

VICTORIAN ombudsman

2014-15 SNAPSHOT

'A bigger voice than our own'



Message from the Ombudsman

This is my first full year as Victorian Ombudsman. As only the fifth occupant of the role since it was created in 1973, I am aware of the great privilege and responsibility of being one of only three independent statutory officers of Parliament enshrined in our Constitution.

My ten-year term provides a rare opportunity within the public sector to map a long-term strategy. My office has recently developed a new strategic framework – setting out a plan to ensure fairness for Victorians in their dealings with the public sector and improve public administration. This framework is captured in a quote from a member of the public in the research we undertook on public perceptions of the office – that the Ombudsman is ‘... a bigger voice than our own’.

My office has the capacity to escalate concerns – to be a bigger voice – on individual matters and systemic ones. What has become clear however, is that many Victorians are not aware of the Ombudsman’s services, and do not know how to access them or what to expect if they do. This is particularly apparent among disadvantaged groups – all too often, those with the greatest need for Ombudsman services are the least likely to use them. Addressing this and making my office much more accessible – including to rural and regional Victoria – is a central aspect of my vision.

I want to see a system that is accessible to all, as well as timely and fair. Not all complaints require investigation, and many can be resolved quickly and informally. But whether or not they are investigated, all complaints contribute to a picture of dissatisfaction, which can be used to drive improvements in public administration. I want to be able to use that data to identify systemic issues that may require investigation, and to feed this back to departments and agencies so they can respond better to public concerns.

Deborah Glass
Ombudsman



Year at a glance



approaches
to our office
increased to
38,980

6% more
approaches
within our
jurisdiction

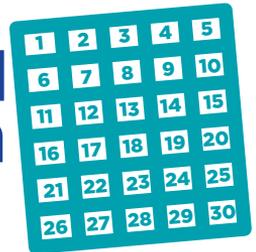


74%
of approaches
were made
by phone



92%

approaches
closed
within
30 days



2014-15



86 employees



5,377 people
used our website
redirection service



Our purpose

The Victorian Ombudsman exists to ensure fairness for all Victorians in their dealings with the public sector and to improve public administration.

We provide a free and independent service to people with complaints about the decisions or actions of over 1,000 Victorian state government departments and agencies.

The Ombudsman can also start her own investigations into government bodies in the public interest, without a complaint.

Under the *Ombudsman Act 1973*, our principal function is to investigate administrative actions taken by an authority.

An authority can be a state government department, administrative office or another public body, such as a:

- private or public prison
- statutory authority, for example, WorkSafe or the Transport Accident Commission
- local council
- child protection or family support service.

We also have functions to enquire into or investigate whether an administrative action is compatible with the Victorian Charter of Human Rights, and to investigate protected disclosure complaints.

We can investigate the following actions¹:

- a decision or an act
- refusing or failing to make a decision or to perform an act
- advising of a proposal or an intention to perform an act
- a recommendation (including to a Minister).

Where people approach us but their complaint is not something we can assist with under our legislation, we help them find the right agency or avenue for their complaint.

¹ We cannot investigate actions that appear to involve corrupt conduct, or that are taken under the *Freedom of Information Act 1982*.

Our work

Our work falls into three main categories:

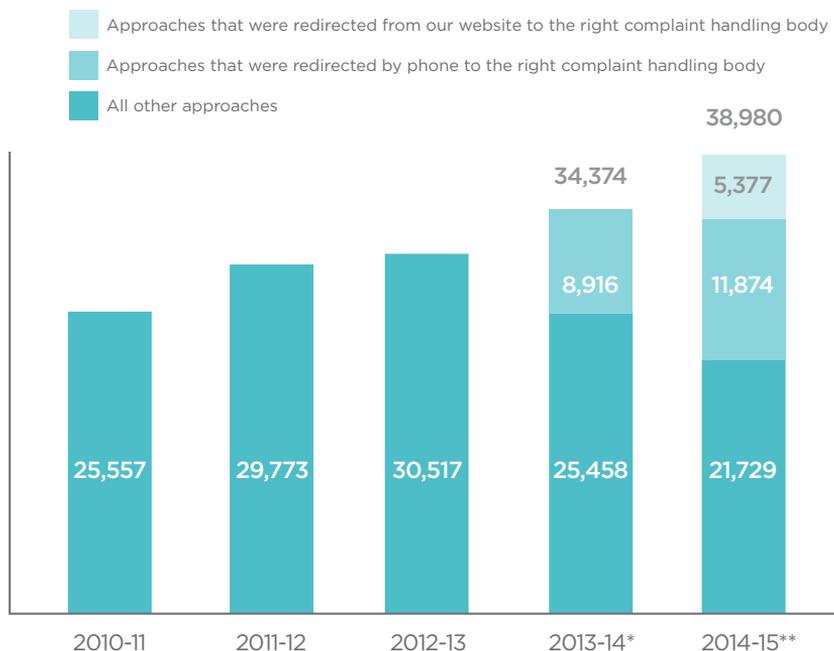
1. enquiries and investigations generated by complaints
2. own motion enquiries and investigations where we haven't received a complaint, for:
 - public interest or systemic issues
 - urgent matters, where we can't wait for a complaint in writing
3. assessing and investigating protected disclosure complaints.

We received 38,980 approaches in 2014-15. This is an increase from the previous year, and continues a five-year upwards trend.

In 2014-15, most people contacted us by phone.

In late 2013, we introduced web and telephone redirection services to make it easier for people to find the right agency for their complaint. We know that many people contact us because they do not know which agency to complain to.

Figure 1: Number of approaches received 2010-15



*Seven months of telephone auto-transfer.

** Data about web auto-transfer available for 2014-15 only.

Figure 2: How people approached us in 2014-15

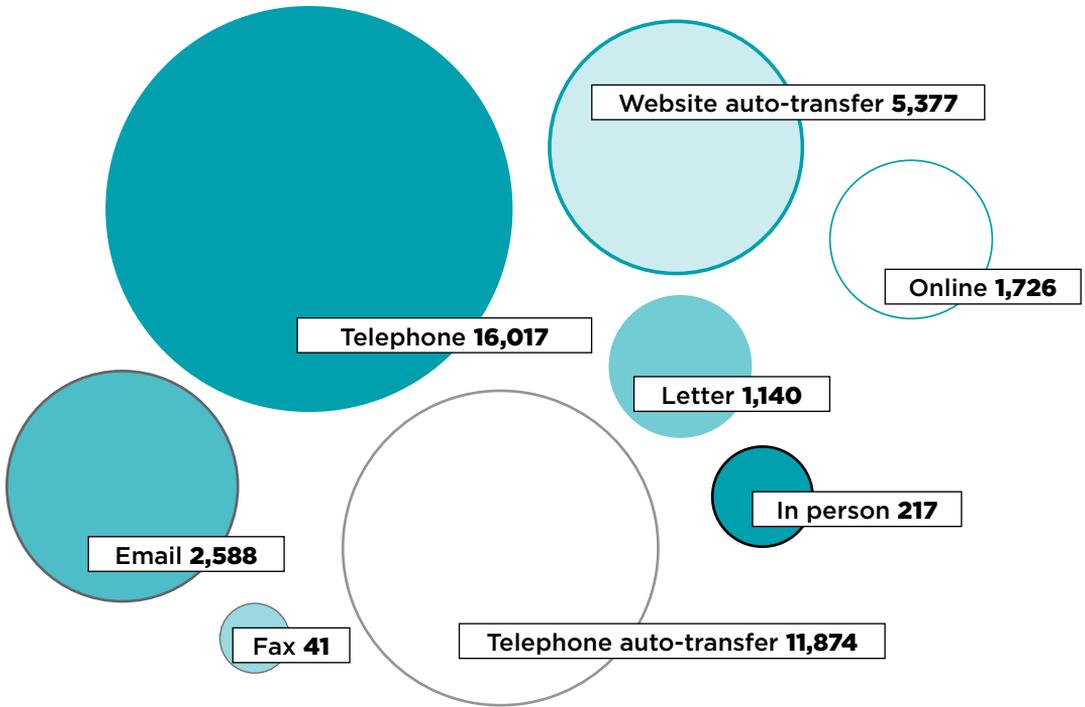
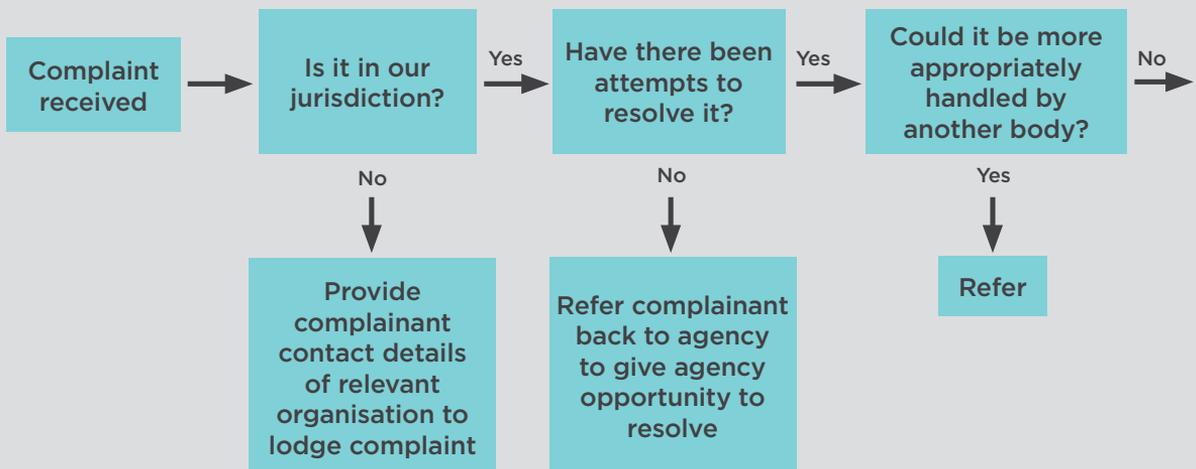


Figure 3: Complaint flow chart



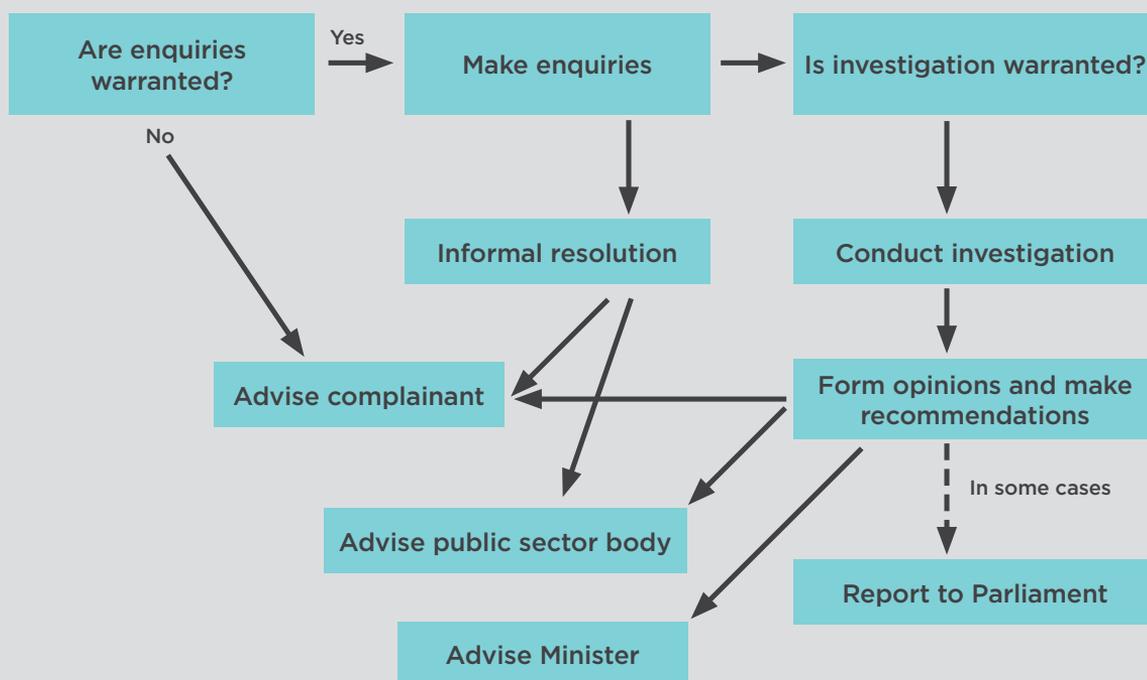
What do people approach us about?

We take complaints about more than 1,000 state government agencies and local councils.

In 2014-15, the 10 most frequently complained about issues were:

1. failure of a department or authority to act or provide a service
2. failure to appropriately manage the health needs of persons in custody
3. assistance to families and children
4. delays in complaint handling

5. inadequate solutions to complaints
6. inadequate processes for handling complaints
7. quality of service delivery by departments and authorities
8. drawing the wrong conclusion to resolve a complaint
9. unreasonable enforcement of regulation by local government
10. management of property in custodial services.

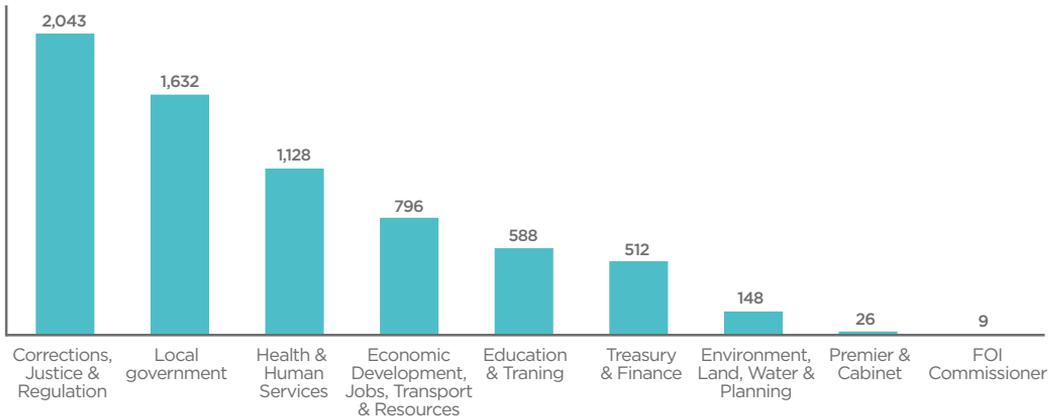


As we take complaints about so many agencies, we group them into portfolios. This helps us identify systemic issues.

In 2014-15, the top three complained about portfolios were:

1. Corrections, Justice and Regulation
2. Local government
3. Health and Human Services.

Figure 4: Closed jurisdictional approaches by portfolio Jan–Jun 2015 (after machinery of government changes)



Corrections

Case study: clean result

We received a call from a prisoner saying he had been in a management unit² for three weeks and his property had been confiscated. He complained that he had no clean clothes and had been in the same clothes and underwear for the three weeks.

We made our own motion enquiries and as a result, the prison found the prisoner's property. It determined that he did not have enough clothing to last him for another week, so it contacted the Salvation Army to obtain more. We were able to close this approach in one day.

² Prisoners are usually only housed in a management unit for disciplinary issues or for short-term protection if there is no room in a protection unit.



Local government

Case study: what is reasonable?

After receiving a parking fine, a driver complained that the infringement was unfair because the council's signs were confusing and unclear. He complained to the council and received an explanation of the parking restrictions, but was not satisfied that the signs clearly conveyed these restrictions.

We considered whether the signs were clear and whether an ordinary person could correctly interpret the restrictions.

We made enquiries with the council, raising concerns about the clarity of the signs and the complexity of the restrictions.

The council noted our concerns and agreed to conduct a review of the signs. Early in 2015, the council started work to replace all signs in the municipality with new, clearer signs.



Health and Human Services

Case study: using powers of discretion

A man contacted us with concerns about fleas, spiders and ants infesting his Office of Housing residence. The pests were particularly concerning him as there were three young children living at the residence.

The complainant said he had made a number of complaints to the department and the problem had been going on for over 18 months. The Office of Housing had declined to arrange pest control services, as it was not considered a maintenance issue and tenants were responsible for any pest control measures.

We made enquiries with the department about the decision not to fumigate the residence. The department repeated to us that this was something tenants were responsible for. However, the department did have discretionary decision making options. After our enquiries, they agreed to fumigate the residence.

How we deliver

In 2014-15, we closed 3,256 approaches through formal enquiries and investigations, an increase of over 500 on the previous year.

The proportion of closed approaches that were matters we could deal with went up in 2014-15, meaning we spent more time on matters we could help with.

Each complaint is different, and our work to resolve them can differ greatly in length of time taken, complexity and amount of detail to consider. One complaint may require several interactions with an agency and the complainant as well as reviewing many documents, while another may be resolved with a single phone call.

We look at each complaint on its merits. We may find that the agency has acted fairly and reasonably.

Our enquiries and investigations can result in a range of positive outcomes, from solutions to local problems, to state-wide systemic changes.

Enquiries

Here are some examples of our enquiries in 2014-15.

Some complaints are time sensitive and we need to act quickly.

Prisoner denied permission to attend mother's funeral

A prisoner in a Victorian jail contacted us asking why he had been denied permission to attend his mother's funeral. His brother, also held at the same prison, had been granted permission.

After we asked that a member of staff at the prison explain to the complainant why he couldn't attend, the prison advised that paperwork from the prisoner requesting permission to attend the funeral had been lost.

The prison advised that they would prioritise the prisoner's request and that unless security issues were raised, he would be able to attend his mother's funeral.

Two days to university census

A student was unhappy with a university's delay in assessing her application for recognition of prior learning for three subjects.

She had made her application a month ago. After following up with the university three times on the status of her application, she had still not received an answer.

When she complained to us, it was two days before the census date. She was concerned that if her application was not assessed by the census date, she would have to pay for the subjects, even if her application was eventually approved.

Given the urgency, we called the university to make enquiries. The university's academic registrar found her application and forwarded it to the relevant faculty for urgent assessment. The faculty approved the application for two of the three subjects.

The registrar advised us that the university would look at how the application had been overlooked and how it could improve its procedures.

We may encourage agencies to review their decision where they have strictly applied a law or policy, without considering the unique circumstances of a situation.

Improving accessibility

A complainant suffering from a number of physical disabilities, which made it difficult to write, applied to increase his subsidised taxi travel. He complained to us because the Taxi Services Commission insisted he could only apply by filling out a form.

We contacted the Commission to see whether there were other options for it to obtain the information it needed.

A manager from the Commission called the complainant and he was able to provide the necessary information over the phone, so his application could be progressed.

Encouraging reasonable efforts to contact people

A financial advisor contacted us on behalf of his client, who was in financial hardship. The client had received a notice from her local council that legal action would start in seven days to collect outstanding rates.

The financial advisor said that the council would not deal with him because the matter was now in a 'legal action phase'.

When we made enquiries with the council, staff said they had tried to contact the resident to discuss payment options, but had not received any response. Because she did not make contact with them, they escalated the matter.

Council staff offered to put the legal action on hold if the resident contacted them, and said they would negotiate a payment plan to assist her.

Sometimes, our enquiries can result in positive outcomes for people who have been dealing with an agency for a long time without resolution.

Finding mutually beneficial solutions

A client of State Trustees contacted us, concerned that she had not had a response from State Trustees two weeks after requesting access to funds. The client had not had any hot water for over two weeks, and needed the money for a new hot water system.

We made own motion enquiries with State Trustees to assess whether it was able to take any action to resolve this issue.

State Trustees was unable to loan the money but it was able to engage a plumber to install a new service. It assisted its client to get access to money to cover the costs of the new service.

To avoid putting its client under additional financial stress, State Trustees arranged a payment plan to ensure that her savings would be re-built and funds for daily living expenses would be available.

Speeding up decisions

A kinship carer complained that her payments, which helped her to care for her four grandchildren, were reduced without notice. There were also delays in the Department of Human Services reimbursing her for other costs.

The department was in the process of reviewing the matter. We made enquiries to clarify the status of the review and when the complainant could expect a decision.

In response, the department reinstated the higher rate of kinship carer payments, backdating them to the date they had been incorrectly changed, and reimbursed the other agreed costs.

Our enquiries help agencies improve their administration practices and reduce the need for people to look for help from an authority such as us.

Questioning a delay

A council had deducted a payment plan instalment from a complainant's bank account twice. The council told her it wouldn't process the refund until it had a number of similar requests, so its finance department could process them all at once.

The complainant told us she was a single mother on a pension and now had only \$14 left in her bank account.

We made own motion enquiries and the council agreed to issue a cheque that day and to speak to its bank to speed up its clearance.

Communicating clearly

A woman was unhappy that the Registry of Births, Deaths and Marriages had refused to remove a notation that her daughter was deceased from her birth certificate. Her daughter had died shortly after birth; she wanted the certificate to remind her of her birth, not her death.

We made enquiries and found that while the official birth certificate was marked, the Registry had also issued a commemorative certificate of birth, which was unmarked. The Registry informed us that the commemorative certificate serves as an official birth record, but cannot be used for identification purposes.

The Registry explained that it marked birth certificates with the word 'deceased' to prevent fraud. Some people try to commit fraud by presenting a birth certificate, and all Australian state and territory registries agreed in 2001 to mark birth certificates this way.

The Registry's computer system automatically links a birth record and a death record to ensure that when a birth certificate is issued, it correctly reflects the status of the person.

We were satisfied that the Registry had a valid reason for continuing this marking practice. The Registry advised us that it intends to explain this practice more clearly on its website.

Formal investigations

Formal investigations include major own motion investigations, investigations of protected disclosures referred by the Independent Broad-based Anti-corruption Commission (IBAC), as well as some complaints that are more complex and require more time.

After an investigation, we can report to the authority involved, the responsible Minister or directly to Parliament. In our reports, we can make recommendations to improve processes and to address complaints about individuals.

Here are some examples of our 2014-15 investigations.

Fairness

An Ombudsman's work is about rebalancing power between the individual and the state. Ensuring fairness for people in dealing with the public sector is core to our work.

Investigation into Mentone Gardens Supported Residential Service

In 2015, we tabled a report into the former Department of Health's oversight of a Supported Residential Service in Melbourne, Mentone Gardens. The department was responsible for:

- monitoring the standard of care received by residents
- assessing the financial capacity of the company operating the facility
- considering and responding to complaints from service users and their families.

When Mentone Gardens went into liquidation in September 2013, residents and families learned that they had lost more than \$4.5 million in bonds and deposits.

Residents claimed they were owed between \$50,000 and \$250,000, with one couple owed \$400,000. Many of the residents had sold their homes to pay for their care, but the impact of their loss was more than monetary.

For their families, the bureaucratic stonewalling of departmental representatives exacerbated the loss.

'I can scarcely describe the tumult which has been caused to my 101 year old mother-in-law by this matter and by the subsequent lack of acknowledgement or acceptance of departmental failings.'

Son-in-law of former resident

A former resident complained to us and after our initial enquiries raised serious concerns about the department's oversight, we launched an investigation in September 2014. A further 17 former residents and family members came forward with similar complaints.

We found that the director of Mentone Gardens had repeatedly assured residents and families that their bonds were refundable and held in trust. This was not true. The liquidator was clear: the money had disappeared, the insolvency caused by 'misappropriation of funds'.

'We got nowhere. We'd go through every department and we'd just get pushed around.'

Former resident

(continued over page)

‘My father lived a frugal and happy life but the news of the loss of his Mentone Gardens deposit disturbed and confused him over his last few months. He deserved a far more peaceful ending to his life.’

Son of former resident

We uncovered a long list of failings by the department over an extended period. Despite having no proper financial records for its entire 25-year operation, numerous complaints about both the care of residents and financial management, as well as two prosecutions by the department, Mentone Gardens had its registration renewed 11 times.

The department did not use its enforcement powers because of a long-standing view that financial matters were not its responsibility. However, this stance contradicted previous actions by the department evidenced in public records.

When we tabled our report in Parliament, our recommendations addressed the systemic failures, as well as options for redress for the former residents, including that:

- the Victorian Government make ex gratia payments to affected people or their estates
- the Victorian Government amend legislation to require proprietors to be audited by an independent auditor
- the Department of Health and Human Services strengthen its regulation procedures
- the Department of Health and Human Services carry out enforcement action when required.

The Victorian Government and the department accepted all the recommendations.

Accountability

The accountability of government agencies is another theme of our work. This year, we investigated a number of issues around procurement and managing conflicts of interest.

Investigation into compliance failures by the Office of Living Victoria

In August 2014, we tabled a report about the statutory authority Office of Living Victoria (OLV). Its role was to drive reforms to integrate the planning of Melbourne's water cycle system (rainwater, storm water and wastewater) into the broader urban planning framework and change the way water services were managed in Victoria.

We had received a protected disclosure complaint alleging improper conduct by staff of OLV in relation to procurement, recruitment and contract management.

The allegations included that contracts were 'split' into small amounts when tendering for services to avoid compliance with government procurement practices.

We launched a formal investigation, finding the standard of record keeping so poor that it was difficult to have confidence in the records we reviewed.

We found many examples of OLV engaging consultants through below-threshold contracts over a period of time.

OLV also re-engaged consultants without changing their scope of work or holding a separate selection process, denying others an opportunity to compete for the work.

Staff avoided having to advertise or go to market by requesting procurement variations on the grounds of expediency or specialist expertise. There was evidence that this led not only to a lack of fair competition, but also to direct conflicts of interest.

In recruitment, there was little evidence of positions being advertised or interviews and background checks being done.

Overall, we found that OLV failed to respect public sector values and be accountable for its use of public funds.

In our final report, we made recommendations to the Department of Treasury and Finance and the Victorian Government Purchasing Board.

While we were finalising our report, the Victorian Government abolished OLV and the CEO resigned.

The culture of agencies and departments is often a critical factor when poor accountability and conflicts of interest proliferate.

Investigation into VicRoads

In October 2014, IBAC referred a protected disclosure complaint about VicRoads to us for investigation.

The complaint related to the conduct of officers in the Transport Safety Services (TSS) unit of VicRoads. The disclosure alleged that it was 'normal practice' that when TSS staff received speeding infringements while driving VicRoads enforcement vehicles, they were declared exempt without proper investigations being conducted.

We investigated the allegations and found them substantiated. Our investigation highlighted a culture of entitlement among the TSS officers, who were breaking the very regulations they were responsible for upholding and enforcing.

Some VicRoads staff also placed the public at risk by routinely breaking the speed limit in enforcement vehicles without using warning lights and sirens.

VicRoads' investigation process was shown to be seriously deficient.

In our final report, our recommendations included:

- creating a policy and procedure for considering infringement exemption requests
- training for all VicRoads officers
- auditing all infringement exemptions granted across all offices between 2012 and 2015.

VicRoads accepted all our recommendations.

Human rights

Human rights are at risk when those in authority overstep or misuse their powers. Under the Ombudsman Act, we can investigate whether an action is incompatible with a human right set out in the Charter of Human Rights.

Investigation into human rights breaches by authorised officers

In July 2013 at Flinders Street Station, authorised officers of the Department of Transport³ restrained a 15 year old girl suspected of not holding a valid ticket. Closed circuit television footage and smartphone footage from a witness were released in December 2013 and received extensive media coverage.

The footage showed the teenager being 'spear tackled' and held face down by three authorised officers for around eight minutes, until police arrived. After reviewing the footage, we started an own motion investigation into the conduct of the authorised officers.

We found that the force used by one of them was excessive and amounted to degrading treatment of the teenage girl – a breach of the Charter of Human Rights and the department's own policies and procedures.

We also investigated the department's internal review of the incident, which had concluded that the officers had complied with their training and done nothing wrong.

We found that the internal review lacked rigour: it did not include interviews with the girl concerned or any independent witnesses. It also lacked independence, as it was conducted by the same unit that had done the initial investigation.

We tabled our report in February 2015, recommending the transfer of responsibility for authorised officers from the department to Public Transport Victoria (PTV).

We recommended PTV review authorised officer training, with an emphasis on customer service and defusing and de-escalating conflict.

By 30 June 2015:

- all private operators of public transport in Victoria had issued policy guidance on de-escalation and the use of authorised officers' powers of arrest
- PTV had engaged an external consultant to conduct an industry-wide review of authorised officer training, to create a more customer-focused approach.

³ Later the Department of Transport, Planning and Local Infrastructure and now the Department of Economic Development, Jobs, Transport and Resources.

People with disability are particularly vulnerable to breaches of their human rights. In 2014, we launched a major investigation into abuse of people with disability.

Investigation of abuse of people with disability

In December 2014, we launched an investigation into how allegations of abuse in the disability sector are reported and investigated.

We called for submissions from people who had experience of reporting abuse, and received 78 from clients, family members and staff in the sector. This was invaluable in shaping our understanding of the extent of the problems.

The Phase 1 report on oversight systems was released in June 2015. In it, we identified some areas of good practice that Victoria can build on, but we also found a number of serious issues.

The overwhelming conclusion was that oversight arrangements in Victoria are fragmented, complicated and confusing. There is a lack of ownership of the problem, little clarity about who is responsible for what, overlapping responsibilities and gaps.

People with disability may not report abuse, for fear they will either not be believed, nothing will happen, or they will suffer repercussions.

The key recommendation in the report was that a single independent body be established to oversee reports of abuse in the disability sector.

Our recommended framework includes mandatory reporting, powers to investigate both individual complaints and systemic issues, public reporting on trends, and the ability to share information with police and other bodies as appropriate.

Our report also recognised the critical role of advocates in assisting people with disability.

Community engagement

We are committed to making sure that the people who need us know we are here. People most in need of help, particularly those who are vulnerable because of health, age, disability or language, are often the least likely to know about or contact us. We want this to change.

Accessibility

When we communicate with people with disability, we provide information in accessible formats, such as in Easy English. Our website is compliant with accessibility standards and we are increasingly mindful of making our materials user-friendly for Victorians of all abilities.

The image shows a page from an Easy English document. At the top right is a circular icon with a thumbs up and an information symbol. Below it is a box with a green checkmark and a red X. The title is "How we will do this work".

1 We will look at how people can **report** **abuse** in disability services.

Report means to tell another person.

Abuse means hurt another person. For example, hit a person or touch a person in a way they do **not** want you to.

2 We will look at what happens when

- someone reports abuse
- people try to find out what happened.

This is called an **investigation**.

One of our Easy English documents produced by Scope (2015). It uses The Picture Communication Symbols ©1981-2010 with permission from Mayer-Johnson. All Rights Reserved Worldwide.

Research: understanding our community

To get a picture of what people know about us, we commissioned independent market research. In February 2015, 1,000 people completed an online survey.

The findings included that younger people were less likely to have heard of the Ombudsman and that older people were more likely to complain to us.

While 67 per cent of respondents said they would be likely to complain first to the agency involved, only 41 per cent had confidence that their complaint would be handled well by the agency. This emphasises the need for agencies to have a positive culture around complaints and to respond effectively to the complaints they receive.

Just under 40 per cent of people said they would bring a complaint to us, which means we have work to do in raising awareness about our service. The survey has given us a useful benchmark against which to measure change in public understanding.

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