INVESTIGATION

Operation Harmonia

October 2026

Special report

ibac | Strengthening Victoria's Integrity

Acknowledgement

IBAC acknowledges the Traditional Custodians of the lands on which we work and pays respect to Elders past, present and emerging. We recognise and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of Victoria.

Published by order, or under the authority, of the Parliament of Victoria. 2026.

ISBN 978-1-922349-67-5

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Letter of Transmittal

To
The Honourable President of the Legislative Council

and
The Honourable Speaker of the Legislative Assembly

Special report on Operation Harmonia

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*, I present IBAC's special report on Operation Harmonia.

IBAC's findings are contained in this report.

Yours sincerely



Victoria Elliott
Commissioner

Independent Broad-based Anti-corruption Commission

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Foreword

Governments are often required to provide urgent support when major emergencies occur. At times, that support may include financial assistance for individuals according to set criteria. Victorians expect their government to provide timely, equitable support when crises strike. They also expect that limited public funds will be expended in a fair and accountable manner.

IBAC's Operation Harmonia investigated the administration of emergency business support grants provided during the COVID-19 pandemic. The investigation highlighted the issues that arise when public servants fail to fulfil their obligations to provide full and frank information to decision-makers.

IBAC found that in November 2021, the Department of Jobs, Precincts and Regions (the department) identified a significant suspected loss, arising from payments made to ineligible grant applicants for a suite of COVID-19 business support programs. When the magnitude of the suspected loss was estimated to be more than $285 million, the Deputy Secretary directed that details of the overpayments be removed from a draft report to the Minister. In addition, the Associate Secretary withheld information about the quantum of the suspected loss from the Secretary.[1]

The significant suspected loss in question arose from flaws in the design and administration of the goods and services tax (GST) eligibility criterion used in several COVID-19 business support programs, which elevated the risks of error, fraud and corruption. Defects in the controls used to detect and investigate suspected fraud, error and the inequitable outcomes – resulting from the department's inconsistent approach to verifying eligibility for these programs – have been canvased in the November 2023 report by the Victorian Auditor-General's Office (VAGO). That report confirmed that payments were made in error and that it was likely that fraud occurred but remained undetected.[2]

Operation Harmonia was concerned with the subsequent provision of inaccurate, incomplete and misleading information to the Secretary, relevant ministers, the Victorian Ombudsman and ultimately VAGO. Multiple failures to provide clear and accurate information occurred over a 10-month period from November 2021. This was not a one-off event, nor was it due to an oversight. IBAC found that decisions were made to withhold information about the magnitude of the loss and misleading information was subsequently created and disseminated over an extended period of time. Importantly, the key events discussed in this report occurred after the height of the COVID-19 pandemic had passed and around the time the Victorian Public Sector Commission (VPSC) issued a reminder of the need to 'provide frank and fearless advice openly' and 'support the provision of difficult advice by acknowledging [identified] issues'.[3]

In evidence to IBAC, a number of witnesses rejected the idea that there was a reluctance to report bad news. Despite those assertions, it is impossible to avoid the conclusion that the advice provided to ministers was not frank and fearless. Indeed, the convoluted rationalisation of the department's decision to withhold information – proffered in response to IBAC's enquiries – suggests that ethics and integrity were secondary considerations in the face of scrutiny.

IBAC has previously made recommendations to promote the provision of frank, impartial and timely advice in Operation Daintree,[4] recognising that this is central to the public sector values of responsiveness and integrity.[5] Departments and agencies must ensure that any information provided to the government and the public about the management of funds is clear, accurate and readily understandable.[6] This supports governments to make informed decisions and helps to ensure that public money is spent in a transparent and accountable manner.

IBAC's Operation Harmonia ultimately found that critical decision-making information was withheld from the Secretary and the Minister for Industry Support and Recovery. Specifically, that more than $285 million may have been paid to businesses that were not registered for GST on the relevant eligibility date across a number of COVID-19 business support programs. The removal of this information from the draft Standing Directions report denied the Secretary and the Minister the opportunity to consider the issue and develop a response.

1 Details of the key individuals who were the focus of IBAC's investigation are set out in 2.2.2.
2 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, Chapter 4.
3 VPSC, October 2021, *Informing and advising Ministers*, *Circular 2021–24*.
4 IBAC, April 2023, *Operation Daintree special report*.
5 *Public Administration Act 2004* (Vic), s 7(1).
6 DTF, Standing Directions 2018, Summary of the Directions, p 2. Issued under the *Financial Management Act 1994* (Vic), s 8, by the Minister for Finance.

Glossary

Acronyms and initialisms

Term	Explanation
ABN	Australian Business Number
ABR	Australian Business Register
ATO	Australian Taxation Office
BCAP	Business Costs Assistance Program
BCAP2	BCAP Round Two
BCAP2e	BCAP Round Two July extension
DTF	Department of Treasury and Finance
GST	Goods and Services Tax
JIBE	Jobs, Innovation and Business Engagement, within the department
LHVF	Licensed Hospitality Venue Fund
SBCHF	Small Business COVID Hardship Fund
VAGO	Victorian Auditor-General's Office
VPSC	Victorian Public Sector Commission

Key terms

Term	Explanation
GST backdating	Requesting that a business's GST registration take effect from a prior date. A business can legally request that the ATO backdate their GST registration to take effect from a date up to four years prior.[7]
GST eligibility criterion	The date on which businesses were required to be registered for GST to qualify for the grant, namely, 27 May 2021 for BCAP2 and 15 July 2021 for BCAP2e.[8]
The department	Department of Jobs, Precincts and Regions, which became the Department of Jobs, Skills, Industry and Regions on 1 January 2023 following machinery of government changes. The same department retained responsibility for administering the grant programs that are the subject of this report after the machinery of government changes.

7 ATO, 2026, Registering for GST, *www.ato.gov.au/businesses-and-organisations/gst-excise-and-indirect-taxes/gst/registering-for-gst*. Note that in circumstances where a business backdates its GST registration with the ATO the business is obliged to report GST from that revised registration date.

8 Department of Jobs, Precincts and Regions 2021, 'Business Costs Assistance Program Round Two Guidelines', p 1 ('BCAP2 Guidelines'); 'Business Costs Assistance Programs Round 2 July Extension', p 1-2. ('BCAP2e Guidelines').

1. Introduction

In Operation Harmonia, IBAC found that critical decision-making information was withheld from the Secretary and the Minister for Industry Support and Recovery by the Associate Secretary and Deputy Secretary. IBAC also found that key information was withheld from the Victorian Ombudsman, and false and misleading information was provided to the subsequent Minister for Industry Support and Recovery.

The information that was either withheld or reported in a false and misleading way concerned the decision not to report the suspected loss of $285 million primarily related to the Business Costs Assistance Program (BCAP) administered by the department during the COVID-19 lockdowns.[9]

The suspected $285 million loss concerned payments made in error – to businesses that did not meet the eligibility criteria – due to flaws in the department's grant assessment process. The program sought to use GST registration to assess whether a business was genuinely operating and actively trading before a lockdown event.[10] However, the use of GST registration as an eligibility criterion was flawed. While business owners can lawfully request that the Australian Taxation Office (ATO) backdate their GST registration to take effect from an earlier date, the department's assessment process could not reliably identify whether an applicant had done so to qualify for funding after a grant had been announced.[11]

By mid-2021, the department was aware of potential issues relating to GST backdating. The issue was flagged in the close-out of the first BCAP in April, and in June 2021 the ATO alerted the department to an increase in the number of businesses backdating their GST. Around the same time the department's Customer Experience team (responsible for complaints and reviews) queried whether unsuccessful applicants should be approved on review if they backdated their GST registration after their application was rejected.

Soon after, the department developed a proposal to address the GST backdating issue and briefed the Minister. The application of the brief was, however, not clear, and the brief did not acknowledge that payments had already been made in error to businesses that had backdated their GST registration.

IBAC found that upon realising that payments may have been made in error, officers from across the department agreed that the suspected loss resulting from payments made to applicants who backdated their GST registration – estimated to be approximately $9 million – should be reported to the Minister as a suspected loss and worked together to quantify the actual loss more accurately.

When a more detailed analysis indicated that the total figure could be in the order of $300 million IBAC found that the Deputy Secretary directed that the information be removed from the draft report being prepared for the Minister, and the Associate Secretary withheld information about the magnitude of the suspected loss from the Secretary. As a result, the Minister was not advised about the suspected loss as required under the Standing Directions.

9 This report includes a number of different figures for the suspected loss due to GST backdating. The $285 million figure reflects the information included in – and subsequently removed from – the draft Standing Directions report (extracted in Figure 5). The figure comprises $36 million for BCAP2, $233.8 million for BCAP2e and $15.44 million for SBCHF, rounded to the nearest million.
10 Minister for Education, Minister for Mental Health, 10 June 2021, response to question without notice and ministers' statements, Hansard, p 2146.
11 The department's industrial grant assessment process used the ATO's Australian Business Register Explorer to check GST registration on the date of assessment, as discussed below.

1.1. The Business Cost Assistance Programs

In March 2020, as the World Health Organization declared the COVID-19 outbreak a pandemic, the Victorian Government announced the first of a series of lockdown measures, and with it, a range of economic support programs for Victorian businesses affected by the COVID-19 lockdowns.

Over the course of the 2020/21 and 2021/22 financial years, the department paid $11 billion in COVID-19 grants to affected businesses. This included $4.5 billion paid under the BCAP, the largest COVID-19 business support program administered by the department. That program involved five rounds and a range of top-up grants over the two financial years, some of which were paid automatically to applicants who successfully applied for the BCAP Round Two (BCAP2) or the BCAP Round Two July extension (BCAP2e).[12]

By the time these programs ended, businesses that successfully applied for BCAP2 received up to $97,200 while businesses that successfully applied for BCAP2e received up to $90,200.[13]

1.1.1. Grants to assist businesses most affected by restrictions

BCAP2 was announced on 30 May 2021 – days after the 27 May 2021 announcement of Victoria's fourth COVID-19 lockdown – offering grants of up to $7000 to assist 'eligible small to medium businesses most affected by the May to June 2021 COVID-19 restrictions'.[14] Applications for BCAP2 were open between 3 and 24 June 2021.

The Minister for Industry Support and Recovery, the Hon Martin Pakula described the purpose of the program as follows:

> The $391.2 million Business Costs Assistance Program Round Two supported those businesses most affected by the May/June industry restrictions, specifically those that are unable to open or unable to substantially operate remotely due to the restrictions.[15]

To ensure BCAP2 targeted genuine businesses that were actively trading before the lockdown was announced, applicants were required to attest that they met certain eligibility criteria which included, among other things, requirements that the business:

- 'incurred direct costs as a result of the circuit breaker action [in circumstances where] the business cannot predominantly operate remotely'
- 'Be registered for Goods and Services Tax (GST) on 27 May 2021'
- 'Hold an Australian Business Number (ABN) and have held that ABN at 27 May 2021'.[16]

On 15 July 2021, Victoria's fifth COVID-19 lockdown was announced. On 21 July 2021, the government announced the BCAP2e grants, which subsequently opened for applications on 30 July 2021. Eligibility requirements for BCAP2e were like those for BCAP2, except that businesses had to be registered for GST and hold an ABN on 15 July 2021,[17] and could not apply if they had already received funding under BCAP2. Applications for BCAP2e were open between 30 July and 20 August 2021.[18]

12 For instance, a business was only eligible for BCAP rounds 3, 4 and 5, if it received a grant under BCAP2 or BCAP2e. While receipt of BCAP2 or BCAP2e was a prerequisite for top-up payments, some top-ups also applied additional criteria, such as location (BCAP3, August extension) or sector (Business Continuity Fund).
13 See Appendix B: Summary of BCAP payments.
14 BCAP2 Guidelines, p 1.
15 Minister for Industry Support and Recovery, the Hon Martin Pakula, 13 August 2021, responses to questions on notice 5999, 6001 and 6014.
16 BCAP2 Guidelines, p 1.
17 BCAP2e Guidelines, pp 1 and 2.
18 Applications for BCAP2e originally closed on 13 August 2021, however, the deadline was extended by one week to 20 August 2021.

1.1.2. GST criterion used to identify legitimate businesses most affected

GST registration on a specified date – preceding each grant announcement – was identified by the department as a 'critical program integrity measure' for BCAP2 and BCAP2e because it demonstrated that a business was actively trading prior to announcement of each grant, 'thereby limiting the risk of a business applying for GST solely to be eligible for a grant'.

Explaining the rationale for the GST registration requirement in response to a question without notice in June 2021 the Minister for Education and Minister for Mental Health stated:

> There are approximately 2.4 million Victorian ABNs on the Australian Business Register, with 839,200 of these registered for GST. The Victorian government has no way to distinguish between trading businesses and non-trading ABNs such as holding companies. The business costs assistance program requires a business to be registered for GST, because it shows the business was actively trading before Thursday, 27 May and is a genuine operation that the owner and the employees or contractors rely on for income. Without that GST criterion, there is no mechanism which can be used to validate turnover information for individual businesses. That is the point.[19]

This explanation was reiterated in November 2021 by the Minister for Industry Support and Recovery in response to a question urging the government to ease the GST eligibility criterion. The Minister noted the requirement was consistent with past practice and was used to prove a business was actively trading and had a substantial turnover that the owner and staff relied on as a primary source of income.[20]

1.1.3. GST backdating

Not all businesses are required to register for GST. Businesses that do so can lawfully request that the ATO backdate their GST registration to take effect from a date up to four years prior. [21]

In terms of assessing the GST registration criterion for BCAP2 and BCAP2e, this was problematic because the department's assessment process could not reliably identify whether an applicant had backdated their GST registration before lodging their application.

Efforts were made to address the issue of GST backdating in August 2021. At that time the department sought a decision from the Minister on the acceptance of backdating in circumstances where an applicant was requesting reassessment after backdating their GST registration. However, as discussed below, the application of the August brief was not clear and did not acknowledge that payments had already been made in error to businesses that backdated their GST registration.

When the suspected loss resulting from payments made in error to applicants who had backdated their GST registration was thought to be approximately $9 million, a line item was added to a draft report for the Minister concerning applicants 'with a backdated GST registration (who) were paid in error'. However, when the figure was revised to $285 million, a senior officer directed that the line item should be removed all together. This conduct was the focus of IBAC's investigation.

19 Minister for Education, Minister for Mental Health, 10 June 2021, response to question without notice and ministers' statements, Hansard, p 2146.
20 Minister for Industry Support and Recovery, the Hon Martin Pakula, 16 November 2021 response to Adjournment Matter 5991.
21 ATO, Registering for GST, *www.ato.gov.au/businesses-and-organisations/gst-excise-and-indirect-taxes/gst/registering-for-gst*. Note that in circumstances where a business backdates its GST registration with the ATO the business is obliged to report GST from that earlier registration date.

1.2. VAGO's November 2023 report

In November 2023, VAGO reported on the COVID-19 business support programs administered by the department, with a focus on the $4.5 billion paid under the BCAP, and the $1.1 billion paid under the Licensed Hospitality Venue Fund.[22] Of particular relevance to this report, VAGO observed that payments were made in error in relation to these programs and that it was 'likely that fraud occurred and, to date, remains undetected'.[23] As reported by VAGO, to administer the large-scale grants program, the department adopted 'high trust' front-end processing methods, which involved checking eligibility in the first instance and later following up with post-payment investigation and review activities.[24] VAGO noted that 'high trust' front-end administrative processes are appropriate in circumstances that demand a rapid response, such as the immediate support required for businesses during the COVID-19 lockdowns.[25]

However, VAGO also stressed that in these circumstances, post-payment investigation and follow-up activities are essential 'to minimise the likelihood of large-scale fraud and error', and that these did not occur.[26] In particular, no evaluation of BCAP2 had been undertaken and an audit only commenced in October 2023, after VAGO requested further information about the program from the department.[27]

VAGO observed that the department failed to provide full and frank advice to the Minister, the Treasurer and the Premier in relation to issues associated with GST backdating, commenting that the department's statements about backdating were 'at best, incomplete, because they omitted to clarify that backdating was also a feature for a cohort of successful applicants'.[28] In particular, VAGO noted that the department's August 2021 briefing to the Minister and subsequent correspondence with the Treasurer and the Premier only identified GST backdating as an issue concerning unsuccessful applicants.[29]

The department's initial response to the VAGO report acknowledged there were shortcomings in the administration of the COVID-19 business support programs and acknowledged that 'the department should have been more timely in commencing its after program audit activities'. The department also advised VAGO that it had commenced an audit which would inform further actions, including potential recovery action.[30]

More recently, VAGO reported that the department had initiated an independent evaluation to assess the effectiveness of the grant programs, undertaken further analysis 'to support a targeted recovery campaign for COVID-19 grants' and acknowledged that $72.5 million had been paid to ineligible applicants from 2020/21 to 2024/25.[31]

With regard to the recovery campaign, IBAC understands that as at 14 April 2026 around $8 million had been recovered by the department and returned to consolidated revenue and that a further $5 million was subject to recovery action by means of repayment plans.

22 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, Chapter 4.
23 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, p 41.
24 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, p 42.
25 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, pp 39 and 52–53.
26 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, p 39.
27 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, p 46.
28 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, p 52.
29 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, pp 51–52.
30 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, pp 60-61.
31 VAGO, November 2025, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2024–25*, p 5.

2.Summary of investigation and outcomes

2.1. IBAC's functions

2.1.1. Investigating corrupt conduct

IBAC's functions in relation to corrupt conduct are set out in the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) (IBAC Act). One of IBAC's primary responsibilities is to identify, expose and investigate corrupt conduct.[32]

Corrupt conduct is defined in section 4 of the IBAC Act. The definition captures conduct by public officers or public bodies that constitutes or involves:

- the dishonest performance of their functions
- knowing or reckless breaches of public trust, or
- the misuse of information or material acquired in the course of performing their public functions.

It also captures conduct by any person that:

- adversely affects the honest performance of a public officer or public body's functions, or
- is intended to adversely affect the effective performance of a public officer or public body's powers or functions and result in the individual or an associate obtaining a benefit they would not otherwise have obtained.

Importantly, the definition of corrupt conduct in the IBAC Act at the time of the investigation required that such conduct must also constitute a relevant criminal offence. Relevant offences include indictable offences against an Act, and some common-law offences including misconduct in public office.

The nature of IBAC's findings

IBAC is not a court. It is prohibited from including in its reports any finding or opinion that a person is guilty of or has committed a criminal offence, or that a person should be prosecuted for any such offence. Unlike a court, IBAC is not bound by the rules of evidence and, in producing a special report, it is not required to apply the criminal standard of proof (proof beyond reasonable doubt).

IBAC is also prohibited from including in its reports any finding or opinion that a person is guilty of or has committed a disciplinary offence (such as a breach of discipline by a police officer or misconduct by a public sector employee) or that a public officer should be prosecuted for any such offence.

However, in a special report, IBAC can make findings of fact and can express comments or opinions about a person's conduct, including if it involved a breach of public trust. Codes of conduct, guidelines, policies and procedures provide an important reference point for assessing conduct. In expressing comments or opinions by reference to these instruments, IBAC makes no comment about the potential disciplinary or criminal consequences of the conduct.

In making its findings, IBAC applies the civil standard of proof (proof on the balance of probabilities), according to what is commonly referred to as the Briginshaw principle.[33] Under this principle, IBAC has regard to the seriousness of the finding, the inherent likelihood or unlikelihood of the fact in question and the gravity of the consequences that may flow from the finding.

2.1.2. Public reporting

IBAC can publish a special report relating to the performance of its duties and functions at any time. This includes a special report about an investigation into suspected 'corrupt conduct' and the outcomes of that investigation.[34]

Public reporting supports the performance of IBAC's functions, by helping to strengthen the public sector's ability to identify, detect and resist corrupt conduct by highlighting conduct capable of constituting corrupt conduct, and vulnerabilities in systems, policies and controls that may increase the likelihood of such conduct occurring in future. Public reporting also provides the community with confidence that complaints of corrupt conduct in the public sector will be appropriately investigated.

32 IBAC Act, s 15(2)(a).
33 *Briginshaw v Briginshaw* (1938) 60 CLR 336.
34 IBAC Act, s 162(1).

Publishing a special report on Operation Harmonia is a matter of public interest and serves to inform parliament and the community about the steps IBAC has taken to identify, investigate and expose alleged corrupt conduct. Namely, that senior officers failed to act on and report significant losses relating to the COVID-19 business support programs that ran during the 2020/21 and 2021/22 financial years.

In reporting on this conduct, IBAC seeks to highlight that:

- Frank and fearless advice is essential to safeguarding limited public funds against fraud and corruption. Senior officers must model the public sector values of integrity and responsiveness by encouraging staff to raise concerns and facilitating an appropriate response to issues raised.
- Staff who speak up will be heard. IBAC's investigation was prompted by a number of disclosures. IBAC commends the numerous officers from across the department who independently raised concerns with IBAC regarding the issues discussed in this report, unaware that others had raised concerns from different quarters.
- The tone from the top matters. Ministers and secretaries must foster a positive risk culture within the agencies they lead to inform the conduct of staff. When decisions are being made under pressure, a positive risk culture often becomes one of the most important elements of an agency's corruption prevention framework.

IBAC has not made recommendations in this instance but notes that fostering an environment in which providing frank and fearless advice is valued is essential to safeguarding agencies (and the public funds they administer) against heightened exposure to fraud and corruption. IBAC supports the guidance issued by the VPSC in relation to the public sector values, including advice on providing difficult advice.[35]

Natural justice

In line with IBAC's obligations under subsections 162(2) to 162(4) of the IBAC Act, IBAC provided adversely and non-adversely mentioned witnesses in Operation Harmonia with extracts from a draft version of this report. Adversely mentioned witnesses were provided with an opportunity to respond prior to tabling. IBAC has a statutory requirement to set out responses fairly.

IBAC received several responses from witnesses. Some witnesses did not respond. Material changes were made to the body of this report as a result of some responses. Elements of responses not incorporated in the body of the report, or not fully incorporated, are reflected in Appendix C, along with a more detailed outline of the process followed. Elements of responses that IBAC considered extraneous to this report and its evidentiary basis are not reflected in this report.

Frank and fearless advice is essential to safeguarding limited public funds against fraud and corruption.

35 VPSC, October 2021, *Informing and advising Ministers*, Circular 2021–24.

2.2. What IBAC did

2.2.1. Overview of the allegations and IBAC's investigation

In August 2022, following several public interest disclosures,[36] IBAC commenced Operation Harmonia to investigate allegations that senior officers at the department:

- failed to act on internal and external indicators of fraud, corruption and other losses involving COVID-19 business support grants administered by the department
- failed to report a suspected significant financial loss to VAGO and the Minister for Industry Support and Recovery as required by the Standing Directions 2018 under the *Financial Management Act 1994* (Vic)
- provided false or misleading information to the Minister for Industry Support and Recovery and VAGO in relation to GST backdating and the financial loss.

Over the course of this investigation IBAC also considered the provision of information to the Victorian Ombudsman.

The loss in question primarily related to two COVID-19 business support grants administered by the department in 2021 as part of the BCAP.

As part of IBAC's investigation, 18 witnesses were summonsed to attend private examinations under Part 6 of the IBAC Act to assist with the investigation. Those private examinations were conducted between May 2023 and April 2024. IBAC also conducted voluntary interviews with eight witnesses and served six summonses to produce documents and other material.

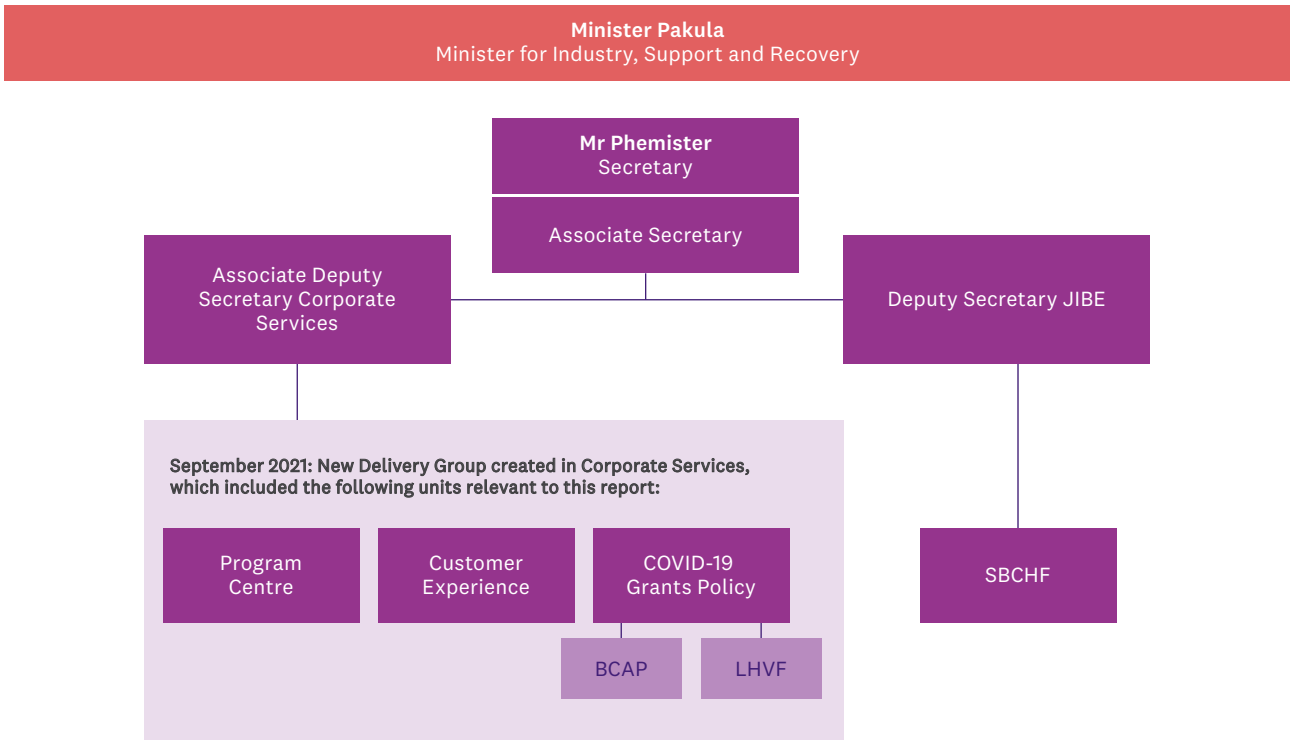
2.2.2. Key individuals

The conduct in question involved the following senior officers with reference to their roles during the period investigated (April 2021–September 2022):

- the Associate Secretary of the department (referred to in this report as 'the Assoc. Secretary'), who was alleged to have concealed the significant GST backdating loss from the Secretary, the Minister for Industry Support and Recovery and VAGO
- the Associate Deputy Secretary Corporate Services (referred to in this report as 'the Dep. Secretary'),[37] who was alleged to have concealed the significant GST backdating loss from the Secretary, the Minister for Industry Support and Recovery and VAGO and subsequently provided false or misleading information to the new Minister for Industry Support and Recovery
- an Executive Director within the department (referred to in this report as 'Executive Director A'), noting that in the course of this investigation IBAC considered whether they withheld key information from the Victorian Ombudsman about the department's methods for assessing grant applications.

36 The *Public Interest Disclosures Act 2012* (Vic) ensures that people who report improper conduct and corruption in the Victorian public sector (whistleblowers) can do so in the knowledge that they will be protected. For further information visit www.ibac.vic.gov.au/public-interest-disclosure.
37 The Associate Deputy Secretary became the Deputy Secretary, Delivery from 2 March 2022 to 18 September 2022.

Figure 1: Accountabilities and reporting lines within the department



The BCAP administered by the department fell within the portfolio of the Hon Martin Pakula as the Minister for Industry Support and Recovery.[38]

During the period investigated by IBAC, the department went through multiple restructures, and roles and responsibilities shifted throughout this time. However, at all relevant times, Simon Phemister was the Secretary of the department, responsible to Minister Pakula.

The Assoc. Secretary referred to throughout this report, reported directly to the Department Secretary, Mr Phemister.

Several deputy secretaries in the department reported to the Assoc. Secretary, including the Dep. Secretary referred to in this report. Executive Director A reported to the Dep. Secretary.

38 Note: This report contains references to people relevant to IBAC's investigation who may no longer be in the role they held during the period of the investigation. In these cases, the way they are referred to will change. For example, the Hon Martin Pakula was Minister for Industry Support and Recovery for some of the time relevant to this investigation. References to Minister Pakula change to Mr Pakula to signify when he was no longer in the ministerial role.

Naming of individuals

IBAC's investigation examined the conduct of senior officers at the former Department of Jobs, Precincts and Regions.

This report includes adverse comments and opinions in relation to the Assoc. Secretary, the Dep. Secretary and Executive Director A. IBAC notes that not all the adverse comments or opinions in this report represent IBAC's views. Several of the adverse comments or opinions in this report are the opinions or comments of witnesses involved in Operation Harmonia whose evidence is included in this report.

This report also refers to several other individuals and entities. Some individuals are named, and others are referred to by their job title or work area to explain the nature and scope of the corruption risks identified.

Where IBAC has named an individual it has been to avoid any ambiguity, primarily in instances where a role has been held by multiple individuals over a period of time. To the extent that any person listed on the right is identifiable in this report, IBAC is satisfied that this is necessary to provide an understanding of the relevant facts and that the references will not cause undue damage to their reputation, safety or wellbeing.

IBAC notes that the following individuals, who are either named or may be identifiable, are not the subject or intended subject of any adverse comment or opinion:

- Ben Carroll, Minister for Industry Support and Recovery (27 June–5 December 2022)
- Deputy Secretary Jobs, Innovation and Business Engagement (JIBE)
- Director Customer Experience, Delivery Centre
- Director Programs, JIBE
- General Counsel
- Integrity Director, People and Culture
- Manager Fraud and Analytics, Integrity Services Unit
- Minister for Education, Minister for Mental Health
- Minister for Employment
- Minister for Regional Development
- Premier of Victoria
- Treasurer of Victoria.

2.3. What the investigation found

IBAC's findings are made on the civil standard, namely the balance of probabilities, based on the principles applied in *Briginshaw v Briginshaw*.[39] The key events in relation to this investigation are set out in Appendix A.

2.3.1. The emerging GST fraud risk was not adequately addressed

IBAC's investigation found that the department did not adequately respond to internal and external indicators that businesses were backdating their GST registration to obtain COVID-19 grants. This exposed the department to an increased risk of making grant payments to ineligible businesses, involving a significant loss for the department.

As noted in VAGO's report, the need to provide immediate support during the COVID-19 lockdowns called for a rapid response. This warranted a 'high trust' front-end approach to the administration of the BCAP grants but also required rigorous post-payment investigation and follow-up activities. These did not occur.[40]

In rapid response environments, mistakes are likely to occur. Departmental officers should not be criticised for making honest mistakes. However, when mistakes are identified they must be addressed in a timely manner to prevent issues from compounding.

39 *Briginshaw v Briginshaw* (1938) 60 CLR 336
40 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, p 39.

The department did not fully appreciate the risk that ineligible applicants could access grants by backdating their GST registration until July 2021

GST registration was used as an eligibility criterion for BCAP2 and BCAP2e to enable the department to quickly and easily screen out businesses that were not a genuine operation, were not actively trading or did not otherwise have sufficient turnover to qualify for a grant. This facilitated the efficient assessment of applications en masse, as part of an 'industrial-scale' grants program. Previous assessment approaches had required the department to manually process business activity statements to assess turnover, which was markedly slower.[41]

One of the key assumptions underlying the GST registration requirement was that it would provide a reasonable proxy for substantial business turnover, defined as turnover above $75,000 per year.[42] However, this assumption was flawed. While businesses with turnover above $75,000 a year are *required* to register for GST, businesses with lower or indeed no turnover at all can also lawfully register for GST. In addition, businesses can legally backdate their GST registration to take effect from a date up to four years prior.[43]

When setting up the grant assessment process, a static dataset was *not* obtained from the ATO before the announcement of each grant. Instead, an applicant's GST registration and ABN status were checked using the Australian Business Register (ABR) Explorer on the assessment date. That data was refreshed weekly and did not indicate when an application to register for GST was made or whether it involved a request that the registration take effect from an earlier date. This meant the department was unable to identify businesses that had backdated their GST registration to meet the eligibility criteria before lodging their application.

In mid-2021, the department became aware that businesses could backdate their ABN and GST registration to an eligibility date to qualify for a grant. In April 2021, this issue was noted in the course of closing out the first BCAP program. On 11 June 2021, the ATO flagged an increase in the number of businesses backdating their ABN and GST registrations with the department. Five days later, the ATO sent an email to JIBE policy owners noting that there was a 15 per cent increase in businesses backdating their ABN and GST registrations compared to the same period the year before, and that it could be a 'red flag' if businesses backdated their ABN and GST registration after grant programs were announced.

However, it was not until after the launch of BCAP2e that the need for static data (that is, a point-in-time dataset of GST-registered businesses extracted on the eligibility date), to properly assess the GST registration on the eligibility date specified in the program guidelines, was more fully appreciated.

Internal communications indicate that there was some confusion as to how the GST registration criterion was being assessed. On 16 July 2021, Customer Experience within the department (responsible for complaints and reviews of ineligible grant applications) emailed JIBE (responsible for grant policy development) to ask, 'If applicants come back and have backdated their GST they will pass, yeah?', to which JIBE responded, 'NO! They should be failing as per [Integrity Services Unit] advice'. On 19 July 2021, Customer Experience circulated discussion points for an upcoming meeting about the GST eligibility criterion for BCAP2 to JIBE. The email noted that the department had not been verifying GST registration on the eligibility date, and that existing checking mechanisms did not enable a point-in-time check. Further, the subsequent email exchange indicated that JIBE acknowledged the issue would need to be revisited in conjunction with the Integrity Services Unit.

41 Business Activity Statements (BAS) were used as an assessment criterion for the first Business Support Fund but led to delays in processing, proved onerous and burdensome for both applicants and the department, and carried fraud and integrity risks due to the ease with which a BAS could be doctored.
42 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, p 43.
43 ATO, Registering for GST, *www.ato.gov.au/businesses-and-organisations/gst-excise-and-indirect-taxes/gst/registering-for-gst*. Note that in circumstances where a business backdates its GST registration with the ATO the business is obliged to report GST from that earlier registration date.

This exchange prompted a JIBE policy owner to check how GST was being assessed by the Program Centre (responsible for the industrial-scale grant assessment), asking the Program Design Director, 'Is this correct? My understanding [is] our GST check IS against the data downloaded on 27 May'. In reply, the Program Design Director confirmed that the Program Centre was *not* using data extracted on 27 May 2021, stating, 'We are checking to ensure that an applicant – at the time of assessment – is registered for GST and that the registration date is on or prior to 27 May'.

This assessment method – using ABR data at the time of assessment only – created a loophole because businesses could register for GST after a grant had been announced but request an earlier GST registration start date that was consistent with the relevant grant eligibility criteria. They could then lodge their application with the department, which would find the business eligible in terms of GST registration using ABR data at the date of assessment, because that data only shows the current effective GST registration date, not details of when amendments were requested or made.

The 19 July 2021 discussion about the GST eligibility criterion prompted staff in JIBE and the Program Centre to discuss how applicants who backdated their GST registration could be identified. In considering the issue, staff referred to recommendations that the department's Integrity Services Unit sent on 16 July to the JIBE policy owners responsible for BCAP, which suggested that point-in-time data be extracted at the eligibility dates and used to assess applications to prevent those with a backdated ABN from being approved for grants.

The department attempted to address this integrity issue by obtaining ABN and GST backdating data. However, according to evidence obtained by IBAC, at the time the ATO was only able to provide data in relation to businesses that had requested to backdate both their GST and ABN registration, not GST only.[44] As a result, the GST backdating data available to the department at that time was limited.

The department briefed the Minister on the issue of GST backdating in August 2021 and proposed a treatment approach, however, that brief and the subsequent action taken by the department did not comprehensively address the issue

On 27 August 2021, the Minister for Industry Support and Recovery signed a brief prepared by JIBE, titled 'COVID business programs – treatment of backdated GST registrations and backdating of other criteria' (the August brief).

The summary presented at the front of the briefing pack specified that the department was seeking a decision on the acceptance of backdated GST registration in limited circumstances where an applicant was requesting **reassessment** after backdating their GST registration.[45] The recommendations signed by the Minister, however, specified that the Minister note the 'integrity risks and potential flow-on financial impacts of accepting backdated GST registrations to **current and future** COVID-19 business support programs',[46] and approve the proposed GST backdating treatment, which involved not accepting backdated GST registrations for COVID-19 business support programs, except where an applicant had temporarily deregistered an existing GST registration and since reinstated and backdated it. The applicant would need to attest that they:

i. were registered in the six months prior to program launch
ii. had backdated their registration to the point where it was deregistered (no gap in registration)
iii. intended to maintain their registration for at least the next six months.

The brief also noted that 'to maintain program integrity and deliver on the policy intent of the program, DJPR [the department] recommends generally not accepting backdated GST registration for BCAP2 or any other in flight COVID business support program, except in exceptional circumstances' adding that 'this approach is consistent with current program guidelines, application form attestations and materials'.

44 At the time the ATO was only authorised to share data for applications to backdate both GST *and* ABN registration because that information, which is publicly available on the ABR website, is not classed as taxation data (unlike GST-only data).
45 Emphasis added.
46 Emphasis added.

The inconsistency between the narrow scope set out in the summary of the brief and the broader wording of the recommendations created ambiguity about the application of the brief and the department's treatment approach. It did not acknowledge that payments had already been made in error to businesses that had backdated their GST registration. Nor did it propose any action to identify applications that had been erroneously approved or recoup those funds.

The department continued to use data that allowed applications with backdated GST registrations to proceed after this flaw in the assessment method was identified

On 19 August 2021, a copy of the draft August brief was forwarded to the Assoc. Secretary, who sent it on to the Dep. Secretary and others. After asking Executive Director A whether the department had 'separate records of the date registration is sought and the date it is backdated to' and observing that such data would be required to implement the August brief recommendation, the Dep. Secretary sought legal advice from General Counsel querying whether an application can still be refused in circumstances where the original application was refused on the basis the business was not registered for GST at the relevant time, and the business has subsequently backdated their registration, which the business is permitted to do by the ATO. In response General Counsel reiterated the rationale for screening out applicants with backdated GST registrations, noting that:

> a policy decision was made to require GST registration on 27 May 2021 in order to avoid individuals from retrospectively registering for GST when they would not ordinarily have done so, other than to receive grant funding (i.e. they would not otherwise have a reason to register for GST).

By 23 August 2021, the Integrity Services Unit had uploaded and shared historical ABR data with the Program Centre to enable cross-checking of GST registration.

Even though the Minister signed the August brief confirming that applications with backdated GST registrations should be rejected and static GST registration data had been extracted to facilitate point-in-time checks, the department's industrial assessment method was not altered.

In IBAC's view, a lack of clearly defined responsibilities contributed to a situation in which various areas of the department each assumed that another area was responsible for making changes to the assessment process. In evidence to IBAC, another deputy secretary within the department asserted that the Program Centre was responsible for making this change because that area was responsible for implementing the program. However, they also acknowledged that during this period:

> There was a number of people who were approving – you know, were working together on these issues, and often the lines of responsibility weren't 100 per cent, you know, as clear as they could [be] because we were working in a really evolving environment where things were moving really quickly.

This was consistent with evidence provided by a range of JIBE and Program Centre staff, all of whom indicated that they did not think their area was responsible for effecting these changes to the assessment process.

After the August brief was signed, new applications continued to be assessed using live ABR data which was refreshed weekly. As a result, businesses that backdated their GST registration were able to access the grants, and the department was unable to identify businesses that backdated their GST unless an application was assessed within a week of lodgement.

The department received legal advice in October 2021 which found that applicants that backdated their ABN registration were ineligible

In October 2021, the Dep. Secretary and the Executive Director COVID-19 Portfolio Management sought legal advice from General Counsel regarding the eligibility of businesses who had backdated their ABN registration to the requisite date in the program guidelines.

On 15 October 2021, General Counsel provided advice that in relation to all grant programs using this eligibility criteria (not just BCAP), a business would fail to meet at least one eligibility criteria if they backdated their ABN registration after the original application date. General Counsel emphasised that the analysis was limited to applicants who backdated their ABN registration after submitting their initial application.

Reflecting on this advice, the Executive Director COVID-19 Portfolio Management wrote:

> I would think any form of backdating by the applicant would mean that they are unable to meet this particular criteria 'Attestation requires applicant to confirm that at the date of the application they have a current ABN ***and held that ABN from the specified date***'.[47]

In response, the Dep. Secretary stated:

> This just confirms that we're in exactly the same situation as we are with GST (i.e. the guidelines prohibit us from concluding that ABN backdating is legitimate) and simplifies the situation. In other words, we're now 100% clear that the decision that has to be made is what constitutes a reasonable effort to recover the loss, as opposed to whether it is even a loss.

2.3.2. Details of the suspected loss were removed from the Standing Directions report prepared for the Minister and VAGO

Under the *Financial Management Act 1994* (Vic), all government agencies have an obligation to notify, among others, their responsible minister and the Auditor-General as soon as the agency is made aware of an actual or suspected significant or systemic fraud, corruption or other loss.[48] Notification is generally made by way of a Standing Directions report.[49] The threshold amount for reporting is $5000.[50]

Having identified that payments may have been made in error – to businesses that amended their GST registration after the announcement of BCAP2 or BCAP2e – this loss *was* included in a draft Standing Directions report to notify the relevant minister and VAGO of the suspected significant loss.

However, IBAC's investigation found that the Dep. Secretary instructed subordinates to remove references to the suspected significant loss from the draft Standing Directions report after speaking with the Assoc. Secretary who additionally failed to disclose the suspected significant loss to the Secretary Phemister. As a result, the Secretary did not report the suspected overpayment of $285 million to VAGO and the relevant minister as required by the Standing Directions. A timeline of the key events is set out in Figure 2.

47 Emphasis in original.
48 DTF, Standing Directions 2018, 3.5.3.
49 To comply with Standing Direction 3.5.3, departments prepare a report known as a Standing Directions report. Standing Direction 3.5.3 stipulates: Where an Agency is made aware of an actual or suspected Significant or Systemic Fraud, Corruption or Other Loss, the Accountable Officer must:
(a) notify, as soon as is practicable, the Responsible Minister, Audit Committee, Portfolio Department and Auditor-General of the incident and remedial action to be taken;
(b) ensure that the persons notified under Direction 3.5.3(a) are kept informed about the incident, including the outcome of investigations; and
(c) ensure that the Agency takes appropriate action to mitigate against future Fraud, Corruption and Other Losses.
50 DTF, Standing Directions 2018, Instruction 3.5 specifies at 1.2 that 'The Fraud, Corruption and Other Losses prevention and management policy under Direction 3.5.1(b) must include a defined value threshold, above which an actual or suspected Fraud, Corruption or Other Loss is considered "Significant" for the purpose of reporting under Direction 3.5.3. The threshold must not exceed $5 000 in money or $50 000 in other property.'

Figure 2: Inclusion and removal of the 'backdated GST registration' line item

Date		Key events
Early Nov 2021		Work starts on the department's Standing Directions report of significant or systemic fraud, corruption and other losses (Standing Directions report).
25 Nov 2021		Details of payments made to BCAP2e applicants who backdated their GST registration (totalling $8.92 million) are added to the draft Standing Directions report.
		Draft Standing Directions report is circulated to the Executive Director COVID-19 Portfolio Management and others, noting that 'initial stats' had been included for BCAP and that the Integrity Services Unit will work with the Manager Program Delivery, JIBE to undertake a 'comprehensive review'.
30 Nov 2021	8.15 am	Integrity Services Unit sends the results of its preliminary review of overpayments due to backdated GST registration to the Acting Director COVID-19 Grants Policy, Delivery Centre as requested. That analysis showed that under BCAP2e, $251.97 million was paid to businesses not registered for GST on 15 July 2021 (21.66% of all BCAP2e payments).
	1pm	Meeting is held to discuss 'GST overpayment', attendees include the Manager Fraud and Analytics, Integrity Services Unit; Acting Director COVID-19 Grants Policy, Delivery Centre; Manager Program Delivery, JIBE; Director Customer Experience, Delivery Centre.
	1.35 pm	Manager Program Delivery, JIBE advises Acting Director COVID-19 Grants Policy, Delivery Centre that the review findings were reflected in the draft Standing Directions report with a note to indicate that details are to be confirmed.
	2.07 pm	Manager Program Delivery, JIBE removes the entire 'backdated GST registration' line item from the draft Standing Directions report with a note stating, 'To be removed a [sic] requested by [the Dep. Secretary]' and advised the Acting Director COVID-19 Grants Policy, Delivery Centre when this was done.
	2.26 pm	Acting Director COVID-19 Grants Policy, Delivery Centre tells Executive Director COVID-19 Portfolio Management, 'after speaking with [the Dep. Secretary] we have removed the GST section from your draft brie[f]'.
	3.31 pm	Executive Director COVID-19 Portfolio Management sends the marked up draft Standing Directions report (with the 'backdated GST registration' line item marked for removal) to the Dep. Secretary with a covering note stating, 'I have confirmed with the Integrity team that any additions to this table will only be in relation to Fraud matters'.
2 Dec 2021		The Assoc. Secretary emails themself, noting that 22% of payments made under BCAP2e were to businesses not registered for GST on 15 July 2021 and that the issue affects all programs with the same eligibility criteria.

The suspected GST backdating loss was included in the draft Standing Directions report

In November 2021, the department started preparing a report on significant or systemic fraud, corruption and other losses in relation to the COVID-19 business support programs, as required under the Standing Directions. On 24 November 2021, in a discussion about what should be included in the draft report, the Acting Director COVID-19 Grants Policy, Delivery Centre, responsible for BCAP, advised the Executive Director COVID-19 Portfolio Management:

> We think we need to add the GST backdated group as well to the overpayments list. Advice from the hotline today was that there are many callers suggesting 'my friend that did the same got paid' and I think it's safer to include them as a known group even if we eventually choose not to recoup the funds. Are you ok with this?
>
> We may also need to do a full re-wash of the data for an accurate number.

In response the Executive Director COVID-19 Portfolio Management agreed, stating:

> We need to include everything we know of and then raise these individuals circumstances with [initials]... Can we have a quick chat in the morning? I'll provide an update on [initials]'s feedback and how we are going to use this doc.

In evidence given to IBAC, the then Acting Director COVID-19 Grants Policy and Executive Director COVID-19 Portfolio Management both agreed that the initials used were most likely a reference to the Assoc. Secretary.

The next day, at the request of the Acting Director COVID-19 Grants Policy, the Manager Program Delivery, JIBE advised that $8.92 million was paid to 273 BCAP2e recipients who were not registered for GST on 15 July 2021 but backdated their GST so they appeared to be registered on that date when their application was assessed.

The Acting Director COVID-19 Grants Policy then asked the Manager Program Delivery, JIBE to add this figure to a draft Standing Directions report together with a further $15.44 million for the Small Business COVID Hardship Fund (SBCHF) and then circulated the document (extracted in Figure 3) to the Executive Director COVID-19 Portfolio Management and others.

In the covering email the Acting Director COVID-19 Grants Policy stated, 'I'm drawing to your attention the final row; similar to the ABN overpayments above it, we've added in GST overpayments as a line item'. The Acting Director COVID-19 Grants Policy also noted that 'initial stats' had been included for BCAP and advised that the Integrity Services Unit had been asked to undertake a 'comprehensive review'.

Figure 3: Extract from draft Standing Directions report, 'Recent Circuit Breaker programs – backdated GST registration', at 29 November 2021

Date of event	Money or other property affected	Description of event and/or incident	Value of assets	Review of internal controls	Rectification plan	Investigations, proceedings and disciplinary action	Recovery of asset	Already reported
Oct 2021	Money	**Recent Circuit Breaker programs – backdated GST registration** Applicants were required to hold GST registration and have held that registration as per program guidelines. Some *unsuccessful BCAP2 applicants have appealed against their GST outcome. When investigating their complaints, some were identified as businesses that backdated their GST, however, were successful in receiving BCAP2e.*	*Identified:* *273 for BCAP** **Continued investigation and applicant self-reporting may result in additional instances.* *Paid:* *$8.92 million* *772 for SBCHF** **Identified post payment and against GST Turnover data provided by the Australian Taxation Office* *Paid: $15.44 m*	Using data provided by the ATO 273 applicants were identified across the BCAP2e with a backdated GST registration, of which $8.92 million were paid in error. Using data provided by the ATO 772 applicants were identified in SBCHF with a backdated GST registration and without representative trading GST trading history in the previous 6 months (to 28 July 2021). This equates to $15.44 million paid	• Initially DJPR assessments inadvertently used ATO data that did not identify backdated GST registration. • DJPR has been using ATO data to identify and cancel applications with a backdated GST registration. If a payment has already been paid, the application is put on hold, so it does not receive top up payments. • For the SBCHF program the department has access to GST trading history for all applicants – this information was used in conjunction with information held by the Australian Business Register on the status of the applicant's GST registration. • Further analysis of the applicants is underway.	Internal investigation was undertaken as a result of identified anomalies with applications. This is ongoing.	**Status**: Pending Resolution DJPR may seek repayment from applicants.	

The Manager Program Delivery confirmed with the Manager Fraud and Analytics that the eligibility dates in the program guidelines should be used for the review, and on 29 November at 8.35 pm and 30 November 2021 at 8.15 am, the Manager Fraud and Analytics responded to the request for review received from the Acting Director COVID-19 Grants Policy, setting out 'figures on backdated GST overpayments... includ[ing] backdated ABN overpayments' for each of the COVID-19 business support programs administered by the department.

That analysis found that $332,558,400 was paid to businesses that were not registered for GST on the eligibility date across all COVID-19 business support programs. This included $251,965,500 paid to businesses under BCAP2e that were not registered for GST on 15 July 2021, accounting for 21.66 per cent of all funds paid in relation to that program, as shown in Figure 4.

On seeing that more than a fifth of all funds for BCAP2e had been paid to businesses not registered for GST on the eligibility date, the Acting Director COVID-19 Grants Policy stated, 'Oh no', then later, 'It's astonishing to realise how many snuck through...'. A 30-minute meeting was then scheduled on 30 November 2021 at 1 pm to discuss 'GST overpayment', with attendees listed as: the Manager Fraud and Analytics, Integrity Services Unit; the Acting Director COVID-19 Grants Policy; the Manager Program Delivery; and the Director Customer Experience, Delivery Centre. At 1.35 pm, the Manager Program Delivery messaged the Acting Director COVID-19 Grants Policy, stating:

> I have updated the overpayment attachment [with Integrity Services Unit's numbers]... however left TBC comments as they might change.

However, approximately half an hour later, the Manager Program Delivery messaged the Acting Director COVID-19 Grants Policy again, stating, 'Should I remove GST from the brief?' to which the Acting Director COVID-19 Grants Policy replied, 'Yes it seems so'. Soon after the Manager Program Delivery confirmed that they had done so.

The Acting Director COVID-19 Grants Policy then sent a message to the Executive Director COVID-19 Portfolio Management saying:

> After speaking with [the Dep. Secretary] we have removed the GST section from your draft brie[f]. Happy to discuss – you will have seen [the Integrity Services Unit's] email this morning.

The analysis conducted by the Integrity Services Unit also included $40.33 million paid to applicants of the SBCHF. However, in a reply email to the group, the Director Programs, JIBE, confirmed that SBCHF had an established data-sharing arrangement with the ATO which allowed the SBCHF team to access the reported GST turnover of each applicant for previous benchmark periods. As a result, the SBCHF team was able to use the 'exceptional circumstance' backdated GST framework – approved by the Minister in the August brief – for applicants that had backdated their GST but had a trading history of at least six months prior to 28 July 2021 (the eligibility date for SBCHF grants). The Director Programs, JIBE, indicated that the figure paid in error to SBCHF applicants was closer to $15.44 million, consistent with the figure provided for the SBCHF in the draft Standing Directions report.[51]

Figure 4: Extract from 30 November 2021 analysis of backdated GST and ABN overpayments

GST not registered on eligibility date

Program	Active	Not Registered	Total	Percentage of total payments
Business Costs Assistance Program - July Extension (BCAP2e)	$ 911,298,800.00	$ 251,965,500.00	$ 1,163,264,300.00	21.66%
Business Costs Assistance Program 2	$ 3,619,859,400.00	$ 36,893,000.00	$ 3,656,752,400.00	1.01%

51 The Integrity Services Unit were not asked to take into consideration the exceptions approved in the August brief in their analysis and figures, which IBAC considers were accurate based on the information provided and the requested parameters.

The suspected GST backdating loss was then removed from the draft Standing Directions report

On 30 November 2021, the Executive Director COVID-19 Portfolio Management emailed a subsequent version of the draft Standing Directions report to the Dep. Secretary for review saying, 'I have confirmed with the Integrity team that any additions to this table will only be in relation to Fraud matters'.

As shown in Figure 5, the suspected overpayment of '$36 million' for BCAP2 and '$233.8 million' for BCAP2e *were* ultimately included in the draft Standing Directions report sent to the Dep. Secretary, together with the $15.44 million GST backdating loss originally included for SBCHF (creating a total figure of $285.24 million). However, the entire 'backdated GST registration' line item was tracked for deletion with a comment from the Manager Program Delivery to the Acting Director COVID-19 Grants Policy, which stated, 'To be removed a[s] requested by [the Dep. Secretary]'. In evidence to IBAC, the Dep. Secretary indicated that this decision 'wouldn't have happened without discussion further up the line', adding that 'the most immediate person I had communicating that to me was [the Assoc. Secretary]'.

On 16 March 2022, Secretary Phemister submitted Standing Directions reports of significant or systemic fraud, corruption and other losses to Minister Pakula, together with the Minister for Employment and the Minister for Regional Development. The Standing Directions reports to Minister Pakula and other ministers identified an $18.31 million loss across COVID-19 grant programs (including BCAP2 and BCAP2e) as a result of applicants backdating their *ABN* registration.

The 'backdated GST registration' line item tracked for deletion in the draft Standing Directions report emailed to the Dep. Secretary on 30 November 2021 was not included in the final version of the report dated 16 March 2022. In evidence to IBAC, Mr Pakula confirmed that he could not recall this suspected loss ever being raised with him, agreeing that he would remember if an issue of this magnitude was raised with him.

Figure 5: Extract from draft Standing Directions report, 'Recent Circuit Breaker programs – backdated GST registration', at 30 November 2021

Date of event	Money or other property affected	Description of event and/or incident	Value of assets	Review of internal controls	Rectification plan	Investigations, proceedings and disciplinary action	Recovery of asset	Already reported
Oct 2021	Money	**Recent Circuit Breaker programs – backdated GST registration** Applicants were required to hold GST registration and have held that registration as per program guidelines. Some BCAP2 and BCAP2e applicants incorrectly received funding as they were not registered for GST at the program eligible date.	*Identified:* 088 for BCAP2* *Paid:* $36 million 7,317 for BCAP2e* *Paid:* $233.8 million *Numbers exclude applicants that backdated their ABN 772 for SBCHF* *Identified post payment and against GST Turnover data provided by the	Using data provided by the ATO 4,153 applicants were identified across the BCAP2 and BCAP2e with a backdated GST registration, of which $269.8 million were paid in error. Using data provided by the ATO 772 applicants were identified in SBCHF with a backdated GST registration and without representative trading GST trading history in the previous 6 months (prior to 28 July 2021). This equates to $15.44 million paid in error.	• Initially DJPR assessments inadvertently used ATO data that did not identify backdated GST registration. • DJPR has been using ATO data to identify and cancel applications with a backdated GST registration. If a payment has already been paid, the application is put on hold, so it does not receive top up payments. • For the SBCHF program the department has access to GST trading history for all applicants – this information was used in conjunction with information held by the Australian Business Register on the status of the applicant's GST registration. • Further analysis of the applicants is underway.	Internal investigation was undertaken as a **Commented** [redacted] To be removed a requested by [redacted] applications. This is ongoing.	**Status**: Pending Resolution repayment from applicants.	

The Secretary was not apprised of the suspected GST backdating loss

Secretary Phemister was the department's Accountable Officer at all relevant times during the period subject to IBAC's investigation.[52] The Standing Directions require the Accountable Officer, as soon as practicable, to:

- notify the Responsible Minister of any significant issue of which the Accountable Officer is aware, that has affected or may affect, the agency's or state's financial management, performance, sustainability or reputation
- keep records of all actual and suspected fraud, corruption and other losses, including remedial actions planned and taken and provide the Responsible Minister (among others) with a copy of those records on request
- notify the Responsible Minister and the Auditor-General (among others) where the agency is made aware of an actual or suspected significant or systemic fraud, corruption or other loss.[53]

In evidence to IBAC, Mr Phemister stated that the losses that had to be reported under the Standing Directions included the 'loss of resources that weren't directed to their dedicated purpose and that hadn't otherwise been treated through ex gratia'. He accepted that if payments were made to people who did not meet the eligibility criteria, those payments should have been reported in the Standing Directions report. He also confirmed that if the Assoc. Secretary was aware of an issue of this kind, they should have reported it to him as the Accountable Executive Officer responsible for signing off the Standing Directions report.

Under examination, the Dep. Secretary accepted that the draft documents indicated that they requested the suspected GST backdating loss be removed, saying 'my recollection is that I did have concerns about those figures' but added, 'it would not have been without that discussion… it would have been after a discussion and a decision that was reached above me'.

The Dep. Secretary noted that the Assoc. Secretary was the most immediate person who communicated reasons not to report the suspected loss of $285 million involving applicants identified as having 'incorrectly received funding as they were not registered for GST at the program eligible date' (as shown in Figure 5), adding:

> I can only imagine that the numbers triggered the conversation because they were higher than people anticipated and that led to asking questions, and my understanding at the time was that the result of those questions was at least my direct manager satisfying [themself] that there was a difference in methodology that underlay the [Integrity Services Unit's analysis] that was inconsistent from how the grants were, my understanding was, being managed appropriately and that led to the information not being put forward at that time.

In response to a draft of this special report, the Assoc. Secretary submitted that they 'did not draft [the Standing Directions] report. [They] did not amend that report. [They] did not tell anybody to amend the report'.

In evidence to IBAC, the Assoc. Secretary maintained that the Integrity Services Unit were given incorrect criteria to conduct the data analysis. When asked if the Secretary was ever made aware of this analysis, the Assoc. Secretary stated:

> I recall briefing the Secretary [about] this analysis and that it was my opinion that the analysis was using the wrong parameters and that it was unfortunate that [they] had sent an email saying 'there's fraud and corruption of this magnitude in this program'. I definitely recall briefing the Secretary regarding that. I can't recall when I briefed him.

52 *Financial Management Act 1994* (Vic), s 42(2)(a).
53 DTF, Standing Directions 2018, 2.3.2, 3.5.2 and 3.5.3.

In terms of considering that analysis, on 2 December 2021 the Assoc. Secretary sent themself an email noting the Integrity Services Unit's figure of 22 per cent of payments made to BCAP2e applicants not registered for GST on 15 July 2021 and observing that the issue affects all programs with the same eligibility criteria, as shown in Figure 6.

Figure 6: Email from the Assoc. Secretary to themself, 2 December 2021

3 possible cases

- Have to have GST reg on 15 July
- Have to attest you meet eligibly criteria on date of application (20 July to 15 Aug was the application period)
- Need to meet all eligibility criteria on the date of assessment

7k backdated to 15 July prior to the date of assessment but did have as at date of assessment

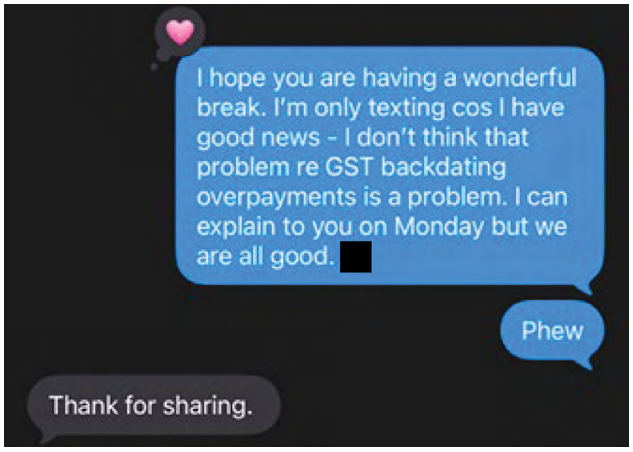
22% of BCAP2e
Affects all progr with this eligibility criteria – 1-5%

[redacted]
Associate Secretary
Department of Jobs, Precincts and Regions

In response to a draft of this report, the Assoc. Secretary advised that they sent this email to themselves for the purposes of discussing the issue with the Secretary and other relevant persons as a summary of the analysis, 'NOT because [they] agreed with the analysis or believed that there was a loss at that time'.

On 3 December 2021 at 9.36 am, the Integrity Director People and Culture forwarded the Integrity Services Unit's full analysis of 29 November to the Assoc. Secretary. In response to a draft of this report, the Assoc. Secretary advised that they had 'a text message from the relevant time that unequivocally corroborates [their] subjective belief that these were not ineligible payments' and provided a copy of a text message they sent to the Dep. Secretary (date stamped 3 December 2021, 3.53 pm), which is shown in Figure 7.

Figure 7: Text message from the Assoc. Secretary to the Dep. Secretary, 3 December 2021



The Assoc. Secretary's rationale for determining – several days after the item was removed from the Standing Directions report – that there was no issue, was not recorded. This text message appears to be the only contemporaneous record by the Assoc. Secretary documenting their consideration of the Integrity Services Unit's analysis.

The message conveyed in the text message – that overpayments arising from GST backdating were not a 'problem' – is inconsistent with the August brief signed by the Minister, which specifically highlighted 'integrity risks and potential flow-on financial impacts of accepting backdated GST registrations' for COVID-19 business support programs. The Assoc. Secretary was aware of this brief, having forwarded it to their staff.

In response to a draft of this report, the Dep. Secretary asserted that they obtained instructions from the Assoc. Secretary in relation to the proposed content of the report and that this was appropriate given the Assoc. Secretary's 'position of authority in respect to [them] within the department and [the Assoc. Secretary's] superior experience on matters pertaining to Standing Directions reporting'. They also reiterated their understanding was that the overpayment figures were going to be checked for accuracy before being reported and that the removal of the line item was 'not to remove them so as not to report them at all'. However, IBAC's investigation did not find that any such re-analysis occurred prior to VAGO's audit.

In response to the draft report, the Assoc. Secretary submitted that they disagreed with the Integrity Services Unit's analysis. In essence, they submitted that this was because they believed that grant payments to people who had not been registered for GST, but who were able to obtain a backdated GST registration before they applied for the grant, were not payments made in error. While the Assoc. Secretary may have disagreed with the Integrity Services Unit's analysis, IBAC considers that the Assoc. Secretary was nonetheless obliged to advise the Secretary and explain that staff were of the view that a suspected significant loss had been identified which the Assoc. Secretary did not agree with, so that the Secretary, as the Accountable Officer, could be in a position to make the final call on whether it needed to be reported, consistent with Standing Direction 3.5.3.

IBAC's investigation did not identify any evidence to corroborate that the Assoc. Secretary or their staff advised the Secretary of the suspected GST backdating loss calculated by the Integrity Services Unit. Indeed, despite 'COVID update' and 'GST backdating' being listed as agenda items in two regular meetings scheduled with Secretary Phemister and Minister Pakula on 6 December 2021 and 7 March 2022, IBAC understands the Assoc. Secretary did not raise the issue of the magnitude of the suspected loss with Mr Phemister or Mr Pakula in that forum or elsewhere.

The Assoc. Secretary's response noted that the agenda was organised by the Office of the Secretary and asserted that the inclusion of these discussion items suggests the Secretary was in fact aware of the Integrity Services Unit's analysis. Mr Phemister's response to a draft of this report stated:

> It is important to note that in the regular meetings with Minister Pakula, agendas were regularly disregarded and items deferred. The fact that an item was put on an agenda and not discussed does not indicate malicious intent. During this busy time, this was a regular, almost normal occurrence as new urgent issues arose and time was tight. The agendas were developed by my Office in consultation with Minister Pakula's. [The Assoc. Secretary] played an advisory role in this process and was not responsible for… decid[ing] what was on the agenda, nor what items on the agenda were discussed.

However, Mr Phemister also noted:

> Had the type and magnitude of the financial loss and legal advice been clear, a discussion with Minister Pakula would have happened immediately and not waited for a formal meeting.

In evidence to IBAC, Mr Pakula did not have any recollection of the issue being raised with him. Similarly, Mr Phemister also confirmed that neither the Dep. Secretary nor the Assoc. Secretary briefed him on that analysis, later adding:

> If one of those two critical bits of information from [General Counsel] or [the Integrity Services Unit] had been presented to me in any form I could have had – I would have had the opportunity to say, 'Thank you for sharing that with me. I really appreciate it. That must have been a really tough thing for you to do. Let's get to fixing it. Boy, Pakula's going to yell at us and he's going to hit the roof. That's my job.'

Not being aware of the issue, Secretary Phemister did not brief Minister Pakula about the suspected GST backdating loss. On being shown the Integrity Services Unit's analysis of payments to businesses not registered for GST (in Figure 4), Mr Phemister remarked that the 21.66 per cent error rate for BCAP2e was 'shocking', saying to IBAC 'these numbers just are astronomically large to me'.

Having regard for the totality of the evidence, IBAC considers that the magnitude of the suspected loss identified by the department was not conveyed to the Secretary as the Accountable Officer. Consequently, the Minister was not advised of the suspected loss as required under the Standing Directions. While the Assoc. Secretary took the view that a loss had not been identified that warranted reporting, taken together – their assertion that there was no issue to report, the absence of any departmental records of a report to the Secretary and the evidence of the Secretary and Minister – the evidence establishes that the Assoc. Secretary did not brief the Secretary about the Integrity Services Unit's analysis or the magnitude of the suspected loss as claimed.

The withholding of this information was significant. It denied the Secretary and the Minister the opportunity to consider the issue and compromised the government's ability to develop an appropriate response to address the suspected loss of $285 million in public funds. It therefore represented a substantial failure by senior officers to provide frank and fearless advice at a critical time. Had that information been provided decisions could have been made, including to suspend and/or recoup payments.

Payments *were* made to ineligible COVID-19 business support program applicants who backdated their GST registration

To confirm details of the loss that should have been reported to the Minister and VAGO, IBAC identified payments made to businesses that backdated their GST registration across all COVID-19 grant programs administered by DJSIR,[54] taking into consideration the exceptions provided in the August brief.[55] IBAC's analysis used a range of sources, including data obtained from the department and from the ATO.

IBAC's analysis found that approximately $257 million was paid to more than 9000 businesses that backdated their GST registration, excluding businesses that met the August brief backdating exceptions (compared to the $332 million figure calculated by the Integrity Services Unit in November 2021, noting the Integrity Services Unit's analysis did not take into consideration the exceptions approved in the August brief, as it was not instructed to do so).[56]

Of concern, $108 million was paid to businesses that reported no business activity (zero turnover) in the three-year period from 1 July 2019 to 1 July 2022; that is, businesses that were not trading in the six months before the COVID-19 pandemic was declared and remained dormant months after the last lockdown ended.

The vast majority of these payments were made in relation to BCAP2e. Specifically, $214 million was paid to 6905 businesses that backdated their GST, accounting for 18 per cent of all payments made under the BCAP2e program (broadly consistent with the 21.66 per cent estimated by the Integrity Services Unit in November 2021). Overall, BCAP2e accounted for 77 per cent of all payments made to businesses that backdated their GST.[57]

2.3.3. False, misleading and/or incomplete information was created and disseminated

Documents created by the department, some of which were subsequently provided to the Minister, the Victorian Ombudsman and/or the Victorian Auditor-General, contained contradictory information. This included records created retrospectively to explain or justify earlier decisions and documents that sought to demonstrate that decision-makers knew about action the department had taken, in a manner that was misleading. A summary of the key events associated with the information provided to the Ombudsman and Minister Carroll is provided in Figure 8.

54 That is, a grant recipient that registered for GST with the ATO after the announcement of the grant they applied for, with a GST effective date prior to the eligibility date for the relevant program.
55 This includes the exceptions outlined in section 2.3.1, particularly the 'no gap' rule, which provided that applicants who backdated their GST registration were eligible for a grant providing there was no gap in their GST registration. IBAC's analysis also accounted for a recommendation in the August brief that BCAP2 applicants seeking reassessment be assessed against the BCAP2e GST registration date of 15 July 2021. IBAC's analysis does not account for GST exempt entities or case by case exemptions.
56 The Integrity Services Unit did not have access to the static dataset that IBAC used in determining the underpayment figure. The team's calculations also did not take into account the exceptions set out in the August brief, as it was not requested to incorporate these exceptions in its analysis. IBAC considers that the Integrity Services Unit's calculations are accurate based on the information available to them and the request made at the time.
57 After the August 2021 backdating exceptions are applied.

Figure 8: Events surrounding the provision of information to the Victorian Ombudsman and Minister Carroll

Date	Key events
8 Dec 2021	Executive Director A drafts an internal working document (a file note) in relation to the recovery of potentially ineligible payments, which states: > The methodology [used by the Integrity Services Unit] should have assessed whether or not applicants held GST registration on and as at the date of their application, rather than on and as at 15 July. The date of application would be a date between 30 July and 20 August. Further, 'for reasons of administrative efficiency': • GST registration was only checked 'as at the date of assessment (normally 2 weeks from the date of application)' • the date of assessment was 'taken as a proxy for the date of application' • because GST registration on the date of application was *also* a requirement under the guidelines, a check for GST registration on the date of assessment only (as a proxy for the date of application) was a valid assessment method.
10 Dec 2021	Victorian Ombudsman writes to the department seeking information about 'the department's policy position on approving or declining grants with backdated GSTs and the consequences of this decision', noting, 'It appears that about 5,000 grant applicants may be affected'.
20 Dec 2021	Executive Director A advises the Ombudsman that 'Applicants must have held GST registration as at the time of application, as well as at the eligibility date… [if an applicant] backdated their GST to these dates, but did not hold GST registration on these dates, then they are not eligible'.
16 Mar 2022	Secretary Phemister submits the Standing Directions report of significant or systemic fraud, corruption and other losses to Minister Pakula and others without the 'backdated GST registration' line item.
24 Jun 2022	Minister Pakula announces his retirement from politics and steps down from his ministerial roles three days later.
Aug 2022	VAGO re-engages with the department as part of the 2021/22 financial year audit, with a focus on the COVID-19 business support programs.
15 Sep 2022	The department submits a brief to Minister Carroll titled 'Administration of GST requirements for COVID-19 business support grants' which asserted that: • Minister Pakula was 'fully apprised of and approved the department's implementation approach' • no payments were made in error • the Integrity Services Unit's analysis of GST overpayments was flawed.
24 Nov 2023	VAGO tables *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*.

The Victorian Ombudsman was advised that the department was assessing whether businesses backdated their GST registration and that such applicants were not eligible

IBAC found that a letter provided to the Victorian Ombudsman withheld key information about the department's method for assessing GST registration.

In April 2021, the Ombudsman tabled a report, *Investigation into the Department of Jobs, Precincts and Regions' administration of the Business Support Fund* which criticised the department for 'failing to establish an effective complaint handling procedure from the outset'.[58] That report also observed that:

> When the Government announces such schemes in the future, it needs to ensure the basic fundamentals are in place – the ease to apply; good communication; staff who have the ability to provide fulsome information and the discretion to show compassion and flexibility when it is right to do so; a proper complaints process.[59]

In this context, and with the ongoing uncertainty in relation to COVID-19 restrictions, the Ombudsman continued to monitor complaints concerning grants administered by the department. Having received more than 80 complaints from businesses that were aware their backdated GST registration had caused issues with their grant applications, the Ombudsman met with Executive Director A on 1 December 2021 to discuss complaints, during which the treatment of backdated GST applications was discussed. By letter, dated 10 December 2021, the Ombudsman's Office sought clarification of 'the department's policy position on approving or declining grants with backdated GSTs and the consequences of this decision'. Under the heading 'Backdated GST' that letter stated:

> I understand the Department is nearing a policy decision on the treatment of applications with backdated GST registrations, and that possibly all outstanding applications with backdated GST registrations for business support funds will be rejected. It appears that about 5,000 grant applicants may be affected.
>
> We anticipate this policy position may well result in an increase in approaches to the Ombudsman; and I would like to suggest steps to ensure the fairness of the policy and to mitigate resourcing implications for our respective organisations.
>
> We anticipate that complainants to our office who have had applications rejected or notifications of overpayment due to backdated GST will send us a screenshot of their business's details from the ABR website showing a GST registration from a date before the deadline in the relevant guidelines.
>
> It would be helpful if we understood what steps the Department proposes to take to determine that a GST registration has been backdated in a way that means the applicant should not receive a grant.
>
> Further, we trust that people who backdated their GST on clear advice from the Department or otherwise in good faith will be treated fairly.
>
> I have provided commentary about complaints we have received relating to backdated GSTs in the attached Appendix.

By letter dated 20 December 2021, Executive Director A wrote to the Ombudsman on behalf of the Dep. Secretary who was on leave at the time. In IBAC's view, that letter implied that the department's assessment method complied with the program guidelines by assessing GST registration on both the eligibility date and the assessment date and suggested that complaints did not, therefore, have any basis if the applicant backdated and did not hold GST registration on the relevant eligibility date. That letter outlined the department's assessment process, stating:

> In order to confirm whether an applicant has backdated their GST we rely on historical data extracts from the Australian Taxation Office (ATO).
>
> Applicants must have held GST registration as at the time of application, as well as at the eligibility date. For the Business Cost Assistance Program 2 (BCAP2) and the Business Cost Assistance Program 2 extension (BCAP2e), the eligibility dates are 27 May 2021 and 15 July 2021 respectively.
>
> If they've backdated their GST to these dates, but did not hold GST registration on these dates, then they are not eligible in accordance with the Program Guidelines published on the Business Victoria website. This was a policy decision of Government at the time.

58 Victorian Ombudsman, April 2021, *Investigation into the Department of Jobs, Precincts and Regions' administration of the Business Support Fund*, p 97.
59 Victorian Ombudsman, April 2021, *Investigation into the Department of Jobs, Precincts and Regions' administration of the Business Support Fund*, p 5.

Executive Director A's letter also acknowledged that while backdating was permitted by the ATO for its purposes and objects, 'backdating GST does not have the same integrity issues for the ATO as it does for the department', adding:

> The significance of the problem is indicated by the large increase in businesses backdating their GST in Victoria (more than 15 percent increase compared to the same time last year) as a result of Victorian COVID-19 grant programs, which came to our attention when the ATO raised it with us as a concern.

This advice acknowledged the integrity risks associated with backdating GST registration and described the Customer Experience team's review process which used historical ATO data extracts to check whether an applicant was registered for GST on the relevant eligibility date. However, it did not acknowledge that the industrial grant assessment process – used by the department's Program Centre to assess all applications in the first instance – could not accurately identify whether an applicant was registered for GST on the relevant eligibility date.

Two weeks prior, Executive Director A led the drafting of a file note that *did* accurately state that the Program Centre's assessment process checked GST registration at the date of assessment and acknowledged that the program guidelines were not being followed for reasons of 'administrative efficiency'. That draft internal working document, created on or around 8 December 2021, asserted that the methodology used by the Integrity Services Unit to calculate GST overpayment was inaccurate because it did not reflect the way the Program Centre processed grants, specifically:

> Program Centre, in delivering the Department's programs, checks GST registration is held on and as at the date of assessment (normally 2 weeks from the date of application), as this is also a requirement of the Guidelines and for reasons of administrative efficiency is taken as a proxy for the date of application.[60]

In evidence to IBAC, Executive Director A was asked to explain the difference between the information they included in the 8 December 2021 file note (which was later provided to VAGO together with a slightly revised version, for audit purposes in August 2022) and the advice they provided to the Ombudsman. In response, Executive Director A stated:

> It's – it's inadvertent, I think. Like, also I had, you know, two different teams helping me. So this was – so the time and it was very hard, I had to do – I had to have two roles. It actually became – it was horrendous. And so this [letter] was for the customer experience team, and the file note was [for] program policy and solutions… I take full responsibility for the difference, but that might have been a part of why because I had two different teams preparing – helping me prepare things. But I acknowledge that this doesn't appear to be consistent with the file note.

Executive Director A withheld key information from the Ombudsman in a way that suggested the department was assessing GST registration at the relevant eligibility date for all grant applicants when it was in fact only assessing at the date of assessment (as a proxy for the date of application, weeks after the eligibility date specified in the guidelines). As noted above, the letter accurately describes the review process which used historical ATO data extracts to identify if an applicant was registered for GST on the relevant eligibility date. However, the letter did not go on to explain that this process was only used to assess applications where the department's decision was contested. Nor did it explain that the department's industrial grant assessment process was still in use and could not accurately identify whether an applicant was registered for GST on the relevant eligibility date because it assessed GST registration on and as at the date of assessment and relied on ABR data, which was updated weekly.

Minister Carroll was advised that no payments were made in error and his predecessor was fully apprised of the department's grant assessment process

IBAC found that the department advised Minister Carroll that no payments were made in error. This was not accurate. He was also misled to believe that his predecessor, Minister Pakula, was informed about the limitations of the department's grant assessment process and accepted that program integrity may be compromised due to the speed of delivery.

In August 2022, VAGO re-engaged with the department as part of the 2021/22 financial year audit, with a focus on the COVID-19 business support programs.[61] In the course of that audit, VAGO raised concerns that the 8 December 2021 file note was relatively informal given it purported to document a significant decision about the grant assessment process.

60 Emphasis in original.
61 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, Chapter 4.

By this time, Mr Pakula was no longer the Minister for Industry Support and Recovery.[62] Nevertheless, a further file note was drafted by the Dep. Secretary for Mr Pakula to sign. That draft, which was sent to Secretary Phemister and copied to the Assoc. Secretary on 6 September 2022, stated:

> It was known to me that industrial processes and data limitations meant that any application where the applicant registered for GST prior to the date of assessment would be found to be eligible if they met the remaining criteria. This was because:
>
> – The department used an ABR validation tool, which is an online tool that is updated each Friday with current GST registration details. It did not identify backdating. At the time, better data was not available from the ATO and there was no alternative data source that the department could have relied upon.
> – The approach was consistent with my view that, in the context of emergency support, ambiguity should be resolved by erring in favour of eligibility, and regardless, treated in a way that doesn't compromise delivery speed...
>
> The Government's priority at all time [sic] was speed of decision making and ensuring that payments were made to as many businesses in need as possible. Trade-offs in processing speed versus program integrity were made explicit in the relevant Cabinet submissions, and the department's approach in it's [sic] handling of GST issues was consistent with that at all times.

When shown this document in examinations, Mr Pakula expressed surprise and stated:

> It would appear to me that, having been approached by VAGO, there's been some – uh – ex post facto creation of this document to try and put things in a better light. That's all I can assume.

When asked why a file note like this would need to be created, the Dep. Secretary indicated that they would not have put it together without being instructed to do so, saying:

> I don't recall this file note. I would not have put it together without being instructed to do so... I wouldn't have written this without being advised that there had been discussions between [the Secretary] and the Minister, that Minister had indicated that these were his views and that he wished them documented. I was definitely not in the practice of writing file notes for the minister unless I understood that was something that had been directly requested.

During examination by IBAC, when asked where that instruction would have come from, the Dep. Secretary nominated either the Assoc. Secretary or Mr Phemister. However, in response to a draft of this report, the Dep. Secretary stated that they 'now recall[ed] the context of the Pakula Note, that the instruction came from the Secretary, and that it was part of an endeavour between the Secretary and the Minister to rectify the record of authorisations around decision making'.

On being shown this file note, the Assoc. Secretary observed that 'It appears to be [the Dep. Secretary]'s best attempt to write down how it worked and what [they] thought the Minister knew'. The Assoc. Secretary confirmed that the document was likely created in response to VAGO's request for documentary evidence to demonstrate that the Minister was apprised of how the program was being rolled out but could not recall whether this was an early or a later draft.

In evidence to IBAC, Mr Phemister initially described this document as 'a good briefing for Minister Carroll coming into the issue' but said they did not remember sending this to Mr Pakula. The draft file note did not progress further. Instead, a brief was prepared for the incoming Minister for Industry Support and Recovery, Mr Carroll, to note and endorse.[63]

On 15 September 2022, the department submitted a brief to Minister Carroll titled 'Administration of GST requirements for COVID-19 business support grants'. That brief, drafted by the Dep. Secretary and recommended by Mr Phemister, sought Minister Carroll's acknowledgement that:

- his predecessor, Minister Pakula, was 'fully apprised of and approved the department's implementation approach'
- no payments were made in error, noting that while there was a 'small window' within which applicants could register for GST after the relevant program eligibility date was announced, cases that fell within that window were an accepted outcome of the industrial grant assessment process
- the Integrity Services Unit's analysis of GST overpayments was flawed, because it 'utilised historical ATO extracts that had been unavailable to the grant processing team when the initial program template was set up, and neglected to account for the established business rules for how program guidelines were implemented'.

62 Mr Pakula announced his retirement from politics on 24 June 2022 and stepped down from his ministerial roles three days later.
63 The Hon Ben Carroll was Minister for Industry Support and Recovery from June to December 2022.

The assertion that Minister Pakula was 'fully apprised of and approved the department's implementation approach' was disingenuous. When shown this brief, Mr Pakula agreed that his general posture was that with regard to emergency support 'ambiguity should be resolved by erring in favour of eligibility' but denied the assertion that he was fully apprised of the implementation approach, telling IBAC:

> There feels like there is an attempt to kind of conflate here things that... the department knew to be my view... with things that, um, the department would like me to – like to be able to say that I knew.

Nor was IBAC able to identify any evidence to suggest that Minister Pakula was advised or engaged in discussions concerning the department's implementation approach. Indeed, while the brief itself went into considerable detail about the implementation process Minister Pakula was apprised of, in evidence the Assoc. Secretary stated:

> I'm not saying that he [Pakula] was reluctant to talk about backdating GST issues but, per se, I don't recall that being an issue. I do recall that he was not of a mind to engage with some of the detailed administrative issues that I thought were required in order to close out these programs.

When asked whether this statement was inaccurate or false, Mr Phemister noted that it was the responsibility of the Minister for Industry Support and Recovery to sign off on the guidelines but acknowledged:

> I think to say he was fully apprised of the implementation approach would rely on a lot of verbal – a lot of people would rely on the author of this brief and – you know, I signed it, it's verbal and memory, because I can't think of a brief where I said to him, and, to be frank, I would – would not have discussed business processes with him in my one-to-one meetings. So I think that is stretching.

Further, the assertion that there was a 'small window' suggested that the number of applicants who were able to access the grants by backdating their GST registration before their application was assessed was equally small. However, in practice, the Integrity Services Unit's November 2021 analysis flagged that more than a fifth of all payments made in relation to BCAP2e were made to businesses not registered for GST on the eligibility date specified in the program guidelines. The fact that more than $250 million, or 21.66 per cent of all payments for BCAP2e were made to applicants that fell within the 'small window', was not communicated to Minister Carroll (or his predecessor, Minister Pakula).

Rather, the brief asserted that the Integrity Services Unit's analysis was 'flawed' on the basis that the analysis applied the incorrect parameters and used historical data that had not been available to the grants processing team when the initial program template was set up. This was disingenuous. While it was true that point-in-time data was not extracted and was not, therefore, used at the commencement of BCAP2 or BCAP2e, the fact that this was not done was a fault in the assessment process, not the Integrity Services Unit's analysis.

Indeed, with regard to the statement that 'the analysis was flawed', comments in an earlier draft of the brief indicate that staff in the Program Centre were of the view:

> The analysis itself was correct, but the interpretation of the analysis was where the uncertainty existed – we did not have a clear position of whether GST backdating was allowed under the guidelines and whether businesses that had backdated their GST should be retrospectively deemed as ineligible and asked to repay funds received.

Finally, because the brief did not give any indication of the overpayment figures in the analysis conducted by the Integrity Services Unit, Minister Carroll had no opportunity to consider the quantum of funds involved in the 'flawed' analysis before being asked to note that no payments were made in error and verify that the brief was an accurate record of decisions taken and processes implemented.

In response to a draft of this report, Mr Phemister argued that it was unfair to conflate the knowledge of a handful of individuals to that of knowledge of 'the Department', noting that only a few staff were aware of the relevant information, and that this was not shared with those involved in briefing the Minister. He stated that he only became aware of the issues with the brief during his examination by IBAC, and that at the time the Minister was briefed, he believed the briefing was accurate, adding:

> clearly he was not briefed accurately. However, that knowledge has only come with the benefit of this investigation.

3. Systemic corruption vulnerabilities

A variety of financial supports were rolled out quickly across Australia over the course of the COVID-19 pandemic. Shortcomings have been identified in some of those programs,[64] (including instances where suspected fraud caused programs to be suspended)[65] and much has been written about the need for better preparation to respond promptly to emergency situations.[66]

As noted earlier, IBAC acknowledges the Auditor-General's comments that a 'high trust' front-end approach to the administration of these business support programs was appropriate in the circumstances. IBAC also agrees with the Auditor-General's findings that post-payment investigation and follow-up activities were essential in this situation but did not occur.[67] IBAC does not intend to comment further on the deficiencies in the administration of the business support programs themselves.

In terms of corruption vulnerabilities, the way in which senior officers responded to advice about the suspected payment error in Operation Harmonia poses issues of greater concern to IBAC. The events that followed this advice, including the instruction to remove the 'backdated GST registration' line item from the draft Standing Directions report and subsequent draft file notes, correspondence and briefs suggest that a positive risk culture was lacking in the department. The failure of senior officers to provide frank and fearless advice meant that the Secretary and the Minister were not well equipped to make informed decisions. The creation of false and misleading or incomplete records involved conduct that was contrary to the public sector values of integrity and responsiveness. These issues are discussed on the following pages.

3.1. Absence of a positive risk culture

In administering BCAP2 and BCAP2e, the department understandably accepted a higher level of risk up front, recognising that speed was critical. Given the increased risk of error, fraud and corruption associated with the expedited rollout, the department was heavily reliant on staff across the department to identify and communicate suspected risks to senior management.

In Operation Harmonia, IBAC observed that when the suspected loss associated with GST backdating was identified, staff from across the department initially agreed that it warranted reporting and worked together to clarify what the suspected loss might be. However, when that figure was updated to indicate that the loss could be more than $250 million for BCAP2e alone, the Dep. Secretary instructed staff to remove the 'backdated GST registration' line item from the Standing Directions report without any further checks or enquiries. At no point was the quantum of the suspected loss communicated to the Secretary by the Assoc. Secretary, as discussed in 2.3.2. This was not indicative of a positive risk culture. To promote a culture of risk identification and reporting, it was essential that senior management respond appropriately to reports by informing decision-makers and taking action to manage identified risks appropriately. Such action demonstrates that senior managers value the actions of staff who raise concerns.

64 VAGO, October 2021, *Management of Spending in Response to COVID-19*; ANAO, May 2023, *Administration of the Disaster Recovery Funding Arrangements*; SA ICAC, April 2024, *Evaluation of grants administration Phase two: Emergency grants*.
65 NSW, September 2021, Service NSW and NSW Police, Strike Force Sainsbery.
66 ANAO, May 2023, *Administration of the Disaster Recovery Funding Arrangements* and COVID-19 Hotel Quarantine Inquiry, December 2020, *Final report*.
67 VAGO, November 2023, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*, p 39.

Obligation to maintain a positive risk culture

Public sector agencies have a responsibility 'to achieve a high standard of public financial management and accountability'.[68] In order to achieve those high standards, agencies must, among other things, apply the *Victorian Government Risk Management Framework* (the Framework),[69] which describes the minimum risk management requirements that agencies are required to meet to demonstrate that they are managing risk effectively.[70] As part of those minimum requirements, the maintenance of a positive risk culture is mandatory, including the period subject to IBAC's investigation.[71]

Under the March 2015 Framework, there was an obligation to support the development of a 'positive risk culture,' defined as one in which 'every person in the agency believes that thinking about and managing risk is part of their job'.[72] This obligation was not relaxed in any way during the COVID-19 pandemic. In fact, the August 2020 update to the Framework bolstered this requirement by turning the obligation from 'support'[73] into an obligation to 'demonstrate' a positive risk culture within an agency.[74] The 2020 update also elaborated on the concept of a positive risk culture, stating:

> Risk culture refers to the system of beliefs, values and behaviours throughout an organisation that shapes the collective approach to managing risk and making decisions. A positive risk culture is one where staff at every level appropriately manage risk as an intrinsic part of their day-to-day work.
>
> To encourage a positive risk culture, agencies should consider how the following key principles of effective risk culture work in practice:
>
> - Tone from the top
> - Accountability
> - Strategy
> - Communication
> - Awareness and recognition of positive risk culture
> - Escalation of bad news
> - Supporting tools, templates and mechanisms, and
> - Continuous improvement.
>
> Leaders should understand and value risk culture as a driver of good risk outcomes and the Accountable Officer for each agency is responsible for setting, owning, instilling and overseeing an appropriate risk culture.[75]

The August 2020 Framework encourages leaders to clearly communicate to all staff that the escalation of bad news is welcomed and that their senior management values the identification of risks, recognising that this can help drive good risk outcomes.

68 DTF, Standing Directions 2018, Introduction.
69 DTF, Standing Directions 2018, 3.7.1.
70 DTF, March 2015 and August 2020, *Victorian Government Risk Management Framework*, section 1.1.
71 DTF, March 2015 and August 2020, *Victorian Government Risk Management Framework*, section 3.1.1.
72 DTF, March 2015, *Victorian Government Risk Management Framework*, section 3.1 and Appendix 1, Risk management concepts, pp 6 and 15.
73 DTF, March 2015, *Victorian Government Risk Management Framework*, section 3.1.1.
74 DTF, August 2020, effective 1 July 2021, *Victorian Government Risk Management Framework*, section 3.1.1.
75 DTF, August 2020, effective 1 July 2021, *Victorian Government Risk Management Framework*, section 3.3.3.

Senior officers must act in a way that promotes a speak-up culture

Consistent with the Framework, in evidence to IBAC Mr Phemister spoke of promoting a speak-up culture in which everyone had responsibility to identify and address risks, stating:

> I tried to create a culture where people would raise issues with me and believed that I had an environment where if people saw risk they would raise it with me and if people saw system failure or error that they were in an environment where they'd be supported if they raised it.
>
> So one of my fundamental views about risk, and we worked quite hard on this, was that people felt incredibly comfortable with identifying risks. Treating those risks, I had a high-risk appetite going into COVID. We threw ourselves in. I'm completely transparent about that. But my primary – my primary mechanism was to have a culture where people felt as though they could… call out issues regardless of where they sat in the organisation and they'd be heard, be it, you know, slips, trips and falls or multi-million dollar grant rounds.

However, in practice, Mr Phemister's Assoc. Secretary was not receptive to information suggesting that there was a risk the department incorrectly paid more than $285 million to businesses that backdated their GST registration.

In evidence to IBAC the Assoc. Secretary made it clear that they objected to being forwarded emails containing information about suspected fraud concerns written by a 'junior data analyst' in the Integrity Services Unit (the Manager Fraud and Analytics, Integrity Services Unit) who 'reported that they were concerned about the program under [their] fraud title', variously stating:

> So I did have concerns about asking that person to do work and receiving emails from that person with a signature block from the fraud unit saying, 'Here's some issues we've identified,' because that unit is very quarantined with – and they have special powers to get access to data that's not generally available.

And:

> What concerned me is that I became aware that [they] sent an email response with [their] signature block saying, 'I have these integrity and fraud concerns relating to this dataset'.

In response to a draft of this report, the Manager Fraud and Analytics, Integrity Services Unit stated that the reference to them as a 'junior data analyst' did not reflect their level of seniority, responsibilities and function within the department. They further stated that the Integrity Services Unit was not operationally or functionally quarantined from the broader grant administration and delivery environment, and that the datasets used in their calculations were available to multiple teams across the department.

When Mr Phemister was asked whether his description of the risk culture he was cultivating accorded with the way the Assoc. Secretary's team responded to the Integrity Services Unit's advice about the suspected GST backdating figure, Mr Phemister stated:

> It does not. I am – one of the things that's – one of the things that struck me over the last few days is how could I have created an environment… where I was more available to people who felt their views and voices were being constrained within their own teams is something that I clearly didn't do well enough for all of the teams in that group.

While IBAC understands the Secretary sought to foster a collaborative approach to managing risk and making decisions, Mr Phemister was also known to be particularly close to the Assoc. Secretary and the Dep. Secretary (having worked with them before), which may have deterred others from bringing different views or concerns to his attention. Indeed, Mr Phemister himself acknowledged that he was 'incredibly close' to some staff, which IBAC took to include the Assoc. Secretary and the Dep. Secretary, and that he should have given others a 'bigger voice'. In developing a positive risk culture senior officers must be mindful of their interactions with staff and how close associations with some individuals may be perceived by others.

Operation Harmonia illustrates why senior officers must show staff that the escalation of bad news, mistakes and suspected risks are valued by the organisation. If senior leaders do not foster a speak-up culture or respond appropriately to such reports, decision-makers may not be armed with all the information they need to determine what strategies should be applied to address those issues. Further, the lack of attention can allow small risks to escalate, exposing the organisation to even greater risks of fraud and corruption.

3.2. Failure to provide frank and fearless advice

IBAC considered whether the department was instructed to withhold information or otherwise discouraged from reporting the suspected GST backdating loss. However, as noted above, Operation Harmonia did not identify evidence to suggest that Minister Pakula or his staff directed the department to withhold information on this issue. Nor did IBAC identify evidence to suggest that the department was instructed to provide Minister Carroll with misleading information about the actions of his predecessor and the status of the business support programs with regard to suspected payment errors.

Obligation to provide frank and fearless advice and act with integrity

The provision of 'frank, impartial and timely advice to the Government' is central to demonstrating the public sector value of responsiveness.[76] With regard to responsiveness, the *Code of conduct for Victorian public sector employees* (the Code of Conduct) expressly states that 'Public sector employees do not withhold relevant information from the Government'.[77]

The Code of Conduct also specifies that public sector employees must 'act honestly in the performance of their duties',[78] 'observe the highest standards of integrity in financial matters and comply with the requirements of relevant financial management legislation, policies and procedures'.[79]

76 *Public Administration Act 2004* (Vic), s 7(1).
77 VPS Code of Conduct, 1 July 2015, Clause 2.1.
78 VPS Code of Conduct, 1 July 2015, Clause 3.1.
79 VPS Code of Conduct, 1 July 2015, Clause 3.3.

The need to model these public sector values when dealing with ministerial offices was reiterated by the VPSC in response to a recommendation from the COVID-19 Hotel Quarantine Inquiry.[80] Specifically, guidance for 'secretaries and senior public service executives' on informing and advising Ministers – issued by the VPSC in October 2021, shortly before the decision was made to remove the 'backdated GST registration' line item from the draft Standing Directions report – emphasised the need for secretaries to:

- provide frank and fearless advice openly, transparently and apolitically
- support the provision of difficult advice by acknowledging issues and being responsive by offering possible options and solutions
- implement working arrangements that operate effectively in urgent situations
- uphold and model the public sector values
- build a trusting relationship with the Minister and their office through consistent practices and the provision of evidence-based advice consistent with the public sector values.[81]

Importantly, public sector employees who operate *beyond*, or ignore professional judgements, risk becoming overly responsive. As the Victorian Ombudsman observed in their report, *Alleged politicisation of the public sector*:

> Nobody we heard from disputed the fundamental importance of being responsive to the elected Government's priorities... But there were mixed views on whether the current balance was right, with suggestions parts of the public sector verged on being 'overly responsive' to political considerations... [Indeed] some questioned whether responsiveness was being elevated to the detriment of other public sector values such as impartiality and integrity.[82]

Frank and fearless advice is essential to inform decision-making

The decision to remove the 'backdated GST registration' line item from the draft Standing Directions report denied the Secretary and the Minister the opportunity to consider the issue and develop a response. Similarly, the advice provided to the Ombudsman did not include key information about the department's assessment process, which increased the likelihood that inequitable decisions would be made in relation to grants marked for review, undermining public confidence in the fairness of that process. Both actions were contrary to the public sector values of responsiveness and integrity.

IBAC found that the Dep. Secretary acted with the authority of the Assoc. Secretary when the Dep. Secretary directed that the 'backdated GST registration' line item be removed from the draft Standing Directions report and failed to transparently report the suspected losses associated with the COVID-19 business support programs to Mr Phemister (as Accountable Executive Officer under the Standing Directions). As a result, the Minister was not advised about the suspected GST backdating loss.

As noted above, the department started work on the Standing Directions report in November 2021 and initially included the 'backdated GST registration' line item. That initial decision was made when it was thought that the suspected overpayment in relation to BCAP2e involved $8.92 million paid to 273 businesses. When a subsequent 'comprehensive review' suggested that more than $250 million may have been paid to over 8000 businesses that backdated their GST registration after BCAP2e was announced, a decision was made to completely remove the 'backdated GST registration' line item all together.

80 VPSC, 29 October 2021, *Informing and advising Ministers*, Circular 2021–24.
81 VPSC, 29 October 2021, *Informing and advising Ministers*, Circular 2021–24.
82 Victorian Ombudsman, December 2023, *Alleged politicisation of the public sector*, p 66.

Importantly, the department did not submit the final report to Minister Pakula until 16 March 2022, meaning that in the months following the initial decision to remove the 'backdated GST registration' line item, the department had an opportunity to reflect on that decision but ultimately decided not to raise the issue of the significant suspected loss. These actions were not the result of an oversight. A decision was made to remove the issue of the suspected GST backdating loss from the Standing Directions report, and a number of measures were subsequently taken to justify that decision. Indeed, as noted above, IBAC did not identify evidence of any attempt by the Assoc. Secretary to bring the magnitude of the suspected loss to the attention of the Secretary as the Accountable Officer.

When advice is not frank and fearless it can ultimately increase an organisation's exposure to a range of risks, including error, fraud and corruption. In evidence to IBAC Mr Phemister noted that deleting the 'backdated GST registration' line item from the draft Standing Directions report exposed him to 'horrendous risk' without giving him an opportunity to consider the issue, saying:

> In the proper process of things [they've] exposed me to horrendous risk by making that change without giving me the opportunity to consider it in the document… what I would have expected and the culture I thought I had created in my organisation would be to say, 'Recent circuit-breaker programs. Figures debated internally. Seek Simon's input.' You know, give me the row to play with. Deleting the row holus-bolus, which is what this does – the whole row's gone – means that when it goes up through the checks people don't have a prompt other than their memory to say, 'Well, where's that bit on GST?'… I really appreciated it when people said, 'Hey, there's this bit here. We might take it out. But just heads up, you might want to think about this.' It's in there; it's a prompt. Because the chain of command between [the Dep. Secretary] and me signing this off is [the Assoc. Secretary], then into my office… That then falls to me to say, 'You've left a row out here'. And I've already owned the fact that, if it should have been in there, I signed it. But this doesn't even afford me that opportunity.

In terms of the consequences of incomplete advice being provided to government, Mr Pakula told IBAC that not being properly informed of things such as the GST backdating overpayment can create 'all manner of… difficulties for ministers'.

When asked if they were of the view that the department gave full and frank advice to its ministers, the Dep. Secretary stated, 'I think the department did not give full and frank written advice to Minister Pakula… and I think that was a consequence of a chilling effect from particular behaviours'. When asked if it would be fair to say that Minister Pakula could be quite explosive at times, Mr Phemister stated, 'I think you'd struggle to find somebody who disagreed with that'. Indeed, when asked if he could think of any reason why this issue would not have been reported to him, Mr Pakula offered the following observations:

> Perhaps there was a degree of embarrassment. Perhaps… I'm going to reflect poorly on myself for a moment here – perhaps there was a – they were worried about my temper. Not that my temper was particularly explosive, but they might've just not, you know – not wanted to tell me. Um. They might've… genuinely believed that it wasn't inconsistent with the guidelines… but I think more – more likely than that, they would've just felt that there was no capacity within the department to deal with having to unpick this… and retrace their steps on it.

When asked if he would disagree with the assertion that the relationship between himself, his office and the department was, at this time, a difficult one, Mr Pakula said, 'I profoundly disagree with that'.

While IBAC's investigation did not find any evidence of political pressure to withhold information from the government, it did find that self-censoring occurred and information about the suspected GST backdating loss was withheld in circumstances where it was understood the information in question would not be welcomed by the Minister or would otherwise reflect poorly on the department.

This is not the first time IBAC has raised concerns about senior officers failing in their duty to provide frank and fearless advice. Nor are IBAC's investigations the only matters in which concern has been raised about the provision of advice to ministers by the Victorian Public Service.

In Operation Daintree, IBAC found that a deputy secretary at the then Department of Health and Human Services awarded a contract without written instruction from the Minister for Health after the Minister's Chief of Staff indicated that the Minister would be unhappy about being asked to approve a direct grant or a competitive procurement process. That investigation found that there was a *belief* among senior officers that the Minister and the government wanted the contract in question to be awarded, which affected the department's processes at all levels.[83]

In its final report, the COVID-19 Hotel Quarantine Inquiry observed that the issue of senior officers not passing information (relevant to the operation of the portfolio) to the Minister was observed across several departments, including the Department of Jobs, Precincts and Regions.[84] As noted above, in response to the Inquiry's recommendations the VPSC issued guidance which cautioned that:

> Shielding the Minister from information and advice that they may not be comfortable hearing is not consistent with the principle of frank and fearless advice. It is only by providing the Minister with full information and advice that Ministers can consider the matter, take into account relevant information and make decisions about necessary actions.[85]

In Operation Harmonia, multiple witnesses told IBAC that while they did not hear it firsthand, there was a general sense that the Minister did not want to hear about GST backdating or errors, which appears to have informed the department's approach to the issue.

Responsive public service requires honesty, diligence and the courage to put forward information that is necessary to know – including errors – no matter how uncomfortable it may be. When mistakes are made, public officers must be forthcoming so that decisions can be made about how best to address those issues.

Having failed to report the suspected significant loss associated with GST backdating to Minister Pakula, the department went on to provide his successor, Minister Carroll, with misleading information in order to generate documentation that would satisfy VAGO's audit of the business support programs. As discussed above, the September 2022 brief drafted by the Dep. Secretary and recommended by Mr Phemister:

- Advised Minister Carroll that GST registration was confirmed 'using the most up-to-date ATO data'. This suggested that the best data was being used, when in fact, the department should have been using historical data extracted on the eligibility date specified in the program guidelines.
- Noted that there was a 'small window' in which applicants could register for GST after the eligibility date specified in the program guidelines and still be found eligible for the grant. This suggested that only a small number of applicants were able to access grants in this way without referencing the estimated $250 million in payments made to BCAP2e applicants who fell within the 'small window'.
- Dismissed the analysis undertaken by the department's Integrity Services Unit as 'flawed', on the basis that it 'utilised historical ATO extracts that had been unavailable to the grants processing team when the initial program template was set up'. This characterisation failed to acknowledge that the analysis conducted by the Integrity Services Unit was not checked in any way to arrive at the conclusion that it was flawed and the failure to use point-in-time data at the commencement of BCAP2 or BCAP2e was a fault in the assessment process, not the Integrity Services Unit's analysis.
- Asserted that Minister Pakula was 'fully apprised of and approved the department's implementation approach'. This occurred in circumstances where the department did not have any documentation to support this position, and was, in fact, seeking Minister Carroll's endorsement of the brief 'as an accurate record of the decisions taken and processes implemented in relation to the assessment of the GST registration criterion', in circumstances where the brief was intended to be provided to VAGO.

83 IBAC, April 2023, *Operation Daintree special report*.
84 COVID-19 Hotel Quarantine Inquiry, December 2020, *Final Report*, Volume 1, p 312.
85 VPSC, *Informing and advising Ministers: How to advise ministers if you're a VPS secretary, executive or officer*, see: www.vpsc.vic.gov.au/working-public-sector/conduct-integrity-and-values/working-ministers/informing-and-advising-ministers/advice-secretaries.

This September 2022 brief revised events in a way that supported the department's decision to not report the suspected GST backdating loss.

In evidence to IBAC, the Assoc. Secretary asserted that there was no suspected GST backdating loss that required inclusion in the report, stating:

> It could have been fraud. It could have been corruption. It could have been an error… It could have been a loss. It could have been a loophole that we were closing down and it wasn't going to be a loss. They were the issues that needed to be teased out. To say that that number… of $233.8 million and the other numbers in the other programs was all systemic fraud, corruption and other loss was, in my view, a misrepresentation of the issue.

Narrowing the scope to focus only on actual fraud in this way ignores the fact that departments are required to report suspected losses in addition to identified fraud.

In a similar vein, the Dep. Secretary told IBAC that they understood the rationale, at the time, for removing the 'backdated GST registration' line item was that the department did not have full confidence in the figures and only intended to leave it out of this report until the department had a better understanding of what the correct approach should be. However, in practice, no effort was made to better understand the extent of any loss associated with the GST backdating issue.

Despite the lack of further enquiry, the brief to Minister Carroll inferred that further investigation had been undertaken in advising the Minister that the Integrity Services Unit's analysis was 'flawed'. Indeed, IBAC's investigation did not identify any further review of that analysis until VAGO re-audited the COVID-19 business support programs in August 2022. That subsequent analysis was broadly consistent with the one prepared by the Integrity Services Unit in November 2021.

Difficult decisions are often made during periods of high pressure when leaders are under significant stress. The public sector values apply regardless of circumstances, however challenging they may be.

Public sector employees are obliged to act with professionalism and provide complete and honest advice to government. They should be robust in their commitment to provide thorough, unbiased reports, even when they know that it may not be what the Secretary or the Minister wants to hear. For their part, ministers must be mindful that their conduct can deter public servants from providing frank and fearless advice and take action to ensure they receive the information they need to facilitate sound decision-making.

4.Conclusion

Operation Harmonia highlights the importance of promoting a speak-up culture. It also demonstrates why it is important for senior leaders to respond constructively when mistakes are made, and when risks are identified by staff. IBAC commends the numerous officers from across the department who independently raised concerns with IBAC regarding the issues discussed in this report, unaware that others had raised concerns from different quarters.

IBAC's investigation found that critical information was withheld from the Secretary and the Minister, contrary to the public sector values of integrity and responsiveness. This was not due to the actions of those officers from across the department who initially agreed that the suspected GST backdating loss warranted reporting and worked together to more accurately quantify the suspected loss. Rather, it was the result of action taken by the Dep. Secretary who instructed that the 'backdated GST registration' line item be removed from the draft Standing Directions report when it became clear that the loss could exceed $285 million and the Assoc. Secretary who did not advise the Secretary about the potential magnitude of the loss.

The investigation also found that Executive Director A withheld key information from the Ombudsman, and the Dep. Secretary created and provided false and misleading information to the incoming Minister. Further, the file note created by Executive Director A and the brief prepared for Minister Carroll (both of which were ultimately provided to the Victorian Auditor-General's Office), minimised the issue, discredited the analysis that identified the suspected loss and obscured the decision to withhold this information from the Minister.

IBAC acknowledges that these events took place during or soon after a period of unprecedented emergency. However, the reality is that difficult decisions are often made under significant pressure. All public officers – including Victorian Public Service staff, senior leaders and ministers – must recognise that heightened pressure can increase decision-making risks and actively promote a speak-up culture during these periods. IBAC's investigation did not identify evidence to suggest that the department was instructed to withhold information from the Minister and witnesses rejected the idea that there was a reluctance to report bad news. However, in evidence to IBAC, even Mr Pakula acknowledged that his temper *may* have been a factor that contributed to the decision not to report this issue. In IBAC's view ministers must recognise that the tone they set at the top informs the culture within the agencies that report to them.

There is no easy fix to ensure an organisation has a positive risk culture. Nor is an ethical culture something that can be instilled in a workforce by issuing a guideline or altering procedures. Indeed, advice on the importance of full and frank advice *was* highlighted in a circular issued by the VPSC in October 2021 (shortly before the decision was made to remove the 'backdated GST registration' line item from the draft Standing Directions report),[86] in May 2023 (following the release of IBAC's *Operation Daintree Special Report*),[87] and again in October 2026 (following the release of IBAC's *Operation Richmond Special Report*).[88]

A sustained effort is required at every level of the public service to appreciate the importance of ethical decision-making and foster an environment in which the provision of robust, complete advice is both expected and welcomed. Failure to do so can unnecessarily increase an agency's risk of exposure to fraud and corruption.

86 VPSC, 29 October 2021, *Informing and advising Ministers*, Circular 2021–24.
87 VPSC, 5 May 2023, *Release of Operation Daintree Special Report*, Circular 2023–27.
88 VPSC, 18 August 2026, *Release of IBAC's special report on Operation Richmond*, Circular 2026-33. Also see IBAC, August 2026, *Operation Richmond special report*.

Appendices

Appendix A: Timeline of key events

Figure 9 sets out the timeline of key events in relation to this investigation.

Figure 9: Timeline of key events

Date	Key events
Nov 2021	Work starts on the department's Standing Directions report of significant or systemic fraud, corruption and other losses (Standing Directions report).
25 Nov 2021	Details of payments made to BCAP2e applicants who backdated their GST registration (totalling $8.92 million) are added to the draft Standing Directions report. Draft Standing Directions report is circulated to the Executive Director COVID-19 Portfolio Management and others, noting that 'initial stats' had been included for BCAP and that the Integrity Services Unit will work with the Manager Program Delivery, JIBE to undertake a 'comprehensive review'.
30 Nov 2021	Comprehensive review of backdated GST overpayments indicates that under BCAP2e, $251.97 million was paid to businesses not registered for GST on 15 July 2021 (21.66% of all BCAP2e payments). Draft Standing Directions report is updated to include details of payments made to BCAP2 and BCAP2e applicants who were 'not registered for GST at the program eligible date', before the entire GST backdating line item is marked for removal with a note stating 'To be removed a [sic] requested by [the Dep. Secretary]'. (See Figure 2 for details.)
2 Dec 2021	The Assoc. Secretary emails themself, noting that 22% of payments made under BCAP2e were to businesses not registered for GST on 15 July 2021 and that the issue affects all programs with the same eligibility criteria.
8 Dec 2021	Executive Director A drafts an internal working document (a file note) in relation to the recovery of potentially ineligible payments, which states: > The methodology [used by the Integrity Services Unit] should have assessed whether or not applicants held GST registration on and as at the date of their application, rather than on and as at 15 July. The date of application would be a date between 30 July and 20 August. Further, 'for reasons of administrative efficiency': • GST registration was only checked 'as at the date of assessment (normally 2 weeks from the date of application)' • the date of assessment was 'taken as a proxy for the date of application' • because GST registration on the date of application was *also* a requirement under the guidelines, a check for GST registration on the date of assessment only (as a proxy for the date of application) was a valid assessment method.

Date	Key events
10 Dec 2021	Victorian Ombudsman writes to the department seeking information about 'the department's policy position on approving or declining grants with backdated GSTs and the consequences of this decision', noting, 'It appears that about 5,000 grant applicants may be affected'.
20 Dec 2021	Executive Director A advises the Ombudsman that 'Applicants must have held GST registration as at the time of application, as well as at the eligibility date… [if an applicant] backdated their GST to these dates, but did not hold GST registration on these dates, then they are not eligible'.
16 Mar 2022	Secretary Phemister submits the Standing Directions report of significant or systemic fraud, corruption and other losses to Minister Pakula and others without the 'backdated GST registration' line item.
24 Jun 2022	Minister Pakula announces his retirement from politics and steps down from his ministerial roles three days later.
Aug 2022	VAGO re-engages with the department as part of the 2021–22 financial year audit, with a focus on the COVID-19 business support programs, in the course of which formal documentation of significant decisions concerning the grant assessment process were sought.
15 Sep 2022	The department submits a brief to Minister Carroll titled 'Administration of GST requirements for COVID-19 business support grants' which asserted that: • Minister Pakula was 'fully apprised of and approved the department's implementation approach' • no payments were made in error • the Integrity Services Unit's analysis of GST overpayments was flawed.
24 Nov 2023	VAGO tables *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2022–23*.

Appendix B: Summary of BCAP payments

In February 2021, the Victorian Government announced the first Business Costs Assistance Program (BCAP). Eligibility for the $2000 grant under that program did not qualify recipients for any subsequent BCAP grant payments.

Figure 10 provides a summary of the maximum payments that could be made to applicants assessed as being eligible for BCAP2 and BCAP2e respectively.

Figure 10: Summary of maximum possible payments under BCAP2 and BCAP2e

Date of announcement	Program announcement	Maximum payments	
		BCAP2	BCAP2e
30 May 2021	BCAP2	$2500	–
2 June 2021	BCAP2 top-up	$2500	–
9 June 2021	BCAP2 top-up	$2000	–
16 July 2021	BCAP2 top-up	$2000	–
21 July 2021	BCAP2 top-up	$2800	–
21 July 2021	BCAP2e	–	$4800
28 July 2021	BCAP2 & BCAP2e top-up	$7000	$7000
6 August 2021	BCAP3	$2800	$2800
12 August 2021	BCAP3 top-up	$2800	$2800
19 August 2021	BCAP3 top-up metro only	$5600	$5600
22 August 2021	BCAP3 top-up regional only		
4 September 2021	BCAP4 top-up per week for 4 weeks#	$8400 (x4)	$8400 (x4)
30 September 2021	BCAP5 top-up per week for 4 weeks*	$8400 (x4)	$8400 (x4)

Payments ranged from $2800 per week for businesses with either no payroll or an annual payroll below $650,000 to $8400 per week for businesses with an annual payroll between $3 million and $10 million and covered the period from 4 to 30 September 2021 (approximately 4 weeks).

* Payments ranged from $1000 per week for non-employing businesses to $8400 per week for businesses with an annual payroll between $3 million and $10 million and covered the period from 1 October to 29 October 2021 (approximately 4 weeks).

Appendix C: Natural justice requirements and responses

Where IBAC intends to make an adverse finding against a public body or to make a comment or opinion that is adverse to any person in a public report, that public body or person must be given a reasonable opportunity to respond to those comments or opinions.[89] In Operation Harmonia, IBAC did this by providing witnesses with extracts from a draft version of this report.

IBAC must fairly set out each element of a response to an adverse finding, comment or opinion it receives in its report.

If IBAC intends to include a comment or an opinion about any person that is not adverse to the person, it must still provide that person with the relevant material in relation to which it intends to name the person. IBAC received several responses to a draft version of this report (from adversely and non-adversely mentioned witnesses). Some witnesses did not respond. Material changes have been made to the body of this report as a result of the responses IBAC did receive. Elements of responses not incorporated in the body of the report, or not fully incorporated, are reflected in this appendix. In some exceptional instances, IBAC has chosen to rebut a person's response within this appendix; however, overall, the report itself speaks entirely to IBAC's response. Elements of responses which IBAC considered extraneous to this report and its evidentiary basis are not reflected in this report.

Responses are set out in alphabetical order.

Why IBAC has named some persons and not others in this report

IBAC must not identify a person in a special report who is not the subject of an adverse comment or opinion unless:

- it is satisfied that it is necessary or desirable to do so in the public interest
- it is satisfied that it will not cause unreasonable damage to the person's reputation, safety or wellbeing
- it states in the report that the person is not the subject of any adverse comment or opinion.

Matters raised across multiple submissions

Procedural fairness

In their responses to the draft report, some witnesses (including the Assoc. Secretary, the Dep. Secretary and Executive Director A) submitted that they were denied procedural fairness by IBAC making findings in the draft report without having questioned them about the subject of those findings during examinations, which has implications for the application of the Briginshaw principle against IBAC's findings.

IBAC's examinations are held in the course of an investigation. IBAC will commonly obtain further information or evidence after a witness's examination. There is no obligation to put every adverse matter to that witness during their examination. IBAC's relevant procedural fairness obligation is set out in section 162(3) of the IBAC Act. As the High Court noted in *AB v IBAC* this 'obligation is only engaged when IBAC forms the intention to include the adverse comment or opinion in its special report'.[90] Any such intention may not exist at the time of the examination. IBAC provided a reasonable opportunity (in accordance with section 162(3) of the IBAC Act) for all subjects of adverse comments in this report, including the Assoc. Secretary, the Dep. Secretary and Executive Director A, to respond to the report.

89 IBAC Act s 162.
90 AB v IBAC [2024] HCA 10 at 28

COVID-19

Multiple witnesses, including Mr Pakula, Mr Phemister, the Assoc. Secretary and Executive Director A, made submissions regarding the context of the COVID-19 pandemic in which the grant programs in Operation Harmonia operated.

Mr Phemister submitted that before COVID-19, the department administered small grants and had months to plan. In contrast, the department had to operate with limited resources and under intense pressure from executive government to deliver the government's COVID-19 response at speed. Noting the urgent community need, he observed that it was preferable to evolve programs quickly despite any potential risks with program governance rather than pause the response and have existing program and governance structures collapse. Mr Phemister also emphasised the significant stress experienced by staff involved in administering these programs, adding:

> These people should be celebrated and the continued blunt criticism, without any reference to their success and the difference that they made, drives a concerning phenomenon in the public service… One hundred percent success was never promised nor achievable in the pandemic. The only way to avoid failure was to avoid being part of the response altogether. This is an unhealthy incentive to provide. Of course, none of this excuses anything short of complete integrity in the public service.

The Assoc. Secretary submitted:

> The IBAC can, and should, in its report opine on the importance of a culture of speaking up and on the ambiguities and uncertainties in the grant programs rushed into existence during the COVID-19 pandemic…
>
> Stepping back, this is not a case about deliberate withholding of information, but a case of misunderstanding and confusion. This was an incredibly difficult time. Billions of dollars were paid over a short period, in a locked down State. Clearly, issues have been raised about the quality and clarity of the criterion that were used for the grant programs in question.

Executive Director A submitted that at the time of preparing the draft file note and the response to the Ombudsman they were temporarily managing two substantial teams, each of which should have had its own Executive Director, while also acting in the Dep. Secretary's role. Executive Director A added that in that emergency environment, 'we had to work all the time, and people had mental health issues, and we didn't have enough time to think about things, and everyone was just trying really hard to do their best'.

Referencing the draft report's acknowledgement that 'in rapid response environments, mistakes are likely to occur' Executive Director A submitted that this principle applies to their conduct, and that if any mistake was made in signing the Ombudsman response, the mistake was an honest one, made under extreme and sustained pressure. Executive Director A added that it was not identified at the time, that they would have corrected it if it had been identified, and that there is no evidence to the contrary.

Mr Pakula submitted that pressures associated with the COVID-19 pandemic may provide a better explanation for any failures on the part of public servants to provide full and frank advice, stating:

> I would be much more understanding of an explanation that relied on the pressure and exhaustion that the public service endured at that time, which I acknowledge was extreme. That was stated clearly in my evidence, and it remains my view today.

People named in the report and responses to the draft report

Associate Secretary

In response to a draft of this report, the Assoc. Secretary rejected the adverse finding against them and submitted that it should not be maintained.

Finding that payments were made to ineligible applicants

Subjective belief that payments were permissible

Throughout their submission, the Assoc. Secretary emphasised that they did not believe then – and do not believe now – that payments to applicants with backdated GST registrations were impermissible under the scheme. The Assoc. Secretary submitted that while IBAC may disagree with their interpretation of the program guidelines, this does not justify a conclusion that they engaged in any deliberate wrongdoing. In support of this assertion the Assoc. Secretary presented details of a text message they sent on 3 December 2021 (see Figure 7) as 'irrefutable contemporaneous evidence that at the relevant time [they] did not think that backdating overpayments "was a problem"'.

The Assoc. Secretary submitted that they did not positively know or suspect that there were overpayments under the scheme and that any suggestion that they deliberately withheld information about ineligible payments is 'simply untrue'. The Assoc. Secretary asserted that they formed the view that the overpayments identified by the Integrity Services Unit were not overpayments in circumstances where: the briefs and legal advice prepared by the department that concerned GST backdating were limited to applicants seeking reassessment; it is lawful for businesses to backdate GST; the guidelines encouraged businesses to check that their ABN registration information was correct on the ABR before applying; the 'general attitude of the Minister at all times was in favour of maximising participation in COVID 19 grant programs'; and the department had previously been criticised for not permitting ANZSIC backdating for similar grant programs.

The Assoc. Secretary also submitted that they had no motive to deliberately withhold losses and that they acted in accordance with their genuine belief at the time. The Assoc. Secretary stated that the email sent to themself recording the Integrity Services Unit's calculations (see Figure 6) was not suggestive of an attempt to cover up or withhold overpayments, and noted several other people were on the correspondence concerning the Integrity Services Unit's analysis. While the Assoc. Secretary may have disagreed with the Integrity Services Unit's analysis, as noted in section 2.3.2, they were obliged to advise the Secretary that a departmental analysis had identified a suspected significant loss which they did not agree with, so that the Secretary, as the Accountable Officer, could make a decision about whether or not a report was required.

Obligation to brief the Secretary

In their submission, the Assoc. Secretary did not agree that they were obliged to advise the Secretary that staff were of the view that a significant loss had been identified which they did not agree with, so that the Secretary, as Accountable Officer, could make the final call.

Their submission stated that the Standing Directions 'did not require [the Assoc. Secretary] to report suspected loss, if [they were] not of the view that there was a suspected loss'.

They further asserted that the view that there was a suspected loss 'was, at most, a contentious conclusion', and that 'no staff held that view or that this view had been conveyed to [them] at the relevant time'.

'Category 1' and 'Category 2' cases of GST backdating

In response to a draft of this report, the Assoc. Secretary submitted that the grant application guidelines were ambiguous as to the application of the GST registration eligibility criteria. They submitted that IBAC's finding – that there were substantial losses under the program – represents an incorrect interpretation of the criteria that does not reflect how the department interpreted or administered the grant program.

The Assoc. Secretary noted that, at all relevant times, the ATO permitted the backdating of GST registration with retrospective effect. They submitted that, in this context, there were two important categories of backdated applicants identified and relevant to the programs:

- 'Category 1' cases, where an applicant had applied to retroactively backdate its GST before the time it submitted its grant application
- 'Category 2' cases, where an applicant had not applied to retroactively backdate its GST registration until after it had submitted its grant application.

The Assoc. Secretary submitted that applicants in 'Category 1' were granted by the department, and 'Category 2' were refused because they did not meet the requirement in the guidelines that 'Applicants must attest that they met the eligibility criteria at the time of the application', and not because GST backdating was otherwise impermissible for the purposes of eligibility under the scheme.

The Assoc. Secretary submitted that they do not disagree with the factual analysis that was presented by the Integrity Services Unit, that payments made with respect to 'Category 1' and 'Category 2' backdating amounted to $251.97 million. The Assoc. Secretary asserted that they have never disagreed with that, expressed that or had a reason to doubt the accuracy of the Integrity Services Unit's analysis with respect to the cumulative total for 'Category 1' and 'Category 2' backdating.

Ultimately, the Assoc. Secretary asserted that:

> What is open to IBAC is for a finding to be made that [the Assoc. Secretary] genuinely held, on IBAC's assessment only, a mistaken belief, that Category 1 backdating was permitted and that these views, which were held throughout the Department at the time, led [the Assoc. Secretary] into error. [They do] not concede that this belief was mistaken. But if the IBAC is of a different view, then this finding is open.
>
> The conduct alleged amounts, at its highest, to a difference of genuinely held opinions about the correct interpretation of grant guidelines, an interpretation shared by multiple other departmental officers and subsequently supported by independent auditors who issued clear audit opinions.

The Assoc. Secretary submitted that IBAC's report wrongly suggests that all cases of GST backdating (including 'Category 1' cases) were impermissible under the program. They stated that, in administering the program, the department interpreted the guidelines as permitting 'Category 1' cases, and payments made to these applicants should therefore not be considered overpayments.

The Assoc. Secretary submitted that the August brief and subsequent legal advices each distinguished between these two forms of GST backdating, and that the Dep. Secretary shared their understanding that 'Category 1' applicants were permitted under the brief.

The Assoc. Secretary formed the view, which they assert was shared by the Dep. Secretary and informed by their understanding of the legal advice provided after the August brief, that 'Category 1' applicants were permitted under that brief. The Assoc. Secretary stated that they and the Dep. Secretary understood the Integrity Services Unit's analysis to be flawed because it treated 'Category 1' and 'Category 2' backdating in an identical manner, and that 'Category 1' backdating, which comprised the overwhelming majority of the figure reported by the Integrity Services Unit, was not 'suspected loss'.

The Assoc. Secretary further submitted that IBAC has generalised advice that static datasets were required to assess all grant applications, arguing that static datasets were only relevant to the assessment of 'Category 2' applications (where applicants backdated GST after submitting a grant application).

3 December 2021 text message

In relation to IBAC's observation that the 3 December 2021 text message provided by the Assoc. Secretary 'appears to be the only contemporaneous record by the Assoc. Secretary documenting [their] consideration of the Integrity Services Unit's analysis', the Assoc. Secretary submitted:

> This misses the big point, which is that it is contemporaneous evidence as to what [they] believed at the time. The reasonableness of this subjective belief is a different issue and the two matters should not be conflated. The fact that it is the 'only' record of this does not mean that it is not a record, and it is not a reason for it to be ignored.

The Assoc. Secretary further submitted that IBAC's conclusion 'ignores the contemporaneous evidence that IBAC itself has included in the Draft Report, namely the Assoc. Secretary's 2 December 2021 email to [themself]'. They submitted that their text message was sent after they emailed themself and considered the issue and determined 'Category 1' cases were not overpayments.

The Assoc. Secretary asserted that IBAC could have obtained further evidence on this point but did not do so. They stated that IBAC could not rely on the absence of evidence to suggest an absence of contemporaneous records.

August 2021 brief recommendation

The Assoc. Secretary submitted that questions put to them in evidence incorrectly suggested that the August 2021 brief concerned both 'Category 1' and 'Category 2' cases and stressed that the context for the August brief was that the department was seeking guidance as to how to deal with 'Category 2' cases. The Assoc. Secretary submitted that the questions put to them in examination about the brief did not accurately summarise its content, and the questioning was therefore 'grossly unfair'.

In particular, the Assoc. Secretary asserted that 'the [August] brief proposed that any applicant for BCAP2 that was refused a grant, but then obtained GST registration before BCAP2e, would be *automatically eligible* to be paid under BCAP2e'. The Assoc. Secretary submitted that this recommendation – which was approved by the Minister – demonstrated that the GST registration criterion was not intended to be used (at least by August 2021), as a meaningful proxy for turnover for the purposes of applicant eligibility.

The Assoc. Secretary also submitted that advice provided by General Counsel in August 2021 is erroneously presented in the report. They submitted that it is taken out of context and is misleading as it is presented as though the advice expresses an opinion in relation to 'Category 1' cases. The Assoc. Secretary submitted there are two important features the report fails to note in relation to the advice:

> ***First***, the reference to the need to be registered for GST 'on the date that they applied for the funding and provided the attestation' makes it clear that this advice concerns Category 2. It is not addressed to backdating before the date of applying for funding and making the necessary attestation (i.e. not critical of Category 1);
>
> ***Second***, it says that Category 2 is ineligible because they were not registered 'when they applied' (for example on 2 June 2021). This means that any backdating had to occur prior to the application being made. This is consistent with backdating in Category 1 being permissible NOT impermissible.[91]

The Assoc. Secretary rejected IBAC's finding that the text message they sent on 3 December 2021 (that conveyed that GST backdating was not a problem) is inconsistent with the August 2021 brief signed by the Minister, which highlighted 'risks and potential flow-on financial impacts of accepting backdated GST registrations'. The Assoc. Secretary submitted that their text message was not inconsistent with the brief on the basis that '[t]he "integrity risks" referred to in the August brief were those associated with accepting reassessments from Category 2 applicants, not risks associated with payments already made to Category 1 applicants'.

91 Emphasis in original.

IBAC notes that the GST backdating treatment approved by the Minister in the August brief involved an exception to the rule of 'not accepting backdated GST registrations for COVID-19 business support programs, except where an applicant temporarily deregistered an existing GST registration and since reinstated and backdated it' (see section 2.3.1).

IBAC agrees that the August 2021 legal advice only concerned unsuccessful applicants who backdated their GST registration then sought a review of their grant application, as reflected in the report (see section 2.3.1).

Standing Directions report and the Integrity Services Unit's analysis

The Assoc. Secretary submitted that the figures removed from the draft Standing Directions report reflected analysis of a 'broad data set that included Category 1' cases. The Assoc. Secretary referred to an email sent on the day of the analysis, which noted that:

- the figures included applicants who were registered for GST at the time of their assessment and whose attestations were not necessarily false given they had backdated their GST registration
- this cohort differed from applicants who were not registered for GST at the time they were assessed and who had falsely attested
- further analysis of the cohort was required to consider 'the alignment of the cohort with our program guidelines, which specif[y] eligibility requirements at the time of assessment'.

The Assoc. Secretary submitted that this email 'demonstrates that the issue was understood by the department not to be backdating per se, but the accuracy of the attestation at the time of the application'. The Assoc. Secretary also made a similar observation in relation to the October 2021 legal advice and noted that this advice concerned ABN backdating and not GST backdating and is consistent with their view that 'Category 1' applicants were eligible for the scheme. They further submitted that it was this advice that likely led to the Dep. Secretary requesting the figure be removed from the Standing Directions report, not the Assoc. Secretary.

As part of IBAC's investigation, IBAC considered this email and the contention that the Integrity Services Unit's analysis did not accurately reflect overpayments because it captured applicants who were able to access grant funding (having backdated their GST before applying, which meant they did not necessarily provide a false attestation) because they were registered at the time of their assessment. IBAC considers that this position is fundamentally flawed. Attestation was just one of a number of eligibility criteria. The program guidelines also required that businesses be registered for GST on the eligibility date *and* at the date of assessment. IBAC considers that this rationale was developed after the department realised the scale of the loss arising from the flawed assessment approach used in the administration of the scheme, and that the explanation is inconsistent with the intent and content of the guidelines.

IBAC further notes that the position contained in the email was inconsistent with the evidence provided to IBAC by multiple policy owners in the department involved in the administration of the program.

Evidence of the Deputy Secretary

The Assoc. Secretary strenuously denied the Dep. Secretary's evidence that they communicated reasons not to report the suspected $285 million in losses and submitted this finding should not be included in the final report. The Assoc. Secretary submitted that the Dep. Secretary's evidence demonstrated that they did not have a sufficiently clear recollection of the events, lacked detail and constituted 'indefinite testimony' and 'inexact proofs' which should not be relied on by IBAC. They noted IBAC had no records of any discussions between the Dep. Secretary and the Assoc. Secretary regarding the Standing Directions report, and there was no evidence that anyone else in the department had suggested that the Assoc. Secretary had anything to do with the removal of the information from the draft.

The Assoc. Secretary further stated that:

> [The person in question] was an Associate Deputy Secretary and Deputy Secretary. [Their] role was to provide [the Assoc. Secretary] advice as well as manage programs in [their] area. [The Dep. Secretary]'s characterisation of [their] relationship with [the Assoc. Secretary] in terms of [their] 'authority' does not establish that [they] instructed [them] to do anything or that it accurately reflects the manner in which [the Dep. Secretary] operated as a senior executive of the Victorian Public Service.

The Assoc. Secretary referred to the text message sent to [the Dep. Secretary] several days later which recorded their view that they did not consider the GST backdating issue to be a 'problem', stating that:

> It is unlikely that [they] would have sent that text to [the Dep. Secretary] if [they] had already told [them] three days before to remove the item from the Standing Directions [report].

Knowledge of Mr Phemister

The Assoc. Secretary also submitted that they did not fail to brief the Secretary on the suspected GST backdating loss and asserted that they had no motive to do so. The Assoc. Secretary submitted that IBAC's finding ignores their examination evidence, where they said on numerous occasions that they did brief the Secretary, the fact that the Secretary's office put the matter on the agenda for discussion with the Minister twice and the September 2022 brief signed by the Secretary, which expressly critiqued the Integrity Services Unit's analysis. Their submission stated:

> [The Assoc. Secretary] also categorically denies that the Secretary was not aware that a large number of businesses with Retroactive GST Registration (Category 1) were paid grants under the Program. [They] spoke to the Secretary about this. It was common knowledge at the time.

Their submission noted that the purpose of their email to themself, dated 2 December 2021, was to raise the matter with the Secretary, and that within days of the Integrity Services Unit's analysis, the issue was placed on the agenda by the Secretary's office. They also reiterated their own evidence that they did inform the Secretary about the matter.

The Assoc. Secretary further submitted that the Secretary's evidence that he was unaware of the suspected loss is highly implausible and inconsistent with the brief prepared for Minister Carroll, which he signed, that determined the Integrity Services Unit's analysis was 'flawed', and that this weighs heavily against the finding against them. Having not been provided the transcript of evidence provided by the Secretary, the Assoc. Secretary submitted that they are unable to assess and test that evidence, and do not know, 'for example, whether it was also put to him (incorrectly) that the August 2021 brief was a recommendation from the Minister about all (including Category 1 backdating) rather than reassessment'. The Assoc. Secretary also stated that the Secretary's evidence was inconsistent with their knowledge of VAGO's August 2022 audit in relation to the Department's 2021/22 financial statements, which considered anomalies in the BCAP and BCAP2e programs.

Analysis by other agencies and bodies

Finally, the Assoc. Secretary referred to audits and analysis of the BCAP programs conducted by external agencies, which they submitted accorded with their interpretation of the guidelines. In particular, they referred to audits conducted by VAGO in 2021/22, 2022/23 and 2023/24, independent quality assurance reviews undertaken by KPMG in 2022 and Deloitte, and the department in 2024/25. They stated that none of these reports had assessed the BCAP2 and BCAP2e grant programs in the same way as IBAC, and that none had treated payments made to those who had backdated GST as payments made in error. They noted that there have been no attempts made to recover those amounts. They also highlighted VAGO's 2024/25 annual financial report on the State of Victoria, which reported that the department had identified $72.5 million was paid in error to applicants over four years from 2020/21 to 2024/25.

As noted in section 1.2, VAGO observed that payments were made in error in relation to these programs and that it was 'likely that fraud occurred and, to date, remains undetected'. With regard to the recovery campaign, IBAC understands that as at 14 April 2026 around $8 million had been repaid and returned to consolidated revenue and that a further $5 million was subject to recovery action by means of repayment plans.

Receptiveness to advice

The Assoc. Secretary submitted that the report misrepresents their evidence in relation to their receptiveness to advice. The Assoc. Secretary stated that they did not give evidence that they were unreceptive to information about potential overpayments or errors, and that 'rather, [their] evidence was that [they] objected to the characterisation of the entire cohort of payments identified by the Integrity Services Unit as constituting "fraud and corruption"' and on any view, was right to do so. The Assoc. Secretary submitted that:

> The effect of IBAC's characterisation is to conflate [the Assoc. Secretary]'s objection to the mislabelling of the data as fraud, with an unwillingness to receive relevant information. In fact [they] gave evidence that the analysis resulted in further work by the Department.

In addition, the Assoc. Secretary submitted that:

> Shortly after receiving the ISU analysis, [they] met on [their] own initiative with the Executive Director – People & Culture and… the analyst who completed the work and had been working long hours during the COVID-19 period, to thank [them] for [their] contribution to the project and to arrange for [them] to receive a special achievement award as part of the Department's staff recognition programme.

Procedural fairness

The Assoc. Secretary's submission included comments in relation to procedural fairness. Those comments are largely reflected earlier in the appendix under *Matters raised across multiple submissions*. The Assoc. Secretary also raised specific concerns that their examination summons did not fairly put them on notice as to the nature of the matters that were subject of the investigation in accordance with sections 121(2) and 130(2) of the IBAC Act and the process adopted in examination was procedurally unfair, being held over a 'period of 2 days, nearly 3 years after events with no prior access to any documents subject of the examination', that no opportunity was afforded to observe other witnesses or ask questions, that insufficient time was provided for them to read documents and that material was presented to them in ways that were confusing and prejudicial. The Assoc. Secretary submitted that while there may be occasions where new information arises over the course of an investigation, which means those matters cannot be put to a witness at the time of examination, this was not the case in this instance and the allegations against the Assoc. Secretary were known at all times, but never properly disclosed or put to them for comment.

Deputy Secretary

In response to a draft of this report, the Dep. Secretary rejected the adverse findings against them.

Conduct in relation to the Standing Directions report

In response to the draft report's findings – that the Dep. Secretary concealed the GST backdating loss from the Secretary, VAGO and the Minister for Industry Support and Recovery by requesting the figure be removed from the Standing Directions report – the Dep. Secretary submitted that this act amounted to 'no more than the mere relaying of an instruction that was entirely reasonable for them to follow for the removal of the draft GST backdating overpayments figure at the direction of [the] Associate Secretary'. They claimed that their conduct was entirely reasonable in the circumstances and constituted an insufficient basis for IBAC to find that they had concealed the suspected loss from relevant parties.

The Dep. Secretary noted that the draft Standing Directions report was written to be executed by the Assoc. Secretary, and that they were acting on their instructions in relation to the content of the report. They noted they were entitled to rely on, and did not question, these instructions given their position of authority within the department, and their superior experience on matters pertaining to Standing Directions matters. The Dep. Secretary further stated that the Assoc. Secretary had 'expressed utter confidence in [their] view as to the uncertain status of the numbers'.

The Dep. Secretary submitted that they held an honest and genuine belief that it was an 'open question' as to whether overpayment figures constituted a relevantly reportable loss, and it was their understanding that 'the quantum of overpayment was not accurately ascertainable at the time'. The Dep. Secretary stated that they were acting under the understanding that the figures in the report should be removed so that their accuracy could be verified before they were reported, and 'not to remove them so as not to report them at all'. The Dep. Secretary stated that in these circumstances, it was reasonable to carry out the Assoc. Secretary's direction to remove the figures from the report.

In relation to IBAC's finding that the Dep. Secretary concealed the suspected loss from the Secretary, the Dep. Secretary stated that they did not know the standing direction was a task undertaken by the Secretary and had no appreciable understanding of how the reporting regime worked. The Dep. Secretary submitted that they could not be found to have actively concealed something from the Secretary in circumstances where 'there is no evidence to suggest that [they] had a consciousness that the Secretary needed to know'. In addition, the Dep. Secretary submitted that their operating understanding at the time was that the position of the Assoc. Secretary had been clearly communicated to the Secretary, and 'was in accordance with [the Secretary's] understanding on the matter'. They further stated that the overpayment figure was 'in no way a secret' and was 'openly and regularly discussed by everyone around me'.

In relation to IBAC's finding that the Dep. Secretary's conduct had resulted in the concealment of the suspected loss from the Minister for Industry Support and Recovery, the Dep. Secretary stated that they held no direct reporting line to the Minister and did not believe they had ever spoken to them. They submitted that it was wrong to suggest that they exercised any independent decision to reveal or conceal any matter, or that they had any obligation to do so. They stated that their operational understanding at all material times, based on their interaction with the Secretary and Assoc. Secretary, was that the Minister was aware of the backdating GST overpayments issue, and claimed that, 'if the Minister did not know, then it is only the Secretary, who did know, who will be able to explain that'.

Finding that payments were made to ineligible applicants

In their response, the Dep. Secretary rejected IBAC's conclusion that payments were made to ineligible businesses in error. They stated that:

> The department's view was that no payments were made in 'error' because the business rules applied to the assessment process meant that backdated GST applicants still got through the gate. If the business accessed the gateway, then the payment was not in error. This does not mean the applicant was 'eligible' when properly considered against the GST eligibility criteria.

The Dep. Secretary also submitted that the Secretary and Minister were aware of the loss, that the Program Centre assessment methodology was resulting in GST overpayment issues, and that the August brief demonstrates that the Secretary and the Minister were aware of the loss, but acknowledged that they would not have been aware of the quantum of the loss, arguing that this was because the data was not capable of revealing that at the time.

Finding that false and misleading information was provided to Minister Carroll

The Dep. Secretary submitted that while they authored the brief to Minister Carroll, the Secretary endorsed the brief, adding that 'the brief was developed at the specific instruction of the Secretary as part of his endeavours to regularise the authorising environment supporting the historical decision making of the department' and observing that, 'It should be inferred that no responsible Secretary delivers an incoming brief to a new Minister on a significant issue without a fully developed understanding of the content. In the event, the Secretary was intimately familiar with the content of the subject brief.'

The Dep. Secretary confirmed that they had no verbal relationship with the Minister and that their belief that the former Minister was 'fully appraised' was based on their understanding that he had been briefed by the Secretary and Assoc. Secretary.

The Dep. Secretary acknowledged that elements of the brief to Minister Carroll were deficient, and that the assessment contained in the brief regarding the Integrity Services Unit's analysis was inaccurate but maintained that the error was manifestly insufficient to sustain an adverse finding in relation to their role and contributions in the drafting of that brief. They also added that 'in a highly technical and confusing environment [this was] a marginal briefing error only' and asserted that, the brief 'draws explicit attention to the involvement of VAGO in the matter' concerning the quantum of the overpayments issue, adding that, 'In departmental communication terms, this is a significant signal of further information to come.'

No motive to mislead or conceal information

In response to the draft report, the Dep. Secretary submitted that they had no motive to mislead or conceal information, stating:

> [My] unchallenged evidence is that [I] never feared for [my] job. [I] never felt it was threatened. Had it been, [I] wouldn't have minded it because [I] thought it was awful and [I] didn't want it. [I] did not fear the Minister, whatever his reputation might have been, because [my] role did not lead to engagement with him. There was similarly no risk of professional embarrassment. [I] had not presided over the calamity, at least on some measures, that was the administration of the industrial grants process. The whole scheme had been set up and was in full operation before [I] even got there. Any losses occasioned by GST backdating for the BCAP cohorts had already happened. It wasn't on [me] if things were ultimately viewed, by VAGO or others, as some sort of shambles.

The Dep. Secretary noted that the report does not identify any compelling factors that underpin the adverse findings related to their conduct and observed that it is more appropriate to consider that their actions were not driven by any particular motive. The Dep. Secretary asserted that their conduct simply reflected:

> The implementation of instruction from the Secretary or Associate Secretary in circumstances where it was reasonable for [them] to do so, in an episode of contextually minor error.

Procedural fairness

The Dep. Secretary's submission included comments in relation to procedural fairness. Those comments are reflected earlier in the appendix under *Matters raised across multiple submissions*.

Executive Director A

In response to a draft of this report, Executive Director A rejected the adverse finding against them and requested that IBAC delete section 2.3.3 of the draft report insofar as it concerns them and the letter to the Ombudsman, together with all consequential references elsewhere in the draft report, stating: 'IBAC has failed to take into account relevant considerations and has given weight to immaterial ones'; the commentary is legally unreasonable and 'the central proposition (in section 2.3.3) is wrong and misconceived; and the proposed adverse finding cannot stand'.

Executive Director A submitted that the prohibition in section 162(6) of the IBAC Act against IBAC including in a report a statement as to a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit, any criminal offence or disciplinary offence, 'Cannot be avoided where the ordinary meaning and context of the report convey the same conclusion that, in substance, amounts to a finding or opinion that the elements or essential character of a disciplinary offence are made out'. Executive Director A submitted 'the protection in s 16[2](6) must be assessed comment by comment and opinion by opinion, and in relation to the cumulative effect of the commentary, read fairly and as a whole' and the prohibition cannot be avoided where IBAC 'makes findings or opinions in a report that, for example, a specified person breached their employment contract or the VPS Code of Conduct or engaged in actions that amounted to the same thing'.

As noted in section 2.1.1, IBAC can make findings of fact and can express comments or opinions about a person's conduct, including if it involved a breach of public trust. Codes of conduct, guidelines, policies and procedures provide an important reference point for assessing conduct. In expressing comments or opinions by reference to these instruments, IBAC makes no comment about the potential disciplinary or criminal consequences of the conduct.

Finding that the department withheld key information from the Victorian Ombudsman

Executive Director A disputed IBAC's finding that the department's advice provided to the Ombudsman was materially deficient or that they otherwise withheld key information from the Ombudsman, stating that it 'depends on decontextualising a single sentence of the [Victorian Ombudsman] Response, comparing it with a draft file note prepared for a different purpose about a different and irrelevant cohort, and disregarding multiple more probable and innocent explanations'. Executive Director A submitted that the finding 'relies on highly cooperative testimony directed at a different issue, where the [Victorian Ombudsman] Request was not even put to [Executive Director A]'.

Executive Director A also submitted that the finding is not available on the evidence, 'because the contents of the document are contextually accurate' and the finding 'connotes an intent that did not exist and cannot be inferred from the evidence'. Specifically, Executive Director A asserted that the sentence 'In order to confirm whether an applicant has backdated their GST we rely on historical data extracts from the Australian Taxation Office (ATO)' should not be interpreted as a statement that the department assessed GST backdating using historical ATO extracts for all BCAP2 and BCAP2e applicants.

Scope of the Victorian Ombudsman's enquiry

Executive Director A submitted that the draft report misidentifies the question raised by the Ombudsman's enquiry and reaches its conclusions well outside of the context in which the relevant documents were created and delivered. They noted that 'there is an apparent conflation of:

i. the industrial processing methodology used for initial bulk assessment,
ii. the considerations relevant to recovery of overpayments, and
iii. the more precise eligibility methodology, reflecting the endorsed Government position, applied on internal review of complaints by Customer Experience'.

Executive Director A submitted that a critical distinction between the above elements has not been drawn, specifically:

- Counsel Assisting had put the context of the Ombudsman's enquiry to them correctly in private examination, relevantly stating that on 10 December the Victorian Ombudsman wrote 'in relation to complaints [about] GST backdating [from] people complaining that they hadn't been paid'
- the Ombudsman's enquiry:
  - was limited to 'the administration of complaints in the Customer Experience Team', and information concerning the Program Centre's assessment process was not material to that request
  - reflected a specific engagement between that office and the Customer Experience Team, in circumstances where the Ombudsman was concerned about the backlog of complaints it was handling
  - included an appendix identifying the specific log of complaints that were of interest.
- the Customer Experience Team's internal review process dealt with non-payment only and was the entire context of the interaction with the Ombudsman
- the department's response to the Ombudsman:
  - reflects the Ombudsman's enquiry
  - was 'plainly framed within the narrower question of the endorsed Government eligibility policy and how it applied to the complaints identified in that appendix'
  - 'did not address "differential eligibility criteria" or processes because, from the perspective of Customer Experience, there were none'.

Accordingly, Executive Director A submitted that the draft report:

- incorrectly asserts that the department's response to the Ombudsman 'suggested' that complaints had 'no basis' if they did not meet eligibility criteria, noting that the department's response 'says nothing about the merits of complaints; [but] sets out, accurately and legitimately, the policy position on program eligibility, which is what was asked, and what was answered'
- fails to acknowledge that the omission was of no consequence to the Ombudsman because 'the Ombudsman was already seized of knowledge that some applicant cohorts who backdated GST were nevertheless receiving the requested grants', noting that a staff member from the department's program centre had recently become employed at the Ombudsman's office, who was 'comprehensively familiar with the Department's operational processes and the status of the GST overpayments issue' and the issue was discussed in engagements with the department
- incorrectly asserts that the alleged omission of information was material because it increased the likelihood that inequitable decisions would be made in relation to these grants, noting that this is not supported by any causal pathway and is wrong.

In support of this submission Executive Director A noted:

- 'the Ombudsman already had knowledge that overpayments occurred and of issues around GST eligibility thresholds being applied'
- 'the alleged omission was not material information for the Ombudsman, whom at the time was concerned with complaint handling and the review of declined or on-hold applicants'
- by 20 December 2021 application windows had ended and the work of the department was 'complaint and review handling, top up reconciliation, resolving applications on hold, overpayment and recovery analysis, loss reporting and audit response work'
- 'the Secretary's response to the VAGO AFR report (2022–23) makes it clear that relevant lessons from the COVID-19 grant programs, including in relation to GST registration, were incorporated into subsequent programs, including the Government's flood recovery grants'
- 'IBAC's causal assertion requires more that the identification of an alleged omission in the [Victorian Ombudsman] Response, noting that subsequent events do not support that proposition'.

Executive Director A also submitted that 'IBAC must identify the decisions said to remain, the decision makers, the process, and the mechanism by which the alleged omission materially increased the likelihood of inequitable outcomes' and 'explain how the Victorian Ombudsman's role would have intersected with each of these steps'.

As noted in section 2.3.3, the Ombudsman's enquiry sought clarification of 'the department's policy position on approving or declining grants with backdated GSTs and the consequences of this decision'. IBAC considers that 'approving and declining' grants is much broader than 'the administration of complaints in the Customer Experience Team' and that information concerning the Program Centre's assessment process was material to that request. IBAC also maintains that while the 'application window had ended' the industrial assessment process had not. Moreover, the failure to specify that the assessment process described in the letter was not used by the Program Centre was material as it inhibited the Ombudsman's ability to properly assess the validity of complaints.

Different purposes of and assessment processes used by Customer Experience and Program Centre

Executive Director A submitted that the draft report conflates the Program Centre and Customer Experience Team's processes, when the functions of the two teams concerned different cohorts, assessed applications for different purposes and used different methods. They also submitted that the reasoning in the draft report 'repeatedly elides that distinction and having done so, leads itself into error'. They noted:

> The Program Centre was responsible for the initial, high volume 'industrial' assessment of grant applications at scale. The fact that some applicants were paid through that methodology did not mean they were eligible to be paid. Indeed, structural overpayment propensity is, in part, the genesis of IBAC's investigation.
>
> By contrast, the Customer Experience team handled complaints and reviews from applicants who had not been paid, assessing their eligibility against the endorsed Government eligibility criteria in force at the time. Customer Experience, at officer and executive level, also managed the Department's stakeholder relationship with the Ombudsman.

Executive Director A added:

> It is important to distinguish the eligibility criteria policy (the substantive rules for entitlement, including the 'Pakula treatment') from the assessment process (the administrative method used to test whether those rules are met). Regrettably, the Draft Report conflates the two.
>
> The Program Centre processed extremely high volumes of initial decisions and, (as the Draft File Note records, for example), checked GST registration 'on and as at the date of assessment', an inexact method that resulted in some applicants being overpaid. Customer Experience, dealing with far lower volumes and seeking greater precision, conducted reviews relying on 'historical data extracts from the Australian Taxation Office'.
>
> The [Victorian Ombudsman] Response describes the latter process because the latter process is what was relevant to the cohort the Ombudsman was asking about.

IBAC agrees that the Program Centre and Customer Experience Team were not using the same eligibility criteria or methodology to assess the GST registration criterion. Those assessment processes used different datasets and different reference points to assess GST registration in all instances. While Customer Experience used historical ATO data to confirm whether GST was held on the eligibility date specified in the program guidelines, the Program Centre used live ABR data to check whether GST was held on the date of assessment. As discussed in section 2.3.3, Executive Director A was aware of this difference as reflected in the draft file note.

IBAC considers that the Program Centre's assessment process did not apply the eligibility criteria policy. As Executive Director A states in their submission, that process involved 'an inexact method that resulted in some applicants being overpaid'. It is the inexactness of this method that was not communicated to the Ombudsman even though it was relevant to the Ombudsman's enquiries which sought clarification of the department's policy position on approving or declining grants with backdated GST.

IBAC considers that the differences between the roles and processes of the Program Centre and Customer Experience Team are accurately presented in the report, including Executive Director A's evidence on the subject (see section 2.3.3). Indeed, IBAC contends that it was the department's response to the Ombudsman that conflated these processes by failing to state that the review process described only reflected the Customer Experience Team's process.

Different purpose of the draft file note

Executive Director A submitted that the draft file note and the letter to the Ombudsman involved 'two different answers to two different questions, and the conflation of their purposes did not exist then and does not exist now'. Specifically, Executive Director A stated that the draft file note was 'concerned with the recovery of potentially ineligible payments administered by the Program Centre, not with the resolution of eligibility complaints by Customer Experience'.

In terms of the accuracy of the contents of the draft file note Executive Director A stressed that they were not responsible for the Program Centre's industrial processing of grants and the information about that process in that document 'was based on what [Executive Director A] and [their] team understood from others, including areas with operational responsibility for grant processing'. Executive Director A added that the evidence clearly establishes that the draft file note was 'provisional, incomplete or potentially inaccurate (... compared to the completed version in June 2022)' and it follows that its contents cannot be used as a 'benchmark' of truth against which the Ombudsman response can be judged as deficient.

IBAC notes that the department provided the June 2022 version of this file note to VAGO in the course of its August 2022 audit (see section 2.3.3). A comparison of the December 2021 'draft' and the June 2022 'completed' version identified minimal amendments, none of which altered the summary of the Program Centre's assessment process. This revised file note was provided to VAGO in response to an audit suggesting that it was in fact used as a 'benchmark of truth' in relation to the Program Centre's assessment process.

Responsibility for the department's response to the Victorian Ombudsman

Executive Director A submitted that they accepted executive responsibility for the two documents not aligning perfectly and attributed the difference to having multiple responsibilities in an emergency operating environment. However, they also stated that they did not accept that any difference was material to the Ombudsman's request, or that they appreciated any inconsistency at the time.

Executive Director A submitted that at the time, they did not have a 'comprehensive, settled, end-to-end systems understanding of the BCAP program' as they were new to industrial-scale grant management, and noted that the BCAP grant environment was 'complex, fragmented across many teams, and not always well documented'. They stated that any deficiency in the letter to the Ombudsman is 'far more naturally explained by that complexity, fragmentation and newness, and by [their] reliance on information from operation teams.

Executive Director A also noted that their comments made to IBAC in evidence – acknowledging that the letter does not appear to be consistent with the file – were made in response to a question about the accuracy of the draft file note – not the Ombudsman response. As such, Executive Director A submitted that read fairly and in context, their evidence only demonstrates they accepted executive responsibility for the fact that the two documents they had been involved in did not align perfectly, expressly attributing the difference to inadvertence and having multiple responsibilities. Executive Director A added that it appears IBAC had 'omitted and underweighted both the unchallenged evidence that they did not consider the distinction important to what the Ombudsman was asking, and the Deputy Commissioner's own reframing of the issue'.

Executive Director A noted that their state of mind at the time was that the Ombudsman already knew of the overpayment issue and 'any inconsistency could rise no higher than an inaccuracy'. They submitted that IBAC's finding wrongly imputes secrecy, maintaining the position that as at December 2021, 'no element of secrecy was apprehended or necessary' and that the correspondence 'merely omitted information about a matter the officer already understood and had not asked about'. They also noted that the report does not connect them to the removal of overpayment figures from the Standing Directions report, and that these findings are 'analytically, functionally and evidentially distinct and no causal or evidentiary bridge between them is identified'.

IBAC accepts Executive Director A's evidence that the operating environment of the grant program was complex and evolved rapidly, and that their understanding of the program may not have been granular. IBAC does not, however, accept that the Executive Director did not have a working knowledge of the issue of GST backdating, an awareness that the department had not been checking that applicants were registered on the eligibility date, and the potential gravity of this issue.

IBAC maintains that key information was withheld from the Ombudsman.

As discussed in section 2.3.1, Executive Director A was aware of the August brief which noted the 'integrity risks and potential flow-on financial impacts of accepting backdated GST registrations to current and future COVID-19 business support programs'. Executive Director A was also involved in discussions concerning the need for 'separate records of the date registration is sought and the date it is backdated to' in order to implement the August brief recommendation. This discussion demonstrated that the department's industrial grant assessment process was not using data that could facilitate the checks described in the letter to the Ombudsman.

Further, as discussed in section 2.3.3, the narrative in the letter to the Ombudsman was inconsistent with the view expressed days earlier, in the 8 December file note. In particular the file note stated that the Integrity Services Unit's analysis was inaccurate because it should have assessed whether or not applicants held registration as at the date of their application rather than the eligibility date of 15 July (for BCAP2e). In contrast, the 20 December letter to the Ombudsman represented this 'inaccurate' analysis as the method being used by the department to assess the GST registration requirement.

Procedural fairness

Executive Director A's submission included comments in relation to procedural fairness. Those comments are reflected earlier in the appendix under *Matters raised across multiple submissions*.

Martin Pakula

In response to a draft of this report, Mr Pakula acknowledged IBAC's finding that certain department officials provided false and misleading information to himself and others. Mr Pakula also provided a range of comments in relation to the report's discussion of vulnerabilities created by failures to provide frank and fearless advice and maintain a positive speak-up culture, asserting that public servants have an obligation to provide frank and fearless advice regardless of the disposition of the responsible minister.

Mr Pakula submitted:

> I am nonetheless disquieted by an undercurrent in the report which I suspect emanates from a philosophical difference between IBAC and myself regarding the dynamic which ought to properly exist between Ministers and their departments.
>
> In response to evidence from the departmental officers who are the subject of this report, IBAC appears to give credence to the notion that Ministers, by responding fiercely or with displeasure to errors or failures of execution by their departments, might unwittingly foster an environment where frank and fearless advice is less likely to be provided. In my view it is injurious to public administration for IBAC to muse in a way which gives any support to this notion.
>
> Ministers are responsible to the Government they serve, the Parliament they answer to, and the community which elects them. They do not hold office to be passive recipients of advice from the public service nor to always respond with equanimity when public servants err. It has always been my view that Ministers are not only entitled to steward their portfolio responsibilities ferociously, they are, in fact, obligated to.
>
> Correspondingly, senior public servants (in particular) should implicitly understand the above. In my experience the vast majority of them do.
>
> Whilst a small minority of public servants might seek to conceal mistakes for fear that they may have to contend with a 'cranky' Minister, such a response can never be justified.
>
> I am not suggesting that IBAC has sought to justify the behaviour which is the subject of this report. I do contend that IBAC implicitly (or perhaps unconsciously) excuses it, in part, by giving credence to the suggestion that presumed Ministerial displeasure might explain a failure by public servants to provide truthful and fulsome information. In my view it is dangerous for IBAC to provide such a signal, either to the public service or indeed to Ministers.

Mr Pakula also asserted that his conduct couldn't be a significant factor in relation to the advice provided by the public servants in the report, submitting that:

> the explanation offered is rendered (at best) insignificant, by the fact that two of the three public servants who are the subject of this report, never briefed me personally and the other did so only infrequently.

Simon Phemister

In response to a draft of this report, Mr Phemister stated that he was shocked when he was informed by IBAC during his examination about the withholding of information regarding the suspected loss and the large scale of the issue and noted that he maintained great concern that this information was withheld.

Departmental culture

In response to the draft report's commentary, Mr Phemister provided a range of comments about the department's speak-up culture.

Mr Phemister stated that he considered it was unfair to characterise the department as an organisation where people felt unsafe to speak up, or as an organisation lacking a positive risk culture. Mr Phemister stated he worked hard to foster a safe environment where people felt safe to speak up, and that during his time as Secretary, he had staff from many divisions of the department approach him regularly, whenever issues and risks arose. He stated he had received reports of numerous overpayment and grant errors, but also cases of historical sexual harassment and bullying, which were all handled with respect and care.

Mr Phemister referenced the department's People Matter Survey results as evidence of the positive culture he cultivated during his tenure, stating:

> The Departmental results, based on record high response rates, improved upon previous results and were higher than, if not equal to my comparison groups.

He also referenced his experience working in the public service for around 20 years at the time and having worked with a lot of his team previously, stating he had multiple examples of acting on concerns of junior staff, regardless of who might be involved. He submitted:

> I cared about my team but under no circumstance would I or did I put anyone above integrity and the values and behaviours expected in the Department.

Mr Phemister said that his personal proximity to the Assoc. Secretary was no different to other executives working 'incredible' hours under 'immense pressure'.

Relationship between ministers' offices and the department

Commenting on the relationship between ministers' offices and the department, Mr Phemister stated the relationships were healthy and appropriate, and noted that hundreds of issues were raised with over a dozen ministers during the pandemic response. He agreed with Mr Pakula's comments in the report about the working relationship between his office and the department, and recognised the stress experienced during the COVID-19 pandemic, stating:

> The Department's relationship with the Coordinating Minister's Office, pre-, during and post the extreme pressure of the pandemic response was constructive and appropriate and [there were] many examples – hundreds – where bad news was communicated and responded to constructively support this view.

Public bodies named in the report and responses to the draft report

Department of Jobs, Precincts and Regions (now Department of Jobs, Skills, Industry and Regions)

In response to the draft report, the Secretary of the department provided the following comments:

> I acknowledge the adverse comments concerning the department's predecessor and the gravity of the identified conduct.
>
> I am committed to fostering a culture that promotes frank and fearless advice and prudent use of public resources. I will be taking further steps to embed expected behaviours and remind our employees of these fundamental and enduring public service obligations in response to the report's findings.
>
> I also commend the individuals who had the courage to speak up about this matter in the public interest and reiterate my firm commitment to fostering a speak up culture in my department.

The response further noted that the individuals adversely mentioned in the report are no longer employed at the department and, as such, the department is unable to take further action in relation to their identified conduct.

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