

VicRoads complaints

February 2019

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The Victorian Ombudsman respectfully acknowledges the Traditional Owners of the lands throughout Victoria and pays respect to them, their culture and their Elders past, present and future.

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* (Vic), I present to Parliament my report on *VicRoads complaints*.

A handwritten signature in black ink, reading "Deborah Glass". The signature is written in a cursive, flowing style.

Deborah Glass OBE

Ombudsman

19 February 2019



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Foreword

Cars and roads are essential to the lives of many of us, from Melbourne to Mallacoota, from Warrnambool to Werrimull. Some 70 per cent of Victorians hold a driver's licence, and there are almost as many registered vehicles in Victoria as there are residents.

So it is not surprising that my office gets so many complaints about VicRoads, over 800 in the last financial year. While these complaints are of course only a fraction of the public's interaction with this key agency, they provide vital feedback. Although we consider each complaint on its merits, looking at the patterns tells us about underlying problems that may need to be fixed to make the system better.

We engaged with VicRoads about the themes emerging from these complaints, to encourage it to address them without formal investigation by my office, and VicRoads has responded very positively. This report sets out those themes and the proposed solutions. I am tabling this report not only because of the significant public interest in VicRoads services, but to draw attention both to the issues and solutions I will continue to monitor.

The issues range from VicRoads' transfer of registration process; applying concessional rates; processing refunds; not receiving renewal notices; to the mistaken recording of alcohol interlock violations.

These issues can have serious consequences for people; financial, practical and emotional. People have had cars, caravans and motorbikes transferred out of their name without their knowledge or consent. Some people spent large sums of money improving cars they bought, to then have those cars seized by Victoria Police because unknown to them, the car was stolen. Other people have incurred fines and demerit points as a result of driving unregistered vehicles, not having received a renewal notice through no fault of their own.

VicRoads can sometimes be quick to charge but slow to refund, leading to financial hardship. We highlight the plight of Tess, who was mistakenly charged three times (over \$1,300)

for her registration renewal, and still waiting for repayment when she contacted my office three months later.

Another area of hardship is VicRoads' consideration of concessional entitlements to renewal of registration fees. Concession cards make access to essential services fairer for people in need, a principle that can be undermined by the overly rigid approach in some of the cases we saw – a clear example of where VicRoads' decisions are lawful, but the law itself is unfair. I am pleased that VicRoads is committed to changing this.

VicRoads has a core function to keep our roads safe, and managing the Alcohol Interlock Program which applies to people convicted of drink driving offences is an important part of that. We saw cases where VicRoads maintained violations in circumstances where the person subject to an interlock condition wasn't even in the car and subsequently gave a clean 'sample'. The sensible exercise of discretion is always a challenge for decision-makers, and VicRoads needs to ask itself more often: Is this fair?

VicRoads acknowledges improvements are needed. Some of these issues will not be fixed properly without major investment in systems, which will take time and money. Given the number of people affected by these issues, and the human cost of VicRoads' shortcomings, we have encouraged them to look for interim solutions as well as long-term ones. I welcome the commitment they have given us, and the public, to address these issues.

And to the millions of Victorians who own a car, have a driver's licence and use our roads – if your problems with VicRoads are not fixed, make a complaint. Complaints tell us what is not working – and as the cases in this report demonstrate, they can drive improvements.

Deborah Glass

Ombudsman

About this report

In 2017-18, the Ombudsman received 811 complaints about VicRoads.

When the Ombudsman receives a complaint, we might:

- encourage the person with the complaint to complain to the authority concerned first, before we become involved
- make enquiries with the authority to informally resolve the complaint
- formally investigate the complaint under the Ombudsman's Royal Commission powers.

Most of the time, we can informally resolve complaints without the need for a formal investigation. These cases are resolved when the authority offers an appropriate solution or accepts our proposals.

Complaints to the Ombudsman tell a story about the public's interaction with government. They help to identify potential problems with how a government authority is operating, and can prompt the Ombudsman to make systemic enquiries to deal with underlying problems.

The Ombudsman reviewed six months' worth of 2018 complaint data about VicRoads. This reflected 367 individual complaints. We did this to understand what the public was telling us about their interaction with VicRoads. For many of these complaints, we encouraged members of the public to complain to VicRoads first.

While these complaints told us a fraction of the story about the public's interaction with VicRoads, we identified five emerging themes:

1. processing of incomplete applications to transfer vehicle registration
2. recognition of concession status
3. processing of refunds and correction of payment errors
4. issuing of suspension and renewal of registration notices
5. administration of suspensions, or 'overlapping suspensions'.

We wrote to VicRoads about what the public was telling us about its processes. We then worked with its leadership and operational teams to improve VicRoads' practices.

The Ombudsman also made enquiries with VicRoads about the Victorian Alcohol Interlock Program and its review of violations issued under the program. This program was expanded in April 2018, and VicRoads will soon take on primary responsibility for supervising participants under the program.

We made these enquiries over three months. During this time, we made proposals to VicRoads to improve its administration. We held a forum for Ombudsman officers and VicRoads directors and area experts. By bringing people together in an informal setting, we were able to have an open discussion.

This allowed all parties to look into how VicRoads could strengthen its practices and improve outcomes for the Victorian community. The Ombudsman was able to better understand VicRoads' systems capability, how its various units relate to each other, and what improvements were achievable.

Some of the issues identified related to laws under review at the time of our enquiries. In other areas, VicRoads' technological capacity limited its ability to make improvements. We encouraged VicRoads to consider what it could do to improve its practices in response to the themes reflected in complaints.

VicRoads accepted all of the Ombudsman's proposals. It said that 'the proposed resolutions [are] benchmarks in improving our service delivery to Victorians'. VicRoads staff also worked with Ombudsman officers to find more short-term and long-term solutions that would support VicRoads' practices, and helped to informally resolve individual complaints.

The Ombudsman could have conducted a formal investigation into these issues. However, to achieve a quick resolution for VicRoads and the Victorian community, we decided to collaborate with VicRoads, while retaining our independence. VicRoads was receptive to our observations and worked with Ombudsman officers to achieve improved practices.

This report details the outcome of our enquiries with VicRoads as a result of complaints we received.¹

'I am pleased that you have noted the collaborative and responsive relationship between your office and VicRoads that has resulted in many complaints being resolved quickly and has allowed VicRoads to discuss improvements in policy, practices and procedures that are being considered and/or undertaken with your senior staff.'

VicRoads Chief Executive Officer

¹ Where appropriate, names of people referenced have been changed.

Registration transferred without driver's knowledge or consent

VicRoads' transfer of registration process has been a constant source of complaint to the Ombudsman. People have told us their vehicle registration had been transferred out of their name without their knowledge or consent. In some cases, this enabled a third-party to steal their vehicle.

Transfer of registration

VicRoads has a function to maintain a Register of motor vehicles.² Anyone who sells or purchases a vehicle needs to apply to VicRoads to transfer the vehicle's registration.³ If VicRoads approves, it records a transfer of vehicle registration in the Register.

VicRoads has a choice to record a transfer of registration where an application is incomplete – if a signature is missing or the application form does not contain the required information. VicRoads can only make this choice where:

- the person who will be recorded as the new registered operator has possession of the vehicle, and
- VicRoads considers it appropriate to register the transfer in the circumstances.⁴

Being a registered operator does not mean the person is the owner of the vehicle.⁵

Transfer disputes

VicRoads processes about 900,000 transfers of vehicle registration each year. VicRoads says most of these transfers are straightforward, with all transfer requirements complete – fees paid, signatures present, and certificates of roadworthiness attached. In almost 200,000 transfers of registration, however, the applicant has not provided all the required information and sometimes a vehicle has moved between several people without any of them applying for a transfer of registration.

Despite the Register not reflecting ownership, a person who claims to be the owner of a registered vehicle can lodge a 'transfer dispute' with VicRoads if they think another person might sell, is selling or has sold their vehicle without their permission. The person needs to lodge the dispute in writing and support it with certain documents before VicRoads has transferred the registration.

Recording of a dispute prevents a transfer of registration or re-registration of a vehicle, until evidence is provided that the dispute is resolved. In practice, recording a dispute will alert a potential buyer that ownership of the vehicle is unclear.

VicRoads' business rules outline the scenarios it considers do not constitute a transfer dispute. These are:

- when an application to transfer registration has already been processed and the purchaser did not pay for the vehicle (this is a civil dispute)
- when a vehicle was driven away or removed from a property because of a domestic argument
- when someone claims a vehicle was falsely transferred into their name.

'We have been to court, we've lost everything ... We changed everything; we put floors, new wheels, we brought it up to scratch just for them to take it away ... [My partner] took out a loan and he's got nothing to show for it ... And VicRoads, after, they even sent me a renewal notice.'

Carla

² Road Safety Act 1986 (Vic), s 5AA; Functions.

³ Road Safety (Vehicle) Regulations 2009 (Vic), regs 71(1), 75, 74; requirement not applicable to the temporary passing of possession of a vehicle to a person who is not intended to become the registered operator.

⁴ Road Safety (Vehicle) Regulations 2009 (Vic), reg 81(2).

⁵ Road Safety Act 1986 (Vic), s 9(b).

Previous Ombudsman investigation

In 2005, the previous Ombudsman investigated VicRoads' transfer of registration process. In his report, *Own motion investigation into VicRoads registration practices*, the Ombudsman said:

VicRoads will transfer registration from a disposer to an acquirer even if it has only part of the information needed to properly identify both parties to the transfer. This includes applications for transfer of registration that have information about only one party to the transfer. VicRoads will update the vehicles Register based on the partial information and attempt to obtain the missing information.

... Stakeholders interviewed during this investigation referred to this practice as one of the main causes of inaccuracies on the vehicles Register. It was suggested that transfers should only be made when VicRoads has obtained all the information required on the application forms it uses for vehicle registration transfer.⁶

The Ombudsman recommended VicRoads only accept completed registration transfer requests. At the time, VicRoads said:

VicRoads agrees that the registration processes can be improved. In particular there is a need to review transfer forms for greater clarity and promote their availability. VicRoads will explore mechanisms for improving compliance with the 14-day deadline for an acquirer and those changing address.⁷

What our complaints told us

Over the six month review period, the Ombudsman received 14 complaints about VicRoads' transfer of registration process. Our review of these complaints indicated that:

- After the 2005 investigation, VicRoads continued – as a general practice – to record a transfer of registration for all incomplete applications.
- Although the Register does not reflect legal ownership, the practical effect of processing an incomplete application enables that person to assert that they are the legal owner. This can result in the theft of motor vehicles.
- Where VicRoads processed incomplete applications, some people spent money improving vehicles that were then seized by Victoria Police.
- VicRoads did not inform a registered operator that a person had submitted an incomplete application until after it had already recorded the transfer, and at that point it was too late to dispute the transfer.

The Ombudsman acknowledges VicRoads' processes are complex. However, law enforcement relies on the Register to issue infringement notices to the correct person, and VicRoads is responsible for maintaining the Register. The Ombudsman accepts there are, in most cases, legitimate reasons for recording a transfer where transfer requirements are incomplete.

⁶ Victorian Ombudsman, *Own Motion Investigation into VicRoads Registration Practices*, 2005, 13-14.

⁷ Ibid 17.

However, our review of complaints identified a common acceptance in the community that in practice, registration equates to ownership. People would use details on the Register to assert ownership and to wrongly facilitate the sale of vehicles.

Complaints to the Ombudsman illustrated that when the transfer of registration process was used to cause wrongdoing, vehicle registration was easily transferred between different people. This is problematic. On some occasions, VicRoads transferred registration that enabled fraud and theft, and VicRoads had information that should have prompted an enquiry. For example, VicRoads transferred registration where disposer details did not match the Register, and where other mandatory fields of the application were incomplete or missing.

In these circumstances, it was unclear how VicRoads determined:

- the proposed new registered operator had possession of the vehicle
- it was appropriate to register the transfer in the circumstances.⁸

Transfer of registration – systemic resolution

The Ombudsman was concerned about VicRoads' general practice of processing incomplete applications to transfer vehicle registration, particularly where details did not match the Register or where signatures were missing. In such cases, VicRoads needed to consider whether it was appropriate to record the transfer given the individual circumstances of the application,⁹ or to merely process the transfer.

In response to the Ombudsman's enquiries, VicRoads partnered with a consultant firm to review its processes (see Figure 1 on page 12) and the current regulatory framework applicable to transferring vehicle registration.

VicRoads said it would work towards a long-term solution which would involve:

- developing a policy of not accepting incomplete transfer of vehicle registration applications and, if required, seek regulatory change to support this policy
- examining how it can meet this new policy objective by firstly changing its practices and processes.

VicRoads' Chief Executive Officer wrote to the Ombudsman saying:

This proposal highlights the complexity associated with designing ... a scheme without creating undesirable outcomes for customers or legal and regulatory anomalies.

... While work on implementing the new policy objective has commenced, given the potential for delays and consequences to arise for customers as a result of such a significant change in operations and customer experience, we must proceed carefully and will take into account any stakeholder impacts. VicRoads will be guided, in part, by the experience in Queensland where the regulatory framework is similar and processes have been designed to avoid the difficult scenarios that have been arising in Victoria and highlighted in your [enquiry]. It is my intention to brief you again on this topic, including the work undertaken by VicRoads and an assessment of potential remediation ...

⁸ As required by *Road Safety (Vehicle) Regulations 2009* (Vic), reg 81.

⁹ In accordance with *Road Safety (Vehicle) Regulations 2009* (Vic), reg 81(2).

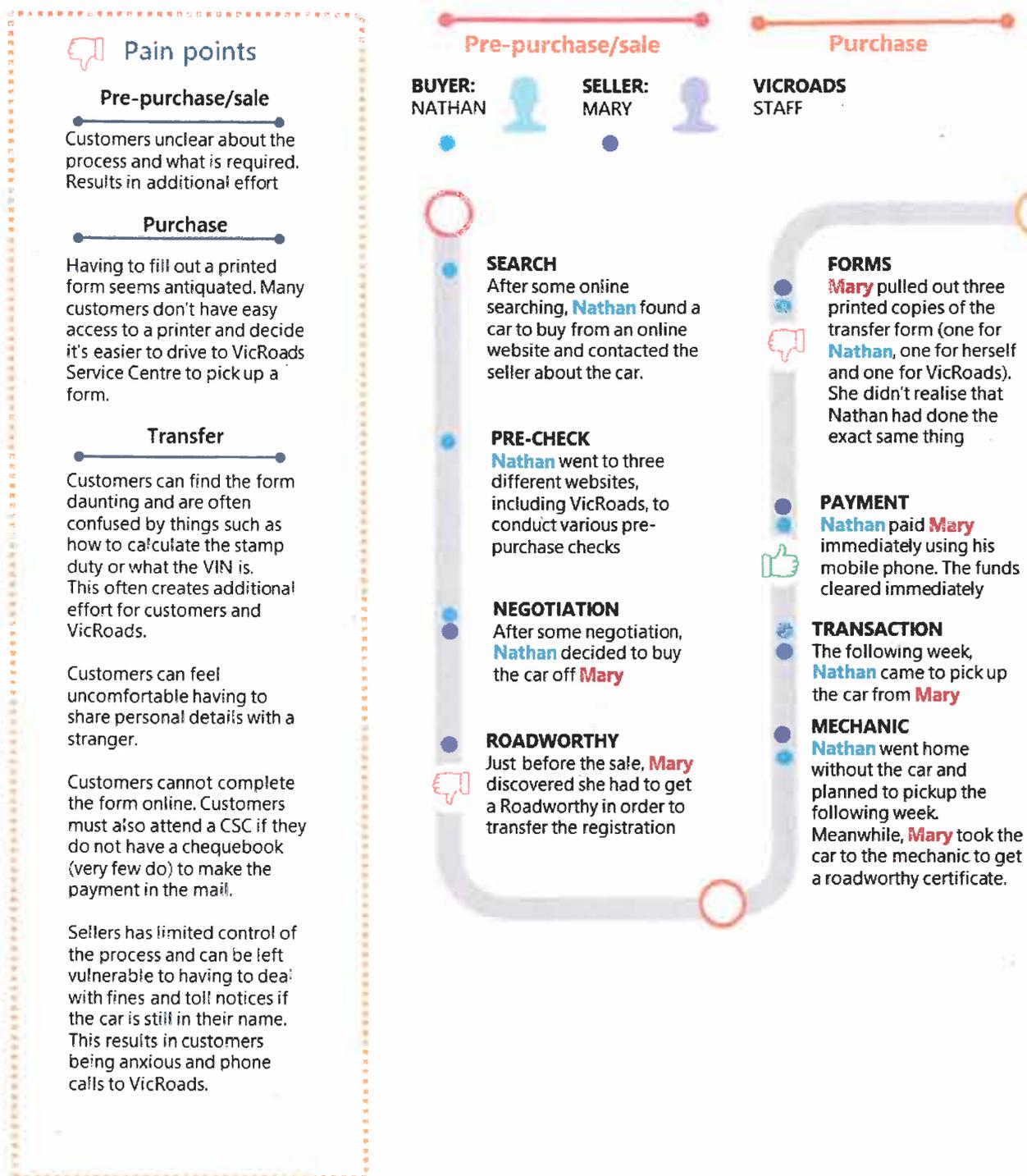
At the forum involving the Ombudsman and VicRoads, we also discussed short-term solutions. We heard from VicRoads that a key limitation to achieving a more robust solution was its limited technological capacity to support changes to its practices and a lack of funding to drive improvements.

A solution to this issue was that VicRoads would embed an 'escalation point' in its processes. Certain applications could then be referred to a decision-maker to determine whether it was appropriate to transfer the registration. VicRoads informed the Ombudsman this would apply to applications where details did not match the Register or where signatures were missing. At this stage, the Ombudsman is satisfied this is a positive short-term solution.

'If at that moment I was advised the vehicle didn't belong to (the seller), I may have had a better chance at getting my money back that I paid for the vehicle to both the seller and mechanic. I also never would have spent over \$1,500 to further improve the vehicle.'

Cassandra

Figure 1: Example of a vehicle registration transfer customer's journey



Transfer

Complete

FORM COMPLETION

They proceeded to fill out the form in triplicate. After struggling to work out the stamp duty, **Nathan** called VicRoads for clarity. **Mary** also had some questions - she didn't know what the VIN was or where to find it. Once confirmed, they both filled the forms and signed.

🕒 30 minutes

COLLECTION

Nathan left, driving his new car. *He's feeling excited*

Meanwhile, **Mary** is a little anxious about the car still being in her name. She's thinking "What if he gets a speeding ticket?"

SUBMISSION

A few weeks go by and **Nathan** finds the transfer forms in his car. He realised he forgot to send them in. He goes to a post office, gets an envelope and stamp until he realises that he needs a cheque in order to pay the stamp duty and fee.

🕒 40 minutes

WONDER

Meanwhile, **Mary** is still unsure as to whether or not the car has *actually* been transferred out of her name or not

COMPLETION

Nathan leaves VicRoads and is relieved that the transfer is done

SERVICE

Once **Nathan's** number is called, the customer service representative processes the transfer immediately and he pays the fees and stamp duty.

🕒 2 minutes!

QUEUE

When **Nathan** gets there, he takes a ticket and waits to be called.

🕒 20 minutes

ATTENDANCE

The next day, **Nathan** drives to his local VicRoads service centre

🕒 15 minutes

SUBMISSION

Nathan decides he'll just go into VicRoads, and arranges to leave work early the next day. *"He wonders why he can't just pay online and send in the forms"*

CONTACT

Mary decides to call VicRoads to ask whether the vehicle has been transferred out of her name.

Delight Points

Being able to sell or search and find a car to buy online seamlessly starts the customer's journey well and in their channel of choice. This is disrupted when it comes to the manual registration transfer process with VicRoads.

Paying for the car via mobile banking apps and online is quick and easy, with funds clearing immediately.

When customers have all of the paperwork they need, the experience at the counter is quick and simple. **This can often result in customer service staff having a narrow view of the experience and not understanding the end-to-end journey or context for the interaction.**

Proposals for resolution

The Ombudsman's proposals about the transfer of registration process and VicRoads' responses are set out below.

Our proposals	VicRoads' responses
<p>VicRoads ensure its staff consider the individual factors of all applications before exercising its discretion to transfer vehicle registration, where transfer requirements are incomplete.</p>	<p>Agreed and action has begun.</p> <p>VicRoads:</p> <ul style="list-style-type: none"> • has started a review of its business rules, work instructions and website content to ensure applications are considered taking into account the individual factors before exercising discretion to transfer vehicle registration, where transfer requirements are incomplete • is making improvements to immediately reduce erroneous transactions, but this will not completely remove the risks associated with processing incomplete transfers as there will continue to be legitimate instances where VicRoads will need to accept incomplete transfer applications.
<p>VicRoads develop guidance for its staff on the application of its discretion.</p>	<p>Agreed and action has begun.</p> <p>VicRoads is reviewing and refining guidance for staff on the application of its discretion and it has identified a potential amendment to the <i>Road Safety Act 1986</i> (Vic).</p>
<p>VicRoads inform a registered operator when an incomplete or incorrect application to transfer form is submitted, and allow the registered operator reasonable time to lodge a transfer dispute before VicRoads finalises the transfer.</p>	<p>Agreed and action has begun.</p> <p>VicRoads is investigating a solution that provides more timely advice to the current registered operator that a vehicle has been transferred out of their name. Also, if there is a dispute over possession of the vehicle, VicRoads will develop a process to allow investigation and prevent further transfers from taking place.</p> <p>This change will take time to put in place as part of the wider system redesign and will need significant capital investment from government. For these reasons, VicRoads is not able to commit to such a project in the short term, but it is a project that it is actively pursuing. Should the capital investment not occur, VicRoads will implement smaller strategic projects in the redesign process that it has identified as having tangible benefits.</p>
<p>VicRoads explore the ability to record a notation on the Register, where a person appears in possession of a vehicle, so law enforcement authorities can issue an infringement notice to the correct person.</p>	<p>Agreed and action has begun.</p> <p>VicRoads will investigate a process change with appropriate controls to ensure the Register is not misused.</p>

Our proposals	VicRoads' responses
<p>VicRoads review the 'scenarios' outlined in its business rules that do not constitute 'a dispute' – specifically, 'when a registered vehicle is ... removed from a property as a result of a domestic argument' – so that circumstances of family violence are not precluded from its processes.</p>	<p>Agreed and action has begun. VicRoads is reviewing the scenarios outlined in its business rules that do not constitute 'a dispute'.</p>

The Ombudsman will continue to monitor complaints about VicRoads' transfer of registration process to determine whether further action may be needed.

Outcomes achieved

The following case studies are complaints the Ombudsman informally resolved with VicRoads.



Transfer processed to former domestic partner without required documentation – reversal of transaction

What was the problem?

Mario contacted the Ombudsman complaining that VicRoads transferred the registration for his vehicle to his ex-partner, Jessica. VicRoads' website outlines the information that needs to be included to transfer registration to a former spouse or domestic partner (see below). Jessica did not provide any of these documents. Mario said VicRoads asked him to provide the missing details; and when he informed VicRoads the vehicle was in his possession, he was told this was 'a civil matter' and to contact the police.

Achieving resolution – what did we do?

When Ombudsman officers met with VicRoads' leadership and operational team, they used Mario's complaint to discuss the consequences that can arise in the transfer of registration process. VicRoads acknowledged its processes can sometimes lead to unintended outcomes.

Because the correct process was not followed in Mario's case, and he said he was in possession of the vehicle, we asked VicRoads to:

- confirm who was in possession of the vehicle
- reverse the initial transfer back to Mario if it was confirmed that he was, in fact, in possession of the vehicle
- keep a 'dispute' over the vehicle registration in its system until VicRoads received confirmation that the dispute had been resolved.

What was the outcome?

VicRoads agreed to our proposals and invited Jessica to demonstrate she had the vehicle in her possession by taking it to a VicRoads Customer Service Centre. If she failed to do so, the registration would be transferred back to Mario. VicRoads has since confirmed the registration has been transferred back to Mario.

Advice on VicRoads website, as at February 2019

Transfer to a current spouse or domestic partner

You will need:

- a completed and signed [Application for Transfer of Registration form \[PDF 368 Kb\]](#)
- the [transfer fee](#), and one of the following:
 1. an original or certified copy of your marriage certificate (for married partners)
 2. an original or certified copy of your relationship certificate (issued by BDM or the City of Melbourne)
 3. a statutory declaration from each party declaring the domestic relationship (for domestic partners).



Transfer processed despite incomplete and wrong details - offer of payment made

What was the problem?

A Victorian community legal centre contacted the Ombudsman on behalf of their clients, Joe and May. May was the registered operator and owner of a vehicle she had lent to Joe.

Joe left the vehicle in his friend Therese's garage for safekeeping while he went overseas. During that time, another person, Scarlett, took the vehicle without Joe's or May's knowledge. Scarlett then gave the vehicle to her friend, Michael, who sold the car to Sam. Joe's and May's lawyers told the Ombudsman that before Michael sold the vehicle to Sam, Joe telephoned Victoria Police from overseas to report the car as stolen. Victoria Police told Joe it would not accept the report because it was 'a civil matter'. When Joe returned from overseas, he again tried to report the car as stolen, but received the same advice.

What did VicRoads do?

To process the transfer of registration to Sam, Michael submitted two transfer forms to VicRoads. The first form indicated the vehicle's registration was being transferred from Joe to Michael. Michael listed Joe as the 'disposer' rather than May, who was the registered operator and owner of the vehicle. The second form was to transfer the registration to Sam. VicRoads processed both transfers on the same day, despite its records showing May was the registered operator. Also, the forms were incomplete as they did not have May's signature and the application did not include the required notice of disposal, signed by May.

VicRoads then asked May to confirm that she agreed to the transfer and to provide a notice of disposal to complete its records. Because VicRoads had already recorded the transfer, May could not lodge a dispute over the transfer. In this case, Michael was able to transfer the registration of a vehicle from May to himself, without May's approval. This allowed him to tell Sam that he was the owner of the vehicle and to sell it to Sam.

Achieving resolution – what did we do?

The Ombudsman highlighted to VicRoads:

- The information VicRoads received should have prompted it to enquire about whether the transfer should be processed. This was because there were inconsistencies in the forms provided and the details of the listed operator did not match the Register.
- Given this, it was unclear how VicRoads determined it was appropriate to transfer the registration.

To informally resolve this complaint, the Ombudsman suggested VicRoads offer payment towards the costs Joe and May incurred due to the transfers.

What was the outcome?

VicRoads acknowledged that by processing the incomplete application and not acting on Joe's and May's objections, it facilitated the fraudulent transfer and sale of the vehicle. VicRoads consequently offered May a contribution towards the costs incurred, on an ex-gratia basis.



Ongoing review

Leon Hennessy was the sole director of Hennessy Transport Ptd Ltd. His son, James, was the manager of the company.

James contacted our office in July 2018 on behalf of his father. He told us that between late March and early April 2018, 41 trucks and personal vehicles had been stolen.

On reporting the theft, James said the police advised that the vehicles could not be reported as stolen because they were no longer in the company name; and in the case of the personal vehicles, in

Leon's name. VicRoads had transferred the vehicles out of their names. James said the police requested his father contact VicRoads about transferring the vehicles back into his name and the company name so the police could accept the report.

Leon said he and his son had difficulties with VicRoads. VicRoads had advised them it was 'a civil matter' and VicRoads would not reverse the transfers. Leon also said the transfers were processed using incomplete transfer of registration forms, without certificates of roadworthiness and without the required stamp duty being paid.

After James contacted the Ombudsman, he and his father complained to VicRoads. VicRoads then transferred the vehicle registrations back into the company's and Leon's names. Unfortunately, the vehicles remain missing, but Leon told us that the police are continuing to look into the matter.

Leon said that as a result of the theft he has lost his home and his company, and is facing bankruptcy.

The Ombudsman's focus in this matter is VicRoads' decision to process the transfers without all the required documentation and stamp duty. The Ombudsman's involvement is ongoing, and we will consider whether this complaint can be informally resolved or whether it needs investigation.

Article in Industry News, 6 August 2018

DETAILS EMERGE OVER MISSING REGO-FRAUD TRUCKS
Date: 06.08.2018

Registrations of missing Victorian vehicles signed over in two separate transactions

VicRoads is working with Victoria Police to help locate 39 missing trucks and trailers after fraudsters were able to sign the vehicle registrations into the name of someone who did not own them.

As ATN reported on Thursday, police are investigating "a number of thefts and deceptions" after a third party managed to shift the vehicle registrations away from their registered operator, Hennessy Transport, earlier this year.



A total of 39 vehicles registered to Hennessy Transport are missing

Concession card holders not receiving VicRoads' concession fees

The Ombudsman receives recurring complaints about VicRoads' consideration of concessional entitlements. These complaints relate to VicRoads being unable to apply concession rates to registration renewal fees for all concession card holders, and its approach to applying concession in the Victorian Alcohol Interlock Program.

Concession fees

- A person can receive a concession rate on one vehicle registered in their name or the name of a spouse or domestic partner.¹⁰
- To receive a concession rate for renewal of registration, a person must have a concession card at the time their registration is paid or the start date of the registration, *whichever is earlier*¹¹ [emphasis added].
- There is currently no mechanism available for VicRoads to apply a pro rata discount.
- VicRoads' Alcohol Interlock Program rules only allow for a concession entitlement to be applied to the primary cardholder. Unlike renewals of registration, concessions are not available to spouses or domestic partners.

A person can pay registration renewal online, by internet banking, or in person at an Australia Post office. If they pay the concession rate using any of these methods and VicRoads later determines they were not eligible, VicRoads contacts the person and requires them to pay the difference between the concession and full fee rate. If the person does not pay the difference, VicRoads will suspend their vehicle's registration. It is an offence to drive an unregistered vehicle on a Victorian road.

The full fee rate is \$816.50 in the metropolitan area, \$762.60 in outer metropolitan and \$699.90 in rural areas. Current concession entitlements for renewal of registration are shown on the following page.

What our complaints told us

Over the six month review period, the Ombudsman received 15 complaints about VicRoads' concession entitlements. Our review of these complaints suggested that:

- The regulations are too narrow to accommodate the circumstances of all concession card holders. This can lead to further financial hardship for concession card holders.
- The concession status of a spouse is not considered in the cost of the Alcohol Interlock Program, but is applied to renewal of registration fees.

Concession cards are to allow people with a disability or those experiencing disadvantage or hardship equal access to essential services. Where a person is issued a concession card before they pay their registration renewal, but not before the date of renewal, the regulations dictate that they are not eligible for a discount. This can force concession card holders to forgo essentials such as medical services so that they can pay their renewal fee and drive a vehicle. To decline a person a concession rate when they hold a valid concession card may compound the difficulties they already experience.

Trevor could not get the concession rate when he went to pay for his renewal because his concession card was issued five days after his registration was due. 'I'm not working at the moment and \$145 is an issue for me ... I have to borrow money off people, my family, to pay this.'

Trevor

¹⁰ Road Safety (Vehicles) Regulations 2009 (Vic), reg 102.

¹¹ Road Safety (Vehicles) Regulations 2009 (Vic), reg 102.

Registration concessions on VicRoads website, as at February 2019

Centrelink	
Concession Type	Concession Entitlements
<p>Health Care Card issued by Centrelink</p> 	<ul style="list-style-type: none"> • 50% discount on registration fee only. No discount on TAC fee • choice of 3, 6 or 12 months registration
<p>Pensioner Concession Card issued by Centrelink</p> 	<ul style="list-style-type: none"> • 50% discount on registration fee • 50% discount on TAC fee • choice of 3, 6 or 12 months registration

Department of Veterans' Affairs	
Concession Type	Concession Entitlement
<p>Gold Card issued by Department of Veterans' Affairs: 🔗 May be embossed with WAR WIDOW Cards embossed with DEPENDANT are not eligible</p> 	<ul style="list-style-type: none"> • 50% discount on registration fee • 50% discount on TAC fee • choice of 3, 6 or 12 months registration
<p>Gold Card issued by Department of Veterans' Affairs: 🔗</p> <ul style="list-style-type: none"> • TPI (Totally and Permanently Incapacitated) • EDA (Extreme Disability Adjustment) 	<ul style="list-style-type: none"> • 100% discount on registration fee • 50% discount on TAC fee • choice of 3, 6 or 12 months registration
<p>Written confirmation from the Department of Veterans' Affairs 🔗 stating your entitlement to a concession under one of the following sections of the Veterans' Entitlement Act 1986:</p> <ul style="list-style-type: none"> • section 22 • section 23 • section 24 • section 25 • section 104 <p>or,</p> <ul style="list-style-type: none"> • RSVR 2009 Schedule 3 13 (b) - assessed pursuant to Part 2 of Chapter 4 of the <i>Military Rehabilitation and Compensation Act 2004</i> of the Commonwealth, as a veteran who has suffered an impairment resulting from one or more service injuries or diseases, the degree of which constitutes 40 impairment points or more. 	<ul style="list-style-type: none"> • 100% discount on registration fee • 50% discount on TAC fee • choice of 3, 6 or 12 months registration

Road authorities in other states apply a concessional rate where a consumer provides evidence of an entitlement, whether prospectively or retrospectively.¹² Other industries and road authorities also provide pro-rata consideration of concession status. While a change to concessional entitlement would affect VicRoads' revenue, it would ensure concession status is appropriately recognised.

Similarly, denying a concession fee for participants in the Alcohol Interlock Program could cause further financial stress or make completing the program cost prohibitive. Road management authorities in other states offer assistance or alternatives when severe hardship can be demonstrated or if a person does not own a car.¹³

Concession rates – systemic resolution

In response to the Ombudsman's enquiries, VicRoads acknowledged the social inequity that current regulations produce and said:

The concerns raised concerning hardship have highlighted the need for VicRoads to consider how it applies its hardship provisions, as well as a broader need to recognise the financial challenges that the vehicle registration charge can pose for some individuals in the community.

VicRoads intends to propose the introduction of a hardship provision in the Road Safety (Vehicle) Regulations 2019 that would allow in circumstances of hardship, VicRoads to waive whole or part of a registration fee.

VicRoads also committed to:

1. review the eligibility date arrangements in light of national practices
2. develop a policy and guidelines for registration payment hardship by:
 - (a) reviewing existing regulations
 - (b) consulting the Department of Treasury and Finance and appropriate non-government organisations.
3. examine the feasibility of extending its policy for concession to spouses and domestic partners of a primary cardholder to participants in the Victorian Alcohol Interlock Program
4. develop a broader connection with Centrelink to confirm the number of people affected by VicRoads' current approach to applying the concession rate for renewal of registration. This is to identify other potential changes to better support social equity.

These are positive steps towards achieving social equity in VicRoads' fees.

12 Queensland Government, *Senior, pensioner and impaired service person concessions* (18 December 2018) <www.qld.gov.au/transport/registration/fees/concession/senior>; Western Australia Government, *Apply for a vehicle licence refund*, Department of Transport (17 January 2019) <www.transport.wa.gov.au/licensing/apply-for-a-vehicle-licence-refund.asp>.

13 Queensland Government, *Alcohol Ignition Interlocks* (2 January 2019) <www.qld.gov.au/transport/safety/road-safety/drink-driving/interlocks>; Tasmanian Government, *Alcohol Interlock Exemptions*, Department of State Growth <www.transport.tas.gov.au/licensing/exemptions/alcohol_interlock_exemptions>.

Proposals for resolution

The Ombudsman's proposals about VicRoads' application of concession discounts and VicRoads' responses are set out below.

Our proposals	VicRoads' responses
<p>VicRoads explore the option of a pro-rata concession discount for all VicRoads fees eligible for concession discounts.</p>	<p>Agreed and action has begun.</p> <p>Victoria recognises many forms of concession – applying concessions to pension concession card holders, Department of Veteran Affairs Card holders and Health Care Card holders.</p> <p>A concession entitlement for Health Care Card holders presents complexities because it is an entitlement that can be removed by the relevant authority, such as Centrelink.</p> <p>VicRoads will start a financial impact assessment of any change to Health Care Card entitlements and registration renewals.</p> <p>At the moment, there is no mechanism under the laws it administers for pro-rata discounts to be applied.</p>
<p>VicRoads explore options for how it could apply discretion under the current regulations.</p>	<p>Agreed and action has begun.</p> <p>VicRoads can reduce or waive a fee in 'special circumstances'* but other than this, it is unable under the current regulations to exercise discretion. In view of this, VicRoads recommended that hardship provisions be included in the Road Safety (Vehicle) Regulations and Road Safety (Drivers) Regulations. This amendment is proposed to come into effect this year.</p> <p>As part of the review of its regulations, provisions for entitlement to concession that exist for some charitable, benevolent or religious entities will be tightened.</p>
<p>In the context of the regulations review, VicRoads recommend regulation 102 be amended to allow a concession rate to be made available to people who hold a valid concession card as at the date a renewal notice is issued or the date of payment, regardless of which is earlier.</p>	<p>Agreed and action has begun.</p> <p>A review of concession entitlements confirms that Victorian regulations broadly align with other Australian jurisdictions.</p> <p>VicRoads will assess whether it is financially viable for it to make the discount fee available to all concession card holders.</p>

*Road Safety (Drivers) Regulations 2009 (Vic), reg 114.

Our proposals	VicRoads' responses
<p>VicRoads recommend regulations relating to the Alcohol Interlock Program allow for a concession rate to be applied to the vehicle of a spouse or domestic partner involved in the program.</p>	<p>Agreed and action has begun.</p> <p>VicRoads has started work relating to the Alcohol Interlock Program. This has included examining the feasibility of extending the policy for concessions to a primary card holder's spouse or partner who is a participant in the Alcohol Interlock Program, noting this will need a financial impact assessment and an amendment to the <i>Road Safety Act 1986</i> (Vic).</p>

We will monitor the progress of these steps and complaints about VicRoads' consideration of concession card holders.

Outcomes achieved

The following case study is a complaint the Ombudsman informally resolved with VicRoads.



Otherwise eligible for concession, but for prison time – concession fee facilitated, and refund made

What was the problem?

Jake decided to pay for his registration renewal through VicRoads' short-term registration program. He paid a three-month registration in April 2018 using his concession card. Before the end of this period, Jake went to prison for a short time.

While in prison, Jake was no longer considered a concession card recipient. This meant when his vehicle registration was due for renewal, Jake was technically not a concession card holder.

In August 2018 and after Jake had left prison, he went to pay for his registration for June, July and August and paid the concession fee at an Australia Post office. VicRoads' system showed that Jake did not have a concession when his renewal was due because he was in prison at the time. Jake was told he would need to pay the difference between the concession and the full fee rate, but he did not do this.

In October 2018, Jake made another payment for short-term registration. Because he was told VicRoads would not accept his concession card, he paid the full fee.

Achieving resolution – what did we do?

VicRoads told us that because Jake had not paid the difference between the fees it had suspended his registration and had not re registered the vehicle when he made the full fee payment in October.

We highlighted to VicRoads that Jake:

- had a concession card when his renewal notice was issued to him for the 12-month period
- appeared to have had his concession card removed for the sole reason of being in prison
- had his concession card reactivated shortly after he was released from prison.

We explained to VicRoads that in the initial period after a person's release from prison, they can be faced with the challenges of finding a place to live and meaningful employment. To decline a person the concession rate in these circumstances may exacerbate their already difficult circumstances.

In recognition of Jake's unique circumstances, we asked VicRoads to:

- explore how it could apply the concession rate to Jake's registration
- lift the suspension associated with the second renewal
- refund Jake for the over-payment or apply a credit to the value of the refund for his next renewal of registration.

What was the outcome?

VicRoads accepted our proposals to resolve the complaint.

Processing refunds and payments

- It is an offence to use an unregistered vehicle on a Victorian road.¹⁴
- Customers who cancel a vehicle's registration before it expires can receive a refund for the period they did not use.¹⁵

What our complaints told us

Over the six month review period, the Ombudsman received 30 complaints about VicRoads' processing of refunds and payments. Our review of these complaints suggested:

- VicRoads typically acts quickly to confirm data errors it identifies, but sometimes takes months to process refunds.
- Several complaints to the Ombudsman could have been avoided through better communication, prioritisation and management of its customers' expectations.

Refunds and payments – systemic resolution

We asked VicRoads to consider whether any improvements were needed to ensure its system can prioritise refunds where it has made an error.

In response, VicRoads said:

The concerns raised about the processing of refunds highlights a number of potential deficiencies with VicRoads' management of refund requests and complaints. Refund requests are received through a number of different channels, including customer service centres, the mail and over the phone. We acknowledge that certain scenarios have arisen in which the organisation has not responded in a customer-focused or timely manner.

We propose to investigate two remediation opportunities, as follows:

1. Develop a concept proposal for system changes to reduce the waiting time for certain types of refunds, by up to 14 days; and
2. Investigate the feasibility of a change in the process for tracking of refunds. The proposed change would involve better email-based tracking on top of reliance on large scale batch requires, which do not always ensure that refund requests are prioritised.

Subject to feasibility and acceptable costing, these changes will reduce these ongoing problems.

¹⁴ *Road Safety Act 1986* (Vic), s 7.

¹⁵ *Road Safety (Vehicle) Regulations 2009* (Vic), ch 2.

Proposals for resolution

The Ombudsman's proposals about VicRoads' processing of refunds and payments, and VicRoads' responses are set out below.

Our proposals	VicRoads' responses
<p>VicRoads ensure that its system can prioritise refunds where it has made a mistake.</p>	<p>Agreed and action has begun.</p> <p>VicRoads recently conducted a pilot program at its Broadmeadows and Dandenong customer service centres aimed at refining its approach to reviewing refund requests. The results showed a significant reduction in wait and processing times of between five and nine days.</p> <p>VicRoads proposes to adopt this pilot for all its customer service centres state-wide and work has started to coordinate system changes to bring the waiting time for certain refunds down from 14 to three days.</p> <p>VicRoads is prioritising the processing of refunds:</p> <ul style="list-style-type: none">• for customers whose circumstances indicate financial hardship or family violence, and• for concession card holders by developing a webform in the myVicRoads portal to capture their registration refund requests. This is to limit the need for these customers to visit a service centre or post an application to VicRoads.

We will continue to monitor these types of complaints.

Outcomes achieved

Complaints about the time taken to fix a mistake or issue a refund are matters that all authorities including VicRoads should be able to resolve without the Ombudsman intervening. Where appropriate, we will continue to engage with VicRoads to help resolve these complaints.



Refunds provided

Sarah paid to register her vehicle for 12 months in October 2017 and then cancelled the registration in February 2018. This meant she could receive a refund for the period from February to October 2018. Sarah wrote to VicRoads to request this refund on 27 February 2018, and provided her bank details.

Sarah contacted the Ombudsman on 25 July 2018 and said she had not received a response from VicRoads. The Ombudsman made enquiries and VicRoads advised it had not responded to Sarah due to a clerical error. As a result, VicRoads processed a refund and issued it directly to Sarah's nominated account.

Abdullah paid his registration fee of \$816.50 to VicRoads on 1 July 2018, but was entitled to a concessional rate of \$669. Abdullah asked VicRoads to refund him the \$147.50 difference. VicRoads responded to Abdullah's request on 16 July 2018 stating its records showed his registration payment on 1 July 2018 was at the concessional rate and that no refund was payable. Abdullah then contacted the Ombudsman and provided a copy of a receipt from his bank for the payment, which showed he had paid the full fee of \$816.50.

After the Ombudsman made enquiries with VicRoads, it issued the \$147.50 refund to Abdullah.

'I had paid a car registration. I then realised a week or two later that I had been charged three consecutive times for the same payment total of \$2,067 of which \$1,378 was over charged on the same day ... I called and spoke with a lady who was kind enough to say she would try and process it as quickly as possible. I mentioned we have four kids going to school and we need to pay school fees and uniforms. Three weeks later I called VicRoads and a gentleman said it will be processed in a couple of weeks. Two weeks later I went online and put in a complaint which they said they would respond to within 48 hours but it's well over a couple of weeks now and no response. Why does life have to be so unfair for hard working families who strive to do the right thing as citizens? And it takes VicRoads almost four months to refund our money.'

Tess

Notices of suspension and renewals of registration

Registered operators are responsible for making sure their vehicles are registered. Although VicRoads does send renewal notices to the registered operator's address, VicRoads is not required to do so.¹⁶ Complaints are particularly likely to arise when, for whatever reason, a registered operator does not receive a renewal notice, and is subsequently fined for driving an unregistered vehicle or driving without a licence.

Over the review period, the Ombudsman received 38 complaints about VicRoads not notifying members of the public of proposed decisions to suspend a driver's licence, or of upcoming renewal of registration.

The following are examples of complaints where the Ombudsman encouraged individuals to make a complaint to VicRoads first. Complaints such as these prompted the Ombudsman to make broad enquiries into how VicRoads issues notices of suspensions and renewals of registration.

VicRoads' registration renewal notice practices

Adam received an infringement notice for operating an unregistered vehicle. When he contacted VicRoads stating he had not received a renewal notification, a VicRoads officer informed him that his renewal notification had been returned as undelivered mail. Adam said the officer told him that VicRoads does not send out further correspondence to a person after undelivered mail is returned from their address until that person updates their address with VicRoads.

Adam said he had resided at the same address for 16 years, and could not reasonably have known about the returned mail or that there was any need to confirm his address with VicRoads.

This case was compared with a separate complaint to the Ombudsman made by Nicole. Nicole was concerned that VicRoads continued to send correspondence to a person at her address, despite her advising VicRoads that the person did not reside there. Nicole said that other state and federal agencies had also attempted to reach the same person at her address, but had stopped sending letters after she notified them of the error.

Vehicle not registered despite payment

Derek paid the concessional rate to renew his vehicle registration for 12 months in November 2017. Due to an error at Centrelink, VicRoads did not initially accept his concessional entitlement. After contacting Centrelink and resolving the error, Derek contacted VicRoads about registering his vehicle at the concessional rate. He said VicRoads told him on 20 December 2017 he did not need to take any other action to finalise his registration.

In January 2018, Victoria Police officers pulled Derek over and issued him with an infringement notice for operating an unregistered vehicle. The officers told Derek his vehicle appeared on a list of unregistered vehicles provided to Victoria Police. Derek then contacted VicRoads, and his vehicle was removed from the unregistered vehicles list. VicRoads also gave Derek a reference number to use in his application to Fines Victoria for a review of the infringement issued to him.

¹⁶ *Road Safety (Vehicles) Regulations 2009 (Vic)*, reg 66.

Driver unaware of suspension of registration

Valerie purchased an unregistered vehicle and in September paid VicRoads to register it for six months. Sometime later, Valerie logged into her VicRoads account and saw a letter stating VicRoads had suspended her registration from October. Valerie contacted VicRoads who told her she had been sent a letter in October advising of the suspension. Valerie said she did not receive this letter, and when she contacted VicRoads, she was told that her registration renewal had not been processed.

This issue has been raised previously with VicRoads, and is set out in the Ombudsman's 2016 Annual Report, as shown on the following page.

What our complaints told us

The above experiences represent three of the 38 complaints the Ombudsman received about VicRoads' issuing of notices within the six-month review period. Many of the complaints indicated people had received an infringement notice for failing to renew their vehicle registration; and, in some cases, their vehicles subsequently needed roadworthy inspections and repairs.¹⁷

The Ombudsman recognises there is no legal requirement for VicRoads to issue a renewal notice, although it is required to issue a notice of suspension or cancellation.¹⁸ Where VicRoads does issue a renewal notice, this can be taken as a courtesy reminder as part of its customer service to the Victorian community.

¹⁷ A roadworthy inspection is required in circumstances where a vehicle remains unregistered for a period of three months.

¹⁸ *Road Safety (Vehicles) Regulations 2009* (Vic), regs 114, 117.

IT wasn't my fault

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

This issue was the subject of numerous complaints and media commentary in November 2015 as a result of people being fined for driving unregistered vehicles when they had not realised their renewal was due.

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

- conducted an investigation and found its system had failed to send out the incomplete transfer letters but had continued to record that the letters had been sent
- lifted the suspension of 8,512 vehicles and reversed the cancellation of 986 vehicle registrations that occurred as a direct result of this error
- attempted to contact 900 of the 1,432 people (where phone numbers were known) who did not receive renewal notices and issued new notices
- worked with Civic Compliance Victoria and Victoria Police to withdraw fines and compensate customers where appropriate.

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

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

As VicRoads had taken appropriate steps to respond to and resolve the issues caused by its system failure, we did not initiate a formal investigation.

Sharing information

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

Outcomes achieved

The Ombudsman is likely to become involved if a driver receives an infringement notice for driving an unregistered vehicle and we find out that VicRoads sent a renewal notice to the wrong address despite the driver updating their address. In such cases, an informal resolution can involve asking VicRoads to provide information to the driver to help them in a request to cancel the infringement notice.



Refund of permit, fine withdrawn

What was the problem?

VicRoads mistakenly changed the address for all of Naomi's three vehicles, instead of just the one she requested. She did not receive her registration renewal notices because they were sent to the wrong address. A few months later, the police fined Naomi for driving an unregistered vehicle.

VicRoads told her even if she did not receive the renewal notice, it was her responsibility to pay the registration by the due date.

Is it fair?

VicRoads' advice to Naomi was right – it is not legally required to send reminder notices and the vehicle's owner is responsible for renewing their registration. Even though VicRoads acted lawfully, in Naomi's case, our enquiries confirmed VicRoads had made a mistake in changing her address.

What was the outcome?

VicRoads agreed to refund the cost of the permits Naomi had to purchase to re register her three vehicles and requested Civic Compliance Victoria (the agency then responsible for recovering unpaid fines on behalf of police) to withdraw the fine.

In response to the Ombudsman's enquiry, VicRoads said:

VicRoads notes that the introduction of the myVicRoads customer portal enables participating customers to receive notifications of impending registration (renewals via email and/or text message), and to view any registration suspensions online.

The introduction of the *myVicRoads* customer portal has been a considerable success in providing customers with a better way of engaging with VicRoads. Since its inception, more than 1.1 million Victorians have signed up to the portal, with, on average, 90,000 new people registering with the portal every month. VicRoads believes that the ongoing take-up of myVicRoads, with its notification options... will assist in addressing the issue of customers not being aware of impending renewals and suspended vehicle registrations.

...

It should be noted that the Road Safety Act 1986 was amended to include a deemed service provision for VicRoads service of notices. This means that specified notices sent by VicRoads will be deemed to have been served. VicRoads will commence applying this provision mid 2019 following an extensive media campaign to ensure customers are aware of their obligations to keep their details up to date.

Given these developments, the Ombudsman did not make any proposals to VicRoads about its current practices, and will continue to monitor this issue.

The case study below was included in the Ombudsman's 2018 report, *Complaints to the Ombudsman: resolving them early*.



Preventing double suspension time

What was the problem?

Andrew applied to the Magistrates' Court to review VicRoads' decision to suspend his driver licence. His appeal was delayed; and before the court heard the matter, he had already served 19 days of the suspension. The court upheld VicRoads' decision and Andrew received another suspension notice with a new start date.

VicRoads declined Andrew's request to reduce the period to reflect the 19 days he had already served and said that its process is to issue a new notice after the court has heard and decided on a matter. Andrew said the original notice did not say the suspension period would be put on hold until after the court's decision.

Achieving resolution – what did we do?

VicRoads explained that its process of sending a new notice after a court decision made sense when a suspension date did not overlap with a court date. However, we highlighted that the court's delay in hearing the matter was beyond Andrew's control and suggested it was reasonable for him to believe the suspension would apply as noted in the original notification letter.

What was the outcome?

VicRoads agreed to reconsider the matter and decided to recognise the time Andrew had already served. It also said it would provide training for its staff to ensure they consider cases on their individual merits.

... VicRoads has decided ... to amend the Notice of Suspension ... by reducing the associated suspension period by 19 days under s 40(2) of the Road Safety Act 1986 on the basis that the same offence triggered both suspension notices ... VicRoads hopes this clarifies the situation and should you require further information, please contact VicRoads.

Extract of letter from VicRoads to Andrew

Overlapping driver license suspension periods

- VicRoads must suspend driver licences in a number of circumstances.¹⁹
- VicRoads needs to provide a licensed driver 28 days' notice to change, vary, suspend or cancel their licence.²⁰
- VicRoads is not able to run demerit point suspension periods at the same time as a non-demerit point suspension or cancellation.
- VicRoads cannot apply a suspension period to an expired licence.

Over the six month review period, the Ombudsman received 11 complaints about VicRoads' administration of suspension periods. In the following case studies, the Ombudsman encouraged the member of the public to complain to VicRoads first. These complaints prompted the Ombudsman to make broad enquiries into VicRoads' administration of licence suspension periods.

Brad's complaint: *Multiple periods of licence suspensions*

Brad's driver licence was suspended after he accrued too many demerit points. During the suspension period, he received another 12-month suspension period as a result of a court hearing. When the suspension period ended, Brad contacted VicRoads for advice on how he could start driving again. He was told that because his licence had expired in March, he would still have a portion of the suspension period to serve on any new licence issued.

Simon's complaint: *Communication with VicRoads staff*

Simon's driver licence was cancelled after he had been issued drink-driving infringements. Simon was aware that, after the suspension, he needed to install an alcohol interlock on his vehicle.

Simon was then told by VicRoads that because his licence had expired, he would need to apply for a new one. He went through this process and his licence was reinstated. He also paid to install the alcohol interlock on his vehicle.

Later, VicRoads sent Simon a letter saying that a further six-month suspension period would be applied to his licence. This was because the original infringements occurred when Simon was on green P plates and he had accrued too many demerit points.

Simon said VicRoads staff did not tell him about the further suspension period that would apply until after he had reapplied for his licence and paid for the alcohol interlock.

Emily and Jarrad's complaint: *Driver licence cancelled after interlock installed*

Emily contacted the Ombudsman on behalf of her partner, Jarrad. Jarrad's driver licence had been suspended and he was required to install an alcohol interlock at the end of the suspension period. When he successfully reapplied for his licence, Jarrad paid to install the alcohol interlock. VicRoads later told him that his licence would be cancelled again due to additional accrued demerit points.

¹⁹ *Road Safety Act 1986* (Vic), s 24.

²⁰ *Road Safety Regulations 2009* (Vic), reg 80(4).

What our complaints told us

The Ombudsman's review of these complaints and enquiries with VicRoads suggested:

- Some drivers are confused when two different suspension periods overlap.
- VicRoads could improve its communication with registered drivers about pending licence suspensions.
- Some drivers have spent money to install and rent interlock devices assuming their licence would be automatically reinstated. Drivers must also pay a removal fee for these devices.

Overlapping suspension – systemic resolution

In response to our enquiries, VicRoads acknowledged the difficulties that arise where multiple suspensions are applied to driver licences and learner permits.

VicRoads said when it makes a mistake in the information it provides to drivers, its Customer Resolution Team is willing to offer reimbursement for costs the driver incurred.

VicRoads also confirmed it has recommended changes to the *Road Safety Act 1986 (Vic)* so demerit point suspensions will run concurrently with any other suspension or cancellation.

Until this change takes effect, the Ombudsman will continue to monitor and action complaints about VicRoads' administration of suspended or cancelled driver licences.

Victorian Alcohol Interlock Program

On 30 April 2018, the Victorian Government introduced new penalties for drink driving offences. These changes mean that all drink drivers registering a blood alcohol content of 0.05 per cent and over will:

- lose their licence for a minimum of three months
- face mandatory interlock conditions for a minimum of six months
- be required to participate in a behaviour change program.

Exemptions to the Alcohol Interlock Program only apply to a person who can provide medical evidence that they have a medical condition that prevents them from using an alcohol interlock device. If a participant applies for an exemption, VicRoads will also consider whether their health allows them to continue to drive at all.

The above changes mean more people are now participants in the alcohol interlock program.

VicRoads' supervised conditions

At the moment, either VicRoads or the Magistrates' Court manage alcohol interlock conditions depending on the details of the offence. VicRoads manages conditions that relate to:

- a first offence
- a blood alcohol content reading of less than 0.10 per cent
- an offence not involving illicit drugs
- an offence that was on or after 1 October 2014.

Before the state election in November 2018, VicRoads indicated that it would start managing all interlock device conditions from August 2019. On 5 February 2019, the Transport Legislation Amendment (Better Roads Victoria and Other Amendments) Bill 2018 (Vic) was introduced into Parliament, proposing this change.

What is an alcohol interlock device?

An alcohol interlock is an electronic breath testing device that prevents a vehicle from starting if it detects alcohol. The interlock also requests tests at random times during a trip and records all tests and any attempts to drive with alcohol present in the participant's breath.

Participants must provide five months of 'clean data' – data recorded by the device that detects no alcohol on the participant's breath.

These devices have a camera. The camera takes pictures during each trip when tests are recorded to start a vehicle and requested during a trip.

VicRoads' website urges participants not to block the device so that the camera can take a full-face image. Unless the image clearly shows someone else, VicRoads will assume the participant is driving.

Failing to give a breath test, returning a positive test, or tampering with the device results in a 'violation'. If a participant has a violation recorded or if VicRoads considers they have not followed the rules, their five-month period resets. So, the interlock device must remain in their vehicle for longer, at extra cost.

What do participants pay?

The program operates on a cost recovery basis. Full-fee participants pay a monthly fee of \$36.10 and concession participants pay \$18.10 each month. Participants also pay supplier charges for the hire and servicing of the device.

This means, for a six-month program, a full-fee participant will pay at least \$1,321.10 and a concession-fee participant \$1,003.10,²¹ in addition to any costs associated with the infringements incurred.

²¹ Victorian Government, *How to install and use your alcohol interlock*, VicRoads (23 January 2019) <www.vicroads.vic.gov.au/licences/demerit-points-and-offences/drink-driving-offences/installing-and-using-the-alcohol-interlock>.

What our complaints told us

Some complaints about the program indicated VicRoads did not withdraw violations where:

- the participant was not in possession of the vehicle at the time a test request was made
- the participant provided a satisfactory sample shortly after a recorded violation.

VicRoads can choose to record a violation where it is unclear who is in possession of the vehicle. However, the Ombudsman considers the rules imply that there is someone physically in the vehicle and behind the steering wheel, or there is evidence a participant is trying to evade giving a sample. Without this, decisions to uphold violations appear to serve no purpose.

Review of violations – systemic resolution

If a participant is issued a violation, the interlock will remain on their vehicle at their cost. When reviewing a violation, VicRoads should consider:

- the circumstances of the violation
- whether upholding a recorded violation furthers or serves the purposes of the regulations.

VicRoads has agreed with this. VicRoads has also said it would develop business rules for reviewing violations so individual circumstances are considered when applying the '10-minute rule', particularly when participants generally comply with the program or they produce a satisfactory breath sample shortly after the recorded violation. Also, VicRoads indicated it is reconsidering the usefulness of the 10-minute rule and may extend the time for a participant to provide a re test without receiving a violation.

The VicRoads Manager, Driver Relicensing Services told Ombudsman officers they would:

- review the Team Leader's decision-making level so that individual circumstances would be reasonably considered
- seek advice from VicRoads' Legal Services Manager about the appropriate exercise of discretion.

The Ombudsman will continue to monitor complaints about the administration of the alcohol interlock program and will consider any further themes in complaints after VicRoads' supervision role is extended in August 2019.

Outcomes achieved

The following cases highlight complaints about VicRoads' reviews of violations issued under the Victorian Alcohol Interlock Program. The Ombudsman made enquiries with VicRoads to informally resolve these complaints.



Reflecting the purposes of the law - violation withdrawn

Sally's complaint was published in the Ombudsman's report, *Complaints to the Ombudsman: resolving them early*, in July 2018.²²

What was the problem?

Sally's driver licence had an alcohol interlock device condition.

When Sally had her car cleaned at a carwash, the device sounded twice when she was not in the vehicle. Two violations were automatically recorded as she did not provide samples. The camera recorded a worker cleaning the boot of the car and a plastic cover over the driver's seat. After Sally got back into the car, the device sounded again and she provided a clean sample.

Sally asked VicRoads to remove the recorded violations because she was not in the car at the time. VicRoads said it would not withdraw the violations because, under the regulations, if it is unclear who is in possession of the vehicle when the device sounds, it could record a violation against the licence. This meant the device would stay on Sally's car for another six months, costing her at least \$1,110 in rental and administrative fees.

Achieving resolution - what did we do?

VicRoads could legally issue the violations but under the regulations it was not required to issue them. We called VicRoads and spoke with the interlock team. We said the decision did not seem to reflect the purpose of the regulations - to ensure people with a device fitted to the car do not drive with alcohol in their system.

What was the outcome?

VicRoads agreed to remove the violations, as Sally had provided a clean sample when she returned to her car.

The Ombudsman said:

Considering the purposes of the law when applying a discretion can strengthen the administrative decisions and actions of authorities.

In this case, VicRoads' initial decision to not remove the violations was legal, but made no practical sense. By speaking informally to a person at VicRoads who could review the circumstances and assist in resolving it, a solution that supported the regulations being applied flexibly was achieved.

²² Victorian Ombudsman, *Complaints to the Ombudsman: resolving them early*, 2018, 11.

Photograph recorded by Sally's device showing that nobody was in the vehicle at the time the device requested the sample.



Photograph recorded by Sally's device showing a plastic covering on the driver's seat. This supports Sally's statement that her vehicle was at a car wash at the time the device requested the sample.



'The photo evidence ... clearly shows a plastic seat cover on the unoccupied driver's seat ... I find it beyond ridiculous and extremely unfair that such a simple and innocent occurrence could lead to me, after an impeccable record for the first five months of this six month program, to now be made to start over again from the beginning at extraordinary cost, embarrassment and inconvenience. The camera in the car is placed there to ensure both fairness and reliability of a system that has proved to be anything but.'

Sally



VicRoads' 10 minute rule - violation withdrawn

What was the problem?

Jeffrey's driver licence had an alcohol interlock device condition.

During a trip, the device requested a breath sample. A violation was automatically recorded after Jeffrey did not provide a satisfactory sample 10 minutes after the request. The violation meant he would have the device on his vehicle for longer and incur additional fees.

Jeffrey asked VicRoads to review this decision because:

- he tried to provide a sample several times within the 10 minutes, but the device was not working
- he did provide a satisfactory breath sample at 10 minutes and 53 seconds.

VicRoads did not revoke the violation because under the Alcohol Interlock Program Rules, a driver must provide a satisfactory breath sample within the 10 minute period. Jeffrey provided the Ombudsman with a copy of the device history, which recorded the attempts he had made before he managed to provide the satisfactory sample.

Achieving resolution - what did we do?

VicRoads' Manager, Driver Relicensing Services told us:

- under the regulations, VicRoads can issue a violation to a participant who fails to provide a satisfactory breath sample
- the regulations do not define what 'fail' means
- VicRoads developed the 10-minute rule to add some leniency to what was otherwise a strict liability violation
- VicRoads applies this rule strictly.

We highlighted the importance of considering individual circumstances in administrative decision-making and being flexible so that outcomes reflect the objectives of the law.²³ We acknowledged that the 10 minute rule was introduced to provide a level of flexibility, however, we suggested that in exceptional circumstances, such as Jeffrey's, VicRoads should consider exercising discretion to waive the violation.

What was the outcome?

The manager agreed to discuss this approach with VicRoads' legal department. As a result, the violation was withdrawn. We confirmed with VicRoads the expectation that it would consider individual circumstances and, in exceptional circumstances, apply the 10-minute business rule flexibly.

²³ Namely, that people who are convicted of a drink driving offence demonstrate that they do not have alcohol in their system while using Victorian roads.



Violation removed by court

What was the problem?

Evan's driver licence was subject to an alcohol interlock device condition.

One day, Evan started his vehicle and produced a satisfactory breath sample. His drive lasted for about 15 minutes and, at the end of it, the device requested another sample. Evan said he did not hear the second request and the photographs taken showed there was no one in the vehicle at the time of the request.

Evan had been issued with two violations before. The first violation was in the first month for not producing a sample. VicRoads waived the second violation because, although Evan did not provide a sample within 10 minutes, he did provide a satisfactory breath sample at 12 minutes.

VicRoads said it would not waive the recent violation because there was no information to indicate the device was faulty. This violation represented 0.17 per cent of the 564 successful 'pass' readings Evan had produced.

When Evan contacted the Ombudsman about this violation, he provided a copy of a letter from his psychologist. The letter detailed his mental health condition that was contributing to his alcoholism and said 'he would not have knowingly ignored the interlock device'.

Achieving resolution – what did we do?

We contacted VicRoads' Manager, Driver Relicensing Services to discuss Evan's complaint. They told us that VicRoads did not think it was appropriate to withdraw the violation. VicRoads had already waived one violation for Evan and its staff had spoken with him about the importance of always providing a sample when requested.

VicRoads said the Magistrates' Court had also received an application from Evan to revoke the violation and that the court had agreed to remove it. VicRoads said it was not aware of the court's reasoning for this decision,²⁴ but noted Evan did have a good history of complying with the program.

What was the outcome?

The substance of Evan's complaint was resolved when the court waived the violation. The Ombudsman did, however, note to VicRoads that it may be that the court too recognised Evan had an overwhelmingly positive record, and on this basis, decided to waive the violation. The Ombudsman believed that VicRoads should have considered this when it received Evan's request to review the violation.

²⁴ Victoria Police has been the body responding to these applications.

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October 2018

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April 2018

Investigation of a matter referred from the Legislative Council on 25 November 2015

March 2018

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Investigation into the financial support provided to kinship carers

December 2017

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Investigation into the management of maintenance claims against public housing tenants

October 2017

Investigation into the management and protection of disability group home residents by the Department of Health and Human Services and Autism Plus

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Enquiry into the provision of alcohol and drug rehabilitation services following contact with the criminal justice system

September 2017

Investigation into Victorian government school expulsions

August 2017

Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board

June 2017

Apologies

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Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board

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Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville

February 2017

Investigation into the Registry of Births, Deaths and Marriages' handling of a complaint

January 2017

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Ombudsman enquiries: Resolving complaints informally

October 2016

Investigation into the management of complex workers compensation claims and WorkSafe oversight

September 2016

Report on recommendations

June 2016

Investigation into Casey City Council's Special Charge Scheme for Market Lane

June 2016

Investigation into the misuse of council resources

June 2016

Investigation into public transport fare evasion enforcement

May 2016

2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting

December 2015

Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations

November 2015

Investigation into the rehabilitation and reintegration of prisoners in Victoria

September 2015

Conflict of interest by an Executive Officer in the Department of Education and Training

September 2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight

June 2015

Investigation into allegations of improper conduct by officers of VicRoads

June 2015

Investigation into Department of Health oversight of Mentone Gardens, a Supported Residential Service

April 2015

Councils and complaints – A report on current practice and issues

February 2015

Investigation into an incident of alleged excessive force used by authorised officers

February 2015

2014

Investigation following concerns raised by Community Visitors about a mental health facility

October 2014

Investigation into allegations of improper conduct in the Office of Living Victoria

August 2014

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