



**Ombudsman enquiries:**  
*Resolving complaints informally*

**October 2016**

---

**ombudsman** VICTORIAN

**Ordered to be published  
Victorian government printer  
Session 2014-16  
P.P. No. 230**

# Letter to the Legislative Council and the Legislative Assembly

To

**The Honourable the President of the Legislative Council**

and

**The Honourable the Speaker of the Legislative Assembly**

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report into *Ombudsman enquiries: Resolving complaints informally*.



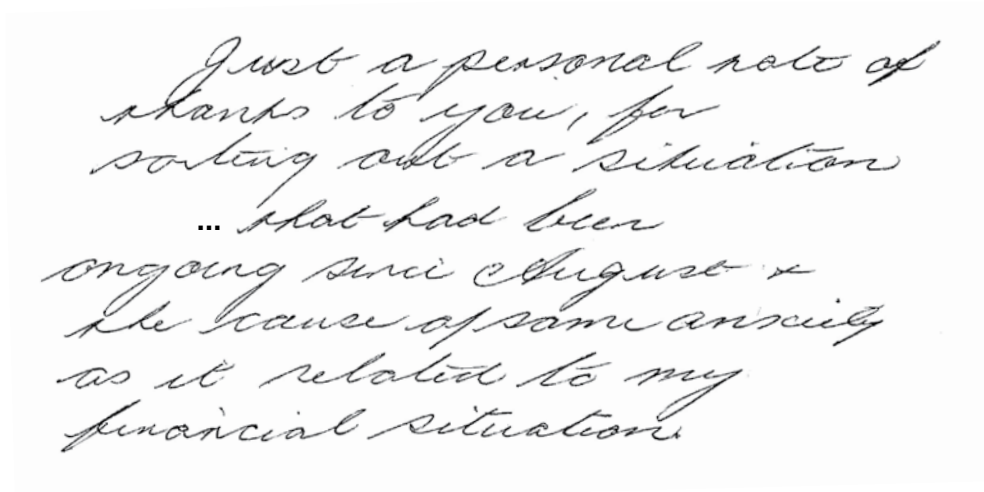
Deborah Glass OBE  
**Ombudsman**

25 October 2016

## Contents

<b>Foreword</b>	<b>2</b>
<b>Our role and complaint handling</b>	<b>4</b>
<b>Minor mistakes with larger consequences</b>	<b>6</b>
Unreasonable refusal to remove withdrawn charges from a driver history report	6
No authority to determine ‘amenity fee’ for a tree	7
Refusal to withdraw infringements issued to the wrong person	8
Incorrectly refusing to consider a late exclusion appeal	9
Failure to directly notify property owners of a change in policy	10
<b>Responding quickly to serious concerns</b>	<b>11</b>
Enquiries to draw the department’s attention to a serious issue	11
Failure to consider a public housing tenant’s family violence circumstances	12
Failure to identify a vulnerable prisoner’s needs for support	13
Failure to comply with conciliation order	14
A well-recorded decision shows the department acting reasonably in dealing with a vulnerable public housing tenant	15
<b>One complaint can fix an issue for many</b>	<b>16</b>
Technology upgrades presenting unforeseen challenges for senior Victorians	16
Planning permit applications subject to unlawful charges	17
Unfair procedure to replace lost bins	18
Failure to consider student’s individual circumstances	19
<b>Further information about the Ombudsman</b>	<b>20</b>

# Foreword



Letter to the Victorian Ombudsman, December 2015

Many people have heard of my office as a result of a small number of high profile - and often critical - reports I table in Parliament, but the beating heart of my office is the tens of thousands of complaints from the public we deal with every year. Every day my staff help Victorians with concerns that they have been treated unfairly by government agencies and councils. These concerns may seem small in the scheme of things but can have a profound effect on their wellbeing.

I am tabling this report to draw attention to this less public work of my office - resolving complaints informally - and to highlight some of the common mistakes agencies could easily fix. Many complaints are resolved informally simply through the intervention of Ombudsman staff. In these cases, I cannot help reflecting it is a pity an agency's management did not grip the problem before it came to my office.

I must also point out that, in many cases, we investigate a complaint and find that the agency did in fact act fairly and reasonably. Fairness is a two-way street. Sometimes even if the action may not have been entirely fair, there is no practical outcome my office can achieve. Like any independent complaints body, we can't please everybody all the time.

The examples in this report illustrate some of what we can do: recognising that minor mistakes can have larger consequences; responding quickly to serious concerns; and that one complaint can fix an issue for many others.

***I just wanted to say thank you for your time spent on my complaint and for your fair decision. I have now received my full refund and the [C]ouncil ha[s] added information regarding application fees to their application form ... I am happy to know that no one else will be misled about fees and application requirements through ... Council the way I was.***

Fax to the Victorian Ombudsman, October 2015

Following a formal investigation, the Ombudsman can opine, among other things, that an agency's actions were unlawful, unreasonable or, simply put, wrong. Unsurprisingly, agencies are usually receptive to initial enquiries by my staff about how they might resolve a complaint informally, and without the need for an investigation. We usually make proposals if we consider the agency's actions appear to have been unfair or unreasonable and when there is a practical outcome that can be achieved.

***I think the fact that I informed them of notifying your office may have galvanised them into action.***

**Email to the Victorian Ombudsman, November 2015**

For example, a strict application of the law or a practice can end in a result that may not be the greatest injustice but is not fair. The agency or council may then agree to our proposal that it reconsider its actions, such as withdrawing an infringement notice or refunding a fee. Or they may simply agree to provide the service they should have provided in the first place.

This is why I have produced complaint handling guides for local government and the public sector, which I will soon support with a new range of training programs.

The cases in this report all come from the previous financial year and were chosen to reflect some of the diversity of agencies and types of complaints my office receives. They are typical of the thousands of enquiries we completed last year – each, in their own modest way, an example of my office's commitment to a fairer Victoria.

Deborah Glass  
**Ombudsman**

# Our role and complaint handling

The Victorian Ombudsman's goal is to ensure fairness for Victorians in their dealings with the state public sector, and to improve public administration. The case examples in this report illustrate how the Ombudsman achieves this through informally resolving complaints.

Under the *Ombudsman Act 1973*, the Ombudsman can receive complaints about, and make enquiries and conduct formal investigations into, the administrative actions of more than 1,000 Victorian government departments, agencies and local councils.

In 2015-16, nearly 40,000 people contacted our office. We made enquiries into around 3,000 of the complaints we received. In the same period, we conducted 33 formal investigations.

***In 2015-16, nearly 40,000 people contacted our office.***

An 'administrative action' is broad – we can consider complaints about an agency's decision or act, an agency failing to make a decision or act, or an agency formulating a proposal or recommendation.

We look at whether the administrative action may be unlawful, unreasonable or wrong. We also consider whether the action is compatible with Victoria's *Charter of Human Rights and Responsibilities Act 2006*.

## Complaints we may consider

When we receive a complaint, we first consider whether we have the ability to deal with it. We cannot consider some matters, such as complaints about Victoria Police, a judge of a court or, in most circumstances, a private body.

Even where we can consider a complaint, our officers may decide that we should not become involved. The Ombudsman Act provides discretion about how we respond to complaints, and we generally do not become involved where:

- it is more appropriate for the person to try to resolve the complaint directly with the agency in the first instance
- the complaint is about terms and conditions of employment
- the person has a right of review or a remedy at a court or tribunal

- the person has waited for more than 12 months before approaching us, without a satisfactory explanation
- there is another specialist body that is better placed to deal with the problem.

These are not hard and fast rules, however, and we look at the circumstances of each case.

## Making enquiries

If a complaint requires more detailed consideration, we may make enquiries with an agency under section 13A of the Ombudsman Act. The purpose of these enquiries is to determine if the complaint can be informally resolved, or whether the Ombudsman should conduct a formal investigation.

During enquiries, our officers may seek further information from the person who made the complaint, and research relevant laws, policies and programs. We may contact agencies for information, inspect an agency's files, visit places connected to the complaint, or meet with relevant parties. The head of an agency is obliged to assist us in our enquiries.

## Section 23

The Ombudsman Act guides our consideration of complaints to determine whether to make enquiries.

When we formally investigate a complaint, the Ombudsman can form an opinion that an agency has made one or more types of 'errors', outlined in section 23. To decide whether to make enquiries, we consider whether the agency might have made one of these errors. We might make enquiries if it appears that the agency's action may have been:

- contrary to law
- unreasonable, unjust, oppressive or improperly discriminatory
- in accordance with legislation or practice that might be unreasonable, unjust, oppressive or improperly discriminatory
- taken for an improper purpose, on irrelevant grounds, or taking into account irrelevant matters
- taken without providing reasons, when reasons should have been given
- based on a mistake of law or fact
- wrong.

We sometimes use the shorthand term 'unlawful, unreasonable or wrong' to collectively describe the section 23 errors.

### Informal resolutions

After we have made enquiries, we may decide to close the complaint because it does not appear that the agency has acted in a way that is unlawful, unreasonable or wrong, or there is no practical outcome we can achieve.

If we think the complaint can be resolved informally, we will contact the parties to seek to do so. The Ombudsman cannot direct or compel an agency to take particular action, but we might ask the agency whether it is willing to take steps to address the concerns, or ask it how it thinks it could resolve the matter.

Some of the informal resolutions we can achieve are having an agency:

- provide a better explanation for its decision or action
- acknowledge and apologise for the error
- explain why the error occurred and the steps it is taking to prevent it happening again – which could include improving its policies or processes

- reconsider the matter and take further action
- provide a refund or make an ex gratia payment.

Resolving complaints informally means we can achieve appropriate outcomes on individual matters, and sometimes on a broader level, without the resources needed for a formal investigation – both for us and for the agency concerned.

***... good results [can be achieved] quickly and efficiently ...***

The case examples that follow show the kind of good results we can achieve quickly and efficiently through informally resolving complaints.

# Minor mistakes with larger consequences

Agencies' minor oversights or mistakes can have a significant impact on a person. While agencies should be open to fixing errors, they sometimes do not recognise or acknowledge they have made a mistake until our office becomes involved.

Without our involvement, the consequences for the people in the case examples below would have included being out of pocket thousands of dollars, having an additional prison sentence for fines they didn't incur, or suffering a significant impact on their livelihood. Our enquiries resulted in the agency acknowledging the issue and correcting the problem.

**“** *I cannot ever drive for Uber anywhere in the world as a result of this charge* **”**

driver in a letter to the Victorian Ombudsman

## Unreasonable refusal to remove withdrawn charges from a driver history report

### What was the problem?

A driver was charged with a drink driving offence and his licence was suspended for 12 months. The charge was subsequently withdrawn by the Magistrates' Court. Several years later, he applied to become an Uber driver but was refused due to a 'drink driving charge' on his record.

The driver asked VicRoads to remove the charge from his driver history report, but VicRoads advised that as it is a 'recording agency' it was unable to alter a public record.

### What did we look at?

We made enquiries with VicRoads about why the charge appeared on his driving history under the heading 'convicted or found guilty' when this was not the case.

### What was the outcome?

Following our enquiries, VicRoads advised that it had removed the reference to convictions or guilt from the man's driver history report. VicRoads explained that the charge noted on the report was recorded before VicRoads had a system to record a licence suspension without recording a charge. VicRoads confirmed the system has since been updated and said that it would issue a new driver history report to the driver free of charge.

Case study

**It is good practice for agencies to avoid adopting an overly bureaucratic approach, and to be open to finding solutions where problems are identified.**



**“This cost for removing the tree is ridiculous”**

resident in an email to the Victorian Ombudsman

## No authority to determine ‘amenity fee’ for a tree

### What was the problem?

A resident wanted to remove a tree from her nature strip in order to build a driveway. The council informed her that the removal of the tree did not meet its tree removal criteria but in the circumstances, it would allow her to remove the tree if she paid \$8710.66, of which \$7270.79 was an ‘amenity value’.

The resident was willing to pay costs for the removal and replacement of the tree but considered the amenity value unreasonable.

### What did we look at?

We made enquiries and asked the council how it calculated the amenity value, and requested details of any policies to guide such decisions.

### What was the outcome?

The council replied that the officer who originally assessed the amenity value was not authorised to do so. The council reviewed its processes to ensure such decisions are only made by officers with the appropriate delegations. To resolve the matter, the council apologised to the resident and advised her that it would only charge her for the removal and replacement of the tree and not the amenity value.

**Most government agencies’ powers and functions come from legislation. Often the legislation assigns these powers to a particular officer, usually the head of the agency. This person can then delegate their powers to others within the organisation.**

**Agencies should inform staff of the powers that are delegated to them, and make sure that decisions are made by an appropriately authorised person. A failure to appropriately delegate, or acting outside of delegations, may lead to invalid decisions and poor outcomes.**

“ I am at a stage where neither the Sheriff’s Office nor VicRoads are responding to any more of my letters ”

prisoner in a letter to the Victorian Ombudsman

Case study

## Refusal to withdraw infringements issued to the wrong person

### What was the problem?

While serving a prison sentence for an unrelated matter, the prisoner’s car was stolen and he was nominated for seven traffic infringements as the driver of the vehicle. Because the prisoner did not reject the nominations, he became liable for the infringements and penalties.

When the infringements became warrants, the prisoner applied to have them served as a prison sentence.

He later realised that he could not have committed the offences as he was in prison at the time. He wrote to Civic Compliance Victoria requesting the infringements be withdrawn because it was impossible for him to have committed the traffic offences. Civic Compliance Victoria rejected the request and the prisoner was required to serve an additional concurrent prison sentence for the offences.

### What did we look at?

We reviewed the prisoner’s evidence demonstrating he was incarcerated when the traffic offences occurred, and made enquiries with Civic Compliance Victoria.

### What was the outcome?

Following our enquiries and to resolve the matter, Civic Compliance Victoria agreed to withdraw the infringements from the prisoner’s name, liaise with the Sheriff’s Office and Corrections Victoria to remove the reference to time served for the offences from his prison record, reinstate the prisoner’s driver’s licence, and remove all related demerit points.

**Agencies should consider complaints on their individual merits and not dismiss them without proper consideration. The prisoner had provided evidence showing that there had been a mistake, and the matter could have been resolved without the need for the Ombudsman’s involvement.**

## Incorrectly refusing to consider a late exclusion appeal

### What was the problem?

A university student was allowed an extension of time to appeal the university's decision to exclude him. He received a letter from the university granting extra time to appeal, nominating a new date by which he should lodge the appeal.

The student contacted us after the university refused to accept this appeal, claiming that it had not been lodged in time and citing the original date by which appeals should be made as the relevant cut-off.

The student said that this was unfair as he had been granted extra time to appeal and had lodged it before the new date set by the university.

### What did we look at?

We made enquiries with the university about the discrepancy in its decision making and record keeping.

### What was the outcome?

Following our enquiries, the university acknowledged that its refusal to consider the student's request for an appeal was an oversight. To resolve the matter, the university accepted the appeal application which was subsequently heard by the University Appeals Committee and granted.

**Accurate and complete record keeping is a cornerstone of good decision making and accountability. It is important that agencies record decisions they have made and advice they have provided. These records should be easily accessible to those who may be involved in future consideration of the matter.**

**“** *Why would she agree to giving me an extension of time, which created a legitimate expectation that the appeal would be considered if a form was supplied by the extended deadline, which I met?* **”**

university student in an email to the Victorian Ombudsman

## “When did the policy change?”

resident in an email to the Victorian Ombudsman

### Failure to directly notify property owners of a change in policy

#### What was the problem?

A resident was unhappy that her local council had not notified her of a change to its policy about charges for additional bins, and was refusing to reimburse fees that it had incorrectly charged.

The resident had received an additional garbage bin from 2006 to 2015. Under the council's Waste Collection Policy, households were charged an annual fee for an extra bin.

However, the resident became aware in 2015 that the council had changed its policy in 2010, to allow households of six people to receive a 'charge exemption' when seeking an additional bin.

The resident wanted reimbursement for the charges she paid between 2010 and 2015 and considered the council should have advised affected households of the policy change.

#### What did we look at?

We made enquiries with the council about how it communicated the change in policy to affected households and asked why it had rejected the resident's request for reimbursement.

#### What was the outcome?

The council considered that it had adequately communicated the change in policy through a number of means and did not consider it should refund any payments made after the policy changed. It advised that 1,251 households had paid the fee for an additional bin prior to the policy change and were continuing to do so at the time of our enquiries.

Although the council had communicated its policy change through council meetings, information on its website and other means, it had not communicated directly with the affected ratepayers. Following our enquiries, we proposed that the council refund the fees charged to the resident and use targeted communication to advise other affected households that they may be entitled to an extra bin free of charge.

The council agreed to our proposals and the matter was resolved.

Case study

**Targeted communication about changes to a policy or procedure can ensure that those affected are aware of the change, especially where their rights or liability might be impacted.**

# Responding quickly to serious concerns

Some of the complaints we receive involve health or safety concerns; at times, vulnerable people are at risk. Sometimes the person complaining has already raised the issues with the agency, but the agency has failed to act.

In these situations, our office takes quick action to alert the agency to the concerns and seek a resolution to the matter.

## Case study

### Enquiries to draw the department's attention to a serious issue

#### What was the problem?

A woman's children resided in an out-of-home care placement with foster carers. After one child burnt their hands, the mother raised concerns with the department that the carer was not adequately supervising the children.

#### What did we look at?

Given the serious nature of the allegation and the risk of harm, we made immediate enquiries with the department about its knowledge of the injury to the child and the action it had taken in response.

#### What was the outcome?

The department confirmed it was aware of the mother's allegation but had not initiated an investigation following her initial complaint to the department. The department acknowledged that its failure to investigate was inconsistent with its policies and procedures.

To resolve the matter, the department informed us that it had commenced an investigation and had provided the mother with the details of a senior officer at the department who she could contact with any queries about the investigation.

**A simple enquiry by the Ombudsman can draw attention to a potentially serious issue and result in quick and appropriate action by the agency. In this example, the department had an opportunity to resolve the complaint before our enquiries, so the Ombudsman's involvement should not have been necessary.**

**“... he has a burnt hand, no one was watching him ”**

mother in an email to the Victorian Ombudsman

**“**... [my friend] has been the victim of family violence from an ex-partner and is fearful for her safety **”**

friend of a public housing tenant in a telephone call to the Victorian Ombudsman

## **Failure to consider a public housing tenant’s family violence circumstances**

### **What was the problem?**

A public housing tenant with limited English contacted us with the assistance of a friend. She was a victim of family violence, and was concerned that she was at risk. Her existing property had a security camera installed.

She wished to move to a new address as she had been receiving threats from her ex-partner, but the Department of Health and Human Services offered a property which did not yet have a security camera fitted. The department advised that she had to sign the lease for the new property, or it would be offered to someone else.

The tenant was not willing to move into the new property until a security camera had been installed. She signed the lease and remained at the original property. As the tenant had signed the lease on the new property, the department charged two rent sums at the same time. The tenant considered that this was unfair.

### **What did we look at?**

We made enquiries with the department. The department advised that while its policy states that tenants who have signed a lease are liable for rent, it would look into the matter urgently.

### **What was the outcome?**

To resolve the matter, the department agreed to work with the tenant’s advocacy agency to have security cameras installed in the new property at the first available opportunity. It arranged for the tenant to move into the new property as soon as possible and requested the regional housing office review its decision to charge her rent for remaining in the original property.

The regional office reviewed the matter and in light of the tenant’s circumstances, agreed to waive the rent on the original property.

**Case study**

**This case illustrates the department taking a proactive approach to resolve a matter fairly and quickly after Ombudsman enquiries brought the issue to its attention.**

## Failure to identify a vulnerable prisoner's needs for support

### What was the problem?

A prisoner's mother contacted our office, concerned about her son's health and safety. Her son had recently entered the prison system, and she believed the prison had not conducted a medical or psychiatric assessment on his arrival.

The mother stated that her son has a number of mental health conditions and disabilities, and she was worried that he would not be safe in a mainstream prison unit and should be placed in a protection unit.

### What did we look at?

In light of the prisoner's vulnerability and the health and safety concerns, we made enquiries with the prison to determine whether he had been medically assessed, and to find out what support the prison was providing him.

### What was the outcome?

Our enquiries confirmed that the prisoner had been assessed on his arrival; all prisoners are medically assessed on arrival to prisons and an 'at risk' or psychiatric assessment may follow, if there are concerns or specific information.

However, as a result of our enquiries, the prison arranged for the prisoner to have a 'case management review' the following day, which included another medical assessment, and identified that he has an intellectual disability. The prison approved his request to transfer to another unit within the prison, and allocated him a support officer to assist him with reading, writing and other needs.

**While the Ombudsman usually requires a complaint from the affected person, in some circumstances, we can make enquiries where someone else raises concerns. Our enquiries here ensured that this vulnerable prisoner received appropriate support from the prison.**

**“** *They wouldn't listen ... I raised every concern* **”**

mother of a prisoner in a telephone call to the Victorian Ombudsman

**“** *I'm having a hell of a time with the insurer* **”**

injured worker in a telephone call to the Victorian Ombudsman

## Failure to comply with conciliation order

### What was the problem?

An injured worker had a disability making it difficult for him to write. In addition, he suffered from a number of debilitating work-related conditions and post-traumatic stress disorder.

He was concerned that his WorkSafe insurance agent was not complying with a conciliation order requiring it to arrange for gardening and window cleaning work to be carried out.

The injured worker said that the agent had asked him to provide a number of quotes for the tasks, meaning that months after the conciliation order was made, no works had taken place.

In addition, the agent had required him to attend appointments with Independent Medical Examiners at times when using public transport exacerbated his mental and physical conditions, including anxiety and spontaneous bleeding.

### What did we look at?

We made enquiries, including considering the conciliation order, and found that the repeated requests for quotes were not in line with any policy of the agent or WorkSafe.

### What was the outcome?

To resolve the matter, the agent acknowledged its error and arranged for the works to be carried out immediately. It also provided advice to staff to prevent similar events occurring in the future. It also added a note to the injured worker's file stating that any appointments were to be made between 11am and 3pm in accordance with his wishes.

Case study

**Agencies should ensure that any requirements they impose are justified and supported by law or policy. Where specific court or tribunal orders are made, agencies must comply with them promptly.**



“ I need help ”

tenant in a telephone call to the Victorian Ombudsman

## **A well-recorded decision shows the department acting reasonably in dealing with a vulnerable public housing tenant**

### **What was the problem?**

An elderly lady from a non-English speaking background, who is also partially deaf, attended our office and was distressed. Using a variety of communication methods, our staff understood the woman was concerned that she was to be evicted from her public housing tenancy.

### **What did we look at?**

We made enquiries with the Department of Health and Human Services, which clarified that the woman was not being evicted, but staff had spoken with her about her habit of spreading broken glass in communal areas to deter cats from her lawn.

The department had organised a meeting with the tenant after a complaint from a neighbour, and had informed her about alternative methods of keeping cats off her lawn. The department also requested she remove the glass by a certain date.

The matter continued for several weeks, with the tenant not removing the glass and attending our office again, claiming she was facing eviction. As she had not removed the glass, the department had sent her a bill for the cost of a contractor doing this.

### **What was the outcome?**

We wrote to the woman in her native language and assured her that she was not currently at risk of eviction, and advised that we considered the department's actions were reasonable.

Our enquiries showed that the department had given the woman a reasonable opportunity to remove the glass and she had failed to do so. The glass posed a serious health and safety risk to her neighbours, and it was necessary for the department to remove it. The department allowed her to pay the glass removal bill in instalments.

We considered that the department's response was reasonable and the matter was resolved.

Case study

**On first impression, it appeared that the department could have been treating a vulnerable person unfairly. However, the department was able to demonstrate through its good record keeping that it had acted reasonably and suitably exercised its discretion in handling a sensitive matter.**

# One complaint can fix an issue for many

There can be broader implications from a single complaint to the Ombudsman – an unfair policy, procedure or decision can affect many people in a similar situation. Not everyone who is affected may realise that there is a problem or be motivated to complain about it.

In the following case examples, our office contacted agencies because of an individual complaint we received. However, in all of the cases, the issue potentially affected many more people.

As a result of our enquiries, the agencies took action to resolve the individual matter – but also made improvements to their policies or systems. This included nearly \$200,000 being refunded to more than 100 permit applicants, a change to an unfair policy, and a university reviewing its guidelines and providing training to staff.

**“consequently most of the CALD senior clubs will lose their sense of independence”**

advocate for CALD senior clubs in an email to the Victorian Ombudsman

## Technology upgrades presenting unforeseen challenges for senior Victorians

### What was the problem?

On a regular outreach program, the Ombudsman and her staff visited Frankston where they met an advocate acting on behalf of a number of clubs comprised of Culturally and Linguistically Diverse (CALD) senior citizens.

The advocate raised concerns about Consumer Affairs Victoria’s decision to transition to only accepting annual statements electronically – rather than allowing hard copy annual statements – from incorporated associations, including these clubs.

The advocate was concerned that this could significantly disadvantage CALD senior citizens by restricting their access to public services and making them more reliant on third parties capable of using a computer.

### What did we look at?

We made enquiries with CAV about the reasons for its decision to move to a new electronic correspondence only system for annual statements, and asked whether this was a viable option in light of the concerns raised by CALD individuals and advocacy groups.

### What was the outcome?

CAV responded that while its move was part of a wider ‘Digital First’ strategy within the Department of Justice and Regulation, it recognised the concerns raised, and to resolve the matter, it agreed to continue to accept both paper and electronic annual statements from incorporated associations.

Case study

**Agencies should always be looking for ways to improve their services and efficiency. However, agencies should remain flexible and not take a strict approach, failing to take account of individual circumstances. Agencies should be mindful of remaining accessible, particularly to vulnerable Victorians.**

**“It is an unlawful law, it is not legislated”**

permit holder in a telephone call to the Victorian Ombudsman

## Planning permit applications subject to unlawful charges

### What was the problem?

This complaint involved a council’s refusal to refund an amount of money paid in order to remove a condition from a planning permit.

The permit included a condition that the permit holder pay a fee of \$900 per subdivision lot for ‘social infrastructure development’, before it would issue a statement of compliance. Alternatively, the permit holder could pay \$502 to have the condition removed from the permit.

However, the Victorian Civil and Administrative Tribunal had previously ordered the council to remove a similar condition from other planning permits without the applicant having to pay a fee.

The permit holder argued that this condition was unlawful and provided evidence to support their case.

### What did we look at?

We made enquiries and the council acknowledged that applying the social development condition in the way it had was inconsistent with the previous VCAT rulings. As a result, the council stopped applying the condition to permits.

We then undertook an ‘own motion’ enquiry into whether the council had imposed this fee in other instances.

### What was the outcome?

As a result of our own motion enquiry, the council advised that it had imposed the condition on 143 permits over four and a half years, generating approximately \$198,940 that was being held in a council trust account to use for the development of social infrastructure.

To resolve the matter, we asked the council whether it would refund these monies to applicants. The council was responsive and agreed to this, and is keeping our office informed of its progress in providing refunds.

Case study

**This case shows the importance of an agency ensuring that it has the power to make a particular decision. Sometimes agencies will need to seek legal advice to interpret legislation and confirm the decision is one they can make. Where a court or tribunal decision clarifies an agency’s authority or obligations, the agency should take steps to make sure it acts consistently with the decision.**

**Where an agency becomes aware that it did not have the power to make a decision, it should consider the consequences and proactively address the situation for all those affected.**

“*Would you please get a resolution to this vexed problem?*”

council resident in an email to the Victorian Ombudsman

Case study

## Unfair procedure to replace lost bins

### What was the problem?

A resident was unhappy that his council was refusing to replace his three kerbside bins until he paid a replacement fee of hundreds of dollars. He said that the bins had been stolen before he moved into the property.

The council's position was that in accordance with its Waste Management Procedure, residents were required to pay a fee before it would replace bins, and could then make a 'no fault' application for a refund of the fee, explaining why they should receive a refund.

The council also stated that all ratepayers whose properties are within a designated waste collection area are required to pay an annual fee for waste collection whether they use the service or not, and that if the resident refused to pay the replacement fee for his bins, he would still be required to pay that annual fee.

### What did we look at?

We made enquiries with the council to decide whether the process for getting a replacement bin was fair and reasonable. We also considered the reasonableness of charging an annual rubbish collection fee when the resident didn't have a bin.

### What was the outcome?

Following our enquiries, the council acknowledged that its Waste Management Procedure required improvement. It stated that in line with intended changes to the procedure, it would provide replacement bins to the resident without requiring an upfront charge, so that the waste collection service could resume immediately.

The council indicated that the resident would be unlikely to avoid paying the replacement fee as he should have ensured the bins were present at the property in the course of settlement. We were satisfied that this was a fair outcome and considered the matter resolved.

**Sometimes a complaint may not lead to the individual's desired outcome, but can result in broader improvements. In this example, our enquiries on a single complaint meant the council changed its policy so that no resident will have to pay an up front charge before the council will replace their bin.**

**“The university has not been fair and reasonable”**

aunt of an international student in an email to the Victorian Ombudsman

## Failure to consider student's individual circumstances

### What was the problem?

An international student at a Victorian university had commenced a packaged course which included 50 weeks of study in an English language program, followed by a Bachelor course as his principal course of study.

The student paid for 25 weeks of the English language course, but after completing 20 weeks, took an approved leave of absence. Upon return, the university advised that he would be unable to attend class until he finalised payment for the next module of the English language program at a cost of \$2,100.

The student was dissatisfied with the service provided by the university and requested a 'letter of release' in order to transfer to another university. Under the relevant national code, international students must obtain a letter of release to be able to transfer to another provider before completing six months of the principal course of study.

Under the code, providers must assess each request on a student's individual circumstances and, if refusing to issue a letter of release, must show that the transfer would be detrimental to the student.

The university refused to provide the letter of release, stating that the student owed the university money and that as the transfer was not to a higher education course, the university considered the student was taking advantage of student visa processes.

### What did we look at?

We made enquiries with the university to clarify whether the student owed the university money. We also considered the university's policies regarding letters of release and the national code.

### What was the outcome?

Following our enquiries, the university acknowledged that it should have sent the student a notice explaining that fees would be due prior to recommencing the course. To resolve the matter, the university agreed to waive the outstanding debt and consider refunding monies already paid.

The university also agreed to provide the student with a letter of release to transfer to the new education provider.

On a broader note, the university agreed to review its transfer guidelines to ensure it complies with the national code and to provide training to staff to ensure that decisions to decline such letters in the future are based on relevant considerations.

This is important to ensure that future students are treated fairly, particularly as many international students will invest significant funds to study in Australia, and may speak English as a second language.

**Agencies must consider the individual merits of a matter before making a decision, and should ensure their policies support and appropriately guide this approach.**

# Further information about the Ombudsman

We have published guidelines outlining guiding principles and practical steps for good complaint handling, to assist public sector agencies to handle complaints well:

- *Complaints: Good Practice Guide for Public Sector Agencies (September 2016)*
- *Councils and complaints - A good practice guide (February 2015)*

You can find these guidelines and more information about the Victorian Ombudsman, our office's policies and practices on our website at [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au).

## Making a complaint

If you have a complaint about a Victorian Government department, statutory authority, agency or local council then our office may be able to assist you.

In the first instance you should attempt to resolve your complaint with the agency concerned. Public bodies should have complaints processes that you can use to try and resolve your issue.

If you are still unable to resolve your concerns or are unsure as to whether your complaint can be considered, please contact the Ombudsman's office via one of the following methods:

## Online

You can submit an online complaint on our website at: <https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint>

## Letter

You can write to us, or visit us in person at:

Victorian Ombudsman  
Level 2  
570 Bourke Street  
Melbourne VIC 3000

Our reception hours are 9:00 to 4:45pm, Monday to Friday.

## Telephone

Telephone 9613 6222 or toll free (regional areas only) on 1800 806 314. While you can usually complain over the phone, we may need you to put your complaint in writing.

Victorian Ombudsman  
Level 2, 570 Bourke Street  
Melbourne VIC 3000

Phone 03 9613 6222  
Fax 03 9602 4761  
Email [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)  
[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)