

Public Transport Ombudsman

Independent Review

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Introduction

Background

- The Navigator Company was engaged to carry out a review of the PTO. Under the PTO's Charter, a review is required by April 2009 being the fifth anniversary of the scheme's inception.
- The Review was to have three areas of examination:
 - the scope of the scheme (jurisdiction & process).
 - the performance of the PTO against the six Benchmarks for Industry-based EDR schemes – Accessibility, Independence, Fairness, Accountability, Efficiency and Effectiveness; and
 - the governance of the scheme – the Board's performance and remuneration (reported separately).
- We were asked to provide a succinct report – with its major emphasis on the future directions for the scheme.

Introduction

- We found a rather more complex scheme to describe than we had expected – with some of its environment and functions more akin to a statutory scheme than a typical industry-based scheme. In part, that is the reason for our failure on one review parameter – this is not a succinct report, largely because of the extent of explanation required to communicate the findings and recommendations.
- There are a large number of recommendations in this report – although this does not reflect any significance of areas for improvement. Rather, we made a comparatively large number of minor recommendations by way of suggested refinements.
- We have separately dealt with our suggestions for emphasis for the long term. It is the Board's practice to engage with a strategic planning exercise each year – and our contribution is aimed at strengthening that thinking process rather than prescribing future priority.

Executive Summary

- The Navigator Company was engaged to conduct an independent review of the effectiveness of the Public Transport Ombudsman – in the 5th year of its establishment. The review involved a detailed review of documents and procedures, briefings from staff, case file reviews, interviews with complainants, public transport operators and other stakeholders. The Reviewers also drew on their extensive experience with a range of industry-based EDR schemes.
- The PTO operates in a highly unusual environment, heavily constrained by the government relationship with the franchised operators of public transport in Victoria – a recognition of which is critical to any assessment of its effectiveness.
- We found the PTO to be a well-run scheme, with enthusiastic and engaged staff and with systems and procedures of considerable strength that has adapted EDR practices from other settings to the unique environment of franchised public transport.
- The scheme clearly meets the Benchmarks for Industry-based EDR in almost all respects. We made a number of minor recommendations by way of **refinement** to PTO rules, procedures, systems – many of which are simply a continuation of directions already well established by the management of the scheme. These include:
 - Continuation of efforts to ensure consumer awareness of the PTO
 - Ensuring access is not restricted
 - Better communication with participants including managing what are often unrealistic expectations of the PTO
- We found that the PTO operates in an environment where a detailed **knowledge** of the workings of the system is more than usually important. The PTO has progressed this knowledge-building but can do more to build expertise in the sector it serves - through briefings, training and secondments.
- We found a scheme that has made significant progress since its implementation but is still “growing into its skin” and that we think can do more to flesh out its **leadership** role and influence on the operations of the public transport system as a whole. This leadership can be shown through a more prominent role in setting standards, in promoting transparency of consumer rights in the sector and in influencing the future design of the policy framework for the public transport system.

Executive Summary

- We found an effective **governance** framework for the PTO, with a committed and engaged Board – albeit with some risks to continuity as its founding members begin to change over. We have recommended that the Board approach Government for some support with the longer term regime for tenure of Board Members.
- Finally, we identified a few key areas of risk to the **long-term future** of the PTO and have made some suggestions for strategic directions for the Board to consider at its strategic planning workshop later this year. These centre around the PTO's ability to add value in three areas:
 - Symbolic and reputational value to the public transport system as a whole
 - Value to individual complainants
 - Value to systemic and continuous improvement of the public transport system

Approach to Review

- Our Review approach included:
 - an extensive documentation review including PTO documents (Board papers, Guidelines, Position Statements, strategy documents, Annual Reports and other publications, KPIs, reports and statistical information) and external reports (McAllister Communications, Sweeney Research and Victorian Auditor-General);
 - briefings and discussions with PTO management.
 - review of the register of outreach activities and the register of complaints made about PTO officers;
 - review of the Resolve case management system records of 43 recently closed cases and telephone interviews with [of these complainants – our case sample encompassed a mix of PTO staff, the range of PTO members and the range of processes utilised by PTO (referral for internal escalation [RFIE]), resolved after initial investigation, discretion exercised not to further investigate and the one PTO binding decision made to date);
 - interviews with the Independent Chair and Board Members;
 - consideration of 5 written submissions (one from an individual, one from another EDR scheme, one from the Department of Transport, one from a motoring organisation and one from an operator);
 - 12 interviews with key stakeholder representatives as per the Review Terms of Reference.
- Our review of case records was directed to understanding the nature, chronology and outcome of the complaint. In particular, we looked to see:
 - whether the PTO's management of the case, including the language used in communications, suggested an appropriately neutral stance is taken;
 - whether an efficient process was followed and appropriate assistance provided to the complainant;
 - whether the outcomes achieved appeared to be fair and in keeping with PTO's charter;
 - whether parties were kept informed through an appropriate mix of written and oral communications.

The Public Transport Context

- Any assessment of the effectiveness of the PTO must begin with an understanding of the unusual environment in which it operates. We understand that the privatised Victorian public transport system is unique and to our knowledge, the PTO is the only industry-based EDR scheme operating in a privately operated public transport setting.
- The PTO reflects the nature of consumer complaints in public transport - including:
 - a high percentage of matters where inconvenience or annoyance – rather than financial loss – is the basis of the complaints;
 - where financial loss is involved, it is typically very small;
 - a high percentage of complaints are immediate in nature (made the same day and with an expectation of an immediate response); and
 - a very short complaint ‘life’ – ie. the consumer loses much of his or her interest in the complaint within days or weeks;
 - a number of complaints that are genuinely directed to improving the system for the public (eg. safety, speed);
 - a number of complaints where the heart of the issue is the trade-off between personal and public convenience (ie. the operator made a deliberate decision in the interests of the greater number of passengers, with the result being some inconvenience to an individual or individuals. Similarly, where an individual demands an improvement or change to the system to their benefit, that would be at some cost to others); and
 - In some cases a direct relationship between the operator and the customer (eg. regular bus route/driver).
- The PTO also reflects the particular way that the public transport system works – including:
 - multiple operators responsible for particular parts of the system;
 - the use of detailed contractual and policy provisions to guide and constrain the private operators;
 - close oversight by the Department of Transport; and
 - the reality that the system is ultimately owned and funded by the public.

The Public Transport Context

- Amongst other things to be discussed later in the report, this means that:
 - the Government's public transport priorities and policies constitute an important context for the scheme;
 - the PTO focuses on shuttle negotiation (a form of conciliation model) to resolve complaints - only one Binding Decision has been made to date – this was in November 2008; and
 - the PTO comparatively infrequently achieves compensation – there is a low percentage of matters where compensation (cash or tickets) is obtained by complainants (of the total of 645 complaints finalised in the 6 months to 31 December 2008, some 117 were either investigated or referred for internal escalation by the operator – and of those 24 resulted in compensation). It should be noted that for operators there can be significant cost as a result of remedies agreed with the PTO eg. infrastructure and other works, staff training and counselling.

Benchmark – Accessibility (Awareness & Promotion)

BACKGROUND

- This Benchmark requires schemes to promote themselves to ensure that all customers of the relevant industry are aware of the scheme's existence.
- As a small and new scheme, the PTO faces considerable challenges in building its profile and so ensuring that its services are utilised.

FINDINGS

- Almost all complainants we spoke with had no difficulty finding and getting in touch with the PTO.
- Interestingly, in a first amongst EDR schemes we have reviewed, a number of complainants reported that they had 'assumed that there would be a public transport ombudsman' and simply went looking for one on the internet.
- The Sweeney research also reported a healthy awareness level of the PTO amongst its survey population - unaided awareness level of 7% and aided awareness level of 33%. This compares reasonably favourably with the TIO's unaided awareness level of 10% and aided awareness level of 54% given that the TIO is a much larger organisation that has been longer established.
- We think that this reflects an appropriately multi-pronged approach by the PTO to building its profile.
 - A focus of attention at the PTO's planning session in 2007, significant effort has been made in cooperation with the operators to improve the profile given to the PTO in operator communication. Outcomes have included new Metlink IVR scripts and scripts for operator brochures and written responses to complaints. Implementation of agreed outcomes has been monitored by the PTO, including that operator websites publicise the PTO.
 - The PTO works with consumer organisations and public interest associations to increase awareness and access. Travellers Aid has stocks of PTO brochures. The PTO's register of outreach activities shows a particular focus on meeting associations representing ethnic groups.
 - Efforts have been made to reach into Regional Victoria with visits by the Ombudsman or his staff to Mildura, Swan Hill, Ballarat and Bendigo.
 - The PTO has also begun a newsletter, *Overview*, to increase awareness and understanding about the PTO in the community and among the staff of operators.

Benchmark – Accessibility (Awareness & Promotion)

FINDINGS cont'd

- Notwithstanding these efforts, some concerns were expressed at interview that the PTO complaint numbers remained lower than might be expected.
- Particular concern was expressed about the awareness of the PTO amongst those living in small country towns given that they might be reluctant to vigorously pursue an issue with their local transport operator and so all the more need the PTO's assistance. We support continued efforts by the PTO to raise its profile in Regional Victoria.
- The issue of consumer reluctance to raise a complaint with operator staff that they must frequently deal with, would not be limited to regional settings. It would equally apply in any regular use setting (a regular bus driver or station attendant). In these instances, it would be useful if the PTO had an ability to accept a complaint directly from a consumer and deal with the matter without automatic referral through the operator.
- Overall, however, we think that the profile of the PTO is at a satisfactory level and that it is now probably the case that the PTO complaint volumes reflects the transitory nature of public transport complaints (annoyance spiking rapidly but soon dissipating after an incident) and the effectiveness of the operator response to complaints – rather than problems of profile.
- The challenge is to maintain efforts over time and to ensure operators are continually vigilant in informing complainants about the PTO's existence. One way to do this would be to more directly monitor whether PTO complainants recall being told about the PTO by operators. In our experience with other EDR schemes, the typical open question "How did you find out about the (scheme)?" does not reliably indicate if the operator did advise the consumer. Prompted questioning about the operators' advice to the complainant will usually produce more reliable results. PTO will be able to periodically aggregate and share this data with operators as a way of measuring the effectiveness of the new IVR scripts and other awareness measures.

Benchmark – Accessibility (Awareness & Promotion)

RECOMMENDATIONS

1. Within the limitations of its size and its budget, the PTO should in the coming year focus effort on promoting itself in regional Victoria and use its complainant demographic data (location of complainants) to measure the effectiveness of these efforts.
2. As specified in its Action Plan, the PTO should continue to monitor operator efforts to publicise the PTO (eg. by periodically checking operator websites, checking physical sites for availability of PTO brochures and so on).
3. The PTO should develop its technique for collection of complainant data to measure as accurately as possible the effectiveness of operator efforts to publicise the PTO.
4. The PTO should, in consultation with operators, develop a procedure for accepting complaints directly from consumers (that have not been through the operator's IDR processes) – where the PTO is satisfied that the consumer has reasonable concerns about possible detriment as a result of making the complaint (to bring this into effect the PTO's Charter will require amendment).

Benchmark – Accessibility (Access/Assistance)

BACKGROUND

- The Accessibility Benchmark also requires a scheme to encourage access by operating a free service and providing explanation to complainants about how the scheme works, including by having readily available material in simple terms for the assistance of complainants. Appropriate facilities and assistance should be provided for complainants with special needs.
- PTO is a free service that accepts complaints by letter, via its website and by telephone.
- The relatively simple nature of many complaints makes it possible to have processes that are quite easy for complainants.

FINDINGS

- The PTO's publication "*An introduction to the Public Transport Ombudsman*" explains simply and clearly what complaints the PTO can accept.
- The PTO provides best-practice EDR accessibility assistance – including a TTY service, toll-free number, website and email access. An interpreter service is provided for 120 community languages.
- Complainants that we spoke with overwhelmingly rated the ease of access and helpfulness of staff very highly. They are evidently not finding it necessary to obtain legal or other such assistance to make or progress their complaint.
- The PTO is currently revising its templates to improve the user-friendliness of language. It is also working on developing a standard form explanation of its processes to be appended to the first communication sent to a complainant (ie. the acknowledgement of receipt of the complaint).

Benchmark – Accessibility (Access/Assistance)

- An important accessibility issue for the PTO is ensuring that complainants have realistic expectations of what the PTO is able to achieve. As observed elsewhere in this report, in many cases the PTO will be unable to resolve a complainant's issues and it is important to manage this expectation gap.
 - We interviewed many complainants whose complaint essentially amounted to dissatisfaction with government policy and who had not understood that the PTO's Charter placed government policy outside of jurisdiction.
 - We also noted that for many complainants, the concept of "fair and reasonable" is quite a difficult concept to communicate in the context of a public transport setting that, amongst other things, must consider what is 'fair and reasonable' as between the interests of an individual user and the interests of larger groups of public transport users and what is 'fair and reasonable' as between public transport users and other citizens.

RECOMMENDATIONS

5. As well as explaining its processes, the planned PTO introductory communication for complainants should be explicitly directed to promoting realistic expectations of what the PTO can achieve. In particular, it should explain (giving examples to assist understanding):
 - the exclusion from jurisdiction of matters of government policy (although the PTO can look at the application of government policy); and
 - the concept of what is 'fair and reasonable' in a public transport setting.

Benchmark - Independence

BACKGROUND

- This Benchmark requires a scheme to have a decision-maker and staff who are selected independently of scheme members. The scheme's overseeing entity should have a balance of consumer and industry stakeholder input and should be responsible for appointing the decision-maker, receiving reports about the scheme's operation and ensuring the budget is sufficient. Changes to the terms of reference should be made in consultation with scheme members, industry and consumer organisations and government.
- The PTO has a Board comprised of equal numbers of Industry and Community Directors with an Independent Chair

FINDINGS

- The structure of the PTO meets the Independence benchmark. We found:
 - no evidence of interference by Board members in the handling of cases - documented protocols are in place for communications between the Board and PTO staff to preserve the independence of complaints management;
 - no evidence of undue Industry or Government influence - in fact a very strong emphasis on maintaining a proper distance from the operations of the PTO
- Unlike many other Industry-based EDR schemes, the Community Directors for the PTO Board have not been drawn from consumer activist ranks. We understand that this is in order to obtain a balanced spread of representatives of the public users of the transport system and in part reflects the shape of the activist groups in public transport - who are largely focused on government policy issues. This may however leave the PTO Board at some risk of criticism over whether it sufficiently represents consumers.
- We note that the PTO has been active in meeting with advocacy groups including the Public Transport Users Association, Victorian Council of Social Services, Consumer Action Law Centre and the Municipal Association of Victoria - which we fully support as a way to develop meaningful engagement with a broad range of consumer perspectives.

Benchmark - Independence

FINDINGS cont'd

- We discuss elsewhere in this report the particular nature of the Victorian public transport system and the limitations on the Ombudsman's powers. These constraints can put the PTO in the position of offering (quite properly) to the consumer only an explanation of some feature of the system or government or operator policy. The PTO is also comparatively infrequently able to achieve significant remedies for individuals. This puts the PTO at some greater risk than most EDR schemes of being accused of being apologists for the system.
- The one submission to the Review from an individual raised the issue of operators unduly influencing the governance of the scheme and it was raised by others at interview. This is an ongoing risk for the PTO and means that more care than is usual must be taken in managing perceptions of the PTO's independence.
- We detected some concern amongst operators that the PTO had more recently assumed a more consumer-advocate role. This is a common concern of industry participants in EDR schemes – in fact we would have been worried if we had not heard it. A crude but sometimes useful indicator of a genuinely independent stance in EDR is that to some extent both industry and consumers accuse the scheme of favouring the other. (Note our Recommendation under Accountability).
- In the PTO instance, we think that the operator concern reflects recent moves to a greater formalisation of the PTO relationship with the operators – which we think is appropriate and healthy.

RECOMMENDATIONS

6. The PTO should continue current efforts to develop more meaningful engagement with a broad range of consumer groups and activists (outside of any direct representation on the Board).
7. In the interests of maintaining and developing its reputation for independence, the PTO should continue to give some public prominence (eg. speeches, media releases, annual reports) to areas where the PTO can properly be recommending changes to government/operator policy.

Benchmark - Fairness

BACKGROUND

- This Benchmark requires decisions of the scheme to be fair and seen to be fair. Procedural fairness must be accorded to the parties. Subject to confidentiality considerations, the scheme should demand scheme members to provide all relevant information and should encourage complainants to do likewise.
- Consistent with this, the PTO is required by its Charter to pursue complaints in a fair, reasonable, just, informal and expeditious manner having regard to law, industry codes and good transport practice (paragraph 5.1). Privacy requirements must be adhered to (paragraph 5.1(d)).

FINDINGS

1. Investigations and procedures

- The PTO has well established processes to obtain, share between the parties and analyse relevant information. In a number of the cases that we reviewed, the PTO took the initiative to request and review relevant CCTV footage. In other cases, the PTO undertook site inspections, for example, to understand the difficulties of a mobility impaired complainant or, in another case, the traffic ramifications of the location of a bus stop.
- In most cases, the complainants we spoke to considered that the PTO had made diligent and appropriate enquiries. Complainants felt that they were kept up to date and were given access to relevant information. We found a high degree of consumer satisfaction with the processes and procedures.

2. Remedies

- It is apparent from both our interviews and the PTO's own surveying of complainants that there is rather less satisfaction with the outcomes of the complaints. Whilst unrealistic expectations are clearly an issue here (an issue addressed elsewhere in our report), we think that for its credibility and for the perception of fairness, the scheme needs to be able to demonstrate more tangible outcomes more often, in order to maintain its standing in the eyes of complainants and the public.

Benchmark - Fairness

FINDINGS cont'd

- We recognise that in the public transport setting, tangible outcomes are more varied than in many other settings and should include such remedies as apologies, independent verification of explanations, staff counselling or training, procedural changes as well as cash or ticket compensation. (Consistent with this, for the 6 months to 31 December 2008, of 117 cases investigated by the PTO or referred for internal escalation, 14 cases resulted in outcomes that included staff discipline/ counselling, staff training or a recommendation for changes to policies or procedures.)
- We do not criticise the PTO in making the following observations. It is operating in a very constrained environment and has done a commendable job of maximising and communicating the value of non-cash tangible outcomes to complainants and stakeholders – and has, where possible, put pressure on the industry generally to make more available in the way of compensation and goodwill gestures.
- That said, there is no escaping the impression that the remedies obtained are seen as comparatively minor. A significant number of our interviewed consumers and stakeholders commented that they found that the remedies to be inconsequential. An uncomfortable number of our interviewed complainants used the expression “so what” when discussing the remedy they were able to obtain through the PTO.
- We think that this sentiment is an expression of the entrenched pattern we have observed in the public transport system, reflected in government policy, of strict control of refunds, replacement tickets and any form of compensation. We heard the view that these need to be tightly restricted to avoid ‘profiteering’, passengers ‘gaming the system’ and because any concession might ‘open the floodgates’ - resulting in a significant loss of revenue. (We were unable to find any data or evidence-based source for these convictions.) This can mean that considerable operator staff resources and sometimes PTO resources are sometimes spent in lengthy, repeated responses and explanations to complainants – when on another view, an apology and a free ticket would be far more efficient and effective.

Benchmark - Fairness

FINDINGS cont'd

- For what it is worth, our own experience of interviewing some hundreds of complainants across many different sectors, is that the effort required to lodge a complaint in a specific format and to stick with the process, means that consumer's complaints are almost always genuine. (They may not be well-founded, but they are made in good faith.)
- Our case review also left us with some concerns about an evident unevenness in approach to remedies as between operators and as between complaints. Where a ticket had been damaged, some complainants benefited from a more liberal approach than others. Some operators evidently restrict a goodwill gesture entirely to the provision of free tickets – other operators in appropriate cases reimburse a taxi fare. Whilst usually a refund was of a single ticket, sometimes several tickets were provided. Whilst variation is to be expected, reflecting the fact that complainants' circumstances vary, this did not seem a sufficient explanation for the differences we observed.
- This is not unusual in an EDR setting, where circumstances, consumer's priorities and the natural variation between firms will always produce variable outcomes. The public transport setting is somewhat different, however. First, each operator has a monopoly in their particular sphere of operations. Second, the government is attempting to provide a seamless public transport service in which considerable effort is put into achieving consistency across the system and finally, the PTO's conciliation model has meant that its influence in achieving standards and consistency across the sector has not been as great as in other sectors where ombudsman determinations can act as a general guide to best practice.
- In summary, we think that these issues create a long-term exposure for the PTO and its credibility and although we understand the difficulty of the environment, we think that the matter requires long-term strategic consideration. The best approach is likely to involve a combination of elements.

FINDINGS (cont)

- First we would encourage the PTO to consider remedies in the context of a clearer distinction between the different types of provisions that make up the public transport policy framework. These provisions are scattered throughout legislation, policy documents, codes, a myriad of franchise contracts and operator policy. It was not always clear to us or complainants what authority or force (or discretion) any quoted policy had. This is one area where the PTO does have a unique perspective on public transport policy and can use that perspective to improve transparency for consumers. For example, it would be useful to have clearer distinction between (say):
 - An immutable government requirement (in law or contract) with no discretion permitted;
 - Government policy - with some discretion in unusual circumstances;
 - Operator policy designed to meet franchise requirements and therefore with discretion; and
 - Discretionary operator policy.

It may be that with some greater transparency, consumers and the PTO will be able to more robustly challenge some elements of the policy framework with respect to remedies.

- Second, we think that the PTO should have a recognised role in commenting upon operator policy documents that bear upon complaints handling and the remedies that are provided to consumers.
- Third, we would encourage the PTO to provide further explanation in its Position Statements as to what it expects as to remedies – when these should be provided and some guidance as to nature/ quantum. We are aware that the PTO has recently published on its website a Position Statement that raised one aspect of remedies - that where an operator fails to respond to complaints within a reasonable time, as well as an apology for the late response, consideration should be given to a goodwill gesture. This Position Statement was developed after consultation with operators and we think provides an excellent model for further work in this area in the future.

Benchmark - Fairness

FINDINGS (cont)

- Ultimately, however, if in any particular case the PTO cannot persuade operators to agree to a remedy that the PTO considers is fair and reasonable in the circumstances, the PTO must be prepared to make it clear to the complainant that he or she need not accept the operator's response but rather the PTO has the power to make a Binding Decision. In November 2008, the PTO did just this. Its first Binding Decision awarded the complainant a full fare ticket for travel for 26 weeks in the amount of \$1,245.40 or, at the complainant's election, cash of that amount. This amount was awarded after considering – and evidently finding insufficient – goodwill gestures offered by the operator. We think that it would be appropriate for the PTO to take this approach more often (see also our comments later in relation to the Efficiency Benchmark).

RECOMMENDATIONS

8. The PTO should approach the Department of Transport and operators to seek agreement to an obligation for both the Department and operators to consult the PTO when drafting or revising public transport documents such as manuals, codes, charters, or agreements that will impact consumers and complaint-handling. In commenting on proposals, the PTO should take into account modern consumer practice from many sectors and its experience of public transport complaints.
9. The PTO should continue and expand its development of Position Statements on the full range of issues it confronts in public transport complaints – including the question of remedies.
10. For each complaint, the PTO should consider and document its assessment of the fairness of the operator's response to the complaint taking into account, as required by its Charter, the law, industry codes and good transport industry practice applicable to the relevant operator. Where the PTO considers that the response may not be fair, taking those matters into account, the PTO should:
 - make the complainant aware of this preliminary view; and
 - ensure that the complainant understands that he or she does not have to accept the operator's response – rather the PTO can proceed to the making of a Binding Decision.

We would expect that the outcome of such an approach would be that PTO Binding Decisions are made more frequently than is currently the case.

FINDINGS (cont)

3. Discretion not to investigate

- Finally we wanted to say something about the PTO's exercise of its discretion not to further investigate a matter (paragraph 6.3 of the Charter and an issue touched upon in the Auditor-General's report). This discretion accounted for 13 complaints closed in the period from July to December 2008. From our case review, it seems that it is sometimes used as the vehicle for closing matters that raise issues of government policy or legislation or the adequacy of public transport services (ie. matters outside jurisdiction as a result of paragraph 4.2 of the Charter) as well as matters where the operator response is considered by the PTO to be fair and reasonable and so further investigation is not warranted.
- In our view, the PTO has appropriate controls to ensure that this discretion is not abused.
 - The PTO does not exercise this discretion pre-emptively. Its practice is to seek operator comments in response to a complaint, including to test whether the original complaint to the operator was responded to in a timely fashion.
 - The PTO has developed guidance as to when this discretion will be exercised (Complaints and Dispute Resolution Service Guideline 3).
 - As part of the office's quality assurance program, the Conciliation Manager reviews all matters where the discretion is exercised.
- Our case review did not identify any matters where we felt that the discretion was inappropriately exercised, however we did identify a process issue. PTO's Guideline 3.6 provides that, where the PTO exercises the discretion not to further investigate, it will write to the relevant complainant advising this result and the complainant's right to seek a review of the PTO's decision. If the review determines that no further investigation is warranted, the parties will be so notified and reasons will be provided. Our case review would suggest, however, that complainants are not consistently being informed of their right of review. We think:
 - this should occur for matters that properly fall within the discretion not to further investigate ;
 - the opportunity for review does not need to be extended where the matter is really being excluded for want of jurisdiction.

RECOMMENDATIONS

11. PTO should review Guideline 3 and clarify practices for closing cases at the PTO's instance. In particular, the PTO's current review of standard template letters should make it clear to complainants where it is closing a case:
 - for want of jurisdiction (ie. because the complaint pertains to a matter listed in paragraph 4.2 of the Charter); or
 - because the discretion not to further investigate is being exercised.

In both cases the PTO should offer the complainant an opportunity to have the matter reviewed.

Benchmark - Accountability

BACKGROUND

- This Benchmark requires a scheme to publicly account for its operations, and fulfil an educational role, by publishing its determinations, and information about its complaints handling and any systemic industry issues.
- The PTO is required by its Charter to prepare an annual report and to monitor general trends and systemic issues arising from complaints and raise those issues with operators and regulators as the PTO considers appropriate. The PTO also has the power to provide confidential reports to operators and the Director of Public Transport where in the PTO's opinion the general public passenger transport services policy or commercial practices of a member have contributed to a complaint or a number of similar complaints.

FINDINGS

- The PTO's website includes its one Binding Determination made in November 2008 (published in full but with identifying particulars removed to protect the complainant's privacy).
- The PTO publishes its Annual Report on its website and directly distributes to over 500 stakeholders. This report includes data about the number of complaints, common causes of complaints and resolution timeframes. In its 2008 Annual Report, for the first time, the PTO identified the number of complaints received for each operator (bus complaints were aggregated). We support the additional transparency that this initiative achieved. The PTO's Recording Review finalised in January this year after consultation with operators was directed to increased consistency and transparency.
- The PTO's Annual Reports also include case studies. This is undoubtedly good practice. To be fair to operators, it is important that the case studies accurately represent the relevant facts. To ensure this, the PTO has a process whereby operators are provided with a draft so that they can check for accuracy. The 2008 Annual Report received quite complimentary feedback from our interviews. As a minor matter, we caution, however, that stakeholders have an expectation that case studies should represent the range of possible outcomes from referral of a matter to the PTO. In our view, last year's Annual Report would have been enhanced by the inclusion of case studies where the operator was exonerated and either the complainant was satisfied with the explanation or the PTO exercised its discretion not to further investigate.

Benchmark - Accountability

FINDINGS (cont)

- In addition to this publicly available information, the PTO provides quarterly reports to operators. Operators have told us they value this reporting.
- The Ombudsman and his staff meet regularly with operators. The quarterly conciliator catch-ups contribute to operator understanding of the PTO's processes and perspectives.
- The three complaints handling training sessions that the PTO has organised for operator and PTO staff (training provided by external experts in July and November 2008 and March 2009) are also a very valuable education initiative.
- Finally the PTO has used its independent and cross-sector complaints handling perspective to highlight issues for the public transport sector:
 - the PTO undertook a review of operator complaints management and released a report to the operators and Director of Public Transport in November 2008;
 - the PTO has reviewed its Authorised Officer complaints and is currently close to finalising a report that will make recommendations aiming to improve practices and minimise complaints;
 - the PTO has made submissions to relevant Government reviews - eg. Bus Safety review.
- We think that these matters all very appropriately fall within the PTO's mandate. We recognise, however, that the PTO's ability to influence policy development is limited and we discuss this more fully in our section on future directions.

RECOMMENDATIONS

12. The PTO should continue its practice of including case studies in its Annual Report. In addition to illustrating any theme of the Report, these should be selected with a view to managing expectations of consumers and reinforcing the independence of the PTO by including examples of the range of likely PTO outcomes.

Benchmark - Efficiency

BACKGROUND

- This Benchmark requires a scheme to operate efficiently by adhering to its jurisdictional mandate, referring relevant complaints to other more appropriate fora, having and adhering to reasonable timeframes and monitoring its own performance.
- For public transport complaints, a quick response is a particular imperative given that many complaints are made very soon after the triggering incident and with the expectation of a quick response.

FINDINGS

- The PTO has systems in place to refer matters to other fora, for example, taxi complaints and complaints within the Ombudsman Victoria's jurisdiction.
- Resolve is a sound case management system that permits the PTO to track matters well. Our case review verified this.
 - Complaints are invariably forwarded to operators for their input within a day of the complaint being received.
 - The PTO has well established follow-up procedures. For example, we saw a number of examples where an operator was reminded that an information request was due the following day.
- Our case review also suggested that operators are generally very good at responding on time to PTO requests for information. This may be reflective of the sector, although it may be that the PTO's reminder system, coupled with its complaint escalation policy assists here (the PTO escalates the classification of a complaint, and imposes a small levy, where an operator fails without valid reason to meet a PTO request for information by the due date).
- The result is that the PTO is currently meeting its efficiency KPIs comfortably: 75% of matters finalised within 14 days and 90% of complaints finalised within 31 days. Complainants we interviewed almost universally regarded the PTO as quick and good at providing them with progress updates.

Benchmark - Efficiency

FINDINGS (cont)

- Where we did occasionally see a complaint stall or effort occur but with little apparent progress, this was because shuttle negotiation was proving unsuccessful and, it seemed, the conciliator was unsure what to do next. The impasse tended to be broken by more senior input within PTO, demonstrating the external benefits of escalation of matters within the PTO (and possibly the implicit prospect of a Binding Decision).
- Lastly, the PTO has been diligent in monitoring its performance.
 - Operator surveys have been regularly undertaken.
 - The PTO sends a survey form to every complainant and analyses the results quarterly for the Board. Where a complainant indicates dissatisfaction with the outcomes achieved through the PTO, the reasons for this will be examined and occasionally a complaint will be re-opened as a result.
 - External assistance has been utilised, including the Victorian Auditor-General's Office's review of authorised officer complaints and we saw evidence of the implementation and tracking of recommendations.

RECOMMENDATIONS

13. The PTO should review procedures and staff training to ensure timely cessation of conciliation effort when the prospects are diminishing and prompt escalation of the complaint with a view to moving to a Binding Decision.

Benchmark - Effectiveness

1. Charter and procedures

BACKGROUND

- This Benchmark specifies that, to be effective, the scope of a complaints handling scheme and the powers of the decision maker must be clear and sufficient to deal with the vast majority of complaints in the relevant industry. Also monetary limits must be sufficient for the industry.
- The PTO Charter monetary limit is \$5,000 or, with the consent of all parties, \$10,000.

FINDINGS

- The PTO Charter clearly specifies the jurisdiction (including limits), procedures, powers and responsibilities of the Ombudsman, however our review did identify a few issues pertaining to the Charter.
- As for other complaints handling schemes, the Charter sets out significant exclusions from jurisdiction. There are usual exclusions such as service pricing and matters under consideration by courts. There are also exclusions that reflect the fact that it is public money that funds public transport and so it is appropriately for Government to determine public transport priorities. Hence the exclusion of:
 - complaints about the content of Government policies, legislation, licences and codes (paragraph 4.2(c) of the Charter) – this includes the operators' compensation codes; and
 - complaints about the adequacy or frequency of a public transport service (paragraph 4.2(h) of the Charter).
- Whilst these exclusions do significantly restrict what the PTO is able to achieve, these exclusions are an inevitable consequence of the public transport context and in our view do not make the Charter insufficient in scope.

Benchmark - Effectiveness

1. Charter and procedures (cont)

FINDINGS (cont'd)

- The Charter is arguably broader in one respect than what is contemplated by the Benchmarks. Whereas the Benchmarks are directed to providing access to consumers who purchase goods or services from scheme members (see Footnote 3 to Benchmark 1), the PTO Charter provides access to those whose land or premises is affected by operators' conduct, operations or activities (paragraph 3.1(g) of the Charter). As a result, we reviewed cases where noise, safety and maintenance issues were raised by those proximate to public transport infrastructure. We thought that the PTO provided an excellent avenue for resolution of these matters.
- We did, however, have some sympathy with the view expressed by one operator that PTO's jurisdiction should not extend to complaints by a service provider or a business wanting to be a service provider to an operator (eg. ticket retailers). This is we think outside the normal scope of an external complaints - handling scheme. Any new exclusion to address this will, however, have to be carefully worded to ensure that its scope is appropriately confined. This should be worked through by the PTO with operators.
- Another issue raised with us was what procedures should be followed where there is a dispute about whether a complaint is within the PTO's jurisdiction. The Charter's silence on this point has led to some uncertainty on at least one occasion. In comparison, financial services EDR schemes set out in their charters a procedure to be followed where there are differing views as to whether or not a matter is within jurisdiction. We think that this is preferable.
- There is also the question of the adequacy of the monetary limit in the Charter. The current monetary limit is significantly less than the monetary jurisdictions of the TIO (\$10,000 for Binding Decisions and \$50,000 for Recommendations) and EWOV (\$20,000 or, with the agreement of the parties, \$50,000).
 - For practical purposes, this is not a significant issue. As noted elsewhere, the vast majority of complaints that find their way to the PTO are for very small amounts. The monetary limit has not served as a limitation on PTO's power to make Binding Decisions – the PTO has only made one Binding Decision and the amount awarded in that case was much lower than the monetary limit.

Benchmark - Effectiveness

1. Charter (cont)

FINDINGS (cont)

- On the other hand, the PTO's power to make Binding Decisions sits behind and informs its conciliation efforts. And whilst PTO complaints have not resulted in compensation payments to complainants in excess of \$5,000, operators do agree with the PTO to carry out works where the cost to them could be in excess of \$5,000 eg. infrastructure works or training or changes to published material.
- A further consideration is the question of credibility of the PTO with consumers and we think that as simplistic as it might appear, a limit of \$10,000 would add some useful weight to the Ombudsman's apparent powers.

On balance, we would like to see the PTO monetary jurisdiction increased so as to give greater legitimacy to its negotiations with operators. A limit of \$10,000 for a determination would we think be unobjectionable – and we note that at least one interviewed operator expressed support for an increase.

- Finally, to implement its Charter effectively, the PTO needs supporting procedures and tools for its staff.
 - The PTO has guidelines, referred to as the CDRS Guidelines, that are available via the PTO's website for the benefit of users of the scheme – although several of these Guidelines have been withdrawn because they are out of date. The intention is that the updating project – to include stakeholder consultation - will be completed by June 2009.
 - The PTO has a knowledge management system that makes relevant resources available to its staff. It also has practice notes and templates and invests appropriately in training for its staff.

Benchmark - Effectiveness

1. Charter (cont)

RECOMMENDATIONS

14. The PTO should consult with its stakeholders with a view to seeking the Minister of Transport's approval to the amendment of the PTO Charter:
 - to exclude from its jurisdiction complaints by a service provider (or a business wanting to be a service provider) to an operator;
 - to introduce a procedure for determining disputes about jurisdiction – typically this is by Ombudsman determination after receiving and considering submissions from the parties; and
 - increasing the monetary limit for compensation to \$10,000 for a determination and with consent of all parties, \$20,000.
15. The PTO should ensure that its CDRS Guidelines are updated by June 2009 so that these are available for the assistance of PTO staff and users of the scheme. The updating project should not be confined to the Guidelines that have currently been withdrawn from the PTO's website and, in particular, should take account of the recommendations pertaining to Guideline 3 made earlier in our report.

Benchmark - Effectiveness

2. IDR linkage and other matters

BACKGROUND

- The Effectiveness Benchmark also requires a scheme to have in place procedures for promoting improvement in member IDR and for encouraging scheme members to abide by the rules of the scheme. Procedures must be in place for addressing complaints about the scheme. Regular independent reviews must be held.

FINDINGS

- The PTO works actively to enhance the complaints handling practices of operators. For example, the PTO is willing to review and provide suggestions about operator complaints handling manuals and has recently done this for two operators.
- The PTO and the operators all use the Resolve case management system. This creates a cross-sector consistency that increases the effectiveness of complaints management.
- After consultation with operators, the PTO has this year established new complaint recording procedures that aim to improve the quality of information provided to operators so that they can more readily identify the original complaint. For example, the PTO collects information as to whether the original complaint was by telephone or otherwise and identifying details such as the operator's case reference number. The revised approach is currently being trialled.
- For each complaint, the PTO makes and records an assessment of the quality of the operator's internal complaints management (MCM) (ie. complainant criticisms sustained or not sustained).
 - This is an excellent initiative that provided the data for the PTO's review last year of operator complaints management, reported upon in November 2008.
 - To further strengthen the data, we suggest that consideration be given to expanding the commentary in the PTO's case management system, Resolve, as to the reasons for the PTO's conclusion eg. operator replied in timely fashion to the complainant's original complaint (date of response should be recorded), or delayed initial response by the operator (again date of response should be recorded).

2. IDR linkage and other matters

FINDINGS (cont)

- An issue raised in the course of our review was the proper role for the PTO in monitoring non-financial actions agreed upon by operators as part of their response to a complaint – particularly where the complainant has no transparency over the issue - eg. staff training that the operator has said that it will conduct. Our case review identified a couple of instances where the PTO did in fact subsequently check with an operator the status of agreed actions. We note that there was some resistance from operators to the PTO assuming this monitoring role.
- It would, however, appear from our review that operators' compliance with scheme rules is good. We have already commented favourably upon the timeliness of their responses to PTO requests for information. The PTO's one Binding Decision led to payment of compensation to the complainant in a timely fashion.
- Finally, there are governance issues that bear upon effectiveness.
 - The PTO has a procedure for handling complaints about the Ombudsman or his staff – this policy ensures appropriate escalation within PTO. Our review of the complaints register and the records relating to the two complaints that have been made since the implementation of this policy mid last year suggests that this policy is effective.
 - Our review, required by the PTO's Constitution, is effectively the PTO's second independent review – last year the Victorian Auditor-General's Office undertook a comprehensive review of complaints pertaining to Authorised Officers. Neither the PTO's Constitution nor its Charter requires, however, ongoing independent reviews – an obligation of the national Benchmarks.
 - In most sectors, the EDR scheme obligation to undertake regular independent reviews is a part of the framework that also obliges industry participants to be members of the scheme. This is a preferable framework, however we recognise that in the public transport setting these obligations are located in different domains.

Benchmark - Effectiveness

2. IDR linkage and other matters

RECOMMENDATIONS

16. To further strengthen the PTO's operator complaints management data, we recommend that consideration be given to expanding the commentary in the PTO's case management system, Resolve, as to the reasons for the PTO's conclusion as to whether or not a complainant's criticism of the operator's complaints management was sustained.
17. The PTO should take steps to clarify with operators (and the DoT as necessary) that it is properly within its remit to monitor the implementation of any agreement reached with operators as part of the resolution of a complaint.
18. The PTO should amend its governing documents to incorporate an obligation to be subject to ongoing five-yearly independent reviews. In the long term, it should approach government for a more robust regulatory framework for membership of the PTO and the standards that the PTO must deliver.

Governance – Board Performance

BACKGROUND

- We were asked to examine the Board's effectiveness and were given access to a recently completed Board self-assessment questionnaire. We interviewed the Independent Chair and conducted interviews with two small groups of the Board members. We also reviewed recent sets of Board papers.

FINDINGS

- We noted earlier in our report that we found no evidence of the Board interfering in handling of specific cases (the Victorian Auditor-General's Office report recommended protocols to ensure that this didn't occur – this recommendation has been fully actioned).
- The Board engages effectively in strategy (has had annual planning days in 2007 and 2008, which have determined on meaningful projects).
- We saw evidence of close monitoring by the Board of progress with key projects eg. the Communications and Promotions Strategy and actions arising from the 2008 planning day.
- We observed well organised and clear Board papers, timely provision of information, organised agendas and minutes. We did, however, have some concern that the Board is being asked to approve management directions at what we think is too great a level of detail for long-term health. We understand that early in the term of a new Ombudsman (CEO), both the Board and the CEO may wish, for a time to engage at a greater level of operational detail – to get to know one another. We would expect to see this return to a more normal degree of delegation to the Ombudsman.
- By all interview accounts and judging by the self-assessment survey results, the Board has achieved an effective operating style in its first few years of operation. The Chair is well-regarded and the ability of members to offer their own perspectives also seems to be sound.

Governance – Board Effectiveness

FINDINGS (cont)

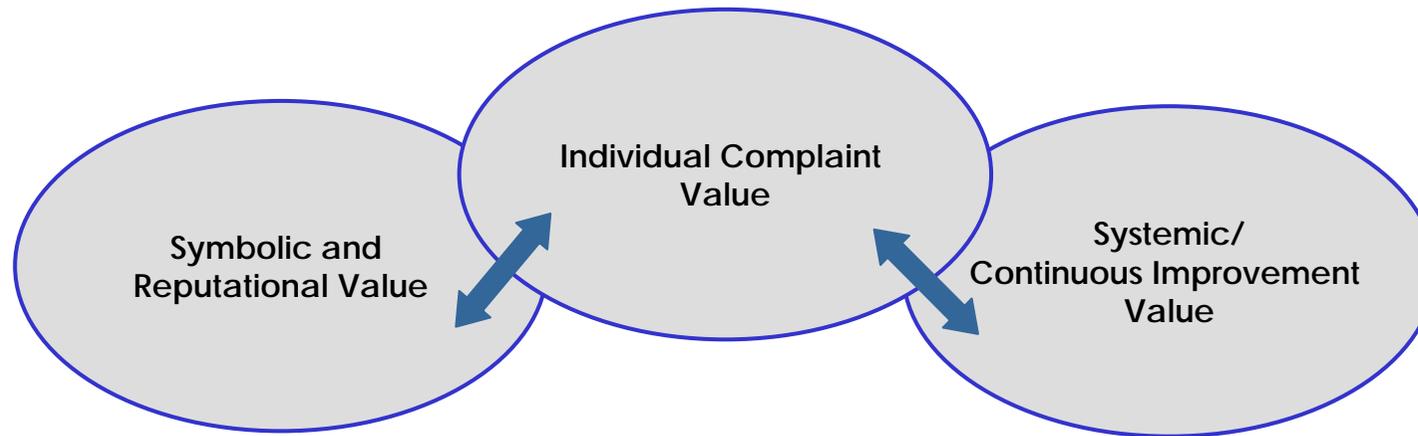
- There was perhaps less confidence that the Board had achieved clarity as to the Board's role in the task of engaging with stakeholders. It is evident that the Ombudsman and the Chair have the primary role in most liaison work, but it was not clear among the rest of the Board what the role should be. This is a common issue with essentially representative Boards.
- Lastly there is the question of the appropriate term of Board members. We are aware that in other contexts, the Victorian Government has preferred shorter tenure for government-appointed Board members than is usually accepted as best-practice in governance. In our experience, board members are at their most effective after a few years of experience of the organisation. Because a comparatively new Board tends to members with similar starting dates, this may mean some resultant weaknesses for experience of the PTO's Board in the coming years as founding members transition off the Board.
- The government-appointed PTO Board members have a mix of terms of appointment (some serving their third two year term and some now serving three year terms. As a matter of long term continuity and for staggered succession planning in the coming period, a transition to a regime of three year terms with a maximum of three (3x3) would be most effective.

RECOMMENDATIONS

19. The Board should take a conscious position to reduce the amount of time spent reviewing detail operational matters and accept delegation of these to the Ombudsman.
20. The Board should discuss and clarify the role of the Board in engaging with stakeholders.
21. The PTO should approach the government with a view to implementing a general policy of three year terms – with a maximum of three terms (3x3) to provide for continuity and improved succession planning.

Future focus for the PTO

The **value-add diagram** below illustrates three of the ways in which an industry-based EDR scheme can add value for its participants and the community. Overleaf, the PTO's contribution to each of these three is assessed – showing strengths, weaknesses and risks.



The symbolic value to the system as a whole of having an Independent Ombudsman. Includes reputational value to the operators and government. Improves confidence of consumers in the system.

The value to the individual complainant. Includes the value of having the matter heard, the value of an independent explanation of the events or reasons for refusal – as well as any redress obtained.

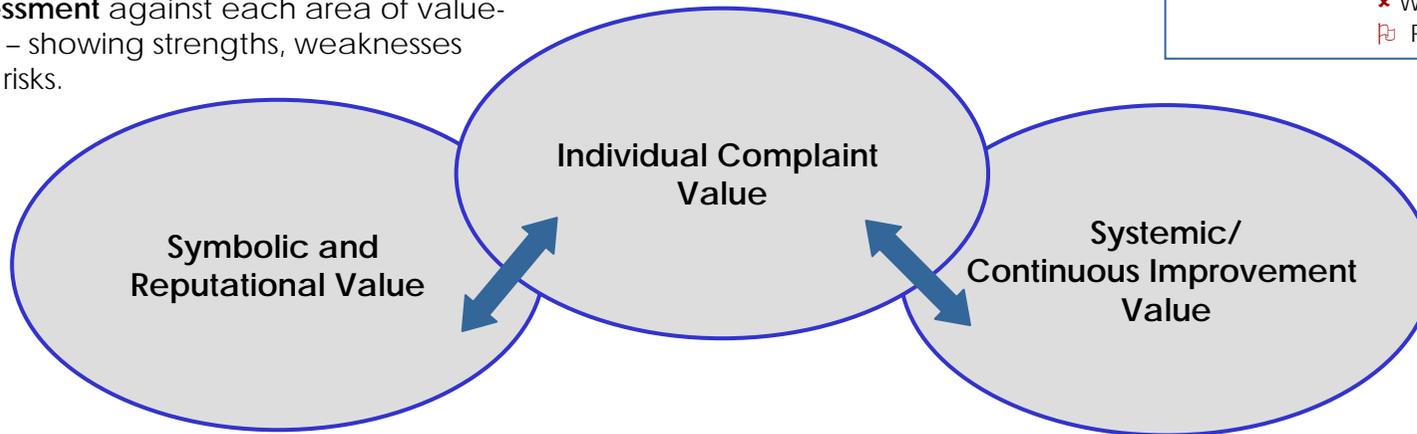
The value from being able to contribute to the improvement of the system as a whole. Includes the value of the ombudsman's direct experience of complaints and complainant attitudes, statistical information and general expertise in dispute resolution.

Future focus for the PTO

The diagram below illustrates an **assessment** against each area of value-add – showing strengths, weaknesses and risks.

Legend:

- ✓ Strength
- ✗ Weakness
- Ⓜ Risk



The symbolic value to the system as a whole of having an Independent Ombudsman.

- ✓ Particularly useful for overseeing privatised system – additional safeguard
- ✓ Particularly useful where multiple operators and authorities
- ✓ Particularly useful in political context
- ✓ Reputation for operators – willing to have independent ‘umpire’
- Ⓜ Risk of being seen as ‘part of system’ – insufficiently independent
- Ⓜ Risk of being seen as ‘toothless’ – limited by contractual and policy constraints

The value to the individual complainant.

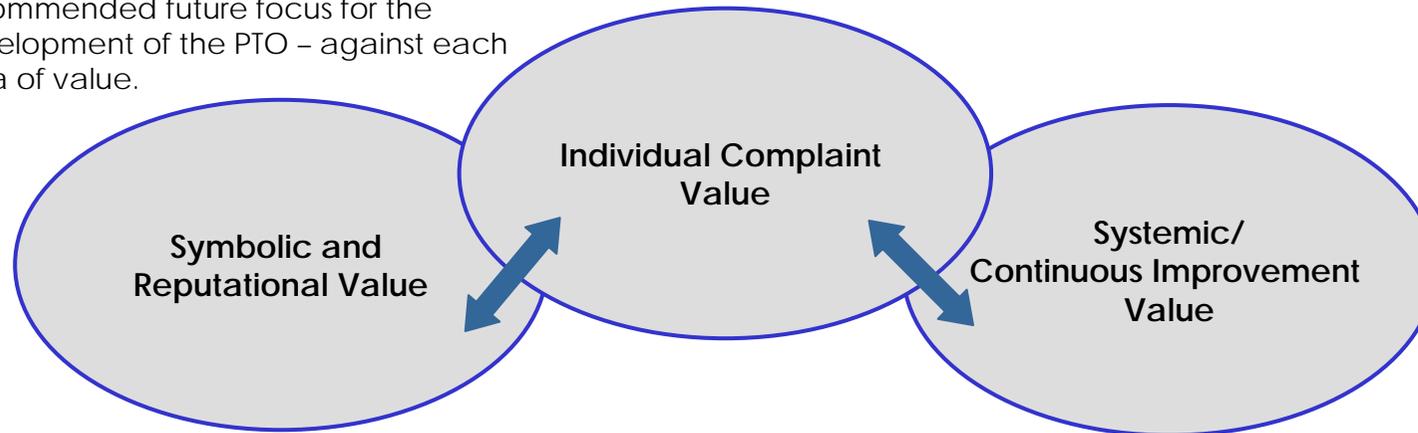
- ✓ Systematic methodology
- ✓ Ability to prompt operator escalation
- ✓ Catch occasional matters that have slipped through
- ✓ In-depth investigations
- ✗ Initial steps can add little to existing operator response
- ✗ Frequently constrained by tight contractual/policy framework of system
- ✗ Individual remedies may not appear significant
- Ⓜ Risk of being seen as ‘part of system’
- Ⓜ Risk of being seen as ‘toothless’

The value from being able to contribute to the improvement of the system as a whole.

- ✓ High levels of inclusion in system-wide improvement activity
- ✓ Accepted role in contributing to improving operator IDR
- ✓ Unique perspective of how complaints are being handled in system
- ✗ Limited volumes of complaints c/w operators
- ✗ Limited ability to add insight into underlying causes of complaints (many other sources of whole of system information)
- Ⓜ Risk of being seen as low value-add
- Ⓜ Risk that insights are not effectively applied to system

Future focus for the PTO

The text below provides a recommended future focus for the development of the PTO – against each area of value.



The symbolic value to the system as a whole of having an Independent Ombudsman.

- This is a highly successful element of the PTO's value-add.
- The focus for the future should be on protecting and enhancing the public perception of the PTO independence and ability to act.
- This may involve some disagreements with operators and Government along the way.

The value to the individual complainant.

- Within the constraints of the system, the PTO has done well in this domain. It provides an accessible, easy to operate service with some effective investigation capabilities.
- It is however, arguably the least potent area of value-add because of its limited ability to provide remedies for complainants.
- The focus for the future should be managing expectations better where nothing can be done – and where possible, improving the proportion of satisfactory outcomes for complainants.

The value from being able to contribute to the improvement of the system as a whole.

- The PTO has helped to improve the way complaints are handled in the system generally.
- It has very good access to IDR and is seen as important to making the whole system work.
- Its ability to contribute is limited, but there are still ways in which that can improve over time.
- The future focus in systemic improvement should be to better differentiate where the PTO can uniquely contribute – and improving its access to Government & operators in those areas.

Future focus for the PTO

Our observation is that the current culture and staff satisfaction in the PTO office is very healthy. There is pride in the work being done and an apparent commitment to continuous improvement. We understand that there have been a range of human resource initiatives to maximise the effectiveness of the staff and their satisfaction. The Ombudsman should take considerable credit for this.

From a longer term organisational health perspective however, we think that the PTO faces some particular long term risks, which must be part of the Ombudsman and Board's thinking about the future focus for the scheme.

■ **Critical Mass**

The PTO is quite small, with 3 part-timers making up its total staffing of 8. It is a particular challenge for an EDR scheme to maintain a sufficient breadth of skills and knowledge, flexibility in workload management and to provide sufficient variety of work or opportunities for individual development and growth for its staff. There is also the question of access to expertise. For example, we saw a complaint that had an insurance component to it, which might have benefited from application of some greater insurance knowledge.

■ **Work satisfaction and challenges**

By their nature, one of the main sources of individual staff satisfaction in EDR schemes is the ability to resolve consumers complaints and to achieve an outcome for them that they would not have otherwise been able to achieve. This need not be total satisfaction of the consumer's desire, but at least some of the time that is important. As an EDR scheme, the PTO has a comparatively low proportion of its complaints that provide that satisfaction.

EDR schemes can also become quite stable, 'complaints factories' with insufficient new endeavours or projects to adequately engage and challenge good staff. They can also, with the best intent, begin to tackle issues that they are not best equipped for. (Note that there was some feedback from operators that the PTO has at times done this.) The small size of the PTO and its constrained role make this a significant risk into the future.

Future focus for the PTO

■ Building public transport knowledge

Although at one level, the PTO complaints are not very complex (say by comparison with a financial investment complaint), they are set against the backdrop of a highly complex public transport system. It is evident from our review of the files that in this scheme in particular, a sound understanding of how the system works is highly advantageous. While the PTO must not be too ingrained in the culture of public transport, it must find ways to develop and keep its knowledge of the system at a high level.

■ Experience

The nature of public transport complaints (service-related, immediate in nature, informal) is such that the interpersonal skills, judgement and general experience of staff will be critical to successful performance – more so than EDR schemes where matters can be decided largely on the paper-based evidence. This also provides a long-term challenge for staff recruitment and retention.

Future focus for the PTO

Based on our consideration of the future challenges for the PTO, we think that the Board and Ombudsman should consider the following suggestions in the process of setting future directions.

■ **Sensible expansion of responsibility**

The PTO should actively consider any opportunities that may arise to expand the organisation's responsibilities in public transport or closely related transport areas. We think that its systems, procedures and capabilities are competent and would make an excellent basis for improving the way complaints from some other domain are handled. In addition, of course, the growth would help address some of the long-term internal risks that the PTO faces.

During our review, it was suggested to us that the PTO could take on responsibility for handling unsatisfied complaints about taxis (currently done by the Victorian Taxi Directorate) or take on jurisdiction for interstate public passenger services that are provided in Victoria (eg. Melbourne-Sydney XPT or the Spirit of Tasmania ferry service). We do not know enough about these particular suggestions to form a view, but it serves as a useful illustration of the type of strategic expansion of responsibilities that might benefit both the PTO and the public.

Although any such added responsibility may be significantly different in nature, and bring new problems to the organisation, the long-term advantages for organisational health and staff engagement and retention may well be worth it.

■ **Collaboration**

The PTO is conveniently co-located with a number of much larger EDR schemes, providing an excellent opportunity for cooperation (eg. consulting other EDR staff in related disputes (eg. insurance), access to training & development activities, the possibility of staff exchanges or temporary staff). This is the most effective way we know to extend the capabilities of a small EDR organisation.

The PTO should also look at systematically seconding PTO staff to operator's IDR sections for short stints – to gain an insight into how complaints are handled at the frontline. Although more difficult to manage from a confidentiality and independence perspective, this could also work in reverse, with staff from operators doing stints – perhaps as technical advisers - at the PTO.

Future focus for the PTO

- **Building public transport knowledge**

The PTO should also look to taking up opportunities for staff to learn about how aspects of the public transport system work. We are aware that these opportunities have been offered and taken up previously. Another way in which the knowledge base can be enriched is to adopt practices used by other EDR schemes such as a panel of experts, who work within operators' organisations, who are accessible for off-line informal advice on how technical aspects of the system work.

Summary of Recommendations

The recommendations in this report are summarised below – under three themes – Refinements, Leadership and Governance. The recommendations retain their original sequential numbering from the body of the report for ease of reference.

Refinements

1. Within the limitations of its size and its budget, the PTO should in the coming year focus effort on promoting itself in regional Victoria and use its complainant demographic data (location of complainants) to measure the effectiveness of these efforts.
2. As specified in its Action Plan, the PTO should continue to monitor operator efforts to publicise the PTO (eg. by periodically checking operator websites, checking physical sites for availability of PTO brochures and so on).
3. The PTO should develop its technique for collection of complainant data to measure as accurately as possible the effectiveness of operator efforts to publicise the PTO.
4. The PTO should, in consultation with operators, develop a procedure for accepting complaints directly from consumers (that have not been through the operator's IDR processes) – where the PTO is satisfied that the consumer has reasonable concerns about possible detriment as a result of making the complaint (to bring this into effect the PTO's Charter will require amendment).
5. As well as explaining its processes, the planned PTO introductory communication for complainants should be explicitly directed to promoting realistic expectations of what the PTO can achieve. In particular, it should explain (giving examples to assist understanding):
 - the exclusion from jurisdiction of matters of government policy (although the PTO can look at the application of government policy); and
 - the concept of what is 'fair and reasonable' in a public transport setting.

Summary of Recommendations

Refinements cont'd . .

11. PTO should review Guideline 3 and clarify practices for closing cases at the PTO's instance. In particular, the PTO's current review of standard template letters should make it clear to complainants where it is closing a case:

- for want of jurisdiction (ie. because the complaint pertains to a matter listed in paragraph 4.2 of the Charter); or
- because the discretion not to further investigate is being exercised.

In both cases the PTO should offer the complainant an opportunity to have the matter reviewed.

13. The PTO should review procedures and staff training to ensure timely cessation of conciliation effort when the prospects are diminishing and prompt escalation of the complaint with a view to moving to a Binding Decision.
14. The PTO should consult with its stakeholders with a view to seeking the Minister of Transport's approval to the amendment of the PTO Charter:
- to exclude from its jurisdiction complaints by a service provider (or a business wanting to be a service provider) to an operator;
 - to introduce a procedure for determining disputes about jurisdiction – typically this is by Ombudsman determination after receiving and considering submissions from the parties; and
 - increasing the monetary limit for compensation to \$10,000 for a determination and with consent of all parties, \$20,000.
15. The PTO should ensure that its CDRS Guidelines are updated by June 2009 so that these are available for the assistance of PTO staff and users of the scheme. The updating project should not be confined to the Guidelines that have currently been withdrawn from the PTO's website and, in particular, should take account of the recommendations pertaining to Guideline 3 made earlier in our report.
17. The PTO should take steps to clarify with operators (and the DoT as necessary) that it is properly within its remit to monitor the implementation of any agreement reached with operators as part of the resolution of a complaint.

Summary of Recommendations

Leadership

6. The PTO should continue current efforts to develop more meaningful engagement with a broad range of consumer groups and activists (outside of any direct representation on the Board).
7. In the interests of maintaining and developing its reputation for independence, the PTO should continue to give some public prominence (eg. speeches, media releases, annual reports) to areas where the PTO can properly be recommending changes to government/operator policy.
8. The PTO should approach the Department of Transport and operators to seek agreement to an obligation for both the Department and operators to consult the PTO when drafting or revising public transport documents such as manuals, codes, charters, or agreements that will impact consumers and complaint-handling. In commenting on proposals, the PTO should take into account modern consumer practice from many sectors and its experience of public transport complaints.
9. The PTO should continue and expand its development of Position Statements on the full range of issues it confronts in public transport complaints – including the question of remedies.
10. For each complaint, the PTO should consider and document its assessment of the fairness of the operator's response to the complaint taking into account, as required by its Charter, the law, industry codes and good transport industry practice applicable to the relevant operator. Where the PTO considers that the response may not be fair, taking those matters into account, the PTO should:
 - make the complainant aware of this preliminary view; and
 - ensure that the complainant understands that he or she does not have to accept the operator's response – rather the PTO can proceed to the making of a Binding Decision.

We would expect that the outcome of such an approach would be that PTO Binding Decisions are made more frequently than is currently the case.

Summary of Recommendations

Leadership cont'd

12. The PTO should continue its practice of including case studies in its Annual Report. In addition to illustrating any theme of the Report, these should be selected with a view to managing expectations of consumers and reinforcing the independence of the PTO by including examples of the range of likely PTO outcomes.
16. To further strengthen the PTO's operator complaints management data, we recommend that consideration be given to expanding the commentary in the PTO's case management system, Resolve, as to the reasons for the PTO's conclusion as to whether or not a complainant's criticism of the operator's complaints management was sustained.

Governance

18. The PTO should amend its governing documents to incorporate an obligation to be subject to ongoing five-yearly independent reviews. In the long term, it should approach government for a more robust regulatory framework for membership of the PTO and the standards that the PTO must deliver.
19. The Board should take a conscious position to reduce the amount of time spent reviewing detail operational matters and accept delegation of these to the Ombudsman.
20. The Board should discuss and clarify the role of the Board in engaging with stakeholders.
21. The PTO should approach the government with a view to implementing a general policy of three year terms – with a maximum of three terms (3x3) to provide for continuity and improved succession planning.

Appendix 1 - Case Review Data (1)

Table 1. Type of operator

Case type	No. of complaints
Train	14
Tram	6
Bus	4
Other eg Metlink, TTA etc	12
Total	36

Table 3. Outcome of complaint

	No. of complaints
Referred for internal escalation	7
Discretion not to investigate further	6
PTO negotiated settlement	16
Complaint not pursued following operator explanation	7
Binding Decision	0
Total	36

Table 2. Subject matter of complaint

Subject matter of complaint	No. of complaints
Authorised officer conduct	9
Land affected by public transport operations	3
Operator information	2
Damage to goods	3
Ticketing	7
Service change/ quality	6
Passenger physical impairment	2
Safety	4
Total	36

Appendix 2 – Complainant Feedback (1)

Table 1. Complainant feedback/perception on specific performance issues

Issue	Agree	Disagree	No view/ not sure
PTO's service was easy to use	22	2	
PTO made appropriate enquiries	9	6	7
PTO kept me informed	15	3	3
RFIE process worked well (4 cases commented in all)	3	1	
PTO's speed was satisfactory	19	2	2
PTO took a fresh and independent look at my complaint	8	10	1
The outcome was satisfactory	8	11	1

Appendix 2 – Complainant Feedback (2)

Table 3. Representative sample of comments from complainants satisfied with PTO

1. Complainants who received a tangible outcome.	
"PTO was as helpful as could be, but seemed to be doing the job with their hands tied behind their backs."	"PTO was brilliant. Happy that didn't have to pay the fine."
"Extremely satisfied with the PTO. Really easy to deal with. Although not terribly happy about the amount of compensation – not anywhere near what was lost."	"Need PTO> Wasn't getting anywhere fast without the PTO. Would use the PTO again."
"Good go-between. Do their job."	"Excellent – (operator) was respectful of PTO"
"Very happy with the result. Did everything in PTO's power."	"Rate them 20 out of 10!"
"Very happy – but didn't really know what was going on behind the scenes"	
2. Complainants who did not receive a tangible outcome.	
"PTO was first class. Doing a good job. Pleased that got a letter from the operator, although still dissatisfied with the Department."	"Systems work well"
" PTO were very good – I was amazed really – but got no result in the end"	"Ran the matter pretty smoothly, very helpful"
"Good people – but no strength to do anything"	"Pretty good – understanding"

Continued overleaf . . .

Appendix 2 – Complainant Feedback (3)

Table 3. cont'd: Representative sample of comments from complainants dissatisfied with PTO

1. Complainants who received a tangible outcome.	
"Got a free ticket – but big deal"	"Rubbish process. Took forever and I got 2 extra tickets – so what"
"Not satisfied, even though (operator) did respond. Still an outstanding safety problem"	
2. Complainants who did not receive a tangible outcome.	
"Toothless. Just repeated what (operator) said"	"Did not respond to all my concerns"
"PTO needs some more powers"	"Ombudsman stood up for (operator)"
"PTO hands tied – no teeth"	

Continued overleaf.

Appendix 2 – Complainant Feedback (4)

Table 4, cont'd: Representative sample of comments from complainants dissatisfied with FICS

2. Complainants who did not receive a tangible outcome	
"PTO dealt very efficiently with the matter. But the outcome was not in their power. Thought that PTO would be able to achieve more."	
"PTO was not helpful. Not happy with the result."	
"Bureaucratic. Issue still not satisfactorily resolved. PTO can't compel the operator to do anything."	

Appendix C – Written Submissions Received

1. Mr. Warren Baker
2. Transport Ticketing Authority (TTA)
3. Department of Transport (DoT)
4. Energy and Water Ombudsman of Victoria (EWOV)
5. Victorian Auditor-General's Office (VAGO)

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