



26 June 2008

Kerryn Riseley
Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring St
EAST MELBOURNE VIC 3002

Dear Ms Riseley,

Inquiry into vexatious litigants

I would like to thank Mr Johan Scheffer MLC, Chair of the Victorian Parliament Law Reform Committee ("the Committee"), for the invitation to make submission to the Committee's inquiry into vexatious litigants ("the inquiry").

I note the Committee's interest in the policies and practices of the Public Transport Ombudsman ("PTO") for responding to difficult or persistent complainants, and our views on the extent to which vexatious litigants may be interacting with the PTO.

Public Transport Ombudsman – policies and procedures

The PTO scheme is an industry self-regulatory dispute resolution service which has the objective of providing a cost-free, efficient, effective, fair, informal and accessible alternative to other remedies, including Court proceedings. Our services are provided to public transport commuters and other affected by the public transport activities, where these persons have been unable to resolve the complaints directly with the public transport operators.

I have attached a brochure about the PTO, and our most recent annual report, for your information.

The PTO is established as a company, and regulated by the PTO Ltd Charter and Constitution. As Ombudsman, my functions are to receive, investigate and facilitate the resolution of complaints about services provided by scheme participants, including Connex (metropolitan trains), Yarra Trams, V/Line (regional trains), bus companies that are members of the Bus Association of Victoria and Metlink.

PTO Ltd Charter – vexatious complaints

The PTO Ltd Charter provides me a discretion to decline to investigate a complaint if, in my opinion, the complaint is frivolous or vexatious, or not made in good faith.

PTO procedures

The PTO has developed Guidelines for the Handling of Complaints and Disputes – the Complaint and Dispute Resolution Service ("CDRS") Guidelines.

CDRS Guideline 3 – Resolution and Finalisation of Complaints – provides for a number of matters including the PTO discretion not to further investigate complaints. A copy

of the Guideline is available on the PTO website, <http://www.ptovic.com.au/content/guidelines.html>. Relevantly, the Guideline provides:

Frivolous and vexatious complaints, or those not made in good faith

When determining whether a complaint is frivolous, vexatious or not made in good faith, the PTO will take into account all available and relevant information relating to the events which led to the complaint, as well as what may be considered fair and reasonable in the circumstances, relevant industry practice and the law. Complaints declined in this manner may include those where:

- *it is evident that, in lodging the complaint, the Complainant intends to cause inconvenience, annoyance or nuisance to a Member;*
- *the complaint is clearly untenable or obviously groundless; or*
- *it is evident that the Complainant has intentionally provided an untruthful or inaccurate account of events.*

CDRS Guideline 3 requires, for these matters, the following:

- the complainant will be advised of the PTO decision
- the public transport operator will also be advised
- the complainant will be advised of their right to ask the Ombudsman to review the decision.

PTO experience with complainants acting unreasonably

The PTO is a fairly young organisation, little more than four years old. We are also a fairly small office, dealing with about 1000 complaints in 2006/7.

A review of our complaints database indicated that, to date, it has not been necessary for the PTO to decline to investigate or further investigate a complaint on the basis that it is frivolous or vexatious. Reasons for this include that by far the majority of complaints are made in good faith. Even where it might be suspected that the complaint is not bona fide, other reasons – such as a lack of cooperation from a complainant or a lack of sufficient interest – can be relied upon in determining not to investigate a complaint.

A review of our information does indicate that a small number of persons make a disproportionate number of complaints. There are, for example, five complainants who have each made 10 or more complaints to the PTO in the past 4 years.

Some very general observations might be made:

- sometimes the complaints repeatedly concern what appear to be minor issues, such as one-off instances of lateness
- sometimes the complaints are about matters in which the complainants do not have a direct interest
- sometimes the complaints are very generic in nature, with little detail and little indication of what is sought as a resolution
- some complainants return to the PTO about the same issue on a number of occasions.

To assist in our management of complaints, the PTO has a '*complainant alert*' field in our complaints database. Where complainants have, in matters, acted unreasonably, a conciliator can include general advice about a complainant's behaviour and recommend appropriate management strategies

On occasion, public transport operators will advise of their view that a particular complaint is vexatious, or the complainant not acting in good faith. This may be because the complainant often makes complaints. While we consider these views and our own records of previous complaints, each complaint is closely considered on its individual merits. Simply because someone complains regularly, or a past complaint has not been substantiated, it does not mean that their complaint is without substance.

I would also observe that some complainants do take up a disproportionate amount of our conciliators' time in dealing with their matters, when regard is had to the nature of the issues they raise.

As Ombudsman, I support my officers taking appropriate action to deal with inappropriate conduct by complainants. This includes cautioning complainants who act inappropriately that their calls may be terminated, and terminating abusive telephone calls. It also includes limiting complainant contact to written communications.

And while complainants and operators are provided with a right of review, once this review is completed at matter will not be revisited unless substantial new evidence is provided to support the re-opening of a complaint.

My office is aware of research undertaken by Australian Parliamentary Ombudsman concerning unreasonable complainant conduct. This research recognises that there are a small number of complainants whose conduct is challenging, and that specific strategies can be employed to assist in managing that conduct. We are presently arranging for our conciliation officers to undertake a workshop, delivered by officers from the NSW Ombudsman, dealing with unreasonable complainant conduct.

Conclusion

I trust the above information is of assistance to your inquiry. If I can be of further assistance, please contact me on 8623 2121.

Yours sincerely



Simon Cohen
Public Transport Ombudsman