

Investigation of a complaint about Ambulance Victoria

May 2019

**Ordered to be published  
Victorian government printer  
Session 2018-19  
P.P. No. 35**

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

# Letter to the Legislative Council and the Legislative Assembly

To

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

and

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

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973* (Vic), I present to Parliament my *Investigation of a complaint about Ambulance Victoria*.



Deborah Glass OBE  
**Ombudsman**

28 May 2019

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# Foreword

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To say that Ambulance Victoria provides a vital service to all Victorians would be an understatement. It provides an emergency medical response to the over 5.8 million residents of Victoria, in its last reported financial year dealing with nearly a million incidents. Ambulances and dedicated paramedics have undoubtedly saved countless lives.

But any agency can be complained about, and Ambulance Victoria is no exception. Most of the complaints we receive are about fees; it comes as a surprise to many people that ambulance attendance in Victoria is not free, as it is in some other States.<sup>1</sup> This can be particularly problematic when someone else has called the ambulance: neither the Good Samaritan caller, nor the injured party, expect to receive a bill.

This investigation arose from a single complaint. A not uncommon scenario: a man we call Simon is involved in an altercation, someone else calls an ambulance, he declines to go to hospital, and some time later receives a bill for \$519. Simon was undoubtedly aggrieved by this. When we made enquiries into his complaint we identified what appeared to be a systemic issue: fees being charged for treatment without transport, potentially involving invoices being charged unfairly.

When we launched an investigation we found that Ambulance Victoria had issued 17,758 invoices in the previous financial year to patients for treatment without transport. We reviewed a random sample of over 120 of these cases, finding multiple cases of questionable practices. These included numerous cases where more than one person was attended by paramedics, each of them, separately, being billed over \$500 for treatment without transport, as well as people being invoiced for ambulances called by well-meaning friends or strangers. In these cases, it seems paramedics made some assessment and provided 'reassurance', thus falling within the definition of 'treatment', whether the reassurance was solicited or not.

We also looked at a sample of disputed invoices for treatment without transport. None of these reviews resulted in the fees being dropped. Several raised questions about Ambulance Victoria's finance department's exercise of discretion, or more accurately, the lack of discretion showed in cases where the fee was plainly unfair.

These practices also raised questions about whether people were given enough information to provide informed consent before being treated by paramedics.

We concluded that while not all the invoices were unfair, Ambulance Victoria's practice of charging people for treatment without transport could result in outcomes that were unreasonable and unjust – as Simon's case showed.

Ambulance Victoria has been responsive to the issues raised in this investigation, including waiving Simon's fee. I welcome their agreement to adjust their fees more fairly, including splitting of fees in multiple-patient scenarios, and to exclude charging when an ambulance is called by a third party unknown to the patient, and not used.

I accept that the role of paramedics is to respond to a medical emergency, not to engage in discussions about fees, and I welcome their commitment to greater discretion being exercised by their finance department. Ambulance Victoria provides a dedicated professional service for which hundreds of thousands of people are grateful; the changes to their charging policies will make it a fairer one.

Deborah Glass

**Ombudsman**

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<sup>1</sup> Ambulance attendance is free in Queensland and Tasmania for residents of the State.

# Background

## The complaint

1. On 16 May 2018, the Ombudsman received a complaint from Simon<sup>2</sup> about Ambulance Victoria (AV). Simon complained:

On 8th January 2018 I was at the library when I was bitten, spat on, thrown to the ground, and had my wallet and car keys stolen in the carpark. The perpetrator's partner called an ambulance for him. When the ambulance arrived, he lay on the ground and paramedics attended him. After attending him, one of the ambulance officers walked towards me, I was being questioned by police, I said "I'm ok, I will go to hospital later." The ambulance officer walked back to the van and came back with a clipboard. She took my pulse and said "sign this". I said "what is it?" She said "refusal of treatment form" so I signed it. I now get an invoice from a debt collection agency for \$519. I feel this process was dishonest and sneaky and not appropriate for such an organisation. My complete version can be confirmed by 6 video cameras.

I did not call an ambulance, I told them I was ok. I think this is very unfair.

2. Simon complained to AV by phone on 23 January 2018 and received a response by letter dated 15 February 2018. AV responded:

### Our review

Ambulance Victoria will not waive the invoice on this occasion. An ambulance crew assessed you, and you were offered transport to hospital, which you refused at that time.

The Ambulance payment guidelines are set by the Department of Health. Further information can be found on their website at [www.health.vic.gov.au](http://www.health.vic.gov.au).

The current emergency road transport fees for Metropolitan Melbourne is \$1,204 and for Regional and Rural Victoria \$1,776.

There is a single cost for treatment without transport within the state of Victoria which is \$519.

...

### Joining the Ambulance Victoria Membership Scheme

We would like to encourage you to consider Ambulance Victoria Membership. This cover provides protection against the cost of future uses of our emergency treatment and transport services delivered by our highly skilled and dedicated paramedics, aided by state-of-the-art equipment and resources.

3. To determine whether Simon's complaint could be resolved informally or should be investigated, throughout late June and July 2018 the Ombudsman made enquiries with AV. In response, AV provided copies of the relevant policy - 'POL FCS 067 Non-Transported Patient Care Records' (the policy) - and procedure - 'PRO FCS 060 Non Transported Patient Care Records - Financial Administration' (the procedure). According to the procedure:

Classification of 'Non-Transported' PCRs is to be in line with Ambulance Victoria's endorsed definition of 'Treatment'. Classification of either 'Treated' or 'Non-Treated' must be further supported by the attending Paramedics entry on a case by case basis.

4. The policy defines 'treatment' as:

### Treatment

The attending Paramedic has provided one or more of professional medical assessment, care or advice for the benefit of the patient. This may or may not include referral to an alternative health care provider.

5. In the case of Simon, the 'Patient Care Record' (PCR) completed by paramedics at the scene recorded their assessment and observations of his general condition and took his history and vital signs (eg blood pressure and pulse). In terms of treatment, the PCR states 'reassurance, wounds irrigated and cleaned.' The PCR also notes that Simon was advised to 'seek medical treatment' and that he refused.

<sup>2</sup> The person's name has been changed to protect their identity.

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6. It appears that AV's definition of 'treatment' ('assessment', 'care' or 'advice') captures the 'reassurance' and 'wounds irrigated and cleaned' provided to Simon.
  7. The facts of Simon's complaint raised the Ombudsman's concerns about AV's policy and practice for charging people for Treatment without Transport and the issue of consent. The Ombudsman noted the potential for the application of the policy to be taken to an extreme, which could involve unfair invoice practices being applied to vulnerable members of the public.
  8. On 27 September 2018, the Ombudsman notified the Hon Jill Hennessy MP, then Minister for Ambulance Services, Ken Lay AO APM, Chair AV, and Simon of her intention to formally investigate the complaint, pursuant to section 15B of the *Ombudsman Act 1973* (Vic).
  9. The Ombudsman advised that she intended to investigate whether AV's policy and practice for charging people for Treatment without Transport is fair and reasonable, considering:
    - 'reasonable' fees for services rendered may be charged in accordance with section 16(a) of the *Ambulance Services Act 1986* (Vic)
    - a person must not be subjected to 'treatment' without full, free and informed consent under section 10(c) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic)
    - relevant fair trading and consumer law principles.
  10. In her notification to the Chair, the Ombudsman requested AV put a hold on the invoice issued to Simon, pending the outcome of the investigation.

## Jurisdiction and methodology

11. The Ombudsman's jurisdiction includes investigating complaints about administrative actions taken by or in an authority. The meaning of 'authority' for the purposes of the Act includes a public statutory body, established by or under an Act for a public purpose.<sup>3</sup> AV falls within this definition.
12. Under the Ombudsman Act, a person affected by administrative action taken by an authority, namely the 'aggrieved person', may make a complaint to the Ombudsman.<sup>4</sup> In the context of this investigation, Simon is affected and aggrieved by AV's actions and decisions in charging him for Treatment without Transport.
13. The investigation involved:
  - assessing the information provided by Simon
  - considering relevant legislation, policies and procedures
  - reviewing more than 120 'Patient Care Records' for Treatment without Transport in the 2017-18 financial year
  - assessing the last 10 reviews of disputed invoices for Treatment without Transport issued in the 2017-18 financial year
  - providing the Ombudsman's draft report to AV for consideration and comment
  - meeting with AV about the draft report and considering its response dated 15 April 2019.
14. This report contains material that could be perceived to be adverse about AV. In accordance with section 25A(2) of the Ombudsman Act, AV has been provided with a reasonable opportunity to respond to the material in the report.

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<sup>3</sup> *Ombudsman Act 1973* (Vic), s 2 (definitions of 'authority', 'public statutory body', 'specified entity' and Schedule 1 item 13).

<sup>4</sup> *Ombudsman Act 1973* (Vic) s 14(1)(a).

15. In his response to the draft report, the Chair, AV wrote:

We also appreciate the opportunity for Mick Stephenson, AV’s acting Chief Executive Officer, to meet with the Deputy Ombudsman on 4 April 2019.

I understand that meeting was productive and informative. Subsequent to that meeting and the potential solutions discussed at that time I wish to provide the following responses which address the Ombudsman’s preliminary conclusions and opinions in the draft report. AV is of the view that these should, as far as is practicable, resolve concerns around ‘unfair invoice practices being applied to vulnerable members of the public’.

16. The Chair’s response to the draft report and the measures he proposed to address the concerns raised by the Ombudsman are set out and addressed in relevant parts of this report.
17. In accordance with section 25A(3), any other persons who are or may be identifiable in this report are not the subject of adverse comment or opinion. They are named or identified as the Ombudsman is satisfied that it is necessary or desirable to do so in the public interest, and that identifying those persons will not cause unreasonable damage to their reputation, safety or wellbeing.

## Anonymity

18. Throughout this report, case studies detail the experiences of individuals charged for Treatment without Transport. For privacy, the names used in the case studies are not the real names of the individuals involved.

## Ambulance Services Act 1986 (Vic)

19. AV is an amalgamation of the Metropolitan Ambulance Service, Rural Ambulance Victoria and Alexandra and the District Ambulance Service. AV provides ambulance and emergency services throughout Victoria.
20. Section 10(5) of the Ambulance Services Act provides:
- (5) The Secretary may, by instrument, give directions to an ambulance service relating to -
- (a) the fees that the service may charge.
21. The fees that AV may charge are set out on the Department of Health and Human Services’ website<sup>5</sup> and include:

Treatment without Transport	All users
Metropolitan, regional and rural	\$532

22. The fee for Treatment without Transport was \$519 at the time of Simon’s complaint.

<sup>5</sup> Department of Health and Human Services, *Ambulance Victoria fee schedule 2018-19* (14 February 2019) < [www2.health.vic.gov.au/hospitals-and-health-services/patient-care/ambulance-and-nept/ambulance-fees](http://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/ambulance-and-nept/ambulance-fees)>.



# Investigation

## The process for charging for Treatment without Transport

23. According to 'POL FCS 067 Non Transported Patient Care Records' (the policy):

Classification of 'Non-Transported' PCR's is to be in line with Ambulance Victoria's endorsed definition of 'Treatment'. Classification of either 'Treated' or 'Non-Treated' must be further supported by the attending Paramedics entry on a case by case basis of:

- for electronic PCRs, a combination of Cancelled, Not Transported, and Not Treated Reasons as presented in VACIS [Victorian Ambulance Clinical Information System], and/or
- for paper PCRs, the 'Not Transported' (J) Code as provided.

Note: Where Paper or Manual PCR appear 'logically incorrect' relative to the 'Not Transported' (J) Code, that PCR may be referred to a Team Leader for resolution (Refer to 4.1.1 of Financial Administration of Non-Transport PCRs Procedure).

24. The policy also includes the below definitions:

J Code	The 'Not Transported' reason provided for on Paper PCRs or mapped to when referring to VACIS PCRs
NTR	No <del>Transport</del> (Treatment) Required*
PCR	Patient Care Record
Treatment	The attending Paramedic has provided one or more of professional medical assessment, care or advice for the benefit of the patient. This may or may not include referral to an alternative health care provider.
TNT	Treat-Not-Transport

\*In a telephone call on 16 November 2018, Ambulance Victoria confirmed that 'NTR' means 'No Treatment Required' and that this is an error in the policy (and procedure). AV has undertaken to the investigation to review and update the policy and procedure.

25. Page 2 of the policy sets out information about cases where 'treatment' is provided' and 'no treatment' is provided:

Cases where '**Treatment**' is provided are considered billable and are to be processed under an appropriate charge class to ensure revenues are either invoiced or recognised.

Cases where '**No Treatment**' is provided are considered non-billable and are to be processed under the charge class 'NTR'. Where appropriate, processing to NTR will be automated to ensure processing efficiency.

26. AV informed the investigation that in practice, paramedics will complete a PCR per patient at the scene. Multiple patients at the one scene will have the same 'case number'. In most cases (about 80 per cent) this will be entered directly into the Victorian Ambulance Clinical Information System (VACIS) record via a tablet device. If the electronic VACIS fails, the record will be created on a green coloured paper PCR (as was created for Simon).

27. Paper PCRs have a field for the 'J Code', being the reason transport was not provided, but the electronic VACIS does not. In Simon's case, the J Code was not recorded on the paper PCR (Image 1 below). According to AV this process is automated through the VACIS system and paramedics are not required to enter a code.
28. Like the J Code field, the paper PCR includes space for a 'charge classification'. Options include 'patient', 'subs' (subscriber), 'pens' (pensioner) and 'DVA' (Department of Veteran Affairs). The charge classification field was left blank in Simon's PCR (Image 2 below).

29. AV stated that where these fields are not completed by paramedics, the finance team assesses the notes to determine whether treatment was provided. In Simon's case, AV noted that paramedics' observations of his condition were recorded, he was provided with 'reassurance', and his wounds were 'irrigated and cleaned' (as per his PCR, next page).

**Image 1: Excerpt of Simon's Patient Care Record**

Officer (3) Employee No. Shift

Call Received Despatched At Location At Patient Depart Location At Destination 1 Clear Return to Base Time

Mobilised Acc. Delay Exit Delay Ret. Code N.P.T Hospital Notification Wait Time Destination 2 At Destination 2 Clear

Observer/Escort

**Image 2: Second excerpt of Simon's Patient Care Record**

**Charge Classification**

SUBS	SUBS REC	IN-STATE SUBS	PENS	O.P.	D.V.A.	T.A.C.
W/COVER	PSYCH	HOS INTER	HOS DAY	PUBLIC DUTY	OTHER	PATIENT



30. AV also told the investigation the finance team searches databases, including subscriber lists and information from Centrelink, to determine whether a patient is exempt from being billed.
31. In each case involving Treatment without Transport, AV will determine whether the matter is 'billable' or 'non-billable'. As noted previously, under the policy, cases where treatment is provided are considered billable and cases where no treatment is provided are considered non-billable. A billable case may not result in a charge to an individual, if for example, they are an AV subscriber or covered by another scheme.
32. There were 104,727 billable cases involving Treatment without Transport in the 2017-18 financial year. These cases can be broken down into categories (Table 1 below).
33. Under PRO FCS 060 Non Transported Patient Care Records - Financial Administration' (the procedure), some 'J Codes' are billable (Table 2 below).
34. The majority of billable Treatment without Transport categories listed in Table 1 should fall under J Code '01 - Definitive Treatment Given - Patient Not Transported'.

Table 1: Billable Treatment without Transport cases in the 2017-18 financial year	Number
The patient was billed	17,758
The patient was an AV subscriber, and therefore not billed	20,587
The patient was a pensioner, and therefore not billed	53,468
The patient was not billed because of their mental health	323
The scene involved the Transport Accident Commission	8,043
Unknown cases (where there was no patient information)	4,548
<b>Total</b>	<b>104,727</b>

Source: Ambulance Victoria.

Table 2: Codes for billable Treatment without Transport categories, according to AV procedure	
J code	Description
01	Definitive Treatment Given - Patient Not Transported
22	Motor Vehicle Accident
23	Work Cover

Source: Ambulance Victoria.

35. AV informed the investigation that in the 2017-18 financial year there were 78,729 non-billable cases where no treatment was provided. Under the procedure, the following J Codes are non-billable:

<b>Table 3: Codes for non-billable categories, according to AV procedure</b>	
<b>J code</b>	<b>Non-billable</b>
02	No Emergency Care Required
03	Patient Refused Treatment and Transport
04	Patient Transported by Other Ambulance
05	Officer Travelled in Other Ambulance as Escort
06	Patient Transported by Other Means
07	Patient Deceased
08	Patient Referred to LMO/LOCUM
09	Doctor In Attendance
10	Cancelled by Requestor
11	Cancelled by First Ambulance at Scene
12	Directed to Another Case
13	Cancelled By Despatcher
14	Incident / Accident Prevented Attendance or Completion
15	Patient Not Ready - Rebooked
16	Ambulance Late / Appointment Cancelled
17	Unable to Locate
18	Patient Absconded
19	Hoax
50	Cert Response
51	Regional Support Team Response

Source: Ambulance Victoria.

36. The 78,729 non-billable cases recorded by AV in the 2017-18 financial year can be broken down as follows:

<b>Table 4: Reasons why bill was not issued by Ambulance Victoria, per cases in 2017-18 financial year</b>	
<b>Reason</b>	<b>Number</b>
Definitive treatment given - patient not transported	8
No emergency care required	6,478
Patient refused treatment and transport	2,678
Patient transported by other ambulance	24,222
Officer travelled in other ambulance as escort	6,400
Patient transported by other means	813
Patient deceased	5,868
Patient transferred to LMO/Locum	112
Doctor in attendance	58
Cancelled by requester	1,420
Cancelled by first ambulance at scene	674
Directed to another case	867
Cancelled by dispatcher	13,838
Incident/accident prevented attendance or completion	434
Patient not ready - rebooked	123
Ambulance late/appointment cancelled	36
Unable to locate	1,522
Patient absconded	1,072
Hoax	38
Cert response	1,310
Regional support team response	38
Clinic car cancelled	10,720
<b>Total</b>	<b>78,729</b>

Source: Ambulance Victoria.

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## Review of billable cases involving Treatment without Transport

37. As noted, in 2017-18, AV issued 17,758 invoices to patients for Treatment without Transport. To assist the investigation, the Ombudsman sought copies of Patient Care Records (whether in paper or electronic form) for the first 10 scenes attended involving Treatment without Transport each month for the 2017-18 financial year (120 cases).
38. Of this sample, multiple cases stood out as being questionable. Examples of these cases are grouped into themes and summarised in this section of the report.
39. The cases also suggested an apparent disjoint between the practice of paramedics' level of care, and the policy of AV's finance area in assessing which matters are billable and which are not. For example, in the case of Alexander (page 18) it is difficult to see that paramedics would have considered their taking limited vital signs and providing reassurance justified a \$519 invoice, especially where the patient 'refused any other assessment or treatment'.

### The 'house-fire scenario' (one ambulance, multiple parties)

40. Noting the breadth of the definition of 'treatment' in the policy, the Ombudsman queried with AV the application of the policy in situations, such as Simon's, where the assessment or reassurance provided by paramedics is incidental to their attendance, treatment and/or transport of another party. AV responded:

... the DHHS guidelines set out the ambulance fees for both "transport" and "treatment without transport". The DHHS guidelines do not specify a fee is only payable by the specific patient for whom the ambulance was requested (or attended).

This is because when an ambulance is dispatched, it attends a "scene" rather than a specific patient. The circumstances of the "scene" will determine how many patients there are and what treatment each patient requires.

Take for example, a house fire. We receive one 000 call to attend, but there may be four occupants in the house - and three neighbours, experiencing difficulties through smoke inhalation. At that scene, the paramedics would assess all parties, who may all require treatment and possibly transport. (this would require other ambulance crews assisting). It is the "scene" the crews are attending, and they are required to deal with whatever that scene presents - regardless of the number of patients, or who called 000.

Each patient the paramedics attend, assess, treat (and transport) at that scene would be invoiced for the service provided (unless, of course the individual had AV membership or was exempt as a concession patient (Pensioner, Health Care Card, Mental Health, DVA, etc.)

41. In the house-fire example, if paramedics provided reassurance to all seven parties at the scene (as was provided to Simon), each could be invoiced for Treatment without Transport.

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42. An example of the 'house-fire scenario' is set out in the case below:

### A scene where multiple people were charged for Treatment without Transport



#### Peter and Al

##### When?

This scene occurred on 1 October 2017 at 1am in regional Victoria.

##### What happened?

Peter and Al were walking with friends back to their car when they were attacked. The unknown offenders assaulted both Peter and Al who received punches to the head. One ambulance attended the scene and saw both Peter and Al.

##### What treatment was provided?

Paramedics made an assessment, including taking Peter's and Al's vital signs and providing reassurance. The patient care records suggest that Peter may have been transported to hospital. Al refused transport.

##### Who was charged?

Both Peter and Al were separately invoiced.

43. According to AV, in 2017-18 there were 1,732 cases attended where more than one patient was treated. In response to the draft report, AV recognised that where paramedics respond to a scene resulting in Treatment without Transport being provided to multiple patients, the cost to AV can be much the same as if the scene involved only one patient.

### Scenes involving police



#### Sarah

##### When?

This scene occurred in the early hours of New Year's Day 2018, north of Melbourne.

##### What happened?

Sarah's husband was involved in an interaction with police. According to the paramedics' notes, he was 'aggressive to police' and sprayed with capsicum spray. Sarah, who was pregnant at the time, was next to her husband when he was sprayed, and received secondary exposure in the eyes. Police called paramedics to check on Sarah. Once her eyes stopped stinging, Sarah drove her husband home.

##### What treatment was provided?

Paramedics made an assessment, including taking Sarah's vital signs, providing her with reassurance, irrigating her eyes and applying ice packs. Paramedics were at the scene for 35 minutes.

##### Who was charged?

Sarah was invoiced \$519 for Treatment without Transport.





## Emmanuel

### When?

This scene occurred in the early hours of 1 October 2017 at a business in Melbourne's inner-west.

### What happened?

Emmanuel was sprayed with capsicum spray by police. Police irrigated Emmanuel's eyes and face before paramedics arrived.

### What treatment was provided?

Paramedics provided further irrigation to Emmanuel's face and assessed him only to a limited extent because he refused. Paramedics also provided Emmanuel with reassurance and advised him to continue irrigation and seek assistance if required.

### Who was charged?

Emmanuel was invoiced \$519 for Treatment without Transport.



## David

### When?

This scene occurred in the afternoon of 1 May 2018 at a private residence, south-east of Melbourne.

### What happened?

An ambulance was called when David appeared short of breath after being handcuffed by police.

### What treatment was provided?

Paramedics made an assessment, including taking David's vital signs and providing him with reassurance.

### Who was charged?

David was invoiced \$519 for Treatment without Transport.

Note: David's record suggests that other patients were at the scene; however, no other patient care records were provided by AV.

44. According to AV, in cases where injury occurs 'in the course of arrest', police are liable for the cost of the ambulance attendance. It appears that at least in the cases of Sarah and Emmanuel, they were charged an ambulance fee in circumstances where police called the ambulance, and there was no arrest.

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## Scenes where other third parties call Ambulance Victoria paramedics



### Lauren

#### When?

This scene occurred on 1 July 2017 at a private residence, south-east of Melbourne.

#### What happened?

Lauren had been struggling with depression because of her parents' health issues. She called a friend to express her feelings of stress and shortness of breath. The friend then called paramedics.

When paramedics arrived, Lauren stated that she has never had thoughts of self-harm and that she did not tell anyone she would take her life (the records suggest that a suicide risk may have been reported by the friend). Lauren told paramedics that she did not know why they had been called, and she refused transport.

#### What treatment was provided?

Paramedics made an assessment, including taking Lauren's vital signs and providing her with reassurance. Paramedics also advised Lauren to call back if she changed her mind and wanted transport to hospital for a mental health assessment.

#### Who was charged?

Lauren was invoiced \$519 for Treatment without Transport.



### Connor

#### When?

This scene occurred on 1 October 2017 on a suburban street, east of Melbourne.

#### What happened?

Police and paramedics were called by a local resident after Connor was found 'slumped in the front seat of his car'. Connor was woken by the sound of the paramedics' sirens. Connor admitted to having used ice on that occasion.

#### What treatment was provided?

Paramedics made an assessment, including taking Connor's vital signs and providing him with reassurance. Connor left with police.

#### Who was charged?

Connor was invoiced \$519 for Treatment without Transport.



## Jordan

### When?

This scene occurred in the early hours of 1 October 2017 in Melbourne's Central Business District.

### What happened?

Jordan was found by a passer-by, asleep on the footpath. The passer-by called paramedics. Paramedics assisted Jordan to arrange transport home and waited for his friend to collect him. Jordan refused AV transport.

### What treatment was provided?

Paramedics made an assessment, including taking Jordan's vital signs, and providing him with reassurance.

### Who was charged?

Jordan was invoiced \$519 for Treatment without Transport.



## Hamish

### When?

This scene occurred in the morning of 1 January 2018 at Melbourne Airport.

### What happened?

Eleven year old Hamish was on a flight from Dubai to Melbourne with his father and woke with swelling on the left side of his face. Paramedics were called (presumably by the airline) before the plane's arrival in Melbourne. Hamish was given medication by flight attendants and his symptoms resolved.

### What treatment was provided?

Paramedics made an assessment, including taking Hamish's vital signs and providing him with reassurance.

### Who was charged?

Hamish's father was invoiced \$519 for Treatment without Transport..



## Alexander

### When?

This scene occurred in the morning of 1 March 2018 at a private residence, east of Melbourne.

### What happened?

Alexander lives alone. Paramedics were called by Alexander's girlfriend who was an inpatient at a private mental health facility. Alexander's girlfriend told Ambulance Victoria that Alexander had threatened suicide and sent her a text message saying 'goodbye'.

When paramedics arrived at Alexander's house, he did not answer the door. Police also attended. Alexander opened the front door and said he hadn't heard the first knocks as he had been asleep (it was 7.30am).

Alexander denied thoughts of suicide or self-harm. Alexander thought that his girlfriend had misconstrued his text messages due to the 'voices in her head'. Alexander refused any other assessment or treatment.

### What treatment was provided?

Paramedics made an assessment, including taking limited vital signs and providing Alexander with reassurance.

### Who was charged?

Alexander was invoiced \$519 for Treatment without Transport..



## Dale

### When?

This scene occurred just before midday on 1 August 2017, south-east of Melbourne.

### What happened?

Dale lives at home with his family and is reliant on alcohol due to a breakdown of his business. Dale referred himself to his community alcohol management team in the morning. That team determined that Dale had a high blood alcohol reading and called paramedics (and police).

### What treatment was provided?

Paramedics made an assessment, including taking Dale's vital signs and providing him with reassurance.

### Who was charged?

Dale was invoiced \$519 for Treatment without Transport..

45. In response to the draft report and cases where third parties call paramedics, AV wrote:

On review of the cases used to illustrate the concern around unfair billing practices for Treatment without Transport there were several where the triple 000 call seeking an ambulance attendance was made by a third party who was unrelated to the patient. In many like cases the patient would be unaware that a third party call was even made. By contrast other cases involve calls being made by the patient's relative, friend or associate and in this sense consent for the ambulance to be called is reasonably implied.

It is understandable that a patient, whilst appreciative of receiving treatment by paramedics, could be surprised to be billed for that Treatment without Transport when they did not authorise the triple 000 call made by a third party such as a bystander.

### Scene attended at a pre-organised event

46. Under section 16(a) of the Ambulance Services Act, 'an ambulance service may charge reasonable fees for services rendered'. In practice, this means AV may enter into a paid agreement with event organisers to attend an event on stand-by. According to its Instagram account, AV attends more than 450 such events each year.

**Image 4: Ambulance Victoria Instagram post about event support**



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47. One invoice detailed a scene at the Melbourne Marathon as set out below:



## Victoria

### When?

This scene occurred mid-morning on 15 October 2017 in Southbank.

### What happened?

Victoria was running in the Melbourne marathon and fell, landing on her left shoulder and left side of her face. She was attended by trained first aid officers who requested paramedics for an assessment.

### What treatment was provided?

Paramedics made an assessment, including taking Victoria's vital signs and dressing her wound. They also provided an ice-pack, paracetamol and reassurance. Victoria refused transport and completed the final 7km of the marathon.

### Who was charged?

Victoria was invoiced \$519 for Treatment without Transport.

48. AV told the investigation that where an agreement is entered into under section 16(a) of the Ambulance Services Act, event goers should not be charged for any Treatment without Transport received. Under such an agreement, specific ambulances are identified as those attending the event on stand-by. Those ambulances are given an 'Event Unit' code, which is reflected on any patient care records generated so the finance team know not to charge.
49. In the case study above, it appears that Victoria was attended by paramedics who were not registered as being on stand-by at the event. In any case, as an event goer, Victoria should not have been charged for the Treatment without Transport she received.

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## Other scenes involving an element of unfairness



### Damon

#### When?

This scene occurred just after midday on 1 April 2018 in Melbourne's outer east.

#### What happened?

Seven year old Damon was with his mother at their local oval when he saw paramedics attending another scene. Damon told his mother he had noticed some pain in his right arm and felt a bit sick and lightheaded. Damon's mother asked a family member to approach the paramedics.

#### What treatment was provided?

Paramedics made an assessment, including taking Damon's vital signs and providing him with reassurance. Paramedics advised his family to see a GP if they continued to have concerns or if he deteriorated.

#### Who was charged?

Damon's family was invoiced \$519 for Treatment without Transport.



### Todd

#### When?

This scene occurred in the afternoon of 1 June 2018 at a medical clinic.

#### What happened?

Todd presented at the medical clinic with abdominal pains. He was assessed at the clinic for transfer to 'Bendigo' (presumably 'Bendigo Hospital'). As Todd was getting into the ambulance, his mother became concerned about the cost because they didn't have ambulance cover. Todd's mother checked with her insurer and confirmed that she did not have cover. Todd then travelled to Bendigo in his mother's car.

#### What treatment was provided?

Paramedics recorded Todd's vital signs, but it is not clear if this was from their own assessment or that of the medical clinic. No other treatment is recorded by AV.

#### Who was charged?

Todd was invoiced \$519 for Treatment without Transport.

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## ‘Treatment’

50. In each of the case studies in this report, paramedics took vital signs, made general observations and in most cases provided ‘reassurance’. These practices fall within the definition of ‘treatment’ as set out in the policy, being ‘... one or more of professional medical assessment, care or advice for the benefit of the patient. This may or may not include referral to an alternative health care provider.’

51. On 13 November 2018, the Ombudsman made enquiries with the Department of Health and Human Services (the department) about its definition of ‘treatment’ for the purposes of charging fees for Treatment without Transport. The department responded:

For the purposes of these fees the department considers ‘treatment’ as the dispatch and arrival of an ambulance resource and includes at least the clinical assessment of a patient. Assessment is expected to include recording of observations and/or vital signs (as relevant and/or appropriate), as well as documentation of any interventions and/or other relevant information.

52. In response to the draft report and the definition of ‘treatment’, AV wrote:

The definition of ‘treatment’ is critical from a clinical perspective. A paramedic’s taking of a patient’s vital signs such as blood pressure, oxygen saturation, temperature, heart rate/pulse, blood sugar, electrocardiogram (ECG), and other observations including the external physical condition or injuries are all core to the work and duty of care of paramedics. A targeted clinical history and a thorough physical examination are the cornerstones of good emergency health care. Ambulance services, along with other professional health providers in emergency environments, often see clinical assessment as the most important and difficult of all the skills required in clinical practice.

...

A paramedic’s assessment is a clinical assessment which informs a clinical triage response to delivering further urgent treatment, recommending transportation to hospital, authorising other forms of transport eg. by Police, referral to alternative providers such as GPs or mental health practitioners. Physical assessment also informs the provision of care as complex as general anaesthesia, finger thoracostomy and cricothyroidotomy, or as simple as the humane provision of comfort and reassurance in a patient that doesn’t need transport to hospital and may or may not need ongoing medical care at all. Such assessments form an integral component of a medical record subject to the *Health Records Act 2001* and constitute a legal record as potential evidence to various legal jurisdictions such as the Coroners Court.

53. Although the policy states that ‘cases where “Treatment” is provided are considered billable’ and ‘cases where “No Treatment” is provided are considered non-billable’, the procedure suggests that a billable case requires ‘Definitive Treatment Given’ (J Code 01) and that a case may be non-billable where ‘No Emergency Care Required’ (J Code 02).

54. Logically, for a paramedic to determine that no emergency care is required (with the result that the event is non-billable) initial observations or assessments would be necessary. While such observations or assessments may amount to ‘treatment’ within the meaning of the policy, without further clinical care, they would arguably fall short of constituting ‘definitive treatment’ under the procedure.

55. In response to the draft report, AV suggested that a complete assessment and appropriate triage would amount to definitive treatment in many cases.



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## Consent

56. Another issue is whether, in providing ‘treatment’ (assessment, care or advice), paramedics seek a person’s consent. The High Court has recognised that ‘except in cases of emergency or necessity, all medical treatment is preceded by the patient’s choice to undergo it.’<sup>6</sup>

### ‘Full, free and informed’ consent

57. Section 10(c) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter) provides that a person must not be subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent. It is unlawful to act incompatibly with this provision, subject to reasonable limitations as may apply in cases of emergency or necessity.<sup>7</sup>

58. According to the department in its 21 November 2018 response:

As the recording of vital signs necessitates the ‘laying on of hands’ it is broadly accepted that patient consent is obtained explicitly or implied through the clinical assessment and management process.

59. The department’s advice regarding implied consent through the ‘laying on of hands’ as necessitated by recording vital signs arguably does not satisfy the requirements of section 10(c) of the Charter or the department’s guidance material on ‘Informed Consent’, that notes in particular:

### Implied consent

...

Implied consent does not negate the need to provide the patient with an appropriate explanation of, and information about, the procedure, investigation, treatment or examination.

...

### Why is informed consent important?

Most people will require medical treatment at some point. This treatment may involve significant risks, **costs** [emphasis added] or pain.

For one individual, those risks and costs may be worth it, while for another individual, they may not be. It is important that people have the right to choose.<sup>8</sup>

60. There is nothing to suggest in this guidance material that it does not apply to AV.

61. In the context of ‘treatment’ provided by paramedics, full, free and informed consent may also require providing information about potential costs.

62. In each of the case studies set out in this report there is nothing to show that full, free and informed consent was sought or given before ‘treatment’ was provided. In the case of Simon, the PCR shows that when advised by paramedics to seek ‘medical treatment’, Simon refused.

63. On this point, during initial enquiries, AV responded:

As the paramedics attended to him, he consented to their assessment and treatment of his injuries from the assault. On that basis, he has consented to treatment and under the DHHS guidelines, the invoice is payable. His signed refusal on the PCR relates to transport, not the initial treatment.<sup>9</sup>

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<sup>6</sup> Eburn, M, *Emergency law: Rights, liabilities and duties of emergency workers and volunteers* (The Federation Press, 4th ed, 2013) 44; *Rogers v Whitaker* (1992) 175 CLR 479.

<sup>7</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic), ss 7(2), 38(1).

<sup>8</sup> Department of Health and Human Services, *Standard 1 Informed Consent Learning Module (Governance for Safety and Quality in Health Service Organisations)* (14 February 2019) <[www2.health.vic.gov.au/about/publications/policiesandguidelines/Standard-1-Informed-Consent-Learning-Module-Governance-for-Safety-and-Quality-in-Health-Service-Organisations](http://www2.health.vic.gov.au/about/publications/policiesandguidelines/Standard-1-Informed-Consent-Learning-Module-Governance-for-Safety-and-Quality-in-Health-Service-Organisations)>.

<sup>9</sup> Email from Manager Professional Standards, Ambulance Victoria to Victorian Ombudsman, 4 July 2018.

Image 5: Excerpt of Simon's Patient Care Record

Time	Action/Fluid/Drug	Dose	Route	Treatment Effect - Reassessment	DEST.
	hearsman. wounds v. jiter			& cleaned.	
				Simon's name	
				Advised pt seek medical treatment pt refused.	
				Simon's signature	

## Reviewing decisions to charge for Treatment without Transport

64. According to AV's procedure:

### 4.2 Managing Accounts Receivable (AR)

Where a patient calls to discuss a 'Treat not Transport' invoice, questions regarding the patient's entitlements under membership/pension etc should be resolved initially.

Following this, if the caller challenges clinical validity of a Treat Not Transport Invoice, the response should be:

*Information provided indicates the attending paramedic has provided one or more of professional medical assessment, care or advice for the benefit of the patient. This may or may not have included referral to an alternative health care provider. Under operational guidance, a 'Treatment' fee is applicable in this case.*

Should the caller further challenge clinical validity of what is considered 'Treatment', the operator can inform them any dispute will require lodgement with Ambulance Victoria's Professional Standards Unit (and can provide relevant contact details) being:

*Email: professionalstandards@ambulance.vic.gov.au*

*Phone: (03) 9840 3635*

*Callers can be directly referred through to Professional Standards in the above instance.*

Depending on case circumstances, PCRs may be reviewed on merit by a clinical specialist and a determination made, or referred by Professional Standards to an appropriate Team Manager for clarification with the attending crew.

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65. When Simon sought a review of his invoice for Treatment without Transport, the response he received from AV purported to rely on section 10(8) of the Ambulance Services Act to justify the charge. The response from AV misleadingly quoted the section of the Act by omitting several words to suggest that Simon's consent to the provision of services was not required:

**Our review**

Ambulance Victoria will not waive the invoice on this occasion. An ambulance crew assessed you, and you were offered transport to hospital, which you refused at that time.

...

The Ambulances Services Act 1986 Part 3, Section 10(8) states:

an emergency ambulance service, the fee charged under a direction given by the Secretary under subsection 5(a) for that service, is payable by that person, whether or not that person consented to the provision of the service.

66. Section 10(8) of the Ambulance Services Act provides:

**10 General powers of the Secretary**

...

- (8) **If a person has been transported by** [emphasis added] an emergency ambulance service, the fee charged under a direction given by the Secretary under subsection (5)(a) for that service, is payable by that person whether or not the person consented to the provision of the service.

67. When asked to explain why the section was misquoted, AV wrote:

I have also reviewed Sect 10(8) of the Ambulance Services Act. You are correct in that it refers to "transport" rather than attendance. As it's currently written, the Act does not provide legislative standing to charge 'non-consenting' patients for ambulance attendance only.

I acknowledge the reference to S.10(8) should not have been included in the letter to [Simon], given he was not transported. This was an oversight of the author and will be raised with him.

68. In response to the draft report, AV acknowledged the practice of relying on section 10(8) of the Ambulance Services Act to bill for Treatment without Transport was incorrect and gave an undertaking to counsel staff on this issue.

69. AV told the investigation that of the 17,758 invoices for Treatment without Transport issued in the 2017-18 financial year, 325 requests for review were received, 92 were upheld and 92 were reversed. It is not clear what the outcomes were of the remaining 141 requests for review; however, it is assumed they had not been finalised at the time of the Ombudsman's information request.

70. The investigation was also provided with documentation of the last 10 reviews of disputed invoices for Treatment without Transport issued in the 2017-18 financial year. None of these reviews resulted in the case being determined as non-billable. In two cases, patients were offered interest free payment plans.

# Conclusions and opinion

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## Policy and practice for charging people for Treatment without Transport

71. The case studies in this report, including Simon's, show that AV's policy and practice for charging people for Treatment without Transport can result in invoices being issued that are not fair or reasonable.
72. In Simon's case:
  - The ambulance was called by a third party, without Simon's knowledge.
  - The scene involved one ambulance and multiple parties, and each party was invoiced separately.
  - Simon allowed paramedics to conduct their assessment including taking his vital signs and irrigating and cleaning his wounds; however, no information was provided about potential costs as may be required by section 10(c) of the Charter. The patient care record shows that when advised by paramedics to seek 'medical treatment', Simon refused.
  - When he sought a review of his invoice for Treatment without Transport, the response he received from AV purported to rely on (and misquoted) section 10(8) of the Ambulance Services Act to justify the charge.

## Scenes where third parties call paramedics

73. In response to the draft report and in recognition of cases like Simon's and other 'Good Samaritan callers' as occurred with Connor and Jordan (pages 16 and 17), AV proposed to cease charging where a patient's Treatment without Transport is 'activated by an unknown third party'.
74. This proposal appears reasonable and should also apply where the caller is known to the person, but the person did not know an ambulance was being called, or could not reasonably have consented to it, as was the case with Lauren (page 16), Hamish (page 17), Alexander and Dale (page 18).

In addition, an exemption should apply where an ambulance is called by police, as was the case with Sarah (page 14), Emmanuel and David (page 15).

## Scenes involving one ambulance and multiple patients

75. In relation to the 'house-fire scenario' (one ambulance, multiple parties), AV proposed to cease charging each patient for a complete Treatment without Transport fee at a multi-patient event, and instead, split the charge according to the number of patients.
76. Where a multi-party Treatment without Transport case is determined to be billable, AV's 'split-charge' proposal appears reasonable to address the unfairness in cases such as those of Peter and Al (page 14).

## Seeking full, free and informed consent

77. Failure to obtain full, free and informed consent to medical treatment, which would reasonably include information about the costs of such treatment, may be incompatible with section 10(c) of the Charter and therefore unlawful within the meaning of section 38(1) of the Charter.
78. In response to the draft report, AV wrote:

It is worth noting that paramedics do not engage in discussions about costs or billing with patients prior to assessment as it is not core to their clinical role and there is a risk that giving cost information would undermine their primary duty resulting in delaying treatment or a patient's refusal of care. Paramedics as a routine ask if they can undertake a physical assessment. They do not carry out assessment where a patient is competent to refuse and does so. There is a very real risk that if a patient were required to give financial consent many assessments would not occur and serious illness or injury would go unrecognised. AV is of the opinion that this would compromise our duty of care and lead to serious adverse events including otherwise preventable deaths.

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79. Paramedics obtaining full, free and informed consent in the context of providing Treatment without Transport is complicated by the fact that ambulance services are not free in Victoria, as they are in Queensland and Tasmania. Arguably, for consent to be ‘informed’ information about potential costs should be provided.

80. AV’s submission that discussions about costs or billing is not core to a paramedic’s clinical role is not unreasonable; however, it is also not unreasonable for people to be informed that an assessment, including having their vital signs taken and receiving reassurance, might cost them over \$500.

81. The investigation recognises the department’s guidance material on informed consent, namely:

... treatment may involve significant risks, costs or pain. For one individual, those risks and costs may be worth it, while for another individual, they may not be. It is important that people have the right to choose.

### **Reviewing decisions to charge for ‘Treatment without Transport’**

82. The unfairness illustrated by Simon’s case was compounded by the process of challenging his invoice for Treatment without Transport. Under the procedure, as set out at paragraph 64 (page 24), the review process has a pre-determined outcome if the complainant challenges the ‘clinical validity of a Treat Not Transport Invoice’. In response to the draft report, AV reconsidered the procedural script used by ‘Accounts Receivable staff’ when a patient challenges the validity of an invoice:

Our assessment of the above script is that it has the potential to be more informative in describing what constitutes treatment. We believe it would be better to fully inform the patient’s query and therefore we propose the following:

*A paramedic’s taking of a patient’s vital signs such as blood pressure, oxygen saturation, temperature, heart rate/pulse, blood sugar, ECG and the examination of injuries or other physical assessment is vital to making an informed decision about the ongoing need for medical care. In this instance we believe you have been provided professional care in the form of this assessment. If there are reasons other than this that you think the account should not be paid or you are unable to pay we are happy to discuss this further.*

83. While proposed revisions to the script go some way to resolve this issue, the point remains that a review of a decision to charge for Treatment without Transport must be genuine and consider the unique circumstances of each case. Essentially, decision makers must be empowered to exercise discretion appropriately to avoid an injustice and consider what outcome is fair and reasonable.

## **Opinion**

84. For the reasons set out above, in Simon’s case, the application of the policy, which resulted in his being charged for Treatment without Transport, was unreasonable and unjust within the meaning of section 23(1)(c) of the *Ombudsman Act 1973* (Vic).

# Recommendations

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Pursuant to section 23(2) of the Ombudsman Act, it is recommended that Ambulance Victoria:

## Recommendation 1

Cancel the invoice issued to Simon for Treatment without Transport on 8 January 2018 and refund any other people who can provide evidence of payment in similar circumstances over the past 12 months, on the individual's request.

## Recommendation 2

Cease charging each patient for a full Treatment without Transport fee at a multi-patient event, wherever practicable splitting the charge according to the number of patients.

## Recommendation 3

Cease charging a Treatment without Transport fee where the ambulance service is activated by a third party and the patient did not know an ambulance was being called, or could not have reasonably consented to it, including when an ambulance is called by police.

## Recommendation 4

Revise its process for dealing with disputed invoices to ensure:

- a. staff are empowered to exercise discretion, and
- b. legislation is not misquoted.

## Recommendation 5

Further to section 10(c) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) note that full, free and informed consent for Treatment without Transport may include conveying relevant information about potential costs, and consider ways to adequately inform patients accordingly.

## Ambulance Victoria's response:

Accepted all recommendations on 8 May 2019.



# Victorian Ombudsman's Parliamentary Reports tabled since April 2014

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## 2019

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Fines Victoria complaints

April 2019

VicRoads complaints

February 2019

## 2018

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Investigation into the imprisonment of a woman found unfit to stand trial

October 2018

Investigation into allegations of improper conduct by officers at Goulburn Murray Water

October 2018

Investigation of three protected disclosure complaints regarding Bendigo South East College

September 2018

Investigation of allegations referred by Parliament's Legal and Social Issues Committee, arising from its inquiry into youth justice centres in Victoria

September 2018

Complaints to the Ombudsman: resolving them early

July 2018

Ombudsman's recommendations - second report

July 2018

Investigation into child sex offender Robert Whitehead's involvement with Puffing Billy and other railway bodies

June 2018

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

June 2018

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

April 2018

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

April 2018

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

March 2018

## 2017

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Investigation into the financial support provided to kinship carers

December 2017

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

November 2017

Investigation into the management of maintenance claims against public housing tenants

October 2017

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

September 2017

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

September 2017

Investigation into Victorian government school expulsions

August 2017

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

June 2017

Apologies

April 2017

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

March 2017



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

February 2017

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

January 2017

## 2016

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Investigation into the transparency of local government decision making

December 2016

Ombudsman enquiries: Resolving complaints informally

October 2016

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

September 2016

Report on recommendations

June 2016

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

June 2016

Investigation into the misuse of council resources

June 2016

Investigation into public transport fare evasion enforcement

May 2016

## 2015

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

December 2015

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

November 2015

Investigation into the rehabilitation and reintegration of prisoners in Victoria

September 2015

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

September 2015

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

June 2015

Investigation into allegations of improper conduct by officers of VicRoads

June 2015

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

April 2015

Councils and complaints – A report on current practice and issues

February 2015

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

February 2015

## 2014

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

October 2014

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

August 2014

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