



OmbudsmanSA

## **FINAL REPORT**

Investigation into the Courts Administration Authority and the Department  
of Planning, Transport and Infrastructure - Delayed disqualification  
notices

July 2012



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## Full investigation - *Ombudsman Act 1972*

Complainant	Ombudsman 'own initiative' investigation, section 13(2) <i>Ombudsman Act 1972</i>
Agencies	Courts Administration Authority  Department of Planning, Transport and Infrastructure
Issues	<ol style="list-style-type: none"><li>1. The Courts Administration Authority delayed informing the Registrar of Motor Vehicles about the commission of offences that attracted demerit points and other penalties</li><li>2. The Registrar of Motor Vehicles should not have issued disqualification notices</li><li>3. The Authority and/or the Registrar should have taken steps to prevent a failure in transferring data</li></ol>

### Jurisdiction

This investigation arose from a number of complaints lodged with my office by individual licence holders. Each of them complained about the unfairness caused by the issuing of disqualification notices by the Registrar of Motor Vehicles (**the Registrar**) some considerable period of time after the commission of an offence or offences.

In order to consolidate those complaints, I decided to commence an own initiative investigation under section 13(2) of the *Ombudsman Act 1972* into the handling of the matter by both the Courts Administration Authority (**the Authority; the CAA**) and the Department of Transport, Infrastructure and Energy (as it then was - now the Department of Planning, Transport and Infrastructure) (**the department**).

Given the nature of the complaints, it has been convenient for me to deal with the issues affecting both agencies in this single report.

I note that under the relevant legislation, South Australian Police (**SAPol**) has some responsibilities for the matters which are the subject of this report. Under section 5(2) of the Ombudsman Act, I do not have jurisdiction in relation to matters which may be the subject of a complaint under the *Police (Complaints and Disciplinary Proceedings) Act 1985*. Accordingly in this investigation I have not considered any administrative action by SAPol.

## Investigation

My investigation has comprised:

- assessing the information provided by licence holders
- seeking a response from the Authority
- seeking information from the department
- meeting with officers of the Authority and the department
- considering the requirements of the *Motor Vehicles Act 1959* and the *Expiation of Offences Act 1996*
- providing the agencies with my provisional report for comment, and considering their responses
- in light of the agencies' responses, preparing a revised provisional report
- providing the agencies with my revised provisional report for comment, and considering their responses
- preparing this final report.

## Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.<sup>1</sup> It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...<sup>2</sup>

## Responses to my provisional report

The Authority advised me in a letter dated 20 December 2011 that it had no comment to make on my provisional report.

By letter dated 17 January 2012, the department provided a lengthy submission in response to my provisional report. A summary of its key comments is as follows:

- the delay in the issuing of disqualification notices was a direct result of the Authority failing to comply with the requirements of section 93 of the Motor Vehicles Act
- on being provided with the offence data, the Registrar issued disqualification notices in a timely manner
- the Registrar has no means to know the number of expiation notices being issued by SAPol nor the number of applications for relief granted by the Authority to monitor and analyse offence trends
- the Registrar has commenced a process whereby licence holders can apply for reimbursement of out of pocket expenses incurred as a direct result of the delay
- in 2010 departmental staff alerted the Authority and SAPol in relation to inconsistencies in records relating to people who had successfully applied for relief. Neither the Authority nor SAPol were prepared to respond to the alerts

<sup>1</sup> This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR449 at 449-450 per Mason CJ, Brennan, Deane and Gaudron JJ.

<sup>2</sup> *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

- there was no 'failure' by the TRUMPS database, as it was dependant on the Authority providing offence data to it
- when the CrimCase database was upgraded in 2009 the Registrar was not advised that programmatic changes were to occur. This prevented the Registrar from conducting the usual testing procedures prior to acceptance
- the Registrar is not the holder of all information required to maintain a driver licence register
- there is close liaison between departmental officers and the Authority with a view to improving business practices, but this matter arose from a single coding error that was not detected by the CrimCase programmers.

### Responses to my revised provisional report

The Authority wrote to me on 12 April 2012. I summarise its comments as follows:

- it provided details of the rationale for its decision not to inform the department of the changes to the CrimCase system in 2009
- it maintained its view that the failure to identify the impact of the changes to CrimCase was a direct result of the legacy nature of the system
- it did not accept the view that it failed to respond to matters raised by the department about data integrity
- it provided some information on the existence of the Justice Data Interchange Site Managers Committee and the Change Control Committee
- it outlined some of the internal control mechanisms within CrimCase.

The Authority wrote to me again on 4 June 2012, making the following points:

- it provided information on its statutory duty under the Expiation of Offences Act to inform the issuing authority of relief orders
- it stated that it had no statutory duty to inform the department about relief orders being granted or discharged.

The department wrote to me on 15 May 2012. A summary of its comments is as follows:

- it gave examples of the level of reliance the Registrar has on third parties in order to maintain the register as required by section 73 of the Motor Vehicles Act
- it provided an overview of the risk mitigation strategies it had in place at the time the Authority was not providing offence data
- it provided details of the investigations taken by it to identify missing data
- it stated that the Registrar is prepared to further promote the offer to pay certain out of pocket expenses to licence holders.

I have considered all of the submissions from the Authority and department, and taken account of them as I consider appropriate in preparing this report.

### Background

1. When an alleged traffic offence occurs, an officer of SAPol may issue an expiation notice, which may involve the imposition of a monetary penalty and demerit points. Section 9 of the Expiation of Offences Act provides that on receiving an expiation notice, an alleged offender who wishes to expiate the offence may seek relief from the Registrar of the Magistrates Court (or the Youth Court) to pay by instalments, or an extension (not exceeding six months) of time to pay.

2. If an application for relief is approved, the Registrar must inform the issuing authority of the order made.<sup>3</sup>
3. Under section 5(6) of the Motor Vehicles Act an offence is expiated for the purpose of recording demerit points, when the order for relief is granted. However, this differs from the Expiation of Offences Act which prescribes that the offence is not expiated in full until the person satisfies the terms of payment agreed with the court.<sup>4</sup>
4. The application for relief form used by the Authority requires that the applicant agree to a series of terms when applying for relief. This includes an acceptance that if the offence attracts demerit points then they will be incurred as soon as relief is granted; and if the offence would constitute a breach of a condition attached to a licence, then that breach is acknowledged.
5. Applications for relief are recorded on the Authority's Criminal Case Management System (**CrimCase**). CrimCase was enhanced in June 2009, during which a coding error was made. This coding error resulted in the Authority failing to provide the Registrar with relevant offence and offender data after numerous applications for relief had been approved.
6. In its response to my provisional report, the department commented that:

In June 2009 when the CAA upgraded CrimCase, the Registrar's staff were not advised by the CAA that any programmatic changes were about to occur. Therefore the Registrar's staff did not undertake the usual steps of end to end testing and user acceptance testing. These risk mitigation steps would have identified the error. Unfortunately the Registrar was not provided this opportunity.
7. In its response to my revised provisional report, the Authority stated that when a systems change is proposed that might affect the Registrar's system and information provided to the Registrar, the department would be informed. In this case however, the Authority considered that the systems change would 'affect only internal Authority systems' so the Registrar was not notified. Subsequent events proved this to be an error of judgement.
8. The coding error was not remedied until June 2011, so the delay in providing information to the Registrar related to offences in some cases up to 2 years old. The omission affected 21 302 individuals, in relation to 111 401 penalties, over the 2 year period between June 2009 and June 2011. Of these files some 54 000 related to the 2009 - 2010 period, and they were transacted first. Files relating to the 2010 - 2011 period were transacted later. As a result of the delays, sanctions including the imposition of demerit points on licences were applied up to 2 years following the alleged offence, and affected individuals did not receive notification of the sanctions until this time.
9. In its response to my provisional report, the department commented that:

I can confirm that the Registrar's staff became suspicious in 2010 when they became aware of inconsistencies in records relating to people who had successfully applied for relief. Contact was made on a number of occasions by senior staff in the Registrar's Office with the CAA and SAPol to investigate further and find remedy to the situation. Despite the numerous attempts made, neither the CAA nor SAPol were willing to accept liability and dedicate resources to it.

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<sup>3</sup> Sections 4 and 9(9) Expiation of Offences Act 1996

<sup>4</sup> Section 9(15) Expiation of Offences Act 1996

Indeed it appears the CAA finally identified the cause of the problem as a direct consequence of the Registrar's staff continued questioning of the CAA, although the Registrar's staff had no knowledge of the magnitude of the matter.

10. I sought a report from the State Courts Administrator on the reasons for the failure by the Authority to inform the Registrar. In a letter to me dated 19 August 2011 the State Courts Administrator explained the sequence of events as follows:

Offenders who receive an expiation notice for a traffic offence have a range of options, including paying the notice in full to SA Police or applying to the Magistrates Court for Relief (time to pay) under s9 of the Expiation of Offences Act 1996.

The Magistrates Court Application for Relief Form requires the applicant to agree to a series of terms when applying for hardship including the following:

*"I accept responsibility for the offence(s) to which the fee(s) relate. If any offence for which I have applied for relief attracts demerit points, then I will incur those demerit points as soon as relief is granted. I will not, at some later date, be able to elect to be prosecuted for any offence on which relief has been granted."*

The original expiation notice states that demerit points may apply but does not specify the number of points relevant to the offence (if any).

In the normal course of events, once an Application for Relief is approved, a data extract including offender details (name, address, date of birth etc.) and offence details is generated through our CrimCase computer application and is passed on in electronic form on a weekly basis to the Registrar of Motor Vehicles (RMV).

As a consequence of a computer system enhancement, the data transfers did not occur for the period from June 2009 to June 2011.

The error occurred when making an enhancement to the fines component of the CrimCase system in June 2009. As part of this system enhancement that related to the "Application for Review of Cancelled Relief", one outcome code was changed from being a "finalising event" to being a "non-finalising event".

Our CrimCase application is a complex legacy system that has been in operation for over 23 years. It has had numerous patches and changes made to it over its life span, with each change adding to the complexity of the code and data processes. When the change was made in 2009 the programmers were not able to recognise that the outcome code also applied to Applications for Relief, of which we had 68,000 in 2009/10. The normal checks were made and the data extract continued to run however the system no longer recognised these as finalised files and therefore from June 2009 onwards, no offence data relating to these matters was generated and sent to the RMV.

The error caused the numbers of offences being provided weekly to the RMV to reduce by approximately 25% or by 1,300 offences on average, dropping from approximately 5,100 to 3,800 per week. Hence the extract file sent to RMV, while still being produced, omitted some records for the period from June 2009 to June 2011. As the data extract is an automated process we were not aware that the number of offences being reported had dropped. Our process identifies whether the data extract is running but not the volume of matters that are being reported. The RMV would be the only place where volume changes could be picked up. It should be noted that the volume of offences fluctuates due to the number of applications for relief etc that have been received during any given period.

On 22 June 2011 a SAPol staff member sent an email to the Information Technology Services Branch (ITSB) containing a query about two specific expiation notices.

They were querying these because the RMV system did not contain offence information relating to these notices when SAPol's system indicated that it should. Upon investigating these matters ITSB discovered that the outcome code was preventing the offence information being provided to RMV. The error was rectified on 25 June 2011 when a new finalising code "Expiation Application Granted" was created. From that date offence details relating to Applications for Relief were once again provided automatically on a weekly basis to the RMV.

Following the discovery, a staff member from RMV requested that CAA extract the data for the missing offences across the two year period. Two files were created that spanned June 2009 to June 2010 and July 2010 to June 2011. Each of these files contained approximately 60,000 records. Overall across the two years there were offence records for 21,302 individuals, relating to 111,401 penalties. These files were provided by the CAA to the RMV on 27 of July 2011.

11. On being made aware of the offences, the Registrar generated notices under the Motor Vehicles Act, imposing a range of sanctions on licence holders. Each notice was accompanied by a letter from the Registrar explaining the delay in sending out the notice, as follows:

Enclosed is a notice of disqualification notice that has resulted from an expiation notice (fine) you received up to two years ago. Some time after July 2009, you applied to the Magistrates Court for relief and then entered into a payment arrangement to pay the fine.

The Courts Administration Authority (CAA) is required to notify the Registrar of Motor Vehicles when a person completes an application for relief so that I can record the offence and any associated demerit points against that person's licence record. The Motor Vehicles Act 1959 (the Act) requires that where this results in a breach of a conditional licence or the demerit points scheme, I must disqualify the person from driving.

In 2009 the CAA upgraded its software and the CAA computer system ceased automatically supplying some offence information to the Registrar of Motor Vehicles. This error meant that I was not notified of your offence and therefore did not send you a notice of disqualification. The error has only recently been discovered and I have acted to correct the problem as quickly as possible.

I acknowledge this delay may cause inconvenience. I have no discretion though to remove or vary a disqualification required under the Act. However if you are eligible to enter into a Good Behaviour Option, a Safer Driver Agreement or Appeal the disqualification to the Magistrates Court, you still have the same options. The options available to you are written on the notice.

Further information is contained on the enclosed notice, so please read it carefully.

If you are uncertain about what to do, you should contact Service SA on 13 10 84.

12. In generating the disqualification notices, the Registrar was exercising powers under two provisions of the Motor Vehicles Act. The first is Part 3B, which provides for the Demerit Points Scheme. The second is section 81B, which deals with the consequences of breaching a prescribed condition on a licence, or where the holder of a conditional licence incurs four or more demerit points. In each case, the relevant legislative provision<sup>5</sup> requires that the Registrar **must** give written notice of the disqualification or other sanction. It does not confer any discretion on the Registrar in this respect.

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<sup>5</sup> Section 98BD(2), and section 81B(1) of the Motor Vehicles Act respectively.

13. The result of the Registrar's actions is that each recipient of a disqualification notice is required to either:
  - acknowledge receipt of the notice; pay the prescribed administration fee; and serve the sanction imposed; or
  - exercise the right of appeal (if applicable); or agree to comply with good behaviour conditions; or enter the Safer Driver Agreement (if applicable).
  
14. When he received the delayed offence data from the Authority, the Registrar imposed a range of sanctions on the various offenders, depending on the age of the licence holder and the category of licence held. In response to those sanctions, individual complaints made to my office by persons affected by the Registrar's actions include:
  - the offence was committed while the licence holder held a learner's permit, and the licence holder has subsequently moved to a P1 and then to a P2 licence
  - the licence holder has been offence free since the commission of the offence and has moved to another licence category
  - the Registrar accepted payments from the licence holder in the intervening period, and issued another category of licence to them
  - the licence holder has incurred costs for driver training and has progressed to another licence category and is now being regressed
  - the licence holder requires a full licence for their job and that is now at risk due to the disqualification. The licence holder has relocated from Padthaway to Adelaide for the purpose of employment
  - the licence holder has secured employment and requires a driver's licence to travel to and from their place of employment and public transport is not an option
  - the licence holder has incurred legal costs in seeking advice on the current situation as they view the Registrar's actions as being unfair given the delay
  - the licence holder's employer has spent money training the licence holder to drive a particular type of vehicle, so that investment has been wasted.
  
15. Based on these complaints, I accept that in many cases, the impact of the Registrar's actions on individual licence holders has been more significant than it would have been if the sanction had been imposed within a reasonable time after the application for relief was granted. In his response to my provisional report, the Registrar noted that this occurred due to the delay in informing him of the offences, rather than as a result of any action or inaction by him.
  
16. The anecdotal information available to me is that in the time between the commission of the offence and the commencement of the disqualification some licence holders had secured employment, taken out mortgages or progressed to different licence categories. A number of complainants have advised me that a loss of licence will result in a loss of their employment, and of the concomitant difficulties that can flow from that.

#### **Whether the Courts Administration Authority delayed informing the Registrar of Motor Vehicles of the commission of offences that attracted demerit points and other penalties**

17. It is clear from the explanation provided by the State Courts Administrator that the Authority failed to inform the Registrar about offences at a time when ordinarily such information would be expected to be passed on. This failure resulted in a delay in the Registrar taking action under the provisions of the Motor Vehicles Act.

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18. I am advised that CrimCase ordinarily transacts about 5100 offences per week. Due to the coding error that figure dropped by about 25% to 3800. As the process of informing the Registrar of offences is an automated system, the drop in the number of recorded offences was not immediately obvious to Authority staff. I am mindful that the Authority provides a similar relief function in response to the policing of offences to 18 other government enforcement agencies.
19. The role of the Authority is to process the application for relief. It has expressed to me an opinion that it should not monitor the processing of offences, and that is the responsibility of other authorities. Section 9(9)(b) of the Expiation of Offences Act states that:
- (9) The Registrar must, on making a decision on an application for relief–  
...  
(b) if an order for relief is made, give written notice of the order to the relevant issuing authority.
20. The ‘issuing authority’ is defined in section 4 of the Expiation of Offences Act as the Commissioner of Police, where the expiation notice is issued by a police officer; and in any other case, the relevant Minister, statutory authority or council on whose behalf the expiation notice is issued. In my view this places a statutory duty on the Authority to provide the issuing authority with information that relief has been granted.
21. In addition to the obligation to notify the issuing authority under the Expiation of Offences Act, the Authority is under a duty to notify the Registrar in certain circumstances. This requirement is under section 93(1)(c) of the Motor Vehicles Act. This section provides as follows:
- (1) If a court–  
(a) convicts a person of an offence that attracts demerit points under this Act; or  
(b) finds a person guilty of the offence of contravening or failing to comply with a condition of a permit or licence under this Act; or  
(c) makes an order affecting demerit points or disqualifying a person from holding or obtaining a driver's licence; or  
(d) makes an order under section 47IAB of the *Road Traffic Act 1961*; or  
(da) makes an order under section 47J(9) of the *Road Traffic Act 1961* revoking a disqualification; or  
(e) makes an order modifying a person's driver's licence,  
the proper officer of the court must notify the Registrar in writing of the date of the finding or order, the nature and effect of the finding or order and short particulars of the grounds on which the finding or order was made.
22. In responding to my revised provisional report, the Authority expressed a view that it has no statutory obligation under section 93 of the Motor Vehicles Act to inform the Registrar of offences the subject of relief orders. I have considered section 93 and agree with the view expressed. Nevertheless, there has been a long established practice of the Authority informing the Registrar of offences such that I can conclude that there was an administrative arrangement in place for that clear purpose.<sup>6</sup>

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<sup>6</sup> View expressed by an officer of the Authority in a telephone conversation on 27 June 2012

23. As a matter of practicality, I have been advised that in the ordinary course, relief would be sought and granted a matter of weeks after the offender receives the expiation notice. The demerit points would be incurred at that time so any punitive action to be taken by the Registrar would be expected to occur shortly thereafter.
24. Section 27(3) of the *Acts Interpretation Act 1915* provides that:
- (3) Where no time is prescribed or allowed within which any thing must be done, the thing must be done with all convenient speed and as often as the prescribed occasion arises.
25. In my view it is plainly unacceptable for the imposition of a sanction to be deferred for up to 2 years beyond the time at which the offender could reasonably expect it to have been imposed. The adage that 'justice delayed is justice denied' seems applicable in these circumstances.
26. In this context I note that:
- an expiation notice cannot be issued after the expiry of 6 months from the date on which the offence was alleged to have been committed<sup>7</sup>
  - the limitation period for the commencement of proceedings for a summary offence that is not expiable is 2 years.<sup>8</sup>

## Opinion

In my opinion, the failure of the Authority to notify the Registrar of the offence and offender details within a reasonable time was unreasonable within the meaning of section 25(1)(b) of the Ombudsman Act.

## Whether the Registrar of Motor Vehicles should not have issued disqualification notices

27. A number of complainants suggested to my office that given the circumstances of the delay, and the additional impacts upon licence holders, the Registrar should have exercised some discretion in the matter, and should not have issued the disqualification notices. I have considered four issues in this regard.
28. First, I have considered whether, in declining to exercise any discretion, the Registrar misunderstood his powers under the Motor Vehicles Act.
29. The Motor Vehicles Act provides that where the holder of a learner's permit, provisional licence or probationary licence commits an offence of contravening a condition of the licence, the person is disqualified from holding or obtaining a permit or licence for a period of 6 months, and the licence is cancelled.<sup>9</sup> The Act also provides for a period of disqualification if a licence holder exceeds 12 demerit points for offences committed within a 3 year period, or a prescribed number of demerit points in relation to a conditional licence.<sup>10</sup>
30. In certain circumstances, a licence holder may appeal to a Magistrates Court against the action taken by the Registrar. As an alternative, some licence holders may have good behaviour conditions applied to their licence, or may enter into a Safer Driver Agreement.

<sup>7</sup> Section 52(1)(a) of the *Summary Procedure Act 1921*, and Section 6(1)(e) of the Expiation of Offences Act.

<sup>8</sup> Section 52(1)(b) of the Summary Procedure Act.

<sup>9</sup> Section 81B(1) and (2) of the Motor Vehicles Act. This section appears in Part 3 of the Act.

<sup>10</sup> Section 98BC(1) of the Motor Vehicles Act. This section appears in Part 3B of the Act.

31. The Registrar sought legal advice on the exercise of his powers under the Motor Vehicles Act. In essence the advice confirms the fact that the Registrar does not have any discretion to withdraw or waive a disqualification notice issued under section 81B or Part 3B of the Motor Vehicles Act. It also confirms that the Registrar does not have the legal power to recognise the time a person may have been on a provisional or probationary licence in order to give 'credit' for that time.
32. On the basis of this legal advice, I have concluded that the Registrar did not misunderstand his powers under the Motor Vehicles Act. It would not have been lawful for the Registrar to decline to issue the disqualification notices.
33. Secondly, I have considered whether the Registrar should have reviewed his actions when approached by licence holders who were adversely affected by his decisions. Section 98Z of the Motor Vehicles Act provides as follows:
  - (1) A person who is aggrieved by a decision of the Registrar under Part 2, 2A, 3, 3A, 3C or 3D may, within one month of the making of the decision, apply to the Registrar for a review of this decision.
34. On its own terms, this right of review does not apply in relation to decisions made under Part 3B of the Motor Vehicles Act. Further, although the Registrar can review a decision made under Part 3 of the Motor Vehicles Act (which includes section 81B), in this case the legal advice to the Registrar is that there was no 'decision' made, because the requirement to disqualify the licence holder was mandatory under the terms of the legislation.
35. Consequently, in my view the Registrar was not entitled to exercise any statutory right of review of these decisions.
36. The third issue I have considered is whether the Registrar should have taken action to reimburse some licence holders for money which they paid to him before the relevant disqualification notice was issued. Based on a number of complaints to my office, some licence holders incurred licence related costs prior to the disqualification action taken by the Registrar.
37. The Motor Vehicles Act gives the Registrar power to refund money for the unused portion of a licence in certain circumstances.<sup>11</sup> The Registrar can also consider applications for the refund of out of pocket expenses on a case by case basis. In its response to my provisional report, the department commented that:

The Registrar of Motor Vehicles has no legal authority to provide reimbursement for out of pocket expenses. Treasurer's Instruction 14 mandates that any such compensation must be as an ex gratia payment approved by the relevant Minister. The Registrar of Motor Vehicles is sympathetic to the situation some licence holders are facing as a result of the delay in processing expiation notices.

To this end the Registrar established a process in September 2011 to invite licence holders to apply for reimbursement of out of pocket expenses specifically relating to their driver's licence as a direct result of the delay in processing their expiation.

All electoral offices and Service SA customer service staff were advised that if a licence holder believes they have incurred out of pocket expenses specifically relating to their driver's licence, as a direct result of the delay in processing their expiation, they may apply for reimbursement ...

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<sup>11</sup> See, for example, section 75AAA(11)(b) of the Motor Vehicles Act, which states that a person who surrenders a licence is entitled to a refund of a proportion of the licence fee determined in accordance with the regulations.

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Only a small number of claims have been made for ex-gratia payments and all to date have been approved by the Minister for Transport Services.

38. I view this procedure as a welcome initiative. However, there may be other licence holders who have a legitimate claim for reimbursement of out of pocket expenses, but who have not raised their concerns with the Minister or another Member of Parliament; or who have not had cause to contact a customer service centre. On publication of my final report in this matter I intend to invite complainants to approach the Registrar seeking his consideration of their specific circumstances.
39. The fourth issue I have considered is whether the provisions of the Motor Vehicles Act are unreasonable, in that the Act effectively prevents the Registrar from exercising a discretion in circumstances such as those which arose in this case. Under section 25(1)(c) of the Ombudsman Act, I may form an opinion that an administrative act 'was in accordance with a rule of law or a provision of an enactment or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory'.
40. The demerit points scheme is one arm of the Government's road safety strategy. It looks to identify drivers exhibiting repeat behaviours and provides for penalties that provide incentives for improving driver behaviour. The legislators have sought to create a regime whereby offender behaviour is modified by the imposition of a range of obligations around the holding of a driver's licence. The intention of the regime is to impose a sanction around the time of the commission of the offence or shortly thereafter, and it is plain that the Parliament intended to require that certain consequences must flow from the commission of that offence.
41. In my view, when enacting the Motor Vehicles Act the Parliament could not have reasonably foreseen such an event as occurred in this case. I consider that the Parliament should be entitled to assume that the laws which it makes will be implemented effectively, and should not need to construct those laws on the basis that some administrative error may occur at some time in the future.
42. The fact is that there are a number of licence holders who, as a result of committing an offence or offences, will be required to be without a licence for a period of time. In some instances this will cause additional hardship beyond that which would have been imposed had the disqualification notices been issued within a reasonable time. Whilst this is regrettable, the Motor Vehicles Act does not provide for any recourse in the circumstances.
43. On balance, given the Parliament's clear intentions in establishing a 'strict liability' scheme for dealing with the consequences of driving offences, I am not able to conclude that the relevant provisions of the Motor Vehicles Act are unreasonable, unjust, oppressive or improperly discriminatory.
44. In summary, I can see no administrative error in relation to the four issues which I have considered.

## Opinion

I consider that in issuing the disqualification notices, the Registrar has not acted in a manner that is unlawful, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

## Whether the Authority and/or the Registrar should have taken steps to prevent a failure in transferring data

45. I have also considered whether the shortcomings in the Authority's transfer of data should have been identified earlier, either by the Authority or by the Registrar. If this had occurred, the additional hardship caused to the licence holders could have been avoided.

### *The Authority's information systems*

46. The Authority processes a significant number of transactions using CrimCase, and for some time it has recognised that CrimCase is not sufficiently sound to fulfil its required functions. I have considered whether the Authority took sufficient steps to prevent the occurrence which resulted in the delay in issuing the disqualification notices.

47. I have been provided with material to show that the Authority has, on a number of occasions over the past decade, brought to the attention of government the fact that there were business risks inherent in maintaining a dated legacy system such as CrimCase. In a letter to me dated 28 October 2011 the State Courts Administrator stated:

Unfortunately replacing the CrimCase and Civil Case Management Systems (CCMS), being large and complex systems with numerous interfaces to other agencies, is beyond the means of the CAA and requires significant government funding (estimated to be \$20 million).

48. The need for investment in the Authority's information communication infrastructure has been regularly commented on in the Authority's annual reports. In the 2007/2008 Annual Report the Chief Justice stated that, 'Until the Government is prepared to meet that cost, the fact of the matter is that the Council cannot provide services and facilities that are commonplace elsewhere.'

49. In December 2007 the Department of Treasury and Finance identified that system support to the Authority is expensive and 'becoming more difficult to source as the skill base naturally declines'.<sup>12</sup>

50. The Authority has prepared bi-lateral budget submissions in the past. In a submission for the 2008-09 budget the Authority stated:

As the CAA case management systems are integral to the wider Justice system this initiative (system replacement) would provide other justice agencies to modernise their platforms. Included in the scope of this exercise is a requirements analysis of the current data sharing mechanisms between CAA and other Justice agencies.

It was also submitted that:

The main benefits of replacing the Case Management systems are...

- Improved sharing of information between agencies
- Mitigation of the risk of relying on aging technologies and the resulting declining resource skill base.

As part of its risk analysis the Authority stated:

The existing systems will become more expensive to support and less able to accommodate new functionality. This new functionality may need to support an integrated

<sup>12</sup> Courts Administration Authority Financial and Asset Management Review

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Justice system. Will ultimately see support costs rise and an increase in the likelihood of risks occurring.

51. In my view the Authority is mindful of the risks associated with relying on CrimCase, and has properly alerted government to the need to manage these risks.
52. I have also considered whether the Authority should have established internal controls to ensure that it was providing data to the Registrar, as necessary. Whilst the Authority was not under a statutory obligation, there was a long-established practice for it to provide the data to the Registrar; and it was aware that the Registrar relied on the data to fulfil his statutory obligations.
53. In my view the Authority, being aware of the weaknesses inherent in the ageing CrimCase system, should have had in place some mechanism to ensure compliance with the Authority's statutory obligations. In my revised provisional report I proposed that the Authority could have instituted a system to compare the number of applications for relief granted with the number of finalised applications for relief transferred to the Registrar.
54. In responding to this suggestion, the Authority reminded me that it transacts a considerable number of transactions to a variety of agencies on a daily basis. Further the number of transactions varies on a daily and weekly basis such that it would be difficult to use a process of exception reporting to identify discrepancies. The CrimCase system incorporates a number of automated error detection triggers to alert staff to data errors. The automated error detection was not able to identify the software logic error that occurred in this case, because a data file was still being sent to the department.
55. The Authority also informed me that it has introduced further controls to ensure the accuracy of the transactions data sent to the department. I acknowledge the challenges presented to the Authority by the volume of transactions, and I welcome these additional controls.
56. I am mindful that the coding error was not easily identifiable. However, I have noted above the department's assertion that the Authority was made aware in 2010 that there might have been a problem with the integrity of the data held by the Registrar, and that no action was taken at that time. Whilst the Authority and the department apparently differ about the responsibility for this, in my view as a result of a lack of protocol the error was not identified until some considerable time later.

#### *The department's information systems*

57. Within the department, the register of drivers licence details is located in a database known as the Transport Regulation User Management Processing System (**TRUMPS**). It is an aggregator of information that is built around a set of business rules that incorporate the statutory requirements of the Registrar.<sup>13</sup> When data is inputted it matches the data with the business rules and either accepts the data (i.e. the incoming data matches identically with information stored on TRUMPS, and is thus stored automatically in the appropriate location) or it rejects the data. In the latter case, an intervention is required, and the data may then be entered manually.

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<sup>13</sup> This description was provided by the department's Manager Business Systems and Development in a meeting with my officer on 28 October 2011.

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58. In the period 2009 to 2011, whilst the Authority was not providing complete information to the Registrar, it was still sending data files daily. These files were being processed in the usual manner.
59. The department advised me that in 2010 its staff became suspicious that there could be problems with the Authority's records. This was as a result of some police inquiries that showed certain offences were recorded by police, but not recorded in TRUMPS. In each case, the department did not identify any systemic fault within TRUMPS, but did not pick up the systemic failure in data transmission from the Authority. This was not identified until June 2011.
60. The department has submitted that it is not possible for its officers to monitor offence trends or undertake analysis. However, it has advised me that the Registrar has recommended the establishment of an across government committee to consider the governance arrangements 'in relation to inter agency communication including enhancing systems interfaces'.
61. The Authority has commented that the Justice Data Interchange Site Managers Committee, which was established in the 1990s to monitor data exchange between government agencies, already exists and would be an appropriate forum for this discussion. It has also proposed the Change Control Committee, which was established as a result of the Bail Process Improvement Project, as an appropriate forum. I will not express a view as to the suitability of either committee, but it seems to me that the agencies must establish a suitable forum for such discussion to occur.
62. In my view it seems clear that the issue of data integrity and communication is of crucial importance to the functioning of both the Authority and the department and that clear protocols and operational practices need to be fixed and applied to avoid a repeat of this event.
63. The nature of the TRUMPS system as an aggregator of data means that the production of statistical reports is not a key purpose of the system. Consequently the department has a limited ability to identify changes in the volume of data inputted into the system. Further, because data files were being sent to the Registrar with the usual frequency, the variation from file to file was so small as to be imperceptible. I accept that if the variations had been more significant it is more likely they would have been detected. I note, however, that in 2010 the department was aware of inconsistencies in recorded data.
64. Section 73 of the Motor Vehicles Act requires that the Registrar maintain a register of licences and in particular:
- (1) The Registrar must keep a register of the names and addresses of all licensed drivers, and of all endorsements on, and renewals, suspensions, and cancellations of, licences.
  - (2) The register will contain such other information as the Registrar thinks necessary for the administration of this Act and will be in a form determined by the Registrar.
65. The Registrar in maintaining the register and carrying out certain statutory duties under the Motor Vehicles Act relies totally on the transmission of data by the Authority to download into TRUMPS. The risk for the Registrar is that any failure on the part of the Authority (such as occurred in this case) compromises the records of the Registrar and consequently, his fulfilment of his statutory duties.

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66. The relationship between the Registrar and the Authority has been a long standing one, and I consider that the Registrar was aware (or should have been aware) of the risks inherent in the transfer of data from the CrimCase database.
67. The department has submitted that at the relevant time it had risk mitigation strategies in place and that TRUMPS was checked to ensure it was not the source of the problem. However, it appears that the department did not have in place an effective system to identify, mitigate or manage the risks associated with a possible failure of CrimCase.
68. I acknowledge that the Registrar considers that he should be entitled to rely on the Authority fulfilling its established duty, and that the Registrar was not advised of the coding changes made by the Authority in June 2009. Had the Registrar been advised, he would have had an opportunity to undertake some testing which is likely to have identified the error.
69. However, on a number of occasions in 2010 the Registrar's staff had raised concerns that the Authority may not have been providing all relevant data. Because of the central importance of the data to the proper fulfilment of the Registrar's legal obligations and other functions, I consider that he could have taken further steps to manage this apparent risk.
70. A number of public authorities rely on the validity of data in the TRUMPS database in carrying out their functions. I note that my Victorian counterpart in 2007 considered the VicRoads driver licence database in the context of an investigation into driver licensing arrangements in that State.<sup>14</sup> The investigation noted that a range of government agencies rely on the data contained in the VicRoads database to assist in their functions e.g. managing compliance and conducting investigations, and that the licensing system should be 'accurate, up-to-date and responsive to the needs of stakeholders'. It also spoke of the need for stakeholders to have confidence in the integrity and accuracy of the database.
71. In this case, the Registrar was under a legal duty to issue disqualification notices, and the failure in data transmission by the Authority led to:
- the Registrar's inability to comply with his duty within a reasonable time
  - unnecessary additional hardship for various individuals, as evidenced by the complaints to my office
  - the TRUMPS database being unreliable during the period for which the data remained unsent, with possible adverse consequences for public administration in various ways.
72. As I have noted, I have not discovered any evidence that the Registrar put in place a strategy to minimise the risks associated with his reliance on the Authority's data transmission.
73. In its response to my provisional report, the department advised me that:
- Staff from the Registrar's office and CAA have been liaising closely over the last two to three years, with a focus on continuously improving business practices. This includes the processing of Court books and communication links to minimise risks such as the non-provision of CC data occurring again. This work involves reviewing all codes but it must be noted that the single coding error that caused the delay was not detected by the Crim Case programmers.

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<sup>14</sup> [http://www.ombudsman.vic.gov.au/resources/documents/Investigation\\_into\\_VicRoads\\_driver\\_licensing\\_arrangements1.pdf](http://www.ombudsman.vic.gov.au/resources/documents/Investigation_into_VicRoads_driver_licensing_arrangements1.pdf)

Currently there is an operational governance committee which oversees operational business improvements relating to CAA and SAPol data sent to TRUMPS.

To augment this, the Registrar of Motor Vehicles has recommended a high level across-Government Committee, comprising the Registrar of Motor Vehicles, SAPOL and the Registrar of the Court be formed to fulfil a similar governance role in relation to inter-agency communication including enhancing systems interfaces. However, given that CrimCase interfaces with up to 18 other Government enforcement agencies, the composition of the Committee will need to be carefully considered.

Although across-Government Committees and working groups provide many benefits including risk identification and management, it is highly unlikely that they would be in a position to control the risk of a single coding error occurring again.

74. In principle I welcome this initiative, and notwithstanding the department's expressed caution, I trust that it will minimise the likelihood of any similar error remaining undetected for so long in future.
75. Nonetheless, my opinion is that the failure by the Registrar to have in place a risk mitigation strategy to ensure the integrity of data upon which the Registrar relied to fulfil a statutory duty was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

## Opinion

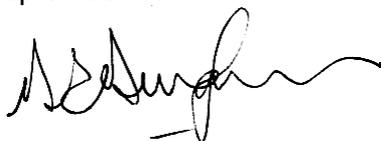
My opinion is that in not establishing internal controls to monitor the transfer of data to the Registrar, the Authority acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

I consider also that the Registrar's failure to have in place a risk mitigation strategy to ensure the integrity of data upon which the Registrar relied to fulfil a statutory duty was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

To remedy these errors, I recommend under section 25(2) of the Ombudsman Act that the Authority and the department should jointly consider what action should be taken to prevent a recurrence of the failure in data transmission, and the failure of internal controls in both the Authority and the department. This action should include appropriate governance arrangements to manage inter agency communication, including enhancing systems interfaces; and should include effective internal controls in both agencies to detect any shortcomings in data transmission.

In accordance with section 25(4) of the Ombudsman Act, I request that the Authority and the department report to me by 30 September 2012 on what steps have been taken to give effect to my recommendations above; and, if no such steps have been taken, the reason(s) for the inaction.

I note also that on publication of this report I intend to invite complainants to approach the Registrar seeking his consideration of their specific circumstances, in accordance with the arrangements which the Registrar advised to all electoral offices and Service SA staff in September 2011.



Richard Bingham  
SA OMBUDSMAN