

# SHARING ENVIRONMENT PROTECTION RESPONSIBILITIES

under the

## *ENVIRONMENT PROTECTION ACT 1993*



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**Joint 18-month trial report by steering committee**



**Sharing environment Protection Responsibilities  
under the *Environment Protection Act 1993***

**A review of the 18-month trial project between the Environment Protection Authority, the Environment Protection Agency, Adelaide City Council, Adelaide Hills Council and the City of Port Adelaide Enfield**

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## SUMMARY

The 'Sharing Environmental Protection Responsibilities' trial was implemented to identify positive outcomes and issues of concern that might be encountered by sharing responsibilities for environmental protection between state and local government agencies under the *Environment Protection Act 1993* (EP Act).

Information gathered from the trial will assist in developing a model for sharing environmental protection responsibilities that can better serve the community of South Australia.

The three councils involved were the City of Port Adelaide Enfield, Adelaide Hills Council and Adelaide City Council. The 18-month trial concluded on 30 June 2002 and the results are detailed in this report.

## Findings

- There was an increase in the number of environmental nuisance complaints received by the trial councils once they started to provide the service.
- By being 'local' and closer to the communities they served, the trial councils were able to provide a quicker response to complaints received.
- The trial councils expressed a view that their communities related better to having their local councils handle minor nuisance complaints.
- The funds made available by the Environment Protection Authority (Authority) and the Environment Protection Agency (EPA) only partially covered the cost of resourcing the trial.
- Officers from the trial councils expressed a desire to continue providing the service; however, this would be limited by the availability of resources and/or ongoing funding.
- Long-term recurrent funding by the Authority is not available; therefore, a range of alternative funding mechanisms will be required to sustain sharing of environment protection responsibilities.
- The trial identified gaps in the understanding of roles, responsibilities and obligations of all parties about the requirements of the EP Act.
- A misconception exists that the Authority exclusively owns the EP Act.
- The trial councils were better placed to resolve environmental nuisance created by council approved developments without expecting another agency (EPA) to become involved.
- It was unclear at what stage an issue that had escalated in complexity would be referred to the EPA for resolution.
- In practice, there was no clear distinction between the issues to be serviced by councils and the issues to be serviced by the EPA, and when a joint approach was required.
- The trial councils are only now feeling confident enough to manage the majority of environmental nuisance issues using the EP Act without assistance from EPA officers.
- The administrative functions related to the appointment of authorised officers and

the delegation of powers and functions under the EP Act are time consuming, repetitive and not well understood by councils.

- The support provided by the EPA was essential and well received by the trial councils; however, there is scope to improve this service.
- The trial councils found that the servicing of nuisance complaints was resource intensive.
- There is a need to develop mechanisms that promote pollution avoidance, thus reducing the need for reactive and resource intensive dispute resolution.

## BACKGROUND

Pollutants impact upon ecosystems, human health, productivity of the land and human lifestyles. As human activities have expanded and intensified, so have the adverse impacts of emissions and waste products associated with these activities. The minimisation and control of pollutants is therefore of increasing importance. One means of achieving this goal is the setting and enforcement of pollution control standards. Responsibility for pollution control in South Australia principally occurs at the state and local levels of government. The allocation of responsibility is a result of historical factors. Accordingly, there is often significant overlap between the roles of each tier of government in relation to pollution control.

Both local and state government authorities have key roles to play in the control of pollution, but these roles require delineation. Local government has an extensive network of people with skills relevant to pollution control, giving it advantages in terms of speed of response and local knowledge. The EPA, on the other hand, has significant technical and scientific expertise in the area of pollution identification and control.

A meeting held in 1996 between the then Environment Protection Authority (Authority), the Local Government Association (LGA) and four metropolitan councils recognised that there was a need to develop a partnership between the two tiers of government aimed at improving protection of the environment.

The Office of Local Government is currently overseeing a whole-of-government program directed at jointly reviewing the roles and responsibilities of state government and local government to identify better ways of working together in 'partnerships' to improve efficiencies in the way services are delivered to the South Australian community.

As part of this whole-of-government Partnerships Program, the LGA has released a 'future directions' document, designed to address the need for greater collaboration between spheres of government. Under a strategy of 'promoting the benefits of environment protection', a possible action to clarify the roles and responsibilities of governments in environment protection is identified.

A joint working group of the EPA/LGA commissioned a report by Prodirections Pty Ltd that detailed a preferred model to share EPA/LGA environmental protection activities. The model recommended that:

- councils become the relevant authority for agreed activities, as in the approach in the *Development Act 1993* and Regulations, with flexibility obtained through the use of Schedules
- councils be empowered but not required to act as the relevant authority:
  - > for compliance activities on all minor environmental issues associated with non-licensed premises
  - > in the environmental assessment of development applications in certain categories currently listed in Schedule 21 of the Environment Protection Act
- various options to generate the required resources be identified for consideration, including investigation fees, expiation fees, an environmental levy and additional fees for environmental assessment of development applications
- the EPA retain residual responsibility for all environmental matters where councils were unable to act as the relevant authority

- the EPA provide support to councils including the provision of tools and guidelines, training, funding support for equipment acquisition, technical advice and an agreed escalation procedure
- the arrangements be legislated and supported by a formal Partnership Agreement between the state government and local government (through the LGA).

The objectives, roles and functions of councils detailed in the revised *Local Government Act 1999* (LG Act) would assist in establishing an agreed framework for the rationalisation and improvement in delivery of environment protection to the South Australian community.

The findings of the Environment Resource and Development Committee of Parliament also supported the sharing of environmental protection activities between the EPA and local government authorities. There is similar support from the LGA to improve the delivery of environment protection services to the South Australian community by all levels of government.

A prioritised approach has resulted in EPA resources being more effectively focused on activities of environmental significance that have the capacity to cause serious environmental harm. This core business service requirement inevitably means some other activities (e.g. environmental nuisance) receive less attention.

The rationale for this approach is that the Authority has power to veto any development that ultimately becomes licensed under the EP Act. It has little or no influence on all other development, including retail and commercial premises and residential developments. These are the sole responsibility of local government. To have one tier of government deal with the development aspect and an expectation that another tier of government will deal with any resulting environmental conflicts does not provide for efficient or effective management and resourcing of these matters.

While councils already have statutory responsibilities for the environment under other Acts, (i.e. *Public and Environmental Health Act 1987*, the Development Act and the Local Government Act), there is a view that, by making available the use of another Act, these responsibilities are being expanded rather than merely refocused. Future options may therefore require an increased commitment of resources to and from local government. The extent and type of any such increase is at this time unclear.

The LG Act was specifically written to ensure that head powers to deal with a wide range of matters, including environment protection, were not duplicated. This view is further reinforced by the reduction of bylaw-making powers in the LG Act.

Local government's role is not clearly defined in the current EP Act nor in policy statements such as the Inter-governmental Agreement. As mentioned above, local government has obligations and responsibilities for the environment under the LG Act, the Public and Environmental Health Act and the Development Act. In addition, by way of its power to appoint authorised officers, local government has a role under the EP Act. With appropriate amendments to define the involvement of councils, the EP Act would provide a legislative tool that councils would use to provide environmental protection services to their local communities.

Another possible concern is achievement by individual councils of consistent outcomes for persons undertaking potentially polluting activities. One of the reasons for the involvement of local government officers is the application of local knowledge. Implicit in this is an expectation that similar incidents may be resolved differently in different areas.

Variation should, however, be on the basis of local conditions only, not on different interpretations of the EP Act or application of different technical information.

Within the above mentioned framework and the LG Act, the LGA and the EPA, in consultation with the Authority, discussed functional reform issues and the sharing of environment protection roles.

The EPA/Local Government Partnership Demonstration Scheme – Sharing Environment Protection Responsibilities – was jointly developed and agreed by the Authority, the EPA, the participating councils and the LGA. A Memorandum of Agreement (MoA) documenting the roles, responsibilities, reporting and funding requirements was jointly prepared and signed by the Authority and the participating councils. This project was designed to build on:

- the reports commissioned by the EPA/LGA working group
- an earlier model developed for sharing functional responsibilities under the EP Act
- local government's extensive network of people with skills relevant to pollution control, giving it advantages in terms of speed of response and local knowledge
- the EPA's technical and scientific expertise in the area of pollution control.

The trial program commenced in November 2000. The aim of the trial was to assist in the development of a working model to:

- provide a partnership approach to environmental management and protection between councils and the EPA
- establish benchmarks and quantitative data to evaluate the resource needs and cost to councils
- determine the most effective and efficient ways of providing environment protection to local communities.

For the purposes of the trial program:

- The participating councils (City of Port Adelaide Enfield (CPAE), Adelaide City Council (ACC) and Adelaide Hills Council (AHC)):
  - > appointed their Environmental Health Officers (EHOs) as authorised officers under the EP Act (ACC, 6 officers; AHC, 4 officers; PAE, 8 officers)
  - > took the lead role in the management and enforcement of environmental nuisance issues associated with domestic and non-licensed activities within their areas
  - > used delegations from the Authority to issue environment protection orders and recover costs in relation to ensuring compliance with any order.
- The Authority:
  - > provided funding of \$180,000 to the participating councils
  - > delegated the powers and functions to issue, vary and revoke environment protection orders, and to undertake various actions on non-compliance with orders.

- The EPA provided:
  - > technical advice and training including guidelines, codes of practice and technical bulletins
  - > sound level meters and specific training associated with their use
  - > in-the-field assistance in the assessment and resolution of environmental incidents
  - > reimbursement to councils for the costs of training its designated officers in regard to the Act
  - > budget funding of \$240,000 to support the trial.

The number and types of complaints handled by the participating councils and the EPA during the trial period are tabled in Appendix 3 (see tables 1, 2 and figures 1, 2). Table 3 provides information on the number and types of environment protection orders issued by the councils. Figure 3 shows comparative costs of trial councils and the MoA financial support in relation to complaint resolution.

## **POST TRIAL**

It is envisaged that the steering committee will continue to meet and periodically review the further development of a working model for councils to share environmental protection responsibilities.

In accordance with clause 3.1 (14) of the MoA, the trial councils will finalise any enforcement action they have taken under the Act in relation to incidents occurring in their individual council areas within the term of the agreement. The trial councils may continue in some instances to provide a limited service, subject to demand on available resources and/or funding.

The Complaints and Reports of Environmental Significance (CARES) system will continue to be used. Furthermore, the EPA will continue to promote the system to all councils with a view to increasing knowledge of the extent of environment protection activities throughout the state.

## RECOMMENDATIONS

- 1 The EP Act be amended to enable cost recovery for servicing environmental complaints based on the polluter pays principle, including on-the-spot fines and fee-for-service provisions.
- 2 The EP Act be amended to allow councils to appoint authorised officers and use the enforcement powers and functions under the Act without having to consult with, or require formal delegation from, the Authority.
- 3 The EPA continue to improve the scope and level of service to councils through the Local Government Support Unit by:
  - coordinating the preparation and delivery of a local government support package
  - continuously reviewing and introducing measures to improve the timeliness of the EPA's response to council authorised officers requesting assistance
  - reviewing the traditional methods of servicing complaints to identify potential for efficiency gains
  - updating the Authorised Officer Manual in both hard copy and electronic format and by making this available to all councils
  - making available one model of sound level meter to assist users to more easily maintain their expertise with these instruments
  - developing in consultation with councils a simple incident management system that has regard for local conditions, while ensuring consistency in the interpretation of the Act, policies and technical information
  - coordinating the preparation and documentation of an agreed procedure for councils to transfer significant nuisance incidents to the EPA for resolution
  - developing mechanisms that promote and encourage pollution avoidance.
- 4 The trial steering committee be retained to review further development of a working model that would enhance the opportunity of sharing environmental protection responsibilities.
- 5 The trial steering committee and EPA continue to work towards facilitating and documenting a clear understanding of the roles, responsibilities and obligations of council authorised officers with respect to use of the EP Act.
- 6 The trial steering committee and EPA develop mechanisms that promote the EP Act as a tool to be shared and owned by other regulatory bodies for the purposes of delivering better protection of the environment in South Australia.
- 7 The working group of the LGA/EPA further investigate future resourcing options to and from local government of an extent and type to sustain sharing of environmental protection responsibilities.

# **Appendix 1**

## **Council Reports**

## ADELAIDE CITY COUNCIL

### Introduction

The Adelaide City Council (ACC)/Environment Protection Authority Memorandum of Agreement (MoA) to share environment protection duties has been under way for nearly 18 months. Environmental Health Officers (EHOs) from ACC began taking the lead role in the management and enforcement of environmental nuisance issues associated with domestic and non-licensed activities in January 2001. The initial agreement was based upon the payment of a lump sum of \$15,000 to the ACC, with an additional fee for service set at \$60 (plus GST) per hour to a maximum of \$180 or 3 hours. A further \$60 (plus GST) was available on approval from the EPA for major incidences that required more than three hours investigation.

The council's EHOs had satisfactorily completed courses in Acoustic Engineering, Environment Protection Enforcement and Investigation Methods before becoming authorised under section 85(3) of the *Environment Protection Act 1993*. An additional 0.5 FTE Environmental Health Officer was appointed for a 12-month period.

Negotiations between the ACC and the EPA commenced on November 2001 with the view to continue the trial for a further six months. A further MoA was prepared and subsequently signed between the two parties. Significant changes were the deletion of the fee for service. The council did, however, receive a further lump sum of \$15,000 to continue the trial.

### Positive outcomes

The appointment of EHOs as authorised officers under the EP Act has enabled quicker complaint resolution and provided an improvement in customer service to the community.

The council's EHOs have over the last 18 months investigated complaints including noise emissions, air pollution and waste discharges to the stormwater system (see figure 1). Three environment protection orders relating to noise were served on owners of properties in Strangways Terrace. The orders were subsequently complied with and revoked.

An environment protection order was served on the owner of a property leased as a commercial food business. The refrigeration system from the business was generating noise levels that exceeded the requirements of the *Environment Protection (Industrial Noise) Policy*. The property owner did not comply with the requirements of the order at the expiry date and was fined for the offence. The owner has since complied with the requirements of the order.

The Environmental Health Section, in conjunction with Rundle Mall Management, carried out an education campaign to lower the levels of amplified noise from businesses in Rundle Mall. Businesses with speakers mounted in facades and/or spruikers were advised that by not exceeding a level of 70 decibels they would reduce impact on other businesses and competitors and lower incidences of complaint. A level of 70 decibels applied to all would ensure that the current practice of turning up music, jingles, etc., to drown out adjoining businesses would cease.

Several complaints were received regarding noise resulting from music and from people at a city outdoor sports activity. Noise readings have been taken and found to be within requirements.

Noise levels from licensed premises have been an ongoing concern for the council. These venues were observed and subsequent action was taken through the Liquor and Gaming Commission to reduce their noise emissions. The council relied on the provisions of the *Environment Protection (Industrial Noise) Policy* to determine the existence of any breach.

### **Issues for consideration**

Due to the increasing number of residential developments in what have been predominantly traditional commercial precincts, an increase in enquiries about air pollution from restaurants, hotels and cafés located adjacent to these residential properties has been observed. The callers are concerned with constant cooking odours from many sources adversely affecting the environment and making living standards unbearable. This has become an escalating issue with residents located near Melbourne Street, North Adelaide.

During the trial two Stormwater Protection Officers funded by the Patawalonga and Torrens Catchment Water Management Boards were appointed to the Environmental Health Section to carry out community education awareness programs and enforcement of stormwater issues within the ACC area. The officers will look at a variety of environmental issues ranging from clean building sites to blue-green algae in the Torrens Lake.

The ACC would consider continuing the trial beyond 30 June 2002 if the EPA provided it with a grant to fund the employment of an Environmental Health Officer. The officer would be dedicated to dealing with all issues of environmental significance.

It is anticipated that, on completion of the trial, approximately six complaints will be forwarded to the EPA for action.

## **ADELAIDE HILLS COUNCIL**

### **Introduction**

Adelaide Hills Council entered a Memorandum of Agreement with the EPA that resulted in a lump sum payment of \$30,000 for the initial 12-month trial period, which enabled the employment of an officer for three days per week. It was agreed that, should the fees accrued exceed \$30,000, the Authority would reimburse the council for its designated officer's time spent in dealing with incidents pertaining to the agreement at a rate of \$60 per hour with a maximum rate of \$180 per incident.

The council did not require the additional fee for service.

The extension of the trial resulted in a further lump sum payment of \$20,000 from the EPA with no additional fees for service.

### **Positive outcomes**

The positive elements of the trial are summarised below:

- The community have benefited from the effective and increased service on a variety of EPA-related issues, in particular noise.
- The council, due to its close location, is able to respond quickly to complaints and to follow up more minor complaints, both of which have not been possible by the EPA.
- Council Environmental Health Officers have more legislative tools and broader powers to deal with issues which had previously only been dealt with under the Public and Environmental Health Act. A choice of legislation allows a better outcome.
- Council officers are able to responsibly monitor developments approved by the council that may have the potential to cause environmental problems, without expecting another agency (EPA) to undertake follow-up of resulting problems – for example, vineyard spray drift, noise from gas guns.
- Valuable assistance by means of training, equipment and advice has been provided by the EPA in a professional manner.
- The CARES program of complaint provides an excellent database of complaint history, which is of great assistance when investigating new issues.
- Working with EPA staff has given both parties an insight into the handling of issues at the different levels of government.

### **Issues for consideration**

Issues for consideration arising from the trial include the following:

- The completion of the trial requires a council decision as to whether it is prepared to continue to carry out the investigation of and response to complaints under the EP Act.
- AHC will be meeting with the EPA to discuss the future direction of the council, with view to continuing the follow-up of complaints, perhaps in a modified form.
- Cost recovery is the main issue, with local government expecting some form of cost

recovery from the state government for any devolution of new activity. The legislative changes proposed, if enacted, will resolve this eventually, but do not address the immediate issue.

- The community is recognising the council as a useful service provider in addressing issues of noise and other forms of pollution as a result of the trial and, as predicted, complaints are increasing. It is difficult to take away a service once it has commenced and the possible backlash from the community may be interesting to evaluate. A random survey of community expectations in the trial council areas on completion of the trial may be of benefit.
- AHC found an area of conflict after an environmental protection order under the EP Act, relating to a noise matter, had been served by the council. The previous complainant observed a minor breach of the order and instigated a Ministerial complaint. It was suggested by the EPA that the council prosecute for breach of the order. The breach was caused by a minor electrical fault that was easily rectified. The council was not prepared to prosecute and did not, and should have been left to determine its own actions after it had investigated the incident. The council would have been responsible for the costs of a prosecution.
- As in all areas where various officers operate, there is a difference in operating procedures. It was noticeable that, within the EPA itself, officers provided differing opinions and advice. This was confusing at times and needs improvement.
- Delineation of duties was more difficult in the AHC due to the establishment of the EPA office at Stirling. This, in the main, has been resolved during the trial.
- Currently, AHC is involved with 32 unfinished complaints, which are nearing completion and are of a minor nature. The council may hand these complaints back to the EPA or, more probably, complete them itself. The EPA should be prepared to manage the complaints that are handed back.

## **CITY OF PORT ADELAIDE ENFIELD**

### **Introduction**

The City of Port Adelaide Enfield (CPAE)/Environment Protection Authority Memorandum of Agreement (MoA) to share environment protection duties has been implemented for 19 months. Environmental Health Officers (EHOs) from CPAE undertook the management and enforcement of environmental nuisance issues associated with domestic and non-licensed premises in November 2000.

To undertake the requirements of the trial the Environmental Services Department appointed and trained eight EHOs as authorised officers (the additional staff resource was one full-time EHO) under the EP Act in the City of Port Adelaide Enfield. The council's EHOs had satisfactorily completed courses in Acoustic Engineering, Environment Protection Enforcement and Investigation Methods before becoming authorised under section 85(3) of the EP Act. The EPA has reimbursed the council for all training costs in regard to the Act.

The EPA provided funding of \$100,000, which enabled the council to employ the one additional full-time EHO for the length of the trial. The EPA also provided technical advice, including guidelines, codes of practice, technical bulletins and training. Sound level meters and specific training associated with their use were also provided in conjunction with field assistance in the assessment and resolution of environmental incidents.

### **Positive outcomes**

The appointment of EHOs as authorised officers under the EP Act has enabled officers to implement a quick remedial response to environmental accidents from non-licensed premises.

Council officers ensured feedback was provided to residents, resulting in an improvement in customer service within the community.

Council officers have local knowledge of the area and are able to link with other departments within the council, such as the Development Section, to provide a more efficient service.

The council's EHOs have investigated complaints involving noise, air pollution and waste discharges to the stormwater system, giving them the opportunity to expand their field of expertise in environmental issues.

During the trial council EHOs have investigated 439 nuisance issues that the EPA would not be able to investigate due to resourcing constraints. Ratepayers now see the council as being able to provide another service.

Over the last 19 months the support from the EPA has been informative and professional.

### **Issues for consideration**

The EPA provided a noise meter for council EHOs to use during the trial. Unfortunately, this meter was changed a number of times and officers were unable to become expert on the one machine.

The amount of information provided by the EPA was substantial; however, the Authorised Officer Manuals supplied by the EPA were not indexed and the sample letters were limited in information and layout.

The EPA provided and paid for all training, which was very informative. However, future training should place a greater emphasis on the practical requirements of the job.

The EP Act does not allow 'on-the-spot' expiations for pollution offences; however, it is envisaged that Environment Protection Policies will overcome this issue.

The City of Port Adelaide Enfield would consider continuing the trial beyond 30 June 2002 if the EPA provided funding enabling the council to employ an EHO to investigate issues of environmental significance.

Continuing the trial would also enable the collection of additional meaningful data that would be useful in forming comprehensive reports and would enable officers to gain the experience and confidence to effectively administer the Act.



# Appendix 2

## EPA Report

## ENVIRONMENT PROTECTION AUTHORITY REPORT

### Introduction

Between 24 October and 9 November 2000, the Authority signed Memorandums of Agreement with Adelaide City Council, Adelaide Hills Council and the City of Port Adelaide Enfield to share environment protection responsibilities.

The participating councils agreed to take the lead role in the investigation and resolution of incidents in their individual council areas, arising from activities on domestic and non-licensed premises that cause or have the potential to cause environmental nuisance, using the enforcement of provisions in the Act.

The Authority provided up to \$180,000 to the participating councils from the Environment Protection Fund for the trial period. The EPA:

- paid \$30,000 for immediate training required by officers from the participating councils who were to be authorised under the EP Act
- budgeted \$34,000 for the purchase of noise and water quality meters for each of the participating councils
- created a local government support function within the EPA
- initiated a \$180,000 project to develop a web-based environmental incidents recording system—the Complaints and Reports of Environmental Significance program (CARES).

### Positive outcomes

During the period of the trial, the EPA developed and packaged an Authorised Officer Manual and supplied copies to all the council officers authorised under the Act for the purposes of the trial.

The contents of the manual include EPA guidelines, codes of practice, pamphlets, information bulletins, advisory notices, standard operating procedures, and examples of correspondence and environment protection orders for council officers to use as templates.

The manual assists authorised officers to adopt a common or standard approach to work practices and a consistent interpretation of the provisions in the Act. The manual also establishes a mechanism to ensure authorised officers are aware of and are able to interpret legislative and policy changes.

The EPA has also developed and released a web-based complaints/incidents management system (CARES), which is available for both the EPA and local government to collect, manage and report on incidents (advice and complaints) relating to the Act. The system was released during the trial period and was adopted for general use by the three trial councils.

The CARES management system has proved to be so successful it is now the only computer based complaints system used by the EPA. The system is highly secure and access is protected by password.

A team of EPA officers from Operations and the Local Government Support Unit were able to provide in-the-field support, technical advice and training to the council's

authorised officers and council delegates. This assistance helped in the assessment of issues, the use of sound level measuring equipment and the preparation of environment protection orders.

## Issues for consideration

The Authorised Officer Manual is currently in a draft form that was not well presented and was difficult to use. An editor and designers are currently working to improve the useability and format of the document.

Currently CARES is not compatible with computing software systems used by councils to monitor and record their own complaints. Links between CARES software and existing council systems are in the process of being formulated to enable single entry of data into both systems.

It has been noted that EPA officers have not been able to assist council officers promptly on all occasions when requested. There is a need to review and introduce measures to improve the timeliness of the EPA's response to council authorised officers requesting assistance.

Administrative functions, including the appointment of authorised officers and the delegation of powers and functions of the Authority to council officers, were time consuming, repetitive and not well understood by councils. Changes are required to the EP Act if these processes are to be simplified.

There remained a perception during the trial that environmental protection and the EP Act were totally owned by the EPA, with repeated reference to 'our act' (i.e. the Authority's Act). It almost appeared foreign to contemplate that the EP Act was just another legislative tool that could be used to help deliver a better quality environment for the communities of South Australia. This perception appears to be inherent amongst many SA councils and needs to be addressed if environmental management is going to be improved throughout the state.

As mentioned above, the Authority provided funding for the trial councils to investigate and resolve environmental nuisance complaints. It became evident that this exercise was resource intensive and the levels of direct funding did not adequately cater for the actual cost of providing the service. The funding and resourcing options provided by the Authority and the EPA were recognised as only part contribution to resourcing the councils to undertake the trial.

Future resourcing options to and from local government and the extent and type of any such options are at this time unclear. Providing adequate support (in kind) from within the EPA is one measure currently in place.

Other aspects that need to be reviewed and assessed concern the potential financial models that would provide some budgetary certainty for councils to allocate resources to administer the EP Act. Options include but should not be restricted to:

- fee-for-service arrangements
- grants to councils
- environment levy – for example, a fee on all plastic shopping bags used in SA
- catchment management levy
- provision of legislative powers to local government to offset its costs (partial cost recovery); administrative charges and inspection fees (i.e. polluter pays) could be

introduced into the EP Act

- State government contributions – the EPA would need to ensure sufficient resources for a comprehensive local government support package.

It became evident that there are no mechanisms or procedures that automatically encourage responsibility for complaint resolution between the complainant and the polluter without government agency intervention. Measures need to be considered to address this issue.

Promotion of the procedures and consequences of causing environmental nuisance or making bogus complaints appears to be lacking. Communities need to accept more responsibility for both the legal and administrative costs of complaint resolution (i.e. user pays) if they create an environmental nuisance that disrupts other people's quality of life.

Manufacturers, retailers and installers of products that can cause environmental nuisance could also play a greater role in advising customers of their general environmental duty. Mechanisms could be developed that encourage this sector to take on more responsibility in advising consumers of the environmental consequences of using inappropriate equipment or poor siting.

As the trial councils have identified, many nuisance complaints arise as a consequence of development approvals issued by the council and it is therefore inappropriate to expect another agency to resolve these issues. Consideration needs to be given to how this message can be better articulated to councils and how their planning decisions play a vital role in pollution avoidance.

The EPA's roles and responsibilities currently do not appear to be clearly understood by councils. The EPA is structured into several branches including Operations (licence monitoring/inspection) and Pollution Avoidance (including planning assessment). The Operations Branch concentrates on monitoring activities of environmental significance that specifically require an EP Act licence. These activities are identified as Schedule 22 development activities under the Development Act and are assessed through the Pollution Avoidance Branch. Development activities that are not of environmental significance are identified as Schedule 21 activities and are processed by councils even though the EPA may be asked to comment on these developments. The EPA has no control over the environmental consequences of decisions made by councils in relation to Schedule 21 development approvals. As it currently stands, there is a perception that, since the introduction of the EP Act, the EPA should also be responsible for the management of complaints arising from Schedule 21 activities. This is not the case and methods need to be explored to better communicate this to all councils.

The trial also highlighted that the current methodology of addressing environmental nuisance complaints aimed at delivering a better quality environment is reactive, resource intensive and costly. This reactive approach clearly demonstrated the demand it placed on both state and local government regulatory agencies to engage in conflict resolution in order to settle environmental nuisance disputes. The level of service required to resolve these complaints had a significant bearing on the level of funding required.

Pollution avoidance measures also need to be considered in conjunction with the current methodologies of complaint resolution. Pollution avoidance when practised by regulatory agencies delivers a far better outcome as it avoids the stress and anxiety experienced by all parties who become involved in the reactive process of resolving complaints. Complaints received are a measure of how successful environmental management policy has been in avoiding pollution.

# Appendix 3

## Tables and figures

Table 1 Environmental incidents/complaints received by trial councils and EPA during 18 months of the trial

COUNCIL NAME	COMPLAINT TYPE				TOTAL
	Air	Noise	Waste	Water	
ADELAIDE CITY Jan 2001 to May 2002	30	96	36	12	174
ADELAIDE HILLS Nov 2000 to May 2002	37	50	19	59	165
PORT ADELAIDE ENFIELD Nov 2000 to May 2002	171	115	26	120	432
<b>TOTALS</b>	238	261	81	191	771
EPA Nov 2000 to May 2002	3641	1326	389	157	5513

Note: The low number of water pollution complaints for the EPA reflects that, in addition to the trial councils, a number of metropolitan councils have taken up the Torrens and Patawalonga Catchment Water Management Board's offer to pay a 'fee for service' for the investigation and resolution of water pollution complaints. There were 155 complaints managed by these councils during 2000 and 2001.

Table 2 Environmental incidents/complaints located in trial councils' areas received by EPA during same period 18 months earlier

COUNCIL NAME	COMPLAINT TYPE				Total
	Air	Noise	Waste	Water	
ADELAIDE CITY	18	52	8	9	87
ADELAIDE HILLS	15	15	6	6	42
PORT ADELAIDE ENFIELD	272	102	29	18	421
<b>TOTALS</b>	305	169	43	33	550

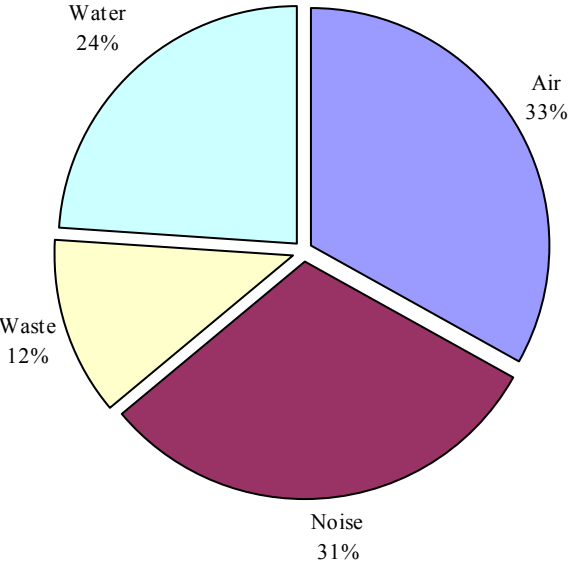


Figure 1 Complaints received by trial councils over the 18 months as a proportion of all complaints

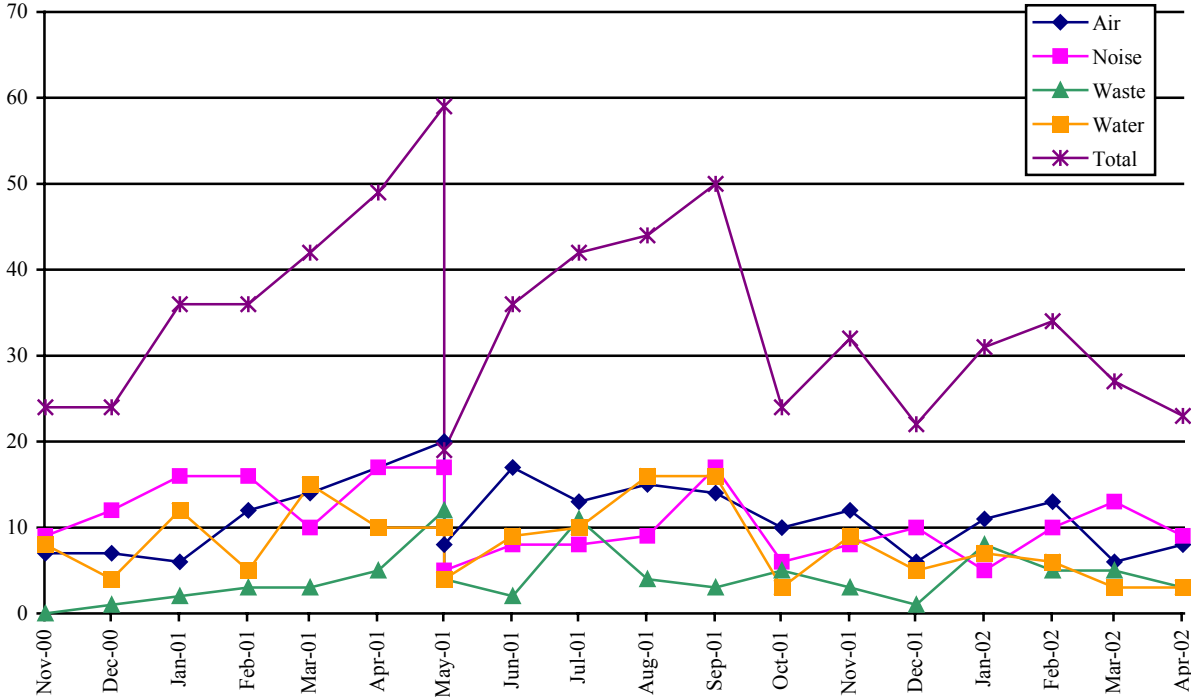


Figure 2 Complaints received on a monthly basis for the 18 months of the trial

Table 3 Environment protection orders issued by trial councils during 18 months of trial

COUNCIL NAME	Pollution category	Pollution type	Environment protection order:		
			S93 (1)	S93 (4) (emergency)	Expiation notice
ADELAIDE CITY	Noise	House alarms	3	0	0
	Noise	Coolroom compressors	1	0	1
ADELAIDE HILLS	Air	Chemical spray drift	0	1	0
	Water	Septic tank discharge	0	1	0
	Noise	Industrial compressor	1	0	0
PORT ADELAIDE ENFIELD	Noise	Domestic air conditioner	1	0	0
	Water	Waste oil and grease entering stormwater	1	0	0
	Water	Waste oil and grease entering stormwater	1	0	0
	Waste	Waste from building site entering waterway	0	1	0
<b>TOTALS</b>			<b>8</b>	<b>3</b>	<b>1</b>

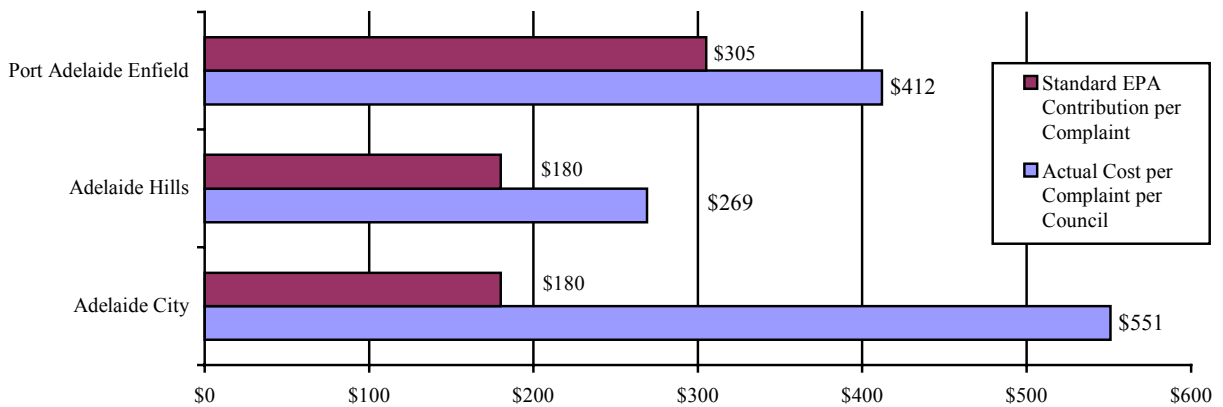


Figure 3 Comparative costs to trial councils and the MoA financial support in relation to complaint resolution

Note: The actual costs borne by the councils include the salary for the necessary EHO full-time equivalent (FTE) to service the trial, leave loading, on costs (e.g. superannuation, long service leave, workers compensation @ 20%), office overheads and vehicle costs.