Rights on the road
> the experiences of older Victorian drivers
One of the key themes to emerge from the Commission’s Forum on the Rights of Older People in 2011 was the stigma still attached to ageing. This included stereotypes and negative perceptions and portrayals of older people and how this affected their interaction with government, service providers, health professionals and even family. An area of particular concern was driver licensing.

For many of us, our driver licence is an essential element of our independence, our ability to access work, our community, to staying in touch with family and friends. In areas where public transport is limited it is often essential to wellbeing and participation and so has enormous practical and symbolic significance.

While the public safety issues around driving are well understood, the issues raised by participants in this report relate to attitudes and actions that reflect ageism in the community and in the systems that regulate driver licensing.

Older drivers are often portrayed as a risk or a danger, when in fact statistics show this is not the case. And yet in Victoria each year many older people are required to provide evidence they are safe on the roads because they have been reported as a risk on the roads anonymously by family members, health professionals or just people on the street.

For some people this is a genuine issue, but many who spoke to us had done nothing to be considered a risk – other than be seen as being old. These attitudes are evidence that ageism and age discrimination remain significant issues in our community.

This report aims to illustrate these concerns and address some of the myths and stereotypes that have a direct, negative impact on older people.

The Commission thanks the many participants who contributed their stories to this report. We particularly thank the Council for the Aging who advocated for the Commission to undertake this work and assisted us with the research. We acknowledge and thank VicRoads who assisted us with statistics and information about the licensing system. I would particularly like to acknowledge Julian Alban, Policy and Project Officer who worked on this research with great dedication.

We hope the report encourages all of those with a responsibility for this issue to think about the factors that influence decisions about older drivers and their rights on the road.

Karen Toohey
Acting Commissioner
The ability to drive is important for many older people’s independence. The freedom it provides when public transport options are limited contributes to social connectedness and areas of life including health and wellbeing, social participation, access to employment, health care, cultural life, and community involvement.

The regulation of licensing for older drivers involves competing policy considerations. While monitoring driving skill and ability is important to maintain road safety, drivers should be able to stay on the road for as long as they are safe to do so, without being subject to discrimination or unnecessary intervention.

Tasmania abolished a requirement for mandatory driving assessments for people aged 85 and over on 5 October 2011, following concerns raised by Tasmania’s Anti-Discrimination Commissioner that the rule was discriminatory and had led to complaints of age discrimination. Similarly, Western Australia changed its driver licensing requirements in April 2012 to remove compulsory medical checks for drivers aged 75 and 78.

As part of its annual reporting on the Charter of Human Rights and Responsibilities for 2011, the Commission undertook consultations to hear about the human rights of older Victorians. One of the key themes that emerged was that some older Victorians are experiencing discrimination and unfair treatment when it comes to decisions about their driver licence.

Concerns raised during the consultations, alongside recent reforms to remove discriminatory licensing requirements in other jurisdictions, led the Commission to conduct research into the experiences of older drivers to see how they fare under Victoria’s licensing system.

The Commission conducted a survey of older drivers in partnership with Council on the Ageing Victoria (COTA), and consulted with key organisations to gain further insight into the issue.

VicRoads provided data on reports about fitness to drive, processes following receipt of reports, medical review, and current policies relating to older drivers. VicRoads’ willingness to work with the Commission has been invaluable in exploring this issue, and identifying key areas for improvement to ensure fairer outcomes for older drivers.

Main findings

Victoria’s driver licensing regime is the least restrictive of all the states. It is the only state where self-reporting and third party reports are the only means of monitoring declining driving skill or ability. While the licence renewal period is limited by policy to three years for drivers over 75 rather than the 10-year period applying to other drivers in Victoria, unlike other states, there are no requirements for mandatory driving assessments or medical reviews based on age. These will only occur where a concern is declared or reported.

All states other than Victoria maintain some form of mandatory age-based medical testing or driving assessment requirements. While Tasmania and Western Australia have relaxed their licensing requirements, some age-based requirements still remain.

However, while the Victorian system may be more relaxed than some, the Commission is concerned that some older drivers are still experiencing discrimination or unfair treatment when it comes to licensing. Our research found:

- older drivers face discrimination when renewing their licence, as VicRoads applies a blanket policy of issuing drivers aged 75 and over with a three-year licence, compared to the 10-year renewal period applying to other drivers.

1 In Western Australia, drivers aged between 80 and 84 still need to undertake a medical test, and those aged 85 years and older still need to pass an annual driving assessment. While Tasmania abolished mandatory annual driving assessments for people aged 85, drivers are still required to have yearly medical assessments from 75 years of age.
over-reporting appears to be a problem. VicRoads data shows that only 6,382 out of a total of 65,567 drivers who were reviewed had their licence suspended or cancelled. This suggests a number of older drivers may be having their licence reviewed in unwarranted situations. This may be because some people are reporting drivers to VicRoads due to stereotyping of older drivers and not because of genuine concerns about their driving.

inconsistencies in practice with regard to the acceptance and use of medical information by VicRoads may also be contributing to the overreach of the system.

It is difficult to determine the extent to which older drivers are being required to undergo testing and review in unwarranted circumstances. Gaps in data collected by VicRoads mean it is not possible to determine precise numbers of third party reports leading to suspension or cancellation of licences, the age of those reported, and the source of reports. Collecting this data would greatly assist with planning and service delivery, and in identifying ways to minimise the current overreach of the system.

While the system appears to be working well for many, some older drivers are experiencing discrimination and unfair treatment. Respondents to the Commission’s survey spoke of inconsistencies in the use of medical information, confusion about review processes and why certain information was required, and being treated unfairly when undertaking driving assessments.

The consequences for those experiencing negative treatment were significant. Respondents who had their licence suspended or cancelled spoke about the personal costs involved, their frustration with delayed licensing decisions, and their inability to access the services they need while awaiting outcomes or following cancellation of their licence:

As a person reaching an age where there is a lot of discussion regarding licence conditions for older drivers and residing in the country, it is very important to be able to retain the right to drive, not only for enjoyment but to ensure essential services can be accessed easily when no public transport exists and to ensure one is able to continue to pursue work opportunities in country locations.

Areas for improvement

Organisations including VicRoads are already undertaking a range of positive measures to ensure older drivers understand their rights and responsibilities with regard to self-reporting and reports from others about their driving. However, the Commission’s research found there are a number of key areas for improvement to ensure fairer outcomes for older drivers. These include:

- raising awareness among older drivers about their rights and responsibilities with regard to age discrimination and driver licensing
- ensuring older drivers can easily access information about age discrimination and their licensing rights and responsibilities in both online and hard copy formats
- providing support and education for professionals responsible for making decisions about people’s fitness to drive, and improving understanding of their obligations regarding age discrimination and the positive duty to eliminate discrimination
- ensuring accountability and transparency among professionals making reports about people’s fitness to drive
- improving individual case management and customer service for older drivers undergoing licensing reviews and testing
- establishing mechanisms for receiving ongoing input from consumers and organisations about policies and guidelines for older drivers.
Recommendations

The Commission makes the following recommendations:

1. That, consistent with the Road Safety Act 1986 and the Equal Opportunity Act 2010, VicRoads remove its policy of issuing a three year licence to all drivers and adopt a more flexible approach that considers the relevant individual circumstances when considering licence renewal periods for drivers over 75.

**Third party reporting**

2. That VicRoads establish formal protocols to assist in determining whether information received about a person’s fitness to drive is bona fide and reliable.

3. That Victoria Police develop training and support materials on the subject of older drivers to aid police reporting, including education about age discrimination and the Assessing Fitness to Drive Guidelines.

4. That consistent with existing practice by Victoria Police, those reporting in a professional capacity be required to identify themselves when making reports about fitness to drive, and further, in order to ensure transparency the driver be provided with the identity of the professional who made the report.

**Medical testing and driving assessments**

5. That VicRoads enhance existing processes for educating health professionals about the Assessing Fitness to Drive Guidelines in consultation with the Royal Australian College of General Practitioners and other key organisations.

6. That the Victorian Taxi Directorate develop a module relating to licensing of older drivers, including information on the Assessing Fitness to Drive Guidelines and age discrimination, as a mandatory prerequisite to obtaining a Driving Instructor Authority.²

7. That the Victorian Taxi Directorate introduce a specific, optional accreditation path for driving instructors wishing to target an older client base.

8. That VicRoads explore alternative testing methodologies for older drivers that more adequately reflect the everyday driving patterns of those being tested.

**Data collection**

9. That VicRoads collect data on the age profile of those who are reported or required to undergo testing and review to assist with planning and service delivery.

10. That VicRoads collect data on the source of reports received wherever possible.

11. That VicRoads collect data on the total number of those reported whose licence is suspended, amended, or cancelled.

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² A Driving Instructor Authority is issued by the Victorian Taxi Directorate under the Road Safety Act 1986.
Service delivery and case management

12. That VicRoads introduce case officers to guide older drivers through licence review processes.

13. That VicRoads partner with COTA and other key organisations to seek consumer input on existing policies and guidelines for older drivers, including the self-assessment checklist for older drivers and the Victorian Older Drivers Handbook.

Older Drivers Action Plan

14. That VicRoads partner with COTA to develop an Older Drivers Action Plan, and that this plan include consumer representation in its development.

15. That, as part of the Older Drivers Action Plan, VicRoads enhance training and awareness among its staff about age discrimination and licensing requirements for older drivers.

16. That, as part of the Older Drivers Action Plan, VicRoads develop an information strategy aimed at older drivers on their rights and responsibilities in relation to driver licensing through information sessions, print media, and social media.

17. That, as part of the Older Drivers Action Plan, VicRoads establish a consumer reference group with representation from older people and key stakeholders to receive ongoing consumer input on systemic issues.

18. That VicRoads partner with the Department of Health, Ageing and Aged Care Branch and COTA to deliver a social marketing campaign aimed at all drivers to reduce discriminatory attitudes and negative stereotyping of older drivers.
Chapter 1 - Background

The Commission’s interest in the experiences of older drivers

This research was prompted by concerns raised during the Commission’s Forum on the Rights of Older People held on 28 October 2011. The Commission also heard from COTA that stakeholders and community members have consistently raised discrimination against older drivers as a significant area of concern.

It complements the Commission’s broader work on the human rights of older people, which was a central theme for the Commission’s 2011 annual reporting on the operation of the Charter of Human Rights and Responsibilities (the Charter).

The experience of older drivers is an issue of concern to the Commission because it engages rights to equality before the law (freedom from discrimination), the right to privacy (use of personal information), and the right to take part in public life, all of which are protected by the Charter.

Equal Opportunity Act 2010 obligations are also relevant. Service providers have an obligation not to treat (or threaten to treat), someone unfairly because of their age. This can be unlawful discrimination. While it will often depend on what is reasonable in the circumstances and there are some relevant statutory exceptions, the stories shared with the Commission raise a broad range of issues for a number of service providers including VicRoads, Victoria Police, medical professionals and driving instructors, and survey responses clearly indicated that in some circumstances age discrimination is occurring.

Since 1 August 2011, duty holders including government departments (such as VicRoads and Victoria Police) and other service providers, such as those providing driving assessments or General Practitioners (GPs), have also been required to take reasonable and proportionate measures to eliminate discrimination as far as possible.

This obligation, called the ‘positive duty’, requires people to be proactive about combating discrimination in their service-delivery roles – whether a person has made a complaint of discrimination or not. While individuals cannot pursue a complaint of discrimination for not complying with the positive duty, a contravention of the duty may be the subject of an investigation undertaken by the Commission.

Regulation of driver licensing in Victoria

- There are no mandatory age-based requirements for medical or other testing in Victoria. The system relies on concerns raised from third party reports and self-reports.
- The Road Safety Act 1986 gives VicRoads discretion to issue drivers 75 and over with licences for shorter periods. It is VicRoads’ policy to issue drivers over 75 with a three-year licence rather than a 10-year licence, to encourage more regular self-assessment.
- Holders of a driver licence must notify VicRoads of any permanent or long-term injury or illness that may impair their capacity to drive safely irrespective of their age (self-reporting).
- Drivers may be required to undergo testing or medical assessment including a road test if a concern is reported to VicRoads (third party reporting).

5 Equal Opportunity Act 2010 ss 15, 44.
6 Equal Opportunity Act 2010 s 129.
• Following a report, VicRoads will require a person to obtain a medical report from their GP and may require them to undergo a range of other tests.
• VicRoads uses all the information before it to make a final assessment and may suspend, cancel or vary the person’s licence.
• The Assessing Fitness to Drive Guidelines are the key instrument used by both GPs and VicRoads to make decisions about fitness to drive.7

Older drivers and road safety

The Victorian Government recently conducted a public consultation on a new Road Safety Strategy. The consultation discussion paper, Victoria’s Road Safety Strategy Have Your Say (“the discussion paper”), sought information on options for regulating licensing of older drivers in Victoria, including the most effective ways to encourage older Victorians to regularly assess their driving ability.8

The discussion paper also highlights key facts relating to older drivers and road safety risk. These include:9
• that the number of Victorians aged 75 or over will increase by 35 per cent by 2021
• that drivers over 75 have a higher risk of death or serious injury if they have a crash because of increased frailty
• while many older people continue to drive safely, physical and mental changes that can present with ageing can reduce driving ability.

In its submission to the discussion paper, COTA stressed that older drivers are often subjected to myths and stereotypes based on ageist attitudes and the misuse of road safety statistics. In particular, COTA has identified that:10
• older drivers compare favourably on the basis of accidents per capita and per driver licence, but statistics are often cited in which the fatality rate is adjusted for distance travelled (older drivers travel shorter distances than younger drivers). This means the number of accidents appears to increase steeply from 70 years.
• because older drivers are more likely to be killed or injured in an accident, this boosts the statistics for road deaths (not the number of crashes).

Key informants participating in the research also highlighted some of the misconceptions regarding older people’s capacity to drive, and key points of evidence disproving some of the common myths and stereotypes about older drivers and the level of intervention required when it comes to licensing.

FACT: Intervention regarding licensing of older drivers is partly about protecting against greater likelihood of death or injury in a crash due to increased frailty.

FACT: Research suggests that in jurisdictions with mandatory age-based medical reviews and driving assessments, road safety outcomes are no better than they are in Victoria, which relies solely on third party reporting and self-reports. 11

FACT: Many older drivers tend to regulate their own driving if necessary, for example, by only driving at certain times of the day and for shorter distances.

7 National Transport Commission, Assessing fitness to drive for commercial and private vehicle drivers—medical standards for licensing and clinical management guidelines (2012).
Licensing reforms in other jurisdictions

Concern about discrimination against older drivers has led to reform to remove mandatory age-based licensing requirements in other jurisdictions.

Tasmania

In 2010, the Tasmanian Department of Infrastructure, Energy and Resources commenced a review of the older driver licensing system. The review followed concerns raised by Tasmania’s Anti-Discrimination Commissioner in response to complaints about mandatory driving assessments for people over 85.

Among the findings from the discussion paper on the review of the older driver licensing system in Tasmania were that:

- older drivers do not present a significant crash risk
- the potential for crash risk among older drivers is significantly diminished by their tendency to avoid risk-taking behaviour
- driving ability does not deteriorate due to age alone, but due to functional or cognitive loss arising from medical conditions
- older drivers’ tendency to self-regulate mitigates crash risk
- existing driving assessments do not validly assess competency to drive
- international comparisons demonstrate that countries with mandatory assessments have the same crash rates as those without mandatory assessments.

The Tasmanian Government ended compulsory testing for motorists aged 85 years and over on 5 October 2011.

Western Australia

Western Australia changed its licensing requirements in April 2012 so that drivers aged 75 and 78 would no longer be forced to undergo medical checks to renew their licence. However, licence holders aged between 80 and 84 still need to undertake a medical test, and drivers aged over 85 must pass an annual seniors’ on-road practical driving assessment.

Institutional environment

VicRoads is Victoria’s driver licensing authority and is responsible for:
- issuing licences
- providing assessments and tests
- receiving reports about fitness to drive
- providing training and education for drivers and those seeking a licence.

As a public authority, VicRoads is bound by the Charter. This means it must not act in a way that is incompatible with the human rights outlined in the Charter. The Royal Automobile Club of Victoria (RACV) also provides information and advice for drivers in Victoria, including:
- information and advice on road safety
- a Seniors Drivers Program, which is part of the RACV Drive School
- a ‘Years Ahead’ road safety for seniors program.

The Monash University Accident Research Centre (MUARC) is the key research institute providing advice and the evidence base to inform the development of policy and best practice approaches to older drivers in Victoria and nationally.

A range of other organisations also have a role in relation to licensing of older drivers, including the Australian Driver Trainers Association of Victoria (ADTAV), which is the peak representative body of professional driving instructors in Victoria.

The Victorian Taxi Directorate regulates the accreditation and training of driving instructors. Local councils also have an important role in providing information to older drivers and linking them to relevant services.

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14 The Victorian Taxi Directorate is a public authority bound by the Charter of Human Rights and Responsibilities Act 2006.
Chapter 2 - Methodology

The aim of the research was to gather information on the extent to which older drivers experience unfair or discriminatory treatment when it comes to decisions about their driver licence.

The research was conducted using the Commission’s research power under section 157 of the Equal Opportunity Act 2010, which provides that the Commission may:

- undertake research into any matter arising from, or incidental to, the operation of this Act that it considers would advance the objectives of the Act
- collect or analyse data relevant to the operation and objectives of the Act.

The report makes a number of recommendations about improving practice among organisations with responsibilities relating to the regulation of driver licensing, to ensure older drivers do not experience discriminatory or unfair treatment and can stay on the road for as long as they are safe to do so, thereby maximising their independence and economic and social participation.

**Project objectives**

The objectives of the project were to:

- seek information about the representation of older people in reporting for unfit driving; re-testing and medical review; and suspension, restriction and cancellation of licences
- understand the experiences of older people with the licensing system and the impacts of downgrading or suspension of their licences on their access to social and economic opportunities
- research the operation of the current licensing regime in Victoria and its impact on older drivers
- explore opportunities for improvement and the elimination of systemic discrimination against older drivers.

**Methodology**

The Commission conducted a survey on the experiences of older drivers developed in partnership with COTA from 1 April to 4 July 2012. Individuals could complete the survey online, mail responses to the Commission, or complete the survey over the phone by calling the Commission’s Enquiry Line. Some respondents also wrote to the Commission, or COTA, describing their experiences in detail after becoming aware of the research.

To complement the survey findings and gain further insight into the issue, the Commission also consulted with key informant organisations. These were:

- COTA
- VicRoads
- Royal Australian College of General Practitioners (RACGP)
- Monash University Accident Research Centre (MUARC)
- Royal Automobile Club Victoria (RACV)
- Australian Driver Trainers Association, Victorian branch (ADTAV)

The Commission also examined data from VicRoads for the period 1 July 2010 to 30 June 2011, including:

- the number of reports received about fitness to drive and the proportion of these resulting in a person’s licence being amended, suspended, or cancelled

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15 In selecting organisations to interview for the research, the Commission wanted to ensure it heard the perspective of key professional and representative organisations responsible for different elements of driver licensing regulation in Victoria. The Commission considers that the organisations selected were appropriate given the focus of the research, but acknowledges there may be other organisations who could have contributed.
• the age profile of those about whom reports were made
• who made reports
• the process following receipt of a report, including the medical testing and review process
• current policies relating to older drivers.

Survey design
The survey asked respondents whether they had experienced unfair or discriminatory treatment regarding decisions about their driving including:
• being unfairly treated by a doctor or other medical professional regarding their health and capacity to drive
• intervention by a family member
• being required to undergo retesting or medical review in situations where it didn't seem warranted
• being unfairly treated by officers at VicRoads or another organisation.

Respondents were asked to describe whether they thought the treatment was because of age and, if yes, why they thought this was the case. Respondents could describe their experiences fully in the open text sections of the survey.

Respondents were also asked if they made a complaint and, if they did, who they complained to. A copy of the survey form is provided at Appendix 1.

Survey participants
The Commission received 445 responses to the survey.16 The majority of respondents were aged 66-75. Amongst those who reported their gender, 65 per cent were male and 35 per cent were female.

The age profile of respondents is provided below:

**Figure 1: Age of survey respondents**

<table>
<thead>
<tr>
<th>Age</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>66-75</td>
<td>183</td>
</tr>
<tr>
<td>76-85</td>
<td>102</td>
</tr>
<tr>
<td>56-65</td>
<td>101</td>
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<td>45-55</td>
<td>23</td>
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<tr>
<td>Over 85</td>
<td>20</td>
</tr>
<tr>
<td>Under 45</td>
<td>14</td>
</tr>
</tbody>
</table>

Limitations of the research
While the Commission received a relatively large number of responses to the survey, the Commission acknowledges the limitations involved in relying primarily on self-reported experiences revealed by those choosing to participate in the survey. Therefore, the Commission also consulted with key informant organisations to hear about the issues facing older drivers in Victoria, and to complement the survey findings.

Survey participants largely became aware of the survey through networks and promotion by the Commission, COTA and the RACV. While COTA and the RACV both have a large client base, the Commission acknowledges the limitations associated with this promotional focus, which may have meant some people with relevant experiences to report did not have the opportunity to do so.

Terminology
The Commission recognises that the language we use to describe people can reinforce negative stereotypes. While the report refers to ‘older people’ and ‘older drivers’, the Commission recognises that age-related distinctions are often arbitrary and that older people are not a homogenous group.17

In the context of regulating driver licences for older people, policy makers have recognised that setting age-based restrictions for the purposes of driver licensing regulation is not about chronological age, but rather a response to medical conditions that are more likely to present when a person gets older.

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16 Some respondents did not answer every question in the survey. Therefore, the number of answers to certain questions does not always match the total number of responses received.

17 There is no single age that defines the onset of age. Arbitrary limits of anywhere between 50 and 70 have been used by various programs for various groups of people.
The Commission’s research found that while Victoria’s driver licensing system is working well for many, some older drivers are experiencing discrimination and unfair treatment. This is occurring on both a personal and systemic level. The findings revealed some individuals are discriminating against older drivers or treating them unfairly because of their age. Older drivers are also experiencing systemic discrimination due to the impact of policies, practices, and procedures relating to licence renewal and testing.

Survey findings

Three hundred and sixteen people reported that they had not experienced any unfair or discriminatory treatment. Seventy-nine respondents said they had a positive experience. One hundred and forty six reports of unfair treatment were made in the survey, noting that respondents could report more than one type of experience.

Figure 2 details the types of treatment reported in the survey.

<table>
<thead>
<tr>
<th>Experience</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>I haven’t experienced any unfair treatment</td>
<td>316</td>
</tr>
<tr>
<td>I have had a positive experience</td>
<td>79</td>
</tr>
<tr>
<td>Being required to undergo retesting or medical review (where you didn’t feel this was needed)</td>
<td>33</td>
</tr>
<tr>
<td>Being treated unfairly by a member of the public</td>
<td>32</td>
</tr>
<tr>
<td>Being dealt with unfairly by officers at VicRoads</td>
<td>26</td>
</tr>
<tr>
<td>Being treated unfairly by the police</td>
<td>14</td>
</tr>
<tr>
<td>Other unfair treatment</td>
<td>13</td>
</tr>
<tr>
<td>Being dealt with unfairly by an insurance company</td>
<td>10</td>
</tr>
<tr>
<td>Intervention by a family member</td>
<td>7</td>
</tr>
<tr>
<td>Being dealt with unfairly by another organisation</td>
<td>6</td>
</tr>
<tr>
<td>Being treated unfairly by a doctor or other medical professional regarding your health and capacity to drive</td>
<td>5</td>
</tr>
</tbody>
</table>
While the number of respondents indicating they had experienced negative treatment was relatively small, these respondents identified issues of serious concern. There was also a significant amount of qualitative data relating to experiences of unfair or discriminatory treatment as comments in the survey tended to relate to these experiences. Respondents spoke about the profound impacts of not being able to drive. Having their licence suspended or cancelled meant they could not access essential services and participate generally:

I have had to sell the car, give up my flat, and am now living in a hostel. I cannot drive. I have to use public transport and I had to get a taxi card.

My friend obtained her driver’s licence later in life and has only ever driven one car. She lived in regional Victoria. A man came from VicRoads in Melbourne to give her the test in a car that she had not driven before. In the first test she had failed because he told her to park in a single parking spot. She told him that she never ever parks in a single parking spot and that she goes to the top of the town and parks there. She was told that she would have to park in a single parking spot. He was not happy with the way she did and failed her driving test. After she failed the test she decided that she couldn’t be bothered doing it again. She now has to get a taxi everywhere, even just to go to the chemist. Even the police in our country town believe it is ridiculous that you cannot drive your own car.

Do people complain?

Respondents were asked if they complained to someone if they felt they experienced unfair or discriminatory treatment. Of those respondents who answered this question, 22 said yes and 62 said no. The majority of respondents had complained to VicRoads (12) followed by Victoria Police (10) or a local member of parliament (4).

Discrimination complaints to the Commission

The findings from the survey confirmed some of the patterns in complaints of alleged discrimination when it comes to driver licensing received by the Commission over the last three years. The Commission received a small number of complaints of alleged unfair or discriminatory treatment in relation to driver licensing. Below is a sample of complaints:

- An 80-year-old driver received a licence, which was limited to three years because of his age. When he asked an officer at VicRoads why it was not for a ten-year period he was told that they assumed he would not need it so late in life.

- A driver in their late 70s made a complaint of age discrimination when they discovered they could only renew their licence for a three-year period. The complainant was frustrated by the poor customer service provided by VicRoads and the lack of explanation by its staff about this licensing requirement. The matter was resolved at conciliation without an admission of liability, for an apology, and an explanation of VicRoads’ policies.

- A driver in their late 70s developed a physical disability and had their licence cancelled after a GP reported them to VicRoads. The Complainant had to undergo a range of tests in order to have their licence reinstated, which took a number of months and several calls to VicRoads about the outcome. The person felt this to be deeply unfair. The matter was resolved at conciliation, without an admission of liability, after the complainant received an apology from VicRoads for poor customer service, and an explanation about why they were required to undergo the medical assessments in relation to their fitness to drive.

Being treated unfairly by Victoria Police

Fourteen respondents indicated they had been treated unfairly by Victoria Police. One respondent described in detail what they thought to be a questionable report by a member of the public, which they felt Victoria Police had not properly investigated before reporting to VicRoads. The scenario is relevant as an example of how various aspects of reporting (by members of the public and Victoria Police) can interact, and the consequences for the individual involved:

My wife and I were at a rehabilitation centre. The next day I found a note in my door from the police referring to a collision and requesting me to contact the officer concerned at the station. To my shock I was informed that a bystander had reported that I had scraped an adjacent car while backing out of a parking space...the police officer concerned could find no evidence of any mark on my car and we later discovered that he had incorrectly described the colour of the alleged damaged car. I was 77 years old at the time and the upshot of this alleged car park incident was that the officer reported me to VicRoads who wrote informing me that I would need to submit a full medical and optical record annually if I were to retain my licence. Given that I was a category 1 driver with an excellent driving record, I can only conclude that this was an example of discrimination based on my age.
In some cases, negative stereotypes may also inform police behaviour. One respondent gave an example of what they felt was an inappropriate and discriminatory response by a police officer to a complaint of road rage. According to the respondent, the first question that the police officer asked was ‘How old are you? You were probably crawling.’ The same respondent also expressed their dissatisfaction with the police response to this complaint more generally, including lack of follow up about the outcome.

Key informants participating in the research also commented on the role of Victoria Police reporting drivers to VicRoads, and confirmed they are a significant referral source and often a key point of contact for older drivers.

Discussions with the RACV suggested a small number of their older members have occasionally raised concerns about their interactions with Victoria Police and subsequent licence review. Members have reported being pulled over and asked questions, and later receiving an anonymous notification from VicRoads about their driving. Drivers may feel confused and intimidated in these situations if matters are not explained to them. Consistent with modern policing, officers reporting individuals about their driving should be required to explain any action they are taking to the individual affected. They should also be identified in any subsequent report to ensure transparency and accountability for their decision.

COTA also raised concerns about Victoria Police making assumptions about driving capacity due to age. COTA also reported a number of complaints to Seniors Information Victoria regarding police attitudes, including police officers automatically reporting older people involved in accidents or incidents to VicRoads for re-testing.18

**Case study**

A pensioner contacted Seniors Information Victoria for advice. After being stopped by police, he was notified that he was required to undertake a number of driving assessments. This incident occurred some time ago. Since then, he receives a letter from VicRoads each year requiring him to undertake a driving test and medical assessment. As he passes both each year, he wants to stop having these tests.

The findings suggest greater understanding about conditions that may affect older drivers would benefit police officers making these decisions and reporting to VicRoads.

A 2008 report from Austroads on a trial of a model licence re-assessment procedure for older drivers stressed the need for police (and GPs) to have ‘objective evidence based pre-screening tools to assist them in their decisions whether to refer an individual for further assessment.’19

The Commission recommends that Victoria Police develop training and support materials to assist in identifying at-risk older drivers in a fair and equitable manner.

**Being unfairly treated by members of the public**

Negative perceptions and attitudes towards people in later life are broad, far reaching, and deeply embedded in Victorian society…[they] frequently manifest in negative actions towards older people such as exclusion, discrimination, and abuse. These negative attitudes and behaviours are generally known as ‘ageism.’ Ageism may not always be deliberate or intentional, but can be implicit in how people interact with older people.20

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18 COTA also raised concerns regarding driving assessors and VicRoads making assumptions about driving capacity due to age.


Stereotyping, ageism, and age discrimination can have a significant impact on the lives of older Victorians. Such attitudes can lead some people to make ill informed judgments about older people's capacity to drive which may in turn lead to discrimination. Our research found that these attitudes may be leading to unwarranted reports to VicRoads.

Thirty-two survey respondents indicated they had been treated unfairly by a member of the public. One survey respondent highlighted their concerns about age discrimination and the function of public reporting to VicRoads:

I live in a retirement village. There is a real concern among my peers as to young drivers in that if you annoy them in any way they will report older drivers to VicRoads. You will then be required to undergo retesting and they know this. It seems unfair that VicRoads responds automatically in this manner without regard to the driver's record. It is an age-based attitude.

A number of respondents also highlighted experiences of road rage or similar treatment. While some of these responses were not directly relevant to the research, they may be relevant if members of the public are reporting to VicRoads because of negative attitudes towards older drivers rather than genuine concerns about their driving.

Survey respondents gave examples of abusive behaviour on the road:

I consider myself a good driver but am getting frustrated when sitting on the speed limit, that younger and more often than not P plate drivers often pass then abuse and give the finger. They seem to notice the grey haired elderly lady and tailgate or beep the horn unnecessarily.

In its discussions with the Commission, COTA also spoke about older people who have reported being harassed by other drivers due to driving at or slightly below the speed limit.

Reporting by family members

These attitudes may also influence the behaviour of family members. Seven survey respondents indicated they had experienced unfair treatment in the form of intervention from a family member. However, there were few comments in the survey about these experiences.

Respondents spoke about family members doubting their driving ability or refusing to drive with them. However, no details were given about circumstances leading a family member to make a report to VicRoads or a medical professional.

This may be because family members are likely to report anonymously.

One survey respondent highlighted their concerns with unwarranted or malicious reporting by family members:

My experience in relation to friends is that it is their children who try and take their cars off them. Sometimes it's because they want the car for themselves so they make out the person can no longer drive or is not safe to drive.

Systemic discrimination against drivers over 75

The Road Safety Act 1986 (Vic) gives VicRoads discretion to grant drivers 75 and over licences for shorter terms. VicRoads’ policy is that all drivers who are 75 years and over are issued with a three-year rather than a 10-year licence.

The Commission is concerned that the blanket application of this policy is problematic and raises questions about: (1) the appropriate exercise of the discretion granted under the Road Safety Act; and (2) whether the blanket application of the three-year renewal period to all drivers over 75, without considering the reasonableness of this measure in the particular circumstances, may be unlawful discrimination under the Equal Opportunity Act 2010.

Ensuring individuals are considered on a case-by-case basis before limiting licence renewal periods would also improve outcomes for older drivers. Survey respondents highlighted their frustration with the inflexibility of the VicRoads policy of issuing all drivers over 75 with a three-year licence, which they felt was discriminatory and unwarranted:

On renewal of my drivers licence last year the renewal was limited to three years due to my age (83). This was despite the accompanying letter congratulating me on my driving record and consequent discount of the fee. To me this is age discrimination. I believe it is due to government legislation in Victoria. Such limitations should not apply to drivers with an exemplary driving record.

they told me that I can only have a 3 year licence as I have turned 75. They said it is a new regulation, but we didn’t know beforehand, otherwise I could have applied for renewal before my 75th birthday to get a 10 year licence. It is purely Age discrimination!
The Equal Opportunity Act and the three-year renewal period

The Equal Opportunity Act provides it is unlawful to discriminate in the provision of goods and services based on listed attributes including age.\textsuperscript{22} The Act also provides exceptions to discrimination, including an exception to discrimination that is authorised by the provisions of another Act.\textsuperscript{23}

When introducing the 2004 amendments to the Road Safety Act, the Parliament acknowledged that the then \textit{Equal Opportunity Act 1995} prohibited age discrimination, but that the amendments were authorising provisions for the purposes of the then section 69, now section 75, of the Equal Opportunity Act. This means that Parliament’s intention was that VicRoads should not be regarded as acting unlawfully by exercising its discretion under the Road Safety Act to issue licences for shorter periods to drivers aged 75 and over.\textsuperscript{24}

VicRoads has adopted a policy of issuing all drivers aged 75 and over with a three-year licence. The Commission is concerned that by applying a blanket policy limiting the licence renewal period to three years in all cases for drivers aged 75 and over, VicRoads may be acting beyond the statutory exception. The Commission recommends that VicRoads adopt a broader policy for drivers over 75, to allow for exceptional circumstances and assessing individuals on a case-by-case basis.

\begin{itemize}
  \item \textit{Equal Opportunity Act 2010} s 44 (1).
  \item \textit{Equal Opportunity Act 2010} s 75.
  \item As the amendments were made prior to the enactment of the \textit{Charter of Human Rights and Responsibilities Act 2006}, the Parliament was not bound to consider whether the amendments were compatible with the rights outlined in the Charter, or whether the measure was a reasonable limitation on rights.
  \item Parliament of Victoria Road Safety Committee, \textit{Inquiry into Road Safety for Older Road Users} (2003).
  \item Transport Legislation (Amendment) Bill 2004 (Vic).
  \item Victoria, \textit{Parliamentary Debates}, Legislative Assembly, 18 November 2004, 1735 (Peter Batchelor, Minister for Transport).
\end{itemize}
VicRoads relies on both self-reports from drivers, and third party reporting of drivers who may be a road safety risk from relatives, health professionals, Victoria Police, and members of the public.

**Self-reporting**

VicRoads imposes a condition that upon being licenced, all motorists are required to advise them of any permanent or long-term injury or illness that may affect their ability to drive safely.\(^2^9\)

VicRoads provides information to help older people recognise these conditions, including the *Victorian Older Drivers Handbook*, which provides information about legal obligations, medical conditions that affect driving, medicines, safe driving practices, good health and driving and planning to stay mobile.\(^3^0\)

**Third party reporting**

If Victoria Police or a member of the public is concerned about someone’s ability to drive safely, they can notify VicRoads. Under the *Road Safety Act 1986*, no action may be taken against a person who, in good faith, reports to VicRoads that a person is unfit to drive or that it may be dangerous to allow that person to hold or be granted a driver licence.

VicRoads is ultimately responsible for making all decisions regarding the licensing of drivers and in doing so, will consider the reports provided by health professionals, Victoria Police, and members of the public. VicRoads is also responsible for making all decisions regarding the issue of conditional licences having regard to the recommendations of health professionals and any other factors.

The *Road Safety (Drivers) Regulations 2009* provide that where VicRoads receives information which discloses or suggests that it may be dangerous to allow a person to hold a driver licence, and VicRoads is satisfied on reasonable grounds that the information is reliable, it has discretion to suspend or vary that person’s driver licence until they have undergone a test of health or competence or any other appropriate test.\(^3^1\)

This element of discretionary decision making when it comes to receiving complaints about a person’s fitness to drive was a key area of concern for the Commission. In its discussions with the Commission, COTA also raised concerns about discretionary decision making leading some people to be re-tested annually when they had proven themselves capable drivers.

**Reporting by medical practitioners**

One aim of the research was to determine whether medical professionals may be over-reporting older drivers to VicRoads, or reporting in unwarranted situations. While there were no explicit examples of this kind of treatment in the survey responses, the Commission explored situations where General Practitioners (GPs) report to VicRoads voluntarily. Discussions with the Royal Australian College of General Practitioners (RACGP) gave further insight into how this occurs in practice, in particular the nature and frequency of reports to VicRoads, interactions with patients, and use of the *Assessing Fitness to Drive Guidelines* (the Guidelines), by GPs.\(^3^2\)

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29. *Road Safety (Drivers) Regulations 2009* s 67(2).
31. *Road Safety (Drivers) Regulations 2009* s 78 (3).
Reporting by medical professionals – common scenarios

The RACGP informed the Commission that:

- most medical reports are provided following a request from VicRoads to provide a report, rather than voluntarily
- it is common for individuals to discuss concerns about a family member’s driving during a consultation
- in situations where a family member does not want to report a family member’s driving to VicRoads themselves, GPs will make a report to VicRoads on their behalf
- GPs generally encourage people to report family members to VicRoads themselves.

According to the RACGP, GPs rarely make reports in the absence of a request from VicRoads. Circumstances where they might report will generally be:

- where the patient is starting new medication that could affect their driving
- where the patient does not follow medical advice, and the GP is genuinely concerned about their safety and the safety of others.

Interactions with patients and family members

The RACGP also spoke about the nature of interactions with patients and family members regarding fitness to drive. According to the RACGP, GPs may discuss a person’s fitness to drive in relation to a health concern discussed during a consultation. In these circumstances, they may:

- query the patient’s driving patterns, and ask them whether they should start thinking about their driving
- suggest ways for the patient to limit their driving if they are not already doing so
- suggest options to the patient before raising any issues with VicRoads, such as undertaking a driving assessment or lessons to gauge their own driving ability
- make a report to VicRoads if the patient does not follow advice and could present a danger to themselves or others.

How many reports does VicRoads receive?

From 1 July 2010 to 30 June 2011, VicRoads received a total of 27,355 reports about a person’s fitness to drive. This figure includes self-reports and all third party notifications including reports by family members, Victoria Police, and medical professionals. The total number of notifications from Victoria Police was 2,460.

VicRoads does not capture data relating to the source of all notifications, other than notifications from Victoria Police. Data on the number of third party reports leading to suspension or cancellation of licences, or the age of those reported, is also not captured. Therefore, it is difficult to determine the extent to which unwarranted third party reporting of older drivers may be occurring, and the outcomes of those reports.

Proportion of reports leading to cancellation of licences

It is only possible to determine outcomes based on the total number of all reviews conducted by VicRoads, which includes regular, ongoing reviews for those who are already in the system, as well as those initiated following third party reports or self-reports.

In the 2010-2011 financial year, a total of 65,567 drivers were reviewed regarding their fitness to drive. 6,382 drivers had their licence suspended or cancelled, and 1,099 drivers were issued with a conditional licence. The remaining 58,086 drivers did not have any action taken to suspend, cancel, or vary their licence.

The findings suggest that, in the majority of cases, no action is taken to cancel a person’s licence following review, whether the review follows a third party report or self-report, or in other circumstances where ongoing reviews take place. This suggests some drivers may be having their licence reviewed in circumstances where there are no genuine concerns about their driving, leading to unwarranted interference and requests for testing. Some drivers may also be having ongoing tests without proper justification.

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33 The view of the individuals interviewed may not necessarily reflect the views of the entire organisation. However, in discussing the findings from key informant interviews the organisation itself is identified as the key informant.

34 Key informants stressed that many older drivers tend to regulate their own driving if needed, for example by driving only at certain times of the day or for shorter distances.

35 This includes reports made about drivers of all ages.

36 The figure is inclusive of reviews following notification, and those initiated by VicRoads medical review.
Process of review

The Commission requested information from VicRoads about the process following a reported concern about fitness to drive, with specific reference to the Road Safety (Drivers) Regulations 2009 which provide that VicRoads may vary, suspend, or cancel a person’s driver licence if it:

- receives information which discloses or suggests that a person is unfit to drive or that it may be dangerous to allow that person to hold a driver licence
- is satisfied on reasonable grounds that the information is reliable.

The Commission wanted to hear about the nature of this discretion to accept and pursue reports about a person’s driving. The response confirmed that VicRoads considers it is obliged to act on all notifications. Therefore, in practice, it appears that VicRoads acts on all notifications received regardless of the nature and source of the information. Following receipt of this information, VicRoads will notify the driver and request that they obtain a letter from their GP confirming their fitness to drive.

In order to prevent discriminatory reporting by members of the public leading to unwarranted requests for testing and medical review, it is important that VicRoads properly consider the nature of any reports it receives given the significant consequences for older drivers once testing and review processes are triggered. In addition to the costs and stress involved, COTA reported that some older people will relinquish their driver licence before they need to due to feelings of intimidation and anxiety about testing procedures.

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37 Road Safety (Drivers) Regulations 2009 s 78 (3).
Chapter 5 - Medical testing and licence review

VicRoads may request a person undertake any test that will assist in determining whether they are unfit to drive, dangerous to drive, or whether their licence should be subject to conditions. Usually this will arise in circumstances where a driver has notified VicRoads of a medical condition that may affect their driving, or someone else has raised concerns about their ability to drive safely.

The types of tests a person may be required to take are outlined in the Road Safety Act 1986, and include:

- testing a person’s fitness to drive including testing their health or medication they are taking and its effect on their ability to drive
- testing the person’s competence
- any other test VicRoads considers necessary or appropriate.

Following receipt of a report which suggests a person is unfit to drive, VicRoads will request that the person obtain a medical report from a GP and may require them to undertake a combination of other tests. This may include a driving test or Occupational Therapy Drivers’ Assessment.

In cases where VicRoads asks a motorist to obtain a medical report, VicRoads will assess the report and also determine whether the person is fit to drive with reference to the Assessing Fitness to Drive Guidelines (‘the Guidelines’).

Suspension of licences while review takes place

VicRoads’ discretion to suspend a person’s licence until they have undergone certain tests means that in some cases, it will suspend their licence immediately following a notification of concern.

Discussions with VicRoads confirmed that some serious conditions will require immediate action to suspend a person’s licence – for example, when a person has had a seizure or has some other unstable condition.

Determining the extent to which certain conditions may affect a person’s driving can be challenging and may mean a range of tests are necessary to obtain a holistic assessment of the driver. As medical conditions affect each person differently, VicRoads reports that it makes assessments on a case-by-case basis. In the majority of cases, VicRoads will not suspend a person’s licence until they have undergone necessary tests to determine their fitness to drive.

38 Road Safety Act 1986 s 27 (1).

39 Road Safety Act 1986 s 27 (2). Those requesting information from individuals must also be mindful of their obligations under section 107 of the Equal Opportunity Act 2010 which prohibits a person requesting or requiring information from another person that could be used to discriminate against them.

40 National Transport Commission, Assessing fitness to drive for commercial and private vehicle drivers—medical standards for licensing and clinical management guidelines (2012).
Assessing Fitness to Drive Guidelines

Medical professionals may voluntarily provide information to VicRoads if they are concerned about someone’s fitness to drive, or they may be asked to provide a report following a request from VicRoads. Medical professionals use the Guidelines for these purposes.

The National Transport Commission (NTC) developed the Guidelines as a national standard to increase road safety in Australia. The Guidelines were revised following a review by the NTC in 2011, which included consultation with a range of stakeholders including driver licensing authorities and health professionals.

The Guidelines provide detailed information on a range of medical conditions and considerations regarding fitness to drive. These include:

- blackouts
- cardiovascular conditions
- diabetes
- hearing
- musculoskeletal conditions
- neurological conditions including dementia
- psychiatric conditions
- substance misuse

The Guidelines specifically direct that in assessing an older person’s ability to drive safely, their functional ability, and not their age, is the key consideration. In cases where a medical practitioner is concerned about a patient’s ability to drive safely, they may recommend that the person undertake a driving or other assessment.

VicRoads provides information and support for medical professionals and others involved in using the Guidelines. This includes an online education course, Safedrive Medical, which is designed to assist health professionals to assess their patient’s fitness to drive.

Use of the Assessing Fitness to Drive Guidelines

The RACGP and other key informants discussed how the Guidelines are used, including some of the conditions most likely to affect a person’s driving. These included mobility issues, eyesight, and cognitive changes. Discussions with the RACGP confirmed the Guidelines are an essential tool informing consultations between GPs and their patients about medical conditions and fitness to drive.

According to the RACGP, the Guidelines are widely used and are easily accessed by health practitioners online, but there is room for improvement to increase understanding and promote better use of the Guidelines. This view was shared by other key informants, including MUARC and the RACV.

Discussions with MUARC provided further insight into interactions between GPs and their patients about fitness to drive. According to MUARC, past research indicates GPs generally feel ill equipped to make decisions about fitness to drive. While the Guidelines provide greater clarity for GPs making these decisions, ongoing education and support about the use of the Guidelines is essential.

Older people’s experiences of medical testing and reviews

Thirty-three survey respondents said they had experienced unfair or discriminatory treatment in relation to medical testing and reviews. Respondents felt they had been treated unfairly or discriminated against because they did not understand why they had to be tested, or because of perceived inconsistencies regarding the acceptance and use of medical reports by VicRoads.

When I renewed my licence in 2004, I put down that I had slight blood pressure but it was under control with medication. Since then I have been required to have a medical examination each year and they have been satisfactory. Now VicRoads insist I have an eyesight test every year for the last two years. My eyesight is 20/20 (perfect).

41 National Transport Commission, Assessing fitness to drive for commercial and private vehicle drivers—medical standards for licensing and clinical management guidelines (2012).

I was requested to get a doctor’s certificate at 76 for driver licensing renewal. VicRoads did not accept this doctor’s opinion.

VicRoads asked me to at age 70 to get a medical certificate from my doctor. She pointed out I was a fit and healthy person who should not be asked this question at age 70.

Respondents expressed frustration with delays from having to undergo further medical tests in situations where it did not seem warranted:

I am a retired coach and bus driver, and when working was required to have a yearly medical to retain my operator’s certificate. However, since retiring and relinquishing my certificate VicRoads still require a medical review to retain my driver licence. This year I passed my medical with all boxes ticked, however VicRoads required me to have an additional eyesight test at an optometrist. I am just frustrated with the whole thing. I am still waiting for a reply from VicRoads. Very upsetting and uncalled for I believe. My doctor is in complete agreement.

I am a stroke survivor, and am required to provide periodic medical reports from my GP. I have observed that my GP recommends a 2-3 year review, but VicRoads medical review continued to call for 12 monthly reviews. I consider this to be very unfair, as I consider myself to be a safe driver who has never been involved in a serious motor vehicle accident.

One respondent stressed they were willing to comply with medical testing requirements for licensing, but felt that their individual circumstances were not properly considered:

I had a bleed and was told I musn’t drive until I had a test. I’m treated as an object with no consideration for my progress as an individual. They may be right but it’s all taking a long time.

Responses also indicated that some people feel VicRoads can be inflexible in their approach:

VicRoads has repeatedly demanded an annual review of my medical condition despite my doctor writing to them advising that I am perfectly fit to drive. They also threaten to cancel my licence if I do not comply within two weeks of their demands.

[She] went for re-testing with VicRoads and passed the medical review. She was subsequently given a licence to drive five kilometres and the VicRoads rep told her she would not be able to drive far enough to see her daughters.

These findings suggests there is room for improvement to how VicRoads manages individual cases, including how they notify and inform older drivers about medical testing and other licensing issues.

What happens when VicRoads receives a medical assessment?

When VicRoads obtains a medical assessment, it will assess that information in accordance with the Guidelines and determine whether the information received is adequate. At this time, they may request further reports from specialists to obtain more information on medical conditions or concerns identified in the medical report. VicRoads Medical Review refers moderate to complex cases to the Victorian Institute of Forensic Medicine (VIFM) for advice. In these situations, the person’s medical file is collated and sent to the VIFM for an opinion.

When VicRoads receives a medical report, it may also request a driving assessment to obtain a holistic assessment of the driver. VicRoads will then make a decision with all the relevant information on hand about allowing the driver to continue driving or may suspend, cancel, refuse, or place conditions on a person’s licence.

If the result of the medical review, including any further tests and driving assessments, indicates the person is not fit to drive, VicRoads provides the person with a written notice. Included in the notice are steps the person can take to have their licence suspension lifted. This includes information about the right to appeal using VicRoads’ internal review process or on application to the Magistrates’ Court. Also included in the notification is a ‘getting around without a car’ brochure outlining alternatives to driving.

Outcomes of review

From 1 July 2010 to 30 June 2011 a total of 65,567 drivers were reviewed regarding their fitness to drive. This figure includes regular, ongoing reviews for those already in the system, and new reviews initiated following a third party report or self-report. Of those who were reviewed:

- 9.7 per cent (6,382) had their licence suspended or cancelled
- 1.7 per cent (1,099) had restrictions or conditions applied to their driver licence
- 4 per cent (2,600) were required to undertake Medical Review initiated driving assessments
VicRoads’ Registration and Licensing Policy department conduct all internal review written requests. The person’s medical case file is reviewed in its entirety and a decision is made to either uphold or overturn the original decision.

If the person is dissatisfied with the outcome of the Internal Review, the person can apply for an appeal to the Magistrates’ Court.

As the VicRoads data above shows, 84 per cent of people reviewed did not have their licence suspended or altered. Paired with some of the findings in the survey, this suggests there is room for improvement to minimise the potential for unnecessary testing or delays, to address the overreach of the system and to remedy any inconsistencies regarding the use and acceptance of medical information obtained by VicRoads from external medical professionals.

Issuing conditional licences
Consistent with government policy seeking to keep drivers on the road for as long as they can do so safely, if the results of any tests suggest the person may have some problems driving, VicRoads will first consider a conditional licence. Only if a person’s driving is considered unsafe will a licence be suspended or cancelled.

The Road Safety (Drivers) Regulations 2009 set out the criteria under which a person’s licence will be suspended or cancelled following test results. These include that it would be dangerous for the person to drive because of an illness, defect or incapacity or because they do not have sufficient knowledge of road laws or adequate driving skills.43

Driving assessments
In addition to medical testing, some older drivers may have to undertake a driving assessment by a qualified driving instructor or occupational therapy driving assessor.

Unfair treatment by driving instructors
Comments in the survey revealed some older drivers are experiencing unfair or discriminatory treatment when it comes to driving assessments. In particular, respondents reported problems with using unfamiliar cars, and poor treatment by driving instructors. One person responding to the survey on someone else’s behalf spoke in detail about problems with a driving assessment, and indicated the person’s age was explicitly mentioned by the driving instructor:

She can drive locally, but they make you get tested every six months. This is because she got a letter a few years ago from VicRoads. The first occupational therapist she had was not good. He sat in the back seat with some bloke in the front seat. She does not know what the role of the other bloke is. It’s intimidating to have two men in the car. The occupational therapist said ‘I don’t believe in 70 year olds being on the road, more so 80 year olds.’ She felt uncomfortable with the small car. He told her lots of different directions, and suddenly yelled to turn left.

Another respondent spoke about poor treatment by a driving instructor, although their age was not explicitly mentioned in their interactions with the instructor:

My car is manual, this car was automatic. I hate driving automatic cars. He opened the door and hit the car next to me. I told him he cannot do that and he said ‘bad luck I’ve done it.’ I asked for my licence as the instructor had taken it from me and he said ‘no, you’ve done it now.’ He said that I had parked too close to the other cars. My next two tests I failed also. On the second test I only veered and barely touched the white bike line. He grabbed the wheel and said you cannot do that. On the third time I was in a school zone and did not know that because vandals had pulled the sign around and I could not see it.

The Commission explored the issue of driving assessments, including training, regulation and accreditation of driving instructors in its discussion with key informants, including the Royal Automobile Club of Victoria (RACV) and the Victorian branch of the Australian Driver Trainers Association (ADTAV).

Consistent with some of the findings in the survey, the ADTAV stressed that the quality of training and accreditation requirements for driving instructors could be improved.

The ADTAV also commented on the value of appropriately ‘matching’ instructors to those they are testing. The benefits of matching the instructor to the driver were highlighted through positive examples of specific instructors who work well with older drivers. Targeted driving instructor services such as the RACV’s Senior Drivers’ Program demonstrate the benefits of a tailored service for older drivers.

43 Road Safety (Drivers) Regulations 2009 78 (2).
Testing methodologies

Survey responses indicated frustration with testing methodologies that did not take into account the reality of everyday driving patterns and behaviours.

Key informants confirmed the importance of testing methodologies genuinely assessing driving ability. For example, MUARC stressed the importance of ensuring testing has a demonstrable association with real world driving performance. Importantly, testing should accurately predict driving safety and potential for crash involvement.

Currently, an important research issue in older driver safety is the development of an improved screening instrument. A study of 1,300 older drivers in Canada, Australia and New Zealand is currently underway – the Candrive/Ozcandrive study. The study aims to develop a screening tool (or set of decision-making rules or checklists) with a high positive predictive capacity to identify at-risk drivers.44

The Commission looks forward to results of the research and development of the tool, which should lead to fairer and more accurate outcomes for older drivers when it comes to testing their driving ability.

Enhancing testing methodologies and ensuring older drivers do not experience discriminatory or unfair treatment when undertaking driving assessments is crucial – particularly given the significant personal consequences of failing tests and the cost involved.

I believe that many older drivers self-monitor appropriately. At times a referral for an Occupational Therapy Driving Assessment is required and I believe the cost of these, particularly in our rural area, is very expensive.

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44  It is expected that the tool will be brief and easy to administer and will be validated against crash involvement, driving infringements and on-road driving performance. Potential predictor variables will be drawn from a variety of sources: medical conditions and medications, cognitive, visual and physical functioning and other health and well-being measures. Information provided to the Commission by MUARC 5 November 2012.

Case study

Ron contacted Seniors Information Victoria for advice. Ron is 80 years old and has been having dialysis. A health provider reported him to VicRoads for a driving assessment. He has a letter from his specialists confirming his health does not affect his driving. For the past month, Ron has undergone a number of medical tests and a driving assessment. He says this has caused him a great deal of stress and fear, and has cost about $600, which is more than he can afford on the pension. Ron now has to have assessments every year. He thinks this is unfair and based entirely on his age given the results of medical tests indicated he is fit to drive. Ron has been driving for 60 years without an accident.

Case study

Lee contacted Seniors Information Victoria as she wants to challenge VicRoads about the cost of annual driving assessments, which she says are demeaning, stressful, and too costly for pensioners. Lee cited one occasion when the driving assessor went with her to the bank to withdraw $395 before he would conduct the assessment. Lee felt that pensioners should get a discount or a concession card for these costs. She contacted her local MP to complain and as a result, VicRoads agreed to waive costs for Lee’s next assessment.
Chapter 6 - Consumer experiences and rights awareness

Respondents spoke about their experiences with VicRoads, with some commenting on delays, inconsistencies, and privacy concerns about the use of their medical information.

One respondent said VicRoads were ‘less than friendly about demands for medical reviews’, and indicated their frustration with VicRoads not accepting recommendations made to them by an external GP.

A respondent living in regional Victoria, and responding to the survey on behalf of their partner, identified a negative experience regarding VicRoads’ lack of flexibility in dealing with their particular situation:

(named individual) received a letter out of the blue from VicRoads stating that she had to undergo a range of medical tests within one week or else her licence would be suspended. She lives in the country and was unable to get all her tests done in time and had her licence cancelled. She took the matter to VCAT who overturned the decision and had it restored to her until she could have all the results back which showed there was nothing wrong with her health or eyesight. She was told that VicRoads had been contacted anonymously about her ability to drive but was never told who this was or where this information came from.

These findings, paired with the responses about unfair treatment in relation to medical testing and review, suggest there is a lack of awareness among some older drivers about their rights, and precisely what occurs when it comes to reporting about fitness to drive and related processes.

One survey respondent, a driving instructor of 20 years, suggested that greater education of older drivers about their rights in relation to driving, including the function of public reporting, is essential to ensure they do not feel aggrieved when they receive anonymous reports and demands for testing. This is particularly important as the Victorian system relies heavily on reports including self-reports.

Discrimination complaints received by the Commission about driver licensing often relate to customer service experiences at VicRoads. This confirms there is room for improvement regarding VicRoads’ engagement with older drivers about their rights and responsibilities and VicRoads’ licensing procedures, and suggests individual case management also needs improvement.

Guidelines and educational materials for older drivers

In addition to the Victorian Older Drivers Handbook, VicRoads also has targeted material on their website aimed at older drivers, including information on a range of medical conditions, obligations with regard to self-reporting, and alternatives to driving for those who can no longer do so. VicRoads also provides an Older Drivers’ checklist to assist with self-assessment.

The Commission welcomes VicRoads’ considerable efforts to ensure older drivers, as well as medical professionals, are aware of their rights and responsibilities when it comes to driving and assessing fitness to drive. However, the research findings confirm that some older drivers remain confused about their rights and responsibilities when it comes to driver licensing. While a lot of information can be found online, not all people have access to this. Therefore, any information materials need to be provided in places and by agencies from which older people tend to seek out information such as COTA, and other key information hubs and events such as Seniors Week.

In order to improve customer service and to take a whole of agency approach to preventing discrimination, the Commission encourages VicRoads to develop an Older Drivers Action Plan to identify and address age discrimination and negative attitudes towards older drivers. The plan should include actions to improve customer service, information provision as discussed above, and to minimise any discriminatory impacts on older drivers.

45 State of Victoria, VicRoads, the Victorian Older Drivers’ Handbook (2010).
Chapter 7 - Conclusion

The findings from the research provide a glimpse into the experiences of older drivers in Victoria. The large number of people indicating they had not experienced unfair or discriminatory treatment, or had a positive experience, suggests the system is working well for many. However, some older drivers are experiencing unfair or discriminatory treatment in a range of areas – when undertaking medical testing and review, driving assessments, being abused by members of the public, or being reported about their fitness to drive.

Discriminatory or unfair treatment when it comes to driver licensing has significant and wide-ranging consequences. It contributes to the social exclusion of older people by limiting their ability to participate in society and access essential services, with negative impacts on health and wellbeing. It also causes stress for older people, particularly where they have to undergo the expense and time of medical tests and licence reviews which prove unnecessary. The apparent overreach of the system, where the vast majority of reports and subsequent reviews do not lead to suspension or cancellation of licences, also adds to the cost of our licensing system generally.

The research revealed that Victoria’s approach to regulating driver licensing is relatively unrestrictive when compared to other states. Organisations with responsibilities for regulating driver licensing are already undertaking a range of positive measures to educate and inform older drivers, and those with reporting obligations, about their rights and responsibilities under the current system. However, the findings demonstrate there is room for improvement to ensure fairer outcomes for older drivers.

As the system relies heavily on reporting functions – by GPs, members of the public, Victoria Police and others – it is crucial that those with responsibilities for reporting are equipped with the knowledge they need to make fair and accurate decisions.

Older drivers themselves need education and support so they can fully understand their rights and responsibilities. This includes raising awareness of the conditions that may affect their driving, reporting functions, and their rights when they are required to undergo medical reviews, testing, and assessments.

Improvements to these aspects of driver licensing regulation in Victoria will ensure older drivers can stay on the road for as long as they are safe to do so, enjoy their independence, and continue to participate as active and engaged members of society.
Appendix 1 -
Experiences of older drivers

Have you been treated unfairly as an older driver?

> Take our survey

The Victorian Equal Opportunity and Human Rights Commission, in partnership with Council on the Ageing (COTA), is looking into older drivers’ experiences in being unfairly treated because of their age.

We want to hear your stories about things such as, being reported for unfit driving, licence re-testing and medical review, and the role of family members, health professionals, insurance companies and police in these processes.

Also, tell us any positive things that have happened when applying for or renewing your licence.

Please answer our short survey – it will take about 10 minutes to complete. The information collected will inform the policy work of COTA and the Commission will publish a report on the issue in mid-2012.

Information collected in this survey is anonymous. You do not need to provide your name or any other personal information at any stage. No person will be identified in the report.

You can complete the survey over the phone by calling the Commission on 1300 292 153 or send us an email about your experience to research@veohrc.vic.gov.au.

Your experience with driving

1. Have you experienced unfair treatment when it comes to driving?

For example, (please tick as many as applicable):

- Being treated unfairly by a doctor or other medical professional regarding your health and capacity to drive
- Intervention by a family member
- Being required to undergo retesting or medical review (where you didn’t feel this was needed)
- Being treated unfairly by a member of the public
- Being treated unfairly by the police
- Being dealt with unfairly by officers at VicRoads
- Being dealt with unfairly by an insurance company
- Being dealt with unfairly by another organisation (please identify)
- All of the above
- Other (please describe below in question 2)
2. Please describe your experience, including who was involved, how it was resolved or if it is still in progress.


3. Do you think the treatment was because of your age? If so, why?


4. Did you take any action or make a complaint?

- Yes
- No

If yes, who did you complain to?

- VicRoads
- Community organisation
- COTA
- Victoria Police
- Victorian Equal Opportunity and Human Rights Commission
- Australian Human Rights Commission
- Media
- Local Member of Parliament
- Other (please describe) ___________________________________________________________________________
If no, why didn't you make a complaint?

☑ Did not think the matter was serious enough to warrant a complaint
☑ Didn't want to make a fuss
☑ Did not know how or where to make a complaint
☑ Complaint process too complicated/daunting
☑ Didn't think anything would happen/no point
☑ Other (please describe below)

5. Is there anything else you would like to tell us about your experience with driving or what could be improved?

About you

6. Are you:

☑ Female
☑ Male

7. How old are you?

☑ Under 45
☑ 45–55
☑ 56–65
☑ 66–75
☑ 76–85
☑ Over 85

8. Do you identify as:

☑ Aboriginal or Torres Strait Islander
☑ from a culturally and linguistically diverse background
(if yes, please describe your background) _____________________________________________
☑ neither of the above.
9. If you would be happy to be contacted about this survey, please provide your phone number or email address.

Thank you for taking our survey. Your response is very important to us.

Before finishing, please note that in submitting this survey you are providing your consent to participate in this research on the basis that your information will be kept private and the published report does not contain any identifying information about you.

If you know anybody else who might want to have their say about their experiences, please encourage them to complete this survey.

Please return your completed survey:

- **By post** – Victorian Equal Opportunity and Human Rights Commission,
  Level 3, 204 Lygon Street, Carlton, Victoria 3053
- **By email** – research@veohrc.vic.gov.au
- **By fax** – 1300 891 858.

You can also contact COTA’s Seniors Information Service in person at 247 Flinders Lane, Melbourne, or by calling 1300 13 50 90.

This project is not a complaints process, rather it is research that will inform the Commission’s future work on this subject. If you would like to make a complaint about age discrimination you can do so by contacting the Commission’s enquiry line on 1300 292 153 during business hours. For more information about how to do this, or to see the on-line complaint form, visit our website at www.humanrightscommission.vic.gov.au/complaints

The Victorian Equal Opportunity and Human Rights Commission is committed to protecting your privacy - for more information about our privacy policy, please visit www.humanrightscommission.vic.gov.au/privacy or call us on 1300 891 858 and a copy of our policy can be sent to you.
Contact us

Enquiry Line 1300 292 153 or (03) 9032 3583
Fax 1300 891 858
Hearing impaired (TTY) 1300 289 621
Interpreters 1300 152 494
Email information@veohrc.vic.gov.au
Website humanrightscommission.vic.gov.au