

VICTORIAN **ombudsman**

Annual Report 2012

Part 2

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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*, I present to the Parliament Part 2 of the annual report of the Ombudsman for the year 2011-12. The report contains the audited financial statements, quantitative measures of the work of my office and other statutory reporting disclosures.

Part 1 of the annual report, dealing with the statutory functions of my office, was tabled in Parliament on 15 August 2012.



G E Brouwer

OMBUDSMAN

12 September 2012

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1 Introduction

This report

My office

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1 Introduction

This report

This is Part 2 of the annual report of the Ombudsman for the year ending 30 June 2012. It contains the audited financial statements for the period; deals with quantitative measures about the work of my office in 2011-12; and meets statutory reporting disclosures required under the *Financial Reporting Directions* and the *Financial Management Act 1994*. The disclosure index, listing all required statutory disclosures, is at Appendix 1.

Part 1 of my annual report was tabled in the Parliament on 15 August 2012. In that part I reported on the operations of my office in 2011-12. It is available on my website at www.ombudsman.vic.gov.au.

My office

The Ombudsman in Victoria is an independent officer of the Parliament under section 94A of the *Constitution Act 1975*. The Ombudsman is appointed to office under section 3 of the *Ombudsman Act 1973* by the Governor in Council.

As Ombudsman, my principal function is to enquire into or investigate administrative actions under the Ombudsman Act. My jurisdiction encompasses actions taken by or on behalf of government departments, public statutory bodies, officers and employees of municipal councils and actions by private sector entities when delivering services on behalf of government. I may conduct an enquiry as a consequence of a complaint or on my own motion.

The Ombudsman also has responsibilities arising from the *Whistleblowers Protection Act 2001* in relation to the assessment and determination of public interest disclosures, as well as some important functions aimed at ensuring compliance by state entities with certain specified Victorian legislation.

The mission of my office is to promote fairness, integrity, respect for human rights and administrative excellence in the Victorian public sector.

I am assisted in discharging my responsibilities by the Deputy Ombudsman and other dedicated staff. I take this opportunity to thank them all for a job well done in what was another year of significant workload.

Details of the organisation of my office, staffing matters, and the values my staff embrace are set out later in this report.

2 The work of my office – quantitative measures

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2 The work of my office – quantitative measures

Approaches¹ – received

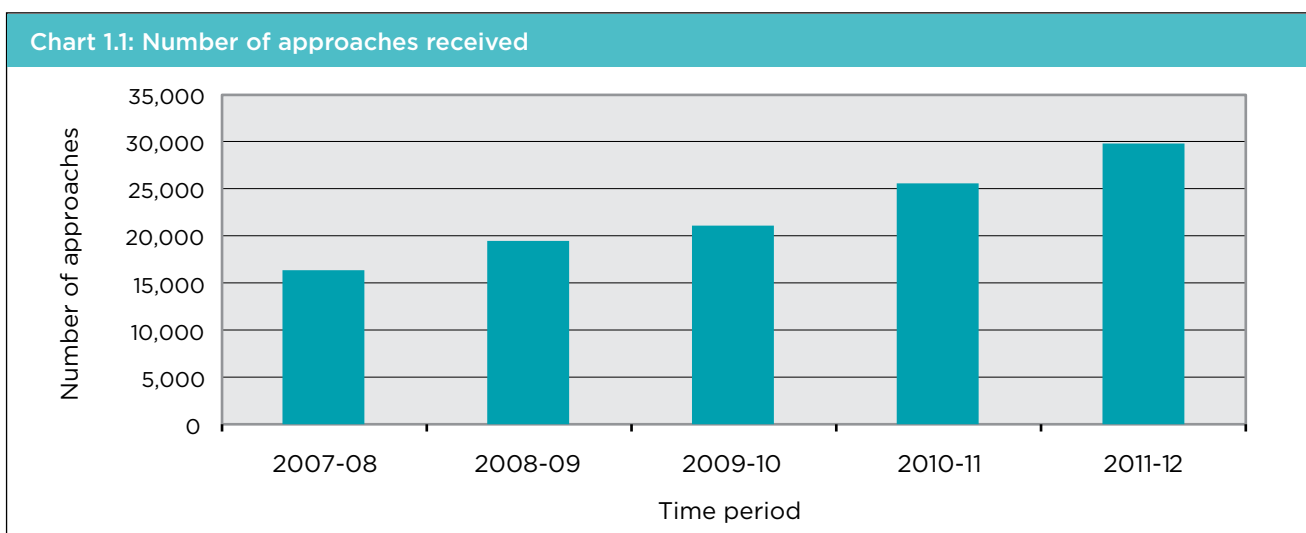
The past year was again the busiest that the Victorian Ombudsman's office has ever experienced. It was the eighth consecutive year where that has been so.

In 2011-12 my office received 29,773 approaches, an increase of over 16 per cent compared to 2010-11. The increase in approaches received since 2007-08 is 82 per cent.

The number of staff has also increased since 2007-08, although in 2011-12 staff numbers decreased.² As a consequence the number of approaches to my office per full time equivalent staff member increased by almost 24 per cent in 2011-12 compared to the previous year, and by 54 per cent since 2007-08.

Table 1 and charts 1.1 and 1.2 following set out the relevant data.

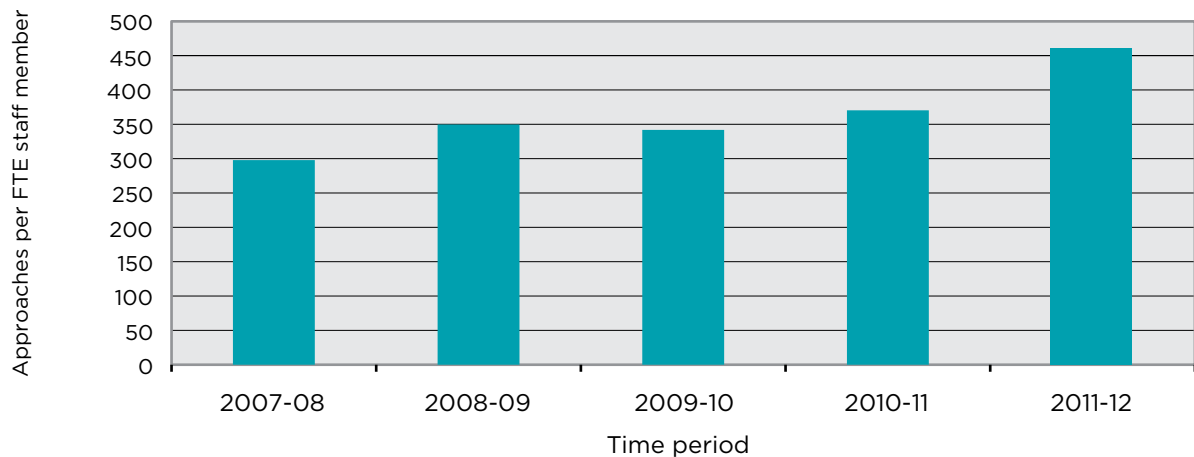
Table 1: Number of approaches received					
	2007-08	2008-09	2009-10	2010-11	2011-12
Approaches received					
Number of approaches	16,344	19,452	21,074	25,557	29,773
Annual percentage change in approaches	-	19.0	8.3	21.3	16.5
Cummulative percentage change since 2007-08	-	19.0	28.9	56.4	82.2
Approaches received per FTE staff member					
Number of approaches per FTE staff member	298	350	342	370	459
Annual percentage change in approaches	-	17.4	-2.2	8.3	23.9
Cummulative percentage change since 2007-08	-	17.4	14.8	24.3	54.0



¹ 'Approaches' are all contacts made from members of the public with my office about the work of my office. They include jurisdictional and non-jurisdictional complaints and requests for information. Jurisdictional complaints are discussed later in this report.

² Staffing levels in my office are discussed later in this report under 'Organisation and staffing'.

Chart 1.2: Number of approaches per FTE staff member



Approaches – closed³

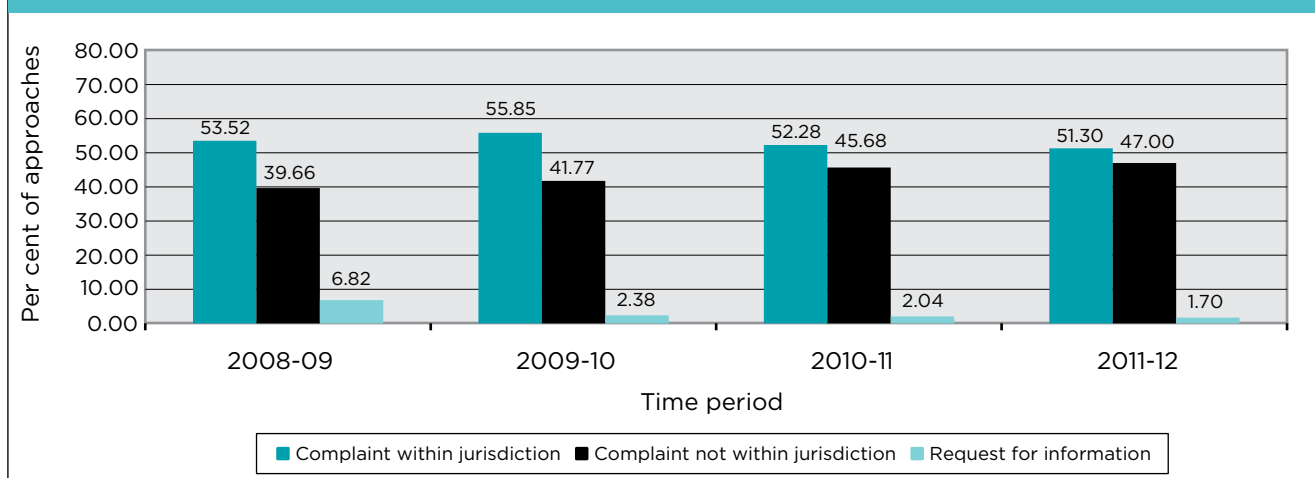
My office closed 29,894 approaches in 2011-12. Of those 15,336 (51 per cent) related to complaints about matters falling within my jurisdiction. The remainder were either complaints about matters over which I do not have jurisdiction (47 per cent) or requests for information (2 per cent).

Table 2 and chart 2 following set out the comparative annual data since 2008-09.

Table 2: Number of approaches closed

Type of approach	2008-09	2009-10	2010-11	2011-12
Complaint within jurisdiction	10,477	11,784	13,281	15,336
Complaint not within jurisdiction	7,763	8,812	11,604	14,051
Request for information	1,336	503	518	507
Total approaches closed	19,576	21,099	25,403	29,894

Chart 2: Per cent of approaches closed by type of approach



³ Approaches closed are those finalised. Note the distinction made here and in other tables and charts between approaches received and closed. Approaches received in any reporting period will vary marginally from those closed because receipt and closure of some approaches will occur in different reporting periods.

The number of persons approaching my office on matters not within my jurisdiction continues to increase, from 40 per cent of all approaches in 2008-09 to 47 per cent in 2011-12. There are likely to be a number of reasons for this, one of which is the relatively high profile of my office in the community.

Although dealing with non-jurisdictional complaints entails a significant workload, my office performs an important clearing-house function for such complainants who otherwise, often do not know how to proceed.

Requests for information, on the other hand, have declined significantly over the past four years, from 7 per cent of all approaches in 2008-09 to less than 2 per cent in 2011-12. One reason for this decline is the enhancement of information available from my website, obviating the need for some of those accessing the site to approach my office through other means.⁴

As I foreshadowed in my 2010-11 report, a complete redesign and update of the functionality of my website commenced in 2011-12. One aim of the upgrade is to assist people to better understand my jurisdiction and to help them identify and make direct contact with the entities they need to approach on the matters over which I do not have jurisdiction. This will further assist to free up my currently stretched personnel resources to concentrate on jurisdictional complaints.

Approaches – time taken to close

Most of the approaches made to my office are closed quickly. Almost 70 per cent of all approaches received in 2011-12 were able to be closed on the day of receipt. Most of these were non-jurisdictional complaints. Eighty-eight per cent of approaches were closed within 7 days.

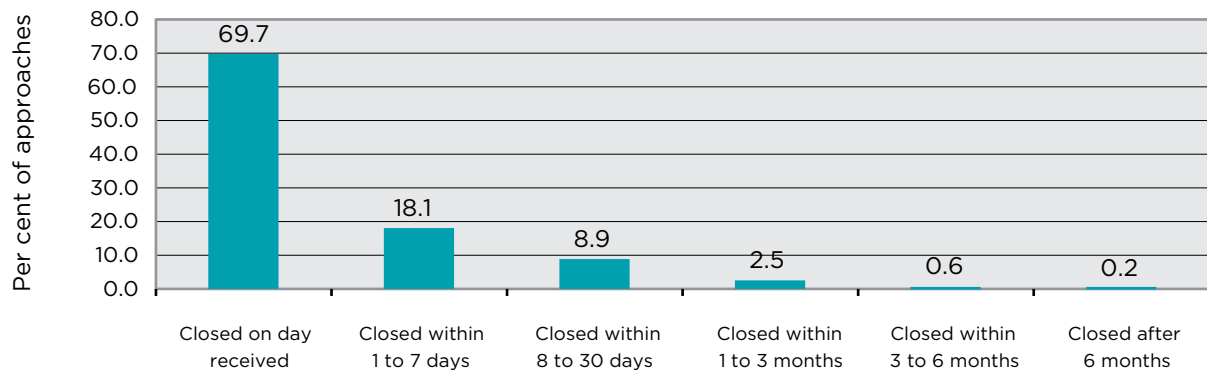
Though non-jurisdictional complaints are generally closed quickly, they often present their own challenges for my staff. Providing advice to persons approaching my office for help – sometimes by distraught persons who are at the end of their tether – about how and to whom they should address their concerns requires both patience and tact by my staff.

Table 3 and chart 3 following set out the detail of time taken to close approaches in 2011-12.

Table 3: Time taken to close approaches in 2011-12	
Time taken to close approaches in 2011-12	Number closed
Closed on day received	20,851
Closed within 1 to 7 days	5,402
Closed within 8 to 30 days	2,651
Closed within 1 to 3 months	758
Closed within 3 to 6 months	179
Closed after 6 months	53
Total approached finalised in 2011-12	29,894

⁴ Statistics about access to the website are discussed later in this report under 'Victorian Ombudsman website'.

Chart 3: Time taken to close approaches in 2011-12



Approaches – how received

The method of contact used by those approaching my office has changed significantly over the past five years. Approaches by telephone remains by far the most common means, accounting for almost 4 of every 5 approaches made. Approaches by letter have steadily declined over the years and in 2011-12 accounted for about 5 per cent of approaches. Approaches made online, on the other hand, accounted for 10 per cent of all approaches in 2011-12, up from 3 per cent in 2007-08.

Table 4 and charts 4.1, 4.2 and 4.3 following set out the relevant details.

Table 4: Number of approaches received and how received

	2007-08	2008-09	2009-10	2010-11	2011-12
How received					
Copied to Ombudsman	80	0	0	0	0
Email	936	1,274	1,239	1,544	2,014
Facsimile	120	155	113	109	124
Letter	2,162	2,091	1,750	1,541	1,628
Online	502	788	1,775	2,274	2,948
In person – at office	87	129	177	135	194
In person – off-site	46	42	23	18	3
In person – regional visit	28	19	1	9	6
In person – prison visit	7	22	5	11	13
Telephone	12,376	14,932	15,991	19,916	22,843
Total approaches	16,344	19,452	21,074	25,557	29,773

Chart 4.1: Per cent of approaches received by email, letter and online

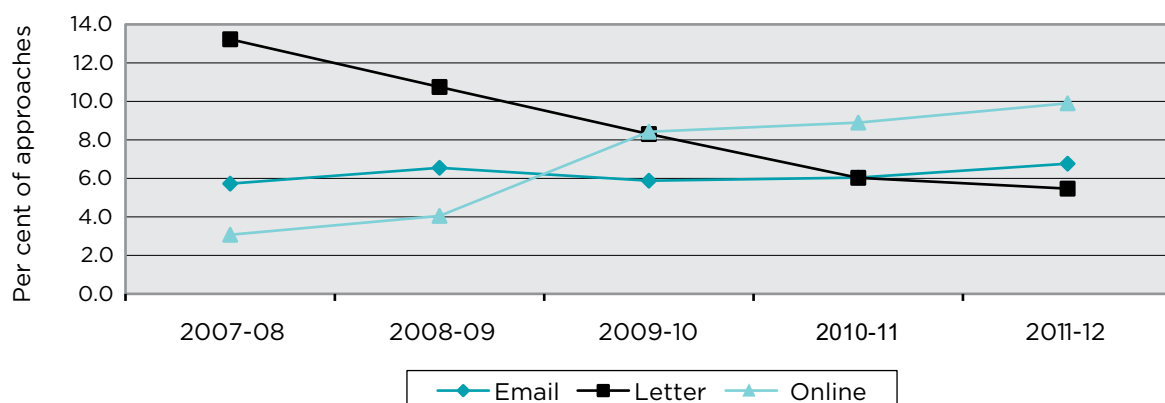


Chart 4.2: Per cent of approaches received by facsimile and in person

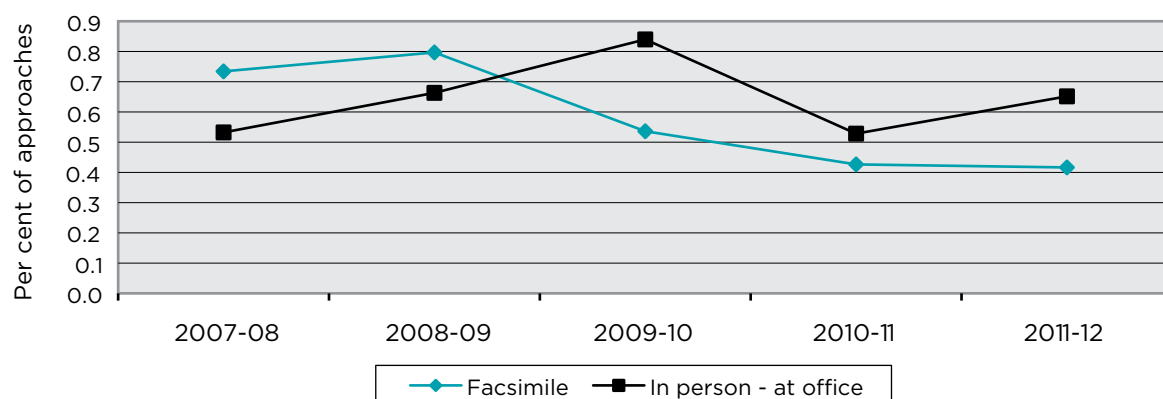
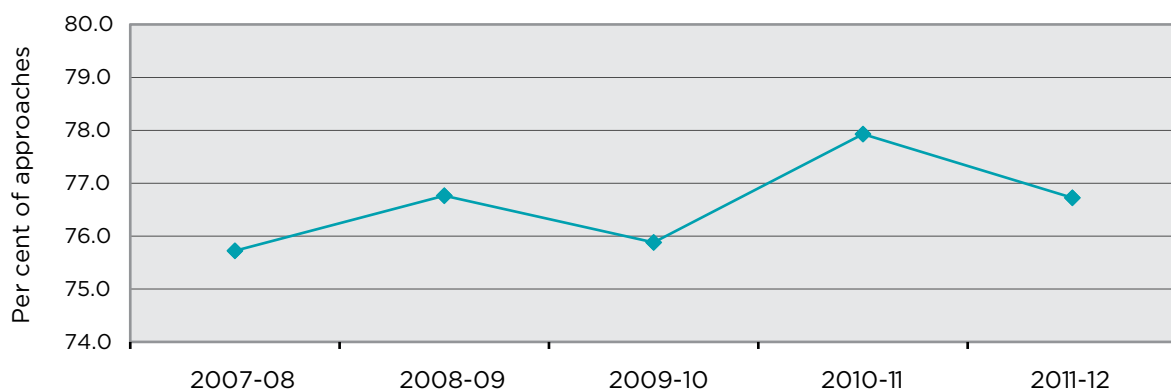


Chart 4.3: Per cent of approaches received by telephone



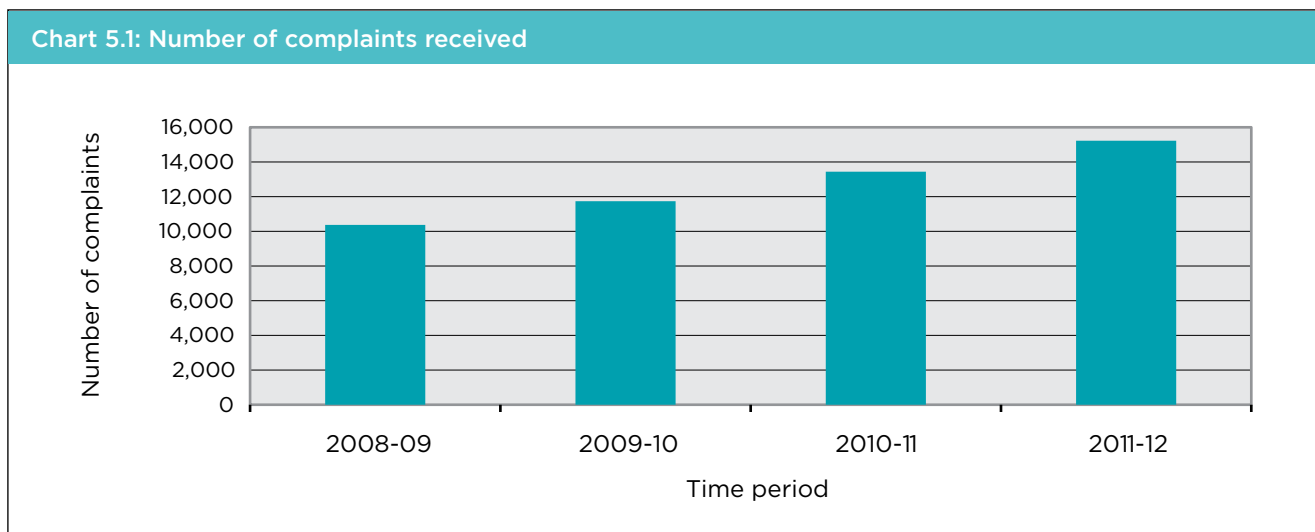
With the innovations in communications technology, we can expect that the means of approaching my office will continue to rapidly change in the coming years. My office will carefully keep under review means by which these changes can be most appropriately supported, including by the upgrade of my website, which will be complete early in 2013.

Jurisdictional complaints⁵ – received and closed

My office received 15,225 jurisdictional complaints in 2011-12, an increase of 13 per cent over the previous year and 47 per cent since 2008-09. This represents a 20 per cent increase in jurisdictional complaints received per full time equivalent staff member over the past year, and an increase of over 25 per cent since 2008-09. In 2011-12 15,336 jurisdictional complaints were closed.⁶

Table 5 and charts 5.1 and 5.2 set out the details about jurisdictional complaints received.

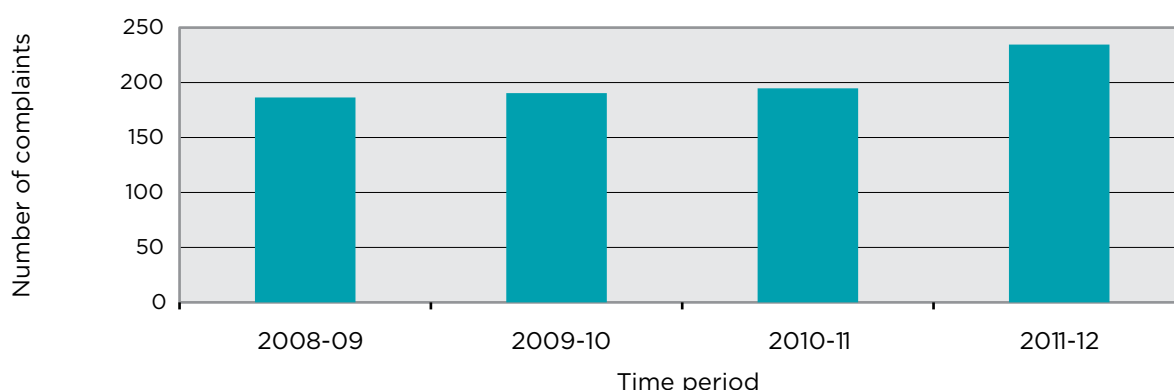
Table 5: Jurisdictional complaints received				
	2008-09	2009-10	2010-11	2011-12
Number of jurisdictional complaints received				
Number of complaints received	10,371	11,737	13,439	15,225
Annual percentage change in complaints received	-	13.2	14.5	13.3
Cummulative percentage change in complaints since 2008-09	-	13.2	29.6	46.8
Number of jurisdictional complaints received per FTE staff member				
Complaints received per FTE staff member	186	190	195	235
Annual percentage change	-	2.1	2.3	20.4
Cummulative percentage change since 2008-09	-	2.1	4.5	25.8



5 Jurisdictional complaints are those which raise matters over which the Ombudsman has jurisdiction and which, therefore, can be investigated in my office.

6 Complaints received in any reporting period will vary marginally from those closed because receipt and closure of some complaints will occur in different reporting periods.

Chart 5.2: Number of complaints received per FTE staff member



As I reported in 2010-11, I am pleased with the way my staff have been able to deal with the increasing workloads – which was particularly heavy in 2011-12 – while still meeting my target of closing complaints within the required timelines.⁷ Increased budgetary resources have allowed me to ensure that each approach to my office is given the attention it deserves, but the increased workload per equivalent full time staff member continues to be a concern and one that I will keep under close review in 2012-13. I will, in particular, look to how I might deploy technology to ease the burden on staff in 2012-13.

Jurisdictional complaints – requests for review

In 2011-12 the outcome of 26 investigations (55 in 2010-11) were reviewed following requests from complainants for an internal review of the handling of their complaints by my office. This is less than 0.2 per cent of all jurisdictional complaints closed in 2011-12. In only seven of the reviewed cases, or about 0.05 per cent of all complaints closed, was the investigation process found to warrant further attention.

Jurisdictional complaints – by portfolio area

Table 6 and chart 6 following detail the proportion of complaints I received over the past five years for each respondent portfolio. As I have mentioned in other reports, this type of time series data is important. It is one of the many inputs used by my office to proactively identify what may be systemic maladministration in the various sectors of government and which may, therefore, require more detailed investigation. Similar data for correctional facilities and local government are also presented in the following pages.

⁷ 'Complaints resolved within required timelines' is a key performance indicator for my office. This and other key indicators are discussed later in this report under 'Output statement'.

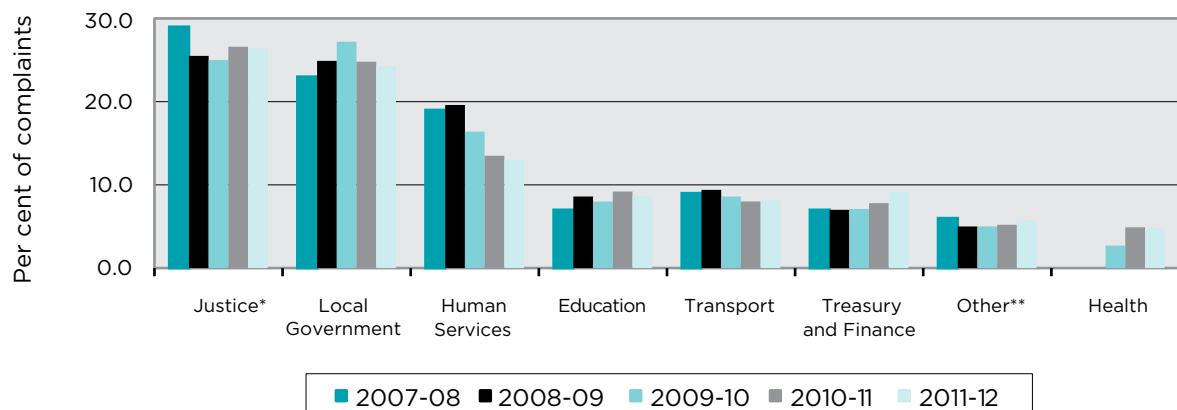
Table 6: Jurisdictional complaints closed by portfolio area

Portfolio area	Per cent of complaints				
	2007-08	2008-09	2009-10	2010-11	2011-12
Justice*	29.0	25.5	25.0	26.6	26.3
Local Government	23.0	24.9	27.2	24.8	24.3
Human Services	19.0	19.6	16.4	13.5	13.0
Education	7.0	8.6	8.0	9.2	8.7
Transport	9.0	9.4	8.6	8.0	8.1
Treasury and Finance	7.0	7.0	7.1	7.8	9.1
Other**	6.0	5.0	5.0	5.2	5.7
Health			2.7	4.9	4.7
Total	100.0	100.0	100.0	100.0	100.0

* Justice portfolio complaints do not include complaints about Victoria Police.

** 'Other' are portfolios where complaints were small percentages of total. These are not separately shown.

Chart 6: Jurisdictional complaints closed by portfolio area



Jurisdictional complaints – by correctional facility

My office closed 2,411 complaints about prisons in 2011-12, 411 (21 per cent) more than in 2010-11.

As in previous years, the most complained about facility in 2011-12 was the privately operated maximum security Port Phillip Prison. Complaints about the prison accounted for 28 per cent of all prison complaints in 2011-12, down from 34.5 per cent in 2010-11. The second most complained about prison was the Metropolitan Remand Centre, operated by Corrections Victoria, accounting for 14 per cent of all prison complaints in 2011-12, down from 16 per cent in 2010-11.

Relative to their operational capacities⁸, the five most complained about prisons in 2011-12 were as follows:

Table 7.1: Most complained about prisons	
Prison	Number of complaints as % of capacity
Melbourne Custody Centre	170%
Port Phillip Prison	84%
Dame Phyllis Frost Centre	80%
Melbourne Assessment Prison	51%
Metropolitan Remand Centre	49%

By contrast, the five least complained about prisons were as follows:

Table 7.2: Least complained about prisons	
Prison	Number of complaints as % of capacity
Loddon	22%
Dhurringile Prison	19%
Beechworth Correctional Centre	16%
Langi Kal Kal Prison	16%
Judy Lazarus Transition Centre	0%

Although these complaint rates can be informative, they need to be considered in the context of the nature of the facility. For example, the five most complained about prisons are all maximum security facilities. The Melbourne Custody Centre is the initial accommodation for prisoners arrested by police and for those attending the Melbourne Magistrates Court. There are approximately 22,000 prisoner movements into and out of that facility each year. The Port Phillip Prison is the second largest capacity correctional facility in Victoria and the Metropolitan Remand Centre the third largest. The Fulham Correctional Centre is the largest.

The five least complained about prisons are minimum security facilities except for Loddon Prison, which is medium security.

Table 8 and charts 8.1, 8.2, 8.3 and 8.4 following set out the relevant details.

⁸ Information about prison operational capacities sourced from www.justice.vic.gov.au on 16 August 2012. Information about the Melbourne Custody Centre sourced from www.au.g4s.com. G4S is a private company and operates the Melbourne Custody Centre on behalf of Victoria Police.

Table 8: Number of complaints closed by correctional facility

	Operational capacity	Number of complaints				Percentages 2011-12	
		2008-09	2009-10	2010-11	2011-12	of capacity	of total
Male Prisons – Maximum security							
Port Phillip Prison (Private)	804	532	554	690	678	84.3%	28.1%
Metropolitan Remand Centre	673	285	341	324	332	49.3%	13.8%
Melbourne Assessment Prison	285	78	95	114	145	50.9%	6.0%
Barwon Prison	423	89	123	123	124	29.3%	5.1%
Melbourne Custody Centre (Private)	67	20	43	72	114	170.1%	4.7%
Male Prisons – Medium security							
Fulham Correctional Centre (Private)	845	179	147	153	245	29.0%	10.2%
Marngoneet Correctional Centre	394	78	67	74	157	39.8%	6.5%
Hopkins Correctional Centre (Ararat Prison)	388	152	108	127	155	39.9%	6.4%
Loddon Prison	409	96	105	81	90	22.0%	3.7%
Male Prisons – Minimum security							
Dhurringile Prison	214	7	20	18	40	18.7%	1.7%
Beechworth Correctional Centre	160	6	10	10	26	16.3%	1.1%
Langi Kal Kal Prison	145	7	12	7	23	15.9%	1.0%
Judy Lazarus Transition Centre	25	4	0	3	0	0.0%	0.0%
Female Prisons							
Dame Phyllis Frost Centre – maximum security	313	55	85	180	247	78.9%	10.2%
Tarrengower Prison – minimum security	72	6	11	18	18	25.0%	0.7%
Other							
Prison not identified	n/a	20	7	6	17	n/a	0.7%
Total	5,217	1,614	1,728	2,000	2,411		

Chart 8.1: Number of complaints closed 2011-12 – male maximum security prisons

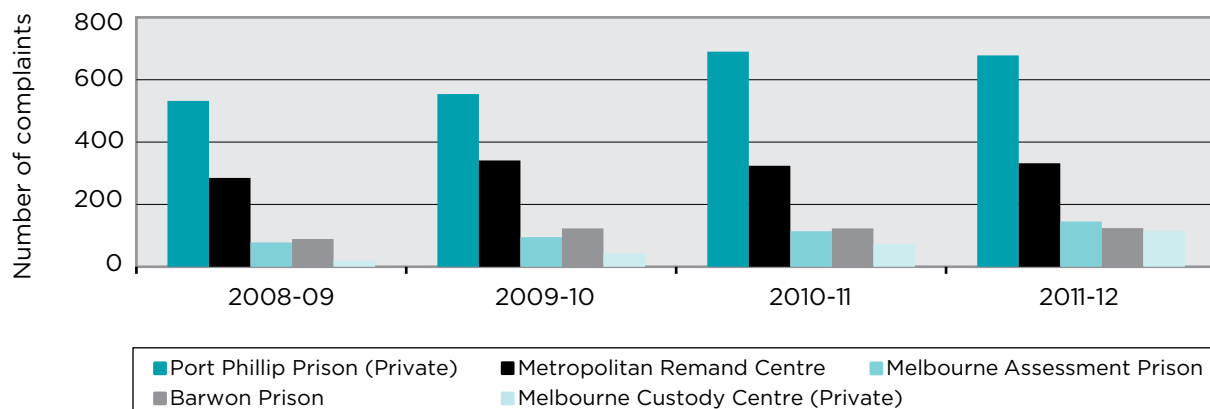


Chart 8.2: Number of complaints closed 2011-12 – male medium security prisons

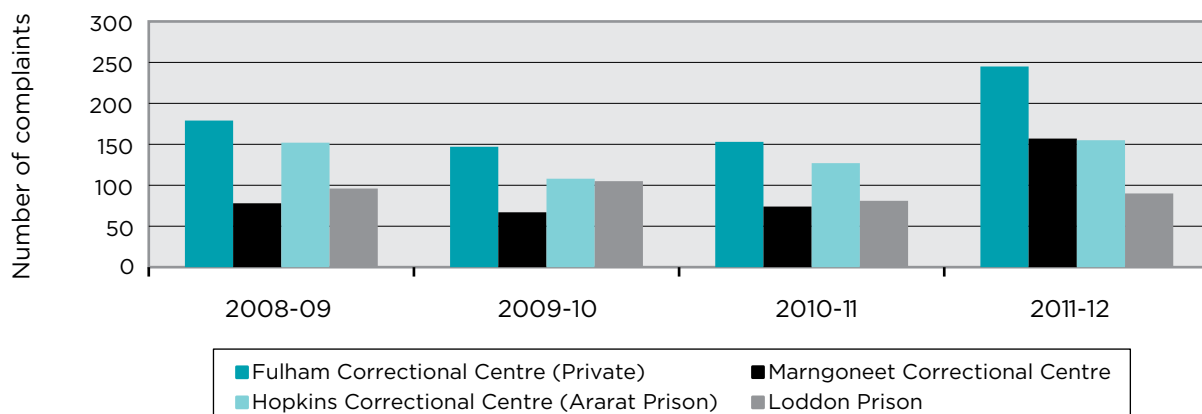


Chart 8.3: Number of complaints closed 2011-12 – male minimum security prisons

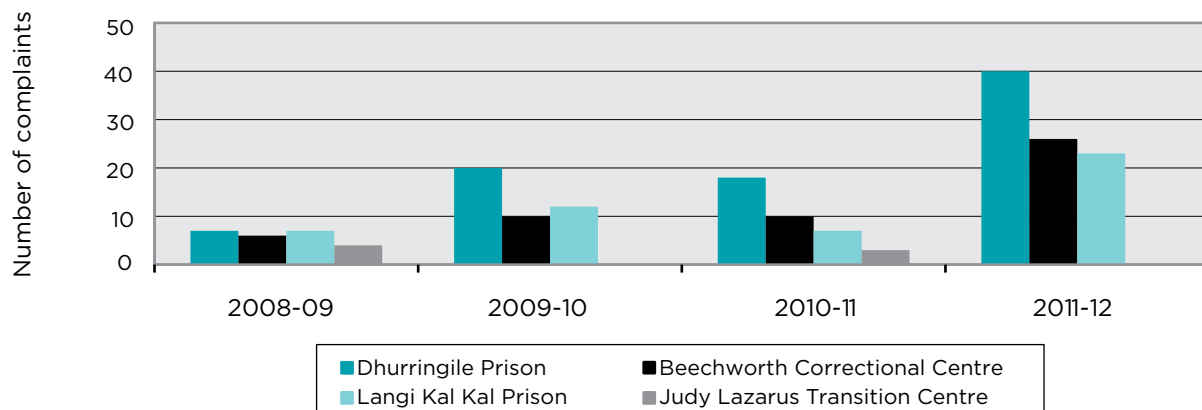
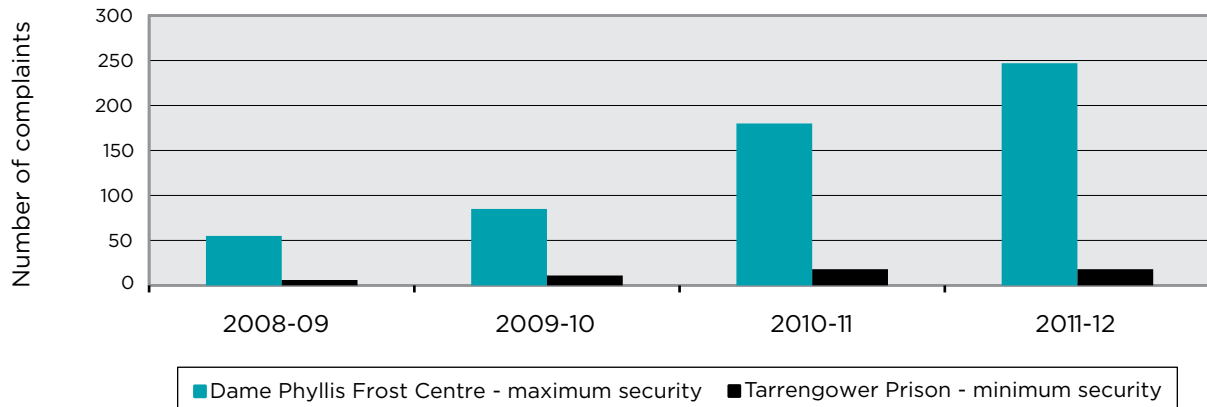


Chart 8.4: Number of complaints closed 2011-12 – female prisons



Jurisdictional complaints – by local government

In 2011-12 my office closed a total of 3,441 complaints about local government in Victoria. All seventy nine councils were subject to at least one complaint during the reporting period, but the rate of complaints varied markedly across local government areas.

Tables 9 and 10 following set out the ten most and least complained about councils, respectively, when measured as number of complaints received per 1,000 population⁹ in the relevant local government areas.

Table 9: Ten most complained about councils

Local government area	2011-12 complaints	June 2011 population	Complaints per 1,000 population
Pyrenees (S)	19	6,727	2.82
Hindmarsh (S)	14	5,870	2.39
Hepburn (S)	24	14,506	1.65
Moyne (S)	23	16,175	1.42
Alpine (S)	17	12,103	1.40
Melbourne (C)	141	100,611	1.40
Mansfield (S)	11	8,031	1.37
Southern Grampians (S)	20	16,510	1.21
Moorabool	32	28,600	1.12
South Gippsland (S)	30	27,506	1.09

⁹ Population data sourced from Australian Bureau of Statistics *Regional Population Growth* publication (catalogue no 3218.0).

Table 10: Ten least complained about councils

Local government area	2011-12 complaints	June 2011 population	Complaints per 1,000 population
Boroondara (C)	62	166,818	0.37
Whittlesea (C)	59	160,371	0.37
Whitehorse (C)	52	157,740	0.33
Queenscliffe (B)	1	3,054	0.33
Melton (S)	36	112,168	0.32
Mildura (RC)	16	51,848	0.31
Corangamite (S)	5	16,504	0.30
Gannawarra (S)	3	10,461	0.29
Yarriambiack (S)	1	7,153	0.14
Ararat (RC)	1	11,297	0.09

Across all 79 councils in Victoria, the median rate of complaints was 0.62 per 1,000 population. The most complained about council on this measure received 4.5 times as many complaints as the median council. On the other hand, the least complained about council received only one seventh as many complaints as the median council. Measured on a per 1,000 population basis, the most complained about council received more than 30 times the number of complaints than the least complained about council.¹⁰

Although these complaint rates can be useful when assessed in the context of other data, their significance needs to be carefully considered when used in isolation. For example, the rates of complaints received for the smaller population councils are more volatile than those with higher populations.

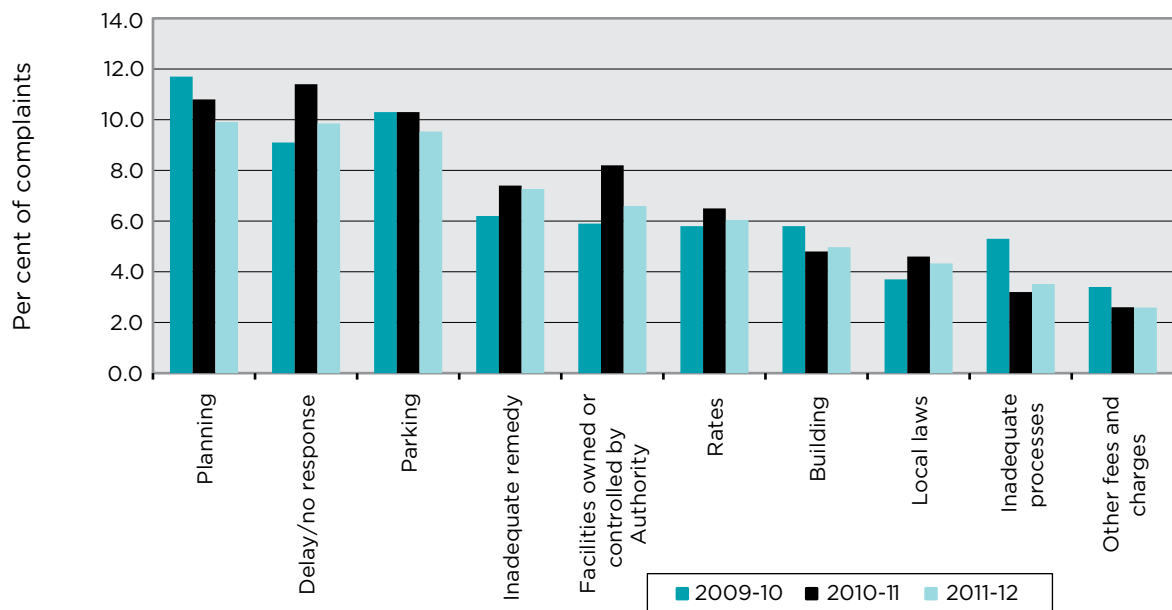
In 2011-12 the most common reasons for complaints involving local government related to delays or no response from the relevant authority, and matters to do with planning. The next three most common issues related to parking, inadequate remedy and local authority facilities. These five issues were also the five most complained about matters in 2010-11, although they all declined marginally over the reporting period as a percentage of all local government complaints.

Table 11 and chart 11 following lists the 10 most common areas of complaint over the three years 2009-10 to 2011-12 about local government matters.

¹⁰ Part 1 of this annual report incorrectly reported the number of complaints received about the Yarra City Council. The correct number is 76, or 0.96 per 1,000 population.

Table 11: Common matters of complaint involving local government

	Per cent of total		
	2009-10	2010-11	2011-12
Planning	11.7	10.8	9.9
Delay/no response	9.1	11.4	9.9
Parking	10.3	10.3	9.5
Inadequate remedy	6.2	7.4	7.3
Facilities owned or controlled by Authority	5.9	8.2	6.6
Rates	5.8	6.5	6.0
Building	5.8	4.8	5.0
Local laws	3.7	4.6	4.3
Inadequate processes	5.3	3.2	3.5
Other fees and charges	3.4	2.6	2.6

Chart 11: Common matters of complaint involving local government


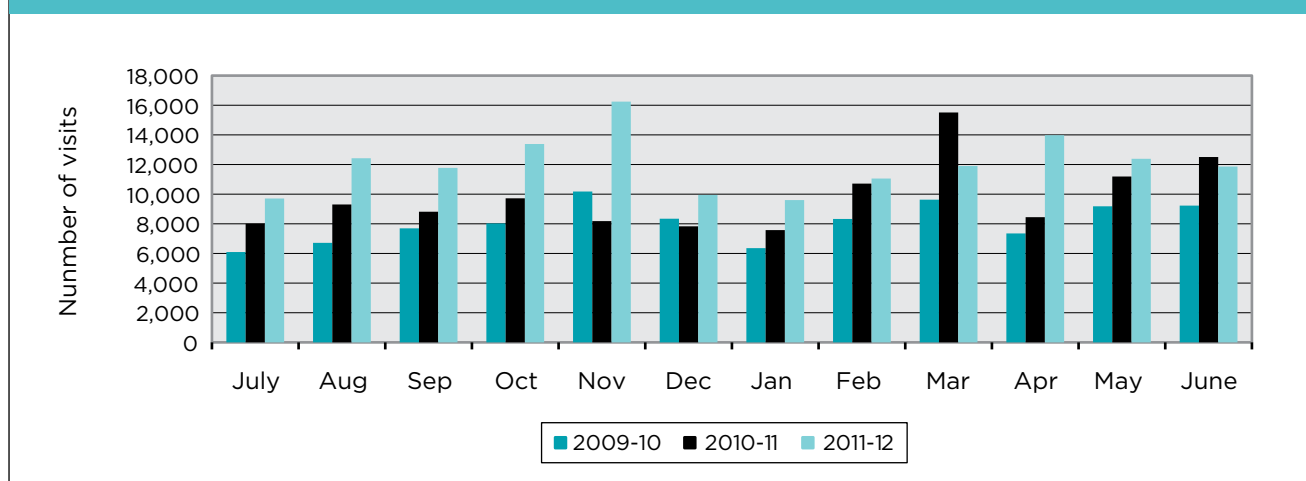
Victorian Ombudsman website

In 2011-12 there were more than 144,000 visits to my website at www.ombudsman.vic.gov.au. This is an average of 394 for every day of the year. It is 22 per cent higher than the nearly 118,000 visits received in 2010-11 and almost 50 per cent more than the visits in 2009-10. Details are set out in table 12 and chart 12 following.

Table 12: Number of visits to Victorian Ombudsman's website

	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
2009-10	6,095	6,715	7,693	8,027	10,178	8,343	6,358	8,327	9,628	7,350	9,181	9,228
2010-11	8,010	9,304	8,815	9,720	8,182	7,830	7,575	10,712	15,511	8,447	11,191	12,506
2011-12	9,707	12,423	11,772	13,384	16,244	9,947	9,601	11,054	11,901	13,977	12,386	11,864

Chart 12: Number of visits to Victorian Ombudsman's website



I have mentioned earlier in this report that the website is becoming an increasingly important source of information about my office and provides a convenient and effective means of accessing my services, particularly for those in regional and remote Victorian communities. It allows members of the public to lodge a complaint at any time of day, to access my reports, publications and written advice about my jurisdiction, and assists persons in directing their concerns to other agencies where I do not have jurisdiction.

The redeveloped website will be operational early in 2013. It will further enhance the services available online and, importantly, relieve some of the workload pressures on my staff.

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3 Statutory disclosures

Output statement

Under the *Financial Management Act 1994*, I am required to report against the output statement for *Ombudsman Services* which is published in the budget papers for each financial year. The published output statement for 2011-12, setting out the outputs and targets for that year, is shown below. The table now also includes the actual outcomes for 2011-12.

Table 13: Output statement for 2011-12			
Output	Unit of measure	2011-12 target	2011-12 actual
Quantity measures			
Internal reviews of complaint investigations conducted at the request of the complainant	number	70	26
Jurisdictional complaints closed, including general, Freedom of Information and Whistleblower complaints	number	11,000	15,336
Outreach initiatives delivered under the outreach program	number	115	135
Reports tabled in Parliament	number	6	12
Quality measures			
Proportion of complaint investigations reviewed at the request of complainants (by a fresh, senior investigator) where the original findings were found to be sound and well founded	per cent	80	73
Recommendations made in jurisdictional complaint investigations that are accepted by respondent agencies	per cent	80	87
Recommendations made in reports tabled in Parliament which respondent agencies agree to implement	per cent	90	77
Timeliness measures			
Complaints resolved within required timelines	per cent	95	97

A brief commentary of the measures and the outcomes is provided below to assist with their interpretation.

Quantity Measures

- First Measure – Internal reviews of complaints investigated**
 The case management arrangements I have put in place and continue to develop in my office are designed to facilitate the investigation and finalisation of complaints thoroughly, expeditiously and accurately. I therefore take requests for reviews of complaint outcomes seriously and ensure that they are addressed promptly at a senior level.
 Of the 15,336 cases finalised in 2011-12, the outcomes of 26 (less than 0.2 per cent) were reviewed. This was fewer than the 70 estimated and is a pleasing result.
- Second measure – Finalise consideration of cases**
 The end of year outcome for this measure is 39 per cent above the projected number of 11,000 cases. The increase continues the annual increase in the number of complaint cases closed by my office over recent years. The cumulative increase since 2008-09 is 46 per cent.

- *Third Measure – Outreach initiatives*

Outreach activities by my office, both to public sector agencies and to the community, are important. The over-target outcome in this measure in 2011-12 was due to a greater focus of my outreach program to regional Victoria. I want to ensure that the services of my office are equally available to all Victorians, wherever they live.

- *Fourth Measure – Reports tabled in Parliament*

The outcome for this measure was significantly above the expected outcome. However, the number of Parliamentary reports is contingent on issues and circumstances as they arise during a given year, some of which cannot be predicted.

Quality Measures

- *First Measure – Reviewed investigations found to be sound*

This measure reports the outcome of internal reviews of investigations following concerns raised by complainants about the handling of their complaints. It shows that, of the 26 complaint cases reviewed, the original findings in 19 (that is, 73 per cent) were found to be sound and well founded. In only seven of the reviewed cases was the initial finding amended (that is, less than 0.05 per cent of all cases closed).

Although these numbers are good results, the 73 per cent outcome is lower than the 80 per cent which my office had predicted. This may be a consequence of the increased workloads on my staff during the reporting period. This is therefore a measure I will keep under close review in 2012-13.

- *Second Measure – Complaint investigation recommendations that are accepted*

This measure relates only to jurisdictional complaints which were found to be substantiated; that is, those where maladministration was found and I wrote to the respondent agency seeking changes in the associated administrative processes. Many complaints may not be formally substantiated but nevertheless achieve effective outcomes for complainants. For example, issues may be clarified for the complainant or misunderstandings between the parties resolved.

My office puts much effort into ensuring that its complaint investigations are thorough and fair. This includes ensuring that recommendations are well founded, reasonable and practical. The higher than projected acceptance of my recommendations by agencies is therefore a pleasing outcome.

- *Third Measure – Tabled report recommendations that are accepted*

The outcome in this measure is a conservative count based on explicit statements by respondent agencies during the 'due diligence' process of preparing parliamentary reports that recommendations have been accepted. It does not include cases where agencies 'agree to consider' recommendations, or where no explicit acceptance of the recommendations is made. Some recommendations await the Government's response.

Less than 2 per cent of recommendations were not accepted by respondents.

Timeliness Measure

The impact and effectiveness of my office on improving service delivery by public sector agencies are maximised if investigations into complaints are completed within tightly drawn timelines.

In order to cope with increases in workload over the years, my office has implemented a number of measures to increase productivity which I have discussed in detail in previous

annual reports. One significant measure was the introduction of a new case management system in July 2007, which continues to be enhanced. This has enabled cases to be evaluated, tracked, monitored and managed more efficiently than previously and has helped my office maintain this measure above its target.

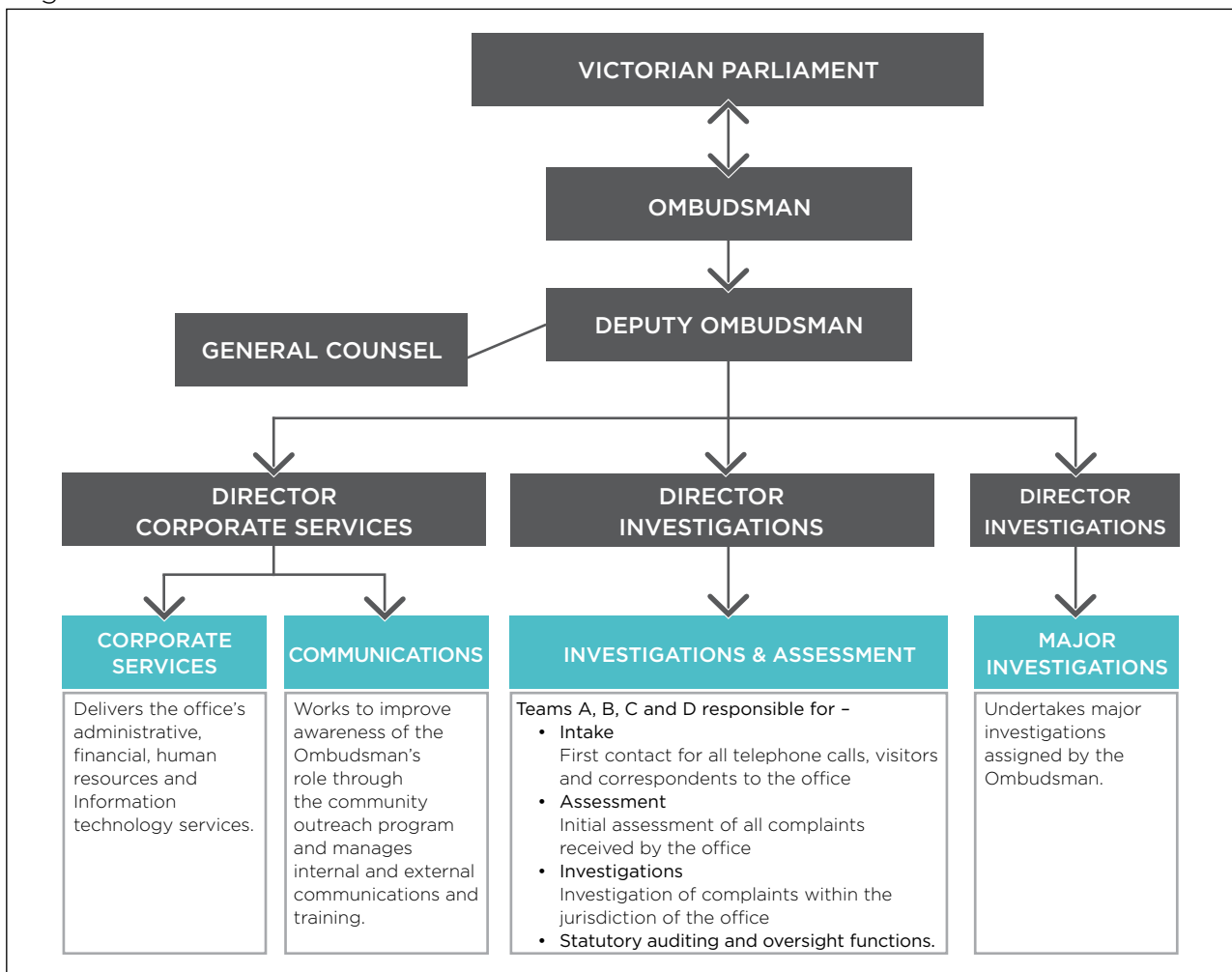
Significant efficiency measures in 2012-13 will include the introduction of further technology support for my officers and the completion of the Ombudsman's intranet and web pages early in 2013.

General comment on measures

I should take this opportunity to make a general comment about the *Ombudsman Services* output statement. The format of the statements published in the budget papers are standardised across public sector entities, including the use of 'targets'. I understand the need for such standardisation and concede that there are significant benefits which allow some degree of performance assessment across agencies and longitudinally within agencies. Nevertheless, there are some shortcomings. For example, some of the targets nominated in the output statement as 'targets' are not targets at all, in the sense that my office does not aim to meet the specified number. Rather, they are 'outcomes' which we may reasonably be able to predict (for example, the number of complaints received) or not (for example, the number of parliamentary reports tabled).

Organisation and staffing

Organisational structure at 30 June 2012



Staffing trends

As Ombudsman, I am an independent officer of the Parliament appointed under the provisions of the *Ombudsman Act 1973*. All employees of my office are employed by me under the *Public Administration Act 2004*.

The following table details staff numbers employed under the Public Administration Act at 30 June over each of the past seven years.

Table 14: Staffing trends*						
2006	2007	2008	2009	2010	2011	2012
47	42	52	52	59	65	63

* These figures relate to staff on the last payroll in the year indicated. They may include staff members on long term maternity or other paid leave and members on long term secondment to other agencies. The figures do not include casual staff.

Table 15: Overview of staff profile at 30 June 2012**				
	Male	Change from 2011	Female	Change from 2011
Executive and Investigations				
Deputy Ombudsman	1	0	0	0
General Counsel	1	0	0	0
Assistant Ombudsman	0	0	0	0
Executive Assistants	0	0	1	+1
Investigation Officers	12	-8	40	0
Corporate Services				
Communications/Training	1	+1	3	+1
Business Services	3	0	1	-1
Human Resources	1	+1	1	+1
Information Systems	3	+1	1	0
Records Management	2	+1	2	+1
TOTAL**	24	-4	49	+3

**The numbers shown here are headcounts. They include 10 casual staff.

Tables 16.1 and 16.2 following relate to all employees on the payroll and who were in receipt of payment for the last pay in 2011-12. It excludes those with an FTE of zero or on leave without pay. It does not include agency staff, contractors or consultants.

Table 16.1: Staff profile by age, gender and employment status as at 30 June 2012

Ongoing		Fixed Term		Casual		Total	
Number (headcount)	FTE	Number (headcount)	FTE	Number (headcount)	FTE	Number (headcount)	FTE
57	55.14	6	5.97	10	3.80	73	64.91

Table 16.2: Staff profile by age, gender and employment status as at 30 June 2012

	June 2011			June 2012		
	Ongoing Employees		Fixed Term and casual	Ongoing Employees		Fixed Term and casual
	Number (headcount)	FTE	FTE	Number (headcount)	FTE	FTE
Gender						
Male	17	17.00	9.62	19	18.56	3.75
Female	31	29.00	13.39	38	36.58	6.02
Total	48	46.00	23.01	57	55.14	9.77
Age						
Under 25	2	2.00	7.39	6	6.00	2.85
25-34	18	16.20	6.60	24	22.60	2.20
35-44	14	13.80	4.00	13	12.56	1.00
45-54	10	10.00	1.00	8	8.00	1.00
55-64	3	3.00	3.02	5	4.98	0.68
Over 64	1	1.00	1.00	1	1.00	2.04
Total	48	46.00	23.01	57	55.14	9.77
Classification						
VPS G1	0	0.00	0.00	0	0.00	0.00
VPS G2	1	1.00	3.00	4	3.60	3.05
VPS G3	16	16.00	6.60	16	15.98	0.00
VPS G4	8	7.40	2.00	13	12.36	1.00
VPS G5	18	16.60	4.00	17	16.20	2.97
VPS G6	3	3.00	2	5	5.00	2.61
Executives	2	2.00	0	2	2.00	0.00
Other	0	0.00	5.41	0	0.00	0.14
Total	48	46.00	23.01	57	55.14	9.77

Human resource management

Public sector values and employment principles

My office embraces the public sector employment principles established under Part 2 of the Public Administration Act. The principles aim to ensure that employment decisions are based on merit; that employees are treated fairly and reasonably; that equal employment opportunity is provided; that human rights as set out in the *Charter of Human Rights and Responsibilities Act 2006* are upheld; that employees have a reasonable avenue of redress against unfair or unreasonable treatment; and that a career public service is fostered.

I also require that my employees comply with the public sector values established under the Act. The values provide that public officials demonstrate responsiveness, integrity, impartiality, accountability, respect, leadership, and that they respect and promote human rights.

Occupational health and safety

Under section 25 of the *Occupational Health and Safety Act 2004* employees must take reasonable care for their own health and safety and that of others and cooperate with their employer in the workplace.

My office continues its commitment to the health, safety and welfare of staff and others in the workplace. The QUIT smoking program, eye tests, subsidised spectacles, on-site influenza inoculations, on-site health checks, ergonomic assessments and confidential counseling with external professionals all remain available to staff. Proactive stress management, psychological and physical well-being programs were also available during lunch breaks over the reporting period.

The Victorian Ombudsman's Occupational Health and Safety Committee, established under the provisions of the Occupational Health and Safety Act, makes recommendations to me about all matters to do with health, safety and welfare of employees and other persons at work.

People matter survey

I was pleased to note the outcomes of the recent survey of the public sector conducted by the State Services Authority which reported that 100% of Ombudsman staff surveyed (66% contributed) agreed that my office:

- strives to earn and sustain a high level of public trust
- always tries to improve its performance.

The survey also found that working for my office gives my staff a sense of pride.

Table 17 following sets out the performance of my office against some important OHS measures.

Table 17: Performance against OHS management measures			
Measure	Key Performance Indicator	2010-11	2011-12
Incidents	No. of reported incidents	1	2
Claims	No. of standard claims ⁽¹⁾	0	1
	No. of lost time claims ⁽²⁾	0	0
	No. of claims exceeding 13 weeks ⁽³⁾	0	0
Fatalities	Fatality claims	0	0
Claim costs	Average cost per standard claim	0	0
Return to work	Percentage of claims with RTW plan <30 days	N/A	N/A
Management commitment	Evidence of OHS policy statement, OHS objectives, regular reporting to senior management of OHS, and OHS plans	Completed	Completed
Consultation and participation	Evidence of agreed structure of designated workgroups (DWGs), health and safety representatives (HSRs), and issue resolution procedures (IRPs)	Completed	Completed
	Compliance with agreed structure on DWGs, HSRs, and IRPs	Completed	Completed
Risk management	Percentage of internal audits/inspections conducted as planned	100%	100%
	Percentage of issues resolved arising from:		
	- internal audits and inspections	100%	100%
	- HSR Provisional Improvement Notices (PINs)	-	-
Training	- WorkSafe Notices	-	-
	Percentage of staff that have received OHS training:		
	- induction	100%	100%
	- contractors and temporary staff	100%	100%
	Percentage of health and safety representatives trained:		
	- on acceptance of role	100%	100%
	- on reporting of incidents and injuries	100%	100%

(1) Data for standard claims, time lost claims and fatality claims is at 30 June 2012. Standard claims are those that have exceeded the employer excess threshold (for medical and like expenses) and/or liability of 10 working days of time lost.

(2) A time lost claim is one with one or more days compensated by the employer's WorkSafe Insurer (after employer excess).

(3) Data based on claims reported in period 1 July 2011 to 30 June 2012. Total incurred costs of standard claims includes payments to date plus an estimate of outstanding claims costs as determined by the employer's WorkSafe Insurer.

Corporate management and governance

Audit and Risk Management Committee

The Victorian Ombudsman's Audit and Risk Management Committee met on four occasions during the reporting period. During the period the committee consisted of the following members:

Table 18: Audit and Risk Management Committee	
Mr Trevor Wood¹¹ Former Assistant Auditor-General Victorian Auditor-General's Office	Appointed as independent member November 2008 Appointed chair December 2011
Mr Adam Awty Chief Operating Officer – Commercial, CFO and Company Secretary CPA Australia	Independent member Appointed November 2011
Ms Cindy Callander Director, Corporate Services, Ombudsman Victoria	Ex-officio representative
Mr Glenn Sullivan¹² Director of Investigations, Ombudsman Victoria	Ex-officio representative

The role of the Audit and Risk Management Committee is to review and advise the Victorian Ombudsman's (VO's) executive about all matters of financial accountability, internal financial control and risk management. These include:

- financial performance
- financial reporting
- scope of work, performance and independence of VO's internal audit function
- scope of work of VO's external auditor
- development, implementation and operation of VO's risk management framework
- accountability and internal control affecting the financial operations of VO
- effectiveness of VO's management information systems and other systems of internal financial control
- acceptability, disclosure and correct accounting treatment of any significant transactions which are not part of VO's normal course of business.

Audit committee's statement on risk management

VO has comprehensive risk management strategies and risk management plans in place consistent with the Australian/New Zealand Risk Management Standard. The strategies, plans and associated control systems provide for risks to be identified, managed, monitored and reported to the senior executive group and to the Audit and Risk Management Committee. My office now also has in place a business continuity plan which will ensure that VO's business functions within the control of my office are able to continue in the event of outages of critical systems or facilities.

¹¹ *Mr Greg Schinck, formerly Assistant Director, Corporate Services, Public Records Office Victoria (PROV) held this position until the end of 2010-11. He resigned from both the chairmanship and the Committee at the June 2011 meeting due to resigning from PROV to take up another position.

¹² Under the terms of my Charter for the Audit Committee, the second ex-officio Committee representative rotates through the positions of Director of Investigations. Mr Sullivan was appointed under this provision from the first meeting of the Committee in 2010-11.

My office relies on CenITex for the hosting of all VO Information Services, including the intranet and internet as well as the office's case management and records management systems. Based on advice from CenITex, I am not assured that it has disaster recovery controls in place to effectively guard against the impact of outages of these critical systems. My office continues to negotiate with CenITex about these matters.

The Audit and Risk Management Committee has verified this concern and has confirmed that the risk profile of my office has been critically reviewed within the past 12 months.

Gifts, benefits and hospitality

My office has gifts, benefits and hospitality policies and procedures in place. They are consistent with the minimum requirements and accountabilities outlined in the *Gifts, Benefits and Hospitality Policy Framework for the Victorian Public Sector* issued by the Public Sector Standards Commissioner.

The policies and procedures are reviewed at least annually and provided to my Audit Committee, together with the register of gifts received by me and my staff during each reporting period.

Compliance with the *Building Act 1993*

The Victorian Ombudsman does not own or control any government buildings and consequently is exempt from notifying its compliance with the building and maintenance provisions of the *Building Act 1993*.

Office-based environmental impacts

My office continues to monitor its impact on the environment. As I have reported in past annual reports, it has had some success since 2006-07. The momentum has been maintained with the work of an active Green Team, which was established by the Director Corporate Services in September 2008. The Team supports and educates staff to use energy efficiently and to reduce waste creation and increase waste recycling wherever possible.

The office's environmental impact in its use of electrical power, paper and office vehicles are detailed below.

Electrical Power

My office made very substantial savings in the electricity used in 2007-08, largely as a result of operating from reduced accommodation. Since then further savings have been made, due to implemented efficiencies. In 2011-12 power use was 16 per cent less than in 2007-08 when measured on a per FTE staff member basis. Emissions of greenhouse gas per FTE staff member were reduced in consequence by a similar amount. The measures contributing to these reductions have included reduced and more efficient lighting; the use of motion sensors to automatically switch off lights when not in use; vigilant staff practices in turning off computers and other equipment when away from the office; and ensuring that all equipment is switched off after normal business hours.

The office continues to meet some of its power needs from government-accredited green power sources.

Table 19 and charts 19.1, 19.2 and 19.3 following set out the relevant details.

Table 19: Electricity usage since 2007-08

	2007-08	2008-09	2009-10	2010-11	2011-12
Total electricity used in the office (gigajoules)	306	314	298	312	305
Electricity used per FTE staff member (megajoules)	5,575	5,653	4,827	4,521	4,696
Electricity used per m ² office space (megajoules)	277	251	237	249	243
Greenhouse emissions due to electricity use (tonnes CO ₂ -e)	118	122	115	121	118
Greenhouse emissions per FTE staff member (tonnes)	2.15	2.19	1.87	1.75	1.82

Chart 19.1: Megajoules of electricity used per FTE staff member

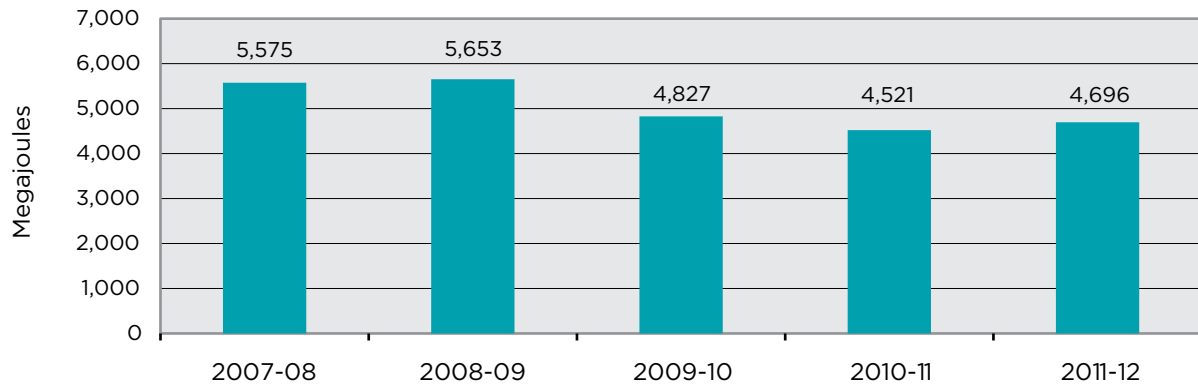


Chart 19.2: Megajoules of electricity used per m² office space

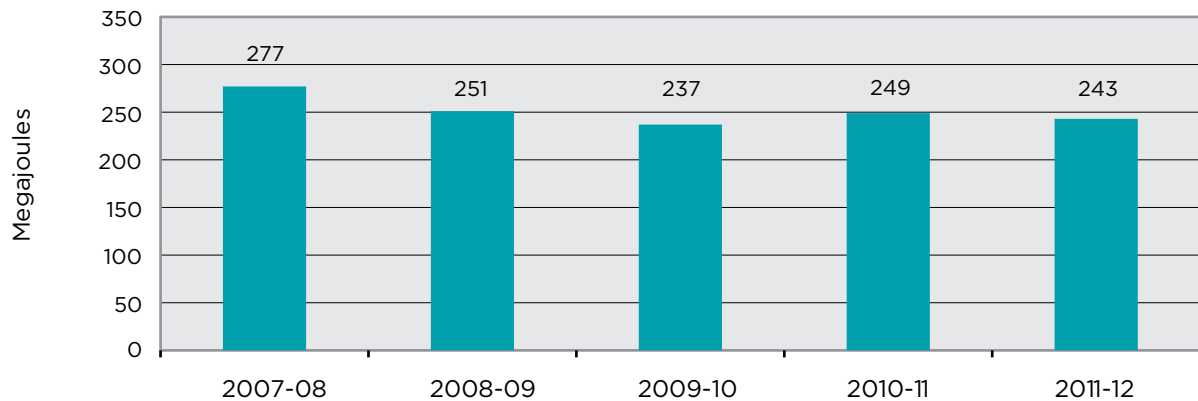
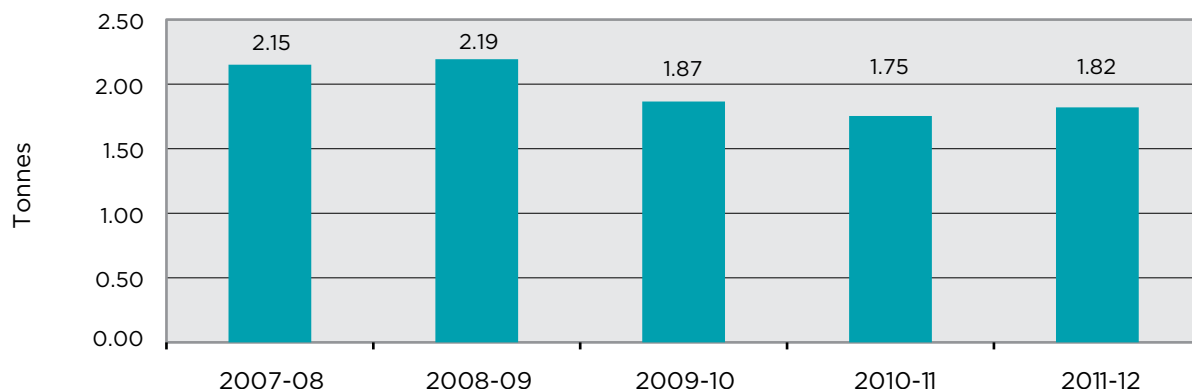


Chart 19.3: Greenhouse emissions per FTE staff member (tonnes)



Waste

In 2011-12 my office continued to recycle all recyclable materials including paper, cardboard, plastics and glass. The materials are placed in segregated recycling bins throughout the office. The bin contents are cleared daily and deposited into communal recycling facilities serving all tenants in the building.

Paper

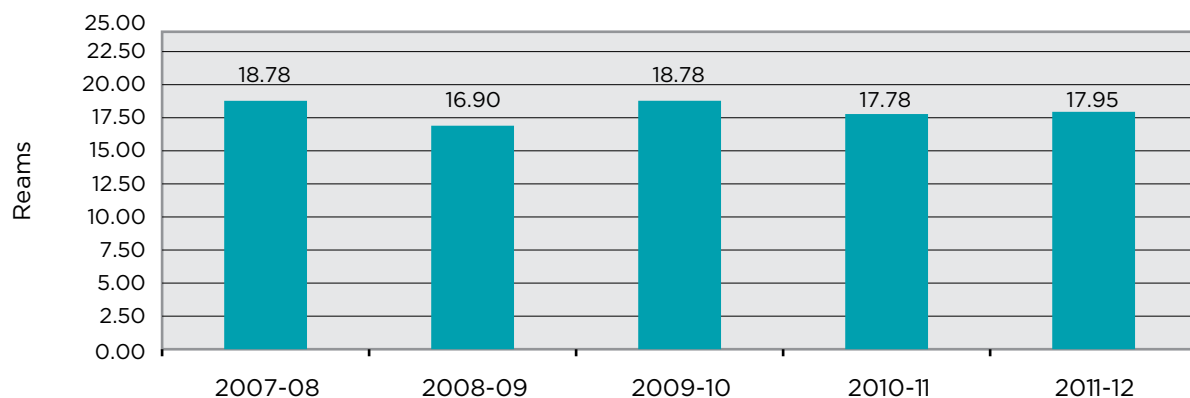
Paper use in the office in 2011-12 has maintained the savings achieved since 2007-08, when usage on an FTE basis was reduced by 6 per cent. EFT staff member usage in 2011-12 was over 4 per cent below the equivalent measure in 2007-08.

Table 20 and chart 20 following set out the details.

Table 20: Paper usage since 2007-08

	2007-08	2008-09	2009-10	2010-11	2011-12
Total paper used in office (reams)	1,030	940	1,158	1,227	1,165
Paper used per FTE staff member (reams)	18.78	16.90	18.78	17.78	17.95

Chart 20: Reams of paper used per FTE staff member



All of the white copying paper used in the office during 2011-12 was 100 per cent recycled paper.

Water

There are no separate water metering facilities for individual tenancies in the building occupied by my office. However, the office uses water efficient appliances wherever possible.

Vehicles

I continue to encourage staff to use public transport when on official business in preference to office cars when that is feasible. Two of the office's three petrol powered vehicles were replaced in 2009-10 with hybrid vehicles with the third being replaced early in 2011-12. The major impact of the hybrids occurred in 2010-11 and is most evident in the greenhouse gas emissions per FTE staff member in table 21 and associated charts following.

Table 21: Vehicle usage since 2007-08

	2007-08	2008-09	2009-10	2010-11	2011-12
Passenger vehicle trips					
Total kilometres driven	35,664	31,589	24,415	35,589	31,865
Kilometres driven per FTE staff member	650	568	396	516	491
Petrol usage					
Litres of fuel used	3,479	2,621	2,243	1,499	1,340
Litres fuel per FTE staff member	63	47	36	22	21
Greenhouse gas emissions associated with vehicles					
Total tonnes CO ₂ -e emitted	11.46	10.17	7.59	6.93	6.20
Tonnes CO ₂ -e emitted per FTE staff member	0.21	0.18	0.12	0.10	0.10

Chart 21.1: Vehicle kilometers per FTE staff member

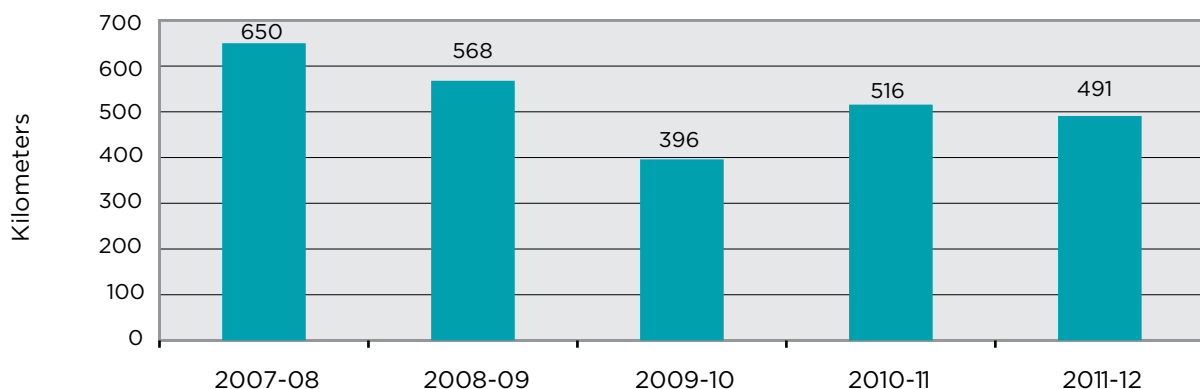


Chart 21.2: Litres of fuel used per FTE staff member

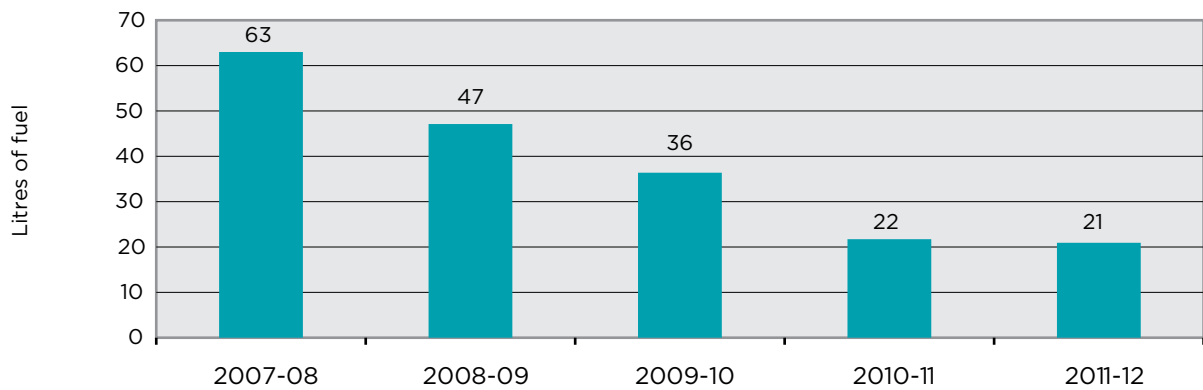
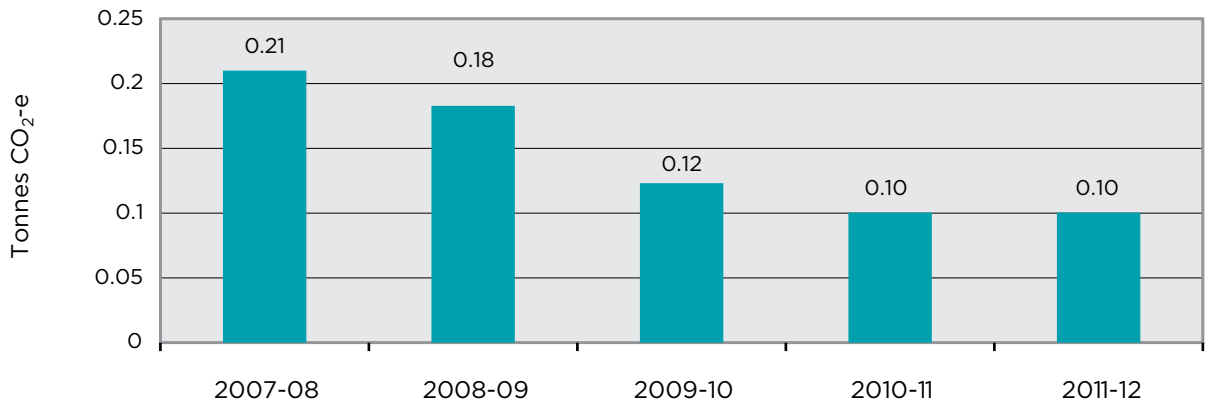


Chart 21.3: Tonnes CO₂-e emitted per FTE staff member



The Victorian Industry Participation Policy Act 2003

The *Victorian Industry Participation Policy* (VIPPP), in operation since 2001, aims to boost employment and business growth in Victoria by encouraging contractors for major projects to maximize use of local suppliers, while still delivering value for money. The VIPPP applies to all state government procurements and projects where values exceed \$3 million and have their primary impact in metropolitan Melbourne, and those over \$1 million that have their primary impact in regional Victoria.

The VIPPP Act requires public bodies to report on their compliance with this policy.

In 2011-12 my office had no procurements or projects to which the policy applied.

Consultancies

Public bodies are required to report the number, and total cost, of consultants engaged during the reporting period and to specify the number of individual consultancies where the total fee was in excess of \$100,000.

I engaged ten consultants during 2011-12, at a total cost of \$260,000 excluding GST. None was over \$100,000.

Declarations of private interests

My Deputy and other senior staff have lodged a declaration of pecuniary and other interests with me. I have lodged a corresponding declaration with the Department of Premier and Cabinet. These declarations are made on appointment and updated annually or more frequently as individual circumstances change.

Freedom of Information Act 1982

The *Freedom of Information Act 1982* (FOI Act) creates a right for the public to access certain documents held by public sector agencies.

The FOI Act applies to documents held by the Ombudsman, except – pursuant to section 29A of the Ombudsman Act – those that disclose information relating to a complaint, an enquiry, an investigation, a report of an investigation or a recommendation resulting from an investigation. Such documents are exempt from the provisions of the FOI Act.

In the reporting period I received 3 valid FOI requests for documents held by my office. Each request was dealt with within the constraints of the statutory exemptions which applied. Further details can be found in the Attorney-General's Annual Report on FOI.

Under the FOI Act applicants seeking access to documents held by other agencies can complain to me about the handling of their requests by those agencies. Discussion about the activities of my office relating to that function is set out in Part 1 of my annual report.

Whistleblowers Protection Act 2001

I have discussed my role and 2011-12 activities of my office under the *Whistleblowers Protection Act 2001* in Part 1 of my annual report.

Under section 69 of the Act I am required to issue guidelines to help public bodies handle disclosures and comply with the Act. The guidelines are provided in Appendix 2 of this report. They are also on my website at www.ombudsman.vic.gov.au.

4 Financial statements for the year ended 30 June 2012

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Victorian Auditor-General's Office

Level 24, 35 Collins Street
Melbourne VIC 3000
Telephone 61 3 8601 7000
Facsimile 61 3 8601 7010
Email comments@audit.vic.gov.au
Website www.audit.vic.gov.au

INDEPENDENT AUDITOR'S REPORT

To the Victorian Ombudsman

The Financial Report

The accompanying financial report for the year ended 30 June 2012 of the Office of the Ombudsman which comprises the comprehensive operating statement, balance sheet, statement of changes in equity, cash flow statement, notes comprising a summary of significant accounting policies and other explanatory information, and the Accountable Officer's and Chief Financial Officer's declaration has been audited.

The Victorian Ombudsman's Responsibility for the Financial Report

The Victorian Ombudsman is responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards, and the financial reporting requirements of the *Financial Management Act 1994*, and for such internal control as the Victorian Ombudsman determines is necessary to enable the preparation of the financial report that is free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

As required by the *Audit Act 1994*, my responsibility is to express an opinion on the financial report based on the audit, which has been conducted in accordance with Australian Auditing Standards. Those standards require compliance with relevant ethical requirements relating to audit engagements and that the audit be planned and performed to obtain reasonable assurance about whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The audit procedures selected depend on judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, consideration is given to the internal control relevant to the entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Victorian Ombudsman, as well as evaluating the overall presentation of the financial report.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Auditing in the Public Interest

Independent Auditor's Report (continued)

Independence

The Auditor-General's independence is established by the *Constitution Act 1975*. The Auditor-General is not subject to direction by any person about the way in which his powers and responsibilities are to be exercised. In conducting the audit, the Auditor-General, his staff and delegates complied with all applicable independence requirements of the Australian accounting profession.


Opinion

In my opinion, the financial report presents fairly, in all material respects, the financial position of the Office of the Ombudsman as at 30 June 2012 and its financial performance and cash flows for the year then ended in accordance with applicable Australian Accounting Standards, and the financial reporting requirements of the *Financial Management Act 1994*.

Matters Relating to the Electronic Publication of the Audited Financial Report

This auditor's report relates to the financial report of the Office of the Ombudsman for the year ended 30 June 2012 included both in the Office of the Ombudsman's annual report and on the website. The Victorian Ombudsman is responsible for the integrity of the Office of the Ombudsman's website. I have not been engaged to report on the integrity of the Office of the Ombudsman's website. The auditor's report refers only to the subject matter described above. It does not provide an opinion on any other information which may have been hyperlinked to/from these statements. If users of the financial report are concerned with the inherent risks arising from publication on a website, they are advised to refer to the hard copy of the audited financial report to confirm the information contained in the website version of the financial report.

MELBOURNE
3 September 2012


for D D R Pearson
Auditor-General

Auditing in the Public Interest

Office of the Ombudsman

Comprehensive Operating Statement For the year ended 30 June 2012			
		2012	2011
	Notes	\$	\$
Income from Transactions			
Grants	2	9,744,736	9,246,556
Total Income from Transactions		9,744,736	9,246,556
Expenses from Transactions			
Employee Benefits	3	7,187,742	6,518,905
Depreciation	3	152,198	156,162
Finance Lease Interest		4,385	5,795
Capital Asset Charge	1(f)	179,000	179,000
Supplies and Services		2,394,309	2,144,076
Total Expenses from Transactions		9,917,634	9,003,938
Net Result from Transactions		(172,898)	242,618
Other Economic Flows Included in Net Result			
Net Gain/(Loss) on Disposal of Property, Plant and Equipment		2,518	5,231
Net Gain/(Loss) Arising from Revaluation of Long Service Leave Liability		(18,542)	1,619
Total Other Economic Flows Included in Net Result		(16,024)	6,850
Net Result		(188,922)	249,468
Other Economic Flows - Other Non-Owner Changes in Equity		-	-
Comprehensive Result		(188,922)	249,468

The above comprehensive operating statement should be read in conjunction with the accompanying notes.

Office of the Ombudsman

Balance Sheet as at 30 June 2012			
		2012	2011
	Notes	\$	\$
Assets			
Financial Assets			
Cash on Hand		1,000	1,000
Receivables	4	643,588	1,046,351
Total Financial Assets		644,588	1,047,351
Non-Financial Assets			
Prepayments		-	30,884
Property, Plant and Equipment	5	494,200	628,140
Intangible Assets	6	83,927	38,238
Total Non-Financial Assets		578,127	697,262
Total Assets		1,222,715	1,744,613
Liabilities			
Payables		191,497	484,801
Provisions	7	1,321,453	1,352,967
Borrowings	8	77,931	86,089
Total Liabilities		1,590,881	1,923,857
Net Liabilities		(368,166)	(179,244)
Equity			
Contributed Capital		513,376	513,376
Accumulated Deficit		(881,542)	(692,620)
Total Equity / (Deficit)		(368,166)	(179,244)

The above balance sheet should be read in conjunction with the accompanying notes.

Office of the Ombudsman

Statement of Changes in Equity For the year ended 30 June 2012			
	Contributed Capital	Accumulated Deficit	Total
	\$	\$	\$
Balance at 1 July 2010	513,376	(942,088)	(428,712)
Net Result for the Year	-	249,468	249,468
Balance at 30 June 2011	513,376	(692,620)	(179,244)
Net result for the year	-	(188,922)	(188,922)
Balance at 30 June 2012	513,376	(881,542)	(368,166)

The above statement of changes in equity should be read in conjunction with the accompanying notes.

Office of the Ombudsman

Cash Flow Statement For the year ended 30 June 2012			
		2012	2011
	Notes	\$	\$
Cash Flows from Operating Activities			
Receipts from Government		10,088,161	9,040,879
Payments to Suppliers and Employees		(9,782,886)	(8,710,239)
Capital Asset Charge Paid		(179,000)	(179,000)
Interest and Other Finance Costs Paid		(4,385)	(5,795)
Net Cash Flows from Operating Activities	16	121,890	145,845
Cash Flows from Investing Activities			
Payments for Property, Plant and Equipment		(40,996)	(81,471)
Proceeds from Disposal of Property, Plant and Equipment		18,612	27,636
Payments for Intangible Assets		(60,750)	(44,000)
Net Cash Flows used in Investing Activities		(83,134)	(97,835)
Cash Flows from Financing Activities			
Repayment of Finance Leases		(38,756)	(48,010)
Net Cash Flows used in Financing Activities		(38,756)	(48,010)
Net Increase in Cash Held		-	-
Cash at the Start of the Year		1,000	1,000
Cash at the End of the Year		1,000	1,000
Non-Cash Financing and Investing Activities	17		

The above Cash Flow Statement should be read in conjunction with the accompanying notes.

Notes to the Financial Statements 30 June 2012

Note 1. Summary of Significant Accounting Policies

(a) Statement of Compliance

These general purpose financial statements have been prepared in accordance with the *Financial Management Act 1994* and applicable Australian Accounting Standards including Interpretations (AASs), issued by the Australian Accounting Standards Board (AASB). In particular, they are presented in a manner consistent with the requirements of AASB 1049 *Whole of Government and General Government Sector Financial Reporting*. Where relevant, those paragraphs of the AASs applicable to not-for-profit entities have been applied.

Accounting policies are selected and applied in a manner which ensures that the resulting financial information satisfies the concepts of relevance and reliability, thereby ensuring that the substance of the underlying transactions or other events is reported.

(b) Basis of Preparation

The accrual basis of accounting has been applied in the preparation of these financial statements whereby assets, liabilities, equity, income and expenses are recognised in the reporting period to which they relate, regardless of when cash is received or paid.

Judgements, estimates and assumptions are required to be made about the carrying values of assets and liabilities that are not readily apparent from other sources. The estimates and associated assumptions are based on professional judgements derived from historical experience and various other factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates. Revisions to accounting estimates are recognised in the period in which the estimate is revised and in future periods that are affected by the revision.

The financial statements are presented in Australian dollars and have been prepared in accordance with the historical cost convention, except where noted.

The accounting policies set out below have been applied in preparing the financial statements.

(c) Reporting Entity

The financial statements include all the controlled activities of the Office of the Ombudsman. The Office was established under the *Ombudsman Act 1973*. Its principal address is: Level 9, 459 Collins Street
Melbourne Victoria 3000.

Objectives and funding

The Office handles complaints concerning administrative actions taken by Victorian Government departments, Victorian statutory authorities and local councils under the *Ombudsman Act 1973*; determines whether a disclosure of improper conduct under the *Whistleblowers Protection Act 2001* is a public interest disclosure; and has a role in ensuring compliance by designated agencies with the provisions of the *Freedom of Information Act 1982* and the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

It aims to improve the accountability of State and local government agencies to the public and the Parliament, and to promote fair and reasonable public administration.

The Office is predominantly funded by accrual based Parliamentary appropriations for the provision of outputs. These appropriations are received by the Department of Premier and Cabinet and on-forwarded to the Office in the form of grants.

(d) Scope and Presentation of Financial Statements

Comprehensive operating statement

Income and expenses in the comprehensive operating statement are classified according to whether or not they arise from 'transactions' or 'other economic flows'. This classification is consistent with the whole of government reporting format and is allowed under AASB 101 *Presentation of Financial Statements*.

Balance sheet

Assets and liabilities are presented in liquidity order with assets aggregated into financial assets and non-financial assets. Current and non-current assets and liabilities are disclosed in the notes, where relevant.

Statement of changes in equity

The statement of changes in equity presents reconciliations of non-owner and owner changes in equity from opening balance at the beginning of the year to the closing balance at the end of the year. It also shows separately changes due to amounts recognised in the comprehensive result and amounts recognised in other economic flows – other movements in equity related to transactions with the owner in its capacity as owner.

Cash flow statement

Cash flows are classified according to whether they arise from operating, investing or financing activities. This classification is consistent with requirements of AASB 107 *Statement of Cash Flows*.

(e) Income from Transactions

Income is recognised to the extent that it is probable that the economic benefits will flow to the Office and the income can be reliably measured.

Grants

Income from grants (other than contribution by owners) is recognised when the Office obtains control over the contribution. Where grants are reciprocal (i.e. equal value is given back by the Office to the provider), the Office is deemed to have assumed control when it has satisfied its performance obligations under the terms of the grant. Non-reciprocal grants are recognised as income when the grant is received or receivable. Conditional grants may be reciprocal or non-reciprocal depending on the terms of the grant.

(f) Expenses from Transactions

Employee benefits

Employee benefits comprise all costs related to employment including wages and salaries, superannuation, fringe benefits tax, leave entitlements, redundancy payments and WorkCover premiums.

Superannuation expenses represent the employer contributions for members of both defined benefit and defined contribution superannuation plans that are paid or payable to these plans during the year.

The Department of Treasury and Finance centrally recognises, on behalf of the State as the sponsoring employer, the defined benefit liability or surplus of most Victorian government employees in such funds.

Depreciation

All plant and equipment and other non-current physical assets (excluding items under operating leases and assets held-for-sale) that have finite useful lives are depreciated. Depreciation is generally calculated on a straight line basis at rates that allocate the asset's value, less any estimated residual value, over its expected useful life. Leasehold improvements are depreciated over the period of the lease or estimated useful life, whichever is the shorter, using the straight line method.

Intangible produced assets with finite useful lives are depreciated as an expense from transactions on a straight-line basis over the asset's useful life. Depreciation begins when the asset is available for use, that is, when it is in the location and condition necessary for it to be capable of operating in the manner intended by management.

The estimated useful lives, residual values and depreciation method are reviewed at least annually. Typical estimated useful lives applicable for the years ended 30 June 2012 and 30 June 2011 are as follows:

Building fitouts	10 years
Office furniture and computer equipment	4-10 years
Motor vehicles under finance lease	2-3 years
Capitalised software development	7 years

Finance lease interest

Finance lease interest charges are recognised as expenses in the period in which they are incurred.

Capital asset charge

The capital asset charge represents the opportunity cost of capital invested in the non-current physical assets used in the provision of outputs. The charge is calculated on the budgeted carrying amount of applicable non-current physical assets (excluding leased motor vehicles).

Resources provided free of charge

Resources provided free of charge or for nominal consideration are recognised at their fair value when the transferee obtains control over them, irrespective of any restrictions or conditions imposed over their use, except that transfers to another government department or agency as a consequence of a restructuring of administrative arrangements are recognised at carrying value.

(g) Other Economic Flows included in Net Result

Other economic flows measure the change in volume or value of assets or liabilities that do not result from transactions. They include net gains and losses on financial and non-financial assets and liabilities and other gains and losses from other economic flows.

Net gains and losses on non-financial assets and liabilities include realised and unrealised gains and losses from revaluations, impairments, and disposals of all physical assets and intangible assets. Net gains and losses on financial instruments include impairment and reversal of impairment for financial instruments at amortised cost, and disposals of financial assets. Other gains and losses from other economic flows include the transfer of amounts from reserves and accumulated surplus to net result due to reclassification, and from the revaluation of the present value of the long service leave liability due to changes in bond interest rates.

Disposal of non-financial assets

Any gain or loss on the disposal of non-financial assets is recognised at the date of disposal and is determined after deducting from the proceeds the carrying value of the asset at that time.

Impairment of non-financial assets

All non-current physical assets and intangible assets are assessed annually for indications of impairment. If there is an indication of impairment, the assets concerned are tested as to whether their carrying value exceeds their recoverable amount. Where an asset's carrying value exceeds its recoverable amount, the difference is written off as an other economic flow except to the extent that the write-down can be debited to an asset revaluation reserve amount applicable to that class of asset.

It is deemed that, in the event of the loss of an asset, the future economic benefits arising from the use of the asset will be replaced unless a specific decision to the contrary has been made. The recoverable amount for most assets is measured at the higher of depreciated replacement cost and fair value less costs to sell. Recoverable amount for assets held primarily to generate net cash inflows is measured at the higher of the present value of future cash flows expected to be obtained from the asset and fair value less costs to sell.

Impairment of financial assets

The Office assesses at the end of each reporting period whether there is objective evidence that a financial asset or group of financial assets is impaired. All financial assets, except those measured at fair value through profit or loss, are subject to annual review for impairment.

Bad and doubtful debts are assessed on a regular basis. Those bad debts considered as written off by mutual consent are classified as a transaction expense. The allowance for doubtful receivables and bad debts not written off by mutual consent are adjusted as other economic flows.

(h) Financial Assets

The financial assets held by the Office include cash and receivables. The classification depends on the purpose for which the financial assets were acquired. Management determines the classification of its financial assets at initial recognition.

The Office assesses at each balance sheet date whether a financial asset or group of financial assets is impaired.

Receivables

Receivables consist of:

- contractual receivables, which include mainly debtors in relation to goods and services; and
- statutory receivables, which include predominantly amounts owing from the Victorian Government and GST input tax credits recoverable.

Receivables that are contractual are classified as financial instruments. Statutory receivables are recognised and measured on the same basis as contractual receivables (except for impairment) but are not classified as financial instruments as they do not arise from a contract.

Debtors are due for settlement at no more than 30 days from the date of recognition. Collectability of debtors is reviewed on an ongoing basis. A provision for doubtful debts is recognised when there is objective evidence that the debts may not be collected. Bad debts are written off when identified.

(i) Non-financial Assets

Prepayments

Prepayments represent payments in advance of receipt of goods or services or that part of expenditure made in one accounting period covering a term extending beyond that period.

Property, plant and equipment

Property, plant and equipment are recognised initially at cost and subsequently measured at fair value less accumulated depreciation and impairment. Where an asset is acquired for no or nominal cost, the cost is its fair value at the date of acquisition. Assets transferred as part of a machinery of government change are transferred at their carrying amount.

The initial cost for non-financial physical assets under a finance lease (refer note 1(k)) is measured at amounts equal to the fair value of the leased asset or, if lower, the present value of the minimum lease payments, each determined at the inception of the lease.

The fair value of plant, equipment and vehicles, is normally determined by reference to the asset's depreciated replacement cost. For plant, equipment and vehicles, existing depreciated historical cost is generally a reasonable proxy for depreciated replacement cost because of the short lives of the assets concerned.

Intangible assets

Intangible assets represent identifiable non-monetary assets without physical substance. Intangible assets are measured at cost less accumulated depreciation and impairment. Costs incurred subsequent to initial acquisition are capitalised when it is expected that additional future economic benefits will flow to the Office.

(j) Liabilities

Payables

Payables consist predominantly of creditors and accruals. Payables represent liabilities for goods and services provided to the Office that are unpaid at the end of the financial year. Payables are initially measured at fair value, being the cost of the goods and services, and then subsequently measured at amortised cost.

Provisions

Provisions are recognised when the Office has a present obligation where the future sacrifice of economic benefits is probable and the amount of the provision can be measured reliably. The amount recognised as a provision is the best estimate of the consideration required to settle the present obligation at reporting date, taking into account the risks and uncertainties surrounding the obligation. Where a provision is measured using the cash flows estimated to settle the present obligation, its carrying amount is the present value of those cash flows, using a discount rate that reflects the time value of money and risks specific to the provision.

Employee benefits

Provision is made for benefits accruing to employees in respect of wages and salaries, annual leave, long service leave and sick leave when it is probable that settlement will be required and they are capable of being measured reliably.

Provisions made in respect of employee benefits expected to be settled within 12 months are measured at their nominal values, using the remuneration rate expected to apply at the time of settlement. Provisions made in respect of employee benefits which are not expected to be settled within 12 months are measured as the present value of the estimated future cash outflows to be made by the Office in respect of services provided by employees up to reporting date. The liability is classified as a current liability where the Office does not have an unconditional right to defer settlement for at least 12 months after the reporting date. The long service leave liability is classified as non-current where the Office has an unconditional right to defer the settlement of the entitlement until the employee has completed the requisite years of service.

(k) Leases

Leases are classified as finance leases whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee. All other leases are classified as operating leases.

Finance leases are recognised as assets and liabilities of the Office at amounts equal to the fair value of the lease property or, if lower, at the present value of the minimum lease payments, each determined at the inception of the lease. The leased asset is depreciated over the shorter of the estimated useful life of the asset or the term of the lease.

Minimum finance lease payments are apportioned between reduction of the lease liability and periodic finance charges which are calculated using the interest rate implicit in the lease and charged directly to the comprehensive operating statement.

Operating lease payments are recognised as an expense in the comprehensive operating statement on a straight line basis over the lease term, except where another systematic basis is more representative of the time pattern of the benefits derived from the use of the leased asset. The leased asset is not recognised in the balance sheet.

(l) Goods and Services Tax (GST)

Income, expenses and assets are recognised net of GST, unless the GST incurred is not recoverable from the Australian Taxation Office (ATO). In this case it is recognised as part of the cost of acquisition of the asset or as part of the expense.

Receivables and payables are stated inclusive of the amount of GST receivable or payable. The net amount of GST recoverable from, or payable to, the ATO is included as part of receivables or payables.

Cash flows are presented on a gross basis. The GST component of cash flows arising from investing and financing activities which is recoverable from, or payable to, the ATO is classified as operating cash flows.

(m) Contributed Capital

Additions to net assets which have been designated as contributions by owners are recognised as contributed capital. Other transfers that are in the nature of contributions or distributions are also designated as contributed capital. Transfers of net assets arising from administrative restructurings are treated as distributions to or contributions by owners.

(n) Commitments

Commitments for future expenditure include operating and capital commitments arising from contracts. These commitments are disclosed in note 11 at their nominal value and inclusive of GST payable. These future expenditures cease to be disclosed as commitments once the related liabilities are recognised in the balance sheet.

(o) Contingent Assets and Contingent Liabilities

Contingent assets and contingent liabilities are not recognised in the balance sheet, but are disclosed by way of a note and, if quantifiable, are measured at nominal value. Contingent assets and liabilities are presented inclusive of GST receivable or payable respectively.

(p) Going Concern Basis

The liabilities of the Office exceed its assets. Despite this, the going concern basis continues to be appropriate for these financial statements as the Government's funding model for the Office provides for the payment of the Office's debts as and when they fall due.

(q) New Accounting Standards and Interpretations

As at 30 June 2012, the following standards and interpretations applicable to the Office had been issued but were not mandatory for the 30 June 2012 reporting period. The Office has not adopted, and does not intend to adopt, these standards early.

AASB 9 Financial instruments. This standard simplifies requirements for the classification and measurement of financial assets resulting from Phase 1 of the IASB's project to replace IAS 39 *Financial Instruments: Recognition and Measurement* (AASB 139 *Financial Instruments: Recognition and Measurement*). Applicable for annual reporting periods beginning on 1 January 2013. Detail of impact is still being assessed.

AASB 13 Fair Value Measurement. This Standard outlines the requirements for measuring the fair value of assets and liabilities and replaces the existing fair value definition and guidance in other AASs. AASB 13 includes a 'fair value hierarchy' which ranks the valuation technique inputs into three levels using unadjusted quoted prices in active markets for identical assets or liabilities; other observable inputs; and unobservable inputs. Applicable for annual reporting periods beginning on 1 January 2013. Disclosure for fair value measurements using unobservable inputs are relatively onerous compared to disclosure for fair value measurements using observable inputs. Consequently, the Standard may increase the disclosures for public sector entities that have assets measured using depreciated replacement cost.

AASB 1053 Application of Tiers of Australian Accounting Standards. This Standard establishes a differential financial reporting framework consisting of two tiers of reporting requirements for preparing general purpose financial statements. Applicable for annual reporting periods beginning on 1 July 2013. The Victorian Government is currently considering the impacts of reduced disclosure requirements (RDRs) for certain public sector entities and has not decided if RDRs will be implemented in the Victorian public sector.

AASB 2009-11 Amendments to Australian Accounting Standards arising from AASB 9 [AASB 1, 3, 4, 5, 7, 101, 102, 108, 112, 118, 121, 127, 128, 131, 132, 136, 139, 1023 and 1038 and Interpretations 10 and 12]. This Standard gives effect to consequential changes arising from the issuance of AASB 9. Applicable for annual reporting periods beginning on 1 January 2013. No significant impact is expected from these consequential amendments.

AASB 2010-2 Amendments to Australian Accounting Standards arising from Reduced Disclosure Requirements. This Standard makes amendments to many Australian Accounting Standards, including Interpretations, to introduce reduced disclosure requirements to the pronouncements for application by certain types of entities. Applicable for annual reporting periods beginning on 1 July 2013. The Victorian Government is currently considering the impacts of RDRs and has not decided if RDRs will be implemented in the Victorian public sector.

AASB 2010-7 Amendments to Australian Accounting Standards arising from AASB 9 (December 2010) [AASB 1, 3, 4, 5, 7, 101, 102, 108, 112, 118, 120, 121, 127, 128, 131, 132, 136, 137, 139, 1023 & 1038 and Interpretations 2, 5, 10, 12, 19 & 127]. These consequential amendments are in relation to the introduction of AASB 9. Applicable for annual reporting periods beginning on 1 January 2013. No significant impact is expected from these consequential amendments.

AASB 2011-2 Amendments to Australian Accounting Standards arising from the Trans-Tasman Convergence Project – Reduced Disclosure Requirements [AASB 101 & AASB 1054]. The objective of this amendment is to include some additional disclosure from the Trans-Tasman Convergence Project and to reduce disclosure requirements for entities preparing general purpose financial statements under Australian Accounting Standards – reduced disclosure requirements. Applicable for annual reporting periods beginning on 1 July 2013. The Victorian Government is currently considering the impacts of RDRs and has not decided if RDRs will be implemented in the Victorian public sector.

AASB 2011-4 Amendments to Australian Accounting Standards to Remove Individual Key Management Personnel Disclosure Requirements [AASB 124]. This Standard amends AASB 124 *Related Party Disclosures* by removing the disclosure requirements in AASB 124 in relation to individual key management personnel. Applicable for annual reporting periods beginning on 1 July 2013. No significant impact is expected from these consequential amendments.

AASB 2011-8 Amendments to Australian Accounting Standards arising from AASB 13 [AASB 1, 2, 3, 4, 5, 7, 9, 2009-11, 2010-7, 101, 102, 108, 110, 116, 117, 118, 119, 120, 121, 128, 131, 132, 133, 134, 136, 138, 139, 140, 141, 1004, 1023 & 1038 and Interpretations 2, 4, 12, 13, 14, 17, 19, 131 & 132]. This amending Standard makes consequential changes to a range of Standards and Interpretations arising from the issuance of AASB 13. In particular, this Standard replaces the existing definition and guidance of fair value measurements in other Australian Accounting Standards and Interpretations. Applicable for annual reporting periods beginning on 1 January 2013. Disclosures for fair value measurements using unobservable inputs is potentially onerous, and may increase disclosures for assets measured using depreciated replacement cost.

AASB 2011-9 Amendments to Australian Accounting Standards – Presentation of Items of Other Comprehensive Income [AASB 1, 5, 7, 101, 112, 120, 121, 132, 133, 134, 1039 & 1049]. The main change resulting from this Standard is a requirement for entities to group items presented in other comprehensive income on the basis of whether they are potentially reclassifiable to profit or loss in a subsequent period (reclassification adjustments). Applicable for annual reporting periods beginning on 1 July 2012. This amending Standard may change the current presentation of ‘Other economic flows–other movements in equity’ to groupings on the basis of whether the components are potentially reclassifiable to profit or loss in subsequent periods. No other significant impact is expected.

AASB 2011-10 Amendments to Australian Accounting Standards arising from AASB 119 (September 2011) [AASB 1, AASB 8, AASB 101, AASB 124, AASB 134, AASB 1049 & AASB 2011-8 and Interpretation 14]. This Standard makes consequential changes to a range of other Australian Accounting Standards and Interpretation arising from the issuance of AASB 119 *Employee Benefits*. Applicable for annual reporting periods beginning on 1 January 2013. No significant impact is expected from these consequential amendments.

AASB 2011-11 Amendments to AASB 119 (September 2011) arising from Reduced Disclosure Requirements. This Standard makes amendments to AASB 119 *Employee Benefits* (September 2011), to incorporate reduced disclosure requirements into the Standard for entities applying Tier 2 requirements in preparing general purpose financial statements. Applicable for annual reporting periods beginning on 1 July 2013. The Victorian Government is currently considering the impacts of RDRs and has not decided if RDRs will be implemented in the Victorian public sector.

2012-1 Amendments to Australian Accounting Standards - Fair Value Measurement - Reduced Disclosure Requirements [AASB 3, AASB 7, AASB 13, AASB 140 & AASB 141].

This amending Standard prescribes the reduced disclosure requirements in a number of Australian Accounting Standards as a consequence of the issuance of AASB 13 *Fair Value Measurement*. Applicable for annual reporting periods beginning on 1 July 2013. The Victorian Government is currently considering the impacts of RDRs and has not decided if RDRs will be implemented in the Victorian public sector.

AASB 2012-2 Amendments to Australian Accounting Standards - Disclosures - Offsetting Financial Assets and Financial Liabilities [AASB 7 & AASB 132]. This Standard amends the required disclosures in AASB 7 to include information that will enable users of an entity's financial statements to evaluate the effect or potential effect of netting arrangements on the entity's financial position. Applicable for annual reporting periods beginning on 1 January 2013. No significant impact is expected from these amendments.

AASB 2012-3 Amendments to Australian Accounting Standards - Offsetting Financial Assets and Financial Liabilities [AASB 132]. This Standard adds application guidance to AASB 132 to address inconsistencies identified in applying some of the offsetting criteria of AASB 132. Applicable for annual reporting periods beginning on 1 January 2014. No significant impact is expected from these amendments.

AASB 2012-5 Amendments to Australian Accounting Standards arising from Annual Improvements 2009-2011 Cycle [AASB 1, AASB 101, AASB 116, AASB 132 & AASB 134 and Interpretation 2]. This Standard makes amendments to various standards as a consequence of the issuance of International Financial Reporting Standard *Annual Improvements to IFRSs 2009-2011 Cycle* by the International Accounting Standards Board in May 2012. Applicable to annual reporting periods beginning on 1 January 2013. No significant impact is expected from these amendments.

Note 2. Income from Transactions

Note 2. Income from Transactions		
Grants	2012 \$	2011 \$
Grants from the Department of Premier and Cabinet	9,744,736	8,346,556
Other Grants from Victorian Government Entities	-	900,000
Total Income from Transactions	9,744,736	9,246,556

Other grants from Victorian government entities include contributions which were recognised as revenue on receipt in 2011. However the expenditure in relation to these contributions was recognised as incurred in 2011 and 2012.

Note 3. Expenses from Transactions

Note 3. Expenses from Transactions		
	2012 \$	2011 \$
Expenses from Transactions include:		
Employee Benefits		
Salaries and Wages	5,618,469	5,103,592
Superannuation		
- Defined Contribution Plans	481,587	422,058
- Defined Benefits Plans	45,881	41,726
Annual and Long Service Leave Expense	648,083	628,840
On-Costs	393,722	322,689
Total Employee Benefits	7,187,742	6,518,905
Depreciation		
Building Fitouts	43,808	38,443
Office Furniture and Equipment	66,090	86,029
Motor Vehicles under Finance Lease	27,239	25,928
Capitalised Software Development	15,061	5,762
Total depreciation	152,198	156,162

Note 4. Receivables

Note 4. Receivables		
	2012 \$	2011 \$
Current:		
Contractual		
Other receivables	-	41,425
	-	41,425
Statutory		
GST Recoverable	12,331	30,244
Amounts Receivable from Victorian Government Departments	495,677	841,894
	508,008	872,138
Total Current	508,008	913,563
Non-Current:		
Statutory		
Amounts Receivable from Victorian Government Departments	135,580	132,788
	135,580	132,788
Total Receivables	643,588	1,046,351

Note 5. Property, Plant and Equipment

Note 5. Property, Plant and Equipment		
	2012 \$	2011 \$
Building Fitouts at Fair Value	461,395	472,846
Less: Accumulated Depreciation	(179,068)	(135,260)
	282,327	337,586
Office Furniture and Equipment at Fair Value	518,838	800,105
Less: Accumulated Depreciation	(383,695)	(594,078)
	135,143	206,027
Motor Vehicles under Finance Lease at Fair Value	134,378	128,645
Less: Accumulated Depreciation	(57,648)	(44,118)
	76,730	84,527
Total Property, Plant and Equipment	494,200	628,140
Reconciliation of Carrying Amounts	2012 \$	2011 \$
<i>Building Fitouts</i>		
Carrying Amount at Start of Year	337,586	267,058
Additions	40,853	103,551
Derecognition of Restoration Obligation	(52,304)	-
Transfers between Classes	-	5,420
Depreciation Expense (note 3)	(43,808)	(38,443)
Carrying Amount at End of Year	282,327	337,586
<i>Office Furniture and Equipment</i>		
Carrying Amount at Start of Year	206,027	319,556
Additions	-	21,920
Disposals	(4,794)	-
Transfers between Classes	-	(5,420)
Transfer to Intangible Assets	-	(44,000)
Depreciation Expense (note 3)	(66,090)	(86,029)
Carrying Amount at End of Year	135,143	206,027

Note 5. Property, Plant and Equipment <i>continued</i>		
Reconciliation of Carrying Amounts <i>continued</i>	2012 \$	2011 \$
<i>Motor Vehicles under Finance Lease</i>		
Carrying Amount at Start of Year	84,527	110,455
Additions	30,597	-
Disposals	(11,155)	-
Depreciation Expense (note 3)	(27,239)	(25,928)
Carrying Amount at End of Year	76,730	84,527

Note 6. Intangible Assets

Note 6. Intangible Assets		
	2012 \$	2011 \$
Capitalised Software Development – at cost	104,750	44,000
Less: Accumulated Depreciation	(20,823)	(5,762)
	83,927	38,238
Carrying Amount at Start of Year	38,238	-
Additions	60,750	-
Transfer from Office Furniture and Equipment	-	44,000
Depreciation Expense	(15,061)	(5,762)
Carrying Amount at End of Year	83,927	38,238

Note 7. Provisions

Note 7. Provisions		
	2012 \$	2011 \$
Current: Employee Benefits		
- Annual Leave payable within 12 months	358,556	359,278
- Long Service Leave		
Expected to be paid within 12 months	90,297	81,607
Expected to be paid after 12 months	583,061	569,799
- Performance Bonus	31,000	34,232
Restoration Costs	122,959	175,263
	1,185,873	1,220,179
Non-Current: Employee Benefits		
- Long Service Leave	135,580	132,788
	135,580	132,788
Total Provisions	1,321,453	1,352,967
Movements in Provisions other than Employee Benefits	Restoration costs	
Carrying Amount at Start of Year	175,263	
Reduction of Provision Recognised	(52,304)	
Carrying Amount at End of Year	122,959	

Note 8. Borrowings

Note 8. Borrowings		
	2012 \$	2011 \$
Secured:		
Current Lease Liabilities	58,425	34,159
Non-Current Lease Liabilities	19,506	51,930
Total Borrowings	77,931	86,089

Lease liabilities are effectively secured as the rights to the leased assets revert to the lessor in the event of default.

<i>Assets pledged as security:</i>		
The carrying amounts of non-current assets pledged as security are:		
Motor Vehicles under Finance Lease	76,730	84,527

Note 9 discloses the maturity analysis of borrowings and the nature and extent of risks arising from borrowings.

Note 9. Financial Instruments

(a) Significant Accounting Policies

Details of the significant accounting policies and methods adopted, including the criteria for recognition, the basis of measurement, and the basis on which income and expenses are recognised, with respect to each class of financial asset, financial liability and equity instrument are disclosed in note 1 to the financial statements.

(b) Categorisation of Financial Instruments

Note 9. Categorisation of Financial Instruments			Carrying Amount	
Financial Assets	Note	Category	2012 \$	2011 \$
Cash on Hand		Cash	1,000	1,000
Receivables*	4	Loans and receivables	-	41,425
			1,000	42,425
Financial Liabilities				
Payables		Financial liabilities at amortised cost	191,497	484,801
Borrowings	8	Financial liabilities at amortised cost	77,931	86,089
			269,428	570,890
Net Holding Gain/(Loss) on Financial Instruments by Category:				
Financial Assets	Note	Category	2012 \$	2011 \$
Cash on Hand		Cash	-	-
Receivables*		Loans and receivables	-	-
			-	-
Financial Liabilities				
Payables		Financial liabilities at amortised cost	-	-
Borrowings		Financial liabilities at amortised cost	(4,385)	(5,795)
			(4,385)	(5,795)

* Receivables disclosed here exclude statutory receivables (i.e. amounts receivable from government departments and GST recoverable)

The net holding gains or losses disclosed above are determined as follows:

- For cash and receivables, the net gain or loss is calculated by taking the interest revenue, if any, minus any impairment recognised in the net result; and
- For financial liabilities measured at amortised cost, the net gain or loss is the related interest expense.

(c) Credit Risk

Credit risk arises from the financial assets of the Office, which comprise cash and cash equivalents, and trade and other receivables. The Office's exposure to credit risk arises from the potential default of counter parties on their contractual obligations resulting in financial loss to the Office. Credit risk is measured at fair value and is monitored on a regular basis.

Credit risk associated with the Office's financial assets is minimal because the main debtor is the Victorian Government. For debtors other than government, it is the Office's policy to only deal with entities with high credit ratings and to obtain sufficient collateral or credit enhancements where appropriate. The Office does not have any significant credit risk exposure to any single counterparty or any group of counterparties having similar characteristics. The carrying amount of financial assets recorded in the financial statements, net of any allowances for losses, represents the Office's maximum exposure to credit risk without taking account of the value of any collateral obtained.

Financial assets that are either past due or impaired

There are no material financial assets which are individually determined to be impaired. Currently the Office does not hold any collateral as security nor credit enhancements relating to any of its financial assets.

As at the reporting date, there was no event to indicate that any of the financial assets were impaired.

There are no financial assets that have had their terms renegotiated so as to prevent them from being past due or impaired, and they are stated at the carrying amounts as indicated. There are no financial assets that are past due but not impaired.

(d) Liquidity Risk

Liquidity risk arises when the Office is unable to meet its financial obligations as they fall due. The Office operates under the Victorian Government's fair payments policy of settling financial obligations within 30 days and in the event of a dispute, making payments within 30 days from the date of resolution.

The Office's exposure to liquidity risk is deemed insignificant based on prior periods' data and current assessment of risk. Maximum exposure to liquidity risk is the carrying amounts of financial liabilities.

The interest rate exposure and maturity analysis of financial liabilities are:

			Maturity dates *			
	Carrying amount \$	Nominal amount \$	Less than 1 month \$	1-3 months \$	3 months – 1 year \$	1-5 years \$
2012						
Payables	191,497	191,497	191,497			
Finance lease liabilities	77,931	82,600	18,227	3,867	39,719	20,787
	269,428	274,097	209,724	3,867	39,719	20,787
2011						
Payables	484,801	484,801	484,801			
Finance lease liabilities	86,089	92,337	14,461	4,379	19,706	53,791
	570,890	577,138	499,262	4,379	19,706	53,791

* The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities.

(e) Market Risk

The Office has no exposure to interest rate, foreign currency and other price risks.

(f) Fair Value

The carrying amount of financial assets and financial liabilities recorded in the financial statements approximates their fair values because of the short term nature of the financial instruments and the expectation that they will be paid in full.

None of the classes of financial assets and liabilities are readily traded on organised markets in standardised form.

Note 10. Commitments for Expenditure

Note 10: Commitments for Expenditure		
	2012 \$	2011 \$
Operating Lease Commitments		
Commitments for minimum lease payments in relation to non-cancellable operating leases, not recognised as liabilities, are payable as follows:		
Within one year	436,061	357,142
Later than 1 year but not later than five years	1,460,692	1,593,551
Later than five years	-	43,552
	1,896,753	1,994,245
Finance Lease Liabilities		
Commitments in relation to finance leases are payable as follows:		
Within one year	61,813	38,546
Later than one year but not later than five years	20,787	53,791
Minimum Lease Payments	82,600	92,337
Less: Future Finance Charges	(4,669)	(6,248)
Total Lease Liabilities	77,931	86,089
Shown in the Financial Statements (Note 8) as:		
Current	58,425	34,159
Non-Current	19,506	51,930
	77,931	86,089

Note 11. Contingent Liabilities and Contingent Assets

There are no contingent liabilities or contingent assets for the Office at 30 June 2012 or 30 June 2011.

Note 12. Responsible Persons

The persons who held the positions of Minister and Accountable Officer in the Office during the financial year were as follows:

Responsible Minister	The Hon Ted Baillieu, MP, Premier
Accountable Officer	George Brouwer, Ombudsman

Remuneration

Remuneration received or receivable by the person holding the office of Ombudsman, in connection with the management of the Office during the reporting period, was in the income bands shown below

\$400,000 - \$409,999 (2011: \$410,000 - \$419,999)

Amounts relating to Ministers are reported in the financial statements of the Department of Premier and Cabinet.

Other Transactions

Other related transactions and loans requiring disclosure under the Directions of the Minister for Finance have been considered and there are no matters to report.

Note 13. Remuneration of Executives

The numbers of executive officers, other than the Accountable Officer, whose total remuneration exceeded \$100,000 during the reporting period, are shown in their relevant income bands in the first two columns of the table below. The base remuneration of these executive officers is shown in the third and fourth columns. Base remuneration is exclusive of bonus payments, long service leave payments, redundancy payments and retirement benefits.

Note 13. Remuneration of Executives	Total Remuneration		Base Remuneration	
	2012 No.	2011 No.	2012 No.	2011 No.
Income Band				
\$230,000 - \$239,999	-	-	-	1
\$240,000 - \$249,999	-	1	1	-
\$260,000 - \$269,999	1	-	1	1
\$300,000 - \$309,999	-	1	-	-
\$310,000 - \$319,999	1	-	-	-
Total Numbers	2	2	2	2
Total Amount (\$)	570,825	549,667	516,813	497,310
Total Annualised Employee Equivalent	2	2	2	2

Note 14. Remuneration of Auditors

Note 14: Remuneration of Auditors		
	2012 \$	2011 \$
Audit Fees paid or payable to the Victorian Auditor-General's Office		
Audit of the Annual Financial Statements	13,700	13,200

No other services were provided by the Victorian Auditor-General's Office.

Note 15. Superannuation

Employees of the Office are entitled to receive superannuation benefits and the Office contributes to both defined benefit and defined contribution plans. The defined benefit plans provide benefits based on years of service and final average salary.

The Office does not recognise any defined benefit liability in respect of the plans because the Office has no legal or constructive obligation to pay future benefits relating to its employees; its only obligation is to pay superannuation contributions as they fall due. The Department of Treasury and Finance recognises and discloses the State's defined benefit liabilities as an administered item in its financial statements.

However, superannuation contributions for the reporting period are included as part of salaries and associated costs in the comprehensive operating statement of the Office.

The Office made contributions to the following major employee superannuation funds during the period:

Defined benefit funds Emergency Services and State Super
 - Revised Scheme
 - New Scheme

Accumulation funds VicSuper

The Office of the Ombudsman does not have any contributions outstanding to the above funds and there have been no loans made from the funds. The bases for contributions are determined by the various schemes.

Note 16. Reconciliation of Net Result to Net Cash Flows from Operating Activities

Note 16. Reconciliation of Net Result to Net Cash Flows from Operating Activities		
	2012 \$	2011 \$
Net Result	(188,922)	249,468
Non-cash movements		
Depreciation	152,198	156,162
Gain on disposal of non-current assets	(2,518)	(5,231)
Change in Operating Assets and Liabilities		
(Increase)/Decrease in Receivables	402,763	(258,101)
(Increase)/Decrease in Prepayments	30,884	(30,884)
Increase/(Decrease) in Payables	(293,305)	1,686
Increase/(Decrease) in Provisions	20,790	32,745
Net Cash Flows from Operating Activities	121,890	145,845

Note 17. Non-cash Financing and Investing Activities

During the period, motor vehicles with a fair value of \$30,597 (2011 - nil) were acquired by means of finance leases.

Note 18. Subsequent Events

Victorian Public Service Workplace Determination 2012

The Victorian Public Service Workplace Determination 2012 was made by Fair Work Australia on 23 July 2012. It replaces the 2009 Extended and Varied Version of the Victorian Public Service Agreement 2006. The Workplace Determination took effect from 29 July 2012 and will remain in force until 31 December 2015. The Workplace Determination provides for wage increases of 3.25 per cent and 1.25 per cent on 1 July 2012 and 1 January 2013 respectively, with six monthly wage increases thereafter. In addition, a lump sum payment of \$1,500 (or equivalent pro-rata amount for part time employees) was made in August 2012 to eligible Victorian Public Service employees who received a salary on 1 July 2012 and were employed on 29 July 2012.

As the Workplace Determination took effect from 29 July 2012, no adjustments have been made to these financial statements other than for the impact on the estimated accrued employee benefits as at 30 June 2012.

Note 19. Glossary of Terms

Comprehensive result

Total comprehensive result is the change in equity for the period other than changes arising from transactions with owners. It is the aggregate of net result and other non-owner changes in equity.

Capital asset charge

The capital asset charge represents the opportunity cost of capital invested in the non-current physical assets used in the provision of outputs.

Commitments

Commitments include those operating, capital and other outsourcing commitments arising from non-cancellable contractual or statutory sources.

Depreciation

Depreciation is an expense that arises from the consumption through wear or time of a produced physical or intangible asset. This expense is classified as a transaction and so reduces the net result from transactions.

Employee benefits expenses

Employee benefits expenses include all costs related to employment including wages and salaries, fringe benefits tax, leave entitlements, redundancy payments and superannuation contributions.

Financial asset

A financial asset is any asset that is:

- (a) cash;
- (b) an equity instrument of another entity;
- (c) a contractual right:
 - to receive cash or another financial asset from another entity; or
 - to exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity; or
- (d) a contract that will or may be settled in the entity's own equity instruments and is:
 - a non-derivative for which the entity is or may be obliged to receive a variable number of the entity's own equity instruments; or
 - a derivative that will or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity's own equity instruments.

Financial instrument

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity. Financial assets or liabilities that are not contractual (such as statutory receivables or payables that arise as a result of statutory requirements imposed by governments) are not financial instruments.

Financial liability

A financial liability is any liability that is:

- (a) a contractual obligation:
to deliver cash or another financial asset to another entity; or
to exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavourable to the entity; or
- (b) a contract that will or may be settled in the entity's own equity instruments and is:
a non-derivative for which the entity is or may be obliged to deliver a variable number of the entity's own equity instruments; or
a derivative that will or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity's own equity instruments. For this purpose the entity's own equity instruments do not include instruments that are themselves contracts for the future receipt or delivery of the entity's own equity instruments.

Financial statements

Depending on the context of the sentence where the term 'financial statements' is used, it may include only the main statements (i.e. comprehensive operating statement, balance sheet, cash flow statement, and statement of changes in equity); or it may also be used to include the main statements and the notes.

Grants

Transactions in which one unit provides goods, services, assets (or extinguishes a liability) or labour to another unit without receiving approximately equal value in return. Grants can either be operating or capital in nature. While grants to governments may result in the provision of some goods or services to the transferor, they do not give the transferor a claim to receive directly benefits of approximately equal value. Receipt and sacrifice of approximately equal value may occur, but only by coincidence. For example, governments are not obliged to provide commensurate benefits, in the form of goods or services, to particular taxpayers in return for their taxes. For this reason, grants are referred to by the AASB as involuntary transfers and are termed non-reciprocal transfers.

Grants can be paid as general purpose grants which refer to grants that are not subject to conditions regarding their use. Alternatively, they may be paid as specific purpose grants which are paid for a particular purpose and/or have conditions attached regarding their use.

Interest expense

Costs incurred in connection with the borrowing of funds. Interest expense includes interest on bank overdrafts and short term and long term borrowings, amortisation of discounts or premiums relating to borrowings, interest component of finance leases repayments, and the increase in financial liabilities and non-employee provisions due to the unwinding of discounts to reflect the passage of time.

Net result

Net result is a measure of financial performance of the operations for the period. It is the net result of items of revenue, gains and expenses (including losses) recognised for the period, excluding those that are classified as 'other non-owner changes in equity'.

Net result from transactions

Net result from transactions or net operating balance is a key fiscal aggregate and is revenue from transactions minus expenses from transactions. It is a summary measure of the ongoing sustainability of operations. It excludes gains and losses resulting from changes in price levels and other changes in the volume of assets. It is the component of the change in net worth that is due to transactions and can be attributed directly to government policies.

Non-financial assets

Non-financial assets are all assets that are not 'financial assets'.

Other economic flows

Other economic flows are changes in the volume or value of an asset or liability that do not result from transactions. They include gains and losses from disposal, revaluation and impairment of non-current physical and intangible assets; actuarial gains and losses arising from defined benefit superannuation plans and fair value changes of financial instruments. In simple terms, they are changes arising from market re-measurements.

Payables

Includes short and long term trade debt and accounts payable, grants and interest payable.

Receivables

Includes short and long term trade credit and accounts receivable, grants, taxes and interest receivable.

Sales of goods and services

Refers to revenue from the direct provision of goods and services and includes fees and charges for services rendered, sales of goods, fees from regulatory services, work done as an agent for private enterprises. It also includes rental income under operating leases and on produced assets such as buildings and entertainment, but excludes rent income from the use of non-produced assets such as land.

Supplies and services

Supplies and services generally represent cost of goods sold and the day to day running costs, including maintenance costs, incurred in the normal operations of the Office.

Transactions

Transactions are those economic flows that are considered to arise as a result of policy decisions, usually an interaction between two entities by mutual agreement. They also include flows within an entity such as depreciation where the owner is simultaneously acting as the owner of the depreciating asset and as the consumer of the service provided by the asset. Taxation is regarded as mutually agreed interactions between the government and taxpayers. Transactions can be in kind (e.g. assets provided/given free of charge or for nominal consideration) or where the final consideration is cash. In simple terms, transactions arise from the policy decisions of the government.

Accountable Officer's and Chief Financial Officer's Declaration

We certify that the attached financial statements for the Office of the Ombudsman have been prepared in accordance with Standing Direction 4.2 of the *Financial Management Act 1994*, applicable Financial Reporting Directions, Australian Accounting Standards, including interpretations, and other mandatory professional reporting requirements.

We further state that, in our opinion, the information set out in the comprehensive operating statement, balance sheet, statement of changes in equity, cash flow statement and notes to the financial statements, presents fairly the financial transactions during the year ended 30 June 2012 and financial position of the Office as at 30 June 2012.

We are not aware of any circumstance, which would render any particulars included in the financial statements to be misleading or inaccurate.

We authorise the attached financial statements for issue on 30 August 2012.



Joe Bonnici
Chief Financial Officer
Department of Premier and Cabinet

Melbourne
30 August 2012



G E Brouwer
OMBUDSMAN
Office of the Ombudsman

Melbourne
30 August 2012

Appendix 1

Disclosure index

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1 Disclosure index

Parts 1 and 2 of the annual report of the Office of the Ombudsman has been prepared in accordance with all relevant Ministerial directions and legislation. The index below will facilitate identification of compliance items with the requirements.

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Appendix 2

Whistleblowers Protection Act 2001 – **Ombudsman’s guidelines**

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2 *Whistleblowers Protection Act 2001* – Ombudsman’s guidelines

Objects of the WPA

The main objectives of the *Whistleblowers Protection Act 2001* (the WPA) are to encourage and facilitate the making of disclosures of improper conduct or detrimental action by public officers and public bodies and establish a system for matters to be investigated. The WPA provides protection to a person who makes a disclosure and remedies for the person where detrimental action has been taken against them.

Who is subject to the WPA?

Any person may make a disclosure about improper conduct by public bodies and public officers. The terms ‘public body’ and ‘public officer’ are defined in section 3 of the WPA.

The types of bodies about which a person may make a disclosure include:

- government departments and agencies
- statutory authorities
- officers of municipal councils
- government-appointed boards and committees
- government-owned companies
- universities
- TAFE colleges
- public hospitals
- state-funded residential care services
- health services contractors
- correctional services contractors.

Public bodies excluded from the WPA are courts, boards, tribunals, commissions and other bodies presided over by a judge, magistrate or legal practitioner appointed under a statute.

Public officers include:

- Members of Parliament
- councillors
- council employees
- public servants
- university employees
- police officers
- protective services officers
- administrative staff of the Chief Commissioner of Police

- teachers
- office holders appointed by the Governor-in-Council or a Minister.

Public officers excluded from the WPA are magistrates and judges of a court or members of a tribunal, the Director of Public Prosecutions, the Auditor-General, the Ombudsman, the Director Police Integrity, the Special Investigations Monitor, the Electoral Commissioner, and parliamentary and judicial staff.

The role of the Ombudsman

The Ombudsman has a central role in handling disclosures of improper conduct and detrimental action made under the WPA. The role of the Ombudsman involves:

- preparing and publishing guidelines to assist public bodies in interpreting and complying with the WPA
- reviewing written procedures established by public bodies and making recommendations in relation to those procedures
- receiving disclosures
- determining whether a disclosure warrants investigation
- investigating disclosures
- monitoring investigations where they have been referred to public bodies
- monitoring the action taken by public bodies where the findings of an investigation reveal that improper conduct or detrimental action has occurred
- reporting to Parliament where public bodies fail to implement recommendations made by the Ombudsman at the conclusion of an investigation
- collating and publishing statistics about disclosures handled by the Ombudsman
- educating and training public bodies.

Establishing written procedures

In addition to being the potential subject of a disclosure, each public body is required by section 68 of the WPA to establish written procedures for handling disclosures. The procedures must facilitate the making of disclosures, the investigation of disclosures, and the protection of whistleblowers from reprisals by the public body or any officer, member or employee of the public body. The procedures must be in accordance with the WPA and these guidelines.

The Ombudsman may review the written procedures of a public body and their implementation. The Ombudsman may make recommendations to a public body as a result of such a review. It is the responsibility of the public body to ensure that its policies and procedures reflect the current WPA, regulations and guidelines. Each public body should review its policies and procedures if amendments are made to the WPA, regulations or the Ombudsman's Guidelines.

A public body must make a copy of its written procedures available to each of its members, employees or officers, and must have a copy available for inspection by members of the public during normal office hours free of charge. The procedures should also be located or linked on any website maintained by the public body.

The following list of matters should be included in the written procedures of a public body to establish an effective internal reporting system for the WPA. Further information about each matter listed can be found in these guidelines.

Contents of whistleblower protection procedures

1. Statement of support for whistleblowers
2. Purpose of the procedures
3. Objects of the WPA
4. Definitions of key terms
5. The reporting system
6. Roles and responsibilities
7. Confidentiality
8. Collating and publishing statistics
9. Receiving and assessing disclosures
10. Investigations
11. Action taken after investigations
12. Managing the welfare of the whistleblower
13. Management of the person against whom the disclosure is made
14. Criminal offences.

Establishing a reporting system

A public body must establish a reporting system for the receipt, assessment and investigation of whistleblower disclosures.

The chief requirements of any reporting system are:

- ensuring senior executive staff are involved and retain oversight
- ensuring confidentiality of the information and the identity of the whistleblower are maintained throughout the process

- keeping the roles of assessment and investigation of a disclosure distinct from welfare management of the whistleblower
- identifying clear contact points for reporting whistleblower disclosures, including all relevant mail, phone and email contacts
- ensuring a disclosure about the chief executive officer of a public body is immediately referred to the Ombudsman.

A clear internal reporting system will benefit a public body by:

- encouraging staff to raise matters of concern internally
- providing a reporting channel for disclosures that may otherwise never be reported
- ensuring disclosures by whistleblowers are properly and appropriately assessed and acted upon
- ensuring the protection of the WPA is fully available to all internal and external whistleblowers.

Which reporting structure to adopt

The reporting system should be centralised. A centralised system of handling disclosures could involve a small number of officers who report direct to the principal officer of an organisation. There are a number of benefits of a centralised system including:

- Fewer people handling disclosures enhances confidentiality and thereby reduces the likelihood of reprisals being taken against whistleblowers.
- Direct involvement of senior management in the reporting system appropriately reflects the seriousness of whistleblower matters.
- As the occurrence of improper conduct and detrimental action is often a result of poor supervision within an organisation, senior management should take overall responsibility for the investigation of these matters.
- It avoids conflicts of interest by excluding line managers from the assessment and investigation of any disclosure.

Roles and responsibilities of those involved in the internal reporting system

There are a number of ways a public body can set up a reporting system. The number of officers and their respective roles will depend on the size of the body and its structure in terms of regions or organisational units. An internal reporting policy should identify the officers who will be involved in the internal reporting system and clearly describe their individual roles.

The protected disclosure coordinator

Every public body must have a nominated protected disclosure coordinator.

The protected disclosure coordinator has a central role in the internal reporting system. He or she will:

- impartially assess each disclosure to determine whether it is a public interest disclosure
- coordinate the reporting system used by the organisation
- be a contact point for general advice about the operation of the WPA
- be responsible for ensuring that the public body carries out its responsibilities under the WPA and the guidelines
- liaise with the Ombudsman in regard to the WPA
- be responsible for carrying out, or appointing an investigator to carry out, an investigation referred to the public body by the Ombudsman
- be responsible for overseeing and coordinating an investigation where an investigator has been appointed
- where necessary, appoint a welfare manager to support the whistleblower
- advise the whistleblower of the progress of an investigation into the disclosed matter
- establish and manage a confidential filing system
- collate and publish statistics on disclosures made
- take all necessary steps to ensure the identity of the whistleblower and the identity of the person who is the subject of the disclosure are kept confidential
- liaise with the chief executive officer of the public body.

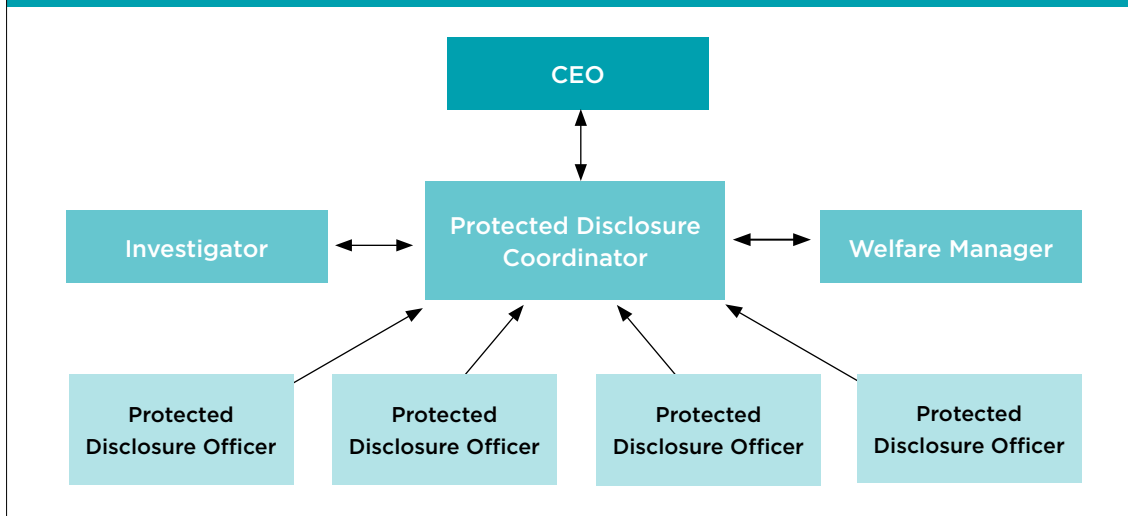
In a smaller public body the principal officer may decide to take on the role of protected disclosure coordinator. The protected disclosure coordinator must be contactable by external and internal whistleblowers and have the authority to make enquiries of officers within the organisation.

A large organisation, or an organisation with a number of geographic locations may wish to appoint a number of protected disclosure officers to assist the protected disclosure coordinator with the receipt of disclosures. However, I recommend that some central oversight be maintained by the protected disclosure coordinator to ensure accurate reporting on outcomes.

Model reporting system for a large organisation

There are a number of possible reporting systems a large organisation or public body can establish. It may involve a number of different officers. For example, one reporting structure could be represented as follows:

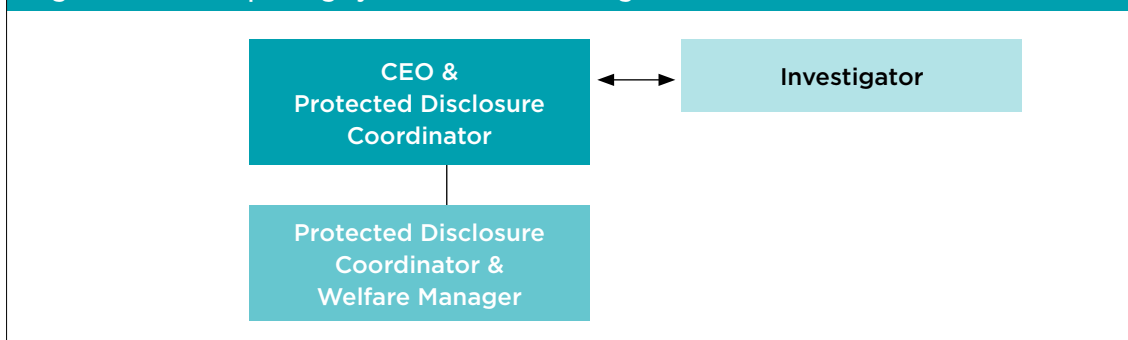
Figure 1: Model reporting system for a large organisation



Model reporting system for a small organisation

In a smaller organisation, a possible internal reporting structure is represented below:

Figure 2: Model reporting system for a smaller organisation



Ensuring confidentiality

Policies and procedures need to take into account the obligation to ensure non-disclosure of confidential information except in accordance with the WPA.

Section 22 of the WPA requires any person who receives information due to the handling or investigation of a protected disclosure, not to disclose that information except in certain limited circumstances. These include:

- where exercising the functions of the public body under the WPA
- when making a report or recommendation under the WPA
- when publishing statistics in the annual report of a public body
- in criminal proceedings for certain offences in the WPA.

However, the WPA prohibits:

- the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the whistleblower
- the disclosure of particulars in an annual report and other reports that might lead to the identification of a person against whom a protected disclosure is made.¹

A breach of section 22 constitutes a criminal offence.

Protecting the whistleblower from reprisals

Section 68 of the WPA also requires public bodies to establish procedures for the protection of a whistleblower from reprisal by personnel for making a protected disclosure. Keeping the whistleblower's identity confidential will assist in minimising the risk of reprisals.

Procedures should include ensuring whistleblowers are advised that it is in their own interests to keep disclosures confidential by only discussing related matters with authorised persons within the public body or officers of the Ombudsman's office or other persons as authorised by law.

Also see sections dealing with 'Detrimental action' and 'Managing the welfare of the whistleblower'.

Establishing a confidential electronic and paper filing system

To prevent breaches of the confidentiality requirements and to minimise the possibility of detrimental action, public bodies must establish a secure electronic and paper filing system. Public bodies must ensure that:

- all paper and electronic files are secure and can only be accessed by authorised officers
- all printed material is kept in files that are clearly marked as a Whistleblowers Protection Act matter and include a prominent warning on the front of the file that criminal penalties apply to any unauthorised divulging of information concerning a protected disclosure
- any files saved on a floppy disk or CD-ROM or other disk are password-protected
- any other material, such as tapes from interviews, are stored securely and can only be accessed by authorised officers
- the security of communications between nominated officers and/or contracted officers i.e. sensitive information or documents are not emailed or faxed to a machine to which staff have general access; personal delivery of documents is the best way to ensure confidentiality.

¹ Under section 22A the Ombudsman may disclose the identity of a person against whom a protected disclosure is made if it is in the public interest.

Education and training to ensure knowledge by personnel

All personnel should be provided with all relevant information and given appropriate training to ensure they are familiar with policies, procedures and the relevant parts of the legislation, particularly their confidentiality obligations and the consequences of a breach of the WPA.

Owing to the confidentiality requirements for whistleblower disclosures, public bodies must establish a reporting system that enables a possible disclosure under the WPA to be identified as early as possible. The sources of possible whistleblower disclosures include:

- correspondence, including facsimiles
- phone calls
- emails
- in person approaches by staff or members of the public.

If a public body has a separate complaints system, then those officers who deal with the receipt and assessment of complaints must be made aware of the WPA, and what matters may fall under the WPA.

Similarly mail centres, front desk staff, online services units and other employees must be made aware of the general nature of whistleblower disclosures and the established reporting channels so that identified disclosures are dealt with appropriately.

Receiving a disclosure

When a public body receives a complaint, report or allegation of improper conduct or detrimental action, the first step is to determine whether the disclosure has been made to the right person or body and then whether the matter falls under the WPA.

There will be situations where a public body receives an allegation of improper conduct or detrimental action, but the person making the allegation has not referred to the WPA. If an allegation raises issues that may fall within the provisions of the WPA, the public body should assess the allegations in terms of the WPA. The protections of the WPA may apply to a disclosure regardless of whether or not the individual making the disclosure specifically requests the protections. The assessment should be made on the nature of the disclosure and not the intention of the individual making it.

For the protections of Part 3 of the WPA to apply, a disclosure must be made in accordance with Part 2 of the WPA. Disclosures made under Part 2 of the WPA are called protected disclosures.

How can a protected disclosure be made?

Part 2 of the WPA provides that a person may make a disclosure:

- orally
- in writing
- electronically
- anonymously.

This means that disclosures may be received from anonymous sources, including unverified email addresses, phone calls, by facsimile, in a conversation or meeting. If the disclosure is made orally, the public body should ensure that contemporaneous notes are made of the disclosure.

If the disclosure comes from an email address from which the identity of the person making the disclosure cannot be determined, the disclosure should be treated as an anonymous disclosure.

Any person can submit an allegation or complaint. The WPA does not require the individual to be an employee of the public body they are complaining about, or a public sector employee. The complaint must be made by an individual and not by a company, organisation or group of people.

To whom must a protected disclosure be made?

Part 2 of the WPA provides that a person must make a disclosure to the appropriate person or body for it to be a protected disclosure under the WPA. As a general rule, a disclosure must be made to the public body that the complaint relates to, or to the Ombudsman.

Therefore, public bodies can only receive disclosures that relate to the conduct of their own members, officers or employees. If a public body receives a disclosure about an employee, officer or member of another public body, the disclosure has not been made in accordance with Part 2 of the WPA. The public body should advise the person making the disclosure of the correct person or body to whom the disclosure must be made. In such circumstances they should be advised to make their disclosure to the Ombudsman.

Table 1: Requirements for receiving a disclosure	
Person who is the subject of the disclosure	Person/body to whom the disclosure must be made
Employee of a public body	That public body or the Ombudsman
Member of Parliament (Legislative Assembly)	Speaker of the Legislative Assembly
Member of Parliament (Legislative Council)	President of the Legislative Council
Councillor	The Ombudsman
Chief Commissioner of Police	The Ombudsman or the Director, Police Integrity
Member of the police force	The Ombudsman, the Director, Police Integrity or Chief Commissioner of Police

Mechanisms for the receipt of disclosures

The public body is responsible for any decisions or actions taken under the WPA, the guidelines or the regulations. Any correspondence and communication between the Ombudsman and the public body will not be through an agent but generally will be with the chief executive officer of the public body or its protected disclosure coordinator. It is generally not appropriate for an agency to use a lawyer or an agent to communicate with my office.

The prescribed procedures are set out in the regulations. Regulation 8 applies to disclosures to public bodies. It states that oral disclosures must be made to a member, officer or employee of the public body and written disclosures must be addressed and sent or delivered to the office of the public body. Hence, an agent cannot offer a separate telephone line, post office box, mail bag or other method to receive disclosures as this may have the effect of invalidating the disclosure.

In assessing whether the information provided is a protected disclosure or a public interest disclosure, an agent may be involved for the purpose of taking statements and collating information. The agent can then provide advice to the public body; however, it is the public body that must decide if the information amounts to a protected disclosure or a public interest disclosure, not the agent.

The WPA only requires that an individual make the disclosure to the public body. The reporting procedures must be available to advise potential whistleblowers of the most effective way to raise their concerns. However, the disclosure does not have to be made in accordance with the public body's preferred procedure. A disclosure may be made to any member, officer or employee of the public body. It is the responsibility of the public body to ensure that any allegation made that may fall under the WPA is referred to the protected disclosure coordinator to assess the information.

Assessing a disclosure

Where a public body receives information relating to the conduct of an employee, member or officer of that public body, it must assess whether the disclosure meets the criteria of Part 2 of the WPA to be a protected disclosure. If Part 2 of the WPA is satisfied, the public body must determine if the information also satisfies Part 4 of the WPA to be a public interest disclosure. Section 28 requires the public body to reach its conclusion about the disclosure within 45 days of receiving it.

Protected disclosures

A protected disclosure is a disclosure that satisfies Part 2 of the WPA. The person making a disclosure that satisfies Part 2 receives the protections outlined in Part 3 of the WPA. To be assessed as a protected disclosure it must meet the following criteria:

- Did a natural person (that is, an individual person rather than a corporation) make the disclosure?
- Does the disclosure relate to conduct of a public body or public officer acting in their official capacity?

- Is the alleged conduct either improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure?
- Does the person making a disclosure believe on reasonable grounds that the alleged conduct has occurred?
- If one or more of the above elements are not satisfied, the person has not made a disclosure under Part 2 of the WPA.

A disclosure may be made about conduct that has occurred before the commencement of the WPA on 1 January 2002 and where the person cannot identify the person or body to whom the disclosure relates.

Improper conduct

A disclosure may be made about improper conduct by a public body or public officer. Improper conduct is defined in section 3 of the WPA to mean conduct that is:

- corrupt, or
- a substantial mismanagement of public resources, or
- a substantial risk to public health or safety, or
- a substantial risk to the environment.

The conduct must be serious enough that if proven would constitute a criminal offence or reasonable grounds for dismissal.

Examples of improper conduct

To avoid closure of a town's only industry, an environmental health officer ignores or conceals evidence of illegal dumping of harmful waste.

An agricultural officer delays or declines imposing quarantine to allow a financially distressed farmer to sell diseased stock.

A building inspector tolerates poor practices and structural defects in the work of a leading local builder.

Corrupt conduct

Corrupt conduct is defined by section 3 of the WPA to mean:

- conduct of any person (whether or not a public officer) that adversely affects the honest performance of a public officer's or public body's functions
- conduct of a public officer that amounts to the performance of their functions dishonestly or with inappropriate partiality
- conduct of a public officer, former public officer or a public body that amounts to a breach of public trust
- conduct by a public officer, former public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their official functions, or

- a conspiracy or attempt to engage in any of the above conduct.

The definition of 'corrupt conduct' contemplates dishonesty, or at the least the forgoing of public interest for a private benefit. The *Shorter Oxford English Dictionary* defines corruption as: to induce a person to act dishonestly or unfaithfully; to make venal; to bribe. Hence, it is an offence of dishonesty. Dishonesty involves a lack of probity; a disposition to deceive, defraud or steal.

The commonly understood meaning of corruption is further qualified in the WPA by the requirement for the conduct in question to be a criminal offence or grounds for dismissal. This indicates that the conduct will only fall within the meaning of the WPA where it is dishonesty of a serious nature.

Similar legislation in NSW, entitled the *Protected Disclosures Act 1994*, adopts a definition of corrupt conduct that includes conduct of a specific type such as:

- bribery
- blackmail
- obtaining or offering secret commissions
- fraud
- theft
- perverting the course of justice
- embezzlement
- election offences
- tax and revenue evasions
- forgery.

The list is obviously not exhaustive and, when in doubt, those with the responsibility for making a decision as to whether the conduct shows or tends to show that there was corrupt conduct should contact Ombudsman Victoria for guidance.

Examples of corrupt conduct

A public officer receives a bribe or receives a payment other than his or her wages or salary in exchange for the discharge of a public duty.

A public officer sells or improperly releases confidential information.

Substantial mismanagement of public resources

The use of the word 'substantial' has the effect of confining the definition to a situation in which the mismanagement is of a significant or considerable degree.

Mismanagement should not be confused with 'misuse'. Mismanagement is to manage badly or wrongly, whilst misuse is wrong or improper use. For example, to use a government car for personal gain is a misuse rather than mismanagement.

Substantial risk to public health, safety or the environment

The use of 'substantial' has the effect of confining the definition to conduct that puts public health, safety or the environment at considerable or great risk.

The risk is limited to public health or safety. This means the risk is not just to an individual but relates to conduct which affects, or has the potential to affect, a large class or group of the wider community.

Detrimental action

The WPA creates an offence for a person to take detrimental action against a person who has made a protected disclosure. Section 3 of the WPA defines detrimental action as including:

- action causing injury, loss or damage
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

Examples of detrimental action

A public body demotes, transfers, isolates in the workplace or changes the duties of a whistleblower due to the making of a disclosure.

A person threatens, abuses or carries out other forms of harassment directly or indirectly against the whistleblower, his or her family or friends.

A public body discriminates against the whistleblower or his or her family or associates in subsequent applications for jobs, permits or tenders.

Belief on reasonable grounds

The phrase 'believes on reasonable grounds' requires more than a suspicion and the belief must have supporting facts and circumstances. For reasonable grounds of belief, the usual test applied is whether a reasonable person would have formed that belief, having regard to all the circumstances. This test is an objective one; that is, whether a reasonable person, possessed of the same information that the person making the disclosure holds, would believe that the improper conduct had occurred. Reasonable grounds for a belief are also taken to require something more than a reasonable suspicion.

Nor can a belief be held to be based on reasonable grounds where it is based on a mere allegation, or conclusion, which is unsupported by any facts or circumstances. The existence of evidence is required to show that the reasonable grounds are probable. For example, it is not sufficient for a person to base a disclosure on the statement 'I know X is accepting bribes to grant planning permits to Y developer'. This is a mere allegation unsupported by any further facts and circumstances.

However, the requirement for facts and circumstances to be present to support a belief does not mean that it is necessary that the person have a prima facie case, merely that the belief be probable.

In some circumstances, hearsay or second-hand information may be used to establish reasonable grounds for the belief, provided that the information is trustworthy. This may depend on how the person obtained the information, and the detail of the information.

The credibility of the maker of the disclosure or individuals who have provided them with information may also be considered in determining if the individual discloser has reasonable grounds for their belief.

Notification of the decision

Where a public body assesses that a person has failed to make a disclosure under Part 2 of the WPA, the public body must advise the individual of its assessment. The public body should indicate on what grounds it has made its assessment and should advise the person of their right of appeal to the Ombudsman about the public body's assessment. It may also be appropriate to advise the person of alternative avenues of redress.

This should include advising the person that their concerns may be addressed through the public body's general complaints mechanisms.

If the reason for the assessment is based upon the failure of the person to support reasonable grounds for the belief that improper conduct or detrimental action has occurred, the public body should ensure the person has had sufficient opportunity to support the allegations or to present additional information prior to completing its assessment.

Section 28 of the WPA requires a public body to reach its conclusion on a disclosure within 45 days of receiving it.

A reassessment of the disclosure can be made if the person provides additional information to support the allegations made.

Where a public body assesses that a person has made a disclosure in accordance with Part 2 of the WPA, this disclosure is now referred to as a protected disclosure and must be dealt with in accordance with the WPA. The next step requires the public body to consider whether the protected disclosure is a public interest disclosure.

Public interest disclosures

Once an allegation has been assessed as a protected disclosure, section 28(1) of the WPA requires a conclusion to be reached as to whether or not it is a public interest disclosure. Division 2 of Part 4 (sections 28 to 32) of the WPA sets out the process that applies to the conclusion reached by a public body.

The threshold test for a protected disclosure to be a public interest disclosure is established in section 28(2), as follows:

In reaching a conclusion under sub-section (1) the public body must consider whether the disclosure shows or tends to show that a public officer to whom the disclosure relates –

- (a) has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer; or
- (b) has taken, is taking or proposes to take detrimental action in contravention of section 18.

To show or tend to show improper conduct or detrimental action

Legal interpretation of the phrase 'shows or tends to show' generally indicates that the disclosure must reveal or make known the conduct. Hence, the focus now shifts away from the reasonable grounds for the belief of the whistleblower. In reaching this conclusion the public body may seek further information or conduct a discreet initial enquiry prior to finalising an assessment.

To assess whether a disclosure shows or tends to show that a public officer has engaged in improper conduct, a public body must be satisfied that there is sufficient supporting material to demonstrate that the conduct has actually occurred. A mere allegation with no supporting evidence is not sufficient.

It may be necessary to question the whistleblower about his or her information and the evidence he or she has or can point to as supporting his or her allegations.

In order to reach a conclusion about whether a disclosure is a public interest disclosure, a public body may conduct discreet enquiries to obtain information that the whistleblower was unable to provide. Those enquiries may reveal information that supports the disclosure made by the whistleblower and lead the public body to conclude the disclosure is a public interest disclosure.

Conclusion that a disclosure is a public interest disclosure

Where the public body concludes that the disclosure amounts to a public interest disclosure, section 29 of the WPA requires the public body to within 14 days:

1. notify the person who made the disclosure of that conclusion; and
2. refer the disclosure to the Ombudsman for a determination as to whether it is a public interest disclosure.

Conclusion that the disclosure is not a public interest disclosure

Where the public body concludes that the disclosure is not a public interest disclosure, section 30 of the WPA requires the public body to:

1. Notify the person who made the disclosure within 14 days of that conclusion; and
2. Advise that person that he or she may request the public body to refer the disclosure to the Ombudsman for a formal determination as to whether the disclosure is a public interest disclosure, and that this request must be made within 28 days of the notification.

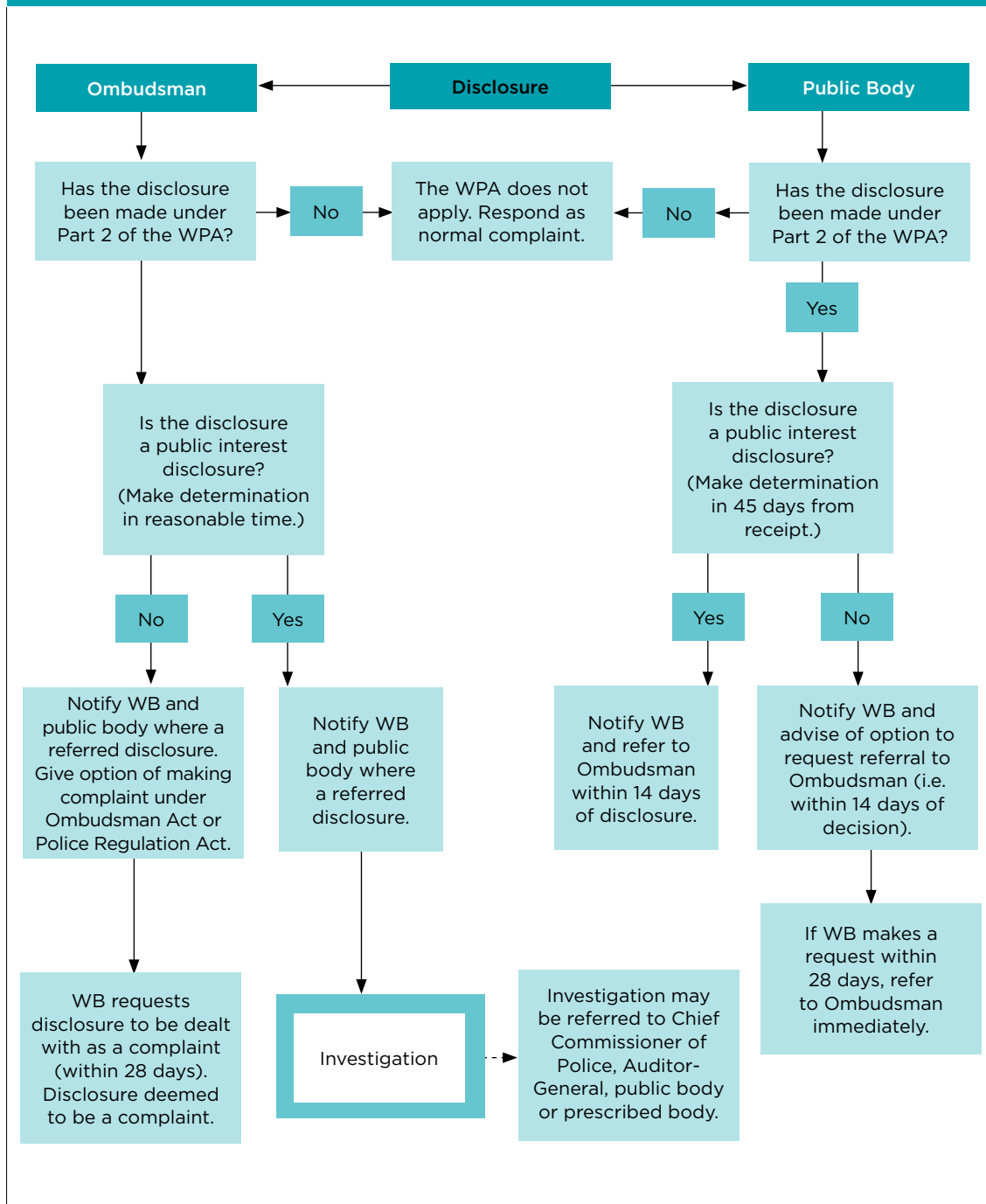
Notification to the whistleblower is not necessary where the disclosure has been made anonymously.

It is highlighted that if a conclusion is reached that the disclosure is not a public interest disclosure, it does not alter the decision that it is a protected disclosure. The protections of Part 3 of the WPA continue to apply in this situation.

Flowchart

The flowchart below represents the assessment and referral process. WB stands for the whistleblower (or person who makes the disclosure).

Figure 3: Flowchart of assessment and referral process



Possible criminal charges, legal action and disciplinary proceedings

The WPA establishes a number of offences that are attached to a disclosure once it has been determined to be a protected disclosure. Public bodies must ensure all nominated officers and staff are aware of the criminal offences created by the WPA and other legal action that may be taken against them.

Criminal offences

Detrimental action

It is an offence for a person to take or threaten action in reprisal when:

- a protected disclosure has been made
- a person believes a protected disclosure has been made
- a person believes that another person intends to make a protected disclosure.

Maximum penalty: a fine of 240 penalty units or two years imprisonment or both: section 18.

Breach of confidentiality

It is an offence for a person to divulge information obtained as a result of the handling of a protected disclosure or the investigation of a public interest disclosure without legislative authority.

Maximum penalty: a fine of 60 penalty units or six months imprisonment or both: section 22.

Obstruction of the Ombudsman

It is an offence for a person to obstruct the Ombudsman in performing his responsibilities under the WPA.

Maximum penalty: a fine of 240 penalty units or two years imprisonment or both: section 60.

Provision of false information

It is an offence for a person to knowingly provide false information under the WPA with the intention that it be acted on as a disclosed matter.

Maximum penalty: a fine of 240 penalty units or two years imprisonment or both: section 106.

Civil action

A whistleblower may take civil action against any person when they believe that detrimental action has been or may be taken against them in reprisal for a protected disclosure by applying to the Supreme Court for:

- an order that the person who took the detrimental action remedies it
- an injunction in any terms the Court considers appropriate: sections 20 and 21.

A person who takes detrimental action against a person in reprisal for a protected disclosure is liable in damages to that person: section 19.

Disciplinary proceedings can be brought against a person responsible for established conduct that was the subject of the investigation: section 81.

Managing the welfare of the whistleblower

The protection of whistleblowers against detrimental action is essential for the effective implementation of the WPA. Management of a public body must be responsible for ensuring whistleblowers are protected from direct and indirect detrimental action, and that the culture of their workplace is supportive of protected disclosures being made.

It is a requirement of the WPA that public bodies establish procedures for the protection of whistleblowers from reprisals. The procedures must comply with the WPA and with these guidelines.

Internal and external whistleblowers

A person making a protected disclosure may be employed by a public body or may be a member of the public. Public bodies are obliged to protect both internal and external whistleblowers from detrimental action taken in reprisal for the making of the disclosure. The management of these two types of whistleblower will, however, be different.

The main issue of difference is that internal whistleblowers are at risk of suffering reprisals in the workplace. A welfare manager must foster a supportive work environment and respond to any reports of intimidation or harassment.

Reprisals may also be taken against external whistleblowers. Public bodies should also appoint a welfare manager for an external whistleblower. A welfare manager of an internal or external whistleblower cannot be expected to go beyond what is reasonable for a public body in providing support to a whistleblower. The welfare manager should discuss the issue of reasonable expectations with the whistleblower.

Appointing a welfare manager

The senior management of a public body must take responsibility for the welfare of a whistleblower. The protected disclosure coordinator should appoint a welfare manager to monitor the needs of the whistleblower and to provide advice and support. Public bodies may wish to make use of an employee assistance program for this purpose. In most circumstances, a welfare manager will only be required where a disclosed matter proceeds to investigation. However, public bodies are obliged to protect all persons who make a protected disclosure, regardless of whether that disclosure is determined to be a public interest disclosure that warrants investigation.

The role of the welfare manager is to:

- examine the immediate welfare and protection needs of a whistleblower who has made a disclosure and seek to foster a supportive work environment

- advise the whistleblower of the legislative and administrative protections available to him or her
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure
- keep a contemporaneous record of all aspects of the case management of the whistleblower, including all contact and follow-up action
- endeavour to ensure that the expectations of the whistleblower are realistic.

The welfare manager must not divulge any details relating to the disclosed matter to any person other than the protected disclosure coordinator, the investigator or the chief executive officer. All meetings between the welfare manager and the whistleblower must be conducted discreetly to protect the confidentiality of the whistleblower.

Reporting back

Whistleblowers should be advised, in general terms, of the progress in investigating or otherwise dealing with their disclosures and the timeframes that apply. An individual should be nominated by the public body to be the point of contact for the whistleblower for the purposes of keeping him or her informed of this information. The officer responsible would normally be the protected disclosure coordinator, or the welfare manager. It should be a person who is readily accessible to the whistleblower and informed of the overall handling of the disclosed matter.

Section 83 of the WPA requires the public body to advise the whistleblower of the findings of any investigation and any action taken by a public body as a result.

Managing expectations

It is important to ensure the whistleblower's expectations are realistic. If a whistleblower develops unrealistically high expectations, dissatisfaction may result with either the way in which the public body has dealt with the disclosure, or the outcome of the investigation.

The whistleblower's expectations in relation to the handling of the disclosure should be discussed at the outset of the making of the disclosure. This can be done by the protected disclosure officer, the welfare manager or both. The whistleblower should be informed of the outcome of the assessment of their disclosure, what action the public body might be able to take, and the objective of any investigation.

Occurrence of detrimental action

If a whistleblower reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action apparently taken in reprisal for the making of the disclosure, the welfare manager or protected disclosure coordinator must:

- record the details of the incident
- advise the whistleblower of his or her rights under the WPA.

Where the detrimental action is of a serious nature likely to amount to a criminal offence, consideration should be given to reporting the matter to the police and the Ombudsman.

The taking of detrimental action in reprisal for making a disclosure can be an offence against the WPA, as well as grounds for making a further disclosure. Where such detrimental action is reported, the allegation must be assessed as a new disclosure under the WPA. A public body must be extremely cautious about conducting enquiries or gathering information concerning an allegation of detrimental action, as a criminal offence may have been committed and any informal investigation may compromise the integrity of evidence. If the Ombudsman subsequently determines the matter to be a public interest disclosure, the Ombudsman may refer it to the Chief Commissioner of Police for investigation.

Consequences for whistleblowers implicated in improper conduct or disciplinary matters

The management of the welfare of an internal or external whistleblower may become complicated when the whistleblower is implicated in misconduct, whether that misconduct is related to the disclosure made or not. The general obligations of a public body in relation to handling and investigating a disclosure and protecting the whistleblower still apply. A whistleblower is not protected from the reasonable consequences flowing from any involvement in improper conduct. Section 17 of the WPA specifically provides that a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under the WPA. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

Disciplinary or other action against a whistleblower invariably creates the perception that it is being taken in retaliation for the disclosure. In all cases where disciplinary or other action is being contemplated, the chief executive officer or other responsible public officer must be able to clearly demonstrate that:

- his or her intention to proceed with disciplinary action is not causally connected to the making of the disclosure
- there are good and sufficient grounds that would fully justify action against any non-whistleblower in the same circumstances
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

If a public body cannot demonstrate that the above preconditions have been met, it leaves itself open to allegations of taking detrimental action against a whistleblower in reprisal for making the disclosure. A public body may wish to obtain legal advice prior to taking any action against the whistleblower.

Great care should be taken to document the process thoroughly including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for making the disclosure. The whistleblower should be clearly advised of the proposed action to be taken and of any mitigating factors that have been taken into account.

Errors to be avoided

The Queensland Criminal Justice Commission (CJC) compiled the following list of errors to be avoided in managing whistleblowers. It can be found on page 29 of the CJC's publication *Exposing corruption: a CJC guide to whistleblowing in Queensland*, published in October 1996.

The following organisational errors in the management of whistleblower disclosures occur more often than many may think and can have serious consequences. The actions have the potential to effectively contaminate the relationship between the whistleblower and the investigating authority and prejudice the integrity of any investigation:

1. Fail to observe the confidentiality of a disclosure by having information pass through a series of hands with few checks as to who has, or who should view the material.
2. Tell anyone who asks about the details and investigations of the disclosure.
3. Report to the workgroup who the whistleblower is, what the allegations are, and whom they are about.
4. Interpret natural justice to mean a person has an immediate right to know when a disclosure has been made about them and who made it.
5. Always as a first step, ask the person who is the subject of the disclosure about the allegation.
6. Forward the disclosure and action on it through the chain of command so as many people know about the matter as possible.
7. Forewarn the person who is the subject of an allegation in plenty of time about the allegations and provide them with investigation details.
8. Allow personal biases about the personality of the whistleblower to influence the assessment of a disclosure.
9. Do not take seriously the concerns expressed by a whistleblower about the possibility of reprisal.
10. Ignore potential conflicts of interest when deciding who should assess or investigate the disclosure.
11. Allow political considerations to influence the assessment of a disclosure or the findings of an investigation.
12. Delay the investigation for as long as possible so any evidence of wrongdoing can be altered or destroyed.

The above issues are equally relevant to whistleblowing in Victoria.

Investigations

The WPA requires the Ombudsman to determine the appropriate way to investigate a public interest disclosure. The Ombudsman will notify public bodies and whistleblowers of the determination made and whether an investigation will take place. Once a public body has referred a disclosure to the Ombudsman to determine if it is a public interest disclosure, the public body must not commence an investigation until instructed by the Ombudsman.

Where the Ombudsman has determined a matter not to be a public interest disclosure, he will advise the person who made the disclosure of the option of having the matter dealt with as a complaint under the *Ombudsman Act 1973* or the *Police Regulation Act 1958*. A person must request that the matter be dealt with as a complaint under either Act within 28 days of being given notice. Allegations or complaints that are determined not to be a public interest disclosure may still warrant investigation and a response by a public body under its normal complaint handling mechanisms.

Who can carry out the investigation?

The Ombudsman will either investigate a public interest disclosure or refer the investigation to one of the following officers or bodies, where it is appropriate to do so:

- Chief Commissioner of Police
- Auditor-General
- Director, Police Integrity
- other bodies prescribed in Regulation 9 in the regulations
- a public body, where the matter relates to an employee, officer or member of that body.

Where the Ombudsman refers an investigation, the Ombudsman must notify the person who made the disclosure of the referral.

Investigation by a public body

Where the Ombudsman has referred an investigation to a public body, the public body must carry out the investigation in compliance with Part 6 of the WPA, these guidelines and the established procedures of that public body.

The objectives of an investigation should be to:

- collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment
- consider the information collected and draw conclusions objectively and impartially
- maintain procedural fairness in the treatment of witnesses and the person who is the subject of the disclosure
- make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.

It is prudent to maintain regular contact with the whistleblower so he or she is kept informed of the progress of the investigation. Regular communication is an important way to reassure whistleblowers that their disclosures are being taken seriously.

Terms of reference and authorisation

Before commencing an investigation, a public body should draw up terms of reference and obtain authorisation for those terms from the chief executive officer or protected disclosure coordinator. The setting of terms of reference is crucial to the successful conduct of enquiries as they establish a focus and set limits for an investigation. Terms of reference oblige a public body to clarify the key issues to which the disclosure gives rise.

The terms of reference should set a date by which the investigation report is to be concluded. They should take into account the practicalities of the investigation and ensure sufficient resources are available to the investigator to complete the investigation within the time set. A mechanism should be established to enable the extension of time where reasonable circumstances exist. Such extensions of time should only be approved by the protected disclosure coordinator or the chief executive officer. Any changes to the terms of reference, investigation plan and times of completion should be reported to Ombudsman Victoria.

The terms of reference should provide for the adequate monitoring of the investigation by the protected disclosure coordinator or the chief executive officer of the public body. Monitoring should ensure the investigation maintains its relevance to the allegations and is being carried out effectively and efficiently.

Preparation of investigation plan

The investigator should prepare an investigation plan. The plan will require the elements of the allegation to be clarified. It should list the issues to be substantiated and describe the avenue of enquiry. A plan should address the following issues:

- What is being alleged?
- What are the possible findings or offences?
- What are the facts in issue?
- How is the investigation to be conducted?
- What resources are required?

Investigating officers should obtain all documents relevant to the allegation prior to conducting interviews. This familiarises the investigator with the issues of the case and allows witnesses, including the whistleblower, to identify and explain documents during the interview process.

At the commencement of the investigation the whistleblower should be:

- notified by the investigator that he or she has been appointed to conduct the investigation
- asked to clarify any matters
- asked to provide any additional material he or she might have.

The investigator needs to be sensitive to the whistleblower's possible fear of reprisals, and to be aware of the statutory protections provided to the whistleblower.

The investigator

The investigator will be responsible for carrying out an investigation into a disclosure where the Ombudsman has referred a matter to the public body. An investigator may be a person from within an organisation, or a consultant engaged for that purpose. The public body must ensure that any investigator is aware of the provisions of the WPA, including the criminal penalties that apply for breaches of the WPA. A public body should ensure a contracted investigator signs a form confirming their understanding of the WPA prior to the commencement of an investigation.

Monitoring by the Ombudsman

Part 6 of the WPA requires the Ombudsman to monitor investigations conducted by public bodies. The public body must provide information about the progress of its investigation to the Ombudsman or to the whistleblower at their request. The information must be provided within 28 days of the request. A public body is not obliged to provide information to the whistleblower where that information has already been given to the whistleblower, or where giving the information would endanger the safety of any person or prejudice the outcome, or affect the course, of the investigation.

If the Ombudsman is not satisfied with an investigation by a public body, the Ombudsman may take it over. If the whistleblower has reasonable grounds to be dissatisfied with the investigation, they may request the Ombudsman to conduct the investigation.

The public body should also provide the Ombudsman with a copy of its terms of reference and investigation plan at the commencement of the investigation. This information should be provided to the Ombudsman within one month of the referral of the investigation to the public body. The public body should also keep the Ombudsman regularly informed of the progress of the investigation. The public body should advise the Ombudsman of any difficulties or problems encountered in its investigation.

Natural justice

The principles of natural justice should be followed in any investigation of a public interest disclosure. The principles of natural justice include procedural fairness and aim to ensure a fair decision is reached by an objective decision-maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.

Public bodies should have regard to the following issues in ensuring procedural fairness:

- The person who is the subject of the disclosure is entitled to know the allegations made against him or her and must be given the right to respond. (This does not mean the person must be advised of the allegation as soon as the disclosure is received or the investigation has commenced.)
- If the investigator is contemplating making a report adverse to the interests of any person, that person must be given the opportunity to respond to the criticisms and to put forward further material that may influence the outcome of the report and that person's defence should be fairly set out in the report.
- All relevant parties to a matter should be heard and all submissions should be considered.
- The investigator or any decision-maker should not have a personal or direct interest in the matter being investigated.
- All proceedings must be carried out fairly and without bias. Care should be taken to exclude perceived bias from the process.
- The investigator must be impartial in assessing the credibility of the whistleblower and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

Recording information

It is important that contemporaneous notes are made of all discussions, phone calls and interviews. It is recommended that all interviews with witnesses be recorded to enable an accurate record of the interview to be kept. The investigator should ask witnesses to identify themselves at the commencement of interviews for the purposes of the taped record.

Public bodies may also accept written statements from a witness. The statement should include the witness's name, address and occupation, and each page should be signed. The last page should be signed below the final paragraph.

Confidentiality requirements

Confidentiality requirements require that strict security should surround the conduct of an investigation into a public interest disclosure. Disclosures should be assessed and investigated discreetly, with a strong emphasis on maintaining confidentiality of both the whistleblower and the person who is the subject of the disclosure.

All interviews should be conducted in private, and care should be taken to avoid any unauthorised divulging of information about the disclosed matter during the investigation process. All information obtained should be placed on a confidential file that is stored securely in a location only accessible by authorised officers. Any tapes or other relevant materials should also be kept in this secure location.

Witnesses should not be provided with a copy of recordings of interviews. If requested, it is acceptable for investigators to allow witnesses to listen to a recording of the interview after the event, so as to clarify what was said. However, the investigator should oversee this process and be present throughout the listening to any recordings.

Generally, there is no objection to witnesses or their support persons, such as legal representatives, taking notes throughout the interview.

Witnesses should be advised that information about the matter is confidential, and that they may be in breach of the WPA if they divulge the information to a third party.

Whistleblowers will often be anxious about the prospect of information about their disclosures being revealed. The investigator should assure the whistleblower that his or her identity will be protected as much as possible at all times. The whistleblower should be advised of the protections afforded by the WPA and of the procedures that are in place to ensure confidentiality will be maintained. Any interviews with the whistleblower should be arranged discreetly and, if possible, away from the workplace to avoid the whistleblower being identified. It may assist the investigation if witnesses are informed in general terms of the reason for the investigation.

However, there will be cases where it will be impossible to protect the identity of the whistleblower. For example, a case may arise where it is well known within an organisation that only the whistleblower could have access to the information in the disclosure. In these circumstances, the whistleblower must be made aware that to investigate a matter, his or her identity will probably be revealed. While confidentiality may not be able to be maintained, the whistleblower is still afforded the protections in the WPA and should have a welfare manager appointed. The principal officer of a public body remains responsible for ensuring that no detrimental action is taken against the whistleblower.

Management of the person against whom a disclosure is made

A public body must also manage the person who is the subject of a protected disclosure. This person will always be an employee, member or officer of the public body. Procedures should be established to avoid unnecessary harm to that person, particularly as an investigation might exonerate the officer from any wrongdoing. Public bodies may appoint an internal contact or make use of an employee assistance program to ensure persons who are the subject of disclosures are given the appropriate support.

All staff, and in particular the person who is the subject of the disclosure, should be given adequate information as to their rights and obligations under the WPA, the public body's internal reporting system and any other relevant law or code of conduct.

Powers with respect to witnesses

The WPA does not provide public bodies with the power to compel witnesses to attend interviews, to answer questions or to produce documents. However, the chief executive officer of a public body and his or her delegates have the power to give a lawful instruction to an employee to attend a meeting at a particular time and to produce official documents. The chief executive officer and his or her delegates are entitled to ask an employee any relevant question concerning his or her employment. An employee may decline to answer any question if the answer would tend to incriminate him or her in relation to a criminal or disciplinary offence.

Investigators should carry out interviews with employees, officials or members in a professional manner.

If an investigator wishes to interview a person employed by another public body or a member of the public, the investigator may only carry out the interview where this person has provided consent. Minors may only be interviewed with the permission of, and in the presence of, a parent or guardian, whose particulars should be documented in the notes of the interview.

Legal representation and other support to witnesses

It is at the discretion of the investigator to determine whether it is appropriate for a witness to have legal representation or a support person present during an interview. If a witness has a special need for another person to be with them, permission should be granted. Where legal representation or another support person is present, their role is to advise or support the witness, not to answer questions for the witness.

Immunity from disciplinary action

A situation may arise where a witness or the whistleblower seeks immunity from disciplinary action for providing information about improper conduct in which they are implicated. In some circumstances, it may be appropriate for the public body to exercise discretion in relation to disciplinary action where an employee comes forward with a disclosure. This will depend on the nature and seriousness of the witness's misconduct. Any decision concerning immunity from disciplinary action must always be made by those officers with the power to take disciplinary action. This should be either the chief executive officer or the protected disclosure coordinator, and not the investigator.

Criminal conduct

The Ombudsman will not refer disclosures alleging serious criminal offences to a public body for investigation. Such disclosures will usually be referred to the Chief Commissioner of Police. However, it is possible during an investigation by a public body that facts are uncovered that reveal possible criminal offences. It is important in these circumstances for the public body to suspend the investigation and to seek the advice of the Ombudsman as to the future of the matter.

Problems with an investigation conducted by a public body

Section 73 of the WPA requires that if a public body considers its own investigation is being obstructed, it must refer the investigation to the Ombudsman. Obstruction may include a refusal to attend an interview or to provide documents.

The Ombudsman has powers to summon a person to attend an interview to answer questions and/or to produce documents. Non-compliance with such a summons is a criminal offence. Section 60 also establishes an offence if a person obstructs an investigation being conducted by the Ombudsman.

The Ombudsman may take over the investigation

There are three circumstances in which the Ombudsman may take over an investigation by a public body:

1. A public body considers its own investigation is being obstructed. If the public body refers an investigation back to the Ombudsman, it must where possible notify the person who made the disclosure of the referral.
2. The person who made the disclosure may request the Ombudsman to investigate the disclosed matter if the:
 - public body fails to carry out the investigation
 - person is dissatisfied with the manner in which the public body is carrying out the investigation
 - person is dissatisfied with the steps taken by the public body after the investigation of the matter
 - public body has failed to comply with the reporting and remedial action requirements set out in section 81 of the WPA.
3. The Ombudsman is not satisfied with the investigation by the public body. Where the Ombudsman takes over an investigation, the Ombudsman must give notice to the person who made the disclosure, unless it was made anonymously.

Where the Ombudsman takes over an investigation, the public body must give to the Ombudsman in writing any information that it has and any findings, preliminary or otherwise, that it has made in respect to the matter. The Ombudsman may:

- commence a new investigation
- complete the investigation
- refer the investigation back to the public body with recommendations
- refer the matter to another public body to investigate.

Action on completion of the investigation

Sections 81 to 83 of the WPA set out the requirements upon a public body at the conclusion of an investigation. The public body must report its findings to the Ombudsman whether the allegations are substantiated or not.

If any of the allegations are substantiated, or the public body takes any action, it must report its findings to the relevant Minister, or the relevant council in the case of council employees.

The WPA also requires the public body to inform the whistleblower of the findings of the investigation and any steps taken as a result. This does not mean that the public agency must provide the whistleblower with the complete investigation report, as in many circumstances it is not appropriate to do so. If the public body is unaware of the identity of the whistleblower and it is known by the Ombudsman, the Ombudsman will inform the whistleblower of the findings and action taken.

The WPA requires the public body to take all reasonable steps to prevent the conduct from continuing or recurring, and may take action to remedy any harm or loss arising from the conduct. Action may include disciplinary proceedings.

Where the allegations in a disclosure have been investigated, and the person who is the subject of the disclosure is aware of the allegations or the fact of the investigation, he or she should be formally advised of the outcome of the investigation.

If the allegations are clearly wrong or unsubstantiated, the person who is the subject of the disclosure is entitled to the support of the public body and its senior management. If the matter has been publicly disclosed, it may be appropriate for the public body to issue a letter of support setting out that the allegations were clearly wrong or unsubstantiated.

Collating and publishing statistics

Section 104 of the WPA requires that all public bodies that publish an annual report or report of operations must include in that report its current whistleblower procedures, and a range of details about protected disclosures in the reporting year. These details include:

- the number and types of disclosures made to the public body during the year
- the number of disclosures referred to the Ombudsman for determination as to whether they are public interest disclosures
- the number and types of disclosed matters referred to the public body by the Ombudsman for investigation
- the number and types of disclosed matters referred by the public body to the Ombudsman for investigation
- the number and types of investigations taken over from the public body by the Ombudsman

- the number of requests made by a whistleblower to the Ombudsman to take over an investigation by the public body
- the number and types of disclosed matters that the public body has declined to investigate
- the number and types of disclosed matters that were substantiated upon investigation and the action taken on completion of the investigation
- any recommendation made by the Ombudsman under the WPA that relates to the public body.

Describing the type of disclosure requires a statement about the nature of the disclosure; for example, an allegation of bribery or fraudulent use of public funds.

It is the responsibility of the protected disclosure coordinator to ensure that confidential records are kept to enable accurate reporting as required by the WPA.

General information

The role of the Ombudsman

The role of the Ombudsman under the WPA is to:

- determine whether disclosures are public interest disclosures
- investigate matters disclosed in public interest disclosures
- prepare and publish guidelines for the procedures to be followed by public bodies in relation to the WPA
- monitor investigations by public bodies
- monitor investigations by the Chief Commissioner of Police
- review the procedures and implementation of public bodies in relation to the WPA
- report findings of an investigation to Parliament as required under the WPA.

Freedom of information

Section 109 of the WPA excludes the application of the *Freedom of Information Act 1982* to any document that relates to a disclosure made under the WPA. Public bodies should ensure that any of its officers handling freedom of information requests are aware of this section. A public body should contact the Ombudsman prior to providing any document originating from the Ombudsman under the Freedom of Information Act.

Ombudsman's Reports 2004-12

2012

Whistleblowers Protection Act 2001 Investigation into allegations of detrimental action involving Victoria Police
June 2012

Own motion investigation into Greyhound Racing Victoria
June 2012

The death of Mr Carl Williams at HM Barwon Prison – investigation into Corrections Victoria
April 2012

Whistleblowers Protection Act 2001 Conflict of interest, poor governance and bullying at the City of Glen Eira Council
March 2012

Investigation into the storage and management of ward records by the Department of Human Services
March 2012

2011

Investigation into the Foodbowl Modernisation Project and related matters
November 2011

Investigation into ICT-enabled projects
November 2011

Investigation into how universities deal with international students
October 2011

Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region)
October 2011

Investigation into the Office of Police Integrity's handling of a complaint
October 2011

SafeStreets Documents - Investigations into Victoria Police's Handling of Freedom of Information request
September 2011

Investigation into prisoner access to health care
August 2011

Investigation into an allegation about Victoria Police crime statistics
June 2011

Corrupt conduct by public officers in procurement
June 2011

Investigation into record keeping failures by WorkSafe agents
May 2011

Whistleblowers Protection Act 2001 Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee
May 2011

Ombudsman investigation – Assault of a Disability Services client by Department of Human Services staff
March 2011

The Brotherhood – Risks associated with secretive organisations
March 2011

Ombudsman investigation into the probity of The Hotel Windsor redevelopment
February 2011

Whistleblowers Protection Act 2001 Investigation into the failure of agencies to manage registered sex offenders
February 2011

Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct by a councillor at the Hume City Council
February 2011

2010

Investigation into the issuing of infringement notices to public transport users and related matters
December 2010

Ombudsman's recommendations second report on their implementation
October 2010

Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct
October 2010

Whistleblowers Protection Act 2001 Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) – Aerospace
July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments
June 2010

Own motion investigation into Child Protection – out of home care
May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat
April 2010

Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey
March 2010

Ombudsman's recommendations – Report on their implementation
February 2010

2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre
December 2009

Own motion investigation into the Department of Human Services – Child Protection Program
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police
November 2009

Brookland Greens Estate – Investigation into methane gas leaks
October 2009

A report of investigations into the City of Port Phillip
August 2009

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing
July 2009

Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council
June 2009

Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council
May 2009

Investigation into corporate governance at Moorabool Shire Council
April 2009

Crime statistics and police numbers
March 2009

2008

Whistleblowers Protection Act 2001 Report of an investigation into issues at Bayside Health
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services
August 2008

Investigation into contraband entering a prison and related issues
June 2008

Conflict of interest in local government
March 2008

Conflict of interest in the public sector
March 2008

2007

Investigation into VicRoads' driver licensing arrangements
December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters
November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre
November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007
October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint
April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong
February 2007

2006

Conditions for persons in custody
July 2006

Review of the *Freedom of Information Act 1982*
June 2006

Investigation into parking infringement notices issued by Melbourne City Council
April 2006

Improving responses to allegations involving sexual assault
March 2006

2005

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons
December 2005

Whistleblowers Protection Act 2001 Ombudsman's guidelines
October 2005

Own motion investigation into VicRoads registration practices
June 2005

Complaint handling guide for the Victorian Public Sector 2005
May 2005

Review of the *Freedom of Information Act 1982*
Discussion paper
May 2005

Review of complaint handling in Victorian universities
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton
March 2005

Discussion paper on improving responses to sexual abuse allegations
February 2005

2004

Essendon Rental Housing Co-operative (ERHC)
December 2004

Complaint about the Medical Practitioners Board of Victoria
December 2004

Ceja task force drug related corruption – second interim report of Ombudsman Victoria
June 2004