

# **VICTORIAN** **ombudsman**

**Investigation into allegations of improper conduct  
by a Magistrates' Court registrar**

**May 2013**

**Whistleblowers Protection  
Act 2001**

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## 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 section 103 of the *Whistleblowers Protection Act 2001*, (as preserved under schedule 1, clause 3 of the *Protected Disclosure Act 2012*) I present to Parliament my report of an investigation into allegations of improper conduct by a Magistrates' Court registrar.



G E Brouwer  
**OMBUDSMAN**

8 May 2013

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# Background

## Public Interest Disclosure

1. In mid-2012, I received a disclosure under the *Whistleblowers Protection Act 2001*<sup>1</sup> (the Act) regarding a Registrar at the Magistrates' Court of Victoria. It was alleged that the Registrar (Registrar X):
  - had been using her position to inappropriately grant extensions of time to her husband, for the payment of a \$1,000 fine that he had incurred a number of years ago
  - authorised extensions through the use of other staff members' computer access details without the knowledge of those staff members.
2. I determined the disclosure to be a public interest disclosure pursuant to the Act and notified the then Acting Secretary, Department of Justice and the then Chief Magistrate of the Magistrates' Court of Victoria (the Court) of my decision to investigate the matter.

## Legislative basis for the investigation

3. This disclosure was investigated, after consultation with the former Chief Magistrate, as in my view, the allegations brought against Registrar X were not excluded from my jurisdiction. While the law at the time of the disclosure excluded me from investigating the actions of a Court (section 13(3) of the *Ombudsman Act 1973* and section 4(1) of the *Whistleblowers Protection Act 2001*), the allegation about Registrar X was not in relation to the exercise of her powers as a registrar of the Court, but that she used her access to Court records as an employee of the Department of Justice to alter those records to the advantage of her partner by using the identity of other persons. The former Chief Magistrate accepted that view.
4. However, with the changes to the Ombudsman Act as a result of the Independent Broad-based Anti-corruption Commission (IBAC) suite of Acts, it is unlikely if similar allegations could be investigated by an integrity body. I do not believe that the allegations could be investigated by me, in view of the new section 13AA(3), and the inclusion of judicial registrars within the list of exempt persons and bodies in the new Schedule 2 to the Ombudsman Act. Furthermore, I doubt if such allegations brought against the Registrar could be investigated by IBAC as I do not consider that they would be of such seriousness to constitute 'serious corrupt conduct'. IBAC would be required, if the allegation was not a disclosure under the *Protected Disclosure Act 2012*, to refer the matter to Victoria Police or the Secretary, Department of Justice. Neither approach would allow a report such as this to be made to the Parliament demonstrating what I consider to be the lax processes in the Magistrates' Court regarding the enforcement of orders. If, however, the allegation was a disclosure, section 73 of the *Independent Broad-based Anti-corruption Commission Act 2011* prevents even that limited form of referral; with the result that similar allegations would never be investigated by an integrity body.

<sup>1</sup> As preserved under schedule 1, clause 3 of the *Protected Disclosure Act 2012*.

## Investigation methodology

5. In investigating this matter my officers:
  - interviewed witnesses and Registrar X, the subject of the disclosure
  - reviewed relevant Court records, correspondence and policies
  - examined email and telephone records
  - reviewed legislation and other documentation.
6. In the course of the investigation 11 witnesses were interviewed under oath or affirmation. All witnesses interviewed were offered the opportunity to be represented by a legal practitioner or accompanied by a support person. One witness attended with a legal practitioner and one witness attended under summons.
7. While my investigation was limited to investigating the public interest disclosure, a number of other matters of concern were identified in the course of the investigation. I have provided details of these matters to the Chief Magistrate for appropriate action.

## Conclusions

8. My investigation established that Registrar X granted at least two of the 14 instalment orders in relation to her husband's \$1,000 fine, in 2007 and 2012. Registrar X's husband failed to make any payments towards the fine from 2006 to 2012, despite being granted 12 instalment orders in this period.
9. Of the 12 orders not made under the name or user identification of Registrar X, evidence to my office identified:
  - three of these were not made by the registrar whose identity was used to make the orders on the Court's computer system
  - four were unlikely to have been made by the registrar whose identity was used
  - for three of the orders, the registrar whose identity was used may have made the order but could not recall
  - the registrar whose identity was used for two of the orders could not be contacted.
10. Further evidence to my office identified that:
  - Registrar X requested another registrar to grant an order for her husband in 2005
  - the timing of the granting of the remaining 13 orders to her husband coincided with when Registrar X was working at the Court where the orders were made
  - Registrar X did not declare a conflict of interest as required by the Court's *Conflict of Interest Policy* and the *Code of Conduct for public sector employees*

- there were no reasons recorded on the Court file to support the granting of the 14 instalment orders.
11. I consider the conduct of Registrar X to be improper and given the personal relationship with her husband, Registrar X should have declared a conflict of interest and should have had no involvement with any applications relating to her husband's fine.
  12. Registrar X's conduct reflects a lack of awareness of the core values of the Victorian Public Sector. This is concerning given the position of trust she holds both as a registrar of the Court and her qualification as a solicitor.
  13. My investigation also identified the following concerns:
    - Registrar X's husband's \$1,000 fine history shows the 14 orders extended the life of his fine over seven years, notwithstanding there was little attempt to pay the fine and no evidence that there had been any application, in the first instance, made for the instalment orders.
    - The practices of the Court allow staff to make orders in Courtlink using the user identifications of other staff. In particular, several computers at the counter of the Magistrates' Court are set up for staff to deal with walk-in clients. This enables any registrar or any person (including non-registrars) to use these computers to deal with client requests and to grant orders. Any corresponding order granted is recorded under the registrar's ID that was used to initially log onto the counter computer. This means that staff can make judicial orders under another person's name and there is no means of identifying which staff member actually made any given order. This practice lacks transparency and accountability and heightens the risk of inappropriate use, as this investigation has illustrated.
  14. In light of the issues identified in this report, I recommended that the Department of Justice and the Chief Magistrate:
    - Consider taking disciplinary action against Registrar X
    - Review and upgrade the Court's IT system to address issues regarding the recording of stays and instalment orders.

## Legislation and Policy – stays and instalment orders

15. Under the *Sentencing Act 1991*, the Court may fine a person if he or she is found guilty of an offence. In determining the amount of a fine and method of payment, the Court must take into account the financial circumstances of the offender and the nature of the burden that the fine's payment will impose.
16. The Court may give a person an instalment order which allows a person to pay a fine by regular instalments specified by the Court. In certain circumstances, the Sentencing Act allows an offender to apply to the Court for a variation of the terms of an instalment order.
17. Under Rule 98 of the *Magistrates' Court Criminal Procedure Rules 2009* (the Rules), such an application must be made either orally or in writing to the proper officer of the Court (a registrar or Deputy Registrar).
18. The registrar has the discretion to approve or reject the application for a stay<sup>2</sup> or instalment order based on the information provided by the applicant.
19. In considering the application, the Rules state that the registrar may:
  - question the offender about his or her financial circumstances
  - require the offender to produce any document concerning his or her financial circumstances that is reasonably accessible to the offender
  - adjourn the application.
20. My investigation identified that the Court does not have any policies or procedures around the issuing of stays or instalment orders and is reliant on the provisions in the Sentencing Act and the Rules. A number of witnesses said that the decision to grant an instalment order is based on the individual discretion of the registrar and can vary from registrar to registrar and from Court to Court. Witnesses outlined the following factors that they would generally take into account:
  - the applicant's financial circumstances
  - the number of fines they have
  - the fine amount
  - the reasons for non-payment
  - whether there are outstanding warrants
  - whether the applicant has previously defaulted on payments.
21. These considerations have not been formalised and are reliant on the discretion of the registrar to request or verify this information. One witness said that a person could 'shop around' the Court system until they found a registrar that would be prepared to grant the order.

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<sup>2</sup> A stay is an order by the Court suspending payment of the fine until a specified date.



22. In response to my draft report the Chief Magistrate said:
- In relation to the granting or refusal of stays of payment or instalment orders the Magistrates' Court Criminal Procedure Rules 2009 (the Rules), are reasonably prescriptive. I do not think it necessary at this stage to amend those Rules.
23. Whilst I note the Chief Magistrate's comments regarding the Rules, registrars must exercise discretion in assessing whether to grant stays or instalment orders. Any additional guidance to registrars in assessing financial hardship or issues of non-payment, would in my view benefit staff. These matters could be addressed by internal guidelines within the Court.
24. The details of the fine, payments and applications for instalment orders or stays are recorded on the Court register via a computer system called Courtlink.
25. Witnesses said that the majority of applications are made orally and registrars generally rely on the oral information provided by the applicant. Evidence to my office is that it is not the general practice of registrars to record the reasons why orders are granted or to require further documentary evidence in determining the application. Staff reported that a 'clerk endorsement' (reasons) may be entered on Courtlink if an application is refused however reasons are generally not recorded for applications that are granted.
26. Courtlink displays payment history, order details and enforcement history (including the warrants issued) on separate screens which need to be searched individually by registrars. This system means that unless registrars are proactive in reviewing all the relevant screens on Courtlink, they will not have the complete fine history necessary to ensure that the reasons for granting an application are appropriate in the circumstances.
27. Some staff at the Court hold two user identifications (ID) for Courtlink to enable them to log onto a second computer.
28. The Chief Magistrate advised that:
- Court staff are often required to multi task in their day to day work. Courtlink is a system that has limitations and one of those that affect court administrators is the inability to exit from a screen being worked on and to save the partially inputted data. For example, if a registrar is initiating charges onto the system and they take a telephone enquiry from a court user they cannot exit from the screen they are in without losing all the previously entered information. If they have a dual identification, they can have Courtlink open under their two ID's on their computer and alternate between the two to allow them to complete several tasks efficiently.
29. The common practice is for this second ID to be used on a 'counter computer', one of several computers set up at the counter of the Magistrates' Court to enable staff to deal with walk-in clients. It enables any registrar or any person (including non-registrars) to use these computers to deal with client requests, grant orders and view Courtlink. Any corresponding order granted is recorded under the registrar's ID that was used to initially log onto the computer. This means that:

- staff can make judicial orders under another person's name
  - there is no means of identifying which staff member actually made any given order.
30. Witnesses reported that Courtlink is a 'dinosaur'. It was described as out-dated and lacking the capacity for audits of decisions made regarding stays and instalment orders.
31. These issues have contributed to an environment with little oversight, poor control mechanisms and the opportunity for corrupt conduct to occur. I have addressed these issues separately with the Court.

## The involvement of Registrar X with her husband's fine matter

32. Registrar X commenced employment with the Department of Justice as a Trainee Registrar at the Magistrates' Court in late 2000. She has held roles at the Coroner's Court and two metropolitan Magistrates' Courts.
33. Registrar X completed a Bachelor of Laws at LaTrobe University and was admitted to practice as a Solicitor in February 2011.
34. At interview, Registrar X said that she met her now husband in 2004, commenced a relationship in January 2005 and married in 2007.

### Registrar X's husband's fine history and the instalment orders made

35. A chronology of the orders, applications and payments made and Registrar X's employment details is contained in Appendix 1. The following is noted in relation to this history:
  - on 25 June 2001, at Magistrates' Court A, Registrar X's now husband was convicted of an offence and fined \$1,000
  - from June 2005 to date, a total of 14 instalment orders have been made in relation to this \$1,000 fine
  - each instalment order allowed monthly payments of \$50 to be made towards the fine
  - at the time my investigation commenced, \$450 remained outstanding on the fine
  - no payments towards the fine were made between 25 August 2006 and 27 November 2012 (approximately six years)
  - 11 warrants to arrest Registrar X's husband had been filed at the Sheriff's office before being recalled by the Magistrates' Court<sup>3</sup>
  - the 14 instalment orders were made under the user identification codes of 10 registrars (including Registrar X)
  - the first order was made at Magistrates' Court B on 28 June 2005 and the second order was made at Magistrates' Court C on 17 July 2006
  - all remaining orders were made at Magistrates' Court D
  - the time allowed for the first payment changed during the history of the fine:
    - in the first five orders granted, the first payment was due between four and six weeks from the date of the order

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<sup>3</sup> In relation to stays or instalment orders, Courtlink will automatically generate a warrant 38 days after a person has defaulted on a monetary penalty. This warrant is then transferred electronically to the Sheriff's Office to be executed. In this case, on each occasion where a warrant was filed with the Sheriff's office, a collection letter was sent to Registrar X's husband from the Sheriff's office within five days. None of the warrants were executed.

- from July 2007 the time allowed for the first payment continued to increase
- the order granted on 10 October 2007 allowed approximately seven weeks for the first payment to be made; the order granted on 11 January 2008 allowed almost three months and the orders granted in April 2011 and March 2012 allowed approximately six months until the first payment was due.
- the first order made at Magistrates' Court D was made on 31 October 2006, the day after Registrar X commenced working there
- no applications were made during the 12 months that Registrar X was on leave between 2009 and 2010
- the day after Registrar X returned from leave, a further instalment order was made on 14 January 2010
- 13 of the 14 orders were made at a Court where Registrar X was working at the time
- Registrar X's husband paid the outstanding fine amount of \$450 in one payment on 27 November 2012 after my office contacted him for an interview.

## **Registrar X's actions in relation to her husband's fine instalments**

36. At interview Registrar X said, to the best of her recollection, she had put her husband on one instalment plan and one stay. Registrar X denied making any other orders.

### **Instalment order - 9 July 2007**

37. Registrar X said that the order made on 9 July 2007 under her ID was likely to be one of the instalment orders that she granted. Registrar X could not recall the specifics of the application.

### **Instalment order - 21 March 2012**

38. The other order Registrar X said she made related to an order granting a stay until October 2012. Registrar X said that her husband called her mobile at the Court and indicated that he needed more time to pay. Registrar X said that they had an argument over the fine being outstanding.

39. Registrar X recalled a conversation with her husband at the time she granted the order. Registrar X said:

I can't remember when it was but I remember him ringing saying 'I want more time, I need more time to pay' and I said to him 'why, you've been given a stay already?'

Like I could see the history and I said to him 'you've been given stays' ... I said 'you need to pay this. This needs to be gone. This can't be raising its

head all the time. Pay the bloody fine' is exactly what I said to him. ... you do the crime you do the time, that's my view. You have to pay your fine'.

... We've had, maybe, probably two arguments over it. Those two times that he's asked me to put a stay on or an instalment because I said to him, 'I don't, I don't want to have to deal with this matter. This is not my matter, this is your matter. You need to deal with it'. I was really adamant. ... I said to him 'This is insanity. How did you get this many stays in the first place'. And he said to me, 'I've been making payments' which I had seen that he had been making payments.

And I said to him, 'you better not have discussed this with somebody, in the sense of, saying to other people that you know, "I'm [her husband]" and he said, 'I would never do that. I don't want anyone to know about this'. And I said 'well you better not have hun [sic] because there's a lot of stays here'. And he said 'but I've been paying it' and I said 'well just pay the bloody thing will you'. And he goes 'I need more time' so I gave him more time to pay and I said 'I don't want to ever hear about this matter again. I'm done with this. I said that if it goes to warrant, go to jail. I don't care'.

And he said, 'Fine. I'll have it paid'.

40. At the time of the 21 March 2012 order no payments had been made on the fine since 2006. Registrar X said that she did a 'PAYENQ' on Courtlink. This function shows the total amount of the fine, the total amount paid and the balance outstanding. It does not show the date the last payment was made, however registrars can perform a separate search for these details on Courtlink.
41. Registrar X said at interview that 'we don't go home and talk about whether he had paid the fine ... I guess in my mind, I presumed no discussion, no anything, meant that it was dealt with'.
42. My investigation identified from Court records that the only order made in 2012 relating to Registrar X's husband's fine was an instalment order entered into on 21 March 2012. The first payment was due on 1 October 2012 and this order was not made using the identity of Registrar X, but that of another colleague.
43. When asked to comment on this at interview Registrar X said that she did not enter into an instalment arrangement but 'a stay'. When asked whether this was clear in her mind, Registrar X said:

Oh absolutely. Absolutely. Because he said 'I want another instalment arrangement' and I said 'no you are not getting an instalment arrangement, you have had multiple instalment arrangements, yes you have made some payments but by now, you should have paid it. You will have a certain amount of time to pay it. You have to come up with that money in that time.' Otherwise, according to this ... if this was made in March, then he doesn't have to pay anything over that time until October and then he gets another nine months to pay. No way. Nup. If that is in fact my order, then it is incorrect because I put him on a stay. He had six months to pay it and I didn't want to hear about it again.

44. The Court records do not reflect that a stay was granted but rather that an instalment order was granted with the first payment due six months after the order was made. Registrar X said at interview that she recalls the order was made in 2012. There were no records of any stays being granted for her husband for this fine.
45. In response to my draft report Registrar X said:
- I am very clear in my mind that the order made on 21 March 2012 was to allow my husband to pay the full balance in October 2012. I remember using aggressive language with him saying that he had to clear the fine in October 2012, but it is quite possible that a wrong entry may have been made.
46. Registrar X denied granting any other orders and also said:
- There are at least twenty registrars at [Magistrates' Court D]. I estimate that at least 100 applications for stay or instalment orders are made every day.
- ...
- As from the commencement of my employment as registrar I was taught to use my discretion in granting stay or instalment orders. This was the regime under which registrars generally granted such orders. I was not provided with any legislation, rules, policy or procedure guidelines which suggested how I should use my discretion in granting such orders and the matters and factors to take into account in the exercise of my discretion.
- ...
- I have learned from the very beginning in my position as registrar in assessing requests for stay or instalment order [*sic*] that it is better for the system to receive the revenue rather than sending people to jail. This has been inculcated in me as the fundamental principle to adopt by the registrars who trained me.
- I have treated my husband as I have treated other people who have made similar requests. In other words, I have done for my husband what I would have normally done for other applicants.
- The fine in question was enforced several years before I met my husband. I have only discussed the issue of the fine with my husband from my recollection, on three or four occasions when I have impressed on him the seriousness of the matter. I wanted him to take responsibility of the fine [*sic*]. I admit that my husband has not been in stable employment. He has held several jobs but seems to be unable to retain a job for a long period of time. He has had long periods of unemployment. I could have paid the outstanding balance of the fine namely \$450.00 for him any time because of my earning capacity but as a matter of principle in my own mind I wanted him to take responsibility and pay the fine.
47. Eight of the nine other registrars recorded on Courtlink as making the orders on Registrar X's husband's fine were interviewed by my investigators. The ninth registrar, who was no longer employed by the Department of Justice, could not be located for interview.

48. Registrar X was recorded on Courtlink as making two orders. Of the 12 other orders made under another registrar's identity, I am satisfied that three of these were not made by the registrar whose identity was used; four were unlikely to have been made by the registrar whose identity was used; in three of the orders, the registrar may have made the order but could not recall and in relation to two of the orders, the registrar could not be contacted.
49. In relation to three of these orders, made on 11 January 2008, 14 January 2010 and 21 March 2012 at Magistrates' Court D, the respective registrars interviewed were adamant that they would not have granted the orders given the history/non-payment of the fine.
50. Evidence presented to my office indicates that the four orders made on 31 October 2006, 19 January 2007, 2 July 2008 and 6 April 2011 at Magistrates' Court D were unlikely to have been made by the registrar whose login was used. In each of these cases, the registrar whose login was used referred to his/her general practice to not grant orders where there have been a lack of payments made. A number of the witnesses also indicated that it was their general practice to only withdraw a warrant if an upfront payment was made. No upfront payments were made in this matter.
51. In relation to the three orders made on 28 June 2005 at Magistrates' Court B, 17 July 2006 at Magistrates' Court C and 26 April 2007 at Magistrates' Court D, the respective registrars said that it may have been them that made the particular order but that they could not recall.
52. The registrar whose identity was used in relation to the two remaining orders dated 10 October 2007 and 26 September 2008 made at Magistrates' Court D could not be contacted as they are no longer employed by the Department of Justice.
53. A number of witnesses also gave evidence that the history of the matter, including the number of instalment plans granted without any attempt to pay the fine was unusual. One Senior Registrar said that giving someone 'nine months to pay \$450 exceeds the expectations of the Court' and 'In my 42 years I have not seen a history like that'.

### **Registrar X's request to a staff member to grant an instalment order**

54. The first instalment plan was granted to Registrar X's then partner on 28 June 2005 in Magistrates' Court B. This was shortly after Registrar X and her now husband commenced a relationship.
55. While Registrar X was not working at Magistrates' Court B at this time, evidence to my office is that she requested a staff member, Registrar A to grant an instalment order for her then partner.

56. At interview Registrar A said:
- ... [Registrar X] initially asked me to, when she found out about it, ... I can't remember if there was a warrant outstanding, I think there was a warrant outstanding, She asked me to recall the warrant which I did and to put [her partner] on I think a payment plan which I did and that was the initial like the very first, first payment plan [her partner] was ever on ...
57. Registrar A also said that:
- ... it's not anything that I wouldn't do for anybody else, any member of the public or anything [sic] that rang so it wasn't a favour to her in that sense. I think she probably just didn't want to do it under her ID because that would obviously look a bit strange.
58. Registrar A later advised my office that:
- ... [Registrar X] may have requested that I recall the warrant and put [her husband] on a payment plan as she may have been a registrar of the Coroner's Court, rather than a registrar of the Magistrates' Court at the time. This would mean that technically she would not have had the power to recall the warrant and grant further time to pay as this is a quasi-judicial function that is available only to registrars of the Magistrates' Court under the Magistrates' Court Act.
59. The Court records indicate that the order was made under the identity of another registrar (other than Registrar A) on 28 June 2005. As outlined previously, the Court has a system where an officer may log into the counter computer using a duplicate ID in order that other staff may use the counter computers. In this case Registrar B's duplicate ID was used. Registrar A said that she may have made the order at a counter computer.
60. Telephone records indicate that a telephone call was made to Registrar X's husband's mobile telephone number from Magistrates' Court B at 3:11pm on 28 June 2005 and the Court records show that the order was made at 3:16pm.
61. A review of Registrar X's husband's mobile and home telephone records did not show a record of a call to the Court.
62. At interview, Registrar X's husband said that he had made every application to the Court and that Registrar X did not assist him in any way.
63. Registrar A and Registrar X's husband were given an opportunity to comment on the relevant extracts of the draft report but chose not to respond.



## Policies and procedures

64. Lord Heward in *R v Sussex Justices; Ex Parte McCarthy*<sup>4</sup> expressed an important principle of administrative law:
- ... it is not merely of some importance but is of fundamental importance, that justice should not only be done, but should manifestly and undoubtedly be seen to be done.
65. This principle has long been held in common law and is supported by the *Code of Conduct for Victorian Public Sector Employees* (the Code of Conduct), the *Public Administration Act 2004* and the Magistrates' Court *Conflict of Interest Policy*.
66. Public sector employees are bound by the Code of Conduct which reflects the provisions in the Public Administration Act.
67. Section 3.2 'using powers at work' states:
- Public sector employees use their power in a responsible way. They do not use their power to provide a private benefit to themselves, their family, friends or associates. They exercise power in a way that is fair and reasonable, and family or other personal relationships do not improperly influence their decisions.
68. Section 3.7 'conflict of interest' provides that:
- Public sector employees declare and avoid conflicts of interest to help maintain community trust and confidence.
- ...
- Public sector employees ensure their personal or financial interests do not influence or interfere with the performance of their role. They seek to ensure the interests of family members, friends, or associates do not influence or could be perceived to influence their performance in the job.
- If an employee is unsure about a possible conflict of interest they seek advice from their manager.
69. These provisions are reflected in the *Conflict of Interest Policy* applicable to staff working at the Victorian Magistrates' Court. The policy states that:
- All employees must avoid conflicts of interest.
  - Employees have a duty to put the public interest above their private interests when carrying out their duties as employees of the Department of Justice.
  - Employees must abstain from any decision-making process in which they could be compromised, or appear to be compromised.
  - All conflicts of interest must be reported to the relevant manager as soon as they are identified and the details recorded along with any associated management action in relation to that identified conflict.

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4 [1924] 1 KB 256 at 259.

70. In terms of relationships and family interests the policy states:

Employees must use their authority in a responsible way. They must not use their authority to provide a private benefit to themselves, their family, friends or associates. Employees must exercise powers in a way that is fair and reasonable, and family or other personal relationships must not improperly influence their decisions.

Employees must declare to their manager any situation in which:

- they are likely to be dealing professionally with members of the public with whom they have personal or business connections
- they are likely to be in a position of involvement in decision-making which may directly affect a family member or close associate.

Such situations must be avoided, as it is difficult to remain impartial in these circumstances.

...

Employees who have authorised access to personal records must not amend their own records or those of family or friends. Such amendments may only be carried out by another employee who has authorised access.

71. Registrar X was aware that she had a conflict of interest. When asked at interview whether she had any conflicts of interest, Registrar X replied:

Other than my husband you mean? No.

72. Registrar X said that she never declared the conflict or discussed the relationship with anyone at work:

... Not because I want to hide my relationship. Not because I want to hide the fact that he has been to Court ... I didn't want anyone, I don't know ... [my husband] and I are very separate when it comes to our work, particularly my work ... so I don't discuss things with him. I don't discuss things about him with other people, I certainly have spoken to him about not discussing me in order to get favours at work or anything. ... I treat my professional life separately to my home life and particularly in this case given ... he was found guilty, I didn't want to have anything to do with that. I didn't want anybody to make assumptions about me or anything like that. So that's why it was never raised. ... I wasn't hiding it. ... I wasn't intentionally hiding it and doing secret things behind people's backs ... that was definitely not my intention.

73. Registrar X said that she did not treat her husband any differently to any other applicant.

74. In terms of Registrar X's general practice, she said that she could not remember the last time she did not grant an application for a stay or instalment order. Registrar X said that:

I find that I'm pretty lenient when it comes to granting a stay or instalment, I figure it's better that we get the money eventually than not get the money at all.

75. When Registrar X was asked whether she considered that the orders granted were favourable to her husband she said 'Yeah, I presume so. Yeah'.

76. My officers asked Registrar X whether she considered she had a conflict of interest. She said:
- Do I consider that now? Well everything is great in hindsight but there is nothing I did for him that I wouldn't do for anybody else. ...That's the best answer I have.
77. When asked whether Registrar X considered that it was appropriate that she grant an order for a family member, she said:
- Well now that you have called my attention to it I would say probably not but I wasn't doing, I wasn't doing anything that I wouldn't do for anybody else. ... That's the best answer I've got. I really wasn't doing anything that I wouldn't do for any other person that had made the same enquiries. I would see that payments had been made, that attempts had been made, that other registrars had granted further time to pay so I wasn't doing anything that I wouldn't do if I was looking at somebody else's case except I was angry with him that he hadn't paid it and I guess that's where the relationship perhaps came in.
78. Registrar X said that she has not had any ongoing training and has not been provided with any material in relation to conflict of interest.
79. However, Registrar X has completed a Bachelor of Laws. This requires that she complete a subject on administrative law which involves an understanding of bias and perceived bias in decision-making.

## Conclusions

80. The allegation that Registrar X inappropriately granted instalment orders to her husband has been substantiated by my investigation.
81. Notwithstanding the lack of records held at the Magistrates' Court, based on the evidence provided to my investigation I am satisfied that Registrar X was involved in the granting of at least two instalment orders in favour of her husband. Registrar X admitted at interview to personally granting two instalment orders for her husband in 2007 and 2012.
82. In addition, in relation to the 14 orders granted for Registrar X's husband:
- A staff member of Magistrates' Court B gave evidence under oath that Registrar X requested that they grant an order for her then partner in 2005.
  - The timing of the granting of the remaining 13 orders to Registrar X's now husband coincided with when Registrar X was working at the Court where the orders were made. For example an order was granted the day after Registrar X commenced at Magistrates' Court D; not one order for her husband was registered when Registrar X was on 12 months leave (despite payments being outstanding); and the day after Registrar X returned from leave, an order was granted.
  - Eight of the nine other Magistrates' Court registrars told my officers that they would not have made the order for Registrar X's husband or could not recall making the order for him. I consider that it is unlikely that anyone else would have any reason or motivation to grant the orders to amend the payment arrangements for Registrar X's husband, other than Registrar X. Some registrars told my officers that the history of Registrar X's husband's matter, the number of instalment plans granted and the time given for him to pay the \$450 fine balance, was 'unusual' and 'giving someone nine months to pay \$450 exceeds the expectations of the Court'.
  - Registrar X gave evidence that she did not want anyone at the Court where she worked being aware of her husband's conviction.
83. There is no record of Registrar X ever declaring a conflict of interest as required by the Court's *Conflict of Interest Policy* and the *Code of Conduct for public sector employees*. Registrar X qualified as a solicitor in 2007 which included training in Administrative Law. Therefore, I do not accept her evidence that she did not understand or have any training in the principles of conflict of interest or perceived bias. I consider Registrar X's conduct to be improper and given her personal relationship with her husband, Registrar X should have had no involvement with any applications relating to her husband's fine.
84. The conduct of Registrar X reflects a lack of awareness of the core values of the Victorian Public Sector. This is concerning given the position of trust she holds both as a registrar at the Court and her legal qualifications.

85. In response to my draft report Registrar X said:
- I disagree with the preliminary conclusions in the draft report. The investigators have not investigated all the facts and circumstances properly and conclusively. They have acted with bias and prejudice and have taken only selected facts in coming to their conclusions.
- I have not used my position as Magistrates' Court Registrar inappropriately in granting the two orders to ... my husband. Nor I have [sic] been involved either directly or indirectly with the other orders.
86. Registrar X has not provided any reasons why she believes my investigators are biased nor has she provided any evidence to refute the conclusions in my report.
87. My investigation also identified further concerns which I consider warrant attention by the Magistrates' Court:
- Registrar X's husband's \$1,000 fine history shows a significant number of instalment orders (14) were granted without any records or evidence of the reasons for doing so. The orders extended the life of the fine over seven years, notwithstanding there was little attempt to pay the fine and no evidence that there had been any application, in the first instance, made for the instalment orders.
  - The practice of the court in allowing staff to make orders in Courtlink using the ID's of other staff lacks transparency and accountability and heightens the risk of inappropriate use, as this investigation has illustrated.

## Recommendations

In light of the issues identified by my investigation, I recommend that the Department of Justice, in conjunction with the Chief Magistrate:

### Recommendation 1

Consider taking disciplinary action against Registrar X regarding matters raised in this report.

The Magistrates' Court and the Department of Justice have accepted this recommendation.

### Recommendation 2

Review and upgrade the Court's IT system to ensure the system:

- a. reflects the person who made the instalment order or stay; and
- b. records the reasons for granting or refusing the instalment order or stay.

The Department of Justice responded that this recommendation is accepted in principle and will be implemented to the extent possible within current system capacity.

In relation to recommendation 2(a), the Secretary of the department responded:

On 26 March 2013, the Principal Registrar of the Magistrates' Court issued Practice Direction 2/2013 that instructs all registrars to ensure that other registrars cannot access their user ID and that Courtlink should not remain open on a computer that is unattended. The Practice Direction also advises registrars that they are specifically prohibited from providing generic access through a duplicate user ID to other registrars.

Before a registrar is able to grant or refuse an instalment order or further time to pay a fine, they must attain certain qualifications. ... In addition I am aware that the Magistrates' Court also provides regular on the job training to registrars on critical functions in their roles. I have asked that the Executive Director, Courts and Tribunals Service also liaise with the CEO, Magistrates' Court regarding any enhancements that can be made to this education and provide greater guidance to registrars.

In relation to recommendation 2(b), the Chief Magistrate responded:

The current legislation [Section 55(1) of the *Sentencing Act 1997*] does not require a registrar to record the reasons for granting or refusing an instalment order or stay. Courtlink does have the provision for a registrar to record the reasons for refusal however, not for the granting of an order. I do not see the value of recording the reasons for the granting of the stay of payment at this stage and as such do not intend to amend the Rules to reflect this requirement.

The Secretary of the department further responded:

Notwithstanding that there is no legislative requirement, the court has however adopted a practice of recording the reasons why further time to pay a fine, or a request for an instalment order, or a stay, has been refused; via a free-text screen in the Courtlink computer system.

The Courtlink computer system is subject to an ongoing IT improvement program, primarily to implement changes as a result of legislative change and reform. Due to constrained resources of the Court, the large number of IT system changes currently pending implementation and the requirements of s.55 of the Sentencing Act, I am advised that introducing a screen to record the reasons for *granting* an instalment order or a stay is not a high priority at this stage. I will however ask the Court to consider giving effect to this recommendation during future IT system upgrades and opportunities.

## Appendix 1 – A chronology

10 July 2000	Registrar X's now husband first appeared before Magistrates' Court A in relation to an offence.
27 November 2000	Registrar X commenced employment with the Department of Justice as a Trainee Registrar at the Magistrates' Court of Victoria.
25 June 2001	\$1 000 fine issued to Registrar X's now husband by Magistrates' Court A in relation to the offence.
No payments made towards the fine.	
9 November 2001	Warrant to arrest Registrar X's now husband for non-payment filed at the Sheriff's office.
June 2003	Registrar X commenced employment at the State Coroner's Office.
Late 2004 – Early 2005	Registrar X commenced a relationship with her now husband.
28 June 2005	Application for stay or instalment order granted to Registrar X's now husband at Magistrates' Court B under the ID of another registrar. The warrant was recalled and instalments of \$50 per month were payable. The first payment was due on 30 July 2005.
August 2005 – January 2006	Seven monthly payments of \$50 were made towards the fine at Magistrates' Court D.
13 February 2006	Registrar X commenced employment at Magistrates' Court C.
28 February 2006	\$50 paid at Magistrates' Court C.
3 April 2006	\$50 paid at Magistrates' Court C.
8 May 2006	\$50 paid at Magistrates' Court C.
7 July 2006	Warrant to arrest Registrar X's now husband for non-payment filed at the Sheriff's office.
17 July 2006	Application for stay or instalment order granted to Registrar X's now husband at Magistrates' Court C under the ID of another registrar. The warrant was recalled and an instalment plan of \$50 per month was granted. The first payment was due on 17 August 2006.
25 August 2006	\$50 paid at Magistrates' Court C.
No further payments were made on the fine between this date and 27 November 2012.	
27 October 2006	Warrant to arrest Registrar X's now husband for non-payment filed at the Sheriff's office.



30 October 2006	Registrar X commenced employment at Magistrates' Court D.
31 October 2006	Application for stay or instalment order granted to Registrar X's now husband at Magistrates' Court D under the ID of another registrar. The warrant was recalled and an instalment plan granted allowing monthly payments of \$50. The first payment was due on 30 November 2006.
12 January 2007	Warrant to arrest Registrar X's now husband for non-payment filed at the Sheriff's office.
19 January 2007	Application for stay or instalment order granted to Registrar X's now husband at Magistrates' Court D under the ID of a registrar. The warrant was recalled and an instalment plan was granted of \$50 per month. The first payment was due on 28 February 2007.
13 April 2007	Warrant to arrest for non-payment filed at the Sheriff's office.
26 April 2007	Application for stay or instalment order granted to Registrar X's now husband at Magistrates' Court D under the ID of another registrar. The warrant was recalled and an instalment plan of \$50 was granted. The first payment was due on 28 May 2007.
6 July 2007	Warrant to arrest for non-payment filed at the Sheriff's office.
9 July 2007	Application for stay or instalment order granted to Registrar X's husband at Magistrates' Court D under Registrar X's ID. The warrant was recalled and instalments were granted of \$50 per month. The first payment was due on 31 July 2007. On the same day (9 July 2007 - approximately one minute later) a further instalment order was granted of \$50 per month with the first payment due on 31 August 2007.
10 October 2007	Application for stay or instalment order granted to Registrar X's husband at Magistrates' Court D under the ID of another registrar. Instalments of \$50 per month were granted. The first payment was due on 30 November 2007.
11 January 2008	Application for stay or instalment order granted to Registrar X's husband at Magistrates' Court D under the ID of another registrar. Instalments of \$50 per month were granted. The first payment was due on 31 March 2008.
9 May 2008	Warrant to arrest Registrar X's husband for non-payment filed at the Sheriff's office.

2 July 2008	Application for stay or instalment order granted to Registrar X's husband at Magistrates' Court D under the ID of another registrar. The warrant was recalled and instalments of \$50 per month were granted. The first payment was due on 29 August 2008.
26 September 2008	Application for stay or instalment order granted to Registrar X's husband at Magistrates' Court D under the ID of a registrar. Instalments were granted of \$50 per month. The first payment was due on 21 December 2008.
30 January 2009	Warrant to arrest Registrar X's husband for non-payment filed at the Sheriff's office.
14 January 2010	Application for stay or instalment order granted to Registrar X's husband at Magistrates' Court D under the ID of another registrar. The warrant was recalled and instalments of \$50 per month were granted. The first payment was due on 1 April 2010.
14 May 2010	Warrant to arrest for non-payment filed at the Sheriff's office.
6 April 2011	Application for stay or instalment order granted to Registrar X's husband at Magistrates' Court D under the ID of another registrar. The warrant was recalled and instalments were granted of \$50 per month. The first payment was due on 1 October 2011.
11 November 2011	Warrant to arrest Registrar X's husband for non-payment filed at the Sheriff's office.
21 March 2012	Application for stay or instalment order granted at Magistrates' Court D under the ID of another registrar. The warrant was recalled and instalments of \$50 were granted. The first payment was due on 1 October 2012.
27 November 2012	\$450 paid at Magistrates' Court A in full satisfaction of the fine (after the commencement of my investigation).



# Ombudsman's Reports 2004-12

## 2012

Own motion investigation into the governance and administration of the Victorian Building Commission  
December 2012

A section 25(2) report to Parliament on the proposed integrity system and its impact on the functions of the Ombudsman  
December 2012

*Whistleblowers Protection Act 2001* Investigation into allegations concerning rail safety in the Melbourne Underground Rail Loop  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct by CenITex officers  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct involving Victoria Police  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations against Mr Geoff Shaw MP  
October 2012

Investigation into the temporary closure of Alfred Health adult lung transplant program  
October 2012

Investigation into an alleged corrupt association  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations of detrimental action involving Victoria Police  
June 2012

Own motion investigation into Greyhound Racing Victoria  
June 2012

The death of Mr Carl Williams at HM Barwon Prison - investigation into Corrections Victoria  
April 2012

*Whistleblowers Protection Act 2001* Conflict of interest, poor governance and bullying at the City of Glen Eira Council  
March 2012

Investigation into the storage and management of ward records by the Department of Human Services  
March 2012

## 2011

Investigation into the Foodbowl Modernisation Project and related matters  
November 2011

Investigation into ICT-enabled projects  
November 2011

Investigation into how universities deal with international students  
October 2011

Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region)  
October 2011

Investigation into the Office of Police Integrity's handling of a complaint  
October 2011

SafeStreets Documents - Investigations into Victoria Police's Handling of Freedom of Information request  
September 2011

Investigation into prisoner access to health care  
August 2011

Investigation into an allegation about Victoria Police crime statistics  
June 2011

Corrupt conduct by public officers in procurement  
June 2011

Investigation into record keeping failures by WorkSafe agents  
May 2011

*Whistleblowers Protection Act 2001* Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee  
May 2011

Ombudsman investigation - Assault of a Disability Services client by Department of Human Services staff  
March 2011

The Brotherhood - Risks associated with secretive organisations  
March 2011

Ombudsman investigation into the probity of The Hotel Windsor redevelopment  
February 2011

*Whistleblowers Protection Act 2001* Investigation into the failure of agencies to manage registered sex offenders  
February 2011

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct by a councillor at the Hume City Council  
February 2011

## 2010

Investigation into the issuing of infringement notices to public transport users and related matters  
December 2010

Ombudsman's recommendations second report on their implementation  
October 2010

*Whistleblowers Protection Act 2001* Investigation into conditions at the Melbourne Youth Justice Precinct  
October 2010

*Whistleblowers Protection Act 2001* Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) - Aerospace  
July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments  
June 2010

Own motion investigation into Child Protection - out of home care  
May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat  
April 2010

*Whistleblowers Protection Act 2001* Investigation into the disclosure of information by a councillor of the City of Casey  
March 2010

Ombudsman's recommendations – Report on their implementation  
February 2010

## **2009**

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre  
December 2009

Own motion investigation into the Department of Human Services – Child Protection Program  
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police  
November 2009

Brookland Greens Estate – Investigation into methane gas leaks  
October 2009

A report of investigations into the City of Port Phillip  
August 2009

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing  
July 2009

*Whistleblowers Protection Act 2001* Conflict of interest and abuse of power by a building inspector at Brimbank City Council  
June 2009

*Whistleblowers Protection Act 2001* Investigation into the alleged improper conduct of councillors at Brimbank City Council  
May 2009

Investigation into corporate governance at Moorabool Shire Council  
April 2009

Crime statistics and police numbers  
March 2009

## **2008**

*Whistleblowers Protection Act 2001* Report of an investigation into issues at Bayside Health  
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services  
August 2008

Investigation into contraband entering a prison and related issues  
June 2008

Conflict of interest in local government  
March 2008

Conflict of interest in the public sector  
March 2008

## **2007**

Investigation into VicRoads' driver licensing arrangements  
December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters  
November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre  
November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007  
October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint  
April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong  
February 2007

## **2006**

Conditions for persons in custody  
July 2006

Review of the *Freedom of Information Act 1982*  
June 2006

Investigation into parking infringement notices issued by Melbourne City Council  
April 2006

Improving responses to allegations involving sexual assault  
March 2006

## **2005**

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons  
December 2005

*Whistleblowers Protection Act 2001* Ombudsman's guidelines  
October 2005

Own motion investigation into VicRoads registration practices  
June 2005

Complaint handling guide for the Victorian Public Sector 2005  
May 2005

Review of the *Freedom of Information Act 1982* Discussion paper  
May 2005

Review of complaint handling in Victorian universities  
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton  
March 2005

Discussion paper on improving responses to sexual abuse allegations  
February 2005

## **2004**

Essendon Rental Housing Co-operative (ERHC)  
December 2004

Complaint about the Medical Practitioners Board of Victoria  
December 2004

Ceja task force drug related corruption – second interim report of Ombudsman Victoria  
June 2004

