

# **TRANSCRIPT**

## **INTEGRITY AND OVERSIGHT COMMITTEE**

### **Performance of the Victorian Integrity Agencies 2021/22**

Melbourne – Monday 31 July 2023

#### **MEMBERS**

Dr Tim Read – Chair

Hon Kim Wells – Deputy Chair

Ryan Batchelor

Jade Benham

Paul Mercurio

Rachel Payne

Jackson Taylor

Belinda Wilson

**WITNESSES**

Mr Sven Bluemmel, Information Commissioner,

Ms Joanne Kummrow, Public Access Deputy Commissioner,

Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, and

Ms Cara O'Shanassy, General Counsel, Office of the Victorian Information Commissioner.

**The CHAIR:** I declare open this public hearing for the Integrity and Oversight Committee's review of the performance of the Victorian integrity agencies in 2021 and 2022.

I would like to welcome the public gallery and any members of the public watching the live broadcast.

I also acknowledge my colleagues participating today.

I thought we would start at this end. Belinda, if you could introduce yourself, and then we will just move up the table swiftly.

**Belinda WILSON:** Sure. Belinda Wilson, the Member for Narre Warren North.

**Paul MERCURIO:** I am Paul Mercurio, Member for the electorate of Hastings.

**Jackson TAYLOR:** Jackson Taylor, the Member for Bayswater.

**Ryan BATCHELOR:** Ryan Batchelor, Member for the Southern Metropolitan Region.

**The CHAIR:** Tim Read, Member for Brunswick and Committee Chair.

**Rachel PAYNE:** Rachel Payne, Member for South-Eastern Metropolitan Region.

**Kim WELLS:** Kim Wells, MP for Rowville and Deputy Chair.

**Jade BENHAM:** Jade Benham, Member for Mildura.

**The CHAIR:** Thank you, Committee.

On behalf of the Integrity and Oversight Committee, I acknowledge the First Nations people, the traditional owners of the land which has served as a significant meeting place here of the First People of Victoria. I acknowledge and pay respect to the elders of the First Nations in Victoria, past and present, and welcome any elders and members of communities who may visit or participate in the public hearing today.

To the witnesses: before you give your evidence, there are some formal things I need to cover, so please bear with me.

Evidence taken by this Committee is generally protected by parliamentary privilege. You are protected against any action for what you say here today, but if you repeat the same things anywhere else, including on social media, these comments will not be protected by this privilege. Any deliberately false evidence or misleading of the Committee may be considered a contempt of Parliament.

All evidence given today is being recorded by Hansard, and you will be provided with a proof version of the transcript for you to check once it is available. Verified transcripts will be placed on the Committee's website. Broadcasting or recording of this hearing by anyone other than Hansard is not permitted.

I welcome from the Office of the Victorian Information Commissioner, Sven Bluemmel, Information Commissioner; Joanne Kummrow, Public Access Deputy Commissioner; Rachel Dixon, Privacy and Data Protection Deputy Commissioner; and Cara O'Shanassy, General Counsel. Thank you all very much for coming. Do you have an introductory statement you would like to start off with?

**Sven BLUEMMEL:** I do, Chair, thank you very much – a very brief statement. Thank you to you and members of the Committee for the opportunity to make a brief opening statement. We are very pleased to be here today, and we look forward to discussing OVIC's performance over 2021/22.

The theme for our annual report for that year was 'Refining the focus'. That reflected our strategic approach for the following three years, which was a renewed focus on engaging more directly and meaningfully with Victorian citizens and empowering them to understand and exercise their information rights across all of our jurisdictions. And we will continue also to focus on empowering agencies to do the right thing in respecting those rights.

In the FOI space, I would like to start by strongly welcoming the recent referral by the Legislative Assembly to this Committee to conduct an independent and comprehensive review of the *Freedom of Information Act 1982*. This year actually marks the 40th anniversary of our 1982 legislation. We were actually the first state in Australia to have FOI legislation, just after the Commonwealth. So 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, and the office stands ready to assist the Committee in any way possible with your review.

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. We did see a small reduction in the number of applications our office received for review of FOI decisions, but we saw a marked increase in the number of complaints that we received. Most of those complaints concerned agency delays. Despite those increases, we managed to perform strongly and indeed meet our performance targets in relation to the conducting of reviews and resolving complaints informally where we can.

We also continued to build on key policy initiatives aimed at enhancing the culture so that agencies actually bring in a culture of information release rather than of withholding. In the privacy space, we continue to improve our timeliness in completing privacy complaints that come before us, and the vast majority of those were finalised without the need for them to go to the Victorian Civil and Administrative Tribunal.

And finally, in the information security space, we did see an increase in the number of information security incident notifications that we received under the information security incident notification scheme that we administer, and we use the information that we gather as the regulator through that scheme to improve security practices across the sector and to identify emerging trends, threats and issues.

During that year we also updated our Regulatory Action Policy, which guides how we take regulatory action, and all of that is available publicly on our website. In that year we also published our new priorities in the regulatory space for the next three years that reflect existing and emerging issues, and they include compliance with the freedom-of-information professional standards; privacy and security when outsourcing; information governance during crises; and finally, privacy, security and transparency in emerging technologies.

That concludes the opening statement. We are of course in your hands for any questions you would like us to answer.

**The CHAIR:** Thank you, Commissioner. I will kick off, but before I do, I would like to thank you on behalf of the Committee for your years of service and your contribution to information management and protection at a really important time. So thank you again, and congratulations on your new position. We might be seeing you in that other role.

**Sven BLUEMMEL:** Thank you, Chair.

**The CHAIR:** Given that you are about to leave this position, perhaps I should start off by asking: Has OVIC been adequately funded?

**Sven BLUEMMEL:** That is always a difficult question to answer, of course. We have always been resource-constrained, which I think most agencies would of course say. Within the resources that we have had available – and of course we have from time to time asked for more, with limited success – we obviously adjust to do the best we can. I think in that phase it is safe to say that we are now an effective information regulator. If you look

across Australia, we are certainly one of, if not the, busiest information regulators, perhaps with the exception of our Commonwealth counterparts, because they also regulate the private sector. In the FOI space, though, we are busier than even they are.

We are under budget pressure. The space where we would like to do more if resources were available would be in our investigations space. There 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 is in being proactive. 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.

We are currently in discussions with the Department of Justice and Community Safety [DJCS] about potential budget savings that might be identified for us. In the state budget this year there was no change to our budget. We had asked for an increase. We did not receive that, but there were no savings imposed on us. We are currently in discussions with the DJCS as to where that whole portfolio is looking to make savings, but for us any cut would be very, very difficult to absorb.

**The CHAIR:** All right. Thank you. In the interests of time, I think I might pass immediately to Mr Batchelor.

**Ryan BATCHELOR:** Thank you. Thanks for coming. Congratulations. We are sorry to see you go. It is democracy's gain, no doubt.

I have got some questions about the protective data security standards and framework. They would apply to the range of agencies that this Committee oversees, wouldn't they – OVIC, the Ombudsman, IBAC and the Inspector. They are all subject to those standards and frameworks. Is that right?

**Sven BLUEMEL:** I might ask Deputy Commissioner Dixon to cover that.

**Ryan BATCHELOR:** And do you, as OVIC, monitor their compliance with those standards and the framework?

**Rachel DIXON:** As you would be aware, the VPDSF [Victorian Protective Data Security Framework] and the standards are risk-based, so we ask them to assess their standards. We do give feedback to agencies on the submissions that they receive. In line with Sven's comment, I have a team of six dealing with 4500 Victorian government bodies, so, while we do get a lot of good responses, I think to the playback sessions that we give people on how they have done the at-risk assessment. That is where it is difficult. So we have engaged with them around some of those sorts of things. We have not given any particular advice to any of them – IBAC in particular. I think we are quite confident with all of the agencies in the way that they are currently aware of the risks that they are taking. That is not to say that if we had to investigate, we might not find something, but, again, given the resources we have, we are not in a position to do that.

**Ryan BATCHELOR:** Would it be fair to say that in terms of the information held in government agencies there is some pretty highly confidential and sensitive information that would be held by these agencies, so their risk profile would be heightened?

**Rachel DIXON:** It would, yes.

**Ryan BATCHELOR:** Have you encountered any weaknesses in any of their systems in any of the work that you have done – any that you have been made aware –

**Rachel DIXON:** When you talk about systems, are you talking about IT systems or are you talking about processes?

**Ryan BATCHELOR:** Both.

**Rachel DIXON:** Okay. I am not aware of weaknesses in the process and we have not done an audit of their actual IT systems. I do know that they work closely with the Department of Government Services [DGS] as well, because obviously the capability side of how they do things rests with DGS, so you would have to ask DGS

whether they have actually done some work. DGS is very fond of the essential eight. We tend to prefer the risk-based standard, but again, not enough resources.

**Ryan BATCHELOR:** And we are assuming and hoping they have got robust systems, but human error can always play a part in –

**Rachel DIXON:** Human error is the number one vector for information security incidents.

**Ryan BATCHELOR:** So in light of that you would expect that these agencies, as part of their compliance framework or best practice, do training in information security with their staff?

**Rachel DIXON:** I would expect that, yes.

**Ryan BATCHELOR:** And that would include, as part of a framework, appropriate document classification, use of information marking limitation, limiters and the like?

**Rachel DIXON:** It would. I would just mention that a year and a half ago – it might be two years ago, now, (sorry, I am slightly fuzzy on the COVID time line), but a couple of years ago – the States and Commonwealth agreed on a new classification standard that would apply across all of Australia for commonality to try and reduce confusion, particularly for agencies that have interstate obligations or interagency obligations. A lot of work was done around education on that. Victoria chose to have an additional element on that –

**Ryan BATCHELOR:** Of course we did.

**Rachel DIXON:** Of course we did – which was the cabinet-in-confidence label. That makes it slightly different from everybody else, but a lot of work went in at all agencies on understanding now how those things work. There has been a lot of workforce turnover, of course, in the last two years. I could not speak to whether that training is ongoing in all those organisations, but it is certainly an issue that we continue to do education on and we have what we call VISN, which is the information security network.

**Ryan BATCHELOR:** So best practice would suggest that staff in these organisations are appropriately trained in how to classify their documents appropriately –

**Rachel DIXON:** Absolutely.

**Ryan BATCHELOR:** and what the meaning of those terms are.

**Rachel DIXON:** Indeed.

**Ryan BATCHELOR:** Last question: Did all integrity agency heads in 2021/22 provide an attestation on the organisation's protective data security plan?

**Rachel DIXON:** I will have to take that on notice and come back to you.

**Ryan BATCHELOR:** That would be great. Thank you. That is all, Chair.

**The CHAIR:** Thanks, Mr Batchelor. We will go to the Deputy Chair, Mr Wells.

**Kim WELLS:** Thanks, Chair. Just a follow-up on the question that Ryan just asked: Who is responsible for the actual audit of the process and the IT systems?

**Rachel DIXON:** We have audit functions under the *PDP Act [Privacy and Data Protection Act 2014]* which allow us to go and actually 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, as Commissioner Bluemmel has mentioned, 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. I know that, as I say, the Department of Government Services works with agencies around the capabilities that they have, but we just do not. We cannot. I have got, as I say, six people, and fewer than that in the investigations team, so it just is not a possibility.

**Kim WELLS:** So following on from that, then, is that a budget issue that your organisation has put forward to make sure that it is proactive rather than reactive in regard to an audit?

**Rachel DIXON:** We have proposed – for example, recently we proposed a trial of an active assurance scheme, not for the agencies per se but actually for the contractors working for those agencies, in light of some recent high-profile data breaches where contractors were in fact the source of the problem. We were not successful in securing funding for that activity, so we are unable to fulfil it – except reactively.

**Kim WELLS:** Just moving along, with your 2021/22 annual report you have listed an 11 per cent increase in the amount of FOI complaints. How did you manage that increase of the 11 per cent, and following on from the Chair's question, was the 2021/22 budget sufficient to be able to deal with that 11 per cent increase in complaints?

**Sven BLUEMMEL:** I will ask Deputy Commissioner Kummrow to take you through the process and how we adjusted. In terms of the overall picture for that, as I mentioned most of the complaints were delay-related, and at about the same time my office undertook a proactive own-motion investigation into the reasons for delay and timely information release, and that was published and tabled in Parliament, and we have since done some follow-up on that. That identified a lot of the issues coming out; for example, in the early days of the pandemic people working from home unable to access documents, and so on, causing delays. Obviously, we are in a very different position now as a sector, but I will ask Deputy Commissioner Kummrow to elaborate on what we did at OVIC to cope with that.

**Joanne KUMMROW:** Thanks, Sven. We received a record number of complaints in 2021/22: 825, and, as you mention, it was an 11.6 per cent increase, and it was a 58 per cent increase from 2019/20. As Commissioner Bluemmel mentioned, the pandemic seemed to have some impact, obviously, on agencies. They had to quickly – some of them did not have the proper technology to take work home. A number of them were using paper files and a number got sick, obviously, and had caring responsibilities and remote schooling and the like. So it was a really catastrophic impact on a lot of agencies. In terms of those complaints, the majority are delay complaints, as we have said – about 72 per cent of those – and the majority of those, 48 per cent, involved Victoria Police. With delay complaints there is no power for either Sven or me under the FOI Act to order or direct an agency to make a decision on where a delay has been incurred.

By delay – I should take a step back and say that is where an agency has not made a decision within time. So what we are left with then in order to practically manage those is contacting the applicant, contacting the agency, trying to find out what the issue of delay is, letting the applicant know – so communicating – also letting the applicant know, or the complainant, that they have a legal right to go to VCAT and seek review, but also we have seen delays there as well with an increase in agencies not making decisions within time. So really just keeping in touch with the applicant and the agency and where we can try to resolve that matter – for example, whether the request could be reduced in some scope, and also advocating for complainants where the matter required some advocacy, so time was of the essence and people needed their request answered [in a] more timely [fashion]. It is extraordinary, really, the increase in complaints, but at the same time we were limited in really what we could do. That is why you see the *Impediments to timely FOI and information release*, an own-motion investigation report that resulted, and it was a build-up from the previous financial year as well. That is what culminated in the Information Commissioner's own-motion investigation, and as we have mentioned earlier –

**The CHAIR:** I am sorry –

**Joanne KUMMROW:** Sorry, I will just wind up.

**The CHAIR:** Just finish the sentence.

**Joanne KUMMROW:** The outcome of that was a recommendation around review of the Act, so we are in that space now and that is very welcome.

**The CHAIR:** Thank you.

**Joanne KUMMROW:** I am sorry, Chair.

**The CHAIR:** Not at all. Thank you very much and thanks for the questions. We will move to Mr Taylor.

**Jackson TAYLOR:** Thank you very much, Chair.

**The CHAIR:** Can I just say to witnesses and Committee we are a little tight on time, so let us all try and be as succinct as possible.

**Joanne KUMMROW:** My apologies. Thank you, Chair.

**Jackson TAYLOR:** Thank you, Chair. How will OVIC tailor its professional engagement activities, advice and guidance material and its educational resources and publications for the general public in line with its revised Regulatory Action Policy and new regulatory priorities?

**Sven BLUEMMEL:** Thank you. We have got a range of things there that we want to do. A couple of years ago this Committee undertook its work into the education and prevention functions of integrity agencies. As a result of that, we have been working with the other integrity agencies to focus our work against those recommendations. I think all but two of those recommendations are actioned. For us as an organisation, it is more just directing more resources or more communications at members of the public. For the first sort of four years, it was all about getting agencies to do things better, and we have done a lot of work there, but we thought that was a little bit at the expense of not working directly with people to tell them, 'Here are your rights, and here is how you can be effective in exercising them.' So it is more a change in emphasis, I would say.

**Jackson TAYLOR:** Thank you, Chair.

**The CHAIR:** Great. Thanks, Mr Taylor. So let us pass now to Ms Benham.

**Jade BENHAM:** Thank you, Chair. Commissioner, how has OVIC tailored its educational resources, publications and engagement activities in response to the findings in its report on the audit of standard 2 of the Victorian Protective Data Security Standards?

**Sven BLUEMMEL:** I will ask Deputy Commissioner Dixon to answer that, please.

**Rachel DIXON:** Thank you very much. I think I referred before to some of the PDSP insight sessions that we give to each agency. Wherever possible, we then walk them through the things that they have done. We also then have the regular, biannual if you like, VISN meetings, which is the Victorian Information Security Network, and then we will occasionally, for certain specific sectors, go directly to the agencies, or to particular sectors, to say we will give you specific advice on how we are seeing this in your sector. As an example, when we had the critical infrastructure Bill come in from the Commonwealth, that proved to be a thing where we needed to do some outreach to explain how that would affect their information holdings and what they had to report.

Likewise, I think you will have seen in our response to the questions on notice from last year that we had tailored particular information asset register requirements for cemetery trusts, for example, because they have a very specific kind of thing. So we are looking at that tailoring more, but we are obviously resource-constrained. At the moment, our focus is moving toward possibly – and I say possibly – doing that for schools because they have quite different assets and information systems than most of the rest of the public sector.

**Jade BENHAM:** Thank you. Thanks, Chair.

**The CHAIR:** All right. Thank you. Let us move to Mr Mercurio.

**Paul MERCURIO:** Thank you. I have got one statement and one question. The statement is I love your tie, Sven. The question is: What factors contributed to OVIC's 24-day improvement in the average time taken to finalise a privacy complaint in 2021/22?

**Sven BLUEMMEL:** Again, I might ask Deputy Commissioner Dixon to take that one.

**Rachel DIXON:** Apologies, some of you were not here, but last time I talked about OVIC taking an approach to dealing with privacy complaints that was a bit more hands-on in the sense that we do not have a decision-making power at OVIC. I cannot make a decision on a privacy complaint as to whether it is correct or not, I can dismiss them, but it is always appealable to VCAT even if I do that. But on the top of that I guess that we would say that we started offering views. We have expertise in the Privacy Act obviously within our office,

And we started offering views to both agencies and individuals about the merits of their claims. 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 just kind of like a bit of a hands-off kind of thing 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. It is getting better and better and better.

I think agencies are hopefully trusting that when we do offer these views, we are not trying to make life hard for them. We are trying to inform them as to legally in our opinion, and obviously our General Counsel has input into some of these sorts of choices, where they stand and what the likely success of their response is likely to be. That has proven to be very successful, and I will occasionally then engage at a senior level with some agencies to say, ‘Look, you have said in your response to this complaint that it is approved under a certain IPP [Information Privacy Principles], and we don’t think that that is a reasonable interpretation of the argument.’ And it works.

**Sven BLUEMMEL:** I think if I may very briefly – that has also, I think, represented a bit of a harvest in the investment we have made as OVIC since our creation some six years ago to invest in our staff skills, to invest in how they deal with people, both in agencies but just as importantly with individuals in the community, so that when people come to us now, if I may say so, I think we have a justified reputation that we are independent, we know what we are doing and our people can be trusted. That is as a result of some really long-term investment in our people. Therefore we see now the benefits of that when people come to us and they get told, ‘Here is what I think is at issue here and where it is heading.’ Even if they do not like it, they realise we are independent and they can trust that. And I think we are, and the people of Victoria are, really reaping the rewards from that.

**Cara O'SHANASSY:** Do you mind if I add something very quickly? Just on those points, we have had a dramatic decrease in matters that have gone to VCAT as well. So in 2017–18, 53 per cent were getting referred off to VCAT and then the following two years only 25 per cent and then 31 per cent and 30 per cent – so from 53 down to between 25 and 30 per cent. That has been the decrease in matters going to VCAT.

**The CHAIR:** Great. I wonder if we can move now to Ms Payne.

**Rachel PAYNE:** Thank you, Chair. I also would like to extend my congratulations to the Commissioner on your new appointment. I think it is fabulous. Just in relation to the *Regulatory Action Policy 2022–25*, I would like to ask what factors informed OVIC’s review and refinement of this policy, and did OVIC draw on independent expert advice in structuring this policy?

**Sven BLUEMMEL:** I might ask Deputy Commissioner Dixon to take some of that because the investigations team that is charged with regulatory action reports through Deputy Commissioner Dixon. But, yes, we certainly drew on a lot of experience and knowledge broadly as to how we would go forward with those.

**Rachel DIXON:** In terms of the structure, and by the way, we refined our approach, so we continue to iterate on it, but when we were first drafting the policy we looked at other policies, so for example the Commonwealth regulatory action policy and other similar agencies to draw on their things. We did not use an external expert. We do not have the resources to do that. But we spent a lot of time studying those other policies. We continue to refine it and that comes out, I think you will see, when we issue our regulatory statement of priorities. We may over time adjust those things.

The one area, which you will have seen in the Victorian Inspectorate’s report, that we have spent quite a lot of time on now is witness welfare in response to this Committee’s questions to us. We refined our approach to regulatory action there. The last time, I think, we appeared we had not actually compelled any witnesses. On the advice of various experts, particularly at the Inspectorate, we have since issued several notices of compulsion. But we have done that for the protection of the witnesses so that they can talk freely about some matters because they have the ability to do that, and we can override some secrecy provisions that they might otherwise feel obliged to do. We did not do it because we wanted to make them feel bad, we did in fact for their benefit. And we have had a lot of training now. VI came in and actually talked to our staff as well, which generated some benefits.

**Rachel PAYNE:** Thank you.

**The CHAIR:** Thank you, and to bring us home for the afternoon, Ms Wilson.

**Belinda WILSON:** Thanks, Chair. My question is just about what you believe the driving force was for the 50 per cent increase in FOI complaints received by you from 2019–20 to 2021–22?

**Sven BLUEMMEL:** I will ask Deputy Commissioner Kummrow to expand on that, but a lot of it was uncovered by our own-motion investigation report into the impediments to timely FOI decision-making and information release. Certainly, we do not ascribe all of it to the changes wrought to the way we worked through the pandemic, but that was certainly a factor.

**Joanne KUMMROW:** No, I think that is right. 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. As Sven said, that was partly due to the COVID-19 pandemic. There are an increasing number of FOI requests in this State year on year. There are always, for some agencies, a large number of incoming FOI requests, and as I mentioned earlier, staff absences due to unplanned leave and technology. Agencies report on the difficulty in recruiting new and experienced FOI officers and also agency budget constraints on recruitment or replacement of FOI officers when they leave. So there is sort of a plethora of factors really, culminating, I think, with the onset of the pandemic.

**The CHAIR:** All right. Thank you very much, Committee. Any final words, Commissioner?

**Sven BLUEMMEL:** Look, I just wanted to say that what is in place now in Victoria is a very effective oversight regime of information rights. One can easily compare that to other jurisdictions where that is not necessarily the case. I just wish the Committee all the best with its deliberations in this set of hearings and also for the review of the FOI, which as I said at the outset, is something that I think is extremely timely. I trust that that will lead to some great outcomes. I wish you all the very best with it, and we will assist wherever we possibly can.

**The CHAIR:** Wonderful. Thank you, and thanks very much to all four of you for coming in and answering our questions. I declare this part of the hearing closed. We will resume again in 5 or 10 minutes, after a short break.

**Witnesses withdrew.**