

ombudsman **VICTORIAN**

**Investigation into allegations of improper conduct
by officers of VicRoads**

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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 sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report into an *Investigation into allegations of improper conduct by officers of VicRoads*.



Deborah Glass OBE

Ombudsman

9 June 2015

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Foreword

This report sets out the investigation into a protected disclosure complaint referred by IBAC to the Ombudsman in October 2014. The discloser alleged that it is “normal practice” for VicRoads Transport Safety Services staff caught speeding in VicRoads vehicles to avoid a fine by claiming unjustifiable exemptions. In effect, the allegation was that some VicRoads staff break the road rules with impunity.

Victorian road rules are clear: road users may not exceed the speed limit, unless the special exemptions for drivers of police, emergency, enforcement and escort vehicles apply. The rationale for both the road rules and the exemptions is unarguably about public safety.

The investigation found that the allegation was substantiated. We found that some VicRoads enforcement officers routinely exceeded the speed limit in VicRoads vehicles without displaying lights or sirens, as required by the road rules. There must be serious doubt about whether at least some of these speeding vehicles were engaged in enforcement activity at all.

Not only did some staff routinely break the rules, the process for investigating infringements and approving exemptions was seriously deficient. Exemptions were approved on no or minimal evidence, and with no or minimal rationale. Senior staff responsible for approving exemptions were not even aware that lights or sirens were necessary.

The result was that VicRoads enforcement officers bore no consequences despite committing offences for which any member of the public would get a ticket and points off their licence.

One of VicRoads’ key aims is the safety of the road system for all road users. Yet this investigation reveals internal failures which could jeopardise the safety of both VicRoads officers and the Victorian public.

The investigation also exposed a culture within a key unit of VicRoads of ignoring the legislation they are responsible for enforcing. One VicRoads enforcement officer told us they “can’t do their jobs” if they did not break the law. People with the power to enforce the law and impose penalties on others must be held to the highest possible standards when it comes to their own conduct. It is a worrying state of affairs when those charged with enforcing the rules not only flout them, but have no qualm in doing so.

The investigation was limited to one area of VicRoads Transport Safety Services, examining 18 of the 40 infringements recorded against VicRoads vehicles over a two-year period. Given the problems identified in this region, the lack of internal controls to monitor exemptions and the confused data, I am recommending that VicRoads review all exemptions approved in the past three years and take appropriate action in relation to any staff who either incurred or approved an exemption inappropriately.

VicRoads’ Chief Executive Officer has told me he is committed to addressing the issues, both cultural and specific, highlighted in this report. Concerns about this area of VicRoads have been raised by the Ombudsman before, including in my predecessor’s 2013 annual report. As a result, a new leadership team was put in place, and I am advised that robust action has been and will continue to be taken to ensure high standards of good conduct.

VicRoads should be leading the way on road safety, and public servants should not forget that they lead by example.

This potentially dangerous and unfair practice came to light as a result of a whistleblower coming forward. Reporting wrongdoing is the first step to rooting it out.

Deborah Glass
Ombudsman

Background

1. On 8 October 2014, pursuant to section 73 of the *Independent Broad-based Anti-corruption Commission Act 2011*, Mr Stephen O'Bryan QC, Commissioner of the Independent Broad-based Anti-corruption Commission (IBAC), referred a complaint about the Roads Corporation Victoria (VicRoads) to my office for investigation under the *Ombudsman Act 1973*.
2. IBAC determined that the information provided was a 'protected disclosure complaint' under the *Protected Disclosure Act 2012*. Under section 15C of the *Ombudsman Act*, I must investigate a protected disclosure complaint about conduct by or in an authority. VicRoads was established under the *Transport Act 1983* and as such is an authority subject to the jurisdiction of the *Ombudsman Act*.
3. On 20 October 2014 I notified the Hon Terry Mulder MP, then Minister for Public Transport and Roads, and Mr John Merritt, the Chief Executive Officer of VicRoads, of my intention to formally investigate the protected disclosure complaint (the disclosure).

The disclosure

4. The disclosure alleged that it is 'normal practice' with speeding infringements issued to VicRoads staff driving VicRoads enforcement vehicles that officers are declared to be exempt without proper investigations being conducted.
5. The disclosure further alleged that:
 - Officer B, an employee in Transport Safety Services (TSS) within VicRoads, claimed an exemption from a speeding infringement he received while driving a VicRoads vehicle. However, Officer B 'has not engaged in any type of enforcement work in years and merely uses the vehicle as transport, therefore the exemption could not be claimed in this instance'

- Director B, the former Director, Regulatory Services, VicRoads, signed a declaration outlining that the matter had been investigated to his satisfaction and that Officer B was exempt from the speeding infringement. However, 'this [speeding] incident was not investigated at all and was merely written off' by Director B.

Investigation methodology

6. The investigation included the examination of:
 - VicRoads documentation
 - VicRoads policies and procedures
 - VicRoads legislation and rules
 - *Code of Conduct for Victorian Public Sector Employees 2007* (VPS Code of Conduct)
 - Traffic Camera Office documentation.
7. Five VicRoads witnesses were interviewed as part of the investigation. They are listed in order of seniority:
 - (1) Executive Director, Regional Services, VicRoads (since retired) – voluntary appearance
 - (2) Director A, Road Operations, VicRoads (since resigned) – voluntary appearance
 - (3) Director B, Regulatory Services, VicRoads (since resigned) – compulsory appearance
 - (4) Officer A, Metro Region, Transport Safety Services, VicRoads – compulsory appearance
 - (5) Officer B, Transport Safety Services, VicRoads – compulsory appearance.

8. This report includes adverse comments about Officer A, Officer B, Director B, Director A and the Executive Director. In accordance with section 25A(2) of the Ombudsman Act, I provided all those named adversely with a reasonable opportunity to respond to the material in the report. Only Officer A responded and his response is fairly set out in the report.

9. In accordance with section 25A(3) of the Ombudsman Act, I advise that any other persons who are identifiable, or may be identifiable from the information in this report are not the subject of any adverse comment or opinion and:

- I am satisfied that it is necessary or desirable in the public interest that the information that identifies or may identify those persons be included in this report; and
- I am satisfied that identifying those persons will not cause unreasonable damage to the persons' reputation, safety or well-being.

VicRoads

10. The objects of VicRoads under section 86 of the *Transport Integration Act 2010* include that it is to improve the safety of the road system for all road users and seek to reduce deaths and injuries.

11. Transport Safety Services (TSS) is in the Regulatory Services division of VicRoads. TSS has offices in a number of locations in metropolitan and rural Victoria. TSS officers are authorised to carry out enforcement, escort and inspection activities under various sections of legislation, for example:

- sections 77(2) and 112 of the *Road Safety Act 1986*

- an authorised person as defined in the dictionary of the Victorian *Road Safety Road Rules 2009* (the Road Rules)
- section 71 of the *Road Management Act 2004*.

12. TSS Authorised Officers (also called enforcement officers) are responsible for improving road safety for all road users by ensuring vehicles comply with legislation. TSS officers can intercept drivers where there is impaired driving and other safety related issues. They can issue penalty notices to members of the public for breach of legislation, including, for example, for speeding and talking on the phone while driving. TSS officers drive both marked and unmarked cars.

13. There are 66 VicRoads officers in Regulatory Services, including approximately 45 TSS officers. There are 48 enforcement vehicles.

Criteria for exemption in the Victorian Road Safety Road Rules 2009

14. Rule 20 of the Road Rules made pursuant to section 95D of the Road Safety Act states:

A driver must not drive at a speed over the speed-limit applying to the driver for the length of road where the driver is driving.

15. The Road Rules apply to all vehicles and road users. However, Part 19 of the Road Rules outlines various exemptions that apply to drivers of police, emergency, enforcement and escort vehicles.

-
16. The exemption that applies to VicRoads staff is Rule 306A in relation to enforcement and escort vehicles. Rule 306A indicates that for an exemption to apply to an enforcement or escort vehicle that is moving, the vehicle must be displaying a light or sounding an alarm:

A provision of these Rules does not apply to the driver of an enforcement vehicle or an escort vehicle if –

- (a) in the circumstances –
 - (i) the driver is taking reasonable care; and
 - (ii) it is reasonable that the rule should not apply; and
 - (b) if the vehicle is a motor vehicle that is moving – the vehicle is displaying a magenta flashing light or sounding an alarm.
17. ‘Enforcement vehicle’ is defined in the dictionary in the Road Rules as meaning a ‘vehicle being used to convey an officer of [VicRoads] ... engaged in connection with the enforcement of ... [various Acts]’.
18. The *Road Safety (Vehicles) Regulations 2009* define an ‘escort vehicle’ as including a motor vehicle that is being used to transport an Authorised Officer and warning other highway users of the presence of certain vehicles, for example, long or heavy loads on trucks.
19. For the purposes of this report, ‘alarm’ in Rule 306A and ‘siren’ are interchangeable. ‘Siren’ is the terminology most commonly used by VicRoads.

VicRoads policies in relation to speeding

20. The VicRoads Safe Driving Policy (1 January 2010) outlines that employees will personally incur the penalties and demerit points attached to all infringements. Exemptions for operational reasons are to be approved by the relevant Director.
21. All VicRoads policies that authorise enforcement officers to exceed the speed limit require the officer to display lights and/or sirens before speeding¹.
22. The policies outline that enforcement officers are only authorised to exceed the speed limit when they are engaged in connection with the enforcement of relevant legislation. This includes, for example, when carrying out enforcement activities, like intercepting a speeding vehicle, or when inspecting or escorting oversized vehicles. VicRoads refers to this type of driving as ‘urgent duty driving’. The policies require all incidents of urgent duty driving to be recorded in the authorised officers’ daily operational handbook.

¹ These policies include: *VicRoads Work Instruction in relation to Interceptions* (28 January 2009); *Work Instruction in relation to Inspection/Escort of Overdimensional Vehicles* (29 January 2009); *TSS Interim Driving Policy* (12 August 2011); *Urgent Duty Driving Policy* (3 November 2014) and the *TSS Driving Competency Policy* (18 November 2014).

Allegation 1

Allegation 1: It is “normal practice” with speeding infringements for VicRoads officers to be declared exempt without proper investigations being conducted

Exemption requests

23. The Victoria Police Traffic Camera Office records show that in the five-year period before January 2015, officers driving VicRoads vehicles received 149 speeding infringements. The infringements were not confined to officers from TSS.
24. My office examined the exemption requests considered by VicRoads between September 2012 and July 2014. Traffic Camera Office records show that during this period of less than two years, officers driving VicRoads vehicles received approximately 40 speeding infringements. The VicRoads main file, which is maintained by the Prosecutions section of VicRoads, shows that there were 18 speeding infringement exemption requests in the same period. However, the information received by this office indicates that the VicRoads main file does not include records of all speeding infringement exemption requests.
25. Of the 18 speeding infringement exemption requests on the VicRoads main file, 13 were approved and five were denied. There were a further five infringement exemption requests relating to failure to obey a traffic light, with all requests approved.
26. There was no documentation on the VicRoads main file showing an analysis of how the Rule 306A exemption criteria applied to any of the requests. Nor was there any documentation outlining the rationale for the exemption being approved. Only one of the speeding infringement exemption requests on the VicRoads main file was accompanied by a statement and supporting documents that outlined both the enforcement activity being undertaken and that lights or sirens were displayed at the time.
27. Officer A's role includes supervising the enforcement activities of team members. He has been in his current role for 15 years. As a supervisor, Officer A completed the Traffic Camera Office Result of Investigation Declaration and Driver Nomination (TCO Declaration) for nine of the speeding infringement exemption requests in the two-year period that my office examined. Of these nine, he completed six in which he declared that the matter had been investigated to his satisfaction and the officer was exempt. For the other three, Officer A declared that the officer was not exempt. Other officers completed a maximum of two TCO Declarations each.
28. The VicRoads main file did not include any statements prepared by the officers who had received the infringement notices to support the exemption requests Officer A considered. Officer A told my office that he keeps a copy of the written statements and any other supporting documents in his own personal file, as he was instructed 16 or 17 years ago not to forward the documents to the VicRoads Prosecutions section to provide to the Traffic Camera Office. Officer A stated:

I was instructed when I started the process not to [provide any supporting documents to the Prosecutions section].

[Ombudsman investigator] *Who instructed you?*

It was the manager at the time, you are going back 16 or 17 years, I can't remember, but that was the process.

29. This practice is not consistent with advice he later provided regarding collection of documents.
30. Officer A provided a copy of his personal file, including the officer statements and supporting documents, to my office. Officer A's file also did not contain any information outlining a rationale or justification for declaring the officers exempt.
31. The statements on Officer A's file show that of the six speeding infringement exemptions approved, only one of the requests was accompanied by a statement and supporting documents that outlined both the enforcement activity being undertaken and that lights or sirens were displayed at the time.
32. In total, only two of the 13 speeding infringement exemptions approved for the period September 2012 to July 2014 fulfilled the criteria for exemption under Rule 306A.
33. Officer A's file also included records relating to two speeding infringements he declared exempt in 2012 and 2013 that were not recorded in the VicRoads main file.
34. In response to my draft report Officer A stated:

I agree that I provided a copy of my file to the investigators. I also accept that my file was incomplete.

...

Notwithstanding that my file was incomplete, I believe that [the relevant documents] could be readily located by VicRoads.

...

I do not agree with the statement that only two of the 13 speeding infringement exemptions met the criteria for exemption. I believe that, if all the documents which should have been considered by the Director were assembled, the documents would show that there was basis on which exemptions could be justified ...

35. Officer A's lawyer stated:

... [T]here will be original documents at VicRoads which, if obtained by your investigators, would give these [sic] a clear insight into the processes followed by Successive Directors [sic] in approving the request for exemptions be made [sic] to the Traffic Camera Office.

...

The only documents shown to [Officer A] in the course of his interview were the Traffic Camera Office records, and spreadsheet which purported to list exemptions he had dealt with.

...

If, when preparing your report, you are relying on documents to support adverse claims against [Officer A] which have not been shown to him, we request that [Officer A] be given an opportunity to examine and comment on these documents.

...

The fact that the supporting documentation was not provided to the Ombudsman does not mean that the supporting documentation does not exist or was not provided to the Director at the time or that the exemption requests were not justified.

36. However, at his interview in January 2015, Officer A was provided a copy of all the original documents relating to TCO Declarations he had completed that were available on the VicRoads main file. This included the TCO Declaration and any supporting material he provided to the Prosecutions section of VicRoads. He was also provided an opportunity to comment on these documents.
37. As outlined above, Officer A stated at interview that copies of relevant material relating to exemptions not on the VicRoads main file were on his own personal file. Officer A was given an opportunity to provide this file and any other relevant documents to my office following his interview. He has had four months since then, including three weeks since receiving a copy of my draft report, to present me with further material to justify the exemptions. He has not presented any evidence that shows that the exemptions could be justified.

Exemptions in VicRoads regional offices

38. All but one of the exemption requests my office examined were made by TSS officers from the Burwood Metro office. There were no exemption requests on the VicRoads main file that had been considered by supervisors from the Eastern, Northern and North Eastern, Western and South Western regional offices. Considering Officer A's file included records of infringements he declared exempt that were not on the VicRoads main file, it is possible that there have been other matters declared exempt by supervisors in the regional offices that are not on the VicRoads main file.

The investigation of exemption requests

39. The current TCO Declaration states:

I [officer name] ... declare that this matter has been investigated to my satisfaction [and]

...

The above driver was operating an Enforcement or Escort vehicle at the time and is thereby exempt from prosecution under the Road Safety Road Rules – Victoria and NO FURTHER ACTION should be taken.

40. Officer A stated at interview that while he completes and swears the TCO Declaration, he does not grant the approval for the exemption himself. He stated that responsibility for granting approval is with the Director, Regulatory Services. Officer A stated that one of his directors in past years was Director B (since resigned).

41. At interview, Director B stated that in 2012 when he was a manager in TSS, he considered approximately six applications for exemptions from infringements. Then in 2013 when he became the Director, Regulatory Services, he considered all speeding infringement exemption requests from staff within the TSS Metro Region.

42. However, there is little record of Director B making the decision on the majority of the exemption requests in 2013, because he did not sign the TCO Declaration. This does not appear to be consistent with the Safe Driving Policy which requires exemptions to be approved by the relevant Director.

43. At interview, Officer A provided conflicting information to my office about:

- whether exemption requests are investigated
- who is responsible for investigating exemption requests
- whether or not he investigated any of the matters.

44. Officer A stated that when a VicRoads staff member in his team receives a speeding infringement, the infringement notice would be provided to him by the Traffic Camera Office. Officer A would then pass this document to the relevant staff member who drove the allocated vehicle, and request that the staff member provide him with:

- an email explaining the circumstances that resulted in the speeding infringement
- a car log
- a running sheet
- any penalty notice or defect notice that the officer issued as evidence of the enforcement activity undertaken.

45. Officer A stated that this was all he had been instructed by VicRoads management to collect.

46. Officer A stated that once he had received this information he made sure that all of the required documents had been provided by the relevant staff member. He then read the email explanation and checked that the person in the car log and running sheet matched up with the person providing the statement. Officer A stated that he did not:

- interview the officer involved or ask them any questions
- analyse the information against the requirements of Rule 306A
- make a recommendation regarding the exemption request.

47. Officer A stated that he then prepared a short memorandum requesting the Director to consider whether the exemption request was approved or not approved. He stated that the Director then read the information and made a hand-written note on the memorandum with their initials or signature indicating 'approved' or 'not approved'. This was often done with a sticky note. He stated that this was the only information provided by the Director in relation to the approval of the exemption.

48. The following are examples of the information provided by the Director in relation to approval:

Example 1: Email in April 2012 from Officer A to a Director. The Director signed and dated the email and the Director's hand-written note on the email stated 'Approved'.

[To the Director], welcome to the Region. As per direction from [the Executive Director] all Traffic Camera Offences must be signed off by yourself. Could you please see the attached and sign off on it by not later than 20/04/12 and return documents to myself so that I may process the documents...

Approved [Noted in hand writing by the Director. Signed and dated 12 April 2012.]

Example 2: Email in March 2014 from Officer A to Director B. Director B circled the word 'approved' and signed the email.

[Director B], please view the attached Traffic Camera File and all relevant supporting documents for your consideration.

Please circle the appropriate.

Approved. [Approved circled. Signed by Director B (not dated).]

Not Approved.

Example 3: Notation by the Director on an email from a TSS Officer in March 2014 outlining the reason for the breach.

I endorse [the officer's] reason for the Road Rule Breach. [Noted in hand writing by the Director and signed (not dated).]

49. Officer A said that neither he nor the Director documented a rationale or justification for approving the exemption under Rule 306A.
50. Once Officer A received the Director's decision, he said he filled out the TCO Declaration and 'processed' it by taking it to Victoria Police to be witnessed. Once the declaration was signed, he forwarded the documents to the Prosecutions section of VicRoads. The Prosecutions section then provided the documents to the Traffic Camera Office.
51. Officer A repeatedly stated that he did not complete an investigation. When asked how he can declare that a matter has been investigated to his satisfaction, Officer A stated that the decision as to whether or not the matter had been satisfactorily investigated was also made at a higher level. He stated:
- I don't investigate it. I don't approve it. I only process it and sign it off.

52. In relation to who actually conducted the investigation, Officer A stated:

It is not an investigation it is a process ... that they [the officer who received the infringement] have to provide that information.

[Ombudsman investigator] *So are you saying that the matter isn't investigated?*

Well, what is an investigation, how far, what type of investigation are you talking about? That is the investigation. They have to provide the information and attach it to the form.

53. When asked whether his Director would have expected Officer A to have completed an investigation of the circumstances, Officer A stated:

I don't know. Because all that we have been told is we provide that information, they make that decision from that information provided.

...

The investigation is what has been instructed to the [supervisors] which we follow by gathering the information from the officers and taking it upstairs for [the Director] to sign off.

54. He agreed that the only thing that happened with the investigation is that the information was provided by the officer to him. When asked if gathering documents was a 'complete investigation' he stated:

If you want to go down the line of if it is a correct process, probably not.

55. In response to my draft report, Officer A stated:

On the basis that my role is to collect and collate information and documents for the Director, not make a recommendation or approve a request for an exemption, I do not believe that I undertake an "investigation". I believe that it is the Director who undertakes the investigation, that is, it is the Director who ascertains the facts having examined the material.

56. In response to my draft report, lawyers for Officer A stated:

As a [supervisor, Officer A] is not in a position to influence the scope or content of the investigations or effect [*sic*] the decision making process undertaken by the Director.

...

In performing his role [Officer A] gives effect to policies made and directions given by others; he does not, for example, determine the scope of rule 306A exemption investigations, nor does he perform any decision making role.

...

[Officer A] has never been required by his Director to indicate his opinion as to whether or not a rule 306A exemption should apply, nor has he been asked to interview the TSS Officer in question.

...

To the extent that [Officer A] should take responsibility for the declaration, his responsibility is limited to stating that the facts contained in the declaration are to his knowledge correct. In this regard when [Officer A] makes a declaration, he does so on the basis that, in accordance with his instructions, he has collected and collated the relevant material, referred it to the Director and the Director has approved seeking an exemption from the Traffic Camera Office. The declaration does not require [Officer A] to have undertaken the investigation, rather, it is sufficient that he is satisfied that the Director has conducted an investigation.

57. I note that the TCO Declaration does not provide the option outlined by Officer A's lawyer, rather, it provides that the matter has been investigated to Officer A's satisfaction. In response to my draft report, lawyers for Officer A also stated:

[T]here is no acknowledgment that [Officer A] makes the declaration at the direction of his Director, that the words used in the declaration are words adopted by the creator of the form, not Officer A ...

58. In response to my draft report Officer A stated:

I do not recall receiving any queries from the Prosecutions Section or the Traffic Camera Office about the adequacy of the declaration.

59. Officer A also stated that once the exemption had been approved there was no need to keep the statement and other supporting documents.

[Ombudsman investigator] *Once the exemption has been approved there is no need to keep the statement and supporting documents anymore?*

Not really. I can't see the relevance of them once it has been approved or not approved...

Nobody has instructed us to keep that information...

60. In response to the draft report, Officer A stated:

I agree that I was not instructed to retain the documents; it was my decision to create the informal file simply to keep the documents in order.

The requirement to display lights or sirens to be eligible

61. All of the VicRoads staff interviewed by my office displayed a belief that VicRoads officers driving enforcement vehicles have essentially the same powers as police. Officer A was the only person interviewed who was aware that to be eligible for an exemption under Rule 306A of the Road Rules, lights or sirens must be displayed. However, Officer A stated that when considering whether to declare an officer exempt from a speeding infringement, he never asked staff whether they were displaying their lights or sirens.

62. In response to my draft report, Officer A stated:

The statement that I "never asked staff whether they were displaying lights and sirens" is not an accurate statement of my position ... On one occasion when the information was not supplied, I sent a follow up email which resulted in the TSS Officer confirming that lights and sirens had in fact been used.

63. In support of this comment Officer A provided my office with a copy of an email dated 14 December 2010 in which he asked a staff member requesting an exemption whether their lights or siren were operating. I note, however, that this exemption request appears to relate to an infringement for failing to obey a traffic light rather than an infringement for speeding. Officer A also provided two emails from May and June 2011 in which the officer requesting an exemption stated that their lights or sirens were displayed. The emails provided do not relate to the relevant period considered by this investigation, that is between September 2012 and July 2014.

64. Officer A stated that he routinely exceeds the speed limit in his VicRoads vehicle without displaying lights or sirens, and that other VicRoads enforcement officers also follow this practice. Officer A stated:

If they are driving along a road... and they see a person on the phone, think he is on the phone, they would exceed the speed limit by a slight amount to see if there is an offence and if there is an offence they would intercept with their lights and siren.
...

They are supposed to operate their lights and siren but in a case like that, if you operate your lights and siren obviously you are not going to see the offence as the person would put the phone away. [Operating lights or sirens] would alert them. So they need to come up with all reasonable care being taken to observe the person committing the offence.

65. Officer A acknowledged that by speeding without displaying lights or sirens, VicRoads officers are breaking the Road Rules:

Technically under the legislation they are not complying with the Road Rules.

66. When it was put to him that he was stating that VicRoads officers are breaking the law by speeding without operating lights or sirens, Officer A said that VicRoads officers could not do their jobs if they did not break the law:

So how do you expect them to do their work? How do you expect the police force to do their work?

...

Under the legislation, yes, they're not allowed to, okay.

[Ombudsman investigator] *But it happens?*

It happens, yes. Otherwise they cannot do their jobs.

...

To do their job that is how we operate, in some cases, not all cases.

67. When asked whether he speeds in a VicRoads car without operating his lights or sirens, Officer A stated:

In some cases yes.

68. When asked if he understands that he is in breach of the Road Rules if he speeds without operating lights or sirens, Officer A stated:

I understand the legislation but we can't do our job if we don't.

69. However, Director A, Road Operations, VicRoads (since resigned) did not consider it reasonable for VicRoads enforcement officers to believe that they must exceed the speed limit without lights or sirens in order to do their job. Director A highlighted the risk to safety for other road users and noted that VicRoads officers speeding is:

[N]ot a good look given that we are trying to promote road safety.

70. Director A stated that where a VicRoads enforcement officer needed to speed, they would need to intensify their visibility to the public and that this is also required of ambulances and fire trucks:

No, I don't think that they should think that they have to speed to do their job properly. They have a vehicle that is a designated VicRoads vehicle for a reason so that they can be visible ... I would expect that if they do have to activate some aspect of their activity which requires them to speed or go through intersections without stopping ... that they do intensify their visibility to the public.

...

[This is] purely and simply from a safety perspective. The same applies for ambulances and police cars and fire brigade ... You know that is a police car, you know that is a fire truck, it is ... big and red. But when it is about to get stuck into it, [it] activates a few things. The same expectation would be of our people.

...

[They need to activate the lights or sirens] for their own safety and for the safety of the people around them.

71. In response to my draft report Officer A stated:

When I was referring to exceeding the speed limit, I was not asked by how much I exceeded the speed limit. In fact, when I exceed the speed limit without using my lights or sirens, I exceed the speed limit by less than 3km/h. The Victoria Police and VicRoads do not take enforcement [*sic*] against a driver who exceeds the speed limit by less than 3km/h.

On occasions where, for example, I suspect that a driver is using a mobile telephone or not wearing seatbelts, I exceed the speed limit by no more than 3km/h to enable me to catch up to the vehicle and observe whether or not an offence is being committed.

I do not, on these occasions, use my lights or siren as this would simply alert the driver to my presence and allow the driver to cease using the phone and buckle his or her belt and thereby escape detection.

...

As a TSS Officer, I have a VicRoads silver driving competency and have as a TSS Officer only received two or three infringement notices. On each occasion, it was determined that a rule 306A exemption should apply.

...

[In referring to other TSS Officers exceeding the speed limit without operating lights or sirens] I am referring to occasions when I am in vehicles driven by other TSS Officers. I have also observed them exceeding the speed limit by less than 3km/h. As stated in the interview, I can not say how often other TSS Officers do this.

72. In response to my draft report, Officer A's lawyer stated:

[Officer A] has an almost perfect record as a private driver over 43 years. To the best of his recollection, [Officer A] has on only two or three occasions been the subject of a Traffic Camera Office offence in his official capacity. On each occasion the Traffic Camera Office accepted that the rule 306A exemption applied.

...

As there is no other evidence of speeding by [Officer A] the only finding open to you is that [Officer A], on occasion [*sic*] basis, for genuine operational reasons, exceeded the speed limit by no more than 3km/h.

73. However, records seen by my office show that in a two-year period between 2007 and 2009 Officer A received seven infringements for speeding. The infringements show that Officer A repeatedly exceeded the speed limit by more than 3 kilometres per hour.
74. The infringements, noting the detected speed, are as follows:
- 27 September 2007 infringement for speeding 78 kilometres per hour in a 70 kilometre per hour zone
 - 26 August 2008 infringement for speeding 67 kilometres per hour in a 60 kilometre per hour zone
 - 31 October 2008 infringement for speeding 110 kilometres per hour in a 100 kilometre per hour zone

- 8 December 2008 infringement for speeding 109 kilometres per hour in a 100 kilometre per hour zone
- 25 February 2009 infringement for speeding 79 kilometres per hour in a 60 kilometre per hour zone
- 17 June 2009 infringement for speeding 110 kilometres per hour in a 100 kilometre per hour zone
- 4 September 2009 infringement for speeding 70 kilometres per hour in a 60 kilometre per hour zone.

75. In each instance Officer A confirmed on the TCO Declaration that he was the driver of the vehicle and requested an exemption.
76. Information received by this office is that prior to 2010 VicRoads did not follow any process to check whether the officer was acting as an enforcement officer at the time of the speeding infringement, or that lights or sirens were displayed. Prior to 2010 the process only involved the manager ascertaining which officer was driving the vehicle, and having a conversation with that officer.
77. The procedure requiring the officer to provide their car logs, running sheet and an email outlining the circumstances was only implemented following a team meeting in July 2010. As a result, there are no documents available to my office to assess whether it was appropriate for Officer A to be declared exempt for the seven speeding infringements he received between 2007 and 2009.
78. The speeding infringements Officer A received between 2007 and 2009 were not part of this investigation. My office has previously investigated allegations that exemptions were approved inappropriately prior to July 2010. However, as there was no procedure to check exemption requests, the allegation could not be substantiated. The information relating to speeding infringements Officer A incurred during that time has been included in this report in response to his statements about his driving behaviour.

79. In response to the information this office has about the seven speeding infringements Officer A received in the two-year period, Officer A's lawyer stated:

[Officer A] is prepared to accept the accuracy of the information you have provided and regrets that he was not able to recall more accurately the number of incidences when he received infringement notices. Nonetheless, [Officer A] does not accept that the receipt of these notices is evidence that he routinely exceeded the speed limit without using his lights and siren.

Findings

80. Evidence suggests that VicRoads staff are speeding in enforcement vehicles without lights or sirens displayed. This is in breach of Rule 306A of the Road Rules. It is also in breach of VicRoads policies, including the following:

- Work Instruction in relation to Interceptions
- Work Instruction in relation to Inspection/Escort of Overdimensional Vehicles
- Safe Driving Policy
- Urgent Duty Driving Policy.

81. From the evidence provided by Officer A and from the available VicRoads documentation, the investigation of speeding infringement exemption requests is seriously deficient. This is also addressed in the evidence provided by Director B and discussed in the findings for Allegation 3.

82. The investigation process is flawed in that:

- while it is the Director's responsibility to approve exemptions under the Safe Driving Policy, it is unclear who is responsible for investigating those requests
- it is unclear what is required of the investigator

- despite completing and signing the TCO Declaration declaring that the matter has been investigated to their satisfaction and the officer is exempt, VicRoads management have not been required to conduct an investigation in order to approve an exemption

- the investigation does not involve an analysis of the factual circumstances against the criteria outlined in Rule 306A of the Road Rules. Nor are staff requesting exemptions asked any questions, including whether lights or sirens were displayed

- the person investigating and/or approving the exemption is not required to document a rationale or justification for approving the exemption. The rationale for each of the 13 exemptions approved between September 2012 and July 2014 is unclear

- further, the VicRoads main file often does not include statements or supporting documents relied on to approve the exemption. Evidence provided by Officer A is that staff have not been instructed to keep this information. The VicRoads main file does not include records of all the exemptions that have been approved

- only two of the 13 speeding infringement exemption requests examined fulfilled the criteria for exemption under Rule 306A. Specifically, only two requests were accompanied by a statement and supporting documents that outlined both the enforcement activity being undertaken and that lights or sirens were displayed at the time.

83. Further, considering VicRoads policy required the Director to approve the exemption, the Directors should not have delegated the signing of the TCO Declaration to more junior officers, including Officer A.

84. As a public sector employee, Officer A is bound by the VPS Code of Conduct. Under clause 5.2 of the VPS Code of Conduct, Officer A is required to make decisions and take actions within the scope of his authority that are lawful and consistent with relevant legislation and government policy. Under clause 5.6 he is required to be aware of and comply with all legislation relevant to the performance of his duties. Officer A's actions in:

- declaring that staff are exempt where staff are not eligible under rule 306A of the Road Rules and various VicRoads policies
- speeding without lights or sirens contrary to Rule 306A

appear to be in breach of clauses 5.2 and 5.6 of the VPS Code of Conduct.

85. In response to my draft report, Officer A stated:

I do not agree that I personally support the granting of the exemption – I am simply indicating that the exemption is supported by the Director. [Officer A's emphasis.]

...

[I]n collating and collecting documents, and making the statutory declaration, I am not making a judgement about whether the exemption should be supported.

86. In response to my draft report, lawyers for Officer A stated:

We accept that both the process of having a statutory declaration made by someone other than the relevant VicRoads decision maker, and the language used in the declaration may be seen as unsatisfactory and that a better procedure would be for the Director to complete the statutory declaration using a better designed form that would ensure the decision maker put his or her mind to each of the elements required to be considered for the purposes of rule 306A. These shortcomings are not, however, matters over which [Officer A] has any control nor are they matters which are so patently incorrect that a person at [Officer A's] level should be expected to bear responsibility.

...

[Officer A's] part in the matters under investigation must be seen to be a reflection of a systemic issue rather than some neglect or misconduct on his part.

87. Finally, Director A outlined that the purpose of displaying lights or sirens is to intensify visibility to the public to ensure public safety. VicRoads enforcement officers exceeding the speed limit without operating lights or sirens means that they are not intensifying their visibility to the public. This presents a risk to public safety.

88. In response to my draft report Officer A stated:

I disagree with the proposition that by exceeding the speed limit I present a risk to public safety. As a very experienced TSS Officer, I believe I am able to make judgments about whether exceeding the speed limit by less than 3km/h presents a risk to public safety.

89. Officer A's comment shows a disregard for the law he is required to enforce for the purpose of road safety.

90. The allegation that it is "normal practice" with speeding infringements issued to VicRoads staff that officers are declared to be exempt without proper investigations being conducted has been substantiated. Further, my investigation has found that VicRoads employees in TSS appear to be in breach of Rule 306A of the Road Rules by speeding without lights or sirens displayed.

Allegation 2

Allegation 2: Officer B improperly claimed an exemption from a speeding infringement

Officer B

91. Officer B is employed in the TSS Division of VicRoads. He has been employed in his current role since January 2011 and employed at VicRoads for more than 30 years. He is a VicRoads Authorised Officer.
92. Officer B drives a VicRoads enforcement vehicle and holds a VicRoads Silver Driving Competency that was issued on 30 December 2011. Evidence shows that Officer B occasionally undertook enforcement work from 2011 on. However, this was not his primary role. Part of Officer B's role included drafting policy, and he was involved in developing the following:
 - Interim Driving Policy
 - Urgent Duty Driving Policy
 - Driving Competency Policy.

Sequence of events in relation to the speeding infringement exemption

The speeding infringement

93. The documents obtained by my office included an infringement notice which indicated that a vehicle allocated to Officer B was detected on 19 December 2012 at approximately 1:00pm at Elgar Road, Burwood. The infringement offence was "exceed speed limit ... by less than 10KM/H" in a 60 kilometre per hour zone. The detected speed was 67 kilometres per hour. The penalty for the speeding offence was \$198.60.

The first statement

94. For the purpose of seeking leniency, Officer B prepared a statement dated 14 February 2013 in which he stated he was the driver of his allocated vehicle on 19 December 2012 at 1:00pm. This statement outlined the factual circumstances that resulted in the speeding infringement, specifically, that Officer B undertook an evasive action to avoid a collision with a Toyota Tarago. Officer B stated that Director B advised him that he was denied an exemption on the basis of the information provided. Officer B provided my office with a copy of the first statement following his interview.

First statement dated 14 February 2013

My full name is [Officer B] ... and I am an authorised officer of the Roads Corporation ...

At approximately 1300 hrs on 19 December 2012, I was on duty and driving my allocated vehicle ... in a northbound direction on Elgar Road on a journey from the VicRoads office at Burwood East to the VicRoads office at Camberwell ...

I was approaching the intersection with Begonia Street and travelling in the right lane to overtake a slower moving vehicle travelling in the left lane. I identified that vehicle as a Toyota Tarago ... As I drove alongside and slightly to the rear of this vehicle, it suddenly veered into my lane. With no time to check my rear vision mirror for following vehicles, I observed there was no traffic approaching from the opposite direction so to avoid a collision I took evasive action by moving onto the wrong side of the road and accelerating to clear the other vehicle ...

This course of action that I took avoided a collision with the Toyota Tarago vehicle and also reduced the risk of a rear end collision by not braking to avoid that vehicle.

The second statement

95. In March 2013, following the rejection of his first request, he prepared a second undated statement in which he stated he was the driver of his allocated vehicle on 19 December 2012 at 1:00pm. The second statement omitted the factual circumstances that resulted in the speeding infringement. Officer B states that he omitted this information on the basis of advice he received from Director B. After receiving the second statement, Director B prepared and signed a TCO Declaration dated 14 March 2013 declaring that he had investigated the matter to his satisfaction and that Officer B was exempt from the speeding infringement. The second statement and TCO Declaration were provided by Director B to the Prosecutions section of VicRoads to give to the Traffic Camera Office to justify the exemption.

Second statement (undated)

My full name is [Officer B] ... and I am an Authorised Officer of the Roads Corporation under Section 77(2)(d) of the Road Safety Act 1986.

I am the holder of a full category Victorian car driver licence ... and a Roads Corporation Silver Driving Competency ... for Urgent Duty Driving under Roads Corporation policies. I have been an Authorised Officer for the Roads Corporation for 11 years.

At approximately 1300 hrs on 19 December 2012, I was driving my allocated vehicle ... in a northbound direction on Elgar Road, Wattle Park. [My allocated vehicle] *is an Enforcement Vehicle defined in Rule 4 of the Road Safety Road Rules 2009.* [Officer B's emphasis]

At this time and location, I was driving the vehicle on duty and operating as an Enforcement Officer under the provisions of Rule 306A of the Road Safety Road Rules 2009.

The second statement omitting the factual circumstances that was presented to the Traffic Camera Office to justify the exemption

96. When presented with the second statement at interview, Officer B confirmed that he was the driver of his allocated vehicle on the relevant day; that he was responsible for the speeding infringement; and that he prepared the second statement.
97. The second statement outlines that Officer B 'was driving the vehicle on duty and operating as an Enforcement Officer under the provisions of Rule 306A of the Road Safety Road Rules 2009.' However, at interview Officer B stated that at the time of the speeding incident, he had taken evasive action and had sped up to avoid a collision with a Toyota Tarago. He stated that while he was driving a VicRoads enforcement vehicle he was:
- in transit
 - not performing enforcement duties at the time
 - not in an urgent duty driving situation
 - not displaying his lights and/or siren.
98. Officer B provided my office with a copy of his diary for 19 December 2012 in which he wrote that he had a near miss with a white Toyota Tarago at 1:00pm.

The first statement outlining the factual circumstances involving an evasive action

99. Officer B acknowledged that normally statements need to include more specific information than that which was included in his second statement. He said that a statement would normally include a description of the events that led to the breach and refer to a diary or a vehicle log, or an infringement that was issued. When queried why he did not include the factual circumstances in the second statement, Officer B stated:

Because there was actually two statements. I certainly signed [the second statement] but there is [a first] statement that explains what happened with the Toyota Tarago and the evasive action which came back to me from [the Executive Director].

100. Officer B said that he provided the first statement to Director B in February 2013. The first statement outlines details of an evasive action he took to avoid a collision with a Toyota Tarago.
101. At interview, Director B confirmed that Officer B had informed him about this incident and that he was aware that the speeding infringement resulted from an evasive action taken to avoid a collision with a Toyota Tarago.
102. Officer B stated that in the first statement he was not claiming an exemption under Rule 306A and rather was claiming leniency based on the situation described. On the TCO Declaration there was an option for Director B to declare that leniency should be applied by selecting that the driver was 'NOT exempt from prosecution', however that he was of the view that exceptional circumstances exist and a caution notice should be issued.

The first statement failed to meet the criteria for exemption

103. Officer B said that he believed that the Executive Director, Regional Services (since retired) had stated that on the basis of the factual circumstances outlined in the first statement, he was not eligible for an exemption:

I filled in a statement at the time and that was presented to [Director B] and then subsequently to [the Executive Director] Regional Services. [The Executive Director], I did notice a comment he made when the file was returned to me that I probably wasn't within the exemption at the time in his perception of things because it was just an evasive action [rather] than an action on duty or under the provisions under 306A.

104. Officer B provided my office with an inter-office memo regarding the traffic infringement notice issued to his allocated vehicle on 19 December 2012. On the inter-office memo are undated hand written comments by Director A, in which he asked the Executive Director whether Director B should handle the matter. Director A's note stated:

[Executive Director] Regional Operations
...

Are you happy for [Director B] to now handle this one (or still me?)?

I am inclined to suggest 'NOT EXEMPTED' in this case.

The Executive Director's note stated:

[Director B]. Tend to agree with [Director A]. Can you deal with this please.

105. Officer B said that following this, Director B told him that an exemption would not be approved on the basis of the evasion of the Toyota Tarago. However, Officer B said that he then provided the second statement to Director B when he met with him at a café in Kew in March 2013.

The Northern Territory Case

106. When queried why he completed the second statement to request the exemption when he was aware that the first statement was viewed by Director A and/or the Executive Director as not fulfilling the exemption requirements, Officer B stated that it was as a result of advice he had received from Director B:

[Director B] and I met and I remember the date was the 13th of March and we discussed the matter and because there had been a lot of conjecture about these issues and changes to corporate policies I was advised because I was on duty and because there is case law in the Northern Territory that says that if you are on duty you could apply for the exemptions, and so that is what I did. On the relevant document that I signed and [Director B] counter signed.

107. At interview when queried about Officer B's exemption request and what he had asked Officer B regarding whether his lights or sirens were operating at the time, Director B stated the following:

... [T]here is a case in regards to this type of action from the Northern Territory where it is on patrol. It is a police case and it is case law... [T]he case law really says that the vehicle doesn't need to be displaying lights and/or sirens if they are on patrol checking vehicles ...

That is some of the consideration that I would take into account when reviewing these reports ...

My recollection is that it is an instance where a Northern Territory police officer was on patrol. I think may have been picked up by a speed camera and successfully argued that whilst in performing his duties of checking vehicles that he fulfilled his requirements as long as he was ... taking all reasonable care.

108. Officer B provided a copy of the case *Bryson v Fensom* [2002] NTSC 25. The case relates to a police officer in the Northern Territory who received an infringement for driving over the speed limit on two occasions while performing enforcement duties, but not displaying lights or sirens. The case highlights the exemption for drivers of police vehicles under Rule 305 of the Australian Road Rules which is identical to Rule 305 under the Victorian Road Rules.

109. Rule 305 of the Victorian Road Rules states that drivers of police vehicles must be displaying a blue or red flashing light or sounding an alarm unless, in the circumstances, it is reasonable not to display the light or sound the alarm, or for the vehicle not to be fitted with a light or alarm.

- (1) A provision of these Rules does not apply to the driver of a police vehicle if -
 - (a) in the circumstances -
 - (i) the driver is taking reasonable care; and
 - (ii) it is reasonable that the provision should not apply; and

- (b) if the vehicle is a motor vehicle that is moving - the vehicle is displaying a blue or red flashing light or sounding an alarm.
- (2) Subrule (1)(b) does not apply to the driver if, in the circumstances, it is reasonable -
 - (a) not to display the light or sound the alarm; or
 - (b) for the vehicle not to be fitted or equipped with a blue or red flashing light or an alarm.

110. Officer B's evidence was that he was in transit, and not performing enforcement duties. As such, the factual circumstances of *Bryson v Fensom* are different. Officer B acknowledged at interview that the set of circumstances in the case did not apply to his own circumstances.

111. Further, *Bryson v Fensom* clearly does not apply to VicRoads officers driving enforcement vehicles. It applies to police and specifically mentions Rule 305, not Rule 306A. While police have discretion under Rule 305 not to display lights or sirens, VicRoads officers do not. There is no discretion in Rule 306A.

The Traffic Camera Office Result of Investigation and Driver Nomination declaration

112. I note that the TCO Declaration used by Director B and previously used by other officers in TSS states 'that a person making a false declaration is liable to the penalties of perjury'. However, the new version of the TCO Declaration relating to enforcement and escort vehicles only states 'that a person making a false statement may be liable to prosecution'. For the declaration to constitute a statutory declaration under section 107 of the *Evidence (Miscellaneous Provisions) Act 1958* it should state:

I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

113. The TCO Declaration should be updated to reflect this.

Findings

114. The evidence suggests that Officer B was not eligible for the exemption under Rule 306A of the Road Rules, as he was:
- not performing any enforcement or escort activities
 - merely in transit
 - not displaying lights or sirens.
115. I note that Officer B was forthcoming to my officers and to Director B about the circumstances that resulted in the speeding infringement. However, Officer B was also aware that Director A and/or the Executive Director had indicated that he was not eligible for the exemption on the basis of the factual circumstances outlined in his first statement. Despite this, he prepared a second statement omitting the factual circumstances in order to claim an exemption.
116. Officer B's evidence is that he relied on advice from Director B and the 'Northern Territory case law' in order to prepare the second statement claiming the exemption. However, considering his:
- knowledge of and involvement in drafting VicRoads policy
 - knowledge that to speed for urgent duty driving, VicRoads officers must be engaged in enforcement activity and must display lights or sirens
 - completion of the Silver Driving Competency
- Officer B should have been aware of the criteria for exemption under Rule 306A.
117. As a public sector employee Officer B is bound by the VPS Code of Conduct. Under clause 5.2, Officer B is required to make decisions and take actions within the scope of his authority that are lawful and consistent with relevant legislation and government policy. Officer B's action in preparing the second statement omitting the factual circumstances and stating he was on duty and operating as an Enforcement Officer when he was not engaged in any enforcement activities appears to be in breach of clause 5.2 of the VPS Code of Conduct.
118. While my recommendation includes taking disciplinary action against Officer B, I do not consider Officer B misled Director B as to the factual circumstances that resulted in the infringement. Officer B was also forthcoming in his evidence to my office and provided documents, both of which greatly assisted my investigation. I note also that the evidence suggests this was Officer B's first time receiving a speeding infringement at VicRoads and the first time he had sought leniency or an exemption.
119. While Officer B made a request for leniency and then for an exemption, it was Director B's responsibility to investigate the matter and ensure leniency or an exemption was approved appropriately.
120. The allegation that Officer B claimed an exemption when he was not conducting enforcement work, and was merely using his vehicle as transport when the exemption could not be claimed, has been substantiated.

Allegation 3

Allegation 3: Director B did not investigate the speeding infringement and “wrote it off”

Director B

121. At the time he completed the TCO Declaration in March 2013 Director B was the VicRoads Director, Regulatory Services. Director B was responsible for approving exemption requests for staff that reported to him, including Officer B.
122. Director B confirmed that he had completed the TCO Declaration dated 14 March 2013 relating to Officer B’s application for exemption. On the form, he declared that the matter had been investigated to his satisfaction, and that Officer B was exempt under the Road Rules.

Policy in relation to investigation of speeding infringement exemptions

123. My office could not identify any VicRoads policy or procedure detailing what the investigation of a speeding infringement issued to a VicRoads officer should involve. Interviewees told my office that what actually occurred was not an investigation but rather a ‘process’.
124. While there may be no policy to outline what the investigation should involve, it is reasonable to expect that a person responsible for considering an application for an exemption, in this case Director B, would enquire into whether the requirements for exemption under Rule 306A of the Road Rules had been fulfilled. Further, Director B should have identified whether the action taken by Officer B was consistent with the Work Instructions in operation at the time in relation to Interceptions and/or Inspection/Escort of Overdimensional Vehicles and with the VicRoads Safe Driving Policy.

125. Director B stated that the normal investigation process for exemption requests involved the officer producing a statement detailing the factual circumstances surrounding the infringement:

The person who was driving the vehicle would be given the opportunity to provide evidence of what they were doing on the day, so like a diary entry, running sheet, something like that to say look I remember I was doing this, I was checking this vehicle, I pulled this vehicle up and I was acting as an ... enforcement vehicle.

126. Director B stated that once he received the statement he would make his decision and complete the TCO Declaration. When asked at interview how often he approved exemption requests he received, Director B stated:

Generally [exemption requests] would be approved.

127. He stated that circumstances where an exemption request would not be approved included:

If someone wrote in and ... their report says I can’t remember, they have gone through a speed camera, I can’t remember what I was doing...they couldn’t give any reason why they were exceeding the speed limit. It would be very difficult to justify.

The factual circumstances that resulted in the speeding infringement

128. When asked about the speeding infringement incurred by Officer B on 19 December 2012, Director B stated that he was aware that there had been an incident where another driver had ‘pulled out’ and that the speeding infringement resulted from the evasive action Officer B took to avoid a collision. He stated that he recalled a conversation with Officer B about this incident. However, he did not have a real recollection of the details.

129. When queried whether he asked Officer B to provide details about this incident, Director B stated that he could not recall what his conversation with Officer B was, but that he imagined that he would have.

Director B's decision to declare Officer B exempt

130. Officer B's evidence was that he provided Director B a copy of his first statement outlining the details of the evasive action with the Toyota Tarago. Director B could not recall whether he received the first statement, but he acknowledged that if the only information about the circumstances that was available related to an evasive action, then this would not be sufficient to justify an exemption.

131. When provided a copy of Officer B's second statement, Director B stated that he could only assume that Officer B provided more details that would have supported the exemption:

I can't remember but I imagine that I would have had a further conversation with him around that, given that [the second statement] is pretty scant.

132. Director B stated that he did not document any conversation he had with Officer B or any other employees regarding exemption requests. However, he acknowledged that it would be appropriate for these conversations to be documented.

133. Director B stated that he was surprised that the details of the incident with the Toyota Tarago were not included in Officer B's second statement. He also stated that he did not know how in the context of the second statement, speeding up to avoid a collision with a Toyota Tarago would involve enforcement work.

134. When asked whether the content of the second statement was sufficient for him to declare Officer B exempt, Director B stated:

Oh look, it is not perfect. It says that he is operating as an enforcement officer and driving the vehicle but ... you would generally, I would think that it would need a bit more information, a bit more detail.

135. Director B stated that Officer B would not be eligible if he was not doing enforcement work. When queried how he justified the exemption request in the circumstances considering Officer B was not performing any enforcement activity and rather, was avoiding a collision, Director B stated:

I can only imagine or assume that in the conversation we had [Officer B] supplied some additional justification. But yes, [the second statement] doesn't really give enough detail in regards to exemption. It generally is not as detailed as I would expect.

... [Officer B should have included details as to] exactly what he was doing at the time ... and the reason he exceeded the speed limit.

136. Director B also acknowledged that Officer B's lights or sirens may not have been operating because this information was not detailed in the second statement. Director B did not ask Officer B any questions about whether his lights or sirens were displayed. He stated this was due to 'the Northern Territory case', which he considered in making a decision as to whether to approve an exemption.

137. Director B acknowledged that he had not looked at the exemption that applied to police officers to consider how it differed from the exemption applicable to VicRoads enforcement officers. He had not requested any legal advice and he did not know if VicRoads had done any analysis of the case. Director B also stated at interview that Officer B would have to be engaged in enforcement duties in order for 'the Northern Territory case' to apply.

138. Director B did not document his rationale for approving the exemption under Rule 306A. He was unable to elaborate on this at interview, repeatedly stating that he could not recall. As such, his rationale for approving the exemption remains unclear and he could not justify that it was reasonable for the exemption to be approved.

Involvement of the Executive Director in the decision making

139. The Executive Director stated that it was the Director's responsibility to ensure exemption requests were approved appropriately. However, he stated that as he was the Executive Director of the TSS area at that time, he would also take some responsibility.

140. Director B could not recall receiving any information from the Executive Director or anyone else in relation to eligibility for exemption for Officer B. However, at interview the Executive Director stated that a copy of the inter-office memo with handwritten notes was provided to Director B.

141. The Executive Director stated that his notation on the memo was his agreement with Director A that Director B should deal with the exemption request.

142. The Executive Director stated that he did not recall reviewing either statement prepared by Officer B as this was not part of his role. When asked whether Officer B would be eligible on the basis of the first statement regarding the evasive action taken to avoid a collision, the Executive Director stated that Officer B was not performing the duties of an Authorised Officer to justify the exemption. He stated that he was doing something that any other VicRoads or government employee may do and they may get a ticket. He stated:

No one else would be exempt.

143. In relation to the second statement omitting the factual circumstances and whether Officer B would be eligible on the basis of that information, the Executive Director stated:

I wouldn't think so at all. No ... There is nothing ... to justify why he may have broken the law in doing his duty. All he is saying is he was on duty. He is not allowed to break the law when he is on duty. He is only allowed to do that if he is performing a function like catching a speeding truck ...

[Declaring an exemption for the circumstances outlined by Officer B] would imply that every day when all of our authorised officers are driving down for lunch because they are licenced and in an [enforcement] vehicle they are allowed to break the law. That is not right.

144. The Executive Director stated that he would have expected Director B to record any conversations with Officer B about the factual circumstances and also to make a note justifying why the exemption was approved, particularly where that was not evident.

Involvement of Director A in the decision making

145. Director A also could not recall reviewing either statement prepared by Officer B. He stated that the exemption request was around the time of a restructure. While he had previously considered exemption requests, Director B was the Director at this time, and this was why he suggested that Director B deal with the matter. Regarding the reason he noted in the memo that Officer B would not be exempt, Director A stated that the details of the first statement may have been described to him by Director B, and as a result, he said that Officer B should not be exempt.

146. Director A said that if he had been presented with the second statement, he would have asked Officer B to demonstrate to him how he was operating as an enforcement officer. He said that 'absolutely' more information was required than what was in the second statement, and that Officer B would need to outline whether he was intercepting or escorting a vehicle. Director A stated that it was the responsibility of the person investigating and approving the exemption to obtain this information.

147. When queried whether Director B should have approved an exemption solely on the basis of the second statement, Director A stated that there may have been a further conversation between Director B and Officer B:

I don't know what extra conversation was had. I don't know what information was provided. But on the basis of [the first statement] it is hard to conclude that there could have been any more tangible information that could have been provided that should have led to the decision to [approve] the exemption...

If there was more conversation it would have had to have had some significantly different information to what was in [the first statement] for the exemption.

Findings

148. It was Director B's responsibility to investigate the incident to ensure he approved the exemption appropriately.

149. Director B's evidence suggests that the conversation he had with Officer B did not involve significantly different information from that in the first statement. Officer B told him about an incident involving an evasive action to avoid a collision with another vehicle. Regardless of whether Director B received the first statement or not, he was aware of the factual circumstances that resulted in the speeding infringement.

150. It is clear from Director B's own evidence that the statement that he relied on (Officer B's second statement) did not contain sufficient detail.

151. The only additional information Director B had about the circumstances was that Officer B incurred the speeding infringement as a result of evasive action taken to avoid a collision. From his own evidence, as this was the only information he had available, he should not have approved the exemption.

152. Director B's investigation of the speeding infringement was seriously deficient in that he:

- did not ask Officer B sufficient questions about the evasive action he took to avoid a collision, including the reason he exceeded the speed limit and the legislation he was enforcing at the time
- was unaware of the criteria for exemption under Rule 306A and that lights or sirens must be operating for the exemption to apply
- did not ask any questions about whether Officer B was displaying lights or sirens as he believed this was not necessary due to the Northern Territory case
- considered the Northern Territory case in making his decision despite not assessing whether the case had any relevance to VicRoads officers driving enforcement vehicles or seeking advice about this. As already pointed out, it is quite clear the case does not have any relevance to VicRoads officers driving enforcement vehicles. Rather, it relates to police
- did not document any conversations he had with Officer B about the incident

-
- did not assess the exemption request in light of the policies that applied at the time
 - did not document any rationale or justification for approving the exemption.

153. As a public sector employee with VicRoads, Director B was bound by the VPS Code of Conduct. Under clause 5.2 of the VPS Code of Conduct Director B was required to make decisions and take actions within the scope of his authority that are lawful and consistent with relevant legislation and government policy. In declaring Officer B exempt in circumstances where Officer B was not performing enforcement or escort duties and was not displaying lights and/or sirens, Director B made a decision that is inconsistent with rule 306A of the Road Rules and with various VicRoads policies. This appears to be a breach of clause 5.2 of the VPS Code of Conduct.

154. The allegation that Director B did not investigate the speeding infringement and merely “wrote it off” has been substantiated.

Conclusions

155. My investigation found that Officer A, repeatedly, and Officer B, once, exceeded the speed limit in VicRoads vehicles without lights and/or sirens displayed. Officer A believes that other VicRoads officers also follow this practice. This is in breach of Rule 306A of the Road Rules.
156. My investigation also found that the process for investigating speeding infringements received by VicRoads employees is seriously deficient and that exemptions are approved where staff are not eligible.
157. Only one of the officers interviewed by my office demonstrated an understanding of the criteria for exemption under Rule 306A of the Road Rules. I question whether a number of the officers appreciated the rationale behind the rule – public safety.
158. The responses of the VicRoads employees interviewed, including:
- Director B and Officer A in relation to exemptions being approved without investigators establishing whether the legal requirements were met
 - officers interviewed demonstrating a lack of understanding of the criteria for exemption under Rule 306A

highlight a culture in TSS of ignoring the legislation they are responsible for enforcing for the purpose of maintaining road safety.

159. Considering that none of the directors interviewed understood the criteria for exemption under Rule 306A, they were not in a position to fulfil their role of ensuring staff were aware of their obligations under the Road Rules.

160. Finally, Officer A's response that he speeds without lights or sirens, and that other officers also follow this practice, highlights a culture of entitlement amongst VicRoads officers in TSS to breach the legislation they are responsible for administering.
161. While my office only examined 18 speeding infringement exemption requests relating to officers in the Burwood office, considering:
- the number of exemptions that were approved over a period of just under two years that did not fulfil the criteria under Rule 306A
 - the lack of internal controls to monitor exemptions

it is possible that this is a systemic issue that applies across all TSS regions. This needs to be addressed by the VicRoads executive.

Recommendations

In relation to the conduct of VicRoads staff members, I recommend that VicRoads:

Recommendation 1

Take appropriate disciplinary action against Officer A and Officer B for breach of the VPS Code of Conduct.

In relation to the investigation procedure, I recommend that VicRoads:

Recommendation 2

Create an investigation policy and review the procedure for consideration of infringement exemptions, including that infringement exemptions are to be approved at the Executive Director level.

Recommendation 3

Provide training to all VicRoads officers, including in particular enforcement officers, on the new investigation policy.

Recommendation 4

Audit all infringement exemptions for the three-year period between May 2012 and May 2015. In accordance with section 23(4) of the Ombudsman Act, I request that VicRoads report the results of the audit and any action taken to my office within six months.

In response to my draft recommendations, the Chief Executive of VicRoads stated:

I accept the recommendations.