Dealing with corruption in public administration – the Victorian experience.

John R Taylor – Deputy Ombudsman Victoria

Background

Whistleblowing is not a new phenomenon in Australia. There has been whistleblower legislation in some States and Territories since the mid 90’s. Victoria introduced its Whistleblower Protection Act in 2001. Since that time the Ombudsman has had the responsibility for determining public interest disclosures and their investigation.

My experience predates this. In 1995 I conducted the first Ombudsman investigation under the ACT Public Interest Disclosure Act 1994. Since that time I have investigated or managed numerous whistleblower investigations. My talk today reflects my experience as Deputy Ombudsman for Victoria.

Our Annual Reports over the past five years have highlighted the usefulness of the Whistleblowers Protection Act in identifying and addressing corruption. For example, our reports have dealt with the following areas where there is an opportunity for corrupt conduct to occur:

- The poor oversight of funds
- Improper use of equipment and property
- Misappropriation of assets
- Improper use of authority and position.

Our experience has reinforced this view. In 2009-2010 whistleblower complaints to Ombudsman Victoria increased 81.3 per cent over the previous year. This was also the busiest year in the 37 year history of the office, with a total of 21,074 complaints made to the office, as well as 11 investigation reports to Parliament on a wide range of topics.

The Whistleblowers Protection Act 2001

The Whistleblowers Protection Act (the Act) entrusts the Ombudsman with the responsibility for addressing all disclosures of improper conduct, including corrupt conduct, by public officials and public bodies in Victoria, including elected local councillors. It also provides protection for whistleblowers.

Whistleblowers perform an important role by ensuring that allegations of serious wrongdoing by public officials are reported and brought to light. In my view, whistleblowing should be encouraged by all public sector bodies and seen as a means of demonstrating an agency’s commitment to accountability, integrity and good public administration. In my experience some public sector bodies are yet to recognise the value of whistleblowing and continue to discourage reporting.
The Act also provides the office with significant intelligence about agencies, their cultures, attitudes and performance, and the opportunity to compare and contrast how agencies undertake their statutory responsibilities, thereby promoting the efficiencies and effectiveness of one agency for others to pursue.

**2008 Amendment**

In September 2008 the Act was amended to provide the Ombudsman with the ability to disclose the name of a person against whom a protected disclosure is made if the Ombudsman considers that it is in the public interest to do so.

In determining whether the identification of a person is in the public interest the Ombudsman must consider and report on the following particulars:

- The nature of the particulars to be disclosed
- The public interest to be served by the disclosure
- The reasons why confidentiality is not appropriate
- Whether the public interest could be met in a manner that is unlikely to lead to the identification of a person.

To date, we have used this provision on seven occasions:

- Bayside Health (The Alfred Hospital)
- Brimbank Council
- Brimbank Building Inspector\(^1\)
- Port Phillip Council\(^2\)
- Victoria Police Forensic Services Centre\(^3\)
- City of Casey councillor
- RMIT's School of Engineering.

In each case it was considered important that the individual involved not be able to hide behind the secrecy provisions of the Act and therefore not be accountable for their actions. This is particularly important in complaints when allegations of improper conduct by a person holding public office is established.

**Complaints data**

Whistleblower complaints increased dramatically during 2009-2010. We largely attribute this to an increase in confidence of whistleblowers to come forward and complain. This confidence may well have grown as a result of the publicity given to our reports to Parliament on whistleblower investigations, including:

- Brimbank\(^4\)
- The Alfred\(^5\)

---

The matters dealt with by this office generally involved complex investigations, interviewing significant numbers of witnesses and obtaining evidence by summons from a wide range of sources. In The Alfred investigation for example, information was obtained from a wide range of sources including State and Federal agencies, banks, telecommunications carriers and civilians.

The following figure illustrates the number of whistleblower complaints received over the past six years.

**Examples of corrupt conduct**

Under the provisions of the Act the Ombudsman can investigate disclosures about corrupt conduct, which is defined as:

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

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

---

6 Ombudsman Victoria, Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre, December 2009.
7 Ombudsman Victoria, Whistleblowers Protection Act 2001 Investigation into an allegation of improper conduct within RMIT’s School of Engineering (TAFE) – Aerospace, July 2010.
8 Ombudsman Victoria, Conflict of interest in the public sector, March 2008.
9 Ombudsman Victoria, Conflict of interest in local government, March 2008.
In his report on conflict of interest in the public sector the Ombudsman stated:

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

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

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

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

**How we investigate**

The Ombudsman has the powers of a Royal Commission (see s18(1) Ombudsman Act). He may:

- summons witnesses and/or documents
- examine on oath
- may regulate his procedures as he sees fit
- determine whether a person may be represented by a lawyer
- legal professional privilege does not apply to the Crown.

Our formal investigations usually involve witnesses being interviewed under oath. Most witnesses attend voluntarily, however where necessary we do issue summonses.

Interviews are always audio recorded and generally conducted in a purpose built interview room monitored by CCTV.

We use all appropriate means to gather evidence including:

- inspecting sites
- inspecting documents
- photographing scenes
- seeking out witnesses
- obtaining email and telephone records
- obtaining CCTV footage
- conducting surveillance
- obtaining criminal and other official records.

**Protecting whistleblowers**

Protecting whistleblowers against reprisals is essential to ensuring the effective operation of the Act. With this in mind, the Act provides that whistleblowers can make disclosures about detrimental action taken (or to be taken) against them in reprisal for making a protected disclosure. Detrimental action can involve intimidation, harassment, injury, suffering disadvantage, or loss of employment opportunities.
While it is a serious offence under the Act to take (or propose to take) detrimental action against a whistleblower, some agencies are still not taking adequate or proactive measures to protect whistleblowers against detrimental action. Senior management in an agency is responsible for ensuring that whistleblowers are protected from direct and indirect detrimental action.

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

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

Case Study 1 – Detrimental Action

A whistleblower raised concerns with her manager about the improper conduct of two of her staff. Later she approached Ombudsman Victoria and alleged that senior management failed to investigate the disclosure; inappropriately investigated her conduct as a whistleblower; and disciplined her following the investigation. Our investigation substantiated the allegations.

We also identified concerns in relation to how the department dealt with other complaints similar to those raised by the whistleblower. As a result, the Ombudsman recommended that the department:

• Review its handling of all complaints received in the preceding three years in relation to allegations of misconduct by departmental officers in the region.

• Compensate the whistleblower for the action taken against her in the workplace and for further acts of detrimental action by departmental officers.

Outcome

Our investigation found that senior management was biased against the whistleblower and failed to investigate their initial disclosure properly. We found all the allegations raised by the whistleblower proven. The department agreed to implement all the recommendations. The department also provided the whistleblower with a formal letter of apology and paid them compensation.

The senior management of an agency is responsible for ensuring that whistleblowers are protected from direct and indirect detrimental action. This responsibility also extends to the culture of the workplace which should support protected disclosures being made.

In my experience, whistleblowers who report improper conduct often require welfare support. Typically welfare support is usually only provided when a whistleblower asks for it. To compound the problem, the level of support is often insufficient. I consider that public sector agencies need to be more active in supporting whistleblowers and addressing issues early before they culminate in stress-related health problems.
Ombudsman’s guidelines

Section 69 of the Act requires that the Ombudsman must prepare and publish guidelines for procedures to:

- Facilitate the making of disclosures to public bodies
- For investigations of disclosed matters
- For the protection of persons from reprisals.

Our guidelines are revised and published annually in our Annual Report. They may also be found on our website at <http://www.ombudsman.vic.gov.au> under the topic ‘Whistleblowers’.

The Act also requires public bodies to establish procedures for whistleblowing, investigating disclosed matters and protecting whistleblowers from reprisals.

Failure to investigate whistleblower disclosures adequately

Under section 42 of the Act the Ombudsman can refer a public interest disclosure to the relevant public body to investigate in the first instance. This is a necessary step in many matters as our office is not sufficiently resourced to investigate all public interest disclosures. The Ombudsman then monitors the investigation undertaken by the public body. Unfortunately, we have identified shortcomings regarding several agencies’ investigations into public interest disclosures. Some of the recurring issues are:

- **Significant delays in completing investigations**

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

- **Agencies failing to comply with the Ombudsman’s Guidelines**

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

- **Breach of confidentiality provisions under the Act**

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

---

• **Conflicts of interest**

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

• **Providing witnesses with the opportunity to collude**

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

• **Poor quality of investigation reports**

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

---

**Case study 2 – Acceptance of gifts**

The Ombudsman received a whistleblower disclosure regarding the conduct of two teachers at a TAFE. It was alleged that the teachers had received $200 each from a businessman in order for the businessman to be awarded recognition of prior learning in certain subjects. The disclosure also alleged that the TAFE had failed to take action in relation to the matter despite being made aware of it. While the TAFE conducted an investigation into the allegation, its investigator had no investigation experience and had simply accepted the accounts provided by the teachers. As a result, we took over the investigation. Our officers interviewed the businessman as part of the investigation and he stated that it was common practice for him to provide gifts in business endeavours.

While the businessman maintained that his payment to the teachers was simply a gift, we concluded that he gave the money to the teachers in anticipation of receiving favourable treatment. During interview, one teacher confirmed that he had considered keeping the money. The Ombudsman concluded that this teacher had intended for the student’s papers to be marked favourably. The Ombudsman also concluded that the TAFE ought to have considered this matter to be of a serious nature and, if no adequate internal expertise existed, should have engaged an external agency to investigate the matter thoroughly.
• ** Agencies fail to record disclosures in their annual reports  

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

- the number and types of disclosures made to the public body during the year
- the number of disclosures referred to the Ombudsman for determination 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.

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

**Lack of awareness**

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

We recently examined the understanding and compliance of certain aspects of the Act by local government. The project randomly selected a sample of 20 councils of the 79 throughout Victoria. Approximately two-thirds of the sample failed to meet obligations under the Act. For example, council officers had not heard of the Act or misunderstood its provisions. Several councils in the sample examined did not train their staff in whistleblower disclosures and investigations and did not have adequate references to the Act on their websites or in their annual reports. One council employee told our officer that ‘we’re not in the whistleblower business here’.

While we have run educative sessions for staff from external agencies around the State to enhance their understanding and application of the Act, the Ombudsman considers that it is the duty of public sector agencies to educate their staff about legislation which governs their practices, investigations and more specifically, response to whistleblower disclosures.
Challenges

The Ombudsman stands for truth, honesty and integrity. Our role is to provide a check on the administrative decisions made in the public sector which impact on the life of the community and individuals. Our mission is to promote fairness, integrity, respect for human rights and administrative excellence in the Victorian public sector.

This has meant that at times the office has come under attack, particularly since our investigation into Brimbank Council. This in itself presents challenges, as the attacks can become personal, directed at the Ombudsman and individual staff.

Recently the NSW Ombudsman commented that:

The Victorian Ombudsman has made a few enemies by exposing a range of corrupt conduct and maladministration in government and local government bodies. He now finds himself having to defend his corner against the recommendations of the recent Proust review.11

Review of Whistleblower Protection Act

In his 2008 and 2009 annual report, the Ombudsman commented on the review of the Act which the Victorian Attorney-General had commenced in 2007. We have provided input to an interdepartmental committee with representatives from the Department Justice and the Department of Premier and Cabinet.

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

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

The federal proposal to include maladministration in its whistleblower legislation is in line with the Victorian Ombudsman’s views that administrative action can include corrupt conduct. However, the Ombudsman has recommended that the investigative provisions of the Whistleblowers Protection Act be rationalised into those of the Ombudsman Act, leaving the whistleblower act provisions to provide protections for whistleblowers. The result would see all investigations, from those arising from allegations of minor maladministration to those of serious corruption, being undertaken under the provisions of the one Act, the Ombudsman Act. This would provide a seamless and flexible capacity to undertake comprehensive investigations and to adapt quickly, efficiently and effectively to changes in the nature and scope of the issues which arise from time to time during the course of an investigation, without the need to change the legislative bases or cease an investigation.

11 Bruce Barbour, Living up to the Standards Corruption Prevention Network Conference, 9 September 2010.
The Whistleblowers Protection Act would contain only those provisions necessary to provide protections to whistleblowers. The Ombudsman considers this would provide better outcomes and any proposal to extend the Victorian whistleblower legislation to include maladministration would significantly blur the lines and confuse complainants as to the distinctions between the Ombudsman and Whistleblowers Protection Acts.

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

Review of Integrity Agencies

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

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

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

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

In his submission, the Ombudsman stated that Victoria was faced with two options but whatever the model proposed, the need is about overcoming the gaps in the current arrangements, to include all persons paid from the public purse in a transparent and equitable way. The two options raised were:

- to use the existing integrity bodies but with additional coverage to overcome the gaps which are obvious in existing arrangements in Victoria
- to establish a single all encompassing anti-corruption commission but in so doing to avoid the pitfalls and limitations evidenced in the current models in place elsewhere in Australia, such as demarcation issues, costs, dilution of investigatory effectiveness, definitional restrictions on what can be investigated and jurisdictional ambiguities as indicated above.
It is important to understand that the current powers available collectively to the integrity bodies in Victoria are equal to those of the interstate anti-corruption bodies. However, there are gaps in the coverage of existing legislation which should be addressed. The coverage should include all public officials, including:

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

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

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

The review report also proposed that VIACC would take over from Ombudsman Victoria responsibility for the administration of the Whistleblowers Protection Act. This will separate the responsibility for investigations of corrupt conduct which will fall to VIACC and administrative actions which will continue to fall to the Ombudsman. It will require the VIACC to meet definitional thresholds of criminal or dismissal offences before it can investigate. In our experience matters involving maladministration sometimes involve corruption and matters involving corruption usually also involve maladministration. In these cases, who will investigate? This establishes artificial boundaries between conduct that is corrupt or not. The extent and nature of issues are often not evident until investigations are underway: some investigations into administrative action turn out to be corrupt conduct and vice versa. In my experience, investigations require flexibility, not legislative barriers.

**Case Study 3 – Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council**

In August 2008 we received a complaint about matters raised in Parliament by an MP regarding allegations of ‘threats, bribery, intimidation, misuse of council funds, mismanagement, improper behaviour and councillors’ failure to govern’. We commenced an investigation into the allegations.

Early in the investigation we received two independent disclosures under the Whistleblowers Protection Act in relation to the alleged improper conduct of councillors at the council. The whistleblowers alleged:

- Councillors directed the CEO to improperly use council funds
- A councillor knowingly released confidential information
- A councillor demanded that funding be diverted.

The investigation revealed the council was generally dysfunctional and marked by infighting and interpersonal conflict. It was clear that the council had split into two groups, the ‘ruling faction’ and the minority councillors and that the council was unable to govern as a whole.
A range of significant issues were identified and investigated including:

- Improper influence of unelected persons
- Conflicts of interest
- Improper use of powers by the ‘ruling faction’
- Bullying and intimidation
- Misuse of council funds and equipment
- Inappropriate release of information
- Improper use of electoral information.

This investigation is a good case in point. It would be useful to examine how the particular model being proposed in Victoria would best handle the issues and individuals covered by our Brimbank report.

The tabled report named members of Parliament and Ministers, both state and federal, Mayors, local councillors, electoral staff, local government staff and state public servants. The issues reported on were a broad spectrum of administrative actions and behaviour including corrupt conduct involving:

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

Many of these issues were not uncovered until the investigation was underway. The report also addressed maladministration. Taken as a whole, the report described a culture at a council which eventually resulted in its suspension. It does not appear that such a breadth of coverage and issues could be achieved under the proposed new system for handling corruption with its fragmentation of jurisdiction and powers. Such a fragmented arrangement will only result in a lessening of transparency and accountability in government in Victoria.

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

The report also chose not to identify the significant body of successful work and the uptake of numerous recommendations our enquiries, investigations and reports have generated over the years, including systemic reforms to reduce maladministration and corruption identified in a number of areas in the Victorian public sector.
For example, as a result of the Brimbank investigation the Local Government Act was amended to prohibit elected councillors from being employed by federal and state members of Parliament during their term on the council. Brimbank Council also reviewed its policies in relation to councillor mobile telephone use, and reviewed the councillors’ use of laptops issued to councillors.

In addition the government created a dedicated investigations area to investigate complaints under the Local Government Act which is now known as the Local Government Investigations and Compliance Inspectorate. There were a range of other outcomes which received and continue to receive publicity in the media.

The integrity review report raised concerns about the procedural fairness of investigations conducted by Ombudsman Victoria including:

- **Witnesses have been denied legal representation or the ability to consult a lawyer.**
  However, in our submission to the review in March 2010, the Ombudsman pointed out that ‘every witness who has sought legal representation over the past five years has had legal representation during a witness interview’.

- **Interviews were conducted by officers in a ‘windowless room’.**
  I invited the commissioners to inspect the interview room. They chose not to do so. In fact the room has windows and is constantly monitored by CCTV.

- **Interview proceedings are intimidating, for example interviewers positioned themselves between the interviewees and the exit door.**
  These seating arrangements are in place to meet obvious occupational health and safety needs and requirements for staff. Staff have suffered from assault and attempts to assault them during interviews in the past, in one case resulting in serious bodily harm to the staff member.

- **Some witnesses with influence or standing may have greater opportunity to convince my office of the need for representation.**
  This statement was not put to us and has no basis whatsoever as all witnesses are treated the same, in line with our policies.

- **Summons have been routinely issued to witnesses for all manner of investigations.**
  No inquiry was made to us on this issue. In fact, summons are rarely issued to require the attendance of witnesses. In most cases, witnesses appear voluntarily.

The Public Service Standards Commissioner was provided with the opportunity to comment on the above issues. In response, he advised that he had chosen to not take up the offer to comment.12

**Improvements following investigations**

Some examples of improvements flowing from our whistleblower investigations include:

- Improved accountability for drug exhibits held by Victoria Police
- Improved procedures in councils on tendering and contracting
- Improved processes and accountability by doctors claiming on the Transport Accident Commission and WorkSafe

---

Local government councillors may no longer work for a Member of Parliament, thereby removing a conflict of interest and duty.

Improved conditions for juveniles in detention.

The creation of a new body specialising in local government investigations: the Local Government Investigations and Compliance Inspectorate.

Improved processes in a university to address cheating and academic misconduct.

Case Study 4 – Investigation into the Parkville Youth Justice Precinct

The Department of Human Services is responsible for the administration of youth justice services in Victoria.

Victoria has two custodial facilities for children in Melbourne: the Melbourne Youth Justice Centre and the Melbourne Youth Residential Centre. The Justice Centre and the Residential Centre are co-located in Parkville and are collectively referred to as the Parkville Youth Justice Precinct. The Precinct holds sentenced and remanded detainees aged 10 to approximately 21 years.

Early in 2010 we received allegations from a whistleblower regarding serious misconduct of staff at the Justice Centre. The allegation related to staff:

- inciting assaults between detainees
- assaulting detainees
- restraining detainees with unnecessary force
- supplying contraband to detainees, including tobacco, marijuana and lighters
- stealing goods and consumables.

The disclosure also included allegations relating to general mismanagement of the Justice Centre, overcrowding, poor adherence to operational procedures and an organisational culture that fostered unethical conduct.

The Ombudsman determined these allegations to be a public interest disclosure pursuant to the Whistleblowers Protection Act 2001. Because of the serious nature of the allegations the Ombudsman decided that we should investigate the entire precinct and the Ombudsman wrote to the Secretary of the department to inform her of this on 12 February 2010. Following visits to the Precinct, on 22 March 2010 the Ombudsman wrote to the Secretary of the department providing photographs of some of the disgraceful conditions and requesting that she take prompt action to address the issues identified.

The investigation identified the following health and safety concerns including

- hanging points
- mouldy and dirty conditions
- high prevalence of communicable infections such as scabies and school sores
- electrical hazards
- unhygienic conditions in food preparation areas
- excessive graffiti.

We also identified breaches of human rights for children in custody including overcrowding and remanded detainees being held with sentenced detainees. Overcrowding also resulted in young people sleeping on mattresses placed in isolation rooms and having to go to the toilet in buckets.

In addition 36% officers who work there did not have Working with Children Checks.
There was clear evidence of the Department failing to respond adequately to improper conduct, including evidence that staff:

- incited physical fights between detainees
- assaulted detainees
- used excessive force during restraints on detainees
- introduced contraband into the precinct
- falsified records
- stole goods and consumables
- slept during night shifts.

Contraband seized during searches by staff included tobacco, green vegetable matter which appeared to be marijuana, white powder, pills, money and home-made weapons. We found that drugs had been retained at the Precinct and not properly disposed of by giving them to the police.

There was also evidence of theft by staff; shifts claimed for which they did not attend; and claiming for uniform allowances in excess of the actual amount that was spent.

A further area of concern in relation to the allegations of breaches of human rights identified was that there was no permanent facility for young offenders who are mentally ill and are sentenced to detention, unlike their adult counterparts.

The Ombudsman made 27 recommendations in total, including that the department:

- Review the suitability of the Precinct with a view to replacing it with a new facility.
- Review policies and practices relating to conditions to ensure that they comply with human rights principles.
- Install CCTV in all common areas of units throughout the Precinct, program areas and recreational areas as a priority.
- Review the current model and policy process used to investigate allegations or suspicions of staff misconduct.
- Report on the outcome of the department’s identification of staff who do not have a Working with Children Check on their personnel file.

The department accepted all of the recommendations.

Case Study 5 – Investigation into the handling of drug exhibits at the Victorian Police Forensic Services Centre

This case highlights the importance of an agency acting promptly when it receives a credible whistleblower complaint. This matter had originally been raised with the Ethical Standards Department of Victoria Police in writing two years before the whistleblower came to the Ombudsman.

In 2008 we received a disclosure under the Act regarding the manner in which the drug exhibits were being managed at the Victorian Forensics Services Centre.

It became apparent during the investigation that many of the issues were not new. Over the past 16 years concerns have been raised about drug exhibit management at the Forensic Services Centre which had not been addressed. For example between 2003 and 2008 the Corporate Management Review Division of Victoria Police had undertaken a review, an audit and two post implementation reviews regarding the receipt, storage, analysis and destruction of drugs with little action being taken as a result.
In addition because of ongoing tension between staff and the Drug and Alcohol Branch and the Forensic Exhibit Management Unit, the two areas responsible for the management of drug exhibits, industrial action was taken by members of the Drug and Alcohol Branch including work bans. These work bans resulted in:

- Bulk quantities of drugs not being forwarded from the Drug and Alcohol Branch to the Forensic Exhibit Management Unit for storage.
- Large quantities of drugs being retained by the Drug and Alcohol Branch.
- Forensic officers in the Drug and Alcohol Branch not returning drug exhibits that had a court order or officers’ authority authorising destruction. This meant that these drugs were not being audited and destroyed.

During our investigation Victoria Police commenced a separate review of the technical processes associated with drug laboratory practices and procedures. We agreed to an external expert being brought from interstate to conduct the review concurrently and subsequently accepted his report which is published with our public report.

The investigation identified many internal control systems and other issues that required attention, in particular:

- Storage of exhibits
- Accountability of exhibits
- Auditing and quality assurance
- Business processes
- Management of the Victoria Police Forensic Services Centre
- Industrial dispute
- Drug destruction.

As a result of our investigation Victoria Police appointed a new head of the Forensic Services Centre and has undertaken significant steps to improve processes and accountability. In addition the two most senior officers at the centre left the organisation.

**Detrimental action**

A component of the complaint made by the whistleblower was that members of the Drug and Alcohol Branch took detrimental action against him as a result of his originally complaining to the Ethical Standards Department about concerns with the management of drug exhibits.

We determined this disclosure to be a public interest disclosure and we subsequently investigated it. Examples of the harassment which the whistleblower was subjected to included work bans; inappropriate comments by senior officers; and inappropriate conduct by staff.

This case received a great deal of publicity in Victoria. It is a good example of how an ethical and honest officer who reports valid concerns can have detrimental action taken against him by colleagues. The whistleblower reported matters that were subsequently substantiated by our investigation. This brought the spotlight on the performance of a number of officers including senior officers at the Forensic Services Centre.
As a result of our investigation the Ombudsman recommended that the Chief Commissioner consider taking discipline and other action against a number of senior officers; ensure that the welfare of the whistleblower was managed appropriately; and give recognition to the whistleblower that acknowledges the difficulty suffered by him as a result of the adverse action taken.

All recommendations were accepted.

John R Taylor
Deputy Ombudsman