



Report of the Queensland Ombudsman

Ombudsman Recommendations to Councils

Analysis of Implementation 2007-2010

June 2012

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Chapter 1: Introduction

1.1 This report

The Ombudsman investigates complaints about the administrative actions of public sector agencies. Following an investigation, the Ombudsman may make recommendations to an agency to rectify the effects of maladministration or improve administrative practices.

This report examines the implementation and effectiveness of the Ombudsman's recommendations to councils¹ between 1 July 2007 and 30 June 2010.

This report considers whether:

- councils adequately implemented the Ombudsman's recommendations
- the implemented recommendations improved councils' administrative processes.

1.2 Background

Between 1 July 2007 and 30 June 2010, the Ombudsman investigated 46 separate complaints about 23 councils.²

A total of 180 recommendations were made as a result of the investigations.³ Fifteen of these recommendations were not considered by this report because their due date for implementation was mid-2012. Therefore, this report considers 165 recommendations that were made to councils in the relevant period.

1.3 The role of the Ombudsman

The Ombudsman investigates whether the administrative actions of agencies are:

- unlawful, unreasonable or unjust
- taken on irrelevant grounds or having regard to irrelevant considerations
- based wholly or partly on a mistake of law or fact
- wrong.⁴

For information about the Ombudsman's complaints process see <http://www.ombudsman.qld.gov.au>.

¹ Local governments are 'agencies' as defined in s. 8(1)(b) of the *Ombudsman Act 2001*.

² The local councils involved were: Blackall-Tambo Regional Council, Brisbane City Council, Bundaberg Regional Council, Cairns Regional Council, Charters Towers Regional Council, Etheridge Shire Council, Fraser Coast Regional Council, Gladstone Regional Council, Gold Coast City Council, Hinchinbrook Shire Council, Logan City Council, Maranoa Regional Council, Mt Isa City Council, North Burnett Regional Council, Redland City Council, Rockhampton Regional Council, Sunshine Coast Regional Council, Tablelands Regional Council, Toowoomba Regional Council, Townsville City Council, Western Downs Regional Council, Whitsunday Regional Council and Woorabinda Aboriginal Shire Council.

³ The number of complaints relating to each council varies and the number of recommendations made in relation to each individual complaint ranges from 1 to 16.

⁴ Section 49 of the *Ombudsman Act 2001*.

The administrative actions of councils include decisions and actions relating to rates and charges, land use, building or licensing decisions, services such as garbage collection and disposal, road maintenance, drainage, water supply and sewerage, local government law enforcement and environmental management, among others.

1.4 The recommendations process

Following the completion of each investigation, a report is forwarded to the agency's principal officer (in this case, the Chief Executive Officer (CEO) of council). Where maladministration is identified, the Ombudsman generally makes one or more recommendations to provide redress or to ensure any failure is not repeated. The CEO is responsible for determining if and how to implement them. Ombudsman officers seek advice from the CEO about whether the recommendations have been accepted and the agency's plan for implementing them.

The Ombudsman has no power to make an agency implement recommendations. However, this report finds that 99% of Ombudsman recommendations were fully or partly implemented by local councils. This is the first long-term review of the implementation of Ombudsman recommendations.

1.5 Types of recommendations

The Ombudsman makes two main types of recommendations: systemic and direct benefit.

Systemic recommendations address issues with policies, procedures or practices that will produce a positive outcome for future decisions or actions, such as a recommendation to improve a policy or provide training to agency officers.

Direct benefit recommendations produce a positive outcome for an individual complainant, such as a recommendation an agency make an ex-gratia payment or apologise.

Each type of recommendation is considered separately in this report.

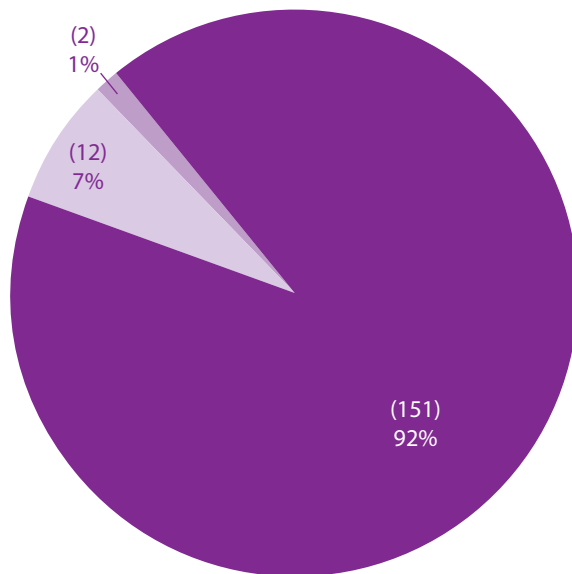
Of the 165 recommendations, 118 were systemic (see Chapter 2) and 44 were direct benefit (see Chapter 3). A further three recommendations were implemented but did not lend themselves to qualitative follow up.

1.6 Overall implementation of recommendations

Although the Ombudsman has no statutory power to enforce the implementation of recommendations, the review found that 92% of the recommendations made to councils between 1 July 2007 and 30 June 2010 were implemented, 7% (12 recommendations) were partly implemented and only 1% (two recommendations) were not implemented.

Total recommendations implemented

■ Implemented ■ Partly Implemented ■ Not implemented



The two recommendations which were not implemented and the twelve which were partly implemented were systemic recommendations (see Chapter 2).

Council responses on the impact of the recommendations across a range of organisational improvement criteria were positive.

Chapter 2: Systemic recommendations

2.1 Types of systemic recommendations

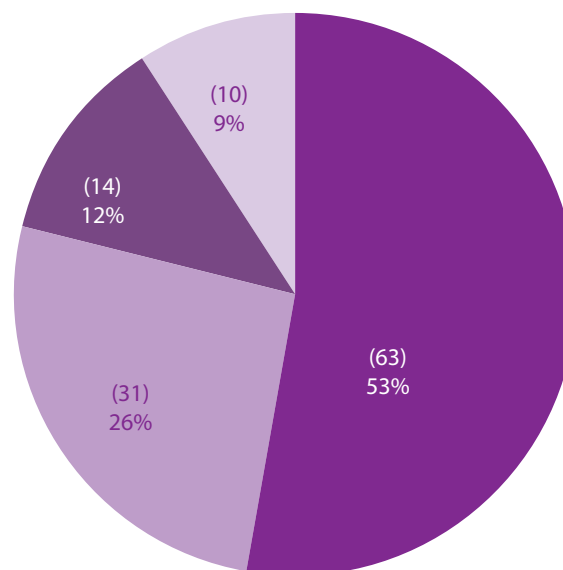
The majority of the systemic recommendations made by the Ombudsman related to:

- improving council policies and procedures (53%)
- providing training to council officers (12%)
- ensuring that record-keeping procedures met the requirements of the *Public Records Act 2002* (26%).

The remaining systemic recommendations made by the Ombudsman in the period were about matters such as reviewing fees, delegations, tender processes, reducing noise and reviewing or repealing local laws. These are labelled 'Other' in the chart below.

Types of systemic recommendations

■ Policies and procedures ■ Record-keeping ■ Training ■ Other



Some examples of the systemic recommendations considered in this report include:

- that a council develop a policy or procedure concerning the use of electronic recording devices by its compliance and regulatory officers (the Ombudsman recommended that the council clarify the circumstances under which recording devices are required, and the need to advise participants that a conversation or interview will be recorded)
- that a council cease charging a fee for providing its views on lease renewal applications under s.159 of the *Land Act 1994*

- where council proposes to enter property and perform works under a vermin notice and the estimated cost is significant, the council should take reasonable steps to advise the property owner of the estimated cost or, where it is not practicable to make an estimate, the basis on which the cost will be calculated
- that a council investigate whether its current planning scheme provisions adequately deal with dam construction and operation so that they do not cause nuisance to downstream property owners, council, State or private infrastructure.

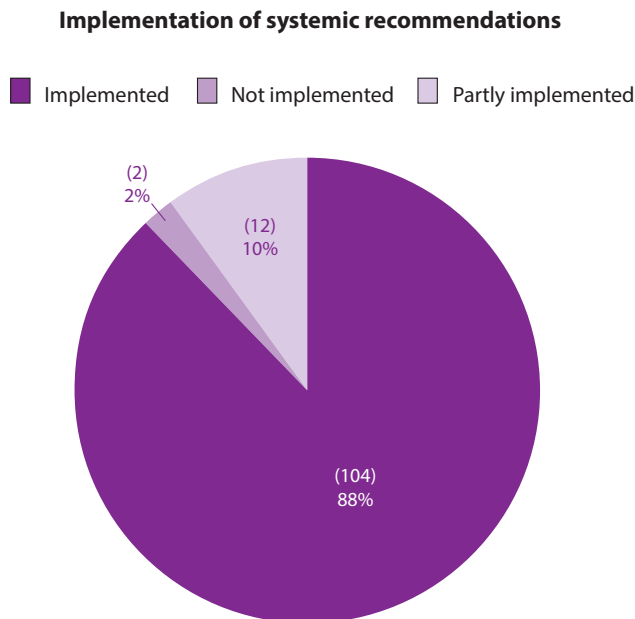
2.2 Methodology

All the councils that were the subject of one or more systemic recommendations were surveyed about the implementation of the recommendations and the impact of the recommendations on administrative practices and quality of decision-making.

An example of a survey form is provided at **Appendix 1**.

2.3 Implementation of systemic recommendations

The analysis showed that 88% (104 recommendations) of the 118 systemic recommendations made were fully implemented, 10% (12 recommendations) were partly implemented and 2% (two recommendations) were not implemented.



2.4 Recommendations that were not implemented

The two recommendations that were not implemented relate to one council and specifically to its policies and procedures for selling land for rates in arrears. The recommendations were not implemented because a subsequent change in the legislation and a change in council policy (to no longer sell land for unpaid rates) rendered the recommendations unnecessary.

In respect of the 12 partly implemented systemic recommendations, while steps have been taken in each case to implement the recommendation, the council had not yet achieved full compliance with the specifics of the recommendation. However, the Ombudsman is satisfied in each case with the attempt to implement the recommendation. Seven of the partly implemented recommendations had been implemented to a satisfactory extent based on the explanation provided by the council and will not be pursued further by the Ombudsman.⁵ Some examples of matters where the Ombudsman is satisfied with the steps taken to implement the recommendation include:

- a recommendation that the council review its procedures for assessing and investigating stormwater complaints. Council advised that a review of its procedures found that the procedures clearly describe the council's jurisdiction, that the complaint was not a typical stormwater complaint and if a similar matter arose it would be escalated to more senior officers
- a recommendation relating to notification of the costs of carrying out work specified in a vermin notice to the landowner. The recommendation was that a procedure should provide specific guidance on instances where the condition of a property makes it impracticable to assess the scope and cost of the work required to comply with a vermin notice. Council advised that its new procedure was that properties with complex issues would be escalated to the team leader.

In each of the above, the council acknowledged the exceptional factual circumstances giving rise to the recommendation and chose to assign responsibility to senior officers should like circumstances arise in the future. In the Ombudsman's view, the approach was satisfactory.

For each of the remaining five partly implemented recommendations, the Ombudsman is awaiting further steps to be taken by councils before the Ombudsman will be satisfied with implementation.⁶

⁵ Brisbane City Council (3 recommendations), Cairns Regional Council (2 recommendations), Etheridge Shire Council (1 recommendation), Redland City Council (1 recommendation).

⁶ Brisbane City Council (1 recommendation), Etheridge Shire Council (2 recommendations), Maranoa Regional Council (1 recommendation), Townsville City Council (1 recommendation).

Some examples of recommendations where the Ombudsman will follow up further on implementation include:

- a recommendation that council formulate a policy for the calculation of infrastructure charges for subdivisions in rural areas. The council advised that the policy would only be able to indicate the potential nature of the charges that could be charged and why, and further that each development application must be considered on its merits. The council noted that the new town planning scheme will deal with this issue
- a recommendation that council make and keep proper records of the basis on which its regulatory fees are calculated (including any variations) to comply with s.1071A(2) of the *Local Government Act 2009*. The council advised that an obstacle to implementation was a change in legislation and that a review of documented fee calculations will be finalised by 30 June 2012
- a recommendation that council review the City Service and Administration Local Law and the Meetings Local Law to ensure their provisions are consistent (within three months of the date of the recommendation). The council has advised that its proposed amendments to the laws are waiting approval
- a recommendation that council implement a policy regarding works in an area that may be a watercourse under the *Water Act 2000*. Council is presently working towards finalisation of the policy.

2.5 Impact of implementation of systemic recommendations

As part of this review councils were asked to comment on the impact of the implementation of systemic recommendations on:

- quality of customer service
- decision-making
- transparency and accountability
- knowledge and learning
- cost to council.

Councils were asked to rate the impact of implementation using a scale of 1 to 5, with 1 being a 'significant decrease' and 5 being a 'significant increase'.

The analysis found the majority of councils considered that implementation of the systemic recommendations improved their practices on four measures (customer service, decision-making, transparency and accountability, and knowledge and learning). Most of the councils surveyed also indicated that implementation of systemic recommendations created no change in costs or a minor increase.

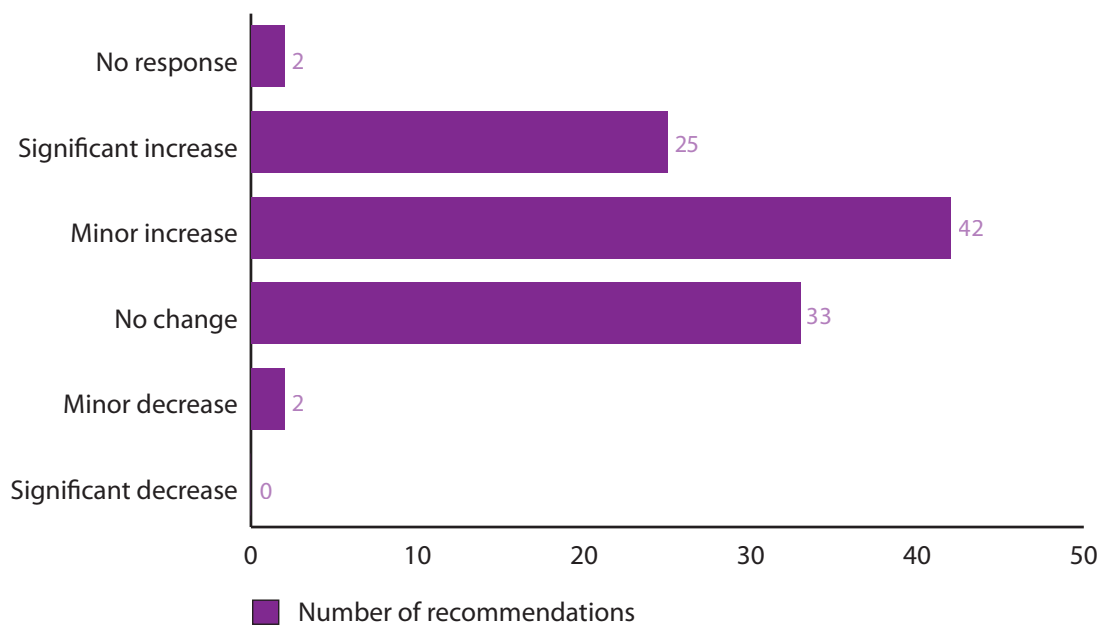
2.6 Quality of customer service

Council comment on the impact of a recommendation on the quality of customer service: *Significant Increase.* 'Complex [decisions] are handled speedily and effectively in the absence of the CEO.'

Quality of customer service refers to timeliness, effectiveness of customer service and customer satisfaction.

We found that 24% of councils who implemented systemic recommendations considered there was a corresponding 'significant increase' in the quality of customer service, and a further 40% of councils considered there was a corresponding 'minor increase.'

Implementation impact - quality of customer service



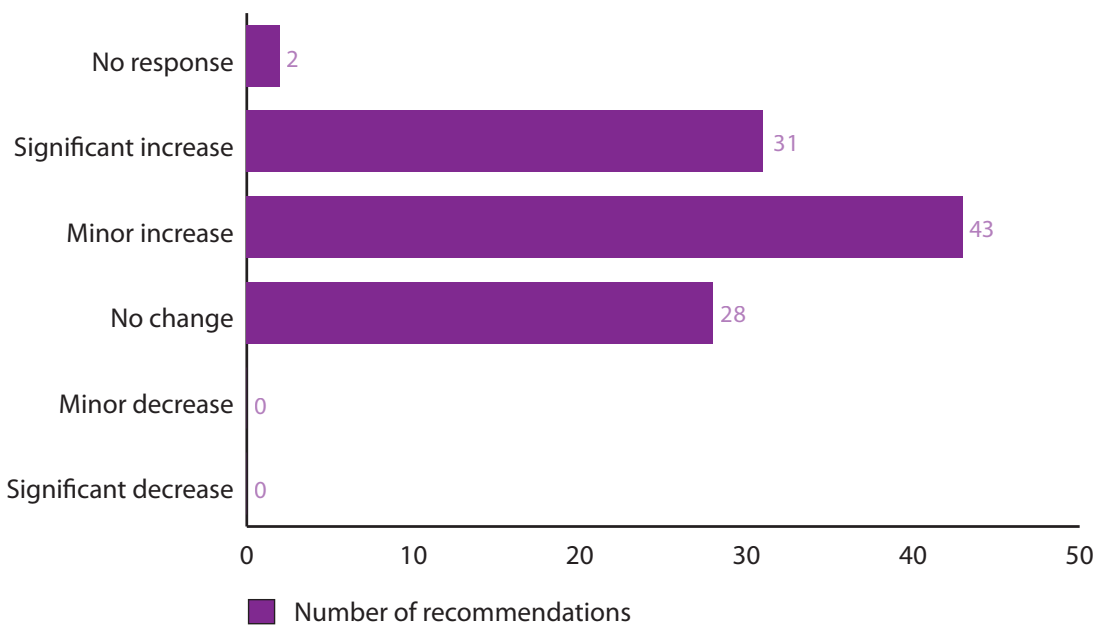
2.7 Quality of decision-making

Quality of decision-making refers to the administrative decision-making principles (such as giving proper reasons, avoiding bias and providing natural justice) which are explained further in the Good Decision Making Guide on the Ombudsman’s website.⁷

Overall, 30% of councils considered there was a ‘significant increase’ in the quality of decision-making at council, and a further 41% of councils consider there was a corresponding ‘minor increase’ as a result of implementing the systemic recommendations

Council comment on impact of a recommendation on the quality of decision-making: *Significant Increase.* ‘Written policies and procedures have been implemented to guide the decision-making process.’

Implementation impact - quality of decision-making



⁷ http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Agency_Resources/Good%20Decision-Making%20Guide.pdf.

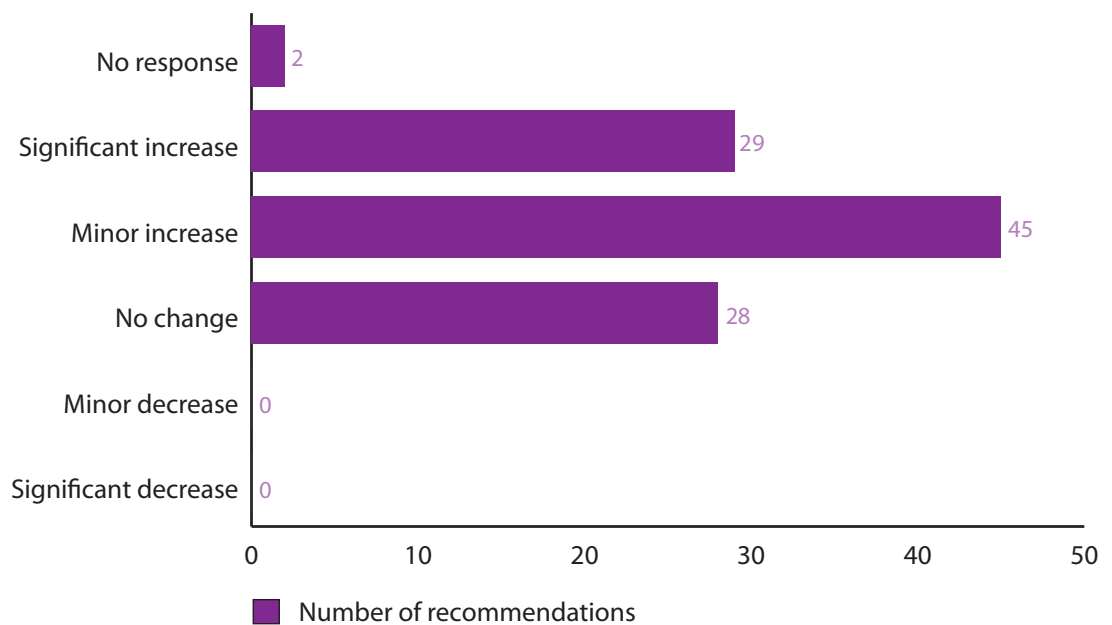
2.8 Transparency and accountability

Council comment on impact of a recommendation on transparency and accountability: *Minor increase*. 'Council staff are more cognisant of the requirement to keep records safe and in a filed system. For instance, council has a system for filing its contracts and funding agreements which it never had before.'

Transparency and accountability refers to the extent that councils comply with appropriate procedures and ensure that records and procedures are capable of external scrutiny.

The review found that 28% of councils who implemented Ombudsman systemic recommendations considered there was 'significant increase' in transparency and accountability in council's administrative processes. A further 43% considered there was a corresponding 'minor increase'.

Implementation impact - transparency and accountability



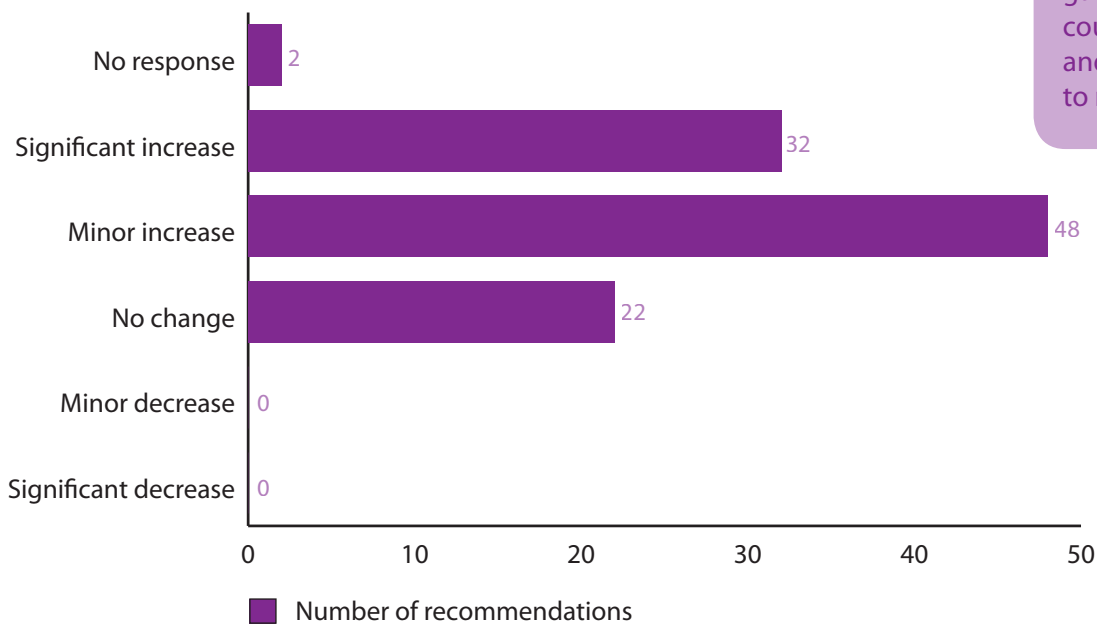
2.9 Knowledge and learning

Knowledge and learning refers to improvements to the information and training available to council officers to deal with similar issues in future.

Overall, 31% of councils said there was a corresponding 'significant increase' in knowledge and learning at council, and a further 46% of councils consider there was a 'minor increase' as a result of implementing the systemic recommendations.

Council comment on impact of a recommendation on knowledge and learning: *Significant increase.* 'This training has resulted in approximately 300 employees gaining an understanding of their obligations within the *Public Records Act 2002* as it relates to recruitment and selection. In addition they have gained an understanding of the council's policies, procedures and best practice as it related to recruitment and selection.'

Implementation impact - knowledge and learning



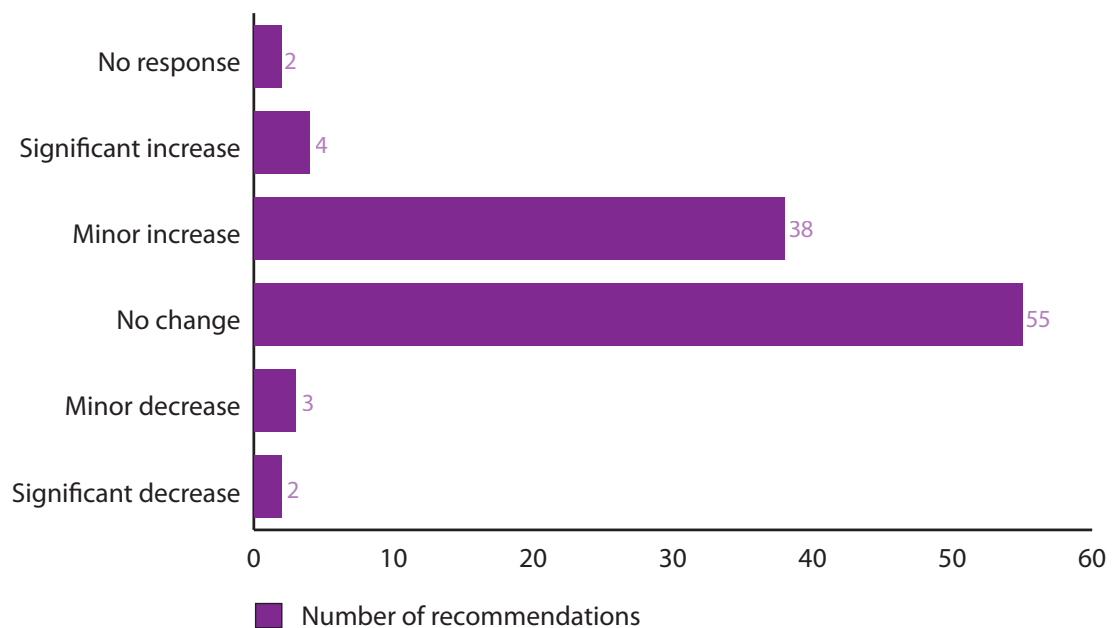
2.10 Cost to council

Council comment on impact on cost to council. *No change.* 'There has been an increased cost to council with regards to training, however this has been offset by the reduced complaints regarding procurement. Overall no change.'

This measure refers to the actual cost of implementation and any increase or decrease in costs to council as a result of the implementation of a recommendation.

The analysis found 53% of councils who implemented a systemic recommendation considered there was 'no change' in costs to council as a result of implementation. A further 37% of councils considered there was only a 'minor increase' in cost.

Implementation impact - cost to council



Chapter 3: Direct benefit recommendations

3.1 Direct benefit recommendations

Direct benefit recommendations are designed to resolve a specific complaint. In the 46 complaints considered in this report, the Ombudsman made 44 direct benefit recommendations to councils.

Implementation of direct benefit recommendations was established by reviewing the case files and seeking further information where necessary.

3.2 Types of direct benefit recommendations

As direct benefit recommendations are crafted to respond to a specific situation, they vary in nature considerably. Some examples of direct benefit recommendations considered in this report include:

- a council issue a written apology to the complainants for its inappropriate approval of their building application
- a council install a convex mirror to enable vehicles to enter and exit a property safely and erect appropriate warning signs about the presence and use of the mirror
- a council pass a public resolution nullifying its previous resolution that a councillor had breached the Councillor Code of Conduct and should be reprimanded
- a council refund the \$390 fee charged to a complainant for the provision of views concerning her application to renew a lease on Crown Land
- a council issue a written apology to a complainant for entering her land to perform work without informing her of the work to be performed and that machinery would be left on site overnight.

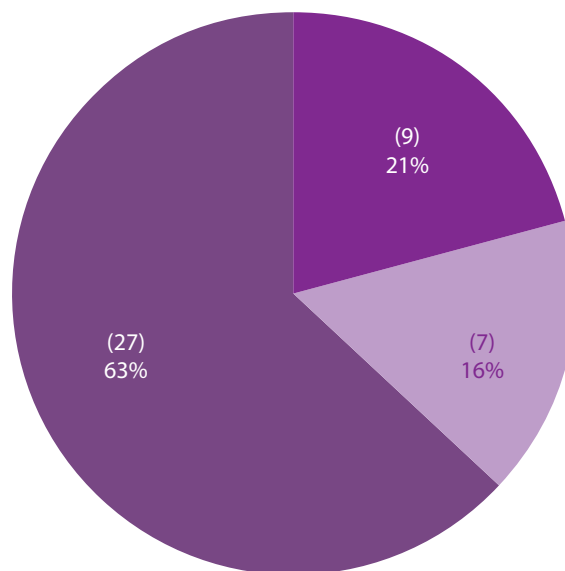
The review found that 21% of the direct benefit recommendations made by the Ombudsman to councils were to apologise to a complainant. A genuine apology is often an effective means to resolve a complaint when a mistake has been made by an agency. A prompt and sincere apology can sometimes stop a situation from escalating and can ensure that a complainant feels understood and respected. As a result of recent changes to the *Civil Liability Act 2003*, an apology is no longer an admission of liability in Queensland and can be made without concern about findings of liability.

A further 16% of the direct benefit recommendations made by the Ombudsman to councils were to make an ex gratia payment to the complainant. Ex gratia payments are a type of special payment that an agency can use to provide compensation to a person who has been wronged by their action. Ex gratia payments are made despite there being no legal requirement or liability to make such a payment, but on the basis of a moral obligation.

The other direct benefit recommendations were a specific response deemed necessary in the circumstances of the complaint.

Types of direct benefit recommendations

■ Apology ■ Ex gratia payment ■ Other



3.3 Implementation of direct benefit recommendations

All 44 direct benefit recommendations have been implemented by councils. This is an excellent response from the councils reviewed in this report.

Chapter 4: Observations

4.1 Reporting on recommendation implementation

The high rate of implementation of Ombudsman recommendations detailed in this report demonstrates the benefit of investigations in identifying effective and practical solutions to weaknesses in administrative decision-making and the willing cooperation of councils in improving their practices.

The Ombudsman intends to continue reporting on the implementation of recommendations by public sector agencies. Councils and other government agencies should be aware of the need to provide records of implementation of recommendations to the Ombudsman following implementation. Councils and other government agencies should also be prepared to evaluate the effectiveness and impact of Ombudsman recommendations on the agency's administrative processes.

Under s. 50(4) of the *Ombudsman Act 2001*, where a formal investigation is undertaken the CEO is required to give a copy of any Ombudsman recommendations to all the members (i.e. councillors) of the local government. In future, the Ombudsman will also ask that the CEO report to council on the implementation of these recommendations. This measure will ensure that implementation action is noted by council.

4.2 Circulation of recommendations and resources which are beneficial to all councils

Some recommendations made to councils by the Ombudsman relate to systemic issues relevant to many councils and other government agencies, for example, in relation to tender processes or complaints management. To avoid replication of complaints and ensure that all councils are aware of best practice, the Ombudsman may choose to publish recommendations on relevant systemic or significant issues among all councils. This will be done by publication on the Ombudsman's website. It will mean councils can apply learnings from other councils and will also promote consistency across councils.

Appendix 1

Survey form for systemic recommendations

| Survey - Local Government Recommendations | | | | |
|--|--|---|------|------------------------|
| Council Name | | | | |
| Our Reference | | | | |
| Your Reference | | | | |
| Complaint | | | | |
| Date of Recommendation | | | | |
| Ombudsman Recommendation | | | | |
| Survey Item | Question | Response | | |
| Subsequent complaints | How many complaints has Council received about similar issues since the date the Ombudsman made its recommendations to Council? | [Insert your response here including complaint reference numbers] | | |
| Part 1 Implementation | | | | |
| 1 | Has this recommendation been fully implemented by Council? Please select the appropriate response (Yes/No/Partly) from the Drop List. | | | |
| 1.1 | If you answered "Yes" to Q1 please explain what steps were taken to implement this recommendation and the date the recommendation was implemented. Please describe any supporting documentation and attach it to the email returning the completed Survey. Then go directly to Q6. | Steps taken | Date | Documentation attached |
| | | | | * |
| 2 | If the recommendation was not implemented by Council (or was partially implemented), please identify any obstacles or issues which prevented implementation (e.g. change in legislation, cost, complainant's response, intent of recommendation unclear). | [Insert your response here] | | |
| 3 | What steps did Council take to consult the Ombudsman's office about the difficulty and how was it resolved? | [Insert your response here] | | |
| 3.1 | What steps could the Ombudsman's Office take to assist Council where implementation becomes difficult? | [Insert your response here] | | |
| 4 | Is it intended that further action to implement this recommendation will be taken in the future? Please select the appropriate response (Yes/No) from the Drop List. | Select from Drop List | | |
| 5 | If you answered "Yes" to Q4, please describe the intended implementation action, and the date by which the action will be taken. If you answered "No" to Q4 please explain why. | [Insert your response here] | | |
| Part 2 Impact - Please only complete Part 2 if the recommendation has been implemented | | | | |
| 6 | What effect, if any, has the implementation of this recommendation had on each of the following areas (6A-E). Please select the appropriate response from the Drop List (ranging from 1 – significant decrease to 5 – significant increase). | | | |
| 6.A | Quality of Customer service | Select from Drop List | | |
| | This refers to timeliness, effectiveness of customer service and customer satisfaction. Please provide an explanation with a specific example where possible, for the score you chose above. | [Insert your response here] | | |
| 6.B | Quality of decision-making | Select from Drop List | | |
| | <i>Please refer to our Good Decisions Guide on our website. Please provide an explanation with a specific example where possible, for the score you chose above.</i> | [Insert your response here] | | |
| | http://www.ombudsman.qld.gov.au/PublicationsandReports/GoodDecisionMakingGuide.aspx | | | |
| 6.C | Transparency and accountability | Select from Drop List | | |
| | <i>This refers to the extent Council acts in a way that complies with appropriate procedures and its records and procedures are capable of external scrutiny. Please provide an explanation with a specific example where possible, for the score you chose above.</i> | [Insert your response here] | | |
| 6.D | Costs to council | Select from Drop List | | |
| | <i>This refers to the actual cost of implementation and any increase or decrease in costs to Council since the implementation of this recommendation. Please provide an explanation with a specific example where possible, for the score you chose above.</i> | [Insert your response here] | | |
| 6.E | Knowledge and Learning | Select from Drop List | | |
| | <i>This refers to the impact of the recommendation on improving the information and training available to officers to deal with similar issues in the future. Please provide an explanation with a specific example where possible, for the score you chose above.</i> | [Insert your response here] | | |
| * Please attach any documentation supporting your answers above to your email . | | | | |