

Ombudsman Victoria Annual Report 2010 – Part I



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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 I of the annual report of the Ombudsman for the year 2009-10 which relates to my statutory functions.

In order to provide Parliament with a timely report of the activities of my office over the past year, I am tabling my report in two parts:

Part I – dealing with my statutory functions

Part II – providing statistical details and the financial statements for my office.

I shall be tabling Part II of the annual report shortly.



G E Brouwer

OMBUDSMAN



ombudsman victoria's mission

to promote fairness, integrity,
respect for human rights and
administrative excellence in
the victorian public sector



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YEAR IN REVIEW

Overview

Ombudsman Victoria has been in existence for 37 years and is distinguished by its independence. My office was created with a view to balancing the adversarial nature of the legal system by empowering the Ombudsman to use inquisitorial measures to ascertain the facts surrounding issues of public importance and concern without the restrictions of traditional court proceedings. The Ombudsman's inquisitorial powers provide an effective, fast and accessible oversight of administrative actions and decisions. I have these powers in common with all anti-corruption bodies and similar integrity agencies charged with the responsibility of finding out the truth in circumstances where improper conduct is suspected.

My role is essentially to provide a check on the administrative decisions made in the public sector which impact on the life of the community and individuals. My mission is to promote fairness, integrity, respect for human rights and administrative excellence in the Victorian public sector. This is achieved by resolving individual complaints which are brought to the attention of my office by members of the public; by influencing systemic change within the public sector based on the recommendations made by my office; and through cultural change.

Workload

The past year has been the busiest in the history of Ombudsman Victoria. In all, my office received a total of 21,074 approaches. Complaints in my jurisdiction increased by 13.2 per cent to a total of 11,737 complaints for the financial year. My office is a small one with less than 60 staff helping individuals deal with issues about matters of federal, interstate, private and state administration, and enquiring, investigating and reporting on the outcome of many of those matters. My office deals with a wide range of issues and activities across a broad range of agencies.

At the same time, I have continued my focus of reporting on significant investigations to Parliament by tabling 11 reports this financial year on a wide range of subjects including the handling of drug exhibits; the child protection system; methane gas leaks at the Brookland Greens Estate; and the probity of the Kew Residential Services and St Kilda Triangle developments.

My core role continues to be investigating complaints from citizens about the administrative actions of government agencies, including local government. With the significant increase in complaints and their complexity, together with limited resources, my office must be as efficient as possible to meet the ever growing workload. Meeting this demand is becoming increasingly difficult within the constraints of current resources.

The past year has been the busiest in the history of Ombudsman Victoria. In all, my office received a total of 21,074 approaches. Complaints in my jurisdiction increased by 13.2 per cent to a total of 11,737 complaints for the financial year.

A key element of the Ombudsman's effectiveness is the power to investigate all administrative actions, from minor errors and maladministration and misconduct, to serious malfeasance and corrupt conduct. The Ombudsman is not hampered as are interstate anti-corruption bodies by having to meet definitional thresholds that require actions to be criminal or dismissal offences before investigations can commence. Staff from one interstate anti-corruption agency during a recent visit commented that these thresholds restricted its ability to investigate a broad range of issues and that it was unable to report as comprehensively as I have been able to do. It is also the case that allegations which at face value appear minor might reveal significant corruption elements during the course of an enquiry or investigation, and of course, on occasions that situation is reversed. The flexibility inherent in the Ombudsman Act and the broad definition of 'administrative action' has enabled me to handle matters across a wide range of issues and complexity.

A crucial element in any legislation to maintain integrity and investigate allegations of wrongdoing is the definition of how that wrongdoing is to be cast. Too narrow a definition can and will hamper and restrict investigators - not proceeding with an investigation, limiting the scope of an investigation or necessitating the cessation of an investigation where issues are subsequently found not to meet the definitional threshold.

The *Whistleblowers Protection Act 2001* also entrusts me with the responsibility for addressing all disclosures of improper conduct, including corrupt conduct, by public officers and public bodies in Victoria, including elected local councillors. It also provides protections for whistleblowers. Whistleblowers perform an important role by ensuring that allegations of serious wrongdoing by public officials are reported and brought to light. In my view, whistleblowing should be encouraged by all public sector bodies and seen as a means of demonstrating an agency's commitment to accountability, integrity and good public administration. In my experience some public sector bodies are still yet to recognise the value of whistleblowing and continue to discourage reporting.

The jurisdiction afforded me through those two acts – the Ombudsman and Whistleblowers Protection Acts – has, apart from some gaps, given me the powers and coverage to investigate allegations about maladministration and corruption across a significant proportion of the public sector.

It also provides me with significant intelligence about agencies, their cultures, attitudes and performance, and the opportunity to compare and contrast how agencies undertake their statutory responsibilities, thereby promoting the efficiencies and effectiveness of one agency for others to pursue.

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In my experience some public sector bodies are still yet to recognise the value of whistleblowing and continue to discourage reporting.

My reports to Parliament shows that the coverage of my reports equals the breadth and depth of those of any of the anti-corruption bodies interstate.

The track record of my office over recent years in dealing with a broad range of issues speaks for itself. A summary of my reports to Parliament shows that the coverage of my reports equals the breadth and depth of those of any of the anti-corruption bodies interstate. The following is a summary of public reports of investigations on non-policing matters conducted by my office since 2005, compared with the anti-corruption bodies interstate. In summary, between 2005 and 2010, my office has produced 32 reports, compared with 27 in New South Wales, 15 in Queensland and 22 in Western Australia.

Given that my office, in the absence of an anti-corruption body, has undertaken this role in Victoria, the evidence suggests that it has done so successfully despite the limitations in powers and the gaps in coverage. Over the past six years, my office has gathered significant intelligence on government agencies which together with the information I have available dealing with complaints over the past thirty years, gives me a good insight into public administration across the Victorian public sector.

Table 1: Summary of public reports on non-police matters – January 2005 to June 2010

	Ombudsman Victoria	Independent Commission Against Corruption (NSW)	Crime and Misconduct Commission (QLD)	Corruption and Crime Commission (WA)
Registration and licensing	<ul style="list-style-type: none"> Licensing issues, Dec 2007 VicRoads' registration practices, June 2005 (own motion) 	<ul style="list-style-type: none"> Licensing issues, Sept 2007 	<ul style="list-style-type: none"> Regulating outcall prostitution, Oct 2006 	
Contracts and tendering	<ul style="list-style-type: none"> Office of Housing (OOH) tender process, Oct 2007 Probity in procurement in hospitals, June 2008 Probity controls in public hospitals, August 2008 Tendering and contracting of information and technology services within Victoria Police, Nov 2009 	<ul style="list-style-type: none"> RailCorp contracts, June 2006 RailCorp, Sept 2008 Tendering and payments in relation to NSW Fire Brigades capital works projects, Dec 2008 Corrupt conduct associated with tendering for Transgrid work (Operation Tambo), Sept 2009 		
Local government	<ul style="list-style-type: none"> City of Greater Geelong planning procedures, Feb 2007 Corporate Governance, Moorabool Shire Council, April 2009 City of Port Phillip, Aug 2009 Brookland Greens Estate – investigation into methane gas leaks, Oct 2009 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 	<ul style="list-style-type: none"> Orange Grove Centre, Aug 2005 		
Improper conduct	<ul style="list-style-type: none"> Shire of Melton, March 2005 Essendon Rental Housing Cooperative, Dec 2005 Disclosure about WorkSafe and Victorian Police handling a bullying and harassment complaint, 2007 Report of an investigation into issues at Bayside Health, October 2008 	<ul style="list-style-type: none"> Wollongong City Council, Oct 2008 Department of Housing, Jan 2008 Wollongong City Council, Dec 2007 Bankstown & Strathfield Council, June 2005 Investigation into bribery and fraud at RailCorp – eight reports, Aug – Dec 2008 Corruption allegations affecting Wollongong City Council, Oct 2008 	<ul style="list-style-type: none"> Appointment of a nursing director, Oct 2006 Palm Island bribery, Mar 2005 Palm Island travel arrangements, Mar 2005 Appointment of Information Commissioner, Jul 2005 Allegations concerning the Hon Gordon Nuttall, Dec 2005 Allegation against the Hon TM Mackenroth in respect of land at Elimbah East, Sept 2009 	<ul style="list-style-type: none"> Public Officers in relation to an investigation, Oct 2008 Land at Whitby, Oct 2008 City of Cockburn, Sept 2008 Alleged misconduct by MLAs, June 2008 Smiths Beach development, Oct 2007, Aug 2009 Sexual contact with children by employees of the Department of Education and Training, Oct 2006

	Ombudsman Victoria	Independent Commission Against Corruption (NSW)	Crime and Misconduct Commission (QLD)	Corruption and Crime Commission (WA)
	<ul style="list-style-type: none"> Alleged improper conduct of Councillors at Brimbank City Council, May 2009 Conflict of interest and abuse of power by a Building Inspector at Brimbank City Council, June 2009 Disclosure of information by a councillor of the City of Casey, March 2010 	<ul style="list-style-type: none"> Attempt to obtain entry to a selective public school through payment of money, Feb 2009 Attempts to improperly influence a Ku-ring-gai Council officer, Feb 2009 Attempts to improperly influence Warringah Council officers, June 2009 Solicitation and receipt of corrupt payments from a Railcorp contractor (Operation Chaucer), Sept 2009 Misuse of Sydney Ferries corporate credit cards (Operation Argyle), Nov 2009 Corruption in the provision and certification of security industry training (Operation Columba), Dec 2009 Corrupt conduct affecting the administration of justice in the Wagga Wagga and other local court areas (Operation Segomo), Mar 2010 Allegations of corruption made by or attributed to Michael McGurk (Operation Calpurnia), Mar 2010 Offer of a corrupt payment to an officer of Strathfield Municipal Council, May 2010 Use of TAFE funds to pay for work on a dog kennel complex, June 2010 		<ul style="list-style-type: none"> Mr John D'Orazio MLA, March & May 2006 Department of Treasury leaks, June 2005 Riverton election, May 2005 <p>Alleged misconduct concerning:</p> <ul style="list-style-type: none"> Mr Stephen Lee, Mayor of the City of Cockburn, Sept 2008 rezoning of land at Whitby, Oct 2008 in connection with the activities of lobbyists and other persons: the Hon Anthony David McRae MLA and Mr Rewi Edward Lyall, Nov 2008 in connection with the activities of lobbyists and other persons: comments made by Mr Stanley John Halden to a journalist about disclosures of confidential Cabinet information, Mar 2009 by employees of Landgate as a result of associations with external clients involved in the property development industry, June 2009 in connection with the activities of lobbyists and other persons – Fortescue Metals Group Ltd, Sept 2009 by councillors or employees of the City of Bayswater, Nov 2009 in connection with the activities of lobbyists and other persons – a ministerial decision in relation to applications for a mining tenement at Yeelirrie, Nov 2009 at the City of Wanneroo, Dec 2009

	Ombudsman Victoria	Independent Commission Against Corruption (NSW)	Crime and Misconduct Commission (QLD)	Corruption and Crime Commission (WA)
				<ul style="list-style-type: none"> in relation to the activities of an associate to a judge of the District Court of Western Australia, March 2010
Conflict of interest	<ul style="list-style-type: none"> Conflict of interest in local government, March 2008 Conflict of interest in the public sector, March 2008 Conflict of interest and abuse of power by a Building Inspector at Brimbank City Council, June 2009 	<ul style="list-style-type: none"> Burwood Council, Aug 2007 Strathfield Council, June 2005 	<ul style="list-style-type: none"> Douglas Shire Council, Oct 2006 Gold Coast Council election, May 2006 Public Duty, private interests: issues in pre-separation conduct and post-separation employment for the Queensland public sector, Dec 2008 	<ul style="list-style-type: none"> CALM officer involvement in Oil Mallee Industry, June 2005
Corrections	<ul style="list-style-type: none"> Contraband entering prisons, June 2008 Use of excessive force, Nov 2007 Conditions in custody, July 2006 Transfer of prisoner property, Dec 2005 	<ul style="list-style-type: none"> Inmate assault, June 2006 	<ul style="list-style-type: none"> How the criminal justice system handles allegations of sexual abuse, March 2008 Drugs and crime, March 2008 	
Universities	<ul style="list-style-type: none"> Complaint handling, May 2005 	<ul style="list-style-type: none"> Handling of plagiarism allegations, June 2005 		
Confidential government information	<ul style="list-style-type: none"> Disclosure of electronic communications, Oct 2007 	<ul style="list-style-type: none"> Leaking of draft cabinet minutes, April 2006 		<ul style="list-style-type: none"> Protecting personal data in the Public Sector, Sept 2005
Administrative action	<ul style="list-style-type: none"> Crime Statistics and police numbers, March 2009 The Transport Accident Commission's and the Victorian WorkCover Authority's admin process for medical practitioner billing, July 2009 Handling of drug exhibits at the Victoria Police Forensic Services Centre, Dec 2009 		<ul style="list-style-type: none"> Financial management guidelines for the Office of the Speaker, June 2005 2009 Southeast Queensland Regional Plan, including land at Palmwoods, Nov 2009 	<ul style="list-style-type: none"> Issues relating to record keeping in the Ministerial Office of the Hon John James Mansell Bowler MLA, Nov 2008
Child protection	<ul style="list-style-type: none"> Department of Human Services – child protection program, Nov 2009 Investigation into child protection – out of home care, May 2010 		<ul style="list-style-type: none"> Reforming child protection in Queensland, June 2007 	

I only report the outcomes of my investigations to Parliament in a fraction of the cases I investigate. For the most part, I make my recommendations to agency heads and where appropriate to the responsible Minister. It is only where I consider it in the public interest that I report to Parliament as a whole. The cases I reported to Parliament in 2009-10 were:

- *An investigation into the Transport Accident Commission's and the Victorian Workcover Authority's administrative processes for medical practitioner billing, July 2009*
- *A report of investigations into the City of Port Phillip, August 2009*
- *Brookland Greens Estate – Investigation into methane gas leaks, October 2009*
- *Own motion investigation into the tendering and contracting of information and technology services within Victoria Police, November 2009*
- *Own motion investigation into the Department of Human Services – Child Protection Program, November 2009*
- *Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre, December 2009*
- *Ombudsman's recommendations – Report on their implementation, February 2010*
- *Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey, March 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*
- *Own motion investigation into Child Protection – out of home care, May 2010*
- *Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments, June 2010.*¹

¹ An addendum to this report is necessary as, in paragraphs 586, 589 and 591, I indicated that Mr Oulton had lodged a declaration of private interest before 30 June 2005 that was available for inspection by the Probity Auditor. I am now satisfied that Mr Oulton had not lodged such a declaration before that date.

A brief comparison of the number of investigation reports tabled in Parliament or made public over the past two years by other statutory Ombudsmen offices interstate shows:

Table 2		
Office	No. investigation reports	No. of staff (as at 30 June 2009)
Commonwealth Ombudsman	38	171
NSW Ombudsman	7	170.48
Queensland Ombudsman	5	57.1
WA Ombudsman	1	45
Ombudsman Victoria	16	55.62

Own motion investigations and enquiries

The use of my own motion powers plays a significant role in influencing systemic and cultural change in the public sector. Under section 14 of the Ombudsman Act I may conduct an investigation on my own motion or as a consequence of a complaint. An own motion investigation may be triggered by a number of complaints to my office which indicate a systemic or cultural issue within a government agency. My own motion investigations and the recommendations made have resulted in agencies making their processes more robust and effective, and less likely to provide opportunities for further maladministration or corruption. I may also conduct an enquiry on my own motion by virtue of subsection 13A.

My own motion investigations are important to highlight and report on issues which have not been addressed by agencies, often over a significant period of time or where the incidence of complaint is so high that there is clearly a problem with the implementation of the legislation. My investigation into the Department of Human Services (DHS) Child Protection Program² is a good example of this, where I had voiced my concerns about the abuse of children in care to the department and in my Annual Reports over a number of years and yet there appeared to be no improvement and child protection concerns remained a significant source of complaints to my office. Between 1 July 2007 and 30 June 2009 I received 838 complaints relating to child protection. I also recognised that the protection of children is an important issue to the Victorian public and my report was a means by which the community could judge the effectiveness of the child protection system. As a result, the department has improved its complaint management processes, now requires community service organisations to establish complaint handling policies and procedures and has taken other steps to address my concerns.

The use of my own motion powers plays a significant role in influencing systemic and cultural change in the public sector.

² Ombudsman Victoria, *Own motion investigation into the Department of Human Services – Child Protection Program*, November 2009.

My own motion investigations are important to highlight and report on issues which have not been addressed by agencies, often over a significant period of time.

An own motion investigation I conducted into Energy Safe Victoria (ESV) was initiated after I received a complaint about ESV failing to take appropriate action after a fire occurred in a caravan at a caravan dealership. The complainant alleged that the particular caravan model should have been subject to a national recall as he believed the fire was a result of a faulty gas connection to the caravan and posed a significant risk to public health and safety.

My investigation identified several systemic issues which impacted on ESV's ability to respond to and investigate complaints as well as monitor bodies it is responsible for regulating. In response to my investigation report and 12 recommendations, the newly appointed Director of ESV responded:

The report is detailed and comprehensive and it has given me a valuable opportunity to review the organisation and identify those areas where it can improve its efficiency and effectiveness. Without detracting from the seriousness or relevance of your recommendations, it is my considered view that the safety and health of the public has not been compromised at any stage.

ESV has made a concerted effort to reform its practices which is a positive outcome in terms of improving public safety. In particular, some of the practices that were implemented by ESV included:

- developing a new case management and audit process
- establishing a panel to assist with case reviews
- developing an information protocol and issuing it to all staff
- compiling an enforcement manual as a reference for staff
- developing a Memorandum of Understanding with the Plumbing Industry Commission.

In addition to addressing specific complaints, my investigations have also emphasised the need for cultural change within organisations to improve public administration. For example, my investigation into corporate governance at Moorabool Shire Council³ identified a culture which failed to fully promote accountable and transparent decision-making practices, particularly in relation to the conduct of Councillors. Cultural change requires a long term and on-going commitment by an agency to effect and maintain an environment in which public officers act ethically, demonstrate integrity, and have respect for human rights in all their responsibilities. The council has since introduced new policies, protocols and arrangements, including endorsement of a Councillor Code of Conduct, to give effect to a process to bring about change.

³ Ombudsman Victoria, *Investigation into Corporate Governance at Moorabool Shire Council*, April 2009.

I consider that my office has made a difference. As a result of my major investigations, I have observed a marked improvement by agencies in making their administrative processes more robust and effective, and less likely to provide opportunities for corruption and maladministration.

Some examples of these improvements in recent years include:

- improving conditions for prisoners in custody
- a greater understanding of conflict of interest in the public sector and local government
- improvements in the child protection system
- improved accountability for drug exhibits held by Victoria Police
- greater security of drivers' licences thereby reducing identity fraud
- improved accountability for crime statistics and police numbers in Victoria Police
- improved procedures in many councils on planning matters
- improved processes and accountability by doctors claiming on the Transport Accident Commission and WorkSafe
- local government councillors may no longer work for a Member of Parliament, thereby removing a conflict of interest and duty.

As a result of my major investigations, I have observed a marked improvement by agencies in making their administrative processes more robust and effective, and less likely to provide opportunities for corruption and maladministration.

Follow up of recommendations made by Ombudsman Victoria

In my 2008-09 annual report, I stated that in future I intended to report to Parliament on the progress made by agencies implementing recommendations arising from my investigations. In February 2010 I tabled my first report of *Ombudsman's recommendations – Report on their implementation*.⁴ The report examined the implementation of recommendations I made in 10 investigation reports tabled in Parliament between July 2006 and June 2008. In examining the implementation of my recommendations, I require evidence from agencies not only that they have given effect to the recommendations where they have stated that they have, but also of the impacts these changes have made on the agency. The 10 investigation reports, which cover a range of subjects and areas of government, were:

- *Conditions for persons in custody, July 2006*
- *Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong, February 2007*
- *Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint, April 2007*

⁴ Ombudsman Victoria, *Ombudsman's recommendations – Report on their implementation*, February 2010.

- *Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract, October 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 VicRoads' driver licensing arrangements, December 2007*
- *Conflict of interest in the public sector, March 2008*
- *Conflict of interest in local government, March 2008*
- *Investigation into contraband entering a prison and related issues, June 2008.*

At the time I tabled my report 93.5 per cent of the recommendations made were either accepted or under consideration by the agency concerned. Seventy-four per cent of the recommendations accepted by the relevant agencies had been implemented. The remaining recommendations mainly comprised significant undertakings that were to be implemented over several years.

I have found that agencies accept and implement my recommendations to improve internal practices and maintain public confidence. However, I note that there is generally a lack of systems in place for agencies to monitor the implementation of my recommendations and evaluate their impact. This is an area that may require improvement particularly as agencies are required to provide information to my office about the progress of the implementation of recommendations on an ongoing basis.

Local government

Complaints about local government continue to be the largest number of complaints received by my office with 2,933 complaints handled this year. Issues arising from my recent investigations into councils include:

- poor procurement and contract management practices
- failure of governance
- conflicts of interest
- staff misconduct
- improper disclosure of information
- poor planning decisions
- failure to appropriately manage council sites.

Complaints about local government continue to be the largest number of complaints received by my office with 2,933 complaints handled this year.

Councils have also been the subject of a number of whistleblower disclosures. My recommendations following the investigation of such disclosures have led to changes in policies and processes and to some attitudinal and cultural change, reducing the risk and opportunities for corrupt conduct to occur in the future. This highlights the critical role played by my office in investigating allegations of corrupt conduct.

Some cases I have reported to Parliament over the past year which deal with local government issues are:

- *A report of investigations into the City of Port Phillip, August 2009*
- *The involvement of Casey and Frankston Councils in the Brookland Greens Estate – Investigation into methane gas leaks, October 2009*
- *Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey, March 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.*⁵

Whistleblowers Protection Act

My annual reports over the past five years have highlighted the usefulness of the Whistleblowers Protection Act in identifying and addressing corruption. For example, my reports have raised the following areas where there is an opportunity for corrupt conduct to occur:

- the poor oversight of funds
- improper use of equipment and property
- misappropriation of assets.

I have also raised the need for the Act to be updated.

This past year has reinforced my views. While the challenges presented by this complex piece of legislation remain, whistleblower complaints were up 81.3 per cent reflecting the positive view of complainants of the effectiveness of my office in examining corruption allegations. These challenges face not only my office but also agencies across the public sector in correctly administering the legislation.

My annual reports over the past five years have highlighted the usefulness of the Whistleblowers Protection Act in identifying and addressing corruption.

While the challenges presented by this complex piece of legislation remain, whistleblower complaints were up 81.3 per cent, reflecting the positive view of complainants of the effectiveness of my office in examining corruption allegations.

⁵ In the report, I stated that Municipal Inspectors had reached a view that Councillor David Vendy and one other had breached sections of the Local Government Act 1989 and they were both fined and placed on good behaviour bonds. By way of clarification, Mr Vendy was charged with a breach of section 81 (7)(a) of the Local Government Act and the Order made by Magistrate T Wilson at the Ballarat Magistrates' Court was that Mr Vendy was placed on a 12 months good behaviour bond and ordered to pay \$3000 to the Court Fund and \$5000 in costs.

Integrity investigations, unlike adversarial processes, such as civil or criminal proceedings, are not intended to determine liability or guilt of individuals. The purpose of integrity investigations is very different. It is to determine what happened.

Natural justice in inquisitorial proceedings is ensured by enabling individuals to be advised of any adverse comments that may be made against them, by enabling them to respond and by having their response fairly reflected in any final report.

In my view, the best solution would be a rationalisation between the Whistleblowers Protection Act and the Ombudsman Act, to expand the Ombudsman Act to include the general provisions of the whistleblower legislation and simplify the existing Whistleblowers Act by removing all investigation provisions (investigations to be conducted using the investigation powers in the Ombudsman Act) and concentrating on protections for whistleblowers.

Natural justice and integrity investigations

There is often much confusion as to the application of the rules of natural justice or procedural fairness to integrity investigations and reports conducted by my office or other similar bodies. Much of this criticism is made either by those who have been or fear that they will be subject to adverse findings in such investigations, or by those who do not fully appreciate the nature and purpose of integrity investigations.

Integrity investigations, unlike adversarial processes, such as civil or criminal proceedings, are not intended to determine liability or guilt of individuals. The purpose of integrity investigations is very different. It is to determine what happened; in other words, to ascertain the truth and to report and make recommendations. While they may identify persons who need to be named in the public interest, any actions regarding a person's conduct are taken by others and the normal legal protections for individuals apply.

In integrity investigations, it has long been recognised in legislation throughout Australia and overseas, that the evidentiary restrictions that apply in adversarial proceedings are not applicable in investigations by Royal Commissions, anti-corruption and integrity bodies as they would work against finding the truth. It is important to note that when communities are faced with serious issues of integrity and corruption, they turn to bodies with inquisitorial powers to deal with the matters which could not be dealt with by adversarial legal processes where process hampers achieving expeditious outcomes.

Natural justice in inquisitorial proceedings is ensured by enabling individuals to be advised of any adverse comments that may be made against them, by enabling them to respond and by having their response fairly reflected in any final report. This is provided for in the Ombudsman and Whistleblowers Protection Acts and is the practice followed in all Ombudsman investigations and applies equally to other inquisitorial bodies in other jurisdictions.

Recent suggestions seeking to turn inquisitorial processes into adversarial ones would go against the nature and purpose of integrity investigations; do not appreciate the nature and purpose of integrity investigations; and reflect a lack of experience in administrative investigations. For example, the suggestion that witnesses be given notice of the detail of the matter under investigation would provide witnesses with the opportunity to manufacture evidence and collude prior to an interview. Such notice serves neither the investigation nor the public interest, although it may well assist the efforts and objectives of persons who seek to avoid being held accountable for their actions.

Similarly, the suggestion that persons be given prior access to adverse material during the course of an investigation would potentially allow witnesses to fabricate their evidence in the interview or elsewhere. Witnesses who raise this concern are generally those who are not prepared to deal with the substance of an allegation, but rather would wish to know who raised it. What is relevant to an integrity investigation is whether the allegation arising from the adverse material is true or not, not its source. Any suggestion of codifying or prescribing the operation of integrity bodies along these lines, can only limit the willingness of witnesses and complainants to provide information regarding maladministration or corruption and, as such, will hamper the effectiveness of investigations.

Considerable flexibility needs to be retained to effectively conduct integrity investigations: flexibility in respect of which, as an independent officer of the Parliament, I am responsible to the Parliament for its exercise. Poorly conceived and ill-considered natural justice suggestions do not assist integrity investigations in this State, indeed can only limit them and lead to a reduction in transparency and accountability.

Review of integrity agencies

In November 2009 the Premier of Victoria announced a review to consider whether any reforms are needed to enhance the efficiency and effectiveness of Victoria's integrity and anti-corruption system. He appointed the Public Sector Standards Commissioner, Mr Peter Allen and to work with him, Ms Elizabeth Proust as Special Commissioner.

The review's terms of reference were to consider the powers, functions, coordination and capacity of Victoria's integrity and anti-corruption system, including my office, the Auditor-General's office, the Office of Police Integrity, the Victoria Police and the Local Government Investigations and Compliance Inspectorate.

Recent suggestions seeking to turn inquisitorial processes into adversarial ones would go against the nature and purpose of integrity investigations; do not appreciate the nature and purpose of integrity investigations; and reflect a lack of experience in administrative investigations.

Poorly conceived and ill-considered natural justice suggestions do not assist integrity investigations in this State, indeed can only limit them and lead to a reduction in transparency and accountability.

It is important to understand that the current powers available collectively to the integrity bodies in Victoria are equal to those of the interstate anti-corruption bodies. However, there are gaps in the coverage of existing legislation which should be addressed.

I made a submission to the review based on the many years of experience my office has in relation to the investigation of administrative action and corrupt conduct. I drew to the commissioners' attention those areas of the integrity system I believe should be enhanced to provide Victoria with a strong and robust model and I pointed out the weaknesses in the current models in Australia which need to be avoided when introducing any new system in Victoria. In particular, I stated that any new system should be seamless and transparent in its operation to ensure that:

- artificial jurisdictional boundaries between agencies did not hamper and limit the nature and extent of investigations
- there was no dilution of focus where police and non-police matters competed for resources and priority within the one body
- definitional thresholds did not limit investigations
- demarcation disputes between agencies did not occur
- all public officials were treated the same way.

In my submission, I stated that Victoria was faced with two options but whatever the model proposed, the need is more about overcoming the gaps in the current arrangements, to include all persons paid from the public purse in a transparent and equitable way, not through a system which places layers and filters in the processes. The two options I raised were:

- to use the existing integrity bodies but with additional coverage to overcome the gaps which are obvious in existing arrangements in Victoria
- to establish an anti-corruption commission but in so doing to avoid the pitfalls and limitations evidenced in the current models in place in Australia, such as demarcation issues, costs, dilution of investigatory effectiveness, definitional restrictions on what can be investigated and jurisdictional ambiguities as indicated above.

It is important to understand that the current powers available collectively to the integrity bodies in Victoria are equal to those of the interstate anti-corruption bodies. However, there are gaps in the coverage of existing legislation which should be addressed. The coverage should include all public officials, including:

- members of Parliament
- ministerial advisers
- local government councillors
- electorate officers
- contractors delivering services to government or expending government money.

There are also some bodies, such as the Convenor of Medical Panels and Municipal Inspectors appointed under the Local Government Act, which do not fall within any administrative accountability framework. I have previously drawn Government's attention to these areas which lack external oversight. Remedying these gaps would see all individuals paid from the public purse being subject to a similar level of scrutiny.

The report of the review was presented to the Premier on 31 May 2010. The report recommended a new system for handling corruption in Victoria including the creation of six new bodies, one of which is a Victorian Integrity and Anti-corruption Commission (VIACC).

The review report also proposed that VIACC would take over from my office responsibility for the administration of the Whistleblowers Protection Act. This will separate the responsibility for investigations of corrupt conduct and administrative actions and will require the VIACC to meet definitional thresholds of criminal or dismissal offences before investigations can commence. This would establish artificial boundaries between conduct that is corrupt or not. The extent and nature of issues are often not evident until investigations are underway: some investigations into administrative action turn out to be corrupt conduct and vice versa. In my experience, investigations require flexibility, not legislative barriers.

My report last year on my *Investigation into the alleged improper conduct of councillors at Brimbank City Council* is a good case in point. It would be useful to examine how the particular model being proposed in Victoria by the review would best handle the issues and individuals covered by the Brimbank report and which agency or agencies would deal with which aspects of such an investigation. My report looked at members of Parliament and Ministers, federal and state, Mayors, local councillors, electoral staff, local government staff and state public servants. The issues I reported on were a broad spectrum of administrative actions and behaviour including corrupt conduct involving:

- undue influence
- conflict of interest
- improper use of power
- bullying and intimidation
- misuse of funds and equipment
- inappropriate use of electoral information.

It remains to be seen how such a breadth of coverage and issues would be handled in a coordinated and comprehensive way under the proposed arrangements, especially as some issues were not uncovered until the investigation was well underway. Members of one interstate anti-corruption commission advised my staff that its current limitations would preclude it from investigating and reporting on the broad range of issues which I was able to deal with in the Brimbank report.

In my experience, investigations require flexibility, not legislative barriers.

On occasions, attempts have been made by people or associations with vested interests to undermine and influence my office or its investigators. This applies particularly where I have found wrongdoing by elected officials, especially in a political context as in the case of Brimbank City Council.

I note that the review report repeated some critical comments about some aspects of my office, apparently emanating from those found out during the course of my investigations. However, the commissioners failed to attempt to ascertain the validity of such comments or seek to verify with me the accuracy of many of those allegations. Instead, they seem to have based their conclusions on the unattributed observations while failing to provide me with the opportunity to comment on those adverse comments which they included in their report. This is particularly concerning given that one of the inaccurate concerns repeated by the commissioners was that I did not provide natural justice. Had they provided me with the opportunity, I consider that the commissioners would have had a more balanced basis on which to form their findings and would not have reached their apparent misconceptions and misunderstandings, which were reliant on the unchallenged, untested and factually incorrect allegations repeated in their report.

The report also chose not to identify the significant body of successful work and the uptake of numerous recommendations my enquiries, investigations and reports have generated over the years, including the systemic reforms to reduce maladministration and corruption identified in a number of areas in the Victorian public sector.

The concerns about the procedural fairness of investigations conducted by my office raised in the review report were that:

- *Witnesses have been denied legal representation or the ability to consult a lawyer.*

However, in my submission to the review in March 2010, I pointed out that 'every witness who has sought legal representation over the past five years has had legal representation during a witness interview'.

- *Interviews were conducted by officers in a 'windowless room'.*

I invited the commissioners to inspect the interview room. They chose not to do so. In fact the room has windows and is constantly monitored by CCTV.

- *Interview proceedings are intimidating, for example interviewers positioned themselves between the interviewees and the exit door.*

These seating arrangements are in place to meet obvious occupational health and safety needs and requirements for staff. Staff have suffered from assault and attempts to assault them during interviews in the past, in one case resulting in serious bodily harm to the staff member.

- *Some witnesses with influence or standing may have greater opportunity to convince my office of the need for representation.*

This statement was not put to me and has no basis whatsoever as all witnesses are treated the same, in line with my office's policies.

- *Summonses have been routinely issued to witnesses for all manner of investigations.*

No inquiry was made to my office on this issue. In fact, summonses are rarely issued to require the attendance of witnesses. In most cases, witnesses appear voluntarily.

The Public Service Standards Commissioner was provided with the opportunity to comment on the relevant parts of this sub-section. In response, he advised that he had chosen to not take up the offer to comment.

Attempts to influence my office

Ensuring integrity in the public sector involves two stages:

1. identifying problems; and
2. effectively dealing with them.

My jurisdiction is limited to the first stage: it is my role only to investigate and recommend. It is at the second stage that agencies have been found wanting, particularly the failure to not only adopt measures to overcome issues that they themselves have identified but also to give effect to some of the recommendations contained in my reports. Occasionally, complainants become frustrated and commentators become cynical where individuals criticised in my reports appear to suffer no sanction because of the inability or inadequacy on the part of agencies whose responsibility it is to follow through my recommendations.

My reports to Parliament speak for themselves and are backed up by the evidence identified in each report from which I draw my conclusions and recommendations. On occasions, attempts have been made by people or associations with vested interests to undermine and influence my office or its investigators. This applies particularly where I have found wrongdoing by elected officials, especially in a political context as in the case of Brimbank City Council. This is not surprising and has been experienced by integrity bodies worldwide. My ability to frankly report to Parliament as a whole including where it is in the public interest to name those responsible is an effective safeguard against the undermining of my office.

From time to time, some agencies go on the defensive and attack my office or staff without a full appreciation of the details and circumstances. It is disappointing that such agencies thus expend valuable time and resources rather than focusing on improvement and reducing opportunities for poor administration or indeed corrupt conduct in their organisations identified through my investigations.

I have observed on a number of occasions a propensity for certain public sector agencies and public officers who or whose organisations have been investigated and whose performance has been found wanting to adopt a primary response of denial, followed by criticisms of the investigations and the officers conducting them, seeking to intimidate the investigator and undermine the merits of the investigation, rather than to acknowledge and deal with the issues which have been identified.

Some agencies go on the defensive and attack my office or staff without a full appreciation of the details and circumstances. It is disappointing that such agencies thus expend valuable time and resources rather than focusing on improvement and reducing opportunities for poor administration or indeed corrupt conduct in their organisations identified through my investigations.



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THE STATE AS A REGULATOR: IMPROVING PERFORMANCE

Complaints to Ombudsman Victoria

The community looks to the state to protect the interests of individuals. This year my office continued to identify instances where public sector bodies failed to take action or adequately discharge their functions.

My last two annual reports paid particular attention to the fact that the community looks to the state to protect the interests of individuals. This year my office continued to identify instances where public sector bodies failed to take action or adequately discharge their functions.

In recent parliamentary reports I commented on the failure of some agencies to effectively perform their regulatory responsibilities. These agencies included the:

- Department of Human Services regarding its child protection services
- Environmental Protection Authority and the City of Casey regarding the Stevensons Road landfill – Brookland Greens estate
- Transport Accident Commission and the Victorian WorkCover Authority in relation to medical practitioner billing.

While the above cases attracted considerable public attention they are not the only examples of agencies failing to meet their obligation to exercise statutory authority. My investigations consistently identify deficiencies in the way agencies discharge their regulatory functions. My reports and recommendations on those deficiencies provide the public sector with the opportunity to benefit from lessons learned over a number of years. In most instances, the themes and issues raised are the same now as I have identified in previous years. Integrity cannot be assured as long as public sector bodies entrusted with enforcement and regulatory responsibilities are reluctant, ill-equipped or cowered into lack of action.

Integrity cannot be assured as long as public sector bodies entrusted with enforcement and regulatory responsibilities are reluctant, ill-equipped or cowered into lack of action.

What is regulation and why regulate?

Government regulation is a part of daily life because it is how the government manages and monitors various aspects of society, the environment and economy. Regulation helps to maintain public order and ensure that the behaviour and practices of private businesses, government agencies and individuals do not adversely affect the public. Regulation also tailors the behaviour of individuals towards the interests of the common good. Local laws governing garbage disposal or public drinking are examples.

In order to protect citizens, Parliament gives government agencies considerable responsibility to regulate the public's actions. Just as traffic regulations, fire bans and occupational health and safety laws promote public safety, so agencies are often required to take specific steps to protect the health and wellbeing of vulnerable groups. For instance, child protection intervention orders and accommodation standards protect the rights and interests of the young and disabled respectively. However, on occasions agencies are hampered or restricted in their ability to follow up and prosecute individuals or organisations. Agencies should regularly examine whether they are equipped with the requisite powers and resources to adequately manage and implement their regulatory responsibilities.

Agencies should regularly examine whether they are equipped with the requisite powers and resources to adequately manage and implement their regulatory responsibilities.

Failure to understand and exercise powers and duties

To perform effectively, regulatory agencies require a clear understanding of their statutory duties and powers. It is apparent that in some situations agencies are either unaware of their responsibilities or their organisational cultures do not encourage enforcement action.

Only where their employees fully understand their statutory responsibilities and powers are agencies in a position to use the tools provided to them by Parliament. A lack of understanding can lead to officers exceeding their mandate and impinging on the rights and freedoms of individuals or other organisations they regulate.

Failure to recognise available powers

Regulators are often required to manage competing priorities when acting in the public interest. The expectation that regulators enforce the law and simultaneously consult with individuals, businesses and/or business groups to explore measures to improve compliance can generate misunderstanding and misdirection. Competing expectations – and the questions of how to address and reconcile them – can lead to staff being confused about roles and responsibilities. This can create inconsistencies in attitudes and processes which have a negative impact on organisational culture and effectiveness.

In some situations agencies are either unaware of their responsibilities or their organisational cultures do not encourage enforcement action.

Some agencies take an approach to their regulatory functions that focuses on developing programs and mechanisms to achieve compliance at the expense of a more vigorous approach to prosecute breaches. This approach sometimes sees agencies lose sight of their fundamental statutory duties and associated powers. It also leaves them unable to adjust their conciliatory approach quickly and effectively to a more coercive one if necessary. Officers require training and guidance on both the facilitative and enforcement aspects of their role so that agencies can be more responsive and more flexible in meeting changing circumstances, priorities and the different demands of individual cases.

Compliance with statutory obligations and practice standards must be a priority of the Department of Human Services if the safety and wellbeing of vulnerable children and young people are to be assured.

One recent example was my investigation into child protection which identified instances where the Department of Human Services did not comply with statutory requirements and internal practice standards. These shortcomings were not restricted to minor administrative matters but involved core processes for ensuring the safety and wellbeing of children who rely on the department. Compliance with statutory obligations and practice standards must be a priority of the Department of Human Services if the safety and wellbeing of vulnerable children and young people are to be assured. I note that the department has now established a Child Protection Practice Standards and Compliance Committee and implemented a governance structure to monitor child protection practice standards.

Exceeding authority

In addition to understanding their available powers, it is important agencies understand and comply with the limitations of their authority. This is critical in situations involving members of the public and their individual interests. When agencies exceed their statutory authority they impose unnecessary burdens and restrictions on those who are being regulated.

My investigations have demonstrated that where staff fail to understand their regulatory roles and/or governing legislative provisions, agencies are more likely to exceed their statutory authority. I continue to identify examples where:

- officers in agencies with no delegated authority exercise decisions
- officers make decisions beyond their authority
- officers incorrectly exercise their delegations
- delegation processes are not documented correctly
- delegations are not regularly reviewed to ensure their currency and correct application
- agencies make decisions where they have no legal authority to do so.

Decisions of this nature often go unnoticed and unchallenged by the general public and it may only be through intervention by my office that the authority for particular decisions is questioned. It is incumbent on agencies to ensure that decisions are legitimately exercised. The following case study illustrates this point.

No legal authority

I investigated a complaint in relation to the Manningham City Council (the council) and its practices in respect to the payment of rates. Under section 167 of the *Local Government Act 1989* (the Act) councils must allow a person to pay rates in four instalments, the first of which is by 30 September each year.

The Act also provides councils with the option of allowing a person to pay rates in a lump sum. However, if councils allow the ratepayers to make lump sum payments, the law provides ratepayers with an extra 4.5 months to make that payment, until 15 February each year.

I made enquiries with the council and formed the view that it was not complying with its statutory obligations. The council stated that it did not offer a lump sum payment option and yet on its rates notices stated that ratepayers could 'prepay' instalments before 30 September. I concluded that the 'prepayment' option is offering a lump sum by another name. I therefore referred the issue to the Secretary of the Department of Planning and Community Development and requested that Local Government Victoria audit the practices of the council and take appropriate action to ensure compliance with the Act. The Secretary accepted my recommendation.

Organisational culture

Agencies can seek compliance through various measures ranging from consultative and conciliated solutions to enforcement of the law. Effective regulatory bodies foster a culture within their organisation which balances competing strategies to achieve compliance; educates staff on how to implement strategies; and determines which strategies are most relevant and useful on a case-by-case basis.

Cooperation between regulatory agencies and those regulated helps both parties to solve regulatory problems; build trust in regulatory processes; and develop understanding of the goals regulation seeks to achieve. Agencies should promote a culture that clearly supports the appropriate use of their statutory powers.

The foreword of the Environmental Protection Authority's (EPA) *Enforcement Policy July 2006* promotes this view:

'The community expects EPA Victoria to exercise its responsibilities in an efficient and effective manner without fear or favour.'

Contrary to this policy statement, my investigation into methane gas leaks in a landfill adjacent to the Brookland Greens Estate⁶ identified a culture within the EPA which did not encourage enforcement action. Even though the *Environment Protection Act 1970* provides the EPA with extensive statutory powers and enforcement tools, the governing culture at the time within the EPA of under-utilising its powers made its enforcement tools ineffective. On several occasions this resulted in the EPA overlooking the actions and inaction of the City of Casey in the construction and management of the landfill.

Agencies should promote a culture that clearly supports the appropriate use of their statutory powers.

My investigation into methane gas leaks in a landfill adjacent to the Brookland Greens Estate identified a culture within the EPA which did not encourage enforcement action.

⁶ Ombudsman Victoria, *Brookland Greens Estate – Investigation into methane gas leaks*, October 2009.

It is critical that staff members receive adequate training in how to undertake their roles. Spending money on improving technology and investing time in devising processes to achieve efficiency are wasted measures if staff members are unfamiliar with how to carry out operational functions.

Last year I concluded that child protection workers did not undertake appropriate checks on proposed carers for children because they did not know about the requisite procedures or the functions of the department's case management system.

I am encouraged that the newly appointed Chief Executive Officer of the EPA has publicly stated that:

‘The EPA’s core job must be to set standards and regulate accordingly’⁷

Staff training and supervision

It is critical that staff members receive adequate training in how to undertake their roles. Spending money on improving technology and investing time in devising processes to achieve efficiency are wasted measures if staff members are unfamiliar with how to carry out operational functions.

In conjunction with training and appropriate guidelines and procedures, staff supervision is one of the most effective means of quality assurance available to organisations. The potential for human error in the workplace cannot be removed; however, the appropriate supervision of staff can mitigate mistakes. In my view management should focus on staff supervision in activities where the consequences of maladministration are serious and difficult to remedy.

Last year I concluded that child protection workers did not undertake appropriate checks on proposed carers for children because they did not know about the requisite procedures or the functions of the department’s case management system.⁸ In addition, the workloads of senior staff members did not allow them to adequately supervise their staff. At times this had serious implications for vulnerable children. The department has since advised me that it has reviewed its practices for checking criminal records, has completed training of all relevant staff and monitors compliance with this policy.

Resources

Inadequate resources in an area impair the ability of agencies to adequately fulfil their regulatory functions. In making decisions about how to manage demand and capacity, priority should be given to activities which have an impact on public health, human rights and safety.

For example, Victorian food premises must be registered and have their licence renewed on a yearly basis, unless stated otherwise at the discretion of the Minister. Prior to registering, renewing or transferring registration, the registration authority must inspect the premises. In most cases the authority is the local council. An investigation I conducted into Moira Shire Council identified that its failure to comply with the *Food Act 1984* was partly due to inadequate resources. The details of this case are as follows.

⁷ *The Age*, 19 April 2010.

⁸ Ombudsman Victoria, *Own motion investigation into the Department of Human Services – Child Protection Program*, November 2009.

Inadequate resources

I received a complaint about Moira Shire Council which identified a failure to inspect local food businesses on a regular basis to ensure food was safe and suitable for human consumption and complied with the Food Standards Code.

My investigation found that only 30 per cent of food premises were inspected each year, primarily because the council did not have the capacity to visit all of the businesses.

One of my recommendations was that the council undertake a detailed assessment of whether resources allocated to its Environmental Health Department were sufficient to meet statutory obligations.

Outcome

The council employed an extra inspector and allocated additional funding to its Environmental Health Department.

Inadequate complaint management

One of the key functions of regulatory agencies is to manage complaints by receiving, assessing, investigating and responding to issues. They should also determine whether there are any thematic or systemic concerns arising from the administration of their regulatory functions. In addition to complaint handling, regulatory agencies are responsible for ensuring that individuals, private bodies and government departments comply with relevant policies, laws and codes of conduct.

Cases of non-compliance often generate complaints. To be responsive and accountable, regulatory agencies must have in place processes which enhance their ability to address complaints in a timely, fair, accurate and thorough manner and to assess whether there are system deficiencies.

Timeliness

Timeliness is an essential characteristic of good regulatory practice. Such practice is built on reliable service delivery which satisfies public expectations by delivering departmental services and performing statutory functions within realistic timeframes. Members of the public can quickly feel lost in the system when regulatory agencies fail to respond to general enquiries or specific complaints in a timely manner. Agencies should take steps to prevent this by:

- managing expectations in regard to the services they provide
- clearly communicating progress, delays and/or decisions regarding services and complaints
- replying promptly to letters, emails and telephone calls.

Inadequate resources in an area impair the ability of agencies to adequately fulfil their regulatory functions. In making decisions about how to manage demand and capacity, priority should be given to activities which have an impact on public health, human rights and safety.

Performance standards and public reputation rely on accurate records, adequate internal and external communication and processes, competent staff and appropriate advice.

Failure to effectively implement sound administrative practices and professional standards can compromise an agency's functions, undermine its credibility and impact negatively on the public's perception of it and the public sector in general.

Failure to respond

In November 2009 I received a complaint that the Mornington Peninsula Shire Council (the council) had failed to respond to an application for a parking permit. The application had been lodged in May 2009 and a \$50 fee was paid to the council. Despite follow-up telephone calls and letters to the council by the complainant's lawyer, the council did not provide the complainant with a response in relation to the application. My investigation officers made contact with the council which confirmed that the amount of time taken to respond to the complainant was unreasonable and that it would ensure a response was sent.

In January of this year the complainant made contact with my office again and stated that the council had still to provide a response regarding the permit.

Outcome

The council was contacted again by my office and the council advised that the complaint involved previous legal proceedings which complicated the matter. However, the council acknowledged and apologised for the delay in deciding the permit application. A response was provided to the complainant in relation to the council's assessment of the permit.

Communication and record-keeping

Performance standards and public reputation rely on accurate records, adequate internal and external communication and processes, competent staff and appropriate advice. Failure to effectively implement sound administrative practices and professional standards can compromise an agency's functions, undermine its credibility and impact negatively on the public's perception of it and the public sector in general.

To enhance transparency and increase public confidence, agencies should:

- maintain records of their actions when addressing a complaint
- clearly articulate their role and responsibilities and the reasons for arriving at their decisions
- discuss and document areas of improvement to achieve greater compliance
- provide up-to-date information on the ongoing status of an investigation into a complaint, where appropriate.

Responsiveness is one of the core elements to a robust complaint handling framework.

These measures also assure complainants that regulatory bodies take their concerns and the public sector values seriously. In my *Good Practice Guide*⁹ I point out that responsiveness is one of the core elements to a robust complaint handling framework. It is essential for maintaining confidence in an agency's processes for complaints to be dealt with quickly, courteously, fairly and within established timelines.

Complainants should be advised of how long it will take to deal with the complaint in accordance with the agency's complaint handling timelines and be kept informed of the progress. If additional time is required to resolve the issues, the complainant should be advised of this and the reasons for the delay.

When regulatory bodies communicate poorly it affects internal and external stakeholders. At significant stages in a process, complainants can become frustrated and decision-makers may remain unaware of critical information due to poor communication.

Good record-keeping is also a necessary and critical requirement. The following case study identifies where inadequate record-keeping can cause additional work for an agency:

Inadequate record-keeping

A complainant approached my office about the Wellington Shire Council's refusal to review a valuation of a property upon request. According to the council the complainant failed to request the review within the prescribed timeframe. The complainant maintained she did not receive the original notice of valuation. Although the council considered it was not responsible for possible mailing errors, its inadequate record-keeping meant that the council was unable to demonstrate it had dispatched the original notice to the proper address.

Outcome

I recommended that the council reassess the complainant's land valuation and review its record-keeping practices. The council accepted and implemented my recommendations.

To adhere to best practice, agencies should document assessments, decision-making processes and jurisdictional questions and prepare investigation plans for matters warranting substantial investigation. These investigation plans should be developed, reviewed and amended as investigations proceed to ensure that the right outcomes are achieved in a timely and effective manner.

⁹ Ombudsman Victoria, *Good Practice Guide: Ombudsman Victoria's guide to complaint handling for Victorian Public Sector Agencies*, page 6

Agencies functioning within a statutory framework should seek to identify and remedy inadequate or outdated provisions: their staff are well placed to do this.

Agencies need to be more proactive about reporting weaknesses in legislation caused by changing circumstances or legal deficiencies. The advice to government should identify how resources could be used more efficiently; how the legislation could better address the problems it seeks to manage or the outcomes it aims to achieve; and how greater certainty could be provided for those working towards compliance.

Continuous improvement

Continuous improvement is a feature of good complaint handling practices and effective regulatory systems. To serve these ends, agencies should draw on available data and staff knowledge and expertise to:

- identify weaknesses in their internal policies and procedures
- review practices in light of legislative changes
- improve management of complaints and investigations.

Agencies should create a work environment which encourages staff members to identify problems in complaint handling practices. Staff experience and knowledge can enhance responses to complaints and contribute to continuous improvement.

Investigations carried out by my office indicate that agencies are more likely to review their internal practices after serious or significant complaints. It is also good practice for an agency to examine systemic issues that are identified by staff dealing with routine complaints. When revising procedures and reviewing practices, agencies should remember that complaints raising minor issues may contain within them lessons just as important as those complaints requiring major investigation.

Agencies functioning within a statutory framework should seek to identify and remedy inadequate or outdated provisions: their staff are well placed to do this. Officers at operational levels of an organisation are often familiar with legislative problems in the areas that they administer but experience difficulty making these concerns known to the agency. There is considerable potential for agencies to draw more fully on operational experience to identify how practices can be improved and where legislation should be reconsidered. This should form part of an agency's corporate plan.

Agencies need to be more proactive about reporting weaknesses in legislation caused by changing circumstances or legal deficiencies. The advice to government should identify how resources could be used more efficiently; how the legislation could better address the problems it seeks to manage or the outcomes it aims to achieve; and how greater certainty could be provided for those working towards compliance.

An investigation I conducted into Greater Geelong City Council's application of state-wide provisions in the Planning Scheme highlights how problems in legislative arrangements can undermine the efforts of agencies to deal with the issues the legislation is designed to address. My office made enquiries with the council after I received a complaint. The problems identified in the City's planning scheme were well known to its staff. The council had devoted significant resources over a number of years to investigating whether a building was to be classified as a dwelling and was compliant with the Planning Scheme.

I brought this matter to the attention of the Minister for Local Government as an example of ambiguity in the Planning Scheme which may lead to a misuse of council resources, complaints from residents and possible exploitation by developers.

High legislative thresholds

In some instances, legislation applies high thresholds for action by regulatory agencies. Setting thresholds for regulatory intervention means balancing the rights of the regulated against the public interest that regulation seeks to serve. The wording of some statutory provisions can make it difficult for agencies to act or act in a way which brings about a quick and effective result, and it is increasingly common for agencies to become embroiled in litigation before the courts.

I am particularly concerned that regulatory agencies responsible for protecting the rights of vulnerable people are not able to impose necessary sanctions because the legislative threshold is set too high. For example, last year I reported on a complaint that the Department of Human Services had failed to act on reports of non-compliance by the owner of a supported residential service for the elderly and disabled. The *Health Services Act 1988* makes DHS responsible for registering and monitoring the compliance of supported residential services. In cases of non-compliance DHS may prosecute owners for specific offences, suspend admissions, place conditions on registration, revoke registration or terminate the appointment of facility administrators. I recommended that the department revoke the proprietor's registration and received a response from the Minister for Community Services that 'there is insufficient evidence to justify the revocation of the registration'.

My office received an update from the department in April 2010. The department stated that as a result of further legal advice, the owner and proprietor of the supported residential service had been charged with offences under the Health Services Act. The matter is currently before the Courts. The department stated that if, as a result of the prosecution, the proprietor was convicted of an offence against the Act or regulations, there would be grounds to reconsider the issue of revocation.

Inadequate investigative powers

My investigations have also identified that, in addition to high thresholds for proving allegations, some regulatory agencies have inadequate investigative powers. This highlights the necessity for agencies to notify the government when legislative provisions restrict their ability to adequately fulfil their regulatory role.

In some instances, legislation applies high thresholds for action by regulatory agencies. Setting thresholds for regulatory intervention means balancing the rights of the regulated against the public interest that regulation seeks to serve.

The wording of some statutory provisions can make it difficult for agencies to act or act in a way which brings about a quick and effective result, and it is increasingly common for agencies to become embroiled in litigation before the courts.

My investigations have also identified that, in addition to high thresholds for proving allegations, some regulatory agencies have inadequate investigative powers.

In my investigation into the alleged improper conduct of councillors at *Brimbank City Council*¹⁰ I reported that a political party inappropriately released tens of thousands of Victorian citizens' personal details from the electoral roll to a Brimbank councillor. I concluded that the release of this confidential information could have amounted to a breach of sections 36 and / or 37 of the *Victorian Electoral Act 2002*. I recommended that the Victorian Electoral Commission investigate these possible breaches of the Act.

As recommended, the Electoral Commissioner investigated possible breaches of the Electoral Act, though the investigation was hindered by the refusal of some witnesses to be interviewed. The Electoral Commissioner concluded that, although there may have been breaches of section 36 of the Act, it would be inadvisable to commence a prosecution for the following reasons:

- the lack of clear harm done by the breaches, as a result of the practical inconsistency between the state and commonwealth law
- the difficulty in identifying the persons or body that contravened the Act
- the lack of evidence about the date of the alleged breaches
- steps by the Australian Labor Party to prevent any further breaches of the Act.

The Electoral Commissioner also advised that as there is no legal requirement for witnesses to answer questions by the Electoral Commission or to produce material relating to possible breaches of the Act, his investigative capacity was considerably restricted. The Commissioner stated that the inconsistency between commonwealth and state legislation 'has led to confusion and, in this case, to a likely inadvertent technical breach of the Electoral Act' and has made enforcement of the Electoral Act 'extremely difficult'.

Guidance for improving practice – a check list

In reviewing how agencies have dealt with complaints over the past year, I have identified a number of practices and principles that can assist agencies and their staff better to meet their statutory obligations and deal with the public's expectations.

Agencies should:

1. provide staff with training on both the administrative and enforcement aspects of their role
2. clearly define and document their role and functions
3. devise and implement a method to review internal and external documentation

¹⁰ Ombudsman Victoria, *Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council*, May 2009.

4. develop, document and formally endorse comprehensive guidelines and policies for staff on the agency's statutory requirements and the responsibilities of the employee
5. ensure staff members are familiar with internal policies, guidelines and practices
6. support organisational policy and procedure through ongoing training and professional development of staff
7. plan for all investigations and major enquiries
8. document decision-making processes
9. use staff supervision and training as measures to guard against poor decision-making
10. ensure adequate resources are assigned to high priority matters
11. respond to complaints in an informative and timely manner and advise complainants of any obstacles that may delay a response
12. maintain ongoing and accurate communication with complainants to demonstrate transparent practice and sustain the public's confidence
13. utilise staff expertise and complaints to the agency to identify weaknesses with policies, procedures and legislation
14. make continuous improvement a key objective
15. review internal practices on an ongoing basis to ensure the systemic issues raised by complainants or agency staff are identified and resolved.

In addition, regulatory agencies should:

1. maintain comprehensive and up-to-date legal advice regarding their role and powers
2. ensure senior leadership promotes a culture in which officers have the confidence to use the agency's powers appropriately
3. provide complainants with information about the regulatory role of the agency and advise complainants of any decisions or delays made in relation to the complaint
4. develop and promulgate internal policies which facilitate communication between staff within a regulatory agency
5. ensure senior staff monitor the quality of complaints management so that significant matters are not overlooked
6. notify the government about how deficient or outdated legislation limits an agency's ability to fulfil its regulatory obligations
7. enter into protocols that clarify and communicate the functions of agencies where more than one agency is responsible for regulating an industry or subject area.



Human rights

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HUMAN RIGHTS

Jurisdiction

The *Charter of Human Rights & Responsibilities Act 2006* (the Charter) places obligations on public authorities – including those private entities whose functions are of a public nature and are acting on behalf of the state or a public authority – to make decisions and act in a manner compatible with the human rights set out in the Charter.

The Charter establishes twenty civil and political rights for all Victorian citizens. These include cultural rights; property rights; protection from cruel, inhuman or degrading treatment; the rights to freedom of movement and of thought, conscience, religion and belief; and the right of freedom of expression.

Under section 13(1A) of the *Ombudsman Act 1973*, Parliament has provided me with the specific function of making enquiries into or investigating whether an administrative action is incompatible with a human right set out in the Charter. I may do so on my own motion or in response to a complaint being made to my office.

A significant proportion of the complaints I receive each year are either from or in relation to some of Victoria's most vulnerable citizens. These include prisoners, children in state care and people with severe psychiatric, intellectual or physical disabilities.

My office has protected human rights well before the enactment of the Charter. Although this is often not recognised, matters which fall within my jurisdiction under the Ombudsman Act include those the Charter protects. The values in the Charter are those which have always been elements of the Ombudsman's jurisdiction. My jurisdiction under the Ombudsman Act is to investigate 'administrative actions' and report to Parliament when those actions are, among other things:

- contrary to law
- unreasonable, unjust, oppressive or improperly discriminatory
- in accordance with the law, but that law is or may be unreasonable, unjust, oppressive or improperly discriminatory
- 'wrong'.

My office has protected human rights well before the enactment of the Charter.

The values in the Charter are those which have always been elements of the Ombudsman's jurisdiction.

Human rights issues – Reports to Parliament prior to the Charter

In previous years, I have reported to Parliament on matters involving human rights issues. Some of the issues raised at the time are significant from a human rights perspective. The following outlines some of those reports and how the Charter would have applied:

- *Improving responses to allegations involving sexual assault*, March 2006

This report was in response to numerous complaints alleging inadequate handling of reports of sexual assault, for example, by students in schools, by members of the public to police and by children in state care. The report identified and criticised the failure of, for example, school staff to take appropriate action to prevent and investigate allegations of sexual assault against students. This behaviour would have, had the Charter been operational at the time, constituted breaches of section 10, protection from cruel, inhuman or degrading treatment and section 17(2), providing every child with the right to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

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

A series of substantiated complaints regarding the mismanagement, damage and loss of prisoners' personal property led to this report. The actions I reported would have amounted to a breach of section 20, the right not to be deprived of property, other than in accordance with law.

- *Conditions for persons in custody*, July 2006

This investigation, amongst other things, identified vulnerable people being held in substandard, overcrowded conditions. For example, prisoners with mental illness or under the influence of drugs were held in cells without supervision or access to healthcare. Police cells had hanging points and housed convicted and unconvicted prisoners together. Had the Charter been in force, this investigation would have found breaches of the right not to be arbitrarily deprived of life (s9); the right to be treated with humanity and respect for the inherent dignity of the human person (s22(1)); the right to be segregated from convicted prisoners (s22(2)); the right when held without charge to be treated in a way that is appropriate for an unconvicted person (s22(3)); and the right not to be treated or punished in a cruel, inhuman or degrading way (s10(b)).

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

In this case, custodial officers used excessive force against a prisoner during a strip search, resulting in the prisoner having a series of injuries, including head injuries. Had this incident occurred in or after 2008, it would have amounted to breaches of the Charter - the right to be treated with humanity and respect for the inherent dignity of the human person (s22(1)) and the right not to be treated or punished in a cruel, inhuman or degrading way (s10(b)).

Melbourne Custody Centre

In response to the 2007 report, *Investigation into the use of excessive force at the Melbourne Custody Centre*, Victoria Police agreed in principle to the custody centre being used as a daytime holding centre. As a short term solution, the gazetted holding time was reduced from 28 to 14 days. I remain concerned that the use of the centre is not being limited to its intended purpose (daytime holding centre) and that detaining persons for more than, at most, two to three days underground and without access to natural light and fresh air is contrary to the Charter obligations provided for by section 10(b) and 22(1).

I had concerns about the Melbourne Custody Centre's culture and, as a consequence, its capacity to properly uphold its responsibilities under the Charter. As I advised the Minister at the conclusion of the investigation regarding custodial officers' attitudes:

My current investigation has reinforced those concerns and it is my view that, unless decisive action is taken, other prisoners will be subject to breaches of their human rights and the inappropriate use of force resulting in more serious injuries. ...[Further]... The lack of training identified by my investigation puts both prisoners and staff at risk and raises serious doubts as to whether the MCC is currently meeting its duty of care to prisoners.

Recently, G4S Australia Pty Ltd took over the management of the Centre. I will continue to monitor conditions at the Centre and the treatment of prisoners.

Human rights issues – Current Parliamentary reports

Over the past year some of my reports and investigations have also concerned and dealt with human rights issues, including:

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

The investigation concluded that the department is not meeting a variety of its obligations to children under the Charter. These rights included the right to protection of families and children (s17), the right to protection of cultural rights for indigenous people (s19(2)) and the right to privacy and reputation (s13).

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

This report examined the safety and quality of care being provided to children in out of home care by the Department of Human Services and identified numerous instances of failure to comply with Charter obligations, particularly related to sections 17(2) and 10(b).

Current research – Human rights and closed environments

As I reported last year, since January 2009 my office has been a partner in a three year Australian Research Council project in conjunction with the Faculty of Law at Monash University. The project, *Applying Human Rights Legislation in Closed Environments: a Strategic Framework for Managing Compliance* is examining places where persons are deprived of liberty, such as:

- prisons
- police cells
- secure psychiatric and disability facilities
- immigration detention centres.

Over the three year period, the project is examining practices in closed environments in relation to issues such as risk-based classifications of individuals and various levels of control imposed; the use of restraints and restricted regimes; access to visits; and complaints and disciplinary mechanisms. The project is also examining how oversight and scrutiny responsibilities are carried out, and what activities and processes are adopted by the relevant agencies to fulfil their role in relation to human rights in these secure settings.

As human rights principles are being embodied in comprehensive domestic obligations in Australia, this significant project is a timely examination of the implementation of human rights in closed environments and will stimulate debate on establishing the most effective mechanisms for balancing human rights with security and safety considerations.



Freedom of information

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FREEDOM OF INFORMATION

Public sector culture

There is still a culture within some agencies regarding limiting access to documents under freedom of information (FOI) legislation.

There is still a culture within some agencies regarding limiting access to documents under freedom of information (FOI) legislation. I regularly identify administrative actions that are contrary to or simply disregard the Attorney-General's guidelines and the administrative recommendations from my 2006 *Review of the Freedom of Information Act*, which all 10 departments accepted. Despite the availability of the Attorney-General's guidelines and the Department of Justice's practice notes, agencies appear to just 'do their own thing'. Not only does this lead to delays in the processing of requests, but there are inconsistencies in the way the *Freedom of Information Act 1982* (the FOI Act) is applied across government.

The role of the FOI Act

The FOI Act provides members of the public with a right of access to documented information that is in the possession of Victorian Government agencies.

Despite the availability of the Attorney-General's guidelines and the Department of Justice's practice notes, agencies appear to just 'do their own thing'.

The present Act was introduced into Parliament by the Cain Government in 1982 and was passed by the Victorian Parliament, coming into operation on 5 July 1983 except for Part II, which commenced on 5 July 1984. Other states and territories introduced FOI legislation from the late 1980s.

In his Second Reading Speech on the FOI Act, Premier Cain identified as the three major premises of FOI:

1. The right of the individual to know what information is contained in government records about him or herself.
2. Accountability of government through openness to public scrutiny.
3. The ability of people informed about government policies to participate in policy making and in government.

Premier Cain also said:

If freedom of information legislation is to work effectively, two fundamental problems must be overcome. Firstly, persons must be aware of the existence of documents that might be of interest to them. Secondly, persons must be able to identify what they need to inspect by first being able to make a wider search.

Despite 26 years of experience in administering the FOI Act, many agencies still have problems in addressing FOI requests from citizens.

I have jurisdiction to investigate complaints about FOI requests where they relate to administrative actions including:

- delays in processing requests
- disputes over the existence or location of documents
- payment of fees and charges imposed.

The number of FOI issues raised in complaints for the 2009-10 financial year was slightly higher (2 per cent) than the number received in 2008-09, as shown in the table below.

Table 3: Table of statistics – FOI issues finalised		
FOI issue	2008-09	2009-10
Delays in processing	74	62
Intervention by Ombudsman	1	2
Lost or non-existent documents	31	39
Publication of documents / information	1	2
Reasons statement	6	5
Refused access to documents	27	39
Requests for access	27	13
Transfer of requests	2	3
Unreasonable charges	7	9
Voluminous requests (unreasonable diversion of resources)	2	8
Total	178	182
Requests for documents dealt with by the Ombudsman's office	17	19

Statutory obligations

In my 2008-09 Annual Report I highlighted that agencies and applicants have a responsibility to provide sufficient information to enable an FOI request to be in a form that can be processed. Section 17 of the FOI Act also allows an agency some discretion regarding the clarity of a request and deciding whether the request is valid. I continue to receive complaints from applicants regarding the interpretation of their request by agencies.

In my *Review of the Freedom of Information Act* tabled in Parliament in 2006, I outlined what I considered to be an adequate statement under section 27 of the FOI Act, in addition to the statutory requirements stipulated in section 27. Section 27 requires agencies to give notice in writing of any decision to deny or defer access to a document or that a document does not exist. I continue to identify poor statements under section 27.

I continue to receive complaints from applicants regarding the interpretation of their request by agencies.

There seems to be a lack of commitment to the principles of the FOI Act by some agencies.

Sections 27 & 51 of FOI Act

I received a complaint about Campaspe Shire Council's processing of an FOI request.

The applicant was a lawyer acting on behalf of his client. The lawyer became concerned about a number of issues in respect of several sections of the FOI Act:

- section 27(1)(a) of the Act by failing to confirm in writing the exemptions relied upon to deny access to documents. The council had initially informed the lawyer of the exemptions by telephone.
- section 27(1)(d) of the Act by failing to inform the lawyer of the right to apply to the Victorian Civil and Administrative Tribunal for a review of the decision
- section 51(3) by allowing the original decision-maker to also complete the internal review.

Outcome

The council acknowledged the issues and stated that it has now updated its FOI procedures to prevent a recurrence.

Lack of commitment to spirit of the FOI Act

There seems to be a lack of commitment to the principles of the FOI Act by some agencies. The following case studies illustrate this:

Lack of commitment

I received a complaint from an MP regarding the Department of Treasury and Finance's processing of two of his requests.

The first request sought access to Ministerial entertainment and hospitality expenses and the second request sought access to departmental entertainment and hospitality expenses. The department decided the first request in December 2008 and the second request in January 2009. In January 2009 the MP sent the department two letters, one for each of his requests, clarifying that he believed the requests had been unreasonably narrowed.

In February 2009 an internal review upheld the original decision for the first request. The internal review officer completed the decision for the second request on the same day, varying the decision.

In relation to the first request the department informed the MP of the interpretation of the request. However, the department did not provide him with an opportunity to respond to the interpretation applied.

The department advised my office during preliminary enquiries that it did not allow him an opportunity to respond because it 'decided to expedite the processing of this particular request and provide a timely response to the FOI applicant'.

In relation to the second request, the department informed him of its interpretation of the request in advance of its decision. However, when he responded, the department did not address his clarification.

I consider it is reasonable for the department to apply definitions and interpretations to the scope of a request. However, it is not within the spirit of the FOI Act to complete processing of the request without:

- allowing the MP an opportunity to respond to the interpretation applied to the request
- giving due consideration to his clarification and discussing the matter with him.

The department could have informed the MP that it would need additional time due to the late clarification. I therefore considered the department had not acted within the spirit of the FOI Act by narrowing the scope of the requests and excluding his clarification.

Outcome

I recommended that the department:

1. allow applicants to respond to any interpretations or definitions applied to a request and confirm the scope before completion
2. address any clarifications from applicants regarding the interpretations or definitions applied to a request and confirm the scope before completion
3. review and process all documents considered not to be within the scope of the second request.
4. amend its internal FOI guidelines to include the Ombudsman's administrative recommendations from the FOI Review.

I also wrote to the Treasurer expressing my concern that although the department accepted my recommendations, it stated in response to my conclusions that it 'reiterates its general position that it does not accept that it should be required to review and process any documents it determined to be outside the scope of any request'. This response does not demonstrate a commitment to processing requests within the spirit of the FOI Act.

In my 2008-09 Annual Report I detailed a case about the Department of Transport's (the department) processing of an MP request seeking access to information about train and tram cancellations, service delays over six minutes and city loop diversions. The department was not complying with the spirit of the FOI Act. This year I investigated another case that again demonstrates a poor attitude within the department towards the release of information.

Delay in release of information

I received a complaint from a person who sought release of data from the Department of Transport (the department) regarding rail passenger patronage on the Hurstbridge line and the number of passengers using connecting bus services. The complainant considered that he should be able to obtain the data routinely and not be required to lodge an FOI request.

The department advised the complainant that it was willing to release the data to him if he agreed to conditions on the ownership and use of the data. Following objections from the complainant, the department advised him that it would not provide the data unconditionally.

My enquiries identified that the Public Transport Division Information Service (PTDIS) is tasked with meeting the operational demands of public transport businesses, and in response to increasing requests for data from the public, PTDIS established a Data Supply Agreement process. This required a PTDIS member to work through a Data Supply Checklist. Where it is deemed appropriate to release the data, the applicant is requested to sign a Data Supply Agreement.

The Checklist provided to my office outlined that prior to releasing data PTDIS officers must determine the owner of the information to be released; whether the data is privileged; whether it is a Cabinet document; if it is confidential, contains personal or sensitive information as defined by the *Information Privacy Act 2000*; or whether the responsible Minister must be notified of the request or proposed release.

I noted in this case that the department was the owner of the data; that the information was not privileged, confidential or contained in a Cabinet document; and did not contain any personal or sensitive information.

In response to the reasonableness of the conditions imposed on the complainant, the department cited its obligation to protect the intellectual property rights of the Victorian Government and to ensure the integrity of the data being released.

I considered it was reasonable to conclude that the information requested by the complainant was not of a sensitive nature as the data did not trigger any of the conditions in the department's Data Supply Checklist to halt such a request.

Further, the department's view that the applicant should be required to make a FOI request to avoid such conditions is not in my view a reasonable response to an information request from the public.

I made the following proposals in order to resolve the matter without the need to proceed to a formal investigation:

- the department review the conditions currently being imposed on applicants who request data, including the complainant, to reflect a less restrictive approach to data release
- the department consider posting online the data it has released to members of the public, academics and private bodies.

Outcome

The department accepted the proposals and removed all conditions except those relating to ownership of the data. The department stated that its website currently has a customised online analysis tool (Victorian Integrated Survey of Travel and Activity) and it also makes transport related data available via the Victorian Transport Statistics Portal.

There are also occasions where FOI requests are mishandled when proper processes are not followed, as the following case study demonstrates:

Failure to follow process

I received a complaint that LaTrobe Regional Hospital, despite its advice that it had decided to release a copy of its Integrated Performance Report (IPR), did not do so and subsequently advised the complainant that it had now decided the IPR was exempt under section 30(1) of the FOI Act.

I identified a number of flaws in the processing of the FOI request, including:

- the hospital's Executive was unaware of the request
- there was a delay in forwarding the request to the appropriate hospital officer
- the decision-maker failed to notice that the decision advice to the complainant referred to inclusion of the IPR when the decision-maker had previously decided it was an exempt document
- the attachment to the decision letter to the complainant did not contain the IPR
- the decision advice failed to advise the complainant that he could seek an internal review
- the hospital's Corporate Counsel did not review the response as is its practice.

Outcome

The Chief Executive Officer of the hospital wrote to the complainant outlining the reasons for the processing errors and apologising for the manner in which the request was handled.

I have seen positive attitudes towards FOI from some agencies, as demonstrated by the following case study:

The right approach

I received a complaint about the Department of Planning and Community Development's handling of several FOI requests. The complaint was that the department:

- refused the complainant's request to carry out an internal review of processing charges imposed on the FOI requests
- unreasonably delayed the processing of the requests.

The complainant requested that I issue a certificate under section 50(2) (c) of the FOI Act. Under that section, an applicant may only request a review of the charges by the Victorian Civil and Administrative Tribunal (VCAT) where I certify the matter to be of sufficient importance for VCAT to consider.

I made enquiries of the department. At the time of considering the request for the internal review of the charges, the department determined that an internal review was not appropriate in this case and that the complainant had a right of review at VCAT, subject to my certification. The department considered that the internal review procedures as set out in section 51 of the FOI Act did not apply to a request for review of charges because section 51(1) only refers to a notice given under section 27 of the FOI Act (a notice providing reasons for refusal); a notice under section 22(3) (notification of charges) is not mentioned. The department's position appears to be supported by case law.

The department also acknowledged that there had been significant delays in processing the requests caused by a need for consultation and FOI resource issues. It advised that it had taken steps to address the delay issues, including the employment of three additional FOI staff.

Outcome

In acknowledgement of the delays, the department waived the charges for the requests and refunded the applicant. My officers raised the internal review matter with the department's FOI unit manager who advised that review of requests would be considered, where circumstances warranted, even in the absence of formal internal review rights.

I concluded that in light of the department's actions to address the issues raised in this matter, it was not necessary for a certificate to be issued under section 50(2)(c) of the FOI Act.

Administrative delays – Department of Human Services

The Department of Human Services (DHS) receives the largest number of FOI requests of the 10¹¹ Victorian government departments.¹² For the last six years, it has been in the top seven of all Victorian agencies that receive the highest number of requests.¹³ From the evidence presented in some cases brought to my office, DHS has been unable to respond to requests within the 45-day statutory timeframe. Despite criticisms by my office over the past five or more years, DHS has not adequately addressed issues associated with the processing of FOI requests.

The following table details the occasions when concerns have been raised about DHS' delays in responding to FOI requests in the last five years compared to the total number of issues I have received about delays. On average, approximately one-third of all complaints about delay to my office has involved DHS despite regular assurances by DHS that their processing will improve. This is an unsatisfactory state of affairs.

Table 4		
Financial year	DHS	Total
2010	20	62
2009	26	74
2008	17	45
2007	13	33
2006	16	45

The main explanations for DHS' delays in processing requests have been consistent since 2003, and include:

- resourcing issues including difficulties in retaining qualified FOI staff and a lack of experienced staff during peak holiday periods
- the increasing size and complexity of FOI requests
- increased use of technology to store information.

Although DHS is aware of these issues and has attempted to address them, DHS continues to be unable to meet the statutory processing timeframe and to satisfactorily address the consistent administrative issues I identify in the way it processes its requests. For example:

On average, approximately one-third of all complaints about delay to my office has involved DHS despite regular assurances by DHS that their processing will improve. This is an unsatisfactory state of affairs.

Although DHS is aware of these issues and has attempted to address them, DHS continues to be unable to meet the statutory processing timeframe and to satisfactorily address the consistent administrative issues I identify in the way it processes its requests.

¹¹ Now 11 with the creation of the Department of Health.

¹² 1,244 in the 2009 financial year, 2009 *Freedom of Information Annual Report* tabled by the Attorney General.

¹³ Attorney General Annual Reports on FOI.

While I acknowledge the difficulties DHS faces in relation to FOI, given the types of documents it is required to process and the number of requests it receives each year, I would have also expected DHS to identify and implement solutions for problems it has been aware of for several years. To provide me with the same excuses, for example, insufficient experienced staff, is unsatisfactory.

- In several cases over recent years DHS has not immediately issued the decision on the request after providing the Minister's office with five days to note the decision, as per the Attorney-General's guidelines. In some cases DHS has waited in excess of 20 days for noting. Despite repeated reassurances to my office that staff will be reminded, this problem continues.
- Communication difficulties between program areas and FOI staff. In one particular case, summarised below, the program area placed undue influence on the FOI decision-maker.
- Consultations with applicants are sometimes inadequate leading to delays in processing the request. In one case, I identified that the pre-assessment team has a decision-making role and could have handled an applicant's request at a very early stage. Instead, the applicant was required to wait several months for a decision under section 25A(5) of the FOI Act (which allows agencies to refuse to process a request if it is apparent that all the documents are exempt).
- In some instances, DHS was unable to explain the reason for the delays in processing requests for certain time periods.

The above matters are concerning because my *Review of the Freedom of Information Act*¹⁴ outlined best practice in managing such issues and DHS is not following that practice. In addition, the Department of Justice's practice notes¹⁵ support the best practices outlined in my 2006 review.

While I acknowledge the difficulties DHS faces in relation to FOI, given the types of documents it is required to process and the number of requests it receives each year, I would have also expected DHS to identify and implement solutions for problems it has been aware of for several years. To provide me with the same excuses, for example, insufficient experienced staff, is unsatisfactory.

Unreasonable delays

I received a complaint regarding DHS' delay in responding to a FOI request. The request was received by DHS on 3 October 2008 and the complainant was notified of the decision more than a year later, on 28 October 2009.

In relation to this matter, I identified the following delays and reasons:

- departmental units other than the FOI Unit, caused delays. For example, emails between the department's program areas and the FOI unit stated: 'We are not trying to be difficult but ... there are some significant matters on our plate including COAG and future funding and the mid-year review of the budget for the coming financial year'

¹⁴ Ombudsman Victoria, *Review of the Freedom of Information Act 1982*, June 2006.

¹⁵ The practice notes are available at <www.foi.vic.gov.au>.

- absences of key people on leave in January 2009 were cited as being reasons for the processing delay
- little action by DHS during the periods:
 - 29 December 2008 and 10 February 2009
 - 30 July and 7 September 2009
- on 3 March 2009, it was noted that the search was largely complete. However, it was noted that due to the bushfires the request was 'on hold'
- from March until the end of July 2009, DHS considered the issue of exemptions. An email dated 23 July 2009 stated that the request needed to 'move through the ranks'
- on 9 September 2009 the Minister's office received the memorandum seeking the decision be noted. DHS waited until 22 October 2009 for the memorandum to be returned; 37 days in excess of the five days recommended in the Attorney-General's guidelines
- on 28 October 2009 DHS notified the applicant of its decision and refunded her deposit. It cited the creation of the new departments of Health and Human Services in August 2009, and the request being across both, as the reason for the delay.

DHS took more than one year to make a decision regarding the request. I expressed concerns to DHS:

- that the length of the delay was unreasonable
- about the reasons for the delay
- the periods where there was a lack of action.

It is clear that DHS failed to act in accordance with the Attorney-General's guidelines concerning the ministerial noting of decisions, which requires the department to process the matter once five days have elapsed.

Outcome

I sought DHS' response on:

- proposed actions to address the continuing delays in processing FOI requests
- an update on steps being taken to clear the backlog in processing FOI requests.

I received a standard response from DHS regarding high staff turnover. They indicated that 'usual reminders' will be given to staff. I considered DHS' response inadequate.

DHS advised that since the implementation of the strategies, the number of current and overdue requests within both the DHS and the Department of Health has reduced substantially. However, there are still requests from 2008 and 2009 that are unfulfilled, with 11 requests with more than 1,000 pages.

Comparing FOI requests as at 31 March 2009 and 28 May 2010, current requests being processed have reduced by 43 per cent and by 41 per cent for overdue requests on hand.

In a similar case, an FOI request was received by the Department of Health on 9 April and a decision was provided on 1 December 2009. The delay was occasioned by the complexity of the request for a large volume of data; the department's program area's failure to respond to the FOI unit; miscommunication about the scope of the request; and lengthy internal discussions about privacy concerns related to the information. At one stage, the department advised the applicant that it had refused the request under section 25A of the FOI Act (the request would unreasonably divert resources of the agency). The department acknowledged that there was lengthy delay in processing this request and that some aspects of processing could have been better managed. The department also advised me that it has initiated action to overcome these problems in future.

Recently, DHS has in response to my concerns, provided me with details of strategies and measures it has taken to reduce the processing times for the FOI requests it receives. They include:

- Ensuring FOI staff numbers are maintained by closely managing staff leave and employing more staff when appropriate.
- More consultation with applicants about re-scoping requests to reduce volume and therefore the time taken to complete requests.
- More use of section 25A of the FOI Act to negotiate on, and possibly reject, large requests where the applicant is either unwilling or unable to reduce the size of their requests.
- Continuing to work with program areas to ensure relevant documents are provided for assessment on a timely basis.
- Formally reminding Ministers of the Attorney-General's guidelines that require FOI decisions to be noted within five days.

DHS advised that since the implementation of the strategies, the number of current and overdue requests within both the DHS and the Department of Health has reduced substantially. However, there are still requests from 2008 and 2009 that are unfulfilled, with 11 requests with more than 1,000 pages.

Comparing FOI requests as at 31 March 2009 and 28 May 2010, current requests being processed have reduced by 43 per cent and by 41 per cent for overdue requests on hand.

Administrative delays – Department of Justice

I received 18 complaints which were investigated by my office about Department of Justice's (DOJ) handling of FOI requests in the 2009-10 financial year.

In respect of the cases I received, for the most part DOJ's handling of the requests was proven to be reasonable. However in a small number of cases, DOJ does not appear to be consulting with applicants in a timely and open manner. The following case studies involved lengthy delays. Given DOJ has portfolio management of FOI across the Victorian public sector, I look to it to lead by example by demonstrating high standards in processing FOI requests.

Communication problems cause delays

I received a complaint about DOJ's delay in responding to an FOI request. The applicant sought access to accounting documents related to CabCharge expenditure. The applicant was willing to receive the information in a report format, detailing the claimant, the service provided or item purchased, the date of invoice, relevant cost code, amount and total figure.

My enquiries identified that DOJ was unable to process the FOI request within 45 days because of internal communication problems. DOJ's FOI Unit failed to communicate properly with the Finance Branch regarding the terms of the FOI request and the types of documents which could be created. The Finance Branch provided the FOI Unit with a document. However, the FOI Unit failed to identify promptly that the document did not contain the categories of information listed in the FOI request. DOJ also failed to contact the applicant to discuss the nature of the FOI request, the types of documents available and the applicant's preference on how to proceed.

Outcome

DOJ acknowledged the causes for the delay in this matter and stated that it would review and amend its practices to ensure better communication with applicants. In order to improve internal communication, the FOI Unit has commenced meeting with other areas of the department to discuss the terms of FOI requests.

DOJ completed processing of the FOI request and provided an apology to the applicant. DOJ also waived the access charges and refunded the \$25 deposit and application fee.

In another example, an applicant lodged the same FOI request with a number of departments in April 2009 and was satisfied with each department's processing of the request, except DOJ. In May 2009 DOJ sought clarification from the applicant regarding the request and following further correspondence, the provision of some information to the applicant and protracted discussions, including advice by the department that the likely outcome was that there would be no documents and a compulsory VCAT conference, DOJ and the applicant met in January 2010 and reached an agreement as to what type of search DOJ would conduct. In March 2010, DOJ advised the applicant that, following a thorough and diligent search, the documents sought 'do not exist'.

This case highlights the importance of early and regular communication with an FOI applicant and I am disappointed that DOJ did not resolve this matter in a more timely manner given it has portfolio responsibility for FOI. This responsibility includes providing guidance to other departments and agencies regarding FOI requests and more recently, training new FOI staff.



Whistleblowers protection act

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WHISTLEBLOWERS PROTECTION ACT

The role of whistleblowers

Whistleblowing should be encouraged by all public sector bodies as a means of demonstrating its commitment to accountability, integrity and good public administration.

Whistleblowers perform an important role by ensuring that allegations of serious wrongdoing by public officials are reported and brought to light. Whistleblowing should be encouraged by all public sector bodies as a means of demonstrating its commitment to accountability, integrity and good public administration and a source of information to prevent opportunities for corruption to occur and system improvements to be made.

In my experience some public sector bodies are still yet to recognise the value of whistleblowing and continue to discourage reporting. In some agencies, negative and prejudicial perceptions about whistleblowers prevail. I consider these attitudes to be inappropriate and believe that agencies should accept whistleblowing as a necessary and integral part of a good complaint handling system.

The aim of the Act

Some public sector bodies are still yet to recognise the value of whistleblowing and continue to discourage reporting.

The *Whistleblowers Protection Act 2001* (the Act) states that anyone who has reasonable grounds to believe that a public officer or public body has engaged in or is engaging in improper conduct may make a disclosure to me or to the relevant public body. It also establishes a system to investigate disclosures and to protect whistleblowers from any reprisals taken against them as a result of making a protected disclosure.

The Act provides a mechanism that enables instances of improper conduct of public officials and bodies to be identified and, where appropriate, investigated and reported. Importantly, it provides whistleblowers who make protected disclosures with a range of protections including protection from reprisals and defamation, immunity from liability and prohibition from identification in reports. It also provides whistleblowers with an avenue to sue for damages for detrimental action, or to seek an order or injunction from the Supreme Court in response to a reprisal for having made a protected disclosure.

Agencies should accept whistleblowing as a necessary and integral part of a good complaint handling system.

I am responsible for assessing, managing and investigating whistleblower disclosures. I also issue guidelines to help public bodies handle disclosures and comply with the Act. These guidelines are provided on Ombudsman Victoria's website <www.ombudsman.vic.gov.au>.

The Whistleblowers Protection Act is an important component of the integrity framework in Victoria and has proven to be beneficial in identifying allegations and disclosures of improper conduct by public officials and public bodies in the Victorian public sector. Individuals have also raised allegations about issues in the public sector which while not meeting the threshold definition of a public interest disclosure have, at the request of the individual, been examined under the provisions of the Ombudsman Act. This flexibility in managing matters brought to my attention has enabled me to examine allegations ranging from minor maladministration to serious corrupt conduct.

In fact, the number of complaints handled by my office under the Whistleblower legislation over the past year has risen by 81.3 per cent – a total of 174 complaints. For the most part, I do not report publicly on the outcome of my investigations: it is only in those circumstances where I consider it in the public interest that I do so. This year, there were two such reports:

- *Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre, December 2009*
- *Investigation into the disclosure of information by a councillor of the City of Casey, March 2010.*

Statistics and trends

In accordance with the Act, a whistleblower disclosure can be made either to the Ombudsman or a public body. In the past 12 months there has been a significant increase in the number of whistleblowers approaching my office direct. It appears that there is a greater level of awareness in the Victorian community about my role in receiving and assessing whistleblower disclosures. I note that the *Review of Victoria's integrity and anti-corruption system*¹⁶ found the public perception in Victoria of the effectiveness of its integrity arrangements to be comparable to those in New South Wales and Queensland, both of which have anti-corruption commissions in place, but significantly less effective than South Australia's arrangements where no anti-corruption commission exists.

The Act requires me to investigate each matter that I have determined to be a public interest disclosure. However I may refer the matter to the public body, the Chief Commissioner of Police or the Auditor-General to investigate if I consider that it is appropriate to do so. Where I determine a matter is not a public interest disclosure, I will advise the person who made the disclosure that the matter may be dealt with as a complaint under the *Ombudsman Act 1973* or *Police Regulation Act 1958*.

The Whistleblowers Protection Act is an important component of the integrity framework in Victoria and has proven to be beneficial in identifying allegations and disclosures of improper conduct by public officials and public bodies in the Victorian public sector.

¹⁶ State Services Authority, *Review of Victoria's integrity and anti-corruption system*, May 2010, page 10.

The number of matters that I determined to be a public interest disclosure this year remains the same as last year (28). However, my office did investigate an additional two cases. There has been a higher level of complexity associated with the matters investigated compared to previous years.

Table 5: Number of whistleblower matters handled each year since 2006-07

PID/PD Table	2009-10	2008-09	2007-08	2006-07
Disclosures				
Total disclosures received	174	96	114	84
Public Interest Disclosure (PID)	28	28	18	21
Protected Disclosure (PD)	15	20	18	9
Investigation of PID				
By Ombudsman	14	12	10	14
By Public Body	14	13	8	6
By Auditor-General	0	1	0	1
By Chief Commissioner	0	1	0	0
Not investigated	0	1	0	0
Alternative Procedures				
Under Ombudsman Act	28	8	7	14
Police Regulation Act	2	3	3	2
No jurisdiction	14	0	0	0
Under Review	1	0	0	0
Withdrawn	2	0	0	0

Because of my limited resources, I have referred an increasing number of whistleblower disclosures back to public bodies for investigation. Unfortunately, the quality of some of the investigation reports I receive back from agencies has been inadequate and I am required to either request further investigations be made to address the deficiencies in the reports or have my staff undertake the investigation. In some instances, the inadequacies of the original investigation reflect the poor choice of investigators, who at times lack the experience and skills necessary to undertake this work. This is both inefficient and time-consuming, resulting in unnecessary delays and uncertainty for whistleblowers.

The role of public sector managers

Senior management has a critical role to play in promoting a culture which actively encourages and supports whistleblowers. This should include making it clear to staff that whistleblowers will not be ostracised or criticised, but will be supported, and the establishment of systems which allow for the effective investigation of whistleblower disclosures, followed by decisive action.

The following case study demonstrates where years of failure by management to address issues led to many problems.

Senior management has a critical role to play in promoting a culture which actively encourages and supports whistleblowers.

Failure by management to act

I received a disclosure from a whistleblower regarding the manner in which drug exhibits were being managed by the Victorian Police Forensic Services Centre. I received a further disclosure that detrimental action had been taken against the whistleblower for having made the disclosure.

My investigation revealed many issues, including:

- for at least 15 years there had been no fully independent audit of drug holdings
- over the past 16 years concerns had been raised about drug exhibit management on numerous occasions but were not addressed
- a reluctance by senior managers to improve processes and procedures
- senior management failed to provide appropriate leadership and direction which led to grievances, occupational health and safety complaints, and Federal Court action.
- mismanagement and a lack of accountability created an environment in which corruption could occur and go unnoticed.

I made a number of recommendations to improve accountability, processes and procedures. These have all been accepted by the Chief Commissioner of Police.

Treatment of whistleblowers

Protecting whistleblowers against reprisals is essential to ensuring the effective operation of the Act. With this in mind, the Act provides that whistleblowers can make disclosures about detrimental action taken (or to be taken) against them in reprisal for making a protected disclosure. Detrimental action can involve allegations of disadvantage, intimidation, harassment, injury, or loss of employment opportunities.

While it is a serious offence under the Act to take (or propose to take) detrimental action against a whistleblower, some agencies are still not taking adequate or proactive measures to protect whistleblowers against detrimental action.

In my experience, the lack of welfare support provided to whistleblowers is a major area of weakness for many agencies.

While I continue to encounter cases where welfare support for the whistleblower has been inadequate, some agencies are managing whistleblower welfare reasonably well.

While it is a serious offence under the Act to take (or propose to take) detrimental action against a whistleblower, some agencies are still not taking adequate or proactive measures to protect whistleblowers against detrimental action. Senior management in an agency is responsible for ensuring that whistleblowers are protected from direct and indirect detrimental action.

In my experience, the lack of welfare support provided to whistleblowers is a major area of weakness for many agencies. This can lead to whistleblowers feeling vulnerable and unsupported, as well as exposed to the risk of reprisal action being taken against them. Public sector agencies need to be more proactive in addressing welfare support for whistleblowers before stress-related health problems result. There is an obligation under the Act for agencies to develop and deliver appropriate welfare support strategies and programs to whistleblowers.

While I continue to encounter cases where welfare support for the whistleblower has been inadequate, some agencies are managing whistleblower welfare reasonably well. I recently investigated a matter where an agency took immediate steps to ensure the welfare of the whistleblower by setting in place appropriate support mechanisms. As a result, the whistleblower felt supported throughout the investigation.

Education and training

My office performs a central role in providing education and training to public sector bodies about handling the receipt of disclosures and providing whistleblower welfare. A key feature of the effective management of disclosures in public bodies is the education and support provided by my office to protected disclosure coordinators and public bodies generally on the provisions of the Act. My officers frequently provide advice, support and training to public bodies and their staff to ensure they are aware of the objectives of the Act and understand how to work within the current legislative framework.

Over the past year my office delivered five whistleblower workshops for 78 protected disclosure coordinators and agency staff as a way to increase the level of understanding about the operation of the Act and their responsibilities.

Review of the Act

In my 2008 and 2009 annual reports, I commented on the review of the Act which the Victorian Attorney-General had commenced in 2007. My office has provided input to an interdepartmental committee with representatives from the Department of Justice and the Department of Premier and Cabinet.

In my view it is essential that the challenges created by the current legislation are urgently addressed. Measures need to be taken to simplify the operation of the Act; to improve the protections afforded to whistleblowers and those involved with their management; and ensure that the framework provided to investigate public interest disclosures fulfils the purpose of the Act.

In February 2009, the Commonwealth House of Representatives Standing Committee on Legal and Constitutional Affairs released its report titled *Whistleblower protection: a comprehensive scheme for the Commonwealth public sector*. This report sets out a preferred model for legislation to protect public interest disclosures within the Australian Government public sector. I understand that the Victorian Attorney-General is considering the Commonwealth Government's response to this report before finalising the recommendations from the Victorian review. I note that the federal model places responsibility for administration of the Act with the Commonwealth Ombudsman; has no thresholds of corrupt conduct and includes maladministration in its broad definition; protects disclosures made to the media; and limits whistleblowers to 'insiders' within the public sector. The current Victorian legislation does not limit who can make disclosures, and I do not support any such limitation.

The federal proposal to include maladministration in its whistleblower legislation is in line with my views that administrative action can include corrupt conduct. However, I have recommended that the investigative provisions of the Whistleblowers Protection Act be rationalised into those of the Ombudsman Act, leaving the whistleblower act provisions to provide protections for whistleblowers. The result would see all investigations, from those arising from allegations of minor maladministration to those of serious corruption, being undertaken under the provisions of the one Act, the Ombudsman Act. This would provide a seamless and flexible capacity to undertake comprehensive investigations and to adapt quickly, efficiently and effectively to changes in the nature and scope of the issues which arise from time to time during the course of an investigation, without the need to change the legislative basis or cease an investigation. The Whistleblowers Protection Act would contain only those provisions necessary to provide protections to whistleblowers. I consider this would provide better outcomes and any proposal to extend the Victorian whistleblower legislation to include maladministration would significantly blur the lines and confuse complainants as to the distinctions between the Ombudsman and Whistleblowers Protection Acts.

The federal model also advocates an education function. I would welcome the addition of an education function to the existing Victorian legislation. While I currently undertake seminars for staff of public sector agencies about their roles and responsibilities under the Act, a specific education provision would enable me to provide added impetus and adequate resources to this task, facilitating better outcomes from agencies especially where I refer allegations to them for investigation.

Examples of corrupt conduct

Under the provisions of the Whistleblowers Protection Act (the Act), corrupt conduct is defined as:

1. the conduct of a person that adversely affects the honest performance of a public officer's or public body's function
2. dishonesty or inappropriate partiality in the conduct of a public officer
3. a breach of public trust by a public officer, a former public officer or a public body
4. the misuse of information or material acquired in the course of a public officer or former public officer's performance of their functions or
5. a conspiracy or attempt to engage in conduct referred to in points 1 and 4.

Where there are conflicts of interests in an agency which are not addressed, an opportunity is provided for corrupt conduct to occur.

Examples of corrupt conduct investigated by my office, or by agencies at my request, demonstrate the importance of taking steps which prevent corruption from arising. In particular, I have identified that where there are conflicts of interests in an agency which are not addressed, an opportunity is provided for corrupt conduct to occur. Several of my reports have addressed the issue of conflicts of interest, with more targeted reports being *Conflict of interest in the public sector*¹⁷ and *Conflict of interest in local government*.¹⁸

In my report on conflict of interest in the public sector I stated:

A conflict of interest is not in itself misconduct; however, failing to recognise it or manage it appropriately is, at best, improper or, at worst, criminal.

I concluded that the following areas warrant specific attention by public sector agencies:

- outside/secondary employment and private business interests
- employment and business activities after leaving public sector employment
- employment and private business interests of family members, friends, and associates
- membership of community groups and organisations
- inappropriate/personal relationships.

Where the above matters are not declared by staff and/or managed by agencies, corrupt conduct can easily emerge.

¹⁷ Ombudsman Victoria, *Conflict of interest in the public sector*, March 2008.

¹⁸ Ombudsman Victoria, *Conflict of interest in local government*, March 2008.

Failure to declare relationship

I referred a public interest disclosure to an agency under the Act. The disclosure concerned allegations of improper conduct against a senior employee of the agency. At my request, the agency appointed an experienced external investigator to undertake the investigation given the seniority of the employee involved. The investigation concluded that the employee had awarded a contract to a family member, had failed to declare the relationship and in so doing had acted dishonestly. The employee resigned following the investigation. The investigator made recommendations to the agency, which I supported, to strengthen its conflict of interest policy and improve the wording of its contracts of employment. The agency accepted the recommendations.

Failure to declare relationship

A university referred an anonymous disclosure to my office for determination. The disclosure related to alleged improper conduct by a senior officer within the university. The allegations included that the subject had engaged a brother to undertake gardening/landscaping work for the university and had used a university credit card to purchase extravagant goods for personal use, such as gift cards. Some level of investigation of the disclosure by way of an internal audit had been undertaken prior to the matter being referred to my office and this audit was suspended to enable an investigation pursuant to the Act to be undertaken. I determined the matter be a public interest disclosure and referred it to the university to investigate.

The university engaged an external investigation company to undertake the investigation on its behalf. The external investigator had a good understanding of the provisions of the Act and in my opinion conducted a thorough investigation. As part of the investigation the investigator reviewed university policies and provided an analysis to the university which found the subject to have breached a number of the policies. The investigation substantiated the allegations against the university officer.

The university responded to the investigator's findings by stating that given serious misconduct had taken place, it would reinstate the investigation by the internal auditor and the auditor's report would then be provided to the Human Resources department in order to commence disciplinary action against the subject. The university also considered the investigation's findings that management shortcomings resulted in inadequate monitoring of the subject's activities and therefore also referred this issue to the Human Resources department. Additionally, the university undertook to review its procedures and audit the use of credit cards on a regular basis.

In light of the findings from the investigation, the university's proposals to address the issues appeared reasonable and I finalised the matter with the understanding that a progress report would be provided to my office.

I consider that maintaining an ethical culture is the single most important factor that ensures that the public sector retains the degree of public trust required in a modern democracy. A commitment to ethical conduct must therefore be espoused at every level of an agency and in each and every task performed. Strong leadership by senior officers is critical to the development of an ethical culture. Where senior staff fail to act ethically there is a higher likelihood of corrupt conduct occurring throughout an agency and affecting staff's understanding of what constitutes acceptable practices. In my view, senior staff must provide exemplary leadership and set the standard for ethical conduct in their organisations. While the establishment of an ethical culture takes time, the development of sound internal policies assists in reducing the likelihood of corrupt conduct.

Poor governance processes

I referred a public interest disclosure to V/Line Pty Ltd (V/Line) for investigation under Part 4 of the Act. The disclosure related to allegations that V/Line employees received cash for scrap metal which was not recorded in the V/Line accounting system and was used for staff related expenses. The investigation concluded that cash payments from the sale of scrap metal were not part of the formal accounts receivable process and instead the money received was kept in a safe under the names of two V/Line employees. When interviewed the employees stated that they used the money for staff related matters such as Christmas functions, flowers and leaving gifts. Other employees who were interviewed during the investigation also confirmed that they had received gifts in the forms of cash and lottery tickets and had attended subsidised Christmas functions. The investigation concluded that \$4,713.20 in cash and one cheque to the value of \$880.35 were not processed via V/Line's accounts receivable system during the period 1 July 2007 to 31 July 2009.

V/Line accepted a recommendation that it seek legal advice to determine what action would be taken in response to this finding. The subsequent legal advice concluded that although company policy had been breached, there was no evidence that any laws had been broken and therefore there were no grounds for criminal action to be taken. V/Line also acknowledged that the processes regarding the collection of scrap metal needed to be strengthened and informed my office that V/Line staff would receive training in the revised Cash Handling Policy and Infrastructure Materials Management Procedure. V/Line also appointed external auditors to ensure that changes in processes were adopted.

V/Line's cash handling procedures have since been improved; staff have been counselled; and payments for scrap metal are to be paid and received only by cheque.

While the above example demonstrates the importance of policy it also shows that insufficient oversight can provide the opportunity for public officers to act corruptly. Other examples are:

Insufficient oversight can provide the opportunity for public officers to act corruptly.

Poor governance processes

A whistleblower made a disclosure regarding the conduct of two employees (husband and wife) at the Department of Primary Industry (DPI). The whistleblower alleged the employees had diverted departmental property such as fencing materials for use on their farm; undertaken non-approved travel; and used a government credit card for non-work related expenses. My investigation established improper conduct and improper work practices by the officers. The conduct of these officers was clearly not of an acceptable standard and in my view amounted to a breach of public trust. I recommended that DPI investigate further and consider disciplinary action. At the beginning of DPI's investigation, one of the employees resigned. DPI commissioned an external body to review policies, procedures and the conduct of the officers in question. The external body also established that improper conduct occurred and the employment of the other officer still working at DPI was terminated.

Failure to follow code of conduct

A whistleblower disclosed that an Executive Director of a Victorian Government Institute had authorised the use of institute funds to pay an employee's speeding infringement incurred while on institute business in an institute motor vehicle. My investigation confirmed that the disclosure was correct, that is the Executive Director had inappropriately authorised the payment from institute funds. The Executive Director argued that at the time of the payment the institute did not have policies in place to guide such payments and therefore the payment was not inconsistent with any institute policy. As a result, the Executive Director stated it could not be said that the action was inappropriate and further claimed that it was a reasonable management decision at the time.

In response I concluded that despite the decision not being in contravention of any institute policy, the Executive Director should have been aware of the existence of a *Whole-of-Government Motor Vehicle procedure* (in place since 1989) and the *Code of conduct for Victorian public sector employees* that were relevant to this matter.

I recommended the institute develop appropriate policies in relation to the use of its motor vehicles and the management of whistleblower disclosures. The institute accepted my recommendations in this regard.

Failure to adequately investigate whistleblower disclosures

In accordance with section 42 of the Act I can refer a public interest disclosure to the relevant public body to investigate in the first instance. This is a necessary step in many matters as my office is not sufficiently resourced to investigate all public interest disclosures. I then monitor the investigation undertaken by the public body.

Unfortunately, I have identified shortcomings regarding several agencies' investigations into public interest disclosures. Some of the recurring issues are:

- *Significant delays in completing investigations*

Delays in finalising investigations into public interest disclosures and in providing my office with a completed investigation report are a recurring issue. For example, in June 2009 I referred a public interest disclosure to the Department of Human Services (DHS) for its investigation. DHS drafted an investigation plan in July 2009 which indicated that the final investigation report would be provided to my office by August 2009. Despite this, I did not receive the report until February 2010. DHS' explanations for the delay included that the plan had not allowed for delays in obtaining legal advice and comments by parties on the draft report; the investigator was ill for one week; a staff member was on annual leave and there were difficulties in obtaining evidence. In my view, these explanations did not reflect the significance and priority that should be given to a whistleblower investigation.

- *Agencies failing to comply with the Ombudsman's Guidelines¹⁹*

The Ombudsman's guidelines are a statutory requirement under section 69 of the Whistleblowers Protection Act. They are published on my website and outline the procedure to be followed by public bodies in relation to disclosures and investigations. Despite this, agencies often overlook advice contained in the guidelines. For example, the guidelines state that the public body should keep my office regularly informed of the progress of the investigation.²⁰ However, there have often been instances where my investigation officers have had to request progress reports because they are not provided by agencies.

¹⁹ Ombudsman Victoria, *Whistleblowers Protection Act 2001 Ombudsman's Guidelines*, August 2009.

²⁰ Ibid, page 27.

- *Breaches of confidentiality provisions under the Act*

There also appears to be a lack of understanding about confidentiality and the protection of whistleblowers. I have identified instances where interviews were recorded and a copy of the interviews provided to witnesses contrary to my guidelines.

- *Conflicts of interest*

In one instance the impartiality and integrity of an investigation of a public interest disclosure were compromised by a conflict of interest that arose during the investigation. The contracted investigator investigating a whistleblower disclosure had prior involvement with two witnesses yet the investigation continued. I have since recalled this investigation and am reinvestigating the allegations because of my concerns with the agency's handling of the matter.

- *Providing witnesses with the opportunity to collude*

I have identified cases where the Act's confidentiality provisions have not been explained in agencies' letters to witnesses. This is concerning because witnesses are therefore provided with the opportunity to collude prior to being interviewed and this subsequently affects the reliability of evidence. In one case, I reviewed an investigation in which a government department forwarded correspondence to prospective witnesses during the course of its investigation. The correspondence alerted prospective witnesses to the investigation and informed them that they may be contacted by the investigators. I advised the Department that such a practice may encourage collusion between witnesses and undermine the integrity of the investigation. I recommended that a more appropriate methodology would be for investigators to contact witnesses shortly prior to their being required to attend an interview and to refer witnesses to the Protected Disclosure Coordinator if they have questions.

- *Poor quality of investigation reports*

Some investigation reports provided by agencies were of a poor quality, particularly where smaller agencies conducted investigations. Conclusions were often asserted without sufficient substantiating evidence; obvious lines of enquiry were not pursued; investigations were not conducted in a timely manner; and investigators had little, and at times no, prior experience in conducting an investigation.

Acceptance of gifts

I received a whistleblower disclosure regarding the conduct of two teachers at a TAFE. It was alleged that the teachers had received \$200 each from a businessman in order for the businessman to be awarded Recognition of Prior Learning in certain subjects. The disclosure also alleged that the TAFE had failed to take action in relation to the matter despite being made aware of it. While the TAFE conducted an investigation into the allegation, its investigator had no investigation experience and had simply accepted the accounts provided by the teachers. As a result, my office took over the investigation. My officers interviewed the businessman as part of my investigation and he stated that it was common practice for him to provide gifts in business endeavours. While the businessman maintained that his payment to the teachers was simply a gift, I consider that he gave the money to the teachers in anticipation of receiving favourable treatment. During interview, one teacher confirmed that he had considered keeping the money. I concluded that this teacher had intended for the student's papers to be marked favourably. I also concluded that the TAFE ought to have considered this matter to be of a serious nature and, if no adequate internal expertise existed, should have engaged an external agency to thoroughly investigate the matter.

- *Agencies fail to record disclosures in their annual reports*

In accordance with section 104 of the Act public bodies are required to prepare a report of operations or an annual report which includes:

- o the number and types of disclosures made to the public body during the year
- o the number of disclosures referred to the Ombudsman for determination whether they are public interest disclosures
- o the number and types of disclosed matters referred to the public body by the Ombudsman for investigation
- o the number and types of disclosed matters referred by the public body to the Ombudsman for investigation
- o the number and types of investigations taken over from the public body by the Ombudsman
- o the number of requests made by a whistleblower to the Ombudsman to take over an investigation by the public body
- o the number and types of disclosed matters that the public body has declined to investigate

- o the number and types of disclosed matters that were substantiated upon investigation and the action taken on completion of the investigation
- o any recommendation made by the Ombudsman under the Act that relates to the public body.

Annual reports are an integral part of an agency's accountability to the public. Failure to report on the number and type of whistleblower disclosures in an agency's annual report contravenes its legal obligations. In one instance, I investigated a disclosure regarding the misappropriation of public funds by a public officer. Prior to my office's involvement, the agency concerned conducted its own investigation. However, the agency did not include the disclosure in statistics represented in its annual report because it did not consider the disclosure to be a whistleblower related matter.

Lack of awareness

There is a general lack of awareness about the Act in public sector agencies, including its purpose and provisions. This has resulted in agencies treating public interest disclosures in a similar manner to other complaints.

My office has recently examined the understanding, and compliance, of certain aspects of the Act by local government. The project randomly selected a sample of 20 councils of the 79 throughout Victoria. Approximately two-thirds of the sample failed to meet obligations under the Act. For example, council officers had not heard of the Act or misunderstood its provisions. Several councils in the sample examined did not train their staff in whistleblower disclosures and investigations and did not have adequate references to the Act on their websites or in their annual reports. While my office has run educative sessions for staff from external agencies to enhance their understanding and application of the Act, I consider that it is the duty of public sector agencies to educate their staff about legislation which governs their practices, investigations and more specifically, response to whistleblower disclosures.



Information technology and its management

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Information technology and its management have emerged as a key issue in a number of my investigations over recent years.

When the integrity of data is compromised, decisions on which it was based can result in adverse or unanticipated outcomes or simply be wrong.

INFORMATION TECHNOLOGY AND ITS MANAGEMENT

Introduction

Information technology (IT) and its management have emerged as a key issue in a number of my investigations over recent years. The issues raised have been consistent over time. It has been a significant theme, for example, in my investigations over the past three years into:

- the Department of Human Services Child Protection Program²¹
- crime statistics and police numbers²²
- VicRoads' driver licensing arrangements²³
- medical practitioner billing practices by the Transport Accident Commission and the Victorian WorkCover Authority.²⁴

Data is used to inform decision-making processes for departments and government. It is critical for efficient and effective operations, forward planning and policy development of agencies and for government regulation. When the integrity of data is compromised, decisions on which it was based can result in adverse or unanticipated outcomes or simply be wrong.

Data integrity and the development and management of IT systems are significant issues for the public sector. They are key issues for public administrators due to our increasing reliance on technology and the information it stores, processes and provides in our day-to-day lives. The management of information, including its security and privacy and the costs associated with developing and operating IT systems can have significant implications on the taxpayer and on the way in which agencies function. They often involve large sums of money.

Data is also used to inform decisions concerning the distribution of public money to various government and non-government agencies and programs. Therefore, reliable, accurate and up-to-date data is necessary to ensure that resources and funding are allocated to the highest priority and most deserving areas in line with government policy.

21 Ombudsman Victoria, *Own motion investigation into the Department of Human Services – Child Protection Program*, November 2009.

22 Ombudsman Victoria, *Crime statistics and police numbers*, March 2009.

23 Ombudsman Victoria, *Investigation into VicRoads' driver licensing arrangements*, December 2007.

24 Ombudsman Victoria, *An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing*, July 2009.

For example, in my investigation into crime statistics and police numbers, I compared data in Victoria Police's Law Enforcement Assistance Program (LEAP) to data collected through the 000 emergency call service, also known as Computer Aided Dispatch (CAD) data. I identified significant differences between CAD data and what was recorded on LEAP. In many instances requests for assistance using the 000 service, despite allegations of serious offences, did not lead to records on LEAP. Also, my investigation identified that LEAP statistics were not always reliable because poor administrative systems and over-reliance of discretionary decisions by individual officers when recording offences led to some crimes being under-reported. Unreliable LEAP data have an impact on decisions regarding the distribution of public money to areas in the police force and to police related programs or policy initiatives.

Inadequate IT systems and poor quality data management practices can also have an impact on an agency's ability to carry out day-to-day functions. For example, my investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre²⁵ (the Centre) established that the Centre could not adequately produce accurate listings of drug holdings; failed to track and weigh all drug exhibits; and could not always identify if the form of a drug had been altered, for example from tablets to powder. I concluded that the IT forensic case management system (FCM) contributed to data integrity issues and the Centre's capacity to appropriately carry out its role.

Use of data

Decision-makers rely on data but often do not question its accuracy and currency, particularly in the context of the decision being made. However, the collection, input and analysis of data are subjective; they are influenced by individuals and agencies. I therefore consider that caution must be exercised when interpreting and using data and when providing information to the public.

My investigation into the Department of Human Services (DHS) Child Protection Program²⁶ established that data was at times presented so that DHS' key performance measures, relied upon by government to monitor DHS' performance, would appear to be achieved. My investigation identified evidence that showed the department's data collection practices to be vulnerable to manipulation, unreliable and overly simplistic. In response, the department commissioned an independent audit which concluded that there was no evidence of deliberate manipulation of data and that the variations found resulted from the imprecise definition of standards and counting rules.

Data integrity and the development and management of IT systems are significant issues for the public sector. They are key issues for public administrators due to our increasing reliance on technology and the information it stores, processes and provides in our day-to-day lives.

Inadequate IT systems and poor quality data management practices can also have an impact on an agency's ability to carry out day-to-day functions.

Decision-makers rely on data but often do not question its accuracy and currency, particularly in the context of the decision being made.

²⁵ Ombudsman Victoria, *Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre*, December 2009.

²⁶ Ombudsman Victoria, *Own motion investigation into the Department of Human Services – Child Protection Program*, November 2009.

It is reasonable for members of the public to expect that these IT systems operate effectively and enhance agencies' service delivery and their ability to meet their statutory responsibilities.

Costs of information technology

Designing, trialling and implementing IT systems often require significant investment of public funds. Therefore, it is reasonable for members of the public to expect that these IT systems operate effectively and enhance agencies' service delivery and their ability to meet their statutory responsibilities. This should also mean ensuring value for money.

During my 2009 investigation of the tendering and contracting of IT within Victoria Police,²⁷ my investigators examined a number of major contracts entered into in the preceding four years. During this investigation Victoria Police advised that as contract variations were made outside of established policy and a major contract was entered into without appropriate authorisation, the actual cost of IT systems was some \$39 million over what had been budgeted.

During my investigation into DHS' Child Protection Program,²⁸ DHS staff informed my officers that the projected cost to implement its Client Relationship Information System (CRIS) across divisions of the department, including child protection had been \$29 million. The department advised that the actual cost to implement CRIS was \$95 million and further expenditure is anticipated.

Despite this significant outlay, I identified that the functionality of CRIS caused administrative complications. It became apparent through interviews with senior child protection program staff that CRIS substantially increased the time taken to meet the administrative requirements of child protection work. The department accepted my recommendation to commission a review of the fitness for purpose of CRIS.

Costs associated with information technology not only relate to the design and implementation of systems, but also the economic repercussions when IT systems do not work effectively or the information contained on them is erroneous.

Risks in outsourcing information technology functions

When public sector agencies outsource their IT functions, the following risks can ensue:

- the agency can lose control of their data, including private and confidential information about members of the public
- breaches in privacy may occur, including the unauthorised sharing of information

²⁷ Ombudsman Victoria, *Own motion investigation into the tendering and contracting of information and technology services within Victoria Police*, November 2009.

²⁸ Ibid.

- the potential for misuse of data or inappropriate access of data is greater particularly when there is little oversight of the contracted body
- private contracted organisations may not be held liable if an error occurs. The government agency responsible for contracting the service is ultimately accountable to ensure that its statutory obligations are fulfilled.

Over recent years, I have identified significant risks in outsourcing operational processes to commercial contractors. I consider that such arrangements must be properly managed and monitored. For example, one system I examined:

- allowed for multiple records to be created for the same person
- limited the ability to extract data for management reporting and statistical analysis
- did not allow staff to access a client's full history on one screen.

Failure to implement quality assurance mechanisms and conduct audits

It is critical that the quality of data and the IT systems used to record, analyse and generate data maintained by government agencies are monitored and audited to ensure data validity and reliability and to assist agencies in meeting their statutory functions. However, I have found that quality assurance mechanisms and audits are often not conducted by agencies on an ongoing basis, or are conducted poorly.

In my investigation report into the Transport Accident Commission's (TAC) and the Victorian WorkCover Authority's administrative processes for medical practitioner billing²⁹ I concluded that the electronic account processing system utilised by the TAC and WorkSafe was poorly designed because it did not have adequate quality assurance mechanisms. Specifically, the electronic database was not designed to detect billing practices that were inconsistent with the Commonwealth Medicare Benefits Schedule (MBS).

In February 2008 WorkSafe requested internal auditors to conduct an audit of the controls in place for managing invoices from private medical practitioners and public hospitals. The report of this audit identified that deficiencies in the electronic database inhibited WorkSafe's capacity to conduct audits and implement control mechanisms. The internal auditors stated:

Over recent years, I have identified significant risks in outsourcing operational processes to commercial contractors. I consider that such arrangements must be properly managed and monitored.

It is critical that the quality of data and the IT systems used to record, analyse and generate data maintained by government agencies are monitored and audited to ensure data validity and reliability.

However, I have found that quality assurance mechanisms and audits are often not conducted by agencies on an ongoing basis, or are conducted poorly.

²⁹ Ombudsman Victoria, *An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing*, July 2009.

WorkSafe controls would not have detected and in fact have not been designed to detect the billing practices ... The electronic payment system and related accounts processing processes were not designed to analyse the use of item numbers or verify the occurrence or appropriateness of the procedures performed prior to processing the invoices.

I concluded that this failure had cost the Victorian public considerable amounts of money for payments that ought not to have been made and in some cases for services not provided.

As a result of my investigation, TAC and WorkSafe commenced reforming their account processing systems and associated controls to ensure medical practitioners' bills are consistent with the MBS.

In another recent example, my investigation identified that a specialist database which is used by special interest groups within the general public and local and state governments, has limited audit capabilities, has significant delays in the verification and addition of up-to-date information and contains inconsistencies in the level of data held. As a result it lacked the public's confidence which has resulted in limited engagement by those members of the community with an interest in providing essential information to the database. I was concerned that as a source of information for decision-making in relation to construction projects, as well as community based issues, it lacked the accuracy and reliability to be expected. The department accepted my recommendations to address and improve these issues, and to engage more purposefully with the relevant interest groups to expand the level of information provided to the database.

I note that the Victorian government has moved toward a centralised IT system through CenITex. The Government Services Division is working with CenITex to deliver standardised and consolidated information and communication technology services across 14 government departments and agencies. The aim of this centralised model is to develop more efficient IT systems while minimising expenditure.³⁰

³⁰ Department of Treasury and Finance, *Information and Communication Technology Services*, available at <<http://www.dtf.vic.gov.au/CA25713E0002EF43/pages/services-to-government-services-overview>>.



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COMPLAINTS MANAGEMENT

Complaints and referrals

This year has again seen a significant increase in complaints to my office. This continues the trend over the past five years of a consistent growth in complaints and overall approaches³¹ to my office each year. In 2009-10 I received 21,074 approaches of which 11,737 comprised jurisdictional complaints. This represents an increase of eight per cent in approaches and an increase of 13.2 per cent in complaints. While this increasing demand poses challenges upon my office in terms of resources, I am encouraged that many people in the Victorian community are aware of their right to complain and the role of my office.

Figure 1 and Table 6 below highlight the increase in the number of approaches my office has received over the past three years and the number of complaints which are in jurisdiction and have been finalised over the same period.

Figure 1

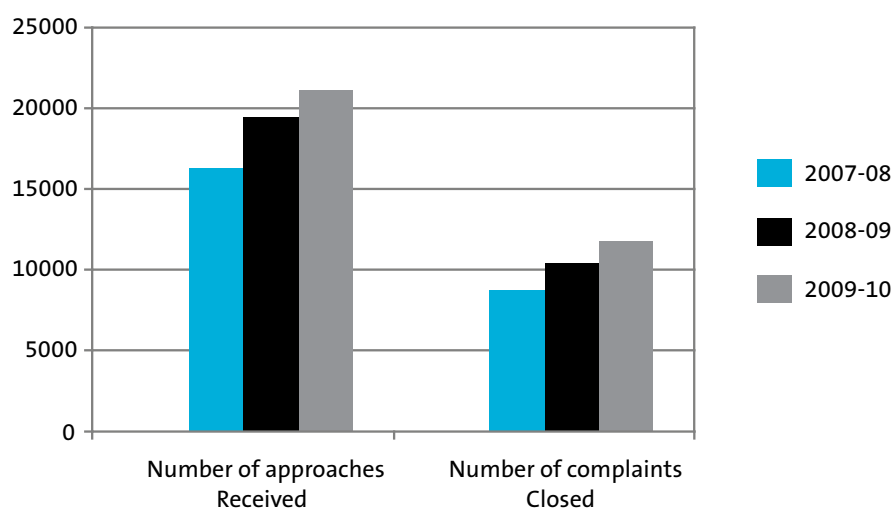


Table 6

Time period	No. of approaches received	No. of complaints closed
2007-08	16,344	8,741
2008-09	19,452	10,477
2009-10	21,074	11,784

³¹ Approaches include non-jurisdictional enquiries and complaints made to my office. Complaints relate to jurisdictional matters only.

I have jurisdiction over 600 Victorian government bodies, statutory authorities and municipal councils. Despite many of the larger agencies having complaint handling systems, complainants frequently approach my office because they have been unable to have their complaint addressed by an agency. Commonly agencies have not complied with their own complaints procedures or have failed to provide adequate explanations for their decisions.

Apart from addressing the issue complained about, my office also refers agencies to my *Good Practice Guide: Ombudsman Victoria's guide to complaint handling for Victorian Public Sector Agencies*, to help them develop and/or review their complaint handling processes. The guide was written primarily for the public sector but may be a useful resource for other organisations. It is available on Ombudsman Victoria's website <www.ombudsman.vic.gov.au>.

The key features of an effective complaint handling process are responsiveness, transparency, access, fairness and accountability. Good administration and robust complaint handling processes are critical to the ongoing effectiveness of an organisation. They also provide a way for agencies to address deficiencies and retain public confidence.

The case study below shows how poor administrative practices can have serious consequences for a complainant.

Failure to respond

A complainant, who was contesting a parking infringement notice in the Magistrates' Court, contacted my office because the court had not responded to his correspondence.

The complainant initially sought to reschedule a hearing date. He followed court policy and phoned the Magistrates' Court Coordinator within the required time to make new arrangements. The court – which did not keep a record of the phone call – held the hearing on the original date and found the complainant guilty in his absence.

The complainant contested the court's decision in writing. In a subsequent letter he stated that:

- the Magistrates' Court did not respond to his first letter
- the Sheriff's Office issued an arrest warrant against him as a result of non-payment of the infringement.

My office made enquiries with the Office of the Executive Director Courts in the Department of Justice. The office acknowledged that it had received the complainant's letters and that they remained unanswered.

Outcome

In the light of its administrative error, the office sent the complainant a letter advising that it had recalled the arrest warrant. It also provided the complainant with the option of a rehearing.

It is important with all complaints processes that agencies are committed to an effective complaints management system. Agencies must ensure that those processes are up-to-date and that staff members follow them.

Inadequate processes

I received a complaint that VicRoads had not responded to a complainant for 9 months. Following initial advice from VicRoads that it had not received the complaint, it transpired that it had been referred to one of its operational areas. The means of tracking the correspondence were inadequate, limited internal checks were made and no acknowledgement was sent to the complainant. VicRoads apologised for its oversight. As a result of this complaint, VicRoads has amended its tracking system and has implemented a process to ensure complainants are informed (within the limits of privacy legislation) of the outcome of investigations related to their complaints.

Agencies also need to give consistent advice to complainants, abide by their previous decisions, and clearly document any changes to policy. Such changes, however, should not disadvantage agreements previously in place. As the next case study illustrates it is important that decision-makers abide by previous decisions which were consistent with policies at the time.

Failure to act on own offer

The complainant purchased land that abutted vacant land owned by the Mornington Peninsula Shire Council. On 28 June 2006 the council wrote to the complainant and agreed to pay for half the cost of a fence between the properties.

In 2009 the complainant began the construction process and provided council with quotes for the fence. The council refused to pay. It advised the complainant that, according to current policy, council did not contribute to the cost of fences abutting its vacant land.

I made enquiries into the complainant's allegation that the council had failed to abide by its written agreement. As a result of my enquiries, the council reviewed its decision.

Outcome

The council agreed to contribute to the cost of the fence.

Fairness

A good complaint handling system recognises the need to be fair to the complainant or the subject of the complaint.

I often receive complaints when agencies take a narrow interpretation of the law or deny responsibility for their actions. Agencies should consider how their actions impact upon complainants and whether the outcomes of their decisions are fair to all parties concerned.

Narrow interpretation

In one instance, a student was awarded a two-year scholarship under a state government funded training scheme. The conditions of the scholarship allowed for 12 weeks maternity leave after the first year of study. The student had to change institutions to complete her course and when she went on maternity leave, as had been arranged with the first institution, she was advised that she was not entitled to maternity leave. I recommended, and the department agreed to pay the student's maternity leave and ensure her scholarship entitlements.

Responsiveness

Complaints should be considered in a timely manner. Responsiveness to complaints would reduce the number of approaches to my office and improve public confidence in agencies' complaint handling. The case study below highlights the cost to individuals of unnecessary administrative delays.

Double billing

Latrobe City Council issued the complainant with a parking infringement notice which she paid in full. The council mistakenly processed the payment twice; identified the error a few weeks later; and contacted the complainant to advise her that it had refunded \$58 into her account.

The complainant contacted the council after her bank advised the refund was not in her account. The council informed her that the process could take up to six weeks. My enquiries confirmed this.

In light of the inconvenience to the complainant, I recommended that the council:

- revoke the infringement notice
- refund to the complainant both her original payment of \$58 and the overpayment of \$58.

Outcome

The council accepted my recommendations and advised that it had trained its staff to ensure that similar problems did not arise in the future.

An essential part of complaint handling is having in place a review process. Reviews of complaints should be conducted by an officer who has not previously been involved in managing the complaint. Reviewers must consider all relevant information and supporting documentation; provide timely responses to complainants; and inform all parties of the outcomes. This next case study demonstrates the importance of reviewing complaints.

Failure to properly investigate

I received a complaint from a mother who had previously complained to the Department of Education and Early Childhood Development about a number of incidents which had occurred at her children's primary school, including the alleged sexual abuse of her daughter by another student.

The department advised the complainant that it had investigated each of her complaints and was satisfied with the school's response. I made enquiries with the department and established that it had failed to:

- interview witnesses
- review documentation
- conduct an adequate investigation
- address the complainant's concerns
- provide reasons for its final decision.

Outcome

Following my enquiries the department engaged an independent investigator to review the complaint; evaluate policies; clarify how staff should respond to like allegations; and discuss the findings of the review with the complainant. The department has also agreed to review departmental policy to provide greater guidance to staff responding to similar allegations in the future.

Accountability and transparency

For decision-makers to be accountable, decisions must be transparent. This means that decision-makers should provide complainants with the reasons behind their decisions and document their decisions. In many cases like the one below, while the decisions are sound and the reasons are well justified, they are poorly communicated.

Failure to provide reasons for decision

I received complaints from a number of students who were excluded from RMIT University for unsatisfactory academic progress.

Under existing procedures, students recommended for exclusion are invited to demonstrate to a panel why they should not be excluded.

The complainants maintained they were denied natural justice because the university did not provide the students with reasons why the panel rejected the arguments they had put in their submissions to not be excluded. They also claimed that the reasons could provide the grounds for the students to seek an appeal of the panel's decision to the Appeals Committee.

My officers contacted the university, considered the reasons for each student's exclusion and found that the university had acted within the scope of its authority in each instance. However, the university was asked to explain why the panel did not provide the complainants with the reasons for its decision to exclude them.

Outcome

The university has put in place new procedures to ensure that students are provided with reasons for decisions.

Accessibility

Accessible complaint handling systems should explain in clear and plain English how to complain and what options exist in the event a complainant remains dissatisfied. There is also an onus on agencies to ensure that the information available to the public is not capable of being misinterpreted. In a recent instance, a student had his application for leave for 'two semesters duration (12 months)' approved. After the twelve months, he cancelled his enrolment and received a bill for outstanding fees. The university took the stance that his approved absence was for two semesters and not three terms (as the academic year was structured), despite the fact that the form did not provide for this. However, following my enquiries, the university accepted that the student had been granted leave for all three terms as they fell within the 12 month period; withdrew the debt; and changed the leave of absence form.

Business improvement

Agencies should ensure that all their staff are aware of processes and adopt correct procedures in the course of their duties. Failure to do so can lead to inconsistent practices. This next case study demonstrates how inconsistency leads to complaints.

Failure to comply with procedures

A prisoner complained to my office that the prison had seized many of his books. He believed the seizure was unreasonable and beyond the prison staff's authority.

My officers investigated the matter and established that the prisoner, a convicted sex offender, had obtained numerous books over an extended period of time without necessary prison approval. Prison procedures require staff to:

- screen prisoner requests for reading material
- determine the suitability of material for prisoners
- ensure property sent to prisoners is also checked for appropriateness.

Staff may also consult Sex Offender Program (SOP) staff for advice where there is any uncertainty. In this case, SOP staff considered certain books unsuitable. In my view, the seizure was reasonable and appropriately authorised in this context.

My investigation also established that books and other items received without the necessary authorisation must be held in the prisoner's property but not released to the prisoner. The prison advised that there were instances of prison staff failing to adhere to procedures governing the recording and storage of unauthorised items.

Outcome

The prison took steps to ensure that its staff follow proper procedure.

However, many agencies are responsive to complaints and I observe many cases where agencies have responded comprehensively and reasonably to complainants.

Incorrect advice

In one case, a complainant had received incorrect advice from VicRoads about the written-off status of a vehicle she later purchased. The Chief Executive of VicRoads wrote to the complainant outlining VicRoads' administrative errors; accepting responsibility for those errors; amending VicRoads' system to reflect up-to-date information and; offering to consider compensation for the difference between the purchase price and sale price of the vehicle, if/when the complainant sells the vehicle. This case reflects good practice by VicRoads.

Impact of technology on my office

Modern technology has had major implications for Ombudsman Victoria. Not only has it made my office more accessible to regional Victorians through the internet, it has affected the way in which people make complaints and enquiries through the use of email and online complaints, how my office investigates complaints, responds to complainants and records information on our database.

In recent years I have noticed a significant change in the way I receive complaints. While I continue to receive the majority of complaints by telephone, online complaints received on Ombudsman Victoria's website are increasingly becoming an avenue for making a complaint. A total of 1,775 approaches were received online this year, which accounts for 8.4 per cent of all approaches. All of these complaints receive an automatically generated acknowledgement from Ombudsman Victoria. Complainants may still lodge complaints by telephone, letter, email or in person by attending my office or an information session.

Online communication is virtually instantaneous and therefore some complainants expect an immediate response. Managing this expectation can be challenging. My office aims to respond to all complaints in a timely manner. Unless a complaint involves urgent issues – or I exercise my discretion and prioritise a complaint – complaints are usually responded to in the order in which they are received. My office also responds to written complaints by telephone, email or letter, depending largely on the nature of the complaint and/or the contact details the complainant provides. A telephone call is often the quickest way to communicate.

My officers create case files for all complaints received via letter, fax, email and the online complaint form. In order to manage workload, I use a 'triage' approach which involves a brief assessment of a complaint prior to a more detailed assessment. This enables me to identify, prioritise and respond to urgent issues raised in new complaints. Urgent issues may include child protection matters where children may be at risk; allegations by prisoners that they have been assaulted; and complaints alleging serious misconduct.

My office uses a case management system called 'Resolve' to manage complaints, capture complaint data, identify systemic issues, analyse complaint statistics and cross-reference complaints.

The internet plays an important role in complaint handling. The community is increasingly using my website to access information about my office and to view my parliamentary reports. For example, there were close to 3,000 download requests for a copy of my report into my *Investigation into the Department of Human Services – Child Protection Program* in the six months following its tabling in Parliament.

My office also uses a telephone system called Q-Master which allows me to collect and monitor statistics such as:

- waiting time on hold
- duration of incoming telephone calls
- number of telephone calls received.

It also allows supervisors to monitor calls for training and quality control purposes.

Q-Master has led to the reduction in my office's average response time for telephone calls to 18 seconds and has provided information to assist my officers to improve their level of service.

A day in intake and assessment

I received 21,074 approaches this year. Approaches are made up of complaints, requests for information and inquiries on matters both within as well as outside my jurisdiction. The Intake and Assessment team performs a significant role within my office. It receives all incoming telephone complaints and handles the majority of written complaints. Members of this team are usually the first point of contact for the public. The Intake and Assessment team is made up of 5 enquiries officers and 7 investigation officers, who handle on average 70 telephone calls and 13.4 written complaints each day. In our busiest week in March 2010, we dealt with 768 telephone calls and 74 written complaints. Despite the high number of approaches to our office during this week, telephone calls were responded to on average within 18 seconds.

The case study below demonstrates the valuable assistance the Intake and Assessment team provides the community on a daily basis.

Helping hand

A member of the public contacted my office complaining about the information provided to him by VicRoads regarding the length of his licence suspension. He claimed to have received mixed messages from VicRoads about whether the suspension was for 28 or 31 days.

While my office does not generally become involved in matters where there is a right of appeal to a court, on this occasion my office sought to clarify with VicRoads its communication about the length of the licence suspension.

My enquiries officer contacted VicRoads and established that the licence suspension was for 31 days. The complainant was grateful for the assistance provided by my enquiries officer in clarifying this issue.

In addition to dealing with jurisdictional complaints, the Intake and Assessment team is responsible for handling on average 177 non-jurisdictional approaches per week. My enquiries officers refer many of the non-jurisdictional complaints to complaint handling and regulatory bodies such as Consumer Affairs Victoria; legal practitioners with Victoria Legal Aid or local community legal centres; and other Ombudsman schemes including:

- Commonwealth Ombudsman
- Fair Work Ombudsman
- Telecommunications Industry Ombudsman
- Financial Ombudsman Service
- Energy and Water Ombudsman (Victoria)
- other state ombudsman offices.

The Intake and Assessment team helps complainants by informing them about options for complaint handling; explaining the complaints procedures of Victoria public sector agencies; providing contact details of other complaint handling bodies; and referring non-jurisdictional complainants to relevant bodies. The following case study is an example of one such referral.

Satisfied complainant

A complainant contacted my office regarding a retailer's failure to replace a faulty table she had purchased. My enquiries officer:

- wrote to the complainant and explained that my office does not have jurisdiction over private organisations
- referred the complainant to Consumer Affairs Victoria
- advised the complainant that Consumer Affairs Victoria is subject to my jurisdiction
- invited the complainant to contact my office again if she is dissatisfied with the administrative actions of Consumer Affairs Victoria.

Outcome

The complainant wrote to the enquiries officer to thank him for his response and his time.

Table 7 provides a snapshot of the nature of telephone calls received in my office over a typical three day period and shows how some 160 of the 21,074 approaches I received were dealt with by my officers. Where complaints were in my jurisdiction, in many instances the advice we provided to the individuals was to discuss the matter with the agency in the first instance. Issues are often resolved in this manner without the need for further involvement by my office. In some cases, we requested further details and the matters were handled by my staff. In respect of other non-jurisdictional matters, my enquiries officers assisted individuals by:

- referring those with concerns about private sector organisations to the appropriate bodies, such as the Financial Services Ombudsman, the Energy and Water Industry Ombudsman and Consumer Affairs Victoria, providing contact details
- referring those with other non-jurisdictional matters to other bodies such as the Commonwealth and other state Ombudsmen and the Telecommunications Industry Ombudsman, explaining why and where to address their concerns.

Table 7

Day 1

Type of complaint	Jurisdiction	Issue
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding Insurance Company
State Trustees Ltd	Jurisdictional Complaint	Alleged 1) excessive commission & 2) delay taken in placing place Complainant's father's house in his name & 3) delayed response to correspondence
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding RACV, referred to Financial Services Ombudsman
University of Melbourne	Jurisdictional Complaint	Complaint about lack of response to questions by Melbourne University
Victorian Civil & Administrative Tribunal (VCAT)	Non-Jurisdictional Complaint	Complaint regarding decision of VCAT
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding Energy account
Greater Dandenong City Council	Jurisdictional Complaint	Complaint about lack of action by Greater Dandenong City Council regarding neighbour inappropriately parking bus
Greater Geelong City Council	Jurisdictional Complaint	Complaint about actions of Geelong City Council in padlocking back access to Complainant's property via rail trail
Knox City Council	Jurisdictional Complaint	Complaint about decision of Council to build Housing Commission units, and also to deny Complainant permission to sub-divide her land
Transport	Jurisdictional Complaint	Inadequate response from Department of Transport
Primary Industries	Jurisdictional Complaint	Complaint that DPI has failed to adhere to legislation pertaining to animal welfare
Melbourne Custody Centre (G4S Australia Pty Ltd)	Jurisdictional Complaint	Concerned that staying in MCC any longer will affect his mental health
Private Organisations	Non-Jurisdictional Complaint	Complaint about Bank
Private Organisations	Non-Jurisdictional Complaint	Complaint about doctor's refusal to give Complainant stronger medication
Metropolitan Remand Centre (Corrections Victoria)	Jurisdictional Complaint	Complaint about lost key-pass in transfer from MRC to Fulham to Melbourne Assessment Prison
Private Organisations	Non-Jurisdictional Complaint	Complaint about Australia New Zealand Institute of Finance
Victoria Police	Jurisdictional Complaint	Complaint regarding infringement notice
Universities	Jurisdictional Complaint	Unclear complaint about Victorian Universities using court case in legal studies curriculum
Victoria Police	Jurisdictional Complaint	Complaint regarding Werribee Police, referred to Ethical Standards Dept (VicPol)
Department of Education and Early Childhood - Southern Metropolitan Region	Jurisdictional Complaint	Complaint about decision of South Caulfield Primary School to refuse entry to child two houses out of school zone
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding locksmith, referred to Consumer Affairs Victoria

Day 1 – continued		
Type of complaint	Jurisdiction	Issue
Private Organisations	Non-Jurisdictional Complaint	Complaint re website designer
VicRoads - Metropolitan South East	Jurisdictional Complaint	Complaint about parking infringement from VicRoads for parking in clearway with covered signs
Yarra City Council	Jurisdictional Complaint	Complaint regarding Infringement notice issued by the City of Yarra
Commonwealth Authorities	Non-Jurisdictional Complaint	Complaint regarding Child Support Agency
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding Bankwest
Wangaratta Rural City Council	Jurisdictional Complaint	Complaint about drainage issue with Wangaratta Council
Hospitals	Jurisdictional Complaint	Complaint regarding St Vincent's Hospital
Uniting Care Wimmera	Jurisdictional Complaint	Complaint regarding Wimmera Uniting Care refusing to return Complainant's property since resigning as a foster carer
VicRoads	Jurisdictional Complaint	Complaint regarding Vic Road's failure to provide adequate signage regarding clearway
Child Protection - Barwon-Sth Western Region	Jurisdictional Complaint	Complaint regarding investigations into Complainant's husband, subsequent removal of children from Complainant's care
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding Apprenticeships Victoria
South East Water	Jurisdictional Complaint	Complaint regarding incorrect plans, incorrect advice from South East Water
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding daughter's treatment by employer at Private school
Private Individuals	Non-Jurisdictional Complaint	Complainant's son is over medicated
VicRoads - Registration and Licensing	Jurisdictional Complaint	Complaint about refusal of VicRoads to renew Complainant's roadworthy certificate without a VIV inspection date
Private Organisations	Non-Jurisdictional Complaint	Citibank complaint
Day 2		
Mitchell Shire Council	Jurisdictional Complaint	Complaint about actions of Mitchell Shire Council following bushfires
Central Gippsland Institute of TAFE	Jurisdictional Complaint	GippsTAFE breached the complainant's confidentiality
CityLink	Jurisdictional Complaint	Complaint against City Link (constant invoices sent)
Interstate Authorities	Non-Jurisdictional Complaint	Complaint about decisions of councillors of Wallandilly Shire Council in NSW
Australia Post	Non-Jurisdictional Complaint	Australia Post Complaint - referred to Commonwealth Ombudsman
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding Private company - Breeze
Dental Practice Board of Victoria	Jurisdictional Complaint	Unhappy with the response of the Dental Practice Board
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding tickets purchased from airline

Day 2 – continued		
Type of complaint	Jurisdiction	Issue
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding a car repairer
Frankston City Council	Jurisdictional Complaint	Delay/planning permit passed on to new officers
VicRoads	Jurisdictional Complaint	Complaint regarding licence suspension by VicRoads
Private Individuals	Non-Jurisdictional Complaint	Complaint requesting information in relation to tenancy rights
Northern Melbourne Institute of TAFE	Jurisdictional Complaint	Complainant was mistreated by TAFE staff and was unfairly suspended from his course
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding Energy account
Private Organisations	Non-Jurisdictional Complaint	Harassment at work
State Trustees Ltd	Jurisdictional Complaint	Complaint about State Trustees not releasing money
Private Organisations	Non-Jurisdictional Complaint	Tiger Airways complaint
State Trustees Ltd	Jurisdictional Complaint	Complaint against State Trustees regarding request for money
Office of Housing	Jurisdictional Complaint	Threats from neighbour in Office of Housing Apartment
CityLink	Jurisdictional Complaint	Complaint regarding Citylink infringement
Ombudsman Victoria	Information Request	Information on 2007 OV report - WorkSafe
Building Commission	Jurisdictional Complaint	Complaint against Building Commission regarding inconsistent advice provided for domestic building licence qualification
Victoria Police	Jurisdictional Complaint	Police officer failing to lodge court proceedings in a timely fashion
Private Organisations	Non-Jurisdictional Complaint	Car insurance
Metropolitan Remand Centre (Corrections Victoria)	Jurisdictional Complaint	Complainant alleges to be allergic to tomato. Nevertheless his meals continue to have tomato in them
Private Individuals	Non-Jurisdictional Complaint	Complaint about neighbours and son's father-in-law
Australian Taxation Office	Non-Jurisdictional Complaint	Complaint regarding someone allegedly stating they are from the Australian Taxation Office and advising Complainant she may be eligible for up to \$3000
Sunshine Hospital	Jurisdictional Complaint	Poor treatment by hospital while complainant in rehabilitation
Private Organisations	Non-Jurisdictional Complaint	Late night television marketing
Frankston Housing Office	Jurisdictional Complaint	OoH and Body Corporate construction
Port Phillip Prison (G4S Australia Pty Ltd)	Jurisdictional Complaint	Governors hearing to affect his parole
Ombudsman Victoria	Information Request	Complainant requested to be provided with OV's fax number
Wangaratta Rural City Council	Jurisdictional Complaint	Complaint about decision regarding drainage refusal by Council
VicRoads - Registration and Licensing	Jurisdictional Complaint	Complaint that roadworthy certificate for truck will expire without VIV inspection arranged

Day 2 – continued		
Type of complaint	Jurisdiction	Issue
Uniting Care Wimmera	Jurisdictional Complaint	Complaint regarding Wimmera Uniting Care refusing to return Complainant's property since resigning as a foster carer
Nillumbik Shire Council	Jurisdictional Complaint	Check if OV received a Fax (in regards to meeting with the council tonight)
Thomas Embling Hospital	Jurisdictional Complaint	Decision of Doctors panel to keep Complainant in psychiatric care
Private Organisations	Non-Jurisdictional Complaint	Gas and electricity disconnected
Child Protection	Jurisdictional Complaint	Complaint against child protection regarding lack of action following report
Private Organisations	Non-Jurisdictional Complaint	Complaint about private conveyancer
Private Organisations	Non-Jurisdictional Complaint	Complaint about employment matter regarding private employer
Private Organisations	Non-Jurisdictional Complaint	Complaint about Freedom furniture credit department
Private Organisations	Non-Jurisdictional Complaint	Complaint about release of superannuation money
Melbourne Custody Centre (G4S Australia Pty Ltd)	Jurisdictional Complaint	Complaint about unclean facilities at Melbourne Custody Centre
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding Origin Energy
Private Individuals	Non-Jurisdictional Complaint	Complaint regarding treating psychiatrist
Private Individuals	Non-Jurisdictional Complaint	Minister falsifying his past actions
Victoria Police	Jurisdictional Complaint	Complaint regarding missing property: gold bracelet
Private Organisations	Non-Jurisdictional Complaint	Complaint against Telstra
Private Organisations	Non-Jurisdictional Complaint	Complaint against Telstra
Hospitals	Jurisdictional Complaint	Complaint about decisions and actions of dentists at Royal Dental Hospital of Melbourne
Victoria Police	Jurisdictional Complaint	Complaint about individual police officer
Private Organisations	Non-Jurisdictional Complaint	Complaint about private employment matter
Private Organisations	Non-Jurisdictional Complaint	Complaint about Eastlink error in payment of funds into account
Private Organisations	Non-Jurisdictional Complaint	Complaint about advertising in Yellow Pages
Nillumbik Shire Council	Jurisdictional Complaint	Complaint about Nillumbik Shire Council holding meeting without making Complainant's submission public
Mildura Rural City Council	Jurisdictional Complaint	Complaint regarding lack of response from Council regarding mobile coffee business

Day 3		
Type of complaint	Jurisdiction	Issue
Office of Police Integrity	Jurisdictional Complaint	Complaint regarding OPI failing to recommend VicPol reopen a case regarding a rape in 1998
Private Organisations	Non-Jurisdictional Complaint	Builder not constructing to design
Ombudsman Victoria	Information Request	Request from journalist from 'Alexandra Herald' for details of upcoming report into Port Phillip Council
Private Organisations	Non-Jurisdictional Complaint	Service provision of Doctor
Private Organisations	Non-Jurisdictional Complaint	Service provided by bank
Private Organisations	Non-Jurisdictional Complaint	Complaint against Complainant's child care company's billing
Hume City Council	Jurisdictional Complaint	Complaint regarding delay in council response
Mitchell Shire Council	Jurisdictional Complaint	Complaint regarding Mitchell Shire failing to enforce laws regarding livestock on the road
Private Organisations	Non-Jurisdictional Complaint	Building Contract dispute
School Education	Jurisdictional Complaint	Complaint regarding bullying at private school
Hospitals	Jurisdictional Complaint	Complaint against BellBird Hospital regarding fees charged for services which Complainant alleges she has already paid
Child Protection - Loddon Mallee Region	Jurisdictional Complaint	Complaint regarding involvement of Child Protection Loddon Mallee
Macedon Ranges Shire Council	Jurisdictional Complaint	Complaint regarding council's inaction on matter ongoing for 40 years
Legal Services Commissioner	Jurisdictional Complaint	Unclear complaint regarding Legal Services Commissioner
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding AAMI, referred to Financial Services Ombudsman
Cardinia Shire Council	Jurisdictional Complaint	Complaint regarding Cardinia Shire failing to remove dangerous tree that obstructs Complainant's view of the road
Private Organisations	Non-Jurisdictional Complaint	Car insurance complaint
Child Protection - Gippsland Region	Jurisdictional Complaint	Father taking child from school
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding Fitness First
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding home insurance company
Victoria Police	Jurisdictional Complaint	Complaint against police conduct
Melbourne City Council	Jurisdictional Complaint	Complaint regarding Infringement issued by Council for parking on nature strip
Glen Eira City Council	Jurisdictional Complaint	Failing to give specific or clear reasons as to why council considers a case closed

Day 3 – continued		
Type of complaint	Jurisdiction	Issue
Local Government Victoria	Jurisdictional Complaint	Complaint regarding LGV refusing to proceed with a complaint against Baw Baw Shire
Private Organisations	Non-Jurisdictional Complaint	Electricity complaint
State Trustees Ltd	Jurisdictional Complaint	Complaint against State Trustees regarding revocation order
Corrections Victoria	Jurisdictional Complaint	Unable to perform community work due to injury
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding a Bank
Loddon Prison (Corrections Victoria)	Jurisdictional Complaint	Falsely accused of insulting a female officer
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding private gas supplier
Private Organisations	Non-Jurisdictional Complaint	Complaint against a beauty salon regarding eyelash removal procedure
Metropolitan Remand Centre (Corrections Victoria)	Jurisdictional Complaint	Doctor under prescribing medication/lost wallet
Child Protection - Gippsland Region	Jurisdictional Complaint	Dept Human Services not returning Complainant's call
Barwon Prison (Corrections Victoria)	Jurisdictional Complaint	Complaint regarding positive urine test at Barwon Prison
Private Organisations	Non-Jurisdictional Complaint	Unclear complaint about souvenir shops not including Tasmania in Australian Souvenirs
Dental Practice Board of Victoria	Jurisdictional Complaint	Complaint against Dental Practice Board of Victoria regarding complaint handling
Royal Melbourne Hospital	Jurisdictional Complaint	Poor assessment made by hospital staff
Private Organisations	Non-Jurisdictional Complaint	Dispute with South Melbourne Market on operation of stall
Private Organisations	Non-Jurisdictional Complaint	Faulty engine installed in car
Greater Geelong City Council	Jurisdictional Complaint	Complaint regarding closure of Geelong's main road for bicycle race
Child Support Agency	Non-Jurisdictional Complaint	Complaint regarding CSA, referred to Commonwealth Ombudsman
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding Optus, referred to Telecommunications Industry Ombudsman
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding swimming pool, referred to Consumer Affairs Victoria
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding electricity bill, referred to Energy & Water Ombudsman Victoria
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding superannuation, referred to Financial Services Ombudsman
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding insurance, referred to Financial Services Ombudsman
Private Organisations	Non-Jurisdictional Complaint	Complaint against Cass House - Colac Accommodation Support Service

Day 3 – continued		
Type of complaint	Jurisdiction	Issue
Transport	Jurisdictional Complaint	Complaint against Metro Trains regarding infringement notice received for not possessing a valid ticket
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding payment requested from AMI for medical treatment - referred to Consumer Affairs Victoria
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding car insurance company
Office of Housing	Jurisdictional Complaint	Complaint regarding neighbour's dog leaving 'droppings' on property
Office of Housing	Jurisdictional Complaint	OOH rejected her application for an early housing transfer, despite her deteriorating health and the risk to her safety
Private Organisations	Non-Jurisdictional Complaint	Complaint about finance fees
VicRoads	Jurisdictional Complaint	Cancellation of license
Ombudsman Victoria	Information Request	Request for OV's email address
Commonwealth Authorities	Non-Jurisdictional Complaint	Dep. Immigration complaint
Private Organisations	Non-Jurisdictional Complaint	Complaint against NAB
Manningham City Council	Jurisdictional Complaint	Tree on nature strip destroying fence
Transport	Jurisdictional Complaint	Complaint regarding infringement issued by authorised inspector on public transport
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding employment, referred to FWO
Melbourne City Council	Jurisdictional Complaint	Complaint against the City of Melbourne regarding an infringement notice
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding the American Embassy
State Trustees Ltd	Jurisdictional Complaint	Complaint that State Trustees have incorrectly been paying car insurance for Complainant despite Complainant cancelling the contract
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding insurance, referred to Financial Services Ombudsman
Private Organisations	Non-Jurisdictional Complaint	Complaint regarding energy provider
Yarra Ranges Shire Council	Jurisdictional Complaint	Breach of planning order by the council
Private Organisations	Non-Jurisdictional Complaint	Telstra complaint

Education and training

Public sector workshop program

This year the interest in my public sector workshop program increased, especially in relation to the whistleblowers legislation. My office conducted seven workshops, five of which were on the Whistleblowers Protection Act. The remaining two workshops focused on good complaint handling systems and the management of unreasonable complainant conduct. Over 110 public officers, including local council representatives, participated in the workshops.

Regional awareness campaigns

My regional awareness campaigns aim to make my office more accessible to those in regional and outer metropolitan areas. This program, which includes presentations to community groups and general information sessions, targets areas over several days. Over the past year my officers travelled to Shepparton, Warragul, Sale, Morwell, Ballarat, Sunbury, Rosebud, Mornington, Dromana and Melton.

Seniors' festival

The Department of Planning and Community Development coordinates a festival for seniors each year. As part of the festival my office provided two morning tea sessions. The event generated so much interest that my officers scheduled an additional two afternoon tea sessions to meet the demand. The Department of Planning and Community Development advised my office that it was one of the most popular events of the festival.

Outreach

Promoting the role of the Ombudsman in the community is an important part of ensuring excellence in public administration. This year my office has participated in 79 outreach presentations. My officers have attended a variety of functions and community organisations including local neighbourhood houses and community centres; university student unions and international student support programs; disability service networks; Indigenous affairs forums; and a festival to promote services for the homeless.

Learning and development

I continue to promote the ongoing education of my staff through the Certificate IV in Government (Investigations) program, introduced in November 2008. Since then, a total of 30 staff have completed the certificate, including two in the first half of this financial year. This year my office has enrolled 13 new investigation officers in the program with a focus on combining internal training and learning with external subject matter expertise.



Ombudsman's reports

OMBUDSMAN'S REPORTS 2004-10

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

