

Ombudsman Victoria Annual Report 2010 – Part II



OMBUDSMAN VICTORIA
ANNUAL REPORT 2009-10 – Part II

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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 II of the annual report of the Ombudsman for the year 2009-10 which provides statistical details and the financial statements for the office.

Part I of the report dealing with the Ombudsman's statutory functions was tabled on 11 August 2010.



John R Taylor
Acting 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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STATISTICS

Introduction

This is Part II of my annual report for the year ending 30 June 2010. It contains the audited financial statements for the period and deals with:

- workload and performance measures of my office
- staffing structures and profiles
- corporate management and governance
- environmental impacts of the operations of the office
- various other disclosures required by ministerial directions and legislation.

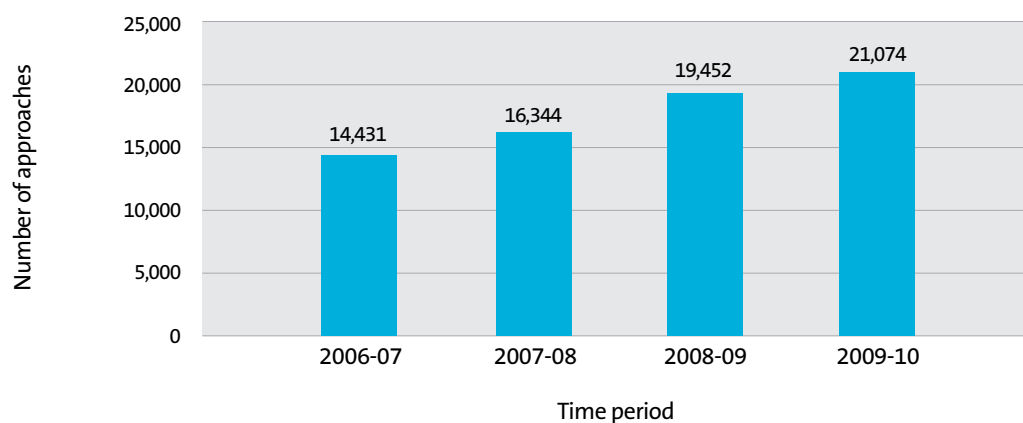
Part I of my annual report was tabled in the Parliament on 11 August 2010. In Part I, I reported on my statutory functions.

The work of my office

The past year has been the busiest in the history of Ombudsman Victoria and is the sixth consecutive year that the number of approaches¹ to my office has increased. Clearly my office is seen as an effective means by which Victorian citizens are able to ensure a fairer and more accountable public sector.

The increase in overall approaches to my office in 2009-10 compared with 2008-09 was 8.3 per cent. The number of complaints² received about matters in my jurisdiction rose by 13.2 per cent.

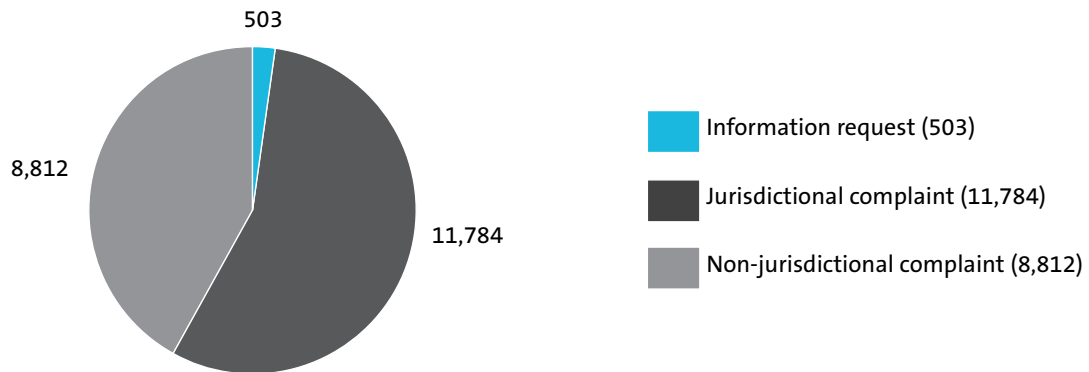
Figure 1: Approaches received by Ombudsman Victoria since 2006-07



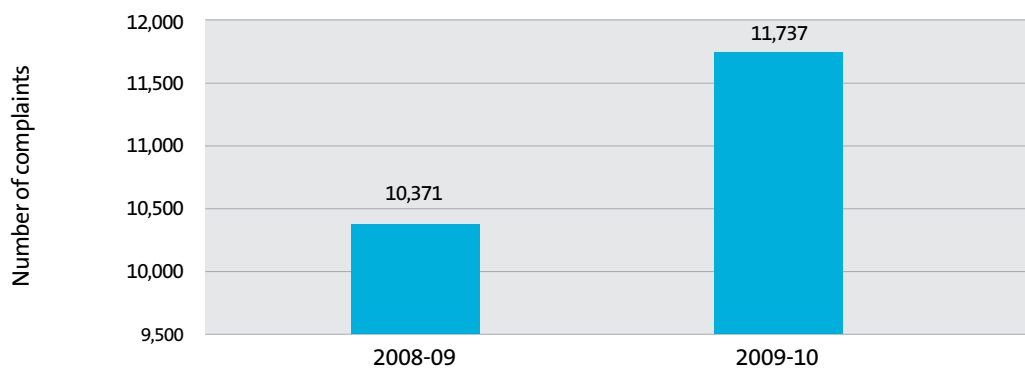
¹ Approaches are all contacts made with my office and include jurisdictional and non-jurisdictional complaints.

² Not all approaches to my office are complaints. Approaches include requests for information.

Figure 2: Number of approaches finalised – 2009-10



Of the 21,099 approaches to my office finalised during 2009-10, 11,784 (55.9 per cent) were complaints falling within my jurisdiction – these are referred to as ‘jurisdictional’ complaints. The remainder were non-jurisdictional complaints and information requests where my staff provided advice and information about how and to whom they should address their concerns or enquiries.

Figure 3: Number of complaints received – 2008-09 and 2009-10³

³ Note the distinction made in this and other tables in this section between approaches/complaints received and those finalised. The receipt of approaches and complaints and the finalisation of them may occur in different reporting periods.

Figure 4: Number of complaints finalised – 2008-09 and 2009-10

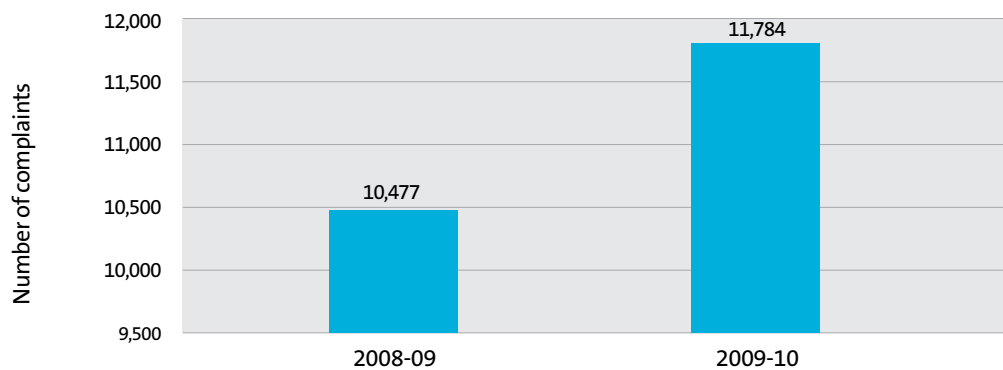
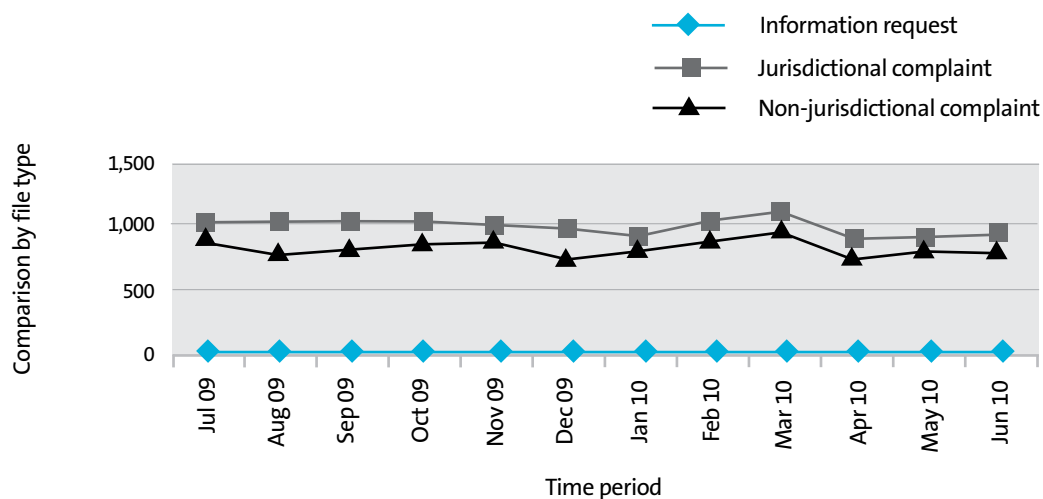


Figure 5: Monthly number of approaches received in 2009-10 by type



Time to close

My office finalised a total of 21,099 approaches this year (19,589 in 2008-09), of which 96.5 per cent (97 per cent in 2008-09) were completed within 30 days. A further 2.6 per cent (2 per cent in 2008-09) were completed within 90 days. I am pleased with this outcome given the increase in the number of approaches and complaints being handled by my office.

I continue to look for and implement efficiencies in the way my office handles approaches received, but it is becoming increasingly difficult to maintain the level of throughput and at the same time ensure that each approach is treated with the professionalism it deserves. I have been given additional resources to meet the increased workload of my office over recent years, without which my office would not have been able to function. However, it is important that additional resources keep pace with the workload. It would be an undesirable outcome for Victoria if my office were not able to deal with complainants in a timely and professional manner.

Figure 6: Time taken to close approaches – 2009-10

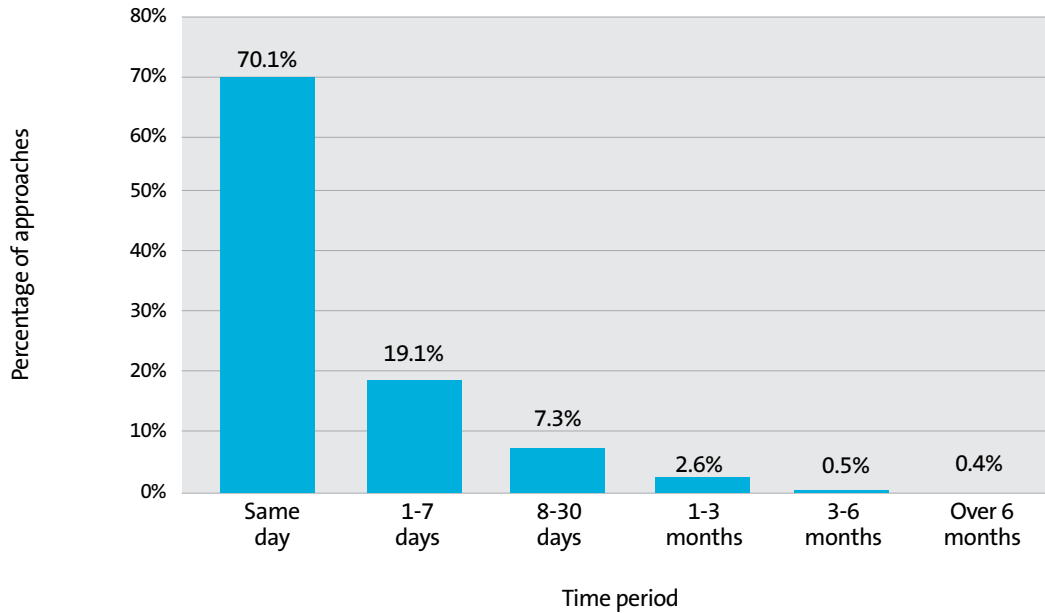
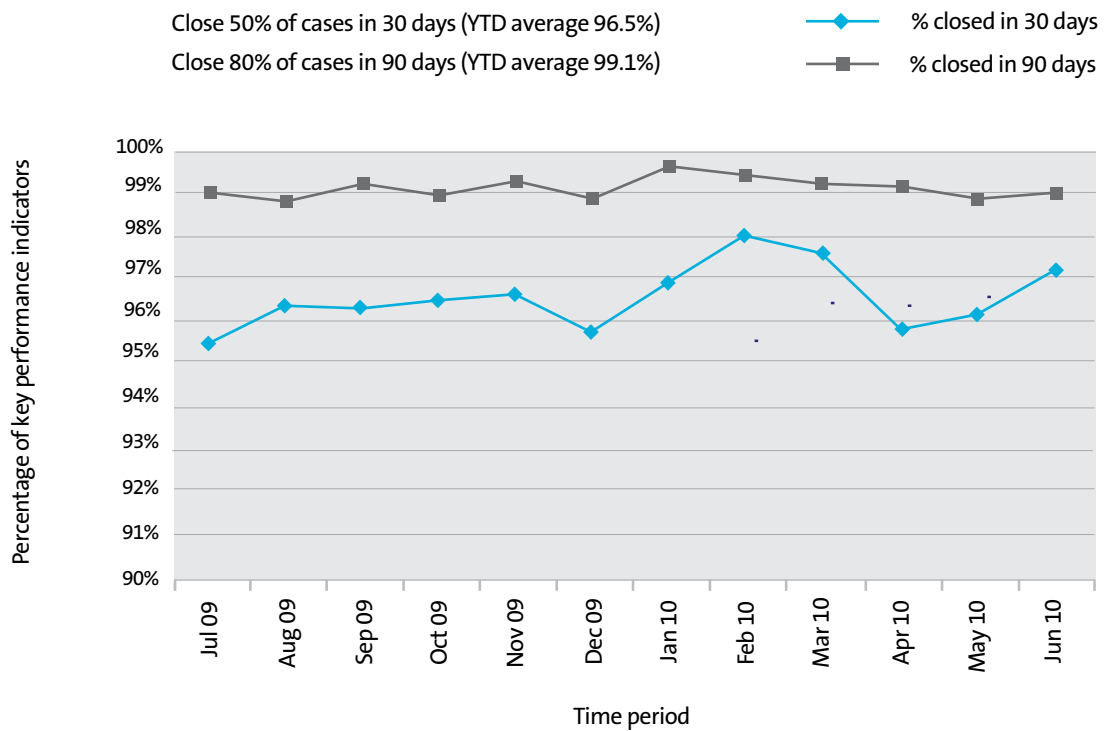


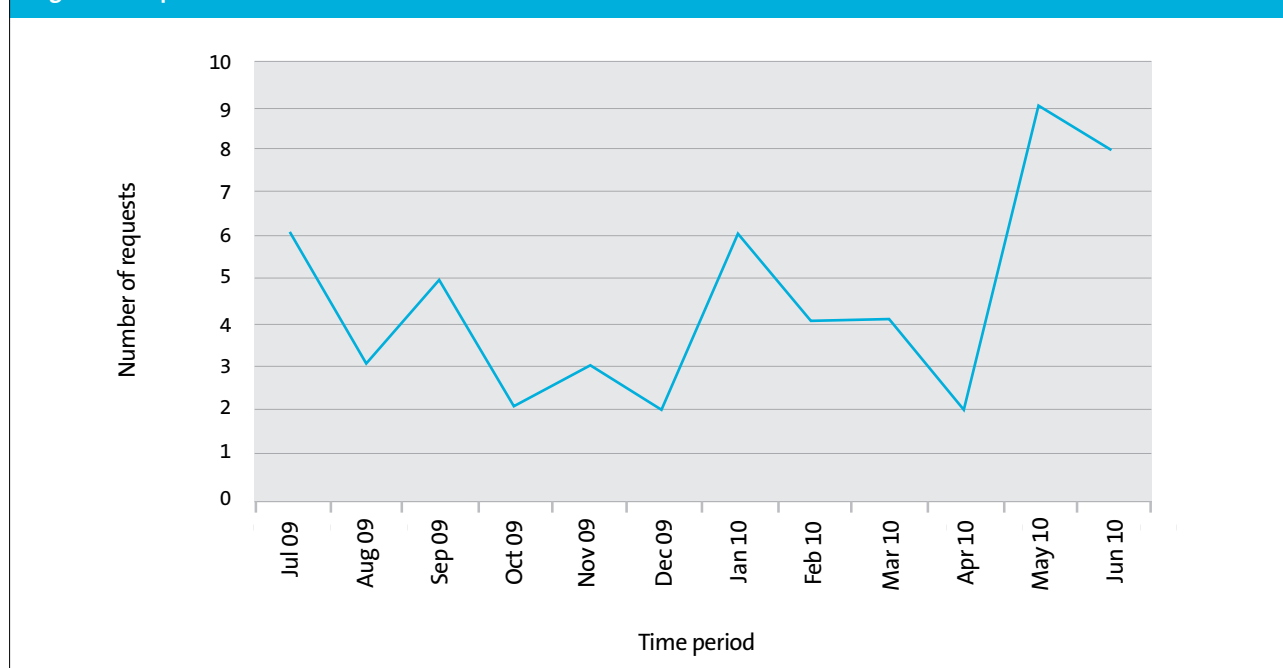
Figure 7: Key performance indicators (KPI) for all approaches – closure times during 2009-10



Requests for internal review

This year, I reviewed the outcomes of 54 investigations following requests for an internal review of the handling of those complaints by my office. This represents an increase over last year's total of 32 cases reviewed, but is less than 0.5 per cent of all jurisdictional complaints finalised. The reviews are conducted by a senior investigator with no previous involvement in the case. In 96 per cent of reviewed cases, the original conclusions were found to be sound and well founded.

Figure 8: Requests for internal review – 2009-10



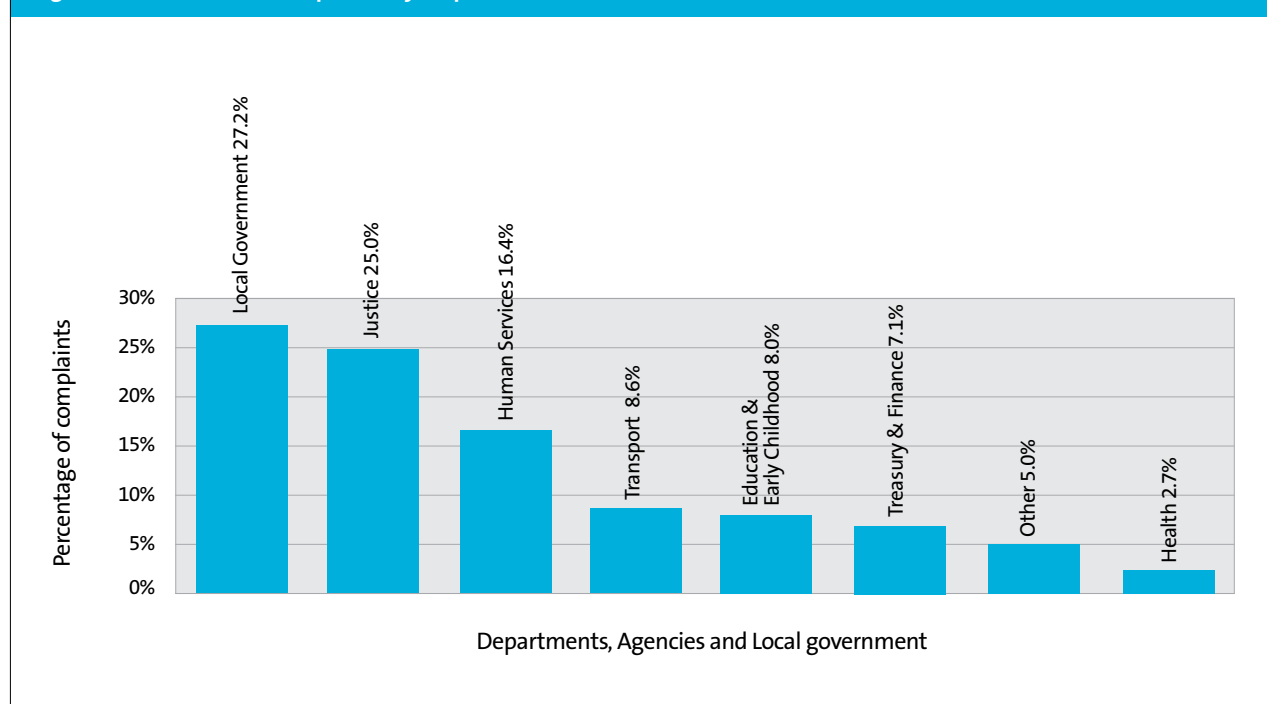
How approaches were received

The method of approaching my office continues to change. Letters were down by 17 per cent compared to 2008-09 and facsimiles down by 27 per cent. The number of online complaints received through Ombudsman Victoria's website increased by 125 per cent. The telephone is still the preferred means of contacting my office. The number of telephone calls increased by 7 per cent in 2009-10 compared to the previous year and represents 76 per cent of all approaches made to my office.

Table 1: Number of approaches received and how received since 2006-07

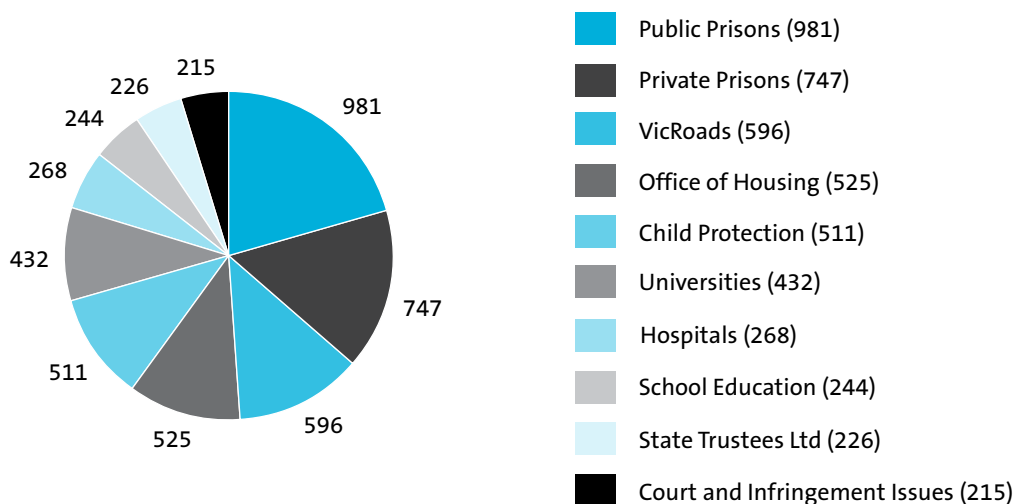
Mode	2006-07	2007-08	2008-09	2009-10
Copied to Ombudsman	49	80	0	0
Email	816	936	1,274	1,239
Facsimile	239	120	155	113
Letter	1,880	2,162	2,091	1,750
Not assigned	432	0	0	0
Online	450	502	788	1,775
Person – office	55	87	129	177
Person – off-site	12	46	42	23
Person – regional visit	2	28	19	1
Prison – visits	0	7	22	5
Telephone	10,496	12,376	14,932	15,991
Total	14,431	16,344	19,452	21,074

Jurisdictional complaints by department, agency and local government

Figure 9: Jurisdictional complaints by respondent – 2009-10⁴

⁴ My office also received 994 complaints about Victoria Police during the financial year. These have not been included in Figures 9 and 10 as I have only limited jurisdiction in relation to Victoria Police matters. In the majority of these cases, the complainants were referred to the Office of Police Integrity.

Figure 10: Ten functional areas about which most complaints were received – 2009-10



Correctional facilities

Table 2: Number of complaints about individual correctional facilities – 2008-09 and 2009-10⁵

Male prisons	Operational capacity	Number of complaints 2008-09	Number of complaints 2009-10
Maximum security			
Port Phillip Prison (Private)	804	532	554
Metropolitan Remand Centre	663	285	341
Barwon Prison	425	89	123
Marngoneet Correctional Centre	306	78	67
Melbourne Assessment Prison	286	78	95
Melbourne Custody Centre	up to 100	20	43
Medium security			
Fulham Correctional Centre (Private)	845	179	147
Ararat Prison	382	152	108
Loddon Prison	410	96	105

⁵ As at 30 June 2010. Source: <www.corrections.vic.gov.au> for all facilities except for the Melbourne Custody Centre, which is managed by Victoria Police.

Number of complaints about individual correctional facilities – 2008-09 and 2009-10 <i>continued</i>			
Minimum security			
Dhurringile Prison	214	7	20
Langi Kal Kal Prison	122	7	12
Beechworth Correctional Centre	120	6	10
Judy Lazarus Transition Centre	25	4	0
Female prisons			
Maximum security			
Dame Phyllis Frost Centre	260	55	85
Minimum security			
Tarrengower Prison	54	6	11
Other			
Prisons not identified	n/a	20	7
Total		1,614	1,728

As in previous years, my office received the most amount of complaints about Port Phillip Prison and the Metropolitan Remand Centre. These two institutions together represent 52 per cent of the total complaints received. Overall, I received 114 additional complaints in 2009-10, an increase of 7 per cent over 2008-09.

Local Government

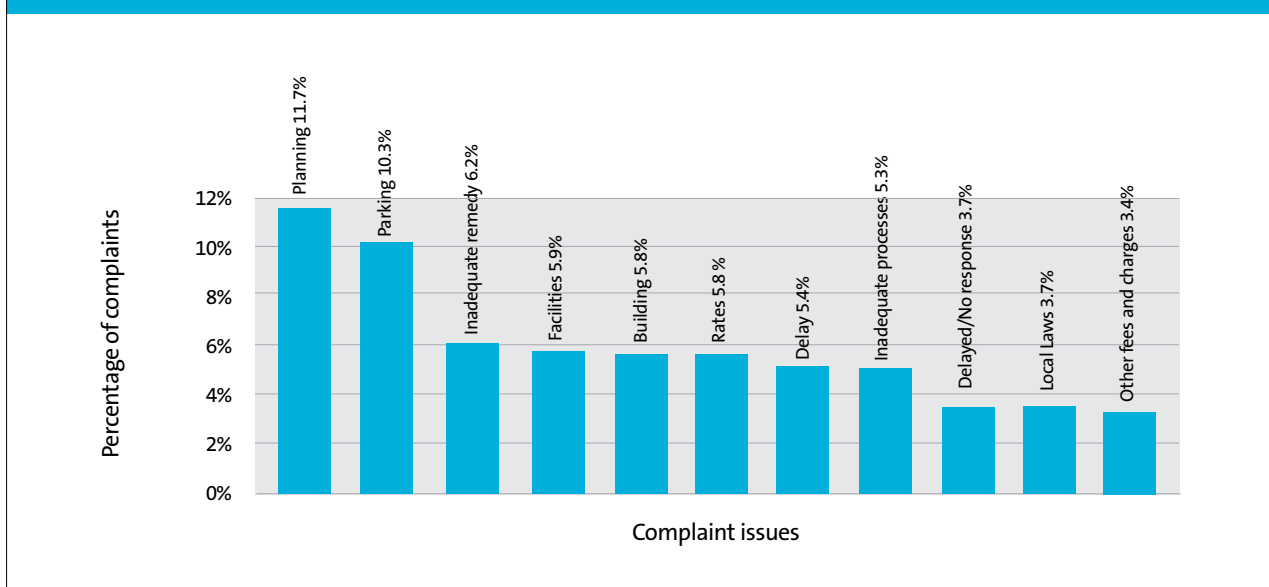
This year local government complaints comprised 27.2 per cent of all jurisdictional complaints received by my office. The most common areas of local government complaint were:

- planning 11.7 per cent 2009-10 compared with 11 per cent 2008-09
- parking 10.3 per cent 2009-10 compared with 9 per cent 2008-09.

In 2009-10 the most significant increase to an area of complaint about local government was, inadequate remedy. My office received 179 complaints about this area or 6.2 per cent of all local government issues raised with my office, compared with 4 per cent in 2008-09.

Conversely, complaints about rates (5.8 per cent) and building issues (5.8 per cent) have fallen from last years 8 per cent for each.

Figure 11: Most common areas of complaints about local government – 2009-10



In relation to the complaints I receive about parking, the majority relate to parking infringement notices and the merits of the issuing of notices. As the complainant usually has a right of appeal to the courts in these circumstances, generally my office does not intervene. Instead, complainants are advised of their right to appeal. This is consistent with section 13(4) of the *Ombudsman Act 1973*.

Ombudsman Victoria website

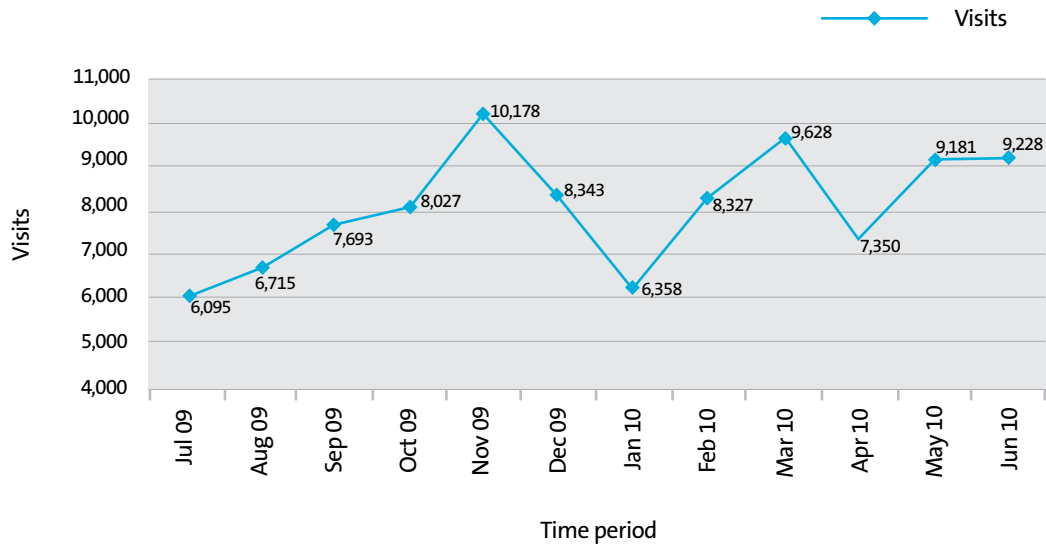
In 2009-10, my office again experienced a significant increase in the number of visits to the Ombudsman Victoria website <www.ombudsman.vic.gov.au>. In total there were over 97,000 visits during the year or, on average, 266 visits every day of 2009-10. The highest monthly figure coincides with the tabling of my reports in Parliament. For example, in November 2009 there were 10,178 visits, which is the month my report into the child protection program⁶ was released. In March 2010 there were 9,628 visits, coinciding with the tabling of my report of the investigation into the disclosure of information by a councillor.⁷ The figures in May and June 2010 were also high (9,181 and 9,228 respectively) following the release of my report on out of home care.⁸ A copy of each of my public reports is made available on my website the day it is tabled in Parliament.

⁶ Ombudsman Victoria, *Own motion investigation into the Department of Human Services – Child Protection Program*, November 2009.

⁷ Ombudsman Victoria, *Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey*, March 2010.

⁸ Ombudsman Victoria, *Own motion investigation into Child Protection – out of home care*, May 2010.

Figure 12: Number of monthly visits to Ombudsman Victoria's website – 2009-10



My website is an important and increasingly significant tool for the community to;

- find out about the work of my office
- access up-to-date information about specific activities
- lodge complaints at any time.

The access is available 24 hours a day and is important in bringing information about my office to the public, including regional and remote Victorian communities.

Table 3: Monthly overview of Ombudsman Victoria's activities and visits to the website – 2009-10

Date	No. of visits	OV activities
July 2009	6,095	Report on TAC's and Worksafe's administrative processes
August 2009	6,715	Report on City of Port Phillip
September 2009	7,693	Annual Report 2008-09
		Regional visit to Warragul
October 2009	8,027	Report on Brookland Greens Estate
		Whistleblowers workshop
November 2009	10,178	Report on tendering and contracting with Victoria Police
		Report on child protection program
		Whistleblowers workshop
		Regional visit to Shepparton
December 2009	8,343	Report on Victoria Police's Forensic Services Centre
		Whistleblowers workshop
January 2010	6,358	Parliament not sitting
February 2010	8,327	Report on the implementation of my recommendations
		Complaint handling workshop
		Regional visit to Ballarat
March 2010	9,628	Report on disclosure of information by a councillor
		Whistleblowers workshop
April 2010	7,350	Report on City of Ballarat
		Regional visit to Dromana, Mornington and Rosebud
May 2010	9,181	Report on out of home care
		Complaint handling workshop
		Regional visit to Melton
June 2010	9,228	Report on probity of Kew and St Kilda developments
		Whistleblowers workshop
		Regional visit to Sale and Morwell
Total	97,123	

Performance statement

Table 4: Corporate framework	
Vision	
A Victorian community that is assured fair and ethical public administration.	
Mission	
To promote fairness, integrity, respect for human rights and administrative excellence in the Victorian public sector.	
Service	
<p><i>We will provide accessible, flexible and responsive services including:</i></p> <ul style="list-style-type: none"> - independent, impartial and effective complaint-handling - consistent and reliable audit and inspection under specific legislation - public sector and Victorian community information and outreach <p><i>With outputs including:</i></p> <ul style="list-style-type: none"> - clarification, remedies and administrative improvement - authoritative and independent advice to Parliament to improve public sector accountability - an informed general public and public sector. 	
Values	
<p><i>Our values are:</i></p> <ul style="list-style-type: none"> - responsiveness - integrity - impartiality - accountability - respect - leadership - commitment to human rights <p><i>Which we demonstrate by:</i></p> <ul style="list-style-type: none"> - acting fairly, honestly and with an open mind - focusing on quality in our performance - speaking authoritatively and respectfully - serving the interests of the Victorian community - developing our skills and expertise. 	
Goals	Outcomes 2009-10
Focus 1: Complaint-handling	
<ul style="list-style-type: none"> - Undertake high quality assessment and investigation of complaints. - Facilitate administrative remedies and systemic improvements by producing authoritative and persuasive reports. - Provide a timely response and assist the complainant to understand the outcome. 	<ul style="list-style-type: none"> • Reviewed the telephone audit process to enable timely feedback to front line investigation staff. • Closed 11,784 jurisdictional complaints. • 96.5% of all approaches were closed within 30 days. • 99.1% of all approaches were closed within 90 days. • In those complaints found to be substantiated, effective outcomes were achieved in 97%.

<p>Focus 2: Accountability</p> <ul style="list-style-type: none"> - Enhance accountability of state and local government agencies to the public and to Parliament. - Assist authorities by identifying systemic issues through complaint-handling and investigations. - Conduct statutory inspections. 	<ul style="list-style-type: none"> • 97% of recommendations emanating from own motion and other investigation reports tabled in Parliament accepted and implemented by entities concerned. • Tabled 11 investigation reports in Parliament in 2009-10.
<p>Focus 3: Access</p> <ul style="list-style-type: none"> - Provide access for all members of the public to an independent means of complaint resolution. - Promote accessible complaint-handling within departments and agencies. - Provide services to those parts of the Victorian community that require additional assistance to engage with the Ombudsman. 	<ul style="list-style-type: none"> • Enhanced access to Ombudsman Victoria's webpage, with a 69% increase in its use in 2009-10. • Conducted or participated in 79 external education initiatives, including in regional Victoria.
<p>Focus 4: Effectiveness</p> <ul style="list-style-type: none"> - Achieve excellence and professionalism in all aspects of our work. 	<ul style="list-style-type: none"> • Reviewed portfolio allocations and associated action plans and timelines. • Built skills and capacity through enhanced flexibility across portfolios within the office. • Enhanced quality assurance and governance communication within the office. • Continued the Change Management Forum to identify opportunities to improve efficiencies.
<p>Focus 5: People</p> <ul style="list-style-type: none"> - Attract and retain the right people. - Provide experiences and develop skills to support career development. 	<ul style="list-style-type: none"> • Appointed a Manager, Human Resources. • Conducted a skills gap and training needs analysis as a basis for a learning and development program in 2010-11. • Developed a Human Resources strategy. • Continued to provide Certificate IV in Government (Investigations) to staff with two graduating in the past year.

Output statement

Under the *Financial Management Act 1994*, I am required to report against the output statement for *Ombudsman Services* which is published in the budget papers for each financial year. The published output statement for 2009-10, setting out the targets and outcomes for the year, is shown below:

Table 5: Output statement for 2009-10			
Output	Unit of measure	2009-10 target	2009-10 actual
Quantity measures			
Finalise consideration of cases including general, Freedom of Information and Whistleblower complaints	number	8,000	11,784
Internal reviews of complaint investigations concluded at the request of the complainant	number	80	54
Outreach initiatives delivered under the outreach program	number	100	79
Undertake and complete own motion investigations and studies	number	4	11
Quality measures			
Proportion of complaint investigations reviewed at the request of complainants (by a fresh, senior investigator) where the original findings were found to be sound and well founded	per cent	80	96
Proportion of complaints, which were found to be substantiated, where effective outcomes were achieved on behalf of complainants or where identified inappropriate administrative processes were changed ⁹	per cent	80	97
Proportion of recommendations emanating from own motion investigations which are accepted and implemented by the entities concerned ¹⁰	per cent	80	97
Timeliness measure			
Complaints resolved within required timelines	per cent	93	98.5

I have discussed matters relating to these measures in Part I of my annual report. I provide a brief explanation of the measures here to assist with their interpretation.

⁹ The findings of a complaint as substantiated and the outcomes of such findings may occur in different reporting periods.

¹⁰ Recommendations and their subsequent acceptance and implementation may occur in different reporting periods.

Quantity measures

First Measure – Finalise consideration of cases

The end of year outcome for this measure is 47 per cent over the projected number of 8,000 cases. This result continues the annual increase in the number of complaint cases received by my office since 2004-05.

Second Measure – Internal reviews of complaints investigated

The case management arrangements I have put in place in my office are designed to facilitate the investigation and finalisation of complaints thoroughly, expeditiously and accurately. I therefore take requests for reviews of complaint outcomes seriously and ensure that they are addressed promptly at a senior level.

Of the 11,784 cases concluded in 2009-10, the outcomes of 54 (less than 0.5 per cent) were reviewed at the request of the complainants. This was fewer than the 80 estimated.

Third Measure – Outreach initiatives

I have discussed in Part I of my report the importance I place on outreach activities by my office, both to public sector agencies and to the community. However, both workloads and vacancies in key positions constrained the program in 2009-10, resulting in an outcome about 20 per cent below target. The expected appointment of a Communications Manager early in 2010-11 will assist in meeting the target next year.

Fourth Measure – Own motion investigations and studies

This measure relates to reports which I tabled in the Parliament during the reporting period. There were 11 reports tabled in 2009-10, significantly more than the anticipated number. My reports to Parliament are contingent on matters as they arise during the year, which cannot be predicted. One such report was as a result of a referral by a Committee of Parliament.

Quality measures

First Measure – Reviewed investigations found to be sound

This measure reports the outcome of internal reviews. Internal reviews are for complainants who are dissatisfied with the handling of their complaint. It shows that, of the 54 complaint cases reviewed, the original findings in 52 were found to be sound and well founded. The two cases where changes were made were due to additional information being provided by the complainants.

Second Measure – Effective outcomes achieved

This measure relates to the proportion of substantiated complaints where effective outcomes were achieved on behalf of complainants.

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

Third Measure – Own motion study recommendations

This measure reports the extent to which respondent agencies accept the recommendations I make in my reports to the Parliament. The higher than anticipated outcome is a pleasing result.

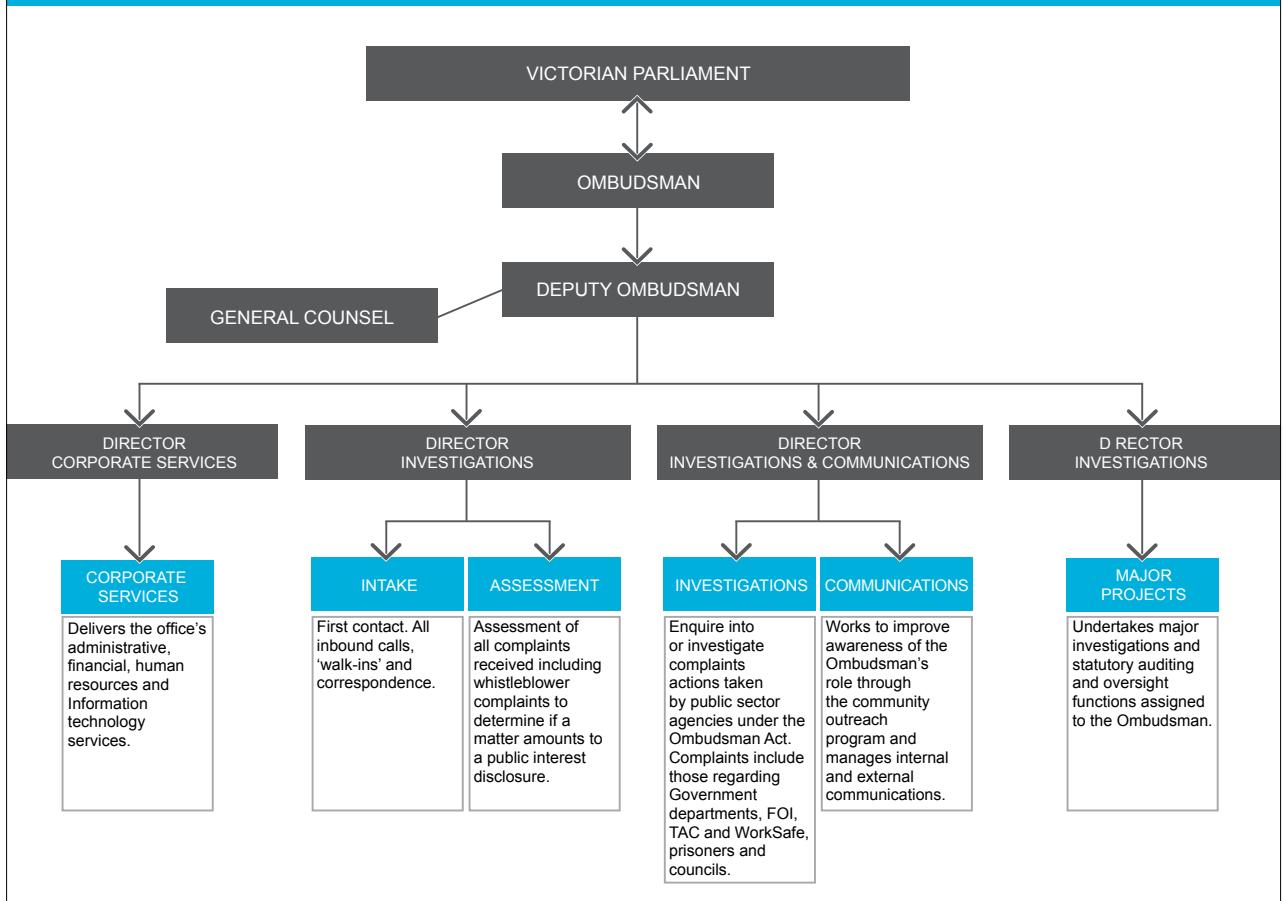
Timeliness measure

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

In order to cope with the increase in workload over the years, my office has implemented a number of measures to increase productivity. One significant measure was the introduction of a new case management system in July 2007. This has enabled cases to be evaluated, tracked, monitored and managed more efficiently than previously and has helped my office maintain this measure above its target. Enhancements to the system in the current reporting period have brought further effectiveness and productivity gains in 2009-10, not only in the timeliness measure but in all the quantity and quality measures.

Staffing

Figure 13: Organisational structure during 2009-10



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

Staffing trends

The following table details staff numbers at 30 June over each of the past six years.

Table 6: Staffing trends					
2005	2006	2007	2008	2009	2010*
54	47	42	52	52	59

*These figures relate to staff on the last payroll in 2009-10. The 2010 figure includes four staff members on long term maternity leave and one member on long term secondment to another agency. The figures do not include the Ombudsman or casual staff.

Table 7: Overview of staff profile at 30 June 2010				
	Male	Change from 2009	Female	Change from 2009
Executive and Investigations				
Ombudsman	1	0	0	0
Deputy Ombudsman	1	0	0	0
General Counsel	1	0	0	0
Assistant Ombudsman	0	0	0	0
Executive Assistants	0	0	1	0
Investigation Officers	14	+1	33	-1
Communications/Training	0	0	3	+1
Corporate Services				
Business Services	2	-1	2	0
Human Resources	0	0	1	+1
Information Systems	2	+1	1	0
Records Management	1	0	2	0
TOTAL**	22	+1	43	+1

**The numbers shown here are headcounts. They include 5 casual staff and the Ombudsman.

Table 8: Staff profile by age, gender and employment status at 30 June

June 2009				June 2010		
Ongoing employees			Fixed-term and casual	Ongoing employees		Fixed-term and casual
	Number (headcount)	FTE ¹¹	FTE	Number (headcount)	FTE	FTE
Gender						
Male	14	14.00	3.53	16	16.00	4.38
Female	31	31.00	7.09	36	35.84	5.43
Total	45	45	10.62	52	51.84	9.81
Age						
Under 25	2	2.00	3.30	4	4.00	0.11
25-34	17	17.00	4.25	19	18.84	4.75
35-44	9	9.00	1.00	12	12.00	2.00
45-54	12	12.00	0.00	12	12.00	1.00
55-64	5	5.00	2.07	5	5.00	1.95
Over 64	0	0.00	0.00	0	0.00	0.00
Total	45	45	10.62	52	51.84	9.81
Classification						
VPS G1	0	0.00	0.00	0	0.00	0.00
VPS G2	1	1.00	0.00	3	2.84	0.00
VPS G3	13	13.00	4.00	16	16.00	2.00
VPS G4	12	12.00	1.00	11	11.00	3.00
VPS G5	13	13.00	1.00	16	16.00	2.00
VPS G6	4	4.00	1.00	4	4.00	0.00
Executives	2	2.00	0.00	2	2.00	0.00
Other	0	0.00	3.62	0	0.00	2.81
Total	45	45	10.62	52	51.84	9.81

11 Where used here and in other environmental impacts tables and graphs set out in this section, FTE (Full Time Equivalent) does not include consultants and contractors or employees who were not on Ombudsman Victoria's payroll in the last full pay period of June 2010. Because such persons have used Ombudsman Victoria's resources during the course of the year, the reported resource usage rates per FTE in the tables overstates the position.

Human Resource management

Public sector values and employment principles

Ombudsman Victoria embraces the public sector employment principles established under Part 2 of the *Public Administration Act 2004* (the Act). The principles aim to ensure that employment decisions are based on merit; employees are treated fairly and reasonably; equal employment opportunity is provided; human rights as set out in the *Charter of Human Rights and Responsibilities Act 2006* are upheld; employees have a reasonable avenue of redress against unfair or unreasonable treatment; and that a career public service is fostered.

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

Occupational health and safety

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

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

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

Corporate management and governance

Audit and Risk Management Committee

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

Mr Greg Schinck Assistant Director, Corporate Services, Public Record Office Victoria	Independent member and chair Appointed November 2008
Mr Trevor Wood Assistant Auditor-General emeritus, Victorian Auditor-General's Office	Independent member Appointed November 2008
Ms Cindy Callander Director, Corporate Services, Ombudsman Victoria	Ex-officio representative
Ms Joy Patton¹² Director of Investigations, Ombudsman Victoria	Ex-officio representative

¹² Under the terms of the Audit and Risk Management Committee's Charter, the second ex-officio Committee representative rotates through the positions of Director of Investigations. Mr Dallas Mischkulnig was appointed in June 2009 and left during the reporting period. Ms Joy Patton attended the June 2010 meeting.

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

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

Audit and Risk Management Committee's Statement on Risk Management

My office has comprehensive risk management strategies and risk management plans in place. The strategies and plans provide for risks to be identified, managed, monitored and reported to the senior executive group and to the Audit and Risk Management Committee. My office now also has in place a business continuity plan which will ensure that business functions continue in the event of outages of critical systems or facilities.

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

Office-based environmental impacts

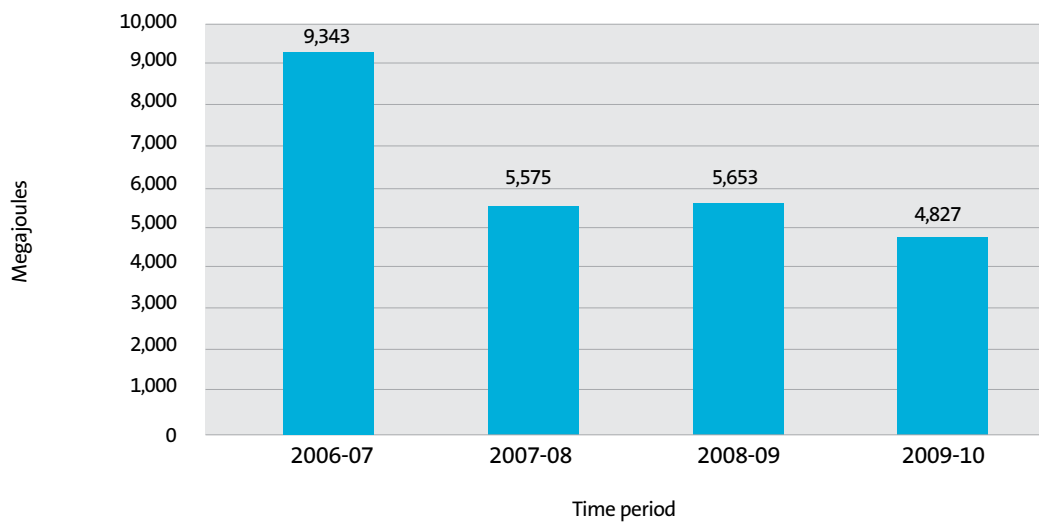
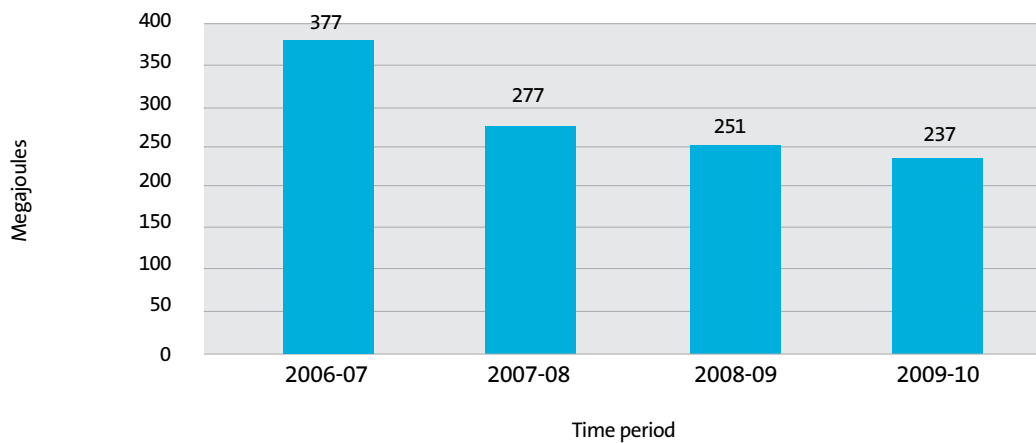
My office continues to reduce its adverse impact on the environment. It has had some success since 2006-07. The momentum has been maintained with the work of Ombudsman Victoria's Green Team, which was established in September 2008. The Team supports and educates staff to use energy efficiently and to reduce waste creation and increase waste recycling wherever possible.

The tables and graphs below set out Ombudsman Victoria's environmental impact in its use of electrical power, paper and office vehicles.

Table 9: Electricity usage since 2006-07

	2006-07	2007-08	2008-09	2009-10
Total electricity used in the office (gigajoules)	383	306	314	298
Electricity used per FTE staff member (megajoules)	9,343	5,575	5,653	4,827
Electricity used per m ² of office space (megajoules)	377	277	251	237
Power greenhouse emissions (tonnes CO ₂ -e)	144	118	122	115

Figure 14: Megajoules of power used per FTE staff

Figure 15: Megajoules of power used per m² office space

Total electricity used by my office in 2006-07 was reduced by more than 43 per cent compared with 2005-06. In 2007-08 electricity used fell by a further 20 per cent, with usage per FTE staff member falling by 40 per cent. The measures contributing to these reductions were reduced lighting; the use of motion sensors to automatically switch off lights when not in use; vigilant staff practices in turning off computers and other equipment when away from the office; and ensuring all equipment is switched off after normal business hours. I am pleased that we have been able to maintain these very significant reductions.

The office continues to meet some of its power needs from government-accredited green power sources. This reduced the emission of CO₂-e into the atmosphere by 28 tonnes during 2009-10.

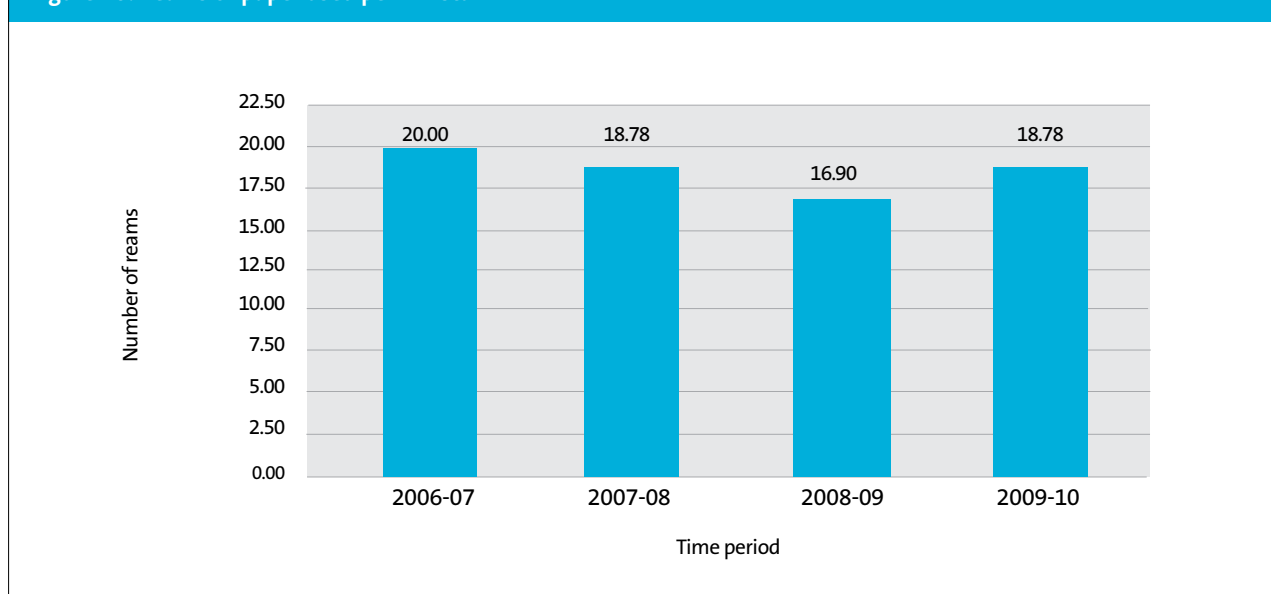
Waste

My office recycles all recyclable materials including paper, cardboard, plastics and glass. The materials are placed in dedicated recycling bins throughout the office. The bin contents are cleared daily and deposited into communal recycling bins serving all tenants in the building.

Table 10: Paper usage since 2006-07

	2006-07	2007-08	2008-09	2009-10
Total paper used in the office (reams)	838	1,030	940	1,158
Paper used per FTE staff member (reams)	20.00	18.78	16.90	18.78

Figure 16: Reams of paper used per FTE staff



All the white paper used in the office during 2009-10 was 100 per cent recycled paper.

Water

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

Vehicles

I encourage staff to use public transport when on official business in preference to office cars wherever feasible. In addition, two of the office's three conventionally powered vehicles were replaced with hybrid powered vehicles late in the reporting period. The impacts of these measures are shown in the table and graphs below.

Table 11: Vehicle usage since 2006-07				
	2006-07	2007-08	2008-09	2009-10
Passenger vehicle trips				
- Total kilometres	30,990	35,664	31,589	24,415
- Kilometres per FTE staff member	755	650	568	396
Petrol consumption				
Total litres	2,872	3,479	2,621	2,243
Litres per FTE staff member	70	63	47	36
Greenhouse gas emissions associated with vehicles				
Total tonnes CO ₂ -e	9.66	11.46	10.17	7.59
Tonnes CO ₂ -e per FTE staff member	0.24	0.21	0.18	0.12

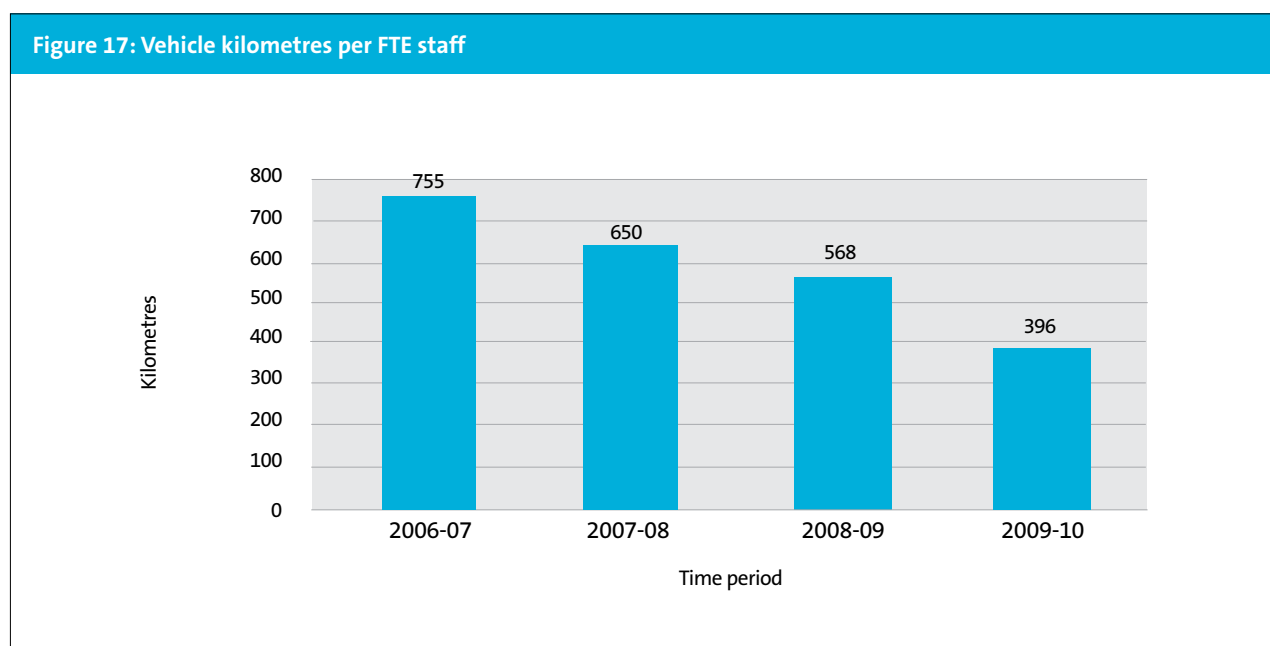


Figure 18: Litres of fuel used per FTE staff

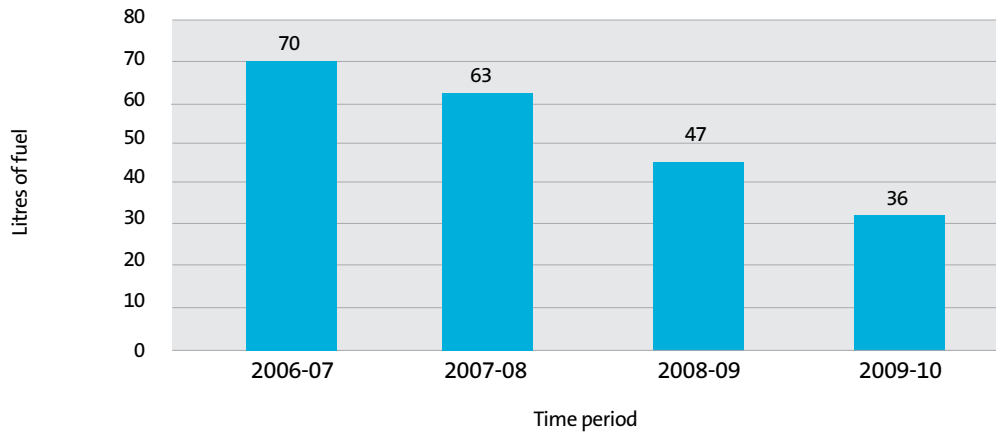
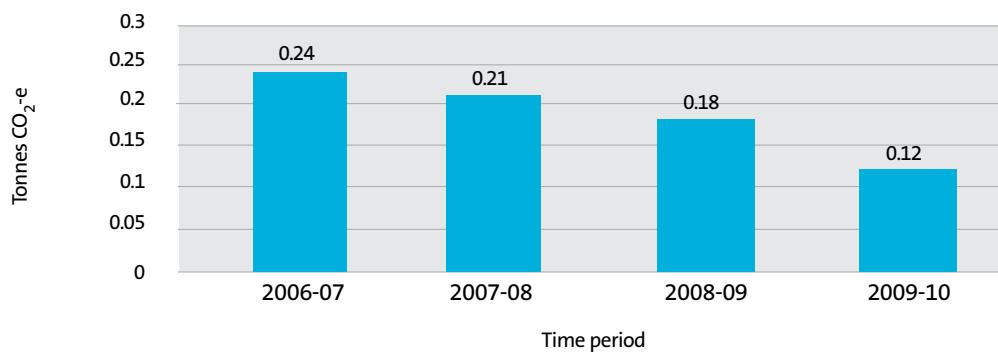


Figure 19: Vehicle tonnes CO₂-e per FTE staff



The Victorian Industry Participation Policy Act

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

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

In the reporting period my office had no procurements or projects to which the policy applied.

Consultancies

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

I engaged four consultants during 2009-10, at a total cost of \$167,000, excluding GST. None was over \$100,000.

Declarations of private interests

My Deputy and other senior staff have lodged a declaration of pecuniary and other interests with me. I have lodged a corresponding declaration with the Department of Premier and Cabinet.

These declarations are made on appointment and updated annually or more frequently as individual circumstances change.

Freedom of Information Act

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

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

In the reporting period I received 19 FOI requests for documents held by Ombudsman Victoria. Each request was dealt with within the constraints of the statutory exemptions which applied. Further details can be found in the Attorney-General's Annual Report on FOI.

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

Whistleblowers Protection Act

Under section 69 of the *Whistleblowers Protection Act 2001*, I am required to issue guidelines to help public bodies handle disclosures and comply with the Act. The guidelines are provided in a separate section of this report and on my website <www.ombudsman.vic.gov.au>.

Disclosure index

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

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Whistleblowers Protection Act 2001 **ombudsman's guidelines**

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WHISTLEBLOWERS PROTECTION ACT 2001

OMBUDSMAN'S GUIDELINES

Objects of the Act

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

Who is subject to the Act?

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

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

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

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

Public officers include:

- Members of Parliament
- councillors
- council employees
- public servants
- university employees
- police officers
- protective services officers
- administrative staff of the Chief Commissioner of Police
- teachers
- office holders appointed by the Governor-in-Council or a Minister.

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

The role of the Ombudsman

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

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

Establishing written procedures

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

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

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

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

Contents of whistleblower protection procedures

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

Establishing a reporting system

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

The chief requirements of any reporting system are:

- ensuring senior executive staff are involved and retain oversight
- ensuring confidentiality of the information and the identity of the whistleblower are maintained throughout the process
- keeping the roles of assessment and investigation of a disclosure distinct from welfare management of the whistleblower
- identifying clear contact points for reporting whistleblower disclosures, including all relevant mail, phone and email contacts
- ensuring a disclosure about the chief executive officer of a public body is immediately referred to the Ombudsman.

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

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

Which reporting structure to adopt

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

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

Roles and responsibilities of those involved in the internal reporting system

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

The protected disclosure coordinator

Every public body must have a nominated protected disclosure coordinator.

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

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

- take all necessary steps to ensure the identity of the whistleblower and the identity of the person who is the subject of the disclosure are kept confidential
- liaise with the chief executive officer of the public body.

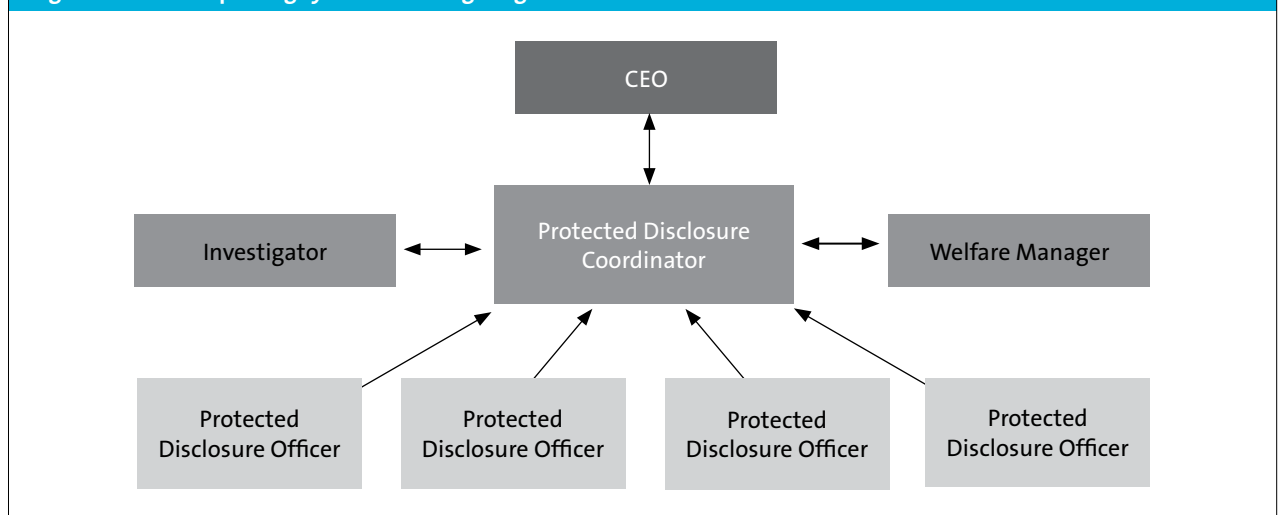
In a smaller public body the principal officer may decide to take on the role of protected disclosure coordinator. The protected disclosure coordinator must be contactable by external and internal whistleblowers and have the authority to make enquiries of officers within the organisation.

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

Model reporting system for a large organisation

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

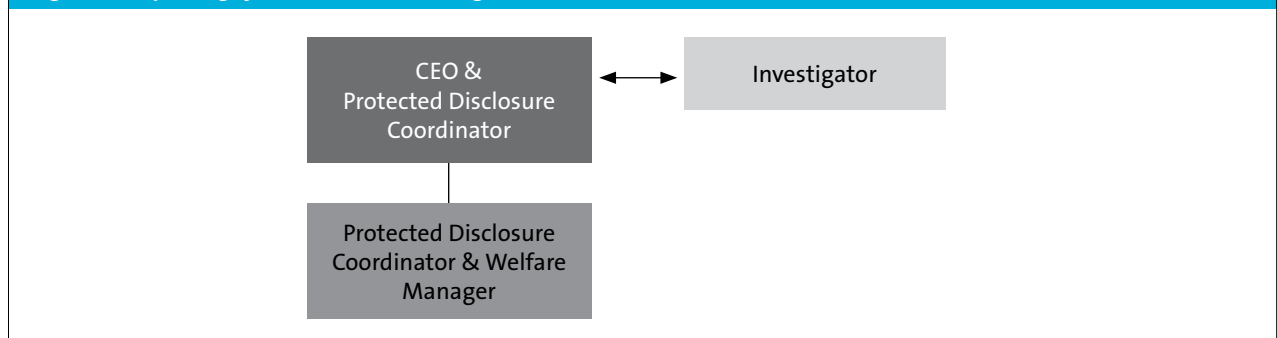
Figure 1: Model reporting system for a large organisation



Model reporting system for a small organisation

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

Figure 2: Reporting system for a smaller organisation



Ensuring confidentiality

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

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

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

However, the Act prohibits:

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

A breach of section 22 constitutes a criminal offence.

Protecting the whistleblower from reprisals

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

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

Also see sections dealing with 'Detrimental action' on page 51 and 'Managing the welfare of the whistleblower' on page 56.

Establishing a confidential electronic and paper filing system

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

Public bodies must ensure that:

- all paper and electronic files are secure and can only be accessed by authorised officers
- all printed material is kept in files that are clearly marked as a Whistleblowers Protection Act matter and include a prominent warning on the front of the file that criminal penalties apply to any unauthorised divulging of information concerning a protected disclosure
- any files saved on a floppy disk or CD-ROM or other disk are password-protected

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

- any other material, such as tapes from interviews, are stored securely and can only be accessed by authorised officers
- the security of communications between nominated officers and/or contracted officers i.e. sensitive information or documents are not emailed or faxed to a machine to which staff have general access; personal delivery of documents is the best way to ensure confidentiality.

Education and training to ensure knowledge by personnel

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

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

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

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

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

Receiving a disclosure

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

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

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

How can a protected disclosure be made?

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

- orally
- in writing
- electronically
- anonymously.

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

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

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

To whom must a protected disclosure be made?

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

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

Table 1: Requirements for receiving a disclosure

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

Mechanisms for the receipt of disclosures

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

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

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

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

Assessing a disclosure

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

Protected disclosures

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

- Did a natural person (that is, an individual person rather than a corporation) make the disclosure?
- Does the disclosure relate to conduct of a public body or public officer acting in their official capacity?
- Is the alleged conduct either improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure?
- Does the person making a disclosure believe on reasonable grounds that the alleged conduct has occurred?

- If one or more of the above elements are not satisfied, the person has not made a disclosure under Part 2 of the Act.

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

Improper conduct

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

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

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

Examples of improper conduct

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

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

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

Corrupt conduct

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

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

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

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

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

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

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

Examples of corrupt conduct

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

A public officer sells confidential information.

Substantial mismanagement of public resources

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

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

Substantial risk to public health, safety or the environment

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

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

Detrimental action

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

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

Examples of detrimental action

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

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

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

Belief on reasonable grounds

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

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

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

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

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

Notification of the decision

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

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

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

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

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

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

Public interest disclosures

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

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

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

(a) has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer; or

(b) has taken, is taking or proposes to take detrimental action in contravention of section 18.

To show or tend to show improper conduct or detrimental action

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

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

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

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

Conclusion that a disclosure is a public interest disclosure

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

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

Conclusion that the disclosure is not a public interest disclosure

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

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

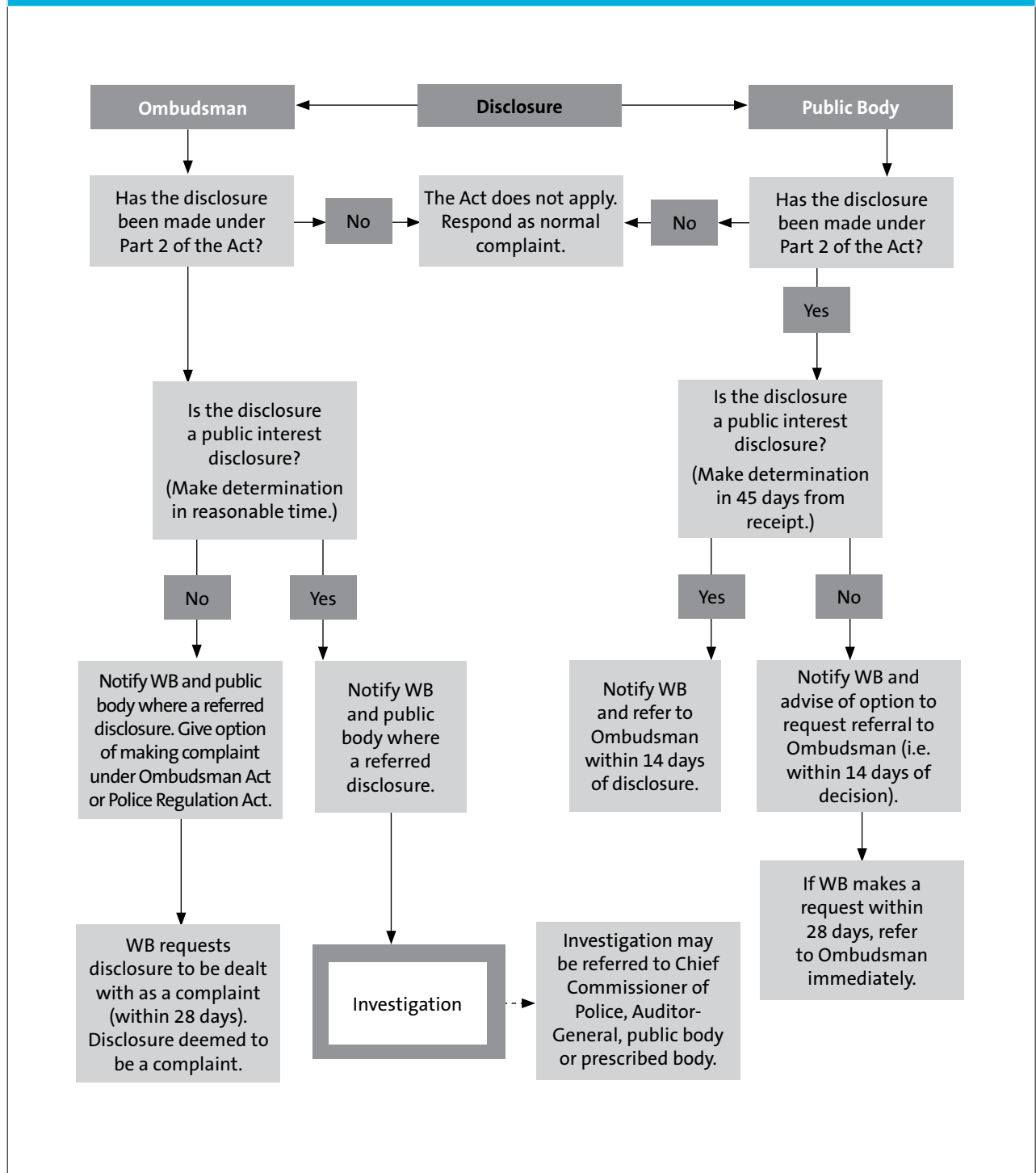
Notification to the whistleblower is not necessary where the disclosure has been made anonymously.

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

Flowchart

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

Figure 3: Flowchart of assessment and referral process



Possible criminal charges, legal action and disciplinary proceedings

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

Criminal offences

Detrimental action

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

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

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

Breach of confidentiality

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

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

Obstruction of the Ombudsman

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

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

Provision of false information

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

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

Civil action

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

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

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

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

Managing the welfare of the whistleblower

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

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

Internal and external whistleblowers

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

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

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

Appointing a welfare manager

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

The role of the welfare manager is to:

- examine the immediate welfare and protection needs of a whistleblower who has made a disclosure and seek to foster a supportive work environment
- advise the whistleblower of the legislative and administrative protections available to him or her
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure
- keep a contemporaneous record of all aspects of the case management of the whistleblower, including all contact and follow-up action
- endeavour to ensure that the expectations of the whistleblower are realistic.

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

Reporting back

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

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

Managing expectations

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

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

Occurrence of detrimental action

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

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

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

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

Consequences for whistleblowers implicated in improper conduct or disciplinary matters

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

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

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

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

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

Errors to be avoided

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

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

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

Investigations

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

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

Who can carry out the investigation?

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

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

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

Investigation by a public body

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

The objectives of an investigation should be to:

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

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

Terms of reference and authorisation

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

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

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

Preparation of investigation plan

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

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

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

At the commencement of the investigation the whistleblower should be:

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

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

The investigator

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

Monitoring by the Ombudsman

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

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

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

Natural justice

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

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

- The person who is the subject of the disclosure is entitled to know the allegations made against him or her and must be given the right to respond. (This does not mean the person must be advised of the allegation as soon as the disclosure is received or the investigation has commenced.)
- If the investigator is contemplating making a report adverse to the interests of any person, that person must be given the opportunity to respond to the criticisms and to put forward further material that may influence the outcome of the report and that person's defence should be fairly set out in the report.
- All relevant parties to a matter should be heard and all submissions should be considered.
- The investigator or any decision-maker should not have a personal or direct interest in the matter being investigated.

- All proceedings must be carried out fairly and without bias. Care should be taken to exclude perceived bias from the process.
- The investigator must be impartial in assessing the credibility of the whistleblower and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

Recording information

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

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

Confidentiality requirements

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

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

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

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

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

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

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

Management of the person against whom a disclosure is made

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

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

Powers with respect to witnesses

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

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

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

Legal representation and other support to witnesses

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

Immunity from disciplinary action

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

Criminal conduct

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

Problems with an investigation conducted by a public body

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

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

The Ombudsman may take over the investigation

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

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

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

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

Action on completion of the investigation

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

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

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

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

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

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

Collating and publishing statistics

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

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

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

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

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

General information

The role of the Ombudsman

The role of the Ombudsman under the Act is to:

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

Freedom of information

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

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Victorian Auditor-General's Office

INDEPENDENT AUDITOR'S REPORT

To the Ombudsman

The Financial Report

The accompanying financial report for the year ended 30 June 2010 of the Office of the Ombudsman which comprises the comprehensive operating statement, balance sheet, statement of changes in equity, cash flow statement, a summary of significant accounting policies and other explanatory notes to and forming part of the financial report, and the accountable officer's and chief financial officer's declaration has been audited.

The Ombudsman's Responsibility for the Financial Report

The Ombudsman is responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and the financial reporting requirements of the *Financial Management Act 1994*. This responsibility includes:

- establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error
- selecting and applying appropriate accounting policies
- making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

As required by the *Audit Act 1994*, my responsibility is to express an opinion on the financial report based on the audit, which has been conducted in accordance with Australian Auditing Standards.

These Standards require compliance with relevant ethical requirements relating to audit engagements and that the audit be planned and performed to obtain reasonable assurance whether the financial report is free from material misstatement.

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

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

Matters Relating to the Electronic Presentation of the Audited Financial Report

This auditor's report relates to the financial report published in both the annual report and on the website of the Office of the Ombudsman for the year ended 30 June 2010. The Ombudsman is responsible for the integrity of the web site. I have not been engaged to report on the integrity of the web site. The auditor's report refers only to the statements named above. An opinion is not provided on any other information which may have been hyperlinked to or from these statements. If users of this report are concerned with the inherent risks arising from electronic data communications, they are advised to refer to the hard copy of the audited financial report to confirm the information included in the audited financial report presented on the Office of the Ombudsman's web site.

Independence

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

Auditor's Opinion

In my opinion, the financial report presents fairly, in all material respects, the financial position of the Office of the Ombudsman as at 30 June 2010 and its financial performance and cash flows for the year then ended in accordance with applicable Australian Accounting Standards (including the Australian Accounting Interpretations) and the financial reporting requirements of the *Financial Management Act 1994*.



for D D R Pearson
Auditor-General

MELBOURNE
20 August 2010

OFFICE OF THE OMBUDSMAN

Comprehensive Operating Statement For the year ended 30 June 2010			
		2010	2009
	Notes	\$	\$
Income from Transactions			
Grants	2	7,720,636	8,033,705
Total Income from Transactions		7,720,636	8,033,705
Expenses from Transactions			
Employee Benefits	3	5,573,133	5,502,181
Depreciation	3	94,234	203,635
Interest Expense	3	5,961	5,776
Resources Provided Free of Charge	1(f)	-	1,967
Capital Asset Charge	1(f)	179,004	175,000
Supplies and Services		1,785,696	2,150,623
Total Expenses from Transactions		7,638,028	8,039,182
Net Result from Transactions		82,608	(5,477)
Other Economic Flows Included in Net Result			
Net Gain/(Loss) on Disposal of Property, Plant and Equipment		2,788	(4,237)
Net Gain/(Loss) Arising from Revaluation of Long Service Leave Liability		(2,571)	(14,227)
Total Other Economic Flows Included in Net Result		217	(18,464)
Net Result		82,825	(23,941)
Other Economic Flows – Other Non-Owner Changes in Equity		-	-
Comprehensive Result		82,825	(23,941)

The above Comprehensive Operating Statement should be read in conjunction with the accompanying notes.

OFFICE OF THE OMBUDSMAN

Balance Sheet as at 30 June 2010			
		2010	2009
	Notes	\$	\$
Assets			
Financial Assets			
Cash on Hand		1,000	1,000
Receivables	4	788,250	585,061
Total Financial Assets		789,250	586,061
Non-Financial Assets			
Non Current Assets Held for Sale		22,405	-
Property, Plant and Equipment	5	697,069	571,610
Total Non-Financial Assets		719,474	571,610
Total Assets		1,508,724	1,157,671
Liabilities			
Payables	6	483,252	421,575
Provisions	7	1,320,222	1,180,880
Borrowings	8	133,962	66,753
Total Liabilities		1,937,436	1,669,208
Net Liabilities		(428,712)	(511,537)
Equity			
Contributed Capital		513,376	513,376
Accumulated Deficit		(942,088)	(1,024,913)
Total Equity / (Deficit)		(428,712)	(511,537)

The above Balance Sheet should be read in conjunction with the accompanying notes.

OFFICE OF THE OMBUDSMAN

Statement of Changes in Equity For the year ended 30 June 2010					
		Equity/(Net Deficit) at 1 July	Comprehensive Result	Transactions with Owner in its Capacity as Owner	Equity/(Net Deficit) at 30 June
	Notes	\$	\$	\$	\$
2010					
Contributed Capital		513,376			513,376
Accumulated Deficit		(1,024,913)	82,825		(942,088)
		(511,537)	82,825		(428,712)
2009					
Contributed Capital		550,149			550,149
Return of Capital				(36,773)	(36,773)
		550,149		(36,773)	513,376
Accumulated Deficit		(1,000,972)	(23, 941)		(1,024,913)
		(450,823)	(23, 941)	(36,773)	(511,537)

The above Statement of Changes in Equity should be read in conjunction with the accompanying notes.

OFFICE OF THE OMBUDSMAN

Cash Flow Statement For the year ended 30 June 2010			
		2010	2009
	Notes	\$	\$
Cash Flows from Operating Activities			
Receipts from Government		7,520,642	7,758,244
Payments to Suppliers and Employees		(7,132,462)	(7,360,113)
Capital Asset Charge Paid		(179,004)	(175,000)
Interest and Other Finance Costs Paid		(5,961)	(5,776)
Net Cash Flows from Operating Activities	16	203,215	217,355
Cash Flows from Investing Activities			
Payments for Property, Plant and Equipment		(187,508)	(192,316)
Proceeds from Disposal of Property, Plant and Equipment		20,727	11,273
Net Cash Flows used in Investing Activities		(166,781)	(181,043)
Cash Flows from Financing Activities			
Repayment of Finance Leases		(36,434)	(36,312)
Net Cash Flows used in Financing Activities		(36,434)	(36,312)
Net Increase in Cash Held		-	-
Cash at the Start of the Year		1,000	1,000
Cash at the End of the Year		1,000	1,000
Non-Cash Financing and Investing Activities	17		

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

NOTES TO THE FINANCIAL STATEMENTS

30 JUNE 2010

Note 1. Summary of Significant Accounting Policies

(a) Statement of Compliance

These general purpose financial statements have been prepared in accordance with the *Financial Management Act 1994* and applicable Australian Accounting Standards including Interpretations (AASs). AASs include Australian equivalents to International Financial Reporting Standards. Where relevant, those paragraphs of the AASs applicable to not-for-profit entities have been applied.

The financial statements also comply with relevant Financial Reporting Directions and relevant Standing Directions issued by the Minister for Finance.

(b) Basis of Preparation

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

These financial statements are presented in Australian dollars, the functional and presentation currency of the Office.

In the application of AASs and the accounting policies set out below, management is required to make judgments, estimates and assumptions about carrying values of assets and liabilities that are not readily apparent from other sources. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgments. Actual results may differ from these estimates. The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period or in the period of the revision and future periods if the revision affects both current and future periods. Judgements made by management in the application of AASs that have significant effects on the financial statements, with a risk of material adjustments in the next year, are disclosed in the notes to the financial statements.

The financial statements have been prepared in accordance with the historical cost convention, except where noted. Historical cost is based on the fair values of the consideration given in exchange for assets.

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

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

(c) Reporting Entity

The financial statements include all the controlled activities of the Office of the Ombudsman. The Office was established under the *Ombudsman Act 1973*. Its principal address is:

Level 9, 459 Collins Street
Melbourne Victoria 3000

Objectives and funding

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

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

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

Administered resources

The Office administers, but does not control, certain resources on behalf of the Victorian Government. It is accountable for the transactions involving those administered resources, but does not have the discretion to deploy the resources for achievement of the Office's objectives. For these resources, the Office acts only on behalf of the Victorian Government.

Transactions and balances relating to these administered resources are not recognised as revenues, expenses, assets or liabilities within the body of the financial statements, but are disclosed separately (see note 18).

(d) Scope and Presentation of Financial Statements

Comprehensive operating statement

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

Balance sheet

Assets and liabilities are presented in liquidity order with assets aggregated into financial assets and non-financial assets. Current and non-current assets and liabilities (those expected to be recovered or settled beyond 12 months) are disclosed in the notes, where relevant.

Statement of changes in equity

The statement of changes in equity presents reconciliations of each non-owner and owner equity opening balance at the beginning of the year to the closing balance at the end of the year. It also shows separately changes due to amounts recognised in the comprehensive result and amounts recognised in other comprehensive income related to other non-owner changes in equity.

Cash flow statement

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

(e) Income from Transactions

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

Grants

Income from the outputs the Office provides to Government is recognised as grants income when those outputs have been delivered and the relevant Minister has certified delivery of those outputs in accordance with specified performance criteria.

Resources received free of charge

Contributions of resources free of charge or for nominal consideration are recognised at their fair value when the transferee obtains control over them, irrespective of whether restrictions or conditions are imposed over the use of the contributions, unless received from another government department or agency as a consequence of a restructuring of administrative arrangements. In the latter case, such a transfer will be recognised at carrying value.

Contributions in the form of services are only recognised when a fair value can be reliably determined and the services would have been purchased if not donated.

(f) Expenses from Transactions

Employee benefits

Employee benefits include superannuation expenses relating to employees who are members of either defined benefit or defined contribution plans. In relation to defined contribution (accumulation) superannuation plans, the associated expense represents the employer contributions that are paid or payable in respect of employees who are members of these plans during the year.

The amount recognised in the comprehensive operating statement in relation to members of defined benefit superannuation plans represents the employer contributions that are paid or payable to these plans during the year. The level of contributions vary depending upon the relevant rules of each plan, and is based upon actuarial advice.

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

Depreciation of property, plant and equipment

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

The estimated useful lives, residual values and depreciation method are reviewed at least annually. Typical estimated useful lives applicable for the years ended 30 June 2010 and 30 June 2009 are as follows:

Building fitouts	10 years
Office and computer equipment	4 years
Furniture and fittings	10 years
Motor vehicles under finance lease	2-3 years

Interest expense

Interest expenses are recognised as expenses in the period in which they are incurred. Interest expenses include finance lease charges.

Capital asset charge

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

Resources provided free of charge

Resources provided free of charge or for nominal consideration are recognised at their fair value.

(g) Other Economic Flows Included in Net Result

Other economic flows measure the change in volume or value of assets or liabilities that do not result from transactions.

Net gain/(loss) on non-financial assets

Net gain/(loss) on non-financial assets and liabilities includes realised and unrealised gains and losses from revaluations, impairments, and disposals of all physical assets and intangible assets.

Disposal of non-financial assets

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

Impairment of non-financial assets

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

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

Net gain/(loss) on financial instruments

Net gain/(loss) on financial instruments includes impairment and reversal of impairment for financial instruments at amortised cost, and disposals of financial assets.

Impairment of financial assets

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

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

Other gains/(losses) from other economic flows

Other gains/(losses) from other economic flows include the transfer of amounts from reserves and/or accumulated surplus to net result due to reclassification, and from the revaluation of the present value of the long service leave liability due to changes in bond interest rates.

(h) Financial Assets

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

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

Receivables

Receivables consist predominantly of amounts owing from the Victorian Government, debtors in relation to goods and services and GST input tax credits recoverable. Receivables that are contractual are classified as financial instruments. Amounts owing from the Victorian Government and other statutory receivables are not classified as financial instruments.

Receivables are recognised initially at fair value and subsequently measured at amortised cost, using the effective interest method, less impairment.

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

(i) Non-financial Assets

Property, plant and equipment

Property, plant and equipment are recognised initially at cost and subsequently measured at fair value less accumulated depreciation and impairment.

Revaluation of non-current physical assets

Non-current physical assets are measured at fair value in accordance with Financial Reporting Directions issued by the Minister for Finance. A full revaluation normally occurs every five years, based on the asset's government purpose classification, but may occur more frequently if fair value assessments indicate material changes in values. Independent valuers are used to conduct these scheduled revaluations and any interim revaluations are determined in accordance with the requirements of the Financial Reporting Directions.

Revaluation increments are recognised in other comprehensive income as an increase in the asset revaluation reserve, except that, to the extent that an increment reverses a revaluation decrement in respect of that class of asset previously recognised as an expense in the net result, the increment is recognised in determining the net result.

Revaluation decrements are recognised immediately as expenses (other economic flows) in the net result, except that, to the extent that a credit balance exists in the asset revaluation reserve in respect of the same class of assets, they are recognised in other comprehensive income as a decrease in the asset revaluation reserve.

Revaluation increases and revaluation decreases relating to individual assets within a class of property, plant and equipment are offset against one another within that class but are not offset in respect of assets in different classes.

(j) Liabilities

Payables

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

Provisions

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

Employee benefits

Provision is made for benefits accruing to employees in respect of wages and salaries, annual leave, long service leave and sick leave when it is probable that settlement will be required and they are capable of being measured reliably. Employee benefits on-costs are recognised separately from provisions for employee benefits.

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

Borrowings

Borrowings are recorded initially at fair value, net of transaction costs. Subsequent to initial recognition, borrowings are measured at amortised cost with any difference between the initial recognised amount and the redemption value being recognised in net result over the period of the borrowings using the effective interest rate method. Fair value is determined in the manner described in note 9(f).

(k) Leases

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

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

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

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

(l) Goods and Services Tax (GST)

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

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

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

Commitments and contingent assets and liabilities are presented on a gross basis.

(m) Contributed Capital

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

(n) Commitments

Commitments are disclosed at their nominal value and inclusive of the GST payable. In addition, where it is considered appropriate and provides additional relevant information to users, the net present values of significant individual projects are stated.

(o) Contingent Assets and Contingent Liabilities

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

(p) Going Concern Basis

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

(q) New Accounting Standards and Interpretations

As at 30 June 2010, the following standards and interpretations (applicable to the Office) had been issued but were not mandatory for the 30 June 2010 reporting period. The Office has not adopted, and does not intend to adopt, these standards early.

AASB 2009-5 Further amendments to Australian Accounting Standards arising from the annual improvements project [AASB 5, 8, 101, 107, 117, 118, 136 and 139]. Some amendments will result in accounting changes for presentation, recognition or measurement purposes, while other amendments will relate to terminology and editorial changes. Applicable for annual reporting periods beginning on 1 January 2010. Impact is minor.

Erratum General Terminology changes - Editorial and terminology amendments to a range of Australian Accounting Standards and Interpretations. Applicable for annual reporting periods beginning on 1 January 2010. Impact is minor.

AASB 124 Related party disclosures (Dec 2009). Government related entities have been granted partial exemption with certain disclosure requirements. Applicable for annual reporting periods beginning on 1 January 2011. Preliminary assessment suggests that impact is insignificant. The Office is still assessing the detailed impact.

AASB 2009-14 Amendments to Australian Interpretation – Prepayments of a minimum funding requirement [AASB Interpretation 14]. Amendment to Interpretation 14 arising from the issuance of Prepayments of a minimum funding requirement. Applicable for annual reporting periods beginning on 1 January 2011. Expected to have no significant impact.

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

AASB 2009-11 Amendments to Australian Accounting Standards arising from AASB 9 [AASB 1, 3, 4, 5, 7, 101, 102, 108, 112, 118, 121, 127, 128, 131, 132, 136, 139, 1023 and 1038 and Interpretations 10 and 12]. This gives effect to consequential changes arising from the issuance of AASB 9 *Financial instruments*. Applicable for annual reporting periods beginning on 1 January 2013. Detail of impact is still being assessed.

AASB 1053 Application of Different Tiers of Australian Accounting Standards. This Standard establishes a differential financial reporting framework consisting of two tiers of reporting requirements for preparing general purpose financial statements. Applicable for annual reporting periods beginning on 1 July 2013. This Standard may affect disclosures in the financial reports of certain types of entities [public sector entities (except whole of government and general government sector)] where reduced disclosure requirements may apply. The Standard does not affect the operating result or financial position.

AASB 2010-2 Amendments to Australian Accounting Standards arising from Reduced Disclosure Requirements. This Standard makes amendments to many Australian Accounting Standards, including Interpretations, to introduce reduced disclosure requirements to the pronouncements for application by certain types of entities. Applicable for annual reporting periods beginning on 1 July 2013. The Standard does not affect financial measurement or recognition, so is not expected to have any impact on the operating result or financial position, but may reduce some note disclosures in the financial statements.

Note 2. Income from Transactions

Note 2. Income from Transactions		
Grants	2010 \$	2009 \$
Grants from the Department of Premier and Cabinet	7,720,636	8,033,705
Total Income from Transactions	7,720,636	8,033,705

Note 3. Expenses from Transactions

Note 3. Expenses from Transactions		
	2010 \$	2009 \$
Expenses from Transactions include:		
Employee Benefits		
Salaries and Wages	4,320,611	4,378,210
Superannuation		
- Defined Contribution Plans	367,976	343,117
- Defined Benefits Plans	43,440	50,930
Annual and Long Service Leave Expense	580,651	464,651
On-Costs	260,455	265,273
Total Employee Benefits	5,573,133	5,502,181
Depreciation		
Building Fitouts	10,588	76,635
Office and Computer Equipment	24,323	61,345
Furniture and Fittings	37,556	44,453
Motor Vehicles under Finance Lease	21,767	21,202
Total Depreciation	94,234	203,635
Interest Expense		
Finance Lease Interest	5,961	5,776
Total Interest Expense	5,961	5,776
Rental Expense Relating to Operating Leases		
Minimum Lease Payments	306,676	314,901

Note 4. Receivables

Note 4. Receivables		
	2010 \$	2009 \$
Current:		
Contractual		
Other receivables	3,716	-
Statutory		
GST Recoverable	15,529	16,049
Amounts Receivable from the Department of Premier and Cabinet	579,344	376,685
	594,873	392,734
Total Current	598,589	392,734
Non-Current:		
Statutory		
Amounts Receivable from the Department of Premier and Cabinet	189,661	192,327
	189,661	192,327
Total Receivables	788,250	585,061

Note 5. Property, Plant and Equipment

Note 5: Property, Plant and Equipment		
	2010 \$	2009 \$
Building Fitouts at Fair Value	363,875	364,044
Less: Accumulated Depreciation	(96,817)	(86,229)
	267,058	277,815
Office and Computer Equipment at Fair Value	525,518	422,384
Less: Accumulated Depreciation	(349,531)	(372,716)
	175,987	49,668
Furniture and Fittings at Fair Value	311,230	309,430
Less: Accumulated Depreciation	(167,661)	(132,036)
	143,569	177,394
Motor Vehicles under Finance Lease at Fair Value	128,645	120,305
Less: Accumulated Depreciation	(18,190)	(53,572)
	110,455	66,733
Total Property, Plant and Equipment	697,069	571,610
Reconciliation of Carrying Amounts	2010 \$	2009 \$
Building Fitouts		
Carrying Amount at Start of Year	277,815	67,156
Additions	31,081	287,294
Derecognition of Restoration Obligation	(31,250)	-
Depreciation Expense (note 3)	(10,588)	(76,635)
Carrying Amount at End of Year	267,058	277,815
Office and Computer Equipment		
Carrying Amount at Start of Year	49,668	143,113
Additions	152,697	6,992
Disposals	(2,055)	(352)
Net Transfers Free of Charge	-	(1,967)
Net Transfers through Contributed Capital	-	(36,773)
Depreciation Expense (note 3)	(24,323)	(61,345)
Carrying Amount at End of Year	175,987	49,668

Note 5: Property, Plant and Equipment <i>continued</i>		
Reconciliation of Carrying Amounts <i>continued</i>	2010 \$	2009 \$
<i>Furniture and Fittings</i>		
Carrying Amount at Start of Year	177,394	168,915
Additions	3,731	53,738
Disposals	-	(806)
Depreciation Expense (note 3)	(37,556)	(44,453)
Carrying Amount at End of Year	143,569	177,394
<i>Motor Vehicles under Finance Lease</i>		
Carrying Amount at Start of Year	66,733	77,419
Additions	103,779	24,866
Disposals	(38,290)	(14,350)
Depreciation Expense (note 3)	(21,767)	(21,202)
Carrying Amount at End of Year	110,455	66,733

Note 6. Payables

Note 6. Payables		
	2010 \$	2009 \$
Current:		
Contractual		
Creditors and Accruals	483,252	421,575
Total Payables	483,252	421,575

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

Note 7. Provisions

Note 7. Provisions		
	2010 \$	2009 \$
Current:		
Employee Benefits		
- Annual Leave payable within 12 months	232,200	188,565
- Long Service Leave		
Expected to be paid within 12 months	80,854	76,298
Expected to be paid after 12 months	593,360	477,177
- Performance Bonus	48,884	40,000
Restoration Costs	175,263	206,513
	1,130,561	988,553
Non-Current:		
Employee Benefits		
- Long Service Leave	189,661	192,327
	189,661	192,327
Total Provisions	1,320,222	1,180,880
Movements in Provisions other than Employee Benefits	Restoration Costs	
Balance at Start of the Year	206,513	
Reduction in provision recognised	(31,250)	
Balance at End of the Year	175,263	

Note 8. Borrowings

Note 8. Borrowings		
	2010 \$	2009 \$
Secured:		
Current Lease Liabilities	47,873	49,818
Non-Current Lease Liabilities	86,089	16,935
Total Borrowings	133,962	66,753
Lease liabilities are effectively secured as the rights to the leased assets revert to the lessor in the event of default.		
Assets pledged as security:		
The carrying amounts of non-current assets pledged as security are:		
Motor Vehicles under Finance Lease	110,455	66,733
Motor vehicles held for sale	22,405	-
Motor Vehicles under Finance Lease	132,860	66,733

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

Note 9. Financial Instruments

(a) Significant accounting policies

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

(b) Categorisation of financial instruments

Categorisation of Financial Instruments			Carrying Amount	
Financial Assets	Note	Category	2010 \$	2009 \$
Cash on Hand		Cash	1,000	1,000
Receivables*	4	Loans and receivables	3,716	-
			4,716	1,000
Financial Liabilities				
Payables	6	Financial liabilities at amortised cost	483,252	421,575
Borrowings	8	Financial liabilities at amortised cost	133,962	66,753
			617,214	488,328
Net Holding Gain/(Loss) on Financial Instruments by Category:				
Financial Assets		Category	2010 \$	2009 \$
Cash on Hand		Cash	-	-
Receivables*		Loans and receivables	-	-
			-	-
Financial Liabilities				
Payables		Financial liabilities at amortised cost	-	-
Borrowings		Financial liabilities at amortised cost	(5,961)	(5,776)
			(5,961)	(5,776)

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

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

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

(c) Credit risk

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

Financial assets that are either past due or impaired

Currently the Office does not hold any collateral as security nor credit enhancements relating to any of its financial assets. As at the reporting date, there is no event to indicate that any of the financial assets were impaired.

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

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

(d) Liquidity risk

Liquidity risk arises when the Office is unable to meet its financial obligations as they fall due. The Office operates under the Victorian Government's fair payments policy of settling financial obligations within 30 days and in the event of a dispute, making payments within 30 days from the date of resolution. The Office's exposure to liquidity risk is deemed insignificant based on prior periods' data and current assessment of risk. Maximum exposure to liquidity risk is the carrying amounts of financial liabilities.

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

			Maturity dates *			
	Carrying amount \$	Nominal amount \$	Less than 1 month \$	1-3 months \$	3 months – 1 year \$	1-5 years \$
2010						
Payables	483,252	483,252	483,252			
Finance lease liabilities	133,962	146,979	25,113	5,639	24,160	92,337
	617,214	630,231	508,365	5,369	24,160	92,337
2009						
Payables	421,575	421,575	421,575			
Finance lease liabilities	66,753	71,069	17,145	2,777	32,936	18,211
	488,328	492,644	438,720	2,777	32,936	18,211

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

(e) Market risk

The Office's exposure to market risk is primarily through interest rate risk. The Office has no exposure to foreign currency and other price risks. Objectives, policies and processes used to manage each of these risks are disclosed in the paragraphs below.

Interest rate risk

Exposure to interest rate risk is insignificant and might arise primarily through the Office's borrowings. The only interest bearing assets or liabilities are the motor vehicle lease liabilities, with respect to which the interest rate is fixed for the term of the lease. The Office's exposure to interest rate risk is set out below.

			Interest rate exposure		
	Weighted average effective interest rate %	Carrying amount \$'000	Fixed interest rate \$'000	Variable interest rate \$'000	Non-interest bearing \$'000
2010					
Financial assets					
Cash on Hand	-	1,000	-	-	1,000
Receivables	-	3,716	-	-	3,716
		4,716	-	-	4,716
Financial liabilities					
Payables	-	483,252	-	-	483,252
Finance lease liabilities	6.9	133,962	133,962	-	-
		617,214	133,962	-	483,252
2009					
Financial assets					
Cash on Hand	-	1,000	-	-	1,000
		1,000	-	-	1,000
Financial liabilities					
Payables	-	421,575	-	-	421,575
Finance lease liabilities	7.1	66,753	66,753	-	-
		488,328	66,753	-	421,575

Sensitivity disclosure analysis

Taking into account past performance, future expectations, economic forecasts, and management's knowledge and experience of the financial markets, the Office believes movements in the range of +1.0 per cent and -1.0 per cent in market interest rates (AUD) from year-end rates are reasonably possible over the next 12 months (Base rates are sourced from Treasury Corporation of Victoria).

The impact on net operating result and equity for each affected category of financial instrument held by the Office at year-end as presented to key management personnel, if the above movements were to occur is Nil (2009 - Nil).

(f) Fair value

The carrying amount of financial assets and financial liabilities recorded in the financial statements approximates their fair values.

The fair values of financial assets and financial liabilities are determined as follows:

- the fair value of financial assets and financial liabilities with standard terms and conditions and traded on active liquid markets are determined with reference to quoted market prices; and
- the fair value of other financial assets and financial liabilities are determined in accordance with generally accepted pricing models based on discounted cash flow analysis.

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

Note 10. Commitments for Expenditure

Note 10: Commitments for Expenditure		
	2010 \$	2009 \$
Operating Lease Commitments		
Commitments for minimum lease payments in relation to non-cancellable operating leases, not recognised as liabilities, are payable as follows:		
Within one year	328,265	310,969
Later than 1 year but not later than five years	1,404,678	1,320,154
Later than five years	377,058	782,773
	2,110,001	2,413,896
Finance Lease Commitments		
Commitments in relation to finance leases are payable as follows:		
Within one year	54,642	52,858
Later than one year but not later than five years	92,337	18,211
Minimum Lease Payments	146,979	71,069
Less: Future Finance Charges	(13,017)	(4,316)
Total Lease Liabilities	133,962	66,753
Shown in the Financial Statements (Note 8) as:		
Current	47,873	49,818
Non-Current	86,089	16,935
	133,962	66,753

Note 11. Contingent Liabilities and Contingent Assets

There are no contingent liabilities or contingent assets for the Office at 30 June 2010 or 30 June 2009.

Note 12. Responsible Persons

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

Responsible Minister	The Hon John Brumby, MP, Premier
Accountable Officer	George Brouwer, Ombudsman

Remuneration

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

\$360,000 - \$369,999 (2009: \$360,000 - \$369,999)

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

Other Transactions

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

Note 13. Remuneration of Executives

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

Note 13. Remuneration of Executives		Total Remuneration		Base Remuneration	
Income Band	2010 No.	2009 No.	2010 No.	2009 No.	
\$200,000 - \$209,999	-	-	-	1	
\$210,000 - \$219,999	-	1	1	-	
\$220,000 - \$229,999	1	-	-	-	
\$230,000 - \$239,999	-	-	-	1	
\$240,000 - \$249,999	-	-	1	-	
\$260,000 - \$269,999	-	1	-	-	
\$270,000 - \$279,999	1	-	-	-	
Total Numbers	2	2	2	2	
Total Amount (\$)	501,102	479,452	460,145	442,627	

Note 14. Remuneration of Auditors

Note 14: Remuneration of Auditors		
	2010 \$	2009 \$
Audit Fees paid or payable to the Victorian Auditor-General's Office		
Audit of the Annual Financial Statements	12,950	11,800

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

Note 15. Superannuation

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

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

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

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

Defined Benefit Funds Emergency Services and State Super
 - Revised Scheme
 - New Scheme

Accumulation Funds VicSuper

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

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

Note 16. Reconciliation of Net Result to Net Cash Flows from Operating Activities		
	2010 \$	2009 \$
Net Result	82,825	(23,941)
Non-cash movements		
Depreciation	94,234	203,635
Net Resources Provided Free of Charge	-	1,967
Loss on Disposal of Non-Current Assets	(2,788)	4,237
Change in Operating Assets and Liabilities		
(Increase)/Decrease in Receivables	(203,188)	(289,244)
Increase/(Decrease) in Payables	61,541	263,770
Increase/(Decrease) in Provisions	170,591	56,931
Net Cash Flows from Operating Activities	203,215	217,355

Note 17. Non-Cash Financing and Investing Activities

During the period, no assets were transferred from the Office to other government divisions. Transfers amounting to \$1,967 were accounted for as resources provided free of charge in the comprehensive operating statement, and \$36,773 as a return of contributed capital in the balance sheet.

During the period, motor vehicles with a fair value of \$103,779 (2009 \$24,866) were acquired by means of finance leases.

Note 18. Administered Items

In addition to the specific operations of the Office which are included in the balance sheet, comprehensive operating statement and cash flow statement, the Office may administer or manage activities on behalf of the State. The transactions relating to these State activities are reported as administered in this note. During the year, there were no administered transactions. In 2009, administered transactions comprised revenue from the Victorian WorkCover Authority and Transport Accident Commission, totalling \$840,000 for the conduct of investigative services. Administered receivables at 30 June 2009 amounted to \$696,696.

Note 19. Glossary of terms

Comprehensive result

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

Capital asset charge

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

Commitments

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

Employee benefits expenses

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

Financial asset

A financial asset is any asset that is:

- (a) cash;
- (b) an equity instrument of another entity;
- (c) a contractual right:
 - to receive cash or another financial asset from another entity; or
 - to exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity; or

- (d) a contract that will or may be settled in the entity's own equity instruments and is:
 - a non-derivative for which the entity is or may be obliged to receive a variable number of the entity's own equity instruments; or
 - a derivative that will or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity's own equity instruments.

Financial instrument

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

Financial liability

A financial liability is any liability that is a contractual obligation:

- (a) to deliver cash or another financial asset to another entity; or
- (b) to exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavourable to the entity.

Financial statements

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

Grants

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

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

Interest expense

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

Net result

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

Net result from transactions

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

Non-financial assets

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

Other economic flows

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

Payables

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

Receivables

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

Sales of goods and services

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

Supplies and services

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

Transactions

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

OFFICE OF THE OMBUDSMAN

Accountable Officer's and Chief Financial Officer's declaration

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

We further state that, in our opinion, the information set out in the comprehensive operating statement, balance sheet, statement of changes in equity, cash flow statement and notes to the financial statements, presents fairly the financial transactions during the year ended 30 June 2010 and financial position of the Office as at 30 June 2010.

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

We authorise the attached financial statements for issue on 20 August 2010.



Peter Goddard
Chief Financial Officer

Department of Premier and Cabinet
Melbourne

20 August 2010



John R Taylor
Acting Ombudsman

Office of the Ombudsman
Melbourne

20 August 2010



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

