



ombudsman VICTORIAN

annualreport2016
snapshot

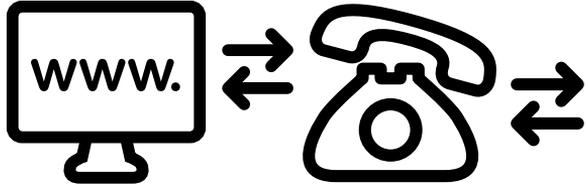
YEAR AT A GLANCE 2015-16



39,470

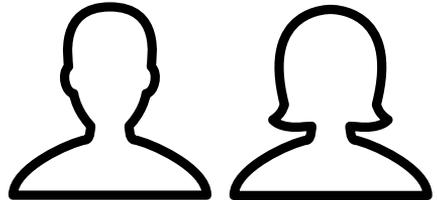
people contacted us

17,469 people
used our redirection services



71%
of contact
was made
by phone

82 employees



92%
of complaints
closed within
30 days

19



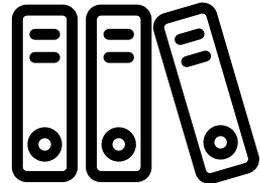
information and complaint
sessions in regional Victoria

formal
investigations
completed



33

8



reports tabled in Parliament



2,988
enquiries
completed

11



submissions
made to drive
public sector
improvement

About us

The Victorian Parliament established the office of the Victorian Ombudsman on 30 October 1973, recognising the power imbalance between the individual and the state and the need for government transparency and accountability.

The Victorian Ombudsman is an independent officer of the Parliament under section 94E of the *Constitution Act 1975*. **The purpose of the office is to ensure fairness for all Victorians in their dealings with the public sector and to improve public administration.**

We do not advocate for members of the public or authorities. We make decisions based on evidence and operate in accordance with the *Ombudsman Act 1973*.

Our day-to-day work involves:

- taking complaints from the public about administrative actions by state government departments, bodies established by legislation (e.g. WorkSafe, VicRoads) and local councils (and certain organisations acting on behalf of those bodies)
- making enquiries and resolving complaints informally where possible
- investigating when needed and making recommendations for change
- examining systemic problems in public administration.

The Ombudsman Act defines administrative action broadly. It can include a decision to grant a permit, a failure to provide a service, a formulation of a proposal and the making of a recommendation to a Minister. We look at whether the administrative action is unlawful, unreasonable or wrong.

We can also consider whether administrative actions are compatible with Victoria's *Charter of Human Rights and Responsibilities Act 2006*. We also investigate protected disclosure complaints about improper conduct received from the Independent Broad-based Anti-corruption Commission (IBAC).

We have a function to monitor compliance with Part 2A of the *Prevention of Cruelty to Animals Act 1986* and sections 71A(1) and 72A(1) of the *Domestic Animals Act 1994*. In May 2016, we commenced an audit of the RSPCA, the Department of Economic Development, Jobs, Transport and Resources, and all 79 Victorian councils about their compliance with these provisions. This audit is ongoing.

The *Terrorism (Community Protection) Act 2003* requires us to be notified when a preventative detention order or prohibited contact order is made, and if a person is taken into custody. We can receive complaints and make representations to a nominated senior police officer about a person's treatment in connection with their detention.

Our vision

Human rights

Under the Ombudsman Act, we can enquire into or investigate whether an administrative action is incompatible with a human right set out in the Charter. We do this whenever we consider the substance of a complaint.

In 2015-16, almost half of the complaints we received involving human rights were about the treatment of persons when deprived of their liberty.

Understandably, people held in closed environments such as prisons, juvenile justice centres and mental health facilities were the most likely to raise these issues. Other common areas of concern related to the right to protection of families and children and property rights.

In matters that involve human rights issues, we can use our enquiries powers to determine if they may be resolved informally or whether an investigation should be conducted.

There are four principles that guide our work:

1. ensuring **fairness** through independent and impartial complaint resolution and encouraging fair and reasonable decision-making in the public sector
2. enhancing **accountability** by modelling transparency and openness and conducting independent investigations into the most serious matters
3. fostering **continuous improvement** by sharing lessons learnt from complaints and investigations and by investigating systemic issues and identifying solutions
4. protecting **human rights** by ensuring they are respected and making it easier for vulnerable people to complain.

Our work

Our core work falls into three main categories:

- investigating complaints about administrative action
- investigating systemic issues
- investigating protected disclosure complaints about improper conduct.

Who we can investigate

Our main function under the Ombudsman Act is to investigate administrative actions taken by or in an authority. An authority can be a state government department or administrative office or another public body such as:

- a private or public prison
- a body established by legislation, such as the Transport Accident Commission
- a local council.

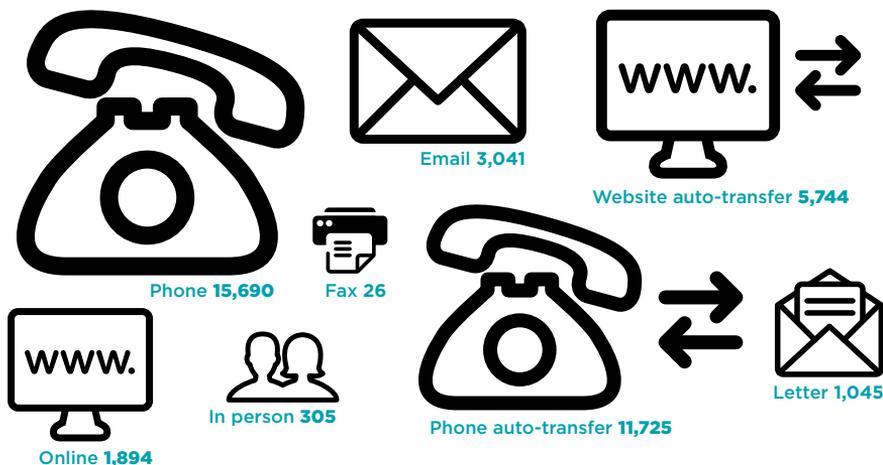
We can also investigate certain organisations acting on behalf of local or state government bodies.

Contact with us

This year 39,470 people contacted us, almost 500 more than the previous year. Of those contacts, 13,964 were about issues we could deal with (in our scope). As in previous years, most people contacted us by phone, but more people contacted us by email and our online form. Since 2014-15:

- email contact has increased 18 per cent
- contact through our online form has increased 10 per cent.

Figure 1: How people contacted us

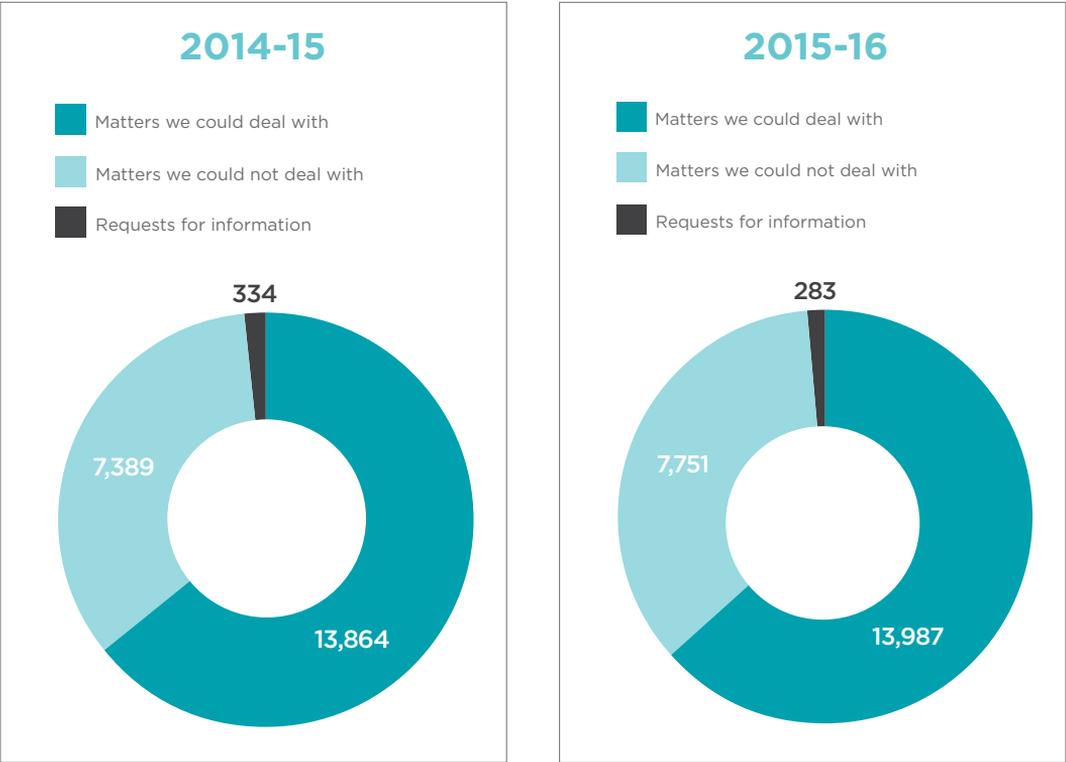


Matters dealt with

This year we finalised 22,021 matters – two per cent more than last year when we finalised 21,587. This includes matters we could deal with (within our scope), ones we could not deal with (outside our scope) and information requests.

This does not include contact that was automatically redirected. Our redirection services were used 17,469 times in 2015-16.

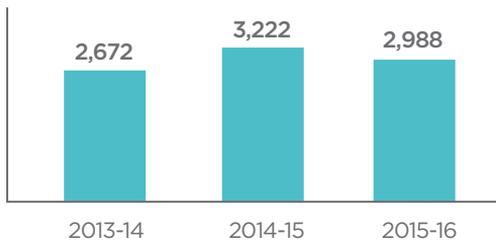
Figure 2: Matters dealt with in 2014-15 and 2015-16



Formal enquiries and investigations

In a year when we invested significant resources in major systemic investigations – including public transport fare enforcement, prisoner rehabilitation and reintegration, and reporting of abuse of people with disability – we maintained a consistent number of investigations and only a small decrease in enquiries.

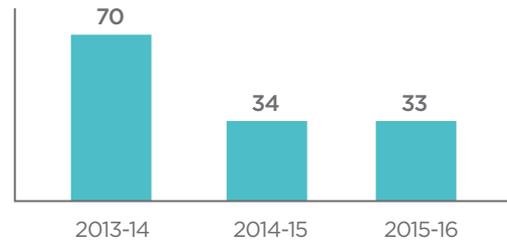
Figure 3: Finalised enquiries



Own motion enquiries and investigations

When we make an enquiry or begin an investigation without receiving a complaint, we are using our ‘own motion’ powers. Many of the reports we present to Parliament do not start with a complaint. This year, we finalised 15 own motion enquiries and four own motion investigations.

Figure 4: Finalised investigations

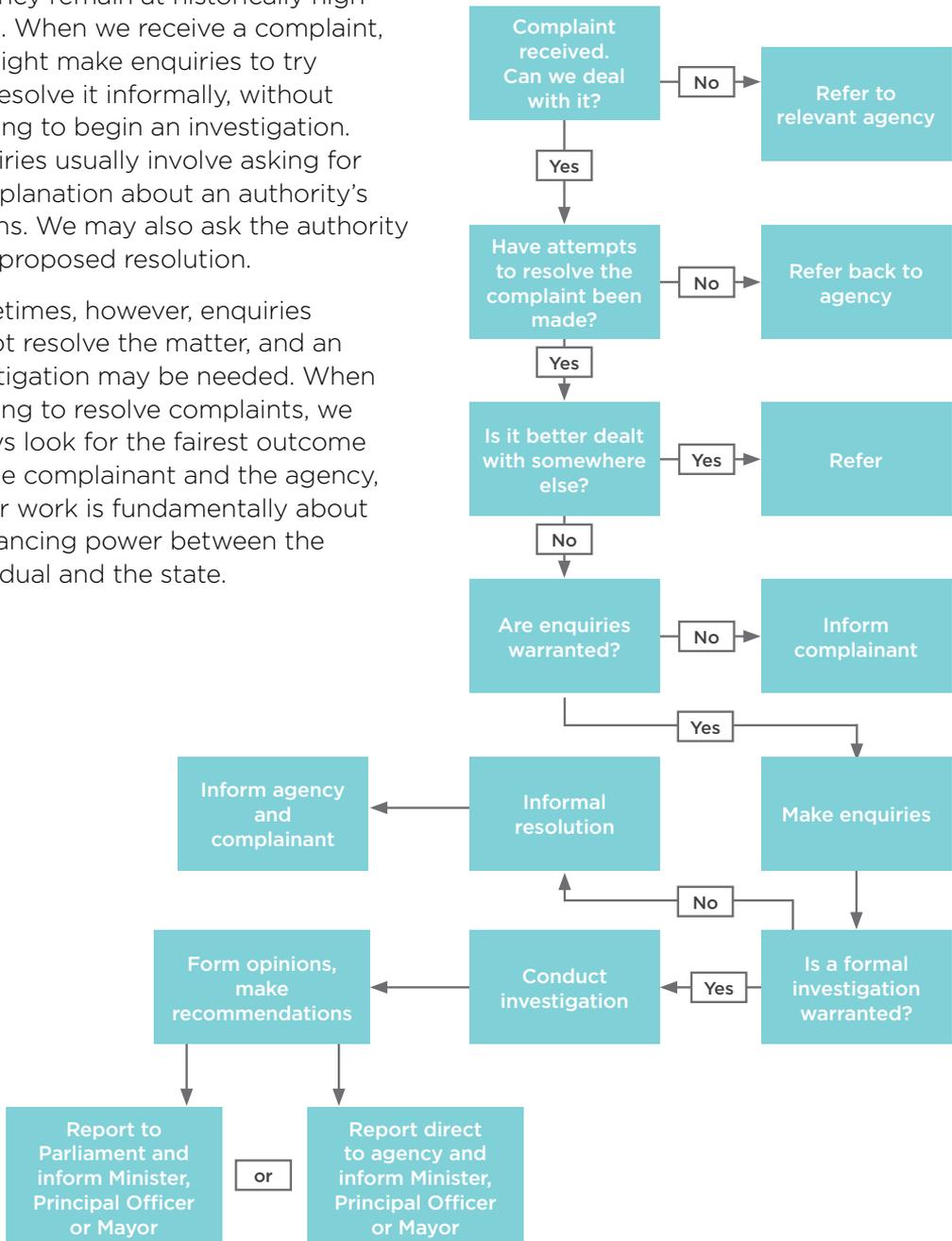


What we do – complaints

We are in the business of complaints, and they remain at historically high levels. When we receive a complaint, we might make enquiries to try and resolve it informally, without needing to begin an investigation. Enquiries usually involve asking for an explanation about an authority's actions. We may also ask the authority for a proposed resolution.

Sometimes, however, enquiries do not resolve the matter, and an investigation may be needed. When working to resolve complaints, we always look for the fairest outcome for the complainant and the agency, as our work is fundamentally about rebalancing power between the individual and the state.

Figure 5: Complaint flowchart



Report: Special charge scheme

Ms Judith Graley MP, Member for Narre Warren South, lodged a complaint on behalf of 37 residents of Market Lane, Narre Warren South. Casey City Council had charged between \$15,000 and \$20,000 to each resident to fund works to surface their road under a special charge scheme.

Under the *Local Government Act 1989*, local councils can levy a special charge to fund works where residents receive a 'special benefit', such as improved access and reduced dust.

During the public notification process, the council advised residents the interest rate on repayments would commence at 4.25 per cent per annum, but when the scheme was declared it went into a closed council meeting to increase the interest rate to 7.5 per cent per annum. Residents were not informed of the increase until after the owners' right to object to the special charge had expired.

We investigated the matter, concluding:

- the decision to enter a closed council meeting on 17 June 2014 to make a decision on the new interest rate appeared to have been made contrary to law
- the decision to increase the interest rate was unreasonable and unjust
- the council's failure to inform residents of the increased interest rate was wrong.

We wrote to the council to invite it to make recommendations about how to resolve the matter.

We made recommendations to Local Government Victoria about its review of the Local Government Act and its guidance to councils on declaring special rates and charges.

We also made recommendations to the council about publishing relevant information and dealing with special charge schemes, and recommended it consider refunding residents interest charged above 4.25 per cent per annum.

Within two weeks of the report being finalised, all the recommendations we made to the council were implemented. The council:

- refunded excess interest to residents
- released all the documents associated with the closed meeting
- implemented a special charge scheme section on its website
- arranged to publish more detailed reasons for going into closed council meetings.



Breaking the circuit

The Ombudsman Act enables us to resolve complaints informally, which we frequently do.

Often, people are getting nowhere because of a communication issue or a breakdown in their relationship with an authority. Sometimes, an authority may have discretion to do or not do something, but it has not applied it. Many complaints only require us to make a simple enquiry to 'break the circuit' between the authority and the person complaining.

Communication breakdown

After dealing with the Office of Housing for almost two years about problems with her property, a tenant contacted us. She had a broken fence, no child locks on her cupboards and her request for an air conditioner had been refused. The tenant had asked to move to a place with an extra room and had not received a response. She had also not been reimbursed for the cost of installing a phone line.

After we made enquiries, the department agreed to fix the fence, install child locks and reimburse the tenant for the phone line. Staff also explained what was needed to progress the application for an air conditioner to the tenant and updated her application for new accommodation, backdating it to the date she had applied.

The department also reviewed the way it was communicating to minimise future delays in responding to her.

What is reasonable?

A driver complained about a fine she received for parking in a dividing strip. She sent us photos showing the dividing strip looked very similar to regular car parks directly next to it, and that there was signage on some dividing strips but not others. She had given this information to the council but it had upheld the fine.

After we made enquiries, the council acknowledged the signage was confusing and agreed to replace missing signage immediately. It withdrew the fine and issued a warning to the driver, saying it would issue warnings to other drivers until the signage was updated.



What people complained about

Figure 6: Top ten issues complained about

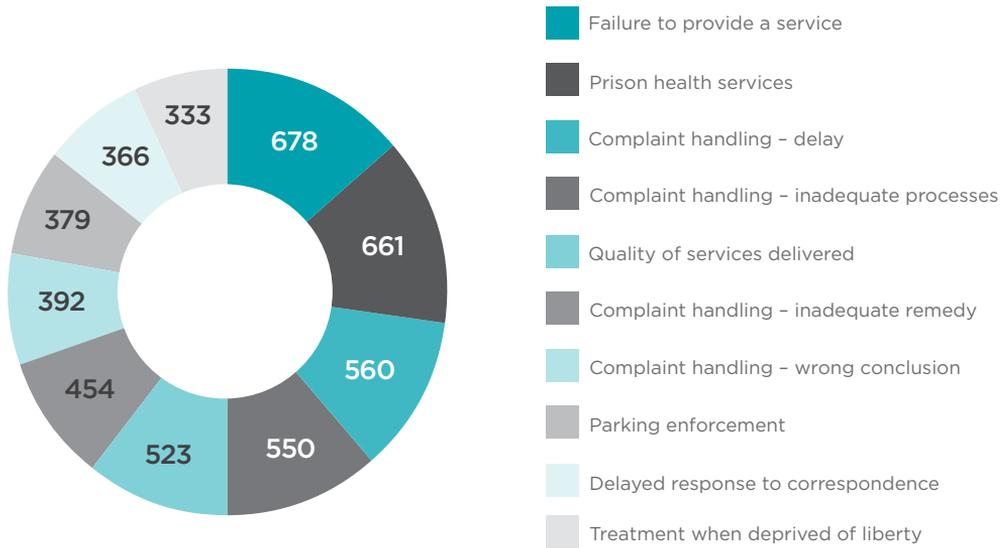
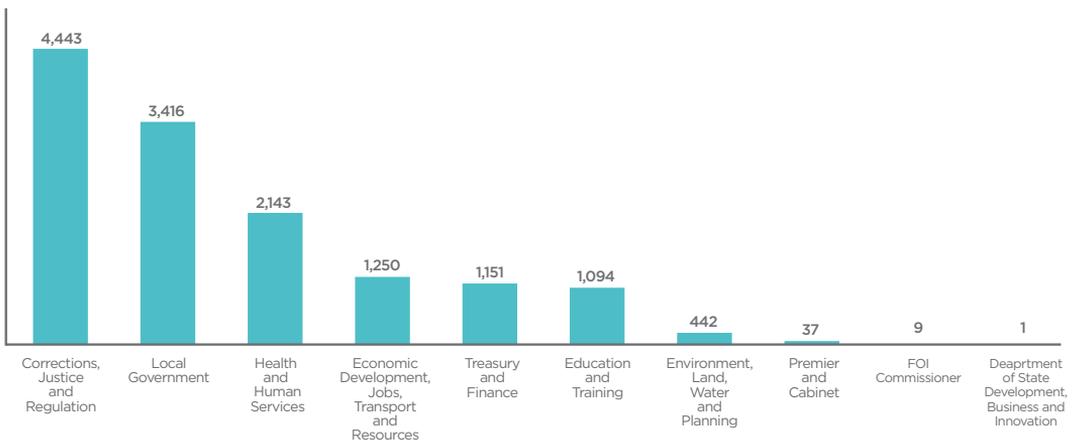


Figure 7: Complaints* about departments in 2015-16

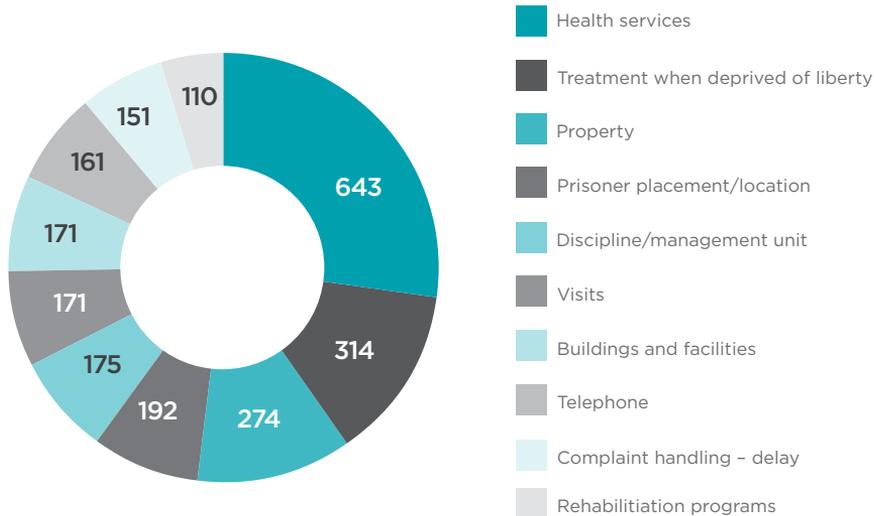


* In this snapshot, a complaint is taken to mean a finalised contact with the office.



Corrections, Justice and Regulation

Figure 8: Top ten issues – Corrections, Justice and Regulation



Prisons

Ten years ago, toll-free phones were put in Victorian prisons so prisoners could contact the Ombudsman, recognising the important role independent scrutiny plays in a closed environment. We receive large numbers of complaints about Corrections Victoria and the department, largely as a result of these phones, and high levels of awareness of our work in prisons and juvenile justice facilities.

Over 90 per cent of complaints about prisons in 2015-16 were made over the phone. These complaints totalled:

- 20 per cent of all complaints we could deal with about all authorities
- more than seven per cent of all contacts made with our office.

Ants no more

A prisoner complained about the lack of action taken in response to his complaints about an ant infestation in his unit. We had received a number of complaints about this matter and because we were concerned about the ants being in contact with people's food, we made enquiries.

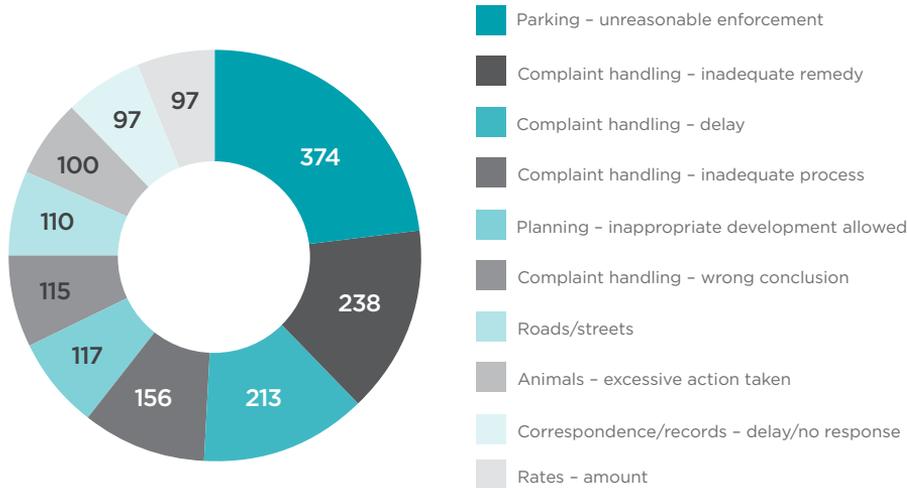
After our enquiries, a maintenance team attended the unit and treated the infestation.

The ants were eradicated and the prison received no further complaints about the issue.



Local government

Figure 9: Top ten issues – local government



Complaints about local government typically make up about a quarter of all complaints we can deal with. In 2015-16 – as in previous years – it was second only to Corrections, Justice and Regulation. The high numbers are understandable, given it is the tier of government many in the community interact with the most.

In the last 10 years, we have published 18 reports about local government or councillor conduct. Issues have ranged from complaint handling to conflict of interest, improper conduct and poor governance.

Taking out the trash

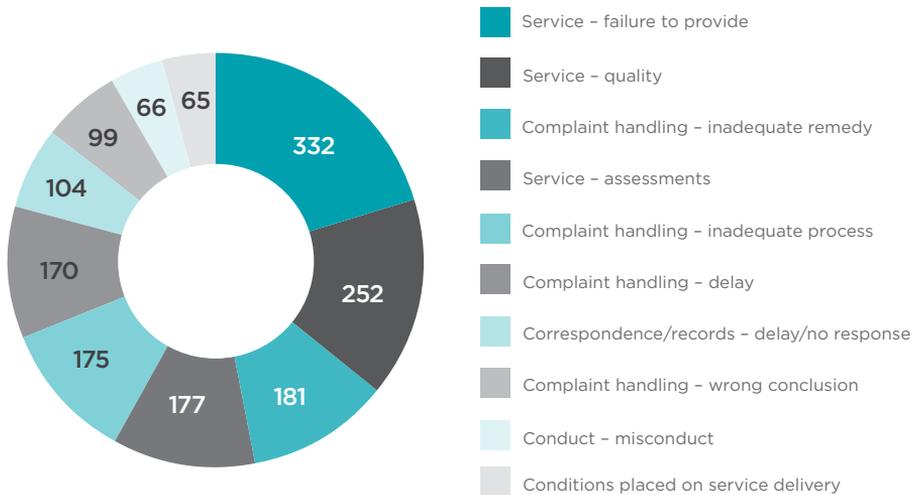
A resident complained his council was not collecting his rubbish bins, and was requiring him to place them on the opposite side of the road. He was concerned about his safety as the speed limit on the road outside his property was 100km/h and there was not enough space for cars to stop – his property was just after a curve in the road.

After we contacted the council, it agreed to liaise with VicRoads to assess the road near the resident's house for an appropriate speed advisory sign. The council also agreed to construct an off-road path so he could safely wheel his bins out for collection.



The Department of Health and Human Services

Figure 10: Top ten issues - DHHS



Poor case management and kinship payments

A grandmother complained about Child Protection's administration of kinship caregiver payments. She said her granddaughter, who she was caring for, had complex needs that made her eligible for a higher rate, but instead she was being paid the basic rate.

She had spoken with a number of managers within the department but had not been able to resolve her complaint.

We asked the department about the kinship payments, but also questioned its handling of the matter – there had been considerable delays.

The department explained that its policy did not allow for kinship payments to be backdated, but it offered to provide a one-off

payment to the grandmother of about \$17,000. This equalled the higher rate of payments available from the start of the placement.

The department acknowledged a number of shortfalls in its handling of the matter. It confirmed there was no evidence criminal record checks were done before the placement started or that a kinship placement assessment was done, both of which are required prior to children entering a placement. The assessment requires departmental staff to confirm they have provided caregivers information regarding the financial support available.

As a result of its review, the department began managing the performance of one of the officers involved. The department also provided training to its staff on their obligations to kinship carers.

What we do – systemic investigations

In 2015, we tabled our *Investigation into the rehabilitation and reintegration of prisoners*, having released a discussion paper in 2014. We also finalised the second part of our investigation into the reporting of abuse in disability services.

In 2016, we looked at the public transport fare enforcement system, concluding that it was unfair, poorly targeted and disproportionate.

Report: Prisons

In September 2015, we tabled our *Investigation into the rehabilitation and reintegration of prisoners* in Parliament. We started this investigation against a backdrop of escalating rates of imprisonment, skyrocketing costs and increased rates of reoffending.

In the report, we noted that prison is a temporary solution; more than 99 per cent of prisoners will be released one day. Our investigation considered the effectiveness of prisoner services and support – such as behavioural, education and drug and alcohol programs – and found they were not adequate. It highlighted the well-known links between disadvantage and imprisonment.

The investigation also focussed on prisoner groups with particular needs including Aboriginal and Torres Strait Islander peoples, people with cognitive disabilities, female prisoners and young prisoners.

We found these groups of prisoners all have unique needs but are not receiving adequate, targeted and appropriate support.

We considered areas of good practice in the Victorian system and in other parts of the world. While there is good work being done, it is often uncoordinated and constrained by location and inadequate resources.

The investigation ultimately found the system was unsustainable. The report made 25 recommendations, a key one being to adopt a whole-of-government approach to reducing offending and recidivism and promoting the rehabilitation of offenders.

One of the recommendations in our prisons investigation was that Aboriginal and Torres Strait Islander prisoners be supported to keep proceeds from the sale of art made while they are in prison.

In late 2015, an Aboriginal Art Policy Model was announced by Corrections Victoria and the Victorian Government. This allows artists to sell artwork made while they are in prison and keep the proceeds.

The sales process, as well as the delivery of art and cultural programs in prisons, is facilitated by an organisation called The Torch. Some of the art made by participants in The Torch program has been purchased by the National Gallery of Victoria, as well as government, corporate and private buyers.

In May 2016, we purchased 13 artworks from The Torch for our new office (we moved on 29 August 2016). The money from the purchase of this art directly impacted many of the artists. It allowed one man to move from a toxic home environment to another city, where he is now working full time. For another artist, it provided critical financial support, allowing her to pay bills to get the electricity turned back on and buy food for herself and her young niece, whom she was caring for.

One of the pieces we bought was featured in an exhibition at the Melbourne Museum's Bunjilaka Aboriginal Cultural Centre (pictured, right, with artist Jeffrey Jackson and his family).

Jeffrey Jackson and his family



Report: Public transport fare evasion enforcement

In May 2016, we tabled our *Investigation into public transport fare evasion enforcement* in Parliament. The investigation responded to hundreds of complaints received by us and the Public Transport Ombudsman about the issuing of penalty fares and infringements on the public transport system.

We found that although fare evasion has fallen in recent years, the fare enforcement system is poorly targeted. While just 1.7 per cent of the population are responsible for 68 per cent of fare evasion, the system does not specifically target this group.

We found more than 65 per cent of the infringement matters that ended up in court involved people who might have had special circumstances; homelessness, for example. Of the matters that went to court only 20 per cent resulted in any financial penalty being imposed, despite the time and cost involved.

Report: Reporting of abuse in the disability sector

In Phase One, we identified areas of good practice for Victoria to build on, but also uncovered a number of serious issues. We found the system is fundamentally failing to deliver protection in a coherent and consistent way.

In December 2015 we tabled Phase Two of our investigation into how allegations of abuse in the disability sector are reported and investigated. Phase Two looked at processes for the reporting and investigation of allegations of abuse in the sector.

Ultimately, we found a system that was more focussed on the forms to be filled out than the person. A system that relied on an archaic method of reporting based on tick boxes, a one-way flow of information (so the service received no feedback), and outdated fax machines to submit incident reports.

We found that the system – meant to support some of society’s most vulnerable – was not fit for purpose and did not review incidents in a way that resulted in effective responses or operational improvements.

We concluded that serious incidents should be reported to a single independent oversight body for the disability sector, that mandatory training for disability workers was necessary and that a comprehensive review of the advocacy needs of people with a disability needed to be undertaken and funded appropriately.

What we do – protected disclosures

While IBAC is principally responsible for receiving and investigating disclosures, the Ombudsman also has a role in assessing and investigating protected disclosure complaints.

This year, we referred 47 disclosures to IBAC. IBAC referred 30 protected disclosure complaints to us. Of those 30, we investigated 24.

We dismissed six for reasons such as:

- the alleged conduct was known to the person disclosing it for more than 12 months
- the allegation had already been appropriately investigated by another agency
- we were not reasonably satisfied the allegations could be substantiated.

Report: Misuse of council resources

Our Investigation into the misuse of council resources uncovered a culture of entitlement among council workers.

Using examples from three separate protected disclosures from a metropolitan, regional and rural council, the investigation showed that council property and resources are at risk of being seen as available for the private benefit of council employees.

The three matters involved:

- a contractor paving a council officer's mother's driveway in return for more council work
- a council officer using a council fuel card to fill up his private vehicle for two years
- council officers buying machinery and equipment with ratepayer funds for personal use.

Tabling the report, the Ombudsman said:

I am tabling this report in Parliament to draw attention to what appears to be an endemic problem within local government. Despite codes of conduct requiring officials to act with integrity and avoid conflicts of interest, and despite the many people working honestly in the sector, too many people still do not recognise that these codes apply to them, or simply do not care. Compliance and enforcement of codes of conduct is inconsistent, and often relies on whistleblowers

What we do - driving improvement

Community engagement

Since 2014, we have regularly visited rural and regional Victoria. We want all Victorians to know our service is available to them, no matter where they live.

On our visits, we hold information sessions for community service organisations and separate complaint sessions for the public, so people can talk to our staff in person about their problem.

This year we produced two animations to help people understand what we do and how to make a complaint. We translated these into several community languages, including Auslan, and put them on our YouTube channel and website.

Our Twitter presence has grown and at 30 June 2016 we had 1,372 followers, an increase of almost 600 over 12 months. We are now also on Facebook.



Figure 11: How we engage with the community



Collaborating

Sharing information is an important part of working with agencies such as VicRoads to improve their practices. Last year we piloted a data sharing program with Barwon Prison and Corrections Victoria, and this year we worked with VicRoads to understand what information would be most useful for it to analyse complaints and drive systemic improvement. Providing tailored data is very valuable for agencies and we have had positive responses to this project so far. We hope to expand it to other agencies in coming years.

IT wasn't my fault

Between April and September 2015, there was an IT system error at VicRoads that resulted in 25,729 people not receiving notices informing them of extra requirements needed to complete their vehicle transfers. This meant 8,512 registrations were suspended and a number of fines issued. The glitch also resulted in 1,432 people not receiving registration renewal notices.

The Ombudsman wrote to VicRoads' Chief Executive and subsequently met with him and other senior executives to find a solution. After this meeting, VicRoads took action and wrote to the Ombudsman explaining what it had done. VicRoads:

- conducted an investigation and found its system had failed to send out the incomplete transfer letters but had continued to record that the letters had been sent

- lifted the suspension of 8,512 vehicles and reversed the cancellation of 986 vehicle registrations that occurred as a direct result of this error
- attempted to contact 900 of the 1,432 people (where phone numbers were known) who did not receive renewal notices and issued new notices
- worked with Civic Compliance Victoria and Victoria Police to withdraw fines and compensate customers where appropriate.

Responding to the matters raised by the Ombudsman, VicRoads also:

- set up a team to investigate additional cases of customers not receiving registration renewal notices six weeks prior to expiry
- posted more information on its website and established a dedicated customer enquiry line
- confirmed address details with more than 7,000 customers and sent more than 10,000 SMS messages to customers whose registration had expired in September 2015
- reviewed its processes and resolved to confirm address details when speaking with customers
- advised it was examining its registration system to identify trends in the non-payment of registration renewals
- engaged Price Waterhouse Coopers to review related processes.

Tracking our recommendations

In 2015-16, we made 54 recommendations arising from investigations. Fifty-two of these were accepted in full or are under consideration and two were partially accepted.

Report on recommendations

In June 2016, we reported – for the first time in the current Ombudsman’s tenure – on the impact of our recommendations made in public reports in the two years between March 2014 and March 2016.

The report highlighted major changes made or underway, as a result of our recommendations. They included:

- payment of \$4.33 million in ex gratia payments to former residents of Mentone Gardens supported residential service or their estates
- regulatory changes to allow Aboriginal and Torres Strait Islander people to sell artworks created in prison, with proceeds held in trust until their release
- plans to introduce a new system for reporting serious incidents involving Department of Health and Human Services clients.

Figure 12: Recommendations made March 2014 to March 2016 – acceptance

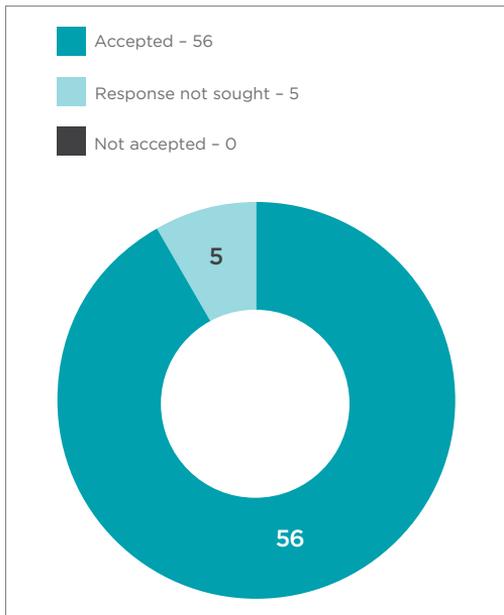
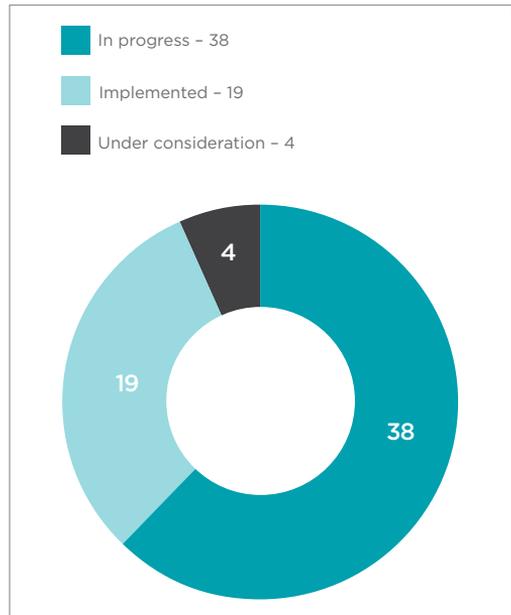


Figure 13: Recommendations made March 2014 to March 2016 – implementation



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