog attacks;
- transporting unrestrained dogs in vehicles; and
- barking dogs.

Compliant

No.

Comment

We sighted two expiation Notices issued by the Council for offences



under the Act. One Notice was issued in respect of a dog attack and the other for a dog owner's failure to register a dog. Despite having requested to view the corresponding files for the expiation Notices we were not provided with them and, therefore, were unable to assess whether the Council had sufficient evidence to prove the elements of the relevant offences to the necessary standard of proof (i.e. beyond reasonable doubt.)

The expiation Notices include majority of the information required under Schedule 1 of the *Expiation of Offences Regulations 1996*. However, they do not state the due date for payment. Rather, the Notices say that payment must be made within 28 days from the date of the Notice. This is not sufficient to satisfy the requirements of Schedule 1 because the actual due date should be specified on the Notice.

We **recommend** that the Council ensure expiation Notices are only issued where there is sufficient evidence to prove the relevant offence. We also **recommend** that Council review its standard expiation Notice to ensure that it includes the specific due date for payment.

We **recommend** that the Council maintain a register of all expiation Notices issued under the Act including:

- the name and address of the recipient of the Notice;
- the date that the Notice was issued; and
- the details of the relevant offence.

The Council has an informal procedure with respect to renewal of dog registrations. Specifically, a reminder Notice will be sent to dog owners who have not renewed their registration and if a renewal is not received by the Council, officers will conduct an inspection of the dog-owner's premises and/or speak to the owner. A caution Notice will also be issued which requires registration fees to be paid within 7 days and, if registration fees remain outstanding, the Council will consider issuing an expiation Notice. We endorse this procedure as it will ensure adequate evidence is obtained before a person is penalised (by way of an expiation Notice) for failing to renew his/her dog registration. We **recommend** that in observing this procedure staff ensure that each step is documented and captured within the Council's record management system.

Section 48

Power to protect persons or property from dogs

Requirement

A person may lawfully injure or destroy a dog if such action is reasonable and necessary for the protection of life or property.

A Dog Management Officer who finds a dog attacking or harassing a protected animal on a reserve may lawfully injure or destroy the dog if there is no other way of protecting the animal.

Compliant

Yes.

Comment

The Council's Dog Management Officer is aware of this provision and the limited circumstances in which a dog may be lawfully destroyed under the Act.



We **recommend** that the Council develop and implement a policy in relation to the destruction of dogs.

Section 50 & 51

Control Orders and Grounds on which Orders may be Made

Requirement

The Council has powers to make destruction orders and various control orders requiring dog owners to take specified actions in compliance with those orders.

The Council may make a destruction order or control order if satisfied that the circumstances set out under section 50 of the Act exist.

Compliant

Yes.

Comment

The Council's Dog Management Officer has only been employed by the Council for a short time and informed us that he has not yet issued an order under this section of the Act.

We were provided with a copy of the Council's template orders and Notice of intention to issue an order. These are consistent with the forms that have been developed by the Dog and Cat Management Board and which are utilised by a number of Councils.

We **recommend** that the Council maintain a register of all control orders issued for dogs within its area. Further, we **recommend** that the Council review Control Orders on an annual basis to ensure that the relevant dog owner continues to comply with the requirements of the Notice.

We were provided with a file for a dog attack in respect of which a Control (Dangerous Dog) Order was issued. In issuing the order, it is clear that the Council observed the required legislative procedure as a Notice of intention to issue an order was sent to the intended recipient of the Order in the first instance. The recipient of the Order appealed against Council's decision to issue the Order to the District Court. The Council engaged legal representation for the appeal. The appeal ultimately progressed to trial and the appeal against the Order was upheld with His Honour finding that the Council ought to have imposed a Control (Menacing Dog) Order in the circumstances. The appeal highlights the importance of Council ensuring that it has sufficient evidence to justify its reasons for issuing control orders.

In the future, where considering issuing a control order under the Act, we **recommend** that the Council have regard to the incident severity scale endorsed by the Dog and Cat Management Board which makes recommendations for the issue of various orders in certain circumstances. For example, in circumstances where there is a once-off dog attack on another animal where there was no provocation and the injury sustained by the animal following the attack was only slight, the issue of a Control (Menacing Dog) order is consistent with the severity scale.

Further, we **recommend** that Council ensure that only persons with delegated authority are responsible for issuing the orders.

Section 52 **Procedure for Making and Revoking Orders**

Requirement Before making an order under the Act, the Council must take reasonable steps to ascertain all persons who own or are responsible for the control of the dog, and give each of those persons seven days Notice of the terms of a proposed order.

The order must be made in a manner and form required by the Board.

Compliant Yes.

Comment We reviewed a file in respect of which a control order was issued. It was evident from our review that the Council observed the requisite procedure under the Act. The orders issued were also consistent with the forms approved by the Dog and Cat Management Board for this purpose.

We **recommend** that the Council develop a policy document which sets out the considerations to be taken into account in determining to issue a control order.

We also **recommend** that in issuing any control orders, the Council serves the order personally and takes the opportunity to ensure that the recipient is aware of the requirements of the order and is in a position to comply with them.

Section 53 **Directions about how to Comply with Order**

Requirement The Council may issue directions to a person who owns or is responsible for the control of a dog subject to a control order about how the order must be complied with in the area of the Council.

Compliant Yes

Comment The Council does not have any formal policy or operational guidelines in place with respect to issuing directions as to how a control order must be complied with. The Council's Dog Management Officer has not issued any directions to the recipient of a control order previously issued by his former incumbent. We were informed that the Council has not commenced a prosecution for a breach of a control order.

We **recommend** that where a control order is breached, the Council immediately consider whether a prosecution or 'upgrading' the Order is warranted in the circumstances.

Section 55 **Contravention of Order**

Requirement A failure to comply with a control order is an offence under the Act. If an order under the Act is contravened, a Dog Management Officer may take reasonable steps to give effect to the order and the Council concerned may recover the costs of that action as a debt from a person who owns or is responsible for the control of the dog.



Compliant Yes.

Comment The Council's Dog Management Officer informed us that he is not aware of any circumstances in which a control order has been breached or has otherwise not been complied with.

We **recommend** that the Council develop a procedure for ensuring compliance with any orders issued under the Act which comprises "spot checks" for monitoring compliance levels.

Section 59A **Prohibition Orders**

Requirement The Council may make a prohibition order against a person in specified circumstances which prohibits the person from acquiring or becoming responsible for the control of any dog for the period specified in the order.

Compliant Not Applicable.

Comment We were informed that the Council has not issued a prohibition order under the Act.

We **recommend** that Council ensure that all Dog Management Officers are aware of the nature of and requirements for making a prohibition order. We also **recommend** that the Council consider adopting an administrative procedure or guidelines for making a prohibition order which addresses the considerations that the Council will take into account in issuing such an order.

Section 60 **Power to Seize and Detain Dogs**

Requirement A Dog Management Officer may seize and detain a dog in specified circumstances. Further, a Dog Management Officer may injure and destroy a dog if the Dog Management Officer reasonably believes that the dog is dangerous or it is impractical to seize because of its savagery.

Compliant Yes.

Comment The Council's Dog Management Officer has a sound understanding of his powers under this section and the limitations upon them.

We **recommend** that Council develop formal guidelines for the seizure of dogs which sets out the process that staff will follow in the event a dog is seized and the owner cannot be contacted. The LGA Standard Operations Procedure regarding the seizure and impounding of dogs may be used for this purpose.

Section 61 **Procedure following Seizure of Dog**

Requirement A Council must either return a dog seized under the Act to the owner or



detain it in a facility approved by the Board.

Where a dog is detained, the Council must ensure that Notice of the detention is given in accordance with the provisions of the Act. Such a Notice must remain on display for at least 72 hours.

Compliant

Yes.

Comment

The Council's Dog Management Officer is aware of the requirements of this section. We sighted an "impounded animal Notice" which the Council prepared in respect of a dog that had been detained. The Notice contained a photo of the animal, the date that it was impounded and the location that it was found and, therefore, was compliant with the requirements of this section.

The Council also maintains a lost and found dog register. We **recommend** that the Council review this register to include details of all dogs that are seized and detained under the Act.

Section 62

Limits on Entitlement to Return of Dog

Requirement

A person is not entitled to the return of a dog seized under the Act unless the person provides satisfactory evidence that he/she owns or is responsible for the control of the dog or, is authorised to receive the dog by a person who owns or is responsible for the control of the dog and pays the charges that are payable in relation to the seizure and detention of the dog and any other outstanding charges or fees payable under the Act in relation to the dog.

Compliant

Yes

Comment

The Council's Dog Management Officer is familiar with the requirements of this section.

We **recommend** that any request for payment of relevant fees and charges made to a person seeking the return of their dog be made in writing.

We also **recommend** that the Council develop guidelines or standard criteria for the waiving of outstanding fees so as to ensure that Council officers exercise their discretion in this regard consistently and appropriately.

Section 63

Destruction or Disposal of Seized Dog

Requirement

A person responsible for a dog detained by the Council may cause the dog to be disposed of or destroyed in specified circumstances.

The Council must not sell or destroy a dog unless:

- it it was found wandering at large and detained under the Act, the dog is unclaimed and Notice of intention has been on view at the Council offices for at least 72 hours; or

- the owner does not want the dog back; or
- the owner or person responsible for the dog has not paid outstanding fees within 7 days of being asked for payment.

Compliant Yes.

Comment The Council's Dog Management Officer has not destroyed a dog under the Act during his employment at the Council and otherwise has a sound understanding of the requirements of this section.

Section 68 **Cat Management Officers Appointed by Board or a Council**

Requirement The Board or a Council may appoint suitable persons to be Cat Management Officers for the purposes of the Act.

Compliant Not Applicable.

Comment The Council has not appointed a Cat Management Officer. In the event that the Council decides to appoint a Cat Management Officer, we **recommend** that Council ensure this appointment is made in writing.

Section 69 **Identification of Cat Management Officers**

Requirement A Cat Management Officer appointed by the Board or Council must be issued with an identity card in a form approved by the Board. A Cat Management Officer must produce his or her identity card for inspection upon request.

Compliant Not Applicable.

Comment The Council has not appointed a Cat Management Officer.

Section 70 **Area Limitation on Cat Management Officers**

Requirement A Cat Management Officer appointed by the Council may exercise powers within the area of the Council or outside of the area of the Council in specified circumstances.

Compliant Not Applicable.

Comment We **recommend** that in the event that Council appoints a Cat Management Officer, the Council ensures the officer is aware of the limitations upon his/her powers under the Act.



Section 76 **Unidentified Cats in Other Areas**

Requirement A person may lawfully seize, detain, destroy or otherwise dispose of an unidentified cat if the person is a Cat Management Officer and the cat is found in the Council's area. This section also sets out the procedure that must be observed where a person seizes a cat.

Compliant Not Applicable.

Comment Since Council's Officers are not appointed as Cat Management Officers, they are not authorised to destroy unidentified cats. Council officers have no powers under the Act to detain unidentified cats and, therefore, they must be immediately released upon seizure.

Section 87 **Service of Notices and Documents**

Requirement A Notice or document required or authorised by the Act to be given to a person may:

- (a) be served on the person personally, or
- (b) posted in an envelope to the persons last known address, or
- (c) left for the person at his or her place of residence or business with someone apparently of or over 16 years of age or in a letter box to which it would have been delivered if sent by post.

Compliant Yes.

Comment Council's Dog Management Officer is familiar with the service requirements of the Act. Ordinarily, Council ensures that Notices are sent by registered post.

We **recommend** that where resources permit, officers consider effecting service by way of personal delivery to avoid any excuses that Notices have not been received.

Section 90 **By-laws**

Requirement The Council may make by-laws for the control and management of dogs or cats within its area. Before making a by-law under the Act, the Council must refer the proposed by-law to the Board for comment and is required to consider any recommendations of the Board in relation to the by-law.

Compliant Yes.

Comment The Council undertook its by-law review in 2009. The Council has adopted a Dogs by-law which is consistent with the powers of the Council to make by-laws under this section.

We **recommend** that the Council develop a standard application form in relation to a request to keep more than the prescribed maximum dogs on



any premises.

We also **recommend** that Council develop a guidelines or policy document which sets out the considerations that will be taken into account in determining whether or not a person may keep more that then prescribed maximum number of dogs on any premises.

FIRE AND EMERGENCY SERVICES ACT 2005

<u>Section 81</u>	<u>An authorised officer may issue a permit to light and maintain a fire</u>
<u>Requirement</u>	A person who is authorised by Council (with the approval of the Chief Officer under the Act) may issue a permit to light or maintain a fire in the open air in circumstances that would otherwise be unlawful.
<u>Compliant</u>	No.
<u>Comment</u>	<p>Council's Fire Prevention Office ('FPO') has not yet been authorised to issue permits under this section. We recommend that Council write to the CFS to obtain approval to authorise its FPO for the purposes of this section.</p> <p>We interviewed Council's FPO, Mr Mark Piro, who has only recently been employed by Council. Mr Piro has not yet issued a permit under this section, however, he has a sound understanding of what is required to justify issuing a permit.</p> <p>The Council does not have a clear process in relation to issuing a permit under this section. We recommend that Council adopt the <i>CFS Permit to Light and Maintain Fire Policy</i> that was created with the LGA to provide guidance to persons responsible for issuing permits under section 81. The adoption of such a policy will provide for consistent decision making over time.</p> <p>We also reviewed Council's template permits which comply with the requirements of Schedule 9 and 10 of the <i>Fire and Emergency Services Regulations</i>.</p>
<u>Section 93</u>	<u>Delegation of Power by Councils</u>
<u>Requirement</u>	A Council may, by instrument in writing, delegate its powers under Division 8 to a Fire Prevention Officer.
<u>Compliant</u>	Yes.
<u>Comment</u>	The auditor sighted Council's instrument of delegations under the Act which evidence the Council's decision to delegate its powers and functions under the Act to staff.
<u>Section 105B</u>	<u>Fire Prevention Officers</u>
<u>Requirement</u>	Each Council that is a rural council, or that has within its area a designated urban bushfire risk area, must appoint at least one person as a Fire Prevention Officer for its area. A Fire Prevention Officer must have qualifications or experience appropriate to the office.
<u>Compliant</u>	No.



Comment

At the time of conducting the audit, we were informed an instrument of appointment has not yet been executed for the FPO. We subsequently provided a template instrument of appointment to the Council for execution.

Council has appointed 1 FPO who has successfully completed the CFS FPO course.

Since a person appointed by Council as a FPO is an 'authorised person' for the purposes of Part 4A of the Act (section 105A-105K inclusive) and, therefore, is authorised to exercise enforcement powers, we **recommend** that the Council's FPO undertake general enforcement training. In Mr Piro's circumstance, he already has a very good understanding of what it is to act fairly and reasonably, however, he would still benefit from enforcement training to further develop his investigation skills and understanding of burdens of proof and evidence limitations.

Section 105C

Functions of Fire Prevention Officers

Requirement

The functions of a Fire Prevention Officer are:

1. to assess the extent of bushfire hazards within the relevant council area;
2. to assist council in providing advice and information to any bushfire management Committee in connection with the preparation or review of the Committee's Bushfire Management Area Plan;
3. to provide advice to owners of property in respect of bushfire prevention and management; and
4. to carry out any other functions assigned by the regulations.

Compliant

Yes.

Comment

Mr Piro has a sound understanding of his role and responsibilities under the Act and good knowledge of bushfire prevention in general.

Councils had assessed bushfire hazards within its area and all hazards are identified in a hazard register. It is the responsibility of the FPO to keep the register under review and ensure it is regularly updated as appropriate. The process for assessing bushfire hazards involves a visual inspection. We **recommend** that the Council review the hazard register to include further detail about the actions required to be undertaken to minimise hazards and details of any hazard reduction work that has been undertaken by the Council.

The FPO regularly provides advice to property upon request regarding bushfire prevention and management, which is based on the standard bushfire information distributed by the CFS. We **recommend** that Council also consider writing to or visiting residents to advise on bushfire safety. In particular, Council should target the elderly and persons who occupy properties in medium or high risk bushfire areas.

We **recommend** that the Council ensure that the activities undertaken by the FPO in fulfilling his functions under the Act are documented. Doing so



will ensure that Council is readily equipped to promptly deal with any request under section 105E of the Act from the Commission, the State Bushfire Coordination Committee or bushfire management committee for the provision of a report relating to the performance, exercise or discharge of functions, powers or responsibilities of Council's Fire Prevention Officers.

Section 105F

Duty to prevent fire on private land

Requirement

Where an authorised person has reasonable grounds to believe that an owner of private land has failed to comply with his/her obligations under section 105F(1) and/or that measure should be taken in respect of private land to prevent or inhibit the outbreak/spread of fire on/through the land or, to protect property on the land from fire, the authorised officer may issue a Notice requiring the owner of the land to take specified action.

Compliant

No.

Comment

We were informed that Council has not developed a policy in relation to the issue of Notices under this section. We **recommend** that Council develop and adopt a policy to ensure staff exercise consistent decision making under this section and, in doing so, that the Council have regard to the Fire Hazard Reduction and Notice Standard Operating Procedure recently released by the LGA (see circular 44.6).

In absence of any formal policy, the FPO explained the procedure he observes before issuing a Notice and/or expiation under this section. this procedure is summarised as follows:

1. A letter is sent to the land owner of vacant blocks as a reminder for vegetation clearance to be undertaken prior to fire season;
2. An inspection of all vacant land is conducted to ascertain whether fire hazard reduction works are required to be taken. In conducting an inspection the officer takes a photo depicting the state of the land;
3. Where necessary, a Notice is issued to land owners under section 105F requiring them to take specified action;
4. A second inspection is conducted to ascertain whether the land-owner has complied with the requirements of the Notice. If the Notice has not been complied with consideration is given to the most appropriate way to proceed, whether it be to issue an expiation Notice and/or to engage contractors to undertake the work required by the Notice and recover the associated costs from the land-owner.

The FPO has a comprehensive understanding of what fairness and reasonableness requires before issuing an expiation Notice for a breach of a Notice. For example, where there has been a breach of a Notice, in determining what further action is required, the FPO will make contact with the relevant land owner and take into account any valid reasons why the Notice has not been complied with. We **recommend** that the land



owner continue to be contacted before default works are undertaken by the Council unless an officer has formed a reasonable belief that the fire risk on the land is so serious that it warrants immediate remedial action being taken. In any event, under section 105J(1)(a) of the Act, the Council **must** give the occupier of land reasonable Notice before entering onto the land for the purposes of effecting enforcement action.

We sighted a Section 105F Notice issued to the owner of land located at 23 James Street, Cape Jervis. The Notice does not contain all the information required under Schedule 12 of the *Fire and Emergency Services Regulations 2005*. We **recommend** that the Council amend its template section 105F Notice to ensure it complies with the requirements of Schedule 12. Further, we **recommend** that the Council prepare a template covering letter to accompany Notices which sets out the date for re-inspection of the premises and the action the Council will consider taking in the event the Notice is not complied with.

We also **recommend** that Council refrain from including the details of any contractor on its Notices because the Council must not be seen to favour any particular contractor.

Finally, we **recommend** that the Council maintain a register of all section 105F(5) Notices issued which includes details of:

- the date of the Notice and the date by which the requirements must be met;
- the recipient's details and the address of the land to which the Notice relates; and
- any expiration Notice issued in relation to the Notice and whether any default works were undertaken by the Council.

Section 105G

Council Land

Requirement

A Council must take reasonable steps to prevent or inhibit the outbreak/spread of fire on/through Council land, to protect property on Council land from fire and, to minimise the threat to human life from fire on Council land.

Compliant

Yes

Comment

We sighted a number of documents which evidence Council's compliance with its obligations under this section. The Council's website also contains information for the public in relation to Fire Danger season and the responsibilities of land owners.

We had regard to the Council's Bushfire Prevention Plan. The Plan provides a clear outline of the Council's role, strategies objectives and actions in relation to fire prevention and outlines the action the Council intends to take to ensure Council land is adequately managed.

Despite no longer being obligated under the Act to prepare and adopt a Bushfire Prevention Plan (this requirement was repealed as part of the 2009 amendments to the Act), we **recommend** that the Council maintain its Plan and continue to work towards achieving the objectives contained therein. We also **recommend** that the Council conduct a review of the



Plan and in doing so, have regard to the recommendations contained within the Report recently released by the 2009 Victorian Bushfires Royal Commission and include reference to any relevant recommendation within the Plan as appropriate.

Further, we **recommend** that Council ensure it keeps adequate records of the work it has taken to manage its land in the interests of bushfire prevention.

FOOD ACT 2001

Section 29

Nature of Offences

Requirement

Offences against Part 2 of the Act are minor indictable offences, however, Council may elect to charge a person who is alleged to have committed an offence under Part 2, Division 2 of the Act with a summary offence.

An offence against Part 2, Division 2 of the Act is an expiable offence in respect of which the following fees apply:

- if the offender is a body corporate - \$2,500;
- if the offender is a natural person - \$500

Compliant

Yes.

Comment

We reviewed the Council's file for the food premises "*Scarfys Homemade Cookies*". The file includes documents relating to a prosecution undertaken by the Council against the proprietor of the food business who, without reasonable excuse, obstructed an authorised officer of the Council in the exercise of his functions under the Act contrary to section 41(1) of the Act.

It is evident from the file that the Council commenced the prosecution because the business owner would not allow Council staff to conduct an inspection of the premises to assess its compliance with the Act. The Council obtained legal advice on the evidence available before determining to proceed with the prosecution. The complaint and summons was filed in the Magistrates Court on 22 November 2008. The matter proceeded to trial and ultimately a successful outcome was achieved for the Council in that the Court found the proprietor guilty of the charge.

We did not review a file in respect of which an expiation Notice had been issued. Since there are only 74 food premises within the Council's area, for the most part, we were informed that business owners are largely compliant with the Act and the Council does not experience serious incidents of non-compliance. Accordingly, circumstances have not arisen which warrant the issue of an expiation Notice.

We were informed by the Council's Environmental Health Officer that he takes a conciliatory approach to enforcement where minor incidents of non-compliance are identified after an inspection. Specifically, the authorised officer will send a follow up letter to the proprietor of the food business outlining the issues of non-compliance identified and requiring those issues to be rectified within a specified timeframe. A follow up inspection is subsequently undertaken.

We were, however, provided with a copy of the Council's template expiation Notice for offences under the Act. The template Notice that we reviewed contains all the information required under Schedule 1 of the *Expiation of Offences Regulations 1996* and, providing it is accurately completed upon being issued, is legislatively compliant.



We **recommend** that Council's Environmental Health Officers ensure that when drafting expiation Notices, all the information required under Schedule 1 of the Regulations is included, including the date and time of the offence, reference to the relevant offence provision under the Act and sufficient details of the nature of the offence.

Section 37

Powers of Authorised Officers

Requirement

This section outlines the inspection and seizure powers conferred upon authorised officers including powers in relation to the entry and inspection of a food premises and the examination of food.

Compliant

Yes.

Comment

It is evident that the Council's Environmental Health Officer ('EHO') who is authorised under the Act has a sound knowledge of the powers conferred upon him under this section, including the circumstances in which a warrant is required to be obtained to enter onto land and the importance of gathering reliable evidence. The Council's EHO has attended a number of training sessions relevant to the exercise of his powers and functions and liaises with EHOs from other Councils to facilitate the sharing of resources between Councils. The Council's EHO has a public health diploma and has further TAFE qualifications.

We were informed that the current EHO will be retiring in the future as he has been in the role for a number of years. Taking this into account, it is very important and we **recommend** that whilst the officer is still working with the Council, steps are taken to try to capture as much of his knowledge and experience as possible to assist any other officer who is appointed to the role in the future. We also **recommend** that any new officers appointed by the Council undertake training in relation to enforcement and investigation and evidence gathering skills. Such training should address the rules of evidence, witness interviewing techniques and note taking, the issue of expiations, relevant standards of proof and the requirements of civil orders. We also **recommend** that the Council maintain a register of the training that has been attended by its staff.

Further, we **recommend** that when undertaking follow up food premises inspections, where resources permit, two officers attend so as to ensure corroborating evidence may be obtained, which will strengthen Council's case in the event it is required to pursue enforcement action (such as by way of expiation or prosecution proceedings).

Section 38

Search Warrants

Requirement

An authorised officer may apply to a magistrate for a search warrant if the authorised officer has reasonable grounds to believe that a provision of this Act or the regulations has been, is being, or is about to be, contravened on food premises.



<u>Compliant</u>	Yes.
<u>Comment</u>	<p>The Council's Environmental Health Officer is familiar with the operation of this section.</p> <p>We recommend that Council develop standard templates for a warrant and supporting affidavit. The Magistrates Court forms numbers 36 and 90 are available on the Magistrates Court website at http://www.courts.sa.gov.au/lawyers/index3.html, may be adopted for this purpose.</p>

Section 43 **Unclean or Unfit Premises, Vehicles or Equipment**

<u>Requirement</u>	Provides that if an authorised officer believes, on reasonable grounds, that the circumstances specified under this section exist, the authorised officer may serve an improvement Notice on the proprietor of the food business.
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<u>Compliant</u>	Yes.
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<u>Comment</u>	<p>The Council has 74 food premises located within its area and inspections of these premises occur on a routine basis to ensure they are compliant with the Act and Regulations. All of the premises have been identified as low to medium risk.</p>
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The Council's EHO has been working within the area for a number of years and, therefore, is intimately familiar with each food premises and has knowledge of when the need for inspection of them arises, although this is not documented. The Council's EHO conduct all inspections and details of inspections are all kept on the individual file for each food premises. Where any non-compliance is identified during a routine inspection, the officer will schedule and undertake a follow up inspection.

We **recommend** that the Council adopt a policy addressing the frequency of inspections within its area and the procedures to be implemented where there is serious non-compliance.

Further, we **recommend** that the Council maintain a register of all food businesses within its area that details the dates of each inspection of the premises by the Council and any follow up action required (i.e. including the issue of an improvement Notice and/or details of any follow up inspection). We **recommend** that the Council diarise all dates for routine and follow up inspections.

We reviewed the Council's file for the Yankalilla Bakery in respect of which an improvement Notice has been issued by the Council. The file contains a number of letters sent from the Council's officer to the proprietor of the bakery outlining the dates of inspections and identifying the areas of non-compliance. The file also contains the inspection checklist completed by the officer for each inspection. There are no photographs included on the file. We **recommend** that in the interests of ensuring the Council has sufficient evidence to justify the issue of an improvement Notice, that it ensure photographs evidencing the identified issues on non-compliance are included on the file.

Section 44

Improvement Notice

Requirement

An improvement Notice is to take the form of an order that is approved by the Act, it must state the specified compliance period, and related matters.

Compliant

Yes.

Comment

The improvement Notice that we sighted was issued by the Council's EHO to the Yankalilla Bakery on 23 April 2009. The Notice was issued following continued non-compliance that had been identified by the Council's EHO.

The improvement Notice outlines both the actions to be taken by the recipient to ensure compliance with the Food Standards Code and the date by which the required actions must be taken.

Council's standard practice is to send improvement Notice via registered post.

We **recommend**:

- that where the requirements of an improvement Notice are not met, that Council immediately consider issuing an expiation Notice in respect of the failure to comply;
- that all improvement Notices be accompanied by a covering letter setting out the reasons for the Notice and notifying the recipient of the consequences of non-compliance with it. We **recommend** a standard template letter be developed for this purpose; and
- that in the event that a food proprietor seeks an extension of time to comply with the requirements of an improvement Notice, that Council require the request to be provided in writing, in addition to reasons for the request. Further Council's response to any such request should also be confirmed in writing and documented on the file and reasons should be recorded as to why an extension was/was not granted.

Section 45

Compliance with Improvement Notice

Requirement

Provides that if an improvement Notice is complied with, an authorised officer is to note the date of compliance on a copy of the Notice. The authorised officer must give a copy of the improvement Notice to whom the improvement Notice was served, if requested to do so by the person.

Compliant

Yes.

Comment

The bottom of the first page of Council's standard template Notice is reserved for the details of the food proprietor's compliance with the requirements of the Notice.

The improvement Notice that we sighted includes the signature of the



authorised officer confirming that the requirements of the Notice have been complied with and the date on which compliance was achieved.

Section 46

Prohibition Order Issued by Council

Requirement

If the Chief Executive Officer (being the head of an enforcement agency under the Act) believes on reasonable grounds that any of the circumstances in s 43 exist and, that the proprietor of a food business has not complied with an improvement Notice or, the issue of a prohibition order is necessary to prevent or mitigate a serious danger to public health, the Chief Executive Officer may serve a prohibition order on the proprietor of the food business. The prohibition order is to be in the form prescribed under section 46(2).

The Chief Executive Officer must give a certificate of clearance if, after and inspection of the premises if upon inspection of the premises it is evident that:

- the premises or handling of food by the food business is not a serious danger to public health; and
- the person to whom the prohibition order was served has complied with the order and any improvement Notices served on him/her.

Compliant

Not Applicable.

Comment

We were informed by the Council's EHO that he has not had cause to issue a Prohibition Order.

We **recommend** that the Council consider issuing prohibition orders for continued and serious breaches of the Act by a business proprietor where the Council has sufficient evidence to warrant the order being issued (including photographs and inspections reports).

Section 47

Scope of Notices and Orders

Requirement

Provides that an improvement Notice or prohibition order may be made with respect to any one or more of the following;

- a. any premises or part of a premises, food transport vehicle or equipment specified in the Notice or order;
- b. all equipment contained on any premises or any part of any premises, or in a food transport vehicle, specified in the Notice or order, or any specified equipment so contained;
- c. the handling of food intended for sale by a food business in a specified way or for a specified purpose.

Compliant

Yes.

Comment

The improvement Notice that we sighted addresses one of the above matters and, in particular, was issued in relation to premises of a food

business.

Section 48

Notices and Orders to Contain Certain Information

Requirement

An improvement Notice or prohibition order issued by the Council must specify any provision of the Food Standards Code to which it relates and may specify particular action to be taken by a person to ensure compliance with the provision of the Food Standards Code to which it relates.

Compliant

Yes.

Comment

The improvement Notice that we sighted includes reference to the relevant clauses of the Food Standards Code and the action that the food proprietor must take to ensure compliance with the Code.

Section 49

Request for Re-Inspection

Requirement

The proprietor of a food business, whose premises or vehicle or equipment is affected by a prohibition order, may at any time after the order is served, make a written request to the officer who made the order to cause the premises or vehicle or equipment to be inspected by an authorised officer.

If a request for inspection is made under this section and the premises, vehicle or equipment concerned, through no fault of the proprietor of the food business, is not inspected by an authorised office within the period of two clear business days after the receipt of the request by the relevant officer, a certificate of clearance is taken to have been issued to the proprietor.

Compliant

Not Applicable.

Comment

Since a prohibition order has not been issued by the Council, we are unable to provide comment in relation to this section.

In any event, we **recommend** that where a prohibition order is issued by the Council, that the Council ensure that if a request to reinspect is received under this section, that the relevant food premises is inspected within 2 business days from the date of request.

In the event a prohibition order is ever issued, we **recommend** the Council develop and maintain a register of all prohibition orders issued under the Act, which includes details of the following:

- details of the food premises and recipient of the order;
- details for any requests for inspection made under section 49 by the proprietor;
- the date of the follow up inspection; and
- the date that the certificate of clearance was issued.

Section 52

Review of Order

Requirement

A person who is bound by a prohibition order who suffers loss as a result of the making of the order may apply to the officer who made the order for compensation if the person considers that there were no grounds for the making of the order.

If there were no grounds for the making of the order, the Council is required to pay such compensation to the applicant as is just and reasonable.

Compliant

Not Applicable.

Comment

We **recommend** that Environmental Health Officers ensure sufficient and reliable evidence is collated in respect of any non-compliance with an improvement Notice which may warrant a prohibition order being issued. Where Council chooses to enforce such non-compliance (whether it be through issue of prohibition and/or an expiation Notice), ideally the relevant file should contain clear photographs of both the non-compliance which resulted in the improvement Notice being issued and, any prevailing non-compliance following the issuing of the order.

Part 6, Division 1 (sections 53-58)

Taking of Samples

Requirement

These sections set out the requirements for the taking of food samples by an authorised officer including, notification to proprietor, payment for sample, procedures to be followed and the submission of sample for analysis.

Compliant

Yes.

Comment

The Council's Environmental Health Officer has never needed to take food samples during his employment with the Council. He is, however, familiar with the requirement of this section.

Section 91

Delegations by Enforcement Authority

Requirement

Provides that subject to section 90, the Council (being an enforcement agency) may delegate a power or function vested or conferred upon it under the Act.

Complaint

Yes.

Comment

Wallmans Lawyers recently conducted a review of the Council's delegations. The Council's delegations under the *Food Act 2001* were made in reliance upon the power contained in this section and delegated to the Chief Executive Officer at the Council meeting of 17 June 2010.

Section 92

Exercise of Functions by Enforcement Agencies

Requirement

The relevant authority may adopt national guidelines relating to the exercise of its functions under the Act and may require other enforcement agencies and authorised officers to adopt those guidelines in the carrying out of their functions under the Act.

Compliant

Yes

Comment

We **recommend** that all Environmental Health Officers appointed by the Council ensure they are familiar with the guidelines prepared for the purposes of this section by the Australian New Zealand Food Authority. Further, officers should be guided by industry practices contained in the guidelines released by the Health Department which are consistent with the national guidelines.

We **recommend** that Council's EHOs regularly inspect the Australian New Zealand Food Standards website <http://www.foodstandards.gov.au/> for useful publications and guidelines which may be adopted by the Council to assist its officers.

Section 93

Reports by Enforcement Agencies

Requirement

The head of an enforcement agency is to report to the relevant authority, at such intervals as the relevant authority requires, on the performance of functions under the Act or Regulations by persons employed or engaged by the agency and the head of the enforcement agency is to forward details on proceedings concerning any offence under the Act or Regulations taken by an officer of the agency and related matters.

Compliant

Yes.

Comment

The Council delivered its Annual Report for the year ending 30 June 2010 within the timeframe requested by the Department, namely by 30 June 2010. We sighted the Annual Report and it contains the following information:

- details of the Council's officers that are authorised under the Act;
- details regarding the risk classification assigned to food premises and of inspections carried out within those premises within the Council's area;
- details of the warning Notices issued under the Act; and
- details regarding any complaints received by the Council in relation to food premises within their areas.

It is clear from the Annual Report that the Council has received complaints in relation to food within its area. We **recommend** that Council maintain a register of all complaints received which includes details of any follow up action taken by the Council and the outcome of the investigation of the complaint (if any).

Section 94

An Enforcement Agency may Appoint Authorised Officers

Requirement

An enforcement agency may appoint authorised officers for the purposes of the Act provided that those officers have appropriate qualifications or experience, and related matters.

The Council must prepare and maintain a list of authorised officers appointed by it.

Compliant

Yes.

Comment

The Council has appointed two Environmental Health Officers who have responsibilities for exercising the powers and functions under the Act.

The Council has assessed that the persons appointed as authorised officers under the Act have the necessary expertise relevant to the exercise of their functions, duties and powers under the Act.

There are no qualifications prescribed under the Act for persons appointed as authorised officers however, the industry standard recommended qualifications held by such a person include a Bachelor of Applied Science (Environmental Health) and/or a Bachelor of Environmental Health. Accordingly, we **recommend** that in appointing authorised officers under the Act in the future, that the Council ensure that the relevant officer has one of these qualifications.

The Council maintains a record of all of its appointments under the Act and maintains a list of authorised officers appointed, which is contained in the Council's Annual Report.

We **recommend** that the Council revise the list of authorised officers maintained under section 94(2) of the Act to include details of:

- date of appointment;
- any relevant conditions or limitation to which the appointment is subject;
- the expertise and qualifications of the persons appointed; and
- the date their appointment ceased.

In conducting the audit we reviewed the instrument of appointment for Council's EHO, Rodney Kleemann which was executed by the Chief Executive Officer on 12 May 2010. We also sighted copies of the officers' identity card.

Section 95

Authorised Officers to have Certificates of Authority

Requirement

Provides that the Council must provide each authorised officer appointed by it with a certificate of authority.

An authorised officer is required to produce the certificate of authority in prescribed circumstances.

Compliant

Yes.



Comment We sighted the instrument of appointment for Rodney Kleemann as part of the audit. In addition to the instrument of appointment, each authorised officer is issued with a photo identity card which lists the legislation under which the officer is authorised.

Section 111 **Disclosure of Certain Confidential Information**

Requirement A person who has, in connection with the administration or execution of the Act, obtained information relating to manufacturing or commercial secrets or working processes must not disclose that information unless the disclosure is made in the prescribed circumstances outlined under subsection (1). Failure to comply with this requirement is an offence.

Compliant Yes.

Comment Council's Environmental Health Officer is aware of this requirement. Since the information contained within Council's food files has the potential to commercially impact upon businesses within the Council's area, we **recommend** that these files be clearly marked "private and confidential" on the exterior to ensure that all members of the organisation recognised that they must be treated as such.

General Comments & Recommendations Regarding Evidence Gathering Procedures & Maintenance of Files

Having reviewed some of the Council's files in conducting the audit, we make the following best practice **recommendations**:

- comments recorded by the Environmental Health Officer within inspection reports and checklists should include detailed descriptions of any non-compliance and photographs should always be taken of any instances on non-compliance to support the officer's findings;
- where photographs are taken, include a detailed description of what the relevant photographs depict and the date and time they were taken to ensure the reliability of the evidence and that any person reviewing the file recognises its purpose; and
- in addition to completing the safety assessment form during an inspection of a food business, where there are serious instances of non-compliance, we **recommend** that the officer also prepare a detailed report;
- that Council maintain a separate register in respect of each food premises which lists all the inspection dates and details of any Notices, orders and/or expiations issued. We recommend the register be attached to the inside cover of each file for easy and quick reference; and
- that the Council develop an evidence collection procedure to assist future staff in exercising their functions and duties under the Act.

ROAD TRAFFIC ACT 1961

Section 17

Installation of Traffic Control Devices

Requirement

The Council may, with the approval of the Minister, install, maintain, alter or operate, or cause to be installed, maintained, altered or operated, a traffic control device on, above or near a road.

Compliant

Yes.

Comment

Council is authorised to install prescribed traffic control devices under the "Notice to Council to Use Traffic Control Devices and to Close Roads and Grant Exemptions for Events" released by the Minister ("the Minister's Notice"). We have reviewed the resolution of Council meeting of 17 June 2006 in relation to Council's delegations which includes reference to Council's authorisations under the Minister's Notice.

We **recommend** that Council ensure that relevant Council staff are aware of their authorisations under the Minister's Notice and ensure that when exercising powers under the Notice that the conditions contained therein are observed. Further, the Minister's Notice operates in conjunction with the *Legal and Technical Responsibilities for Traffic Control Devices* which is otherwise defined as the Code in clause A3 of the Minister's Notice. We also **recommend** that Council ensure that all relevant staff are familiar with the provisions of the Code.

Section 32

Road Closing by Council for Traffic Management Purposes

Requirement

The Council may, by the installation or alteration of a traffic control device –

- (a) close a road or part of a road to all vehicles or vehicles of a specified class; or
- (b) close a road as a through road for motor vehicles,

for the purposes of rationalising the flow or impact of traffic within a part of the Council's area, in pursuance of a resolution of the Council.

Before such a resolution is made, the Council must ensure the consultation requirements under this section are fulfilled.

A resolution for a road closure under section 32 must be published in the Government Gazette

Compliant

Not Applicable.

Comment

We were informed that the Council has not exercised its powers under this section to close a road. The Council ordinarily relies on section 359 of the *Local Government Act 1934* to close roads on a temporary basis, and otherwise, acts in accordance with the provisions of the *Roads (Opening and Closing) Act 1991* to close roads on a permanent basis.

Section 33 **Road Closing and Exemptions for Certain Events**

Requirement The Council may apply to the Minister for a declaration that an event is an event to which section 33 applies in which case the Minister may make an order directing –

- (a) that specified roads (being roads on which the event is to be held or roads that, in the opinion of the Minister, should be closed for the purpose of the event) be closed to traffic for a specified period; and
- (b) that persons taking part in the event be exempted, in relation to the specified roads, from the duty to observe an enactment, regulation or by-law prescribing the rule to be observed on roads by pedestrians or drivers of vehicles.

Compliant Not Applicable.

Comment The power to declare an event to be an event to which section 33 applies has been delegated by the Minister to Councils in accordance with clause F of the Minister's Notice. The Council may sub-delegate the power to close roads and grant exemptions for certain road events to its Chief Executive Officer.

Clause F.4 of the Ministers Notice sets out the road rules in respect of which the Council may grant exemptions for a certain event.

The Council resolution of 17 June 2010 evidences that the Council has sub-delegated the power delegated to it by the Minister under section 33(2) to the Chief Executive Officer.

We **recommend** that where the Chief Executive Officer exercises a power under this section, that he ensure strict compliance with the conditions contained in clause F of the Minister's Notice.

Section 35 **Authorised Officers**

Requirement An authorised person as defined in the *Local Government Act 1999* (being a person appointed as such by the Council under section 260 of the *Local Government Act 1999*), is an authorised officer under the *Road Traffic Act 1961* for the purposes of –

- (a) enforcing prescribed provisions of the Act in area of the Council for which he or she is an authorised person; or
- (b) exercising the powers of an authorised officer under prescribed provisions of the Act in the area of the Council for which he or she is an authorised person.

Compliant Yes.

Comment The Council has appointed officers under section 260 of the *Local Government Act 1999* by way of executing an instrument of appointment. These officers are, therefore, authorised for the purposes of enforcing the prescribed provisions of the Act. The prescribed provisions are those contained in Part 12 of the Australian Road Rules relating to restrictions



on stopping and parking and regulation 21 of the *Road Traffic (Miscellaneous) Regulations 1999*, which relates to the prohibition of parking in certain public places. This means that authorised officers of Council are authorised to enforce parking contraventions by way of expiation Notice.

Section 40N

Removing Unattended or Broken Down Vehicle of Danger or Obstruction

Requirement

Where an authorised officer of the Council believes on reasonable grounds that a vehicle is unattended or broken down on a bridge, culvert or freeway; or believes on reasonable grounds -

- (a) a vehicle is unattended or broken down on any road; U
- (b) the vehicle is –
 - (i) causing harm, or creating a risk of harm, to public safety, the environment or a road infrastructure; or
 - (ii) causing or likely to cause an obstruction to traffic or any event lawfully authorised to be held on the road; or
 - (iii) obstructing or hindering, or likely to obstruct or hinder, vehicles from entering or leaving land adjacent to the road,

the officer may remove the vehicle, or, in the case of a vehicles that is a combination, any vehicle forming part of the combination (by driving or towing it or otherwise) to a convenient place; or

authorise another person to remove it (by driving or towing it, or otherwise) to a convenient place.

Compliant

Not Applicable.

Comment

We were informed that an authorised officer of the Council has not exercised powers under this section.

In any event, we **recommend** that Council ensure that relevant officers are aware of the powers contained in this section and the limitations upon them, as they may be used as an alternative to removing an abandoned vehicle under section 237 of the *Local Government Act 1999*.

Section 40P

Notice of Removal of Vehicle and Disposal of Vehicle if Unclaimed

Requirement

This section applies to a vehicle that has been removed to a convenient place under section 40N of the Act. Section 40P sets out the procedure that must be observed by the Council where a vehicle is removed and relocated. That is, the authorised officer who removed the vehicle must ensure that the owner of the vehicle is notified in accordance with this section. If the owner of the vehicle does not, within one month after service or publication of the Notice relating to the removal of the vehicle take possession of the vehicle and pay all expenses in connection with the removal, custody and maintenance of the vehicle and of serving,



posting or publishing the Notice, the Council must offer the vehicle for sale by public auction in accordance with the provisions of the Act.

If the vehicle is not sold at the auction or Council believes that the proceeds of the sale of the vehicle would be unlikely to exceed the costs incurred in selling the vehicle, the Council may dispose of the vehicle in such a manner as it thinks fit. Any proceeds from the sale of such a vehicle are to be distributed in accordance with section 40P(5) of the Act.

Compliant

Not Applicable.

Comment

The Council has not removed a vehicle under section 40P of the Act and, therefore, a view cannot be expressed about its compliance with the requirements of this section.

Importantly, section 40P confers duties upon the Council, including to sell the vehicle by public auction if it is not claimed and, to apply the proceeds of any sale in accordance with the provisions of the Act. This section also confers a discretionary power on the Council relating to the ability of the Council to, in limited circumstances dispose of a vehicle that has been removed. Where the Council wishes to delegate this power so that staff can exercise it on its behalf, we **recommend** the following wording be inserted into the Council's Schedule of delegations under the *Road Traffic Act 1961*:

"the power, in accordance with section 40P(5) of the Act, if –

- (a) a vehicle removed under section 40N if offered for sale by public auction but is not sold at auction; or*
- (b) the delegate reasonably believes that the proceeds of the sale of the vehicle be unlikely to exceed the costs incurred in selling the vehicle;*

to dispose of the vehicle in such manner as the delegate thinks fit".



ROAD TRAFFIC (MISCELLANEOUS) REGULATIONS 1999

Regulation 21

Prohibition of Parking in Certain Public Places

Requirement

It is an offence for a person to park a vehicle (other than a bicycle) in a public place owned by or under the care, control or management of a Council, except in an area specifically set aside for parking by the Council parking authority.

A person who acts in contravention of this regulation is liable for a maximum penalty of \$500 or an expiation fine of \$35.

Compliant

Not Applicable.

Comment

We were informed by the Council's authorised officer that a review of the Council's parking arrangements is being undertaken and until that time, expiations are not to be issued for parking offences under the Act, Regulations or Road Rules.

We **recommend** that Council ensure its authorised officers are familiar with this offence provision, which will assist in circumstances where Council experiences difficulties with persons parking on land owned by Council that is not set aside for that purpose.



AUSTRALIAN ROAD RULES (UNDER THE ROAD TRAFFIC ACT 1961)

Part 12

Restrictions on Stopping and Parking

Requirement

Regulation 6 of the *Road Traffic (Road Rules Ancillary & Miscellaneous Provisions) Regulations 1999*, provides that the provisions of Part 12 of the Rules relating to restrictions on stopping and parking are offences that may be enforced by an authorised officer of the Council. These offences may be enforced by way of expiation and/or prosecution where the Council has sufficient evidence (i.e. evidence that establishes the elements of the relevant offences beyond reasonable doubt) available to it.

Compliant

Not Applicable.

Comment

We were informed that authorised officers of the Council have not issued parking infringements / expiation Notices. The reasons for this is because there is a number of parking signage within the Council's area that is required to be updated to ensure it is a valid parking sign under the Act and Rules.

We were informed that the Council intends to undertake a comprehensive review of parking within its area following the recent November 2010 elections.

We **recommend** that the Council undertake this review as a priority and in doing so, we **recommend** that the Council identify the areas in which it wishes to regulate parking and erect signs that comply with the requirements of the Act and Rules to ensure parking may be effectively regulated in those areas. Any person who acts in contravention of the signs will commit an expiable offence under the Australian Road Rules.

Once the review has been undertaken and Council is enforcing parking infringements, we **recommend** that:

- a template expiation Notice be prepared for parking infringements; and
- Council ensure that it has sufficient evidence before issuing any expiation which includes a photograph of the offending vehicle.



PUBLIC AND ENVIRONMENTAL HEALTH ACT 1987

Section 6

Delegation

Requirement

The council may, by instrument in writing, delegate any of its powers or functions under the *Public and Environmental Health Act 1987*. A power or function delegated under this section may, if the instrument of delegations so provides, be further delegated.

Compliant

Yes.

Comment

We reviewed the minutes for the Council meeting of 17 June 2010. The minutes contain the resolutions of the Council's most recent delegations review. As part of this review, Council re-made its delegations and the delegations under the *Public and Environmental Health Act 1987* were made in exercise of the power contained in this section.

We also reviewed the Council's Schedule of Delegations to the Chief Executive Officer and it is clear that all of the Council's powers and functions under the Act and Regulations have been delegated to the Chief Executive Officer. The Chief Executive Officer is permitted to further sub-delegate these powers and functions.

Section12A

Powers and duties of relevant authorities

Requirement

It is the duty of the local Council –

- (a) to promote proper standards of public and environmental health in its area; and
- (b) to take adequate measures to ensure that provisions of Part 3, which relates to the protection of public health, are observed in its area; and
- (c) to take reasonable steps –
 - (i) to prevent the occurrence and spread of notifiable diseases within its area; and
 - (ii) to prevent any infestation or spread of vermin, rodents or other pests within its area.

Compliant

Yes.

Comment

The Council's Environmental Health Officer is primarily responsible for exercising the powers and functions of Council under the Act. The Officer conducts a number of inspections to ensure high standards of public health are observed within the Council's area. There has not been an outbreak of a notifiable disease within the Council's area.

The Council has implemented a school immunisation program through the Department of Health.

School presentations were also undertaken at the Yankalilla Area School in relation to food handling and the role of Environmental Health Officers



within the community. Further, Council published an in-house newsletter "*In the Loop*" which has been identified by the Council as the best option to promote public health matters within the community.

As identified in the Council's Annual Report under the Act, the Council constitutes a small rural community and there are no pressing environmental issues facing the community.

The Council has not developed a Strategic Corporate Plan which focuses primarily on environmental health activities. We **recommend** that in moving forward, the Council give consideration to developing such a plan, which identifies the manner in which Council will seek to implement its functions and duties under this section and include details of any programs the Council intends to put in place (or, which already exist) to achieve this.

Section 15

Prevention of insanitary conditions on premises

Requirement

The Council may, by Notice in writing, require the owner of the premises or any other person who is apparently responsible in causing the insanitary condition or allowing the insanitary condition to occur –

- (a) to take specified action to improve the condition of the premises;
or
- (b) to desist from a specified activity to which the condition of the premises is apparently attributable.

Further, if residential premises are, by reason of their insanitary condition, unfit for human habitation, the Council may require specified action to be taken to improve the condition and include within such a Notice a direction that, after a date specified in a Notice, the premises must not be occupied until action has been taken to render the premises fit for human habitation and, the Council is satisfied that the premises are fit for human habitation.

Compliant

No.

Comment

We reviewed Council's file for Lot 116 Lockers Road, Myponga. The file contains a Notice issued under section 15(1) & (2) of the Act in relation to an insanitary condition on premises, which rendered the premises unfit for human habitation. Specifically, the Notice provides that the insanitary condition arose from inadequate facilities for sanitisation or personal hygiene and the absences of an effective wastewater system on the premises. The Notice sets out the work that the owner is required to undertake to remedy the insanitary condition. The Notice does not state the specified date by which such action must be taken. Accordingly the validity of the Notice could be challenged on the grounds that it is ambiguous.

Further, there is not sufficient evidence on the file to justify the issue of the Notice. The file does contain a list of sub-standard defects which was prepared by the Department of Families and Communities. There are no notes of the Council officer having inspected the premises or any photographs of the premises.



The file also contains a letter to the owner of the premises dated 4 December 2008 which confirms that the requirements of the Notice have been complied with and that the Notice is, therefore, revoked. As a matter of law, there is no need to revoke a Notice once it has been complied with. Rather, the Notice automatically remains in force until such time as the requirements specified therein have been fulfilled. The only time in which a Notice should be revoked is where the Council forms the view that it should not have been issued in the first instance.

There is no evidence on the file of an inspection having been undertaken by the Council's officer following the Notice having been issued, nor of any photos which evidence the owners' compliance with requirements of the Notice. We **recommend** that when issuing Notices under the Act, that Council ensure it has sufficient evidence which warrants a Notice being issued. This evidence is crucial so that Council may effectively justify its position in having issued a Notice if such a Notice is appealed. We **recommend** that such evidence should be maintained on the relevant file.

There are no expiation Notices on the file and it is clear that the officer choose to address the insanitary condition by way of a civil enforcement Notice rather than penalise the owner. This was a reasonable course of action in the circumstances given the action required to be taken by the owner would require significant cost to him.

We **recommend** that the Council maintain a register of all Notices issued under the Act which details the date of the Notice, the date that its requirements are to be complied with and any follow up actions and inspection dates.

We **recommend** that the Council review its standard section 15 Notice to ensure it complies with best practice standards and at the very least, include the date by which the actions specified therein is to be taken.

Part 3

Part 3 – Protection of Public Health - Offences

Requirement

Part 3 creates a number of offences for which the Council is responsible for enforcing. The offences include:

- a failure to comply with a Notice issued under section 15 in relation to insanitary condition on premises;
- the causing of an insanitary condition and causing or allowing an insanitary condition to occur on a premises (section 16(1));
- failure to comply with a section 17 Notice;
- discharging waste in a public place (section 18);
- failing to keep thoroughfare clean and free of refuse (section 19);
- failure to comply with a section 20 Notice in relation to inadequate facilities for sanitation or personal hygiene; and
- pollution of a water supply (section 21).

Compliant

Not Applicable



Comment We were informed that the Council has not had cause to either issue an expiation Notice under the Part 3 of the Act nor to commence prosecution proceedings for an offence arising under this Part. We were informed that the officer ordinarily takes a conciliatory approach in dealing with persons who commit offences under the Act and that once the offence has been identified persons ordinarily cooperate with the Council and ensure any necessary remedial action is taken. We were informed that EHO would consider taking more severe action by way of prosecution or expiation where a person chose not to co-operate with his directions.

We **recommend** that Council's Environmental Health Officer undertake training in relation to investigation procedures and evidence gathering to ensure that where a breach of legislation has occurred or an offence has been committed, Council officers are well equipped to enforce that breach. Further, the collation of evidence is crucial to the Council's ability to be able to take any enforcement action. We **recommend** that where the Council does not have sufficient evidence that it refrain from taking any such action.

Section 17 **Control of offensive activities**

Requirement If an activity gives rise to a risk to health or results in the emission of offensive material or odours, the Council may, by Notice in writing to the person responsible for the activity, require that person to desist from that activity or to observe requirements stipulated in the Notice in relation to the carrying on of the activity.

Compliant Not Applicable.

Comment We were informed that Council has not issued a Notice under this section.

Section 18 **Discharge of waters**

Requirement The Council may, by Notice in writing, require an owner to take specified action (immediately or within a period specified in a Notice) –

- (a) to prevent the discharge or potential discharge of waste from those premises into a public place or other premises; or
- (b) to remove waste discharge by the owner into a public place or other premises.

Compliant No.

Comment We reviewed the Council's file for the Normanville Meat Works. A Notice was issued to the owner of the premises at which the meat works is situated on 21 August 2007. The Notice was issued in reliance of the powers under this section and sets out the action that must be taken by the recipient to prevent a discharge of waste from the premises and the date by which that work must be undertaken (being by 31 August 2007).



The Notice does not contain any of the reasons for which it was issued (namely why and how the owner of the premises was responsible for the discharge of waste into a public place).

The file contains letters to the land owner in response to complaints received by members of the public in March 2002 and June 2002 about the spillage of waste from trucks carrying paunch waste from the Yankalilla abattoirs. The letters confirm that inspections were undertaken by the Council's officer and the action that the owner had agreed to take through the course of discussions with the EHO. The file did not contain any evidence of the EHO's inspection of the premises or related investigation of the complaints.

There is also a letter on the file dated 21 August 2007 which details that the Council received a complaint in relation to blood being spilled on a Council road. Following this complaint, the Council chose to issue a Notice under section 18 to the owner of the premises. There is no evidence on the file of the inspection notes of the Council's officer who investigated the complaint, nor any photos of the offence having been committed. Accordingly, there is not sufficient evidence on the file to warrant the Notices having been issued.

That said, the complaints from the residents do give rise to concerns about the practices of the meat works over the last few years and we **recommend** that Council be vigilant in ensuring these practices do not give rise to further breaches of the Act in the future. Where any such breach does occur, we **recommend** that the Council seriously consider expiating the owner in light of the previous breaches under the Act.

Section 19

Private thoroughfare

Requirement

Where the owner of a private thoroughfare fails to keep that area clean and free of refuse, the Council may, by Notice in writing, require the owner to take specified action to remedy the default within such time as the Council allows in the Notice.

Compliant

Not Applicable.

Comment

We were informed that the Council has not issued a Notice under this section.

We **recommend** that Council ensure that its EHOs are aware of the requirements of this section.

Section 20

Provision of adequate sanitation

Requirement

Where the Council is of the opinion that premises have inadequate facilities for sanitation or personal hygiene, the Council may, by Notice in writing, require an owner of the premises to take such action as the Council thinks necessary, and specifies in the Notice, to provide adequate facilities within such time, and in such manner, as is specified in the Notice.



Compliant Not Applicable.

Comment We were informed that the Council has not issued a Notice under this section.

We **recommend** that Council ensure that its EHOs are aware of the requirements of this section.

Section 21 **Pollution of water**

Requirement Where the Council is of the opinion that a water supply may become polluted in consequence of a particular activity, the Council may, by Notice in writing addressed to the person responsible for the activity, require the person to take a specified action to prevent pollution of the water supply within such time as the Council specifies in the Notice, or to desist from the activity.

Compliant Not Applicable.

Comment We were informed that the Council has not issued a Notice under this section.

We **recommend** that Council ensure that its EHOs are aware of the requirements of this section.

Section 22 **Sources of water supply may be closed**

Requirement Where the Council is of the opinion that a water supply is polluted and that action is necessary to prevent human consumption of the water, it may, by Notice published in the Gazette, restrict or prohibit the taking of water from that water supply, or the use of water taken from that water supply, for human consumption.

Compliant Not Applicable.

Comment Circumstances have not arisen which warrant the Council taking action under this section.

We **recommend** that Council ensure that its EHOs are aware of the requirements of this section.

Section 23 **Action on default**

Requirement Where the requirements of a Notice under Part 3 are not complied with, the Council may cause the requirements to be carried out. Where this occurs, a person authorised to do so by the Council may enter the premises at any reasonable time for the purposes of carrying out the requirements of the Notice. A warrant may be required in prescribed circumstances.

Compliant Not Applicable.

Comment Whilst the Council has issued Notices under Part 3, it has not had cause to take default action because the requirements of the Notices were complied with.

We **recommend** that Council consider exercising its powers under this section in circumstances where there is severe risk to public health caused by a breach of the Act and failure to comply with a Notice to ensure compliance with Council's general public health duty to maintain and protect public health within its area.

Section 36 **Action to prevent the spread of infection**

Requirement Where the Chief Executive Officer of the Department of Health or anyone acting in that position informs the Council of the occurrence of a notifiable disease in its area that constitutes a threat to public health, the Council must take such action as is reasonably open to it to assist in preventing the spread of that disease.

Compliant Not Applicable.

Comment We were informed that there has not been an outbreak of a notifiable disease in the Council's area.

We **recommend** that Council ensure that its EHOs are aware of the requirements of this section.

Section 38 **Inspections etc**

Requirement Sets out the powers conferred upon a person who is an authorised officer.

Compliant Yes.

Comment Council's Environmental Health Officer is aware of his powers and functions under this section of the Act.

We **recommend** that the Council ensure that its officers who exercise powers under this Act receive training in relation to them.

Section 39 **Councils may appoint officers of health**

Requirement The Council may appoint a person to act as the officer of health for its area.

Compliant Yes.

Comment The Council has appointed Rodney Kleemann in writing as an Environmental Health Officer. We sighted the instrument of appointment

and it complies with best practice standards.

Section 41

Power to Require Information

Requirement

The Council may require a person to furnish such information relating to public or environmental health as reasonably required for the purposes of the Act.

Compliant

Not Applicable.

Comment

The Council has not exercised its powers under this section of the Act.
We **recommend** that Council ensure that all relevant officers are aware of this power which may be of assistance in the investigation of offences under the Act.

Section 42

Confidentiality

Requirement

Where a person, in the course of official duties, obtains medical information relating to another, or information the disclosure of which would involve the disclosure of information relating to personal affairs of another, shall not disclose that information unless –

- (a) the disclosure is made in the course of official duties; or
- (b) the disclosure is made with the consent of the other person; or
- (c) the disclosure is required by a court or tribunal constituted by law.

Compliant

Yes.

Comment

Council staff are aware of the confidentiality and disclosure requirements under this section.

We **recommend** that files relating to public and environmental health issues are clearly labelled "*private and confidential*" to ensure they are not readily accessible by other staff and to minimise the risk of inadvertent disclosures of confidential information.

Section 43

Manner of giving Notice

Requirement

A Notice required or authorised by this Act may be given or served personally, or by post, or if the Notice relates to premises and it is to be served on an owner of those premises, by affixing the Notice to a conspicuous part of the premises.

Compliant

Yes.

Comment

Council staff are aware of the service requirements under the Act. Ordinarily the Council practice is to serve Notices by way of registered post.

Section 44

Reporting

Requirement

The Council must, on or before 30 September every year, submit a report to the Public and Environmental Health Council regarding the work of the Council under the Act which was undertaken during the preceding financial year ending 30 June that year. The report must include in respect of that financial year –

- (a) a report on the standard public and environmental health in the local councils area;
- (b) details of the measures that local council has taken under Part 3.

Compliant

Yes.

Comment

We reviewed the Council's Annual Report under the Act for the year ending 30 June 2010. The report contains the information required under this section including details of the enforcement action taken by the Council and comments regarding any significant environmental health issues facing the local community. The report was submitted to the Public and Environmental Health Council via email within the required timeframe.

Section 45

Offences against the Act

Requirement

Proceedings for an offence against the Act must be commenced upon the complaint of an authorised officer of the Council and must be commenced within one year after the date in which the offence is alleged to have been committed.

Compliant

Not Applicable.

Comment

The Council has not prosecuted any offences under the Act. Accordingly, we **recommend** that where Council has sufficient evidence of an offence under the Act, that it obtain legal advice in relation to the reliability of that evidence before making any decision to prosecute.