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Managing Complaints Against Ticket Inspectors

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Victorian Auditor-General's Office
Auditing in the Public Interest

The Hon. Robert Smith MLC
President
Legislative Council
Parliament House
Melbourne

The Hon. Jenny Lindell MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act 1994*, I transmit my report on
Managing Complaints Against Ticket Inspectors.

Yours faithfully



DDR PEARSON
Auditor-General

30 July 2008

Foreword

The Public Transport Ombudsman scheme provides a dispute resolution service for users of public transport services who have complaints about ticketing, infrastructure, service delivery, staff and authorised officers. The scheme plays a significant role in Victoria's public transport system in an environment where public transport is facing formidable challenges resulting from an upsurge in patronage and concurrent capacity constraints.

This audit examined whether the scheme's governance and institutional arrangements for managing complaints against authorised officers were effective and efficient.

The PTO scheme is still young, having been established four years ago. Over this time, the PTO has been refining its complaint procedures and processes and implementing new tools to assist continuous improvement in the services that authorised officers provide.

At the time of the audit, only a small number of authorised officer complaints received by the PTO were directly managed by them. Around 80 per cent were referred to other agencies to manage as they were outside of the PTO's jurisdiction.

The audit found that the PTO's management of authorised officer complaints could be more timely and there is a need for the PTO's role to be better communicated to public transport users. The pressures on the organisation are likely to increase. Its jurisdiction in the area of authorised officers has recently been widened, and an increased awareness of the scheme in the community is likely to further increase the level of complaints it handles.

In undertaking this audit, my mandate in auditing such agencies as PTO Ltd was questioned. Nevertheless, PTO Ltd should be commended for its cooperation and for its timely action in relation to several key issues raised during the audit.



DDR PEARSON
Auditor-General

30 July 2008

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1 Executive summary

1.1 Introduction

Public transport in Victoria is provided by a range of private companies under franchise agreements with the Victorian Government. Private transport operators may employ or engage authorised officers to ensure that passengers comply with ticketing and behavioural requirements. Authorised officers have powers of ticket inspection as well as protection of public safety, customer service and enforcement of all transport offences including behavioural offences.

In April 2004 the Public Transport Industry Ombudsman Victoria (PTIOV) Limited was established to administer a public transport complaints management scheme (the PTO scheme) to investigate complaints, including those made against authorised officers. Complainants can use the PTO scheme if they fail to reach resolution with a transport operator. In October 2006 the PTIOV's name was changed to Public Transport Ombudsman Limited (PTO Ltd).

As a company limited by guarantee, PTO Ltd does not have shareholders but, rather, a number of members of the company who pay an annual membership fee and who are bound by the company's charter and constitution. Current members include the major transport operators, such as Yarra Trams, Connex, and the Bus Association of Victoria. The board of the company employs the Public Transport Ombudsman (PTO).

When PTO Ltd was established, the PTO Ltd charter restricted the PTO's jurisdiction to investigate complaints regarding the conduct or behaviour of authorised officers. Under the *Transport Act 1983*, the Victorian Ombudsman had jurisdiction to investigate complaints that related to authorised officers whilst they were exercising their statutory powers. Arrangements entered into between the PTO and the Victorian Ombudsman provided for these complaints to be transferred to the Victorian Ombudsman for investigation. Most of the complaints against authorised officers were in relation to the exercise of their statutory powers and therefore managed by the Victorian Ombudsman. The PTO's charter has now been amended to provide it with jurisdiction, but not powers, concurrent with the Victorian Ombudsman, over complaints against authorised officers. The changes took effect from February 2008.

It is likely that the volume of complaints against authorised officers the PTO receives will increase as a result of the changes to its jurisdiction, and it will have a more important role in the system. Accordingly, the audit examined whether the PTO's complaints management systems are soundly based to efficiently meet this challenge in the future.

1.2 Legal issues affecting the audit

This audit was conducted under section 15(1) (b) of the *Audit Act 1994* which allows the Auditor-General to conduct any audit necessary to determine whether the operations or activities of the whole or any part of the Victorian public sector (whether or not those operations or activities are being performed by an authority or authorities) are being performed effectively, economically and efficiently and in compliance with all relevant acts.

It is not clear that the PTO Ltd is an 'authority' for the purposes of the Audit Act, since it is not established under an Act, and is therefore unlikely to be a 'public body' under the Act. It is also unclear that it is an entity of which the state has control, control being defined by reference to the relevant accounting standard, rather than, for example, by reference to the number of government appointed directors.

Our view was that the audit could proceed on the basis that, notwithstanding doubts about being an 'authority' under the Act, PTO Ltd and its operations could be seen as part of the Victorian public sector, and therefore within section 15(1)(b) of the *Audit Act 1994*, which does not rely on the definition of 'authority'. This view is supported by the fact that it is likely that PTO Ltd is a 'public entity' for the purposes of the *Public Administration Act 2004*.

Despite this, the PTO Ltd board refused to concede jurisdiction but agreed to assist the audit voluntarily.

An alternative proposal to have PTO Ltd prescribed as an 'authority' by regulation made under section 3(e) of the *Audit Act 1994* was rejected by the board at an early stage of the audit.

During the conduct of the audit, the PTO also raised the potential to breach the *Privacy Act 1988* (Commonwealth) if it provided full information requested by audit. Full and free access to all information is a fundamental tenet of the auditor's role and consistent with the relevant auditing standard and the role of the Auditor-General.

Following legal advice obtained by audit and notices issued under section 11 of the *Audit Act 1994*, the PTO agreed to provide the full information.

A further issue was the application of section 12 of the *Audit Act 1994* which removes any legal restrictions upon the access that the Auditor-General has to documents. Section 12 applies only to 'authorities' and its application to PTO Ltd was therefore doubtful.

Once the audit was underway, the approach of both the PTO Ltd board, and the PTO was cooperative. Notwithstanding this, the audit should not have to rely on voluntary cooperation in order to carry out a performance audit.

The Auditor-General's mandate in carrying out this performance audit was unclear in a number of respects. This had the potential to detrimentally affect the integrity of the audit, and to affect its timeliness.

1.3 The audit

This audit assessed the effectiveness and efficiency of the PTO's management of complaints against authorised officers during the period April 2004 to December 2007 (before the changes to the PTO's jurisdiction).

We sought to determine whether:

- governance and institutional arrangements facilitate the provision of effective and efficient complaints management for users of public transport who are affected by authorised officers
- complaint management processes are effective and efficient in dealing with complaints against authorised officers and deliver beneficial outcomes for stakeholders.

In examining these issues, audit applied the *Benchmarks for Industry-Based Consumer Dispute Resolution Schemes* (the national benchmarks).¹

The audit reviewed a selection of complaints against authorised officers that the PTO had managed, and a selection that the PTO had referred to a member or another agency. In light of the small number of complaints against authorised officers that the PTO has managed, and the small number of complaints selected, this review was not statistically representative. Rather, this review was done with a view to identifying in the PTO's complaints handling process, potential issues that should be addressed to efficiently and effectively deal with the anticipated increase in complaints that the PTO will manage following the jurisdictional change.

1.4 Findings

Governance and institutional arrangements

The former Department of Infrastructure (DOI now the Department of Transport, DOT) carried out a thorough examination of potential models for a public transport complaints management scheme. The PTO scheme has a number of mechanisms to safeguard the independence of the PTO.

Before the recent changes, the jurisdictional arrangements between the PTO and the Victorian Ombudsman around authorised officers were complex and unclear to scheme users. The new jurisdiction widens and provides a clearer definition of PTO's jurisdiction but more information should be provided to users about the allocation of complaints between ombudsmen.

The PTO has sufficient powers to carry out its functions relating to complaints against authorised officers.

¹ Commonwealth Department of Industry, Science and Tourism (1997), *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*, Consumer Affairs Division, Department of Industry, Science and Tourism, Canberra. Refer to Appendix B of this report.

While there are numerous and sufficient mechanisms to ensure the PTO's independence, the lack of procedures governing contact between PTO Ltd staff and scheme directors/board members poses a risk that contact could give rise to a perception of conflict or bias. The PTO advised that it is currently drafting protocols as part of a directors' manual, aimed at clarifying relationships between staff and directors.

Complaints management

In the period audited, the majority of complaints (around 80 per cent) against authorised officers received by PTO were referred to other agencies to manage because the complaints were outside the PTO's jurisdiction.

In applying the national benchmarks to assess the complaints handling function of the PTO concerning authorised officers, the audit found:

- the PTO's current complaints handling guidelines are consistent with the benchmarks
- improvements could be made in the management of complaints by PTO Ltd in the following areas:
 - established timelines were not achieved in more than 50 per cent of cases (12 of 22 complaints managed)
 - recordkeeping was inconsistent
 - referral processes were not complied with.
- more could be done to raise awareness of the PTO scheme and to ensure public transport users with special needs can access the PTO scheme
- there was, until very recently, no means for bringing complaints against the PTO or PTO Ltd board about the handling of any complaint.

Continuous improvement

The audit found there were adequate communication mechanisms for conveying information to stakeholders.

The audit believes that the PTO scheme is unlikely to have been a major driver of continuous improvement of standards of service. Victorian Government initiatives are likely to have been more influential.

The PTO has a tool for monitoring complainant satisfaction with members. The tool can be used to identify systemic issues and drive continuous improvement but is currently not achieving its intended aims.

The PTO performs no systematic post-complaint monitoring of action taken by members.

1.5 Recommendations

Legal issues affecting the audit

Where the government controls entities that may not fall within standard public sector accountability mechanisms, including entities where the government appoints the majority of a corporate board, the central agencies should ensure that the Auditor-General's mandate to carry out performance audits on such entities is clear **(Recommendation 2.1)**.

The Minister for Finance should amend section 12 of the *Audit Act 1994* to make it more consistent with the operation of section 15 of the *Audit Act 1994* **(Recommendation 2.2)**.

Governance and institutional arrangements

The PTO should:

- revise its website to include more information about the process of determining which ombudsman will deal with each complaint **(Recommendation 3.1)**.
- in consultation with the board, finalise protocols for staff that address board contact with staff, clarify the role of board members and emphasise the PTO and his staff's independence from the board **(Recommendation 3.2)**.

Complaints management

The PTO Ltd board should closely monitor the effectiveness of its recent initiatives to increase community awareness of the PTO and the services it provides. The results of this monitoring should be disclosed via the PTO Ltd's annual report **(Recommendation 4.1)**.

In relation to the new escalation policy, the PTO should:

- closely monitor implementation of the policy to ensure consistent application by its staff
- consider including, within the policy a requirement for conciliation staff to document in the complaint file reasons for escalating or not escalating a complaint **(Recommendation 4.2)**.

The PTO should establish complaints management timelines for the information of complainants and monitoring of its own performance **(Recommendation 4.3)**.

The PTO should review how it assesses its performance in managing complaints against authorised officers. Specific performance targets should be established for specific categories of complaints so that its performance can be meaningfully assessed **(Recommendation 4.4)**.

The PTO and PTO Ltd board should ensure that:

- all staff are aware of the procedures, guidelines and protocols for referring complaints to agencies
- all data and statistics published in the PTO Ltd annual report—for example, what constitutes a referral—are clearly defined to maximise understanding and accountability for performance **(Recommendation 4.5)**.

The PTO should review its quality assurance mechanisms with a view to establishing a more targeted program, i.e., targeting of specific complaint types, complaint handling areas, coverage of members, conciliation managers, etc. The program should outline what is to be reviewed, who is to undertake the review and when reviews are to be conducted **(Recommendation 4.6)**.

PTO Ltd should continue to monitor the number of complaints following the changes to the PTO's jurisdiction and analyse resource requirements so that timely action can be taken **(Recommendation 4.7)**.

PTO Ltd should seek amendment to its charter and constitution to ensure regular reporting of determinations in summary form to members of the scheme **(Recommendation 4.8)**.

The PTO, PTO Ltd board and DOT should monitor the effectiveness of the complaints procedures relating to the PTO and the PTO Ltd board. If those procedures prove ineffective, the PTO, PTO Ltd board and DOT should consider the need for independent, third party oversight of the scheme **(Recommendation 4.9)**.

The PTO Ltd charter should be amended to ensure that reasons are provided to a complainant when their complaint has been declined under clause 6.3 of the charter **(Recommendation 4.10)**.

The PTO should consider obtaining feedback from the various specific users of the PTO scheme, for example, authorised officer complainants, to assist in monitoring the effectiveness of its service provision and to drive improvements **(Recommendation 4.11)**.

Continuous improvement

The outcomes of the recently established transport taskforce actions should be documented and analysed by DOT to gauge their effectiveness in driving continuous improvement across the transport industry, including in relation to authorised officers **(Recommendation 5.1)**.

The PTO should consider implementing a post-complaint monitoring process to ensure members follow through with proposed actions **(Recommendation 5.2)**.

RESPONSE provided by Chair, Public Transport Ombudsman Ltd

The Public Transport Ombudsman (PTO) welcomes the completion of this performance audit.

As the audit report notes, the PTO only accrued full jurisdiction to deal with authorised officer complaints in 2008. Authorised officers are given significant statutory powers, and robust arrangements are essential to ensure these powers are not misused. Effective and accessible complaint processes are a critical element.

The audit findings that the process prior to establishing the PTO scheme was comprehensive and rigorous, and that the PTO has sufficient powers to carry out its functions, are therefore very significant. Also important are the report's findings that the PTO's complaint handling and other procedures are generally consistent with national good practice benchmarks for industry ombudsman.

The audit report recognises that changes recently implemented for authorised officer complaints are likely to improve the operation of the PTO; this should consequently increase the accountability of authorised officers and public transport operators. The audit report also acknowledges the considerable action taken to increase the awareness and understanding of the PTO in the community, and policy and process changes that should enhance our effectiveness.

The board and the new ombudsman will carefully consider the audit recommendations as they concern the PTO. In addition, the upcoming five year review of the PTO scheme provides an opportunity to consider audit report recommendations for amendment to the PTO Ltd charter and constitution.

We agree that the mandate for this audit was not clear. The PTO has nevertheless provided every assistance to audit, and the report will be a useful contribution to our continual improvement.

RESPONSE provided by Secretary, Department of Transport

Recommendation 4.9 – The department will analyse the effectiveness of the scheme. Whilst the governance of the board is a matter for ASIC and corporate regulators, DOT will give consideration to the engagement of an independent advisor to review the effectiveness of the scheme if warranted.

Recommendation 5.1 – The department will work with the PTO on ways of continuously improving service in the transport industry.

RESPONSE provided by Acting Secretary, Department of Treasury and Finance

The Department of Treasury and Finance notes the recommendations [Recommendation 2.1 and 2.2] and the current proposals raised by the Auditor-General to amend the Audit Act 1994, which are currently being considered by government.

It is envisaged that the current review of the Financial Management Act 1994 will examine public sector accountability mechanisms, including the definition of a Public Sector entity. In the absence of any firm conclusions resulting from that review, it would be premature to alter any concurrent, interrelated legislation on this matter until a broader policy decision has been finalised.

RESPONSE provided by Secretary, Department of Premier and Cabinet

Recommendation 2.1: The department acknowledges the important function that the Public Transport Ombudsman Limited ('PTO') plays in the resolution of complaints against authorised officers.

Where the government 'controls' an entity it is clearly within the jurisdiction of the Auditor-General to conduct a performance audit under the Audit Act 1994 ('Act'). Under s 15(1)(a) of the Act, where he or she considers it necessary, the Auditor-General is permitted to conduct a performance audit on an 'authority'. Authority is defined in the Act to include both an entity of which the state has control and 'public bodies'. Accordingly, no clarification of the Auditor-General's mandate is required if the state controls a body.

The power to appoint the majority of a corporate board is not, on its own, conclusive evidence of 'control' under the Act. There might be circumstances (such as a performance audit over the activities of the PTO) where it is not clear whether the state controls the entity or whether it otherwise falls within the purview of the Act. In such circumstances, the regulation-making power contained in the Act to allow a body to be prescribed as a 'public body' could be utilised. Accordingly, in the circumstances of this and similar audits, the Auditor-General could approach the central agencies with his or her concerns about jurisdiction and reasons necessitating the proposed regulation.

The department would welcome further discussion with the Auditor-General about appropriate procedures to adopt where the jurisdiction of the Auditor-General is uncertain.

The department will continue to work in collaboration with the department of Treasury and Finance and the Auditor-General's Office to consider the Auditor-General's proposals to amend the Audit Act 1994. This consideration will also take into account the current review of the Financial Management Act 1994, which includes clarification of the definition of public sector entities.

2 The Public Transport Ombudsman scheme

2.1 Scheme structure and purpose

The Public Transport Ombudsman Limited (PTO Ltd) was established as a company limited by guarantee in April 2004. The purpose of the Public Transport Ombudsman (PTO) scheme is to provide a free, efficient, effective, fair, informal and accessible alternative to other remedies, such as court proceedings, for users of public passenger transport services. The PTO can only deal with a matter after a complainant has first sought resolution with the transport operator and has been unsuccessful.

2.1.1 Establishment constitution, charter and board

PTO Ltd's constituent documents are a charter and a constitution that, together, contain details of the PTO scheme's structure and functions.

The constitution establishes the board of management of PTO Ltd, which also employs the Public Transport Ombudsman (PTO). The board comprises:

- three transport industry directors; one each appointed by the train operators, the tram operators and the Bus Association of Victoria (industry directors)
- three directors appointed by the Minister for Public Transport to represent commuter interests (consumer directors)
- an independent chair appointed by the minister.

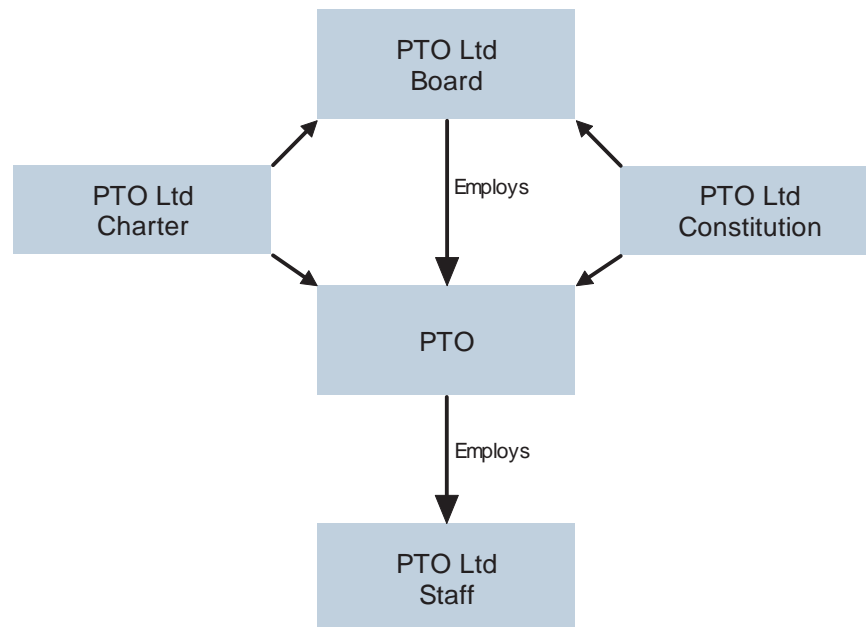
The constitution binds the company and its members (the transport operators) to act in accordance with PTO Ltd's charter.

The charter contains a range of obligations for scheme members, details of the role, function and jurisdiction of the PTO and associated matters, such as the process for annual planning, budgeting and other procedures.

The PTO employs the staff who work in the PTO's office.

Broadly speaking, a reference to the PTO is a reference to the PTO himself, while his staff are referred to as PTO Ltd staff. A reference to the PTO scheme is an all inclusive reference to the general structure of the scheme, including the PTO Ltd, its board, the Ombudsman and the staff in the PTO's office. These relationships are outlined in Figure 2A.

Figure 2A
Public Transport Ombudsman (PTO) scheme



Source: Victorian Auditor-General's Office.

2.1.2 Scheme membership

As a company limited by guarantee, PTO Ltd does not have shareholders, but rather a number of members of the company who pay an annual membership fee, and who are bound by the company's constitution and charter. Current members include the major transport operators, such as Yarra Trams, Connex, and the Bus Association of Victoria. A full list of members can be found on the PTO's website.

2.1.3 Powers

The PTO is empowered to receive, investigate and facilitate the resolution of complaints and disputes between users of public passenger transport services in Victoria and members of the PTO scheme.

For example, the PTO receives complaints in relation to ticketing, infrastructure and the conduct of authorised officers.

The jurisdiction over complaints about authorised officers has been shared between the PTO and the Victorian Ombudsman. Before October 2007 the PTO's jurisdiction in this area was very narrow. It dealt with complaints about the conduct or behaviour of authorised officers. The Victorian Ombudsman managed complaints about authorised officers when they were performing their statutory functions (refer to Appendix A for details). Consequently, the PTO handled very few complaints about authorised officers.

Recent changes to its jurisdiction (late 2007) now mean that it has the same jurisdiction (but not the same powers) as the Victorian Ombudsman and can handle any complaint about authorised officers, under the *Transport Act 1983*, including complaints about use of their statutory powers.

The jurisdictional relationship between the PTO and the Victorian Ombudsman, and the administrative arrangements around it have been described in an exchange of letters. The charter and constitution of PTO Ltd refer to this exchange of letters as an 'MOU' or memorandum of understanding.

2.1.4 Funding

The scheme is funded through an annual levy upon members which is determined by the board. Each year, the board examines a business plan prepared by the PTO that is used to assess PTO Ltd annual funding figures and levy for the upcoming year.

2.2 Complaints management processes

The charter establishes the jurisdiction of the PTO in managing complaints and the process which must precede referral of a complaint to the PTO. Before lodging a complaint with the PTO, a complainant must raise the matter with the relevant transport operator and provide a reasonable opportunity for the member to resolve the matter. If the matter is not resolved, the complainant is then entitled to bring their issue to the PTO. Where the PTO does not have jurisdiction, the charter provides for the PTO to refer complainants to an appropriate authority.

The PTO's complaints handling process is set out in its *Complaint and Dispute Resolution Service: Guidelines for the Handling of Complaints and Disputes* (CDRS).

The CDRS also sets out processes for consultation and resolution of complaints and provides for the referral of complaints to:

- the relevant member involved if the member has not had the opportunity to consider the complaint previously, or
- the Department of Transport (DOT), the Victorian Ombudsman or another body or agency if the complaint is outside the PTO's jurisdiction.

2.3 Who are 'authorised officers'?

A key feature of most public transport systems is the collection of fees by way of ticket selling to offset the cost of operating the system. Enforcement of the ticketing system is an important component of ticketing arrangements. In Victoria that enforcement has traditionally occurred through coercive powers provided to specific people who are variously described as 'ticket inspectors', 'revenue protection officers', 'authorised officers' or other such names.

Authorised officers under the *Transport Act 1983* have functions and powers beyond those of ticket inspection. These include protection of public safety, customer service and enforcement of all transport offences, including behavioural offences. However, to enhance broader public understanding of the audit topic, the term ‘ticket inspectors’ has been used in the audit title.

Before privatisation, enforcement powers were exercised by public servants employed by the state. Post-privatisation, these powers are now exercised by employees of private companies.

This audit focuses on ‘authorised officers’ exercising powers under Division 4AA of the *Transport Act 1983* for enforcement purposes. These powers include the power to demand names and addresses and the power to arrest, in certain circumstances.

This audit does not examine any aspect of complaints in regard to ‘authorised persons’, who, as defined in the *Transport (Conduct) Regulations 2005* and the *Transport (Ticketing) Regulations 2006*, do not have enforcement powers.

Further details about the powers of ‘authorised officers’ are provided in Appendix A of this report.

2.4 Conduct of the audit

The objective of the audit was to determine whether:

- governance and institutional arrangements of the PTO scheme facilitate the provision of effective and efficient complaints management for users of public transport who are affected by authorised officers
- the PTO complaints management processes are effective and efficient in dealing with complaints against authorised officers and deliver beneficial outcomes for stakeholders.

The audit did not examine the complaints management practices that applied before the establishment of the PTO in 2004.

The PTO shares jurisdiction over complaints against authorised officers with the Victorian Ombudsman. The audit also examined how the PTO manages that jurisdictional relationship.

The PTO’s jurisdiction in relation to complaints against authorised officers has recently been expanded and is now concurrent with the Victorian Ombudsman’s. It is likely that the PTO’s volume of complaints against authorised officers will increase and it will have a more important role in the system. Accordingly, to meet this challenge, the audit examined whether the PTO’s complaints management systems are soundly based in anticipation of this.

2.4.1 Legal issues affecting the audit

The audit faced a number of legal issues in conducting this audit. Although these issues were eventually overcome, they had the potential to affect the timeliness and integrity of the audit. (Details are included in the executive summary of this report.)

Conclusion

The Auditor-General's mandate in carrying out this performance audit was unclear in a number of respects.

Recommendations

- 2.1 Where the government controls entities that may not fall within standard public sector accountability mechanisms, including entities where the government appoints the majority of a corporate board, the central agencies should ensure that the Auditor-General's mandate to carry out performance audits on such entities is clear.
- 2.2 The Minister for Finance should amend section 12 of the *Audit Act 1994* to make it more consistent with the operation of section 15 of the *Audit Act 1994*.

2.4.2 Audit criteria

To determine whether the governance and institutional arrangements in place facilitate the effective and efficient management of complaints against authorised officers, this audit used criteria found in the Commonwealth Government's *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*¹ ('national benchmark', refer to Appendix B of this report).

¹ Commonwealth Department of Industry, Science and Tourism 1997, *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*, Consumer Affairs Division, Department of Industry, Science and Tourism, Canberra. The benchmarks were developed with the assistance of dispute schemes, consumer groups, government and regulatory authorities. The benchmarks are not mandatory but industries with schemes are encouraged to assess whether their existing or proposed scheme meets each benchmark.

In examining the governance and institutional arrangements, the audit examined whether:

- the Department of Infrastructure (now DOT) conducted a thorough analysis of the various models available for a public transport complaints management scheme before the establishment of the PTO scheme
- the PTO has sufficient powers to investigate complaints against authorised officers
- the intended changes to the PTO Ltd charter are likely to yield improved governance.

PTO's adherence to key components of the national benchmarks for dispute resolution were also used to assess PTO's complaints management processes and the scheme's effectiveness in facilitating continuous improvement in the standards of service of authorised officers.

2.4.3 Audit methodology

The audit involved a review of relevant PTO data, internal processes and procedures and complaints management guidelines. It also involved interviewing key staff of PTO Ltd and DOT and members of the PTO Ltd board.

The audit reviewed a sample of authorised officer complaints that were managed by the PTO and a sample of complaints referred by the PTO to a member, DOT, the Victorian Ombudsman or another body.

The audit was performed in accordance with the Australian auditing standards applicable to performance audits, and included tests and procedures sufficient to enable audit conclusions to be reached.

The total cost of the audit was \$180 000. This cost includes staff time, overheads, expert advice and printing.

3 Governance and institutional arrangements for the PTO scheme

At a glance

Background

The Public Transport Ombudsman Limited (PTO Ltd) provides for the resolution of public transport complaints.

The Public Transport Ombudsman (PTO) has a shared jurisdiction with the Victorian Ombudsman in dealing with complaints about the conduct of authorised officers. The management of this jurisdiction is set out in an exchange of letters between the PTO and the Victorian Ombudsman.

Key findings

- The former Department of Infrastructure (now the Department of Transport) undertook a thorough examination of possible models for a public transport complaints management scheme before settling on the PTO Ltd model.
- The PTO's jurisdiction over complaints against authorised officers before the October 2007 changes was complex and unclear to scheme users and therefore did not comply with the national benchmark.
- The new arrangement widens and provides a clearer definition of the PTO's jurisdiction. It complies with the national benchmarks. More information, however, could be provided to users about the allocation of complaints between the ombudsmen.
- The PTO has sufficient powers to investigate and facilitate the resolution of complaints against authorised officers.
- In terms of enforcement powers, the PTO scheme has not been tested since no determinations have been made by the PTO.
- There are numerous and sufficient mechanisms to ensure the PTO's independence.
- The lack of procedures governing contact between PTO Ltd staff and scheme directors/board members poses a risk that contact may give rise to a perception of conflict or bias. The PTO advised that it is currently drafting protocols as part of a directors' manual, aimed at clarifying relationships between staff and directors.

At a glance – *continued*

Key recommendations

- The PTO should:
 - revise its website to include more information about the process of determining which ombudsman will deal with each complaint **(Recommendation 3.1)**.
 - in consultation with the board, finalise protocols for PTO staff that address board contact with staff, clarify the role of board members and emphasise the PTO and his staff's independence from the board **(Recommendation 3.2)**.

3.1 Background

The establishment of any type of dispute resolution scheme requires careful analysis of models and consideration of a range of policy and legal issues.

As responsibility for the implementation of public transport policy rested with the former DOI (now Department of Transport, DOT), audit examined DOI's role in the development of the PTO scheme to establish whether a full and rigorous analysis of potential models was undertaken.

The audit also examined the governance and institutional arrangements for the PTO scheme and assessed whether it facilitated the provision of effective and efficient complaints management for users of public transport who are affected by authorised officers.

3.2 Establishing the PTO scheme

The PTO Ltd was established in 2004 following a Law Reform Committee report, and the commissioning of a number of reviews.

In 2001, the Law Reform Committee of the Victorian Parliament received a reference to consider and report on the powers of entry, search and seizure, questioning and requirement to produce documents held by authorised persons under a number of Victorian acts.

The committee made the following recommendations in relation to the exercise of these coercive powers by authorised officers:

- the *Ombudsman Act 1973* be amended to subject the inspectorate function of the transport companies to oversight by the Victorian Ombudsman
- a separate unit be set up within the Victorian Ombudsman's Office to deal with complaints against authorised officers.

As part of its response to the recommendations, the government established a broad-ranging review to examine a number of aspects of authorised officers' operations, including training, powers, accountability and authorisation.

Following that report, a number of other reviews by a range of consultants were commissioned by DOI. These reviews considered a wide range of factors in developing the scheme including:

- other models across the world
- assessment criteria for an ombudsman, which included the national benchmarks for dispute resolution (refer part 2.4.2 of this report)
- complaints handling standards
- cost and funding arrangements
- jurisdictional relationship with the Victorian Ombudsman (discussed in more detail below).

Following these studies, the PTO was established as a stand-alone ombudsman with a shared jurisdiction with the Victorian Ombudsman over complaints regarding authorised officers.

Conclusion

Before establishing the PTO scheme, DOI undertook a thorough examination of the possible models for a public transport complaints management scheme. The process of developing the scheme model was comprehensive and rigorous.

3.3 Governance and institutional arrangements

Audit examined whether the governance and institutional arrangements of the PTO scheme complies with the national benchmarks 2, 3.9, 6.2 and 6.10 (refer to part 2.4.2 and Appendix B of this report), in so far as the scheme:

- has a clearly established jurisdiction and whether the changes to the PTO Ltd charter in late 2007 are likely to improve governance relating to complaints against authorised officers
- has sufficient powers to carry out its functions
- provides for an independent arbiter of disputes
- provides for the independence of PTO Ltd staff.

3.3.1 PTO jurisdiction

The PTO's jurisdiction over complaints against authorised officers is sourced in its charter and in correspondence between the PTO and the Victorian Ombudsman.

These arrangements were revised in late 2007 to expand the PTO's jurisdiction to cover all aspects of complaints against authorised officers and to make the PTO the single initial point for all complaints relating to authorised officers (after the complaint remained unresolved by the transport operator). Key reasons for the change in arrangements included to:

- avoid confusion among users where complaints could be 'split' between the PTO and the Victorian Ombudsman. This contributed to a negative perception of the usefulness of the PTO scheme.
- reduce potential duplication of complaint handling between the PTO and the Victorian Ombudsman, due to the different foci of the respective offices
- reduce multiple agency complaint handling since a complainant may have approached a number of agencies before being referred to the PTO.

In response to a 2007 PTO survey of complainants, 49 per cent of respondents stated they were not satisfied with the PTO's resolution of their complaint (only 40 per cent were satisfied and 11 per cent did not respond). Comments by respondents reflected a frustration with the PTO's jurisdictional split and confusion surrounding PTO's powers and mandate. The PTO advised us that the feedback was one of the key drivers of the changes to the jurisdiction.

Figure 3A outlines the nature of the arrangement between the ombudsmen and the changes to the PTO's jurisdiction.

Figure 3A
Arrangements between the PTO and the Victorian Ombudsman for managing complaints against authorised officers

Date	Nature of arrangement ^(a)
May 2005	<p>The PTO could receive, investigate and facilitate resolution of complaints regarding the conduct or behaviour of authorised officers, except those complaints which related to authorised officers while they were exercising their statutory powers.^(b) These complaints were to be transferred to the Victorian Ombudsman for investigation.</p> <p>Where 'overlapping complaints' arose, an analysis would be undertaken to assess the existence of 'systemic' (within PTO jurisdiction) or 'intertwined' issues in the complaint.</p> <p>Where there were intertwined issues, a case-by-case approach was adopted to determine which ombudsman would manage the complaint.</p> <p>Where agreement on who should deal with a complaint could not be reached, jurisdiction would default to the Victorian Ombudsman.</p>
October 2007 ^(c)	<p>Jurisdiction for the complaint is concurrent with that of the Victorian Ombudsman. The PTO will receive all complaints regarding authorised officers in the first instance (where the complainant has not been satisfied with the operator's response.)</p>

Notes: (a) Changes to PTO's charter and constitution were made to give effect to the arrangements between the ombudsmen.

(b) Statutory powers under the *Transport Act 1983*, the *Transport (Infringements) Regulations 1999* and the *Transport (Passenger and Rail Freight) Regulations 1994* or any relevant statute or regulation. Refer also to Appendix A of this report.

(c) The changes to the charter were approved by members and the Minister for Public Transport in October 2007.

Source: Information provided by the PTO.

The audit's review of the arrangements with the Victorian Ombudsman for managing authorised officer complaints disclosed:

- the 2005 arrangements:
 - gave little guidance on how the case-by-case analysis of complaints should occur
 - were referred to in the PTO charter but were never publicly available, i.e., on the PTO website
 - made no attempt to categorise the types of complaints with interrelated issues that might be allocated to each respective agency. Such categorisation may have improved the allocation process and also reduced the number of potentially contentious cases.
- the revised 2007 arrangements (effective February 2008):
 - seek to address the multiple handling of such complaints
 - are referred to in the PTO charter, but until very recently, were never publicly available, i.e., on the PTO website. PTO advised that the arrangements have always been available to the public if specifically requested.

- are not explained in detail on the PTO's website, nor is there sufficient information concerning the allocation process
- still allocate complaints between the two agencies on a largely subjective basis. The procedures state that where the PTO experiences a lack of cooperation from an operator in dealing with a complaint, assistance from the Victorian Ombudsman will be sought.
- provide a more systematic approach to jurisdictional issues, but do not attempt to categorise complaints with interrelated issues
- allow for greater cooperation and information exchange and regular reporting and joint investigations between the two ombudsmen
- should allow easier identification of systemic issues
- will not of itself improve PTO's ability to gather information from operators, however, the closer relationship with the Victorian Ombudsman may assist the PTO in dealing with any situations that may arise where transport operators refuse to cooperate.

The new jurisdiction means that the PTO is likely to handle a much larger volume of complaints against authorised officers. In effect, the PTO now has the same jurisdiction (although not the same investigative powers) as the Victorian Ombudsman in relation to these complaints.

Over time, the Victorian Ombudsman and the PTO should collate data regarding referrals. This data could be used to categorise these types of complaints with a view to drafting clearer rules around referrals.

The PTO advised audit that it is currently undertaking a review of internal processes and procedures and that this includes developing greater clarity of process for determining jurisdiction, and greater cooperation with the Victorian Ombudsman under the terms of the revised arrangement.

Conclusion

The PTO's jurisdiction over complaints against authorised officers before the October 2007 changes was complex and unclear to scheme users and therefore did not comply with the national benchmark.

The new arrangement widens and provides a clearer definition of the PTO's jurisdiction. This complies with the national benchmarks. More information could be provided to users about the allocation of complaints between the ombudsmen.

From a user point of view, the single entry point combined with the PTO's consumer focus, and the ability to use the Victorian Ombudsman's enforcement powers as a fallback is likely to improve the operation of the scheme for the user.

It will be important that these changes are well disseminated to generate maximum benefit for users of the scheme. The PTO has flagged the need for a comprehensive communications strategy as part of PTO Ltd's 2008–09 business plan.

Recommendation

- 3.1 The PTO should revise its website to include more information about the process of determining which ombudsman will deal with each complaint.

3.3.2 Enforcement powers

The PTO is not established under legislation and has no statutory enforcement powers. The PTO's powers in this respect are sourced in contract only, through the operation of the franchise agreements. The PTO can neither coercively obtain information from members or their employees, nor carry out an investigation without voluntary assistance from the relevant transport company (member). The PTO cannot force scheme members to discipline authorised officers were the PTO to recommend this as the outcome of a complaint. The scheme relies on influencing the behaviour of operators, rather than resorting to strict enforcement.

In the event that a member refuses to cooperate with a PTO investigation into a complaint about an authorised officer, the PTO has a number of options, including:

- make a determination against the member. The member is constitutionally bound to abide by the terms of the charter. The charter makes the PTO's decisions binding on members of the scheme
- notify the Minister for Public Transport of the matter. The minister could raise the issue with the chair of the PTO Ltd board, or consider contractual remedies
- the charter specifically empowers the PTO to 'take appropriate action to ensure that the [Public Transport] Ombudsman's determinations are implemented, or that requests for information are met by a member. This action could include escalation of the matter to the member's CEO, referral to the board, or referral to the Director of Public Transport'
- refer the matter to the Victorian Ombudsman, depending on the circumstances. Such referral could only occur in accordance with the established arrangements, and the Victorian Ombudsman still retains a discretion not to investigate. The Victorian Ombudsman has coercive powers to conduct an investigation. Audit was advised by the Victorian Ombudsman that this power is purely discretionary and referrals will not be investigated simply as a matter of course.

To date, none of the available mechanisms has been tested, and DOT and the PTO advised that there have been no adverse determinations against operators relating to complaints against authorised officers.

Conclusion

The PTO has sufficient powers to investigate and facilitate the resolution of complaints against authorised officers.

The PTO does not have statutory enforcement powers and since no determinations have been made by the PTO scheme, there has been no need for such powers to be exercised.

3.3.3 PTO independence

An additional factor necessary to ensure proper exercise of PTO powers is the need for the PTO to be independent of scheme members against whom the PTO may make a binding determination. Accordingly, users of the PTO scheme should expect independence in the exercise of the PTO's functions.

The PTO is not established under legislation. Therefore the PTO's independence is not guaranteed in the standard way. The PTO scheme arrangements are consistent with other industry ombudsman schemes. In the public sector, independence of an officer is usually maintained by making removal difficult or by limiting employer or appointer (usually the minister) power of direction over the officer.

In contrast, the PTO is an employee of the PTO Ltd board, and as the subject of a normal employment contract, must comply with directions of the employer, the PTO Ltd board. As three directors of the board are appointed from the industry, against whom complaints concerning authorised officers may be directed, it is essential that the PTO not be subject to interference, and there should not be any perception of interference in this aspect of the PTO's functions. Board procedures and protocols should be in place to protect this independence.

In correspondence to the government during development of the PTO scheme, the former Victorian Ombudsman argued that the PTO's independence was significantly hampered by the fact that the scheme is funded by industry and that the charter and constitution would be managed and reviewed at any time by the board.

Currently, changes to the constitution of PTO Ltd can only be made by special resolution of the company, and in some circumstances require the consent of the Minister for Public Transport.

Audit found that PTO independence is not stated explicitly in the charter or the constitution. Independence is implied through a number of mechanisms including:

- the standard separation of functions between a board and the chief executive officer (in this case the PTO). Under the standard model, the chief executive officer is responsible for operations
- the PTO's contract being for a fixed term, and acknowledging his independence in the performance of certain functions, such as complaints handling
- an independent chair, i.e., not an industry appointee or a transport users appointee
- the ability of the PTO to make decisions binding on members
- the charter which states that:
 - one of the board's responsibilities is the maintenance of independence of the PTO
 - the PTO has responsibility for the day-to-day operations of the scheme and the resolution of individual complaints

- the constitution which:
 - prohibits directors of PTO Ltd from using information or their position to benefit themselves or a third party
 - states that the PTO must not be associated with any member or director of PTO Ltd
- the constitution and Part 2 of Division 2D.1 of the *Corporations Act 2001*, both of which set out procedures relating to directors having conflicts of interest.

3.3.4 Independence of PTO Ltd staff

Another important indicator of independence is the selection process for the PTO. As the current PTO was recently appointed, the audit examined the appointment process.

The audit found:

- the employment and selection process was transparent and consistent with good governance
- there was no evidence to suggest that the PTO is not independent in his operations.

Accordingly, reviews of complaint files showed no evidence that complaints against authorised officers were handled in anything other than an independent and fair manner.

As discussed in part 4.4.3 of this report, however, until very recently, no mechanism for complaining about the PTO or the PTO Ltd board existed. Audit was advised that no such complaints have ever been received.

The PTO advised he has complete autonomy in the selection of staff.

PTO Ltd staff are also provided with information concerning the respective roles of the PTO and the board upon commencement of employment, such as the charter and constitution.

PTO Ltd staff report to the PTO and should not be subject to, or answerable to board members. Although position descriptions for staff in PTO Ltd identify reporting arrangements, and staff induction requires staff to know who their relevant managers are, the PTO advised that there are no written procedures governing contact between PTO Ltd staff and board members.

The lack of such procedures poses a risk in that staff may be unclear about whether they are subject to any form of direction from board members. In some circumstances, legitimate contact with board members may give rise to a perception of conflict, or bias in dealing with particular complaints.

The PTO advised that on occasion, industry directors may have direct dealings with PTO Ltd staff about particular complaints. On these occasions, the PTO advised that industry directors would be acting in their capacity as a scheme member employee, and not in their capacity as a PTO Ltd board member.

In circumstances such as this, there is no guarantee that the relevant staff member would understand the capacity in which the industry director is acting. Consequently, miscommunication may lead to a perception of conflict or bias.

The PTO has very recently advised that it is currently drafting a directors' manual that includes protocols for communications between directors and PTO Ltd staff. The PTO advised that, when finalised, these protocols will be provided to staff to clarify relationships with directors.

Conclusion

The audit found no evidence to suggest that the PTO has acted other than independently in the exercise of the PTO's functions notwithstanding no determinations have been made and the independence of the PTO has not been tested.

There are numerous and sufficient mechanisms to ensure the PTO's independence and these are broadly compliant with the national benchmarks.

The relationship of PTO Ltd staff with scheme directors/board members requires clarification.

Recommendation

- 3.2 The PTO should, in consultation with the board, finalise protocols for staff that address board contact with staff, clarify the role of board members and emphasise the PTO and his staff's independence from the board.
-

4 Management of complaints against authorised officers

At a glance

Background

The PTO's process for handling complaints against authorised officers is set out in its *Complaint and Dispute Resolution Service* (CDRS) guidelines. The guidelines also provide for the referral of complaints to other agencies, such as the Victorian Ombudsman and transport operators.

The audit assessed whether the PTO scheme and its complaint management practices were accessible, efficient, accountable, fair and effective.

Key findings

- Most of the complaints against authorised officers (around 80 per cent) received by the PTO were outside the PTO's jurisdiction and referred to other agencies to manage.
- The PTO is aware of the low profile of the scheme within the community and has taken action to address this in recent times.
- More could be done for specific cohorts of public transport users with special needs to ensure they can access the PTO scheme.
- The PTO exceeded time limits for the resolution of complaints in more than 50 per cent of cases (12 of 22 complaints it managed directly), in the 3.5 years to the end of 2007.
- The new escalation policy provides greater clarity in the classification of complaints and clearer guidelines for operators' and members' responses.
- PTO's referral of complaints was managed efficiently; however, it did not comply with the 2005 protocol for referrals to the Victorian Ombudsman.
- The broadening of the PTO's jurisdiction over complaints against authorised officers coupled with greater awareness of the scheme is likely to cause an increase in the volume of complaints. This may have resource implications in terms of staff, quality assurance processes and also recording systems.
- The CDRS contains the necessary guidelines to ensure the PTO scheme is fair. These guidelines are generally adhered to and reflect the standards in the national benchmarks.

At a glance – *continued*

Key findings – *continued*

- Until recently, when new procedures were drafted, the PTO scheme was not compliant with the national benchmark in that there was no process for making a complaint about the PTO, or the PTO Ltd board. Upon finalisation of these procedures, the scheme will be compliant with the national benchmarks. As these procedures have yet to be finalised and consequently tested, it will be necessary to monitor their effectiveness.
- While users' satisfaction has improved since the PTO scheme has been in existence, the PTO's processes for managing, resolving and referring complaints could still be improved.

Key recommendations

- The PTO Ltd board should closely monitor the effectiveness of its recent initiatives to increase community awareness of the PTO and the services it provides. The results of this monitoring should be disclosed via the PTO Ltd's annual report (**Recommendation 4.1**).
- The PTO should establish complaints management timelines for the information of complainants and monitoring of its own performance (**Recommendation 4.3**).
- The PTO and PTO Ltd board should ensure that:
 - all staff are aware of the procedures, guidelines and protocols for referring complaints to agencies
 - all data and statistics published in the PTO Ltd annual report—for example, what constitutes a referral—are clearly defined to maximise understanding and accountability for performance (**Recommendation 4.5**).
- The PTO, PTO Ltd board and DOT should monitor the effectiveness of the complaints procedures relating to the PTO and the PTO Ltd board. If those procedures prove ineffective, the PTO, PTO Ltd board and DOT should consider the need for independent, third party oversight of the scheme (**Recommendation 4.9**).

4.1 Background

This section of the report deals with the effectiveness and efficiency of the PTO's management of complaints against authorised officers from July 2004 to December 2007, and the scheme's adherence to the following guidelines in the national benchmarks (refer to Appendix B of this report):

- accessibility
- efficiency
- accountability
- fairness
- monitoring effectiveness.

During this period, the PTO was not able to investigate complaints against authorised officers exercising their statutory powers (refer to Appendix A). These complaints were under the jurisdiction of the Victorian Ombudsman.

Figure 4A outlines that since the establishment of the PTO Ltd in 2004, a total of 451 complaints against authorised officers have been received by the PTO.

Most (around 80 per cent) of the complaints against authorised officers received by the PTO during the period were referred by the PTO to the member or to other agencies (i.e., the Victorian Ombudsman) to manage as they were outside the PTO's jurisdiction (refer to part 3.3 of this report).

Figure 4A
Complaints against authorised officers received by the PTO,
July 2004 to December 2007 (number)

Year	2004 ^(a)	2005	2006	2007	Total
Total complaints received	37	119	144	151	451

Note: (a) Figures are for the six-month period, July 2004–December 2004.

Source: Information provided by the PTO.

Figure 4B shows that in the period July 2004 to December 2007, the PTO directly managed 85 complaints in relation to authorised officers.

Figure 4B
PTO Ltd management of complaints against authorised officers,
July 2004 to December 2007 (number)

Year	2004 ^(a)	2005	2006	2007	Total
Complaints investigated and resolved by the PTO	3	6	5	8	22
Complaints managed but not investigated by the PTO ^(b)	5	20	19	19	63
Total	8	26	24	27	85

Notes: (a) Figures are for the six-month period, July 2004–December 2004.

(b) Includes cases where the PTO has received a complaint, started investigation but the complaint has not been resolved because: it lost contact with the complainant, it exercised discretion to not investigate further, or the complaint was assessed as out of the PTO's jurisdiction.

Source: Information provided by the PTO.

Audit examined data on the handling and classification of complaints, user survey comments on the PTO's performance and the PTO's business plan identifying issues to be addressed going forward.

In addition to this data the audit reviewed a selection of six complaints against authorised officers from the 22 that have been resolved by the PTO since the scheme's establishment. In light of the small number of complaints, this review sought to identify potential issues in the PTO's complaints handling process that need to be addressed to efficiently and effectively deal with the anticipated increase in complaints that the PTO will manage following the jurisdictional expansion.

Audit also reviewed four complaints against authorised officers from the 63 that the PTO had managed, but not resolved or referred, and 15 complaints from the 366 that were referred to a member or another agency (see part 4.3.3 and Figure 4E of this report). These reviews assisted us with our examination of PTO's role and the procedures the scheme followed in receiving and referring complaints that were either discontinued or out of jurisdiction.

4.1.1 Nature of complaints handled by the PTO

The following examples outlined in Figure 4C illustrate the types of complaints received and handled by the PTO before the changes to its jurisdiction, and classified by the PTO as complaints relating to authorised officers.

Figure 4C
Complaints classified by the PTO as relating to
authorised officers and managed by the PTO

Example 1

The complainant was a regular passenger unhappy about the lack of service and lack of information about timetable changes, no smoking areas and service alterations passed on to him by staff. The PTO contacted the operator with details of the complainant's concerns. After receiving the operator's response, the PTO provided the complainant with information addressing his concerns, including the location of notices advertising timetable changes, the forthcoming erection of a "No Smoking" sign in the shelter of his station, and the existence of *Customer Comments Forms* and information cards carried by the operator's staff.

Example 2

The complainant was unhappy with the behaviour of an authorised officer whom he believed was rude and used unnecessary force on another passenger. He complained to the operator involved but was unhappy with the response he received, so he requested the PTO review the operator's response to his complaint. The PTO explained the limitations on their jurisdiction over complaints against authorised officers to the complainant and gave him the number for the Victorian Ombudsman. The PTO offered to obtain more information from the operator about its internal investigation into the case. The complainant accepted this offer and the PTO then proceeded to follow up his complaint with the operator. The operator's response took 12 weeks, during which time the PTO kept the complainant updated. Upon receipt of information from the operator, the PTO informed the complainant it was satisfied with the operator's internal investigation, and conveyed the operator's offer of a free ticket. The operator's offer of a free ticket was a goodwill gesture for the treatment the complainant had received from the call centre when the centre was dealing with the complaint. The complainant accepted the offer of the free ticket.

Source: PTO complaint file.

4.2 Accessibility

The *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*¹ state that to be accessible, a scheme 'makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers'.

¹ Commonwealth Department of Industry, Science and Tourism 1997, *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*, Consumer Affairs Division, Department of Industry, Science and Tourism, Canberra.

According to PTO Ltd's annual report, a key aim of the PTO scheme is to 'make it as easy as possible for complainants to lodge and pursue a complaint'. Complainants can lodge a complaint by telephone, fax, teletype machine (allowing hearing and verbally impaired people to use the telephone by typing messages for an answering service), email or through the PTO website. Since 2004, 60 to 80 per cent of complaints against authorised officers have been submitted to the PTO through the 1800 hotline.

The audit assessed whether:

- public transport users were aware of the PTO scheme and the extent to which PTO Ltd and its members promote its existence
- the scheme was accessible to complainants with special needs.

4.2.1 Awareness and promotion of the scheme

The development of a communications and public awareness campaign to inform the public about the PTO scheme's role and functions was considered a priority when PTO Ltd was established in 2004. However, little progress has been made.

The PTO has acknowledged that more action is required to raise awareness of its services and functions amongst the general public, public transport users, the scheme's members and stakeholders. Recent actions taken by the PTO include:

- market research, commissioned by the PTO in 2007, which confirmed very low levels of public awareness of the PTO (33 per cent awareness once prompted): significantly lower than the results of similar surveys conducted for comparable industry ombudsman schemes
- discussion with scheme members about including the PTO's contact details on their websites and in brochures. Agreement has been reached with around half of the members
- establishing a taskforce in 2008 comprising the PTO, PTO Ltd's conciliation manager, scheme members and a Department of Transport officer, to explore options for promoting the PTO scheme and increasing awareness. As a result, the following actions have either been implemented or are being considered:
 - promotion of the PTO and operators' complaint processes in publications and on websites
 - the development of a detailed communications and promotions strategy
 - establishing a performance target within its 2008–09 business plan to enable assessment of its efforts to increase public awareness
 - review of member websites to ensure consistency of messages about complaints handling.

Additional surveys undertaken in 2007, assessing the community's awareness of dispute resolution schemes showed an improvement in user awareness of the PTO.² Around 50 per cent of respondents (once prompted) had heard of the PTO as a body that can help with a dispute.

Conclusion

As a relatively new scheme, the PTO faces a number of challenges. One of these is the need to increase community awareness of the PTO and the services it provides. PTO Ltd staff are aware of the low profile of the scheme within the community and they have taken action to address this in recent times.

4.2.2 Accessibility for complainants with special needs

A major part of accessibility is ensuring that no one is prevented from accessing and using the scheme, regardless of their abilities. *The Benchmarks for Industry-Based Customer Dispute Resolution Schemes* specify that the scheme should 'provide[s] appropriate facilities and assistance for disadvantaged complainants or those with special needs'.

The PTO scheme recognises the importance of a highly accessible industry-based customer dispute resolution scheme, and this is articulated in the PTO Ltd charter, its mission and as a strategic goal in its 2008–09 business plan.

To assess the PTO scheme's accessibility and usability for complainants with special needs, audit reviewed publicly available information relating to the scheme and interviewed PTO Ltd staff to determine how matters from complainants with special needs are managed in practice.

The PTO's Complaint and Dispute Resolution Service guidelines (CDRS) and promotional material outline that the following assistance measures are available for complainants:

- a teletype machine for making complaints
- braille translations organised through the Victorian Institute for the Blind
- wheelchair access to the PTO Ltd office
- the opportunity for people who are unable to lodge a complaint on their own behalf to communicate with PTO through a representative
- use of the translating and interpreting service where required.

² *Dispute Resolution in Victoria: Community Survey 2007*, Department of Justice, Melbourne, June 2007 and, *Dispute Resolution in Victoria: Small Business Survey 2007*, Department of Justice, Melbourne, August 2007.

These measures are largely similar to those provided in other dispute resolution schemes. The audit found that while the PTO website conforms to level 2 (of 3 levels) of the Web Content Accessibility Guidelines³, the website's content accessibility could be improved by providing large print and 'language other than English' publications on the website.

Conclusion

The PTO has in place a variety of measures to assist complainants with special needs to access the PTO scheme. More could be done, however, for specific cohorts of public transport users to ensure they are aware of the PTO and they can access the scheme.

Recommendation

- 4.1 The PTO Ltd board should closely monitor the effectiveness of its recent initiatives to increase community awareness of the PTO and the services it provides. The results of this monitoring should be disclosed via the PTO Ltd's annual report.

4.3 Efficiency

The national benchmarks state that a scheme should operate efficiently by '...keeping track of complaints [and] ensuring complaints are dealt with by the appropriate process or forum...' and having '...reasonable time limits set for each of its processes which facilitate speedy resolution...'.³

Audit assessed:

- the timeliness of the PTO's complaint handling
- the efficiency of the PTO's recordkeeping system and processes
- the efficiency of the PTO's referral procedures.

4.3.1 Timeliness

The CDRS guidelines allow the PTO a certain amount of time to manage a complaint, according to the level of seriousness and complexity. The PTO classifies complaints as level 1 on receipt. Level 1 complaints should be finalised within 14 calendar days; and level 2 complaints within 31 calendar days. Information on the timeliness of the PTO's complaint management is included in the PTO Ltd annual report. This information is outlined in Figure 4D.

³ *Web Content Accessibility Guidelines 1.0: W3C Recommendation* 5 May 1999, viewed 23 April 2008, < <http://www.w3.org/TR/WAI-WEBCONTENT/#wc-priority-2>>.

Figure 4D
Complaints against authorised officers managed in PTO Ltd timelines,
July 2004 to December 2007 (number and per cent)

PTO timelines for managing complaints	2004 ^(a)	2005	2006	2007
Complaint closed within 14 days	nil	101 (85%)	137 (95%)	135 (90%)
Complaint closed within 31 days	6 (16%)	9 (8%)	1 (1%)	5 (3%)
Complaint closed in 31 days or more	32 (84%)	8 (7%)	6 (4%)	11 (7%)
Total	38	118	144	151

Note: (a) Figures are for the six-month period, July 2004–December 2004.

Source: Information provided by PTO.

Figure 4D shows that the majority of the PTO's cases are processed in a timely manner, achieving resolution of at least 85 per cent of complaints received in less than 14 days. However, care must be taken in interpreting the data in the table. It includes both the complaints managed directly by the PTO (i.e., 27 in 2007) and those it receives and immediately refers to other agencies (i.e., 124 in 2007), as shown in Figures 4B and 4E.

The majority of complaints against authorised officers that the PTO received (81 per cent) were immediately referred. These complaints are 'closed' on the day of receipt.

The data in Figure 4D may be interpreted in a number of ways. A more meaningful indication of PTO performance would be for performance criteria to be established that allows separate assessment of the timeliness of referred complaints and complaints actually managed by PTO.

Statistics provided to the audit showing the timeliness of the PTO's handling of complaints against authorised officers that were not referred to another body (refer Figure 4B, July 2004–December 2007) indicate that the PTO often exceeded timelines: 12 of the 22 complaints against authorised officers resolved by the PTO exceeded time limits specified in the CDRS for each classification level, four of those by more than 40 days each.

The complaints data also shows that complaints against authorised officers are seldom escalated, even when timelines have been exceeded: eight of the 22 complaints remained at classification level 1 despite exceeding time limits.

Audit's review of complaint files suggests that time limits are often exceeded as the result of the member's failure to meet deadlines for responding to the PTO's information requests. Other reasons include the need for additional inquiries to be made and delays in the complainant or third parties providing information. The audit was advised by the PTO that the decision to escalate a complaint (from classification level 1 to 2 and 3) rests with the conciliation manager following consideration of such factors as:

- the complexity of the complaint
- the length of time the complaint has been under discussion
- the managerial level at which the complaint is being handled
- delays by operators in providing information, the nature of the information outstanding and whether the PTO is being kept informed of the efforts made by the operator.

The audit review of complaint files highlighted the absence of information on file to indicate that the conciliation manager had considered the need to escalate a complaint.

Discussions with the conciliation manager indicate that the PTO is aware of problems surrounding complaint classification and timeliness of processing. To address this, the PTO has developed a new complaint escalation policy (effective 1 July 2008) aimed at encouraging members to work cooperatively with the PTO and to provide timely and relevant responses to complaints. The policy provides for escalation of matters where an information request is not met by a member, and there is no valid reason for not meeting the request. Levies ranging from \$200 for level 2 complaints to \$2 000 for complaints classified as a dispute, can be imposed on members.

In order to be effective, this new levy system will rely on complaints being escalated in accordance with the new policy.

It is also considered best practice for a dispute resolution scheme to provide complainants with clear timeframes for the handling of their case. It is not clear whether this will be possible under the new escalation policy.

Conclusion

The PTO is currently closing the majority of complaints against authorised officers within time limits by referring them to other bodies for resolution. However, for those complaints it directly managed (22 cases in the 3.5 years to the end of 2007), it exceeded time limits in more than 50 per cent of cases.

The new escalation policy provides greater clarity over the classification of complaints and clearer guidelines for operators' and members' responses. This should help to address some of the issues raised by the audit.

With changes to the PTO scheme's constitution likely to increase the level of complaints against authorised officers received by the PTO, it is an appropriate time for the PTO to review the way in which it assesses its performance in managing complaints, including the need to provide complainants with clear timeframes for handling their case.

4.3.2 Record keeping system and processes

All complaints received by the PTO are registered on its complaints system database, 'Resolve'. The database records relevant information such as complainant details, operator, times and dates of actions and complaint outcome.

The PTO advised that the 'Resolve' system is being upgraded with capacity to monitor the progress of individual complaints and key complaint management milestones.

Our file review indicated that the PTO's recordkeeping lacked consistency, with the amount of information and documentation included in files varying considerably. The PTO has acknowledged some inconsistency in past processes and is currently working with conciliators to gain greater consistency and detail in recordkeeping processes.

Conclusion

The enhancement of the PTO's complaints handling database, and greater detail and consistency in recordkeeping processes should assist it in its management and monitoring of complaints including timeliness of processing. This will be particularly important as the volume of complaints is likely to increase.

The PTO complies with the national benchmarks in recording and keeping track of complaints received.

4.3.3 Referral processes

The charter details PTO Ltd's jurisdiction in the management of complaints about authorised officers. Referrals by the PTO are primarily made to members, the Victorian Ombudsman or DOT depending on the content.

As shown in Figure 4E, in the period July 2004 to December 2007, the PTO referred most of the complaints it received in relation to authorised officers to members and the Victorian Ombudsman for attention.

Figure 4E
Authorised officer complaints referred by the PTO to other agencies, July 2004 to December 2007

Referred to: / Year	2004 ^(a)	2005	2006	2007	Total
Member	9	47	52	79	187
Victorian Ombudsman	6	28	64	36	134
DOI/DOT	15	15	4	7	41
Other ^(b)	0	2	0	2	4
Total	30	92	120	124	366

Notes: (a) Figures for the six-month period July 2004-December 2004.
 (b) Referrals are also made to local councils, Victoria Police, etc.

Source: Information provided by the PTO.

What is a 'referral'?

PTO Ltd's annual reports contain statistics on the number of referrals made by the PTO to other agencies. The PTO indicated that a 'referral' is when a complainant is advised to contact another agency/body and provided with the contact details.

The annual report does not provide a definition of a referral.

Referral guidelines

The referral protocols outlined in the exchange of letters between the PTO and the Victorian Ombudsman specify that the referring ombudsman will 'provide a copy of the complaint and any necessary material to the other ombudsman'.

Referrals are managed by way of:

- procedures described in the PTO's CDRS guidelines
- operating arrangements between the PTO and the Victorian Ombudsman.

These procedures and arrangements covered transfer of complaints material and supporting administrative requirements such as notification of a transfer to a complainant.

The audit assessed the PTO's handling of referrals to the Victorian Ombudsman against the protocols outlined in the exchange of letters between the two ombudsmen and interviewed PTO staff to determine their understanding and application of referral procedures. Audit also reviewed 15 complaints files referred by the PTO to other agencies.

Audit's review of referred files found that for complaints referred to the Victorian Ombudsman, the protocols established in 2005 were not adhered to by the PTO. Copies of complaints and the supporting documentation was not provided by the PTO to the Victorian Ombudsman as required by the arrangements. The PTO indicated that his staff were not aware of the 2005 protocols and confirmed that these protocols were not applied.

The PTO indicated that there were some gaps in the protocols outlined in the exchange of letters and staff took a consistent approach to referrals by advising the complainant that their complaint was in the jurisdiction of the Victorian Ombudsman and provided contact details.

Conclusion

Generally the referral of complaints by the PTO was managed efficiently. However, there were instances of non-compliance with the PTO complaints handling guidelines and the PTO did not comply with the 2005 arrangements for referrals to the Victorian Ombudsman.

This issue should in part be resolved by the 2007 changes to the PTO scheme's constitution, with arrangements for complaint referrals to the Victorian Ombudsman being revised. It is important for the PTO to ensure that staff are aware of complaint handling protocols and arrangements in place with the agencies with which it deals.

The PTO complies with the national benchmarks in ensuring all complaints are referred to the appropriate body, however, it did not comply with its own protocols and processes for referring complaints.

Recommendations

4.2 In relation to the new escalation policy, the PTO should:

- closely monitor implementation of the policy to ensure consistent application by its staff
- consider including, within the policy a requirement for conciliation staff to document in the complaint file reasons for escalating or not escalating a complaint.

4.3 The PTO should establish complaints management timelines for the information of complainants and monitoring of its own performance.

4.4 The PTO should review how it assesses its performance in managing complaints against authorised officers. Specific performance targets should be established for specific categories of complaints so that its performance can be meaningfully assessed.

4.5 The PTO and PTO Ltd board should ensure that:

- all staff are aware of the procedures, guidelines and protocols for referring complaints to agencies
- all data and statistics published in the PTO Ltd annual report—for example, what constitutes a referral—are clearly defined to maximise understanding and accountability for performance.

4.4 Accountability

The national benchmarks state that the underlying principle of accountability is that a scheme publishes determinations and information about complaints, highlights systemic problems, educates members and demonstrates consistency and fairness in decision making.

Audit examined whether the PTO scheme is accountable, i.e., whether it:

- demonstrated consistency in decision making
- published key performance data and indicators (KPIs) relating to the scheme's operations
- is itself subject to oversight in terms of, how complaints against the PTO or PTO Ltd board are dealt with, and to whom it is accountable.

4.4.1 Consistency

To ensure PTO conciliation staff manage and investigate complaints consistently and in line with established procedures, a number of quality assurance mechanisms have been established including:

- review by the conciliation manager of open and finalised cases (100 per cent of finalised cases)
- specific case discussions between conciliators and the PTO
- monthly meetings with conciliators to discuss complaints, share information and feedback on member issues
- issue of conciliator practice notes to provide supplementary advice to staff about the management of particular issues/complaint types.

In addition, the PTO and the Victorian Ombudsman meet quarterly to review any issues relating to the management of authorised officer complaints.

The PTO advised audit that these quality assurance mechanisms have been established progressively over the past six months and that reviews of specific complaints are undertaken by the senior conciliation manager and recorded in the case file.

The broadening of the PTO's jurisdiction over complaints against authorised officers coupled with greater awareness of the scheme is likely to cause an increase in the volume of complaints. This may have resource implications in terms of staff, quality assurance processes and coverage and also recording systems, and increase the risk of inconsistent handling of cases. The PTO advised the audit that new arrangements for monitoring and reporting the impact of its new authorised officer jurisdiction have been implemented at board level.

Conclusion

The PTO's quality and consistency assurance regime appears adequate given the low number of complaints against authorised officers currently received by it and the small number of its conciliation staff. It complies with the national benchmark.

With a likely increase in the number of both complaints against authorised officers being resolved by the PTO, and staff to manage the complaints, a more targeted quality assurance program should be developed.

The effect on PTO Ltd resources of any increase in the number of complaints against authorised officers to be managed by the PTO will need to be continually monitored.

Recommendations

- 4.6 The PTO should review its quality assurance mechanisms with a view to establishing a more targeted program, i.e., targeting of specific complaint types, complaint handling areas, coverage of members, conciliation managers, etc. The program should outline what is to be reviewed, who is to undertake the review and when reviews are to be conducted.
- 4.7 PTO Ltd should continue to monitor the number of complaints following the changes to the PTO's jurisdiction and analyse resource requirements so that timely action can be taken.

4.4.2 Publication of key statistical performance data

Determinations

PTO Ltd's charter obliges it to:

- provide reasons to a member and a complainant, in each individual case, in support of a determination of the complaint
- publish binding decisions without identifying the complainant.

The charter does not specify where binding decisions should be published.

In practice, no binding determinations have yet been made, so none have been published.

The PTO is aware of the obligation to publish and has indicated that any binding determination would be published on the PTO website, with further details published in the PTO Ltd annual report.

The national benchmarks require a scheme to 'regularly provide[s] written reports of determinations to scheme members and any interested bodies'. Neither the PTO Ltd charter nor the constitution obliges the PTO to report determinations, in summary form, to members.

Publication of statistical information

PTO Ltd's reporting requirements are found in the *Corporations Act 2001* (Commonwealth). This requires reporting information such as a review of operations, principal activities and major changes. It doesn't require reporting of other information specific to PTO Ltd.

There is no obligation in the charter or the constitution to report any specific statistics relating to the scheme or to report statistics relating to the management of complaints against authorised officers.

The national benchmark 4.3 (refer to Appendix B) states that a scheme should annually publish specific statistical data such as KPIs and other data, including:

- number, type and outcomes of complaints
- time taken to resolution
- summary of systemic issues
- representative case studies
- a list of members
- information about new developments of key areas in which policy or education initiatives are required.

Audit examined PTO Ltd's annual reports for 2005, 2006 and 2007 which show that information identified in the benchmark was reported for each year, with the exception of complaint resolution times and outcomes in the 2005 annual report. The data for resolution times for 2005 was provided in the 2007 annual report.

The data published in the annual reports is aggregated, and does not include specific data relevant to various complaint types, such as complaints against authorised officers. The data does, however, include specific figures for the top five complaints issues.

Given the fact that authorised officers are only the fifth largest issue managed under the scheme, the audit sees no need to provide specific data on complaints against authorised officers at this stage. However, as the number of complaints against authorised officers managed by the PTO increases, this may become necessary.

The PTO Ltd's annual reports contain a number of case studies dealing with complaints against authorised officers. The annual reports have been evolving with the scheme, and the information contained in the latest report is easy to access, available on the internet, understandable and well presented.

Conclusion

The PTO is aware of the obligations under the charter to publish determinations and has indicated the intent to comply when publication is required.

The 2007 PTO Ltd annual report complies with the national benchmark though its charter and constitution do not specify the type of information and data to be included in annual reports.

Recommendation

- 4.8 PTO Ltd should seek amendment to its charter and constitution to ensure regular reporting of determinations in summary form to members of the scheme.

4.4.3 Oversight

The audit assessed whether the PTO scheme is accountable, i.e., subject to oversight in terms of how complaints against the PTO or board are dealt with and to whom it is accountable. This aspect is set out in the national benchmarks 2.6, 2.8 and 6.5 (refer to Appendix B of this report).

Although the Victorian Ombudsman has jurisdiction over complaints against authorised officers, it is unlikely that the Victorian Ombudsman has any jurisdiction over the PTO, PTO Ltd staff or the PTO Ltd board.

The PTO and the PTO Ltd board are not subject to Parliamentary or ministerial oversight, and the PTO Ltd charter and constitution do not provide any mechanism for dealing with complaints about the PTO or the board.

Under different scenarios, a complaint about the PTO could be made to:

- the board as the PTO's employer
- the Secretary of DOT or the Minister for Public Transport.

In these scenarios the PTO Ltd board, as the employer of the PTO, may be perceived to be conflicted, and neither the secretary nor the minister has any power to take direct action against the PTO. They could refer the matter to the board.

Under other scenarios a complaint about the board or a board member could be made to:

- the Australian Securities and Investments Commission (ASIC). ASIC would investigate potential breaches of the *Corporations Act 2001*
- the chair of the PTO Ltd board; or
- the Secretary of DOT or the Minister for Public Transport.

In these scenarios, the chair could also be seen to be conflicted, while the minister is the only one with the power to remove non-industry directors.

In any event, under the governance arrangements in place, the board cannot be directed by the minister. Any investigation of the complaint would need to rely on cooperation between the various players.

At the beginning of this audit, the board had no procedures for dealing with complaints about the PTO or for complaints about itself.

Discussions with board members of PTO Ltd revealed that the board was aware of the issue and was taking steps to examine what procedures might be appropriate. The PTO advised that this issue had been raised before this audit.

At a late stage of the audit, after receipt of a preliminary draft of this report, the PTO advised the audit that it had completed drafting a procedure for dealing with complaints against the PTO, and complaints against the PTO Ltd board. The PTO advised that the procedure for dealing with complaints against the PTO is summarised on its website and that the process for dealing with complaints against directors may be available on its website in future.

During the development of the PTO scheme model, the issue of complaints against the scheme was raised by the then Victorian Ombudsman who recommended that the PTO scheme be subject to the Victorian Ombudsman's oversight.

Government chose not to adopt this recommendation and made authorised officers the subject of specific oversight by the Victorian Ombudsman in the *Transport Act 1983*.

When questioned by audit about accountability, board directors gave a variety of responses. However, a response common to all board members interviewed was that board members were accountable to scheme members as this is consistent with their duties to the company under the *Corporations Act 2001*. A similar sentiment expressed by board members was that they were broadly responsible for ensuring an effective complaints resolution system, as part of a better public transport system for all stakeholders and that there was a general spirit of cooperation and seeking better outcomes within the board.

Board directors also suggested that there was accountability to the Parliament through the appointment of user-representative directors by the minister and that there was a level of commitment to the scheme from the board and the government.

DOT representatives advised us that the department does not have a role in 'regulating' the actions of the PTO, or PTO Ltd. It is responsible for management and administration of the operators' contracts and to implement Victorian Government transport policy.

In 2001 the Law Reform Commission commented that, 'The powers of public transport inspectors to request a name and address and detain and arrest under the *Transport Act 1983* are without a doubt the most controversial inspectors' powers the committee encountered...' To ensure the PTO scheme is robust in its operations, an effective mechanism for dealing with complaints about the scheme is necessary to provide the appropriate checks and balances.

Conclusion

Until the procedures described by the PTO were drafted, the PTO scheme was not compliant with this element of the national benchmark in that there was no process for making a complaint about the PTO, or the PTO Ltd board. On finalisation of these procedures, the scheme will be compliant with the national benchmarks.

As the procedures have yet to be finalised and consequently tested, it will be necessary to monitor their effectiveness, especially in regard to perceptions of potential conflicts of interest. Should the procedures prove ineffective, independent third party oversight should be considered.

Recommendation

- 4.9 The PTO, PTO Ltd board and DOT should monitor the effectiveness of the complaints procedures relating to the PTO and the PTO Ltd board. If those procedures prove ineffective, the PTO, PTO Ltd board and DOT should consider the need for independent, third party oversight of the scheme.

4.5 Fairness

Audit reviewed the PTO's Complaint and Dispute Resolution Service guidelines (CDRS) and draft guidelines for the handling of complaints against authorised officers, to determine whether they comply with national benchmark 3, which calls for determinations to be made in a fair manner (refer to Appendix B of this report).

4.5.1 The PTO's CDRS guidelines

Although no determinations have been made, the PTO's guidelines and procedures encompass key fairness elements including:

- all parties being informed about the PTO's jurisdiction and how the complaint will be managed
- all parties being provided with an opportunity to explain their case and point of view
- communication between the parties being managed by the PTO
- notification to the parties by the PTO of the progress of the complaint
- where the PTO exercises his discretion not to pursue a complaint, to advise the complainant of the decision and their right to a review of that decision.

The guidelines are robust and offer comprehensive guidance for the management of complaints, however, the CDRS provides very little procedural guidance for staff in relation to referral of complaints to other agencies.

Since the establishment of the PTO scheme, the guidelines have been reviewed on two occasions and refined with a focus on including practices that emphasise the importance of early, internal resolution by operators and other members. The current guidelines are robust and reflect the industry standards set out in the national benchmarks.

4.5.2 Specific guidelines for the management of complaints against authorised officers

In view of the PTO's expanded jurisdiction for managing complaints against authorised officers (effective from February 2008), it is likely that the PTO will manage more complaints against authorised officers and refer a smaller proportion than it has done.

The PTO has finalised specific guidelines for dealing with such complaints. The guidelines provided to audit outline specific procedures for the management of complaints against authorised officers, including referral arrangements with other relevant bodies.

The guidelines offer comprehensive additional protocols. When applied to an investigation, these guidelines should provide for complaints against authorised officers to be appropriately handled.

Conclusion

The CDRS contains the necessary guidelines to ensure the PTO scheme is fair, and the specific authorised officer guidelines reflect the principles outlined in the national benchmarks.

4.5.3 Frivolous and vexatious complaints

Clause 6.3 of the PTO Ltd charter allows the PTO to decline to investigate a complaint on a number of grounds, including where it is considered that the complaint:

- is frivolous or vexatious
- is better dealt with by another body
- does not warrant further investigation.

The CDRS guidelines detail when this discretion might be exercised. The circumstances include a number of subjective assessments, such as:

- the complainant intends to annoy or inconvenience a member of the scheme
- the complainant has intentionally provided untrue information, or
- the complaint is 'clearly untenable'.

The charter does not oblige the PTO to provide reasons to a complainant about why their complaint has been declined under clause 6.3. The right to an appeal against a decision to decline to investigate a complaint is difficult if reasons are not given to the complainant.

In contrast, clause 6.2 of the charter requires reasons to be given for any binding decision made under clause 6.1.

The CDRS guidelines currently provide for reasons to be given to a complainant where the discretion not to investigate is exercised. Unlike the charter, these guidelines can be changed at any time.

Of the complaints against authorised officers reviewed by audit, none had been listed as frivolous or vexatious, and no complainants had requested a review of the PTO's decision.

The PTO advised audit that, to date, no complaints against authorised officers had been declined on the grounds of being frivolous or vexatious.

Conclusion

Circumstances may arise when the PTO decides not to investigate further, and the reasons for this decision may be subjective. The charter does not require the complainant to be informed of these reasons.

The CDRS guidelines reflect the standards in the national benchmarks.

Recommendation

- 4.10 The PTO Ltd charter should be amended to ensure that reasons are provided to a complainant when their complaint has been declined under clause 6.3 of the charter.

4.6 Monitoring effectiveness

Audit assessed the mechanisms used by the PTO to obtain feedback from complainants on the service/s provided to them by the PTO. This aspect is set out in the national benchmarks 5.12 and 6.12 (refer to Appendix B of this report).

4.6.1 User satisfaction with the PTO's management of complaints

To obtain feedback on complainant's satisfaction levels, each month the PTO surveys a sample of complainants. Some results are published in PTO Ltd's annual report. The 2007 annual report includes the percentages of 'satisfactory' and 'very good' responses to a range of questions about PTO service, such as promptness, courtesy and quality.

Feedback gathered in user surveys is not specific in respect of the various key complaint areas including complaints against authorised officers. Such information would be useful in assisting the PTO to address specific issues relevant to the handling of various types of complaints. Again, this may be particularly important as the number of authorised officer cases that the PTO handles increases.

The statistics published show that users are generally satisfied with PTO service, and results for most categories have improved from the 2006 survey. Satisfaction with staff knowledge fell slightly from 84 per cent in 2006 to 81 per cent in 2007.

Some of the unpublished user survey data from 2007, however, indicates there are a number of areas with scope for improvement:

- 49 per cent of respondents were dissatisfied with the PTO's resolution of their complaint, while only 40 per cent were satisfied (11 per cent did not respond)
- of those respondents whose complaint was unable to be resolved by PTO Ltd, 32 per cent indicated that the PTO had not explained to them why it had not been able to resolve their complaint. Of that same population, only 40 per cent indicated the PTO's response was acceptable (28 per cent did not respond)
- 28 per cent of respondents said that they were not kept informed of the progress of their complaint to their satisfaction, 65 per cent indicated they were informed to their satisfaction (7 per cent did not respond).

Requesting survey respondents to provide feedback in terms of 'their satisfaction' is ambiguous since some respondents will have been kept informed but not to their satisfaction. Others will have been kept informed to their satisfaction. This ambiguity detracts from the value of the data and makes interpreting the results more difficult.

It should be noted that percentages published in the annual report have been calculated by eliminating all non-responses to each question. This data may be misinterpreted. The PTO should explain its methods of calculation in the report so that readers can be fully informed.

Conclusion

Overall users' satisfaction levels improved over the three years the PTO scheme has been in existence and changes to the PTO's jurisdiction may help to resolve some of the issues identified by survey respondents. The survey results, however, indicate the PTO may need to review:

- the way it resolves and refers complaints
- the explanations it provides to complainants
- how it keeps complainants informed about the progress of their complaint.

The PTO should reassess the way it gathers and reports user feedback data.

The PTO is compliant with the benchmark in so far as it has measures for receiving feedback about the scheme and determining user satisfaction.

Recommendation

-
- 4.11 The PTO should consider obtaining feedback from the various specific users of the PTO scheme, for example, authorised officer complainants, to assist in monitoring the effectiveness of its service provision and to drive improvements.
-

5 Continuous improvement

At a glance

Background

The PTO has valuable data on complaints that can be used to identify systemic issues. This in turn, may lead to opportunities for continuous improvement in the employment, training and operations of authorised officers.

Key findings

- Stakeholders agree that the PTO scheme has contributed to, but has not been the major driver of continuous improvement of, standards of service in the industry. Victorian Government initiatives are likely to have been more influential.
- The PTO has adequate procedures to identify systemic issues arising from complaints data and this complies with the national benchmark.
- There is significant communication of data and key issues between the PTO, scheme members and the Department of Transport (DOT). It is less clear how DOT deals with PTO data in order to identify and address matters for continuous improvement.
- The PTO tool for capturing complainant satisfaction with operators' complaint handling complies with the national benchmark, but is not currently achieving its objectives.
- The PTO performs no systematic post-complaint monitoring of actions taken by members.

Key recommendations

- The outcomes of the recently established transport taskforce actions should be documented and analysed by DOT to gauge their effectiveness in driving continuous improvement across the transport industry, including in relation to authorised officers (**Recommendation 5.1**).
- The PTO should consider implementing a post-complaint monitoring process to ensure members follow through with proposed actions (**Recommendation 5.2**).

5.1 Background

Data from handling complaints can be used to identify shortcomings in the public transport system that need to be addressed, improve members' complaint handling and, more specifically, drive improvements in the employment, training and operations of authorised officers.

Continuous improvement should be driven by the employers of the authorised officers, i.e., the operators, and where there is a need for legislative change or change in aspects of the franchise agreements, by the government through DOT, (i.e., the Secretary, DOT, formerly the Director of Public Transport within the Department of Infrastructure).

Neither the PTO Ltd constitution or the charter gives any role or imposes any obligations upon the PTO for continuous improvement of the public transport system. The Public Transport Franchise Agreements oblige operators to use reasonable endeavours to secure continuous improvement in overall customer satisfaction on passenger services during the franchise period. This is a general obligation and not specific to the activities of authorised officers or the PTO.

Audit examined whether:

- the PTO scheme facilitates continuous improvement in the employment, training and operations of authorised officers
- continuous improvement has been driven by a broader approach to systemic issues.

In this respect, audit assessed whether the PTO scheme complies with the national benchmark (6.4 and 6.8, refer to Appendix B of this report) which provides that a scheme should have:

- mechanisms for referring systemic issues arising from complaints to members and the overseeing entity
- the capacity to advise members about their internal complaints mechanisms.

5.2 Impact of the PTO scheme on continuous improvement

Discussions with PTO Ltd board members, the former and current PTO and DOT revealed unanimous support for the notion that continuous improvement had been achieved because of the PTO scheme, although individual examples are more difficult to identify.

Board members believed that the handling of complaints by the operators was far more professional, there was more consistency across the industry and complaints handling had received more resources and a higher priority within operators' organisations. The board members' agreed view is that the mere existence of the scheme has provided a spur to drive continuous improvement.

Board members believed that it was too soon to make an assessment of continuous improvement for authorised officer employment, training and operations, especially given the recent changes to the PTO's jurisdiction.

The PTO described three key areas where opportunities for continuous improvement arose within PTO jurisdiction, namely:

- the ability to pinpoint systemic issues arising from individual complaints to drive continuous improvement across the transport sector
- the use of trend data in complaints to reconcile differing operator approaches and to drive greater consistency and better practices. In this respect, the PTO's independence is vital
- a need to extract more information regarding operator complaint handling, through monitoring whether complainants are satisfied with complaints handling.

The PTO advised that greater analysis of complaints data and assessment of complainant satisfaction are important parts of its business plan for 2008–09.

Another continuous improvement initiative is the proposal to impose the Australian Standard AS ISO 10002-2006: *Customer satisfaction—Guidelines for Complaints Handling in Organisations* on operators through the franchise agreements. Although stakeholders are discussing this change, it is difficult to say whether the PTO is a key driver of it.

Audit notes that the Metlink Services Agreement and the operator franchise agreements already have obligations on operators to comply with the relevant Australian complaints handling standard, AS 4269-1995.

Operators and Metlink (referred to as respondents) were given an opportunity to reflect on whether the PTO scheme had contributed to continuous improvement in relation to authorised officers.

One respondent:

- acknowledged that complaints against authorised officers are amongst the most difficult, and that public perceptions of the way authorised officers carry out their functions are difficult to change
- thought that the major impetus for continuous improvement in this area originally came from an early consultant's report examining the transport system, but that the PTO had provided an additional spur and a focus on complaints issues
- felt that the changes to the PTO's jurisdiction would potentially provide it with a greater role in the next stage in the continuous improvement of complaints handling and operations for authorised officers. This step would then be further enhanced as the parties, including the PTO, get involved with the new ticketing system. The PTO may have a key role to play in the development and monitoring of the rules applying to authorised officer activities under the new system.

Another respondent stated that the majority of investigations into complaints against authorised officers were conducted by the Victorian Ombudsman rather than the PTO. In its opinion there had been little continuous improvement resulting from these investigations, with the majority of these cases tending to be determined on issues of disputed fact rather than on process or procedure. However, this respondent also expressed the opinion that the PTO had contributed to the identification of systemic issues.

A third respondent expressed the opinion that the PTO had contributed to continuous improvement. The respondent suggested that PTO Ltd staff's proactive efforts to understand the issues surrounding authorised officers had led to diplomatic complaint handling and open discussions on ways to reduce the potential for issues to be repeated. This respondent also stated that the PTO had achieved beneficial outcomes for the industry in terms of the handling of complaints against authorised officers in two ways:

- through the increased transparency of complaint resolution for complainants
- through the awareness the respondent's staff (including authorised officers) have of the potential for complaints to go to the PTO if they believe they have been treated badly.

This respondent believed that the PTO had played a role in the reduction of complaints against authorised officers, due to authorised officers' awareness of the scheme.

DOT also expressed the view that the PTO is not the major driver of continuous improvement, but has contributed to it. For example, a major service improvement in the operation of authorised officers occurred in 2006, with the introduction of Division 4A of Part 7 of the *Transport Act 1983*. Following an adverse decision relating to an authorised officer in the Magistrates' Court in 2005, the former DOI undertook a broad review of authorisations and the processes surrounding those authorisations. Service improvement work commenced followed by the legislation, which imposed a range of probity checks, training standards, accreditation requirements and standard conditions on authorisations granted to authorised officers and affecting their employers, the operators.

DOT strictly monitors authorisations granted to authorised officers and has procedures in place to ensure the legislative provisions are complied with. DOT is currently auditing the effectiveness of that system.

Conclusion

It is difficult to attribute major continuous improvement initiatives directly to the PTO scheme. Notwithstanding, there is sufficient anecdotal evidence to suggest that the scheme has had a positive impact in driving continuous improvement in the employment, training and operations of authorised officers, and in complaints handling more generally.

The more influential drivers of continuous improvement are likely to be initiatives driven by Victorian Government policy.

5.3 Does the PTO scheme have procedures for referring systemic issues?

5.3.1 Systemic issues

Systemic issues are those that are raised in a complaint to the PTO and appear to have affected, or have the potential to affect, a number of public transport users, or others affected by public transport operations, in addition to the complainant.

The PTO Ltd charter provides for the PTO to:

- receive and record complaints relating to systemic issues
- review systemic issues in its jurisdiction
- 'draw systemic issues to the attention of scheme members, regulators, including the Director of Public Transport [now Secretary, DOT], or the Minister for Public Transport as the PTO considers appropriate'.

The audit examined the PTO's processes for identifying systemic issues.

At the individual complaint level, the PTO's conciliators identify possible systemic issues when handling complaints referred to the PTO. In determining whether to classify an issue as systemic, the PTO takes into account:

- how many people the issue may affect
- whether the impact of the issue extends across all or a substantial part or aspect of the public transport network
- how many complaints the PTO receives about the issue
- whether the issue is capable of being addressed or resolved.

The PTO has developed a guideline for identifying and managing systemic issues within its Complaint and Dispute Resolution Service guidelines and complaints can be tagged as systemic in the 'Resolve' database.

At present all complaints containing any issue relating to authorised officers are tagged as systemic. This appears to be done without proper consideration of the specific nature of the issues raised in the complaint. Some discretion and consideration of specific issues may lead to the collection of more useful data surrounding systemic issues.

The PTO guideline provides a basis for ensuring the provision of information to stakeholders in accordance with the charter. This information can be used to drive continuous improvement.

PTO Ltd, the PTO and DOT discuss systemic issues in the public transport system and the PTO board passes information on these issues to operators and DOT.

Board members expressed diverse views on the PTO's role in identifying systemic issues including:

- The scheme had not been in operation long enough to provide solid data to identify and tackle systemic issues and that the dataset was as yet, too small to be meaningful.
- This area of the scheme warranted further development and more regularised reporting was necessary.
- There is a need to identify key systemic issues from individual complaints data before they became widespread and proactively raise that issue with operators and DOT.
- Continuous improvement was driven internally from operators' overall commitment to the scheme rather than from the PTO complaints data identifying systemic issues. The value in the PTO scheme lay with providing the operator with the initial opportunity to resolve the complaint, thereby driving continuous improvement.

Conclusion

The PTO has adequate procedures to identify systemic issues arising from complaints data and complies with the benchmark. These procedures form a necessary part of facilitating continuous improvement in the service of authorised officers although there is insufficient evidence to conclude that this approach is a key driver of continuous improvement of standards of service in this area.

5.3.2 Communication mechanisms

Communication between the PTO, the PTO board, members of the scheme and DOT provides opportunities for data exchange to identify issues that might contribute to continuous improvement. Key formal communication mechanisms include:

- the PTO's obligations under the charter which include:
 - making recommendations to the Minister for Public Transport on the charter
 - making *ad hoc* reports to members, the PTO Ltd board and the Secretary of DOT
 - monitoring systemic issues and general trends and raising those issues with members and regulators
- obligations on the PTO to publish determinations in individual cases under the charter.

Important informal mechanisms for communications include:

- periodic meetings between DOT officers, PTO officers and, on occasion, the chair of the PTO board
- meetings between the PTO and chair of the board with the Minister and Secretary of DOT to discuss issues arising from the PTO's work, including trends and possible systemic issues identified through complaint handling.

Conclusion

There is significant and ongoing communication of data and key issues, including systemic issues through the PTO's monitoring tools and meetings, to scheme members and to DOT. The scheme complies with the national benchmark in this area.

5.3.3 Use of data

It is unclear how PTO data is used within DOT. Statistics and systemic issues appear on the agenda for the regular individual meetings between the PTO and the Director of Public Transport, however, discussions and outcomes of those meetings are not well documented. In future, any agreed outcomes from these discussions should be documented and monitored for achievement.

The recent planning exercise involving DOT, the PTO and operators is an example of good communication between the stakeholders, and has resulted in the establishment of a transport taskforce to specifically deal with increasing the awareness of the PTO scheme through promotion by members. The taskforce has been given specific actions to perform, with responsibility clearly allocated to individual stakeholders. The PTO organised the planning exercise and it is appropriate that the PTO Ltd board monitor the taskforce outcomes. DOT should analyse these outcomes to identify further opportunities for continuous improvement.

In relation to authorised officers, the taskforce actions included a review of authorised officer training to include an additional module relating to the PTO.

Conclusion

Although there is good communication between stakeholders, it is less clear how DOT deals with PTO data in order to identify and address matters for continuous improvement.

Recommendation

- 5.1 The outcomes of the recently established transport taskforce actions should be documented and analysed by DOT to gauge their effectiveness in driving continuous improvement across the transport industry, including in relation to authorised officers.

5.4 Does the PTO scheme have the capacity to advise members about their internal complaints mechanisms?

In going through the complaints process, either with the operators or PTO Ltd, a complainant will make a subjective judgment of how they have been treated by the operator, and the efficacy of the operator's complaints handling process. This information is important and should be captured and used to drive continuous improvement in operators' management of complaints against authorised officers.

The audit examined the PTO's monitoring arrangements and how it captures this information, and assessed it against the national benchmark. The benchmark requires a scheme to have the capacity to advise members about their internal complaints mechanisms.

Complaint files include a Member Complaint Management (MCM) section where a complainant's issues with the member's (the operator) original handling of their complaint (i.e., the reason the complaint came to the PTO) are recorded.

In 2006 the PTO began a system of assessing, at case closure, whether the MCM comment was justified and whether the operator's case handling was satisfactory. MCM data is generated into a monthly report and discussed with members at monthly meetings (which are to become quarterly meetings from mid-2008) to inform and advise them about their internal complaints management mechanisms. The PTO advised the audit that the MCM was not designed to monitor complaints post-resolution.

Discussions with PTO Ltd staff revealed that:

- there was no clear understanding of the MCM assessment by PTO Ltd staff on files
- the MCM does not monitor what happens to the complaint once it leaves the PTO.

The PTO advised that the MCM is not currently functioning as intended. As part of the 2008–09 business plan, MCM will be used more strategically and focus on information exchange regarding:

- developments in operators' organisations
- industry-wide systemic issues arising from complaints
- more generalised feedback on operator practices in handling complaints.

The audit also found that the PTO does not monitor in any systematic way what happens to a complaint once it leaves the PTO. For example, if, after PTO intervention, an operator agrees to a particular action to resolve a complaint, PTO does not check at a later stage whether that action has occurred. The operator and complainant receive resolution letters and the complainant is advised that, if the operator does not comply, the complainant may contact the PTO for further review of the operator's actions.

As the changes in jurisdiction may lead to an increase in the number of complaints managed by the PTO, the lack of post-resolution monitoring may lead to a loss of a significant amount of information that could be used for feedback on members' responses to complaints.

Conclusion

The PTO has a tool available, the MCM, which complies with the national benchmarks. The MCM, as currently implemented is not achieving its aims. Audit believes that changes to MCM mooted by the PTO are likely to result in the MCM achieving its aims of providing consistent and useful feedback to members on their internal complaints handling processes.

The MCM does not, however, allow post-complaint monitoring of members' actions and accordingly, valuable information may be being lost.

Recommendation

- 5.2 The PTO should consider implementing a post-complaint monitoring process to ensure members follow through with proposed actions.
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Appendix A

Statutory powers and functions of ticket inspectors (authorised officers)

The Director of Public Transport, Department of Transport may authorise persons to exercise the following powers where that officer reasonably believes that an offence has been committed:

- require a person to state his or her name and address
 - request a person to provide evidence of the correctness of name and address
 - arrest a person if necessary to:
 - ensure appearance of the person at court
 - preserve public order
 - prevent continuation or repetition of an offence
 - ensure the safety or welfare of the public or the person concerned
 - remove a person and that person's property from a bus, train or tram or from company premises or property
 - require a person to produce a valid ticket and proof of entitlement to a concession fare entitlement.
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Appendix B

Benchmarks for industry-based customer dispute resolution schemes

The following benchmarks and select key practices, developed by the Consumer Affairs Division, Department of Industry, Science and Tourism, were used in undertaking this audit. The benchmarks were published in August 1997.

Benchmark and principle	Key practice
1. Accessibility The scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers.	1.1 The scheme seeks to ensure that all customers of the relevant industry are aware of its existence. 1.2 The scheme promotes its existence in the media or by other means. 1.3 The scheme produces readily available material in simple terms explaining: <ul style="list-style-type: none"> • how to access the scheme • how the scheme works • the major areas with which the scheme deals • any restrictions on the scheme's powers. 1.8 The scheme provides appropriate facilities and assistance for disadvantaged complainants or those with special needs.
	2.2 The decision-maker is appointed to the scheme for a fixed term. 2.3 The decision-maker is not selected directly by scheme members, and is not answerable to scheme members for determinations. 2.5 The scheme's staff are not selected directly by scheme members, and are not answerable to scheme members for the operation of the scheme. 2.6 There is a separate entity set up formally to oversee the independence of the scheme's operation. The entity has a balance of consumer, industry and, here relevant, other key stakeholder interests.

Benchmark and principle	Key practice
<p>2. Independence – <i>continued</i> The decision-making process and administration of the scheme are independent from scheme members.</p>	<p>2.8 As a minimum the functions of the overseeing entity comprise:</p> <ul style="list-style-type: none"> • appointing or dismissing the decision-maker • recommending or approving the scheme's budget • receiving complaints about the operation of the scheme • recommending and being consulted about any changes to the scheme's terms of reference • receiving regular reports about the operation of the scheme • receiving information about, and taking appropriate action in relation to, systemic industry problems referred to it by the scheme.
<p>3. Fairness The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.</p>	<p>3.1 The decision-maker bases determinations on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law.</p> <p>3.2 The scheme's staff advise complainants of their right to access the legal system or other redress mechanisms at any stage if they are dissatisfied with any of the scheme's decisions or with the decision-maker's determination.</p> <p>3.3 Both parties can put their case to the decision-maker.</p> <p>3.4 Both parties are told the arguments, and sufficient information to know the case, of the other party.</p> <p>3.5 Both parties have the opportunity to rebut the arguments of, and information provided by, the other party.</p> <p>3.6 Both parties are told of the reasons for any determination.</p> <p>3.7 Complainants are advised of the reasons why a complaint is outside jurisdiction or is otherwise excluded.</p> <p>3.9 The decision-maker can demand that scheme members provide all information which, in the decision-maker's view, is relevant to a complaint, unless that information identifies a third party to whom a duty of confidentiality or privacy is owed, or unless it contains information which the scheme member is prohibited by law from disclosing.</p>

Benchmark and principle	Key practice
<p>4. Accountability</p> <p>The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.</p>	<p>4.1 The scheme regularly provides written reports of determinations to scheme members and any interested bodies for the purposes of:</p> <ul style="list-style-type: none"> • educating scheme members and consumers • demonstrating consistency and fairness in decision-making. <p>4.3 The scheme publishes a detailed and informative annual report containing specific statistical and other data about the performance of the scheme, including:</p> <ul style="list-style-type: none"> • information about how the scheme works • the number and types of complaints it receives and their outcome • the time taken to resolve complaints • any systemic problems arising from complaints • examples of representative case studies • information about how the scheme ensures equitable access • a list of scheme members supporting the scheme, together with any changes to the list during the year • where the scheme's terms of reference permit, the names of those scheme members which do not meet their obligations as members of the scheme • information about new developments or key areas in which policy or education initiatives are required. <p>4.4 The annual report is distributed to relevant stakeholders and otherwise made available upon request.</p>
<p>5. Efficiency</p> <p>The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.</p>	<p>5.2 The scheme has mechanisms and procedures for referring relevant complaints to other, more appropriate, fora.</p> <p>5.3 The scheme has mechanisms and procedures for referring systemic industry problems that become apparent from complaints, to relevant scheme members.</p> <p>5.9 The scheme sets objective targets against which it can assess its performance.</p> <p>5.12 The scheme's staff seek periodic feedback from the parties about the parties' perceptions of the performance of the scheme.</p>

Benchmark and principle	Key practice
<p>6. Effectiveness</p> <p>The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.</p>	<p>6.1 The scope of the scheme and the powers of the decision-maker are clear.</p> <p>6.2 The scope of the scheme (including the decision-maker's powers) is sufficient to deal with:</p> <ul style="list-style-type: none"> • the vast majority of customer complaints in the relevant industry and the whole of each such complaint • customer complaints involving monetary amounts up to a specified maximum that is consistent with the nature, extent and value of customer transactions in the relevant industry. <p>6.4 The scheme has mechanisms for referring systemic industry problems to the overseeing entity (where referral to the scheme member or members under key practice 5.3 does not result in the systemic problem being adequately addressed) for appropriate action.</p> <p>6.5 The scheme has procedures in place for:</p> <ul style="list-style-type: none"> • receiving complaints about the scheme • referring complaints about the scheme to the overseeing entity for appropriate action. <p>6.8 The scheme has the capacity to advise scheme members about their internal complaints mechanisms.</p> <p>6.10 The determinations of the decision-maker are binding on the scheme member if complainants accept the determination.</p> <p>6.12 The review, undertaken in consultation with relevant stakeholders, includes:</p> <ul style="list-style-type: none"> • the scheme's progress towards meeting these benchmarks • whether the scope of the scheme is appropriate • scheme member and complainant satisfaction with the scheme • assessing whether the dispute resolution processes used by the scheme are just and reasonable • the degree of equitable access to the scheme • the effectiveness of the terms of reference.

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