

**Investigation into the administration of the Fairness Fund  
for taxi and hire car licence holders**

**June 2018**

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

# Letter to the Legislative Council and the Legislative Assembly

To

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

and

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

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973* (Vic), I present to Parliament my *Investigation into the administration of the Fairness Fund for taxi and hire car licence holders*.



Deborah Glass OBE

**Ombudsman**

14 June 2018

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# Foreword

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It is not surprising that the Ombudsman, with our mandate about fairness, should be asked to investigate a payment scheme called the 'Fairness Fund', one of several schemes set up by the state government as a result of reforms to the taxi and hire car industry.

We received sixty-four complaints about the Fairness Fund, about delays, letters without information, lack of communication, apparently incomprehensible decision-making leading to dire personal circumstances, and one overwhelming complaint: that the Fund was not fair.

Inevitably, many complaints were also concerned about the perceived unfairness of the taxi industry reforms themselves, as a result of which many licence holders lost a great deal of money. We explained that the deregulation of the taxi industry was not a matter for the Ombudsman – the policies of elected governments are matters for the ballot box. But we could, and did, look at the administration of the Fairness Fund, which had attracted so much ire.

Perhaps equally inevitably, the full picture was more complex than that presented by the many distressed complainants. Reforms to the taxi industry have been underway since 2013, and the Fairness Fund was one of a number of schemes intended to deliver financial assistance to those impacted. Overall, the government claims to have provided over half a billion dollars of financial assistance to licence holders.

The Fairness Fund was set up to provide ex gratia assistance for licence holders experiencing significant financial hardship. It is the nature of ex gratia payments that they are not compensation – they are an 'act of grace' – providing sums of money in situations when there is no legal obligation to do so, when it is believed to be morally right.

But the discretionary nature of such schemes makes it all the more important that they operate in a timely, flexible manner, providing clear advice and information to applicants. This did not happen. Much of this was the result of initial miscalculation.

The Fund initially expected to receive 150 applications; it ultimately received 1,247. This clearly had an impact on timelines, as did the fact that many applicants did not provide the comprehensive financial information requested, and the high potential for fraud.

But while the Fund was overwhelmed with applications and needed to ensure that public money would not be paid out inappropriately, hundreds of people were given the bureaucratic run-around. The call centre operated on such a limited script it is difficult to see why it was even set up. Letters were pro forma templates with little information. Confusion persisted about eligibility criteria.

We did not conclude that the Fund itself was flawed, although much better planning and communication, including managing expectations, would have avoided many of the complaints. We did not examine the fairness of the decisions on payment. These were made following review by external auditors according to detailed criteria that could not be published to mitigate against fraudulent claims, and it was reasonable for the Fund to ensure it had full and honest financial information before making a decision on payment.

But it should have anticipated at least some of the difficulties it encountered. Its poor communication, compounded by delay, was unreasonable and would have exacerbated the distress already felt by people who believed the government had taken away their livelihood or life savings.

In these circumstances, despite the worthy motive behind its establishment, calling it a Fairness Fund was asking for trouble.

The Fund itself has completed its work but there are important lessons to be learned for the handling of such schemes in future. Good intentions should not be undone – as they were in this case – by poor execution.

Deborah Glass

**Ombudsman**

# Background

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## Complaints about the Fairness Fund

1. In October and November 2017, the Ombudsman received 40 complaints about the Fairness Fund, administered by the Department of Economic Development, Jobs, Transport and Resources (the department).
2. The Fund was established by the state government to provide financial assistance to taxi and hire car licence holders suffering 'significant financial hardship' resulting from reforms to the industry announced in 2016.<sup>1</sup>
3. The complaints were about:
  - delays in the department's processing of applications to the Fund
  - inadequate communication with applicants about the status of their applications, which many said exacerbated their anxiety around their financial situation
  - lack of transparency around decision making on applications.
4. The financial circumstances of complainants varied. They were elderly retirees who were no longer capable of working and looking to live off their 'nest egg'; young families just making ends meet; and people who suffered financially but were able to withstand the changes due to their financial position.
5. Some described very difficult financial circumstances, including having to refinance mortgages they could no longer afford, and dealing with banks calling in loans.

## Methodology

6. This office initially met with departmental staff in November 2017 to discuss the complaints. The Ombudsman subsequently determined to conduct an 'own motion' investigation into the department's administration of the Fund, on the basis the complaints raised potential systemic issues.
7. The Ombudsman's jurisdiction to conduct an own motion investigation derives from section 16A of the Ombudsman Act, which provides that the Ombudsman may conduct an own motion investigation into any administrative action taken by or in an authority. The definition of an 'authority' under section 2(1) of the Ombudsman Act includes state government departments.
8. The Ombudsman notified the Minister for Public Transport, the Hon Jacinta Allan MP; the Secretary of the department, Richard Bolt; and the Chair of the Fairness Fund, Marnie Williams, of the commencement of the investigation on 24 November 2017.
9. The investigation was announced publicly on 30 November 2017. Following this, the Ombudsman received a further 24 complaints about the Fund between December 2017 and April 2018.
10. The investigation examined whether the department:
  - unreasonably delayed its processing of Fairness Fund applications
  - communicated sufficiently with people about their applications
  - had an appropriate framework, including policies and procedures, to manage timelines, and communication with applicants and complaints.

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<sup>1</sup> Department of Economic Development, Jobs, Transport and Resources, *Taxi and hire car industry reforms* <<https://transport.vic.gov.au/ways-to-travel/taxis-hire-car-and-ridesharing/industry-reforms/>>.

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11. The investigation did not examine decisions regarding applicants' eligibility to receive a payment, on the basis that payments from the Fund were ex gratia: they were discretionary payments and there was no obligation for the government to provide them.
12. The investigation included:
- meeting with the department on 14 November 2017
  - enquiries with the department and considering responses dated 6 December 2017, 12 and 19 January, 18 April and 21 and 24 May 2018
  - reviewing departmental documents, including:
    - o briefings to the Minister regarding the operation of the Fund
    - o procedural documents relating to the Fund
    - o scripts provided by the department to its outsourced call centre to manage queries relating to the Fund
    - o correspondence between the Fund and various stakeholders
  - reviewing the 64 complaints received by this office between October 2017 and April 2018
  - speaking with complainants
  - conducting a voluntary interview with the Chief Executive Officer of WEstjustice, the community legal centre contracted by the department to assist licence holders in submitting applications to the Fund
- providing the Ombudsman's draft report to the department for comment and considering its response dated 15 May 2018.
13. This report includes adverse comments about the department.
14. In accordance with section 25A(3) of the Ombudsman Act, any other parties who are identifiable, or may be identifiable from the information in this report, are not the subject of any adverse comment or opinion. They are named or identified in this report as:
- it is necessary or desirable to do so in the public interest and
  - identifying those parties will not cause unreasonable damage to their reputation, safety or wellbeing.

## Anonymity

15. Throughout this report, case studies detail the experiences of some of the licence holders who applied to the Fund.
16. For privacy reasons, the names used are not the real names of the individuals involved.

## Reforms to the industry

17. In 2011, the state government announced an independent inquiry into the Victorian taxi and hire car industry, which Premier Ted Baillieu stated would:
- [A]ddress 'longstanding and deep-rooted' issues and ... recommend 'sweeping reforms' to the industry that would improve low levels of public confidence, provide better security for drivers and safety for customers, and ensure that drivers are properly trained and knowledgeable.<sup>2</sup>

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<sup>2</sup> Professor Allan Fels AO, *Customers First: Service, Safety, Choice* (Taxi Industry Inquiry) Summary Report, December 2012.

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18. At this time, the industry was described as:

[C]omplex and multilayered, with services delivered through a web of legal, commercial and economic arrangements involving taxi and hire car licence owners, operators, networks, drivers, training organisations, payment system providers and many others. These services operate within a restrictive and prescriptive regulatory framework that has evolved over many years.<sup>3</sup>

19. Taxi licences were valuable, with only around 3,550 licence holders in Victoria. Licence holders were also able to make a return on their licence by assigning or 'leasing' the licence to an operator for about \$30,000 per year in Melbourne. The majority of licence holders did not actually operate or drive a taxi.<sup>4</sup>

20. Licence value had increased by 7.3 per cent per year in real terms since 1980, with the average price paid for a licence in 2011 reaching \$495,000.<sup>5</sup>

21. The inquiry, carried out by Professor Allan Fels AO in 2011 and 2012, identified a range of issues within the industry and recommended substantial reforms which would 'not only improve the choice, quality and availability of services for taxi and hire car users', but would 'also assist the industry to become more accountable for its performance and boost demand for its services'.

22. Professor Fels commented in his report:

For many years, Victoria's taxi industry has operated as a 'closed shop', with a small number of licence holders protected and benefitting from the effects of no competition at the direct expense of taxi users, operators and drivers (who continue to experience low levels of remuneration, poor working conditions and a highly risky work environment). As licence values have risen, service standards have declined.

23. The inquiry recommended a range of reforms, including that:

- there no longer be any limit on the number of new licences issued
- licences be transferrable but not assignable (ie not be leased out to operators for a fee)
- an annual fixed licence fee be introduced, which would reflect the zone in which the licence is authorised to operate.

24. The inquiry recognised the introduction of a fixed fee for purchasing and maintaining a licence would lead to a loss of value in licences over time.

25. Following the inquiry, a range of legislative reforms was introduced by the state government in 2013 and 2014, which included:

- removing the restriction on the maximum number of taxi licences available
- setting licence prices at levels that would promote a measured increase in taxi and hire car numbers and allow an appropriate increase in the driver's share of fare revenue.<sup>6</sup>

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3 Fels, above n 2.

4 Ibid.

5 Ibid.

6 *Transport Legislation Amendment (Further Taxi Reform and Other Matters) Bill 2014* (Vic) First Amended Print Explanatory Memorandum, 3.



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26. In late 2015, the state government created a \$4 million Taxi Reform Hardship Fund to assist licence owners experiencing severe financial distress due to the reforms that followed the inquiry.
  27. In August 2016, further reforms were proposed by the government, aimed at, among other things, removing the significant licence fees, thereby making it easier to enter the industry.<sup>7</sup>
  28. These reforms also addressed the issue of licence assignment, by revoking existing licences and granting a new type of licence. A licence that was assigned at the time the new licence provisions commenced was granted to the incumbent assignee.<sup>8</sup> This meant the original licence holder no longer held a licence and the income they had been receiving from the assignment of their licence ceased.
  29. Licence holders whose licence was not assigned when the new provisions commenced were granted a new licence which was not assignable.<sup>9</sup> Also, in practice, they would not have been able to generate any assignment income as the new licences were low-cost and could be purchased easily.
  30. The government announced a \$494 million assistance package to financially assist licence holders impacted by these further reforms.<sup>10</sup> The support package included:
    - \$332 million of transition assistance payments
    - a \$50 million Fairness Fund, which was later uncapped.

## The Fairness Fund

31. Under the Fairness Fund announced in August 2016, eligible licence holders were able to apply to the department for an ex gratia payment between 30 November 2016 and 30 April 2017.
32. An ex gratia payment is discretionary:
 

[T]here is no obligation to provide a payment of money or other benefit and the entity obtains no benefit from the payment. The decision that results in an ex gratia ... [payment] is usually based on moral or equitable grounds rather than a need or legal obligation of the entity, or to settle or resolve a legal liability or claim.<sup>11</sup>
33. Licence holders were advised they could apply to the Fund if they had an ownership interest in a licence between 1 January 2016 and 23 August 2016 and were facing 'significant financial hardship' as a result of the reforms, where any or all of the below could be demonstrated:
  - a lack of current income or loss of a future income stream that was significantly impacting household spending capacity
  - significant difficulty meeting ongoing debt obligations related to the licence(s) held
  - a lack of available funds to meet financial commitments.
34. Licence holders were also advised that special consideration would be given to applicants with 'extenuating circumstances' that were resulting in financial hardship, which was of a different nature to the above.

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<sup>7</sup> *Commercial Passenger Vehicle Industry Bill 2017* (Vic) Introduction Print Explanatory Memorandum, 1.

<sup>8</sup> *Commercial Passenger Vehicle Industry Act 2017* (Vic) s 34.

<sup>9</sup> *Transport (Compliance and Miscellaneous) Act 1983* (Vic) s 143AB.

<sup>10</sup> Department of Economic Development, Jobs, Transport and Resources, above n 1.

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<sup>11</sup> Department of Treasury and Finance (Vic), *Financial Reporting Direction 11A Disclosure of ex gratia expenses* (June 2013).

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## Principles of good customer service

35. The investigation considered principles of good customer service, drawn from the Ombudsman's own Service Delivery Charter, and their application to the department's administration of the Fairness Fund.
36. Good customer service is critical for all Victorian public sector agencies that deal with members of the community, as it retains trust and confidence in these services and in the public sector as a whole.
37. Key principles of the Charter include:
  - Communication: keeping people informed, including acknowledging receipt of correspondence, keeping a person updated while a matter is looked into, advising them of key timeframes, and providing an outcome once a matter is finalised.
  - Transparency: providing reasons for decisions.
  - Accessibility: ensuring all members of the community can access the organisation, and providing different means by which people can make contact.

## Lessons from Commonwealth government ex gratia payment schemes

38. The Commonwealth Ombudsman has previously examined the administration of executive schemes,<sup>12</sup> including ex gratia payment schemes, by Commonwealth Government agencies, based on complaints over a six-year period.
39. In his report,<sup>13</sup> he:
  - commented on the benefits and drawbacks of such schemes
  - highlighted common issues arising in complaints to his office
  - outlined eight 'best practice principles' for agencies to consider when developing and administering executive schemes (including ex gratia payment schemes).

### Benefits and drawbacks

40. The Commonwealth Ombudsman noted that the main advantage of executive schemes was their flexibility, stating:

Because there is no need to wait until legislation is drafted, considered and passed by Parliament, such schemes can be quickly established when the need arises, adjusted easily as circumstances change and closed down when the need for them no longer exists. If legislation has unintended consequences that cause hardship, an executive scheme can ameliorate its effect on a particular group of people ...

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<sup>12</sup> 'Executive schemes' are those that rely on executive rather than legislative power.

<sup>13</sup> Commonwealth Ombudsman, *Executive Schemes*, <[https://www.ombudsman.gov.au/\\_\\_data/assets/pdf\\_file/0019/26209/investigation\\_2009\\_12.pdf](https://www.ombudsman.gov.au/__data/assets/pdf_file/0019/26209/investigation_2009_12.pdf)> (August 2009).

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41. He highlighted that this very same flexibility could also 'pose risks to people's rights in terms of program accountability and review of decisions', as core safeguards that apply when agencies are exercising powers conferred by legislation do not exist within executive schemes.

### **Issues commonly raised in complaints**

42. Common issues arising in complaints to the Commonwealth Ombudsman included:
- inadequate advice to potential claimants, including failure to publish guidelines or other relevant information
  - poor decision making practices, including delays in finalising claims, inadequate staffing resources, and inadequate information given to claimants when decisions were notified.

### **Best practice principles**

43. The best practice principles outlined by the Commonwealth Ombudsman included:
- ensuring comprehensive, accurate and up to date information is available to the public
  - good decision making processes, including timeliness in finalising claims and deciding reviews, ensuring staffing resources are adequate, and giving claimants adequate information when they are notified of decisions.

# Timeliness of the Fund's application process

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## Planning for the Fairness Fund

### Lessons from the Taxi Reform Hardship Fund

44. In establishing the Fairness Fund, the department told the investigation that it 'built on its experience' with the Taxi Reform Hardship Fund (TRHF), an assistance package provided by the state government to licence holders impacted by the earlier reforms.
45. The TRHF was a \$4 million fund, to which applications could be submitted between November 2015 and February 2016. The department said the TRHF involved an application process and assessment based on a measure of financial hardship, but the eligibility criteria were 'stricter, and the available funding much smaller' (compared to the Fairness Fund).
46. The TRHF received 95 applications, with applicants notified of outcomes in September 2016 – a wait of seven to 10 months.
47. In assessing applications to the TRHF, the department said it waited until all applications had been received and assessed before making final eligibility decisions and providing payments.
48. Noting the delays this caused to some applicants receiving their outcomes, the department said it adopted a different approach for the Fairness Fund, where outcomes to applications and payments were provided as assessments were completed.

49. Licence holders were told '[u]nlike the previous hardship fund, the Fairness Fund will provide significantly more funding and payments will be made faster'.<sup>14</sup>

### Predicting application numbers

50. The department told the investigation it attempted to predict the number of applications to the Fairness Fund by creating an Expression of Interest register which ran until the Fund opened in November 2016. About 700 Expressions of Interest were received.
51. The department said it also had access to data from the Taxi Services Commission, which showed that in November 2016 there were approximately 5,600 taxi licences and 1,200 hire car licences on issue. However, the department advised it was difficult to ascertain the exact number of people with an ownership interest due to:
  - some individuals owning multiple licences
  - others holding interests through complex structures, such as trusts.
52. Based on the above, the department internally forecast 150 applications to the Fund.<sup>15</sup> It subsequently clarified to the investigation that '150 was the minimum expected number of applications', reflecting a 'balanced judgement of senior executives in light of the number of applications to the TRHF and the expression of interest register'. It also advised that it had engaged resources that were able to be scaled up in the event more applications were received.
53. In total, 1,247 applications were received.<sup>16</sup>

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14 Taxi Services Commission, *Letter to licence holders: Victorian Government Fairness Fund is open for applications*, Printer's proof, 3 January 2017.

15 Department of Economic Development, Jobs, Transport and Resources, *Internal briefing for Head, Transport for Victoria – Approval of price contract variation for KPMG audit and assessment of Fairness Fund applications for the taxi and hire car industry*, 11 July 2017.

16 Department of Economic Development, Jobs, Transport and Resources, response to draft report, 15 May 2018.

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## The application process

54. Licence holders wanting to apply for a payment from the Fund were required to submit a detailed application form, which included questions about their financial affairs and the impact of the reforms on them.
55. Applicants had to provide information about their income, licence assignment income, bank accounts, real estate interests, licence details, share and investment interests, superannuation, vehicles, other assets and other debts.
56. Applicants were also required to provide supporting documentary evidence, such as tax returns, property and vehicle valuations, and bank and other statements.
57. The department advised applicants in correspondence and at public information sessions that all outcomes and payments were expected to be made by mid-2017.
58. The department engaged the Western Community Legal Centre (WEStjustice) to assist licence holders in completing their applications. The department said that based on the experience of the TRHF, it anticipated licence holders would likely require assistance preparing their application and associated documentation.
59. The department said it also offered an external psychological counselling service to applicants, in recognition that this may have been a difficult time for them.

## Complexities in the assessment process

60. Applications to the Fund were received by the department and then provided to external auditors engaged by the department to fully audit applicants' financial information.
61. The department said the core external auditing team comprised four auditors, a partner and administrative support, which was increased on an 'as needed basis'. It said:

Available resources ... [were] managed over time using best endeavours to meet the overall requirements of the assessment process. Accordingly, the audit effort has flexed in accordance with the volume of applications received and the timing of additional information received during the process. During April, May and June, a significant audit effort was required to address the volume of applications received subsequent to 31 March (842 receipts in April and May). Between June and October 2017 the initial assessment work on applications was completed to an extent that allowed a reduction of audit effort while the audit team waited for responses to requests for additional information. This was then scaled up again in October to address the significant volume of additional information.
62. Once each application had been fully audited, the Chair of the Fund was responsible for determining the outcome, in accordance with policy decided by the Minister. The department explained that:

While the Fairness Fund payments are discretionary financial payments from the Victorian Government ... the Department's assessment and authorisation of individual payments occurred within an eligibility and payment framework agreed by the Minister, following a thorough audit and on the recommendation of the Chair of the Fund (who was appointed by the Minister). Also, the payments were made from public funds authorised by the Cabinet to the Department specifically for (and limited to) this Fund.

63. The department informed the investigation that the assessment of applications to the Fund had been ‘complicated’ by a range of factors, including:

- the volume of applications, which was more than initially expected
- the poor quality of numerous applications, many of which were incomplete, necessitating follow up requests for extra information
- a further review undertaken of the first 320 applications deemed ineligible, to ensure decision making was consistent with the policy intent of the Fund
- the need to manage the risk of potential fraud.

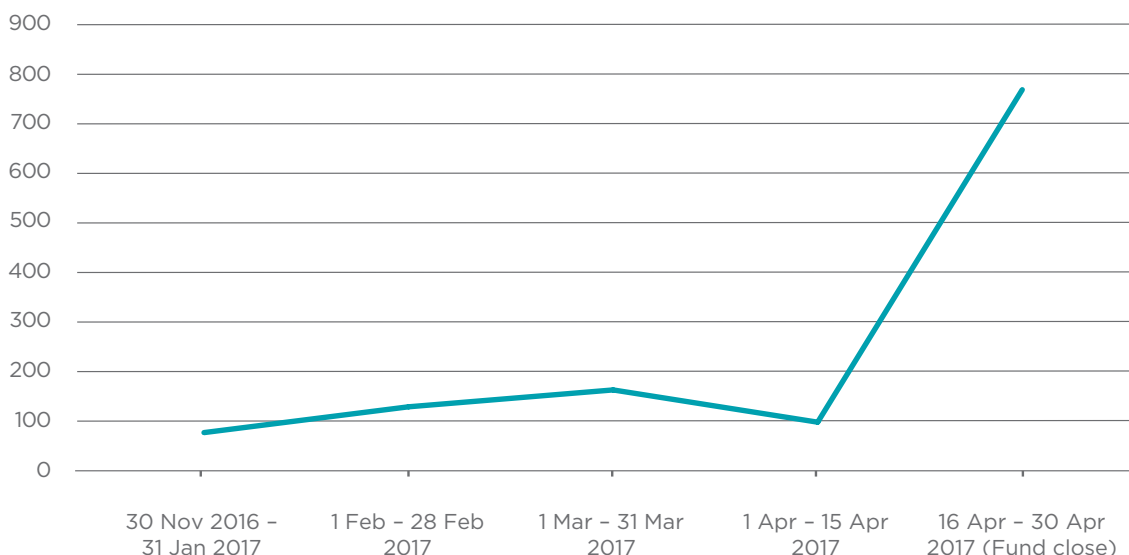
### Volume of applications

64. The department advised:

- 77 applications were received in the first two months of the application process
- a further 129 applications were received in February 2017
- an additional 163 applications were received in March 2017, bringing the total number of applications received to 369 – more than double the original minimum forecast of 150.

65. There was a significant spike in applications in April 2017, with 98 received in the first two weeks, and then a further 768 received in the last two weeks before the application process closed (see Chart 1). This brought the total received to 1,247<sup>17</sup> – more than eight times the original forecast.

Chart 1: Flow of applications received



<sup>17</sup> The total number of applications submitted by 30 April 2017 included a small number of applications submitted before the due date which were recorded as a separate application much later than 30 April 2017, including for example applications lost in the post.

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## Delayed processing of applications

66. A month and a half after the application period closed – around the time the department initially advised payments were to be provided – 679 of the 1,247 applications (54 per cent) had been preliminarily assessed by the Fund's external auditors. Of these, only 176 applications (or 14 per cent of the total) had been fully audited.<sup>18</sup>
67. The first payments from the Fund were made in late July 2017, about three months after the application process closed.
68. About six months later, in January 2018, the department said about two thirds of applications (881 of the 1,247) had been finalised, leaving about a third (354) outstanding. This was around six months after the department had originally intended to provide outcomes and payments, and eight and a half months after the application period closed.
69. On 30 April 2018, a year on from the closure of the application process, the assessment of all applications was completed.
70. Licence holders complained to the Ombudsman about the length of the assessment process and delays in their applications being processed. Many said this caused them distress given their uncertain financial circumstances at the time.

71. One licence holder said:

My Fairness Fund application has been with the ... [department] for over 9 months now ... This Fund was designed to provide immediate relief to license owners, yet those most in need are not being assisted ... or no urgency. Is it a case of "too hard basket"?

...

My income has now ceased and taken away from me leaving me with debt that I cannot service. I plead with you to please assist or intervene so my family can breathe again, we are not criminals but honest hard working Victorians, who deserve to reap the benefit of their hard work.

72. Another said:

... I am scattered due to the uncertainty of our predicament which ... [the] department can rectify by putting an end to it by buying our Plates back ... We have four children aged five to seventeen at home, my husband has health issues and we have both been under emotional and mental stress for over a year due to this uncertainty and reduction in our income from the Plates, our children and extended family are affected too.

...

We are still waiting on the "fairness fund". if? when? and how much will we receive????

My lease income has almost ceased, I am at wits end ... We as a family feel beleaguered, frustrated. We feel our assets are being stolen from us by ... [the] State government who are supposed to protect us and our assets.

73. In the following case studies, the licence holders waited seven months and 10 months respectively to find out if they would receive a payment.

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<sup>18</sup> Department of Economic Development, Jobs, Transport and Resources, *Ministerial Brief to the Hon Jacinta Allan MP, Minister for Public Transport*, 23 June 2017.



### Case study 1: licence holder forced to return to work while waiting seven months for outcome

Marie applied to the Fund on 27 April 2017. She complained to the Ombudsman on 9 October 2017 about the delay in the department processing her application.

She said:

- Her financial situation had deteriorated as a result of the reforms.
- Her husband, Frank, had Parkinson's disease, and his condition had worsened as a result of the stress of their financial situation.
- She receives support from the National Disability Insurance Scheme for her husband, and a support person regularly attends their home to care for him.

- As a result of their financial situation, she had to return to work, and there were times when both she and the carer were not at home, leaving Frank by himself.
- Frank recently had a fall when he was at home alone and injured himself.

At this office's initial meeting with the department, it advised that a decision on Marie's application was made on 13 November 2017 that she was eligible for a \$100,000 payment. The department advised Marie would receive the payment within two to three weeks of the decision date, which was about seven months after her original application was submitted.



### Case study 2: pensioner waited ten months to be advised of ineligibility

Mario is an elderly pensioner who applied to the Fund on 9 February 2017 with the assistance of his daughter. He complained to the Ombudsman on 30 October 2017 about the delay in his application being processed, as about nine months had passed since he submitted it:

... My application has not yet been processed.

I have contacted the Fairness Fund Administrator seeking a time frame or outcome but have only received vague or no advice.

I am a pensioner and my wife and myself are suffering, this fairness fund was supposed to provide relief, I have been very patient, however, I am now in very difficult financial grounds and the fairness fund is providing me with no responses or even specific advice.

No reasonable person would expect that 8 months later I am yet to receive a response from the fairness fund. This is harsh, unjust and completely unreasonable.

Not only has my asset been taken from me with no fair compensation, but, this fairness fund is yet to advise me of an estimated reply date and how they assist me. **I urgently seek the Ombudsman's assistance** [emphasis in original].

In December 2017, Mario was advised that he was ineligible to receive a payment from the fund, about ten months after he submitted his application.



74. In response to the Ombudsman's draft report, the department said Marie (Case study 1) had a unique set of financial circumstances, which were not covered by the assessment criteria that had been established. It said that as such:

The final assessment for this application was held back until a consistent approach was determined by the Chair in relation to ... [applicants with these circumstances]

...

While this caused delays for affected applicants waiting for an outcome, ultimately it was to their benefit and this applicant received a payment.

75. In response to the Ombudsman's draft report, the department said Mario (Case study 2) was deemed ineligible because he did not meet the criteria of 'significant financial hardship'.

### Requests for further information

76. The department advised that it made requests for further information during the assessment process where applicants had not provided all the information required, and/or the information provided needed clarification.

77. It said that as at 17 January 2018, 755 applications were subject to such requests via letter – more than half the total applications received. As shown in Table 1 below, in the majority of cases (629), one request for further information was made, with two requests being made in a further 110 cases.

78. The department said that in addition to the above, requests for further information were made to applicants via email and telephone, meaning the total number of applicants who were required to produce further information exceeded 800.

Table 1: Requests for further information sent to applicants	
Number of letters sent as at 17 January 2018	Number of Applicants
1 letter	629
2 letters	110
3 letters	13
4 letters	2
5 letters	1
<b>Total</b>	<b>755</b>

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79. At interview, WEstjustice said the majority of the 155 applicants they assisted received letters requesting further information or clarification. This was despite WEstjustice providing a lawyer, financial counsellor and social worker to assist initially with the submission of applications.<sup>19</sup>

80. The department advised the investigation that the high number of requests for further information was attributable to the poor quality of applications, many of which contained incomplete information. It said in some cases, applicants deliberately failed to complete some parts of the application form, on the basis that they objected to the government's policy. The department said irrespective of whether requested information had been omitted deliberately or by mistake, it provided a number of opportunities for applicants to provide the required information.

81. In response to the Ombudsman's draft report, the department further said:

The Government could have closed the Fund earlier for expediency but was determined to help as many people as possible prove their eligibility for a payment.

As a result, it was kept open and necessitated the need to continue sending additional information requests. Applicants were then provided multiple opportunities, and offered time extensions when requested for, in order to respond to these requests.

82. The department also said:

In assessing applicants who had provided inaccurate, incomplete or poor-quality applications, the department needed to ensure integrity of the assessment and audit process was maintained, while also giving applicants every opportunity to provide the information necessary to access funding. Applications of this nature posed the highest risk to the fund. Accordingly, the audit of these applications was particularly resource intensive and led to extended timelines. While rejecting initial applications due to inaccurate, incomplete or poor-quality information may have expedited the assessment process it would have risked denying potentially eligible applicants access to payments.

83. Evidence provided to the investigation indicated that in some cases, there was a long time between requests by the department for extra information, which further delayed the assessment process. This occurred in the following case study, where there was a four month gap between the initial and subsequent requests for further information.

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<sup>19</sup> Interview with WEstjustice (Melbourne, 18 January 2018).



### Case study 3: four month gap between requests for further information

Peter and his wife Elise applied to the Fund on 7 March 2017. On 30 October 2017, they complained to the Ombudsman about the delay in their application being processed. They said after submitting their application, the department requested further information on 23 June 2017, which they provided on 6 July 2017.

The department acknowledged receipt of the further information in an email to Peter and Elise on 10 July 2017, which stated that '[o]utcomes for all applications along with payments ... [were] expected to be made from mid-2017'.

A further request for information was made on 3 November 2017, four months after the first request, and eight months after their application was submitted.

The request required a response within 14 days of the date of the letter. Peter and Elise said by the time they received the letter by post, they had only seven days to respond.

The second request asked Peter and Elise to provide, among other things, bank statements demonstrating their receipt of two \$150,000 loans. They advised that the two loans were from a family member in 2004 and they had already provided the original loan agreements, endorsed by a lawyer, to the department. They said they had asked the bank to supply the relevant statements, but it advised it only maintains records for seven years. Peter and Elise responded to the department on 16 November 2017 explaining the above.

Peter and Elise raised concerns about the length of the process and multiple requests for information in their complaint to the Ombudsman, stating:

It seems unreasonable and unfair to repeatedly request additional information. This will only drag on the approval process with no end date. Also, the time taken from my reply to the first request for additional information and the second request takes about 4 months.

In March 2018, Peter and Elise were notified they were ineligible to receive a payment.

84. In response to the Ombudsman's draft report, the department said:

- Peter and Elise's original application was missing some required information.

- They only provided partial responses to requests for additional information.
- Ultimately they did not provide sufficient evidence to substantiate claims in their application.

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## Review of ineligible applicants

85. The department told the investigation that it undertook a review of the first 320 applications assessed as ineligible to ensure the assessment process 'was consistent with the policy intent of the Fund'.
86. The department said it did not inform applicants the review was being undertaken or that they had been assessed as ineligible to receive a payment until the review had been completed. The department acknowledged this delayed outcomes being provided to these applicants, but said:

It would have been inappropriate for the Department to notify applications of a 'preliminary' assessment before the application of Government policy is finalised by the minister. The process of providing policy advice to the Minister is confidential, and a matter for the Minister, not the department, to decide whether to make public the nature of policy advice being sought or given by the Department. The Minister's response to questions regarding the timing of assessment is recorded in Hansard and refers generally to the complexity of the assessment process.

87. The department advised that the review was finalised in December 2017, concluding that for 'the vast majority', the existing eligibility framework for the Fund was 'robust and appropriate', with a minor adjustment made to the assessment criteria.
88. Applicants subject to the review were then advised of their ineligibility in December 2017 – eight months after applications closed.

## Management of fraud risks

89. The department informed the investigation that the need to manage the risk of potential fraud contributed to the delay in applications being processed. It explained that the specific financial criteria used to assess the eligibility of applications was not provided to licence holders 'because of the risk of fraud and the potential for applicants to engage in the strategic withholding of information in order to maximise their payment'.
90. It does not appear the department told licence holders that the detailed criteria would not be published.
91. Evidence from the CEO of WEstjustice, at interview, supported the legitimacy of this issue. He stated they had been approached by people who said they had decided not to, or had been advised not to, disclose all their assets.
92. The department advised that the length of the assessment process 'reflected the combined impact of two broad approaches: best practice fraud prevention and taking every opportunity to ensure that everyone who would be eligible is able to demonstrate their eligibility'.
93. In response to the Ombudsman's draft report, the department reiterated that:
- ... the Government was warned, including by the CEO of WEstjustice, that applicants were hiding assets.
- To ensure that applications were adequately assessed and the integrity of the fund maintained, the department put in place a rigorous auditing and scrutiny process.

# Communication with applicants

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94. On top of the delays in the processing of applications, licence holders raised concerns about poor communication from the department, including:

- an inability to get an update on the status of their application, and estimated timeframes for an outcome
- a lack of transparency around decision making.

95. Many said these communication issues exacerbated their frustration and stress arising from the process.

96. Effective communication is a key principle of good customer service. It includes keeping a person updated while a matter is looked into; advising them of key timeframes; and providing an outcome once a matter is finalised.

## Responses to requests for status updates

97. The department told the investigation the acknowledgement letters it sent to applicants after receiving their application stated that payments were 'expected to be made by mid-2017'. This advice was also provided at public information sessions held by the department.

98. The department said it sent update letters to all applicants on 30 May 2017 which stated that applications were 'being assessed as quickly as possible', and that the Chair of the fund would 'notify each applicant of the outcome of their application when it is finalised'.

99. Advice about the original mid-2017 timeframe ceased at this time. However, the department advised it identified during the Ombudsman investigation that in error, a small number of letters were sent to applicants between May and September 2017 which contained the initial advice that payments were 'expected to be made by mid-2017'.

The department said it:

was working to ensure every valid application was accepted and processed, and it was an oversight that the text of the acknowledgement letter was not updated.

100. As months passed since applications were submitted and the process closed, many licence holders contacted the department seeking an update on when they could expect an outcome.

101. Licence holders complained to the Ombudsman about the lack of information they received from the department in response to these requests. Many were provided information of a generic nature. For example:

There have been many applications to the Fund. The department, in consultation with the Fund's externally appointed auditors, is continuing to work through applications as quickly as possible.

Each applicant will receive a notification letter as soon as their application is finalised, which means some people will learn the outcome of their application before others.

We have started processing payments to some applicants. However, the assessment process is detailed and takes time.

Every person's financial circumstances are different and it is necessary to assess and investigate every application on its merits to ensure no eligible person misses out.

At this stage, we are unable to provide a definite timeline for when your application will be finalised.

We understand this may be a distressing time for you and your family. The Taxi Services Commission has established a dedicated hardship support line with counsellors that can assist ... Please note that this telephone service cannot give you an update on your application status.

102. In the following case study, a couple was left waiting many months for an outcome, and was frustrated by the generic responses they received from the department when trying to get any information.



#### Case study 4: 'no new information', despite lengthy wait

On 3 December 2017, a complaint was made to the Ombudsman on behalf of Albert and his wife Yvonne about their inability to get an update on their application to the Fund.

Albert and Yvonne received an acknowledgement of their application on 23 March 2017, but received no subsequent updates or communication. Nearly eight months later on 20 November 2017, they sent an email to the department to follow up. The department responded on the same date with the template response outlined at paragraph 101.

Albert and Yvonne sent a further follow up email on 22 November 2017 referring to advice provided at an information session in early 2017 that payments would be made by mid-2017. They queried how many applications had been received and, of those, how many had been finalised.

The department responded on 23 November 2017 without acknowledging the query raised, stating there was 'no new information' the department could provide.

In December 2017, Albert and Yvonne were advised they were ineligible to receive a payment.

103. In response to the Ombudsman's draft report, the department said in this case '[n]otification of an outcome was delayed while the department undertook its review to ensure that the outcomes were reflecting the intent of the Fund'.<sup>20</sup>
104. The department also said that Albert and Yvonne were deemed ineligible because they did not meet the criteria of 'significant financial hardship'.
105. When asked about applicants' concerns regarding communication, the department said:

The Fairness Fund team has provided as much information to applicants as was possible within the policy settings.

The timelines for finalising the outcomes of applications has been uncertain, and so we have not provided timelines.

...

We recognise that some applicants have expressed a desire for greater and more frequent communication ... [the department] decided to prioritise effort on getting payments to those who need it most as quickly as possible, while still providing reasonable responses to queries from applicants.

#### Call centre response to queries

106. The department outsourced management of telephone communication from the public about the Fund to a call centre. It said the call centre 'was established as an information service appropriate for a one-off discretionary grants program such as the Fairness Fund'.
107. Accessibility is one of the key principles of good customer service in the Ombudsman's Service Delivery Charter, which outlines the need to ensure all members of the community can access a public sector body, and that they can do so by various means.
108. Call centre staff were provided a script from the department containing basic information about the Fund and generic responses to potential queries they may receive from the public. However, the department said that call centre staff did not have access to the department's database or any information about applications to the Fund.

<sup>20</sup> This review is mentioned earlier in the report, at paragraph 85.

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109. The call centre was unable to address basic questions such as whether a person's application had been received; what additional information was needed from applicants; or the status of a person's application. Instead, people who contacted the call centre were advised to email the department.
110. On some occasions, a lack of communication between the call centre and the department created extra confusion for licence holders attempting to clarify the status of their application.
111. This occurred in the following case study, where the department sent the applicant a request for further information, which he says he did not receive. Over the coming months the applicant followed up with the department via email and contacted the call centre about the status of his application. He was not at any stage advised it was awaiting further information from him. He complained to the Ombudsman about the unnecessary delay this caused in the processing of his application.



### **Case study 5: miscommunication about further information extends delays**

On 8 December 2017, Nick complained to the Ombudsman about the department's communication during the assessment of his application. He said he received a 'final request for additional information' letter dated 30 November 2017, which stated he would be deemed ineligible for a payment if the requested information was not provided within seven days.

The letter said the department had requested information from him on 31 August 2017 (three months prior), to which it had received no response. Nick said he never received this letter and had in fact followed up with the department twice by email, on 28 September 2017 and 30 October 2017, seeking an update on his application. He said he had also contacted the call centre. In all communications he said he also explained he had lost his job and would be unemployed as of November 2017.

Nick was not told in any response to these emails or his call to the call centre that a letter had been sent to him on 31 August 2017 and that the fund was waiting for him to provide additional information.

One email from the department on 2 October 2017 contained the generic template response outlined at paragraph 101 of this report. Nick said that another email dated 1 November 2017 specifically stated 'Additional information not requested'.

Nick said he was confused and frustrated that the department had not informed him of the request of 31 August 2017 earlier, as he could have provided the requested information much earlier.

Nick further wrote to the department on 4 December 2017 seeking an urgent extension of time to submit the requested information. He had received no response by 8 December 2017 and so rushed to get the requested information to the department. Nick said he received a response the same day from the department confirming it had received his additional information and it would be passed on to the external auditors. He said:

Interestingly, they did not reply when I asked for an extension by 1 week.

In January 2018, Nick was advised that he was eligible for a \$50,000 payment.



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112. In response to the Ombudsman's draft report, the department confirmed that it requested additional information from Nick on 31 August 2017, and said:

the applicant emailed the Department on 11 October 2017 with further information about his circumstances. This email was registered as a response to the 31 August request for additional information.

It became clear later that the applicant had not received the 31 August request for additional information, and the applicant's October email with further information was initiated by the applicant.

While this administrative error caused a delay in finalising the application, the error was uncovered through subsequent checks.

The applicant supplied the requested information and was awarded a payment.

## Transparency around decision making

113. Some licence holders complained to the Ombudsman about the lack of reasons given for the decision on their application. Many licence holders were found to be ineligible to receive a payment and said they were perplexed by this outcome, as they believed they had met the published criteria around 'significant financial hardship'.
114. Letters to applicants advising them of their ineligibility did not provide any individual reasons for the decision, stating:

I regret to inform you that you did not meet the eligibility criteria for the Fund and do not qualify for a payment. This result is final and there is no opportunity for review.

115. It does not appear the department told licence holders up front that they would not be provided individual reasons for outcomes.

116. Transparency is a key principle of good customer service outlined in the Ombudsman's Service Delivery Charter, which includes providing reasons for decisions. While this is preferable in ordinary circumstances, the department was not obliged at law to provide reasons for decisions on Fund applications, given the payments were ex gratia.

117. Nonetheless, licence holders expressed dissatisfaction with the lack of transparency around decision making, and in some cases tried to seek reasons from the department for the outcome.

118. One licence holder stated:

... I am not at all happy and satisfied with the outcome of my application.

...

You asked for a significant amount of information at the time of the application and in return I get a one page scripted/cookie cutter letter stating I did not meet the eligibility criteria, that no one to date actually knows what they are!!!!

119. In the following case study, a licence holder questioned the basis for the outcome of his application to the fund, and was dissatisfied with the generic response he received.





## Case study 6: queries about eligibility assessment go unanswered

On 17 November 2017, Stephen complained to the Ombudsman about the lack of reasons provided for the outcome to his application. He applied based on the three taxi licences he held and was advised he was eligible to receive a \$250,000 payment. Stephen was dissatisfied with this amount and sought clarification from the department about how it had reached this calculation. He wrote to the department stating:

... I seek clarification on ... the process for calculating how much someone is to receive from the Fairness Fund, and how the figure was determined to ascertain [if] this was fairly accomplished. I am seeking fairness and transparency in how this was determined. I have a right to know as the owner of the now defunct licenses.

The department responded to Stephen stating:

The Chair of the Fund ... supported by a team of externally appointed auditors, have assessed and thoroughly considered each and every application in accordance with the eligibility criteria.

Eligibility for payments from the Fairness Fund is determined based on a number of factors, including significant difficulty meeting debt obligations, and loss of income.

If applications were found to be missing important information, the team and TfV [Transport for Victoria] have worked with applicants to obtain the necessary supporting information to ensure no eligible person misses out.

We trust this addresses your concerns.

120. In response to the Ombudsman's draft report, the department said:

The payment of \$250,000 is one of the highest payments made from the Fairness Fund, and is in addition to the \$200,000 of Transition Assistance, which was also paid to this applicant.

121. The department advised the investigation that details of the assessment process would not be made public once all applications had been assessed because:

The Fund is [a] one-off discretionary grants program. The disclosure of assessment process details in isolation could confuse or misinform applicants about the assessment process. There were a number of applications where discretionary judgement needed to be applied by the Chair to determine eligibility. Judgement was applied based on the principles of the established eligibility criteria as a whole - not just the financial assessment process. In addition, the complexity of the financial assessment process would require significant resources to provide the level of customer service to support follow-up queries.

122. The investigation accepts the department's rationale for not publishing the detailed assessment criteria in light of the discretionary nature of the Fund.

## Appealing decisions

123. Applicants were advised from the outset that there would be no opportunity to appeal outcomes regarding eligibility to receive a payment. For example, in a letter to the Victorian Hire Car Association, the department said:

The Government has appointed external auditors to ensure that applications are properly assessed in accordance with the eligibility criteria. The Fairness Fund's auditors have established a comprehensive, evidence-based, consistent application process and will assess each application individually and carefully, verifying information as required. Therefore, there will be no further opportunity for review.

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124. Outcome letters to ineligible applicants also confirmed that decisions were 'final' and that there was no opportunity for review. These letters, however, also stated:

If you are concerned that information you provided during the application and assessment process was not considered in the final assessment, please contact the Fairness Fund by email ...

125. Ineligible applicants who complained to the Ombudsman questioned how they could know if all information provided had been considered when they were not advised of the specific eligibility criteria used to assess applications and were unaware of how their application had been considered.

126. The following case study is an example of this. The licence holder had a \$150,000 debt from her taxi licence and questioned the conclusion that she was ineligible to receive a payment. She expressed concern that the department had not received all her information and requested it provide her the criteria used to assess applications.

127. In response to the Ombudsman's draft report, the department said the licence holder in the case study was deemed ineligible because she did not meet the criteria of 'significant financial hardship'.



## Case study 7: failure to explain outcome, despite concerns information may not have been received

On 27 December 2017, Cherie complained to the Ombudsman about advice she received on 11 December 2017 that she had been found ineligible to receive a payment from the Fund. Cherie held one taxi licence.

Cherie emailed the department expressing concern that it did not receive all the information she provided. She said:

I received a letter today stating that I do not qualify for any payment from the fairness fund.

I now am concerned that you did not receive all my information.

I purchased my license in 2015 and still owe \$150,000 after the government forcibly acquired my license.

How does this fairness fund work if my license has been taken away from me and I still have a debt to the bank as stated above \$150,000 with no income coming in from the plate [licence] to pay the bank back.

She sent a further follow up email to the Fund on 18 December 2017.

The department responded to Cherie on 8 January 2018 with a generic response:

The Chair of the Fund ... supported by a team of externally appointed auditors and Transport for Victoria (TfV), have assessed and thoroughly considered each application in accordance with the eligibility criteria.

The purpose of the Fairness Fund was to assist licence holders facing significant hardship as a result of the reforms, who can demonstrate any or all of the following criteria

- A lack of current income or loss of a future income stream that is significantly impacting on household spending capacity.
- Significant difficulty in meeting ongoing debt obligations related to the licence(s) held.
- A lack of available funds to meet financial commitments.

Special consideration was also given to applicants with extenuating circumstances that are resulting in financial hardship of a different nature to that set out above. Eligibility was reviewed on a case-by-case basis, [and] took into account all the information submitted.

If applications were found to be missing important information, the Fairness Fund team has worked with applicants to obtain the necessary supporting information to ensure no eligible person misses out.

As noted in our letter dated 7 December 2017, the outcome is final and there is no opportunity for review.

We trust this addresses your concerns.

Cherie responded to the department stating:

How can this be a fair outcome when I have met all the criteria and still suffering financially?

Can you please send me the criteria that was used to assess my application because I do not understand how I am not eligible considering I was left with a debt of \$150,000.

Please explain.

The Fund responded to Cherie's further correspondence stating:

The assessment of your application is now closed. The Fairness Fund Support Team is unable to provide you with further assistance and will not be responding to further emails.

In her complaint to the Ombudsman, Cherie questioned the criteria used to assess applications and why she was not provided any reasons for her ineligibility. She said 'based on the criteria on the website I was eligible and why was I denied any avenue to appeal considering I am left with a sizable debt'. She further said:

I would like to express my disgust as to how I have been treated by the fairness fund. How can this be ok?

1. Lack of communication
2. Questions asked by me not being answered
3. No explanation as to how they came to this decision.

# Policies and procedures

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128. The investigation also considered whether the department had appropriate policies and procedures in place to manage timelines, and communication with applicants and complaints.

129. When asked to provide all relevant policies, procedures and business rules, the department provided:

- an audit process flow chart, which outlined the process by which the external auditors assessed applications
- business rules for the department's receipting of applications.

130. The department also referred to the template email responses which were developed and provided information on its practices once application outcomes started being finalised. It said:

[T]he administration team established a daily catch up with the project manager and project director to 'triage' and/or escalate all queries being received by email or phone. The project manager more closely monitored call centre logs to identify themes or issues emerging so that the call centre script could be kept relevant and up to date at all times.

131. The department did not provide any written policies, procedures or business rules about managing timelines, communication with applicants or complaint handling.

# Conclusions

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132. The Fairness Fund was established by the state government to provide ex gratia payments to licence holders suffering 'significant financial hardship' as a result of industry reforms. It was a one-off discretionary grants program: the government was not obliged to provide the payments, but rather did so as an act of 'good faith'.
133. As highlighted by the Commonwealth Ombudsman, ex gratia payment schemes are commonly characterised by their flexibility and quick establishment, without the need for legislation to be passed. This very same flexibility can, however, pose risks to people's rights and expectations, as decisions are not subject to review and the usual safeguards around transparency and decision making do not apply.
134. While noting the nature of the fund, by the department's own acknowledgement it significantly underestimated the volume of applications to the fund, expecting a minimum of 150. It was not clear to the investigation why the department was not able to better forecast this given it received around 700 Expressions of Interest and had access to data showing there were approximately 5,600 taxi licences and 1,200 hire car licences on issue.
135. The department ultimately received 1,247 applications. The volume of applications contributed to delays in applicants receiving outcomes. While the department advised that its resources were scaled up to deal with the volume of applications, the delays suggest that inadequate resources were assigned to the task of assessing applications.
136. Complexities with the assessment process also contributed to delays. It is accepted that some of these complexities were likely unavoidable or outside the department's control, such as applicants mistakenly or deliberately omitting information in their applications. The department engaged a community legal centre to assist licence holders with the complex application process, as well as providing an external psychological counselling service.
137. Dissatisfaction with the duration of the assessment process may have been less had the department not raised expectations early by stating that all outcomes and payments were expected to be made by mid-2017.
138. It seems the department realised this commitment would not be met for the majority of applications around May – June 2017, when its initial advice about the mid-2017 timeframe ceased, and only 14 per cent of applications had been fully assessed.
139. It is acknowledged that timelines for deciding upon applications were uncertain at this time. However, the department should have been more transparent with applicants about the process taking much longer than initially anticipated and provided a revised estimated date for when applicants would receive an outcome. This would have gone a way to managing some applicants' already heightened expectations, and growing anxiety about their uncertain financial circumstances.
140. Instead, the department sent template responses to applicants who queried the status of their application and established a call centre which had no access to information about applications and was unable to give appropriate advice.

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141. It took 12 months from the closure of the application process for all 1,247 applications to be finalised. Given the impact of these decisions on individuals and their families, and the initial expectation that applications would be finalised by mid-2017, this delay was unreasonable.
142. The department's advice regarding the limited information which could be provided to applicants 'within the policy settings' and its prioritisation of getting payments 'to those who need it most' is also acknowledged. However, the importance of effective communication was underestimated by the department.
143. The investigation accepts the department's rationale for not publishing the Fund's detailed assessment criteria, noting the potential for fraudulent applications. However, understandably, this led to confusion amongst applicants ultimately deemed ineligible who believed they clearly met the high-level eligibility criteria of 'significant financial hardship'.
144. It is acknowledged that the Fund was an ex gratia payment scheme, and so not only was there was no legal obligation to provide the payments, there was also no requirement to provide reasons for decisions made. However, the absence of reasons for outcomes, combined with the delays, inadequate communication, and no published information regarding the specific eligibility criteria, resulted in many viewing the Fairness Fund as anything but fair.
145. Illogically, the department also informed applicants that while they were not able to appeal outcomes, they could raise concerns if they believed information they provided had not been considered in the final assessment. The absence of details of the reasons for outcomes or the specific assessment criteria used rendered this advice futile and caused further frustration amongst applicants.
146. The investigation notes that, generally, extensive policies and procedures, akin to those of a public sector agency, are not developed for ex gratia payment schemes, in light of their quick and temporary establishment. In respect of the Fairness Fund, the department developed detailed eligibility criteria and business rules around receiving applications. However, it would have benefitted from also developing a procedure around communication with applicants, including the role of the call centre in dealing with queries and complaints. This would have ensured such communication with licence holders was consistent and timely, and concerns were escalated where appropriate.
147. Government departments and agencies should consider the issues outlined in this report in the establishment of any future ex gratia payment schemes.

## Opinion

148. Based on the evidence obtained in the investigation, the department has acted in a manner that is unreasonable, pursuant to section 23(1)(b) of the Ombudsman Act, by:
- failing to establish and resource the scheme sufficiently to meet the reasonable likelihood of demand
  - failing to transparently communicate with licence holders about their application to the fund, including reasons for delay.

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149. In response to the Ombudsman's draft report, the Secretary of the department said:

The department has adhered to its obligation to spend Victorian taxpayers' money with due diligence.

The circumstances which led to the assessment of applications taking longer than expected included:

- a) many applications included inaccurate information or were incomplete to a degree that they could not [be] assessed
- b) many applications being of such a poor quality that they could not be assessed
- c) the number of applications to the Fund being at the upper end of the department's expectations
- d) around half of all applications being received in the final two weeks of the application period (as this could not be foreseen it took time to scale-up processing and audit activity).

...

The department agrees that its communications were not as agile as possible and alternative options should have been considered, adopted and implemented. If required to administer similar discretionary *ex gratia* payments in future, the department will work to develop a more comprehensive and agile communication plan.

It is also important to note, as mentioned in your draft report, that the Fairness Fund was not the primary means for all licence holders to receive redress for the impact of the Government's reforms. The vast bulk of assistance was delivered through the \$332 million of Transition Assistance Payments which was paid in October 2017. The Fairness Fund was an additional, and discretionary, fund.

150. The department further said:

It is important to recognise that Fairness Fund payments were discretionary, and the Government established the Fund as recognition of the hardship experienced by licence holders as a direct result of the industry reforms.

Furthermore, payments from the Fund were in addition to transition assistance payments of up to \$100,000 paid directly to taxi and hire car licence holders. Transition assistance payments were paid for up to four licences. The Government was not obliged to make these payments.

Overall, the Government has provided over half a billion dollars of direct and indirect financial assistance to licence holders. After combining transition assistance and Fairness Fund payments, some individual licence holders received up to \$900,000 in financial support.

# Victorian Ombudsman's Parliamentary Reports tabled since April 2014

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## 2018

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Investigation into Maribyrnong City Council's internal review practices for disability parking infringements

April 2018

Investigation into Wodonga City Council's overcharging of a waste management levy

April 2018

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

March 2018

## 2017

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Investigation into the financial support provided to kinship carers

December 2017

Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre

November 2017

Investigation into the management of maintenance claims against public housing tenants

October 2017

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

September 2017

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

September 2017

Investigation into Victorian government school expulsions

August 2017

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

June 2017

Apologies

April 2017

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

March 2017

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

February 2017

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

January 2017

## 2016

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Investigation into the transparency of local government decision making

December 2016

Ombudsman enquiries: Resolving complaints informally

October 2016

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

September 2016

Report on recommendations

June 2016

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

June 2016



Investigation into the misuse of council resources  
June 2016

Investigation into public transport fare evasion  
enforcement  
May 2016

## 2015

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Reporting and investigation of allegations  
of abuse in the disability sector: Phase 2 –  
incident reporting  
December 2015

Investigation of a protected disclosure  
complaint regarding allegations of improper  
conduct by councillors associated with political  
donations  
November 2015

Investigation into the rehabilitation and  
reintegration of prisoners in Victoria  
September 2015

Conflict of interest by an Executive Officer in  
the Department of Education and Training  
September 2015

Reporting and investigation of allegations  
of abuse in the disability sector: Phase 1 –  
the effectiveness of statutory oversight  
June 2015

Investigation into allegations of improper  
conduct by officers of VicRoads  
June 2015

Investigation into Department of Health  
oversight of Mentone Gardens, a Supported  
Residential Service  
April 2015

Councils and complaints – A report on current  
practice and issues  
February 2015

Investigation into an incident of alleged  
excessive force used by authorised officers  
February 2015

## 2014

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Investigation following concerns raised by  
Community Visitors about a mental health  
facility  
October 2014

Investigation into allegations of improper  
conduct in the Office of Living Victoria  
August 2014

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