

PUBLIC TRANSPORT OMBUDSMAN LIMITED

CHARTER

Version as at October 2007

**PUBLIC TRANSPORT OMBUDSMAN LIMITED
CHARTER**

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PUBLIC TRANSPORT OMBUDSMAN LIMITED CHARTER

A: INTRODUCTION

1 THE PTO SCHEME

- 1.1 Public passenger transport operators in the State of Victoria, and certain other entities involved in the public transport industry in Victoria, are participants in an independent dispute resolution scheme for persons who use their public passenger transport services or are affected by their public transport related activities, known as the Public Transport Ombudsman (“**PTO**”) scheme. The PTO scheme has been established by means of a company limited by guarantee called Public Transport Ombudsman Limited (“**PTO Limited**”).
- 1.2 The PTO scheme is an industry self-regulatory scheme which has the objective of providing a cost-free, efficient, effective, fair, informal and accessible alternative to other remedies, such as court proceedings, for users of public passenger transport services in Victoria or people affected by transport related activities of a member who are unable to resolve complaints or disputes regarding public transport services or public transport related activities directly with a public passenger transport operator or other members of the PTO scheme.
- 1.3 The mission of PTO Limited is to receive, investigate and facilitate the resolution of complaints and disputes between users of public passenger transport services in Victoria and members of the PTO scheme, where the members have been unable to resolve the complaint in the first instance. The mission of PTO Limited is founded on principles of independence, natural justice, access, equity, effectiveness, accountability and community awareness.
- 1.4 The Constitution of PTO Limited establishes:
 - (a) a Board of Directors, composed of directors appointed by the members, directors appointed by the Minister for Transport representing users of public transport services, and one independent Chairperson appointed by the Minister for Transport; and
 - (b) an Ombudsman vested with authority under this Charter to receive, investigate and facilitate the resolution of complaints.
- 1.5 The aim of the PTO scheme is to provide independent and prompt resolution of complaints and disputes having regard to what is fair and reasonable for the members and the complainant, good industry practice and current law.
- 1.6 The decision-making process and administration of the PTO scheme are independent of the PTO scheme members. The Ombudsman is appointed by the Board of Directors which is responsible for overseeing the independent operation of the PTO scheme. Industry and consumers have equal, important roles in running the PTO scheme with representation on the Board of Directors of PTO Limited and by the appointment of an independent Chairperson.
- 1.7 **Victorian Ombudsman**

The Victorian Ombudsman has legislative responsibility for the investigation and resolution of complaints about people and Victorian Public Statutory Bodies exercising a statutory power under State legislation and this may overlap with the jurisdiction and function of the Ombudsman. To resolve any potential overlap the Victorian Ombudsman and the Ombudsman will enter a Memorandum of Understanding (**MOU**) defining respective responsibilities and consultative arrangements in respect of the investigation and facilitation of resolution of complaints.

1.8 Metlink

Metlink Victoria Pty Ltd ACN 105 274 904 (**Metlink**) is a company responsible for the co-ordination and delivery of key network-wide public transport functions; from ticketing; information provision; new signage; system advocacy and complaints handling. The stakeholders' membership of Metlink includes all metropolitan train, tram and bus operators, V/Line Passenger Pty Ltd and other regional operators. Metlink will be responsible for receiving at first instance all public passenger transport complaints against its members' stakeholders. Metlink will register the complaint and forward the complaint to the relevant public passenger transport operator (or determine the complaint itself where the complaint relates to services Metlink provides or fails to provide) in a standard format within a specified time frame for resolution. The responsible public passenger transport operator or Metlink (as the case may be) will then be required, within a specified time frame, to respond to the complainant directly. If the complaint is not resolved to the satisfaction of the complainant he or she may lodge an application with the Ombudsman to review the decision.

2 MEMBERS

- 2.1 The Ombudsman will ensure that an accurate and up-to-date list of all members is readily available to the public at all times, free of charge.

B: OMBUDSMAN

3 JURISDICTION AND FUNCTIONS OF THE OMBUDSMAN

- 3.1 The Ombudsman will only have jurisdiction to review a complaint which has first been investigated and considered by a member and the complaint remains unresolved by the members internal complaint handling mechanisms, except where the Ombudsman exercises his/her discretion in accordance with **paragraph 5**, where there has been delays beyond the timeframes for responding established by Metlink.

Subject to **paragraph 4**, the Ombudsman's jurisdiction and functions are to receive, to investigate and to facilitate the resolution of:

- (a) complaints as to the provision or supply of (or the failure to provide or supply) public passenger transport or any goods or services related to the provision or supply (or the failure to provide or supply) public passenger transport services by or for a member;
- (b) complaints in relation to the sale of tickets including ticketing machines, ticket retailers and ticket refunds;

- (c) complaints relating to infrastructure and rolling stock related matters (including, without limitation, graffiti, vandalism and cleanliness);
- (d) complaints regarding the conduct or behaviour of Authorised Officers, where under the MOU the Ombudsman is the appropriate body to receive, investigate and facilitate the resolution of the complaint;
- (e) complaints in relation to Public Statutory Bodies providing public transport services or related activities, where under the MOU the Ombudsman is the appropriate body to receive, investigate and facilitate the resolution of the complaint;
- (f) complaints regarding the conduct or behaviour of officers, employees, agents or contractors of members;
- (g) complaints in relation to a member's use of, or the effect of a member's conduct, operations or activities on or in relation to, land or premises;
- (h) complaints referred by the DPT in relation to the conduct, operation or activities of a member's public passenger transport business; and
- (i) such other complaints as may, by agreement between the Ombudsman, the complainant and the member be referred to the Ombudsman by a member.

3.2 Complaints may be made to the Ombudsman by persons directly affected by the provision or supply of (or the failure to provide or supply) such services by scheme members or by the carrying out of (or the failure to carry out) public passenger transport related activities by members.

3.3 Complaints may be made to the Ombudsman on behalf of a complainant by an authorised representative of the complainant

3.4 The Ombudsman is under no obligation but has a discretion as to whether to accept a complaint from a group or unincorporated association and treat it as a complaint from the person forwarding the complaint on behalf of the group.

3.5 The focus of the PTO scheme is on individual complaints which may be oral or in writing. "Individual" in this context means a single event or a single public passenger transport user or person affected or a single situation.

3.6 A complaint must have:

- (a) arisen from events which occurred after 18 April 2004; and
- (b) the complainant has lodged an application to review the member's decision within six months of the member issuing its decision.

Without limiting the foregoing, the Ombudsman has a discretion (having regard to the period of time that has elapsed and whether it is possible to investigate the complaint within the existing resources allocated to the PTO Limited) as to whether to investigate any complaint where the complainant has lodged an application to review the member's decision later than six months after the member has issued its decision.

- 3.7 The Ombudsman has jurisdiction to receive and record complaints relating to systemic issues of a member (for example, a management practice that gives rise to repeated complaints). The Ombudsman does not have jurisdiction to review a systemic issue which partly or wholly relates to a matter listed in paragraph 4. The Ombudsman may draw systemic issues to the attention of members, regulators or the Minister for Transport as the Ombudsman considers appropriate.

4 LIMITS ON THE OMBUDSMAN JURISDICTION

- 4.1 For the avoidance of doubt, the jurisdiction of the Ombudsman is limited to the functions enumerated in paragraph 3.

- 4.2 The functions of the Ombudsman do not extend to complaints relating to:

- (a) the setting of prices or tariffs or determining price structures;
- (b) commercial activities which are not within or closely related to the core public passenger transport services provided by members;
- (c) the content of Government policies (as opposed to commercial policies of government-owned or government-controlled members), legislation, licences and codes;
- (d) complaints which are specifically under consideration by any court or tribunal, or which would involve reconsidering matters that have previously been considered or determined by a court or tribunal;
- (e) any matter specifically required by legislation, including subordinate legislation, rules, codes, licences, and orders made in accordance with the law, or any matter which, under an agreed working procedure with the Director of Public Transport or another relevant government authority, is to be handled by the Director of Public Transport or another government authority as the case may be;
- (f) actions properly and reasonably taken by a member and the consequences of such actions, in execution of a written direction, notice or other like instrument (**Instrument**) issued to a member by a person or entity having regulatory or administrative power to issue such Instrument and where such Instrument directly relates to:
 - (i) facilitating the reliability of the supply of public passenger transport services;
 - (ii) facilitating the security of public passenger transport services;
 - (iii) a public passenger transport emergency; or
 - (iv) a matter of public passenger transport safety.
- (g) any Free School Bus Service provided under a contract with the Secretary to the Department of Infrastructure and under the service provision and travel eligibility policies of the Department of Education and Training;

- (h) complaints in relation to the adequacy of the region or routes of operation or frequency of service, published in the current timetable, in relation to public passenger transport services;
- (i) complaints regarding the conduct or behaviour of Authorised Officers, which the Ombudsman does not have authority to receive, investigate and facilitate the resolution of in accordance with the MOU; and
- (j) complaints in relation to Victorian Public Statutory Bodies that do not provide public transport services or conduct related activities or which the Ombudsman does not have authority to receive, investigate and facilitate the resolution in accordance with the MOU.

5 PROCEDURES OF THE OMBUDSMAN

5.1 The Ombudsman, in handling complaints, must pursue them in a fair, reasonable, just, informal and expeditious manner having regard to the law, industry codes and good transport industry practice applicable to the relevant member. The Ombudsman may require the member and complainant to go through a conciliation process. In consultation with the Board, the Ombudsman is responsible for developing procedures which best achieve these objectives. However, these procedures must include the following:

- (a) the Ombudsman on receiving a complaint, will in a manner consistent with the processes established by Metlink, verify with an officer designated by the member concerned whether the member has had the opportunity to consider the complaint;
- (b) the Ombudsman may proceed to investigate the complaint only after the member has had this opportunity, subject to time limits established by Metlink to avoid undue delay in dealing with the complaint, and the member has been notified that the Ombudsman intends to investigate the complaint. The Ombudsman has a discretion whether to investigate a complaint that has yet to be determined by a member where the member has not determined the complaint and there has been delays exceeding the time for responding established by Metlink having due regard to the complexity of the complaint;
- (c) within fourteen days of receiving notification of an investigation by the Ombudsman, the member concerned shall provide to the Ombudsman all documentation relevant to the complaint other than documentation containing confidential information of a third party, who despite the reasonable efforts of the member, has refused to consent to disclosure of the information to the Ombudsman. If a dispute arises in relation to the provision of documents under this clause, except to the extent that the relevant documents contain confidential information of a third party, the Ombudsman in his or her absolute discretion is to determine whether the documents or any of them are to be produced;
- (d) with respect to all information concerning or relating to a complaint, the Ombudsman must act in accordance with relevant privacy legislation;
- (e) in complying with any subpoena for production of documents, the Ombudsman must notify the person who has provided the information which is the subject

of the subpoena so that the person concerned is afforded the opportunity to appear in court to oppose production of the documents; and

- (f) fees for use of the PTO scheme will not be charged to, or costs be awarded against public passenger transport users and the PTO scheme will present no cost barriers to public passenger transport users.

6 POWERS OF THE OMBUDSMAN

6.1 Binding Decisions

After completion of an investigation in accordance with **paragraph 5** and in the absence of a conciliated settlement of a complaint, the Ombudsman shall resolve a complaint:

- (a)
 - (i) by making a determination that the member the subject of investigation pay compensation to a complainant; or
 - (ii) by directing a member to provide a public passenger transport service; or
 - (iii) by directing a member to amend, or not to impose, a charge in relation to a service; or
 - (iv) by directing a member to supply goods or services the subject of the complaint or undertake any necessary corrective or other work to resolve the complaint; or
 - (v) by directing a member to make an appropriate correction, deletion or addition to a record; or
 - (vi) by directing a member to attach to a record a statement provided by the complainant of a correction, deletion or addition sought by the complainant; or
 - (vii) by directing a member to do, not to do, or to cease doing, an act,

or any combination of the matters set out in **paragraph 6.1(a)(i) to (vii)** inclusive, provided that the total of such determinations or directions in relation to an individual complaint, or in relation to claims against any one as a result of any one event or series of related contemporaneous events member, which is demonstrably consistent with the circumstances, does not exceed in value \$5,000 (such sum will not include any payment or allowance for legal costs of any kind); or

- (b) by dismissing the complaint.

In addition to the above, the Ombudsman, with the consent of all parties, may make a determination or direction the value of which exceeds \$5,000 but does not exceed \$10,000.

For the avoidance of doubt, no payment or allowance of legal costs of any kind will be recognised or form part of the value of a determination or direction made by the Ombudsman under **paragraph 6.1**.

The Ombudsman will not be entitled to make a determination or direction under **paragraph 6.1** which involves the payment of exemplary damages to a complainant.

All decisions by the Ombudsman under **paragraph 6.1** shall be automatically binding upon members. However, the complainant may elect whether or not to accept the decision of the Ombudsman within twenty-one days of the Ombudsman's decision. If the complainant accepts the decision of the Ombudsman, the complainant shall fully release the member from all claims, actions, damages and liabilities whatsoever in relation to the complaint. In the event that the complainant does not accept the decision of the Ombudsman, the complainant may pursue his or her remedies in any other forum the complainant may choose and the member is then fully released from the Ombudsman's decision.

6.2 **Reasons**

The Ombudsman shall provide complainants and members with written reasons in support of a decision under **paragraph 6.1**. The Ombudsman shall publish binding decisions, without identifying the complainant to the decision.

6.3 **Discretion not to Investigate**

The Ombudsman has the discretionary power to decline to investigate a complaint if in the opinion of the Ombudsman:

- (a) the complaint is frivolous or vexatious or was not made in good faith;
- (b) the complainant does not have a sufficient interest in the subject matter of the complaint;
- (c) an investigation, or further investigation, is not warranted; or
- (d) the complaint is more appropriately or effectively dealt with by any other body.

6.4 In exercising the powers of determination or direction under **paragraph 6.1**, the Ombudsman shall not make a determination or direction which, when given effect, would involve:

- (a) a member contravening any code, licence, regulation or law of the Commonwealth or of a State. Where there is a dispute between the Ombudsman and a member about the effect of the law or of regulatory instruments, the Ombudsman may obtain legal advice, at the member's expense, which interpretation will be binding; and
- (b) a member acting inconsistently with a stated policy of the Victorian Government or the Public Transport Division.

7 OTHER POWERS AND RESPONSIBILITIES OF THE OMBUDSMAN

7.1 The Ombudsman is responsible for:

- (a) the overall performance of the PTO scheme including, but not limited to, meeting such objectives as are determined by the Board from time to time;

- (b) managing the day to day operations of the PTO scheme, including but not limited to the appointment and termination of employment of staff;
- (c) attending, in a non-voting capacity, meetings of the Board at the invitation of the Board;
- (d) consulting with the Director of Public Transport and other relevant government authorities and development of working procedures with these bodies where appropriate; the working procedures developed will, amongst other things, define the respective areas of responsibility of the Ombudsman and the other authorities concerned for the consideration of and investigation into complaints, having regard to the responsibilities of those authorities under applicable legislative and regulatory instruments;
- (e) developing procedures for the fair, just, informal and expeditious handling of complaints;
- (f) appropriate public information programs on promoting the PTO scheme and its complaint-handling procedures at a cost consistent with other Ombudsman schemes;
- (g) making recommendations to the Minister for Transport on this Charter;
- (h) controlling and monitoring expenditure within the agreed budgets and for providing regular reports to the Board on expenditure;
- (i) preparing the annual report of the Ombudsman;
- (j) at the Ombudsman's discretion, making ad hoc confidential reports to members, the Director of Public Transport and the Board;
- (k) at the Ombudsman's discretion, making general observations about the operation of the PTO scheme in any public forum, other than during a Victorian State election period;
- (l) acting as an interface with the public for the receipt and referral of complaints (including referral of those not within the jurisdiction of the Ombudsman);
- (m) keeping adequate data on complaints or requests for information, both for reporting purposes and to identify the sources of practices giving rise to similar complaints;
- (n) monitoring general trends and systemic issues arising from the complaints made or referred to the Ombudsman and raising those issues with members, regulators as the Ombudsman considers appropriate;
- (o) ensuring that an accurate and up-to-date list of all members in the PTO scheme is readily available to the public, free of charge;
- (p) preparing annual business plans and proposed annual funding estimates and budgets and submitting them to the Board; and
- (q) raising with the Board issues of policy or practice which arise in relation to the PTO scheme.

7.2 The Ombudsman also has the power:

- (a) to delegate such of the Ombudsman's functions as may be convenient for the efficient day-to-day operation of the PTO scheme, other than the power:
 - (i) to make binding decisions under **paragraph 6.1**, and
 - (ii) to provide written reasons under **paragraph 6.2**,
 which powers may only be delegated to persons employed in senior positions within the Ombudsman's office;
- (b) to make a confidential report to a member and to the Director of Public Transport where, in the Ombudsman's opinion, the general public passenger transport services policy or commercial practices of a member:
 - (i) have contributed to a complaint; or
 - (ii) have been identified as the source of a number of similar complaints; or
 - (iii) have impeded the investigation or handling of a particular complaint;
- (c) to take appropriate action to ensure that the Ombudsman's determinations are implemented, or that requests for information are met by a member. This action could include escalation of the matter to the CEO of the member, referral to the Board, or referral to the Director of Public Transport.

8 BUSINESS PLANS, ANNUAL FUNDING FIGURES AND BUDGETS

- 8.1 For each Financial Year, the Board will require the Ombudsman to prepare a business plan for PTO Limited and to submit it to the Board at least 90 days before the commencement of the Financial Year. The Board will require the Ombudsman to submit a proposed Annual Funding Figure and a proposed budget for the relevant Financial Year with the business plan. Because the Ombudsman has responsibility for managing the day to day operations of the PTO scheme, the Ombudsman is responsible for the preparation of financial budgets and business plans and any subsequent amendments, subject to the approval of the Board. The Ombudsman must submit proposed budgets, plans and/or amendments to the Board. The Ombudsman is responsible for controlling and monitoring expenditure within the approved budget and for providing regular reports to the Board on expenditure.
- 8.2 The Board will, from time to time, appoint a committee to be known as the Budget Committee, comprising Directors appointed by the members and Directors appointed by the Minister for Transport representing users of public transport services (not being the Chairperson of the Board).
- 8.3 The Budget Committee will, for each Financial Year, formulate a proposed Annual Funding Figure for PTO Limited and a proposed budget in consultation with the Ombudsman, and submit them to the Board at least 60 days before the commencement of that Financial Year.
- 8.4 The Board will, for each Financial Year, produce a proposed Annual Funding Figure for PTO Limited and a proposed budget, taking into consideration the proposed Annual Funding Figure and proposed budget formulated by the Budget Committee, and will ensure

that the Board's proposed Annual Funding Figure is put before a general meeting of PTO Limited to be voted upon at least 30 days before the commencement of that Financial Year. In producing proposed Annual Funding Figures the Board will seek to ensure that the level of funding is such that the Ombudsman is able to carry out his or her functions under this Charter, provided the Annual Funding Figure does not increase from year to year by more than 10%, unless otherwise agreed by the members.

- 8.5 Variations to Annual Funding Figures of PTO Limited may be proposed by the Board but will only be effective once passed by PTO Limited in general meeting, except that if a motion to accept such a variation is not passed when put to a general meeting of PTO Limited, the Board may, if it considers appropriate, refer the proposed variation once only to a further general meeting of PTO Limited for reconsideration.
- 8.6 If the Annual Funding Figure put by the Board to a general meeting of PTO Limited in accordance with the above procedure is passed by the meeting, the Board's proposed budget will become the budget for the relevant Financial Year. If the Annual Funding Figure put by the Board to a general meeting of PTO Limited in accordance with the above procedure is not passed by the meeting, the Board must refer within 7 days a revised proposed Annual Funding Figure to a further general meeting of PTO Limited for reconsideration. If the revised Annual Funding Figure is not agreed by the members at the meeting, the Board shall refer the matter to the Director of Public Transport for decision. The members and the Board acknowledge that the decision of the Director of Public Transport will determine the Annual Funding Figure for that Financial Year and is final.

C: THE BOARD

9 MEMBERSHIP OF THE BOARD

An independent Chairperson of the Board will be appointed by the Minister for Transport ("**Minister**"), according to a procedure set out in the Constitution of PTO Limited. Industry Directors will be appointed by members from the transport industry and the Minister shall appoint three (or such other number as is equal to the number of Directors appointed by members) Directors representing the interests of users of public transport services ("**Consumer Directors**"). Subject to the Constitution, if any Consumer Director ceases to hold a position as a Director, that vacancy must be filled within three calendar months (or such longer period as the Directors may otherwise resolve) by a person appointed by the Minister as representing the interests of users of public transport services.

10 ROLE AND RESPONSIBILITIES OF THE BOARD

- 10.1 The responsibilities of the Board include the oversight of the PTO scheme and maintenance of the independence of the Ombudsman. While the Ombudsman will have responsibility for the day to day operation of the scheme, it is the function of the Board to provide advice to the Ombudsman on policy and procedural matters.
- 10.2 Specifically, the duties of the Board include:
- (a) the appointment and termination of appointment of the Ombudsman in accordance with the Constitution of PTO Limited and the Ombudsman's contract of employment;
 - (b) the appointment for a specific time of an acting Ombudsman as required;

- (c) within the framework of this Charter, to determine policies and practices relating to the administration of the PTO scheme;
- (d) to monitor this Charter and, from time to time, recommend to the Minister for Transport amendments to this Charter as the Board thinks fit;
- (e) to receive and consider recommendations from the Ombudsman for amendments to this Charter. It is the role of the Board, in consultation with the Ombudsman, to prepare recommendations for referral to the Minister for Transport in relation to the amendment of the PTO scheme and this Charter;
- (f) to ensure effective management by the Ombudsman of the allocation of resources such that expenditure does not exceed the budgets approved by the Board;
- (g) to produce proposed Annual Funding Figures for each Financial Year of the PTO scheme and ensure the Annual Funding Figures are put before the members to be voted upon. Through the Budget Committee, to receive and consider proposed financial budgets and business plans (and any subsequent amendments thereto) prepared by the Ombudsman;
- (h) to consider the appropriateness, scope and effectiveness of the PTO scheme, and, in particular, to review the scheme at least by the fifth anniversary of the inception of the scheme;
- (i) to accept or reject proposals by the Ombudsman on the promotion of the PTO scheme and the preparation of the Annual Report; and
- (j) to seek to ensure sufficient funding for the operation of the PTO scheme.

11 RELATIONSHIP BETWEEN THE BOARD AND THE OMBUDSMAN

- 11.1 The Board has responsibility for policy matters and oversight of the operation of the PTO scheme. The Ombudsman has responsibility for the day to day operation of the PTO scheme and resolution of individual complaints. These roles are complementary and, as a general rule, the Ombudsman would attend Board meetings as an observer.
- 11.2 The Board is responsible for the formal administration of PTO Limited and exercises final authority in relation to the financial affairs of the company (subject to the Constitution of PTO Limited).

D: AMENDMENTS TO CHARTER

12 MECHANISM FOR AMENDMENTS TO CHARTER

- 12.1 This Charter may only be amended with the prior written consent of the Minister for Transport.

E: DEFINITIONS

- 13 Terms capitalised in this Charter have the same meaning as defined in the Constitution of the PTO Limited.