



**Ombudsman
Victoria
Annual
Report 07**

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 section 25 of the *Ombudsman Act 1973* and section 102 of the *Whistleblowers Protection Act 2001*, I present to the Parliament the annual report of Ombudsman Victoria for 2006-07.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G E Brouwer', is written over a light grey rectangular background.

G E Brouwer
OMBUDSMAN

ombudsman
victoria
mission

**Independently investigate,
review and resolve
complaints concerning
administrative actions of
state government
departments, local councils
and statutory authorities;
to report the results to
complainants and agencies;
to report to Parliament;
to improve accountability;
and to promote fair and
reasonable public
administration.**

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overview
2006-07

OVERVIEW 2006-07

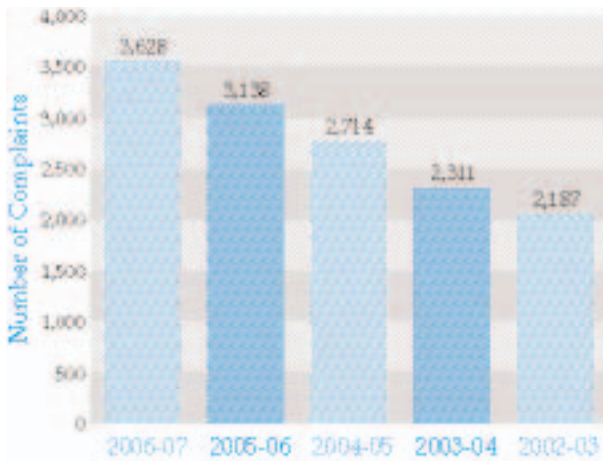
The reporting year 2006-07 has been one of sustained activity at Ombudsman Victoria (OV), with my office managing a significant workload, as well as restructuring and moving to new premises.

Over the period I received a total of 3,628 complaints from the public. This is 15 per cent more than last year. The majority involved allegations of unreasonable, unfair or wrong decisions, actions or enforcements of rules by government departments, local councils or statutory authorities. A number required in-depth investigation, but most were resolved through enquiries with the agencies concerned.

I note that there has been a consistent increase in overall complaint numbers for the past three years. Comparative tables are set out below.

Complaints statistics

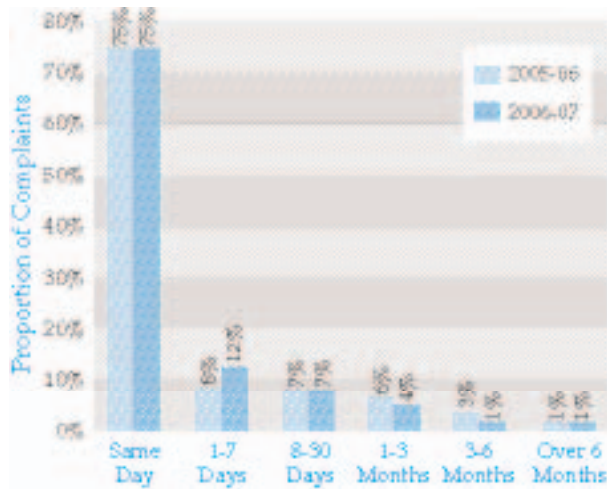
Activity	2006-07	2005-06	2004-05	2003-04	2002-03
Complaint files raised					
General jurisdiction complaints	3,628	3,138	2,714	2,311	2,187
Complaints finalised	3,644	3,261	2,726	2,233	2,144
FOI complaints					
Requests for Ombudsman files	7	8	12	2	8
Complaints about other agencies	107	152	169	179	199
Whistleblower complaints					
Complaint files raised	84	82	79	85	125
Complaints finalised	87	94	62	107	121



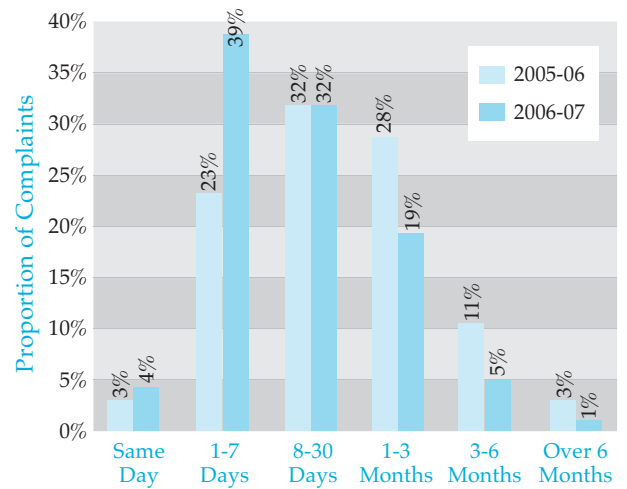
A total of 3,838 complaints were finalised in 2006-07.

The average time taken to close cases was 25 days, with half closed within 12 days. Seventy-five per cent of cases were open for less than 30 days and 95 per cent for less than 90 days. This represents a significant gain in efficiency compared with previous years.

Time to close all complaints



Time to close complaints received in writing



These improvements have largely resulted from changes in complaint-handling procedures and staffing arrangements in my office, which were instituted at the beginning of the reporting year. I hope to achieve further improvements from 1 July 2007 when a new computer-based case management system is implemented.

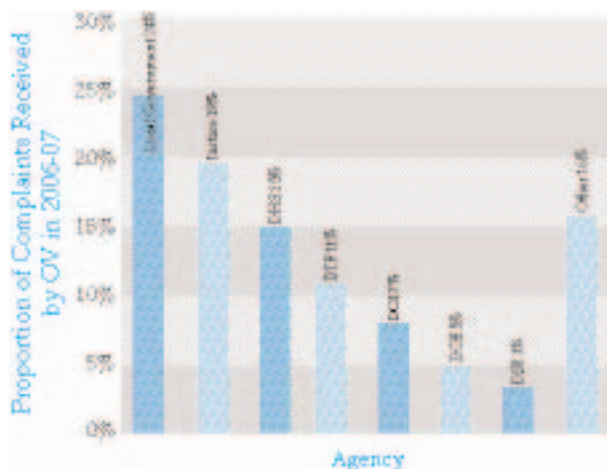
Complaints – by agency

Local government accounted for 24 per cent of all complaints received by my office, making it the largest source of such matters. Agencies and authorities under the jurisdiction of the Department of Justice (DOJ) accounted for 19 per cent of complaints.

Forty-one per cent of complaints were associated with five other departments: the Department of Human Services (DHS), the Department of Treasury and Finance (DTF), the Department of Infrastructure (DOI), the Department of Education (DOE) and the Department of Sustainability and Environment (DSE).

The remaining 16 per cent of complaints were spread across the other public sector agencies and statutory authorities under my jurisdiction.

Percentage breakdown of complaints by agency



Major issues

Over the past year I identified four major areas of concern in Victorian public administration:

- conflict of interest
- failure to meet statutory requirements
- poor customer service
- lack of cooperation between agencies.

Identifying and addressing these systemic issues is, in my view, critical to good governance and public service effectiveness in this state. For this reason, I have chosen to feature each issue in detail in this annual report (see section 'Major issues 2006-07'). I make several recommendations, particularly with regard to conflict of interest, and I encourage government departments and agencies to respond to the challenge. I will continue to monitor these issues closely in the year ahead.

Major reports

Under the *Ombudsman Act 1973*, I can initiate proceedings on my own motion to undertake an enquiry or investigation into a matter or systemic issue without receiving a specific complaint.

During 2006-07 I tabled three major public reports in Parliament. Two were own motion investigations:

- *Conditions for persons in custody* (July 2006)
- *Own motion investigation into the policies and procedures of the Planning Department at the City of Greater Geelong* (February 2007).

The third report resulted from an investigation that arose from a disclosure under the *Whistleblowers Protection Act 2001* (the Whistleblowers Protection Act):

- *Investigation into a disclosure about WorkSafe and Victoria Police handling of a bullying and harassment complaint* (April 2007).

Three major public reports were tabled in Parliament.

Copies of these reports are available at OV's website www.ombudsman.vic.gov.au. I also give further details of the investigations in the 'Department of Justice and Corrections Victoria' and 'Local government' sections of this annual report. A summary of progress to date with the adoption of my recommendations is provided in Appendix A.

Enhanced jurisdictions

This year my office was given additional functions under the following legislation:

- *Domestic (Feral and Nuisance) Animals Act 1994*
- *Terrorism (Community Protection) (Amendment) Act 2006*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Children, Youth and Families Act 2006*.

The animal welfare amendments enable my office to monitor compliance with the provisions of the *Domestic (Feral and Nuisance) Animals Act 1994* by certain persons appointed by the Department of Primary Industries (DPI) and local councils.

The *Terrorism (Community Protection) (Amendment) Act 2006* (the Terrorism Act) identifies my office as the only external body that a person held in custody under its provisions can contact to lodge a complaint about their treatment. In addition, Victoria Police must notify me in writing of any preventative detention order.

The *Charter of Human Rights and Responsibilities Act 2006* (the Charter) came into operation on 1 January 2007. I now have increased responsibilities to investigate human rights complaints; however, Victorian public sector agencies are not required to comply with the Charter until 1 January 2008. I have therefore approached this situation as a practical exercise, establishing systems to manage enquiries and investigations; developing data collection and reporting frameworks; and building internal resources.

Under the *Children, Youth and Families Act 2006*, my powers now extend to enquire into or investigate the administrative actions of not-for-profit, non-government providers of welfare services, i.e. registered community services.

Review of the Whistleblowers Protection Act

The Whistleblowers Protection Act has been in operation for five years. I have publicly stated on several occasions, as well as in my last two annual reports, that the current legislation is challenging to administer and creates difficulties for my office and for the public bodies that are required to comply with its provisions. Due to these concerns, I hosted a forum in July 2006 to enable representatives from relevant agencies to discuss experiences and identify issues relevant to the operation of this Act. I brought these issues, as well as those of other stakeholders, to the attention of the Attorney-General, the Hon Rob Hulls MLA, and the DOJ.

I therefore welcome the Attorney-General's decision to review the Whistleblowers Protection Act. Terms of reference have been approved and an interdepartmental steering committee established to oversee the project. It is envisaged that the process will culminate in amending legislation that will be considered by Parliament in 2008.

Supreme Court challenge

For the first time in 30 years, the Ombudsman's jurisdiction was challenged before the Supreme Court of Victoria on 4 April 2007.

The Convenor of Medical Panels sought a declaration from the court that the Ombudsman did not have jurisdiction to enquire into or investigate the appointment of a medical panel by the convenor under section 63(4) of the *Accident Compensation Act 1985*.

My office had received a number of complaints alleging conflicts of interest and bias in the methods of appointment used by the convenor to appoint particular medical panels.

The court accepted my argument that the convenor was carrying out an administrative action when appointing a medical panel and would therefore be subject to the Ombudsman's jurisdiction. However, the court also found that by virtue of a provision of the Accident Compensation Act, the convenor had the immunity and protection of a judge of the Supreme Court. This meant that his administrative actions were not in my jurisdiction, as I am prevented by the provisions of the Ombudsman Act from investigating the actions of judges.


As a result the court granted a declaration that my office is precluded from enquiring into or investigating the actions of the convenor. In my view this has created a hiatus in the accountability of the convenor, with a number of complaints remaining outstanding.

Looking ahead

My priorities in the coming year will be to:

- further develop the new complaints management system
- implement operational and reporting changes to meet my obligations under the Charter
- finalise a number of major investigations and reviews.



A blue-tinted photograph of a hand holding a pen, with the text "major issues 2006-07" overlaid in the bottom left corner. The image is framed by four blue corner tabs, suggesting it's a page from a binder or folder. The background is a light blue gradient.

**major
issues
2006-07**

conflict of
interest

CONFLICT OF INTEREST

Conflict of interest issues have come up with increasing frequency over the past 12 months.

Public officials need to actively manage conflicts and lead by example.

Complaints of a conflict of interest have identified public sector managers who have chosen to ignore clear conflicts and act partially with their own interest in mind. As a manager, they have often been the person responsible for policing conflict of interest issues and/or for educating their departmental or agency staff about such issues.

I have also found that there can be a lack of effective audit and accountability mechanisms within government agencies. This may contribute to managers ignoring conflicts of interest, as the likelihood of

being held accountable is minimal. This view is supported by evidence from recent investigations which showed that when the next level of management became aware of the conflicts, they effectively covered up the issues. On several occasions when senior officers learned of a serious conflict of interest, they condoned the improper behaviour, ignored it or attempted to justify it.

The following case highlights the issue:

Family Ties

I received a complaint from a whistleblower regarding a conflict of interest where it was alleged a departmental employee was purchasing IT equipment from his brother's company at inflated prices. My investigation revealed that quotes from other companies were being forwarded to the brother's company to assist it to secure tenders and become a recognised service provider.

Other issues of concern that were discovered as a result of my investigation:

- pornographic material on a more senior officer's computer
- a decision-maker accepting gifts and invitations
- use of departmental letterhead for personal gain
- improper associations
- improper disposal of assets.

My investigation highlighted the agency's lack of governance and accountability in failing to maintain a conflict of interest register, a gifts register, an assets register and an internet firewall.

The matter was referred to the agency for further investigation.

The way forward

As mentioned in my annual report of 2005-06, I commenced a joint project with Macquarie University to examine the nature and extent of conflict of interest in the Victorian public service. This report will be tabled early in the 2007-08 financial year. One of the main findings is the lack of clarity about what is meant by a conflict of interest, as well as the lack of application of this concept in public administration. My report will attempt to demystify what is essentially a very basic principle and my recommendations, if applied in the public sector, should reduce the number of conflicts of interest due to misunderstanding.

However, to address deliberate manipulation of the system for personal gain, senior public officials should become more involved in the management of conflicts of interest. I am concerned about the misconception that merely having policies, procedures and protocols in place suffices in dealing with conflicts of interest. Public officials need to actively manage conflicts and lead by example.

failure to meet
statutory
requirements

FAILURE TO MEET STATUTORY REQUIREMENTS

Complaints can stem from the failure of agencies to comply with or fulfil their statutory obligations.

My concerns regarding the failure of agencies to meet their statutory obligations, particularly in the areas of child protection, road safety, whistleblowers and FOI are reported in my previous two annual reports.

This issue continues to be a recurring theme in my investigations.

The following cases arose from the failure of the agencies concerned to comply with statutory obligations.

The Whistleblowers Protection Act and the *Occupational Health and Safety Act 2004*

Bullying and WorkSafe

In November 2006 I received a complaint from two persons wishing to make a disclosure under the provisions of the Whistleblowers Protection Act. The whistleblowers alleged that WorkSafe Victoria (WorkSafe) had failed to adequately investigate their complaint about bullying at The Police Association (TPA). WorkSafe is required to investigate such allegations.

I found that WorkSafe's handling of the complaint was inadequate as it ignored, without any convincing explanation, evidence from a number of sources, including a former executive member of TPA, two directors of TPA, a review commissioned by the Executive of TPA that had found a culture of bullying and harassment, and two WorkCover claims relating to bullying at TPA.

I recommended that WorkSafe properly investigate this matter and that the investigators should have no current or previous links to Victoria Police and/or TPA.

WorkSafe accepted my recommendations and has made progress in implementing them.

This case may be symptomatic of a wider issue. I am concerned that more people will be affected if the identified WorkSafe shortfalls in responding to complaints about bullying continue. I have received two further complaints about WorkSafe failing to act on bullying and harassment allegations. I shall be investigating these separately.

I will also be closely monitoring complaints about WorkSafe's handling of bullying and harassment allegations.

Corrections Act 1986

The treatment of prisoners is subject to stringent legislative requirements. It is important that prisoners and their families know that they can turn to my office when a prison fails to comply with its statutory obligations. It is also important to ensure that prison guidelines reflect legislation. For example:

Dying wish

From September to October 2006, a prisoner tried to get access to a dying friend in a prison hospital. Section 57 (1) (c) of the Corrections Act allows for leave permits to visit long-term friends suffering from a serious illness.

Permission was denied on the basis that their relationship was not a family relationship. This was not an appropriate reason for denying the request.

Unfortunately I was unable to resolve this matter before the prisoner's friend died. However, the prisons guidelines have been amended and all prison staff have been advised of the correct interpretation of the legislation.

Child protection

Delay in meeting statutory obligations is unacceptable.

Last year I reported that I had investigated a rural region's child protection program managed by DHS. This investigation led to the development and implementation of a comprehensive strategy to strengthen the program. I have continued to monitor the implementation of this strategy and I am pleased with the outcomes for children and young persons in the region.

However, the following cases demonstrate the consequences of DHS not meeting its statutory obligations to assist in the protection of vulnerable young people when someone has reported abuse. The cases also highlight the complexities of assessing risk.

Repeat of abuse

In October 2006 I received a complaint from a father on behalf of his four children aged between 10 and 15 years. The children lived with their mother and stepfather.

The father advised my office that the children had disclosed to him that they were being physically abused and had sustained injuries which were clearly visible. These injuries were reported to DHS by the father, school staff and medical personnel.

My office made enquiries with DHS and found that, pursuant to the *Children and Young Persons Act 1989*, the children had been placed on supervision orders in 2005. DHS acknowledged that it had not acted when advised that the children were being harmed.

DHS made further investigations and in November 2006 applied to the Children's Court to breach the supervision orders. Taking the matter back to the Children's Court resulted in the children being placed on new supervision orders with a range of specific conditions designed to ensure their safety. The case was subsequently overseen by a child protection manager.

Safety of daughter

I investigated a complaint from the father of a six-year-old girl. The father was concerned about his daughter's safety when she was with his former wife and her current partner. He complained that DHS delayed acting on a notification relating to his daughter and that it failed to inform him of action taken regarding her.

My office made enquiries and DHS acknowledged that the delay in the response to the notification was unacceptable. DHS also acknowledged that the father should have been better informed about the assessment process and any findings.

Following my office's intervention, DHS took a number of steps to address the issues relating to the complaint. This included the case being allocated to a case worker, the father receiving an apology for the delay and DHS arranging a meeting with him. DHS also stated that it would endeavour to keep the father better informed in future.

Road safety

Procedures must always support the fulfilment of statutory obligations.

VicRoads administers the registration of motor vehicles and trailers and the licensing of drivers in Victoria. Its procedures and systems are provided in accordance with the *Transport Act 1983*. One of the objectives of this Act is to improve and simplify registration and licensing procedures and systems.

The following case demonstrates how things can go wrong when statutory obligations are not reflected in practice.

Transferring ownership

During 2006-07 my office received two complaints about VicRoads' practice of accepting and actioning incomplete vehicle operator transfer forms. In both cases a domestic relationship had ended, with one party attempting to secure the other party's vehicles by lodging a transfer form with VicRoads. In both cases the transfer form showed only one party's signature. The complainants believed that VicRoads was not able to process a transfer unless both the disposer and acquirer had signed the transfer form.

VicRoads said that it did accept incomplete transfer notifications, including notifications without the signatures of the disposer or acquirer. It did this to ensure that it held the most up-to-date information about the person responsible for the operation of a vehicle. Where there was an incomplete notification, VicRoads' procedure was to write to the party concerned to seek outstanding items, such as signatures, so as to complete the transfer record. It would record a 'disputed transfer' notation on the registration database for the vehicle concerned until the issue was resolved. Significantly, I was told that unless both parties provided written consent, or one of the parties obtained an order from a civil court, the transfer would not be reversed.

I was concerned at VicRoads' confirmation that it recognised an incomplete transfer and that, if a party failed to respond to requests for outstanding transfer items, no further action could be taken. Provisions of the *Road Safety (Vehicles) Regulations 1999* detail the obligations imposed on both acquirers and disposers of a registered vehicle. VicRoads claimed these provisions also gave it discretion with disputed transfers, thereby allowing it to maintain or suspend a vehicle registration. VicRoads did not regard the use of available enforcement provisions in the legislation as practical. Given the concerns raised with my office, VicRoads accepted that its current policy on disputed transfers should be reviewed.

In 2005 I conducted an own motion investigation into VicRoads' registration practices. I recommended that VicRoads:

- only accept completed registration transfer requests. If it is necessary to obtain additional information to complete a transfer of registration, VicRoads should make only one attempt to obtain information before suspending the registration
- improve its application procedures to ensure that the public can more readily comply with the requirement to provide all details, including signatures, when transferring a vehicle's registration. This should include:
 - improving the transfer forms for greater clarity and ease of use and making it clear that registration will not be transferred unless all information is provided
 - making transfer forms available at non-VicRoads outlets to facilitate the availability of the forms at weekends and at other times when private sales occur
 - advertising that transfer forms can be downloaded from VicRoads' website
- only accept applications for transfer of registration in person and require inspection of the vehicle at the time of transfer
- seek a regulation which provides a penalty for vehicle operators who fail to finalise their registration transfers by the 14-day deadline.

While improvements have already been made to transfer provisions, including modifications to the transfer form, VicRoads has advised that a working group has been established to identify further improvements to transfer transactions and application procedures.

Forms should be clear and easy to use, with the consequences of non-compliance identified.

As for the two complaints I received during 2006-07, I was not able to resolve the issue for one complainant due to VicRoads' current policies. The complainant was advised to seek legal advice, as VicRoads would only finalise the dispute if both parties now approved the transfer, or there was a court order issued.

The other complaint had an unusual outcome. When the relevant transfer document was closely examined by my office and the disposer's signature was compared to that of the person's recorded driver licence signature, they appeared to be different. Given the irregular signature on the transfer form,

VicRoads agreed to pass the matter to its Investigation Unit for possible referral to Victoria Police. The vehicle's registration was suspended pending the outcome of this investigation.

Freedom of Information Act 1982

I continue to receive complaints relating to the inability of agencies to comply with their statutory obligations under the *Freedom of Information Act 1982* (the FOI Act).

In several cases investigated, the reasons given for claiming exemptions were clearly misleading. In other instances, departments failed to give proper assistance to applicants in amending their requests. The effect was to delay answering the requests without appearing to exceed the time limits of the FOI Act.

Some agencies took advantage of every available exemption to provide as little material as possible.

Some decisions showed little regard for the objectives of the FOI Act. The responses provided material that might technically be relevant to the request, but was of little or no benefit to the applicant. Some agencies took advantage of every available exemption to provide as little material as possible.

In 2006-07 I received 33 complaints about the failure of agencies to provide information to applicants within 45 days of payment of application. The frequency of such complaints is concerning.

Sometimes the person requesting information needs it to achieve closure in extremely difficult circumstances, as the following case highlights:

Death of a child

I was contacted by a mother whose four-year-old child had died while attending his pre-school. The complainant had applied under the FOI Act for information about the circumstances surrounding the child's death.

The mother complained to my office after waiting eight months for a response. After my officers made enquiries, the documents were provided and an explanation was given for those that were unavailable.

I am also concerned about officers of the Victorian WorkCover Authority (VWA) advising applicants that the material sought cannot be located or has been lost. During the reporting period, 34 complainants wrote to me about the inability of departments to locate files and/or the loss of files. The following case is an example:

Lost video tapes

I received several complaints about access to surveillance information held by VWA agents under the FOI Act or the *Accident Compensation Act 1985*.

The complaints were that the surveillance video is not routinely released when all file information is requested. Applicants often have to make several requests to access the video. Sometimes the agents say that it has been lost.

My officers visited several VWA agents and observed the storage and retrieval of surveillance videos. At some locations the videos were stored on overcrowded shelves without any mechanism to track their movement or link them to the claim file. I have been critical of these agents and have recommended changes to improve the storage and retrieval of video tapes which in turn will reduce the likelihood of this evidence being lost.

All VWA agents are aware that surveillance videos must be considered as part of a request for information. I will continue to monitor this issue.

**poor customer
service**

POOR CUSTOMER SERVICE

More could be done to prevent complaints at their source.

Many complaints received this year are about relatively minor matters that should have been easily resolved by the agency concerned, without any need for intervention by my office. In isolation they are not significant, yet collectively they contribute to undermining public confidence in the competency of government agencies.

However, there have also been some encouraging signs that agencies are addressing this problem with the assistance of OV's *Guide to complaint*

handling for Victorian public sector agencies, which is freely available on the OV website at www.ombudsman.vic.gov.au

I note that DOE has been actively working to improve its complaint-handling processes, following criticism in my last two annual reports. My office has also noted continuing improvements from agencies such as State Trustees and the Office of Housing (OOH). At the completion of investigations of particular complaints, I have also recommended to several agencies that they review their complaint-handling processes against the standards in OV's guide.

While moves towards better complaint management are encouraging, I continue to receive complaints from members of the public about the actions of agencies. I consider that many agencies could do more to prevent complaints by addressing problems at their source.

In my experience, most complaints arise from one of the following:

- delay
- unfulfilled expectations
- poor communication
- inflexibility
- perceived lack of fairness.

These issues generally arise from poor customer service. Agencies that understand and respond to the needs of customers will usually provide their services in a way that fosters confidence. The failure to understand the interests and concerns of customers can lead to all participants being dissatisfied.

Neighbour's business

On several occasions Mr A complained to his local council about a neighbour conducting a spray-painting and panel-beating business from his home in a residential zone. Mr A said that this was not permitted under the local planning scheme. The issue went on for many years, with Mr A becoming more and more frustrated with the council's reasons for inaction.

When Mr A complained to my office, the matter had been with the council for more than 10 years and the list of complaints had grown from one to three businesses operating outside the planning scheme.

My enquiries revealed that the council had not adequately investigated the matter and had refused to treat Mr A reasonably when he made complaints.

Following the issue of a draft report to the mayor of the council, my office sought to resolve the matter by mediation, particularly bearing in mind the age of the dispute. The outcome of the process was that all parties, including the

cont...

council, agreed to an independent assessment in relation to two specific issues:

- the alleged construction of buildings without a building permit
- the alleged operation of an earthmoving business from the site.

The council agreed to fund the assessment. The assessment found that the buildings in place had the necessary building permits, but that a 'store' in connection with an earthmoving business required a planning permit.

This case illustrates the usefulness of encouraging parties in protracted disputes to attempt to resolve their problems, rather than seeing my office as providing the solutions.

It is better for parties in protracted disputes to attempt to resolve their problems first.

I have found that the longer a person has a relationship with an agency, the greater the potential for difficulties to arise. There appear to be two major reasons for this: first, the greater the number of interactions, the greater the potential for an error to occur or for expectations to be unfulfilled; and second, when a complainant has many unresolved minor complaints, they collectively generate significant dissatisfaction.

Poor handling of complaints by agencies can be costly and may result in a mistrust of organisations and their officers.

Major and minor complaints

I received a complaint from a person who was injured at work and had a long and complex relationship with VWA and two WorkCover agents. There were many complaints, including major and minor allegations. For example, it was alleged that there was a failure to respond adequately to all the complaints raised, as well as a failure to provide a transparent decision-making process. Added to this were more complex issues, such as conflict of interest.

I conducted an investigation by interviewing VWA staff, WorkCover agent staff, treaters, examiners, conciliators and the complainant. While a number of allegations were not proven, I found that the allegation regarding the failure to resolve the multiple complaints was substantiated. I made 20 recommendations to improve the way VWA managed complaints.

These included the need to:

- conduct an audit of VWA's complaint-handling process
- change or review a policy
- improve the transparency and documentation of decision-making processes
- improve electronic storage of information
- provide training to staff.

VWA accepted my recommendations and has made significant progress in implementing them.

In my view, OOH has become a leader in the public sector in regard to its willingness to resolve matters by addressing complaints promptly and, where necessary, issuing an apology. Aside from the benefits of such an approach, it makes sound business sense to do so. OOH usually has a long-term relationship with its customers and so cannot allow goodwill to be lost, especially through problems that can easily be solved.

The following cases illustrate how poor customer service can cause an escalation of a problem:

Debt collection

OOH made an application to the Victorian Civil and Administrative Tribunal (VCAT) for compensation for damages to a tenant's former residence. VCAT ordered the former tenant to pay compensation and set a deadline for payment.

However, due to an administrative error OOH referred the debt to a debt collector before it was due. The former tenant was very distressed at being approached by the debt collector and was confused about their obligations. My office contacted OOH which promptly apologised to the former tenant for the error.

The matter was resolved and the former tenant paid the compensation due to OOH.

Sheriff's Office gives cheque back

In December 2006 a complainant wrote to me alleging that the Sheriff's Office had lost a cheque, which had been seized after the execution of a warrant. My office requested the Sheriff's Office investigate the matter, so that it had an opportunity to address the issue.

The investigation established:

- the Sheriff's Office collected a post-dated cheque from the debtor
- the cheque was then returned to the debtor
- the Sheriff's officers did not follow their own guidelines when advised that the debtor was under administration, assuming this to be the case, but without confirming.

The internal investigation found that there had been breaches of policy and procedures by the Sheriff's officers and their supervisors.

In order to resolve these issues, I recommended that an ex-gratia payment of \$2190.00 be made to the complainant, as he had been deprived of the opportunity to realise or confirm the value of the cheque. The Sheriff proposed 12 further recommendations to ensure that the practices surrounding the seizure of cheques are implemented properly. DOJ has accepted my recommendations and has taken steps to implement them.

CityLink fines

I received a complaint that CityLink fines had been imposed incorrectly on a business vehicle. CityLink had mistakenly categorised it as a Queensland-registered vehicle.

The Sheriff's Office visited the complainant in late-2005 seeking payment of more than \$5000 for the unpaid fines as a warrant had been issued. The complainant felt that there was no option except to pay, as the alternative was for the officers to take possession of her car.

I considered that it was not unreasonable for the complainant to expect CityLink to have remedied the consequences of its administrative error regarding her account, as it had acknowledged its mistake.

I also found that evidence was lacking from CityLink to enable the fines to be enforced. CityLink provided Victoria Police, which issues infringement notices, with an image of the vehicle. The image was not accompanied by appropriate certification as to its non-registration with CityLink at the time of the alleged offences. Deficiencies were also identified in the way the complaint was handled. The complainant had previously been told by all the agencies involved that nothing could be done about the matter.

I made a number of recommendations that were accepted by DOJ:

- appropriate recompense for the complainant
- a review of processes relating to CityLink offences
- a review of objections by others in similar circumstances and consideration of appropriate compensation
- a review of DOJ's complaint-handling processes in line with *OV's Guide to complaint handling for Victorian public sector agencies*.

I will continue to monitor the implementation of my recommendations.

Agencies must be willing to resolve matters by addressing complaints promptly.

lack of
cooperation
between agencies

LACK OF COOPERATION BETWEEN AGENCIES

The Victorian Government performs functions which can draw on responsibilities and resources across a wide range of departments and agencies. For example, urban development can result in interactions between local councils, DOI, DSE, the Department for Victorian Communities (DVC) and VicRoads.

It is important that these interactions are efficient and effective with clear lines of accountability. I often receive complaints involving a number of agencies where there is an obvious lack of coordination and cooperation between them.

Interactions between agencies need to have clear lines of accountability.

This is demonstrated in the report I published in March 2006—*Improving responses to allegations involving sexual assaults*—an own motion investigation into how government departments, including DHS, DOJ, DOE and Victoria Police, respond to allegations of sexual assault. Among many issues, my enquiry found a lack of both cooperation and consistent standards across the Victorian public sector agencies involved.

My report invited government agencies to re-examine existing policies and practices that have a negative impact on people reporting sexual assault, and to work collaboratively and constructively towards improving them.

Ensuring an effective whole-of-government approach requires an equitable distribution of resources and central leadership. I recognise that at times this presents considerable challenges for agencies.

This lack of coordination can also occur in local government, as the following example shows:

Zoning

Mr T complained about the administrative actions of a council's planning department relating to the zoning of land in regional Victoria. He alleged that the land was incorrectly zoned Public Conservation and Resource Zone when it was actually a freehold parcel owned by a relative. He claimed that he had been asking the council to rezone the property since 2000. The situation prevented an application for a planning permit being considered for the site. Mr T alleged that the council had not responded to his correspondence or phone calls.

The council's planning department acknowledged that the land was zoned incorrectly, but claimed that it could not be rezoned until it was placed on the VicMap database by DSE. The council claimed that DSE was refusing to do this until the council provided specific information about the location of the land; however, the council considered that it was not its role to survey land for mapping by DSE.

In an effort to resolve the matter, my officers invited both DSE and the council to attend a meeting. However, prior to the meeting, DSE agreed to identify the land so that it could be included on VicMap.

DSE later confirmed that the land was on the map database. OV provided this information to the council and was subsequently advised that drafting of amendment documentation had commenced.

Subdivision planning

Mr D contacted my office concerned about the way the council was approaching subdivision planning in his municipality. He believed that a planning permit issued for a subdivision had not fully taken into account the stormwater drainage implications for the site. The site was located on a hill and the stormwater was draining down through crown land that had environmental controls and into the local creek. Issues relating to flooding and damage to the creek environments had been reported; however, this had not resulted in any modification to the permit requirements.

My officers travelled to the site and met with Mr D and another local resident. They also met with the council planning manager, the assets engineer, the Chief Executive Officer and a representative from DSE, as it holds responsibility for crown land. I noted that this was the first occasion that all parties had discussed the details of this matter together.

At the conclusion of the meeting, the council acknowledged that if the original planning permit for the subdivision had contained clearer and more detailed conditions on the treatment of stormwater and drainage from the site, many of the environmental issues may not have arisen. The council agreed to ensure that:

- the developer undertook to complete the works subject to the council's satisfaction
- the bond could be used to complete the works, should the developer not comply with the timeframe.

This included enforcement action to be taken through the Environment Protection Authority if necessary.



A photograph of a group of people in a meeting, with the word "complaints" overlaid in large, bold, black letters. The image is framed by a white border with blue corner accents.

complaints



**department of
human
services**

DEPARTMENT OF HUMAN SERVICES

DHS is the largest single department in Victoria. By its nature it deals with hundreds of thousands of Victorians every year.

Child protection

My jurisdiction now extends to private providers of welfare services.

In late November 2005, the Children, Youth and Families Act was passed by State Parliament. It has implications for my jurisdiction. Section 20 of this Act gives me the power to enquire or investigate the administrative actions of registered community services.

A registered community service refers to agencies providing out-of-home care services and/or community-based child and family services. This Act commenced on 23 April 2007 and funds have been allocated in the coming year's budget to support my office's work in this area. This new function broadens my jurisdiction to include private providers of welfare services. Such services include:

- residential care units
- home-based care
- family support and family support innovation projects
- specialist services.

I recognise the complexities of assessing risk to children and that child protection staff may require time and support to develop the experience to make assessments adequately. The following case highlights the willingness of DHS to be open to reviewing its practices.

Protection for a child

In October 2006 I received a complaint from a mother on behalf of her 13-year-old son. The mother complained that her son had disclosed both to his school and to child protection staff that his father was currently physically abusive to him. However, child protection staff formed the view that there was insufficient information to prevent the son returning to his father's care.

As a result of my enquiries, DHS reviewed the way in which the case had been handled and instigated steps to ensure that action was taken to protect the boy. DHS also contacted the boy's mother and discussed with her the concerns that she had raised.

At my suggestion DHS agreed for the Principal Practitioner, whose role includes staff training, to review the manner in which the case had been handled and to assist staff within the region to better handle such cases in future.

Youth justice centres

I am conscious of the need for scrutiny of institutions closed to the community, such as youth justice centres, given the age and potential vulnerability of detainees. OV officers visit youth justice centres on a regular basis. This provides an opportunity to observe conditions, as well as to assist in resolving complaints on the spot.

Although the young people detained in youth justice centres are in custody because they have committed criminal offences, I am aware of the special needs which set this group apart from those within the adult correctional system. The following cases highlight how such needs are addressed when complaints are received by my office:

Computer access

A young man in custody at the Melbourne Youth Justice Centre approached my officers during a routine visit. He complained that he was not being provided access to a computer and that this was limiting his ability to complete his VCE. My officers made enquiries with the manager and the situation was resolved within 48 hours.

Contact visits

A young woman in custody at a youth residential centre complained to my officers that she was not permitted to have physical contact with visitors, including her family. The contact was denied due to security rules and the potential for the introduction of contraband to the centre.

Given her age and the importance of connection with her family, my officers raised the matter with the manager. Following my officers' enquiries, the manager decided to support contact visits between family members for detainees assessed as not posing a security risk.

Disability

Many disability services provide for persons with an intellectual disability. These persons may have significant communication difficulties and be less able to voice their preference or exercise their choice about decisions relating to their care. They may also be less able to make complaints about the care or services they receive.

I consider this an area of special interest and I note the implementation of the new *Disability Act 2006* in July 2007. This Act aims to build a strong complaint and review system through the establishment of the Disability Services Commissioner. I have jurisdiction over the administrative actions of the Commissioner and intend to monitor closely the quality and access of the complaint-handling processes as the new arrangements are put in place.

Over the past year, I have been concerned about the way DHS has handled a number of complaints about disability services, as the following example demonstrates:

Assault investigation

In November 2006 the mother of a 23-year-old intellectually disabled young man, who resides in a community residential unit (CRU), complained to me that her son had been sexually assaulted by a new resident at the CRU.

The mother informed me that she initially complained to DHS and that they undertook to investigate the complaint within 30 days, as required by DHS standards. In January 2007 the mother again complained to me stating that she was not satisfied with DHS's investigation, as she believed it was not impartial. She also indicated that other residents in the CRU had been physically assaulted by the new resident. No immediate action had been taken by DHS to have the violent resident removed, thus continuing to place vulnerable people at potential risk.

I commenced a formal investigation of the allegations and the resident suspected of perpetrating violence was moved. I am continuing to review this situation.

In my annual report of 2005-06, I outlined my investigation into the fees charged for the placement of a client in the Adult Training and Support Services (ATSS). In June 2007 I concluded a review of the implementation of my recommendations. It established that they have been partially implemented and I note that some of them are addressed under the Disability Act, such as the clarification of service provision within ATSS. I have written to DHS with the conclusions of my review.

Given the potential vulnerability of persons with a disability, as well as the needs of their carers/guardians, I will be monitoring the implementation of the Disability Act.

Housing

While OOH has made substantial improvements to the way it handles complaints, there will be times when it is necessary for my office to intervene, as the following case illustrates:

Tenancy debt

I reviewed a complaint from a community advocacy group on behalf of a homeless person who was refused housing assistance unless he entered into an agreement to repay an amount incurred in a previous tenancy. The young man had commenced repayments and was committed to repaying the debt. However, he believed that some concession should have been made as he had been in prison on two occasions during the term of the tenancy and OOH had refused to reassess the debt. In the course of enquiries, my office found that there had been opportunity for OOH to obtain half the money owing from the co-tenant but had failed to do so. This failure to recover money appeared to be outside OOH's guidelines on recovery. The rent had also been assessed at market rate rather than at a rebated rate, due to both tenants failing to respond to the department's initial request for income information. As a consequence of my investigation, the young man's debt was reduced by \$900.

Health

The Victorian Government has passed new legislation governing health boards. The *Health Professions Registration Act 2005* will replace 11 existing Acts of Parliament. Under this new Act, the separate health boards will continue to exist, but they will operate under a common framework.

The health boards' complaint investigation process, which is of particular relevance to my office, also changes. Responsibility for the conduct of formal hearings transfers from the boards to VCAT and a review process for complainants aggrieved by a board decision has been introduced. I propose to monitor the implementation of these changes.

The following is an example of how my officers have assisted a complainant in relation to one of the health registration boards:

Correspondence handling

I received a complaint from a man saying that he had written and emailed a health registration board on a number of occasions, but had not received any response. My office requested that the board conduct a review of the investigation into his complaint.

The board acknowledged that it had failed to respond to a number of pieces of correspondence. As a result of my intervention, the board became aware of an internal communication problem and introduced a new policy, which alters the manner in which correspondence is processed, particularly on closed cases. As the board has implemented a new policy, acknowledged and apologised for the failure to respond to the complainant's correspondence and taken action to assist him, no further action was required by my office.

A blue-tinted photograph of a desk setup. In the foreground, there is a stack of several books. Behind them, a blue pen lies horizontally. To the left, a white notepad is visible with the numbers 11, 7, and 8 written on it. To the right, another white notepad has the number 5 written on it. The entire scene is set against a light blue background with four dark blue rectangular shapes in the corners, resembling a photo being pinned to a wall.

**department of
education**

DEPARTMENT OF EDUCATION

DOE is one of Victoria's largest agencies with more than 500,000 students in over 1,600 government schools. It also employs more than 50,000 officers as principals, assistant principals, teachers and support staff.

Review of complaint-handling procedures

In my last two annual reports, I have expressed concern about DOE's handling of complaints. Last year I also outlined the findings and recommendations of my review of DOE's complaint-handling procedures.

During 2006-07 my office met with DOE and was advised that a number of complaint-handling initiatives had been implemented, including:

- Complaint-handling in schools and regional offices will now be overseen by the DOE's Office for Government School Education.
- A common data-collection and reporting mechanism will be established.
- New complaint information for school communities has been developed and provided to every government school.
- Parent opinion surveys now refer directly to complaint handling.

My office will continue to meet and discuss with DOE the ongoing implementation of these initiatives over the coming year.

The following case illustrates DOE's need to improve its record-keeping practices:

Learning difficulties

A family complained that a public primary school failed to identify and address a six-year-old student's learning difficulties causing him to be disadvantaged at school. The family raised their concerns with the school but was dissatisfied with the school's response. Subsequent assessments of the student identified significant learning deficits.

My office made enquiries with DOE, but found it difficult to determine events because contradictory information was provided. I proposed that DOE acknowledge that the school's assessment of the student's needs may have been inaccurate. I also proposed that DOE review the school's literacy assessment practices. I recommended that the school apologise to the family for any impact this may have had on the student and that it remind staff of proper record-keeping practices.

DOE agreed to my recommendations and apologised to the family.

Serious assault

The issue of allegations of sexual assault and inappropriate behaviour, especially in Special Schools, is extremely complex and difficult. The following cases illustrate some of the problems associated with it. I am encouraged that DOE has initiated a small working party to investigate this issue and to gain some definitive advice and support for these students and schools. I also note that DOE has developed comprehensive procedures for schools. *Responding to allegations of student sexual assault – Procedures for Victorian Government Schools* has been prepared in consultation with stakeholders, including my office.

Serious assault on school grounds

I received a complaint from a parent that a primary school had failed to supervise school grounds adequately, and that this had provided a student with the opportunity to sexually assault other younger students at the school. The parent also complained that DOE failed to inform parents about the sexual assaults, which meant that they could not discuss the issue with their children.

My office made enquiries with DOE and was informed that the department's investigation would occur after Victoria Police had completed its investigation.

At my request, DOE provided me with a copy of the report of its investigation.

I decided to investigate this matter after receiving and reviewing the DOE report. My officers interviewed a number of DOE staff and examined DOE files, policy and legislation.

As a result I made a number of recommendations to DOE, including that it:

- train senior staff, including school principals in how to deal with allegations of sexual assaults in schools
- clearly state and inform staff about the role of the Student Critical Incident Advisory Unit (SCIAU)
- ensure SCIAU liaises with Victoria Police on protocols to develop a clear understanding of their respective roles
- review its investigation and address staff concerns about the investigative process
- review record-keeping practices in schools and in the Legal Service Branch to ensure documents relating to students, critical incidents and legal advice can be readily identified and accessed.

DOE accepted all my recommendations.

Assault by another student

A parent complained that a principal at a special-setting school failed to inform her that her intellectually-disabled son had been sexually assaulted by a student at the school and failed to report the matter to Victoria Police. The parent also complained that DOE failed to adequately supervise the student who assaulted her son.

My office conducted a formal investigation into the complaint. This involved examining files and interviewing staff from DOE and DHS. I made a number of recommendations which DOE agreed to implement. These included that DOE apologise to the parent for failing to notify her of the incident and for the delay in responding to her concerns. DOE also agreed to review its investigation procedures to include progress reports to complainants and clear timelines, and to review the implementation of recommendations arising from its investigation of this matter.



**local
government**

LOCAL GOVERNMENT

The regulatory activities of councils give rise to many complaints to my office.

Effective local government is critical to the maintenance of safe, well-run communities. *The Constitution Act 1975* describes councils as having the functions and powers that Parliament considers are necessary to ensure the peace, order and good government of each municipal district. *The Local Government Act 1989* lists the functions of a council. These include acting as service providers, tax collectors, planners and law enforcers.

Councils are also regulators. They have authority to regulate the behaviour of citizens, the conduct of business, the activities of developers, the quality of carers, the use of vehicles and the adequacy of construction.

Complaints to my office frequently arise from such regulatory activities, particularly in relation to planning, the reduction of nuisances and the enforcement of parking regulations.

Planning issues

I conducted an own motion investigation into the processing of planning permit applications at the City of Greater Geelong in response to a number of complaints about planning matters. My investigation focused on whether planning applications were being processed in accordance with the relevant legislation and whether there were adequate policies and procedures in place to ensure legal, fair and reasonable processing of planning applications.

My investigation included visits to the planning department and interviews with staff. I was approached at different times throughout my investigation by people wanting to contribute information to the study. A number of these witnesses were also interviewed.

My report, which was tabled in Parliament in February 2007, examined the role and structure of the planning department and the processing of planning applications in the context of the wider Victorian planning system. It examined each stage of the planning permit process, from the time that an application is lodged through to a determination. It also identified the pressures that are placed on the planning permit process and the effect that they have on planning outcomes.

In order to test the rigour of the processes in place at the City of Greater Geelong and to review the planning department's adherence to the relevant legislation, I reviewed 10 planning application case studies. I found general compliance with the legislation, but identified weaknesses in some areas of the planning process that could be improved or strengthened through policy development and implementation. These shortcomings have been addressed by recommendations throughout my report.

I also examined the different ways in which planning decisions were made, including the existing delegation arrangements. I found that there were significant inadequacies with one of the decision-making forums used to determine planning applications and I considered that reform should be made. The deficiencies identified in relation to the Councillor Hearing Panel (CHP) highlighted the need for a more transparent decision-making process. I considered that the structure and function of CHP did not promote procedural fairness.

I made a number of recommendations, including that the City of Greater Geelong:

- review its delegations in relation to planning approvals
- develop a procedural manual to provide guidance to planners
- review CHP with a view to greater transparency and accountability
- review the councillors’ Code of Conduct.

In particular, I considered that it is important to have a code of conduct in place that outlines the parameters for direct contact with staff and addresses the issues of good governance, transparency in decision-making and accountability.

The City of Greater Geelong welcomed my report and has implemented all of the recommendations.

Enforcement of planning provisions

The *Planning and Environment Act 1987* requires local councils to administer and enforce their planning schemes efficiently and I regularly receive complaints that councils have failed to meet this responsibility. While my office is generally able to resolve individual complaints, I am concerned that councils may not be committing adequate resources and attention to their planning enforcement role.

My examination of complaints suggests that both staff expertise and financial resources impact on a council’s performance in this area. I am aware that a number of councils do not employ staff specifically for the planning enforcement function. Some councils use by-laws officers because of their experience in gathering evidence that is admissible in legal proceedings. Other councils rely on their town planning officers who may be familiar with planning requirements and controls, but may not have the necessary investigative skills.

In my view council staff should not only be able to respond to complaints in a timely manner but, where necessary, have the capacity to conduct investigations outside normal business hours, particularly as alleged breaches may occur after hours. In these cases council staff need to be able to respond at short notice, otherwise the opportunity to gather evidence may be lost.

Dealing with nuisances

The *Health Act 1958* imposes a duty on a council to remedy, as far as is reasonably possible, all nuisances in its municipal district. This applies to nuisances which are, or are liable to be, dangerous to public health or offensive. My office deals with a wide range of these types of complaints. Complainants are often upset about the issue. Their concerns may be longstanding, or they see their rights to a peaceful existence severely diminished.

Floodwater

I received a complaint that floodwater had been entering the complainant’s property from a neighbouring property since August 2000. The complainant had concerns about the thoroughness of action taken by the council, including its apparent failure to conduct a follow-up inspection after a complaint made in 2000.

My enquiries found that a dye test had been conducted in 2000 which confirmed that the flooding came from the neighbouring property. However despite the installation of a drainage solution, the problem of flooding continued. My office found that the extent of further action taken to address the problem was unclear. While the council had taken action, its records failed to reflect this.

cont...

I was critical of the fact that the council's administrative and complaint-handling processes had not been promoted on its website. I also made a number of recommendations which were accepted by the council, including that it engage an independent contractor to conduct dye tests to determine whether a nuisance continued to exist and that it take corrective action as required.

The complainant and her neighbour have now agreed to remedial works which will be undertaken shortly.

Complaints about council inaction in relation to barking dogs are common.

Barking dogs

I received a complaint from a resident that the council had failed to investigate her complaint about barking dogs in her neighbourhood.

My office contacted the council to determine what action it had taken in response to the complainant's concerns. The council advised that it had asked the complainant and a neighbour to provide two-week diaries detailing the barking incidents. The complainant would not provide the diaries as she had given the council the name and address of another neighbour affected by the noise, whom the council could contact. The council refused to investigate her complaint without the diaries.

I advised the council of its obligation to investigate the complaint and suggested that a council officer visit the site at the time the nuisance was allegedly occurring and interview the complainant's neighbour. The council accepted that it was not the complainant's responsibility to prove that a nuisance existed. It agreed to undertake an investigation of the complaint by arranging doorknocks to appropriate neighbouring properties to determine whether the dog was a nuisance.

Parking issues

My office continues to receive a large number of complaints about parking fines. I generally do not investigate parking-related complaints as the complainants have a right of review in the courts. The courts are better placed to determine guilt or innocence, particularly as parking offences usually involve the word of the parking enforcement officer against that of the person in charge of the vehicle.

Complaint-handling procedures should be promoted on councils' websites.

Family day care

On occasions my office receives enquiries or complaints about family day care services provided by local councils. Issues raised vary widely, but the following complaint illustrates the seriousness of the allegations that can be made:

Injured child

Ms P complained about injuries sustained by her two-year-old son in a council family day care program. She said that in February 2006 she received a phone call from the carer to inform her that her son had blisters on his feet. The child was subsequently admitted to hospital overnight with third-degree burns on both feet.

Ms P said that the carer informed her that she had allowed the child to go outside without shoes for half an hour in the middle of the day. Ms P complained to the council and, following an investigation, was informed that the injury did not occur in family day care.

Ms P also stated that in March 2006 her son was once again in family day care. When she picked him up, she believed he was distressed and appeared to be having trouble walking. She said she spoke with the carer who said that her two-year-old daughter may have crawled over him and hurt his leg.

Ms P sought medical attention for her son and his leg was x-rayed. Ms P complained again to the council and was told that the matter had been referred to DHS Child Protection. Ms P stated that the council informed her that it did not intend to investigate further as the carer claimed there was no incident.

After making informal enquiries with the council, I decided to formally investigate issues pursuant to section 14 of the Ombudsman Act. My office interviewed Ms P and a number of council staff, and examined a range of documentation including files, medical records, legislation and policy. Medical files and x-rays were provided to my office that indicated a fracture of the right leg. My officers also consulted with the Victorian Institute of Forensic Medicine, DHS Child Protection and Victoria Police Records Services Division.

I concluded that the investigation undertaken by the council relating to both injuries was inadequate and I recommended:

- the establishment of clear investigation guidelines for complaints and allegations relating to child safety within the council's family day care program
- the provision of staff training within the family day care program to assist with their understanding of the role of DHS Child Protection and how this interfaces with their responsibilities
- the engagement of experienced and skilled investigators for the purpose of investigating matters pertaining to child safety in the family day care program
- a review of the complaint-handling processes in the family day care program, taking into consideration OV's *Guide to complaint handling for Victorian public sector agencies*.

The council accepted my recommendations.



department of
**justice and
corrections victoria**

DEPARTMENT OF JUSTICE AND CORRECTIONS VICTORIA

Prisoners, being deprived of their liberty, have little ability or capacity to deal with many aspects of their daily lives. The restrictions of life in prison make it difficult for them to handle what might appear to be minor concerns to people outside prison. For this reason it is essential to have a fair and effective complaints mechanism in place in each prison. It is also a requirement of the standards that Corrections Victoria has set down for prisons in the *Director's Instructions* for public prisons and in the *Commissioner's Requirements* for private prisons. However, I find that there are often situations where a prisoner is unable to resolve a complaint satisfactorily through an internal process. This is particularly so when they have a concern which is of a sensitive or serious nature. It is therefore important that prisoners have access to my office.

This year there has been a 30 per cent reduction in the number of written complaints from prisoners.

I note that there has been a reduction in the number of written complaints from prisoners at a time when prison numbers are at a record high. Written complaints reduced by 30 per cent in 2006-07, compared with 2005-06. While it is too early to identify precise reasons for this reduction, it may in part be due to greater effectiveness by prison management in addressing prisoner concerns at the outset. The introduction of a free-call telephone number to my office and improvements in some aspects of prison life and conditions, including the opening of two new prisons, may also be contributing factors.

Free-call telephone number

Members of the general public have access to my office through a toll-free telephone number. I believe that prisoners should have similar access. In line with such practices in most other Australian jurisdictions, I arranged for Corrections Victoria to establish a free-call line to OV from all prisons. The free-call facility commenced in July 2006. Calls can be for a maximum of 12 minutes and are not monitored by prison management. Posters about how to access OV's free-call line are displayed near prison telephones in all prisons. I understand the system is working well.

Report on conditions in custody

The report of my own motion investigation into *Conditions for persons in custody* was tabled in the Victorian Parliament in July 2006. I found that despite a number of initiatives under way, there were still serious concerns about the conditions in which people are held in both police cells and prisons. These concerns include overcrowding and long stays in police cells, where access to basic amenities is limited, and deficiencies in the provision of health care, including mental health care, at custodial facilities. They have implications for the wider community. I noted the need for more robust and transparent mechanisms for monitoring custodial conditions in police cells and prisons, and in that context, I proposed to review the performance of the Corrections Inspectorate.

During April and May 2007, Victoria Police and Corrections Victoria provided me with reports on the progress made so far to implement my recommendations. I am pleased that a number of measures have been taken to address my concerns, including improved conditions in the transport of prisoners. However, some important issues remain outstanding. These include:

- decriminalising drunkenness and treating it as a public health issue, while still giving Victoria Police the power to detain intoxicated persons for their own safety
- making condoms available in all male prisons as part of Corrections Victoria's Communicable Diseases Policy to prevent the spread of sexually-transmitted diseases to the wider community. This remains a matter for government
- ensuring that the Melbourne Custody Centre is only used as a short-term holding centre where prisoners are held overnight or over a weekend.

My full report may be found at www.ombudsman.vic.gov.au

Review of Corrections Inspectorate

In February 2007 I commenced an own motion investigation to review the Corrections Inspectorate as a result of the commitment I had made in my report on conditions in custody. The review included:

- interviews with inspectorate staff, internal stakeholders, such as prison managers and Corrections Victoria management, and external stakeholders
- an audit of inspectorate files
- observation of the Inspectorate conducting a *Healthy Prison Review* on-site at the Dame Phyllis Frost Correctional Centre.

Prison visits

All Victorian prisons were visited at least once during 2006-07, with the larger prisons visited more frequently due to specific investigations. Such visits provide an opportunity for OV staff to meet with prisoners, speak with supervisory staff, prison management and non-custodial staff, and observe on-site aspects of prison life.

Other prison-related activities undertaken by my office include presentations to new prison officers about the role of the Ombudsman, liaison and discussions with Official Prison Visitors, and meetings with the prison general managers.

Terrorism legislation

In the context of the Victorian *Charter of Human Rights and Responsibilities Act 2006* (the Charter) which comes into effect for all Victorian public authorities on 1 January 2008, I have a broad role which also includes persons held in custody. Several rights under the Charter are especially relevant to persons in custody, including protection from torture and cruel, inhumane or degrading treatment, the right to liberty and security of the person, and humane treatment when deprived of liberty.

I also have a role under the Terrorism Act to investigate complaints from persons held under its provisions. A number of alleged terrorists are currently held in the Barwon maximum security prison under a restricted regime. My officers regularly inspect their conditions and treatment in custody by visiting that facility. I propose to continue to monitor their conditions.

Melbourne Custody Centre

The Melbourne Custody Centre is located under the Melbourne Magistrate’s Court. It is a custodial facility which can hold up to 70 persons—male and female—who are either remanded or sentenced prisoners. The facility is operated by private prison contractor GEO, under contract from Victoria Police. GEO also operates Fulham Prison, Sale. I have previously outlined my concerns about the Melbourne Custody Centre in my report on *Conditions for persons in custody*. My jurisdiction as Ombudsman extends over this facility by virtue of the provisions of the Corrections Act and the Ombudsman Act.

I continue to be concerned that this facility holds detainees in unsuitable conditions for periods of up to 28 days. Some prisoners held there are deemed to be ‘protection’ prisoners for whom, at times, there are no suitable vacancies available in the prison system. I also understand that more recently police have been bringing to the centre an increasing number of people who have been arrested for drunkenness, as the facility provides 24-hour medical care. I consider this latter arrangement to be unsatisfactory as, in effect, intoxicated individuals are being treated as criminals rather than as persons with a medical problem.

Value of CCTV

On a number of occasions, I have received complaints from prisoners about their treatment by custodial staff, particularly allegations of assault. Upon investigation I have discovered that video surveillance

Too often there are deficiencies in the recording and management of video surveillance footage.

footage that should have recorded the alleged incidents is not available. I strongly believe that video surveillance of persons held in detention is an effective tool and, when functioning properly and monitored, is a protection both for the detainee who may be at risk of harm and for custodial staff. My investigations too often reveal deficiencies in how the video surveillance recordings are managed, as well as technical failures. In two recent instances, I was dissatisfied with the lack of video footage due to technical malfunctions. One related to the Melbourne Custody Centre and the other to a transfer of prisoners to a court.

Prison regulations

Complaints from prisoners often arise from a lack of discretion in applying prison regulations. The following cases illustrate how my office has resolved such matters:

Prescription drugs

A prisoner complained that he had been charged and found guilty of stockpiling prescription drugs in his cell. Since the charge was drug-related, the prisoner was given an identified drug user (IDU) status which resulted in a ban on visits and other privileges. My officers requested that Corrections Victoria seek legal advice on the matter. I was advised that the particular charge relates only to a drug of addiction or of dependence and the prescription medication was neither.

The charge was dropped and the prisoner’s IDU status removed.

Issues with mail

A prisoner complained to my office that his mail was taking several weeks to be processed at the new and recently-opened Metropolitan Remand Centre. As the mail related to his pending court appeal, the delays were detrimental to his case.

My office investigated the cause of the delays at the prison and subsequently a full-time mail officer was appointed to speed up the process.

Good record-keeping is a key requirement of a well-functioning prison.

Drug testing

A prisoner was charged and found guilty of possession of illicit drugs after traces were found on his jumper. The prisoner complained that he had never tested positive to random or targeted drugs testing before and therefore believed that the charges were unjust and a mistake had occurred.

My investigation found that there was doubt about the way in which the traces of drugs had come to be on his jumper. The prison accepted my recommendation that the charges be dropped.



**transport accident
commission
and victorian workcover
authority**

TRANSPORT ACCIDENT COMMISSION AND VICTORIAN WORKCOVER AUTHORITY

This year my officers continued to build constructive relationships with VWA, the Transport Accident Commission (TAC), authorised VWA agents and self-insurers. My officers also met with other agencies involved in the industry, such as professional bodies, and advocacy and legal groups. This involved regular visits to discuss specific complaints, as well as meetings on broader issues, such as complaint themes and service-delivery strategies.

OV continues to build constructive relationships with respondent agencies.

These meetings have been complemented by other activities, including three issues of the *OV Bulletin* in which I share ideas and topics with the industry. During 2006-07 the bulletin covered a range of subjects, including access to information, changes to legislation regarding destruction of documents, complaints data and trends. My officers also contributed to events such as the VWA claims management forum.

In April 2007 my office held a forum for self-insurers. This was an opportunity to hear about issues specific to self-insurers; to discuss themes that are being identified from complaints; and to provide information about the role of OV.

A further demonstration of the constructive relationships between OV and respondent agencies was the collaboration between VWA and my office on a review of access to information. This joint review identified opportunities to improve the information available to injured workers who want to access their claim details. As a result of this project, VWA revised its claims manual, clarified information provided on its website and conducted a further review of its standard letters. These outcomes allow injured workers to understand the 'access to information' process and thereby to make informed decisions.

This year I received a similar number of complaints related to TAC and VWA as last year. This followed a sharp rise in 2005-06, after the establishment of a specialised unit in my office to handle these complaints.

Complaints statistics

	2006-07	2005-06	2004-05
TAC	78	98	49
VWA	331	293	122
Total	409	391	171

Poor record-keeping has been a common theme this year, as illustrated by the following case:

Missing evidence

I received a number of complaints during the year that injured workers had not received copies of surveillance tapes when they requested full access to their records.

I consider that surveillance tapes should be automatically treated as part of the request, rather than requiring an injured person to make a second request to access them.

My enquiries revealed that, in some cases, agencies simply did not check to see if a tape existed and sometimes further action could have been taken to find a lost tape, such as contacting the original service provider.

During one site visit, my officers observed disorganised storage shelves, without any system in place to track the location of tapes when they were required by case officers. In this particular case, I recommended that a tracking system be implemented. This was accepted.

Given the number of complaints and the importance of this issue, I will be monitoring the storage and retrieval of surveillance tapes in the coming year.

Destruction of documents

The Crimes (Documents Destruction) Act 2006 makes it a criminal offence to destroy documents that are, or are reasonably likely to be, required as evidence in existing or potential legal proceedings. The *Evidence (Document Unavailability) Act 2006* provides the courts and VCAT with the discretion to reverse the effects on a proceeding where a document or documents have become unavailable because they have been destroyed, disposed of, lost, concealed, or rendered illegible, undecipherable or incapable of identification.

The discretion allows a court or VCAT to make any ruling or order it considers necessary to ensure fairness to all parties. This can include that an adverse inference be drawn from the unavailability of the document, or that all or part of a defence or statement of claim be struck out.

I expect all agencies to review their existing policies to ensure compliance with new legislation.

These amendments came into effect on 1 September 2006 and apply to both the public and private sector.

I expect all agencies to review their existing policies to ensure compliance with these legislative changes. Contracted service providers should also be made aware of these requirements.

The following case highlights these legislative changes:

Missing or destroyed

I received a complaint from an injured worker who had requested documents on his claims file. The self-insurer advised that his claim file was either missing or had been destroyed as part of the agency's document retention policy.

As a result of the worker's complaint, the agency reviewed its document retention policy and cancelled all future destruction of workers' compensation files.

Where evidence is to be relied upon in a decision-making process, I consider it important that the agency concerned verify evidence, particularly surveillance evidence, before relying on it. The following investigation illustrates this point:

Wrongly identified

A woman complained to my office that she was not the person identified in surveillance footage that had been taken and used as evidence to stop her income compensation payments.

The complainant said that at the time the surveillance footage was taken, she was away from Melbourne caring for her father. She had provided statements to the WorkCover agent from six people, including doctors and her minister of religion, to confirm this.

Following an analysis of the agent's files and interviews with staff and other witnesses, I decided that the agency had failed to consider properly the information provided by the complainant in support of her claim that she was not the person in the surveillance video. This failure extended to the appeal process where the agency did not take reasonable steps to try to settle the dispute.

The agency agreed to reconsider the information provided by the complainant and reassess its decision to stop her income compensation payments.

As well as identifying new issues as they arise, I will continue to focus on the areas that have been regular sources of complaints this year:

- storage and retrieval of surveillance tapes
- destruction of documents
- access to information under the FOI Act and the *Accident Compensation Act 1985*
- transparency of decision-making and review of decisions
- WorkSafe’s response to complaints about bullying in the workplace.



**other
agencies**

VicRoads

Most Victorians are affected by the activities of VicRoads. Its responsibilities include the management of the Victorian road network, the maintenance and enhancement of road safety, the registration of vehicles and the licensing of drivers. In addition, VicRoads holds an extensive database that is used by both the public and private sectors for a range of purposes, from tolling infringements to the enforcement of parking fines.

In June 2005 I provided a report to Parliament identifying my wide-ranging concerns about VicRoads' vehicle registration practices. I am currently conducting a similar own motion investigation examining VicRoads' licensing practices.

My office has also been in discussion with VicRoads about its new corporate complaint-handling processes, which I hope will lead to a reduction in the number of complaints that I receive.

Over the past year I have dealt with several complaints related to VicRoads' rejection of requests for particular personalised number plates. The following is an example:

Personalised number plates

After ordering and receiving his personalised number plates, the complainant believed that they implied a sexual innuendo and so sought to exchange them for ones that were 'neutral'. VicRoads refused, saying that the complainant would need to purchase new plates.

The complainant contacted my office and enquiries were made with VicRoads. VicRoads acknowledged that an error had been made and that the number plates should not have been issued. VicRoads exchanged the number plates at no cost to the complainant.

Given the large volume of individual transactions handled by VicRoads, mistakes are sometimes made. In the following case, my office's involvement led to a satisfactory resolution for both VicRoads and the complainant:

Boat operator licence

Mr Y complained that he had renewed his boat operator licence with a cash payment to VicRoads in July or August 2006. He received a renewed licence for three years. He did not retain any receipt details of the payment.

In November 2006 Mr Y received a letter from VicRoads informing him that his licence had expired. He contacted VicRoads and queried this notice. He was informed that he needed to provide a receipt showing payment of the renewal fee. Mr Y wrote to VicRoads, enclosing a copy of his current licence. He received a response in January 2007 in which VicRoads requested that he provide proof of payment, saying that unless this was done, his licence would remain expired.

Mr Y complained to my office and enquiries were made. VicRoads explained that the complainant had only paid \$5 for an amendment to his boat licence, not a full renewal fee. At the time of payment, VicRoads processed the \$5 fee, mistakenly stamping his licence as renewed.

As a result of my intervention, VicRoads amended the licence records to show that the complainant's licence would be valid until 2009. VicRoads did not seek the additional payment required for the renewed licence because of the way it had handled the matter.

Vehicle registration

Ms Z inherited a vehicle and found that its registration had expired on 12 September 2006. After raising the matter with VicRoads, the complainant paid a transfer fee on 23 October, but did not have the required roadworthy certificate at the time.

On 2 November the vehicle's registration was paid as a late registration renewal at a VicRoads office and was backdated to 12 September. Ms Z said that the full-year registration should have been applied from 2 November. She indicated that she now had a roadworthy certificate.

Enquiries made by my office revealed that Ms Z was provided with unclear information about the requirements for the transfer of the vehicle. In recognition of this, VicRoads amended the registration expiry date of the vehicle to 2 November.

Processes for registering vehicles continue to be an area of concern.

In my own motion investigation into VicRoads' registration practices, undertaken in 2005, I recommended the upgrade or replacement of the registration computer system. I note that this has been given further consideration and that funding has been allocated in 2007-08 to develop the business case for a replacement system.

Universities' complaint-handling processes

In January 2007 my office wrote to each university to follow up on my earlier investigation into their complaint-handling processes. A number have responded and provided progress reports. However, I consider that there is further work to be done and propose to review their performance in the coming year.

I note with interest that complaints about universities have reduced over the past year and consider this may be the result of the work some universities have been undertaking to review their processes.

the
whistleblowers
protection act

THE WHISTLEBLOWERS PROTECTION ACT

The Whistleblowers Protection Act (the Act) provides that any person who believes, on reasonable grounds, that a public officer or public body has engaged in improper conduct may make a disclosure to me or to the relevant public body. The primary purpose of this Act is to encourage and facilitate whistleblowers to make disclosures.

I also perform a key role in assessing, managing and investigating whistleblower disclosures. I am responsible for issuing guidelines to assist public bodies in handling such disclosures and complying with this Act. These guidelines are on OV's website at www.ombudsman.vic.gov.au under the 'Whistleblower' section.

In 2006-07 the volume of whistleblower complaints has remained stable compared with the previous year. However, there has been a decrease in the number of disclosures which I determined to be public interest disclosures (PIDs).

Statistics 2006-07

Disclosures	2006-07	2005-06
Total disclosures received	84	82
Public Interest Disclosure (PID)	21	29
Protected Disclosure (PD)	9	3
Investigation of PID		
By Ombudsman	14	14
By Public Body	6	14
By Auditor-General	1	2
Alternative Procedures		
Under Ombudsman Act	14	12
Police Regulation Act	2	1
No jurisdiction	33	35

(These figures include cases carried over from 2005-06)

An individual receives the protections of the Act if their allegation satisfies the definition of a protected disclosure. A protected disclosure occurs where an individual believes, on reasonable grounds, that a public officer or public body:

- has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body, or
- has taken, is taking or proposes to take detrimental action as a public officer or public body.

Once an allegation has been assessed as a protected disclosure, it has to be assessed whether or not it is a PID. The threshold test for this is that the Ombudsman must be satisfied that the disclosure shows or tends to show that a public officer or public body:

- has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body, or
- has taken, is taking or proposes to take detrimental action as a public officer or public body.

Improper conduct is defined in section 3 of the Act to mean:

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

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

To assess whether a disclosure shows or tends to show that a public officer has engaged in improper conduct, I must be satisfied that there is sufficient supporting material to demonstrate that the conduct has actually occurred or is likely to occur.

Public sector bodies need to be more proactive in supporting whistleblowers.

The Act also allows a whistleblower to make a disclosure about detrimental action taken against them in reprisal for making a protected disclosure. Detrimental action commonly involves allegations of disadvantage, intimidation, harassment, injury or loss of employment opportunities. The Act makes it a serious offence to take detrimental action against a whistleblower, attracting a fine and/or imprisonment.

Welfare of whistleblowers

I have found that whistleblowers often require welfare support to overcome stress-related issues as a result of making a disclosure. While my guidelines require public sector bodies to provide welfare support to whistleblowers, it has come to my attention that support is generally only provided when a whistleblower identifies that assistance is needed.

I believe that public sector bodies need to be more proactive in supporting whistleblowers and addressing the issue of stress prevention.

The following case study illustrates some of my concerns about the handling of whistleblower welfare by public sector bodies. The matter highlights the importance of providing a whistleblower with welfare support at an early stage, as well as maintaining their confidence while dealing with the matter.

Whistleblower welfare

In September 2005 I received a disclosure of detrimental action from an officer of an agency. The officer alleged that reprisal action had been taken by management. This followed an earlier PID in 2004.

I determined the whistleblower's disclosure of detrimental action to be a PID and referred it to the agency for investigation. The whistleblower later asked that I take over the investigation due to a loss of faith in the agency's ability to conduct it fairly.

My office investigated the matter. While the majority of the allegations could not be substantiated, I found that the whistleblower's identity had been publicly disclosed in the workplace. As a consequence of my investigation, I recommended that the agency:

- conduct whistleblower information and training programs
- prepare a manual to guide all persons conducting whistleblower investigations on its behalf
- review welfare arrangements for whistleblowers
- take no action against the whistleblower in relation to the alleged misconduct.

The agency accepted all my recommendations.

Protection of whistleblowers

Blowing the whistle on yourself does not provide protection against liability for inappropriate conduct.

Despite the protections which apply to whistleblowers for making a protected disclosure under this Act, a whistleblower remains liable for their own conduct and actions.

As such, blowing the whistle on yourself does not provide protection against liability for inappropriate or illegal conduct. The following case illustrates this point:

Self reporting

I received a disclosure from an employee of a cemetery trust who informed my office that he had made a disclosure about his own conduct under the Whistleblowers Protection Act. The whistleblower sought to blow the whistle on himself for inappropriately obtaining a large loan from trust funds while working at the cemetery.

The cemetery trust did not consider the matter to be a PID under the Act, but considered that the matters raised were of serious misconduct and warranted terminating the person's employment.

I was satisfied that there was sufficient supporting evidence to show or tend to show that the conduct was both corrupt and a substantial mismanagement of resources. As a result, I determined this disclosure to be a PID. I was satisfied that appropriate action had been taken in the management of this disclosure and that the whistleblower raised no allegations of detrimental action.

As the disclosure related to the accounting and financial practices of the cemetery trust, in accordance with the Act, I referred the matter to the Auditor-General for independent investigation, as I considered he was better placed to deal with the matter.

It is important to note that the Act states 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'.

The whistleblower was unable to avoid liability for his conduct as a result of blowing the whistle on himself. He was dismissed from his position.

Another PID involved allegations of corruption:

Corrupt conduct

A disclosure was made by a whistleblower about a university course coordinator. The whistleblower alleged that he was approached by the person responsible for teaching the course and was shown a copy of a confidential examination paper. The whistleblower was instructed to copy the paper and prepare the students for examination.

I determined the disclosure to be a PID and referred the matter to the university for investigation.

While some specific allegations were not substantiated, the university found that the overall allegation of corrupt conduct on the part of the course coordinator was sustained. The university concluded that, as the conduct acknowledged by the program coordinator constituted a serious breach of trust and serious misconduct, the program coordinator's employment should be terminated.

His employment was terminated. The university also undertook to strengthen its processes to ensure that there was no repetition of this conduct.

Awareness of the Whistleblowers Protection Act

Some agencies do not have a satisfactory awareness of this Act.

Some public sector bodies still do not have a satisfactory awareness of the Act or their obligations regarding the handling of disclosures. While some organisations only receive one or two disclosures per year, it is important that all public bodies follow OV's guidelines and have appropriate processes in place for handling whistleblower disclosures.

The following case study highlights my concerns regarding the approach taken by a council in dealing with a whistleblower disclosure:

Fabrication of documents

In December 2006 my office received notification of a whistleblower disclosure from a local council. The council had determined it to be a PID.

The whistleblower alleged he had been pressured by a senior manager to fabricate documents relating to an insurance audit that was required to validate works undertaken by the council. The documentation did not exist and was required for the audit.

I determined this matter to be a PID. I was concerned that the council had adopted a confrontational approach in its management of the disclosure by requiring the whistleblower to face the people he accused of improper conduct and explain his actions directly to them. I believe this approach may have left the whistleblower open to detrimental action being taken against him.

I requested that the council consult my guidelines in handling this and future whistleblower disclosures, as well as consider welfare support for the whistleblower.

As a result of its investigation, the council found that while the allegation was not substantiated, accurate records had not been maintained for lengthy periods in some cases. The investigation found poor management practices, a failure to apply procedures and a communication breakdown in relation to the handling of the disclosure. The council accepted and adopted all the investigation's recommendations. These included the provision of ongoing training to council staff about the Act and the implementation of remedial/disciplinary action in relation to managerial concerns.

National research project

The collaborative national research project into the management and protection of whistleblowers in the Australian public sector continues to make steady progress towards its objectives. The project is led by Griffith University in Queensland, with the involvement of 11 integrity institutions from around Australia, including OV.

The focus of the last 18 months has been on data collection. Several survey instruments have been deployed; practices and procedures in the public sector have been reviewed; and detailed quantitative and qualitative data has been collected from 15 case study agencies. Preliminary analysis of some of the early data was presented at a National Investigation Symposium in November 2006; further findings will be published in the latter half of this year.

As an adjunct to this project, a major comparative analysis of existing legislative regimes was published in November 2006¹. This confirmed variability and inconsistencies in the style, coverage and principles of existing and proposed legislative frameworks dealing with public sector whistleblowing. It identified legislative best practice and made recommendations that will inform a coherent national model for managing public interest whistleblowing.

I look forward to continuing to participate in this important national project.

¹ Brown, A J (2006), Public Interest disclosure Legislation in Australia: Towards the Next Generation, Commonwealth Ombudsman, NSW Ombudsman, and Queensland Ombudsman

freedom of
information

FREEDOM OF INFORMATION

The FOI Act provides members of the public with rights of access to documentary information that prescribed Victorian government agencies have in their possession.

I have jurisdiction to investigate complaints about FOI requests where they relate to an administrative action, such as a delay in processing a request, a document that cannot be found or which is claimed does not exist, and any fees or charges imposed.

Over the past year FOI complaints have reduced by 30 per cent. I believe that this is largely due to the work that departments and agencies have undertaken following my review of the FOI Act. This is an encouraging sign that the recommendations in my report are being implemented. I tabled that report in Parliament in June 2006.

FOI statistics

FOI grounds for complaint	2006-07	2005-06
Delays in processing	33	45
Lost or non-existent documents	34	58
Unreasonable charges	5	3
Voluminous requests	4	2
Refused access to documents	9	11
Intervention by Ombudsman	0	2
Other	22	31
Total	107	152
Requests for documents dealt with by the Ombudsman's office	7	8

Review of the FOI Act

In June 2006 I tabled a report in Parliament on an own motion investigation into the FOI Act. I outlined my findings and the outcome of my review in the 2005-06 annual report. Since then, in his opening of Parliament in December 2006, the Governor of Victoria, Professor David de Kretser, AC, said that the reforms recommended by me would be implemented.

An update on the adoption and implementation of my recommendations is provided in Appendix A.

The following cases illustrate issues that were discussed in my FOI review and continue to be monitored:

Part II statement

I received a complaint that a council did not maintain and publish a statement of the documents and information in its possession, as required by Part II of the FOI Act.

I considered Part II statements in my review of the FOI Act and noted that departments and agencies should be complying with its requirements.

However, I also recommended that Part II of the Act be reviewed. I do not intend to conduct further enquiries into this issue, as DOJ has accepted this recommendation. DOJ is currently considering changes to Part II, as part of the development of an FOI Amendment Bill that is due to be introduced into Parliament in the Spring session of 2007.

Interpretation of request

I received a complaint from a Member of Parliament (MP) regarding the interpretation of his FOI request by DVC. He had requested documents regarding third parties engaged in the writing and/or proof-reading and/or editing of brochures for the Victorian Office of Multicultural Affairs (VOMA).

The MP believed that DVC failed to identify one document that should have been processed as part of his FOI request. The document was an invoice for the service of drafting speeches for a Minister. The MP provided a copy of the invoice he believed DVC should have identified and copy of a decision made regarding access.

VOMA stated that it had identified the invoice at an early stage of its document searches; however, DVC's FOI officer interpreted the request as seeking documents from consultants/businesses engaged for VOMA and not those engaged for the Minister. Therefore, she believed the invoice was not within the scope of the request.

I considered that VOMA's interpretation of the request was too narrow. This is contrary to the objectives of the FOI Act.

The following two cases are further examples of FOI complaints received by my office during 2006-07:

Excessive charges

I received a complaint about excessive charges of \$3,500 imposed by the Wimmera Catchment Management Authority (WCMA) for processing the complainant's FOI request. The request sought invoices and cost information regarding the production of various catchment management documents produced by WCMA over a period of 10 years.

WCMA explained that to produce the detailed information requested by this FOI request would be an expensive and time-consuming process. My enquiries revealed that a number of the requested documents were the products of extensive processes, making it difficult to assign a cost at the level of detail requested by the applicant. A further complication arose due to the fact that the requested information spanned 10 years, requiring WCMA to access archival records and data from incompatible, older financial systems.

Discussions between my office and WCMA concluded that the item quoted for 'analysis' had no legal basis in the FOI Act and should have been regarded as part of search time.

My officers inspected WCMA's financial systems, which they were advised could produce reasonably accurate summary cost totals for the requested documents. As a result of this investigation, a proposal was reached that WCMA could comply with the FOI request by providing summary cost totals to the complainant for access charges of \$320. This amount was less than one tenth of the amount initially quoted to the complainant, which represented a reasonable compromise for both parties.

Although a compromise was reached between my office and WCMA, the complainant chose not to take his FOI request any further. WCMA advised that it was very appreciative of the advice it received from my office.

Missing FOI request

I received a complaint about a delay by DOI in responding to a request for information. The applicant had sent his initial request in July 2005, as well as a further letter in February 2006.

My office made enquiries about the matter. DOI claimed that it had not been able to respond to the request because it had not received the original request or letter. My office then contacted the applicant who provided a copy of the letter of February 2006. This was forwarded to DOI so that it could begin processing the request immediately.

Further enquiries by my office revealed that DOI had incorrectly filed the letters in an unrelated file without being actioned, as they were not originally identified as an FOI request. DOI apologised for this oversight and stated that it would take steps to ensure that it did not occur again.

inspection functions

INSPECTION FUNCTIONS

I have several statutory functions to inspect the records of some Victorian agencies in order to monitor their compliance with relevant legislation. These functions are carried out by inspection officers acting under my delegated authority.

Melbourne CityLink

The *Melbourne City Link Act 1995* (the City Link Act) enables Victoria Police to receive restricted tolling information as defined in that Act for law enforcement purposes. Police may seek information for the purposes of investigating indictable offences and specified road safety and other laws. Police are not to disclose or use the information other than as specified in the legislation.

My role under the Ombudsman Act is to inspect the records of Victoria Police to ensure that they comply with the requirements of the City Link Act. Under this latter Act, I can request Victoria Police to keep specific records to enable me to carry out my function.

During 2006-07 two inspections were carried out to determine compliance. In accordance with the Ombudsman Act, a report on these inspections was given to the Minister for Police and Emergency Services, the Hon Mr Robert Cameron MLA, with copies to the Attorney-General, the Hon Rob Hulls MLA, and the Chief Commissioner of Police, Ms Christine Nixon.

Memorandum of Understanding with Department of Primary Industries

In August 2003 my predecessor signed a Memorandum of Understanding (MOU) with DPI. The MOU established protocols for DPI reporting and referral to my office of incidents where authorised fisheries inspectors use defensive equipment, such as capsicum spray, batons, handcuffs and other actions, while exercising their law enforcement functions.

The protocols also cover DPI's own investigation of these incidents, as well as reviews and any actual investigations undertaken by my office.

The MOU was intended to be an interim measure pending formalisation of my office's monitoring and investigative role in amendments to the *Fisheries Act 1995*. In the four years since the MOU was established, there have been two instances where reporting was required by DPI.

DPI has now re-committed to working with my office to formalise the arrangements, including legislative amendment if appropriate and consistent with broader government policy.

RSPCA inspectors

RSPCA officers are approved as inspectors under the *Prevention of Cruelty to Animals Act 1986*. Under the Ombudsman Act, I monitor their compliance with the Prevention of Cruelty to Animals Act.

Authorised officers

Under the Domestic (Feral and Nuisance) Animals Act, I monitor officers contracted by local or state government to ensure their compliance with this Act.

Telecommunications (Interception) (State Provisions) Act 1988

On 1 July 2006, the inspection functions under the *Telecommunications (Interception) (State Provisions) Act 1988* were transferred from my jurisdiction to the Special Investigations Monitor.

A photograph of a group of people sitting around a table in a meeting, with the word "outreach" overlaid in large, bold, black letters. The image is framed by a blue border with four blue corner tabs, suggesting it's a page from a book or a document. The background is a solid light blue color.

outreach

OUTREACH

The outreach program aims to raise awareness of my office and its function and build relationships with community organisations.

“KOORIES... KNOW YOUR RIGHTS” PROGRAM

My office has participated in a collaborative project designed to improve access to government services for Indigenous Victorians. The project is coordinated by the Indigenous Consumers Unit at Consumer Affairs Victoria and brings together staff from several government agencies and statutory authorities.

During the year my staff were also involved in community education forums for Indigenous communities in Footscray, Shepparton, Swan Hill, Thornbury, Bendigo and Mildura. My officers will continue to participate in community education programs which aim to improve Indigenous Victorians’ knowledge and use of OV services.

COMMUNITY EDUCATION

One of the goals of this program is to deliver a broad range of community education activities across Victoria.

Over the past 12 months, my staff have made more than 120 presentations to external groups and organisations. These have included:

- forums on the Whistleblowers Protection Act and the FOI Act
- a forum with self insurers under the WorkCover scheme
- seminars on unreasonable complainant conduct and on effective complaint handling for a number of government agencies, including councils
- information sessions on the role of the Ombudsman for community and student groups
- training sessions for new prison officers
- a range of keynote addresses and lectures at conferences and official events.

My staff and I also travelled to regional Victoria as part of the ongoing regional visits program. We met with community leaders, MPs, local council representatives and complainants in Warrnambool, Horsham, Mildura and Benalla. We will continue to travel to regional areas of the state during the course of the next year.

STRATEGIC ALLIANCES

Developing strategic alliances or partnerships with other institutions is a way of extending my office’s capacity to address issues, as well as an opportunity to draw on the skills and experience of other organisations.

OV is currently involved in the following joint initiatives:

- a review of whistleblowers protection legislation with Griffith University and other State, Territory and Commonwealth Ombudsmen, funded by the Australian Research Council
- an own motion investigation into conflict of interest with Macquarie University
- a joint project with other State and Commonwealth Ombudsmen on handling unreasonably persistent complainants
- an AusAID-funded project to provide training and development to the Office of the Ombudsman Thailand.

TRAINING FOR OMBUDSMAN THAILAND

Over the past year my office has provided a professional development program for staff from the Office of the Ombudsman Thailand (OOT). The *Ombudsman Victoria and Ombudsman Thailand Public Accountability Enhancement Program* is a joint project between OV and OOT. Its aim is to improve the capacity of OOT staff to investigate complaints about public administration matters and systemic issues, and to strengthen their investigative report-writing skills. There is also a strong focus on executive leadership, gender equity and development in the workplace.

OV received \$113,848 from the Commonwealth Government under the AusAID *Public Sector Linkages Program* to fund the partnership with OOT, with smaller contributions to the program being made by OV and OOT.

In 2006-07 the program included:

- a five-day advanced investigations course and a two-day gender equity forum in Melbourne for eight Thai investigators
- a five-day leadership and executive development program for the three Thai Ombudsmen.

Later in 2007 a five day professional development unit of the program, focussing on administration and business services systems, will be conducted for three non-investigation staff. The overall program will be completed in December 2007.

The 2006-07 net result surplus of \$49,143, reported in the financial statements in this report, largely represents the AusAID funds which were not expended in 2006-07. That surplus will be used to fund the 2007-08 component of the project.

The program has contributed to the development of the role of the Ombudsman in Thailand and also given my staff opportunities to liaise with their counterparts from another country.

OUTREACH SUMMARY 2006-07

Activity	Audiences
General presentations (75)	<ul style="list-style-type: none"> - government agencies - community groups - community sector organisations - students
Formal presentations (12)	<ul style="list-style-type: none"> - professional associations and authorities - international delegations - community leaders and representatives in the regional cities: Warrnambool, Horsham, Mildura and Benalla
Training (17)	<ul style="list-style-type: none"> - new prison officers at Marngoneet Correctional Centre, Port Phillip Prison, Dame Phyllis Frost Prison, the Metropolitan Remand Centre and the Melbourne Assessment Prison - DHS complaints officers - official visitors - TAFE welfare studies students
Activity	Topic/Issue
Forums (10)	<ul style="list-style-type: none"> - the Whistleblowers Protection Act for protected disclosure coordinators - changes to the Children, Youth and Families Act - Ombudsman's expectations in the handling of complaints - good complaint-handling techniques - conflict of interest issues for local councils
Activity	Centres
Site visits (8)	<ul style="list-style-type: none"> - the three Victorian Youth Justice Centres - Melbourne Custody Centre and Port Phillip Prison



**about ombudsman
victoria**

ABOUT OMBUDSMAN VICTORIA

MY OFFICE

The principal function of my office is to review, investigate and resolve complaints about administrative actions taken by or on behalf of government departments, public statutory bodies, and officers and employees of municipal councils. My office also has some important functions aimed at ensuring compliance by state entities with certain Victorian legislation.

I have jurisdiction over approximately 600 Victorian government agencies, 79 local government councils, 12 professional boards, universities and government schools, public and private prisons and authorised officers under the *Transport Act 1983*. I am also empowered to investigate the action of private agencies contracted to perform activities for government agencies.

I may also initiate, without specific complaint, investigations of my own motion.

MY MISSION

My mission is to help ensure policy implementation of the highest possible standards in the Victorian public sector, and to improve the overall accountability of the public sector to the Victorian Parliament and, through the Parliament, to the Victorian community.

SERVICES

The services of my office are free, impartial and independent.

Free

My office is available at no charge to all who have a complaint against a public sector agency over which I have jurisdiction.

Impartial

I am neither an advocate for complainants nor an apologist for agencies which are the subjects of complaints. My role is to objectively review the lawfulness and reasonableness of actions subject to complaint; to seek corrective actions where I find that maladministration has occurred; to help shape effective and efficient policy implementation; and to improve the accountability of the public sector.

Independent

Under Victoria's constitution I am an independent officer of the Victorian Parliament.

As such I have an important role in supporting the Parliament in its scrutiny of the executive government. I am able to report direct to Parliament, via the President of the Legislative Council and the Speaker of the Legislative Assembly, whenever I consider that to be necessary.

VALUES

My office and I embrace the public sector values established under the *Public Administration Act 2004*. They are:

Responsiveness — we strive to provide services of the highest quality to all our stakeholders, clients and the Victorian community generally.

Integrity — we use the powers entrusted to us responsibly and deal with people in an honest and transparent manner.

Impartiality — we act fairly and objectively in our dealings by ensuring that we consider all relevant facts and make decisions using fair criteria.

Accountability — we accept responsibility for our decisions and actions and comply with all the governance standards applicable to my office.

Respect — we treat fairly and objectively all those with whom we have dealings.

Leadership — each of us encourages strong leadership by actively supporting, implementing and promoting these values.

My staff and I also comply with the public sector employment principles by ensuring that:

- employment decisions within the office are based on *merit*
- employees are treated *fairly and reasonably*
- *equal employment opportunity* is provided and,
- employees have a reasonable *avenue of redress* against unfair or unreasonable treatment.

STRATEGIC PRIORITIES

Our strategic priorities in the reporting period were to:

- further enhance our professional development program to ensure a flexible, skilled, knowledgeable and effective workforce
- continue to integrate into the activities of the office significant new jurisdictions recently given to the Ombudsman under various Acts of Parliament
- target and refine our outreach activities, both to vulnerable community groups to enhance their accessibility to OV's services and to agencies to facilitate excellence in the administration of their policies
- establish more meaningful measures to assess our work performance.

PERFORMANCE

Under the *Financial Management Act 1994* (FMA), 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 2006-07, setting out the targets and outcomes for the year, is as follows.

Output statement	Unit of measure	2006-07 actual	2006-07 target
Quantity measures			
Finalise consideration of complaints (including general, FOI and whistleblower complaints)	number	3,838	3,000
Inspections carried out in accordance with legislative requirements	number	1	3
Undertake and complete own motion investigations and studies	number	10	4
Quality measures			
Satisfaction of Ombudsman with complaints resolution process	per cent	100	100
Satisfaction of Ombudsman with the inspections and monitoring process	per cent	100	100
Undertake Outreach Program	number	122	100
Timeliness measures			
Complaints resolved within 30 days	per cent	75	50
Complaints resolved within 90 days	per cent	95	80

These output measures have been in place since 2004-05; however, they are now less relevant for a number of reasons, including important legislative changes and the transfer of a significant part of my inspection functions to the Special Investigations Monitor.

The performance measure for inspections is discontinued because:

- the Ombudsman’s telecommunications interception function was transferred to the Special Investigations Monitor during the reporting period
- inspection functions under the *Crimes (Controlled Operations) Act 2004* and the *Surveillance Devices (Amendment) Act 2004*, which were initially intended for the Ombudsman, are now conducted by the Special Investigations Monitor.

The one reported inspection in 2006-07 was of the records of Victoria Police in relation to its use of tolling information under the City Link Act.

For 2006-07 I have reported, as required, against the output statement as it stood in 2006-07. My reported satisfaction rating under the quality measures is relative to the resources that I have had at my disposal.

Given those resources, I have been satisfied that the processes employed by my office have been as effective and efficient as they could be. However, with a forecast increase in my budget for 2007-08 and with improved technological resources, especially a new case management system scheduled for introduction in July 2007, I expect to be able to improve the processes in the coming year.

OV's performance table for 2006-07 sets out its achievements against its goals and aims.

I propose to develop a more comprehensive set of performance measures for 2007-08.

Performance table 2006-07

Goal	Aim	Performance in 2006-07
Complaint handling		
Resolve complaints concerning administrative actions taken by Victorian government departments, local councils, agencies and statutory bodies.	Complete 50 per cent of all complaint files within 30 days.	- 75 per cent of all files closed were open for less than 30 days.
	Complete 80 per cent of all complaint files within 90 days.	- 95 per cent of all files closed were open for less than 90 days.
	Further assist agencies in their complaint resolution processes.	- promoted OV's Good Practice Guide.
Access		
Ensure the public has ready access to the services of OV. Provide an independent means of having grievances against public sector agencies impartially examined.	Use the OV website at www.ombudsman.vic.gov.au to improve access.	- introduced an online complaint form - uploaded printed information to the website - published information about outreach activities on the website.
	Visit regional areas to meet with community groups, state and local government representatives and the public.	- conducted four major regional visits to Warrnambool, Horsham, Mildura and Benalla - conducted 13 meetings with community-based organisations - conducted 25 education visits to respondent agencies - made 17 presentations to community groups.
	Produce easily accessible information on areas of OV's jurisdiction.	- participated in the Koorie DOJ visits, field days - published six fact sheets on a range of OV-related topics - published media releases.
	Organise and participate in targeted activities, meetings and presentations to community groups.	- conducted four visits to regional areas. These were attended by the Ombudsman and/or his deputy - conducted six visits to youth justice centres and secure welfare institutions. These were for education activities and also to take complaints.

Goal	Aim	Performance in 2006-07
Accountability		
Enhance accountability of Victorian state and local government agencies to the public and Parliament.	<p>Provide reports to Parliament on own motion investigations that address systemic problems in public administration.</p> <p>Monitor recommendations made to agencies in tabled reports.</p> <p>Ensure public awareness of tabled reports through media coverage.</p>	<ul style="list-style-type: none"> - tabled the following reports to Parliament: <ul style="list-style-type: none"> - <i>Conditions for persons in custody</i>—July 2006 - <i>Own motion investigation into the policies and procedures of the Planning Department at the City of Greater Geelong</i>—February 2007 - <i>Investigation into a disclosure about WorkSafe and Victoria Police handling of a bullying and harassment complaint</i>—April 2007. - made a total of 94 recommendations in the three reports tabled in Parliament. All the recommendations have either been accepted, endorsed or are in the process of being addressed by the relevant agencies (see Appendix A). - received 340 mentions in the media, including: <ul style="list-style-type: none"> 94 broadcast mentions 246 print mentions.
Effectiveness		
Ensure OV strives to achieve excellence and professionalism in all aspects of its work.	<p>Improve internal systems to increase effectiveness.</p> <p>Encourage secondments to and from Commonwealth and state government agencies to build experience and understanding of issues and complaint-handling practices.</p> <p>Help agencies to improve their own complaint-handling processes.</p>	<ul style="list-style-type: none"> - introduced weekly management meetings for Unit Managers and more senior personnel - held monthly staff meetings - provided lunchtime seminars on a range of topics. - received two officers seconded from Commonwealth and state government agencies - seconded three OV officers to other Commonwealth and state government agencies. - held forums and training sessions on Ombudsman jurisdiction (see ‘Outreach summary 2006-07’) - developed and presented one-week Advanced Investigation program for Office of the Ombudsman Thailand - developed strategies for handling unreasonable complainant conduct.

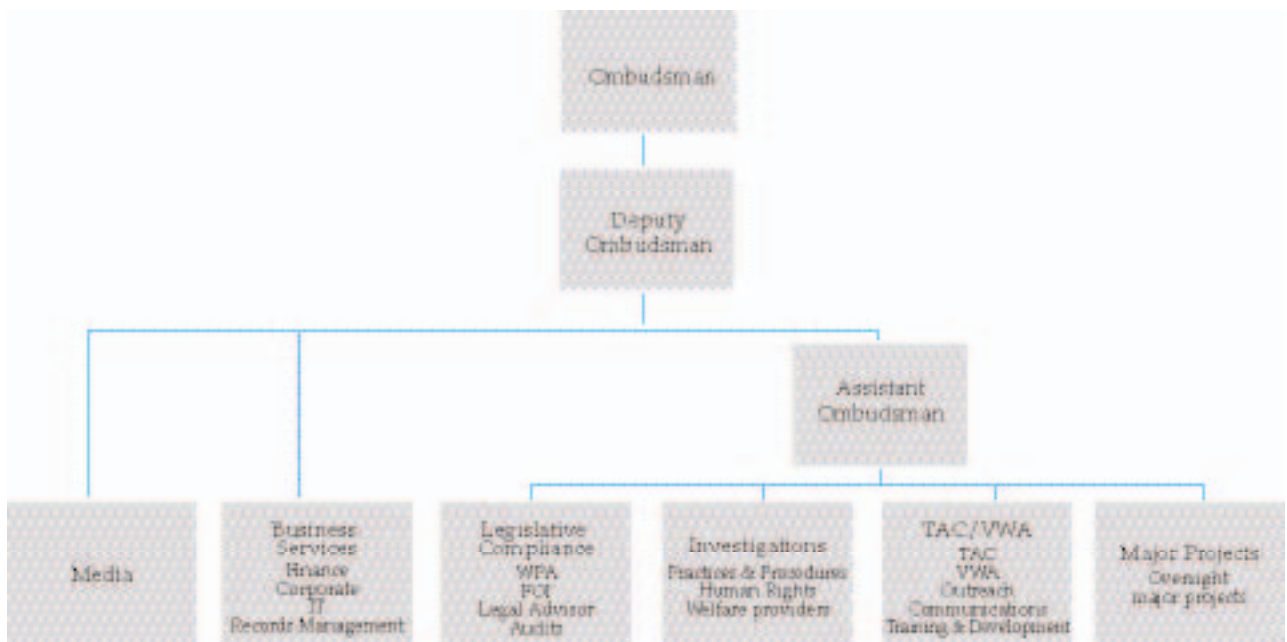
Publications

The following publications were produced during 2006-07. All are available on the OV website.

Publication	Date
<i>Investigation into a disclosure about WorkSafe and Victoria Police handling of a bullying and harassment complaint</i>	April 2007
<i>Own motion investigation into the policies and procedures of the Planning Department at the City of Greater Geelong</i>	February 2007
<i>Conditions of persons in custody (A joint report with the Office of Police Integrity)</i>	July 2006
<i>Ombudsman Victoria Annual Report 2005-06</i>	October 2006
Prison posters regarding toll-free telephone number	July 2006
Koorie information brochure	March 2007
Fact sheets 1. <i>Transport Accident Commission and WorkCover</i> 2. <i>About Ombudsman Victoria</i> 3. <i>Tips for making a complaint to a Victorian Public Sector agency</i> 4. <i>Own Motion enquiry or investigation</i> 5. <i>Formal investigations and section 14 of the Ombudsman Act</i> 6. <i>The Children, Youth and Families Act and the role of the Ombudsman</i>	Throughout 2006-07

ORGANISATION

Organisation Chart



Staff profile by function at 30 June 2007

	Male	Change from 2006	Female	Change from 2006
Executive/Investigations Division				
Ombudsman	1	-	-	-
Deputy Ombudsman	1	-	-	-
Assistant Ombudsman ¹	-	-	-	-1
Executive assistants ²	-	-	1	-1
Investigation officers	11	-1	19	+3
Communications ³	0	-2	1	-
Business Services and Information Systems				
Business Services	3	-1	1	-
Information Systems	1	-1	1	-
Records Management	-	-	2	-1
Total⁴	17	-5	25	0

¹ The Assistant Ombudsman position was vacant on 30 June 2007

² The Executive Assistant to the Ombudsman is also the Executive Assistant to the Director, Police Integrity. She is paid by the Office of Police Integrity and is not counted in these figures.

³ The Media Advisor serves both the Office of the Ombudsman and the Office of Police Integrity. He is paid by the Office of Police Integrity and is not counted in these figures.

⁴ Some staff members are employed on fixed-term and casual contracts.

Staff profile by age, gender and employment status at 30 June 2007

	June 2007			June 2006		
	Ongoing Employees		Fixed-term and Casual	Ongoing Employees		Fixed-term and Casual
	Number (Headcount)	FTE	FTE	Number (Headcount)	FTE	FTE
Gender						
Male	13	13.00	3.49	19	19.00	2.27
Female	19	19.00	5.53	24	23.75	1.00
Age						
Under 25	1	1.00	1.53	1	1.00	-
25-34	6	6.00	2.00	12	12.00	-
35-44	9	9.00	2.00	12	12.00	1.00
45-54	11	11.00	1.00	11	10.75	-
55-64	5	5.00	2.49	7	7.00	1.27
Over 64	-	-	-	-	-	1.00
Classification						
VPS G1	-	-	-	-	-	-
VPS G2	1	1.00	-	2	2.00	-
VPS G3	7	7.00	5.00	12	12.00	1.00
VPS G4	11	11.00	1.00	15	15.00	-
VPS G5	7	7.00	-	5	4.75	-
VPS G6	5	5.00	1.00	7	7.00	-
VPS Executives	1	1.00	-	2	2.00	-
Other	-	-	2.02	-	-	2.27

Data is for employees on OV's payroll in the last full pay period of June each year.

Ongoing employees are those engaged on an open-ended contract of employment and executives engaged on a standard executive contract.

"FTE" means Full Time Equivalent.

The data does not include persons on leave without pay or absent on secondment, external contractors and consultants, or temporary staff employed by employment agencies.



OV's Management Team (left - right): Paul Conroy *Media Advisor*, John Taylor *Deputy Ombudsman*, Dallas Mischkulnig *Director, Investigations*, Jo Carden *Director, Investigations*, Stephen Mumford *Director, Investigations* and Doug Field *Manager, Business and Information Services*.

MY STAFF

I am assisted in managing OV by my Senior Executive Group. The role of that group is to help me set, monitor and review the overall strategic direction of the office and to manage its day-to-day operations. Members of that group are:

Deputy Ombudsman

John Taylor took up this position in September 2004. Prior to joining my office, he was the Senior Assistant Commonwealth Ombudsman responsible for the state and territory offices and corporate functions of the Office of the Commonwealth Ombudsman. He has substantial experience in the Ombudsman jurisdiction and has been the author of numerous public reports relating to a wide range of government agencies.

Assistant Ombudsman

This position is vacant but is currently being filled on rotation by one of the Directors, Investigations.

Manager, Business and Information Services

Doug Field has extensive experience throughout the public sector at both federal and state level in areas including strategic planning, IT, human resources and financial management. He has also worked in the private sector as a director and corporate manager in the engineering, manufacturing and retail industries.

Directors, Investigations

Jo Carden has a strong background in health services, with significant operational and strategic management experience implementing new strategic directions and legislative changes. She is currently working on improvements in the TAC and WorkCover jurisdictions.

Dallas Mischkulnig has more than 25 years experience in the public service in the areas of health, education and statutory regulation. He holds qualifications in nursing, education and law, and is currently the Director of the Legislative Compliance Unit.

Stephen Mumford has an extensive background in the community services sector. He has eight years experience in leading investigations in my office.

As Ombudsman I am the Chief Administrator of OV under the *Public Sector Management and Employment Act 1988*. Apart from the Ombudsman, all employees of the office are employed under that Act.

Staffing trends

The following table details staff numbers at 30 June over the past 10 years.

1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
25	27	25	26	23	26	34	54	47	42

COMMUNICATIONS AND MEDIA ACTIVITIES

The Communications Manager and the Media Advisor inform stakeholders, including Parliament, the media and the broader community, about OV's work and objectives. They prepare media releases, brochures and website content, and edit special reports to Parliament. They also assist with the preparation of speeches and with the placement of articles and opinion pieces in newspapers and other publications. They respond to enquiries from the media and generally coordinate communication activities for my office.

Website

OV's website is at www.ombudsman.vic.gov.au

CORPORATE MANAGEMENT AND GOVERNANCE

Audit and Risk Management Committee

OV's Audit and Risk Management Committee was established during the reporting year. It held its first meeting on 29 November 2006. It consists of the following members:

Ms Jackie McCann Director, Corporate Services Victorian Health Promotion Foundation	Independent member and chair
Mr Ray Turnley Manager, Internal Audit Department of Justice	Independent member
Mr Doug Field Manager, Business and Information Services Ombudsman Victoria	Ex-officio representative
Mr Stephen Mumford Director, Investigations Ombudsman Victoria	Ex-officio representative

The role of the committee is to review and advise OV's executive about all matters of financial accountability and internal financial control. These include:

- financial performance
- financial reporting process
- scope of work, performance and independence of OV's internal audit function
- scope of work of OV's external auditor
- development, implementation and operation of OV's risk management framework
- accountability and internal control affecting the financial operations of OV
- effectiveness of OV'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 OV's normal course of business.

Human resource management

During 2006-07 my office continued its commitment to occupational health and safety compliance, as well as to general staff health and wellbeing. In particular, initiatives such as the office-funded QUIT smoking program, eye tests and the on-site influenza inoculation program were maintained. There were also two important new initiatives:

- establishment of a Health and Safety Committee. The role of the committee is to review and make recommendations to the executive about all matters related to health and safety in OV's workplace. The five-member committee includes an elected employee representative
- introduction of flexitime. OV is committed to providing a family-friendly workplace and a work environment where employees are able to strike a reasonable balance between their private lives and work responsibilities. OV has therefore introduced a system of flexible working hours for all staff of Victorian Public Service (VPS) Grade 1 to 4 classifications.

New case management system

Following a period of development, implementation and staff training, I plan to introduce a new case management system to my office on 2 July 2007.

The implementation of the new case management system, called *Resolve*, is an important measure for my office as it will assist in better complaint management and reporting capabilities. It will also increase the ability to analyse cases and identify systemic issues. This new system will be integrated with OV's existing records management system to bring efficiencies to complaints management practices.

Office-based environmental impacts

In August 2006 my office relocated to smaller premises on level 9 in the north tower of 459 Collins Street, Melbourne. The new premises are just over half the size of those previously occupied. This has generated significant savings in OV's rental, outgoings and office cleaning budgets. The savings have helped support OV's strategic priorities.

The relocation has also allowed us to reinforce our commitment to reducing the impact of office operations on the environment, particularly in the use of electricity. The following are quantitative measures of environmental performance against key indicators for the reporting period.

Electricity

Total electricity used in the office	383 gigajoules
Megajoules used per FTE staff member	9,343 megajoules
Megajoules used per m2 of office space	377 megajoules
Greenhouse gas emissions associated with power use	144 tonnes CO ₂ -e

As a result of the office moving to smaller premises, overall electricity use has been reduced by more than 43 per cent.

My staff continue to explore other ways to improve power efficiency, including the installation of networks to enable lights to be switched off in areas of the office which are unoccupied for short times and motion detectors which will automatically switch off lights in unoccupied individual offices. We will also explore the purchase of power generated from renewable sources under the Government's accredited Green Power scheme.

Waste

OV continues to recycle all paper, cardboard and plastics using identified and dedicated recycling bins throughout the office. The bin contents are cleared daily and deposited into recycling bins serving all tenants in the building.

Paper

Total paper used in office	838 reams
Reams of paper used per FTE staff member	20 reams

Water

There is no separate metering of water for the individual tenancies in the building, nor are we able to separate water usage for the base building and tenancies. The figures below are based on the net area occupied by OV as a proportion of the available rental space for the building overall. The figures therefore include base building water consumption.

Total water used by OV	917,000 litres
Litres of water used per FTE staff member	22,000 litres

Transportation

Passenger vehicle trip kilometres associated with OV operations:	
- total	30,990 km
- per FTE staff member	755 km
Petrol consumption from passenger vehicle use associated with OV operations:	
- total	2,872 litres
- per FTE staff member	70 litres
Greenhouse gas emissions associated with total fuel consumption from passenger vehicles:	
- total	9.66 tonnes CO ₂ -e
- per FTE staff member	0.24 tonnes CO ₂ -e

I have encouraged a reduction in the use of private cars by providing on-site bicycle parking and shower facilities for those who wish to cycle or walk to and from work. I have also enabled employees to pay for public transport tickets by way of fortnightly deductions from their salaries.

"FTE" means Full Time Equivalent as defined elsewhere in this report. That is, it does not include consultants, contractors and employees who were not on OV's payroll in the last full pay period of June 2007 but who may have used OV's resources during the course of the year. The reported consumption rate per FTE in the table therefore overstates the position.

The VIPP Act

The *Victorian Industry Participation Policy Act 2003* (the VIPP Act) requires public bodies to report on their implementation of the provisions of this Act. They are required to apply VIPP in all tenders over \$3 million that have their primary impact in metropolitan Melbourne, and in those over \$1m that have their primary impact in regional Victoria.

In the reporting period OV had no tenders to which this Act applied.

Consultancies

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

Four consultants were engaged by OV during 2006-07, at a total cost of \$133,000 excluding GST. One was in excess of \$100,000.

Declarations of private interests

My Deputy has 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 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 for which the provisions of the FOI Act do not apply. These documents are exempt.

In the reporting period I received seven FOI requests for documents held in my possession. Each request was dealt with within the constraints of the statutory exemptions which applied.

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 elsewhere in this report.

The Whistleblowers Protection Act

There were no whistleblower disclosures relating to OV during the reporting period.

Legislation

The Ombudsman is empowered by the following legislation:

Act	Responsible Minister	Purpose
<i>Ombudsman Act 1973</i>	Premier	Provides for the appointment of an Ombudsman and details the Ombudsman's role and functions.
<i>Corrections Act 1986</i>	Minister for Corrections	Empowers the Ombudsman to investigate complaints about actions of contractors managing prisons or police gaols.
<i>Freedom of Information Act 1982</i>	Attorney-General	Creates a right for the community to access information in the possession of government agencies and provides the Ombudsman with specific powers in relation to the investigation of FOI complaints and related functions.
<i>Whistleblowers Protection Act 2001</i>	Attorney-General	Empowers the Ombudsman to investigate disclosures of improper conduct engaged in by public bodies and public officers, including members of Parliament and municipal councillors.
<i>Transport (Miscellaneous Amendment) Act 2003</i>	Minister for Transport	Empowers the Ombudsman to investigate complaints about the actions of officers employed by private transport companies in exercising statutory duties in the detection of offences committed on public transport.
<i>Animals Legislation (Animal Welfare) Act 2003</i>	Minister for Agriculture	Empowers the Ombudsman to monitor compliance with: <ul style="list-style-type: none"> – the Prevention of Cruelty to Animals Act by approved inspectors of the RSPCA in their exercise of certain powers to enter, inspect and search premises – the Domestic (Feral and Nuisance) Animals Act by certain persons appointed by DPI and local councils.
<i>Charter of Human Rights and Responsibilities Act 2006</i>	Attorney-General	Empowers the Ombudsman to enquire into or investigate whether any administrative action is incompatible with a human right set out in the Charter of Human Rights and Responsibilities Act.
<i>Children, Youth and Families Act 2006</i>	Minister for Community Services	Empowers the Ombudsman to enquire into or investigate the administrative actions of not-for-profit, non-government providers of welfare services, i.e. registered community services.

disclosure
index

DISCLOSURE INDEX

OV's Annual Report 2006-07 is prepared in accordance with all relevant Victorian legislation. The following index facilitates identification of the office's compliance with statutory disclosure requirements.

Legislation	Requirement	Reference
Ministerial directions		
Report of operations		
Charter and purpose		
FRD 22A	Manner of establishment	10, 73
FRD 22A	Objectives, functions, powers and duties	63, 73, 74, 87
FRD 22A	Nature and range of service provided	3
Management and structure		
FRD 22A	Organisational structure	78
Financial and other information		
FRD 22A	Statement of workforce data and merit and equity	79
FRD 22A	Summary of the financial results for the year	94 - 97
FRD 22A	Significant changes in financial position during the year	94 - 97
FRD 22A	Operational and budgetary objectives and performance against objectives	73 - 86
FRD 22A	Major changes or factors affecting performance	n / a
FRD 22A	Subsequent events	n / a
FRD 22A	Application and operation of <i>Freedom of Information Act 1982</i>	63 - 65, 85, 86
FRD 22A	Compliance with building and maintenance provisions of <i>Building Act 1993</i>	n / a
FRD 22A	Statement on national Competition Policy	n / a
FRD 22A	Application and operation of the <i>Whistleblowers Protection Act 2001</i>	57 - 61, 85
FRD 22A	Details of consultancies over \$100,000	85
FRD 22A	Details of consultancies under \$100,000	85
FRD 12	Disclosure of major contracts	85
FRD 22A	Statement of availability of other information	78
FRD 22A	Occupational health and safety	83
FRD 15A	Executive officer disclosures	85
FRD 10	Disclosure index	88 - 89
FRD 24	Reporting of office-based environmental impacts by government departments	83 - 84
FRD 25	Victorian Industry Participation Policy disclosures	85

Legislation	Requirement	Reference
Ministerial directions		
Financial statements		
Financial statements required under Part 7 of FMA		
SD 4.2 (c)	Compliance with Australian accounting standards and other authoritative pronouncements	98
SD 4.2 (c)	Compliance with ministerial directions	94 - 97, 111
SD 4.2 (d)	Rounding of amounts	n/a
SD 4.2 (a)	Statement of recognised income and expense	96
SD 4.2 (c)	Accountable officer's declaration	111
SD 4.2 (f)	Model financial report	111
SD 4.2 (b)	Statement of financial performance	94
SD 4.2 (b)	Statement of financial position	95
SD 4.2 (b)	Statement of cash flow during the year	97
Other disclosures in notes to the financial statements		
FRD 9A	Departmental disclosure of administered assets and liabilities	98, 110
FRD 11	Disclosure of ex-gratia payments	n/a
FRD 13	Disclosure of parliamentary appropriations	94 - 97
FRD 21A	Responsible person and executive officer disclosures	107 - 108
FRD 23	Superannuation liabilities and disclosure	109





financials



AUDITOR GENERAL
VICTORIA

INDEPENDENT AUDIT REPORT

OFFICE OF THE OMBUDSMAN

To the Members of the Parliament of Victoria and the Ombudsman

Matters Relating to the Electronic Presentation of the Audited Financial Report

This auditor's report for the financial year ended 30 June 2007 relates to the financial report of the Office of the Ombudsman included on its web site. 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 below. 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 this web site.

The Financial Report

The accompanying financial report for the year ended 30 June 2007 of the Office of the Ombudsman which comprises an operating statement, balance sheet, statement of recognised income and expense, 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 Responsibility of the Ombudsman for the Financial Report

The Ombudsman is responsible for the preparation and the 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 judgment, 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 internal control relevant to the Ombudsman'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 Office'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 obtained is sufficient and appropriate to provide a basis for my audit opinion.


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. The Auditor-General, his staff and delegates comply 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 2007 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.

MELBOURNE
31 August 2007


D.D.R. Pearson
Auditor-General

OPERATING STATEMENT

For the year ended 30 June 2007

	Notes	2007 \$	2006 \$
Income			
Grants	1(b), 2	6,135,347	5,536,763
Resources Received Free of Charge	1(k), 2	853	32,049
		6,136,200	5,568,812
Expenses			
Employee Benefits	1(h), 3	3,896,394	3,578,355
Depreciation and Amortisation	1(d), 3	169,419	154,746
Capital Asset Charge	1(i)	197,000	18,000
Resources Provided Free of Charge	1(k)	4,054	187,881
Loss on Disposal of Non-Current Assets		33,128	-
Supplies and Services		1,784,222	1,821,467
Finance Lease Interest	1(f)	2,840	2,839
		6,087,057	5,763,288
Net Result for the Period	9(a)	49,143	(194,476)

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

BALANCE SHEET

As at 30 June 2007

	Notes	2007 \$	2006 \$
Current Assets			
Cash on Hand		1,000	1,000
Receivables	4	249,696	16,853
Total Current Assets		250,696	17,853
Non-Current Assets			
Receivables	4	99,464	-
Property, Plant and Equipment	5	435,168	1,109,695
Total Non-Current Assets		534,632	1,109,695
Total Assets		785,328	1,127,548
Current Liabilities			
Payables	6	326,118	905,853
Interest Bearing Liabilities	7	42,160	21,765
Provisions	8	651,835	526,104
Total Current Liabilities		1,020,113	1,453,722
Non-Current Liabilities			
Interest Bearing Liabilities	7	38,090	18,819
Provisions	8	99,464	76,489
Total Non-Current Liabilities		137,554	95,308
Total Liabilities		1,157,667	1,549,030
Net Liabilities		(372,339)	(421,482)
Equity			
Contributed Capital	9(b)	550,149	550,149
Accumulated Deficit	9(a)	(922,488)	(971,631)
Total Equity / (Deficit)		(372,339)	(421,482)

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

STATEMENT OF RECOGNISED INCOME AND EXPENSE

For the year ended 30 June 2007

	Notes	2007 \$	2006 \$
Net Income Recognised Directly in Equity		-	-
Net Result for the Period		49,143	(194,476)
Total Recognised Income and Expense for the Period		49,143	(194,476)

The above Statement of Recognised Income and Expense should be read in conjunction with the accompanying notes.

CASH FLOW STATEMENT

For the year ended 30 June 2007

	Notes	2007 \$	2006 \$
Cash Flows from Operating Activities			
Receipts from Government		5,874,493	8,255,923
Payments to Suppliers and Employees		(5,566,686)	(6,810,870)
Capital Asset Charge		(197,000)	(18,000)
Finance Costs		(2,840)	(2,839)
Net Cash Inflow from Operating Activities	16	107,967	1,424,214
Cash Flows from Investing Activities			
Payments for Property, Plant and Equipment		(100,799)	(1,903,398)
Net Cash (Outflow) from Investing Activities		(100,799)	(1,903,398)
Cash Flows from Financing Activities			
Proceeds from Capital Contribution by State Government		-	485,844
Repayment of Finance Leases		(7,168)	(6,660)
Net Cash Inflow / (Outflow) from Financing Activities		(7,168)	479,184
Net Increase In Cash Held		-	-
Cash at the Beginning of the Financial Year		1,000	1,000
Cash at the End of the Financial 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 2007

Note 1. Summary of Significant Accounting Policies

Statement of Compliance

This general purpose financial report has been prepared on an accrual basis in accordance with the Financial Management Act, Australian Accounting Standards and Interpretations. Accounting Standards include Australian equivalents to International Financial Reporting Standards (A-IFRS).

The financial report was authorised for issue by Mr. G E Brouwer (Ombudsman) on 29 August 2007.

Basis of Preparation

The financial report has been prepared on the basis of historical cost, except where noted. Cost is based on the fair values of the consideration given in exchange for assets.

In the application of 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.

Judgments made by Management in the application of accounting policies that have significant effects on the Financial Statements and estimates with a significant risk of material adjustments in the next year are disclosed throughout the notes in the Financial Statements.

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.

(a) Reporting Entity

The Financial Statements include all the controlled activities of the Office of the Ombudsman. With the approval of the Minister for Finance under the Financial Management Act, the reporting entity for the year ended 30 June 2005 included the activities of the Office of Police Integrity. The Office of Police Integrity prepared separate Financial Statements for the year ended 30 June 2006 and assets and liabilities de-consolidated as opening balances for the Office of Police Integrity at 1 July 2005 were:

Property, plant and equipment	2,820,057
Provisions	459,000
Payables	2,361,057

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).

(b) 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; determines whether a disclosure of improper conduct under the Whistleblowers Protection Act warrants investigation; and ensures compliance by designated agencies with the provisions of the Freedom of Information Act.

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.

(c) Income

All income received by the Office is generally required to be paid into the Consolidated Fund. Income becomes controlled by the Office when it is appropriated (to the Department of Premier and Cabinet) from the Consolidated Fund by the Victorian Parliament and applied to the purposes defined under the relevant appropriations Act.

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

(d) Depreciation of Property, Plant and Equipment

Depreciation is calculated on a straight-line basis to write off the net cost or revalued amount of each item of property, plant and equipment over its expected useful life to the Office. Estimates of remaining useful lives, residual values and depreciation method for all such assets are reviewed at least annually. The expected useful lives applicable for the years ended 30 June 2007 and 30 June 2006 were as follows:

Building Fitouts	10 years
Computer Equipment	4 years
Office Equipment	4 years
Furniture and Fittings	10 years

(e) Impairment of Assets

All non-current physical 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 by a charge to the Operating Statement except to the extent that the write-down can be debited to an Asset Revaluation Reserve amount applicable to that class of asset.

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. 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.

(f) 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.

Assets held under finance leases are recognised as assets of the Office at their fair value or, if lower, at the present value of the minimum lease payments, each determined at the inception of the lease. The corresponding liability is included in the Balance Sheet as a finance lease obligation.

Lease payments are apportioned between finance charges and reduction of the lease obligation so as to achieve a constant rate of interest on the remaining balance of the liability. Finance charges are charged directly against income.

The lease asset is depreciated on a straight line basis over the term of the lease, or where it is likely that the Office will obtain ownership of the asset, the expected useful life of the asset to the Office. Lease assets held at the reporting date, being motor vehicle leases, are being depreciated over 1 to 3 years.

Operating lease payments are charged to the Operating Statement in the periods in which they are incurred, as this represents the pattern of benefits derived from the leased assets.

(g) Payables

These amounts represent liabilities for goods and services provided to the Office prior to the end of the financial year and which are unpaid. The amounts are unsecured and are usually paid within 30 days of recognition.

(h) Employee Benefits

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

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

Superannuation

Defined contribution plans

Contributions to defined contribution superannuation plans are expensed when incurred.

Defined benefit plans

The amount charged to the Operating Statement in respect of defined benefit plan superannuation represents the contributions made by the Office to the superannuation plan in respect to the current services of current Office staff. Superannuation contributions are made to the plans based on the relevant rules of each plan.

The Office does not recognise any defined benefit liability in respect of the superannuation plan 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 administers and discloses the State's defined benefit liabilities in its Financial Statements.

(i) Capital Asset Charge

The capital asset charge is imposed by the Department of Treasury and Finance and 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 carrying amount of non-current physical assets.

(j) Contributed Capital

Consistent with UIG Interpretation 1038 *Contributions by Owners Made to Wholly-Owned Public Sector Entities*, grants received for additions to net assets are designated as contributed capital. Other transfers that are in the nature of contributions or distributions are also designated as contributed capital.

(k) Resources Provided and Received Free of Charge

Contributions of resources and resources provided free of charge are recognised at their fair 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.

(l) 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 because the Office performs a statutory function and is ultimately part of the State Government of Victoria, which guarantees payment of the Office's debts as and when they fall due.

(m) Functional and Presentation Currency

These Financial Statements are presented in Australian dollars, which is the Office's functional and presentation currency.

(n) New Accounting Standards and Interpretations

As at 30 June 2007, the following standards and interpretations (applicable to the Office) had been issued but were not mandatory for the 30 June 2007 reporting period. The Office has not adopted, and does not intend to adopt, these standards early.

AASB7 Financial Instruments: Disclosure and AASB2005-10 Amendments to Australian Accounting Standards [AASB132, AASB101, AASB114, AASB117, AASB133, AASB139, AASB1, AASB4, AASB1023 & AASB1038]. AASB7 and AASB2005-10 replace the disclosure requirements of AASB132 and are applicable for annual reporting periods beginning 1 January 2007. Application of the standards will have no direct impact on the amounts recognised in the Financial Statements but will impact the type of information disclosed in relation to the Office's financial instruments.

AASB101 Presentation of Financial Statements (revised). This removes Australian specific requirements from *AASB101*, including the Australian illustrative formats of the Operating Statement, Balance Sheet and Statement Of Recognised Income and Expense which entities were previously 'encouraged' to adopt in preparing their Financial Statements. Applicable for annual reporting periods beginning 1 January 2007. The impact on presentation is not expected to be significant.

Note 2. Income

	2007 \$	2006 \$
Income from Government		
Grants from the Department of Premier and Cabinet (note 1(b), 1(c))	6,021,499	5,536,763
Other Grants	113,848	-
Resources Received Free of Charge (note 1(k), 17)	853	32,049
Total Income	6,136,200	5,568,812

Note 3. Expenses

	2007 \$	2006 \$
The net result for the period includes the following expenses:		
Employee Benefits		
Salaries and Wages	3,069,897	2,975,379
Superannuation		
- Defined Contribution Plans	214,840	157,625
- Defined Benefits Expense	30,859	40,746
Annual and Long Service Leave Expense	362,468	204,444
Other On-Costs	218,330	200,161
Total Employee Costs	3,896,394	3,578,355
Depreciation		
Building Fitouts	28,583	52,351
Computer Equipment	95,600	69,818
Furniture and Fittings	38,124	27,174
Motor Vehicles under Finance Lease	7,112	5,403
Total Depreciation	169,419	154,746
Rental Expense Relating to Operating Leases		
Minimum Lease Payments	207,092	359,043
Auditors' Remuneration	9,600	9,600

Note 4. Receivables

	2007 \$	2006 \$
Current:		
Debtors	2,741	-
GST Recoverable	21,010	16,853
Amounts Receivable from Government Departments	225,945	-
	249,696	16,853
Non Current:		
Amounts Receivable from Government Departments	99,464	-
	99,464	-

Note 5. Property, Plant and Equipment

	2007 \$	2006 \$
Building Fitouts (including Construction in Progress) – at Cost	55,246	528,213
Less: Accumulated Depreciation	(3,810)	(65,121)
	51,436	463,092
Computer Equipment – at Cost	616,429	862,317
Less: Accumulated Depreciation	(408,395)	(399,379)
	208,034	462,938
Furniture and Fittings – at Cost	178,405	202,135
Less: Accumulated Depreciation	(82,631)	(58,672)
	95,774	143,463
Motor Vehicles under Finance Lease	96,736	49,902
Less: Accumulated Depreciation	(16,812)	(9,700)
	79,924	40,202
	435,168	1,109,695

Reconciliation of Movements

	2007 \$	2006 \$
Building Fitouts (including Construction in Progress)		
Carrying Amount at Start of Year	463,092	675,056
Deconsolidation of Opening Balances for Office of Police Integrity (note 1(a))	-	(101,040)
Additions	55,547	-
Transfers between classes	-	(58,573)
Net Transfers to Other Government Divisions	(403,572)	-
Disposals	(35,048)	-
Depreciation Expense (note 3)	(28,583)	(52,351)
Carrying Amount at End of Year	51,436	463,092
Computer Equipment		
Carrying Amount at Start of Year	462,938	875,623
Deconsolidation of Opening Balances for Office of Police Integrity (note 1(a))	-	(1,500,721)
Additions	7,851	431,841
Net Transfers (to)/from Other Government Divisions	(167,155)	32,049
Transfers between classes	-	693,964
Depreciation Expense (note 3)	(95,600)	(69,818)
Carrying Amount at End of Year	208,034	462,938
Furniture and Fittings		
Carrying Amount at Start of Year	143,463	1,633,835
Deconsolidation of Opening Balances for Office of Police Integrity (note 1(a))	-	(1,048,389)
Additions	39,320	220,582
Net Transfers to Other Government Divisions	(48,885)	-
Transfers between classes	-	(635,391)
Depreciation Expense (note 3)	(38,124)	(27,174)
Carrying Amount at End of Year	95,774	143,463
Motor Vehicles under Finance Lease		
Carrying Amount at Start of Year	40,202	215,512
Deconsolidation of Opening Balances for Office of Police Integrity (note 1(a))	-	(169,907)
Additions	46,834	-
Depreciation Expense (note 3)	(7,112)	(5,403)
Carrying Amount at End of Year	79,924	40,202

Note 6. Payables

	2007 \$	2006 \$
Creditors and Accruals	326,118	353,998
Amounts Payable to Other Government Agencies	-	551,855
	326,118	905,853

Note 7. Interest Bearing Liabilities

	2007 \$	2006 \$
Current:		
Secured		
Lease Liabilities	42,160	21,765
Non-Current:		
Secured		
Lease Liabilities	38,090	18,819
Aggregate Carrying Amount of Interest Bearing Liabilities		
Current	42,160	21,765
Non-Current	38,090	18,819
	80,250	40,584
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	79,924	40,202

Note 8. Provisions

	2007 \$	2006 \$
Current:		
Employee Benefits		
- Annual Leave	179,169	202,632
- Long Service Leave		
Expected to be paid within 12 months	68,000	29,531
Expected to be paid after 12 months	274,903	263,120
- Performance Bonus	25,512	30,821
- Other	104,251	-
	651,835	526,104
Non-Current:		
Employee Benefits		
- Long Service Leave	99,464	76,489
Aggregate Carrying Amount of Provisions		
Current	651,835	526,104
Non-Current	99,464	76,489
	751,299	602,593

Note 9. Equity and Movements in Equity

	2007 \$	2006 \$
(a) Accumulated Deficit		
Accumulated Deficit at the Start of the Period	(971,631)	(777,155)
Net Result for the Period	49,143	(194,476)
Accumulated Deficit at the End of the Period	(922,488)	(971,631)
(b) Contributed Capital		
Balance at the Start of the Period	550,149	64,305
Capital Contributions by Victorian State Government	616,411	485,844
Capital Distributions to Victorian Government Agencies	(616,411)	-
Balance at the End of the Period	550,149	550,149

Note 10. Financial Instruments

(a) Financial Risk Management Objectives

The Office does not enter into or trade financial instruments, including derivative financial instruments, for speculative purposes.

(b) Credit Risk Exposures

The Office does not have any significant credit risk exposure to any single counterparty or any group of counterparties having similar characteristics. The credit risk on financial assets of the Office which have been recognised in the Balance Sheet is generally the carrying amount, net of any provisions for doubtful debts.

(c) Interest Rate Risk Exposures

The Office is not exposed to any significant interest rate risk. 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 weighted average interest rate for lease liabilities for the year ended 30 June 2007 was 6.8% (2006 - 6.3%).

(d) Fair Value of Financial Assets and Liabilities

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 11. Responsible Persons

In accordance with the Ministerial Directions issued by the Minister for Finance under the Financial Management Act, the following disclosures are made regarding responsible persons for the period.

Names

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 Steve Bracks, 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:

\$330,000 - \$339,000 (\$310,000 - \$319,999 in 2006)

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 12. 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.

	Total Remuneration		Base Remuneration	
	2007 No.	2006 No.	2007 No.	2006 No.
\$140,000-\$149,999	-	-	-	1
\$150,000-\$159,999	-	1	-	-
\$190,000-\$199,999	-	-	-	1
\$200,000-\$209,999	-	1	1	-
\$220,000-\$229,999	1	-	-	-
Total Numbers	1	2	1	2
Total Amount (\$)	223,487	363,374	207,320	349,374

Note 13. Contingent Liabilities and Contingent Assets

There are no contingent liabilities or contingent assets for the Office of the Ombudsman at 30 June 2007 or 30 June 2006.

Note 14. Commitments for Expenditure

	2007 \$	2006 \$
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	229,912	406,630
Later than 1 year but not later than five years	956,350	1,678,959
Later than five years	1,002,422	24,976
	2,188,684	2,110,564

	2007 \$	2006 \$
Finance Lease Commitments		
Commitments in relation to finance leases are payable as follows:		
Within one year	46,383	23,957
Later than one year but not later than five years	41,889	19,847
Later than five years	-	-
Minimum Lease Payments	88,272	43,804
Less: Future finance charges	(8,022)	(3,220)
Total Lease Liabilities	80,250	40,584
Shown in the Financial Statements as:		
Current (note 7)	42,160	21,765
Non-Current (note 7)	38,090	18,819
	80,250	40,584

Note 15. Superannuation

No liability is recognised in the Balance Sheet for the Office's share of the State's unfunded superannuation liability. The State's unfunded superannuation liability has been reflected in the Financial Statements of the Department of Treasury and Finance.

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

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

Defined Benefit Funds

Government Superannuation Office

- 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 for the Reporting Period to Net Cash Inflow / Outflow from Operating Activities

	2007 \$	2006 \$
Net Result for the Reporting Period	49,143	(194,476)
Depreciation and Amortisation	169,419	154,746
Net Resources (Received)/Provided Free of Charge	3,201	(32,049)
Loss on Disposal of Non-Current Assets	33,128	-
Change in Operating Assets and Liabilities, net of effect of Capital Contributions *		
(Increase)/Decrease in Receivables	284,105	59,435
Increase/(Decrease) in Payables	(579,735)	1,577,610
Increase/(Decrease) in Provisions	148,706	(141,052)
Net Cash Inflow / (Outflow) from Operating Activities	107,967	1,424,214
* Change in Operating Assets and Liabilities in 2006 was net of the effect of deconsolidating the Office of Police Integrity.		

Note 17. Non-Cash Financing and Investing Activities

During the period, net assets amounting to \$3,201 were transferred from the Office to other Government Divisions and accounted for as resources transferred free of charge in the Operating Statement. Additionally, assets amounting to \$616,411 transferred to the Office of Police Integrity during the year were accounted for as Capital Distributions. During the period, motor vehicles with a fair value of \$46,834 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, Operating Statement and Cash Flow Statement, the Office administers or manages activities on behalf of the State. The transactions relating to these State activities are reported as Administered in this note. During the year, administered transactions comprised revenue from the Victorian WorkCover Authority and Transport Accident Commission totalling \$404,015 (2006 - \$478,000) for the conduct of investigative services. Administered receivables at the end of the year amounted to \$242,409 (2006 - \$Nil)

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, applicable Financial Reporting Directions, Australian Accounting Standards and other mandatory professional reporting requirements.

We further state that, in our opinion, the information set out in the Operating Statement, Balance Sheet, Statement of Recognised Income and Expense, Cash Flow Statement and Notes to the Financial Statements, presents fairly the financial transactions during the year ended 30 June 2007 and financial position of the Office as at 30 June 2007.

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



Peter Goddard
Chief Financial Officer
Department of Premier and Cabinet

Melbourne
29 August 2007



G E Brouwer
Ombudsman
Office of the Ombudsman

Melbourne
29 August 2007



**whistleblowers
protection act
2001**

WHISTLEBLOWERS PROTECTION ACT 2001 OMBUDSMAN'S GUIDELINES

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OMBUDSMAN'S GUIDELINES

Objects of the Act

The main objective of the *Whistleblowers Protection Act 2001* (the Act) is to encourage and facilitate the making of disclosures of improper conduct 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. 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
- officer holders appointed by 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 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
- 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 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 agency to ensure that its policies and procedures reflect the current Act, Regulations and Guidelines. Each agency 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 is 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 calls and emails.
- 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.

What 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 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.
- It reduces requirements for the training of staff.

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

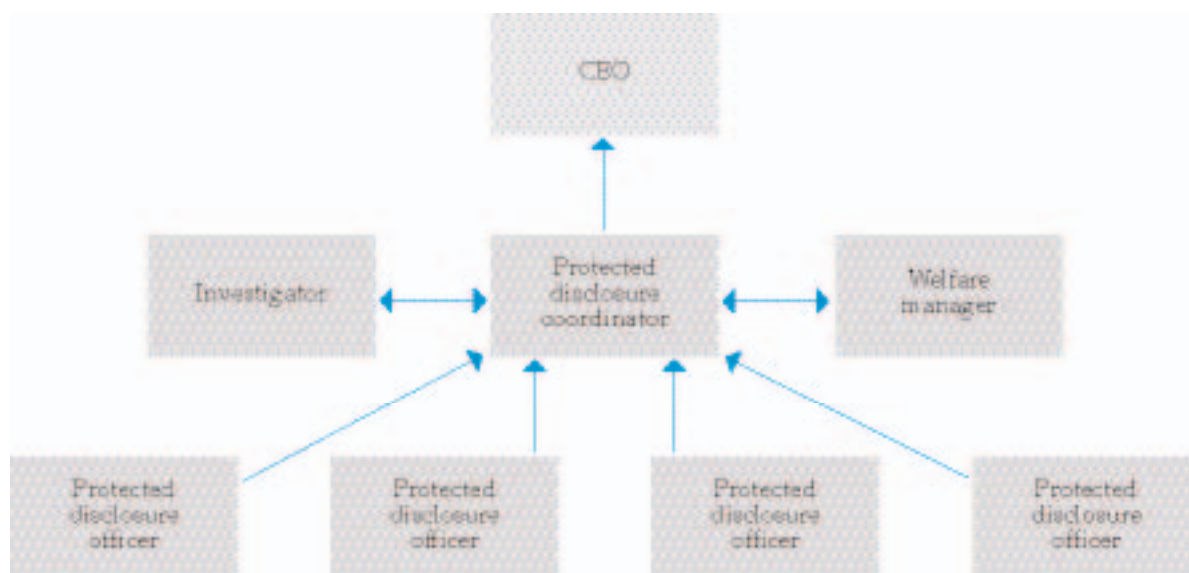
- take all necessary steps to ensure the identity of the whistleblower and the identity of the person who is the subject of the disclosure are kept confidential
- liaise with the chief executive officer of the public body.

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.

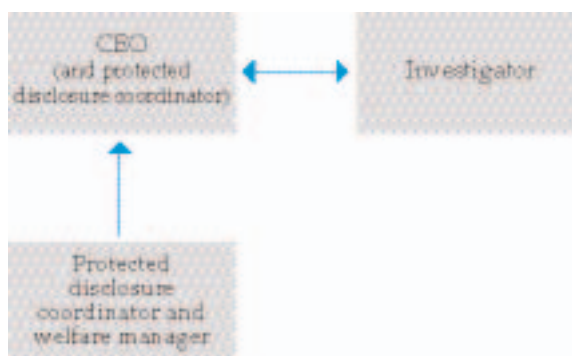
Model reporting system for a large organisation

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:



Model reporting system for a small organisation

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



ENSURING CONFIDENTIALITY

Policies and procedures need to take into account the obligation to ensure non-disclosures 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 to Parliament that might lead to the identification of a person against whom a protected disclosure is made.

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 page 126 for information about detrimental action that amounts to a reprisal and page 131 on managing the welfare of the whistleblower.

ESTABLISHING A CONFIDENTIAL ELECTRONIC AND PAPER FILING SYSTEM

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

- all paper and electronic files are secure and can only be accessed by authorised officers
- all printed material is kept in files that are clearly marked as a Whistleblowers Protection Act matter and include a prominent warning on the front of the file that criminal penalties apply to any unauthorised divulging of information concerning a protected disclosure
- any files saved on a floppy disk or CD-Rom or other disc are password protected
- any other material, such as tapes from interviews, are stored securely with access only to 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, the relevant parts of the legislation, particularly their confidentiality obligations and resulting 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 source of possible whistleblower disclosures include:

- correspondence, including faxes
- 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.

The table below sets out the 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 between 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 and considering 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 agency must determine if the information also satisfies Part 4 of the Act to be a public interest disclosure. Section 28 requires the public agency 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. A protected disclosure 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 have reasonable grounds for believing 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 official. 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 official) 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 foregoing 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:

- (a) bribery
- (b) blackmail
- (c) obtaining or offering secret commissions
- (d) fraud
- (e) theft
- (f) perverting the course of justice
- (g) embezzlement
- (h) election offences
- (i) tax and revenue evasions
- (j) 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 the office of the Ombudsman 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 favours unmeritorious applications for jobs or permits by friends and relatives.

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 and 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, and
- 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 and associates in subsequent applications for jobs, permits or tenders.

Reasonable grounds for belief

The phrase “reasonable grounds for belief” 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 is 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 whistleblower or individuals that have provided them with information may also be considered in determining if the individual has reasonable grounds for the belief.

NOTIFICATION OF THE DECISION

Where a public body determines 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 determination. 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 made through the public body’s general complaints mechanisms.

If the reason for the determination is based upon the failure of the person to support reasonable grounds for the belief that improper conduct 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 determination.

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 determines 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 assess 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 an assessment to be made of 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 determination made 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 making this determination 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 prima facie 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.

Determination of 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.

Determination 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:

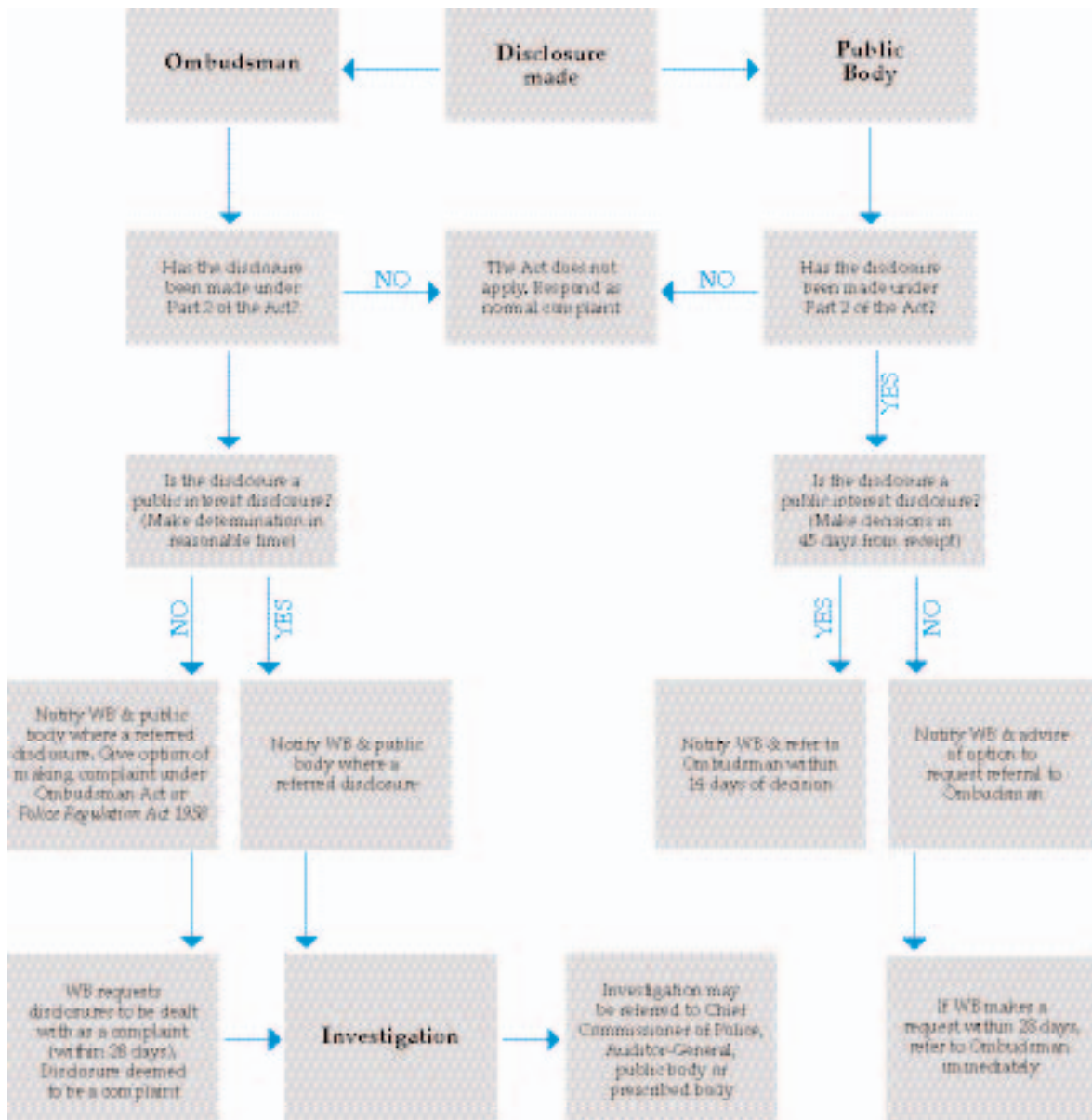
1. Notify the person who made the disclosure within 14 days of that conclusion, and
2. Advise that person that he or she may request the public body to refer the disclosure to the Ombudsman for a formal determination as to whether the disclosure is a public interest disclosure, and that this request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



POSSIBLE CRIMINAL CHARGES, LEGAL ACTION AND DISCIPLINARY PROCEEDING

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 (\$25,155) 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 or investigation of a protected disclosure without legislative authority.

Maximum penalty: a fine of 60 penalty units (\$6,289) 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 (\$25,155) 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 (\$25,155) 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 the 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 subject of the investigation: section 81.

Managing the welfare of the whistleblower

The protection of genuine 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 both 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 objective of any investigation, what action the public body might be able to take, and the reasons why this decision has been made.

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 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.

cont...

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 complaints 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 by 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.

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 enquiry 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 agency 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 agency 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 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 should 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.
- A decision should not be made until all reasonable enquiries have been made.
- 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 whistleblowers 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 tape-recorded to enable an accurate record of the interview to be kept. The investigator should ask the witness to identify him/herself at the commencement of the interview 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 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 protection 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, possibly, 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 in 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 a hearing 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
 - the person is dissatisfied with the manner in which the public body is carrying out the investigation
 - the person is dissatisfied with the steps taken by the public body after the investigation of the matter
 - the 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 investigation

Sections 81 to 83 of the Act set out the requirements of 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 reoccurring, 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

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- 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 agencies should ensure that any of its officers handling freedom of information requests are aware of this section. A public agency should contact the Ombudsman prior to providing any document originating from the Ombudsman under the Freedom of Information Act.

Contact details

Ombudsman Victoria

Level 9, North Tower, 459 Collins Street
Melbourne VIC 3000
DX 210174 Melbourne

Tel: (03) 9613 6222

Toll Free: 1800 806 314

Internet: www.ombudsman.vic.gov.au

Ombudsman: Mr George Brouwer

freedom of
information

FREEDOM OF INFORMATION

This section contains information that is required to be published annually under Part II of the FOI Act.

Certain documents in my office's possession are exempt from the FOI Act pursuant to section 29A of the Ombudsman Act. Documents that disclose the following information are exempt:

- a complaint
- an enquiry under Part IIIA to determine whether an investigation should be conducted
- an investigation under Part IV
- a report made under Part IV
- a recommendation made under Part IV.

Therefore, the majority of documents in my office's possession are exempt from the Act.

Categories of documents

OV holds information related to:

- investigations, including complaints, correspondence and file notes regarding consultations with complainants, agencies and other information sources
- background material, records of conversation, analysis and advice
- the development or implementation of policy and legislation.

The various reports dealing with issues of public interest are tabled in Parliament and posted on OV's website at www.ombudsman.vic.gov.au

Other types of documents that are maintained in my possession include:

- internal administrative and operational documents
- internal policy and procedural documents
- personnel documents
- accounting records.

It should be noted that certain documents are destroyed or transferred to the Public Records Office in accordance with the *Public Records Act 1973*.

FOI arrangements

The following arrangements are in operation in my office:

Access to records

An authorised officer deals with all requests for access to records held by my office. Applicants seeking access to documents should attempt to specify the topic of interest rather than the file series in which the applicant considers the document might exist. Assistance in specifying the topic is available from the authorised officer.

Forms of request for access

Applicants are required by the FOI Act to submit an application in writing requesting access to documents. A letter clearly describing the document or documents sought is sufficient. The letter should specify that the application is a request made under the FOI Act and should not form part of a letter on another subject. The applicant should provide the following information:

- name
- address
- telephone number
- details of document(s) requested
- form of access required—eg. copy of documents, inspection of file, or other.

A request for a correction or amendment of personal information contained in a document held by my office must be made in writing. It should specify particulars of how and why the person making the request believes the information to be incorrect, incomplete, misleading or out-of-date and specify the amendments that they wish to make.

The request should be addressed as follows:

Mr John Taylor
Deputy Ombudsman
Level 9 North Tower
459 Collins St
Melbourne VIC 3000

An authorised officer can also be contacted on tel. (03) 9613 6222 for assistance with queries about making an application.

Charges

An application fee of \$21.00 is required unless evidence of hardship is provided. Applicants are advised that other charges may be made in accordance with the *Freedom of Information (Access Charges) Regulations 2004*.

Appeals

Applicants may appeal against a decision made in response to requests for access to documents and for amendment of records, or against the cost levied for allowing access to documents. Information about the appropriate avenue of appeal will be conveyed to the applicant in the letter advising of the initial decision. Applicants are advised to consult Part 4 of the FOI Act for further information about appeal rights.

Further information about the FOI Act can be obtained from the Act, the various regulations made under the Act, and www.foi.vic.gov.au

appendix

A

APPENDIX A:

ADOPTION OF RECOMMENDATIONS FROM OV REPORTS TABLED IN PARLIAMENT DURING 2006-07

INVESTIGATION INTO A DISCLOSURE ABOUT WORKSAFE AND VICTORIA POLICE HANDLING OF A BULLYING AND HARASSMENT COMPLAINT – APRIL 2007

Recommendation	Current Status	Respondent Agencies
WorkSafe		
I recommended that:		
1. WorkSafe properly investigate this matter by referring it to the appropriate area to conduct an investigation.	WorkSafe has commenced its investigation of the matter.	WorkSafe Victoria
2. WorkSafe review its practices and procedures regarding inspections and investigations, particularly the referral for investigation process.	WorkSafe has commenced a review.	WorkSafe Victoria
3. WorkSafe should issue an instruction to all staff that all significant meetings, internal communications, contacts with witnesses, and all dealings relating to complaints and other business activities which lead to decisions be formally recorded by way of a file note or minute.	Recommendation implemented.	WorkSafe Victoria
Victoria Police		
I recommended that:		
4. Victoria Police continue the investigation.	Victoria Police advises that its investigation is on hold pending the outcome of WorkSafe's investigation.	Victoria Police
5. The provisions of the Police Regulation Act be amended in relation to: <ul style="list-style-type: none"> - its interaction with the provisions of the Whistleblowers Protection Act - addressing the status of serving police officers being full-time paid union officials. 	Agreed to.	Victoria Police

OWN MOTION INVESTIGATION INTO THE POLICIES AND PROCEDURES OF THE PLANNING DEPARTMENT AT THE CITY OF GREATER GEELONG – FEBRUARY 2007

Recommendation	Current Status	Respondent Agencies
Nine recommendations made	8 of 9 recommendations implemented. The remaining recommendation - update the Councillor manual - is due for completion in time for the 2008 election.	City of Greater Geelong

OWN MOTION INVESTIGATION INTO CONDITIONS IN CUSTODY – JULY 2006

A. Conditions for persons held in police cells – Victoria Police

Recommendation	Current Status	Respondent Agencies
I made the following recommendations:		
1. Drunkenness should be decriminalised as an offence in line with the recommendation of the Parliamentary Inquiry into Public Drunkenness.	Under consideration.	Victoria Police
2. Make improvements to the reports from the POLCELL database of detainees in police custody to enable better monitoring of police cell use. This should include the recording of intoxicated persons and other vulnerable persons.	To be addressed under the E*Justice system.	Victoria Police
3. Liaise with Corrections Victoria to develop common definitions and criteria for persons who need 'protection', 'separation', or 'segregation' and ensure that training is provided to watch-house staff in this regard.	Liaison with Corrections Victoria commenced.	Victoria Police
4. Review the condition of all cell complexes.	All cells except Mildura completed.	Victoria Police
5. Ensure all new cells are fitted with a basin allowing access to drinking water.	All "A" category cells comply with this recommendation.	Victoria Police
6. Ensure all cells are equipped with duress alarm buttons, and that staff respond to alarms promptly.	All "A" category cell complexes are fitted with intercom/stentofon systems although some individual holding cells do not have alarms. This is being progressed by the Properties Branch.	Victoria Police
7. Review the camera surveillance systems in all watch-houses and upgrade those without digital recording capabilities. Watch-houses should have the capacity to hold all video recordings for not less than a month from the date of recording.	Victoria Police advises that all camera facilities will be upgraded to digital capacity.	Victoria Police
8. Ensure that all prisoners coming to police cells are aware of watch-house rules and the consequences of breaching them, in particular in relation to smoking.	Report sent to Assistant Commissioners for inclusion in Standing Operational Procedures (SOPs).	Victoria Police
9. Explore, in conjunction with Corrections Victoria and Court Services, ways of increasing the use of teleconferencing.	Working party formed.	Victoria Police
10. Liaise with Court Services to review the current system of listing court cases to reduce the need for holding detainees in police cells for lengthy periods.	Working party formed.	Victoria Police
11. DOJ upgrade court cells where necessary.	DOJ agreed.	DOJ

Recommendation	Current Status	Respondent Agencies
12. Review the conditions in which detainees are transported in police vehicles, in light of the above issues.	A needs analysis is to be undertaken. Victoria Police advises that nearly all prisoner transport is conducted by GSL Custodial Services.	Victoria Police
13. Appoint a central area to be responsible for the regular inspection of all police cells.	Implemented.	Victoria Police
14. Remind watch-house staff to pay close attention to any LEAP database risk warning regarding a detainee, especially relating to suicide/self-harm when receiving a detainee into custody.	Training issues have been identified and are included in the Welfare Training Package developed by Ballarat Divisional Training Officer (DTÖ).	Victoria Police
15. In conjunction with Corrections Victoria, use dedicated, trained Corrections Victoria staff for managing detainees in larger police cell complexes rather than police members.	Victoria Police agrees in principle to this recommendation.	Victoria Police
16. Ensure that detainees who are assessed as suffering from a serious medical condition are not held in police cells overnight.	Agreed.	Victoria Police
17. Liaise with Corrections Victoria so as to enable the number of vulnerable persons waiting in police cells for a bed at MAP to be reduced.	To be raised with DOJ and attended to in conjunction with DOJ's review of prisoner management. Victoria Police advises that this is largely out of police control.	Victoria Police
18. Make improvements to the facilities available to medical and nursing staff in watch-houses.	Victoria Police agrees and proposes to conduct an audit of older facilities to assess suitability and cost of compliance.	Victoria Police
19. Ensure the 2004 protocol between DHS Mental Health Branch and Victoria Police for the provision of psychiatric services to detainees in police cells is fully implemented.	Protocol currently being enhanced.	Victoria Police
20. Ensure that standard information about the watch-house rules is displayed in reception areas of police stations so it is visible to detainees.	Report sent to Assistant Commissioners for inclusion in SOPs regarding the display of fundamental rules in prisoner reception areas and where possible in internal yards.	Victoria Police
21. Explain such information to detainees and include details of visits, smoking, fire safety procedures, meals, how to make requests or complaints and other basic entitlements and amenities.	Report sent to Assistant Commissioners for inclusion in SOPs to ensure compliance with the emergency planning component of stations' Business Continuity Plan.	Victoria Police
22. Ensure that food quality within watch-houses is monitored by local Command, including random sampling of food by watch-house supervisors.	Report sent to Assistant Commissioners to include complaints process and service monitoring functions in SOPs.	Victoria Police
23. Replace all vinyl foam squares used as mattresses in police cells with a one-piece mattress as they deteriorate.	A prototype is currently in production and will be tested prior to any further decision being made.	Victoria Police

Recommendation	Current Status	Respondent Agencies
24. Ensure that all watch-houses are equipped with a tamper proof television in the cell complex.	All cells audited complied with this recommendation.	Victoria Police
25. Ensure that watch-house white boards containing detainee information are not visible to other detainees and visitors when standing at the charge counter.	Report sent to Assistant Commissioners for inclusion in SOPs that prisoner information should not be visible to other prisoners and visitors.	Victoria Police
26. Organise regular workshops or training sessions for watch-house staff to share good practices in custodial management and to help promote consistency across watch-houses.	Custody Welfare Training Package developed and rolled out to all DTOs.	Victoria Police
27. Review the adequacy of Victoria Police's Custody Welfare training package.	Training package has been developed. Distribution through DTO network will occur at the DTO monthly meeting.	Victoria Police
28. Ensure that Melbourne Custody Centre is used as a daytime holding centre where prisoners are only held overnight or over a weekend.	Victoria Police agrees in principle to this recommendation. A new facility is planned for North Melbourne.	Victoria Police
29. Monitor cleanliness in cells on a regular basis.	Audits completed.	Victoria Police
30. Wherever possible, permit detainees who are there for more than a day access to fresh air for one hour per day, particularly where cells and 'yards' have no access to fresh air and/or natural light.	Properties Branch identifying some building locations which may be modified to allow for access to fresh air and natural light without compromising safety. Design of older stations may mean this recommendation is not achievable in some instances.	Victoria Police
31. Review the lighting levels in all cells and where possible install day and night-light sensitive cameras so that lights within cells can be switched off at night. Where this is not possible, cells should have 'dimmer' switches installed which provide sufficient light for the cameras at night.	Properties Branch to action this recommendation with Treasury funds.	Victoria Police
32. Permit reasonable access by detainees to telephones and letter writing facilities at all police stations so that they can contact legal representatives and family.	Report sent to regional Assistant Commissioners to act upon. In addition the Melbourne Custody Centre has a process for letter writing. Report sent to Assistant Commissioners for inclusion in SOPs.	Victoria Police
33. Permit visits to detainees in police custody consistent with what is allowed in prison for both professional and non-professional visits. Watch-house management should ensure that this is complied with.	The design of some buildings prevents personal prisoner visits without compromising safety and security.	Victoria Police
34. Visiting hours should be communicated to detainees when they are received into the watch-house and such visits should be facilitated.	Agreed subject to above.	Victoria Police

Recommendation	Current Status	Respondent Agencies
35. Non-professional visits should be introduced at Frankston immediately.	Design of station prevents personal prisoner visits without compromising safety and security. Properties Branch is reviewing building design to identify if there is any way to facilitate this recommendation.	Victoria Police
36. Facilitate access to a set of clean clothes for each detainee either through their own family or friends, or else from the Salvation Army or other welfare services.	All stations have a procedure in place to provide prisoners with a clean set of clothes.	Victoria Police
OWN MOTION INVESTIGATION INTO CONDITIONS IN CUSTODY – JULY 2006		
B. Corrections Victoria		
I made the following recommendations:		
1. Equip all prison cells with duress alarm buttons incorporating intercoms which must be operative and able to be responded to promptly by staff.	Completed. All cells are equipped with either an intercom or a duress alarm. In minimum-security facilities, common areas and shared accommodation are equipped with either an intercom or duress alarm, or a combination of both.	Corrections Victoria
2. Ensure that duress alarm buttons are tested in all prison cells on a regular basis.	Completed. Prison general managers advise that testing frequency meets or exceeds manufacturers' requirements. A Commissioner's Requirement was issued in January 2007 regarding the maintenance and testing of prison cell intercoms.	Corrections Victoria
3. Complete the building program at Ararat Prison as soon as possible to enable a reduction in the numbers of prisoners per cell and the elimination of four-bed cells.	Ongoing/on track to complete all building works by end of reporting period.	Corrections Victoria
4. Review its procedures for maintenance repairs in prisons so that they are promptly dealt with.	Ongoing. A prison infrastructure master planning process has now commenced and will consider facilities maintenance and upgrade requirements across the prison system.	Corrections Victoria
5. Ensure that the yard in the Acacia Unit at Barwon Prison is provided with a toilet, as a matter of urgency.	Completed. Three toilets operational as at 6 October 2006.	Corrections Victoria
6. Refurbish the facilities at Ararat and Tarrengower Prisons.	On track to complete all building works by the end of reporting period.	Corrections Victoria
7. Review the criteria and use of the current P1 rating policy and related procedures.	On track. Corrections Victoria continues to work with health service providers and it is expected that agreement regarding "P" definition revisions and the screening tool will be reached with all providers by the end of reporting period.	Corrections Victoria
8. Introduce greater flexibility in the current classification procedures, including a model which allows the movement of prisoners from maximum security to fill empty beds in other facilities, if necessary with security upgrades in selected units.	Not accepted by Corrections Victoria, which is satisfied that current classification procedures retain sufficient flexibility to progress prisoners through the system, and that the upgrade of selected units to house maximum security prisoners at medium and minimum security prisons is not likely to be considered as an option.	Corrections Victoria

Recommendation	Current Status	Respondent Agencies
9. Consider expanding Home Detention and Weekend Leave programs in appropriate circumstances, in conjunction with the Adult Parole Board.	Not accepted by Corrections Victoria. This program has been subjected to several reviews. Two further Administrative Status Reports were conducted in November 2004 and November 2006. The recommendations of the most recent report were accepted by the Minister for Corrections and, at this time, there is no intention to further review the eligibility criteria, in particular to establish a weekend-leave program.	Corrections Victoria
10. Review the number of Aboriginal Wellbeing Officers (AWO).	Completed. Corrections Victoria received ERC funding to employ one more AWO in the 2006-07 financial year and another the following year, on an ongoing basis.	Corrections Victoria
11. Ensure that designated facilities are available at each prison to accommodate the needs of intellectually and physically disabled prisoners.	Corrections Victoria recently developed the Disability Framework 2007-2009 comprising 64 actions and seven objectives. These are being progressively implemented.	Corrections Victoria
12. Ensure that prison staff have access to qualified interpreters if required.	All prison general managers have confirmed adherence and compliance with Correctional Management Standard 38 (Prisoners from Culturally and Linguistically Diverse Backgrounds) and Director's Instruction 2.9 (Prisoners from non-English Speaking Backgrounds).	Corrections Victoria
13. Recruit staff from multicultural backgrounds to work within prisons.	Centralised DOJ prison-recruitment staff were appointed in October 2006. Advertisements were placed in the Vietnamese Times, Indigenous Times and Il Globo. Information forums have also been held to attract Indigenous people to work at Corrections Victoria.	Corrections Victoria
14. Ensure that the information the Sentence Management Unit receives in regard to 'protection' prisoners is current and appropriately utilised when deciding whether a prisoner requires 'protection' status or not and where they are to be placed.	Management and assessment of protection prisoners remains an ongoing focus for the Sentence Management Unit. This issue was identified in a review report and an action plan has been completed by Corrections Victoria addressing all of these issues.	Corrections Victoria
15. Develop a protocol with Victoria Police on a uniform definition of 'protection' status, incorporating segregation/separation needs for persons in custody.	Completed. The standardisation of an agreed protection status and recommended set of actions has been incorporated in the CJEP Risks and Recommended Actions module that was implemented on 3 July 2006 across Victoria Police and Corrections Victoria. Also reflected in Commissioner's Requirement No 4, 2006.	Corrections Victoria
16. Ensure that 'protection' prisoners are not held in management units, due to a lack of appropriate beds, for any longer than is necessary.	Should a protection prisoner be accommodated in a management unit, as soon as a protection bed becomes available, priority is given to that prisoner over any incoming receptions. Reconfiguration work has seen a net increase of 15 protection beds in the system. The matter continues to be a priority.	Corrections Victoria

Recommendation	Current Status	Respondent Agencies
17. Ensure that the recommendations made by the Coroner into the deaths in prison are promptly implemented, including the recommendations made in relation to the deaths in Port Phillip Prison (2002) and Beechworth Prison (2002).	All coronial recommendations are evaluated by Corrections Victoria and, if accepted, implemented. Corrections Victoria is currently redeveloping its monitoring processes and procedures for all coronial inquiry recommendations, with regular reporting to the Corrections Victoria Leadership Team.	Corrections Victoria
18. Extend prison peer educator and peer listener programs to prisoners in management units.	Recommendation not accepted by Corrections Victoria. Peer-educator and peer-listener programs will not be extended to prisoners in management units due to the increased risk of trafficking of substances and/or information by prisoners used as peers or listeners, and because the security of those units would potentially be compromised by peers having access to different parts of the units and different prisoner groups.	Corrections Victoria
19. Provide training and regular debriefing for peer educators by professional staff.	Completed. The Director, Prison Services instructed public prison general managers to amend local operating procedures by 30 November 2006 to reflect this requirement.	Corrections Victoria
20. Regularly monitor standards for the quality and quantity of food.	Ongoing. Prison general managers advised that they are adhering to Correctional Management Standard 18 (Food) and Director's Instruction 4.3. Review of public prisons' adherence to relevant policies to occur.	Corrections Victoria
21. Review the provision of food in prisons in respect of expenditure to ensure basic nutritional requirements for adults are being met.	Ongoing - see previous	Corrections Victoria
22. Review the contractual arrangements and the monitoring and auditing of the provision of health care in prisons, including mental health care, in conjunction with DHS to address deficiencies.	Completed. DOJ and DHS have jointly reviewed the model of prison health service delivery. Directions of that review have been endorsed. Changes to be implemented progressively over 2007-08.	Corrections Victoria
23. Ensure that prisoners attending medical appointments do not lose their cell/bed and work-related privileges.	Not accepted. However, prisons try to enable returning prisoners to 'fast track' their way back to their original cells or work positions.	Corrections Victoria
24. Give priority to the completion and implementation of Corrections Victoria's Communicable Diseases Policy. This should include making condoms available in all male prisons.	Ongoing/on track. Finalisation of Communicable Diseases Policy nearing completion. A number of draft strategies have been put in place to reduce the transmission of BBVs/STIs among prisoners. No decision has been made to introduce condoms into Victorian prisons at this time.	Corrections Victoria
25. Liaise with the Commonwealth with a view to gaining access to Medicare for prisoners.	Completed. The matter was considered on 17 November 2006, at which time the Federal Minister for Health did not support a proposal that prisoners who are Australian citizens or residents be eligible for Medicare.	Corrections Victoria

Recommendation	Current Status	Respondent Agencies
26. Review mental health services for prisoners within all prisons. Wherever possible, access to mental health services for prisoners should minimise the need for transfer of the prisoner to other locations.	Completed. See Recommendation 22.	Corrections Victoria
27. Develop a strategy in conjunction with DHS to increase the number of places available for prisoners with severe mental health problems in a secure psychiatric hospital.	Supported by Corrections Victoria. As part of the Better Pathways Strategy, Corrections Victoria is establishing a 20-bed flexible intensive support unit at the Dame Phyllis Frost Centre for the treatment of women with mental health issues. It is expected that the facility will be commissioned in July 2007. Corrections Victoria is working in close consultation with DHS and Forensicare in the establishment of 20 additional secure beds at the Thomas Embling Hospital, with the commissioning of the Jardine Unit in May 2007. Similarly, Corrections Victoria is in consultation with DHS in the development of a proposal for a further 100-bed medium-security forensic facility.	Corrections Victoria
28. Provide prison officers with specific training in regard to mental illness and personality disorders.	Agreed.	Corrections Victoria
29. Review access to telephones across all prisons and in particular in the evenings, as well as for prisoners in management units.	Toll-free number introduced on 1 July 2006 so prisoners can phone OV during business hours.	Corrections Victoria
30. Actively seek to identify and develop employment opportunities for prisoners by attracting suitable contracts for industries within prisons.	Ongoing/on track.	Corrections Victoria
31. Liaise with the Adult Parole Board to ensure that there is better coordination in relation to assessment criteria regarding release and eligibility for parole.	Completed.	Corrections Victoria
32. Facilitate and extend post-release support for any prisoner exiting prison (including advice on access to long-term accommodation, community-based services and treatment programs, parenting and family support programs and sexual assault / family violence programs).	Ongoing/on track.	Corrections Victoria
33. Review its budget allocation to education and other programs.	Ongoing/on track.	Corrections Victoria
34. Ensure that prisoners are able to access appropriate courses and programs and maintain continuity throughout their sentence, particularly long-term prisoners.	Ongoing/on track.	Corrections Victoria

Recommendation	Current Status	Respondent Agencies
35. Lift bans on visitors once the period of the ban has been completed.	Ongoing/on track.	Corrections Victoria
36. Provide more information to visitors about prison rules and visiting procedures prior to them entering a prison. An information sheet should be provided in this regard.	Ongoing/on track.	Corrections Victoria
37. Remind prison staff working in the visitor reception areas that they should be civil to visitors at all times.	Completed.	Corrections Victoria
38. Ensure that prison officers thoroughly search prisoners when they transfer from prison to police watch-houses to attend court.	Completed.	Corrections Victoria
39. Ensure that regular prisoner representative meetings occur and that culturally diverse groups are represented. Processes for selecting prisoner representatives should be fair and transparent.	Completed.	Corrections Victoria
40. Ensure that a regularly updated copy of Corrections Victoria's Director's Instructions is available in prison libraries and is accessible to all prisoners.	Completed.	Corrections Victoria
41. Ensure that prisoners found not guilty of prison charges are reinstated with comparable entitlements/privileges to the ones they had previously held.	Completed.	Corrections Victoria
42. Ensure that both prisoners and visitors are aware of the requirements to conduct strip searches and that the consequences of refusal are explained.	Completed.	Corrections Victoria
43. Consider amending the <i>Corrections Act 1986</i> so that Emergency Management Days can be applied for, in appropriate circumstances, by sentenced and unsentenced prisoners who are subsequently sentenced, when they are held in excess of 48 hours in police cells.	Not accepted. Corrections Victoria believes that the recommendation is unlikely to meet the community's expectations of prisoners' entire sentences being served.	Corrections Victoria
44. Closely monitor the prison transport contract and consider a variation to the contract to ensure conditions which meet basic standards are part of the contractor's obligations.	Completed/ongoing.	Corrections Victoria

appendix **B**

APPENDIX B:

FURTHER OUTCOMES FROM REPORTS TABLED IN PARLIAMENT DURING 2005-06

REVIEW OF THE FREEDOM OF INFORMATION ACT – JUNE 2006		
Recommendation	Current Status	Respondent Agencies
Legislative recommendations		
I recommended that:		
1. Section 25 of the Act be amended in terms similar to section 22 of the Commonwealth FOI Act to enable agencies to delete material that is not within the scope of the request where deletion is both practicable and not contrary to the applicant's known wishes.	Implemented as part of the <i>Terrorism (Community Protection) Further Amendment Bill (2006)</i>	DOJ
2. – 10. Other recommendations.	These recommendations are being considered as part of the development of an FOI Amendment Bill due for introduction into Parliament in the Spring session of 2007.	Whole of government
Process recommendations		
I recommended that:		
11. & 12. Victorian FOI agencies adopt a range of practices, to be supported by practice notes issued by DOJ.	The 10 departments and Victoria Police have implemented those recommendations which were not already part of their standard procedures. Practice Notes addressing these issues have been drafted and posted on the FOI Online website.	Whole of government
13. DOJ issue practice notes setting acceptable standards for handling FOI requests, including decision letter and a set of standard-form letters.	Accepted. Practice Notes addressing these issues have been drafted and posted on the FOI Online website.	DOJ
14. DOJ provide advice to all FOI agencies on any significant developments in FOI, including legislative changes and decisions interpreting the Act.	Accepted. Agencies are advised of significant developments in FOI by direct notification (letter, e-mail, etc) and via FOI Online website.	DOJ
15. In addition to holding monthly meetings of department FOI managers, DOJ facilitate the sharing of experience and expertise among other FOI agencies.	DOJ accepted this recommendation and added: "The comments regarding the leadership role DOJ is to undertake in relation to FOI is encouraging – especially the fact that the report welcomes Justice's suggestion that DOJ issue FOI practice notes to provide guidance to departments and agencies in the operation of the FOI Act." DOJ has already convened a number of professional development seminars and regional FOI forums and more of each is planned.	DOJ

Recommendation	Current Status	Respondent Agencies
16. Victoria Police maintain more detailed data on FOI requests, particularly in relation to timeliness.	Completed. Victoria Police stated: "...we have recently upgraded the records management system used by the Freedom of Information Unit. The new database will enable more sophisticated statistical analysis than the previous system."	Victoria Police
Administrative recommendations		
I recommended that:		
17. Guidelines be issued indicating that where government agencies engage non-government entities to carry out functions prescribed by statute, they ensure that the terms of contract give the agency the right of access to documents produced in the course of performing those functions.	Victoria Police and all departments except DOI accepted this recommendation. DOI stated it already has an appropriate system in place to ensure it has access to all contractors' documents. Practice Notes addressing these issues have been drafted and posted on the FOI Online website.	Whole of government
18. A mechanism be implemented to collect and record the level of officers involved and the time spent responding to FOI requests.	Accepted by all departments and Victoria Police. To be implemented as part of the collection of data for the 2007–08 FOI Annual Report.	Whole of government
19. Agencies provide access to documents in electronic form where requested by applicants, unless it would be unreasonable to do so.	Accepted by all departments and Victoria Police. To be implemented, where appropriate.	Whole of government
20. Either a guideline be issued or the Act amended to define the expression 'routine request'.	Practice Notes addressing these issues have been drafted and posted on the FOI Online website.	Whole of government
21. Either a guideline be issued or the Act amended in relation to applying and waiving charges.	Accepted by DOJ. Practice Notes addressing these issues have been drafted and posted on the FOI Online website.	Whole of government
22. VCAT be given power to declare a person a vexatious applicant, with the effect that further applications by that person may be made only with the consent of VCAT.	Accepted by all departments and Victoria Police. This recommendation is being considered as part of the development of an FOI Amendment Bill due for introduction into Parliament in the Spring session of 2007.	Whole of government
23. Government departments and agencies review their compliance with Part II of the Act.	Accepted by all departments and Victoria Police. This recommendation is being considered as part of the development of an FOI Amendment Bill due for introduction into Parliament in the Spring session of 2007.	Whole of government
24. Part II be reviewed as a matter of urgency, giving consideration to adopting a system of publication schemes on the model of the United Kingdom FOI Act.	Accepted by all departments and Victoria Police. This recommendation is being considered as part of the development of an FOI Amendment Bill due for introduction into Parliament in the Spring session of 2007.	Whole of government

Recommendation	Current Status	Respondent Agencies
25. DOJ should monitor agencies' compliance with Part II.	Accepted by DOJ. This recommendation is being considered as part of the development of an FOI Amendment Bill due for introduction into Parliament in the Spring session of 2007.	DOJ

INVESTIGATION INTO PARKING INFRINGEMENT NOTICES ISSUED BY MELBOURNE CITY COUNCIL - APRIL 2006

Recommendation	Current Status	Respondent Agencies
Seven recommendations made.	All accepted and have been acted upon.	MCC

INVESTIGATION INTO THE HANDLING, STORAGE AND TRANSFER OF PRISONER PROPERTY IN VICTORIAN PRISONS - DECEMBER 2005

Recommendation	Current Status	Respondent Agencies
Nine recommendations made.	DOJ accepted all recommendations. In particular, tamper-proof, lockable tubs for prisoners' property were introduced to all prisons in June-July 2006.	DOJ

OWN MOTION INVESTIGATION INTO VICROADS REGISTRATION PRACTICES – JUNE 2005

Recommendation	Current Status	Respondent Agencies
20 recommendations made.	While VicRoads has implemented many of the recommendations, Recommendation 13 - either upgrade or replace the registration computer system - remains outstanding. VicRoads advises that funding has been allocated by government in 2007-08 to develop the business case for a replacement system.	VicRoads

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