



VICTORIAN
ombudsman

Reflections on 10 years

March 2024



Artwork by ***Maddison Laws***

Complaints Officer/Aboriginal liaison officer, Victorian Ombudsman

Proud Yorta Yorta woman from Cummeragunja, located along Victoria's border following the Murray River in Barmah.

Artwork shows the complex nature of VO's work and the many moving parts within the organisation that contribute to a greater goal.

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The Victorian Ombudsman pays respect to First Nations custodians of Country throughout Victoria. This respect is extended to their Elders past and present. We acknowledge their sovereignty was never ceded.

Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973* (Vic), I present to Parliament my report *Reflections on 10 years*.

A handwritten signature in black ink, appearing to read 'Deborah Glass', written in a cursive style.

Deborah Glass OBE

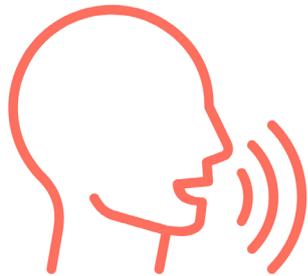
Ombudsman

25 March 2024

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10 years at a glance 2014-24



161,744

jurisdictional
complaints received



44,275

enquiries



349

formal
investigations



769

Public Interest Complaints
finalised, comprising

1,766

allegations



5

Referrals from
Parliament



99

reports tabled in
Parliament



84

complaints conciliated
since 2021-22

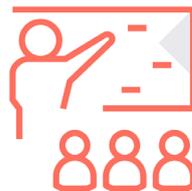


608

recommendations,

95%

accepted



294

educational
workshops



Significant reform to
modernise the
Ombudsman Act

1. Purpose of this report

I will shortly come to the end of my 10-year term as Victoria's Ombudsman. Many people have asked me what I have enjoyed most, or least, about the job; about my most memorable cases, what I hoped to achieve and what I will be leaving undone. What works within our integrity framework and what still needs fixing.

This report attempts to answer those questions. It is thematic rather than chronological, and it is intended to be constructive, as well as reflective. While it chronicles some tensions with the government and agencies, in many ways that underscores the nature and strength of the institution. I offer these reflections in a spirit of improvement; hoping, in the interests of the public we all serve, they will provide food for thought and rationale for change.

I leave the role with both pride and sadness. I will miss it terribly: I think I have had the best job in the State. But it is right that it is a fixed term, and it is time to go.

There is much to be proud of in our integrity system, not least that Victoria has had an Ombudsman for over 50 years, with a rare level of independence, the powers of a Royal Commission and the ability to hold the powerful to account. To listen to and resolve people's complaints, large and small. To consider human rights, investigate systemic issues and make recommendations to make Victoria a fairer place.



Being the Ombudsman can be a lonely job, carrying both the credit and the blame for all that is done in your name. It is not the same as heading an agency or department: you are the role, and the role is you. The personal is entwined with the professional, and therefore I offer more personal reflection than is customary in a report tabled in Parliament.

While the role is deeply personal, every achievement listed here rests on the shoulders of many. A dedicated leadership team and highly committed, values-driven professional staff make all the difference. You know who you are, and I thank you.

2. A 10-year vision: the journey to 2024

I will not dwell on my journey from law graduate to Ombudsman, via banking in Switzerland, financial regulation in Hong Kong and police complaints in the United Kingdom, but as I have since reflected:

Sometimes you go on a journey with no destination in mind, but looking back down the road it all makes sense.

Being the Ombudsman is a privilege unparalleled in the Victorian public sector – a constitutionally independent officer of Parliament, with a 10-year non-renewable term. Long enough for a vision, not so long that you become stale or captured. Non-renewable so there is no danger of you making compromises to be reappointed.

A jurisdiction that extends to almost all publicly funded bodies, and a mandate to make decisions in the interests of justice. How perfect is that?

As I said to my staff on my first day, you do not start a 10-year term with a plan. You start with a set of values and beliefs – in integrity, fairness, social justice and human rights – and in the way you work. I believe in working with people wherever possible to achieve change – and that the most impactful powers are the ones you don't need to use because everyone knows you have them. And as I realised later, that also help you achieve change simply with the nudge of the Ombudsman's elbow.

On that first day in the role, I knew almost nothing of the office or its staff. I had spent nearly 30 years out of Australia, a complete outsider to the Victorian public service. During my online research before applying for the job I had read reports of the previous Ombudsman's concerns about the new integrity regime, removing his jurisdiction over the police, and I had heard about the Ombudsman's reputation for fearsome investigations and reports.

Every Ombudsman puts their own stamp on the role, their own personality, their own values. I had spent 13 years dealing with the particularly thankless police jurisdiction in the United Kingdom and was happy to leave it behind.

So I thought long and hard about another journey during that first year in the role: the journey to 2024.

Reading Hansard is the ideal way to understand the purpose of a role and the debates preceding the creation of the Ombudsman in New Zealand (1962), the United Kingdom (1966) and Victoria (1973) were fascinating. Throughout my term I have opened presentations about the role with a quote from former New Zealand Attorney-General the Hon JR Hanan MP:

...the balance between the citizen and the state has over a long period been swinging more and more in favour of the state... this concentration of power in the state has made it all the more essential in a democracy, that the citizen should be protected against the abuses of power...

People nod when you talk about imbalance of power. It's something we all feel when dealing with an often-faceless bureaucracy. So explaining the Ombudsman – not as an advocate to take sides with a complainant, but as a truly independent and powerful entity that will consider the fairness of some official decision – sends a strong message.

The 10-year vision was developed with my leadership team in February 2015. The opening statement reads:

At the end of 2023 VO celebrates its 50th anniversary and my 10-year term is coming to an end. What will I be reflecting on in the 50th anniversary speech? And what are the milestones for getting there, in the next year or five?

This is, of course, aspirational. External events will impact us and the journey will not be either straight or smooth. We may find boulders on the road - but if we keep the vision clear, our eyes fixed on the goal, we will simply find another way to get there. ...

The Ombudsman's vision is clear: ensuring fairness and improving public administration for all Victorians. VO's strategic framework has been formed collaboratively with all staff. Now we need the road map on how to make the future happen.

So what did I hope for back then, and how much did we achieve? The 2015 vision goes on:

By 2024, there will be a decrease in government resources and a vast and entrenched community of the vulnerable. Our focus here has been unceasing.

We have an unassailable reputation for fairness, integrity and independence. We have seen major systemic changes and improvements in the public sector as a result of our investigations.

Most of all, the Victorian Ombudsman has remained true to our core role: in dealing with the imbalance of power between the individual and the state, we have never forgotten we deal with people. Our business is humanising the bureaucracy.

Some aspects of the vision did not come to pass. A 'one-stop complaints handling service with multiple access points both physically and technologically' was neither resourced, nor, in the COVID-19 pandemic environment, feasible. I also hoped to end my term with a greater multiple in the number of complaints, and the capacity to use data from those complaints to feed back to agencies to drive improvements in public administration. This required investment in both technology and community engagement, neither of which reached the levels I had hoped for.

But much did happen, not necessarily in ways I anticipated then. In 2015 I wrote of my aspirations:

VO is known for its expertise in investigations and as Parliament's Ombudsman; Parliament looks to VO first to investigate issues of concern across the public sector and report on them without fear or favour. VO is seen as an authority on human rights.

We have a modern Ombudsman Act: the overly prescriptive confidentiality restrictions are gone, we have a public interest and public education function, we've taken on new functions including the ability to conciliate, and monitoring complaints handling in the public sector.

Because of VO's public sector education training programs, and other guides and initiatives, we refer more complaints direct to agencies as they are better at complaint handling than they were five years ago.

And through all these developments, our continued focus on vulnerable people and communities remains.

In the public sphere, we've had a couple of big fights – which we've won. VO's reputation continues to grow. We've increased our engagement with NGOs and the private sector as there's more government outsourcing and we're educating them on public values. VO is more accountable to the public through publishing our own monthly performance indicators and statistics.

The vision also looked inward – to an office built on solid policy foundations, with a stable, diverse and experienced workforce, a leader in flexible work practices and family-friendly policies. No-one could have anticipated the impact of COVID-19, but we were more prepared for remote working than most.

I did have early hopes to simplify Victoria's particularly convoluted complaint handling environment, where multiple bodies, mostly within the Ombudsman's jurisdiction, deal with complaints in some specific area. It could not be good for a member of the public to be confronted by this tangled web of complaint bodies, not knowing where to go with their problem. Nor for the public purse, to support a large number of small agencies with sometimes overlapping jurisdictions.

But it seemed no government had appetite for simplification; on the contrary, for many years the government's response to a problem seemed to be to set up a specialised agency to deal with it rather than to find synergies with existing ones.

Others will be the judge of how far I succeeded, but while I leave some things undone, I am struck by how much of that early vision became reality.

Leadership has always required a vision of success, and the ability to take people with you to get there. It requires navigation, sometimes of uncharted territory, full of pitfalls you cannot even imagine when you begin the journey. It means taking risks – and remembering there can be a greater risk in doing nothing.

It means doing the right thing, even if it isn't popular. And it means persistence – and recalibrating when things don't go as planned. Because things never go as planned.

3. Integrity and fairness in practice

While the political dimension has coloured much public perception during my term, it has never been the focus. The vision was and remained one of fairness, of using complaints and matters of public interest to improve public administration.

Tools in the armoury

A vision is far easier to write than implement, and every Ombudsman needs a range of tools in their kit to make it happen.

You need some way of drawing out the systemic issues from the thousands of complaints. This is an art rather than a science – more complaints do not mean more issues; there are multiple complex factors to consider. With more than a thousand agencies in my jurisdiction but complaints mostly about a few dozen, and with other integrity agencies active in the field, we need to use the limited resources available to the office to add the most value.

My solution was to create an informal regular gathering of senior staff which we called, slightly tongue-in-cheek, the ‘Boiling Pot’.

We would scan the issues we were already investigating, which were metaphorically bubbling away in the Boiling Pot, review those that were simmering – perhaps from a pattern of complaints – and poke a spoon into those that needed a stir. While some agencies, like prisons and local councils, will always feature in the work of my office because of the sheer volume of complaints about them, it’s also good to be looking at a range of issues and agencies. If we don’t stay relevant to the community we serve, we will lose currency, and eventually, impact.

We also have tools to improve our own work; including an internal report with another tongue-in-cheek name: the Glasshouse Report. Aside from the obvious riff on my name it refers to the adage that *people in glass houses shouldn’t throw stones*. Every time we make a recommendation to an agency about some improvement to their processes, we check how we do it ourselves.

Systemic issues don’t always require investigation. Sometimes I write to the head of the agency pointing out a problem and encouraging them to fix it. If that has the desired effect, we can all move on. Much depends on the attitude of agency heads – a Secretary or CEO willing to listen and act, without adopting a defensive position, will improve public administration with only the gentle nudge of the Ombudsman’s elbow.

VicRoads, for example, has been the subject of thousands of complaints over the years. But many of the issues highlighted in those complaints – including systemic ones involving licences, fines or roads – were able to be resolved without formal investigation.

Many tools were brought out of the kit to deal with local councils, consistently at or near the top of the charts of annual complaint numbers. It’s not surprising the Ombudsman gets so many complaints about local councils; they are the tier of government closest to the public, delivering an array of vital services and, less well received, enforcement action. But when first briefed about the themes of complaints to the Ombudsman, I was told the biggest gripe was the way councils themselves dealt with their complaints.

So ‘good complaint handling’ was not only the subject of an investigation that surveyed all 79 councils and made recommendations resulting in legislative change, including a mandatory complaint handling policy. It also resulted in the Ombudsman producing a complaint handling guide for councils and developing education programs targeting councils to help their staff do it better.

Relationships with agencies are vital, but tricky in an environment historically seen to be based in conflict. The Ombudsman’s newer tools – education, engagement, conciliation and complaint reviews – with their focus on prevention and improvement, are helping. Conciliation in particular has brought immediate and tangible benefits to both complainants and agencies dealing with what had been long-running intractable problems. The message is getting out to agencies – the Ombudsman really is there to help you.

Getting the word out

I said in an early interview that those who most need the Ombudsman are often those least likely to approach us.

These would be communities or individuals who do not speak English or communicate easily, don’t have access to the internet, or have any confidence in any form of officialdom. Aboriginal and Torres Strait Islander peoples. People from culturally and linguistically diverse communities. People with disabilities. Refugees living in public housing. The list goes on.

The Ombudsman was not as widely known throughout the Victorian community as I wanted. How could I, with my small office, attempt to broaden community understanding of the role of Ombudsman to ensure those who needed our services knew we were there? Because without the public’s complaints, how could we know what public services need to be fixed?

I wanted to connect both with the broader public and with specific disadvantaged groups. But community engagement on its own can be a hit-and-miss affair. In my first couple of years, I did a series of regional roadshows, seeking to engage with local community groups and agencies. Often I found myself addressing a handful of people in a dusty hall. Clearly this was not going to be an effective use of the Ombudsman’s time, and I did not have other resources to devote to outreach. Fortunately the media, especially in regional Victoria, was eager to carry the new incumbent’s message that I was the Victorian Ombudsman, not just the Melbourne Ombudsman.

In 2020 the new function of public education was inserted into the Ombudsman Act, something I had long wished for. But the COVID-19 pandemic presented an almost impossible challenge to public engagement despite the technology that allowed us to appear simultaneously in so many living rooms.

The reality is we will never be large enough to engage directly with millions of Victorians. But if we cannot connect directly with large numbers of people from disadvantaged communities, we can at least engage with organisations which do – such as community legal centres (CLCs) and financial counsellors.

I have had a soft spot for CLCs since I worked in one, as a student at Monash University in the early 1980s. The CLC movement has expanded vastly since those days and does fabulous work promoting access to justice to some of the most disadvantaged in our society. There had to be some synergy there – the Ombudsman also provides access to justice, in a free service that doesn’t involve the courts.

I am proud of the work we have begun with CLCs around Victoria, helping their clients deal with unfair fines, sort out their public housing complaints, and resolve a myriad of other matters. Patterns of complaints to CLCs also expose systemic issues. My investigations into fines for disability permit holders in Maribyrnong, public housing maintenance debts, and the hard lockdown of the public housing towers were all based on early CLC contact.

Similarly with financial counsellors, a group I first encountered when asked to speak at their annual conference early in my term. That contact exposed concerns about the way local councils dealt with financial hardship, resulting in a systemic investigation I launched in August 2020 as the issue became even more topical with the pandemic. We've seen legislative change, and real progress by many councils since, which I hope the next Ombudsman will continue to monitor.

Indigenous engagement

It is impossible to talk of disadvantage without thinking about our First Peoples. A legacy of intergenerational trauma sees them over-represented in the unholy trinity of child protection, youth justice and prisons. In my first year in the role it was clear the office was a long way behind some other Ombudsman offices in Australia in this regard – New South Wales, for example, had a statutorily appointed Deputy Ombudsman to monitor and assess Aboriginal programs.

We have a long way to go to engage productively and consistently with Aboriginal communities. I know the occasional Ombudsman visit will not do it. Among other things we need Aboriginal staff, and it is a huge challenge to recruit and retain them. Although our work is unique, with a strongly values-based culture and engaged workforce, my small office cannot offer the opportunities of a large government department.

But I am pleased we have created paid part-time cadetships for Aboriginal students seeking relevant work experience during their tertiary study and that we now have an Aboriginal liaison officer. And I am proud the office has so strongly embraced the journey to reconciliation – visually, in the artwork acquired for the office from the Torch charity which supports Aboriginal prisoners, and verbally, in the varied and authentic acknowledgements of Country my staff make daily.

I leave it to the next Ombudsman to continue this hugely important effort. I encourage them to work with Aboriginal communities and Aboriginal statutory officeholders to consider the merits of a statutory Aboriginal Deputy Ombudsman position as in New South Wales. Such a person, using the independence and powers of the office, could achieve a great deal.

Gender: the FW2 Club

I had never really thought about gender before becoming a member of the FW2 (First Woman To...) Club in 2014. My first thought, upon being approached to speak at a women's event in my first year was, why are there still women's events?

I was struck back then by how much gender is still an issue in Australia, having been in leadership roles for the previous 25 years in Hong Kong and the UK where women leaders are taken much more for granted. I kept getting asked what it felt like to be the first female Ombudsman, to which there were several answers: that my mother would have been very proud, and I was sorry she did not live to see the day; that I would need to have the exclusively 'he/him' pronouns removed from my legislation; and disbelief that it had taken 40 years to find a woman to do the job.

I found this gem in the 1973 debates for the Ombudsman Bill:

I urge that the remuneration of the Ombudsman should be given careful consideration by the persons responsible. It is useless expecting to obtain the best man if he is offered the salary of a second division public servant.

I have spoken about gender, recruited some outstanding women, and sought to be a role model for diversity and equality, in my years in the job. We have come some way since the days when it was assumed men would hold all positions of power. But my aspiration remains that there will simply **be** women in the highest levels of public life – that this will be normal, and unremarkable ... and Australia will be a better place for it.

Media and funding

I discovered on my first day that the office did not have even one media or communications person. *The Ombudsman does not communicate*, I was told, *except through reports tabled in Parliament*.

I took a very different approach and the media has played a hugely important role in supporting the independence of my office.

This has never been starker than in my periodic battles for funding, something I started talking about in my 2015 annual report. In the early days I was concerned about the principle of budgetary independence, that I should not be negotiating my funding with the same government I was investigating. But even after a measure of budgetary independence was inserted into the Ombudsman Act, the amount still required negotiation.

While it attracted little attention from the public or the Government, the joint paper on budget independence issued by the Auditor-General, IBAC Commissioner and me in 2022 remains a blueprint worth following by any government that cares about accountability. Our proposal is for the funding of our agencies to be the responsibility of an independent tribunal, so that governments of whatever stripe cannot be accused, fairly or otherwise, of interfering with the independence of those agencies whose job it is to hold them to account.

I have expressed the rather cynical view that most governments fund their integrity agencies with as little as they can get away with. Media support for my office has been helpful and somehow the money has always been found to support the office's core functions. A good working relationship with the Treasurer's office and department also helped. But my successors will inherit the problem.

The media has also helped me connect directly with people around Victoria. In contrast to some of my in-person visits where I might be addressing a handful of people, regular sessions on talkback radio expose me to hundreds of thousands. These sessions can sometimes be challenging. I am regularly confronted by disgruntled complainants and must explain live on-air why the office cannot help them. But overall they are wonderfully rewarding, not only giving me the opportunity to explain what the office does, but the chance to fix some longstanding problems.

As an organisation that has never spent a cent on advertising, we get tremendous bang for our buck from these appearances.

4. Collaboration vs independence

Of all the multiple balancing acts required of an Ombudsman, this may be the hardest. Too independent, you can make headlines criticising agencies' behaviour, but you are unlikely to really improve it for the long term. Too collaborative, you risk becoming captured or worse, irrelevant.

In my first months in the role I met all the department secretaries and the heads of the key agencies with which the office came into contact. I wanted to know what they thought the office should be doing, what worked and what didn't. I was greeted with a mix of caution and enthusiasm, especially for a collaborative approach. But few proffered ideas about areas the Ombudsman should investigate in their patch.

Still, it paved the way for future relationships, and in some cases, future work. Several years later I took a call from a Secretary who was dealing with a complaint to the Minister for Transport about historical sex abuse at Puffing Billy railway. It was becoming increasingly challenging for the Department to handle. Would the Ombudsman investigate? The Ombudsman would, and the *Investigation into child sex offender Robert Whitehead's involvement with Puffing Billy and other railway bodies*, tabled in June 2018, resulted in a rare moment of unanimity between the Government and Ombudsman to support survivors of abuse.

Puffing Billy investigation

In this case, the Ombudsman's skilled investigators and their judicious use of coercive powers uncovered the truth of how a child sex offender had got away with his offending for so long. For decades, the management of Puffing Billy and other entities had turned a blind eye, to protect his reputation and that of the railway. His young victims had to seek justice for themselves, or worse, suffer in silence, afraid they would not be believed.

On 27 November 2019, I sat in Parliament's Visitors' Gallery to witness the apology to the victims of a serial sex abuser for the historical failures of the State to protect them.

On behalf of the Parliament, the government and the people of Victoria: for every childhood that was stolen, for every future that was compromised, for every family that was betrayed and for every life that was destroyed we are sorry – so very, deeply sorry.

- The Hon Daniel Andrews MP, Premier, 27 November 2019

That public apology was one of nine recommendations I made in the Puffing Billy report, all accepted and implemented.

Some of the victims, no longer young, sat in the gallery near me. The intense silence as we witnessed the apology, delivered not only by the Premier but a succession of Ministers and Shadow Ministers, was palpable. Both pain and relief were visible on people's faces.

A moment I will never forget, and a powerful example both of the ability of an apology to heal, and of what can be achieved when an Ombudsman and Government collaborate without compromising independence.

It remains a frustration that the independent well-honed investigative skills of the Ombudsman's office were used so little on request. So much more could have been done with the Ombudsman's Royal Commission-like powers had Parliament and agency heads seen the office as a support, not a threat.

WorkSafe investigations

Collaboration is a two-way street. Major investigations rarely come from a request; usually they stem from a pattern of complaints indicating a potential systemic issue.

So it was with the handling of complex workers' compensation claims. They had been the subject of frequent complaints to my office for many years, not generally examined on their merits as complainants could seek a remedy in a court or tribunal. But numbers were increasing, and one of my investigators proposed looking at a few in detail for signs of any systemic issues we should examine.

This led to the first WorkSafe investigation, tabled in September 2016. It found significant evidence of unreasonable decision-making; cases in which agents were working the system to delay and deny seriously injured workers the financial compensation to which they were entitled – and which they eventually received if they had the support, stamina and means to pursue their cases through the dispute process. As I commented in the report:

The impact of this on vulnerable people cannot be overstated. The cessation of payments – for up to two years before a case is concluded – will inevitably lead to financial hardship and as the cases illustrate, can equally lead to depression and despair. In such cases the system itself compounds the injury – not only to the detriment of the worker, but ultimately to all of us who bear the social and financial cost.

Developing meaningful recommendations for this report was tricky. I was aware of the fraught history of workers' compensation in Victoria – successive governments have wrestled with the complexity of creating a scheme that is both fair and financially viable. It seemed the balance had swung too far from fairness, but WorkSafe's then leadership did not accept the conclusions, and did not agree there was any need for major reform. They questioned our evidence base, claiming it was just a few bad apples.

The recommendations I made in that 2016 report were modest, and accepted. While I could have been more ambitious, what was the point? There was no buy-in, and real change will not happen without it. I did make clear that I would be monitoring the situation, and it did not surprise me that complaints continued unabated.

I began a second investigation some 18 months later, on the back of the continued influx of complaints; anecdotal evidence that not enough had changed. By the end of that investigation WorkSafe had a new CEO and Chair of the Board. There were no further mutterings about a few bad apples. The responsible Minister was interested, and supportive of major reform. Among other things, a new arbitration function now enables timely and inexpensive binding decisions rather than workers having to resort to the courts.

The reform is yet another illustration not only of how the Ombudsman and Government can work together to achieve lasting change, but how acceptance of the Ombudsman's evidence-based findings is a vital precursor to change.

Ninety Mile Beach investigation

Less well known is my 2019 investigation into Wellington Shire Council's handling of the Ninety Mile Beach subdivisions. This too illustrates how an Ombudsman investigation can achieve outcomes in the public interest.

The investigation started following complaints from landowners that they were paying rates and charges on land they could not build on and in some cases, even access. The history of the Ninety Mile Beach subdivisions was a sorry one - people bought land from a developer in the 1950s and 60s, with promises it would become Victoria's Gold Coast. But the land was never suitable for building on, much of it flood-prone or sand dunes.

At the heart of many complaints was a problem we could not fix. The original landowners understandably felt cheated. But their experience reflected an era before planning controls protected the natural environment, and neither the government nor the Council was responsible for the original flawed transaction.

Both the Council and the Department of the Environment co-operated fully with the investigation, in which we looked for a fair outcome to a saga with its origins in planning failures more than fifty years old.

I concluded that the Council should not be levying charges on land that cannot be developed – but ultimately, the land should be returned to public ownership for the benefit of all.

Both the Council and Department were quick to act on my recommendations and have since provided regular updates of their progress toward consolidating land ownership, a compulsory acquisition program, and a possible expansion to a local coastal park, with land management involving Traditional Owners. An outcome for all who love our golden beaches.

5. The human factor: the good, the bad and the plucky

What distinguishes the Ombudsman from the other agencies in the integrity sphere? We all have independence, powers of varying degrees and a similar jurisdiction over the public sector. It was an early question for me – what is the Ombudsman’s rightful turf?

Of the three agencies generally described as the key integrity bodies – the Ombudsman, IBAC and the Auditor-General, the Ombudsman has by far the smallest budget – around half or one-third that of the others. It also has, by a significant margin, the most contact with the public.

So for me, it has always been the human factor. The Ombudsman deals, above all, with people, and their problems, large and small. Every complaint tells its own story, and a pattern of complaints can expose a systemic issue worthy of an Ombudsman investigation.

And as I was reminded in my early readings of the debates that preceded the creation of Ombudsman offices around the world, the role is fundamentally about the imbalance of power between the individual and the state. I could only agree with the musings of the first Victorian Ombudsman Sir John Dillon who reflected in his last annual report:

The real value of the Office is that in times of feelings of frustration and often a deep sense of injustice as a result of dealing with the bureaucracy, a citizen must say to himself, ‘to whom can I turn? If only I knew someone who could help me.’ The answer to that question is, ‘the Ombudsman’.

Mentone Gardens investigation

An investigation can sometimes begin with a single complaint, and sometimes a single complaint can define the values of an office.

Soon after I started in the role I received a complaint from a 91-year-old man who had been living in an aged care home that went bankrupt. The bonds paid by the residents and their families – around \$4.5 million – disappeared. The impact this had on the elderly residents, many in their 90s and some over 100, went beyond dollars. They also lost their dignity, their independence, their ability to buy Christmas presents for their grandchildren.

Allan Lorraine had complained to the Department of Health, which denied any responsibility. It wasn’t a government facility. A classic case of stonewalling bureaucracy – it wasn’t their problem. But it was a Supported Residential Service, a privately-run facility supposed to be regulated by the Department.

When he complained to my office, as with all such complaints we did an assessment, and made some enquiries. Two of my investigators went to look at the files. What they found was so concerning that I launched a formal investigation, and in the report I tabled a few months later, I described the Department’s oversight of Mentone Gardens as a litany of failures.

But what’s the fair outcome for people who had lost everything, who had sold their family homes to provide for their old age? The answer was clearly an ex gratia payment. I wrote to the new Minister for Health during the investigation, to put him on notice what I was minded to recommend, knowing that such payments should not be made lightly but this aged and vulnerable cohort would need payments quickly.

When I tabled the report in April 2015 I formally recommended payments be made by the end of June.

This provoked a less-than-enthusiastic response from the Minister, who felt that some sharing of responsibility was appropriate – perhaps I could agree on the Government paying half?

I told the Minister that his response to my recommendations was entirely a matter for him. My recommendations were not enforceable, but I had committed to the families to monitor them and I intended to make the response public. I also pointed out that the report was tabled on the day the Government announced settlement of the cancellation of the East-West Link – it had not escaped the attention of the families that the Government was paying hundreds of millions of dollars to not build a road, yet here they were quibbling over a few million to some elderly people.

Some months later I was happy to report the Government paid out \$4.33 million to the residents and families, everyone entitled to be got paid, and Allan Lorraine received an Order of Australia Medal for his efforts.

That case regularly featured in my speeches as Ombudsman, as symbolic of the value of complaints, and the persuasive power of the office.

Challenging complainant conduct

Every complaint handling body has them – people with a grievance - be it simple or tightly held for many years, who for many and varied reasons simply will not accept the office's process or the outcome of their complaint.

Sometimes they have a point. Building on work begun in NSW, my office has become a leader in dealing with complex, or challenging behaviour, recognising how some behaviours can mask legitimate grievances, and the importance of responding to the complaint rather than the behaviour surrounding it. Communication is key, and managing expectations. We also know that mental health, differing communication needs and disability can be significant factors in complainant behaviour and we have developed techniques and training not only for our own staff but for people across the public sector.

But there are some complainants who, despite the most sensitive management, persist with their grievances against all the evidence, sometimes to the point of threats and harassment. We have developed techniques and training for dealing with this too. When all else fails, we simply have to contain and manage the behaviour and protect the welfare of our staff.

Sometimes the harassment extends to the Ombudsman. It is not difficult to guess my email address, and in my time in the role I have made a lot of public speeches. And of course, everything my staff do, they do in my name.

The most egregious example is a complainant, I'll call them Sam, who had a grievance with the office going back to the term of the first Ombudsman in the 1970s. Sam had persisted with their complaint with every subsequent Ombudsman. When Sam approached me in 2014 the original files were long gone, but instead of treating it as a problem I was in no position to fix I made the mistake of replying, unhelpfully reopening a case about whose merits I had no idea, and starting a correspondence that became increasingly threatening and irrational.

Such complaints, and complainants, take up a disproportionate amount of time, always a limited commodity in an Ombudsman's office. If not managed properly, they will devour the kind of resources a public organisation such as mine should be spending on complaints with merit.

The public sector: love your complaints

It has been a mantra throughout my term, in all my dealings with the public sector: complaints are free feedback, learn to love them.

Complaints all too often have a bad rap – and no doubt every agency has some equivalent of 'Sam' who engages in the kind of behaviour that creates health and safety issues for staff. But as I have tried hard to communicate over the years, the vast majority of complainants have a genuine grievance worth listening to.

We have developed good complaint handling guides and training, now complemented by formal complaint system reviews where my specialist staff work with agencies, often at their request, to review their complaint policies and processes and recommend improvements. We can usually judge the success of these by the number and type of complaints we continue to receive about those agencies.

In an ideal world, which we do not live in, there would be no need for an Ombudsman. We are all human and things will always go wrong. Mistakes will be made. But in that ideal world, agencies would respond to complaints, fix problems, apologise, pay compensation or otherwise sort out the problem.

Until that happy day comes, the nudge of the Ombudsman's elbow will continue to be needed.

6. Unpopular causes: prisons and human rights

Why prisons matter

One of the many major frustrations and achievements I reflect on in the role, is the work my office has done in prisons.

I was briefed early on the main areas of complaint to the office. Number one, for many years, was prisons, because there has been a free call number to the Ombudsman's Office inside all Victorian prisons since 2006.

Prisons are not a popular cause with governments or the public, especially when violent offenders released on bail or parole commit further violent acts. But the Ombudsman plays a particularly important role in overseeing the health of our prison system, often mirrored in the themes from prisoner complaints. As Nelson Mandela famously said: *No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.*

The previous Ombudsman had tabled several major reports on prisons, including his *Investigation into deaths and harm in custody* in March 2014, which among other things had highlighted the growth in the prison population and problems of overcrowding. For my first systemic investigation I was keen to explore what was going on in prisons to make it less likely that the people inside would go back there after release. What was being done about rehabilitation?

The background was a 25 per cent growth in the prison population in the preceding three years, the budget for correctional services rising to over \$1 billion, and an increased recidivism rate – plainly not making the community safer.

In my *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, tabled in September 2015, I concluded that the system was not sustainable. I wrote at the time:

While this investigation focussed on Corrections Victoria, it is patently clear that long-term solutions do not lie within the walls of our prisons or with a single

government department. The successful innovations elsewhere have come as a result of a concerted whole-of-government response. The state needs a comprehensive approach – across the justice system, education, health and housing – to focus on the causes of crime rather than its consequences. Offenders need to be dealt with in ways that make it less likely they will reoffend – through alternatives to imprisonment where appropriate, or through a prison system with a greater focus on rehabilitation. The community too, must play its part in supporting reintegration.

This issue is no longer at the margins. It has profound implications for public safety, the state's economy and the sort of society we create. While the public is understandably horrified by violent crime, we cannot keep pouring public funds into a correctional system that is not making us safer. If we continue in this way, current trends in both prisoner numbers and cost mean it will not be long before we have to make hard decisions between prison beds or hospital beds, better schools or more security.

It has been described as a landmark report and continues to be extensively quoted, including in relation to its recommendations, which I have monitored in subsequent reports to Parliament.

What has happened since 2015?

In June 2015, there were 6,219 people in Victorian prisons. The prison population peaked in 2019 at more than 8,200 but began to decrease during the COVID-19 pandemic, and pleasingly has continued to fall, sitting at 6,329 in February 2024.

In 2015 my report noted that the number of people on remand in Victoria's prisons had nearly doubled over the previous four years, likely as a consequence of bail reforms in 2013. At its peak in 2019, some 44 per cent of prisoners were on remand. While the percentage of people on remand has started to decrease (36.7 per cent in February 2024), whether this will continue is not yet clear.

Happily, the recidivism rate is stable, or even slightly reduced: some impact, one can hope, from the many reports and recommendations over the years.

The then Department of Justice accepted all the recommendations I made in the 2015 report, and the last eight years have seen some significant improvements as well as further reports. The recent *Cultural Review of the Adult Custodial Corrections System* commissioned by the Minister for Corrections considered many of the same issues, highlighting the inherent tension between a rehabilitative approach to incarceration and an operational environment prioritising security and good order of prisons.

I have commended the Department's progress in subsequent reports, as well as monitoring those areas where improvements are still needed. As I said in 2015, long-term solutions do not lie within the walls of our prisons. With more than a third of the prison population on remand, far too many people are ending up in prison who should not be there. I am yet to meet a prison general manager who did not agree with that statement.

Real reform was, and is still, needed in the wider justice sector. But this requires a government not driven by headlines that all too often have triggered a knee-jerk tightening of bail, parole and sentencing laws. The kind of tightening that swept up troubled, non-violent people like Veronica Nelson who should never have been in a prison cell when she died, tragically, in January 2020. Reforms to bail laws so starkly highlighted by her death were not introduced until August 2023, after a highly critical Coronial finding.

In 2022 the Legislative Council's Legal and Social Issues Committee's *Inquiry into Victoria's criminal justice system* highlighted many of the same issues as my 2015 report. It commented that the Government had 'prioritised investment in correctional facilities over early intervention measures' – echoing my comments seven years earlier that simply 'building more prisons' was not going to make Victorians safer. While the Government's two-page response suggests support for ongoing reform, it largely draws on past funding commitments and doesn't detail if, and how the Inquiry's recommendations will be implemented.

I acknowledge that as Ombudsman I do not stand for election and have no need to accommodate popular opinion. Nor have I been able to persuade the editors of some mass media outlets, or their audiences, that tough-on-crime policies which keep people in prison longer or repeatedly send them back ultimately make us less safe, not to mention their impact on the public purse.

But history is full of examples of enlightened governments taking brave steps and leading public opinion. Without them we would still have public hangings, Dickensian prisons and sweatshops, not to mention institutionalised discrimination against women and minorities. Victoria was once a leader in justice reform. Perhaps one day we will be one again.

Falling behind on international standards

Unfortunately, Victoria is one of the laggard states yet to implement a UN instrument¹ ratified by Australia in 2017 to designate independent agencies to inspect prisons and other closed environments.

I began looking into the implications of OPCAT earlier in 2017 and tabled two reports on it. They included international research and policy proposals for how OPCAT could be implemented in Victoria, as well as inspections carried out to OPCAT's exacting standards of several closed environments, focusing on women and youth.

Those reports, articulating the benefits of OPCAT and widely praised by the human rights community across Australia and overseas, seem to have mostly been ignored by the Government.

Forty-five countries around the world have designated their Ombudsman institutions to carry out OPCAT inspections, and five Australian states and territories, including the Commonwealth. But not in Victoria, where the Ombudsman has done more work on OPCAT than any State in Australia.

¹ The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ('OPCAT') supplements the United Nations Convention Against Torture (1984) to establish an international and local inspection system for places of detention, in order to prevent torture and other forms of ill-treatment.

The official excuse for not implementing OPCAT is cost, and lack of agreement with the Federal Government as to who will pay for it. Yet as we pointed out in a 2019 report, the cost of the independent body if contained in an existing agency with the necessary powers – such as the Ombudsman – was at the time less than \$3 million. A fraction of 1 per cent of the Corrections budget. A negligible sum in the Government’s accounts, with the potential to save vastly more millions with what such inspections can prevent – such as riots, or scandals of the sort we have seen in the Northern Territory, resulting in costly Royal Commissions.

I do not know why the Government has been unable to make the decision to designate the Ombudsman, at the least, to be the independent inspector of Victorian prisons. I have wondered if it is because they are simply unwilling to give me any new functions. Perhaps now they will finally get on with it.

The Ombudsman and human rights

A passion for human rights is in my DNA, nurtured over a lifetime, growing up in Melbourne in a community of Holocaust survivors. One of them was my godfather, whom I spoke about when I delivered the Human Rights Oration at the Holocaust Museum in March 2023:

... standing here in front of you this evening, in this place, I am acutely aware that Otto – and indeed so many of you - know more than most about human rights and what happens when they are breached. How important it is that there is accountability for the way in which the State treats its citizens. You know about the human cost of official overreach and the responsibility we all have to speak up and speak out against injustice, abuse of power, corruption, discrimination, and other forms of oppression. Because we know where it can end.

In the UK I saw how talking about human rights can be misused, how they can become dirty words. I saw politicians and commentators using the term ‘human rights’ as pejorative, about upholding the rights of prisoners and illegal immigrants rather than upstanding honest citizens like you and me.

Coming back to Australia as Ombudsman, becoming Victoria’s human rights investigator, it was good to be back on the side of the angels. Victoria was the first Australian state to enshrine human rights into law through the *Charter of Human Rights and Responsibilities Act* in 2006, requiring public authorities to act compatibly with and properly consider human rights; and giving the Ombudsman the express function to deal with human rights issues and complaints.

This in my view is a perfect match, because at its heart, the concept of human rights is the relationship between the individual and the state, and since the first Ombudsman in Sweden in 1809, the role of the Ombudsman has been to redress the power imbalance between the two. The same social impulse that fed the human rights movement – to protect citizens from official overreach – also led to the spread of the Ombudsman institution from Scandinavia to New Zealand and now more than 190 countries worldwide.

All too often human rights are poorly understood both by the public agencies who are obliged to consider them and by the public they are intended to protect. I haven’t seen the same level of aversion here to human rights as I saw in the UK; more often bureaucracies simply ignore the topic – not turning their minds to human rights at all, either because they think they’re expendable or simply not important.

Human rights in a pandemic

We all became painfully familiar with lockdowns in 2020, and most of us tolerated them, understanding their necessity, as best we could. But the hard lockdown of public housing residents in Flemington and North Melbourne in July 2020 was different. Unlike every lockdown before or since in Victoria, it took effect immediately. The rest of us had time to rush to the shops for food or medicines before being locked down. These residents found out when they saw uniformed police surrounding their homes. Complaints poured in, and I made the decision to investigate.

Our investigation found the immediacy of the lockdown was not based on direct public health advice, and that the Chief Health Officer on the day was given less than 15 minutes to consider the human rights assessment. A proper assessment would have allowed some time to communicate and plan the public health response. It would have put health, not security, front and centre. It would have reduced or eliminated much of the distress that followed.

My conclusion that the decision appeared to be contrary to law because it breached human rights had the predictable defensive response: the Government made no apology for saving human lives. That wasn't however what I'd said they should apologise for. At least the report made an impact – indeed it is the first report I've put out that made global headlines.

Does it matter that I asked the Government to apologise, and they ignored me? Of course I would have preferred them to have done so, even to do so now. But my role – including how I promote human rights – is more subtle than that. Things can change for the better even if governments claim they have done nothing wrong. A year later, when there was a further outbreak of COVID-19 in the towers, things were handled very differently – as a public health, not a security issue. They may not have apologised, but actions speak louder than words.

Human rights are not absolute. Lockdowns, border closures, compulsory mask-wearing and vaccination requirements restricted our freedoms of movement and expression, but these rights must be balanced against our own – and others' – health and wellbeing and right to life.

This can be a difficult balancing act, including for my office. We did not investigate all COVID-era complaints alleging human rights breaches such as vaccine mandates and lockdowns, and copped some flak for that – but I was quite prepared to say some decisions to restrict freedoms appeared to be reasonable – which also gives you more credibility when you say others are not.

I think the COVID years brought human rights to the fore in a way I could never have imagined. Before the pandemic, I doubt that anyone other than a human rights lawyer or activist knew there was a human right to humane treatment when deprived of liberty. And for those who did know about that, including me, we assumed it was basically about people in prison.

Now that we have all been deprived of our liberty by the State or otherwise been denied our freedom of movement, we have a much deeper consciousness of what those rights actually mean. The State can deprive you of your liberty, or otherwise restrict your freedoms, but if they do, it must be proportionate to the risk, and reflect the least restrictive means of achieving an end.

The language of power in dealing with crisis can suggest that human rights are expendable in an emergency, with its focus on human lives. While the sentiment may be understandable in a crisis, our society is better than that. Our human rights laws are more robust than that. If there are good reasons for fundamental rights and freedoms to be curtailed it is lawful, reasonable, and indeed necessary to curtail them.

Societies weaken themselves when they demean human rights. Because fundamentally, human rights affect every one of us, not just people in prisons. We should never take them for granted. If we don't claim our human rights, if we don't value them, we will diminish them, and we may lose them.

7. The Ombudsman and anti-corruption

I came into the role with a long experience of leading investigations, starting many years ago in the UK's Police Complaints Authority, which at the time had the function of supervising police investigations into deaths following police contact.

My first such case happened on a Friday night, involving the death of a young black man in south London. These deaths are fraught with controversy and confrontation. I remember sitting in a room at the local police station late at night where the Detective Chief Inspector from the Professional Standards Department was asking me what he should do. I improvised.

Fortunately, there were no riots in the streets and the investigation proceeded smoothly. But I should not have had to manage such a situation on intuition and instinct. The professional training I subsequently received gave me credibility with police sceptical of civilian oversight, and helped me lead many subsequent investigations, not least the hugely complex investigation I started in 2012, into aspects of the Hillsborough soccer stadium disaster which claimed 96 lives in 1989.

Administrative investigations of the sort done by Ombudsmen and in this instance a Police Complaints Commission share core principles. We are trying to find out what happened, sometimes in murky waters with multiple versions of events, but directed towards a remedial outcome where at all possible. But there are also different kinds of Ombudsman investigations. Sometimes we are looking at people's conduct to determine if someone has done the wrong thing. Others may be looking at a systemic issue, involving multiple people's stories and often, a strong research component.

Either way, we need to think about what we are trying to achieve. An investigation must be proportionate to the outcome. If the conduct is trivial or mitigated, without a very good reason to continue, an investigation should be dropped. Every Ombudsman has limited resources, and we should focus those resources on the matters most in the public interest, where someone really needs to be held to account, ongoing failings exposed, or a vital story told.

Dedicated public servants can also be wrongly accused, and while investigations are inherently stressful, an Ombudsman investigation can exonerate, as well as criticise.

Coercive powers need careful consideration. I have seen them used too much or not at all. I am aware of situations where the use of summonses was routine, whether a person was a witness or subject, whether or not they had indicated a willingness to co-operate. At the other extreme, the Office of the Commonwealth Ombudsman was rightly criticised by the Robodebt Royal Commission for its failure to use coercive powers at all.

As I said to my staff on my first day in the office, the most impactful powers are the ones you don't need to use because everyone knows you have them.

For many years before I started in the role, the Ombudsman's office had been the de-facto anti-corruption body in the State. That changed with the introduction of IBAC in 2013.

I was happy not to be investigating corruption. In my experience it is very difficult for an agency to deal effectively with both low-level complaints and high-level corruption – the former always loses out to the latter. Complaints are not, however, of lesser consequence, they play a vital role in improving public administration.

As I was developing my vision in that first year, I was articulating this distinction: *Corruption is IBAC's business and fairness is mine.*

I came to realise quite quickly however this wasn't strictly true. The border between corruption and traditional Ombudsman business of maladministration is not clear-cut. As New Zealand Attorney-General JR Hanan noted in 1962, this concerned '*not... so much the conscious or malicious abuses of power... [but] the genuine mistakes, misjudgements, and what may be termed unreasonable decisions which are inevitable wherever power is exercised*'.

An early bugbear was the whistleblower regime, in which IBAC was sending a considerable number of low-level whistleblower complaints to my office, which we were obliged to investigate, thus consuming valuable investigative resources I would have rather used elsewhere. Some early joint lobbying of the Government bore fruit, giving the Ombudsman enquiry powers so that cases without substance could be shut down without formal investigation. But the system remains unwieldy and imperfect.

My office had always had a strong co-operative relationship with IBAC, vital if we are to provide an effective service to whistleblowers and other reporters of corrupt and improper conduct, who should not have to concern themselves with which side of the line their allegations fall.

But overlapping definitions and different interpretations do not help, and the lowering of the threshold for referral to IBAC also carried unintended consequences. There is a raft of inappropriate behaviours, including workplace behaviours such as bullying and harassment, which need to be addressed but do not necessarily fit within the remit of IBAC or the Ombudsman, and I understand the disappointment some whistleblowers feel if we decline to investigate when they think their allegations deserve a stronger response.

In my view the legislation should clearly distinguish lower-level 'misconduct', that can be dealt with as an employment matter, from 'improper conduct' as conduct for which someone's employment may be terminated. This would ensure integrity agencies focused their scarce investigative resources on matters most in the public interest and whistleblowers' expectations are more effectively managed.

While most of the matters referred by IBAC are closed at the enquiry stage or discontinued, the small number that are fully investigated and result in public reports play a valuable part in promoting codes of conduct and administrative improvement.

Among others, critical reports of Wodonga City Council's waste management levy, Ballarat City Council's recruitment practices and Warrnambool City Council's credit card misuse carried lessons for all councils. We will never know how many others indulged in the same practices but changed them while their CEOs heaved a sigh of relief their name was not in the headlines.

Operation Watts

The culmination of IBAC/Ombudsman co-operation was Operation Watts, the first joint investigation by an Ombudsman and an anti-corruption agency in Australia, quite possibly anywhere in the world. It came about by chance: simultaneous but unconnected referrals from Parliament to the Ombudsman, and the Attorney-General to IBAC, of branch stacking in the Victorian branch of the Australian Labor Party resulting in the alleged misuse of public funds for party political purposes.

A joint investigation rather than two parallel ones covering the same ground was an obvious solution but would never have come about without the excellent working relationship I enjoyed with IBAC's Commissioner. While the solution may have seemed obvious it carried huge complexity – we had different legislation, powers and jurisdictions. In practical terms it had to be an IBAC investigation to which Ombudsman investigators were seconded.

But it was important to me, and to his credit equally to IBAC Commissioner Robert Redlich, that the Ombudsman was not the junior partner in this arrangement. It was not constitutionally possible for the Ombudsman to preside with the IBAC Commissioner at any public hearings, but we jointly chaired an internal steering group that met throughout the life of the investigation. Strategic decisions were taken together and the final report was a joint product, presented at a combined press conference.

The only direct conversation I had with Premier Andrews in his entire Premiership was on the morning of that press conference, when he rang to tell me and Robert Redlich that the Government was accepting all our recommendations.

I do not believe either of our agencies would have achieved that outcome had we been acting separately. Nor, I suspect, would it have happened had the report not been released in an election year.

While I await the implementation of those recommendations, which would represent the greatest reform in Victorian parliamentary integrity in generations, I still reflect on the challenges inherent in our system for assessing and investigating corruption and misconduct.

In particular, the definition of corruption, which hangs on the requirement for an indictable criminal offence to have been committed, is plainly out of keeping with public opinion. While I do not subscribe to the notion that all wrongdoing must be defined as corrupt, we should be concerned about wrongdoing short of the criminal: the 'grey corruption' we found in Operation Watts and that IBAC found in Operation Daintree – the 'bending or breaking of rules ... that unfairly favours the allies, friends and networks of decision-makers'.

And, as the Red Shirts report I tabled describing MP conduct as 'wrong' although not criminal showed, such conduct can be just as damaging to public trust, even more so when it goes unpunished.

8. The Ombudsman and politics

A political appointment?

If I scroll through X, formerly known as Twitter, I learn that I am a political ‘operative’; about my ‘biased and consistent attacks on the Andrews [Labor] government since they cut her funding years ago’; ‘auditioning for [Liberal Party] preselection after she misses getting another contract’; and to add some balance, an ‘Andrews lapdog’.

Such commentators have plainly not read my reports and I do not expect them to read this one. They are unlikely to be interested in facts: that my funding was not cut, my term is non-renewable; that I have tabled reports supportive of the government.

But for those interested in facts, I offer these. I was indeed appointed by a Liberal government, that of Denis Napthine, in March 2014. All integrity officers are appointed by the government of the day. I have never had any political affiliation. I did not meet Premier Napthine or any of his ministry before I was appointed, and I met him only once afterwards.

So how did I get the job? Simply this, I applied for it. I was living in London, coming to the end of my term at the Independent Police Complaints Commission of England and Wales, and friends in Melbourne sent me the advertisement.

An election and a referral

Politics seemed irrelevant when I started in 2014. The then-head of the public service arranged a meeting with Premier Napthine, who wanted to know which football team I supported. It is St Kilda, at the time at the bottom of the ladder. Good team for an Ombudsman, was the response.

A meeting was also arranged with Leader of the Opposition Daniel Andrews. It was cordial, and we discussed reforming my legislation so complaints did not need to be made in writing.

Premier Andrews did support this change in Parliament, which was made in 2016. I never met him again in the nine years he was the Premier and I was the Ombudsman.

Although I have never been politically affiliated, I am unashamedly an advocate for social justice. I had already begun an investigation into rehabilitation in prisons, and I thought this would be a government more interested in justice reform, and supportive of my work.

How wrong I was.

Andrew Tongue, the head of the public service who led the process for my appointment, was ousted on the first day of the new Andrews government. While it is not unusual for incoming governments to make such changes, the speed and suddenness of his departure was shocking – not only to me, new as I was to Victoria – but to the senior and seasoned public servants I spoke to.

Nine years later, just after I tabled my report into the alleged politicisation of the public service, I learned what happened on that day, via a podcast interview with recently retired Premier Andrews. On it, he described Andrew Tongue providing him ‘frank and fearless’ advice about the cost of axing the East-West Link.

Both the public servant and the unbuilt road were axed. The latter cost a billion dollars; the former, a legacy of fear.

The cold shower of political reality drenched me further when I met the new head of the public service, Chris Eccles. I had discussed my budget many times with Andrew Tongue and he had promised to fix it without the necessity of a budget bid, by reallocating funds from agencies who weren’t using them.

I raised that in my first meeting with Chris Eccles, from which it was clear the Ombudsman’s funding was not on the list of government priorities. I was told to put in a bid. And that it was too late to do so for the following year.

I still hoped that with time, an alignment of values and interests might reconcile this new government to its Ombudsman. After all, didn't we all want to see improvements in public administration? To encourage the public sector to learn from its complaints? To support integrity in public officials?

Then in November 2015 I received the case commonly known as 'Red Shirts'.

The impact of my Red Shirts investigation

This referral came without warning from the Upper House of Parliament which the Government did not control, some eighteen months after I started. A motion brought by then Greens Party leader Greg Barber – supported by the Opposition and crossbench – required the Ombudsman to investigate ALP Members of Parliament's use of publicly funded electoral officers for campaigning purposes before the 2014 election. I found out about the referral from a social media post while on a tram.

The debate in the Legislative Council had focused on the Ombudsman's jurisdiction. The Government had, unsurprisingly, not supported the motion; not, they said, because they had anything to hide but because the Ombudsman had no jurisdiction to investigate Members of Parliament and it would therefore be 'disrespectful' to send it to her. Various members of the Opposition and crossbench had argued the Ombudsman had previously investigated MPs so there was plainly jurisdiction.

The referral involved a unique provision of Ombudsman legislation, in which either House of Parliament or a Committee could refer 'any matter' to the Ombudsman, whereupon the Ombudsman 'must investigate'. There were several such referrals in the term of my predecessor, at least one of which involved investigating the actions of Ministers. His capacity to do so was challenged by then Attorney-General Rob Hulls, legal advice was produced by both sides, but the matter did not go to court and the Ombudsman carried out his investigation.

Given this precedent, I wrote to the Leader of the Government in the Legislative Council, the Hon Gavin Jennings MP, advising that I had noted the views expressed in the debate but intended to investigate the matter. In response, I was provided with written advice from the Solicitor-General, dated some months earlier, to the effect that the Ombudsman had no jurisdiction to investigate MPs.

I found myself on the horns of a dilemma. I had no great desire to investigate the referral, which had all the hallmarks of a political hot potato, but I had an even greater aversion to the Government telling me I couldn't. I was particularly annoyed that the Solicitor-General's advice had not been provided to me sooner, before I had publicly asserted jurisdiction. Had it been, the whole history of this matter may have been different.

This had now become a battle for my independence, with gender overtones. I was an independent officer of Parliament. How would it look if I simply bowed to the Government, when my male predecessor had stared them down, and other legal arguments had been made, including in Parliament, that I did have jurisdiction? It would not be good for the reputation of the office for me to appear weak or craven, and it would be bad for the independence of the office for me to simply accept the Government's view.

There was no point getting more legal advice. But under the Ombudsman Act I could go to the Supreme Court for a determination. I did not want the Government telling me I could not investigate them, but I did not mind the court telling me so.

The court did not. The Supreme Court said I did have jurisdiction to investigate Members of Parliament. This question was pursued by the Government on appeal all the way to the High Court, which finally laid the matter to rest and paved the way for continued 'political' referrals.

But this litigation, and its outcome, inevitably affected my relationship with the Government for the years of my term. Although I never sought the Red Shirts referral, and remained neutral throughout the litigation, it was widely portrayed as a battle between the Government and the Ombudsman. Referrals from Parliament continued – while there had been three in the first 40 years of the office, I received five in my 10-year term.

The Andrews Government was in power for nine of the 10 years of my term, a time of significant challenge and change, including the COVID-19 years. In that time I did have some productive relationships with Ministers, and achieved some good reform outcomes, despite the appearance of conflict between me and the Government. But whether the conflict was perceived or real, I have no doubt it affected my relationship with Ministers, with the public, and with Parliament itself.

Is the public service politicised?

I have often reflected it would have been nice to get a referral from Parliament in the public interest, not just about political footballs. The Ombudsman is a standing Royal Commission without the price-tag.

So, what of the last referral I received from Parliament, in February 2022?

This referral was multi-faceted and required me to investigate a number of matters, some of which had already been investigated or were at the time under investigation.

It was apparent from the debate in the Legislative Council preceding the referral that the main motivation behind it was to reopen the Red Shirts investigation, and in particular to send that matter to IBAC. I did not do so and explained why in a short report to Parliament in July 2022.

Another section in the referral required me to examine claims in a media article about ‘stacking of ALP activists’ into the public sector, and this was clearly one of the reasons the motion was supported by some members of the crossbench.

Actual or perceived politicisation of the public service was an issue that had troubled me for some time. Judging by the number of reports around Australia touching on this theme, it was clearly troubling many people, including current and former public servants, politicians and academics. So, this presented a perfect opportunity to examine the issue in Victoria.

My 287-page report speaks for itself, and I will not replicate my findings here. The initial ‘nothing to see here’ response from the Government was predictable but disappointing. Some months before its release, Premier Andrews had resigned. I hoped that the new Premier, Jacinta Allan, or at least some in her Cabinet and their advisers, would actually read the report, which many commentators have described as balanced, where they would find a great deal to see and be disturbed by.

I was encouraged to receive a letter from Premier Allan, advising me that the Government is taking the time ‘to carefully consider the Report’s findings and [my] consequent recommendations.’ As I said in the report itself:

... nothing will change without a recognition at the highest levels of government that change is necessary.

Around Australia public trust in government has been falling for years. If this report does not convince those with the power to make changes, I must leave it to the public to judge for themselves.

I have done what I can, both to expose the subtle but dangerous impact of creeping politicisation, and to propose what I believe to be workable solutions. It is now up to others to hold the Government to account.

9. Thoughts for a better system

The Ombudsman Act is now pretty good, and I must thank former Special Minister of State Jennings for the reforms that gave the office modern tools with a focus on complaint resolution, greater information sharing abilities and a measure of budgetary independence.

But I didn't get all I asked for, and some other issues have since emerged that need addressing if the system is to function as well as it should. I have long requested the ability to release information in the public interest. This would have been helpful, for example, when my office has dealt with public interest complaints that did not result in a report tabled in Parliament and therefore must remain confidential – but were subject to inaccurate and damaging media commentary. While the Government has tinkered around the edges, there is more to do in investing the Ombudsman with the latitude to use their judgement about what constitutes the public interest.

I have also talked publicly about the need for other reforms – to the ability of the Ombudsman to obtain documents and to other aspects of the integrity regime. My experience of Cabinet-In-Confidence documents in particular suggests this shield is increasingly being used to protect government secrecy at the expense of accountability. It simply does not make sense for an Ombudsman not to have access to such documents when a House or Committee of the Parliament can require an Ombudsman to investigate a matter that is likely to involve Cabinet-related information.

I have also been vocal about the oversight regime for my office. Oversight is a good thing, and for Ombudsmen elsewhere in Australia is usually provided by a Parliamentary Committee or senior member of the legal profession. My office doesn't always get it right and constructive critique of our practices is valuable. But my experience of the current regime is not positive, and enabling legislation does not provide the discretion necessary for it to be proportionate. In any resource-constrained public sector environment this cannot be a good use of public funds.

I declare an interest: the Inspector and I have a history that must remain confidential, as a result of which I do not believe either of us can make objective judgements about the other. But while personalities are an unavoidable factor in the relationship between overseer and overseen, conflict is less likely to arise if legislation provides for both discretion by, and oversight of, the overseer. The Ombudsman Act provides this safeguard for agencies in my jurisdiction, but the legislation governing the Inspectorate provides for neither. The Inspectorate's extraordinary powers can be used on anyone, including members of the public, and it cannot be right that those powers are effectively unfettered.

The end of my term raises another area for reform: the appointment of the Ombudsman. It is a 10-year term entirely in the gift of the government of the day. This has been true for 50 years, and I believe I have continued a tradition of strong-minded independent people in the role. I trust this will continue for another 50 and more, whichever government makes the appointment.

But there is nothing in the Ombudsman Act that requires, for example, the Ombudsman to have any particular qualifications or experience, or be acceptable (or equally unacceptable) to all sides of politics. It would be a good thing if the appointment was subject to scrutiny by a non-government controlled Parliamentary Committee with veto powers, as occurs for the appointment of the IBAC Commissioner.

The last word

The greatest privilege of an Ombudsman is to make a meaningful difference to the lives of our fellow beings. To know your staff are resolving people's complaints, delivering fairness in what can be an unfair world. To know your reports have had impact, that they held the Government and the public service to account, raised standards, changed people's lives for the better.

I cannot enforce my recommendations – rightly so, I don't control public policy or the public purse, and a forced apology is worthless – but I can expose, monitor and report. I can table reports directly in Parliament without the intervention of a Minister. This is the power of transparency, which along with a free press is a formidable tool for upholding integrity and holding governments to account.

The Ombudsman is part of the system of proportionate remedies available to those who believe they have been treated unfairly. It is the only one that is free, and compared with the court system, timely. And sometimes the Ombudsman – not bound by, nor creating, precedents – can better reflect the community's broader sense of justice, like ex gratia payments to a group of elderly aged care residents let down by the State.

I often end my speeches with this quote from Irish statesman Edmund Burke:

It is not what a lawyer tells me I may do; but what humanity, reason, and justice tell me I ought to do.

It is the guiding principle of Ombudsmen the world over, and I commend it.

Deborah Glass OBE

March 2024

Appendix 1: Procedural Fairness

This report includes comment or opinion that may be adverse to the Victorian Government and the Victorian Inspectorate. In accordance with section 25A(2) of the *Ombudsman Act 1973* (Vic), the Premier and Victorian Inspector were given a reasonable opportunity to respond to relevant material in this report that may be adverse. This report attaches their responses.

In accordance with section 25A(3) of the Ombudsman Act, any other persons who are or may be identifiable from the information in this report are not the subject of any adverse comment or opinion. They are named or identified in the report as the Ombudsman is satisfied that:

- it is necessary or desirable to do so in the public interest
- identifying those persons will not cause unreasonable damage to those persons' reputation, safety, or wellbeing.

Appendix 1: Procedural Fairness



Hon Jacinta Allan MP

Premier of Victoria

1 Treasury Place
Melbourne, Victoria 3002 Australia
Telephone: +61 3 9651 5000

BMIN-240300258

Deborah Glass OBE
Victorian Ombudsman
Level 2, 570 Bourke Street
MELBOURNE VIC 3000


Dear Ombudsman

Thank you for the opportunity to comment on the *Ombudsman's Report on Leaving Office*, to be tabled in Parliament as you conclude your ten year term.

The office of the Victorian Ombudsman plays a vital role in our democracy. For fifty years your office has assisted a multitude of Victorians, often the most vulnerable. Your ten year report provides a revealing picture of some of the ways in which you and your staff have assisted Victorians over the last ten years to achieve fair and helpful outcomes in their dealings with the Victorian Government.

As well as supporting individual citizens, through your investigations and recommendations you have also assisted the Victorian Government to identify necessary reforms to ensure government keeps the citizen at the centre of everything it does. With that in mind, I am proud that since our election in 2014, the Government has accepted 95% of your recommendations across all investigations.

On behalf of the Government of Victoria I congratulate you on your ten year term of office and thank you for your service to our State.

Yours sincerely



Hon Jacinta Allan MP
Member for Bendigo East
Premier

13.3.24

Appendix 1: Procedural Fairness

Response of the Victorian Inspector

Attachment A: response to extract of draft report

I agree with the Ombudsman that oversight is a good thing. For the Victorian Inspectorate it is provided by two parliamentary committees. Those committees are empowered to monitor and review the Victorian Inspectorate's performance of its duties and functions. A feature of that oversight is the capacity of one of those committees, the Integrity and Oversight Committee, to engage an independent person to investigate public interest complaints relating to the Inspector or any other Victorian Inspectorate officer. There is strong and effective oversight of the Inspectorate, as there should be. On top of that, recourse may be had to court to stay, or remedy, any overstepping by the Inspectorate.

The Ombudsman states that for Ombudsmen elsewhere in Australia oversight is usually provided by a parliamentary committee or senior member of the legal profession. The same situation applies in Victoria. The Ombudsman is oversighted by the Integrity and Oversight Committee and by the Victorian Inspectorate. The Victorian Inspectorate is headed by a senior member of the legal profession. Both my predecessor and I were Queen's Counsel (now King's Counsel) when appointed.

Occasional differences of opinion about approaches to compliance are inevitable between overseer and overseen. But such differences should not cloud the judgement of senior public officers. The relationship between the Victorian Inspectorate and the Ombudsman is analogous to that between the Ombudsman and any of the agencies within her jurisdiction. Oversight by one agency of another should be seen as a means to bring about systemic improvement in partnership with each other.

The Victorian Inspectorate acknowledges the contribution of the Ombudsman over her 10 years in office and looks forward to working with her successor over the next 10.

Appendix 2:

Tabled Parliamentary reports

As a constitutionally independent officer of the Victorian Parliament, the Ombudsman can report directly to the Parliament about any matter arising in connection with the performance of her functions.

Over the past decade, the Ombudsman has tabled 99 reports in the Parliament, including many high-profile reports on investigations.

The Ombudsman can formally investigate public organisations' actions and decisions on a complaint or on her 'own motion' (without a complaint).

Where **investigations into complaints** often consider individual actions and decisions, **own motion investigations** usually examine systemic issues.

The Ombudsman also investigates **Public Interest (whistleblower) Complaints** about improper conduct and detrimental action by public officers, which are referred by IBAC and must investigate 'any matter' referred as a **Parliamentary Complaint**, by either house or a committee of the Victorian Parliament.

During an investigation, the Ombudsman has the powers of a Royal Commission, including the power to:

- compel a person to attend an interview on oath or affirmation
- compel a person to produce documents.
- inspect a public organisation's premises.
- take statutory declarations.

Following an investigation, the Ombudsman can make recommendations to remedy problems and improve public administration. The Ombudsman actively monitors the acceptance and implementation of her **recommendations**, which together with other **follow-up reports** to Parliament, hold public organisations to account and demonstrate tangible results.

The Ombudsman also has an important role to resolve complaints, quickly, informally and fairly, including by conciliation. Demonstrating the value of complaints as free feedback, the Ombudsman has tabled a series of **Casebooks and Enquiries** in the Parliament which also acknowledge public organisations' willingness to engage informally to fix problems without formal investigation.

Pulling together many lessons learned from investigations and complaints, the Ombudsman has also produced a series of **Good Practice Guides** to promote improvements in public administration.

Finally, each year the Ombudsman is required report to Parliament on the performance of her functions. The Ombudsman's **Annual Reports** showcase work from across the office, including complaints and investigations, the delivery of educational workshops and community outreach and a variety of other projects undertaken throughout the year.

The colour-coded titles below list Victorian Ombudsman's Parliamentary Reports tabled since April 2014.

Appendix 2:

Tabled Parliamentary reports

Investigations into complaints

Investigation into a Building Permit complaint

November 2023

Councils and complaints: Glen Eira City Council's approach to contractor work

April 2023

Investigation into complaints about assaults of five children living in Child Protection residential care units

October 2020

Investigation of a complaint about Ambulance Victoria

May 2019

Investigation into Maribyrnong City Council's internal review practices for disability parking infringements

April 2018

Investigation into Wodonga City Council's overcharging of a waste management levy

April 2018

Investigation into the Registry of Births, Deaths and Marriages' handling of a complaint

January 2017

Investigation into Casey City Council's Special Charge Scheme for Market Lane

June 2016

Investigation into Department of Health oversight of Mentone Gardens, a Supported Residential Service

April 2015

Own motion (systemic) investigations

Investigation into healthcare provision for Aboriginal people in Victorian prisons

March 2024

Investigation into the Department of Transport and Planning's implementation of the zero and low emission vehicle charge

September 2023

WorkSafe 3: Investigation into Victorian self-insurers' claims management and WorkSafe oversight

June 2023

Investigation into a former youth worker's unauthorised access to private information about children

September 2022

Investigation into complaint handling in the Victorian social housing sector

July 2022

Investigation into Environment Protection Authority decisions on West Gate Tunnel Project spoil disposal

May 2022

Investigation into decision-making under the Victorian Border Crossing Permit Directions

December 2021

Investigation into good practice when conducting prison disciplinary hearing

July 2021

Investigation into how local councils respond to ratepayers in financial hardship

May 2021

Investigation into the Department of Jobs, Precincts and Regions' administration of the Business Support Fund

April 2021

Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020

December 2020

Appendix 2:

Tabled Parliamentary reports

Investigation into the planning and delivery of the Western Highway duplication project

July 2020

Investigation into three councils' outsourcing of parking fine internal reviews

February 2020

WorkSafe 2: Follow-up investigation into the management of complex workers compensation claims

December 2019

Revisiting councils and complaints

October 2019

OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people

September 2019

Investigation into Wellington Shire Council's handling of Ninety Mile Beach subdivisions

August 2019

Investigation into State Trustees

June 2019

Investigation into the imprisonment of a woman found unfit to stand trial

October 2018

Investigation into child sex offender Robert Whitehead's involvement with Puffing Billy and other railway bodies

June 2018

Investigation into the administration of the Fairness Fund for taxi and hire car licence holders

June 2018

Investigation into the financial support provided to kinship carers

December 2017

Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre

November 2017

Investigation into the management of maintenance claims against public housing tenants

October 2017

Enquiry into the provision of alcohol and drug rehabilitation services following contact with the criminal justice system

September 2017

Investigation into Victorian government school expulsions

August 2017

Investigation into the transparency of local government decision making

December 2016

Investigation into the management of complex workers compensation claims and WorkSafe oversight

September 2016

Investigation into public transport fare evasion enforcement

May 2016

Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting

December 2015

Investigation into the rehabilitation and reintegration of prisoners in Victoria

September 2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight

June 2015

Investigation into an incident of alleged excessive force used by authorised officers

February 2015

Investigation following concerns raised by Community Visitors about a mental health facility

October 2014

Appendix 2:

Tabled Parliamentary reports

Public Interest (whistleblower) Complaints

Report on investigations into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison

June 2022

Investigation into allegations of collusion with property developers at Kingston City Council

October 2021

Investigation into Melton City Council's engagement of IT company, MK Datanet Pty Ltd

June 2021

Investigation of protected disclosure complaints regarding the former Principal of a Victorian public school

February 2021

Investigation into corporate credit card misuse at Warrnambool City Council

October 2020

Investigation into review of parking fines by the City of Melbourne

September 2020

Investigations into allegations of nepotism in government schools

May 2020

Investigation of alleged improper conduct by Executive Officers at Ballarat City Council

May 2020

Investigation into improper conduct by a Council employee at the Mildura Cemetery Trust

November 2019

Investigation into allegations of improper conduct by officers at Goulburn Murray Water

October 2018

Investigation of three protected disclosure complaints regarding Bendigo South East College

September 2018

Investigation into the management and protection of disability group home residents by the Department of Health and Human Services and Autism Plus

September 2017

Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board

June 2017

Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board

March 2017

Investigation into the misuse of council resources

June 2016

Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations

November 2015

Conflict of interest by an Executive Officer in the Department of Education and Training

September 2015

Investigation into allegations of improper conduct by officers of VicRoads

June 2015

Investigation into allegations of improper conduct in the Office of Living Victoria

August 2014

Appendix 2: Tabled Parliamentary reports

Parliamentary Complaints

Investigation of a matter referred from the Legislative Council on 9 February 2022 – Part 2
December 2023

Investigation of a matter referred from the Legislative Council on 9 February 2022 Part 1
July 2022

**Joint investigation with IBAC
Operation Watts, a joint investigation into allegations of serious corrupt conduct involving Victorian public officers, including Members of Parliament**
July 2022

Investigation of matters referred from the Legislative Assembly on 8 August 2018
December 2019

Investigation of allegations referred by Parliament's Legal and Social Issues Committee, arising from its inquiry into youth justice centres in Victoria
September 2018

Investigation of a matter referred from the Legislative Council on 25 November 2015
March 2018

Recommendations and follow-up reports

Social Housing complaint handling – progress report
March 2024

**Joint investigation with IBAC
Operation Watts Progress report**
September 2023

Ombudsman's recommendations – fourth report
September 2022

Outsourcing of parking fine internal reviews – a follow-up report
March 2021

Ombudsman's recommendations – third report
June 2020

Ombudsman's recommendations – second report
July 2018

Report on recommendations
June 2016

Appendix 2: Tabled Parliamentary reports

Casebooks and Enquiries

Misconduct in public organisations: A casebook
August 2023

Complaint handling casebook: Resolving issues informally
May 2023

The Ombudsman for Human Rights: A Casebook
August 2021

Fines Victoria complaints
April 2019

VicRoads complaints
February 2019

Complaints to the Ombudsman: resolving them early
July 2018

Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville
February 2017

Ombudsman enquiries: Resolving complaints informally
October 2016

Good Practice Guides

Good Practice Guide: Complaint handling in a crisis
February 2023

Councils and complaints – A good practice guide 2nd edition
July 2021

Apologies
April 2017

Councils and complaints – A report on current practice and issues
February 2015

Annual Reports

Annual Report October 2023

Annual Report October 2022

Annual Report October 2021

Annual Report December 2020

Annual Report October 2019

Annual Report September 2018

Annual Report October 2017

Annual Report October 2016

Annual Report October 2015

Annual Report September 2014

Other reports to Parliament

Reflections on 10 years
March 2024

**Watchdog for the people
50 years of the Victorian Ombudsman 1973-2023**
October 2023

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