Investigations summaries 2020–2021

A special report under section 31 of the Ombudsman Act

SafeWork NSW: Asbestos compliance action taken against Blue Mountains City Council

(This investigation was the subject of a public report tabled on 21 August 2020 entitled *Investigation into actions taken by SafeWork NSW Inspectors in relation to Blue Mountains City Council workplaces*.)

In 2018, Blue Mountains City Council complained to us that SafeWork had taken excessive and unreasonable compliance actions in relation to council's asbestos management practices. We investigated, finding SafeWork inspectors had acted contrary to law in issuing some compliance notices and had required council to take action that was not justified by legislation and relevant industry standards.

In August 2020 we tabled a special report to Parliament, recommending SafeWork apologise to council and provide compensation for the undue expenses caused by its actions.

Background

SafeWork is NSW's work health and safety regulator. It plays a central role in ensuring safe workplaces, reducing work-related fatalities, serious injuries and illnesses.

Blue Mountains City Council complained to us that SafeWork had taken excessive and unreasonable asbestos compliance actions compared to what it would normally have done in similar circumstances. Council claimed that this was in response to media and political pressures, alleging that senior executives of SafeWork had inappropriately instructed SafeWork inspectors to issue compliance notices that were not otherwise warranted.

Why did we investigate?

Regulatory agencies such as SafeWork must act and be seen to be acting independently, impartially and consistently. Workers, employers and the community rely on SafeWork to make enforcement decisions and actions that are based on professional expertise, evidence and relevant standards. These decisions and actions must reflect the seriousness of the risk and the potential for harm in the workplace.

Employers, workers and the community need to be able to place their trust in a regulator to act lawfully and reasonably, and to provide certainty and consistency in enforcement.

We recognise that asbestos presents a significant danger, and we have previously reported on the need for even more rigorous management of asbestos in the community. However, where risks such as asbestos raise legitimate and significant community concerns, it is even more critical that a regulator acts in a rigorous, consistent and proportionate manner. It must act in accordance with its legislative powers, with decisions made on the basis of relevant standards and the best available evidence.

After council complained to us in 2018, we investigated:

- the lawfulness of notices that SafeWork issued to council regarding asbestos at 4 sites
- whether SafeWork inspectors issued any notices because they were instructed to do so, rather than because they independently believed the notices were warranted
- whether SafeWork required council to comply with standards that were higher than those recommended by legislative guidelines and industry standards – and if so, whether this was reasonable
- whether administrative practices around the issuing of notices were adequate, and conflicts of interests appropriately managed
- whether the compliance actions were consistent, and whether SafeWork assessed and communicated the risk from asbestos exposure consistently when it decided to issue notices.

What did we find?

On a number of occasions, SafeWork inspectors issued notices even though they did not hold the reasonable belief that is required under legislation. Instead, they issued the notices because they were directed or felt obliged to do so.

In some cases, SafeWork required council to take action that was not justified by legislative guidelines and relevant industry standards, and failed to provide clear and documented evidence as to why different standards were being applied. SafeWork also applied asbestos risk management guidelines inconsistently, with different SafeWork inspectors assessing asbestos risks differently across the same scenarios.

SafeWork's conduct imposed significant undue financial costs on Blue Mountains City Council, and therefore indirectly on its ratepayers.

What did we recommend?

This investigation highlighted a need to strengthen the independence of SafeWork inspectors to ensure the compliance actions it takes are free from irrelevant considerations caused by external pressures. It also highlighted the need to improve the way risks from asbestos exposure in real life scenarios are assessed and communicated to the affected community.

We recommended that SafeWork apologise to council and provide compensation for the undue expenses caused by its actions.

We also recommended improvements to SafeWork's policies, procedures and training to help ensure that future compliance actions are applied consistently and reasonably.

SafeWork has reported that it has implemented all recommendations made. It apologised to the council for its actions and made an ex-gratia payment to it in July 2021 for the unnecessary expenses council incurred. SafeWork has updated relevant policy guidelines, developed practice notes and decision-making templates for inspectors and delivered training to them. It has also designed a quality assurance program for the decisions of inspectors which is being piloted.

Wollongong City Council: Responsibilities regarding potentially contaminated land

In 2019, a purchaser of land, 'Mr B', complained to us that Wollongong City Council had issued him planning certificates and development consent without disclosing that the land he was proposing to purchase may have been contaminated due to past land use. He told us he subsequently spent over $100,000 investigating the source of the contaminant and remediating the land.

We investigated, finding council had acted unreasonably by failing to assess contamination when it approved the development and by not including information about past development consents for the land that indicated it was potentially contaminated. We recommended council apologise to Mr B, make an ex-gratia payment for part of the expenses he incurred, and update and review its processes and training to help ensure a similar situation doesn't happen in future.

Background

Mr B complained that council could have – and should have – notified him of a known fuel contaminant on his land when it issued him planning certificates and granted development consent to build a health clinic and car park on the site. He told us that council's omission had caused him significant and ongoing financial losses.

In 2016, Mr B noticed oil seeping through concrete joints in the car park. 2 weeks later council told Mr B it had reviewed its records and located historical building approvals for a petrol bowser on the site.

Council directed Mr B to investigate the source of the contaminant. He eventually located an underground storage tank (commonly used to store petroleum products or waste oil) under the car park. Council then directed Mr B to clean up and remediate the land, which included payment of ongoing environmental management costs.

Why did we investigate?

It is important that councils build up information on land use history, contamination and remediation in their local areas, and accurately record and manage it. This information is vital to provide accurate advice to the community and especially to prospective purchasers of land.

Although development applicants are responsible for compiling and lodging development applications with the required reports and plans, they should be able to rely on council's systems and staff to fully consider the need to disclose council's knowledge of earlier development consents if they point to possible land contamination.

As we were concerned about council's handling of Mr B's matter, we decided to investigate. We considered whether it was lawful and reasonable for council:

- to issue planning certificates and development consent without turning its mind to whether it had information indicating the land may potentially be contaminated
- to hold Mr B fully responsible for investigating the source of the contaminant, remediating it and paying the ongoing environmental management costs.

What did we find?

We found that council acted unreasonably[21] when it determined Mr B's development application because it failed to assess potential contamination in accordance with the relevant planning guidelines and council's policies. Having failed to assess contamination, council did not require remediation before the development started, which led to an unjust outcome for Mr B when he was required to remediate the land after the development had already been completed.

21. Within the meaning of s 26(1)(a) of the *Ombudsman Act 1974.*

Council also acted unreasonably by not including more information on the planning certificates, as suggested by the planning guidelines, about the relevant historical uses of the site (ie as a petrol station) that indicated potential contamination. The relevant guidelines stated that, as a minimum, planning certificates should list activities that may cause contamination. Council's own policy stated that it should 'consider the likelihood of contamination upfront in the planning and development process'.

Historic development consents indicating the land was potentially contaminated were uploaded onto council's property database system in November 2003. This information should have been accessible to staff who assessed the development application and issued the planning certificates.

Given the information about potential contamination was available to council before the development commenced, it was unreasonable to require Mr B to meet the full cost of remediating the site after the development was completed. Some of the remediation costs could have been prevented had council acted on the contamination at development application stage.

What did we recommend?

We recommended that council:

- apologise to Mr B for the consequences of failing to assess the potential contamination of his land at development application stage, and as a result failing to provide him with relevant information before development was carried out
- ensure the records in its various systems accurately reflect the current contamination status of land
- review and make necessary amendments to its processes for considering and granting planning certificates and development applications to ensure it considers prior listed uses of the land
- review the information it provides to future applicants for planning certificates and development consents, to ensure they are given sufficient information about possible contamination
- provide training and guidance to relevant staff around changes resulting from the above recommendations.
- provide a copy of the final report issued at the conclusion of this investigation to its Audit and Risk Committee.

We are awaiting council's response to our recommendations.

Broken Hill City Council: Occupying unfinished council premises without an occupation certificate

(This investigation was the subject of a public report tabled on 15 December 2020 entitled *An inherent conflict of interest: councils as developer and regulator*.)

On 15 December 2020 we reported on an investigation we had conducted into Broken Hill City Council (BHCC) that found council had breached the law by allowing large public events to be hosted in its unfinished civic centre, despite not having the necessary certification that it was safe to do so.

This investigation led to a broader review of how councils in NSW manage situations where they are the developer, and at the same time regulate that development. We found that while this type of conflict of interest arises relatively frequently, it is not adequately dealt with by relevant planning laws or council policies. In December 2020 we tabled a special report to Parliament recommending that the Department of Planning, Industry and Environment (DPIE) convene a working group to consider options that can be implemented to avoid or better manage these types of conflicts of interest.

Background

For important reasons of public safety, use of a building without the necessary occupation certificate is strictly prohibited by the *Environmental Planning and Assessment Act 1979* (EP&A Act).

In May 2017 we received a public interest disclosure informing us that BHCC had allowed the use of their unfinished civic centre for large public functions prior to an occupation certificate being approved for the building.

BHCC was both the developer and the consent authority. Under the EP&A Act, it was also the regulatory authority. The role of the regulatory authority is to ensure a development is carried out in accordance with the development consent and all applicable planning laws. BHCC's decision to allow use of the civic centre without an occupation certificate (and to take no enforcement action in respect of that unlawful conduct) highlighted a conflict between BHCC's interest as the owner and developer, and its public duty to uphold and enforce the law as the regulator.

As well as finding BHCC's actions were wrong, the investigation highlighted a broader systemic problem: councils being responsible for enforcing their own compliance with the EP&A Act and other regulations.

Following our investigation into BHCC we sought to examine how widespread the problem might be across the state, and what different councils did to address it.

We conducted a survey of councils and requested information to determine whether they had adequate policies and procedures to deal with the inherent conflicts of interest in situations where councils enforced their own compliance with laws and regulations.

What did we find?

While DPIE has wide-ranging compliance powers under the EP&A Act, its ability to act against councils for contravening the Act is limited. While councils' own codes of conduct do set out a general framework for ethical conduct and can increase transparency in decision-making, they do not prohibit councils from making regulatory decisions on their own developments – nor do they address the resulting conflict of interest when they have both roles.

In 2007, the Independent Commission Against Corruption (the ICAC) recommended that individual councils take steps to manage such conflicting roles. Our survey of councils suggests their adoption of the ICAC's recommendation has been inadequate and inconsistent. While some councils have adopted specific policies to assist with these types of conflicts, there is no common, consistent approach, and policies do not specifically address the risks that can arise where councils act as their own regulator.

What did we recommend?

We proposed a range of options to resolve the conflict in councils' roles in enforcing compliance in relation to their own developments, including:

- establishing a new statewide panel or commission
- making the Secretary of DPIE, the Minister for Planning, or an independent external body or individual responsible for assessment and determination
- making council staff responsible for assessment, with strict role separation.

We recommended that the Secretary of DPIE convene a working group of relevant agencies, including the Office of Local Government and representatives from a cross-section of councils, to consider options (including but not limited to those above) to avoid or, if necessary, manage these kinds of conflicts of interest. We recommended the working group consult relevant stakeholders to further inform the options considered. We asked it to implement any agreed-to options within 12 months of the date of tabling the report.

DPIE accepted our recommendations in November 2020. It has formed a working group that is currently consulting with stakeholders about the proposed options.

Wingecarribee Shire Council: Charging developers water and sewerage management contribution fees in pre–2007 development consents

We received a complaint alleging that Wingecarribee Shire Council had imposed water and sewerage management fees on a developer that were substantially higher than those specified in the development consent issued to her in 2006. We investigated, finding that the council had treated this developer (and others in a similar situation) unreasonably.

Background

When a local council is the water supply authority, it has the power to require developers to pay a contribution towards water and sewerage management works. Some councils choose to include a condition in development consents specifying that this contribution must be paid at the time the developer applies for a construction or subdivision certificate, which can often be some years after the development had been approved.

Lawyers acting on behalf of a property developer, 'Ms X', told us that in 2018 Wingecarribee Shire Council had charged her water and sewerage management fees that were more than $150,000 higher than the amount originally specified in the development consent she obtained in 2006. The relevant condition in Ms X's development consent listed the charges and did not include any notice, express or implied, that the fees might increase in the future (to align with the charges specified in the Development Servicing Plan (DSP) current at the time she applied for a construction certificate). This meant she had no prior notice that the fees could increase – in this case, substantially.

We had already investigated council about largely the same issue in 2008, following a complaint from a different developer. At that time, council agreed to note in its records that anyone holding a development consent dated before 1 January 2007 would not have to pay increased water and sewerage contributions when they became due – instead, they would be charged the fees set out in the consent. Council also agreed to write to any affected developers to inform them of this decision. In addition, any consents that were issued after 1 January 2007 would include a notice informing developers that their future water and sewerage contributions would align with the fees specified by the DSP current at the time the payment became due. This was to provide notice of likely future increases to prevent a similar situation from reoccurring.

Contrary to its undertaking to us, council only wrote to some of the affected developers and instead of saying they would be charged the fees set out in the consent, they were told they would be required to pay fees as specified by the DSP in place at the time they applied for a construction certificate. This meant that developers who had consents issued before 1 January 2007 would still be charged fees higher than those specified in their consents, as in the case of Ms X's.

Why did we investigate?

We had a number of concerns about the reasonableness of some of the actions taken by the council. These included concerns that:

- although council was technically authorised by law to increase the fees in line with its DSP, it had done so without providing any notice to the developer in the consent that was issued to her
- council had failed to abide by the undertaking it had made to us in 2009 that anyone holding a development consent dated before 1 January 2007 would not have to pay an increased fee.

What did we find?

Council acted unreasonably in its treatment of Ms X and other developers who had development consents issued before 1 January 2007. The standard condition in the development consents, which stated water and sewerage management fees would have to be paid before either a construction or a subdivision

certificate was obtained also specified the amounts for the fees. The standard condition did not state that the fees were subject to future increases. This was inconsistent with the relevant 'development control plan' that requires the consent to include a note making it clear that the fees were subject to change.

During our 2008 investigation, council had also agreed to refund the difference in fees paid by all the developers who were affected by council's failure to notify them of future increases. Some, but not all affected developers received refunds.

What did we recommend?

We recommended that Ms X be reimbursed the fees she paid over and above what was set out in her development consent. We also recommended that council:

- publicly invite developers in the same situation as Ms X to contact council to be considered for a fee refund
- write to any developers with development consents containing the pre–2007 standard condition who had not yet paid their water and sewerage charges, to tell them they will only be required to pay the fees listed in their consents

The council has agreed to implement all our recommendations.

Department of Communities and Justice, Corrective Services NSW and Youth Justice NSW: Strip searches at Frank Baxter Youth Justice Centre

(This investigation was the subject of a public report tabled on 8 June 2021 entitled *Strip searches conducted after an incident at Frank Baxter Youth Justice Centre*.)

Following an incident at Frank Baxter Youth Justice Centre, 3 young people were subjected to fully naked body strip searches – a type of search that that is normally only permitted in the adult correctional system. We investigated, finding that while the strip searches were technically legal, they were not justified in the circumstances.

We recommended legislative change to ensure that in future, no young person will be subjected to this type of search.

Background

In January 2020, the Inspector of Custodial Services made a referral to our office[22] reporting that Correctives Services NSW (CSNSW) officers, 'may have carried out unauthorised strip searches' of 3 young people while attending a disturbance at Frank Baxter Youth Justice Centre in November 2019.

The disturbance involved 3 young people climbing onto the roofs of several buildings, gaining access to building materials and tools and refusing to come down. While they were on the roof, they made a series of serious threats to the safety of Youth Justice NSW (YJNSW) staff.

A Memorandum of Understanding (MoU) between CSNSW and YJNSW provides that CSNSW's Security Operations Group (SOG) can be called in to take control of a youth justice centre to quell a riot or disturbance. The MoU authorises SOG officers to exercise the same powers in respect of young people as they can exercise in respect of adults in the adult correctional system. Although it does not explicitly mention searches, it appears that the MoU includes the power to conduct fully naked body strip searches – the kind of searches that can happen in adult prisons but which are ordinarily not allowed in youth justice centres.

In youth justice centres, the only strip searches that are ordinarily permitted are 'partially clothed searches'.[23] These involve the young person first removing all of the top half of their clothing, putting it back on, then removing the bottom half. This means that the young person's entire body can be subject to visual inspection, but the young person is never completely naked.

In relation to the November disturbance, after the CSNSW officers entered the centre and spoke to the 3 young people, they came down from the roof without any use of force and with no further incident. The young people were handcuffed, and officers conducted a pat down search of each of them. No weapons or contraband were found.

The young people were then taken to cells where CCTV was in operation and subjected to fully naked body strip searches. This included CSNSW officers requiring 1 young person to bend over whilst naked while they inspected his buttocks area and then inspected his genital area. Again, nothing was found.

Why did we investigate?

After reviewing footage of the incident, we decided to conduct an own-motion investigation. We investigated whether:

- the strip searches of the young people by CSNSW officers were contrary to law
- the strip searches complied with relevant policies and procedures
- the strip searches preserved the privacy and dignity of the young people or were unjust, unreasonable, oppressive or otherwise wrong

22. Under s 26 of the *Inspector of Custodial Services Act 2012.*
23. Children (Detention Centres) Regulation 2015.

- adequate training had been provided to CSNSW officers and YJNSW staff in relation to searching young people
- adequate records were kept in relation to the conduct of the searches.

We did not examine the decision to call in CSNSW officers, nor the conduct of the CSNSW or YJNSW staff preceding the 3 strip searches.

What did we find?

Although the searches were legally authorised by the MoU, the way the searches were conducted was not justified by the circumstances and was therefore oppressive. The fully naked body searches were disproportionate to the risk posed, did not consider any potential detrimental impact on the particular young people, did not include an assessment of options for less intrusive searches, and did not sufficiently preserve the dignity of the young people.

We also found that it was wrong to conduct the strip searches in view of operational CCTV cameras, as it was inconsistent with policy and constituted an unnecessary invasion of the young people's privacy.

We concluded that young people in detention should never be subject to these kinds of strip searches.

What did we recommend?

We recommended the government consider making legislative amendments to provide that:

- young people in detention should never be subjected to fully naked body strip searches, including by CSNSW officers
- searches (such as pat down searches and partially clothed strip searches) should otherwise only be conducted when necessary, in private, with the removal of no more clothing than is reasonably necessary for the search, and with other appropriate safeguards in place
- YJNSW should maintain a digital record of all searches of young people that involve the removal of some or all of a young person's clothing.

We also recommended that SOG officers be trained about how to conduct searches of young people in line with YJNSW search policy and procedure.

In response to the recommendations, YJNSW has updated several policies and procedures to minimise the circumstances under which a full naked body strip search would be conducted. CSNSW officers will be trained to conduct partially clothed body searches as an alternative. However, YJNSW and CSNSW have rejected the recommendations aimed at providing legislative protections for young people who might be subject to strip searches. They have also rejected any policy or practice changes that would limit the removal of clothing and visual inspection to what is reasonably necessary in the individual circumstances stating this would be operationally unfeasible and would compromise the security, safety and good order of the centres.

(Former) Department of Planning and Environment: Procurement of an acting executive director

(This investigation was the subject of a public report tabled on 19 October 2021.)

The NSW Department of Planning and Environment (DPE)[24] engaged the services of an external contractor ('C') as an executive director using emergency procurement provisions. We investigated, finding that DPE had acted unreasonably and contrary to law and government procurement policy in the way it engaged C for the role.

Background

C was acting executive director for around 10 months. Instead of employing them personally through an employment contract, DPE contracted them through 'Company A'. Company A employed C and C was also its director.

DPE used 'emergency procurement' provisions to engage C's services through company A for a 3-month period. It then extended the 'emergency' appointment for another 3 months. Use of emergency procurement provisions meant that built-in procurement safeguards (such as dollar limits) did not apply.

DPE then further extended C's time in the role by entering into a contract with a contingent labour hire firm. In turn, the firm entered into a contract with company A (which employed C). This arrangement lasted approximately 5 months.

Why did we investigate?

After receiving a complaint about the procurement activity from 2 former DPE executive employees, we decided to investigate whether:

- the vacant executive director role warranted an 'emergency' procurement, and what effect the emergency procurement provisions had in these circumstances
- DPE reported the emergency procurement to the NSW Procurement Board, as it is legally required to do
- DPE kept adequate records around the procurement
- the further engagement of C represented value for money.

What did we find?

We found DPE acted unreasonably in using emergency procurement provisions to fill the executive director role. Filling the vacant position did not constitute an emergency – there was no threat to public health and safety, risk of damage to the environment or serious legal or financial risk, and the departure of the incumbent executive director was also not sudden or unforeseen.

Use of emergency provisions also meant DPE's procurement was not subject to legislative requirements, including that it must comply with certain statutory conditions relating to probity and value for money.[25] It also meant that other safeguards (such as a dollar limit on procurement) did not apply. Subsequently, the total cost of engaging C exceeded the scheme's monetary limit for procuring 'base level suppliers'.

We also found DPE breached the law[26] by failing to notify the NSW Procurement Board of the emergency procurement.[27]

DPE also breached NSW procurement policy by engaging C through a labour hire firm for the additional 5 months, as the engagement did not demonstrate value for money. It also failed to keep adequate records of its decision-making around the hiring and continued engagement of C.

24. DPE's functions have since been taken over by the Department of Planning, Industry and Environment (DPIE).
25. Set out in s 176 of the *Public Works and Procurement Act 1912*.
26. Clause 4 of the Public Works and Procurement Regulation 2014.
27. Required under clause 4.

What did we recommend?

We recommended that DPE:

- retrospectively report the emergency procurement to the NSW Procurement Board
- send us a copy of its procurement guidelines (that it told us it was updating as a result of our investigation) when they are complete
- provide us with a copy of the internal procurement audit it commenced as a result of our investigation
- tell us what it will do to address any issues identified in that internal audit.

DPE accepted all of our recommendations. It has reported the emergency procurement to the NSW Procurement Board and updated its procurement guidelines. It has also advised us that all of the recommendations from the internal procurement audit have now been implemented.

We also wrote to the NSW Public Service Commissioner suggesting that consideration be given to the development of additional guidance to the public sector regarding the circumstances (if any) under which contractors may be engaged to 'act in' employment roles.

Transport for NSW: The scrapping of a derelict boat

In 2018 Transport for NSW (Transport) attempted to recover nearly $100,000[28] from the former owner of a derelict boat to cover the cost of the boat's disposal – despite the fact he had sold it weeks earlier. We investigated, finding that the conduct of Transport in pursuing enforcement action against the former owner was unreasonable and contrary to law.

Background

The boat in question was rundown and unseaworthy. Transport had ordered the owner to clean it up, using powers vested in it under the *Marine Safety Act 1998*. Around the same time, the owner advertised the boat for sale.

When he sold the boat, the registration was transferred to the new owner. On the same day, and prior to Transport registering the ownership transfer, the 2 men together met with Transport's compliance officers, who also reissued the order to clean up the vessel from the former owner to the new one.

Some weeks later the new owner told Transport he couldn't carry out the required work, claiming the former owner had misrepresented the condition of the boat to him. Transport allowed the new owner to relinquish registration, ceased compliance action against him, and then restarted action against the former owner – ordering him to remove the boat from navigable waters.

Because the former owner maintained he was not responsible for the boat – and in any case, had no right to board it to carry out the required work or to remove it from waters – Transport eventually assumed custody of it and had it scrapped. Transport issued an invoice to the former owner to cover the cost.

The former owner insisted he was not responsible for Transport's costs in scrapping the boat because he had already sold it to someone else. He believed the registration transfer, the cancellation of the accompanying mooring licence and Transport's reissuing of the 'clean-up notice' to the new owner had represented the end of his dealings with the boat and with Transport.

Why did we investigate?

Derelict vessels pose a hazard to the state's waterways. Transport is empowered by legislation to enforce the relevant laws to protect the waterways from pollution and unsafe vessels. However, compliance action must be conducted fairly and in accordance with laws and policies.

We considered whether Transport could lawfully:

- require the former owner to remove the boat from navigable waters after he no longer owned it and the boat was not registered to him
- recover its costs and expenses for removing the boat.

We also considered the adequacy of the relevant policies that guide compliance and vessel registration.

What did we find?

The compliance action taken against the former owner was unreasonable and contrary to law.[29]

The notice to the former owner to remove the boat from navigable waters was issued contrary to the requirements of the Maritime Safety Act, which empowers Transport to direct an owner of a vessel that obstructs navigation, or a person responsible for the obstruction, to remove that obstruction. The former owner no longer owned or had control of the boat when it became an obstruction and was not, at that time, the person responsible for the obstruction. This being the case, Transport also could not recover the costs and expenses it incurred when it later removed the boat and disposed of it.

28. Under the *Maritime Safety Act 1998*.
29. Within the meaning of s 26(1)(a) of the *Ombudsman Act 1974*.

If Transport compliance officers had had doubts about the new owner's capacity to repair the boat in line with the statutory clean-up order issued to him, they could have refused to transfer the registration (in which case the former owner would have remained the registered owner). Equally, Transport could have refused to reissue the statutory order to the new owner when the 2 men met with Transport's compliance officers, which would have allowed them to continue to hold the former owner responsible under the previous order.

Although Transport may have later come to regret its decisions, it did not have the option to pursue the former owner. Having transferred the boat's registration and clean-up order to the new owner, when Transport later decided to allow the new owner to relinquish the boat and to not repair or remove it from waters, its only option was to take responsibility for the boat itself.

We also found that Transport did not have adequate policies or procedures in place to deal with derelict vessels at the time of the events under investigation. The existing policies did not include sufficient guidance on taking compliance action under what is a complex legislative environment. These issues were compounded by the fact that vessel registration renewal in NSW does not require any proof of seaworthiness, and that disposing of end-of-life vessels is cumbersome and expensive.

What did we recommend?

We recommended that Transport:

- withdraw the invoice and apologise to the former owner for its actions
- develop more comprehensive guidance on when and how enforcement powers under different acts should be used
- review its notice and internal appeal procedures and train staff on revised guidelines.

We also recommended Transport consider ways to resolve the issue of ongoing registration of derelict vessels, including how registration of such vessels is transferred.

We are awaiting Transport's response to our recommendations.