Ombudsman Victoria
Annual Report 09
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


G E Brouwer
OMBUDSMAN
fairness accountability
to promote fairness, integrity, respect for human rights and administrative excellence in the Victorian public sector
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1. IMPROVING PUBLIC ADMINISTRATION

Administrative standards and organisational culture shape the workplace by determining how an agency runs and how people within that agency behave. Agencies which develop a positive culture in turn promote strong values and high standards through good governance.

Basic administration

My statutory role is to investigate the administrative actions taken by or on behalf of government departments and other authorities.

I note the growing trend in some departments and agencies to focus on high-level strategies, sometimes at the risk of neglecting the primary functions of their core business. In so doing, basic administrative practices are being compromised. Efficient administration increases productivity by streamlining office systems and flagging potential problems. Good administration is therefore critical to the ongoing effectiveness of an organisation.

Service delivery

I consider service delivery a key component of basic administration. Service delivery relates to methods and standards of service including:

- prompt and professional customer service
- timely and efficient delivery of services
- sound and transparent decision-making practices
- accurate and detailed record-keeping systems.

Many of the complaints I received this year highlighted failures to meet satisfactory standards in these areas.

I identified poor customer service as one area of defective administration in my Annual Report 2007-08 and am concerned that it remains a persistent problem. I continue to receive many complaints about departments, councils and agencies (hereafter collectively called ‘agencies’) failing to respond to simple requests and enquiries. Replying promptly to people’s letters, emails and telephone calls enhances their dealings with the public sector. Such timely responses also help to prevent undue escalation of otherwise minor matters.

Good service delivery means satisfying public expectations by delivering departmental services and performing statutory functions without delay. Agencies should manage expectations in regard to the services they provide, and clearly communicate any progress, delays or decisions when providing those services. Delays often prompt complaints and leave many complainants feeling lost in the system. This reaction is not satisfactory given that it is reasonable for people to expect their requests will be actioned in a timely manner.
The following case study provides an example of an agency’s multiple failures to meet proper service delivery through poor tracking of work progress and poorly communicated decisions.

**Human error**

I received a complaint that the Victorian WorkCover Authority (WorkSafe) took six months to refer a matter internally for investigation. The complainant alleged that the matter was not actioned in a timely manner, the file was lost and decisions were not communicated.

I conducted enquiries and established that WorkSafe:

- received the complainant’s statement but did not record the receipt date
- mistakenly forwarded the complainant’s file to its record storage facility
- was aware of the complainant’s requests which required actions and/or responses
- made no record of actions taken or meetings with the complainant
- communicated its decision not to take action in a letter five months after the decision was reached and 12 months after the complaint was made
- responded to my enquiries based on personal recollection.

I concluded that the complaint was substantiated in that WorkSafe failed to refer the complaint to be investigated; did not investigate or communicate its decisions in a timely manner; and referred the complainant’s file to storage when actions were still required.

**Outcome**

Following my investigation WorkSafe assessed the application and communicated its decision to the complainant. The matter was resolved informally after much delay.

Agencies should have a proper process to track workflow and identify delays in delivering services or reaching decisions. Failure to properly monitor workflow may result in requests being ignored or overlooked.

Reliability, accountability and efficiency are the benchmarks for service excellence. The next case study illustrates how, for services to be delivered in a timely and efficient way, the right information must be provided at the right time.
The right information at the right time

I received a complaint about the Department of Education and Early Childhood Development (DEECD) from parents, who alleged that a primary school had wrongly informed them that their son would be guaranteed a place at their ‘neighbourhood’ secondary school.

During the placement process the secondary school informed the primary school that the parents did not live in its neighbourhood zone. The primary school passed on the secondary school’s suggestion that the parents outline their son’s curriculum goals and achievements in writing to ‘virtually assure’ him a place. However the primary school did not advise the parents to nominate another secondary school in case the application was unsuccessful.

When the son was not placed at the desired secondary school the parents lodged an appeal with DEECD. After consulting with the primary and secondary schools DEECD upheld the secondary school’s decision not to admit the complainants’ son; however, DEECD made offers of other secondary schools, which the complainants found unsuitable. Instead the complainants home-schooled their son.

Outcome

I considered that the complainants’ son was unfairly disadvantaged by the primary school’s advice that a position was ‘virtually assured’. After reconsidering the issues in the complaint, DEECD accepted my view and enrolled the complainants son in this instance.

Poor complaint-handling

Accessible and effective complaint-handling is an essential part of customer service. Any customer service model without a complaints process is incomplete, as is a complaints process which is put in writing but not into action. Failure to implement or provide easy access to an adequate complaint-handling process amounts to poor customer service.

In 2007 I developed my Complaint handling guide for the Victorian public sector1 which outlines steps to help agencies resolve complaints and improve their practices. These steps allow a complaint to be resolved independent of my office. The first step in a complaint-handling procedure should direct complainants to express their concerns to the relevant agency, while the second step should give the agency the opportunity to respond. This may trigger the department or agency to change its policies or procedures to benefit other members of the community in the future. Generally my office will only deal with complaints after these steps have been taken.

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1 Available at: <www.ombudsman.vic.gov.au>.
Agencies should provide easy access to a complaint-handling procedure. My Complaint handling guide for the Victorian public sector discusses the key features of an effective complaint-handling process:

- accessibility
- commitment
- fairness
- transparency
- responsiveness
- privacy and confidentiality
- accountability
- business improvement
- internal review.

When I do receive a complaint, I may make enquiries into the issue complained about and/or the complaint-handling process itself. The common shortfalls I regularly identify during my enquiries include:

- failing to respond to a complaint
- resolving the complaint but failing to respond to the underlying systemic problem
- failing to be transparent and communicate reasons
- lack of expertise in responding to difficult behaviours
- conducting a superficial check
- giving the impression of ‘rubber stamping’.

Prematurely dismissing a complaint generally prolongs its resolution. A cursory response is unfair to complainants and a burden on the system; complainants are likely to return with unaddressed concerns, particularly if they have an ongoing relationship with the agency. The following case study illustrates this point.
Dismissing a complaint prematurely

I received a complaint about the way VicRoads handled a transfer of registration. When the complainant bought a second-hand car on 24 September 2007 a registration certificate was displayed on the windscreen with an expiry date of 17 September 2008. The complainant was unaware that the previous owner had not renewed the registration and that it had actually expired on 17 September 2007.

On 24 October 2007 the complainant submitted the transfer of registration documentation, roadworthy certificate and associated fees to VicRoads. Although VicRoads processed the documentation and accepted payment it did not notify the complainant that the vehicle’s registration had lapsed. The complainant remained unaware of this fact until 31 December 2007 when the police fined his son $550 for driving an unregistered vehicle.

VicRoads initially responded to my enquiries by advising that it:

- informed the complainant that vehicle registration renewal notices are sent as a customer service only, and explained that the onus is on the owner to renew registration
- would accept transfer of registration documentation and associated fees up to three months after the registration expired
- asked Civic Compliance Victoria to waive the fine in this case
- ignored a customer service ‘work instruction’ to send a registration renewal notice to the complainant.

Outcome

In response to my recommendations, VicRoads agreed to update the transfer of registration application and the information on its website to reflect its policy of accepting transfer documentation and fees up to three months after the expiry date; implement system changes to ensure that registration renewals are automatically generated when registration transfers are received for vehicles without renewed registration; reimburse the complainant $550 in lieu of the fine and ensure that Civic Compliance Victoria annulled the infringement notice.

I confirmed that VicRoads paid the complainant $550 in compensation.

Given the importance of complaints to improving customer service, I am concerned to find some agencies only considering the lawfulness of actions when responding to a complaint. This narrow interpretation of an agency’s responsibilities limits the opportunity to identify the possibility of systemic problems and restricts opportunities for continuous improvement.
In some instances, complaints can be the basis for agencies to change their policies or procedures to benefit members of the community in the future. Agencies should handle complaints properly, consider systemic issues and seize opportunities to improve.

Agencies should keep proper records of decision-making processes so that their decisions can be reviewed or investigated if necessary. They should also adequately communicate the reasons for their decisions to complainants. When I review the way agencies handle complaints, I consider the lawfulness and reasonableness of their actions when researching, making and communicating their decisions. Documenting the complaint process is therefore critical to my ability to conduct an accurate and comprehensive enquiry or investigation.

**Administrative decision-making and record-keeping**

Good record-keeping is a basic part of effective administration and yet agencies often fail to meet this key criterion. A component of good record-keeping is the requirement to accurately collect data. Accurate records are essential in ensuring that decision-making processes are consistent and evidence-based; and that the reasons for decisions are available in the event the result is questioned or reviewed. This is illustrated by the following case study.

**Inaccurate data**

A prisoner contacted my office through an interpreter on 19 August 2008 regarding the results of a drug screening. He complained that the prison advised him he had tested positive to a banned substance during urine screening on 21 July 2008. As a result of the positive test he was given an ‘identified drug user’ (IDU) status, which restricted his privileges.

The prisoner maintained that he was not tested on 21 July 2008 but instead had tested negative on both 18 and 22 July 2008. He suspected that the staff had confused him with another prisoner in his unit with the same surname.

**Outcome**

I made enquiries into the matter and Corrections Victoria confirmed that the prison made a mistake. The prison corrected the test results, amended the prisoner’s IDU status on 20 August 2008 and reinstated his privileges.

Good administration drives quality decision-making. For decisions to be well informed and authoritative, agencies must consider policies, relevant laws, workplace values and codes of conduct. The next case study provides an example of a council failing to follow the procedures outlined to the affected members of its municipality in relation to a decision-making process. Given the impact of decisions on people and communities, procedural fairness is important. Public officers should ensure public access to relevant information through transparent consultations and open communication.
Failure to apply survey process

I received a complaint regarding East Gippsland Shire Council’s proposal to change waste collection services by introducing the option of a green waste bin. The council conducted a postal survey of residents regarding the proposal. The survey process stipulated that survey forms which were not returned would be counted as ‘yes’ votes.

The council did not accept the results of the survey. Contrary to the process it had outlined to the residents, the council contacted voters who had not responded to the survey to confirm their vote. This action changed the result of the survey and subsequently the proposal was rejected.

My office made enquiries which established that:

- the process was clearly set out in a letter which explained that any survey forms not returned would count as ‘yes’ votes
- there were 10 ‘yes’ votes, 19 ‘no’ votes and 11 ‘no responses’.

This meant that the result from the original survey was 21 ‘yes’ votes and 19 ‘no’ votes.

Outcome

I recommended to the council that it accept the result based on the original counting process outlined to the residents. The council implemented my recommendation, accepted the votes counted in the first survey and supported the proposal.

At times I find that some decisions, although well-made and adequately documented in the agencies’ files, were nonetheless poorly communicated, unclear, confusing, or not communicated at all. It is reasonable to expect agencies to provide explanations in regard to how decisions were made as a matter of fairness and good administration. Inaccurate records can have a significant impact on an agency’s ability to provide such explanations. The next two case studies show examples of agencies failing to adequately communicate reasons for their decisions to complainants.
Insufficient information to appeal

I received a complaint from a student who was excluded from her degree level course at RMIT University in Semester 1 2008. The School of Accounting and Law had determined the student’s academic progress was unsatisfactory and the faculty’s Student Progress Committee (SPC) subsequently affirmed this decision and recommended that the student’s enrolment be cancelled. The student was notified in writing of this decision on 20 August 2008.

I was concerned that the SPC’s advice did not provide the student with sufficient information to allow her to present the matter to the University Appeals Committee (UAC) effectively. I was also concerned at the limited records maintained by the university.

The student subsequently lodged an appeal with UAC and attended a hearing accompanied by a student rights officer. The student submitted documentation and reports to the UAC which she considered demonstrated that she should be permitted to continue her studies. The student was orally advised by the UAC of its decision to dismiss her appeal and she subsequently received confirmation of its decision via email.

As well as raising this case with the Vice-Chancellor, I advised her that a review of the university’s written correspondence to other complainants to my office regarding exclusion decisions found that such correspondence generally contained generic information and failed to directly address the evidence raised by complainants.

I advised the Vice-Chancellor that the lack of adequate explanation for decisions, as well as poor recording of UAC hearings, can lead to a lack of transparency in the decision-making process. It may also mean that the university is unable to substantiate its decisions should it be subject to appeal, or external scrutiny.

Outcome

The Vice-Chancellor accepted my recommendations to arrange a new hearing by the University Appeals Committee made up of members who had not previously been involved in the matter. However, before the hearing could proceed, the school decided to withdraw the exclusion.

The Vice-Chancellor also took immediate steps to ensure students are provided with more detailed written explanations regarding Student Progress Committee and University Appeals Committee decisions.
Refusal to issue ‘release letters’

The national code of practice for registration authorities and providers of education and training to overseas students states that registered providers must not knowingly enrol students who wish to transfer from another provider registered under the code prior to the student completing six calendar months of their principal course of study, except in limited circumstances. In practical terms students seeking to transfer to a different provider must present a ‘release letter’ from their current provider before they can be enrolled elsewhere within this initial six-month period.

My office received several complaints regarding the University of Ballarat’s refusal to issue release letters to international students. While my office did not identify any deficiencies in the decisions that the university made in individual instances, I observed that the complainants had received pro forma letters from the university in response to their release letter applications and appeals. These letters stated:

[A] Release Letter will not be granted as you have not provided the University with sufficient evidence of Exceptional Circumstances justifying your request to transfer providers.

I noted that the response letters did not contain information about the complainants’ individual circumstances nor did they define what ‘exceptional circumstances’ were or provide reasons why the grounds advanced by the applicants did not constitute exceptional circumstances. I consider that the absence of individual reasons may have contributed to the complainants contacting my office.

I recommended that the university provide more detailed explanations to students seeking release letters. I also suggested that those reasons should explain the criteria being applied and why the students’ applications failed to meet these criteria, on the basis that these steps might encourage confidence in the university’s decision-making processes.

Outcome

The university acted on my suggestions and amended its policy regarding release letters and included a definition of exceptional circumstances. The revised policy also requires reasons to be provided to applicants if their request for a release letter is denied.

Accurate data collection also assists in the identification of systemic issues and informs operational and strategic planning. Questions have been raised as to the integrity of data collected on the basis of its accuracy and completeness; the application of definitions; and inconsistencies with other jurisdictions. My enquiries and investigations substantiate these concerns regarding record-keeping in several instances.
Data integrity has been an ongoing issue since my Investigation into VicRoads driver licensing arrangements in 2007.2 In this investigation I found that there were limitations with the driver licensing database which were central to the deficiencies I identified with the driver licensing arrangements. In the report I stated, ‘The system has limited functionality and is unable to meet the increasing demands and expectations placed on it by stakeholders’. The outcomes of such inefficiencies include poor service delivery and the risk of identity fraud.

The following case study demonstrates how poor record-keeping of financial transactions can lead to inadequately documented decisions and the potential for theft and fraud.

**Poor record-keeping**

I received a complaint that a staff member of a unit at Austin Health failed to record patient cash payments in the receipt system. The hospital provided me with copies of cash receipts but could not determine where the missing money had gone.

The hospital made further enquiries at my request and found evidence of improper conduct by the staff member including inappropriate expenditure on staff morning teas, lunches and flowers.

**Outcome**

The hospital reviewed the cash-handling and receipt procedures within the unit and aligned them to overall Austin Health procedures. Austin Health also initiated an internal audit of decentralised cash-handling procedures and is currently amending all units’ cash-handling responsibilities to address issues identified. The staff member is no longer employed by the hospital.

My report entitled Probity controls in public hospitals for the procurement of non-clinical goods and services3 also dealt with issues of data collection and integrity. I found that there was a ‘need for regular stock-takes to monitor the use of equipment and supplies in Engineering Departments’.4 Such a simple data recording activity not only ensures proper stock level management, but may also prevent theft and stock loss.

Data integrity was also a key issue explored in my report Crime statistics and police numbers.5 This investigation is discussed in the next case study.

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2 Ombudsman Victoria, Investigation into VicRoads driver licensing arrangements, Melbourne, June 2007.
3 Ombudsman Victoria, Probity controls in public hospitals for the procurement of non-clinical goods and services, Melbourne, August 2008.
5 Ombudsman Victoria, Crime statistics and police numbers, Melbourne, March 2009.
Data integrity and crime statistics

My investigation into *Crime statistics and police numbers* identified a number of factors which compromised data integrity including antiquated recording practices and outdated information technologies which led to the under-reporting of some crimes.

I identified that the audit procedures in Victoria Police for crime data focused on the management of reported crime once it is entered into the Law Enforcement Assistance Program (LEAP) instead of the central issue of whether a crime incident required a LEAP report. This made the audit processes inadequate and unable to measure compliance with crime recording policies, which impacted on the accuracy of crime statistics.

I concluded that non-compliance, for whatever reason, with the policies for recording crime should be identified and addressed. Large organisations require robust measures to assess whether performance targets are met. Crime data are an essential part of this measurement. I believe it is critical that there is a commitment to ensuring that the data collected and used are of a high quality and that a commitment to quality forms part of the performance management system.

This led me to make 25 recommendations, which included:

- regular audits where LEAP records are reviewed against the Computer Aided Dispatch (CAD) system for validation
- independent audits of police practices for recording crime into LEAP to ensure compliance with Victoria Police’s policies and procedures
- revised organisational and management arrangements for the recording and production of crime data and statistics.

**Outcome**

Victoria Police has committed to regular audits to review CAD data and criminal record data; agreed to refer my recommendation for independent audits to its Corporate Management Review Division for consideration; and work towards improved data governance practices through its Data Management Steering Committee.

Because of the sensitive nature of information held by government authorities and the range of applications for statistics, data must be accurate, complete and secure.
Performing statutory functions

Relevant legislation provides agencies with a range of responsibilities. The broad role of some government agencies can create a complex environment and can lead to agencies:

- failing to exercise statutory functions
- failing to use statutory powers
- exceeding statutory authority
- misusing their powers.

The relationship of public sector agencies to their various responsibilities is often the focus of complaints to my office.

Failure to exercise statutory functions

Over the past year, my investigations have identified instances where public sector bodies have failed to exercise their statutory powers. This has included agencies:

- not complying with statutory requirements
- failing to exercise a statutory duty when providing particular services
- exceeding statutory roles
- failing to apply the same standards and/or levels of scrutiny to themselves as they impose on others.

The state as a regulator

Parliament gives government agencies considerable responsibility to regulate the conduct of individuals and private interests. The community therefore frequently looks to the state to protect the interests of individuals.

This year I received a number of complaints alleging the failure of public sector bodies to protect the interests of the public. Such complaints are prevalent in local government due to its involvement in community matters. The failure of local governments to address the basic concerns of residents amounts to administrative inaction. Common complaints are in regard to breaches of planning requirements, barking dogs and other alleged ‘nuisances’ as defined by the Health Act 1958.

Complaints of this kind often arise due to the:

- complainant misunderstanding the extent of the agency’s powers
- agency poorly communicating its actions
- lack of resources available to respond in a timely manner
- specific circumstances of an individual matter.
Of particular concern to me during the year were instances of regulators failing to take action or not discharging their functions adequately to protect the public interest. There are a number of agencies I am investigating where similar issues have arisen. This matter is one of continuing concern.

**Legal Services Commissioner**

The *Legal Profession Act 2004* established the office of the Legal Services Commissioner and lists its objectives, one of which is:

> to ensure that complaints against Australian legal practitioners and disputes between law practices or Australian legal practitioners and clients are dealt with in a timely and effective manner.6

The role of the Legal Services Commissioner is to protect both consumers of legal services and the public interest in the proper administration of justice. The Legal Services Commissioner has the power to address complaints made against Victorian legal practitioners to ensure that they acted within the confines of the law, with appropriate ethical standards and with deference to their professional position.

The Legal Services Commissioner can receive complaints which relate to disputes about legal costs, claims of up to $25,000, or disciplinary matters. The legal system can be financially costly and the law can be complex, with intricacies which many members of the public find difficult to navigate and understand. This can leave the public vulnerable to unscrupulous, negligent or unprofessional practices of legal practitioners.

Over the past year I received 95 complaints about the Legal Services Commissioner, which replaced the former Legal Ombudsman in December 2005. There were recurring themes in the complaints which pointed to a systemic failure by the Legal Services Commissioner to adequately undertake its statutory role.

For example, complainants alleged that:

- complaints were inadequately investigated or not investigated at all
- there were significant delays – sometimes in excess of three years – in finalising complaints
- documentation practices were poor and failed to provide complainants with information about the Legal Services Commissioner’s internal review process and external review mechanisms
- investigations lacked procedural fairness.

The following case study highlights that the lack of appropriate review powers in place for the Legal Services Commissioner is still the case. It illustrates how this can result in injustice to complainants and allow practitioners to avoid detection and/or prosecution as a consequence of the current legislative...
I recommended that the Attorney-General consider amending the Legal Profession Act 2004 to enable the Legal Services Commissioner to review its merits-based decisions where there have been deficiencies in its investigations or errors in its decisions.

I understand that this is being considered as part of a national reform of the Australian legal profession announced by the Council of Australian Governments.

Lack of appropriate review powers

The complainant required life-saving medical treatment and so his legal practitioner referred him to a mortgage broker, who sourced a short-term loan. Because the complainant was overseas his brother signed the contract, which contained different terms and conditions from the original agreement.

When the complainant defaulted on the loan the mortgage company sued. In this case the legal practitioner, who formerly represented the complainant, also represented the mortgage company.

The complainant contacted the Legal Services Commissioner (LSC) and maintained that the legal practitioner had a conflict of interest. He also complained that the legal practitioner failed to follow his instructions and advise him properly. The LSC dismissed the complaint because of insufficient evidence.

I investigated the complaint and established that the LSC did not interview the complainant, his brother or the legal practitioner. Although the LSC requested documents from the practitioner, it failed to exercise its powers to obtain the documents when they were not supplied. Instead of gaining access to documents which may have provided evidence, the LSC relied solely on the legal practitioner’s assertions.

Outcome

I asked the LSC to seek legal advice on whether the case could be reopened. The advice identified that the solicitor ‘acted for both financier and borrower contrary to rules 10.2 and 10.6 [Professional Conduct and Practice Rules 2000]’; that the solicitor ‘failed to protect his client’s interests’ and ‘acted in a potential conflict of interest’.

The deficiencies in the LSC investigation and errors in the final decision drew into question the merits of the decision. However, the legal advice indicated that the legality of the decision was not brought into question because the LSC had followed the legal procedures set out in its governing legislation, the Legal Profession Act 2004.

The advice concluded that deficiencies in an LSC investigation or an error in its decision (which may have been caused by the deficiencies in its investigation) cannot be classed as a ‘legal’ error but is an error that
Complainants should be entitled to reviews of deficient investigations or erroneous decisions. I have recommended to the Attorney-General that he amend the Legal Profession Act 2004 to allow the LSC to re-open a case where there has been a merits error.

I note that since this recommendation the Council of Australian Governments (COAG) announced that it had devised a plan to achieve a national regulation for the Australian legal profession and any proposed changes to the Legal Profession Act (including complaint-handling and professional discipline) will be considered as part of this process.

I also conducted an own motion investigation into the Legal Services Commissioner and its decision-making processes under section 14 of the Ombudsman Act because of the number of complaints I had received. My investigation identified a lack of understanding by staff of the Legal Services Commissioner’s statutory powers and a restricted skills-set to conduct investigations. The Legal Services Commissioner’s investigators showed limited knowledge of the basic techniques of investigative processes. Case files lacked:

- investigation plans
- thorough and professional approaches to gathering evidence
- follow-up on serious allegations
- substantiating documents such as practitioners’ files
- timely conclusions
- verification of practitioners’ responses
- reasons for decisions.

I made 28 recommendations to the Legal Services Commissioner and am pleased to note that it has taken steps to address a number of problems identified in my own motion investigation. I intend to review the Legal Services Commissioner’s implementation of my recommendations over the next year. I also referred the report of my investigation to the Attorney-General for his information, particularly in relation to the inability of the Legal Services Commissioner to re-open cases on the basis of merits.
Bayside Health

Another complaint regarding the relationship of public sector agencies to their various statutory responsibilities resulted in my Report of an investigation into issues at Bayside Health.7

Unlike most other jurisdictions, Victoria has a decentralised health system where locally managed health centres are established under legislation to service community needs in their geographical area. Metropolitan Health Services are legal entities in their own right. They are funded by the Victorian government; their boards of management are appointed by the responsible Minister; and they have statutorily defined functions and responsibilities.

The challenge for health services is to ensure they have effective systems in place to monitor performance, identify vulnerabilities and minimise risks to the public. Most systems rely on the integrity of those who play pivotal roles within the health service, including senior medical staff.

My investigation into Bayside Health determined that the administrative systems in place at both the Transport Accident Commission (TAC) and the Victorian WorkCover Authority (WorkSafe) were not sufficient to capture the anomalies in the billing practices of a senior medical staff member.

The failure of insurers, in particular the TAC, to monitor and audit bills resulted in significant financial incentives for what were clearly inappropriate billing practices. This failure has cost the Victorian public considerable amounts of money for payments that should not have been made and for services that in some cases were not provided.

What struck me in this investigation is how different agencies blamed each other for failing to have proper controls. For example, the TAC said that it ‘relies on procedures and internal controls completed at the … [h]ospital for the appropriateness of clinical care decisions and representations from surgeons that surgical items contained in invoices are clinically justified’. On the other hand, the hospital was of the view that the ‘TAC and other insurers were solely responsible for auditing … bills’.8

My investigation identified a need for a detailed examination of the billing practices of medical practitioners, particularly specialists. I also considered that billing for full-time and part-time medical practitioners should be conducted by the public hospital in which they are employed. Further lessons arising from this investigation include the need to:

- review all private practice arrangements
- identify and review all current arrangements entered into by medical practitioners with medical supply companies

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8 Ibid, page 11.
• review billings with a view to recovering overcharged or incorrectly charged items

• improve the existing system of peer review of surgery to ensure that all cases in all disciplines are screened.

As a result of my concerns about billing practices I commenced an own motion investigation into the TAC’s and WorkSafe’s systems for detecting inappropriate medical practitioner billing practices. My investigation highlighted deficiencies in the billing systems, audit frameworks and recovery strategies. I made a number of recommendations aimed at improving these processes which were accepted by both TAC and WorkSafe. My report on this investigation was tabled in Parliament in July 2009.9

**Vulnerable residents of a supported residential service**

My office is an important part of society’s safety net for those who are least able to advance and defend their own human rights. This aspect of my role has become even more prominent since my jurisdiction was extended to include the Charter of Human Rights and Responsibilities Act 2006 (the Charter). My functions now also include the power to enquire into or investigate whether any administrative action is incompatible with a human right set out in the Charter.

Earlier this year I was concerned that the Department of Human Services failed to take sufficient steps to use its statutory powers to protect the safety of vulnerable residents of a supported residential service. I investigated the matter due to concern for the residents’ well-being. The following case study outlines this investigation.

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**Failing to exercise regulatory powers early**

I received a complaint that the Department of Human Services (DHS) failed to act on reported breaches of the Health Services Act 1988 by the owner of a supported residential service.

DHS responded to my enquiries and confirmed that a consultancy firm investigated the matter and provided it with a report, on which the department sought legal advice. DHS informed me that although there were indications that the owner may have breached the law, legal advice indicated there was not enough evidence to take legal action. DHS said that it had added conditions to the certificate of registration and monitored the owner’s level of compliance.

I reviewed the consultancy firm’s report and found that it contained serious allegations against the owner which included a number of potential breaches of the Health Services Act. I questioned whether DHS was able to ensure the safety and well-being of the residents of the lodge and so I commenced a formal investigation.

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The Health Services Act 1988 makes DHS responsible for registering and monitoring the compliance of supported residential services. In cases of non-compliance DHS may prosecute owners for specific offences, suspend admissions, place conditions on registration, revoke registration, or terminate the appointment of facility administrators.

My investigation identified that the department had consistently received complaints about the supported residential service and its owner’s actions since 2001. As DHS was aware of the nature, scope and seriousness of allegations, I consider that it had the opportunity to investigate and impose appropriate sanctions sooner but failed to do so.

The Secretary advised that a number of steps have been taken to improve compliance with standards at the supported residential service. The Secretary considered these steps had diminished the concerns about care being provided to residents.

Outcome

Following the conclusion of my investigation, I made seven recommendations to the Secretary of DHS. These included seeking further legal advice regarding the prosecution of the proprietor for alleged breaches of the Health Services Act; reviewing DHS’s methods for conducting investigations of complaints into supported residential services; and developing processes for tracking complaints about proprietors of supported residential services across their tenures at multiple facilities. My final recommendation was that the Secretary consider revoking the registration of the proprietor of the supported residential service.

The Secretary agreed to the majority of my recommendations and advised that these were reflected in departmental actions and policy. In response to my final recommendation, the Secretary advised that only the Minister was able to revoke the registration of a proprietor and that, following further legal advice, the Secretary would brief the Minister about this possibility.

I have now referred my report and recommendations to the Minister for her consideration and response. I will also continue to monitor DHS’s implementation of my recommendations and its investigation of the supported residential service.

My investigation into DHS’s actions prompted it to seek further legal advice regarding possible prosecution of the proprietor for breaches of the Health Services Act.
Exceeding authority

Individuals can be at a considerable disadvantage when dealing with the authority of public agencies. Agencies must remain mindful of this imbalance and should seek proper advice before considering actions that may infringe upon an individual’s rights and interests.

The next case study provides an example of a council failing to ensure it was not exceeding its powers and demonstrates how my office was able to assist a complainant whose legal entitlements were infringed.

Lack of legal authority

I received a complaint from a landowner regarding Casey City Council’s road sealing works. The complainant claimed that in the process of widening the road, the council had fenced off a 6 x 6 x 8.33 metre section of his land without any attempt to consult with or compensate him.

In responding to my initial enquiries, the council used subdivision documents as evidence of its authority over the land; however the original certificate of title drew into question the nature and extent of this authority. I made further enquiries into the council’s legal authority to fence off the land. This led the council to reconsider its position and conclude that it did not have legal authority.

Outcome

The council advised the complainant that it was willing to either remove the fence and reinstate the complainant’s land or pay compensation. The complainant chose to be compensated.

Citizens can be placed at a distinct disadvantage when confronted by the resources of a government agency, such as a council. This power imbalance is amplified if one party to a negotiation is not legally represented. Agencies should not abuse their authority when exercising statutory powers, as the next case study illustrates.

Unequal bargaining power

I received a complaint that the Alpine Shire Council acted unreasonably in relation to a proposed land acquisition. The council wanted to purchase the complainants’ land in order to develop a shared bicycle and pedestrian path, and was willing to compulsorily acquire a portion of the land if necessary. After negotiating with the complainants’ solicitor, the council agreed in writing to pay $55,000 for the land plus legal costs. It later reneged on the agreement and refused to pay the complainants’ legal fees.

During my investigation the council insisted that it could have resolved the matter without legal intervention, despite having sought its own legal advice on a number of occasions. The council also appeared to give
little weight to the fact that the complainants did not wish to sell their land, as they believed the development would impact on their privacy. I would expect most members of the public in the complainants’ position to be:

- intimidated by a council willing to exercise its compulsory acquisition powers against them
- disadvantaged by continuing discussions in this context without legal representation.

**Outcome**
I concluded that it was reasonable in these circumstances for the complainants to have legal representation and that the council had acted unreasonably by not paying the complainants’ legal costs. I recommended that the council reimburse the complainants and improve its administration by reviewing its:

- record-keeping policies and procedures
- practices of negotiating legal contracts with parties who are not represented
- complaint-handling procedures.

The council confirmed that it is in the process of moving from a paper-based document management system to an electronic one. The council advised that when it implements the new system it will update its record-keeping policies and procedures. The council also provided a draft document of its reviews to my office for consideration and reimbursed the complainants $3,500 in legal fees.

**Department of Human Services and child protection**
Many agencies have a statutory duty to care for and protect certain members of the community. Examples include the guardianship services provided by the Office of the Public Advocate; financial services by State Trustees to represented persons; clinical treatment and care of involuntary patients as mandated by the Mental Health Act 1986; and the child protection services provided by the Department of Human Services.

Having investigated several serious matters where children have been inadequately protected, I was concerned about the Department of Human Services’s capacity to meet its statutory responsibilities and provide child protection services. My office’s enquiries into child protection have identified issues requiring the immediate attention of the department but for which action was not taken.

I identified that at times concerns seem to go unnoticed or unconsidered by the Department of Human Services, and it is not until a complaint is made to my office that the department’s actions are more closely examined.
As an example, only after my office made enquiries did the Department of Human Services recognise there was no legal order in place to confirm the department’s role as custodian to a child in question. My enquiries into this matter also found instances where children subject to the Department of Human Services’ intervention did not have a current best interest case plan. The Children, Youth and Families Act 2005 requires the department to prepare a case plan within six weeks of a court making any of these orders:

(a) Supervision order
(b) Supervised custody order
(c) Custody to Secretary order
(d) Guardianship to Secretary order
(e) Long-term guardianship to Secretary order
(f) Therapeutic treatment (placement) order.

The Department of Human Services in one region conducted an audit of best interest case plans to establish whether non-compliance with this statutory requirement was systemic. Of 387 children on protection orders in the region at the time of the audit, best interest case plans were in place for 345 children. This means that the Department of Human Services was non-compliant in 11 per cent of cases investigated. In other words, for 42 children requiring supervision a best interest case plan was not in place.

The audit process identified vulnerabilities in the program, especially in relation to convening meetings within the required timeframes. Other vulnerabilities included: middle managers being absent from the program on leave and extended leave; middle managers changing roles; and the process of transferring cases to teams when best interest plans needed to be scheduled. The region responded to my concerns by taking steps to catch up with the backlog of overdue best interest case plans and by designing administrative measures aimed at preventing these problems in the future.

The Department of Human Services’s inability to provide vulnerable children with an allocated case worker was one particular area of concern. Several of my enquiries identified unsupervised children on Children’s Court Orders. This means that courts have determined these children are in need of protection, yet the Department of Human Services has been unable to provide an adequate level of monitoring. Some regional offices have particularly high proportions of children subject to their supervision who are not allocated to a caseworker.

For example, an investigation found one child protection supervisor who had 64 children awaiting a child protection worker to be available. Minimal attention was given to these children whilst their cases awaited allocation.
Basic measures were overlooked in a system that appears to be operating under stress.

As a result I commenced an own motion investigation into the Department of Human Services’s Child Protection Program in April 2009. I am also undertaking this investigation because I am concerned about the Department of Human Services’s ability to discharge its statutory responsibilities towards children at significant risk of harm.

My investigation examines the context in which the Department of Human Services is operating and focuses specifically on the impact of the Children, Youth and Families Act 2005 on children and young people. The investigation will be conducted in conjunction with the Privacy Commissioner, as it will also address allegations of privacy breaches.

I informed the Secretary and Minister of my intention to investigate.

Lack of awareness of procedures

A further theme to emerge from my enquiries was that some staff members lacked adequate knowledge of the department’s internal practice standards which govern their work. The next case study is an example of basic measures that were overlooked in a system that appears to be operating under stress.

Police checks

I concluded from an investigation that the Department of Human Services (DHS) repeatedly failed to conduct criminal records checks. This resulted in DHS placing a child with a convicted sex offender, against whom the child had made disclosures of abuse in the past. Even though the child’s mother brought this to the attention of DHS staff on a number of occasions, DHS did not investigate the matter.

DHS’s staff is required to conduct a search of DHS’s database to ensure carers are not alleged to have abused other children, yet none of the staff members my office interviewed were aware of how to conduct this check. My investigation revealed that staff also lacked knowledge of relevant procedures.

I established that inadequate supervision, largely due to excessive workloads, impacted on the way DHS managed this case. I made a number of recommendations to improve child protection practices including that DHS train its staff in the practice standard for police checks; review caseloads carried by team leaders; and consider the impact of supervision on staff.

Outcome

As a result of my investigation DHS reviewed this case and instigated additional training for staff in the region. To ensure better practice in the future DHS is also reviewing the way it resources cases, makes decisions and allocates work.
Many cases suggest that as resources are stretched to meet demand, the threshold for intervention increases. The rising threshold seems to either delay or prevent the investigation of serious allegations, as illustrated in this next case study.

**Timely safety**

I received a complaint regarding the failure of the Department of Human Services (DHS) to intervene when it became aware that two boys, aged five and six, were living with a convicted child sex offender.

On 4 November 2008 a family member complained to DHS about the boys’ living arrangements but DHS’s Intake area did not refer the matter to its Response Unit for action until 21 November 2008. By the time the Response Unit acted on the information the boys had moved to an unknown location. DHS therefore was unable to check on the boys’ safety and well-being.

Although the boys were located and eventually received suitable accommodation, I remained critical of the amount of time DHS took to act.

**Outcome**

The department has commenced to implement my recommendations by:

- reviewing the region’s Intake area
- assessing resources, workloads and decision-making processes
- arranging specialist support for complex investigations from the Regional Child Protection Principal Practitioner and the Sexual Assault Investigations Unit
- introducing new training and support strategies to build staff skills
- enhancing the skills of Intake staff by providing them with opportunities to observe investigations with Response staff and develop their skills
- facilitating Family Law Court training sessions to ensure that all staff members are familiar with the correct procedures and processes of the court.

These issues can be compounded in circumstances where the different agencies involved in supporting a child do not agree upon the appropriate response. The implementation of the Children, Youth and Families Act has led to significant changes in case practice, particularly in early intervention and prevention responses. Even in light of these new measures, problems are compounded when the different agencies involved in supporting a child do not agree upon the appropriate response.
The new reforms focus on proactive and supportive responses to vulnerable families and consider the effects of cumulative harm on vulnerable children. The following case study demonstrates the challenges that the Department of Human Services has had in implementing these reforms and changes to practice.

Conflicting opinions

I received a complaint from the CEO of a community support organisation regarding the Department of Human Services’s (DHS’s) failure to intervene and protect a mother (aged 14) and her son (aged five months). The mother had been sexually abused and had a history of self harm.

The complainant advised that her organisation was providing the mother with parenting support, but that she had serious concerns about the safety of both children. She maintained that although she had reported her concerns to the department, DHS had neither investigated nor taken into account the risk of cumulative harm to mother and son. The complainant was seeking a more comprehensive assessment of the risks to both children.

This was a highly complex matter. The family had a long history with DHS and a number of community support services. Given the sensitive context of child protection practice, DHS made a professional judgement not to intervene in this matter.

The organisation’s staff and Child Protection staff disagreed on the appropriate intervention in this case. DHS believed there was no reason for protective intervention because the family was voluntarily working with community support services. The organisation insisted there were significant risks, especially noting the ages of the mother and son, which the department had not assessed adequately.

Despite the decision that mother and son should enter the Queen Elizabeth Centre immediately after the birth for a residential parenting assessment, the organisation was unable to effect sufficient change within the family for the assessment to take place.

Outcome

I recommended that DHS explore further strategies to assess the mother’s parenting capacity, bearing in mind her age and circumstances. DHS accepted my recommendations.

Double standards

Public opinion of a government agency can easily undermine public acceptance of the agency’s authority. One example is when a complainant identifies that an agency is not willing to apply to itself the same standards that it applies to the general public.

Members of the public usually understand that when they owe money to an agency it will seek to recover the outstanding debt. In some instances where
an innocent mistake is made the agency may waive the fine however it will generally expect the debt to be repaid with interest. I consider it is fair that an agency apply the same standards to itself. When it makes an administrative error and owes money to a member of the public it should also repay the debt with interest. The following case study illustrates this point.

**Council overcharging**

I received a complaint that Moorabool Shire Council overcharged a resident $4,988.96 in council rates for the financial years of 2004-05, 2005-06, 2006-07 and 2007-08. Even though the council refunded the principal amount, it declined the complainant’s request to repay the interest because it was ‘not council practice’ to pay interest on refunds.

My investigation identified that the council overcharged the complainant because it had changed its rates structure in 2004 and incorrectly recorded the complainant’s property details. I noted that the council charges ratepayers a penalty interest of 12 per cent per annum for all late rate payments. I considered this to be a reasonable guide for how the council should compensate the complainant for its administrative mistake.

**Outcome**
The council accepted my recommendation to apply its own standards to its own conduct and reimbursed the complainant $1,589.27 in interest.

Another example is provided in the case study below. In this instance, I consider that a council gave preferential treatment to an individual in a private planning matter because of the individual’s role within the council.

**The different treatment of a councillor and a ratepayer**

I received a complaint from a farmer and his wife about the Wellington Shire Council issuing their neighbour with a planning permit for land forming works. The complainants stated that the Wellington Shire Council issued their neighbour’s planning permit without following due process. Their neighbour was a councillor and also Mayor.

My investigation identified that the:

- complainants’ neighbour applied for a planning permit after he had completed 70 per cent of extensive land levelling works on his rural property
- council did not take action against the neighbour for completing works without a permit
- neighbour did not vote on the issue but remained in the gallery while the council considered his permit application
• council issued the neighbour with a permit despite receiving an objection from another party
• permit had eight conditions including that an embankment exist of no less than 150mm
• complainants continually reported flooding to their property to council and the council failed to resolve the matter
• complainants’ neighbour, who was then Mayor, raised concerns to a council officer about flooding to his property and the council responded by inspecting the site and advising the neighbour to reduce the height of the embankment from 450mm to 150mm.

My investigation also identified that the council’s preferential treatment continued when the neighbour sought an amendment to the planning permit to build a water reuse dam. I determined that during this process the council disregarded the expert advice it sought and made ill-informed decisions which resulted in flooding of the complainants’ property. My investigation established that council officers:

• selectively applied the expert advice it sought from the West Gippsland Catchment Management Authority (WGCMA)
• issued an amendment to the planning permit which mandated that the dam hold 1.24ML and removed the need for the embankment
• acted against WGCMA’s advice that the embankment should only be deleted if the reuse dam were enlarged to 1.65ML
• confirmed that the council struggled with drainage issues; did not have an engineering report or gradient information; and assumed drainage responsibility without relevant technical knowledge.

When the complainants asked the council to review these changes to the permit conditions, the council threatened to take enforcement action against the complainants if they did not remove an embankment they had built in mid-2002 to stop flooding on their property. The council argued that the complainants’ embankment contravened its planning scheme. The council subsequently:

• issued the complainants with a planning contravention notice in relation to their embankment
• commenced action before the Victorian Civil and Administrative Tribunal (VCAT).

After incurring legal costs the complainants removed the embankment.
As a result of my investigation, I recommended that the council engage an engineer to provide a detailed assessment of the area. Almost five years after the complainants approached my office, the council had the area assessed. The assessment confirmed the need for an embankment. The council obtained a quote for the reinstatement of the embankment then agreed to pay the complainants the amount specified, subject to the complainants agreeing not to take any further action against the council. I understand the complainants are considering whether to accept the council’s offer or pursue legal action.

I note that in response to this case study, the CEO of the council stated it had not ignored the complainants as it had undertaken several assessments.

Outcome

My investigation demonstrated a marked difference in the council’s treatment of the complainants and their neighbour. There was a strong inference that the neighbour received preferential treatment because he had been a councillor and the Mayor. He was able to apply for a retrospective planning permit and was not sanctioned for works completed without a permit. In comparison, the complainants were taken to VCAT for building an embankment without a planning permit – an embankment that experts had identified was necessary to alleviate flooding to their property. I remain concerned that this matter was unnecessarily protracted owing to the council’s unwillingness earlier in my investigation to address the complaint.

Legislation limitations

On some occasions, even though an agency acts in accordance with legislation, the outcome is still not in the best interests of the community or the individuals involved. In the following case study, it is my view that the Department of Human Services missed an opportunity to review and improve its practices because of the limitations of the current legislation.

Failure to review

I received a complaint from a mother who alleged that the Department of Human Services (DHS) contributed to the death of her stillborn son. While I found no evidence to support this allegation, I identified limitations of the legislation in respect of DHS’s obligation to report child deaths to the Child Safety Commissioner.

The Child, Youth and Families Act 2005 (CYF Act) states that the Secretary may receive reports regarding the safety and well-being of an unborn child. This enables DHS to provide advice and assistance to the mother of the unborn child.

The Secretary must report the death of a child to the Child Safety Commissioner if the child was a Child Protection client at the time of his
or her death, or within three months before his or her death. In this case the complainant’s child was stillborn and so was not legally considered a child under the CYF Act. I considered that all child deaths should be reported to the Child Safety Commissioner as an opportunity to review the effectiveness of the child protection system.

**Outcome**

The Secretary of DHS acknowledged my recommendation, however stated that present legislation does not allow the department to implement it. My office contacted the Victorian Child Death Review Committee, which in turn advised that it will seek changes to the legislation.
transparency in government
2. TRANSPARENCY IN GOVERNMENT

Freedom of Information Act

The *Freedom of Information Act 1982* (FOI Act) provides members of the public with a right of access to documented information that is in the possession of prescribed Victorian Government agencies.

I have jurisdiction to investigate complaints about freedom of information (FOI) requests where they relate to administrative actions including:

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

Currently the charge for a FOI request is $23.40 (two fee units).

FOI complaints for this financial year were more than 40 per cent higher than the numbers received in 2007-08, as shown in the table below.

<table>
<thead>
<tr>
<th>FOI grounds for complaint</th>
<th>2007-08</th>
<th>2008-09</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delays in processing</td>
<td>45</td>
<td>74</td>
</tr>
<tr>
<td>Intervention by Ombudsman</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Lost or non-existent documents</td>
<td>30</td>
<td>31</td>
</tr>
<tr>
<td>Other</td>
<td>19</td>
<td>0</td>
</tr>
<tr>
<td>Publication of documents / information</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Reasons statement</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Refused access to documents</td>
<td>16</td>
<td>27</td>
</tr>
<tr>
<td>Requests for access</td>
<td>6</td>
<td>27</td>
</tr>
<tr>
<td>Transfer of requests</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Unreasonable charges</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>Voluminous requests (unreasonable diversion of resources)</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>125</strong></td>
<td><strong>178</strong></td>
</tr>
</tbody>
</table>

Requests for documents dealt with by the Ombudsman’s office | 6       | 17      |
Avoidable errors are still occurring when agencies process FOI requests. The following case study illustrates this.

**Miscommunication**

A solicitor complained to my office about a WorkCover claims agent’s refusal to release documents relevant to his client’s WorkCover claim. The agent believed it did not have to supply the requested documents because the file containing the documents was in secondary storage. Following my enquiries, the agent acknowledged that it:

- assessed the request under sections 107 and 107A of the *Accident Compensation Act 1985* rather than the *Freedom of Information Act 1982*
- mistakenly claimed that the requested documents were exempt because they were in secondary storage
- sent poorly drafted letters which contained grammatical and legal errors
- did not retrieve the relevant file from secondary storage in a timely manner, which delayed the application process
- failed to inform the applicant that the request for documents could progress once the file was received.

**Outcome**

The agent processed the request and provided the solicitor’s client with a copy of the complete file. The agent also organised further training for its staff.

I am also concerned that backlogs are increasingly common in many agencies. The next case study highlights a department’s delay in investing additional resources despite an apparent increase in FOI requests.

**Frustrating the FOI process**

I received a complaint about the Department of Industry, Innovation and Regional Development’s (DIIRD) handling of a freedom of information (FOI) request. The complainant stated that DIIRD:

- failed to deal with the request in a timely and efficient manner
- breached the statutory 45-day limit
- failed to provide hard copy documents in electronic form as requested
- refused to provide any documents despite having received a deposit.
I made enquiries with DIIRD and established that it took:

- 41 days to search for the documents from the time DIIRD received the request
- 49 days to ask for a $60 deposit from the applicant when the law allows for 45 days
- 33 days to retrieve relevant documents from archive boxes which had been initially examined and then prematurely returned to storage
- 25 days after the deposit was paid to send the complainant a response.

DIIRD acknowledged the delays and explained that they were caused by large increases in the numbers of FOI applications and proceedings before VCAT. Due to the number of documents retrieved in the archive boxes, DIIRD considered it could refuse the request under section 25A of the FOI Act.

**Outcome**

I concluded that DIIRD could have made a better assessment of the request had it thoroughly examined the archive boxes from the outset. I informed DIIRD that I believed it was unreasonable for the department to keep the applicant’s deposit given the significant delays and the department’s failure to adequately assess the request.

DIIRD refunded the deposit and waived any future charges in the processing of the request. In addition, DIIRD allocated extra resources to the FOI Unit to meet its increased workload and commissioned a review of its administrative practices to improve its handling of FOI requests.

I remain concerned about the culture surrounding FOI practices in some areas of the public sector. Often agencies act against the intention of the FOI Act by restricting, rather than facilitating the release of information.

**Cultural change**

In 1982 the Parliament enacted the FOI Act with the intention of encouraging and stimulating an open, transparent government by creating the means by which Victorians would have ready access to government documents, subject to a limited number of exemptions.

This intention required that agencies administer the FOI Act in an appropriate manner. The Attorney-General emphasised this point in 2000 with his Guidelines to assist the administration of the FOI Act. The Attorney-General expressed the view that those guidelines:

require departments and agencies … make decisions under the FOI Act consistent with three key principles vital to a healthy democracy. They are that:
I am concerned that there appears to be an unnecessarily restrictive approach within some agencies regarding the use and interpretation of the FOI Act. During a number of investigations conducted during the year I have observed that the emphasis in interpreting and applying the Act, particularly the exemption provisions, is in a manner more consistent with ‘protecting’ documents from release, rather than as a means of allowing citizens to have open access to government documents.

Many FOI requests which my office examines relate to problems in the consultation process. The following case study is an example of this.

**Insufficient consultation and failure to assist**

I received a complaint about the City of Boroondara’s decision to deny the complainant access to documents requested under the Freedom of Information Act 1982. The council had refused to provide the complainant with either access to the requested documents or an edited copy of the documents, including only the dates of the documents.

My enquiries revealed that, in light of the nature of the documents the complainant requested access to, it appeared the administrative decision of the council in applying the exemption on the grounds of legal professional privilege, was one reasonably open to the council to make under the Act.

However, I noted that the council also determined that the deletion of privileged material from the documents would render them meaningless and therefore the complainant would not wish to have an edited copy. In this regard I considered that the council adopted a narrow approach to this matter, particularly in relation to the complainant’s request for only the dates of the documents.

**Outcome**

I concluded that the council could have consulted more widely and provided the complainant with greater assistance in processing his request, particularly his request for the dates of the requested documents. I recommended that council officers take this into consideration when processing future FOI requests of this nature.
As outlined in section 17 of the FOI Act and demonstrated by the case study below, agencies and applicants have a responsibility to provide sufficient information to enable the request to be in a form that can be processed.

**Insufficient consultation**

I received a complaint about LaTrobe Community Health Service’s (LCHS) refusal to process a freedom of information (FOI) request. The complainant sought financial information which LCHS denied under section 17 of the FOI Act because it maintained the request was unclear.

I made enquiries and sought information from LCHS about how its financial management system operates and what type of reports the system produces. In response LCHS provided information including example reports and appropriate ways to word the request.

**Outcome**

I contacted the complainant, discussed the types of reports LCHS could produce which related to his search, and provided him with advice on the wording of the request in case he wished to pursue the matter. The complainant was satisfied and subsequently lodged a new FOI request.

In my *Review of the Freedom of Information Act*, I stated:

> Where appropriate, an agency should provide a fair indication of the types or classes of documents that it holds that relate to the subject matter of the request or the way in which information is recorded or stored.  

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This does not always occur. The next case study is an example of a department’s failure to provide such assistance.

**Assisting the applicant – demystifying information**

A Member of Parliament (MP) complained about the Department of Transport’s (DOT) handling of his freedom of information (FOI) request. He sought information about train and tram cancellations; service delays over six minutes; and city loop diversions.

DOT determined that because this information did not exist in a single document it would have to create tables to satisfy the MP’s request. These tables could not be readily extracted from DOT’s database and it would require more time than DOT was obliged to spend.

The MP advised that DOT had previously satisfied similar FOI requests. DOT confirmed this. However, having carefully considered this matter DOT determined that a significant amount of work was required to create such a document. Consequently DOT determined this request exceeded the requirements of section 19 of the FOI Act.

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I investigated DOT’s database systems and found that it would require significant analytical resources to extract the requested information. I asked DOT to provide the MP with a list of readily available reports to assist with future FOI requests.

One DOT officer stated that he was reluctant to provide the complainant with a ‘shopping list’. I am concerned that DOT:

- did not attempt to assist the MP in his endeavour to obtain information
- was reluctant to ‘demystify’ readily available information.

This practice goes against the objective of the FOI Act, which is:

to extend as far as is possible the right of the community to access information in the possession of the Government of Victoria and other bodies constituted under the law of Victoria for certain public purposes.

DOT has subsequently advised the officer’s comment does not reflect departmental culture in responding to FOI applications.

**Outcome**

I obtained from DOT a list of readily available reports and forwarded them to the MP to assist him in the future. DOT could have provided these reports in the first instance to assist the applicant.

I do see good examples in the Victorian public sector of an open culture in handling FOI requests. However, the inclination in some agencies is to use the FOI Act to prevent the release of documents, rather than to use it according to its intended purpose: as a means to allow scrutiny of an open and transparent government. The following case study demonstrates this point.

**Using FOI to protect documentation**

I conducted an own motion investigation into the decision-making processes of the Department of Transport. My investigation related to the department’s initial decision to refuse a freedom of information (FOI) request and subsequent decision to defend its position in court. These decisions cost both the department and the applicant time and a large amount of money, as well as delaying the applicant’s entitlement to obtain the documents for 30 months.

The department originally refused to release the requested documents arguing they were exempt under section 28 of the FOI Act in that they were ‘Cabinet-in-confidence’. When the applicant appealed this decision the department conducted an internal review.

The department sought legal advice and was told it had ‘a less than 50 per cent chance of winning’. It did not advise the Secretary of the
unlikely success of its actions before taking its case to the Victorian Civil and Administrative Tribunal (VCAT) and the Court of Appeal. Both VCAT and the Court of Appeal clearly and unambiguously rejected the department’s argument. Further, it was impossible to determine who, if anyone, approved the instruction to lodge the appeal.

My investigation identified significant difficulties in the way the department:

- managed documents
- sought, obtained, recorded and communicated instructions for litigation
- responded to FOI requests
- applied model litigant guidelines.

In February 2009 I made a number of recommendations which aim to improve FOI culture and prevent unnecessary litigation, including that:

1. the Attorney-General consider issuing additional FOI guidelines to make it clear that the departments should interpret and apply exemptions in the FOI Act consistently with the terminology, intention and purpose of the FOI Act

2. each departmental Secretary ensure procedures are in place so that model litigant guidelines are taken into account and documented in decisions to conduct litigation; and that any advice sought from counsel regarding possible or prospective litigation should expressly refer to and advise on the application of the model litigant guidelines in relation to the proposed action

3. the Attorney-General consider making a requirement for departments and agencies to seek a second legal opinion from either the Solicitor-General, the Victorian Government Solicitor, Crown Counsel (Advisings) or a legal practitioner nominated by the Victorian Government Solicitor before they commence an appeal to the Court of Appeal regarding FOI matters, where the Solicitor-General, the Victorian Government Solicitor or Crown Counsel (Advisings) are not involved

4. the departmental Secretary review the file maintenance practices in the department and ensure that policies are in place to properly manage and record documents; in particular, that all approvals for conducting litigation are documented on file before litigation begins.

**Outcome**

The Attorney-General has sought advice from the Victorian Government Solicitor and the Department of Justice regarding the implementation of recommendations one and three in the report. Representatives of the department have also met with my officers to discuss the recommendations.

The department dealing with this FOI matter accepted recommendation four and is well advanced in its implementation. It also provided qualified support for recommendations two and three.
The department has continued to defend the approach taken during the preparation and conduct of the appeal. In its response to the draft of this report, it made the following points:

- it had Senior Counsel’s advice that it had strong grounds of appeal
- leave had been granted by the Court of Appeal, which the department felt indicated that it had an arguable case.

However, both of those issues are irrelevant to and do not address the concerns expressed regarding this matter, which relate to the processes adopted by the department in launching this appeal. Those concerns are that:

- the department failed to document its processes
- no one was prepared to accept that they had given instructions to launch the appeal
- it was not possible to identify anyone who granted approval to launch the appeal
- of the persons who could have been understood to have given instructions to launch the appeal, none were advised of all of the information necessary to consider whether the appeal should be initiated, particularly that the department had a less than 50 per cent chance of success.

The department has also continued to argue that the Secretary at the time the appeal was launched had given approval for the appeal based on a Notice in the Government Gazette, despite evidence gained in the investigation to the contrary.

My office has received complaints about agencies’ decisions to refuse applicants access to documents under various sections of the FOI Act. Under section 25A(5) an agency may refuse to process a request, without identifying any of the documents, if it is apparent that all the documents would be exempt and the person making the request would not wish to have access to an edited copy of the documents. Agencies can sometimes be unnecessarily restrictive when assessing an applicant’s request.

Other cultural difficulties can be seen from the failure to meet the statutory timelines and then justifying those failures on the often quoted excuse of inadequate resourcing. These delays have led to growing backlogs which are becoming increasingly common in many agencies. Without adequate resources and efficient processes, agencies are at risk of failing to provide an efficient service delivery or, worse, failing to meet their statutory responsibilities. The Secretary of the Department of Justice states:

> All departments, including the Department of Justice, are aware of the need to improve their timeliness in responding to FOI requests and accordingly, performance has been placed as a standing item on the meeting agenda for the State Coordination and Management Committee.

Other cultural difficulties can be seen from the failure to meet the statutory timelines and then justifying those failures on the often quoted excuse of inadequate resourcing. These delays have led to growing backlogs which are becoming increasingly common in many agencies.
These failures and this justification are clearly not satisfactory and are inconsistent with the legislative obligation placed on agency heads and with the Attorney-General’s 2000 Guidelines. As those guidelines make clear:

Agencies must respond promptly and within the timelines set out in the FOI Act for all matters related to FOI applications and requests for internal reviews and appeals. Particular care must be taken to ensure statutory response times are met for requests for access or amendments to documents and requests for internal reviews, as well as orders made by the Victorian Civil and Administrative Tribunal (VCAT).

Furthermore, as the Attorney-General made clear in his guidelines, inadequate resourcing is not justification for poor compliance with statutory timelines:

Principal officers must also ensure that adequate resources are available to fulfil their agency’s obligations under the FOI Act.

Poor attitudes towards FOI requests and a limited understanding of FOI laws underscore these cultural problems. Although my office continues to promote greater openness and transparency, some agencies remain reluctant to fully disclose matters of public interest, even after receiving guidance.

**Transparency in decision-making**

The following own motion enquiry illustrates my concerns about a lack of transparency in some water boards’ decision-making.

**Access to minutes of board meetings**

I conducted an own motion enquiry into the openness and transparency of operations at 17 Victorian water authorities because, in my view, the issue of water resources and management is of considerable public interest.

Some water authorities already open their meetings to the public and publish minutes of meetings even though they are not legally required to do so.¹¹ Many others use community consultative groups to keep their operations and decision-making processes open.

Water authorities with closed meetings expressed concerns such as:

- dealing with sensitive commercial and contractual issues
- discussing commercial and business information in a public arena
- changing venues to accommodate larger numbers in the forum
- excluding the public to enhance decision-making
- inhibiting open and frank dialogue among directors
- increasing workload

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¹¹ See section 120(2) of the *Water Act 1989* which states, ‘Subject to this Act, the board of directors of a water corporation may regulate its own procedure’.
• running meetings less efficiently
• re-casting the role of directors, who are not elected public representatives.

While open meetings are generally an effective way to maintain transparency in decision-making processes, sometimes matters will arise which are inappropriate for discussion in a public forum. One water authority has a ‘commercial-in-confidence’ section on its meeting agenda which allows the directors to close the meeting for the discussion of such matters. I consider this a reasonable and logical approach to balancing the need for commercial confidentiality with the principles of openness and transparency.

The secretive way some water authorities conduct their meetings may encourage suspicion and mistrust. Water authorities should therefore consider ways of opening meetings to the public where appropriate and making minutes publicly available for inspection on request.

**Outcome**

During my enquiry, water authorities indicated their full support for the principle of open and transparent governance. They also acknowledged that public access to the authorities could be further improved. As a result of my enquiry, a number of water authorities proposed to review their procedures to enhance their public accountability and openness. Some proposals for improvements include: making copies of board meeting minutes available for inspection at their offices; making meeting summaries available on their websites; and restructuring board meeting agendas to enable the public to attend non-confidential items of board meetings. I am encouraged by the positive responses I received from the water authorities in relation to the preliminary findings and recommendations of my enquiry.

The need for change in departmental culture regarding granting access to information is essential and is just as important as the right to obtain actual access under the FOI Act. Accordingly, I will be examining these matters closely and reporting on them during the forthcoming year.
Tendering across the public sector

The probity of tender processes is an area vulnerable to poor decision-making because it can involve complex financial transactions, the intersection of the private and public sectors, and a public officer’s responsibilities and personal interests. Tendering and contracting remains an area of concern, particularly in local government. One of the key themes identified during the year was a lack of transparency and accountability in this area.

Tenderers invest significant time preparing their bids and there is a reasonable expectation of a fair process which includes feedback to tenderers. Because this expectation was not always met I conducted a number of investigations in relation to contracting and tendering over the past year. My report to Parliament on *Probity controls in public hospitals for the procurement of non-clinical goods and services* identified four inter-related themes:

- accountability and transparency
- value for money
- impartiality
- conflicts of interest.

The investigation included a review of the regulatory framework guiding procurement in the Victorian public hospital system. I made several recommendations, including that the Department of Human Services ensure that all Victorian public hospitals:

- review their selection and management of external contractors, with a view to achieving greater openness and transparency
- review their financial controls over procurement to eliminate probity risks
- consider centralising purchasing arrangements and controls over supplies
- review cash flows and develop a plan to meet debts and obtain payments as they fall due
- revise their policies, procedures and training in relation to dealing with gifts, benefits and conflicts of interest.

The next case study provides an example of lack of transparency demonstrated in relation to conflict of interest issues identified during this investigation.

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There need to be improved procedures in place within Victorian public hospitals to facilitate the capture and use of information relating to declared conflicts of interest.

Probity controls

I conducted an own motion investigation into the effectiveness of probity controls in the Victorian public hospital system in relation to the procurement of non-clinical goods and services. My investigation reviewed staff practices and procedures which affect probity in procurement at two metropolitan and one rural hospital.

At one hospital the Manager of Clinical Engineering engaged an employee’s private IT company to develop a software program. Although the manager was aware of the conflict of interest, the staff member was not asked to make a formal declaration of his conflict of interest until some months after his IT company had started work on the development of the software program.

At another hospital the code of conduct provided a detailed definition of ‘conflicts of interest’ and provided examples of where and when a conflict of interest might be encountered. With the exception of board members, who are required to disclose any conflicts of interest as a condition of their appointment to the board, my investigation was unable to identify any formal register or process for registering and monitoring conflicts of interest involving staff.

I considered that there need to be improved procedures in place within Victorian public hospitals to facilitate the capture and use of information relating to declared conflicts of interest.

Outcome

I recommended that the Department of Human Services (DHS) ensure all Victorian public hospitals provide initial and refresher training to hospital staff on dealing with conflicts of interest. Any amendments or additions to hospital policies and procedures should be circulated to all staff as part of annual staff reviews. I also recommended that DHS ensure hospitals review their practices and procedures to improve the capture and use of information relating to declared conflicts of interest in the procurement process. DHS accepted my recommendations.

I consider that all Victorian public hospitals would benefit from conducting a review of existing probity controls in order to determine how adequately they deal with the risks associated with the procurement of non-clinical goods and services. In light of my conclusions, I recommended that the Department of Human Services take responsibility for overseeing this review and ensuring that all Victorian public hospitals comply with the existing regulatory framework. The Department of Human Services has supported my recommendations and, where necessary, will assist in ensuring hospitals implement them.

While my conclusions arose principally from a recent review of three hospitals, in my view the problems identified are likely to have relevance to all Victorian hospitals. In light of this, I referred this matter to the Auditor-General for consideration of a sector-wide review.
integrity transparency accountability fairness

human rights issues
3. HUMAN RIGHTS ISSUES

Victorian public authorities are obliged to act in a way that is compatible with the human rights outlined in the Charter of Human Rights & Responsibilities Act 2006 (the Charter). Since 1 January 2008 my functions include enquiring into or investigating whether any administrative action is incompatible with a human right set out in the Charter.

Victorian public authorities provide a number of services direct to members of the community. Often those receiving services are the more vulnerable members of our community: prisoners, children, the aged, and those in community care due to illness and/or disability.

During the past year the key rights at issue for complainants were:

- section 8 – recognition and equality before the law
- section 17 – protection of families and children
- section 21 – right to liberty and security of the person.

Providing services to individuals may involve complex issues to which agencies must also respond in a manner consistent with their obligations under the Charter.

A complaint I received against the Victorian Taxi Directorate (the Directorate) highlights the importance of agencies maintaining awareness and understanding of their obligations under the Charter. It particularly relates to the complainant’s rights ‘to equal and effective protection against discrimination’\(^\text{13}\), and ‘to move freely within Victoria’\(^\text{14}\).

**Refusal to accept a guide dog**

The complainant, who is blind, reported a taxi driver to the Directorate for displaying intimidating behaviour and refusing to carry her guide dog unless it was wearing a muzzle. In response to the complainant’s report, the Directorate told the complainant that it had interviewed the driver involved; explained his legislative obligation to carry guide dogs; and issued him with a formal warning. The complainant did not feel that this response was adequate.

I made enquiries with the Directorate to establish whether the complaint had been investigated and addressed appropriately. In response, the Directorate admitted that there were broader problems which it needed to address in the area of service delivery for persons who required the assistance of a guide dog.

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\(^{13}\) Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic) section 8.

\(^{14}\) Ibid, section 12.
Outcome

The Directorate advised that it had taken the following actions in response to my enquiries:

- formally apologised to the complainant regarding its inadequate handling of her complaint
- reviewed the appropriateness of the penalty issued to the driver involved
- initiated a review of policy relating to penalties for drivers refusing to carry guide dogs
- initiated a formal audit to ensure that taxi drivers are receiving appropriate training regarding their obligations to carry guide dogs.

In this case, consideration of the Directorate’s obligations under the Charter further illustrates the importance of this issue and the need to improve administrative processes in this area.

The complaints I receive regarding the treatment of people incarcerated in custodial facilities also continue to highlight the importance of the Charter. In a truly democratic and inclusive society everyone, including those incarcerated, should be able to enjoy and respect human rights.

There are a wide variety of custodial facilities operated by various government departments and their contractors. These facilities include prisons, police holding cells, the Melbourne Custody Centre, secure psychiatric facilities, residential services for children, and youth justice centres.

The following case study demonstrates the need for vigilance to ensure that those in custody have their human rights to humane treatment and protection from torture and cruel, inhumane or degrading treatment protected through recourse to my office.

Treatment of a prisoner

I received a complaint from a prisoner alleging that he had been assaulted by an officer shortly after he arrived at a custodial facility.

I investigated the matter; viewed CCTV footage; examined relevant documentation; formally interviewed relevant officers and concluded that the officers used excessive force on the prisoner, which I considered was unwarranted in the circumstances.

The prisoner, who had soiled himself, was moved naked through the custodial facility to the showers. I considered this treatment not to be in accordance with the values enshrined in the Charter.
It is important that Victorian public authorities ensure staff members deliver services in a manner consistent with the Charter. Training and education help inform staff values and promote a culture which adheres to the Charter. It is equally essential that Victorian public authorities continue to ensure their policies and procedures are compliant with the Charter.

The next case study shows how a failure to review policies and procedures in the context of the Charter can lead to human rights being undermined.

**Access to bail application**

A prisoner complained that the Melbourne Assessment Prison did not give him access to bail application forms while he was in its custody. He stated that he was given access to the forms only after he was transferred to the Metropolitan Remand Centre.

My office made enquiries and received conflicting information about when the detention centres provided bail application forms to prisoners. I was concerned that this inconsistency may breach the human rights of people in custody.

**Outcome**

As a result of my enquiries, the Department of Justice reviewed current practices and agreed to ensure that bail application forms would be available to all remand prisoners wherever they are held.

Since January 2009 my office has been a contributor to an Australian Research Council project which will develop practical strategies for addressing human rights obligations. This project aims to improve the delivery and quality of services to people held in closed environments such as prisons, detention centres, and settings accommodating the aged and persons with disabilities. This will assist human rights monitoring bodies, as well as staff and management of closed settings, to implement human rights obligations in everyday operations.

The Australian Research Council project involves my office’s collaboration with Monash University Law School and five other external scrutiny bodies whose roles touch on closed environments where persons are held and deprived of liberty:

- Commonwealth Ombudsman
- Office of Police Integrity (Vic)
• Office of the Public Advocate (Vic)
• Human Rights and Equal Opportunity Commission (Vic)
• Office of the Inspector of Custodial Services (WA).

The project aims to assess the readiness of staff and management of various types of closed environments to apply human rights in their daily operations; review the roles of the relevant external scrutiny agencies; and identify changes needed in order to achieve compliance with human rights obligations.

Over the next three years, the joint venture will examine current practices in closed environments such as: risk-based classifications to various levels of control; the use of restraints/separations and restricted regimes; the use of force; and the operation of complaints and disciplinary mechanisms. The project will also examine how internal monitoring and inspection responsibilities are carried out, and what activities and procedures are adopted by the relevant external scrutiny agencies to fulfil their role in relation to human rights.
integrity transparency fairness accountability

whistleblowers protection act
4. WHISTLEBLOWERS PROTECTION ACT

The Whistleblowers Protection Act 2001 (the Act) states that anyone who has reasonable grounds to believe that a public officer or public body has engaged in improper conduct may make a disclosure to me or to the relevant public body.

The law aims to encourage and assist whistleblowers in making disclosures of improper conduct. It also establishes a system to investigate matters and to protect whistleblowers from any adverse consequences as a result of making a disclosure.

The Act provides a mechanism that enables instances of improper conduct of public officials and bodies to be identified and, where appropriate, investigated and reported. This brings such conduct out into the open for proper scrutiny and ensures that those responsible are held accountable for their actions. Importantly, it provides whistleblowers with a range of protections including protection from reprisals and defamation, immunity from liability and prohibition from identification in reports. It also provides whistleblowers with an avenue to sue for damages for detrimental action, or to seek an order or injunction from the Supreme Court in response to a reprisal for having made a protected disclosure.

I am responsible for assessing, managing and investigating whistleblower disclosures. I also issue guidelines to help public bodies handle disclosures and comply with the Act. These guidelines are provided on page 100 of this report, as well as on Ombudsman Victoria’s website at: <www.ombudsman.vic.gov.au>.

How the Act works

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.

Allegations which I consider to be protected disclosures are assessed further to determine whether they constitute Public Interest Disclosures (PID). The threshold test for this is that I 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.
Section 3 of the Act defines improper conduct as any of the following:

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

**Review of the Act**

In 2007 the Attorney-General agreed to review the Act with the aim of simplifying and modernising it in light of the experience my office has gained over the past seven years. To assist in the review process, my office has provided input to an interdepartmental committee with representatives from the Department of Justice and the Department of Premier and Cabinet.

While I understand the complexity of issues being considered in the review it is critical that the challenges created by the current legislation are addressed. Measures need to be taken to simplify the operation of the Act; improve the protections afforded to whistleblowers and those involved with their management; and ensure that the framework provided to investigate public interest disclosures fulfils the purpose of the Act.

I note that the Commonwealth House of Representatives Standing Committee on Legal and Constitutional Affairs has considered what constitutes a preferred model for legislation to protect public interest disclosures within the Australian Government public sector. In February 2009 this committee released its report titled *Whistleblower protection: a comprehensive scheme for the Commonwealth public sector*.

I note also that in March 2009 the Parliament of New South Wales’s Committee on the Independent Commission against Corruption released a discussion paper, *Protection of public sector whistleblower employees*, which will also inform the review of the Victorian Act. The government is awaiting the tabling of the Federal Government response to the Federal Parliamentary Legal and Constitutional Affairs Committee report on whistleblowing protection in the Commonwealth public sector before finalising the recommendations from the Victorian review.
Statistics

While the total number of disclosures made to my office in the past 12 months has only minimally decreased in comparison to the last financial year, the level of complexity associated with the matters investigated is increasing along with the number of allegations which have been substantiated.

The Act requires me to investigate each matter that I have determined to be a PID, however I may refer the matter to the public body, the Chief Commissioner of Police or the Auditor-General to investigate if I consider that it is appropriate to do so.

Where I determine a matter is not a PID, I will advise the person who made the disclosure that the matter may be dealt with as a complaint under the Ombudsman Act 1973 or Police Regulation Act 1958.

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<th>Table 2: Number of whistleblower cases by year since 2006-07</th>
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Inadequate transparency and accountability

Public confidence in the integrity of government agencies is achieved through independent and impartial scrutiny of the quality of decision-making and of the probity of the handling of public funds. Inadequate financial controls can lead to an erosion of public confidence in the ability of public bodies to perform their statutory functions and duties, as this next case study shows.

15 As this matter was ten years old I exercised the discretion provided to me under section 40 of the Whistleblowers Protection Act and decided not to investigate the matter.
Poor oversight of donated funds

A whistleblower disclosed that a public body used donations for unintended purposes. My investigation identified a lack of transparency in the financial management system and inadequate reporting mechanisms in relation to how donated funds were spent.

The CEO maintained that donated funds could be applied to any of its purposes as the public body saw fit. Without appropriate procedures in place this approach is clearly open to misuse.

Outcome

I recommended that the public body take immediate action to ensure that donors are provided with regular reports and accurate information on how their donated funds are spent. I also recommended that it update its financial management system’s capacity to identify and monitor donated funds.

The Minister agreed to implement all of my recommendations to ensure greater accountability and transparency in the public body’s accounting systems.

Knowledge of the Act

Some public sector bodies still do not have a satisfactory awareness of their legal obligations when responding to whistleblower disclosures or their investigation. In 2008-09 my office delivered workshops for protected disclosure coordinators as a way to increase the level of understanding about the Act. The case study below illustrates why this approach is necessary.

Failure to conduct a proper investigation

A whistleblower alleged the improper conduct of two TAFE teachers by disclosing that the teachers accepted money from a student during their assessment of the student’s applications for recognition of prior learning.

The whistleblower initially reported the matter to the TAFE institute. He said that management investigated his complaint but took no further action. It appeared that the TAFE viewed the payment as a gift that was duly reported to management and returned to the student.

My investigation established that the manager:

- did not assess the complaint under the Whistleblowers Protection Act 2001
- conducted the investigation without appropriate investigation experience
- accepted the version of the two teachers without testing their evidence

Some public sector bodies still do not have a satisfactory awareness of their legal obligations when responding to whistleblower disclosures or their investigation.
On a positive note, it is encouraging to see some agencies recognising the value of whistleblowing; making a commitment to fully investigating disclosures; and protecting whistleblowers in the process.

Encouraging whistleblowers to report serious wrongdoing and protecting them against detrimental action is essential to ensuring the effective operation of the Act.

In some cases, agencies spend time and resources identifying whistleblowers rather than protecting them.

- failed to interview the student at the centre of the allegations
- did not appropriately document the investigation process or produce a final report on the outcome.

I was satisfied that the money was intended as a bribe by the student to gain a qualification to which he was not entitled. I also identified that one of the teachers had considered keeping the money. In addition to this misconduct, I identified poor record-keeping practices within the TAFE institute. For example, one of the teachers failed to complete the assessment report and took five months to enter the student’s test results into the database.

Outcome

I made several recommendations to improve the institution’s recognition of prior learning process. I also recommended that it revise its whistleblower and complaint-handling procedures; ensure the investigation of complaints by experienced and trained officers; consider disciplining the teacher who thought of keeping the money; create a workplace-specific gifting policy; and train all staff on conflict of interest and gift policies.

The institute accepted all my recommendations.

On a positive note, it is encouraging to see some agencies recognising the value of whistleblowing; making a commitment to fully investigating disclosures; and protecting whistleblowers in the process.

Whistleblower protection and welfare

The Act provides that whistleblowers can make disclosures about detrimental action taken against them in reprisal for making a protected disclosure. Detrimental action can involve allegations of disadvantage, intimidation, harassment, injury, or loss of employment opportunities.

Encouraging whistleblowers to report serious wrongdoing and protecting them against detrimental action is essential to ensuring the effective operation of the Act. While it is a serious offence under the Act to take detrimental action against a whistleblower, some agencies are still not taking adequate measures to protect whistleblowers against detrimental action despite the possibility of a fine and/or imprisonment. In some cases, agencies spend time and resources identifying whistleblowers rather than protecting them. The following case study provides an example.
Detrimental action against a whistleblower

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

My investigation also identified concerns in relation to how the department dealt with other complaints similar to those raised by the whistleblower. As a result, I 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

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

Ultimately, 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 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. The following case study highlights my concerns regarding the vulnerability of whistleblowers.
Setting the standard

I investigated allegations of detrimental action against a whistleblower in a major government department when it was disclosed to me that:

- two employees may have been involved in unethical and unprofessional conduct involving a vulnerable person
- the line manager was possibly biased in failing to document, report and investigate critical incidents which involved the two employees.

In response to the allegations the two employees complained that the whistleblower had breached their privacy, bullied and harassed them.

I identified deficiencies and procedural flaws in the department’s grievance processes as well as significant problems with the way allegations were managed and investigated by senior managers. I concluded that three senior departmental officers did not act with the integrity, impartiality or respect prescribed by the Public Administration Act 2004, Code of Conduct for Victorian Public Sector Employees, and the department’s disciplinary policies.

My report made 13 recommendations including that the department:

- ensure conflict of interest issues are resolved before starting an investigation
- review the conduct of the senior officers involved in the investigation
- review the way disciplinary matters are managed and delegated to ensure officers are accountable and processes are transparent
- apologise to the whistleblower
- conduct an external review of all disciplinary and employee work-related complaint cases the office has handled in the past three years
- consider taking disciplinary action against the manager for circulating material which identified the whistleblower
- consider paying the whistleblower compensation for the unfair treatment.

Outcome

The department accepted all my recommendations and has started implementing them. I will continue to monitor this process.
National research study into whistleblowing

In 2005 my office became a partner in a collaborative national research project into the management and protection of whistleblowers in the Australian public sector entitled *Whistling while they work: enhancing theory and practice of internal witness management in public sector organisations*. The project was led by Griffith University in Queensland and involved 11 partner integrity agencies across Australia.

The first comprehensive study of whistleblowing in Australia was published on 9 September 2008. *Whistleblowing in the Australian public sector* calls for:

- major reform of the operational systems used to manage whistleblowing
- expansion of support programs
- new oversight and coordination arrangements across the public sector
- legislative reform including new rules to recognise public whistleblowing.

The national research project reached these conclusions in December 2008. Since then I have been encouraged by the results it has achieved and the way it has improved understanding of whistleblowing in Australia.
fairness accountability transparency integrity

year in review
5. YEAR IN REVIEW

Public sector culture

Over the past year I have had cause to be critical of a number of government agencies performing important statutory functions. Increasingly I am finding in such agencies a lack of will to enforce the law; or to use the powers given to them by the Parliament; or to take appropriate action when complaints are made.

Complaints about local government in particular continue to form a significant proportion of complaints to my office. I have conducted formal investigations into a number of councils following complaints about their performance and I reported to Parliament on a range of issues facing a number of councils including poor governance practices, misuse of resources, conflicts of interest and abuse of power.\(^\text{16}\)

My investigations have also identified poor practices within councils such as the sharing of a computer username and password, the improper use of council provided laptops and poorly worded policies. Problems related to failures of governance have included poor organisational culture, poor conceptual understanding of duties and inappropriate interaction between councillors and officers.

The reasons for misconduct ranged from a poor understanding of one’s duty to a wilful disregard for ethical principles owing to self-serving motives and corruption. Public officers are charged with moral and legal responsibilities and should be mindful of both to ensure true accountability in office.

In some instances I have identified corruption. Corruption is more insidious than simply paying a bribe. It starts with cultivating a friendship, leading to lunches, invitations to sporting events, and finally the undermining of ethical standards in an organisation.

Local government relies on public confidence that councillors and officers act responsibly and effectively in the best interests of the community. The misconduct of public officers affects vulnerable members of the community and erodes public trust, especially when practice does not accord with policies in place.

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Reports to Parliament

This year I tabled six investigative reports in Parliament including:

- Conflict of Interest and Abuse of Power by a Building Inspector at Brimbank City Council (June 2009)
- Investigation into the alleged improper conduct of councillors at Brimbank City Council (May 2009)
- Corporate Governance at Moorabool Shire Council (April 2009)
- Crime statistics and police numbers report (March 2009)
- Report of an investigation into issues at Bayside Health (October 2008)
- Probity controls in public hospitals for the procurement of non-clinical goods and services (August 2008).

Many of my reports tabled this year are in demand, especially the Investigation into the alleged improper conduct of councillors at Brimbank City Council and Crime statistics and police numbers report. Both reports highlight systemic dysfunction and show that the causes of the problems may be individual, cultural and/or operational.

My investigation into Brimbank City Council identified that a flawed corporate culture and compromised governance practices resulted in bullying and intimidation, improper use of powers and position, and misappropriation of funds, resources and information. My investigation into crime statistics identified that Victoria Police was not able to meet the best interests of the community due to poor administrative systems and deficient technology.

My reports are seen by some sections of the public sector as vehicles for learning and understanding. For example, reports like Conflict of Interest and Abuse of Power by a Building Inspector at Brimbank City Council and Corporate Governance at Moorabool Shire Council provide short case studies which local governments can use to evaluate and improve their own practices. Councils may draw upon these reports to identify conflicts of interest, discuss vulnerability to corrupt conduct, and analyse inconsistent applications of published policies and procedures.

My recommendations provide a standard against which local governments, departments and agencies should measure their own performance.

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17 Ombudsman Victoria, Investigation into the alleged improper conduct of councillors at Brimbank City Council, Melbourne, May 2009.
19 Ombudsman Victoria, Conflict of Interest and Abuse of Power by a Building Inspector at Brimbank City Council, Melbourne, June 2009.
20 Ombudsman Victoria, Investigation into Corporate Governance at Moorabool Shire Council Melbourne, April 2009.
Cranbourne Estate investigation

Public concern about gas leaking from a former municipal landfill site at Cranbourne prompted the Acting Premier to ask that I consider investigating this issue. I subsequently commenced an own motion investigation into the administrative actions of government departments and local councils in relation to the management and operation of the former landfill site.

I will be presenting my report of the investigation to Parliament.

Referral by the Legislative Council

Section 16 of the Ombudsman Act empowers Parliament to refer any matter to me for investigation and report, except matters concerning a judicial proceeding. In December 2008 the Legislative Council referred two matters to me regarding the probity of land developments: the St Kilda foreshore and at Kew Cottages. This is the first time Parliament has used these powers.

Once my investigation into these matters is complete I will report my conclusions and recommendations to Parliament.

Conflicts of interest

In March 2008 I tabled two reports in Parliament into Conflict of interest in the public sector and Conflict of interest in local government. Both reports highlighted the need for better understanding of and improved processes for dealing with conflict of interest situations.

In my view, the failure to openly address conflicts of interest can lead to a progressive undermining of public confidence in the integrity of public administration. Failing to identify conflicts and address them can result in a loss of impartiality in decision-making processes.

Conflict of interest continues to be poorly understood in the public sector. If not managed, conflicts of interest can make agencies vulnerable to corrupt conduct. My experience in dealing with whistleblower disclosures reveals many public bodies are yet to demonstrate that they fully understand how to identify or deal with a conflict of interest.

On 12 August 2009 I tabled A report of investigations into the City of Port Phillip, which demonstrates these issues. I will discuss the council’s procurement practices in more detail during the next reporting period.

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21 In this context 'Parliament' means either House of Parliament, or a joint committee of both Houses of Parliament, or a committee of each House.
22 Ombudsman Victoria, Conflict of interest in the public sector, Melbourne, March 2008.
23 Ombudsman Victoria, Conflict of interest in local government, Melbourne, March 2008.
Police complaints

The Office of Police Integrity (OPI) was established in November 2004 as an independent anti-corruption body with a specific focus on Victoria Police. Currently civilian employees within Victoria Police are not covered by the Police Regulation Act 1958. This legislative arrangement means that my office continues to investigate matters relating to Victoria Police’s civilian employees.

In my view, the 2,500 public servants employed by Victoria Police should come under the provisions of the Police Regulation Act so that the Chief Commissioner is able to treat all his staff in a similar manner. This is particularly important in this modern day where joint taskforces and project teams comprise both uniformed and non-uniformed officers.

Over the past year I have reported to Parliament on the inefficiencies in the recording of crime statistics and police numbers, and continue to investigate the management of Victoria Police’s Business Information and Technology Services and drug exhibits by the Victoria Police Forensic Services Centre.

Public Sector Workshop Program

Through my investigation reports I influence administrative improvement beyond the agency subject to my investigation by raising awareness of recommended actions and standards.

Parliamentary reports also provide a framework for my Public Sector Workshop Program. As case studies of maladministration and misconduct, they allow workshop participants to analyse complaints, explore remedies and develop preventative measures which are appropriate to their own workplace.

My Public Sector Workshop Program is designed to improve public administration and increase accountability within government agencies. These workshops have proved to be an effective tool for public sector staff in gaining knowledge about my role and understanding of their own responsibilities.

In addition to hosting these free workshops, my officers also develop and deliver workshops targeted for particular groups as requested. This targeted approach allows public sector groups to learn with their peers. Facilitators tailor workshop materials to the participants’ needs by using information from the agency.

Workshop participants this year have included local government employees, protected disclosure co-ordinators, complaint-handlers, investigators, prison officers and a range of other public sector officers.

While significant resources are required to plan and deliver an effective Public Sector Workshop Program, I see this as a critical initiative to influence positive change beyond an investigation report.
Certificate IV in Government (Investigation)

My focus this year has been on accrediting the internal training of my investigation staff. Last year my office developed a customised program in conjunction with a registered tertiary training organisation that focuses specifically on my powers and jurisdiction.

Fifteen staff members have already attained a Certificate IV in Government (Investigation) with a further group of investigation officers due to graduate in October 2009. A number of staff has completed units through a ‘recognition of prior learning’ (RPL) process. Those who required additional training completed the remaining units in-house through external trainers.

I consider training as a critical part of my office culture as it aims to equip officers with the necessary skills and knowledge for their roles. I note that this initiative is also improving the quality of the enquiries and investigations, and assisting in retaining talented staff members.

The accreditation of learning and development for Ombudsman Victoria investigators is a first for any Australian ombudsman’s jurisdiction. I am encouraged that the Office of the Ombudsman for the Northern Territory and Charles Darwin University have jointly adopted this initiative and are making the course available to all Northern Territory government agencies.

My more experienced staff members, who have met the Certificate IV training requirements, are also integrated into the professional development process. To further develop their presentation skills, senior staff members contribute to workshops internally and externally as presenters, topic experts, facilitators and coaches.

Outreach

I am introducing a new approach to regional outreach in an effort to increase the number of outreach visits to rural and regional Victoria. Visits to regional and outer metropolitan areas will focus on meeting with public service and community groups in order to improve the accessibility of my office to all Victorians.

Each regional visit comprises different outreach activities depending on the audiences in the region. Activities include targeted meetings, presentations, complaints sessions and group discussions.
Macquarie University Innovation Award

Last year my office worked on a collaborative research project with Macquarie University. The study analysed and mapped the dimensions of conflict of interest. This project culminated in my report *Understanding conflict of interest in the public sector* (March 2008), which outlines the systemic changes required to improve standards and practices in relation to conflict of interest.

The partnership with Macquarie University has made a significant contribution to public sector ethics and accountability. The university has since recognised both the unique, interdisciplinary nature of this partnership and the relevance of its research outcomes to the workings of the public service.

Associate Professor Cindy Davids and Mr Gordon Boyce received Macquarie University’s Innovative Partnership Award at the university’s awards dinner on 6 May 2009 as a result of their work on the project.
6. STATISTICS

Complaints

For the fifth year in a row approaches to my office have increased, this year by 19 per cent compared to the last financial year. Significantly, complaints within my jurisdiction have increased by 19 per cent from 8,791 to 10,477. Victorians clearly see my office as a place they can turn to in order to address their concerns about government agencies.

<table>
<thead>
<tr>
<th>Time period</th>
<th>Number of approaches</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006-07</td>
<td>14,431</td>
</tr>
<tr>
<td>2007-08</td>
<td>16,344</td>
</tr>
<tr>
<td>2008-09</td>
<td>19,452</td>
</tr>
</tbody>
</table>

Note: Excludes own motion investigations under the Ombudsman Act.

While the majority of approaches made to my office relate to matters within my jurisdiction, my officers also provided referral advice in relation to a large number of non-jurisdictional complaints and information requests.

24 My office introduced a new case management system in July 2007 with superior data capture and better statistical reporting capabilities. However, the new case management system makes it difficult to compare statistics from the years prior to its introduction. Therefore, for the purposes of this annual report, some comparative figures from the years prior to the introduction of the system have been generated manually.
Time to close

My office finalised a total of 19,589 approaches in this financial year. The steadily increasing number of approaches impacts on the operations of my office. Of those, 97 per cent of cases were completed in less than 30 days with a further two per cent of cases completed in less than 90 days.
Requests for review

While there has been an increase in jurisdictional complaints, the number of requests to review the handling of a complaint by my office has fallen from 72 to 32 compared to last year.
How approaches were received

There has also been a significant change in the number of complainants who make complaints via the website, with a 57 per cent increase in the number of online complaints. In response to this trend I made the online complaint form more user-friendly this year by including review and print options. Despite the increase in web use, complainants still prefer speaking to my investigation officers by telephone. Of the complaints my office received this year, 77 per cent were by telephone in comparison to 12 per cent by letter and facsimile.

<table>
<thead>
<tr>
<th>Mode</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copied to Ombudsman*</td>
<td>49</td>
<td>80</td>
<td>0</td>
</tr>
<tr>
<td>Email</td>
<td>816</td>
<td>936</td>
<td>1,274</td>
</tr>
<tr>
<td>Facsimile</td>
<td>239</td>
<td>120</td>
<td>155</td>
</tr>
<tr>
<td>Letter</td>
<td>1,880</td>
<td>2,162</td>
<td>2,091</td>
</tr>
<tr>
<td>Not assigned**</td>
<td>432</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Online</td>
<td>450</td>
<td>502</td>
<td>788</td>
</tr>
<tr>
<td>Person - office</td>
<td>55</td>
<td>87</td>
<td>129</td>
</tr>
<tr>
<td>Person - offsite</td>
<td>12</td>
<td>46</td>
<td>42</td>
</tr>
<tr>
<td>Person - regional visit</td>
<td>2</td>
<td>28</td>
<td>19</td>
</tr>
<tr>
<td>Prison - visits</td>
<td>0</td>
<td>7</td>
<td>22</td>
</tr>
<tr>
<td>Telephone</td>
<td>10,496</td>
<td>12,376</td>
<td>14,932</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>14,431</td>
<td>16,344</td>
<td>19,452</td>
</tr>
</tbody>
</table>

* This mode of receipt now falls under one of the other listed categories.

**With the introduction of a new case management system in the 2007-08 year it became mandatory to record how a complaint was received. This was not feasible with the previous system.
Jurisdictional complaints by department, local government and agency

**Figure 7: Jurisdictional complaints by department and local government during 2008-09**

- **Justice**: 26%
- **Local Government**: 25%
- **Human Services**: 20%
- **Transport**: 9%
- **Education & Early Childhood Development**: 9%
- **Treasury & Finance**: 7%
- **Other**: 4%

**Note:** My office also received 861 complaints in relation to Victoria Police this financial year. These have not been included in the graphs above and below owing to my limited jurisdiction in relation to Victoria Police. The majority of these complaints were referred to the Office of Police Integrity.

**Figure 8: Top ten jurisdictional complaints by agency during 2008-09**

- **Port Phillip Prison**: 532
- **VicRoads**: 414
- **Metropolitan Remand Centre**: 285
- **State Trustees Ltd**: 247
- **Office of Housing**: 239
- **Ararat Prison (Corrections Victoria)**: 152
- **Fulham Correctional Centre**: 179
- **Civic Compliance Victoria**: 128
- **RMIT University**: 126
- **Victorian WorkCover Authority**: 120
Prisons

<table>
<thead>
<tr>
<th>Male prisons</th>
<th>Number of complaints</th>
<th>Average daily population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum security</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Port Phillip Prison (Private)</td>
<td>532</td>
<td>694</td>
</tr>
<tr>
<td>Metropolitan Remand Centre</td>
<td>285</td>
<td>599</td>
</tr>
<tr>
<td>Barwon Prison</td>
<td>89</td>
<td>305</td>
</tr>
<tr>
<td>Marngoneet Correctional Centre</td>
<td>78</td>
<td>264</td>
</tr>
<tr>
<td>Melbourne Assessment Prison</td>
<td>78</td>
<td>248</td>
</tr>
<tr>
<td>Melbourne Custody Centre</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Medium security</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fulham Correctional Centre (Private)</td>
<td>179</td>
<td>749</td>
</tr>
<tr>
<td>Ararat Prison</td>
<td>152</td>
<td>373</td>
</tr>
<tr>
<td>Loddon Prison</td>
<td>96</td>
<td>384</td>
</tr>
<tr>
<td>Minimum security</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dhurringile Prison</td>
<td>7</td>
<td>151</td>
</tr>
<tr>
<td>Langi Kal Kal Prison</td>
<td>7</td>
<td>119</td>
</tr>
<tr>
<td>Beechworth Correctional Centre</td>
<td>6</td>
<td>106</td>
</tr>
<tr>
<td>Judy Lazarus Transition Centre</td>
<td>4</td>
<td>22</td>
</tr>
<tr>
<td>Female prisons</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum security</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dame Phyllis Frost Centre (Corrections Victoria)</td>
<td>55</td>
<td>210</td>
</tr>
<tr>
<td>Minimum security</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tarrengower Prison (Corrections Victoria)</td>
<td>6</td>
<td>44</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prison not identified</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>1,614</td>
<td>4,268</td>
</tr>
</tbody>
</table>

As was the case last year, the two correctional facilities I received the largest number of jurisdictional complaints about were Port Phillip Prison and the Metropolitan Remand Centre. As indicated by Figure 8, Port Phillip Prison was the jurisdictional agency that was the subject of the most complaints to my office this year. Also consistent with previous years, the proportion of jurisdictional complaints I received about minimum security facilities was minimal in comparison with those I received about medium and maximum security facilities.
Local government

Planning, parking and building were the areas of local government administration which I received the most complaints about this year.

I note that the majority of parking related complaints I received were not investigated because they related to the merits of an infringement incurred by the complainant. In such cases, the complainant usually possesses a legal right of appeal. Because of the operation of section 13(4) of the Ombudsman Act, it is generally not appropriate for my office to intervene in such matters. In these instances, my investigation officers provide information to the complainant regarding other avenues through which they may wish to pursue their complaint.

Transport Accident Commission and Victorian WorkCover Authority

This year I saw a reduction in the number of jurisdictional complaints against the Transport Accident Commission (TAC) received by my office and only a minor decrease in the number of jurisdictional complaints about the Victorian WorkCover Authority (WorkSafe).

| Table 5: TAC and WorkSafe jurisdictional complaints received since 2007-08 |
|---------------------------------|----------------|----------------|
|                                | 2007-08 | 2008-09 |
| TAC                             | 117     | 76      |
| WorkSafe                        | 273     | 267     |
| Total                           | 390     | 343     |
Web statistics

Figure 10 shows that the number of visitors to the Ombudsman Victoria website significantly increased during the months of October, March, May and June.

Table 6, on the following page, provides further detail in relation to the correlation between activities undertaken by my office and the number of visitors to my website. It indicates that peaks in website usage followed the release of my reports on Bayside Health\textsuperscript{25}, crime statistics\textsuperscript{26} and the Brimbank City Council\textsuperscript{27}, which received considerable media attention. Copies of all my public reports are made available to download from my website the day they are tabled in Parliament.

Increasingly, my website is becoming a crucial medium for the community to access up-to-date information about my office and its activities. It allows members of the public to lodge a complaint at any time of day; and to access reports, publications and succinct written advice about my jurisdiction, powers and processes.

\textsuperscript{25} Ombudsman Victoria, Report of an Investigation into issues at Bayside Health, Melbourne, October 2008.
\textsuperscript{26} Ombudsman Victoria, Crime statistics and police numbers, Melbourne, March 2009.
\textsuperscript{27} Ombudsman Victoria, Conflict of Interest and Abuse of Power by a Building Inspector at Brimbank City Council, Melbourne, June 2009.
### Table 6: Monthly overview of Ombudsman Victoria’s activities and website visitors during 2008-09

<table>
<thead>
<tr>
<th>Date</th>
<th>No. of visits</th>
<th>OV activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 08</td>
<td>3,407</td>
<td>Prison Seminar for Ombudsman Officers</td>
</tr>
<tr>
<td>August</td>
<td>4,192</td>
<td>Bacchus Marsh regional visit</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Councils/Bayside Health media interest</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hospital probity report released</td>
</tr>
<tr>
<td>September</td>
<td>4,793</td>
<td>Annual Report 2007-08 released</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Media attention - gas leak Brookland Greens Estate</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Own motion investigation into Brookland Greens commenced</td>
</tr>
<tr>
<td>October</td>
<td>5,396</td>
<td>Bayside Health report released</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Media attention - Bayside Health report</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Traralgon regional visit</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OV officers address Indonesian Bureaucratic Reform Delegation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FOI workshop</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Whistleblowers workshop</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Victorian Seniors Festival morning teas</td>
</tr>
<tr>
<td>November</td>
<td>4,261</td>
<td>Media attention - Geelong councillor conflict of interest</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Conflict of interest workshop</td>
</tr>
<tr>
<td></td>
<td></td>
<td>OV officers address Vietnam Inspectorate Commission Delegation</td>
</tr>
<tr>
<td>December</td>
<td>3,464</td>
<td>Healesville regional visit</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complaint-handling workshop</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Parliament requests OV investigate St Kilda Triangle and Kew Cottages</td>
</tr>
<tr>
<td>January 09</td>
<td>3,261</td>
<td>Nothing to report</td>
</tr>
<tr>
<td>February</td>
<td>4,599</td>
<td>Media attention - power outage; public transport</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Media attention - conflict of interest recommendations</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Media attention - Geelong councillor alleged conflict of interest</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Media attention - Victorian bushfires and Royal Commission</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Media attention - reference to Ombudsman regarding Moorabool Shire Council</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Media attention - plans to protect informants</td>
</tr>
<tr>
<td>March</td>
<td>5,414</td>
<td>Regional visits to Swan Hill and Mildura</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Crime statistics and police numbers report released</td>
</tr>
<tr>
<td>April</td>
<td>5,006</td>
<td>Whistleblowers workshop</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Regional visit to Echuca</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Moorabool Shire Council report released</td>
</tr>
<tr>
<td>May</td>
<td>8,053</td>
<td>Brimbank report released</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Media attention - Brimbank</td>
</tr>
<tr>
<td>June</td>
<td>5,637</td>
<td>Brimbank building inspector report released</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Media attention - both Brimbank reports</td>
</tr>
</tbody>
</table>
Performance statement

Table 7: Corporate framework

<table>
<thead>
<tr>
<th>Vision</th>
<th>A Victorian community that is assured fair and ethical public administration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mission</td>
<td>To promote fairness, integrity, respect for human rights and administrative excellence in the Victorian public sector.</td>
</tr>
<tr>
<td>Service</td>
<td>We will provide accessible, flexible and responsive services including:</td>
</tr>
<tr>
<td></td>
<td>- independent, impartial and effective complaint-handling</td>
</tr>
<tr>
<td></td>
<td>- consistent and reliable audit and inspection under specific legislation</td>
</tr>
<tr>
<td></td>
<td>- public sector and Victorian community information and outreach;</td>
</tr>
<tr>
<td></td>
<td>With outputs including:</td>
</tr>
<tr>
<td></td>
<td>- clarification, remedies and administrative improvement</td>
</tr>
<tr>
<td></td>
<td>- authoritative and independent advice to Parliament to improve public sector accountability</td>
</tr>
<tr>
<td></td>
<td>- an informed general public and public sector.</td>
</tr>
<tr>
<td>Values</td>
<td>Our values are:</td>
</tr>
<tr>
<td></td>
<td>- responsiveness</td>
</tr>
<tr>
<td></td>
<td>- integrity</td>
</tr>
<tr>
<td></td>
<td>- impartiality</td>
</tr>
<tr>
<td></td>
<td>- accountability</td>
</tr>
<tr>
<td></td>
<td>- respect</td>
</tr>
<tr>
<td></td>
<td>- leadership</td>
</tr>
<tr>
<td></td>
<td>- commitment to human rights;</td>
</tr>
<tr>
<td></td>
<td>Which we demonstrate by:</td>
</tr>
<tr>
<td></td>
<td>- acting fairly, honestly and with an open mind</td>
</tr>
<tr>
<td></td>
<td>- focusing on quality in our performance</td>
</tr>
<tr>
<td></td>
<td>- speaking authoritatively and respectfully</td>
</tr>
<tr>
<td></td>
<td>- serving the interests of the Victorian community</td>
</tr>
<tr>
<td></td>
<td>- developing our skills and expertise.</td>
</tr>
</tbody>
</table>

Goals | Outcomes 2008-09

Focus 1: Complaint-handling

- Undertake high quality assessment and investigation of complaints.
- Facilitate administrative remedies and systemic improvements by producing authoritative and persuasive reports.
- Provide a timely response and assist the complainant to understand the outcome.

- Closed 10,477 jurisdictional complaints.
- 96.1% of all files were open for less than 30 days.
- 98.4% of all files were open for less than 90 days.
- Reviewed and enhanced online complaint form.
### Focus 2: Accountability

- Enhance accountability of state and local government agencies to the public and to Parliament.
- Assist authorities by identifying systemic issues through complaint-handling and investigations.
- Conduct statutory inspections.

| Achieved in six reports to Parliament. |
| Made 139 recommendations in the six reports. |
| Published quarterly newsletters. |
| Monitored the implementation of recommendations made to agencies in Parliamentary reports. |
| Delivered a follow-up strategy targeting councils regarding the impact of the conflict of interest reports. |
| Commenced two investigations based on requests from the Upper House of the Victorian Parliament under section 16 of the Ombudsman Act. |

### Focus 3: Access

- Provide access for all members of the public to an independent means of complaint resolution.
- Promote accessible complaint-handling within departments and agencies.
- Provide services to those parts of the Victorian community that require additional assistance to engage with the Ombudsman.

| Participated in presentation of 97 external education activities, including regional visits and prison visits. |
| Reviewed culturally and linguistically diverse strategies. |
| Reviewed languages other than English on website. |
| Published four new fact sheets. |
| Reviewed and enhanced on-line complaint form. |

### Focus 4: Effectiveness

- Achieve excellence and professionalism in all aspects of our work.

| Reviewed existing performance measures: internal, annual report and budget output. |
| Finalised strategic plan review and placed new strategic framework on website. |
| Implemented new file audit model. |
| Developed a telephone audit model. |
| Reviewed all audit processes and established plan to coordinate all audits. |

### Focus 5: People

- Attract and retain the right people.
- Provide experiences and develop skills to support career development.

| Conducted 61 internal training sessions for Ombudsman staff, including customised investigation training. |
| Staff attended 34 external training and education activities. |
| Facilitated lunchtime health and wellbeing activities. |
| Developed and initiated ongoing customised internal training in conjunction with Box Hill Institute. |
| First 15 staff members attained Certificate IV in Government (Investigation) through customised training program. |
Output statement

Under the Financial Management Act 1994, I am required to report against the output statement for Ombudsman Services which is published in the budget papers for each financial year. The published output statement for 2008-09, setting out the targets and outcomes for the year, is as follows:

<table>
<thead>
<tr>
<th>Table 8: Output statement for 2008-09</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Output</strong></td>
</tr>
<tr>
<td>Quantity measures</td>
</tr>
<tr>
<td>Undertake and complete own motion investigations and studies</td>
</tr>
<tr>
<td>Finalise consideration of cases including general, freedom of information and whistleblower complaints</td>
</tr>
<tr>
<td>Outreach initiatives delivered under the outreach program</td>
</tr>
<tr>
<td>Internal reviews of complaint investigations concluded at the request of the complainant</td>
</tr>
<tr>
<td>Quality measures</td>
</tr>
<tr>
<td>Investigations reviewed at the request of complainants (by a fresh, senior investigator) where the original findings were found to be sound and well founded</td>
</tr>
<tr>
<td>Complaints, which were found to be substantiated, where effective outcomes were achieved on behalf of complainants or where identified inappropriate administrative processes were changed</td>
</tr>
<tr>
<td>Proportion of recommendations emanating from own motion investigations which were accepted and implemented by the entities concerned</td>
</tr>
<tr>
<td>Timeliness measure</td>
</tr>
<tr>
<td>Complaints resolved within required timelines</td>
</tr>
</tbody>
</table>

I have discussed in detail matters relating to these measures in the Statistics and Year in review sections of this report. I provide a brief explanation of the measures on the next page to assist with their interpretation.

---

28 Substantiated complaints are those where maladministration was found to have occurred and the Ombudsman has written to the respondent agency seeking an outcome on improvements to the administrative process. Many complaints may not be formally substantiated but nevertheless achieve effective outcomes for the complainant insofar that, for example, issues have been clarified or misunderstandings resolved. The findings of a complaint as substantiated and the outcomes of such findings may occur in different periods.

29 Recommendations and their subsequent acceptance and implementation may occur in different reporting periods.
First quantity measure – Own motion investigations
The end of year outcome for this measure is 50 per cent over the target. The six investigation reports in 2008-09 were those which I tabled in the Parliament during the reporting period. These are contingent on matters as they arise during the year, some of which cannot be forecast.

Second quantity measure – Consideration of cases finalised
The end of year outcome for this measure is 31 per cent over the target of 8,000. This target is not within the control of my office. The increase in 2008-09 reflects the upward trend in the number of complaint cases received by my office in recent years.

Third quantity measure – Outreach initiatives
I have discussed on page 69 of this report the importance I place on outreach activities by my office, both to public sector agencies and to the community at large. My office was able to meet 97 per cent of its target for this measure in 2008-09, notwithstanding considerable pressure on my resources.

Fourth quantity measure – Internal reviews of complaints investigated
I take requests for reviews of complaint outcomes seriously and ensure that all such requests are addressed promptly at a senior level within OV.

Of the 10,477 jurisdictional cases concluded in 2008-09, only 32 requests for review of investigation outcomes were made and 26 reviews were completed.

First quality measure – Complaint investigation reviewed and found to be sound
The end of year outcome for this measure is 100 per cent. This means that, in all of the 26 complaint case reviews completed by a senior officer in 2008-09 at the request of the complainant, the outcome of the original investigation was, on review, found to be sound and well-founded.

The outcomes for the remaining two quality measures, and for the timeliness measure, all exceeded the anticipated targets. These are satisfactory results, particularly given the continuing pressure on my staff.
I, as Ombudsman, am an independent officer of the Parliament, appointed under the *Ombudsman Act 1973*. All employees of my office are employed by me under the *Public Administration Act 2004*. 
Staffing trends

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

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>54</td>
<td>47</td>
<td>42</td>
<td>52</td>
<td>52</td>
</tr>
</tbody>
</table>

* 2009 figures include seven fixed-term staff members. They do not include the Ombudsman or casual staff.

<table>
<thead>
<tr>
<th>Table 10: Overview of staff profile at 30 June 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Male</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>Executive and Investigations</td>
</tr>
<tr>
<td>Ombudsman                                     1</td>
</tr>
<tr>
<td>Deputy Ombudsman                               1</td>
</tr>
<tr>
<td>General Counsel                                1</td>
</tr>
<tr>
<td>Assistant Ombudsman                            0</td>
</tr>
<tr>
<td>Executive assistants                           0</td>
</tr>
<tr>
<td>Investigation officers                         13</td>
</tr>
<tr>
<td>Communications                                 0</td>
</tr>
<tr>
<td>Corporate Services</td>
</tr>
<tr>
<td>Business Services                              3</td>
</tr>
<tr>
<td>Information Systems                            1</td>
</tr>
<tr>
<td>Records Management                             1</td>
</tr>
<tr>
<td>TOTAL**                                       21</td>
</tr>
</tbody>
</table>

** These figures include 10 part-time casual staff and the Ombudsman. The numbers shown here are headcounts.

Ombudsman Victoria’s employment principles and values

Ombudsman Victoria embraces and promulgates the public sector employment principles established under Part 2 of the Public Administration Act 2004. The principles aim to ensure that employment decisions made in my office are based on merit, that employees are treated fairly and reasonably, that equal employment opportunity is provided, that human rights as set out in the Charter of Human Rights and Responsibilities Act 2006 are upheld, that employees have a reasonable avenue of redress against unfair or unreasonable treatment, and that a career public service is fostered.
### Table 11: Staff profile by age, gender and employment status as at June 2008 and 2009

<table>
<thead>
<tr>
<th></th>
<th>June 2008</th>
<th></th>
<th>June 2009</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Ongoing employees</td>
<td>Fixed-term and casual</td>
<td>Ongoing employees</td>
<td>Fixed-term and casual</td>
</tr>
<tr>
<td>Number (headcount)</td>
<td>FTE</td>
<td>FTE&lt;sup&gt;30&lt;/sup&gt;</td>
<td>Number (headcount)</td>
<td>FTE</td>
</tr>
<tr>
<td>Gender</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>19</td>
<td>19.00</td>
<td>14</td>
<td>14.00</td>
</tr>
<tr>
<td></td>
<td>1.00</td>
<td>3.53</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>32</td>
<td>32.00</td>
<td>31</td>
<td>31.00</td>
</tr>
<tr>
<td></td>
<td>2.84</td>
<td>7.09</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under 25</td>
<td>3</td>
<td>2.00</td>
<td>2</td>
<td>2.00</td>
</tr>
<tr>
<td></td>
<td>1.35</td>
<td>3.30</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25-34</td>
<td>15</td>
<td>15.00</td>
<td>17</td>
<td>17.00</td>
</tr>
<tr>
<td></td>
<td>0.49</td>
<td>4.25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>35-44</td>
<td>12</td>
<td>12.00</td>
<td>9</td>
<td>9.00</td>
</tr>
<tr>
<td></td>
<td>0.00</td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>45-54</td>
<td>15</td>
<td>15.00</td>
<td>12</td>
<td>12.00</td>
</tr>
<tr>
<td></td>
<td>0.00</td>
<td>0.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>55-64</td>
<td>5</td>
<td>5.00</td>
<td>5</td>
<td>5.00</td>
</tr>
<tr>
<td></td>
<td>2.00</td>
<td>2.07</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Over 64</td>
<td>1</td>
<td>1.00</td>
<td>0</td>
<td>0.00</td>
</tr>
<tr>
<td></td>
<td>0.00</td>
<td>0.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Classification

| VPS G1 | 0 | 0.00 | 0.00 | 0 | 0.00 | 0.00 |
| VPS G2 | 1 | 1.00 | 0.00 | 1 | 1.00 | 0.00 |
| VPS G3 | 16 | 16.00 | 0.00 | 13 | 13.00 | 4.00 |
| VPS G4 | 13 | 13.00 | 0.00 | 12 | 12.00 | 1.00 |
| VPS G5 | 12 | 12.00 | 0.00 | 13 | 13.00 | 1.00 |
| VPS G6 | 6 | 6.00 | 1.00 | 4 | 4.00 | 1.00 |
| VPS Executives | 3 | 3.00 | 0.00 | 2 | 2.00 | 0.00 |
| Other  | 0 | 0.00 | 2.84 | 0 | 0.00 | 3.62 |

### Human resource management

My office continues its commitment to the health, safety and welfare of staff and others in the workplace. The QUIT smoking, eye test, subsidised spectacles, on-site influenza inoculation and ergonomic assessment programs all remain available to staff. The Employee Assistance Program also remains available. Other proactive stress management and psychological well-being programs that I have reported on in previous reports are particularly important and remain available. The Occupational Health and Safety Committee, established under the provisions of the *Occupational Health and Safety Act 2004*, makes recommendations to the Executive about all matters to do with health, safety and welfare of employees and other persons at work.
Corporate management and governance

Audit and Risk Management Committee

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

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr Greg Schinck</td>
<td>Assistant Director, Corporate Services</td>
</tr>
<tr>
<td></td>
<td>Public Records Office Victoria</td>
</tr>
<tr>
<td></td>
<td>Independent member and chair</td>
</tr>
<tr>
<td>Mr Trevor Wood</td>
<td>Assistant Auditor-General emeritus</td>
</tr>
<tr>
<td></td>
<td>Victorian Auditor-General’s Office</td>
</tr>
<tr>
<td></td>
<td>Independent member</td>
</tr>
<tr>
<td>Ms Cindy Callander</td>
<td>Director, Corporate Services</td>
</tr>
<tr>
<td></td>
<td>Ombudsman Victoria</td>
</tr>
<tr>
<td></td>
<td>Ex-officio representative</td>
</tr>
<tr>
<td>Mr Dallas Mischkulnig</td>
<td>Director, Investigations</td>
</tr>
<tr>
<td></td>
<td>Ombudsman Victoria</td>
</tr>
<tr>
<td></td>
<td>Ex-officio representative</td>
</tr>
</tbody>
</table>

Mr Greg Schinck replaced Ms Jackie McCann in November 2008. Ms McCann, who was the Director, Corporate Services at the Victorian Health Promotion Foundation, left the Foundation in 2008 and was therefore no longer available to serve on Ombudsman Victoria’s Audit Committee.

Mr Trevor Wood was appointed to the vacant second independent member position in November 2008.

Under the terms of the Audit Committee’s Charter, the second OV ex-officio Committee representative rotates across the Directors of Investigations. Under that provision, Ms Jo Carden’s term on the committee expired in June 2009. She has been replaced by Mr Dallas Mischkulnig.

The role of the committee is to review and advise Ombudsman Victoria’s executive about all matters of financial accountability, internal financial control and risk management. These include:

- financial performance
- financial reporting process
- scope of work, performance and independence of Ombudsman Victoria’s internal audit function
- scope of work of Ombudsman Victoria’s external auditor
- development, implementation and operation of Ombudsman Victoria’s risk management framework
accountability and internal control affecting the financial operations of Ombudsman Victoria

- effectiveness of Ombudsman Victoria’s management information systems and other systems of internal financial control

- acceptability, disclosure and correct accounting treatment of any significant transactions which are not part of Ombudsman Victoria’s normal course of business.

Audit Committee’s statement on risk management

Ombudsman Victoria has comprehensive risk management strategies and risk management plans in place. The strategies and plans provide for risks to be identified, managed, monitored and reported to the senior executive group and to the Audit and Risk Management Committee.

My office now also has in place a business continuity plan which will ensure that Ombudsman Victoria’s business functions continue in the event of outages of critical systems or facilities.

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

Office-based environmental impacts

My office continues to work to improve its impact on the environment. Resource consumption statistics indicate that we are making notable progress in this area. In September 2008, Ombudsman Victoria also initiated a Green Team made up of staff. The team’s purpose is to monitor key resource usage and waste creation; identify environmental impacts; brainstorm ideas to improve environmental impacts; support and educate staff to minimise energy use and adopt environmentally responsible practices in the office.

<table>
<thead>
<tr>
<th>Table 12: Electricity usage since 2006-07</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>2006-07</td>
</tr>
<tr>
<td>Total electricity used in the office (gigajoules)</td>
</tr>
<tr>
<td>Electricity used per FTE30 staff member (megajoules)</td>
</tr>
<tr>
<td>Electricity used per m² of office space (megajoules)</td>
</tr>
<tr>
<td>Power greenhouse emissions (tonnes CO₂-e)</td>
</tr>
</tbody>
</table>

30 ‘FTE’ does not include consultants and contractors, or employees who were not on Ombudsman Victoria’s payroll in the last full pay period of June 2009. Because such persons may have used Ombudsman Victoria’s resources during the course of the year, the reported resource usage rates per FTE in the tables overstates the position.
Total electricity used by my office in 2006-07 was reduced by more than 43 per cent compared with 2005-06. In 2007-08 electricity use fell by a further 20 per cent, with usage per FTE staff member falling by 40 per cent. I am pleased to report that these reductions have been maintained in 2008-09. The 10 per cent reduction in electricity used per metre of office space was due to the acquisition of more space during the reporting year.

The office continues to meet some of its power needs from government-accredited green power sources. This reduced the emission of CO₂-e into the atmosphere by 21 tonnes during 2008-09.
Waste

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

Paper

The use of paper in the office continues to decline. Usage per full-time equivalent staff member has now decreased by 15 per cent since 2006-07. All of the white paper used in the office during 2008-09 was 100 per cent recycled paper.

<table>
<thead>
<tr>
<th>Table 13: Paper usage since 2006-07</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total paper used in the office (reams)</td>
</tr>
<tr>
<td>-------------------------------------</td>
</tr>
<tr>
<td>Paper used per FTE staff member (reams)</td>
</tr>
</tbody>
</table>

Water

The building occupied by Ombudsman Victoria does not have separate water metering facilities for individual tenancies. However, the office uses water-efficient appliances wherever possible.

Vehicles

I have continued to encourage staff to use public transport when on official business in preference to office cars wherever feasible. The impact of this is shown in the tables on the following page.
Table 14: Vehicle usage associated with OV operations since 2006-07

<table>
<thead>
<tr>
<th></th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Passenger vehicle trips</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total kilometres</td>
<td>30,990</td>
<td>35,664</td>
<td>31,589</td>
</tr>
<tr>
<td>Kilometres per FTE staff member</td>
<td>755</td>
<td>650</td>
<td>568</td>
</tr>
<tr>
<td><strong>Petrol consumption</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total litres</td>
<td>2,872</td>
<td>3,479</td>
<td>2,621</td>
</tr>
<tr>
<td>Litres per FTE staff member</td>
<td>70</td>
<td>63</td>
<td>47</td>
</tr>
<tr>
<td><strong>Greenhouse gas emissions associated with vehicles</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total tonnes CO₂-e</td>
<td>9.66</td>
<td>11.46</td>
<td>10.17</td>
</tr>
<tr>
<td>Tonnes CO₂-e per FTE staff member</td>
<td>0.24</td>
<td>0.21</td>
<td>0.18</td>
</tr>
</tbody>
</table>

Figure 15: Vehicle kilometres per FTE staff since 2006-07

Figure 16: Litres of fuel used per FTE staff since 2006-07
The Victorian Industry Participation Policy Act

The Victorian Industry Participation Policy Act 2003 (The VIPP Act) requires public bodies to report on their implementation of its provisions. They are required to apply VIPP principles in all tenders over $3 million that have their primary impact in metropolitan Melbourne, and in those over $1 million that have their primary impact in regional Victoria. In the reporting period Ombudsman Victoria 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 to specify the number of individual consultancies where the total fee was in excess of $100,000. Eight consultants were engaged by OV during 2008-09, at a total cost of $421,000 excluding GST. None were over $100,000.

Declarations of private interests

The Deputy Ombudsman and General Counsel have lodged a declaration of pecuniary and other interests with me. I have lodged a corresponding declaration with the Department of Premier and Cabinet. These declarations are made on appointment and updated annually or more frequently as individual circumstances change.

Freedom of Information Act

The Freedom of Information Act 1982 (FOI Act) creates a right for the public to access certain documents held by public sector agencies. The FOI Act applies to documents held by the Ombudsman, except – pursuant to section 29A of the Ombudsman Act – those that disclose information relating to a complaint, an enquiry, an investigation, a report of an investigation, and a recommendation resulting from an investigation. Such documents are exempt. In the reporting period I received one FOI request for documents held in my possession. This request was dealt with within the constraints of the statutory exemptions which applied. Further details can be found in the Attorney-General’s Annual Report on FOI.

Whistleblowers Protection Act

There was one whistleblower disclosure relating to OV during the reporting period.
Disclosure index

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

<table>
<thead>
<tr>
<th>Table 15: Ministerial directions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Direction</strong></td>
</tr>
<tr>
<td>Charter and purpose of office</td>
</tr>
<tr>
<td>FRD 22B</td>
</tr>
<tr>
<td>FRD 22B</td>
</tr>
<tr>
<td>FRD 22B</td>
</tr>
<tr>
<td>Management and structure of office</td>
</tr>
<tr>
<td>FRD 22B</td>
</tr>
<tr>
<td>Financial and other information relating to the office</td>
</tr>
<tr>
<td>FRD 8B</td>
</tr>
<tr>
<td>FRD 10</td>
</tr>
<tr>
<td>FRD 12A</td>
</tr>
<tr>
<td>FRD 15B</td>
</tr>
<tr>
<td>FRD 22B; SD 4.2(k)</td>
</tr>
<tr>
<td>FRD 22B</td>
</tr>
<tr>
<td>FRD 22B</td>
</tr>
<tr>
<td>FRD 22B</td>
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<td>FRD 24C</td>
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<tr>
<td>FRD 25</td>
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<tr>
<td>FRD 29</td>
</tr>
<tr>
<td>SD 4.5.5</td>
</tr>
<tr>
<td>SD 4.2(g)</td>
</tr>
<tr>
<td>Standing Direction 4.2</td>
</tr>
<tr>
<td>-----------------------</td>
</tr>
<tr>
<td><strong>SD 4.2(j)</strong></td>
</tr>
<tr>
<td><strong>SD4.2(a)</strong></td>
</tr>
<tr>
<td><strong>SD4.2(b)</strong></td>
</tr>
<tr>
<td><strong>SD4.2(b)</strong></td>
</tr>
<tr>
<td><strong>SD4.2(b)</strong></td>
</tr>
<tr>
<td><strong>Other requirements under Standing Direction 4.2</strong></td>
</tr>
<tr>
<td><strong>SD4.2(c)</strong></td>
</tr>
<tr>
<td><strong>SD4.2(d)</strong></td>
</tr>
<tr>
<td><strong>SD4.2(c)</strong></td>
</tr>
<tr>
<td><strong>SD4.2(f)</strong></td>
</tr>
<tr>
<td><strong>Other disclosures in notes to the financial statements</strong></td>
</tr>
<tr>
<td><strong>FRD 9A</strong></td>
</tr>
<tr>
<td><strong>FRD 11</strong></td>
</tr>
<tr>
<td><strong>FRD 13</strong></td>
</tr>
<tr>
<td><strong>FRD 21A</strong></td>
</tr>
<tr>
<td><strong>FRD 102</strong></td>
</tr>
<tr>
<td><strong>FRD 103D</strong></td>
</tr>
<tr>
<td><strong>FRD 104</strong></td>
</tr>
<tr>
<td><strong>FRD 106</strong></td>
</tr>
<tr>
<td><strong>FRD 107</strong></td>
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<td><strong>FRD 109</strong></td>
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<td><strong>FRD 110</strong></td>
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<tr>
<td><strong>FRD 112A</strong></td>
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<tr>
<td><strong>FRD 113</strong></td>
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<tr>
<td><strong>FRD 114A</strong></td>
</tr>
<tr>
<td><strong>FRD 119</strong></td>
</tr>
</tbody>
</table>

**Table 16: Legislation**

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Page No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freedom of Information Act 1982</td>
<td>93</td>
</tr>
<tr>
<td>Building Act 1983</td>
<td>N/A</td>
</tr>
<tr>
<td>Whistleblowers Protection Act 2001</td>
<td>93</td>
</tr>
<tr>
<td>Victorian Industry Participation Policy Act 2003</td>
<td>93</td>
</tr>
<tr>
<td>Financial Management Act 1994</td>
<td>136</td>
</tr>
<tr>
<td>Multicultural Victoria Act 2004</td>
<td>N/A</td>
</tr>
</tbody>
</table>
fairness accountability transparency fairness accountability

whistleblowers protection act 2001
ombudsman’s guidelines
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7. WHISTLEBLOWERS PROTECTION ACT 2001
OMBUDSMAN’S GUIDELINES

Objects of the Act

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

Who is subject to the Act?

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

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

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

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

Public officers include:

- Members of Parliament
- councillors
- council employees
- public servants
- university employees
- police officers
- protective services officers
- administrative staff of the Chief Commissioner of Police
- teachers
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 are maintained throughout the process
- keeping the roles of assessment and investigation of a disclosure distinct from welfare management of the whistleblower
- identifying clear contact points for reporting whistleblower disclosures, including all relevant mail, phone and email contacts
- ensuring a disclosure about the chief executive officer of a public body is immediately referred to the Ombudsman.

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

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

Roles and responsibilities of those involved in the internal reporting system

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

The protected disclosure coordinator

Every public body must have a nominated protected disclosure coordinator.

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

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

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

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

**Model reporting system for a large organisation**

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

![Figure 18: Model reporting system for a large organisation](image)

**Model reporting system for a small organisation**

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

![Figure 19: Reporting system for a smaller organisation](image)
Ensuring confidentiality

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

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

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

However, the Act prohibits:

- the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the whistleblower
- the disclosure of particulars in an annual report and other reports 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 111 for information about detrimental action that amounts to a reprisal and page 116 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 disk are password-protected

31 Under section 22A the Ombudsman may disclose the identity of a person against whom a protected disclosure is made if it is in the public interest.
any other material, such as tapes from interviews, are stored securely and can only be accessed by authorised officers.

- the security of communications between nominated officers and/or contracted officers i.e. sensitive information or documents are not emailed or faxed to a machine to which staff have general access; personal delivery of documents is the best way to ensure confidentiality.

**Education and training to ensure knowledge by personnel**

All personnel should be provided with all relevant information and given appropriate training to ensure they are familiar with policies, procedures and the relevant parts of the legislation, particularly their confidentiality obligations and 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 facsimiles
- phone calls
- emails
- in person approaches by staff or members of the public.

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

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

**Receiving a disclosure**

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

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

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

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

- orally
- in writing
- electronically
- anonymously.

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

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

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

To whom must a protected disclosure be made?

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

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

<table>
<thead>
<tr>
<th>Person who is the subject of the disclosure</th>
<th>Person/body to whom the disclosure must be made</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee of a public body</td>
<td>That public body or the Ombudsman</td>
</tr>
<tr>
<td>Member of Parliament (Legislative Assembly)</td>
<td>Speaker of the Legislative Assembly</td>
</tr>
<tr>
<td>Member of Parliament (Legislative Council)</td>
<td>President of the Legislative Council</td>
</tr>
<tr>
<td>Councillor</td>
<td>The Ombudsman</td>
</tr>
<tr>
<td>Chief Commissioner of Police</td>
<td>The Ombudsman or the Director, Police Integrity</td>
</tr>
<tr>
<td>Member of the police force</td>
<td>The Ombudsman, the Director, Police Integrity or Chief Commissioner of Police</td>
</tr>
</tbody>
</table>
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 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. The person making a disclosure that satisfies Part 2 receives the protections outlined in Part 3 of the Act. To be assessed as a protected disclosure it must meet the following criteria:

- Did a natural person (that is, an individual person rather than a corporation) make the disclosure?
- Does the disclosure relate to conduct of a public body or public officer acting in their official capacity?
- Is the alleged conduct either improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure?
- Does the person making a disclosure 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 officer. Improper conduct is defined in section 3 of the Act to mean conduct that is:

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

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

**Examples of improper conduct**

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

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

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

**Corrupt conduct**

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

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

The definition of ‘corrupt conduct’ contemplates dishonesty, or at the least the forgoing of public interest for a private benefit. The *Shorter Oxford English Dictionary* defines corruption as: to induce a person to act dishonestly or unfaithfully; to make venal; to bribe. Hence, it is an offence of dishonesty. Dishonesty involves a lack of probity; a disposition to deceive, defraud or steal.
The commonly understood meaning of corruption is further qualified in the Act by the requirement for the conduct in question to be a criminal offence or grounds for dismissal. This indicates that the conduct will only fall within the meaning of the Act where it is dishonesty of a serious nature.

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

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

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

**Examples of corrupt conduct**

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

A public officer sells confidential information.

**Substantial mismanagement of public resources**

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

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

**Substantial risk to public health, safety or the environment**

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

The risk is limited to public health or safety. This means the risk is not just to an individual but relates to conduct which affects, or has the potential to affect, a large class or group of the wider community.
Detrimental action
The Act creates an offence for a person to take detrimental action against a person who has made a protected disclosure. Section 3 of the Act defines detrimental action as including:

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

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

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

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

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 are also taken to require something more than a reasonable suspicion.

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

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

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

The credibility of the whistleblower or individuals who 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 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).

Figure 20: Flowchart of assessment and referral process

```
Ombudsman
Has the disclosure been made under Part 2 of the Act?

Disclosure
Has the disclosure been made under Part 2 of the Act?

Public Body
Has the disclosure been made under Part 2 of the Act?

Is the disclosure a public interest disclosure? (Make determination in reasonable time.)

No
Notify WB and public body where a referred disclosure. Give option of making complaint under Ombudsman Act or PRA.

Yes
Investigation may be referred to Chief Commissioner of Police, Auditor-General, public body or prescribed body.

Is the disclosure a public interest disclosure? (Make determination in 45 days from receipt.)

No
Notify WB and advise of option to request referral to Ombudsman (i.e. within 14 days of decision).

Yes
Notify WB and refer to Ombudsman within 14 days of disclosure.

If WB makes a request within 28 days, refer to Ombudsman immediately.

Was the Act does not apply. Respond as normal complaint.

WB requests disclosure to be dealt with as a complaint (within 28 days). Disclosure deemed to be a complaint.

Investigation
```

No
Notify WB and public body where a referred disclosure.

Yes
Notify WB and public body where a referred disclosure.
```
Possible criminal charges, legal action and disciplinary proceedings

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

Criminal offences

Detrimental action

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

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

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

Breach of confidentiality

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

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

Obstruction of the Ombudsman

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

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

Provision of false information

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

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

Civil action

A whistleblower may take civil action against any person when they believe that detrimental action has been or may be taken against them in reprisal for 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 these two types of whistleblower will, however, be different.

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

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

Appointing a welfare manager

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

The role of the welfare manager is to:

- examine the immediate welfare and protection needs of a whistleblower who has made a disclosure and seek to foster a supportive work environment
- advise the whistleblower of the legislative and administrative protections available to him or her
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure
- keep a contemporaneous record of all aspects of the case management of the whistleblower, including all contact and follow-up action
- endeavour to ensure that the expectations of the whistleblower are realistic.
The welfare manager must not divulge any details relating to the disclosed matter to any person other than the protected disclosure coordinator, the investigator or the chief executive officer. All meetings between the welfare manager and the whistleblower must be conducted discreetly to protect the confidentiality of the whistleblower.

**Reporting back**

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

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

**Managing expectations**

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

The whistleblower’s expectations in relation to the handling of the disclosure should be discussed at the outset of the making of the disclosure. This can be done by the protected disclosure officer, the welfare manager or both. The whistleblower should be informed of the 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 the details of the incident
- advise the whistleblower of his or her rights under the Act.

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

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

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

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

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

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

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

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

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

1. Fail to observe the confidentiality of a disclosure by having information pass through a series of hands with few checks as to who has, or who should view the material.

2. Tell anyone who asks about the details and investigations of the disclosure.

3. Report to the workgroup who the whistleblower is, what the allegations are, and whom they are about.

4. Interpret natural justice to mean a person has an immediate right to know when a disclosure has been made about them and who made it.

5. Always as a first step, ask the person who is the subject of the disclosure about the allegation.

6. Forward the disclosure and action on it through the chain of command so as many people know about the matter as possible.

7. Forewarn the person who is the subject of an allegation in plenty of time about the allegations and provide them with investigation details.

8. Allow personal biases about the personality of the whistleblower to influence the assessment of a disclosure.

9. Do not take seriously the concerns expressed by a whistleblower about the possibility of reprisal.

10. Ignore potential conflicts of interest when deciding who should assess or investigate the disclosure.

11. Allow political considerations to influence the assessment of a disclosure or the findings of an investigation.

12. Delay the investigation for as long as possible so any evidence of wrongdoing can be altered or destroyed.
Investigations

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

Where the Ombudsman has determined a matter not to be a public interest disclosure, he will advise the person who made the disclosure of the option of having the matter dealt with as a complaint under the Ombudsman Act 1973 or the Police Regulation Act 1958. A person must request that the matter be dealt with as a complaint under either Act within 28 days of being given notice. Allegations or complaints that are determined not to be a public interest disclosure may still warrant investigation and a response by a public body under its normal 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 from the chief executive officer or protected disclosure coordinator. The setting of terms of reference is crucial to the successful conduct of enquiries as they establish a focus and set limits for an investigation. Terms of reference oblige a public body to clarify the key issues to which the disclosure gives rise.

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

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 must be given the opportunity to respond to the criticisms and to put forward further material that may influence the outcome of the report and that person’s defence should be fairly set out in the report.
- All relevant parties to a matter should be heard and all submissions should be considered.
- 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 whistleblower and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

Recording information

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

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

Confidentiality requirements

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

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

Witnesses should 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, if possible, away from the workplace to avoid the whistleblower being identified. It may assist the investigation if witnesses are informed in general terms of the reason for the investigation.

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

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

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

Powers with respect to witnesses

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

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

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

Legal representation and other support to witnesses

It is 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
   - person is dissatisfied with the manner in which the public body is carrying out the investigation
   - person is dissatisfied with the steps taken by the public body after the investigation of the matter
   - public body has failed to comply with the reporting and remedial action requirements set out in section 81 of the Act.

3. The Ombudsman is not satisfied with the investigation by the public body. Where the Ombudsman takes over an investigation, the Ombudsman must give notice to the person who made the disclosure, unless it was made anonymously.

Where the Ombudsman takes over an investigation, the public body must give to the Ombudsman in writing any information that it has and any findings, preliminary or otherwise, that it has made in respect to the matter. The Ombudsman may:
   - commence a new investigation
   - complete the investigation
   - refer the investigation back to the public body with recommendations
   - refer the matter to another public body to investigate.
**Action on completion of the investigation**

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

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

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

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

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

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

**Collating and publishing statistics**

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

- the number and types of disclosures made to the public body during the year
- the number of disclosures referred to the Ombudsman for determination as to whether they are public interest disclosures
- the number and types of disclosed matters referred to the public body by the Ombudsman for investigation
- the number and types of disclosed matters referred by the public body to the Ombudsman for investigation
- the number and types of investigations taken over from the public body by the Ombudsman
- the number of requests made by a whistleblower to the Ombudsman to take over an investigation by the public body
- the number and types of disclosed matters that the public body has declined to investigate
- the number and types of disclosed matters that were substantiated upon investigation and the action taken on completion of the investigation
- any recommendation made by the Ombudsman under the Act that relates to the public body.
Describing the type of disclosure requires a statement about the nature of the disclosure; for example, an allegation of bribery or fraudulent use of public funds.

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

**General information**

**The role of the Ombudsman**

The role of the Ombudsman under the Act is to:

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

**Freedom of information**

It is highlighted that section 109 of the Act excludes the application of the *Freedom of Information Act 1982* to any document that relates to a disclosure made under the Act. Public 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
financial statements
for the year ended
30 june 2009
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Accountable Officer’s and Chief Financial Officer’s Declaration
INDEPENDENT AUDITOR’S REPORT

To the Ombudsman

The Financial Report

The accompanying financial report for the year ended 30 June 2009 of the Office of the Ombudsman which comprises the comprehensive operating statement, balance sheet, statement of changes in equity, cash flow statement, a summary of significant accounting policies and explanatory notes to and forming part of the financial report, and the accountable officers and chief financial officer’s declaration has been audited.

The Ombudsman’s Responsibility for the Financial Report

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

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

Auditor’s Responsibility

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

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

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

Matters Relating to the Electronic Presentation of the Audited Financial Report

This auditor’s report relates to the financial report published in both the annual report and on the website of the Office of the Ombudsman for the year ended 30 June 2009. The Ombudsman is responsible for the integrity of the website. I have not been engaged to report on the integrity of the website. The auditor’s report refers only to the statements named above. An opinion is not provided on any other information which may have been hyperlinked to or from these statements. If users of this report are concerned with the inherent risks arising from electronic data communications, they are advised to refer to the hard copy of the audited financial report to confirm the information included in the audited financial report presented to the Office of the Ombudsman website.

Independence

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

Auditor’s Opinion

In my opinion, the financial report presents fairly, in all material respects, the financial position of the Office of the Ombudsman as at 30 June 2009 and its financial performance and cash flows for the year then ended in accordance with applicable Australian Accounting Standards (including the Australian Interpretations) and the financial reporting requirements of the Financial Management Act 1994.
## Comprehensive Operating Statement
For the year ended 30 June 2009

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<tr>
<td></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

### Net Result from Transactions

<table>
<thead>
<tr>
<th>Notes</th>
<th>2009</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

### Other Economic Flows Included in Net Result

<table>
<thead>
<tr>
<th>Notes</th>
<th>2009</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

### Comprehensive Result

<table>
<thead>
<tr>
<th>Notes</th>
<th>2009</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

The above Comprehensive Operating Statement should be read in conjunction with the accompanying notes.
## OFFICE OF THE OMBUDSMAN

### Balance Sheet as at 30 June 2009

<table>
<thead>
<tr>
<th></th>
<th>2009</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notes $</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Financial Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash on Hand</td>
<td>1,000</td>
<td>1,000</td>
</tr>
<tr>
<td>Receivables</td>
<td>585,061</td>
<td>295,817</td>
</tr>
<tr>
<td><strong>Total Financial Assets</strong></td>
<td>586,061</td>
<td>296,817</td>
</tr>
<tr>
<td><strong>Non-Financial Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property, Plant and Equipment</td>
<td>571,610</td>
<td>456,603</td>
</tr>
<tr>
<td><strong>Total Non-Financial Assets</strong></td>
<td>571,610</td>
<td>456,603</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td>1,157,671</td>
<td>753,420</td>
</tr>
<tr>
<td><strong>Liabilities</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payables</td>
<td>421,575</td>
<td>157,803</td>
</tr>
<tr>
<td>Interest Bearing Liabilities</td>
<td>66,753</td>
<td>78,199</td>
</tr>
<tr>
<td>Provisions</td>
<td>1,180,880</td>
<td>968,241</td>
</tr>
<tr>
<td><strong>Total Liabilities</strong></td>
<td>1,669,208</td>
<td>1,204,243</td>
</tr>
<tr>
<td><strong>Net Liabilities</strong></td>
<td>(511,537)</td>
<td>(450,823)</td>
</tr>
<tr>
<td><strong>Equity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contributed Capital</td>
<td>513,376</td>
<td>550,149</td>
</tr>
<tr>
<td>Accumulated Deficit</td>
<td>(1,024,913)</td>
<td>(1,000,972)</td>
</tr>
<tr>
<td><strong>Total Equity / (Deficit)</strong></td>
<td>(511,537)</td>
<td>(450,823)</td>
</tr>
</tbody>
</table>

The above Balance Sheet should be read in conjunction with the accompanying notes.
## OFFICE OF THE OMBUDSMAN

### Statement of Changes in Equity

**For the year ended 30 June 2009**

<table>
<thead>
<tr>
<th>Notes</th>
<th>Equity/(Net Deficit) at 1 July</th>
<th>Comprehensive Result</th>
<th>Transactions with Owners in their Capacity as Owners</th>
<th>Equity/(Net Deficit) at 30 June</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contributed Capital</td>
<td>550,149</td>
<td></td>
<td></td>
<td>550,149</td>
</tr>
<tr>
<td>Return of Capital</td>
<td></td>
<td>(36,773)</td>
<td></td>
<td>(36,773)</td>
</tr>
<tr>
<td></td>
<td>550,149</td>
<td>(36,773)</td>
<td></td>
<td>513,376</td>
</tr>
<tr>
<td>Accumulated Surplus/(Deficit)</td>
<td>(1,000,972)</td>
<td>(23,941)</td>
<td></td>
<td>(1,024,913)</td>
</tr>
<tr>
<td></td>
<td>(450,823)</td>
<td>(23,941)</td>
<td></td>
<td>(511,537)</td>
</tr>
<tr>
<td>2008</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contributed Capital</td>
<td>550,149</td>
<td></td>
<td></td>
<td>550,149</td>
</tr>
<tr>
<td>Accumulated Surplus/(Deficit)</td>
<td>(922,488)</td>
<td>(78,484)</td>
<td></td>
<td>(1,000,972)</td>
</tr>
<tr>
<td></td>
<td>(372,339)</td>
<td>(78,484)</td>
<td></td>
<td>(450,823)</td>
</tr>
</tbody>
</table>

*The above Statement of Changes in Equity should be read in conjunction with the accompanying notes.*
# OFFICE OF THE OMBUDSMAN

## Cash Flow Statement
For the year ended 30 June 2009

<table>
<thead>
<tr>
<th>Notes</th>
<th>2009</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

### Cash Flows from Operating Activities

- **Receipts from Government**: $7,758,244 (06), 6,761,759
- **Payments to Suppliers and Employees**: $(7,360,113) (06), (6,417,250)
- **Capital Asset Charge**: $(175,000) (06), (174,996)
- **Interest Expenses**: $(5,776) (06), (4,810)

**Net Cash Flows from Operating Activities**: 17 217,355 164,703

### Cash Flows from Investing Activities

- **Payments for Property, Plant and Equipment**: $(192,316) (06), (147,417)
- **Proceeds from Disposal of Property, Plant and Equipment**: $11,273 (06), 12,727

**Net Cash Flows used in Investing Activities**: (181,043) (06), (134,690)

### Cash Flows from Financing Activities

- **Repayment of Finance Leases**: $(36,312) (06), (30,013)

**Net Cash Flows used in Financing Activities**: (36,312) (06), (30,013)

**Net Increase In Cash Held**: -

**Cash at the Start of the Year**: 1,000 1,000

**Cash at the End of the Year**: 1,000 1,000

**Non-Cash Financing and Investing Activities**: 18

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The above Cash Flow Statement should be read in conjunction with the accompanying notes.
Notes to the Financial Statements
30 June 2009

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 1994 and applicable Australian Accounting Standards (AASs) and Interpretations. AASs include Australian equivalents to International Financial Reporting Standards. In complying with AASs, the Office has, where relevant, applied those paragraphs applicable to not-for-profit entities.

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

Basis of Preparation
The Financial Statements have 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.

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.

Scope and Presentation of Financial Statements
Early adoption of AASB 101 Presentation of Financial Statements (September 2007)
As a result of a state wide policy to improve consistency in public sector reporting, the Office has revised the presentation of its Financial Statements to align with the AASB 1049 Whole of Government and General Government Sector Financial Reporting presentation format, used in the Financial Report for the State and the general government sector. In addition, the Office has also early adopted the September 2007 version of AASB 101.

In keeping with AASB 101 (September 2007) these Financial Statements include the following changes:

(a) the notion of:

- ‘a complete set of financial statements’ rather than using ‘financial report’;
- ‘changes in equity’ rather than ‘movements in equity’; and
- ‘transactions with owners in their capacity as owners’ rather than ‘transactions with owners as owners’.
(b) references to equity holders as owner.

Some of the changes applied to the Financial Statements and notes as a result of alignment to AASB 1049 that are allowable under AASB 101 (September 2007) include the following:

- extended Operating Statement incorporating non-owner changes in equity, which is now referred to as Comprehensive Operating Statement;
- items being presented by liquidity order in the Balance Sheet;
- the inclusion of a limited number of Government Finance Statistics (GFS) classifications, such as income or expenses from transactions, and other economic flows; and
- a glossary of terms included in the notes explaining certain terms, including GFS terms adopted.

**Comprehensive Operating Statement**

The Comprehensive Operating Statement includes items previously included in the Statement of Recognised Income and Expense. Income and expenses in the Comprehensive Operating Statement are separated into either ‘transactions’ or ‘other economic flows’.

**Balance Sheet**

Items of assets and liabilities in the Balance Sheet are:

- ranked in liquidity order;
- aggregated into financial and non-financial assets;
- classified according to GFS terminology, but retain measurement and disclosure rules under existing accounting standards applicable to the Office; and
- current versus non-current assets and liabilities are disclosed in the notes where relevant.

**Statement of Changes in Equity**

The Statement of Changes in Equity presents reconciliations of each non-owner and owner equity opening balance at the beginning of the year to the closing balance at the end of the year, showing separately movements due to amounts recognised in the comprehensive result and amounts recognised in equity related to transactions with owners in their capacity as owners.

**Cash Flow Statement**

The Cash Flow Statement classifies flows by operating, investing and financing activities in accordance with AASB 107 Cash Flow Statements. There were no significant changes due to alignment of the Office’s Financial Statements presentation formats to AASB 1049.

**(a) Reporting Entity**

The Financial Statements include all the controlled activities of the Office of the Ombudsman.
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 19).

(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 1973; determines whether a disclosure of improper conduct under the Whistleblowers Protection Act 2001 is a public interest disclosure; and has a role in ensuring compliance by designated agencies with the provisions of the Freedom of Information Act 1982 and the Victorian Charter of Human Rights and Responsibilities Act 2006.

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

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

(c) Income from Transactions

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.

Resources Received Free of Charge

Contributions of resources free of charge or for nominal consideration are recognised at their fair value when the transferee obtains control over them, irrespective of whether restrictions or conditions are imposed over the use of the contributions, unless received from another government department or agency as a consequence of a restructuring of administrative arrangements. In the latter case, such a transfer will be recognised at carrying value. Contributions in the form of services are only recognised when a fair value can be reliably determined and the services would have been purchased if not donated.
(d) Expenses from Transactions

Employee Benefits
Expenses for employee benefits are recognised when incurred, except for contributions in respect of defined benefit plans. The gain or loss following revaluation of the present value of the long service leave liability due to changes in bond interest rates is recognised as an other economic flow.

Superannuation - Defined Benefit Plans
The amount charged to the Comprehensive Operating Statement in respect of defined benefit superannuation plans 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 Department of Treasury and Finance centrally recognises the defined benefit liability or surplus of most Victorian government employees in such funds.

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 to its estimated residual value. Leasehold improvements are depreciated over the period of the lease or estimated useful life, whichever is the shorter. Estimates of remaining useful lives, residual values and depreciation method for all such assets are reviewed annually. The expected useful lives applicable for the reporting periods ended 30 June 2009 and 30 June 2008 are as follows:

- Building Fitouts: 10 years
- Computer and Communications Equipment: 4 years
- Furniture and Fittings: 10 years

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

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

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

(e) Other Economic Flows Included in Net Result
Other economic flows measure the change in volume or value of assets or liabilities that do not result from transactions.

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

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

Impairment of Non-Financial Assets

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

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.

Net Gain/(Loss) on Financial Instruments

Net gain/(loss) on financial instruments includes realised and unrealised gains and losses from revaluations of financial instruments that are designated at fair value through profit or loss or held for trading, impairment and reversal of impairment for financial instruments at amortised cost, and disposals of financial assets.

Impairment of Financial Assets

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

Other Gains/(Losses) from Other Economic Flows

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

(f) Financial Assets

The Office classifies its financial assets in the following categories: financial assets at fair value through profit or loss, loans and receivables, held-to-maturity investments, and available-for-sale financial assets. The classification depends on the purpose for which the investments were acquired. Management determines the classification of its investments at initial recognition.

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

Cash

Cash comprises cash on hand and cash at bank, deposits at call and short term deposits that are readily convertible to cash and are subject to an insignificant risk of changes in value.
Loans and Receivables

Trade receivables, loans and other receivables are recognised initially at fair value and subsequently measured at amortised cost, using the effective interest method, less impairment. Trade debtors are due for settlement at no more than 30 days from the date of recognition. Collectability of debtors is reviewed on an ongoing basis. A provision for doubtful debts is raised when there is objective evidence that the debts may not be collected. Debts which are known to be uncollectable are written off.

(g) Non-Financial Assets

Property, Plant and Equipment

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

Revaluation of Non-Current Physical Assets

Non-current physical assets measured at fair value are revalued in accordance with Financial Reporting Directions issued by the Minister for Finance. This revaluation process normally occurs every five years, based on the asset’s Government Purpose Classification. In the intervening period, annual assessments are made, with the aid of appropriate indices, as to whether the fair value of a class of assets may differ materially from its carrying amount. Assets are revalued if there are indicators of a material change in fair value.

Revaluation increments are credited directly to the Asset Revaluation Reserve, except that, to the extent that an increment reverses a revaluation decrement in respect of that class of asset previously recognised as an expense, the increment is recognised immediately as income in determining the net result.

Revaluation decrements are recognised immediately as expenses, except that, to the extent that a credit balance exists in the Asset Revaluation Reserve in respect of the same class of assets, they are debited directly to the Asset Revaluation Reserve.

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

(h) Liabilities

Payables

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

Interest Bearing Liabilities

Interest bearing liabilities are recorded initially at fair value, net of transaction costs. Subsequent to initial recognition, interest bearing liabilities are measured at amortised cost with any difference between the initial recognised amount and the redemption value being recognised in profit and loss over the period of the interest bearing liability using the effective interest rate method.
Employee Benefits
Provision is made for benefits accruing to employees in respect of wages and salaries, annual leave, long service leave and sick leave when it is probable that settlement will be required and they are capable of being measured reliably. Employee benefits on-costs are recognised separately from provisions for employee benefits.

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

(i) 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.

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

(j) Goods and Services Tax (GST)
Income, expenses and assets are recognised net of GST, except:

- where the amount of GST incurred is not recoverable from the Australian Taxation Office (ATO), it is recognised as part of the cost of acquisition of an asset or as part of an item of expense; or
- for receivables and payables which are recognised inclusive of GST.

The net amount of GST recoverable from, or payable to, the ATO is included as part of receivables or payables.

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

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

(l) Functional and Presentation Currency

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

(m) New Accounting Standards and Interpretations

As at 30 June 2009, the following standards and interpretations (applicable to the Office) had been issued but were not mandatory for the 30 June 2009 reporting period. The Office has not adopted, and does not intend to adopt, these standards early.

**AASB 123 Borrowing Costs.** Option to expense borrowing cost related to a qualifying asset had been removed. Entities are now required to capitalise borrowing costs relevant to qualifying assets. Applicable for annual reporting periods beginning 1 January 2009. The Office continues to expense borrowing costs.

**AASB 2007-6 Amendments to Australian Accounting Standards arising from AASB 123 [AASB 1, AASB 101, AASB 107, AASB 111, AASB 116 & AASB 138 and Interpretations 1 & 12].** An accompanying amending standard also introduced consequential amendments into other Standards. Applicable for annual reporting periods beginning 1 January 2009. Standard will have no impact to not-for-profit public sector as Victorian Government agencies have an exemption from capitalising borrowing costs.

**AASB 2007-10 Further Amendments to Australian Accounting Standards arising from AASB 101.** This Amending Standard changes the term ‘general purpose financial report’ to ‘general purpose financial statements’ and the term ‘financial report’ to ‘financial statements’. Applicable for annual reporting periods beginning 1 January 2009. Impact is insignificant.

**AASB 2008-5 Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASBs5, 7 101, 102, 107, 108, 110, 116, 118, 119, 120, 123, 127, 128, 129, 131, 132, 134, 136, 138, 139, 140, 141, 1023 & 1038].** Some amendments result in accounting changes for presentation, recognition and measurement purposes, while some other amendments that relate to terminology and editorial changes are expected to have no or minimal effect on the Office’s accounting. Applicable for annual reporting periods beginning 1 January 2009. Impact is being evaluated.

**AASB 2008-7 Amendments to Australian Accounting Standards - Cost of an Investment in a Subsidiary, Jointly Controlled Entity or Associate [AASB 1, AASB 118, AASB 121, AASB 127 & AASB 136].** Changes mainly relate to treatment of dividends from subsidiaries, associates and jointly controlled entities. Applicable for annual reporting periods beginning 1 January 2009. Impact is being evaluated.

**Interpretation 15 – Agreements for the Construction of Real Estate [AASB 118].** This Interpretation addresses two issues: (i) Is the agreement within the scope of AASB 111 Construction Contracts or AASB 118 Revenue? and (ii) When should revenue from the construction of real estate be recognised? Applicable for annual reporting periods beginning 1 January 2009. Impact is being evaluated.

AASB 2009-1 Amendments to Australian Accounting Standards – Borrowing Costs of Not-for-Profit Public Sector Entities [AASB 1, AASB 111 & AASB 123]. The amendments arise from the AASB’s review of the requirement in AASB 123 to capitalise borrowing costs. In February 2009, the AASB decided that not-for-profit public sector entities could continue to expense borrowing costs attributable to qualifying assets pending the outcome of various IPSASB/AASB projects. Operative for periods beginning on or after 1 January 2009 that end on or after 30 April 2009. The Office continues to expense borrowing costs.

AASB 2009-2 Amendments to Australian Accounting Standards – Improving Disclosures about Financial Instruments [AASB 4, AASB 7, AASB 1023 & AASB 1038]. These amendments arise from the issuance of Improving Disclosures about Financial Instruments (Amendments to IFRS 7) by the IASB in March 2009. The amendments require enhanced disclosures about fair value measurements and liquidity risk. Operative for periods beginning on or after 1 January 2009 that end on or after 30 April 2009. Impact is being evaluated.

AASB 2009-6 Amendments to Australian Accounting Standards. This standard makes numerous editorial amendments as a consequence of the issuance in September 2007 of a revised AASB 101. For example, the term ‘revaluation reserve’ is changed to “revaluation surplus”. Operative for periods beginning on or after 1 January 2009 that end on or after 30 June 2009. Impact is expected to be insignificant.

AASB 2008-3 Amendments to Australian Accounting Standards arising from AASB 3 & AASB 127 [AASB 1, 2, 4, 5, 7, 101, 107, 112, 114, 116, 121, 128, 131, 132, 133, 134, 136, 137, 138 & 139 and Interpretations 9 & 107]. This Standard gives effect to consequential editorial changes to other Australian Accounting Standards arising from revised AASB 3 and amended AASB 127. Applicable for annual reporting periods beginning 1 July 2009. Impact is being evaluated.

AASB 2008-6 Further Amendments to Australian Accounting Standards arising from the Annual Improvements project [AASB 1 & AASB 5]. The amendments require all the assets and liabilities of a for-sale subsidiary to be classified as held-for-sale and clarify the disclosures required when the subsidiary is part of a disposal group that meets the definition of a discontinued operation. Applicable for annual reporting periods beginning 1 July 2009. Impact is being evaluated.

AASB 2008-8 Amendments to Australian Accounting Standards – Eligible Hedged Items [AASB 139]. The amendments to AASB 139 clarify how the principles that determine whether a hedged risk or portion of cash flows is eligible for designation as a hedged item should be applied in particular situations. Applicable for annual reporting periods beginning 1 July 2009. Impact is expected to be insignificant.

AASB 2008-13 Amendments to Australian Accounting Standards arising from AASB Interpretation 17 – Distributions of Non-cash Assets to Owners [AASB 5 & AASB 110]. Some of the amendments are in respect of the classification, presentation and measurement of non-current assets held for distribution to owners in their capacity as owners. Applicable for annual reporting periods beginning 1 July 2009. Impact is being evaluated.
AASB 2009-4 Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 2 and AASB 138 and AASB Interpretations 9 & 16]. Various consequential amendments to existing standards as a result of IASB’s Annual Improvements project. Applicable for annual reporting periods beginning 1 July 2009. Impact is expected to be insignificant.

AASB 2009-7 Amendments to Australian Accounting Standards [AASB 5, 7, 107, 112, 136 & 139 and Interpretation 17]. A suite of amendments as a result of editorial corrections by the AASB and by the IASB, some of which relate to correcting errors made in AASB 2008-12. Applicable for annual reporting periods beginning 1 July 2009. Impact is being evaluated.

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

Note 2. Income from Transactions

<table>
<thead>
<tr>
<th>Note 2. Income from Transactions</th>
<th>2009 $</th>
<th>2008 $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grants from the Department of Premier and Cabinet</td>
<td>8,033,705</td>
<td>6,733,721</td>
</tr>
<tr>
<td>Total Income from Transactions</td>
<td>8,033,705</td>
<td>6,733,721</td>
</tr>
</tbody>
</table>
Note 3. Expenses from Transactions

<table>
<thead>
<tr>
<th>Note 3. Expenses from Transactions</th>
<th>2009 $</th>
<th>2008 $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenses from Transactions includes:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries and Wages</td>
<td>4,378,210</td>
<td>3,718,153</td>
</tr>
<tr>
<td>Superannuation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Defined Contribution Plans</td>
<td>343,117</td>
<td>302,342</td>
</tr>
<tr>
<td>- Defined Benefits Plans</td>
<td>50,930</td>
<td>45,587</td>
</tr>
<tr>
<td>Annual and Long Service Leave Expense</td>
<td>464,651</td>
<td>517,439</td>
</tr>
<tr>
<td>Other On-Costs</td>
<td>265,273</td>
<td>253,029</td>
</tr>
<tr>
<td>Total Employee Benefits</td>
<td>5,502,181</td>
<td>4,836,550</td>
</tr>
<tr>
<td>Depreciation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building Fitouts</td>
<td>76,635</td>
<td>5,784</td>
</tr>
<tr>
<td>Computer Equipment</td>
<td>61,345</td>
<td>84,542</td>
</tr>
<tr>
<td>Furniture and Fittings</td>
<td>44,453</td>
<td>32,022</td>
</tr>
<tr>
<td>Motor Vehicles under Finance Lease</td>
<td>21,202</td>
<td>14,630</td>
</tr>
<tr>
<td>Total Depreciation</td>
<td>203,635</td>
<td>136,978</td>
</tr>
<tr>
<td>Interest Expense</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest Expense from Financial Liabilities not at Fair Value through Profit or Loss</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finance Lease Interest</td>
<td>5,776</td>
<td>4,810</td>
</tr>
<tr>
<td>Total Interest Expense</td>
<td>5,776</td>
<td>4,810</td>
</tr>
<tr>
<td>Rental Expense Relating to Operating Leases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum Lease Payments</td>
<td>314,901</td>
<td>232,876</td>
</tr>
</tbody>
</table>
Note 4. Other Economic Flows included in Net Result

<table>
<thead>
<tr>
<th>Note 4. Other Economic Flows included in Net Result</th>
<th>2009 $</th>
<th>2008 $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Gain/(Loss) on Non-Financial Assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Gain/(Loss) on Disposal of Property, Plant and Equipment</td>
<td>(4,237)</td>
<td>(3,109)</td>
</tr>
<tr>
<td>Total Net Gain/(Loss) on Non-Financial Assets</td>
<td>(4,237)</td>
<td>(3,109)</td>
</tr>
<tr>
<td>Other Gains/(Losses) from Other Economic Flows</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Gain/(Loss) arising from Revaluation of Long Service Leave Liability</td>
<td>(14,227)</td>
<td>1,890</td>
</tr>
<tr>
<td>Total Other Gains/(Losses) from Other Economic Flows</td>
<td>(14,227)</td>
<td>1,890</td>
</tr>
</tbody>
</table>

Note 5. Receivables

<table>
<thead>
<tr>
<th>Note 5. Receivables</th>
<th>2009 $</th>
<th>2008 $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statutory</td>
<td></td>
<td></td>
</tr>
<tr>
<td>GST Recoverable</td>
<td>16,049</td>
<td>2,266</td>
</tr>
<tr>
<td>Amounts Receivable from Government Departments</td>
<td>376,685</td>
<td>180,787</td>
</tr>
<tr>
<td>Amounts Receivable from Government Departments</td>
<td>392,734</td>
<td>183,053</td>
</tr>
<tr>
<td>Non-Current:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statutory</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amounts Receivable from Government Departments</td>
<td>192,327</td>
<td>112,764</td>
</tr>
<tr>
<td>Amounts Receivable from Government Departments</td>
<td>192,327</td>
<td>112,764</td>
</tr>
<tr>
<td>Total Receivables</td>
<td>585,061</td>
<td>295,817</td>
</tr>
</tbody>
</table>
## Note 6. Property, Plant and Equipment

### Note 6: Property, Plant and Equipment

<table>
<thead>
<tr>
<th></th>
<th>2009 $</th>
<th>2008 $</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Building Fitouts (including Construction in Progress)</strong></td>
<td>364,044</td>
<td>76,750</td>
</tr>
<tr>
<td><strong>Less: Accumulated Depreciation</strong></td>
<td>(86,229)</td>
<td>(9,594)</td>
</tr>
<tr>
<td></td>
<td>277,815</td>
<td>67,156</td>
</tr>
<tr>
<td><strong>Office and Computer Equipment</strong></td>
<td>422,384</td>
<td>591,888</td>
</tr>
<tr>
<td><strong>Less: Accumulated Depreciation</strong></td>
<td>(372,716)</td>
<td>(448,775)</td>
</tr>
<tr>
<td></td>
<td>49,668</td>
<td>143,113</td>
</tr>
<tr>
<td><strong>Furniture and Fittings</strong></td>
<td>309,430</td>
<td>259,405</td>
</tr>
<tr>
<td><strong>Less: Accumulated Depreciation</strong></td>
<td>(132,036)</td>
<td>(90,490)</td>
</tr>
<tr>
<td></td>
<td>177,394</td>
<td>168,915</td>
</tr>
<tr>
<td><strong>Motor Vehicles under Finance Lease</strong></td>
<td>120,305</td>
<td>121,472</td>
</tr>
<tr>
<td><strong>Less: Accumulated Depreciation</strong></td>
<td>(53,572)</td>
<td>(44,053)</td>
</tr>
<tr>
<td></td>
<td>66,733</td>
<td>77,419</td>
</tr>
<tr>
<td><strong>Total Property, Plant and Equipment</strong></td>
<td>571,610</td>
<td>456,603</td>
</tr>
</tbody>
</table>

### Reconciliation of Movements

<table>
<thead>
<tr>
<th></th>
<th>2009 $</th>
<th>2008 $</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Building Fitouts (including Construction in Progress)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carrying Amount at Start of Year</td>
<td>67,156</td>
<td>51,436</td>
</tr>
<tr>
<td>Additions</td>
<td>287,294</td>
<td>21,504</td>
</tr>
<tr>
<td>Depreciation Expense (note 3)</td>
<td>(76,635)</td>
<td>(5,784)</td>
</tr>
<tr>
<td>Carrying Amount at End of Year</td>
<td>277,815</td>
<td>67,156</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>2009 $</th>
<th>2008 $</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Office and Computer Equipment</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carrying Amount at Start of Year</td>
<td>143,113</td>
<td>208,034</td>
</tr>
<tr>
<td>Additions</td>
<td>6,992</td>
<td>15,001</td>
</tr>
<tr>
<td>Disposals</td>
<td>(352)</td>
<td>-</td>
</tr>
<tr>
<td>Net Transfers Free of Charge</td>
<td>(1,967)</td>
<td>-</td>
</tr>
<tr>
<td>Net Transfers through Contributed Capital</td>
<td>(36,773)</td>
<td>-</td>
</tr>
<tr>
<td>Transfers Between Classes</td>
<td>-</td>
<td>4,620</td>
</tr>
<tr>
<td>Depreciation Expense (note 3)</td>
<td>(61,345)</td>
<td>(84,542)</td>
</tr>
<tr>
<td>Carrying Amount at End of Year</td>
<td>49,668</td>
<td>143,113</td>
</tr>
</tbody>
</table>
Note 6: Property, Plant and Equipment continued.

<table>
<thead>
<tr>
<th>Reconciliation of Movements continued</th>
<th>2009 $</th>
<th>2008 $</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Furniture and Fittings</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carrying Amount at Start of Year</td>
<td>168,915</td>
<td>95,774</td>
</tr>
<tr>
<td>Additions</td>
<td>53,738</td>
<td>110,516</td>
</tr>
<tr>
<td>Disposals</td>
<td>(806)</td>
<td>-</td>
</tr>
<tr>
<td>Net Transfers Free of Charge</td>
<td>-</td>
<td>(733)</td>
</tr>
<tr>
<td>Transfers Between Classes</td>
<td>-</td>
<td>(4,620)</td>
</tr>
<tr>
<td>Depreciation Expense (note 3)</td>
<td>(44,453)</td>
<td>(32,022)</td>
</tr>
<tr>
<td>Carrying Amount at End of Year</td>
<td>177,394</td>
<td>168,915</td>
</tr>
<tr>
<td><strong>Motor Vehicles under Finance Lease</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carrying Amount at Start of Year</td>
<td>77,419</td>
<td>79,924</td>
</tr>
<tr>
<td>Additions</td>
<td>24,866</td>
<td>28,360</td>
</tr>
<tr>
<td>Disposals</td>
<td>(14,350)</td>
<td>(15,837)</td>
</tr>
<tr>
<td>Net Transfers Free of Charge</td>
<td>-</td>
<td>(398)</td>
</tr>
<tr>
<td>Depreciation Expense (note 3)</td>
<td>(21,202)</td>
<td>(14,630)</td>
</tr>
<tr>
<td>Carrying Amount at End of Year</td>
<td>66,733</td>
<td>77,419</td>
</tr>
</tbody>
</table>

Note 7. Payables

<table>
<thead>
<tr>
<th>Note 7. Payables</th>
<th>2009 $</th>
<th>2008 $</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contractual</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creditors and Accruals</td>
<td>421,575</td>
<td>157,803</td>
</tr>
<tr>
<td><strong>Total Payables</strong></td>
<td>421,575</td>
<td>157,803</td>
</tr>
</tbody>
</table>

Note 10 discloses the maturity analysis of contractual payables and the nature and extent of risks arising from contractual payables.
### Note 8. Interest Bearing Liabilities

<table>
<thead>
<tr>
<th></th>
<th>2009 $</th>
<th>2008 $</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secured Lease Liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>49,818</td>
<td>48,600</td>
</tr>
<tr>
<td>Non-Current:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secured Lease Liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>16,935</td>
<td>29,599</td>
</tr>
<tr>
<td><strong>Total Interest Bearing Liabilities</strong></td>
<td>66,753</td>
<td>78,199</td>
</tr>
</tbody>
</table>

*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


*Note 10 discloses the maturity analysis of interest bearing liabilities and the nature and extent of risks arising from interest bearing liabilities.*
Note 9. **Provisions**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Annual Leave</td>
<td>188,565</td>
<td>219,996</td>
</tr>
<tr>
<td>- Long Service Leave</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expected to be paid within 12 months</td>
<td>76,298</td>
<td>84,000</td>
</tr>
<tr>
<td>Expected to be paid after 12 months</td>
<td>477,177</td>
<td>481,943</td>
</tr>
<tr>
<td>- Performance Bonus</td>
<td>40,000</td>
<td>18,733</td>
</tr>
<tr>
<td>Restoration Costs</td>
<td>206,513</td>
<td>50,805</td>
</tr>
<tr>
<td><strong>Non-Current:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Long Service Leave</td>
<td>192,327</td>
<td>112,764</td>
</tr>
<tr>
<td>Total Provisions</td>
<td>1,180,880</td>
<td>968,241</td>
</tr>
<tr>
<td>Movements in Provisions other than Employee Benefits</td>
<td>Restoration Costs</td>
<td></td>
</tr>
<tr>
<td>Balance at Start of the Year</td>
<td>50,805</td>
<td></td>
</tr>
<tr>
<td>Additional Provision Recognised</td>
<td>155,708</td>
<td></td>
</tr>
<tr>
<td>Balance at End of the Year</td>
<td>206,513</td>
<td></td>
</tr>
</tbody>
</table>
Note 10. Financial Instruments

(a) Significant Accounting Policies

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

(b) Categorisation of Financial Instruments

<table>
<thead>
<tr>
<th>Categorisation of Financial Instruments</th>
<th>Carrying Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009 $</td>
</tr>
<tr>
<td>Cash</td>
<td></td>
</tr>
<tr>
<td>Cash</td>
<td></td>
</tr>
<tr>
<td>Receivables *</td>
<td>5</td>
</tr>
<tr>
<td>Financial Liabilities</td>
<td></td>
</tr>
<tr>
<td>Payables</td>
<td>7</td>
</tr>
<tr>
<td>Interest bearing liabilities</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Holding Gain/(Loss) on Financial Instruments by Category:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2009 $</td>
</tr>
<tr>
<td>Cash</td>
<td></td>
</tr>
<tr>
<td>Receivables *</td>
<td>5</td>
</tr>
<tr>
<td>Financial Liabilities</td>
<td></td>
</tr>
<tr>
<td>Payables</td>
<td>7</td>
</tr>
<tr>
<td>Interest bearing liabilities</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Receivables disclosed here exclude statutory receivables (i.e. Amounts Receivable from Government Departments and GST recoverable)

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

- For cash and cash equivalents, loans or receivables and available for sale financial assets, the net gain or loss is calculated by taking the interest revenue, plus or minus foreign exchange gains or losses arising from revaluation of the financial assets, and minus any impairment recognised in the net result; and

- For financial liabilities measured at amortised cost, the net gain or loss is calculated by taking the interest expense, plus or minus foreign exchange gains or losses arising from the revaluation of the financial liabilities.
(c) Credit Risk

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

**Financial assets that are either past due or impaired**
Currently the Office does not hold any collateral as security nor credit enhancements relating to any of its financial assets.

As at the reporting date, there is no event to indicate that any of the financial assets were impaired.

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

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

(d) Liquidity Risk

Liquidity risk arises when the Office is unable to meet its financial obligations as they fall due. The Office operates under the Victorian Government’s fair payments policy of settling financial obligations within 30 days and in the event of a dispute, making payments within 30 days from the date of resolution.

The Office’s exposure to liquidity risk is deemed insignificant based on prior periods’ data and current assessment of risk. Maximum exposure to liquidity risk is the carrying amounts of financial liabilities.

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

<table>
<thead>
<tr>
<th></th>
<th>Carrying amount $</th>
<th>Nominal amount $</th>
<th>Less than 1 month $</th>
<th>1-3 months $</th>
<th>3 months – 1 year $</th>
<th>1-5 years $</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2009</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payables</td>
<td>421,575</td>
<td>421,575</td>
<td>421,575</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finance lease liabilities</td>
<td>66,753</td>
<td>71,069</td>
<td>17,145</td>
<td>2,777</td>
<td>32,936</td>
<td>18,211</td>
</tr>
<tr>
<td><strong>2008</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payables</td>
<td>157,803</td>
<td>157,803</td>
<td>157,803</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finance lease liabilities</td>
<td>78,199</td>
<td>82,592</td>
<td>17,252</td>
<td>26,132</td>
<td>8,045</td>
<td>31,163</td>
</tr>
</tbody>
</table>

*The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities.*
(e) Market Risk

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

**Interest rate risk**

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

The Office’s exposure to interest rate risk is set out below.

<table>
<thead>
<tr>
<th>Interest rate exposure</th>
<th>Weighted average effective interest rate</th>
<th>Carrying amount $’000</th>
<th>Fixed interest rate $’000</th>
<th>Variable interest rate $’000</th>
<th>Non-interest bearing $’000</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Financial liabilities</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payables</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-</td>
<td></td>
<td>421,575</td>
<td></td>
<td></td>
<td>421,575</td>
</tr>
<tr>
<td>Finance lease liabilities</td>
<td>7.1</td>
<td>66,753</td>
<td>66,753</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Financial liabilities</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payables</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-</td>
<td></td>
<td>157,803</td>
<td></td>
<td></td>
<td>157,803</td>
</tr>
<tr>
<td>Finance lease liabilities</td>
<td>6.9</td>
<td>78,199</td>
<td>78,199</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Sensitivity disclosure analysis**

Taking into account past performance, future expectations, economic forecasts, and management’s knowledge and experience of the financial markets, the Office believes the following movements are reasonably possible over the next 12 months (Base rates are sourced from Treasury Corporation of Victoria):

- A parallel shift of +0.5 per cent and -0.5 per cent in market interest rates (AUD) from year-end rates. The impact on net operating result and equity for each affected category of financial instrument held by the Office at year-end as presented to key management personnel, if the above movements were to occur is Nil (2008 - Nil).
(f) Fair Value

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

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

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

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

Note 11. Commitments for Expenditure

<table>
<thead>
<tr>
<th>Note 11: Commitments for Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Operating Lease Commitments</td>
</tr>
<tr>
<td>Commitments for minimum lease payments</td>
</tr>
<tr>
<td>Within one year</td>
</tr>
<tr>
<td>Later than 1 year but not later than five years</td>
</tr>
<tr>
<td>Later than five years</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Finance Lease Commitments</td>
</tr>
<tr>
<td>Commitments in relation to finance leases</td>
</tr>
<tr>
<td>Within one year</td>
</tr>
<tr>
<td>Later than one year but not later than five years</td>
</tr>
<tr>
<td>Minimum Lease Payments</td>
</tr>
<tr>
<td>Less: Future finance charges</td>
</tr>
<tr>
<td>Total Lease Liabilities</td>
</tr>
<tr>
<td>Shown in the Financial Statements as:</td>
</tr>
<tr>
<td>Current (note 8)</td>
</tr>
<tr>
<td>Non-Current (note 8)</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
Note 12. Contingent Liabilities and Contingent Assets
There are no contingent liabilities or contingent assets for the Office of the Ombudsman at 30 June 2009 or 30 June 2008.

Note 13. Responsible Persons
In accordance with the Ministerial Directions issued by the Minister for Finance under the Financial Management Act 1994, 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 John Brumby, MP, Premier
- Accountable Officer: George Brouwer, Ombudsman

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

- $360,000 - $369,999 ($360,000 - $369,999 in 2008)

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 14. 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.

<table>
<thead>
<tr>
<th>Income Band</th>
<th>Total Remuneration</th>
<th>Base Remuneration</th>
</tr>
</thead>
<tbody>
<tr>
<td>$200,000 - $209,999</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$210,000 - $219,999</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$220,000 - $229,999</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$230,000 - $239,999</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$260,000 - $269,999</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Numbers</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Total Amount ($)</td>
<td>479,452</td>
<td>237,566</td>
</tr>
</tbody>
</table>

Note 15. Remuneration of Auditors

<table>
<thead>
<tr>
<th>Note 15: Remuneration of Auditors</th>
<th>2009 $</th>
<th>2008 $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit Fees paid or payable to the Victorian Auditor-General’s Office Auditing the Annual Financial Statements</td>
<td>11,880</td>
<td>10,800</td>
</tr>
</tbody>
</table>

No other services were provided by the Victorian Auditor-General’s Office.
Note 16. Superannuation

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

No liability is recognised in the Balance Sheet for the Office’s share of the State’s defined benefit superannuation liability because the Office has no legal or constructive obligation to pay future benefits relating to its employees; its only obligation is to pay superannuation contributions as they fall due. The Department of Treasury and Finance recognises and discloses the State’s defined benefit liabilities in its Financial Statements.

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

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

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

**Accumulation Funds**
- VicSuper

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

Note 17. Reconciliation of Net Result to Net Cash Flows from Operating Activities

<table>
<thead>
<tr>
<th>Note 17. Reconciliation of Net Result to Net Cash Flows from Operating Activities</th>
<th>2009 $</th>
<th>2008 $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Result</td>
<td>(23,941)</td>
<td>(78,484)</td>
</tr>
<tr>
<td>Depreciation</td>
<td>203,635</td>
<td>136,978</td>
</tr>
<tr>
<td>Net Resources Provided Free of Charge</td>
<td>1,967</td>
<td>1,131</td>
</tr>
<tr>
<td>Loss on Disposal of Non-Current Assets</td>
<td>4,237</td>
<td>3,109</td>
</tr>
<tr>
<td>Change in Operating Assets and Liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Increase)/Decrease in Receivables</td>
<td>(289,244)</td>
<td>53,342</td>
</tr>
<tr>
<td>Increase/(Decrease) in Payables</td>
<td>263,770</td>
<td>(168,315)</td>
</tr>
<tr>
<td>Increase/(Decrease) in Provisions</td>
<td>56,931</td>
<td>216,942</td>
</tr>
<tr>
<td>Net Cash Flows from Operating Activities</td>
<td>217,355</td>
<td>164,703</td>
</tr>
</tbody>
</table>
Note 18. Non-Cash Financing and Investing Activities

During the period, net assets were transferred from the Office to other Government Divisions. Transfers amounting to $1,967 (2008 $1,131) were accounted for as resources provided free of charge in the Comprehensive Operating Statement, and $36,773 (2008 Nil) as a return of contributed capital in the Balance Sheet.

During the period, motor vehicles with a fair value of $24,866 (2008 $28,360) were acquired by means of finance leases.

Note 19. 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 $840,000 (2008 Nil) for the conduct of investigative services. Administered receivables at the end of the year amounted to $696,696 (2008 Nil).

Note 20. Glossary of Terms

Comprehensive result

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

Capital asset charge

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

Commitments

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

Employee benefits expenses

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

Financial asset

A financial asset is any asset that is:

(a) cash;

(b) an equity instrument of another entity;

(c) a contractual right:

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

Financial Statements
Depending on the context of the sentence where the term ‘Financial Statements’ is used, it may
include only the main Statements (i.e. Comprehensive Operating Statement, Balance Sheet, Cash
Flow Statement, and Statement of Changes in Equity); or it may also be used to include the main
Statements and the Notes.

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

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

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

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

Non-financial assets
Non-financial assets are all assets that are not ‘financial assets’.
Other economic flows

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

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

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

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

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

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

Accountable Officer’s and Chief Financial Officer’s Declaration
We certify that the attached Financial Statements for the Office of the Ombudsman have been prepared in accordance with Standing Direction 4.2 of the Financial Management Act 1994, applicable Financial Reporting Directions, Australian Accounting Standards and other mandatory professional reporting requirements.

We further state that, in our opinion, the information set out in the Comprehensive Operating Statement, Balance Sheet, Statement of Changes in Equity, Cash Flow Statement and Notes to the Financial Statements, presents fairly the financial transactions during the year ended 30 June 2009 and financial position of the Office as at 30 June 2009.

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  
3 September 2009

G E Brouwer  
Ombudsman  
Office of the Ombudsman  
Melbourne  
3 September 2009
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Investigation into Corporate Governance at Moorabool Shire Council
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Crime statistics and police numbers
March 2009

2008
Whistleblowers Protection Act 2001
Report of an investigation into issues at Bayside Health
October 2008
Probity controls in public hospitals for the procurement of non-clinical goods and services
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Conditions for persons in custody
July 2006
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April 2006
Improving responses to allegations involving sexual assault
March 2006

2005
Investigation into the handling, storage and transfer of prisoner property in Victorian prisons
December 2005
Whistleblowers Protection Act: Ombudsman’s Guidelines
October 2005
Own motion investigation into VicRoads registration practices
June 2005
Complaint handling guide for the Victorian Public Sector
2005
May 2005
Review of the Freedom of Information Act: discussion paper
May 2005
Review of complaint handling in Victorian universities
May 2005
Investigation into the conduct of council officers in the administration of the Shire of Melton
March 2005
Discussion paper on improving responses to sexual abuse allegations
February 2005

2004
Essendon Rental Housing Co-operative (ERHC)
December 2004
Complaint about the Medical Practitioners Board of Victoria
December 2004
Ceja task force drug related corruption: second interim report
June 2004