

Investigation into the issuing of infringement notices to public transport users and related matters

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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 the Parliament a report of an investigation into the issuing of infringement notices to public transport users and related matters.



G E Brouwer

OMBUDSMAN

20 December 2010

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During 2008 and 2009, my office received 189 complaints about infringement notices issued to public transport users for offences such as failing to travel with a valid ticket.

With a minimum fine of \$176 for adult offenders, the fines are designed to be a major deterrent, for what in some instances are offences that equate to lost revenue of only a few dollars.

My investigation identified that the oversight of the authorisation of public transport officers and their subsequent compliance with conditions attached to that authorisation is inadequate.

EXECUTIVE SUMMARY

1. During 2008 and 2009, my office received 189 complaints about infringement notices issued to public transport users for offences such as failing to travel with a valid ticket. Analysis of these complaints and enquiries with the department identified the following issues:
 - Insufficient training of authorised officers in the use of discretion when issuing infringement notices.
 - The department's processing of authorised officer reports is not a rigorous or transparent process.
 - Commuters who request an internal review and challenge the issuing of their infringement notice are not provided with a specific response to address their concerns.
2. As a result, I decided to conduct an own motion investigation into the issuing of public transport infringement notices.
3. The Department of Transport (the department) is the lead agency responsible for the development and management of the public transport network in Victoria.
4. Public transport is provided by a range of private companies under franchise agreements with the Victorian Government.
5. The primary role of the transport infringements system and its authorised officers is to discourage fare evasion and protect the revenue derived from ticket sales. To enable authorised officers to fulfil this role, they must be 'authorised' by the Secretary of the department. There are currently around 545¹ authorised officers employed by transport operators. These officers are variously referred to as ticket inspectors, inspectors, revenue protection officers or customer service employees.
6. In 2009-10:
 - the department issued 171,835 ticket infringements
 - \$638.4 million was generated in revenue from ticket sales
 - \$15.6 million was generated from infringements or statutory fines.
7. With a minimum fine of \$176 for adult offenders, the fines are designed to be a major deterrent, for what in some instances are offences that equate to lost revenue of only a few dollars.

Authorisation of ticket inspectors

8. As the regulator of the system's authorised officers, the department has an obligation to monitor and manage the officers' behaviour and conduct for purposes of ongoing authorisation. My investigation identified however, that the oversight of the authorisation of public transport officers and their subsequent compliance with conditions attached to that authorisation is inadequate.

¹ Department of Transport website as at 7 December 2010.

9. My investigation identified a number of instances of officers being authorised and re-authorised despite non-compliant behaviour, including:
 - officers having accrued significant traffic infringements of over \$8,000
 - an officer having been the subject of an intervention order for alleged violent behaviour
 - two officers having been charged with drug possession
 - several incidents where officers failed to comply with specific conditions inserted into their authorisation regarding non-compliant behaviour.
10. In each of these examples the department failed to take appropriate action to revoke or suspend the officer's authorisation.
11. The current oversight of the authorisation of public transport officers and their subsequent compliance with conditions is inadequate. While the department clearly sets out the conditions of authorisation, and has more than sufficient legislative power to deal with non-compliance, it has failed to address unsatisfactory behaviour on a number of occasions.
12. The department's officer authorisation process is inefficient and results in the authorisation of officers who may be inappropriate for such duties.

Failure of operators to report incidents

13. There is a legislative requirement for accredited transport operators to notify the department of any serious incidents involving authorised officers within 14 days of the incident occurring. My investigation identified that this reporting requirement was not being adhered to by all operators, and that the department was not being vigilant in ensuring compliance. Where operators did provide reports of complaints about authorised officers, these reports were provided to the franchise relations area. My officers were told in May 2010 that the area responsible for authorised officer regulation and authorisation had only just become aware that these reports existed.
14. In the period 2008-10, the transport operators only reported three incidents. I find it difficult to believe that this represented a true picture. Since drawing this issue to the attention of the department it advised that it had implemented a trial of agreed reporting criteria and timeframes with three operators. From 27 September 2010 to 19 November 2010, 66 notifications were received. This confirms that the notification by operators of serious incidents involving authorised officers in the two year period 2008-10, was unsatisfactory.

My investigation identified a number of instances of officers being authorised and re-authorised despite non-compliant behaviour, including: significant traffic infringements, being the subject of an intervention order and being charged with drug possession.

The current oversight of the authorisation of public transport officers and their subsequent compliance with conditions is inadequate.

The notification by operators of serious incidents involving authorised officers in the two year period 2008-10, was unsatisfactory.

Closed Circuit Television (CCTV) footage has highlighted examples of inappropriate authorised officer conduct and use of excessive force.

Authorised officers do not issue infringement notices direct to offenders. I see no reason why authorised officers should not issue infringement notices direct to commuters, rather than the current cumbersome process which adds no value as no meaningful review takes place.

I am concerned with what appears to be at best a cursory assessment of requests for review.

Use of excessive force

15. Closed Circuit Television (CCTV) footage provided to my office has highlighted a number of examples of inappropriate authorised officer conduct and use of excessive force. Of concern was that the incidents in question were referred to the department by the operators for possible prosecution of the commuters involved. In my view this demonstrates that authorised officers and their managers are clearly not aware of the limitations on the appropriate use of their powers, or are ignoring them. Similar concern about authorised officer conduct has been expressed in recent court cases. I have decided to release the CCTV of four such incidents as I consider that it is in the public interest to do so.

Issuing of infringement notices

16. Authorised officers do not issue infringement notices direct to offenders, but instead make a Report of Non-Compliance (RONC) that is forwarded to the department for it to issue an infringement notice.
17. My investigation identified that up until March 2010, one entry level administration officer was primarily responsible for processing up to 200,000 RONCs a year and determining whether these would progress to an infringement notice. At interview the officer estimated that this process could take as little as 10-15 seconds per RONC.
18. In essence, the department relies on the RONC report from the authorised officer that an offence has been committed and will not generally review the merits of a matter unless a subsequent request for review is submitted by a commuter following receipt of the infringement notice.
19. I consider that the current process of authorised officers 'reporting' commuters to the department gives the public the impression that a more thorough, merits based review occurs with the department. My investigation identified that this was not the case. I see no reason why authorised officers should not issue infringement notices direct to commuters, rather than the current cumbersome process which adds no value as no meaningful review takes place.

Internal review of the issuing of infringement notices

20. I am concerned with what appears to be at best a cursory assessment of requests for review and the lack of details recorded regarding the decision-making process and reasoning. The lack of detail provided in the department's review letters tend to give commuters the impression that their individual circumstances have not been considered and may influence the number of matters referred to the Infringements Court.

21. Of the 29,413 internal reviews undertaken in 2009-10, the department withdrew the infringement notice in 49.4 per cent of cases. In 2008-09 52.4 per cent were withdrawn. It is clear that if you appeal the issue of an infringement, there is a 50 per cent chance that it will be withdrawn.
22. The internal review process should provide a check on the legitimacy and fairness of the original decision and enable inappropriate decisions to be overturned before any significant enforcement action has commenced. The internal review process is a key initiative to making the infringements system fairer. The public should be able to have confidence that an appeal to the department to review the decision to issue the infringement should be undertaken comprehensively and consistently. Unfortunately it appears that this is not the case.
23. I do not consider that the current review of infringements issued and case review outcomes conducted by the department's internal auditors is sufficient to be relied upon as validation of quality processes and outcomes.
24. The department's current IT database used to record assessment and decision details regarding requests for review is inadequate. The failure of the department to state what evidence is necessary for a review may result in inconsistent decision-making and may impact on the efficiency and fairness of the infringements system.
25. I have made a number of recommendations, including that the department:
 - review the authorised officer accreditation process
 - introduce the practice of authorised officers issuing infringement notices
 - review operational matters including the appropriateness of authorised officers operating in plain clothes
 - take action to ensure that the operators have appropriate systems in place to meet their statutory obligations in relation to reporting notifiable incidents and occurrences.
26. The department has accepted all but one recommendation, which is that authorised officers be required to issue infringement notices direct to commuters. The department considers that this recommendation may increase the risk of harm to authorised officers. I disagree with this view. However the department has implemented a research project to attempt to assess the likely impact on authorised officers of this recommendation.
27. I wish to place on the record the cooperation provided by the department in the course of my investigation and its prompt action to deal with the inadequacies of its processes identified in this report.

I do not consider that the current review of infringements issued and case review outcomes conducted by the department's internal auditors is sufficient.

The department's current IT database used to record assessment and decision details regarding requests for review is inadequate.

BACKGROUND

The infringements system

28. The infringements system in Victoria plays a critical role² in regulating community behaviour across industries and occupations as well as protecting the physical environment to achieve public order, safety and amenity.
29. Around 130 agencies – government departments and authorities, local councils, universities and hospitals – issue infringement notices for minor statutory offences relating to parking, speeding, polluting the environment, public transport offences, non-registration of animals and breaches of industry regulations.
30. Commencing in mid-2006 the new infringements framework introduced significant changes for enacting and administering around 2,000 infringement offences. The accompanying guidelines, provided by the Attorney-General's office,³ state that the aim of the changes was to provide a fairer and firmer fine system. *Fairer*, in that the system seeks to better protect those who are vulnerable and inappropriately caught in the system. People who receive an infringement can also request that an agency review the decision to issue the infringement. For *firmer* enforcement, the system introduced a range of sanctions where payment has not been made.
31. The Attorney-General's guidelines outline a number of principles upon which the *Infringements Act 2006* (the Infringements Act) is based, including:
 - the balancing of fairness (lower fine levels, convenience of payment, consistency of approach) with compliance and system efficiency (reduced administration costs, no need to appear in court, no conviction)
 - the provision of a rapid and certain response for lower level offences appropriate for infringements, with deterrence dependent on people being aware they are likely to be detected offending and dealt with through less severe penalties
 - a requirement that individual circumstances be taken into account
 - a recognition of genuine special circumstances, both at the time of issuing an infringement notice, and during the enforcement process.
32. The introduction of the Infringements Act was also accompanied by a number of supporting regulations regarding public transport, including the *Transport (Ticketing) Regulations 2006* and the *Transport (Infringements) Regulations 2006* (now 2010) (the regulations).
33. The stated goal is for everyone travelling on public transport to pay the correct fare. The Department of Transport (the department) and the system operators aim to ensure the maximum number of patrons achieve this goal and minimise fare evasion.

2 Victorian Auditor-General's Office, *Withdrawal of Infringement Notices*, June 2009, page 1.

3 Attorney-General's Guidelines to the *Infringements Act 2006*, pages 2-3.

Complaints to my office

34. During 2008 and 2009, my office received 189 complaints about infringement notices issued to public transport users for offences such as failing to travel with a valid ticket. Analysis of these complaints and enquiries with the department identified the following issues:
- Insufficient training of authorised officers (sometimes referred to as AOs) in the use of discretion when issuing infringement notices.
 - The department's processing of authorised officer reports is not a rigorous and transparent process.
 - Commuters who request an internal review and challenge the issuing of their infringement notice are not provided with a specific response to address their concerns.
35. As a result, I decided to conduct an own motion investigation into the issuing of public transport infringement notices. I advised the Minister for Transport and the Secretary of the department on 29 December 2009 of my intention to conduct this investigation.

Investigation methodology

36. My investigation involved:
- interviewing staff from the department and senior managers from the private operators contracted by the Victorian government to operate the public transport system
 - examining departmental files including obtaining information from the Department of Justice
 - reviewing relevant policy documents, legislation and research
 - observing authorised officers on metropolitan trams and trains performing their functions.
37. In the course of this investigation 11 witnesses were interviewed, nine on a voluntary basis and two under summons. The department was provided with a draft copy of my report and, I understand, liaised with transport operators, to consider the contents of the report, and to have the opportunity to comment. Those responses have been included in this report.

Key stakeholders

The Department of Transport

38. The Department of Transport (the department) is the lead agency responsible for the development and management of the public transport network in Victoria. Its responsibilities are divided amongst several divisions and authorities, as follows:
- The Public Transport Division coordinates and monitors passenger bus, train and tram services. It also manages contracts with the operators which deliver public transport services.

- Public Transport Safety Victoria is the rail and bus safety regulator. It is responsible for accrediting bus, train and tram operators.
 - The Transport Ticketing Authority oversees the current public transport ticketing system contract and procures and manages the new ticketing system.
39. The department oversees all aspects of the infringement process including:
- the authorisation of authorised officers
 - consideration of Reports of Non-Compliance (RONC)
 - the issuing of infringement notices to public transport users for ticketing and related offences as well as for offences related to car parking at railway stations
 - assessment of requests for reviews of infringement notices
 - prosecution of infringement matters in court
 - administration of payment plans for infringement fines.
40. In 2009-10 the department:
- received 173,426 RONC from authorised officers
 - issued 171,835 ticket infringement notices
 - received 29,413 requests for a review of the issuing of an infringement notice
 - overturned the original decision to issue an infringement (infringement withdrawn or official warning issued) in 14,529 (49.4 per cent) of these requests for review
 - prosecuted a further 967 matters at the infringements court
 - referred 142 matters relating to special circumstances to the Infringements Court for consideration.
41. The offence of 'Failing to Produce a Valid Ticket' was by far the most commonly issued infringement by the department in 2009-10, being 70 per cent of all infringement notices issued.
42. In 2009-10 the department generated \$15.6 million from infringement fines (\$16.5 million in 2008-09).

Public Transport operators

43. Public transport is provided by a range of private companies under franchise agreements with the Victorian Government. Tram and train companies operate under a Franchise Agreement with the Director of Public Transport and private bus companies operate under a Transport Service Agreement with the Director.
44. The *Transport (Compliance and Miscellaneous) Act 1983* (the Act) requires that these operators obtain accreditation before they can employ and manage authorised officer staff. To be accredited, the departmental Secretary must be satisfied that a company is competent to manage authorised officers and has appropriate training programs and systems to manage their performance and to record incidents, complaints and the actions taken. The following private companies are currently accredited:

- Yarra Trams – the metropolitan tram operator
- Metro Trains – the metropolitan train operator, from 30 November 2009, previously Connex Melbourne
- V/Line – the country train operator
- Grenda’s Bus Lines, National Bus Company, Ventura Bus Lines – metropolitan and regional route bus services.

Metlink

45. Metlink is a consortium of public transport operators responsible for the coordination and delivery of key network-wide public transport functions: from ticketing; information provision; new signage; system advocacy and complaint handling.⁴
46. Metlink’s membership includes all metropolitan train, tram and bus operators, V/Line Passenger Pty Ltd and other regional operators. Metlink is responsible for receiving at first instance all public passenger transport complaints against its stakeholders. Metlink registers complaints and forwards these to the relevant public passenger transport operator.

Myki

47. The Myki system and its problems have been well publicised. During my investigation, Myki was in testing phase and only operational in zones 1 and 2 of the metropolitan networks, which included some limited V/Line services. I have not investigated the Myki system nor its uptake as it is still in its introductory stage.

Authorised officers

48. Currently there are around 545⁵ authorised officers employed by the transport operators. These officers are variously referred to as ticket inspectors, inspectors, revenue protection officers or customer service employees.
49. My investigation focused primarily on the two largest employers of authorised officers, Metro Trains (over 360 officers) and Yarra Trams (over 160 officers).
50. The primary role of an infringements system and its authorised officers is to discourage fare evasion and protect the revenue derived from ticket sales.
51. To enable authorised officers to fulfil this role, they must be ‘authorised’ by the Secretary of the department. The authority bestowed upon authorised officers through this process includes powers to:
 - serve infringement notices for ticket or other offences
 - require a person to state his or her name and address
 - request evidence of the correctness of the name and address
 - detain or arrest a person if necessary to:

⁴ Public Transport Ombudsman Limited Charter 2007, page 2.

⁵ Department of Transport website as at 7 December 2010.

- o ensure appearance of the person at court
 - o preserve public order
 - o prevent continuation or repetition of an offence
 - o ensure the safety or welfare of the public or the person concerned
 - o remove a person and that person's property from a bus, train or tram or from company premises or property
 - o require a person to produce a valid ticket and proof of entitlement to a concession fare entitlement
 - prosecute offences for:
 - o smoking on a train, tram or bus
 - o protruding from a door or window of a train or boarding or leaving a train while it is in motion
 - o trespassing or crossing a railway line other than at a crossing or when signals at a crossing are operating
 - o damaging or defacing property including writing graffiti
 - o placing feet anywhere other than on the floor.
52. In addition, around 25 departmental staff are authorised officers for purposes of prosecuting offenders reported by authorised officers employed by transport operators. Authorised officers may only exercise their statutory powers when employed by an accredited company or the department.
53. The role of authorised officers is varied as they perform other functions in addition to their core enforcement activities (of ticketing and behavioural offences). The *Code of Conduct for Public Transport Authorised Officers* states the compliance by authorised officers is necessary for safe, efficient and effective operation of public transport. It also sets out the primary objectives for authorised officers being to:
- provide good service to all public transport passengers
 - provide assistance to the travelling public on all aspects of public transport services
 - act as a deterrent to vandalism, fare evasion and anti-social behaviour
 - when necessary be responsible for reporting all offences against the Act and regulations
 - ensure that the highest degree of integrity and professionalism is maintained at all times.

Revenue

54. Revenue derived from ticket sales amounted to \$638.4 million in 2009-10.

55. Metlink has the responsibility of conducting and presenting research reports into fare evasion on public transport. These reports, titled the 'Fare Evasion and Valid Concession Percentage survey' have been prepared bi-annually since 2005 and include estimates of fare evasion based on surveys conducted by authorised officers in May and October.⁶ The annual impact of Fare Evasion for 2009 estimated in these reports was \$64.6 million.⁷ Details for 2010 were not available at the date of this report.
56. The *Transport (Infringement) Regulations 2010* prescribe that transport operators are paid an administration fee of \$30 per infringement issued. Representatives from Metro and Yarra Trams advised that this administration fee was a nominal one, to cover the costs of the operator. The department's 2009-10 annual report records \$1.3 million was returned to operators for 'administrative costs associated with ticket infringements'.⁸
57. The infringement types and level of fines as outlined in the *Transport (Infringement) Regulations 2010* are included in Appendix 1. With a minimum fine of \$176 for adult offenders, the fines are designed to be a major deterrent, for what in some instances are offences that equate to lost revenue of only a few dollars.

6 Fare Evasion/Valid Concession Percentage Survey Results, Second Half 2009.

7 *ibid.*

8 Department of Transport, *Annual Report 2009-10*, page 86.

APPOINTMENT OF AUTHORISED OFFICERS

Recruitment

58. Authorised officer positions are advertised by the transport operators, usually via a recruitment consultancy. Applicants are required to submit to a pre-selection interview, psychological testing and role plays before being selected to undergo the requisite training.
59. Selected applicants must then undergo a six-week training course to obtain a Certificate III in Public Transport Customer Service and Compliance (the certificate). There are 22 modules of which three are provided by the department. They include law enforcement; use of force and an officer's legislative powers and obligations. Applicants are also required to pass an examination in order to obtain the qualification.
60. The remaining 19 modules are provided by tertiary education providers: Victoria University for the Bus Association Victoria, Grenda Bus, Metro Trains & V/line; and Ballarat University for Yarra Trams.
61. Following the successful completion of the initial six-week training course, and authorisation from the department, authorised officers are subject to a further two-year probation period in which they must use their experience and knowledge obtained on the job to complete the requirements for obtaining the certificate.

Authorisation

62. Following successful completion of the six-week training course, the department receives an *Application for Authorisation* accompanied by written confirmation that the applicant officer is employed or engaged by an accredited transport operator.
63. The Applications for Authorisation provide details regarding an officer's background and suitability for the position, including whether they:
 - are of good repute
 - have been found guilty of an offence by a court
 - have been charged with or have any matter either still under investigation or yet to be dealt with by a court
 - have incurred any fines or penalties with the Infringements Court or any other enforcement agency that remain unpaid
 - have ever been issued with either a ticket infringement notice or a transport infringement notice or charged with any offence under the Act or regulations in the past 10 years
 - have applied for a licence, permit or certification and been refused
 - had a licence, permit, or certification cancelled, revoked or varied
 - have been a defendant in any application under the *Crimes (Family Violence) Act 1987* or the *Crimes Act 1958* in respect to either an interim intervention order or an intervention order.

64. According to the department's Policy Guidelines for Authorised Officers Under Division 4AA of Part IV of the *Transport (Compliance and Miscellaneous) Act 1983* (the Act), there are a number of matters that 'in the absence of compelling evidence to the contrary', would justify refusal to authorise a person. These include:
- imprisonment, and
 - findings of guilt or charges proven regarding:
 - o indictable offences – or shop stealing warning notice
 - o summary offences – regarding dishonesty, violence, assault or property damage
 - o drug-related offences – regarding the possession, use or sale or dealing of illegal drugs
 - o serious traffic offences – an indictable offence; driving under the influence of alcohol or drugs; driving while suspended, cancelled or disqualified in the previous 10 years
 - o other matters – outstanding warrants or court orders; being charged with or awaiting a hearing for a criminal offence; being subject to an intervention order or found guilty of a breach of an intervention order; impersonating an authorised officer; breach or laws relating to security work; firearms or weapons related offences.
65. The Secretary of the department has the power under section 221D of the Act to set the conditions of an officer's authorisation.
66. Applicants for authorised officer positions are not required to make any declaration regarding their criminal history or character until after they have undergone the pre-selection process with the operator and the six-week training course.
67. At this stage applicants are required to submit to a National Police Check. This check, conducted by Victoria Police, lists any disclosable court outcomes registered in the records of any Australian State or Territory, or of the Australian Federal Police. An applicant's initial National Police Check also involves a fingerprint search.

Defects in authorisation process

68. My investigation reviewed 32 of the department's authorisation files. From this sample, two instances were identified where an applicant had been authorised despite the National Police Check having been conducted using the wrong date of birth. Whilst one of these errors had been highlighted on file, on neither occasion does it appear that the department had addressed this oversight.
69. In one of the examples, a further check was conducted on the correct details three years later when the officer applied for re-authorisation. However, in the other example there was no evidence of a further check having been conducted between 2003 and February 2010 when the officer's employment was terminated in relation to an alleged assault. I understand that a National Police Check is conducted on the specific details provided, and does not search for 'similar' records.

70. My investigation also identified two examples where there was no evidence on the department's files of a National Police Check having been conducted. In one example this check appears to have been overlooked at the time of the officer's original application for authorisation while the other example related to an application for re-authorisation. In both instances, this error does not appear to have been noted or addressed and further police checks were not undertaken until three years later, when both applicants were applying for re-authorisation.
71. Witnesses from Metro, Yarra Trams and the department have told my investigation that applicants must also undergo an interview with the department as part of the authorisation application process. I note that the records of such interviews were handwritten notes that were generally very brief and at times barely legible.
72. The review of the sample of 32 authorisation files also identified a number of instances where an applicant was given 'authorisation' by the department, despite having a history of offences which should have brought into question their suitability for the authorised officer role.
73. I also note that under condition two of the department's 'Schedule of Standard Conditions'⁹, authorised officers are required immediately to notify their employer, and the department in writing, of any criminal charge laid against them, including traffic offences.
74. In addition to the above condition, the department also has the following powers under the Act to:
- Section 221J – Conduct an inquiry into an officer's conduct
 - Section 221L – Suspend or revoke an officer's authorisation.
75. In one example, an authorised officer submitted an application for re-authorisation in 2007. The officer failed to disclose any offences or infringements in this application, yet then submitted a further application in January 2008 in which he subsequently advised of 57 infringements, mostly E-tag fines incurred between 2006-07 totalling \$9,634.
76. The authorised officer in question has been authorised since 2003, and had been made aware that, as a condition of authorisation, he was required to notify the department of infringements when incurred.
77. In another example, an authorised officer had a number of infringement matters at the time of his original authorisation and had accumulated a total of 32 demerit points for traffic offences over 13 years. The officer had also declared a charge of possession of cannabis in his original application for authorisation, for which he had received a good behaviour bond.
78. In October 2003 the department wrote to the officer noting that he had 'incurred traffic fines since your initial authorisation in October 2000 and that as a result you lost your licence for a period of three months'. As a result a specific condition was inserted into his authorisation that he 'immediately report to me [the department] during the period of reauthorisation any traffic or other convictions recorded against you'.
79. The officer incurred a further three infringements: January 2005, November 2006 and February 2007. The department's file does not indicate any evidence that the authorised officer had notified the department of these further infringements at the time they were incurred, despite this being a specific condition of his authorisation.

⁹ Schedule of Standard Conditions under section 221D(1)(b) of the *Transport (Compliance and Miscellaneous) Act 1983* for external authorised officers.

80. Notwithstanding this failure to adhere to this condition, and the general conditions of authorisation regarding notification of infringements/offences, the officer's authorisation was renewed by the department in January 2008. The department did not take any action in relation to these breaches, nor did it apply any further conditions to his re-authorisation.
81. Further examples identified included two applicants for re-authorisation who had accumulated fines of over \$3,000 and \$8,000 respectively in traffic infringements whilst 'authorised' and two other cases where an applicant had been charged with drug possession, albeit of a minor amount, and without conviction.
82. My investigation did not identify any examples where the penalties referred to in the Act, and the Schedule of Conditions had been enforced for a breach of an officer's conditions of authorisation.
83. A total of six out of 32 authorised officers were given inadequate authorisation checks. If proper checks had been made some of these may not have been authorised. This is of concern.

Conclusions

84. The current oversight of the authorisation of public transport officers and their subsequent compliance with conditions is inadequate. While the department clearly sets out the conditions of authorisation, and has more than sufficient legislative power to deal with non-compliance, it has failed to address unsatisfactory behaviour on a number of occasions.
85. The department's officer authorisation process is inefficient and results in the authorisation of officers who may be inappropriate for such duties. The requirement to declare any criminal history and undergo a National Police Check only after they have been selected by the operator and undergone six weeks' training places unreasonable pressure on the department to authorise applicants who do not meet the authorisation criteria. The longer the process continues prior to authorisation, the greater the expectation by the officer to be appointed.
86. The example identified of two National Police Checks having been conducted on the wrong details demonstrates a lack of attention in the department's assessment of applications for authorisation. It also leaves the department with no confirmation of either applicant's possible criminal history.
87. The suitability of officers for authorisation cannot be assured if the department's National Police Checks are not rigorous. I am concerned as to how many other incomplete checks may have occurred and remain undetected.
88. I note that there is a considerable pool of persons interested in employment in an authorised officer position (over 500 as at March 2010). Therefore there is no shortage of replacement officers.¹⁰

¹⁰ Metro Quarterly Report to Department of Transport, March 2010, page 86.

Recommendations

I recommend that the department:

Recommendation 1

Review its officer accreditation process and practices to ensure that the authorisation/re-authorisation of officers is thorough. Specific consideration should be given to:

- a) Requiring applicants to declare their criminal history prior to undertaking the training course.
- b) Undertaking the National Police Check either prior to training or once an applicant has successfully completed the training course, and include the option to decline authorisation on the ground of character and integrity, where an applicant is found to have a criminal/infringement history that was not previously declared.
- c) Develop a checklist for assessing applications for authorisation including a requirement to document formally interviews with applicants.
- d) Develop criteria for appointment of authorised officers including: character, antecedents, and types of convictions.
- e) Ensure that adequate records are kept of any declarations of infringements and the action taken by the department during re-authorisations.
- f) Develop criteria for suspending or revoking authorisation when an officer breaches set conditions.
- g) Enforce established authorisation criteria – where an applicant’s history does not satisfy the criteria set out by the department, the application should be rejected.

The department’s response

Accepted – The processes for authorising, re-authorising and disciplining officers have been amended and will take effect from next intake. New process criteria to be considered for both authorisation and disciplinary processes have been set out in a new manual, which is almost ready for roll out with the relevant DOT team.

Recommendation 2

Amend its authorisation guidelines on the basis of the abovementioned review and provide training to departmental and operator staff involved in the assessment of authorised officer applications.

The department’s response

Accepted – See response to Recommendation 1. In addition, consultation has already occurred with the operators concerning the proposed changes. Training of staff using the draft internal guideline has been conducted.

Recommendation 3

Conduct an audit of the National Police Checks undertaken of authorised officer applicants over the last three years to ensure that the correct authorised officer information was used.

The department's response

Accepted – A sample of current files will be audited.

Recommendation 4

Review all current officers' authorisation records and where officers do not meet the department's authorisation criteria, they should be flagged for closer scrutiny upon their re-authorisation.

The department's response

Accepted.

REPORTING OF INCIDENTS INVOLVING AUTHORISED OFFICERS

Statutory requirement of the operators to report incidents

89. Accredited operators are required to record and notify the department of incidents involving authorised officers. For example each accredited company is required to:
- notify the department in relation to certain incidents or occurrences as defined in the Act
 - advise the department of incidents where there has been an arrest of a commuter
 - record all complaints made against authorised officers in compliance with the *Metlink Services Agreement*.
90. The majority of the department's processes subject to my investigation are oversighted by the Legal Division, Government Branch which is ultimately responsible for the accreditation of transport operators/ companies.
91. Once accredited, transport operators are then able to employ authorised officers. This authorisation process is overseen by the Authorised Officer Regulation, Training and Accreditation team which is responsible for the regulation of authorised officers, monitoring of their training and conduct, and where necessary, taking disciplinary action. This team reports to the Legal Division.
92. The Legal Division also houses the Prosecutions and Investigations area which prosecutes ticketing and other transport related offences and liaises with Victoria Police in this regard.
93. The Legal Division also oversees the Infringements Administration Area which is responsible for the receipt and processing of RONCs, and issuing of infringement notices, and the Case Review area, which processes appeals made by the public about the issuing of infringement notices.
94. The Act requires accredited companies to notify the Director of Transport of any relevant incident or occurrence within 14 days after the day the incident or occurrence took place. A relevant incident or occurrence is defined as:
1. An incident or occurrence which involves any authorised officer (AO) or passenger, which at the time results in a personal injury being observed or suspected which has resulted, or may result, in significant medical treatment.
 2. An incident or occurrence which involves any valuable property of a passenger being seriously damaged during any interaction with an AO irrespective of fault.
 3. An incident or occurrence which is likely, in the attendant circumstances, to be controversial.
 4. An incident or occurrence which involves a child or other vulnerable person where the operator or AO is aware that the incident or occurrence is likely to lead to a complaint about any AO's exercise of discretion.
 5. An incident or occurrence which gives rise to a reasonable suspicion by an operator that an AO may have breached any condition of authorisation, or the Code of Conduct, in such a way that the action might adversely impact the perceived suitability, competence or good repute of any AO.

Failure of the operators to report incidents

95. Over the past two years (2008-10), the operators have reported a total of only three incidents to the department under this requirement. I find it difficult to believe that this represented a true picture. Since drawing this issue to the attention of the department it has advised that:

... agreed reporting criteria and timeframes were implemented on a trial basis from 27 September 2010. As at 19 November 2010, DOT has received 66 notifications. ...

96. During the course of my investigation my officers became aware of eight incidents involving authorised officers and commuters which were not included in the three reported incidents referred to above. Six of the incidents were reported not in accordance with the operator's statutory obligations to report any incident relating to the conduct of the authorised officer, but rather as a result of the operators wishing to proceed with the arrest of the commuter/s involved. The remaining two incidents were brought to the attention of the department separately, one by an anonymous source, and the other by a commuter who had suffered personal injury.

97. The department advised that when a commuter is arrested, it is standard practice for the operator to report the matter to the department's Prosecutions and Investigations area and for a review of the associated CCTV footage (for Metro Trains and V/Line) to be made, witness statements obtained and an investigation to be undertaken to establish if there is sufficient evidence for the department to prosecute the commuter.

98. Neither the transport operators, nor the authorised officers involved in the incidents had viewed the CCTV footage before sending the reports to the department.

Use of excessive force

99. My investigators examined files and Closed Circuit Television (CCTV) footage relating to each of the incidents. Details of four of the incidents are outlined below and a copy of the CCTV evidence for each of these incidents is provided on the DVD accompanying this report. The images of the persons involved have been obscured for privacy reasons.

100. I have decided to release the CCTV footage as I consider that it is in the public interest to do so.

Incident 1: 9 March 2010 – Ringwood Railway Station

On 9 March 2010 an authorised officer in plain clothes pushed two youths from a moving train onto the platform at the Ringwood Railway Station. This incident was anonymously reported to the department. The officer was part of a four person patrol. The officer resigned. Following a police investigation, the officer was charged with two counts of recklessly causing injury. File notes disclosed that the officer admitted in his pre-authorisation interview to having a speeding fine; obtaining a learner permit by making a false statement; obtaining an identity card by lying; and shoplifting.

Incident 2: 26 August 2009 – Lilydale Railway Station

Several Connex (now Metro Trains) authorised officers requested the department consider charging a commuter with offences including assault and resisting arrest. In reviewing the evidence including CCTV footage, the department considered that while the commuter may have committed offences, excessive force was used by one of the officers – ‘performing a running tackle, forcing him [the commuter] onto a seat with considerable force then, possibly grabbing him by the throat’. The officer stated that he needed to step in and take action as he was being spat on. The CCTV evidence contradicts the officer’s version of the event.

The key officer involved in the incident resigned from Connex Trains shortly after this incident, however then reapplied to Metro Trains. The department has advised the officer that it will not consider his new application for authorisation until it has investigated this incident and another incident under consideration.

Incident 3: 16 June 2009 – Lara Railway Station

The department received a report from authorised officers requesting consideration that a passenger be charged for failing to produce a valid ticket, resisting arrest, offensive language and refusing to provide name and address. Following review of CCTV by the department, concerns were raised about the following actions of the authorised officers:

- excessive force used by some officers in obtaining the passenger’s identification card contrary to specific scenario training received by the officers
- considerable discrepancies between the officers’ statements and the CCTV evidence
- the failure of the officers to advise the passenger formally that by not stating his name and address he was committing an offence.

Each officer was formally counselled and required to undergo refresher training. An infringement notice was issued to the passenger for not having a valid ticket to travel.

Incident 4: 21 January 2009 – Dandenong line

An authorised officer requested the department charge a passenger for assault and resisting arrest in transit on the Dandenong line. Following the department’s review of evidence and CCTV footage which involved four authorised officers, it was considered that an officer had unlawfully assaulted the commuter and that all four officers involved had made false statements. The CCTV shows:

- The commuter trying to retrieve items he had handed to the officers to confirm his identity. The officers had retained the items notwithstanding a requirement for them to return them to the commuter without delay.
- One officer forcefully pushing the commuter backwards onto a seat and then grabbing him in the upper chest/throat area. The officers submitted statements alleging that the commuter had pushed the officer in the chest. This was inconsistent with the CCTV evidence.
- The officer who allegedly assaulted the commuter resigned and another officer received a reprimand and warning that his authorisation would be revoked if there was a repeat of his conduct.

101. Concerns regarding authorised officer conduct were expressed by a Magistrate in January and March 2010 in a court hearing. The defendant passenger was involved in an incident on a train in May 2008 involving four authorised officers. As a result, he was charged with 10 offences including: fail to produce a valid ticket; assault officers; interfere with equipment; disorderly conduct; spit at another person; threatening language; and refuse to supply name and address.
102. In arriving at his decision, the Magistrate indicated ‘the matter was a matter of oath against oath. That there was not a shred of independent corroborative evidence’. The defendant passenger was outnumbered four to one, and that at least one of the authorised officers had a large physique. The Magistrate said:
- ...the Metro authorised officers are operating from a credibility deficit. That is to say that the bench does not accept the oath of Metro authorised officers unless there is independent corroboration.
103. The Magistrate dismissed the charges.

Reporting of complaints under the Metlink Services Agreement

104. The *Metlink Services Agreement* requires the franchisee (or operator) to provide to the department each month,¹¹ information including: Details of *Priority A* and *Priority B* complaints; and an analysis of the complaints received identifying trends and / or variations and the reasons for these, for example: fare change; increased patronage; and specific disruptions.
105. Details of the nature of Priority A complaints include matters about:
- authorised officers – alleged physical or verbal misconduct
 - safety and security – immediate physical impact
 - operational incidents
 - disabilities access – wheelchair access, guide dogs, vision impaired or any other form of disability
 - customers advising they will be contacting the media in relation to a public transport service.
106. Priority B complaints include matters about:
- cleanliness
 - staff performance
 - authorised officers – customer service technique, information
 - metcard ticketing
 - myki ticketing
 - infrastructure
 - comfort on-vehicle
 - luggage
 - safety and security
 - information.

¹¹ *Metlink Services Agreement*, Schedule 7, 1(l)(ii).

107. A quarterly report is also required to be provided to the department and includes information similar to that included in the monthly reports in addition to data on the timeframes for resolution of the complaints. Priority A complaints require resolution by the operator within three days and Priority B, resolution within seven days.
108. Complaints are initially referred to the company concerned for investigation.
109. Departmental officers stated that there was a lack of clarity within the department as to which areas should receive information such as complaints regarding officer conduct. For example, the Legal Division had only become aware in recent months of the monthly and quarterly reports received from operators and specifically, complaint statistics of a Priority A nature. This information is received by the department's Relationship Franchise division and is not routinely distributed to the Legal Division notwithstanding its role to accredit operators and regulate (including re-authorise) authorised officers.
110. For example, my investigation identified that for the six months ended June 2010, complaints received by Metro specifically in relation to authorised officers included complaints about:
 - behaviour (physical and verbal): 36
 - use of unreasonable force: 29.

Other than Metro reporting to the department that the 'response timeframe' in relation to Priority A complaints of three days was achieved, there is no further feedback provided to the department and no action taken on those reports.

Conclusions

111. The four incidents of authorised officers' conduct highlighted in the CCTV are concerning on several levels and for the following reasons:
 - Generally, these matters were notified by authorised officers or operators to the department as they wished to proceed with the prosecution of the commuters involved. The officers appear to have no understanding that their own conduct may be concerning or of the likelihood that they will be charged for offences such as using unreasonable or excessive force or assault.
 - These matters were forwarded to the department without any quality control being undertaken over the reports or the credibility of the officers' reports.
 - An issue common to three of the four incidents is that the CCTV evidence did not corroborate the version of events that was being alleged by the authorised officers in their statements.
 - Authorised officers are clearly not aware of the extent of their powers or are ignoring them.
 - Some authorised officers involved have a criminal history. This brings into question the rigour of the operator / department's authorisation process or re-authorisation checks.
 - The officers' behaviour generally typifies an inability to handle confronting situations, using excessive force for what are misdemeanour ticket offences.
112. I consider that the department should take a more active role in the oversight of authorised officers.

113. Based on the eight incidents viewed by my office alone (four of which are set out in the attached DVD), I consider that the notification by operators over a two-year period of only three serious incidents involving authorised officers as defined in the Act is unsatisfactory. This is borne out by the identification of 66 incidents in less than two months since I raised my concerns with the department.
114. Finally, the comments made by the Magistrate regarding his views as to the reliability of evidence from authorised officers and other operational matters are also of concern.

Action taken by the department

115. In response my concerns about authorised officer conduct the department has advised that it:
- developed a program of advanced/ refresher training for tram and train operators' authorised officers covering such areas as their role and responsibilities; appropriate exercise of powers; use of force; evidentiary issues; and issues in prosecuting offenders
 - provided feedback to Metro Train team leaders on recent incidents and court decisions with a focus on identifying trends and issues
 - reminded the operator companies via discussions of their obligations of accreditation to ensure officers are properly trained and supported.

Recommendations

I recommend that the department:

Recommendation 5

Undertake a review of the information received from the operators over the past year about officer incidents and complaints. The department should ensure that the Legal Division, which has the responsibility to regulate officer conduct and re-authorise officers, has relevant information to undertake its roles and responsibilities effectively.

The department's response

Accepted – DOT Legal now routinely receives the monthly report from Metro which includes data on complaints. A sample exercise similar to those identified under Recommendations 3 and 4 is to be undertaken.

Recommendation 6

Take action to:

- a) ensure that the operators have appropriate systems in place to meet their statutory obligations in relation to the reporting of notifiable incidents and occurrences
- b) audit the incidents over the past 12 months where operators deemed a report to the department was not required.

The department's response

Accepted – Meetings have been held with Metro, Yarra and VLine. A set of criteria for reporting incidents has been agreed upon.

Recommendation 7

Review the training provided to authorised officers to ensure the officers have the necessary skills and expertise to undertake their roles and are aware of their responsibilities pursuant to the Act.

The department's response

Accepted – A project is now in place within DOT Legal to review the standard training provided to AOs when they are first employed. This review should be completed by the end of 2010.

Recommendation 8

Review operational matters including the appropriateness of authorised officers conducting plain clothes patrols and the need for digital voice recorders for evidence gathering.

The department's response

To the extent that DOT can implement this recommendation, it is accepted. Metro has now confirmed that it has ceased plain clothes operations for ticket inspections. This issue raises internal operational matters for the transport operators. However, discussions have taken place on this issue. Metro is also keen to trial the use of digital cameras/recorders by AOs, and to explore different methods of restraint for people who resist arrests by AOs.

EXERCISE OF POWERS

Discretion and reporting of offences

116. Authorised officers do not issue infringement notices direct to offenders, but instead make a Report of Non-Compliance (RONC) that is forwarded to the department for it to issue an infringement notice. Representatives of the department and both major transport operators said that the rationale behind this approach is that by making a report instead of issuing a direct infringement, the potential for confrontations and aggressive reactions from commuters is reduced. However, in the past authorised officers issued infringement notices.
117. Complainants to my office have said that the authorised officers had led them to believe that an infringement notice might not be issued against them, when spoken to for an offence. However, transport operators denied that authorised officers gave advice to commuters that could leave them with the impression that the matter may not proceed to an infringement notice.
118. The department's *Authorised Officer Reference Notes Manual* provides the following advice regarding the discretion available to authorised officers, and how and when this should be exercised:

The basic philosophy is that all offences detected should be reported in the appropriate manner, no matter who the person is unless a policy directive stipulates otherwise...

119. The reference notes also state:

[Y]ou may consider using your discretion to decide not to report an offence where you have formed a reasonable belief that one of the following circumstances exists:

the passenger is physically incapable of purchasing and/or validating a ticket as a result of old age or disability
 the passenger genuinely does not understand the need to, or how to, purchase a ticket because they

- are very young
- are a visitor or tourist from outside Melbourne
- have no (or limited) understanding of English

the passenger is homeless or impecunious.

This certainly doesn't mean that people in these categories should never be reported if they do not have a valid ticket. Or that these are the only circumstances in which it may be appropriate to use discretion not to report an offence.

Where you exercise your discretion not to complete a Report of Non-Compliance, you should direct the passenger to purchase and/or validate a ticket. Where it is not possible for the passenger to purchase and/or validate a ticket, you should ask the person to leave the vehicle at the next safe opportunity.

120. The manual also provides the following advice on reasonable doubt and the issuing of warnings:

You may also decide not to report an offence if, after assessing the situation, you do not believe the matter could be proved beyond reasonable doubt.

...

A warning is usually given to a person, whether a passenger or offender, when an AO deems it necessary to prevent an offence or the commission of further offence; it is usually given verbally and at the time.

121. The department's training module refers to ticket offences as being criminal offences which require a standard of proof of 'beyond reasonable doubt'. The manual states that if this standard cannot be achieved, the authorised officers should consider using their discretion.
122. My investigation identified that where an authorised officer decides to issue a warning in lieu of a RONC, this is an informal process and details of the commuter to whom the warning has been issued are not recorded. As a result the department does not have the capacity to monitor whether this power is being used appropriately and consistently, or to ensure that repeat offenders are not given more than one warning for committing an offence.
123. The *Transport (Ticketing) Regulations 2006* provides for a number of defences in relation to commuters who do not hold, or fail to produce a valid ticket. Section 12 of these regulations refers to a commuter taking 'all reasonable steps that were available', carrying out 'relevant action' and 'additional actions necessary' for a ticket to be made valid for the whole of travel before commencing, during, and at the completion of travel.¹²
124. I also note that the 'defences' as provided in the *Transport (Ticketing) Regulations 2006* are not included in the 'discretion' section of the *Authorised Officers Reference Notes*, despite the apparent level of assessment involved.

Conclusions

125. I consider that the current process of authorised officers 'reporting' commuters to the department gives the public the impression that a more thorough, merits based review occurs with the department. My investigation identified that this was not the case. I see no reason why authorised officers should not issue infringement notices, rather than the current cumbersome process which adds no value as no meaningful review takes place.
126. The department has stated that the major concern with this recommendation is that it may increase the risk of harm to authorised officers.
- ... That would also obviously raise serious industrial and occupational health and safety issues, as well as contractual issues with the transport operators.
- ... DOT has implemented a research project to attempt to assess the likely impact on authorised officers. ...
- That work is not yet complete.
127. Authorised officers should also make a record of cautions or warnings issued, to ensure that the department can monitor the appropriateness of such action.

¹² *Transport (Ticketing) Regulations 2006*, Division 2 – Defences, Section 12, page 13.

Recommendations

I recommend that the department:

Recommendation 9

Cease issuing infringement notices and re-introduce the practice of authorised officers issuing infringement notices direct to commuters.

The department's response

DOT is not yet in a position to accept or reject this draft recommendation. This issue raises industrial and OHS issues. Consultants have been briefed to conduct research, and have obtained information about similar regimes in other jurisdictions.

Recommendation 10

Ensure that authorised officers record the details of commuters for whom a warning has been issued in lieu of a RONC/infringement. This information should be retained for statistical purposes, trend analysis, training, and the identification of repeat offenders. If the authorised officer does not believe an offence has been committed, this should not be considered a warning, but rather as a 'no offence'.

The department's response

Accepted in principle.

INFRINGEMENT NOTICES

Issuing an infringement notice

128. Issuing infringement notices to public transport users involves a number of parties and stages. The process begins with an authorised officer who suspects a person has committed an offence while travelling on public transport, or within the designated area.¹³
129. Details of the alleged infringement, passenger identification details and the explanation provided for the offence are recorded on the RONC, and another authorised officer signs as a witness. Depending on the transport operator, the RONCs are either reviewed at the Depot (Metro) or Eastern Road Operations Centre (Yarra Trams) and, if no irregularities are noted, they are forwarded to the department for processing.
130. How and when a RONC is completed also appears to be at the discretion of authorised officers. My officers were told that some authorised officers will record the offence straight onto a RONC form, whilst others will record the relevant details into a separate notebook and fill out the RONC form later.
131. Only one operator's RONC form (Metro Trains) provides for the sign-off by a supervisor. This is despite advice from the department's Infringements Administration area that this sign off is a process common to all operators.
132. There is limited space (three lines) for the authorised officer to record the commuter's explanation regarding the alleged offence.
133. The Manager, Revenue Protection Unit, Yarra Trams said at interview that authorised officers will often record further details of the commuter's defence in their notebook, and that the RONC is summary information and a record of the commuter's substantive response to the offence.
134. Despite this, the department acknowledged that infringements were often withdrawn due to further information obtained from the notes that were not on the RONC.
135. The department advised that it is in the process of designing a uniform RONC form for all operators.
136. Once a RONC is received by the department, an administration officer (known as the Quality Control Officer) conducts a quality assurance check.¹⁴ This check is conducted against a checklist of 17 criteria of which the majority are administrative points, such as whether the RONC has been completed correctly, the infringement codes provided are correct, and whether they have been completed in the required black or blue pen.¹⁵

13 [P]remises owned or occupied by a passenger transport company that is designated by the passenger transport company by means of signs in or near the area as an area for entry to which a ticket valid for that entry is required; or
(b) if a railway station is specified by the Director in a notice published in the Government Gazette as a station to which this paragraph applies –
(i) a platform at that station;
(ii) a waiting room or area adjoining a platform from which the platform can be accessed without the need to pass a ticket validating machine, a smartcard reader or a ticket barrier;
(iii) an area between a platform and any ticket validating machine, smartcard reader or ticket barrier that it is necessary to pass to gain access to the platform.

Department of Transport Reference notes for Authorised Officers, November 2009 update, page 22.

14 *PERIN V2 Business Process & Procedure Manual, Volume 6 – Overview of Infringement Notices & Collection Letters.*

15 *Issuing Officer Code of Conduct, Appendix 2.*

137. If the Quality Control Officer notes any irregularities, the RONCs are returned to the operator to be amended where possible. If there are no irregularities, an infringement notice is created, checked, and sent electronically to Australia Post for printing and mailing. The department does not retain copies of infringement notices sent, but advised that it can regenerate them electronically if required.
138. Both the Quality Control Officer and her immediate Manager confirmed at interview with my investigators that this process was an administrative check only, and that the merits of a particular report and the reasonableness of the issuing of an infringement are not considered at this point. At interview, a Quality Control Officer, advised:
- The RONC only has a small section for a summary, so you are not getting the full picture, you are only getting a short version.
139. This is despite point (d) on the checklist requiring the Quality Control Officer to:
- Check that the detail on the RONC contains sufficient evidence to enable the Issuing Officer to form a reasonable belief that an offence has been committed as required by the relevant legislative provision/s.¹⁶
140. The department's process for assessing RONCs is outlined in *Issuing Officer Code of Conduct* and includes the following steps prior to issuing infringements:
6. ... After the RONC is completed by the AO, the content of the RONC is checked by the AO's Team Leader and then promptly forwarded to the Department of Infrastructure [*sic*] for consideration.
 7. Given the extensive training of the Officers and the discretion that is often exercised at the point of interception, the majority of RONCs forwarded to the Department of Infrastructure [*sic*] are appropriate for progression to infringement status. Notwithstanding that, upon receipt of a RONC at DOI [*sic*], the Departmental Issuing Officer (who is an Authorised Officer of the DOI [*sic*]) undertakes a number of steps prior to the generation of an infringement notice.¹⁷
141. In 2009-10 the department received 173,426 RONCs, however until March 2010 there was one Quality Control Officer responsible for reviewing all of these RONCs.
142. When asked at interview to approximate the amount of time spent reviewing each RONC the Quality Control Officer estimated this to be as little as 10-15 seconds for straightforward matters. The officer estimated that on some days he/she reviewed between 580-700 RONCs per day.
143. I have included a copy of the *Issuing Officer Code of Conduct* at Appendix 2 to highlight the 17 criteria against which one individual was required to process up to 200,000 RONCs per year.
144. Following my officers' interview of the Quality Control Officer, the department transferred a more experienced staff member to the Infringements Administration area to assist with the RONC assessment process.

¹⁶ *ibid*, page 2, point (d).

¹⁷ *ibid*, page 1.

Service of infringement notices

145. The *Infringements Act 2006* refers to infringements being served by an ‘Issuing Officer’ and provides the following definition of an issuing officer:

- (a) a person appointed by an enforcement agency to issue or serve an infringement notice in respect of an infringement offence; or
- (b) a prescribed person or person who is a member of a prescribed class of person.

146. The department confirmed that the Manager of the Infringement Administration area, was the ‘issuing officer’ for the purposes of the *Infringements Act 2006*, but acknowledged that whilst his name went out on the infringements, he did not have an active role in the oversight of individual matters.

147. Of the 173,426 RONCs sent to the department in 2009-10 for processing, 1,591 did not proceed to the issuing of an infringement notice, with a warning issued instead. Figure 1 provides further details of RONCs not issued.

Figure 1: Notices not issued		
	2008-09 No.	2009-10 No.
RONCs Incomplete – Not Issued Metro	71	91
RONCs Incomplete – Not Issued Yarra Trams	28	56
Homeless – Set aside	73	69
Children Under 15 Official Warnings	1,285	1,094
Official Warnings in lieu of Infringement Notice	1,354	281
Total	2,811	1,591

Source: Information provided by the Department of Transport.

148. In 2009-10 there were 281 official warnings while in 2008-09 there were 1,354. The higher level of warnings in 2008-09 was as a result of a directive from the Department of Justice to use discretion when considering reports of offences by persons residing in areas affected by the Black Saturday Bushfires.

149. As also outlined in Figure 1, the department has an established rule of issuing warnings for first time offenders under 15 years of age. Changes recently introduced via the *Transport (Infringements) Regulations 2010* now provide lower penalties for first time offenders between 15-18 years of age.¹⁸

150. The department’s *Use of official warnings for infringement offences guidelines* states:

- 6. It is considered that the serving of Official Warnings at issue stage would have only limited application in the Public Transport Division given the:
 - (a) Discretion exercised by Authorised Officers on the public transport system
 - (b) Office based generation of ticket and transport infringements, and the resultant absence of face to face contact in the process, thereby removing the opportunity for judgement calls to be made based on behaviour / characteristics of the alleged offender
 - (c) Absolute liability nature of ticketing offences.¹⁹

¹⁸ *Transport (Infringements) Regulations 2010*, pages 4,5,7 and 12.

¹⁹ Department of Infrastructure, *Use of official warnings for infringement offences guidelines*, February 2007, page 1.

151. Despite the option to do so under the *Infringements Act 2006* and its own internal guidelines I was advised that it was not the general practice of the department to issue warnings at the Infringement Administration area.
152. Instead, the department relies on the report from the authorised officer that an offence has been committed and will not generally review the merits of a matter unless a subsequent request for review is submitted by a commuter following receipt of the infringement notice.
153. Apart from where RONCs were referred back to the transport operator because they were incomplete or contained administrative errors, I understand that authorised officers were not provided any feedback from the department with regard to RONCs issued.
154. Several of the department's practices, including the infringement administration and case review areas, were subject to regular examination by external auditors. A review of one of these audits, conducted in December 2008, identified that only a small sample (10) of infringements issued was examined and did not specifically consider whether the decision to issue an infringement was correct.

Internal review of the issuing of infringement notices

155. When a commuter receives an infringement notice they have four options:
- pay the applicable fine
 - do not take any action, in which case further penalties will be incurred and the matter ultimately referred to court
 - request to have the matter heard and determined in court
 - request to have the issue of the infringement notice reviewed.
156. A review may be requested if the person believes:
- (a) the decision –
 - (i) was contrary to law, or
 - (ii) involved a mistake of identity; or
 - (b) that special circumstances apply to the person; or
 - (c) the conduct for which the infringement notice was served should be excused having regard to any exceptional circumstances relating to the infringement offence.²⁰
157. The request for review must state the ground upon which it is being made and include all relevant supporting documentation.
158. During 2009-10, there were 29,413 internal reviews conducted by the department following requests to review the issuing of the infringement notice. This represents 17 per cent of all public transport infringements issued in that period.
159. Of the internal reviews undertaken in 2009-10, the department:
- upheld the initial decision to issue the infringement notice in 50.6 per cent of cases
 - withdrew the infringement notice in 49.4 per cent (or 14,529 of cases) as outlined in Figure 2.

²⁰ Department of Transport 'Ticket Infringement Notice', page 2.

Figure 2: Basis for withdrawal of infringement notices 2009-10

Grounds for the withdrawal following internal review	Description	Notices withdrawn No.
Exceptional circumstances – <i>official warning</i>	Circumstances exist which excuse the offence i.e. the circumstances are unforeseen or unpreventable.	12,393
Exceptional circumstances – <i>withdraw</i>		297
Special circumstances – <i>official warning</i>	Special circumstances apply to the applicant such as a mental or intellectual disability, a serious addiction to drugs, alcohol or substances that result in a person being unable to understand or control their offending behaviour, or homelessness that resulted in a person unable to control their behaviour.	1,531
Special circumstances – <i>withdraw</i>		9
Mistake of identity – <i>withdraw</i>	There was a defect or mistake made in the decision to serve the infringement notice.	282
Mistake of identity – <i>official warning</i>		16
Contrary to law – <i>withdraw</i>		0
Contrary to law – <i>official warning</i>		1
Total infringement notices withdrawn following internal review		14,529

Source: Information provided by the Department of Transport.

Exceptional circumstances

160. Eighty-seven per cent (12,690) of withdrawn infringement notices were withdrawn due to exceptional circumstances.
161. The *Attorney-General's 2006 Guidelines to the Infringements Act* (the guidelines) require operational procedures to be prepared by agencies to guide staff who issue infringements and who make decisions about infringement notices.
162. The department has two such documents: *Business Process & Procedures Manual* and *Procedure for Conduct of Internal Reviews*. These documents do not indicate:
 - the criteria to be used when deciding whether to give an official warning instead of upholding the issue of an infringement notice
 - the evidence appellants claiming exceptional circumstances are required to show.
163. The department has no documented working definition for exceptional circumstances. This category includes all withdrawals which do not fit in the remaining categories: contrary to law, mistaken identity and special circumstances.

164. The Attorney-General's February 2008 information paper 'The internal review provisions' advises in relation to exceptional circumstances:

The 'exceptional circumstances' test, like the special circumstances test, provides the infringements system with the flexibility to determine whether, taking into account the circumstances in which the offending conduct occurred, the imposition of a penalty was justified.

...

Exceptional circumstances cover cases where a person has enough awareness and self-control to be liable for his or her conduct, but has a good excuse.

165. The Auditor-General's June 2009 report on the *Withdrawal of Infringement Notices*²¹ found that agencies with clearer, more definitive guidance had lower withdrawal rates, signifying more consistent application of their guidelines and a reasonable exercise of discretion.
166. As highlighted in Figure 2, the majority of infringements withdrawn at case review (12,393 or 85 per cent) resulted in a warning being issued. In the files reviewed by my investigators, there was no indication of why a warning had been issued.
167. A review of the department's procedures manual²² indicates that there are 55 letter templates that a case review officer can generate to send to an appellant.
168. According to the department's *Procedure for Conduct of Internal Reviews*, Case Review Officers are responsible for the assessment of requests for review. This can include any investigative activity required and recommending an outcome to management.
169. In practice, a different approach not covered in the department's guidelines was applied to the assessment of appeals. That is, when a request for a review was received by the department, an initial assessment is conducted by a manager.
170. This assessment included:
- a review of the facts as presented in the request for review
 - a review of the initial RONC or the authorised officer's notes taken at the time of the report
 - completion of an assessment stamp in which the manager lists the appropriate codes to be entered into the department's PERIN system and advises the appropriate proforma response letter to be generated by the Case Review Officer.

Review of appeal files

171. My officers examined 18 infringement cases internally reviewed by the department. These matters had also been the subject of complaints received by my office during 2008-09.
172. In a number of the cases examined, the requests for review were accompanied by detailed explanations, often a number of pages long, setting out the commuter's defence for the alleged infringement.

²¹ Victorian Auditor-General's Office, op cit, page 36.

²² Transport Infringement Administration, *Unique Processes Procedure Manual*, Nov 09 draft, page 32.

173. The following issues in the department's processing of appeals were identified:
- There were no authorised officer notes on the review files notwithstanding three of the cases reviewed resulted in the withdrawal of the infringement notice.
 - Evidence of the department's internal review assessment lacked detail. The initial assessment comprised a stamp on the letter requesting a review. The stamp recorded details of the infringement number, the initials of the person who reviewed the matter, and the code of the relevant proforma letter. There was no other record of the assessment and no details of actions, analysis and/or reasons for the review's outcome. This does not comply with the requirements of the *Public Records Act 1973*.²³
 - Despite appellants' detailed submissions, the outcome letters provided by the department were generic and did not address the specific issues raised by the appellant. As a result, appellants complained to my office that the department had not adequately considered their concerns.
 - It appears that the infringement review response letters were deliberately sparse in detail, and seldom addressed all the points raised as the department only considered 'absolute liability'.

174. I note the following explanation is provided to appellants in the department's outcome letters:

Absolute liability means that the only matter under consideration is the act itself and that the defence of honest and reasonable mistake is not available.

175. My investigation also identified that:

- The basis for the department's decision to, for example, 'exercise discretion, withdraw an infringement notice and issue an official warning' was not evident in the department's files or justified by established decision rules or procedures. A review of the department's PERIN database also failed to locate records of the rationale for a particular review decision.
- A copy of the withdrawal notices and/or official warnings issued as a result of the department's internal review were not retained on file to evidence that the outcome of the review had been provided to the appellant and done so within the legislative timeframe of 21 days from review completion. The department does not make or retain any electronic copies of the documents relating to a case review, but has a folio of each proforma letter for referral. This is due to a commercial arrangement the department has with Australia Post where the notices are created electronically and then forwarded to Australia Post for printing and despatch.
- Significant documents were missing from all files, such as the request for an internal review, the authorised officer's notes and a copy of the department's decision letter.
- Of the four infringement matters that were withdrawn after an internal review, only one was done after the initial case review assessment. In one of the remaining three cases, the commuter made four requests for review before the matter was ultimately overturned. In two other examples, a decision was made to withdraw the infringement after multiple reviews, without any new information being presented.

²³ Agencies are required under the *Public Records Act 1973* to make and keep full and accurate records of the business of the public office.

- As a result of missing documentation, I was unable to assess the consistency of the department's decision-making at case review.
- The department was unable to provide details in relation to 41 appeals on the basis of special circumstances. As the department upheld the decision to issue the infringement notice, these matters are required to be referred to the Magistrates Court for hearing. The department advised that there had been an error in reporting its appeals data to the Department of Justice and that this error related to the past two years.

Quality assurance of appeals

176. A quality assurance process is critical to avoid inappropriate and inconsistent decisions and to ensure the processing of appeals comply with the *Infringements Act 2006* (the Act) and the department's guidelines.
177. An effective quality assurance process should include:
- regular reporting on infringement and appeal statistics and trends
 - compliance audits of internal review processing
 - reporting against indicators such as the time taken to process appeals
 - specific review of appeals cases approaching the statutory time limit of 90 days.
178. The department does not have a formal quality assurance program over appeals processing. Currently the processes regarding case review are included in the audits conducted by the department's internal auditors. These audits occur twice every three years and have found no evidence to suggest the case review process requires improvement.
179. My investigation reviewed one of these audits, conducted in 2008 and noted that it was very limited in scope and only reviewed a small sample of 60 cases. In contrast, the department received over 18,000 requests for internal review in 2008-09.

Feedback on appeal outcomes to the operators and authorised officers

180. There is currently no mechanism for the outcomes arising from the department's internal review processing to be fed back to key persons involved. For example, the transport operators, the departmental officer responsible for issuing the infringement, or the authorised officer who initially considered the offence and completed the RONC.
181. Authorised officers confirmed that they do not get feedback from the department on the outcomes of the internal process and considered this would be valuable information.

Prosecution of infringement matters

182. Infringement matters are referred to the courts for a number of reasons. A person in receipt of an infringement notice has the option of electing to refer to the matter direct to the Infringements Court for hearing, or after having received the outcome of a request for an internal review.
183. In 2009-10 the department received 1,026 notifications of a commuter electing to have an infringement matter heard in the infringements court. Of these, the department elected not to pursue 59 matters once referred to the courts.
184. The department may also refer matters to the courts where an infringement has not been paid.

Conclusions

185. I am concerned with what appears to be at best a cursory assessment of requests for review and the lack of details recorded regarding the decision-making process and reasoning. The lack of detail provided in the department's review letters tend to give commuters the impression that their individual circumstances have not been considered and may influence the number of matters referred to the Infringements Court.
186. The internal review process should provide a check on the legitimacy and fairness of the original decision and enable inappropriate decisions to be overturned before any significant enforcement action has commenced. The internal review process is a key initiative to making the infringements system fairer. The public should be able to have confidence that an appeal to the department to review the decision to issue the infringement should be undertaken comprehensively and consistently. Unfortunately it appears that this is not the case.
187. I consider that information from the department's infringements systems should be used to evaluate and improve the quality of practices and services both within the department (in the issuing of infringements and case review processing) and those provided by the operators of the public transport system.
188. The department's guidelines should be improved to provide more information about the appeals decision-making process and the need to retain proper records of review decisions and the basis on which those decisions are made. The need to record accurately all stages of the processing of the appeal and withdrawal of the notice should also be addressed.
189. Since the introduction of the requirement for an internal review process, in 2006, the department has accumulated significant case examples of what are acceptable and non-acceptable circumstances for appeals. Documenting such information will be of assistance for staff, and ensure efficient and consistent decision-making both by case review officers and authorised officers.
190. Quality assurance and ongoing monitoring drives performance and provides accountability to management and the community for an agency's activities. Analysis of case review outcomes is required by the department, including providing feedback particularly authorised officers in order to maximise the effectiveness of their patrolling / RONC activities. I do not consider that the current review of infringements issued and case review outcomes conducted by the department's internal auditors is sufficient to be relied upon as validation of quality processes and outcomes.
191. The department's current IT database used to record assessment and decision details regarding requests for review is inadequate. The failure of the department to state what evidence is necessary may result in inconsistent decision-making and may impact on the efficiency and fairness of the infringements system.
192. I also consider that, by causing authorised officers to issue infringement notices, as recommended, the department will remove the unnecessarily cumbersome process of Australia Post despatching Infringement Notices and letters.

Recommendations

I recommend that the department:

Recommendation 11

Review its internal review guidelines and procedures to ensure that:

- they are consistent with legislative requirements including record keeping requirements
- are comprehensive in terms of providing guidance for case review staff, particularly about the nature of exceptional circumstances and its applicability in the public transport context.

The department's response

Accepted – DOT officers are updating Procedure for Conduct of Internal Review Guidelines.

Recommendation 12

Review its case review outcome letters to ensure that the department responds to the reasonable concerns of the appellant.

The department's response

Accepted in principle.

Recommendation 13

Develop quality assurance mechanisms to ensure the processing of internal reviews is completed in accordance with internal and legislative requirements.

The department's response

Accepted – DOT is to develop a PERIN generated computer report to identify any review requests which have not been dealt with in accordance with statutory timelines with that report to be noted and stored in Trim by the Senior Manager, Compliance and Infringements on a monthly basis. Any matters not dealt with within statutory guidelines are to be noted in that report and appropriate action taken. The review mechanism is to be developed by 24 December 2010.

Recommendation 14

In consultation with the Department of Justice, develop a framework for measuring the performance and administration of its infringements systems. The framework should include key performance indicators and reporting arrangements for assessing the extent to which it has fulfilled its obligations under the Act.

The department's response

Accepted – The review mechanism is to be developed by 24 December 2010.

DOT also responded that it had:

... arranged for [auditor] to conduct an internal audit of DOT's analysis and implementation of the draft recommendations in order to ensure that the process adopted by DOT is rigorous.

SUMMARY OF RECOMMENDATIONS

I recommend that the department:

Recommendation 1

Review its officer accreditation process and practices to ensure that the authorisation/re-authorisation of officers is thorough. Specific consideration should be given to:

- a) Requiring applicants to declare their criminal history prior to undertaking the training course.
- b) Undertaking the National Police Check either prior to training or once an applicant has successfully completed the training course, and include the option to decline authorisation on the ground of character and integrity, where an applicant is found to have a criminal/infringement history that was not previously declared.
- c) Develop a checklist for assessing applications for authorisation including a requirement to document formally interviews with applicants.
- d) Develop criteria for appointment of authorised officers including: character, antecedents, and types of convictions.
- e) Ensure that adequate records are kept of any declarations of infringements and the action taken by the department during re-authorisations.
- f) Develop criteria for suspending or revoking authorisation when an officer breaches set conditions.
- g) Enforce established authorisation criteria – where an applicant’s history does not satisfy the criteria set out by the department, the application should be rejected.

Recommendation 2

Amend its authorisation guidelines on the basis of the abovementioned review and provide training to departmental and operator staff involved in the assessment of authorised officer applications.

Recommendation 3

Conduct an audit of the National Police Checks undertaken of authorised officer applicants over the last three years to ensure that the correct authorised officer information was used.

Recommendation 4

Review all current officers’ authorisation records and where officers do not meet the department’s authorisation criteria, they should be flagged for closer scrutiny upon their re-authorisation.

Recommendation 5

Undertake a review of the information received from the operators over the past year about officer incidents and complaints. The department should ensure that the Legal Division, which has the responsibility to regulate officer conduct and re-authorise officers, has relevant information to undertake its roles and responsibilities effectively.

Recommendation 6

Take action to:

- a) ensure that the operators have appropriate systems in place to meet their statutory obligations in relation to the reporting of notifiable incidents and occurrences
- b) audit the incidents over the past 12 months where operators deemed a report to the department was not required.

Recommendation 7

Review the training provided to authorised officers to ensure the officers have the necessary skills and expertise to undertake their roles and are aware of their responsibilities pursuant to the Act.

Recommendation 8

Review operational matters including the appropriateness of authorised officers conducting plain clothes patrols and the need for digital voice recorders for evidence gathering.

Recommendation 9

Cease issuing infringement notices and re-introduce the practice of authorised officers issuing infringement notices direct to commuters.

Recommendation 10

Ensure that authorised officers record the details of commuters for whom a warning has been issued in lieu of a RONC/infringement. This information should be retained for statistical purposes, trend analysis, training, and the identification of repeat offenders. If the authorised officer does not believe an offence has been committed, this should not be considered a warning, but rather as a 'no offence'.

Recommendation 11

Review its internal review guidelines and procedures to ensure that:

- they are consistent with legislative requirements including record keeping requirements
- are comprehensive in terms of providing guidance for case review staff, particularly about the nature of exceptional circumstances and its applicability in the public transport context.

Recommendation 12

Review its case review outcome letters to ensure that the department responds to the reasonable concerns of the appellant.

Recommendation 13

Develop quality assurance mechanisms to ensure the processing of internal reviews is completed in accordance with internal and legislative requirements.

Recommendation 14

In consultation with the Department of Justice, develop a framework for measuring the performance and administration of its infringements systems. The framework should include key performance indicators and reporting arrangements for assessing the extent to which it has fulfilled its obligations under the Act.

APPENDIX 1 – Schedule of infringement fines and associated penalties

Appendix 1: Schedule of infringement fines and associated penalties		
Infringement types	Fine – Adult \$	Fine – Child (under 18) \$
Making a journey without a valid ticket	176	60
Smoking in a carriage or public transport premises (including train platforms; tram and bus shelters)	176	60
Littering	176	60
Having your feet on the furniture or fittings	176	60
Trespassing	234	60
Using indecent or offensive language or gestures	234	60
Behaving in a disorderly or offensive manner	234	60
Interfering with the doors of a vehicle	234	60
Travelling with part of your body outside a vehicle in motion	234	60

Source: *Transport (Infringement) Regulations 2010*.

APPENDIX 2 – Issuing Officer Code of Conduct



Department of Infrastructure

ISSUING OFFICER CODE OF CONDUCT

PURPOSE

1. To review and re- establish the Issuing Officer Code of Conduct prepared in accordance with the requirements of the Attorney General's Guidelines to the Infringements Act 2006.

LEGISLATION

2. Infringements Act 2006 (Attorney General's Guidelines to the Infringements Act 2006)

RELEVANT PUBLIC TRANSPORT DIVISION DOCUMENTS

3. This document should be read in conjunction with the endorsed:
 - Use of Official Warnings for Infringement Offences Guidelines, and
 - Procedure for Conduct of Internal Reviews of Infringement Notices, and
 - Special Circumstances Operational Guidelines.

COMPLIANCE

4. The document has been reviewed by the Public Transport Division Legal Branch.

BACKGROUND

5. Authorised Officers (AOs) working for transport companies are in an unusual position at law in that they have statutory powers while being employed by private companies. They are appointed following a comprehensive recruitment and selection process and are trained in the relevant areas of procedure and law and in the application of their powers, responsibilities and law enforcement processes. They are instructed on the points of proof required to constitute public transport offences. Authorised Officers also act in accordance with a Code of Conduct developed in partnership between the State Government and the franchisees.
6. When AOs detect an alleged offence that they believe should be referred to the Department of Infrastructure (DOI) with a view to consideration being given to an Infringement Notice being issued, they complete a Report of Non Compliance (RONC). After the RONC is completed by the AO, the content of the RONC is checked by the AO's Team Leader and then promptly forwarded to the Department of Infrastructure for consideration.
7. Given the extensive training of the Officers and the discretion that is often exercised at the point of interception, the majority of RONCs forwarded to the Department of Infrastructure are appropriate for progression to infringement status. Notwithstanding that, upon receipt of a RONC at DOI, the Departmental Issuing officer (who is an Authorised Officer of the DOI) undertakes a number of steps prior to the generation of an infringement notice.

APPENDIX 2 – continued

PROCEDURES/ CODE OF CONDUCT

8. The Departmental Issuing Officer who processes a RONC for the purposes of potentially issuing a Transport or Ticket Infringement Notice must:
- (a) Ensure the document is legible and logical;
 - (b) Check offence date, making sure this corresponds with the day of the week which has been noted on the RONC;
 - (c) Ensure that all details are clearly written in black or blue pen, so that there can be no dispute regarding detail, and that each area of the form and any supporting documentation is completed relating to the respective alleged offence/s;
 - (d) Check that the detail on the RONC contains sufficient evidence to enable the Issuing Officer to form a reasonable belief that an offence has been committed as required by the relevant legislative provision/s.;
 - (e) Check that all address information is complete and correct, ie street name, suburb and postcode;
 - (f) Where necessary undertake Victorian Driver's Licence checks; refer to Melways and phone disc checks to ensure that all details are correct;
 - (g) When appropriate, liaise with the Transport Companies. If details are missing or information is incorrect a sheet listing the matters requiring clarification is attached to the RONC which is then returned to the officer concerned for further dealing;
 - (h) All data relating to the RONCs sent back for further dealing is recorded on a database at DOI and updated by the issuing DOI officer when the amended RONC is returned to DOI;
 - (i) Check gender, date of birth and age where relevant;
 - (j) Check time of offence, am/pm, note that the 24 hour clock must be used;
 - (k) Check that the offence code matches the description of the offence;
 - (l) Check offence location, Trains - nearest or approaching railway station or in between which stations, Trams and Buses- nearest intersecting streets and suburb;
 - (m) Check informant and witness details, identity card number and depot location have been completed (required for Prosecution /Reviews);
 - (n) Ensure all information (points of proof) relating to the offence is written in the summary and any evidence attached;
 - (o) Ensure that in the event of a ticket having been confiscated it is attached securely in an envelope to the RONC;
 - (p) Student ½ yearly and yearly tickets are to have additional information attached as per Directive TM 03/200;
 - (q) When there are more than 2 offences which have been reported an A4 sized RONC is required and the offences must be authorised for dealing via the infringement process by a Prosecutor.

APPENDIX 2 – continued

(Offences that are not subject to the infringement notice process are sent directly to the Prosecutions and Investigations Area for consideration and processing through the usual prosecution procedures).

9. In every case, if the issuing DOI officer is not certain whether the RONC should progress to infringement notice status, they immediately refer the matter to their supervisor for assessment and determination as to whether alternate action, eg. Official Warning, diversion, no action or Special Circumstances consideration, would be more appropriate than Infringement Notice generation.
10. In addition to ensuring that each of the above steps is followed, the Issuing Officer will also take account of the relevant provisions of the Use of Official Warnings for Infringement Offences Guidelines and the Special Circumstances Operational Guidelines.

SUNSET PROVISION

11. This Code will sunset on 31 March 2010.

Prepared by:

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20/12/2007

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20/02/2007

APPENDIX 2 – continued

ATTACHMENT 1

Extract from “Infringements Act 2006 Obligations and Initiatives Under Victoria’s New Infringements System” booklet produced by the Department of Justice.

3. Code of Conduct to apply to issuing officers

The *Infringements Act 2006* does not require that officers of enforcement agencies consider ‘special circumstances’ at the issuing stage. However, if issuing officers are to exercise such discretions, then each enforcement agency must have a code of conduct to guide officers with the responsibility for issuing infringement notices in the discharge of their responsibilities.

The code should take into account the nature of the business of the issuing agency and the role and functions of its issuing officers. The code should focus on principles of the infringements system with respect to fairness and the recognition of individual circumstances and deal with the appropriateness of issuing infringements to people with obvious special circumstances.

OMBUDSMAN'S REPORTS 2004-10

2010

Ombudsman's recommendations – second report on their implementation

October 2010

Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct

October 2010

Whistleblowers Protection Act 2001 Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) – Aerospace

July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments

June 2010

Own motion investigation into Child Protection – out of home care

May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat

April 2010

Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey

March 2010

Ombudsman's recommendations – Report on their implementation

February 2010

2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre

December 2009

Own motion investigation into the Department of Human Services – Child Protection Program

November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police

November 2009

Brookland Greens Estate – Investigation into methane gas leaks

October 2009

A report of investigations into the City of Port Phillip

August 2009

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing

July 2009

Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council

June 2009

Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council

May 2009

Investigation into corporate governance at Moorabool Shire Council

April 2009

Crime statistics and police numbers

March 2009

2008

Whistleblowers Protection Act 2001 Report of an investigation into issues at Bayside Health

October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services

August 2008

Investigation into contraband entering a prison and related issues

June 2008

Conflict of interest in local government

March 2008

Conflict of interest in the public sector

March 2008

2007

Investigation into VicRoads' driver licensing arrangements

December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters

November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre

November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007

October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint

April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong

February 2007

2006

Conditions for persons in custody

July 2006

Review of the *Freedom of Information Act 1982*

June 2006

Investigation into parking infringement notices issued by Melbourne City Council

April 2006

Improving responses to allegations involving sexual assault

March 2006

2005

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons

December 2005

Whistleblowers Protection Act 2001 Ombudsman's guidelines

October 2005

Own motion investigation into VicRoads registration practices

June 2005

Complaint handling guide for the Victorian Public Sector 2005

May 2005

Review of the *Freedom of Information Act 1982*

Discussion paper

May 2005

Review of complaint handling in Victorian universities

May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton

March 2005

Discussion paper on improving responses to sexual abuse allegations

February 2005

2004

Essendon Rental Housing Co-operative (ERHC)

December 2004

Complaint about the Medical Practitioners Board of Victoria

December 2004

Ceja task force drug related corruption – second interim report of Ombudsman Victoria

June 2004

DVD

The DVD on the opposite page contains CCTV footage of four incidents referred to in this report:

Incident 1 – description page 23

Tuesday 9 March 2010

Ringwood Railway Station

This incident is covered from two camera angles

Incident 2 – description page 24

Wednesday 26 August 2009

Lilydale Railway Station

Incident 3 – description page 24

Tuesday 16 June 2009

Lara Railway Station

Incident 4 – description page 24

Wednesday 21 January 2009

Dandenong line