



Integrity and  
Oversight Committee

# Performance of the Victorian integrity agencies 2021/22

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**Report**

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# Committee membership



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# About the Committee

The Integrity and Oversight Committee is a joint investigatory committee constituted under the *Parliamentary Committees Act 2003* (Vic).

## Functions

### 7 Integrity and Oversight Committee

- (1) The functions of the Integrity and Oversight Committee are—
  - (a) to monitor and review the performance of the functions and exercise of the powers of the Information Commissioner; and
  - (b) to consider and investigate complaints concerning the Information Commissioner and the operation of the Office of the Victorian Information Commissioner; and
  - (c) to report to both Houses of Parliament on any matter requiring the attention of Parliament that relates to—
    - (i) the performance of the functions and the exercise of the powers of the Information Commissioner; or
    - (ii) any complaint concerning the Information Commissioner and the operation of the Office of the Victorian Information Commissioner; and
  - (d) to examine the annual report of the Information Commissioner and any other reports by the Information Commissioner and report to Parliament on any matters it thinks fit concerning those reports; and
  - (e) to inquire into matters concerning freedom of information referred to it by the Parliament and to report to Parliament on those matters; and
  - (f) to monitor and review the performance of the duties and functions of the Victorian Inspectorate, other than those in respect of VAGO officers; and
  - (g) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the Victorian Inspectorate, other than those in respect of VAGO officers, that require the attention of the Parliament; and
  - (h) to examine any reports made by the Victorian Inspectorate to the Integrity and Oversight Committee or the Parliament other than reports in respect of VAGO officers; and
  - (i) to consider any proposed appointment of an Inspector under section 18 of the *Victorian Inspectorate Act 2011* and to exercise a power of veto in accordance with that Act; and

- (ia) to receive and assess public interest disclosures about conduct by or in the Victorian Inspectorate and engage an independent person to investigate any such disclosure that it has assessed to be a public interest complaint; and
  - (j) to monitor and review the performance of the duties and functions of the IBAC; and
  - (k) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the IBAC that require the attention of the Parliament; and
  - (l) to examine any reports made by the IBAC to the Integrity and Oversight Committee or the Parliament; and
  - (m) to consider any proposed appointment of a Commissioner under section 20 of the *Independent Broad-based Anti-corruption Commission Act 2011* and to exercise a power of veto in accordance with that Act; and
  - (n) to carry out any other function conferred on the Integrity and Oversight Committee by or under—
    - (i) the *Ombudsman Act 1973*; and
    - (ii) the *Independent Broad-based Anti-corruption Commission Act 2011*; and
    - (iii) the *Victorian Inspectorate Act 2011*; and
    - (iv) the *Public Interest Disclosures Act 2012*.
- (2) Despite anything to the contrary in subsection (1), the Integrity and Oversight Committee cannot—
- (a) reconsider a decision of the Information Commissioner or Public Access Deputy Commissioner in relation to a review of a particular matter; or
  - (b) reconsider any recommendations or decisions of the Information Commissioner or Public Access Deputy Commissioner in relation to a complaint under the *Freedom of Information Act 1982*; or
  - (c) reconsider any findings in relation to an investigation under the *Freedom of Information Act 1982*; or
  - (d) reconsider the making of a public interest determination under the *Privacy and Data Protection Act 2014*; or
  - (e) reconsider the approval of an information usage arrangement under the *Privacy and Data Protection Act 2014*; or
  - (f) reconsider a decision to serve a compliance notice under the *Privacy and Data Protection Act 2014*; or
  - (g) disclose any information relating to the performance of a duty or function or exercise of a power by the Ombudsman, the Victorian Inspectorate or the IBAC which may—

- (i) prejudice any criminal proceedings or criminal investigations; or
  - (ii) prejudice an investigation being conducted by the Ombudsman, the IBAC or the Victorian Inspectorate; or
  - (iii) contravene any secrecy or confidentiality provision in any relevant Act; or
- (h) investigate a matter relating to the particular conduct the subject of—
- (i) a particular complaint or notification made to the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011*; or
  - (ii) a particular disclosure determined by the IBAC under section 26 of the *Public Interest Disclosures Act 2012* to be a public interest complaint; or
  - (iii) any report made by the Victorian Inspectorate; or
- (i) review any decision by the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011* to investigate, not to investigate or to discontinue the investigation of a particular complaint or notification or a public interest complaint within the meaning of that Act; or
- (j) review any findings, recommendations, determinations or other decisions of the IBAC in relation to—
- (i) a particular complaint or notification made to the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011*; or
  - (ii) a particular disclosure determined by the IBAC under section 26 of the *Public Interest Disclosures Act 2012* to be a public interest complaint; or
  - (iii) a particular investigation conducted by the IBAC under the *Independent Broad-based Anti-corruption Commission Act 2011*; or
- (k) review any determination by the IBAC under section 26 of the *Public Interest Disclosures Act 2012*; or
- (l) disclose or share any information that is likely to lead to the identification of a person who has made an assessable disclosure and is not information to which section 53(2)(a), (c) or (d) of the *Public Interest Disclosures Act 2012* applies; or
- (m) review any decision to investigate, not to investigate, or to discontinue the investigation of a particular complaint made to the Victorian Inspectorate in accordance with the *Victorian Inspectorate Act 2011*; or
- (n) review any findings, recommendations, determinations or other decisions of the Victorian Inspectorate in relation to a particular complaint made to, or investigation conducted by, the Victorian Inspectorate in accordance with the *Victorian Inspectorate Act 2011*.

## Secretariat

Sean Coley, Committee Manager  
Dr Stephen James, Senior Research Officer  
Tom Hvala, Research Officer  
Holly Brennan, Complaints and Research Assistant  
Maria Marasco, Committee Administrative Officer  
Bernadette Pendergast, Committee Administrative Officer

## Contact details

**Address** Integrity and Oversight Committee  
Parliament of Victoria  
Parliament House, Spring Street  
East Melbourne Victoria 3002

**Phone** +61 3 8682 2747

**Email** [ioc@parliament.vic.gov.au](mailto:ioc@parliament.vic.gov.au)

**Web** [parliament.vic.gov.au/ioc](http://parliament.vic.gov.au/ioc)

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# Chair's foreword

I am pleased to present to the Parliament, the Integrity and Oversight Committee's (IOC) report: *Performance of the Victorian integrity agencies 2021/22*.

The IOC regularly reviews and reports on the performance of Victoria's four major integrity agencies, the Independent Broad-based Anti-corruption Commission (IBAC), the Office of the Victorian Information Commissioner (OVIC), the Victorian Ombudsman (VO) and the Victorian Inspectorate (VI).

In preparing this report, the Committee examined the agencies' annual reports for 2021/22 and then asked the agencies to respond to questions on notice. The agencies answered the Committee's questions at public hearings and also provided written responses to the questions on notice.

The Committee thanks the agencies for participating in the review process and for their willingness to respond to our requests for information.

The Committee also thanks the agencies for playing their important part in Victoria's integrity system, and particularly acknowledges the significant contribution of departing leaders: Hon Robert Redlich AM KC, who completed his term as IBAC Commissioner in 2022; Mr Sven Bluemmel, who left his position as Information Commissioner this year to become Victoria's Electoral Commissioner; and Ms Deborah Glass OBE, who will complete her term as Ombudsman early next year.

The Committee congratulates Victoria's Inspector, Mr Eamonn Moran PSM KC, who was reappointed this year for a further two-year term, and Victoria's new IBAC Commissioner, Victoria Elliott, on their appointments.

During 2021/22, IBAC published a report identifying corruption risks in community service organisations performing work outsourced by the Victorian Government. This identified areas of risk such as procurement, contract management and conflicts of interest. This raises the question of whether IBAC can adequately investigate alleged misconduct in these areas.

During public hearings for this review, at which the definition of corrupt conduct in the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) was discussed, IBAC Acting Commissioner Farrow noted that 'South Australia and Victoria are the only jurisdictions where corrupt conduct is limited to criminal conduct'—this may limit IBAC's ability to investigate misconduct falling short of a criminal offence. The Committee is interested in this issue and will examine it further.

Complaints and notifications to IBAC increased by almost one third during 2021/22, making it difficult for IBAC to reduce delays in responding to complaints.

Delays are also a problem for Victorians requesting information under Freedom of Information (FOI) law, and OVIC struggles to address this problem, in part because it has no power to direct an agency to decide on FOI requests. This is why the Committee recommends that the FOI Act be amended, granting OVIC the power to require an agency or minister to make a decision regarding an FOI request by a certain date.

The Committee has just been informed of a recent significant cut to OVIC's funding, meaning OVIC is unable to conduct an independent review of the FOI Professional Standards, which is a statutory requirement. Further, the reduction in base funding is of such magnitude that the Committee understands it will lead to a net loss of ten staff positions which will inevitably reduce its ability to meet targets and carry out all its functions.

The Committee is very concerned by this development and recommends that sufficient funding be restored to OVIC to allow it to conduct an independent review of the FOI Professional Standards.

Like other agencies, the number of complaints and notifications going to the VI increased by over a quarter in 2021/22, so the agency struggled to reduce delays in finalising complaints.

The Ombudsman has identified a potential efficiency measure by pointing to the requirement that her office notify the VI every time a coercive power, such as a summons, is used. The notifications and the resulting workload consumes time and resources from both agencies and the Ombudsman questioned the value of this routine requirement.

The VI, however, pointed out the importance of oversight of the use of coercive powers because their use limits the human rights of individuals subjected to them. The Committee recommends further review of this issue, by the Government, to identify the most efficient and effective way to monitor the use of these powers.

The VO tabled six reports during 2021/22 covering diverse topics including an 'Investigation into decision-making under the Victorian Border Crossing Permit Directions' and another examining allegations of collusion with property developers at Kingston City Council. The VO was also able to finalise most complaints within a month of receiving them.

Both the VO and IBAC joined with the Victorian Auditor-General's Office to call in October 2022 for their funding to be determined by a body independent of executive government. This came up in more than one public hearing, and it should be obvious that integrity agencies, which may investigate government departments or ministerial decisions or conduct, should not be funded at the whim of the government.

I thank my fellow Committee members, Deputy Chair Hon Kim Wells MLA, Ryan Batchelor MLC, Jade Benham MLA, Paul Mercurio MLA, Rachel Payne MLC, Jackson Taylor MLA and Belinda Wilson MLA for their work on the Committee and

contributions to this report. I also thank the previous Chair, Gary Maas MLA, for his contribution to the Committee's work.

In closing, I acknowledge the Committee's secretariat for all their efforts in planning and conducting this review and preparing the report: Sean Coley, Committee Manager; Dr Stephen James, Senior Research Officer; Tom Hvala, Research Officer; Holly Brennan, Complaints and Research Assistant; and Maria Marasco and Bernadette Prendergast, Committee Administrative Officers.

I commend this report to the Parliament.

A handwritten signature in black ink that reads "Tim Read". The signature is written in a cursive style with a large, prominent 'T' and 'R'.

**Dr Tim Read MLA**  
**Chair**



# Recommendations

## 2 Independent Broad-based Anti-corruption Commission

**RECOMMENDATION 1:** That the Victorian Inspectorate be invited to join the Prevention and Education Advisory Committee.

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**RECOMMENDATION 2:** That—given its obligations to the Parliament in respect of tabling reports, and the legal complexity and uncertainty regarding how the provision of embargoed copies of the Independent Broad-based Anti-corruption Commission’s (IBAC) special reports to media outlets in advance of tabling accords with the privileges of Parliament—IBAC seek legal advice on whether this practice accords with the privileges of Parliament.

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**RECOMMENDATION 3:** That if, upon receiving such legal advice, the Independent Broad-based Anti-corruption Commission’s (IBAC) position is that providing embargoed copies of its special reports to media outlets in advance of tabling is legal, prudent and appropriate, IBAC develop a rigorous and transparent policy identifying the basis upon which embargoed copies of special reports are provided to media outlets (and to which journalists) in advance of tabling, to guide its decision-making.

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## 3 Office of the Victorian Information Commissioner

**RECOMMENDATION 4:** That the Office of the Victorian Information Commissioner be granted the power under the *Freedom of Information Act 1982* (Vic) to require an agency or minister to make a decision regarding a FOI request by a certain date.

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**RECOMMENDATION 5:** That the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) and other relevant legislation be amended to enable the Office of the Victorian Information Commissioner to obtain review application data held by the Victorian Civil and Administrative Tribunal.

77

**RECOMMENDATION 6:** That the legislation underpinning the Information Security Incident Notification Scheme be amended to require that notifications under the Scheme are made to the Office of the Victorian Information Commissioner at the time of the incident.

80

**RECOMMENDATION 7:** That the Victorian Government consider granting the Office of the Victorian Information Commissioner more funding to pursue a more proactive investigations and audits schedule.

83

**RECOMMENDATION 8:** That the Victorian Government consider providing more funding for the Office of the Victorian Information Commissioner to support development of its evaluation and assessment framework.

85

**RECOMMENDATION 9:** That the Victorian Government provide sufficient funding to the Office of the Victorian Information Commissioner to enable it to conduct an independent review of the Freedom of Information Professional Standards.

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## 4 Victorian Inspectorate

**RECOMMENDATION 10:** That, following consultation with the integrity agencies, the Victorian Government review the effectiveness and efficiency of the coercive powers notification scheme, including the requirement that all exercises of coercive powers be notified to the Victorian Inspectorate (VI).

This includes:

- what kinds of matters must or may be notified to the VI
- what kinds of matters must or may be reviewed by the VI
- an examination of the merits of complementary or alternative review measures (such as audits of coercive power notifications).

In making this recommendation, the Committee emphasises the importance of robust, independent oversight of integrity agencies' use of coercive powers given their impact on the human rights of persons subject to them.

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# Acronyms and abbreviations

BIL	Business Impact Level
BP3	Budget Paper No. 3 (Service Delivery), Department of Treasury and Finance (Victoria)
CCP	Chief Commissioner of Police
CCTV	closed-circuit television
CEO	Chief Executive Officer
CMS	Case Management System
COO	Chief Operating Officer
DELWP	Department of Environment, Land, Water and Planning (Victoria)
DJCS	Department of Justice and Community Safety (Victoria)
DJPR	Department of Jobs, Precincts and Regions (Victoria)
DTF	Department of Treasury and Finance (Victoria)
EACS	electronic access control system
EER	Engagement and Early Resolution team, Independent Broad-based Anti-corruption Commission
ERC	Expenditure Review Committee
FOI	freedom of information
FTE	full-time equivalent
HR	human resources
IBAC	Independent Broad-based Anti-corruption Commission
IDAM	Identity and Access Management
ICAC	Independent Commission Against Corruption (New South Wales)
IOC	Integrity and Oversight Committee
ICT	Information Security Policy
IT	Information Technology
KPIs	key performance indicators
LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex, queer/questioning plus
NSW	New South Wales
OH&S	Occupational Health and Safety
OVIC	Office of the Victorian Information Commissioner
PDSP	Protective Data Security Plan
PEAC	Prevention and Education Advisory Committee
PIC	public interest complaint
PID	public interest disclosure
PMS	People Matter Survey, Victorian Public Sector Commission

## Acronyms and abbreviations

PRIME	Police Responding in Mental Health Events
QA	Quality and Assurance
SD	surveillance devices
SMF	Security Management Framework
TA	Treasurer's Advance
TAC	Transport Accident Commission (Victoria)
TI	telecommunications interceptions
TISP	<i>Telecommunications (Interception) (State Provisions) Act 1988 (Vic)</i>
TRIM	information management system
VAGO	Victorian Auditor-General's Office
VCAT	Victorian Civil and Administrative Tribunal
VI	Victorian Inspectorate
VLSBC	Victorian Legal Services Board and Commissioner
VO	Victorian Ombudsman
VPDSS	Victorian Protective Data Security Standards
VPS	Victorian Public Sector
VPSC	Victorian Public Sector Commission

# Chapter 1

## Introduction

### 1.1 Overview of Victoria's integrity system

Accountability and integrity are two key principles underpinning responsible government. Victoria's integrity system is comprised of a number of bodies, which perform distinctive roles in maintaining trust and confidence in public administration. Together, they help protect and advance the integrity of the Victorian public sector.

The Independent Broad-based Anti-corruption Commission (IBAC) is responsible for identifying, exposing and preventing corrupt conduct in the Victorian public sector. Its functions include a focus on overseeing Victoria Police. It is also the central agency for receiving, assessing and investigating disclosures about improper conduct by a public officer or public body (known formally as 'public interest disclosures' (PIDs), and, less formally, as 'whistleblower complaints').

The Office of the Victorian Information Commissioner (OVIC) oversees Victoria's freedom of information (FOI), information privacy, and information security regimes. It aims to facilitate greater access to information while safeguarding privacy and data in appropriate circumstances.

The Victorian Ombudsman (VO) investigates and resolves complaints about the administrative actions of Victorian government agencies, including local councils. It is also empowered to enquire into any administrative action that is incompatible with the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

The Victorian Inspectorate (VI) oversees a number of key integrity agencies, including IBAC, OVIC and the VO, by monitoring their compliance with the law, their use of coercive powers and their compliance with procedural fairness requirements.

These integrity agencies are not subject to the direction or control of the executive government and are directly accountable to the Parliament of Victoria through the Integrity and Oversight Committee (IOC).

### 1.2 The Integrity and Oversight Committee

The IOC is a joint investigatory committee of the 60th Parliament of Victoria established under the *Parliamentary Committees Act 2003* (Vic) ('*PC Act 2003* (Vic)'). The IOC is responsible for monitoring and reviewing the performance of the duties and

functions of some of Victoria's leading integrity agencies. The IOC performs this oversight role through, among other actions,

- monitoring and reviewing the performance of the duties and functions of IBAC, OVIC, the VI and the VO
- examining the agencies' reports, including annual reports
- reporting to both Houses of Parliament on any matter requiring the attention of Parliament.<sup>1</sup>

As noted, the Committee monitors and reviews the agencies' performance of their duties and functions. These duties and functions include public information, education and prevention responsibilities; complaint handling, investigations and reviews of public sector body investigations; and inquiries into public sector bodies (including any consequent recommendations for those bodies).

In addition to the examination of agency reports, including their annual reports, the Committee exercises oversight by monitoring information about the performance of agencies it has received from complainants; that is in the public domain; or that has come from the integrity agencies themselves through correspondence, briefings, submissions and appearances at Committee hearings. Further, the Committee has power to inquire into matters that have been referred to it by the Parliament of Victoria or which have been self-referred by the Committee under the *PC Act 2003* (Vic).<sup>2</sup>

With regard to its own investigatory power, the Committee may, in the circumstances prescribed in the *PC Act 2003* (Vic), investigate complaints about the Information Commissioner and the operation of OVIC.<sup>3</sup> However, it cannot investigate complaints about IBAC, the VI or the VO. While the Committee cannot investigate these kinds of complaints, it can monitor and review them, and seek further information from the integrity agency concerned, where the Committee considers that a complaint has identified a systemic issue that bears on the performance of the agency (for example, its professionalism and timeliness in responding to a complaint).<sup>4</sup> The *PC Act 2003* (Vic) expressly prohibits the Committee, however, from reconsidering the decisions, findings or recommendations made by IBAC, OVIC, the VI and the VO.<sup>5</sup>

The IOC is authorised to engage an independent investigator to investigate PIDs about the VI.<sup>6</sup>

Under the governing legislation, the budgets of IBAC, the VI and the VO 'for each financial year ... [are] to be determined in consultation with the Parliamentary

1 *Parliamentary Committees Act 2003* (Vic) ('*PC Act 2003* (Vic)') s 7(1); *Ombudsman Act 1973* (Vic) s 26H(1).

2 *PC Act 2003* (Vic) s 33(1), (3).

3 *PC Act 2003* (Vic) s 7(1)(b).

4 *PC Act 2003* (Vic) s 7(1); IOC, *Integrity and Oversight Committee*, <<https://new.parliament.vic.gov.au/get-involved/committees/ioc>> accessed 28 October 2023; IOC, *IOC complaint fact sheet*, <[https://www.parliament.vic.gov.au/images/stories/committees/IOC/IOC\\_Complaint\\_Fact\\_Sheet.pdf](https://www.parliament.vic.gov.au/images/stories/committees/IOC/IOC_Complaint_Fact_Sheet.pdf)> accessed 8 October 2023.

5 *PC Act 2003* (Vic) s 7(2); *Ombudsman Act 1973* (Vic) s 26H(2).

6 *PC Act 2003* (Vic) s 7(1)(ia); *Public Interest Disclosures Act 2012* (Vic) s 56A(1)(d).

Committee [the IOC] concurrently with ... [their] annual plan[s] ...<sup>7</sup> Before the beginning of each financial year, each of these agencies must ‘prepare’ and ‘submit’ ‘a draft annual plan describing’ their ‘proposed work program for that financial year’ for the IOC’s ‘consideration’.<sup>8</sup>

Further, the IOC is required to recommend to Parliament the appointment of an independent person to conduct a performance audit of IBAC, the VI and the VO at least once every four years.<sup>9</sup> The independent performance audit must ‘determine’ whether these agencies are achieving their ‘objectives effectively, economically and efficiently and in compliance’ with their governing legislation.<sup>10</sup> The inaugural reports of the independent performance auditor on the performance of IBAC and the VI were tabled last year.<sup>11</sup> The Committee is currently making preparations for the initiation of the independent performance audit of the VO.

## 1.3 Performance of the integrity agencies: an overview

In conducting its review of the integrity agencies in 2021/22, the Committee’s research and analysis was complemented by evidence received from the agencies, and from the former IBAC Commissioner, the Hon Robert Redlich AM KC, at public hearings held on 31 July and 14 August 2023.<sup>12</sup> The IOC also benefited from the agencies’ written responses to detailed questions sent to them in advance of, and following, those public hearings. The Committee thanks the agencies, and Mr Redlich, for their attendance at the hearings, and IBAC, OVIC, the VI and the VO for their written responses to its questions on notice.

The Committee closely examined the agencies’ performance across their duties and functions, with a focus on complaint handling, investigations, reviews and oversight; public information, engagement, education and prevention; governance and workplace; and accountability.

### 1.3.1 IBAC

The year under review was very productive for IBAC. The agency performed well against its Annual Plan 2021–22, completing key complaint-handling deliverables; strengthened its internal governance measures; improved quality assurance with respect to its assessments function; and augmented its capacity to collect, analyse

<sup>7</sup> *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) (*IBAC Act 2011* (Vic)) s 167. There are provisions to the same effect with regard to the Victorian Inspectorate (VI) and the Victorian Ombudsman (VO): *Victorian Inspectorate Act 2011* (Vic) (*VI Act 2011* (Vic)) s 90A; *Ombudsman Act 1973* (Vic) s 24A.

<sup>8</sup> *IBAC Act 2011* (Vic) s 168(1); *VI Act 2011* (Vic) s 90B(1); *Ombudsman Act 1973* (Vic) s 24B(1).

<sup>9</sup> *IBAC Act 2011* (Vic) s 170; *VI Act 2011* (Vic) s 90D; *Ombudsman Act 1973* (Vic) s 24D.

<sup>10</sup> *IBAC Act 2011* (Vic) s 170(4); *VI Act 2011* (Vic) s 90D(4); *Ombudsman Act 1973* (Vic) s 24D(4).

<sup>11</sup> See Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022.

<sup>12</sup> See Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2021/22*, Hearings, <<https://new.parliament.vic.gov.au/get-involved/inquiries/performanceofvictorianintegrityagencies202122/hearings>> accessed 8 October 2023.

and use complaints data. It also completed a number of significant, high-quality investigations, particularly in relation to the public sector.

Importantly, IBAC accepted, and made significant progress in implementing, the vast majority of recommendations in the IOC's corruption prevention and education inquiry report and 2020/21 performance report, as well as the audit report of the inaugural independent performance audit of the agency. The Committee also welcomes IBAC's implementation of a number of key improvements to its management of witness welfare, including its establishment of a new witness liaison welfare team to better engage with witnesses and others involved in its investigations.

IBAC has also continued its active approach to its education and prevention function, delivering an impressive number and variety of educational initiatives during 2021/22. This has included its 'You have the right not to remain silent' and 'Speak up to stop it' campaigns, which achieved broad print, digital and broadcast reach. However, the Committee encourages IBAC to further develop its measurement frameworks and tools so it can gain a more accurate sense of the quality and impact of its important education and prevention work.<sup>13</sup>

IBAC did not meet any of its 2021/22 Budget Paper No. 3 (BP3) performance targets for its assessments function, and this is demonstrative of a long-term trend. The agency continues to struggle to respond to its ever-increasing assessments workload, noting that it received 31% more complaints and notifications than in 2020/21.<sup>14</sup> While IBAC is working hard to improve the timeliness and quality of its assessments, it is not yet able to meet the demands of its assessments workload. Given the complexity of the agency's assessments function, the Committee therefore encourages IBAC to find effective ways to demonstrate how its work to improve timeliness is improving its productivity.

While IBAC has made significant progress in monitoring Victoria Police investigations of referred complaints (for instance, by increasing the number of formal reviews it conducts), its current reporting on its reasons for referring a complaint to Victoria Police for investigation, rather than investigating the complaint itself, remains opaque. The Committee therefore encourages IBAC to find more informative ways to report on this vital part of its police oversight work.

With regard to IBAC's workplace culture, while the Committee is pleased that the agency has made steady progress in addressing issues raised by its 2019 People Matter Survey (PMS) results, it needs to do more to reduce the incidence of bullying and violence or aggression and encourage the formal reporting of such behaviour. Moreover, given its pivotal role in the Victorian integrity system, it is critical that IBAC foster a speak-up culture and ensure that its workforce has confidence in the agency's reporting processes and procedures. In this connection, the Committee will monitor any findings or recommendations that come out of IBAC's current OH&S review.

<sup>13</sup> See Section 2.3.2 in Chapter 2 of this report. See also Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, especially Chapter 6.

<sup>14</sup> See Table 2.2 in Chapter 2 in this report.

### 1.3.2 OVIC

In 2021/22, OVIC prioritised close engagement with members of the public in order to help them better understand and more effectively exercise their information rights. OVIC also worked with the agencies to encourage and empower them to respect those rights.<sup>15</sup>

The Committee recognises OVIC's proactive approach to identifying potential improvements to Victoria's freedom of information (FOI) and privacy and data security framework, especially those identified in its *Impediments to timely FOI and information release* report.<sup>16</sup> The Committee looks forward to engaging with OVIC on further work in reviewing the FOI regime in the Committee's forthcoming inquiry to be conducted in 2023/24.

In 2021/22, OVIC made progress in improving the timeliness of its FOI reviews and finalisation of FOI privacy complaints. OVIC has also addressed delays in FOI decision-making through measures such as increased monitoring activities, early engagement with organisations, ongoing engagement with organisations facing backlogs of undecided requests, and advocacy for adequate FOI staffing resources at organisations. The Committee is pleased to note that these efforts have contributed to significant declines in FOI complaints received by OVIC in 2022/23, and fewer complaints about organisations with systemic problems with delays in FOI decision-making.

Unfortunately, however, OVIC's capacity to effectively monitor the timeliness of organisations' FOI decision-making is impeded by the current legislative regime. OVIC has drawn the Committee's attention to a number of legislative amendments it considers would strengthen the agency's monitoring of FOI and privacy. In this connection, the Committee has therefore recommended that the Victorian Government consider legislative amendments to authorise OVIC to require organisations to make an FOI decision by a certain date, to enable it to access data with respect to review decisions of the Victorian Civil and Administrative Tribunal, and to require notifications under the Information Security Incident Notification Scheme to be made at the time of the incident.

The Committee also recommends that the Victorian Government consider providing additional funding to OVIC so it can increase its auditing work, undertake more own motion investigations, and develop a rigorous evaluation and assessment framework with respect to the quality and impact of its education and prevention initiatives.

### 1.3.3 VI

The VI has made significant progress in implementing the vast majority of recommendations in the IOC's corruption prevention and education inquiry report and 2021/22 performance report, as well as the report of the inaugural independent

<sup>15</sup> Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 2.

<sup>16</sup> See OVIC, *Impediments to timely FOI and information release: own-motion investigation under section 610 of the Freedom of Information Act 1982 (Vic)*, Melbourne, September 2021.

performance audit of the VI. The Committee also welcomes the VI's steadfast leadership with regard to witness welfare management by integrity agencies generally, and its acceptance of, and work in implementing, all the recommendations directed at the agency.

The VI continues to struggle with its increasing complaint-handling workload in a timely fashion. Delay in finalising complaints, for instance, remains a significant issue for the VI. However, the Committee recognises the significant work the VI has undertaken to improve its timeliness in finalising complaints, making steady progress in increasing its annual complaints closure rate. The Committee further welcomes the introduction of new BP3 timeliness performance targets for the VI, and the agency's complaint-handling Service Charter, both of which will improve efficiency.

The Committee also recognises the positive steps the VI has taken to address workplace challenges revealed in its 2022 PMS results. It has, for instance, made progress in reducing the incidence of 'high' to 'severe' work-related stress and bullying as well as sexual harassment.<sup>17</sup> It is critical that the VI encourage formal reporting of internal workplace violence and aggression and provide adequate support to staff in public-facing, complaint-handling positions. The Committee will monitor the VI's 2023 PMS results with an eye on these challenges.

### 1.3.4 VO

In the year under review, the VO effectively handled a large volume of complaints in a timely and innovative fashion. It finalised more than 90% of its complaints within 30 days.<sup>18</sup> Its success in this regard reflects its commitment to, and experience in, a 'collaborative' approach to oversight; early and effective engagement with organisations subject to complaints; and use of early resolution techniques to resolve matters. For example, it has encouraged organisations to take 'direct action' themselves to resolve complaints at first instance.<sup>19</sup>

The Committee is also encouraged by the early success of the VO's exercise of its conciliation function, which has enhanced the agency's capacity to resolve complaints to the satisfaction of complainants and respondent organisations—especially when there is a continuing relationship between them (for example, in the public housing sector).<sup>20</sup>

While the VO monitors complainants' experience of the complaint-handling process, the Committee considers that there is room for the VO to do more. For example, the Committee encourages the VO to consider collecting, analysing and recording data relating to type of complaint, subject of complaint and complaint outcome in order to

<sup>17</sup> See Section 4.7.2 in Chapter 4 in this report.

<sup>18</sup> VO, *2022 annual report*, Melbourne, 2022, p. 18.

<sup>19</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 9 (quoted text); VO, *2022 annual report*, Melbourne, 2022, pp. 26, 29.

<sup>20</sup> VO, *2022 annual report*, Melbourne, 2022, p. 42; Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 2, 6.

better understand the motivations and behaviour of complainants who make a series of complaints to the VO and, therefore, to improve the rigour of its already effective complaint handling.

With regard to the limitations of its current online complaint channels, and as part of continuous improvement, the Committee encourages the VO to use ‘discount usability’ testing, which the agency itself can undertake economically.<sup>21</sup> Research shows that even modest usability testing of this kind is a worthwhile exercise that enhances the quality of products and services.<sup>22</sup>

Further, the Committee reiterates its view that the Victorian integrity system, with the leadership of IBAC and the support of the VO and other integrity agencies, needs to develop and use a rigorous measurement framework to identify and improve the quality and impact of its important education and prevention work.<sup>23</sup>

Finally, the Committee is pleased to note that the VO’s implementation of some key improvements to its management of witness welfare in response to the Committee’s review.<sup>24</sup>

## 1.4 Report structure

The report is comprised of six chapters. This chapter has given an overview of Victoria’s integrity system; the role, functions, jurisdiction and responsibilities of the IOC; and the performance of the integrity agencies in 2021/22.

The remaining chapters evaluate the performance of the integrity agencies in greater depth, with a focus on complaint handling, investigations, reviews and other forms of oversight; public information, engagement, education and prevention; governance and workplace; and accountability.

Chapter 2 examines the performance of IBAC.

Chapter 3 examines the performance of OVIC.

Chapter 4 examines the performance of the VI.

Chapter 5 examines the performance of the VO.

Chapter 6 concludes the report with brief reflections on the agencies’ performance and the Committee’s recommendations for improvements.

<sup>21</sup> See Section 5.6.2 (Complainant satisfaction) in Chapter 5 of this report.

<sup>22</sup> See Section 5.6.2 (Complainant satisfaction) in Chapter 5 of this report.

<sup>23</sup> See Section 5.7.1 in Chapter 5 of this report. See also Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria’s integrity agencies*, Melbourne, April 2022, especially Chapter 6.

<sup>24</sup> See Section 5.6.3 (Witness welfare management) in Chapter 5 of this report.



# Chapter 2

## Independent Broad-based Anti-corruption Commission

### 2.1 Introduction

The Independent Broad-based Anti-corruption Commission (IBAC) is the principal anti-corruption and police oversight body in Victoria. IBAC's jurisdiction encompasses the Victorian public sector, including public service departments and government agencies, local councils, Victoria Police, the Parliament of Victoria and the judiciary.<sup>1</sup>

The agency is primarily responsible for exposing, investigating and preventing public sector corruption and police personnel misconduct and, through education, improving the capacity of the Victorian public sector to prevent corruption and misconduct. IBAC's functions include receiving, handling, assessing and investigating public complaints and agency notifications about alleged corruption and police personnel misconduct, and it prioritises investigating 'serious' and 'systemic' corrupt conduct.<sup>2</sup> Further, IBAC produces reports and makes recommendations as part of its investigative, audit, research and intelligence activities. It also performs a range of functions under the *Public Interest Disclosures Act 2012 (Vic)* ('PID Act 2012 (Vic)'), including assessing and investigating public interest disclosures (PIDs, 'whistleblower complaints'), producing guidelines and reviewing public sector procedures.<sup>3</sup>

In exercising these functions, IBAC is authorised to use a range of investigative powers, including coercive and covert powers such as physical and electronic surveillance and the summoning and questioning of witnesses in public and private examinations.<sup>4</sup>

IBAC is oversighted by the Victorian Inspectorate (VI) and the Integrity and Oversight Committee (IOC). The VI focuses on IBAC's compliance with applicable legislation, in particular the lawful use of its coercive powers, while the IOC monitors and reviews its overall performance.<sup>5</sup>

This chapter reviews IBAC's performance of its complaint-handling, investigative, review, audit, educative and preventive functions in 2021/22, as part of the Committee's regular review and monitoring of Victoria's integrity agencies. The chapter also

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1 IBAC, *Who we investigate*, <<https://www.ibac.vic.gov.au/investigating-corruption/who-we-investigate>> accessed 4 July 2023.

2 *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* ('IBAC Act 2011 (Vic)') s 15(1A).

3 *IBAC Act 2011 (Vic)*, especially ss 8, 15; *Public Interest Disclosures Act 2012 (Vic)* ('PID Act 2012 (Vic)'), especially s 55; IBAC, *Annual report 2021/22*, Melbourne, 2022, especially pp. 4, 54–55.

4 *IBAC Act 2011 (Vic)*, especially pts 3, 4, 6; *Surveillance Devices Act 1999 (Vic)*, especially pt 4; *Telecommunications (Interception and Access) Act 1979 (Cth)*, especially chs 1–4.

5 *Victorian Inspectorate Act 2011 (Vic)* ('VI Act 2011 (Vic)'), especially s 11; *Parliamentary Committees Act 2003 (Vic)* ('PC Act 2003 (Vic)'), especially s 7(1); IBAC, *Annual report 2021/22*, Melbourne, 2022, especially pp. 54–56.

examines IBAC's performance with respect to its governance, workplace systems and culture, and the discharge of its accountabilities.

## 2.2 Complaint handling, investigations, reviews and audits

IBAC performs a range of complaint-handling and investigative functions in furtherance of its primary objective of identifying, exposing and investigating serious and systemic corrupt conduct and police misconduct.<sup>6</sup>

IBAC receives and assesses complaints, notifications, PIDs and PID notifications about public sector corruption, police misconduct, and 'improper conduct'<sup>7</sup> under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)') and *PID Act 2012* (Vic).<sup>8</sup> After assessing a complaint or notification received under the *IBAC Act 2011* (Vic), or determining that a PID or PID notification received under the *PID Act 2012* (Vic) meets the threshold of a 'public interest complaint', or can otherwise be classified as a complaint or notification under the *IBAC Act 2011* (Vic),<sup>9</sup> IBAC must ordinarily decide whether to dismiss, investigate or refer it.<sup>10</sup> IBAC has a limited summoning power for the purpose of conducting preliminary inquiries to determine what action it should take in respect of a complaint or notification.<sup>11</sup>

Except in limited circumstances, IBAC has absolute discretion to decide to dismiss a complaint or notification received under the *IBAC Act 2011* (Vic).<sup>12</sup> On the other hand, IBAC must refer a complaint or notification to a specified person or body with jurisdiction to investigate the matters raised, if it considers it would be 'more appropriate' to do so.<sup>13</sup> In certain circumstances, IBAC also has power to refer a public interest complaint to a specified person or body with jurisdiction to investigate the complaint.<sup>14</sup>

IBAC can conduct corrupt-conduct<sup>15</sup> and police-conduct investigations in response to complaints or notifications received, or on its 'own motion', and has a broad range of investigative and coercive powers at its disposal.<sup>16</sup>

IBAC also performs review and auditing functions in furtherance of its principal oversight objective of preventing corrupt conduct and police misconduct and improving the Victorian public sector's capacity to resist it.<sup>17</sup>

<sup>6</sup> *IBAC Act 2011* (Vic) s 15 (see also s 8).

<sup>7</sup> See *PID Act 2012* (Vic) s 4 ('Meaning of improper conduct') (see also s 3).

<sup>8</sup> *IBAC Act 2011* (Vic) ss 51-52, 57; *PID Act 2012* (Vic) ss 4-5; pt 2; ss 21-22, 55. See also *Victoria Police Act 2013* (Vic) ss 167-170.

<sup>9</sup> *IBAC Act 2011* (Vic) s 7; *PID Act 2012* (Vic) ss 26, 26A.

<sup>10</sup> *IBAC Act 2011* (Vic) s 58 (see also s 58A).

<sup>11</sup> *IBAC Act 2011* (Vic) pt 3, div 3A.

<sup>12</sup> *IBAC Act 2011* (Vic) s 67 (see also ss 58, 60, 63, 65).

<sup>13</sup> *IBAC Act 2011* (Vic) s 73.

<sup>14</sup> *PID Act 2012* (Vic) s 73A.

<sup>15</sup> *IBAC Act 2011* (Vic) s 4 ('Corrupt conduct') (see also s 60).

<sup>16</sup> *IBAC Act 2011* (Vic) ss 60, 64, pt 4.

<sup>17</sup> *IBAC Act 2011* (Vic) s 15 (see also s 8).

IBAC has power to request and review information about Victorian public sector agency and Victoria Police investigations of referred complaints or notifications, including their findings and outcomes, and to withdraw referrals.<sup>18</sup> Additionally, IBAC examines the systems and/or practices of public sector entities to identify potentially systemic concerns. The results of these audits may be published and can include recommendations for improvement of processes (see, for example, IBAC's *Victoria Police handling of complaints made by Aboriginal people* audit report).<sup>19</sup>

### 2.2.1 Complaint handling

IBAC performed strongly against its Annual Plan 2021/22, completing key deliverables with respect to improving its analysis of data collected through its assessments function. Importantly, this included the development of a 'police work area risk-identification model' and internal 'data dashboards' to identify trends in allegations in complaints and notifications received.<sup>20</sup>

The agency's performance against the Victorian Budget Paper No. 3 (BP3) performance targets for its assessments function was, however, hampered by the increasing volume and complexity of complaints and notifications received, a trend which shows no sign of abating and the challenge of which IBAC is still striving to meet.<sup>21</sup> The Committee recognises, however, that IBAC has taken significant action to improve its timeliness, and that this important work continued in 2021/22. Furthermore, the Committee, having previously acknowledged that IBAC's BP3 performance measures do not adequately capture the nature and complexity of its assessments function, is pleased that IBAC is committed to reviewing and improving its performance measures, in line with The IBAC Plan 2021–25.<sup>22</sup> The Committee also commends IBAC on the work it undertook in 2021/22 to improve the quality of its assessments, including the introduction of its PID Framework and Quality Assurance Framework.

#### IBAC's data dashboards and police work risk identification model

One of the highlights of IBAC's implementation activities for the '[h]igh-risk police areas' and '[h]igh-risk public sector agencies' strategic focus areas in its Annual Plan 2021/22, was the development of data dashboards to track trends in local government, public sector and Victoria Police 'complaints, allegations and cases'.<sup>23</sup>

<sup>18</sup> *IBAC Act 2011* (Vic) ss 78–79. See also IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 26–27, 42, 48–49. Note that, under ss 169(3) and 170 of the *Victoria Police Act 2013* (Vic), Victoria Police must report to IBAC on the commencement, progress and outcomes of investigations into alleged police misconduct.

<sup>19</sup> IBAC, *Audit report: Victoria Police handling of complaints made by Aboriginal people*, Melbourne, May 2022. See also *IBAC Act 2011* (Vic) s 15(6)(a)–(b).

<sup>20</sup> IBAC, *Annual Plan 2021/22*, Melbourne, 2022, p. 9; IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 21, 25.

<sup>21</sup> See IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 37.

<sup>22</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 11; IBAC, *Annual Plan 2021/22*, Melbourne, 2022, p. 16; Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 82–87; IBAC, *The IBAC Plan 2021–25*, Melbourne, 2021, pp. 5, 12.

<sup>23</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 19, 21, 25.

In this connection, the Committee was interested to know how IBAC intends to measure the effectiveness and impact of these dashboards.<sup>24</sup> IBAC informed the Committee that it is reviewing the performance measures for its intelligence function, and that this review coincides with the implementation of its Intelligence Framework to be completed in the latter part of 2023.<sup>25</sup>

The agency has indicated that the performance measures for the dashboards, which are only internal at this point, are under development and may include ‘the rates of use and refresh of data’ and ‘the number of IBAC’s strategic focus areas where corruption and misconduct harm is reduced over the five-year planning cycle’. IBAC has stressed that, because the dashboards are used by multiple business units across the organisation to inform their assessments and ‘decisions for targeted operations and prevention activities’, each unit (and indeed each type of activity) will have tailored performance measures.<sup>26</sup>

Importantly, the Committee notes that work is well underway to make information collected through IBAC’s data dashboards available to the public. IBAC informed the Committee that, pursuant to its Corruption Prevention Strategy 2021–24:

... IBAC is developing an interactive allegations dashboard for its public website ... [that] will allow users to filter data by date, sector, public sector body (including Victoria Police), alleged behaviour and function ... [and also intends to publish] sector profiles ... [including] on police, education, transport, human services and local government ... [containing] allegations data and insights relating to trends and issues in reporting.<sup>27</sup>

Another of IBAC’s significant implementation activities for the high-risk police areas strategic focus area was the development and rollout of its internal ‘police work area risk-identification model’.<sup>28</sup> IBAC has explained that the model will be used to identify which police stations are most vulnerable to corruption, with the results informing its prevention and operational decision-making regarding its oversight of Victoria Police.<sup>29</sup>

### IBAC’s PID Framework and Quality and Assurance Framework

IBAC completed the development of its PID Framework and Quality and Assurance Framework in 2021/22, a key workstream of the agency’s ‘[e]nhanced complainant experience’ strategic initiative in its Annual Plan 2021/22.<sup>30</sup> IBAC reported that the frameworks were developed to

<sup>24</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 2.

<sup>25</sup> Ms Marlo Baragwanath, Chief Executive Officer (CEO), IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 17.

<sup>26</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 5.

<sup>27</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 2.

<sup>28</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 25.

<sup>29</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 5.

<sup>30</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 36; IBAC, *Annual Plan 2021/22*, Melbourne, 2022, p. 13 (quoted text).

provide greater consistency in the handling of ... [complaints] and notifications ... [and to] assist in producing quality assessments, improving staff capability, and identifying opportunities for continuous improvement.<sup>31</sup>

At the request of the Committee,<sup>32</sup> IBAC explained how the frameworks will ensure greater consistency in its handling of complaints and notifications and the quality of its assessments, informing the Committee that the frameworks

establish key principles which guide IBAC's approach to the PID scheme and the assessment of complaints and notifications. One of the principles in the QA [Quality and Assurance] framework is that IBAC's assessments, decisions and reviews are consistent and defensible.<sup>33</sup>

The Committee was interested to know whether the frameworks provide specific guidance for staff on assessing police-related complaints and notifications and referring police-related PIDs to Victoria Police for investigation.<sup>34</sup> In response, IBAC advised that

[w]hile the frameworks are not intended to set out the way in which decisions are made (as this is the role of the delegate, generally IBAC's Commissioner and Deputy Commissioners), the frameworks will be supported by updated policies and procedures, including a policy on referrals of complaints and notifications.<sup>35</sup>

IBAC's Assessment & Review Quality Assurance Officer began implementing the Quality and Assurance Framework in March 2023, which IBAC has reported will involve 'working through each of its three key stages in an effort to drive continuous improvement—quality foundations, quality sampling and quality remediation'.<sup>36</sup>

In this regard, the Committee asked what impact the Quality and Assurance Framework will have on IBAC's timeliness in assessing complaints and notifications.<sup>37</sup> IBAC advised that, given that the Framework is still being implemented, an assessment of its impact on timeliness would be premature.<sup>38</sup> If the Framework identifies 'process improvements' that could potentially have a positive impact on timeliness, IBAC will consider them.<sup>39</sup>

However, IBAC has also emphasised that the Framework is oriented to the quality, rather than the timeliness, of assessments, consistent with its primary purpose of improving the overall quality of IBAC's assessment of complaints and notifications.

<sup>31</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 28.

<sup>32</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 4.

<sup>33</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 8.

<sup>34</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 4.

<sup>35</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 8.

<sup>36</sup> Ibid.

<sup>37</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 4.

<sup>38</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 8.

<sup>39</sup> Ibid.

IBAC also pointed out that its timeliness performance in assessments is significantly influenced by the ‘volume’ and complexity of complaints and notifications received, and the impact of procedural improvements.<sup>40</sup>

The Committee commends IBAC on the work it has done, and continues to do, on improving the quality of its assessments. The Committee notes, however, that it has not been informed how IBAC intends to measure or report on the frameworks’ impact on the quality of the agency’s assessments. Given that IBAC’s current performance reporting does not address the quality of assessments or the flow-on impacts of improvements in this area, the Committee considers that it will be important for IBAC to find ways of demonstrating the value of this work to the public.

### IBAC’s performance against BP3 targets and timeliness in assessing complaints and notifications

IBAC had three BP3 performance targets for its assessments function in 2021/22, all relating to timeliness.<sup>41</sup> The 2021/22 BP3 introduced an additional timeliness performance target—‘Public interest Disclosure (PID) complaints and notifications assessed within 30 days’.<sup>42</sup> IBAC reported that it did not meet any of these targets in 2021/22 and Table 2.1, below, sets out the agency’s performance against the targets.<sup>43</sup>

**Table 2.1 IBAC’s performance against 2021/22 BP3 targets for its assessments function**

Performance measures	2021/22 target (%)	2021/22 actual (%)	Result
PID complaints and notifications assessed within 30 days	70	62	×
Complaints or notifications about public sector corrupt conduct (excluding police personnel conduct and police personnel corrupt conduct) assessed by IBAC within 45 days	85	38	×
Complaints or notifications about police personnel conduct and police personnel corrupt conduct assessed by IBAC within 45 days	90	52	×

Source: Adapted from IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 37; Department of Treasury and Finance (Victoria), *Victorian Budget 2021/22: service delivery* (Budget Paper No. 3), Melbourne, 2021, p. 377.

In its report on the performance of integrity agencies in 2020/21, the Committee expressed concern that IBAC’s reporting on performance data for its assessment of complaints and notifications did not demonstrate the stated impact of its triaging

<sup>40</sup> Ibid.

<sup>41</sup> Department of Treasury and Finance (Victoria), *Victorian Budget 2021/22: service delivery* (Budget Paper No. 3), Melbourne, 2021, p. 377.

<sup>42</sup> Ibid.

<sup>43</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 37.

and allocation pilot project.<sup>44</sup> For context, IBAC created a new position of Triage Co-ordinator and established an Engagement and Early Resolution (EER) team within its Legal, Assessment & Review and Compliance division as a result of the success of the pilot project.<sup>45</sup>

Consequently, as part of its 2021/22 performance review, the Committee requested information about the impact of IBAC's new triaging and allocation system on timeliness with respect to its assessments function, including the data that the agency had collected and analysed to determine its effectiveness.<sup>46</sup> In response, IBAC informed the Committee that

[i]n 2021/22 Assessment & Review restructured its teams to include the Engagement and Early Resolution (EER) team, which is focused on intake and triage of complaints and notifications. The creation of the EER team has allowed the data entry associated with complaints and notifications to be streamlined via a single team. There are currently 5 FTE focused on Assessments in the EER team. In addition, the Triage coordinator considers each complaint and notification to determine case complexity.

The impact of the EER team has allowed for more timely allocation of cases for assessment and better-informed allocation of cases to appropriately experienced and skilled staff, based on the nature of the complaint/notification and its complexity. The data collected to date confirms that the EER team, [sic] is better able to achieve more timely assessments for low complexity cases.<sup>47</sup>

The Committee also requested information about the size and skill-base of IBAC's assessments team, specifically the number of assessment officers employed within its Assessment & Review section and the proportion of assessment officers able to assess complex complaints and notifications.<sup>48</sup>

IBAC, noting that its Assessment & Review team performs 'both assessment *and* review work', advised that 10 full-time equivalent (FTE) positions were assigned to the team in 2019/20, 11 FTE positions in 2020/21 and 16 FTE positions in 2021/22.<sup>49</sup> The Assessment & Review team's budget was temporarily boosted in 2021/22 as a result of increased fixed-term funding of IBAC through the Treasurer's advance and other sources. Of the 16 FTE positions assigned to the team in 2021/22, 11 were fixed-term positions funded through the Treasurer's Advance (including three assessment officer positions). In 2022/23, IBAC re-assessed the number of FTE positions assigned to the team in

<sup>44</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 82–85.

<sup>45</sup> *Ibid.*, p. 83.

<sup>46</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 3.

<sup>47</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 6.

<sup>48</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 3.

<sup>49</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 5 (emphasis added).

response to the findings of the base review<sup>50</sup> and the expiry of the additional funding. The agency was funded for 13.5 FTE ‘ongoing’ assessment officer positions in 2022/23 and, currently, 8 FTE of those staff members are able to assess complex complaints and notifications.<sup>51</sup>

However, despite the measures IBAC has implemented to improve timeliness, there was an *increase* in the average number of days taken to complete an assessment of a complaint or notification in 2021/22 (72 days) compared to 2020/21 (63 days).<sup>52</sup> The Committee further notes that this data point does not include the time taken to allocate complaints and notifications for assessment. IBAC has informed the Committee that, while it ‘did not measure the time taken to allocate complaints in 2021/22’, it has started collecting data on average allocation times since introducing its Quality Assurance Framework in 2022/23. IBAC’s analysis of data collected to date indicates that, on average, it takes 22 days to allocate a complaint or notification for assessment, though the agency has emphasised that ‘some complaints or notifications are prioritised for allocation based on complexity, sensitivity or where issues are raised by a complainant or body which requires a quick allocation’.<sup>53</sup> This means that, on average, complainants are waiting 94 days (or over 13 weeks) from the date of making their complaint to receipt of IBAC’s complaint assessment decision.

IBAC’s explanation in its *Annual report 2021/22* of its failure to meet its BP3 timeliness performance targets for its assessments function is similar to the explanation provided for the 2020/21 reporting period—the increasing volume and complexity of complaints and notifications received.<sup>54</sup> However, this is not adequately reflected in IBAC’s reporting on performance data for its assessment of complaints and notifications during 2021/22. Table 2.2, below, provides an overview of IBAC’s performance of its assessments function during 2021/22.

**Table 2.2 IBAC’s assessment of complaints and notifications in 2021/22**

Performance measure	2020/21	2021/22	Difference
Total complaints and notifications received	2,832	3,728	31% increase
Complaints from the general public	2,272	3,148	38% increase
Notifications (including mandatory notifications) from departments and agencies	560	580	3% increase
Complaints and notifications assessed as PIDs	442	389	12% decrease
Total allegations assessed	4,965	5,646	13% increase

<sup>50</sup> An independent review of IBAC was conducted at the request of the Treasurer ‘to assess how much funding IBAC requires to operate effectively and efficiently in the future’—Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix C (audit of IBAC), pp. 33, 95–96.

<sup>51</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, pp. 5–6.

<sup>52</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 6; Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix C (audit of IBAC), p. 31.

<sup>53</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 6.

<sup>54</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 11, 37. See also IBAC, *Annual report 2020/21*, Melbourne, 2021, p. 7.

Performance measure	2020/21	2021/22	Difference
Allegations assessed as public interest complaints	785	747	4% decrease
Allegations dismissed	2,690	3,765	40% increase
Allegations investigated by IBAC	67	38	44% decrease
Allegations referred to another entity	1,884	1,502	20% decrease
Allegations resulting in other outcomes (returned, withdrawn, no further action and deferred)	309	295	5% decrease

Source: IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 19–20; IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 14, 39.

The Committee notes that there was a 31% increase in the total number of complaints and notifications received by IBAC in 2021/22 compared with 2020/21. This increase is primarily attributable to the 38% increase in complaints received from the general public, given that notifications received from departments and agencies only increased marginally, by 3%. In 2021/22, there was also a 13% increase in the total number of allegations assessed by IBAC from 2020/21.<sup>55</sup>

However, the data contained in Table 2.2, together with the information provided to the Committee by IBAC detailed above, suggests that, when 2021/22 data is compared with 2020/21 data, this higher workload was offset by a number of factors, including:

- the lower complaint volume to assessment officer ratio, given IBAC's Assessment & Review team was 45% larger in 2021/22 than in 2020/21
- the 12% decrease in the volume of complaints and notifications that were assessed as PIDs, noting that such disclosures are often among the more complex and time-intensive to assess
- the 4% decrease in the number of allegations assessed as public interest complaints (PICs), noting that PIDs and PID notifications determined to be PICs are often among the more complex and time-intensive to assess
- the indications, in the data reported on by IBAC, that the significant increase in the volume of complaints and notifications received in 2021/22 was primarily attributable to low-complexity complaints and notifications. The Committee notes, for example, that IBAC dismissed 54% of all allegations it assessed in 2020/21, whereas that figure rose to 67% in 2021/22. This was also reflected in the 40% increase in the number of allegations dismissed by IBAC in 2021/22 from 2020/21.<sup>56</sup>

The Committee appreciates that responding to the sheer volume of complaints and notifications that IBAC receives is a challenging task, one compounded by the year-on-year increases in the volume and complexity of its assessments workload. To put IBAC's assessments workload into context, in 2021/22 a team of 16 FTE

<sup>55</sup> IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 19–20; IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 14, 39.

<sup>56</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, pp. 5–6; IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 19–20; IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 39; Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 84–85.

positions assessed 5,646 allegations in 3,728 complaints and notifications received.<sup>57</sup> Considering the breadth and complexity of the work involved, particularly with respect to the assessment of complaints and notifications under the Victorian PID Scheme, this is an impressive achievement.

Even so, IBAC did not meet the BP3 targets for its assessments function in 2021/22 and did not report timeliness improvements in the average number of days taken to complete an assessment. The Committee therefore considers that IBAC's performance reporting in its 2021/22 annual report does not show how the EER team has improved the agency's timeliness performance regarding its assessments function, nor demonstrate progress made by the agency in improving its efficiency in this area. While IBAC has described, in broad terms, how the EER team is working to improve the agency's timeliness, it has not provided data to the Committee to support this account or its assertion that the EER team has improved the timeliness of its assessment of low-complexity complaints.

Consequently, the Committee reiterates its comments in its *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare* report<sup>58</sup> that IBAC's reporting on the timeliness of its assessments function is not demonstrative of changes in the volume or complexity of its complaints workload, nor the impact of the EER team on productivity. Noting that IBAC reviews its BP3 measures annually,<sup>59</sup> the Committee therefore renews its call for IBAC to explore more effective ways to demonstrate its productivity to the public, through its data collection, analysis and reporting.

## 2.2.2 Investigations

IBAC's performance in 2021/22 with respect to its investigations function was impressive. Among its many achievements was the tabling of its special reports on Operations Turon and Dawson, the finalisation of its investigations in Operations Wingan and Carlisle and its public hearings in Operations Esperance and Watts.<sup>60</sup>

The Committee acknowledges IBAC's high-quality reports which are comprehensive and particularly good at explaining complex investigations, findings and recommendations in a way that is accessible to the public. Helpfully, IBAC also publishes on its website summaries of its tabled investigation reports which provide

<sup>57</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 14.

<sup>58</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 82–87.

<sup>59</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 2.

<sup>60</sup> IBAC, *Annual report 2021/22*, Melbourne 2022, pp. 16–17; IBAC, *Investigation summary: Operation Wingan*, Melbourne, 15 July 2021, <<https://www.ibac.vic.gov.au/operation-wingan>> accessed 17 October 2023; IBAC, *Operation Turon: an investigation into alleged misconduct by a former Victoria Police Assistant Commissioner*, Melbourne, October 2021; IBAC, *Operation Dawson: an investigation into alleged misconduct by a former Victoria Police Superintendent*, Melbourne, December 2021; IBAC, *Investigation summary: Operation Carlisle*, Melbourne, 6 March 2022, <<https://www.ibac.vic.gov.au/publications-and-resources/article/investigation-summary---operation-carlisle>> accessed 17 October 2023; IBAC and the VO, *Operation Watts: investigation into allegations of misuse of electorate office and ministerial officer staff and resources for branch stacking and other party-related activities*, Melbourne, July 2022.

informative snapshots of the primary issues raised.<sup>61</sup> For reports with voluminous or complex recommendations, such as the reports on Operations Watts and Daintree, IBAC has started publishing plain-language summaries of the recommendations.<sup>62</sup> The Committee is particularly pleased that IBAC and the VO decided to publish a progress report on the implementation of recommendations arising from their joint Operation Watts report,<sup>63</sup> and considers that this will strengthen public trust in IBAC's monitoring activities.

The public reporting on IBAC's investigations of Operations Turon, Dawson, and Wingan showcased the agency's important police oversight work. The investigations dealt with an array of police conduct issues of interest and concern to the public, including declaring and managing conflicts of interest, appropriate social media use and out-of-work conduct, excessive use of force, and policing of vulnerable persons. IBAC made important recommendations to Victoria Police to address identified misconduct risks, including with respect to the activation of Body Worn Cameras, use of force reporting, and PRIME<sup>64</sup> training. Notably, in response to thematic concerns observed across multiple police-related investigations, including Operation Wingan, IBAC subsequently released a report on misconduct issues and risks associated with Victoria Police's Critical Incident Response Team.<sup>65</sup>

These kinds of investigations are invaluable, resulting in recommendations which contribute to the incremental improvement of Victoria Police's policies, procedures and practices as well as its organisational culture. They also provide important guidance to police officers on how to identify and manage misconduct risks that may arise in the performance of their duties, and highlight what unacceptable conduct looks like.

IBAC commenced 18 new investigations and 12 new preliminary inquiries<sup>66</sup> in 2021/22, a significant increase from the 7 new investigations and 7 new preliminary inquiries it commenced in 2020/21—noting that 50% of these investigations and preliminary inquiries were initiated in response to complaints and notifications received by the agency, whereas the remainder were initiated on its own motion.<sup>67</sup> Positively, IBAC reported that it progressed and finalised investigations into five of the six strategic focus areas identified in its Annual Plan 2021/22.<sup>68</sup>

<sup>61</sup> See, for example, IBAC, *Summary—Operation Turon: an investigation into alleged misconduct by a former Victoria Police Assistant Commissioner*, Melbourne, 25 October 2021, <<https://www.ibac.vic.gov.au/publications-and-resources/article/operation-turon-special-report-october-2021>> accessed 17 October 2023.

<sup>62</sup> See, for example, IBAC and VO, *Recommendations: Operation Watts*, Melbourne, 20 July 2022, <<https://www.ibac.vic.gov.au/operation-watts>> accessed 17 October 2023; IBAC, *Recommendations: Operation Daintree*, Melbourne, 19 April 2023, <<https://www.ibac.vic.gov.au/operation-daintree-special-report>> accessed 17 October 2023.

<sup>63</sup> IBAC and VO, *Operation Watts: progress report*, Melbourne, September 2023.

<sup>64</sup> PRIME is Victoria Police's principal mental health and awareness training program.

<sup>65</sup> See IBAC, *Special report on police misconduct issues and risks associated with Victoria Police's Critical Incident Response Team*, Melbourne, October 2022.

<sup>66</sup> Under the *IBAC Act 2011* (Vic) (s 59A), IBAC has power to conduct preliminary inquiries 'for the purpose of determining whether to dismiss, refer or investigate a complaint or notification'. See also IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 40.

<sup>67</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 40–41. Under the *IBAC Act 2011* (Vic) (ss 59B, 60(1), 64(1)), IBAC has power to conduct preliminary inquiries 'for the purpose of determining whether to conduct an own motion investigation', and, on its own motion, corrupt-conduct and police-misconduct investigations. This own-motion power is in addition to its jurisdiction to commence investigations in response to complaints or notifications received under the *IBAC Act 2011* (Vic) or *PID Act 2012* (Vic).

<sup>68</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 40. See also IBAC, *Annual Plan 2021/22*, Melbourne, 2022, p. 8.

IBAC also commenced work on the implementation activities associated with upgrading its Investigations Framework by strengthening ‘governance, performance measures, cross-functional connections and quality assurance across the investigation life cycle’.<sup>69</sup> This was a key strategic initiative of its Annual Plan 2021/22.<sup>70</sup> While IBAC deferred strengthening the Investigations Framework’s performance measures until 2022/23, it assured the Committee that work was ‘ongoing to further strengthen governance and performance measurement’.<sup>71</sup> Pleasingly, IBAC informed the Committee that the roll out of the upgraded Framework is well underway, noting that the review of the policy documents and procedures underpinning the Framework will be completed by the end of the 2023/24 reporting period.<sup>72</sup>

### IBAC’s performance against 2021/22 BP3 targets for its investigations function

IBAC had four BP3 performance targets in 2021/22 for its investigations function, all relating to timeliness.<sup>73</sup> IBAC reported that it only met one of these BP3 targets in 2021/22, and Table 2.3, below, sets out the agency’s performance against the targets.<sup>74</sup>

**Table 2.3 IBAC’s performance against 2021/22 BP3 targets for its investigations function**

Performance measures	2021/22 target (%)	2021/22 actual (%)	Result
Proportion of <b>standard</b> IBAC investigations into <b>public sector</b> corrupt conduct (excluding police personnel conduct and police personnel corrupt conduct) completed within 9 months	60	0	×
Proportion of <b>complex</b> IBAC investigations into <b>public sector</b> corrupt conduct (excluding police personnel conduct and police personnel corrupt conduct) completed within 18 months	60	0	×
Proportion of <b>standard</b> IBAC investigations into <b>police</b> personnel conduct and police personnel corrupt conduct completed within 9 months	60	67	✓
Proportion of <b>complex</b> IBAC investigations into <b>police</b> personnel conduct and police personnel corrupt conduct completed within 18 months	60	0	×

Source: Adapted from IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 41; Department of Treasury and Finance (Victoria), *Victorian Budget 2021/22: service delivery* (Budget Paper No. 3), Melbourne, 2021, p. 377.

<sup>69</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 24.

<sup>70</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 5; IBAC, *Annual Plan 2021/22*, Melbourne, 2022, p. 14.

<sup>71</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 2; IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 5 (quoted text).

<sup>72</sup> Ms Marlo Baragwanath, CEO, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 17.

<sup>73</sup> Department of Treasury and Finance (Victoria) (DTF), *Victorian Budget 2021/22: service delivery* (Budget Paper No. 3), Melbourne, 2021, p. 377.

<sup>74</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 41.

The agency's performance across these BP3 targets was hampered by the high level of complexity of investigations, litigation and the ongoing impact of COVID-19 on staffing capacity.<sup>75</sup> The Committee notes, for example, long-running litigation in relation to IBAC's Operation Sandon investigation, as extensively reported on in the media. The Committee also notes the significant increase in the number of complex investigations commenced by IBAC in 2021/22 from 2020/21, and the higher number of ongoing investigations that the agency was carrying as at 30 June 2022 (38) compared to 30 June 2021 (27).<sup>76</sup>

Importantly, IBAC has confirmed that the agency's BP3 performance measures 'have been refined for 2023/24', while noting that the implementation of several of these measures will be delayed due to the 'IT system changes' required to implement them.<sup>77</sup>

### Publication of IBAC recommendations

Under s 159 of the *IBAC Act 2011* (Vic), IBAC may make recommendations in connection with an investigation, but they must be made privately unless 'contained in a report'. As Mr Redlich explained in the hearing:

[T]here is currently a deficiency in the *IBAC Act* in that the only recommendations of IBAC which can be published are those which are made in a special report which is tabled in Parliament. IBAC does not table more than two or three reports a year, but we write countless outcome letters to councils and departments at the end of an investigation, in which we identify failings and we set out recommendations. It would be really important that the legislation is amended to reflect the need to be able to publish those recommendations. I do not suggest, if we are talking about recommendations concerning individuals, that recommendations should be published. I am talking about recommendations that identify institutional failings. It makes I think good sense that the community should be alive to recommendations that address institutional failings and are aware of them, and that encourages in turn public discussion about those sorts of things.<sup>78</sup>

The Committee acknowledges the importance of IBAC's education and prevention functions. The Committee also accepts that IBAC's power to make recommendations following investigations, and its ability to inform the public of the results of its investigations, is critical to the incremental improvement of the integrity system and the effective performance of its education and prevention functions.

The Committee recognises that, while IBAC should not be unduly restrained in making its recommendations public, this is a complex issue requiring careful consideration of a range of matters, such as:

<sup>75</sup> Ibid.

<sup>76</sup> Ibid., p. 40.

<sup>77</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 5.

<sup>78</sup> Hon Robert Redlich AM KC, former IBAC Commissioner, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 11.

- the benefit of the current s 159 restrictions to IBAC’s collaborative approach to oversight and organisations’ willingness to accept, and take meaningful action in response to, private recommendations made by IBAC
- the potential adverse effect of legislative change on the oversight relationship between IBAC and the organisations it oversees
- whether the statutory procedural fairness process with respect to special reports will apply to investigations in respect of which IBAC’s recommendations are published other than in the form of a tabled report.

The Committee takes a particular interest in these issues and will examine them further in the course of its ongoing review and monitoring work.

### IBAC’s response to IOC recommendations in its witness welfare report

In 2021/22, the IOC conducted a comprehensive review of witness welfare management principles, policies and standard practices of the Victorian integrity agencies as part of its review of their performance in 2021/22.<sup>79</sup> A detailed overview of the conduct of the witness welfare review by the Committee and the purpose and nature of the report can be found in Chapter 1 of the Committee’s report.<sup>80</sup>

In its report on the performance of integrity agencies during the period 2020/21 with a focus on their management of witness welfare, the IOC made three recommendations to IBAC:

Recommendation 5: That the Independent Broad-based Anti-corruption Commission (IBAC):

- update its policies and procedures to provide specific guidance on decision-making regarding confidentiality notice variation requests
- consider developing and implementing an application form for persons subject to a confidentiality notice who seek permission to disclose a specified matter to a third party, to assist in ensuring that such requests are appropriately recorded and assessed
- capture data relating to confidentiality notice variation requests to enable it to readily report on the number of requests received and approved during a particular reporting period
- update its policies and procedures providing specific guidance on complaints regarding reputational harm or damage in connection with IBAC’s public examinations
- capture data relating to complaints received regarding reputational harm or damage in connection with IBAC’s public examinations, to enable it to readily report on the number of complaints received during a particular reporting period.

<sup>79</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022.

<sup>80</sup> *Ibid.*, pp. 1-27.

Recommendation 6: That the Independent Broad-based Anti-corruption Commission (IBAC), in consultation with Converge International Consultants (Converge), explore the feasibility of:

- IBAC officers who are serving a summons or confidentiality notice on a person seeking that person's consent to provide their name and contact information to Converge, for the purpose of Converge making contact with the person proactively in the first instance in order to familiarise the person with its witness welfare support services
- IBAC officers who are serving a summons to attend a public examination on a person seeking that person's consent to provide their name and contact information to Converge, for the purpose of Converge conducting a welfare evaluation and assessment of the person in relation to the examination
- Converge establishing an informed consent process and secure electronic information-sharing platform to facilitate the sharing of results of the pre-hearing welfare evaluation and assessment with IBAC, to inform the agency's operational risk assessment for the particular witness in relation to the public examination
- Converge, with the consent of the witness, providing proactive periodic mental wellbeing check-in calls on an ongoing basis, between the end of the examination and publication of IBAC's investigation report, regarding all witnesses who give evidence in a public examination.

Recommendation 7: That the Independent Broad-based Anti-corruption Commission (IBAC):

- update its policies and procedures to provide specific guidance on decision-making regarding requests under s 117(3A)(a) of the ... [*IBAC Act 2011* (Vic)] ... including assessment of factors under s 117(3B) and (4) of the Act
- consider developing and implementing an application form for persons wanting to exercise their rights under s 117(3A)(a) of the *IBAC Act 2011* (Vic), to assist in ensuring that such applications are appropriately recorded and assessed
- capture data relating to requests received and own motion determinations made under s 117(3A) of the *IBAC Act 2011* (Vic) during a particular reporting period.<sup>81</sup>

The Committee is happy to report that IBAC has accepted all recommendations directed to it.

IBAC has already begun work on implementing Recommendation 5 and informed the Committee that it was 'in the process of updating its policies and procedures relating to confidentiality notices'.<sup>82</sup> IBAC also intends to ensure effective monitoring and management of confidentiality notices by:

- providing specific guidance on decision-making for variation requests to confidentiality notices

<sup>81</sup> Ibid., pp. 79–81.

<sup>82</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 3.

- developing a process to record authorisations to disclose information covered by a confidentiality notice ...
- refining ... [its] process for actions taken in response to concerns raised by a witness that a public examination will cause unreasonable damage to that person[']s reputation, safety or wellbeing to ensure consistency.<sup>83</sup>

IBAC provided a further update on its progress in implementing Recommendation 5 at the Committee's public hearing with the agency on 14 August 2023. Positively, with the exception of work underway on a register tracking the agency's exercise of coercive powers, IBAC informed the Committee that all other work to implement Recommendation 5 has been completed.<sup>84</sup>

IBAC has accepted Recommendation 6 'in principle', and informed the Committee that it is 'in the process of considering the services offered by Converge as well as other service providers, to determine which would be best suited to support its approach to the management of witness welfare'.<sup>85</sup> IBAC elaborated on its consideration of the matter at the public hearing, indicating that the concerns that gave rise to Recommendation 6 (namely, ensuring the accuracy of IBAC's welfare risk assessments, that its communication with witnesses is appropriate, and that witnesses are able to access appropriate support) would be addressed through the agency's newly established witness liaison team.<sup>86</sup>

IBAC has also begun work on implementing Recommendation 7, updating the information provided to witnesses summoned to an IBAC examination to provide guidance on how to make an application for a private examination under s 117(3A) (a) of the *IBAC Act 2011* (Vic), and on 'making complaints about reputational harm or damage'.<sup>87</sup> IBAC is also developing guidance on its examinations process, including public examinations.<sup>88</sup> With respect to s 117(3A)(b) of the Act—concerning IBAC's authority to hold, on its own motion, part of a public examination in private—the agency informed the Committee that it is reviewing its processes for exercising this power and considering how it can 'centralise data' with respect to decisions made under s 117(3A)(b).<sup>89</sup> IBAC has further emphasised that its examination transcripts accurately record when a public examination moves to a private examination.<sup>90</sup>

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<sup>83</sup> Ibid.

<sup>84</sup> Ms Marlo Baragwanath, CEO, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 19.

<sup>85</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 3.

<sup>86</sup> Ms Marlo Baragwanath, CEO, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 19–20.

<sup>87</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 4; *Finding into death* [of Amanda Jane Stapledon] *without inquest* (Coroners Court of Victoria, State Coroner Ryan, 23 June 2023) 15 [60] (quoted text).

<sup>88</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 4.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

The Committee is pleased that in February 2023 IBAC established its dedicated witness liaison team, comprising a witness liaison manager and two witness liaison officers, including an Aboriginal liaison officer.<sup>91</sup>

The witness liaison team, which has been described by IBAC as ‘an internal advice function’, is responsible for:

- ensuring that IBAC officers’ interactions with witnesses are appropriately managed
- ensuring that suitable supports are put in place for witnesses
- overseeing witness referrals to independent support services
- contributing to internal staff training.<sup>92</sup>

IBAC informed the Committee that the team has ‘relevant expertise for managing’ its functions, including in social work.<sup>93</sup> The team, working ‘closely with investigators, lawyers and other IBAC officers’, provides specialist in-house assistance to the agency in identifying, assessing and managing welfare risks by<sup>94</sup>

develop[ing] engagement plans to support regular communication with witnesses at all stages throughout an investigation, including during the drafting and tabling of a report, and, if applicable, any subsequent prosecution ... [and by providing] witnesses with information about, or referrals to, external counselling services and resources.<sup>95</sup>

However, the witness liaison team does not have a ‘therapeutic relationship’ with, nor provide counselling to, witnesses. IBAC informed the Committee that this approach accords with ‘expert advice’ received by the agency.<sup>96</sup>

The Committee notes that this approach is consistent with the recent findings and recommendations of the Inspector of the New South Wales Independent Commission Against Corruption (NSW ICAC) audit of the Commission’s management of witness welfare.<sup>97</sup> The Inspector was assisted by an expert consultant psychologist who advised that, while NSW ICAC (and anti-corruption bodies like it) should ensure that witnesses are able to access mental health support or treatment provided by an

<sup>91</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 3; Ms Marlo Baragwanath, CEO, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 20 (quoted text).

<sup>92</sup> Mr Stephen Farrow, Acting Commissioner, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 20; Ms Marlo Baragwanath, CEO, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 19–20.

<sup>93</sup> Mr Stephen Farrow, Acting Commissioner, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 20 (quoted text); Ms Marlo Baragwanath, CEO, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 20.

<sup>94</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 3; IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 7 (quoted text); *Finding into death* [of Amanda Jane Stapledon] *without inquest* (Coroners Court of Victoria, State Coroner Ryan, 23 June 2023) 15 [60].

<sup>95</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 3 (quoted text); IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 8.

<sup>96</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 3 (quoted text), IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 8.

<sup>97</sup> See Inspector of the New South Wales Independent Commission Against Corruption, *Special report 2023/01: Audit of the welfare of witnesses and other people involved in ICAC investigations*, Sydney, February 2023.

independent mental health practitioner ‘through a managed referral process’, they should not deliver therapeutic services to them.<sup>98</sup>

At the time of the IOC’s review of witness welfare management, IBAC’s overarching policy and procedural documents with respect to its management of witness welfare were its *Welfare Management for IBAC Investigations* policy (*Welfare Management Policy*) and associated *Welfare Management Guideline*.<sup>99</sup> In 2022, IBAC reviewed its *Welfare Management Policy*, *Welfare Management Guideline* and associated policies, with the assistance of a consultant psychologist.<sup>100</sup> In response to the findings of IBAC’s review, the agency has since developed and published a new *Witness Wellbeing Policy*, to supersede the *Welfare Management Policy*, which makes reference to the role of the witness liaison team.<sup>101</sup>

The Committee notes that the *Witness Wellbeing Policy* is not easily accessible on IBAC’s website at present. The document is saved under the ‘Related resources’ tab on the ‘Information for witnesses’ page of IBAC’s website under the title ‘Welfare management for IBAC investigations policy’.<sup>102</sup> This is likely to cause confusion for the public because IBAC’s *Witness Wellbeing Policy* specifically states that ‘[t]his policy supersedes Welfare Management for IBAC investigations – Policy’.<sup>103</sup> Given that the *Witness Wellbeing Policy* sets out IBAC’s expectations of officers with respect to the ‘psychological wellbeing of witnesses’, the Committee considers that it is important that witnesses are aware of it.<sup>104</sup> The Committee strongly encourages IBAC to make the *Witness Wellbeing Policy* easily accessible on its website.

In its report, the IOC also made four recommendations to the Victorian Government relating to IBAC.<sup>105</sup> The Committee notes that the Victorian Government recently released its response to those recommendations.<sup>106</sup> The Committee is pleased to report that the substance of Recommendations 1 and 2 have been addressed, noting that:

- under reg 45 of the *Independent Broad-based Anti-corruption Commission Regulations 2023* (Vic), five key providers of mental health crisis support services<sup>107</sup> are now ‘prescribed services’ for the purpose of s 44(2)(f)(iii) of the *IBAC Act 2011* (Vic). This means that persons subject to an IBAC confidentiality notice are

<sup>98</sup> Ibid., pp. 19–20; Annexure: Report by Mr Simon Brown-Greaves, p. 6 (quoted text).

<sup>99</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, October 2022, pp. 55–66.

<sup>100</sup> *Finding into death* [of Amanda Jane Stapledon] *without inquest* (Coroners Court of Victoria, State Coroner Ryan, 23 June 2023) 10 [49].

<sup>101</sup> *Finding into death* [of Amanda Jane Stapledon] *without inquest* (Coroners Court of Victoria, State Coroner Ryan, 23 June 2023) 10 [50]; IBAC, *Witness Wellbeing Policy*, n.d., p. 6, <<https://www.ibac.vic.gov.au/media/1127/download>> accessed 24 July 2023.

<sup>102</sup> See IBAC, *Information for witnesses*, n.d., <<https://www.ibac.vic.gov.au/information-witnesses>> accessed 24 July 2023.

<sup>103</sup> IBAC, *Witness Wellbeing Policy*, n.d., p. 6, <<https://www.ibac.vic.gov.au/media/1127/download>> accessed 24 July 2023.

<sup>104</sup> Ibid., p. 1.

<sup>105</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 74, 76–77.

<sup>106</sup> Department of Justice and Community Safety (DJCS), *Response to the recommendations made to the Victorian Government by the Integrity and Oversight Committee in its report Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, August 2023, p. 1.

<sup>107</sup> Beyond Blue, Headspace, Lifeline, SuicideLine or Suicide Call Back Service, and SANE Australia.

permitted to disclose a restricted matter when seeking ‘crisis support, suicide prevention and [or] mental health and wellbeing support services’ from those services, without seeking prior permission from IBAC, unless IBAC formally directs them otherwise

- IBAC has committed to developing, and publishing on its website, guidelines relating to the requirements for holding public examinations, including the assessment of mandatory criteria in s 117(1)(a)–(d) of the *IBAC Act 2011* (Vic).<sup>108</sup>

The VI has informed the Committee that it is engaging with IBAC on Recommendations 2–4, and that:

[T]he VI is keen to see IBAC develop procedural guidelines relating to the requirements for holding public examinations, and in particular, guidance on what may constitute ‘unreasonable damage to a person’s reputation, safety or wellbeing.’ Equally important is recommendation 7, which recommends specific guidance on decision making regarding requests under s 117(3A)(a) of the *IBAC Act* to hold part of an examination in private. The VI is also engaging with IBAC about the scope of its welfare risk assessments to support its decision making in relation to holding public hearings.<sup>109</sup>

### IBAC’s investigative threshold

Under the *IBAC Act 2011* (Vic), corrupt conduct is confined to conduct that, among other matters, constitutes an indictable offence (that is, a serious criminal offence), or a serious common law offence such as misconduct in public office.<sup>110</sup> This means that IBAC’s investigative jurisdiction is narrower than some interstate anti-corruption agencies, for example, the NSW ICAC.<sup>111</sup> During his term as Commissioner, Hon Robert Redlich AM KC expressed the view that IBAC’s narrow investigative jurisdiction, including its inability to investigate ‘grey’<sup>112</sup> corruption, was problematic.<sup>113</sup>

At the Committee’s public hearing with Mr Redlich, the Committee asked whether the current definition of corrupt conduct in the *IBAC Act 2011* (Vic) was adequate and whether it constrained the performance of IBAC.<sup>114</sup> Mr Redlich stated:

[T]he Act requires that it is not corruption unless a crime has been committed. That is far too onerous an obligation, and Daintree is a stark example of it, because no crime

<sup>108</sup> DJCS, *Response to the recommendations made to the Victorian Government by the Integrity and Oversight Committee in its report Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, August 2023, p. 1.

<sup>109</sup> VI, Response to Integrity and Oversight Committee questions on notice, 2 June 2023, pp. 1–2.

<sup>110</sup> *IBAC Act 2011* (Vic) ss 3–4.

<sup>111</sup> The definition of ‘corrupt conduct’ in s 8 of the *Independent Commission Against Corruption Act 1988* (NSW) is broad and encompasses, but is not limited to, conduct that would constitute an indictable offence or a serious common law offence.

<sup>112</sup> ‘Grey’ or ‘soft’ corruption encompasses misconduct and other ‘unethical’ behaviour that does not necessarily ‘reach the threshold of corrupt criminal conduct’ (IBAC, *Operation Daintree special report*, Melbourne, April 2023, p. 8). See also IBAC and VO, *Operation Watts: investigation into allegations of misuse of electorate office and ministerial office staff and resources for branch stacking and other party-related activities*, Melbourne, July 2022, pp. 170, 179, 182.

<sup>113</sup> See, for example, Hon Robert Redlich AM KC, ‘Governing with integrity’, speech delivered at the 2022 Sir John Barry Memorial Lecture in Criminology, 20 October 2022.

<sup>114</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 10.

was committed in Daintree. The Commission found that none of the misconduct—and there was a lot of it—met the definition of a crime ... [W]e should not have a requirement at the end of subsection 4, which is the definition section, which adds the words ‘constitute a relevant offence’. The matters set out in section 4, which talks about misconduct, are ample and should be ample to justify the jurisdiction of the Commission to look at misconduct. That is how it operates at a federal level, and I am delighted to say that the federal legislation is much broader than it is here in Victoria for that fundamental reason—that integrity commissions should not be constrained by having to be satisfied that a crime has been committed. Look, for 40 years we have been saying the criminal law is a blunt instrument to be applying to questions of integrity ... The Federal Parliament has recognised that making it a crime before it can be said to be corruption is unnecessary and stifles the role of an integrity commission.<sup>115</sup>

Acting Commissioner, Mr Stephen Farrow, gave a further perspective on this at the Committee’s public hearing, noting that:

Certainly it is not the case that IBAC has been unduly constrained, but we recognise that IBAC’s definition of corrupt conduct is very different to that which applies in some other jurisdictions. South Australia and Victoria are the only jurisdictions where corrupt conduct is limited to criminal conduct. As you would appreciate, there is a spectrum from maladministration through to misconduct and criminal conduct. Our definition is focused on the far end of that spectrum. Some other jurisdictions, such as ICAC in New South Wales and the National Anti-Corruption Commission, have a definition [that] goes into misconduct, that part of the spectrum.

But I think it is important when looking at the jurisdiction to look at the role that IBAC plays in the broader integrity system. There is no question that there need to be effective mechanisms to investigate and deal with misconduct. The question is: Which body, which powers and which functions are appropriate? I am sure you are aware that in Operation Watts, IBAC and the Victorian Ombudsman investigated alleged misconduct by Members of Parliament and ministers, identified a gap in the integrity system and recommended the establishment of a Parliamentary Integrity Commissioner to deal with misconduct by Members of Parliament and ministers that falls short of criminal conduct. That was a recommendation that we reiterated in our Operation Daintree Special Report earlier this year, recommending that the jurisdiction of that body be expanded to cover ministerial advisers.

I think any consideration of the definition of corrupt conduct and the scope of IBAC’s investigation powers needs to have regard to how we fit within a scheme that is made up of multiple bodies. For example, if you compare us to ICAC in New South Wales, there is not a parliamentary integrity commission in New South Wales, and so I think looking at, for example, the scope of their jurisdiction it is important to bear in mind, as I say, the multiple components of any integrity system. But another aspect of the definition of corrupt conduct is the label that is applied to particular types of conduct, and, clearly, that is a matter of community values and a matter for Parliament to determine.<sup>116</sup>

<sup>115</sup> Hon Robert Redlich AM KC, former IBAC Commissioner, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 10.

<sup>116</sup> Mr Stephen Farrow, Acting Commissioner, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 13.

The Committee notes the views of Mr Farrow and Mr Redlich and that there are a range of issues and views expressed by other stakeholders. The Committee takes an interest in these issues and will examine them further in the course of its ongoing review and monitoring work.

### 2.2.3 Reviews and audits

IBAC performed well against its Annual Plan 2021/22, meeting all of its planned deliverables with respect to reviews and audits.<sup>117</sup> IBAC conducted important ‘thematic reviews’<sup>118</sup> of Victoria Police’s investigation of three distinct types of use of force complaints, and commenced work on a thematic review of Victoria Police’s handling of family violence incidents involving its employees, the findings of which it intends to publish in 2024.<sup>119</sup> It also tabled a report on the findings and recommendations of its audit of Victoria Police’s handling of complaints made by Aboriginal people, and commenced work on a special report on the misconduct risks for Victoria Police of use of force by its officers. Finally, IBAC rolled out its Focus Communities Strategy, progressing its commitment to improving its public engagement and accessibility.<sup>120</sup>

The Committee is pleased that IBAC intends to publish the findings of the three thematic reviews it conducted in 2021/22.<sup>121</sup> The Committee notes that the VI’s report on *IBAC’s referral and oversight of Emma’s complaints about Victoria Police’s response to family violence by a police officer* (*‘Emma’s report’*) touched on the adequacy of Victoria Police’s response to, and investigation of, family violence incidents involving their employees.<sup>122</sup> The Committee commends IBAC’s decision to undertake a thematic review of the effectiveness of Victoria Police’s investigations of such matters, and its responsiveness to concerns expressed by the VI and the public on this issue. The Committee considers that publishing the findings of this review is important in building public trust in IBAC’s police oversight role.

#### IBAC’s oversight of Victoria Police’s handling of referred complaints

IBAC has long argued that its funding levels significantly constrain its capacity to investigate the police-related complaints it receives, including those relating to serious police misconduct.<sup>123</sup> At the Committee’s public hearing, Mr Redlich stated:

If we are looking at the question of whether or not all serious police misconduct should be investigated by the Commission, the Commission’s budget is wholly inadequate ...

<sup>117</sup> See IBAC, *Annual Plan 2021/22*, Melbourne, 2022, pp. 10–11; IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 26–27.

<sup>118</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 26 (IBAC has reported that with a thematic review, it ‘analyse[s] a body of cases ... [to identify] trends and themes’ in police investigations that ‘touch on a strategic focus area in the context of legislation, policies and procedures’).

<sup>119</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 2.

<sup>120</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 26–27.

<sup>121</sup> *Ibid.*, p. 26.

<sup>122</sup> See VI, *IBAC’s referral and oversight of Emma’s complaints about Victoria Police’s response to family violence by a police officer*, Melbourne, October 2022.

<sup>123</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, pp. 5, 33, 41, 129; Mr Eamonn Moran PSM KC, Inspector, VI, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 25–26.

IBAC is only able to investigate something in the order of 2 per cent of serious police misconduct. If that is to increase, it inevitably would require a substantial increase in funding.<sup>124</sup>

In this connection, the Committee agrees with the Victorian Inspector that there should be a category of police-related complaint which, due to its seriousness, cannot be referred by IBAC to Victoria Police for investigation, but also recognises that the investigation of police-related complaints is only one aspect of IBAC's extensive police oversight work.<sup>125</sup> Further, beyond the question of whether the proportion of police-related complaints that IBAC investigates is appropriate, there are important questions regarding the kinds of matters it refers to Victoria Police for investigation and its monitoring of such investigations.

The Committee acknowledges that IBAC has made positive and significant progress with respect to its assessment processes for referrals of complaints to Victoria Police for investigation, particularly since the publication of *Emma's report*.<sup>126</sup> As noted by the VI at the Committee's public hearing:

... I am pleased to say that ... [the recommendations in *Emma's report*] are well advanced in terms of implementation by IBAC ... IBAC [must] ensure that it has really clear policies and procedures for giving consideration to its referrals ... [It] must have written reasons when it is referring [a complaint to Victoria Police] and it must consider whether or not to withdraw referrals that go to the police ... [and] the particular circumstances [in which] ... they might withdraw those [referrals] ... [IBAC staff reviewing and recommending the referral of a police-related complaint] must ... consider certain factors ... [for example,] the risk that there may be to the witness or whether or not there might be a systemic corruption issue rather than just a smaller issue ... [I]t is really pleasing to see in a more recent complaint that IBAC responded to ... that they really have taken on board the recommendations and put in place significant changes to make sure that all of those considerations are starting to be put in place.<sup>127</sup>

Encouragingly, IBAC completed 258 reviews of Victoria Police investigations in 2021/22, which is a '303% increase' on the number of police-related reviews conducted in 2020/21, and the highest number of reviews conducted since its establishment.<sup>128</sup> The Committee notes that IBAC made 20 recommendations to Victoria Police in 2021/22 as a result of these reviews, requesting, for example, that Victoria Police formally respond or re-investigate matters.<sup>129</sup>

<sup>124</sup> Hon Robert Redlich AM, former IBAC Commissioner, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 16.

<sup>125</sup> Mr Eamonn Moran PSM KC, Inspector, VI, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 25–26.

<sup>126</sup> VI, *Special report: IBAC's referral and oversight of Emma's complaints about Victoria Police's response to family violence by a police officer*, Melbourne, October 2022; Ms Cathy Cato, CEO and General Counsel, VI, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 26.

<sup>127</sup> Ms Cathy Cato, CEO and General Counsel, VI, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 26.

<sup>128</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 13, 15 (quoted text).

<sup>129</sup> *Ibid.*, p. 49.

One important aspect of IBAC's oversight of Victoria Police's handling of complaints about its officers is the capacity to monitor how the organisation classifies such complaints, to ensure that it is not misclassifying complaints or minimising police misconduct. IBAC does this by reviewing mandatory notifications received from Victoria Police and through its access to the organisation's internal complaints system. When reviewing mandatory notifications, IBAC gives consideration to whether the complaint classification assigned by Victoria Police aligns with the nature of the misconduct described in the complaint itself. Additionally, when reviewing Victoria Police's investigation of referred complaints, IBAC looks for any indications that Victoria Police may have minimised or misclassified the conduct being investigated.<sup>130</sup>

IBAC informed the Committee that Victoria Police has recently introduced a new complaints classification system in response to feedback from IBAC over a number of years raising issues regarding the organisation's former process for classifying complaints. Victoria Police has streamlined the process, from 13 classification categories to 3: Category 1, encompassing very serious misconduct; Category 2, encompassing misconduct of a 'medium serious' nature; and Category 3, which relates to service delivery complaints (for example, rudeness by Victoria Police officers to members of the public). Pleasingly, IBAC has indicated that it intends to continue the momentum of 2021/22 in terms of the number of reviews it conducts.<sup>131</sup>

Following the findings and recommendations of the Victorian Parliament's IBAC Committee in its 2018 *Inquiry into the external oversight of police corruption and misconduct in Victoria* report, the IOC has long-expressed concern about the proportion of total police-related complaints and notifications that IBAC investigates, and the number of reviews of Victoria Police investigations of referred matters that IBAC conducts.<sup>132</sup>

The legislative framework is complex with respect to the categories of police-related complaints that IBAC receives and assesses, and the conduct they encompass.

Under s 52 of the *IBAC Act 2011* (Vic), IBAC can receive complaints about 'police personnel conduct'.<sup>133</sup> IBAC also receives mandatory notifications from the Chief Commissioner of Police regarding complaints made to Victoria Police about 'corrupt conduct' or police personnel misconduct of its officers, other staff and recruits, and other matters.<sup>134</sup> Police personnel misconduct is defined in s 5 of the Act as conduct

<sup>130</sup> Ms Kylie Kilgour, Deputy Commissioner, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 18–19. See also IBAC, *Audit of Victoria Police complaints handling systems at regional level*, Melbourne, September 2016; IBAC, *Audit of complaints investigated by Professional Standards Command, Victoria Police*, Melbourne, June 2018.

<sup>131</sup> Ms Kylie Kilgour, Deputy Commissioner, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 18–19.

<sup>132</sup> See Parliament of Victoria, IBAC Committee, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Melbourne, September 2018, especially pp. 43–52, 239–252; Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, pp. 32–34, 35–36; Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2019/20*, November 2021, pp. 22–26.

<sup>133</sup> *IBAC Act 2011* (Vic) s 5 ('Meaning of police personnel conduct': conduct of a police or protective services officer in the performance of their duties, including acts, decisions, failing or refusing to act or make a decision, conduct which is 'disgraceful or improper' or amounts to an offence 'punishable by imprisonment', or conduct 'likely to bring Victoria Police into disrepute or diminish public confidence in it').

<sup>134</sup> *IBAC Act 2011* (Vic) s 57(2).

amounting to an offence ‘punishable by imprisonment’, or conduct likely to adversely impact Victoria Police’s reputation or good standing in the community or which is otherwise ‘disgraceful or improper’. A primary point of distinction between section 57 notifications and section 52 complaints is that the originating complaint was made to Victoria Police, rather than to IBAC.

### *Police-related PIDs and PID notifications*

In addition to section 52 complaints and section 57 notifications, IBAC can also receive police-related PIDs and PID notifications under the *PID Act 2012* (Vic).

A police-related PID refers to a ‘police complaint disclosure’ made directly to IBAC or a disclosure about ‘improper conduct’ (within the meaning of the *PID Act 2012* (Vic)) relating to a Victoria Police employee.<sup>135</sup> Under s 5 of the *PID Act 2012* (Vic), a ‘police complaint disclosure’ is defined as a complaint by a police or protective services officer about a fellow officer, noting that it is ‘taken to be a disclosure for the purposes of ... [the *PID Act 2012* (Vic)]’.<sup>136</sup>

As IBAC has emphasised, ‘improper conduct’ under the *PID Act 2012* (Vic) has a different meaning to ‘police personnel misconduct’ under the *IBAC Act 2011* (Vic), and encompasses a wide range of conduct, including conduct that:

- is corrupt or criminal;
- amounts to ‘serious professional misconduct’;
- adversely affects a public officer’s honest performance of their duties, or dishonest performance of those duties;
- knowingly or recklessly breaches the public trust; or
- involves the misuse of information or other material acquired in the performance of their work.<sup>137</sup>

A police-related PID notification refers to a PID about ‘improper conduct’ received by another entity and notified to IBAC under s 21 of the *PID Act 2012* (Vic) (including ‘misdirected disclosure[s]’), or a ‘police complaint disclosure’ received by Victoria Police and notified to IBAC under s 22 of the Act. Where a ‘police complaint disclosure’ is received by the Chief Commissioner of Police<sup>138</sup> from a police or protective services officer complainant, relating to conduct of a fellow officer that would likely amount to ‘improper conduct’ or ‘detrimental action’ within the meaning of the *PID Act 2012* (Vic),

<sup>135</sup> *PID Act 2012* (Vic) s 5(1)(b) (see also s 4).

<sup>136</sup> See also *PID Act 2012* (Vic) s 3 (definition of ‘assessable disclosure’: (g)–(h)).

<sup>137</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 7; *PID Act 2012* (Vic) s 4. See also *IBAC Act 2011* (Vic) s 5.

<sup>138</sup> Or referred to the Chief Commissioner of Police under s 168 of the *Victoria Police Act 2013* (Vic) (see *PID Act 2012* (Vic) s 5(1)(c)). See also *Victoria Police Act 2013* (Vic) ss 167(3) (police and protective services officers must report to a higher-ranked officer the conduct of a fellow officer if they reasonably believe that that officer is ‘guilty of misconduct’), 168 (an officer who receives a s 167(3) complaint must refer it to the Chief Commissioner of Police).

a section 22 notification must be made to IBAC.<sup>139</sup> The threshold for making a section 22 notification is that, on the information provided, the complainant reasonably believes that the subject of the complaint has, is, or is likely to engage in ‘improper conduct’, or the Chief Commissioner is satisfied that the complaint ‘shows or tends to show’ that.<sup>140</sup>

IBAC is ordinarily required to assess police-related PIDs and PID notifications it receives in order to determine whether they are public interest complaints.<sup>141</sup> However, IBAC may determine that the notification is not a public interest complaint if, in consultation with Victoria Police (as the notifying entity), and with the consent of the discloser, it considers that Victoria Police is the ‘more appropriate’ entity to deal with the PID or that it has been adequately dealt with by Victoria Police.<sup>142</sup>

Police-related PIDs and PID notifications represent only a small proportion of the total volume of complaints and notifications received by IBAC about Victoria Police annually. For example, of all police-related complaints and notifications received by IBAC in 2019/20, 2020/21 and 2021/22, police-related PIDs and PID notifications comprised only 21%, 12% and 10% respectively.<sup>143</sup>

In 2020/21, following amendments to s 67 of the *PID Act 2012* (Vic),<sup>144</sup> IBAC started reporting on the number of assessments and determinations made under s 26 of the Act in respect of police-related PIDs and PID notifications. Section 26 of the Act requires IBAC to assess the police-related PIDs and PID notifications it receives in order to determine whether they meet the threshold of a public interest complaint.<sup>145</sup> With respect to disclosures in police-related PIDs and PID notifications that IBAC determined were public interest complaints, IBAC also started reporting on the number of those complaints that it investigated, referred to another organisation for investigation or action, or dismissed.<sup>146</sup>

The data for 2020/21–2021/22 is relatively stable and indicates that IBAC determines that the overwhelming majority of disclosures in police-related PIDs and PID notifications do not meet the threshold of a public interest complaint. Of the small proportion of disclosures in police-related PIDs and PID notifications that IBAC determines do meet the threshold of a public interest complaint, it refers the overwhelming majority to other organisations (including Victoria Police) for investigation or action.

<sup>139</sup> *PID Act 2012* (Vic) s 22.

<sup>140</sup> *PID Act 2012* (Vic) s 22(1)(b).

<sup>141</sup> *PID Act 2012* (Vic) s 26(1).

<sup>142</sup> *PID Act 2012* (Vic) s 26(5)–(6).

<sup>143</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 39.

<sup>144</sup> See *PID Act 2012* (Vic) s 67(1)(b)(iii), (iv).

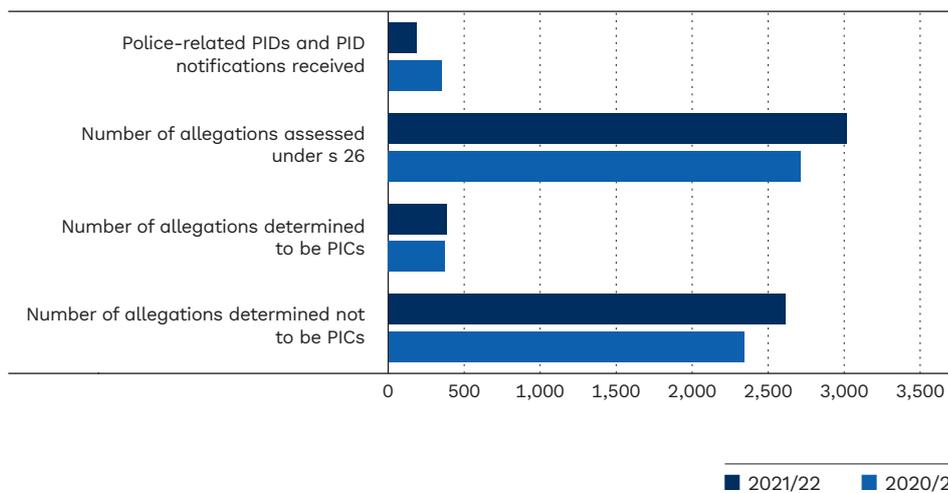
<sup>145</sup> Under s 26(3) of the *PID Act 2012* (Vic), an assessable disclosure meets the threshold of a public interest complaint if it ‘shows or tends to show ... [that] a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct ... [or] a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45 [‘Protection from reprisal’] ... [or] the person who made the disclosure believes on reasonable grounds [that it does]’.

<sup>146</sup> See IBAC, *Annual report 2020/21*, Melbourne, 2021, p. 60; IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 71; *PID Act 2012* (Vic) s 67(1)(b)(iv).

In 2020/21, IBAC received 346 police-related PIDs and PID notifications under ss 21 and 22 of the *PID Act 2012* (Vic). It is unclear whether any proportion of the 106 PIDs made to IBAC in 2020/21 under pt 2 div 2 of the *PID Act 2012* (Vic) were police-related, because IBAC did not report whether these disclosures were police and/or public-sector-related. The police-related PIDs and PID notifications contained 2,724 allegations assessed by IBAC in accordance with s 26 of the Act, 377 (14%) of which were determined to be public interest complaints requiring investigation and 2,347 (86%) of which were determined not to be public interest complaints. Of the 377 allegations assessed as public interest complaints in 2020/21, IBAC investigated 4 (1.06%), exercised its power of preliminary inquiry in relation to 2 (0.5%), referred 344 (91%) to other organisations (including Victoria Police) for investigation, and dismissed 26 (7%).<sup>147</sup>

Figure 2.1, below, provides an overview of the police-related PIDs and PID notifications received and assessed by IBAC in 2020/21–2021/22, while Figure 2.2, below, sets out what action IBAC took in relation to the 377 police-related PID allegations that it determined were public interest complaints in 2020/21.

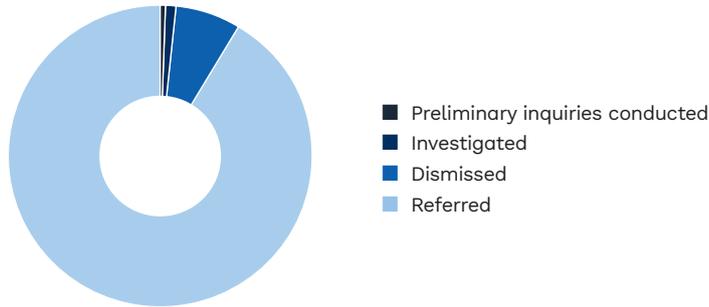
**Figure 2.1 Police-related PIDs and PID notifications received and assessed by IBAC under the *PID Act 2012* (Vic) in 2020/21–2021/22**



Source: Devised from IBAC, *Annual report 2020/21*, Melbourne, 2021, p. 60; IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 71.

<sup>147</sup> IBAC, *Annual report 2020/21*, Melbourne, 2021, p. 60.

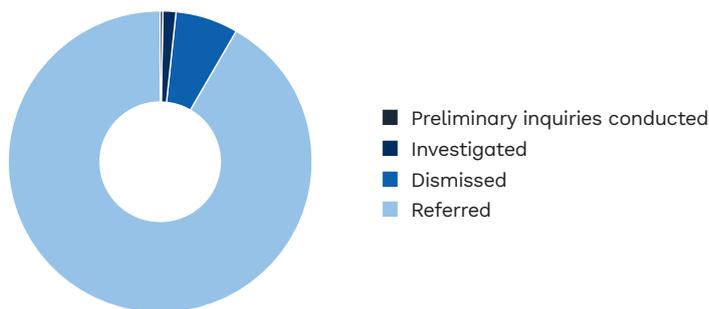
**Figure 2.2 Action taken by IBAC in relation to police-related public interest complaints (PICs) in 2020/21**



Source: Devised from IBAC, *Annual report 2020/21*, Melbourne, 2021, p. 60.

In 2021/22, IBAC received 182 police-related PIDs and PID notifications under ss 21 and 22 of the *PID Act 2012* (Vic). It is unclear whether any proportion of the 37 PIDs made to IBAC in 2021/22 under pt 2 div 2 of the *PID Act 2012* (Vic) were police-related because IBAC did not report whether these disclosures were police and/or public sector-related. The police-related PIDs and PID notifications contained 3,003 allegations assessed by IBAC in accordance with s 26 of the Act, 385 (13%) of which were determined to be public interest complaints requiring investigation and 2,618 (87%) of which were determined not to be public interest complaints. Of the 385 allegations assessed as public interest complaints in 2021/22, IBAC investigated 5 (1.3%), exercised its power of preliminary inquiry in relation to 1 (0.3%), referred 353 (92%)<sup>148</sup> to other organisations for investigation (including 352 to Victoria Police), and dismissed 26 (7%).<sup>149</sup> See Figure 2.1, above. See, also, Figure 2.3, below, which sets out what action IBAC took in relation to the 385 police-related PID allegations that it determined were public interest complaints in 2021/22.

**Figure 2.3 Action taken by IBAC in relation to police-related PICs in 2021/22**



Source: Devised from IBAC, *Annual report 2021/22*, Melbourne, 2021, p. 71.

<sup>148</sup> The IOC has long expressed concern about the proportion of police-related complaints and notifications IBAC refers back to Victoria Police for investigation. See, for example, Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, pp. 22–26, 32–34, 35–36; Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2019/20*, November 2021, pp. 22–24.

<sup>149</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 71; IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 7.

Regarding police-related public interest complaints that IBAC referred to Victoria Police for investigation in 2021/22, the Committee sought information regarding the proportion of those investigations that IBAC reviewed.<sup>150</sup> IBAC advised that, '108 allegations' of the '352 PIC allegations' (that is, 31%) were referred to Victoria Police on the understanding that 'IBAC would conduct a review' of Victoria Police's investigation of those matters.<sup>151</sup> However, IBAC did not provide any information regarding the number of reviews of those investigations that it had either commenced or finalised.

The Committee asked whether IBAC had received any internal service complaints<sup>152</sup> in 2021/22 about Victoria Police investigations of referred public interest complaints.<sup>153</sup> IBAC responded as follows:

Yes, IBAC did receive complaints about Victoria Police investigations. IBAC is in the process of enhancing its processes to consider complaints about how Victoria Police has handled referred matters, and whether in the circumstances, IBAC will withdraw a referral to Victoria Police and investigate the matter itself.<sup>154</sup>

The Committee notes that IBAC did not provide any information regarding the number of complaints it received about Victoria Police investigations of referred public interest complaints (or in respect of referred complaints more generally).

IBAC has emphasised that its police-related reviews improve 'public confidence in the ability of Victoria Police to respond to complaints and deal appropriately with misconduct, as well as to identify significant corruption risks'.<sup>155</sup> However, the Committee considers that IBAC's opaque reporting on data relating to its assessments and review functions invites unwarranted public criticism of its performance with respect to police oversight. Given the legislative complexity surrounding the types of police-related complaints that IBAC receives and assesses, the conduct they encompass, and the varied reasons why IBAC may decide to investigate a matter or refer it to Victoria Police for investigation, it is insufficient to look merely at the overall percentage of the total police-related complaints and notifications that IBAC investigates. The Committee considers that the public would greatly benefit from IBAC taking a more nuanced approach to collecting and reporting on its police-related assessments and reviews performance data.

To illustrate this point, the data presented in IBAC's 2021/22 annual report shows that, over time: the total number of police-related complaints and notifications has increased; the total number of allegations referred to Victoria Police has decreased; and the total number of police-related reviews that IBAC conducts has increased.<sup>156</sup>

<sup>150</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 3.

<sup>151</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 7.

<sup>152</sup> A complaint to IBAC about its handling of an existing complaint.

<sup>153</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 3.

<sup>154</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 7.

<sup>155</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 49.

<sup>156</sup> *Ibid.*, pp. 15, 39, 48.

But, given that the purpose of IBAC's police-related reviews is to determine whether Victoria Police investigations have been conducted thoroughly and fairly, that their findings are available on the evidence, and that their results (that is, Victoria Police's decision whether or not to take action and, if so, what kind of action) are 'reasonable' and align with 'public expectations', it is difficult to get a proper sense of the impact of these reviews on Victoria Police's performance in these areas over time, or, indeed, their value.<sup>157</sup>

IBAC no longer reports on the number of 'comprehensive' versus 'high-level' police-related reviews that it conducts,<sup>158</sup> nor continues to report on the number of reviews that are returned to Victoria Police as 'deficient'.<sup>159</sup> While IBAC did report on the total number of recommendations made to Victoria Police in relation to reviews conducted in 2021/22, it did not provide any information about the *proportion* of Victoria Police investigations that were found wanting, nor a thematic overview of the issues identified. IBAC also does not report on the proportion of Victoria Police investigations of referred matters that it reviews (noting, of course, that the number of reviews conducted of total referrals made may not be able to be reported on in the same reporting period due to the retrospective nature of IBAC's reviews and the time frame for investigations generally).

The Committee considers that IBAC needs to report on metrics that better address matters the public would benefit from knowing about the agency's systemic performance of its police-related assessments and review functions. This would include, for example:

- how the different types of police-related complaints and notifications that IBAC receives vary in complexity and seriousness
- what proportion of the various types of police-related complaints and notifications are investigated by IBAC, and why
- what proportion of the various types of police-related complaints and notifications are referred to Victoria Police for investigation, and why
- what proportion of referred matters IBAC reviews, and in what proportion of those reviews, the investigation by Victoria Police is found wanting
- (where appropriate) Victoria Police's acceptance and action rate on formal feedback or recommendations made by IBAC with respect to its investigation of referred complaints.

The Committee therefore strongly encourages IBAC to consider how it might report on performance data in way that is more meaningful in terms of building greater public understanding of, and public confidence in, IBAC's oversight of Victoria Police.

<sup>157</sup> Ibid., p. 48.

<sup>158</sup> See IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 61.

<sup>159</sup> See IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 36.

## IBAC's oversight of Victoria Police's collection, storage and use of information

At the request of the Committee,<sup>160</sup> IBAC elaborated on the nature and extent of its oversight functions and responsibilities with respect to Victoria Police's collection, storage and use of information as follows:

IBAC has compliance monitoring functions in relation to Victoria Police's operationalisation of various legislative schemes such as the Firearm Prohibition Orders regime within the *Firearms Act 1996*, the *Witness Protection Act 1991*, the *Sex Offender[s] Registration Act 2004* and others, some of which require IBAC to ensure that Victoria Police is complying with their legislated record-keeping obligations. However, other than IBAC's jurisdiction with respect to police personnel conduct or corrupt conduct, IBAC does not have any express general oversight functions or responsibilities with respect to Victoria Police's collection, storage and use of information.

To the extent that Victoria Police's collection, storage and use of information might be improperly managed, IBAC can investigate where that mismanagement meets the threshold of police personnel misconduct or corrupt conduct. If considered appropriate, IBAC can provide information obtained by it in the course of the performance of our duties, functions and powers to the Information Commissioner as a Victorian integrity body.<sup>161</sup>

IBAC has previously reported on corruption drivers and vulnerabilities for Victoria Police with respect to unauthorised access, use and disclosure of police information.<sup>162</sup> In this connection, the Committee therefore asked IBAC how, since the release of its seminal 2019 report, it has monitored Victoria Police's collection, storage and use of information and worked to reduce the incidence of information misuse within the force.<sup>163</sup> IBAC explained that it has:

- undertaken investigations of information misuse and related matters and made recommendations to Victoria Police to ensure continuous improvement (for example, Operation Dawson);<sup>164</sup>
- monitored Victoria Police investigations of information misuse and related matters, to ensure their fairness and thoroughness, by conducting reviews of 39 such investigations (including 28 in the 2021/22 reporting period);
- monitored allegations in complaints and other data to track trends in 'a range of corruption and police misconduct risks, including misuse of information'; and

<sup>160</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 4.

<sup>161</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, pp. 8–9.

<sup>162</sup> See IBAC, *Unauthorised access and disclosure of information held by Victoria Police: an analysis of corruption risks and prevention opportunities*, Melbourne, September 2019, especially pp. 13–26.

<sup>163</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 4.

<sup>164</sup> See IBAC, *Operation Dawson: an investigation into alleged misconduct by a former Victoria Police Superintendent*, Melbourne, December 2021.

- delivered in-person presentations on the risks of information misuse to a broad cross-section of Victoria Police, including ‘new recruits, Senior Sergeants, Inspectors, detectives and VPS staff’ and prepared related tailored educational material.<sup>165</sup>

#### 2.2.4 Review of IBAC’s Budget Paper No. 3 performance targets

The Committee is pleased that the 2023/24 BP3 introduced three new performance targets for IBAC:

- Number of police oversight activities (including preliminary inquiries, investigations, active monitoring and reviews) completed ...
- Number of public sector oversight activities (including preliminary inquiries, investigations and reviews) completed ...
- Average satisfaction with corruption prevention forums and events delivered by IBAC for a public sector (including police) audience.<sup>166</sup>

IBAC informed the Committee that the new targets were proposed by the agency in response to the findings of a 2022 internal review of its BP3 performance targets. IBAC’s Annual Plan 2023/24 also includes key performance indicators to track the ‘short-term outcomes’ of prevention initiatives and the recommendations that the agency makes.<sup>167</sup>

### 2.3 Public information, education and prevention

The objects of the *IBAC Act 2011* (Vic) include assisting in preventing public sector corruption and police misconduct, educating the public sector and general public about the impact of this wrongdoing and how it can be prevented, and enhancing the public sector’s capacity to resist it.<sup>168</sup> IBAC has explicit education and prevention functions to achieve these objects, including the provision of advice, educational training, publications and other resources to the public sector and the general public on the impact and prevention of corruption and police misconduct.<sup>169</sup> IBAC is also responsible for administering the Victorian PID Scheme. Its functions under the *PID Act 2012* (Vic) include promoting the purposes of the Act and providing educational information to the public sector to facilitate its compliance with the Scheme, including issuing procedural guidelines for the receipt and handling of PIDs and the protection of disclosers.<sup>170</sup>

The Committee notes that 2021/22 was a very productive year for IBAC with respect to its corruption prevention and education work. IBAC actioned the first year of its Corruption Prevention Strategy 2021–2024, progressing workstreams to expand its

<sup>165</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 9.

<sup>166</sup> DTF, *Victorian Budget 2023/24: service delivery* (Budget Paper No. 3), Melbourne, 2023, p. 363.

<sup>167</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 2.

<sup>168</sup> *IBAC Act 2011* (Vic) s 8(b)–(d).

<sup>169</sup> *IBAC Act 2011* (Vic) s 15 (especially (5)–(6)).

<sup>170</sup> *PID Act 2012* (Vic) ss 1, 55(2).

‘internal data analytics capability’ and public ‘reach and accessibility’.<sup>171</sup> IBAC met its BP3 performance target, delivering 125 corruption prevention initiatives.<sup>172</sup> In the public hearing on 14 August 2023, IBAC provided an extensive overview of these initiatives and related work, informing the Committee that the agency:

- presented at 89 forums, including over 30 forums and related speaking engagements to Victoria Police employees through its Victoria Police education program
- delivered the ‘You have the right to not remain silent’ campaign to improve community awareness and understanding of public sector corruption and police misconduct
- delivered the ‘Speak up to stop it’ digital awareness campaign to highlight the risk of undue influence across State and local government, which appeared online almost two million times
- delivered an internally produced podcast series on topical issues that was listened to 707 times
- surveyed 12,000 public sector, local government and Victoria Police employees, Victorian Government business suppliers and members of the community to gain a deeper understanding of the barriers to reporting corruption and misconduct, published the findings of this research on its website, and shared the findings with stakeholders through engagement and communication activities
- tabled two special reports detailing the findings of its investigations in Operations Turon and Dawson and recommendations for managing key corruption risks identified and promoting a workplace integrity culture
- published a research report, *Corruption risks associated with government funded human services delivered by community service organisations*
- published an audit report, *Victoria Police handling of complaints made by Aboriginal people*
- applied the learnings of its audit of Victoria Police’s handling of complaints made by Aboriginal people to the development of an Aboriginal community awareness program to build awareness and knowledge of IBAC’s complaints processes
- improved the accessibility of its online complaint form, including by releasing it in 21 non-English languages
- made 28 recommendations to the Victorian public service to bring about improvements in their systems, practices and controls.<sup>173</sup>

<sup>171</sup> Ms Marlo Baragwanath, CEO, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 16–17.

<sup>172</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 34.

<sup>173</sup> Ms Marlo Baragwanath, CEO, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 16–17; Ms Kylie Kilgour, Deputy Commissioner, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 15; IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 3.

### 2.3.1 Response to IOC recommendations in its education and prevention report

In its report on the education and prevention functions of Victoria's integrity agencies, the IOC made 11 recommendations to IBAC:

Recommendation 1: That the Independent Broad-based Anti-corruption Commission establish a community education and stakeholder engagement program, with a focus on police oversight and police-related complaints, that engages with members of the LGBTIQ+ community, and other vulnerable complainants, including members of Victoria's Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities and people with disability.

Recommendation 2: That, in support of this community education and stakeholder engagement program, the Independent Broad-based Anti-corruption Commission develop tailored resources, with a focus on police oversight and police-related complaints, for members of the LGBTIQ+ community, and other vulnerable complainants, including members of Victoria's Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities and people with disability.

Recommendation 3: That the Independent Broad-based Anti-corruption Commission maintain on its website an up-to-date directory containing the contact details of all Public Interest Disclosure Coordinators of Victorian public sector bodies and local councils.

Recommendation 4: That the Independent Broad-based Anti-corruption Commission (IBAC) publish clear, consistent and sufficiently detailed information for potential reporters of wrongdoing about how to make an anonymous report, and how IBAC protects their anonymity.

Recommendation 5: That the Independent Broad-based Anti-corruption Commission provide Public Interest Disclosure Coordinators with adequate technical information and guidance so they can securely receive, store and manage anonymous reports of wrongdoing.

Recommendation 6: That the Independent Broad-based Anti-corruption Commission consider:

- the potential for using secure dropbox technology to ensure the secure receipt and management of public interest disclosures, complaints and other reports of wrongdoing, particularly when a discloser, complainant or other reporter wants to remain anonymous
- how it might use secure dropbox technology to effectively communicate with anonymous reporters, from report to outcome.

Recommendation 12: That the Independent Broad-based Anti-corruption Commission (IBAC), the Office of the Victorian Information Commissioner, the Victorian Inspectorate and the Victorian Ombudsman establish a corruption-prevention and education network, coordinated by IBAC, that:

- is guided by agreed best practice principles on corruption prevention and education;
- draws on the expertise and experience of other integrity leaders, such as the Victorian Public Sector Commission, the Institute of Public Administration Australia (Victoria) and the Australia and New Zealand School of Government; and
- facilitates the development, delivery and review of corruption-prevention and education resources and training for the public sector.

Recommendation 13: That the Independent Broad-based Anti-corruption Commission, the Office of the Victorian Information Commissioner, the Victorian Inspectorate and the Victorian Ombudsman develop, in consultation with each other, systematic, comprehensive and consistent evidence-based frameworks for measuring the quality and impact of their respective prevention and education initiatives.

Recommendation 14: That the Independent Broad-based Anti-corruption Commission, the Office of the Victorian Information Commissioner, the Victorian Inspectorate and the Victorian Ombudsman collaborate, where possible, on large-scale data collection projects to support the measurement framework, including benchmarks for tracking progress over time in a meaningful way, that reflect the complexity and value of integrity agencies' oversight work.

Recommendation 15: That the Independent Broad-based Anti-corruption Commission, the Office of the Victorian Information Commissioner, the Victorian Inspectorate and the Victorian Ombudsman include in their annual reports a dedicated section on the measurement of the quality and impact of their prevention and education initiatives.

Recommendation 16: That the Independent Broad-based Anti-corruption Commission include in its annual report an account of the recommendations it has made during the relevant financial year, by number, type and sector.<sup>174</sup>

IBAC has begun implementing recommendations 1–2, 4, 12–14 and 16.

IBAC has made significant progress in implementing Recommendations 1 and 2, reporting that its *Focus Communities Strategy 2021–23* (the Strategy),<sup>175</sup> which was rolled out in February 2022,

establishes a multi-year community education and stakeholder engagement program to ensure IBAC is accessible, accountable and engaged with our community, in particular with members of three identified communities: Aboriginal and Torres Islander communities, LGBTIQ+ communities and multicultural communities.<sup>176</sup>

<sup>174</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, pp. 90, 95, 105, 107, 131, 168.

<sup>175</sup> IBAC, *Focus Communities Strategy 2021–23*, Melbourne, 2023, <<https://www.ibac.vic.gov.au/publications-and-resources/article/ibac%27s-focus-communities-strategy>> accessed 4 July 2023.

<sup>176</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 1.

IBAC has released a variety of tailored resources under the Strategy, including the translation of explanatory videos on the agency’s police oversight role, and a police and protective services officers complaints handling flow chart. IBAC’s public information campaign, ‘You have the right to not remain silent’, also sought to raise awareness of the agency’s police oversight role within focus communities in regional areas and encourage them to report police misconduct.<sup>177</sup>

Given that the Strategy has now been fully implemented, IBAC has committed to developing a new Community Strategy.<sup>178</sup>

With respect to Recommendation 4, IBAC reports that its ‘new website makes it easier for people to report corruption and misconduct, with forms supported by clearer step by step instructions; improvements to accessibility of the complaint form and the ability to provide information anonymously via the complaint form’.<sup>179</sup> In late 2023, IBAC also intends to publish a variety of new PID material on its website, ‘including an e-module, videos, factsheets, and FAQ documents’. IBAC considers that the recommendation will be fully implemented by 31 August 2023.<sup>180</sup>

IBAC has reported that its Prevention and Education Advisory Committee (PEAC), established in late 2022 and comprising representatives from the Local Government Inspectorate, the Office of the Victorian Information Commissioner, the Victorian Auditor-General’s Office (VAGO), the Victorian Ombudsman and the Victorian Public Sector Commission (VPSC), addresses the substance of Recommendation 12.<sup>181</sup>

The stated purpose of PEAC, which meets quarterly, is to provide an inter-agency forum for considering and collaborating on the development of corruption prevention and education resources and training tailored to the Victorian public sector.<sup>182</sup>

PEAC is a key initiative furthering IBAC’s commitment, in its Corruption Prevention Strategy 2021–2024, to greater collaboration with fellow Victorian integrity agencies. A central pillar of IBAC’s approach to corruption prevention in the Strategy is to collaborate by working ‘closely with other Victorian integrity agencies to facilitate an efficient whole-of-system approach to building integrity and preventing corruption’. PEAC appears to have incorporated many elements of the collaboration ‘priority projects’ identified in the Strategy, including with respect to data, information and knowledge-sharing across Victorian integrity agencies, and greater inter-agency

<sup>177</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 1. See also IBAC, *Complaints handling process—complaints against Victoria Police officers and protective service officers (PSOs)*, Melbourne, August 2021, <<https://www.ibac.vic.gov.au/publications-and-resources/article/complaints-handling-process---complaints-against-victoria-police-officers-and-protective-services-officers>> accessed 4 July 2023; IBAC, *You have the right to not remain silent*, n.d., <<https://www.ibac.vic.gov.au/youhavetheright>> accessed 4 July 2023.

<sup>178</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 1.

<sup>179</sup> Ibid.

<sup>180</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 1 (quoted text); IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 2.

<sup>181</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, pp. 1–2.

<sup>182</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, pp. 1–2; IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 2.

coordination of corruption prevention planning processes and development of educational resources.<sup>183</sup>

However, the Committee is concerned that the VI, which sits at the apex of the Victorian integrity system, is not part of PEAC, particularly considering its oversight functions with respect to IBAC, OVIC, VAGO and the VO. The Committee considers that the VI could make a valuable contribution to PEAC and, given IBAC's advice that the 'Terms of Reference' of PEAC allow it to 'invite additional integrity leaders as relevant', strongly encourages IBAC to invite the VI to join PEAC in line with the spirit of IOC's original recommendation and IBAC's Corruption Prevention Strategy 2021–2024.<sup>184</sup>

**RECOMMENDATION 1:** That the Victorian Inspectorate be invited to join the Prevention and Education Advisory Committee.

Through the PEAC, IBAC is working to implement Recommendations 13–14, consulting with other members on the measurement frameworks and exploring potential opportunities for collaboration on data sharing and collection. This includes, for example, IBAC's 'Organisational Integrity Maturity rating system', which is under development. IBAC has committed to continuing development of the 'new rating system and data collection tool' in the 2023/24 reporting period in hopes of piloting them in 2023.<sup>185</sup> IBAC has reported that it is

currently undertaking an organisation-wide refresh of performance measures, which includes prevention and education measures. A draft set of measures identifying activities, outputs, outcomes and impact will be finalised by December 2023. Discussions with the other integrity agencies will continue to be ongoing in 2023/24 via... [PEAC] to share information and learnings about each agency's performance measurement framework, which may inform further changes on the future.<sup>186</sup>

The Committee commends IBAC on these developments and looks forward to hearing more about the progress of PEAC on these matters in due course.

Finally, IBAC will commence reporting on the recommendations it has made in each financial year in its annual report for 2022/23, and thereafter, in line with Recommendation 16.<sup>187</sup>

IBAC has also accepted recommendations 5 and 15.

IBAC has provided 'in principle' acceptance of Recommendation 5, noting that, as part of the implementation activities for its Annual Plan 2023/24, it will give consideration to the need to include further information and resources for PID Coordinators on its

<sup>183</sup> IBAC, *Corruption Prevention Strategy 2021–24*, Melbourne, 2022, pp. 8 (quoted text), 9–11.

<sup>184</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, pp. 1–2.

<sup>185</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, pp. 1–2; IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 2.

<sup>186</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 2.

<sup>187</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 2.

website in consultation with its PID Community of Practice. IBAC advised that it is also developing related '[a]dditional information and resources', which will be published on its website by the end of 2023.<sup>188</sup>

IBAC has committed to implementing Recommendation 15 in its annual reporting from 2023/24 onwards, noting that the delay is due to the fact that the 'new measurements will not be finalised in time for the 2022/23 annual report'.<sup>189</sup>

IBAC informed the Committee that it is continuing to 'refine' the measurement of its initiatives and has committed to expanding its reporting on measurement in its annual reports, including on 'participant satisfaction and intent to apply learnings'.<sup>190</sup> The Committee is pleased that IBAC intends to provide more in-depth reporting on the impact of its initiatives. However, with respect to reporting on participant satisfaction, the Committee notes that IBAC already reports on its annual performance against BP3 participant satisfaction targets for its corruption-prevention and education initiatives.<sup>191</sup>

Moreover, the Committee is not persuaded that measuring the intention of participants to apply learnings from IBAC-lead corruption prevention activities is a good measure of the impact of such initiatives, or will enhance its ability to determine to what extent its initiatives have enhanced corruption-prevention capacity in the Victorian public sector. Given the IOC's findings in its *Inquiry into the education and prevention functions of Victoria's integrity agencies* report that, 'research indicates that "behavioural intentions and judgments do not necessarily lead to actual behaviour"' because of the influence of organisational culture on conduct, the Committee is keen to see IBAC develop, implement and report on more sophisticated and reliable measures of impact, in line with the IOC's recommendation.<sup>192</sup>

IBAC is considering its acceptance of Recommendation 6. The implementation activities for its Annual Plan 2023/24 will include a review of Victorian and interstate integrity agencies' use of technology with respect to anonymous reporting. The findings of this review will determine whether using secure drop-box or equivalent technology will deliver the benefits envisaged by the recommendation and its compatibility with the agency's existing IT infrastructure.<sup>193</sup> IBAC advised that it will inform the Committee of its decision regarding the implementation of this recommendation by mid-2024.<sup>194</sup>

<sup>188</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 2; IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 2 (quoted text).

<sup>189</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 2.

<sup>190</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 3.

<sup>191</sup> See, for example, IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 34; IBAC, *Annual report 2020/21*, Melbourne, 2021, p. 14; IBAC, *Annual report 2019/20*, Melbourne, 2020, p. 20.

<sup>192</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, p. 140 (quoting Dr Eva Tsahuridu).

<sup>193</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 2.

<sup>194</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 2.

Finally, IBAC has not accepted Recommendation 3. IBAC has drawn the Committee's attention to the fact that the role of PID Coordinators is not legislatively enshrined or defined and therefore organisations 'may elect to acquit their obligations [under the *PID Act 2012* (Vic)] by other means'.<sup>195</sup> It is the agency's view, noting the extensive list of persons permitted to receive a PID on behalf of an entity in Schedule 2 of the *PID Act 2012* (Vic), that publishing and maintaining 'a complete list of individuals identified as persons who may receive disclosures' would be difficult because it would be 'unwieldy and subject to frequent change'.<sup>196</sup>

IBAC has indicated that not all Victorian public sector bodies and local councils have a PID Coordinator because they are not required by law to appoint one. The Committee is, respectfully, not persuaded by IBAC's contention. The recommendation does not require IBAC to publish a list of *all* persons permitted to receive a PID on behalf of an entity under Schedule 2 of the *PID Act 2012* (Vic), rather, the contact details of PID Coordinators for entities that have appointed one. It is notable, in this connection, that IBAC's published guidance for the public and public sector bodies suggests that it is best practice for entities that can receive PIDs to appoint a designated PID Coordinator. For example, the Committee notes the following information published on IBAC's website, providing guidance to the public on how they can report corruption and misconduct:

*All Victorian state government departments, administrative offices and local councils have a Public Interest Disclosure Coordinator who is responsible for receiving and handling reports of improper conduct from employees or members of the public, and ensuring that support and welfare protection is provided to them.*<sup>197</sup>

The Committee also notes that IBAC's *Guidelines for handling public interest disclosures* states:

Bodies that can receive public interest disclosures should have ... [a] means of identifying a person (or persons) who can receive disclosures (known as a Public Interest Disclosure Coordinator).<sup>198</sup>

The Committee therefore encourages IBAC to give further consideration to implementing Recommendation 3.

### 2.3.2 IBAC's measurement of the impact of key corruption-prevention initiatives

At the Committee's public hearing, IBAC was asked to give insight into the effectiveness of its corruption-prevention and education initiatives in 2021/22. Mr Farrow informed the Committee that:

<sup>195</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 2.

<sup>196</sup> Ibid.

<sup>197</sup> IBAC, *Guidance material: What is a public interest disclosure?*, 1 January 2020, <<https://www.ibac.vic.gov.au/publications-and-resources/article/fact-sheet-what-is-a-public-interest-disclosure>> accessed 14 July 2023 (emphasis added).

<sup>198</sup> IBAC, *Guidelines for handling public interest disclosures*, Melbourne, January 2020, p. 23.

[O]bviously it is challenging to measure effectiveness ... [Y]ou can see from the increasing numbers of complaints and notifications we are receiving ... that there is greater awareness of IBAC's work ... [Y]ou can see from our strategic focus areas ... [that] we have identified a number of high risk areas where we want to really ensure that particular agencies or sectors are very aware of corruption risks ... [W]e do a lot of intelligence-led [work], we have got a strategic intelligence capacity which really directs our attention to where the greatest risks are.<sup>199</sup>

Two of IBAC's significant corruption-prevention initiatives in the 2021/22 reporting period were its public information campaigns: 'You have the right to not remain silent', drawing attention to IBAC's police oversight role in regional and vulnerable communities, and 'Speak up to stop it', drawing attention to the issue of undue influence in the Victorian public sector.<sup>200</sup>

IBAC informed the Committee that the 'You have the right to not remain silent' campaign targeted eight regional local government areas—Greater Shepparton, Horsham, Latrobe, Mitchell, Southern Grampians, Swan Hill, Wellington and Wodonga—based on strategic intelligence indicating there was a high risk of underreporting of police misconduct in those areas.<sup>201</sup>

The campaign was developed with the diversity of regional communities in mind, such as people from diverse cultural backgrounds, young people and women, who may be more likely to underreport their experiences of police misconduct.<sup>202</sup> IBAC engaged a digital and creative services firm to consult on the development of the campaign, and also sought input from a variety of stakeholders with specialised knowledge of the target audience, including the Victorian Equal Opportunity and Human Rights Commissioner and the Victorian Commissioner for LGBTIQ+ Communities.<sup>203</sup>

IBAC's 'You have the right to not remain silent' campaign ran for five and a half weeks at a cost of \$131,129 for its development and rollout, noting that its objectives were to 'increase awareness about IBAC's police oversight role with a focus on reaching regional Victoria, LGBTIQ+ and multicultural communities; and encourage credible reporting of police misconduct'.<sup>204</sup> IBAC reported that it used online and social media platforms to disseminate the campaign's messaging, including Facebook, Instagram and Weibo, and also multicultural and regional radio stations, outdoor digital advertising screens in shopping centres and GP clinics, and print.<sup>205</sup>

IBAC considered the campaign a success because it achieved 'mass awareness to target audiences', noting that it primarily used 'online metrics' to assess its effectiveness and impact, 'as radio and print are harder to quantify'. Online metrics

<sup>199</sup> Mr Stephen Farrow, Acting Commissioner, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 16.

<sup>200</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 22, 25, 31.

<sup>201</sup> Ms Kylie Kilgour, Deputy Commissioner, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 15–16.

<sup>202</sup> *Ibid.*

<sup>203</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 4.

<sup>204</sup> *Ibid.*, p. 5.

<sup>205</sup> *Ibid.*

revealed ‘over 2.1 million impressions, reaching more than 344,000 individuals’.<sup>206</sup> Additionally, it noted that ‘[t]he campaign played 218 times across multicultural and community radio’ likely reaching ‘hundreds of thousands of regional Victorians’.<sup>207</sup> The outdoor digital and print advertising also reached ‘more than 286,797 people ... and up to 133,405 people’ respectively—however, IBAC itself cautioned that, because of the ‘specific and targeted audience, industry average benchmarks, like click through rates, are not an accurate measure of performance’.<sup>208</sup>

The ‘Speak up to stop it’ campaign ran for 4 weeks and IBAC spent \$68,763 on its development and rollout, noting that its objectives were to ‘raise awareness of, and prevent the risks of, improper influence in the Victorian public sector, while also encouraging public sector employees to report improper influence to their managers and suspected corruption to IBAC’.<sup>209</sup>

IBAC has reported that it used online and social media platforms to disseminate the campaign’s messaging, including Facebook, LinkedIn and Google Ads, and that ‘[o]nline metrics’ were used to assess its effectiveness and impact. IBAC considered the campaign successful, noting that online metrics revealed ‘1.8 million impressions and over 5,000 clicks [were recorded] across all platforms ... [with] a click through rate of 0.6 per cent for LinkedIn and a cost per click of \$7.39 for Facebook (exceeding Victorian Government average online campaign benchmarks)’.<sup>210</sup>

As the first phases of multi-year campaigns which the agency intends to run annually, IBAC informed the Committee that the performance of future campaigns will be benchmarked against the online metrics for the 2022 ‘You have the right to not remain silent’ and ‘Speak up to stop it’ campaigns ‘for a more accurate measure of success’.<sup>211</sup>

Following the public hearing, IBAC informed the Committee that it re-launched the ‘You have the right to not remain silent’ campaign in 2022/23, targeting 13 regional local government areas—Bairnsdale, Ballarat, Bendigo, Greater Shepparton, Horsham, Lakes Entrance, Mildura, Morwell, Robinvale, Sale, Swan Hill, Traralgon and Warragul—based on strategic intelligence and media agency data indicating there was a potential ‘higher risk’ of police misconduct or underreporting of police misconduct in those areas. IBAC reported that campaign messaging appeared 6.9 million times on social media platforms, and was advertised across multicultural and regional radio stations, and on digital advertising screens in shopping centres and GP clinics that were translated into seven languages other than English.<sup>212</sup>

The Committee is pleased by these indicators of the print, digital and broadcast reach of the campaigns. However, while IBAC’s commitment to maturing its measurement

<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid., p. 4.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid., pp. 4–5.

<sup>212</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, pp. 3–4.

of the impact of its education and corruption-prevention initiatives is evident, and encouraging, the Committee considers that the agency has more work to do to fully implement the spirit of the IOC's recommendations on performance measurement in Chapter 6 of the *Inquiry into the education and prevention functions of Victoria's integrity agencies* report.

The Committee is mindful that the online metrics used by IBAC to measure the effectiveness of the campaigns are *proxy* measures of their impact because they do not measure the extent to which knowledge has actually been acquired by the target audiences, nor whether knowledge acquired as a result of the campaign has, or will, impact the behaviour of the target audience. Given the clear distinction between awareness and attitudinal or behavioural change, and indeed organisational change, the Committee is keen to see IBAC measure the success of its future public information campaigns with greater sophistication over time. IBAC could, for example, complement existing measures of information reach (like online metrics) with other quantitative measures of the impact of such campaigns. This could include, for example, complaints data showing trends in internal and external reporting on police conduct by vulnerable communities and on conduct amounting to undue influence, including improvements in the specificity of these types of complaints or in the number of complaints received that fall within IBAC's jurisdiction. The Committee considers that this will enable IBAC to better demonstrate the value for money of such initiatives, by showing how they have contributed to improvements in ethical standards, corruption resistance and public trust in IBAC and other institutions.<sup>213</sup>

## 2.4 Governance and workplace

### 2.4.1 Information management and security

At the request of the Committee, IBAC provided an overview of the information management and security principles, procedures and practices it has in place to minimise the risk of improper disclosure of confidential and sensitive information held by the agency.<sup>214</sup>

The IBAC Commissioner, Deputy Commissioners, Chief Executive Officer (CEO) and all other staff are required to swear an oath or make an affirmation under the *IBAC Act 2011* (Vic) undertaking, among other matters, to comply with their statutory confidentiality obligations.<sup>215</sup>

IBAC's policies and procedures provide guidance to staff on the processes they are expected to follow with respect to information management and security, including

<sup>213</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, pp. 133-169.

<sup>214</sup> Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 23 August 2023, p. 2.

<sup>215</sup> *IBAC Act 2011* (Vic) ss 31, 34, 37; Ms Marlo Baragwanath, CEO, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 21.

appropriate access to and use of the agency's systems and information.<sup>216</sup> Further, staff receive extensive training at induction on these policies and procedures and also receive ongoing refresher training and messaging on information security.<sup>217</sup>

IBAC also has a security classification system with respect to information contained in documents and emails. IBAC trains staff on how to correctly classify information using the system, and conducts regular spot checking of documents and monitoring of new documents uploaded to the agency's electronic document management system to ensure that information is correctly classified.<sup>218</sup> IBAC also provides training on how information of varying security classifications can be shared, noting that different rules apply depending on the sensitivity of the information.<sup>219</sup>

Further, IBAC has extensive cybersecurity measures in place which allow it to restrict, monitor and audit access to sensitive and confidential information; contain and manage risks of improper disclosure; and take timely action in response to security incidents, including, for example:

- controlling access to sensitive documents and capacity to monitor user access to such holdings
- quarterly audits of access to information stored in IBAC's electronic document management system
- timely disablement and removal of user accounts when staff leave the agency
- detection processes for intentional and unintentional information leaks.<sup>220</sup>

IBAC is also subject to oversight by OVIC with respect to its compliance with the *Privacy and Data Protection Act 2014* (Vic) and indicated that it has a 'very high level of compliance' with the Victorian Protective Data Security Framework.<sup>221</sup>

### **Provision of draft special reports and advance special reports under ss 162 and 166 of the *IBAC Act 2011* (Vic)**

IBAC has special protocols for the release of draft special reports prior to their publication. Under the *IBAC Act 2011* (Vic), IBAC has procedural fairness obligations to public bodies about whom adverse findings are made, persons about whom adverse comments or opinions are expressed, and persons about whom comments or opinions are expressed.<sup>222</sup> Prior to publication of a report, IBAC provides copies of draft sections of the report to adversely named bodies/persons, to give them the opportunity to

<sup>216</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 4.

<sup>217</sup> Ms Marlo Baragwanath, CEO, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 21.

<sup>218</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 4.

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> Mr Glenn Ockerby, Executive Director, Corporate Services, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 21.

<sup>222</sup> *IBAC Act 2011* (Vic) s 162(2)-(4).

respond, and is further required to give a fair account of any response in the final published report. IBAC also provides copies of draft sections of the report to named persons.<sup>223</sup>

The Committee learnt for the first time during public hearings<sup>224</sup> that IBAC also occasionally provides copies of final special reports to select media outlets 24 hours in advance of tabling in Parliament and formal publication—for example, the reports on the agency’s Operations Watts<sup>225</sup> and Operation Daintree<sup>226</sup> investigations. Copies of advance reports are embargoed in the sense that the recipient is prohibited, under s 166 of the *IBAC Act 2011* (Vic), from disclosing or publishing the content of the report before it is formally tabled and published. IBAC stressed that it does not provide embargoed copies of its reports to media outlets as a matter of standard practice, but rather, on a ‘case-by-case basis’ following careful consideration.<sup>227</sup> IBAC informed the Committee that it was not aware of any instances of media outlets breaching the embargo.<sup>228</sup>

At a Committee public hearing, Mr Redlich denied that, during his term as Commissioner, it was IBAC’s practice to brief journalists on the content of the agency’s reports before tabling.<sup>229</sup> IBAC confirmed that it is ‘not standard practice’<sup>230</sup> for the agency to brief journalists in this way, and that it ‘does not have off the record conversations with journalists in advance of tabling’.<sup>231</sup>

Both Mr Redlich and IBAC drew a distinction between the act of briefing journalists and providing embargoed copies of reports to journalists and media outlets in advance of tabling. Mr Redlich informed the Committee that, during his term as Commissioner, only two reports were provided to journalists in advance of tabling, both under embargo: the special reports on IBAC’s Operations Watts and Daintree investigations.<sup>232</sup> Similarly, IBAC informed the Committee that the first embargoed report provided to journalists prior to tabling was the special report on Operation Watts,<sup>233</sup> and emphasised that

<sup>223</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 4.

<sup>224</sup> Mr Stephen Farrow, Acting Commissioner, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 21.

<sup>225</sup> IBAC and the VO, *Operation Watts: investigation into allegations of misuse of electorate office and ministerial officer staff and resources for branch stacking and other party-related activities*, Melbourne, July 2022.

<sup>226</sup> IBAC, *Operation Daintree special report*, Melbourne, April 2023.

<sup>227</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, pp. 5–6.

<sup>228</sup> Mr Stephen Farrow, Acting Commissioner, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 21; IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 5.

<sup>229</sup> Mr Ryan Batchelor MP, Member, Integrity and Oversight Committee, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 17; Hon Robert Redlich AM KC, former IBAC Commissioner, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 17.

<sup>230</sup> Mr Stephen Farrow, Acting Commissioner, IBAC, to Dr Tim Read MP, Chair, Integrity and Oversight Committee, correspondence, 19 October 2023, p. 1.

<sup>231</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 6.

<sup>232</sup> Hon Robert Redlich AM KC, former IBAC Commissioner, to Dr Tim Read MP, Chair, Integrity and Oversight Committee, correspondence, 1 November 2023.

<sup>233</sup> IBAC and the VO, *Operation Watts: investigation into allegations of misuse of electorate office and ministerial officer staff and resources for branch stacking and other party-related activities*, Melbourne, July 2022; IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 6.

[t]he decision to provide embargoed copies of a special report to the media is made on a case-by-case basis and has only been done in advance of some of IBAC's more complex and significant special reports.<sup>234</sup>

IBAC, highlighting the significant complexity of some of its reports, explained that this practice facilitates accurate media reporting because journalists have more time to read and consider the content of the report and can clarify issues with IBAC prior to reporting on it.<sup>235</sup> In this way, IBAC considers that the practice supports its education and prevention function and promotes witness welfare,<sup>236</sup> noting that s 15 of the *IBAC Act 2011* (Vic) tasks IBAC with exposing corruption and police misconduct; performing education and prevention functions to achieve the objects of the Act (which include the exposure of corruption and police misconduct and the education of the public on the impact and means of preventing these ills);<sup>237</sup> and publishing information on ways to prevent corruption and police misconduct.<sup>238</sup>

At the request of the Committee,<sup>239</sup> IBAC explained its view that this practice respects and accords with the privileges of the Parliament in respect of reports to be tabled, as follows:

IBAC's considered position is that it is not contrary to the privileges of Parliament, nor does it constitute a contempt of Parliament, in certain circumstances, to provide an embargoed copy of a special report to selected media outlets shortly before the special report is tabled in Parliament.

IBAC's position is based on the fact that the disclosure is of a final report, not a draft report, and that this disclosure is made in accordance with strict confidentiality obligations that are subject to penalty if breached. In this regard, publication of information contained in the special report is expressly prohibited prior to tabling. It does not prevent or in any way impede the ability of the Parliament and its committees to perform any of their functions.<sup>240</sup>

IBAC has indicated that its position is not informed by expert legal advice.<sup>241</sup> While recognising IBAC's view that the provision of embargoed reports in advance of tabling supports its education and prevention function, the Committee is nonetheless concerned that it is presently unclear how this practice accords with parliamentary

<sup>234</sup> Mr Stephen Farrow, Acting Commissioner, IBAC, to Dr Tim Read MP, Chair, Integrity and Oversight Committee, correspondence, 19 October 2023, p. 1.

<sup>235</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 6; Mr Stephen Farrow, Acting Commissioner, IBAC, to Dr Tim Read MP, Chair, Integrity and Oversight Committee, correspondence, 19 October 2023, p. 1.

<sup>236</sup> Mr Stephen Farrow, Acting Commissioner, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 21; IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, pp. 5–6.

<sup>237</sup> *IBAC Act 2011* (Vic) s 8(a), (c).

<sup>238</sup> *IBAC Act 2011* (Vic) s 15(2), (5)–(6).

<sup>239</sup> Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 23 August 2023, p. 2.

<sup>240</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, pp. 5–6.

<sup>241</sup> Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 23 August 2023, p. 2; IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, pp. 5–6.

privilege.<sup>242</sup> The Committee emphasises that parliamentary privilege is within the domain of Parliament itself as a matter of parliamentary law and custom, and, in particular, draws attention to a ruling from the President of the Legislative Council in 2011, which stated:

The premature release of any report prior to its formal tabling in the House is grossly discourteous to the House and, under certain circumstances, could potentially be dealt with as contempt. Any such action would be a matter for the House to consider by substantive motion based on a consideration of all the circumstances in the case. The premature release of a report can also potentially have serious consequences in that the contents may not be protected by parliamentary privilege prior to the report being tabled and ordered to be printed.<sup>243</sup>

Given its serious concerns and the President's ruling, the Committee considers that it is reasonable for Parliament to seek assurances from IBAC on this matter, and will examine this complex issue further.

**RECOMMENDATION 2:** That—given its obligations to the Parliament in respect of tabling reports, and the legal complexity and uncertainty regarding how the provision of embargoed copies of the Independent Broad-based Anti-corruption Commission's (IBAC) special reports to media outlets in advance of tabling accords with the privileges of Parliament—IBAC seek legal advice on whether this practice accords with the privileges of Parliament.

The Committee is also concerned that IBAC's decision-making on which reports are released to journalists and media outlets under embargo in advance of tabling is not currently guided by formal policy. The Committee considers that, provided the practice legally accords with parliamentary privilege, such a policy is vital to assuring Parliament, the Victorian public sector and the broader public that these decisions are made in a methodical and consistent way.

**RECOMMENDATION 3:** That if, upon receiving such legal advice, the Independent Broad-based Anti-corruption Commission's (IBAC) position is that providing embargoed copies of its special reports to media outlets in advance of tabling is legal, prudent and appropriate, IBAC develop a rigorous and transparent policy identifying the basis upon which embargoed copies of special reports are provided to media outlets (and to which journalists) in advance of tabling, to guide its decision-making.

<sup>242</sup> Mr Ryan Batchelor MP, Member, Integrity and Oversight Committee, public hearing, Melbourne, 14 August 2023, pp. 21–22.

<sup>243</sup> Legislative Council of Victoria, *Rulings from the Chair: Edition No. 6, 1979–2011, 48th to the 57th Parliaments*, Department of the Legislative Council, Parliament of Victoria, Melbourne, December 2011, p. 80.

## 2.4.2 External review of OH&S

IBAC has engaged workplace risk assessment and risk management consultancy firm, Risk Strategies, to conduct the review of its Health, Safety and Wellbeing Strategy 2021–23. The review, which commenced in April 2023, will assess IBAC’s implementation of the Strategy.<sup>244</sup> The Committee looks forward to IBAC reporting to it on the methodologies, processes and outcome of the review, in line with the agency’s previous acceptance of Recommendation 1 in the IOC’s *Inquiry into the performance of Victorian integrity agencies 2019/20* report.<sup>245</sup>

## 2.4.3 Workplace culture

Following media reporting on IBAC’s 2019 People Matter Survey (PMS) results, the IOC expressed concerns about the agency’s workplace culture in its *Inquiry into the performance of Victorian integrity agencies 2019/20* report, particularly with respect to bullying, discrimination, sexual harassment and violence or aggression (formerly known as ‘occupational violence’).<sup>246</sup> In 2022, IBAC informed the Committee that its Health, Safety and Wellbeing Strategy 2021–23 had resulted in improvements in its 2020 and 2021 PMS results, noting ‘significant improvements’ with respect to workplace discrimination and sexual harassment, and ‘improvement’ in workplace bullying and violence and aggression.<sup>247</sup>

The VPSC has published IBAC’s 2022 PMS results on its website.<sup>248</sup> The results indicate that IBAC has made significant progress with respect to workplace discrimination and sexual harassment since 2019, but only marginal progress with respect to the percentage of survey respondents who report having experienced bullying and violence or aggression.<sup>249</sup>

Since 2021, IBAC has achieved reductions across 4 of the 9 types of workplace bullying covered by the PMS, most notably with respect to ‘[i]ncivility’ and ‘[i]ntimidation and/

<sup>244</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 5.

<sup>245</sup> See Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2019/20*, Melbourne, November 2021, p. 32; Hon Robert Redlich AM KC, Commissioner, IBAC, to Hon Jill Hennessy MP, Chair, Integrity and Oversight Committee, correspondence, 17 February 2022; Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 81–82.

<sup>246</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2019/20*, Melbourne, November 2021, pp. 28–29.

<sup>247</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, p. 82.

<sup>248</sup> See Victorian Public Sector Commission (VPSC), *Independent Broad-based Anti-corruption Commission 2022 people matter survey results report*, <<https://vpsc.vic.gov.au/wp-content/uploads/2023/04/Independent-Broad-based-Anti-corruption-Commission-Organisation-results-2022.pdf>> accessed 10 July 2023 (‘IBAC 2022 PMS results’).

<sup>249</sup> In 2019, 11% of survey respondents reported that they had experienced workplace discrimination, while 6% of 2022 survey respondents had. In 2019, 13% of survey respondents reported that they had experienced workplace sexual harassment, while 5% of 2022 survey respondents had. In 2019 and 2022, 14% of survey respondents reported that they had experienced workplace bullying. In 2019, 7% of survey respondents reported that they had experienced workplace violence and aggression, while 5% of 2022 survey respondents had (Nino Bucci, ‘Senior IBAC police oversight lawyer resigns amid string of leadership departures’, *The Guardian*, 10 December 2020, <<https://www.theguardian.com/australia-news/2020/dec/10/senior-ibac-police-oversight-lawyer-resigns-amid-string-of-leadership-departures>> accessed 10 July 2023). See also Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2019/20*, Melbourne, November 2021, p. 29; VPSC, ‘IBAC 2022 PMS results’, p. 21.

or threats'.<sup>250</sup> However, the incidence of workplace bullying due to '[e]xclusion or isolation', '[w]ithholding essential information for me to do my job', and '[v]erbal abuse' has increased and is, moreover, significantly higher than IBAC's comparator group and the Victorian public sector.<sup>251</sup>

There are indications that IBAC has further work to do to encourage a speak-up culture with respect to workplace bullying. Regarding those who reported experiencing bullying in the preceding 12 months, there was a significant decrease in the percentage of 2022 survey respondents who reported the conduct to their manager or IBAC's Human Resources department, compared to 2021. IBAC's 2022 results also indicated that survey respondents were less likely to tell the perpetrator that their conduct was unacceptable than they were in 2021.<sup>252</sup>

Moreover, none of the twenty-seven 2022 survey respondents who reported experiencing workplace bullying submitted a formal complaint.<sup>253</sup> While there are a variety of reasons why employees may not make a formal complaint, the primary reasons reported by survey respondents for not doing so were that they believed that there would be negative consequences for their reputation or career. There was a significant increase in the reputational and career consequences explanations for non-reporting in 2022, compared to 2021, and IBAC's 2022 results in these two categories were well above its comparator group and the Victorian public sector.<sup>254</sup>

There are also indications that employee trust in IBAC's current reporting mechanisms may be waning. The modest increase in the proportion of 2022 survey respondents who 'didn't feel safe to report' workplace bullying, for example, was accompanied by a significant increase (22%) in the proportion of people who thought the complaint process would be 'embarrassing or difficult' (6 people), compared to 2021 (no people), a result which was moderately worse than its comparator group and the Victorian public sector.<sup>255</sup>

The percentage of IBAC's 2022 survey respondents who reported experiencing workplace violence or aggression (5%) is significantly lower than its 2020 high (15%), and IBAC's 2022 results are only marginally higher than its comparator group and, positively, significantly lower than the Victorian public sector.<sup>256</sup> However, as with bullying, none of the ten 2022 survey respondents who reported experiencing violence or aggression made a formal complaint, and the primary reason reported for not doing so was the fear of negative career consequences and, to a lesser extent, that they 'didn't feel safe to report' (20%) (2 people)—both of which were well above IBAC's comparator group and the Victorian public sector.<sup>257</sup>

<sup>250</sup> VPSC, 'IBAC 2022 PMS results', p. 22.

<sup>251</sup> Ibid.

<sup>252</sup> Ibid., p. 23.

<sup>253</sup> Ibid.

<sup>254</sup> Ibid., p. 24.

<sup>255</sup> Ibid.

<sup>256</sup> Ibid., p. 21.

<sup>257</sup> Ibid., pp. 34–35.

The Committee considers it worth noting, however, that only 4 of the 27 Occupational Health and Safety (OH&S) incidents reported within IBAC in the 2021/22 reporting period were classified as ‘psychological injury’, and that, in all cases, the injury resulted ‘from interaction with individuals *external* to IBAC’.<sup>258</sup>

While IBAC has made steady progress in addressing the issues raised in its 2019 PMS results, the Committee considers that it has further work to do to improve aspects of its workplace culture. Given its role in the Victorian integrity system, IBAC needs to lead by example. It is critical that IBAC foster a speak-up culture and ensure that its workforce has confidence in the agency’s reporting processes and procedures. The Committee will monitor the results of the Risk Strategies review, including IBAC’s actioning of any recommendations arising from it, to ensure that it brings about measurable improvements in IBAC’s future PMS results.

#### 2.4.4 Employee turnover and expenses

As part of its annual performance review, the Committee asked IBAC about the employee turnover rate and average length of service within each of its divisions, namely Prevention & Communication, Corporate Services, Operations, and Legal, Assessment & Review and Compliance.<sup>259</sup> IBAC declined to provide a breakdown of ‘divisional turnover rates and tenure’ on the basis that ‘short term volatility caused by differing labour markets, restructures and the impact of change management factors ... make point in time comparisons misleading’.<sup>260</sup> IBAC did not elaborate on these factors.

IBAC did, however, inform the Committee that the employee turnover rate for the organisation as a whole in the 2021/22 reporting period was ‘26.7%’.<sup>261</sup> IBAC advised that its turnover rate is equivalent to that of interstate integrity agencies, against which IBAC ‘benchmarks itself’, but did not elaborate or provide data or other evidence to support this.<sup>262</sup> While the Committee appreciates that the reasons for IBAC’s turnover rate varying in a particular reporting period are complex and may not necessarily be replicated in subsequent reporting periods, it also notes that the agency’s turnover rate has been consistently higher than the Victorian public sector average, and, since 2020/21, significantly so.<sup>263</sup>

<sup>258</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 5 (emphasis added).

<sup>259</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 4.

<sup>260</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 6.

<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

<sup>263</sup> Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix C (audit of IBAC), p. 126; IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 6; VPSC, *Employee turnover*, <<https://vpsc.vic.gov.au/data-and-research/data-facts-visuals-state-of-the-sector/employee-turnover>> accessed 11 July 2023.

IBAC has also informed the Committee that the ‘average tenure’ of employees across the whole organisation is ‘3.99 years’.<sup>264</sup> IBAC was unable to provide an exact figure for the average cost of onboarding an employee, noting that it was ‘not able to be calculated as IBAC does not have an activity-based costing model that would enable this to be accurately costed’.<sup>265</sup> This is concerning because it means that IBAC is unable to estimate, with any degree of accuracy, how much money it is spending on employee onboarding, and the full extent of its turnover costs, including lost productivity of existing staff in training new starters, and of new starters in learning the skills required of the job role before they are fully productive in the role. IBAC advised that ‘[t]he DTF [Department of Treasury and Finance Victoria] costing model estimates the average cost per VPS employee is \$13K’.<sup>266</sup>

In 2021 and 2022, IBAC paid \$799,129 in termination benefits and ex gratia<sup>267</sup> payments, which IBAC noted was not significantly different from past years.<sup>268</sup> At the Committee’s public hearing with IBAC on 14 August 2023, the agency’s CEO, Ms Marlo Baragwanath, explained the difference between termination benefits and ex gratia payments:

[T]he DTF (Department of Treasury and Finance) model accounts require ... [IBAC] to report in a particular way. So termination benefits ... [are] paid in accordance with either the enterprise agreement or contractual requirements for executives ... [which] include payments made to staff who have resigned, been terminated or come to the end of a fixed-term contract ... [while] [e]x gratia payments are paid in very limited circumstances ... in negotiation with the employee.<sup>269</sup>

Given IBAC’s high turnover rate, and the relatively short average tenure of its employees, total onboarding costs, and total turnover costs more generally, are likely to be considerable. The Committee therefore strongly encourages IBAC to boost its efforts to reduce its employee turnover rate and improve the average length of service of employees.

IBAC’s employee expenses also rose considerably in 2021/22, from \$30.6 million in 2020/21 to \$35.7 million, noting that employee expenses as a proportion of the agency’s total expenditure remained stable at 63% compared to 66% in 2020/21.<sup>270</sup> The Committee sought to understand the reasons for this.<sup>271</sup> IBAC informed the Committee that the increase was attributable to the annual increase in the Victorian

<sup>264</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 6.

<sup>265</sup> Ibid.

<sup>266</sup> Ibid.

<sup>267</sup> See IBAC, *Annual report 2021/22*, Melbourne, 2022 p. 108 (‘Ex gratia expenses are the voluntary payments of money or other non-monetary benefit (for example, a write-off) that is not made either to acquire goods, services or other benefits for the entity or to meet a legal liability, or settle or resolve possible legal liability of or claim against the entity.’).

<sup>268</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 88, 108; Mr Glenn Ockerby, Executive Director, Corporate Services, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 14.

<sup>269</sup> Ms Marlo Baragwanath, CEO, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 14.

<sup>270</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 52, 82; IBAC, *Annual report 2020/21*, Melbourne, 2021, pp. 44, 70.

<sup>271</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 3.

Public Service Enterprise Agreement and increases to its funding from the DTF's Expenditure Review Committee (ERC) and the Treasurer's Advance (TA). IBAC has stated that:

The ERC and TA funding was for specific initiatives such as IBAC enhancing support provided to the VPS to prevent corruption and police misconduct; enhancing the complainant experience; implementing IBAC's IT strategy; additional resources to implement recommendations arising from the Royal Commission into the Management of Police Informants and additional resources for investigations and reviews.<sup>272</sup>

This is supported by IBAC's reporting on its employment levels in its annual report for 2021/22, which shows that the agency employed 190 people as at June 2021, and 231 people as at June 2022.<sup>273</sup> However, the Committee considers that the 21% increase in the size of IBAC's workforce in 2021/22 provides only a partial, rather than a complete, explanation of the significant increase in its employee expenses in the 2021/22 reporting period. Moreover, IBAC has not provided a detailed accounting in its 2021/22 annual report of how the additional ERC and TA funding was applied with respect to employee expenses.

#### 2.4.5 Consultancy expenditures

In its 2021/22 annual report, IBAC reported that it paid Logicalis Australia Pty Ltd \$44,898 to assist with the development of the agency's 'enterprise architecture framework', and Terra Firma Pty Ltd \$29,976 for 'capability assessment, development and roadmap' ('the roadmap').<sup>274</sup> At the request of the Committee, IBAC elaborated on the need for, and nature of, these services.<sup>275</sup>

With respect to the Logicalis consultancy, IBAC advised that Logicalis assisted IBAC's internal IT team to assess 'the current state of IBAC's existing technology, data, applications and processes ... [to support] the development of a future state strategy to enhance and integrate systems and applications'. IBAC has reported that this will allow the agency to undertake 'new application initiatives ... with greater certainty and accuracy of business impact' into the future.<sup>276</sup>

With respect to the Terra Firma consultancy, IBAC emphasised that it has prioritised investment in covert evidence and intelligence-gathering technology to support the performance of its investigative functions. Terra Firma provided specialist 'business analytics' services on the development of the roadmap.<sup>277</sup> IBAC informed the Committee that the roadmap

<sup>272</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 7.

<sup>273</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, pp. 64–65.

<sup>274</sup> IBAC, *Annual report 2021/22*, Melbourne, 2022, p. 68.

<sup>275</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 4; IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 6.

<sup>276</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 6.

<sup>277</sup> *Ibid.*

provides a forward projection of investment into technical capabilities based on demonstrated business need and is a core strategic planning document necessary to identify and address capability gaps and ensure the organisation is investing in the most effective operational systems.<sup>278</sup>

## 2.4.6 Budget and resourcing

IBAC informed the Committee that, following the findings of a 2021/22 independent base review, it received additional ongoing funding for 2022/23. Prior to that, budgetary shortfalls had been addressed through ‘fixed-term and one-off’ funding, including through the Treasurer’s Advance. IBAC considers that its current funding level, and the ratio of FTE staff to its oversight portfolio, are equivalent to comparable anti-corruption and police oversight agencies in the New South Wales, Western Australian, and Queensland jurisdictions (while noting some differences in the sizes and jurisdictions of these agencies).<sup>279</sup>

While IBAC has acknowledged that it is currently adequately funded to perform its core functions, the Committee recognises that the demands on IBAC are dynamic, as is its workload. Furthermore, the Committee acknowledges that external factors, such as increases in the VPS enterprise agreement or the CPI, or in public demand for the services provided by IBAC, may place pressure on IBAC’s funding moving forward.<sup>280</sup>

The Committee notes that IBAC has advocated for an independent funding model that would, in Mr Redlich’s view, ensure that the agency is adequately resourced on a secure basis.<sup>281</sup> This view is elaborated in a joint paper, *Budget independence for Victoria’s Independent Officers of Parliament*, from IBAC, the VO and the Victorian Auditor-General’s Office, published on 18 October 2022, which was signed by the heads of the relevant integrity agencies, including Mr Redlich:

The Ombudsman and IBAC Commissioner have commented in previous annual reports and publicly about the challenges associated with the independence of the process [of the funding of Victorian integrity agencies]. ...

This paper sets out a case to further strengthen the perceived and actual independence of these three officers of Parliament. ...

Our intention is to remove politics from the debate, so that governments of whatever stripe cannot be accused, fairly or otherwise, of interfering with the independence of those agencies whose job it is to hold them to account. ...

<sup>278</sup> Ibid.

<sup>279</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, pp. 2–3.

<sup>280</sup> Ibid., p. 3.

<sup>281</sup> IBAC, the VO and the Victorian Auditor-General’s Office, *Budget independence for Victoria’s Independent Officers of Parliament*, Melbourne, October 2022.

Our key recommendation is that consideration of our funding be the responsibility of a new independent statutory commission/tribunal ...

[W]e are seeking to establish a transparent and robust process which is apolitical ...<sup>282</sup>

## 2.5 Accountability

The VI and the IOC have external oversight of IBAC. The VI is responsible for, among other matters, monitoring IBAC's compliance with the *IBAC Act 2011* (Vic) and other applicable laws; overseeing IBAC's performance of its functions under the *PID Act 2012* (Vic); and receiving, assessing, and in certain circumstances investigating, complaints about IBAC and IBAC officers (including PIDs).<sup>283</sup> The IOC, on the other hand, is primarily responsible for monitoring and reviewing IBAC's systemic performance of its statutory functions and duties, reviewing and providing feedback on IBAC's draft annual plans before tabling, and providing a recommendation to Parliament regarding the appointment of an independent performance auditor to conduct an external performance audit of the agency at least once every four years, and overseeing the conduct of the audit.<sup>284</sup>

### 2.5.1 The IOC

#### Complaints

The IOC is expressly prohibited, under s 7(2) of the *PC Act 2003* (Vic), from investigating or reviewing any investigation of any complaint made to IBAC. The IOC is further prohibited from reviewing any decision by IBAC to investigate, not investigate or discontinue investigating any complaint. In addition, the IOC is not authorised to 'review any findings, recommendations, determinations or other decisions' of IBAC in relation to a complaint.

The IOC receives complaints about IBAC as part of its broad performance-monitoring function under s 7(1) of the *PC Act 2003* (Vic). The Committee's role in relation to such complaints is to consider whether any aspects of IBAC's handling of a matter raises performance issues that have broader implications for the performance of the agency's duties and functions at a systemic (that is, agency-wide) level.

In 2021/22, the IOC received 8 complaints about IBAC within the Committee's jurisdiction and finalised 10 (which included some received in 2020/21). For details, see Table 2.4. The majority of complaints related to IBAC's dismissal of a complaint.

<sup>282</sup> Ibid., p. 2.

<sup>283</sup> *VI Act 2011* (Vic) s 11(2); *PID Act 2012* (Vic) s 56.

<sup>284</sup> *PC Act 2003* (Vic), s 7(1); *IBAC Act 2011* (Vic) ss 168, 170.

**Table 2.4 Complaints about IBAC received by the IOC in 2021/22**

Within jurisdiction	8
Complaints received in 2020/21 and finalised in 2021/22	4
Complaints received and finalised in 2021/22	6
Complaints received in 2021/22 and finalised in 2022/23	2
Closed after assessment, without enquiries	6
Closed, following enquiries	6
Systemic performance issues identified	0

Source: Devised from IOC complaints data.

## Review of annual plan

IBAC is required to table an annual plan for each financial year, setting out its strategic priorities and work program for the reporting period.<sup>285</sup> In accordance with s 168 of the *IBAC Act 2011* (Vic), IBAC submitted its draft annual plan for 2021/22 to the IOC for its consideration prior to tabling. The consultation process was extended due to the COVID-19 pandemic lockdowns and finalisation of The IBAC Plan 2021–25 (which guides the agency’s annual planning by setting out its longer-term ‘strategic direction and priorities’ for the 5-year period).<sup>286</sup> The IOC provided feedback on the draft plan, which IBAC duly actioned.<sup>287</sup> IBAC tabled its Annual Plan 2021/22 on 8 February 2022.<sup>288</sup>

## Independent performance audit of IBAC and response to recommendations of the auditor in the audit report

The inaugural independent performance audit of IBAC was conducted in 2022 in accordance with s 170 of the *IBAC Act 2011* (Vic). In its report on the audit, the independent performance auditor made 38 recommendations to IBAC.<sup>289</sup> IBAC has accepted all but one of the auditor’s recommendations.<sup>290</sup>

In the audit report, IBAC indicated its acceptance of 24 of the auditor’s recommendations, by describing work programs already underway to address the

<sup>285</sup> *IBAC Act 2011* (Vic) s 168.

<sup>286</sup> See IBAC, *The IBAC Plan 2021–25*, Melbourne, 2021 (especially p. 4, quoted text).

<sup>287</sup> Mr Steve McGhie MP, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 9 February 2021; Hon Robert Redlich AM QC, Commissioner, IBAC, to Hon Jill Hennessy MP, Chair, Integrity and Oversight Committee, correspondence, 7 October 2021; Hon Jill Hennessy MP, Chair, Integrity and Oversight Committee, to Hon Robert Redlich AM QC, Commissioner, IBAC, correspondence, 19 November 2021; Hon Robert Redlich AM QC, Commissioner, IBAC, to Hon Jill Hennessy MP, Chair, Integrity and Oversight Committee, correspondence, 1 December 2021; IBAC, *Corporate reports: The IBAC Plan 2021–25*, December 2021, <<https://www.ibac.vic.gov.au/publications-and-resources/article/the-ibac-plan-2021-25>> accessed 19 July 2023.

<sup>288</sup> See IBAC, *Annual plan 2021–22*, Melbourne, 2022.

<sup>289</sup> Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix C (audit of IBAC), pp. 10–23.

<sup>290</sup> IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, pp. 1–4.

substance of those recommendations.<sup>291</sup> At the request of the Committee, IBAC provided an update on the progress of those work programs, as detailed in Table 2.5, below.

**Table 2.5 Recommendations initially accepted by IBAC: implementation progress**

No.:	Description	Implementation progress
1.1.1	Implement the Balanced Scorecard and recommendations of the IOC's <i>Inquiry into the education and prevention functions of Victoria's integrity agencies</i> report	Implementation underway. Balanced Scorecard reporting was implemented internally for 2022/23. Refined Scorecard included in IBAC's Annual Plan 2023/24 and will be reported on in its 2023/24 annual report.
1.1.2	Implement the Assessment and Review quality assurance framework	Fully implemented
1.1.4	Develop/implement business rules regarding investigation start and closure dates to assist with performance reporting against timeliness targets	Fully implemented
1.1.5	Track completion of key phases of an investigation (e.g., investigative activities; report writing; preparation of brief of evidence, court proceedings, etc.)	Implementation underway. IBAC's Investigations Framework will be implemented in 2023/24, following which Recommendation 1.1.5 will be actioned.
1.1.6	Implement the Investigations Framework and underlying performance metrics	
1.1.8	Develop standardised reporting for the exercise of coercive powers; status of assessments and operations; and productivity of IBAC's assessment's function	Implementation not begun. IBAC is unable to provide a time frame for completion given that implementation is dependent on systems changes.
1.2.1	Address PID gaps identified in the IOC's <i>Inquiry into the education and prevention functions of Victoria's integrity agencies</i> report	See 2.3.1 of this chapter
1.3.1	Develop/implement performance metrics for IBAC's Target Development Unit	Fully implemented
1.3.2	Implement the Intelligence Framework	Implementation underway, for completion in 2023/24
1.4.1	Implement the recommendations in the IOC's <i>Inquiry into the education and prevention functions of Victoria's integrity agencies</i> report	See 2.3.1 of this chapter
2.1.1	Implement recording and reporting capability with respect to the exercise of investigative powers	Implementation not begun. IBAC is unable to provide a time frame for completion given that implementation is dependent on systems changes.
2.1.2	Update policies and procedures to provide guidance to staff on completing mandatory coercive power notifications to the VI	Fully implemented <sup>292</sup>

<sup>291</sup> Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix C (audit of IBAC), pp. 10–19, 21–22.

<sup>292</sup> IBAC informed the Committee that it has developed and rolled out a 'new template report relating to IBAC's use of coercive powers' in response to Recommendation 2.1.2, noting that it is committed to continuous improvement of its templates and takes into account the VI's feedback and the agency's 'operational requirements'—IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 3.

No.:	Description	Implementation progress
2.2.2	Implement the Investigations Framework	Implementation underway, for completion in 2023/24
2.3.1	Identify and record shared risks (Governance and Risk Management frameworks)	Implementation underway, for completion in 2023/24
2.5.1	Mandate pre-employment screening for Victorian public sector misconduct	Fully implemented
3.1.1	Conduct a costs vs benefits analysis of time-attribution for Operations on a task/activity basis and time-attribution for other non-corporate areas such as Legal	Implementation underway for IBAC's Operations division, for completion in 2023/24. IBAC will consider extending it to other divisions in 2024/25.
3.3.2	Implement a resource planning system	Implementation underway for IBAC's Operations division, for completion in 2023/24. IBAC will not extend the system to other divisions at this stage given the challenges associated with resource forecasting for work that is primarily complaints-driven.
3.5.1	Ensure BP3 targets accurately reflect IBAC's performance	Fully implemented
3.5.2	Develop a structured approach to regularly reviewing BP3 targets and internal performance measures	Fully implemented
4.3.1	Finalise guidance for IBAC staff on making a PID to the VI	Implementation underway, for completion in 2023/24
4.3.2	Take steps to better understand the reasons for low formal incident reporting by IBAC staff	Fully implemented. IBAC will continue to monitor staff feedback and its annual PMS results.
4.5.1	Implement the recommendations of the mwah report <sup>293</sup>	Implementation underway. IBAC has implemented a number of the mwah report's recommendations and incorporated the remaining recommendations into its People Strategy 2023–26.
4.5.3	Implement IBAC's People Strategy 2022 and collect relevant data to assess its effectiveness	Implementation underway, for completion through IBAC's People Strategy 2023–26. The success of IBAC's People Strategy 2022 will be assessed across a broad range of performance measures.
4.6.1	Conduct a training needs analysis for VPS employees	Implementation underway, a training needs analysis was conducted of IBAC's Investigations Unit in 2023/24 and the agency will, in accordance with its People Strategy 2023–26, conduct a training needs analysis of the broader organisation in 2025/26.

Source: Adapted from Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix C (audit of IBAC), pp. 10–19, 21–22; IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, pp. 2–4.

<sup>293</sup> In 2019, in response to the findings of an internal review of IBAC's HR planning and capability, IBAC engaged a workplace culture consultancy firm, 'mwah', to assist in the preparation of its strategic workforce plan. mwah prepared a report with recommendations for improving IBAC's 'strategic workforce planning'—Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix C (audit of IBAC), pp. 22, 130–133 (Recommendation 4.5.1 'Implement the recommendations from the mwah report to address gaps in workforce planning.'). IBAC, *Annual report 2018/19*, Melbourne, 2019, p. 22, 91; IBAC, *Details of consultancy expenditure in excess of \$10,000 (2018/19)*, n.d., <<https://www.ibac.vic.gov.au/media/352/download>> accessed 26 July 2023.

As part of its annual performance review, the Committee asked IBAC about its acceptance of the remaining 14 of the auditor's recommendations.<sup>294</sup> IBAC has accepted all but one of these recommendations and has made significant progress in implementing them, as detailed in Table 2.6, below.

**Table 2.6 Acceptance/implementation status of remaining 14 recommendations**

No.:	Description	Acceptance and implementation status
1.1.3	Develop/implement process to capture verbal complaints	Accepted, implementation underway
1.1.7	Effective storage arrangements for data and other information contained in annual reports	Accepted, fully implemented
1.1.9	Investigations Framework to include requirement for regular spot-checking of investigations to monitor compliance with processes and legislation	Not accepted. IBAC considers that its investigations framework will ensure greater transparency, better reporting, accountability and oversight.
1.4.2	Improved reporting on performance against BP3 measures in annual reports	Accepted, detail that complies with the DTF's Resource Management Framework to be included in IBAC's annual reports from 2023 onwards
2.2.1	Update policies and procedures identified in IBAC's risk and assurance report to reflect current organisational processes	Accepted, implementation underway
2.3.2	Identify and develop/implement an approach to managing State significant risks as required by the Victorian Government Risk Management Framework	Accepted, implementation underway
2.3.3	Develop a centralised register for recommendations directed to the IBAC and track and report on implementation progress	Accepted, implementation underway
2.4.1	Update the Planning and Reporting policy to reflect IBAC's approach to communicating its 2021 strategic planning outputs for future consistency	Accepted, fully implemented
2.5.2	Implement processes to ensure IBAC employees are aware of and acknowledge their security obligations and complete the annual Change of Circumstance declaration	Accepted, implementation underway
3.3.3	Enforce standard naming convention for TRIM documents	Accepted, implementation underway
3.6.1	Measure public trust and confidence in IBAC's prevention initiatives through biannual surveys, the results of which should be published	Accepted in principle. In 2023/24, research to be conducted on suitable trust measures and appropriate data collection, methodology and frequency. Following this, assessment to be made of the projected costs of conducting a biannual survey.
4.5.2	Address issues in IBAC's 2022 PMS results not covered by the mwah report and recommendations	Accepted, implementation underway

<sup>294</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Mr Stephen Farrow, Acting Commissioner, IBAC, correspondence, 4 May 2023, p. 2.

No.:	Description	Acceptance and implementation status
4.7.1	Develop a register of contractors	Accepted, fully implemented
4.7.2	Develop guidance material with respect to the engagement and management of contractors	Accepted, fully implemented

Source: Adapted from Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix C (audit of IBAC), pp. 10–13, 15–18, 20, 22–23; IBAC, Response to Integrity and Oversight Committee questions on notice, 30 June 2023, p. 1.

## 2.5.2 The VI

The VI's oversight of IBAC during 2021/22 centred around its complaint-handling, monitoring and review functions.

The Committee notes that approximately 62% (72) of the complaints that the VI received in 2021/22 within its jurisdiction related to IBAC or IBAC officers. The volume of complaints received about IBAC also increased significantly, by 64% (28), from 2020/21. The VI finalised 46 IBAC-related complaints in 2021/22, dismissing 19 at assessment (including 1 withdrawn complaint) and a further 14 after making enquiries with IBAC or conducting a review of its complaint file (4 with feedback provided to IBAC). The VI also provided feedback to IBAC on 3 complaints following a file review, informally resolved a further 6 in consultation with IBAC, addressed 1 through its monitoring activities, and formally investigated 3.<sup>295</sup>

Positively, the VI triaged 100% of the 693 coercive power notifications received from IBAC in 2021/22 through its new case management system. It also reviewed 100% of IBAC's public hearing notifications. The majority of total coercive power notifications (81%) received by the VI in 2021/22 were from IBAC, noting that there was a 67% increase in the number of IBAC notifications from 2020/21.<sup>296</sup>

The VI also reported on the six improvements it made to the Victorian integrity system in 2021/22, five of which were related to its oversight of IBAC. Positively, IBAC was receptive to feedback received from the VI. IBAC implemented private recommendations of the VI in response to issues it identified when inspecting records relating to IBAC's exercise of powers under the *Telecommunications (Interception and Access) Act 1979* (Cth) and reviewing IBAC's public hearing notifications in Operation Bredbo. IBAC also took action on compliance feedback received from the VI on its coercive power notifications, and made improvements to its procedures, templates and public information with respect to its natural justice process for special reports and other matters.<sup>297</sup>

Chapter 4 in this report provides further information about the VI's oversight of IBAC during 2021/22.

<sup>295</sup> VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29–30, 51.

<sup>296</sup> *Ibid.*, pp. 35–36, 39, 49.

<sup>297</sup> *Ibid.*, pp. 21–22.

## 2.6 Conclusion

The Committee acknowledges that 2021/22 was a very productive year for IBAC. The agency performed strongly against its Annual Plan 2021/22, completing key complaint-handling deliverables; strengthening its internal governance measures; improving quality assurance with respect to its assessments function; and improving its capacity to collect, analyse and utilise complaints data.

IBAC did not meet any of its 2021/22 BP3 performance targets for its assessments function, and this is demonstrative of a long-term trend. The agency continues to struggle to respond to its year-on-year increasing assessments workload, noting that it received 31% more complaints and notifications than in 2020/21. A team of 16 FTE positions assessed 5,646 allegations in 3,728 complaints and notifications, a considerable feat given the breadth and complexity of the work involved in assessing the jurisdictional complaints that IBAC receives. Unfortunately, however, IBAC has been unable to make progress in reducing the average number of days taken to complete an assessment, with complainants now waiting, on average, 13 weeks from the date of making their complaint to receipt of the agency's assessment decision.

The Committee considers that the success of the significant measures that IBAC has put in place to improve the timeliness of its assessments is not adequately reflected in the agency's reporting on performance data for its assessments function in its 2021/22 annual report. Given IBAC's consistent underperformance with respect to its BP3 measures, this is concerning, because it is difficult for the public to gauge how the agency is performing, and to get an accurate sense of the important progress that the agency is making in these areas. The Committee, recognising that this is a challenging task, therefore renews its call for IBAC to explore more effective ways of demonstrating its productivity to the public, including BP3 measures that will enable the agency to demonstrate its increasing efficiency with respect to the increasing volume and complexity of its complaints workload.

IBAC has made significant progress with respect to workplace discrimination but still has further work to do to reduce the incidence of bullying and violence or aggression and to encourage formal reporting of such incidents. The Committee will monitor IBAC's compliance with Recommendation 1 in the IOC's 2019/20 performance report and looks forward to IBAC reporting to it on the methodologies, processes and outcome of its current OH&S review.

Importantly, IBAC has accepted, and made significant progress in implementing, the vast majority of recommendations in the IOC's corruption prevention and education inquiry report and 2020/21 performance report, as well as the audit report of the inaugural independent performance audit of IBAC. The Committee particularly commends IBAC on the establishment of PEAC and its witness liaison team.

IBAC delivered an impressive volume and array of educational initiatives during 2021/22, including its 'You have the right to not remain silent' and 'Speak up to stop it' campaigns. While there were strong indicators of the significant print, digital

and broadcast reach of the campaigns, these metrics do not measure the extent to which knowledge has actually been acquired by the target audiences, nor whether knowledge acquired as a result of the campaigns has, or will, impact the behaviour of the target audiences. The Committee is nevertheless pleased by IBAC's commitment to maturing its measurement of the impact of its education and corruption-prevention initiatives and is keen to see IBAC measure the success of its future public information campaigns with greater sophistication.

IBAC has made significant progress with respect to its monitoring of Victoria Police investigations of referred complaints, completing 258 police-related reviews in 2021/22, the highest number of reviews conducted annually since the agency's establishment. The Committee recognises the value of such work in strengthening the efficacy of IBAC's police oversight role. Positively, Victoria Police has streamlined its complaints classification system in response to feedback from IBAC. This will enhance IBAC's monitoring efforts in ensuring that Victoria Police is not misclassifying complaints or minimising police misconduct. Finally, the Committee strongly encourages IBAC to consider how it might report on performance data in a way that is more meaningful in terms of building greater public understanding of, and confidence in, IBAC's oversight of Victoria Police.



# Chapter 3

## Office of the Victorian Information Commissioner

### 3.1 Introduction

The Office of the Victorian Information Commissioner (OVIC) oversees the Victorian government's 'collection, use and disclosure of information'.<sup>1</sup> OVIC's functions are found in the *Freedom of Information Act 1982 (Vic)* ('*FOI Act 1982 (Vic)*') and *Privacy and Data Protection Act 2014 (Vic)* ('*PDP Act 2014 (Vic)*').

OVIC's overarching objectives are two-fold. First, to support the Victorian public sector by educating and guiding agencies on freedom of information (FOI), privacy and data and information security, as well as ensuring 'fair access to government information'.<sup>2</sup> Second, to support the Victorian community by helping individuals understand and exercise their privacy rights and right to access government information, and to take 'regulatory action in the public interest'.<sup>3</sup>

Overall, the 2021/22 year for OVIC was positive. Despite an increasingly demanding workload, the agency improved the average time taken to finalise privacy complaints and met various Budget Paper No. 3 (Service Delivery) (BP3) measures, such as completing 60% of FOI reviews within time frames agreed with applicants.<sup>4</sup> The Committee recognises OVIC's proactive approach to stakeholder engagement and complaint resolution, which has enhanced OVIC's reputation among Victoria's agencies and broader public.

Despite these efforts, as highlighted by OVIC, there are considerable structural difficulties in the operation of Victoria's FOI legislation that require improvement. In 2023, the Legislative Assembly made a referral to the Committee to inquire into certain aspects of the *FOI Act 1982 (Vic)* ('the FOI inquiry'). The Committee welcomes the opportunity to work with OVIC and stakeholders, including the broader Victorian community, to consider ways of improving the *FOI Act 1982 (Vic)* so it ensures Victoria's FOI framework is robustly designed to empower OVIC to further the Act's objectives. As stated by the then Information Commissioner, 'this review is a timely opportunity to ensure that Victoria has fit-for-purpose access to information laws and to improve access to government-held information for all Victorians'.<sup>5</sup>

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1 OVIC, *Annual report 2021-22*, Melbourne, 2022, p. 8.

2 Ibid., p. 6.

3 Ibid.

4 Ibid., p. 14.

5 Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 2.

With the forthcoming FOI inquiry in mind, this chapter analyses OVIC's performance in the following areas: FOI and privacy-related complaints and reviews; public information and education; governance and workplace; and accountability.

## 3.2 Complaint handling, investigations and oversight

### 3.2.1 The operation of the *FOI Act 1982 (Vic)*

Victoria's *FOI Act 1982 (Vic)* enables Victorians to access documents in the Victorian government's possession, subject to limited exceptions and exemptions.<sup>6</sup> By facilitating public access to information, this Act helps maintain public trust, accountability and transparency in government.<sup>7</sup> OVIC's role in respect of Victoria's FOI system includes independently reviewing agencies' refusal to allow access to documents, investigating complaints about how agencies and ministers handle FOI requests, and monitoring compliance of agencies with the FOI Professional Standards.<sup>8</sup> The following section highlights FOI-related trends during the 2021/22 period, as well as OVIC's significant outputs in this area.

#### Freedom of information trends and outputs

In 2021/22, Victorian government agencies and ministers received 43,978 FOI requests.<sup>9</sup> This figure is 1,729 more, or a 4% increase, compared with the 2020/21 period.<sup>10</sup> As stated by the then Information Commissioner, Mr Sven Bluemmel:

We continue to receive more FOI requests than those in any other Australian jurisdiction, including the Commonwealth, and the year under review here, 2021-22, was another year of record numbers of FOI requests made in Victoria.<sup>11</sup>

Most requests were made by members of the public seeking access to personal information—70%.<sup>12</sup> Non-personal requests—including those from Members of Parliament, the media or organisations—comprise 30%.<sup>13</sup>

<sup>6</sup> OVIC, *Annual report 2021-22*, Melbourne, 2022, p. 8.

<sup>7</sup> *Ibid.*, p. 59.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, p. 102.

<sup>11</sup> Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 2.

<sup>12</sup> OVIC, *Annual report 2021-22*, Melbourne, 2022, p. 105.

<sup>13</sup> *Ibid.*

Table 3.1 FOI information trends and outputs

FOI indicator <sup>14</sup>	2020/21	2021/22
Number of FOI decisions by agencies	34,623	37,639
Percentage of FOI applications granted in full by agencies	66.3%	66.6%
Percentage of FOI applications granted in part by agencies	29.9%	30.1%
Percentage of FOI applications denied by agencies	3.8%	3.3%
Number of FOI complaints received by OVIC	739	825
Number of FOI complaints finalised by OVIC	604	791
Average number of days for OVIC to finalise FOI complaints	61	96

Source: OVIC, *Annual report 2021/22*, Melbourne, 2022, pp. 85–86, 107.

In September 2021, OVIC tabled an own motion investigation report: *Impediments to timely FOI and information release*.<sup>15</sup> The investigation examined the causes of delay in freedom of information in Victoria, focusing on the FOI-related compliance and efficiency of five Victorian organisations—Victoria Police, Department of Transport, Department of Justice and Community Safety, Alfred Health and Frankston City Council.<sup>16</sup> OVIC found that different causes of delay fall into three categories regarding demand and process, culture and attitude and legislative limitations.<sup>17</sup> The report made 16 recommendations, including specific recommendations for the five organisations, as well as for a review of Victoria’s FOI legislation to ensure it reflects modern public administration and digital environments.<sup>18</sup>

The Information Commissioner monitored the five organisations’ progress in implementing OVIC’s recommendations, publishing a further report, *Impediments to timely FOI and information release: twelve months on*.<sup>19</sup> The report concluded that 2 of the 5 agencies investigated improved in timeliness during the 12 months after the report was tabled.<sup>20</sup> The remaining 3 agencies continued to encounter ‘significant delays’.<sup>21</sup> Further, the report found that, in the 12 months following the report, delays for Victorians requesting government information had ‘worsened’ and was at ‘unacceptable levels’.<sup>22</sup> It appears that, without substantive reform, agencies subject to Victoria’s FOI requirements will continue to struggle with providing information in a timely and effective manner to members of the public.

<sup>14</sup> OVIC, *Annual report 2020–21*, Melbourne, 2021, pp. 58, 79, 103; Ms Penny Eastman, Assistant Commissioner, Public Access Reviews & Regulation, OVIC, correspondence, 8 August 2022; OVIC, *Annual report 2021–22*, Melbourne, 2022, pp. 60, 85–86, 107; Ms Penny Eastman, Assistant Commissioner, Public Access Reviews & Regulation, OVIC, correspondence, 16 August 2023.

<sup>15</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 3.

<sup>16</sup> OVIC, *Impediments to timely FOI and information release: own motion investigation under section 610 of the Freedom of Information Act 1982 (Vic)*, Melbourne, 2021, pp. 1, 17.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> OVIC, *Impediments to timely FOI and information release: twelve months on: review of agencies’ implementation of the Information Commissioner’s recommendations*, Melbourne, 2022 (*Impediments to timely FOI and information release: twelve months on*); OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 2.

<sup>20</sup> OVIC, *Impediments to timely FOI and information release: twelve months on*, Melbourne, 2022, p. 4.

<sup>21</sup> Ibid.

<sup>22</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 2.

Importantly, the report highlighted potential improvements to Victoria's FOI framework:

[M]uch of the information sought in these requests could be released through more streamlined processes without even requiring a FOI application. However, unlike similar legislation in some other Australian jurisdictions, the FOI Act does not contain express mechanisms for proactive and informal release of information.<sup>23</sup>

The Committee endorses OVIC's proactive approach to identifying possible improvements to Victoria's FOI framework and, noting the Information Commissioner's comments during the Committee's public hearing on 31 July 2023, looks forward to working with the agency 'to ensure that Victoria has fit-for-purpose access to information laws and to improve access to government-held information for all Victorians' in the FOI inquiry to be undertaken by the Committee in 2023/24.<sup>24</sup>

### OVIC's handling of freedom of information complaints

Contained in s 6I of the *FOI Act 1982 (Vic)*, the Information Commissioner and Public Access Deputy Commissioner's functions include receiving and handling complaints made about agencies or ministers arising from an FOI request.<sup>25</sup> Depending on whether the responsible entity is an agency or minister, complaints can be made regarding, for instance, delays in processing FOI requests, decisions that requested documents do not exist or 'cannot be located', and decisions to release documents containing information regarding personal or commercial information.<sup>26</sup>

In 2021/22, OVIC received 825 complaints.<sup>27</sup> This figure is an 11.6% increase from 2020/21 and a 58% increase from 2019/20.<sup>28</sup> Most complaints (72.5%) related to agency delays in making FOI decisions within prescribed time frames.<sup>29</sup> Almost half (48.2%) of these delay complaints concerned Victoria Police, noting that OVIC received 50.9% more police-related complaints in 2021/22 than in 2020/21.<sup>30</sup> Members of the public comprise 94.5% of complainants, followed by Members of Parliament (2.6%), organisations (2.4%) and media (0.5%).<sup>31</sup>

OVIC has explored the factors contributing to the 58% increase in complaints received from 2019/20 to 2021/22 in its own motion report, *Impediments to timely FOI and information release*. This report highlights the impact of COVID-19 and other factors contributing to agencies' delay in handling FOI requests. OVIC recently summarised these causes:

<sup>23</sup> OVIC, *Impediments to timely FOI and information release: twelve months on*, Melbourne, 2022, p. 5.

<sup>24</sup> Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne 31 July 2023, *Transcript of evidence*, p. 2.

<sup>25</sup> OVIC, *Annual report 2021-22*, Melbourne, 2022, pp. 61, 80.

<sup>26</sup> *Ibid.*, p. 80.

<sup>27</sup> *Ibid.*, p. 60.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, p. 82.

<sup>30</sup> OVIC, *Annual report 2021-22*, Melbourne, 2022, p. 82; OVIC, Response to Integrity and Oversight Committee questions on notice, 6 September 2023, p. 3.

<sup>31</sup> OVIC, *Annual report 2021-22*, Melbourne, 2022, p. 81.

Not all agencies but a number of agencies acquired an FOI backlog, and once that gets ingrained into an organisation it is quite hard to address. ... [T]hat was partly due to the COVID-19 pandemic. There are an increasing number of FOI requests in ... [Victoria] year on year. There are always, for some agencies, a large number of incoming FOI requests ... [and] staff absences due to unplanned leave and technology. Agencies report on the difficulty of recruiting new and experienced FOI officers and also agency budget constraints on recruitment or replacement of FOI officers when they leave.<sup>32</sup>

OVIC informed the Committee that it monitored police-related complaints closely during 2021/22 and regularly engaged with Victoria Police on addressing the backlog of undecided FOI requests. The reasons for delay in Victoria Police's FOI decision-making during 2021/22 included:

- acquiring a backlog of FOI requests during the COVID-19 pandemic and significant delays in processing incoming FOI requests;
- the increasing number and complexity of FOI requests;
- staff absences and leave, including unplanned leave and other health reasons;
- FOI staff being assigned to other, non-FOI-related tasks;
- difficulty in recruiting new and experienced FOI officers; and
- agency budget constraints on recruiting new or replacement FOI officers.<sup>33</sup>

As reported in OVIC's *Impediments to timely FOI and information release: twelve months on* report, despite the agency's monitoring and engagement with Victoria Police during 2021/22, delays in the organisation's FOI decision-making increased in 2022/23.<sup>34</sup>

In April 2023, OVIC was informed that Victoria Police would receive two-year fixed-term funding for 14 additional FOI staff to assist with clearing the significant backlog of undecided FOI requests.<sup>35</sup>

OVIC emphasised that its ability to effectively address delays in FOI decision-making is hampered by the current legislative regime, explaining that

[t]he issue faced by the Information Commissioner and the Public Access Deputy Commissioner is that there is no power under the *Freedom of Information Act 1982* (Vic) (FOI Act) to require an agency to make a decision by a certain date. Further, there is [sic] no consequences or penalty for an agency that does not meet statutory time frames under the FOI Act. While an applicant can apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of any agency's 'deemed decision' refusing access to their request, if an agency does not make its decision within the 30 day statutory time frame (or as otherwise agreed), few applicants exercise this right and

<sup>32</sup> Ms Joanne Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 8.

<sup>33</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 6 September 2023, pp. 3-4.

<sup>34</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 6 September 2023, p. 5; OVIC, *Impediments to timely FOI and information release: twelve months on*, Melbourne, October 2022, pp. 9-14.

<sup>35</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 6 September 2023, p. 5.

either await a decision from the agency and/or make a complaint to OVIC. Therefore, OVIC's ability to address delay in FOI decision making is limited to stakeholder engagement and advocacy, or an own motion investigation—an option that has already been deployed in relation to Victoria Police ...<sup>36</sup>

OVIC seeks to overcome these challenges through:

- increased regulatory monitoring activities, including additional close monitoring of delayed police-related FOI requests and monthly meetings between the Public Access Deputy Commissioner and Victoria Police's Executive Director Governance and Assurance
- early engagement with organisations to prevent backlogs of undecided FOI requests from worsening
- regular meetings with organisations managing a high volume of FOI requests or a backlog of undecided FOI requests
- promoting the importance of, and advocating for, well-resourced FOI teams within organisations
- reviewing organisations' FOI processes to see where improvements can be made
- encouraging organisations to make FOI applicants aware of their OVIC and VCAT rights.<sup>37</sup>

There is some indication that these measures are having an impact. OVIC received 21% fewer FOI complaints in 2022/23 than in 2021/22 and this was accompanied by a 4.3% reduction in the proportion of those complaints that related to delayed FOI decision-making.<sup>38</sup> Further, in 2022/23, Victoria Police accounted for 36.1% of all delay complaints received by OVIC, a fall of 12% from 2021/22.<sup>39</sup> OVIC considers that these developments can be attributed to increased FOI staffing levels and decision-making efficiency within organisations, as well as better communication with FOI applicants regarding delays.<sup>40</sup>

The timeliness with which OVIC finalises FOI complaints, particularly delay complaints, remains of concern to the Committee. In 2021/22, OVIC finalised 791 complaints (compared with 604 in 2020/21).<sup>41</sup> However, OVIC took an average of 105 days to finalise delay complaints.<sup>42</sup> The agency has explained:

The increase in time to finalise complaints was due to the increased number of complaints received by OVIC, ongoing delays by agencies making a decision on an FOI

<sup>36</sup> Ibid.

<sup>37</sup> Ibid., pp. 5–6.

<sup>38</sup> Ibid., p. 6.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid., pp. 5–6.

<sup>41</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 85.

<sup>42</sup> Ibid., p. 86.

request and the absence of a power under the FOI Act for a Commissioner to require an agency to make a delayed decision by a certain date.<sup>43</sup>

The Public Access Deputy Commissioner reiterated this latter point during the Committee's public hearings, noting that '[w]ith delay complaints there is no power ... under the FOI Act to order or direct an agency to make a decision ... where a delay has been incurred'.<sup>44</sup> As such, OVIC is limited in its ability to seek a conclusive and more efficient outcome. Nevertheless, the agency pursues a number of informal resolution processes, such as encouraging agencies and ministers to proactively engage with applicants and flag potential delays with individuals.<sup>45</sup> OVIC also regularly meets with FOI practitioners and, in some cases, requires agencies to inform OVIC of its FOI workload, staff resources and challenges.<sup>46</sup> The agency engages in a burdensome administrative process to help resolve each delay complaint. As explained by the Deputy Public Access Commissioner, when an agency does not make a decision in time, OVIC will undertake steps that involve

contacting the applicant, contacting the agency, trying to find out what the issue of delay is, letting the applicant know ... also letting the applicant know, or the complainant, that they have a legal right to go to VCAT and seek review ... So really just keeping in touch with the applicant and the agency and where we can trying to resolve the matter.<sup>47</sup>

**RECOMMENDATION 4:** That the Office of the Victorian Information Commissioner be granted the power under the *Freedom of Information Act 1982* (Vic) to require an agency or minister to make a decision regarding a FOI request by a certain date.

### OVIC's freedom of information reviews

Under the *FOI Act 1982* (Vic), individuals seeking access to information may apply for a review of a decision made by a minister or agency relating to a refusal—whether to grant access to a document, waive or reduce an application fee, or amend a document—or a deferral of access to a document.<sup>48</sup> If the matter cannot be resolved first informally, OVIC 'will make a fresh decision on the review application'.<sup>49</sup>

In 2021/22, 'OVIC received 528 review applications seeking review of decisions' to refuse access to documents, 79 fewer applications than the previous period.<sup>50</sup> OVIC finalised

<sup>43</sup> Ibid.

<sup>44</sup> Ms Joanne Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 5.

<sup>45</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, pp. 81–82.

<sup>46</sup> Ibid., p. 82.

<sup>47</sup> Ms Joanne Kummrow, Public Access Deputy Commissioner, OVIC, public hearing, Melbourne 31 July 2023, *Transcript of evidence*, p. 5.

<sup>48</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 64.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid., pp. 65, 72.

552 reviews, including 25% via informal resolution.<sup>51</sup> Sixty per cent of these reviews were completed within the statutory time frame.<sup>52</sup> The average time needed to complete a review was 110 days.<sup>53</sup> Most review applicants were members of the public (78.8%), followed by Members of Parliament (14.2%), organisations (4.2%) and media (2.8%).<sup>54</sup>

Importantly, 60.1% of OVIC's review decision outcomes differed from agencies' or ministers' decisions.<sup>55</sup> The decisions of 75 agencies were varied.<sup>56</sup> Departments with high percentages of varied decisions include the following: Department of Treasury and Finance (100%), Department of Health (87%) and the Department of Premier and Cabinet (83%).<sup>57</sup> OVIC has explained that this percentage demonstrates

... OVIC's commitment to upholding the object of the FOI Act to ensure fair public access to government information. This also reflects where OVIC has encouraged applicants to narrow the scope of their review application, an agency or Minister agreeing to withdraw their reliance on an exemption, or to release further information during the review process.<sup>58</sup>

It is worth noting that the difference between the agency or minister and OVIC's decision 'might be minor, involving the release of a small amount of extra information in the document, or major, involving the removal of certain exemptions entirely or findings that other exemptions apply'.<sup>59</sup> Regardless of whether OVIC's variation to the original decision is slight or substantive, this percentage is surprisingly high and suggests agencies and ministers, in many instances, could have a better understanding of their FOI obligations.

OVIC engages extensively with agencies to reduce the number of decisions that are overturned. This engagement with agencies includes utilising informal resolution processes, delivering regular Information Access Series webinars, providing agencies with preliminary views regarding a likely outcome and regularly meeting with key agencies that receive a high volume of FOI requests, or which are subject to the most OVIC reviews or complaints.<sup>60</sup> OVIC has committed to expanding its liaison program in 2023/24, which will help OVIC 'to discuss ... [agencies'] FOI workload[s], to understand pressure points and trends, to discuss individual review and complaint matters, and to promote OVIC's free education and training resources'.<sup>61</sup>

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51 Ibid., p. 60.

52 Ibid., p. 77.

53 Ibid.

54 Ibid., p. 66.

55 Ibid., p. 70.

56 OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 7.

57 Ibid.

58 OVIC, *Annual report 2021-22*, Melbourne, 2022, p. 70.

59 OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 7.

60 Ibid., pp. 7-9.

61 OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 8.

In 2021/22, 76 applications were made to the Victorian Civil and Administrative Tribunal (VCAT) seeking a review of the Commissioners' decisions.<sup>62</sup> This figure is an 11.8% increase compared with the 2020/21 period.<sup>63</sup> OVIC has explained this increase as follows:

The increase in the reported number of VCAT applications may be explained by an increased awareness by agencies of their obligation to notify OVIC. Other factors which may affect the number of reported VCAT applications could include applicants being better informed of their appeal rights and wanting full release of requested documents.<sup>64</sup>

While an agency or minister must notify OVIC if they, or an applicant, appeal a Commissioner's decision in VCAT, agencies do not always notify OVIC.<sup>65</sup> As such, OVIC is unable to confirm the number of review applications or outcomes of matters commenced or finalised by VCAT.<sup>66</sup> OVIC has sought to improve the collection of VCAT review data by, for example, reminding agencies of their notification obligations and using stakeholder engagement meetings to obtain updates from key agencies.<sup>67</sup> However, without amendment to s 34 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), which restricts VCAT's ability to share review application data, OVIC is unable to accurately report or fully utilise review applications determined by VCAT.<sup>68</sup>

**RECOMMENDATION 5:** That the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) and other relevant legislation be amended to enable the Office of the Victorian Information Commissioner to obtain review application data held by the Victorian Civil and Administrative Tribunal.

### 3.2.2 Privacy: the operation of the *PDP Act 2014* (Vic)

In conjunction with the Victorian Charter of Human Rights and Responsibilities, the *PDP Act 2014* (Vic) enshrines the Victorian public's privacy rights.<sup>69</sup> Under this Act, OVIC is empowered to promote and protect the right to privacy across the community and Victorian public sector by advancing the Act's objectives, which include, for instance, providing for the responsible collection and handling of personal information in the Victorian Public Sector (VPS), and providing remedies for interference with individuals' information privacy.<sup>70</sup>

<sup>62</sup> OVIC, *Annual report 2021-22*, Melbourne, 2022, p. 78.

<sup>63</sup> Ibid.

<sup>64</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 11.

<sup>65</sup> OVIC, *Annual report 2021-22*, Melbourne, 2022, p. 78.

<sup>66</sup> Ibid.

<sup>67</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 11.

<sup>68</sup> Ibid.

<sup>69</sup> OVIC, *Annual report 2021-22*, Melbourne, 2022, p. 31.

<sup>70</sup> OVIC, *Annual report 2021-22*, Melbourne, 2022, pp. 8, 31; *PDP Act 2014* (Vic) s 1(a)-(b).

The following section analyses OVIC’s performance regarding its privacy-related and data security functions during the 2021/22 period.

### Privacy and information security trends

Under the *PDP Act 2014* (Vic), individuals can seek remedies if their information privacy is interfered with.<sup>71</sup> In 2021/22, OVIC received 86 complaints.<sup>72</sup> It finalised 89 complaints.<sup>73</sup> The average time needed to finalise a complaint was 123 days, which was a 24-day improvement compared with 2020/21.<sup>74</sup> Seventy per cent of ‘complaints were finalised without referral to VCAT’ (a 1% improvement on 2020/21).<sup>75</sup>

**Table 3.2 Privacy and information security trends**

Privacy and data security indicators <sup>76</sup>	2020/21	2021/22
Number of privacy complaints received by OVIC	86	86
Number of privacy complaints finalised by OVIC	94	89
Percentage of privacy complaints finalised by OVIC without being referred to VCAT	69%	70%
Average number of days for OVIC to finalise privacy complaints	147	123
Number of data breaches notified by agencies to OVIC	159	124

Source: OVIC, *Annual report 2021/22*, Melbourne, 2022, pp. 32, 34, 37–38.

The 24-day decrease in time taken to finalise a complaint is a remarkable achievement. This improvement is attributable to the agency’s proactive approach to offering ‘formal views’ to interested parties regarding the merits of a complaint.<sup>77</sup> As explained by OVIC’s Privacy and Data Protection Deputy Commissioner:

Now we assist individuals to prepare their complaints, and we try to encourage them to have the best chance of success, but previously we were ... hands-off ... and we will let them do it in mediation. Now we actually offer formal views. And we have continued to refine that process now over two years—three years—and it has produced year-on-year results each time.<sup>78</sup>

OVIC has highlighted the general factors that contributed to the complexity of complaints that took more than 6 months to resolve (being 20%).<sup>79</sup> These factors typically include delays in receiving responses from organisations, whether due

<sup>71</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 31.

<sup>72</sup> *Ibid.*, p. 32.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*, p. 34.

<sup>76</sup> OVIC, *Annual report 2020–21*, Melbourne, 2021, pp. 28–30, 32; OVIC, *Annual report 2021–22*, Melbourne, 2022, pp. 32–33, 35, 37.

<sup>77</sup> Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, pp. 6–7.

<sup>78</sup> *Ibid.*, p. 7.

<sup>79</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 35.

to extensions of time, missed deadlines by agencies, or because of unsatisfactory responses.<sup>80</sup> Other factors include instances where complaints involve factual or legal disputes (requiring time for parties to gather evidence and prepare submissions), ‘protracted’ negotiations (involving offers and counter-offers), and complaints made by prisoners (requiring postal services, rather than electronic correspondence).<sup>81</sup>

### Information Security Incident Notification Scheme

Under OVIC’s Information Security Incident Notification Scheme, VPS entities must notify OVIC of certain incidents that ‘compromise the confidentiality, integrity, or availability of public sector information’.<sup>82</sup> In 2021/22, OVIC received 633 incident notifications, increasing from 373, or 170%, from the previous year.<sup>83</sup> Seventy-seven per cent of these notifications related to soft copy material, 80% affected the confidentiality of information and 75% concerned personal information.<sup>84</sup>

This increase in incident notifications suggests that awareness of the Scheme is increasing. For instance, as part of its Protective Data Security Plan sessions, OVIC ran multiple sessions regarding Element 9.010 of the Scheme and incident reporting requirements to help organisations better understand their reporting obligations.<sup>85</sup> OVIC has explained:

Incident notifications continue to steadily increase as awareness of the scheme increases across the Victorian public sector. For example, OVIC received 78 notifications in the first reporting period (November 2019–June 2020), 155 in the second reporting period (July 2020–December 2020), 218 in the January 2021–June 2021 reporting period, and 343 notifications in the July 2021–December 2021 reporting period.<sup>86</sup>

However, OVIC notes that the rise in incident notifications may also be attributable to the timing of when organisations send notifications, rather than when an incident occurred. For instance, in February 2022, notifications made under the scheme were high, but only because the Department of Justice and Community Safety and the Transport Accident Commission submitted two months’ worth of notifications.<sup>87</sup> OVIC has therefore recommended that the Scheme be amended to include notification time frames and requirements mandated under legislation.<sup>88</sup> The Committee supports this recommendation in order to improve the accuracy of notification data available to OVIC.

<sup>80</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 5.

<sup>81</sup> Ibid., pp. 6–7.

<sup>82</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 54.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid., p. 55.

<sup>85</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 10 (Element 9.010 refers to ‘the incident reporting requirement’).

<sup>86</sup> Ibid., p. 9.

<sup>87</sup> Ibid., p. 10.

<sup>88</sup> Ibid.

**RECOMMENDATION 6:** That the legislation underpinning the Information Security Incident Notification Scheme be amended to require that notifications under the Scheme are made to the Office of the Victorian Information Commissioner at the time of the incident.

### Victorian Protective Data Security Standards (VPDSS) audits

OVIC oversees the implementation of the VPDSS, which comprise ‘12 high level mandatory requirements to assist Victorian public sector (VPS) organisations protect public sector information’.<sup>89</sup> In 2021/22, in furtherance of its regulatory priorities ‘Privacy and security when outsourcing’ and ‘Monitoring information security risks in the [VPS]’, OVIC conducted two audits to evaluate whether Victorian government organisations are correctly implementing Standards 2 and 8 of the VPDSS.<sup>90</sup>

Published in November 2021, OVIC analysed the adherence of four agencies—namely, the Department of Treasury and Finance, Barwon Region Water Corporation, the Victorian Institute of Forensic Medicine and Cenitex—to Standard 2 of the VPDSS, which requires VPS organisations to identify and assess the security value of information.<sup>91</sup> The audit specifically evaluated whether the agencies completed their 2020 Protective Data Security Plans correctly.<sup>92</sup>

The report provided various recommendations directed at strengthening the identification and security value assessment of public sector information.<sup>93</sup> It concluded

that all four audited agencies had practices, procedures, and systems in place to assess the security value of information they hold. Three of the four organisations had a formalised information asset register to record the security value of their information holdings. OVIC saw evidence that each organisation used their conclusions about the security value of their information to develop controls to protect that information.<sup>94</sup>

The audit helped OVIC refine its educational resources, publications and engagement activities, including its Protective Data Security Plan insight sessions, Victorian Information Security Network meetings, sector-specific advice and tailored information asset register requirements.<sup>95</sup>

<sup>89</sup> OVIC, *Standard 8 of the Victorian Protective Data Security Standards: audit of information security in third-party arrangements under section 8D(2)(b) of the Privacy and Data Protection Act 2014 (Vic)*, Melbourne, 2022, p. 5 (‘Standard 8 of the Victorian Protective Data Security Standards’).

<sup>90</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, pp. 19–20.

<sup>91</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 20; OVIC, *Standard 2 of the Victorian Protective Data Security Standards: audit under section 8D(2)(b) of the Privacy and Data Protection Act 2014 (Vic)*, Melbourne, 2022, pp. 14–15 (‘Standard 2 of the Victorian Protective Data Security Standards’).

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> OVIC, *Standard 2 of the Victorian Protective Data Security Standards*, Melbourne, 2022, p. 6.

<sup>95</sup> Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, OVIC, public hearing, Melbourne 31 July 2023, *Transcript of evidence*, p. 6.

The Privacy and Data Protection Deputy Commissioner also evaluated the implementation by four VPS organisations of Standard 8 of the VPDSS<sup>96</sup>, which was published in July 2022, namely, the Department of Environment, Land, Water and Planning (DELWP); the Department of Jobs, Precincts and Regions (DJPR); the Transport Accident Commission (TAC); and the Victorian WorkCover Authority (WorkSafe).<sup>97</sup> As stated in the audit report:

The purpose of the audit was to confirm that the four Organisations ... have practices and procedures in place to ensure third-parties [sic] they share public sector information with are securing it. To do this, the audit assessed the organisations' practices against Standard 8, with reference to specific audit criteria, to express an opinion about the effectiveness of the Organisations in ensuring that third parties they work with handle public sector information securely.<sup>98</sup>

The report concluded that none of the four VPS organisations were 'effective' when measured against the four audit criteria.<sup>99</sup> The audit report highlighted various opportunities for each agency to strengthen their approach to minimising and controlling information security risks when engaging third parties.<sup>100</sup> Importantly, as noted in the report, each VPS agency confirmed it would action OVIC's recommendations.<sup>101</sup>

These two audits are significant regulatory actions for OVIC; the Committee commends the agency for completing them to such a high standard.

### 3.2.3 Law enforcement information and data security

OVIC maintains a close professional relationship with Victoria Police, as a means of continually improving the organisation's information-security capability. For instance, Victoria Police submitted Protective Data Security Plans to OVIC in 2018, 2020 and 2022.<sup>102</sup> The Committee is eager for Victoria Police to action and complete the remaining 19 recommendations of the Commissioner for Law Enforcement Data Security and the Commission for Privacy and Data Protection put forward in 2017.<sup>103</sup>

The Committee is aware that the workload created by Victoria Police's FOI, privacy and data security-related outputs requires a significant amount of OVIC's resources.

<sup>96</sup> Standard 8 of the VPDSS requires public sector organisations to have arrangements in place that protect their information when they interact with third parties, and to ensure that those parties 'securely collect, hold, manage, use, disclose or transfer' their information—OVIC, *Victorian Protective Data Security Standards*, Melbourne, 2019, p. 4; OVIC, *Victorian Protective Data Security Standards: implementation guidance version 2.2*, Melbourne, 2023, pp. 23–24.

<sup>97</sup> OVIC, *Standard 8 of the Victorian Protective Data Security Standards*, Melbourne, 2022, p. 6.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*, p. 5.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*, pp. 5, 25.

<sup>102</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 13.

<sup>103</sup> *Ibid.*

## 3.3 Regulatory actions

### 3.3.1 Audits, investigations and examinations

In 2021/22, OVIC undertook 5 regulatory actions in response to FOI, privacy and information security issues, meeting its Budget Paper No. 3 Output Performance target.<sup>104</sup> These actions comprised two audits, two site visits of Victoria Police premises and an own motion investigation.<sup>105</sup>

OVIC seeks additional resources to undertake a more proactive approach to undertaking regulatory action. The then Information Commissioner, Mr Sven Bluemmel, has highlighted that

[t]here is a lot more we can do proactively. At the moment, the vast majority of our work is reactive. We receive a complaint, we receive an application for a review of an FOI decision or we receive a policy from an agency saying, 'Please help us with this.' Where we could do a lot more in being proactive.<sup>106</sup>

The agency has noted two regulatory actions where a more proactive approach is sought. First, in respect of audits, the Privacy and Data Protection Deputy Commissioner has explained:

We have audit functions under the *PDP Act* ... which allow us to ... look at whether or not people have secure systems. The problem is that the powers that we have under part 4 of our Act are very different than the powers we have under part 3 of our Act, and ... we tend to be reactive because we do not have the resources to be proactive in this space. So when a breach occurs we will then look at the systems that were in place, but we do not have a proactive audit of information systems because we do not have the resources.<sup>107</sup>

Second, the agency would like to conduct more investigations:

The space where we would like to do more if resources were available would be in our investigations space ... Our investigation function, which is a legislative function we have to perform, is very small. We could easily quadruple that and only engage in very important, valuable things in that space where government and agencies in our opinion need to do better.<sup>108</sup>

The Committee notes OVIC's efforts to obtain additional resources to ensure it can adopt a more proactive audit and investigations program in the future.

<sup>104</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, pp. 13, 19.

<sup>105</sup> Ms Stephanie Siomos, Executive Assistant to Mr Sven Bluemmel, Information Commissioner, and Ms Joanne Kummrow, Public Access Deputy Commissioner, OVIC, correspondence, 10 August 2023.

<sup>106</sup> Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne 31 July 2023, *Transcript of evidence*, p. 3.

<sup>107</sup> Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, OVIC, public hearing, Melbourne 31 July 2023, *Transcript of evidence*, p. 4.

<sup>108</sup> Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne 31 July 2023, *Transcript of evidence*, p. 3.

**RECOMMENDATION 7:** That the Victorian Government consider granting the Office of the Victorian Information Commissioner more funding to pursue a more proactive investigations and audits schedule.

### 3.3.2 Regulatory Action Policy

OVIC's Regulatory Action Policy guides its use of regulatory powers to ensure agencies fulfil their obligations under the *FOI Act 1982 (Vic)* and *PDP Act 2014 (Vic)*.<sup>109</sup> The Regulatory Action Policy is an 'important tool in helping citizens to better understand their information rights and how they will be enforced'.<sup>110</sup>

In 2021/22, OVIC announced a new regulatory policy for 2022–25 to reflect 'OVIC's increasing maturity as a regulator' and incorporate its new regulatory powers, introduction of the FOI Professional Standards, and second version of the VPDSS.<sup>111</sup> The updated policy contains important information for agencies and Victorian public explaining how OVIC pursues regulatory action.<sup>112</sup> This policy is supported by four new regulatory principles that guide OVIC's regulatory activities: compliance with FOI Professional Standards; privacy and security when outsourcing; information governance during crisis; privacy, security and transparency in emerging technologies.<sup>113</sup>

The Committee is pleased to understand that, in preparing the new policy, OVIC has worked with the Victorian Inspectorate (VI) to improve its approach to witness welfare so witnesses appearing under a notice of compulsion can give stronger evidence.<sup>114</sup>

## 3.4 Public information and education

### 3.4.1 General public engagement and education

The Committee recognises the strength of OVIC's public engagement and education program. In terms of online offerings, in 2021/22 the agency's virtual events and forums attracted over 6,400 attendees, which is a 3,000-person increase from the previous reporting year.<sup>115</sup> Further, in 2021/22, over 6,000 e-learning modules were completed, and over 440 VPS staff attended the agency's free monthly privacy, FOI, and data protection training webinars.<sup>116</sup> Evaluation surveys of OVIC's privacy and FOI online modules indicate 97% of attendees rated their experience as 'satisfactory or

<sup>109</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 21; Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 2.

<sup>110</sup> OVIC, *Regulatory Action Policy 2022–25*, Melbourne, 2022, p. 5.

<sup>111</sup> OVIC, *Regulatory Action Policy 2022–25*, Melbourne, 2022, p. 5 (quoted text); OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 21.

<sup>112</sup> OVIC, *Regulatory Action Policy 2022–25*, Melbourne, 2022, p. 5.

<sup>113</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 21; Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 2.

<sup>114</sup> Ms Rachel Dixon, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 7.

<sup>115</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 25.

<sup>116</sup> *Ibid.*, pp. 25–26.

above'.<sup>117</sup> Importantly, OVIC continues to improve the accessibility and user experience of its website, noting that its website traffic doubled in 2021/22, from 153,627 visits in 2020/21 to 319,432 visits in 2021/22.<sup>118</sup>

OVIC's in-person educational and public awareness events, particularly those relating to Privacy Awareness Week, were similarly well-attended.<sup>119</sup> For instance, event registrations for Privacy Awareness Week events in 2022 increased 32.9%, from 716 in 2021 to 951 in 2022.<sup>120</sup>

### 3.4.2 Responding to the Committee's education and prevention functions inquiry

The Committee recognises OVIC's progress in responding to the Committee's recommendations from its inquiry into the education and prevention functions of Victoria's integrity agencies.<sup>121</sup> OVIC has implemented recommendations 8, 15 and 18.<sup>122</sup> These recommendations involved improving OVIC's website, and including data regarding informal resolutions, and the measurement of quality and impact OVIC's prevention and education initiatives, in its annual report.<sup>123</sup> More generally, the agency has broadened its focus from improving agencies' compliance to working more closely with members of the public.<sup>124</sup>

Responses to recommendations 13, 14, and 17 from the education and prevention inquiry remain incomplete.<sup>125</sup> These recommendations were directed at improving the measurement of OVIC's quality and impact, such as Recommendation 17, which encourages OVIC to provide more information on its consultations, privacy impact assessments and legislative reviews.<sup>126</sup> However, OVIC has confirmed it is currently progressing these suggested improvements or made comparable improvements that fulfil the Committee's recommendations.<sup>127</sup> For instance, Recommendation 13 of the inquiry report recommended that OVIC

develop, in consultation with [Victoria's other integrity agencies] ... systematic, comprehensive, and consistent evidence-based frameworks for measuring the quality and impact of [its] ... prevention and education initiatives.<sup>128</sup>

<sup>117</sup> Ibid., p. 27.

<sup>118</sup> Ibid., p. 28.

<sup>119</sup> Ibid., p. 25.

<sup>120</sup> Ibid.

<sup>121</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022.

<sup>122</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, pp. 16–18.

<sup>123</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, pp. xvi–xviii.

<sup>124</sup> Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 6.

<sup>125</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, pp. 16–18.

<sup>126</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, p. xvii.

<sup>127</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, pp. 16–18.

<sup>128</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, p. xvii.

In response, OVIC now participates in the cross-agency Prevention and Education Advisory Committee (PEAC), which aims to

foster information sharing and collaboration on activities across the Victorian integrity system that are designed to prevent corruption and misconduct, and to promote integrity and ethical standards across the Victorian public sector and community.<sup>129</sup>

The Committee encourages OVIC to continue, in conjunction with other integrity agencies, to develop more rigorous measurements of the quality and impact of its prevention and education initiatives.

The Committee is pleased that OVIC is also developing an evaluation and assessment framework regarding its education and prevention program, assisted by information obtained through PEAC.<sup>130</sup> The agency has stated that additional funding would assist the development of this framework: '[w]hilst development of a framework may be achievable, data collection required to report on KPIs included in the framework will be dependent on securing additional agency funding'.<sup>131</sup>

**RECOMMENDATION 8:** That the Victorian Government consider providing more funding for the Office of the Victorian Information Commissioner to support development of its evaluation and assessment framework.

The Committee looks forward to receiving updates on OVIC's continued progress regarding the implementation of recommendations 13, 14 and 17.

## 3.5 Governance and workplace

### 3.5.1 Governance

In 2021/22, OVIC reported nil breaches of the Code of Conduct for Victorian Public Sector Employees of Special Bodies.<sup>132</sup> No time was lost in 2021/22 because of workplace injuries.<sup>133</sup>

OVIC utilised 9 consultancies, over \$10,000 per engagement, for specialist services—comprising legal advice, information technology services, stakeholder engagement and research, and 'gender equality advice'—for a total of \$202,898.5.<sup>134</sup>

<sup>129</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 16.

<sup>130</sup> Ibid., pp. 16–17.

<sup>131</sup> Ibid., p. 17.

<sup>132</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 15.

<sup>133</sup> Ibid.

<sup>134</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 12; OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 18.

### 3.5.2 Workplace wellbeing

During the year in review, staff wellbeing at OVIC was in a healthy position. Consistent with 2020/21 results, 91% of respondents in the Victorian Public Sector Commission's People Matter Survey for 2021/22 are proud to tell others they work for OVIC and 88% of survey participants recommend OVIC as a good place to work.<sup>135</sup>

Instances of negative behaviours remain low: 3% of OVIC staff reported experiencing violence or aggression in the last 12 months and no staff reported experiencing bullying, discrimination or sexual harassment.<sup>136</sup> In conjunction with reviewing annual performance development planning processes, OVIC uses these People Matter Survey results to help identify the professional development needs of staff.<sup>137</sup>

### 3.5.3 Information management and security

At the request of the Committee, OVIC provided an overview of the information management and security principles, procedures, processes and practices it has in place to minimise the risk of improper disclosure of confidential and sensitive information held by the agency:<sup>138</sup>

OVIC has a Security Management Framework (SMF) that provides a structure for information security in OVIC and includes policies, procedures and guidelines that work together to protect OVIC's information and reduce the risks of compromise of information.

OVIC's SMF is supported by an Information Security Policy (the policy) covering security risk management, identity and access management, information security incident management, business continuity, external party management, information management, information sharing, personnel security, ICT security and physical security.

This broader policy is supported by supplementary policies and procedures including, but not limited to, policies addressing personnel security, information security, physical security, system accreditation, risk management, ICT use, incident management plan, records management, and business continuity.

OVIC has a combination of security measures in place to protect public sector information. Examples of these include:

Personnel Security:

- OVIC personnel are expected [to] undertake thorough screening checks including Baseline, Negative Vetting Level 1 or 2 security clearances, or equivalent screening

<sup>135</sup> Victorian Public Sector Commission, *Office of the Victorian Information Commissioner 2022 people matter survey results report*, n.d., p. 11, <<https://vpsc.vic.gov.au/wp-content/uploads/2023/04/Office-of-the-Victorian-Information-Commissioner-Organisation-results-2022.pdf>> accessed 23 October 2023.

<sup>136</sup> *Ibid.*, p. 21.

<sup>137</sup> OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 9.

<sup>138</sup> Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Ms Rachel Dixon, Acting Information Commissioner, OVIC, correspondence, 23 August 2023, p. 2; OVIC, Response to Integrity and Oversight Committee questions on notice, 6 September 2023, pp. 1–2.

processes providing a level of assurance for personnel accessing sensitive or security classified information/systems.

- Regular personnel awareness and training activities
- Regular security briefings to all personnel

#### Physical Security:

- OVIC have a secure enclosed office space within a government building
- OVIC manages access to its own premises:
  - electronic access control system (EACS)
  - CCTV system monitors OVIC's tenancy
- separate secure file storage area
- separate alarm system with back to base monitoring
- C class and B class safes and ICT racks for the protection of sensitive and security classified hardcopy/softcopy information

#### ICT Security:

- OVIC has a secure cloud on premises ICT environment, and has security measures including, but not limited to:
  - 2 factor authentication
  - Virtual Private Networks
  - Role-based access governing access to information assets/systems (IDAM)
  - Encrypted laptops and media (media management)
  - Microsoft Security Score of >85%
  - Secure document transfer system
  - Azure based environment currently being assessed to manage security classified information at PROTECTED
  - Encrypted backups (to the cloud and offsite secondary storage provider)
  - Patching and malware prevention
  - Logging and monitoring

#### Information Management/Information security:

- OVIC has identified and subsequently security assessed its information assets
- These information assets are recorded in our Information Assets register (IAR)
- OVIC's IAR is a critical input into risk assessments and control selection
- Protective markings are used by all OVIC personnel, clearly indicating the handling measures that are needed to securely manage the material (hardcopy/softcopy)
- Electronic Document Records Management System aligned to Information practices

- Restricted file shares
- Offsite secondary storage of inactive hardcopy documents

Governance:

- Aside from the policies and procedures listed above, other security measures include, but are not limited to:
  - an active risk register that is reviewed and regularly reported on to various committees
  - the completion of our own Protective Data Security Plan, including annual progress reporting to the Information Commissioner
  - monthly security meetings with the Information Commissioner to discuss information security risks and issues, as well as raising other information security matters (strategic, tactical or operational)
  - fortnightly ICT meetings that include discussions on ICT security risks as a regular standing item
  - annual security controls reviews/testing
  - actively manages any incidents
  - security risk assessments, including assessments of third parties, and system accreditation of new systems
  - regular penetration testing/vulnerability tests of external facing systems
  - regular business continuity testing.<sup>139</sup>

The Committee was also interested to know OVIC's views, from an oversight perspective, on the effectiveness of IBAC's, the VO's and the VI's information management and security systems.<sup>140</sup>

Given the volume of Protective Data Security Plans (PDSPs) that OVIC receives, and its resourcing, it is not practicable for the agency to review and audit every PDSP to assess their performance against the VPDSS. The agency therefore takes a 'risk-based approach' to monitoring organisations' compliance with the VPDSS by focusing its efforts on areas where non-compliance carries the greatest risk of harm or would have a significant impact.<sup>141</sup> Positively, OVIC informed the Committee that it is confident that the integrity agencies have a sound awareness of the information security risks associated with their work.<sup>142</sup>

OVIC also informed the Committee that it has not had cause to undertake an audit of the agencies, indicating that their information management practices do not pose

<sup>139</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 6 September 2023, pp. 1-2.

<sup>140</sup> Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Ms Rachel Dixon, Acting Information Commissioner, OVIC, correspondence, 23 August 2023, p. 2.

<sup>141</sup> OVIC, Response to Integrity and Oversight questions on notice, 6 September 2023, p. 3.

<sup>142</sup> Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 3.

a risk in terms of OVIC's risk-based monitoring model.<sup>143</sup> This is supported by the account that the agencies provided to the Committee of their conscientious approach to information management and security, their rigorous processes for maintaining the security of their organisational data, and their reduction of the risk of improper or accidental disclosure. See the discussions in this report in sections 2.4.1 in Chapter 2 (IBAC), 4.7.1 in Chapter 4 (VI) and 5.8.2 in Chapter 5 (VO).

### 3.6 Accountability

The VI, Victorian Ombudsman and Integrity and Oversight Committee oversight and receive complaints regarding OVIC.<sup>144</sup> In 2021/22, the VI received no complaints and 6 enquiries regarding OVIC.<sup>145</sup> The Committee received 10 complaints in respect of OVIC during 2021/22, finalising 6 complaints in the same period and 4 in 2022/23.<sup>146</sup>

### 3.7 Conclusion

In 2021/22, OVIC prioritised directly engaging with the Victorian public to help them understand and exercise their information rights.<sup>147</sup> It also focused on empowering agencies to respect those rights.<sup>148</sup> The Committee considers that OVIC has largely achieved these goals through sustained effort and considerable resourcefulness.

The Committee recognises, in particular, OVIC's proactive approach to identifying various possible improvements to Victoria's FOI and privacy and data security framework, particularly those highlighted in OVIC's own motion investigation and other regulatory activities, such as its *Impediments to timely FOI and information release* report.

Further, as OVIC has highlighted, the Committee's inquiry into Victoria's FOI regime will

serve the public interest in improving transparency and accountability, and assist agencies struggling with the formal, technical and administrative processes under the FOI Act. The FOI Act no longer reflects contemporary government, and the public rightly expects more timely access to information in the digital age.<sup>149</sup>

The Committee looks forward to working with OVIC and interested parties during its forthcoming FOI inquiry.

<sup>143</sup> Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 3; OVIC, Response to Integrity and Oversight questions on notice, 6 September 2023, p. 3.

<sup>144</sup> *Victorian Inspectorate Act 2011* (Vic) s 11(5)(a)–(d); *Parliamentary Committees Act 2003* (Vic) s 7(1)(a)–(e). Note, the Victorian Ombudsman's oversight of OVIC is limited to investigating administrative action taken in accordance with the *PDP Act 2014* (Vic): OVIC, *Annual report 2021–22*, Melbourne, 2022, p. 17.

<sup>145</sup> VI, *Annual report 2021–22*, Melbourne, 2022, p. 60.

<sup>146</sup> IOC, *Complaints data–2021/22*, Melbourne, 2023.

<sup>147</sup> Mr Sven Bluemmel, Information Commissioner, OVIC, public hearing, Melbourne, 31 July 2023, *Transcript of evidence*, p. 2.

<sup>148</sup> *Ibid.*

<sup>149</sup> OVIC, Response to Integrity and Oversight Committee questions on notice, 26 May 2023, p. 15.

## 3.8 Postscript: recent funding developments

As the Committee was finalising its examination of OVIC's performance during 2021/22 for this report, it received a letter from the Acting Information Commissioner, advising that, due to changes to OVIC's funding, the agency would be unable to undertake its statutorily required review of the FOI Professional Standards ('the Standards') by 2 December 2023.<sup>150</sup> The aim of the Standards, which apply to all Victorian agencies subject to the FOI Act, is to ensure that the Act is administered by agencies in a way that is consistent with the objects of the Act.<sup>151</sup> In light of the letter from OVIC, the Committee requested further information from the agency to better understand the nature and effect of the recent funding changes.<sup>152</sup>

In response, OVIC informed the Committee that, in late July 2023, its base funding for 2023/24 was reduced by \$500,000, to \$9,237,000, and would be further reduced by \$460,000, to \$8,777,000, in 2024/25.<sup>153</sup> While OVIC has stated that it is committed to reviewing the Standards, it has indicated that it will be unable to do so in 2023/24–24/25 given its current funding levels.<sup>154</sup>

Further, as a result of these developments, OVIC has commenced a restructuring process under the Victorian Public Service Enterprise Agreement. Thirteen positions have been made redundant, only three of which will be replaced by newly created positions.<sup>155</sup> OVIC emphasised that its capacity to perform its statutory functions is likely to be impacted by these redundancies, including its:

- timely finalisation of FOI complaint and review matters and capacity to meet its BP3 performance targets
- important communications and education work (including, for example, its free training sessions on the *FOI Act 1982* (Vic), the Standards and the *PDP Act 2014* (Vic), Information Access Series webinars, and updating of e-learning modules)
- capacity to provide preliminary views on privacy complaints and conciliate such complaints in a timely way
- capacity to provide timely and 'comprehensive guidance' and 'conduct new policy projects'.<sup>156</sup>

<sup>150</sup> Ms Rachel Dixon, Acting Information Commissioner, OVIC, to Dr Tim Read MP, Chair, Integrity and Oversight Committee, correspondence, 29 August 2023; *FOI Act 1983* (Vic) ss 5, 6V, 6X(1); OVIC, *Professional Standards: issued by the Information Commissioner under Part 1B of the Freedom of Information Act 1982* (Vic), Melbourne, December 2019, p. 3.

<sup>151</sup> Mr Sven Bluemmel, Information Commissioner, OVIC, to Dr Tim Read MP, Chair, Integrity and Oversight Committee, correspondence, 26 July 2023, p. 1.

<sup>152</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Ms Rachel Dixon, Acting Information Commissioner, OVIC, correspondence, 3 October 2023.

<sup>153</sup> Ms Rachel Dixon, Acting Information Commissioner, OVIC, to Dr Tim Read MP, Chair, Integrity and Oversight Committee, correspondence, 13 October 2023, pp. 5–6.

<sup>154</sup> *Ibid.*, p. 5.

<sup>155</sup> *Ibid.*, pp. 4–5, 9–10.

<sup>156</sup> *Ibid.*, pp. 6–9.

The Committee is concerned that OVIC’s capacity to perform its statutory functions has been reduced by recent changes to its funding. Moreover, given that OVIC has informed the Committee its funding challenges are ongoing, and will continue into 2024/25, they will affect the agency’s capacity to respond to any changes to Victoria’s FOI regime arising out of the Committee’s review, including any new functions and responsibilities.

**RECOMMENDATION 9:** That the Victorian Government provide sufficient funding to the Office of the Victorian Information Commissioner to enable it to conduct an independent review of the Freedom of Information Professional Standards.



# Chapter 4

## Victorian Inspectorate

### 4.1 Introduction

The Victorian Inspectorate (VI) has extensive oversight functions and powers in relation to Victorian integrity bodies, including the Independent Broad-based Anti-corruption Commission (IBAC), the Office of the Victorian Information Commissioner (OVIC) and the Victorian Ombudsman (VO).<sup>1</sup> This includes specific jurisdiction, under particular conditions, to receive, assess and investigate complaints and public interest disclosures (PIDs) about the conduct of these bodies and officers; to monitor compliance with legislative and record-keeping requirements; and to review certain policies and procedures.<sup>2</sup> The VI can also initiate investigations and inquiries into these bodies on its own motion, make private and public recommendations, and table reports in the Parliament of Victoria.<sup>3</sup>

In exercising its oversight functions, the VI gives particular attention to integrity bodies' use of coercive and covert powers, the summoning and questioning of persons during investigations, the conduct of undercover ('controlled') operations, the interception of telecommunications, and the deployment of surveillance devices.<sup>4</sup>

The Integrity and Oversight Committee (IOC) monitors and reviews the performance of the VI, except with respect to officers of the Victorian Auditor-General's Office (VAGO).<sup>5</sup>

In what follows, the IOC reviews the performance of the VI (focusing on its oversight of IBAC, OVIC and the VO) in the following areas: complaints, investigations, inquiries, reviews, and inspections; public information and education; governance and workplace; and accountability.

### 4.2 Complaint handling

The VI receives and assesses complaints regarding, among other matters, the conduct of IBAC and IBAC employees, and VO and OVIC officers' exercise of coercive powers and compliance with procedural fairness requirements in the performance of their duties.<sup>6</sup>

1 *Victorian Inspectorate Act 2011 (Vic)* ('VI Act 2011 (Vic)'), especially ss 1, 5, 11-14.

2 *VI Act 2011 (Vic)*; *Public Interest Disclosures Act 2012 (Vic)* ('PID Act 2012 (Vic)'); VI, *Annual report 2018-19*, Melbourne, 2019, pp. 5-8, 10, 14-27; *Public Interest Monitor Act 2011 (Vic)*; VI, Response to Integrity and Oversight Committee questions on notice, 16 January 2020, especially pp. 5, 13-27.

3 *VI Act 2011 (Vic)*; VI, *Annual report 2018-19*, Melbourne, 2019, pp. 5-27.

4 VI, *Annual report 2018-19*, Melbourne, 2019, pp. 5-10, 14-27; *VI Act 2011 (Vic)*.

5 *Parliamentary Committees Act 2003 (Vic)* ('PC Act 2003 (Vic)') s 7(1)(f)-(h). The Victorian Parliament's Public Accounts and Estimates Committee (PAEC) reviews the performance of the VI with respect to Victorian Auditor-General's Office (VAGO) officers: *PC Act 2003 (Vic)* s 14(1)(ab)-(ad); VI, *Annual report 2018-19*, Melbourne, 2019, p. 14.

6 *VI Act 2011 (Vic)* s 43.

The VI also receives and assesses mandatory notifications, including from IBAC and the VO, regarding complaints and notifications received by IBAC relating to the agency or its officers, and complaints or referrals received by the VO relating to apparent misconduct of IBAC or IBAC employees or VO officers and others.<sup>7</sup> Further, the VI is the receiving entity for PIDs about IBAC and IBAC officers, and for referred public interest complaints from IBAC that fall within its investigative jurisdiction.<sup>8</sup>

In 2021/22, the VI received 163 jurisdictional and non-jurisdictional enquiries<sup>9</sup> and 116 jurisdictional complaints, which is a 37% and 27% increase respectively from 2020/21. The majority of complaints received in 2021/22 related to IBAC or IBAC officers (72 or 62%), the VO or VO officers (35 or 30%), or both (2 or 2%), while the majority of the 67 jurisdictional enquiries received similarly related to IBAC or IBAC officers (34 or 51%), the VO or VO officers (23 or 34%), or both (3 or 4%).<sup>10</sup>

### 4.2.1 The VI's timeliness in finalising complaints

The majority of complaints received by the Committee about the VI relate to originating complaints to the VI about IBAC and the VO. A recurring theme of such complaints is the VI's delay in finalising complaints.

The Committee notes that the report on the 2022 inaugural independent performance audit of the VI indicates delay in finalising complaints is a significant ongoing issue for the VI, in part due to the increasing volume and complexity of complaints received in recent years, and the VI's historically small complaints team.<sup>11</sup> Notwithstanding these challenges, the VI has made progress by increasing the number of complaints it finalises annually by 109% (47) since 2017/18.<sup>12</sup>

#### Complaints about IBAC

Figure 4.1, below, shows the five-year trends in the volume of IBAC complaints received and closure rates.

<sup>7</sup> *IBAC Act 2011* (Vic) s 71; *Victorian Ombudsman Act 1973* (Vic) s 16F.

<sup>8</sup> *PID Act 2012* (Vic) ss 26, 56; *IBAC Act 2011* (Vic) s 73.

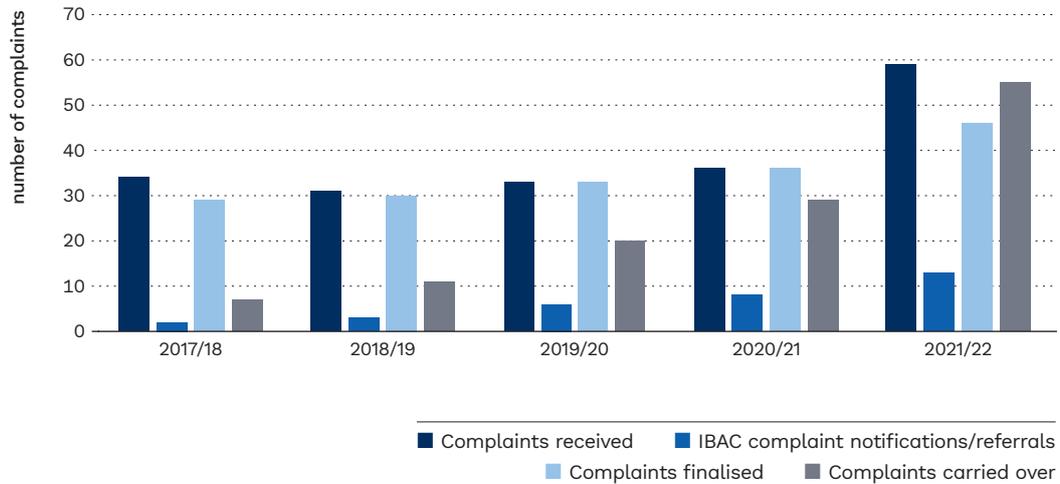
<sup>9</sup> See VI, *Annual report 2021–22*, Melbourne, 2022, p. 28 ('An enquiry is a contact from a member of the public requesting information about the VI's complaint processes or seeking to provide information they believe is relevant to the VI's functions [including enquiries about making a complaint about non-jurisdictional matters].').

<sup>10</sup> VI, *Annual report 2021–22*, Melbourne, 2022, pp. 25, 28–29; VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 21.

<sup>11</sup> Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix D (audit of the VI), pp. 38–49.

<sup>12</sup> VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 12, 14; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29–30.

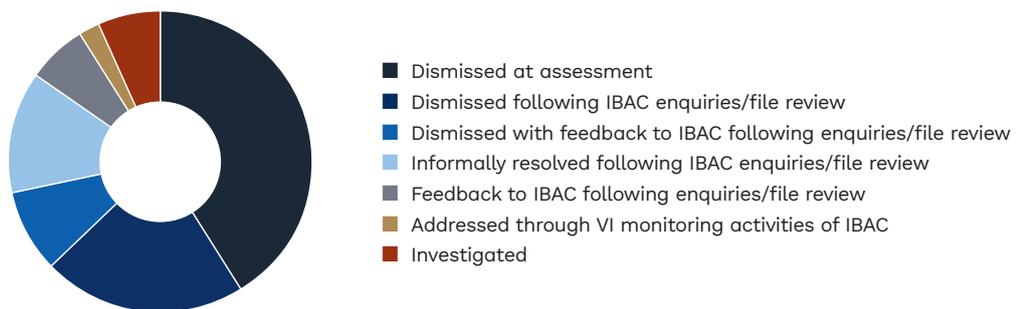
**Figure 4.1 Complaints about IBAC received, finalised and carried over by the VI in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 12, 14; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 32, 35–36, 53; VI, *Annual report 2019–20*, Melbourne, 2020, pp. 30, 32, 53; VI, *Annual report 2020–21*, Melbourne, 2021, pp. 30, 32, 35, 54–55; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29–30, 50–51.

With respect to complaints about IBAC that the VI closed in 2021/22, the VI dismissed 41% (19) of complaints at assessment. The VI made enquiries with IBAC or reviewed IBAC’s complaint files in 50% (23) of complaints received, dismissing approximately 30% (14) of complaints following such action. Notably, the VI provided feedback to IBAC on complaint-handling issues identified in 15% (7) of complaints, including in 9% (4) of complaints it dismissed. The VI reported that this feedback led to improvements in IBAC’s complaint-handling and related procedures and practices. Finally, a further 2% (1) of complaints were dealt with through the VI’s monitoring activities of IBAC in 2021/22, and approximately 7% (3) of complaints were investigated.<sup>13</sup> Figure 4.2, below, sets out the outcomes reported by the VI for complaints about IBAC that were finalised in 2021/22.

**Figure 4.2 Complaints about IBAC: outcomes in 2021/22**



Source: Devised from VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 12, 14; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 32, 35–36, 53; VI, *Annual report 2019–20*, Melbourne, 2020, pp. 30, 32, 53; VI, *Annual report 2020–21*, Melbourne, 2021, pp. 30, 32, 35, 54–55; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29–30, 50–51.

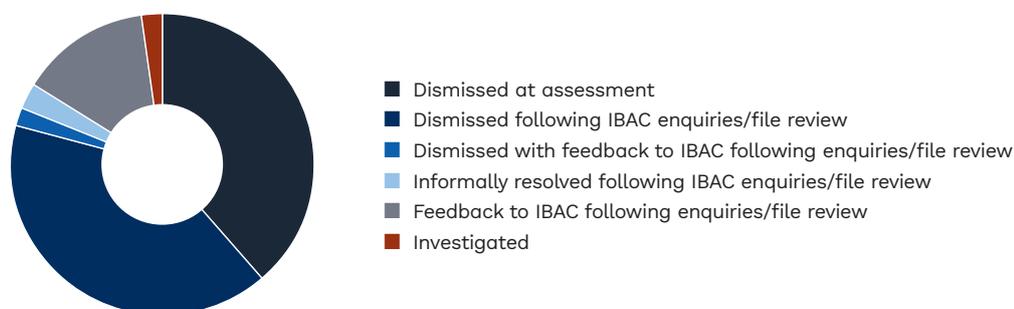
<sup>13</sup> VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29–30, 50–52.

The longer-term averages for outcomes reported by the VI for complaints received about IBAC that were finalised in the five-year period 2017/18–2021/22 indicate that the VI:

- dismisses approximately 40% of such complaints at assessment;
- dismisses and informally resolves a further 40% and 3% respectively, after making enquiries with IBAC or reviewing IBAC’s complaint files;
- provides feedback to IBAC on complaint-handling and related issues identified in a further 16% of complaints (including in 2% of dismissed matters); and
- investigates 2% of complaints.<sup>14</sup>

Figure 4.3, below, sets out the outcomes reported by the VI for complaints about IBAC that were finalised in 2017/18–2021/22.

**Figure 4.3 Complaints about IBAC: outcomes in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 12, 14; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 32, 35–36, 53; VI, *Annual report 2019–20*, Melbourne, 2020, pp. 30, 32, 53; VI, *Annual report 2020–21*, Melbourne, 2021, pp. 30, 32, 35, 54–55; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29–30, 50–51.

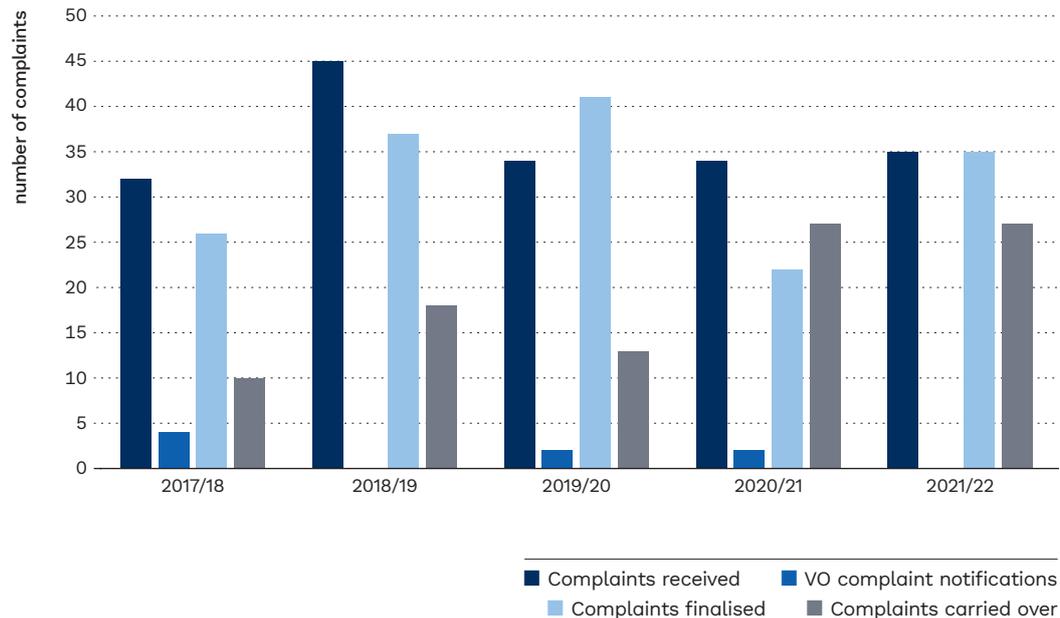
### Complaints about the VO

The VI has also made modest progress by increasing the number of VO complaints finalised annually. In 2021/22, the VI finalised 35 complaints received about the VO, a 59% increase from the 22 complaints finalised in 2020/21, and a 35% increase since 2017/18.<sup>15</sup> Figure 4.4, below, shows the five-year trends in the volume of VO complaints and closure rates.

<sup>14</sup> VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 12, 14; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 32, 35–36, 53; VI, *Annual report 2019–20*, Melbourne, 2020, pp. 30, 32, 53; VI, *Annual report 2020–21*, Melbourne, 2021, pp. 30, 32, 35, 54–55; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29–30, 50–51.

<sup>15</sup> VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 12, 14; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 35–36, 53; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 22, 29, 54–55.

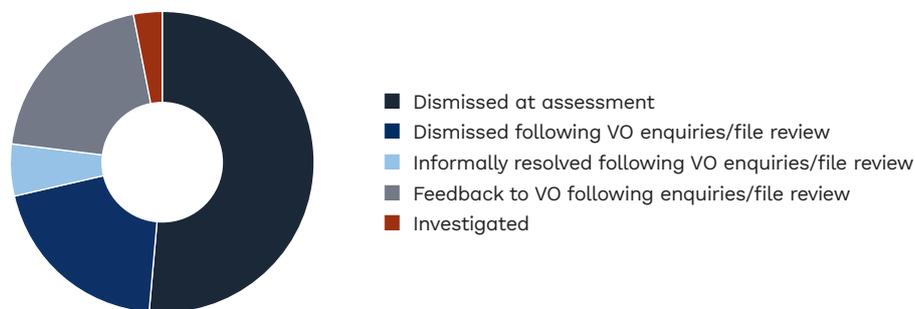
**Figure 4.4 Complaints about the VO received, finalised and carried over by the VI in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 12, 14; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 32, 35–36, 73; VI, *Annual report 2019–20*, Melbourne, 2020, pp. 30, 32–33, 59; VI, *Annual report 2020–21*, Melbourne, 2021, pp. 33, 36, 59, 60; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29–30, 54–55.

With respect to complaints about the VO that the VI closed in 2021/22, the VI dismissed 51% (18) of complaints at assessment. The VI made enquiries with the VO or reviewed the VO’s complaint files in 46% (16) of complaints, dismissing and informally resolving 20% (7) and 6% (2) of complaints respectively following such action. Notably, the VI provided feedback to the VO on complaint-handling and related issues identified in 20% of complaints. The VI reported that this feedback led to improvements in the VO’s complaint-handling and related procedures and practices. Finally, approximately 3% (1) of complaints were investigated.<sup>16</sup> Figure 4.5, below, sets out the outcomes reported by the VI for complaints about the VO that were finalised in 2021/22.

**Figure 4.5 Complaints about the VO: outcomes in 2021/22**



Source: Devised from VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 12, 14; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 32, 35–36, 73; VI, *Annual report 2019–20*, Melbourne, 2020, pp. 30, 32–33, 59; VI, *Annual report 2020–21*, Melbourne, 2021, pp. 33, 36, 59, 60; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29–30, 54–55.

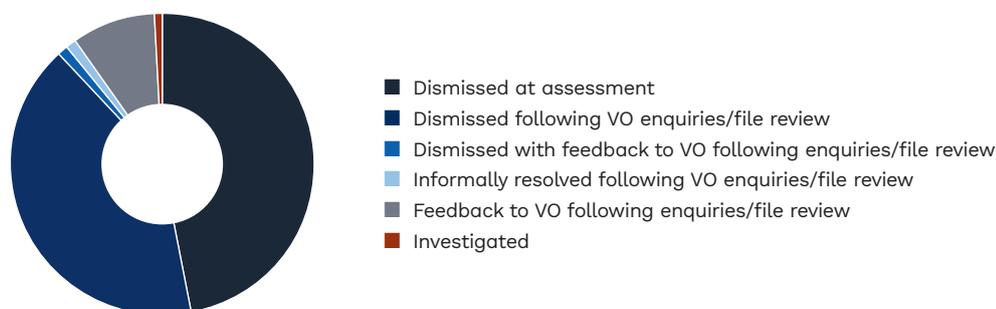
<sup>16</sup> VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29–30, 54–56.

The longer-term averages for outcomes reported by the VI for complaints received about the VO that were finalised in the five-year period 2017/18–2021/22, indicate that the VI:

- dismisses approximately 47% of such complaints at assessment;
- dismisses and informally resolves a further 41% and 1% respectively, after making enquiries with the VO or reviewing the VO's complaint files;
- provides feedback to the VO on complaint-handling and related issues identified in a further 10% of complaints (including in 1% of dismissed matters); and
- investigates less than 1% of complaints.<sup>17</sup>

Figure 4.6, below, sets out the outcomes reported by the VI for complaints about the VO that were finalised in 2017/18–2021/22.

**Figure 4.6 Complaints about the VO: outcomes in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 12, 14; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 32, 35–36, 73; VI, *Annual report 2019–20*, Melbourne, 2020, pp. 30, 32–33, 59; VI, *Annual report 2020–21*, Melbourne, 2021, pp. 33, 36, 59, 60; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29–30, 54–55.

### Action to improve timeliness

Since 2021/22, the VI has taken significant action to improve its timeliness in finalising complaints, including by:

- bolstering the capacity of its complaint-handling team
- publishing a complaints Service Charter requiring complaint-handlers to acknowledge receipt of complaints 'within 5 business days' and update complainants on the progress of their complaint 'every 28 days'
- developing a new Complaints Framework to support the Service Charter, with key performance indicators to drive progress

<sup>17</sup> VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 12, 14; VI, *Annual report 2018–19*, Melbourne, 2019, pp. 32, 35–36, 73; VI, *Annual report 2019–20*, Melbourne, 2020, pp. 30, 32–33, 59; VI, *Annual report 2020–21*, Melbourne, 2021, pp. 33, 36, 59–60; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29–30, 54–55.

- in consultation with the Department of Treasury and Finance, creating two Victorian Budget Paper No. 3 (Service Delivery) (BP3) timeliness performance targets with respect to the finalisation of low complexity and medium complexity complaints<sup>18</sup>
- improving the ‘reporting capability’ of its Case Management System (CMS) to ensure effective compliance monitoring with respect to the Complaints Framework and new BP3 targets.<sup>19</sup>

In recent years, the VI has been dealing with an increasing backlog of complaints. The VI informed the Committee that, in 2021/22, the backlog resulted from the following factors: 57 complaints which it had carried over from 2020/21, the significant increase in the volume and complexity of complaints received in 2021/22 compared to the previous reporting period, and the ongoing impact of the ‘COVID operating environment on productivity’.<sup>20</sup> This meant that the VI carried 83 complaints over to 2022/23, despite the fact that it closed approximately 32% more complaints in 2021/22 (90) than in 2020/21 (68).<sup>21</sup>

Through fixed-term funding, in order to address the backlog of complaints, the VI appointed 3 additional fixed-term complaint officer positions for the period February to June 2023 inclusive. Positively, the VI reported that it has made progress in finalising the backlog of complaints, noting that prior to the end of the 2022/23 financial year, it had finalised approximately 65% of open complaints from 2021/22 (54) and over 30% of complaints received in 2022/23.<sup>22</sup> In 2022/23, the VI closed 136 complaints, 46 more than in 2021/22, including 93% (80) of complaints carried over from 2021/22 and 47% (56) of complaints received by the agency in 2022/23.<sup>23</sup> However, despite doubling its annual complaint closure rate since 2020/21, the backlog of complaints continues to be problematic given that 70 complaints were carried over to 2023/24.<sup>24</sup> As at 1 July 2023, the VI’s complaints team consisted of a Manager Complaints, a Senior Complaint Assessment Officer and two Complaint Assessment Officers.<sup>25</sup>

Since 2019/20, ‘high complexity’ complaints have significantly increased in volume and also as a proportion of total complaints received by the VI.<sup>26</sup> These kinds of complaints involve legal complexities, require significant analysis or review of voluminous

<sup>18</sup> See Department of Treasury and Finance (Victoria), *Victorian Budget 2023/24: service delivery* (Budget Paper No. 3), Melbourne, 2023, p. 365 (‘Proportion of low complexity complaints completed within 2 months’ and ‘Proportion of medium complexity complaints completed within 5 months’).

<sup>19</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 21.

<sup>20</sup> Ibid.

<sup>21</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 21; VI, *Annual report 2020–21*, Melbourne, 2021, p. 31; VI, *Annual report 2021/22*, Melbourne, 2022, p. 30.

<sup>22</sup> VI, Response to Integrity and Oversight Committee questions on notice, 2 June 2023, p. 4; VI, *Annual report 2021–22*, Melbourne, 2022, p. 30.

<sup>23</sup> VI, *Annual report 2022–23*, Melbourne, 2023, pp. 28–29; VI *Annual report 2021–22*, Melbourne, 2022, p. 30.

<sup>24</sup> VI, *Annual report 2022–23*, Melbourne, 2023, pp. 28–29; VI *Annual report 2021–22*, Melbourne, 2022, p. 30.

<sup>25</sup> VI, Response to Integrity and Oversight Committee questions on notice, 2 June 2023, p. 4; VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 21.

<sup>26</sup> Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix D (audit of the VI), p. 43; VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 21.

information, relate to the exercise of coercive powers by the agencies that the VI oversees (including their examinations, hearings or other investigative powers), involve substantial interaction with the complainant (whether for welfare or other reasons), or require significant guidance or input from the VI's senior management.<sup>27</sup>

The VI informed the Committee that all members of its complaints team are able to assess high complexity complaints and when making a complaint allocation decision, consideration is given to the complaint's complexity level (low, medium or high), and the 'seniority, skills and experience' of the complaint officer.<sup>28</sup> Complaint assessment officers are supported in managing high complexity complaints by the VI's in-house Legal Services team and senior management (including the CEO and General Counsel, and the General Manager Integrity Operations and Policy).<sup>29</sup>

While the VI was unable to provide data analytics on the types of customer service complaints received with respect to its complaint-handling function, it informed the Committee that the majority of such complaints relate to delay. However, the VI has recently started collecting data on VI-related complaints to the Committee, to ensure it is able to identify the causes of issues raised and reduce the recurrence of similar issues in the future.<sup>30</sup>

Nevertheless, the trend of increasing volume and complexity of complaints received by the VI shows no signs of abating, noting that it continued into 2022/23.<sup>31</sup> The VI has stressed that unfortunately, under current conditions, its capacity to clear the backlog of complaints will be seriously limited by:

- the implementation of new complaint-handling processes;
- the development of new templates to support the Complaints Framework;
- the training requirements for new complaint assessment officers; and
- the challenges associated with dealing with complex complainant behaviour more frequently.<sup>32</sup>

## 4.2.2 The VI's Service Charter and Complaint Handling Framework

The Committee commends the VI on the development and roll-out of its new Complaint Handling Framework, which supports the delivery of the agency's complaint-handling Service Charter published on its website in December 2022.<sup>33</sup> The Framework and Charter were developed in consultation with expert independent advice to address

<sup>27</sup> VI, Response to Integrity and Oversight Committee questions on notice, 2 June 2023, p. 5.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid., p. 6.

<sup>31</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 21.

<sup>32</sup> Ibid.

<sup>33</sup> See VI, *Victorian Inspectorate service charter*, <<https://www.vicinspectorate.vic.gov.au/victorian-inspectorate-service-charter>> accessed 11 September 2023.

opportunities for improvement with respect to the effectiveness and efficiency of the VI's complaint-handling processes.<sup>34</sup>

The VI informed the Committee that the Framework introduces a new complaint-handling process with specific instructions for the 'submission, intake, triage and allocation, assessment, decision and outcome' phases of the complaints process.<sup>35</sup> The Framework will be implemented over 12 months and will involve the release of new templates and procedures, updates to the VI's CMS and website, as well as improvements to the agency's collection and reporting of data. This will allow the VI to monitor its compliance with the Charter more efficiently and accurately.<sup>36</sup>

The Committee asked the VI to elaborate on how it will monitor compliance with the Service Charter and its performance against the Complaints Framework.<sup>37</sup> In response, the VI informed the Committee that the key performance indicators (KPIs) for the Framework comprise timeliness requirements under the *PID Act 2012* (Vic), BP3 targets, KPIs in the Service Charter, and additional KPIs relating to timeliness regarding triaging and allocation of complaints and finalisation of high complexity complaints.<sup>38</sup> Recent improvements to the 'reporting capability' of the VI's CMS will, further, allow the agency to record, track and generate reports on performance across the following KPIs:

- acknowledging receipt of 95% of complaints within five business days
- triaging and allocating complaints within three business days
- providing complainant updates every 28 days
- making notifications to IBAC or the IOC under the *PID Act 2012* (Vic) within 28 days
- issuing complaint outcome decisions on low complexity complaints within 2 months for 75% of such complaints, and within 5 months for the remaining 25%
- issuing complaint outcome decisions on medium complexity complaints within 5 months for 75% of such complaints, and within 9 months for the remaining 25%
- issuing complaint outcome decisions on high complexity complaints within 9 months
- providing written reasons for all complaint outcome decisions.<sup>39</sup>

<sup>34</sup> VI, Response to Integrity and Oversight Committee questions on notice, 2 June 2023, p. 3.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Mr Eamonn Moran PSM KC, Inspector, VI, correspondence, 23 August 2023, p. 2.

<sup>38</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 15.

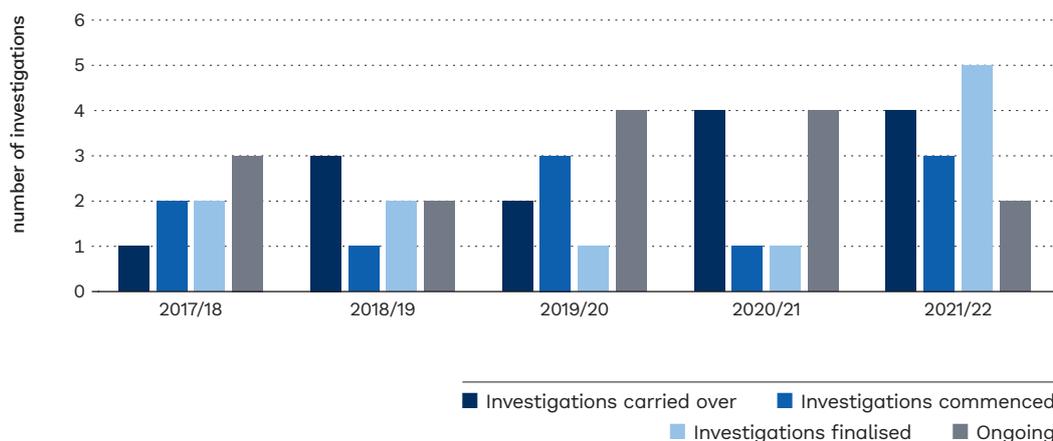
<sup>39</sup> Ibid.

### 4.3 Investigations and inquiries

Notwithstanding that the majority of complaints received by the VI are resolved by liaising with, and reviewing information provided by, complainants and the subject agencies, the VI has power to investigate complaints, and must investigate all public interest complaints.<sup>40</sup> The VI also has power to investigate, on its own motion, matters within its complaints jurisdiction, and may conduct preliminary inquiries to determine whether or not to investigate a complaint or conduct an ‘own motion’ investigation.<sup>41</sup> The VI’s multidisciplinary investigation teams are supported by an assigned legal officer and senior management, including the Special Counsel, Integrity Investigations, the General Manager Integrity Operations and Policy, the CEO and General Counsel, and the Inspector.<sup>42</sup>

The VI commenced three investigations and continued investigating a further four carried over from 2020/21, the highest number undertaken within a reporting period on record. Despite the significant increase in the number of investigations finalised in 2021/22, the number of investigations commenced and finalised annually has remained relatively stable since 2017/18–2021/22, as set out in Figure 4.7, below.

**Figure 4.7 Investigations carried over, commenced and finalised by the VI in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 15–16; VI, *Annual report 2018–19*, Melbourne, 2019, p. 38; VI, *Annual report 2019–20*, Melbourne, 2020, p. 37; VI, *Annual report 2020–21*, Melbourne, 2021, p. 39; VI, *Annual report 2021–22*, Melbourne, 2022, p. 34.

All investigations conducted by the VI in 2021/22 were mandatory investigations of public interest complaints.<sup>43</sup> Under s 44(2) of the *Victorian Inspectorate Act 2011* (Vic) (*VI Act 2011* (Vic)), the VI must investigate all public interest complaints (including those referred to the VI by IBAC).<sup>44</sup> While the VI was previously required under the

<sup>40</sup> VI, Response to Integrity and Oversight Committee questions on notice, 2 June 2023, p. 5; *VI Act 2011* (Vic) s 44.

<sup>41</sup> *VI Act 2011* (Vic) ss 46–47, 48B–48C.

<sup>42</sup> VI, Response to Integrity and Oversight Committee questions on notice, 2 June 2023, p. 5.

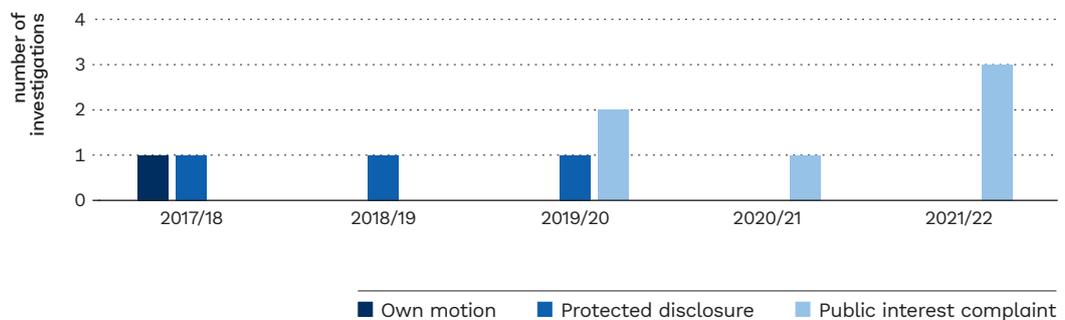
<sup>43</sup> VI, *Annual report 2021–22*, Melbourne, 2022, p. 34. See also *VI Act 2011* (Vic) s 44(2).

<sup>44</sup> *IBAC Act 2011* (Vic) ss 7, 73; *PID Act 2012* (Vic) s 26.

protected disclosure regime to investigate all protected disclosure complaints,<sup>45</sup> amendments to that scheme under the *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic) broadened the scope of whistleblower complaints, henceforth to be known as ‘public interest complaints’, by widening the definition of ‘improper conduct’ (now expressly including, for example, ‘serious professional misconduct’).<sup>46</sup> These amendments took effect on 1 January 2020.<sup>47</sup>

All investigations commenced since the legislative amendments took effect in 2020, have been of public interest complaints. Figure 4.8, below, sets out the trigger for VI investigations in the 2017/18–2021/22 period. The trigger for the VI’s 2021/22 investigations is consistent with the longer-term trends, which show that all investigations in the past five years, except one ‘own motion’ investigation, have been mandatory investigations of complaints under the PID Scheme.

**Figure 4.8 Trigger for VI investigations in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 15–16, VI, *Annual report 2018–19*, Melbourne, 2019, p. 38; VI, *Annual report 2019–20*, Melbourne, 2020, p. 37; VI, *Annual report 2020–21*, Melbourne, 2021, p. 39; VI, *Annual report 2021–22*, Melbourne, 2022, p. 34.

Notwithstanding the requirement under s 48 of the *VI Act 2011* (Vic) for IBAC, the VO, OVIC and others to comply with a request for assistance received by the VI in connection with a jurisdictional investigation, the VI also has a range of coercive investigative powers available to it.<sup>48</sup> Principal among these are the power to summon witnesses to produce documents or other things or attend an examination in an inquiry connected with an investigation, and the power to issue a confidentiality notice prohibiting a witness from disclosing restricted matters relating to an investigation.<sup>49</sup> Figure 4.9, below, provides a summary of the coercive powers exercised by the VI with respect to investigations in 2017/18–2021/22.

<sup>45</sup> See *VI Act 2011* (Vic), No. 70 (incorporating amendments as at 1 July 2019).

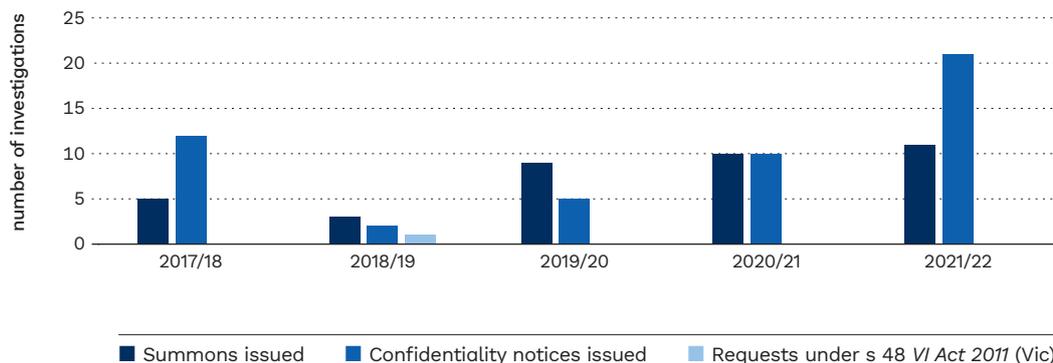
<sup>46</sup> *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic) ss 1(ii)(A) (purposes), 7 (definition of ‘improper conduct’). And see, now, *PID Act 2012* (Vic) s 4 (especially s 4(1)(b)(ii): ‘serious professional misconduct’). See also VI, *Annual report 2018–19*, Melbourne, 2019, pp. 26, 37; VI, *Annual report 2019–20*, Melbourne, p. 3; IBAC, *Information sheet: Key changes—Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (No. 2/2019), Melbourne, September 2019.

<sup>47</sup> *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic) s 2(3).

<sup>48</sup> *VI Act 2011* (Vic) pt 6.

<sup>49</sup> *VI Act 2011* (Vic) ss 38, 53.

**Figure 4.9 Coercive powers exercised by the VI in investigations in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 15–16; VI, *Annual report 2018–19*, Melbourne, 2019, p. 38; VI, *Annual report 2019–20*, Melbourne, 2020, p. 37; VI, *Annual report 2020–21*, Melbourne, 2021, p. 39; VI, *Annual report 2021–22*, Melbourne, 2022, p. 34.

The longer-term averages for outcomes reported by the VI for investigations that were finalised in the five-year period 2017/18–2021/22, indicate that, while the allegations in 50% of investigations are found to be unsubstantiated, the VI provides feedback to the subject agency in 80% of investigations, whether in a tabled special report or in private recommendations or observations. Importantly, this indicates that even in matters where allegations are determined to be unsubstantiated following an investigation, the VI frequently identifies issues during the course of that investigation requiring an ‘integrity response’.<sup>50</sup>

Figure 4.10, immediately below, sets out the breakdown of investigation outcomes reported by the VI in 2017/18–2021/22.

**Figure 4.10 Investigation outcomes reported by the VI in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2017–2018*, Melbourne, 2018, pp. 15–16; VI, *Annual report 2018–19*, Melbourne, 2019, p. 38; VI, *Annual report 2019–20*, Melbourne, 2020, p. 37; VI, *Annual report 2020–21*, Melbourne, 2021, p. 39; VI, *Annual report 2021–22*, Melbourne, 2022, p. 34.

<sup>50</sup> VI, *Integrity response guidelines*, Melbourne, 2020, p. 3 (The VI performs its oversight functions through ‘compliance activities such as inspections, complaint assessments, investigations and monitoring activities’. The VI uses the term ‘integrity responses’ to describe ‘appropriate responses to non-compliance or other issues identified through ... [its compliance] activities.’).

### 4.3.1 The VI's response to the IOC's witness welfare report recommendations

In its report on the performance of integrity agencies during 2020/21 with a focus on their management of witness welfare, the IOC made two recommendations to the VI:

Recommendation 8: That the Victorian Inspectorate (VI) develop, as a matter of priority, capacity in its case management system to run automated reports to identify, record and analyse any welfare risks affecting persons who have made complaints to the VI, as well as witnesses involved in its investigations.

Recommendation 9: That the Victorian Inspectorate:

- engage an external and independent person or body with psychological expertise to review its *Witness Welfare Policy*, templates and standard practices to ensure they conform to best practice principles
- drawing on external and independent psychological expertise, develop and implement a risk assessment matrix (with a focus on physical and mental health) that meets best practice, for use in relation to witnesses examined by the agency or subject to a confidentiality notice issued by the agency
- inquire into the feasibility of creating an at least 0.5 FTE, ongoing Complainant and Witness Welfare Officer position, for a psychologist, mental health nurse or mental health social worker
- inquire into the feasibility of engaging an external and independent counselling and support service to deliver, on a fee-for-service basis, welfare support services to witnesses at greatest risk of serious harm
- report to the Committee on these recommendations, including the outcomes of any inquiries undertaken in accordance with them.<sup>51</sup>

Pleasingly, the VI has accepted and implemented all recommendations.<sup>52</sup>

For example, the VI has upgraded its CMS to address Recommendation 8.<sup>53</sup>

With respect to Recommendation 9, the VI informed the Committee that it had engaged a suitable expert to review its *Witness Welfare Policy*, develop a risk assessment matrix to assist the agency in identifying and managing welfare risks to witnesses, and provide specialist advice on the role description of a Witness Welfare

<sup>51</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 138–141.

<sup>52</sup> See Mr Eamonn Moran PSM KC, Acting Inspector, VI, to Mr Gary Maas MP, Chair, Integrity and Oversight Committee, correspondence, 14 March 2023, p. 1; VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 19. See also VI, *Media release: Victorian Inspectorate welcomes the findings of the Integrity and Oversight Committee's performance report focusing on welfare of witnesses and accepts the recommendations*, Melbourne, 6 October 2022, <<https://content.vic.gov.au/sites/default/files/2022-10/Victorian-Inspectorate-Media-Release-Response-to-IOC-report-into-witness-welfare-2022-10-06-FINAL.pdf>> accessed 2 August 2023.

<sup>53</sup> Mr Eamonn Moran PSM KC, Acting Inspector, VI, to Mr Gary Maas MP, Chair, Integrity and Oversight Committee, correspondence, 14 March 2023, p. 3; VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 19.

Officer position.<sup>54</sup> In response to the findings and recommendations of the review, and in consultation with the reviewer:

- work on a new framework is underway which will involve developing new Witness Welfare Guidelines and updating the existing *Witness Welfare Policy* (the VI has emphasised that the new guidelines are '[b]est practice' and will include 'a clear and comprehensive process for conducting static and dynamic risk assessments'); and
- the VI has created 'portfolio responsibility for [a] Welfare Governance Officer' and appointed an existing employee with relevant expertise to the role.<sup>55</sup>

The VI also identified a suitable external counselling and support service to provide support services to high-risk witnesses, noting that the scope of those services will take into account the findings and recommendations of New South Wales's Inspector of the Independent Commission Against Corruption's audit of that State's Independent Commission Against Corruption's (NSW ICAC) management of witness welfare.<sup>56</sup> To this end, the VI reported that it recently piloted a program through an external provider, Carfi, to provide support and supervision sessions for its frontline staff, and independent support services to witnesses, including a 24-hour witness welfare hotline.<sup>57</sup>

The Victorian Government, in its formal response to the report's recommendations, noted that it had engaged with the VI on Recommendations 2 and 3, and that IBAC is consulting with the VI on the development of formal guidelines relating to the requirements for holding public examinations.<sup>58</sup> The VI has informed the Committee that it is engaging with IBAC on Recommendations 2-4, and that:

[T]he VI is keen to see IBAC develop procedural guidelines relating to the requirements for holding public examinations, and in particular, guidance on what may constitute 'unreasonable damage to a person's reputation, safety or wellbeing.' Equally important is recommendation 7, which recommends specific guidance on decision making regarding requests under s 117(3A)(a) of the IBAC Act to hold part of an examination in private.

The VI is also engaging with IBAC about the scope of its welfare risk assessments to support its decision making in relation to holding public hearings.<sup>59</sup>

<sup>54</sup> Mr Eamonn Moran PSM KC, Acting Inspector, VI, to Mr Gary Maas MP, Chair, Integrity and Oversight Committee, correspondence, 14 March 2023, p. 3.

<sup>55</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 19.

<sup>56</sup> Mr Eamonn Moran PSM KC, Acting Inspector, VI, to Mr Gary Maas MP, Chair, Integrity and Oversight Committee, correspondence, 14 March 2023, p. 3. See also Inspector of the Independent Commission Against Corruption, *Special report 2023/01: Audit of the welfare of witnesses and other people involved in ICAC investigations*, Sydney, February 2023.

<sup>57</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 19.

<sup>58</sup> Department of Justice and Community Safety, *Response to the recommendations made to the Victorian Government by the Integrity and Oversight Committee in its report Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, August 2022, p. 1.

<sup>59</sup> VI, Response to Integrity and Oversight Committee questions on notice, 2 June 2023, pp. 1-2.

The Committee is pleased that the VI is actively engaging with IBAC on Recommendations 2–4, and will monitor this development to ensure that IBAC’s procedural guidelines reflect the spirit of Recommendation 2 and that the VI has appropriate mechanisms in place to ensure effective monitoring of IBAC’s compliance with the guidelines.

In response to Recommendation 10,<sup>60</sup> which was directed to the Victorian Government, two additional timeliness performance targets were included in the 2023/24 BP3 with respect to the VI’s finalisation of low complexity and medium complexity complaints.<sup>61</sup> The VI informed the Committee that its newly introduced Complaints Framework will include key performance indicators for the timeliness of its complaint assessments function from 2024/25 onwards.<sup>62</sup> Positively, the Victorian Government indicated that it would

continue to work with the VI to ensure that its BP3 performance measures provide an appropriate benchmark for the timeliness of its complaint handling processes.<sup>63</sup>

#### 4.4 Review of agency use of coercive powers

One of the VI’s primary oversight functions in relation to the integrity bodies it oversees—including IBAC, the VO and OVIC—is to receive, monitor and review mandatory notifications regarding their exercise of coercive and other powers,<sup>64</sup> also known as ‘coercive power notifications’.<sup>65</sup>

The VI monitors such notifications through a triaging system which aims to ensure that higher-risk notifications and matters requiring closer scrutiny are prioritised for review, such as:

- powers exercised or approved by an officer who is new to the role, for example, a new Deputy Commissioner overseeing a public examination
- powers exercised in connection with investigations, including higher-risk processes, such as witnesses summonsed to public examinations, or witnesses who are publicly or privately examined without legal representation

<sup>60</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 145–148 (‘Recommendation 10: That the Victorian Government, in consultation with the Victorian Inspectorate (VI), develop a Budget Paper No. 3 timeliness performance measure for the VI’s assessment of complaints, taking into account the VI’s size and variations in the complexity of complaints received.’).

<sup>61</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 19; Department of Treasury and Finance (Victoria), *Victorian Budget 2023/24: service delivery* (Budget Paper No. 3), Melbourne, 2023, p. 365 (‘Proportion of low complexity complaints completed within 2 months’ and ‘Proportion of medium complexity complaints completed within 5 months’).

<sup>62</sup> Mr Eamonn Moran PSM KC, Acting Inspector, VI, to Mr Gary Maas MP, Chair, Integrity and Oversight Committee, correspondence, 14 March 2023, p. 3.

<sup>63</sup> Department of Justice and Community Safety, *Response to the recommendations made to the Victorian Government by the Integrity and Oversight Committee in its report Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, August 2022, pp. 1–2.

<sup>64</sup> The VI defines coercive powers as ‘powers that limit the freedoms and rights of individuals’—VI, *Annual report 2021–22*, Melbourne, 2022, p. 35.

<sup>65</sup> *VI Act 2011* (Vic) pts 3, 5, 5A; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 5, 35.

- powers exercised with respect to witnesses where welfare concerns have been identified
- powers exercised in connection with vulnerable witnesses, including persons with a disability, particularly where there are special legal requirements, such as the right to a support person.<sup>66</sup>

For instance, in 2021/22, the VI reviewed 100% of notifications received from OVIC (due to the low frequency with which it exercises coercive powers). The VI also reviewed 100% of public hearing notifications received from IBAC, due to the risks associated with the exercise of this extraordinary coercive power, including risks to the welfare of witnesses summoned to a public hearing.<sup>67</sup>

The main purpose of a review is to ensure that the subject agency has complied with the applicable laws when exercising a coercive power.<sup>68</sup> A review can result in the VI providing feedback to the agency—for example, on procedural issues or on the legality of a notice issued if the VI considers that the notice does not comply with the requirements of the relevant Act.<sup>69</sup>

The vast majority of the 860 coercive power notifications in 2021/22 were received from IBAC (693) and the VO (129).<sup>70</sup> IBAC notifications accounted for 81% of total notifications in 2021/22 and 64% (416) of the 650 total notifications received in 2020/21.<sup>71</sup> VO notifications, on the other hand, comprised 15% of total notifications received in 2020/21 and 33% (214) of total notifications received in 2020/21.<sup>72</sup> Despite this, notifications received from IBAC and the VO consistently represent the vast majority of all notifications received by the VI within a given reporting period, as set out in Figure 4.11, immediately below.

<sup>66</sup> Ms Alison Lister, General Manager, Integrity Operations and Policy, VI, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 29; Ms Cathy Cato, Chief Executive Officer and General Counsel, VI, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 29.

<sup>67</sup> VI, *Annual report 2021–22*, Melbourne, 2022, pp. 23, 38–39.

<sup>68</sup> *VI Act 2011* (Vic) ss 40A, 42AA, 42C.

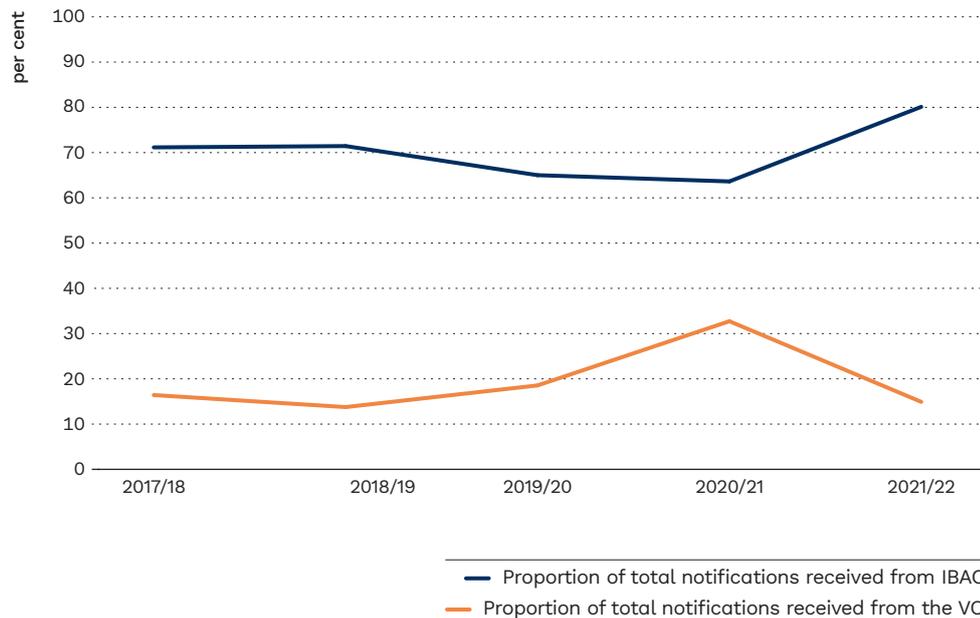
<sup>69</sup> VI, *Annual report 2021–22*, Melbourne, 2022, pp. 5, 23.

<sup>70</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 1; VI *Annual report 2021–22*, Melbourne, 2022, p. 35–37.

<sup>71</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 4; VI *Annual report 2021–22*, Melbourne, 2022, p. 35–37.

<sup>72</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, pp. 1, 4; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 35–37.

**Figure 4.11 IBAC and VO notifications as a proportion of total coercive power notifications received by the VI in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2021–22*, Melbourne, 2022, pp. 25, 38.

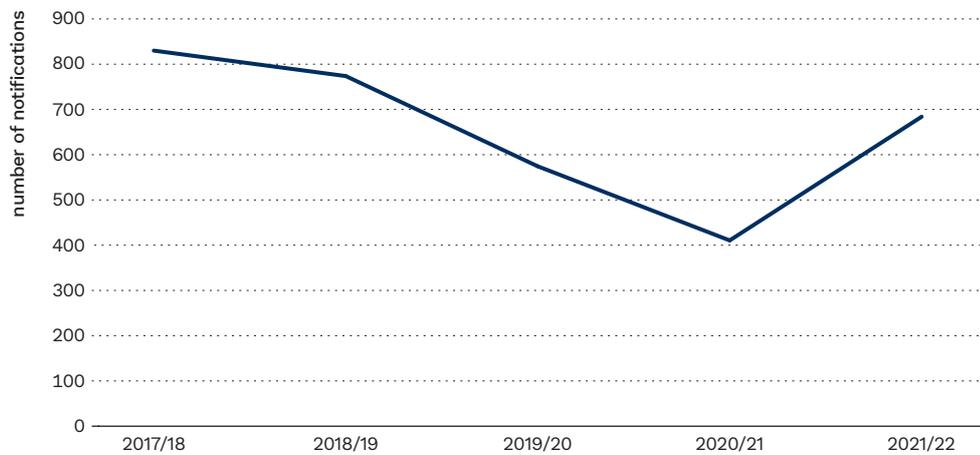
The VI received 277 more coercive power notifications from IBAC in 2021/22 than in 2020/21, attributable to large increases in notifications relating to the issue and cancellation of confidentiality notices, summonses issued in preliminary inquiries and investigations, and electronic recordings (and transcripts) of private and public examinations. However, this was offset by a 40% decrease in notifications received from the VO in 2021/22 compared with 2020/21, with the steepest declines in notifications relating to the issue of confidentiality notices and summonses and electronic recordings of voluntary and compulsory appearances.<sup>73</sup>

Figures 4.12 and 4.13, below, set out the five-year trends in the volume and types of IBAC notifications to the VI. While the total volume of notifications has declined over time, there has been an upward trajectory since 2020/21 (following a step decline at the height of the COVID-19 pandemic). The overwhelming majority of notifications relate to witness summonses issued in connection with IBAC investigations, and confidentiality notices that have been issued or cancelled, followed by recordings of private and public examinations.<sup>74</sup>

<sup>73</sup> VI, *Annual report 2021–22*, Melbourne, 2022, pp. 36–37.

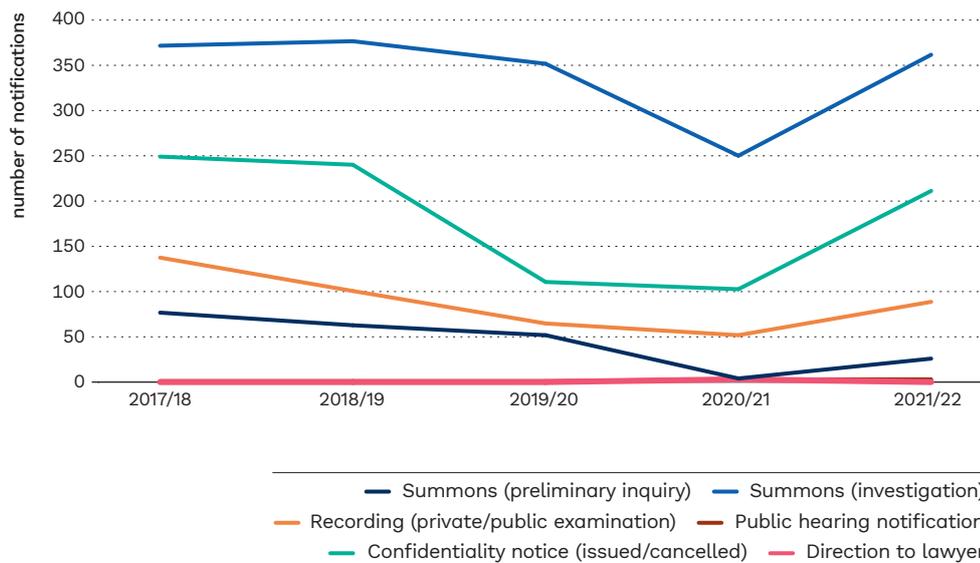
<sup>74</sup> *Ibid.*, p. 37.

**Figure 4.12 IBAC coercive power notifications to the VI in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2021–22*, Melbourne, 2022, p. 38.

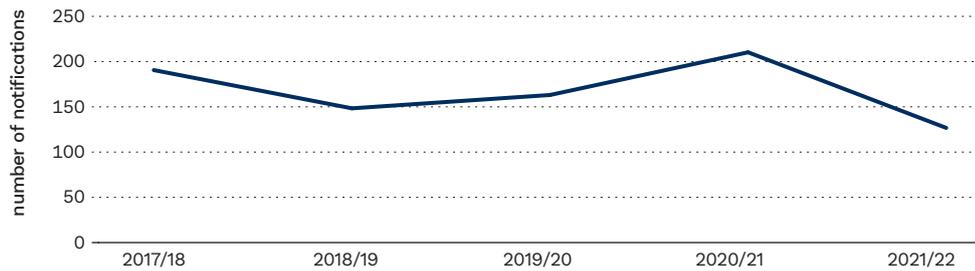
**Figure 4.13 Breakdown of IBAC coercive power notifications to the VI in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2017–2018*, Melbourne, 2018, p. 18; VI, *Annual report 2018–19*, Melbourne, 2019, p. 41; VI, *Annual report 2019–20*, Melbourne, 2020, p. 39; VI, *Annual report 2020–21*, Melbourne, 2021, p. 41; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29, 37; VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 4.

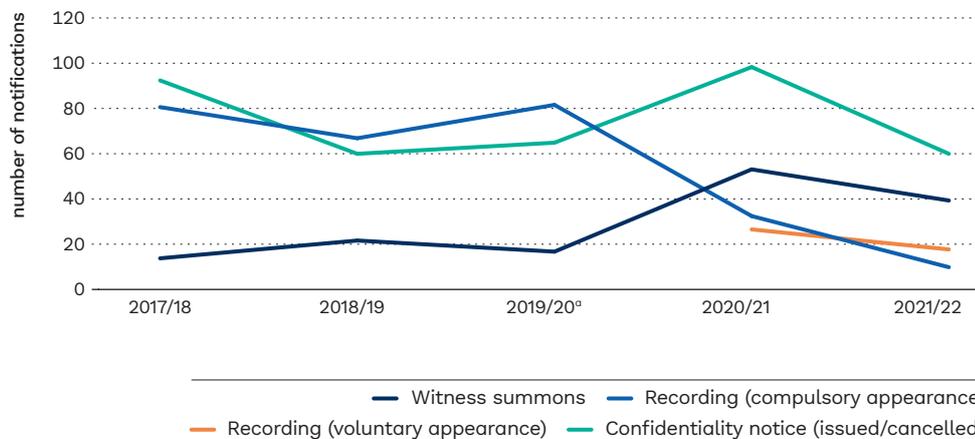
Figures 4.14 and 4.15, below, set out the five-year trends in the volume and types of VO notifications to the VI. The total volume of notifications has declined over time, following a significant increase in 2020/21. The majority of notifications relate to confidentiality notices that have been issued or cancelled. There has been a noticeable decline in notifications relating to recordings of compulsory appearances, which has coincided with a noticeable rise in notifications relating to witness summonses issued.

**Figure 4.14 VO coercive power notifications to the VI in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2021–22*, Melbourne, 2022, p. 38.

**Figure 4.15 Breakdown of VO coercive power notifications to the VI in 2017/18–2021/22**



a. The 'Recording (compulsory appearance)' figure includes recordings of voluntary appearances, which the VI started reporting on separately in 2020/21.

Source: Devised from VI, *Annual report 2017–2018*, Melbourne, 2018, p. 18; VI, *Annual report 2018–19*, Melbourne, 2019, p. 41; VI, *Annual report 2019–20*, Melbourne, 2020, p. 39; VI, *Annual report 2020–21*, Melbourne, 2021, p. 41; VI, *Annual report 2021–22*, Melbourne, 2022, pp. 29, 37; VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 1.

The VI received 32% more coercive power notifications in 2021/22 than in 2020/21 and triaged 100% of the 860 notifications received, more than double the number it triaged in 2020/21 (413). The VI also reviewed 33% (284) of notifications, 51 more than in 2020/21.<sup>75</sup>

Importantly, reviews conducted by the VI of coercive power notifications brought about at least three improvements to the integrity system in 2021/22. The VI reported that, following its review of hearing notifications during IBAC’s Operation Bredbo, IBAC had taken action to implement five VI recommendations made privately to the agency with respect to the criteria for holding public hearings under the *IBAC Act 2011* (Vic). Further, the VI identified and provided feedback on compliance issues with respect to confidentiality notices notified by IBAC, and IBAC duly cancelled and reissued the notices to ensure their validity. Finally, the VI’s triage and review activities resulted in improvements to IBAC’s reporting and quality assurance procedures with respect to the exercise of coercive powers by its officers generally, and to procedural improvements with respect to Victoria Police’s exercise of its powers to apply for

75 Ibid., pp. 25, 39.

covert search warrants under the *Telecommunications (Interception and Access) Act 1979* (Cth).<sup>76</sup>

The Committee notes that the 2021/22 reporting period was the first period in which all notifications were managed through the VI's updated CMS.<sup>77</sup> The Committee will continue to monitor the impact of the VI's CMS on its productivity with respect to its triaging rate, given that the volume of notifications is likely to continue increasing to pre-COVID-19 pandemic levels. However, despite the increase in notifications received in 2021/22, the VI still received 27% fewer notifications than in 2017/18, and 21% fewer than in 2018/19.<sup>78</sup>

Since 2017/18, the VI has made steady progress in its monitoring of coercive power notifications by increasing the proportion of total notifications it triages while maintaining the proportion it reviews, noting:

- in 2017/18, the VI triaged 0% of the notifications received and reviewed 29% (344);
- in 2018/19, it triaged 24% (266) and reviewed 42% (466);
- in 2019/20, it triaged 24% (210) and reviewed 7% (63);
- in 2020/21, it triaged 64% (413) and reviewed 36% (233); and
- in 2021/22, it triaged 100% (860) and reviewed 33% (284).<sup>79</sup>

Figure 4.16, immediately below, shows the trends in these data points.

**Figure 4.16 Proportion of total coercive power notifications received that were triaged and reviewed by the VI in 2017/18–2021/22**



Source: Devised from VI, *Annual report 2021–22*, Melbourne, 2022, p. 25.

<sup>76</sup> Ibid., p. 21.

<sup>77</sup> Ibid., p. 39.

<sup>78</sup> Ibid., p. 25.

<sup>79</sup> Ibid.

## Efficacy of the coercive powers notification and review scheme

At the Committee's public hearing with the VO on 14 August 2023, the Victorian Ombudsman, Ms Deborah Glass OBE, expressed concern about the efficiency and efficacy of the coercive powers notification scheme and the significant impost on her office of making and responding to the VI's oversight of such notifications.<sup>80</sup>

The Ombudsman explained that the scheme creates a significant workload for the VO, which has increased over time as the VI has diverted more resources to monitoring notifications. The Ombudsman's view is that the workload relating to notifications takes resources away from the VO's 'core work' and causes unnecessary delays in the performance of its primary functions. The Ombudsman queried the public utility of the scheme, highlighting that, in 2021/22, despite receiving no complaints about the exercise of its coercive powers, the VO nonetheless made 185 notifications to the VI and responded to the VI's questions and requests for information about them.<sup>81</sup>

The Committee sought information from the VI and the VO to gain a deeper understanding of the need for 'real-time' oversight of coercive power notifications and the work involved in making and responding to coercive power notifications.<sup>82</sup>

The VI emphasised that the exercise of coercive powers is distinguishable from other kinds of administrative decisions because of how they impact the rights of persons subjected to them. For example, confidentiality notices limit the right to freedom of expression under the *Charter of Human Rights and Responsibilities Act 2006* (Vic), while summonses to produce information or attend an examination, which carry criminal penalties for non-compliance, limit the right to privacy, freedom of movement and liberty. Coercive powers are also generally exercised in investigations, which pose unique welfare and reputational risks to those involved.<sup>83</sup>

Consequently, the VI expressed its view on the need for oversight of the exercise of coercive powers as follows:

A decision to exercise a coercive power, with the attendant human rights impacts and welfare risks ... is such a special kind of administrative decision that in a society governed by the rule of law it ought to be subject to oversight by an independent body. Unless there is a requirement to notify the VI about the exercise of such a power, the only way in which the VI will become aware of it is if the person who is the subject of the power makes a complaint to the VI or the VI becomes aware of it when conducting a monitoring project on particular actions of an agency. Those limited circumstances do not provide for proper accountability and would result in many, if not most, exercises of coercive power not being independently reviewed.<sup>84</sup>

<sup>80</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 2–4, 8.

<sup>81</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 2–3 (quoted text); VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 3.

<sup>82</sup> Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Eamonn Moran PSM KC, Inspector, VI, correspondence, 23 August 2023, p. 2; Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Deborah Glass OBE, Ombudsman, VO, correspondence, 23 August 2023, p. 2.

<sup>83</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, pp. 6–7.

<sup>84</sup> Ibid.

The VI also said that the real-time oversight made possible by the current notification scheme allows the VI to take practical steps to remedy issues with the agencies' exercise of coercive powers that mitigate the risks to those agencies. For example, the ability to identify and take timely action in relation to matters such as non-compliance with legislative requirements or technical or drafting deficiencies in notices, and protecting persons from the unlawful exercise of coercive powers.<sup>85</sup>

The VI emphasised that the general focus of its review work is identifying thematic monitoring issues across notifications that may pose an issue for the VO in terms of its systemic policies, procedures and practices, and that this is reflected in its approach to seeking information and giving feedback to the VO on its notifications.<sup>86</sup>

The VI informed the Committee that, of the 66 reviews conducted of the 129 notifications received from the VO in 2021/22, it:

- took monitoring action in respect of nine 'recurring' themes observed across 22 notifications to determine whether there were 'systemic issues' warranting formal feedback;
- provided formal feedback to the VO on a monitoring issue in one notification; and
- provided observations to the VO in respect of monitoring themes identified across 12 notifications.<sup>87</sup>

The VI acknowledged that it reviewed a significantly higher proportion of the VO's notifications in 2020/21 (149 or 69%) than in 2021/22 (51% or 66). The VI explained that this resulted from the agency diverting additional resources to monitoring VO notifications during the COVID-19 lockdowns because, unlike IBAC notifications, VI staff were able to access them remotely due to their 'lower security classification'.<sup>88</sup>

In 2021/22, the VI also finalised work on a 'review project' commenced in 2020/21.<sup>89</sup> The VI had identified thematic monitoring issues across 21 notifications of voluntary and compulsory appearances received in 2020/21. The issues related to witness welfare, interviewing techniques and management of complex and large-scale investigations. The VI provided formal feedback to the VO on these issues to help it improve its investigation practices and procedures. The VI reported that the VO had improved its investigation planning processes, focusing on the importance of 'project management and case management workflows' and introduced additional training for its investigators on 'interviewing skills and techniques'.<sup>90</sup>

<sup>85</sup> Ibid., p. 7.

<sup>86</sup> Ibid., p. 2.

<sup>87</sup> Ibid., p. 2.

<sup>88</sup> Ibid., p. 1.

<sup>89</sup> Ibid., p. 2.

<sup>90</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 2; VI, *Annual report 2021-22*, Melbourne, 2022, pp. 21, 57.

By comparison, the VI reviewed 17% (72) of the 416 notifications it received from IBAC in 2020/21, and 26% (179) of the 693 it received from IBAC in 2021/22, noting that IBAC notifications were only able to be accessed on site during the lockdowns.<sup>91</sup>

In 2021/22, the VI requested information and/or provided feedback to IBAC in 55 of the notifications it reviewed, including in 18 individual notifications (with some requiring urgent action), and in respect of thematic monitoring issues identified across 42 notifications. The VI additionally raised minor administrative matters identified during the triaging process (for example, missing documents or minor ambiguities).<sup>92</sup>

The VI continues to escalate and correspond with the VO and IBAC on matters involving serious or time-sensitive compliance issues or requiring ongoing engagement with the agency. However, in early 2023, the VI implemented a new reporting model for notifications received from these agencies (the new model). Under the new model, the VI reports monthly to the VO and IBAC on ‘compliance issues and feedback’, rather than raising issues individually, and provides them with an opportunity to respond. The VI intends to start publishing high-level summaries of these reports in its annual reporting from 2023/24 onwards.<sup>93</sup>

The VI has acknowledged that, as agencies adjust to the new model, the response process may be more time-consuming, given that they are now required to provide ‘systemic methodology to prevent future errors’ in relation to monitoring issues that have been flagged. However, the VI stressed that when it provides feedback on a compliance issue, it clearly explains its reasons and the steps it considers the agency should take to address or manage the issue, having regard to the effectiveness of the agency’s policies, procedures and practices from an oversight perspective. The VI also considers that the new model is the best way to improve agency compliance.<sup>94</sup>

Given the Ombudsman’s publicly expressed concern about the burden of the VI’s ‘multiple requests for information’ in relation to notifications made by the VO, and of the ‘considerable resources ... spent responding’,<sup>95</sup> the Committee sought data from the VO regarding:

- the number of requests for additional information that the VI made of the VO in 2021/22 in relation to the reviews it conducted of VO notifications, and how this compared to previous reporting periods;
- the impost on the VO in 2021/22 of responding to reviews conducted by the VI of its notifications; and
- the proportion of 2021/22 reviews in which the VI provided feedback to the VO on issues identified.<sup>96</sup>

<sup>91</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 5.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid., p. 3.

<sup>94</sup> Ibid.

<sup>95</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, 14 August 2023, *Transcript of evidence*, p. 2.

<sup>96</sup> Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Ms Deborah Glass OBE, Ombudsman, VO, correspondence, 23 August 2023, p. 2.

While the VO acknowledged the need for effective oversight of its exercise of coercive powers, it considers that the current notification scheme is neither an effective nor an efficient way of overseeing its operations.<sup>97</sup>

The VO does not consider that the enquiries it receives from the VI in relation to its triaging and review of notifications are ‘targeted’ or ‘proportionate’.<sup>98</sup> For example, the VO informed the Committee that between November 2022, when the VI introduced the new model, and May 2023, ‘the VI provided 59 pages of feedback, referencing some 70 per cent of notifications made in that period’.<sup>99</sup> Additionally, the VI’s most recent monthly report made references to *all* notifications made, indicating that they are ‘now being reviewed as a matter of course’.<sup>100</sup>

Moreover, the VO does not consider that the feedback and recommendations received from the VI in relation to its notifications result in meaningful or significant changes to its operational procedures and practices, noting that, in its view,

the overwhelming majority are trivial or technical in nature ... which would likely have been picked up through ... [the VO’s] internal quality assurance and training programs ... [and] frequently relate to improving compliance with the VI’s own notification requirements rather than ... [the VO’s exercise] of coercive powers.<sup>101</sup>

To illustrate the point, the Ombudsman provided an overview of the workload associated with responding to the VI’s triaging and review of notifications made in connection with a group of investigations conducted by the VO in 2021. The Ombudsman explained that the VI’s requests for information and suggestions for improvements ran to 54 pages, even though, to the VO’s knowledge, no complaints had been made by witnesses about their interactions with the agency.<sup>102</sup> This included questions about the way in which some legally represented witnesses had been questioned and comments about the ‘demeanour and body language’ of interviewers, despite no issues having been raised by the interviewees or their legal representatives at interview. The VI also made 97 comments on, and suggested revisions to, aspects of the VO’s operational procedures—the vast majority of which were disregarded by the VO because, in its view, they either did not justify changes being made, were stylistic in nature, or were based on a misunderstanding of the VO’s functions and powers under its Act.<sup>103</sup> In the VO’s view, the fact that the VI’s real-time monitoring of these particular notifications resulted in ‘four minor changes’ to the VO’s operational procedures, is demonstrative of the lack of proportionality and value of this kind of oversight work.<sup>104</sup>

<sup>97</sup> Ms Deborah Glass OBE, Ombudsman, VO, to Integrity and Oversight Committee, correspondence, 21 August 2023, p. 3.

<sup>98</sup> *Ibid.*, p. 1.

<sup>99</sup> VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 3.

<sup>100</sup> *Ibid.*

<sup>101</sup> Ms Deborah Glass OBE, Ombudsman, VO, to Integrity and Oversight Committee, correspondence, 21 August 2023, p. 2.

<sup>102</sup> *Ibid.*, p. 2.

<sup>103</sup> *Ibid.*, pp. 2–3.

<sup>104</sup> *Ibid.*

The VO highlighted that there are workable alternatives that would, in the Ombudsman's view, allow more meaningful oversight of the agency's exercise of coercive powers:

There are multiple alternatives available to the VI to carry out effective oversight. The office can request documents and information from my office at any time and for any reason relevant to its oversight function. Among other things, it can carry out a thematic inspection of my office's use of coercive powers. Removing the requirement for routine notification would not compromise oversight, but it would save significant resources in both agencies.

It is also worth noting that in no other Ombudsman, State or Federal, jurisdiction in Australia and New Zealand (all of whom have similar coercive powers) is there a similar oversight regime to the VI. Oversight is conducted, usually on a yearly basis, by Parliamentary Committees.<sup>105</sup>

The VO has suggested that if ss 18D<sup>106</sup> and 26E<sup>107</sup> of the *Ombudsman Act 1973* (Vic) were repealed, the VI would still have the capacity to effectively monitor the VO's exercise of coercive powers through s 11(4)<sup>108</sup> of the *VI Act 2011* (Vic), including the discretionary power to conduct thematic reviews. Alternatively, the VO considers that the notifications provisions could be replaced entirely by a requirement for the VI to undertake annual audits or reviews of the VO's exercise of coercive powers.<sup>109</sup>

The Committee notes the VI's and VO's contending views on the coercive powers notification and review scheme. While the Committee recognises the unique impact of the exercise of coercive powers on persons' human rights and welfare, and therefore the need for independent oversight of their exercise, it also recognises the heavy burden placed on the VO in responding to the VI's review of its coercive power notifications.

The Committee is also concerned by the VO's claims that the VI's coercive power reviews might not always be proportionate or result in improvements to either the VO's operation, or the integrity system more generally, that would justify the burden placed on the VO. Significantly, the VO has claimed that its work in responding to VI feedback on its coercive power notifications diverts resources from its core functions. On the other hand, the Committee notes the VI's argument that all exercises of coercive powers need to be independently oversights, and that oversight should not be confined to cases where there has been a formal complaint about an agency's coercive power, since this would be a partial and unreliable approach to take.

<sup>105</sup> VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 2.

<sup>106</sup> Under s 18D of the *Ombudsman Act 1973* (Vic), the VO is required to notify the VI of the issue of a witness summons, including the person's name and the reasons for issuing the summons.

<sup>107</sup> Under s 26E of the *Ombudsman Act 1973* (Vic), the VO is required to provide the VI with copies of confidentiality notices issued or cancelled, or, in the case of notices extended by order of the Supreme Court, copies of the application and order.

<sup>108</sup> Under s 11(4) of the *VI Act 2011* (Vic) (and s 43(5)-(6)), the VI can monitor the VO's exercise of coercive powers and its compliance with statutory procedural fairness requirements in relation to its enquiries, investigations, reports and recommendations. The VI can also receive, investigate, report on and make recommendations in respect of complaints about the conduct of VO officers, namely, their exercise of coercive powers and compliance with statutory procedural fairness requirements in the performance of their duties.

<sup>109</sup> VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 2.

In examining this area, the Committee notes that the requirement under relevant legislation for integrity agencies, including the VO, to notify all exercises of coercive powers to the VI for review, creates a heavy workload—not only the oversight agencies but for the VI itself. This raises the question of how much time and resources the VI itself should allocate to this function compared with its other functions, such as complaint handling and investigations. In particular, the Committee notes that the data analysed in this chapter demonstrates that VI delay in finalising complaints is a significant ongoing issue, with an ever-increasing volume and complexity of complaints and a backlog that the VI has been unable to clear, and which, under present conditions, it has little prospect of clearing.

The Committee emphasises, however, in the strongest terms, its recognition of the intrusive nature of coercive powers, which impact on the human rights, and potentially welfare, of those subject to them. Given the distinctive nature and impact of these powers, the Committee stresses the vital need for their exercise to be subject to robust, independent oversight. This was acknowledged by Acting Commissioner Farrow on behalf of IBAC, who informed the Committee that given the ‘very significant’ coercive powers the agency exercises, ‘it is appropriate that we are subject to external, independent oversight.’<sup>110</sup>

Given the Committee’s concerns over the effectiveness and efficiency of the current coercive powers notification and review scheme, and the contending views of the VO and the VI, it considers that a comprehensive review of the scheme is warranted. This will help ensure that the integrity agencies’ exercise of coercive powers is effectively oversights.

**RECOMMENDATION 10:** That, following consultation with the integrity agencies, the Victorian Government review the effectiveness and efficiency of the coercive powers notification scheme, including the requirement that all exercises of coercive powers be notified to the Victorian Inspectorate (VI).

This includes:

- what kinds of matters must or may be notified to the VI
- what kinds of matters must or may be reviewed by the VI
- an examination of the merits of complementary or alternative review measures (such as audits of coercive power notifications).

In making this recommendation, the Committee emphasises the importance of robust, independent oversight of integrity agencies’ use of coercive powers given their impact on the human rights of persons subject to them.

<sup>110</sup> Mr Stephen Farrow, Acting Commissioner, IBAC, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 13–14.

## 4.5 Inspections

The VI has an inspections function as part of its oversight of controlled (‘undercover’) operations, interceptions of telecommunications, the employment of surveillance devices, and the exercise of counter-terrorism powers.<sup>111</sup> The VI oversees a number of bodies in this regard, such as IBAC and Victoria Police, through:

- Inspecting records of relevant bodies;
- Responding to identified issues, including making formal findings of non-compliance and recommendations to prevent breaches of the law; and
- Reporting the outcomes of the VI’s inspections to chief officers of bodies and Ministers, and to Parliament ...<sup>112</sup>

Regarding telecommunications interceptions, in 2021/22 the VI ‘made two regular reports, one each for Victoria Police and IBAC’, as well as another report ‘with respect to its findings from an irregular inspection of IBAC records’ it had conducted in 2020/21.<sup>113</sup> In the latter report, the VI made five process-based recommendations to IBAC, all of which were accepted by the agency.<sup>114</sup>

With respect to surveillance devices, Victoria Police and IBAC may ‘apply for warrants to use optical, listening, tracking and data surveillance devices’ in order to investigate offences.<sup>115</sup> The VI’s oversight activities in this area included inspection of Victoria Police and IBAC records, and in February 2022 the VI reported on these inspections to Parliament.<sup>116</sup>

In 2021/22, the VI fulfilled its inspection and reporting obligations with respect to the controlled-operation authorities it oversees, including IBAC.<sup>117</sup>

Finally, the VI conducted an inspection of Victoria Police records relating to its counter-terrorism powers, and otherwise fulfilled its reporting obligations under the *Terrorism (Community Protection) Act 2003 (Vic)*.<sup>118</sup>

### 4.5.1 Destruction of documents by IBAC and Victoria Police

The VI has engaged with IBAC and Victoria Police with regard to their processes for the destruction of documents under telecommunications interceptions (TI) and surveillance devices (SD) legislation.<sup>119</sup> This legislation requires ‘certain TI and SD

<sup>111</sup> VI, *Annual report 2021–22*, Melbourne, 2022, p. 41.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*, p. 42.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> VI, Response to Integrity and Oversight Committee questions on notice, 2 June 2023, pp. 7–8.

records to be destroyed once the IBAC Commissioner, Chief Commissioner of Police (CCP) or the chief officer of an agency ... is satisfied that they are no longer required for specified purposes'.<sup>120</sup>

Both IBAC and Victoria Police had, to various degrees, relied on the Carltona principle in authorising the destruction of documents 'as a purely administrative' activity.<sup>121</sup>

The Carltona principle

provides that legislation may allow for an implied authorisation of a person's functions and powers to be undertaken by another person, as a matter of administrative convenience. The Carltona principle is likely to apply in circumstances where: the administrative power is of a more routine nature, the person being authorised is of a high or senior level, and the authorisation is administratively or practically necessary.<sup>122</sup>

The VI does not consider that the destruction of these kinds of records is a 'purely administrative' matter.<sup>123</sup> It considers, instead, that it is preferable if the IBAC Commissioner and CCP exercise 'control' of this activity by having a formal delegation instrument authorising the destruction of records.<sup>124</sup>

The VI considered the application of the Carltona principle by IBAC and Victoria Police for the destruction of TI and SD records. The VI's view is that the destruction of TI and SD records is not purely administrative in nature. It requires that 'an opinion be formed' by the IBAC Commissioner or the CCP as to whether the record is not likely required. In short, there is a degree of control in exercising the power personally. It is only once the opinion is formed that the act of destroying the records could be considered administrative in nature.<sup>125</sup>

Following the VI's engagement with IBAC and Victoria Police, they have agreed to put their record-destruction practices on a footing consistent with the VI's understanding:

IBAC agreed to delegate the Commissioner's powers of destruction under the TISP [*Telecommunications (Interception) (State Provisions) Act 1988* (Vic)] and SD [*Surveillance Devices Act 1999* (Vic)] Acts rather than rely on implied agency (the *Carltona* principle) and advised that appropriate amendments would be made to its procedures for handling and destroying records. This removes any uncertainty inherent in reliance on implied agency.

<sup>120</sup> Ibid., p. 7.

<sup>121</sup> Ibid., pp. 7 (quoted text), 8 ('The VI's correspondence to Victoria Police noted it had a delegation instrument in place for SD records. For TI records, the VI advised Victoria Police that while the use of the Carltona principle can be justified by the high volume of records it is required to destroy, a formal instrument of delegation was preferable.').

<sup>122</sup> VI, Response to Integrity and Oversight Committee questions on notice, 2 June 2023, p. 7. See also *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560.

<sup>123</sup> VI, Response to Integrity and Oversight Committee questions on notice, 2 June 2023, p. 7.

<sup>124</sup> Ibid., pp. 7-8.

<sup>125</sup> Ibid., p. 7.

Victoria Police agreed that it would make a delegation instrument for the destruction of restricted records rather than continuing to rely on the *Carltona* principle.<sup>126</sup>

The Committee is pleased that these enhancements are being made to IBAC and Victoria Police processes for the destruction of TI and SD records when they are no longer required.

## 4.6 Public information and education

In September 2021, the VI, in response to a recommendation from the Committee,<sup>127</sup> appointed a Senior Communications Officer, to enhance its engagement with the Victorian public and other stakeholders.<sup>128</sup>

The VI has also updated its website and ensured that, in particular, it meets ‘accessibility requirements’ in accordance with the Victorian Government’s Single Digital Presence policy.<sup>129</sup>

In the report of its inquiry into the corruption and education functions of Victoria’s integrity agencies, the Committee recommended that the VI develop and roll out better informed and active engagement with the LGBTIQ+ community, culturally and linguistically diverse communities, Aboriginal and Torres Strait Islander communities, people with disability and other vulnerable complainants.<sup>130</sup> Similarly, the Committee recommended that the VI tailor and publish resources for these audiences on its website.<sup>131</sup>

Pleasingly, citing its annual plan for 2022/23, the VI committed to ‘engage with and tailor information for members of the LGBTIQ+ community and other vulnerable complainants, and lawyers representing clients involved in integrity agency investigations’.<sup>132</sup>

With regard to lawyers representing clients involved in an integrity agency investigation, the VI has published a guidance note regarding the conditions under which a lawyer’s notes made during a coercive examination can be removed by an agency.<sup>133</sup>

<sup>126</sup> VI, *Annual report 2021–22*, Melbourne, 2022, p. 22. See also VI, Response to Integrity and Oversight Committee questions on notice, 2 June 2023, p. 8 (‘IBAC accepted the VI’s view that the IBAC Commissioner could delegate the destruction of SD and TI records and committed not to destroy further records until a delegation instrument was in place. The VI sighted the Commissioner’s delegation instrument dated August 2021 at its next inspection of IBAC’s records. ... In July 2021, Victoria Police confirmed that a delegation would be obtained from the CCP for the destruction of TI records.’).

<sup>127</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the performance of Victorian integrity agencies 2017/18–2018/19*, Melbourne, December 2020, pp. 90–91 (Recommendation 6).

<sup>128</sup> VI, *Annual report 2021–22*, Melbourne, 2022, p. 26.

<sup>129</sup> Ibid.

<sup>130</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria’s integrity agencies*, Melbourne, April 2022, pp. 117–120 (Recommendations 9–10).

<sup>131</sup> Ibid., p. 120 (Recommendation 10).

<sup>132</sup> VI, *Annual report 2021–22*, Melbourne, 2022, p. 26.

<sup>133</sup> VI, *Guidance note 1: Can a legal practitioner’s notes be removed after a coercive examination?*, <<https://www.vicinspectorate.vic.gov.au/can-legal-practitioners-notes-be-removed-after-coercive-examination>> accessed 10 July 2023; VI, *Annual report 2021–22*, Melbourne, 2022, p. 26.

In addition to these initiatives, during 2021/22 the VI gave a range of presentations to bodies such as Wage Inspectorate Victoria, on the VI's oversight functions, and to OVIC on witness welfare management. It also participated in Victoria Law Foundation's annual Law Week, giving a seminar on public sector integrity.<sup>134</sup>

## 4.7 Governance and workplace

### 4.7.1 Information management and security

At the request of the Committee, the VI provided an extensive overview of the information management and security principles, procedures, processes and practices it has in place to minimise the risk of improper disclosure of confidential and sensitive information held by the agency.<sup>135</sup>

The VI's approach to information management is guided by its Security Governance Framework. The Framework is supported by the agency's Security Governance Committee, which has responsibility for overseeing its security management, and by its Senior Governance Officer and Fraud and Corruption Control Officer, Information and Records Manager, Manager-IT Systems (who has cybersecurity expertise and experience), and two Privacy Officers (who have legal expertise and experience).<sup>136</sup>

VI staff:

- are subject to rigorous pre-employment screening processes
- are required to take an oath or make an affirmation under s 30 of the *VI Act 2011* (Vic)<sup>137</sup> before commencing their employment, undertaking, among other matters, to comply with their statutory confidentiality obligations
- are required to hold a minimum Negative Vetting Level 1 Security Clearance
- receive comprehensive induction training on the agency's expectations with respect to security, set out in the VI Induction Handbook, including their legal and other obligations with respect to handling (collecting, storing, using and disclosing) sensitive and confidential information, and on the action they are required to take to prevent the loss, misuse or unauthorised access to or disclosure of information
- ongoing security management learning and development through the VI's Security Awareness Program, including external training, internal and external presentations, and resources published on the staff intranet.<sup>138</sup>

<sup>134</sup> VI, *Annual report 2021-22*, Melbourne, 2022, p. 27.

<sup>135</sup> Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Mr Eamonn Moran PSM KC, Inspector, VI, correspondence, 23 August 2023, p. 2; VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, pp. 11-14.

<sup>136</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, pp. 11-12.

<sup>137</sup> *VI Act 2011* (Vic) s 30 (prior to the commencement of their employment, VI staff are required to attest that they 'will faithfully and impartially perform their duties and functions and exercise their powers ... [and] will not disclose, except as authorised or required by law, any information received in the performance of their duties and functions or the exercise of their powers.').

<sup>138</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, pp. 11-13.

The VI's primary IT network is run through Cenitex, which is the network provider for the Victorian Government. Staff access to confidential and sensitive information stored on this network is restricted to information that is directly related to their job role responsibilities; for example, Human Resources (HR) staff only have access to HR-related information. The VI has introduced a two-step printing process for the Cenitex network, which requires staff to print the document from their computer and enter a personalised code at the printer to ensure that printed documents are collected and viewed by their intended recipient. The VI's operational information, such as information relating to its complaint-handling, investigations and monitoring functions, is stored on a separate 'secure air-gapped network' which is not internet-enabled. Authorised access to the secure network is confined to operational staff and the agency's CMS can only be accessed via this network. Similar to the Cenitex network, access to the secure network is restricted to information directly connected to users' work, to ensure that information is only accessed by staff with a 'genuine need to know'. For example, the Legal Services team is only able to access operational matters in which they have direct involvement. Documents can only be printed from this network to secure on-site printers which are similarly not internet-enabled.<sup>139</sup>

Given the VI's small size, there is a Memorandum of Understanding between the agency and the Department of Justice and Community Safety (DJCS) which allows it to use the DJCS's 'corporate systems' (for example, its IT, Finance and HR systems). These systems relate to the VI's Cenitex network rather than its secure network. Consequently, the VI follows the policies and procedures of the DJCS with respect to information security and privacy management for its corporate systems, including the *Use of Technology Policy* and the *Information and Records Management Policy*. The VI also has its own policies with respect to agency-specific requirements, including an *IT Policy* (including *Protective Marking Policy*), *Security Policy*, *Privacy Policy*, and *Fraud, Corruption and Other Losses Policy*. Where appropriate, information security and privacy management has been embedded in the VI's other policies including, for example, in its *Integrity Operations Governance Policy* and *Witness Welfare Policy*.<sup>140</sup>

The VI's *Protective Markings Policy* and Information Asset Register guide staff on correctly classifying information according to its 'Business Impact Level'<sup>141</sup> and managing information according to its classification. All security incidents are recorded in the Security Incidents Register and reported to the VI's Audit and Risk Committee. The Security Governance Committee is responsible for monitoring the Register.<sup>142</sup>

<sup>139</sup> Ibid., p. 12.

<sup>140</sup> Ibid.

<sup>141</sup> See Office of the Victorian Information Commissioner, *Business Impact Level App*, <<https://ovic.vic.gov.au/information-security/business-impact-level-app>> ('Business Impact Levels (BIL) are used to determine the security value of public sector information. BILs describe the potential harm or damage to government operations, organisations or individuals if there were a compromise to the confidentiality, integrity or availability of public sector information.').

<sup>142</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, pp. 12–13.

The VI also has rigorous measures in place with respect to physical aspects of information security, including:

- a floor-plan layout that complies with the requirements of the Australian Government’s Protective Security Policy Framework, including for ‘secure zones’
- swipe-accessible access to restricted areas
- a CCTV system and Type 1A Security Alarm System (high security) with 24/7 monitoring
- staff declaration requirements relating to the physical security of their remote-working environments including, for example, a ‘dedicated lockable office’
- a requirement for all contractors to:
  - hold a Negative Vetting Level 1 Security Clearance or be supervised by someone who does; and
  - sign a deed of confidentiality
- a requirement for the small proportion of specialised contractors to whom operational information may be disclosed, such as external counsel, to take an oath or make an affirmation under s 30 of the *VI Act 2011* (Vic).<sup>143</sup>

The VI monitors the effectiveness of its information security management, in part, through internal and external auditing and ‘compliance reporting’.<sup>144</sup>

The VI is subject to oversight by OVIC with respect to its compliance with the *Privacy and Data Protection Act 2014* (Vic). As required by the Act<sup>145</sup> and the Victorian Protective Data Security Standards (VPDSS), the VI submits Protective Data Security Plans to OVIC biennially, setting out how it will address and comply with the VPDSS, and attests annually to how it has actioned the matters raised in those plans. Further, if a security incident adversely affects the ‘confidentiality, integrity or availability’ of information with a Business Impact Level classification of ‘limited’ or above, the VI must notify OVIC. Pleasingly, the VI informed the Committee that, to date, there has been no need for the agency to make such a notification.<sup>146</sup>

The VI also conducts internal audits to monitor its compliance with internal policies and procedures and relevant statutory obligations and external standards. For example, the agency audited its compliance with the VPDSS, its internal fraud and corruption controls, and privacy management generally, respectively in 2019/20, 2021/22 and 2022/23. The VI informed the Committee that the 2022/23 audit found that the agency was compliant with 44 out of 45 criteria listed in the Privacy Framework Better

<sup>143</sup> Ibid., p. 13–14.

<sup>144</sup> Ibid., p. 14.

<sup>145</sup> *Privacy and Data Protection Act 2014* (Vic) s 89.

<sup>146</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 14.

Practice Assessment Checklist and with all criteria listed in the Information Privacy Principles Assessment Checklist.<sup>147</sup>

## 4.7.2 Workplace culture

The Victorian Public Sector Commission (VPSC) has published the VI's 2021 and 2022 People Matter Survey (PMS) results on its website.<sup>148</sup>

Given the small size of the VI,<sup>149</sup> fluctuations in responses by two or more respondents can have a marked impact on the agency's overall score for a particular question or category. Furthermore, the VI had a very high response rate of 88% of its workforce (21 survey respondents) compared to the 52% rate for its comparator group and the broader Victorian public sector.<sup>150</sup>

Notwithstanding these qualifications, the VI's 2022 PMS results revealed a significant decline in performance across a number of key areas, including with respect to organisational engagement, job satisfaction, workplace stress, and violence and aggression.<sup>151</sup> The results indicated that the VI had further work to do to improve its organisational management of work-related stress, including the quality of the support provided to employees experiencing work-related stress, and its communication regarding psychological safety issues more generally.<sup>152</sup>

Of particular concern to the Committee was the prevalence of VI survey respondents who indicated they were experiencing 'high' to 'severe' work-related stress increased from 22% (approximately 4 respondents) in 2021 to 33% (approximately 7 respondents) in 2022.<sup>153</sup> The 2022 result was higher than the VI's comparator group (20%) and the public sector (25%).<sup>154</sup> The primary causes of work-related stress, workload and time-pressure, were unremarkable given that they were broadly consistent with the results for the VI's comparator group and the Victorian public sector. However, work-related stress due to the management of work increased substantially, from 0% in 2021 to 20% (approximately 4 respondents) in 2022, and was significantly higher than the VI's comparator group and the public sector (12%).<sup>155</sup> This coincided

<sup>147</sup> Ibid.

<sup>148</sup> See Victorian Public Sector Commission (VPSC), *Office of the Victorian Inspectorate 2021 people matter survey results report*, <<https://vpsc.vic.gov.au/wp-content/uploads/2021/11/Office-of-the-Victorian-Inspectorate-Organisation-results-2021.pdf>> accessed 4 August 2023; VPSC, *Office of the Victorian Inspectorate 2022 people matter survey results report*, <<https://vpsc.vic.gov.au/wp-content/uploads/2023/04/Office-of-the-Victorian-Inspectorate-Organisation-results-2022.pdf>> accessed 4 August 2023 ('VI 2022 PMS results').

<sup>149</sup> There were 18 respondents to the VI's 2021 People Matter Survey (PMS) and 21 respondents to the 2022 PMS, constituting 95% and 88% of the agency's entire workforce respectively—VPSC, 'VI 2022 PMS results', p. 8.

<sup>150</sup> VPSC, 'VI 2022 PMS results', p. 8.

<sup>151</sup> Ibid., pp. 10–15, 21.

<sup>152</sup> Ibid., pp. 16, 28, 30, 32, 38, 42–43.

<sup>153</sup> Ibid., p. 15.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid., p. 16.

with significant falls in the level of job satisfaction<sup>156</sup> and engagement<sup>157</sup> reported by VI survey respondents. Additionally, there were declines across ‘safety climate’<sup>158</sup> questions, particularly with respect to senior leaders’ recognition of the importance of psychological health and communication about psychological safety, and their active commitment to stress prevention.<sup>159</sup>

The Committee was also concerned by the increase in the prevalence of workplace violence or aggression, which increased by 24% in 2022 (approximately 5 respondents) and was significantly higher than the VI’s comparator group (4%) and the Victorian public sector (10%).<sup>160</sup> The Committee notes that this PMS category is *not* confined to the behaviour of colleagues, and includes the behaviour of members of the public affecting VI staff in connection with the performance of their duties.<sup>161</sup> The VI considers that staff were subjected to ‘increasingly aggressive’ behaviour in their interactions with complainants in 2022 compared to previous years, and that this may go some way towards explaining the significant increase in workplace violence or aggression in 2022.<sup>162</sup>

The ‘[l]owest scoring questions’ category in the VI’s 2022 PMS results, indicated that the VI may not have been addressing, to survey respondents’ satisfaction, issues with respect to workload, flexible working arrangements, learning and development needs, and safety climate.<sup>163</sup> For example, the VI’s 2022 PMS results revealed that:

- only 43% of VI respondents (approximately 9 people) felt they had enough time to do their job effectively and that their workload was appropriate for their job, substantially below the agency’s comparator group and its 2021 PMS results
- only 52% of VI respondents (approximately 11 people) agreed that all levels of the agency were involved in stress prevention, noting that, while this was on a par with the VI’s comparator group, there was a 20% fall from the VI’s 2021 PMS results
- only 33% of VI respondents (approximately 7 people) had confidence that the VI’s management team would properly consider a flexible working arrangement

<sup>156</sup> The VPSC PMS combined scorecard for ‘satisfaction’ questions provides a high-level snapshot of the level of staff satisfaction with respect to their ‘jobs, work-life balance and career development’—VPSC, ‘VI 2022 PMS results’, pp. 14–15.

<sup>157</sup> The VPSC PMS ‘engagement index [score] ... is a weighting of all [survey] engagement question responses ... [noting that] [h]igh engagement drives greater productivity, employee wellbeing and lower absences, turnover and workplace stress’—VPSC, ‘VI 2022 PMS results’, pp. 10–11.

<sup>158</sup> The VPSC PMS defines ‘[s]afety climate’ as ‘how well staff feel ... [their] organisation supports safety at work ... [noting that a] safe workplace is a key outcome of Leading the way and the Victorian public sector mental health and wellbeing charter’—VPSC, ‘VI 2022 PMS results’, p. 42.

<sup>159</sup> The VI’s combined scorecard for ‘satisfaction’ questions declined by 32% in 2022, and was significantly lower than the VI’s comparator group and the broader Victorian public sector. Similarly, there was a 19% decline in the VI’s ‘engagement index’ score, noting that the VI performed worse than the averages for its comparator group across all engagement questions in 2022 and, compared with 2021, there were falls of between 21%–37% in positive responses to these questions—VPSC, ‘VI 2022 PMS results’, pp. 10–14, 30, 42–43.

<sup>160</sup> *Ibid.*, p. 21.

<sup>161</sup> *Ibid.*, p. 25.

<sup>162</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 20.

<sup>163</sup> VPSC, ‘VI 2022 PMS results’, p. 28.

request, 50% less than in 2021, and significantly lower than the VI's comparator group (84%).<sup>164</sup>

Positively, the VI informed the Committee that it has taken action to understand and address the issues raised in the results of the 2022 PMS. The VI's 2022 PMS results were presented to staff and they were encouraged to report their concerns to management. The VI also sought staff feedback through internally administered 'Survey Monkey surveys' to gain a deeper understanding of the issues raised in the 2022 PMS results and identify the kinds of changes that VI staff wanted the agency to implement.<sup>165</sup>

In the latter part of 2022, the VI rolled out changes to its regular staff meeting, including taking into account the availability of part-time employees when scheduling the meeting. The VI also restructured the meeting by fostering engagement-building activities, providing greater information about learning and development opportunities, and including higher quality and more targeted presentations, such as re-introducing a popular seminar series.<sup>166</sup>

Further, the VI delivered ongoing respectful workplace and sexual harassment presentations to staff. The VI also conducted a learning and development survey of its staff to better understand their needs and goals, introduced a Flexible Working Policy, and is exploring options for remote access to its CMS as part of its ICT Strategy and Roadmap.<sup>167</sup>

Finally, the VI sought to ease workload pressures by creating and filling six additional positions in the period August 2022 to February 2023 and successfully recruiting a person to fill a 'long term legal vacancy'.<sup>168</sup>

The VI surveyed 89% of its workforce in January–February 2023 to assess the impact of these actions, noting that the survey response rate was equivalent to the agency's 2022 PMS response rate.<sup>169</sup> The VI reported that the results of the 2023 Survey revealed significant improvements with respect to engagement and 20% falls in the prevalence of 'high' to 'severe' work-related stress and violence and aggression.<sup>170</sup>

<sup>164</sup> Ibid.

<sup>165</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 20.

<sup>166</sup> Mr Eamonn Moran PSM KC, Acting Inspector, VI, to Mr Gary Maas MP, Chair, Integrity and Oversight Committee, correspondence, 17 March 2023, p. 1; VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 20.

<sup>167</sup> Mr Eamonn Moran PSM KC, Acting Inspector, VI, to Mr Gary Maas MP, Chair, Integrity and Oversight Committee, correspondence, 17 March 2023, pp. 1-2; VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 20.

<sup>168</sup> Mr Eamonn Moran PSM KC, Acting Inspector, VI, to Mr Gary Maas MP, Chair, Integrity and Oversight Committee, correspondence, 17 March 2023, p. 2.

<sup>169</sup> Ibid.

<sup>170</sup> Mr Eamonn Moran PSM KC, Acting Inspector, VI, to Mr Gary Maas MP, Chair, Integrity and Oversight Committee, correspondence, 17 March 2023, p. 2; VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 20.

Positively, the VI informed the Committee that these results were reflected in the VI's 2023 PMS results, with a significant reduction achieved with respect to the incidence of 'high' to 'severe' work-related stress (now down to 11% of staff).<sup>171</sup> While the incidence of workplace violence and aggression increased from the 2023 internal survey, from 4% to 11%, the VI achieved a significant reduction of 13% from the 2022 PMS result. While no formal complaints of internal workplace violence and aggression were received by VI management in 2023, the VI is 'conscious of increasing instances of complainant aggression and abuse'.<sup>172</sup> Given this apparent trend, the Committee considers that, moving forward, it will be important for the VI to ensure it is adequately supporting staff in public-facing complaint-handling roles.

The VI's management team is committed to 'maintaining a strong, positive and healthy culture' and building on the positive changes that have occurred since the 2022 PMS.<sup>173</sup> The Committee will continue to monitor the success of the measures that the VI has implemented to ensure they bring about measurable improvements in the VI's future PMS results.

## 4.8 Accountability

There are a number of accountability mechanisms in place with regard to the performance of the VI, including its performance against Victorian Budget performance measures, commitments in its annual plans, responses to recommendations in independent performance audits, and the IOC's receipt and assessment of complaints about the agency (limited to the identification of potentially systemic performance issues).

### 4.8.1 Performance against 2021/22 Victorian Budget performance measures

There are performance measures for the VI in the 2021/22 BP3, which are set out in Table 4.1, immediately below:<sup>174</sup>

<sup>171</sup> VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, p. 20.

<sup>172</sup> Ibid.

<sup>173</sup> Mr Eamonn Moran PSM KC, Acting Inspector, VI, to Mr Gary Maas MP, Chair, Integrity and Oversight Committee, correspondence, 17 March 2023, p. 2.

<sup>174</sup> VI, *Annual report 2021–22*, Melbourne, 2022, p. 20.

Table 4.1 VI's performance against BP3 performance measures

Performance measures	Unit of measure	2021-22 target	2021-22 actual	Performance variation	Result
<b>Quantity</b>					
Recommendations of the VI accepted by agencies	Per cent	75	79	+5%	✓
Reasons for decisions provided for complaint outcomes	Per cent	100	100	-	✓
<b>Quantity</b>					
Improvements to the integrity system	Number	6	6	-	✓

Note: ✓ Performance target achieved or exceeded.

Source: VI, *Annual report 2021-22*, Melbourne, 2022, p. 20.

As shown above, the VI met its targets of 75% of VI recommendations accepted by agencies it oversees and the provision to complainants of reasons for complaint outcomes in all cases (100%).<sup>175</sup>

The VI also met its requirement of making six improvements to the Victorian integrity system, understood by the VI to mean where the VI's

integrity response to an identified issue has demonstrably influenced an integrity body's conduct in a way that will help to prevent non-compliance.<sup>176</sup>

The VI identified the following six improvements:<sup>177</sup>

1. Reduction in risk of IBAC breaching 'non-disclosure obligations' regarding telephone interceptions
2. IBAC has begun implementing five private recommendations from the VI to lessen the risk of IBAC breaching non-disclosure obligations in the *Telecommunications (Interception and Access) Act 1979* (Cth). This issue was identified by the VI through its inspection of IBAC records on telecommunications interceptions.
3. Improved compliance by IBAC regarding the use of coercive powers
4. IBAC has enhanced its 'reporting and quality assurance' with regard to its use of coercive powers. This issue was identified by the VI through its regular review of IBAC's coercive power notifications.
5. Enhanced quality assurance by Victoria Police regarding its counterterrorism 'covert search warrant applications'.

Victoria Police has implemented two private recommendations regarding its 'quality assurance and procedures' for covert search warrant applications under the

<sup>175</sup> Ibid.

<sup>176</sup> Ibid., p. 21.

<sup>177</sup> Ibid., pp. 21-22.

*Terrorism (Community Protection) Act 2003 (Vic)*. This issue was identified by the VI through its review of Victoria Police coercive power notifications.

6. Better reporting by the VO on statistics, and provision of information to its Audit and Risk Committee

This resulted from the VO's acceptance, in whole or part, of private VI recommendations arising out of a VI investigation.

7. Agencies' improved 'policies, procedures, practices or training'

A number of agencies made improvements in response to VI oversight. Improvements made by IBAC, the VO and OVIC are set out in Box 4.1, below.

8. Improvements in the authorisation processes for IBAC's and Victoria Police's destruction of records

Use of formal authorisation instruments for the destruction of documents rather than reliance on the Carltona principle (see the discussion in Section 4.5.1, above).<sup>178</sup>

#### **Box 4.1 Agencies' improved 'policies, procedures, practices or training' in response to VI oversight**

VO – Improvements for large scale investigations, including investigation planning processes, and investigator training, including skills and techniques

IBAC – Improved a range of procedures, templates and witness welfare handouts relating to the natural justice process in the drafting of special reports and search warrants ...

OVIC – Improvements made to OVIC's coercive powers policy and procedures ...

Source: VI, *Annual report 2021-22*, Melbourne, 2022, p. 21.

### **4.8.2 Performance against the VI's 2021-22 Annual Plan**

Under the *VI Act 2011 (Vic)*, the VI presents a draft annual plan of its work for the coming financial year to the IOC for its consideration. The IOC considers the draft and may provide feedback to the VI, including suggested changes to the plan.<sup>179</sup>

In its 2021/22 annual report, the VI reported on its performance against its *Annual Plan 2021-22*, and, in particular, against its operational and corporate priorities identified in the plan.<sup>180</sup> Table 4.2, immediately below, summarises key aspects of that performance.

<sup>178</sup> Ibid.

<sup>179</sup> *VI Act 2011 (Vic)* s 90B.

<sup>180</sup> VI, *Annual report 2021-22*, Melbourne, 2022, pp. 22-24.

Table 4.2 VI's performance against its *Annual Plan 2021–22*

Priority	Performance
Operational Priority One—Mandatory Functions	<ul style="list-style-type: none"> <li>• Inspections and reporting: all obligations fulfilled</li> <li>• Public interest disclosures: all disclosures assessed under the <i>PID Act 2012 (Vic)</i> except 2, whose assessment was not completed within 2021/22</li> </ul>
Operational Priority Two—Responding to Complaints and Notifications	<ul style="list-style-type: none"> <li>• Complaints: <ul style="list-style-type: none"> <li>– the VI closed 90 complaints, compared with 68 in 2020/21, a 32% improvement in the closure rate, but 83 complaints were still open at the end of 2021/22</li> <li>– the VI did not 'clear the backlog' in complaints attributed to COVID-19 and 'was less successful' than previously in informing complainants about these delays</li> <li>– in response to these challenges, the VI's Annual Plan 2022–23 commits the agency to a new Service Charter, Complaints Framework and more complaint-handling staff (made possible by the May 22 State Budget)</li> </ul> </li> <li>• Coercive power monitoring: <ul style="list-style-type: none"> <li>– the VI received 860 coercive power notifications, which was a 32% increase from the previous financial year</li> <li>– the VI reviewed 284 notifications (33% of the total), including all those from OVIC and those for public hearings</li> </ul> </li> </ul>
Operational Priority Three—Other Monitoring and Review Functions	<ul style="list-style-type: none"> <li>• The VI's Monitoring Projects involve close examination of an agency's policies, procedures and practices, often initiated due to the VI's identification of particular concerns. <ul style="list-style-type: none"> <li>– The VI reported that because of the demands of its investigative workload and complaint handling it did not initiate any 'formal' Monitoring Projects during 2021/22.</li> </ul> </li> </ul>
Corporate Priority One—Key Infrastructure Projects	<ul style="list-style-type: none"> <li>• VI's security system upgraded (September 2021)</li> <li>• Telephony system upgraded (November 2021)</li> <li>• Implementation of new records management system delayed due to corporate-support transition from Department of Premier and Cabinet to Department of Justice and Community Safety, which have different ICT systems</li> </ul>
Corporate Priority Two—Budget Independence	'In the May 2022 State Budget the VI received an increase of \$14.9 million over four years and \$4.817 million ongoing', which the agency reported 'will enable the VI to address many of its resourcing needs'.
Corporate Priority Three—Performance Audit	The VI undertook work in relation to the conduct of the independent performance audit of the agency, which was ongoing at the end of 2021/22.
Corporate Priority Four—Strategic Plan	The Plan was in operation from January 2022 and includes the priorities of increasing community 'knowledge of rights within the integrity system', improving that system and improving 'timeliness and ease of access for integrity participants'.
Corporate Priority Five—ICT Strategy and Roadmap	<ul style="list-style-type: none"> <li>• A new ICT supplier has been secured following a procurement process, and began work in July 2022.</li> <li>• The new ICT Strategy to be completed in 2022/23.</li> </ul>

Source: Adapted from VI, *Annual report 2021–22*, Melbourne, 2022, pp. 12–17 (Monitoring Projects), 20–24, 39, 49, 57.

The VI has performed creditably with regard to inspections and the assessment of disclosures, however the agency recognises the need for improvement in the timeliness of its complaint handling and communication with complainants throughout the process. In this connection, the VI's development of a Service Charter and Complaints Framework are welcome enhancements to the agency's service ethos and accountability measures (see also the detailed analysis in Section 4.2.2 of this chapter). The Committee also acknowledges the VI's completion of important infrastructure projects as well as the launch of its new Strategic Plan.

### 4.8.3 Independent performance audit of the VI

The inaugural independent performance audit of the VI was conducted in 2022 in accordance with s 90D of the *VI Act 2011* (Vic). In its report on the audit, the independent performance auditor made 15 recommendations to the VI.<sup>181</sup> The auditor reported that the VI had accepted 13 recommendations outright and one 'in principle' (Recommendation 5.4(b)), and had advised that it would consider incorporating the remaining recommendation (Recommendation 11.3) into its planning.<sup>182</sup>

The VI provided the Committee with an update on the progress of its implementation of the recommendations and informed the Committee that:

- it has formally engaged with the Department of Justice and Community Safety and the Committee on Recommendation 1.5, noting that the recommendation is directed to the Parliament of Victoria
- it has completely implemented Recommendations 4.3, 5.2, 5.4, 6.3 and 11.9, noting that it:
  - updated its CMS to address Recommendation 4.3;
  - updated its CMS and defined 'complaint allegation outcomes' in its 2022/23 annual report to address Recommendation 5.2;
  - addressed Recommendation 5.4 through reporting in its 2022/23 annual report, updates to its CMS, and its new Complaints Framework (which provides a simplified process for closure of complaints);
  - updated the template for its Investigation Plan in response to Recommendation 6.3; and
  - reviewed and updated its BP3 timeliness performance targets in response to Recommendation 11.9. The VI additionally confirmed that a recent '[p]erformance reporting audit' did not identify any non-compliance issues with respect to the agency's performance measures and the Victorian Government Risk Management Framework.

<sup>181</sup> Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix D (audit of the VI), pp. 13–15.

<sup>182</sup> Ibid.

- work on implementing Recommendation 6.2 is well underway, noting that an investigation manual, which will incorporate a newly developed guideline and associated procedures, is in the final stages of review
- work on implementing Recommendation 10.7 is well underway, noting that the VI:
  - is in the process of finalising its ‘External Communications and Stakeholder Engagement Strategy’, which includes a matrix to assist the agency to analyse how it monitors, informs, satisfies and manages stakeholders;
  - is in the process of finalising individualised plans for communicating and engaging with key stakeholders;
  - intends to implement the recommendations of its ‘website usability project’ in 2023/24 to improve the ‘accessibility, inclusivity and effectiveness’ of its website; and
  - intends to survey stakeholder engagement in the fourth quarter of 2023 (by 31 December).
- work on implementing Recommendations 12.5.1 and 12.6 is well underway, noting that:
  - the principles for the VI’s Strategic Workforce Plan have been settled and the agency intends to finalise the Plan in 2023; and
  - the VI surveyed the agency’s learning and development needs, adopted a new approach to learning and development at staff meetings, and is in the process of developing and embedding a structured learning and development program.
- it has taken Recommendation 11.3 under consideration, noting that it has reviewed the most suitable ‘cost measurement options’ having regard to the size of the VI and its resourcing, and a draft model is under review by the executive.<sup>183</sup>

#### 4.8.4 Complaints about the VI received by the IOC

The IOC is expressly prohibited under s 7(2) of the *Parliamentary Committees Act 2003* (Vic) (*‘PC Act 2003 (Vic)’*) from investigating or reviewing any investigation of any complaint made to the VI. The IOC is further prohibited from reviewing any decision by the VI to investigate, not investigate or discontinue investigating any complaint. In addition, the IOC is not authorised to ‘review any findings, recommendations, determinations or other decisions’ of the VI in relation to a complaint.

The IOC receives complaints about the VI as part of its broad performance-monitoring function under s 7(1) of the *PC Act 2003* (Vic). The Committee’s role in relation to such complaints is to consider whether any aspects of the VI’s handling of a matter raises performance issues that have broader implications for the performance of the agency’s duties and functions at a systemic (that is, agency-wide) level.

<sup>183</sup> Mr Eamonn Moran PSM KC, Acting Inspector, VI, to Mr Gary Maas MP, Chair, Integrity and Oversight Committee, correspondence, 14 March 2023, pp. 1, 4–5; VI, Response to Integrity and Oversight Committee questions on notice, 8 September 2023, pp. 17–18.

In 2021/22, the IOC received 6 complaints about the VI within the Committee's jurisdiction and finalised 3 (which included one complaint received in 2020/21). The majority of complaints related to the VI's delay in finalising an originating complaint and complaint outcome decisions. Table 4.3, below, sets out the VI complaints received and finalised in 2021/22 and the complaint outcomes of complaints finalised in 2021/22.

**Table 4.3 VI complaints received and finalised by the IOC in 2021/22**

Within jurisdiction	6
Complaints received in 2020/21 and finalised in 2021/22	1
Complaints received and finalised in 2021/22	2
Complaints received in 2021/22 and finalised in 2022/23	4
Closed, following enquiries	7
Systemic performance issues identified	0

Source: Devised from IOC complaints data.

## 4.9 Conclusion

The VI has accepted, and made significant progress in implementing, the vast majority of recommendations in the IOC's corruption prevention and education inquiry report and 2020/21 performance report, as well as the audit report of the inaugural independent performance audit of the VI. The Committee also acknowledges the VI's conscientious implementation of the Committee's witness welfare management recommendations and the agency's steadfast leadership in this area.

The VI continues to struggle to respond to its increasing complaints workload, noting that it received 27% more complaints and notifications in 2021/22 than in 2020/21, and delay in finalising complaints remains a significant ongoing issue for the agency. However, since 2021/22, the VI has taken significant action to improve its timeliness in finalising complaints and has made modest progress in increasing the number of complaints it finalises annually. The VI has new timeliness performance targets with respect to its triaging and allocation of complaints and finalisation of high complexity complaints. The Committee will continue to monitor the VI's timeliness in finalising complaints and the success of the measures it has implemented to address timeliness. This will include monitoring of the agency's compliance with its new BP3 performance targets and complaint-handling Service Charter.

The Committee acknowledges the work that the VI has done to address the issues raised in its 2022 PMS results, and is encouraged by the early progress it has made in reducing the incidence of 'high' to 'severe' work-related stress and bullying and sexual harassment. The Committee considers that the VI still has further work to do to encourage formal reporting of internal workplace violence and aggression and to adequately support staff in public-facing complaint-handling roles.

# Chapter 5

## Victorian Ombudsman

### 5.1 Introduction

The Victorian Ombudsman (VO) is an independent officer of the Parliament of Victoria appointed under s 3 of the *Ombudsman Act 1973* (Vic) to enquire into or investigate complaints about the administrative actions of Victorian government authorities. The VO's jurisdiction includes the actions of government departments, statutory bodies, local governments and private entities performing functions on behalf of the government.<sup>1</sup>

The Ombudsman can conduct 'enquiries' or investigations in response to the receipt of a complaint<sup>2</sup> or use its 'own motion' powers.<sup>3</sup> It must investigate a public interest complaint<sup>4</sup> and may investigate a 'complaint' or 'notification', as defined in the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)'), that has been referred by the Independent Broad-based Anti-corruption Commission (IBAC).<sup>5</sup> The Ombudsman must also investigate matters referred by the Victorian Parliament, other than those which concern a judicial proceeding.<sup>6</sup>

This chapter reviews the performance of the VO in 2021/22 with respect to the following areas: complaint handling and investigations; engagement and education; governance and workplace; and accountability.

### 5.2 Complaint handling and investigations

#### 5.2.1 Complaint handling

##### Overview

The VO has observed that complaints are their 'core business'.<sup>7</sup> In 2021/22, the VO received a record 18,889 complaints within their jurisdiction, an increase of 4.6% on

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1 *Ombudsman Act 1973* (Vic) s 13. See also Column 1 of Schedule 1 for a list of the 'specified' entities that fall under the definition of an 'authority' in s 2 of the Act.

2 *Ombudsman Act 1973* (Vic) ss 13–13A, 15B.

3 *Ombudsman Act 1973* (Vic) s 16A.

4 *Ombudsman Act 1973* (Vic) s 15C, subject to the exceptions in ss 15D and 15E.

5 *Ombudsman Act 1973* (Vic) ss 15B, 16C–16D; *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act 2011* (Vic)') s 73.

6 *Ombudsman Act 1973* (Vic) s 16 (Legislative Council or committee thereof, Legislative Assembly or committee thereof or joint committee of both Houses).

7 VO, *2022 annual report*, Melbourne, 2022, p. 26.

the preceding year.<sup>8</sup> This included 6,666 complaints made through the VO's online complaint form, a 14% increase on the preceding year, and 17,111 phone contacts, also a 14% increase.<sup>9</sup> The VO noted that increased use 'of these targeted complaints channels can help us respond to complaints more efficiently'.<sup>10</sup> Happily, over 90% of jurisdictional complaints received were finalised 'within 30 days' and more than 5000 complaints were resolved informally, without the need for the VO to launch a formal investigation. The VO obtained meaningful outcomes for complainants in the matters that were resolved informally (including through organisations the subject of complaints communicating with complainants on issues in dispute, providing apologies, or waiving fees or issuing refunds).<sup>11</sup>

The bodies most subject to complaints were local councils and prisons and, across all complaints made to the VO, the chief issue complained about was lack of any response from a body or delayed communication, including correspondence.<sup>12</sup> Encouragingly, the Ombudsman did note, however, that

complaints about local councils' complaint handling look to be trending down—possibly, an indication that our many years of work with local councils, including training, reports about complaint handling, and good practice guides are bearing fruit.<sup>13</sup>

The VO reports that it adapted effectively to the demands of the COVID-19 environment by continuing to provide complainants with a variety of ways to make a complaint and contact the VO's office:

Our streamlined online complaints process continued to be an effective way to lodge a complaint.

We operated without any significant impacts to our contactable hours for the entire 2022 financial year and piloted a program of extended hours of service from 7 am to 6:30 pm.<sup>14</sup>

The Committee acknowledges the resilience and adaptability of the VO in continuing to operate these services in a difficult period. In this context, in terms of timeliness, it is also pleasing that the VO reports that it closed 91.4% of jurisdictional complaints within 30 days.<sup>15</sup>

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<sup>8</sup> Ibid., pp. 4, 6.

<sup>9</sup> Ibid., p. 18.

<sup>10</sup> Ibid.

<sup>11</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 2; VO, *2022 annual report*, Melbourne, 2022, pp. 29–30.

<sup>12</sup> VO, *2022 annual report*, Melbourne, 2022, pp. 5, 7, 27, 29.

<sup>13</sup> Ibid., p. 7.

<sup>14</sup> Ibid., p. 20.

<sup>15</sup> Ibid., p. 18.

## Early resolution

During 2021/22, the VO continued to enjoy success with early resolution of complaints.<sup>16</sup> The agency's Early Resolution Team handles around 90% of 'contacts' with the VO, and the agency resolved more than '5,000 issues without a formal investigation' being needed.<sup>17</sup> As the VO reported:

Most of the complaints to the office were closed within 30 days; ending, at times, long and protracted disputes between complainants and departments.

Through the informal and efficient resolution of complaints, the public experiences the benefits of our intervention and agencies are given opportunities to improve their practices.<sup>18</sup>

The rationale for early resolution is to resolve complaints as soon as possible to prevent manageable issues from becoming larger and more complex disputes.<sup>19</sup> The VO uses a range of measures to resolve complaints, including facilitating contact between the public body subject of a complaint and the complainant, when, for example, there has been no response (or an unreasonably delayed response) to the complainant.<sup>20</sup> Sometimes the VO seeks an explanation from a public body for their decision-making, which can be enough to resolve a dispute.<sup>21</sup> At other times, the VO may suggest a solution:

We might make proposals if we consider the organisation's actions have been unfair or unreasonable and when there is a practical outcome that can be achieved.<sup>22</sup>

'Direct action' is the most common way complaints are resolved early, which might be accomplished through a public body remedying the problem or providing satisfactory reasons for its decision on a matter.<sup>23</sup> Public bodies agreed to direct action in 3,779 instances in 2021/22.<sup>24</sup>

The VO has found that verbal engagement with respondent organisations, for example through virtual or in-person meetings or its conciliation function, is often more effective in resolving complaints than conducting formal written enquiries, which can hamper respondents' preparedness to engage. Consequently, the VO ensures that its formal enquiries are 'targeted', 'proportionate' and do not place too great a burden on the respondent.<sup>25</sup>

<sup>16</sup> Ibid., pp. 26, 29.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid., p. 29.

<sup>19</sup> Ibid., p. 26.

<sup>20</sup> Ibid., pp. 26, 29.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid., pp. 26 (quoted text), 29.

<sup>23</sup> Ibid., p. 29.

<sup>24</sup> Ibid., p. 30.

<sup>25</sup> VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, pp. 5, 6 (quoted text).

The VO also finalised 105 public interest complaint referrals from IBAC in 2021/22, mostly using its recently introduced enquiry powers rather than formally investigating them.<sup>26</sup>

## Conciliation

Another complaint-handling tool available to the VO is the alternative dispute resolution (ADR) method of conciliation.<sup>27</sup> During the year under review, the VO publicised its conciliation function and continued to build its skill and capacity in exercising it.<sup>28</sup> The VO has reported that it has a ‘resolution rate’ of over 90% for complaints it conciliates and has had particular success in resolving local council and public housing complaints through its conciliation function.<sup>29</sup> The agency has noted that, ‘Conciliation is fast becoming an integral tool in our complaint resolution toolkit’.<sup>30</sup> As the Ombudsman has elaborated:

Conciliation is voluntary for both parties, and much of the first year [of having the power] was spent raising awareness among agencies to encourage participation. I am happy to report this has borne fruit. Conciliation is now a very effective tool in the Ombudsman’s toolkit and is increasingly being used to resolve longstanding and previously intractable complaints, to the mutual benefit of complainants and agencies. It is proving particularly effective with local councils and public housing complaints, where there is an ongoing relationship between the parties.<sup>31</sup>

Conciliation can be employed throughout the complaint-handling life cycle from receipt, assessment, early resolution and even during an investigation.<sup>32</sup> Conciliation is considered by the VO to be particularly useful resolution option when:

- it may be detrimental for the parties to continue to disagree about the issues in dispute
- there is a notable imbalance of power between the parties
- there is an ongoing relationship between the complainant and the organisation, and both parties may benefit from the process.<sup>33</sup>

For a useful account of what the VO’s conciliation practice involves, see Box 5.1, below.

<sup>26</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 2.

<sup>27</sup> VO, *2022 annual report*, Melbourne, 2022, p. 42.

<sup>28</sup> Ibid.

<sup>29</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 4 (quoted text); Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 2.

<sup>30</sup> VO, *2022 annual report*, Melbourne, 2022, p. 42.

<sup>31</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 2.

<sup>32</sup> VO, *2022 annual report*, Melbourne, 2022, p. 42.

<sup>33</sup> Ibid.

**Box 5.1 VO conciliation.**

During conciliation, our conciliators evaluate both parties' positions, while giving advice and suggesting options for resolution. Conciliators can:

- offer a controlled and confidential environment, in which parties agree to rules of respectful engagement
- help the parties 'cut to the chase' to achieve a speedy resolution
- give parties an opportunity to explain what has happened and what they think is a fair outcome to the complaint
- enlighten and allow parties to appreciate each other's viewpoints.

Source: VO, *2022 annual report*, Melbourne, 2022, p. 42.

'Common remedies' arising out of VO conciliation with public sector bodies include:

- re-establishing communication
- apologising
- fixing the problem
- committing to review or change policies/procedures
- agreeing to further investigate issues raised in the complaint
- acknowledging the impact of their decisions
- offering an *ex gratia* payment.<sup>34</sup>

However, the VO has observed that conciliation is not always appropriate.<sup>35</sup>

For example, conciliation will not be tried where parties hold intransigent positions and are closed-off to resolving the complaint; where there is a public interest for the VO to take a more formal approach (for example, through an investigation, report and recommendations); or where, in all the circumstances, the agency's use of 'further resources' on the matter is unwarranted.<sup>36</sup>

It should also be noted that the VO is not authorised to 'conciliate public interest disclosure matters' (whistleblower complaints), though it supports legislative amendment to allow it to do so.<sup>37</sup> In a recent report, the Committee recommended that the Government consider the merits of a such an amendment.<sup>38</sup> The Victorian Government has responded that it 'supports in full the [Committee's] recommendation

<sup>34</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 4.

<sup>35</sup> Ibid., p. 5.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 173-174 (Recommendation 16).

... [and] will examine the merits of the amendment in consultation with the Victorian Ombudsman and other stakeholders'.<sup>39</sup> The Committee welcomes this response, and will be interested to learn the outcome of the Government's examination of the merits of the proposed amendment.

Positively, the feedback received by the VO from respondent organisations who have participated in the conciliation process to date has been overwhelmingly positive, indicating that they view the process as being 'an efficient, fair and objective way of resolving complaints' and of fostering a constructive working relationship with the complainants moving forward.<sup>40</sup>

## Data collection and analysis

In order to better understand the motivation and behaviour of complainants who complain to the VO on more than one occasion, the Committee asked what broad data the agency collects and analyses regarding this cohort (for example, type of complaint, agencies complained about, complaint outcome, etc.).<sup>41</sup>

This is relevant both to the identification of potentially systemic problems that might lie behind multiple complaints from a complainant (for example, a systemic complaint-handling deficiency at a public sector body), as well as to the identification and management of any unreasonable complainant expectations and behaviour that may become challenging for the VO ('complex behaviour').<sup>42</sup>

While the VO's response did not address the Committee's question about data at the level of type of complaint, subject of complaint or complaint outcome, it did explain that the VO considers data relating to the history of a complaint and complainant conduct (including communications with the agency):

VO can generate and analyse a complainant's history of contact with the office at any time. Specific analysis of repeat complainants can happen when:

- [c]omplainant contacts VO about a closed case, officers are prompted to consider the nature of the contact and whether they need to re-open a matter or commence a new complaint
- [c]omplainant contacts VO about a new matter, officers consider their history of contact before deciding how to log the new approach

<sup>39</sup> Victorian Government, Response to the recommendations made to the Victorian Government by the Integrity and Oversight Committee in its report *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, August 2023, p. 2.

<sup>40</sup> VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 6.

<sup>41</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Ms Deborah Glass OBE, Ombudsman, VO, correspondence, 4 May 2023, p. 3.

<sup>42</sup> See, for example, VO, *Service Delivery Charter*, Melbourne, <<https://www.ombudsman.vic.gov.au/about-us/annual-reports-and-policies/service-delivery-charter>> accessed 8 August 2023 ('As we expect our staff to be courteous and respectful when dealing with you, we expect you to afford our staff the same in return.');

VO, *Policy: Dealing with complex behaviours from members of the public*, Melbourne, 25 May 2018, p. 3 ('complex behaviour' includes 'a wide spectrum of potentially ... challenging behaviour' which may involve, most seriously, 'verbal abuse, threats and violence');

VO, *Policy: Supporting the wellbeing of VO complainants and witnesses (Welfare Policy)*, Melbourne, 6 April 2022. See also VO, *Good practice guide: managing complex complainant behaviour*, Melbourne, 2 February 2022, p. 5.

- [m]anagers conduct 6 monthly reviews of alerts placed on cases when complainants contact VO with unreasonable frequency.<sup>43</sup>

The Committee encourages the VO to consider collecting, analysing and recording data relating to type of complaint, subject of complaint and complaint outcome in order to better understand the motivations and behaviour of complainants who make a series of complaints to the agency, and, therefore, to further enhance the rigour of its already effective approach to complaint handling.

## VO reviews of public sector complaint handling

The VO has the authority to review public sector bodies' complaint practices and procedures<sup>44</sup> in order to improve their complaint handling.<sup>45</sup> The VO can undertake a review on its own motion or in response to a complaint.<sup>46</sup> The VO's complaint handling review policy gives a useful account of the authority and rationales for its reviews:

The Ombudsman has a mandate to improve public sector administration. Receiving and understanding complaints can help an organisation measure its effectiveness in its service delivery ...

Reviewing complaint practices and procedures enables the Ombudsman to assist an authority optimise the value of feedback from complaints to make informed, citizen-focused changes to service delivery and operations. ...

Reviews of complaint practices and procedures comprise a valuable aspect of engaged oversight. Giving a complaint system a health check is a natural applied extension of the Ombudsman's leadership in publishing guides and undertaking public sector education for best practice complaint handling.<sup>47</sup>

In doing so, the VO approaches reviews collaboratively and proportionately, appreciating that there is a range of complaint-handling systems that conform to VO and national and international standards, and that the jurisdiction, size and capacity of the organisation being reviewed needs to be accommodated.<sup>48</sup>

When reviewing an authority's complaint handling practices and procedures, the Ombudsman uses a collaborative approach. The Ombudsman engages with the authority at the outset of the review and adapts the methodology to suit the needs and capabilities of the authority.

<sup>43</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 8.

<sup>44</sup> VO, *Policy: Review of complaint practices and procedures of an authority*, Melbourne, 20 April 2021, especially, pp. 4–5; *Ombudsman Act 1973* (Vic) ss 2A(d), 13D(1)(a)–(b)

<sup>45</sup> VO, *Policy: Review of complaint practices and procedures of an authority*, Melbourne, 20 April 2021, pp. 4–6; VO, *2022 annual report*, Melbourne, 2022, p. 40.

<sup>46</sup> VO, *Policy: Review of complaint practices and procedures of an authority*, Melbourne, 20 April 2021, p. 4; *Ombudsman Act 1973* (Vic) s 13D(1)(a)–(b).

<sup>47</sup> VO, *Policy: Review of complaint practices and procedures of an authority*, Melbourne, 20 April 2021, pp. 4, 6–7.

<sup>48</sup> VO, *Policy: Review of complaint practices and procedures of an authority*, Melbourne, 20 April 2021, pp. 4–6 (citing the VO's 'good practice guides' on complaint handling, Australian/New Zealand Standard, *Guidelines for complaint management in organisations* (AS/NZS 10002: 2014) and International Organization for Standardization, *Quality management—customer satisfaction—Guidelines for complaints handling in organizations* (ISO 10002: 2018)); VO, *2022 annual report*, Melbourne, 2022, p. 40; VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, pp. 5–6.

The methodology applied is also dependent upon the legislative and organisational context of the individual authority. The Ombudsman takes a proportionate approach to fact finding and information-gathering exercises, to match the organisations' operational capacity and complexity. ...

The Ombudsman recognises that there is more than one successful form for a complaint handling system. A review looks at the degree to which the authority's complaint practices and procedures exhibit the core values to which the authority is committed under legislation and policy. For the Victorian state public sector these are responsiveness, integrity, impartiality, accountability, respect, leadership and human rights.<sup>49</sup>

In conducting its reviews, the VO uses a range of established audit tools, such as

- examining VO data on complaints about the organisation being reviewed
- examining the organisation's 'policies, procedures and data'
- consulting with stakeholders to determine the subject and scope of the review
- carrying out surveys of customers and staff
- asking the organisation to undertake a 'self-audit and assessment' with the support of the VO.<sup>50</sup>

In a collaborative and pragmatic spirit, the VO aims, through discussing identified issues with the organisation, to develop 'targeted', 'practical' and 'achievable' recommendations at the conclusion of a review, and continues to engage with and support the organisation as it implements them.<sup>51</sup> The VO is also authorised to provide education and training to the organisation.<sup>52</sup> The Ombudsman has elaborated on how she understands the spirit and character of collaborative oversight as follows:

[W]hen I came into the [Ombudsman] role one of the things I was really keen to do was establish a collaborative way of working with agencies without compromising my independence, because I think that is a tension that always exists between the overseer and the overseen. It is an important tension. What I have always been mindful of is that if you want to achieve improvements in public administration, and that is a key purpose of my office, you have got to take people with you. You cannot just land on them, because they might pay lip service to your recommendations, they might tick the box to make you go away, but nothing is going to change. If you really want to achieve those improvements, if we are investigating a systemic issue that we feel really requires

49 VO, *Policy: Review of complaint practices and procedures of an authority*, Melbourne, 20 April 2021, pp. 5–6 (citing the *Public Administration Act 2004* (Vic) s 7(1) on public sector values).

50 VO, *Policy: Review of complaint practices and procedures of an authority*, Melbourne, 20 April 2021, p. 5. See also VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, pp. 5–6

51 VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 5. See also VO, *Policy: Review of complaint practices and procedures of an authority*, Melbourne, 20 April 2021, p. 6.

52 VO, *Policy: Review of complaint practices and procedures of an authority*, Melbourne, 20 April 2021, p. 6; *Ombudsman Act 1973* (Vic) s 13D(2)(b).

systemic change, then you have actually got to convince them of the need for change and to make sure that it will ultimately be reflected in their agency.<sup>53</sup>

During 2021/22, the VO reviewed the complaint practices and procedures of the Victorian Legal Services Board and Commissioner (VLSBC), which handles complaints about Victorian legal practitioners.<sup>54</sup> The VO undertook the review in response to a number of complaints from a complainant as well as ‘trends’ it had discerned in complaints it received about the VLSBC.<sup>55</sup> The VO’s collaborative review reflected the VO’s approach, discussed above, with VLSBC staff consulted and surveyed and a self-audit completed by the organisation.<sup>56</sup> The VO made a number of private recommendations to the VLSBC to help enhance its complaint handling, including for improved communication with complainants and ‘internal processes’ and ‘culture’.<sup>57</sup> The VLSBC considered the VO’s review well-conducted and beneficial:

The Ombudsman’s review recommendations have provided us with a clear roadmap to help us improve our complaints handling systems. ...

We have begun implementing a series of changes to address the recommendations alongside our existing strategic projects.

This collaborative process and the Ombudsman’s expertise in best practice complaints handling will accelerate our progress in delivering high quality complaint handling services to Victorian consumers of legal services.<sup>58</sup>

This outcome is consistent with the VO’s account of the significant benefits of effective reviews of public sector complaint handling in Victoria, which:

- (a) prevent complaints being unnecessarily escalated to the Ombudsman’s office by empowering an authority to proactively identify its own administrative deficiencies and take ownership of implementing improvements
- (b) collaborate with authorities and collectively work towards creating cultural change that recognises the value of complaints to excellent administrative practice
- (c) effect sustainable social and public service change that better serves the public interest by using legislative powers flexibly and interchangeably
- (d) through the power to make recommendations, ensure authorities remain accountable for implementing positive change to their processes after reviews of complaint practices and procedures are completed.<sup>59</sup>

<sup>53</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 9–10.

<sup>54</sup> VO, *2022 annual report*, Melbourne, 2022, p. 40.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> VO, *Policy: Review of complaint practices and procedures of an authority*, Melbourne, 20 April 2021, p. 6.

The Committee recognises these benefits, especially in reducing protracted complaints, improving services for complainants, reducing the complaint-handling workload of the VO, and improving public sector administration. The Committee encourages the VO to conduct more reviews of the complaint-handling systems of public sector organisations within its jurisdiction.

### Complainant satisfaction

The VO recognises the usefulness of feedback on its complaint-handling, including from complainants themselves.<sup>60</sup> In this connection, the agency has observed:

Complaints are free feedback about what people think of your agency's services and decisions. They can highlight the need for changes to your practices, or the need to explain them to members of the public in a different way.<sup>61</sup>

To this end, the VO conducts quarterly complainant satisfaction surveys in which complainants

regardless of their contact channel (phone or online complaints form) ... are given an opportunity to provide feedback about their experience, quality of VO's complaints handling service and ways to improve it.<sup>62</sup>

In 2021/22, the VO engaged EY Sweeney to carry out quarterly complainant satisfaction surveys.<sup>63</sup> The VO reported that overall satisfaction with the agency's service 'has remained largely consistent across 2021–2022 with previous years'.<sup>64</sup> However, there has been a decline in the percentage of complainants who were 'satisfied' or 'very satisfied' with the VO's complaint handling, especially with its online and email services.<sup>65</sup>

Given these results, the Committee asked the VO what factors it considered contributed to this decline in complainant satisfaction.<sup>66</sup> In response, the VO drew attention to the impact of COVID-19 in provoking and increasing the number of non-jurisdictional complaints (for example, regarding COVID-19 face-mask requirements) to the VO from

<sup>60</sup> VO, *Policy: Review of complaint practices and procedures of an authority*, Melbourne, 20 April 2021, p. 4; VO, *Complaints: good practice guide for public sector agencies*, Melbourne, September 2016, p. 2; VO, *Service Delivery Charter*, Melbourne, <<https://www.ombudsman.vic.gov.au/about-us/annual-reports-and-policies/service-delivery-charter>> accessed 8 August 2023 ('We ask people who have had contact with us to take part in a survey and use the feedback to improve our services. You will be asked if you would like to take part in a survey when you submit your online complaint or call us. You can also tell us that you would like to participate in a survey at any other time.');

VO, *2022 annual report*, Melbourne, 2022, pp. 82, 84–88; VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, pp. 3, 7–8.

<sup>61</sup> VO, *Complaints: good practice guide for public sector agencies*, Melbourne, September 2016, p. 2.

<sup>62</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 3.

<sup>63</sup> VO, *2022 annual report*, Melbourne, 2022, p. 84. EY Sweeney is a market research company: *Who we are*, <<https://eysweeney.com.au/who-we-are>> accessed 10 August 2023.

<sup>64</sup> VO, *2022 annual report*, Melbourne, 2022, p. 84.

<sup>65</sup> VO, *2022 annual report*, Melbourne, 2022, p. 85; VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 7.

<sup>66</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Ms Deborah Glass OBE, Ombudsman, VO, correspondence, 4 May 2023, pp. 2–3.

complainants displaying challenging behaviours, including aggressive behaviour; the overall increase in the number of complaints in this period; and customers' long-standing preference for speaking to the VO over the phone.<sup>67</sup> The VO also noted a trend in the emotional state and behaviour of complainants, 'who appear to be more agitated and negative when contacting the Ombudsman ... [which] is also the experience of other complaint handling organisations'.<sup>68</sup>

It is pleasing that the VO is making constructive efforts to improve the experience of complainants using the agency's online and email services.<sup>69</sup> These include better SMS communication, the introduction of a webchat function, tailoring communication to the ascertained needs and concerns of individuals, and a commitment to phone contact when practicable and appropriate:

- Improved SMS communication. We have implemented automated SMS updates at key stages in the complaint handling process such as when we have allocated a complaint to an officer, when we have made enquiries to an agency and when the agency has responded. Messages also contain a reference number complainants can use if contacting the VO.
- New webchat function. Complainants can now chat live with a complaints officer during business hours.
- A greater focus on adjusting our communication to the needs of individual complainants. All complainants are asked what assistance we can provide in dealing with the VO at the first approach. This question is automated in our online processes and a compulsory question for phone approaches.
- A greater focus on phone contact. Unless a complainant specifies they only want online contact, officers call all complainants in complex matters to discuss the outcome of their matter before it is closed. This step is monitored as part of our Quality Assurance auditing process.<sup>70</sup>

In a 2022 report, the Committee made the following recommendation in relation to the VO's online complaint services:

That the Victorian Ombudsman undertake UX (user experience) and focus group testing on its online complaint services (including use of SMS and webchat) and apply any lessons learnt to improve those services and enhance complainant satisfaction.<sup>71</sup>

<sup>67</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 7; VO, *2022 annual report*, Melbourne, 2022, pp. 4 ('944 complaints about COVID-related public health measures'), 6, 20, 29, 60. On challenging behaviour, see also VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 7; VO, *2022 annual report*, Melbourne, 2022, p. 7; VO, *Good practice guide: managing complex complainant behaviour*, Melbourne, February 2022, pp. 5-7; VO, *Policy: Dealing with complex behaviours from members of the public*, Melbourne, May 2018.

<sup>68</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 7.

<sup>69</sup> *Ibid.*, pp. 7-8.

<sup>70</sup> *Ibid.*, p. 8.

<sup>71</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, p. 170 (Recommendation 12).

The Committee asked the VO for its response to this recommendation and about any implementation measures it had undertaken.<sup>72</sup> The VO responded:

Since piloting of SMS and webchat, complainants are surveyed about their experience with those services. While the sample of surveyed complainants remains low, VO will continue to reflect on complainant feedback, both in its totality and feedback in relation to specific contact channels.

VO does not have the financial resources to consider complainant focus groups.<sup>73</sup>

While the VO does not consider it has the financial capacity to conduct focus group testing in relation to its online services, which would doubtless yield valuable insights, the Committee encourages the VO to explore, instead, options for 'discount' usability testing, which the agency can conduct itself economically.<sup>74</sup> Research demonstrates that even modest usability testing is a worthwhile exercise that enhances the quality of products and services.<sup>75</sup>

### Complainant portal

At the Committee's public hearing, the VO explained that it was developing an online portal that will enable complainants to provide further information after submitting their complaint and track the progress of their complaint electronically.<sup>76</sup> The portal will additionally enable complainants to communicate with VO complaints officers via an instant messaging function and view the status of their complaints.<sup>77</sup>

The VO informed the Committee that its in-house IT team is developing the portal, working in conjunction with external IT consultant, Resolve, to integrate it with the agency's Case Management System (CMS). The VO anticipates that the portal will be rolled out by the end of the 2023/24 reporting period.<sup>78</sup>

The VO recognises that most complainants still prefer to communicate with the agency via telephone. However, the VO considers that expanding the ways in which the public are able to interact with the agency is important in terms of accessibility, and that

72 Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Ms Deborah Glass OBE, Ombudsman, VO, correspondence, 4 May 2023, p. 2.

73 VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 3.

74 Kate Moran, Nielsen Norman Group, *Usability testing 101*, 1 December 2019 ('Simple "discount" usability studies can be inexpensive ...'), <<https://www.nngroup.com/articles/usability-testing-101>> accessed 10 August 2023; Jakob Nielsen, *Discount usability: 20 years*, 13 September 2009, <<https://www.nngroup.com/articles/discount-usability-20-years>> accessed 10 August 2023. See also Intuit Mailchimp, *Lean UX: a guide to improve user experience and productivity*, <<https://mailchimp.com/resources/lean-ux>> accessed 10 August 2023; Gerry Gaffney, Information & Design, *When is usability testing appropriate?*, <<https://infodesign.com.au/usabilityresources/usabilitytesting.html>> accessed 10 August 2023.

75 Kate Moran, Nielsen Norman Group, *Usability testing 101*, 1 December 2019, <<https://www.nngroup.com/articles/usability-testing-101>> accessed 10 August 2023; Jakob Nielsen, *Discount usability: 20 years*, 13 September 2009, <<https://www.nngroup.com/articles/discount-usability-20-years>> accessed 10 August 2023; Intuit Mailchimp, *Lean UX: a guide to improve user experience and productivity*, <<https://mailchimp.com/resources/lean-ux>> accessed 10 August 2023; Gerry Gaffney, Information & Design, *When is usability testing appropriate?*, <<https://infodesign.com.au/usabilityresources/usabilitytesting.html>> accessed 10 August 2023.

76 Dr Marija Maher, Chief Operating Officer (COO), VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 6–7.

77 VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 1.

78 Ibid.

providing complainants with the flexibility that the portal will provide, may alleviate pressure on telephone complaint intake. Positively, the VO intends to measure survey user satisfaction with the portal on a quarterly basis.<sup>79</sup>

The Committee commends the VO on this development, noting that the VO is leading the way in implementing this kind of technology among State ombudsmen.<sup>80</sup>

## 5.2.2 Investigations

The VO has the power to conduct investigations into public organisations in response to a complaint or on its own motion.<sup>81</sup> Ordinarily it undertakes investigations if an ‘issue may be systemic’ or when a matter is otherwise in the public interest to investigate.<sup>82</sup> The VO also investigates public interest complaints referred to it by IBAC as well as matters referred by the Parliament of Victoria.<sup>83</sup> In investigating, the VO can exercise Royal Commission powers, which include powers to:

- compel a person to attend an interview on oath or affirmation
- compel a person to produce documents
- inspect a public organisation’s premises
- take statutory declarations.<sup>84</sup>

In 2021/22, the VO tabled six reports, including reports on investigations into corrections, a local council, COVID-19 decision-making, and the Environment Protection Authority (see Table 5.1, below).<sup>85</sup>

**Table 5.1 VO reports tabled in Parliament 2020–21**

Title	Date tabled
Investigation into good practice when conducting prison disciplinary hearings	July 2021
The Ombudsman for human rights: A casebook	August 2021
Investigation into allegations of collusion with property developers at Kingston City Council	October 2021
Investigation into decision-making under the Victorian Border Crossing Permit Directions	December 2021
Investigation into Environment Protection Authority decisions on West Gate Tunnel Project spoil disposal	May 2022
Investigation into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison	June 2022

Source: VO, *2022 annual report*, Melbourne, 2022, p. 83.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> VO, *2022 annual report*, Melbourne, 2022, p. 46; *Ombudsman Act 1973* (Vic) pt IV.

<sup>82</sup> VO, *2022 annual report*, Melbourne, 2022, p. 46.

<sup>83</sup> VO, *2022 annual report*, Melbourne, 2022, p. 46; *Ombudsman Act 1973* (Vic) pt IV.

<sup>84</sup> VO, *2022 annual report*, Melbourne, 2022, p. 46.

<sup>85</sup> Ibid., p. 83.

During 2021/22, the VO conducted important investigations bearing on, among other matters, corrections administration, border restrictions and local government planning and development.<sup>86</sup>

The VO's findings and recommendations contributed significantly to improvements in public sector administration in Victoria, as seen in the following two examples.

In its July 2021 report on an investigation into prison disciplinary hearings, the VO noted that it received an average of 60 complaints annually in relation to the more than 10,000 hearings conducted every year in Victoria. These hearings are conducted when a prisoner is charged with breaking a prison rule.<sup>87</sup> The VO's own motion investigation into the hearings process examined recurring themes evident through the complaints received, particularly whether hearings were conducted competently and fairly, and with sufficient information and support for prisoners and proportionate penalties for prisoners found guilty of breaking a prison rule.<sup>88</sup>

The VO found that, while there had been significant improvements since a 2011 Ombudsman investigation, serious problems persisted. These included insufficient use of a minor offences process to reduce the number of formal disciplinary hearings being held, a lack of plain-language information for prisoners about the hearings scheme, obstacles to prisoners calling witnesses, inadequate support for prisoners with cognitive impairments and other disabilities, poor record-keeping practices, and the lack of both a requirement for written reasons for hearing decisions and an option for internal reviews of decisions.<sup>89</sup>

The VO recommended that the Department of Justice and Community Safety (DJCS) introduce a minor-offence process that would divert prisoners from the more formal hearings process; create a 'dedicated,' specialist team within DJCS, 'with relevant operational and administrative decision-making expertise', to conduct hearings and internal reviews; require the recording of written reasons for 'disciplinary hearing outcomes and penalties'; and provide better information and support for prisoners, especially those with disabilities.<sup>90</sup>

Overall, the investigation made a significant contribution in identifying improvements that would help ensure that prison disciplinary practices, processes and decision-making comply with administrative law and human rights requirements.<sup>91</sup>

<sup>86</sup> See, for example, the following VO reports: *Investigation into good practice when conducting prison disciplinary hearings*, Melbourne, July 2021; *Investigation into decision-making under the Victorian Border Crossing Permit Directions*, Melbourne, December 2021; *Investigation into allegations of collusion with property developers at Kingston City Council*, Melbourne, October 2021.

<sup>87</sup> VO, *Investigation into good practice when conducting prison disciplinary hearings*, Melbourne, July 2021, pp. 4, 11; VO, *2022 annual report*, Melbourne, 2022, p. 50.

<sup>88</sup> VO, *Investigation into good practice when conducting prison disciplinary hearings*, Melbourne, July 2021, pp. 4–5, 8, 11–12, 74–77, and generally; VO, *Annual report 2022*, Melbourne, 2022, p. 50.

<sup>89</sup> VO, *Investigation into good practice when conducting prison disciplinary hearings*, Melbourne, July 2021, especially pp. 74–77; VO, *2022 annual report*, Melbourne, 2022, p. 50.

<sup>90</sup> VO, *Investigation into good practice when conducting prison disciplinary hearings*, Melbourne, July 2021, pp. 78–79.

<sup>91</sup> VO, *Investigation into good practice when conducting prison disciplinary hearings*, Melbourne, July 2021, especially pp. 4–5, 8–13, 16–19, 74–79; VO, *2022 annual report*, Melbourne, 2022, p. 50.

The DJCS indicated that it largely supported the recommendations as part of the Government's review of the Victorian prison system.<sup>92</sup>

Another investigation conducted by the VO in the year under review concerned the nature and operation of the Victorian border-restrictions scheme as a pandemic-control measure during COVID-19.<sup>93</sup>

On 11 January 2021, a new traffic-light system was introduced to govern 'domestic travel into Victoria'.<sup>94</sup> Subsequently, on 11 July 2021, New South Wales and the Australian Capital Territory were declared 'red zones', meaning Victorian residents needed red-zone permits to return to their home State from these areas.<sup>95</sup> On 20 July, Victorian residents in these zones were given only 12 hours within which to return home.<sup>96</sup> Finally, on 23 July, no-one was allowed to enter Victoria unless they were an 'excepted person' or had an exemption.<sup>97</sup> The Department of Health received 33,252 exemption applications between 9 July and 14 September 2021, 2,736 of which were granted.<sup>98</sup> The Ombudsman received 315 complaints over this process.<sup>99</sup>

While the VO recognised the unprecedented health challenges administrators faced during the pandemic, and that the Border Directions themselves were lawful and not unreasonable, the agency identified a number of shortcomings of the system that resulted in 'unjust outcomes' in a number of cases.<sup>100</sup>

In particular, the VO found that the discretion to grant exemptions was exercised too narrowly and without sufficient attention to, or engagement with, applicants' challenging individual circumstances, such as illness, age, financial hardship, job demands and caring responsibilities.<sup>101</sup> This was compounded by the 'extensive' evidence and documentation required to support applications, made more difficult by lockdowns.<sup>102</sup> In addition, the VO found that sometimes 'people [were] refused exemptions with no reasons or review process'.<sup>103</sup> Moreover, great demands were placed on Department of Health staff processing exemption applications, who 'had approximately 30 seconds to categorise and prioritise' an application.<sup>104</sup>

<sup>92</sup> VO, *Investigation into good practice when conducting prison disciplinary hearings*, Melbourne, July 2021, pp. 78–79.

<sup>93</sup> VO, *Investigation into decision-making under the Victorian Border Crossing Permit Directions*, Melbourne, December 2021.

<sup>94</sup> *Ibid.*, p. 14.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*, pp. 15–16.

<sup>97</sup> *Ibid.*, p. 15.

<sup>98</sup> *Ibid.*, pp. 4, 68.

<sup>99</sup> *Ibid.*

<sup>100</sup> VO, *Investigation into decision-making under the Victorian Border Crossing Permit Directions*, Melbourne, December 2021, pp. 6–8, 16–17, 109, 114 (quoted text), 115, and *passim*; VO, *Annual report 2022*, Melbourne, pp. 21–22.

<sup>101</sup> VO, *Investigation into decision-making under the Victorian Border Crossing Permit Directions*, Melbourne, December 2021, pp. 6–8, 114–115 and *passim*.

<sup>102</sup> *Ibid.*, p. 7.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*, pp. 4 (quoted text), 17.

The VO's recommendations to the Department of Health identified improvements that could be made in decision-making, including fuller consideration of persons' 'individual circumstances', provision of reasons for adverse decisions, and internal and external review options.<sup>105</sup> The VO also recommended that the Victorian Government seek amendment of s 12 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('Charter') by deleting the words 'lawfully within Victoria', so it would read, '[e]very person has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live'.<sup>106</sup>

The Department of Health has actioned the recommendations by acknowledging the impact that the border restrictions had on affected Victorians, releasing a 'COVID-19 Compliance and Enforcement Policy' under the *Public Health and Wellbeing Act 2008* (Vic), and reconsidering, and in some instances withdrawing, infringement notices issued under the Border Crossing Directions.<sup>107</sup> Further, the Department is also developing guidance for future decision-makers on implementing pandemic orders, and has implemented IT system upgrades, including an internal review function. Finally, the proposed legislative amendment to the Charter is currently under consideration by the Victorian Government.<sup>108</sup>

Moreover, beyond the value of formal findings and recommendations, the VO has emphasised that its commitment to improving public administration through collaboration guides its approach to its investigations work. The VO proactively engages with organisations during the investigative process, including through virtual and in-person meetings between investigators and organisational representatives.<sup>109</sup> The VO has found that these kinds of meetings have:

- allowed 'real time discussion about solutions to systemic problems'
- avoided the need for lengthy exchanges of formal correspondence which, in the VO's view, can unnecessarily prolong a matter
- resulted in organisations taking action to resolve complaints or improving their systems during the active phase of the investigation.<sup>110</sup>

### Witness welfare management

The VO's 'commitment to supporting the wellbeing of people engaged with' the agency<sup>111</sup> is welcome given the Committee's long-standing interest in integrity agencies' management of the welfare of witnesses and other persons involved in investigations,

<sup>105</sup> Ibid., p. 115.

<sup>106</sup> Ibid., p. 114.

<sup>107</sup> Parliament of Victoria, Department of Health, *Public reporting on the investigation into decision-making under the Victorian Border Crossing Permit Directions*, 27 May 2022, <<https://www.health.vic.gov.au/public-reporting-on-the-investigation-into-decision-making-under-the-victorian-border-crossing>> accessed 19 October 2023.

<sup>108</sup> Ibid.

<sup>109</sup> VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, pp. 5–6.

<sup>110</sup> Ibid.

<sup>111</sup> VO, *2022 annual report*, Melbourne, 2022, p. 46.

which culminated in a comprehensive report in October 2022.<sup>112</sup> In its 2021/22 annual report, the VO noted the significance of its recently ‘consolidated “witness welfare” policy’, which

draws on principles that guide our practice, including keeping people at the centre of our decision-making and being flexible, thoughtful and responsive to individuals’ needs and exercising powers responsibly and with restraint.<sup>113</sup>

While the Committee found through its 2022 review that the VO’s witness welfare policies, procedures and standard practices generally met best practice standards, it also made a number of recommendations to enhance the VO’s performance in this area.<sup>114</sup>

In its 2022 witness welfare report, the Committee recommended that

the Victorian Ombudsman (VO) ensure that persons who are served with a confidentiality notice or summons to appear can directly access welfare support services provided by the VO’s Employee Assistance Program provider, without the need for a referral by the VO.<sup>115</sup>

The Committee welcomes the VO’s implementation of this recommendation, including by having the following text on all its confidentiality notices and summonses:

I have also made available our office’s confidential, free and anonymous employee assistance program available for you to access directly using the following details:

Converge International Witness Support

Phone number: ...

Please quote: Case ID: ...<sup>116</sup>

In its 2022 report, the Committee also recommended that

the Victorian Ombudsman inquire into the potential for using its improved data collection, analysis, sharing and reporting capacity (including the Power BI platform) to identify, record, analyse and act on welfare risks with respect to complainants and witnesses engaging with the agency, while complying with applicable laws and protecting the privacy, safety, health and wellbeing of those persons.<sup>117</sup>

<sup>112</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, especially pp. 7–14 and Chapter 6 (on the VO).

<sup>113</sup> VO, *2022 annual report*, Melbourne, 2022, p. 46.

<sup>114</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, p. 174 (see also pp. 167–168, 170).

<sup>115</sup> *Ibid.*, p. 168.

<sup>116</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, pp. 2–3.

<sup>117</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, p. 170.

When asked about its position on this recommendation,<sup>118</sup> the VO responded:

Considered but not practicable.

Individual welfare matters are complex and multifaceted, and are not readily reducible to being collected as meaningful data. The risks and needs can change over time, noting that some welfare issues can be avoided altogether by taking certain investigative steps such as minimising the use of coercive powers.<sup>119</sup>

While the Committee agrees that it is important for integrity agencies to use their coercive powers judiciously,<sup>120</sup> it is, respectfully, not persuaded by the VO's other contentions. The Committee considers that information and data about the particular welfare vulnerabilities of complainants and witnesses engaging with the VO (especially those subject to coercive powers during investigations) is critical to the accurate identification and management of welfare risks throughout a complaint or investigation process.<sup>121</sup> Precisely because '[i]ndividual welfare matters are complex and multifaceted', and 'change over time', integrity agencies need to maintain accurate information about individuals engaging with them, including about their health, safety and wellbeing.<sup>122</sup> This conclusion is supported by the best practice principles identified in the Committee's 2022 witness welfare report.<sup>123</sup>

Moreover, at a higher level, the collection and analysis of this kind of information and data would enable the VO to identify any patterns in welfare risks and causes, and how the agency might better manage them—including making any consequential changes to its policies, procedures, practices and services.<sup>124</sup> Recording and documenting these

<sup>118</sup> Dr Tim Read MP, Chair, Integrity and Oversight Committee, to Ms Deborah Glass OBE, Ombudsman, VO, correspondence, 4 May 2023, p. 2.

<sup>119</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 3.

<sup>120</sup> See, for example, Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 157, 164–166.

<sup>121</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 14–15, 31–32, 34–40.

<sup>122</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 3 (quoted text); Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 14–15, 31–32, 34–40. See also Inspector of the Independent Commission Against Corruption, *Special Report 2023/01: Audit of the welfare of witnesses and other people involved in ICAC investigations*, Sydney, February 2023, pp. 8, 12 (on 'intelligence holdings ... potentially relevant for the purpose of identifying whether there is any potential risk to the health and safety of any person'), 20 (on the 'dynamic' character of risks 'to the mental health and wellbeing of witnesses and others involved in the ... [Independent Commission Against Corruption, ICAC] investigation activities'), 21 (on the need for 'effective reporting and documentation of incidents and risk management within the context of the mental health and wellbeing of witnesses and others involved in the ICAC investigation activities').

<sup>123</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, Chapter 2.

<sup>124</sup> This approach is consistent with the VO's approach to learning from complaints in order to improve its complaint handling and overall service performance—see, for example, VO, *Complaints: good practice guide for public sector agencies*, Melbourne, September 2016, p. 2; VO, *Policy: Review of complaint practices and procedures of an authority*, Melbourne, 20 April 2021, p. 4. See also VO, *Strategic Framework 2020–2024*, <<https://www.ombudsman.vic.gov.au/about-us/mission-and-values/strategic-framework>> accessed 10 August 2023; VO, *Policy: supporting the wellbeing of VO complainants and witnesses (Welfare Policy)*, 6 April 2022, pp. 5–6 (on welfare risk identification, 'management' and 'monitoring'); VO, *2022 annual report*, Melbourne, 2022, p. 72 ('The Victorian Ombudsman's work generates a broad set of data on complaints ... The data collection and validation processes in place at the Victorian Ombudsman supports a robust foundation for collecting, analysing, and presenting data in our reports.').

risks and their materialisation<sup>125</sup> is therefore part of a ‘feedback loop that ensures organisational learning’, as psychologist Simon Brown-Greaves noted in his expert report for the New South Wales Inspector of the Independent Commission Against Corruption.<sup>126</sup> At a still higher level, collecting, analysing, reporting and learning from data about complainants and witnesses is in the Committee’s view a familiar and important part of integrity agencies’ continuous improvement processes.<sup>127</sup>

It should be noted that the Committee made a similar recommendation to the Victorian Inspectorate:

That the Victorian Inspectorate (VI) develop, as a matter of priority, capacity in its case management system to run automated reports to identify, record and analyse any welfare risks affecting persons who have made complaints to the VI, as well as witnesses involved in its investigations.<sup>128</sup>

Pleasingly, the VI expects, by the end of 2023, to have implemented this recommendation through enhancements to its case management system.<sup>129</sup>

## Referrals from the Parliament of Victoria

Where Parliament refers a matter to the VO for investigation, otherwise known as a ‘Parliamentary referral’, the VO is required to investigate it.<sup>130</sup> The investigation of parliamentary referrals is funded through requests for Treasurer’s Advances from the Department of Treasury and Finance (DTF). The VO only seeks funding for reimbursement of direct expenses for these kinds of investigations (for example, staffing expenses and specialist external services such as legal advice). The VO assigns each parliamentary referral a unique finance code to ensure that the costs of the investigation are recorded separately to other matters. These expenses are publicly reported on as part of the VO’s Budget Paper No. 5 (Statement of Finances) obligations with respect to Treasurer’s Advances, and can be audited by DTF and the Victorian Auditor-General’s Office (VAGO).<sup>131</sup>

## Access to Cabinet-in-confidence material?

At the Committee’s public hearing, the Ombudsman expressed the view that legislative reform was needed to enable the VO to access information classified as

<sup>125</sup> Inspector of the Independent Commission Against Corruption, *Special Report 2023/01: Audit of the welfare of witnesses and other people involved in ICAC investigations*, Sydney, February 2023, pp. 21–22 and Annexure: Report by Mr Simon Brown-Greaves (‘Annexure’), pp. 8, 19.

<sup>126</sup> *Ibid.*, Annexure, p. 8.

<sup>127</sup> See, for example, VO, *Strategic Framework 2020–2024*, <<https://www.ombudsman.vic.gov.au/about-us/mission-and-values/strategic-framework>> accessed 10 August 2023; VO, *Service Delivery Charter*, Melbourne, <<https://www.ombudsman.vic.gov.au/about-us/annual-reports-and-policies/service-delivery-charter>> accessed 8 August 2023; VO, *2022 annual report*, Melbourne, 2022, on ‘continuous improvement’: pp. 14–15, 72, 77.

<sup>128</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, p. 138 (Recommendation 8).

<sup>129</sup> Mr Eamonn Moran PSM KC, Inspector, VI, correspondence, 14 March 2023, pp. 1, 3.

<sup>130</sup> *Ombudsman Act 1973* (Vic) s 16.

<sup>131</sup> VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 5.

‘Cabinet-in-confidence’, or pertaining to ministerial deliberations, for the purpose of investigating parliamentary and IBAC referrals relating to the conduct of ministers and Members of Parliament (MPs).<sup>132</sup> The Ombudsman acknowledged that ombudsmen’s offices in other Australian and international jurisdictions are similarly constrained. However, she noted that the statutory requirement to investigate such matters via parliamentary and public interest complaint referrals, is ‘unique’ to Victoria.<sup>133</sup>

At the request of the Committee, the VO provided an overview of the current legislative regime and elaborated on the reforms and protocols it considers are needed to enable it to thoroughly investigate such matters.<sup>134</sup> The VO explained that ss 19, 19A and 19B of the *Ombudsman Act 1973* (Vic) prohibit the agency from receiving information pertaining to ministerial deliberations or deliberations of certain parliamentary committees and, additionally, from obtaining Cabinet information and information pertaining to the deliberations of parliamentary committees in connection with a public interest complaint investigation.<sup>135</sup>

The VO emphasised that the parliamentary referral provision under s 16 of the *Ombudsman Act 1973* (Vic) is a function additional to the VO’s principal and other statutory functions set out in ss 13 and 13AA of the Act.<sup>136</sup>

The VO considers that an authorisation permitting it to access Cabinet information and information pertaining to ministerial deliberations for the purposes of investigating parliamentary or public interest complaint referrals concerning the conduct of MPs, similar to the provisions of pt 7 of the *Audit Act 1994* (Vic),<sup>137</sup> would enable the agency to effectively discharge its duties to Parliament.<sup>138</sup> The VO recognises, however, that a protocol would be needed to regulate the disclosure of information in relation to s 16 investigations, including exemptions for information affecting state or national security, with an independent appeal/review mechanism.<sup>139</sup>

### 5.3 Engagement and education

In April 2022, the VO’s Engagement team was absorbed into its Education and Prevention team.<sup>140</sup> The focus of the new Engagement, Education and Prevention team

<sup>132</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 3.

<sup>133</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 3; VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 4; *Ombudsman Act 1973* (Vic) s 16.

<sup>134</sup> Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Ms Deborah Glass OBE, Ombudsman, VO, correspondence, 23 August 2023, pp. 2–3; VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, pp. 3–4.

<sup>135</sup> VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 4.

<sup>136</sup> VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 4 (citing *Glass v President of the Legislative Council & Anor* [2016] VSC 507).

<sup>137</sup> Under pt 7 of the *Audit Act 1994* (Vic), the Victorian Auditor-General can access Cabinet information for the purposes of undertaking financial and performance audits and assurance reviews, and as expressly authorised under another Act—VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 4.

<sup>138</sup> VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 4.

<sup>139</sup> *Ibid.*, pp. 4–5.

<sup>140</sup> VO, *2022 annual report*, Melbourne, 2022, pp. 64, 69.

was on engagement with Community Legal Centres, Indigenous communities peak bodies and culturally and linguistically diverse (CALD) communities.<sup>141</sup> For example, the VO had a stall at the Federation of Ethnic Community Councils Australia conference, through which the agency was able to explain its jurisdiction and services and, in due course, provide training to ten service organisations.<sup>142</sup>

Further, the VO is finalising its second Reconciliation Action Plan with Reconciliation Australia, as part of its engagement with First Nations peoples, and anticipated that the plan would be endorsed in 2022/23.<sup>143</sup> The VO's other engagement with First Nations communities in 2021/22 included

- purchasing First Nations artworks for use in agency publications and presentations
- inviting Elders to speak at VO staff sessions
- participation in Koorie Heritage Trust Walks
- First Nations 'cultural awareness & safety training' for staff.<sup>144</sup>

The VO also continued its ongoing participation in Victorian Law Week, with particular involvement in the following events:

- Geelong Town Hall—at which the Ombudsman delivered a presentation to council staff and the public, after which investigation officers assisted with a complaints clinic.
- Victorian Multicultural Commission ... police oversight presentation, co-presented with IBAC
- Melbourne Central at which the Engagement Officer was supported by investigation officers to conduct a complaints clinic.<sup>145</sup>

The VO reported that these events involved around 200 agency 'interactions with members of the public'.<sup>146</sup>

In order to enhance community understanding of the role of the VO, including its functions and jurisdiction, the Ombudsman and the Engagement Officer gave 14 presentations, at which there were, in total, 150 attendees.<sup>147</sup> The VO advised that the number of attendees was affected by the impact of COVID-19-safe restrictions.<sup>148</sup>

As part of its collaborative efforts, the Ombudsman co-delivered, with IBAC and VAGO, a webinar on procurement risks, and another, with the Victorian Aboriginal Legal Service, on human rights complaints.<sup>149</sup>

<sup>141</sup> Ibid., pp. 64–65, 69, 73.

<sup>142</sup> Ibid., p. 64.

<sup>143</sup> Ibid., p. 65.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid., p. 64.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

In terms of the VO's digital presence, the agency reported a 62% increase in social media followers and a 33% increase in website traffic.<sup>150</sup>

Regarding its Public Sector Education program, the VO delivered 38 workshops in 2021/22, a 65% increase on 2020/21, covering complaint handling, conflicts of interest and challenging behaviour (including challenging complainant behaviour).<sup>151</sup> Fifty-four organisations received VO training during the year under review.<sup>152</sup> The education was well-received, with a rating of 95.1% (a 9% increase on 2020/21),<sup>153</sup> bearing in mind the limitation of participant-satisfaction surveys in measuring the impact of these workshops in changing participant behaviour.<sup>154</sup>

### 5.3.1 Response to Committee recommendations on education and prevention

#### Corruption-prevention and education network

In its report of its inquiry into the education and prevention functions of Victoria's integrity agencies, the Committee made a number of recommendations directed at the VO.<sup>155</sup>

In order to harness the benefits of broader, deeper, more rigorous, more transparent and efficient collaboration and peer review among integrity agencies regarding their education and prevention work, the Committee recommended the establishment of a formal corruption-prevention and education network:

That the Independent Broad-based Anti-corruption Commission (IBAC), the Office of the Victorian Information Commissioner, the Victorian Inspectorate and the Victorian Ombudsman establish a corruption-prevention and education network, coordinated by IBAC, that:

- is guided by agreed best practice principles on corruption prevention and education;
- draws on the expertise and experience of other integrity leaders, such as the Victorian Public Sector Commission, the Institute of Public Administration Australia (Victoria) and the Australia and New Zealand School of Government; and
- facilitates the development, delivery and review of corruption-prevention and education resources and training for the public sector.<sup>156</sup>

The recommendation arose out of the Committee's finding that in Victoria 'current collaborations between integrity agencies on education and prevention are limited

<sup>150</sup> Ibid.

<sup>151</sup> Ibid., pp. 68–69.

<sup>152</sup> Ibid., p. 69.

<sup>153</sup> Ibid.

<sup>154</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, p. 140.

<sup>155</sup> Ibid., pp. 131, 168.

<sup>156</sup> Ibid., p. 131 (Recommendation 12).

and ad hoc rather than systematic and guided by agreed best practice principles'.<sup>157</sup> The Committee therefore argued for a new corruption-prevention and education network:

Such a network can help ensure that the integrity agencies' collaboration on education and prevention is guided by best practice principles, that education and prevention work (such as the production of resources and delivery of training) is shared on a coherent basis, taking account of jurisdiction and expertise, and that duplication is minimised. The network would also provide a way for integrity agencies to methodically and regularly review corruption-prevention and education resources and training for the public sector, thereby helping to maintain their quality and relevance. This is consistent with the integrity agencies' recognition of the importance of communities of knowledge and practice in the anti-corruption field.<sup>158</sup>

In response to a Committee question about the VO's position on this recommendation, and whether it had begun to implement it, the agency referred to IBAC's establishment in October 2022 of a Prevention and Education Advisory Committee (PEAC), of which the VO is 'a core member'.<sup>159</sup> The VO further informed the Committee that

... PEAC aims to share information on prevention and education activities being undertaken by member agencies, including research, policy, communication and engagement programs and initiatives; and to identify opportunities for collaboration between members on prevention and education activities.<sup>160</sup>

The Committee welcomes this development in putting collaboration between the integrity agencies on education and prevention on a surer and more regular footing. However, the Committee reiterates the importance of the development and publication of agreed best principles to guide the integrity agencies in their collaboration in this area. Further, the Committee emphasises the importance of ensuring that all key integrity agencies are members of PEAC, including the VI as the peak integrity oversight agency. The Committee also encourages PEAC to draw on the expertise of other integrity leaders such as the Victorian Public Sector Commission, the Institute of Public Administration Australia (Victoria) and the Australia and New Zealand School of Government. Finally, the Committee highlights the importance of PEAC developing and using rigorous peer review measures to ensure the quality of education and prevention resources and training, and to take full advantage of the potential for innovation. As the Committee found in its 2022 report,

when guided by agreed and publicised best practice principles, integrity agency collaboration on education and prevention has a number of virtues [including] in ...

- fostering further opportunities for innovation in the development of education and prevention approaches and resources (for example in the use of social media) ...

<sup>157</sup> Ibid., pp. 129–130.

<sup>158</sup> Ibid., p. 130.

<sup>159</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 1.

<sup>160</sup> Ibid.

- providing a network for the peer review of integrity agencies' education and prevention resources and services against best practice standards.<sup>161</sup>

The Committee will continue to monitor developments with PEAC, with the expectation that it will mature into a network comparable to the corruption-prevention and education network recommended in the IOC's 2022 report.

### Measuring the quality and impact of prevention and education initiatives

In its education and prevention report, the Committee recommended that

the Independent Broad-based Anti-corruption Commission, the Office of the Victorian Information Commissioner, the Victorian Inspectorate and the Victorian Ombudsman develop, in consultation with each other, systematic, comprehensive, and consistent evidence-based frameworks for measuring the quality and impact of their respective prevention and education initiatives.<sup>162</sup>

In response to this recommendation, the VO has noted that it has recently 'engaged a data insights and social researcher provider to develop a measure of impact for VO's Education and Prevention workshops'.<sup>163</sup> In 2023/24, the VO will also conduct independent surveys on 'the impact of VO's training' six months after workshops have been delivered.<sup>164</sup>

These are encouraging developments to the extent that they recognise the limitations of conventional participant satisfaction surveys, which do not measure the impact of education/training in positively changing participant behaviour in their workplaces.<sup>165</sup> This is because, as the Committee found in its 2022 report:

Traditional measurement data points—positive participant satisfaction surveys, tracking improvements in awareness or in general attitudes about corruption and misconduct, and frequency of education and training—are *proxy* measures of quality, in that they do not measure whether the knowledge acquired as a result of education and training has, or will, impact behaviour.<sup>166</sup>

Given these caveats, the Committee reiterates its recommendation that the VO develop, in consultation with IBAC, OVIC and the VI, 'systematic, comprehensive, and consistent evidence-based frameworks for measuring the quality and impact of their respective prevention and education initiatives'.<sup>167</sup>

<sup>161</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, p. 128.

<sup>162</sup> *Ibid.*, p. 168 (Recommendation 13).

<sup>163</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 1.

<sup>164</sup> *Ibid.*

<sup>165</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, p. 140.

<sup>166</sup> *Ibid.*

<sup>167</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, p. 168.

## Data collection

With regard to data collection to support the recommended development of a measurement framework to determine the quality and impact of integrity agency education and prevention efforts, in its 2022 report the Committee recommended that

the Independent Broad-based Anti-corruption Commission, the Office of the Information Commissioner, the Victorian Inspectorate and the Victorian Ombudsman collaborate, where possible, on large-scale data collection projects to support the measurement framework, including benchmarks for tracking progress over time in a meaningful way, that reflect the complexity and value of integrity agencies' oversight work.<sup>168</sup>

The VO has informed the Committee that, through PEAC, it has begun to discuss the sharing of data 'to address maladministration and corruption prevention', with 'the sharing of local government complaints data' being one example.<sup>169</sup> The Committee welcomes this development and encourages the VO to help initiate, develop and support large-scale data-collection projects that will inform and support a rigorous measurement framework to identify the quality and impact of its education prevention work.

## Reporting on measurement

The Committee has recommended that the integrity agencies overseen by it include in their annual reports 'a dedicated section on the measurement of the quality and impact of their prevention and education initiatives'.<sup>170</sup> The VO has informed the Committee that it is in the process of 'developing a set of impact measures through a third-party provider'.<sup>171</sup> With regard to quality, the VO has stated that it 'already measures the quality of its offering through a post-workshop survey' and that participant satisfaction is reported on as part of its accountability through the State Budget Paper (BP3) performance measures.<sup>172</sup>

The Committee recognises that the VO is in the early stages of developing rigorous measures to ascertain the impact of its education and prevention programs. It looks forward to the VO reporting on its performance against these measures, when finalised, in a dedicated section in its annual report.

<sup>168</sup> Ibid. (Recommendation 14).

<sup>169</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 2.

<sup>170</sup> Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, p. 168 (Recommendation 15).

<sup>171</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 2.

<sup>172</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 2. See also VO, *2022 annual report*, Melbourne, 2022, pp. 68–69, 82.

## 5.4 Governance, workplace and funding

### 5.4.1 Governance

Positive developments in VO governance in 2021/22 included the drafting of a 'capability framework' to guide the development of staff (especially managers), a Gender Equality Action Plan 2021–2025, and an Accessibility Action Plan 2021–2024.<sup>173</sup>

In terms of business systems and finance, the VO made improvements to its case management system and introduced a finance system better attuned to the demands on the agency as a body with budget independence.<sup>174</sup>

The VO has also made gains through the continuation of its digital-first approach, including by digitising its hard-copy archive; improving workflow and records-management systems; and enhancing data collection, cataloguing, sharing, storage and use.<sup>175</sup>

#### Information management and security

At the request of the Committee, the VO provided an overview of the information management and security principles, procedures and practices it has in place to minimise the risk of improper disclosure of confidential and sensitive information held by the agency.<sup>176</sup>

The VO has a security classification system for all information held and created by the agency and the rating assigned to information determines how it may be shared. The VO restricts and monitors access to and movement of digital information and other data by:

- storing digital information and other data in approved locations within the VO's IT systems
- restricting, tracking and auditing access to the VO's systems and case files, and automatically removing access privileges when staff leave the agency
- preventing the transfer of information onto unencrypted removable devices
- blocking access to certain cloud-based storage, transfer and file-sharing applications and email providers
- providing automatic warnings before an email is sent to an external recipient as a reminder to staff to be mindful of information privacy and security

<sup>173</sup> VO, *2022 annual report*, Melbourne, 2022, p. 10. See also VO, *Gender equality action plan 2021–2025*, Melbourne, n.d.; VO, *Accessibility action plan 2021–2024*, n.d.

<sup>174</sup> VO, *2022 annual report*, Melbourne, 2022, p. 11.

<sup>175</sup> *Ibid.*, p. 72.

<sup>176</sup> Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Deborah Glass OBE, Ombudsman, VO, correspondence, 23 August 2023, p. 3; VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, pp. 6–7.

- sharing sensitive information with external organisations via the secure Kiteworks platform
- implementing enhanced security protocols for investigations of a highly sensitive nature, including, siloing the investigation team within the VO's premises, increased screening for conflicts of interest, and special secure storage arrangements for digital and hard copy information and data.<sup>177</sup>

The VO also has stringent protections in place with respect to the physical security of information, including restricted electronic access to its premises, particular rooms within the premises, and also its internal and external storage sites. Access to these areas is monitored by motion sensor security cameras.<sup>178</sup>

From a governance perspective, VO staff receive monthly cyber training and are subject to 'regular simulated testing of spam and spear phishing attacks' to ensure their training is building practical skills. The VO strongly encourages a speak-up culture with respect to data breaches and data breach incidents are reported mandatorily through the agency's internal governance.<sup>179</sup>

#### 5.4.2 Workplace

In response to VO staff concerns identified through the agency's 2021/22 People Matter Survey results over flexible work arrangements, and workload and time-pressure burdens,<sup>180</sup> the agency has taken a number of measures, including introducing on 'a sustainable hybrid working model'—that is, a balance of work on site and from home—which, at 1 June 2023, was being finalised.<sup>181</sup>

In terms of addressing workload and time-pressure burdens, the VO referred the Committee to the delivery of training to staff on mental health, 'self-care' and stress management.<sup>182</sup> These are welcome measures given the demands on agency staff that come with the VO being a high-volume complaint-handling body.<sup>183</sup>

#### 5.4.3 Funding

In October 2022, the VO, IBAC and VAGO published a joint paper on the need for decisions about their funding to be made independent of the Executive Government

<sup>177</sup> VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, pp. 6–7.

<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

<sup>180</sup> VO, *2022 annual report*, Melbourne, 2022, p. 77 (17% of staff wanted improvements in flexible working arrangements and 56% wanted improvements regarding workload and time pressures).

<sup>181</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 10.

<sup>182</sup> Ibid.

<sup>183</sup> See, for example, VO, *Good practice guide: managing complex complainant behaviour*, Melbourne, February 2022, pp. 43–47 (on coping with the emotional demands on staff experiencing challenging complainant behaviour). See also Commonwealth Ombudsman, *Better practice complaint handling guide*, Canberra, n.d., p. 18 ('Mentoring, wellness programs, role variety and mobility can help reduce complaint handling "burnout"').

(‘the joint paper’), expressing the view that an independent tribunal should be established to make decisions about the funding of Victorian integrity bodies.<sup>184</sup>

At the Committee’s public hearing, the Ombudsman expressed concern about the VO’s continued reliance on the Treasurer’s Advance to cover shortfalls in its annual budgetary allocation, noting the uncertainty of this funding mechanism. The Ombudsman also renewed calls for ‘decisions about funding to be entirely removed from political processes’.<sup>185</sup> Asked to elaborate on this view, the VO referred the Committee to the joint paper and emphasised the need for a ‘transparent, robust and apolitical resourcing framework’.<sup>186</sup>

## 5.5 Accountability

There are a number of accountability mechanisms in place respecting the performance of the VO, including its performance against Victorian Budget performance measures, commitments in its annual plans, independent performance audits, VI oversight of its exercise of coercive powers, and the IOC’s receipt and assessment of complaints about the agency (limited to the identification of potentially systemic performance issues).

### 5.5.1 Performance against 2021/22 Victorian Budget performance measures

The VO met all but three of its 2021/22 Victorian Budget Paper No. 3 (BP3) performance measures (see Table 5.2, below).<sup>187</sup> It met its targets for:

- Number of jurisdictional cases opened
- Jurisdictional cases selected for enquiry/investigation
- Jurisdictional cases that lead to an agreed improvement
- Public sector education program satisfaction rate
- Complaints closed within 30 days.<sup>188</sup>

The VO did not meet the following targets:

- Education and training participants [number of participants]
- Complaint service satisfaction

<sup>184</sup> IBAC, the VO and the Victorian Auditor-General’s Office, *Budget independence for Victoria’s Independent Officers of Parliament*, Melbourne, October 2022, especially pp. 12–20.

<sup>185</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, pp. 3 (quoted text), 8.

<sup>186</sup> Mr Sean Coley, Committee Manager, Integrity and Oversight Committee, to Ms Deborah Glass OBE, Ombudsman, VO, correspondence, 23 August 2023, p. 3; VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 5 (quoted text).

<sup>187</sup> VO, *2022 annual report*, Melbourne, 2022, p. 82; Department of Treasury and Finance (Victoria), *Victorian Budget 2021/22: service delivery* (Budget Paper No. 3), Melbourne, 2021, pp. 378–380.

<sup>188</sup> VO, *2022 annual report*, Melbourne, 2022, p. 82. See also Department of Treasury and Finance (Victoria), *Victorian Budget 2021/22: service delivery* (Budget Paper No. 3), Melbourne, 2021, pp. 378–379.

- Investigations closed within 12 mths.<sup>189</sup>

There were 532 participants in the VO's education and training programs, short of the 2021/22 BP3 target of 642.<sup>190</sup> The VO noted that the number of participants was affected by the impact of COVID-19, and related health restrictions, which made face to face training more challenging to hold and less attractive to stakeholders.<sup>191</sup> The VO elaborated on these challenges as follows:

VO did not meet its education and training participant targets due to COVID and the suspension of face-to-face offering[s]. While VO did develop online training, [the] onset of COVID-related fatigue meant there was limited interest in online training.<sup>192</sup>

While the Committee acknowledges these impacts, it encourages the VO to further develop its online education and training platforms and content as an attractive complement, or alternative, to face to face delivery, given the marked digital transformations that the COVID-19 pandemic has accelerated.<sup>193</sup>

Regarding complaint service satisfaction, the VO's result of 56% fell just short of the 2021/22 target of 60%.<sup>194</sup> The VO has attributed this result, in part, to the number of complaints it receives that are outside its jurisdiction,<sup>195</sup> with the agency unable to assist these complainants other than to direct them to the right complaint-handler. The VO has reported that it is making a number of efforts to meet this challenge.<sup>196</sup>

In the Committee's view, continued enhancements to the VO's public information, communication with complainants and 'warm handovers' to appropriate complaint-handlers will also improve the agency's performance in this regard.<sup>197</sup> According to the VO, a warm handover 'allows complainants to be transferred directly to another department/agency without requiring the complainant to take further steps',<sup>198</sup> which can reduce the risk of a complaint-handling roundabout.

The VO closed 75% of its investigations within 12 months, short of the 80% target for 2021/22.<sup>199</sup> In explaining this result, the VO noted that

[e]ach investigation presents unique management challenges. Contributing factors in FY21/22 were staffing capacity and regular delays in responses from authorities.

<sup>189</sup> VO, *2022 annual report*, Melbourne, 2022, p. 82.

<sup>190</sup> Ibid.

<sup>191</sup> Ibid.

<sup>192</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, pp. 6–7.

<sup>193</sup> On the acceleration of technological, including digital, change, see, for example: Lauren Croft, 'Many organisations ill-prepared for digital world, new report says', *Lawyers Weekly*, 17 August 2022, <<https://www.lawyersweekly.com.au/biglaw/35234-many-organisations-ill-prepared-for-digital-world-new-report-says>> accessed 5 August 2023; Governance Institute of Australia, *Driving the digital revolution: a guide for boards*, Sydney, 2022, <<https://www.governanceinstitute.com.au/advocacy/survey-reports/driving-the-digital-revolution-a-guide-for-boards>> accessed 5 August 2023.

<sup>194</sup> VO, *2022 annual report*, Melbourne, 2022, p. 82.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> VO, *2022 annual report*, Melbourne, 2022, pp. 8 (quoted text), 10–11. See also VO, *Annual Plan 2021–22*, Melbourne, 2021, p. 9 (Objective 4: 'Develop a website-driven "warm handover" for non-jurisdictional complaints.').

<sup>198</sup> VO, *2022 annual report*, Melbourne, 2022, p. 10.

<sup>199</sup> Ibid., p. 82.

The VO has implemented project management principles and system upgrades to support timely completion of its investigations.<sup>200</sup>

These ‘principles’ and ‘upgrades’ are reflected in the VO’s framework for project management. The Framework complements the VO’s Case Management System (CMS) and supports investigators in managing their caseloads throughout the lifecycle of an investigation. Investigators are provided with guidance and operational planning tools, specifically tailored to the complexity their investigation, which ensure compliance with relevant BP3 performance targets and capture important data on matters such as ‘resource allocation, cost consideration and time parameters’. The VO informed the Committee that it ‘has identified approximately 246 discrete activities that can form part of an investigation’. These activities relate to specific phases of an investigation and each phase has assigned tasks or activities. This facilitates effective allocation of resources and improves operational efficiency.<sup>201</sup>

The Committee appreciates the substantial and complex investigative workload of the VO, and that investigations often involve distinctive challenges and demands on time and other resources. The Committee will continue to monitor and review the effectiveness of the VO’s initiatives to enhance the efficient finalisation of their investigations.

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<sup>200</sup> VO, Response to Integrity and Oversight Committee questions on notice, 1 June 2023, p. 7.

<sup>201</sup> VO, Response to Integrity and Oversight Committee questions on notice, 14 September 2023, p. 7.

Table 5.2 VO output statement 2021/22

Performance measures	Unit of measure	2021-22 actual	2021-22 target	Performance Variation (%)	Result (a)
<b>Quantity</b>					
<b>Number of jurisdictional cases opened</b>	number	18,889	14000	34.92	✓
The number of jurisdictional cases opened is contingent on approaches to the office by members of the public. This can lead to a variance between the target and the outcome.					
<b>Jurisdictional cases selected for enquiry/investigation</b>	per cent	27.7	20	38.5	✓
Where possible the Victorian Ombudsman has introduced 'batching' as a method to efficiently deal with enquiries into a number of complaints about a systemic issue.					
<b>Education and training participants</b>	number	532	642	17.1	■
The ongoing impact of COVID-19 has impacted the Victorian Ombudsman's ability to hold face to face training. Uptake of our online virtual course delivery has been positive					
<b>Quality</b>					
<b>Jurisdictional cases that lead to an agreed improvement</b>	per cent	67.8	35	93.8	✓
Jurisdictional cases that lead to an agreed improvement is contingent on case issues having a remedy. This can lead to a variance between the target and the outcome.					
<b>Public sector education program satisfaction rate</b>	per cent	95.1	85	11.9	✓
Collectively both virtual and face to face training programs have delivered consistent and positive satisfaction rates across FY20/21 period.					
<b>Complaint service satisfaction</b>	per cent	56	60	6	■
Complaint service satisfaction results are consistent with FY2020-21 results. The Victorian Ombudsman continues to receive a significant amount of non-Jurisdictional complaints which affects service satisfaction results. Several initiatives are currently underway to support this measure.					
<b>Timeliness</b>					
<b>Complaints closed within 30 days</b>	per cent	94.8	85	11.5	✓
The Victorian Ombudsman has been conducting workforce planning initiatives and system enhancements in prioritising resourcing to its early resolutions team to ensure timely closure of complaints.					
<b>Investigations closed within 12 mths</b>	per cent	75	80	6.25	■
The VO has implemented project management principles and system upgrades to support timely completion of its investigations.					
<b>Cost</b>					
<b>Total cost output</b>	\$ million	\$19.400	\$20.200	4	✓
This excludes: <ul style="list-style-type: none"> <li>• Parliamentary Referral expense reimbursement</li> <li>• Special Appropriation</li> <li>• ATNAB funding</li> </ul>					

Note: ✓ Performance target achieved or exceeded.  
 ■ Performance target not achieved - exceeds 5 per cent variance.

Source: VO, 2022 annual report, Melbourne, 2022, Table 9, p. 82.

## 5.5.2 Performance against the VO's 2021–22 Annual Plan

In the foreword to the VO's 2021/22 Annual Plan, the Ombudsman, Ms Deborah Glass OBE, emphasised the importance of making the VO's office as accessible as possible by 'dealing with more complaints in different ways'.<sup>202</sup> Its proposed measures

range from traditional methods of engagement such as increasing ... call centre contact hours, working with third parties such as community legal centres, to using social media and modern technology to expand our reach. The impact of COVID-19 has highlighted not only our continued relevance to the community but also the need for flexibility in all our work ...<sup>203</sup>

Pleasingly, all the Committee's feedback on the 2021/22 Annual Plan was incorporated in the final plan by the VO.<sup>204</sup>

Selected aspects of the VO's performance against its 2021/22 Annual Plan are set out in Table 5.3, below. Here, the Committee identifies key outcomes that have fallen short of the goals listed in the Plan.

The VO has explained that COVID-19 limited its direct engagement with CALD communities, younger Victorians, regional centres and 'vulnerable communities', although it held 'awareness-raising' events with the Federation of Ethnic Communities' Councils of Australia and the Victorian Multicultural Commission.<sup>205</sup>

The VO is working to make greater use of its review of complaints-handling function to help improve the complaint-handling capacity of public sector organisations within its oversight jurisdiction.<sup>206</sup> The Annual Plan, for example, committed the VO to review 'at least one department and one public body'.<sup>207</sup> The VO reviewed one public body, the VLSBC, but not a department.<sup>208</sup>

In terms of the VO's human resources, the Annual Plan stated that the agency would fill 'key workforce gaps ... through targeting recruitment and training'.<sup>209</sup> However, the VO has reported that it has struggled to fill these skill gaps, even with greater use of recruitment agencies to do so.<sup>210</sup> The VO has also attributed the failure to realise this goal to 'the great resignation', which is a shorthand term for the complex and uneven phenomenon of mass resignations in response to stresses, health risks, and changed

<sup>202</sup> VO, *Annual Plan 2021–22*, Melbourne, 2021, p. 3.

<sup>203</sup> *Ibid.*

<sup>204</sup> *Ibid.*, p. 11.

<sup>205</sup> VO, *2022 annual report*, Melbourne, 2022, p. 8.

<sup>206</sup> *Ibid.*

<sup>207</sup> *Ibid.*

<sup>208</sup> *Ibid.*

<sup>209</sup> *Ibid.*, p. 10.

<sup>210</sup> *Ibid.*

employment security (and work conditions, demands and expectations) that is partly due to the ramifications of the COVID-19 pandemic.<sup>211</sup>

**Table 5.3 VO Annual Plan 2021–22: selected outcomes**

<b>Objective 1 Relevance More people access and value our services</b>	
<b>Action</b>	<b>Outcome</b>
Pilot expanded Victorian Ombudsman contact hours 7 am–7 pm	An extended hours pilot was conducted over a 4-week period in November/December 2021. Following the analysis of the demand versus resourcing implications, VO will consider expanding its opening hours.
Expand Victorian Ombudsman contact methods to include SMS and webchat	SMS was successfully introduced to support automated complaint progress updates via complainant's mobile device. Webchat was successfully implemented to support warm handovers of non-jurisdictional complaints to the correct entity, whilst also allowing the complainant the ability to lodge their complaint via the messaging platform.
Pilot a partnership with a metro and a regional Community Legal Centre (CLC)	Partnerships with Peninsula and Loddon Campaspe CLCs were successfully piloted with plans to expand the model to several other CLCs. The two CLCs now have a greater level of understanding of the VO's jurisdiction and a complainant referral service has been established.
Conduct a social justice/human rights focused investigation	<ul style="list-style-type: none"> <li>• A human rights casebook was tabled, illustrating the rights of children and families, kinship carers, injured workers, activists and prisoners.</li> <li>• The Border Permits investigation was tabled, featuring a strong human rights and social justice focus.</li> <li>• A webinar with the Victorian Aboriginal Legal Service on human rights complaints took place on 22 June 2022.</li> </ul>
Expand community awareness (especially of young people) of the Victorian Ombudsman's role through increased use of social media channels	The Victorian Ombudsman's TikTok channel was introduced, targeting the 18–25 year-old age group and aims at increasing the level of awareness of young people in the role of the Victorian Ombudsman. This is the age group that continues to be underrepresented as complainants. The realisation of the goal will continue in the coming years as part of VO's business as usual work.
Implement the alternative dispute resolution function	The alternative dispute resolution (ADR) function has been established, inclusive of staff recruitment and policy and process development. Intensive internal training of types of complaints that lend themselves to an ADR consideration has taken place. A targeted public organisations awareness-raising campaign is underway with a successful session with local councils already completed.
Conduct a follow-up community awareness survey	A community-awareness survey was completed, pointing to a strong favourable perception of the VO among the Victorian community and further opportunities to continue to clarify jurisdictional powers and limitations through targeted social media channels as well as a better complainant referral process to the VO by public organisations.

<sup>211</sup> VO, *2022 annual report*, Melbourne, 2022, p. 10. On 'the great resignation', see, for example: Joseph Fuller and William Kerr, 'The great resignation didn't start with the pandemic', *Harvard Business Review*, 23 March 2022, <<https://hbr.org/2022/03/the-great-resignation-didnt-start-with-the-pandemic>> accessed 6 August 2023; Martin Edwards, 'Australia isn't experiencing the great resignation yet, but there has been an uptick', *The Conversation*, 17 June 2022, <<https://theconversation.com/australia-isnt-experiencing-the-great-resignation-yet-but-there-has-been-an-uptick-184384>> accessed 6 August 2023.

<b>Objective 2</b> <b>Impact</b> <b>Victorian public organisations deal fairly with people</b>	
Action	Outcome
Develop business intelligence capability to assist public organisations learn from complaints	Investment in staffing capability and systems has resulted in Power BI reports now used daily to inform decision making. Regular report sharing with public organisations was piloted.
Conduct at least one joint investigation or project with IBAC	Conducted joint 'Operation Watts' investigation in partnership with IBAC tabled on 20 July 2022.
Increase the number of public education workshops, including at least one Victorian Ombudsman-led initiative with other integrity agencies	<ul style="list-style-type: none"> <li>A joint webinar with IBAC and VAGO on best practice procurement practices attracted approximately 800 registrations.</li> <li>A joint webinar with IBAC and the Victorian Public Sector Commission, facilitated by the Institute of Public Administration Australia, on public service impartiality attracted over 700 registrations.</li> </ul>
Conduct quarterly workshops for public organisations on emerging issues	In addition to the webinars on procurement practice, public sector impartiality, human rights complaints and an ADR information session, a workshop with local councils on best practice complaints handling was held.
Enhance efficiencies in enquiries and investigations by improving Ombudsman liaisons with public organisations	<ul style="list-style-type: none"> <li>COVID-19 has significantly impacted the full achievement of this goal both in the ability to engage face to face and due to staff turnover within VO and public organisations.</li> <li>Recognising the prevalence of local government complainants in VO work, in person and online sessions with Local Government liaison officers were hosted.</li> </ul>
Commence at least two systemic investigations into issues of public concern	Systemic investigations into Social Housing and Environmental Protection Agency were conducted.
<b>Objective 3</b> <b>Quality</b> <b>Victorian Ombudsman staff are recognised for their integrity, values and skills</b>	
Action	Outcome
Embed 6-monthly administrative decision-making and human rights training for staff	Administrative decision-making and human rights training to staff has been created and implemented with a regular training schedule in place.
Develop real-time Victorian Ombudsman performance metrics to be displayed on the website	Real-time performance reporting of the VO output performance measures is now displayed on the Victorian Ombudsman's website.
<b>Objective 4</b> <b>Innovation</b> <b>Sustainable Victorian Ombudsman, lean internally and efficient externally</b>	
Action	Outcome
Deliver on process and system efficiencies through case management system automation, including complaint correspondence integration	Ongoing case management system improvements have become part of business-as-usual work. Automation to send direct correspondence is scheduled to be implemented in early FY2022-23. Project management methodology to support investigations has been piloted.
Pilot a 'warm handover' of premature complaints to a department/agency	Capability constraints by both VO and IT service providers have significantly impacted the full achievement of this goal. While a technology-focused solution continues to be explored, VO staff continue to be 'a bridge' between complainants and responding department/agency.

(Continued)

Objective 4 Innovation Sustainable Victorian Ombudsman, lean internally and efficient externally (Continued)	
Action	Outcome
Develop a website-driven 'warm handover' for non-jurisdictional complaints	Direct linkage from the VO's online complaints form to a non-jurisdictional entity has been successfully piloted, leading to fewer touch-points by VO staff. The aim is to continue to expand this solution to other agencies in FY2022-23.

Source: Adapted from VO, *2022 annual report*, Melbourne, 2022, pp. 8-11.

### 5.5.3 Independent performance audit

At least once every four years a performance audit of the VO is required to be conducted by an independent auditor (that is, in practice, before 1 July 2024). The Committee has commenced to facilitate this process in accordance with the *Ombudsman Act 1973 (Vic)*.<sup>212</sup> The Committee will report on the independent performance audit in its next review of the performance of the Victorian integrity agencies.

### 5.5.4 Complaints and disclosures about the VO received by the IOC

The IOC is expressly prohibited under s 26H(2) of the *Ombudsman Act 1973 (Vic)* from investigating or reviewing any investigation of any complaint made to the VO. The IOC is further prohibited from reviewing any decision by the VO to investigate, not investigate or discontinue investigating any complaint. In addition, the IOC is not authorised to 'review any findings, recommendations, determinations or other decisions' of the VO in relation to a complaint.

The IOC receives complaints about the VO as part of its broad performance-monitoring function under s 26H(1) of the *Ombudsman Act 1973 (Vic)*. The Committee's role in relation to such complaints is to consider whether any aspects of the VO's handling of a matter raise performance issues that have broader implications for the performance of the agency's duties and functions at a systemic (that is, agency-wide) level.

In 2021/22, the IOC received 4 complaints about the VO within the Committee's jurisdiction and finalised 4 (which included one complaint received in 2020/21). The majority of complaints related to the VO's complaint outcome decisions. Table 5.4, below, sets out the VO complaints received and finalised in 2021/22 and the complaint outcomes of complaints finalised in 2021/22.

<sup>212</sup> Section 24D. See also *Parliamentary Committees Act 2003 (Vic)* s 7(1).

**Table 5.4 VO complaints received and finalised by the IOC in 2021/22**

Within jurisdiction	4
Complaints received in 2020/21 and finalised in 2021/22	1
Complaints received and finalised in 2021/22	3
Complaints received in 2021/22 and finalised in 2022/23	1
Closed, following enquiries	4
Systemic performance issues identified	0

Source: Devised from IOC complaints data.

## 5.6 Conclusion

This chapter has reviewed the performance of the VO across a range of areas, including complaint handling and reviews of public sector complaint-handling systems, investigations, witness welfare management, education and prevention, and information management and security, paying close attention to the VO's annual-plan and BP3 benchmarks.

The VO effectively handles a large volume of complaints in a timely and innovative manner. The agency finalised more than 90% of its complaints within 30 days and continues to have success in complaint resolution by using informal and collaborative methods, including early resolution (for example, by facilitating effective direct action by oversighted public bodies) and conciliation. The Committee encourages the VO to continue its use of conciliation and also its review of public bodies' complaint-handling systems as a way to enhance their capacity to resolve complaints themselves at first instance, to the benefit of the body, the complainant and the VO (for instance, by reducing their complaint-handling burden).

While the VO uses a number of methods to monitor complainants' experience of the complaint-handling process, and to better understand trends in complaints overall, the Committee considers that there is room for the VO to do more. For example, the Committee encourages the VO to consider collecting, analysing and recording data relating to type of complaint, subject of complaint and complaint outcome in order to better understand the motivations and behaviour of complainants who make a series of complaints to the VO, and, therefore, to enhance the rigour of its already effective approach to complaint handling.

While the VO has said that it does not have the financial capacity to conduct focus group testing on the effectiveness of its online complaint channels (which would doubtless be valuable), the Committee encourages it to use 'discount usability' testing instead, which the agency can itself conduct economically. Research shows that even modest usability testing of this kind is a worthwhile exercise that enhances the quality of products and services.

The Committee notes a number of positive developments in relation to education and prevention in the year under review, but encourages the VO to improve its data

collection, analysis and measurement as a part of continuous improvement. Relatedly, while the establishment by IBAC of PEAC has the potential to improve collaboration between Victorian integrity agencies, it does not yet match the character of the formal corruption-prevention and education network recommended by the Committee in 2022 (for example, regarding an agreed and published set of best practice principles and rigorous peer review of education and prevention resources and activities). Further, the Committee considers that PEAC should be expanded to include the peak oversight body, the VI. Finally, the Committee reiterates its view that the Victorian integrity system, with the leadership of IBAC and the support of the VO and other integrity agencies, needs to develop and use a rigorous measurement framework to identify and improve the quality and impact of its education and prevention work.

Finally, the Committee is pleased to note the VO's implementation of some key improvements to its management of witness welfare in response to the Committee's review.



# Chapter 6

## Conclusion

The Independent Broad-based Anti-corruption Commission (IBAC), Office of the Victorian Information Commissioner (OVIC), Victorian Inspectorate (VI) and Victorian Ombudsman (VO) continue to make invaluable contributions to strengthening the transparency, accountability, integrity and good governance of the Victorian public sector. They have done so through a range of efforts, including effective public and public sector engagement; incisive monitoring, review and audit activities; high-quality public information and education and prevention initiatives; insightful intelligence and research reports; best-practice guidance for public sector organisations; and rigorous investigation reports.

In undertaking this review, the IOC received submissions, held hearings, sought answers to questions on notice for the agencies and undertook research. The Committee thanks the integrity agencies for their submissions, testimony and answers to questions on notice. The Committee also thanks the former IBAC Commissioner, Hon Robert Redlich AM KC, for his testimony.

The Committee looks forward to continuing to engage constructively with Victoria's integrity agencies.

### 6.1 IBAC

IBAC has accepted, and made significant progress in implementing, the vast majority of recommendations in the Committee's preceding two reports,<sup>1</sup> as well as the recommendations of the 2022 inaugural independent performance audit of IBAC.<sup>2</sup>

The agency continued its important education and prevention work in 2021/22, using strategic intelligence to target and engage with regional and vulnerable communities. The volume, array and reach of those initiatives were impressive. IBAC has, also, through the establishment of the Prevention and Education Advisory Committee (PEAC), made important progress in collaborating with other Victorian integrity bodies on education and prevention initiatives, data collection and measurement. The Committee considers that there is, however, further work to do to ensure that PEAC achieves the intended purpose of the formal corruption-prevention and education network recommended by the Committee in 2022.

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1 Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 79–81; Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, pp. 90, 95, 105, 107, 131, 168.

2 Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix C (audit of IBAC), pp. 10–23.

The Committee is encouraged that IBAC's serious commitment to improving its data collection will lead to the agency measuring the impact of its initiatives with increasing sophistication over time. The Committee is further encouraged that the establishment of IBAC's witness liaison team will improve the accuracy of its welfare risk assessments and help ensure that its witness welfare-related policies, procedures and practices are fit for purpose.

While IBAC is working hard to improve the timeliness and quality of its assessments, it continues to struggle to meet the demands of its assessments workload. Given the complexity of the agency's assessments function, the Committee strongly encourages IBAC to find effective ways of demonstrating how the work it is doing to improve timeliness is increasing productivity.

The Committee has previously expressed concern over the proportion of police-related complaints that IBAC investigates. IBAC has made significant progress with respect to its monitoring of Victoria Police investigations of referred complaints, and this will no doubt strengthen public confidence in the agency's police oversight role. However, given the opaqueness of its current reporting on the reasons for referring, rather than investigating, police-related complaints—and on the impact of its monitoring activities on Victoria Police's handling and investigation of such complaints—the Committee strongly encourages IBAC to find more informative ways of reporting on this important aspect of its police oversight work.

The Committee has also previously expressed concern about aspects of IBAC's workplace culture. While IBAC has made steady progress in addressing the issues raised in the results of the Victorian Public Sector Commission's 2019 People Matter Survey (PMS), the Committee considers that the agency needs to do more to reduce the incidence of bullying and violence or aggression and encourage formal reporting of such behaviour. Given its role in the Victorian integrity system, it is critical that IBAC foster a speak-up culture and ensure that its workforce has confidence in the agency's reporting processes and procedures. Consequently, the Committee will monitor any findings and recommendations arising out of IBAC's current OH&S review.

## 6.2 OVIC

Despite its increasing workload, OVIC has made steady progress in improving the timeliness of its FOI reviews and the finalisation of FOI Freedom of Information (FOI) and privacy complaints. In 2021/22, the agency engaged with the Victorian public to help them better understand and exercise their information rights, and conducted important monitoring work with respect to understanding the barriers to timely FOI decision-making.

OVIC has addressed delays in FOI decision-making through increased regulatory monitoring activities, early engagement with organisations, regular ongoing engagement with organisations dealing with backlogs of undecided FOI requests, and advocating for properly resourced FOI staffing within organisations. Positively,

these activities contributed to marked declines in FOI complaints received by OVIC in 2022/23, and fewer complaints regarding organisations with systemic problems with delays in FOI decision-making.

OVIC's ability to effectively monitor organisations' timeliness in FOI decision-making, and other matters, is hampered by the current legislative regime. OVIC has drawn the Committee's attention to a number of legislative amendments it considers will strengthen its monitoring functions with respect to FOI and privacy.

Consequently, the Committee recommends that the Victorian Government give consideration to legislative amendments to empower OVIC to require organisations to make an FOI decision by a certain date, enable it to access data relating to review decisions of the Victorian Civil and Administrative Tribunal, and require notifications under the Information Security Incident Notification Scheme to be made at the time of the incident.

The Committee also recommends that the Victorian Government provide additional funding to OVIC to enable the agency to increase its auditing work, undertake more own motion investigations, and develop a rigorous evaluation and assessment framework with respect to the quality and impact of its education and prevention initiatives.

OVIC, noting that organisations continue to struggle with the formal, technical and administrative processes under the *Freedom of Information Act 1982 (Vic)*, has welcomed the Committee's upcoming inquiry into Victoria's FOI regime. The Committee looks forward to examining these and other matters more closely during the FOI inquiry.

## 6.3 VI

The VI has accepted, and made significant progress in implementing, the vast majority of recommendations in the IOC's preceding two reports,<sup>3</sup> as well as the recommendations of the 2022 inaugural independent performance audit of the VI.<sup>4</sup>

The VI has also made significant progress with respect to its monitoring and review of mandatory coercive power notifications. Importantly, this work has resulted in incremental procedural improvements which will, over time, strengthen public confidence in IBAC's, OVIC's and the VO's exercise of such powers.

The Committee acknowledges the significant work that the VI has done to improve its timeliness in finalising complaints despite the fact that it continues to struggle with the increasing volume and complexity of complaints it receives. The Committee is encouraged that the VI is making steady progress in increasing its annual complaints

<sup>3</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 138, 141; Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria's integrity agencies*, Melbourne, April 2022, pp. 119–120, 131, 168.

<sup>4</sup> Parliament of Victoria, Integrity and Oversight Committee, *The independent performance audits of the Independent Broad-based Anti-corruption Commission and the Victorian Inspectorate*, Melbourne, October 2022, Appendix D (audit of the VI), pp. 13–15.

closure rate. The Committee is further encouraged that the introduction of new Budget Paper No. 3 timeliness performance targets for the VI, and the complaint-handling Service Charter, will improve efficiency in this area. The Committee will continue to monitor the VI's timeliness in finalising complaints and, in particular, the success of these measures.

Positively, the VI has taken action to address its 2022 PMS results and has made early progress in reducing the incidence of 'high' to 'severe' work-related stress and bullying and sexual harassment. It is critical that the VI encourage formal reporting of internal workplace violence and aggression and adequately support staff in public-facing complaint-handling roles. Consequently, the Committee will monitor the VI's 2023 PMS results.

## 6.4 VO

The VO implemented key improvements to its management of witness welfare in response to the Committee's preceding report.<sup>5</sup>

The VO continues to handle and resolve a large volume of complaints in a timely and innovative manner. The agency leads by example, finalising more than 90% of its complaints within 30 days,<sup>6</sup> favouring informal and 'collaborative'<sup>7</sup> ways of resolving complaints, and showing a serious commitment to continuous improvement by surveying complainant satisfaction and being receptive and responsive to complainant feedback.

The Committee is encouraged by the early success of the VO's conciliation function, which indicates that it has significantly enhanced the agency's capacity to resolve complaints to the satisfaction of complainants and respondent organisations.

The Committee encourages the VO to consider collecting, analysing and recording data relating to type of complaint, subject of complaint and complaint outcome in order to better understand the motivations and behaviour of complainants who make multiple complaints to the VO, and, therefore, to enhance the rigour of its already effective approach to complaint handling. The Committee also considers that 'discount usability' testing, which could be conducted by the VO itself, would assist with continuous improvement of its online and other complaint channels.

**Adopted by the Integrity and Oversight Committee  
Parliament of Victoria, East Melbourne  
17 November 2023**

<sup>5</sup> Parliament of Victoria, Integrity and Oversight Committee, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*, Melbourne, October 2022, pp. 162-170.

<sup>6</sup> VO, *2022 annual report*, Melbourne, 2022, p. 18.

<sup>7</sup> Ms Deborah Glass OBE, Ombudsman, VO, public hearing, Melbourne, 14 August 2023, *Transcript of evidence*, p. 9.

# Appendix A

## Public hearings

### A.1 Public hearings

#### Monday, 31 July 2023

55 St Andrews Place, East Melbourne

Name	Position	Organisation
Mr Sven Bluemmel	Information Commissioner	Office of the Victorian Information Commissioner
Ms Joanne Kummrow	Public Access Deputy Commissioner	Office of the Victorian Information Commissioner
Ms Rachel Dixon	Privacy and Data Protection Deputy Commissioner	Office of the Victorian Information Commissioner
Ms Cara O'Shanassy	General Counsel	Office of the Victorian Information Commissioner
Hon Robert Redlich AM KC	former Commissioner	Independent Broad-based Anti-corruption Commission

#### Monday, 14 August 2023

55 St Andrews Place, East Melbourne and via Zoom

Name	Position	Organisation
Ms Deborah Glass OBE	Ombudsman	Victorian Ombudsman
Ms Megan Philpot	Deputy Ombudsman	Victorian Ombudsman
Dr Marija Maher	Chief Operating Officer	Victorian Ombudsman
Mr Stephen Farrow	Acting Commissioner	Independent Broad-based Anti-corruption Commission
Ms Kylie Kilgour	Deputy Commissioner	Independent Broad-based Anti-corruption Commission
Ms Marlo Baragwanath	Chief Executive Officer	Independent Broad-based Anti-corruption Commission
Mr Glenn Ockerby	Executive Director, Corporate Services	Independent Broad-based Anti-corruption Commission
Mr Eamonn Moran PSM KC	Inspector	Victorian Inspectorate
Ms Cathy Cato	Chief Executive Officer and General Counsel	Victorian Inspectorate
Ms Alison Lister	General Manager, Integrity Operations and Policy	Victorian Inspectorate

